

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint against BellSouth )  
Telecommunications, Inc., for alleged )  
overbilling and discontinuance of service )  
And petition for emergency order restoring )  
Service, by IDS Telcom LLC. )

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Docket No. 031125-TP  
Filed: August 12, 2004

REBUTTAL TESTIMONY AND EXHIBITS

OF

ANGEL LEIRO

ON BEHALF OF

IDS TELCOM, LLC.

DOCUMENT NUMBER-DATE

08812 AUG 12 3

FPSC-COMMISSION CLERK

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6

7

8 **Q. PLEASE STATE YOUR NAME AND THE PARTY YOU ARE**  
9 **REPRESENTING.**

10 A. My name is Angel Leiro. I filed direct testimony on behalf of IDS in this  
11 proceeding.

12

13

14 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

15 A. The purpose of my rebuttal testimony is to address certain assertions  
16 made by BellSouth witnesses Kathy K. Blake and David F. Melton, Jr. in their  
17 Direct Testimony. My Rebuttal Testimony addresses issues relating to the DUF  
18 dispute, the so called "Market Based Rates"<sup>1</sup> dispute, and the Settlement "Q"  
19 Account dispute.

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<sup>1</sup> As Mr. Gillan testifies, the term "market-based rate" is an oxymoron -- there is no market from which IDS Telcom can purchase wholesale switching, a fact amply documented by the usurious rates that BellSouth has proposed. IDS Telcom would be interested in attempting to migrate some of its analog lines to its own local switch, that act would require non-discriminatory access to an EEL (loops with concentration), which BellSouth will not provide. BellSouth's refusal to offer a non-discriminatory EEL also means that BellSouth may not charge IDS Telcom any rate other than its cost-based rates; however, even had BellSouth offered a non-discriminatory EEL, its rates must still be just and reasonable (as Mr. Gillan explains).

1

2 **Q. ARE YOU INCORPORATING ANY OF IDS' OTHER REBUTTAL**  
3 **TESTIMONIES BY REFERENCE, AND WHY ARE YOU DOING SO?**

4 A. Yes, my rebuttal testimony adopts and incorporates by reference the  
5 rebuttal testimonies of Jermaine Johnson, Elizabeth Fefer and the joint testimony  
6 of Raquel Rencher and Elizabeth Fefer. My reasons for adopting these rebuttal  
7 testimonies, is that I am competent to testify about the issues set forth in each of  
8 those testimonies, and will be available to answer questions relating to them.  
9 Moreover, rather than restate what has already been said in those testimonies, it  
10 is more efficient for me to simply adopt them. This testimony also incorporates  
11 by reference each of the exhibits attached to those rebuttal testimonies.

12

13

14 **DUF DISPUTE (ISSUE 4(a) and 4(b))**

15

16 **Q. IN THE DIRECT TESTIMONY OF KATHY K. BLAKE, BEGINNING AT**  
17 **PAGE 6, MS. BLAKE STATES THAT THERE IS NOTHING IN THE PRIOR**  
18 **AGREEMENT THAT WOULD ENTITLE IDS TO A "TRUE-UP" OF DUF**  
19 **RATES. DO YOU AGREE WITH THIS STATEMENT?**

20 A. No, I do not agree with Ms. Blake's statement or position on the true-up  
21 issue. The DUF dispute arises from DUF charges under the parties' Prior  
22 Agreement that was in effect from January 2001 through February 4, 2003.  
23 There are several similar (if not identical) sections in the Prior Agreement that

deal with the true-up issue. See, for example, Section 13 of Attachment 2 of the  
2 Prior Agreement which was included in Exhibit No.\_\_\_\_(AL-2) of my direct  
3 testimony at pages 2-3.

4 Section 13, titled "True Up" opens by stating that: *"This section applies*  
5 *only to Tennessee and other rates that are interim or expressly subject to true-up*  
6 *under this attachment."* Thus, it is clear that Section 13, "True Up," applies in  
7 three circumstances: (1) UNE rates in Tennessee; (2) *"other rates that are*  
8 *interim"*; and (3) rates that are expressly subject to true-up. In this docket, all of  
9 the DUF rates at issue fall under the second category of rates-- *"other rates that*  
10 *are interim."* Section 13 of Attachment 2 contains several relevant paragraphs.

11 Paragraph 13.1 states as follows:

12 *The interim prices for Network Elements and Other Services and*  
13 *Local Interconnection shall be subject to true-up according to the*  
14 *following procedures:*

15  
16 Paragraph 13.2 states in pertinent part as follows:

17 *The interim prices shall be trued-up, either up or down, based on*  
18 *final prices determined . . . by a final order (including any appeals)*  
19 *of the Commission which final order meets the criteria of (3) below.*  
20 *The parties shall implement the true-up by comparing the actual*  
21 *volumes and demand for each item, together with interim prices for*  
22 *each item, with the final prices determined for each item.*

23  
24 Finally, Paragraph 13.4 states:

25 *A final order of this Commission that forms the basis of a true-up*  
26 *shall be the final order as to prices based on appropriate cost*  
27 *studies, or potentially may be a final order in any other Commission*  
28 *proceeding which meets the following criteria: (a) BellSouth and*  
29 *IDS are entitled to be a full Party to the proceedings; (b) It shall*  
30 *apply the provisions on the federal Telecommunications Act of*  
31 *1996, including but not limited to Section 252(d)(1) (which contains*  
32 *pricing standards) and all then-effective implementing rules and*  
33 *regulations; and (c) It shall include as an issue the geographic*

1            *deaveraging of network element and other services prices, which*  
2            *deaveraged prices, if any are required by said final order, shall form*  
3            *the basis of any true-up.*  
4

5

6        **Q.     WHAT DO THESE PROVISIONS MEAN?**

7        A.     First, any interim rates will be subject to true-up once final rates have been  
8        established for all services provided under the Prior Agreement, including all  
9        DUF charges. Second, a final rate is one established through appropriate cost  
10       studies and/or geographic deaveraging under Section 252. In the case of the  
11       DUF dispute, as I explain below, it was not until this Commission's UNE pricing  
12       order in September 2002 that appropriate cost-based rates were established for  
13       DUF.

14

15

16       **Q.     DO THE PARTIES AGREE ON CERTAIN ASPECTS OF THE DUF**  
17       **DISPUTE?**

18       A.     Yes. There appears to be no dispute between IDS and BellSouth, that if  
19       the parties true-up the DUF rates, IDS will not owe BellSouth anything for DUF  
20       charges. This is because IDS paid BellSouth all DUF charges at the final rate  
21       established by this Commission in Order No. PSC-02-1311-FOF-TP in Docket  
22       No. 990649A-TP ("September 2002 Rates"). It also appears that Ms. Blake  
23       concedes that "interim rates" are subject to true-up since she states on page 6,  
24       lines 14-15 that: *"Only 'interim' rates were declared subject to true-up."*

25

1

2 **Q. WHAT THEN IS IN DISPUTE?**

3 A. The dispute between IDS and BellSouth involves a determination as to  
4 which DUF rates were "interim" and which were "final" as defined in the  
5 Interconnection Agreement. Ms. Blake states on page 6, lines 15-17 that:  
6 *"Permanent rates, regardless of whether they might be revised or updated in*  
7 *subsequent state commission proceedings, were not subject to true-up."* These  
8 rates were not "updated" as Ms Blake suggests, but rather corrected to account  
9 for multiple errors in the rates.

10

11

12 **Q. CAN YOU EXPLAIN YOUR UNDERSTANDING OF HOW THIS**  
13 **COMMISSION ESTABLISHED RATES IN THE UNE DOCKET?**

14 A. Yes. It is my understanding that this Commission established all UNE  
15 rates for BellSouth in Docket No. 990649-TP/990649A-TP in three different  
16 orders. With respect to DUF rates, each of the three Commission Orders  
17 contained different DUF rates.

18

19

20 **Q. WHEN DID THE FIRST COMMISSION ORDER COME OUT AND WHAT**  
21 **WERE THE RELEVANT RATES?**

1 A. The first set of DUF rates were set on May 25, 2001 in Order No. PSC-01-  
2 1181-FOF-TP ("May 2001 Order"). The May 2001 Rates for the relevant DUF  
3 records were:

4	ADUF (Message Processing):	0.013928 per message
5	ADUF (Connect Direct):	0.00012927 per message
6	ODUF (Message Processing):	0.006614 per message
7	ODUF (Connect Direct):	0.00010772 per message

8 (Exhibit No. \_\_\_\_ (AL-3), May 2001 Order, Appendix A).

9

10

11 **Q. WHEN DID THE SECOND SET OF DUF RATES COME OUT?**

12 A. The second set of DUF rates were set on October 18, 2001 in Order No.  
13 PSC-01-2051-FOF-TP ("October 2001 Order"). The October 2001 Rates for the  
14 relevant DUF records were:

15	ADUF (Message Processing):	0.014391 per message
16	ADUF (Connect Direct):	0.00012973 per message
17	ODUF (Message Processing):	0.006835 per message
18	ODUF (Connect Direct):	0.00010811 per message

19 (Exhibit No. \_\_\_\_ (AL-4), October 2001 Order, Appendix A).

20

21

22 **Q. WHEN WAS THE THIRD SET OF DUF RATES ESTABLISHED?**

23 A. The third and final set of DUF rates were set on September 27, 2002 in  
24 Order No. PSC-02-1311-FOF-TP ("September 2002 Order"). The September  
25 2002 Rates for the relevant DUF records were:

26	ADUF (Message Processing):	0.001656 per message
27	ADUF (Connect Direct):	0.00012450 per message

1 ODUF (Message Processing): 0.002146 per message  
2 ODUF (Connect Direct): 0.00010375 per message  
3

4 (Exhibit No. \_\_\_\_\_(AL-5), September 2002 Order Appendix A).  
5  
6

7 **Q. CAN YOU BRIEFLY DESCRIBE THESE THREE DIFFERENT RATE**  
8 **ORDERS?**

9 **A.** In the May 2001 Order, this Commission addressed the appropriate  
10 methodology, assumptions, and inputs for establishing BellSouth rates for UNEs.  
11 The Commission then set rates for many BellSouth UNEs and UNE  
12 Combinations, but ordered BellSouth to refile within 120 days cost study  
13 revisions addressing hybrid copper/fiber xDSL-capable loops, network interface  
14 devices (NIDs), and cable engineering and installation. On June 11, 2001,  
15 BellSouth moved to reconsider the May 2001 Order based upon numerous  
16 matters, including inflation adjustment factors that impacted many rates  
17 (including all DUF rates). On June 26, 2001, BellSouth also filed a motion  
18 seeking to conform staff analysis and cost model run to the May 2001 Order, in  
19 which BellSouth claimed several inconsistencies between the Commission staff's  
20 cost model run and the May 2001 Rates.

21 Shortly thereafter, IDS became aware that BellSouth was offering CLECs  
22 the May 2001 Rates by way of interconnection agreement amendments. On or  
23 about August 13, 2001, BellSouth sent IDS a signed Amendment purporting to  
24 incorporate the May 2001 Rates. Because of various delays, including litigation



1 before this Commission in the docket that gave rise to the Settlement “Q”  
2 Account dispute, the Amendment did not become effective until November 2001.

3 On October 2, 2001, the Commission voted to grant various motions  
4 seeking to reconsider and/or alter the May 2001 Order and its rates. On October  
5 18, 2001, this Commission entered an order granting in part the motions for  
6 reconsideration and modifying many of the May 2001 Rates, including the DUF  
7 rates in dispute here. On October 8, 2001, BellSouth submitted its new cost  
8 studies in compliance with the May 2001 Order. These cost studies included  
9 completely new cost studies for all DUF rates. (See Exhibit No. \_\_\_\_ (AL-6), a  
10 copy of BellSouth’s October 29, 2001 Request For Specified Confidential  
11 Classification which accompanied BellSouth’s revised cost studies. Attachment  
12 A lists the various revised cost models BellSouth submitted, including new cost  
13 studies for ADUF, EODUF and ODUF).

14  
15  
16 **Q. DID BELLSOUTH EXPLAIN THE REASON FOR THESE NEW**  
17 **STUDIES?**

18 A. No. However, this Commission later said in its September 2002 Order  
19 (pp. 8-9):

20 *[W]e ordered BellSouth to refile, within 120 days of the issuance of*  
21 *the Order, revisions to its cost study . . . . Later, BellSouth*  
22 *determined, through proceedings in other states, that changes were*  
23 *needed to the inputs for Daily Usage File (DUF) rates. As a result,*  
24 *that issue has been incorporated into this proceeding as well. This*  
25 *proceeding has come to be referred to as ‘BellSouth’s 120-day*  
26 *filing.’*  
27

1 Moreover, during the hearing on BellSouth's 120 day filing, on March 11, 2002,  
2 BellSouth's DUF witness, Ms. Caldwell, provided the following explanation:

3 *One last thing I would like to add is, we did do an additional study in*  
4 *this filing that is associated with the daily usage file, or DUF,*  
5 *studies. These files are the files that are used to provide electronic*  
6 *billing data to ALECs, and they were originally based on the*  
7 *demand at the time when Phase I was done as well as the first*  
8 *study that was filed here on a much lower demand. Demand*  
9 *changed after BellSouth began offering UNE-P and that was not*  
10 *available when we did the Phase I studies. So with that*  
11 *adjustment, we have increased the demand. And in looking at the*  
12 *DUF rates, you will see that they reflect that increased demand with*  
13 *the major ADUF and ODUF offerings.*

14  
15 (Exhibit No. \_\_\_\_ (AL- 7), transcript excerpt).

16

17

18 **Q. WHAT DOES THIS LEAD YOU TO CONCLUDE?**

19 A. Based upon Ms. Caldwell's testimony, the DUF rates in the May 2001  
20 Order and October 2001 Order, were calculated using cost studies that only  
21 considered the demand for DUF records under Resale and not UNE-P. Since  
22 the vast majority of DUF records are generated under UNE-P, any studies under  
23 Resale were meaningless and did not model a true "forward-looking"  
24 demand/rate for DUF records in a world where CLECs can provide service under  
25 UNE-P. Under the terms of the parties' agreement, neither the May 2001 Rates  
26 or the October 2001 Rates for DUF were final rates under the Prior Agreement  
27 (Paragraph 13.4 of Attachment 2) because such rates pursuant to the agreement  
28 must be established through "appropriate cost studies" and/or geographic  
29 deaveraging under Section 252. BellSouth's first DUF cost studies, which were

1 erroneous and not based upon the provision of service under UNE-P did not  
2 meet this test.

3

4

5 **Q. WHAT DOES A COMPARISON OF THE VARIOUS RATES REVEAL?**

6 A. A review of the proposed rates in BellSouth's 120 day filing for DUF shows  
7 that BellSouth's proposed ADUF message rate was only about 13% of the  
8 corresponding May 2001 rate and that the proposed ODUF message rate was  
9 only about 37.8% of the corresponding May 2001 rate. When BellSouth began  
10 billing IDS the May 2001 Rates, it knew that those DUF rates were between  
11 approximately 2.6 to 7.7 times the rate that would apply using "*appropriate cost*  
12 *studies*" that considered DUF demand under UNE-P. BellSouth knew it was  
13 over-recovering DUF costs under both the May 2001 Rates and the October  
14 2001 rates. And this Commission eventually adopted final DUF rates in the  
15 September 2002 Order, which were even lower than those BellSouth proposed in  
16 its 120- day filing cost studies.

17

18

19 **Q. DID BELL SOUTH HAVE TO MAKE FURTHER REVISIONS TO ITS**  
20 **COST MODEL?**

21 A. Yes. On January 24, 2002, BellSouth advised the Commission that it  
22 needed to revise its Loop Model again because of additional errors. (See Exhibit  
23 No. \_\_\_\_ (AL-8), BellSouth's Motion For Leave To File Amended Cost Study And

1 Testimony). As a result, this Commission revised many more rates in its  
2 September 2002 Order than previously identified in the May 2001 Order for  
3 BellSouth's 120-day filing. Only the September 2002 Order was a true "final" rate  
4 order which set final rates for BellSouth UNEs and UNE Combinations using the  
5 appropriate costing standard as required by the parties' agreement.

6

7

8 **Q. DO YOU HAVE FURTHER SUPPORT FOR IDS' POSITION THAT THE**  
9 **MAY 2001 RATES WERE NOT FINAL RATES PURSUANT TO THE PARTIES'**  
10 **AGREEMENT?**

11 A. Yes. Even ignoring the fact that the first cost studies were erroneous, it  
12 is clear that the May 2001 Rates were never final. IDS only availed itself of the  
13 May 2001 Rates, and never adopted the October 2001 Rates. At BellSouth's  
14 request, this Commission altered the May 2001 Rates on reconsideration in the  
15 October 2001 Order and then set final DUF rates in the September 2002 Order.  
16 Shortly after the September 2002 Order, IDS requested an amendment to  
17 receive the September 2002 Rates. A copy of that Amendment was attached to  
18 my Direct Testimony as Exhibit No.\_\_\_\_(AL-2) (pages 4 and 5). That Amendment  
19 was executed by IDS on or about October 18, 2002 and by BellSouth on or about  
20 October 22, 2002. The last paragraph of that Amendment states as follows:  
21 *"Neither party waives any right to seek clarification from the Commission*  
22 *regarding retroactive application of the rates contained in this Amendment."* This

1 dispute concerns a true-up of the September 2002 Rates over the May 2001  
2 Rates that was specifically contemplated by this October 2002 Amendment.

3

4

5 **Q. MS. BLAKE IMPLIES (BEGINNING AT PAGE 6) THAT THE MAY 2001**  
6 **RATES WERE FINAL AND PERMANENT DUF RATES. ARE YOU AWARE**  
7 **OF ANY PROCEEDINGS IN WHICH BELL SOUTH ARGUED THAT THE MAY**  
8 **2001 RATES WERE NOT FINAL AND WERE ACTUALLY VOID?**

9 A. Yes, I am aware of a proceeding in which BellSouth vehemently argued  
10 that the May 2001 Rates were never final and were ultimately rendered void. In  
11 Supra Telecom's bankruptcy (Case No. 02-41250-BKC-RAM), BellSouth and  
12 Supra litigated many billing disputes, which reduced BellSouth's pre-bankruptcy  
13 billings to Supra from \$170.3 million to \$37 million. In reviewing a related  
14 Supra/BST adversary proceeding (Adv. No. 03-1122-BKC-RAM-A), it appears  
15 that Supra claimed that BellSouth should true-up the final September 2002 Rates  
16 for DUF, and that BellSouth eventually did so as part of the overall settlement.  
17 As part of the Supra/BST Adversary Proceeding, both BellSouth and Supra also  
18 filed copies of transcripts and filings in a prior arbitration between the parties  
19 called "Arbitration VI." Attached to this testimony as Exhibit No. \_\_\_\_ (AL-9) is a  
20 copy of "BellSouth's Request For Interpretation, Clarification, And/Or Correction"  
21 in Arbitration VI. The BellSouth attorneys listed on that filing include E. Earl  
22 Edenfield, Jr. (who represented BellSouth in UNE cost Docket No. 990649-

1 TP/990649A-TP) and James Meza III (who represents BellSouth in this docket).

2 BellSouth states at page 5 of that Request:

3 *The Commission's May 2001 Order was not 'final and*  
4 *nonappealable' when Supra requested the amendment (and it is*  
5 *still not final as the Commission's May 2001 Order, as revised by*  
6 *the October 2001 Order, is the subject of an appeal pending in*  
7 *federal court – MCI Worldcom v. BellSouth, Case No. 401-CV-492-*  
8 *RH, U.S. Dist. Ct. N.D. Fla. – and further Commission action).*  
9

10 BellSouth's motion also states on page 7 that: *"There is no dispute that the rates*  
11 *set forth in the May 2001 Order have been replaced by rates the Commission*  
12 *established in its October 2001 Order."* Additionally, attached to this testimony  
13 as Exhibit No. \_\_\_\_\_(AL-10) is a transcript of oral argument on the BellSouth  
14 Request, in which BellSouth's attorney, Mr. Edenfield, argued that the May 2001  
15 Rates were never final:

16 [Mr. Edenfield:] *The only other issue to take into consideration is*  
17 *the impact of the October 2001 reconsideration Order and the*  
18 *impact it has on these rates [May 2001 Rates]. The Tribunal has*  
19 *ordered the May 25, 2001 rates when, in fact, those rates for all*  
20 *intents and purposes were found to be erroneous by the Florida*  
21 *Public Service Commission. I have a copy of the October*  
22 *reconsideration...*  
23

24 *Mr. Edenfield: If you look on page 5. The import of what I'm*  
25 *arguing, while the entire reconsideration Order is important, you will*  
26 *look at the inflation factor which impacts every single rate from May*  
27 *25, the Commission in October decided it had misapplied the*  
28 *inflation factor...*  
29

30 [Mr. Edenfield:] *What happened was they misapplied the inflation*  
31 *factor and had to go back and redo all of the May 25 rates...*  
32

33 [Mr. Edenfield:] *I guess what I'm asking you to consider is the*  
34 *impact of the reconsideration Order on your finding that the May 25*  
35 *rates are appropriate. If you do not agree with my argument that*  
36 *these are the rates that should have applied for the entire term,*  
37 *then and only then, I would ask you to consider that the May 25*

1           *rates are not appropriate because they were declared invalid, for all*  
2           *intents and purposes, by this Award [October 2001 Order] and,*  
3           *thus, it would be October rates that will be applicable for the time*  
4           *period Mr. Edenfield: The October rates are not final and*  
5           *nonappealable. Again, this gets back to if you disagree with my*  
6           *analysis here and somehow determine that rates other than the*  
7           *October '99 and the December '99 stipulation apply, then I would*  
8           *ask you to consider – because the October rates are no more final*  
9           *and nonappealable than the May rates.*

10  
11 (Exhibit No. \_\_\_\_\_(AL-10), transcript pps. 74, 75, 76, 77).  
12

13  
14 **Q. WHY ARE THESE EXCERPTS IMPORTANT?**

15 A. BellSouth has always known that both the May 2001 Order and the  
16 October 2001 Order were not final orders and therefore the May 2001 rates and  
17 the October 2001 rates were not final rates as contemplated by the parties'  
18 agreement. In addition, BellSouth was successful in arguing in the Supra matter  
19 that the May 2001 rates were never final rates and that such rates were rendered  
20 void by the October 2001 Order. (Exhibit No. \_\_\_\_\_at p. 7, AL-11). Ms. Blake is  
21 simply wrong when she implies that the May 2001 Rates (which are at heart of  
22 this dispute) were final or otherwise permanent rates as contemplated by the  
23 parties' agreement. BellSouth itself has successfully argued to the contrary in  
24 another proceeding.

25  
26  
27 **Q. IN MS. BLAKE'S DIRECT TESTIMONY, BEGINNING AT PAGE 5, SHE**  
28 **STATES THAT THERE WAS NO INDICATION IN THE SEPTEMBER 2002**  
29 **ORDER THAT THE SEPTEMBER 2002 RATES WERE TO BE APPLIED**

1 **RETROACTIVELY. WAS THERE ANYTHING IN THE SEPTEMBER 2002**  
2 **ORDER THAT PRECLUDED A RETROACTIVE TRUE-UP OF RATES?**

3 A. No. The September 2002 Order is silent on this topic and merely states  
4 that the rates will become effective upon amendment of the carrier's  
5 interconnection agreements. This statement, however, has nothing to do with a  
6 true-up of rates as the parties' agreement requires.

7

8

9 **Q. ARE THE CONCEPTS OF "TRUE UP" AND "EFFECTIVE DATES" THE**  
10 **SAME?**

11 A. No. These concepts are different and are certainly not mutually exclusive.  
12 Although the September 2002 rates may have only become *effective* with the  
13 parties' October 2002 Amendment, once those rates became effective, the true-  
14 up provisions of the Prior Agreement came into play. This issue was explicitly  
15 addressed in the October 2002 Amendment which states: "*Neither party waives*  
16 *any right to seek clarification from the Commission regarding retroactive*  
17 *application of the rates contained in this Amendment.*" (Exhibit No. \_\_\_\_ (AL-2) to  
18 my Direct Testimony). Both IDS and BellSouth contemplated the true-up in the  
19 October 2002 Amendment.

20

21

22 **Q. HAS THE FCC DISCUSSED THE CONCEPT OF TRUE-UP IN**  
23 **RELATION TO BELL SOUTH'S DUF RATES?**



1 A. Yes. The FCC has issued rulings discussing BellSouth's "true-up"  
2 obligations in the context of several Section 271 proceedings, including the  
3 Florida Section 271 proceeding.

4

5

6 **Q. CAN YOU BRIEFLY DESCRIBE SOME OF THESE PROCEEDINGS?**

7 A. Yes. On May 15, 2002, the FCC granted BellSouth Section 271 long  
8 distance approval in the states of Georgia and Louisiana in FCC 02-147 (CC  
9 Docket 02-35). In FCC 02-147, the FCC noted in footnote 299 to ¶ 87 that:  
10 "*BellSouth uses region-wide demand estimates in its DUF rate model.*" In ¶ 88,  
11 the FCC noted that on August 27, 2001, BellSouth revised its SGAT in Georgia  
12 to reflect to lower ADUF and ODUF rates based upon more current DUF  
13 demand, and that these demand estimates were also used in Louisiana. (See  
14 Exhibit No. \_\_\_\_\_(AL-12), BellSouth August 27, 2001 letter to GPSC). That letter  
15 together with a copy of the revised SGAT relating to DUF, reflects DUF rates up  
16 to 57% *below* the May 2001 rates for DUF previously set by this Commission.  
17 The FCC also noted in ¶ 88 that on October 1, 2001, BellSouth again updated  
18 cost studies in Georgia that reflected even lower DUF rates. Given the fact that  
19 BellSouth uses region-wide demand estimates, one can only wonder why  
20 BellSouth waited until October 2001 to advise this Commission about the DUF  
21 costing problems.

22

1 Q. DID THE FCC MAKE ANY FURTHER COMMENTS ON THE DUF  
2 RATES IN THE GEORGIA 271 PROCEEDINGS?

3 A. Yes. The FCC said in ¶ 90 that the erroneous DUF rates were being  
4 corrected through further proceedings before the Georgia Commission and that  
5 the BellSouth DUF rates were interim subject to true-up once final rates were  
6 established in Georgia. In ¶ 91, the FCC said: "*The fact that the rates are subject*  
7 *to a downward true-up with the state commission's final determination gives us*  
8 *confidence that competitive LECs will be compensated for any overcharges in a*  
9 *timely manner.*" In footnote 310 to ¶ 91, the FCC said:

10 *BellSouth has sought to provide assurance that 'to the extent that*  
11 *the GPSC [Georgia Public Service Commission] orders lower rates*  
12 *in the current proceeding, AT&T, as well as all other CLECs, will*  
13 *receive the benefit of these rates retroactively.'* *BellSouth GALA II*  
14 *Ruscilli/Cox Reply at 8-9. Thus it appears that BellSouth has*  
15 *minimized uncertainty by proposing lower rates and committing to*  
16 *refund any DUF overcharges. This consists of the difference*  
17 *between the interim rates and new permanent rates to be*  
18 *established by the Georgia Commission, and is retroactive to*  
19 *August 27, 2001.*  
20

21 Finally, in Appendix D to FCC 02-147, the FCC discussed the legal standards  
22 that apply to BellSouth's Section 271 application. In paragraph 23 of Appendix  
23 D, the FCC stated as follows:

24 *Consistent with the Commission's precedent, the mere presence of*  
25 *interim rates will not generally threaten a section 271 application so*  
26 *long as: (1) an interim solution to a particular rate dispute is*  
27 *reasonable under the circumstances; (2) the state commission has*  
28 *demonstrated its commitment to the Commission's pricing rules;*  
29 *and (3) provision is made for refunds or true-ups once permanent*  
30 *rates are set. [citing SWBT Texas Order, 15 FCC Rcd at 18394,*  
31 *paragraph 88 and Bell Atlantic New York Order, 15 FCC Rcd at*  
32 *4091, paragraph 258]. In addition, the Commission has determined*  
33 *that the rates contained within a section 271 application, including*

1           *those that are interim, are reasonable starting points for interim*  
2           *rates for the same carrier in an adjoining state. [citing SWBT*  
3           *Kansas/Oklahoma Order, 16 FCC Rcd at 6359-60, paragraph 239].*  
4  
5

6  
7       **Q.     DID THE FCC COMMENT ON THE BELLSOUTH DUF RATES IN THE**  
8       **CONTEXT OF ITS FLORIDA 271 APPROVAL?**

9       A.     Yes. On December 19, 2002, the FCC released FCC 02-331, which  
10      granted BellSouth Section 271 approval in Florida and in Tennessee. At ¶ 26  
11      (and implicitly at paragraph 27), the FCC recounted the history of UNE rate  
12      proceedings in Florida:

13           *In connection with the BellSouth 120 day filing, on March 11-12,*  
14           *2002, the Florida Commission conducted an administrative hearing*  
15           *to receive evidence concerning some of the issues raised in that*  
16           *filing. By order dated September 27, 2002, the Florida Commission*  
17           *addressed the following issues: loop cost studies and modifications;*  
18           *DUF cost studies and modifications; unbundled copper loop (non-*  
19           *design) cost study and modifications; NIDs; the hybrid copper/fiber*  
20           *xDSL-capable loop offering; accounting for inflation; and other*  
21           *related issues. The Florida Commission found that BellSouth's cost*  
22           *studies and associated inputs, as modified by the state commission*  
23           *in the Florida Commission 120-Dat Filing Order, resulted in rates*  
24           *that comply with TELRIC principles. [citing Florida Commission*  
25           *Comments filed on September 25, 2002 in the FCC's section 271*  
26           *proceeding in support of BellSouth's application].*  
27

28      As in the Georgia/Louisiana Order, in Appendix D to FCC 02-331, the FCC  
29      discussed the legal standards applicable to BellSouth's Section 271 application.  
30      Like the Georgia/Louisiana Order, in paragraph 23 of Appendix D, the FCC  
31      stated as follows:

32           *Consistent with the Commission's precedent, the mere presence of*  
33           *interim rates will not generally threaten a section 271 application so*

1            *long as: (1) an interim solution to a particular rate dispute is*  
2            *reasonable under the circumstances; (2) the state commission has*  
3            *demonstrated its commitment to the Commission's pricing rules;*  
4            *and (3) provision is made for refunds or true-ups once permanent*  
5            *rates are set.*  
6

7  
8            **Q.     WHAT DO THE FCC'S SECTION 271 STANDARDS HAVE TO DO WITH**  
9            **THIS PROCEEDING?**

10          A.     As is clear in both the Georgia\Louisiana and Florida\Tennessee Orders,  
11          the FCC's requirement to true-up interim rates to final cost-based rates comes  
12          from proceedings that pre-date the Prior Agreement.    **Thus when this**  
13          Commission interprets the true-up provisions of the Prior Agreement and  
14          ultimately decides this DUF dispute, this Commission should consider that the  
15          true-up provisions of the Prior Agreement (which were standard throughout the  
16          BellSouth region) were intended to comply with the FCC's Section 271  
17          requirement that BellSouth true-up interim rates to final rates.    Thus, when  
18          BellSouth filed its various Section 271 applications with the FCC, it would point to  
19          the true-up provisions in the SGATs and represent to the FCC that BellSouth met  
20          the FCC's true-up requirements.    IDS seeks to hold BellSouth to those FCC  
21          representations and promises and force a true-up of the DUF rates.

22  
23  
24          **Q.     DO THE FCC ORDERS HAVE ANY OTHER SIGNIFICANCE TO THIS**  
25          **PROCEEDING?**

1 A. Based upon the FCC's findings in the BellSouth Georgia/Louisiana Order  
2 (FCC 02-147) and the Florida/Tennessee Order (FCC 02-331), the following is  
3 clear. First, the DUF cost studies used to arrive at the May 2001 Rates and the  
4 October 2001 Rates were faulty, erroneous and, until the proper modifications  
5 were made to the cost studies in the 120-day filing, not TELRIC compliant.  
6 Second, as early as August 2001, BellSouth knew that its initial DUF cost studies  
7 were erroneous and BellSouth committed to both the FCC and Georgia  
8 Commission, that it would refund all DUF overcharges to all CLECs through  
9 retroactive true-ups as part of its Section 271 obligations. In the process,  
10 BellSouth clearly acknowledged that any rates based upon the faulty cost-studies  
11 were neither reasonable nor just, and thus BellSouth would refund any over-  
12 recoveries through the true-up process. Third, BellSouth's interim DUF rates in  
13 Georgia as of August 1, 2001, were up to 57% less than the DUF rates in the  
14 May 2001 Order. Fourth, the FCC found, based upon this Commission's  
15 comments in BellSouth's Florida Section 271 application, that only after the  
16 September 2002 Order, were BellSouth's rates in Florida TELRIC compliant.<sup>2</sup>  
17 Finally, the Section 271 obligation to have cost-based UNE rates, imports an  
18 obligation to true-up interim rates to final rates. Therefore, I think it is clear that  
19 BellSouth has an obligation to true-up the DUF rates in this dispute to the final  
20 September 2002 rates.

21

---

<sup>2</sup> In the FCC order approving BellSouth's Florida 271 application (FCC Order 02-331), the FCC said at p. 14, para. 26: "The Florida Commission found that BellSouth's cost studies and associated inputs, as modified by the state commission in the Florida Commission's 120-day filing order, results in rates that comply with TELRIC principles."

1

2 **Q. IS THERE ANYTHING ELSE ABOUT THE DUF DISPUTE THAT MS.**  
3 **BLAKE AND MR. MELTON HAVE FAILED TO CONSIDER IN THEIR DIRECT**  
4 **TESTIMONIES?**

5 **A.** Yes. Both Ms. Blake and Mr. Melton assume that there are no billing  
6 errors in the DUF charges which they seek to recover in this docket. However,  
7 approximately \$164,598.08 of the DUF charges which BellSouth seeks were  
8 provided under UNE Call Flow No. 12 (see Exhibit No. \_\_\_\_\_(RR/EF-2)). Since  
9 at least 6/22/01, BellSouth has known and admitted that it erroneously bills  
10 CLECs for usage and DUF records, which only result from a BellSouth billing  
11 error (see Exhibit No. \_\_\_\_\_(RR/EF-1)).

12 BellSouth will not allow IDS to discriminate between the DUF records it  
13 wants or does not want. Therefore, if IDS wants DUF records, BellSouth sends  
14 IDS all DUF records, including those which detail usage under UNE Call Flow  
15 No. 12. Moreover, under UNE Call Flow. No. 12, a CLEC cannot be reimbursed  
16 for the erroneously bill usage without the associated DUF record. Although UNE  
17 Call Flow No. 12 demonstrates that BellSouth has a billing problem (and  
18 BellSouth promises to fix the problem), BellSouth refuses to reverse all DUF  
19 charges associated with UNE Call Flow No. 12. At the May 2001 rates under  
20 which BellSouth seeks to charge IDS for DUF, the cost of the DUF records are  
21 more than *three times* the erroneous usage being billed. IDS should not have to  
22 pay for such records which clearly result only from BellSouth's erroneous billing

1 practices that have been known for since at least June 2001, and which to date  
2 have not been corrected.

3

4 **"MARKET-BASED RATE" DISPUTE**

5

6 **Q. ON PAGE 8 OF MS. BLAKE'S DIRECT TESTIMONY SHE CITES TWO**  
7 **PROVISIONS OF THE CURRENT INTERCONNECTION AGREEMENT**  
8 **RELATING TO "MARKET-BASED RATES." ARE THERE OTHER**  
9 **PROVISIONS OF THE PARTIES' AGREEMENT(S) THAT APPLY TO THIS**  
10 **DISPUTE?**

11 A. Yes. The two provisions Ms. Blake cites in her direct testimony are  
12 incomplete. First, Ms. Blake only cites from the Current Agreement, despite the  
13 fact that more than 50% of BellSouth's back-billing of "Market-Based Rates"  
14 (approximately \$1,390,473.53) arises under the Prior Agreement (approximately  
15 \$1,068,019.84 under the Current Agreement) (see Exhibit No.\_\_\_\_(RR/EF-3,  
16 Exhibit No.\_\_\_\_(RR/EF-4) and Exhibit No.\_\_\_\_(RR/EF-5)).

17 Moreover, Ms. Blake only references provisions of the Current Agreement  
18 from Section 4 of Attachment 2 to the Current Agreement relating to "Local  
19 Switching." In fact, the entire "market-based rate" dispute arises under "UNE  
20 Port/Loop Combinations" in Section 5.5 of Attachment 2 of the Current  
21 Agreement, and "Port/Loop Combinations" in Section 5.6 of Attachment 2 of the  
22 Prior Agreement. For completeness and later reference, I have attached to this  
23 testimony additional relevant provisions of the Prior Agreement relating to

1 "market-based rates" as Exhibit No.\_\_\_\_(AL-13), and additional relevant  
2 provisions of the Current Agreement relating to "market-based rates" as Exhibit  
3 No.\_\_\_\_(AL-14).

4 **Q. MS. BLAKE CONTENDS ON PAGE 9 OF HER DIRECT TESTIMONY**  
5 **THAT BELL SOUTH RENDERED BILLS TO IDS FOR "MARKET-BASED**  
6 **RATES" IN CARRIER ACCESS BILLING SYSTEM ("CABS") AND**  
7 **FORMATTED IN CABS BILLING OUTPUT SPECIFICATION ("CBOS")**  
8 **STANDARD. IS SHE CORRECT?**

9 A. No. As set forth in greater detail in the Joint Rebuttal Testimony of Raquel  
10 Rencher and Elizabeth Fefer, both the Prior Agreement and Current Agreement  
11 require the use of standard CABS billing, which for all UNE billing in this dispute,  
12 is the BellSouth UNE J Bill.

13 For the first three "market-based rate" back-billings,<sup>3</sup> Ms. Blake claims that  
14 BellSouth properly billed these charges in the OC&C section of the CABS bill.  
15 However, as the BellSouth Billing Guide (Exhibit No.\_\_\_\_(RR/EF-13)) states,  
16 only non-recurring charges are supposed to be placed in the OC&C section.  
17 Moreover, even when proper charges are placed in the OC&C section of the  
18 CABS bill, BellSouth is supposed to provide a USOC, date, and charge amount  
19 for each an every individual charge; none of which was ever provided in the first  
20 three back-billings.

21 Moreover, IDS receives CABS UNE J Bills every month under which IDS'  
22 recurring and non-recurring port/loop combinations are billed at cost-based rates.

---

<sup>3</sup> This discussion concerns only BellSouth's faulty billing practices not the rate level which is discussed elsewhere.



1 Those CABS UNE J Bills are thousands of pages in length for each month, and  
2 provide not only a CSR for each WTN (Working Telephone Number), but also a  
3 detailed line-by-line description by USOC of each and every recurring (monthly)  
4 and non-recurring (one-time only) charge. Thus IDS is able to match-up every  
5 charge in its UNE J Bill to each and every IDS customer and telephone number.

6 The only difference between the "market-based rate" billing and the cost-  
7 based rate billing is the charge associated with each different USOC. Therefore,  
8 IDS should receive CABS UNE J Bills for "market-based rate" charges that are  
9 identical to those which IDS receives for cost-based rate charges. However,  
10 none of the five "market-based rate" back-billings by BellSouth were provided in  
11 the CABS UNE J Bill standard in IDS receives its cost-based rate bills. As  
12 indicated in the Florida rate sheets going back as far as August 2001 (Exhibit  
13 No. \_\_\_\_\_(RR/EF-9)), BellSouth has acknowledged a billing problem associated  
14 with its billing of "market-based rates" and has promised to correct this problem.  
15 However, like the UNE Calls Flow No. 12 billing problem, after more than three  
16 years of acknowledging the problem, BellSouth has yet to fix such billing  
17 problems.

18 As with the UNE Call Flow No. 12 billing problem, the "market-based rate"  
19 billing issue is problematic, costly, and disruptive to IDS' business; and IDS  
20 should not be required to bear the injuries caused by BellSouth's uncorrected  
21 mistakes.

22

23

1 **Q. MS. BLAKE ALSO CONTENDS THAT IDS DID NOT PROPERLY**  
2 **DISPUTE BELL SOUTH'S "MARKET-BASED RATE" BILLS. DO YOU AGREE**  
3 **WITH THIS STATEMENT?**

4 A. No. As set forth in detail in the Joint Rebuttal Testimony of Raquel  
5 Rencher and Elizabeth Fefer, IDS complied with both the Prior Agreement and  
6 Current Agreement when disputing each of the five "market-based rate" back-  
7 billings. Under ¶ 2.1.1 of the Prior Agreement, IDS need only to have notified  
8 BellSouth of the dispute in writing upon discovery (see Exhibit No.\_\_\_\_\_(RR/EF-  
9 7)). Under the Current Agreement, IDS need only to have submitted a BAR  
10 forms for these disputes (see Exhibit No.\_\_\_\_\_(RR/EF-8)). IDS did all of the  
11 above. Additionally, IDS provided further detail reflected in electronic Exhibit  
12 No.\_\_\_\_\_(RR/EF-16) and electronic Exhibit No.\_\_\_\_\_(RR/EF-17), both of which I  
13 am familiar with, have reviewed, and am able to answer questions about.

14

15

16 **Q. DID MS. BLAKE IDENTIFY ALL OF THE REASONS IDS DISPUTED**  
17 **SUCH BACK-BILLINGS?**

18 A. No. Ms. Blake failed to identify all of the disputes raised and identified in  
19 IDS' Direct Testimonies. Each of these disputes was communicated to BellSouth  
20 in a number of ways, including in writing and via escalated attempts to resolve  
21 those disputes. Most notably, some of the disputes Ms. Blake ignores include  
22 the issue of BellSouth's: (a) failure to provide non-discriminatory access to DS0  
23 EELs; (b) back-billings on the first three lines for each end-user in Zone 1 of the

1 Top 50 MSAs; (c) erroneous billings of lines that did not belong to IDS' or for new  
2 installations when the customer was being switched "as-is" on existing service;  
3 and (d) the fact that once BellSouth obtained its Section 271 approval in Florida,  
4 BellSouth was obligated to provide local switching at "just and reasonable rates."  
5  
6

7 **Q. MS. BLAKE CONTENDS AT PAGE 7 OF HER DIRECT TESTIMONY**  
8 **THAT BELLSOUTH CORRECTLY ASSESSED "MARKET-BASED RATES"**  
9 **AND THAT BELLSOUTH'S AUTHORITY IS DERIVED FROM THE FCC'S *UNE***  
10 ***REMAND ORDER*. DO YOU AGREE?**

11 **A.** No. First, Ms. Blake ignores the fact that the *UNE Remand Order* has a  
12 condition precedent that requires BellSouth to first make available to IDS non-  
13 discriminatory access to EELs. Second, Ms. Blake ignores the fact this  
14 Commission has already interpreted the FCC's Remand Order to exclude the  
15 first three lines. Third, Ms. Blake ignores the fact that once BellSouth obtained  
16 its Section 271 approval in Florida, BellSouth had an obligation to provide local  
17 switching (either as a UNE as a UNE Combination) at "just and reasonable  
18 rates." Finally, Ms. Blake ignores the other miscellaneous problems with the  
19 back-billings, including the lack of detailed records for the first three back-billings  
20 and the various mistakes within those back-billings.  
21  
22

1 **Q. HAS THIS COMMISSION PREVIOUSLY INTERPRETED THE FCC'S**  
2 **FOUR LINE OR MORE RULE?**

3 A. Yes. In Order No. PSC-02-0413-FOF-TP, this Commission was called  
4 upon to interpret the FCC's four line or more rule with respect to BellSouth's  
5 obligation to provide local circuit switching under Section 251 and 252 of the  
6 Telecommunications Act (i.e. C.F.R. 51.319(c)(2)). In Section "O" of that Order,  
7 this Commission ruled that the first three customer lines should be provided at  
8 cost-based rates. Although the Commission's order was specific to the Supra-  
9 BellSouth Arbitration, this Commission' interpretation of that issue is what is  
10 important to consider.

11  
12

13 **Q. BUT DOES IDS HAVE THE SAME LANGUAGE IN ITS AGREEMENT**  
14 **THAT IS IN THE SUPRA AGREEMENT, AND IF NOT, DOES IT MATTER?**

15 A. Although the language in the Supra agreement is different, the language  
16 in IDS' agreement does not state that IDS will pay every line at "market-based  
17 rates." Moreover, the other relevant provisions of the agreement that are  
18 attached hereto as Exhibit No.\_\_\_\_(AL-13) (Prior Agreement) and Exhibit  
19 No.\_\_\_\_(AL-14) (Current Agreement) make it clear that the cost-based rate  
20 applies where BellSouth is obligated to provide local circuit switching under FCC  
21 and/or PSC rules. Hence, BellSouth can only charge IDS the cost-based rate for  
22 the first three lines of each customer.

23



1 Q. UNDER THE “MARKET-BASED RATE DISPUTE” HAVE MS. BLAKE  
2 AND MR. MELTON FAILED TO CONSIDER BELLSOUTH’S SECTION 271  
3 OBLIGATIONS AS WELL?

4 A. Yes. As discussed further in the Rebuttal Testimony of Joe Gillan, once  
5 BellSouth obtained its Section 271 approval in Florida, BellSouth had an  
6 obligation to provide IDS with local circuit switching at “just and reasonable  
7 rates.”

8  
9

10 Q. HAS BELLSOUTH OFFERED IDS PROPOSED SECTION 271 RATES?

11 A. Yes and no. I was extensively involved in negotiating the Current  
12 Interconnection Agreement, and at no time during those negotiations did  
13 BellSouth or IDS ever discuss what the cost of recurring and non-recurring  
14 charges would be for local switching and corresponding port/loop combinations.  
15 However, after the FCC’s *Triennial Review Order*, I specifically sought to clarify  
16 BellSouth’s position regarding pricing under Section 271. After numerous  
17 attempts, I was advised by IDS’ contract negotiator (Martha Romano), that  
18 BellSouth was preparing a “commercial agreement” for “mass market” local  
19 switching, and that this offering would contain BellSouth’s proposed Section 271  
20 rates. A summary of those proposed rates for local switching was then posted  
21 on BellSouth’s Interconnection Services Website. (Exhibit No. \_\_\_\_\_(AL- 15)).

22  
23

1 **Q. WERE BELLSOUTH'S PROPOSED SECTION 271 RATES DIFFERENT**  
2 **THAN THE "MARKET-BASED RATES"?**

3 A. Yes, the rates were different. The monthly recurring charges for DS0  
4 Port/Loop Combinations for Mass Markets have been provided below for easy  
5 comparison.

	<u>"Market-Based Rate"</u>	<u>Proposed Sec. 271 Rate</u>
6 Zone 1	\$23.77	\$20.20
7 Zone 2	\$27.88	\$24.31
8 Zone 3	\$38.63	\$35.06

9  
10  
11  
12 **Q. DID IDS ACCEPT BELLSOUTH'S PROPOSED SECTION 271 RATES,**  
13 **AND IF NOT, THEN WHY"?**

14 A. IDS has not agreed to BellSouth's proposed Section 271 rates because  
15 they are unjust and unreasonable, as explained in further detail in the Rebuttal  
16 Testimony of Joe Gillan. Additionally, IDS has since learned that the Tennessee  
17 regulatory commission recently set a "just and reasonable" rate under Section  
18 271 of approximately \$5.08 per month for local DS0 switching, as described in  
19 greater detail by Joe Gillan.

20  
21 **SETTLEMENT "Q" ACCOUNT DISPUTE**

22  
23 **Q. BEGINNING ON PAGE 5 OF HIS DIRECT TESTIMONY, MR. MELTON**  
24 **STATES THAT IDS AND BELLSOUTH MADE SEVERAL AGREEMENTS**  
25 **RELATING TO THE SETTLEMENT "Q" ACCOUNT. DO YOU AGREE?"**

•

1 A. No. The delaying of two months payment under the Settlement  
2 Agreement and Settlement Amendment was not an amendment, but rather a  
3 voluntary waiver by BellSouth of the right to insist timely payment of the  
4 Settlement "Q" Account. The parties did not execute an amendment, nor was  
5 any amendment required under the written settlement documents.

6 As for Mr. Melton's contention that Bob Hacker made an agreement  
7 reflected in his Exhibit DM-4, I disagree with Mr. Melton. Bob Hacker left IDS in  
8 mid-December 2003 before BellSouth terminated IDS' access to LENS. After  
9 BellSouth began asserting that Bob Hacker made a "side agreement" to increase  
10 the opening balance of the Settlement "Q" Account, I personally searched  
11 through all of Bob Hacker's files, including his computer files and e-mails. I  
12 located many of the e-mail documents referenced in Elizabeth Fefer's Direct  
13 Testimony and Rebuttal Testimony. However, I did not find a copy of the e-mail  
14 which is attached to Mr. Melton's Direct Testimony as Exhibit DM-4.

15

16 **Q. EVEN IF THERE WAS AN AGREEMENT TO INCREASE THE OPENING**  
17 **BALANCE OF THE SETTLEMENT "Q" ACCOUNT, WOULD IT MATTER SO**  
18 **LONG AS IDS RECEIVED ALL OF ITS AGREED CREDITS?**

19 A. No. So long as IDS obtained all of the agreed credits, it would not matter.  
20 However, IDS did not obtain the agreed credits as identified and detailed in the  
21 Direct and Rebuttal Testimonies of Elizabeth Fefer. The entire Settlement "Q"  
22 Account dispute really hinges upon Mr. Melton's contention in his Direct  
23 Testimony that IDS agreed to settle all of its pending disputes under paragraph 4

•  
1 of the original Settlement Agreement for a total of \$925K. IDS vigorously  
2 disputes this position and there is nothing in either the Settlement Amendment or  
3 any correspondence which supports Mr. Melton's contention. IDS on the other  
4 had contends that based upon the facts surrounding the Settlement Agreement  
5 and Settlement Amendment, the parties agreed to provide IDS approximately  
6 \$1.68 million in credits on the disputes referenced in paragraph 4 of the original  
7 Settlement Agreement and that BellSouth failed to provide all of those credits.

8 All of the correspondence between the parties clearly shows that there is a  
9 dispute over what was or was not supposed to be transferred into the Settlement  
10 "Q" Account, and whether IDS received all of the agreed credits. In the end,  
11 what really matters is whether BellSouth provided IDS all of the agreed credits,  
12 and the answer to that question is no. Because BellSouth did not provide IDS all  
13 of the agreed credits under the Settlement Agreement and Settlement  
14 Amendment, whether there was an agreement to increase the opening balance  
15 is irrelevant and IDS does not owe BellSouth anything more under the Settlement  
16 Agreement and Settlement Amendment. However, it is IDS' position that it  
17 overpaid the Q Account.

18

19

20 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

21 A. Yes.



BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into  
pricing of unbundled network  
elements.

DOCKET NO. 990649-TP  
ORDER NO. PSC-01-1181-FOF-TP  
ISSUED: May 25, 2001

The following Commissioners participated in the disposition of  
this matter:

E. LEON JACOBS, JR., Chairman  
J. TERRY DEASON  
LILA A. JABER

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ORDER NO. PSC-01-1181-FOF-TP  
DOCKET NO. 990649-TP  
PAGE 3

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**FINAL ORDER ON RATES FOR UNBUNDLED NETWORK ELEMENTS  
PROVIDED BY BELLSOUTH**

BY THE COMMISSION:

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APPENDIX A - RATE COMPARISON INCLUDING COMMISSION-APPROVED FINAL RATES

ELEMENT NUMBER & DESCRIPTION		BELLSOUTH PROPOSED RATES			AT&T/WORLDCOM PROPOSED RATES			BLUESTAR/COVAD /RHYTHMS PROPOSED RATES		COMMISSION-APPROVED RATES		
		RECURRING	NON-RECURRING Including First	NON-RECURRING ADD'L	RECURRING	NON-RECURRING Including First	NON-RECURRING ADDITIONAL (If Different)	NON-REC. FIRST	NON-REC. ADD'L	RECURRING	NON-RECURRING Including First	NON-RECURRING ADDITIONAL (If Different)
K.2.9	AIN Toolkit Service - Query Charge, Per Query	\$0.0549426			\$0.0517506					\$0.0509436		
K.2.10	AIN Toolkit Service - Type 1 Node Charge, Per AIN Toolkit Subscription, Per Node, Per Query	\$0.0067157			\$0.0059618					\$0.0062787		
K.2.11	AIN Toolkit Service - SCP Storage Charge, Per SMS Access Account, Per 100 Kilobytes	\$0.07			\$0.05					\$0.06		
K.2.12	AIN Toolkit Service - Monthly report - Per AIN Toolkit Service Subscription	\$12.23	\$15.66		\$11.91	\$15.69				\$8.00	\$7.79	
K.2.12	AIN Toolkit Service - Monthly report - Per AIN Toolkit Service Subscription - Disconnect Only		\$11.01			\$11.03					\$4.47	
K.2.13	AIN Toolkit Service - Special Study - Per AIN Toolkit Service Subscription	\$3.89	\$17.32		\$3.54	\$17.37				\$3.85	\$8.62	
K.2.14	AIN Toolkit Service - Call Event Report - Per AIN Toolkit Service Subscription	\$8.48	\$15.66		\$8.49	\$15.69				\$4.28	\$7.79	
K.2.14	AIN Toolkit Service - Call Event Report - Per AIN Toolkit Service Subscription - Disconnect Only		\$11.01			\$11.03					\$4.47	
K.2.15	AIN Toolkit Service - Call Event Special Study - Per AIN Toolkit Service Subscription	\$0.13	\$17.32		\$0.12	\$17.37				\$0.13	\$8.62	
L.0	ACCESS DAILY USAGE FILE (ADUF)											
L.1	ACCESS DAILY USAGE FILE (ADUF)											

APPENDIX A - RATE COMPARISON INCLUDING COMMISSION-APPROVED FINAL RATES

ELEMENT NUMBER & DESCRIPTION	BELLSOUTH PROPOSED RATES			AT&T/WORLDCOM PROPOSED RATES			BLUESTAR/COVAD /RHYTHMS PROPOSED RATES		COMMISSION-APPROVED RATES	
	RECURRING	NON-RECURRING Including First	NON-RECURRING ADD'L	RECURRING	NON-RECURRING Including First	NON-RECURRING ADDITIONAL (If Different)	FIRST	ADD'L	RECURRING Including First	RECURRING ADDITIONAL (If Different)
.1.1	ADUF, Message Processing, per message	\$0.014367		\$0.014330					\$0.013928	
.1.3	ADUF, Data Transmission (CONNECT:DIRECT), per message	\$0.00012975		\$0.0001299					\$0.00012927	
.0	DAILY USAGE FILES									
.1	ENHANCED OPTIONAL DAILY USAGE FILE									
.1.1	Enhanced Optional Daily usage File: Message Processing, Per Message	\$0.228759		\$0.228088					\$0.222451	
.2	OPTIONAL DAILY USAGE FILE									
.2.1	Optional Daily Usage File: Recording, per Message	\$0.0000082		\$0.0000060					\$0.0000068	
.2.2	Optional Daily Usage File: Message Processing, Per Message	\$0.006814		\$0.006820					\$0.006614	
.2.3	Optional Daily Usage File: Message Processing, Per Magnetic Tape Provisioned	\$48.78		\$48.90					\$48.77	
.2.4	Optional Daily Usage File: Data Transmission (CONNECT:DIRECT), Per Message	\$0.00010812		\$0.00010749					\$0.00010772	
.0	NONRECURRING COSTS									
.1	SERVICE ORDER									
.1.1	Electronic Service Order, per local service request		\$2.75		\$0.00					\$1.37
.1.1	Electronic Service Order, per local service request - Disconnect Only		\$0.42		\$0.00					\$0.18
.1.2	Manual Service Order, per local service request		\$21.56		\$0.00					\$10.73
.1.2	Manual Service Order, per local service request -		\$3.84		\$0.00					\$1.65

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into  
pricing of unbundled network  
elements.

DOCKET NO. 990649-TP  
ORDER NO. PSC-01-2051-FOF-TP  
ISSUED: October 18, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman  
J. TERRY DEASON  
LILA A. JABER

ORDER ON MOTIONS FOR RECONSIDERATION  
AND MOTION TO CONFORM ANALYSIS

BY THE COMMISSION:

I. CASE BACKGROUND

On December 10, 1998, the Florida Competitive Carriers Association (FCCA), the Telecommunications Resellers, Inc. (TRA), AT&T Communications of the Southern States, Inc. (AT&T), MCIMetro Access Transmission Services, LLC and WorldCom Technologies, Inc. (WorldCom), the Competitive Telecommunications Association (Comptel), MGC Communications, Inc. (MGC), **Intermedia** Communications Inc. (Intermedia), Supra Telecommunications and Information Systems (Supra), Florida Digital Network, Inc. (Florida Digital Network), and Northpoint Communications, Inc. (Northpoint) (collectively, "Competitive Carriers") filed their Petition of Competitive Carriers for Commission Action to Support Local Competition in BellSouth's Service Territory. Among other matters, the Competitive Carriers' Petition asked that we set deaveraged unbundled network element (UNE) rates. The petition was addressed in Docket No. 981834-TP.

On May 26, 1999, we issued Order No. PSC-99-1078-PCO-TP, granting in part and denying in part the Competitive Carriers' petition. Specifically, we granted the request to open a generic UNE pricing docket for the three major incumbent local exchange providers, BellSouth Telecommunications, Inc. (BellSouth), Sprint-Florida, Incorporated (Sprint), and GTE Florida Incorporated

APPENDIX A

ELEMENT NUMBER & DESCRIPTION		APPROVED, AS MODIFIED HEREIN					
		RECURRING	NON-RECURRING Including First	NON-RECURRING ADDITIONAL (If Different)	RECURRING	NON-RECURRING Including First	NON-RECURRING ADDITIONAL (If Different)
K.2.15	AIN Toolkit Service - Call Event Special Study - Per AIN Toolkit Service Subscription	\$0.13	\$8.62		\$0.12	\$9.56	
L.0	ACCESS DAILY USAGE FILE (ADUF)						
L.1	ACCESS DAILY USAGE FILE (ADUF)						
L.1.1	ADUF, Message Processing, per message	\$0.013928			\$0.014391		
L.1.3	ADUF, Data Transmission (CONNECT:DIRECT), per message	\$0.00012927			\$0.00012973		
M.0	DAILY USAGE FILES						
M.1	ENHANCED OPTIONAL DAILY USAGE FILE						
M.1.1	Enhanced Optional Daily usage File: Message Processing, Per Message	\$0.222451			\$0.229109		
M.2	OPTIONAL DAILY USAGE FILE						
M.2.1	Optional Daily Usage File: Recording, per Message	\$0.0000068			\$0.0000071		
M.2.2	Optional Daily Usage File: Message Processing, Per Message	\$0.006614			\$0.006835		
M.2.3	Optional Daily Usage File: Message Processing, Per Magnetic Tape Provisioned	\$48.77			\$48.96		
M.2.4	Optional Daily Usage File: Data Transmission (CONNECT:DIRECT), Per Message	\$0.00010772			\$0.00010811		
N.0	NONRECURRING COSTS						
N.1	SERVICE ORDER						
N.1.1	Electronic Service Order, per local service request		\$1.37			\$1.52	
N.1.1	Electronic Service Order, per local service request - Disconnect Only		\$0.18			\$0.20	
N.1.2	Manual Service Order, per local service request		\$10.73			\$11.90	
N.1.2	Manual Service Order, per local service request - Disconnect Only		\$1.65			\$1.83	

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into  
pricing of unbundled network  
elements. (BellSouth Track)

DOCKET NO. 990649A-TP  
ORDER NO. PSC-02-1311-FOF-TP  
ISSUED: September 27, 2002

The following Commissioners participated in the disposition of  
this matter:

LILA A. JABER, Chairman  
J. TERRY DEASON  
MICHAEL A. PALECKI

APPEARANCES:

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On behalf of Sprint Communications Company, Limited  
Partnership.

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On behalf of AT&T Communications of the Southern States,  
Inc.

DOCUMENT NUMBER-DATE

10367 SEP 27 8

Docket No.: 031125-TP  
Witness: Angel M. Leiro  
Exhibit No. \_\_\_\_\_(AL-5)  
September 2002 Order, Appendix A.  
Page 1 of 6

PSC-COMMISSION CLERK

ORDER NO. PSC-02-1311-FOF-TP  
DOCKET NO. 990649A-TP  
PAGE 2

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WAYNE D. KNIGHT, ESQUIRE, and BETH KEATING, ESQUIRE,  
Florida Public Service Commission, 2540 Shumard Oak  
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On behalf of the Commission.

FINAL ORDER ON RATES FOR UNBUNDLED NETWORK ELEMENTS  
PROVIDED BY BELLSOUTH TELECOMMUNICATIONS, INC. (120-DAY FILING)

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A review of the EODUF files shows that an increase in messages of 500 per month is used throughout the projection. These figures are appropriate.

As discussed in the preceding sections, BellSouth should be allowed to recover the cost of providing DUF services through specified rates. Accordingly, it was appropriate for BellSouth to file a cost study in support of those rates. We find that the DUF cost studies submitted in BellSouth's 120-day compliance filing are appropriate with certain adjustments. First, the cost study should be adjusted to remove costs for software development which have already been amortized. Second, the cost study should be adjusted to reflect BellSouth's actual growth experience in DUF messages. We find that the existing DUF rates should be modified to reflect these adjustments. The resulting rates are shown in Table 2-4 below.

Table 2-4  
 Rate Comparison

		Previous BellSouth Approved Rates	BST DDC-3 01/28/02	BFP-19 2/11/02	Commission Approved
<b>L.0</b>	<b>ADUF</b>				
L.1.1	ADUF Message processing, per message	\$0.014391	\$0.001858	\$0.00	\$0.001656
L.1.3	ADUF, Data Transmission, per message	\$0.0001297	\$0.0001245	\$0.00	\$0.0001245
<b>M.1</b>	<b>Enhanced Optional Daily Usage File</b>				
M.1.1	EODUF message processing - per message	\$0.229109	\$0.235115	\$0.235150	\$0.080698
<b>M.2</b>	<b>Optional Daily Usage File</b>				
M.2.1	ODUF recording, per message	\$0.0000071	\$0.0000071	\$0.00	\$0.0000071
M.2.2	ODUF message processing, per message	\$0.006835	\$0.002505	\$0.00	\$0.002146

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DOCKET NO. 990649A-TP  
PAGE 72

M.2.3	ODUF, message processing, per magnetic tape provisioned	\$48.96	\$35.91	\$35.91	\$35.91
M.2.4	ODUF Data Transmission, per message	\$0.00010811	\$0.000103750	\$0.00	\$0.00010375

III. UNBUNDLED COPPER LOOP - NONDESIGNED (UCL-ND) LOOP COST STUDY AND MODIFICATIONS

We now examine the UCL-ND loop cost study as submitted by BellSouth in its 120 day filing for compliance with Order No. PSC-01-1181-FOF-TP. We then address what modifications, if any, are appropriate and what should the rates be.

One of the requirements of our Order No. PSC-01-1181-FOF-TP, issued May 25, 2001, is that BellSouth determine xDSL loop nonrecurring costs that exclude the design layout record (DLR), test point, and order coordination. Specifically, our order stated:

. . . we shall require BellSouth to file modified versions of its xDSL nonrecurring cost studies, which exclude the following: 1) the DLR, 2) a test point, and 3) order coordination. The purpose of these modified cost studies is to provide us with sufficient information to set rates for a menu of separate provisioning options.

Furthermore, as noted above, although the Data ALECs want a nondesigned xDSL-capable loop, they also want a guarantee that the loop will not be rolled to another facility. We find this to be a reasonable request; therefore, based on [sic] record, we find it appropriate to require BellSouth to provision an SL-1 loop and guarantee not to roll it to another facility, or in other words, guarantee not to convert it to an alternative technology.

Order No. PSC-01-1181-FOF-TP, p. 73.

APPENDIX A						
UNBUNDLED NETWORK ELEMENTS RECURRING COST SUMMARY						
ELEMENT NUMBER & DESCRIPTION	ZONE	BELLSOUTH APPROVED RATES	BELLSOUTH FILING	AT&T/MCI PROPOSED	COMMISSION APPROVED	
	2	\$47.63	\$68.69	\$36.30	\$51.85	
	3	\$92.01	\$275.93	\$123.44	\$92.00	
D.6	INTEROFFICE TRANSPORT - DEDICATED - DS3					
D.6.1	Interoffice Transport - Dedicated - DS3 - Per Mile	\$3.87	\$3.87	\$3.87	\$3.87	
D.6.2	Interoffice Transport - Dedicated - DS3 - Facility Termination	\$1,071.00	\$1,071.31	\$673.56	\$1,071.00	
D.10	INTEROFFICE TRANSPORT - DEDICATED - STS-1					
D.10.1	Interoffice Transport - Dedicated - STS-1 - Per Mile	\$3.87	\$3.87	\$3.87	\$3.87	
D.10.2	Interoffice Transport - Dedicated - STS-1 - Facility Termination	\$1,056.00	\$1,056.07	\$645.04	\$1,056.00	
D.12	INTEROFFICE TRANSPORT - DEDICATED - 4-WIRE VOICE GRADE					
D.12.1	Interoffice Transport - Dedicated - 4-Wire Voice Grade - Per Mile	\$0.0091	\$0.0091	\$0.0091	\$0.0091	
D.12.2	Interoffice Transport - Dedicated - 4-Wire Voice Grade - Facility Termination	\$22.58	\$22.58	\$13.01	\$22.58	
L.0	ACCESS DAILY USAGE FILE (ADUF)					
L.1	ACCESS DAILY USAGE FILE (ADUF)					
L.1.1	ADUF, Message Processing, per message	\$0.014391	\$0.001858	\$0.00	\$0.001656	
L.1.3	ADUF, Data Transmission (CONNECT:DIRECT), per message	\$0.00012973	\$0.00012450	\$0.00	\$0.00012450	
4.0	DAILY USAGE FILES					
4.1	ENHANCED OPTIONAL DAILY USAGE FILE					
M.1.1	Enhanced Optional Daily usage File: Message Processing, Per Message	\$0.229109	\$0.235115	\$0.235115	\$0.080698	

APPENDIX A						
UNBUNDLED NETWORK ELEMENTS RECURRING COST SUMMARY						
ELEMENT NUMBER & DESCRIPTION	ZONE	BELLSOUTH APPROVED RATES	BELLSOUTH FILING	AT&T/MCI PROPOSED	COMMISSION APPROVED	
M.2	OPTIONAL DAILY USAGE FILE					
M.2.1	Optional Daily Usage File: Recording, per Message	\$0.0000071	\$0.0000071	\$0.00	\$0.0000071	
M.2.2	Optional Daily Usage File: Message Processing, Per Message	\$0.006835	\$0.002505	\$0.00	\$0.002146	
M.2.3	Optional Daily Usage File: Message Processing, Per Magnetic Tape Provisioned	\$48.96	\$35.91	\$35.91	\$35.91	
M.2.4	Optional Daily Usage File: Data Transmission (CONNECT:DIRECT), Per Message	\$0.00010811	\$0.00010375	\$0.00	\$0.00010375	
P.0	UNBUNDLED LOOP COMBINATIONS					
P.1	2-WIRE VOICE GRADE LOOP WITH 2-WIRE LINE PORT (RES, BUS, COIN, CENTREX, PBX)					
P.1.RESBUS	2-Wire VG Loop/Port Combo (Res, Bus, Coin)					
	P.1.1 2-Wire Voice Grade Loop	\$11.77	\$13.75	\$5.37	\$9.77	
	P.1.2 Exchange Port - 2-Wire Line Port	\$1.17	\$1.17	\$1.17	\$1.17	
		1	\$12.94	\$14.92	\$6.53	\$10.94
			\$15.89	\$18.23	\$8.02	\$13.88
			\$1.17	\$1.17	\$1.17	\$1.17
		2	\$17.06	\$19.40	\$9.19	\$15.05
			\$30.70	\$48.99	\$18.54	\$24.63
			\$1.17	\$1.17	\$1.17	\$1.17
		3	\$31.87	\$50.16	\$19.70	\$25.80
P.1.PBX	2-Wire VG Loop/Port Combo (PBX)					
	P.1.1 2-Wire Voice Grade Loop	\$11.77	\$13.75	\$5.37	\$9.77	
	P.1.2 Exchange Port - 2-Wire Line Port	\$1.17	\$1.17	\$1.17	\$1.17	
		1	\$12.94	\$14.92	\$6.53	\$10.94

ANDREW D. SHORE  
Senior Regulatory Counsel

BellSouth Telecommunications, Inc.  
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October 29, 2001

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


Re: Docket No. 990649-TP (UNEs)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Request for Specified Confidential Classification for recurring cost studies provided pursuant to Order No. PSC-01-1181-FOF-TP, 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,

  
Andrew D. Shore (KA)

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

414537

Docket No.: 031125-TP  
Witness: Angel M. Leiro  
Exhibit No. \_\_\_\_\_(AL-6)  
10/29/01 BellSouth Filing  
Page 1 of 10

DOCUMENT NUMBER-DATE

13677 OCT 29 01

FPSC-COMMISSION CLERK

**CERTIFICATE OF SERVICE**  
**Docket No. 990649-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via  
FedEx. Mail this 29<sup>th</sup> day of October, 2001 to the following:

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Andrew D. Shore (CA)

**(+) Signed Protective Agreement**

Docket No.: 031125-TP  
Witness: Angel M. Leiro  
Exhibit No. \_\_\_\_\_(AL-6)  
10/29/01 BellSouth Filing  
Page 5 of 10

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into pricing of unbundled network element ) Docket No.: 990649-TP  
\_\_\_\_\_ ) Filed: October 29, 2001

**BELLSOUTH TELECOMMUNICATIONS, INC.'S  
REQUEST FOR SPECIFIED CONFIDENTIAL CLASSIFICATION**

COMES NOW, BellSouth Telecommunications, Inc. ("BellSouth" or "Company"), and pursuant to Rule 25-22.006, Florida Administrative Code, files its Request for Specified Confidential Classification.

1. On October 8, 2001, BellSouth refiled its recurring cost studies pursuant to Order No. PSC-01-1181-FOF-TP, along with a Notice of Intent. These cost studies include vendor-specific pricing information, confidential business information and customer proprietary information that is considered proprietary to BellSouth.

2. BellSouth hereby files this Request for Specified Confidential Classification because the information contained in BellSouth's cost studies includes vendor-specific pricing information and other confidential business information that could cause competitive harm to BellSouth, and is confidential and proprietary under Florida Statutes, Sections 364.183 and 364.24.

3. Attachment A to BellSouth's Request for Confidential Classification contains an explanation of the proprietary information along with a list that identifies the location of the information designated by BellSouth as confidential.

4. Attachment B to BellSouth's Request for Confidential Classification is a CD Rom containing the redacted cost studies.

5. Attachment C to BellSouth's Request for Confidential Classification is a sealed envelope containing one copy of the documents in CD-ROM form which are confidential and proprietary

6. The information contained in BellSouth's recurring cost studies and BSTLM Loop Model include vendor-specific pricing information, confidential business information and customer proprietary information. A more specific description of this information is contained in Attachment A. Public disclosure of this information would provide competitors with an unfair advantage in future negotiations. Corresponding information on competitors is not available to BellSouth. The information discussed in this Request for Specified Confidential Classification is valuable and BellSouth strives to keep it secret. Therefore, such information should be classified as confidential business information and customer proprietary information pursuant to Section 364.24 and Section 364.183(3)(e), Florida Statutes. Accordingly, it should be held exempt from the public disclosure requirements of Section 119.07, Florida Statutes.

6. BellSouth has treated and intends to continue to treat the information for which confidential classification is sought as private, and this information has not been generally disclosed.

7. The original of this Request was filed today with the Division of the Commission Clerk and Administrative Services and a copy was served on the Parties.

WHEREFORE, based on the foregoing, BellSouth respectfully requests that the Commission enter an order declaring the information described above to be confidential, proprietary business information that is not subject to public disclosure.

Respectfully submitted this 29th day of October, 2001.

BELLSOUTH TELECOMMUNICATIONS, INC.



NANCY B. WHITE (KA)  
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(305) 347-5558



ANDREW SHORE (KA)  
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**ATTACHMENT A**

BellSouth Telecommunications, Inc.  
FPSC Docket No. 990649-TP  
Request for Confidential Classification  
Page 1 of 2  
10/29/01

**REQUEST FOR CONFIDENTIAL CLASSIFICATION OF COMPLIANCE COST  
STUDY (1 CD-ROM) AND THE BSTLM LOOP MODEL (4 CD-ROMs) AS FILED  
ON OCTOBER 8, 2001 IN FLORIDA PUBLIC SERVICE  
COMMISSION DOCKET 990649-TP**

**Explanation of Proprietary Information**

- A. This information reflects vendor specific prices negotiated by BellSouth. Public disclosure of this information would impair BellSouth's ability to contract for goods and services on favorable terms. This information is valuable, it is used by BellSouth in conducting its business and BellSouth strives to keep it secret. Therefore, this information should be classified as proprietary, confidential business information pursuant to Section 364.183(3)(d) Florida Statutes and is exempt from the Open Records Act.

**PAGE NO.**

**BASIS FOR REQUEST**

Compliance Filing CD - Proprietary Files:

ADUF.XLS	1
DS1_CALC.XLS	1
DSLAM.XLS	1
EODUF.XLS	1
FL-NID.XLS	1
FLST_SST_P.XLS	1
FLUNTW.XLS	1
FL-USL.XLS	1
IO_VG2.XLS	1
IO_VG4.XLS	1
MDF_FUND.XLS	1
ODUF.XLS	1

**ATTACHMENT A**

**BellSouth Telecommunications, Inc.  
FPSC Docket No. 990649-TP  
Request for Confidential Classification  
Page 2 of 2  
10/29/01**

**REQUEST FOR CONFIDENTIAL CLASSIFICATION OF COMPLIANCE COST  
STUDY (1 CD-ROM) AND THE BSTLM LOOP MODEL (4 CD-ROMs) AS FILED  
ON OCTOBER 8, 2001 IN FLORIDA PUBLIC SERVICE  
COMMISSION DOCKET 990649-TP**

**CONTINUED**

BSTLM (CD 1 of 4) – Entire CD	1
BSTLM (CD 2 of 4) – Entire CD	1
BSTLM (CD 3 of 4) – Entire CD	1
BSTLM (CD 4 of 4) – Entire CD	1

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 990649A-TP

In the Matter of

INVESTIGATION INTO PRICING  
OF UNBUNDLED NETWORK  
ELEMENTS (BELLSOUTH TRACK).

ELECTRONIC VERSIONS OF THIS TRANSCRIPT ARE  
A CONVENIENCE COPY ONLY AND ARE NOT  
THE OFFICIAL TRANSCRIPT OF THE HEARING.  
THE .PDF VERSION INCLUDES PREFILED TESTIMONY

VOLUME 2

Pages 183 through 319



PROCEEDINGS: HEARING

BEFORE: CHAIRMAN LILA A. JABER  
COMMISSIONER J. TERRY DEASON  
COMMISSIONER MICHAEL A. PALECKI

DATE: Monday, March 11, 2002

TIME: Commenced at 9:35 a.m.

PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: TRICIA DEMARTE  
Official FPSC Reporter  
(850) 413-6736

APPEARANCES: (As heretofore noted.)

Docket No.: 031125-TP  
Witness: Angel M. Leiro  
Exhibit No. \_\_\_\_\_(AL-7)  
FPSC Transcript Excerpt  
Page 1 of 4

DOCUMENT NUMBER-DA

FLORIDA PUBLIC SERVICE COMMISSION

03204 MAR 2002

FPSC-COMMISSION CLERK

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8

9

A My name is Doris Daonne Caldwell.

10

Q And by whom are you employed, Ms. Caldwell, and in

11

what capacity?

12

A BellSouth Telecommunications. I'm a director in the  
13 finance department.

14

Q Have you caused to be prepared and prefiled in this  
15 docket, Ms. Caldwell, 31 pages of amended direct testimony as  
16 well as 30 pages of amended surrebuttal testimony?

17

A Yes, I have.

18

Q Do you have any corrections substantively to make to  
19 that testimony?

20

A I do not.

21

Q If I were to ask you the same questions today that  
22 appear in your amended direct testimony and your amended  
23 surrebuttal testimony, would your answers be the same?

24

A Yes, they would.

25

MR. SHORE: Madam Chair, we move at this time for the



1 Commission ordered BellSouth to do this study so the Commission  
2 could compare its results with costs calculated using material  
3 loading factors. And one of the specific points is, the  
4 Commission ordered us to look at cable placement, engineering,  
5 installation, and the associated structure placement. So  
6 that's exactly what BellSouth studied in their bottoms-up  
7 study.

8           The bottoms-up study as attached to my exhibit --  
9 excuse me -- attached as an exhibit to my testimony, you will  
10 see that I did a comparison of the original ordered rates  
11 compared to the new rates that we have here. In some cases  
12 they went up, in some cases they went down. The bottoms-up  
13 study, therefore, we don't feel produces a more reasonable or  
14 accurate result, and from a costing perspective, we feel that  
15 the in-plant factor is still a justifiable approach to pricing  
16 our loops.

17           One last thing I would like to add is, we did do an  
18 additional study in this filing that is associated with the  
19 daily usage file, or DUF, studies. These files are the files  
20 that are used to provide electronic billing data to ALECs, and  
21 they were originally based on the demand at the time when  
22 Phase I was done as well as the first study that was filed here  
23 on a much lower demand. Demand changed after BellSouth began  
24 offering the UNE-P and that was not available when we did the  
25 Phase I studies. So with that adjustment, we have increased

1 the demand. And in looking at the DUF rates, you will see that  
2 they reflect that increased demand with the major ADUF and ODUF  
3 offerings. One point that is made about these studies in  
4 Mr. Darnell's testimony is he claims that the BellSouth common  
5 cost factor already includes a DUF cost, but that is incorrect.  
6 If you look at the cost study, you will see that the DUF costs  
7 have been removed from the common cost factor. That concludes  
8 my testimony -- thank you -- or my summary.

9 MR. SHORE: This witness is available for  
10 cross-examination and to answer, I hope, the questions that  
11 were pending the prior witnesses.

12 CHAIRMAN JABER: I was going to say I thought that  
13 was your testimony, Ms. Caldwell.

14 THE WITNESS: Oh, I'm sorry.

15 CHAIRMAN JABER: Do you tender the witness for cross?

16 MR. SHORE: I do.

17 CHAIRMAN JABER: Mr. Hatch.

18 CROSS EXAMINATION

19 BY MS. McNULTY:

20 Q Hi, Ms. Caldwell. This is Donna McNulty, and I'll be  
21 asking you some questions on behalf of MCI WorldCom and AT&T.

22 A Okay.

23 Q And I'll start off with following up on some  
24 questions that Mr. Hatch asked of Mr. Stegeman. In your  
25 testimony on Page 31, you essentially state that previously

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into pricing of unbundled network element )  
Docket No.: 990649A-TP )  
Filed: January 28, 2002

**BELLSOUTH 'S MOTION FOR LEAVE TO FILE  
AMENDED COST STUDY AND TESTIMONY**

BellSouth Telecommunication, Inc. ("BellSouth") hereby respectfully moves pursuant to Rule 28-106.204 of the Florida Administrative Code for leave to file its amended cost study and testimony and exhibits that it amended as a result of its amended cost study. In further support of this motion, BellSouth shows the Commission that:

1. By letter dated January 24, 2002, BellSouth advised the Commission and the parties that it was revising certain inputs into its cost study filed in this proceeding in order to correct errors discovered during the course of this case. The letter, which is attached hereto and incorporated herein by reference, explains the reasons for those changes.

2. BellSouth served the parties electronically with a file containing its revised inputs on January 24, 2002.

3. On January 25, 2002, AT&T and MCI served BellSouth with data requests seeking information regarding BellSouth's revised inputs. BellSouth served responses to those data requests on Monday, January 28, 2002, answering all of AT&T and MCI's questions.

4. AT&T and MCI have stated that they may request permission to present live rebuttal testimony at the hearing dealing specifically with the issues of BellSouth's revised inputs. BellSouth would not object to that request.

5. BellSouth's cost witness, Daonne Caldwell amended her testimony to make it consistent with BellSouth's revised inputs. Redlined copies of Ms. Caldwell's amended direct and surrebuttal testimony are attached. Exhibits DDC-1 and DDC-3 to Ms. Caldwell's testimony have also been amended to reflect the cost model run with the revised inputs.

6. BellSouth seeks permission to file its revised cost study and exhibits so that it may enter them into the record in this proceeding.

7. The revisions were made in order to correct errors discovered during the course of this case. Also, BellSouth answered immediately the ALECs' questions about its revised inputs and does not object to them presenting live rebuttal testimony on these issues.

8. Pursuant to Rule 28-106.204(3) of the Florida Administrative Code, BellSouth conferred with counsel for AT&T and MCI regarding this motion and they advised that their clients do not have a position with respect to this motion.

Respectfully submitted this 28th day of January, 2002.

BELLSOUTH TELECOMMUNICATIONS, INC.

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430962

Docket No.: 031125-TP  
Witness: Angel M. Leiro  
Exhibit No. \_\_\_\_\_(AL-8)  
BellSouth Motion to Amend Cost Study  
Page 2 of 5

Andrew D. Shore  
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January 24, 2002

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

**Re: Investigation into Pricing of Unbundled Network Elements  
(BellSouth Track), Docket No. 990649A-TP**

Dear Mrs. Bayó:

The purpose of this letter is to inform the Commission and parties to this proceeding of changes BellSouth has made to certain inputs in its cost-study filed in this proceeding and to explain the reasons for the changes.

First, the engineering factors BellSouth used in its original cost study are the same factors used in BellSouth's internal cost estimating system, OSPCM. In gathering information for a Staff-requested late-filed deposition exhibit, BellSouth learned of a discrepancy in the way the OSPCM system applies the factors and the way the BSTLM© applies the factors. The engineering factors in the OSPCM are applied to Telco labor plus contractor costs. The BSTLM©, however, was programmed to apply the factors to Telco labor, contractor costs, and material cost. Thus, application of the factors from BellSouth's OSPCM resulted in an overstatement of the engineering costs for copper and fiber cable accounts. In order to address this problem, BellSouth has developed engineering factors based on relationships between engineering costs and total non-engineering investments for each plant account. A worksheet setting forth the development of these factors is attached.

Second, BellSouth has made two of the BSTLM© logic changes addressed by Mr. Pitkin in his rebuttal testimony and by Mr. Stegman in his surrebuttal testimony. Those two changes address the cell reference problem with the fiber cable, EF&I calculation and the cell reference problem with the structure sharing calculation.

Mrs. Blanca S. Bayo  
January 24, 2002  
Page 2


Third, BellSouth is correcting an error with respect to Feeder/Distribution Interface (FDI) placing hours. BellSouth uses contractors to place FDI's with placement costs based on the weight of the cabinets. Since the BSTLM input tables for FDI placement assume Telco placement, BellSouth had to convert contractor costs to Telco placement hours by dividing contractor costs by the Telco labor rate. BellSouth made an error in that calculation, resulting in a slight overstatement of FDI cost. BellSouth's revised inputs reflect the a correction of the referenced error.

Lastly, BellSouth changed inputs regarding its underground excavation costs and manhole costs. BSTLM© calculates all conduit duct costs, underground excavation costs and manhole costs as engineering, furnished and installed (EF&I) (rather than distinguishing between material and labor), because BellSouth's contracts with outside vendors provide for these items on a furnished and installed basis that includes the material and labor associated with installing the material. Since the BSTLM© applies loadings (e.g., sales tax, exempt material, supply expense) to material only, this would result in an understatement of these miscellaneous loading costs in the BSTLM©. BellSouth developed a 4C loading factor to account for these loadings and applied that factor to the BSTLM inputs in its cost study filing in this proceeding. BellSouth later learned that this loading was not applied to Type 1 and Type 2 manholes or to the underground excavation costs per foot. BellSouth is correcting this problem by applying the loading to all manhole sizes, to duct costs per foot. and to underground excavation costs per foot. BellSouth is also revising manhole costs as set forth in the surrebuttal testimony of BellSouth witness Daonne Caldwell.

BellSouth is in the process of re-running its cost models with the revised inputs discussed above and plans to file an amended cost study as well as an amended Exhibit DDC-3 to Ms. Caldwell's testimony. However, due to the processing times associated with running the cost models and the logistics of making electronic copies and transporting them to Tallahassee, BellSouth will be unable to file its amended cost study and exhibit, which is the cost output summary, until Monday, January 28, 2002. We did, however, want to get this information to the Commission and the parties even before those cost study runs can be completed. We are providing to all parties today via e-mail an executable file, FI\_Network\_Version\_Changes.exe, to replace a user's Invest Logic.xls file, as well as with three new .mdb data bases (1 for each BSTLM© scenario) with BellSouth's revised inputs so that parties can see these revisions and run them in the cost model if they wish. This file contains proprietary information and is being provided pursuant to a Notice of Intent being filed today as well as to the terms of the Protective Agreement.

Mrs. Blanca S. Bayo  
January 24, 2002  
Page 3

I would appreciate your marking a copy of this letter as "filed" and returning it to me. If you have any questions or need any further information, please do not hesitate to contact me.

Sincerely,  
  
Andrew D. Shore

cc: All Parties of Record (via e-mail and overnight mail)  
Marshall M. Criser III  
R. Douglas Lackey  
Nancy B. White

**BEFORE THE CPR INSTITUTE FOR  
DISPUTE RESOLUTION ARBITRAL TRIBUNAL**

**SUPRA TELECOMMUNICATIONS  
& INFORMATION SYSTEMS, INC.,**

**Claimant**

**Arbitration VI**

V.

**BELLSOUTH  
TELECOMMUNICATIONS, INC.**

**Respondent and  
Counter-claimant**

**August 22, 2002**

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**BELLSOUTH'S REQUEST FOR  
INTERPRETATION, CLARIFICATION, AND/OR CORRECTION**

BellSouth Telecommunications, Inc. ("BellSouth"), in accordance with CPR Rule 14.5<sup>1</sup>, submits this Request for Interpretation, Clarification, and/or Correction with respect to six (6) issues in the Tribunal's August 7, 2002 Award in Arbitration VI ("Arbitration VI Award"). While reserving all rights asserted in this request and in earlier filings in this proceeding, BellSouth is at this time cooperating with the implementation of the Arbitration VI Award, including the ordered accounting.

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<sup>1</sup> Rule 14.5 of the CPR Rules for Non-Administered Arbitration states, in relevant part:

Within 15 days after receipt of the award, either party, with notice to the other party, may request the Tribunal to interpret the award, to correct any clerical, typographical or computation errors, or any errors of a similar nature in the award; or to make an additional award as to claims or counterclaims presented in the award but not determined in the award . . . .



## DISCUSSION

### I. **Supra Has Not Paid any Portion of the Restated Bills.**

In Arbitration III and IV, the Tribunal ordered BellSouth to invoice Supra UNE rates instead of resale rates for all of Supra's accounts from June-December 2001 ("Restated Bills"). See Tribunal's August 14, 2002 Order Regarding an Accounting in Arbitration III and IV at 1 ("August 14<sup>th</sup> Award"). BellSouth provided Restated Bills to Supra totaling \$16.7 million in compliance with the Tribunal's decision. These bills did not contain any usage or access charges because BellSouth was unable to recapture this information. Id.

Supra has challenged the Restated Bills on the grounds that they were not in CABS format and thus has refused to pay any portion of the Restated Bills. In its August 14<sup>th</sup> Award, the Tribunal rejected this assertion as it determined that (1) the Restated Bills were in CABS format; (2) Supra had no contracts in place that would allow it to bill third parties; and (3) the lack of access or usage billings and data led to a "net reduction" to the total amount owed by Supra to BellSouth. See August 14<sup>th</sup> Award at 2-3.

However, in the Arbitration VI Award, the Tribunal stated that Supra has paid the Restated Bills for the time period June-December 2001. See Arbitration VI Award at 16 ("The Tribunal agreed and ordered BellSouth to restate its bills for that period using UNE rates. This was accomplished and the resulting amount was paid by Supra to BellSouth."). As established above, this statement is incorrect because Supra has never paid any portion of the Restated Bills. See BellSouth's Post-Hearing Brief at 47-48. In fact, the payment of these bills is currently the subject of Arbitration III and IV.

Moreover, the Tribunal recognized that the Restated Bills have not been paid as it stated that it was “inclined to grant a partial award of some significant amount of the approximately \$17 million invoiced by BellSouth to Supra.”<sup>2</sup> See August 14<sup>th</sup> Award at 3.

Accordingly, because there is no question that Supra has never paid any amount of the Restated Bills, BellSouth requests that the Tribunal correct and/or clarify its statement in the Arbitration VI Award to reflect this fact.

**II. The Tribunal’s Ruling to Apply Rates Other than the Rates in the Interconnection Agreement, as Modified by the Stipulation, Is Contrary to the Law.**

In the Arbitration VI Award, the Tribunal found that BellSouth is required to bill Supra the UNE rates in the parties’ Interconnection Agreement from June 1, 2001 to August 15, 2001. See Arbitration VI Award at 14-15. The Tribunal also found that Supra should be billed those rates established in the Florida Public Service Commission’s (“Commission”) UNE docket pursuant to its May 25, 2001 Order, Order No. PSC-01-1181-FOF-TP (“May 2001 Order”) for the time period August 16, 2001 to the present. Id. The Tribunal found that Supra was not entitled to the rates set forth in Exhibit 150, which were the rates established by the Commission’s October 18, 2001 Order in the same docket, Order No. 01-0251-FOF-TP (“October 2001 Order”) because Supra “has not established when the rates in Supra Exh. 150 became effective. . .” Id. at 15.

In reaching the conclusion that BellSouth must charge Supra the rates in the May 2001 Order, the Tribunal found that the Supra was entitled to amend the Interconnection Agreement to incorporate the May 2001 rates even though that Agreement had expired.

---

<sup>2</sup> The Tribunal refused to make such an award at that time because of the accounting ordered in Arbitration VI. August 14<sup>th</sup> Award at 3-4.

See Arbitration VI Award at 14. The Tribunal premised this finding on Section 5 of the General Terms and Conditions of the Interconnection Agreement, which it found allows “Supra to select and incorporate either more favorable rates, more favorable terms, and conditions offered to third parties.” Id. This finding directly conflicts with the Telecommunications Act of 1996 (the “Act”) and the parties’ obligations under the Interconnection Agreement regarding contract amendments.

Supra had the right to obtain new rates by one of two methods. First, it could have adopted the new rates from another carrier’s interconnection agreement pursuant Section 252(i) of the Act and pursuant to Section 5 of the General Terms and Conditions. There is no evidence in the record, however, that Supra ever requested to adopt the rates from another agreement.<sup>3</sup>

Second, Supra could have amended its agreement consistent with the terms of its Interconnection Agreement and in compliance with the May 2001 Order, which required an amendment to invoke the new rates. See Arbitration VI Award at 13. However, Section 9.3 of the Interconnection Agreement provides that either party may request an amendment of the agreement “[i]n the event that any **final and nonappealable** legislative, regulatory, judicial, or other legal action” affects the terms of the Interconnection Agreement. (emphasis added). If such an event occurs, the parties are to attempt to negotiate an amendment, and if they are unable to do so, the terms of the

---

<sup>3</sup> Supra has confused this Tribunal by arguing that Section 5 of the Interconnection Agreement allows it to amend the Agreement. This is not true. Consistent with Section 252(i) of the Act, Section 5 simply provides that Supra can opt into another carrier’s agreement that has more favorable rates, terms, and conditions. Supra has never asked to opt into another contract. Rather, Supra has only requested that the parties amend the Interconnection Agreement to reflect the change in law that resulted from the Commission’s May 2001 Order. Amendments relating to changes in law are governed by Section 9.3 of the General Terms and Conditions, not Section 5.

amendment are to be submitted to dispute resolution as described in the Interconnection Agreement. Id.

The Commission's May 2001 Order was not "final and nonappealable" when Supra requested the amendment (and it is still not final as the Commission's May 2001 Order, as revised by the October 2001 Order, is the subject of an appeal pending in federal court – MCI WorldCom v. BellSouth, Case No. 4:01-CV-492-RH, U.S. Dist. Ct. N. D. Fla.-- and further Commission action). Therefore, Supra was not entitled to an amendment under the terms of the Interconnection Agreement. See BellSouth Exh. 121. Indeed, BellSouth informed Supra of this fact in its July 19, 2001 letter responding to Supra's request for an amendment. Id. ("Order No. PSC-01-1181-FOF-TP, issued May 25, 2001, is not final and nonappealable, therefore, in accordance with the Agreement, even if an amendment were to be made, the rates established by that Order are not eligible for inclusion in the Agreement at this time."). However, BellSouth was willing to execute a stand alone agreement that would incorporate the new rates. Id. As testified by Mr. Ramos, however, Supra never responded to BellSouth's request.

- Q. Well, Mr. Ramos, you didn't respond to Mr. Follensbee with a proposal that certain rates stay – I mean certain terms and conditions stay the same, or provide any sort of a counter proposal to Mr. Follensbee in July of 2001, did you?
- A. I don't think I would – we did not provide any formal proposal. . . .

Tr. Vol. J at 165-66.

Further, Supra never asked this Tribunal to resolve such a dispute as required by the Interconnection Agreement,<sup>4</sup> and even if it had, this Tribunal would not have been entitled to require an amendment to the agreement, because the rates established in the Commission's UNE docket are not final and nonappealable. Thus, through its Arbitration VI Award, the Tribunal has modified the terms of the Interconnection Agreement regarding when the contract can be amended. In effect, the Tribunal has rewritten the "final and nonappealable" requirement of Section 9.3.

For the foregoing reasons, the Tribunal should correct and/or clarify the rates it ordered. It is undisputed that there are no rates for services between BellSouth and Supra that are filed and approved by the Commission other than the rates in the Interconnection Agreement and the Stipulation. To the extent the Tribunal believes that the Stipulation expired and was no longer applicable after May of 2001, the only applicable rates would be the rates in the Interconnection Agreement.

Even if the Tribunal believes that Supra is entitled to rates other than those in the Interconnection Agreement and Stipulation, Supra should be billed at the rates ordered by the Commission in October 2001 rather than in May 2001. In its October 2001 Order, the Commission resolved several motions for reconsideration that were filed in response to the May 2001 Order. See October 2001 Order at 31-32. The Commission granted BellSouth's motion in part and thus revised the rates set forth in that Order. Id. No party asked for reconsideration of the Commission's decision in the May 2001 Order that the rates would only become effective when the parties amended their interconnection

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<sup>4</sup> Further, Supra never raised BellSouth's purported refusal to amend the Interconnection Agreement as an affirmative claim in this arbitration. Accordingly, in resolving BellSouth's Motion to Strike Testimony, the Tribunal ruled that Supra could only raise this claim "as an affirmative defense, and not for affirmative relief . . . ." Tr. Vol. I at 6.

agreement to incorporate those rates. Id. Accordingly, the precondition to adoption of the Commission established rates is still in effect and applies to the revised rates established in the October 2001 Order.

There is no dispute that the rates set forth in the May 2001 Order have been replaced by rates the Commission established in its October 2001 Order. Indeed, Mr. Nilson testified at the hearing that, if the rates in the Interconnection Agreement or the Stipulation did not apply, then Supra was entitled to the rates set forth in the October 2001 Order and not the May 2001 Order.

Q. Mr. Nilson, you indicated that there were some May rates that were in your tables from the Florida Public Service Commission?

A. I have an exhibit that includes the appendix from the May generic UNE order documented in 649.

Q. It's a fact, isn't it, that many or at least some of the rates that were set forth on your appendix were superseded by rates adopted by the Florida Public Service Commission in October 2001?

A. That's correct.

Q. And you did not use the October rates, did you?

A. That is a subsequent exhibit to my testimony.

Q. And between the two rates, which rates do you think you're entitled to?

A. The October rates.

Tr. Vol. II at 306. Accordingly, application of the rates in the May 2001 Order forces the parties to implement rates that have been superseded by the Commission and thus do not exist.

Therefore, BellSouth requests that the Tribunal clarify, correct, and interpret its Award and find that BellSouth properly billed Supra the rates in the Interconnection Agreement and Stipulation. Alternatively, if the Tribunal finds that the Stipulation expired in May 2001, the Tribunal should find that BellSouth is required to bill Supra the rates in the Interconnection Agreement. If the Tribunal rejects the above arguments as well as the express terms of the Interconnection Agreement, it should find that Supra should be charged the UNE rates in the October 2001 Order from October 19, 2001 to the present.

**III. Supra Is Not Entitled to Any Third Party Revenue BellSouth Collected for the Restated Bills or Pending Conversion to UNE-P.**

In Arbitration III and IV, the Tribunal ordered BellSouth to convert Supra's embedded customers base of approximately 157,000 access lines from resale to UNE-P by January 31, 2002. See December 21, 2001 Award in Arbitrations III and IV ("December Award"). In addition, the Tribunal required BellSouth to restate Supra's invoices for the period June 1 through December 31, 2001 as UNE bills instead of resale bills. Id.

Because of the complexities involved with the conversion of that many lines, the Tribunal extended this time period for the conversion to February 28, 2002, pursuant to BellSouth's request for an extension. See Interpretation of Award, issued on February 4, 2002. BellSouth completed the conversion by the end of March, 2002. See Order on Supra's Motion for Sanctions Regarding BellSouth's Compliance with Consolidated Arbitrations, issued June 11, 2002 ("Order on Motion for Sanctions").

During the conversion period (Jan-March 2002), BellSouth continued to bill at resale rates those lines that had yet to be converted from resale to UNE-P. As a result,

BellSouth collected third-party revenue for those resale accounts until they were converted to UNE-P. As testified by Mr. Scollard, however, BellSouth does not bill or collect any third party revenue associated with a UNE-P account.

Arbitrator Donahey: Now, do you know whether after a line has been converted from resale to UNEs that in fact BellSouth continues to collect the access charged that are under the left?

The Witness: I know for a fact that we do not continue to bill those access charges. Now –

Arbitrator Donahey: Or collect them?

The Witness: Or collect them. If we don't bill them, we can't collect them.

Tr. Vol. II at 319. Moreover, Mr. Follensbee testified that BellSouth has not collected any third party revenue on Supra's UNE lines from January-June 2002. Tr. Vol. III at 163.

As to the Restated Bills, BellSouth did not bill Supra any usage or access charges because BellSouth was unable to capture the information necessary to bill Supra for usage or access. See August 14<sup>th</sup> Award at 2. As a corollary, BellSouth did not provide access and usage data to Supra that would have permitted Supra to bill any third parties. Id.

In the Arbitration VI Award, the Tribunal found that Supra was entitled to any third party revenue collected by BellSouth for resale accounts until those accounts were converted to UNE-P. See Arbitration VI Award at 15. Accordingly, the Tribunal ordered that “the amount of revenue which BellSouth has collected since June 2001 to the present that should have been collected by Supra should be determined and that amount should be paid by BellSouth to Supra.” Id. Clarification and/or interpretation of this



requirement is necessary because it directly conflicts with the Tribunal's recent August 14<sup>th</sup> Award in Arbitration III and IV.

In that decision, the Tribunal found that Supra did not have in place "contracts with interexchange carriers and other third parties that would provide for Supra's billing of access usage charges." See August 14<sup>th</sup> Award at 2. The Tribunal acknowledged that the "access and usage fees foregone by BellSouth exceed[ed] whatever access and usage charges . . ." Supra would have received. Id. Accordingly, the Tribunal concluded that "the absence of access and usage data for the seven-month period of June through December 2001 led to a net reduction in the total amount owed by Supra to BellSouth." Id. For these reasons, the Tribunal implicitly found that Supra was not entitled to recover or offset any third party revenue collected by BellSouth from June-December 2001, which is part of the same time period covered by the Arbitration VI Award. See August 14<sup>th</sup> Award at 2-3.

The two Awards must be reconciled. In light of the Tribunal's recent August 14<sup>th</sup> Award, BellSouth requests that the Tribunal modify its Arbitration VI Award to clarify that BellSouth is not obligated to provide Supra any third party revenue BellSouth received from January-March 2002 while converting Supra's embedded base from resale to UNE-P.<sup>5</sup> This request is consistent with the finding in Arbitration III and IV that Supra is not entitled to recover any third party revenue for the time period June-December 2001, and is the only finding that comports with the evidence. The evidence is undisputed that Supra has no contract with third parties from whom charges could have been collected. See August 14<sup>th</sup> Award at 2.

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<sup>5</sup> For the reasons set forth in Section IV, infra, Supra is not entitled to any third party revenue BellSouth collected on resale accounts Supra submitted after December 31, 2001 and which were not part of the embedded base.

In addition, other evidence from the hearing proves that Supra is not entitled to recover any third party revenue from January-March 2002 for the conversion of the embedded base, because Supra does not have any contracts with other CLECs, wireless carriers, or independent telephone companies that would entitle it to recover any third party revenue. Ms. Wilbanks, Supra's expert, confirmed this fact at the hearing:

Q. Now if a CLEC wanted to bill a wireless company for anything, they would have to have a contract with that wireless company, correct?

A. That is correct.

Q. Supra has no contract with any wireless companies for exchange of traffic; isn't that right?

A. That is correct.

Q. And if you're going to exchange traffic with an independent telephone company, you have to have a contract with them too, right?

A. Yes, that is correct, interconnection agreement.

Q. And Supra has no contract with independent telephone companies; is that right?

A. No.

Q. I'm sorry?

A. They do not.

Q. And if you're going to bill a CLEC for reciprocal compensation, you have to have an agreement with a CLEC, right?

A. That is correct.

Q. And Supra doesn't have any contracts with CLECs either, do they?

A. That is -- not to my knowledge . . . .

Tr. Vol. IV at 96-97. Moreover, Supra did not introduce any tariffs in evidence to prove that it is entitled to collect from interexchange carriers, and Supra failed to prove or introduce copies of any contracts that it may have with interexchange carriers. Tr. Vol. II at 220.

Under Florida law, when asserting claims of breach of contract, the plaintiff has the burden of establishing all the essential elements of the cause of action by a preponderance of the evidence. See, e.g., Carpenter Contractors of America, Inc. v. Fastener Corp. of America, Inc., 611 So. 2d 564, 565 (Fla. 4<sup>th</sup> DCA 1992). These essential elements include “the existence of a contract, a breach, and damages flowing from the breach.” Id. “Where there is no proof of damages, there can be no recovery.” See, e.g., Broxmeyer v. Elie, 647 So. 2d 893, 895 (Fla. 4<sup>th</sup> DCA 1994).

Supra did not sustain any damages relating to the embedded base because, as admitted by Supra’s expert, without third party contracts, Supra could not collect any associated third party revenue. The Tribunal recognized this fact in its August 14<sup>th</sup> Award. Consistent with that decision, BellSouth requests that the Tribunal clarify that Supra is not entitled to any third party revenue BellSouth received for the embedded base from January-March 2002, because “Supra did not have in place contracts with interexchange carriers and other third parties that would provide for Supra’s billing of access and usage charges.”

**IV. The Resale Accounts Supra Submitted After December 31, 2001 Should Stand.**

In the Arbitration VI Award, the Tribunal found that “Supra and other CLECs operating in Florida can successfully order UNE related service requests via BellSouth’s LENS.” Arbitration VI Award at 9. The Tribunal also held that “Supra, for its own

litigation-related or other reasons, continues to submit orders for **resale** lines, awaits BellSouth's conversion of those lines to UNE billing, but Supra refuses to pay BellSouth's invoices on either a resale or UNE basis." Id. (emphasis in original). The Tribunal concluded by finding that "[i]n no event is Supra to order resale services via LENS with the intention of having BellSouth convert the order to one for UNEs. BellSouth is no longer obligated to effect such conversions." Id.

Accordingly, there is no question that Supra can and has in fact submitted UNE orders through LENS but has chosen to submit resale orders instead. Given this finding, BellSouth requests that the Tribunal clarify and/or interpret its decision and find that (1) Supra must pay all resale invoices for any resale accounts Supra submitted to BellSouth after December 31, 2001; (2) BellSouth is not required to restate any resale invoices to UNE invoices for any resale accounts Supra established after December 31, 2001; and (3) BellSouth is not required to provide Supra with any third party revenue collected and received by BellSouth for any resale accounts submitted by Supra after December 31, 2001.

December 31, 2001 is the appropriate cut-off date because, in Arbitration III and IV, the Tribunal ordered BellSouth to convert Supra's entire base, as of that date, from resale to UNE-P. Further, Mr. Pate testified that Supra submitted more than 60,000 service requests for UNE-P accounts through LENS in 2002. See Pate RT at 8; Tr. Vol. III at 67. Thus, it is clear that, at a minimum, Supra has been able to order UNEs through LENS at least from January 1, 2002, if not sooner. In fact, the evidence is clear that nondiscriminatory UNE ordering was available even earlier. The FCC, in its decision granting long distance authority to BellSouth in Georgia and Louisiana, reviewed

performance data from October-December 2001 and found that BellSouth provided nondiscriminatory access to its operational support systems. See In the Matter of Joint Application by BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana, Memorandum Opinion and Order, FCC No. 02-147, CC Docket No. 02-35 (May 15, 2002) ("Georgia/Louisiana 271 Order") at ¶ 101.

Refusal to order the requested clarification and/or interpretation would undermine the Tribunal's explicit findings as to this issue and improperly reward Supra for its deliberate refusal to submit UNE orders "for its own litigation-related or other reasons." Simply stated, the Tribunal has found that Supra can and has submitted UNE orders and that Supra has chosen to submit resale orders instead. That decision has consequences, including the consequence that Supra be responsible for the resale invoices on accounts established after December 31, 2002 and that BellSouth can properly bill and collect third party revenue on those resale accounts.

**V. The Tribunal Rather than Supra Should Choose the Accountant that Will Conduct the Accounting.**

The Tribunal held that "Supra will select the accountant used in Supra's audit in Arbitrations I and II, or another qualified accounting professional, to conduct an accounting of BellSouth's invoices commencing August 21, 2002." Arbitration VI Award at 4. Under Florida law, after a finding that an accounting should be had, the court then determines the scope and extent of the accounting. See Wood v. Brackett, 266 So.2d 398, 399 (Fla. 1st Dist. Ct. App. 1972); Florida Jur. 2d § 29 (1997). "The court may either take the account or make a reference for that purpose." Florida Jur. 2d § 29 (1997). Although not an absolute rule, reference to a special master for an accounting is generally

recommended and is the approved procedure for complicated accountings involving multiple years and complex issues. See id.; Childs v. Boots, 152 So. 212, 214 (Fla. 1933) (“A reference to a master in a case like this, for an accounting to be taken before such master, is no doubt, the approved procedure and one generally commended as the proper course of procedure to be followed.”); Johnson Enterp. of Jacksonville, Inc. v. FPL Group, Inc., 162 F.3d 1290, 1333 n.95 (11<sup>th</sup> Cir. 1998) (“If a complicated accounting were required, the claim could have been referred to a special master.”).

Exhaustive research has revealed no case law where the Court gave one of the **parties** the right to appoint the special master that will perform the accounting. See e.g., Tatum Bros. Real Estate & Invest. Co. v. Shenk, 221 F. 182, 186 (5<sup>th</sup> Cir. 1915) (finding that court should have referred accounting to special master rather than performing the accounting itself); Johnson Enterp., 162 F.3d at 1333 n.95; F.A. Conner v. G.H. McNew, 237 So. 2d 190, 191 (Fla. 3<sup>rd</sup> DCA 1970) (finding that court’s appointment of accountant as special master to perform accounting was appropriate). Indeed, under the applicable rules of procedure, only the court can select a special master, and, under Florida law, the parties must consent to the appointment of a master. See Fla. R. Civ. P 1.490(b)(c); Fed. R. Civ. P. 53.

The Tribunal’s Order effectively allows Supra to appoint the special master that will conduct the accounting ordered by the Tribunal (and then also allows Supra to object to that entity’s finding (Arbitration VI Award at 5)), which is prohibited under Florida and federal law.<sup>6</sup> BellSouth has not consented to this appointment. Further, in apparent

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<sup>6</sup> In addition to violating Florida and federal law, the Tribunal’s decision to order an accounting of the UNE rates BellSouth billed Supra is contrary to its procedural decision at the hearing. At the beginning of the hearing, the Tribunal granted BellSouth’s Motion to Strike Mr. Ramos’ testimony regarding cooperative testing and his assertions regarding BellSouth’s purported refusal to amend the Interconnection Agreement.

violation of the Tribunal's Order requiring Supra to retain the accountants used in Arbitration I and II "or another qualified accounting professional," Supra has chosen two different consulting groups to perform the accounting, and neither group appears to possess "qualified accounting professional[s]." This fact highlights the problems associated with allowing one party to select a special master because it potentially allows unqualified individuals to perform a task that is supposed to assist the Tribunal in resolving complex issues.<sup>7</sup>

For the foregoing reasons, BellSouth respectfully requests that the Tribunal clarify its Arbitration VI Award by finding that the Tribunal, and not Supra, will select the accounting professionals that will perform the accounting. Alternatively, the Tribunal should clarify that Supra is not entitled to object to the accounting. In no event, should Supra be allowed to unilaterally select the sole company that will conduct the accounting and then have the ability to object to its findings.

#### **VI. BellSouth Provided the Records Required in the Contract.**

The Tribunal rejected Supra's claim that BellSouth was not providing usage information in EMI format. See Arbitration VI Award at 6. However, the Tribunal found that BellSouth failed to provide certain usage records Supra could "expect to receive" under Attachment 7, Appendix II of the Interconnection Agreement. Id. In

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The Tribunal struck Mr. Ramos' testimony as to cooperative testing and held that, "as to the right to amend the agreement, it can only be used as an affirmative defense and not for affirmative relief by Supra." Tr. Vol. I at 6. In granting Supra's claims for affirmative relief, the Tribunal ordered an accounting of the UNE rates because it found that Supra had a right to amend the expired Interconnection Agreement, thereby rendering BellSouth's bills incorrect. See Arbitration VI Award at 2-5, 15. As a result, the Tribunal awarded Supra affirmative relief based upon a claim that it held could only be used as an affirmative defense. Indeed, the Tribunal listed the request for an accounting as one of Supra's claims. See Arbitration VI Award at 2. This decision effectively renders the Tribunal's procedural decision meaningless.

<sup>7</sup> BellSouth is currently reviewing the relevant experience of the two consulting groups. BellSouth reserves the right to strike or otherwise challenge Supra's selection of the two consulting groups to conduct the accounting.

support of this finding, the Tribunal found that BellSouth's expert admitted that BellSouth "failed to provide the usage information that it was required to provide" under the applicable appendix, except for certain records. Id.

Contrary to the Tribunal's finding, the fact that Ms. Huizenga was unable to locate all of the Appendix II records in her sample does not definitively establish that BellSouth failed to provide the identified records. Of all the records listed, Ms. Huizenga testified that BellSouth provided the following records in the sample she reviewed: 01-01-01, 01-01-31, 01-01-32, 10-01-01, 10-01-18, 10-01-31, 10-01-35, and 10-01-37. See Tr. Vol. IV at 273-78. For other records, Ms. Huizenga either did not remember seeing a specific record in her sample or she was unable to locate the record. Id. Ms. Wilbanks testified that she did not have time to access the files so she could only affirmatively state that BellSouth provided the 01-01-01 records. Id.

First, Ms. Huizenga testified that she reviewed only a sample of Supra's usage information. Id. at 255. Thus, the fact that she was unable to locate all of the records does not definitely establish that BellSouth does not produce the records.

Second, the type of usage records sent to a carrier depends on the type of services provided by BellSouth. As Mr. Plummer testified, the fields that would be applicable to a UNE provider would not be the same records that BellSouth would send to a long-distance provider. See Tr. Vol. III at 36. Ms. Huizenga also testified that the type of records provided depend on the type of service provided.

Q. Is every EMI field populated on every record that gets transmitted to a CLEC?

A. No.



Q. Under what circumstances would certain fields not contain information.

A. There are fields that pertain to only some services, and so you may have a service that you're providing a record for that doesn't pertain to those fields. . . .

Tr. Vol. IV at 175. There is no dispute as to this issue as Mr. Nilson testified that, if a particular field is not applicable, a default value is appropriately populated into that field.

Tr. Vol. II at 213-14.

Thus, if certain records are not produced because BellSouth does not provide services to Supra that generate those records, then BellSouth would not be in violation of the contract for failing to produce the listed record. As explained by Mr. Plummer, "BellSouth provides Supra with EMI records for all the usage listed in their [I]nterconnection [A]greement when BellSouth provides the service to Supra." Tr. Vol. II at 392.

For example, Ms. Huzienga was unable to locate the following records in her sample: 01-01-06, 01-01-07, 01-01-08, 01-01-09, 10-01-06, 10-01-07, 10-01-08, 10-01-09. All of these records are generated only when conference call services are provided. See Plummer RT at Exh. MAP-2. As explained by Mr. Plummer in his exhibit and in his testimony, BellSouth does not provide conference call services to Supra. Id. Similarly, Ms. Huzienga was unable to locate the following records: 01-01-80, 01-01-81, 01-01-82, 01-01-83, 10-01-80, 10-01-81, 10-01-82, and 10-01-83. Again, all of these records are generated only when BellSouth provides service to marine, aircraft, or high-speed trains. Id. BellSouth does not provide this service to Supra. Id.

Therefore, because Supra is not purchasing these services from BellSouth, no usage records are being generated for these services. Consequently, BellSouth cannot be in breach for failing to produce records that do not exist.

Third, subsequent to the execution of the Interconnection Agreement, OBF changed the record identifier for header and trailer records to 20-24-01 and 20-24-02 respectively. See Plummer RT at MAP-5 (indicating EMI record numbers for header and trailer records). The Interconnection Agreement identified these records as 20-20-01 and 20-20-02. As explained by Mr. Plummer, “BellSouth provides Supra with EMI records for all the usage listed in their [I]nterconnection [A]greement when BellSouth provides the service to Supra.” Tr. Vol. II at 392. Thus, BellSouth does provide the header and trailer records as they are currently identified by the OBF.

For all of these reasons, BellSouth requests that the Tribunal clarify its decision by explaining that BellSouth did not fail to provide and thus is not required to produce (1) records that do not exist because BellSouth does not provide certain services to Supra; (2) records that BellSouth does provide to Supra but Ms. Huizenga was unable to locate in reviewing her sample; and (3) records that have been superseded by OBF but which BellSouth provides under the new record identifier.

### CONCLUSION

For the foregoing reasons, BellSouth requests that the Tribunal clarify, interpret, and/or correct the Arbitration VI Award in the following respects:

1. Supra has not paid any portion of the Restated Bills, which encompass the time period June-December 2001 and which total approximately \$16.7 million.

2. BellSouth properly billed Supra the rates in the Interconnection Agreement and Stipulation. Alternatively, if the Tribunal finds that the Stipulation expired in May 2001, Supra should be charged the rates in the Interconnection Agreement. If the Tribunal rejects the above arguments, Supra should be charged the UNE rates in the Interconnection Agreement from June 1, 2001 to August 15, 2001 and the UNE rates from the Commission's October 2001 Order from August 16, 2001 to the present.

3. In light of the Tribunal's August 14<sup>th</sup> Award, BellSouth is not required to provide Supra with any third party revenue billed and collected for the time period June-December 2001.

4. In light of the Tribunal's August 14<sup>th</sup> Award, BellSouth is not required to provide Supra with any third party revenue billed and collected for those accounts in the embedded base that were billed resale rates pending conversion to UNE-P from January-March 2002, because "Supra did not have in place contracts with interexchange carriers and other third parties that would provide for Supra's billing of access and usage charges."

5. Because Supra can and has submitted UNE orders through LENS and instead chooses to submit resale orders, Supra must pay all resale invoices for any resale accounts Supra submitted, regardless of whether these accounts were eventually converted to UNE-P, from January 1, 2002 to the present.

6. Because Supra can and has submitted UNE orders through LENS and instead chooses to submit resale orders, BellSouth is not required to restate any resale

invoices to UNE invoices for any resale accounts submitted by Supra from January 1, 2002 to the present.

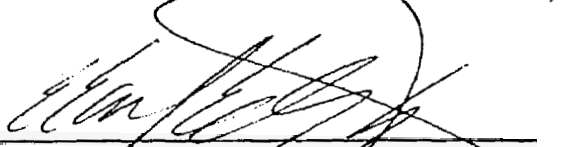
7. Because Supra can and has submitted UNE orders through LENS and instead chooses to submit resale orders, BellSouth is not required to provide Supra with any third party revenue billed and collected by BellSouth for any resale accounts submitted by Supra from January 1, 2002 to the present.

8. The Tribunal and not Supra will select the special master or "qualified accounting professional" that will conduct the accounting. Alternatively, Supra will not be entitled to object to the findings of the firms it has selected.

9. BellSouth did not fail to provide records Supra can "expect to receive" under Attachment 7, Appendix II if (1) the records do not exist because BellSouth does not provide certain services to Supra; (2) BellSouth in fact provides the records even if Ms. Huizenga was unable to locate the records in her sample; and (3) the records have been superseded by OBF but BellSouth provides the records under the new record identifier.

Respectfully submitted,

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Docket No.: 031125-TP  
Witness: Angel M. Leiro  
Exhibit No. \_\_\_\_\_ (AL-9)  
BellSouth's Request for Interpretation  
Page 21 of 22

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BEFORE THE CPR INSTITUTE FOR  
DISPUTE RESOLUTION ARBITRAL TRIBUNAL

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) BELLSOUTH TELECOMMUNICATIONS, INC., )  
Claimant,  
vs.  
) SUPRA TELECOMMUNICATIONS AND )  
INFORMATION SYSTEMS, INC., )  
Respondent.

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SUPRA TELECOMMUNICATIONS AND )  
INFORMATION SYSTEMS, INC., )  
Claimant,  
vs.  
BELLSOUTH TELECOMMUNICATIONS, INC., )  
Respondent.

CONTINUATION OF  
ORAL ARGUMENTS BEFORE THE ARBITRAL TRIBUNAL  
M. SCOTT DONAHEY, ESQUIRE  
CAMPBELL KILLEFER, ESQUIRE  
JOHN ESTES, ESQUIRE  
ARBITRATION VI  
ATLANTA, GEORGIA  
TUESDAY, SEPTEMBER 10, 2002

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23 REPORTED BY: LEE ANN BARNES,  
CCR B-1852

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25 FILE NO. 407176

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BEFORE THE CPR INSTITUTE FOR  
DISPUTE RESOLUTION ARBITRAL TRIBUNAL

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BELLSOUTH TELECOMMUNICATIONS, INC., )  
Claimant,  
vs.  
SUPRA TELECOMMUNICATIONS AND )  
INFORMATION SYSTEMS, INC., )  
Respondent.

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SUPRA TELECOMMUNICATIONS AND )  
INFORMATION SYSTEMS, INC., )  
Claimant,  
vs.

3 rates in the stipulation are lower than the  
4 loop rates in the agreement. So Supra has  
5 been receiving them. This is a benefit to  
6 Supra --

7 MR. DONAHEY: But it expired. The  
8 stipulation expired.

9 MR. EDENFIELD: Here is the quandary in  
10 which BellSouth found itself. The FCC wanted  
11 deaveraged rates. The FCC had instructed the  
12 states to issue deaveraged rates.

13 The quandary we found ourselves in was  
14 we came up with a way to get some interim  
15 deaveraged rates that the parties could use,  
16 but until this was accomplished -- Supra  
17 would have been screaming bloody murder, in  
18 my estimation, had we said you can no longer  
19 have the deaveraged rates. We're going back  
20 to the higher rates in the October '99  
21 agreement.

22 MR. KILLEFER: Even though technically you  
23 would have a legal argument that was the case.

24 MR. EDENFIELD: Exactly. Technically, we  
25 could have stopped -- either May 25 or June 30,

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1 2001, we could have stopped providing them with  
2 deaveraged loop rates, raised it back up to the  
3 October '99 rates.

4 MR. DONAHEY: Or you could have given them  
5 the May 25 rates.

6 MR. EDENFIELD: We tried.

7 MR. ESTES: And how long did you continue to  
8 give them the stipulated rate -- the rates in the  
9 stipulation?

10 MR. EDENFIELD: For the entire period in  
11 question in front of this Tribunal.

12 MR. ESTES: That would be through June of  
13 this year?

14 MR. EDENFIELD: Through June of 2002, yes,  
15 sir. For the entire period at issue before the  
16 Tribunal in III, IV and VI, these are the rates  
17 that we have billed.

18 Now to the extent there was a question  
19 about this -- and if we have not made that  
20 clear until now I just want to make it  
21 clear -- these are the rates we had billed.  
22 Had Supra taken any action whatsoever to our  
23 agreement to waive these other rights and  
24 give them the amendment, they would have had  
25 the rates.

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1 And the reason BellSouth is so bothered  
2 by the Order is that it appears what the  
3 Tribunal has done is rewarded Supra by giving  
4 them this, when they did nothing here to help  
5 themselves comply with this. We absolutely  
6 sent them something that they could use to  
7 comply with this Order to have the rates, and  
8 they refused to do it. They did nothing.  
9 They didn't complain; they didn't send back a  
10 markup; they truly did nothing. And that's  
11 BellSouth's position on that.

12 The only other issue to take into  
13 consideration is the impact of the October

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2001 reconsideration Order and the impact it has on these rates. The Tribunal has ordered the May 25, 2001 rates when, in fact, those rates for all intents and purposes were found to be erroneous by the Florida Public Service Commission.

I have a copy of the October reconsideration --

MR. DONAHEY: I have that and part of the problem the Tribunal had is that in Arbitration VI, no one introduced that as an exhibit. What I found was that only subsequently to the fact that

we had issued the Award and in fact it was an exhibit in Arbitration III and IV. So it is part of the record. It was BellSouth Exhibit 327 in Arbitration III and IV. And it has the entire -- there were only some very selected excerpts that were made a part of the record --

MR. EDENFIELD: If you would like it -- I'm not sure procedurally where we are.

MR. DONAHEY: I think I have the entire thing but maybe I don't. So why don't you give us what you have.

MR. EDENFIELD: For what I'm arguing here, the most important part is on page 5.

MR. DONAHEY: This looks different.

MR. EDENFIELD: It's copied different. I tried to kill a few less trees.

MR. DONAHEY: Page 5?

MR. EDENFIELD: If you look on page 5. The import of what I'm arguing, while the entire reconsideration Order is important, you will look at the inflation factor which impacts every single rate from May 25, the Commission in October decided it had misapplied the inflation factor.

MR. ESTES: I'm lost. Page 5?

MR. EDENFIELD: Look under where it says "Decision."

MR. DONAHEY: You'll find it as important for us to reconsider our decision regarding the inflation factor at this time.

MR. EDENFIELD: My apologies for not being clear. It's the last sentence under the decision section, Mr. Estes.

What happened was they misapplied the inflation factor and had to go back and redo all of the May 25 rates. I submit to you that when you go back --

MR. DONAHEY: Somebody besides this Tribunal makes mistakes.

MR. EDENFIELD: Believe me, I make them all the time.

I guess what I'm asking you to consider is the impact of the reconsideration Order on your finding that the May 25 rates are appropriate.

If you do not agree with my argument that these are the rates that should have applied for the entire term, then and only then, I would ask you to consider that the



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May 25 rates are not appropriate because they

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1 were declared to be invalid, for all intents  
2 and purposes, by this Award and, thus, it  
3 would be October rates that will be  
4 applicable for the time period.

5 MR. KILLEFER: When did the October rates  
6 become final and nonappealable?

7 MR. EDENFIELD: The October rates are not  
8 final and nonappealable. Again, this gets back  
9 to if you disagree with my analysis here and  
10 somehow determine that rates other than the  
11 October '99 and the December '99 stipulation  
12 apply, then I would ask you to consider --  
13 because the October rates are no more final and  
14 nonappealable than the May rates.

15 MR. ESTES: I have one question there. Has  
16 Supra asked for the October rates?

17 MR. KILLEFER: Actually, in a post-hearing  
18 brief they took the position that the October  
19 2000 rates were the appropriate rates and they  
20 have recanted that in their filing that we have  
21 before us.

22 MR. ESTES: But no formal --

23 MR. EDENFIELD: But they've never asked for  
24 them.

25 MR. ESTES: All right. And I guess one more

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1 question -- I already know the answer -- but  
2 BellSouth has not offered those rates to Supra?

3 MR. EDENFIELD: The last time we talked to  
4 them about rates, my recollection, is here, but  
5 they are in the new agreement.

6 MR. ESTES: Well, okay.

7 MR. EDENFIELD: Let me tell you, I tried to  
8 limit it to the period over which you were  
9 concerned.

10 Effective July 15 of this year, which is  
11 the date of the Florida Public Service  
12 Commission had ordered us to file the new  
13 agreement, the new rates are now in place.

14 MR. KILLEFER: So when you render a bill for  
15 July and August, that bill will reflect the rates  
16 under the new Interconnection Agreement?

17 MR. EDENFIELD: As of July 15. It will  
18 reflect these rates (indicating).

19 MR. DONAHEY: As of July 15 is the Follow-on  
20 Agreement effective?

21 MR. EDENFIELD: The Follow-on Agreement is  
22 effective. I will tell you that there is, up in  
23 the air, the issue of: Is it retroactive? Is it  
24 effective July 15 which is the date that appears  
25 in the agreement? Or Supra, I think their

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1 position, they can speak for themselves, I  
2 believe is the effective date I think is the date  
3 the Florida Public Service Commission approved  
4 it, which I believe October 22 -- I'm sorry,  
5 August 22. So that is up in dispute. I'm not  
6 sure that either party has gone back to really  
7 think about retroactivity or any issue like that.

8 MR. ESTES: I'm sorry. I got you off the  
9 track because. I meant to confine my question to

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the relevant period. And it's interesting and I appreciate the information as to the status of the Follow-on Agreement, but that doesn't really impact --

MR. EDENFIELD: You're absolutely correct.

MR. DONAHEY: It's my fault, I'm sorry.

MR. ESTES: And I didn't intend for it to get off on that, but you've answered my question.

MR. EDENFIELD: The only other thing I'd mention briefly before was section 252(e) of the Telecommunications Act which requires Commission approval of agreements.

One of the impacts of ordering us to apply rates that were not in an amendment approved by the Commission is that, in BellSouth's estimation, you have now violated

Section 252(e) of the act by putting in effect an amendment that was not approved by the Florida Commission. And with that --

MR. DONAHEY: I don't have 252(e).

MR. EDENFIELD: I was in a copying frenzy killing trees as fast as I could do it yesterday. I've got the act here. I can get it for you.

MR. DONAHEY: We'd appreciate it.

MR. EDENFIELD: I will get a copy of that. That concludes my presentation on the rates issue.

MR. DONAHEY: Thank you, Mr. Edenfield.

MR. EDENFIELD: Sure.

MR. DONAHEY: Mr. Chaiken, would you like to address us on this issue?

MR. CHAIKEN: Yes, sir. I appreciate it.

What you have here is a big game of smoking mirrors aimed at delaying the implementation of any reduction in rates whatsoever. BellSouth is to believe there never has been a point in time where any CLEC out there can take advantage of any reduction in rates ordered by the PFSC because no Order has ever been final and nonappealable. So therefore, nobody could ever take advantage

of this. That's just a ridiculous position. It's not what was intended by the FCC. It's not what was intended by the FPSC. It was not what was intended by Congress.

Supra made a request pursuant to the FPSC Order on May 25, 2001 to adopt those more favorable rates, bottom line. And you've got to remember what the stipulation said, and Supra agrees with the Tribunal's interpretation of the stipulation which said that the new rates, at least the loop rates, go into effect automatically.

Now, Chairman Donahey, you were arguing with counsel regarding --

MR. DONAHEY: I was questioning him. I never argue.

MR. CHAIKEN: My apologies. Questioning counsel's position regarding what that Order required of people who wanted to take advantage of those rates. Well, you've got to remember

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that that Order included parties that were not part of that original stipulation. That Order said that these rates are available to everybody. Well, the stipulation, which both BellSouth and Supra are part of said that you get these loop

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rates until either of those two things happen. Well, on May 25 that did happen. And Supra, in order to protect itself --  
MR. ESTES: I don't understand your point here. If I understand it correctly, BellSouth had given you the stipulated rates.  
MR. CHAIKEN: Not the May rates.  
MR. ESTES: I thought you were talking about the rates in the stipulation.  
MR. CHAIKEN: But on May 25 --  
MR. DONAHEY: -- 2001?  
MR. CHAIKEN: 2001, correct -- new rates should have applied. The PSC ordered rates on May 25, 2001.  
MR. ESTES: Tell me why.  
MR. CHAIKEN: Because the stipulation says that it expires on one of two events: Either the FPSC issues an Order or June 1, 2001 happens. And it expired by operation of the first one. May 25, 2001 the FPSC says --  
MR. ESTES: So what's the stipulation got to do with the May rates?  
MR. CHAIKEN: The stipulation says you get them when the FPSC issues the Order. So May 25 I believe to be the crucial date. That's the date

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in which, at a minimum --  
MR. DONAHEY: Where does it say that in the stipulation?  
MR. CHAIKEN: Oh, boy, I don't have it in front of me. But I believe we cite it in our post-hearing brief. If you give me a second, I'll get that to you, but let me go on while I have someone looking for that.  
Supra did concede in its post-hearing brief, and Mr. Killefer pointed that out correctly, that our position was that the October rates, in all fairness, should have applied because those were more current. And for that period of time those were more current.  
Now, you have to remember, and Mr. Edenfield just argued to you, that what should have happened is the October rates should have gone into effect and you should have seen a credit one way or the other based on those rates.  
Well, the FPSC just issued a new UNE order setting the rates even lower, than what were in the May rates, last week. If you're going to follow Mr. Edenfield's logic there,

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then there should be a credit going back in time with those rates.  
MR. DONAHEY: We've got a new agreement in place now, don't we?  
MR. CHAIKEN: We have a new agreement in

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place.

MR. DONAHEY: The new agreement will take care of that.

MR. CHAIKEN: Now, understand what BellSouth's argument here is. It's that on July 11, 2001 Supra's request to use the new May rates -- as of that time they were the new May rates -- basically was ineffectuate. They shouldn't have been granted at that time because it was a -- it was not a final nonappealable order pursuant to 9.3 of the contract.

Well, nowhere in this July 11, 2001 letter does Supra state that, to make its request pursuant to 9.3. In fact, I would argue, as you noted, that Supra makes the request pursuant to Section 5.

If you read Section 5, and BellSouth analogized Section 5 to Section 252(i) of the Act. And said Section 5 mirrors 252(i). Well, if you look at Section 5 and you look

at 252(i) you'll find that Section 5 of the agreement goes beyond 252(i) of the Act and grants Supra even greater rights than what is granted under 252(i).

Now, you ask the question as to whether or not anybody else had the May rates. Well, it's my understanding, and I'm hoping to provide you some documentation -- BellSouth provided you a whole bunch of new documents today -- but I'm being told that both AT&T and MCI have the May rates in contract in effect today.

MR. DONAHEY: The question was: Did anybody have them in effect in agreements at the time that you raised the issue of amending the agreement; i.e., July 11.

MR. CHAIKEN: I don't want answer, but I will cite to you the testimony of Mr. Follensby on November 16, 2001 at the Arbitration III and IV hearing page 694 lines 8 through 13.

MR. DONAHEY: 694 lines --

MR. CHAIKEN: 8 to 13. It's 11/16/01. Stated that other carriers had agreements that included the May rates. I don't know what time period for, but did he make that statement.

The bottom line is that we agreed with the Tribunal's reasoning as set forth in its orders as to why the May rates should apply. If BellSouth at any time felt the October rates should have applied, they could have stated that the FPSC issued the Order, the October rates should apply.

But that wasn't BellSouth's attempt. BellSouth's attempt this whole period was to try to stick Supra with the much higher rates that were in the contract.

MR. DONAHEY: They said the rates that were in the stipulation were lower than those in the contract.

MR. CHAIKEN: Only for the loops.

MR. DONAHEY: Were there other -- they said

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18 that it only covered the loops.  
19 MR. CHAIKEN: The stipulation only covered  
20 the loops. The May Order covered --  
21 MR. DONAHEY: No, no. But they said that  
22 the rates in the stipulation were lower than  
23 those in the contract.  
24 MR. CHAIKEN: I agree with that statement.  
25 But the May rates, which include rates --  
00087 MR. DONAHEY: I understand. They were lower

1 than the contract and the stipulation.  
2 MR. KILLEFER: Mr. Chaiken, how do you  
3 assert that the May rates should still apply if  
4 the Florida Public Service Commission in October  
5 found that those rates were erroneous?  
6 MR. CHAIKEN: I believe sitting here today  
7 both AT&T and MCI are operating under the May  
8 rates.  
9 MR. DONAHEY: We're not going accept new  
10 evidence.  
11 MR. CHAIKEN: Mr. Edenfield handed you a  
12 bunch of additional evidence.  
13 MR. DONAHEY: This is not evidence. He  
14 handed us the law and argued from it. That's not  
15 evidence. He's given us things that are already  
16 in the record. It's already in the record that  
17 AT&T agreed with this and you give me their  
18 contract, that's fine. But I don't want to  
19 supplement the record.  
20 MR. CHAIKEN: How about an FPSC Order?  
21 MR. DONAHEY: An FPSC Order will be fine.  
22 MR. KILLEFER: You haven't answered my  
23 question.  
24 MR. CHAIKEN: I'm sorry.  
25 MR. KILLEFER: How can you assert that the

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1 May rates should apply if the Florida Public  
2 Service Commission found, some four months later,  
3 five months later, that they were erroneous?  
4 MR. CHAIKEN: well, at any point in time  
5 BellSouth could have come back to Supra and said,  
6 You know what, the May rates no longer apply.  
7 Here are the October rates.  
8 MR. KILLEFER: That still doesn't answer my  
9 question. How can you assert that you're  
10 entitled to rates that were found to be  
11 erroneous?  
12 MR. CHAIKEN: I would argue that from May up  
13 until October until, the date which the PSC  
14 issued its Order, the May rates should apply.  
15 MR. KILLEFER: Even if they're erroneous?  
16 MR. CHAIKEN: I believe as of last week, the  
17 FPSC has found that those rates going way back in  
18 time were erroneous. You've got to remember what  
19 UNE costs are supposed to be. They're supposed  
20 to be a level at which BellSouth can recover its  
21 cost for providing service. well, they just  
22 recently lowered the rates even below what was in  
23 the May rates, just last week.  
24 MR. ESTES: Suppose that BellSouth had given  
25 you the May rates in May, charged you the May

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rates, and then it comes October and the  
Page 37

Docket No.: 031125-TP  
Witness: Angel M. Leiro  
Exhibit No. \_\_\_\_\_(AL-10)  
Oral Argument Transcript  
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2 Commission says, we were wrong. Those rates in  
3 May were wrong. We're going to set these rates  
4 at this level.

5 Then what would happen? would BellSouth  
6 and Supra then go back and true up, as  
7 Mr. Edenfield suggested.

8 MR. CHAIKEN: I would say Supra would be  
9 agreeable to that, as long as now the PSC has --

10 MR. ESTES: So what have you accomplished?

11 MR. CHAIKEN: You've accomplished a true  
12 allocation of the proper costs of those services.  
13 You've accomplished doing what Congress intended,  
14 which is reimbursing BellSouth for its costs, its  
15 true costs.

16 MR. ESTES: The net result would be that  
17 under this hypothetical, then Supra would have  
18 ended up paying, if they paid anything, the  
19 October rates.

20 MR. CHAIKEN: I agree. But then, if you  
21 take that one step further, based on what the  
22 FPSC recently ordered, you'd have to go back and  
23 true it up based on the new rates.

24 MR. ESTES: when did they do that?

25 MR. CHAIKEN: Last week.

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1 MR. ESTES: I don't know that that's  
2 something before us.

3 MR. KILLEFER: were those rates applied  
4 retroactively and if so, back to what date?

5 MR. CHAIKEN: I don't know the answer to  
6 that sitting here today.

7 MR. DONAHEY: I would guess, this is  
8 strictly a speculation on my part, that the FPSC  
9 didn't apply those things retroactively. It's up  
10 to the parties to do that.

11 MR. EDENFIELD: Generally what happens is  
12 they negotiate. The within one thing that you're  
13 not being told is the new loop rates aren't being  
14 changed because of some error in the old loop  
15 rates, like they had between May and okay. This  
16 is simply a continuation of the docket.  
17 Basically, the UNE rates will continue to be  
18 modified probably forever. But there's a  
19 difference in saying it was modified because we  
20 were erroneously --

21 MR. DONAHEY: Assuming they were all CLECs.

22 MR. EDENFIELD: Believe me, we've come to  
23 accept they're here to stay. we welcome the  
24 competition.

25 MR. DONAHEY: Mr. Chaiken, let me ask you:

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1 what was wrong with the amendment that was  
2 proposed by BellSouth on July 19, 2001?

3 MR. CHAIKEN: The bottom line is it asks to  
4 us replace an entire attachment of our contract  
5 that we were relying on. In fact, we were  
6 litigating before you at the time. It asks us to  
7 say that Attachment 2 should be stricken, its  
8 entirety should apply with these new terms and  
9 conditions. well, we just wanted the rates at  
10 that time. We had been litigating that issue for  
11 some time before this Tribunal.

12 Not withstanding that, if I could just

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

In re:

SUPRA TELECOMMUNICATIONS  
AND INFORMATION SYSTEMS, INC.,

Debtor.

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SUPRA TELECOMMUNICATIONS  
AND INFORMATION SYSTEMS, INC.,

Plaintiff,

vs.

BELLSOUTH TELECOMMUNICATIONS,  
INC.,


Defendant.

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Case No. 02-41250-BKC-RAM

Chapter 11

Adv. No. 03-1122-BKC-RAM-A

U.S. BANKRUPTCY COURT  
MIAMI DIVISION  
OFFICE  
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**RESPONSE BY DEBTOR TO MOTION OF BELLSOUTH TELECOMMUNICATIONS,  
INC. FOR PARTIAL SUMMARY JUDGMENT REGARDING APPLICATION  
OF FPSC SEPTEMBER 27, 2002 RATE ORDER AND  
CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT**

Supra Telecommunications and Information Systems, Inc., the debtor and debtor-in-possession ("**Supra**" or the "**Debtor**"), responds in opposition to the *Motion of BellSouth Telecommunications, Inc. for Partial Summary Judgment Regarding Application of FPSC September 27, 2002 Rate Order* (the "**MSJ**"), dated March 26, 2004, filed by BellSouth Telecommunications, Inc. ("**BellSouth**"), and cross-moves for summary judgment, pursuant to Federal Rule of Civil Procedure 56, made applicable to this adversary proceeding by Federal Rule of Bankruptcy Procedure 7056. The following grounds support this Response and Cross-Motion:

## INTRODUCTION

For the period of July 15, 2002<sup>1</sup> through and including October 23, 2002, BellSouth seeks an approximately \$4 million windfall as a result of its acknowledged incorrect and inflated cost studies, delay tactics, and intentional overbilling of Supra. Specifically, BellSouth seeks to charge Supra October 2001 rates that BellSouth knows provides it with not only its costs and a reasonable profit (to which Supra concedes BellSouth is entitled), but also millions of dollars more, contrary to the Telecommunications Act of 1996. BellSouth argues that it should be permitted to collect these funds because the order setting the lower rates was not entered by the Florida Public Service Commission (the "FPSC") until September 27, 2002 (the "**Sep. 02 Order**").<sup>2</sup> The relief sought by BellSouth should be denied for two reasons. First, the doctrine of judicial estoppel prevents BellSouth from arguing that the rates contained in the Sep. 02 Order should not be retroactively applied as of July 15, 2002. BellSouth itself has argued successfully for the retroactive application of an FPSC order setting rates, so to now argue the opposite is prohibited by the doctrine of judicial estoppel. Alternatively, to prevent BellSouth from being unjustly enriched, and giving BellSouth the benefit of all doubt, the corrective rates BellSouth proposed to the FPSC on January 28, 2002 should apply from July 15, 2002 to the application date of the Sep. 02 Order.<sup>3</sup> Additionally, and at a minimum, Supra is entitled to the rates

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<sup>1</sup> Although this adversary proceeding also covers July 1, 2002 through and including July 14, 2002, Supra is seeking only to have the Court's rulings apply to the parties' present interconnection agreement (the "**Present Agreement**") that became effective on July 15, 2002.

<sup>2</sup> See Order No. PSC-02-1311-FOF-TP, a copy of which is **Exhibit 16** hereto.

<sup>3</sup> Supra believes the Sep. 02 Order rendered on September 27, 2002, should be applied as of September 27, 2002. BellSouth will likely argue that October 24, 2002 is the appropriate application date.



contained in the Sep. 02 Order from September 27, 2002, the date of the order, to October 23, 2002.

**STATEMENT OF MATERIAL FACTS**

**A. The Petition**

1. On October 23, 2002 (the "**Petition Date**"), the Debtor filed with this Court a voluntary petition for relief under chapter 11 of Title 11 of the United States Code. The Debtor continues to manage its business and operates its assets as a debtor in possession under 11 U.S.C. §§ 1107 and 1108.

**B. Procedural Background and the MSJ**

2. On March 5, 2003, the Debtor commenced this adversary proceeding, alleging counts for (i) breach of contract, (ii) unjust enrichment, (iii) specific performance, (iv) accounting, (v) turnover, and (vi) conversion. This adversary proceeding will adjudicate, *inter alia*, the balance of (i) BellSouth's general unsecured claim for the period of July 1, 2002 to July 14, 2002, and (ii) the cure amount of the Present Agreement for the period of July 15, 2002 to October 22, 2002.

3. On March 26, 2004, BellSouth filed the MSJ. In the MSJ, BellSouth seeks a summary judgment in the approximate amount of \$5,316,000<sup>4</sup> for providing ADUF and ODUF records from July 1, 2002 to October 23, 2002.

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<sup>4</sup> This is an approximated number applying rates contained in the FPSC's October 18, 2001 Order (No. PSC-01-2051-FOF-TP), which Supra submits BellSouth seeks to apply

**C. The 1996 Act, the FPSC Orders, and BellSouth's Cost Studies**

4. In return for providing to Supra ADUF and ODUF records ("DUF"),<sup>5</sup> pursuant to the Telecommunications Act of 1996, BellSouth is only entitled to recover its cost of providing such records plus a reasonable profit.<sup>6</sup> Specifically, the Act provides that the price for UNEs (e.g., DUF) shall be "(i) based on the cost (determined without reference to a rate-of return or other rate-based proceeding) of providing the interconnection network element (whichever is applicable), and (ii) nondiscriminatory, and (B) may include a reasonable profit."<sup>7</sup>

5. On May 25, 2001, the FPSC issued an order setting various UNE rates, including DUF rates, based on a DUF cost study submitted by BellSouth.<sup>8</sup>

6. Four months later, on October 2, 2001 the FPSC voted, *inter alia*, to raise the DUF and various other UNE rates contained in the May 01 Order.<sup>9</sup>

7. On October 8, 2001, due to proceedings in other states, BellSouth "submitted a new DUF cost study to the FPSC . . ." <sup>10</sup> that showed that the DUF rates ordered by the FPSC in May 2001 were too high. Accordingly, in this study, BellSouth proposed lower DUF rates.

8. On October 18, 2001, the FPSC issued an order memorializing its October 2, 2001 vote. As the rates contained in the Oct. 01 Order were voted on prior to BellSouth's

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<sup>5</sup> DUF records are recordings that allow Supra to bill both its end-users and other telecommunication carriers.

<sup>6</sup> See *Affidavit of Dave Nilson* (the "Nilson Affidavit"), a copy of which is **Exhibit 1** hereto, ¶ 3, and *Response of BellSouth Telecommunications, Inc. to Second Request for Admissions by Debtor to BellSouth Telecommunications, Inc.* (the "BST Admissions"), dated April 20, 2004, a copy of which is **Exhibit 2** hereto, No. 3.

<sup>7</sup> 47 U.S.C. § 252(d).

<sup>8</sup> See Order No. PSC-01-1181-FOF-TP (the "May 01 Order"), a copy of which is **Exhibit 3** hereto.

<sup>9</sup> See October 2, 2001 FPSC Vote Sheet, a copy of which is **Exhibit 4** hereto.

<sup>10</sup> MSJ, ¶ 12.

October 8<sup>th</sup> cost study filing, the Oct. 01 Order DUF rates were amended without taking into account BellSouth's October 8, 2001 cost study proposing reductions to the May 01 Order DUF rates.<sup>11</sup> The rates set forth in the Oct. 01 Order were substantially higher than the rates proposed in BellSouth's October 8, 2001 cost study.

9. Three months later, on January 28, 2002, just two days before a scheduled hearing before the FPSC to review the various UNE rates set in the May 01 and Oct. 01 Orders and to set new rates not previously set in those orders, BellSouth filed a revised DUF cost study.<sup>12</sup> This cost study again proposed DUF rates even lower than the rates reflected in the Oct. 8<sup>th</sup> cost study.

10. On January 31, 2002, the FPSC issued an order stating:

On January 28, 2002, a mere two days before the hearing in this proceeding, BellSouth filed a revised cost study and a revised BSTLM Loop Model. The revision at this late stage in the process has placed the other parties in this docket at a severe disadvantage.<sup>13</sup>

As a result, the FPSC continued the hearing until March 11-13, 2002.

11. On June 3, 2002, following the March 2002 hearing, the FPSC staff issued a recommendation and agreed with BellSouth that the Oct. 01 Order DUF rates were too high. The FPSC staff recommended to further reduce the DUF rates contained in the Oct. 01 Order below BellSouth's proposed rates of January 28, 2002.<sup>14</sup>

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<sup>11</sup> See Order No. PSC-01-2051-FOF-TP (the "Oct. 01 Order"), a copy of which is **Exhibit 5** hereto.  
<sup>12</sup> BST Admissions, No. 5.

<sup>13</sup> *Order Continuing Hearing and Establishing Procedure and Filing Dates Limited to BellSouth Telecommunications, Inc. Revised Cost Study Filing of January 28, 2002*, a copy of which is **Exhibit 6** hereto.

<sup>14</sup> Nilson Affidavit, ¶ 4.

12. On August 26, 2002, almost eight months after BellSouth filed its revised cost study, the FPSC staff filed a revised recommendation again proposing the same DUF rates which the FPSC staff previously recommended in its June 3, 2002 recommendation.<sup>15</sup>

13. On September 6, 2002, the FPSC voted to accept the FPSC staff's proposed DUF and other UNE rates as set forth in the recommendation of August 26, 2002.<sup>16</sup>

14. On September 11, 2002, Supra sent a letter to BellSouth requesting the rates that were approved by the FPSC on September 6, 2002, including the DUF rates, be incorporated in the Present Agreement.<sup>17</sup>

15. On September 27, 2002, the FPSC issued the Sept. 02 Order which, *inter alia*, reduced BellSouth's rates for various UNEs, including DUFs; the DUF rates were reduced to the amounts that the FPSC Staff first proposed on June 3, 2002. In this order, the FPSC expressly found, among other things, that BellSouth was receiving an over-recovery of its costs.<sup>18</sup>

#### **D. The Inflated Invoices**

16. BellSouth issued invoices to Supra for the months of October 2001 through October 2002 (collectively, the "**Invoices**") that included amounts for DUF services.<sup>19</sup> In the Invoices, BellSouth intentionally applied higher, inflated DUF rates rather than the lower, corrective DUF rates that BellSouth proposed to the FPSC on January 28, 2002, or the even further reduced rates adopted by the FPSC in the Sept. 02 Order.<sup>20</sup>

<sup>15</sup> August 26, 2002 FPSC Staff Recommendation p. 12, a copy of which is **Exhibit 7** hereto.

<sup>16</sup> See September 6, 2002 FPSC Vote Sheet, a copy of which is **Exhibit 8** hereto.

<sup>17</sup> See letter from David Nilson to Greg Follensbee, a copy of which is Exhibit L to the MSJ.

<sup>18</sup> Sept. 02 Order, p. 65 ("... BellSouth has been over-recovering its DUF costs.").

<sup>19</sup> Nilson Affidavit, ¶ 5.

<sup>20</sup> Nilson Affidavit, ¶ 6.

**E. The Retroactive Application of the Oct. 01 Order (at BellSouth's Request)**

17. Supra and BellSouth have been parties to various arbitrations in order to determine, among other things, the proper amount of BellSouth's bills from June 2001 to June 2002. On August 7, 2002, in Arbitration VI, the arbitration tribunal (the "**Tribunal**") ordered the application of the UNE rates contained in the May 01 Order for services rendered between August 16, 2001 and June 30, 2002.<sup>21</sup> BellSouth sought reconsideration of this Order in order to have the corrected Oct. 01 Order rates apply rather than the lower May 01 Order rates.<sup>22</sup> The Tribunal retroactively applied the corrected, higher Oct. 01 Order rates and replaced the lower May 01 Order rates from October 18, 2001 back to August 16, 2001.<sup>23</sup>

**APPLICABLE LAW WITH REGARD TO SUMMARY JUDGMENT**

18. "Summary judgment is appropriate where the record reflects 'that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.'<sup>24</sup> Summary judgment is only appropriate "where the record as a whole could not lead a

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<sup>21</sup> See Award in Arbitration VI (the "8-7-02 Arb Award"), p. 15, a copy of which is **Exhibit 9** hereto.

<sup>22</sup> See BellSouth's Request For Interpretation, Clarification, and/or Correction (the "**Request for Clarification**"), dated August 22, 2002, a copy of which is **Exhibit 10** hereto.

<sup>23</sup> The Tribunal found "that the rates which BellSouth should have been billing Supra for the period of August 16, 2001 through June 30, 2002 are the rates in the Interconnection Agreement as modified by the corresponding rates set out in the October 2001 FPSC Order." *Clarification and Correction of Award and Additional Award in Arbitration VI and Clarification of August 14, 2002 Order in Consolidated Arbitrations III and IV*, dated September 20, 2002, p. 4, a copy of which is **Exhibit 11** hereto.

<sup>24</sup> *Feltman v. Bd. of County Commissioners of Metro. Dade County (In re S.E.L. Maduro (Florida), Inc.)*, 205 B.R. 987, 989, n. 1 (Bankr. S.D. Fla. 1997) (Mark, CJ.) (citing Fed. R. Civ. P. 56(c)).

rational trier of fact to find for the nonmoving party.<sup>25</sup> In considering BellSouth's MSJ, the Court must view the facts in the light most favorable to Supra, the nonmoving party.<sup>26</sup>

### ARGUMENT

#### **A. Judicial Estoppel Prevents BellSouth from Arguing that the Sept. 02 Order Cannot Be Retroactively Applied**

19. BellSouth argued before the Tribunal that the higher Oct. 01 Order rates should apply retroactively and replace the lower May 01 Order rates which the Tribunal initially ordered the parties to apply. There was no language in the Oct. 01 Order that rendered the Oct. 01 Order rates retroactive.<sup>27</sup> In its Request for Clarification regarding the application of the rates in the May 01 Order, BellSouth argued for retroactive application of the higher rates stating:

Supra should be billed at the rates ordered by the Commission in October 2001 rather than in May 2001.<sup>28</sup>

There is no dispute that the rates set forth in the May 2001 Order have been replaced by rates the Commission established in its October 2001 order.<sup>29</sup>

[A]pplication of the rates in the May 2001 Order forces the parties to implement rates that have been superseded by the Commission and thus do not exist.<sup>30</sup>

<sup>25</sup> *Williams v. Vitro Services Corp.*, 144 F.3d 1438, 1441 (11<sup>th</sup> Cir. 1998).

<sup>26</sup> *Id.*; see also *Poller v. Columbia Broadcasting Systems, Inc.*, 368 U.S. 464, 473 (1962); *Hyman v. Nationwide Mut. Fire Ins. Co.*, 304 F.3d 1179, 1185 (11<sup>th</sup> Cir. 2002) (citing *Burton v. City of Belle Glade*, 178 F.3d 1175, 1187 (11<sup>th</sup> Cir. 1999)).

<sup>27</sup> When asked at his deposition if there was any language in the Oct. 01 Order which would have the rates set forth therein apply retroactively, Follensbee conceded: "No. It was silent, basically." 4-15-04 Deposition Transcript of Follensbee p. 149 ln. 19. "Again, I think it was silent on – it did not address retroactivity at all. It didn't state if they would be, didn't state they wouldn't be. It simply said that the rates will be effective upon us approving an agreement that incorporates those rates, when presented to us for approval." *Id.* at p. 151 lns. 8 - 13.

<sup>28</sup> Request for Clarification, p. 6 (exhibit 10 hereto).

<sup>29</sup> Request for Clarification, p. 7.

<sup>30</sup> Request for Clarification, p. 7.

20. On September 10, 2002, at the hearing on the Request for Clarification,

- BellSouth's counsel Kip Edenfield argued before the Tribunal:

The only other issue to take into consideration is the impact of the October 2001 reconsideration Order and the impact it has on these rates. **The Tribunal has ordered the May 25, 2001 rates when, in fact, those rates for all intents and purposes were found to be erroneous by the Florida Public Service Commission.**<sup>31</sup>

\* \* \*

What happened was **[the FPSC] misapplied the inflation factor** and had to go back and redo all of the May 25 rates.<sup>32</sup>

\* \* \*

I guess what I'm asking you to consider is the impact of the reconsideration Order on your finding that the May 25 rates are appropriate. If you do not agree with my argument that these [expired rates from a Joint Stipulation dated December 17, 1999] are the rates that should have applied for the entire term, then and only then, **I would ask you to consider that the May 25 rates are not appropriate because they were declared to be invalid, for all intents and purposes,** by this Award and, thus, it would be October rates that will be applicable for the time period.<sup>33</sup>

21. BellSouth prevailed and the Tribunal replaced the lower May 01 Order rates and retroactively awarded BellSouth all of the corrected, higher Oct. 01 Order rates.<sup>34</sup> Amazingly, BellSouth's corporate representative, Greg Follensbee, recently testified that he believed "the

<sup>31</sup> 9-10-02 Arb VI Hearing Transcript at p. 74 lns. 12 – 19, a copy of which excerpt is **Exhibit 12** hereto (emphasis added).

<sup>32</sup> *Id.* at p. 76 lns. 9 – 11 (emphasis added).

<sup>33</sup> *Id.* at p. 76 ln. 17 – p. 77 ln. 4 (emphasis added).

<sup>34</sup> "The Tribunal finds that the rates which BellSouth should have been billing Supra for the period of August 16, 2001 through June 30, 2002 are the rates in the Interconnection Agreement as modified by the corresponding rates set out in the October 2001 FPSC Order." 9-20-02 Arb Award at p. 4.

tribunal made a wrong decision in what they did. I don't think they should apply those October rates in August, but that's their decision."<sup>35</sup>

22. The very same corrected rates for which BellSouth argued for and received retroactive benefit have since been corrected by the Sept. 02 Order. Supra now seeks the same treatment with regard to the Sep. 02 Order that BellSouth received with regard to the Oct. 01 Order. And like the Oct. 01 Order, the Sep. 02 Order is silent on the issue of retroactivity.<sup>36</sup> However, despite its previous arguments before the Tribunal, and in direct contravention thereof, BellSouth now inconsistently argues that "when the FPSC wishes to make one of its Orders have retroactive or prospective effect, it knows how to do so."<sup>37</sup> Thus, it now maintains that the Sept. 02 Order may not be applied retroactively unless expressly stated and that Supra is not entitled to receive the benefit of the corrected rates contained in the Sep. 02 Order. In essence, BellSouth seeks retroactive application of corrected rates only when retroactive application

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<sup>35</sup> 4-15-04 Deposition Transcript of Follensbee p. 163 lns. 22 – 25, a copy of which transcript is Exhibit 13 hereto. Mr. Follensbee was then questioned as to the fairness of the previous Tribunal ruling compared to what Supra is seeking here:

Q: Do you think it would be fair if both parties were treated the same way, meaning that both parties got retroactive application of corrected rates?

A: No.

\* \* \*

Q: You don't think there should be some type of consistency between rulings?

A: As I said, I've been 32 years in this business. Consistency never applies in any rulings that I've ever seen. Rulings are made individually without any consideration to past rulings.

The Court should take note of Mr. Follensbee's belated effort to distance himself from the clear position his employer litigated and prevailed upon.

<sup>36</sup> Nilson Affidavit, ¶ 8.

<sup>37</sup> MSJ, ¶ 36.



benefits BellSouth. Principles of judicial estoppel, however, prevent BellSouth from making this disingenuous argument.

23. The law does not allow a party to maintain successfully a position in one proceeding and then assume the opposite position in another proceeding.<sup>38</sup> Judicial estoppel protects the integrity of the judicial system by not allowing a party to prevail twice using opposite arguments where its interests are so suited.<sup>39</sup>

24. It is undisputed that BellSouth previously argued for retroactive application of corrected FPSC rates and, based on this argument, the Tribunal awarded BellSouth retroactive application of corrected FPSC rates. Judicial estoppel is designed to prohibit the kind of deliberate position changing BellSouth is now attempting.<sup>40</sup> Thus, because (i) BellSouth's

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<sup>38</sup> "A claim made or position taken in a former action or judicial proceeding will, in general, estop the party to make an inconsistent claim or to take a conflicting position in a subsequent action or judicial proceeding to the prejudice of the adverse party. In order to work an estoppel, the position assumed in the former trial must have been successfully maintained." *Ramsey v. Jonassen*, 737 So.2d 1114, 1116 (2<sup>nd</sup> DCA 1999) (quoting *Chase & Co. v. Little*, 156 So. 609, 610 (1934)).

<sup>39</sup> "[W]here a party assumes a certain position in a legal proceeding, and success in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him." *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001) (citation omitted). "This rule, known as judicial estoppel, 'generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase.'" *Id.* (citations omitted). The purpose of this rule is to "protect the integrity of the judicial process." *Id.* (citations omitted). Among the factors that courts consider in deciding whether to apply this doctrine are (i) the party's later position must be "clearly inconsistent" with its earlier position; (ii) whether the party has succeeded in persuading a court to accept that party's earlier position; and (iii) whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped. *Id.* at 1845 (citations omitted).

<sup>40</sup> "The purpose of this doctrine, 'is to protect the integrity of the judicial process by prohibiting parties from deliberately changing positions according to the exigencies of the moment.'" *Burnes v. Pemco Aeroplex, Inc.*, 291 F.3d 1282, 1285 (11<sup>th</sup> Cir. 2002) (citation omitted). *See also Jackson v. Barnett Dealer Fin. Servs.*, 942 So.2d 283 (Fla. 3<sup>rd</sup> DCA 2003) (quoting *Montero v. Compugraphic Corp.*, 531 So.2d 1034, 1036 (Fla. 3<sup>rd</sup> DCA 1988) for the proposition that "[a] litigant cannot, in the course of litigation, occupy inconsistent and contradictory positions.") "The doctrine is designed to

current position is "clearly inconsistent" with its prior position; (ii) BellSouth persuaded the Tribunal to accept its earlier position; and (iii) BellSouth would undoubtedly impose an unfair detriment on Supra if it is not estopped from maintaining this argument, the Court should apply judicial estoppel and order that all the rates contained in the Sep. 02 Order be applied as of the effective date of the Present Agreement.

**B. Alternatively, BellSouth's January 28, 2002 Proposed DUF Rates Should Apply from July 15, 2002 to the Date Supra Receives the Benefit of the Rates in the Sep. 02 Order and, the Rates in the Sep. 02 Order Should Apply as of September 27, 2002**

*BellSouth's January 28, 2002 Proposed DUF Rates Should Apply from July 15, 2002 to the Application Date of the Rates of the Sep. 02 Order*

25. Pursuant to the Telecommunications Act of 1996, BellSouth is only entitled to recover its cost of providing ADUF and ODUF records plus a reasonable profit. On January 28, 2002, BellSouth submitted to the FPSC rates that it admits permitted it to recover these costs and book a reasonable profit.<sup>41</sup> Therefore, because BellSouth would be unjustly enriched with any result that permits BellSouth to obtain more money, at a minimum, the January 28<sup>th</sup> proposed DUF rates should apply as of July 15, 2002 – the effective date of the Present Agreement – to the application date of the Sep. 02 Order.<sup>42</sup>

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prevent parties from making a mockery of justice by inconsistent pleadings." *Id.* (citation omitted). See also *In re Coastal Plains, Inc.*, 179 F.3d 197, 205 (5<sup>th</sup> Cir. 1999) explaining that the "purpose of the doctrine is to protect the integrity of the judicial process by preventing parties from playing fast and loose with the courts to suit the exigencies of self interest" (internal quotes and citations omitted).

<sup>41</sup> BST Admissions, No. 6.

<sup>42</sup> To state a cause of action for unjust enrichment, a plaintiff must allege (1) a benefit conferred on defendants and their knowledge of such benefit; (2) that defendants voluntarily accepted and retained such benefit; and (3) the circumstances are such that it would be inequitable for defendants to retain the benefit without paying the value thereof to the plaintiff. *Mobil Oil Corp. v. Dade County Esol*

26. Here, BellSouth seeks to over-recover on DUF rates that it knows are wrong and will result in a substantial windfall to it. The following chart depicts the relevant DUF rate evolution. Column A is the Oct. 01 Order DUF rates that BellSouth seeks to enforce against Supra. Based on these rates, Supra anticipates a charge of approximately \$5,316,000. Column B depicts the January 28, 2002 DUF rates that BellSouth proposed to the FPSC. Utilizing these rates – which BellSouth, by submitting to the FPSC, admits are more correct than the Oct. 01 Order rates – would reduce the charges to \$1,372,000. And column C shows the rates approved by the FPSC pursuant to the Sep. 02 Order. Utilizing these rates, Supra anticipates a charge of

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*Management Co., Inc.*, 982 F.Supp. 873, 880 (S.D. Fla. 1997); see also *Hillman Const. Corp. v. Wainer*, 636 So.2d 576, 577 (Fla. 4<sup>th</sup> DCA 1994) (citation omitted).

only approximately \$1,197,000.

	A	B	C	D	E	F	G
	Oct. 01 Order DUF rates BellSouth seeks to apply in this instant adversary proceeding	1/28/02 BellSouth proposed DUF rates	6/03/02 FPSC staff proposed rates	8/26/02 FPSC staff proposed rates	9/6/02 FPSC voted rates	Sep. 02 Order approved rates	% Reduced From Oct. 01 Order to Sep. 02 Order
<b>Access Daily Usage File</b>							
ADUF message processing, per message	\$0.014391	\$0.001858	\$0.001656	\$0.001656	\$0.001656	\$0.001656	88.5%
ADUF data transmission, per message	\$0.0001297	\$0.0001245	\$0.0001245	\$0.0001245	\$0.0001245	\$0.0001245	4%
<b>Optional Daily Usage File</b>							
ODUF message processing, per message	\$0.006835	\$0.002505	\$0.002146	\$0.002146	\$0.002146	\$0.002146	68.7%
ODUF data transmission, per message	\$0.00010811	\$0.00010375	\$0.00010375	\$0.00010375	\$0.00010375	\$0.00010375	4%
<b>Estimated Total Amount BST Entitled To 7/1/02 - 10/23/02</b>	\$5,316,000 <sup>43</sup>	\$1,372,000 <sup>44</sup>	\$1,197,000	\$1,197,000	\$1,197,000	\$1,197,000 <sup>45</sup>	

27. As further evidence of the inequity that BellSouth seeks to impart on Supra, on October 8, 2001, BellSouth "submitted a new DUF cost study to the FPSC."<sup>46</sup> This cost study proposed substantial reductions to the Oct. 01 Order DUF rates BellSouth was currently charging and seeks to charge in this proceeding. Two days prior to the scheduled hearing, on January 28, 2002, BellSouth filed another cost study with the FPSC. In addition to proposing even lower rates than those set forth in BellSouth's October 8, 2001 cost study and the FPSC's Oct. 01 Order,

<sup>43</sup> Nilson Affidavit, ¶ 10.

<sup>44</sup> Nilson Affidavit, ¶ 11.

<sup>45</sup> Nilson Affidavit, ¶ 12.

<sup>46</sup> MSJ, ¶ 12.

the January 28<sup>th</sup> filing prolonged the impending corrective ruling (that resulted in the Sep. 02 Order) because the FPSC was forced to continue the hearing until March 11, 2002.<sup>47</sup>

28. Moreover, BellSouth has already received a massive windfall for the time period of October 2001 through June 30, 2002 from Supra because it received and retained the higher, erroneous Oct. 01 Order rates for those nine months under the prior interconnection agreement.<sup>48</sup> Even if Supra did not pay BellSouth a single penny for the DUF records provided during the period at issue in this adversary proceeding, BellSouth will have already recovered in full (and then some) the costs of such production plus a reasonable profit. Supra merely seeks to pay BellSouth the proper amounts, consistent with 47 U.S.C. § 252(d), associated with providing these DUF records.

29. In sum, BellSouth has already been unjustly enriched. BellSouth will be further unjustly enriched if it receives and retains payment under the Present Agreement for DUF rates in excess of the DUF rates BellSouth proposed on January 28, 2002. First, Supra would be conferring a massive benefit upon BellSouth through BellSouth's substantial over-recovery and unreasonable profit; BellSouth is and has been well-aware of this over-recovery since at least October 2001. Second, not only is BellSouth voluntarily accepting such benefit, it is aggressively seeking it. And third, the circumstances are such that it would be inequitable for

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<sup>47</sup> Interestingly, BellSouth even had the audacity to attempt to hold Supra responsible at these admittedly, over-inflated DUF rates for DUF records that it never even processed or produced to Supra for an additional \$540,000. See *BellSouth's Statement of Element of Proof of Claim, Estimated Amounts and Identification of Litigation Related to Each of Claim*, dated September 15, 2003, a copy of which is **Exhibit 14** hereto. BellSouth has since withdrawn this portion of the claim.

<sup>48</sup> BellSouth also received a massive over-recovery from October 2001 to the time BellSouth began applying the lower DUF rates to all other CLECs – presumably when such CLECs effectively amended their interconnection agreement to incorporate the Sep. 02 Order.

BellSouth to retain this massive over-recovery and unreasonable profit – especially considering that the rates from the Oct. 01 Order have been lowered by the FPSC in its Sep. 02 Order, and admitted to be substantially less by BellSouth in its cost studies dated October 8, 2001 and January 28, 2002.

30. To prevent further unjust enrichment, the DUF rates which BellSouth submitted to the FPSC on January 28, 2002 should be applied as of the effective date of the Present Agreement until the time in which Supra receives the benefit of the Sep. 02 Order.

*The Sep. 02 Order Revised Rates Should Be Applied  
as of Sep. 27, 2002*

31. In addition to seeking to apply the January 28<sup>th</sup> proposed DUF rates as of July 15, 2002 to the application date of the Sep. 02 Order, Supra seeks to apply the rates contained in the Sep. 02 Order from September 27, 2002 to the Petition Date.

32. On August 26, 2002, the FPSC staff filed a recommendation proposing various rates reductions. On September 6, 2002, the FPSC unanimously voted for the exact rates proposed by the FPSC Staff on August 26, 2002.

33. On September 11, 2002, Supra requested that the revised rates be incorporated into the Present Agreement.<sup>49</sup>

34. BellSouth asserts that Supra's September 11<sup>th</sup> request is somehow ineffective as it predated the written Sep. 02 Order (dated September 27). In reference to the September 11<sup>th</sup> request, Mr. Follensbee stated that Mr. Nilson "requested the rates, but there were no rates at that

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<sup>49</sup> MSJ, Exhibit L.

time to request."<sup>50</sup> This is patently false. BellSouth knew every single rate for which the FPSC voted and approved on September 6, 2002 because all these rates were contained in the August 26, 2002 staff recommendation. Over two weeks passed in which the parties could have amended the Present Agreement to include these known rates or prepared an acceptable amendment to incorporate the anticipated pending order.

35. Nevertheless, through numerous e-mail exchanges between the parties, Supra's intent to incorporate the rates of the Sep. 02 Order so as to avoid being over-billed by BellSouth was clear.<sup>51</sup> Any delay, which serves only to benefit BellSouth, should not be excused.<sup>52</sup>

36. Significantly, BellSouth, without any amendment being executed, began applying the Sep. 02 Order as of October 24, 2002.<sup>53</sup> This date was chosen solely by BellSouth and shows that its argument regarding the need to have an executed contract amendment before the rates can be applied is meritless.

### C. Collateral Estoppel Does Not Apply

37. BellSouth argues that Supra is collaterally estopped from litigating this issue in this adversary proceeding.<sup>54</sup>

38. The essential elements for collateral estoppel are: (1) the issue at stake is identical to the one involved in the prior proceeding; (2) the issue was actually litigated in the prior proceeding; (3) determination of the issue in the prior litigation must have been "a critical and

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<sup>50</sup> 4-15-04 Deposition Transcript of Follensbee at p. 151 lns. 17 -18.

<sup>51</sup> See e-mail exchange of October 29, 2002, a copy of which is **Exhibit 15** hereto.

<sup>52</sup> As was the case in Arbitrations III, IV and VI relating to previous FPSC authorized rates, where the Tribunal stated it "believes it reasonable that an amendment incorporating those rates could have and should have been completed." 9-20-02 Arb Award at p. 4.

<sup>53</sup> Nilson Affidavit, ¶ 9.

<sup>54</sup> MSJ, ¶¶ 38 - 47.

necessary part" of the judgment in the prior action; and (4) the party against whom collateral estoppel is asserted must have had a full and fair opportunity to litigate the issue in the prior proceeding.<sup>55</sup>

39. First, the issue at stake is not identical because the issue before this Court involves a different interconnection agreement than the one the Tribunal had before it. Before this Court, Supra is seeking application of the Sep. 02 Order and DUF rates to the inception of the Present Agreement. As BellSouth admits, "the Tribunal was limited to the term of the **prior** interconnection agreement."<sup>56</sup>

40. Second, the issue must have been actually litigated in the prior proceeding. Here, as BellSouth noted, the Tribunal held that the issue of the September 2002 rates was "beyond the jurisdiction of this Tribunal, and therefore, we will not permit reference to September 2002 rates."<sup>57</sup> Therefore, the issue could not have been litigated.

41. Third, while Supra did request that the Tribunal reconsider this ruling, as also noted by BellSouth, "the Tribunal reaffirmed its prior decision."<sup>58</sup> As such, the Tribunal, due to its belief that it lacked jurisdiction, never actually determined this issue – and certainly did not determine its application to the Present Agreement. Thus, it could not have been "a critical and necessary part" of the Tribunal's decision.

42. And fourth, because the Tribunal refused to consider this issue, Supra never had "a full and fair opportunity to litigate the issue" in the past.

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<sup>55</sup> *Cristo v. Padgett*, 223 F.3d 1324, 1339 (11<sup>th</sup> Cir. 2000) (citing *Pleming v. Universal-Rundle Corp.*, 142 F.3d 1354, 1359 (11<sup>th</sup> Cir. 1999)).

<sup>56</sup> MSJ, ¶ 4 (emphasis added).

<sup>57</sup> MSJ, ¶ 18 (quoting excerpted transcript of April 1, 2003 Arbitration VI hearing at p. 65).

<sup>58</sup> MSJ, ¶ 21.



43. For all of these reasons, BellSouth's collateral estoppel argument is facially deficient.

**CONCLUSION**

By way of the MSJ, BellSouth seeks to impose upon Supra a considerable monetary burden that it knows that it is not entitled to. In addition to turning 180 degrees and arguing against a position that it prevailed upon in a prior proceeding a month before the Petition Date, BellSouth seeks to overcharge Supra a price for services that it has admitted, and the FPSC has ruled, it flat-out wrong. Similar to BellSouth's summary judgment motion for "default fees" in which it cites to tariffs that are unenforceable and illegal and a statute that is inapplicable, the Court should see this MSJ for what it is: a desperate attempt by BellSouth to press even the remotest, untenable arguments to support its vastly reduced \$170.3 million claim.

WHEREFORE, Supra requests that the Court to hear and consider this Response and Motion and thereupon enter an Order (i) denying the MSJ; (ii) granting this Motion; and (iii) for

such other and further relief that it deems just and proper.

Dated this 30<sup>th</sup> day of April 2004.

We hereby certify that we are admitted to the Bar of the United States District Court for the Southern District of Florida and that we are in compliance with the additional qualifications to practice in this court set forth in Local Rule 20901(A).

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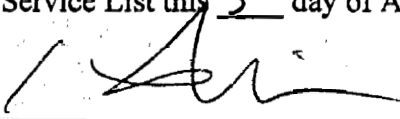
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via hand delivery upon all parties and counsel on the appended Service List this 30<sup>th</sup> day of April, 2004.

  
\_\_\_\_\_  
Kevin S. Neiman

August 27, 2001

**DELIVERED BY HAND**

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

Re: *BellSouth Telecommunications, Inc.'s Entry into InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996*; Docket No. 6863-U

*BellSouth Telecommunications, Inc.'s Statement of Generally Available Terms and Conditions Under Section 252(f) of the Telecommunications Act of 1996*; Docket No. 7253-U

*Generic Proceeding to Establish Long-Term Pricing Policies for Unbundled Network Elements*; Docket No. 10692-U

Dear Mr. McAlister:

Enclosed please find an original and eighteen (18) copies, as well as an electronic version, of: (1) a revised Statement of Generally Available Terms and Conditions for Interconnection, Unbundling and Resale Provided by BellSouth Telecommunications, Inc. in the State of Georgia ("SGAT") dated August 24, 2001, which incorporates recent decisions of this Commission and reflects BellSouth's updated product offerings; (2) a legislative version of the SGAT, which identifies the changes that have been made to the current SGAT in effect in Georgia dated May 31, 2001; and (3) Statement of Confidentiality.

The only provisions of the SGAT that have been modified are the Terms and Conditions section, Attachment A ("Georgia Interconnection and UNE Prices"), and Attachment C ("Service Descriptions: Unbundled Network Elements"). Each modification is discussed briefly below:

- (1) The Terms and Conditions section has been modified to incorporate the Commission's decisions in Docket No. 11900-U and Docket No. 13542-U.

Docket No.: 031125-TP  
Witness: Angel M. Leiro  
Exhibit No. \_\_\_\_\_(AL-12)  
BellSouth's 8/27/01 Letter to Georgia PSC  
Page 1 of 4

- (2) Attachment A and Attachment C have been modified to incorporate the Commission's decision in Docket No. 11900-U.
- (3) Attachment A has been modified to reduce the per message recurring rates for BellSouth's Optional Daily Usage File (Cost Reference numbers F.1.2 and F.1.3) and its Access Daily Usage File (Cost Reference number L.1.1). These reductions reflect a lower cost structure than was assumed by BellSouth in its cost studies submitted and approved in Docket No. 7061-U and address concerns raised by certain Intervenor in comments filed in Docket No. 6863-U. BellSouth's revised rates, which are interim and subject to true-up based upon a final order in Docket No. 14361-U, are supported by a TELRIC-compliant cost study, trade secret and public disclosure versions of which are being provided on enclosed CD-ROMs.
- (4) Attachment A has been modified to reflect restructured physical collocation rates which reduce the nonrecurring rates approved by this Commission in Docket No. 7061-U. These restructured rates result in costs previously captured in nonrecurring rates being recovered in recurring rates and are consistent with collocation rates recently filed and approved in other BellSouth states. BellSouth's restructured collocation rates, which are interim and subject to true-up based upon a final order in Docket No. 14361-U, are supported by a TELRIC-compliant cost study, trade secret and public disclosure versions of which are being provided on enclosed CD-ROMs.
- (5) Attachment A has been modified to add rate elements for virtual collocation in the remote terminal (Cost Reference number H.8), which were inadvertently omitted from BellSouth's earlier SGAT. These rates are the same for physical collocation in the remote terminal. BellSouth also has corrected a typographical error in the rate for Physical Collocation in the Remote Terminal – Application Fee – Disconnect (Cost Reference number H.6.1.99).
- (6) Attachment A has been modified to revise the physical collocation rate element for a Security Access System (Cost Reference number H.1.37) to reflect a per square foot charge consistent with the Commission's decision in Docket No. 11901-U.

Mr. Reece McAlister  
August 27, 2001  
Page 3

I would appreciate your filing same and returning three (3) extra copies stamped "filed" in the enclosed self-addressed and stamped envelopes.

Very truly yours,

Bennett L. Ross

BLR:nvd  
Enclosures

cc: Parties of Record  
Mr. Ken Ellison (proprietary information)

407548

### Georgia Interconnection and UNE Prices

3list Item	Cost Ref #	Rate Element	Recurring Rate	Nonrecurring Rate Electronic	Nonrecurring Rate Manual
	E.4.199	CNAM for DB Owners – Service Establishment, Manual - Disconnect			72.51 24.38
	E.4.2	CNAM for Non DB Owners – Service Establishment, Manual			73.00 20.73
	E.4.299	CNAM for Non DB Owners – Service Establishment, Manual – Disconnect			72.51 24.38
	E.4.3	CNAM for DB Owners – Service Provisioning with Point Code Establishment			2,564.00 2,106.00
	E.4.399	CNAM for DB Owners – Service Provisioning with Point Code Establishment - Disconnect			521.80 374.87
	E.4.4	CNAM for Non DB Owners – Service Provisioning with Point Code Establishment			1,416.00 828.77
	E.4.499	CNAM for Non DB Owners – Service Provisioning with Point Code Establishment - Disconnect			521.80 374.87
	E.4.5	CNAM Database and Non Database Owners, Per Query	.0009987		
2	F.0	<b>Operations Support Systems (OSS)</b>			
	F.1	<i>Operational Support Systems (OSS)</i>			
		OSS Interactive Ordering and Trouble Maintenance, Account Establishment, per user		200.00	
		OSS Electronic Interface, per first 1,000 orders	550.00		
		OSS Electronic Interface, next 1,000 orders	110.00		
		<i>Optional Daily Usage File (ODUF) ***</i>			
	F.1.2	Optional Daily Usage File: Recording, Per Message	.0000090		
	F.1.3	Optional Daily Usage File: Message Processing, Per message	.0046462		
	F.1.4	Optional Daily Usage File: Message Distribution, Per Magnetic Tape Provisioned	28.85		
	F.1.5	Optional Daily Usage File: Data Transmission (CONNECT:DIRECT), Per Message	.0000434		
	L.0	<i>Access Daily Usage File (ADUF) ***</i>			
	L.1.1	ADUF, Message Processing, Per message	.0079506		
	L.1.3	ADUF, Data Transmission (CONNECT:DIRECT), Per Message	.0000434		
	M.0	<i>Enhanced Optional Daily Usage File (EODUF)</i>			
	M.1.1	EODUF: Message Processing, Per Message	.0034555		
2	H.0	<b>Collocation</b>			
	H.1	<i>Physical Collocation</i>			
	H.1.1	Physical collocation - application cost			3,850.00
	H.1.5	Physical collocation - cable installation cost per cable			2,750.00
	H.1.6	Physical collocation - floor space, per square feet - zone A	7.50		
	H.1.6	Physical collocation - floor space, per square feet - zone B	6.75		

**Notes:**

Under nonrecurring rate columns where two rates appear, the top rate is for the first element installed and the bottom rate is for additional elements installed at the same time.

(\*) Interim until final Order in Docket No. 14361-U (per 6/11/01 Order in Docket No. 11900-U). Exceptions: Loop Modification and UDC NRC are interim for 18 months.

(\*\*) Interim and subject to true-up based upon final Order in Docket No. 14361-U (per 6/11/01 Order in Docket No. 11900-U)

(\*\*\*) Interim and subject to true-up based upon final Order in Docket No. 14361-U.

# **BELLSOUTH® / CLEC Agreement**

***Customer Name: IDS Telcom, L.L.C.***

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## ACCESS TO NETWORK ELEMENTS AND OTHER SERVICES

### 1. Introduction

- 1.1 This Attachment sets forth the unbundled network elements and combinations of unbundled network elements that BellSouth agrees to offer to IDS in accordance with its obligations under Section 251(c)(3) of the Act. The specific terms and conditions that apply to the unbundled network elements are described below in this Attachment 2. The price for each unbundled network element and combination of unbundled Network Elements are set forth in Exhibit D of this Agreement.
- 1.2 For purposes of this Agreement, "Network Element" is defined to mean a facility or equipment provided by BellSouth on an unbundled basis as is used by the CLEC in the provision of a telecommunications service. These unbundled network elements will be consistent with the requirements of the FCC 319 rule. For purposes of this Agreement, combinations of Network Elements shall be referred to as "Combinations."
- 1.2.1 Except as otherwise required by law, BellSouth shall not impose limitation restrictions or requirements or request for the use of the network elements or combinations that would impair the ability of IDS to offer telecommunications service in the manner IDS intends.
- 1.2.2 Except upon request by IDS, BellSouth shall not separate requested network elements that BellSouth currently combines.
- 1.2.2.1 Unless otherwise ordered by an appropriate state or federal regulatory agency, currently combined Network Elements are defined as elements that are already combined within BellSouth's network to a given location.
- 1.3 BellSouth shall, upon request of IDS, and to the extent technically feasible, provide to IDS access to its network elements for the provision of IDS' telecommunications service. If no rate is identified in the contract, the rate for the specific service or function will be as set forth in applicable BellSouth tariff or as negotiated by the Parties upon request by either Party.
- 1.4 IDS may purchase network elements and other services from BellSouth for the purpose of combining such network elements in any manner IDS chooses to provide telecommunication services to its intended users, including recreating existing BellSouth services. With the exception of the sub-loop elements which are located outside of the central office, BellSouth shall deliver the network elements purchased by IDS for combining to the designated IDS collocation space. The network elements shall be provided as set forth in this Attachment.



4.1 **Local Switching**

4.1.1 BellSouth shall provide non-discriminatory access to local circuit switching capability, and local tandem switching capability, on an unbundled basis, except as set forth below in Section 4.1.3.3 to IDS for the provision of a telecommunications service. BellSouth shall provide non-discriminatory access to packet switching capability on an unbundled basis to IDS for the provision of a telecommunications service only in the limited circumstance described below in Section 4.4.6.

4.1.2 Except as otherwise provided herein, BellSouth shall not impose any restrictions on IDS regarding the use of Switching Capabilities purchased from BellSouth provided such use does not result in demonstrable harm to either the BellSouth network or personnel or the use of the BellSouth network by BellSouth or any other telecommunication carrier.

4.1.3 **Local Circuit Switching Capability, including Tandem Switching Capability**

4.1.3.1 Definition

Local Circuit Switching Capability is defined as: (A) line-side facilities, which include, but are not limited to, the connection between a loop termination at a main distribution frame and a switch line card; (B) trunk-side facilities, which include, but are not limited to, the connection between trunk termination at a trunk-side cross-connect panel and a switch trunk card; and (C) All features, functions, and capabilities of the switch, which include, but are not limited to: (1) the basic switching function of connecting lines to lines, line to trunks, trunks to lines, and trunks to trunks, as well as the same basic capabilities made available to BellSouth's customers, such as a telephone number, white page listings, and dial tone; and (2) all other features that the switch is capable of providing, including but not limited to customer calling, customer local area signaling service features, and Centrex, as well as any technically feasible customized routing functions provided by the switch; (D) switching provided by remote switching modules.

4.1.3.2 Unbundled Local Switching, together with Common Transport and, if necessary, Tandem Switching, provides to IDS local subscribers local calling and the ability to presubscribe to a primary carrier for intraLATA toll service and a primary carrier for interLATA toll service.

4.1.3.2.1 Provided that IDS purchases unbundled local switching from BellSouth and uses the BellSouth CIC for its end users' LPIC or if a BellSouth local end user selects BellSouth as its LPIC, then the Parties will consider as local any calls originated by an IDS local end user, or originated by a BellSouth local end user and terminated to an IDS local end user, where such calls originate and terminate in the same LATA, except for those calls originated and terminated through switched access arrangements (i.e., calls that are transported by a party other than BellSouth). For

such calls, BellSouth will charge IDS the UNE elements for the BellSouth facilities utilized. Neither Party shall bill the other originating or terminating switched access charges for such calls. Intercarrier compensation for local calls between BellSouth and IDS shall be as described in BellSouth's UNE Local Call Flows set forth on BellSouth's web site. Notwithstanding anything to the contrary in this Agreement, BellSouth shall bill the usage associated with such calls quarterly on a manual basis until a mechanical billing capability has been established.

- 4.1.3.2.2 Where IDS purchases unbundled local switching from BellSouth but does not use the BellSouth CIC for its end users' LPIC, BellSouth will consider as local those direct dialed telephone calls that originate from an IDS end user and terminate within the basic local calling area or within the extended local calling areas and that are dialed using 7 or 10 digits as defined and specified in Section A3 of BellSouth's General Subscriber Services Tariffs. For such local calls, BellSouth will charge IDS the UNE elements for the BellSouth facilities utilized. Intercarrier compensation for local calls between BellSouth and IDS shall be as described in BellSouth's UNE Local Call Flows set forth on BellSouth's web site.
- 4.1.3.2.3 For any calls that originate and terminate through switched access arrangements (i.e., calls that are transported by a party other than BellSouth), BellSouth shall bill IDS the UNE elements for the BellSouth facilities utilized. Each Party may bill the toll provider originating or terminating switched access charges, as appropriate.
- 4.1.3.2.4 Reverse billed toll calls, such as intraLATA 800 calls, calling card calls and third party billed calls, where BellSouth is the carrier shall also be considered as local calls and IDS shall not bill BellSouth originating or terminating switched access for such calls.
- 4.1.3.3 Notwithstanding BellSouth's general duty to unbundle local circuit switching, BellSouth shall not be required to unbundle local circuit switching for IDS when IDS serves end-users with four (4) or more voice-grade (DS-0) equivalents or lines in locations served by BellSouth's local circuit switches, which are in the following MSAs: Atlanta, GA; Miami, FL; Orlando, FL; Ft. Lauderdale, FL; Charlotte-Gastonia-Rock Hill, NC; Greensboro-Winston Salem-High Point, NC; Nashville, TN; and New Orleans, LA, and BellSouth has provided non-discriminatory cost based access to the Enhanced Extended Link (EEL) throughout Density Zone 1 as determined by NECA Tariff No. 4 as in effect on January 1, 1999.
- 4.1.3.4 In the event that IDS orders local circuit switching for a single end user account name at a single physical end user location with four (4) or more two (2) wire voice-grade loops from a BellSouth central office listed on Exhibit A, BellSouth's sole recourse shall be to charge IDS the market based rate in Exhibit D for use of the local circuit switching functionality for the affected facilities.

5.5.2 Rates

5.5.2.1 The non-recurring and recurring rates for UNE/Special Access Combinations will be the sum of the unbundled loop rates as set forth in Exhibit D and the interoffice transport rates and multiplexing rates as set forth in the Access Services Tariff.

5.6 **Port/Loop Combinations**

5.6.1 At IDS' request, BellSouth shall provide access to combinations of port and loop network elements, as set forth in Section 5.6.3 below, that are Currently Combined in BellSouth's network except as specified in Sections 5.6.1.1 and 5.6.1.2 below.

5.6.1.1 BellSouth shall not provide combinations of port and loop network elements on an unbundled basis in locations where, pursuant to FCC rules, BellSouth is not required to provide circuit switching as an unbundled network element.

5.6.1.2 In accordance with effective and applicable FCC rules, BellSouth shall not be required to provide circuit switching as an unbundled network element in density Zone 1, as defined in 47 C.F.R. 69.123 as of January 1, 1999 of the Atlanta, GA; Miami, FL; Orlando, FL; Ft. Lauderdale, FL; Charlotte-Gastonia-Rock Hill, NC; Greensboro-Winston Salem-High Point, NC; Nashville, TN; and New Orleans, LA, MSAs to IDS if IDS' customer has 4 or more DS0 equivalent lines.

5.6.2

5.6.2.1

5.6.2.2

**(AMENDED)**

5.6.2.3

**AMENDMENT  
TO THE  
AGREEMENT BETWEEN  
IDS TELCOM, L.L.C.  
AND  
BELLSOUTH TELECOMMUNICATIONS, INC.  
DATED JANUARY 27, 2001**

Pursuant to this Amendment, (the "Amendment"), IDS Telcom, L.L.C ("IDS"), and BellSouth Telecommunications, Inc. ("BellSouth"), hereinafter referred to collectively as the "Parties," hereby agree to amend that certain Interconnection Agreement between the Parties dated January 27, 2001 ("Agreement").

WHEREAS, BellSouth and IDS entered into the Agreement on January 27, 2001, and;

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

1. The Parties hereby agree to delete Sections 5.1 and 5.2, Attachment 2, in its entirety and replace it with new Sections 5.1, 5.2, 5.2.1, 5.2.2, 5.2.3, 5.2.4 and 5.2.5, Attachment 2 incorporated herein below:
  - 5.1 For purposes of this Section, references to "Currently Combined" network elements shall mean that the particular network elements requested by IDS are in fact already combined by BellSouth in the BellSouth network.
  - 5.2 Unbundled Network Element Combinations shall include:
    - 5.2.1 Density Zone 1 Enhanced Extended Links (EELs);
    - 5.2.2 Ordinarily Combined UNE Combinations;
    - 5.2.3 Special Access Service to UNE Conversions;
    - 5.2.4 Currently Combined Transport Element Combination Conversions; and
    - 5.2.5 UNE Loop/Port Combinations.
2. The Parties hereby agree to delete Sections 5.3.1, 5.3.2, 5.3.3 and 5.3.4 Attachment 2 in its entirety and replace it with new Sections 5.3.1, 5.3.2, 5.3.3 and 5.3.4, Attachment 2 incorporated herein below:
  - 5.3.1 EELs are a combination of unbundled loop and transport. BellSouth shall provide IDS with EELs where they are available.
  - 5.3.2 Density Zone 1 EELs, as they relate to the FCC's Unbundled Switching Option, are comprised of the configurations in Section 5.3.4 consisting of Local Loop and Interoffice Channel terminating in the requesting CLEC's collocation in the Point of Presence (POP) Serving Wire Center (SWC).
  - 5.3.3 Density Zone 1 EELs are intended to provide new service connectivity from an end user's location through that end user's SWC to IDS's collocation space in a BellSouth central office. The circuit must be connected to the IDS's switch for the purpose of provisioning circuit telephone exchange service to the IDS's end-user

- 5.4.2.2 The rates for Ordinarily Combined UNE Combinations which do not replicate a combination described in Section 5.3.4, shall be the sum of the recurring rates and nonrecurring rates for the stand-alone network elements as set forth in Exhibit D of this Attachment.
- 5.4.3 To the extent that IDS seeks to obtain other combinations of network elements that BellSouth ordinarily combines in its network which have not been specifically priced by the Commission when purchased in combined form, IDS, at its option, may request that such rates be determined pursuant to the BFR/NBR process set forth in this Agreement.
- 5.4.4 Currently Combined Combinations to UNE Conversions
- 5.4.4.1 In every state within which BellSouth operates, IDS's existing network transport element combinations may be converted to UNEs, if requested. These combinations may not be connected to tariffed services.
- 5.4.4.2 Rates
- 5.4.4.3 The rates for the Conversion of Currently Combined Combinations which replicate a configuration described in Section 5.3.4 shall be the sum of the recurring rates for that combination and a one-time conversion charge as set forth in Exhibit D of this Attachment.
- 5.4.4.4 The rates for the Conversion of Currently Combined Combinations which do not replicate a configuration described in Section 5.3.4 shall be the sum of the recurring rates for the stand-alone network elements and a one-time conversion charge as set forth in Exhibit D of this Attachment.
- 5.4.4.5 To the extent BellSouth has not developed methods and procedures to provide any specific combination of network elements requested by IDS, whether or not Currently Combined, such methods and procedures shall be established pursuant to the BFR/NBR process.
7. The Parties hereby agree to delete Section 5.6.2, 5.6.2.1, 5.6.2.2, 5.6.2.3 and 5.6.2.4 Attachment 2 and replace it with a new Section 5.6.2, 5.6.2.1, 5.6.2.2, 5.6.2.3 and 5.6.2.4 incorporated herein below:
- 5.6.2 Combinations of port and loop unbundled network elements along with switching and transport unbundled network elements provide local exchange service for the origination or termination of calls. Port/ loop combinations support the same local calling and feature requirements as described in the Unbundled Local Switching or Port section of this Attachment 2 and the ability to presubscribe to a primary carrier for intraLATA and/or to presubscribe to a primary carrier for interLATA toll service.
- 5.6.2.1 BellSouth shall make available UNE port/loop combinations, regardless of whether such combinations are Currently Combined, so long as such combinations are ordinarily combined in BellSouth's network.
- 5.6.2.2 Except as set forth in section 5.6.2.3 below, BellSouth shall provide UNE port/loop combinations that are ordinarily combined in BellSouth's network, regardless of whether such combinations are Currently Combined at the cost-based rates in Exhibit D.

5.6.2.3 BellSouth is not required to provide combinations of port and loop network elements on an unbundled basis in locations where, pursuant to FCC rules, BellSouth is not required to provide circuit switching as an unbundled network element.

5.6.2.4 Notwithstanding the foregoing, BellSouth shall provide combinations of port and loop network elements on an unbundled basis where, pursuant to FCC rules, BellSouth is not required to provide local circuit switching as an unbundled network element and shall do so at the market rates in Exhibit D. If a market rate is not set forth in Exhibit D for a UNE port/loop combination, such rate shall be negotiated by the Parties.

8. The Parties agree to delete the Notes for Enhanced Extended Link (EELs) in Exhibit D, Attachment 2 in their entirety and replace with new Notes for Enhanced Extended Link (EELs) in Exhibit D, Attachment 2 incorporated herein by reference as Exhibit 1 to this Amendment.

9. This Amendment shall be deemed effective as September 4, 2002.

10. All of the other provisions of the Agreement, dated January 27, 2001, shall remain in full force and effect.

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

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

**BellSouth Telecommunications, Inc.**

**IDS Telecom, L.L.C.**

By:(Signature on File)\_\_\_\_\_

By: (Signature on File)\_\_\_\_\_

Name: Elizabeth R. A. Shiroishi

Name: Michael Noshay

Title: Assistant Director,  
Interconnection Services

Title: Manager/Pres

Date: 09/05/02\_\_\_\_\_

Date: 09/05/02\_\_\_\_\_

**AMENDMENT  
TO THE  
AGREEMENT BETWEEN  
IDS TELCOM, L.L.C  
AND  
BELLSOUTH TELECOMMUNICATIONS, INC.  
DATED JUNE 26, 2001  
EFFECTIVE JANUARY 27, 2001**

Pursuant to this Amendment, (the "Amendment"), IDS Telcom, L.L.C., ("IDS"), and BellSouth Telecommunications, Inc. ("BellSouth"), hereinafter referred to collectively as the "Parties," hereby agree to amend that certain Interconnection Agreement between the Parties dated June 26, 2001 and effective January 27, 2001 ("Agreement") for the state of Florida ("Agreement").

WHEREAS, BellSouth and IDS entered into the Agreement on dated June 26, 2001 and effective January 27, 2001, and;

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

1. The Parties agree to delete all rates in Exhibit 1, Attachment 1, 2, 3, and 7 and replace with the rates set forth in Exhibit 1 of this Amendment, attached hereto and incorporated herein by this reference, reference as ordered in Florida Docket 990649A-TP, issued September 27, 2002.
2. The Parties agree to delete and replace Section 11.1 of Attachment 1 with the following, incorporated herein by this reference:

11.1 The Optional Daily Usage File (ODUF) Agreement with terms and conditions is included in this Attachment as Exhibit D. Rates for ODUF are as set forth in Attachment 7 of this Agreement.
3. The Parties agree to delete and replace Section 12.1 of Attachment 1 with the following, incorporated herein by this reference:

12.1 The Enhanced Optional Daily Usage File (EODUF) Agreement with terms and conditions is included in this Attachment as Exhibit D. Rates for EODUF are as set forth in Attachment 7 of this Agreement.
4. All of the other provisions of the Agreement, dated June 26, 2001 and effective January 27, 2001, shall remain in full force and effect.
5. Either or both of the Parties are authorized to submit this Amendment to the respective state regulatory authorities for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996.
4. Neither party waives any right to seek clarification from the Commission regarding retroactive application of the rates contained in this Amendment.

UNBUNDLED NETWORK ELEMENTS - Florida										Attachment: 2		Exhibit: 1			
CATEGORY	RATE ELEMENTS	Interim	Zone	BCS	USOC	RATES(\$)				Svc Order Submitted Elec per LSR	Svc Order Submitted Manually per LSR	Incremental Charge - Manual Svc Order vs. Electronic-1st	Incremental Charge - Manual Svc Order vs. Electronic-Add'l	Incremental Charge - Manual Svc Order vs. Electronic-Disc 1st	Incremental Charge - Manual Svc Order vs. Electronic-Disc Add'l
						Rec	Nonrecurring		Nonrecurring Disconnect						
							First	Add'l	First	Add'l	SOME C	SOMAN	SOMAN	SOMAN	SOMAN
	Feature (Service) Activation for each Trunk Port Terminated in D4 Bank			UEPPX	1PQWU	0.66	78.18	18.42	55.03	10.95		11.90			1.83
	<b>Telephone Number/ Group Establishment Charges for DID Service</b>														
	DID Trunk Termination (1 per Port)			UEPPX	NDT	0.00	0.00	0.00				11.90			
	Estab Trk Grp and Provide 1st 20 DID Nos. (FL,GA, NC.& SC)			UEPPX	NDZ	0.00	0.00	0.00				11.90			
	DID Numbers - groups of 20 - Valid all States			UEPPX	ND4	0.00	0.00	0.00				11.90			
	Non-Consecutive DID Numbers - per number			UEPPX	ND5	0.00	0.00	0.00				11.90			
	Reserve Non-Consecutive DID Numbers			UEPPX	ND6	0.00	0.00	0.00				11.90			
	Reserve DID Numbers			UEPPX	NDV	0.00	0.00	0.00				11.90			
	<b>Local Number Portability</b>														
	Local Number Portability - 1 per port			UEPPX	LNPCP	3.15	0.00	0.00							
	<b>FEATURES - Vertical and Optional</b>														
	<b>Local Switching Features Offered with Line Side Ports Only</b>														
	All Features Available			UEPPX	UEPVF	2.25	0.00	0.00				11.90			1.83
	<b>UNBUNDLED PORT LOOP COMBINATIONS - MARKET RATES</b>														
	Market Rates shall apply where BellSouth is not required to provide unbundled local switching or switch ports per FCC and/or State Commission rules.														
	This includes:														
	Unbundled port/loop combinations that are Currently Combined or Not Currently Combined in Zone 1 of the Top 8 MSAs in BellSouth's region for end users with 4 or more DS0 equivalent lines.														
	The Top 8 MSAs in BellSouth's region are: FL (Orlando, Ft. Lauderdale, Miami); GA (Atlanta); LA (New Orleans); NC (Greensboro-Winston Salem-Highpoint/Charlotte-Gastonia-Rock Hill); TN (Nashville).														
	BellSouth currently is developing the billing capability to mechanically bill the recurring and non-recurring Market Rates in this section except for non-recurring charges for not currently combined in FL and NC. In the interim where BellSouth cannot bill Market Rates, BellSouth shall bill the rates in the Cost-Based section preceding in lieu of the Market Rates and reserves the right to true-up the billing difference.														
	The Market Rate for unbundled ports includes all available features in all states.														
	End Office and Tandem Switching Usage and Common Transport Usage rates in the Port section of this rate exhibit shall apply to all combinations of loop/port network elements except for UNE Coin Port/Loop Combinations which have a flat rate usage charge (USOC: URECU).														
	For Not Currently Combined scenarios the Nonrecurring charges are listed in the First and Additional NRC columns for each Port USOC. For Currently Combined scenarios, the Nonrecurring charges are listed in the NRC - Currently Combined section.														
	Additional NRCs may apply also and are categorized accordingly.														
	<b>2-WIRE VOICE GRADE LOOP WITH 2-WIRE LINE PORT (RES)</b>														
	<b>UNE Port/Loop Combination Rates</b>														
	2-Wire VG Loop/Port Combo - Zone 1		1			23.77									
	2-Wire VG Loop/Port Combo - Zone 2		2			27.85									
	2-Wire VG Loop/Port Combo - Zone 3		3			38.63									
	<b>UNE Loop Rates</b>														
	2-Wire Voice Grade Loop (SL1) - Zone 1		1	UEPRX	UEPLX	9.77									
	2-Wire Voice Grade Loop (SL1) - Zone 2		2	UEPRX	UEPLX	13.88									
	2-Wire Voice Grade Loop (SL1) - Zone 3		3	UEPRX	UEPLX	24.63									
	<b>2-Wire Voice Grade Line Port (Res)</b>														
	2-Wire voice unbundled port - residence			UEPRX	UEPRL	14.00	90.00	90.00				11.90			
	2-Wire voice unbundled port with Caller ID - res			UEPRX	UEPRC	14.00	90.00	90.00				11.90			
	2-Wire voice unbundled port outgoing only - res			UEPRX	UEPRO	14.00	90.00	90.00				11.90			
	2-Wire voice unbundled Florida Area Calling with Caller ID - res			UEPRX	UEPAF	14.00	90.00	90.00				11.90			
	2-Wire voice unbundled res, low usage line port with Caller ID (LUM)			UEPRX	UEPAP	14.00	90.00	90.00				11.90			
	2-Wire voice unbundled Low Usage Line Port without Caller ID Capability			UEPRX	UEPRT	14.00	90.00	90.00				11.90			
	2-Wire voice unbundled Florida extended dialing port for use with CREX7 and Caller ID			UEPRX	UEPA1	14.00	90.00	90.00				11.90			
	2-Wire voice unbundled Florida extended dialing port for use with CREX7, without Caller ID capability			UEPRX	UEPA8	14.00	90.00	90.00				11.90			
	2-Wire voice unbundled Florida Area Calling Port without Caller ID Capability			UEPRX	UEPA9	14.00	90.00	90.00				11.90			
	<b>LOCAL NUMBER PORTABILITY</b>														
	Local Number Portability (1 per port)			UEPRX	LNPCX	0.35									
	<b>FEATURES</b>														
	All Features Offered			UEPRX	UEPVF	0.00	0.00	0.00				11.90			
	<b>NONRECURRING CHARGES - CURRENTLY COMBINED</b>														
	2-Wire Voice Grade Loop / Line Port Combination - Switch-as-is			UEPRX	USAC2		41.50	41.50				11.90			



UNBUNDLED NETWORK ELEMENTS - Florida

CATEGORY	RATE ELEMENTS	Interim	Zone	BCS	USOC	RATES(\$)	Svc Order Submitted Elec per LSR	Svc Order Submitted Manually per LSR	Attachment: 2		Exhibit: 1			
									Incremental Charge - Manual Svc Order vs. Electronic-1st	Incremental Charge - Manual Svc Order vs. Electronic-Add'l	Incremental Charge - Manual Svc Order vs. Electronic-Disc 1st	Incremental Charge - Manual Svc Order vs. Electronic-Disc Add'l		
									Rec					
						First	Add'l	First	Add'l	SOME C	SOMAN	SOMAN	SOMAN	SOMAN
	Exchange Ports - 2-Wire ISDN Port (See Notes below.)			UEPTX UEPSX	U1PMA	8.83	46.83	50.68	27.64	11.93		11.90		1.83
	All Features Offered			UEPTX UEPSX	UEPVF	2.28	0.00	0.00				11.90		1.83
NOTE: Transmission/usage charges associated with POTS circuit switched usage will also apply to circuit switched voice and/or circuit switched data transmission by B-Channels associated with 2-wire ISDN ports.														
NOTE: Access to Channel or D Channel Packet capabilities will be available only through BFR/New Business Request Process. Rates for the packet capabilities will be determined via the Bona Fide Request/New Business Request Process.														
	Exchange Ports - 2-Wire ISDN Port - Channel Profiles			UEPTX UEPSX	U1UMA	0.00	0.00	0.00						
	Exchange Ports - 4-Wire ISDN DS1 Port			UEPEX	UEPEX	82.74	174.61	95.17	49.80	18.23		11.90		1.83
<b>UNBUNDLED PORT WITH REMOTE CALL FORWARDING CAPABILITY</b>														
<b>UNBUNDLED REMOTE CALL FORWARDING SERVICE - RESIDENCE</b>														
	Unbundled Remote Call Forwarding Service, Area Calling, Res			UEPVR	UERAC	1.40	3.74	3.63	1.88	1.80		11.90		
	Unbundled Remote Call Forwarding Service, Local Calling - Res			UEPVR	UERLC	1.40	3.74	3.63	1.88	1.80		11.90		
	Unbundled Remote Call Forwarding Service, InterLATA - Res			UEPVR	UERTE	1.40	3.74	3.63	1.88	1.80		11.90		
	Unbundled Remote Call Forwarding Service, IntraLATA - Res			UEPVR	UERTR	1.40	3.74	3.63	1.88	1.80		11.90		
<b>Non-Recurring</b>														
	Unbundled Remote Call Forwarding Service - Conversion - Switch-as-is			UEPVR	USAC2		0.102	0.102				11.90		
	Unbundled Remote Call Forwarding Service - Conversion with allowed change (PIC and LPIC)			UEPVR	USACC		0.102	0.102						
<b>UNBUNDLED REMOTE CALL FORWARDING - Bus</b>														
	Unbundled Remote Call Forwarding Service, Area Calling - Bus			UEPVB	UERAC	1.40	3.74	3.63	1.88	1.80		11.90		
	Unbundled Remote Call Forwarding Service, Local Calling - Bus			UEPVB	UERLC	1.40	3.74	3.63	1.88	1.80		11.90		
	Unbundled Remote Call Forwarding Service, InterLATA - Bus			UEPVB	UERTE	1.40	3.74	3.63	1.88	1.80		11.90		
	Unbundled Remote Call Forwarding Service, IntraLATA - Bus			UEPVB	UERTR	1.40	3.74	3.63	1.88	1.80		11.90		
	Unbundled Remote Call Forwarding Service Expanded and Exception Local Calling			UEPVB	UERVJ	1.40	3.74	3.63	1.88	1.80		11.90		
<b>Non-Recurring</b>														
	Unbundled Remote Call Forwarding Service - Conversion - Switch-as-is			UEPVB	USAC2		0.102	0.102				11.90		
	Unbundled Remote Call Forwarding Service - Conversion with allowed change (PIC and LPIC)			UEPVB	USACC		0.102	0.102						
<b>UNBUNDLED LOCAL SWITCHING, PORT USAGE</b>														
<b>End Office Switching (Port Usage)</b>														
	End Office Switching Function, Per MOU						0.0007662							
	End Office Trunk Port - Shared, Per MOU						0.000164							
<b>Tandem Switching (Port Usage) (Local or Access Tandem)</b>														
	Tandem Switching Function Per MOU						0.0001316							
	Tandem Trunk Port - Shared, Per MOU						0.000235							
<b>Common Transport</b>														
	Common Transport - Per Mile, Per MOU						0.0500635							
	Common Transport - Facilities Termination Per MOU						0.0004372							
<b>UNBUNDLED PORT/LOOP COMBINATIONS - COST BASED RATES</b>														
Cost Based Rates are applied where BellSouth is required by FCC and/or State Commission rule to provide Unbundled Local Switching or Switch Ports.														
Features shall apply to the Unbundled Port/Loop Combination - Cost Based Rate section in the same manner as they are applied to the Stand-Alone Unbundled Port section of this Rate Exhibit.														
End Office and Tandem Switching Usage and Common Transport Usage rates in the Port section of this rate exhibit shall apply to all combinations of loop/port network elements except for UNE Coin Port/Loop Combinations.														
The first and additional Port nonrecurring charges apply to Not Currently Combined Combos. For Currently Combined Combos the nonrecurring charges shall be those identified in the Nonrecurring - Currently Combined sections.														
<b>2-WIRE VOICE GRADE LOOP WITH 2-WIRE LINE PORT (RES)</b>														
<b>UNE Port/Loop Combination Rates</b>														
	2-Wire VG Loop/Port Combo - Zone 1		1				10.94							
	2-Wire VG Loop/Port Combo - Zone 2		2				15.05							
	2-Wire VG Loop/Port Combo - Zone 3		3				25.80							
<b>UNE Loop Rates</b>														
	2-Wire Voice Grade Loop (SL1) - Zone 1		1	UEPRX	UEPLX		9.77							
	2-Wire Voice Grade Loop (SL1) - Zone 2		2	UEPRX	UEPLX		13.88							
	2-Wire Voice Grade Loop (SL1) - Zone 3		3	UEPRX	UEPLX		24.63							
<b>2-Wire Voice Grade Line Port Rates (Res)</b>														
	2-Wire voice unbundled port - residence			UEPRX	UEPRL	1.17	53.31	26.46	27.50	8.37		11.90		
	2-Wire voice unbundled port with Caller ID - res			UEPRX	UEPRC	1.17	53.31	26.46	27.50	8.37		11.90		

# **BELLSOUTH® / CLEC Agreement**

**Customer Name: IDS Telcom, L.L.C.**

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**ACCESS TO NETWORK ELEMENTS AND OTHER SERVICES****1 Introduction**

- 1.1 This Attachment sets forth rates, terms and conditions for Network Elements and combinations of Network Elements that BellSouth agrees to offer to IDS Telcom in accordance with its obligations under Section 251(c)(3) of the Act. Additionally, this Attachment sets forth the rates, terms and conditions for other services BellSouth makes available to IDS Telcom. The price for each Network Element and combination of Network Elements and other services are set forth in Exhibit B of this Agreement. Additionally, the provision of a particular Network Element or service may require IDS Telcom to purchase other Network Elements or services.
- 1.2 For purposes of this Agreement, "Network Element" is defined to mean a facility or equipment IDS Telcom used in the provision of a telecommunications service. For purposes of this Agreement, combinations of Network Elements shall be referred to as "Combinations."
- 1.3 BellSouth shall, upon request of IDS Telcom, and to the extent technically feasible, provide to IDS Telcom access to its Network Elements for the provision of IDS Telcom's telecommunications services. If no rate is identified in this Agreement, the rate for the specific service or function will be as set forth in the applicable BellSouth tariff or as negotiated by the Parties upon request by either Party.
- 1.4 IDS Telcom may purchase Network Elements and other services from BellSouth for the purpose of combining such network elements in any manner IDS Telcom chooses to provide telecommunication services to its intended users, including recreating existing BellSouth services. With the exception of the sub-loop Network Elements which are located outside of the central office, BellSouth shall deliver the Network Elements purchased by IDS Telcom to the demarcation point associated with IDS Telcom's collocation arrangement.
- 1.5 BellSouth shall comply with the requirements as set forth in the technical references within this Attachment 2.
- 1.6 IDS Telcom may not purchase unbundled network elements (UNEs) or convert special access circuits to UNEs if such network elements will be used to provide wireless telecommunications services.
- 1.7 Rates
- 1.7.1 The prices that IDS Telcom shall pay to BellSouth for Network Elements and Other Services are set forth in Exhibit B to this Attachment. If IDS Telcom

- 3.16.3 IDS Telcom shall inform its end users to direct data problems to IDS Telcom, unless both voice and data services are impaired, in which event the end users should call BellSouth.
- 3.16.4 Once a Party has isolated a trouble to the other Party's portion of the sub-loop, the Party isolating the trouble shall notify the end user that the trouble is on the other Party's portion of the sub-loop.
- 3.16.5 Notwithstanding anything else to the contrary in this Agreement, when BellSouth receives a voice trouble and isolates the trouble to the physical collocation arrangement belonging to IDS Telcom, BellSouth will notify IDS Telcom. IDS Telcom will provide at least one but no more than two (2) verbal connecting facility assignments (CFA) pair changes to BellSouth in an attempt to resolve the voice trouble. In the event a CFA pair change resolves the voice trouble, IDS Telcom will provide BellSouth an LSR with the new CFA pair information within 24 hours. If the owner of the collocation space fails to resolve the trouble by providing BellSouth with the verbal CFA pair changes, BellSouth may discontinue IDS Telcom's access to the High Frequency Spectrum on such sub-loop. BellSouth will not be responsible for any loss of data as a result of this action.

#### **4 Local Switching**

- 4.1 BellSouth shall provide non-discriminatory access to local circuit switching capability and local tandem switching capability on an unbundled basis, except as set forth in the Sections below to IDS Telcom for the provision of a telecommunications service. BellSouth shall provide non-discriminatory access to packet switching capability on an unbundled basis to IDS Telcom for the provision of a telecommunications service only in the limited circumstance described below in Section 4.5.

#### **4.2 Local Circuit Switching Capability, including Tandem Switching Capability**

- 4.2.1 Local circuit switching capability is defined as: (A) line-side facilities, which include, but are not limited to, the connection between a loop termination at a main distribution frame and a switch line card; (B) trunk-side facilities, which include, but are not limited to, the connection between trunk termination at a trunk-side cross-connect panel and a switch trunk card; (C) switching provided by remote switching modules; and (D) all features, functions, and capabilities of the switch, which include, but are not limited to: (1) the basic switching function of connecting lines to lines, line to trunks, trunks to lines, and trunks to trunks, as well as the same basic capabilities made available to BellSouth's customers, such as a telephone number, white page listings, and dial tone; and (2) all other features that the switch is capable of providing, including but not limited to customer calling, customer local area signaling service features, and Centrex, as well as any technically feasible customized routing functions provided by the switch. Any

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features that are not currently available but are technically feasible through the switch can be requested through the BFR/NBR process.

- 4.2.2 Notwithstanding BellSouth's general duty to unbundle local circuit switching, BellSouth shall not be required to unbundle local circuit switching for IDS Telcom when IDS Telcom serves an end-user with four (4) or more voice-grade (DS-0) equivalent lines or lines served by BellSouth in one of the following MSAs: Atlanta, GA; Miami, FL; Orlando, FL; Ft. Lauderdale, FL; Charlotte-Gastonia-Rock Hill, NC; Greensboro-Winston Salem-High Point, NC; Nashville, TN; and New Orleans, LA, and BellSouth has provided non-discriminatory cost based access to the Enhanced Extended Link (EEL) throughout Density Zone 1 as determined by NECA Tariff No. 4 as in effect on January 1, 1999.
- 4.2.3 In the event that IDS Telcom orders local circuit switching for an end user with four (4) or more DS0 equivalent lines within Density Zone 1 in an MSA listed above, BellSouth shall charge IDS Telcom the market based rates in Exhibit B for use of the local circuit switching functionality for the affected facilities. If a market rate is not set forth in Exhibit B, such rate shall be negotiated by the Parties.
- 4.2.4 Unbundled Local Switching consists of three separate unbundled elements: Unbundled Ports, End Office Switching Functionality, and End Office Interoffice Trunk Ports.
- 4.2.5 Unbundled Local Switching combined with Common Transport and, if necessary, Tandem Switching provides to IDS Telcom's end user local calling and the ability to presubscribe to a primary carrier for intraLATA and/or to presubscribe to a primary carrier for interLATA toll service.
- 4.2.6 Provided that IDS Telcom purchases unbundled local switching from BellSouth and uses the BellSouth CIC for its end users' LPIC or if a BellSouth local end user selects BellSouth as its LPIC, then the Parties will consider as local any calls originated by an IDS Telcom local end user, or originated by a BellSouth local end user and terminated to an IDS Telcom local end user, where such calls originate and terminate in the same LATA, except for those calls originated and terminated through switched access arrangements (i.e., calls that are transported by a party other than BellSouth). For such calls, BellSouth will charge IDS Telcom the UNE elements for the BellSouth facilities utilized. Neither Party shall bill the other originating or terminating switched access charges for such calls. Intercarrier compensation for local calls between BellSouth and IDS Telcom shall be as described in BellSouth's UNE Local Call Flows set forth on BellSouth's web site.
- 4.2.7 Where IDS Telcom purchases unbundled local switching from BellSouth but does not use the BellSouth CIC for its end users' LPIC, BellSouth will consider as local those direct dialed telephone calls that originate from an IDS Telcom end user and terminate within the basic local calling area or within the extended local calling areas and that are dialed using 7 or 10 digits as defined and specified in Section A3

5.4.1.14 4-wire 64 kbps Interoffice Channel + 4-wire 64 kbps Local Loop

5.4.2 Ordinarily Combined EELs listed above shall be billed the sum of the nonrecurring and recurring charges for that combination as set forth in Exhibit B of this Attachment. Ordinarily combined EELs not listed in Sections 5.4.1.1.5.4.1.14 shall be billed the sum of the nonrecurring charges and recurring charges for the individual network elements that comprise the combination as set forth in Exhibit B of this Attachment.

5.4.3 To the extent that IDS Telcom requests an EEL combination Not Typically Combined in the BellSouth network, the rates, terms and conditions shall be determined pursuant to the Bona Fide Request Process.

### **5.5 UNE Port/Loop Combinations**

5.5.1 Combinations of port and loop unbundled network elements along with switching and transport unbundled network elements provide local exchange service for the origination or termination of calls. Port/ loop combinations support the same local calling and feature requirements as described in the Unbundled Local Switching or Port section of this Attachment 2 and the ability to presubscribe to a primary carrier for intraLATA and/or to presubscribe to a primary carrier for interLATA toll service.

5.5.2 BellSouth shall make available UNE port/loop combinations, regardless of whether such combinations are Currently Combined, so long as such combinations are ordinarily combined in BellSouth's network.

5.5.3 Except as set forth in section 5.5.4 below, BellSouth shall provide UNE port/loop combinations described in Section 5.5.6 below that are Currently Combined or Ordinarily Combined in BellSouth's network at cost-based rates in Exhibit B. Except as set forth in Section 5.5.4 below, BellSouth shall provide UNE port/loop combinations not described in Section 5.5.6 below or Not Typically Combined Combinations in accordance with the Bona Fide Request process.

5.5.4 BellSouth is not required to provide combinations of port and loop network elements on an unbundled basis in locations where, pursuant to FCC rules, BellSouth is not required to provide circuit switching as an unbundled network element.

5.5.5 BellSouth shall not be required to provide local circuit switching as an unbundled network element in density Zone 1, as defined in 47 CFR 69.123 as of January 1, 1999 of the Atlanta, GA; Miami, FL; Orlando, FL; Ft. Lauderdale, FL; Charlotte-Gastonia-Rock Hill, NC; Greensboro-Winston Salem-High Point, NC; Nashville, TN; and New Orleans, LA, MSAs to IDS Telcom if IDS Telcom's customer has 4 or more DS0 equivalent lines.

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- 5.5.6 Notwithstanding the foregoing, BellSouth shall provide combinations of port and loop network elements on an unbundled basis where, pursuant to FCC rules, BellSouth is not required to provide local circuit switching as an unbundled network element and shall do so at the market rates in Exhibit B. If a market rate is not set forth in Exhibit B for a UNE port/loop combination, such rate shall be negotiated by the Parties.
- 5.5.7 BellSouth shall make 911 updates in the BellSouth 911 database for IDS Telcom's UNE port/loop combinations. BellSouth will not bill IDS Telcom for 911 surcharges. IDS Telcom is responsible for paying all 911 surcharges to the applicable governmental agency.
- 5.8.1 Combination Offerings
- 5.8.1.1 2-wire voice grade port, voice grade loop, unbundled end office switching, unbundled end office trunk port, common transport per mile per MOU, common transport facilities termination, tandem switching, and tandem trunk port.
- 5.8.1.2 2-wire voice grade Coin port, voice grade loop, unbundled end office switching, unbundled end office trunk port, common transport per mile per MOU, common transport facilities termination, tandem switching, and tandem trunk port.
- 5.8.1.3 2-wire voice grade DID port, voice grade loop, unbundled end office switching, unbundled end office trunk port, common transport per mile per MOU, common transport facilities termination, tandem switching, and tandem trunk port.
- 5.8.1.4 2-wire CENTREX port, voice grade loop, CENTREX intercom functionality, unbundled end office switching, unbundled end office trunk port, common transport per mile per MOU, common transport facilities termination, tandem switching, and tandem trunk port.
- 5.8.1.5 2-wire ISDN Basic Rate Interface, voice grade loop, unbundled end office switching, unbundled end office trunk port, common transport per mile per MOU, common transport facilities termination, tandem switching, and tandem trunk port.
- 5.8.1.6 4-wire ISDN Primary Rate Interface, DS1 loop, unbundled end office switching, unbundled end office trunk port, common transport per mile per MOU, common transport facilities termination, tandem switching, and tandem trunk port.
- 5.8.1.7 4-wire DS1 Trunk port, DS1 Loop, unbundled end office switching, unbundled end office trunk port, common transport per mile per MOU, common transport facilities termination, tandem switching, and tandem trunk port.
- 5.8.1.8 4-wire DS1 Loop with normal serving wire center channelization interface, 2-wire voice grade ports (PBX), 2-wire DID ports, unbundled end office switching, unbundled end office trunk port, common transport per mile per MOU, common transport facilities termination, tandem switching, and tandem trunk port.

UNBUNDLED NETWORK ELEMENTS - Florida

CATEGORY	RATE ELEMENTS	Inter	Zone	BCS	USOC	RATES(\$)				Svc Order Submitted Elec per LSR	Svc Order Submitted Manually per LSR	Attachment: 2		Exhibit: B		
						Rac	Nonrecurring		Nonrecurring Disconnect			Incremental Charge - Manual Svc Order vs. Electronic-1st	Incremental Charge - Manual Svc Order vs. Electronic-Disc 1st	Incremental Charge - Manual Svc Order vs. Electronic-Disc Add'l	Incremental Charge - Manual Svc Order vs. Electronic-Disc Add'l	
							First	Add'l	First							Add'l
NOTE: Access to B Channel or D Channel Packet capabilities will be available only through BFR/New Business Request Process. Rates for the packet capabilities will be determined via the Bona Fide Request/New Business Request Process.																
<b>UNBUNDLED LOCAL EXCHANGE SWITCHING(PORTS)</b>																
<b>EXCHANGE PORT RATES</b>																
	Exchange Ports - 2-Wire DID Port			UEPEX	UEPP2	8.73	78.41	15.82		41.94	4.26		11.90		1.83	
	Exchange Ports - DDITS Port - 4-Wire DS1 Port with DID capability			UEPDD	UEPDD	54.95	151.11	77.75		48.81	3.10		11.90		1.83	
	Exchange Ports - 2-Wire ISDN Port (See Notes below.)			UEPTX UEPSX	U1PMA	8.83	46.83	50.68		27.64	11.93		11.90		1.83	
	All Features Offered			UEPTX UEPSX	UEPVF	2.26	0.00	0.00					11.90		1.83	
NOTE: Transmission/usage charges associated with POTS circuit switched usage will also apply to circuit switched voice and/or circuit switched data transmission by B-Channels associated with 2-wire ISDN ports.																
NOTE: Access to B Channel or D Channel Packet capabilities will be available only through BFR/New Business Request Process. Rates for the packet capabilities will be determined via the Bona Fide Request/New Business Request Process.																
	Exchange Ports - 2-Wire ISDN Port -- Channel Profiles			UEPTX UEPSX	U1UMA	0.00	0.00	0.00								
	Exchange Ports - 4-Wire ISDN DS1 Port			UEPEX	UEPEX	82.74	174.61	95.17		48.80	18.23		11.90		1.83	
<b>UNBUNDLED PORT with REMOTE CALL FORWARDING CAPABILITY</b>																
<b>UNBUNDLED REMOTE CALL FORWARDING SERVICE - RESIDENCE</b>																
	Unbundled Remote Call Forwarding Service, Area Calling, Res			UEPVR	UERAC	1.40	3.74	3.63		1.88	1.80		11.90			
	Unbundled Remote Call Forwarding Service, Local Calling - Res			UEPVR	UERLC	1.40	3.74	3.63		1.88	1.80		11.90			
	Unbundled Remote Call Forwarding Service, InterLATA - Res			UEPVR	UERTE	1.40	3.74	3.63		1.88	1.80		11.90			
	Unbundled Remote Call Forwarding Service, IntraLATA - Res			UEPVR	UERTR	1.40	3.74	3.63		1.88	1.80		11.90			
<b>Non-Recurring</b>																
	Unbundled Remote Call Forwarding Service - Conversion - Switch-as-is			UEPVR	USAC2		0.102	0.102					11.90			
	Unbundled Remote Call Forwarding Service - Conversion with allowed change (PIC and LPIC)			UEPVR	USACC		0.102	0.102								
<b>UNBUNDLED REMOTE CALL FORWARDING - Bus</b>																
	Unbundled Remote Call Forwarding Service, Area Calling - Bus			UEPVB	UERAC	1.40	3.74	3.63		1.88	1.80		11.90			
	Unbundled Remote Call Forwarding Service, Local Calling - Bus			UEPVB	UERLC	1.40	3.74	3.63		1.88	1.80		11.90			
	Unbundled Remote Call Forwarding Service, InterLATA - Bus			UEPVB	UERTE	1.40	3.74	3.63		1.88	1.80		11.90			
	Unbundled Remote Call Forwarding Service, IntraLATA - Bus			UEPVB	UERTR	1.40	3.74	3.63		1.88	1.80		11.90			
	Unbundled Remote Call Forwarding Service Expanded and Exception Local Calling			UEPVB	UERVJ	1.40	3.74	3.63		1.88	1.80		11.90			
<b>Non-Recurring</b>																
	Unbundled Remote Call Forwarding Service - Conversion - Switch-as-is			UEPVB	USAC2		0.102	0.102					11.90			
	Unbundled Remote Call Forwarding Service - Conversion with allowed change (PIC and LPIC)			UEPVB	USACC		0.102	0.102								
<b>UNBUNDLED LOCAL SWITCHING, PORT USAGE</b>																
<b>End Office Switching (Port Usage)</b>																
	End Office Switching Function, Per MOU							0.0007662								
	End Office Trunk Port - Shared, Per MOU							0.000164								
<b>Tandem Switching (Port Usage) (Local or Access Tandem)</b>																
	Tandem Switching Function Per MOU (Full)							0.0001319								
	Tandem Trunk Port - Shared, Per MOU (Full)							0.000235								
	Tandem Switching Function Per MOU (Melded)							0.0000531								
	Tandem Trunk Port - Shared, Per MOU (Melded)							0.0000946								
	Melded Factor: 40.24% of the Tandem Rate															
<b>Common Transport</b>																
	Common Transport - Per Mile, Per MOU							0.0000035								
	Common Transport - Facilities Termination Per MOU							0.0004372								
<b>UNBUNDLED PORT/LOOP COMBINATIONS - COST BASED RATES</b>																
Cost Based Rates are applied where BellSouth is required by FCC and/or State Commission rule to provide Unbundled Local Switching or Switch Ports.																
Features shall apply to the Unbundled Port/Loop Combination - Cost Based Rate section in the same manner as they are applied to the Stand-Alone Unbundled Port section of this Rate Exhibit.																
End Office and Tandem Switching Usage and Common Transport Usage rates in the Port section of this rate exhibit shall apply to all combinations of loop/port network elements except for UNE Coin Port/Loop Combinations.																
The first and additional Port nonrecurring charges apply to Not Currently Combined Combs. For Currently Combined Combs the nonrecurring charges shall be those identified in the Nonrecurring - Currently Combined sections.																
2-WIRE VOICE GRADE LOOP WITH 2-WIRE LINE PORT (RES)																



UNBUNDLED NETWORK ELEMENTS - Florida						Attachment: 2		Exhibit: B							
CATEGORY	RATE ELEMENTS	Interim	Zone	BCS	USOC	RATES(\$)				Svc Order Submitted Elec per LSR	Svc Order Submitted Manually per LSR	Incremental Charge - Manual Svc Order vs. Electronic-1st	Incremental Charge - Manual Svc Order vs. Electronic-Add'l	Incremental Charge - Manual Svc Order vs. Electronic-Disc 1st	Incremental Charge - Manual Svc Order vs. Electronic-Disc Add'l
						Rec	Nonrecurring		Nonrecurring Disconnect						
						First	Add'l	First	Add'l	SOMEK	SOMAN	SOMAN	SOMAN	SOMAN	SOMAN
<b>UNE Port/Loop Combination Rates</b>															
	2-Wire VG Loop/Port Combo - Zone 1		1			10.94									
	2-Wire VG Loop/Port Combo - Zone 2		2			15.05									
	2-Wire VG Loop/Port Combo - Zone 3		3			25.80									
<b>UNE Loop Rates</b>															
	2-Wire Voice Grade Loop (SL1) - Zone 1		1	UEPRX	UEPLX	9.77									
	2-Wire Voice Grade Loop (SL1) - Zone 2		2	UEPRX	UEPLX	13.88									
	2-Wire Voice Grade Loop (SL1) - Zone 3		3	UEPRX	UEPLX	24.63									
<b>2-Wire Voice Grade Line Port Rates (Res)</b>															
	2-Wire voice unbundled port - residence			UEPRX	UEPRL	1.17	53.31	26.46	27.50	8.37		11.90			
	2-Wire voice unbundled port with Caller ID - res			UEPRX	UEPRC	1.17	53.31	26.46	27.50	8.37		11.90			
	2-Wire voice unbundled port outgoing only - res			UEPRX	UEPRO	1.17	53.31	26.46	27.50	8.37		11.90			
	2-Wire voice unbundled Florida Area Calling with Caller ID - res			UEPRX	UEPAF	1.17	53.31	26.46	27.50	8.37		11.90			
	2-Wire voice unbundled res, low usage line port with Caller ID (LUM)			UEPRX	UEPAP	1.17	53.31	26.46	27.50	8.37		11.90			
	2-Wire voice unbundled Florida extended dialing port for use with CREX7 and Caller ID			UEPRX	UEPA1	1.17	53.31	26.46	27.50	8.37		11.90			
	2-Wire voice unbundled Florida extended dialing port for use with CREX7, without Caller ID capability			UEPRX	UEPA8	1.17	53.31	26.46	27.50	8.37		11.90			
	2-Wire voice unbundled Florida Area Calling Port without Caller ID Capability			UEPRX	UEPA9	1.17	53.31	26.46	27.50	8.37		11.90			
	2-Wire voice unbundled Low Usage Line Port without Caller ID Capability			UEPRX	UEPRT	1.17	53.31	26.46	27.50	8.37		11.90			
<b>FEATURES</b>															
	All Features Offered			UEPRX	UEPVF	2.26	0.00	0.00				11.90			
<b>LOCAL NUMBER PORTABILITY</b>															
	Local Number Portability (1 per port)			UEPRX	LNPCX	0.35									
<b>NONRECURRING CHARGES (NRCs) - CURRENTLY COMBINED</b>															
	2-Wire Voice Grade Loop / Line Port Combination - Conversion - Switch-as-is			UEPRX	USAC2		0.102	0.102				11.90			
	2-Wire Voice Grade Loop / Line Port Combination - Conversion - Switch with change			UEPRX	USACC		0.102	0.102				11.90			
<b>ADDITIONAL NRCs</b>															
	2-Wire Voice Grade Loop/Line Port Combination - Subsequent Activity			UEPRX	USAS2	0.00	0.00	0.00				11.90			
<b>2-WIRE VOICE GRADE LOOP WITH 2-WIRE LINE PORT (BUS)</b>															
<b>UNE Port/Loop Combination Rates</b>															
	2-Wire VG Loop/Port Combo - Zone 1		1			10.94									
	2-Wire VG Loop/Port Combo - Zone 2		2			15.05									
	2-Wire VG Loop/Port Combo - Zone 3		3			25.80									
<b>UNE Loop Rates</b>															
	2-Wire Voice Grade Loop (SL1) - Zone 1		1	UEPBX	UEPLX	9.77									
	2-Wire Voice Grade Loop (SL1) - Zone 2		2	UEPBX	UEPLX	13.88									
	2-Wire Voice Grade Loop (SL1) - Zone 3		3	UEPBX	UEPLX	24.63									
<b>2-Wire Voice Grade Line Port (Bus)</b>															
	2-Wire voice unbundled port without Caller ID - bus			UEPBX	UEPBL	1.17	53.31	26.46	27.50	8.37		11.90			
	2-Wire voice unbundled port with Caller + E484 ID - bus			UEPBX	UEPBC	1.17	53.31	26.46	27.50	8.37		11.90			
	2-Wire voice unbundled port outgoing only - bus			UEPBX	UEPBO	1.17	53.31	26.46	27.50	8.37		11.90			
	2-Wire voice unbundled incoming only port with Caller ID - Bus			UEPBX	UEPB1	1.17	53.31	26.46	27.50	8.37		11.90			
	2-Wire voice unbundled Incoming Only Port without Caller ID Capability			UEPBX	UEPBE	1.17	53.31	26.46	27.50	8.37		11.90			
<b>LOCAL NUMBER PORTABILITY</b>															
	Local Number Portability (1 per port)			UEPBX	LNPCX	0.35									
<b>FEATURES</b>															
	All Features Offered			UEPBX	UEPVF	2.26	0.00	0.00				11.90			
<b>NONRECURRING CHARGES (NRCs) - CURRENTLY COMBINED</b>															
	2-Wire Voice Grade Loop / Line Port Combination - Conversion - Switch-as-is			UEPBX	USAC2		0.102	0.102				11.90			

UNBUNDLED NETWORK ELEMENTS - Florida										Attachment: 2		Exhibit: B			
CATEGORY	RATE ELEMENTS	Interim	Zone	BCS	USOC	RATES(\$)				Svc Order Submitted Elec per LSR	Svc Order Submitted Manually per LSR	Incremental Charge - Manual Svc Order vs. Electronic-1st	Incremental Charge - Manual Svc Order vs. Electronic-Add'l	Incremental Charge - Manual Svc Order vs. Electronic-Disc 1st	Incremental Charge - Manual Svc Order vs. Electronic-Disc Add'l
						Rec	Nonrecurring First	Nonrecurring Add'l	Nonrecurring Disconnect First						
UNBUNDLED PORT LOOP COMBINATIONS - MARKET RATES															
Market Rates shall apply where BellSouth is not required to provide unbundled local switching or switch ports per FCC and/or State Commission rules.															
This includes:															
Unbundled port/loop combinations that are Currently Combined or Not Currently Combined in Zone 1 of the Top 8 MSAs in BellSouth's region for end users with 4 or more DS0 equivalent lines.															
The Top 8 MSAs in BellSouth's region are: FL (Orlando, FL, Lauderdale, Miami); GA (Atlanta); LA (New Orleans); NC (Greensboro-Winston Salem-Highpoint/Charlotte-Gastonia-Rock Hill); TN (Nashville).															
BellSouth currently is developing the billing capability to mechanically bill the recurring and non-recurring Market Rates in this section except for non-recurring charges for not currently combined in FL and NC. In the interim where BellSouth cannot bill Market Rates for not currently combined scenarios, the Nonrecurring charges are listed in the NRC - Currently Combined section.															
The Market Rate for unbundled ports includes all available features in all states.															
End Office and Tandem Switching Usage and Common Transport Usage rates in the Port section of this rate exhibit shall apply to all combinations of loop/port network elements except for UNE Coin Port/Loop Combinations which have a flat rate usage charge.															
For Not Currently Combined scenarios the Nonrecurring charges are listed in the First and Additional NRC columns for each Port USOC. For Currently Combined scenarios, the Nonrecurring charges are listed in the NRC - Currently Combined section.															
<b>2-WIRE VOICE GRADE LOOP WITH 2-WIRE LINE PORT (RES)</b>															
<b>UNE Port/Loop Combination Rates</b>															
	2-Wire VG Loop/Port Combo - Zone 1		1			23.77									
	2-Wire VG Loop/Port Combo - Zone 2		2			27.88									
	2-Wire VG Loop/Port Combo - Zone 3		3			38.63									
<b>UNE Loop Rates</b>															
	2-Wire Voice Grade Loop (SL1) - Zone 1		1	UEPRX	UEPLX	9.77									
	2-Wire Voice Grade Loop (SL1) - Zone 2		2	UEPRX	UEPLX	13.88									
	2-Wire Voice Grade Loop (SL1) - Zone 3		3	UEPRX	UEPLX	24.63									
<b>2-Wire Voice Grade Line Port (Res)</b>															
	2-Wire voice unbundled port - residence			UEPRX	UEPRL	14.00	90.00	90.00			11.90				
	2-Wire voice unbundled port with Caller ID - res			UEPRX	UEPRC	14.00	90.00	90.00			11.90				
	2-Wire voice unbundled port outgoing only - res			UEPRX	UEPRO	14.00	90.00	90.00			11.90				
	2-Wire voice unbundled Florida Area Calling with Caller ID - res			UEPRX	UEPAF	14.00	90.00	90.00			11.90				
	2-Wire voice unbundled res, low usage line port with Caller ID (LUM)			UEPRX	UEPAP	14.00	90.00	90.00			11.90				
	2-Wire voice unbundled Low Usage Line Port without Caller ID Capability			UEPRX	UEPRT	14.00	90.00	90.00			11.90				
	2-Wire voice unbundled Florida extended dialing port for use with CREX7 and Caller ID			UEPRX	UEPA1	14.00	90.00	90.00			11.90				
	2-Wire voice unbundled Florida extended dialing port for use with CREX7, without Caller ID capability			UEPRX	UEPA8	14.00	90.00	90.00			11.90				
	2-Wire voice unbundled Florida Area Calling Port without Caller ID Capability			UEPRX	UEPA9	14.00	90.00	90.00			11.90				
<b>LOCAL NUMBER PORTABILITY</b>															

## BellSouth DS0 Wholesale Local Platform Service for the Mass Market

In light of the FCC's Triennial Review Order and BellSouth's expectation that state commissions will find that in certain markets, CLECs are not impaired without access to unbundled local switching for Mass Market customers, BellSouth is making available DS0 Wholesale Local Platform Services to competitive local exchange carriers (CLECs) providing local service to Mass Market customers at the market rates listed on the attached schedules.<sup>1</sup> The DS0 Wholesale Local Platform Service will be available for purchase, subject to execution of a commercial agreement, as of February 20<sup>th</sup>, 2004.

The total recurring and nonrecurring rates listed in the schedules apply to the loop, port and switch-based feature components of the DS0 Wholesale Local Platform Services. Additional charges for local usage, dedicated transport if necessary, and other ancillary services may also apply. Volume and term agreements may be negotiated for significant service quantities.

For more information regarding BellSouth DS0 Wholesale Local Platform Service, contact your BellSouth contract negotiator.

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<sup>1</sup> This document and the attached rates do not apply to DS0 Wholesale Local Platform Service lines provided in the following situations: 1) DS0s provided to end users who are also being served with at least one DS1; 2) the number of DS0s provided to an end user location exceeds the mass market/enterprise market crossover point currently being determined by the state commissions; and 3) subject to modification as the state commissions determine the mass market/enterprise market crossover point, an end user who is served by 4 or more DS0 or equivalent lines within Zone 1 of a top 8 MSA in BellSouth's region. In these situations, BellSouth offers an enterprise market rate for the Local Platform Service.

Alabama

BellSouth DS0 Wholesale Local Platform Service for the Mass Market

	DS0 Mass Market - Residential	DS0 Mass Market - Business	DS0 Mass Market - PBX	DS0 Mass Market - Coin	DS0 Mass Market - FX/FCO - Res	DS0 Mass Market - FX/FCO - Bus	DS0 Mass Market - BRI
<b>Loop, Port &amp; Features - Total Monthly - Recurring Charges</b>							
Zone 1	\$ 21.68	\$ 21.68	\$ 21.68	\$ 21.43	\$ 24.74	\$ 24.74	\$ 36.25
Zone 2	\$ 30.17	\$ 30.17	\$ 30.17	\$ 29.92	\$ 33.21	\$ 33.21	\$ 46.84
Zone 3	\$ 43.78	\$ 43.78	\$ 43.78	\$ 43.53	\$ 46.50	\$ 46.50	\$ 62.82
<b>Loop, Port &amp; Features Recurring Charges</b>							
Port	\$ 8.15	\$ 8.15	\$ 8.15	\$ 8.15	\$ 8.38	\$ 8.38	\$ 15.24
Features	\$ 1.98	\$ 1.98	\$ 1.98	\$ 1.98	\$ 1.98	\$ 1.98	\$ 1.98
Loop - Zone 1	\$ 11.55	\$ 11.55	\$ 11.55	\$ 11.55	\$ 14.38	\$ 14.38	\$ 19.03
Loop - Zone 2	\$ 20.04	\$ 20.04	\$ 20.04	\$ 20.04	\$ 22.85	\$ 22.85	\$ 29.62
Loop - Zone 3	\$ 33.65	\$ 33.65	\$ 33.65	\$ 33.65	\$ 36.14	\$ 36.14	\$ 45.60
<b>Nonrecurring Charges</b>							
New Installation* - 1st	\$ 33.48	\$ 57.75	\$ 57.75	\$ 57.75	\$ 220.00	\$ 220.00	\$ 425.00
New Installation* - Add'l	\$ 10.04	\$ 10.04	\$ 10.04	\$ 10.04	\$ 145.00	\$ 145.00	\$ 285.00
Disconnect - 1st					\$ 110.00	\$ 110.00	\$ 220.00
Disconnect - Add'l					\$ 25.00	\$ 25.00	\$ 50.00
Conversion** - 1st	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 20.00	\$ 20.00	\$ 90.00
Conversion** - Add'l	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 65.00

Notes:

> Local Usage, dedicated transport if necessary and ancillary charges may apply.

\* New Installation nonrecurring charge applies to the request for "not currently or ordinarily combined" services.

\*\* Conversion nonrecurring charge applies to the request for a "currently combined" service.

Florida

BellSouth DS0 Wholesale Local Platform Service for the Mass Market

	DS0 Mass Market - Residential	DS0 Mass Market - Business	DS0 Mass Market - PBX	DS0 Mass Market - Coin	DS0 Mass Market - FX/FCO - Res	DS0 Mass Market - FX/FCO - Bus	DS0 Mass Market - BRI
<b>Loop, Port &amp; Features - Total Monthly - Recurring Charges</b>							
Zone 1	\$ 20.20	\$ 20.20	\$ 20.20	\$ 20.20	\$ 22.90	\$ 22.90	\$ 31.89
Zone 2	\$ 24.31	\$ 24.31	\$ 24.31	\$ 24.31	\$ 28.06	\$ 28.06	\$ 38.31
Zone 3	\$ 35.06	\$ 35.06	\$ 35.06	\$ 35.06	\$ 41.53	\$ 41.53	\$ 55.10
<b>Loop, Port &amp; Features Recurring Charges</b>							
Port	\$ 8.17	\$ 8.17	\$ 8.17	\$ 8.17	\$ 8.40	\$ 8.40	\$ 14.38
Features	\$ 2.26	\$ 2.26	\$ 2.26	\$ 2.26	\$ 2.26	\$ 2.26	\$ 2.26
Loop - Zone 1	\$ 9.77	\$ 9.77	\$ 9.77	\$ 9.77	\$ 12.24	\$ 12.24	\$ 15.25
Loop - Zone 2	\$ 13.88	\$ 13.88	\$ 13.88	\$ 13.88	\$ 17.40	\$ 17.40	\$ 21.67
Loop - Zone 3	\$ 24.63	\$ 24.63	\$ 24.63	\$ 24.63	\$ 30.87	\$ 30.87	\$ 38.46
<b>Nonrecurring Charges</b>							
New Installation* - 1st	\$ 31.27	\$ 46.59	\$ 46.59	\$ 46.59	\$ 220.00	\$ 220.00	\$ 425.00
New Installation* - Add'l	\$ 9.38	\$ 9.98	\$ 9.98	\$ 9.98	\$ 145.00	\$ 145.00	\$ 285.00
Disconnect - 1st					\$ 110.00	\$ 110.00	\$ 220.00
Disconnect - Add'l					\$ 25.00	\$ 25.00	\$ 50.00
Conversion** - 1st	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 20.00	\$ 20.00	\$ 90.00
Conversion** - Add'l	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 65.00

Notes:

- > Local Usage, dedicated transport if necessary and ancillary charges may apply.
- \* New Installation nonrecurring charge applies to the request for "not currently or ordinarily combined" services.
- \*\* Conversion nonrecurring charge applies to the request for a "currently combined" service.

## Georgia

## BellSouth DS0 Wholesale Local Platform Service for the Mass Market

	DS0 Mass Market - Residential	DS0 Mass Market - Business	DS0 Mass Market - PBX	DS0 Mass Market - Coin	DS0 Mass Market - FX/FCO - Res	DS0 Mass Market - FX/FCO - Bus	DS0 Mass Market - BRI
<b>Loop, Port &amp; Features - Total Monthly - Recurring Charges</b>							
Zone 1	\$ 18.24	\$ 18.24	\$ 18.24	\$ 18.24	\$ 20.44	\$ 20.44	\$ 41.30
Zone 2	\$ 23.54	\$ 23.54	\$ 23.54	\$ 23.54	\$ 25.82	\$ 25.82	\$ 40.64
Zone 3	\$ 40.34	\$ 40.34	\$ 40.34	\$ 40.34	\$ 41.95	\$ 41.95	\$ 50.10
<b>Loop, Port &amp; Features Recurring Charges</b>							
Port	\$ 7.90	\$ 7.90	\$ 7.90	\$ 7.90	\$ 8.09	\$ 8.09	\$ 12.19
Features	\$ 0.78	\$ 0.78	\$ 0.78	\$ 0.78	\$ 0.78	\$ 0.78	\$ 0.78
Loop - Zone 1	\$ 9.56	\$ 9.56	\$ 9.56	\$ 9.56	\$ 11.57	\$ 11.57	\$ 28.33
Loop - Zone 2	\$ 14.86	\$ 14.86	\$ 14.86	\$ 14.86	\$ 16.95	\$ 16.95	\$ 27.67
Loop - Zone 3	\$ 31.66	\$ 31.66	\$ 31.66	\$ 31.66	\$ 33.08	\$ 33.08	\$ 37.13
<b>Nonrecurring Charges</b>							
New Installation* - 1st	\$ 33.87	\$ 48.17	\$ 48.17	\$ 48.17	\$ 220.00	\$ 220.00	\$ 425.00
New Installation* - Add'l	\$ 13.35	\$ 24.81	\$ 24.81	\$ 24.81	\$ 145.00	\$ 145.00	\$ 285.00
Disconnect - 1st					\$ 110.00	\$ 110.00	\$ 220.00
Disconnect - Add'l					\$ 25.00	\$ 25.00	\$ 50.00
Conversion** - 1st	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 20.00	\$ 20.00	\$ 90.00
Conversion** - Add'l	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 65.00

**Notes:**

> Local Usage, dedicated transport if necessary and ancillary charges may apply.

\* New Installation nonrecurring charge applies to the request for "not currently or ordinarily combined" services.

\*\* Conversion nonrecurring charge applies to the request for a "currently combined" service.

## Kentucky

## BellSouth DS0 Wholesale Local Platform Service for the Mass Market

	DS0 Mass Market - Residential	DS0 Mass Market - Business	DS0 Mass Market - PBX	DS0 Mass Market - Coin	DS0 Mass Market - FX/FCO - Res	DS0 Mass Market - FX/FCO - Bus	DS0 Mass Market - BRI
<b>Loop, Port &amp; Features - Total Monthly - Recurring Charges</b>							
Zone 1	\$ 17.79	\$ 17.79	\$ 17.79	\$ 17.79	\$ 20.90	\$ 20.90	\$ 32.69
Zone 2	\$ 22.52	\$ 22.52	\$ 22.52	\$ 22.52	\$ 25.68	\$ 25.68	\$ 38.92
Zone 3	\$ 38.74	\$ 38.74	\$ 38.74	\$ 38.74	\$ 41.45	\$ 41.45	\$ 57.22
<b>Loop, Port &amp; Features Recurring Charges</b>							
Port	\$ 8.15	\$ 8.15	\$ 8.15	\$ 8.15	\$ 8.23	\$ 8.23	\$ 16.59
Features	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Loop - Zone 1	\$ 9.64	\$ 9.64	\$ 9.64	\$ 9.64	\$ 12.67	\$ 12.67	\$ 16.10
Loop - Zone 2	\$ 14.37	\$ 14.37	\$ 14.37	\$ 14.37	\$ 17.45	\$ 17.45	\$ 22.33
Loop - Zone 3	\$ 30.59	\$ 30.59	\$ 30.59	\$ 30.59	\$ 33.22	\$ 33.22	\$ 40.63
<b>Nonrecurring Charges</b>							
New Installation* - 1st	\$ 34.95	\$ 61.66	\$ 61.66	\$ 61.66	\$ 220.00	\$ 220.00	\$ 425.00
New Installation* - Add'l	\$ 12.48	\$ 18.58	\$ 18.58	\$ 18.58	\$ 145.00	\$ 145.00	\$ 285.00
Disconnect - 1st					\$ 110.00	\$ 110.00	\$ 220.00
Disconnect - Add'l					\$ 25.00	\$ 25.00	\$ 50.00
Conversion** - 1st	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 20.00	\$ 20.00	\$ 90.00
Conversion** - Add'l	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 65.00

## Notes:

> Local Usage, dedicated transport if necessary and ancillary charges may apply.

\* New Installation nonrecurring charge applies to the request for "not currently or ordinarily combined" services.

\*\* Conversion nonrecurring charge applies to the request for a "currently combined" service.

## Louisiana

## BellSouth DS0 Wholesale Local Platform Service for the Mass Market

	DS0 Mass Market - Residential	DS0 Mass Market - Business	DS0 Mass Market - PBX	DS0 Mass Market - Coin	DS0 Mass Market - FX/FCO - Res	DS0 Mass Market - FX/FCO - Bus	DS0 Mass Market - BRI
<b>Loop, Port &amp; Features - Total Monthly - Recurring Charges</b>							
Zone 1	\$ 20.13	\$ 20.13	\$ 20.13	\$ 20.13	\$ 23.45	\$ 23.45	\$ 34.48
Zone 2	\$ 30.75	\$ 30.75	\$ 30.75	\$ 30.75	\$ 33.87	\$ 33.87	\$ 47.34
Zone 3	\$ 56.62	\$ 56.62	\$ 56.62	\$ 56.62	\$ 58.98	\$ 58.98	\$ 77.99
<b>Loop, Port &amp; Features Recurring Charges</b>							
Port	\$ 8.36	\$ 8.36	\$ 8.36	\$ 8.36	\$ 8.52	\$ 8.52	\$ 15.39
Features	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Loop - Zone 1	\$ 11.77	\$ 11.77	\$ 11.77	\$ 11.77	\$ 14.93	\$ 14.93	\$ 19.09
Loop - Zone 2	\$ 22.39	\$ 22.39	\$ 22.39	\$ 22.39	\$ 25.35	\$ 25.35	\$ 31.95
Loop - Zone 3	\$ 48.26	\$ 48.26	\$ 48.26	\$ 48.26	\$ 50.46	\$ 50.46	\$ 62.60
<b>Nonrecurring Charges</b>							
New Installation* - 1st	\$ 32.50	\$ 67.39	\$ 67.39	\$ 67.39	\$ 220.00	\$ 220.00	\$ 425.00
New Installation* - Add'l	\$ 11.10	\$ 25.37	\$ 25.37	\$ 25.37	\$ 145.00	\$ 145.00	\$ 285.00
Disconnect - 1st					\$ 110.00	\$ 110.00	\$ 220.00
Disconnect - Add'l					\$ 25.00	\$ 25.00	\$ 50.00
Conversion** - 1st	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 20.00	\$ 20.00	\$ 90.00
Conversion** - Add'l	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 65.00

**Notes:**

> Local Usage, dedicated transport if necessary and ancillary charges may apply.

\* New Installation nonrecurring charge applies to the request for "not currently or ordinarily combined" services.

\*\* Conversion nonrecurring charge applies to the request for a "currently combined" service.



Mississippi

BellSouth DS0 Wholesale Local Platform Service for the Mass Market

	DS0 Mass Market - Residential	DS0 Mass Market - Business	DS0 Mass Market - PBX	DS0 Mass Market - Coin	DS0 Mass Market - FX/FCO - Res	DS0 Mass Market - FX/FCO - Bus	DS0 Mass Market - BRI
<b>Loop, Port &amp; Features - Total Monthly - Recurring Charges</b>							
Zone 1	\$ 21.77	\$ 21.77	\$ 21.77	\$ 21.77	\$ 24.72	\$ 24.72	\$ 38.15
Zone 2	\$ 26.70	\$ 26.70	\$ 26.70	\$ 26.70	\$ 29.58	\$ 29.58	\$ 44.56
Zone 3	\$ 35.83	\$ 35.83	\$ 35.83	\$ 35.83	\$ 38.38	\$ 38.38	\$ 54.74
Zone 4	\$ 54.47	\$ 54.47	\$ 54.47	\$ 54.47	\$ 56.55	\$ 56.55	\$ 77.17
<b>Loop, Port &amp; Features Recurring Charges</b>							
Port	\$ 8.23	\$ 8.23	\$ 8.23	\$ 8.23	\$ 8.27	\$ 8.27	\$ 17.33
Features	\$ 2.56	\$ 2.56	\$ 2.56	\$ 2.56	\$ 2.56	\$ 2.56	\$ 2.56
Loop - Zone 1	\$ 10.98	\$ 10.98	\$ 10.98	\$ 10.98	\$ 13.89	\$ 13.89	\$ 18.26
Loop - Zone 2	\$ 15.91	\$ 15.91	\$ 15.91	\$ 15.91	\$ 18.75	\$ 18.75	\$ 24.67
Loop - Zone 3	\$ 25.04	\$ 25.04	\$ 25.04	\$ 25.04	\$ 27.55	\$ 27.55	\$ 34.85
Loop - Zone 4	\$ 43.68	\$ 43.68	\$ 43.68	\$ 43.68	\$ 45.72	\$ 45.72	\$ 57.28
<b>Nonrecurring Charges</b>							
New Installation* - 1st	\$ 38.76	\$ 56.45	\$ 56.45	\$ 56.45	\$ 220.00	\$ 220.00	\$ 425.00
New Installation* - Add'l	\$ 10.95	\$ 12.64	\$ 12.64	\$ 12.64	\$ 145.00	\$ 145.00	\$ 285.00
Disconnect - 1st					\$ 110.00	\$ 110.00	\$ 220.00
Disconnect - Add'l					\$ 25.00	\$ 25.00	\$ 50.00
Conversion** - 1st	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 20.00	\$ 20.00	\$ 90.00
Conversion** - Add'l	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 65.00

Notes:

- > Local Usage, dedicated transport if necessary and ancillary charges may apply.
- \* New Installation nonrecurring charge applies to the request for "not currently or ordinarily combined" services.
- \*\* Conversion nonrecurring charge applies to the request for a "currently combined" service.

**North Carolina** **BellSouth DS0 Wholesale Local Platform Service for the Mass Market**

	DS0 Mass Market - Residential	DS0 Mass Market - Business	DS0 Mass Market - PBX	DS0 Mass Market - Coin	DS0 Mass Market - FX/FCO - Res	DS0 Mass Market - FX/FCO - Bus	DS0 Mass Market - BRI
<b>Loop, Port &amp; Features - Total Monthly - Recurring Charges</b>							
Zone 1	\$ 20.03	\$ 20.03	\$ 20.03	\$ 20.03	\$ 24.16	\$ 24.16	\$ 45.84
Zone 2	\$ 28.33	\$ 28.33	\$ 28.33	\$ 28.33	\$ 35.12	\$ 35.12	\$ 57.01
Zone 3	\$ 39.61	\$ 39.61	\$ 39.61	\$ 39.61	\$ 50.00	\$ 50.00	\$ 72.18
<b>Loop, Port &amp; Features Recurring Charges</b>							
Port	\$ 9.28	\$ 9.28	\$ 9.28	\$ 9.28	\$ 9.19	\$ 9.19	\$ 31.37
Features	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Loop - Zone 1	\$ 10.75	\$ 10.75	\$ 10.75	\$ 10.75	\$ 14.97	\$ 14.97	\$ 14.47
Loop - Zone 2	\$ 19.05	\$ 19.05	\$ 19.05	\$ 19.05	\$ 25.93	\$ 25.93	\$ 25.64
Loop - Zone 3	\$ 30.33	\$ 30.33	\$ 30.33	\$ 30.33	\$ 40.81	\$ 40.81	\$ 40.81
<b>Nonrecurring Charges</b>							
New Installation* - 1st	\$ 33.56	\$ 53.56	\$ 53.56	\$ 53.56	\$ 220.00	\$ 220.00	\$ 425.00
New Installation* - Add'l	\$ 11.97	\$ 18.13	\$ 18.13	\$ 18.13	\$ 145.00	\$ 145.00	\$ 285.00
Disconnect - 1st					\$ 110.00	\$ 110.00	\$ 220.00
Disconnect - Add'l					\$ 25.00	\$ 25.00	\$ 50.00
Conversion** - 1st	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 20.00	\$ 20.00	\$ 90.00
Conversion** - Add'l	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 65.00

**Notes:**

- > Local Usage, dedicated transport if necessary and ancillary charges may apply.
- \* New Installation nonrecurring charge applies to the request for "not currently or ordinarily combined" services.
- \*\* Conversion nonrecurring charge applies to the request for a "currently combined" service.

## South Carolina

## BellSouth DS0 Wholesale Local Platform Service for the Mass Market

	DS0 Mass Market - Residential	DS0 Mass Market - Business	DS0 Mass Market - PBX	DS0 Mass Market - Coin	DS0 Mass Market - FX/FCO - Res	DS0 Mass Market - FX/FCO - Bus	DS0 Mass Market - BRI
<b>Loop, Port &amp; Features - Total Monthly - Recurring Charges</b>							
Zone 1	\$ 24.93	\$ 24.93	\$ 24.93	\$ 24.93	\$ 28.04	\$ 28.04	\$ 40.90
Zone 2	\$ 31.55	\$ 31.55	\$ 31.55	\$ 31.55	\$ 34.49	\$ 34.49	\$ 48.64
Zone 3	\$ 37.21	\$ 37.21	\$ 37.21	\$ 37.21	\$ 39.82	\$ 39.82	\$ 54.27
<b>Loop, Port &amp; Features Recurring Charges</b>							
Port	\$ 8.13	\$ 8.13	\$ 8.13	\$ 8.13	\$ 8.32	\$ 8.32	\$ 15.96
Features	\$ 3.04	\$ 3.04	\$ 3.04	\$ 3.04	\$ 3.04	\$ 3.04	\$ 3.04
Loop - Zone 1	\$ 13.76	\$ 13.76	\$ 13.76	\$ 13.76	\$ 16.68	\$ 16.68	\$ 21.90
Loop - Zone 2	\$ 20.38	\$ 20.38	\$ 20.38	\$ 20.38	\$ 23.13	\$ 23.13	\$ 29.64
Loop - Zone 3	\$ 26.04	\$ 26.04	\$ 26.04	\$ 26.04	\$ 28.46	\$ 28.46	\$ 35.27
<b>Nonrecurring Charges</b>							
New Installation* - 1st	\$ 34.08	\$ 54.53	\$ 54.53	\$ 54.53	\$ 220.00	\$ 220.00	\$ 425.00
New Installation* - Add'l	\$ 15.34	\$ 22.15	\$ 22.15	\$ 22.15	\$ 145.00	\$ 145.00	\$ 285.00
Disconnect - 1st					\$ 110.00	\$ 110.00	\$ 220.00
Disconnect - Add'l					\$ 25.00	\$ 25.00	\$ 50.00
Conversion** - 1st	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 20.00	\$ 20.00	\$ 90.00
Conversion** - Add'l	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 65.00

**Notes:**

- > Local Usage, dedicated transport if necessary and ancillary charges may apply.
- \* New Installation nonrecurring charge applies to the request for "not currently or ordinarily combined" services.
- \*\* Conversion nonrecurring charge applies to the request for a "currently combined" service.

## Tennessee

## BellSouth DS0 Wholesale Local Platform Service for the Mass Market

	DS0 Mass Market - Residential	DS0 Mass Market - Business	DS0 Mass Market - PBX	DS0 Mass Market - Coin	DS0 Mass Market - FX/FCO - Res	DS0 Mass Market - FX/FCO - Bus	DS0 Mass Market - BRI
<b>Loop, Port &amp; Features - Total Monthly - Recurring Charges</b>							
Zone 1	\$ 21.18	\$ 21.18	\$ 21.18	\$ 21.18	\$ 25.45	\$ 25.45	\$ 39.27
Zone 2	\$ 25.01	\$ 25.01	\$ 25.01	\$ 25.01	\$ 30.52	\$ 30.52	\$ 41.78
Zone 3	\$ 30.02	\$ 30.02	\$ 30.02	\$ 30.02	\$ 37.17	\$ 37.17	\$ 51.32
<b>Loop, Port &amp; Features Recurring Charges</b>							
Port	\$ 8.70	\$ 8.70	\$ 8.70	\$ 8.70	\$ 8.89	\$ 8.89	\$ 23.07
Features	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Loop - Zone 1	\$ 12.48	\$ 12.48	\$ 12.48	\$ 12.48	\$ 16.56	\$ 16.56	\$ 16.20
Loop - Zone 2	\$ 16.31	\$ 16.31	\$ 16.31	\$ 16.31	\$ 21.63	\$ 21.63	\$ 18.71
Loop - Zone 3	\$ 21.32	\$ 21.32	\$ 21.32	\$ 21.32	\$ 28.28	\$ 28.28	\$ 28.25
<b>Nonrecurring Charges</b>							
New Installation* - 1st	\$ 34.86	\$ 49.14	\$ 49.14	\$ 49.14	\$ 220.00	\$ 220.00	\$ 425.00
New Installation* - Add'l	\$ 15.12	\$ 26.04	\$ 26.04	\$ 26.04	\$ 145.00	\$ 145.00	\$ 285.00
Disconnect - 1st					\$ 110.00	\$ 110.00	\$ 220.00
Disconnect - Add'l					\$ 25.00	\$ 25.00	\$ 50.00
Conversion** - 1st	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 20.00	\$ 20.00	\$ 90.00
Conversion** - Add'l	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 65.00

**Notes:**

> Local Usage, dedicated transport if necessary and ancillary charges may apply.

\* New Installation nonrecurring charge applies to the request for "not currently or ordinarily combined" services.


\*\* Conversion nonrecurring charge applies to the request for a "currently combined" service.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Rebuttal Testimony and Exhibits of Angel Leiro on behalf of IDS Telcom, LLC. has been provided by (\*) hand delivery and U.S. Mail, this 12th day of August, 2004, to the following:

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

(\*) James Meza, III  
Nancy B. White  
c/o Ms. Nancy H. Sims  
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