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August 17, 2004

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

**Re: 031125-TP: Complaint of IDS Telecom LLC against BellSouth
Telecommunications, Inc., for over billing and discontinuance of
service, and petition for emergency order restoring service**

Dear Ms. Bayó:

Enclosed is BellSouth Telecommunications, Inc.'s Prehearing Statement, which we ask that you file in the captioned docket.

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

Sincerely,


James Meza III (BM)

Enclosures

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

**CERTIFICATE OF SERVICE
DOCKET NO. 031125-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail and First Class U.S. Mail this 17th day of August, 2004 to the following:

Patty Christensen
Staff Counsel
Florida Public Service
Commission
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Represents IDS


James Meza III

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint against BellSouth Telecommunications,) Docket No.: 031125-TP
Inc. for alleged overbilling and discontinuance of service,)
by IDS Telecom LLC)
_____) Filed: August 17, 2004

PREHEARING STATEMENT OF BELLSOUTH TELECOMMUNICATIONS, INC.

BellSouth Telecommunications, Inc. ("BellSouth"), in compliance with the Order Establishing Procedure (Order No. PSC-04-0472-PCO-TP) issued on May 6, 2004, hereby submits its Prehearing Statement for Docket No. 031125-TP.

A. Witnesses

BellSouth proposes to call the following witness to offer testimony on the issues in this docket:

<u>Witness</u>	<u>Issue(s)</u>
Greg Follensbee (Rebuttal)	1, 2, 5
David Melton (Direct and Rebuttal)	1, 4, 5
Roger Edmunds (Rebuttal)	1, 2
Carlos Morillo (Direct ¹ and Rebuttal)	1, 2, 3, 4, 5, 6

BellSouth reserves the right to call additional witnesses, witnesses to respond to Commission inquiries not addressed in direct and rebuttal testimony and witnesses to address issues not presently designated that may be designated by the Prehearing Officer at the prehearing conference to be held on August 30, 2004. BellSouth has listed the witnesses for whom BellSouth believes testimony will be filed, but reserves the right to supplement that list if necessary.

B. Exhibits

Direct Testimony of Carlos Morillo

KKB-1 Letter to IDS (Elizabeth Fefer) dated 12/3/03 regarding past due resale accounts
KKB-2 Letter to IDS (Elizabeth Fefer) dated 12/3/03 regarding past due UNE accounts

Direct Testimony of David F. Melton, Jr.

DM-1 PROPRIETARY – Settlement Agreement
DM-2 Amendment to Settlement Agreement
DM-3 Email from Claude Morton to Robert Hacker dated 7/18/02
DM-4 Email from Robert Hacker to Maxine Alagar dated 6/12/03
DM-5 Email from Robert Hacker to Maxine Alagar dated 6/24/03
DM-6 Email from David Melton to Robert Hacker dated 4/10/02
DM-7 Email from Robert Hacker to David Melton dated 4/10/02
DM-8 Email from Leah Cooper to Robert Hacker dated 4/8/02
DM-9 BAR Forms

Rebuttal Testimony of Carlos Morillo

CM-1 Carrier Notification Letter dated 6/10/02
CM-2 Carrier Notification Letter dated 7/30/02
CM-3 Attachment 7, pages 3-3 of Prior Agreement
CM-4 Attachment 2, page 45 of Current Agreement
CM-5 Call Flow 12
CM-6 Carrier Notification Letter dated 8/30/02
CM-7 Carrier Notification Letter dated 9/27/02
CM-8 Password Requests
CM-9 2 Wire Voice Grade UNE Loop/Port Switched Combination
CM-10 IDS Market Based Rate Dispute (Dispute Regarding Wire Center Assignment to Zone 1 Based on June 2004 Dispute Data)

Rebuttal Testimony of David F. Melton, Jr.

DM-10 Email from D O'Donnell to Regenia Harris dated 4/01/02

BellSouth reserves the right to file exhibits to any testimony that may be filed under the circumstances identified in Section "A" above. BellSouth also reserves the

¹ Mr. Morillo adopted the direct testimony of Kathy Blake filed in this proceeding.

right to introduce exhibits for cross-examination, impeachment, or any other purpose authorized by the applicable Florida Rules of Evidence and Rules of this Commission.

C. Statement of Basic Position

BellSouth properly terminated IDS' access to LENS in December 2003 because IDS failed to pay undisputed and past due resale billings and asserted duplicative UNE disputes totaling over \$1.8 million. In addition, BellSouth did not solely terminate IDS' access to LENS for nonpayment of the Past Due Q Account. And, IDS' interpretation of events that led to the creation of the Past Due Q Account and the amounts transferred to such an account are incorrect. Notwithstanding IDS' post-hoc, second-hand interpretation of the actions of the parties, IDS' and BellSouth agreed to include approximately \$3.2 million into the Past Due Q Account, which represents \$2.475 million from the Settlement Amendment, approximately \$667,000 in post September 2001 billing disputes, and \$68,000 in undisputed unpaid billings that accrued between September 2001 and March 2002.

As to the DUF Dispute, IDS should be required to pay BellSouth approximately \$1.4 million immediately. BellSouth properly charged IDS the DUF rate from the Commission's May 2001 UNE Order until such time that the parties amended their contract in October 2002 to incorporate the rates in the Commission's September 2002 UNE Order. The Commission's September 2002 UNE Order provides that the rates ordered therein would only become effective when the parties amended their current agreement. The Commission expressly refused to retroactively order the September

2002 UNE Order rates for an earlier time. Notwithstanding the Commission's express order, IDS continues to assert that the September 2002 UNE Order rates apply retroactively. This argument violates the Commission's Order and BellSouth has no obligation, either from the FCC in any 271 order or contractually, to apply those rates in a manner that deviates from the Commission's September 2002 UNE Order.

Regarding the Market Based Rate Dispute, IDS should be ordered to immediately pay BellSouth approximately \$3.1 million in market based rate switching charges. BellSouth has properly billed IDS these charges under the contract and for the appropriate lines that reside in the applicable MSA.

D. BellSouth's Position on the Issues

Issue 1: **Was there a further agreement to include additional billed amounts into the Settlement Agreement and Settlement Amendment?**

Position: No. The parties did not agree to include additional billed amounts into the Settlement Agreement and Settlement Amendment. Rather, the parties, in a separate agreement, agreed to include additional amounts into the Past Due Q Account. Specifically, the parties agreed to include the \$2.475 million from the Settlement Amendment, approximately \$667,000 in post September 2001 billing disputes, and \$68,000 in undisputed unpaid billings that accrued between September 2001 and March 2002. The parties made this additional agreement to allow IDS additional time to pay down past due amounts and any post-September 2001 disputed amounts that were disputed but ultimately denied. IDS' own emails proves this

separate agreement. Importantly, this separate agreement to include additional amounts into the Past Due Q Account was not a modification of the Settlement Agreement or Settlement Amendment.

Issue 1(a): What are the amounts owed under the original Settlement Agreement and Settlement Amendment?

IDS still owes BellSouth over \$597,000 for the Past Due Q Account. As stated above, there were three separate amounts included into the Past Due Q Account, one of which only related to the Settlement Agreement or the Settlement Amendment (the \$2.475 million). The other two amounts the – the approximate \$667,000 in post-September 2001 billing disputes and the \$68,000 in post-September 2001 undisputed, unpaid billings – were not part of the Settlement Agreement or Settlement Amendment. The amount remaining in the Past Due Q Account is unpaid, undisputed, and past due.

Issue 1(b): What are the amounts owed under any other agreement or amendment?

As stated above, the parties, in separate agreement, agreed to include additional amounts into the Past Due Q Account, which increased the amount in the Past Due Q Account from \$2.475 million to over \$3.2 million. IDS still owes BellSouth over \$597,000 for the Past Due Q Account.

Issue 1(c): Have those amounts been paid?

No. IDS still owes BellSouth over \$597,000 for the Past Due Q Account.

Issue 2: Did BellSouth properly terminate IDS's access to LENS in December 2003 pursuant to the Interconnection Agreement?

Yes. The Current Interconnection Agreement requires that all amounts owed for services rendered under a prior agreement are considered past due and owing for

treatment purposes under the Current Agreement. Thus, BellSouth properly relied on the Current Agreement in exercising its rights for IDS' failure to pay past due and undisputed billings, regardless of when services are rendered. Furthermore, irrespective of the nonpayment of the Past Due Q Account, BellSouth properly terminated IDS' access to LENS because IDS failed to pay undisputed and past due resale billings and asserted duplicative UNE disputes totaling over \$1.8 million.

Issue 3: If BellSouth improperly terminated IDS's access to LENS in December 2003, then would such action constitute anticompetitive behavior in violation of Chapter 364, Florida Statutes?

Position: No. BellSouth's actions in terminating IDS' LENS for nonpayment of undisputed and past due billings was proper under the Current Agreement and thus did not constitute anticompetitive behavior.

Issue 4(a): Did BellSouth assess the correct Daily Usage File (DUF) charges for services provided to IDS in Florida?

Position: Yes. BellSouth properly charged IDS DUF records pursuant to the terms of the Prior and Current Agreement and at the appropriate rate. Further, in compliance with the Commission's September 2002 UNE Order, BellSouth charged IDS the DUF rate established therein only after the parties amended the Prior Agreement to incorporate said rates. BellSouth has no obligation and IDS is not entitled to retroactive application of the September 2002 UNE Order DUF rates.

Issue 4(b): Does IDS owe BellSouth for DUF charges, if so, how much is owed?

Position: Yes. IDS owes BellSouth \$1,438,276.63 for DUF charges from December 2001 to November 2002.

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

Position: Yes. BellSouth properly billed IDS market based rates for switching under the Prior and Current Agreement and for the appropriate lines that reside in the applicable MSA. The rates charged are correct and BellSouth billed IDS in a mechanized fashion and in the proper format.

Issue 5(b): Did BellSouth correctly calculate and bill IDS the appropriate amount?

Position: Yes. The rates charged are correct and BellSouth billed IDS in a mechanized fashion and in the proper format.

Issue 5(c): Did IDS properly dispute the amounts in subpart 5(b) in accord with the provisions of the parties' interconnection agreement? If not, has IDS violated the interconnection agreement?

Position: No. IDS failed to comply with the Prior and Current Interconnection Agreement in asserting its dispute as to the market based rates. In failing to properly dispute the market based rate charges, IDS has violated the interconnection agreement.

Issue 5(d): Based on subparts (a) and (b), how much does IDS owe BellSouth, if any?

Position: As of June 2004, IDS disputed \$3,187,116 for market based rate charges. IDS should be required to pay all amounts that they are disputing.

Issue 6: When should any credit or payment be submitted?

Position: Pursuant to Attachment 7, Section 2.2, if a billing dispute is resolved in BellSouth's favor, IDS must make "immediate payment of any of the disputed amount owed" or BellSouth shall have the right to "pursue normal treatment procedures." Accordingly, if the Commission finds in BellSouth's favor for the disputes asserted in this proceeding, IDS should make immediate payment of all amounts owed.

E. Stipulations

None.

F. Pending Motions

None.

I. Confidentiality Motions

1. Request for Confidential Classification of BellSouth's Supplemental Response to Staff's 2nd Interrogatories – Filed August 13, 2004
2. BellSouth's Notice of Intent to Request Confidential Classification for the Rebuttal Testimony of Gregory R. Follensbee; filed August 12, 2004
3. Request for Confidential Classification of the Direct Testimony of David F. Melton, Jr. and Exhibit DM-1; filed August 12, 2004
4. Request for Confidential Classification of BellSouth's Response to Staff's 2nd Request for Production, No. 7; filed August 4, 2004
5. Request for Confidential Classification of portions of Staff's Audit and Workpapers; filed July 28, 2004
6. Request for Confidential Classification for BellSouth's Responses to Staff's 1st Interrogatories (Nos. 1, 2 and 10); 1st Request for Production (No. 2) and 1st Request for Admissions (No. 2); filed June 18, 2004
7. Request for Confidential Classification of Exhibits F, G, H and I to BellSouth's Counterclaim; filed May 28, 2004
8. Request for Confidential Classification of BellSouth's Partial Motion to Dismiss; filed February 6, 2004

Respectfully submitted this 17th day of August, 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.

Nancy White

NANCY B. WHITE

(BIA)

c/o Nancy H. Sims

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