

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for arbitration  
concerning complaint of IDS  
Telcom LLC against BellSouth  
Telecommunications, Inc.  
regarding breach of intercon-  
nection agreement.

DOCKET NO. 010740-TP  
ORDER NO. PSC-01-1865-PHO-TP  
ISSUED: September 17, 2001

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on September 10, 2001, in Tallahassee, Florida, before Commissioner J. Terry Deason, as Prehearing Officer.

APPEARANCES:

R. DOUGLAS LACKEY, ESQUIRE, 675 West Peachtree Street,  
Suite 4300, Atlanta, Georgia 30375.  
On behalf of BellSouth Telecommunications, Inc.

SUZANNE F. SUMMERLIN, ESQUIRE, 1311-B Paul Russell Road,  
Suite 201, Tallahassee, Florida 32301.  
On behalf of IDS Telecom LLC.

MARY ANNE HELTON, ESQUIRE, Florida Public Service  
Commission, 2540 Shumard Oak Boulevard, Tallahassee,  
Florida 32399-0850.  
On behalf of the Commission Staff.

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

II. CASE BACKGROUND

IDS Long Distance, Inc. n/k/a IDS Telecom, L.L.C. (IDS) filed a Complaint and Request for Emergency Relief against BellSouth Telecommunications, Inc. (BellSouth) on May 11, 2001. IDS raises

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four counts against BellSouth: (1) BellSouth has breached the interconnection agreement by failing to provide IDS OSS and UNEs at parity; (2) BellSouth has perpetrated an anticompetitive campaign of "win back" tactics against IDS, including the Full Circle Program and fraudulent telemarketing schemes; (3) BellSouth has permitted the sharing of IDS's customer proprietary network information between its retail and wholesale divisions in violation of the Telecommunications Act of 1996; and (4) the Commission should immediately initiate a show cause proceeding to investigate and sanction BellSouth for its anticompetitive activities that have harmed citizens of the State of Florida. BellSouth filed a response and the matter has been set for hearing.

### III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the

proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of the Commission Clerk and Administrative Services's confidential files.

IV. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so

answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>IDS Direct</u>		
Keith Kramer	IDS	All issues
Becky Wellman	IDS	All issues
Angel Leiro	IDS	3, 4
Bradford Hamilton	IDS	3, 4
<u>BST Direct and Rebuttal</u>		
John A. Ruscilli* Elizabeth Rokholm Shelley Walls	BellSouth	2, 3, 4, 5
Ken L. Ainsworth* Claude P. Morton Linda W. Tate	BellSouth	1, 2, 3
Mary K. Batcher, Ph.D.	BellSouth	3
Jerry L. Wilson* Pattie Knight Pat Rand Jimmy Patrick	BellSouth	1, 2, 5
Petra Pryor* Michael Lepkowski	BellSouth	1, 2
Sandra Harris**	BellSouth	2
Janet Miller-Fields* Robby K. Pannell	BellSouth	1, 2, 3, 4

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
Beth Shiroishi**	BellSouth	2, 3
<u>IDS Rebuttal</u>		
Keith Kramer Becky Wellman	IDS	All issues
Bill Gulas Becky Wellman	IDS	All issues
Angel Leiro	IDS	3, 4
Robert Hacker	IDS	5
Keith Kramer	IDS	All issues

\* This witness also prefiled direct testimony in addition to prefiling rebuttal testimony as part of a panel.

\*\* This witness prefiled direct and rebuttal testimony.

#### VII. BASIC POSITIONS

**IDS:** BellSouth has breached its Interconnection Agreement with IDS by failing to provide IDS OSS and UNEs and UNE-Ps at parity. BellSouth has engaged in anticompetitive activities in violation of Chapter 364, Florida Statutes, and the Telecommunications Act of 1996. BellSouth has inappropriately utilized IDS' CPNI data in violation of the Telecommunications Act of 1996 by permitting its retail unit to have access to IDS' proprietary information, obtained by BellSouth's wholesale unit, for the purpose of winning back customers that have switched to IDS. The Florida Public Service Commission should order BellSouth to refund to IDS 40% of the monies paid to BellSouth during the last two years for the sub-parity OSS and access to UNEs and UNE-Ps that BellSouth has provided IDS. The Florida Public Service Commission should order BellSouth to provide IDS direct access to its DOE and SONGS systems so IDS will not be at BellSouth's mercy in the processing of IDS' orders. The Florida Public Service Commission should sanction

BellSouth for its anticompetitive activities and place a moratorium on all BellSouth win back activities for twelve months after the point at which BellSouth proves on an evidentiary record that it is providing IDS OSS and UNEs and UNE-Ps at parity.

**BST:** The underlying theme of IDS' Complaint is that BellSouth has attempted to put IDS out of business by failing to provide IDS non-discriminatory access to OSS and by allegedly engaging in anticompetitive behavior against IDS. IDS' Complaint and the direct testimony it has filed in these proceedings, however, consist of unsupported allegations, theories, and misunderstandings. While there have been isolated problems in provisioning specific UNEs to IDS, on occasion, these problems are not systemic, nor do they constitute evidence of any willful acts on BellSouth's part. Instead, they reflect the complex nature of the business in which BellSouth and IDS participate. Similarly, there may also have been isolated instances in which BellSouth authorized representatives may have violated BellSouth's policies in attempting to promote BellSouth's win back promotions. As the evidence will show, however, BellSouth has addressed each of these instances in the past and it has taken appropriate measures to prevent these incidents from arising in the future.

Contrary to IDS' theories, the facts at the hearing will show that (1) BellSouth provides IDS nondiscriminatory access to OSS; (2) BellSouth provides IDS nondiscriminatory access to UNEs and UNE-Ps; (3) BellSouth has not engaged in anticompetitive behavior; (4) BellSouth has not improperly used CPNI information; and (5) IDS has failed to prove that it is entitled to any of the remedies it seeks in this proceeding.

**STAFF:** Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VIII. ISSUES AND POSITIONS

**ISSUE 1:** Has BellSouth breached its interconnection agreement with IDS by failing to provide IDS OSS at parity?

**POSITIONS**

**IDS:** Yes. The Commission should find that BellSouth has breached its Interconnection Agreement with IDS by failing to provide IDS OSS and UNEs and UNE-Ps at parity. BellSouth's OSS systems are inherently flawed and permit an unreasonably high level of processing delays and inaccuracies that results in IDS' customers having to wait much longer to get service and having to endure disconnections and loss of features and other errors to a much more frequent and serious degree than occurs with BellSouth's retail customers. (IDS' Witnesses Kramer, Wellman, and Gulas)

**BST:** No. BellSouth is required by the Telecommunications Act of 1996 to provide ALECs non-discriminatory access to its OSS. Pursuant to this obligation, BellSouth provides IDS non-discriminatory access to its OSS for the purpose of providing functionality of pre-ordering, ordering, provisioning, maintenance and repair and billing in substantially the same time and manner as it does for itself. BellSouth provides this non-discriminatory access to its OSS via electronic and manual interfaces.

**STAFF:** No position at this time.

**ISSUE 2:** Has BellSouth breached its interconnection agreement with IDS by failing to provide IDS UNEs and UNE-Ps at parity?

**POSITIONS**

**IDS:** Yes. The Commission should find that BellSouth has breached its Interconnection Agreement with IDS by failing to provide IDS with UNEs and UNE-Ps at parity. BellSouth refused to provide IDS UNEs and UNE-Ps for a substantial period of time. When BellSouth has provided



UNE-Ps for IDS, it has taken an unreasonable amount of time to process orders, and BellSouth's performance failures have caused IDS' customers to suffer disconnections, loss of features, etc. BellSouth's failure to provide IDS UNES and UNE-Ps at parity have caused IDS substantial damages in terms of economic damages and reputation damages. (IDS' Witnesses Kramer, Wellman, and Gulas)

**BST:** No. BellSouth provides IDS non-discriminatory access to UNES and UNE-Ps. While, as with any large undertaking of such a complex nature, there have been a few problems in the provisioning of some UNES for IDS, BellSouth submits that it is in compliance with the requirements established by the FCC and the Commission' - with regard to the rates, terms, and conditions that its offers for UNES, including UNE-P and with regard to providing xDSL service over UNE loops when BellSouth is not the voice provider. Furthermore, BellSouth's most recent analysis of UNE-P conversions establishes that out of 34,063 UNE-P Orders from July 18, 2001 to August 6, 2001, only .53% experienced any type of conversion related problem, with only .17% experiencing a no dial tone disruption of service.

**STAFF:** No position at this time.

**ISSUE 3:** Has BellSouth engaged in anticompetitive activities against IDS in violation of Chapter 364, Florida Statutes, and the Telecommunications Act of 1996?

**POSITIONS**

**IDS:** Yes. BellSouth has engaged in a consistent, intentional effort to win back IDS' customers, utilizing win back tariffs such as the Full Circle Program, especially since January 2001. In these win back efforts, BellSouth has capitalized on BellSouth's own OSS and UNE-P failures to lure customers back to BellSouth, blaming IDS for disconnections and loss of features and unreasonable delays when IDS had no part in causing them. BellSouth's

telemarketers have made misrepresentations regarding IDS going into bankruptcy and having financial problems and otherwise disparaging IDS to IDS' customers and potential customers. (IDS' Witnesses Kramer, Wellman, Gulas, Leiro, and Hamilton)

**BST:** No. BellSouth is not engaging in anticompetitive behavior through its win back promotions. Due to the nature of the competitive market, it is appropriate for BellSouth to offer win back promotions and BellSouth's promotions are in compliance with FCC and Commission rules. While there have been complaints from ALECs that certain telemarketers were informing end users that certain ALECs were going bankrupt, it is against BellSouth policy for any employee or authorized representative of BellSouth to criticize a competitor to a customer or to interfere with any contract between a competitor and its customers. In those instances where BellSouth learned of such complaints, BellSouth took immediate action to investigate and in fact suspended its outbound win back efforts pending the outcome of its investigation. BellSouth has taken appropriate steps to ensure compliance with BellSouth internal policies regarding sales and marketing practices as well as applicable statutory and regulatory requirements.

**STAFF:** No position at this time.

**ISSUE 4:** Has BellSouth inappropriately utilized IDS' CPNI data in violation of the Telecommunications Act of 1996?

**POSITIONS**

**IDS:** Yes. BellSouth has permitted its retail unit to have inappropriate access to IDS' Customer Proprietary Network Information in the possession of BellSouth's wholesale unit. The purpose of this inappropriate access has been to assist BellSouth in winning back IDS' customers, sometimes even before their conversion to IDS had been completed. (IDS' Witnesses Kramer, Wellman, Gulas, Leiro, and Hamilton)

**BST:** No. BellSouth is in compliance with the FCC's rules regarding win back programs for customers who have converted to a competitor. BellSouth's retail side develops its win back lists using retail information consistent with applicable FCC rulings.

**STAFF:** No position at this time.

**ISSUE 5:** What remedies, if any, should the Commission order BellSouth to provide IDS in the event IDS proves that BellSouth has breached the Interconnection Agreement or engaged in anticompetitive activities?

**POSITIONS**

**IDS:** In the event IDS proves that BellSouth has breached the Interconnection Agreement by failing to provide IDS OSS and UNEs and UNE-Ps at parity, the Florida Public Service Commission should order BellSouth to make a 40% refund to IDS of the monies paid to BellSouth over the past two years. The Commission should order BellSouth to provide IDS direct access to BellSouth's DOE AND SONGS systems. In the event IDS proves that BellSouth has engaged in anticompetitive activities, the Commission should order BellSouth to immediately cease all win back tariffs, promotions, and telemarketing activities targeted at IDS' customers until twelve months after BellSouth proves on an evidentiary record that it is providing IDS OSS and UNEs and UNE-Ps at parity with that provided to its own retail customers. The Commission should sanction BellSouth for such activities and for the inappropriate use of IDS' CPNI data. The Commission should strongly consider the structural separation of BellSouth's retail unit into a separate corporate entity as requested by AT&T's Petition in Docket No. 01 0345-TP. The Commission should not grant BellSouth Section 271 relief as it has requested in Docket No. 960786-TL until it proves on an evidentiary record that: it is providing IDS and other CLECs OSS and UNEs and UNE-Ps at parity and that it is not engaging in anticompetitive activities. (IDS' Witnesses Kramer, Wellman, and Gulas)

**BST:** The remedies requested by IDS are not reasonable. BellSouth has dealt fairly with IDS and has not, in any manner, attempted to put IDS, or any ALEC, out of business. If the Commission finds that BellSouth breached its Interconnection Agreement with IDS, then the only remedy should be those remedies set forth in that agreement. As to any additional remedies requested by IDS, BellSouth submits that they are unreasonable, unwarranted, and may exceed the Commission's authority.

**STAFF:** No position at this time.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>IDS Direct</u>			
Keith Kramer	IDS	KK-1	Resume of Keith Kramer
	IDS	KK-2	November 2, 1999, amendment to Interconnection Agreement between IDS and BellSouth signed January 29, 1999
	IDS	KK-3	April 17, 2000, letter from Ms. Petra Pryor
	IDS	KK-4	May 17, 2000 letter from Glenn Estell

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
	IDS	KK-5	May 12, 2000, letter to Duane Ackerman
	IDS	KK-6	May 19, 2000 letter to Petra Pryor
	IDS	KK-7	June 8, 2000 letter from Petra Pryor
	IDS	KK-8	August 1, 2000, letter to FPSC requesting permission to participate in the staff workshop in Docket No. 0001 21 -TP
	IDS	KK-9	August 30, 2000 letter from Petra Pryor to Joe Millstone
	IDS	KK-10	September 19, 2000, letter from Rick Hemby
	IDS	KK-11	October 4, 2000 letter to Mr. Gulas
	IDS	KK-12	November 28, 2000 letter from Petra Pryor

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
	IDS	KK-13	January 8,2001, letter from Claude Morton
	IDS	KK-14	Affidavit of Keith Kramer
Rebecca (Becky) Wellman	IDS	BW-1	Resume of Rebecca Wellman
Bradford Hamilton	IDS	BH-1	Resume of Bradford Hamilton
	IDS	BH-2	Full Circle Program notification dated August 25, 2000
	IDS	BH-3	Full Circle Program Tariff notification
Angel Leiro	IDS	AL-1	Resume of Angel Leiro

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
	IDS	AL-2	Composite Exhibit of Customer Affidavits [Affidavits of Ms. Leonora Suglio, Mr. Mason Tolman, Mr. Alvaro Lozano, Ms. Laura Tirse, Ms. Suki York, Ms. Vanessa McCaffrey, Mr. Gregg McGrady, Ms. Jennifer Cleaver, Mr. Michael Larson, Ms. Ennette Auter, Ms. Becky Pleus, Mr. Joseph A. Neves, and Mr. Robert J. Eury.]
<u>BellSouth Direct and Rebuttal</u>			
Ken L. Ainsworth	BellSouth	KLA-1	(Confidential) IDS Service Orders

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Ken L. Ainsworth	BellSouth	KLA-2	UNE-P Conversion LMOS Analysis Summary Page July 18 through August 6, 2001 and June 22 through August 6, 2001
Mary K. Batcher	BellSouth	MKB-1	Telephone Survey Script Switching Local Telephone Service Providers from IDS to BellSouth
	BellSouth	MKB-2	Chart - First choice of reason for switching local phone service from IDS to BellSouth
	BellSouth	MKB-3	Chart - First choice of reason for switching local phone service from IDS to BellSouth by length of time with IDS



<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
	BellSouth	MKB-4	Chart - Did you receive any calls from BellSouth representatives?
	BellSouth	MKB-5	Chart - Did you receive any calls from BellSouth representatives by length of time with IDS?
John A. Ruscilli	BellSouth	JAR-1	Letter to Michael Noshay from Shelley Walls dated, October 28, 1999
	BellSouth	JAR-2	BellSouth's Win Back Review and Implementation
John Ruscilli Elizabeth Rokholm Shelley Walls	BellSouth	JAR-3	News Advertisement for Xspedius, dated August 19, 2001 The Birmingham News - 3D

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
	BellSouth	JAR-4	Letter to Network Vice Presidents from Hal G. Henderson and J.R. Satterfield, dated June 22, 2001
<u>IDS Rebuttal</u>			
Keith Kramer Becky Wellman	IDS	KK/BW-2	Video Tape Demonstrating Activity "W"
	IDS	KK/BW-3	Excerpt from Deposition of Gloria Burr, BellSouth Employee, Pages 1 and 64
	IDS	KK/BW-4	Carrier Notification Letter Dated August 27, 2001
William P. Gulas Becky Wellman	IDS	WG/BW-1	Software Release Process
	IDS	WG/BW-2	Carrier Notification Letters Dated April 6, 2000, for SN91081703 and SN91081725

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Angel Leiro	IDS	AL-3	Composite Exhibit of All Discovery Produced by IDS to BellSouth
Bradford Hamilton	IDS	BH-1	Article from the Florida Sun Sentinel dated September 4, 2001, entitled "Inquiries Target BellSouth Offers"
Robert H. Hacker	IDS	RHH-1	Letter of Robert H. Hacker to Claude P. Morton Dated May 2, 2001
	IDS	RHH-2	Letter of Robert H. Hacker to Claude P. Morton Dated May 31, 2001

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Keith Kramer	IDS	KK-13	Excerpt from Deposition of Petra Pryor, BellSouth Employee, Pages 1, 11 and 12. [Note: There is an Exhibit KK-13 attached to Mr. Kramer's Direct Testimony and that number was inadvertently duplicated on this first rebuttal exhibit. Therefore, this rebuttal exhibit is being identified as KK-13 Rebuttal).]
	IDS	KK-14	Excerpt from Deposition of Gloria Burr, BellSouth Employee, Pages 1, 54, 99, 100.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
	IDS	KK-15	EDI TrustedLink Commerce PC Package Training - Customized for IDS-LD.
	IDS	KK-16	Letter from Gary Smart, BellSouth Interconnecti on Services, Dated December 28, 1999, with Attached Agreement for Provision of List of ADSL Qualified Loops.
	IDS	KK-17	Letter to Keith Kramer from Jerry Watts, Vice President, BellSouth, Dated August 27, 2001.
	IDS	KK-18	Letter to IDS Telcom, LLC, from Claude P. Morton Dated January 8, 2001.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
	IDS	KK-19	E-mail from BellSouth to Bud Higdon, IDS, Dated April 27, 2000.
	IDS	KK-20	E-mail from Terry Hudson to Michael Lepkowski Regarding Testing of Bulk Ordering
	IDS	KK-21	E-mail from Pat Rand to Landra Martin Regarding LSF Issue
	IDS	KK-22	Letter to FCC by IDS Customer Dated April 30, 2001
	IDS	KK-23	Letter to Rick Moses, Florida PSC, from Angel Leiro, Dated March 2, 2001, With Attached List of 633 IDS Customers

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
	IDS	KK-24	Wall Street Journal Article Dated August 28, 2001, entitled "AT&T Ratchets Up Efforts in Washington Pushing Bell Breakup Plan"
	IDS	KK-25	Miami Herald Newspaper Advertisement by BellSouth
	IDS	KK-26	Atlanta Journal-Constitution Newspaper Advertisement by BellSouth

Parties and Staff reserve the right to identify additional exhibits for the purposes of cross-examination, impeachment, or any other purpose authorized by the applicable Florida Rules of Evidence and Rules of this Commission.

X. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

XI. PENDING MOTIONS

BellSouth's September 14, 2001, Motion to Quash Subpoena Duces Tecum.

XII. PENDING CONFIDENTIALITY MATTERS

Both IDS and BellSouth have filed Notices of Intent to Request Confidentiality. All Requests for Confidentiality shall be filed by September 18, 2001.

BellSouth's September 10, 2001, Request for Confidential Classification of Exhibit KLA-1.

BellSouth's September 13, 2001, Request for Confidential Classification of its Response to Staff's Second Set of Interrogatories No. 42.

XIII. RULINGS

BellSouth's Motion for a Continuance

BellSouth filed a Motion to Compel Discovery and for a Continuance on August 22, 2001. IDS responded in opposition on August 29, 2001. By Order No. PSC-01-1790-PCO-TP, issued September 5, 2001, I granted BellSouth's Motion to Compel and gave IDS until September 6, 2001, to comply with all outstanding discovery requests propounded by BellSouth. In addition, I reserved ruling on BellSouth's motion for a continuance until I could consider whether IDS had complied with BellSouth's discovery requests. At the prehearing conference, the parties continued to disagree over whether IDS had answered all of BellSouth's discovery. BellSouth argued that discovery remained outstanding, and IDS responded that there was no outstanding discovery.

Having considered the pleadings and the arguments raised by the parties at the prehearing conference, I find that no further discovery remains outstanding. IDS has complied with my motion to compel and provided answers or documents to all outstanding discovery requests propounded by BellSouth. Since no discovery remains outstanding, I find there is no reason to continue the hearing on this basis. Accordingly, BellSouth's motion to continue the hearing is denied.

BellSouth's Motion for Leave to File Supplemental Rebuttal Testimony

BellSouth filed a Motion for Leave to File Supplemental Rebuttal Testimony on August 29, 2001, in which it asked for leave



to file supplemental rebuttal testimony to address the discovery IDS failed to timely answer prior to its extended due date for filing rebuttal testimony as established in Order No. PSC-01-1640-PCO-TP, issued August 10, 2001. At the prehearing conference, IDS stated that it does not object to BellSouth filing this supplemental rebuttal testimony.

Having considered the pleadings and the arguments raised by counsel at the prehearing conference, I find that BellSouth's motion to file supplemental rebuttal testimony shall be granted. BellSouth shall have until the close of business on Monday, September 17, 2001, to file supplemental rebuttal testimony to address discovery responses provided by IDS between August 20, 2001, and September 6, 2001.

BellSouth's Motion to Defer OSS Issue to Generic Docket Addressing Third Party Testing of BellSouth's OSS

BellSouth filed a Motion to Defer OSS Issue to Generic Docket Addressing Third Party Testing of BellSouth's OSS on August 27, 2001. BellSouth argued that Issue 1, which states, "Has BellSouth breached its interconnection agreement with IDS by failing to provide IDS OSS at parity?" should be deferred to the third party testing portion of Docket No. 960786-TP to, in part, eliminate inefficiencies and the potential for inconsistent results. IDS responded in opposition to this motion on September 4, 2001. According to IDS, it has a fundamental due process right to pursue an individual complaint against BellSouth. IDS also argued that it would create extreme financial and procedural hardships for IDS if Issue 1 was deferred to Docket No. 960786-TP.

Having considered the pleadings and the parties arguments at the prehearing conference, I find that BellSouth's motion to defer Issue 1 shall be denied. IDS is entitled to have the Commission hear its complaint in this docket.

Opening Statements

Opening statements, if any, shall not exceed ten minutes per party.

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Based on the foregoing, it is


ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission. It is further

ORDERED that BellSouth Telecommunication Inc.'s Motion for a Continuance is denied as set out in the body of this order. It is further

ORDERED that BellSouth Telecommunication Inc.'s Motion for Leave to File Supplemental Rebuttal Testimony is granted and that BellSouth shall have until September 17, 2001, to file supplemental rebuttal testimony as defined in the body of this order. It is further

ORDERED that BellSouth Telecommunication Inc.'s Motion to Defer OSS Issue to Generic Docket Addressing Third Party Testing of BellSouth's OSS is denied as set out in the body of this order.

By ORDER of Commissioner J. Terry Deason as Prehearing Officer, this 17th day of September, 2001.

  
J. TERRY DEASON  
Commissioner and Prehearing Officer

( S E A L )

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.