

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of IDS Long Distance, Inc. )  
n/k/a IDS Telcom, L.L.C., Against )  
BellSouth Telecommunications, Inc., and )  
Request for Emergency Relief. )

Docket No. 010740-TP  
Filed August 28, 2001

**IDS TELCOM, L.L.C.'s RESPONSE TO BELL SOUTH'S  
MOTION TO DEFER ISSUES TO GENERIC DOCKET  
ESTABLISHED TO INVESTIGATE THE EXISTENCE OF  
ANTICOMPETITIVE BEHAVIOR BY BELL SOUTH**

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IDS Long Distance, Inc. n/k/a IDS Telcom, L.L.C., ("IDS"), by and through its undersigned counsel, hereby files this Response to BellSouth's Motion to Defer Issues to Generic Docket Established to Investigate the Existence of Anticompetitive Behavior by BellSouth, and states as follows:

1. BellSouth Telecommunications, Inc. ("BellSouth") filed its Motion to Defer Issues to Generic Docket Established to Investigate the Existence of Anticompetitive Behavior by BellSouth ("Motion to Defer Issues"), filed by BellSouth Telecommunications, Inc. ("BellSouth") on August 21, 2001. In its Motion to Defer Issues, BellSouth requests that the Commission issue an Order deferring Issues Nos. 3 and 4 and a portion of Issue 5 which were raised and identified in IDS' Complaint and which were established by the Prehearing Officer in Order No. PSC-01-1501-PCO-TP, issued July 18, 2001. These issues ask whether BellSouth has engaged in anticompetitive conduct, and what are the appropriate remedies, if any, for such alleged behavior.

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BellSouth requests that these issues be deferred to the generic docket the Commission established to investigate alleged anticompetitive behavior by BellSouth (Docket No. 011077-TL, at least partially at the request of IDS.

2. BellSouth has a two-point rationale for its request that the Commission defer the anticompetitive issues in IDS' Complaint to the Commission's generic investigation in Docket No. 011077-TL). The first part of BellSouth's rationale is that IDS' Complaint states that BellSouth's anticompetitive activities have affected and are affecting all ALECs in Florida. The second part of BellSouth's rationale for deferring the anticompetitive issues to the generic docket is that the Commission can more efficiently utilize its resources by addressing these issues that affect all ALECs in a generic proceeding.
3. IDS applauds the Commission's decision to establish Docket No. 011077-TL to investigate IDS' allegations of BellSouth's anticompetitive activities, as well as the allegations of other ALECs. This Docket is very appropriate to investigate the types of activities that BellSouth, Verizon and Sprint have engaged in as incumbent local exchange companies ("ILECs") and what sanctions might be appropriate in regard to the community of ALECs. Such a generic proceeding is also particularly useful in determining action the Commission can take on a prospective basis to prohibit and restrict

- such behavior by ILECs in order to assure the development of competition in the local telecommunications services market in Florida.
4. In the case of IDS' Complaint in Docket No. 010740-TP, however, IDS strongly objects to BellSouth's Motion to Defer Issues on the basis that IDS has a legal right to put on its evidence regarding BellSouth's anticompetitive activities against IDS individually in a formal Section 120.569, Florida Statutes, proceeding before the Commission. In such a proceeding, intervenors are not legally appropriate because they cannot demonstrate the required legal rudiments of being "substantially affected" parties.
  5. It is true that all ALECs are negatively affected in a general sense by BellSouth's anticompetitive behavior in that the local telecommunications services market does not develop, and some ALECs have been specifically affected in a serious fashion. A generic docket to investigate such behavior is entirely appropriate. However, it is not true that all ALECs have been damaged or are substantially affected by BellSouth's specific anticompetitive actions directed toward IDS individually.
  6. In a generic proceeding such as that to be held in Docket No. 011077-TL, IDS would be put in the position of having countless "intervenors" permitted to participate in its individual complaint against BellSouth. This would constitute a denial of federal and state constitutional due process to IDS. The generic proceeding will involve three incumbent

local exchange companies (BellSouth, Verizon, and Sprint) and countless numbers of ALECs that will be invited to participate. Such a proceeding would be incalculably costly for IDS. A generic proceeding is extremely time-consuming and costly in that the tremendous numbers of participants must be served copies of every document and pleading. A generic proceeding would delay IDS' redress by many, many months, if not years. As reflected in its Complaint, IDS has expressed an urgent need for immediate help from the Florida Public Service Commission to avoid the drastic consequences for IDS of BellSouth's continuing anticompetitive behavior against IDS.

7. The Commission has consistently and regularly denied intervention to interested ALECs in various arbitration and complaint proceedings (that pitched an individual ALEC against BellSouth) on the basis that the intervenors were not substantially-affected parties. It would be completely legally inconsistent and inappropriate, as well as a complete denial of due process, to require IDS to put on its evidence in a generic proceeding involving other ALECs and ILECs.
8. In the generic proceeding in Docket No. 011077-TL, the Commission will be able to perform the groundwork for the ultimate promulgation of rules regarding the prospective activities of BellSouth, Verizon and Sprint in regard to win back activities targeted at customers of ALECs in Florida. The Commission may also be able to apply sanctions that will apply across the board to the benefit of all ALECs in Florida.

However, the relief the Commission will be able to grant in the context of the generic proceeding will not be the type of specific relief that IDS requires. IDS has alleged that BellSouth has breached its Interconnection Agreement with IDS by failing to provide OSS and UNEs to IDS at parity. However, IDS has also alleged that it is the combination of BellSouth's failure to provide OSS at parity with the win back programs that has resulted in the tremendous damage IDS has suffered. These claims are intimately intertwined; the relief IDS is requesting for these claims is also, necessarily, intertwined. It is not appropriate to deny IDS its formal evidentiary hearing on these anticompetitive issues in the context of the Section 120.569, Florida Statutes, proceeding scheduled for September 21, 2001, and October 1, 2001.

WHEREFORE, IDS respectfully requests that the Commission deny BellSouth's Motion to Defer Issues to Generic Docket Established to Investigate the Existence of Anticompetitive Behavior by BellSouth.

Respectfully submitted, this 28th day of August, 2001.



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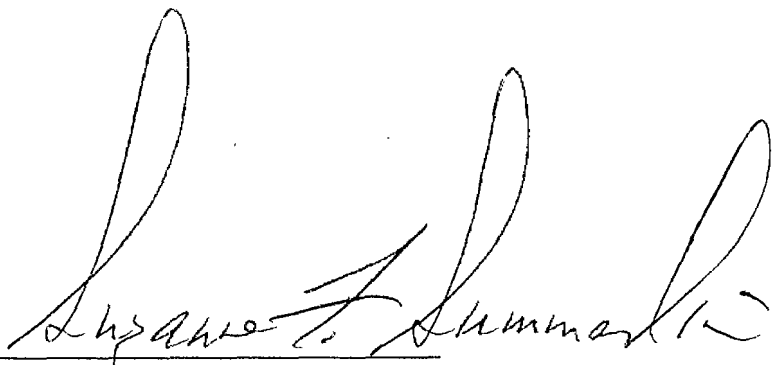
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing IDS' Response to BellSouth's Motion to Defer Issues to Generic Docket Established to Investigate the Existence of Anticompetitive Behavior by BellSouth was furnished by Hand Delivery(\*), Facsimile(\*\*), and U.S. Mail this 28<sup>th</sup> day of August, 2001, to:

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