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August 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. 010740-TP (IDS Complaint)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Motion for Leave to File Supplemental Rebuttal Testimony, 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*  
James Meza III (LA)

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

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**CERTIFICATE OF SERVICE**  
**Docket No. 010740-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via  
by Electronic Mail and Federal Express this 29th day of August, 2001 to the following:

Mary Anne Helton  
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James Meza III (LA)

(+) Signed Protective Agreement

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Complaint of IDS Long Distance, Inc. )      Docket No.: 010740-TP  
n/k/a IDS Telecom, L.L.C., Against      )  
BellSouth Telecommunications, Inc., and      )  
Request for Emergency Relief      )      Filed: August 29, 2001  
\_\_\_\_\_ )

**MOTION FOR LEAVE TO FILE  
SUPPLEMENTAL REBUTTAL TESTIMONY**

BellSouth Telecommunications, Inc. ("BellSouth") respectfully requests that the Florida Public Service Commission grant it leave to file supplemental rebuttal testimony after it receives complete and accurate responses to the discovery that it served on IDS Long Distance, Inc. n/k/a IDS Telecom, L.L.C. ("IDS"), which IDS has failed to answer and which is the subject of BellSouth's pending Motion to Compel and for a Continuance. In support of this motion, BellSouth states the following:

1. On May 11, 2001, IDS filed a Complaint against BellSouth alleging that BellSouth has breached its interconnection agreement with IDS and engaged in anticompetitive activities to the detriment of IDS and other ALECs. IDS requested, among other relief, that the Commission hold an expedited hearing in this matter. Complaint ¶ 84(a).

2. On July 18, 2001, the Commission issued its Order Establishing Procedure in this docket, Order No. PSC-01-1501-PCO-TP ("Procedural Order"). In its Procedural Order, the Commission ruled that "[d]ue to the expedited time schedule for this proceeding, all discovery responses shall be served within 20 days of receipt of the discovery requests." Order at p. 2. The Procedural Order also required that objections to or requests for clarifications of discovery requests be made within 10 days of service of

the discovery requests. *Id.* The Procedural Order set August 13, 2001, as the deadline for BellSouth to file its direct and rebuttal testimony, and it scheduled the evidentiary hearing for September 21 and October 1, 2001. *Id.* at 6-7.

3. On July 31, 2001, BellSouth served IDS with its First Set of Interrogatories and First Request for Production of Documents (“Discovery Requests”). According to the Procedural Order, any objections to the Discovery Requests were required to be made by August 10, 2001, and IDS’ responses were due to be served on or before August 20, 2001.

4. On August 6, 2001, BellSouth filed a Motion for an Extension of Time to August 27, 2001, to file its testimony, on the grounds that it needed time to analyze the discovery responses due from IDS on August 20, 2001, before filing its testimony, and because IDS’ direct testimony filed on July 23, 2001, is long and fact-intensive.

5. On August 10, 2001, the Commission issued its Order No. PSC-01-1640-PCO-TP, granting BellSouth until August 27, 2001, to file rebuttal testimony so as to “enable BellSouth to consider IDS’ discovery responses when it files its rebuttal testimony.” The Commission also extended the deadline for BellSouth to file its direct testimony to August 20, 2001.

6. IDS did not object to *any* of BellSouth’s Discovery Requests, nor did it seek an extension of time to serve its responses.

7. After 5:30 p.m. on August 20, 2001, IDS served BellSouth’s Florida legal office with IDS’ Answers to BellSouth’s First Set of Interrogatories and IDS’ Responses to BellSouth’s First Request for Production of Documents. Because IDS’ responses did not, for the most part, even purport to be responsive to BellSouth’s discovery requests, on

August 22, 2001, BellSouth filed a Motion to Compel and for a Continuance. For instance, in response to each and every one of BellSouth's 20 requests for productions of documents, IDS stated unabashedly:

IDS has not had the resources to collect all the records, notes, correspondence that it may have in its possession. If and when IDS has this compiled it will supply them to BellSouth.

IDS' "answers" to BellSouth First Set of Interrogatories are equally non-responsive. In response to 48 of the 103 interrogatories, IDS responded the same way it responded to all of BellSouth's document requests – It said it did not have the resources to provide responsive information, but would supply answers "*if and when*" it decided to devote the resources to doing so.<sup>1</sup> For at least 23 additional interrogatories, IDS provided a partial answer and stated that it had additional responsive information and would provide it to BellSouth "if and when" it had the time.<sup>2</sup>

8. On August 22, 2001, IDS' counsel informed counsel for BellSouth that IDS would be producing supplemental responses but requested that BellSouth execute a protective agreement prior to receiving the documents. Counsel for IDS further requested that counsel for BellSouth compare the protective agreement drafted by IDS' counsel with the protective agreements used in the 271 proceeding. Counsel for BellSouth did not receive the faxed version of the protective agreement until late in the afternoon on August 22, 2001 and could not review the document as requested prior to the close of business because of other work commitments.

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<sup>1</sup>See IDS' "Answers" to Interrogatories Nos. 3-5, 9, 19, 26, 35, 39, 43, 55-56, 65-68, 70-93, and 95-103.

<sup>3</sup>See IDS' "Answers" to Interrogatories Nos. 8, 10, 15-16, 18, 24-25, 27, 29, 32, 34, 36-37, 40, 48-50, 53, 57-59, 63, and 94.

9. On August 23, 2001, the counsel for BellSouth reviewed the draft protective agreement to insure that it was the same agreement being used in the 271 proceeding as requested, executed the agreement, and faxed a copy back to IDS' counsel by early afternoon. On that same date, three days after the responses were due, IDS served BellSouth's Florida legal office with its Supplemental Responses to BellSouth's Requests for Production immediately prior to the close of business. In these responses, IDS provided documents to some of BellSouth's requests and indicated for others that (1) IDS will compile records responsive to a request; (2) there are currently no documents that have been compiled that are response to the requests; (3) IDS would endeavor to locate and produce a document; or (4) IDS did not have in its possession responsive documents or has not identified responsive documents. *See* IDS' Supplemental Responses to Requests for Production Nos. 7, 13, 14, 16, 17, and 18.

10. At the close of business on August 24, 2001, a full four days after its responses were originally due, IDS served BellSouth's legal office in Florida with IDS' Supplemental Responses to BellSouth's 103 Interrogatories. Of the 103 Interrogatories, IDS purports to have produced responsive answers to Interrogatory Nos. 2, 3, 4, 6, 7, 8, 12, 18, 25, 26, 28, 30, 31, 35, 44, 49 and 50. However, for 56 of these Interrogatories, IDS still maintains, as it did with its original responses, that IDS "does not have the resources to collect all of the records, notes, correspondence that it may have in its possession" and that it will produce responsive documents "if and when" it compiles the documents.

11. Because IDS failed to timely produce responsive documents, counsel for BellSouth was unable to review and circulate IDS' Supplemental Responses prior to BellSouth filing its rebuttal testimony, which was due on August 27, 2001.

12. As stated above, in Order No. PSC-01-1640-PCO-TP, the Commission granted BellSouth until August 27, 2001, to file rebuttal testimony so that BellSouth could "consider IDS' discovery responses when its files its rebuttal testimony." Because IDS failed to provide sufficient responses to BellSouth on August 20, 2001, the original date its responses were due, and instead waited until the close of business on August 23 and 24, 2001 to serve its Supplemental Responses, BellSouth was unable to consider IDS' discovery responses when it filed its rebuttal testimony. As a result, IDS has effectively precluded BellSouth from preparing and presenting complete rebuttal testimony related to IDS' allegations. This conduct effectively eviscerates the Commission's Order that specifically provided that BellSouth should be able to review IDS' responses prior to filing rebuttal testimony.

13. While IDS has produced some documents and responses to BellSouth's discovery, for 56 Interrogatories that expressly ask that IDS to "back up" several assertions made in its direct testimony, IDS has either (1) refused to produce any responsive information because it allegedly lacked resources to compile responsive documents; or (2) provided partial answers but lacked the resources to compile responsive documents.<sup>3</sup> In addition, BellSouth believes that for the information it did produce, some of it is not responsive to the specific discovery request. As a result,

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<sup>3</sup> IDS provided partial answers to only 12 of the 56 Interrogatories that it failed to adequately answer allegedly because it "lacked the resources" to allow it to provide responsive information.

BellSouth's Motion to Compel and for a Continuance is not rendered moot by IDS' Supplemental Responses.

14. In light of the fact that IDS failed to timely produced responsive information that would allow BellSouth to incorporate IDS' responses in its rebuttal testimony and because IDS has still refused to adequately respond to BellSouth's discovery, BellSouth respectfully requests that after disposition of BellSouth's Motion to Compel and for a Continuance, BellSouth be given an opportunity to file rebuttal testimony to specifically address the information IDS produced in its Supplemental Responses.

15. Pursuant to Rule 28-106.204(3) of the Florida Administrative Code counsel for BellSouth conferred with counsel for IDS with respect to this motion. IDS' counsel indicated that IDS may consent to BellSouth filing supplemental rebuttal testimony if (1) BellSouth gave IDS a firm date in which BellSouth would file supplemental rebuttal; and (2) Bellsouth provided IDS with the specific discovery requests that it still believed were outstanding. Counsel for BellSouth informed counsel for IDS that any date for supplemental rebuttal should be after the date the Commission resolves BellSouth's Motion to Compel and for a Continuance because IDS may be required to provide additional documents. However, counsel for BellSouth will provide IDS with a list of discovery requests that it believes is still outstanding.

WHEREFORE, for the foregoing reasons, BellSouth respectfully requests that, after the disposition of its Motion to Compel and for a Continuance, the Commission provide BellSouth with an opportunity to specifically address the information IDS produced in its Supplemental Responses.



Respectfully submitted this 29<sup>th</sup> day of August, 2001.

BELLSOUTH TELECOMMUNICATIONS, INC.

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