

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of IDS Long Distance, Inc.)
N/K/A IDS Telecom, L.L.C., Against)
BellSouth Telecommunications, Inc., and)
Request for Emergency Relief)

DOCKET NO. 107040-TP

FILED: SEPTEMBER 5, 2001

REBUTTAL TESTIMONY

OF

ROBERT H. HACKER

ON BEHALF OF

IDS TELCOM, L.L.C.

DOCUMENT NUMBER-DATE

11054 SEP-5 2001

FPSC-COMMISSION CLERK

1 Q. MR. HACKER, PLEASE STATE YOUR NAME AND YOUR
2 BUSINESS ADDRESS.

3 A. My name is Robert H. Hacker. My business address is 1525 N.W.
4 167th Street, Miami, Florida 33169.

5
6 Q. FOR WHOM ARE YOU EMPLOYED AND IN WHAT POSITION?

7 A. I am employed by IDS. My position with IDS is Chief Financial
8 Officer.

9
10 Q. PLEASE DESCRIBE YOUR DUTIES AT IDS.

11 A. As the Chief Financial Officer at IDS, I handle all of IDS'
12 finance, accounting, and tax matters.

13
14 Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.

15 A. In 1973, I received a BA in Philosophy from Hamilton College. In
16 1980, I received an MBA in Finance (*Beta Gamma Sigma*) from the
17 Columbia University Graduate School of Business.

18
19 Q. PLEASE DESCRIBE YOUR WORK EXPERIENCE AS IT APPLIES
20 TO YOUR QUALIFICATIONS TO ADDRESS THE SUBJECT
21 MATTER OF YOUR TESTIMONY?

22 A. I have twenty-eight years of experience in financial positions, including as
23 a banker, financial consultant and Chief Financial Officer. When I joined

1 IDS Telcom as Chief Financial Officer in October 2000, this was the third
2 company in which I have served in this capacity. I have served as a Chief
3 Financial Officer for the last ten years. I am also a Partner in TatumCFO.

4
5 Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS
6 PROCEEDING?

7 A. No.

8
9 Q. MR. HACKER, WHAT IS THE PURPOSE OF YOUR TESTIMONY?

10 A. The purpose of my testimony is to rebut the assertions in the direct
11 and rebuttal testimony of BellSouth's witnesses Petra Pryor and
12 Claude Morton regarding the financial interactions between
13 BellSouth and IDS. I will also rebut portions of many of the
14 BellSouth witnesses' testimonies in regard to the financial impact
15 on IDS of BellSouth's failure to provide IDS OSS and UNEs and
16 UNE-Ps at parity, as well as the financial impact of BellSouth's
17 anticompetitive actions on IDS.

18
19 Q: ARE YOU SPONSORING ANY EXHIBITS?

20 A: Yes. I am sponsoring the following two exhibits:

21 RH-1 – Letter from Robert Hacker, IDS, to Claude Morton,
22 BellSouth, dated May 2, 2001; and

1 RH-2 – Letter from Robert Hacker, IDS, to Claude Morton;
2 BellSouth, dated May 31, 2001.

3
4 Q. BELLSOUTH'S WITNESS CLAUDE MORTON HAS TESTIFIED THAT
5 IDS CURRENTLY OWES BELLSOUTH \$5.9 MILLION. CAN YOU
6 RESPOND TO THIS ASSERTION?

7 A. Yes. IDS does not owe BellSouth \$5.9 million. BellSouth's calculation
8 apparently includes several inappropriate amounts, as described below:

- 9 1. This calculation apparently includes charges for services outside
10 the State of Florida, including Alabama, Georgia, Kentucky,
11 Mississippi, North Carolina and South Carolina.
- 12 2. This calculation apparently includes the current bill of approximately
13 \$ 1.7 million which is not payable until September 16—twelve days
14 in the future—and a portion of this current bill is not due and
15 payable until later in the month of September.
- 16 3. This calculation apparently includes accrued finance charges.
17 However, the January 22, 2001, Agreement between IDS and
18 BellSouth does not provide for finance charges to continue to
19 accrue on past due balances. (When IDS stated this position in a
20 phone call to BellSouth Witness Claude Morton in May 2001, he
21 stated that he would have to check with his legal department and
22 get back to me, but he never replied or took further issue with the

1 IDS' position that no finance charges should be accrued by
2 BellSouth.)

- 3 4. This calculation does not reflect pending disputes filed by IDS
4 which date back as far as October 2000, and total approximately
5 \$2,138,718. There are four major pending disputes which include:
- 6 a. \$929,000 which represents the "delta difference" between
7 the resale rates IDS was required to pay by BellSouth due to
8 its failure to provide an adequate conversion process and
9 the substantially lower UNE-P rates which IDS believes it
10 was entitled to pay for the period November 1999-May 2000;
 - 11 b. \$453,000 which represents the "delta difference" between
12 the resale rates IDS was required to pay and the UNE-P
13 rates IDS believes it was entitled to pay during the months
14 August through December of 2000;
 - 15 c. \$214,000 in BellSouth's over billing IDS in the first half of
16 2001 (for instances in which BellSouth inappropriately
17 charged IDS for disconnection charges, amounts appearing
18 on BellSouth's billing without appropriate documentation,
19 etc.);
 - 20 d. \$542,000 in BellSouth's inappropriate back billing IDS in July
21 2001 for the increase in the deaveraged loop; there is no
22 provision for back billing for changes in the deaveraged loop

1 in the Interconnection Agreement between IDS and
2 BellSouth.

3
4 Q: WHAT AMOUNT DOES IDS OWE BELLSOUTH?

5 A: After taking into account all of the adjustments described above except for
6 number 1, as of September 4, 2001, IDS has a past due balance with
7 BellSouth of approximately \$1,109,326.

8
9 Q: BELLSOUTH'S WITNESS CLAUDE MORTON INDICATED THAT IDS
10 HAD REACHED AN AGREEMENT WITH BELLSOUTH REGARDING
11 PAYMENT OF PAST DUE AMOUNTS. IS THIS TRUE?

12 A: Yes.

13
14 Q: CAN YOU DESCRIBE THE AGREEMENT REACHED BETWEEN
15 BELLSOUTH AND IDS?

16 A: Yes. BellSouth and IDS reached an Agreement on January 22, 2001,
17 covering past due amounts owed to BellSouth by IDS. The Agreement
18 provides that IDS will pay past due amounts at the rate of \$200,000 per
19 month until the past due balance is completely repaid--an open ended
20 contract drafted by BellSouth. Although I made written requests to
21 BellSouth's Witness Claude Morton on May 2, 2001, and May 31, 2001,
22 (identified as Exhibits RH-1 and RH-2, respectively, and attached hereto)
23 Mr. Morton never responded and thus, BellSouth has never confirmed to

1 IDS its calculation of the balance past due. However, in any event, the
2 Agreement clearly anticipated that there would be significant past due
3 balances as of today's date, September 5, 2001, in amounts which would
4 total over \$1 million and possibly exceeding \$2.4 million, depending on the
5 resolution of pending disputes.

6
7 Q: HAS IDS HONORED THE TERMS OF THE AGREEMENT WITH
8 BELLSOUTH?

9 A: Yes. Since the date of the Agreement, IDS has made all current monthly
10 payments (less disputes) on time and has paid an additional total of \$2.4
11 million toward past due balances, as called for in the Agreement.

12 Payments for past due amounts include seven monthly payments, each in
13 the amount of \$200,000, which have been made each month in
14 accordance with the Agreement.

15
16 Q: HAS IDS SUFFERED SIGNIFICANT FINANCIAL LOSSES DUE TO
17 BELLSOUTH'S FAILURE TO PROVIDE IDS OSS AND UNEs AND UNE-
18 Ps AT PARITY AND AS A RESULT OF BELLSOUTH'S
19 ANTICOMPETITIVE PRACTICES?

20 A: Yes. BellSouth's continuing pattern of anticompetitive practices, OSS
21 problems, and win backs based on misleading statements to customers
22 have caused IDS significant losses both in financial terms and in its ability
23 to retain customers. IDS has lost approximately 37,000 customer lines

1 since May 2000, or 41.2% of the new lines added from May 2000 through
2 July 2001. Using a CLEC industry attrition rate of approximately seven
3 percent per month (which would include the effect of ILEC competitive and
4 anti-competitive practices nationwide) losses in this period would have
5 totaled approximately 27,000 lines. Consequently, BellSouth's
6 anticompetitive practices have caused approximately 10,000 additional
7 lost customer lines for IDS. These customers would represent
8 approximately \$470,000 per month in lost revenue to IDS in July 2001.
9 Given that approximately 42 percent of local customers also use IDS for
10 long distance, additional lost long distance revenue per month would total
11 approximately \$88,000. These figures do not include the additional
12 servicing expenses for IDS to deal with customers who were affected by
13 BellSouth's anticompetitive practices.

14
15 Q: RECOGNIZING THAT THE FLORIDA PUBLIC SERVICE COMMISSION
16 IS NOT AUTHORIZED TO AWARD PARTIES MONETARY DAMAGES,
17 IS THERE ANY MONETARY REMEDY THAT YOU BELIEVE THE
18 FLORIDA PUBLIC SERVICE COMMISSION SHOULD GRANT IDS IF
19 IDS PROVES THAT BELLSOUTH HAS IN FACT FAILED TO PROVIDE
20 IDS OSS AND UNEs AND UNE-Ps AT PARITY AND THAT BELLSOUTH
21 HAS ENGAGED IN THE ANTICOMPETITIVE PRACTICES THAT IDS
22 HAS ALLEGED?

1 A: Yes. I am not a lawyer and I do not respond to this question as a lawyer.
2 However, it is my understanding that the Florida Public Service
3 Commission is not authorized to award parties monetary damages
4 generally. However, it is also my understanding that the Commission has
5 the authority to determine the appropriate remedies for contractual
6 breaches of interconnection agreements. If IDS is successful in proving
7 its case that BellSouth has not provided IDS OSS, UNEs, and UNE-Ps at
8 parity and that BellSouth has engaged in anticompetitive activities that
9 have capitalized on BellSouth's failure to provide OSS and UNE-Ps at
10 parity, it would be consistent with the Commission's jurisdiction and
11 authority to implement the interconnection agreement by determining an
12 appropriate remedy for the breach of the interconnection agreement. In
13 such a case, I believe that a refund from BellSouth to IDS representing 40
14 percent of the monies paid to BellSouth by IDS is an appropriate remedy
15 for the reasons discussed below.

16 Given that BellSouth caused approximately twenty-seven percent
17 (10,000/37,000) of the total attrition during the period, BellSouth should be
18 required to refund to IDS approximately twenty-seven percent of the
19 amount billed by BellSouth for local services (\$15.43 million) during the
20 period from May 2000 to July 2001, or \$ 4.2 million. Additionally, the four
21 major pending disputes totaling \$2,138,718 which I described earlier in my
22 testimony and which relate to BellSouth's anticompetitive behavior, should
23 be resolved in favor of IDS. Therefore, the Florida Public Service

1 Commission should order BellSouth to refund to IDS a total amount of
2 \$6.3 million, or 40.8 percent of the total amount IDS has been billed by
3 BellSouth.

4

5 Q. MR. HACKER, DOES THIS CONCLUDE YOUR TESTIMONY?

6 A. Yes.



Via Facsimile and U.S. Mail

May 2, 2001

Mr. Claude P. Morton
Senior Manager
BellSouth Telecommunications, Inc.

Re: Letter Agreement dated January 22, 2001

Dear Mr. Morton:

IDS Telcom, LLC ("IDS") entered into a Letter Agreement with BellSouth Telecommunications, Inc. ("BellSouth") on January 22, 2001 setting forth the payment schedule for the undisputed past due balance owed to BellSouth ("the Agreement"). The Agreement did not detail the past due amount, so as a matter of clarification, the undersigned wanted to reconcile our accounting with yours to avoid any disputes pertaining to the Agreement. The reconciliation is rounded to the whole dollar.

At the time of the Agreement, our records showed a past due balance with BellSouth of approximately \$1.798 million (\$2.728 million less an unresolved disputed amount of \$.929 million). Pursuant to the Agreement, IDS paid \$1.0 million on January 23, 2001 and three monthly payments of \$200,000 for a total past due payment of \$1.6 million. IDS will make a payment of approximately \$198,000 on May 31, 2001, which will be the last past due payment required to be made under the Agreement. IDS understands that it may be required to make additional payments upon resolution of the pending dispute and will comply accordingly.

IDS requests that BellSouth acknowledge that the May 31, 2001 payment is the final payment due pursuant to the Agreement. Additionally, if your accounting balance differs from ours, please contact us within five (5) business days. It is imperative that we hear from you to avoid any inadvertent breach of the Agreement.

Thank you for your attention to these matters.

Sincerely,


Robert H. Hacker
Chief Financial Officer

IDS TELCOM, L.L.C.
Public Service Commission
Docket No. 107040-TP
Exhibit RHH - 1 of 2

1525 N.W. 167th St, 2nd Floor, Miami, Florida 33169
Tel. (305) 913-4000 Fax. (305) 913-5019 Toll Free: 1-800-335-4437

Via Registered Mail

May 31, 2001

Mr. Claude P. Morton
Senior Manager
BellSouth Telecommunications, Inc.

Re: Letter Agreement dated January 22, 2001 and IDS Letter May 2, 2001


Dear Mr. Morton:

On May 2, 2001 I sent you a letter (copy attached) by facsimile, post and email seeking to clarify certain matters related to our Agreement of January 22, 2001. The letter asked for Bell South to confirm that the \$ 200,000 payment due at the end of May is the final payment due under the Agreement. The letter also identified a dispute in the amount of \$929,000 which remains unresolved and could affect the number of remaining months for which \$ 200,000 payments are due.

To date IDS has received no oral or written response to the letter of May 2, 2001. According to our records there is no past due amount owing to Bell South as of May 31, 2000, and consequently there would be no payment of \$ 200,000 due at month end June or thereafter. I would appreciate if you could confirm this fact or present some analysis to demonstrate amounts still owing to Bell South. Any efforts to bring about a resolution of the \$ 929,000 dispute would also be appreciated.

Again, I would like to confirm IDS' intention to comply with the Agreement and our desire to avoid any inadvertent breach of the Agreement. Thank you for your attention to these matters.

Sincerely,


Robert H. Hacker
Chief Financial Officer

IDS TELCOM, L.L.C.
Public Service Commission
Docket No. 107040-TP
Exhibit RHH - 2 of 2

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