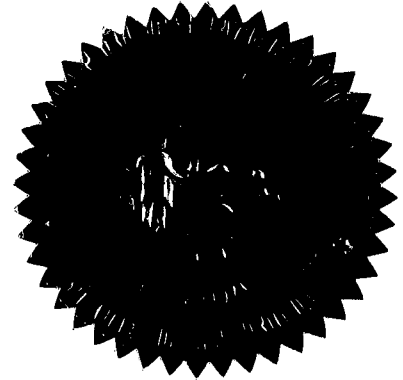


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 010740-TP

In the Matter of

REQUEST FOR ARBITRATION CONCERNING
COMPLAINT OF IDS TELECOM LLC AGAINST
BELLSOUTH TELECOMMUNICATIONS, INC.
REGARDING BREACH OF INTERCONNECTION
AGREEMENT.



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PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER J. TERRY DEASON
Prehearing Officer

DATE: Monday, September 10, 2001

TIME: Commenced at 9:30 a.m.
Concluded at 4:53 p.m.

PLACE: Betty Easley Conference Center
Room 152
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: TRICIA DeMARTE
Official FPSC Reporter
(850) 413-6736

1 APPEARANCES:

2 SUZANNE SUMMERLIN, 1311-B Paul Russell Road, Suite
3 201, Tallahassee, Florida 32301, appearing on behalf of IDS
4 Telecom, LLC.

5 DOUGLASS R. LACKEY, BellSouth Telecommunications,
6 Inc., c/o Nancy Sims, 150 South Monroe Street, Suite 400,
7 Tallahassee, Florida 32301, appearing on behalf of BellSouth
8 Telecommunications, Inc.

9 MARY ANNE HELTON, Florida Public Service Commission,
10 Division of Legal Services, 2540 Shumard Oak Boulevard,
11 Tallahassee, Florida 32399-0870, appearing on behalf of the
12 Commission Staff.

13

14 ALSO PRESENT:

15 MICHAEL NOSHAY, IDS Telecom, L.L.C.

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P R O C E E D I N G S

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2 COMMISSIONER DEASON: Call the prehearing conference
3 to order. Could I have the notice read, please.

4 MS. HELTON: Pursuant to notice published in the FAW
5 on August the 24th, 2001, this prehearing conference for Docket
6 Number 010740-TP was set for this time and place. The purpose
7 of the prehearing conference is more fully set forth in the
8 notice.

9 COMMISSIONER DEASON: Take appearances.

10 MR. LACKEY: Good morning, Mr. Chairman. My name is
11 Doug Lackey, and I'm an attorney here appearing on behalf of
12 BellSouth Telecommunications, Inc.

13 MS. SUMMERLIN: Good morning, Commissioner Deason.
14 I'm Suzanne Summerlin representing IDS Telecom.

15 MS. HELTON: And I'm Mary Anne Helton representing
16 the Commission Staff.

17 COMMISSIONER DEASON: Ms. Helton, do we have
18 preliminary matters?

19 MS. HELTON: Yes, sir. Based on my understanding, we
20 have three outstanding motions: A motion to compel filed by
21 BellSouth, a motion to defer an issue to the OSS part of the
22 271 proceeding by BellSouth, and a motion to file supplemental
23 rebuttal testimony also by BellSouth.

24 COMMISSIONER DEASON: All three motions have been
25 filed by BellSouth?

1 MS. HELTON: Yes, sir.

2 COMMISSIONER DEASON: Okay. Mr. Lackey, do you wish
3 to -- any particular order you wish to address these motions?

4 MR. LACKEY: I think that the easiest thing to do is
5 to talk about the discovery first and then the motion for
6 supplemental rebuttal testimony and, finally, the OSS issue.
7 The OSS issue is similar to the request we made to move the
8 issues dealing with anticompetitive issues to the docket
9 involving anticompetitive issues, the same basic theory. It
10 shouldn't take 30 seconds to discuss that.

11 COMMISSIONER DEASON: Okay. Well, then please
12 proceed with your motion to compel.

13 MR. LACKEY: Thank you. Basically, we filed
14 discovery, I think, on August 1st asking IDS to respond to
15 103 interrogatories and 20 requests for production of
16 documents. Almost all of them related directly to the prefiled
17 direct testimony because that's what we had at the time.
18 Indeed, most of them went to specific pages and line numbers
19 and asked for information related to what was said on those
20 pages in particular. The answers were due on the 20th, the day
21 our testimony was originally due. You had granted us an extra
22 week to file rebuttal testimony, until August 27th, in order to
23 have the discovery in hand before we filed that rebuttal.

24 On the 20th, we received some responses to the
25 discovery. We promptly filed a motion to compel. Thereafter,

1 you issued an order --

2 COMMISSIONER DEASON: And this was filed on the 22nd;
3 is that correct?

4 MR. LACKEY: I'm sorry?

5 COMMISSIONER DEASON: Was this -- this was filed on
6 the 22nd?

7 MR. LACKEY: The motion?

8 COMMISSIONER DEASON: Yes.

9 MR. LACKEY: I believe it was filed on the 22nd, yes.

10 COMMISSIONER DEASON: Okay. Very well.

11 MR. LACKEY: And I will say that on the 23rd and
12 24th, IDS attempted to supplement the answers they had given
13 us. At least 48 of the answers they gave us simply said they
14 had no resources. Another 23 of the responses they gave us to
15 the interrogatories similarly said -- well, they gave us a
16 partial answer but not a complete answer.

17 You issued an order allowing them until September 6th
18 to file a complete answers to the questions we posed. I would
19 also note that no objections were filed to any of the
20 interrogatories or the requests for production of documents the
21 tenth day after service as is required by your other prehearing
22 order.

23 We received on Thursday further responses to the
24 discovery. At this point, we still have 13 interrogatories for
25 which there is no answer. The first answer was, "No

1 resources." The second supplemental answer filed on either the
2 23rd or the 24th said, "No further information." And the last
3 one filed on September 26th said, "No further information." We
4 have an additional ten interrogatories -- let's me make sure
5 I've got the numbers right -- we have an additional ten
6 interrogatories that were partially complete at the time of
7 your first order for which there was no further answer; that
8 is, again, it was simply, "No further information," "No further
9 information." So at this point, there are 23 of the
10 interrogatories for which there is no answer different than the
11 answer that was given when you ruled the first time that they
12 were incomplete.

13 Now, in addition, there are a number of
14 interrogatories, and I can go through them one by one at some
15 point if you'd like, where there was some supplemental answer
16 given that was either still incomplete or nonresponsive.

17 COMMISSIONER DEASON: This is in addition to the 23
18 you just described?

19 MR. LACKEY: Yes. The first 13 I described, there's
20 nothing, no resources, and then the second, I'm sorry, the
21 first attempt to supplement said, "No further information."
22 The second attempt to supplement said, "No further
23 information."

24 Then we have another 16 for which we have partial
25 answers that are incomplete or nonresponsive, and I can go

1 through those if you would like. So, basically, we've got 39
2 out of the 103 interrogatories for which we either have no
3 answer or for which we have incomplete or nonresponsive
4 answers.

5 In addition, we have 8 of 20 PODs for which we still
6 have no responsive information. Basically, our position is, is
7 that obviously this is a pretty serious matter. They are
8 asking for a refund of 40 percent of what they paid us over the
9 last two years. This is a high profile case. The Wall Street
10 Journal has had articles about it. It's a serious matter.

11 We have asked questions that relate directly to the
12 testimony, and I'd be happy to give you a couple of examples
13 that I think are pertinent. We asked them for -- for instance,
14 they said they polled their customers in the testimony. They
15 said they polled their customers, and their customers told them
16 something about what we had done. We sent them an
17 interrogatory and said, tell us who the customers are that you
18 polled; nothing.

19 Now, it's absolutely inconceivable that they could
20 have done a survey of their customers, a poll of their
21 customers, and not have any documents indicating who the
22 customers were, who they called, who called them or anything,
23 but we've got nothing. And it just goes on and on and on like
24 that.

25 And they asked for this hearing to be expedited, and

1 I understand that. And the discovery time was shortened, and I
2 understand that. But there's a matter of fundamental fairness
3 here. We're being required to defend ourselves against some
4 pretty egregious allegations. They've basically accused us of
5 lying, cheating, and stealing. And we're entitled to know what
6 the evidence is that they're going to rely on in addressing
7 that in a hearing, and they are not telling us.

8 Now, some of the questions that we haven't raised
9 again, they answered some of them, some of the questions they
10 simply said, we don't have any documents related to this, and
11 that's fine. I can understand that. But when they tell me
12 they don't have the resources and then they tell me they don't
13 have any further information twice, I don't think that's a
14 responsive answer. I don't think that addresses -- or I don't
15 think it responds to your order appropriately.

16 Now, we've asked for the matter to be continued. We
17 need this matter continued until they fully and adequately, and
18 I'm not talking about adequate in my viewpoint, I'm talking
19 about just adequately in a legal sense, respond to this
20 discovery. And once they respond to the discovery, we ought to
21 then be afforded an opportunity to file rebuttal testimony to
22 address the claims they are making against us. If you make us
23 go to hearing on this, the way this case is postured now, we
24 will not be given a fair opportunity to respond to the
25 complaints they are making.

1 Now, I can go through the 39 one by one and show you
2 what I'm talking about, and I'll be happy to do it. I have the
3 list here. I had my -- I had the list typed up this morning,
4 and I've got the list of the numbers. We can go through them
5 if you'd like, but that's basically the essence of what I'm
6 going to say as we go through them. I'll show you what we
7 asked. I'll take you to the testimony and show you where it
8 was raised. We'll look at the answer, and I believe you'll
9 find that it's just exactly as I represented it to be.

10 COMMISSIONER DEASON: We will not go through that
11 list at the present time. I will hear from Ms. Summerlin
12 first. We may do that at a later time.

13 Ms. Summerlin.

14 MS. SUMMERLIN: Yes, Commissioner Deason. IDS
15 absolutely agrees with Mr. Lackey that BellSouth is entitled to
16 have the evidence that IDS is going to rely on in its case.
17 It's IDS's burden to put on its case in front of this
18 Commission, and IDS will put on its case. BellSouth propounded
19 20 requests for production of documents and 103
20 interrogatories.

21 One of those interrogatories, as I'm sure you're
22 familiar, asked for every document that supported every
23 response to those interrogatories. What that amounts to is
24 103 interrogatories and 122 requests for production of
25 documents. Yes, we were supposed to respond to that within 20

1 days, and IDS absolutely made every effort possible to try to
2 respond. The reason IDS did not object to those requests by
3 BellSouth is that IDS viewed those requests as perfectly
4 appropriate. If there was documentation or there was an answer
5 to be provided, it should be provided.

6 IDS went to extreme lengths to try to do a good faith
7 effort to respond on the 20th of August which was the day that
8 your order establishing procedure required us to respond. We
9 filed the response. It did say -- it may not have been the
10 most artful response, but it basically said on many of the
11 requests we didn't have the human resources to be able to
12 gather the information that BellSouth was requesting at that
13 point.

14 We filed supplemental responses which we were
15 preparing to file as quickly as possible regardless of any
16 motion to compel being filed by BellSouth. We filed a
17 supplemental response on August 23rd. We filed a supplemental
18 response on August 24th. BellSouth knew that every one of the
19 key people involved in this case was located in Birmingham or
20 Atlanta on the days that these items were due, on the 20th and
21 for the entire -- pretty much three days of the week prior to
22 that and two days, the 20th and the 21st.

23 And one might say that these are not legally
24 relevant, but I think they are legally relevant because I think
25 that it's within your discretion to do justice in your role as

1 the Prehearing Officer. And it does matter that one company is
2 a tiny company going up against a much larger company. And,
3 yes, IDS did ask for this expedited hearing because it needs
4 immediate relief, and it has no choice but to come to this
5 Commission for that relief, and therefore, it was not objecting
6 to an expedited discovery schedule. But the simple reality is,
7 you cannot turn around on a dime and produce every document
8 that your company has ever looked at or ever had anything to do
9 with.

10 Now, there are two supplemental responses, a
11 first round of supplemental responses, and then one that we
12 just filed on September 6th. This company has committed
13 incredible effort to try and to produce everything that
14 BellSouth asked for. There are questions that are responded to
15 that there are no further documents or information to be
16 produced. If IDS did not produce those documents, then
17 obviously IDS can't rely on them to put on its case. And that
18 is the simple fact. You can't make a company create something
19 it doesn't have. I mean, even BellSouth, I can't ask them to
20 produce something they don't have. And regardless of whether
21 Mr. Lackey or BellSouth thinks that IDS's case is going to be
22 very good, that is not the deciding factor on whether this
23 motion to compel should be granted or whether this continuance
24 should be granted.

25 IDS has gone to extreme lengths to do everything

1 within its power to put on its case in a reasonable and fair
2 way and to give BellSouth a reasonable and fair response to its
3 discovery that it deserves. BellSouth produced its discovery
4 to IDS last week, and we haven't had a chance yet to go through
5 it to be able to relay to you the numerous situations where
6 BellSouth said in its discovery response that it didn't have
7 the resources, or it didn't have any particular document or
8 whatever we might have asked for. I don't have that litany to
9 provide today because I haven't had time to go through that.

10 One reason I haven't had time is that although
11 BellSouth has said they didn't have the human resources, they
12 were able to file a lawsuit against IDS in Atlanta, Georgia in
13 federal court against IDS. We were forced to go to two
14 hearings in the last few days. And the reason I bring this up
15 is because at some point the Commission must take into account
16 the fact that some companies simply do not have the resources to
17 turn around and do a case in the most precise fashion in every
18 way all the time.

19 I will assert to you that IDS has complied in good
20 faith with every requirement that the Commission has placed on
21 it. And if a response has been made that there's no further
22 information, then that is the fact. And whether BellSouth
23 likes that or not, that is the case. And I agree that if we go
24 to hearing, IDS can't come up with a whole bunch of information
25 that it did not produce to BellSouth. That would not be

1 appropriate, and it may simply be that BellSouth thinks there's
2 a whole bunch of stuff that there isn't.

3 IDS has committed resources and has tried to do what
4 your order granting the motion to compel said. We've tried to
5 comply with the procedure order to start with. As I said, we
6 were already trying to provide responses before any motion to
7 compel was filed or before you considered it. We were working
8 diligently to try to produce the information.

9 Now, the issue of this continuance. If any company
10 here is at a disadvantage, it's IDS. And why is that? The
11 reason for that is that if anybody knows what happened during
12 the last couple of years regarding whether BellSouth has given
13 IDS operational support systems at parity or whether BellSouth
14 has provided UNEs or UNE-Ps to IDS at parity, it's BellSouth;
15 it's not IDS. IDS has inferior quality records simply by the
16 very nature of the relationship. BellSouth knows every single
17 order that comes into its systems. It knows how they're being
18 processed. It knows whether it has anticompetitive activities
19 going on. It knows about its telemarketing practices. It
20 knows every single thing that is of any concern to it in terms
21 of being able to put on its defense.

22 IDS is the company that is disadvantaged because IDS
23 has had to accept whatever records it's been able to keep that
24 are going to, clearly just by the very nature of the situation,
25 not be as adequate and as completely and nicely kept as the

1 records that BellSouth has. And I guess what I'm getting to
2 is, we have to talk about in terms of prejudice. At some point
3 what the argument that BellSouth is making to you today is that
4 it's being prejudiced by not getting the information. I am
5 asserting to you that there is no prejudice here. IDS has told
6 BellSouth everything that it has. It's given it everything
7 that it has. They will be deposing everybody we have, our five
8 witnesses, this next week, or I'm sorry, tomorrow, Wednesday,
9 Thursday, and Friday. They will be deposing our five people
10 that will be testifying in this case. They have had a
11 tremendous effort on our part to give them discovery, and they
12 started out with a heck of a lot more information about every
13 issue in this case than IDS will ever hope to have. And the
14 idea that they are being prejudiced, in my view, is just
15 absolutely not reasonable for this Commission to consider.

16 In terms of the continuance, IDS came to this
17 Commission on May 11th basically begging for some help from the
18 Commission. It is now September 10th. That's four months
19 later. All along, IDS has tried to do what it's supposed to do
20 to be able to get in front of you and the rest of the
21 Commission to put on its case. Whether it's as good a case as
22 BellSouth thinks we've got or not, IDS wants the opportunity to
23 be in front of the Commission on September 21st to be able to
24 get some relief as soon as possible. To put this hearing off
25 for the reason that IDS was not able to turn around on a dime

1 in 20 days and produce 122 requests for production of documents
2 and 103 interrogatory responses to BellSouth who has only now,
3 on September 4th, had to produce any discovery to us. And part
4 of the reason -- it's not because we were sitting back just
5 lollygagging. The reason was, we were trying to make -- get
6 the information we needed by deposing BellSouth employees to be
7 able to gather the kind of information that we can't get any
8 other way in an expedited schedule. But we did submit
9 discovery or propound discovery to BellSouth, and they did just
10 now have to file some responses on September 4th. But up until
11 then, they were not required to do that.

12 The bottom line here from IDS's perspective is that
13 we've done everything conceivable to meet the burdens that the
14 Commission places on a company to come before it in a complaint
15 proceeding. IDS has said to you from the very beginning that
16 it is an emergency need for redress from the Commission. That
17 doesn't mean that IDS doesn't have to follow the rules, and I'm
18 not saying that. I'm saying IDS has followed the rules, has
19 done everything it could possibly do to put on a fair case and
20 to give the information to BellSouth that it is entitled to.
21 And I would be the first to argue to you that BellSouth is
22 entitled to information that's relevant to the case. But if
23 something doesn't exist, it is not appropriate to continue a
24 hearing or to compel somebody to produce it if it does not
25 exist.

1 COMMISSIONER DEASON: Ms. Summerlin, let me interrupt
2 you at this point.

3 MS. SUMMERLIN: Yes.

4 COMMISSIONER DEASON: If I understood Mr. Lackey
5 correctly, he indicated that the basis of his interrogatories
6 and production of documents was to try to gain additional
7 information pertaining to allegations contained within your
8 direct case.

9 MS. SUMMERLIN: Uh-huh.

10 COMMISSIONER DEASON: And he indicates that this
11 information is needed to prepare for hearing, to basically
12 understand the nature of the allegations and, I guess, to
13 determine if those allegations are substantiated and to know
14 the basis of those allegations.

15 I guess my question to you, do you agree with
16 Mr. Lackey that as of now there are 39 interrogatories which
17 have no answers or just partial answers, and that 8 of 20 PODs
18 have not been provided?

19 MS. SUMMERLIN: I don't agree with him at all. I
20 don't know which ones he's talking about, but I will concede
21 that there are some answers that say there's no further
22 information. And what I would assert to you is that that is a
23 legally sufficient answer if that is true. It is not
24 Mr. Lackey's or BellSouth's job to put on IDS's case. If IDS
25 doesn't have information in the way of a document or a response

1 beyond the testimony of its witnesses, then the Commission
2 cannot compel the creation of something that does not exist.

3 What I am saying to you is, IDS has made as good an
4 effort as it can to produce an answer and to produce documents
5 wherever those things exist. If the only answer is the
6 testimony of our witnesses, then that's our problem. That is
7 not -- I mean, BellSouth has every opportunity -- they've now
8 asked us to produce documents. We can't show up on the 21st
9 with a bunch of stuff we didn't give them. That's the way it
10 works. I mean, and that is perfectly appropriate that we can't
11 do that.

12 What I'm saying to you is, we want to show up with
13 stuff on the 21st, so we would produce it if we had it. But if
14 we don't have it, the Commission cannot sanction a company for
15 not having it. It's just like if I asked BellSouth to produce
16 something that they say they don't have, and then I say, hey,
17 you know, I can't go to hearing because they didn't produce X,
18 Y, Z, and they're here telling you they don't have it. You
19 can't -- it would be totally inappropriate for you to continue
20 a case --

21 COMMISSIONER DEASON: Okay. Thank you. I've heard
22 enough.

23 MS. SUMMERLIN: Okay.

24 COMMISSIONER DEASON: Mr. Lackey, let me ask you a
25 question. To the extent that the discovery which you have

1 filed and you have indicated is not complete or not responsive,
2 to the extent that that discovery was to gain further
3 information on the direct case and allegations made within
4 direct testimony, have you considered -- if there's no
5 information that can substantiate it, have you just considered
6 filing a motion to strike that direct testimony?

7 MR. LACKEY: That's certainly a possibility, and
8 we'll do that if that's where we end up, but I need to respond
9 and say that that's not what the answer says. There are some
10 interrogatory answers, for instance, Number 70, where they
11 said, "IDS has no documents responsive to this request."

12 Now, if they say, we have no documents responsive to
13 this request, that's an appropriate and legally sufficient
14 answer. And you will find that Number 70 isn't on my list
15 anymore. But when they tell me that they have no resources,
16 and then the next answer is, we have no further information,
17 that does say anything. They said they didn't have resources
18 to look, and then later they say they have no further
19 information.

20 I don't know whether they're saying, well, you know,
21 we didn't have the resources to look, and, gee, we still
22 haven't looked, and we still don't have any information. Or
23 whether they're saying, we have looked, we have done a diligent
24 search of our documents, and we have no documents that would be
25 responsive to your request, which would be a legally sufficient

1 answer. I'm not splitting hairs. The difference is clear.
2 And we can go through and try to strike the stuff, you know,
3 and we can --

4 COMMISSIONER DEASON: Well, what we're going to do at
5 this point is, we're going to take a recess. Staff, I'm
6 directing Staff and the parties to meet together. I want to go
7 item by item according to your list, Mr. Lackey. I want -- if
8 it can be clarified between the parties as to whether there is
9 just no information to be provided, it does not exist, and no
10 more information is going to be forthcoming, and nothing is
11 going to be presented at hearing in that regard, if that can be
12 substantiated between the two parties, I want that to take
13 place.

14 I want Staff to participate. I want to -- if need
15 be, when we reconvene this prehearing conference, we'll go item
16 by item, but to the extent that items can be eliminated from
17 your list, for whatever reason, I want that done. I want to be
18 able to focus on the items that remain, if any, and I will get
19 a little bit of a flavor for it at that point. And we will
20 recess for one hour. We will reconvene at eleven o'clock, and
21 then we will go through whatever list is necessary that remains
22 at that time.

23 Is there any questions from the parties as to what my
24 direction is?

25 MS. SUMMERLIN: Commissioner Deason, I guess we'll be

1 happy to try to cooperate with what you're saying, but what I
2 have said to you is that the response we provided on there,
3 when we say there's no further information, that is an --
4 exactly what Mr. Lackey is trying -- he's trying to
5 characterize that as saying that, oh, well, you know, the next
6 week we're going to get together and come up with something and
7 show up at the hearing. That's not what we're doing.

8 COMMISSIONER DEASON: Just satisfy Mr. Lackey during
9 the next hour if that's the case, and maybe he won't have any
10 items left on his list.

11 MR. LACKEY: Just so this is productive. May I give
12 an example, just one example, of what I'm talking about?

13 COMMISSIONER DEASON: Sure.

14 MR. LACKEY: Interrogatory 55 asked them, it says,
15 "Please identify the customers who were polled by IDS's
16 customer relationship management team as referenced on Page 6
17 of Mr. Hamilton's prefiled direct testimony."

18 On Page 6 of Mr. Hamilton's testimony he says, "We
19 made hundreds of calls to our marketing department customer
20 relations group to determine if customers have provided some
21 form of authorization other than a verbal request for BellSouth
22 to take them back, and not a single customer that went back to
23 BellSouth in January or February 2001 provided any such
24 authorization to BellSouth."

25 That's his testimony. We asked him for the identity

1 of the customers so we could check and see what we had, and
2 we've got nothing. Now, it's not enough for them to say, we
3 don't have any further information. I mean, they know who they
4 called. They've got records. And if we don't know who they
5 called, we can't check and see whether we had LOAs for these
6 customers. So, you know, I guess I need to strike that
7 testimony because it's clearly prejudicial.

8 They said, hey, we called our customers, and they
9 said they switched us back without a letter of authorization.
10 Okay. Let me check and see whether I've got LOAs. Sorry, we
11 don't know who the customers are. How am I going to defend
12 against that? That's the sort of thing we're talking about.

13 COMMISSIONER DEASON: I understand, and I think maybe
14 the next hour can be productively used. And to the extent that
15 there are items which remain that need my attention, we'll go
16 through it item by item. We will stand in recess until
17 eleven o'clock.

18 (Recess from 10:00 a.m. to 11:00 a.m.)

19 COMMISSIONER DEASON: Call the prehearing conference
20 back to order. Staff, I understand that discussions have taken
21 place and should continue to take place concerning the
22 discovery dispute, but that we can proceed with other matters.

23 MS. HELTON: That's correct.

24 COMMISSIONER DEASON: Okay. Mr. Lackey, you have two
25 other pending motions: A motion to defer and then a motion

1 concerning supplemental testimony. Which do you wish to
2 address next?

3 MR. LACKEY: Actually, I think they're both pretty
4 easy to resolve, or at least at this point. What we asked for
5 was further interest to our discovery and an opportunity to
6 provide supplemental testimony once we had those complete
7 answers. Obviously, the question of providing further
8 supplemental rebuttal testimony is going to depend upon your
9 ruling of the first motion. So I think they go together.

10 If you conclude that they should be required to
11 provide further answers and continue the hearing, then I would
12 ask that you also allow us, once they completely answer the
13 questions, allow us to file supplemental testimony addressing
14 those issues.

15 COMMISSIONER DEASON: How much time do you need --
16 assuming that there is to be additional discovery produced, how
17 much time after that discovery is produced do you need to
18 complete your supplemental?

19 MR. LACKEY: No more than two weeks at the absolute
20 outside once it's all done, once it's all complete.

21 COMMISSIONER DEASON: But you understand that this
22 hearing begins on September the 21st, which is 11 days from
23 today.

24 MR. LACKEY: I understand that that's when it's
25 supposed to begin. If you grant the motion to continue, that

1 doesn't become an issue, I suppose. If you do -- if you do not
2 grant the motion, the second hearing, I believe, is on
3 October 1st.

4 COMMISSIONER DEASON: That's correct.

5 MR. LACKEY: So there is some --

6 COMMISSIONER DEASON: Some leeway there.

7 MR. LACKEY: If we get answers, we could file the
8 testimony in between the two days, I guess, since I assume we
9 will be going during the latter part of the hearing.

10 COMMISSIONER DEASON: Okay. Ms. Summerlin, do you
11 wish to respond to that?

12 MS. SUMMERLIN: Well, I think that IDS has provided
13 supplemental -- a second supplemental response on
14 September 6th. And I think that we don't object to BellSouth
15 being able to file supplemental rebuttal because of the fact
16 that they got that testimony at that point. The idea that it
17 would be between the two dates, that's not even something I had
18 considered.

19 The other issue will be that we will be filing a
20 motion to compel and be trying to do the same thing. So I
21 guess we're not objecting totally to the concept of them being
22 able to file supplemental rebuttal. We'll be asking for the
23 same right when we file our motion to compel.

24 MS. HELTON: One --

25 COMMISSIONER DEASON: Let me ask one thing.

1 MS. HELTON: Okay.

2 COMMISSIONER DEASON: Ms. Summerlin, do you -- how do
3 you foresee us proceeding with the hearing dates that we have
4 and still provide an opportunity to BellSouth to file
5 supplemental testimony, supplemental rebuttal, as well to
6 provide time for you to provide -- to file your motion to
7 compel and to get additional discovery and to file supplemental
8 rebuttal all within the time period to have this go to hearing
9 on September 21st and October 1st?

10 MS. SUMMERLIN: Well, we have 11 days between now and
11 then. It would seem to me that BellSouth needs to be given at
12 least a few days to file their supplemental. We're going to
13 immediately file a motion to compel. If we file one at all, it
14 will be immediately, within a day. We will be asking for
15 discovery to be produced by BellSouth within three or four
16 days. Or whatever we identify in that motion to compel, will
17 be something that we obviously have decided is absolutely
18 usually essential.

19 So, I mean, it's perfectly possible to stick with the
20 hearing dates that we have and handle these things, I believe.
21 I mean, it's not easy, but it's certainly possible. And IDS is
22 far more committed to getting to this hearing on September 21st
23 than any other issue in this situation right now.

24 COMMISSIONER DEASON: Well, it's my desire to work
25 with the parties and to try to make all accommodations

1 possible. But at some point, if the dispute is concerning
2 discovery and the need to continue to file supplemental
3 rebuttal testimony continues, that some points are going to put
4 in question and potentially jeopardize the hearing dates, that
5 is, just from a scheduling standpoint, just for the moment
6 ignoring the motion to continue, and that will be taken up in
7 due course. So just for the parties' benefit, there is a
8 concern there.

9 Mr. Lackey, do you wish to address your motion
10 concerning the OSS issues?

11 MR. LACKEY: Yes, I think that's about a 30 second
12 issue. It essentially is the same issue that we raised with
13 regard to the anticompetitive activities. Basically, Issue
14 1 and Issue 2 implicate the question of whether we are
15 providing access to our operating systems at parity. That's
16 what's going to have to be resolved in order to resolve Issues
17 1 and 2, at least it appears on its face that's what's going to
18 have to be resolved. You have an entire proceeding, including
19 third-party testing and all the rest of it, that deals with
20 this exact issue. I'm not quite sure how you're going to
21 handle the parity issue in this hearing between IDS and
22 BellSouth when you have a docket and a proceeding and
23 third-party testing that's been going on for two years that
24 implicates the entire industry.

25 And so what we would ask is that this issue, these

1 issues, these parts of these issues be moved to those generic
2 proceedings as well so that they can all be handled efficiently
3 and at one time.

4 COMMISSIONER DEASON: Ms. Summerlin.

5 MS. SUMMERLIN: Commissioner, I'm sure you have seen
6 our written response to BellSouth's motion. I guess the bottom
7 line is, the other proceeding that the Commission is conducting
8 right now was not constituted to litigate the rights of
9 individual parties to interconnection agreements. Whether or
10 not BellSouth is providing IDS OSS at parity at this point in
11 time is part and parcel of the interconnection agreement
12 between the two parties. And IDS just like any other CLEC in
13 the state of Florida has a right, or ALEC in the state of
14 Florida, has a right to come to the Commission and ask to have
15 any issues under that interconnection agreement that they have
16 with BellSouth litigated. And IDS is here on that basis.

17 IDS should not be required to participate in a
18 generic proceeding that is looking at issues in a policy sense
19 as opposed to the actual litigation between two parties to the
20 interconnection agreement. And, you know, I've said a lot of
21 different things. I don't know that you need me to go on and
22 on. But that's the bottom line, is that IDS has a right to
23 have the issues in its interconnection agreement determined by
24 the Commission in a proceeding that is focussed on the two
25 parties to that agreement.

1 COMMISSIONER DEASON: Very well. Staff, do you have
2 anything to add?

3 MS. HELTON: Well, as I understand the issues that
4 are set out in the order establishing procedure, those are more
5 historical type issues where we were looking at what has
6 happened in the past. And as I understand the OSS testing
7 that's going on in Docket Number 960786, that's more of a
8 current basis. So I think we're looking at two different time
9 periods.

10 COMMISSIONER DEASON: Thank you. I'm going to deny
11 the motion. Even though there may be some duplication of work,
12 I think that it is important that we allow IDS the opportunity
13 to present their case concerning allegations of OSS
14 disparities, and we will proceed on that basis.

15 Mr. Lackey, any other motions? I know that we have
16 some things still pending, but --

17 MR. LACKEY: I don't think there are any other
18 motions that haven't been addressed.

19 COMMISSIONER DEASON: Okay. Ms. Summerlin, do you
20 have any -- well, first of all, are there any other preliminary
21 matters other than the motions?

22 MR. LACKEY: Not that I'm aware of.

23 COMMISSIONER DEASON: Okay.

24 MS. HELTON: Commissioner Deason, can I ask about --
25 the parties have filed several notices of intent to file

1 requests for confidential treatment. If we could maybe get a
2 date certain when those requests are going to be filed so that
3 they could be ruled on prior to the hearing.

4 MR. LACKEY: Yeah, we probably need to talk about
5 that. I didn't look at those before I came down here, so I'm
6 not confident that I can address them right now. But I believe
7 that what some of that was, was that was information that we
8 thought IDS might want to have kept proprietary, and so we
9 filed a notice of intent. But to the extent it's their data,
10 they're going to be required to file the motion, I believe.

11 MS. HELTON: And to be honest with you, I haven't
12 kept track, but quite a few notices have been filed. So
13 there's the potential for quite a few requests being filed.

14 MS. SUMMERLIN: As far as IDS's part goes, what we've
15 asked for confidential treatment of was information related to
16 our customers. I mean, I think 100 percent, really, of what
17 we've asked for have been customer names, addresses, and
18 account numbers, that kind of information. It's not anything
19 else. So we will have to file requests for confidentiality for
20 those. I think we are legally required to do that.

21 And in terms of using any of the confidential
22 information in the hearing, we will certainly follow the
23 procedures that are set out in the prehearing order right now
24 and try to use written exhibits, you know, and not talk about
25 anything that's confidential. I mean, theoretically, we're

1 supposed to be talking about that today, so I just wanted to
2 make note of that.

3 COMMISSIONER DEASON: The Staff, I think, is desirous
4 of a time for having any specific request to be filed.

5 MS. HELTON: That's exactly what I'm desiring.

6 COMMISSIONER DEASON: Do you have a suggested --

7 MS. SUMMERLIN: Somehow I knew that was what you
8 were -- desires.

9 COMMISSIONER DEASON: Do you have a suggestion,
10 Staff? When can the parties file that?

11 MS. HELTON: Well, obviously, the sooner, the better
12 for Staff.

13 MS. SUMMERLIN: IDS will commit to trying to get
14 those filed by, I guess, by maybe next Monday, the 17th.

15 MS. HELTON: That way it will give them a weekend.
16 That works for us.

17 MS. SUMMERLIN: Yeah, these are not easy things to
18 do, as I'm sure you-all are aware.

19 MS. HELTON: I'm very familiar with companies who
20 have a request.

21 MS. SUMMERLIN: Yeah.

22 MR. LACKEY: The ones that we are going to file the
23 request on, we can do it by the 18th.

24 COMMISSIONER DEASON: I thought the 17th was the day,
25 the 17th.

1 MR. LACKEY: The 17th, I'm sorry. I was just
2 negotiating. The 17th will be fine.

3 MS. SUMMERLIN: We'll take the 18th.

4 COMMISSIONER DEASON: We'll stay with the 17th.

5 Ms. Summerlin, do you have any preliminary matters
6 before we proceed further?

7 MS. SUMMERLIN: Yes, sir, I do. On a prior occasion,
8 I failed to ask you for the authority to give an opening
9 statement. And so I'm asking you today that I be able to give
10 an opening statement at this hearing. And we'll certainly stay
11 within the -- I think you have ten minutes in the prehearing
12 order.

13 MS. HELTON: That's correct.

14 MS. SUMMERLIN: And I'll certainly comply with that.

15 COMMISSIONER DEASON: Okay. Mr. Lackey.

16 MR. LACKEY: That's fine with us.

17 COMMISSIONER DEASON: Okay. Ten minutes per side,
18 opening statements. Okay. That will be reflected then in the
19 prehearing order.

20 MS. SUMMERLIN: I just have one other -- I think it's
21 just one other, let's -- IDS does not know for sure if any
22 customers are going to be able to come to this hearing. I
23 would just like to confirm that if they can come, or they want
24 to come, that they would be allowed to do their customer
25 testimony at the beginning of the proceeding as is normally

1 done in Commission proceedings.

2 I don't know whether anybody is going to come. We're
3 not putting on any testimony. We're not -- you know, we would
4 have prefiled it if we were doing it that way, but if customers
5 wanted to come, I need to be able to tell them when and how
6 that would be handled, so --

7 COMMISSIONER DEASON: Mr. Lackey.

8 MR. LACKEY: Well, I guess we're contemplating as
9 treating these customers like public witnesses, but, you know,
10 clearly, if IDS's customers are going to appear and testify and
11 they have advance knowledge of who's coming, maybe they don't
12 have to prefile the testimony, but they ought to at least be
13 required to tell me who they have talked to and, you know,
14 what's going on, so I can at least have somebody look up, you
15 know, the people's records and find out what the situation is.

16 I shouldn't be required to come in here the morning
17 of the 21st and have a bus load of IDS customers here and not
18 know a thing about any of them and try to find out as we go.
19 That doesn't strike me as being particularly fair.

20 MS. SUMMERLIN: If I may respond, Commissioner.
21 First of all, IDS doesn't know if anybody is going to show up.
22 I mean, honestly, we do not know whether anybody will show up
23 because you're talking that person having to pay for
24 transportation from -- generally from Miami. If any of them
25 were going to come, it would be from there, and IDS certainly

1 is not situated to be able to afford that transportation. So I
2 think there's a natural and inherent barrier to the likelihood
3 of very many people coming. But we will not know if and
4 when -- or who will be coming.

5 And I would point out that this Commission holds
6 hearings all the time where customers are invited to come, and
7 no utility has been put in a position of having to give the
8 other parties information as to those customers because they
9 don't ever know for sure who's going to show up. There could
10 be endless numbers, or there could be one. I mean, and at this
11 point in time, we have no expectation that there's going to be
12 any big number of people or that there may not even be one. I
13 just don't know, but I certainly don't think that we have an
14 obligation to go and try to find out and give every kind of
15 notice to BellSouth. I mean, these are people that will have
16 been their customers also. I mean, if they come at all.

17 Quite honestly, I haven't spoken to a single person
18 who had said to me they're going to come, and I can tell you
19 that as a lawyer right now. I haven't spoken to a single
20 person, and I don't know whether anybody will come. If they
21 do, I will be surprised, but I don't think it's IDS's
22 obligation to inform anybody about who they are because we
23 don't know. It is a public hearing, and if somebody is a
24 customer of BellSouth or of IDS, they have a right to come.

25 COMMISSIONER DEASON: Okay. Let me just clarify the

1 way we're going to handle this. If a customer comes to this
2 hearing and wishes to make a statement, they will be permitted
3 that opportunity, as is customary. But it is not commonplace
4 for there to be an outpouring of customer testimony within the
5 confines of a complaint docket. This Commission goes to great
6 lengths to get customer testimony, but it is usually concerning
7 quality of service if it's a rate proceeding or if it's
8 something of some major public import such as area codes,
9 things of that nature. Usually customers do not avail
10 themselves of their opportunity to testify in a complaint
11 between two competing telephone companies.

12 I'm not going to say that I will not take customer
13 testimony, but I will put this warning out that if it appears
14 that customers are being recruited to come and to testify and
15 that it is trying to circumvent the necessity of prefiling
16 direct testimony, it will not be looked favorably upon at the
17 time.

18 Of course, this is -- the Chairman will be actually
19 presiding at this hearing, and it will be up to his prerogative
20 to handle that in the way that he sees, but I will certainly
21 avail myself of the opportunity to at least discuss with him at
22 the hearing that this matter was discussed at prehearing
23 conference and that parties were admonished not to go out and
24 recruit customers to come and testify in support of their
25 direct case, either side.

1 We will not deny customers their opportunity to
2 present true customer testimony in the broad sense. Obviously,
3 parties will be free to make any objections if it appears that
4 the customer testimony really should be part of one of the
5 other party's direct case.

6 MS. SUMMERLIN: Commissioner, I appreciate what
7 you're saying, and I'm certainly not objecting to any of that.
8 The only thing I am concerned about is, obviously, the only way
9 a customer will know this case is going on is if somebody has
10 told them at one of the companies. That does not mean that
11 they have been recruited, you know, to come and flood the
12 hearing. Obviously, we don't have enough time to deal with the
13 testimony --

14 COMMISSIONER DEASON: Well, that was my other
15 comment, is we have two days to conduct this hearing which it
16 appears that every minute of those two days is going to be
17 utilized and will be held at a premium. I don't know what the
18 Chairman's plan is going to be, but if we find ourselves taking
19 extensive customer testimony, you may get a de facto
20 continuance of this hearing if we cannot conclude within two
21 days.

22 And if this is going to be heard by the full panel of
23 Commissioners, all five Commissioners, I don't know when the
24 next available hearing date -- it may be the next day, or it
25 may be six months, but that's up to the Chairman's office to

1 determine that.

2 Any other preliminary matters?

3 Let me ask Staff: This hearing has been noticed in
4 the normal way of Florida Administrative Weekly, but there's
5 been no requirement to send out any customer notice because it
6 is not really within the normal -- or describe to me, if you
7 can, the extent that any notice has been given concerning this
8 hearing.

9 MS. HELTON: Just as you said, it's been published in
10 the Florida Administrative Weekly as is required in Chapter
11 120, Florida Statutes, and we also last week issued the
12 Commission notice that's typically --

13 COMMISSIONER DEASON: It's on our Web site and that
14 sort of thing?

15 MS. HELTON: Right. But that's not issued to any
16 customers either. That's just issued to the companies and
17 anyone that's an interested person. I believe they also get
18 it, but I don't know that for a fact, but it's designated as
19 such in our case management system.

20 COMMISSIONER DEASON: Okay. All right. Yes,
21 Mr. Lackey.

22 MR. LACKEY: I haven't done this in a long time, so I
23 may have the procedures wrong. But there's a couple of
24 corrections that need to be made in the prehearing statement,
25 and there's the issue of the order of witnesses and there's --

1 COMMISSIONER DEASON: We're going to get to all of
2 that.

3 MR. LACKEY: We're going to get to all of that?

4 COMMISSIONER DEASON: Yes, sir, we sure will.

5 MR. LACKEY: Sorry. It's been a while.

6 COMMISSIONER DEASON: In fact, that's what we will do
7 next, is we will proceed through the draft prehearing order.
8 As is customary, at least in my prehearing conferences, I like
9 to proceed through this section by section. If there are no
10 questions or corrections or modifications, we will proceed
11 rapidly section by section.

12 If you have any comment or wish to make any
13 modification, let me know, and we will give you the opportunity
14 to explain that fully.

15 Having said that, Section I, Conduct of Proceedings.

16 MS. HELTON: Commissioner Deason, before we get to
17 that, I had not included Mr. Lackey in the appearances section.
18 So maybe if we could ask him whether he needs to be included
19 there, and the other attorneys that are listed there, should
20 they remain there? And are there any additional attorneys that
21 should be included?

22 MR. LACKEY: At the present time, I believe an
23 appearance was entered on my behalf last week. I should be
24 added to the prehearing. I don't believe there are any other
25 attorneys that we will be adding.

1 COMMISSIONER DEASON: So just add your name to those
2 that are there?

3 MR. LACKEY: Yes, sir, I'm afraid so.

4 COMMISSIONER DEASON: Okay. Very well. Section I,
5 Conduct of Proceedings. Section II, Case Background.
6 Section III, Confidential Information. Section IV, Posthearing
7 Procedures. Section V, Prefiled Testimony and Exhibits.
8 Section VI, Order of Witnesses.

9 Mr. Lackey.

10 MR. LACKEY: I think we've got two issues here.
11 First, my witnesses were just listed alphabetically, so we'll
12 have to figure out what the order is going to be for the
13 presentation. And I'm sorry I don't have it today because I
14 don't have it.

15 COMMISSIONER DEASON: When can you have that,
16 Mr. Lackey?

17 MR. LACKEY: Within the next couple of days. I just
18 didn't realize until I started looking at it that we'd just
19 done it alphabetically.

20 MS. HELTON: Today is the 10th, so you can have it to
21 me by the close of business on the 12th?

22 MR. LACKEY: Sure.

23 COMMISSIONER DEASON: Is that satisfactory?

24 MS. HELTON: Yes, sir.

25 COMMISSIONER DEASON: Okay. Your other concern.

1 MR. LACKEY: The other issue is just a procedural
2 one. A lot of these witnesses filed direct and rebuttal. Are
3 we going to just put everybody up at one time?

4 COMMISSIONER DEASON: That's certainly -- we need to
5 discuss that. Do you have a preference?

6 MR. LACKEY: Everybody at one time is fine with me.

7 MS. SUMMERLIN: I have a preference, because I
8 believe that the way this case has been handled, IDS would put
9 on its direct case, BellSouth puts on direct and rebuttal, and
10 then we put on our rebuttal. That's the way the testimony is
11 filed, and in this type of case, I think that's an appropriate
12 way to order the witnesses.

13 MR. LACKEY: I'm sorry, I got distracted. Did you --

14 COMMISSIONER DEASON: Ms. Summerlin indicated that
15 the flow should be: IDS putting on its direct case, BellSouth
16 putting on its direct and rebuttal, and then IDS putting on its
17 rebuttal. I think I characterized that correctly.

18 MS. SUMMERLIN: Yes, sir.

19 COMMISSIONER DEASON: Do you have a problem with
20 that, Mr. Lackey?

21 MR. LACKEY: No. We're not going to try this case in
22 two days, though. But I certainly can't object to --

23 COMMISSIONER DEASON: That's going to be the
24 Chairman's problem. I'm just going to be there when he tells
25 me to be there.

1 MR. LACKEY: You just mention to him we discussed it
2 during the prehearing conference.

3 COMMISSIONER DEASON: Staff, you have no problem with
4 having IDS put on its direct followed by BellSouth's direct and
5 rebuttal and then concluding with IDS rebuttal?

6 MS. HELTON: No, sir, we have no problem with that.

7 COMMISSIONER DEASON: Okay. To the extent the
8 parties need to clarify with Staff exactly -- perhaps all
9 witnesses have direct and rebuttal, and there may even be some
10 supplemental, so I'm just going to -- it's going to be
11 incumbent upon the parties to make sure Staff fully understands
12 the order of witnesses and which witnesses are going to be
13 testifying in which phase of the hearing so that it can be
14 incorporated correctly into the prehearing order.

15 MR. LACKEY: Let me ask a question about that since I
16 go in the middle and my witnesses go up one time. For
17 instance, Mr. Ruscilli has direct testimony by himself, and
18 then he has rebuttal testimony in a panel of two other
19 witnesses. We're talking about just putting him up one time,
20 putting everybody up at one time, put his --

21 MS. HELTON: I was going to ask about that. As you
22 know, this is the first time I've ever done a
23 telecommunications hearing, and I don't recall ever having a
24 panel of witnesses before. How is that done? Or is that --

25 COMMISSIONER DEASON: It's not commonplace, but it's

1 not unheard of. We have usually made that accommodation unless
2 there's been some strenuous objection and good reason for the
3 objection from opposing party.

4 Ms. Summerlin, do you have an objection to a panel of
5 witnesses?

6 MS. SUMMERLIN: No, we responded by our own panel, so
7 we can't object.

8 MR. LACKEY: I was waiting on that.

9 MS. SUMMERLIN: He was hoping I would have forgotten
10 that.

11 MR. LACKEY: No, I didn't.

12 MS. HELTON: Just for clarification purposes so we
13 don't have to go through this at the hearing, so if we have a
14 cross examination question for the panel, we just state our
15 question, and then the panel decides who to answer?

16 MR. LACKEY: Most of our testimony indicates -- if a
17 particular witness on a panel knows about the testimony, it has
18 their name in front of the question. And you can just
19 direct -- the practice has been you direct the question to
20 whoever you want. The object is to get through it more quickly
21 and to get as complete an answer as possible. So we've lumped
22 them together, the people who ought to know some of the same
23 things, but you can --

24 COMMISSIONER DEASON: It would be your prerogative.
25 If you wish to address the question to a particular member of

1 the panel, you may do so, and then the panel -- the individual
2 can respond, and then the -- or they may indicate that it would
3 be preferable for another member of the panel to response, but
4 usually that goes fairly smoothly.

5 MS. HELTON: Okay. And Ms. Summerlin had not
6 provided the list of rebuttal witnesses, so I'm assuming you
7 will do that also by the close of business on Wednesday so that
8 that can be included in the --

9 MS. SUMMERLIN: On Wednesday, okay.

10 COMMISSIONER DEASON: Let me ask this question.

11 Mr. Lackey, when you present your direct and your rebuttal,
12 since, as you indicated, you are going in the middle, are you
13 desirous to having them do direct and rebuttal at one time?

14 MR. LACKEY: Yes, sir. What I was really asking
15 about is, Ruscilli has got direct by himself and then Ruscilli
16 is on a panel with two other witnesses giving rebuttal. I
17 proposal we just put all three of them up there, let him give
18 his direct, give his rebuttal and the panel give their rebuttal
19 all at one sitting instead of putting him up and then
20 questioning him about his direct, then pulling him off and
21 putting the panel up.

22 COMMISSIONER DEASON: Ms. Summerlin, any objection?

23 MS. SUMMERLIN: That's fine.

24 MR. LACKEY: But I don't care. I mean, if somebody
25 objects, we'll do it the other way.

1 MS. SUMMERLIN: That's fine.

2 COMMISSIONER DEASON: If it will facilitate and
3 expedite, let's go with that.

4 MR. LACKEY: I think it will.

5 COMMISSIONER DEASON: Perhaps now would be a good
6 time to address customer, not customer, but witness summaries
7 of testimony. We are going to allow, as is customary,
8 witnesses to provide a brief summary of their testimony. And
9 perhaps there should be emphasis on the term "brief" if we're
10 serious about trying to conclude this hearing in two days.

11 So I will not put any specific time period on, but
12 just make it clear to your witnesses that it should be a
13 summary, which means that they should only summarize what is in
14 their testimony and not take a summary as an opportunity to
15 expand upon what has been prefiled and that it should be kept
16 as brief as possible.

17 Mr. Lackey.

18 MR. LACKEY: The draft order says five minutes on
19 witness summaries.

20 COMMISSIONER DEASON: There is a time period?

21 MR. LACKEY: It says --

22 MS. HELTON: Can you refresh my memory as to which
23 section that's in?

24 MR. LACKEY: It's on Section IV, "Summaries of
25 testimony shall be limited to five minutes."

1 COMMISSIONER DEASON: I don't have an objection
2 having the time period. Is there --

3 MR. LACKEY: That's fine.

4 MS. SUMMERLIN: That's fine.

5 COMMISSIONER DEASON: Five minutes?

6 MS. SUMMERLIN: That's fine.

7 COMMISSIONER DEASON: We can leave it in then.

8 That's fine. And I will leave it up to the Chairman to enforce
9 it.

10 Section VII, Basic Positions. Section VIII, we'll go
11 issue by issue within that section and begin with Issue 1.
12 Issue 2.

13 MR. LACKEY: Wait a minute. Yes. On Issue 2, on
14 Page 10, at the end of ours, the "33 percent" should be
15 ".53 percent."

16 MS. HELTON: .53 percent?

17 MR. LACKEY: Uh-huh. I about had a stroke when I saw
18 the 33 percent.

19 COMMISSIONER DEASON: Okay. That change has been
20 noted.

21 Any other changes for Issue 2?

22 MR. NOSHAY: .05 percent?

23 COMMISSIONER DEASON: It's a .53 percent, which is a
24 little more than one-half percent.

25 Issue 3. Issue 4. Issue 5.

1 MR. LACKEY: There's a typo in our position. There's
2 an apostrophe after the "has" on Page 12, a small thing.

3 COMMISSIONER DEASON: Staff, did you catch that?

4 MS. HELTON: I understood that one.

5 COMMISSIONER DEASON: Very well. We can proceed now
6 to Section IX, Exhibit List, which is quite extensive. Any
7 changes or corrections?

8 MS. SUMMERLIN: For IDS, Commissioner, there is an
9 extremely long list that we submitted in our prehearing
10 statement that we're going to replace that with the actual
11 direct -- or actual rebuttal exhibits that we filed, and that
12 will shorten that list tremendously because all of those are
13 subsumed in one exhibit. So it will be a lot less lengthy.

14 COMMISSIONER DEASON: Very well. Can you get that to
15 Staff by close of business Wednesday?

16 MS. SUMMERLIN: Uh-huh.

17 MR. LACKEY: I don't know what that means, but I
18 guess we'll just wait and see what they are when they get here.
19 We've got some exhibits that we're going to object to, but --

20 COMMISSIONER DEASON: We'll deal with that when the
21 witness takes the stand, and we'll have them identified, which
22 is customary, and then you may object to those before they get
23 admitted into the record.

24 MR. LACKEY: Okay.

25 COMMISSIONER DEASON: Section X, Proposed

1 Stipulations. The parties are free to negotiate a settlement
2 in this docket. Let the record reflect there were a few
3 chuckles.

4 Section XI, Pending Motions. We will deal with the
5 motion for continuance later today.

6 MS. HELTON: That's correct.

7 COMMISSIONER DEASON: We have already addressed the
8 motion to defer OSS issue, and we will also address the motion
9 to file supplemental rebuttal testimony after we address the
10 dispute concerning discovery.

11 MS. HELTON: I don't know if this is appropriate or
12 not. I know Ms. Summerlin has said that she plans on filing a
13 motion to compel. Would it be appropriate to ask the parties
14 if they plan on filing any other motions so that Staff can kind
15 of look at their workload situation to plan time to have to
16 deal with those, if necessary?

17 COMMISSIONER DEASON: Well, I think it's fair to ask
18 the parties if they, sitting here today, if they know that
19 there will be motions that will be filed to at least advise you
20 as to what they are, but obviously, they will still be free to
21 file motions in the future depending upon the course of the
22 docket.

23 MS. HELTON: Right.

24 COMMISSIONER DEASON: I'll just ask the parties, if
25 you're aware of any motions that, sitting here today, that you

1 know will be filed, if you could indicate that to Staff, that
2 probably would be helpful.

3 MS. SUMMERLIN: We will be filing a motion to compel,
4 and I will do it just as fast as I can.

5 MR. LACKEY: I don't intend to file any more motions
6 to compel anyway. But the only issue that I have that's open
7 that we're still talking about was the rebuttal testimony of
8 Mr. Kramer that was supposed to be filed on the 5th. It was
9 filed -- served on us without exhibits sometime after the close
10 of business on the 6th. We found a revised copy with exhibits
11 stuffed into the bars -- the door of our office. In other
12 words, it was filed late, and we're still talking about whether
13 we're just going to let that one go or not. That's the only
14 other thing I know of that we've got sitting out there.

15 MS. SUMMERLIN: Well, if necessary, we will file a
16 motion for leave to accept the late-filed. It was a
17 replacement testimony. There were clerical problems with
18 formatting and getting the exhibits on there, and his testimony
19 was filed on the correct date without the exhibits because of
20 the clerical --

21 COMMISSIONER DEASON: I think this is something the
22 parties can talk about.

23 MR. LACKEY: We just haven't had a chance to look at
24 it, or I haven't looked at it. And since you asked me, I
25 didn't want to surprise you if something came out.

1 COMMISSIONER DEASON: I would suggest that the
2 parties work this out between themselves, and if not, advise
3 Staff that you will be filing a motion and file it. And it
4 will be dealt with in due course.

5 MR. LACKEY: I don't think it's going to be an issue,
6 quite frankly. I just don't want to surprise you.

7 COMMISSIONER DEASON: Staff, did that answer your
8 question?

9 MS. HELTON: Close enough.

10 COMMISSIONER DEASON: Okay. Section XII, Pending
11 Confidentiality Matters. We addressed that to some extent
12 prior.

13 Staff, do you need any further clarification?

14 MS. HELTON: I just want to confirm that the parties
15 will file any request for confidential treatment by Monday,
16 September the 17th. And if it gets filed after that, then it's
17 going to be public; is that correct?

18 MS. SUMMERLIN: No, I don't think so.

19 MR. LACKEY: It's okay with us.

20 MS. HELTON: Pardon?

21 MR. LACKEY: It's okay with us.

22 COMMISSIONER DEASON: We will not divulge
23 information, but I think it is important for the parties to
24 meet that deadline. And if they cannot be met, they should
25 demonstrate good cause for why.

1 MS. SUMMERLIN: Sure. We will do everything we can
2 to meet that deadline.

3 COMMISSIONER DEASON: Okay. And Section XIII,
4 Rulings. This section will incorporate rulings that have been
5 made previous here today and rulings subsequent to the present
6 moment.

7 I understand that the parties need additional time to
8 continue the review of the matters which are subject of
9 discovery and motion to compel. Let me -- is the time being
10 utilized in a fruitful manner?

11 MS. SUMMERLIN: Commissioner, I have -- what I have
12 attempted to do is to contact the people -- my client's
13 headquarters down in Miami to try to get them to look at the
14 list that Mr. Lackey produced today to try to see if there are
15 other responses that were provided that are applicable to the
16 things that he has identified, because to the best of my
17 knowledge, we have given everything that we had.

18 And if it happened to be something that was provided
19 in another response, if we can identify something that will
20 help BellSouth to see what we're talking about, that's what
21 we're trying to do. I mean, the bottom line is, if we had
22 anything, we have tried to produce it. And, you know, to the
23 extent that you give us any more time, I will have that effort
24 go on and try to respond.

25 COMMISSIONER DEASON: Ms. Summerlin, there can be no

1 time given.

2 MS. SUMMERLIN: No, what I mean is today.

3 COMMISSIONER DEASON: Oh, yes, today.

4 MS. SUMMERLIN: Get back to you. That's all I'm
5 talking about.

6 COMMISSIONER DEASON: Oh, okay. I thought you were
7 asking for --

8 MS. SUMMERLIN: No, no. no.

9 COMMISSIONER DEASON: -- additional time to file
10 responses. I've already made that accommodation. What I want
11 is, I think it would be helpful to continue for the parties to
12 discuss it. What I'm desirous of is for IDS to indicate to
13 BellSouth if no information exists or a review has already been
14 done and everything that exists has been provided and nothing
15 else is forthcoming, I want that indicated.

16 MS. SUMMERLIN: Okay.

17 COMMISSIONER DEASON: If there are matters out there,
18 there's information that should be provided which was not
19 provided before now, well, then I think that's a pretty serious
20 matter, and I will then have to contemplate whether we need to
21 continue this hearing. I would like to have that resolved to
22 the fullest extent possible today before we leave.

23 Having said that, I will allow additional time for
24 that to take place. I think that it's obvious that Mr. Lackey
25 needs to know if the responses he's gotten indicates that

1 there's nothing else forthcoming or if there's still a
2 situation where you just indicate that you need more time to
3 completely respond. I think that's two different matters
4 altogether. I need to know that myself, and it has a bearing
5 on the way I will treat the motion to continue the hearing as
6 well as the question of the time period for filing supplemental
7 testimony. They're just dependent upon that further discovery.

8 Any questions? If I can give any further guidance?
9 Mr. Lackey, you look a little puzzled.

10 MR. LACKEY: No, no, I'm not puzzled. I'm just
11 concerned, I guess is the issue. And I'll stay here as long as
12 we need to. As far as I'm concerned, if they tell me, for
13 instance, using that customer interrogatory I talked about,
14 that they can't identify the customers and that they have no
15 documents that would allow them to identify the customers, then
16 to me that's a complete answer to the question. I mean, that's
17 pretty straightforward to me.

18 COMMISSIONER DEASON: Obviously, you're not asking
19 them to provide information which does not exist.

20 MR. LACKEY: Exactly right, but I want an unequivocal
21 statement that they don't have the information, it doesn't
22 exist, and there are no documents. And I think I'm entitled to
23 that.

24 COMMISSIONER DEASON: Ms. Summerlin, do you have any
25 objection to that?

1 MS. SUMMERLIN: No. We will clarify that the
2 responses that say "no further information" on this question
3 means "no documents" if they have not been provided. If
4 there's something in the responses to another question that
5 meets that particular question and that's why that response was
6 given, then I will clarify that. I mean, that's the only other
7 possibility.

8 MR. LACKEY: What I want to make sure of is, no
9 documents or no information. I mean, the fact that it's
10 inconvenient to go back and look at the records to find out
11 which customers you called to get information for doesn't mean
12 there's no information available. That's my point.

13 MS. SUMMERLIN: Well, I guess on that point I need to
14 say that the response would be if the company has not got any
15 way to go through every last piece of paper that it has to be
16 able to compile a request, that -- in one sense, you can say
17 there is information, but it may not be possible for them to
18 produce that information. And if they cannot produce it to
19 give to Mr. Lackey now, they can't produce it at the hearing, I
20 mean, clearly.

21 So, I mean, the bottom line is either they've got it
22 and they can produce it because it's in a form they can give it
23 to somebody, or it's there in a whole incredible file cabinet
24 full of records that nobody --

25 COMMISSIONER DEASON: But I'm still going to give

1 you-all time to discuss it, but Ms. Summerlin, it seems to me
2 that it was -- you had the burden to object based upon
3 relevancy or if it was overly burdensome or whatever, and there
4 were no objections filed, is my understanding, to any of the
5 discovery that was filed by Bellsouth; am I correct?

6 MS. SUMMERLIN: There were no objections filed. You
7 don't have to file an objection before you know that the
8 information does not exist. The way this process works is, you
9 file an objection if you think something is absolutely
10 inappropriate. That wasn't the position that IDS took.

11 The position was, if something was relevant to the
12 case and they had it, they should produce it, and they tried
13 to. And the answer that was given was simply to reflect that
14 there is no information to provide. It's just like asking
15 BellSouth a question that they may have. There's all kinds of
16 information that they have that they're not going to be able to
17 produce because they're not going to have enough people to put
18 on that task to do it. And that's a legitimate response in
19 some situations, and I think it is in this situation to some of
20 these questions. But I'm not saying that's even the response.
21 I will clarify that either they have nothing or there's some
22 other response that we've given that has the information in it,
23 one or the other.

24 COMMISSIONER DEASON: Very well.

25 MR. LACKEY: And, again, I want to leave the record

1 clear, suggesting that I'm requiring or the law requires
2 anything other than a reasonable search of documents that might
3 reasonably be expected to contain the data. I'm not saying you
4 have to look at every piece of paper, but when you get an
5 inquiry and you don't object, you've got to at least look, make
6 a reasonable search. That's all we're here about.

7 COMMISSIONER DEASON: Okay. I will ask the parties
8 how much time is needed to conclude discussing the discovery
9 dispute so that we can give you adequate time but, at the same
10 time, realize that we need to conclude this prehearing
11 conference today.

12 Ms. Summerlin.

13 MS. SUMMERLIN: The problem I've got right this
14 second is, if I call them up and they have the answers right
15 now, we could be back here in 15 minutes, but I don't know if
16 they've got the -- if they're ready to tell me that or not.

17 MS. HELTON: I think we'd still need to go through
18 the questions, or Staff would.

19 COMMISSIONER DEASON: The problem that I have, I have
20 a hearing that convenes at 1:30, which is a continuation
21 hearing in a different docket. I don't know exactly what the
22 time period is for that hearing.

23 I would suggest that we reconvene at 2:30 with the
24 assumption that the -- that my hearing will conclude by that
25 time; it may not. Staff can keep the parties apprised of the

1 status of that hearing. And if you get bored, you're welcome
2 to come and watch that hearing.

3 MR. LACKEY: What kind of a hearing is it?

4 COMMISSIONER DEASON: It's a service standard
5 complaint filed against Verizon.

6 MR. LACKEY: I'd like to observe somebody else
7 getting complained about.

8 COMMISSIONER DEASON: A show cause, actually, I guess
9 is what it was.

10 MS. SUMMERLIN: Commissioner, I just have one other
11 thing if I may bring it up. I would like to ask or clarify
12 whether the Staff intends to make an exhibit of the deposition
13 transcripts that we're taking in this case, as is commonly
14 done. And I'm just curious, I mean, if that's going to be done
15 on not.

16 MS. HELTON: Right now, Staff is planning on doing
17 that.

18 MR. LACKEY: And I've informed the Staff, and I
19 assume that's why Ms. Summerlin asked the question, that I
20 intend to object to that practice in this case.

21 COMMISSIONER DEASON: You're going to --

22 MS. HELTON: Wait a second because I don't understand
23 Mr. Lackey's objection. I thought the objection was going to
24 go to us including deposition transcripts only for those
25 BellSouth people who are testifying in the hearing and who are

1 deposed.

2 MR. LACKEY: I intend to make an objection to those
3 portions of that exhibit that would be objectionable under law.
4 If there's been a deposition taken of someone who's not subject
5 to the jurisdiction of this Commission, then I think that's an
6 exception to the law relating to the use of depositions. But
7 if you're going to dump the depositions in of the people who
8 are witnesses to the proceeding, that's not a proper use of the
9 depositions, and I intend to object at that time. I mean, I
10 think that -- you know, we don't -- it isn't often done like
11 that around here. I mean, we get a little loose about how it's
12 done, but this case has larger implications than all of that,
13 and I need to make sure the record stays as clean as I can make
14 the record stay and that means adhering to the law on those
15 points.

16 MS. SUMMERLIN: Commissioner, if I may. IDS will
17 probably be filing a motion to ask that BellSouth produce all
18 of the witnesses that were deposed in this case as adverse
19 witnesses, if they are not being promoted as a witness in this
20 case, for the purpose of being able to get their deposition
21 transcript either in, in that way or ask the questions again if
22 we have to at the hearing.

23 MR. LACKEY: I'm sorry, I don't mean to drag this
24 out, but that doesn't make any sense. What I just said was, if
25 you've taken the deposition of somebody who's not subject to

1 the jurisdiction of this Commission, somebody who is in
2 Alabama, then submitting that deposition in lieu of that
3 person's live testimony, I believe, is an exception to the rule
4 that says you can't use depositions. That's when you do use
5 it. What I was suggesting --

6 MS. HELTON: And --

7 MR. LACKEY: I'm sorry.

8 MS. HELTON: And so those you will not object to
9 Staff having those included as exhibits in the proceeding.

10 MR. LACKEY: To that extent, the only thing we will
11 object to is to the extent the deposition was taken and during
12 the deposition an objection was made to the question or answer,
13 we're going to have to resolve that objection --

14 MS. HELTON: Which was only about half of the
15 deposition --

16 MR. LACKEY: -- but we'll certainly not object to the
17 proper use of the deposition, which is when you can't get
18 jurisdiction --

19 COMMISSIONER DEASON: Well, Mr. Lackey, you certainly
20 will be free to make whatever objections --

21 MR. LACKEY: Sure. I understand.

22 COMMISSIONER DEASON: -- before anything goes into
23 the record. The only thing I would ask is to the extent that
24 you can at least advise Staff exactly the subject matter of
25 those objections so that it would speed the process at the

1 hearing.

2 MR. LACKEY: And, I mean, everybody is going to -- I
3 raised this this morning with Staff so that everybody would be
4 on notice about this.

5 COMMISSIONER DEASON: And I appreciate it.

6 MR. LACKEY: I'm not trying to sandbag anybody on
7 this.

8 COMMISSIONER DEASON: Yes.

9 MS. SUMMERLIN: Can I just make sure that I
10 understand what has just transpired? BellSouth is not going to
11 object to Staff putting in the deposition transcripts of all of
12 the people who were deposed who are not testifying in the case
13 as a formal BellSouth witness; is that correct?

14 MR. LACKEY: I'm not going to object to the legal use
15 of the depositions other than to the extent that there were
16 objections made during the deposition.

17 MS. SUMMERLIN: Okay.

18 MR. LACKEY: They have to be resolved before it can
19 go into the record.

20 MS. SUMMERLIN: That's a yes, Mr. Lackey?

21 MR. LACKEY: That's the answer I just gave you. I
22 think it was pretty clear.

23 MS. SUMMERLIN: All right. So we come back at 2:30?

24 COMMISSIONER DEASON: We will come back no sooner
25 than 2:30. It's my desire that perhaps that we can reconvene

1 at 2:30. I would suggest you be here. And Staff can advise
2 you as to my status as far as the hearing that I will be
3 participating in. So 2:30 is the target time.

4 MS. SUMMERLIN: Okay. Thank you.

5 COMMISSIONER DEASON: And with that, we'll stand in
6 recess until that time or later.

7 (Recess from 11:50 a.m. to 4:00 p.m.)

8 COMMISSIONER DEASON: Call the prehearing conference
9 back to order. Staff, where do we stand? We have all the
10 issues resolved; right?

11 MS. HELTON: I wish I could say that.

12 COMMISSIONER DEASON: Okay.

13 MS. HELTON: We have made a good faith effort and
14 gone through all of the interrogatories and PODs that BellSouth
15 listed earlier this morning, and there are still some
16 interrogatories for which there is a dispute over whether a
17 response, an adequate response has been provided.

18 COMMISSIONER DEASON: What about PODs?

19 MS. HELTON: PODs, there is -- the one POD, which is
20 the one that asked for all the documents that backs up all the
21 interrogatories, I call that kind of the fallout POD, if
22 there's any interrogatories which you rule are not -- there's
23 not a responsive answer, then there may be some outstanding
24 documents there, but otherwise, I believe that BellSouth is in
25 agreement that the PODs have been answered.

1 COMMISSIONER DEASON: Very well. So how many
2 interrogatories do we need to review?

3 MS. HELTON: Eighteen.

4 COMMISSIONER DEASON: Eighteen. Okay. We can take
5 them one by one.

6 Mr. Lackey.

7 MR. LACKEY: Yes, sir. Before I start, could I say
8 that with regard to a number of the PODs and a number of the
9 interrogatories that are no longer in dispute, the reason they
10 are not in dispute --

11 COMMISSIONER DEASON: Is your microphone working?

12 MR. LACKEY: Am I there? Okay. I'm sorry. I saw
13 the green light and thought I was on.

14 Again, with regard to a number of the PODs and a
15 number of the interrogatories, the reason they're no longer in
16 dispute is that it's my understanding that Ms. Summerlin is
17 going to tell us with regard to those that IDS has no documents
18 that would be responsive.

19 And with regard to at least two of them, it's not
20 only that there were no documents, but there was no information
21 that would allow customers to be identified, which, as I said
22 this morning, is a perfectly adequate answer for me.

23 COMMISSIONER DEASON: Very well.

24 MR. LACKEY: Would you like me to go through those
25 first, or how do you want to approach this?

1 COMMISSIONER DEASON: The ones that Ms. Summerlin is
2 going to provide you that information which you think complies
3 with your requirements, I don't need to review those.

4 MR. LACKEY: I'm sorry, what we had agreed to do,
5 though, is we would do it on the record here. She would say
6 there were no docs, no documents.

7 COMMISSIONER DEASON: Oh, you just want to do it on
8 the record. I thought she was going to be filing something
9 with you in writing. No, we can get it on the record here
10 today. That's fine.

11 MR. LACKEY: It just seems to me that it's waste of
12 time to have her submit another document if we can just say on
13 the record which ones that there are no additional documents
14 for.

15 COMMISSIONER DEASON: That's fine. Please proceed
16 with that.

17 MR. LACKEY: What I have is, I have Number 65,
18 Number 67, Number 81, Number 87, Number 88, Number 97,
19 Number 98, Number 15, Numbers 29, 37, 34. And then PODs 7, 15,
20 16, 17, 18, and 20. It's my understanding that with regard to
21 those interrogatories and PODs, it's IDS's position that they
22 have no responsive documents to those interrogatories and PODs.

23 COMMISSIONER DEASON: Ms. Summerlin, do you agree
24 with that?

25 MS. SUMMERLIN: That's correct.

1 COMMISSIONER DEASON: Okay. Very well.

2 MR. LACKEY: And then with regard to 55 and 56, it
3 didn't ask for documents. It asked for identification of
4 customers that were polled, and it's my understanding that it's
5 IDS's position that they have no information that would allow
6 the polled customers to be identified.

7 MS. SUMMERLIN: That's correct.

8 COMMISSIONER DEASON: Very well.

9 MR. LACKEY: And then from there, we're on to the
10 ones we have the argument about.

11 COMMISSIONER DEASON: All right.

12 MR. LACKEY: What I'd like to do, I think the most
13 productive thing to do would be to look at, for instance,
14 Number 10 and Number 5 go together.

15 COMMISSIONER DEASON: These are included in your
16 August 22nd motion or not? I just need a copy to work from. I
17 know that you had some information attached.

18 MS. HELTON: Let me go make you a copy of this quick.
19 It's the answers. I think that might help.

20 MR. LACKEY: That's probably the easiest way to do
21 it.

22 COMMISSIONER DEASON: Okay. We'll just --

23 MS. HELTON: We have not been able to locate our --
24 Bob -- our first supplemental -- we have not been able --

25 COMMISSIONER DEASON: Bob, you need to make two

1 copies, okay?

2 MS. HELTON: The first supplemental answer that -- I
3 have the actual documents, but for some reason we have
4 misplaced the list that goes to the questions.

5 Do you have a copy of that that we can --

6 MS. SUMMERLIN: Believe it or not, I don't think I
7 have that here.

8 MS. HELTON: Okay.

9 MS. SUMMERLIN: I've got a lot of other stuff, but I
10 think Mr. Lackey said he had one.

11 MS. HELTON: Do you have one that's not marked up,
12 Mr. Lackey, that we could make a copy of?

13 MR. LACKEY: That's what I'm looking for right now.
14 We want the first supplemental answer, is that it?

15 MS. HELTON: Yes. We have the actual documents that
16 were attached to that, but for some reason, the list has been
17 misplaced, or not the list, but the responsive answer.

18 MR. LACKEY: Well, wouldn't you know it, I got one
19 mark on one answer. I mean, you are welcome to it. All it
20 says is "no docs."

21 MS. HELTON: Okay.

22 (Discussion off the record.)

23 MS. HELTON: Sorry, Commissioner Deason, we just
24 realized that, for some reason, we can't locate that one
25 document.

1 COMMISSIONER DEASON: Okay. We'll just stand in
2 recess until we get the copies back, and we'll work from that.
3 It should expedite matters.

4 (Brief recess.)

5 COMMISSIONER DEASON: Okay. We'll go back on the
6 record. Mr. Lackey, you may proceed item by item for the 18
7 interrogatories which remain in dispute.

8 MR. LACKEY: Thank you, sir. I think the place to
9 begin is with Interrogatories 5 and 10 because they both
10 implicate the same issue. And in order to understand both of
11 them, you need to look at the one immediately prior to it.
12 Interrogatory 4 asks for the identity of the 1,400 business
13 customers that Mr. Kramer testified that they lost to BellSouth
14 as a result of the bulk conversion issue.

15 Number 10 addresses some testimony where Mr. Kramer
16 said, during the two weeks following the bulk conversion, IDS
17 lost half of their customers to BellSouth. They have given us
18 a list, or a list is a wrong way to put it, they have given us
19 a set of documents that contains phone numbers and what have
20 you. There's no question about that, and we haven't objected
21 to Number 4.

22 The problem is, is that in Number 5, we asked them
23 some further questions, and they did respond that they did not
24 know what the reason was why the customer disconnected in
25 response to an interrogatory. But we asked them what services

1 they had provided to the customer and what revenue they had
2 received from the customer during the preceding six months.
3 The reason -- and if you'll look at Number 10, it's the same
4 question essentially with regard to the half of IDS customers
5 that were lost during the first two weeks in May or the two
6 weeks following the bulk conversion issue. That's why I'm
7 putting them together.

8 The purpose of making the inquiry, of course, is that
9 IDS has asked that the Commission order a refund of 40 percent
10 of the money that IDS has paid to BellSouth over the past two
11 years. Now, without regard to whether the Commission can do
12 that or not, we're entitled to try to find out what the damages
13 are that IDS could have possibly incurred as a result of losing
14 these customers. And so, therefore, we asked what services did
15 the customers have and what revenue did you receive from them
16 so that we could make such a calculation. They didn't produce
17 any of that information.

18 And when we were discussing it earlier, it wasn't a
19 question that the information doesn't exist, it's that it's not
20 compiled in one place, and they don't intend to go seek out
21 that information for the customers who left them and came to
22 us.

23 Now, I don't see how they can possibly take that
24 position when they're asking for damages from us as a result of
25 these actions. They are claiming that they were damaged

1 because we had a bulk conversion problem, 1,400 of their
2 customers left them, they say, and came to BellSouth, they say,
3 and that they lost even more customers during the following two
4 weeks.

5 If we can't find out what revenue they lost from
6 those customers, how can we possibly test the damages that
7 they're claiming? It seems perfectly relevant, perfectly
8 logical. They can't assert that the information doesn't exist.
9 They just simply don't want to go into their records and get
10 it, and we think they ought to be required to do so.

11 COMMISSIONER DEASON: Okay. Ms. Summerlin.

12 MS. SUMMERLIN: Commissioner, IDS produced the list
13 of the customers with the phone numbers. Mr. Lackey has
14 pointed out that he did receive that. IDS has not had -- has
15 no documentation that shows what services those customers had,
16 what revenue it got from those customers for the six months
17 prior to that date. IDS does not have this information, and
18 that is the only thing -- there's nothing else I can say. They
19 don't have this information. And I would point --

20 COMMISSIONER DEASON: Let me clarify. Mr. Lackey is
21 saying you have it, it's just not readily available for you to
22 easily put it into a report, and you're saying that it does not
23 exist. So I need that clarified.

24 MS. SUMMERLIN: Let me clarify it because what he's
25 saying is that it's easily -- or, you know, that we're saying

1 it's not convenient. That's not what we're saying at all.
2 What we're saying is, we don't have the information about each
3 of these customers that spells out what revenue they have. We
4 don't have -- I mean, I'm not saying that somewhere if you went
5 to absolute extreme lengths you couldn't find it. But the
6 truth of the matter is, they don't have that information in a
7 manner that they can present it even to the Commission, period.
8 I mean, there's just no way. They don't have the information
9 compiled in that way. They don't have it, period.

10 It doesn't mean that if you spent, you know, 50
11 people's manhours for six months that you couldn't derive that
12 information. I'm not saying that it couldn't be found
13 somewhere at some cost, but I think that the other point that's
14 important to realize is, is that BellSouth has the information
15 itself. If they believe that this is such a critical thing,
16 they have those telephone numbers. They've got copies of every
17 order.

18 If we had that information, we would be producing it.
19 We don't have it compiled in the way that they're asking. We
20 don't have it at all.

21 COMMISSIONER DEASON: Well, let me clarify one thing.
22 Mr. Lackey, I'll ask you this. You are seeking on a
23 by-customer basis the services to which they subscribed and the
24 revenues that were derived from those services.

25 MR. LACKEY: For the six months preceding their

1 leaving IDS and coming back to BellSouth, according to IDS,
2 that's right.

3 COMMISSIONER DEASON: And that is because there is
4 within the -- IDS's direct case, there is the position that
5 there should be a 40 percent refund associated with those
6 revenues?

7 MR. LACKEY: Well --

8 COMMISSIONER DEASON: Or which revenues?

9 MR. LACKEY: Their claim is that because of all the
10 bad things that we'd allegedly done, they're entitled to a 40
11 percent rebate on what they paid us.

12 COMMISSIONER DEASON: What they paid you, not on the
13 revenues received. Okay.

14 MR. LACKEY: What they paid us. And the issue is,
15 again, is, they claim that they lost these 1,400 customers, and
16 they claim that they came back to BellSouth, and therefore,
17 they were deprived of the revenue from those 1,400 customers.
18 And it's a part of their damages. All we're saying is, we
19 don't believe it's what you say it is. We don't believe that
20 your damages are what you claim them to be. Show us what you
21 lost, and we can't get that information.

22 COMMISSIONER DEASON: Okay. You may proceed. Are
23 you finished, Ms. Summerlin, with your response?

24 MS. SUMMERLIN: Yes.

25 COMMISSIONER DEASON: Okay. You may proceed to your

1 next interrogatory, Mr. Lackey.

2 MR. LACKEY: They're not coming in quite the order
3 you'd expect because we had them grouped. So if I can go --
4 the next one is 39.

5 COMMISSIONER DEASON: That's fine.

6 MR. LACKEY: I'm sorry, I'm showing 39 to be a "no
7 doc." I must have made a mistake on that one.

8 COMMISSIONER DEASON: So we can delete that from the
9 list?

10 MR. LACKEY: Yes. My notes -- unless I made a
11 mistake, my notes say that Ms. Summerlin said that they gave us
12 the only document they had that was responsive to that, that
13 there were no other documents.

14 MS. SUMMERLIN: I said that my people said that they
15 have used the loss reports, and they don't have any documents.

16 MR. LACKEY: Okay. I'm sorry, I just missed that
17 one.

18 COMMISSIONER DEASON: Okay.

19 MR. LACKEY: Forty-three, we -- what this basically
20 involves, if you look at Mr. Kramer's testimony, he was talking
21 about the enormous acquisition costs for customers, and that's
22 really a part of their damages, that they had incurred enormous
23 acquisition costs to obtain their customers, and we had
24 basically taken the customers from them.

25 We asked them for the amount of the acquisition cost

1 and an explanation of how they calculated the amount. And we
2 had nothing up until today when Ms. Summerlin tells us that the
3 amount they've now determined is \$83, but they cannot explain
4 or have not explained and have not provided us any information
5 on how they calculated the \$83. Today was the first day we
6 heard the \$83, but we still don't know how it was calculated or
7 compiled.

8 COMMISSIONER DEASON: Ms. Summerlin.

9 MS. SUMMERLIN: The company had no documentation of
10 that -- the derivation of that \$83. They only found out -- or
11 had the information today when I called to try to follow up on
12 this, but they don't have any documentation that spells out
13 precisely where that's coming from. The response that I tried
14 to give Mr. Lackey earlier today is that that covers -- that's
15 a general figure that covers their commissions, bonuses,
16 marketing costs, and the point of sale costs. That's what I
17 referred to earlier with him, and the bottom line is, they
18 don't have any documentation that's more of an analysis than
19 that.

20 MR. LACKEY: And if I may respond. That's one of the
21 interrogatories that didn't call for documentation. It didn't
22 say, "Identify documents." It said, "Please state the amount,
23 and explain in detail how you calculated the amount."

24 And what we have now is, we have an amount, still
25 don't know how it was calculated.

1 COMMISSIONER DEASON: Okay. You may proceed to your
2 next item.

3 MR. LACKEY: That moves us to the next list, and we
4 have to back up to 15. No, I'm sorry.

5 MS. HELTON: Which --

6 MR. LACKEY: I now cannot read my own handwriting.

7 COMMISSIONER DEASON: It's late in the day.

8 MR. LACKEY: Fifteen is a no doc issue, I'm sorry.

9 MS. HELTON: My notes show that Number 32 is your
10 next one.

11 MR. LACKEY: Yes, you're correct. I apologize.
12 Thirty-two. Mr. Kramer at Page 54 of his testimony, let me be
13 precise about this because this is interesting, I think, as
14 interesting as anything can be at this point. He says on Page
15 54, Line 10, "By January 8, 2001, IDS had performed an audit,"
16 talking about the conversion, I think.

17 So we said, provide us details of how they -- how you
18 conducted the audit. And the response we got back is, well, it
19 wasn't a formal audit but rather a random audit conducted,
20 quote, on the fly, close quote, in order to gauge and verify
21 that the affected orders -- well, I didn't ask whether it was a
22 formal audit or an on-the-fly audit. I asked for the details
23 about how it was conducted, and I don't have an answer, and I
24 still don't have an answer. And it's not dependent on any
25 documents. It's in Mr. Kramer's testimony, and he can explain,

1 presumably, this on-the-fly audit he did. But at this point I
2 have no answer whatsoever to explain that audit.

3 COMMISSIONER DEASON: Ms. Summerlin.

4 MS. SUMMERLIN: The answer that Mr. Lackey just read
5 basically that it was an on-the-fly audit, that's the response
6 of the company. They don't have any details beyond that they
7 just randomly called customers. They don't have any precise
8 description of any formal audit.

9 COMMISSIONER DEASON: Very well. Next item,
10 Mr. Lackey.

11 MR. LACKEY: Number 36. On Page 59 of his testimony,
12 Lines 16 and 17, Mr. Kramer states unequivocally, "BellSouth
13 telemarketed every single one of my customers." So we asked
14 for the facts that supported his conclusion that we had
15 telemarketed every one of his customers. And the answer that
16 we got was, first, that they don't have the resources, then a
17 comment about the notice of our Full Circle program, win-back
18 tariff and some further discussion about that win-back tariff.
19 But, I mean, my point is, they make the claim that they
20 telemarketed every one of our customers. We asked them for the
21 detail of all the facts supporting that statement, and what
22 they gave is not responsive to it.

23 COMMISSIONER DEASON: Ms. Summerlin.

24 MS. SUMMERLIN: Mr. Lackey does not like the response
25 that we gave. That does not mean that it wasn't responsive.

1 We gave the answer that was appropriate to that question, and
2 there's nothing else to be given.

3 COMMISSIONER DEASON: Okay. Next item, Mr. Lackey.

4 MR. LACKEY: The next item is Number 40.

5 COMMISSIONER DEASON: I'm sorry, 40?

6 MR. LACKEY: Forty. Okay. IDS claimed that they
7 lost 3,100 customers in the period November through February,
8 November of 2000 through February of 2001. All we did was ask
9 them how they calculated the 3,100 person figure, customer
10 figure, and they haven't answered it. They make a reference to
11 our loss reports. It says, "By using the monthly loss reports
12 provided by BellSouth, IDS can create a spreadsheet which
13 depicts the losses by month." Well, I mean, that's not the
14 question.

15 I mean, the question was, explain how you calculated
16 that you lost 3,100 customers. And part of the problem we have
17 here is, they have given us another figure on another document
18 of 3,600 customers. And so all we're trying to do is get to
19 the bottom of it and find out what the facts are that underlie
20 their claim; they haven't answered it.

21 And we're going to come back to it, but we're going
22 to have the same issue with the 297 figure that's also
23 implicated in that question, and it's going to have the same
24 issue on Interrogatory 42 when we get to it where we asked them
25 how he calculated the 10,000 access line figure on that Page

1 62. Those are all numbers that he uses on his page of his
2 testimony. We asked him just to tell us how did you calculate
3 them, and we don't have an answer.

4 COMMISSIONER DEASON: Ms. Summerlin.

5 MS. SUMMERLIN: We went through all of these
6 questions, and some of the answers that I had were taken off
7 with my colleague who has gone back to Miami. But the bottom
8 line is on 40, there was an answer that was provided to 40, and
9 there was a document that's referred to in a response to 37,
10 which is an Excel spreadsheet, and that is the answer that we
11 had at that time to that question. I guess -- well --

12 COMMISSIONER DEASON: Did you provide the
13 spreadsheet?

14 MS. SUMMERLIN: We provided an Excel spreadsheet in
15 the second supplemental answer to Interrogatory Number 37, and
16 earlier this afternoon, I pointed out to Mr. Lackey that that
17 may give some help on that Number 40.

18 MR. LACKEY: Well, if I could just --

19 COMMISSIONER DEASON: Well, just let me ask a
20 question. That was in response to 37, but there was no
21 spreadsheet provided for Interrogatory 40; correct?

22 MS. SUMMERLIN: No, no. What we said is, there's no
23 additional information. And I just tried to clarify that, as
24 we had said earlier today, instead of saying there's absolutely
25 no document at all, if IDS had presented information that might

1 be responsive to something in another response, that I was
2 trying to point out to Mr. Lackey that in the response to
3 Number 37 that information might be helpful for the response to
4 Number 40.

5 COMMISSIONER DEASON: Mr. Lackey.

6 MR. LACKEY: I was just going to say that I don't
7 think I'm entitled to helpful information. I think I'm
8 entitled to know how they calculated the number that they put
9 in the man's testimony that he's going to swear to.

10 COMMISSIONER DEASON: Okay. The next item.

11 MR. LACKEY: The next one is 48. Forty-eight refers
12 to Page 65 of Mr. Kramer's testimony. And what his statement
13 says is, "BellSouth has consistently changed LENS and its other
14 electronic interfaces without adequate notice to IDS." So I
15 asked for the facts to support that. And I will tell you,
16 there's a reference in the answer to a letter from Mr. Thrasher
17 (phonetic), Ms. Summerlin says, that they will find and produce
18 that. That's not the dispute here.

19 The part of the answer that's in dispute is, they
20 responded to my question about the facts that support the
21 contention that BellSouth has consistently changed LENS without
22 adequate notice to IDS with a sentence that says, "On more than
23 one occasion, BellSouth has made changes to LENS without the
24 proper and timely notice to IDS." All they did was rephrase
25 the testimony. They didn't give me a list of times when we

1 changed LENS and didn't give them notice or anything. They
2 just said what they said in the testimony again. It cannot
3 possibly be an adequate answer.

4 COMMISSIONER DEASON: Ms. Summerlin.

5 MS. SUMMERLIN: IDS has documented every time that
6 BellSouth has not given them notice, and they don't have any
7 answer that's more specific than the one they gave.

8 COMMISSIONER DEASON: Mr. Lackey, if there is -- if
9 IDS has no more specific information than what they have
10 provided, what do you expect them to provide?

11 MR. LACKEY: If their answer is, is that we have no
12 documents and we have no information that would allow us to
13 come up with a specific date on which this occurred, then I'm
14 sorry, I mean, I can't do anything more than that, I guess.
15 But that's not what they said. They basically said, oh, it's
16 happened on more than one occasion. They can't remember a
17 single occasion, can't identify any of them, apparently. It
18 just doesn't seem logical to me.

19 COMMISSIONER DEASON: Well, Ms. Summerlin, can you
20 clarify for the record here exactly what your response is?

21 MS. SUMMERLIN: The response is just as Mr. Lackey
22 has read it, that on various occasions BellSouth has failed to
23 notify IDS of changes in LENS. And if we had specific
24 occasions that they had documented, we would be producing it.
25 They don't have it.

1 COMMISSIONER DEASON: So you have no specific
2 information on what the changes were or when they were
3 implemented?

4 MS. SUMMERLIN: That's right.

5 COMMISSIONER DEASON: Okay. The next item,
6 Mr. Lackey.

7 MR. LACKEY: I believe that carries us back to 6,
8 starting over again. Again, we're referring directly with the
9 testimony of Mr. Kramer that talks about most customers calling
10 BellSouth for help. We asked him to identify the customers
11 that IDS contends started calling BellSouth. And the answer,
12 if you have the first set there, is just -- it's not
13 responsive.

14 I mean, it's just a general statement that says,
15 "Customers that were on resale and were converted to UNE-P were
16 not the main concern now as much as the new customers being
17 converted from BST retail to IDS's UNE-P. In particular, the
18 UNE-P conversion customers, when experiencing the conversion
19 related disruptions, contacted BellSouth to find out what the
20 problem was."

21 I mean, all they're doing is repeating the testimony
22 back to me. And what I want to know is, how do they know that?
23 I mean, how can they make that statement if they don't have any
24 facts that they can turn to to support that?

25 COMMISSIONER DEASON: What type information do you

1 think would be responsive, Mr. Lackey?

2 MR. LACKEY: Well, I assume what they would have is,
3 they would have customer service records from their customers.
4 These started out as resale customers that were converted to
5 UNE-P; that is, they were already IDS customers, and they went
6 through a conversion process to change them from resale to
7 UNE-P. They have got a customer service record on them as
8 resale customers, and one would think that if they called up
9 and said, you know, we had a problem, we called BellSouth,
10 anything like that would be noted there.

11 And, again, if they have nothing, if they have
12 nothing, then of course that's an answer. I mean, if the
13 statement is not based on any facts, they can say that, but, I
14 mean, if they are going to say it, they're going to have to
15 tell me what facts it's based on.

16 COMMISSIONER DEASON: Ms. Summerlin, what facts
17 are -- is your client relying to make the statement in the
18 testimony?

19 MS. SUMMERLIN: Well, I think that from the response
20 that's provided, it's very clear that IDS has no specific list
21 of every single, each and every customer that ever called
22 BellSouth for help. This was a statement in his testimony that
23 was based on general experience. There's a lot of questions
24 that have been asked by BellSouth in this series that you're
25 listening to right now that are statements that were made based

1 on the general experience of the individual. There is not some
2 documentation that says, these are all the customers that ever
3 called BellSouth for help.

4 The bottom line is, some documents might have been
5 noted, but if they -- the point is, there have been customer
6 records that have been produced in other responses to discovery
7 that talk about all of the issues in this case. And they might
8 have possibly some notation here or there, but as far as a
9 delineation of every single customer, IDS never kept that kind
10 of documentation. They don't know every customer that ever
11 called BellSouth for help. They don't know every detail of
12 every single incident that might have occurred.

13 Basically, BellSouth's request says, "Identify each
14 and every customer IDS contends started calling BellSouth for
15 help." That would be impossible; it is impossible for IDS.
16 They have tried to produce some documents here that are noted,
17 letters from Bud Higdon sent via e-mail to Petra Pryor, the
18 letter from Glen Estell to Joe Millstone, the letter from
19 June 8th letter from Petra Pryor to Keith Kramer, in an attempt
20 to show the facts that they base that statement on. And that's
21 the best they can do.

22 COMMISSIONER DEASON: The next item, Mr. Lackey.

23 MR. LACKEY: Yes, sir. Number 9. This one basically
24 goes back to the one I was talking about, 5 and 10, where we
25 said, "Identify the customers." This is the one where he

1 testified that during the two weeks following the bulk
2 conversion issue, they lost half their customers. And we
3 basically said, "Identify the customers you lost." And what
4 they did was, they referred us back to what they had produced
5 in response to Interrogatory Number 5 and Interrogatory Number
6 4. And those are big documents. But, I mean, they are just a
7 list of phone numbers.

8 And, for instance, on Number 5, which is one of the
9 ones they referred us to, it's supposed to be half their
10 customers. And thing at the top of it says, of the original
11 2,464 TNs, telephone numbers, listed on the bulk order,
12 379 cannot be found in IDS billing, 889 are currently
13 disconnected from -- in IDS billing, 1,199 are currently active
14 in IDS billing. And, I mean, you know, all I did was ask them
15 who they lost, and I got numbers and nothing that identifies
16 them and nothing that responds to the question about who they
17 lost.

18 I mean, our position is, they didn't lose these
19 customers to us. And, you know, if I don't get some
20 information that says who they were and where they went, I'm
21 going to have a bit of trouble figuring out how I'm going to
22 respond to it and rebut it.

23 COMMISSIONER DEASON: Ms. Summerlin.

24 MS. SUMMERLIN: We've produced, as Mr. Lackey pointed
25 out, this exhibit in response to Interrogatory Number 5. That

1 was an effort to give identification to customers involved in
2 the bulk ordering fiasco, and that is all IDS has. There is
3 nothing that's more specific that sets out everything just as
4 Mr. Lackey would have it. I mean, if we had it, we would be
5 producing it. We don't have anything beyond that response.

6 MR. LACKEY: Can I say one more thing, please.

7 COMMISSIONER DEASON: Sure.

8 MR. LACKEY: I mean, it's inconceivable that they
9 wouldn't have a record of the customers they lost. I mean,
10 they had them. They were their customers. They were paying
11 them presumably for their service. And during a two-week
12 period, he says half of them went away, and they can't tell us
13 who the half were that went away. I'm sorry, I just cannot
14 believe that answer is responsive.

15 COMMISSIONER DEASON: Ms. Summerlin, there are no
16 customer records?

17 MS. SUMMERLIN: Commissioner, I think that the bottom
18 line here is that there's an awful lot of stuff that it would
19 be very good to have for any company at this point in time.
20 But the truth of the matter is, the information that IDS has at
21 this point is put into this document here. It lists the
22 telephone numbers of customers involved in the bulk order
23 problem. They do not have any perfect compilation of every
24 customer that they lost at this point in time, and I don't
25 foresee them ever being able to create that. And I think that

1 there will be issues that will be brought up at this hearing
2 that will clarify why maybe they don't have that information.

3 COMMISSIONER DEASON: Mr. Lackey, your next item.

4 MR. LACKEY: The next one is 18. It relates
5 specifically to Page 35 of Mr. Kramer's testimony where he is
6 reporting that in the latter part of August, IDS experienced a
7 dramatic increase in the number of customers being disconnected
8 without the corresponding new connection, and then he
9 specifically refers to this. "On many occasions, a BellSouth
10 technician would appear on the premises of a newly-acquired IDS
11 customer and the technician would tell the customer that he was
12 there to disconnect the customer's services." That's not an
13 unambiguous statement. I mean, that's pretty clear.

14 So we said, tell us who. And basically, the first
15 thing we got was, is that every time there was a truck roll it
16 happened. And then we got a series of -- well, it was 19
17 missed appointments. It was just a list of 19 -- or documents
18 that had 19 missed appointments that were supposedly responsive
19 to this. Some of those dockets indicated that there was no
20 access; that is, the tech went to the house, and there was
21 nobody there. So how could that possibly be evidence that our
22 technician told the customer that he was there to disconnect
23 their service?

24 The point of the matter is, they made a specific
25 allegation, our technicians were telling customers this, and

1 we're either entitled to have them say, we have no evidence of
2 that, or here's the evidence of it, and we don't have it at
3 this point. I mean, it's a pretty serious allegation not to
4 have any evidence on.

5 COMMISSIONER DEASON: Ms. Summerlin.

6 MS. SUMMERLIN: IDS provided all the missed
7 appointment documentation that it has. Some of them may
8 include situations where there was no access. It may still
9 identify a customer for whom that kind of event occurred at a
10 different occasion. One of the things that Mr. Lackey is
11 pointing out is that the answer was, every time there's a truck
12 roll, meaning somebody from BellSouth was sent to one of IDS's
13 customers. IDS asked BellSouth for records of all the truck
14 rolls that BellSouth performed for IDS. The reason we asked
15 that is that IDS doesn't have that information.

16 The simple fact is, although things might be ideal to
17 have, and certainly in this situation it would be very ideal
18 for IDS to have it, they don't have it. And it's not that they
19 are trying to hiding it or not producing it, they don't have
20 it. And BellSouth has indicated to IDS that it will be
21 producing a CD ROM with all those truck rolls on it, and then
22 in turn we will both able to identify --

23 COMMISSIONER DEASON: I'm a little confused. How is
24 it that you're relying on an assertion in your direct
25 testimony, and you're saying that you're relying on something

1 from BellSouth that BellSouth has not yet provided to you?

2 MS. SUMMERLIN: No, I'm not saying that. What I'm
3 saying is, IDS does not have documentation of every instance
4 when this type of experience occurred. It's, again, something
5 that was from general knowledge. It was not written down in a
6 particular place in a particular log. They produced the missed
7 appointment documentation they had. What I am merely pointing
8 out is that it's further proof that IDS didn't have the truck
9 roll information because we asked BellSouth to produce it. We
10 didn't have it.

11 COMMISSIONER DEASON: I understand. Any response,
12 Mr. Lackey?

13 MR. LACKEY: Only that the man said in his testimony,
14 our technicians were saying this, and we say prove it. Give us
15 the facts, give us the documents, and they go, you know where
16 the truck rolls are. The truck roll isn't going to show what
17 the customer said or what the technician said. You know, if we
18 are going to defend ourselves against this allegation, we have
19 got to have some specifics.

20 COMMISSIONER DEASON: Your next item.

21 MR. LACKEY: It's 23. This one's -- it's Line 18 on
22 Page 23 where Mr. Kramer says that approximately 50 percent of
23 IDS conversion orders were having problems. We asked him to
24 explain how they calculated it. The answer was, for every two
25 orders that were submitted, one would have a problem either

1 during conversion or not being able to get past the
2 provisioning process at all.

3 And we asked for an explanation in detail, and the
4 answer I got was, well, for every two orders we submitted, one
5 didn't work. That's 50 percent. I don't think that is a
6 satisfactory response when we asked for an explanation of a
7 figure and asked for some detail about it.

8 COMMISSIONER DEASON: Ms. Summerlin.

9 MS. SUMMERLIN: Commissioner, the response that was
10 given was what IDS had. And I think that Mr. Kramer's
11 testimony was a statement from his experience. It was not
12 necessarily based on a precise document or calculation. It was
13 a general statement of the experience that IDS was having at
14 the time, and if we had any further proof of that, we would be
15 producing it.

16 COMMISSIONER DEASON: Mr. Lackey, what you are
17 seeking? Counsel has just indicated that it's a statement
18 based upon experience, and there's nothing that they have to
19 substantiate that.

20 MR. LACKEY: If that were the answer that was given
21 in the response to the interrogatory, I think I would have no
22 objection to that answer. I don't think I'd have a claim to
23 object to that answer if that's what they said.

24 COMMISSIONER DEASON: Ms. Summerlin, is that your
25 answer? Or did I mischaracterize it?

1 MS. SUMMERLIN: That's the answer, yes.

2 COMMISSIONER DEASON: Okay. I think we have
3 eliminated one.

4 MR. LACKEY: The next ones are 30 and 31, and they
5 really work together. And this is another one where Mr. Kramer
6 rolled out a couple of numbers: 1,100 customers as it referred
7 to in 30; and 297, not 296 or 298, but 297 customers are
8 referred to in 31. And we just said, explain in detail where
9 you got these numbers from and how you calculated them. And,
10 you know, the answer they gave us, "The calculation is easily
11 arrived at through BellSouth's own loss reports provided to
12 IDS. One can compare the customers whose orders were submitted
13 to BellSouth, and later cancelled," and so forth.

14 You know, if they had made the calculation of 1,100,
15 which they obviously did, it's a nice round figure, 1,100, and
16 they made the calculation of 297, which is a very precise
17 figure, it seems like to me we're entitled to know how they
18 calculated those two numbers. Can they replicate them?

19 COMMISSIONER DEASON: Ms. Summerlin.

20 MS. SUMMERLIN: Commissioner, I think Mr. Lackey just
21 said that there's an explanation provided, that you look at the
22 loss reports. That was the response that the company gave of
23 how that calculation was done.

24 COMMISSIONER DEASON: Well, the question wasn't where
25 do you look; the question was, how did you calculate it?

1 MS. SUMMERLIN: The question was, how did you
2 calculate it? We looked at the loss reports and calculated it
3 that way. I mean, that's a response to the question.

4 COMMISSIONER DEASON: Okay. So the response was you
5 looked at what reports?

6 MS. SUMMERLIN: The loss reports, L-O-S-S. Those are
7 reports that are issued by BellSouth.

8 COMMISSIONER DEASON: So you looked at the loss
9 reports to determine those numbers, and it should be readily
10 apparent from those loss reports how you derived the 1,100 and
11 the 297?

12 MS. SUMMERLIN: That's my understanding of what our
13 answer is, yes.

14 COMMISSIONER DEASON: Is it readily determined from
15 those reports, Mr. Lackey? Or do you know?

16 MR. LACKEY: I cannot answer that question because I
17 don't know which loss reports we're talking about. I mean, it
18 doesn't say in the answer, so I can't -- I just can't answer
19 that question. I don't know. We haven't obviously been able
20 to do it up to this point. If we've been able to replicate it,
21 we would have obviously said so.

22 COMMISSIONER DEASON: All right. Your next item.

23 MR. LACKEY: The next one is 42, and I think I
24 already covered 42 when I talked to 40. So that means we can
25 skip to 52. Okay. Now, this one is an interesting one. On

1 Page 70, Lines 6 through -- 7 through 11, they say that we
2 should be sanctioned with severe penalties for its
3 anticompetitive activities which have resulted in serious
4 damages to IDS and to IDS customers and to the development of
5 competition. So we said, please itemize with particularity
6 each and every one of the serious damages alleged on Page 7,
7 and for each such damage, please set forth the monetary amount
8 of such damage and explain in detail how it was calculated.

9 And they gave us an answer that didn't have any
10 monetary figures at all attached to it. The Staff during our
11 discussions pointed out that, well, you know, it doesn't say on
12 Page 70, Lines 7 through 11 that they were talking about
13 monetary damages, but my response is, they said they suffered
14 serious damages. We said, identify the damages and set forth
15 the monetary amount for each damage.

16 Now, if their answer is, there aren't any, I'm okay
17 with that. But if they're going to claim any monetary damages
18 as a result of those acts, it seems like to me I'm entitled to
19 have them lay it out and explain for us how they arrived at it.

20 COMMISSIONER DEASON: Ms. Summerlin.

21 MS. SUMMERLIN: Commissioner, IDS is not here at this
22 Commission to get monetary damages in the normal sense of that
23 term. IDS has requested a 40 percent refund, and we have
24 provided in Bob Hacker's testimony, his rebuttal testimony, an
25 explanation for the way IDS calculated that amount.

1 If this were a U.S. District Court where we were
2 dealing with a forum that could provide monetary damages, then
3 we would be having to put on a case of that sort. What IDS has
4 tried to do is to discuss the types of damages in terms of,
5 there's no way to calculate what the monetary value is of a
6 reputation damage. And we're certainly not -- by not being
7 able to provide a monetary amount for every damage, we are
8 certainly not saying there aren't damages. There are serious
9 damages. It's not just something that you can calculate in
10 some precise fashion. And I think that we have provided a
11 thorough explanation of where the 40 percent figure has come
12 from in Mr. Hacker's rebuttal testimony.

13 COMMISSIONER DEASON: Any further comments,
14 Mr. Lackey?

15 MR. LACKEY: Just only to note again that I agree
16 that the Commission can't award damages, but to the extent,
17 they're asking for that refund, and it's predicated upon these
18 kinds of actions, it seems like to me we're entitled to know
19 what they claim their damages are from these types of actions
20 in order to see whether there's any relationship between what
21 they're claiming and what they actually suffered.

22 If they suffered \$10 worth of damage and want
23 \$100 million worth of rebates, that doesn't strike me as being
24 very logical. You know, we need to be able to see what their
25 damages are, what they claim their damages are in order to

1 evaluate the merits of the rest of their case for the rebate.
2 I don't see how anybody is going to be able to make a judgment
3 on the merits of that claim without knowing what the damages
4 are.

5 COMMISSIONER DEASON: Your next item, your next item.

6 MR. LACKEY: Fifty-eight. And actually, 58 is
7 another one where -- this was in Mr. Hamilton's testimony about
8 the technician disconnecting the lines. The first one we
9 talked about was in Mr. Kramer's testimony where he said that
10 our technicians went out to the customer's premises and told
11 them that they were there to disconnect the lines. This is the
12 same issue. It's in Mr. Hamilton's testimony. So this one
13 will go with the earlier one whose number you would probably
14 like me to give you.

15 Let me just -- it's the same point. He says in his
16 testimony, "We rolled technicians. The technicians told the
17 customer that they were there to disconnect their service."
18 And we've asked them, you know, who are you talking about?
19 What technicians? What customers? And we're getting an answer
20 that, you know, isn't responsive. I mean, they're back to the
21 each and every truck roll issue, which is part of the answer
22 they gave us in response to 58.

23 COMMISSIONER DEASON: Very well. I'm trying to find
24 the number.

25 MR. LACKEY: I'll go back and find it. I'm sorry, I

1 should know it.

2 COMMISSIONER DEASON: Is it 18?

3 MR. LACKEY: I believe that was it, but let me look.
4 Yes, sir, it's 18. Mr. Kramer's 58 is in Mr. Hamilton's
5 testimony.

6 COMMISSIONER DEASON: Do you have anything to add to
7 that, Ms. Summerlin?

8 MS. SUMMERLIN: Commissioner, I already talked about
9 the fact that we've produced all the missed appointment
10 information that we had, and that is as responsive as we can
11 be.

12 COMMISSIONER DEASON: Mr. Lackey, you are almost up
13 to 16, how many more do you have?

14 MR. LACKEY: I believe that's actually it.

15 MS. HELTON: I believe I miscounted, which is why I'm
16 a lawyer and not an accountant.

17 COMMISSIONER DEASON: Okay.

18 MR. LACKEY: And that's why I'm foolish because I
19 took her word for it instead of counting it myself.

20 COMMISSIONER DEASON: Okay. All right. I'm not
21 going to make a ruling sitting here this afternoon. I will
22 take this under advisement. I will confer with Staff. I
23 anticipate making a ruling quickly.

24 If the parties wish, I can hear further argument on
25 the question of having supplemental testimony filed, but I

1 think it is kind of dependent upon the status that I give to
2 these outstanding discovery disputes.

3 MR. LACKEY: The only thing I would add to that is,
4 they did in fact respond to some of the interrogatories in the
5 September 6th response, and we have some things we would like
6 to say about that. So the supplemental testimony issue does in
7 fact exist irrespective of your --

8 COMMISSIONER DEASON: Even based upon the
9 supplemental --

10 MR. LACKEY: I was in error earlier this morning when
11 I said that I thought it would depend on what you did with
12 these because I had forgotten that there were some responses
13 that were made on the 6th.

14 COMMISSIONER DEASON: And, Ms. Summerlin, I take it
15 your position is basically the same?

16 MS. SUMMERLIN: We certainly need to look at the
17 responses BellSouth has provided, definitely.

18 COMMISSIONER DEASON: Okay. Staff, is there anything
19 further that you need to bring forth at this time?

20 MS. HELTON: Not that we're aware of.

21 COMMISSIONER DEASON: Okay. I appreciate all of the
22 parties' hard work and efforts in this extended period we're in
23 a prehearing conference, but hopefully it will facilitate
24 matters in the long run. I will try to be making a decision
25 quickly. I may ask Staff to relay that to you verbally or by

1 fax or something before an actual order is entered.

2 Do the parties have anything else at this point?

3 Very well. This prehearing conference is adjourned.

4 (Prehearing concluded at 4:53 p.m.)

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1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON)

4

5 I, TRICIA DeMARTE, Official Commission Reporter, do hereby
6 certify that the foregoing proceeding was heard at the time and
7 place herein stated.

8

9 IT IS FURTHER CERTIFIED that I stenographically
10 reported the said proceedings; that the same has been
11 transcribed under my direct supervision; and that this
12 transcript constitutes a true transcription of my notes of said
13 proceedings.

14

15 I FURTHER CERTIFY that I am not a relative, employee,
16 attorney or counsel of any of the parties, nor am I a relative
17 or employee of any of the parties' attorneys or counsel
18 connected with the action, nor am I financially interested in
19 the action.

20

21 DATED THIS 12th DAY OF SEPTEMBER, 2001.

22

23

Tricia DeMarte

24

TRICIA DeMARTE

25

FPSC Official Commission Reporter
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