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July 7, 2004

Mrs. Blanca S. Bayó
Division of the Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850


**Re: 040488-TP – Complaint of BellSouth Telecommunications, Inc.,
Against IDS Telecom, LLC to Enforce Interconnection Agreement
Deposit Requirements**

Dear Ms. Bayó:

Enclosed is BellSouth Telecommunications, Inc.'s Motion to Strike Portions of IDS Telecom, LLC's Brief Regarding BellSouth's Complaint to Enforce Deposit Requirements, which we ask that you file in the captioned docket.

Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,


Nancy B. White

Enclosures


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

**CERTIFICATE OF SERVICE
DOCKET NO. 040488-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
Electronic Mail and U.S. Mail this 7th day of July, 2004 to the following:

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Represents IDS


Nancy B. White

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of BellSouth)
Telecommunications, Inc., Against) Docket No.: 040488-TP
IDS Telecom, LLC to Enforce)
Interconnection Agreement Deposit)
Requirements) Filed: July 7, 2004

**BELLSOUTH TELECOMMUNICATIONS, INC.'S MOTION TO STRIKE PORTIONS OF
IDS TELECOM, LLC'S BRIEF REGARDING BELLSOUTH'S COMPLAINT TO
ENFORCE DEPOSIT REQUIREMENTS**

BellSouth Telecommunications, Inc. ("BellSouth") submits this Motion to Strike Portions of IDS Telecom, LLC (IDS') Brief Regarding BellSouth's Complaint to Enforce Deposit Requirements. In support of this Motion, BellSouth states as follows:

1. On June 29, 2004, IDS Telecom, LLC ("IDS") filed its Brief Regarding BellSouth's Complaint to Enforce Deposit Requirements ("Brief") in the above captioned docket. In the Brief, IDS on several occasions referenced the existence and the substance of confidential settlement discussions held with BellSouth on this matter.

2. When BellSouth realized this information was contained in IDS' Brief, BellSouth requested that IDS withdraw these references. IDS originally agreed to do so, but has now stated that it will not. Accordingly, BellSouth has no choice but to file this motion.

3. Rule 90.408, Florida Code of Evidence states that "evidence of an offer to compromise a claim which was disputed as to validity or amount, as well as any relevant conduct or statements made in negotiations concerning a compromise, is inadmissible to prove liability or absence of liability for the claims on its value."

4. The references in IDS' Brief are being used by IDS to support IDS' position and, are, therefore improper. The specific references are located on page 3,

first paragraph; page 5, second full paragraph; and page 23, top of page and first full paragraph (pages are attached hereto).

5. Because these portions of IDS' Brief were improperly included therein as a violation of Rule 90.408, Florida Code of Evidence, they should be stricken and not relied on by the Florida Public Service Commission ("Commission") in reaching a decision on this matter.

WHEREFORE, BellSouth respectfully requests that the Commission strike the following portions of IDS' Brief: page 3, first paragraph, lines 1-4; page 5, second full paragraph, lines 13 - 18; and page 23, lines 1-3 and 12-15; and prohibit IDS from relying, introducing or using these portions in its Brief.

Respectfully submitted this 7th day of July, 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.



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1 IDS notes that recently, during various discussions involving Joe Millstone (IDS President),
2 Harry Goldberg (BellSouth Vice-President) and their counsel, BellSouth admitted that its provides
3 many CLECs terms in which to build up a deposit, such as paying over several months. However,
4 BellSouth has failed to extend such options to IDS in its Complaint. IDS also notes that BellSouth
5 has obtained no deposit from Supra Telecommunications & Information Systems, Inc. ("Supra
6 Telecom") for services rendered in Florida, a CLEC that has been in bankruptcy since October
7 2002. Moreover, BellSouth allowed another South Florida CLEC (Saturn Telecommunications
8 Services, Inc. d/b/a STS Telecom) to merely provide BellSouth a UCC-1 (security agreement) in
9 lieu of a deposit. Finally, BellSouth used poor Dun & Bradstreet credit ratings to demand a security
10 deposit from Florida Digital Network ("FDN"), while discounting IDS' excellent Dun & Bradstreet
11 credit ratings in order to demand a deposit from IDS. IDS contends that these actions demonstrate
12 that BellSouth has not applied its credit standards in a non-discriminatory manner.

13 IDS also contends that BellSouth refused to allow IDS to adopt the deposit
14 provisions/requirements and/or the billing section of an approved interconnection agreement
15 between BellSouth and Supra Telecommunications & Information Systems, Inc. ("BellSouth/Supra
16 Agreement"). The BellSouth/Supra Agreement was filed with Commission on August 16, 2002
17 (Document No. 08661) in Docket No. 001305-TP. This Commission subsequently approved the
18 BellSouth/Supra Agreement on August 22, 2002 in Order No. PSC-02-1140-FOF-TP (Docket No.
19 001305-TP). That agreement purports to last three years (or until or about July 14, 2005), and thus
20 is available for adoption. As will be explained in greater detail herein, in December 2003 IDS
21 sought to adopt the deposit provisions/requirements of the BellSouth/Supra Agreement. BellSouth
22 refused the request, erroneously claiming that IDS could only adopt "network elements."
23 Thereafter, in April 2004, IDS requested to adopt the entire billing section of the BellSouth/Supra

1 whatsoever and is grossly inflated and over-estimated.

2 Even if BellSouth is entitled to any deposit, the purpose of any such deposit is to provide
3 security for payment and should not be used as an anticompetitive tool to harm a CLEC. Most of
4 BellSouth's billing is for monthly recurring charges which are billed in advance. Thus when
5 BellSouth renders IDS a wholesale bill, the due date for payment is usually on or before the date
6 services are rendered. Under the agreement, BellSouth may issue a thirty day notice to IDS if
7 payment is not made by the due date, and thereafter terminate services if the undisputed portion of
8 the bills are not paid. Thus as a general proposition, a one month deposit will likely be sufficient;
9 particularly since BellSouth owes IDS monies for access services, which at current BellSouth
10 access rates, exceeds \$400,000 in undisputed billing. Given that BellSouth has failed to dispute or
11 pay such undisputed bills for accessing IDS' facilities network, and will likely continue to do so in
12 the future, BellSouth is more than secure with only a one month deposit.

13 Finally, IDS' main investor is MCG Capital Corporation ("MCG"), a publicly traded
14 company which, as of March 31, 2004, had total assets of over \$767 million and total equity of over
15 \$455 million. MCG has indicated a willingness to provide a corporate guaranty under
16 commercially reasonable terms, in lieu of a deposit for services provided in Florida. Although in
17 discussions with BellSouth (Harry Goldberg), BellSouth has indicated a willingness to accept such
18 a guaranty, it has not expressed that position in this docket. Given the fact that BellSouth has
19 accepted alternate forms of security from other CLECs, it would be discriminatory for BellSouth to
20 refuse a MCG corporate guaranty, particularly when the assets of MCG far exceed its liabilities thus
21 minimizing BellSouth's exposure to loss.

22 **II. FACTUAL BACKGROUND AND DISCUSSION**

23 On or about February 10, 2003, BellSouth filed a request for approval of an interconnection,

1 BellSouth has violated that provision. Moreover, during discussions with BellSouth's Vice
2 President Harry Goldberg (some of which involved counsel for both sides), BellSouth admitted that
3 many CLECs are allowed to build up a security deposit over time. However, with IDS, BellSouth
4 demanded payment over a period one month.

5 Assuming a security deposit is required of IDS, then in order for IDS to be treated in a
6 manner similar to that of other CLECs, IDS should first be given an opportunity to present alternate
7 forms of security. For example, IDS' main investor is MCG. As noted previously, MCG is a
8 publicly traded company with assets that exceed liabilities by over \$455 million. Attached hereto
9 as Exhibit "27" is MCG's latest Form 8-K filing with the Securities Exchange Commission. In that
10 8-K Filing, MCG set forth its current Balance Sheets and Statements of Operation. Both financial
11 statements demonstrate that a corporate guaranty from MCG would more than adequately secure
12 BellSouth for services rendered to IDS in the state of Florida. MCG has indicated a willingness to
13 provide such a guaranty on commercial reasonable terms, in order to secure services provided to
14 IDS.- In the event MCG changes its position on the corporate guaranty, IDS should be allowed to
15 post a UCC-1 in lieu of a deposit. Alternatively, if a cash deposit is required, it should be
16 established only on the services which BellSouth provides to IDS in the state of Florida. Given
17 IDS' history of prompt payment of undisputed amounts, IDS's excellent Dunn & Bradstreet credit
18 rating, and the fact that BellSouth can terminate services with only one month exposure (should
19 IDS fail to make payment), then any such security deposit should be set at no more than one month
20 of billings in Florida (or approximately \$1 million). Lastly, IDS should be given the opportunity to
21 build up this deposit amount over time. In this regard, a six-month time period (i.e. monthly
22 payments of approximately \$167,000 per month) would be reasonable and consistent with Section
23 1.1.3 of Attachment 7 to the Interconnection Agreement, which provides that IDS shall have at least