

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint against BellSouth)
Telecommunications, Inc., for alleged)
overbilling and discontinuance of service)
And petition for emergency order restoring)
Service, by IDS Telcom LLC.)
_____)

Docket No. 031125-TP
Filed: July 22, 2004

DIRECT TESTIMONY AND EXHIBITS

OF

ANGEL LEIRO

ON BEHALF OF

IDS TELCOM, LLC.

DOCUMENT NUMBER - DATE

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FPSC-COMMISSION CLERK

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6

7

8 **Q. PLEASE STATE YOUR NAME AND ADDRESS.**

9 A. My name is Angel Leiro, and my business address is 1525 NW 167th
10 Street, Suite 200, Miami, Florida 33169.

11

12 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT POSITION?**

13 A. I am currently employed by IDS Telcom, LLC ("IDS") as the Vice-President
14 of Regulatory Affairs.

15

16 **Q. WHAT ARE YOUR PRESENT RESPONSIBILITIES?**

17 A. As the Vice-President of Regulatory Affairs, my responsibilities include all
18 matters regarding the rules and regulations governing telecommunications
19 carriers as they relate to Federal and State regulatory authorities, such as the
20 Florida Public Service Commission ("FPSC") and the Federal Communications
21 Commission ("FCC"). Additionally, I am responsible for assuring, to the extent
22 possible, the performance of both IDS and BellSouth to and with the parties'
23 interconnection agreements and amendments thereto. Additionally, I oversee the

1 investigation and resolution of customer complaints as well as maintain in good
2 standing the necessary licenses and authorities to do business as a
3 telecommunications carrier in 8 states. I am the contact for IDS with the FPSC
4 for all regulatory matters.

5

6 **Q. PLEASE PROVIDE SOME BRIEF INFORMATION ON YOUR**
7 **BACKGROUND AND EXPERIENCE.**

8 A. My resume is attached to this testimony and identified as Exhibit No. ___
9 (AL-1). I have worked in a regulatory affairs capacity in the telecommunications
10 field since 1998. I have been employed with IDS since November 2000. Prior to
11 this position, I have worked for two other CLECs between early 1998 and
12 November 2000. One of the CLECs focused primarily on data services and the
13 other primarily on resale of local services while working towards becoming a
14 facilities-based carrier. Prior to these CLEC positions, I worked as a paralegal
15 for many years with a number of different law firms in Miami, Florida. As part of
16 my experience with these various CLECs, I have researched numerous FCC
17 rulings, state commission opinions and orders, as well as orders and opinions
18 from public legal proceedings regarding requirements and responsibilities of
19 ILECs (and more particularly as they relate to IDS' interconnection agreements).
20 I am familiar with many of the facts and each of the issues set forth in this
21 proceeding and am competent to provide testimony on all the issues in this
22 proceeding.

23

1 **Q. HAVE YOU TESTIFIED PREVIOUSLY ON TELECOMMUNICATIONS**
2 **ISSUES BEFORE ANY REGULATORY BODY?**

3 A: Yes. I previously testified before this Commission in 2001 in FPSC
4 Docket No. 010740-TP.

5

6 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

7 A. The purpose of my testimony is summarize IDS' position regarding each
8 of the issues in this docket. Depending upon the issue, I have general and/or
9 specific knowledge of both the facts and issues underlying each of the disputes
10 in this docket. However, I will refrain from repeating specific facts set forth in the
11 direct testimonies of Jermaine Johnson, Elizabeth Fefer and the joint testimony
12 of Raquel Rencher and Elizabeth Fefer; however, I will add further testimony
13 were necessary.

14

15 **Q. ARE YOU INCORPORATING ANY OF IDS' OTHER DIRECT**
16 **TESTIMONIES BY REFERENCE, AND WHY ARE YOU DOING SO?**

17 A. Yes, my testimony adopts and incorporates by reference the direct
18 testimonies of Jermaine Johnson, Elizabeth Fefer and the joint testimony of
19 Raquel Rencher and Elizabeth Fefer. My reasons for incorporating these
20 testimonies herein, is that I am competent to testify about the issues set forth in
21 each of those testimonies, and will be available to answer questions relating to
22 the matters discussed in these testimonies. Moreover, rather than restate what
23 has already been said in those testimonies, it is more efficient to simply adopt

1 and incorporate those testimonies herein. This testimony also incorporates by
2 reference each of the exhibits attached to those testimonies.

3

4 **Q. IN REGARD TO ISSUE 1, "WAS THERE A FURTHER AGREEMENT TO**
5 **INCLUDE ADDITIONAL BILLED AMOUNTS INTO THE SETTLEMENT**
6 **AGREEMENT AND SETTLEMENT AMENDMENT Q ACCOUNT?"**

7 A. No. IDS made no further agreements to include additional amounts into
8 the settlement "Q" Account. Moreover, both the Settlement Agreement and
9 Settlement Amendment are clear that any further amendments must be in a
10 writing that is signed by both parties. Although there is a provision that deals
11 with waivers, that provision still requires a writing by the party making the waiver.
12 In any event, BellSouth is claiming that the parties' amended the Settlement
13 Amendment, and not that IDS waived any rights under those documents. Based
14 upon the testimonies filed by IDS, BellSouth simply failed to provide IDS with all
15 of the agreed credits under the Settlement Agreement and Settlement
16 Amendment. The additional amount of approximately \$757,266.10, which
17 BellSouth transferred into the settlement "Q" Account on April 8, 2002, should
18 have been credited back to IDS as of that date, together with all interest and late
19 payment charges relating to such amounts.

20

21 **Q. IN REGARD TO ISSUE 1(A), "WHAT ARE THE AMOUNTS OWED**
22 **UNDER THE ORIGINAL SETTLEMENT AGREEMENT AND SETTLEMENT**
23 **AMENDMENT?"**

1 A. Based upon the testimonies filed by IDS, IDS does not owe BellSouth
2 anything further under the Settlement Agreement and Settlement Amendment.
3 In fact, IDS overpaid the account in error and then requested BellSouth apply the
4 overpayment elsewhere. It is unclear whether BellSouth honored this request.

5

6 **Q. IN REGARD TO ISSUE 1(B), "WHAT ARE THE AMOUNTS OWED**
7 **UNDER ANY OTHER AGREEMENT OR AMENDMENT?"**

8 A. Based upon the testimonies filed by IDS, IDS does not owe BellSouth
9 anything further under the Settlement Agreement and Settlement Amendment;
10 nor does IDS owe anything under any alleged further amendment or other
11 agreement. IDS made no further agreements to include additional amounts into
12 **the settlement "Q" Account.** Furthermore, the documents require any
13 amendments to be in a writing signed by the parties, and thus any alleged oral
14 agreement would be unenforceable. In any event, given that BellSouth was
15 represented by an in-house lawyer during the transaction and all relevant time
16 periods thereafter, and IDS was not represented by counsel, BellSouth can
17 hardly complain.

18

19 **Q. IN REGARD TO ISSUE 1(C), "HAVE THOSE AMOUNTS BEEN PAID?"**

20 A. Based upon the testimony filed by IDS, IDS has paid BellSouth all
21 amounts due under the Settlement Agreement and Settlement Agreement.
22 Since there was no agreement, nor could there be any such agreement, to
23 include additional amounts, IDS owes BellSouth nothing further.

1

2 **Q. IN REGARD TO ISSUE 2, "DID BELLSOUTH PROPERLY TERMINATE**
3 **IDS' ACCESS TO LENS IN DECEMBER 2003 PURSUANT TO THE**
4 **INTERCONNECTION AGREEMENT?"**

5 A. No. Based upon the testimony filed by IDS, BellSouth violated the parties'
6 Current Agreement when it denied IDS access to LENS in December 2003.
7 Although this dispute arose under the Prior Agreement, which was in effect prior
8 to February 5, 2003, BellSouth's actions in terminating LENS occurred under the
9 Current Agreement. Under the Prior Agreement, IDS clearly disputed the over
10 charges to the "Q" Account. Moreover, BellSouth can hardly contend that there
11 was never a dispute on the "Q" Account issue. Because the Current Agreement
12 does not allow BellSouth to deny IDS service for non-payment of disputed
13 amounts, BellSouth clearly violated the parties' Current Agreement.

14

15 **Q. IN REGARD TO ISSUE 3, "IF BELLSOUTH IMPROPERLY**
16 **TERMINATED IDS' ACCESS TO LENS IN DECEMBER 2003, THEN WOULD**
17 **SUCH ACTION CONSTITUTE ANTICOMPETITIVE BEHAVIOR IN VIOLATION**
18 **OF CHAPTER 364, FLORIDA STATUTES?"**

19 A. Yes. Under these circumstances, BellSouth's actions would constitute
20 anticompetitive behavior in violation of Chapter 364. Although IDS is not
21 contending that every breach of contract constitutes anticompetitive behavior, in
22 this case, it is clear that BellSouth knew that the settlement "Q" Account was in
23 dispute. Not only was there a plethora of correspondence between the parties

1 arguing and debating how and what happened to the “Q” Account, but the
2 amount transferred by BellSouth clearly was different than the parties’ written
3 agreement, which specifically required amendments to be in a writing signed by
4 both parties. Moreover, BellSouth has yet to date, been able to identify where
5 and how all of the credits set forth in the settlement documents were applied to
6 IDS’ accounts. Lastly, before IDS even filed this docket, IDS had sought informal
7 dispute resolution before this Commission. The response of FPSC Staff was
8 merely to advise the parties that informal dispute resolution was not applicable in
9 these circumstances and that the parties needed to file a formal dispute
10 proceeding. Yet after receiving that FPSC Staff position, BellSouth nevertheless
11 simply announced that since IDS’ informal complaint had been “dismissed,” the
12 issue of the “Q” Account was no longer in dispute. No reasonable person could
13 conclude that BellSouth’s conduct was anything but monopolistic and intentional,
14 with malice, and taken with the sole purpose of “bullying” IDS into paying an
15 overcharge. Although not every breach of contract can be considered
16 anticompetitive, the circumstances here can hardly be described any other way.

17

18 **Q. IN REGARD TO ISSUE 4(A), “DID BELL SOUTH ASSESS THE**
19 **CORRECT DAILY USAGE FILE (DUF) CHARGES FOR SERVICES**
20 **PROVIDED TO IDS IN FLORIDA?”**

21 A. No. Based upon the testimony filed by IDS, BellSouth did not assess the
22 correct DUF charges for service provided to IDS in Florida. The reasons are
23 three-fold.

1 First, BellSouth failed to true-up all of the disputed charges as required by
2 the Prior Agreement and the FCC's Section 271 Orders. The Prior Agreement
3 applies to all DUF disputes, and Section 13 of Attachment 2, clearly states that
4 the parties will true-up interim rates to final rates. Moreover, the Amendment
5 executed by the parties in October 2002, under which IDS obtained the final
6 September 2002 Rates, clearly states in what should have been labeled
7 paragraph 6, that neither party waives the right to seek clarification from this
8 Commission as to whether or not the September 2002 Rates will be retroactively
9 applied. See Exhibit No. ___ (AL-2) for the true-up provisions and the Amendment
10 in the Prior Agreement. Moreover, when BellSouth petitioned the FCC for
11 Section 271 Approval in various states, carriers opposed to the approval noted
12 the fact that many PSCs had not yet established final TELRIC prices for many
13 UNEs. During each of these Section 271 Dockets (including in Florida), the FCC
14 stated that the presence of interim UNE rates did not prohibit the FCC from
15 granting BellSouth Section 271 approval, so long as BellSouth had a mechanism
16 to true-up (or down) interim rates to final rates. Of particular interest to the FCC
17 was the fact that BellSouth had understated demand for DUF records in its early
18 cost studies, which resulted in overly inflated DUF rates that BellSouth was
19 charging as the interim rate until each state commission could determine the final
20 rates. In the Georgia 271 Order, the FCC specifically identified BellSouth's over-
21 inflated DUF rates as being one such rate that needed to be retroactively trued-
22 downward once final rates were set. In this case, the May-2001 Rates (which
23 IDS adopted) were clearly interim as they were subsequently increased in

1 October 2001, and then reduced in the final UNE order of September 2002.
2 Moreover, the May 2001 Rates were never appealable and thus could not be
3 considered final. Despite the clear language of the parties' Prior Agreement, the
4 FCC's 271 Orders, and the non-final nature of the May-2001 DUF Rates,
5 BellSouth has simply refused to true-up the DUF rates.

6 Second, BellSouth seeks to charge IDS for Call Flow #12 records which
7 BellSouth only provides because of its own errors in billing; errors which
8 BellSouth has known about for at least three years and for which BellSouth
9 apparently has done nothing to correct. Although BellSouth claims the Call Flow
10 #12 records are not part of this dispute, BellSouth is clearly trying to get paid for
11 those records in this Docket. If BellSouth does not want Call Flow #12 in this
12 Docket, it should drop its claim for payments on those records and credit IDS
13 accordingly.

14 Third, BellSouth's back-billing of these charges was an unreasonable
15 billing practice. In The Peoples Network Inc. v. American Telephone and
16 Telegraph, Company, Docket No. E-92-99 (FCC April 1997), the FCC held that
17 the back-billing of charges several months in arrears can be deemed an
18 unreasonable practice in violation of 47 U.S.C. 201(b). Section 201(b) prohibits
19 unreasonable practices by telecommunications carriers, including unreasonable
20 billing practices. The rationale behind prohibiting unreasonable delays in billing
21 is that such delays can prejudice the billed carrier, and may cause the billed
22 carrier to incur unrecoverable or unreasonable losses. In this instance,
23 BellSouth's attempt to back-bill IDS for amounts dating back as far as a year or

1 more is unreasonable because IDS set its prior customer rates based upon
2 known costs. The history of DUF records and charges indicates an early
3 uncertainty about the total recurring monthly charges that CLECs would incur for
4 these records. To some extent, CLECs such as IDS who had recently entered
5 the local exchange business, had the right to rely upon early estimates of these
6 charges in setting customer rates and other recovery mechanisms. In short,
7 BellSouth's delays of in back-billing some of the DUF charges has caused IDS to
8 suffer unreasonable prejudice which IDS believes prohibits some (or all) of the
9 back-billing under Section 201(b).

10

11 **Q. IN REGARD TO ISSUE 4(B), "DOES IDS OWE BELLSOUTH FOR DUF**
12 **CHARGES, IF SO, HOW MUCH IS OWED?"**

13 A. Based upon the testimony filed by IDS, IDS does not owe BellSouth for
14 any DUF charges in Florida. In fact, BellSouth should be required to credit IDS
15 for the Call Flow #12 records that BellSouth made a part of this Docket by
16 seeking payment on those records.

17

18 **Q. IN REGARD TO ISSUE 5(A), "DID BELLSOUTH CORRECTLY ASSESS**
19 **MARKET-BASED RATES FOR SERVICES PROVIDED TO IDS IN FLORIDA IN**
20 **THE APPLICABLE MSAS?"**

21 A. No. Based upon the testimony IDS has filed, BellSouth did not correctly
22 assess Market-Based Rates for services in Florida. Although many reasons
23 have previously been provided, I will add that in the Supra/BellSouth arbitration in

1 FPSC Docket No. 001305-TP, this Commission was called upon to interpret the
2 FCC's 4 lines or more rule in regard to BellSouth's obligation to provide local
3 switching. In PSC Order No.02-0413-FOF-TP (March 26, 2002), this
4 Commission held at pages 96 through 101, that BellSouth had an obligation to
5 provide local switching on the first three (3) lines to an end-user having four (4) or
6 more lines at one location. Implicitly, this decision holds that BellSouth has a
7 Section 251/252 obligation to provide local switching to all CLECs on the first
8 three (3) lines; otherwise, why would Supra have been entitled to TELRIC rates
9 on those lines? Neither the Current Agreement or Prior Agreement is so specific
10 as to require IDS to pay Market-Based Rates on all such lines. In fact, the
11 Florida rates sheet specifically states that Market Rates only apply where
12 BellSouth has no obligation to provide local switching. Moreover, when
13 BellSouth finally obtained Section 271 approval in Florida, BellSouth clearly had
14 an obligation to provide local switching under the Section 271 checklist.
15 Therefore, once BellSouth obtained Section 271 approval, the Market Rates no
16 longer apply. It was only when the FCC issued its TRO Order in August 2003,
17 that the FCC made it clear that Section 271 pricing need not be at TELRIC rates,
18 but rather at just and reasonable rates; and the Tennessee Commission has
19 recently made an interim ruling that BellSouth's MBR are not "just and
20 reasonable." Furthermore, despite IDS' requests, BellSouth does not provide
21 non-discriminatory access to DS0 EELs, for which all the MBR disputes arise
22 (the difference between TELRIC and MBR for DS0 switching, is a large part of
23 the MBR dispute). Moreover, for the same reasons identified above in the DUF

1 dispute, IDS believes that BellSouth's back-billings of Market-Based Rates were
2 also an unreasonable billing practice.

3
4 **Q. IN REGARD TO ISSUE 5(B), "DID BELLSOUTH CORRECTLY**
5 **CALCULATE AND BILL IDS THE APPROPRIATE AMOUNT?"**

6 A. No. Based upon the testimony filed by IDS, BellSouth did not correctly
7 calculate and bill IDS the appropriate amount.

8
9 **Q. IN REGARD TO ISSUE 5(C), "DID IDS PROPERLY DISPUTE THE**
10 **AMOUNTS IN SUBPART 5(B) IN ACCORD WITH THE PROVISIONS OF THE**
11 **PARTIES INTERCONNECTION AGREEMENT?"**

12 A. Yes. First, it should be noted that under the Prior Agreement, use of BAR
13 forms was only an option. All IDS had to do to initiate a dispute was to inform
14 BellSouth in writing. Nevertheless, IDS submitted BAR forms for all DUF and
15 MBR disputes. Accordingly, all of the DUF and MBR disputes were properly
16 disputed in accordance with the parties' interconnection agreements.

17
18 **Q. IN REGARD TO ISSUE 5(D), "BASED ON SUBPARTS (A) AND (B)**
19 **ABOVE, HOW MUCH DOES IDS OWE BELLSOUTH, IF ANY?"**

20 A. Based upon the testimonies filed by IDS, IDS does not owe BellSouth any
21 monies on the above referenced disputes.

1 **Q. IN REGARD TO ISSUE 6, “WHEN SHOULD ANY CREDIT OR**
2 **PAYMENT BE SUBMITTED?”**

3 A. In accordance with the Current Agreement, any credits to IDS should be
4 provided immediately. However, to the extent any monies are found to be due to
5 BellSouth, both the Prior Agreement and Current Agreement contain a provision
6 calling for the payment of such amounts over time. I would refer this
7 Commission to Section 1.1.3.1 of Attachment 7 of the Prior Agreement and
8 Section 1.1.3 of Attachment 7 of the Current Agreement for the details as to
9 when and how such payments should be made.

10

11 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

12 A. Yes.

Angel M. Leiro
13810 S.W. 104th Street
Miami, Florida 33186
Business: (305) 413-9000

Present Employment: Vice President of Regulatory Affairs

Experience: 10/2000 to present – IDS Telcom, LLC

I report to the Chief Executive Officer and my primary responsibilities are to advise on and maintain the Company's compliance with all state and federal regulatory requirements as they relate to the operation of a full service telecommunications carrier in 8 states the Company holds authority to and presently conducts business in.

In conjunction with the above, I am involved in ascertaining obligations and the determination of the level of performance provided by the Company's main supplier(s) relative to its Agreement(s) with them for the acquisition and provisioning of telecommunication services.

I am responsible for overseeing the Company's policies and procedures as they relate to all Customer affecting issues or complaints filed with Regulatory Commissions in the various states including the FCC.

3/00 - present The Basico Group, Inc. – Coral Gables, Florida

V-P Operations

Develop and implement all areas of standard operating procedures for growing a Telecommunications Service Provider concentrating on the provision of High-Speed Internet Access to commercial properties as well as Hosting, Design and E-Commerce products and services.

6/98 – 3/00 Supra Telecom, Inc. - Miami, Florida

Director of Legal and Regulatory Affairs

Developed and implemented corporate legal department Alternative Local Exchange Company; provided paralegal assistance to Company attorneys and participated in the litigation matters related to collocation in central offices; assist and advise on regulatory affairs before the Commission various Southeast states; Incorporate and maintain the company's corporate and regulatory good standing in various states as well as obtain authority to services in over 28 States for the provision of local exchange telephone services, long distance and advanced telecom services.

Responsible for the daily investigative proceedings before the FCC and State regulatory commissions (Y2K issues, pricing and billing, tariff reform, collocation, interconnection and other issues affecting the telecom industry).

Assisted in the preparation of legislation before the House of regarding local telecommunications competition.

8/95 – 3/98 Mobile Medical, Inc. - Miami, Florida

Co-Owner and Operator

Responsible for the daily operation of Orthopedic and Prosthetics facility.

Docket No.: 031125-TP
Witness: Angel M. Leiro
Exhibit No. _____(AL-1)
Leiro Resume
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Medicare, Medicaid, Private Insurance and open account billing and collections, A/R, A/P, P&L.

4/92 – 4/95 Zarco & Associates, P.A.- Miami, Florida

Legal Administrator/Senior Litigation Paralegal

Administered a commercial and franchise litigation law firm through various levels of expansion and build-out. Supervised approximately 15 employees and managed 4 attorney tenants with staff.

Responsible for the Administration of the office including; managing personnel library of legal and factual resources; billing system; Manage work flow; Implement advertising and media relations activities; Established and maintained accounting, billing and payroll processes; Coordinate events, activities, and services related to firm matters

Actively participated and administered the development of client legal matters in State and Federal courts including; factual and legal research and writing; client conflict checks; supervise the development, organization and maintenance of client files and calendars; coordinate entire case dockets and preparations for trial.

1/90-3/92 Weil Lucio Mandler Croland & Steele, P.A. Miami, Florida

Litigation/Corporate Paralegal

Performed many of the above activities including; Assist International Law Partner in preparation and certification of legal documents through various foreign consulates; Assist Tax Department partner in preparation of documents for appraisal reduction hearings; Assist Corporate Department partners in the preparation of SEC documentation and filings; State and Federal Court jury trials, jury selection, witness preparation for examination direct and cross etc.

1/87-12/89 Hornbsy & Whisenand, P.A. – Miami, Florida

Administrative Assistant/Junior Paralegal

Maintained and updated all litigation pleadings, production of documents and attorney work product.

Fact gathering through clients and witnesses.

Implemented and performed all courthouse filing procedures for State and Federal Courts and assisted Administrator in the daily operations of law firm.

Assisted Librarian with the purchasing and updating of law library reference materials.

1/84-12/86 Fine Jacobson Schwartz Nash Block & England, P.A. Miami, Florida

Administrative Assistant/File Clerk/Courthouse Runner

Implement and perform Courthouse filing procedures (State and Federal).

Maintained and administered the closing and archiving of case files for two merging firms.

Assisted in administrative duties necessary during merger.

Education: 1985-1989 AA Degree – Miami Dade Community College
Miami, Florida

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Witness: Angel M. Leiro
Exhibit No. _____(AL-1)
Leiro Resume
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1990-1992 Attended Florida International University completing majority of required courses toward an undergraduate degree in Marketing and Finance with an emphasis in financial and managerial accounting.

Computer Experience:

Proficient in Internet Research, Windows 95/98/NT Environment, Word, Wordperfect (5.0 and above), Excel, Outlook, Peachtree Accounting/Timeslips, Paradox, Discovery. Skilled in Project, Powerpoint, New Visio Professional, and a variety of other software applications.

Languages:

Fluent in English and Spanish

References available upon request.

Attachment 2

Network Elements and Other Services

Docket No.: 031125-TP
Witness: Angel M. Leiro
Exhibit No. _____(AL-2)
Prior ICA Excerpt
Page 1 of 5

BellSouth / IDS
Interconnection Agreement-FLA
06/18/01

database. IDS will be required to forward 911 calls to the appropriate E911 tandem, along with ANI, based upon the current E911 end office to tandem homing arrangement as provided by BellSouth. If the E911 tandem trunks are not available, IDS will be required to route the call to a designated 7-digit local number residing in the appropriate Public Service Answering Point (“PSAP”). This call will be transported over BellSouth’s interoffice network and will not carry the ANI of the calling party. IDS shall be responsible for providing BellSouth with complete and accurate data for submission to the 911/E911 database for the purpose of providing 911/E911 to its end users.

- 12.5.3 Rates. Charges for 911/E911 service are borne by the municipality purchasing the service. BellSouth will impose no charge on IDS beyond applicable charges for BellSouth trunking arrangements.
- 12.5.4 Basic 911 and E911 functions provided to IDS shall be at least at parity with the support and services that BellSouth provides to its end users for such similar functionality.
- 12.5.5 Detailed Practices and Procedures. The detailed practices and procedures contained in the E911 Local Exchange Carrier Guide For Facility-Based Providers as amended from time to time during the term of this Agreement will determine the appropriate practices and procedures for BellSouth and IDS to follow in providing 911/E911 services.

13. True-Up

This section applies only to Tennessee and other rates that are interim or expressly subject to true-up under this attachment.

- 13.1 The interim prices for Network Elements and Other Services and Local Interconnection shall be subject to true-up according to the following procedures:
- 13.2 The interim prices shall be true-up, either up or down, based on final prices determined either by further agreement between the Parties, or by a final order (including any appeals) of the Commission which final order meets the criteria of (3) below. The Parties shall implement the true-up by comparing the actual volumes and demand for each item, together with interim prices for each item, with the final prices determined for each item. Each Party shall keep its own records upon which the true-up can be based, and any final payment from one Party to the other shall be in an amount agreed upon by the Parties based on such records. In the event of any disagreement as between the records or the Parties regarding the amount of such true-up, the Parties agree that the body having jurisdiction over the matter shall be called upon to resolve such differences, or the Parties may mutually agree to submit the matter to the Dispute Resolution process in accordance with

the provisions of Section 12 of the General Terms and Conditions and Attachment 1 of the Agreement.

- 13.3 The Parties may continue to negotiate toward final prices, but in the event that no such Agreement is reached within nine (9) months, either Party may petition the Commission to resolve such disputes and to determine final prices for each item. Alternatively, upon mutual agreement, the Parties may submit the matter to the Dispute Resolution Process set forth in Section 12 of the General

Terms and Conditions and Attachment 1 of the Agreement, so long as they file the resulting Agreement with the Commission as a “negotiated Agreement” under Section 252(e) of the Act.

- 13.4 A final order of this Commission that forms the basis of a true-up shall be the final order as to prices based on appropriate cost studies, or potentially may be a final order in any other Commission proceeding which meets the following criteria:
- (a) BellSouth and IDS are entitled to be a full Party to the proceeding;
 - (b) It shall apply the provisions of the federal Telecommunications Act of 1996, including but not limited to Section 252(d)(1) (which contains pricing standards) and all then-effective implementing rules and regulations; and,
 - (c) It shall include as an issue the geographic deaveraging of network element and other services prices, which deaveraged prices, if any are required by said final order, shall form the basis of any true-up.

**AMENDMENT
TO THE
AGREEMENT BETWEEN
IDS TELCOM, L.L.C
AND
BELLSOUTH TELECOMMUNICATIONS, INC.
DATED JUNE 26, 2001
EFFECTIVE JANUARY 27, 2001**

Pursuant to this Amendment, (the "Amendment"), IDS Telcom, L.L.C., ("IDS"), and BellSouth Telecommunications, Inc. ("BellSouth"), hereinafter referred to collectively as the "Parties," hereby agree to amend that certain Interconnection Agreement between the Parties dated June 26, 2001 and effective January 27, 2001 ("Agreement") for the state of Florida ("Agreement").

WHEREAS, BellSouth and IDS entered into the Agreement on dated June 26, 2001 and effective January 27, 2001, and;

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

1. The Parties agree to delete all rates in Exhibit 1, Attachment 1, 2, 3, and 7 and replace with the rates set forth in Exhibit 1 of this Amendment, attached hereto and incorporated herein by this reference, reference as ordered in Florida Docket 990649A-TP, issued September 27, 2002.
2. The Parties agree to delete and replace Section 11.1 of Attachment 1 with the following, incorporated herein by this reference:

11.1 The Optional Daily Usage File (ODUF) Agreement with terms and conditions is included in this Attachment as Exhibit D. Rates for ODUF are as set forth in Attachment 7 of this Agreement.
3. The Parties agree to delete and replace Section 12.1 of Attachment 1 with the following, incorporated herein by this reference:

12.1 The Enhanced Optional Daily Usage File (EODUF) Agreement with terms and conditions is included in this Attachment as Exhibit D. Rates for EODUF are as set forth in Attachment 7 of this Agreement.
4. All of the other provisions of the Agreement, dated June 26, 2001 and effective January 27, 2001, shall remain in full force and effect.
5. Either or both of the Parties are authorized to submit this Amendment to the respective state regulatory authorities for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996.
4. Neither party waives any right to seek clarification from the Commission regarding retroactive application of the rates contained in this Amendment.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their respective duly authorized representatives on the date indicated below.

IDS Telcom, L.L.C.

BellSouth Telecommunications, Inc.

By: (Signature on File)

By: (Signature on File)

Name: Michael Noshay

Patrick Finlen
Name: for Elizabeth R. A. Shiroishi

Title: President/Manager

Assistant Director, Interconnection
Title: Services

Date: 10/18/02

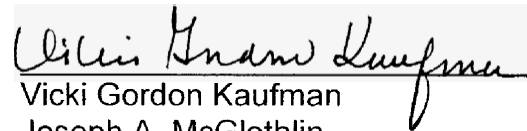
Date: 10/22/02

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Direct Testimony and Exhibits of Angel Leiro on behalf of IDS Telcom, LLC. has been provided by (*) hand delivery and U.S. Mail, this 22nd day of July, 2004, to the following:

(*) Patricia Christensen
Office of General Counsel
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2540 Shumard Oak Blvd.
Tallahassee, FL 32399

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