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: August 17, 2004

IDS TELCOM LLC'S PREHEARING STATEMENT

IDS Telecom LLC (IDS), pursuant to Order Nos. PSC-04-0472-PCO-TP and PSC-04-0625-PCO-TP submits its Prehearing Statement.

A. APPEARANCES:

Vicki Gordon Kaufman
Joseph A. McGlothlin
McWhirter, Reeves, McGlothlin, Davidson, Kaufman & Arnold, P.A.
117 South Gadsden Street
Tallahassee, FL 32301

B. WITNESSES:

Witness[1]	Proffered by	Issues
Angel Leiro	IDS	All
Jermaine Johnson	IDS	5(a)
Elizabeth Fefer	IDS	1, 1(a), 1(b), 1(c), 2, 5(d), 6
Elizabeth Fefer/ Raquel Rencher (panel)	IDS	4(a), 4(b), 5(a), 5(b), 5(c),5(d), 6
Joe Gillan	IDS	5(a)

C. STATEMENT OF BASIC POSITION:

This case involves 3 separate billing disputes between IDS and BellSouth. First, BellSouth has attempted to charge IDS, and include in the "Settlement Q Account," more than the parties agreed to in their settlement. Second, BellSouth has attempted to

[1] IDS has assumed that direct and rebuttal testimony will be combined.

overcharge IDS for DUF records. Third, BellSouth has attempted to charge IDS so-called "marked-based rates" for switching. A summary of each dispute follows.

"Q Account" Dispute

In September 2001, IDS and BellSouth entered into a Settlement Agreement to resolve billing disputes. The Agreement required IDS to make certain payments to BellSouth and required BellSouth to credit IDS' accounts for certain items. Subsequently, the parties executed a Settlement Amendment, in which they agreed to establish a special "Settlement Q Account." The "Settlement Q Account" was to include the net amount that IDS agreed to pay after the quantification of the items, including credits due IDS to be applied by BellSouth, to which they had agreed in principle in the Settlement Agreement. The negotiated amount of $2.475 million was to be transferred to this account to represent BellSouth past due billings as of March 25, 2002, net of the several credits to which BellSouth had agreed. IDS was to remit $200,000 per month to BellSouth to pay down the $2.475 million "Settlement Q Account" over time, and BellSouth agreed to waive all past interest and late fees. However, BellSouth did not provide IDS with all the credits the parties agreed to in the Settlement and the Settlement Amendment and opened the Q Account with a balance of $3.232 million instead of $2.475 million, thereby increasing the settlement amount to be paid by IDS beyond that to which the parties had agreed. IDS timely made its payments as required by the parties' agreements and the parties then began their on-going dispute over the appropriate opening amount in the Q Account. IDS has paid the agreed upon $2.475 million (with interest) and has actually overpaid the Q Account in error. As of April 8, 2002, IDS was entitled to a credit from BellSouth for the overcharges in the amount of $757,266.10, which today would include all interest and late payment charges from April 8, 2002.

DUF Dispute

The DUF dispute has three components. First, in their interconnection agreement, the parties agreed to "true up" the amounts IDS paid BellSouth for DUF files when the rates became final. Under the terms of the agreement, DUF rates are not "final" for purposes of the agreement until the rates have been derived through the application of "appropriate cost studies." By BellSouth's own admission, the cost studies on which rates in effect prior to those approved in September 2002 (Order No. PSC-02-1311-FOF-TP) were based were premised on flawed cost studies. Accordingly, the payments for DUF files remained subject to true-up until that time. IDS has disputed all amounts related to this true-up issue and owes BellSouth nothing further for DUF charges. Second, IDS should not be required to compensate BellSouth for "Call Flow #12" records which are needed only for IDS to quantify erroneously billed usage and then bill it back to BellSouth. These "Call Flow #12" billing records are needed only because of BellSouth's billing error, which it has failed to correct since at least June 2001. Third, the very large backbillings, which BellSouth attempted to assess between June 2002 and October 2002, constitute an unreasonable billing practice.

"Market-Based Rate" Dispute

The dispute related to so-called "market-based rates" has several aspects. First, BellSouth is not entitled to charge anything other than the Commission approved TELRIC rate for local switching because it has not met the basic qualifying criterion to do so -- it does not provide non-discriminatory cost-based access to the Enhanced Extended Link (EEL) throughout Density Zone 1, as the FCC rule and the parties' interconnection agreements require. The "EELs" offered by BellSouth do not even comply with the FCC's definition of required "EELs" because the BellSouth "EELs" exclude loop concentration. Therefore, any issue as to rate level or application is moot.

Second, even *if* BellSouth had made the required EELs available, imposition of its so-called "market rates" would violate its obligation to offer unbundled local switching at just and reasonable rates. When BellSouth obtained authority to offer interLATA service in Florida, it also voluntarily accepted the obligation to offer local switching at just and reasonable rates. BellSouth's so-called "market rates" are demonstrably *not* just and reasonable and, therefore, cannot be imposed.

In addition, this Commission has already ruled in two prior cases that BellSouth is obligated to provide switching at TELRIC rates on the first three lines to a customer in Density Zone 1. (See, Order No. PSC-02-0413-FOF-TP, Order No. PSC-01-1951-FOF-TP). Consequently, wholly aside from the other issues involving this dispute, under no condition is BellSouth permitted to apply non-TELRIC rates to the first three lines.

Last, BellSouth made various errors in assessing and back-billing these charges.

D. EXHIBITS

Leiro Direct Exhibits

Exhibit No. ___ AL-1	Leiro Resume
Exhibit No. ___ AL-2	Prior Interconnection Agreement Excerpts

Leiro Rebuttal Exhibits

Exhibit No. ___ AL-3	Excerpt, May 2001 Order, Apdx. A
Exhibit No. ___ AL-4	Excerpt, Oct. 2001 Order, Apdx. A
Exhibit No. ___ AL-5	Excerpt, Sept. 2002 Order, Apdx. A
Exhibit No. ___ AL-6	10/29/01 BellSouth filing
Exhibit No. ___ AL-7	Transcript Excerpt
Exhibit No. ___ AL-8	BellSouth Motion to Amend Cost Study
Exhibit No. ___ AL-9	BellSouth Request for Interpretation
Exhibit No. ___ AL-10	Oral Argument Transcript
Exhibit No. ___ AL-11	BellSouth Response
Exhibit No. ___ AL-12	BellSouth 8/27/01 letter to GPSC
Exhibit No. ___ AL-13	Excerpt from Prior Agreement

Exhibit No. ___ AL-14	Excerpt from Current Agreement
Exhibit No. ___ AL-15	BellSouth Proposed Rates

Johnson Direct Exhibits

Exhibit No. ___ JJ-1	Current Interconnection Agreement Excerpt
Exhibit No. ___ JJ-2	Prior Interconnection Agreement Excerpts
Exhibit No. ___ JJ-3	Prior Interconnection Amendment
Exhibit No. ___ JJ-4	11/20/02 email between Johnson & Gaston
Exhibit No. ___ JJ-5	12/31/02 letter from Cook to Johnson
Exhibit No. ___ JJ-6	1/14/04 email from Johnson to Gaston
Exhibit No. ___ JJ-7	2/3/04 letter from Tache to Johnson

Johnson Rebuttal Exhibits

Exhibit No. ___ JJ-8	EEL Rate Sheet from Prior Agreement
Exhibit No. ___ JJ-9	EEL Rate Sheet from Amendment to Prior Agreement
Exhibit No. ___ JJ-10	EEL Rate Sheet from Current Agreement
Exhibit No. ___ JJ-11	BellSouth guide for Unbundled Dedicated Transport regarding EELs.
Exhibit No. ___ JJ-12	BellSouth guide for Unbundled Loop Concentration

Fefer Direct Exhibits

Exhibit No. ___ EF-1	Settlement Agreement **(confidential)**
Exhibit No. ___ EF-2	Settlement Amendment
Exhibit No. ___ EF-3	Excerpts of April 2002 Billing
Exhibit No. ___ EF-4	Q Account Correspondence
Exhibit No. ___ EF-5	Q Account Payments
Exhibit No. ___ EF-6	Disputed Late Payments & Interest Charges (through December 2002 billings)
Exhibit No. ___ EF-7	Itemization of BellSouth Credits
Exhibit No. ___ EF-8	Prior Interconnection Agreement Excerpts
Exhibit No. ___ EF-9	Current Interconnection Agreement Excerpts

Fefer Rebuttal Exhibits

Exhibit No. ___ EF-10	Hacker Affidavit

Fefer/Rencher Direct Exhibits

Exhibit No. ___ RR/EF-1	Call Flow #12
Exhibit No. ___ RR/EF-2	Call Flow #12/DUF Errors
Exhibit No. ___ RR/EF-3	Back Bill Summary
Exhibit No. ___ RR/EF-4	Disputes by Billing Account

Exhibit No. ___ RR/EF-5	Disputes by Billing Account
Exhibit No. ___ RR/EF-6	BAR Forms
Exhibit No. ___ RR/EF-7	Current Interconnection Billing
Exhibit No. ___ RR-EF-8	Prior Interconnection Billing

Fefer/Rencher Rebuttal Exhibits

Exhibit No. ___ RR/EF-9	BellSouth Rate Sheet
Exhibit No. ___ RR/EF-10	2/5/03 Interconnection Agreement Amendment
Exhibit No. ___ RR/EF-11	CD containing spreadsheets for UNE Q Accounts
Exhibit No. ___ RR/EF-12	CD containing spreadsheets for UNE Q Accounts
Exhibit No. ___ RR/EF-13	Excerpts from BellSouth Billing Guide
Exhibit No. ___ RR/EF-14	Excerpt from Prior Interconnection Agreement
Exhibit No. ___ RR/EF-15	Excerpt from Current Interconnection Agreement
Exhibit No. ___ RR/EF-16	CD containing BellSouth May 2003 backbilling
Exhibit No. ___ RR/EF-17	CD containing BellSouth December 2003 backbilling

Gillan Rebuttal Exhibits

Exhibit No. ___ JPG-1	BellSouth Discovery Responses Regarding Derivation of "Market-based" Rates

IDS reserves the right to supplement its Exhibit List based upon continuing discovery between the parties, and to include exhibits that might be used in depositions to be taken, and in the cross-examination of BellSouth witnesses and re-direct of IDS witnesses.

E. STATEMENT OF ISSUES AND POSITIONS:

ISSUE 1: Was there a further agreement to include additional billed amounts into the Settlement Agreement and Settlement Amendment Q account?

IDS: No. IDS did not agree to include additional amounts in the Settlement Q account. BellSouth has failed to provide IDS with all of the credits that had been agreed to by the parties under the original Settlement Agreement and Settlement Amendment. As a result, BellSouth seeks to collect from IDS an amount greater than the settlement that the parties negotiated.

a. What are the amounts owed under the original Settlement Agreement and Settlement Amendment?

IDS: IDS does not owe BellSouth anything. Under the parties' settlement, BellSouth owes IDS a credit of $757,266.10, plus late payment charges and interest since April 8, 2002.

b. What are the amounts owed under any other agreement or amendment?

IDS: There has been no additional agreement or amendment, so nothing further is owed by IDS to BellSouth.

c. Have those amounts been paid?

IDS: All amounts IDS owed BellSouth have been paid. Pursuant to the Settlement Agreement and Settlement Amendment, BellSouth owes IDS a credit of $757,266.10, plus late payment charges and interest since April 8, 2002.

ISSUE 2: Did BellSouth properly terminated IDS's access to LENS in December 2003 pursuant to the interconnection agreement?

IDS: No. BellSouth violated the parties' Interconnection Agreement when it improperly denied IDS access to LENS in December 2003. BellSouth terminated LENS due to charges, which IDS had properly disputed and this is impermissible under the Interconnection Agreement.

ISSUE 3: If BellSouth improperly terminated IDS's access to LENS in December 2003, then would such action constitute anticompetitive behavior in violation of Chapter 364, Florida Statutes?

IDS: Yes. BellSouth knew that the amounts in the Q Account were in dispute due to the extensive correspondence and discussion between the parties on this issue. Despite this, BellSouth terminated LENS service knowing full well that it would totally halt IDS' ability to serve its current customers and to process orders for new customers. Such behavior is clearly anticompetitive and in violation of Chapter 364, Florida Statutes.

ISSUE 4(a): Did BellSouth correctly assess the correct Daily Usage File (DUF) charges for services provided to IDS in Florida?

IDS: No. BellSouth failed to true-up the DUF charges as required by the parties' Interconnection Agreement, which required "final" DUF rates to be based on appropriate cost studies. Further, BellSouth has attempted to charge IDS for "Call Flow #12" records, which BellSouth only provides IDS so as to *correct BellSouth's billing errors.* Finally, BellSouth's practice of continually attempting to back bill is unreasonable.

ISSUE 4(b): Does IDS owe BellSouth for DUF charges, if so, how much is owed?

IDS: No, IDS does not owe BellSouth for DUF charges in Florida. Further, BellSouth should be required to credit IDS the DUF charge for all Call Flow #12 records.

ISSUE 5(a): Did BellSouth correctly assess market-based rates for services provided to IDS in Florida in the applicable MSAs?

IDS: No. First, BellSouth has failed to fulfill the basic qualifying criterion for charging such rates -- its does not provide non-discriminatory access to EELs as required by the Interconnection Agreement. BellSouth also does not provide the proper EEL as defined by the FCC. Second, even *had* BellSouth made EELs available, imposing its so-called "market rates" would violate its obligation to offer unbundled local switching at just and reasonable rates. Third, under no circumstances is BellSouth permitted to charge non-TELRIC rates for the first three lines. Last, mistakes exists in the BellSouth back-billings.

ISSUE 5(b): Did BellSouth properly calculate and bill IDS the appropriate amount?

IDS: No. BellSouth is attempting to charge IDS what BellSouth claims are "market-based" rates. For the reasons, set out in Issue 5(a), BellSouth's proposed charges are incorrect. Moreover, BellSouth failed to bill IDS in accordance with the parties' agreements and failed to provide the required detail needed to audit most of the bills.

ISSUE 5(c): Did IDS properly dispute the amounts in subpart 5(b) in accord with the provisions of the parties' interconnection agreement?

IDS: Yes. Under the parties' prior Interconnection Agreement, IDS simply had to inform BellSouth in writing regarding a billing dispute, which it did. Under the current Interconnection Agreement, IDS must submit BAR forms, which it did for all billing disputes.

ISSUE 5(d): Based on subparts (a) and (b) above, how much does IDS owe BellSouth, if any[thing]?

IDS: IDS does not owe BellSouth anything.

ISSUE 6: When should any credit or payment be submitted?

IDS: Credits from BellSouth to IDS are due immediately. However, if the Commission concludes that IDS owes BellSouth anything, the parties' Interconnection Agreements call for the payment of amounts due over time. Each agreement has a different schedule for payment of any such amounts found to be due.

F. STIPULATED ISSUES:

None at this time.

G. PENDING MOTIONS:

IDS has no motions pending at this time.

H. PENDING CONFIDENTIALITY CLAIMS:

Pursuant to BellSouth's request, IDS has filed the Settlement Agreement between the parties pursuant to confidentiality protection.

I. REQUIREMENTS WHICH CANNOT BE COMPLIED WITH:

IDS is aware of no requirements with which it cannot comply at this time.

J. DECISIONS PREEMPTING THE COMMISSION'S ABILITY TO RESOLVE THIS MATTER:

On April 26, 2004, four days after the issue identification conference that established Issues 1, 2 and 3 (relating to the Settlement "Q" Account dispute), this Commission entered Order No. PSC-04-0423-FOF-TP, which held that the Commission lacked subject matter jurisdiction to interpret and/or enforce the Settlement Agreement and Settlement Amendment. The Commission, however, reserved ruling on whether or not such agreements would be admissible in considering whether or not BellSouth breached the current Agreement. IDS notes and raises this ruling as a precaution regarding the scope and parameters of this proceeding.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing IDS Telecom, LLC's Prehearing Statement has been served upon the following parties by electronic mail and U.S. mail this 17th day of August, 2004:

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