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**ORIGINAL**

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August 20, 2004

Ms. Blanca Bayo, Director  
Commission Clerk and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

RECEIVED-FPSC  
04 AUG 23 PM 1:42  
COMMISSION  
CLERK

040927-TP

Dear Ms. Bayo:

Enclosed with this letter on behalf of STS Telecommunication Services, Inc. ("STS") are the original and fifteen copies of the "Complaint of Saturn Telecommunications Services, Inc. d/b/a STS Telecom against BellSouth Telecommunications, Inc. for Declaratory Relief Regarding BellSouth's Request For Amendment Pursuant to "Change of Law" Provision of The Interconnect Agreement"

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the copy to me in the envelope provided.

Thank you for your assistance with this filing.

Very truly yours,

ALAN C. GOLD

RECEIVED & FILED  
*Alan*  
FPSC-BUREAU OF RECORDS

Enclosure:

cc: Mr. R. Douglas Lackey  
Ms. Nancy B. White  
STS Telecommunications

DOCUMENT NUMBER-DATE

09221 AUG 23 3

FPSC-COMMISSION CLERK

ORIGINAL

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Interconnection Agreement between  
Saturn Telecommunication Services, Inc.  
d/b/a STS Telecom and BellSouth  
Telecommunications, Inc.

040927 - TP

**COMPLAINT OF SATURN TELECOMMUNICATIONS SERVICES, INC.  
D/B/A STS TELECOM AGAINST BELLSOUTH TELECOMMUNICATIONS,  
INC. FOR DECLARATORY RELIEF REGARDING BELLSOUTH'S REEUQST  
FOR AMENDMENT PURSUANT TO "CHANGE OF LAW" PROVISION OF  
THE INTERCONNECT AGREEMENT**

Petitioner Saturn Telecommunications Services, Inc. d/b/a STS Telecom, ("STS") by and through its undersigned counsel and pursuant to Sections 364.01(4)(g) Florida Statutes, and Rules 25-22.036(2), 28-106.201 and 28.106.202, Florida Administrative Code, hereby files this Complaint for Declaratory Relief against Respondent, BellSouth Telecommunications, Inc. ("BellSouth"), (1) seeking interpretation of Section 14.3 of the Interconnection Agreement between the parties, and (2) requesting that the Florida Public Service Commission issue its ruling that BellSouth improperly and prematurely invoked Section 14.3 of the Interconnection Agreement (3) requesting a stay be issued prohibiting BellSouth from invoking the provisions of Section 14.3 of the Interconnection Agreement based upon the rulings of the United States Court of Appeal for the District of Columbia Circuit, in the case of *United States Telecom Assoc. v. Federal Communications Commission*, (Court Ruling)

**INTRODUCTION**

1. STS is a competitive local exchange carrier ("CLEC") and interexchange carrier ("IXC") certified by the Florida Public Service Commission (the "Commission") to provide such services in Florida. STS is also a

DOCUMENT NUMBER-DATE

09221 AUG 23 3

FPSC-COMMISSION CLERK

“telecommunications carrier” and “local exchange carrier” under the Telecommunications Act of 1996 as amended (the “Act”) STS’ full name and address is:

STS Telecommunication Services Inc.  
12233 SW 55 Street  
Suite 811  
Cooper City, FL 33330

All documents filed, served or issued in this docket should be served on the following:

Alan C. Gold, P.A.  
1320 South Dixie Highway  
Suite 870  
Coral Gables, FL 33146  
305-667-0475, ext 1 (office)  
305-663-0799, (fax)

2. BellSouth Telecommunications, Inc. is an incumbent local exchange carrier (“ILEC”) certificated by the Commission to provide local exchange services in Florida. BellSouth is an ILEC, as defined in Section 251 (h) of the Act, and is a “local exchange telecommunications company” as defined by Section 364.02(6), Florida Statutes. BellSouth’s address for receiving communications from the Commission is:

R. DOUGLAS LACKEY  
Suite 4300, BellSouth Center  
675 West Peachtree Street, N.E.  
Atlanta, GA 30375

3. The Commission has jurisdiction with respect to the claims asserted in this Complaint under Chapter 120 and 364, Florida Statutes and Chapters 25-22 and 28-106, Florida Administrative Code. Moreover, the Commission’s jurisdiction to enforce interconnection agreements is

explicitly set forth in Section 364.162, Florida Statutes and also is inherent in its authority to approve such agreements under Section 252 of the Act.

4. BellSouth and IDS Telcom entered into an Interconnect Agreement (“Agreement”) dated February 5, 2003, which was approved by the Florida Public Service Commission. See Docket number 03-0158-TP. (A copy of the Agreement is attached hereto as Exhibit A.)
5. The Agreement became effective on May 30, 2003 and expires on February 4, 2004.
6. STS adopted in its entirety the Agreement, which adoption was approved by the Commission on September 5, 2003 in Docket number 03-0487-TP.
7. Section 14.3 of the Agreement states the following:
  - 14.3 In the event that any effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of IDS Telcom or BellSouth to perform any material terms of this Agreement, IDS Telcom or BellSouth may, on thirty (30) days’ written notice, required that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within ninety (90) days after such notice, the Dispute shall be referred to the Dispute Resolution procedure set forth in this Agreement.
8. On or about July 13, 2004, BellSouth sent STS a formal notice invoking the “change of law” provisions of Section 14.3, alleging that the court ruling constituted a legal action which materially affected material terms of the Agreement and requested that the terms of the Agreement be

renegotiated within 90 days from the date of the Notice (A copy of the “formal notice” from BellSouth is attached hereto as Exhibit B).

9. BellSouth alleges that a Federal court ruling in the District of Columbia Circuit had rendered 47 U.S.C. § 251 invalid, and that such change in law is a material change which requires re-negotiation pursuant to Section 14.3 of the Agreement. *See Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 (2003)(“*Triennial Review Order*”), *reversed in part on other grounds, United States Telecom. Ass’n v. FCC*, Nos. 00-1012, *et al* (D.C. Cir. Mar. 2, 2004)(“*USTA II*”).
10. STS disputes BellSouth’s interpretation of the D.C. Circuit’s ruling, and states that no material change in law has occurred triggering the operation of Section 14.3 of the Agreement.

#### ARGUMENTS

11. The D.C. Circuit ruled that the FCC failed to follow the law when it allowed the States to determine “impairment” pursuant to 47 USC § 251, and that determination was strictly to be made by the FCC.
12. To comply with the D.C. Circuit ruling, the FCC has stated publicly that the FCC will attempt to have permanent rules in place before the end of the year, and request that ILECs not take this opportunity, when there is a temporary vacancy of the rules, to exploit their position and threaten competition. In spite of the request from the FCC, BellSouth has taken

this opportunity to attempt to pre-empt the FCC's permanent rules, and is attempting to pre-empt any interim rules to which the Parties are to adhere to when the FCC makes the rules available. Thus, contrary to the express wishes of the FCC, BellSouth is attempting to exploit their position and

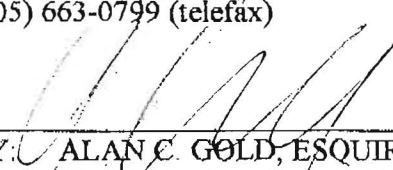
13. Authority granted to state public service commissions under the Federal Telecommunications Act includes authority to interpret agreements which have already been approved. *See BellSouth Telecommunications, Inc. v. MCIMetro Access Transmission Services, Inc.* 317 F.3d 1270, 1274 (US App. 11<sup>th</sup> Cir. 2003).

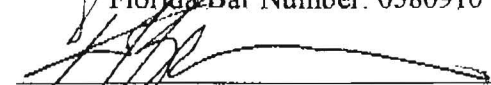
**WHEREFORE**, STS Telecommunication Services, Inc. requests that the Public Service Commission:

- (1) Take jurisdiction over this matter;
- (2) Rule on the interpretation of Section 14.3 of the Agreement that no material change in law has occurred, and therefore the Agreement is not subject to renegotiation.
- (3) In the alternative, if the Commission finds that Section 14.3 of the Agreement is operable, then rule that said ninety (90) day time period will not start to run until after the Commission has resolved this Petition;
- (4) For such other relieve as the Public Service Commission deems necessary and proper.

Respectfully submitted,

ALAN C. GOLD, P.A.  
Gables One Tower  
1320 South Dixie Highway  
Suite 870  
Coral Gables, FL 33146  
(305) 667-0475 (office)  
(305) 663-0799 (telefax)

  
BY: ALAN C. GOLD, ESQUIRE  
Florida Bar Number: 304875  
JAMES E. PARADO, ESQUIRE  
Florida Bar Number: 0580910

  
KEITH KRAMER FOR SATURN  
TELECOMMUNICATIONS SERVICES,  
INC., d/b/a STS TELECOM

**CERTIFICATE OF SERVICE**

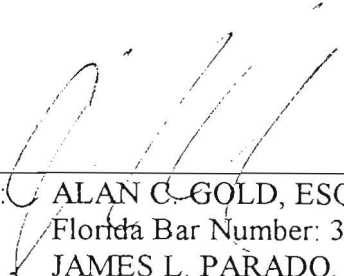
**NEW DOCKET - Complaint of STS Against BellSouth re Declaratory Relief**

I HEREBY CERTIFY that a copy of the foregoing was furnished by Federal Express Overnight Delivery this 20 day of August 2004, to the following:

Florida Public Service Commission  
Division of Legal Services  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850  
Fax No. (850) 413-6221

MS. MARTHA ROMANO  
BellSouth Interconnection Services  
675 Wst Peachtree Street, NE  
Room 34S91  
Atlanta, Georgia 30375

R. DOUGLAS LACKEY, ESQUIRE  
BellSouth Legal Department  
Suite 4300, BellSouth Center  
675 West Peachtree Street, N.E.  
Atlanta, Georgia 30375

  
BY: ALAN C. GOLD, ESQUIRE  
Florida Bar Number: 304875  
JAMES L. PARADO, ESQUIRE  
Florida Bar Number 0580910



# **BELLSOUTH® / CLEC Agreement**

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Note: This page is not part of the actual signed contract/amendment, but is present for record keeping purposes only.

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**By and Between**  
**BellSouth Telecommunications, Inc.**  
**And**  
**IDS Telcom, L.L.C.**

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## AGREEMENT GENERAL TERMS AND CONDITIONS

**THIS AGREEMENT** is made by and between BellSouth Telecommunications, Inc., (“BellSouth”), a Georgia corporation, and IDS Telcom LLC (“IDS Telcom”), a Florida limited liability company, and shall be effective on the Effective Date, as defined herein. This Agreement may refer to either BellSouth or IDS Telcom or both as a “Party” or “Parties.”

### W I T N E S S E T H

**WHEREAS**, BellSouth is a local exchange telecommunications company authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee; and

**WHEREAS**, IDS Telcom is or seeks to become a CLEC authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; and

**WHEREAS**, IDS Telcom wishes to resell BellSouth’s telecommunications services and purchase network elements and other services, and, solely in connection therewith, may wish to utilize collocation space as set forth in Attachment 4 of this Agreement); and

**WHEREAS**, the Parties wish to interconnect their facilities and exchange traffic pursuant to Sections 251 and 252 of the Act.

**NOW THEREFORE**, in consideration of the mutual agreements contained herein, BellSouth and IDS Telcom agree as follows:

#### **Definitions**

**Affiliate** is defined as a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term “own” means to own an equity interest (or equivalent thereof) of more than 10 percent.

**Commission** is defined as the appropriate regulatory agency in each state of BellSouth’s nine-state region (Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee).

**Competitive Local Exchange Carrier (CLEC)** means a telephone company certificated by the Commission to provide local exchange service within BellSouth's franchised area.

**Effective Date** is defined as the date that the Agreement is effective for purposes of rates, terms and conditions and shall be thirty (30) days after the date of the last signature executing the Agreement. Future amendments for rate changes will also be effective thirty (30) days after the date of the last signature executing the amendment. BellSouth will adjust recurring rates billed in advance at the previous rates.

**End User** means the ultimate user of the Telecommunications Service.

**FCC** means the Federal Communications Commission.

**General Terms and Conditions** means this document including all of the terms, provisions and conditions set forth herein.

**Telecommunications** means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

**Telecommunications Service** means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

**Telecommunications Act of 1996 ("Act")** means Public Law 104-104 of the United States Congress effective February 8, 1996. The Act amended the Communications Act of 1934 (47 U.S.C. Section 1 et. seq.).

## **1. CLEC Certification**

- 1.1 Prior to execution of this Agreement, IDS Telcom agrees to provide BellSouth in writing IDS Telcom's CLEC certification for all states covered by this Agreement except Kentucky prior to BellSouth filing this Agreement with the appropriate Commission for approval.
- 1.2 To the extent IDS Telcom is not certified as a CLEC in each state covered by this Agreement as of the execution hereof, IDS Telcom will notify BellSouth in writing and provide CLEC certification when it becomes certified to operate in any other state covered by this Agreement. Upon notification, BellSouth will file this Agreement with the appropriate Commission for approval.

## **2. Term of the Agreement**

- 2.1 The term of this Agreement shall be three years, beginning on the Effective Date and shall apply to the BellSouth territory in the state(s) of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee. Notwithstanding any prior agreement of the Parties, the rates, terms

and conditions of this Agreement shall not be applied retroactively prior to the Effective Date.

- 2.2 The Parties agree that by no earlier than two hundred seventy (270) days and no later than one hundred and eighty (180) days prior to the expiration of this Agreement, they shall commence negotiations for a new agreement to be effective beginning on the expiration date of this Agreement (“Subsequent Agreement”).
- 2.3 In the event the Commission does not issue its order prior to the expiration date of this Agreement, or if the Parties continue beyond the expiration date of this Agreement to negotiate the Subsequent Agreement, this Agreement shall be deemed extended on a month-to-month basis. Upon conversion to a month-to-month term, either Party, in its discretion may terminate this Agreement upon thirty (30) days notice to the other Party. In the event that BellSouth terminates this Agreement as provided above, BellSouth shall continue to provide services to IDS Telcom pursuant to (1) the terms, conditions and rates set forth in BellSouth’s standard interconnection agreement then in effect and made available to CLECs requesting negotiations pursuant to Section 251 of the Act, or (2) an agreement adopted by IDS Telcom pursuant to Section 252(i) of the Telecom Act. In the event that the Parties begin operating under BellSouth’s standard interconnection agreement or an agreement adopted by IDS Telcom, the Parties may continue to negotiate a Subsequent Agreement or may continue to pursue arbitration of a Subsequent Agreement before the Commission. The terms of such Subsequent Agreement shall be effective as of the effective date stated in such Subsequent Agreement and shall not be applied retroactively to the expiration date of this Agreement unless the Parties agree otherwise.

**3. Operational Support Systems**

IDS Telcom shall pay charges for Operational Support Systems (OSS) as set forth in this Agreement in Attachment 1 and/or in Attachments 2, 3 and 5, as applicable.

**4. Parity**

When IDS Telcom purchases Telecommunications Services from BellSouth pursuant to Attachment 1 of this Agreement for the purposes of resale to End Users, such services shall be equal in quality, subject to the same conditions, and provided within the same provisioning time intervals that BellSouth provides to its Affiliates, subsidiaries and End Users. To the extent technically feasible, the quality of a Network Element, as well as the quality of the access to such Network Element provided by BellSouth to IDS Telcom shall be at least equal in quality to that which BellSouth provides to itself, its Affiliates or any other Telecommunications carrier. The quality of the interconnection between the network of BellSouth and the network of IDS Telcom shall be at a level that is equal to that which BellSouth provides itself, a subsidiary, an Affiliate, or any other party. The interconnection facilities shall be designed to meet the same technical criteria and service standards that are used within BellSouth’s network

and shall extend to a consideration of service quality as perceived by BellSouth's End Users and service quality as perceived by IDS Telcom.

## 5. **White Pages Listings**

- 5.1 BellSouth shall provide IDS Telcom and its customers access to white pages directory listings under the following terms:
- 5.2 Listings. IDS Telcom shall provide all new, changed and deleted listings on a timely basis and BellSouth or its agent will include IDS Telcom residential and business customer listings in the appropriate White Pages (residential and business) or alphabetical directories in the geographic areas covered by this Interconnection Agreement. Directory listings will make no distinction between IDS Telcom and BellSouth subscribers.
- 5.2.1 Rates. So long as IDS Telcom provides subscriber listing information (SLI) to BellSouth in accordance with Section 5.3 below, BellSouth shall provide to IDS Telcom one (1) primary White Pages listing per IDS Telcom subscriber at no charge other than applicable service order charges as set forth in BellSouth's tariffs.
- 5.3 Procedures for Submitting IDS Telcom SLI are found in The BellSouth Business Rules for Local Ordering.
- 5.4 IDS Telcom authorizes BellSouth to release all IDS Telcom SLI provided to BellSouth by IDS Telcom to qualifying third parties via either license agreement or BellSouth's Directory Publishers Database Service (DPDS), General Subscriber Services Tariff (GSST), Section A38.2, as the same may be amended from time to time. Such IDS Telcom SLI shall be intermingled with BellSouth's own customer listings and listings of any other CLEC that has authorized a similar release of SLI.
- 5.4.1 No compensation shall be paid to IDS Telcom for BellSouth's receipt of IDS Telcom SLI, or for the subsequent release to third parties of such SLI. In addition, to the extent BellSouth incurs costs to modify its systems to enable the release of IDS Telcom's SLI, or costs on an ongoing basis to administer the release of IDS Telcom SLI, IDS Telcom shall pay to BellSouth its proportionate share of the reasonable costs associated therewith. At any time that costs may be incurred to administer the release of IDS Telcom's SLI, IDS Telcom will be notified. If IDS Telcom does not wish to pay its proportionate share of these reasonable costs, IDS Telcom may instruct BellSouth that it does not wish to release its SLI to independent publishers, and IDS Telcom shall amend this Agreement accordingly. IDS Telcom will be liable for all costs incurred until the effective date of the amendment.
- 5.4.2 Neither BellSouth nor any agent shall be liable for the content or accuracy of any SLI provided by IDS Telcom under this Agreement. IDS Telcom shall indemnify, hold harmless and defend BellSouth and its agents from and against any damages, losses, liabilities, demands, claims, suits, judgments, costs and expenses (including



but not limited to reasonable attorneys' fees and expenses) arising from BellSouth's tariff obligations or otherwise and resulting from or arising out of any third party's claim of inaccurate IDS Telcom listings or use of the SLI provided pursuant to this Agreement. BellSouth may forward to IDS Telcom any complaints received by BellSouth relating to the accuracy or quality of IDS Telcom listings.

5.4.3 Listings and subsequent updates will be released consistent with BellSouth system changes and/or update scheduling requirements.

5.5 Unlisted/Non-Published Subscribers. IDS Telcom will be required to provide to BellSouth the names, addresses and telephone numbers of all IDS Telcom customers who wish to be omitted from directories. Unlisted/Non-Published SLI will be subject to the rates as set forth in BellSouth's General Subscriber Services Tariff.

5.6 Inclusion of IDS Telcom End Users in Directory Assistance Database. BellSouth will include and maintain IDS Telcom subscriber listings in BellSouth's Directory Assistance databases at no recurring charge and IDS Telcom shall provide such Directory Assistance listings to BellSouth at no recurring charge.

5.7 Listing Information Confidentiality. BellSouth will afford IDS Telcom's directory listing information the same level of confidentiality that BellSouth affords its own directory listing information.

5.8 Additional and Designer Listings. Additional and designer listings will be offered by BellSouth at tariffed rates as set forth in the General Subscriber Services Tariff.

5.9 Directories. BellSouth or its agent shall make available White Pages directories to IDS Telcom subscribers at no charge or as specified in a separate agreement with BellSouth's agent.

## 6. Court Ordered Requests for Call Detail Records and Other Subscriber Information

6.1 Subpoenas Directed to BellSouth. Where BellSouth provides resold services or local switching for IDS Telcom, BellSouth shall respond to subpoenas and court ordered requests delivered directly to BellSouth for the purpose of providing call detail records when the targeted telephone numbers belong to IDS Telcom End Users. Billing for such requests will be generated by BellSouth and directed to the law enforcement agency initiating the request. BellSouth shall maintain such information for IDS Telcom End Users for the same length of time it maintains such information for its own End Users.

6.2 Subpoenas Directed to IDS Telcom. Where BellSouth is providing to IDS Telcom Telecommunications Services for resale or providing to IDS Telcom the local switching function, then IDS Telcom agrees that in those cases where IDS Telcom receives subpoenas or court ordered requests regarding targeted telephone

numbers belonging to IDS Telcom End Users, and where IDS Telcom does not have the requested information, IDS Telcom will advise the law enforcement agency initiating the request to redirect the subpoena or court ordered request to BellSouth for handling in accordance with 6.1 above.

- 6.3 In all other instances, where either Party receives a request for information involving the other Party's End User, the Party receiving the request will advise the law enforcement agency initiating the request to redirect such request to the other Party.

## 7. **Liability and Indemnification**

- 7.1 IDS Telcom Liability. In the event that IDS Telcom consists of two (2) or more separate entities as set forth in this Agreement and/or any Amendments hereto, all such entities shall be jointly and severally liable for the obligations of IDS Telcom under this Agreement.

- 7.1.1 BellSouth Liability. BellSouth shall take financial responsibility for its own actions in causing, or its lack of action in preventing, unbillable or uncollectible IDS revenue.

- 7.2 Liability for Acts or Omissions of Third Parties. Neither Party shall not be liable to the other for any act or omission of another Telecommunications company providing services to the Parties hereunder.

### 7.3 Limitation of Liability

- 7.3.1 Except for any indemnification obligations of the Parties hereunder, each Party's liability to the other for any loss, cost, claim, injury, liability or expense, including reasonable attorneys' fees relating to or arising out of any negligent act or omission in its performance of this Agreement, whether in contract or in tort, shall be limited to a credit for the actual cost of the services or functions not performed or improperly performed.

- 7.3.2 Limitations in Tariffs. A Party may, in its sole discretion, provide in its tariffs and contracts with its End Users and third parties that relate to any service, product or function provided or contemplated under this Agreement, that to the maximum extent permitted by Applicable Law, such Party shall not be liable to the End User or third party for (i) any loss relating to or arising out of this Agreement, whether in contract, tort or otherwise, that exceeds the amount such Party would have charged that applicable person for the service, product or function that gave rise to such loss and (ii) consequential damages. To the extent that a Party elects not to place in its tariffs or contracts such limitations of liability, and the other Party incurs a loss as a result thereof, such Party shall indemnify and reimburse the other Party for that portion of the loss that would have been limited had the first Party included in its tariffs and contracts the limitations of liability that such other Party included in its own tariffs at the time of such loss.

- 7.3.3 Neither BellSouth nor IDS Telcom shall be liable for damages to the other Party's terminal location, equipment or End User premises resulting from the furnishing of a service, including, but not limited to, the installation and removal of equipment or associated wiring, except to the extent caused by a Party's negligence or willful misconduct or by a Party's failure to ground properly a local loop after disconnection.
- 7.3.4 Under no circumstance shall a Party be responsible or liable for indirect, incidental, or consequential damages, including, but not limited to, economic loss or lost business or profits, damages arising from the use or performance of equipment or software, or the loss of use of software or equipment, or accessories attached thereto, delay, error, or loss of data. In connection with this limitation of liability, each Party recognizes that the other Party may, from time to time, provide advice, make recommendations, or supply other analyses related to the services or facilities described in this Agreement, and, while each Party shall use diligent efforts in this regard, the Parties acknowledge and agree that this limitation of liability shall apply to provision of such advice, recommendations, and analyses.
- 7.3.5 To the extent any specific provision of this Agreement purports to impose liability, or limitation of liability, on either Party different from or in conflict with the liability or limitation of liability set forth in this Section, then with respect to any facts or circumstances covered by such specific provisions, the liability or limitation of liability contained in such specific provision shall apply.
- 7.4 Indemnification for Certain Claims. The Party providing services hereunder, its Affiliates and its parent company, shall be indemnified, defended and held harmless by the Party receiving services hereunder against any claim, loss or damage arising from the receiving Party's use of the services provided under this Agreement pertaining to (1) claims for libel, slander or invasion of privacy arising from the content of the receiving Party's own communications, or (2) any claim, loss or damage claimed by the End User of the Party receiving services arising from such company's use or reliance on the providing Party's services, actions, duties, or obligations arising out of this Agreement.
- 7.5 Disclaimer. EXCEPT AS SPECIFICALLY PROVIDED TO THE CONTRARY IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES TO THE OTHER PARTY CONCERNING THE SPECIFIC QUALITY OF ANY SERVICES, OR FACILITIES PROVIDED UNDER THIS AGREEMENT. THE PARTIES DISCLAIM, WITHOUT LIMITATION, ANY WARRANTY OR GUARANTEE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR FROM USAGES OF TRADE.

## 8. Intellectual Property Rights and Indemnification

- 8.1 No License. No patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by this Agreement. The Parties are strictly prohibited from any use, including but not limited to, in the selling, marketing, promoting or advertising of telecommunications services, of any name, service mark, logo or trademark (collectively, the “Marks”) of the Other Party. The Marks include those Marks owned directly by a Party or its Affiliate(s) and those Marks that a Party has a legal and valid license to use. The Parties acknowledge that they are separate and distinct and that each provides a separate and distinct service and agree that neither Party may, expressly or impliedly, state, advertise or market that it is or offers the same service as the Other Party or engage in any other activity that may result in a likelihood of confusion between its own service and the service of the Other Party.
- 8.2 Ownership of Intellectual Property. Any intellectual property that originates from or is developed by a Party shall remain the exclusive property of that Party. Except for a limited, non-assignable, non-exclusive, non-transferable license to use patents or copyrights to the extent necessary for the Parties to use any facilities or equipment (including software) or to receive any service solely as provided under this Agreement, no license in patent, copyright, trademark or trade secret, or other proprietary or intellectual property right, now or hereafter owned, controlled or licensable by a Party, is granted to the other Party. Neither shall it be implied nor arise by estoppel. Any trademark, copyright or other proprietary notices appearing in association with the use of any facilities or equipment (including software) shall remain on the documentation, material, product, service, equipment or software. It is the responsibility of each Party to ensure at no additional cost to the other Party that it has obtained any necessary licenses in relation to intellectual property of third Parties used in its network that may be required to enable the other Party to use any facilities or equipment (including software), to receive any service, or to perform its respective obligations under this Agreement.
- 8.3 Intellectual Property Remedies
- 8.3.1 Indemnification. The Party providing a service pursuant to this Agreement will defend the Party receiving such service or data provided as a result of such service against claims of infringement arising solely from the use by the receiving Party of such service in the manner contemplated under this Agreement and will indemnify the receiving Party for any damages awarded based solely on such claims in accordance with Section 7 preceding.
- 8.3.2 Claim of Infringement. In the event that use of any facilities or equipment (including software), becomes, or in the reasonable judgment of the Party who owns the affected network is likely to become, the subject of a claim, action, suit, or proceeding based on intellectual property infringement, then said Party shall promptly and at its sole expense and sole option, but subject to the limitations of liability set forth below:

- 8.3.2.1 modify or replace the applicable facilities or equipment (including software) while maintaining form and function, or
- 8.3.2.2 obtain a license sufficient to allow such use to continue.
- 8.3.2.3 In the event Section 8.3.2.1 or 8.3.2.2 are commercially unreasonable, then said Party may terminate, upon reasonable notice, this contract with respect to use of, or services provided through use of, the affected facilities or equipment (including software), but solely to the extent required to avoid the infringement claim.
- 8.3.3 Exception to Obligations. Neither Party's obligations under this Section shall apply to the extent the infringement is caused by: (i) modification of the facilities or equipment (including software) by the indemnitee; (ii) use by the indemnitee of the facilities or equipment (including software) in combination with equipment or facilities (including software) not provided or authorized by the indemnitor, provided the facilities or equipment (including software) would not be infringing if used alone; (iii) conformance to specifications of the indemnitee which would necessarily result in infringement; or (iv) continued use by the indemnitee of the affected facilities or equipment (including software) after being placed on notice to discontinue use as set forth herein.
- 8.3.4 Exclusive Remedy. The foregoing shall constitute the Parties' sole and exclusive remedies and obligations with respect to a third party claim of intellectual property infringement arising out of the conduct of business under this Agreement.
- 8.4 Dispute Resolution. Any claim arising under this Section 8 shall be excluded from the dispute resolution procedures set forth in Section 10 and shall be brought in a court of competent jurisdiction.
- 9. Proprietary and Confidential Information**
- 9.1 Proprietary and Confidential Information. It may be necessary for BellSouth and IDS Telcom, each as the "Discloser," to provide to the other Party, as "Recipient," certain proprietary and confidential information (including trade secret information) including but not limited to technical, financial, marketing, staffing and business plans and information, strategic information, proposals, request for proposals, specifications, drawings, maps, prices, costs, costing methodologies, procedures, processes, business systems, software programs, techniques, customer account data, call detail records and like information (collectively the "Information"). All such Information conveyed in writing or other tangible form shall be clearly marked with a confidential or proprietary legend. Information conveyed orally by the Discloser to Recipient shall be designated as proprietary and confidential at the time of such oral conveyance, shall be reduced to writing by the Discloser within forty-five (45) days thereafter, and shall be clearly marked with a confidential or proprietary legend.
- 9.2 Use and Protection of Information. Recipient agrees to protect such Information of the Discloser provided to Recipient from whatever source from distribution,

disclosure or dissemination to anyone except employees of Recipient with a need to know such Information solely in conjunction with Recipient's analysis of the Information and for no other purpose except as authorized herein or as otherwise authorized in writing by the Discloser. Recipient will not make any copies of the Information inspected by it.

- 9.3 Exceptions. Recipient will not have an obligation to protect any portion of the Information which:
- 9.3.1 (a) is made publicly available by the Discloser or lawfully by a nonparty to this Agreement; (b) is lawfully obtained by Recipient from any source other than Discloser; (c) is previously known to Recipient without an obligation to keep it confidential; or (d) is released from the terms of this Agreement by Discloser upon written notice to Recipient.
- 9.4 Recipient agrees to use the Information solely for the purposes of negotiations pursuant to 47 U.S.C. 251 or in performing its obligations under this Agreement and for no other entity or purpose, except as may be otherwise agreed to in writing by the Parties. Nothing herein shall prohibit Recipient from providing information requested by the FCC or a state regulatory agency with jurisdiction over this matter, or to support a request for arbitration or an allegation of failure to negotiate in good faith.
- 9.5 Recipient agrees not to publish or use the Information for any advertising, sales or marketing promotions, press releases, or publicity matters that refer either directly or indirectly to the Information or to the Discloser or any of its affiliated companies.
- 9.6 The disclosure of Information neither grants nor implies any license to the Recipient under any trademark, patent, copyright, application or other intellectual property right that is now or may hereafter be owned by the Discloser.
- 9.7 Survival of Confidentiality Obligations. The Parties' rights and obligations under this Section 9 shall survive and continue in effect until two (2) years after the expiration or termination date of this Agreement with regard to all Information exchanged during the term of this Agreement. Thereafter, the Parties' rights and obligations hereunder survive and continue in effect with respect to any Information that is a trade secret under applicable law.
10. **Resolution of Disputes**
- Except as otherwise stated in this Agreement, if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the aggrieved Party shall petition the Commission for a resolution of the dispute. However, each Party reserves any

rights it may have to seek judicial review of any ruling made by the Commission concerning this Agreement.

## 11. Taxes

11.1 Definition. For purposes of this Section, the terms “taxes” and “fees” shall include but not be limited to federal, state or local sales, use, excise, gross receipts or other taxes or tax-like fees of whatever nature and however designated (including tariff surcharges and any fees, charges or other payments, contractual or otherwise, for the use of public streets or rights of way, whether designated as franchise fees or otherwise) imposed, or sought to be imposed, on or with respect to the services furnished hereunder or measured by the charges or payments therefore, excluding any taxes levied on income.

### 11.2 Taxes and Fees Imposed Directly On Either Providing Party or Purchasing Party.

11.2.1 Taxes and fees imposed on the providing Party, which are not permitted or required to be passed on by the providing Party to its customer, shall be borne and paid by the providing Party.

11.2.2 Taxes and fees imposed on the purchasing Party, which are not required to be collected and/or remitted by the providing Party, shall be borne and paid by the purchasing Party.

### 11.3 Taxes and Fees Imposed on Purchasing Party But Collected And Remitted By Providing Party.

11.3.1 Taxes and fees imposed on the purchasing Party shall be borne by the purchasing Party, even if the obligation to collect and/or remit such taxes or fees is placed on the providing Party.

11.3.2 To the extent permitted by applicable law, any such taxes and/or fees shall be shown as separate items on applicable billing documents between the Parties. Notwithstanding the foregoing, the purchasing Party shall remain liable for any such taxes and fees regardless of whether they are actually billed by the providing Party at the time that the respective service is billed.

11.3.3 If the purchasing Party determines that in its opinion any such taxes or fees are not payable, the providing Party shall not bill such taxes or fees to the purchasing Party if the purchasing Party provides written certification, reasonably satisfactory to the providing Party, stating that it is exempt or otherwise not subject to the tax or fee, setting forth the basis therefor, and satisfying any other requirements under applicable law. If any authority seeks to collect any such tax or fee that the purchasing Party has determined and certified not to be payable, or any such tax or fee that was not billed by the providing Party, the purchasing Party may contest the same in good faith, at its own expense. In any such contest, the purchasing Party shall promptly furnish the providing Party with copies of all filings in any

proceeding, protest, or legal challenge, all rulings issued in connection therewith, and all correspondence between the purchasing Party and the taxing authority.

- 11.3.4 In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing Party during the pendency of such contest, the purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.
- 11.3.5 If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing Party shall pay such additional amount, including any interest and penalties thereon.
- 11.3.6 Notwithstanding any provision to the contrary, the purchasing Party shall protect, indemnify and hold harmless (and defend at the purchasing Party's expense) the providing Party from and against any such tax or fee, interest or penalties thereon, or other charges or payable expenses (including reasonable attorney fees) with respect thereto, which are incurred by the providing Party in connection with any claim for or contest of any such tax or fee.
- 11.3.7 Each Party shall notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.
- 11.4 Taxes and Fees Imposed on Providing Party But Passed On To Purchasing Party.
- 11.4.1 Taxes and fees imposed on the providing Party, which are permitted or required to be passed on by the providing Party to its customer, shall be borne by the purchasing Party.
- 11.4.2 To the extent permitted by applicable law, any such taxes and/or fees shall be shown as separate items on applicable billing documents between the Parties. Notwithstanding the foregoing, the purchasing Party shall remain liable for any such taxes and fees regardless of whether they are actually billed by the providing Party at the time that the respective service is billed.
- 11.4.3 If the purchasing Party disagrees with the providing Party's determination as to the application or basis for any such tax or fee, the Parties shall consult with respect to the imposition and billing of such tax or fee. Notwithstanding the foregoing, the providing Party shall retain ultimate responsibility for determining whether and to what extent any such taxes or fees are applicable, and the purchasing Party shall abide by such determination and pay such taxes or fees to the providing Party. The providing Party shall further retain ultimate responsibility for determining whether and how to contest the imposition of such taxes and fees; provided,



however, that any such contest undertaken at the request of the purchasing Party shall be at the purchasing Party's expense.

- 11.4.4 In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing Party during the pendency of such contest, the purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.
- 11.4.5 If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing Party shall pay such additional amount, including any interest and penalties thereon.
- 11.4.6 Notwithstanding any provision to the contrary, the purchasing Party shall protect, indemnify and hold harmless (and defend at the purchasing Party's expense) the providing Party from and against any such tax or fee, interest or penalties thereon, or other reasonable charges or payable expenses (including reasonable attorneys' fees) with respect thereto, which are incurred by the providing Party in connection with any claim for or contest of any such tax or fee.
- 11.4.7 Each Party shall notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.
- 11.5 Mutual Cooperation. In any contest of a tax or fee by one Party, the other Party shall cooperate fully by providing records, testimony and such additional information or assistance as may reasonably be necessary to pursue the contest. Further, the other Party shall be reimbursed for any reasonable and necessary out-of-pocket copying and travel expenses incurred in assisting in such contest.

## 12. Force Majeure

In the event performance of this Agreement, or any obligation hereunder, is either directly or indirectly prevented, restricted, or interfered with by reason of fire, flood, earthquake or like acts of God, wars, revolution, civil commotion, explosion, acts of public enemy, embargo, acts of the government in its sovereign capacity, labor difficulties, including without limitation, strikes, slowdowns, picketing, or boycotts, unavailability of equipment from vendor, changes requested by IDS Telcom, or any other circumstances beyond the reasonable control and without the fault or negligence of the Party affected, the Party affected, upon giving prompt notice to the other Party, shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis until the delay, restriction or interference has ceased); provided, however, that the Party so affected shall use diligent efforts to avoid or

remove such causes of non-performance and both Parties shall proceed whenever such causes are removed or cease.

**13. Adoption of Agreements**

BellSouth shall make available, pursuant to 47 USC § 252 and the FCC rules and regulations regarding such availability, to IDS Telcom any interconnection, service, or network element provided under any other agreement filed and approved pursuant to 47 USC § 252. The Parties shall adopt all rates, terms and conditions concerning such other interconnection, service or network element and any other rates, terms and conditions that are interrelated or were negotiated in exchange for or in conjunction with the interconnection, service or network element being adopted. The adopted interconnection, service, or network element and agreement shall apply to the same states as such other agreement and for the identical term of such other agreement. The term of the adopted agreement or provisions shall expire on the same date as set forth in the agreement that was adopted.

**14. Modification of Agreement**

14.1 If IDS Telcom changes its name or makes changes to its company structure or identity due to a merger, acquisition, transfer or any other reason, it is the responsibility of IDS Telcom to notify BellSouth of said change and request that an amendment to this Agreement, if necessary, be executed to reflect said change.

14.2 No modification, amendment, supplement to, or waiver of the Agreement or any of its provisions shall be effective and binding upon the Parties unless it is made in writing and duly signed by the Parties.

14.3 In the event that any effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of IDS Telcom or BellSouth to perform any material terms of this Agreement, IDS Telcom or BellSouth may, on thirty (30) days' written notice, require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within ninety (90) days after such notice, the Dispute shall be referred to the Dispute Resolution procedure set forth in this Agreement.

**15. Non-waiver of Legal Rights**

Execution of this Agreement by either Party does not confirm or imply that the executing Party agrees with any decision(s) issued pursuant to the Telecommunications Act of 1996 and the consequences of those decisions on specific language in this Agreement. Neither Party waives its rights to appeal or otherwise challenge any such decision(s) and each Party reserves all of its rights to pursue any and all legal and/or equitable remedies, including appeals of any such decision(s).

**16. Indivisibility**

The Parties intend that this Agreement be indivisible and nonseverable, and each of the Parties acknowledges that it has assented to all of the covenants and promises in this Agreement as a single whole and that all of such covenants and promises, taken as a whole, constitute the essence of the contract. Without limiting the generality of the foregoing, each of the Parties acknowledges that any provision by BellSouth of collocation space under this Agreement is solely for the purpose of facilitating the provision of other services under this Agreement and that neither Party would have contracted with respect to the provisioning of collocation space under this Agreement if the covenants and promises of the other Party with respect to the other services provided under this Agreement had not been made. The Parties further acknowledge that this Agreement is intended to constitute a single transaction, that the obligations of the Parties under this Agreement are interdependent, and that payment obligations under this Agreement are intended to be recouped against other payment obligations under this Agreement.

**17. Waivers**

A failure or delay of either Party to enforce any of the provisions hereof, to exercise any option which is herein provided, or to require performance of any of the provisions hereof shall in no way be construed to be a waiver of such provisions or options, and each Party, notwithstanding such failure, shall have the right thereafter to insist upon the performance of any and all of the provisions of this Agreement.

**18. Governing Law**

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State in which the services are being ordered, without regard to its conflicts of law principal.

**19. Assignments**

Any assignment by either Party to any non-affiliated entity of any right, obligation or duty, or of any other interest hereunder, in whole or in part, without the prior written consent of the other Party shall be void. Consent by the other Party shall not be unreasonably withheld, and if unreasonably withheld, a Party may assign this Agreement in its entirety to an Affiliate of the Party without the consent of the other Party; provided, however, that the assigning Party shall notify the other Party in writing of such assignment thirty (30) days prior to the Effective Date thereof and, provided further, if the assignee is an assignee of IDS Telcom, the assignee must provide evidence of Commission CLEC certification. The Parties shall amend this Agreement to reflect such assignments and shall work cooperatively to implement any changes required due to such assignment. All obligations and duties of any Party under this Agreement shall be binding on all successors in interest and assigns of such Party. No assignment or delegation hereof shall relieve the assignor of its obligations under this Agreement in the event that the assignee

fails to perform such obligations. Notwithstanding anything to the contrary in this Section, IDS Telcom shall not assign this Agreement to any Affiliate or non-affiliated entity unless either (1) IDS Telcom pays all bills, past due and current, under this Agreement, or (2) IDS Telcom's assignee expressly assumes liability for payment of such bills.

**20. Notices**

20.1 Every notice, consent, approval, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered by hand, by overnight courier or by US mail postage prepaid, address to:

**BellSouth Telecommunications, Inc.**

BellSouth Local Contract Manager  
600 North 19<sup>th</sup> Street, 8<sup>th</sup> floor  
Birmingham, Alabama 35203

and

ICS Attorney  
Suite 4300  
675 W. Peachtree St.  
Atlanta, GA 30375

**IDS Telcom LLC**

Angel Leiro  
V-P Regulatory Affairs  
1525 N. W. 167th Street  
2nd Floor  
Miami, Florida  
aleiro@IDSTELCOM.com

or at such other address as the intended recipient previously shall have designated by written notice to the other Party.

20.2 Unless otherwise provided in this Agreement, notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent, and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day after the fifth day, after it was deposited in the mails.

20.3 Notwithstanding the foregoing, BellSouth may provide IDS Telcom notice via Internet posting of price changes and changes to the terms and conditions of services available for resale per Commission Orders. BellSouth will also post

changes to business processes and policies, notices of new service offerings, and changes to service offerings not requiring an amendment to this Agreement, notices required to be posted to BellSouth's website, and any other information of general applicability to CLECs.

**21. Rule of Construction**

No rule of construction requiring interpretation against the drafting Party hereof shall apply in the interpretation of this Agreement.

**22. Headings of No Force or Effect**

The headings of Articles and Sections of this Agreement are for convenience of reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement.

**23. Multiple Counterparts**

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall together constitute but one and the same document.

**24. Filing of Agreement**

Upon execution of this Agreement it shall be filed with the appropriate state regulatory agency pursuant to the requirements of Section 252 of the Act, and the Parties shall share equally any filing fees therefor. If the regulatory agency imposes any filing or public interest notice fees regarding the filing or approval of the Agreement, IDS Telcom shall be responsible for publishing the required notice and the publication and/or notice costs shall be borne by IDS Telcom.

Notwithstanding the foregoing, this Agreement shall not be submitted for approval by the appropriate state regulatory agency unless and until such time as IDS Telcom is duly certified as a local exchange carrier in such state, except as otherwise required by a Commission.

**25. Compliance with Applicable Law**

Each Party shall comply at its own expense with Applicable Law.

**26. Necessary Approvals**

Each Party shall be responsible for obtaining and keeping in effect all approvals from, and rights granted by, governmental authorities, building and property owners, other carriers, and any other persons that may be required in connection with the performance of its obligations under this Agreement. Each Party shall reasonably cooperate with the other Party in obtaining and maintaining any required approvals and rights for which such Party is responsible.

**27. Good Faith Performance**

Each Party shall act in good faith in its performance under this Agreement and, in each case in which a Party's consent or agreement is required or requested hereunder, such Party shall not unreasonably withhold or delay such consent or agreement.

**28. Nonexclusive Dealings**

This Agreement does not prevent either Party from providing or purchasing services to or from any other person nor, except as provided in Section 252(i) of the Act, does it obligate either Party to provide or purchase any services (except insofar as the Parties are obligated to provide access to Interconnection, services and Network Elements to IDS Telcom as a requesting carrier under the Act).

**29. Rate True-Up**

29.1 This section applies to Network Interconnection and/or Unbundled Network Elements and Other Services rates that are expressly subject to true-up under this Agreement.

29.2 The designated true-up rates shall be trued-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. The Parties shall implement the true-up by comparing the actual volumes and demand for each item, together with the designated true-up rates 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 shall submit the matter to the Dispute Resolution process in accordance with the provisions of Section 10 of the General Terms and Conditions of this Agreement.

29.3 An effective order of the Commission that forms the basis of a true-up shall be based upon cost studies submitted by either or both Parties to the Commission and shall be binding upon BellSouth and IDS Telcom specifically or upon all carriers generally, such as a generic cost proceeding.

**30. Survival**

The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

**31. Entire Agreement**

31.1 This Agreement means the General Terms and Conditions, the Attachments identified in Section 31.2 below, and all documents identified therein, as such may be amended from time to time and which are incorporated herein by reference, all of which, when taken together, are intended to constitute one indivisible agreement. This Agreement sets forth the entire understanding and except for Settlement Agreements that have been negotiated separate and apart from this agreement, supersedes prior agreements between the Parties relating to the subject matter contained in this Agreement and merges all prior discussions between them. Any orders placed under prior agreements between the Parties shall be governed by the terms of this Agreement and IDS Telcom acknowledges and agrees that any and all amounts and obligations owed for services provisioned or orders placed under prior agreements between the Parties, related to the subject matter hereof, shall be due and owing under this Agreement and be governed by the terms and conditions of this Agreement as if such services or orders were provisioned or placed under this Agreement. Neither Party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the Party to be bound thereby.

31.2 This Agreement includes Attachments with provisions for the following:

- Resale
- Network Elements and Other Services
- Network Interconnection
- Collocation
- Access to Numbers and Number Portability
- Pre-Ordering, Ordering, Provisioning, Maintenance and Repair
- Billing
- Rights-of-Way, Conduits and Pole Attachments
- Performance Measurements
- BellSouth Disaster Recovery Plan
- Bona Fide Request/New Business Request Process

31.3 The following services are included as options for purchase by IDS Telcom pursuant to the terms and conditions set forth in this Agreement. IDS Telcom may elect to purchase said services by written request to its Local Contract Manager if applicable:

- Optional Daily Usage File (ODUF)
- Enhanced Optional Daily Usage File (EODUF)
- Access Daily Usage File (ADUF)
- Line Information Database (LIDB) Storage
- Centralized Message Distribution Service (CMDS)

Calling Name (CNAM)  
LNP Data Base Query Service

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year written below.

**BellSouth Telecommunications, Inc.**

**IDS Telcom, L.L.C.**

By: (Signature on File) \_\_\_\_\_

By: (Signature on File) \_\_\_\_\_

Name: Elizabeth R. A. Shiroishi \_\_\_\_\_

Name: Hacker \_\_\_\_\_

Title: Assistant Director,  
Interconnection Services \_\_\_\_\_

Title: CFO \_\_\_\_\_

Date: 01/06/03 \_\_\_\_\_

Date: 12/19/02 \_\_\_\_\_



**Attachment 1**

**Resale**

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## RESALE

### 1. Discount Rates

- 1.1 The discount rates applied to IDS Telcom purchases of BellSouth Telecommunications Services for the purpose of resale shall be as set forth in Exhibit C. Such discounts have been determined by the applicable Commission to reflect the costs avoided by BellSouth when selling a service for wholesale purposes.
- 1.2 The telecommunications services available for purchase by IDS Telcom for the purposes of resale to IDS Telcom, L.L.C.'s End Users shall be available at BellSouth's tariffed rates less the discount set forth in Exhibit C to this Agreement and subject to the exclusions and limitations set forth in Exhibit A to this Agreement.

### 2. Definition of Terms

- 2.1 COMPETITIVE LOCAL EXCHANGE COMPANY (CLEC) means a telephone company certificated by the Commission to provide local exchange service within BellSouth's franchised area.
- 2.2 CUSTOMER OF RECORD means the entity responsible for placing application for service; requesting additions, rearrangements, maintenance or discontinuance of service; payment in full of charges incurred such as non-recurring, monthly recurring, toll, directory assistance, etc.
- 2.3 DEPOSIT means assurance provided by a customer in the form of cash, surety bond or bank letter of credit to be held by BellSouth.
- 2.4 END USER means the ultimate user of the Telecommunications Service.
- 2.5 END USER CUSTOMER LOCATION means the physical location of the premises where an End User makes use of the telecommunications services.
- 2.6 NEW SERVICES means functions, features or capabilities that are not currently offered by BellSouth. This includes packaging of existing services or combining a new function, feature or capability with an existing service.
- 2.7 RESALE means an activity wherein a certificated CLEC, such as IDS Telcom, L.L.C., subscribes to the telecommunications services of BellSouth and then offers those telecommunications services to the public.

**3. General Provisions**

- 3.1 All of the negotiated rates, terms and conditions set forth in this Attachment pertain to the resale of BellSouth's retail telecommunications services and other services specified in this Attachment. Subject to effective and applicable FCC and Commission rules and orders, BellSouth shall make available to IDS Telcom for resale those telecommunications services BellSouth makes available, pursuant to its General Subscriber Services Tariff and Private Line Services Tariff, to customers who are not telecommunications carriers.
- 3.1.1 When IDS Telcom provides Resale service in a cross boundary area (areas that are part of the local serving area of another state's exchange) the rates, regulations and discounts for the tariffing state will apply. Billing will be from the serving state.
- 3.1.2 In Tennessee, if IDS Telcom does not resell Lifeline services to any end users, and if IDS Telcom agrees to order an appropriate Operator Services/Directory Services block as set forth in BellSouth's General Subscriber Services Tariff, the discount shall be 21.56%.
- 3.1.2.1 In the event IDS Telcom resells Lifeline service to any end user in Tennessee, BellSouth will begin applying the 16% discount rate to all services. Upon IDS Telcom and BellSouth's implementation of a billing arrangement whereby a separate Master Account (Q-account) associated with a separate Operating Customer Number (OCN) is established for billing of Lifeline service end users, the discount shall be applied as set forth in 3.1.2 preceding for the non-Lifeline affected Master Account (Q-account).
- 3.1.2.2 <customer\_name>> must provide written notification to BellSouth within 30 days prior to providing its own operator services/directory services or orders the appropriate operator services/directory assistance blocking, to qualify for the higher discount rate of 21.56%.
- 3.2 IDS Telcom may purchase resale services from BellSouth for their own use in operating their business. The resale discount will apply to those services under the following conditions:
- 3.2.1 IDS Telcom must resell services to other End Users.
- 3.2.2 IDS Telcom cannot be a competitive local exchange telecommunications company for the single purpose of selling to themselves.
- 3.3 IDS Telcom will be the customer of record for all services purchased from BellSouth. Except as specified herein, BellSouth will take orders from, bill and receive payment from IDS Telcom for said services.
- 3.4 IDS Telcom will be BellSouth's single point of contact for all services purchased pursuant to this Agreement. BellSouth shall have no contact with the End User

except to the extent provided for herein. Each Party shall provide to the other a nation wide (50 states) toll-free contact number for purposes of repair and maintenance.

- 3.5 BellSouth will continue to bill the End User for any services that the End User specifies it wishes to receive directly from BellSouth. BellSouth maintains the right to serve directly any End User within the service area of IDS Telcom, L.L.C.. BellSouth will continue to market directly its own telecommunications products and services and in doing so may establish independent relationships with End Users of IDS Telcom, L.L.C.. Neither Party shall interfere with the right of any person or entity to obtain service directly from the other Party.
- 3.5.1 When a subscriber of IDS Telcom or BellSouth elects to change his/her carrier to the other Party, both Parties agree to release the subscriber's service to the other Party concurrent with the due date of the service order, which shall be established based on the standard interval for the subscriber's requested service as set forth in the BellSouth Product and Services Interval Guide.
- 3.5.2 BellSouth and IDS Telcom will refrain from contacting subscribers who have placed or whose selected carrier has placed on their behalf an order to change his/her service provider from BellSouth or IDS Telcom to the other Party until such time that the order for service has been completed.
- 3.6 Current telephone numbers may normally be retained by the End User and are assigned to the service furnished. However, neither Party nor the End User has a property right to the telephone number or any other call number designation associated with services furnished by BellSouth, and no right to the continuance of service through any particular central office. BellSouth reserves the right to change such numbers, or the central office designation associated with such numbers, or both, whenever BellSouth deems it necessary to do so in the conduct of its business and in accordance with BellSouth practices and procedures on a nondiscriminatory basis.
- 3.7 Where BellSouth provides local switching or resold services to IDS Telcom, L.L.C., BellSouth will provide IDS Telcom with on line access to intermediate telephone numbers as defined by applicable FCC rules and regulations on a first come first served basis. IDS Telcom acknowledges that such access to numbers shall be in accordance with the appropriate FCC rules and regulations. IDS Telcom acknowledges that there may be instances where there is a shortage of telephone numbers in a particular Common Language Location Identifier Code (CLLIC); and in such instances, IDS Telcom shall return unused intermediate telephone numbers to BellSouth upon BellSouth's request. BellSouth shall make all such requests on a nondiscriminatory basis.
- 3.8 BellSouth will allow IDS Telcom to designate up to 100 intermediate telephone numbers per CLLIC, for IDS Telcom, L.L.C.'s sole use. Assignment, reservation

and use of telephone numbers shall be governed by applicable FCC rules and regulations. IDS Telcom acknowledges that there may be instances where there is a shortage of telephone numbers in a particular CLLIC and BellSouth has the right to limit access to blocks of intermediate telephone numbers. These instances include: 1) where jeopardy status has been declared by the North American Numbering Plan (NANP) for a particular Numbering Plan Area (NPA); or 2) where a rate center has less than six months supply of numbering resources.

- 3.9 Service is furnished subject to the condition that it will not be used for any unlawful purpose.
- 3.10 Service will be discontinued if any law enforcement agency advises that the service being used is in violation of the law.
- 3.11 BellSouth can refuse service when it has grounds to believe that service will be used in violation of the law.
- 3.12 BellSouth will cooperate with law enforcement agencies with subpoenas and court orders relating to IDS Telcom, L.L.C.'s End Users, pursuant to Section 6 of the General Terms and Conditions.
- 3.13 If IDS Telcom or its End Users utilize a BellSouth resold telecommunications service in a manner other than that for which the service was originally intended as described in BellSouth's retail tariffs, IDS Telcom has the responsibility to notify BellSouth. BellSouth will only provision and maintain said service consistent with the terms and conditions of the tariff describing said service.
- 3.14 Facilities and/or equipment utilized by BellSouth to provide service to IDS Telcom remain the property of BellSouth.
- 3.15 White page directory listings for IDS Telcom End Users will be provided in accordance with Section 5 of the General Terms and Conditions.
- 3.16 Service Ordering and Operational Support Systems (OSS)
  - 3.16.1 IDS Telcom must order services through resale interfaces, i.e., the Local Carrier Service Center (LCSC) and/or appropriate Complex Resale Support Group (CRSG) pursuant to this Agreement. BellSouth has developed and made available interactive interfaces by which IDS Telcom may submit LSRs electronically as set forth in Attachment 6 of this Agreement. Service orders will be in a standard format designated by BellSouth.
  - 3.16.2 LSRs submitted by means of one of these interactive interfaces will incur an OSS electronic charge as set forth in Exhibit C to this Agreement. An individual LSR will be identified for billing purposes by its Purchase Order Number (PON). LSRs submitted by means other than one of these interactive interfaces (Mail, fax, courier, etc.) will incur a manual order charge as set forth in Exhibit C to this

Agreement. Supplements or clarifications to a previously billed LSR will not incur another OSS charge.

3.16.3 Denial/Restoral OSS Charge. In the event IDS Telcom provides a list of customers to be denied and restored, rather than an LSR, each location on the list will require a separate PON and therefore will be billed as one LSR per location.

3.16.4 Cancellation OSS Charge. IDS Telcom will incur an OSS charge for an accepted LSR that is later canceled.

3.17 Where available to BellSouth's End Users, BellSouth shall provide the following telecommunications services at a discount to allow for voice mail services:

- Message Waiting Indicator ("MWI"), stutter dialtone and message waiting light feature capabilities
- Call Forward Busy Line ("CF/B")
- Call Forward Don't Answer ("CF/DA")

Further, BellSouth messaging services set forth in BellSouth's Messaging Service Information Package shall be made available for resale without the wholesale discount.

3.18 BellSouth shall provide branding for, or shall unbrand, voice mail services for IDS Telcom per the Bona Fide Request/New Business Request process as set forth in Attachment 11 of the General Terms and Conditions.

3.19 BellSouth's Inside Wire Maintenance Service Plan is available for resale at rates, terms and conditions as set forth by BellSouth and without the wholesale discount.

3.20 In the event IDS Telcom acquires an end user whose service is provided pursuant to a BellSouth Special Assembly, BellSouth shall make available to IDS Telcom that Special Assembly at the wholesale discount at IDS Telcom's option. IDS Telcom shall be responsible for all terms and conditions of such Special Assembly including but not limited to termination liability if applicable.

3.21 BellSouth shall provide 911/E911 for IDS Telcom customers in the same manner that it is provided to BellSouth customers. BellSouth shall provide and validate IDS Telcom customer information to the PSAP. BellSouth shall use its service order process to update and maintain, on the same schedule that it uses for its customers, the IDS Telcom customer service information in the ALI/DMS (Automatic Location Identification/Location Information) databases used to support 911/E911 services.

- 3.22 BellSouth shall bill, and IDS Telcom shall pay, the End User line charge associated with implementing Number Portability as set forth in BellSouth's FCC No. 1 tariff. This charge is not subject to the wholesale discount.
- 3.23 Pursuant to 47 CFR Section 51.617, BellSouth will bill to IDS Telcom, L.L.C., and IDS Telcom shall pay, End User common line charges identical to the End User common line charges BellSouth bills its End Users.
- 4. BellSouth's Provision of Services to IDS Telcom, L.L.C.**
- 4.1 Resale of BellSouth services shall be as follows:
- 4.1.1 The resale of telecommunications services shall be limited to users and uses conforming to the class of service restrictions.
- 4.1.2 Hotel and Hospital PBX services are the only telecommunications services available for resale to Hotel/Motel and Hospital End Users, respectively. Similarly, Access Line Service for Customer Provided Coin Telephones is the only local service available for resale to Payphone Service Provider (PSP) customers. Shared Tenant Service customers can only be sold those local exchange access services available in BellSouth's A23 Shared Tenant Service Tariff in the states of Florida, Georgia, North Carolina and South Carolina, and in A27 in the states of Alabama, Kentucky, Louisiana, Mississippi and Tennessee.
- 4.1.3 BellSouth reserves the right to periodically audit services purchased by IDS Telcom to establish authenticity of use. Such audit shall not occur more than once in a calendar year. IDS Telcom shall make any and all records and data available to BellSouth or BellSouth's auditors on a reasonable basis. BellSouth shall bear the cost of said audit. Any information provided by IDS Telcom for purposes of such audit shall be deemed Confidential Information pursuant to the General Terms and Conditions of this Agreement.
- 4.2 Subject to Exhibit A hereto, resold services can only be used in the same manner as specified in BellSouth's Tariffs. Resold services are subject to the same terms and conditions as are specified for such services when furnished to an individual End User of BellSouth in the appropriate section of BellSouth's Tariffs. Specific tariff features (e.g. a usage allowance per month) shall not be aggregated across multiple resold services.
- 4.3 IDS Telcom may resell services only within the specific service area as defined in its certificate of operation approved by the Commission.
- 4.4 If IDS Telcom cancels an order for resold services, any costs incurred by BellSouth in conjunction with provisioning of such order will be recovered in accordance with BellSouth's General Subscriber Services Tariffs and Private Line Services Tariffs.



**5. Maintenance of Services**

- 5.1 Services resold pursuant to this Attachment and BellSouth's General Subscriber Service Tariff and Private Line Service Tariff and facilities and equipment provided by BellSouth shall be maintained by BellSouth.
- 5.2 IDS Telcom or its End Users may not rearrange, move, disconnect, remove or attempt to repair any facilities owned by BellSouth except with the written consent of BellSouth.
- 5.3 IDS Telcom accepts responsibility to notify BellSouth of situations that arise that may result in a service problem.
- 5.4 IDS Telcom will contact the appropriate repair centers in accordance with procedures established by BellSouth.
- 5.5 For all repair requests, IDS Telcom shall adhere to BellSouth's prescreening guidelines prior to referring the trouble to BellSouth.
- 5.6 BellSouth will bill IDS Telcom for handling troubles that are found not to be in BellSouth's network pursuant to its standard time and material charges. The standard time and material charges will be no more than what BellSouth charges to its retail customers for the same services.
- 5.7 BellSouth reserves the right to contact IDS Telcom's End Users, if deemed necessary, for maintenance purposes.

**6. Establishment of Service**

- 6.1 After receiving certification as a local exchange company from the appropriate regulatory agency, IDS Telcom will provide the appropriate BellSouth service center the necessary documentation to enable BellSouth to establish a master account for IDS Telcom's resold services. Such documentation shall include the Application for Master Account, proof of authority to provide telecommunications services, an Operating Company Number ("OCN") assigned by the National Exchange Carriers Association ("NECA") and a tax exemption certificate, if applicable.
- 6.2 IDS Telcom shall provide to BellSouth a blanket letter of authorization ("LOA") certifying that IDS Telcom will have End User authorization prior to viewing the End User's customer service record or switching the End User's service. BellSouth will not require End User confirmation prior to establishing service for IDS Telcom's End User customer. IDS Telcom must, however, be able to demonstrate End User authorization upon request.
- 6.3 BellSouth will accept a request directly from the End User for conversion of the End User's service from IDS Telcom to BellSouth or will accept a request from

**BellSouth Interconnection Services**

675 West Peachtree Street, NE  
Room 34S91  
Atlanta, Georgia 30375

Vicki Wright  
(404) 927-7514  
FAX: 404 529-7839

**Sent Via Electronic Mail and Certified Mail**

**July 13, 2004**

**Keith Kramer**  
**Executive Vice President**  
**Saturn Telecommunication Services Inc.**  
**d/b/a STS**  
**12233 SW 55<sup>th</sup> Street, Suite 811**  
**Cooper City, FL 33330**

Subject: Request for Interconnection Agreement Amendment between **Saturn Telecommunication Services Inc.** and BellSouth Telecommunications, Inc. in Compliance with Vacatur/Remand of Triennial Review Order

Dear Keith:

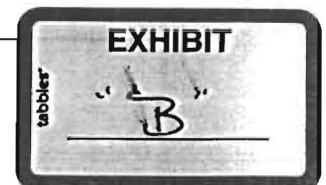
This is a formal notice under the Interconnection Agreement between BellSouth Telecommunications, Inc. (BellSouth) and **Saturn Telecommunication Services Inc. (STS) for the state of Florida.**

Effective June 16, 2004, the United States Court of Appeals for the District of Columbia Circuit issued its mandate (Court Ruling) in the appeal of the Federal Communication Commission's (FCC) Triennial Review Order (TRO). The Court, among other things, vacated the FCC's rules associated with mass-market switching, high capacity dedicated transport, dark fiber and high capacity loops, thereby eliminating BellSouth's obligation pursuant to Section 251 of the 1996 Telecommunications Act (Act) to provide these services as Unbundled Network Elements (UNE) at Total Element Long-Run Incremental Cost (TELRIC) rates.

BellSouth hereby requests that **(STS)** enter into an amendment that is compliant with the Court Ruling. BellSouth makes this request pursuant to the change of law provisions in Section **14.3 of the General Terms and Conditions.** Pursuant to the change of law provisions of the Interconnection Agreement, if the parties are unable to reach agreement within **ninety (90)** days of this notice, either party may pursue the dispute resolution process set forth in the General Terms and Conditions in the Interconnection Agreement. BellSouth intends to pursue its legal, equitable and/or regulatory rights to ensure that the existing Interconnection Agreement between the parties is modified, reformed or amended to properly reflect the Court's mandate in an expeditious manner.

BellSouth's proposed Amendment, which eliminates or revises language in the affected sections of the parties' existing Attachment 2, Network Elements and Other Services, is being sent via electronic mail. Modifications to Attachment 2 are pursuant to the Court Ruling reflecting the deletion of rates, terms and conditions for services no longer required to be offered at TELRIC rates.

For execution, please print one full original Interconnection Agreement amendment and a duplicate signature page. The full original will become your file copy of the amendment. I will



print BellSouth's originals from the files attached to this email. Execute both original signature pages and return only those pages to my attention. These will be executed on behalf of BellSouth and I will return one fully executed original signature page to you for inclusion in your files. BellSouth will file the signed Interconnection Agreement amendment with the appropriate state commission(s).

This notice, including the reminder of your opportunity to pursue the dispute resolution process, is consistent with BellSouth's commitment to Chairman Powell and the FCC that it will not unilaterally increase prices for carriers with current interconnection agreements. If you are interested in discussing alternative services available from BellSouth that may be provided in lieu of the products and services that are no longer available as UNEs pursuant to the Interconnection Agreement, please let me know.

Should you have any questions, please feel free to contact me.

Sincerely,

***Vicki Wright***  
Manager - Interconnection Services

Attachments