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September 5, 2001

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Ms. Blanca S. Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

RE: Docket No. 010740-TP (Complaint of IDS Against BellSouth)

Dear Ms. Bayo:

Enclosed please find an original and sixteen copies of IDS Telcom, LLC's  
Rebuttal Testimony and Exhibits of the following people:

- 1 Keith Kramer - 11049-01
- 2 Wm Gulas/B Wellman - 11050-01
- William Gulas -
- 3 K Kramer/B Wellman - 11051-01
- Rebecca Wellman
- 4 Exh KK-BW2 (video) - 11052-01
- 5 Angel Leiro - 11053-01
- 6 Robert Hacker - 11054-01
- 7 David Allen - 11055-01
- 8 Bradford Hamilton - 11056-01

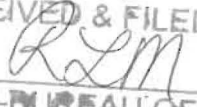
Please stamp the enclosed copy of this letter and copies of each Rebuttal  
Testimony to indicate that the originals were filed and return the copies to my  
office. Copies have been served on the parties reflected on the attached  
Certificate of Service.

Sincerely,

  
Suzanne F. Summerlin

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CMP \_\_\_\_\_  
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CTR \_\_\_\_\_  
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11049-01 09/05/01  
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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

**In re: Complaint of IDS Long Distance, Inc.  
n/k/a IDS Telecom, LLC Against  
BellSouth Telecommunications, Inc.,  
and Request for Emergency Relief.**

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**Docket No. 010740-TP**

**Filed September 5, 2001**

**REBUTTAL TESTIMONY**

**OF**

**KEITH KRAMER**

**ON BEHALF OF**

**IDS TELCOM, LLC**

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

A. My name is Keith Kramer and my business address is 1525 N.W. 167th Street, Suite 200, Miami, Florida 33169.

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

A. I am a Senior Vice President at IDS Telcom, LLC ("IDS").

Q. **HAVE YOU TESTIFIED IN THESE PROCEEDINGS PREVIOUSLY?**

A. Yes, I provided direct testimony on July 23, 2001.

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

A. I will rebut the testimony of several BellSouth employees on issues including BellSouth's anticompetitive actions in connection with its provisioning of UNE-P services to IDS and its anticompetitive winback efforts. In addition, several BellSouth witnesses have presented testimony that appears designed to mislead this Commission, and my testimony will attempt to clarify these issues and present this Commission with an accurate account of BellSouth's actions.

#### **BellSouth's Anticompetitive Behavior**

##### **I. Anticompetitive Actions Regarding Provisioning of Network Combination or UNE-P.**

A. **BellSouth's Policy and Profit Incentive to Prevent or Delay Conversions.**

Q. **BELLSOUTH, THROUGH THE TESTIMONY OF JOHN A. RUSCILLI, CLAIMS THAT IT HAS NO INCENTIVE TO KEEP ALECS PROVIDING END USERS WITH LOCAL TELEPHONE SERVICE ON A RESALE BASIS RATHER THAN A UNE-P OR NETWORK COMBINATION PLATFORM. IS THERE SOMETHING MR. RUSCILLI FAILED TO TELL THE COMMISSION**

**REGARDING THE DIFFERENCE BETWEEN RESALE AND UNE-P OR  
NETWORK COMBINATION SALES BY ALECS?**

A. Of course, Mr. Ruscilli's statement completely ignores BellSouth's profit motive and the fact that resale is much more profitable to BellSouth than is UNE-P or Network Combinations. To claim that maintaining their high profits is not an incentive for BellSouth is ridiculous.

**Q. HOW DO YOU KNOW THAT PROVIDING SERVICE ON A RESALE BASIS IS  
MORE PROFITABLE TO BELL SOUTH THAN PROVIDING SERVICE ON A  
NETWORK COMBINATION OR UNE-P BASIS?**

A. I know that IDS pays BellSouth considerably less for the same services under a network combination or UNE-P basis than it does on a resale basis. The difference is so great that IDS's gross profit margin at the time it was attempting to convert its entire customer base was approximately negative 10% for resale and approximately 34% for network combinations, and after the 319 Remand Order in February 2000, the gross profit margin for UNE-P was approximately 48% in the State of Florida and can be considerably more in other regional BellSouth States. BellSouth has refused to provide IDS with an accounting of its exact profit margins for resale verses network combination or UNE-P. In a statement that exemplifies BellSouth's refusal to present this Commission with honest and straightforward testimony, BellSouth's Assistant Vice President of Sales, Petra Pryor, claims in her deposition that she does not know the profit margins of BellSouth's resale products or UNE products. See Pryor deposition at p. 12, attached as Exhibit KK-13. Based on the charges to IDS alone, it is not difficult to figure out that BellSouth

makes substantially more money when ALECs are forced to provide service to end users on a resale basis, rather than through network combinations or UNE-P.

**Q. DO YOU KNOW WHETHER BELLSOUTH'S POLICY WAS TO HELP ALECS PROCESS CONVERSION OF THEIR ACCOUNTS FROM RETAIL OR RESALE TO NETWORK COMBINATIONS OR UNE-P?**

**A.** According to the deposition testimony of Gloria Burr it was BellSouth's corporate strategy not to help ALECs to convert their accounts from retail or resale to UNE-P. See Burr deposition p. 99-100, attached as Exhibit KK-14.

**Q. BELLSOUTH ATTEMPTS TO REBUT YOUR TESTIMONY THAT 90% OF MULTI-LINE BUSINESS CUSTOMERS HAVE FEATURES THAT CAUSE ORDERS TO DROP OUT OF BELLSOUTH'S AUTOMATED SYSTEM AND INTO MANUAL HANDLING, BY PROVIDING DATA FOR THE TIME PERIOD MAY-JULY 2001, IS THIS THE APPROPRIATE TIME PERIOD FOR SUCH AN ANALYSIS?**

**A:** Of course not. This is BellSouth's standard method of operation, they sit on a problem while their competitors' reputations and business bases erode. Only when faced with scrutiny by a Public Service Commission do they fix the problem and then claim that there is nothing left to talk about. But the damage is done and new problems are certain to replace the old ones.

**B. Nonfunctional EDI - The Fraudulent Inducement to Enter the November 1999 Amendment to the Interconnection Agreement.**

**Q. THE PANEL REBUTTAL TESTIMONY OF JOHN RUSCILLI, ELIZABETH ROKHOLM AND SHELLEY WALLS SUGGESTS THAT IDS WAS NOT FRAUDULENTLY INDUCED INTO ENTERING THE NOVEMBER 1999 AMENDMENT TO THE INTERCONNECTION AGREEMENT, BECAUSE IDS KNEW THAT BELL SOUTH'S POSITION WAS THAT PROVIDING NETWORK COMBINATION SERVICE FELL OUTSIDE OF THE FLORIDA PSC'S JURISDICTION. DOES THIS TESTIMONY ADDRESS THE FRAUD THAT INDUCED IDS TO SIGN THE NOVEMBER 1999 AMENDMENT?**

**A.** Not at all. The fraud was that BellSouth claimed it had two electronic ordering systems, Electronic Data Interface system ("EDI") and TAG, available to submit an ALEC's orders to BellSouth. At the time, and unbeknownst to IDS, EDI was not fully functional and capable of converting retail or resale customers to network combination service. EDI could only support UNE orders and could not support network combination orders, thus these services could not be set up or converted through EDI. See BellSouth EDI information package describing limited application of EDI, attached as Exhibit KK-15. BellSouth was well aware of this fact as Access One and Access Integrated Networks had attempted to utilize EDI to convert network combination orders between February and May 1999, and the EDI system was a complete failure. In response, as discussed below, BellSouth agreed to convert the resale base of these companies to network combination itself. After BellSouth completed the conversion, Access One and Access Integrated Networks abandoned the EDI system and began using TAG to interface with BellSouth.

**Q. HOW DID IDS LEARN THAT EDI COULD NOT BE USED TO CONVERT SERVICE TO NETWORK COMBINATION?**

A. IDS conducted a conversion test with two of its own employees, Freddy O'Quendo and Fabio Gallopi. These employees had local service with BellSouth and IDS attempted to convert them to a Network Combination platform. Both individuals lost all service and were left with no dial tone. Although Pattie Knight claims in her rebuttal testimony that she was unaware of the problem, I assure you that I discussed the problem with her and she initially claimed that the problem was caused by IDS employees who needed additional training. Later Gary Smart conceded that the problem was caused by BellSouth. See Gary Smart letter attached as Exhibit KK-16.

**Q. WERE OTHER ALECS USING EDI FOR NETWORK COMBINATION CONVERSIONS DURING THE END OF 1999 AND THE BEGINNING OF 2000?**

A. No. To the best of my knowledge, contrary to the deposition testimony of Jimmy Patrick there were not other ALECs successfully using EDI for network combination conversions in 1999. In fact, the two ALECs that he claims were using EDI for network combination conversions in 1999 (AT&T and ITC/Deltacom), did not even have Network Combinations Agreements with BellSouth at that time. See ITC/Deltacom letter attached as Exhibit KK-17.

**Q. HOW DO YOU RESPOND TO BELLSOUTH'S ATTEMPT TO REBUT YOUR TESTIMONY THAT EDI WAS NOT SET UP FOR PORT-LOOP CONVERSIONS OR NETWORK COMBINATIONS BY CLAIMING ON PAGE 16 OF THE PANEL REBUTTAL TESTIMONY OF WILSON, KNIGHT, RAND**

**AND PATRICK, THAT "AT LEAST THREE ALECS ARE CURRENTLY USING EDI TO CONVERT LINES FROM RESALE TO UNE-P?"**

- A. This testimony ignores the question of when EDI was set up for network combinations, port-loop or UNE-P conversions. I testified on direct that "[i]t was not IDS'[s] fault that the electronic mechanism . . . was not designed at that time to accept UNE port/loop conversion." At the time IDS was attempting to convert its resale base in late 1999 and early 2000, EDI was not set up to handle this function. Whether EDI can process port-loop conversions almost two years later is irrelevant.

**Q. DID OTHER ALECS WITH NETWORK COMBINATION AGREEMENTS WITH BELL SOUTH EXPERIENCE THE PROBLEMS WITH EDI?**

- A. Yes. To my knowledge, at that time there were only two other ALECs who had Network Combinations Agreements to establish network combination services (Access One and Access Integrated Networks). These carriers also chose to utilize EDI to interface with BellSouth in early 1999. However due to problems of an unknown nature, they also could not convert their lines to network combinations. Although BellSouth ultimately agreed to convert the lines itself, contrary to Ken Ainsworth's testimony, BellSouth did not offer to convert the lines because Access One and Access Integrated Networks were paying market based rates. Rather, it was because BellSouth failed to provide an electronic interface that worked. Although IDS also had entered into an agreement to pay market based rates at that time and was provided with an interface that did not work, for unknown reasons BellSouth treated IDS differently and did not offer to convert IDS's lines.



**Q. CAN YOU EXPLAIN THE FINANCIAL IMPACT THAT THE INABILITY TO CONVERT CUSTOMERS FROM RETAIL OR RESALE TO NETWORK COMBINATIONS AND UNE-P BETWEEN NOVEMBER 1999 AND MAY 2000 HAD ON IDS.**

A. It was devastating. Based on the false belief that it could convert customers to network combinations with BellSouth's EDI system, in December 1999 IDS began entering into agreements to provide local telephone service at a discount of 20% off BellSouth's rates. While this would be profitable for IDS if the customer was on a network combination basis, IDS would lose money if it had to provide service to the customer on a resale basis. On a resale basis, IDS was receiving a 16.9 discount on BellSouth's rates, but had agreed to provide the service to its customers at an even lower price. While IDS's gross profit margin was approximately negative 10% for these customers on a resale basis, its gross profit margin at the time was approximately 35% once it could get these customers on a network combination. As discussed in my direct testimony, the cost of the delay to IDS was \$929,999, not including the customers who left IDS due to the bulk ordering fiasco when BellSouth disconnected the service of so many IDS customers.

**Q. ON PAGE 8 OF HER REBUTTAL TESTIMONY, MS. PRYOR IS ASKED TO COMMENT "ON MR. KRAMER'S CONTENTION ON PAGE 44 OF HIS DIRECT TESTIMONY THAT BELL SOUTH AGREED TO PAY IDS \$929,999 PLUS \$1,400,000 TO SETTLE THE BULK ORDERING INCIDENT," WOULD YOU COMMENT ON THIS QUESTION AND HER RESPONSE.**

A. It is bad enough when witnesses such as Ms. Pryor provide misleading testimony to this Commission, but in this case, the question itself misstates my testimony.<sup>1</sup> I did not claim that BellSouth "agreed to pay IDS \$929,999 plus \$1,400,000 to settle the Bulk Ordering Incident," I said that Ms. Pryor aided IDS's completion of a Billing Adjustment Request and told IDS to deduct that sum from the current bill that IDS owed BellSouth. Because the Interconnection Agreement with BellSouth required IDS to pay its bills in full, while it was disputing an item, and Ms. Pryor permitted IDS to withhold payment, I did believe that BellSouth had agreed to the disputed amount. However, they later stated that they only would provide IDS with a credit of \$546,000. See January 8, 2001, BellSouth letter from C. Morton to IDS referring to BellSouth's agreement to provide IDS with a \$546,000 credit, attached as Exhibit KK-18. For an unknown reason, in Mr. Morton's testimony, he states that BellSouth's position is now that IDS is not even entitled to the reduced credit.

**C. EDI training**

**Q. CAN YOU ADDRESS THE TRAINING THAT BELLSOUTH PROVIDED TO IDS REPRESENTATIVES IN FEBRUARY OF 2000?**

A. As Pattie Knight claimed that the problems IDS experienced with EDI were due to insufficient training, I arranged to have BellSouth provide additional training in February 2000. The training was a complete bust, as the IDS representatives complained that the

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<sup>1</sup> Likewise, in her direct testimony, Ms. Pryor is asked "[d]id BellSouth ever offer IDS \$2.4 million to settle any of its claims, as alleged by Mr. Kramer?" Pryor direct testimony p. 6 line 15.

training was simply a rehash of things they knew and even the trainers could not get EDI to work properly.

**Q. IDS'S COMPLAINT AND YOUR DIRECT TESTIMONY ADDRESS THE SITUATION IN WHICH MS. RAND TRAINED IDS EMPLOYEES ON EDI AND IDS ASKED HER TO PROCESS AN ORDER TO DEMONSTRATE HOW IT WORKED. CAN YOU RESPOND TO MS. RAND'S TESTIMONY THAT "NEITHER MR. KRAMER NOR ANYONE ELSE ASKED ME TO PROCESS AN ORDER THROUGH EDI."**

**A.** It appears that Ms. Rand is playing games with her wording in an attempt to mislead this Commission. First, I personally asked Ms. Rand to demonstrate how an order should be processed through EDI and second, while she may not have technically processed the order herself, she stood next to Brad Hamilton's computer terminal and walked him through the process, step by step. They couldn't get the order to go through. See the rebuttal testimony of Brad Hamilton for a more detailed description of these events. Ms. Rand's testimony, which doesn't even mention the failed test, is further evidence that BellSouth is not attempting to present this Commission with the whole truth.

**Q. ON PAGE 11 AND 13 OF HER REBUTTAL TESTIMONY, MS. RAND DENIES THAT SHE RECOMMENDED THAT IDS CONSIDER USING TAG BECAUSE EDI WAS NOT FUNCTIONING PROPERLY AND WAS NOT SUPPORTING NETWORK COMBINATIONS. DO YOU RECALL YOUR CONVERSATION WITH MS. RAND?**

A. Yes, immediately after her demonstration of the EDI system had failed we discussed the possibility of IDS using TAG. We discussed TAG as a possible viable alternative to aid IDS's interface with BellSouth because of the problems IDS was experiencing with EDI. IDS ordered TAG in February 2000 (rather than January 2000), after IDS had become painfully aware that it had been fraudulently induced to enter an agreement with BellSouth based on false claims that BellSouth had a fully functional EDI system available.

**D. Beta Testing The Bulk Ordering System.**

**Q: DO YOU KNOW WHETHER BELL SOUTH TESTED THE BULK ORDERING FUNCTION PRIOR TO OFFERING IT TO IDS?**

A: Yes, although I did not know it at the time, it is my understanding that BellSouth tested the bulk ordering function with Access Integrated Networks in early April 2000. I understand that Access Integrated Networks tested the bulk ordering system for approximately two weeks and that the test was a complete failure. Because of the test's failure, Access Integrated Networks ceased using the bulk ordering system on or about April 17, 2000. On that same date, Ms. Pryor sent IDS a letter addressing a possible beta of the bulk ordering system by IDS.

**Q. IN THE REBUTTAL PANEL TESTIMONY OF PETRA PRYOR AND MICHAEL LEPKOWSKI, MS. PRYOR SUGGESTS THAT BELL SOUTH AND IDS DID NOT DISCUSS IDS BETA TESTING THE BULK ORDERING SYSTEM UNTIL AFTER THE BULK ORDERING INCIDENT IN MAY 2000 AND CLAIMS THAT HER APRIL 17, 2000 LETTER WAS MISDATED. SHE GOES ON TO STATE**

**THAT "[A]T NO TIME DID BELL SOUTH AGREE TO BETA TEST THE BULK ORDERING FEATURE WITH IDS PRIOR TO THE BULK ORDERING INCIDENT." HOW DO YOU RESPOND?**

A. It is clear that Ms. Pryor's letter was correctly dated April 17, 2000 as IDS received a follow-up e-mail from Mr. Lepkowski on April 27, 2000 addressing issues pertaining to the proposed beta testing. See Lepkowski April 27, 2000 e-mail attached as Exhibit KK-19. Likewise, on the same page of the rebuttal testimony, Mr. Lepkowski admits that "[p]rior to the Bulk Ordering Incident, I received an e-mail from BellSouth employee Terry Hudson asking me if I thought IDS would be interested in participating in a beta test of the bulk ordering feature." See Hudson e-mail attached as Exhibit KK-20. While Ms. Pryor is correct that BellSouth did not reach an agreement with IDS regarding beta testing the bulk ordering system prior to what BellSouth refers to as the Bulk Ordering Incident, Mr. Lepkowski's own testimony, as well as the documented letter from Ms. Pryor and follow-up e-mail, all confirm the fact that IDS and BellSouth discussed the possibility of IDS beta testing the bulk ordering system prior to the Bulk Ordering Incident. Indeed, when BellSouth announced that its bulk ordering system was available to all ALECs, IDS believed that BellSouth had successfully beta tested the system with another ALEC. Only later, and at great expense, did IDS learn that the system had not been successfully beta tested.

**Q: DID BELL SOUTH TELL IDS ABOUT THE PROBLEMS EXPERIENCED BY ACCESS INTEGRATED REGARDING ACCESS INTEGRATED'S BULK ORDERING TEST?**

A: No. Although it appears that BellSouth knew that the bulk ordering system failed testing with Access Integrated Networks, BellSouth did not advise IDS. Instead, BellSouth touted the system as fully functional at the BellSouth ALEC forum. In fact, I only learned of the failed Access Integrated Networks bulk ordering test during the course of discovery in this action.

Q: **DO YOU KNOW WHETHER THE BULK ORDERING SYSTEM IS NOW FULLY FUNCTIONAL?**

A: It is my understanding that the bulk ordering system is now fully functional. In fact, I reviewed the deposition transcript of Gloria Burr, an employee at BellSouth in charge of the bulk ordering beta test, and she concluded that "[e]ventually the [beta test results at IDS] were satisfactory." See Burr deposition at p. 54. Notwithstanding the satisfactory test results and the tremendous benefits of the bulk ordering product, BellSouth decided not to release the bulk ordering system, as part of a "corporate strategy." See Burr deposition at pp. 99-100.

**E. The Premature Bulk Ordering Roll-Out and the Resulting Fiasco.**

Q. **HOW DID IDS REACT TO BELL SOUTH'S ANNOUNCEMENT AT THE ALEC INFORUM ON MAY 2-3, 2000, THAT ITS BULK ORDERING SYSTEM WAS AVAILABLE TO ALECs THROUGH THE LENS SYSTEM?**

A. IDS's Brad Hamilton asked whether BellSouth was sure its bulk ordering system worked and when they confirmed that the system was completely functional, I instructed Mr. Hamilton to sign up for the service immediately.

**Q. DID YOU BELIEVE THAT THE BULK ORDERING SYSTEM HAD BEEN BETA TESTED WITHOUT IDS.**

A. Certainly, I knew that BellSouth could not release a product without adequate testing and assumed they had successfully conducted the beta testing without IDS. Unfortunately, it was not until later that IDS learned no such testing had taken place. BellSouth now claims that the release of the untested product was just a mistake and that the sales representatives involved did not realize the product had not been successfully beta tested. In fact, just two weeks before the BellSouth sales group announced that bulk order conversions were available, the sales group had set up the beta test with Access Integrated Networks that had completely failed. As described in the testimony of IDS employees Mr. Gulas and Ms. Wellman, BellSouth does not release products without approval from several different departments. All of this strongly suggests that BellSouth chose to release its untested bulk ordering system on an unsuspecting group of ALECs.

**Q. DO YOU AGREE WITH MR. LEPKOWSKI'S TESTIMONY ON PAGE 6 LINE 25 OF THE PANEL REBUTTAL TESTIMONY OF PRYOR AND LEPKOWSKI, THAT IDS'S TWENTY FIVE (25) BULK ORDERING TEST ORDERS "WOULD NOT TAKE THE PLACE OF A BETA TEST BECAUSE IT CERTAINLY DID NOT ADDRESS ALL THE POSSIBILITIES THAT A BETA TEST WOULD ADDRESS?"**

A. I agree that the test was not intended to take the place of a beta test. At the time of the test, however, IDS had been told that the product had been successfully beta tested, yet still wanted to proceed with a test group before submitting its entire customer base for

conversion. IDS began with a conversion of a group of 84 (not 25) customers. BellSouth incorrectly "confirmed" that the conversions had gone through successfully. Based on BellSouth's confirmation that the test orders had successfully gone through, IDS began converting its entire customer base on Monday May 8, 2000. The resulting fiasco was previously addressed in my direct and has not been rebutted by BellSouth. Had IDS known that BellSouth had not properly beta tested the product before unleashing it on an unsuspecting public, it would not have attempted such a large scale conversion.

**Q. CAN YOU COMMENT ON KEN AINSWORTH'S TESTIMONY THAT ONLY FOUR IDS CUSTOMERS LOST DIAL TONE DURING THE FAILED ATTEMPT TO CONVERT IDS'S ENTIRE CUSTOMER BASE FROM RESALE TO UNE-P IN EARLY MAY, 2000?**

A. Again this testimony is quite misleading. Of the initial 1,200 conversion orders, over 400 customers were left in an out of service condition. This means that a customer's service is not working correctly. For example, the bulk ordering disaster left most of IDS's business customers without their hunting feature. This feature is critical to many businesses, as it permits calls to a main business number to "roll over" to other lines in the company. Without this service, a single call to a business can tie up its entire phone service. Although the bulk ordering problems were caused by BellSouth, as I reported to Petra Pryor at the time, these problems led directly to approximately 750 IDS customer lines switching back to BellSouth. My direct testimony incorrectly cited a number of 1,400 customer lines who returned to BellSouth due to bulk ordering problems, however, the correct number is 750, as IDS originally reported to BellSouth.



**F. Local Service Freeze.**

**Q. BELLSOUTH PRESENTED THREE WITNESSES, INCLUDING JANET MILLER-FIELDS, MR. LEPKOWSKI AND MS. PRYOR, TO TESTIFY REGARDING THE USE OF A TOOL CALLED A LOCAL SERVICE FREEZE, CAN YOU EXPLAIN HOW BELLSOUTH UTILIZED LOCAL SERVICE FREEZES IN AN ANTICOMPETITIVE FASHION?**

**A.** IDS put a Local Service Freeze on IDS customer accounts to ensure that these accounts were not switched to a new carrier without authorization. However, BellSouth used the Local Service Freeze as an anticompetitive tool in two ways: First, BellSouth utilized the Local Service Freeze to impair IDS's ability to convert its own customers from resale to UNE-P, despite the fact this did not involve a carrier change. Second, even though BellSouth permitted IDS to add the Local Service Freeze code to its own customer accounts, for an unknown reason, BellSouth initially refused to permit IDS itself to remove the Local Service Freeze on its customer's accounts.

**Q: DO YOU HAVE ANY DOCUMENTS TO SUPPORT YOUR PROPOSITION THAT BELLSOUTH INTENTIONALLY USED THE LOCAL SERVICE FREEZE IN AN ANTICOMPETITIVE MANNER?**

**A:** Yes. I have an internal BellSouth e-mail from Pat Rand addressed to Landra Martin. This e-mail discusses the problems that Local Service Freeze created for IDS when IDS attempted to move its resale customers to UNE-P. Mr. Rand states that "[t]here appears to be some LESOG programming edits that are inhibiting this CLEC [IDS] from processing resale to UNE-P conversion orders on accounts the CLEC has frozen. Guess

we showed them how we could really freeze the account. HA!" See E-mail of Pat Rand, attached as Exhibit KK-21. This e-mail is a real-life example of the attitude IDS encounters by the BellSouth employees who are supposed to help IDS, and provides much more insight than the carefully tailored testimony BellSouth now offers to explain this issue.

**G. Problems with ADSL**

**Q. BELLSOUTH CLAIMS THAT IT IS NOT REQUIRED TO PROVIDE ADSL SERVICE TO CUSTOMERS WHO RECEIVE UNE-P SERVICE THROUGH IDS. DID BELLSOUTH IN FACT EVER PROVIDE SUCH SERVICE?**

A. Although BellSouth now claims that it did not have to, BellSouth converted customers with BellSouth's ADSL service to IDS on a UNE-P basis. BellSouth then began disconnecting the customer's DSL service without warning. BellSouth then told some of these IDS customers they could only have their DSL service restored if they switched their entire local phone service and ADSL back to BellSouth. See letter from Maury Enterprises to the FCC dated 4/30/01 and other customer e-mails addressing this issue attached as Composite Exhibit KK-22.

**Q. WHAT ARE IDS'S COMPLAINTS REGARDING HOW BELLSOUTH HANDLED IDS'S CUSTOMERS WHO HAVE ADSL?**

A. IDS's first complaint is that BellSouth had no authority to disconnect the DSL service that was being provided to IDS customers who had been converted to UNE-P service. These were IDS customers, not BellSouth customers. Second, in no event does the FCC or the Florida Public Service Commission permit BellSouth to turn off an IDS customer's DSL

service and then refuse to restore service until the customer returns all of their local phone service back to BellSouth.

BellSouth claimed that IDS could remedy the problem by simply switching the customers' ADSL back to resale while leaving their other local phone service on a UNE-P basis. IDS complied by requesting that ADSL service be switched back to resale. Instead, BellSouth apparently changed its mind and without warning left the customers without any DSL service. BellSouth, again used this problem to its own benefit by telling IDS customers that they could have their DSL service restored only by returning to BellSouth. See letter from Maury Enterprises to the FCC dated 4/30/01 attached as part of Exhibit KK-22.

#### **H. MemoryCall Service**

**Q. BELLSOUTH DISCUSSES WORK THAT IT DID TO PREVENT MEMORYCALL MAILBOXES FROM BEING DISCONNECTED WHEN BEING CONVERTED FROM RETAIL OR RESALE TO UNE-P. DO YOU HAVE ANY COMMENTS REGARDING THE WORK BELLSOUTH DID TO PREVENT THIS PROBLEM?**

**A.** IDS first identified this problem and notified BellSouth in approximately June of 1999. According to an e-mail of Freddy O'Quendo in June 2000, BellSouth had created a fix in the summer of 1999 during the conversion of Access One and Access Integrated Networks. As presented in Harris' testimony, the fix was incorporated in the downstream system but the fix was not installed to the ALECs' ordering system until March 2001, thus providing BellSouth with a tool to disrupt the service IDS provides for over a year.

**I. Failure to Promptly Provide ALECs With Updated Information**

**Q. ON PAGE 9 OF HIS PANEL REBUTTAL TESTIMONY, MR. LEPKOWSKI TESTIFIED REGARDING A DISCUSSION THE TWO OF YOU HAD REGARDING INFORMATION PROVIDED TO ALECS THROUGH THE LENS SYSTEM AND THROUGH THE CSOTS SYSTEM. CAN YOU EXPLAIN WHY THIS DISCUSSION UPSET YOU?**

**A.** Sure, I was upset because BellSouth told ALECs to use their LENS system for CSR updates of conversion completions and they did not disclose that CSOTS had more accurate and updated information regarding conversion. Long delays in BellSouth updating its LENS system led to IDS not knowing when conversions were complete and thus to not being able to bill its customers. All the while, unbeknownst to IDS, it could have been receiving updated conversion information from the CSOTS system. BellSouth never provided an explanation of why it did not provide IDS with this information.

**Q. BELLSOUTH WITNESS, MR. WILSON, ADDRESSES THE ALLEGATION THAT BELL SOUTH WAS NOT UPDATING LENS IN A TIMELY FASHION. MR. WILSON SUGGESTS THAT YOU (KEITH KRAMER) WERE DESCRIBING DELAYS IN UPDATING BELLSOUTH'S CUSTOMER SERVICE RECORDS ("CSR") RATHER THAN LENS AND CLAIMS (IN BOTH HIS DIRECT AND HIS REBUTTAL TESTIMONY) THAT IN MOST CASES CSR IS UPDATED WITHIN 24-48 HOURS OF AN ORDER BEING CORRECTLY POSTED TO THE CUSTOMER RECORD INFORMATION SYSTEM ("CRIS"). DO YOU AGREE WITH THIS TESTIMONY?**

A. This testimony completely ignores the fact that in November and December of 2000, BellSouth was not updating CRIS in a timely fashion. The delays led to IDS not being aware for weeks that conversions were completed and therefore, IDS could not bill its customers. At the time I spoke with Mr. Lepkowski of BellSouth, who led me to believe the problem was that BellSouth was not completing the conversions in a timely manner and that BellSouth would "back-date" the effective billing date to the date that the conversion should have been completed. Mr. Lepkowski suggested that BellSouth was back dating the EBD as a favor to IDS and that IDS should start billing from the EBD, even if the conversion had not actually been completed.

Q. **HOW DID YOU REACT TO MR. LEPKOWSKI'S SUGGESTION THAT IDS SHOULD BILL ITS CUSTOMERS BEGINNING ON THE EBD, EVEN IF THEIR SERVICE HAD NOT BEEN CONVERTED BY THAT DATE?**

A. I told him that his proposal was completely unacceptable. Mr. Lepkowski was suggesting that IDS bill end users for services they were still receiving from BellSouth and he acknowledged that BellSouth would be sending a bill for the same services. He was suggesting a solution that was unfair, dishonest, and certain to cause even more problems with IDS customers.

Q. **DID YOU LATER LEARN THAT BELL SOUTH WAS NOT BACK DATING THE CONVERSION TO THE EFFECTIVE BILLING DATE?**

A. Yes. According to Mr. Wilson's testimony, the real problem was that the conversions were being completed, but there was a substantial delay in updating the CRIS system to let ALECs such as IDS know. Due to BellSouth's failure to update CRIS in a timely

fashion, it appeared that BellSouth was only processing approximately 50% of IDS's orders during this time period. Ultimately, the end result of the delay versus back dating conversion dates was the same, as IDS was unable to begin billing its customers because it did not know that their conversion had been completed.

**Q. CAN YOU REPLY TO MS. PRYOR'S CLAIM ON PAGE 7 LINE 7 OF HER REBUTTAL TESTIMONY THAT THE QUANTITY OF ORDERS PROCESSED BY IDS HAS NEVER COME CLOSE TO 1,000 ORDERS PER DAY?**

A. Yes, although IDS at times sold over 1,000 lines per day. It only processed as many as 968 lines in a single day. Although IDS was processing a large volume of lines during November and December 2000, due to BellSouth's delays with CRIS updates, it appeared that a much lower volume was being processed.

**II. Anticompetitive Winback Activities.**

**A. BellSouth's Use of Service Disruptions for Winback.**

**Q. MR. RUSCILLI'S TESTIMONY DISCUSSES BELLSOUTH'S ALLEGED POLICY NOT TO USE SERVICE DISRUPTIONS AS AN OPPORTUNITY FOR WINBACK. IN YOUR EXPERIENCE, IF THIS POLICY EXISTS, IS IT FOLLOWED BY BELLSOUTH REPRESENTATIVES?**

A. No. It is evident from the exhibits attached to IDS's Complaint that customers who experience service disruptions during conversion from BellSouth to IDS regularly contact BellSouth and are told that IDS ordered the disconnection of their service. They are not told that BellSouth is supposed to process the disconnection and new service orders simultaneously. IDS has documented and attached to its Complaint instances in which the customer is told that their

service was disconnected at the request of IDS and that the only way to have their service restored promptly is to return their service to BellSouth. There is no excuse of this type of winback behavior.

**Q. WILL YOU COMMENT ON MR. RUSCILLI'S COMMENT THAT WINBACK DURING A CUSTOMER CALL DUE TO A SERVICE OUTAGE IS PERMISSIBLE IF THE CUSTOMER RAISES THE TOPIC?**

A. These winback discussions are wholly inappropriate. First, the customer is an IDS customer and BellSouth should simply direct them to contact IDS without further comment. Second, IDS has no way to monitor these conversations to determine who initiates winback discussions and should not have to rely on BellSouth representatives, who are compensated based, at least in part, on sales volume and who have repeated used improper tactics to mislead IDS's customers.

**Q. MR. RUSCILLI'S STATEMENT AT PAGE 28 OF HIS TESTIMONY INDICATES WINBACK LETTERS ARE NOT SENT TO A CUSTOMER UNTIL AFTER THEIR SERVICE IS DISCONNECTED. DOES THIS ADDRESS THE MISUSE OF BELL SOUTH'S ROLE AS THE WHOLESALE PROVIDER OF SERVICE TO IDS?**

A. This does not address the common situation in which the disconnect is completed, but the new service portion of the order is not completed. In these cases, not only is the IDS customer left without service, but they are being solicited to return to BellSouth "who can restore their service."

**Q. DO YOU AGREE WITH BELLSOUTH'S ASSERTION THAT ITS WHOLESALE DIVISION DOES NOT INFORM ITS RETAIL DIVISION OF CONVERSION ORDERS BEFORE THE ORDER IS COMPLETED?**

**A.** If that were true, how can you explain that in November and December 2000, 297 IDS customers were won back by BellSouth prior to completion of their conversion to IDS?

*Attach documentation supporting this statement.*

**B. Unauthorized Switch Back to BellSouth.**

**Q. BELLSOUTH, IN THE REBUTTAL TESTIMONY OF MS. ROKHOLM, STATES THAT IT OBTAINS LOAs (LETTERS OF AUTHORIZATION) AND TPVs (THIRD PARTY VERIFICATION) FOR ALL CUSTOMERS THEY "WIN BACK" TO BELLSOUTH. MR. KRAMER, DO YOU BELIEVE THIS TO BE A FAIR AND ACCURATE STATEMENT?**

**A.** No. Ms. Rokholm's testimony is incomplete and attempts to mislead the Commission. In January 2001, IDS randomly called a number of customers who had left IDS to return to BellSouth between December 2000 and January 2001, to see whether they had agreed to do so by signing a Letter of Authorization or agreeing to be recorded for a Third Party Verification. None of the customers told us they had signed a Letter of Authorization or had agreed to be recorded for a Third Party Verification. Based in part on this investigation, IDS wrote to Risk Moscs of the Florida Public Service Commission and supplied him with a list of approximately 633 former IDS customers for further investigation. See letter with attachments, attached as Exhibit KK-23.

**C. BellSouth's Use of CPNI.**



**Q. IN ADDRESSING BELLSOUTH'S USE OF CPNI IN WINBACK CAMPAIGNS, JOHN RUSCILLI, ON PAGE 17-18 OF HIS DIRECT TESTIMONY, STATES THAT WINBACKCAMPAIGNS ARE A "NATURAL OUTGROWTH OF THE MARKET DEVELOPMENT CONTEMPLATED BY THE ACT AND SUPPORTED BY BOTH THIS COMMISSION'S AND THE FCC'S RULES REQUIREMENTS." COULD YOU ADDRESS MR. RUSCILLI'S COMMENTS, PAYING PARTICULAR ATTENTION TO THE FCC'S VIEW ON THE USE OF CPNI IN WINBACK MARKETING EFFORTS?**

**A.** Mr. Ruscilli's testimony regarding the competitive benefits of winbackcampaigns, and in particular, the use of CPNI in those campaigns is misleading. Although the FCC in its September 3, 1999 Order on Reconsideration and Petitions for Forbearance, CC Docket No. 96-149 (Order 99-223)("Order on Forbearance") did loosen the restrictions on a carrier's use of CPNI in winbackpromotions, the Order on Forbearance falls well short of providing carriers with authority for unbridled use of CPNI in winbackefforts.

**Q. WHAT DOES THE FCC STATE REGARDING THE USE OF CPNI IN WINBACKCAMPAIGNS?**

**A.** In its Order on Forbearance, the FCC relaxed its previous restrictions to allow carriers to use CPNI to regain customers who have already switched to another carrier. Those winbackefforts, however, are limited to the marketing of the service or services to which the customer previously subscribed. Significantly, the FCC also ruled that carriers could not use CPNI gained through the provision of carrier-to-carrier service, *i.e.*, notice of the customer's imminent cancellation of service, to undertake "retention" campaigns as to

these "soon-to-be former customers." The FCC noted that such restrictions were necessary to promote competition and protect customer privacy:

We conclude that competition is harmed if any carrier uses carrier-to-carrier information, such as switch or PIC orders, to trigger retention marketing campaigns, and consequently prohibit such actions accordingly. Congress expressly protected carrier information in section 222(a) by creating a duty to protect the confidentiality of proprietary information and contains an outright prohibition against the use of such information for a carrier's own marketing efforts. As stated in the CPNI Order, Congress' goals of promoting competition and preserving customer privacy are furthered by protecting competitively-sensitive information of other carriers, including resellers and information service providers, from network providers that gain access to such information through their provision of wholesale services.(¶ 77)

Thus, a carrier can only attempt to "retain" customers if it learned of the information about a customer switch through independent retail means. Any such "retention" campaign would also be limited to the marketing of services to which the customer previously subscribed.

At the Change of Control forum, all ALECs, except Birch, agreed not to use CPNI in an effort to win back customers. BellSouth's use of such information gives it an unfair competitive advantage over all other ALECs. As the Wall Street Journal put it, it is like BellSouth is playing poker using their deck and they know the hand that every one else is playing with. See WSJ article dated August 31, 2001 attached as Exhibit KK-24.

**D. Winback Before IDS Knows That Conversion is Complete.**

**Q. BELLSOUTH CLAIMS THAT IN ORDER FOR CUSTOMERS TO RETURN TO BELLSOUTH BEFORE THEIR CONVERSION TO IDS WAS COMPLETE, IDS MUST CANCEL THE PENDING ORDER. HOW CAN BELLSOUTH**

**WINBACKCUSTOMERS BEFORE IDS EVEN KNOWS THAT CONVERSION  
WAS COMPLETE?**

A. If BellSouth waits until the conversion is complete, but prior to LENS updating the CSR (which takes 24-48 hours according to Mr. Clements's testimony), and contacts the end customer, BellSouth can win back the customer before IDS even is notified that the conversion was completed.

**E. Truck Roll.**

**Q. CAN YOU EXPLAIN THE PRACTICE KNOWN AS A TRUCK ROLL AND  
WHEN SUCH AN ACTION WOULD BE IMPROPER?**

A. Truck Roll is the action of BellSouth sending a service technician to a customer's premises. This should not happen for an as/is conversion of a customer from BellSouth retail to IDS. Unfortunately, BellSouth has repeatedly sent technicians to the customer's business and the technicians tell the customer that they are there to disconnect the customer's service because they are switching to IDS. The customer is confused, states that he/she does not want their service disconnected and BellSouth "Wins Back" the customer.

**F. Defamatory Comments Regarding IDS**

**Q. HOW DO YOU RESPOND TO BELL SOUTH'S CLAIM THAT IT REACTED  
PROMPTLY TO ADDRESS THE FACT THAT ITS TELEMARKETERS WERE  
MAKING FALSE AND DEFAMATORY STATEMENTS REGARDING IDS?**

A. Mr. Ruscilli suggests that BellSouth "took immediate action" to investigate the allegations and ultimately fired one telemarketing agency. Mr. Ruscilli fails to mention

that IDS first brought this issue to BellSouth's attention by notifying Ms. Pryor of the problem in April 2001. However, it was not until July 2001 (after IDS filed its Complaint with this Commission) that BellSouth fired its telemarketing firm.

BellSouth's claimed corrective actions are not, and can not be, by the very nature of BellSouth's role, effective enough to protect companies such as IDS from past and future abusive conduct by BellSouth.

**G. Misleading and Anticompetitive Advertising**

**Q: MR. RUSCILLI CONTENDS IN HIS DIRECT TESTIMONY (AT PAGE 12, LINES 23-24) THAT "BELLSOUTH HAS NOT, AND IS NOT, ENGAGING IN ANTICOMPETITIVE ACTS AGAINST IDS . . . ." HOW DO YOU RESPOND TO THIS CONTENTION?**

**A:** Nothing could be further from accurate. In fact, BellSouth's anticompetitive tactics do not stop at the disparity in its provisioning of OSS and winback programs. BellSouth publicly has portrayed ALECs and their services as unreliable, and has intentionally mislead consumers by implying that telephone service disruptions are more prevalent among ALECs. BellSouth has done this through advertisements and otherwise.

**Q: CAN YOU GIVE ME AN EXAMPLE OF A SPECIFIC ANTICOMPETITIVE AND MISLEADING ADVERTISEMENT PLACED BY BELLSOUTH?**

**A:** Certainly. In a recent BellSouth advertisement directed toward small businesses -- IDS's primary target consumer -- BellSouth claims that comparing telecommunication service between an ALEC, such as IDS, and BellSouth is like comparing apples to oranges. The advertisement explicitly states that "Finding cheap communications services for your

small business is easy. Finding dependable service isn't. You can get the quality and reliability you've come to expect from BellSouth, now at substantial savings. . . . [Y]ou can't compare apples to oranges!" The sole inference to be drawn from this ad is that problems associated with telephone service will more likely result if the consumer chooses an ALEC as its telecommunications provider. What is not apparent to the consumer from this ad, however, is that the service disruptions alluded to by BellSouth are generally caused by BellSouth – not the ALEC. Of course, BellSouth fails to clarify this in its ad. Now, notwithstanding the fact that BellSouth recently ran this ad in Florida and has run similar ads in other states, Mr. Ruscilli contends that BellSouth has not, and is not, engaged in any anticompetitive activities. *See* BellSouth Advertisement, entitled "There are lots of ways a small business can save" attached as Exhibit KK-25.

**Q: DO YOU HAVE ANY ADDITIONAL EXAMPLES OF BELL SOUTH'S ANTICOMPETITIVE MARKETING CAMPAIGN AGAINST ALECS?**

**A:** Yes. A second specific example of BellSouth's misleading propaganda against ALEC telecommunication service specifically comes to mind. In this ad, BellSouth uses a bridge spanning across a waterway with a gap in its middle to imply, again, that if a small business uses an ALEC as its telecommunication provider, service disruptions are likely to result. BellSouth goes on to state that "[i]t seems like everyone promises to save you money on phone service these days. But if the service doesn't keep you connected, it doesn't really matter if its cheap." Just as with the "apples to oranges" ad, this ad leaves the consumer with the impression that service disconnections are likely to be caused by switching from BellSouth to an ALEC, when if BellSouth complies with its obligations,

this should not happen at all. BellSouth is employing the ultimate form of deception: taking service disruptions it has caused, and leading consumers to believe an innocent ALEC is the responsible party. This type of anticompetitive and misleading marketing campaign should not be tolerated. *See* BellSouth Advertisement, entitled "With other savings offers, there may be something missing – like reliable service" attached as Exhibit KK-26.

**H. Winback By Providing Discounts Greater Than Avoided Costs**

**Q. HOW CAN BELL SOUTH AFFORD TO GIVE BUSINESS CUSTOMERS DISCOUNTS GREATER THAN ITS AVOIDED COSTS?**

A. BellSouth claims that the discount provided to ALECs on resale is "avoided costs." Yet in Florida, the "avoided cost" discount provided to ALECs on business accounts is only 16.81%, while BellSouth is offering up to 20% discount off their retail business rates to winbackbusiness customers lost to ALECs such as IDS. BellSouth therefore provides services to these customers with discounts below their avoided cost discount. BellSouth can afford to do this long enough to drive ALECs out of business.

**Q. ON PAGE 11 OF THIS PANEL REBUTTAL TESTIMONY, MR. LEPKOWSKI CLAIMS THAT YOU REPORTED TO THE COMMISSION AND TO HIM THAT 1,200 OF IDS'S CUSTOMERS HAD LOST SERVICE WHILE A HURRICANE WAS THREATENING FLORIDA. IS HIS TESTIMONY ACCURATE?**

A. No, I told the Commission and Mr. Lepkowski that I was concerned because IDS had an estimated 25 customers without service during the hurricane threat. I later learned that it

may have actually been 12 customers who were without emergency services in the face of the threatened hurricane. In either case, I was sincerely concerned for the safety of these customers and it was only with the threat of Commission action that BellSouth restored their service.

**III. Clarification of Direct Testimony.**

**Q. ARE THERE ANY ADDITIONS OR CLARIFICATIONS OF YOUR DIRECT TESTIMONY THAT YOU WOULD LIKE TO MAKE IN LIGHT OF THE TESTIMONY PROVIDED BY BELL SOUTH?**

A. Yes. Due either to incorrect information I received from BellSouth or to a misunderstanding, there are a few clarifications I wish to make to ensure that my direct testimony is accurate. These corrections include the following:

1) **Voice Mail.** I testified regarding the consistent problems IDS had as a result of BellSouth dropping the Voice Mail service or wiping out voice mail boxes when IDS converted customers from resale to a UNE platform. BellSouth goes to great lengths to explain that Voice Mail can not be converted to UNE-P service while a similar service called MemoryCall Service can be converted to UNE-P. In fact, the IDS customers who experienced the problems with their service during conversion to UNE-P did have MemoryCall Service rather than Voice Mail. These customers' MemoryCall Service function should have been converted to UNE-P without incident, but due to BellSouth's errors or system problems, these IDS customers suffered the loss of features described in my direct testimony. The substance of the allegations against BellSouth remain the same, but reference to Voice Mail should have been to MemoryCall Service throughout.

**2) Remote Access.** Reference to Remote Call Forwarding should be to Remote Access.

Again, the analysis remains the same.

**3) Local Service Freeze.** Reference in my direct testimony to a Local PIC Freeze should have been to a Local Service Freeze. As explained below, a Local Service Freeze is one of the tools available to IDS to protect its customers from unauthorized transfer to another carrier. During a conversion from resale to UNE-P, there is no change in carrier - only a change in the type of service provided. BellSouth provided testimony (see direct testimony of Janet Miller-Fields p. 10), that on a resale or UNE-P account only the ALEC, that is the BellSouth customer, can request, remove, or change a Local Service Freeze. Despite these facts, when IDS attempted to convert the type of services it provided to its customers with a Local Service Freeze, BellSouth claimed that it could not convert the accounts from resale to UNE-P without a written authorization from the end-use customer to effect the change. Ultimately, after a substantial delay, BellSouth agreed to process the conversions without the authorizations. In effect, BellSouth managed to use the Local Service Freeze, designed to protect IDS, to further BellSouth's anticompetitive actions.

**4) UNE-P vs. Network Combination.** Prior to February 17, 2001 BellSouth provided network combinations. After the FCC's 319 Remand Order these services were provided in a platform referred to as an unbundled network element platform or UNE-P. Therefore, any reference to UNE-P for periods prior to February 17, 2000 should be a reference to Network Combinations.

## **Remedies**



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

A. Yes.

3) Disconnect codes issues - who is addressing?

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