BELLSOUTH

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REGULATORY AUTH.
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EXECUTIVE SECRETARY

January 30, 2001

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VIA HAND DELIVERY

David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *In the Matter of the Petition for Arbitration of IDS Telecom, LLC Pursuant to Section 252(b) of the Communications Act of 1934*
Docket No. 01-00010

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth's Response to IDS's Petition for Arbitration. Copies of the enclosed are being provided to counsel of record.

Very truly yours,

Guy M. Hicks

GMH:ch
Enclosure

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BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *In the Matter of the Petition for Arbitration of IDS Telecom, LLC Pursuant to Section 252(b) of the Communications Act of 1934*

Docket No. 01-00010

BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE TO IDS TELECOM, LLC'S PETITION FOR ARBITRATION

Pursuant to 47 U.S.C. § 252(b)(3), BellSouth Telecommunications, Inc. ("BellSouth"), responds to the Petition for Arbitration filed by IDS Telecom, LLC ("IDS") and shows as follows:

INTRODUCTION

Sections 251 and 252 of the Telecommunications Act of 1996 ("1996 Act") encourage negotiations between parties to reach local interconnection agreements. Section 251(c)(1) of the 1996 Act requires incumbent local exchange companies ("ILECs") to negotiate the particular terms and conditions of agreements to fulfill the duties described in Sections 251(b) and 251(c)(2-6).

Since passage of the 1996 Act on February 8, 1996, BellSouth has successfully conducted negotiations with a large number of competitive local exchange carriers ("CLECs") in Tennessee. To date, the Tennessee Regulatory Authority ("the Authority") has approved numerous agreements between BellSouth and CLECs. The nature and extent of these agreements vary depending on the individual needs of the companies, but the conclusion is inescapable – BellSouth has a record of embracing competition and displaying willingness to compromise and interconnect on fair and reasonable terms.

As part of the negotiation process, the 1996 Act allows a party to petition a state commission for arbitration of unresolved issues.[1] The petition must identify the issues resulting from the negotiations that are resolved, as well as those that are unresolved.[2] The petitioning party must submit along with its petition "all relevant documentation concerning: (1) the unresolved issues; (2) the position of each of the parties with respect to those issues; and (3) any other issue discussed and resolved by the parties."[3] A non-petitioning party to a negotiation under this section may respond to the other party's petition and provide such additional information as it wishes within 25 days after the commission receives the petition.[4] The 1996 Act limits the commission's consideration of any petition (and any response thereto) to the unresolved issues set forth in the petition and in the response.[5]

BellSouth and IDS entered into an Interconnection Agreement ("Agreement") that expired on January 26, 2001. The Agreement provides that BellSouth and IDS will continue to operate pursuant to the terms of the Agreement until such time as a new interconnection agreement is executed. The parties have been negotiating in an attempt to reach a new agreement, but although BellSouth and IDS negotiated in good faith, the parties have been unable to reach agreement on some issues. As a result, IDS filed its Petition for Arbitration.

Through the arbitration process, the state commission must resolve the unresolved issues ensuring that the requirements of Sections 251 and 252 of the 1996 Act are met. The obligations

1 47 U.S.C. § 252(b)(2).

2 *See generally,* 47 U.S.C. §§ 252 (b)(2)(A) and 252 (b)(4).

3 47 U.S.C. § 252(b)(2).

4 47 U.S.C. § 252(b)(3).

5 47 U.S.C. § 252(b)(4).

contained in those sections of the 1996 Act are the obligations that form the basis for negotiation, and if negotiations are unsuccessful, then form the basis for arbitration. Issues or topics not specifically related to these areas should be outside the scope of an arbitration proceeding. Once the commission has provided guidance on the unresolved issues, the parties must incorporate those resolutions into a final agreement to be submitted to the commission for approval.[6]

In this Response, BellSouth addresses each of the eleven issues IDS has presented in its Petition, and BellSouth presents a clear statement of BellSouth's position on these issues. BellSouth does not attempt to represent IDS's position on these issues, nor does BellSouth respond, except in the most egregious cases, to the various statements that IDS has made regarding BellSouth's positions on the issues to be decided. In the introduction to its Petition, for example, IDS accuses BellSouth of engaging in "dilatory tactics," "rebuffing" IDS, and "artificially chop[ping] off" the statutory timeframe for negotiations. BellSouth specifically and emphatically denies each and every one of the underlying claims made in those attacks on BellSouth.

IDS attached to its Petition as Exhibit E a draft of the interconnection agreement currently being negotiated by the parties. BellSouth agrees that Exhibit E to IDS's Petition identifies the remaining unresolved issues and each party's proposed language regarding those issues.

IDS'S INTRODUCTORY STATEMENTS

1. The allegations of Paragraph 1 of the Petition require no response from BellSouth.

2. With regard to Paragraph 2 of the Petition, on information and belief, BellSouth admits that IDS is a Florida corporation with its principal place of business at the address set forth in this Paragraph.

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6 47 U.S.C. § 252(a).

3. With regard to Paragraph 3 of the Petition, BellSouth admits that IDS has filed an application for certification as a CLEC with the Authority and that the application is pending. BellSouth is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 3.

4. With regard to Paragraph 4 of the Petition, BellSouth admits that it is an ILEC; that its principal place of business is located at 675 West Peachtree Street, Atlanta, Georgia 30375; and that it provides telecommunications services in the State of Tennessee. Based on footnote 1 (which appears on page 2 of the Petition), it appears that the remaining allegations in Paragraph 4 are directed toward the operations of BellSouth Corporation. BellSouth Corporation, however, is not a party to this proceeding, and it is not the corporate entity with which IDS has been negotiating the local interconnection agreement that is the subject of this arbitration proceeding. These remaining allegations in Paragraph 4, therefore, have no relevance whatsoever to this proceeding and they require no response from BellSouth (which is expressly defined in Paragraph 4 of IDS's Petition as BellSouth Telecommunications, Inc.). In an abundance of caution, however, to the extent that the remaining allegations set forth in Paragraph 4 of the Petition are directed toward BellSouth, they are denied.

BACKGROUND

5. BellSouth admits the allegations set forth in the first three sentences of Paragraph Number 5 of the Petition. BellSouth also admits that Exhibit 1 to IDS's Petition is a letter of July 25, 2000 from Beth Shiroishi of BellSouth to Keith Kramer of IDS, and BellSouth states that the letter speaks for itself. BellSouth admits that IDS's Petition for Arbitration is timely filed with the Authority pursuant to Section 252(b)(1) of the Act and, with regard to the

allegations set forth in footnote 4 of the Petition (which appears on page 3), BellSouth does not suggest that the Authority should dismiss IDS's Petition.

6. The allegations set forth in Paragraph 6 of the Petition require no response from BellSouth and are moot in light of BellSouth's agreement that IDS's Petition for Arbitration is timely filed with the Authority pursuant to Section 252(b)(1) of the Act. In fact, the allegations set forth in Paragraphs 7 through 12 of the Petition are all moot and irrelevant in light of this agreement, and they serve no purpose other than to gratuitously cast aspersions on BellSouth. While BellSouth does not wish to engage in unnecessary wrangling over a procedural issue that simply does not exist, BellSouth feels compelled to set the record straight regarding some of the more egregious allegations set forth in these paragraphs of the Petition, and BellSouth has done so in the footnote to this Paragraph of its Response.[7]

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[7] The letter of July 25, 2000, complies with the terms of the Agreement and establishes a clear commencement of the negotiation period, giving IDS a full 160 days to negotiate. Moreover, BellSouth had attempted to negotiate a new interconnection agreement with IDS for some time before it sent this letter. BellSouth also agreed to extend the term of the Agreement for an additional 6 month period (to January 26, 2001) in order to afford IDS additional time to negotiate the new interconnection agreement.

IDS's statements that BellSouth "was unable to provide IDS with a single version of BellSouth's [standard] interconnection agreement" and that IDS could not negotiate without having the most current version of the standard agreement are simply wrong. BellSouth makes changes to its standard interconnection agreement at least on a quarterly basis. Under IDS's reasoning, therefore, negotiations could never begin because there always would be a forthcoming revised standard agreement. The fact that BellSouth revises its standard agreements periodically, however, does not hinder any CLEC's ability to negotiate an interconnection agreement with BellSouth – regardless of the document from which the negotiations start, the CLEC can negotiate regarding any different or additional terms and conditions it desires. In any event, BellSouth stood ready and willing to negotiate with IDS using the agreement originally sent to IDS on July 25, 2000. It was IDS that wanted to delay negotiations until it had what it deemed to be the "most current version" of the standard agreement.

Additionally, IDS's statement in Paragraph 15 that modifying the commencement date of negotiations is a common BellSouth practice is simply not true. BellSouth may, in certain circumstances and with agreement of both parties, extend the expiration date of existing agreements, restart the negotiations periods, or take such other action as may be acceptable to both parties. This, however, is the exception rather than the rule, and BellSouth's practice is to maintain the original commencement date for renegotiations except in rare circumstances.

Finally, in paragraphs 17 and 18 of the Petition, IDS implies that BellSouth made sweeping changes to its proposed interconnection agreement and insisted that IDS use the revised version of BellSouth's standard agreement as the starting point for negotiations. Once again, this is not true.

7. In response to Paragraph 7 of the Petition, BellSouth incorporates its Response to Paragraph 6 of the Petition, states that the Act speaks for itself, and states that no further response is required of BellSouth.

8. In response to Paragraph 8 of the Petition, BellSouth incorporates its Responses to Paragraphs 6 through 7 of the Petition, states that the 1999 Agreement speaks for itself, and states that no further response is required of BellSouth.

9. In response to Paragraph 9 of the Petition, BellSouth incorporates its Responses to Paragraphs 6 through 8 of the Petition, states that the 1999 Agreement speaks for itself, and states that no further response is required of BellSouth.

10. In response to Paragraph 10 of the Petition, BellSouth incorporates its Responses to Paragraphs 6 through 9 of the Petition, states that the 1999 Agreement speaks for itself, and states that no further response is required of BellSouth.

11. In response to Paragraph 11 of the Petition, BellSouth denies the allegations set forth in the first sentence of that Paragraph. BellSouth admits that both parties have made considerable efforts to reach mutually agreeable resolution of the eleven issues in dispute in this proceeding, and BellSouth states that it remains willing to continue attempts to settle these issues. BellSouth emphatically denies the remainder of the allegations set forth in Paragraph 11 of the Petition, and it incorporates its Responses to Paragraphs 6 through 10 of the Petition.

12. BellSouth admits that the parties had a conference call on October 17, 2000, but BellSouth denies that negotiation sessions between IDS and BellSouth commenced on that date.

First, the revisions that BellSouth makes to its standard agreement each quarter are intended to keep the agreement current as FCC and Authority orders are adopted, and these revisions usually are not voluminous. Second, BellSouth never insisted that IDS use the revised version of the standard interconnection agreement as the starting point for negotiations, and BellSouth did not otherwise delay the negotiations or make the negotiations more difficult.

BellSouth admits that the parties held negotiation sessions on October 27, November 22, and December 4, 2000, and BellSouth admits the allegations set forth in the last sentence of Paragraph 12 of the Petition. Further, BellSouth incorporates its Responses to Paragraphs 6 through 11 of the Petition.

13. BellSouth admits the allegations set forth in the first sentence of Paragraph 13 of the Petition, and BellSouth admits that both parties have spent considerable time trying to reach mutually agreeable resolutions of the issues in dispute. BellSouth denies the remainder of the allegations set forth in Paragraph 13 of the Petition, and it incorporates its Responses to Paragraphs 6 through 12 of the Petition.

14. In response to Paragraph 14 of the Petition, BellSouth states that the letter of July 25, 2000 which is attached as Exhibit 1 to IDS's Petition speaks for itself. BellSouth denies the remainder of the allegations set forth in Paragraph 14 of the Petition, and it incorporates its Responses to Paragraphs 6 through 13 of the Petition.

15. BellSouth denies the allegations set forth in Paragraph 15 of the Petition, and it incorporates its Responses to Paragraphs 6 through 14 of the Petition.

16. In response to Paragraph 16 of the Petition, BellSouth incorporates its Responses to Paragraphs 6 through 15 of the Petition. To the extent that the allegations set forth in Paragraph 16 of the petition are inconsistent with those responses, they are denied.

17. In response to Paragraph 17 of the Petition, BellSouth incorporates its Responses to Paragraphs 6 through 16 of the Petition. To the extent that the allegations set forth in Paragraph 17 of the petition are inconsistent with those responses, they are denied.

18. BellSouth emphatically denies the self-serving and inaccurate allegations set forth in Paragraph 18 of the Petition, and BellSouth incorporates its Responses to Paragraphs 6 through 17 of the Petition.

DISPUTED ISSUES AND POSITIONS OF THE PARTIES

19. In response to Paragraph 19 of the Petition, and as set forth more fully below, BellSouth admits that the following eleven issues are the only issues IDS has purported to submit to the Authority for arbitration.

With regard to the remainder of the Petition, BellSouth proposes to clarify IDS's statement of the issue to the extent it is necessary to do so and to succinctly present, with a minimum of editorializing, BellSouth's position on the issue. Except where IDS has made the most outrageous statements, BellSouth will not comment upon, or even address IDS's position, since presumably IDS is entitled to present its positions as it deems appropriate. However, the Authority should disregard IDS's statements purporting to present BellSouth's positions regarding the issues in dispute. IDS has cast BellSouth's positions incorrectly in a number of instances, and has failed to fairly and fully present them in other cases. Rather than try to correct IDS's mistakes, BellSouth will simply restate its positions in a fashion intended to present its positions.

ISSUE A: Should BellSouth be allowed to use the interconnection agreement to limit its liability for negligent acts, and require indemnification from IDS for BellSouth's negligent acts that cause harm to IDS customers?

BellSouth's Position: BellSouth has proposed that each parties' liability to the other arising out of any negligent act or omission, whether in contract or tort, should be limited to a credit for the actual cost of the services or functions not performed or improperly performed. As IDS acknowledges in Paragraph 21 of its Petition, BellSouth is willing to exclude from this limitation losses resulting from gross negligence, fraudulent misrepresentation, or willful or wanton misconduct. BellSouth, however, is not willing to simply do away with any limitation of liability, and it is not statutorily obligated to do so.

ISSUE B: Should BellSouth be allowed to prohibit IDS from identifying BellSouth as the underlying source of services provided by IDS, in discussions between IDS and customers or potential customers?

BellSouth's Position: The real dispute regarding this issue appears to be whether telemarketers who sell IDS's services should be allowed to use BellSouth's name to sell IDS's services. IDS, for instance, "agrees with the general restrictions proposed for inclusion in the agreement under which each party is generally prohibited from using the name, logo, trademark, or service mark in any sales, marketing, or advertising of its telecommunications services." *See* Petition at Paragraph 31. IDS also is willing to agree to a restriction under which it would not reference BellSouth or the BellSouth network in any of its radio, television, and general circulation print media advertising. *See* Petition at Paragraph 28. Additionally, BellSouth is willing to allow IDS (or its telemarketers) to use BellSouth's name in response to a direct individual inquiry from a particular customer or potential customer regarding the source of the underlying service or the identity of a service technician.

IDS, however, makes no qualms about its position that BellSouth's provision of the services IDS provides is "an important 'selling point,'" *see* Petition at ¶30, and IDS makes it clear that it wants to use BellSouth's name in its telemarketing efforts to solicit existing or prospective customers. *See*, e.g., Petition at ¶28. Unfortunately, using BellSouth's name as a "selling point" for services IDS offers – especially in the context of telemarketing – could easily lead to customer confusion. In fact, many BellSouth customers complain that they have unintentionally switched from BellSouth's service to services provided by other companies who use BellSouth's name as a "selling point" because they thought they were dealing with BellSouth itself. BellSouth has obtained judicial relief against several companies who have – intentionally or unintentionally – created customer confusion by their use of BellSouth's name. BellSouth, therefore, is unwilling to agree to language which would lead to customer confusion by permitting IDS to use BellSouth's name to sell IDS's services.

ISSUE C: Should BellSouth be required to include in the interconnection agreement provisions for the alternate resolution of disputes between the parties, which would include inter-company escalation provisions if good faith negotiations are not successful in resolving disputes arising under the agreement?

BellSouth's Position: BellSouth agrees that it is preferable to avoid litigation when possible. BellSouth is committed to making reasonable and good-faith efforts to resolve disputes among the parties before seeking relief before the Authority or the Courts, and BellSouth has a history of doing just that. There may be differences, however, which the parties cannot resolve among themselves, and BellSouth is unwilling to agree to terms and conditions that restrict or delay its ability to seek relief from the Authority when those differences arise.

The United States District Court of Appeals for the Eighth Circuit has ruled that the Authority is charged with the authority to resolve disputes relating to interconnection agreements. Consistent with this ruling, BellSouth's proposed language provides that disputes regarding the agreement will be resolved by the Authority. IDS, on the other hand, suggests that "in most cases" when the parties cannot agree, an alternative dispute resolution mechanism should "serve as [the parties'] sole remedy." *Petition* at ¶35. IDS, however, also proposes that "neither party would waive the right to file a complaint or otherwise seek enforcement of the agreement by the Authority or the FCC, with regard to any regulated public service obligations . . . ." *Id.* at ¶37. IDS further states that under its proposal, "nothing in the agreement would limit or expand the authority or jurisdiction of the Authority regarding telecommunications matters within the state." *Id.* Suffice it to say that IDS's proposal seems to contradict itself in many respects.

Additionally, IDS's proposal provides that if initial negotiations over disputed matters are not successfully resolved within 14 days, the dispute must be submitted to an Inter-Company Dispute Resolution Board. *See* Exhibit 2 to IDS's Petition at Page 13, §12.3.2. The proposal, however, is silent as to how disputes that cannot be resolved by this Board are resolved. Again, IDS's proposal creates more questions than answers. In any event, BellSouth is unwilling to agree to language which arguably allows a deadlock by this Board to be the "sole remedy" for disputes under the agreement.

ISSUE D: Should BellSouth be required to provide combined network elements that are ordinarily combined in the BellSouth network even if those combined network elements were not already combined at the particular location at which the network elements are requested by IDS?

BellSouth's Position: "Currently combines" means that the network elements that the CLEC wants to purchase from BellSouth as a UNE combination are, in fact, physically combined and providing service to the customer that IDS wishes to serve. Under the 1996 Act, as construed by the courts and the FCC, there is no legal basis or need for the Authority to adopt an expansive view of "currently combined" so as to obligate BellSouth to combine elements for CLECs. As the FCC made clear in its Third Report and Order, Rule 51.315(b) applies to elements that are "in fact" combined. The FCC declined to adopt the definition of "currently combined" that would include all elements "ordinarily combined" in the incumbent's network, which is the essence of IDS's position on this issue.

ISSUE E: Should BellSouth be allowed to restrict the way in which two competitive LECs provide services over the same loop, by imposing the rule that BellSouth will deliver a loop and a port to the collocation space of either LEC only in those situations where the loop and the port are stand alone network elements, but will not support line sharing in situations in which the competitive LECs are using UNE-P combinations?

BellSouth's Position: As is evident from the language IDS used in framing the issue, this issue addresses situations "in which two competitive LECS provide services over the same loop . . . ." In these situations, one carrier provides voice service over a portion of the frequency on the loop and another carrier provides data services over another portion of the frequency on the loop, and neither of these carriers is BellSouth. In a recent Order, the FCC noted that is has "characterized this type of arrangement as 'line splitting,' rather than line sharing." *See In Re: Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Order No. FCC 01-26 in CC Docket Nos. 98-147, 96-98 (Released January 19, 2001) at ¶17. Thus while IDS mistakenly refers to this issue as a "line sharing" issue, BellSouth will address it as what it is – a line splitting issue.

In a line splitting arrangement, a carrier using a UNE-platform to provide voice service to one of its customers would "split" the loop and allow another carrier (other than BellSouth) to provide data services to the same customer over the higher frequency portion of the same loop. BellSouth does not oppose this type of arrangement. In fact, BellSouth supports line splitting arrangements.

When a carrier with a UNE-P combination enters into a line splitting arrangement with another carrier, however, the loop that had been serving the customer is no longer combined with the port that had been serving the customer. Instead, central office work is performed to run the loop to a splitter which splits the frequency used to provide the voice service from the frequency used to provide the data services. From there, one connection carries the voice frequency to the port on the switch, while another connection carries the data frequency to a point on the CLEC's data network.

Under IDS's proposal, the carrier that had been providing voice services to the customer would simply continue to pay UNE-P rates. As explained above, however, in line splitting situations the loop that had been part of the UNE-P combination is unbundled. IDS, therefore, should be required to pay the cost-based non-recurring charges associated with handling the service order, unbundling the loop, running the loop to the splitter, and then running the voice frequency from the splitter to the port on BellSouth's switch. Additionally, once the loop is unbundled in this manner, IDS should be required to pay UNE rates for the loop and UNE rates for the port, rather than the UNE-P rates for a loop-port combination. BellSouth acknowledges that with regard to the recurring rates IDS pays, this will make no practical difference to the extent that the UNE-P rates currently are derived by simply adding the UNE loop rate to the UNE port rate. As a conceptual matter, however, the distinction is critical and it could result in practical difference if the manner in which UNE-P rates are derived is altered in the future.

BellSouth's position is supported by the FCC's January 19, 2001 Order, in which the FCC acknowledged that the incumbent LEC must perform central office work in order "to deliver unbundled loops and switching to a competing carrier's physically or virtually collocated splitter that is part of a line splitting arrangement." *Id.* at ¶20. The FCC went on to say that:

> [I]ncumbent LECs have an obligation to permit competing carriers to engage in line splitting using the UNE-platform where the competing carrier purchases the entire loop and provides its own splitter. For instance, if a competing carrier is providing voice service using the UNE-platform, it can order an unbundled xDSL-capable loop terminated to a collocated splitter and DSLAM equipment and unbundled switching combined with shared transport, to replace its existing UNE-platform arrangement with a configuration that allows provisioning of both data and voice services. As we described in the *Texas 271 Order*, in this situation, the incumbent must provide the loop that was part of the existing UNE-platform as the unbundled XDSL-capable loop, unless that loop was used for the UNE-platform is not capable of providing xDSL service.

Id. at ¶19 (emphasis added). IDS, therefore, is not entitled to UNE-P rates when it is a party to a line splitting arrangement with another carrier.

ISSUE F **If IDS is unable to order combined network elements such as EEL combinations (when electronic ordering is available) or UNE-P combinations because of failures in BellSouth's electronic ordering systems, should BellSouth be required to accept such orders on a resale or special access basis (as appropriate) and charge IDS the lower rates for EEL and UNE-P combinations?**

BellSouth's Position: BellSouth currently provides electronic ordering systems which allow CLECs like IDS to order various services, including UNE-P combinations. As is the case with any electronic system, problems arise from time to time and CLECs are temporarily unable to use these systems to order services or network elements. IDS contends that any time it is unable to use these electronic systems to order service or network elements, BellSouth should be required to accept such orders on a resale or special access basis and charge IDS the lower rates for EEL and UNE-P combinations. IDS apparently seeks this result regardless of the duration of the systems problems and regardless of whether work-around solutions are available.

BellSouth is unwilling to agree to this unnecessary and inflexible proposal. Instead, when problems with the electronic systems prevent IDS from placing electronic orders that BellSouth normally accepts, BellSouth will accept manual orders from IDS, work those manual orders, and charge IDS the lower rates applicable to electronic orders. This is a fair, equitable, and reasonable solution to the issue presented by IDS.

ISSUE G: **In circumstances where IDS has requested an EEL combination but BellSouth is unable to provision that combination, should BellSouth be required to provide an equivalent special access service to IDS at the same rate as the EEL combination that BellSouth was unable to provision? Also, should BellSouth be required to convert IDS to the EEL combination and waive all conversion charges?**

BellSouth's Position: The phrase "is unable to provision that combination" in the language of IDS's statement of this issue is not clear. To the extent that this language is intended to reflect the situation in which IDS has requested an EEL combination that is not already combined in BellSouth's network, it appears that IDS trying to force BellSouth to provide a combination that BellSouth simply is not required to provide. BellSouth recognizes its obligation not to break apart UNEs that are already combined in the network, and BellSouth complies with that obligation. BellSouth, however, is not required to combine a loop and dedicated transport that is not already combined in the network in response to IDS's order for an EEL. BellSouth objects to any attempt by IDS to require BellSouth to provide EELs in circumstances in which it is not required to do so.

Alternatively, the phrase "is unable to provision that combination" could be intended to reflect the situation in which IDS has attempted to electronically order an EEL combination that is already combined in BellSouth's network but is unable to do so because of problems with BellSouth's electronic ordering systems. To the extent that this is the situation addressed by this Issue, BellSouth is unwilling to agree to IDS's inflexible and unnecessary proposal. Instead, when problems with the electronic systems prevent

IDS from placing electronic orders, BellSouth will accept manual orders from IDS, work those manual orders, and charge IDS the lower rates applicable to electronic orders. This is a fair, equitable, and reasonable solution to the issue presented by IDS.

ISSUE H: Should BellSouth be required to render bills to IDS within one year of providing services to IDS, except when meet point billing is involved or charges are incorrectly billed due to errors in or omission of customer provided data? If BellSouth renders a bill to IDS for services provided more than 30 days prior to the rendering of the bill, should BellSouth be required to give IDS the option of paying the bill in equal, interest-free monthly installments over a six-month period?

BellSouth's Position: BellSouth is committed to providing all CLECs, including IDS, with accurate and timely invoices for services provided under the interconnection agreements. From time to time, however, there are instances when this billing may be delayed. For example, BellSouth often relies on usage records from a third party to bill IDS for services jointly provided by that third party (via meet point billing procedures) – records that BellSouth may not receive for an extended period of time after the date of the usage in question. In these and other situations it may be necessary to bill for services many months after the date of the calls being placed. BellSouth's position is that the only limiting factor should be the applicable laws and commission rules set out in each state.

Additionally, BellSouth cannot agree to IDS's request for a six-month, interest-free loan any time it takes more than 30 days for a charge to appear on IDS's bill. In the normal course of business there are many situations where a service provided by a CLEC may take more than 30 days to be billed. As an example, a service request from IDS may be completed on the close of the billing period being used to bill IDS, and the charges for that service may not appear on IDS's bill until the next billing period (more than thirty days later). IDS should not be allowed to pay the entire bill – including the charges for hundreds or even thousands of service requests as well as any usage or other charges on that same bill – over the course of six months without interest. That is patently unfair and unreasonable.

IDS can receive, on a daily basis, information on each service order it has placed with BellSouth for resold services, unbundled network elements, or interconnection facilities as well as the customer service records for its accounts. Additionally, BellSouth makes available to IDS information which provides IDS with a record of each call made by its end users when those end users are served by IDS using resale services or unbundled network elements provided by BellSouth. With these sources of data, there is no reason for IDS not to know the amount of billing it should expect from BellSouth.

ISSUE I: **Before BellSouth discontinues services to IDS, should BellSouth be required to make commercially reasonable efforts to work with IDS to avoid the suspension or termination of service? In providing that it will have authority to suspend or terminate service for nonpayment of undisputed amounts, should BellSouth be permitted to include provisions in the agreement that narrowly define what constitutes a bona fide dispute over amounts owed by IDS?**

BellSouth's Position: Prior to suspending or terminating a CLEC's service, BellSouth notifies the CLEC of the reasons that are prompting the action, informs the CLEC of any steps that may be taken to correct any problems, and indicates a specific date after which service will not be provided. Whenever possible, BellSouth works with CLECs to make arrangements for the payment of past-due bills. BellSouth, however, is unwilling to finance a CLEC's business indefinitely by providing service when the CLEC does not pay its undisputed bills.

Nor is BellSouth willing to agree that a CLEC may evade disconnection of service for non-payment of its bills by making vague and unsubstantiated claims of billing disputes. Instead, BellSouth proposes to define a bona fide billing dispute as

> a dispute of a specific amount of money actually billed by BellSouth. The dispute must be clearly explained by IDS and supported by written documentation from IDS, which clearly shows the basis for IDS's dispute of charges. The dispute must be itemized to show the Q account and earning number(s) against which the disputed amount applies. By way of example and not limitation, a billing dispute will not include the refusal to pay all or part of a bill or bills when no written documentation is provided to support the dispute, nor shall a billing dispute include the refusal to pay other undisputed amounts owed by IDS until the dispute is resolved. Claims by IDS for damages of any kind will not be considered a billing dispute.

Requiring a CLEC to explain and document the reasons it disputes amounts appearing on its bill is fair and reasonable.

ISSUE J: Should BellSouth be allowed to require IDS to submit to BellSouth for approval certain advertising material relating to the interconnection agreement?

BellSouth's Position: BellSouth has proposed unremarkable contract language which protects its trademarks, brands, and other intellectual property rights. IDS, however, objects to language which states that IDS will not use "BellSouth's corporate or trade names, logos, trademarks or service marks" in its advertising materials without BellSouth's permission. There is no valid basis for IDS's apparent argument that it may use BellSouth's name and marks in IDS's advertising materials without BellSouth's permission.

ISSUE K: In connection with its provision of unbundled local circuit switching, should BellSouth be required, for billing purposes, to re-rate as local calls any calls that originate and terminate in an extended local calling area, and that cannot initially be identified as a local call by BellSouth's switching facilities?

BellSouth's Position: IDS's petition states that when BellSouth provides extended local calling areas to its end users, "its billing department rerates extended area calls because its switch is programmed to rate those calls as intraLATA toll calls." The same switch that rates these calls as intraLATA toll calls when they are placed by BellSouth's end users also rates these calls as intraLATA toll calls when they are placed by IDS's end users. Therefore, IDS's calls in similar situations are treated by the switch in question in exactly the same manner as similar BellSouth calls. Contrary to IDS's assertions in Paragraph 109 of the Petition, therefore, BellSouth is not "refusing to provide IDS with all of the features, functions, and capabilities of local switching." Instead, BellSouth provides IDS with the same features, functions, and capabilities of local switching that it provides itself. How BellSouth bills those customers for those calls is a matter between BellSouth and its customers, just as IDS's billing of those calls to its customers is a matter to be addressed solely by IDS.

20. Any specific allegations contained in IDS's Petition that BellSouth has not specifically admitted are hereby denied.

WHEREFORE, BellSouth respectfully requests that the Authority enter an order in favor of BellSouth on each of the issues set forth herein, and grant BellSouth such other relief as the Authority deems just and proper.

Respectfully submitted, this 30th day of January, 2001.

BELLSOUTH TELECOMMUNICATIONS, INC.

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CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2001, a copy of the foregoing document was served on the parties of record, via the method indicated:

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