

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

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Docket No. 031125-TP  
Filed: August 12, 2004

REBUTTAL TESTIMONY AND EXHIBIT

OF

ELIZABETH FEFER

ON BEHALF OF

IDS TELCOM, LLC.

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6   **AUGUST 12, 2004**

7

8

9   **Q.    PLEASE STATE YOUR NAME AND THE PARTY YOU ARE**  
10 **REPRESENTING.**

11   A.   My name is Elizabeth Fefer. I previously filed Direct Testimony on behalf of  
12   IDS in this proceeding.

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

16   A.   The purpose of my Rebuttal Testimony is to address the statements,  
17   implications, and assertions contained in the Direct Testimonies of BellSouth  
18   witnesses Kathy K. Blake and David F. Melton. My Rebuttal Testimony relates to  
19   the Settlement "Q" Account dispute (Issue 2).

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1 Q. BEGINNING ON PAGE 2 OF HER DIRECT TESTIMONY, MS. BLAKE  
2 CONTENDS THAT BELL SOUTH PROPERLY TERMINATED IDS' ACCESS TO  
3 LENS FOR FAILURE TO PAY UNDISPUTED AMOUNTS. DO YOU AGREE?

4 A. No. In fact, Ms. Blake's testimony practically admits that BellSouth  
5 terminated IDS' access to LENS over *disputed* amounts. In her Direct  
6 Testimony, Ms. Blake recites that Bellsouth had not received payment for "certain  
7 services," and refers to Exhibit KKB-1. Page 1 of Exhibit KKB-1 is a December  
8 3, 2003 notice stating that if IDS does not pay \$808,188.95 by December 18,  
9 2003 for various resale accounts, BellSouth will interrupt services to IDS. Page 2  
10 of Exhibit KKB-1 is virtually the same as page 1, but demands an additional  
11 payment of \$7,664,303.80 on various UNE accounts. In total, Exhibit KKB-1  
12 demanded \$8,472,492.75 from IDS by December 18, 2003. These amounts  
13 represent BellSouth's calculation of the total resale and UNE *billing disputes*  
14 between the parties as of December 3, 2003; including the Settlement "Q"  
15 Account, DUF and "Market-Based Rate" disputes raised in this docket.

16 All of the amounts identified by Ms. Blake in Exhibit KKB-1 had been  
17 disputed by IDS many times over. However, in my experience, when BellSouth  
18 rejects a billing dispute, its practice is to unilaterally claim all associated amounts  
19 to be "undisputed," and therefore due. This practice requires IDS to continually  
20 raise the same disputes over and over again to avoid a termination of services.  
21 BellSouth's practice contradicts both the Prior Agreement and Current  
22 Agreement. They state that when a billing dispute remains unresolved, either  
23 party may take the dispute to the Commission for resolution. Both agreements

1 also provide that BellSouth may not terminate IDS' services for failing to pay  
2 disputed amounts. Ms. Blake's Direct Testimony and Exhibit KKB-1 demonstrate  
3 BellSouth's way of avoiding its obligations under the interconnection agreements  
4 by simply declaring disputed amounts "undisputed," and then threatening to deny  
5 IDS services for failing to pay such disputed amounts. Contrary to Ms. Blake's  
6 position, BellSouth's practice of unilaterally declaring billing disputes to be  
7 undisputed violates both the Prior Agreement and Current Agreement.

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10 **Q. ON PAGE 3 OF HER DIRECT TESTIMONY, MS. BLAKE CONTENDS**  
11 **THAT BELLSOUTH DID NOT TERMINATE IDS' ACCESS TO LENS SOLELY**  
12 **FOR FAILURE TO PAY THE DISPUTED SETTLEMENT "Q" ACCOUNT. DO**  
13 **YOU AGREE?**

14 A. No. The two letters which Ms. Blake attached as Exhibit KKB-1, threaten  
15 to terminate services if IDS' did not pay BellSouth \$8,472,492.75 by December  
16 18, 2003, for resale and UNE accounts that IDS had properly disputed over a  
17 period of more than one year, but which BellSouth had repeatedly and  
18 unilaterally declared "undisputed." IDS did not pay the approximately \$8.5 million  
19 demanded by BellSouth in Exhibit KKB-1, and in fact is currently litigating a  
20 substantial part of that dispute as part of the Settlement "Q" Account, DUF and  
21 "Market-Based Rate" disputes in this docket.

22 BellSouth terminated IDS' access to LENS for one reason only: IDS'  
23 refusal to pay the amounts disputed under the Settlement "Q" Account. On the

1 afternoon of Friday, December 19, 2003, Rodger Edmonds (BellSouth Collection  
2 Manager) telephoned me and said that BellSouth would suspend IDS' access to  
3 LENS unless IDS immediately paid \$611,627.42 under the Settlement "Q"  
4 Account. I explained to Rodger that the Settlement "Q" Account was disputed  
5 and that BellSouth could not explain how the opening balance was increased  
6 beyond the \$2.475 million to which the parties agreed in the Settlement  
7 Amendment. I also explained to Rodger that he was calling me on a Friday  
8 afternoon just before the Christmas holidays, arguably the busiest period of time  
9 during the year; that people at both IDS and BellSouth had plans to be gone for  
10 the holidays; and that disconnecting LENS at that time was going to cause IDS  
11 tremendous problems, especially when the Settlement "Q" Account was  
12 obviously in dispute. Rodger said that he could not do anything and had been  
13 instructed to deny IDS access to LENS.

14 After our telephone conversation, I sent Rodger an e-mail memorializing  
15 our conversation, which was attached as page 15 of 19 in Exhibit No. \_\_\_\_ (EF-4)  
16 to my Direct Testimony. My December 19, 2003 e-mail to Rodger Edmonds  
17 (sent at 4:09 p.m.) stated:

18 *Rodger:*

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*As we discussed just a few minutes ago, you know that the Q account balance is wrong and that the settlement agreement says that the beginning balance should have only been \$2,475,000. You also cannot explain to me how the balance in the Q account was originally set up at over \$3 million, and that BellSouth does not care that there is a difference or a mistake in the Q account. According to you, since we have already discussed this issue in the past, the \$611,000 is now undisputed. You also told me that despite what is an obvious mistake by BellSouth, you were told to shut down IDS' access to LENS unless we send you the \$611,000.*

1           *You made no sense at all. If LENS is down all weekend, you will*  
2           *cause IDS allot of damage. I ask that you immediately restore IDS'*  
3           *access to LENS.*

4           *Angel Leiro has asked me to send a copy of this memo to*  
5           *Michael Barrett of the Florida PSC.*

6  
7           *Elizabeth.*  
8

9           At approximately 5:36 p.m. that same day (12/19/03), and after BellSouth had  
10          denied IDS access to LENS, Rodger Edmonds sent me the following e-mail  
11          response (Exhibit No.\_\_\_\_(EF-4), page 15 of 19) stating:

12           *Elizabeth:*

13  
14           *Regarding our earlier conversation, BellSouth has discussed*  
15           *and explained the bill in question numerous times. BellSouth has*  
16           *not been able to identify any mistakes in the billing on the account*  
17           *in question. Notices were sent that have expired. IDS has not paid*  
18           *the undisputed portion of the bill. Lens will be restored when we*  
19           *receive the full undisputed charges, \$611,627.*

20  
21           *Rodger Edmonds*  
22           *Customer Service Manager*  
23           *BellSouth – ICS Billing & Collections*  
24

25          As is clear from my e-mail and Rodger Edmonds' response,  
26          BellSouth denied IDS access to LENS for failing to pay "\$611,627" which  
27          BellSouth unilaterally declared was undisputed "on the account in  
28          question" (the Settlement "Q" Account). Clearly, BellSouth terminated  
29          IDS' access for one reason only: IDS' refusal to pay the disputed  
30          Settlement "Q" Account.

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1 Q. IN THEIR DIRECT TESTIMONY, MS. BLAKE (PAGE 3) AND MR.  
2 MELTON (PAGE 10) CONTEND THAT BELL SOUTH DENIED IDS ACCESS  
3 TO LENS FOR FAILING TO PAY OTHER AMOUNTS UNRELATED TO THE  
4 SETTLEMENT "Q" ACCOUNT. DO YOU AGREE?

5 A. Absolutely not. As is clear from my December 19, 2003 e-mail exchange  
6 with Rodger Edmonds, BellSouth terminated IDS' access to LENS only over the  
7 Settlement "Q" Account.

8 Ms. Blake's statement that BellSouth terminated access to LENS for  
9 failing to pay approximately \$33,000 in past due undisputed resale billings is  
10 false. In subsequent communications with Rodger Edmonds, it was determined  
11 that the approximate \$33,000 referenced by Ms. Blake was actually a mistake on  
12 BellSouth's part in failing to acknowledge recent pending disputes.

13 As for the \$1.8 million to which Ms. Blake (page 3) and Mr. Melton (page  
14 10) refer, those payments were on BellSouth's then current billings to IDS. They  
15 had nothing to do with any of the amounts reflected on Exhibit KKB-1. These  
16 amounts were actually for recent billings, for which BellSouth could not even take  
17 action under the Current Agreement for at least another month. Thus (as will be  
18 explained below), they could not possibly have been used by BellSouth to deny  
19 IDS access to LENS on December 19, 2003.

20 BellSouth's resale and UNE billings are typically dated on the 17<sup>th</sup> day of  
21 each month. But because it takes as much as two weeks or more beyond that  
22 date for BellSouth to send its bills to IDS, it is impossible for IDS to audit and pay  
23 those bills within 30 days of the billing date. IDS typically pays its bills within 30

1 to 35 days of receipt. When BellSouth claims these payments are late, it  
2 conveniently ignores the role of its own inability to send IDS bills timely.

3 BellSouth denied IDS access to LENS on December 19, 2003 and did not  
4 restore access until the following week-- after IDS had filed its complaint in this  
5 docket. After the Christmas holidays (and after BellSouth had restored IDS'  
6 access to LENS), the parties held an informal telephone conference call with  
7 FPSC staff to attempt to resolve the dispute. At that time, BellSouth's attorney.  
8 (Mary Jo Peed) stated that IDS owed BellSouth undisputed billings that were  
9 due. Ms. Peed's reference was to BellSouth's November 2003 UNE/Resale bills,  
10 which BellSouth claimed were past due as of December 17, 2003, but which,  
11 because those bills were again late, IDS would normally pay during the first week  
12 of January 2004. As a result of the telephone call, the parties agreed to have a  
13 face-to-face meeting after the New Year to discuss the Settlement "Q" Account  
14 dispute.

15 On January 2, 2004 the parties met to discuss not only the Settlement "Q"  
16 Account, but other pending disputes as well. During that meeting, neither  
17 Rodger Edmonds nor David Melton could explain why the Settlement "Q"  
18 Account was opened at the higher amount. At the same time, the parties  
19 discussed ongoing disputes, including the current UNE and Resale disputes  
20 arising from the November 2003 bills. The \$1 million paid by IDS on January 2,  
21 2004 was for BellSouth's November 2003 bills and normally would have been  
22 paid by IDS later that week. Moreover, the \$800,000 payment sent on January  
23 15, 2004 also was paid for and applied to other amounts not covered by either



1 the Settlement "Q" Account or any of the amounts in Exhibit KKB-1. Since these  
2 payments of \$1.8 million in January 2004 had nothing to do with either the  
3 Settlement "Q" Account, or any other amounts identified in Exhibit KKB-1,  
4 BellSouth's references to these payments are a disingenuous attempt to create a  
5 justification (after the fact) for having denied IDS access to LENS.

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8 **Q. ON PAGE 2 OF MR. MELTON'S DIRECT TESTIMONY, HE CONTENDS**  
9 **THAT IDS ROUTINELY PAYS ITS BILLS LATE AND RAISES UNSUPPORTED**  
10 **DISPUTES OR DISPUTES PREVIOUSLY ADDRESSED. WHAT IS YOUR**  
11 **RESPONSE?**

12 A. **As I stated** earlier, IDS typically pays the undisputed portion of BellSouth's  
13 bills within 30 to 35 days of receipt. However, it usually takes two weeks or more  
14 for BellSouth to send out its bills. Mr. Melton conveniently ignores the fact that  
15 the timing of IDS' payment is a function of BellSouth's own inability to send out  
16 timely bills.

17 With respect to billing disputes, IDS has raised only those disputes that  
18 are supported by the interconnection agreement, regulatory rulings, and/or  
19 similar disputes resolved against BellSouth in litigation between BellSouth and  
20 other CLECs. Contrary to Mr. Melton's statement, IDS does not raise disputes  
21 simply to avoid its payment obligations.

22 With respect to disputes previously addressed by the parties, Mr. Melton is  
23 correct that IDS must continue to raise such disputes because of BellSouth's

1 standard practice of unilaterally declaring unresolved billing disputes to be  
2 “undisputed.” However, this problem is one of BellSouth’s own making, and one  
3 that violates the parties’ Current Agreement.

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6 **Q. ON PAGES 4 AND 5 OF HIS DIRECT TESTIMONY, MR. MELTON**  
7 **PURPORTS TO DESCRIBE THE SETTLEMENT AMENDMENT. DO YOU**  
8 **AGREE WITH HIS DESCRIPTION?**

9 A. No. I properly described the Settlement Amendment in my prior  
10 Direct Testimony. One important aspect of Mr. Melton’s description of the  
11 Settlement Amendment with which I strongly disagree appears on page 5 of his  
12 Direct Testimony. Under point 5, Mr. Melton says, *“This \$925,000 credit resolved*  
13 *the billing disputes in Paragraph 4 of the Settlement Agreement.”* This statement  
14 is absolutely false. In fact, I remember this very discussion taking place when  
15 the parties were negotiating the Settlement Amendment. At that time (during  
16 January–March 2002), IDS specifically did not and would not agree to reduce  
17 any part of the disputes identified in paragraph 4 of the Settlement Agreement.

18 BellSouth drafted the Settlement Amendment. There is nothing in the  
19 Settlement Amendment or in any correspondence between the parties, which  
20 even remotely suggests that IDS ever agreed that the \$925,000 credit was the  
21 total credit for those disputes under paragraph 4 of the Settlement Agreement. In  
22 fact, if you consider (1) the Settlement Amendment specifically states that all  
23 prior interest and late payment charges through February 2002 will be waived

1 and (2) through December 2001, such charges totaled \$819,143.00 (see Exhibit  
No.\_\_\_\_\_(EF-6) to Direct Testimony), Mr. Melton's interpretation of the  
3 Settlement Amendment makes no sense. Apparently, Mr. Melton claims that IDS  
4 agreed to waive all other disputes under paragraph 4 of the Settlement  
5 Agreement except for interest and late payment charges. This position is  
6 ridiculous, particularly when you consider that during our attempts to resolve the  
7 Settlement "Q" Account dispute, Mr. Melton, Mr. Edmonds and BellSouth tried  
8 their best to explain where IDS received the very credits that Mr. Melton now  
9 claims IDS waived (i.e., all of the credits due under paragraph 4 of the Settlement  
10 Agreement).

11 As stated in the Settlement Amendment, the \$925,000 credit was an  
12 amount that BellSouth had previously allowed IDS to withhold from IDS' February  
13 2002 payments to BellSouth, and nothing more. The intent of the Settlement  
14 Amendment was to eliminate and "zero out" all past due amounts as of March  
15 25, 2002. The parties were to arrive at a zero "balance" by applying to the  
16 settlement amount all the credits due under paragraph 4 of the Settlement  
17 Agreement (the erroneous back-billing amounts, amounts billed without  
18 documentation, and all interest and late payment charges through February  
19 2002). That process yielded a balance of \$2,475,000 to be transferred to the  
20 Settlement "Q" Account. Clearly, what happened is that when BellSouth  
21 implemented the Settlement Amendment, it only applied credits of \$925,000.  
22 Then, instead of resetting the Settlement "Q" Account balance by crediting the  
23 remaining items in paragraph 4 of the Settlement Agreement, BellSouth simply

1 added those amounts to the Settlement "Q" Account, thus unilaterally raising the  
2 opening balance to approximately \$3.2 million.

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5 **Q. ON PAGES 5 AND 6 OF MR. MELTON'S DIRECT TESTIMONY, HE**  
6 **CLAIMS THERE WERE FURTHER AMENDMENTS TO THE SETTLEMENT**  
7 **AGREEMENT AND SETTLEMENT AMENDMENT. DO YOU AGREE?**

8 A. No. Based upon my "back-office" involvement in the Settlement  
9 Amendment, subsequent discussions with various BellSouth representatives  
10 (including Mr. Melton), and my reconstruction of the accounts, I can say  
11 conclusively that there were no further amendments to either the Settlement  
12 Agreement or Settlement Amendment (I do not consider the two month delay in  
13 payments to be an amendment, since IDS paid all additional interest and the  
14 agreements already allowed this to occur without the need of an amendment).

15  
16  
17 **Q. ON PAGES 6, 7 AND 8 OF MR. MELTON'S DIRECT TESTIMONY, HE**  
18 **CLAIMS THAT BOB HACKER AGREED TO INCREASE THE OPENING**  
19 **BALANCE OF THE SETTLEMENT "Q" ACCOUNT TO \$3,232,266. DO YOU**  
20 **AGREE?**

21 A. No. I worked closely with Bob Hacker on the Settlement Amendment and  
22 its implementation. I compiled and/or supervised most (if not all) of the  
23 preparation of information and data used in the Settlement Agreement and

1 Settlement Amendment. Bob Hacker left IDS in mid-December 2003, before  
2 BellSouth denied IDS access to LENS. During the entire period from the time the  
3 Settlement "Q" Account was created until the day he left IDS, Bob Hacker never  
4 stated, intimated or advised me of any agreement of the kind Mr. Melton now  
5 claims.

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7

8 **Q. WHAT ABOUT EXHIBIT DM-4, DESCRIBED BY MR. MELTON AS AN**  
9 **E-MAIL FROM MR. HACKER?**

10 A. I have never seen that e-mail before. During the months of conversations  
11 before and after the filing of this docket, and in countless discussions and  
12 correspondence with Maxine Alagar, David Melton, Rodger Edmonds, and others  
13 at BellSouth, nobody at BellSouth ever mentioned or provided IDS a copy of that  
14 document. Moreover, even when the FPSC Staff auditor was looking into the  
15 Settlement "Q" Account, she repeatedly advised that BellSouth had never  
16 provided any documentation to support its claim that there ever was an  
17 agreement to increase the opening balance of the Settlement "Q" Account.  
18 Furthermore, in the numerous e-mails between IDS and BellSouth on the subject  
19 of the discrepancy in the balance of the Settlement "Q" Account that I have  
20 attached to my Direct Testimony as Exhibit No. \_\_\_\_\_(EF-3), BellSouth never  
21 mentioned the e-mail labeled as Exhibit DM-4 or any such alleged agreement.  
22 More important than BellSouth's prior silence on the subject, however, is the fact

1 that Mr. Hacker's actions and statements before and after the date of Exhibit DM-  
2 4 refute the notion that he accepted the higher Settlement "Q" Account balance.

3

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5 **Q. PLEASE EXPLAIN.**

6

7 A. Mr. Melton contends that Exhibits DM-6 and DM-7, a 4/10/02 e-mail  
8 exchange between himself and Bob Hacker, support his claim. They do not. At  
9 12:23 p.m. Mr. Melton sent Bob Hacker a spreadsheet of the balances  
10 transferred to the Settlement "Q" Account (Exhibit DM-6). At 3:50 p.m. Bob  
11 Hacker responded, "Thanks" (Exhibit DM-7). Mr. Melton claims that this proves  
12 that Bob Hacker agreed to the inflated opening balance. However, the obvious  
13 purpose of this e-mail was simply to acknowledge receipt of the file. In an  
14 internal e-mail later that same afternoon, Bob Hacker asked Diane O'Donnell (of  
15 IDS) to double check the opening balance, and observed that the amount  
16 transferred may not have included other credits due (Exhibit No.\_\_\_\_(EF-4), at  
17 page 3 of 19). On May 28, 2002, Bob Hacker forwarded to BellSouth attorney  
18 Leah Cooper my e-mail of 5/28/02, in which I asked for an explanation as to why  
19 the opening balance of the Settlement "Q" Account was wrong (Exhibit  
20 No.\_\_\_\_(EF-4), at page 4 of 19). On June 11, 2002, Bob Hacker sent Claude  
21 Morton (BellSouth) an e-mail asking that the parties spend some time to confirm  
22 the Settlement "Q" Account balance (Exhibit No.\_\_\_\_(EF-4), at page 5 of 19).

1 David Melton claims that his Exhibit DM-4 shows that Bob Hacker sent  
2 Maxine Alagar an e-mail in which Mr. Hacker supposedly agreed to a higher "Q"  
3 Account opening balance of \$3,232,266. However, later messages disprove Mr.  
4 Melton's claim. In an e-mail exchange on the very next day (June 13, 2003, at  
5 3:02 p.m.), Maxine Alagar sent Bob Hacker an e-mail claiming that the balance of  
6 the Settlement "Q" Account contained \$720,315.64 of late payment charges  
7 (which under the Settlement Amendment were supposed to be waived) (Exhibit  
8 No.\_\_\_\_(EF-4), at page 6 of 19). Nine minutes later, Bob Hacker told Ms  
9 Alagar that I would check the determination of finance charges (Exhibit  
10 No.\_\_\_\_(EF-4), at page 6 of 19). Ms. Alagar's reference to \$720,315.64 in late  
11 payment charges can only refer to the late payment charges that BellSouth  
12 agreed to waive in the Settlement Amendment. Of course, it has always been  
13 my position that BellSouth caused the entire Settlement "Q" Account dispute  
14 simply by failing to provide all of the agreed credits. Coincidentally, that amount  
15 of approximately \$720K is close to the amount of credits that BellSouth failed to  
16 provide IDS as determined in my Direct Testimony. As for the June 24, 2003 e-  
17 mail attached as Exhibit DM-5, it appears to me that this e-mail only attempts to  
18 synchronize both IDS' and BellSouth's understanding of the Settlement "Q"  
19 Account for further analysis.

20 On September 10, 2003, Bob Hacker sent Maxine Alagar an e-mail in  
21 which he clearly advised Ms. Alagar that IDS overpaid the Settlement "Q"  
22 Account and that *BellSouth's balances were wrong* (Exhibit No.\_\_\_\_(EF-4), at  
23 page 8 of 19). On September 11, 2003, Bob Hacker then forwarded to Ms.

1 Alagar, an e-mail containing my analysis of the Settlement "Q" Account, which  
2 clearly shows that the opening balance was disputed (Exhibit No.\_\_\_\_(FF-4), at  
3 page 9 of 19). In e-mail exchanges dated October 1, 2003, Ms. Alagar  
4 acknowledged to Bob Hacker that, after some analysis, the parties had  
5 determined that the amount of the initial transfer is where the problem exists  
6 (Exhibit No.\_\_\_\_(EF-4), at page 11 of 19). On October 6, 2003, there was  
7 another e-mail exchange between Bob Hacker and Ms. Alagar in which it is clear  
8 that Bob Hacker's position is that "\$2.4xx million" was supposed to the opening  
9 balance of the Settlement "Q" Account (Exhibit No.\_\_\_\_(EF-4), at page 12 of 19).  
10 Finally, on October 15, 2003, Bob Hacker sent Ms. Alagar a letter which clearly  
11 and unequivocally states that the opening Settlement "Q" Account balance was  
12 wrong (Exhibit No.\_\_\_\_(EF-4), at page 14 of 19).

13 Finally, I would also note that Mr. Melton refers to an April 8, 2002 e-mail  
14 from Leah Cooper in which it appears that Leah Cooper and Bob Hacker  
15 discovered a \$68,000 discrepancy in the \$2,475,000 million amount to be  
16 transferred to the Settlement "Q" Account (Exhibit DM-8). Significantly, Ms.  
17 Cooper, BellSouth's attorney, confirmed that the opening balance was to consist  
18 of the \$2.475 million plus the \$68K discrepancy. Although Ms. Cooper sent an e-  
19 mail to Bob Hacker confirming discovery of the \$68K discrepancy, there are no  
20 subsequent e-mails from her alleging any further agreement to increase the  
21 Settlement "Q" Account balance to \$3.2 million.

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**Q. YOU MENTIONED THAT COMMENTS MR. HACKER MADE  
SUBSEQUENT TO THE DATE OF EXHIBIT DM-4 REFUTE THE CONTENTION  
THAT HE AGREED TO THE INCREASE IN THE INITIAL BALANCE OF THE Q  
ACCOUNT. CAN YOU ELABORATE?**

A. Yes. While BellSouth has only now provided Exhibit DM-4, BellSouth's more general contention that IDS somehow agreed to a higher balance is not new, and along the way IDS took measures to defend against the claim. While Mr. Hacker no longer works for IDS, in March 2004-- after he left IDS' employ -- Mr. Hacker provided IDS with an affidavit attesting that he never agreed to any oral or written changes to either the Settlement Agreement or Settlement Amendment. Again, because it was prepared in March 2004, well prior to the appearance of DM-4, the affidavit does not address Mr. Melton's exhibit specifically. However, in the affidavit Mr. Hacker states categorically and unequivocally that he never agreed to an amendment to the original Settlement Amendment, which stipulated a beginning balance in the Q account of \$2,475,000. A copy of that affidavit is attached to this testimony as Exhibit No. \_\_\_\_\_(EF-10).

In summary, all of the correspondence and communications between the parties compels a conclusion completely contrary to that raised by Mr. Melton. Simple logic also refutes BellSouth's contention.

1 **Q. PLEASE EXPLAIN.**

2 A. The parties worked long and hard to sift through their myriad of disputes in  
3 order to distill the value that represented a negotiated, agreed amount that IDS  
4 would pay to BellSouth, and to isolate the agreed amount in a separate account  
5 to which a special payment schedule would apply while the parties continued to  
6 deal with the remaining disputes. IDS knew that the Settlement "Q" Account  
7 consisted of a balance it had agreed to pay, and that it was created for that  
8 special purpose. What incentive would IDS have had to then complicate the  
9 "agreed" account the parties had worked so hard to segregate from unsettled  
10 items by rolling into the account a number of *disputed* amounts that were subject  
11 to additional, individual dispute resolution processes? Although I do not want to  
12 accuse Mr. Melton of sponsoring a false or fabricated document in Exhibit DM-4,  
13 in light of the purpose of the Q account, the history of the parties' dealings, and  
14 Mr. Hacker's own statements before and after the date on the document, it is  
15 impossible for me to see how that document can be valid - or, if Mr. Hacker wrote  
16 it, impossible to agree with the meaning that Mr. Melton wants to attribute to the  
17 document.

18

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20 **Q. ASSUMING THAT BOB HACKER ACTUALLY SENT MELTON EXHIBIT**  
21 **DM-4, HOW SHOULD IT BE READ?**

22 A. Although I do not accept, for the reasons previously stated, that Bob  
23 Hacker ever sent Exhibit DM-4, if one assumes he did, I believe it would be

1 necessary to read that document in a manner that would reconcile it with his  
2 numerous other statements before, during, and after that period, including his  
3 sworn affidavit (Exhibit No. \_\_\_\_ (EF-10)). During the summer of 2003, when  
4 both IDS and BellSouth were trying to reconcile the Settlement "Q" Account, both  
5 parties knew that a dispute existed in the opening balance. Significantly, on the  
6 day following the date of the purported Exhibit DM-4, Bob Hacker clearly  
7 questioned BellSouth's Maxine Alagar about whether BellSouth waived the  
8 interest and late payment charges (Exhibit No. \_\_\_\_ (EF-4), at page 6 of 19). In  
9 other words, even if Bob Hacker agreed to the higher balance of \$3.2 million on  
10 June 12, 2003; under the Settlement Amendment BellSouth was still obligated to  
11 credit the interest and late payment charges referenced by Ms. Alagar as totaling  
12 approximately \$720K. (Exhibit No. \_\_\_\_ (EF-4), at page 6 of 19). Taking this  
13 contemporaneous indication into account, all that Exhibit DM-4 purports to show  
14 is that Bob Hacker might have been willing (more than one year later) to  
15 acknowledge a higher opening balance, so long as BellSouth provided all the  
16 proper credits to which IDS was entitled. Any debate over whether the e-mail was  
17 sent and, if so, what the author intended, must not distract the Commission from  
18 focusing on the larger issue in this case: Regardless of whether amounts flowed  
19 inside or outside the Q account, has IDS received from BellSouth all of the  
20 credits to which the parties agreed in the Settlement Amendment?

21

22

1 Q. ON PAGES 8 AND 9 OF HIS DIRECT TESTIMONY, MR. MELTON  
2 STATES THAT THE AMOUNT TRANSFERRED INTO THE SETTLEMENT "Q"  
3 ACCOUNT CONSISTS OF \$2,475,000 PLUS \$667,811.15 FOR POST-  
4 SEPTEMBER 2001 DISPUTES, AND \$68,880.37 FOR POST-SEPTEMBER  
5 2001 UNDISPUTED BILLINGS. DO YOU AGREE WITH HIM?

6 A. Absolutely not. First, BellSouth' numbers do not even add up. The sum of  
7 \$2,475,000 plus \$667,811.15, plus \$68,880.37 equals \$3,211,691.52; not the  
8 amount of \$3,232,266.10 initially transferred (Exhibit No.\_\_\_\_(EF-4), at page 2 of  
9 19). Second, all of the disputes submitted by IDS post-September 2001, were  
10 submitted to BellSouth in early March 2002. Those disputes totaled  
11 \$871,917.98. Finally, Leah Cooper's April 8, 2002 e-mail only references  
12 \$68,000, not \$68,880.37 as stated by David Melton. (Exhibit No. DM-8). Mr.  
13 Melton has not provided any back-up or other support for the amounts claimed in  
14 his Direct Testimony. BellSouth's numbers have never added up, and they still  
15 do not add up in Mr. Melton's Direct Testimony.

16  
17  
18 Q. ON PAGES 8 AND 9 OF HIS DIRECT TESTIMONY, MR. MELTON  
19 STATES THAT IDS RECEIVED CREDITS FOR THE POST-SEPTEMBER 2001  
20 DISPUTES ELSEWHERE. DOES THIS STATEMENT SHED LIGHT ON THE  
21 SETTLEMENT "Q" ACCOUNT DISPUTE?

22 A. Yes. Mr. Melton's statement merely shows how confused BellSouth was,  
23 and continues to be, on the Settlement "Q" Account matter. As part of the

1 process of arriving at the numbers used in the Settlement Amendment, the  
2 parties included all BellSouth billings through February 2002. The disputes on  
3 post-September 2001 billings were never part of the Settlement Amendment  
4 because they had not been submitted until March 2002; and it would have taken  
5 months to work through and credit those disputes. Even BellSouth agrees that  
6 the credits for those disputes were not applied until August 2002. It would have  
7 been impossible for anyone to assign a number to those disputes in order to  
8 arrive at the value to use in the Settlement Amendment. Thus, the agreed figure  
9 of \$2,475,000 could have only included BellSouth's billings through February  
10 2002 (less payments, the \$925,000 from the Settlement Amendment, and the  
11 other credits applied earlier per paragraph 6 of the Settlement Agreement). The  
12 fact that BellSouth eventually transferred more into the Settlement "Q" Account,  
13 simply acknowledges that BellSouth failed to provide the additional credits  
14 referenced in paragraph 4 of the Settlement Agreement.

15

16

17 **Q. DID BELL SOUTH PROVIDE IDS ALL OF THE AGREED CREDITS DUE**  
18 **UNDER THE SETTLEMENT AGREEMENT AND SETTLEMENT**  
19 **AMENDMENT?**

20 A. No. At the end of the day, the answer to the Settlement "Q" Dispute is that  
21 BellSouth failed to provide IDS all of the credits which BellSouth had agreed to  
22 provide IDS under both the Settlement Agreement and Settlement Amendment.  
23 Mr. Melton's Direct Testimony attempts to steer IDS and this Commission away

1 from that one simple fact. The real issue is whether BellSouth provided all of the  
2 agreed credits. BellSouth has not demonstrated that it has done so.

3

4

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

6 **A. Yes.**

## **AFFIDAVIT OF ROBERT H. HACKER**

Before me, the undersigned authority, personally appeared Robert H. Hacker, who after being duly sworn, deposes and states as follows:

1. I am of legal age, and am competent to testify to and have personal knowledge of the matters set forth in this affidavit.

2. I was employed with IDS Telecom LLC ("IDS") from approximately September 2000 through December 2003.

3. During the time period of my employment with IDS, I held the position of Chief Financial Officer ("CFO").

4. One of my duties as IDS' CFO was to identify incorrect billing by BellSouth Telecommunications, Inc. ("BellSouth"), and negotiate and resolve such billing disputes. During my tenure, I was involved with billing disputes up until approximately August 2003, when others in the company took over the details of such matters.

5. To the best of my knowledge, all of the billing disputes with BellSouth, raised while I was involved, were reviewed by me, and were legitimate, meritorious and based upon IDS' honest and good faith understanding of the parties' agreements and the applicable law.

6. While I was CFO of IDS, it was my practice and policy to pay all undisputed charges to BellSouth, and to raise billing disputes only when IDS honestly believed that BellSouth's billing was incorrect under the applicable agreements and/or current state of the law as understood by IDS. During my tenure and involvement with billing disputes, IDS did not raise billing disputes with BellSouth for cash flow management reasons.

7. On or about May 2001, IDS filed a complaint against BellSouth with the Florida Public Service Commission. Thereafter on or about July 2001, IDS filed another complaint against BellSouth with the Georgia Public Service Commission. On or about August 2001, BellSouth Intellectual Property Corp. ("BIPCO") filed suit against IDS in the United States District Court for the Northern District of Georgia.

8. On or about September 2001, IDS, BellSouth and BIPCO settled the disputes referenced in the previous paragraph. I negotiated and executed the Settlement Agreement on behalf of IDS. Because the Settlement Agreement required the parties to reach further agreements regarding billing disputes, on or about March 2002, IDS and BellSouth executed an Amendment To Settlement Agreement. As with the Settlement Agreement, I negotiated and executed the Amendment To Settlement Agreement on behalf of IDS.

9. I did not make any oral or written modifications, changes, clarifications or amendments with BellSouth on the subjects of the Settlement Agreement or Amendment To Settlement Agreement. Moreover, I did not execute any further amendments to either the





## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Rebuttal Testimony and Exhibit of Elizabeth Fefer on behalf of IDS Telcom, LLC. has been provided by (\*) hand delivery and U.S. Mail this 12<sup>th</sup> day of August, 2004, to the following:

(\*) Patricia Christensen  
Office of General Counsel  
Room 370 Gunter Building  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399

(\*) James Meza, III  
Nancy B. White  
c/o Ms. Nancy H. Sims  
BellSouth Telecommunications, Inc.  
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Tallahassee, FL 32301-1556



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