Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of the Joint Application of	)	
IDS TELCOM CORP., Assignee,	)	
and	)	
IDS TELCOM LLC, Assignor,	)	WC Docket No. 05-70
Notice of and Request For Grant of Authority Pursuant to Section 214 of the Communications Act of 1934, as amended, and Sections 63.04 and 63.24 of the Commission's Rules to Complete an Assignment of Domestic Section 214 Authorizations and Sale of Customer Base and Other Assets	)	

REPLY COMMENTS OF APPLICANTS

MCG Capital Corporation ("MCG"), IDS Telcom Corp. ("New IDS") and IDS Telcom LLC ("Old IDS") (collectively, "Applicants"), pursuant to Section 63.03(a) of the Commission's Rules, 47 C.F.R. § 63.03(a), hereby file these Reply Comments in response to Comments filed by Phyllis Heiffer ("Heiffer") in the above captioned matter on March 14, 2004. As set forth in greater detail below, Applicants respectfully submit that Heiffer's Comments pertain solely to an unrelated commercial dispute and that Heiffer has failed to raise any material public interest issues that require additional Commission review. Accordingly, Applicants reiterate their request that the Commission

grant Applicants' Application in due course through the Commission's streamlined approval process.

Applicants further state as follows:

1. On February 11, 2005, Applicants filed the above-captioned Application with the Commission seeking approval under Section 214 of the Communications Act as amended, 47 U.S.C. § 214, for New IDS to acquire the assets, including domestic Section 214 authority, held by Old IDS, an authorized common carrier that operates primarily in the Southeastern United States.

2. On March 1, 2005, the Commission accepted that Application for filing and issued a public notice in this docket, granting Applicants' request for streamlined processing.

3. By electronic filing dated March 14, 2005, Heiffer filed Comments in opposition to the Application. In those Comments, Heiffer states that the proposed transaction will not serve the public interest because: (1) Heiffer believes that Old IDS has not made sufficient "provisions for payment to creditors of Old IDS"; (2) New IDS "will continue to have access" to the management team of Old IDS; and (3) Heiffer believes that the transaction may somehow avoid obligations/restrictions placed on Old IDS.[1]

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[1] Heiffer's submission in this docket is styled as "Comments," and, as such, is not a formal opposition to the Application. The informal nature of Heiffer's Comments is further demonstrated by Heiffer's failure to support any of her factual allegations by verification or affidavit. *See* 47 C.F.R. § 1.720. Since Heiffer has not formally opposed the Application, Applicants informally file these Reply Comments in response, while noting that Heiffer has not sought to become and should not be treated as a party to the above captioned proceeding. Given that Heiffer has not filed a formal opposition and that the time for filing such a petition has passed, Applicants respectfully submit that no formal Commission response to Heiffer is required.

To the extent that Heiffer's Comments might be construed in some way to be a formal opposition to the Application (*i.e.* a petition to deny), Heiffer has no standing to make such a filing. To establish standing, courts have held that Heiffer would need to establish: (1) personal injury; (2) that is "fairly

Reply Comments

4. By way of background, Heiffer is a disgruntled ex-employee of Old IDS who was terminated for cause in 2001. Subsequent to Heiffer's termination, Heiffer initiated and is currently conducting a protracted litigation against Old IDS before the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida. *See* Case No. 02-00749 CACE 14. That litigation involves a long-standing commercial dispute between Heiffer and Old IDS over various facets of Heiffer's employment by Old IDS and the commercial arrangements between Heiffer and Old IDS which ended in 2001.

5. Heiffer's actions are on-going before a court of competent jurisdiction in the State of Florida (a court which has already held and continues to hold substantial proceedings). Thus far, however, Heiffer has failed to obtain any relief for damanges in that forum. Accordingly, Heiffer now seeks, through her Comments, to drag this Commission into a commercial dispute entirely unrelated to the transaction at issue.

6. It is well settled that the Commission is not the proper forum for parties to pursue resolution of commercial disputes.[2] Indeed, the Commission has specifically stated that its approval processes may not be used in an effort to exert pressure on parties to resolve unrelated contractual disputes.[3]

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traceable" to the challenged action and (3) that there is substantial likelihood that the relief requested will redress the injury claimed. *California Assoc. of the Physically Handicapped, Inc. v. FCC*, 778 F.2d 823, 825 (D.C.Cir. 1985). Heiffer fails to meet every element of that test. Heiffer has failed even to allege, let alone verify, that she has suffered a concrete injury, that such injury is in any way "fairly traceable" to the proposed transaction ,or that denial of the proposed transaction would provide redress. As a result, to the extent that Heiffer's Comments might be intended or might somehow be construed to be a formal opposition, Applicants respectfully assert that Heiffer lacks standing and that therefore the petition to deny must be denied and dismissed.

[2] *Regents of University System of Georgia v. Carroll*, 338 U.S. 586, 602 (1950) (holding that the Commission is not the proper forum to litigate contractual disputes between licensees and others).

[3] *Global Crossing Ltd. (Debtor-in-Possession), Transferor and GC Acquisition Limited, Transferee, Applications for Consent to Transfer Control of Submarine Cable Landing Licenses, International and Domestic Section 214 Authorizations, and Common Carrier and Non-Common Carrier Radio Licenses,*

7. Applicants submit that Heiffer has filed Comments without basis solely to harass, burden, oppress and delay Applicants. Heiffer has engaged in, and continues to engage in, litigation with IDS Telcom LLC in a variety of fora in an effort to press unmeritorious claims and interfere in any way she can with the activities of her former employer. The Comments are simply another in a long line of such unfounded actions.

8. Given that the import and intent of Heiffer's contentions to impermissibly delay this proceeding are clear, Applicants respectfully request that the Commission afford Heiffer's Comments no weight in considering the merits of Applicants' Application.

9. Even if the Commission were to overlook the clear nature and intent of Heiffer's comments, none of Heiffer's contentions bears on the Commission's public interest analysis. Clear precedent establishes the factors the Commission typically considers in the context of Section 214 transfer of control proceedings. Those factors are summarized in *In WorldCom, Inc. and its Subsidiaries (debtors-in-possession), Transferor, and MCI, Inc., Transferee Applications for Consent to Transfer and/or Assign Section 214 Authorizations, Section 310 Licenses, and Submarine Cable Landing Licenses*, 18 FCC Rcd 26484 (2003), where the Commission stated:

> The legal standards that govern our public interest analysis for assignment and transfer of control applications under sections 214(a) and 310(d) and the Cable Landing License Act require that we weigh the potential public interest harms against the potential public interest benefits to ensure that, on balance, the proposed transaction will serve the public interest, convenience, and necessity. Our analysis considers the likely competitive effects of the proposed transfers and/or assignments and whether such

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and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act, 30 CR 798 (2003); *In re Applications of Arecibo Radio Corporation, Memorandum Opinion and Order*, 101 F.C.C. 2d 545, 548, ¶8 (1985) (because the Commission does not possess the resources, expertise or jurisdiction to adjudicate breach of contract questions fully, the Commission normally defers to judicial decisions regarding the interpretation of contracts).

> transfers and/or assignments raise significant anti-competitive concerns. In addition, we consider the efficiencies and other public interest benefits that are likely to result from the proposed transfers of control of the licenses and authorizations. We must also address the basic qualifications of the applicants in this case.

Applicants respectfully submit that those same factors apply to the instant proceeding.

10. None of Heiffer's allegations, however, pertains to any of these public interest factors. Heiffer raises no issues that pertain to the on-going services New IDS will provide. She does not address how the transaction might affect those services or how any of IDS's customers would be affected. Heiffer does not make any allegations over the competitive impact of the proposed transaction. None of Heiffer's allegations draws into question the basic qualifications of New IDS or its financial, managerial, technical or any other qualifications to provide service.[4] In fact, Heiffer's allegations simply do not pertain to the public interest at all.

11. Instead, Heiffer would have this Commission waste its scarce resources to retrace ground already well covered elsewhere, while raising the prospect that the Commission could issue an order which is ultimately at odds with the final determination of the court proceedings now underway. Applicants respectfully submit that that is neither an appropriate nor judicious role for the Commission to play.

12. To the contrary, there is good reason for the Commission not to take up Heiffer's contentions in this proceeding. Were the Commission to embark on such an analysis and substantially delay approval of the transaction, such delay could serve to complicate Applicants' efforts to ensure that IDS customers continue to receive service

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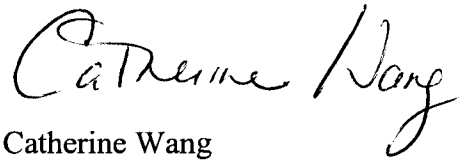
[4] Heiffer notes that New IDS will continue to have access to the management team of Old IDS. While that statement is true, the management team overseeing the operations of New IDS is entirely different than the management team of Old IDS. As a result, Heiffer's allegations simply do not pertain to the managerial qualifications of Old IDS.

on a seamless, uninterrupted basis. Such delay would be directly adverse to the public interests that the Commission protects.

Conclusion

The central aim of Heiffer's Comments is to draw the Commission into an unrelated commercial dispute between Heiffer and Old IDS, the merits of which are already before a court of law. The Commission has a long standing policy against considering such contentions in the context of license transfer proceedings. Accordingly, because Heiffer's Comments in the above-captioned proceeding fail to raise any material issues or factors which bear on the Commission's public interest considerations, Applicants respectfully submit that the Commission should give no weight to Heiffer's Comments and approve the proposed transaction through its streamlined processes.

Respectfully submitted,



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