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December 23, 2003

031125-TP

Ms. Blanca Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Room 110
Tallahassee, Florida 32399-0850

VIA HAND DELIVERY
RECEIVED-FPSC
COMMISSION
CLERK
DEC 23 PM 4:32

Re: Complaint by IDS Telecom LLC Against BellSouth Telecommunications, Inc.

Dear Ms. Bayo:

Enclosed for filing on behalf of IDS Telecom LLC are the original and fifteen copies of IDS Telecom LLC's Complaint by IDS Telecom LLC against BellSouth Telecommunications, Inc. for Overbilling and Discontinuance of Service, and Petition for Emergency Order Restoring Service.

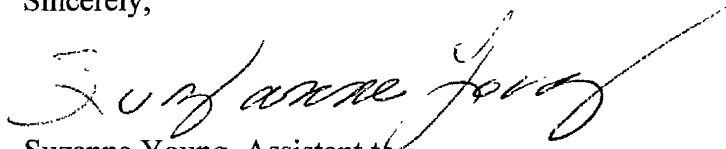
Please acknowledge this filing by date-stamping and returning the enclosed copy of this letter.

Thank you for your assistance with this filing.

RECEIVED & FILED


FPSC-BUREAU OF RECORDS

Sincerely,


Suzanne Young, Assistant to
Marsha E. Rule, Esq.

Enclosures

cc: All Counsel

DOCUMENT NUMBER-DA
13420 DEC 23
FPSC-COMMISSION CLE

FLORIDA PUBLIC SERVICE COMMISSION

Complaint of IDS Telecom LLC against)
BellSouth Telecommunications, Inc. for) Docket No. 031125-TP
over billing and discontinuance of service, and)
petition for emergency order restoring service) Filed:

**COMPLAINT BY IDS TELECOM LLC AGAINST
BELLSOUTH TELECOMMUNICATIONS, INC. FOR
OVERBILLING AND DISCONTINUANCE OF SERVICE,
AND
PETITION FOR EMERGENCY ORDER RESTORING SERVICE**

Pursuant to Sections 364.01 (4)(g), Florida Statutes, and Rules 25-22.036(2) and 28-106.201, Florida Administrative Code, IDS Telecom, LLC (“IDS”) hereby files this Complaint and Petition against BellSouth Telecommunications, Inc. (“BellSouth”), seeking (1) immediate restoration of Local Exchange Navigation System (“LENS”) service to IDS and (2) resolution of a billing dispute between IDS and BellSouth. In support, IDS states as follows:

1. IDS is certificated by the Florida Public Service Commission (the “Commission”) as a competitive local exchange company (“CLEC”) and interexchange company (“IXC”). IDS is a “telecommunications carrier” and “local exchange carrier” under the Telecommunications Act of 1996, as amended (the “Act”). IDS’s full name and address is:

IDS Telecom LLC
1525 N. W. 167th Street, Suite 200
Miami, FL 33169-5131

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

Marsha E. Rule
Martin P. McDonnell
Rutledge, Ecenia, Purnell & Hoffman, P.A.
215 South Monroe Street, Suite 420
Tallahassee, FL 32301
(850) 681-6788

FLORIDA PUBLIC SERVICE COMMISSION

13420 DEC 23 8

FPSC-COMMISSION CLERK

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

Ms. Nancy H. Simms
BellSouth Telecommunications, Inc.
150 South Monroe Street, Suite 400
Tallahassee, FL 32301-1556

3. The Commission has jurisdiction with respect to the claims asserted in this Complaint under Chapters 120 and 364, Florida Statutes and Chapters 25-22 and 28-106, Florida Administrative Code. Moreover, the Commission’s jurisdiction to enforce interconnection agreements is explicitly set forth in Section 364.162, Florida Statutes and also is inherent in its authority to approve such agreements under Section 252 of the Act.

BACKGROUND

4. In September 2001, IDS and BellSouth entered into a confidential settlement agreement (the “Confidential Settlement”) by which the parties agreed to settle certain disputes.

5. In March 2002 the parties executed a non-confidential agreement to amend the earlier Confidential Settlement (the “Settlement Amendment”). A copy of the Settlement Amendment is attached hereto as “Exhibit A.”

6. In the Settlement Amendment, the parties agreed upon specific payments and credits in settlement of the disputes addressed in the Confidential Settlement. Specifically, BellSouth and IDS established a “Total Amount Due” of \$2,475,000.00 from IDS to BellSouth, which BellSouth would bill to IDS a newly-established and separately maintained account (the

“Past Due Q Account”) and agreed that IDS would pay the Total Amount Due by making payments of \$200,000.00 per month to the Past Due Q Account. The parties further agreed that BellSouth would waive all claims regarding prior interest or late payments charges, but that interest at the rate of 1.5% and applicable late payment charges would begin to accrue on the Total Amount Due under the Past Due Q Account beginning in March 2002.¹

7. IDS has made full payment in its obligation under the Settlement Amendment. However, rather than billing the Total Amount Due of \$2,475,000.00 to the Past Due Q Account as required by the Settlement Agreement, BellSouth erroneously billed \$3,231,996.10 the Past Due Q Account, or \$756,996.10 in excess of that specified in the Settlement Agreement.

8. IDS paid a total of \$3,049,140.74 to the Past Due Q Account, as shown in the spreadsheet attached hereto as “Exhibit B”. IDS disputed and continues to dispute BellSouth’s excess charges of \$756,996.10 to this account. IDS has paid all amounts not in dispute.

9. BellSouth has never provided an explanation of its overcharges to this account, and IDS therefore has been unable to resolve this dispute. Accordingly, on November 3, 2003, IDS filed an informal complaint against BellSouth with the Florida Public Service Commission, a copy of which is attached as “Exhibit C”. IDS requested PSC staff assistance with a number of disputes, including the disputes regarding the past due Q account. *See* Item No. 8. Pursuant to Rule 25-22.032(6), Florida Administrative Code, BellSouth therefore is prohibited from discontinuing service to IDS on the basis of any unpaid disputed bill.

10. Through a series of discussions and an exchange of correspondence between IDS and Staff, Staff proposed that IDS file a formal complaint regarding its disputes with BellSouth. IDS agreed to do so. Shortly thereafter, on December 19, 2003, citing non-payment of an

¹ BellSouth also agreed to issue IDS a credit in the amount of \$925,000.00, which was later applied to a different IDS account.

alleged \$611,627.42 in undisputed charges in connection with the Past Due Q Account, BellSouth terminated its LENS service to IDS.²

11. LENS is an electronic interface that allows CLECs to manage their customers' accounts. IDS provisions local exchange service to its customers via the unbundled network elements platform (UNE-P), which it purchases at wholesale from BellSouth. IDS uses LENS to initiate, terminate and restore local exchange service to its customers. Without LENS, IDS cannot initiate service to new customers, terminate service to customers who request termination, deny service to customers who are in default, or restore service to customers who have experienced an outage. In short, IDS cannot conduct its business without access to LENS. BellSouth's improper termination of LENS service has caused, and continues to cause, irreparable harm to IDS and its customers.

COUNT ONE

12. IDS incorporates paragraphs 1-11, above, as if fully set forth herein.

13. IDS filed an informal complaint against BellSouth with the Commission on November 3, 2003, and paid all undisputed portions of the Past Due Q Account charges.

14. Rule 25-22.032(6), Florida Administrative Code, prohibits BellSouth from discontinuing service to IDS during the complaint process because of any unpaid disputed bill. BellSouth's termination of LENS service to IDS therefore violates Rule 25-22.032(6), Florida Administrative Code.

15. BellSouth's improper termination of LENS service to IDS has caused, and continues to cause, irreparable harm to IDS and its customers. Each hour that such refusal to

² BellSouth first advised IDS that it had terminated access to LENS service late on Friday afternoon, effectively precluding IDS from seeking relief until the following Monday (or paying BellSouth over \$600,000 that IDS maintains it does not owe.)

provide service continues makes it less likely that IDS will be able to retain its customers. The Commission should order BellSouth to immediately restore LENS service to IDS pending the Commission's resolution of this Complaint and Petition.

COUNT TWO

16. IDS incorporates paragraphs 1-11, above, as if fully set forth herein.

17. Attachment 7, Section 1.7.2 of the IDS-BellSouth interconnection agreement, attached hereto as "Exhibit D" regulates BellSouth's right to suspend or terminate service for non-payment,³ and states, in pertinent part, as follows:

BellSouth reserves the right to suspend or terminate service for nonpayment. If payment of amounts not subject to a billing dispute, as described in Section 2, is not received by the bill date in the month after the original bill date, BellSouth will provide written notice to IDS Telecom that additional applications for service may be refused, that any pending orders for service may not be completed, and/or that access to ordering systems may be suspended if payment is not received by the fifteenth day following the date of the notice. In addition, BellSouth may, at the same time, provide written notice to the person designated by IDS Telecom to receive notices of noncompliance that BellSouth may discontinue the provision of existing services to IDS Telecom if payment is not received by the thirtieth day following the date of the initial notice.

IDS has disputed, and continues to dispute, the entire sum of money demanded by BellSouth, and has paid all "amounts not subject to a billing dispute" as required by

³ Although the dispute arises prior to the effective date of the Agreement, BST's authority to terminate service is governed by the agreement pursuant to Section 31 thereof which states in pertinent part:

[T]his Agreement sets forth the entire understanding and except for Settlement Agreements that have been negotiated separate and apart from this Agreement, supersedes prior agreements between the Parties relating to the subject matter contained in this Agreement and merges all prior discussions between them. Any orders placed under prior agreements between the Parties shall be governed by the terms of this Agreement and IDS . . . acknowledges and agrees that any and all amounts and obligations owed for services provisioned or orders placed under prior agreements between the Parties, related to the subject matter hereof, shall be due and owing under this Agreement and be governed by the terms and

Attachment 7, Section 1.7.2. Further, BellSouth did not provide the 30-day notice of service discontinuation required by Section 1.7.2. BellSouth's termination of IDS' access to LENS therefore violates Attachment 7, Section 1.7.2 of the parties' interconnection agreement.

COUNT THREE

18. IDS incorporates paragraphs 1-11, above as if fully set forth herein.

19. BellSouth's improper charges to the Past Due Q Account and its termination of LENS service to IDS violate the parties' March, 2002 Settlement Agreement. The Commission should order BellSouth to immediately restore LENS service to IDS pending the Commission's resolution of this Complaint and Petition, and upon hearing, should resolve this dispute in favor of IDS.

COUNT FOUR

20. IDS incorporates paragraphs 1-11, above, as if fully set forth herein.

21. Section 364.01(g), Florida Statutes directs the Commission to "ensure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior and eliminating unnecessary regulatory restraint."

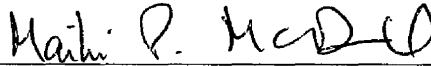
22. BellSouth's unilateral termination of its essential and monopoly LENS services on a Friday afternoon, during the pendency of a billing dispute, is clearly anticompetitive and causes irreparable harm to IDS and its customers. The Commission should order BellSouth to immediately restore LENS service to IDS pending the Commission's resolution of this Complaint and Petition, and upon hearing, should prohibit BellSouth from engaging in similar anticompetitive behavior in the future.

conditions of this Agreement as if such services or orders were provisioned or placed under this Agreement.

WHEREFORE, IDS respectfully requests that the Commission:

- (1) Order BellSouth to restore LENS service to IDS immediately, and to continue providing LENS service to IDS while this docket is pending;
- (2) Determine that BellSouth's termination of LENS service to IDS violates Rule 25-22.032(6), Florida Administrative Code;
- (3) Determine that BellSouth's termination of LENS service to IDS violates the parties' interconnection agreement;
- (4) Determine that Bellsouth's termination of LENS service constitutes an anticompetitive practice; and
- (5) Order such other relief as the Commission deems just and appropriate.

Respectfully submitted,



MARSHA E. RULE, ESQ.
MARTY P. MCDONNELL, ESQ.
Rutledge, Ecenia, Purnell & Hoffman, P.A.
P.O. Box 551
Tallahassee, Florida 32302
(850) 681-6788 (Telephone)
(850) 681-6515 (Telecopier)

Attorneys for IDS Telcom LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a copy of the foregoing was furnished by hand delivery this 23rd day of December, 2003, to the following:

Beth Keating, Esq.
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Ms. Nancy H. Simms
BellSouth Telecommunications, Inc.
150 South Monroe Street, Suite 400
Tallahassee, FL 32301-1556

Marsha E. Rule
MARSHA E. RULE, ESQ. *for*

AMENDMENT TO SETTLEMENT AGREEMENT

THIS AMENDMENT TO SETTLEMENT AGREEMENT ("Amendment") is entered into this 25th day of March, 2002, by BellSouth Telecommunications, Inc. ("BST") and IDS Long Distance, Inc. n/k/a IDS Telcom, L.L.C. ("IDS") (collectively referred to as the "Parties").

RECITALS

WHEREAS, on or about September 27, 2001, BST and IDS entered into a settlement agreement resolving certain disputed issues between the Parties (the "Settlement Agreement");

WHEREAS, BellSouth Intellectual Property Corporation ("BIPCO") was also a party to the Settlement Agreement but does not have an interest in this Amendment;

WHEREAS, the Settlement Agreement contained provisions calling for the future resolution of disputed sums owed to BST by IDS;

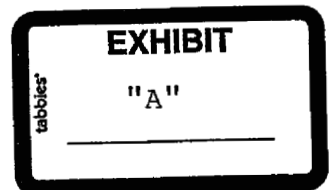
WHEREAS, the Parties agreed to implement the Settlement Agreement by determining a Total Amount Due to BST by IDS and then reducing that Total Amount Due by the amount resolving the disputed issues set forth in Paragraph 4 of the Settlement Agreement; and

WHEREAS, the Parties have determined the Total Amount Due and have resolved the pending disputes set forth in Paragraph 4 of the Settlement Agreement and hereby wish to memorialize such agreement.

NOW, THEREFORE, in consideration of the mutual promises contained in this Amendment, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, BST and IDS, intending to be bound by this Amendment, hereby agree as follows:

1. The Total Amount Due to BST by IDS is \$2,475,000.
2. IDS shall continue to pay BST the sum of \$200,000 per month by the close of business on the last day each month until March 31, 2003, which shall fully satisfy the Total Amount Due.
3. BST will bill the Total Amount Due to IDS under a new and separate Q account which will be designated as the Past Due Q Account.
4. BST will waive all prior interest or late payment charges on the Total Amount Due. However, interest and late payment charges will accrue on the Total Amount Due under the Past Due Q Account beginning in March, 2002. Interest will accrue at 1.5%.

" A "



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5. BellSouth shall issue IDS a credit in the amount of \$925,000. BellSouth allowed IDS to withhold this amount from its payment due to BellSouth in February 2002.
6. BST shall file and IDS shall execute a UCC-1 against IDS' assets to secure an interest in the Total Amount Due.
7. IDS shall keep all bills, billed under CRIS or CABS, current and shall not allow any undisputed current charges to become past due.
8. Should IDS fail to make a payment of \$200,000 to BST in any given month pursuant to this Amendment for the Past Due Q Account or fail to keep its billing current for all other accounts, IDS will be in breach of this Amendment. IDS shall have fourteen (14) days to cure such breach. If the breach is not cured within fourteen (14) days, the remaining balance of the Total Amount Due in the Past Due Q Account will immediately become due and owing and IDS shall pay to BST the full amount.
9. Except as specifically set forth herein, all of the provisions of the Settlement Agreement remain in full force and effect.
10. The Parties after executing this Amendment will be bound by the terms and conditions contained herein.
11. The Effective Date of this Amendment is March 25, 2002. The undersigned Parties hereby execute this Agreement.

IDS TELCOM, INC.

BELLSOUTH
TELECOMMUNICATIONS, INC.

By: *[Signature]*
Name: HACKER
Title: CFO

By: *[Signature]*
Name: Gregory R. Follenster
Title: Senior Director

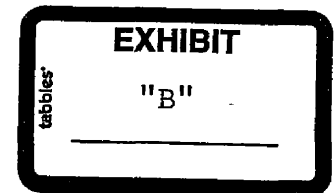
Exhibit B - IDS Payments to Past Due Q Account

<u>Opening balance</u>	<u>Interest Due</u>	<u>payment/check #</u>	<u>principal payment</u>	<u>Principal Paid</u>	<u>interest paid</u>	<u>interst pymt date</u>	
2,475,000		5257	4/11/2002	200,000			2,275,000
2,275,000	34,125	5550	5/14/2002	200,000			2,109,125
2,109,125	31,637	6007	6/13/2002	200,000			1,940,762
1,940,762	29,111	6206	6/28/2002	200,000			1,769,873
1,769,873	26,548	6610	7/25/2002	200,000			1,596,421
1,596,421	23,946	6997	8/29/2002	200,000			1,420,368
1,420,368	21,306						1,441,673
1,441,673	21,625						1,463,298
1,463,298	21,949	8278	12/11/2002	200,000			1,285,248
1,285,248	19,279	8794	1/16/2003	200,000			1,104,527
1,104,527	16,568	9184	2/11/2003	200,000			921,094
921,094	13,816	10001	3/14/2003	200,000	27,491.14	3/13/2003	707,420
707,420	10,611	10406	4/15/2003	200,000	21,079.08	4/15/2003	496,952
496,952	7,454	10807	5/13/2003	200,000	39,570.52	5/13/2003	264,836
264,836	3,973	11221	6/13/2003	200,000	361,000.00	6/17/2003	-292,192

281,949	2,600,000	449,140.74
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The sum total of all payments that were due to the Past Due Q Account is \$2,756,949 (\$2,475,000 Total Amount Due + cumulative interest of \$281,949).

However, IDS paid a total of \$3,049,140.74 (\$2,600,000 principal + \$449,140.74 interest), or an OVERPAYMENT of \$292,192.





IDS TELCOM Headquarters 1525 N.W. 167th Street, Suite 200, Miami, Florida 33169 U.S.A.
T+ 305 913 4000 F+ 305 913 4024 TOLL FREE+ 800 335 4437

November 3, 2003

Via Hand Delivery and Federal Express

Ms. Blanca S. Bayo, Director
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Room 110
Tallahassee, Florida 32399-0850

RE: Informal complaint against BellSouth Telecommunications Inc. pursuant to Rule 25-22.032, Florida Administrative Code

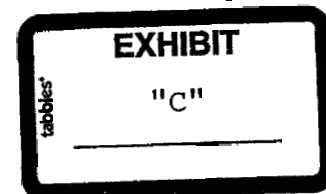
Dear Ms. Bayo:

I am writing on behalf of IDS Telcom LLC ("IDS"), a certificated Florida CLEC headquartered in Miami. We are wholesale customers of BellSouth Telecommunications, Inc. ("BellSouth") pursuant to a commission-approved agreement. Please consider this letter as IDS' informal complaint against BellSouth regarding a series of billing and service problems described below.

We have attempted to work through these problems with BellSouth and have paid the undisputed portions of BellSouth's billings. However, BellSouth has refused to recognize the legitimacy of our disputes, and instead of attempting to resolve our differences, is threatening discontinuance of service.

Briefly, our disputes with BellSouth fall roughly into the following categories:

1. **Conversion charges:** Although the charge for UNE conversions decreased in our latest Interconnection Agreement, BellSouth erroneously continues to charge the old rate and its bills are therefore artificially inflated.
2. **Engineering charges:** BellSouth erroneously imposes engineering charges for which there is no documentation or an otherwise adequate method for validating charges; further, BellSouth is charging us for repairs on the BellSouth side of the demarcation point.
3. **Non-Basic 1 and Non-Basic 4 charges:** BellSouth erroneously bills non basic charges on basic UNE lines.
4. **Port install and disconnect charges:** BellSouth inappropriately charges multiples of the first-line port install or disconnect charge for all lines on multi-line orders, rather than charging the first-line rate for the first line, and a lower rate for additional lines. Additionally, BellSouth charges a disconnect fee to IDS when



BellSouth or a third party carrier wins an IDS customer, even though IDS placed no order with BellSouth.

5. Port/loop rerates: Although the charge for port/loop combo monthly recurring charges changed, BellSouth mistakenly continued to charge the old rate for a period of time, and failed to credit IDS for such overcharges.
6. Usage rerates: Although usage rates changed, BellSouth mistakenly continued to charge the old rate for a period of time, and failed to credit IDS for all such overcharges.
7. Market-based rates: BellSouth bills IDS an improper rate for ports on accounts in excess of four lines and fails to bill in a mechanized fashion. Further, in some cases BellSouth improperly bills a market-based rate on lines that are not in the MSA.
8. Issues subject to confidentiality requirements: There are several additional issues that I cannot describe more fully in this letter because they are covered by a confidentiality agreement. However, BellSouth has been placed on notice of these disputes and therefore is aware of them. IDS will comply with reasonable Staff requests for information regarding these issues, subject to confidentiality requirements.

The above errors have resulted in BellSouth overcharging IDS approximately \$3.3 million to date. This amount will change over time because the problems are continuing in nature.

We believe that some of these problems result from problems with BellSouth's billing system, but are exacerbated by BellSouth's failure to promptly acknowledge and properly process billing disputes. On numerous occasions IDS has requested a reconciliation of accounts and asked BellSouth to provide supporting detail, but BellSouth refuses to supply us with the requested information. We have tried in good faith to resolve these complaints directly with BellSouth, but have been unable to do so. We therefore request Florida Public Service Commission assistance in investigating these problems as well as ensuring that BellSouth does not discontinue any service to us, as threatened, pending such investigation.

Very truly yours,


Angel Leiro
Vice President, Regulatory Affairs

cc: BellSouth Local Contract Manager
ICS Attorney
Maxine Alegar
BellSouth Telecommunications, Inc.

payment is not received by the payment due date, a late payment charge, as set forth in Section 1.6, below, shall apply.

- 1.5 Tax Exemption. Upon BellSouth's receipt of tax exemption certificate, the total amount billed to IDS Telcom will not include those taxes or fees from which IDS Telcom is exempt. IDS Telcom will be solely responsible for the computation, tracking, reporting and payment of all taxes and like fees associated with the services provided to the end user of IDS Telcom.
- 1.6 Late Payment. If any portion of the payment is received by BellSouth after the payment due date as set forth preceding, or if any portion of the payment is received by BellSouth in funds that are not immediately available to BellSouth, then a late payment charge shall be due to BellSouth. The late payment charge shall be the portion of the payment not received by the payment due date multiplied by a late factor and will be applied on a per bill basis. The late factor shall be as set forth in Section A2 of the General Subscriber Services Tariff, Section B2 of the Private Line Service Tariff or Section E2 of the Intrastate Access Tariff, as appropriate. In addition to any applicable late payment charges, IDS Telcom may be charged a fee for all returned checks as set forth in Section A2 of the General Subscriber Services Tariff or pursuant to the applicable state law.
- 1.7 Discontinuing Service to IDS Telcom. The procedures for discontinuing service to IDS Telcom are as follows:
- 1.7.1 BellSouth reserves the right to suspend or terminate service in the event of prohibited, unlawful or improper use of BellSouth facilities or service, abuse of BellSouth facilities, or any other violation or noncompliance by IDS Telcom of the rules and regulations of BellSouth's tariffs.
- 1.7.2 BellSouth reserves the right to suspend or terminate service for nonpayment. If payment of amounts not subject to a billing dispute, as described in Section 2, is not received by the bill date in the month after the original bill date, BellSouth will provide written notice to IDS Telcom that additional applications for service may be refused, that any pending orders for service may not be completed, and/or that access to ordering systems may be suspended if payment is not received by the fifteenth day following the date of the notice. In addition, BellSouth may, at the same time, provide written notice to the person designated by IDS Telcom to receive notices of noncompliance that BellSouth may discontinue the provision of existing services to IDS Telcom if payment is not received by the thirtieth day following the date of the initial notice.
- 1.7.3 In the case of such discontinuance, all billed charges, as well as applicable termination charges, shall become due.
- 1.7.4 If BellSouth does not discontinue the provision of the services involved on the date specified in the thirty days notice and IDS Telcom's noncompliance continues,

