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December 30, 2003

Ms. Blanca Bayo, Director
Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

HAND DELIVERY

COMMISSION
CLERK

DEC 30 PM 3:27

RECEIVED FPSC

Re: Docket No. 031125-TP

Dear Ms. Bayo:

Enclosed with this letter on behalf of IDS Telcom, LLC ("IDS") are the original and fifteen copies of the Amended Complaint by IDS against BellSouth Telecommunications, Inc. for Overbilling and Discontinuance of Service, and Petition for Emergency Order Restoring Service.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the copy to me.

Thank you for your assistance with this filing.

Sincerely,

Martin P. McDonnell
Martin P. McDonnell

RECEIVED & FILED

MPM
FPSC-BUREAU OF RECORDS

- AUS _____
- CAF _____
- CMP _____
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- OPC _____
- MMS _____
- SEC 1
- OTH _____

MPM/rl
Enclosure
cc: Parties of Record

Roxanne\Bayoids.1230

DOCUMENT NUMBER-DATE

13556 DEC 30 03

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Complaint of IDS Telcom, LLC against)
BellSouth Telecommunications, Inc. for) Docket No. 031125-TP
over billing and discontinuance of service, and)
petition for emergency order restoring service) Filed: December 30, 2003

**AMENDED COMPLAINT BY IDS TELCOM, LLC
AGAINST BELL SOUTH TELECOMMUNICATIONS, INC.
FOR OVERBILLING AND DISCONTINUANCE OF SERVICE,
AND
PETITION FOR EMERGENCY ORDER RESTORING SERVICE**

PETITIONER IDS TELCOM, LLC (“IDS”), by and through its undersigned counsel and pursuant to Rule 1.190(a), Florida Rules of Civil Procedure, Sections 364.01 (4)(g), Florida Statutes, and Rules 25-22.036(2), 28-106.201 and 28-106.202, Florida Administrative Code, hereby files this Amended Complaint against Respondent **BELLSOUTH TELECOMMUNICATIONS, INC.** (“BellSouth”), seeking: (1) immediate restoration of Local Exchange Navigation System (“LENS”) service to IDS; (2) resolution of a monetary dispute between IDS and BellSouth under a settlement agreement which resolved, in part, a prior docket; (3) and interpretation and resolution of certain contract provisions in the parties’ Interconnection Agreement; and in support thereof states as follows:

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

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

DOCUMENT NUMBER-DATE
13556 DEC 30 03
FPSC-COMMISSION CLERK

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

2. BellSouth Telecommunications, Inc. is an incumbent local exchange carrier 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. Sims
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.

4. On December 23, 2003, IDS opened this docket by filing a complaint against BellSouth seeking immediate restoration of LENS and resolution of a monetary dispute arising under a settlement agreement that resolved, in part, a prior docket before this Commission. Pursuant to Rule 28-106.202, F.A.C., IDS may amend its pleading prior to the designation of the presiding officer, and hence hereby timely files this amended complaint and petition.

BACKGROUND

5. On or about January 27, 2001, IDS and BellSouth entered into an interconnection agreement for the provision of telecommunication services within the state of Florida (“Prior Agreement”).

6. As a result of various disputes, including billing disputes, on or about May 11, 2001, IDS filed a complaint against BellSouth with this Commission (Docket No. 010740-TP (“01-0740 Docket”). Additionally, on a about July 16, 2001, IDS filed a similar complaint against BellSouth before the Georgia Public Service Commission (“GPSC Docket”).

7. On or about September 27, 2001, IDS and BellSouth settled the 01-0740 Docket and the GPSC Docket by way of a confidential settlement agreement (the “Confidential Settlement”), which by its very terms contemplated an amendment quantifying certain payments and payment terms in resolution of these three disputes.

8. On or about March 25, 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.”

9. In the Settlement Amendment, the parties agreed upon specific payments and credits in settlement of the billing disputes addressed in the Confidential Settlement. Specifically, BellSouth and IDS established a “Total Amount Due” of \$2,475,000.00 from IDS to BellSouth, and the parties agreed that BellSouth would bill IDS this amount under a newly established and separately maintained account called the Past Due Q Account (“Q Account”). The parties further agreed that IDS would pay and satisfy the Total Amount Due by making monthly payments to the Q Account of \$200,000 by the last day of each month, until March 31, 2003 (or a total of 13 monthly payments of \$200,000.00). The parties also 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 Q Account beginning in March 2002.¹

10. However, rather than billing the Total Amount Due of \$2,475,000.00 to the Q Account as required by the Settlement Agreement, BellSouth erroneously billed \$3,231,996.10 to the Q Account, or \$756,996.10 in excess of that specified in the Settlement Agreement.

11. On or about February 5, 2003, a new interconnection agreement became effective between the parties ("Current Agreement").

12. As of mid-2003, IDS had not only paid the \$2,475,000 with all accrued interest, but also because of erroneous BellSouth billing statements continued to pay under this Q Account, and in fact overpaid the Q Account. In total, IDS paid \$3,049,140.74 to the Q Account, as shown in the spreadsheet attached hereto as "Exhibit B."

13. Despite having overpaid the Q Account, BellSouth has insisted that IDS pay the additional monies that BellSouth erroneously posted to the Q Account. Despite repeated requests by IDS to BellSouth to correct the Q Account balances, BellSouth has refused to do so without any explanation. IDS not only disputed the erroneous Q Account balances under the Prior Agreement, but also continued to dispute such erroneous balances under the Current Agreement. Accordingly, the additional amounts demanded by BellSouth under the Q Account are in dispute and have remained in dispute during all relevant time periods.

14. IDS has disputed and continues to dispute BellSouth's excess charges of \$756,996.10 to the Q account. Moreover, IDS has paid all amounts not in dispute under this Q

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

Account. BellSouth has never provided an explanation of its overcharges to this Q Account, and thus IDS has been unable to resolve this dispute.

15. Under the parties' Current Agreement, BellSouth cannot terminate services for failing to pay amounts in dispute. In particular, Attachment 7, Section 1.7.2 of the parties' Current Agreement, attached hereto as "Exhibit C", regulates BellSouth's right to suspend or terminate service for non-payment,² 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 Telcom if payment is not received by the thirtieth day following the date of the initial notice.

16. Additionally, Attachment 7, Section 2.1 of the parties' Current Agreement, attached hereto as "Exhibit D," states in pertinent part as follows:³

² This dispute arises under the Settlement Agreement. Nevertheless, the Prior Agreement was in place when the Settlement Agreement was executed. Although the Current Agreement appears to allow BellSouth to declare as due under the Current Agreement amounts incurred under the Prior Agreement, it does not specifically allow BellSouth to include other amounts, such as those amounts dues under the Settlement Agreement. In this regard, Section 31 of the General Terms and Conditions of the Current Agreement states in pertinent part as follows:

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

In any event, services such as LENS are being provided today under the Current Agreement.

³ This dispute arises under the Prior Agreement, which provides in Attachment 7, Section 2.1.1, that: "Each Party agrees to notify the other Party in writing upon the discovery of a billing dispute." As early as May 2002, IDS had notified BellSouth in writing of a problem in the amount billed in the Q Account. Despite numerous and various

Each Party agrees to notify the other Party in writing upon discovery of a billing dispute. . . In the event of a billing dispute, the Parties will endeavor to resolve the dispute within sixty (60) calendar days of the notification date. If the parties are unable within the 60 day period to reach resolution, then the aggrieved Party may pursue dispute resolution in accordance with the General Terms and Conditions of this Agreement.

17. Lastly, the General Terms and Conditions, Section 10 of the parties' Current Agreement, attached hereto as "Exhibit E", states as follows:⁴

Except as otherwise stated in this Agreement, if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the aggrieved Party shall petition the Commission for a resolution of the dispute.

18. Accordingly, under the parties' Current Agreement, BellSouth cannot unilaterally declare a dispute resolved and thereafter terminate services to IDS simply because BellSouth claims an amount is undisputed. Where as here, a dispute exists over amounts billed by BellSouth; BellSouth must first seek resolution of this dispute before this Commission⁵ before attempting to discontinue any services to IDS.

19. Notwithstanding the fact that the parties' Current Agreement does not permit BellSouth to discontinue services for IDS' failure to pay the excess charges levied under the Q

correspondence going back and forth between the parties, BellSouth could never explain how or why the Q Account balance was set up with the erroneous billing amount. This dispute has carried over to the Current Agreement and has remained disputed by the parties both in oral and written communications.

⁴ Under the Prior Agreement, Section 12 of the General Terms and Conditions governed the procedure for resolving all disputes between the parties arising under that agreement. Sections 12.1 and 12.2 provided a mediation process between the parties that would escalate the dispute up the management chain. Section 12.3 provided that in the event the parties could not resolve the dispute within 30 days of submission to an Inter-Company Dispute Resolution Board, then either party may bring the dispute to either the Commission, the FCC or a court of competent jurisdiction. Finally, Section 12.4 provided in part that: "The Parties shall continue providing the service(s) subject to a dispute during the pendency of the dispute resolution procedure." Thus under the Prior Agreement, BellSouth could not terminate services while the dispute remained unresolved.

⁵ The Present Agreement is applicable to several states, including Florida. The above-cited provisions of the Present Agreement apply equally to all the states covered by the agreement. Since BellSouth cannot take unilateral action under the Present Agreement and must first seek resolution from the appropriate Commission, it is irrelevant whether any of the amounts in dispute arise from services provided in another state. In any event, most (if not all) of the amounts in dispute here relate only to Florida.

Account, IDS nevertheless wished to resolve this dispute in accordance with the procedures set forth in the Current Agreement. In this regard, on November 3, 2003, IDS filed an informal complaint against BellSouth with this Commission, a copy of which is attached as "Exhibit F". IDS requested PSC staff assistance with a number of disputes, including the disputes regarding the Q Account. *See* Item No. 8. Apart from the Current Agreement, pursuant to Rule 25-22.032(6), Florida Administrative Code, BellSouth was and is prohibited from discontinuing service to IDS on the basis of any unpaid disputed bill.

20. 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. Each of the items and charges set forth in IDS' informal complaint are in dispute. IDS has also filed an informal complaint with the FCC regarding DUF charges and may seek other relief from the FCC. Although BellSouth has not sought to resolve any of the parties' disputes either before this Commission, the FCC or any other commission, IDS wishes to bring a conclusion to these matters and thus has begun to prepare filings on each of its remaining disputes.

21. Because of the urgency associated with this Complaint, the possibility of additional unresolved disputes, and the possibility that some disputes are more appropriate before another commission, for purposes of this docket, IDS notes that other disputes exist between BellSouth and IDS that remain unresolved; many of which are set forth in IDS' informal complaint attached hereto as Exhibit "F". Under the parties' Current Agreement, BellSouth cannot discontinue any services to IDS until each of these good faith billing disputes has been resolved by the appropriate commission(s).

22. Notwithstanding the filing of an informal complaint with this Commission and the fact that BellSouth's over-billing of the Q Account is clearly in dispute, BellSouth has terminated services to IDS. In this regard, on December 19, 2003, citing non-payment of an alleged \$611,627.42 in undisputed charges in connection with the Q Account; BellSouth terminated its LENS service to IDS.⁶

23. LENS is an electronic interface that allows CLECs to manage their customers' accounts. LENS is more than simply an ordering system. 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

24. IDS incorporates paragraphs 1-23, above, as if fully set forth herein.

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

26. 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.

⁶ BellSouth first advised IDS that it had terminated access to LENS service late on Friday afternoon (12/19/03), effectively precluding IDS from seeking relief until the following Monday (or paying BellSouth over \$600,000 that IDS maintains it does not owe.)

BellSouth's termination of LENS service to IDS therefore violates Rule 25-22.032(6), Florida Administrative Code.

27. 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 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

28. IDS incorporates paragraphs 1-23, above, as if fully set forth herein.

29. The parties' Current Agreement does not allow BellSouth to terminate any services to IDS for failing to pay disputed amounts. Under the Current Agreement, BellSouth's remedy is to seek resolution of any disputes before an appropriate commission.

30. IDS has disputed, and continues to dispute, the entire sum of money demanded by BellSouth under the Q Account, and has paid all "amounts not subject to a billing dispute" as required by Attachment 7, Section 1.7.2. of the Current Agreement.

31. Further, BellSouth did not provide the 30-day notice of service discontinuation required by Section 1.7.2.

32. BellSouth's unilateral action of declaring this dispute "undisputed", failing to follow the dispute resolution procedure set forth in the Current Agreement, and terminating IDS' access to LENS are all acts in violation of the parties' Current Agreement. Moreover, the Current Agreement does not allow BellSouth to declare as due under the Current Agreement, those amounts which might be due under the Settlement Agreement.

33. 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 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.

34. Additionally, this Commission should resolve this dispute in IDS' favor and find that BellSouth has violated the parties' Current Agreement.

35. Finally, this Commission should find and declare that under the parties' Current Agreement, BellSouth has no right to terminate services to IDS for failure to pay disputed amounts, and that BellSouth's right of recourse under the Current Agreement is to first seek resolution of the dispute by the appropriate commission. This Commission should also enjoin BellSouth against future violations the parties' Current Agreement in this respect.

COUNT THREE

36. IDS incorporates paragraphs 1-23, above as if fully set forth herein.

37. BellSouth's improper charges to the Q Account and its termination of LENS service to IDS violates the parties' March, 2002 Settlement Agreement.

38. Based upon the express language of the Settlement Agreement (which was the basis for resolving the 01-0740 Docket (which had previously gone to hearing before this Commission), this 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 and find that BellSouth has violated the parties' Settlement Agreement.

COUNT FOUR

39. IDS incorporates paragraphs 1-23, above, as if fully set forth herein.

40. 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.”

41. 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 discriminatory, and causes irreparable harm to IDS and its customers.

42. Moreover, BellSouth’s unilateral actions in: (a) declaring this dispute “undisputed”; (b) failing to follow the dispute resolution procedure set forth in the Current Agreement; (c) terminating services for failing to pay disputed amounts; and (d) terminating IDS’ access to LENS in this instance; are all anticompetitive and discriminatory acts in violation of Florida law.

43. The Commission should find BellSouth to be in violation of Florida law, order BellSouth to immediately restore LENS service to IDS pending the Commission’s resolution of this Complaint and Petition, and upon hearing, should enjoin and prohibit BellSouth from engaging in this and similar anticompetitive behavior in the future.

COUNT FIVE

44. IDS incorporates paragraphs 1-23, above, as if fully set forth herein.

45. The Telecommunications Act of 1996 prohibits discriminatory and anticompetitive behavior by ILECs such as BellSouth.

46. 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 discriminatory, and causes irreparable harm to IDS and its customers.

47. Moreover, BellSouth's unilateral actions in: (a) declaring this dispute "undisputed"; (b) failing to follow the dispute resolution procedure set forth in the Current Agreement; (c) terminating services for failing to pay disputed amounts; and (d) terminating IDS' access to LENS in this instance; are all anticompetitive and discriminatory acts in violation of the Telecommunications Act of 1996 and related federal law.

48. The Commission should find that BellSouth has violated the Telecommunications Act of 1996, order BellSouth to immediately restore LENS service to IDS pending the Commission's resolution of this Complaint and Petition, and upon hearing, should enjoin and prohibit BellSouth from engaging in this and similar anticompetitive and discriminatory behavior in the future.

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' Current Agreement and the Settlement Agreement;

(4) Determine and declare that BellSouth's termination of services during the pendency of a billing and related disputes over payment, violates the parties' Current Agreement, and enjoin BellSouth from future violations in this regard;

(5) Determine and declare that BellSouth's termination of services during the pendency of a billing and related disputes over payment, violates Florida law and Federal law, and enjoin BellSouth from future violations in this regard;


(6) Determine that Bellsouth's termination of LENS service constitutes an anticompetitive and discriminatory practice in violation of both Florida and Federal law;

(7) Determine that any other practice by BellSouth complained about in this Amended Complaint violates the parties Current Agreement, and/or is anticompetitive and discriminatory practice in violation of both Florida and Federal law;

(8) Determine any other issues raised in this Amended Complaint and grant each and all of the relief previously requested in this Amended Complaint; and

(9) Order such other relief as the Commission deems just and appropriate.

Respectfully submitted,



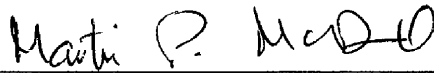
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(850) 681-6788 (Telephone)
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Attorneys for IDS Telecom LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a copy of the foregoing was furnished by hand delivery this 30th 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. Sims
BellSouth Telecommunications, Inc.
150 South Monroe Street, Suite 400
Tallahassee, FL 32301-1556

A handwritten signature in black ink that reads "Martin P. McDonnell". The signature is written in a cursive style and is positioned above a horizontal line.

MARTIN P. MCDONNELL, ESQ.

03/23/2002 21:32

NO. 480 002

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 Telecom, 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%.



2 21:32

NO. 480 003

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. Fellersben
 Title: Senior Director

IDS ACCOUNT 205 Q97 4557

MONTH	BEGINNING BAL	CURRENT	TOTAL BILL	PAYMENT	ADJUSTMENT	BALANCE
2-Mar	\$0	\$0	\$0	(\$200,000)	\$331,686.37	\$131,686.37
2-Apr	\$131,686.37	\$2,897,723.99	\$3,029,410.36	(\$200,000)	\$2,585.74	\$2,831,196.04
2-May	\$2,831,996.10	\$42,489.94	\$2,874,486.04	\$0	\$0	\$2,874,486.04
2-Jun	\$2,874,486.04	\$42,490.09	\$2,916,976.31	(\$400,000)	\$0	\$2,516,976.13
2-Jul	\$2,516,976.13	\$36,490.24	\$2,553,466.37	(\$200,000)	\$0	\$2,353,466.37
2-Aug	\$2,353,466.37	\$33,490.39	\$2,386,956.76	(\$200,000)	\$0	\$2,186,956.76
2-Sep	\$2,186,956.76	\$30,490.54	\$2,217,447.30	\$0	\$0	\$2,217,447.30
2-Oct	\$2,217,447.30	\$30,490.69	\$2,247,937.99	\$0	\$0	\$2,247,937.99
2-Nov	\$2,247,937.99	\$30,490.84	\$2,278,428.83	(\$200,000)	\$0	\$2,078,428.83
2-Dec	\$2,078,428.83	\$27,490.99	\$2,105,919.82	\$0	\$0	\$2,105,919.82
3-Jan	\$2,105,919.82	\$27,491.14	\$2,133,410.96	(\$200,000)	\$0	\$1,933,410.96
3-Feb	\$1,933,410.96	\$24,491.29	\$1,957,902.25	(227,491.14)	\$0	\$1,730,411.11
3-Mar	\$1,730,411.11	\$21,079.08	\$1,751,490.19	(400,000.00)	\$0	\$1,351,490.19
3-Apr	\$1,351,490.19	\$15,079.23	\$1,366,569.42	(45,570.37)	\$0	\$1,320,999.05
3-May	\$1,320,999.05	\$14,395.82	\$1,335,394.87	(415,079.23)	\$0	\$920,315.64
3-Jun	\$920,315.64	\$8,169.78	\$928,485.42	(361,000.00)	\$0	\$567,485.42
TOTALS		\$3,282,354.05		(\$3,049,140.74)	\$334,272.11	



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,



provided by IDS Telcom in establishment of its billing account(s) with BellSouth, or to the individual and/or address subsequently provided by IDS Telcom as the contact for billing information. All monthly bills and notices described in this Section shall be forwarded to the same individual and/or address; provided, however, upon written notice from IDS Telcom to BellSouth's billing organization, a final notice of disconnection of services purchased by IDS Telcom under this Agreement shall be sent via certified mail to the individual(s) listed in the Notices provision of the General Terms and Conditions of this Agreement at least 30 days before BellSouth takes any action to terminate such services.

- 1.10 Rates. Rates for Optional Daily Usage File (ODUF), Access Daily Usage File (ADUF), and Centralized Message Distribution Service (CMDS) are set out in Exhibit A to this Attachment. If no rate is identified in this Attachment, the rate for the specific service or function will be as set forth in applicable BellSouth tariff or as negotiated by the Parties upon request by either Party.

2. **BILLING DISPUTES**

- 2.1 Each Party agrees to notify the other Party in writing upon the discovery of a billing dispute. IDS Telcom shall report all billing disputes to BellSouth using the Billing Adjustment Request Form (RF 1461) provided by BellSouth. In the event of a billing dispute, the Parties will endeavor to resolve the dispute within sixty (60) calendar days of the notification date. If the Parties are unable within the 60 day period to reach resolution, then the aggrieved Party may pursue dispute resolution in accordance with the General Terms and Conditions of this Agreement.
- 2.2 For purposes of this Section 2, a billing dispute means a reported dispute of a specific amount of money actually billed by either Party. The dispute must be clearly explained by the disputing Party and supported by written documentation, which clearly shows the basis for disputing charges. By way of example and not by 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 amounts owed by the billed Party until the dispute is resolved. Claims by the billed Party for damages of any kind will not be considered a billing dispute for purposes of this Section. If the billing dispute is resolved in favor of the billing Party, the disputing Party will make immediate payment of any of the disputed amount owed to the billing Party or the billing Party shall have the right to pursue normal treatment procedures. Any credits due to the disputing Party, pursuant to the billing dispute, will be applied to the disputing Party's account by the billing Party immediately upon resolution of the dispute.
- 2.3 If a Party disputes a charge and does not pay such charge by the payment due date, or if a payment or any portion of a payment is received by either Party after the payment due date, or if a payment or any portion of a payment is received in funds

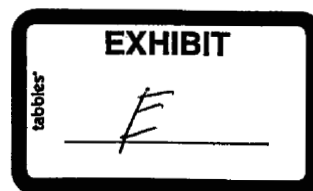


disclosure or dissemination to anyone except employees of Recipient with a need to know such Information solely in conjunction with Recipient's analysis of the Information and for no other purpose except as authorized herein or as otherwise authorized in writing by the Discloser. Recipient will not make any copies of the Information inspected by it.

- 9.3 Exceptions. Recipient will not have an obligation to protect any portion of the Information which:
- 9.3.1 (a) is made publicly available by the Discloser or lawfully by a nonparty to this Agreement; (b) is lawfully obtained by Recipient from any source other than Discloser; (c) is previously known to Recipient without an obligation to keep it confidential; or (d) is released from the terms of this Agreement by Discloser upon written notice to Recipient.
- 9.4 Recipient agrees to use the Information solely for the purposes of negotiations pursuant to 47 U.S.C. 251 or in performing its obligations under this Agreement and for no other entity or purpose, except as may be otherwise agreed to in writing by the Parties. Nothing herein shall prohibit Recipient from providing information requested by the FCC or a state regulatory agency with jurisdiction over this matter, or to support a request for arbitration or an allegation of failure to negotiate in good faith.
- 9.5 Recipient agrees not to publish or use the Information for any advertising, sales or marketing promotions, press releases, or publicity matters that refer either directly or indirectly to the Information or to the Discloser or any of its affiliated companies.
- 9.6 The disclosure of Information neither grants nor implies any license to the Recipient under any trademark, patent, copyright, application or other intellectual property right that is now or may hereafter be owned by the Discloser.
- 9.7 Survival of Confidentiality Obligations. The Parties' rights and obligations under this Section 9 shall survive and continue in effect until two (2) years after the expiration or termination date of this Agreement with regard to all Information exchanged during the term of this Agreement. Thereafter, the Parties' rights and obligations hereunder survive and continue in effect with respect to any Information that is a trade secret under applicable law.

10. Resolution of Disputes

Except as otherwise stated in this Agreement, if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the aggrieved Party shall petition the Commission for a resolution of the dispute. However, each Party reserves any



rights it may have to seek judicial review of any ruling made by the Commission concerning this Agreement.

11. Taxes

- 11.1 Definition. For purposes of this Section, the terms “taxes” and “fees” shall include but not be limited to federal, state or local sales, use, excise, gross receipts or other taxes or tax-like fees of whatever nature and however designated (including tariff surcharges and any fees, charges or other payments, contractual or otherwise, for the use of public streets or rights of way, whether designated as franchise fees or otherwise) imposed, or sought to be imposed, on or with respect to the services furnished hereunder or measured by the charges or payments therefore, excluding any taxes levied on income.
- 11.2 Taxes and Fees Imposed Directly On Either Providing Party or Purchasing Party.
- 11.2.1 Taxes and fees imposed on the providing Party, which are not permitted or required to be passed on by the providing Party to its customer, shall be borne and paid by the providing Party.
- 11.2.2 Taxes and fees imposed on the purchasing Party, which are not required to be collected and/or remitted by the providing Party, shall be borne and paid by the purchasing Party.
- 11.3 Taxes and Fees Imposed on Purchasing Party But Collected And Remitted By Providing Party.
- 11.3.1 Taxes and fees imposed on the purchasing Party shall be borne by the purchasing Party, even if the obligation to collect and/or remit such taxes or fees is placed on the providing Party.
- 11.3.2 To the extent permitted by applicable law, any such taxes and/or fees shall be shown as separate items on applicable billing documents between the Parties. Notwithstanding the foregoing, the purchasing Party shall remain liable for any such taxes and fees regardless of whether they are actually billed by the providing Party at the time that the respective service is billed.
- 11.3.3 If the purchasing Party determines that in its opinion any such taxes or fees are not payable, the providing Party shall not bill such taxes or fees to the purchasing Party if the purchasing Party provides written certification, reasonably satisfactory to the providing Party, stating that it is exempt or otherwise not subject to the tax or fee, setting forth the basis therefor, and satisfying any other requirements under applicable law. If any authority seeks to collect any such tax or fee that the purchasing Party has determined and certified not to be payable, or any such tax or fee that was not billed by the providing Party, the purchasing Party may contest the same in good faith, at its own expense. In any such contest, the purchasing Party shall promptly furnish the providing Party with copies of all filings in any

IDS

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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

EXHIBIT

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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,

Angela Leiro

Vice President, Regulatory Affairs

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