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September 7, 1999

Mrs. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 990691-TP (ICG Arbitration)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Prehearing Statement, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

E. Earl Edenfield, Jr.
E. Earl Edenfield, Jr. (PW)

AFA	_____	cc: All Parties of Record
APP	_____	Nancy B. White
CAF	_____	Marshall M. Criser III
CMU	<i> favors</i>	R. Douglas Lackey
CTR	_____	
EAG	_____	
LEG	<u> 1 </u>	
MAS	<u> 3 </u>	
OPC	_____	
PAI	_____	
SEC	<u> 1 </u>	
WAW	_____	
OTH	_____	

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**CERTIFICATE OF SERVICE
Docket No. 990691-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

U.S. Mail this 7th day of September, 1999 to the following:

**C. Lee Fordham
Staff Counsel
Florida Public Service
Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850**

**ICG Telecom Group, Inc.
Mr. Carl Jackson
50 Glenlake Parkway, Suite 500
Atlanta, GA 30328
Tel. No. (678) 222-7342
Fax. No. (678)222-7413
Represented by McWhirter Law Firm**

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Tel. No. (850) 222-2525
Fax. No. (850) 222-5606
Represents ICG**


E. Earl Edenfield, Jr. (per)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:)
)
Petition by ICG TELECOM GROUP, INC.) Docket No. 990691-TP
For Arbitration of an Interconnection)
Agreement with BELLSOUTH)
TELECOMMUNICATIONS, INC. Pursuant to)
Section 252(b) of the Telecommunications)
Act of 1996.) Filed: September 7, 1999
_____)

**PRE-HEARING STATEMENT OF
BELLSOUTH TELECOMMUNICATIONS, INC.**

BellSouth Telecommunications, Inc. ("BellSouth"), in accordance with the provisions of the Order Establishing Procedure (Order No. PSC-99-1532-PCO-TP), issued August 4, 1999, submits its Pre-hearing Statement.

Witnesses

BellSouth proposes to call the following witnesses to offer testimony on the issues in this docket, as enumerated in Appendix A of the Order Establishing Procedure:

<u>Witness</u>	<u>Issue(s)</u>
1. Alphonso J. Varner (Direct and Rebuttal)	1, 3 - 7, 10, and 18-25
2. D. Daonne Caldwell (Direct)	3

BellSouth reserves the right to call additional witnesses, witnesses to respond to Commission inquiries not addressed in direct or rebuttal testimony and witnesses to address issues not presently designated that may be designated by the Pre-hearing Officer at the pre-hearing conference to be held on September 21, 1999. BellSouth has listed the witnesses for whom

DOCUMENT NUMBER-DATE

10713 SEP-7 99

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BellSouth believes testimony will be filed, but reserves the right to supplement that list if necessary.

Exhibits

Alphonso J. Varner	AJV-1	ISP Traffic Diagrams (A and B)
	AJV-2	ISP Traffic Diagrams (C and D)
	AJV-3	BellSouth's Inter-Carrier Compensation Proposal at the FCC
	AJV-4	ISP Traffic Diagrams (E and F)
	AJV-5	ISP Traffic Diagrams (G and H)
	AJV-6	Proposed Interim Inter-Carrier Access Service Compensation Plan
	AJV-7	Calculation of Sharing Percentage
	AJV-8	Florida UNE Rate and Cost Analysis
	AJV-1 (Rebuttal)	Newspaper articles regarding Internet access prices
D. Daonne Caldwell	DDC-1	Cost Study

BellSouth reserves the right to file exhibits to any testimony that may be filed under the circumstances identified in Section "A" above. BellSouth also reserves the right to introduce exhibits for cross-examination, impeachment, or any other purpose authorized by the applicable Florida Rules of Evidence and Rules of this Commission.

Statement of Basic Position

Each of the individually numbered issues in this docket represent a specific dispute between BellSouth and ICG Telecom Group, Inc. ("ICG") as to what should be included in the Interconnection Agreement between the parties. Some of these issues involve matters that are not

properly within the scope of the Telecommunications Act of 1996 ("1996 Act") or the jurisdiction of this Commission and should, therefore, not be part of an Arbitrated Agreement. As to all other issues, BellSouth's positions are the more consistent with the 1996 Act, the pertinent rulings of the FCC and the rules of this Commission. Therefore, the Commission should sustain each of BellSouth's positions.

BellSouth's Position on the Issues of Law and Fact

Issue 1: Until the FCC and the FPSC adopt a rule with prospective application, should dial-up access to the Internet through Internet Service Providers (ISPs) be treated as if it were a local call for purposes of reciprocal compensation?

Position: No. The FCC's recent Declaratory Ruling in CC Docket Nos. 96-98 and 99-68, released on February 26, 1999, confirmed unequivocally that traffic bound for the Internet through ISPs ("ISP-bound traffic") is interstate in nature, not local. Under the provisions of the 1996 Act and FCC rules, only local traffic is subject to reciprocal compensation obligations. Thus, reciprocal compensation is clearly not applicable to ISP-bound traffic. In addition to being contrary to the law, treating ISP-bound traffic as local for reciprocal compensation purposes is contrary to sound public policy.

The issue in this proceeding is vastly different from prior ISP decisions rendered by the Commission, which were based on findings that the parties intended to pay reciprocal compensation for ISP-bound traffic. In this proceeding, there is absolutely no doubt that BellSouth does not intend to pay reciprocal compensation for ISP-bound traffic.

The FCC made clear that any inter-carrier compensation mechanism for ISP-bound traffic is outside of the scope of §251(b)(5), as such traffic is interstate, not local. *See* FCC Declaratory Ruling, at FN 87. Thus, this issue is not proper for §252 arbitration. Notwithstanding, BellSouth

proposes an interim mechanism for ISP-bound traffic pending the FCC's issuance of a final order in its inter-carrier compensation docket.

Issue 2: **Should the amount paid by ICG in the Bona Fide Request process be offset for BellSouth's costs in developing a project plan whenever other parties subsequently request and receive the same service at a reduced rate (because BellSouth has already developed the necessary project plan)?**

Position: This issue is resolved.

Issue 3: **Should the following packet-switching capabilities be made available as UNEs:**

(a) user-to-network interface (UNI) at 56 kbps, 64 kbps, 128 kbps, 256 kbps, 384 kbps, 1.544 Mbps, 44.736 Mbps;

(b) network-to-network interface (NNI) at 56 kbps, 64 kbps, 1.544 Mbs, 44.736 Mbps;

(c) data link control identifiers (DLCIs), at committed information rates (CIRs) of 0 kbps, 8 kbps, 9.6 kbps, 16 kbps, 19.2 kbps, 28 kbps, 32 kbps, 56 kbps, 64 kbps, 128 kbps, 192 kbps, 256 kbps, 320 kbps, 384 kbps, 448 kbps, 512 kbps, 576 kbps, 640 kbps, 704 kbps, 768 kbps, 832 kbps, 896 kbps, 960 kbps, 1.024 Mbps, 1.088 Mbps, 1.152 Mbps, 1.216 Mbps, 1.280 Mbps, 1.344 Mbps, 1.408 Mbps, 1.472 Mbps, 1.536 Mbps, 1.544 Mbps, Mbps, 3.088 Mbps, 4.632 Mbps, 6.176 Mbps, 7.720 Mbps, 9.264 Mbps, 10.808 Mbps, 12.350 Mbps, 13.896 Mbps, 15.440 Mbps, 16.984 Mbps, 18.528 Mbps, 20.072 Mbps?

Position: With certain exceptions, BellSouth agrees to comply with ICG's request until the FCC issues a final non-appealable order on Rule 51.319. Moreover, until a recent (August 25, 1999) pre-hearing conference before the Tennessee Regulatory Authority, BellSouth believed that this issue was settled regionally, subject only to ICG's review of BellSouth's rates in each state. BellSouth's understanding was based upon agreements reached in a mediation conference in Montgomery, Alabama, held on August 10, 1999. While BellSouth acknowledges that ICG raised

collocation questions relating to this issue during that mediation, the parties settled the issue in its entirety in Alabama¹.

BellSouth opposes ICG's attempt to broaden Issue 3 to include a collocation issue related to packet-switching. Section 252(b)(2) of the 1996 Act requires the petitioner (in this case ICG) to state the unresolved issues in the Arbitration Petition. In addition, §252(b)(4) limits the Commission's consideration of §252 arbitration issues to those "set forth in the petition and in the response...." The packet-switching issue raised by ICG in the Arbitration Petition is limited strictly to whether BellSouth is required to provide packet-switching capabilities as a UNE. To allow ICG to change and expand this issue would be a violation of the requirements of the 1996 Act and would prejudice BellSouth's right to a fair arbitration.

Issue 4: Under the Telecommunications Act of 1996, should "Enhanced Extended Link" Loops (EELs) be made available to ICG in the Interconnection Agreement as UNEs?

Position: No. First, neither loops, ports, nor transport have been defined by the FCC as UNEs that BellSouth must provide. Second, even if loops, ports and transport are defined as UNEs, BellSouth is only obligated to provide combinations of those elements where they are currently combined in BellSouth's network. Notwithstanding, BellSouth is willing to provide the EEL combination through commercial agreement.

Because BellSouth is not required to combine network elements for ALECs under the 1996 Act, the issue of applicable rates for such network combinations is not properly the subject of

¹ The North Carolina Utilities Commission ("NCUC") did not consider any of the UNE issues (issues 3,4 and 6) because of the fluidity of the issue at the FCC, and the concern that UNE policy be consistent and not established on a piecemeal basis. Similar to the Florida Commission, the NCUC has an ongoing UNE docket, which was deemed by the NCUC to be an appropriate place to consider those issues. No other state where this arbitration is to be heard has yet to address issue 3.

arbitration. To the extent the Commission concludes otherwise, or determines to establish rates for network elements that are currently combined in BellSouth's network, the Commission should do so in the context of the UNE generic proceeding (Dkt. 990649-TP) rather than an arbitration involving one ALEC. Thus, this issue is not appropriate for arbitration.

Issue 5: Should liquidated damages be imposed when BellSouth fails to meet the time intervals for provisioning UNEs?

Position: No. This issue is currently the subject of BellSouth's Motion to Remove Issues from Arbitration, filed August 25, 1999. In short, the Commission has ruled in several proceedings that the Commission lacks the authority to award penalties or liquidated damages. Thus, the issue is inappropriate for this, or any, arbitration.

Issue 6: Should volume and term discounts be available to ICG for UNEs?

Position: No. BellSouth should not be required to provide volume and term discounts for UNEs. Neither the 1996 Act nor any FCC order or rule require volume and term discount pricing. The UNE recurring rates that ICG pays are cost-based in accordance with the requirements of Section 252(d) and are derived using least-cost, forward looking technology consistent with the FCC's rules. Also, BellSouth's nonrecurring rates already reflect any economies involved when multiple UNEs are ordered and provisioned at the same time. To the extent the Commission decides to consider volume and term discounts for UNEs, the Commission should do so in the context of the UNE generic proceeding (Dkt. 990649-TP) rather than an arbitration involving one ALEC.

Issue 7: For purposes of reciprocal compensation, should ICG be compensated for end office, tandem, and transport elements of termination where ICG's switch serves a geographic area comparable to the area served by BellSouth's tandem switch?

Position: No. The appropriate rates for reciprocal compensation are the elemental rates for end office switching, tandem switching and common transport that are used to transport and terminate local traffic. If a call is not handled by a switch on a tandem basis, it is not appropriate to pay reciprocal compensation for the tandem switching function. BellSouth's position is consistent with the Commission's December 16, 1996 Order in the MFS/Sprint Arbitration (Order No. PSC-96-1532-FOF-TP), which was reaffirmed in the MCI/Sprint Arbitration in an Order dated April 14, 1997 (Order No. PSC-97-0294-FOF-TP).

Issue 8: In calculating PLU and PIU, should BellSouth be required to report the traffic on a monthly basis?

Position: This issue is resolved.

Issue 9: Should BellSouth be required to provide to ICG a breakdown of the intrastate and interstate traffic that it reports to ICG?

Position: This issue is resolved.

Issue 10: Should BellSouth be required to commit to provisioning the requisite network buildout and necessary support when ICG agrees to enter into a binding forecast of its traffic requirements in a specified period?

Position: No. BellSouth is not required by the 1996 Act or any FCC order or rule to commit to a binding forecast with ICG or any ALEC.

Issue 11: Should ICG meet the requirements of becoming a BellSouth "certified vendor" before being allowed to install, provision, or maintain its own collocation space?

Position: This issue is resolved.

Issue 12: When there are fewer than fifty (50) BellSouth “certified vendors” in a designated area and/or when a certified vendor is unable to perform the collocation work on a timely basis, should the process for becoming a BellSouth “certified vendor” be waived or expedited?

Position: This issue is resolved.

Issue 13: Should a BellSouth “certified vendor” be required to cross connect ICG’s equipment with the equipment of another telecommunications carrier that desires such a connection?

Position: This issue is resolved.

Issue 14: Should security escorts be required for ICG site visits?

Position: This issue is resolved.

Issue 15: When ICG transitions its virtual collocation to physical collocation, should the charges be limited to actual costs in making the transition and a records change?

Position: This issue is resolved.

Issue 16: Should ICG be allowed to sublease any of its equipment located on BellSouth’s premises?

Position: This issue is resolved.

Issue 17: When a customer number is transferred to ICG, how soon should BellSouth update its records?

Position: This issue is resolved.

Issue 18: Should liquidated damages be imposed when BellSouth fails to install, provision, or maintain any service in accordance with the due dates set forth in the parties’ interconnection agreement?

Position: No. See BellSouth’s response to Issue 5 above.

Issue 19: Should BellSouth continue to be responsible for any cumulative failure in a one-month period to install, provision, or maintain any service in accordance with the due dates specified in the interconnection agreement with ICG?

Position: No. See BellSouth’s response to Issue 5 above.

Issue 20: Should liquidated damages be imposed when BellSouth's service fails to meet the requirements imposed by the interconnection agreement with ICG (or the service is interrupted causing loss of continuity or functionality)?

Position: No. See BellSouth's response to Issue 5 above.

Issue 21: Should BellSouth continue to be responsible when the duration of service failure exceeds certain benchmarks?

Position: No. See BellSouth's response to Issue 5 above.

Issue 22: Should liquidated damages be imposed when BellSouth's service fails to meet the grade of service requirements imposed by the interconnection agreement with ICG?

Position: No. See BellSouth's response to Issue 5 above.

Issue 23: Should BellSouth continue to be responsible when the duration of service's failure to meet the grade of service requirements exceeds certain benchmarks?

Position: No. See BellSouth's response to Issue 5 above.

Issue 24: Should liquidated damages be imposed when BellSouth's fails to provide any data in accordance with the specifications of the interconnection agreement with ICG?

Position: No. See BellSouth's response to Issue 5 above.

Issue 25: Should BellSouth continue to be responsible when the duration of its failure to provide the requisite data exceeds certain benchmarks?

Position: No. See BellSouth's response to Issue 5 above.

Stipulations

Upon agreement of the parties, the following issues, as delineated in Appendix A of the Order Establishing Procedure, are resolved: 2, 8, 9, and 11-17 (inclusive).

Pending Motions

Motion of BellSouth Telecommunications, Inc. to Remove Issues from Arbitration, filed August 25, 1999.

Other Requirements

None.

Respectfully submitted this 7th day of September 1999.

BELLSOUTH TELECOMMUNICATIONS, INC.

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