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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of:)
)
Petition by ICG TELECOM GROUP, INC.)
for Arbitration of an Interconnection)
Agreement with BELLSOUTH)
TELECOMMUNICATIONS, INC. Pursuant to)
Section 252(b) of the Telecommunication)
Act of 1996)

Docket No. 990691-TP
Submitted: September 7, 1999

**ICG TELECOM GROUP, INC.'S RESPONSE TO
BELLSOUTH TELECOMMUNICATIONS, INC.'S
MOTION TO REMOVE ISSUES FROM ARBITRATION**

ICG Telecom Group, Inc. (ICG), through its undersigned counsel, submits its response to BellSouth's Motion to Remove Issues from Arbitration.

On May 27, 1999, ICG filed its Petition asking the Commission to arbitrate disputes that had arisen during negotiations between ICG and BellSouth Telecommunications, Inc. (BellSouth) of the terms and conditions of an interconnection agreement. Among the items that the parties could not negotiate were ICG's request that performance standards be incorporated into the contract, and that the contract provide for consequences in the event BellSouth failed to adhere to those standards.

Issue Nos. 5 and 18-25 relate to BellSouth's refusal to negotiate standards and consequences,

- AFA _____
- APP _____
- CAF _____
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- LEG _____
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- OTH _____

as well as its refusal to negotiate provisions which would require BellSouth to acknowledge its responsibility for customer difficulties resulting from BellSouth's failure to meet performance standards.

On August 25, 1999, BellSouth filed its motion to exclude these issues. BellSouth bases its motion on (1) rulings by the Commission that it has no authority to award damages; and (2) the fact that ICG withdrew similar issues in another jurisdiction.

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With regard to the Commission's orders cited by BellSouth, ICG agrees that the Commission has determined that it cannot award damages. However, to the extent this tenet has served as a basis to exclude issues relating to BellSouth's refusal to negotiate terms, ICG respectfully submits that the current situation poses a different question. ICG is not asking the Commission to award damages; ICG is asking the Commission to require that the parties include terms and conditions in an interconnection agreement that will deter BellSouth from non-performance.

The distinction lies in the difference between adjudicating the damages occasioned by a past breach, on one hand, and the Commission's authority to prevent anti-competitive behavior, on the other. In this arbitration, the Commission is implementing the Telecommunications Act of 1996, the objective of which is to facilitate competition in the local exchange market. New entrants who avail themselves of an ILEC's facilities as they attempt to build relationships with customers are dependent on the quality of the response they receive from the ILEC. The ILEC has every incentive to frustrate the intent of the Act by favoring its own operations over that of the new entrant. Unless the interconnection agreement has teeth, the new entrant will be exposed to the possibility of activities designed to place the ALEC at a competitive disadvantage. Provisions containing standards and consequences are needed to counter that incentive and to facilitate the competition that is the objective of the Act. Section 364.01(4)(g), Florida Statutes, empowers the Commission to ensure that all telecommunications companies are treated fairly, by preventing anti-competitive behavior. The Commission can exercise that power by requiring the parties to incorporate standards and in their effective remedies in their agreement.

With respect to the balance of BellSouth's argument, the decision of ICG to withdraw certain issues in Alabama was based on the circumstances of that case, and offers no support for BellSouth's motion here. BellSouth also quotes ICG's witness, Karen Notsund, as saying elsewhere that the issue

is too important for a two-party arbitration. In point of fact, in this proceeding Ms. Notsund advocates that the Commission conduct a generic proceeding on the subject. ICG notes that, with respect to OSS, the Commission -- after receiving input from numerous parties -- is in the process of implementing third party testing of OSS that will incorporate performance standards. In this case, ICG should not be prohibited from advocating that further such generic measures be undertaken as a result of BellSouth's intransigence during negotiations.

WHEREFORE, ICG requests that the Commission deny BellSouth's Motion to Remove Issues from Arbitration.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy ICG Telecom Group, Inc.'s Response to BellSouth Telecommunications, Inc.'s Motion to Remove Issues from Arbitration has been furnished by United States mail or by (*) hand-delivery this 7th day of September, 1999 to:

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