

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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 Telecommunications)
Act of 1996.)**

**Docket No. 990691-TP)
Filed: September 7, 1999)**

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**REBUTTAL TESTIMONY
OF
PHILIP W. JENKINS
ON BEHALF OF
ICG TELECOM GROUP, INC.**

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1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **REBUTTAL TESTIMONY**

3 **OF**

4 **PHILIP JENKINS**

5 **ON BEHALF OF ICG TELECOM GROUP, INC.**

6 **DOCKET NUMBER 990691-TP**

7 **Q. ARE YOU THE PHILIP JENKINS WHO HAS PROVIDED DIRECT**
8 **TESTIMONY IN THIS PROCEEDING?**

9 A. Yes, I am.

10 **Q. WHAT IS YOUR PURPOSE IN TESTIFYING TODAY?**

11 A. I would like to take this opportunity to rebut the argument made by BellSouth's
12 witnesses in response to ICG's petition for arbitration and related direct testimony,
13 specifically, the binding forecast issue.

14 **Q. ARE THERE OTHER ISSUES YOU ADDRESSED IN YOUR DIRECT**
15 **TESTIMONY THAT SUBSEQUENTLY HAVE BEEN SETTLED BY ICG AND**
16 **BELLSOUTH?**

17 A. Yes, in my direct testimony, I addressed several issues relating to collocation.
18 Those issues have been settled, and so there is no need for me to rebut the
19 arguments made by BellSouth witnesses on those issues in their direct testimony.

20 **Q. HAVE YOU REVIEWED MR. VARNER'S TESTIMONY CONCERNING**
21 **BINDING FORECASTS?**

22 A. Yes.

1 **Q. DO YOU UNDERSTAND BELL SOUTH'S POSITION AS DESCRIBED BY**
2 **MR. VARNER?**

3 A. No. I do not understand BellSouth's reluctance to agree to ICG's request. ICG
4 is not asking BellSouth to take any risk. ICG is willing to commit to BellSouth for a
5 specified volume of interconnection trunks as a part of a binding forecast - whether
6 or not ICG's traffic volume achieves the forecasted levels. If the traffic volume falls
7 short of the forecast, ICG will pay BellSouth its full cost for the unused trunks. In
8 other words, ICG will take all of the risk, BellSouth will assume no risk.

9 **Q. CAN YOU EXPLAIN ICG'S PROPOSAL MORE SPECIFICALLY?**

10 A. Yes. ICG relies primarily on direct end office trunks to deliver traffic from
11 BellSouth end offices to ICG's switch. Trunks from BellSouth to ICG are BellSouth's
12 responsibility to provision, pay for and administer. These direct end office trunks from
13 BellSouth to ICG are the trunks for which ICG would like to enter into binding
14 forecasts.

15 ICG provides BellSouth with quarterly traffic forecasts now. These forecasts
16 assist BellSouth in planning the growth of its network to meet ICG's needs. However,
17 BellSouth is currently under no obligation to respond to ICG's forecasts. BellSouth
18 may choose not to provision additional trunking to ICG even though ICG's forecast
19 suggests additional trunks are or soon will be needed. Also, while BellSouth may
20 ultimately augment these trunk groups, it may not do so in time to meet ICG's needs.
21 Under ICG's proposal for a binding forecast, in exchange for ICG's commitment to
22 specific traffic forecasts, BellSouth would be obligated to provision the trunking

1 necessary to carry the traffic volume specified. Ordinarily trunks from BellSouth to
2 ICG are BellSouth's financial responsibility. However, ICG is willing to agree to pay
3 BellSouth for any trunks provisioned under a binding forecast which are not utilized.
4 Were there to be such a shortfall, ICG believes that it would be only temporary and
5 that traffic volume would soon catch up to the forecast level.

6 **Q. DOES ICG WANT TO MAKE ALL OF ITS FORECASTS BINDING**
7 **FORECASTS?**

8 A. No. ICG simply wants the option to require binding forecasts. We do not
9 anticipate that this provision would be used in every instance. In many cases, ICG
10 would continue to provide BellSouth with non-binding traffic forecasts to assist
11 BellSouth in planning. ICG would only use the binding forecast option where (i) it
12 was confident of substantial additional growth and (ii) it was concerned that, without
13 a binding commitment by BellSouth to timely provision the necessary trunks, there
14 would be an unacceptable risk of blockage of incoming calls to ICG's network.

15 **Q. WHY ARE BINDING FORECASTS NECESSARY?**

16 A. With a binding forecast, ICG will be assured that whatever additional trunking
17 is dictated by its forecast will be provided by BellSouth. Binding forecasts will
18 provide ICG and its customers with the certainty that the network, specifically
19 BellSouth's trunking to ICG, will handle reasonably foreseeable traffic volumes.
20 Again, ICG is willing to assume all of the risk that its traffic volume will not meet its
21 projections. BellSouth will be paid in full for any trunks called for in the forecast if
22 they are not utilized by ICG on the schedule indicated in the forecast. Under these

1 conditions, I do not understand BellSouth's unwillingness to agree to ICG's proposal.

2 **Q. ARE YOU AWARE WHETHER BELL SOUTH HAS EVER OFFERED TO**
3 **PROVIDE BINDING FORECASTS TO ALECs?**

4 A. Yes. I am aware of at least one agreement (there may be more) in which
5 BellSouth has agreed to provide binding forecasts. In its agreement with KMC
6 Telecom, BellSouth agreed to the following language:

7 **20.3 Exchange of Traffic Forecasts**

8 Thirty (30) days after the Interconnection Activation [sic] Date and
9 each month during the term of this Agreement, each Party shall provide
10 the other Party with a rolling, six (6) calendar month, non-binding
11 forecast of its traffic and volume requirements for the services and
12 Network Elements provided under this Agreement in the form and in
13 such detail as agreed by the Parties. Notwithstanding Section 31.0,
14 the Parties agree that each forecast provided under this Section 20.3
15 shall be 'Proprietary Information' under Section 31.0."

16 **20.4 Binding Traffic Forecasts**

17 Any Party that is required pursuant to this Agreement to provide a
18 forecast (the 'Forecast Provider') or the Party that is entitled pursuant
19 to this Agreement to receive a forecast (the 'Forecast Recipient') with
20 respect to traffic and volume requirements for the services and
21 Network Elements provided under this Agreement may request in
22 addition to non-binding forecasts required by Section 20.3 that the

1 other enter into negotiations to establish a forecast (a 'Binding
2 Forecast') that commits such Forecast Provider to purchase, and such
3 Forecast Recipient to provide, a specified volume to be utilized as set
4 forth in such Binding Forecast. The Forecast Provider and Forecast
5 Recipient shall negotiate the terms of such Binding Forecast in good
6 faith and shall include in such Binding forecast provisions regarding
7 price, quantity, liability for failure to perform under a Binding Forecast
8 and any other terms desired by such Forecast Provider and Forecast
9 Recipient. Notwithstanding Section 31.0, the Parties agree that each
10 forecast provided under this Section 20.4 shall be deemed 'Proprietary
11 Information' under Section 31.0.

12 There is no reason similar language should not be included in the ICG agreement.

13 To not include it would be discriminatory.

14 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

15 **A.** Yes, it does.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the ICG Telecom Group, Inc.'s Rebuttal Testimony of Philip W. Jenkins has been furnished by (*)hand-delivery and by U.S. mail this 7th day of September, 1999 to:

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