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Legal Department

E. EARL EDENFIELD, Jr.  
General Attorney

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BellSouth Telecommunications, Inc.  
150 South Monroe Street  
Room 400  
Tallahassee, Florida 32301  
(404) 335-0763

RECORDS AND  
REPORTING

September 17, 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 Response to ICG Telecom Group, Inc.'s Motion to Strike, 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.  
(or)

- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU 1
- CTR \_\_\_\_\_
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- LEG 1
- MAS 3
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cc: All Parties of Record  
Nancy B. White  
Marshall M. Criser III  
R. Douglas Lackey

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*Done 9/20/99*

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

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

Facsimile and U.S. Mail this 17th 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

McWhirter Law Firm  
Joseph McGlothlin  
Vicki Gordon Kaufman  
117 South Gadsden Street  
Tallahassee, FL 32301  
Tel. No. (850) 222-2525  
Fax. No. (850) 222-5606  
Represents ICG

*E. Earl Edenfield, Jr.*  
E. Earl Edenfield, Jr.  
(2)

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 17, 1999
_____	)	

**RESPONSE OF BELLSOUTH TELECOMMUNICATIONS, INC.  
TO ICG TELECOM GROUP'S MOTION TO STRIKE**

BellSouth Telecommunications, Inc. ("BellSouth"), responds to ICG Telecom Group, Inc.'s ("ICG") motion to strike certain portions of the direct testimony of Alphonso J. Varner. Apparently recognizing the complete lack of legal support for its testimony, ICG seeks to limit the Florida Public Service Commission's ("Commission") consideration of the issue of an interim inter-carrier compensation mechanism for traffic bound for the Internet via Internet Service Providers ("ISP traffic"). Throughout its testimony, ICG presents theories and methodologies in support of the inter-carrier compensation mechanism proposed by ICG. Notwithstanding, ICG seeks to preclude BellSouth from presenting contrary theories and methodologies that will assist the Commission in reaching an informed decision on this very important issue. Therefore, for the reasons set forth below, the Commission should deny ICG's Motion to Strike and allow the complete testimony of Alphonso Varner in this proceeding.

ARGUMENT

Issue 1 of the Arbitration Petition ("Issue 1") provides, "Until the FCC adopts a rule with prospective application, should dial-up calls to Internet service providers (ISPs) be treated as if

they were local calls for purposes of reciprocal compensation?” (Arbitration Petition, at 8) ICG contends that Issue 1 requires the Commission to “fashion in this proceeding a mechanism that includes ISP traffic for purposes of reciprocal compensation for costs incurred in handling calls....” (Motion to Strike, at 3, FN 1) While disagreeing to the mechanism proposed by ICG, BellSouth does agree that Issue 1 requests the Commission to establish an interim inter-carrier compensation mechanism for ISP traffic.

As authority for its Motion to Strike, ICG cites Section 252(b)(4) of the Telecommunications Act of 1996 (“1996 Act”). While quoting the language of the statute correctly, ICG’s arguments based on that language are totally misplaced. Clearly, the 1996 Act allows the Commission to consider any issue raised in the petition or response. As noted above, ICG does not dispute that the issue to be considered by the Commission is the appropriate interim inter-carrier compensation mechanism for ISP traffic. Nowhere in the 1996 Act is a requirement that every nuance of testimony be raised in either the petition or the response, only the issue.

The basis for the Motion to Strike appears to be that ICG disagrees with BellSouth’s proposed interim inter-carrier compensation plan. ICG contends that “nowhere in its response does BellSouth suggest that BellSouth should be compensated by ICG as a consequence of ISP traffic.”<sup>1</sup> (Motion to Strike, at 2) Although ICG disagrees with BellSouth’s proposed interim inter-carrier compensation plan, that is not a basis for Mr. Varner’s testimony to be stricken. In addition, ICG’s allegation that “BellSouth never advanced such a theory and never asserted such a claim during negotiations with ICG” (*Id.*) is equally disingenuous. BellSouth’s proposed

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<sup>1</sup> BellSouth is left with the distinct impression that if BellSouth had proposed a plan whereby ICG was compensated for ISP traffic instead of BellSouth, then the testimony would be acceptable.

interim inter-carrier compensation plan was discussed during multiple negotiation sessions held prior to both the North Carolina and Alabama arbitration hearings. In fact, Mr. Varner presented BellSouth's interim inter-carrier compensation plans during the North Carolina arbitration hearing. Thus, any claim by ICG that it is surprised by Mr. Varner's testimony is not supported by the facts.

Finally, even under the most restrictive interpretation of the issue, the portions of Mr. Varner's testimony at issue are directly relevant to the issues of: (1) whether ISP traffic should be defined as local traffic, and; (2) whether ICG will incur costs for which it will not be compensated if the traffic is defined as anything other than local traffic. Specifically, Mr. Varner's proposal sets forth the methodology by which ICG will recover its costs under a scenario where ISP traffic is treated in accordance with its true nature, interstate exchange access traffic.

#### CONCLUSION

ICG fails to assert any competent legal or factual grounds upon which the testimony of Mr. Varner can be stricken. Therefore, BellSouth requests that Mr. Varner's direct testimony stand as written and filed.

Respectfully submitted this 17<sup>th</sup> day of September 1999.

BELLSOUTH TELECOMMUNICATIONS, INC.

*Nancy B. White*  
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NANCY B. WHITE (SR)

MICHAEL P. GOGGIN

c/o Nancy Sims

150 South Monroe Street, #400

Tallahassee, Florida 32301

(305) 347-5558

*R. Douglas Lackey*  
\_\_\_\_\_  
R. DOUGLAS LACKEY (SR)

E. EARL EDENFIELD JR.

A. LANGLEY KITCHINGS

675 West Peachtree Street, #4300

Atlanta, Georgia 30375

(404) 335-0763

178777