

REBUTTAL TESTIMONY OF ALPHONSO J. VARNER  
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 990691-TP

SEPTEMBER 7, 1999

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Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR BUSINESS ADDRESS.

A. My name is Alphonso J. Varner. I am employed by BellSouth as Senior Director for State Regulatory for the nine-state BellSouth region. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS DOCKET?

A. Yes. I filed direct testimony and seven exhibits on August 2, 1999.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. My testimony rebuts portions of the direct testimony filed by ICG Telecom Group, Inc. ("ICG") witnesses Michael Starkey, Bruce Holdridge and Karen Notsund filed with the Florida Public Service Commission ("Commission") on August 2, 1999.

1

2 Q. ON PAGE 11, MR. STARKEY STATES THAT ISP-BOUND TRAFFIC IS  
3 FUNCTIONALLY NO DIFFERENT THAN OTHER TYPES OF TRAFFIC  
4 FOR WHICH BELLSOUTH HAS AGREED TO PROVIDE RECIPROCAL  
5 COMPENSATION. IS HE CORRECT?

6

7 A. No. Mr. Starkey is incorrect. Traffic bound for the Internet for Internet Service  
8 Providers ("ISP-bound traffic") is functionally equivalent to access traffic, not  
9 local traffic. As I stated in my direct testimony, only local traffic is subject to  
10 reciprocal compensation obligations. As previously confirmed by the Federal  
11 Communications Commission's ("FCC") Declaratory Ruling, ISP-bound  
12 traffic is jurisdictionally interstate; therefore, reciprocal compensation for ISP-  
13 bound traffic under Section 251 is not applicable.

14

15 Q. MR. STARKEY EXPLAINS ON PAGE 17 THAT CALLS DIRECTED TO  
16 ISPs ARE FUNCTIONALLY IDENTICAL TO LOCAL VOICE CALLS FOR  
17 WHICH BST HAS AGREED TO PAY TERMINATION CHARGES. DO  
18 YOU AGREE?

19

20 A. To the extent this statement is correct, the same could be said of a call to an  
21 interexchange carrier's ("IXC's") point of presence ("POP"). Mr. Starkey  
22 would agree that such calls to an IXC's POP are not subject to reciprocal  
23 compensation. It is not the technical use of the facilities that is relevant here,  
24 rather it is the nature of the traffic. Just like IXC traffic, ISP-bound traffic is  
25 originating access traffic.

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Q. AT PAGE 8 OF HIS TESTIMONY, MR. STARKEY QUOTES FROM PARAGRAPH 25 OF THE FCC'S DECLARATORY RULING IN AN ATTEMPT TO SHOW THAT THIS COMMISSION SHOULD APPLY RECIPROCAL COMPENSATION TO ISP-BOUND TRAFFIC IN THE PARTIES' INTERCONNECTION AGREEMENT. PLEASE COMMENT.

A. Mr. Starkey's use of paragraph 25 is incorrect. The basis for paragraph 25 is to advise the state commission that, in the absence of a federal rule governing ISP-bound traffic, states may "at this point" determine how ISP traffic should be treated in interconnection agreements. In other words, to do so would not violate any federal rule "at this point." However in its NPRM, the FCC asked for comment from the parties as to whether it is proper for states to address ISP traffic in arbitration proceedings. BellSouth believes it is not within the states' authority to do so and the FCC lacks the power to vest that authority with the state commissions. In any event, the FCC notes that decisions by the states must be consistent with federal law and that states must comply with the FCC's rules when adopted.

In light of this instruction to the states, it is important to emphasize the FCC's position as stated in footnote 87 of its Declaratory Ruling: "We conclude in this Declaratory Ruling, however, that ISP-bound traffic is non-local interstate traffic. Thus, the reciprocal compensation requirements of section 251(b)(5) of the Act and Section 51, Subpart H (Reciprocal Compensation for Transport and Termination of Local Telecommunications Traffic) of the Commission's

1 rules do not govern inter-carrier compensation for this traffic." The  
2 inescapable conclusion that this Commission must reach is that the FCC has  
3 exercised jurisdiction over ISP-bound traffic and footnote 87 states that ISP-  
4 bound traffic is not subject to reciprocal compensation. Instead, ISP-bound  
5 traffic will be subject to an inter-carrier compensation mechanism more  
6 appropriate to interstate access traffic.

7  
8 Q. MR. STARKEY FURTHER QUOTES FROM PARAGRAPH 25 IN AN  
9 ATTEMPT TO SHOW THAT THE FCC WAS ENCOURAGING STATES  
10 TO APPLY RECIPROCAL COMPENSATION TO ISP-BOUND TRAFFIC.  
11 DO YOU AGREE?

12  
13 A. No. The FCC is not at all encouraging the states to adopt reciprocal  
14 compensation for ISP-bound traffic in paragraph 25. Footnote 87 clearly  
15 demonstrates the fallacy of Mr. Starkey's conclusion. Instead, the FCC is  
16 simply explaining why it believes those states that ruled that reciprocal  
17 compensation is applicable to ISP-bound traffic could have done so. Paragraph  
18 25 states in part, "[w]hile to date the Commission has not adopted a specific  
19 rule governing the matter, we do note that our policy of treating ISP-bound  
20 traffic as local for purposes of interstate access charges would, if applied in the  
21 separate context of reciprocal compensation, suggest that such compensation is  
22 due for that traffic." The rest of the Order, however, goes on to say  
23 conclusively that such a conclusion is inaccurate. The FCC was simply  
24 advising the states that it could understand how its failure to adopt a specific  
25

1 rule could be a reason that the states might not have fully understood the  
2 FCC's previous decisions that ESP/ISP traffic is access traffic.

3  
4 Q. MR. STARKEY AT PAGE 16 IMPLIES THAT A CLEC WOULD NOT  
5 HAVE ANY COST RECOVERY ASSOCIATED WITH SERVING AN ISP  
6 PROVIDER IF NOT FOR THE RECIPROCAL COMPENSATION IT  
7 RECEIVES FROM ILECS. DO YOU AGREE?

8  
9 A. No. ISPs are carriers. As carriers, ISPs obtain access services from their  
10 serving local exchange carrier ("LEC"). The rates ISPs pay their serving LEC  
11 covers the full charge for the service provided to them. When an IXC or an  
12 ISP purchases access service, it is the IXC or the ISP, not the end user, who is  
13 the customer of the LEC for that service. The revenue the LEC receives from  
14 the ISP for access services is the only means to recover the costs of delivering  
15 the traffic to the ISP. Any additional compensation would only serve to  
16 augment the revenues the LEC receives from its ISP customer at the expense of  
17 the originating LEC's end user customers. In other words, paying ICG  
18 reciprocal compensation for ISP-bound traffic would result in BellSouth's end  
19 user customers subsidizing ICG's operations. Indeed, the FCC has recognized  
20 that the source of revenue for transporting ISP-bound traffic is the charge that  
21 the ISP pays for the access service. Further compensation to the ISP-serving  
22 LEC is inappropriate and is not in the public interest.

23  
24 If ICG is not recovering its cost from the ISPs it serves, it is likely that ICG is  
25 charging below cost rates to those ISPs. Apparently ICG's complaint is that it

1 will no longer be able to charge below cost rates when the subsidy it received  
2 from BellSouth in the form of reciprocal compensation goes away. Obviously,  
3 such complaint provides no basis for continuing the subsidy. However, it does  
4 clearly show why such subsidies should not be established, because once they  
5 are established, they become difficult to remove.

6  
7 It is difficult to empathize with ICG's situation. BellSouth has been an access  
8 service provider for ESPs and ISPs for years. Though BellSouth has been  
9 unable to collect the otherwise applicable switched access charges due to the  
10 FCC's exemption, BellSouth's source of cost recovery has been the business  
11 exchange service rates it charges ISPs.

12  
13 Q. DOES MR. STARKEY CONTRADICT HIS OWN CLAIM THAT ALECs  
14 DO NOT RECOVER COSTS FROM ISPs?

15  
16 A. Yes. Interestingly, Mr. Starkey directly contradicts his contention that  
17 alternative local exchange carriers ("ALECs") do not recover their costs from  
18 ISPs. The contradiction is found in the following comment at page 14:  
19 "Indeed, ISPs and other technologically reliant customer groups are, in many  
20 cases, providing the revenue and growth potential that will fund further ALEC  
21 expansion into other more traditional residential and business markets." If  
22 ALECs are not recovering their cost to provide service to ISPs, what is the  
23 source of the revenue to fund expansion? The revenue comes from ALECs  
24 like ICG soaking ILECs for inappropriate reciprocal compensation payments  
25 on non-local ISP-bound access traffic. The Commission should see this

1 situation for what it is. ICG is asking this Commission to require BellSouth to  
2 fund ICG's business operations and expansion plans. Such a scheme creates a  
3 market distortion that should not be allowed to occur. If ICG's  
4 recommendation is adopted, ICG wins, ISPs win and BellSouth's end user  
5 customers lose and, ultimately, competition in the local exchange suffers.  
6 Reciprocal compensation for ISP-bound traffic sets up a win-win-lose  
7 situation, versus an appropriate inter-carrier compensation sharing mechanism,  
8 which establishes a win-win-win situation.

9  
10 Q. AT PAGE 20, MR. STARKEY TAKES A DIFFERENT TACK, SETTING UP  
11 A HYPOTHETICAL SITUATION WHERE BELLSOUTH IS THE ONLY  
12 LOCAL PROVIDER AND SERVES ALL ISP CUSTOMERS. HE  
13 CONTENDS THAT FOR BELLSOUTH TO MEET THE INCREASED  
14 NETWORK REQUIREMENTS CAUSED BY ISPS, BELLSOUTH WOULD  
15 "UNDOUBTEDLY BE ASKING STATE COMMISSIONS AND THE FCC  
16 FOR RATE INCREASES TO RECOVER THOSE ADDITIONAL  
17 INVESTMENT COSTS." DO YOU AGREE?

18  
19 A. No. BellSouth is not arguing that routing traffic through an ISP should be done  
20 for free. In Mr. Starkey's hypothetical case, BellSouth would be receiving  
21 revenues from the ISP for the access service. When ICG serves that ISP, a  
22 portion of those revenues should be used to compensate BellSouth for the costs  
23 incurred.

24  
25 Q. MR. STARKEY STATES THAT BELLSOUTH SHOULD BE

1 ECONOMICALLY INDIFFERENT AS TO WHETHER IT ITSELF INCURS  
2 THE COST TO TERMINATE THE CALL ON ITS OWN NETWORK OR  
3 WHETHER IT INCURS THAT COST THROUGH A RECIPROCAL  
4 COMPENSATION RATE PAID TO ICG". PLEASE RESPOND. (PAGES  
5 11, 19-20)  
6

7 A. Mr. Starkey leaves out one very important point. When BellSouth uses its own  
8 network to route calls to a BellSouth served ISP, it charges the ISP business  
9 exchange rates. It is not able to recover its cost from the end user that places  
10 the call. When an ALEC serves the ISP, only the ALEC receives revenues for  
11 the access service provided to the ISP. Although BellSouth incurs cost for  
12 delivering BellSouth end user calls to the ALEC, under reciprocal  
13 compensation BellSouth is unable to recover that cost. This is why it is so  
14 important that access service revenues, such as for ISP-bound traffic, be shared  
15 among the carriers that jointly provide the service. As I stated earlier, ICG  
16 should reimburse the originating carrier (BellSouth) for its cost of transporting  
17 the ISP-bound call to ICG's point of interconnection. Instead, ICG wants  
18 BellSouth to incur even more of the costs without receiving any of the  
19 compensation. This is a perversion of the entire access charge system that this  
20 Commission should not allow to occur.

21  
22 Q. MR. STARKEY STATES ON PAGE 17 THAT IT IS A SIMPLE  
23 ECONOMIC REALITY THAT BOTH ISP CALLS AND OTHER CALLS  
24 GENERATE EQUAL COSTS THAT MUST BE RECOVERED BY THE  
25 RECIPROCAL COMPENSATION RATE PAID FOR THEIR CARRIAGE.

1 DO YOU AGREE?

2

3 A. No, this statement is wrong. Costs for calls directed to ISPs are to be  
4 recovered from the ISP, rather than the originating end user. Costs for local  
5 calls are recovered from the originating end user. This fact means that  
6 reciprocal compensation is inappropriate for ISP-bound calls. In the case of a  
7 call sent from BellSouth to an ISP served by ICG, ICG is the only carrier  
8 collecting revenue for the ISP-bound calls. In the case of a local call directed  
9 from a BellSouth end user to an ICG end user, BellSouth would be the only  
10 carrier collecting revenue. Mr. Starkey ignores this important point and claims  
11 that the only carrier collecting revenue for ISP-bound calls should receive more  
12 revenue.

13

14 Q. CONTRARY TO MR. STARKEY'S CONTENTION, WHY IS IT POOR  
15 PUBLIC POLICY TO REQUIRE THE PAYMENT OF RECIPROCAL  
16 COMPENSATION FOR ISP TRAFFIC? (PAGES 10-11)

17

18 A. In paragraph 33 of its ISP Declaratory Ruling, the FCC stated its desire that  
19 any inter-carrier compensation plan advance the FCC's "goals of ensuring the  
20 broadest possible entry of efficient new competitors, eliminating incentives for  
21 inefficient entry and irrational pricing schemes, and providing to consumers as  
22 rapidly as possible the benefits of competition and emerging technologies." In  
23 fact, payment of reciprocal compensation on ISP-bound traffic would be  
24 contrary to the FCC's stated goals for the following reasons:

25 • Reduces incentive to serve residence and business end user customers;

- 1 • Further subsidize ISPs;
- 2 • Encourages uneconomic preferences for ALECs to serve ISPs due to the
- 3 fact that ALECs can choose the customers they want to serve and ALECs
- 4 could offer lower prices to ISPs without reducing the ALEC's net margin;
- 5 • Increases burden on end user customers;
- 6 • Establishes unreasonable discrimination among providers (IXCs versus
- 7 ISPs);
- 8 • ILEC is not compensated for any costs incurred in transporting ISP-bound
- 9 traffic; and
- 10 • Creates incentives to arbitrage the system, such as schemes designed solely
- 11 to generate reciprocal compensation.
- 12

13 Q. AT PAGE 13, MR. STARKEY ATTEMPTS TO BUILD A CASE FOR WHY

14 ISP PROVIDERS SEEK OUT ALECS. PLEASE COMMENT.

15

16 A. In attempting to show why ISPs seek out ALECs to provide their access service

17 versus ILECs such as BellSouth, Mr. Starkey merely succeeds in demonstrating

18 why ALECs should not be subsidized by the ILEC through reciprocal

19 compensation. Mr. Starkey says that ALECs attract ISPs' business because

20 ALECs provide the service, products, technology, capacity, flexibility and low

21 prices that ISPs desire. If, in fact, all of this is true, ICG should be able to

22 attract ISP business even more easily than they attract other business

23 customers. Why then is it necessary for ICG to receive a subsidy from

24 BellSouth when it can so easily attract ISPs due to ICG's inherent advantages?

25 In fact, if these advantages are so significant, ICG should be able to charge a

1 higher price than BellSouth charges and still win the ISPs' business.

2

3 Q. FURTHER, ON PAGE 22, MR. STARKEY STATES, "HOWEVER, IN THE  
4 CASE OF RECIPROCAL COMPENSATION, IT HAS COME TO BST'S  
5 ATTENTION THAT IT HAS BECOME, IN MANY CASES, A NET PAYOR  
6 OF TERMINATION CHARGES BECAUSE ALECS HAVE BEEN  
7 SUCCESSFUL IN ATTRACTING ISP PROVIDERS AND OTHER  
8 TECHNOLOGICALLY DEMANDING CUSTOMERS. HENCE, IF INDEED  
9 ITS RATES FOR TRAFFIC TRANSPORT AND TERMINATION ARE  
10 OVERSTATED, IT BECOMES THE PARTY MOST LIKELY TO BE  
11 HARMED." WHAT IS YOUR RESPONSE?

12

13 A. The above statement is wrong. Reciprocal compensation does not apply to  
14 access traffic. BellSouth is not arguing for a lower reciprocal compensation  
15 rate for this traffic. BellSouth is not objecting to paying reciprocal  
16 compensation simply because ISPs have a high volume of *incoming* traffic.  
17 BellSouth has not objected to paying reciprocal compensation for end users  
18 with these characteristics (e.g., pizza delivery service, etc.). BellSouth,  
19 however, is objecting to paying reciprocal compensation on access traffic  
20 because it is not applicable and is not in the public interest.

21

22 Q. MR. STARKEY CONTINUES ON PAGE 25 BY STATING, "THE  
23 APPROPRIATE WAY FOR BST TO MITIGATE ITS 'NET PAYOR'  
24 STATUS FOR RECIPROCAL COMPENSATION IS NOT TO SIMPLY  
25 REFUSE TO PAY FOR ITS CUSTOMERS' USE OF THE ICG NETWORK,

1 BUT INSTEAD TO FOLLOW THE DEMANDS OF THE COMPETITIVE  
2 MARKETPLACE JUST AS ICG AND THE LONG DISTANCE  
3 COMPANIES HAVE." WHAT IS YOUR RESPONSE?  
4

5 A. ICG proposes to distort the marketplace by requiring reciprocal compensation  
6 where it is inappropriate. Instead of removing distortion, their proposal creates  
7 distortion in the form of subsidies to ISPs.  
8

9 Q. WHAT IS YOUR RESPONSE TO MR. STARKEY'S ARGUMENT ON  
10 PAGES 26-27 THAT, BECAUSE OF BELLSOUTH'S SUCCESS IN  
11 ADDING SECOND LINES, BELLSOUTH SHOULD PAY RECIPROCAL  
12 COMPENSATION FOR ISP-BOUND TRAFFIC?  
13

14 A. None of this discussion is relevant to the issue at hand. These second lines are  
15 no different from first lines when it comes to the question of who should pay  
16 for access traffic. This entire discussion is irrelevant to the issue of reciprocal  
17 compensation.  
18

19 Q. HOW DO YOU RESPOND TO MR. STARKEY'S CONTENTION THAT  
20 BELLSOUTH.NET'S "UNLIMITED USAGE" RATES ARE FAR BELOW  
21 OTHER COMPETITORS?  
22

23 A. Mr. Starkey is clearly misinformed. It is obvious by the newspaper  
24 advertisements contained in Exhibit AJV-1 attached to this testimony, that  
25 BellSouth.net's rates are not out of line with other ISPs.

1 Q. REFERRING TO DIAGRAM 3 IN HIS TESTIMONY, MR. STARKEY  
2 CONTENDS ICG PERFORMS TRANSPORT FUNCTIONS IN ADDITION  
3 TO SWITCHING FUNCTIONS. PLEASE RESPOND.  
4  
5 A. Diagram 3 clearly reflects that ICG's Lucent 5ESS switch is functioning only  
6 as an end office switch. Without specific information from ICG to the  
7 contrary, the "piece of equipment" in ICG's collocation cage appears to be  
8 nothing more than a Subscriber Loop Carrier which is part of loop technology  
9 and provides no "switching" functionality. ICG's switch is not providing a  
10 transport or tandem function, but is switching traffic through its end office for  
11 delivery of traffic from that switch to the called party's premises. This is the  
12 same conclusion the Commission determined in its Metropolitan Fiber Systems  
13 of Florida, Inc. ("MFS") and Sprint arbitration order. The Commission  
14 determined that "MFS should not charge Sprint for transport because MFS  
15 does not actually perform this function." (Order No. PSC-96-1532-FOF-TP,  
16 issued December 16, 1996) The circumstances in the MFS/Sprint arbitration  
17 case can be logically extended to the issue raised by ICG in this arbitration  
18 proceeding. In fact, the Commission reaffirmed this conclusion when it issued  
19 its Order in the MCI/Sprint arbitration case in Docket No. 961230-TP (Order  
20 No. PSC-97-0294-FOF-TP, issued April 14, 1997) The evidence in the record  
21 does not support ICG's position that its switch provides the transport or tandem  
22 switching elements; and the Act does not contemplate that the compensation  
23 for transporting and terminating local traffic should be symmetrical when one  
24 party does not actually use the network facility for which it seeks  
25

1 compensation. Any decision by this Commission should be consistent with its  
2 previous rulings.

3

4 Q. AT PAGE 32, MR. STARKEY STATES THAT ICG SHOULD BE PAID  
5 THE SAME TANDEM TERMINATION RATE AS PAID TO BELLSOUTH  
6 EVEN THOUGH ICG ONLY USES ONE SWITCH. PLEASE COMMENT.

7

8 A. In the MFS/Sprint order referenced above, the Commission found, "[s]ince  
9 MFS has only one switch, there technically can be no transport." ICG only has  
10 one switch. As was the case with MFS, technically there can be no transport  
11 since ICG has only one switch and, therefore, ICG is not entitled to  
12 compensation for transport and tandem switching unless it actually performs  
13 each function.

14

15 Q. PLEASE RESPOND TO MR. STARKEY'S CONTENTION THAT  
16 VOLUME AND TERM COMMITMENTS BY ICG WOULD REDUCE THE  
17 TELRIC PRICES.

18

19 A. There is no rational basis for ICG's position. The basic flaw in Mr. Starkey's  
20 analysis is that he assumes that TELRIC prices were based on network costs as  
21 they are instead of what they are projected to be. For example, Mr. Starkey's  
22 claim that a volume commitment by ICG would increase the utilization of plant  
23 ignores the way the costs were developed. Plant utilization in the study  
24 represents this Commission's view of plant utilization in the future. Any

25

1 impact of volume requested by ICG is already included in this utilization  
2 percentage.

3

4 Q. PLEASE RESPOND TO MR. STARKEY'S CONTENTION THAT LONG-  
5 TERM COMMITMENTS BY ICG WOULD MINIMIZE BELLSOUTH'S  
6 RISK OF STRANDED INVESTMENT.

7

8 A. Mr. Starkey is basing his conclusion on an incorrect understanding of the cost  
9 studies. He is correct that in the retail world the risk of stranded plant costs  
10 would be reduced by a term commitment. However, none of the costs that a  
11 term commitment would reduce are included in TELRIC. Therefore, the  
12 impact of any reduction, even if it exists, is irrelevant with respect to UNE  
13 prices. The other major point that Mr. Starkey misses is that retail prices  
14 typically exceed costs. Consequently, discounts due to term commitments  
15 simply reduce the level of contribution, not the level of costs. UNE prices do  
16 not include any contribution. And since there are no savings of TELRIC costs,  
17 there is no basis for offering term discounts.

18

19 Q. ~~MR. HOLDRIDGE CONTENTS THAT BELL SOUTH SHOULD BE HELD~~  
20 ~~TO ALL INTERVALS, RESPONSIBILITIES AND LEVELS OF SERVICE~~  
21 ~~TO WHICH BELL SOUTH COMMITS IN THE AGREEMENT, INCLUDING~~  
22 ~~ANY STANDARDS IT COMMITS TO THAT EXCEED ITS~~  
23 ~~COMMITMENTS TO ITS OWN CUSTOMERS. PLEASE RESPOND.~~

24

25

1 A. ~~The Telecommunications Act of 1996 ("the Act") cites three standards by~~  
2 ~~which ILECs are to be held accountable. The first is that ILECs will provide~~  
3 ~~access to services in "substantially the same time and manner" (ALECs), that it~~  
4 ~~provides to the ILEC's own retail customer, FCC 96-325, First Report and~~  
5 ~~Order, Adopted August 1, 1996, § V.5, ¶ 518. The second standard requires~~  
6 ~~that an ILEC will "provide an efficient competitor a meaningful opportunity to~~  
7 ~~compete", FCC 96-325, Second Order for Reconsideration, Adopted December~~  
8 ~~13, 1996, § I., ¶ 9. Finally, ILECs are to provide interconnection services that~~  
9 ~~are "equal in quality" to that which ILECs provide themselves, FCC 96-325,~~  
10 ~~First Report and Order, Adopted August 1, 1996, § IV.II, ¶ 224. No where~~  
11 ~~does the Act suggest, as Mr. Holdridge contends, that an ILEC should commit~~  
12 ~~to any standards that exceed its commitments to its own customers.~~

13  
14 Q. ~~WHAT IS BELLSOUTH'S POSITION REGARDING ICG'S PROPOSED~~  
15 ~~STANDARDS ATTACHED TO MR. HOLDRIDGE'S TESTIMONY AS~~  
16 ~~EXHIBIT 19~~

17  
18 A. ~~Bellsouth believes that the standards proposal submitted by ICG is both overly~~  
19 ~~burdensome and complicated and that the escalating scale of enforcement~~  
20 ~~penalties is excessive. The purpose of penalties, if agreed to by any ILEC, is to~~  
21 ~~reimburse the ALEC for discriminatory treatment, not to create a financial~~  
22 ~~windfall for the ALEC.~~

23  
24 Q. ~~ON PAGE 7, MS. NOTSUND REQUESTS THAT THIS COMMISSION~~  
25 ~~NOT ARBITRATE THIS ISSUE BUT RATHER INITIATE A GENERIC~~

1 ~~PROCEEDING TO CONSIDER APPROPRIATE PERFORMANCE~~  
2 ~~MEASUREMENTS AND ENFORCEMENT MECHANISMS. PLEASE~~  
3 ~~RESPOND.~~

4  
5 A. ~~BellSouth agrees with ICG that this issue should not be arbitrated. As this~~  
6 ~~Commission recently concluded in the MediaOne/BellSouth Arbitration~~  
7 ~~proceeding (Docket No. 990149 TP), it lacks the authority under state law to~~  
8 ~~impose liquidated damages provisions in arbitrated agreements.~~

9  
10 ~~Regarding Ms. Netsund's request for the initiation of a generic proceeding to~~  
11 ~~address this issue, the Commission's Order in Docket No. 960786 TL dated~~  
12 ~~August 9, 1999, adopted the Commission Staff's Proposal for Independent~~  
13 ~~Third Party Testing of BellSouth's Operations Support Systems. This Order~~  
14 ~~concluded that the testing plan would be used to determine whether BellSouth~~  
15 ~~had established adequate performance measures. Even though the Commission~~  
16 ~~may choose to address performance measurements in a generic proceeding, the~~  
17 ~~fact remains that this Commission lacks the statutory authority to impose~~  
18 ~~liquidated damages or penalty requirements regardless of whether the issue is~~  
19 ~~addressed in a generic proceeding or an arbitration proceeding.~~

20  
21 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

22  
23 A. Yes.

24  
25 174954



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