

ORIGINAL

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: August 2, 1999

DIRECT TESTIMONY AND EXHIBITS

OF

MICHAEL STARKEY

ON BEHALF OF

ICG TELECOM GROUP, INC.

DOCUMENT NUMBER-DATE

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1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **DIRECT TESTIMONY**

3 **OF CINDY Z. SCHONHAUT**

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

5 **DOCKET NO. 990691-TP**

6 **Q. PLEASE STATE YOUR NAME, ADDRESS, AND EMPLOYMENT.**

7 A. My name is Cindy Zara Schonhaut. I am Executive Vice President for
8 Government and Corporate Affairs for ICG Communications, Inc., the parent
9 company of ICG Telecom Group, Inc. ("ICG"). My office is at 161 Inverness Drive
10 West, Englewood, Colorado 80112.

11 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND**
12 **PROFESSIONAL EXPERIENCE.**

13 A. I received my J.D. from the University of Miami School of Law, where I
14 graduated with honors and was an editor of the Law Review. Previous to that, I
15 received an undergraduate degree in social work from Syracuse University.

16 I have worked in the telecommunications industry for 19 years, particularly
17 in the area of regulatory and legal affairs. As Executive Vice President, I handle all
18 public policy issues for ICG at the federal, state, and local levels. I am also
19 responsible for ICG's implementation of the Telecommunications Act of 1996 and
20 parallel state laws, and negotiation of ICG's interconnection agreements with the
21 incumbent local exchange carriers ("ILECs"). I joined ICG in February 1996 as a
22 Vice President of the newly created Government Affairs department. I was promoted

1 in December 1996 to Senior Vice President, and was again promoted in November
2 1998 to my current position.

3 Previous to my work with ICG, I held positions at MFS Communications
4 Company, Inc. ("MFS") and the Federal Communications Commission ("FCC"). At
5 MFS in Washington, D.C., I served for more than four years as Vice President of
6 Government Affairs. In that role, I represented the company before the U.S.
7 Congress, state legislatures, and regulatory agencies. I often served as an expert
8 witness for MFS in state regulatory proceedings. In particular, I represented MFS
9 before Congress in the period leading up to the passage of the Telecommunications
10 Act of 1996.

11 Prior to my tenure with MFS, I served for 11 years as an attorney with the
12 FCC. I was Legal Advisor for a commissioner and two Bureaus: the Common
13 Carrier Bureau and the Mass Media Bureau. While at the FCC, I was a member of
14 the task force that implemented the original access charges system and the
15 divestiture of the Bell system. Following that, I was Special Counsel for joint board
16 matters in the Common Carrier Bureau. I also served as a member of the
17 Communications Staff Subcommittee of the National Association of Regulatory Utility
18 Commissioners and acted as the FCC's liaison to all state regulatory agencies.

19 Currently, I serve as Vice Chair of the Board of Directors of the Competitive
20 Telecommunications Association ("CompTel"), the leading trade association
21 representing competitive telecommunications interests. I also chair CompTel's
22 Regulatory Affairs Committee, a committee designed to provide a forum for

1 competitive local providers. In addition to my work with CompTel, I am a member of
2 the board of directors of the Association for Local Telecommunications Services
3 (“ALTS”).

4 **Q. HAVE YOU TESTIFIED BEFORE STATE PUBLIC SERVICE COMMISSIONS**
5 **IN THE PAST?**

6 A. Yes, at various points in my career I have testified before the state commissions
7 of Tennessee, Kentucky, Texas, Maryland, Ohio, California, Colorado, and Missouri.

8 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?**

9 A. My purpose in testifying is to describe the dispute between ICG and BellSouth
10 as it pertains to both the appropriate reciprocal compensation rate generally and
11 reciprocal compensation for calls to ISPs. I will outline the potential consequences
12 of these reciprocal compensation issues on the availability of a wide array of
13 telecommunications options for the people and businesses of Florida. Ultimately,
14 much of the disagreement of the parties about reciprocal compensation is
15 fundamentally policy-oriented, rather than factual in nature. The resolution of this
16 dispute, however, will have significant public policy implications for the development
17 of local exchange competition throughout Florida. In some respects, the outcome of
18 the reciprocal compensation disputes will be a primary factor in determining whether
19 competition of local exchange service moves forward or becomes mired in the mud
20 of an outdated regulatory system.

21 My testimony focuses on the compelling public policy justifications for
22 providing reciprocal compensation for calls to ISPs at a rate that reflects the network

1 functions ICG performs in delivering traffic from the BellSouth network to all
2 customers – including ISPs – served by ICG’s network. Another ICG witness, Michael
3 Starkey, discusses the responsibility of the state commissions with regard to
4 providing for reciprocal compensation and setting the appropriate rate in his direct
5 testimony, from an economics and regulatory perspective.

6 **Q. DOES ICG PROVIDE SERVICE TO ISP CUSTOMERS?**

7 A. Yes. ICG serves ISPs in many of the markets in which it currently operates.

8 **Q. HOW HAS ICG WON ITS ISP CUSTOMERS?**

9 A. ICG has simply stepped in to provide the new and innovative services
10 necessary to serve a market the ILECs were ignoring. Before alternative local
11 exchange carriers (“ALECs”) began to offer local exchange service, ISPs and other
12 end users with specific service needs were dependent exclusively on the ILECs – the
13 monopolist providers of such services. Without competitive pressures, the ILECs
14 offered “one size fits all” service at high rates. Often the “size” offered to ISPs was
15 one that barely fit its operations.

16 Compared to the ILECs, ICG has frequently been able to offer ISPs service
17 packages that are carefully tailored to the ISP’s operators. For example, ICG has led
18 the way in offering volume and term discounts to ISPs. ICG has gone beyond
19 offering simple delivery to the ISP’s demarcation point and has provided turn-key
20 solutions to ISP needs. ISPs have also been attracted by ICG’s superior network,
21 which consists entirely of digital switching and fiber optic transport facilities, as
22 opposed to the analog/digital switching and a hybrid of fiber, microwave, and copper

1 network transport facilities offered by the typical incumbent. In addition, ICG offers
2 ISPs the option of collocating ISP equipment alongside ICG equipment in ICG's
3 central office.

4 Before the advent of local competition, high bandwidth options were
5 expensive and the penetration low. Without the arrival of ICG and other ALECs,
6 there is no reason to believe that the ILECs would have been spurred to develop
7 their own new technology and service offerings, such as ISDN lines, digital
8 subscriber lines, and packet-switching capabilities. Today, ICG continues to be at
9 the forefront of serving ISPs as well as other businesses that have specific or
10 advanced telecommunications needs.

11 **Q. HOW WOULD THE LACK OF RECIPROCAL COMPENSATION FOR CALLS**
12 **TO ISPs HARM ICG?**

13 A. The impact of no reciprocal compensation for a significant amount of traffic
14 that ICG terminates to end users would be felt across ICG's operations. Without
15 reciprocal compensation for delivering traffic to ISPs, ICG and other ALECs would
16 be left to raise their rates or absorb their costs – either of which would be destructive
17 to their ability to attract and keep customers. The remaining option would be to
18 decline to provide service to ISPs. All of these possible responses would endanger
19 the competition that is critical to fostering an advanced public switched telephone
20 network and a menu of service offerings that would meet the needs of all end users
21 – whether business end users or individuals.

22 In addition, with reciprocal compensation for calls to ISPs precluded as a

1 source of revenue, ICG would find it necessary to weigh whether it would be a wise
2 business decision to provide service to ISPs and their customers in Florida, or
3 whether ICG would be better off solely serving other end users with large volumes
4 of incoming calls, such as pizza delivery services or local chat lines. Another
5 possibility for ICG to weigh in an environment of no reciprocal compensation would
6 be to simply forego the particular market. Consequently, the improvements in rates
7 and services that would result from ALEC competition would be lost.

8 Precluding reciprocal compensation for calls to ISPs that ICG terminates on
9 behalf of BellSouth would deny ICG payment for the service it provides. ICG would
10 incur a cost for which it would never be compensated, not even when the FCC
11 adopts its rules on compensation for ISP traffic, which will be prospective in
12 application. BellSouth, for its part, would avoid the cost of terminating the call and
13 would therefore come out ahead. Without receiving fair compensation for the service
14 it provides its competitors, ICG would be significantly handicapped in the competitive
15 marketplace and would likely reassess its plans for business in this state. In this
16 regard, ICG is not requesting special treatment, but only that it be allowed to recoup
17 its costs incurred on behalf of other carriers, as ICG would for any other calls ICG
18 terminates.

19 **Q, WHAT ABOUT THE EFFECT ON ISPs?**

20 A. If ALECs are forced to raise their rates to ISPs because the ALECs are not
21 recovering the cost of terminating the traffic, it could result in increased costs to end
22 users of ISP services. There is no way of knowing how ISPs would handle rate

1 increases, and whether ISP rate increases would artificially suppress demand for
2 services in such a way that the growth of the Internet in this state would not reach the
3 levels it otherwise would have. If, as I have discussed above, ALECs reassessed
4 their willingness to provide service to ISPs, ISPs would be left without any bargaining
5 leverage to negotiate more favorable rates and necessary services, and all ISP
6 customers would suffer as a consequence.

7 **Q. DOES BELLSOUTH HAVE A PARTICULAR INCENTIVE TO RESIST**
8 **PAYING ICG RECIPROCAL COMPENSATION FOR ISP TRAFFIC?**

9 A. Yes. Another witness, Michael Starkey, discusses BellSouth's incentives
10 at length in his testimony. In brief, BellSouth apparently recognizes that any carrier
11 that can avoid paying compensation to other carriers for the completion of local calls
12 originated by its end user customers will have a competitive advantage. As an
13 established ILEC with a diversified customer base, BellSouth seeks to limit its
14 exposure to reciprocal compensation for local calls delivered to end user ISPs who
15 may be targeted by its competitors. While its incentive may be natural, however, the
16 consequences of this Commission allowing BellSouth to avoid such payments would
17 be competitively disastrous, as I have outlined above with regard to ICG's options if
18 faced with such an outcome.

19 **Q. WHAT IS THE ROLE OF THE COMMISSION IN RESOLVING THE DISPUTE**
20 **ABOUT RECIPROCAL COMPENSATION FOR ISPs?**

21 A. The role of this Commission is to make a policy decision that will have a
22 fundamental impact on the development of the internet in this state. This

1 Commission's decision will help determine whether competitors enter the local
2 market and, if they choose to do so, which customers they will serve – Internet and
3 high tech customers who bring the benefits of the information age to end users or the
4 more typical end users who simply have high volumes of incoming calls.

5 **Q. WHAT IS THE ROLE OF THIS COMMISSION WITH REGARD TO**
6 **RECIPROCAL COMPENSATION FOR ISP-BOUND TRAFFIC IN LIGHT OF THE**
7 **FCC's RECENT RULING?**

8 A. Although the FCC's Declaratory Ruling and Notice of Proposed Rulemaking
9 in CC Docket 96-98, released on February 26, 1999 ("FCC Ruling"), found that calls
10 to ISPs when exchanged between two carriers within the same local calling area in
11 a state are "jurisdictionally mixed and appear to be largely interstate[.]" the FCC
12 concluded that calls are to be *compensated* in accordance with the actions of the
13 state commission unless and until the FCC adopts a further order governing
14 compensation. Any FCC Order will have prospective application only.

15 The FCC Ruling makes it abundantly clear that a state commission's
16 ordering of reciprocal compensation in an arbitration proceeding is consistent with
17 federal policy until the FCC adopts a rule. The FCC stated repeatedly in its Ruling
18 that "[c]urrently, the Commission has no rule governing inter-carrier compensation
19 for ISP-bound traffic." Id. at ¶ 22. In addition, the FCC suggested in its Ruling that
20 it was appropriate for a state to provide for reciprocal compensation as long as there
21 continues to be no federal rule. The FCC stated further that:

22 In the absence of a federal rule, state commissions that have had to

1 fulfill their statutory obligation under Section 252 to resolve
2 interconnection disputes between incumbent LECs and CLECs have
3 had no choice but to establish an inter-carrier compensation
4 mechanism and to decide whether and under what circumstances to
5 require payment of reciprocal compensation...

6 *...[N]either the statute nor our rules prohibit a state commission from*
7 *concluding in an arbitration that reciprocal compensation is appropriate*
8 *[for traffic] not addressed by section 251(b)(5), so long as there is no*
9 *conflict with federal law. A state commission's decision to impose*
10 *reciprocal compensation obligations in an arbitration proceeding ...*
11 *does not conflict with any [FCC] rule regarding ISP-bound traffic.*

12 FCC Ruling at §26 (emphasis added). Therefore, a determination by this
13 Commission to impose reciprocal compensation pending promulgation of a federal
14 rule at some point in the future not only would "not conflict with any [FCC] rule
15 regarding ISP-bound traffic," it would help to ensure equity until the FCC resolves
16 how ALECs will get paid for calls to ISPs.

17 **Q. WHAT WOULD BE THE CONSEQUENCES OF THIS COMMISSION**
18 **CHOOSING TO AWAIT THE COMPLETION OF THE FCC'S RULEMAKING**
19 **PROCEEDING ON COMPENSATION FOR ISP-BOUND TRAFFIC?**

20 A. Without action by this Commission, ICG will not receive any compensation
21 for calls to ISPs; until the time the FCC finally promulgates a rule, ICG will be unable
22 to recover its costs of carrying calls to ISPs on behalf of end users served by

1 BellSouth. The FCC has not indicated its timeline for adopting a rule, which could
2 be months or even a year away. This means that ICG would be uncompensated for
3 a significant amount of traffic that it carries every day for the indeterminate future.
4 In addition, because the FCC's rule will be prospective only in application in this
5 state, ICG will *never* receive compensation for delivering calls to ISPs without a
6 ruling by this Commission in ICG's favor. The foreclosure of this source of revenue
7 would threaten ICG's ability both to compete in Florida as well as to provide service
8 to ISPs and their end users. Without compensation for ICG's costs in serving a
9 significant category of its customers, ICG could be forced to re-think its options
10 concerning its planned operations in this state.

11 **Q. HOW SHOULD THIS COMMISSION SET THE RECIPROCAL COMPENSATION**
12 **RATE FOR CALLS TERMINATED BY ICG ON BEHALF OF BELL SOUTH?**

13 A. The Commission should establish a reciprocal compensation rate that
14 recognizes that ICG's network performs a similar function and serves a comparable
15 geographic area to that served by the BellSouth tandem. As such, the rate paid to
16 ICG by BellSouth for reciprocal compensation should recover ICG's costs of
17 providing the same tandem, transport, and end office functions that BellSouth
18 provides in terminating a call from ICG. As Mr. Starkey describes in more detail in
19 his testimony, to ensure symmetrical compensation between ICG and BellSouth, the
20 appropriate rate for ICG's termination of BellSouth traffic would be the sum of the
21 BellSouth tandem switching, transport and end office switching rate elements.

22 **Q. WHAT RECIPROCAL COMPENSATION RATE SHOULD APPLY TO ISP**

1 **TRAFFIC?**

2 A. The same reciprocal compensation rate that is applied to any other traffic.
3 As I have mentioned, and as Mr. Michael Starkey explains in greater detail, the
4 functions performed by ICG's network are the same when it delivers a call from
5 BellSouth's customer to ICG's ISP customer as when ICG terminates any other call.
6 Accordingly, the same rate should apply.

7 **Q. PLEASE SUMMARIZE YOUR TESTIMONY ON THE IMPORTANCE OF THE**
8 **RELIEF SOUGHT BY ICG.**

9 A. It would be sound public policy to grant the relief sought by ICG. If local
10 competition is to continue to develop and expand, it is necessary to achieve efficient
11 interconnection of competing service providers. As an integral part of this
12 interconnection, service providers will need to terminate traffic on each other's
13 network, making reciprocal compensation critical to recovering the costs associated
14 with terminating a call obtained from another provider. Without action by this
15 Commission, ICG will not receive any compensation for calls to ISPs; until the time
16 the FCC finally promulgates a rule, ICG will be unable to recover its costs of
17 delivering calls to ISP customers on behalf of end users served by BellSouth. The
18 Commission's decision has significant implications for the future of the competitive
19 market for local services and the development of Internet services in this state. More
20 generally, this Commission should set a symmetrical, reciprocal compensation rate
21 that allows ICG to recover costs equal to those recovered by BellSouth when ICG
22 terminates traffic to its tandem locations. Although it is by now an obvious point, it

1 bears repeating that the resolution of this arbitration issue will ultimately have a
2 significant impact on the people and businesses of Florida and the range of
3 telecommunications options open to them.

4 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY AT THIS TIME?**

A. Yes.

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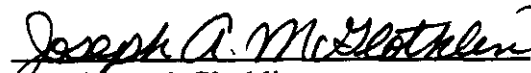
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the ICG Telecom Group, Inc.'s Testimony of Cindy Z. Schonhaut has been furnished by hand-delivery this 2nd day of August, 1999 to:

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