BOULT
CUMMINGS
CONNERS
& BERRY PLC

LAW OFFICES
414 UNION STREET, SUITE 1600
POST OFFICE BOX 198062
NASHVILLE, TENNESSEE 37219

Henry Walker
(615) 252-2363
Fax: (615) 252-6363
Email: hwalker@bccb.com

TELEPHONE (615) 244-2582
FACSIMILE (615) 252-2380
INTERNET WEB http://www.bccb.com

June 30, 2000

David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

In Re: Petition of ICG Telecom Group, Inc. for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Section 252 of the Telecommunications Act of 1996
Docket No. 99-00377

Dear David.

On June 2, 2000, ICG filed with the TRA a proposed order reflecting the TRA's decision in the above-captioned docket. On June 15, 2000, BellSouth filed a letter objecting to the proposed order. BellSouth points to three alleged errors in the proposed order and implies that these "are just a few of the various liberties ICG has taken with the Authority's decision." BellSouth then asks that ICG's entire filing either be stricken from the record or disregarded altogether by the TRA.

The three "errors" are not, in fact, errors at all. But even if they were, they could easily be corrected without affecting the rest of the proposed order. One suspects that BellSouth's real purpose is to dissuade the TRA from using any section of ICG's suggested language because of the proposed order is, in fact, an accurate, legally defensible and persuasive rejection of BellSouth's position on the "enhanced extended loop" issue and might well be used to persuade other state regulators to adopt the TRA's conclusion. It should not be surprising that BellSouth doesn't like it and would prefer to offer its own draft of the TRA's order.

BellSouth first argues that, on page 4, the order improperly suggests that "the Authority finds that . . . . a requesting carrier is entitled to obtain current combinations of loop and transport on an unrestricted basis." In the transcript of the TRA's conference, however, the Chairman specifically stated, "In its latest report, the FCC has concluded that . . . . a requesting carrier is entitled to obtain existing combinations of loop and transport . . . on an unrestricted basis." Therefore, read the Chairman's motion, "BellSouth is required to provide

ICG with extended loop links pursuant to the FCC order."

Thus, the TRA ruling rested squarely on the Authority's interpretation of — and apparent agreement with — the FCC's order. Given that premise, it seems appropriate for the Authority to say in its order (as ICG suggested), "The Authority therefore finds, based on the FCC's rules and orders, a requesting carrier is entitled to obtain current combinations of loop and transport on an unrestricted basis." That is, after all, exactly what the TRA concluded.

The second alleged "error" in the proposed order is the following sentence: "Where ICG (or any other CLEC for that matter) is providing local exchange service to a customer using facilities purchased out of BellSouth's special access tariff, ICG is entitled to convert those facilities to UNEs at UNE pricing." BellSouth objects to the parenthetical reference to "any other CLEC" because, BellSouth argues, this arbitration proceeding binds only BellSouth and ICG.

That sentence of the proposed order is preceeded by, and based directly on, the FCC's finding in the *UNE Remand Order* that incumbent LECs must provide bundled loop and transport elements that are currently used to provide special access. The FCC's conclusion, of course, applies to all LECs and all CLECs. Although the TRA arbitration order only binds BellSouth and ICG, the suggested language is based on the FCC's decision and it is hardly an "error" to acknowledge that in the order.

Finally, BellSouth complains that in footnote 3, ICG "is attempting to create for itself an order that holds *per se* that ICG is providing the requisite amount of traffic over special access facilities without any self-certification whatsoever from ICG's network personnel who will actually be administering ICG's traffic."

During the deliberations on this issue, the TRA recognized, as did the FCC, that CLECs could not use EELs as a substitute for special access unless the CLEC is also "providing a significant amount of local exchange service over that same line." Transcript at 5. To meet that requirement, the FCC allows CLECs to "self-certify" that the CLEC is "providing a significant amount of local traffic" over the EEL. In drafting the proposed order, ICG assumed that the TRA was aware of the self certification" requirement and, moreover, that the TRA was aware that ICG's witness on this issue had explicitly offered such certification, underoath, from the witness stand. Therefore, from ICG's perspective, the "certification" requirement is a matter that could and should be disposed of in this arbitration order.

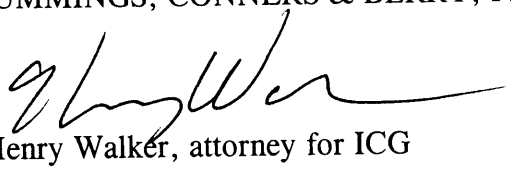
The same day, however, that ICG filed its proposed order with the TRA, the FCC

released a "supplemental order classification" in Docket 98-98,[1] concerning the limitations on use of an EEL. Although not mentioned in BellSouth's June 15 letter, the FCC order provides further, specific guidance concerning the self-certification process. Under these circumstances, the last two sentences in footnote 3 of the proposed order are now out-of-date and should be stricken

In conclusion, ICG stands by its proposed order and urges the TRA to adopt it, in whole or in part, as the agency finds appropriate. The Authority should also recognize BellSouth's objections for what they really are — an effort to persuade the TRA to let BellSouth, the losing party, draft a final order which BellSouth itself may later challenge in court.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: 
Henry Walker, attorney for ICG

HW/nl
cc: Guy Hicks, attorney for BellSouth

[1] The reference in footnote 3 of ICG's proposed order to FCC docket '93-98" is a typographical error.