

S T O L L | K E E N O N | & | P A R K | L L P

2650 AEGON CENTER | 400 WEST MARKET STREET | LOUISVILLE, KENTUCKY 40202-3377
(502) 568-9100 PHONE | (502) 568-5700 FAX | WWW.SKP.COM

DOUGLAS F. BRENT
502-568-5734
brent@skp.com

RECEIVED

August 11, 2004

AUG 12 2004

PUBLIC SERVICE
COMMISSION

Ms. Elizabeth O'Donnell
Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, Kentucky 40601

Via Federal Express

RE: Case No. 2004-00243

Dear Ms. O'Donnell:

Enclosed for filing in the above-referenced case are the original and ten (10) copies of ICG Telecom Group, Inc.'s Response to the Commission's July 14, 2004 Order. Please indicate receipt of this filing by your office by placing a file stamp on the extra copy and returning to me the enclosed, self-addressed stamped envelope.

Sincerely,



Douglas F. Brent

DFB:jms

COMMONWEALTH OF KENTUCKY

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BEFORE THE PUBLIC SERVICE COMMISSION

AUG 12 2004

PUBLIC SERVICE
COMMISSION

In the Matter of:

INVESTIGATION OF THE FAILURE)	
OF CERTAIN NON-DOMINANT)	
TELECOMMUNICATIONS PROVIDERS)	CASE NO. 2004-00243
TO FILE REPORTS REQUIRED)	
PURSUANT TO KRS 278.140)	

RESPONSE OF ICG TELECOM GROUP, INC.

ICG Telecom Group, Inc. ("ICG"), through its undersigned counsel, hereby responds to the Commission's July 14, 2004 Order in the referenced proceeding. ICG has filed the reports required by KRS 278.140, and hereby shows cause why ICG's authority to provide service in the Commonwealth of Kentucky should not be revoked. As grounds for this petition, ICG states the following:

1. On July 14, 2004, the Commission issued an order (the "Show Cause Order") stating that various competitive carriers, including ICG, had failed to file gross earnings reports and/or annual reports for the year 2003. Appendix A to the Show Cause Order indicated service by mail to Cynthia Walker, 180 Grand Avenue, Suite 450, Oakland, California 94612 as the representative of ICG.
2. Cynthia Walker is a former employee of ICG. The Oakland, California address is an ICG sales office.
3. During early 2003, ICG learned that the Commission did not have current address information for ICG. Accordingly, undersigned counsel for ICG wrote to the Executive Director of the Commission on April 16, 2003, asking that Scott E. Beer be

listed as the general regulatory contact for all matters related to the Commission.

ICG also requested that Murray Barr, another former employee, be removed from contact lists used by the Commission. The letter provided the correct address for Mr. Beer, who is located at ICG's Englewood Colorado headquarters.

4. Months after ICG's April, 2003 letter to the Commission, ICG's undersigned counsel discovered that orders in new cases affecting ICG, *e.g.*, Case No. 2003-00379, were not being mailed to Mr. Beer as requested, but instead were being mailed to former employee Cynthia Walker at the Oakland, California address. Accordingly, counsel for ICG wrote to the Executive Director again, on October 31, 2003, requesting that the Commission update its records and general service lists to reflect Mr. Beer as the internal regulatory contact for ICG. The second letter asked that all other contact listings be removed, including those for Cynthia Walker and Murray Barr. This letter emphasized that PSC service lists in new cases were continuing to reflect the wrong address for ICG.
5. Despite these efforts by ICG to have all correspondence sent to Mr. Beer, the 2003 annual report forms and gross revenue report forms were apparently mailed to the California address. They were never received by ICG's regulatory department in Colorado, and the reports were not timely filed. ICG had timely filed the required report for prior years.
6. On July 12, 2004, undersigned local counsel for ICG reviewed the Show Cause Order and Appendix A when they were posted on the Commission's website and discovered the improper service on ICG. Counsel promptly contacted the Commission to urge that the Commission's Utility Information System entry for ICG be corrected,

consistent with what ICG had requested more than a year earlier. After counsel notified staff by telephone, the Utility Information System was updated on July 13, 2004, one day after entry of the Show Cause Order.

7. Once ICG was informed of the Show Cause Order and realized the forms had never arrived, the forms were obtained, and the required reports were prepared and filed. ICG is now in good standing.
8. The facts above are all evidence of ICG's objective good faith in attempting to comply with statutory requirements of the Commission. As the facts above make clear, at no time has ICG deliberately avoided or ignored a regulatory requirement of the Commission. In fact, the Commission's records should reflect a diligent effort by ICG to keep the Commission apprised of its proper address and contact information. These facts and circumstances should permit the inference that the failure to timely file the annual report and report of gross intrastate revenues was inadvertent, and certainly not intentional. In any event, ICG has satisfied the requirements of the Show Cause Order, and believes the public interest is served by ICG's continued service to Kentucky customers. ICG will promptly pay its 2003 regulatory assessment once received.

Wherefore, ICG requests that the Commission issue an order confirming that ICG's Kentucky tariffs remain in effect and that ICG is not subject to a penalty under KRS 278.990(1) or (3).

Respectfully submitted,



Scott E. Beer
Director and Counsel
Industry and Corporate Affairs
ICG TELECOM GROUP, INC.
161 Inverness Drive West
Englewood, Colorado 80112

C. Kent Hatfield
Douglas F. Brent
STOLL, KEENON & PARK, LLP
2650 AEGON Center
400 West Market Street
Louisville, Kentucky 40202
(502) 568-9100

Attorneys for ICG Telecom Group, Inc.

Dated: August 11, 2004