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June 12, 2003

**RECEIVED**

JUN 13 2003

PUBLIC SERVICE  
COMMISSION

Mr. Thomas M. Dorman  
Kentucky Public Service Commission  
211 Sower Boulevard  
P.O. Box 615  
Frankfort, Kentucky 40601

**RE: Case No., 2002-456, Inquiry into use of Contract  
Service Arrangements by Telecommunications  
Carriers**

Dear Mr. Dorman:

Enclosed please find the original and ten copies of ICG Telecom Group's Opposition to Cincinnati Bell's Motion to Compel. Please indicate receipt of this filing by your office by placing a file stamp on the extra copy and returning to me via the enclosed, self-addressed, stamped envelope.

Sincerely Yours,

Douglas F. Brent  
Counsel to ICG Telecom Group

DFB:jms

Enc.

Cc: Parties of Record

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JUN 13 2003

PUBLIC SERVICE  
COMMISSION

In the Matter of

INQUIRY INTO THE USE OF )  
CONTRACT SERVICE ARRANGEMENTS )  
BY TELECOMMUNICATIONS ) CASE NO. 2002-00456  
CARRIERS IN KENTUCKY )

ICG'S OPPOSITION TO CINCINNATI BELL'S MOTION TO COMPEL

ICG Telecom Group ("ICG" or "Respondent"), by counsel, hereby responds<sup>1</sup> to and opposes Cincinnati Bell Telephone Company's ("CBT") motion to compel responses to CBT's April 2, 2003 data requests. ICG also opposes CBT's "alternative" application for subpoenas requiring document production and appearances at the June 17 hearing. As shown below, there are three reasons the motion must be denied. First, CBT cannot compel responses from non-parties like ICG. Second, CBT's application and motion are untimely and granting them would seriously prejudice ICG, whose key employees are located in Colorado.

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<sup>1</sup> In filing this opposition to CBT's motion to compel and alternative application for subpoena ICG's appearance is not a waiver of any argument that ICG is a non-party not subject to any obligation to participate in this case.

Third, CBT's hollow motion cannot be reconciled with CBT's earlier decision to protect Broadwing from participating in the case.

**I. CONTRARY TO CBT'S CLAIM, ICG IS A NON-PARTY AND IS NOT REQUIRED TO ANSWER CBT'S REQUESTS.**

In initiating this proceeding the Commission cited three examples of questionable pricing discrimination, all involving BellSouth, an ILEC. ICG's conduct was not at issue. Nevertheless, the Commission named all ILECs and various competitive carriers, including ICG, as respondents. The PSC provided an opportunity for respondent carriers to opt-out of participating in the proceeding, explaining that it would review any statement filed and, if necessary, enter orders requiring information, if not full participation. Many carriers, including some ILECs, availed themselves of the opportunity to withdraw. ICG followed the procedure established by the PSC. ICG wrote to the Commission on April 16, explaining that ICG had only recently emerged from bankruptcy proceedings, was not active before the Commission, and would be unduly burdened by participation in the case.

**II. CBT'S APPLICATION AND MOTION ARE NOT TIMELY.**

In early April CBT sent data requests to several carriers, including ICG. ICG responded to CBT by letter dated April 17, advising that ICG had given notice to the Commission

that it would withdraw from participation. CBT then waited nearly six weeks before filing its application for subpoena and its subsequent alternative motion to compel. This tardiness is not discussed or explained by CBT's motion or application. Yet, CBT proposes that ICG be forced to identify witnesses and send them to Kentucky with less than a week's notice. This request would be unreasonable even if ICG were a party.

**III. PRIOR TO SEEKING DISCOVERY FROM ICG, CBT MADE CERTAIN ITS OWN COMPETITIVE AFFILIATE WOULD NOT BE REQUIRED TO PARTICIPATE IN THE CASE.**

In its motion to compel, CBT suggests it is somehow unreasonable and perhaps unexpected that ICG has declined to respond to CBT's discovery requests. Attached to CBT's motion is the letter from counsel for ICG explaining that ICG had withdrawn from participation via notice to the Commission.

The fact that ICG had written such a letter to the PSC should have come as no surprise to CBT. CBT's counsel had done the same thing on March 21, twelve days before mailing its data requests to ICG. Counsel for CBT, who also represents CBT affiliate Broadwing Telecommunications, Inc. ("Broadwing"), wrote to the Commission and explained that Broadwing "wishes to be relieved of any obligation to provide

written responses to any requests for information presented by the Commission or other parties, to provide testimony, or to otherwise participate in the proceeding.<sup>3</sup> (emphasis added).

The Broadwing letter cited a reorganization and pending sale of assets, without elaborating on when the sale would close or whether Broadwing would remain subject to the Commission's jurisdiction. Certainly ICG has no greater obligation than Broadwing did to explain why it has chosen not to participate in this case. But more importantly, the prior request on behalf of its affiliate illustrates how CBT viewed the proceeding in March - participation was at the option of the carrier.

**IV. IF THE PSC GRANTS CBT'S REQUESTS IT MUST REISSUE NOTICE, IDENTIFY PARTIES AND PROVIDE A NEW PROCEDURAL SCHEDULE.**

If the PSC determines to grant the extraordinary relief requested by CBT, it must also cancel the June hearing, re-issue notice of the proceeding with more specific guidance as to the issues and indispensable parties, and issue a new procedural schedule. If the PSC believes it needs to investigate specific carriers, it can identify them.

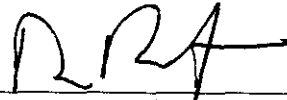
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<sup>3</sup> The March 21 letter, written on Cincinnati Bell letterhead, is attached as Exhibit A to the opposition filed by NuVox Communications and Time Warner Telecom.

V. CONCLUSION.

For the reasons discussed herein CBT's motion and application should be denied.


Respectfully submitted,

A handwritten signature in black ink, appearing to read 'DRB', is written above a horizontal line.

C. Kent Hatfield  
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CERTIFICATE OF SERVICE

A copy of the foregoing was served this 12<sup>th</sup> day of June, 2003 first class, United States mail, postage prepaid, upon those persons listed on the attached service list.



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