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December 22, 1998

Mrs. Blanca S. Bayo
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

RE: Docket No. 981008-TP

Dear Mrs. Bayo:

Enclosed are an original and 15 copies of the Prehearing Statement of BellSouth Telecommunications, Inc. Please file this document in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served on the parties shown on the attached Certificate of Service.

Sincerely,

Mary K. Keyer (re)
Mary K. Keyer

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Enclosures

cc: All Parties of Record
A. M. Lombardo
N. B. White
W. J. Ellenberg (w/o enclosures)

DOCUMENT NUMBER-DATE

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OFFICE OF RECORDS AND REPORTING

CERTIFICATE OF SERVICE

Docket No. 981008-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. Mail this 22nd day of December, 1998 to the following:

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Legal Counsel
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James C. Falvey, Esq.
e.spire Communications, Inc.
133 National Business Parkway
Suite 200
Annapolis Junction, MD 20701

 (12)
Mary K. Keyer

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

COMPLAINT OF e.spire)
COMMUNICATIONS, INC. AGAINST)
BELLSOUTH TELECOMMUNICATIONS,) Docket No. 981008-TP
INC. REGARDING RECIPROCAL)
COMPENSATION FOR TRAFFIC) Filed: December 22, 1998
TERMINATED TO INTERNET SERVICE)
PROVIDERS)
_____)

PREHEARING STATEMENT OF BELLSOUTH TELECOMMUNICATIONS, INC.

BellSouth Telecommunications, Inc. ("BellSouth"), in compliance with the Order Establishing Procedure (Order No. PSC-98-1481-PCO-TP), issued on November 3, 1998, hereby submits its Prehearing Statement for the above-styled matter.

A. Witnesses

BellSouth proposes to call the following witnesses to offer testimony on the issues in this docket:

<u>Witness</u>	<u>Issue(s)</u>
Albert Halprin (Direct and Rebuttal)	All
Jerry D. Hendrix (Direct and Rebuttal)	All

BellSouth reserves the right to call additional witnesses, witnesses to respond to Commission inquiries not addressed in direct or rebuttal testimony and witnesses to address issues not presently designated that may be designated by the Prehearing Officer at the prehearing conference to be held on January 6, 1998. BellSouth has listed the witnesses for whom BellSouth believes testimony will be filed, but reserves the right to supplement that list if necessary.

B. Exhibits

Jerry Hendrix	JH-1	Diagram Illustrating a Call to an ISP
	JH-2	BellAtlantic Ex Parte Filing with the FCC (July 10, 1998)
	JH-3	SBC Telecommunications, Inc., Ex Parte Filing with the FCC (August 14, 1998)
	JH-4	BellAtlantic Ex Parte Filing with the FCC (November 4, 1998)

BellSouth reserves the right to file exhibits to any testimony that may be filed under the circumstances identified in Section A above. BellSouth also reserves the right to introduce exhibits for cross-examination, impeachment, or any other purpose authorized by the applicable Florida Rules of Evidence and Rules of this Commission.

C. Statement of Basic Position

ISP traffic is not local traffic under the Interconnection Agreement, but is exchange access traffic that is jurisdictionally interstate. The difference in e.spire's Florida monthly minutes of use for terminating local traffic did not exceed 2,000,000 minutes. Then, and only then, would the parties be required to negotiate a reciprocal compensation rate. e.spire is not entitled to take the reciprocal compensation rate of another ALEC without first negotiating with BellSouth a traffic exchange agreement for the payment of reciprocal compensation on a going-forward basis in compliance with the Interconnection Agreement and then without taking the other ALEC's agreement in its entirety.

D. BellSouth's Position on the Issues

Issue 1: Is ISP traffic included in the definition of "local traffic" as that term is defined in the Interconnection Agreement between BellSouth and e.spire?

Position: No. Calls made by an end-user customer to access the Internet or other services offered by an Internet Service Provider ("ISP") do not constitute local traffic. These calls are in the nature of exchange access traffic that is jurisdictionally interstate.

The Interconnection Agreement negotiated between BellSouth and e.spire in this proceeding requires the termination of calls on either party's network for the traffic to be considered local traffic. Call termination does not occur when an ALEC, serving as a conduit, places itself between BellSouth and an ISP. ISP traffic is not jurisdictionally local because the Federal Communications Commission ("FCC") has concluded that enhanced service providers, of which ISPs are a subset, use the local network to provide interstate services.

The FCC has long held that the jurisdictional nature of traffic is determined by the end-to-end nature of a call. In a recent memorandum and order, the FCC reiterated its previous holdings by stating that the FCC "traditionally has determined the jurisdictional nature of communications by the end points of the communication and consistently has rejected attempts to divide communications at any intermediate points of switching or exchanges between carriers." CC Docket No. 98-79, ¶ 17. As such, calls to an ISP constitute exchange access traffic, not local telephone exchange service subject to reciprocal compensation consideration. Based on the foregoing, ISP traffic is clearly not local traffic as defined under the parties' Interconnection Agreement.

Issue 2: Did the difference in e.spire's minutes of use for terminating local traffic exceed two million minutes in Florida on a monthly basis?

Position: No. As stated above, ISP traffic is not local traffic. BellSouth believes e.spire is including ISP traffic in its alleged minutes of use for terminating local traffic in Florida. If such is the case, the difference in minutes of use for terminating local traffic in Florida on a monthly basis did not exceed 2,000,000 minutes.

Issue 3: In this instance, how should the reciprocal compensation rate, if any, be determined under the parties' Interconnection Agreement?

Position: Since e.spire's minutes of use for terminating local traffic did not exceed 2,000,000 minutes in Florida on a monthly basis, no reciprocal compensation rate must be determined. In Section VI.B of the parties' Interconnection Agreement, BellSouth and e.spire agreed that once e.spire's minutes of use exceeded two million minutes for terminating local traffic in each state on a monthly basis, the parties "will thereafter negotiate the specifics of a traffic exchange agreement which will apply on a going-forward basis." (Emphases added.) Even if the Commission were to find e.spire's minutes of use in Florida for terminating local traffic on a monthly basis exceeded 2,000,000, which BellSouth denies, the parties must "negotiate" a traffic exchange agreement to apply on a "going-forward basis," pursuant to the terms of the Interconnection Agreement. e.spire is not entitled to take a rate from another ALEC's agreement without first negotiating a rate with BellSouth and then without accepting the other ALEC's agreement in its entirety. *See Iowa Utilities Bd. v. FCC*, 120 F.3d 753, 801 (8th Cir. 1997), *cert. granted* 1998 U.S. LEXIS 662 (U.S. 1998). Regardless of how the reciprocal compensation rate, if any, is ultimately determined, the rate should only apply on a going-forward basis from the time it is determined e.spire met the two-million-minute threshold and at a minimum, from the date the parties began negotiating the rate. If it is

determined that e.spire is entitled to take the reciprocal compensation rate of another ALEC's agreement, that rate should only be applied on a going-forward basis from the time it is determined e.spire met the two-million-minute threshold and then only after the effective date of the other ALEC's agreement.

Issue 4: What action, if any, should the Commission take?

Position: The Commission should find that ISP traffic is not included in the definition of "local traffic" as defined under the parties' Interconnection Agreement because that traffic does not "terminate" on either party's network, as required in the definition of "local traffic" in the Interconnection Agreement.

The Commission should further find that e.spire's minutes of use for terminating local traffic in Florida on a monthly basis did not exceed 2,000,000 minutes.

Since e.spire did not meet the two-million-minute threshold, the Commission should find that no reciprocal compensation rate need be determined. If the Commission should determine e.spire met the two-million-minute threshold, which BellSouth denies, then the Commission should find that the parties must negotiate the appropriate reciprocal compensation rate to apply on a going-forward basis as provided for in the Interconnection Agreement. If the Commission should find that e.spire should be allowed to adopt the reciprocal compensation rate of another ALEC, then the Commission should find that that rate applies on a going-forward basis from the time e.spire met the two-million-minute threshold and only after the effective date of the other ALEC's agreement.

E. Stipulations

There are no stipulations of which BellSouth is aware.

F. Pending Motions

There are no pending motions at this time.

G. Other Requirements

BellSouth knows of no requirement set forth in any prehearing order with which it cannot comply.

Respectfully submitted this 22nd day of December, 1998.

BELLSOUTH TELECOMMUNICATIONS, INC.

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NANCY B. WHITE

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