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RECORDS AND
REPORTING

October 1, 1999

Mrs. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 981008-TP (e.spire Complaint)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Response to e.spire Communications, Inc.'s Request for Oral Presentation, which we ask that you file in the captioned matter.

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 to the parties shown on the attached Certificate of Service.

Sincerely,

Michael P. Goggin
Michael P. Goggin (PW)

AFA _____
APP _____
CAF _____
CMU _____
CTR _____
EAG _____
LEG _____
MAS _____
OPC _____
PAI _____
SEC _____
WAW _____
OTH _____

/vf
Enclosures

cc: All parties of record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

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FPSC-BUREAU OF RECORDS

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FPSC-RECORDS/REPORTING

CERTIFICATE OF SERVICE
Docket No. 981008-TP

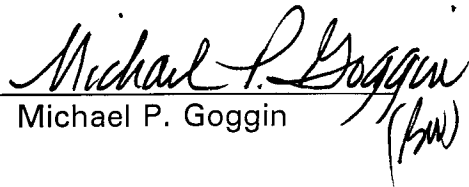
I HEREBY CERTIFY that a copy of the foregoing has been furnished by

U.S. Mail this 1st day of October, 1999 to:

Beth Keating
Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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Represents e.spire


Michael P. Goggin

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

COMPLAINT OF e.spire)
COMMUNICATIONS, INC. AGAINST)
BELLSOUTH TELECOMMUNICATIONS,)
INC. REGARDING RECIPROCAL)
COMPENSATION FOR TRAFFIC)
TERMINATED TO INTERNET SERVICE)
PROVIDERS)

Docket No. 981008-TP

Filed: October 1, 1999

RESPONSE OF BELLSOUTH TELECOMMUNICATIONS, Inc. to E.SPIRE COMMUNICATIONS, INC.'S REQUEST FOR ORAL PRESENTATION

BellSouth Telecommunications, Inc. ("BellSouth") hereby responds to e.spire Communications, Inc.'s ("e.spire's") Request for Oral Presentation.

1. On August 20, 1999, BellSouth filed a motion to stay the Florida Public Service Commission's ("Commission's") order in this matter pending the completion of the Federal District Court's review of that order pursuant to the Telecommunications Act. BellSouth argued that a discretionary stay was appropriate because it was likely to prevail in the District Court on the question of whether it should be required to pay reciprocal compensation on Internet-bound traffic routed through ISPs, because it was likely that BellSouth would be irreparably harmed if it were required to pay e.spire reciprocal compensation for this interstate traffic pending review, and because neither e.spire nor the public interest would be harmed by the stay as BellSouth is holding in escrow the sums e.spire claims are due. In its response to BellSouth's motion, e.spire did not request oral argument, but asserted that a stay would be inappropriate.

2. On September 23, 1999, the Commission Staff issued a recommendation on BellSouth's motion, encouraging the Commission to grant the stay. The Staff pointed out that the Commission still had not finally ruled on the parties' dispute over the

proper method of calculating the amounts e.spire claims should be paid as reciprocal compensation. If the stay were not granted, the Commission would have to address this issue before e.spire could receive payment. The Staff noted, however, that it is unlikely that the Commission has the jurisdiction to take the matter up while the case is on review in the federal court. Moreover, it would be a waste of Commission time and resources to schedule proceedings on this limited issue when it is likely that the District Court will dispose of all issues in its review.

3 Upon the release of the Staff's recommendation, e.spire belatedly requested an oral presentation. According to the Commission's rules, e.spire is not entitled to oral argument on a motion unless it requests as much at the time it responds to the motion (and then only if the Commission, in its discretion, grants the request). Rule 25-22.058, Fla. Admin. Code. e.spire's belated request for oral argument was not filed with its response to BellSouth's Motion, accordingly, it has waived its right to request argument on this Motion. Rule 25-22.058(1), Fla. Admin, Code. e.spire's belated request must be disregarded for this reason alone.¹

4. In addition, it is clear from e.spire's request that oral presentation would not add materially to the Commission's understanding of the issues.² The Motion has been fully briefed and e.spire does not note any issue to be addressed at an oral

¹ The rule cited by e.spire in support of its belated request for oral argument, Rule 25-22.0021, is not applicable in this instance. While it is accurate to say that BellSouth's post-hearing motion to stay concerns an issue not addressed at the hearing on the merits, e.spire has responded to the motion in writing and has waived its right to request oral argument. In short, e.spire has been heard on this matter.

² Even if e.spire had not waived its right to request oral argument, it should be denied. Rule 25-22.058 mandates that a request "shall state with particularity why oral argument would aid the Commission in comprehending and evaluating the issues before it." In its belated request, e.spire fails to do so.

argument that was not covered in its brief. e.spire evidently was motivated to file its belated request for oral argument by the Staff's recommendation. One might expect that e.spire, having gone to the trouble to file a pleading with the Commission, would have stated in its filing whether it disagreed with the Staff's analysis. Apparently, however, e.spire does not take issue with the Staff's reasoning, only the result staff recommends. Indeed, e.spire does not indicate that it intends to address any factor with respect to the stay other than the likelihood of success on the merits. The Staff's recommendation is not based on this factor, however, and e.spire's position on this issue was clearly stated in its brief in opposition to BellSouth's motion. In short, e.spire has requested oral argument although it apparently has nothing to add to its briefing. Accordingly, even if its request were properly before the Commission, there would be no reason to grant it.

For the reasons stated above, e.spire's Request for Oral Presentation should be denied.

Respectfully submitted this 1st day of October, 1999.

BELLSOUTH TELECOMMUNICATIONS, INC.

Nancy B. White

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