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MARY K. KEYER  
General Attorney

00 APR 26 PM 4:34

BellSouth Telecommunications, Inc.  
150 South Monroe Street  
Room 400  
Tallahassee, Florida 32301  
(404) 335-0729

RECORDS AND  
REPORTING

April 26, 1999

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 Petition on Proposed Agency Action. 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,

RECEIVED & FILED

*[Handwritten Signature]*  
FPSC-BUREAU OF RECORDS *Mary K. Keyer (LKR)*  
Mary K. Keyer

Enclosures

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

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**CERTIFICATE OF SERVICE**  
**Docket No. 981008-TP**

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

U.S. Mail this 26th day of April, 1999 to:

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

e.spire Communications, Inc.  
131 National Business Parkway  
#100  
Annapolis Junction, MD 20701  
Tel. No. (301) 361-4200  
Fax. No. (301) 361-4277

Ervin Law Firm  
Everett Boyd  
P.O. Drawer 1170  
Tallahassee, FL 32302  
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Messer Law Firm  
Norman Horton  
P.O. Box 1876  
Tallahassee, FL 32302  
Tel. (850) 222-0720  
Fax. (850) 224-4359  
Represents e.spire

Mary K. Keyer (ck)  
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: April 26, 1999  
TERMINATED TO INTERNET SERVICE )  
PROVIDERS )  
\_\_\_\_\_ )

**PETITION ON PROPOSED AGENCY ACTION**

BellSouth Telecommunications, Inc. ("BellSouth"), pursuant to Rule 25-22.036 of the Florida Administrative Code, files its Petition on Proposed Agency Action protesting Order No. PSC-99-0658-FOF-TP ("Order") issued April 6, 1999, in which the Commission proposes to require the parties to determine the number of minutes originated by e.spire and terminated on BellSouth's system using actual, available information to derive the differential between what e.spire terminated on BellSouth's system and what BellSouth terminated on e.spire's system. If actual numbers are not available, the Commission alternatively proposes to require the parties to use the methodology set forth in the Order to determine the differential. The parties are then to report to the Commission within four months of the March 16, 1999, Agenda Conference once they have determined the amount owed by BellSouth based on the \$.009 rate, and the amount has been paid to e.spire.

In support of its petition, BellSouth states:

1. BellSouth's official address for its Florida regulatory operations is:

BellSouth Telecommunications, Inc.  
150 South Monroe Street  
Suite 400  
Tallahassee, Florida 32301

2. The names of BellSouth's representatives in this proceeding are:

Nancy B. White  
150 West Flagler Street  
Suite 1910  
Miami, Florida 33130

William J. Ellenberg II  
Mary K. Keyer  
675 West Peachtree Street  
Suite 4300  
Atlanta, GA 30375

3. BellSouth is a local exchange company providing local exchange and intraLATA toll service in Florida.

4. BellSouth protests the Commission's requirement that the parties determine the number of minutes originated by e.spire and terminated on BellSouth's system using actual, available information to derive the differential between what e.spire terminated on BellSouth's system and what BellSouth terminated on e.spire's system. The Commission's proposed agency action is not supported by competent and substantial evidence. In proposing such a requirement on the parties, the Commission is attempting to supplement the record with evidence that e.spire failed to provide during the hearing. Such an attempt is improper.

5. Issue 2 at the hearing was: "Did the difference in e.spire's minutes of use for terminating local traffic exceed two million minutes in Florida on a monthly basis?" e.spire had the burden of proof on this issue to show that it did.

e.spire arguably met its burden for March and April 1998,<sup>1</sup> but did not do so for the other months in question. Order, p. 15 (“There is not . . . sufficient evidence in the record of this proceeding to determine how many minutes of traffic originated from e.spire and terminated on BellSouth’s system for all of the months at issue in this proceeding”). Although the Commission states that this is “due in part to BellSouth’s failure to provide traffic reports in accordance with the terms of the parties’ agreement,” there is no evidence to support this conclusion. Order, p. 15.

6. e.spire provided summary reports of originating and terminating local traffic for March and April 1998 which show the two-million-minute differential was exceeded in those two months when ISP traffic was included. Order, p. 15. There is no evidence to conclude that e.spire was unable to provide those same summary reports for the other months in question. Nor is there evidence to support the conclusion that e.spire did not produce these subsequent summary reports due to any action or inaction on the part of BellSouth.<sup>2</sup>

7. BellSouth further protests the Commission’s proposed calculation of full terminated traffic differential because Section VI.B of the Resale Agreement between the parties, which specifically addresses reciprocal compensation, clearly states that “there will be no cash compensation exchanged

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<sup>1</sup> e.spire included in its calculation for March and April 1998, minutes of use for ISP traffic, which BellSouth denies should be included. Nevertheless, even if ISP traffic were properly included, e.spire did not provide sufficient information for the other months at issue in this proceeding. Order, p. 15.

<sup>2</sup> In fact, counsel for e.spire represented at the Agenda Conference on March 16, 1999, that e.spire did have the “support for the subsequent months that shows the terminating and the originating columns.”

by the parties during the term of this Agreement unless the difference in minutes of use for terminating local traffic exceeds two million minutes per state on a monthly basis.” Based on the clear language of the Agreement, no compensation is due either party unless the difference in minutes of use exceeds two million minutes on “a monthly basis.” Therefore, even if e.spire met the differential in March and April 1998, and even if e.spire were entitled to the \$.009 rate for reciprocal compensation, which BellSouth denies, e.spire would not be entitled to any compensation on its minutes of use unless the difference in minutes of use for terminating local traffic exceeded two million minutes for each month for which it is requesting reciprocal compensation, i.e., “on a monthly basis.” To hold otherwise would completely ignore the plain language of the Agreement.

8. BellSouth also protests the Commission’s proposed methodology because it is based on an assumption for which there is no basis in the record, it is unclear and confusing, and it is speculative. The proposed methodology is not supported by competent and substantial evidence.

9. The substantial interests of BellSouth are affected by the Order because the proposed action would require BellSouth to pay an amount based on evidence that was not in the record.

10. There may be a dispute between the parties as to the meaning of “monthly basis” as used in the parties’ Agreement, interpretation of the Agreement, and the methodology set forth in the Order.

11. BellSouth is entitled to relief under Chapters 120 and 364, Florida Statutes, and Chapter 25-22, Florida Administrative Code.

WHEREFORE, BellSouth protests Order No. PSC-99-0658-FOF-TP issued April 6, 1999, in which the Commission proposes to require the parties to calculate the full terminated traffic differential and the alternative methodology set forth therein; requests that a hearing pursuant to Section 120.57 be held on this issue; and requests that the Commission grant such other relief as is necessary and proper under the circumstances.

Respectfully submitted this 26th day of April, 1999.

BELLSOUTH TELECOMMUNICATIONS, INC.

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