

ORIGINAL

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January 20, 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. ~~981043~~ TP and 981745-TP

Dear Mrs. Bayó:

In correspondence dated December 28 and December 30, 1998, Messrs. Pat Wiggins and Norman Horton provided a list of the issues common to both e.spire and Intermedia, as well as a list of the issues specific to e.spire in connection with the above captioned arbitration matters. This will serve as BellSouth's response to these issues in terms of wording or objection to inclusion of the issue itself. I have attached hereto a copy of the correspondence described above, however, for ease of reference, I will set forth each issue as contained in the correspondence, with BellSouth's response following. BellSouth's proposed changes to the wording of issues is identified in italics.

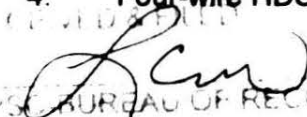
Common Issues

1. Should BellSouth be required to provide the following items as network elements, features, functions or capabilities?

A. Unbundled Loops

1. Two-wire ISDN
2. Two-wire ADSL *"compatible"*
3. Two-wire HDSL *"compatible"*
4. Four-wire HDSL *"compatible"*

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5. Four-wire DSO
6. Four-wire DS1
7. DS3
8. OC3
9. OC12
10. OC48

**e.spire only:**

11. IDSL
12. SDSL
13. SL1
14. SL2
15. Bit Stream Unbundled Loops
16. *ADSL equipped loop*

**BellSouth's response:** BellSouth objects to the wording of this issue because Intermedia's and e.spire's arbitration petitions request ADSL and HDSL "compatible" loops; only e.spire seeks an ADSL equipped loop. BellSouth also objects to the inclusion of this issue with respect to the unbundled loops identified as Nos. 1-6 because BellSouth has already agreed to provide these loops. Thus, this issue does not require arbitration by the Commission. BellSouth also objects to the inclusion of this issue with respect to the unbundled loops identified as Nos. 7-10 as it relates to e.spire because it is BellSouth's understanding that this issue has been settled with e.spire. BellSouth has no objections to the inclusion or wording of this issue with respect to the unbundled loops identified as Nos. 7-10 as it relates to Intermedia or the loops identified as Nos. 11-16 as it relates to e.spire.

**B. Dedicated Interoffice Transport**

1. DSO
2. DS1
3. DS3
4. OC3
5. OC12
6. OC48

**BellSouth's response:** BellSouth objects to the inclusion of this issue because BellSouth has already agreed to provide these types of

**dedicated interoffice transport. Thus, this issue does not require arbitration by the Commission.**

**C. Dedicated Local Channels**

1. DSO
2. DS1
3. DS3
4. OC3
5. OC12
6. OC48

**BellSouth's response:** BellSouth objects to the inclusion of this issue because BellSouth has already agreed to provide these types of dedicated local channels. Thus, this issue does not require arbitration by the Commission.

**D. Packet Switching**

1. User-to-Network Interface (UNI)
2. Network-to-Network Interface (NNI)
3. Data Link Control Identifiers (DLCI) at Committed Information Rates (CIRs)

**BellSouth's response:** BellSouth objects to the inclusion of this issue because BellSouth has already agreed to provide these packet switching types. Thus, this issue does not require arbitration by the Commission.

**E. Channelization/Multiplexing**

**BellSouth's response:** BellSouth objects to the inclusion of this issue as it relates to e.spire because this issue was not raised in e.spire's petition for arbitration. BellSouth also objects to the inclusion of this issue as it relates to Intermedia because BellSouth has already agreed to provide the channelization/multiplexing requested by Intermedia. Thus, this issue does not require arbitration by the Commission.

**F. Remote Terminals/Remote Terminal Equipment**

**BellSouth's response:** No objections to inclusion or wording of this issue.

**G. Dark Fiber**

1. Loops
2. Dedicated Interoffice Transport
3. Dedicated Local Channel

**BellSouth's response:** BellSouth objects to the inclusion of this issue because BellSouth has already agreed to provide dark fiber, even though the Commission has previously ruled in Order No. PSC-96-1579-FOF-TP, issued on December 31, 1996 that dark fiber is not a network element as defined by the Telecommunications Act of 1996. Thus, this issue does not require arbitration by the Commission.

**H. Enhanced Extended Link (EEL)**

**BellSouth's response:** BellSouth objects to the inclusion of this issue, which seeks to have this Commission direct BellSouth to provide a combination of unbundled network elements. The Eighth Circuit has squarely held that the Telecommunications Act of 1996 "does not permit a new entrant to purchase the incumbent [local exchange carrier's] assembled platform(s) of combined network elements (or any lesser existing combination of two or more elements) in order to offer competitive telecommunication services." *Iowa Utilities Board v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997), *cert. granted* 118 S. Ct. 879 (1998). Until the Supreme Court rules on the pending appeal of that decision, the Eighth Circuit's interpretation of the 1996 Act is controlling, which means that Intermedia and e.spire, not BellSouth, must combine the unbundled network elements. *See id.* (1996 Act "unambiguously indicates that requesting carriers will combine ... unbundled elements themselves"); *see also MCI Metro Access Transmission Services, Inc. v. GTE Northwest, Inc.*, No. C97-742WD, at 7 (W.D. Wash. July, 1998); *AT&T Communications, Inc. v. BellSouth Telecommunications, Inc.*, No. 5:97-CV-405-BR at 19 (E.D. N.C. May 22, 1998) (striking down provision in interconnection agreement that purported to obligate BellSouth to provide combinations of elements to AT&T because it required BellSouth "to do something it does not have to do under the Act"). Because neither the unbundled access provisions in Section 251, nor the associated arbitration and pricing provisions in Section 252 of the Act apply to this issue, BellSouth objects to its inclusion in this proceeding.

I. Loop Feeder (e.spire only)

**BellSouth's response:** BellSouth objects to the inclusion of this issue because BellSouth has already agreed to provide unbundled loop feeder to e.spire. Thus, this issue does not require arbitration by the Commission.

J. Loop Distribution (e.spire only)

**BellSouth's response:** BellSouth objects to the inclusion of this issue because BellSouth has already agreed to provide unbundled loop distribution to e.spire. Thus, this issue does not require arbitration by the Commission.

2. What should be the rates, terms and conditions for the items considered in Issue 1 to be network elements, features, functions, or capabilities?

**BellSouth's response:** Subject to BellSouth's objections set forth above on Issue 1, BellSouth has no objections to inclusion or wording of this issue.

3. Should BellSouth be required to provide UNE combinations? If so, what should be the rates?

**BellSouth's response:** BellSouth objects to the inclusion of this issue, which seeks to have this Commission direct BellSouth to provide a combination of unbundled network elements. The Eighth Circuit has squarely held that the Telecommunications Act of 1996 "does not permit a new entrant to purchase the incumbent [local exchange carrier's] assembled platform(s) of combined network elements (or any lesser existing combination of two or more elements) in order to offer competitive telecommunication services." *Iowa Utilities Board v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997), cert. granted 118 S. Ct. 879 (1998). Until the Supreme Court rules on the pending appeal of that decision, the Eighth Circuit's interpretation of the 1996 Act is controlling, which means that Intermedia and e.spire, not BellSouth, must combine the unbundled

network elements. See *id.* (1996 Act “unambiguously indicates that requesting carriers will combine ... unbundled elements themselves”); see also *MCI Metro Access Transmission Services, Inc. v. GTE Northwest, Inc.*, No. C97-742WD, at 7 (W.D. Wash. July, 1998); *AT&T Communications, Inc. v. BellSouth Telecommunications, Inc.*, No. 5:97-CV-405-BR at 19 (E.D. N.C. May 22, 1998) (striking down provision in interconnection agreement that purported to obligate BellSouth to provide combinations of elements to AT&T because it required BellSouth “to do something it does not have to do under the Act”). Because neither the unbundled access provisions in Section 251, nor the associated arbitration and pricing provisions in Section 252 of the Act apply to this issue, BellSouth objects to its inclusion in this proceeding.

BellSouth also objects to the wording of this issue. Although the petitions for arbitration filed by both e.spire and Intermedia seek to require BellSouth to provide combinations of network elements, the petitions are specifically limited in the types of combinations sought. The wording of this issue should be similarly limited, even assuming the issue were properly the subject of arbitration, which BellSouth submits is not the case.

4. Should BellSouth be required to convert special access services purchased from BellSouth’s tariff to unbundled network elements for current customers? If so, what should be the rates, terms and conditions? (as reworded by the parties)

BellSouth’s response: BellSouth has no objections to inclusion or wording of this issue.

5. Should BellSouth be required to provide volume and term pricing for unbundled network elements and resold services? If so, what should be the rates, terms, and conditions of the specific unbundled network elements and resold services requested?

BellSouth’s response: BellSouth has no objections to inclusion or wording of this issue.

6. **Where BellSouth and Intermedia/e.spire are bidding for services for the same end-user, should BellSouth provide the same rates, terms, and conditions to Intermedia/e.spire for wholesale unbundled network elements and resold services that it provides to itself or an affiliate on a retail basis? (as reworded by the parties)**

**BellSouth's response:** BellSouth objects to the inclusion of this issue as it relates to e.spire because this issue was not raised in e.spire's petition for arbitration. BellSouth has no objections to inclusion or wording of this issue as it relates to Intermedia.

7. **What should be the rates, terms, and conditions for physical collocation?**

**BellSouth's response:** BellSouth has no objections to inclusion or wording of this issue.

8. **What should be the rates, terms, and conditions for virtual collocation?**

**BellSouth's response:** BellSouth objects to the inclusion of this issue as it relates to e.spire because this issue was not raised in e.spire's petition for arbitration. BellSouth has no objections to inclusion or wording of this issue as it relates to Intermedia.

9. **Should BellSouth be required to provide the following collocation arrangements? If so, what should be the rates, terms, and conditions?**

- A. **Shared cages collocation**
- B. **Cageless collocation**
- C. **Remote Terminal**
- D. **Other**

**BellSouth's response:** BellSouth objects to the wording of this issue because the reference to "other" collocation arrangements is unclear and ambiguous.

10. Is BellSouth required to allow Intermedia/e.spire to interconnect with other ALECs also collocated in a BellSouth central office? If so, what should be the rates, terms and conditions?

**BellSouth's response:** BellSouth objects to the inclusion of this issue as it relates to e.spire because this issue was not raised in e.spire's petition for arbitration. BellSouth also objects to the inclusion of this issue as it relates to Intermedia because it is BellSouth's understanding that this issue has been settled with Intermedia.

11. What performance measure should be included in the parties' respective agreements?

**BellSouth's response:** BellSouth objects to the inclusion of this issue as it relates to e.spire because it is BellSouth's understanding that this issue has been settled with e.spire. BellSouth has no objections to inclusion or wording of this issue as it relates to Intermedia.

12. Should penalty provisions be included in the parties' respective agreements? If so, what penalties should be imposed?

**BellSouth's response:** BellSouth objects to the inclusion of this issue as it relates to e.spire because it is BellSouth's understanding that this issue has been settled with e.spire. BellSouth also objects to this issue as it relates to Intermedia because the issue of financial penalty and liquidated damages is not one subject to arbitration under Section 251 of the Act. Moreover, this Commission lacks the authority to arbitrate such an issue under state law. *Southern Bell Telephone & Telegraph Co. v. Mobile America Corporation*, 291 So.2d 199, 202 (Fla. 1974).



13. (a) What should be the appropriate reciprocal compensation rate level for transport and termination of local traffic?
- (b) For purposes of reciprocal compensation, should the definition of local traffic include traffic that originates from or terminates to an Enhanced Service Provider (ESP) or Information Service Provider (ISP)? If so, what are the appropriate reciprocal compensation rate levels for ESP and ISP traffic?

BellSouth's response: BellSouth has no objections to inclusion or wording of this issue.

14. What number portability requirements should be included in the parties' respective agreements?

BellSouth's response: BellSouth has no objections to inclusion or wording of this issue.

15. What Frame Relay requirements should be included in the parties' respective agreements?

BellSouth's response: BellSouth has no objections to inclusion or wording of this issue.

#### **B. e.spire only issues**

1. Should e.spire be allowed to substitute portions of its interconnection agreement with comparable portions of other agreements between BellSouth and other ALECs or should e.spire be required to substitute the other agreement in its entirety?

BellSouth's response: BellSouth objects to the inclusion of this issue because the Commission has previously determined that a Most Favored Nations clause is not a matter to be arbitrated. See, Order No. PSC-97-0122-FOF-TP issued on February 3, 1997.

2. What should be the Term of the Agreement?

BellSouth's response: BellSouth has no objections to inclusion or wording of this issue.

3. Should the party subject to a court order or subpoena for intercept devices be responsible for the costs associated with that party's compliance?

BellSouth's response: BellSouth objects to the inclusion of this issue because it is BellSouth's understanding that this issue has been settled with e.spire.

4. Should BellSouth be required to include binding commercial arbitration in its interconnection agreement with e.spire?

BellSouth's response: BellSouth objects to the inclusion of this issue because it is BellSouth's understanding that this issue has been settled with e.spire.

5. When changes to the Applicable Law of the Agreement occur, should the Agreement be reformed when the changes are "effective" or "final and nonappealable"?

BellSouth's response: Add the word "final" as in "when final and nonappealable."

6. Should e.spire's Lucent 5ESS switch be defined as constituting both an end office and a tandem switch?

BellSouth's response: BellSouth has no objections to inclusion or wording of this issue.

7. Should e.spire be permitted to resell flat and measured rate service on the same business premise to End Users when BellSouth

previously allowed such End Users to purchase both flat and measured Services at the same premise?

**BellSouth's response:** BellSouth objects to the inclusion of this issue because it is BellSouth's understanding that this issue has been settled with e.spire.

8. Should BellSouth be allowed to charge for expediting e.spire's requests for installation of Resale Services?

**BellSouth's response:** BellSouth objects to the inclusion of this issue because it is BellSouth's understanding that this issue has been settled with e.spire.

9. Under what circumstances and in what form should BellSouth be required to provide notification of:

- (a) cutovers;
- (b) due dates;
- (c) win-backs; and
- (d) maintenance contacts.

**BellSouth's response:** BellSouth objects to the inclusion of this issue as it relates to items 9(a), 9(b), and 9(d) because it is BellSouth's understanding that these matters have been settled with e.spire. BellSouth has no objection to the wording or inclusion of Issue 9(c).

10. Should BellSouth be required to make available Contract Service Arrangements ("CSAs") for resale at the CSA rate minus the wholesale discount?

**BellSouth's response:** BellSouth objects to the inclusion of this issue because it is BellSouth's understanding that this issue has been settled with e.spire.

11. **Should BellSouth be required to provide CSAs to e.spire for e.spire's resale to similarly situated local users who are not parties to the original CSA?**

**BellSouth's response:** BellSouth objects to the inclusion of this issue because it is BellSouth's understanding that this issue has been settled with e.spire.

12. **Where e.spire resells an existing CSA, should application of all non-recurring termination, re-installation, recurring, rollover, and more charges be waived by BellSouth?**

**BellSouth's response:** BellSouth objects to the inclusion of this issue because it is BellSouth's understanding that this issue has been settled with e.spire.

13. **Should BellSouth be required to make its RNS interface available to e.spire?**

**BellSouth's response:** BellSouth objects to the inclusion of this issue because: (1) it is BellSouth's understanding that this issue has been settled with e.spire; and (2) this Commission has previously determined that BellSouth is not required to provide an ALEC with the exact same interfaces that BellSouth uses for its retail operations. See Order No. PSC-98-1001-FOF-TP issued on July 22, 1998.

14. **Should BellSouth be required to develop an EDI interface that will function as a Single Point of Contact ("SPOC") for pre-ordering, ordering and provisioning functions?**

**BellSouth's response:** BellSouth objects to the inclusion of this issue because it is BellSouth's understanding that this issue has been settled with e.spire.

15. **Should BellSouth be required to provide prices charged to its End Users over a pre ordering interface?**

**BellSouth's response:** BellSouth has no objections to inclusion or wording of this issue.

16. Should BellSouth be required to develop systems which provide end-to-end pre-ordering and ordering processes without manual intervention (i.e., "Flow-Through")?

**BellSouth's response:** BellSouth objects to the inclusion of this issue because it is BellSouth's understanding that this issue has been settled with e.spire.

17. Should BellSouth be required to provide copies of all test and turn-up results in support of complex Resale services or UNEs ordered by e.spire?

**BellSouth's response:** BellSouth has no objections to inclusion or wording of this issue.

18. Should BellSouth be required to develop electronic systems for pre-ordering, ordering, provisioning, and maintenance which are compliant with all existing and future applicable industry standards established by ATIS, OBF and ANSI?

**BellSouth's response:** BellSouth objects to the inclusion of this issue because it is BellSouth's understanding that this issue has been settled with e.spire.

19. Should BellSouth be required to adopt the "Change Management" procedures applicable to OSS systems modifications?

**BellSouth's response:** BellSouth objects to the inclusion of this issue because it is BellSouth's understanding that this issue has been settled with e.spire.

20. Should BellSouth be required to provide an electronic feed sufficient to enable e.spire to confirm that Directory Listings of e.spire End Users have been included in the databases utilized by

**BellSouth to generate Directories and the Directory Assistance database?**

**BellSouth's response:** BellSouth objects to the inclusion of this issue. This is an issue that must be negotiated with an affiliate of BellSouth, BellSouth Advertising and Publishing Company ("BAPCO"), rather than BellSouth.

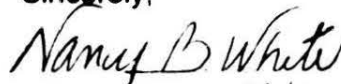
21. Should BellSouth permit e.spire to review galley proofs of Directories in advance of publication for the purpose of verifying inclusion of e.spire End Users?

**BellSouth's response:** BellSouth objects to the inclusion of this issue. This is an issue that must be negotiated with an affiliate of BellSouth, BellSouth Advertising and Publishing Company ("BAPCO"), rather than BellSouth.

22. Should BellSouth be allowed to limit its liability for errors or omissions in Directory Listings to \$1.00?

**BellSouth's response:** BellSouth objects to the inclusion of this issue. This is an issue that must be negotiated with an affiliate of BellSouth, BellSouth Advertising and Publishing Company ("BAPCO"), rather than BellSouth.

Sincerely,

  
Nancy B. White (BN)

NBW/jn

cc: Martha Carter Brown  
Norman Horton  
Donna Canzano  
Pat Wiggins