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January 10, 2001

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Ms. Blanca Bayó, Director  
Division of Records and Reporting  
Room 110, Easley Building  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

Re: FPSC Docket No. 000075-TP

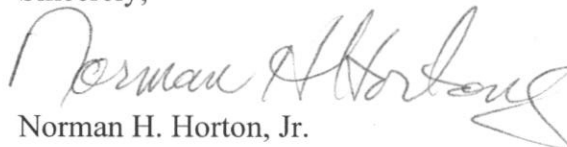
Dear Ms. Bayó:

Enclosed for filing on behalf of e.spire Communications, Inc. are an original and fifteen copies of the Rebuttal Testimony of James C. Falvey in the above referenced docket.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely,

  
Norman H. Horton, Jr.

NHH/amb  
Enclosure

APP  
CAF cc: James Falvey, Esq.  
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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Investigation into appropriate  
methods to compensate carriers for  
exchange of traffic subject to Section 251  
of the Telecommunications Act of 1996

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Docket No. 000075-TP

**REBUTTAL TESTIMONY**  
  
**OF**  
  
**JAMES C. FALVEY**  
  
**ON BEHALF OF**  
  
**E.SPIRE COMMUNICATIONS, INC.**

Dated: January 10, 2000

1   **Q.   PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.**

2   A.   My name is James C. Falvey. I am Senior Vice President – Regulatory Affairs  
3       for e.spire Communications, Inc. (“e.spire”), which formerly was known as  
4       American Communications Services, Inc. or “ACSI”. My business address is 133  
5       National Business Parkway, Suite 200, Annapolis Junction, Maryland 20701.

6

7   **Q.   ARE YOU THE SAME JAMES C. FALVEY THAT FILED DIRECT**  
8       **TESTIMONY IN THIS PROCEEDING ON DECEMBER 1, 2000?**

9   A.   Yes. My background information is a matter of record in this proceeding.

10

11   **Q.   WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY IN THIS**  
12       **PROCEEDING?**

13   A.   My rebuttal testimony responds to some of the issues raised by other witnesses in  
14       this proceeding and clarifies e.spire’s positions with respect to those issues. My  
15       testimony is intended to defend e.spire’s stated position, *i.e.*, that this Commission  
16       should find that incumbent local exchange carriers (“ILECs”) and alternative local  
17       exchange carriers (“ALECs”) should continue to compensate each other for calls  
18       placed to Internet Service Providers (“ISPs”) pursuant to the reciprocal  
19       compensation provisions of their interconnection agreements.

20

21

1    **Q.     HOW IS YOUR REBUTTAL TESTIMONY ORGANIZED?**

2    A.     It's a little difficult to tackle all of the issues raised by the different witnesses in  
3           an organized fashion.. In the interest of economy I will limit my rebuttal  
4           testimony to what I consider the principal points made by other witnesses. Based  
5           on my examination of the direct testimony presented by the participants, I will  
6           focus principally on the points made by Ms. Shiroishi, BellSouth's witness.

7

8    *Issue 1(a) Does the Commission have the jurisdiction to adopt an intercarrier*  
9       *compensation mechanism for the delivery of ISP-bound traffic?*

10

11   *Issue 1(b) Does the Commission have the jurisdiction to adopt such an intercarrier*  
12       *compensation mechanism through a generic proceeding?*

13

14   **Q.     IN BELLSOUTH'S DIRECT TESTIMONY, WITNESS BETH SHIROISHI**  
15           **CONTENDS ON PAGES 2-3 THAT, SINCE ISP-BOUND TRAFFIC IS**  
16           **INTERSTATE ACCESS IN THE EXCLUSIVE JURISDICTION OF THE**  
17           **FCC, THE EFFECT OF VACATING THE FEBRUARY 26, 1999 ORDER**  
18           **WAS TO DEPRIVE THE STATES OF JURISDICTION TO SELECT AN**  
19           **INTERIM MECHANISM. DO YOU HAVE ANY COMMENTS ON HER**  
20           **CONTENTION?**

21   A.     Yes. First of all, when Ms. Shiroishi asserts that ISP-bound traffic is interstate  
22           access, she is incorrect: as noted in my direct testimony and in the direct  
23           testimony of the other competitive carriers in this proceeding, ISP-bound traffic is

1 a type of local traffic, and in fact is virtually indistinguishable from other types of  
2 local calls. The FCC did attempt for the first time in its February 26, 1999  
3 Declaratory Ruling to characterize ISP-bound traffic as largely interstate in  
4 nature, based on the so-called "end-to-end" theory of calling. However, this FCC  
5 ruling was decisively vacated by the DC Circuit Court of Appeals, and the  
6 applicability of the "end-to-end" calling theory as applied to ISP-bound calls was  
7 severely called into question. ISPs are not correctly analogous to interexchange  
8 carriers that access the local exchange in order to offer a telecommunications  
9 service. Rather, ISPs are end-users that use telecommunications in order to  
10 provide an information service. So Ms. Shiroishi is incorrect in her bald assertion  
11 that ISP-bound traffic is interstate access: in fact, nearly every jurisdiction,  
12 including Florida, has traditionally treated these calls as local for purposes of  
13 compensation.

14  
15 Second, Ms. Shiroishi's novel assertion that, since ISP-bound traffic is interstate  
16 in character, the states do not have jurisdiction over it unless expressly conferred  
17 by the FCC is simply a conclusion based on her initial faulty premise, and cannot  
18 be accorded much credulity. In her version of the way things work, the February  
19 26, 1999 Declaratory ruling for the first time conferred the jurisdiction on the  
20 states to establish interim mechanisms for compensation of ISP-bound traffic, and  
21 when that order was vacated by the D.C. Circuit, the conferral of jurisdiction was

1 also withdrawn, leaving states powerless to act. This is a faulty reading of both  
2 the FCC's Declaratory Ruling and of the D.C. Circuit's opinion, and one that  
3 would deprive this Commission of its core jurisdiction. As pointed out in the  
4 testimony of Gregory D. Fogleman for the Commission Staff (at page 9), it is  
5 clear that the FCC did not *confer* initial jurisdiction to the states in its February  
6 26, 1999 order, but rather acknowledged that, in the absence of an express federal  
7 ruling, "carriers are bound by their existing interconnection agreements, as  
8 interpreted by state commissions, and thus are subject to reciprocal compensation  
9 obligations to the extent provided by such agreements or as interpreted and  
10 enforced by state commissions."

11  
12 The vacation of the FCC's Declaratory ruling did not change this part of the  
13 picture, although it decisively rejected the FCC's end-to-end call theory (and  
14 thereby the characterization of ISP-bound calls as interstate based on that theory).  
15 In fact, the D.C. Circuit took pains to indicate that it did not reach the ILEC  
16 contention that Section 251 (b)(b) of the Telecommunications Act "preempts state  
17 commissions from compelling payments to competitor LECs."<sup>1</sup>  
18

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<sup>1</sup> *Bell Atlantic Telephone Companies v. Federal Communications Commission*,  
2000 U.S. App. LEXIS 4685 (D.C. Cir. March 24, 2000) at 26-27.

1 In sum, contrary to Ms. Shiroishi's assertion, the FCC's Declaratory Ruling did  
2 not confer, and the D.C.Circuit's vacation of that ruling did not take away, the  
3 state commission's inherent right to establish compensation mechanisms for ISP-  
4 bound traffic pending an express federal ruling.

5  
6 **Q. MS. SHIROISHI POINTS OUT ON PAGE 11 OF HER TESTIMONY**  
7 **THAT THE CHIEF OF THE FCC'S COMMON CARRIER BUREAU HAS**  
8 **"STATED PUBLICLY" AT THE TIME THE DECLARATORY RULING**  
9 **WAS VACATED THAT HE BELIEVED THAT THE FCC "CAN AND**  
10 **WILL" PROVIDE CLARIFICATION AND REACH THE SAME**  
11 **CONCLUSION AS THE VACATED RULING. SHOULD THIS**  
12 **INFLUENCE THE DECISION IN THIS PROCEEDING?**

13 **A.** No. A great deal of time has passed since that statement was made, but the FCC  
14 has not been able to justify its position. Florida can't base its way forward on the  
15 unrealized wishes of any FCC official. There is a great deal of uncertainty on this  
16 question at the federal level, and the change of administrations may make it even  
17 more difficult to reach a clear decision. In the meantime, ILECs and competitive  
18 carriers across the country are doing business every day, and they need guidance  
19 from state commissions on how to treat, and compensate, ISP-bound calls. The  
20 FCC may ultimately act, but in the interim, Florida and other states should act.

1 Q. BUT WHAT ABOUT THE ARGUMENT MADE BY VERIZON'S  
2 WITNESS EDWARD BEAUVAIS THAT THE DECLARATORY RULING  
3 GRANTED STATES THE INTERIM AUTHORITY ONLY WHEN  
4 CONSTRUING INTERCONNECTION AGREEMENTS OR  
5 ARBITRATING INTERCONNECTION AGREEMENTS?

6 A. Dr. Beauvais wisely admits that he is not an attorney before he states this  
7 conclusion. His analysis of the case is faulty, based more on wishful thinking  
8 than on the text of the case. As I state above, in my opinion, the FCC did not for  
9 the first time *confer* authority on the states in the FCC Declaratory Ruling – it  
10 merely pointed out that, absent a federal ruling, the states are free to proceed to  
11 establish their own reasonable mechanisms. The Declaratory Ruling was not an  
12 attempt by the FCC to curtail the rights of the states, but in fact an  
13 acknowledgement that they may act on the issue of reciprocal compensation  
14 pending a federal rule. This is consistent with the recent observation of the D.C.  
15 Circuit Court in its March 2000 decision vacating the FCC's ruling:

16  
17 [The FCC] observed that [pending adoption of a federal rule]  
18 parties may voluntarily include reciprocal compensation provisions  
19 in their interconnection agreements, and that state commissions,  
20 which have authority to arbitrate disputes over such agreements,  
21 can construe the agreements as requiring such compensation;  
22 *indeed, even when the agreements of interconnecting LECs include*  
23 *no linguistic hook for such a requirement, the commissions can*  
24 *find that reciprocal compensation is appropriate.*<sup>2</sup>

<sup>2</sup> *Bell Atlantic Telephone Companies v. Federal Communications Commission*,  
2000 U.S. App. LEXIS 4685 (D.C. Cir. March 24, 2000) (emphasis supplied).



1   **Q.   MS. SHIROISHI GOES ON TO CLAIM ON PAGE 4 OF HER**  
2       **TESTIMONY THAT THE FCC HAS FOR MANY YEARS ASSERTED**  
3       **THAT ISP-BOUND TRAFFIC IS INTERSTATE IN CHARACTER. DO**  
4       **YOU HAVE ANY COMMENT ON THIS CONTENTION?**

5   **A.**   Yes. In fact, Ms. Shiroishi is again interpreting the FCC's past decisions in a way  
6       most generous to her position. Simply because the FCC provided for exemptions  
7       for information service providers from access charges in past orders does not  
8       necessarily entail that ISP-bound traffic is interstate in character. In fact, what it  
9       does do is the opposite: it establishes a treatment for ISP-bound traffic that is  
10      akin to that afforded local calls. By ensuring that ISPs and other information  
11      providers are not charged access charges, the FCC also indirectly placed its  
12      imprimatur on the historically prevalent way of compensating ISP-bound traffic:  
13      reciprocal compensation as a local call. In fact, as pointed out by the D.C. Circuit  
14      Court in its March, 2000 decision, the FCC has as recently as 1998 characterized  
15      calls to ISPs as "local," and only very recently flip-flopped on the subject. When  
16      accused of inconsistency, the FCC trotted out the same argument that Ms.  
17      Shiroishi attempts to float here, viz., that the FCC's exemption of ISPs from  
18      access service charges proves that ISPs are exchange access users. This  
19      convoluted argument was directly rejected by the D.C. Circuit Court in its March  
20      2000 order as "not very compelling."

21

1 Despite Ms. Shiroishi's attempts to establish the contrary, it is well known that  
2 the only FCC ruling that sought to establish the character of ISP-bound traffic as  
3 largely interstate was the February 26, 1999 Declaratory Ruling. But not only  
4 was that ruling promptly vacated by the D.C. Circuit Court for failure to show a  
5 reasoned basis, but (as noted by Mr. Fogleman for the Commission Staff on page  
6 9 of his testimony) the ruling itself allowed that its conclusion regarding the  
7 nature of ISP-bound traffic "does not in itself determine whether reciprocal  
8 compensation is due in any particular instance."  
9

10 **Q. MS. SHIROISHI POINTS OUT ON PAGE 6 OF HER TESTIMONY THAT**  
11 **BELLSOUTH'S ADSL OFFERING WAS FILED AND APPROVED BY**  
12 **THE FCC IN ITS FEDERAL TARIFF FCC NO. 1. DOES THIS CHANGE**  
13 **YOUR OPINION AS THE CHARACTER OF ISP-BOUND TRAFFIC?**

14 **A.** Not at all. For one thing, BellSouth determines how to structure its tariffs, and  
15 what jurisdiction to file them in. BellSouth can't "bootstrap" a regulatory  
16 classification simply by filing a tariff that claims a certain offering is in the FCC's  
17 jurisdiction. Indeed, in the absence of an express federal ruling, BellSouth can  
18 take whatever position it wants in its federal tariff, but this does not determine the  
19 question for our purposes here. Moreover, this again only deals with the ADSL  
20 service offering, and not with dial-up ISP-bound traffic, the main theme of this  
21 proceeding. It is entirely possible that BellSouth could structure an offering of

1 ADSL so that it is presumptively federal in character, for example, by defining it  
2 as a service that must cross exchange boundaries. So the fact of BellSouth's tariff  
3 filing is essentially immaterial – the fact that this particular ADSL service  
4 offering was not challenged by the FCC on the filing of BellSouth's tariff does  
5 not impinge upon the work we have to do in this proceeding.

6  
7 *Issue 2 Is delivery of ISP-bound traffic subject to compensation under Section 251 of*  
8 *the Telecommunications Act of 1996?*  
9

10 **Q. MS. SHIROISHI'S ASSERTS ON PAGES 7-11 OF HER TESTIMONY**  
11 **THAT A RECENT, UNAPPEALED DECISION OF THE FCC**  
12 **ESTABLISHES THAT XDSL SERVICES ARE "ORDINARILY"**  
13 **EXCHANGE ACCESS. SHOULD THIS INFLUENCE THE**  
14 **COMMISSION'S DECISION?**

15 **A.** No. The December 23, 1999 Order on Remand is at best of limited applicability  
16 here. First, and most importantly, this case was mentioned specifically at the end  
17 of the D.C. Circuit's opinion, and it is clear that the basis underlying the decision,  
18 viz., that ISPs make use of exchange access service, has been essentially gutted by  
19 the Circuit Court's analysis. The Circuit Court clarified that the FCC's  
20 characterization does not rest on a solid foundation (and indeed is directly in  
21 conflict with the FCC's prior decisions<sup>3</sup>). Thus, the rationale underlying the

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<sup>3</sup> See, e.g., *In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, 11 FCC (continued...)

1 December 23, 1999 Order on Remand is probably no longer valid in the wake of  
2 the Circuit Court's decision. Second, at any rate the principal focus of that case  
3 was xDSL services, not dial-up services. Ms. Shiroishi is trying to stretch a very  
4 limited (and probably no longer valid) ruling to cover the entire subject matter of  
5 this proceeding, and it isn't proper. The question of how to treat ISP-bound  
6 traffic is, at least until the FCC rules expressly, squarely on the plate of the State  
7 commissions, and those commissions have the requisite authority to establish  
8 compensation mechanisms.

9  
10 **Q. MS. SHIROISHI CLAIMS ON PAGE 13 OF HER TESTIMONY THAT, IF**  
11 **THE COMMISSION DETERMINES THAT ISP-BOUND TRAFFIC**  
12 **TERMINATES AT THE ISP SERVER, THE COMMISSION "MUST**  
13 **CONSIDER THE ISSUE OF ISP SERVERS LOCATED OUTSIDE THE**  
14 **CALLING AREA BUT SERVED BY A LOCALLY DIALED NUMBER.**  
15 **DO YOU HAVE ANY COMMENT ON THIS?**

16 **A.** Yes. This issue has been addressed by BellSouth in arbitrations in a number of  
17 states. But the Commission should keep in mind two things on this issue: (i) that  
18 BellSouth's tariffed Foreign Exchange Service presently allows BellSouth to, as

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(...continued)

Rcd 21905, 22023 (p 248) (1996), in which the Commission clearly stated that "ISPs do not use exchange access." As the D.C. Circuit pointed out in its decision, the FCC only overruled this decision *after* its oral argument before the D.C. Circuit (perhaps in an attempt to bolster its faltering position).

1 she terms it, “assign NPA/NXXs to locations outside of the rate center to which  
2 that NPA/NXX is assigned” – in fact that is the *entire purpose* of the Foreign  
3 Exchange Service, which has been in place for many years; and (ii) that BellSouth  
4 representatives have admitted in at least one arbitration that BellSouth currently  
5 collects reciprocal compensation for calls made by an ALEC’s customers to  
6 BellSouth Foreign Exchange customers.<sup>4</sup> The fact is that, from a user’s point of  
7 view, a call to a “local” NPA/NXX is just the same whether the actual location of  
8 the recipient of the call is in that rate center or outside it. The only difference is  
9 that the LEC must make arrangements to haul that traffic, at its own expense,  
10 from the “virtual” location to the actual physical location of its customer. In the  
11 case of the Foreign Exchange Service, the Foreign Exchange customer pays  
12 something extra to have a “local” number in a rate center far from its physical  
13 location.

14  
15 When BellSouth raises this issue, it is because BellSouth wants to reserve to itself  
16 something that it wants to deny to competitive carriers – essentially to assign its  
17 numbers as it sees fit. Competitive carriers need to be able to design their local  
18 calling areas as they see fit, and assign NPA/NXXs anywhere within them – just  
19 as BellSouth does with its Foreign Exchange Service. In reality, the assignment

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<sup>4</sup> See October 4, 2000 Letter from Guy M. Hicks, Esq. on behalf of BellSouth to David Waddell, Executive Secretary of the Tennessee Regulatory Authority in Docket No. 99-00948 (attached as “**Exhibit 1**”).

1 by a ALEC of an NPA/NXX in this manner his does not discomfit BellSouth one  
2 iota, because whether the actual physical location of the ALEC customer is in the  
3 local rate center or outside it, BellSouth performs exactly the same function: it  
4 hands the call off to the ALEC locally, and BellSouth's duties end right there. If  
5 in fact the recipient of the call is outside the rate center, the ALEC must make  
6 arrangements to haul the call to the actual location, just as BellSouth does for its  
7 Foreign Exchange customers. These calls are indistinguishable from local calls,  
8 and do not add any burden to the LEC that hands them off – in addition, they  
9 provide a much-desired service for many businesses that would not be able to  
10 engage in commerce as satisfactorily if their targeted customers needed to pay for  
11 a long-distance call to contact them.

12  
13 In sum, there is no compelling reason why the Commission would have to  
14 rescrumble the current treatment of NPA/NXX assignment if it determines that  
15 ISP-bound traffic terminates at the ISP. Both BellSouth and competitive carriers  
16 have been rating calls based on their NPA/NXXs for years, and this practice is the  
17 simplest method and should be continued.

1   **Q.   MS. SHIROISHI CLAIMS THAT CONGRESS DID NOT INTEND TO**  
2       **CREATE A “COMPETITIVE WINDFALL” FOR ALECS IN ALLOWING**  
3       **ISP-BOUND TRAFFIC TO RECEIVE RECIPROCAL COMPENSATION.**  
4       **HOW DO YOU RESPOND?**

5   A.   This is a typical ILEC argument, but it holds no water. As a threshold matter,  
6       where there are cost-based rates there can be no windfall. As pointed out by  
7       AT&T’s witness Lee Selwyn in his direct testimony (at p. 7), reciprocal  
8       compensation flows both ways, based on the work performed by each carrier. If a  
9       large amount of reciprocal compensation flows in the ALEC’s direction, it simply  
10      means that the ALEC is doing a disproportionate amount of work in terminating  
11      more ILEC calls than the ILEC terminates for the ALEC customers. If these calls  
12      are to be compensated at all, this principle must be applied. In cases where the  
13      ILEC terminates more calls than the ALEC, the ILEC will come out ahead. This  
14      “windfall” argument overlooks the fact that actual work is being done by both  
15      parties, and it is compensated in proportion to the volume of work done. A true  
16      “windfall” would be winning the Irish Lottery with a ticket bought by a deceased  
17      relative – some huge bonus that was both unearned and unexpected. Reciprocal  
18      compensation payments for work performed cannot correctly be characterized as  
19      a “windfall” simply because it is a large amount of money that the ILEC would  
20      prefer not to pay. Indeed, the ILEC wants to avoid its responsibility to pay for  
21      services rendered by ALECs in terminating these calls at cost-based rates – to

1 allow the ILECs to evade these payment would be a true injustice and a  
2 “windfall” for the ILECs, because they would get “something for nothing.”

3

4 **Q. MS. SHIROISHI CLAIMS THAT THERE ARE “NO NEW REVENUES**  
5 **OR COST REDUCTIONS FOR BELL SOUTH TO FUND THESE**  
6 **EXCESSIVE PAYMENTS OF RECIPROCAL COMPENSATION THAT**  
7 **ALECS ARE CLAIMING.” DO YOU AGREE?**

8 A. No. This is a red herring. It is not necessary for BellSouth to find any “new”  
9 revenues or cost reductions to fund the compensation of an ALEC for terminating  
10 a local call. BellSouth receives monthly payments from its subscribers that  
11 include the amounts necessary to terminate all local calls, including those  
12 terminated at ISPs. Ms. Shiroishi claims on page 18 of her testimony that  
13 “Internet-bound traffic characteristics were never considered when local rates  
14 were established.” But if BellSouth feels that its rates to its subscribers do not  
15 adequately cover the costs directly incurred by the subscribers (e.g., dialing up  
16 ISPs on a ALEC’s network), BellSouth should reexamine these costs and attempt  
17 to obtain a rate increase for its subscribers. e.spire does not in fact agree that  
18 BellSouth’s local rates are insufficient to fund the costs incurred by BellSouth’s  
19 subscribers – but if they were, the proper action is not to “stiff” a connecting  
20 carrier by refusing payment for work done, but rather to turn to the cost-causer –  
21 the rate payer, and seek an increase there.



1 *Issue 3 What actions should the Commission take, if any, with respect to establishing*  
2 *an appropriate compensation mechanism for ISP-bound traffic in light of*  
3 *current decisions and activities of the courts and the FCC?*  
4

5  
6 **Q. MS. SHIROISHI STATES THAT, IF THE COMMISSION TAKES ANY**  
7 **ACTION ON THE ISSUE OF RECIPROCAL COMPENSATION FOR ISP-**  
8 **BOUND TRAFFIC, IT SHOULD INSTITUTE A "BILL AND KEEP"**  
9 **SYSTEM FOR RECIPROCAL COMPENSATION. DO YOU HAVE ANY**  
10 **COMMENT ON THIS?**

11 **A.** Yes. e.spire disagrees with this. First of all, such a system would presume that it  
12 is reasonably possible to segregate ISP-bound traffic from other types of local  
13 calls that appear to be similar, for example, relatively long-duration calls between  
14 two teenagers. As other witnesses in this proceeding have recognized, attempts to  
15 segregate such traffic accurately are "problematic at best."<sup>5</sup> And if such a system  
16 were practicable, which it is not, it would result in disparate treatment for  
17 compensation purposes for the same type of transaction. From e.spire's point of  
18 view, and in fact from BellSouth's point of view, a call to an ISP is not  
19 technically different from a call to a pizza parlor, except that it may or may not  
20 have a longer duration on average.<sup>6</sup> And from a duration point of view, it

---

<sup>5</sup> See, e.g., Direct Testimony of Gregory D. Fogleman, Commission Staff, at 19.

<sup>6</sup> See, e.g., Direct Testimony of Michael R. Hunsucker, on behalf of Sprint (at 14):  
The basic switching components used for voice and Internet-bound  
traffic are the same. There is nothing unique about Internet calls  
(continued...)

1 certainly is indistinguishable from local calls to telephone company business  
2 offices, as anyone who has tried to straighten out errors on his or her monthly bill  
3 can attest. There simply is no adequate justification to compensate the  
4 terminating carrier for one type of call, and not for another, when the same work  
5 is involved.

6  
7 Secondly, bill and keep for ISP-bound traffic would require a carrier serving an  
8 ISP – and both ALECs and ILECs serve ISPs – to provide termination services for  
9 free if there is an imbalance in traffic. It would greatly favor the cost causer – the  
10 originator of the call – over the carrier that must terminate traffic on behalf of that  
11 cost causer. So bill and keep is not a valid approach in this context unless traffic is  
12 generally very balanced between carriers. Failing to recognize the terminating  
13 carrier's costs by applying bill and keep in an imbalanced situation would be an  
14 inequitable windfall to the originating carrier. This is also the position taken by  
15 Mr. Fogleman of the Commission Staff in his comments at page 18.

16  
17 *Issue 4 What policy considerations should inform the Commission's decision in this*  
18 *docket?*

19  
20 **Q. VERIZON'S WITNESS BEAUVAIS CLAIMS ON PAGES 11 AND 22**  
21 **THAT RECIPROCAL COMPENSATION SHOULD NOT BE MEASURED**

---

(...continued)

that causes the per message and per MOU unit cost components to  
change. Only the call duration changes.

1           **ON A MINUTES OF USE ("MOU") BASIS BECAUSE MOST FLORIDA**  
2           **RATEPAYERS SUBSCRIBE TO FLAT-RATED LOCAL EXCHANGE**  
3           **SERVICE. DO YOU AGREE?**

4    A.    No. It's an interesting argument, but it is necessary to step back from it a  
5           little. Dr. Beauvais claims that:

6                               if a flat-rated structure is to be the predominant standard for end  
7                               users, then a usage-based system for compensation for traffic  
8                               exchanges among rival local carriers is inefficient in the first order,  
9                               since it automatically results in prices for local usage set at a level  
10                              below the incremental cost of providing the end-to-end call.<sup>7</sup>

11                             below the incremental cost of providing the end-to-end call.<sup>7</sup>  
12  
13       Dr. Beauvais goes on to state (on page 11) that intercompany compensation  
14       should have a "marginal price of zero per minute of use." I'm not an economist,  
15       but there are practical problems with this idea that occur to me from the outset.  
16       First of all, the question of whether the flat rated subscription can compensate for  
17       the end-to-end call really depends on the level of the flat rate charged and the  
18       average cost of completing a call. If a residential user were charged  
19       \$1,000/month, it seems to me likely that his normal calling pattern would be  
20       compensated for, regardless of whether intercarrier compensation were flat-rated  
21       or usage-based. So at base, it is a question not of the appropriateness of a usage-  
22       based intercarrier compensation mechanism, but whether the flat rate is high  
23       enough, based on usage patterns.

---

<sup>7</sup> Direct Testimony of Dr. Edward Beauvais on behalf of Verizon, p. 22.

1 Second, the fact that Verizon may offer, and its subscribers may prefer, flat rated  
2 plans in Florida is entirely unrelated to the question of how, for example, e.spire  
3 should be compensated for completing a local call, whether to a pizza parlor or to  
4 an ISP. If Verizon must raise its flat rate to cover its cost, that is Verizon's  
5 concern, and Verizon should take this up in a cost proceeding with the  
6 Commission. But the suggestion that Verizon's methodology of charging its  
7 customers should determine the nature and extent of its compensation of a  
8 terminating carrier is simply wrong-headed, because the terminating carrier's cost  
9 of terminating the call is independent from the way in which Verizon chooses to  
10 charge its customers. I don't think Dr. Beauvais' point, although interesting,  
11 should be persuasive in the inquiry at hand.

12

13 *Issue 5 Is the Commission required to set a cost-based mechanism for delivery of ISP-*  
14 *bound traffic?*

15

16

17 **Q. MS. SHIROISHI CLAIMS THAT, IF A COST-BASED MECHANISM**  
18 **WERE SET BY THE COMMISSION FOR THE DELIVERY OF ISP-**  
19 **BOUND TRAFFIC, THIS SHOULD BE THE "ACTUAL COST**  
20 **INCURRED FOR THE DELIVERY OF ISP-BOUND TRAFFIC," AND**  
21 **NOT THE COST OF TERMINATING A LOCAL CALL. DO YOU**  
22 **AGREE?**

1     A.     No. ISP-bound calls are handled the same way by the ILEC and by the ALEC as  
2           any other local call, and they are virtually indistinguishable. Although Ms.  
3           Shiroishi tries to argue that the calls are generally of a longer duration, there are  
4           many other types of call that are of long duration that are not ISP-bound calls. To  
5           segregate out ISP-bound calls from other types of local calls requires institution of  
6           systems that aren't really in place yet, greatly adding to the expense and  
7           complexity of the transactions. Ms. Shiroishi's implication that ALECs are  
8           instituting more efficient and capable equipment that can result in cost savings for  
9           termination of such calls is just speculation. Even if it were true, the presumption  
10          under the FCC's rules is that competitive carriers are entitled to symmetrical  
11          compensation – giving both the ILEC and the ALEC the incentive to make their  
12          systems more efficient – and this benefits the public.

13  
14          Ideally, e.spire does not dispute the notion that carriers should be entitled to  
15          compensation based on the cost for the work they perform. But apart from  
16          general speculations, neither BellSouth nor Verizon has presented any  
17          information in this proceeding that would justify bifurcated treatment for ISP-  
18          bound and other local types of calls. And, looking at the testimony of BellSouth's  
19          witness David Scollard only underscores the impracticality of attempting to  
20          segregate ISP-bound calls from other types of calls. Mr. Scollard himself admits  
21          at the end of his testimony (page 5) that, for lack of the ability to obtain ISP

1 numbers used by ALECs in generating bills to BellSouth, BellSouth has  
2 attempted to segregate the calls based on duration alone. So BellSouth wants to  
3 “guess” as a method for distinguishing these calls. But what about the teenager’s  
4 call to his girlfriend, or other local calls that have durations similar to those of a  
5 typical ISP-bound call? BellSouth is so anxious to catch the tuna that it turns a  
6 blind eye to the dolphins in the net. As pointed out by Sprint witness Michael R.  
7 Hunsucker (at 9):

8  
9 ISP-bound traffic is functionally the same as other local voice  
10 traffic and it is administratively cumbersome and/or expensive to  
11 distinguish between the two types of traffic. Longer holding times,  
12 for example, are characteristic of other users in addition to ISP.  
13

14 The Commission should also take into account that what we are talking about  
15 here is an interim mechanism. If carriers resort to very expensive cost studies and  
16 extensive and complex technical methods to address these issues, the FCC’s  
17 ruling might ultimately reject such an approach. In such circumstances, it will  
18 have been a waste of time and money for everyone. Therefore, it makes sense to  
19 continue on the simplest and most straightforward course -- treatment of ISP-  
20 bound calls as local calls for reciprocal compensation purposes.

21  
22 *Issue 6 What factors should the Commission consider in setting the compensation*  
23 *mechanisms for delivery of ISP-bound traffic?*  
24

25 *Issue 7 Should intercarrier compensation for delivery of ISP-bound traffic be limited*  
26 *to carrier and ISP arrangements involving circuit-switched technologies?*  
27

1    **Q.    WITNESSES SHIROISHI FOR BELL SOUTH AND BEAUVAIS FOR**  
2           **VERIZON TAKE THE POSITION THAT RECIPROCAL**  
3           **COMPENSATION FOR ISP-BOUND TRAFFIC SHOULD, IF IT IS**  
4           **ALLOWED AT ALL, BE LIMITED TO ARRANGEMENTS INVOLVING**  
5           **CIRCUIT-SWITCHED TECHNOLOGY. DO YOU AGREE?**

6  
7    **A.**    No. As I mentioned in my Direct Testimony, this would be a mistake in my  
8           opinion because it would fail to recognize ALEC costs in terminating calls made  
9           over non-circuit switched technologies, and it would discourage innovation, short-  
10          changing the Florida consumer. I think Michael Hunsucker, Sprint's witness,  
11          stated it very well when he observed on page 18 of his Direct Testimony:

12  
13                   To limit inter-carrier compensation for ISP-bound traffic to only  
14                   circuit-switched traffic is both unwarranted and provides economic  
15                   incentives for LECs not to implement more advanced, and more  
16                   efficient, technologies.

17  
18  
19    ***Issue 8 Should ISP-bound traffic be separated from non-ISP-bound traffic for the***  
20    ***purposes of assessing any reciprocal compensation payments? If so, how?***

21  
22                                   ***[This issue is addressed above]***

23  
24    ***Issue 9 Should the Commission establish compensation mechanisms for delivery of***  
25    ***ISP-bound traffic to be used in the absence of the parties reaching an***  
26    ***agreement or negotiating a compensation mechanism? If so, what should be***  
27    ***the mechanism***

1    **Q.    SPRINT'S WITNESS HUNSUCKER FAVORS THE ADOPTION OF A**  
2           **BIFURCATED RATE STRUCTURE FOR LOCAL SWITCHING, TO BE**  
3           **APPLIED TO ALL RECIPROCAL COMPENSATION TRAFFIC. DO**  
4           **YOU AGREE?**

5  
6    A.    This is a complex question that would require a lot of study, and I am not  
7           prepared to take a firm position on this issue, except to say that the blended  
8           switching rate is in my view simpler, and will not require a wholesale re-thinking  
9           of the way in which carriers compensate each other in Florida. It seems to me  
10          that a blended switch rate can satisfactorily account for the differences in call  
11          durations if it takes into account all relevant data concerning the way calls are  
12          presently made. So instead of the radical departure of a bifurcated switching rate  
13          applicable to all reciprocal compensation, I think it would be simpler to stay with  
14          the existing blended approach and adjust it if the data warrant such an action. If  
15          the Sprint proposal is adopted, it should also apply to access charges and UNE-P  
16          rates.

17

18   **Q.    DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

19   A.    Yes, thank you, it does.

20





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**VIA HAND DELIVERY**

David Waddell, Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

Re: *Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Intermedia Communications Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*  
Docket No. 99-00948

Dear Mr. Waddell:

During the hearing of the referenced matter last month, the Directors requested that BellSouth advise the TRA whether it is billing Intermedia reciprocal compensation for calls placed by Intermedia's customers to those BellSouth customers who subscribe to foreign exchange ("FX") service. BellSouth has completed its internal investigation and concluded that it is, in fact, billing Intermedia reciprocal compensation for such calls. If, after consideration of this issue in the arbitration, the TRA agrees with BellSouth that reciprocal compensation should not be billed by either carrier for these calls, then BellSouth will take the appropriate steps to cease billing Intermedia (and other CLECs) reciprocal compensation for such calls.

Very truly yours,

A handwritten signature in black ink, appearing to be "Guy M. Hicks", written over a horizontal line.

Guy M. Hicks

GMH:tmt

cc: Don Baltimore, Esquire

POSTED  
10-1-00

**CERTIFICATE OF SERVICE**

I hereby certify that on October 4, 2000, a copy of the foregoing document was served on the parties of record, via the method indicated:

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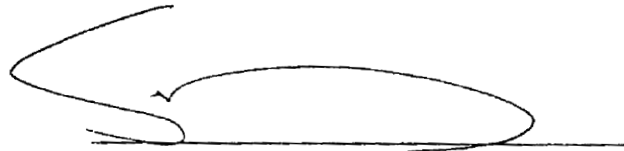
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A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal line.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Rebuttal Testimony of James Falvey on behalf of e.spire Communications, Inc. has been served on the following parties by Hand Delivery (\*) and/or U. S. Mail this 10th day of January, 2001.

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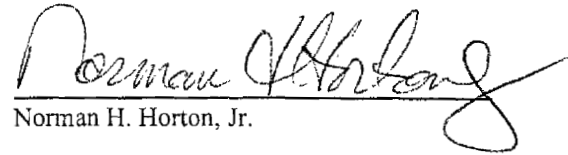
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