

ORIGINAL

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August 31, 1998

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 (Recombination Docket)**

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of the Answer of BellSouth Telecommunication's, Inc. to Complaint of e.spire Communications, Inc., 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,

*Mary K. Keyer*  
Mary K. Keyer (Bul)

ACK \_\_\_\_\_

AFA \_\_\_\_\_

APP \_\_\_\_\_

CAF \_\_\_\_\_

CMU \_\_\_\_\_

MKK/ds  
Enclosures

CTR \_\_\_\_\_

EAG \_\_\_\_\_

cc: All parties of record

LEG 2 \_\_\_\_\_

A. M. Lombardo

LIN \_\_\_\_\_

R. G. Beatty

OPC \_\_\_\_\_

William J. Ellenberg (w/o enclosures)

RCH \_\_\_\_\_

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FPSC-BUREAU OF RECORDS

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DOCUMENT NUMBER-DATE

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FILED-RECORDS/REPORTING

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: August 31, 1998

ANSWER OF BELLSOUTH TELECOMMUNICATIONS, INC.,  
TO COMPLAINT OF e.spire COMMUNICATIONS, INC.

BellSouth Telecommunications, Inc. ("BellSouth"), hereby files its answer to the Complaint of e.spire Communications, Inc., ("e.spire") pursuant to Rule 1.110, Florida Rules of Civil Procedure and Rules 25-22.037 and 25-22.0375, Florida Administrative Code. The Complaint seeks a ruling that calls made to Internet or information service providers ("ISPs") should qualify for reciprocal compensation under the terms of e.spire's Interconnection Agreement with BellSouth when such traffic is exchanged between BellSouth and e.spire. There is no factual, legal, or policy basis for such a ruling because calls made to the Internet through ISPs that originate on one carrier's network do not "terminate" on the other carrier's network, as is required for reciprocal compensation to apply. To the contrary, a single such call may communicate with interstate, foreign, and local destinations simultaneously; thus, as a jurisdictional matter such traffic cannot be considered "local." Indeed, jurisdiction over ISP traffic is clearly vested with the Federal Communications Commission ("FCC"), which is

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presently considering the issues raised in e.spire's Complaint.<sup>1</sup> Furthermore, reciprocal compensation means that compensation flows in both directions; there is nothing "reciprocal" about ISP traffic, since such traffic all flows in one direction. Accordingly, e.spire is not entitled to the relief it seeks in this proceeding, and the Commission should dismiss e.spire's Complaint.

### **FIRST DEFENSE**

The Florida Public Service Commission ("Commission" or "FPSC") should decline to hear this Complaint because ISP traffic is interstate in nature.

Furthermore, since the issue which is the subject of this Complaint, i.e., whether ISP traffic is subject to reciprocal compensation, is presently pending before the FCC, the Florida Commission should simply hold this matter in abeyance until such time as the FCC renders a decision.

### **SECOND DEFENSE**

For answer to the specific averments contained in the Complaint, BellSouth states:

1. BellSouth is without knowledge of the averments in Paragraph 1 of the Complaint, therefore, denies the same.
2. The averments in Paragraph 2 of the Complaint do not state facts to which BellSouth need respond.

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<sup>1</sup> The FCC stated in its April 10, 1998, Report to Congress that "the question of whether Competitive LECs that serve Internet service providers (or Internet service providers that have voluntarily become competitive LECs) are entitled to reciprocal compensation for terminating Internet traffic. The issue . . . is now before the Commission . . ." *In the Matter of Federal - State Joint Board on Universal Service*, Report to Congress, CC Docket No. 96-45 (April 10, 1998) at n. 220.

3. BellSouth is without knowledge of the averments in Paragraph 3 of the Complaint, therefore, denies the same.

4. BellSouth admits the averments in Paragraph 4 of the Complaint, except the averment that BellSouth is authorized to provide local exchange services in areas of Florida currently served by e.spire, of which BellSouth is without knowledge, therefore, denies the same.

5. BellSouth admits the averments in Paragraph 5 of the Complaint.

6. BellSouth states Section VI.A of the Agreement referred to in Paragraph 6 of the Complaint speaks for itself.

7. BellSouth states that Attachment B of the Agreement speaks for itself and denies the remaining averments in Paragraph 7 of the Complaint. BellSouth affirmatively states that calls made to the Internet through ISPs that originate on one carrier's network do not "terminate" on the other carrier's network, thus such calls do not fall within the definition of "local traffic" as defined in the Interconnection Agreement. A single call to the Internet may communicate with interstate, foreign, and local destinations simultaneously; thus, as a jurisdictional matter such traffic cannot be considered "local" under the Interconnection Agreement or under the law.

8. BellSouth states Section VI.B of the Agreement referred to in Paragraph 8 of the Complaint speaks for itself and admits that although the phrase "bill and keep" is not found in Section VI.B of the Interconnection

Agreement, the parties agreed until certain conditions occurred “there will be no cash compensation exchanged by the parties” for the exchange of local traffic.

9. BellSouth admits the Agreement does not contain a rate for reciprocal compensation, states the Agreement and Section XXII.A of the Agreement speak for themselves, and denies the remaining averments in Paragraph 9 of the Complaint. BellSouth affirmatively states the language in Section XXII.A of the Agreement essentially tracks Section 252 (i) of the Telecommunications Act, which the Eight Circuit Court of Appeals, in interpreting this provision in the Act, determined that new entrants, under Section 252(i), may accept the terms and conditions of prior agreements “in their entirety.” *Iowa Utilities Board et al. v. FCC*, 120 F.3d 753, 800-801 (8th Cir. 1997). BellSouth affirmatively states this opinion has, in effect, eliminated the FCC’s “pick and choose” rule. BellSouth further affirmatively states that Section VI.B of the Agreement requires the parties to “thereafter negotiate the specifics of a traffic exchange agreement which apply on a going-forward basis,” only in the event that “the difference in minutes of use for terminating local traffic exceeds 2 million minutes per state on a monthly basis.” (Emphases added.)

10. BellSouth denies the reciprocal compensation rate of \$.009 per minute is contained in the Interconnection Agreement between MCI and BellSouth and states the November 14, 1997, letter and e.spire’s proposed amendment to the Agreement identified as Exhibit B in Paragraph 10 of the Complaint speak for themselves. BellSouth specifically denies that anything in

the November 14, 1997, required BellSouth to negotiate a traffic exchange agreement in Florida at that time under the terms of its Interconnection Agreement with e.spire. BellSouth affirmatively states the November 14, 1997, letter addressed only local minutes for e.spire customers in Alabama and Georgia in October, 1997.

11. BellSouth denies it did not respond to e.spire's November 14, 1997, letter, states the letters of November 14, 1997, December 23, 1997, and January 8, 1998, referred to in Paragraph 11 of the Complaint, speak for themselves, and specifically denies BellSouth breached its Agreement with e.spire.

12. BellSouth states the December 23, 1997, and January 8, 1998, letters referred to Paragraph 12 of the Complaint speak for themselves. BellSouth admits it did not provide e.spire with local traffic usage reports, and affirmatively states in a meeting on November 3, 1997, BellSouth advised e.spire it was not yet technically capable of recording local traffic usage for e.spire, but was continuing to work toward such capability. BellSouth further states that since e.spire indicated in this meeting that it had a system called "Traffic Master" that could track and record traffic, both originating and terminating minutes, on its local interconnection trunks, BellSouth agreed in its January 8, 1998, letter to use e.spire's usage reports for determining the local traffic differentials. Based on information from e.spire that its trunks were combined usage trunks, BellSouth requested an audit of the process used by e.spire to "jurisdictionalize

its traffic between local and interexchange on these combined trunks.” To date, e.spire has not agreed to allow BellSouth to conduct such an audit.

13. BellSouth denies it owes e.spire unpaid reciprocal compensation or that e.spire has documents to support such a claim, states there were no documents identified as Exhibit D to BellSouth’s copy of the Complaint, although there were what appeared to be invoices attached, one of which was dated subsequent to the filing date of the Complaint, and states the remaining averments in Paragraph 13 of the Complaint do not state facts to which BellSouth need respond.

14. BellSouth states the averments regarding federal and state law requirements call for conclusions of law to which BellSouth need not respond, admits BellSouth and e.spire entered into an Interconnection Agreement, and denies the remaining allegations in Paragraph 14 of the Complaint.

15. BellSouth denies the averments in Paragraph 15 of the Complaint, specifically that BellSouth did not comply with its Agreement with e.spire. BellSouth affirmatively states that although negotiations between e.spire and BellSouth began over the issue of reciprocal compensation, those negotiations were never finished, and e.spire is attempting through this complaint to circumvent the negotiation process required under the parties’ Agreement.

16. BellSouth denies the averments in Paragraph 16 of the Complaint. BellSouth affirmatively states that in the call-flow scenario described in Paragraph 16, although e.spire transports the call to its ISP customer, the call

does not terminate there. BellSouth specifically denies it is receiving anything free from e.spire or that it is violating §§ 251-252 of the Act.

17. BellSouth denies the averments in Paragraph 17 of the Complaint.

18. BellSouth admits the Commission has jurisdiction over complaints under the statutory provisions cited in Paragraph 18 of the complaint, but denies the Commission has jurisdiction over ISP traffic because such traffic is interstate in nature, the jurisdiction over which is vested with the FCC.

19. The statutory provisions cited in Paragraph 19 of the Complaint speak for themselves. BellSouth would note that Section 251 (a) of the Telecommunications Act of 1996 imposes the duty to interconnect networks upon all telecommunication carriers, not just local exchange carriers.

20. BellSouth admits it entered into an Interconnection Agreement with e.spire, states § 251(b) of the Act speaks for itself, and states the remaining averments in Paragraph 20 of the Complaint call for conclusions of law to which BellSouth need not respond.

21. BellSouth denies the averments in Paragraph 21 of the complaint.

22. BellSouth admits it charges its ISP customers local business rates by virtue of the FCC's continued decision to exempt ISPs from paying interstate access charges and to allow ISPs to pay only local business rates and subscriber line charges for their interstate switched access connection to the local exchange company central offices. BellSouth further admits that as a result of the FCC's decision, its end-users, as well as the customers of BellSouth's ISP



customers, can access their ISP by dialing a local number (similar to Feature Group A in the Access Services Tariff). Importantly, BellSouth states the FCC's exemption for ISPs extends only to incumbent local exchange carriers ("ILECs"). Thus, e.spire, as a competitive local exchange carrier ("CLEC"), is free to charge any appropriate rates (access or otherwise) in order to compensate it fully for the cost of any services it provides to ISPs. BellSouth admits it treats revenues associated with traffic to its ISP customers as local for purposes of separations and ARMIS reporting, as established and controlled by the FCC. BellSouth denies the remaining allegations in Paragraph 22 of the Complaint.

23. BellSouth states its January 8, 1998, letter and Section XV.C of the Agreement speak for themselves and denies the remaining averments in Paragraph 23 of the Complaint.

24. BellSouth states Section XV.A of the Agreement speaks for itself and denies the remaining averments in Paragraph 24 of the Complaint, specifically that BellSouth refuses to pay reciprocal compensation for local traffic (as defined in the Agreement) terminated by e.spire and that BellSouth has an obligation to pay reciprocal compensation for ISP traffic under its Agreement with e.spire. BellSouth admits it has been technically incapable of providing e.spire with copies of local usage data, that it fully disclosed this fact to e.spire, and that it agreed to use e.spire's traffic usage data with BellSouth being allowed to audit the process used by e.spire to jurisdictionalize its traffic between local and interexchange since e.spire uses combined trunks. BellSouth affirmatively states

it has not been allowed to audit e.spire's usage data to determine if the 2 million minute threshold set forth in the Agreement has ever been achieved by e.spire in Florida which would then trigger the duty of both parties to negotiate a new "traffic exchange agreement" to be applied "on a going-forward basis," as provided in Section VI. B of the Agreement.

25. BellSouth admits \$0.009 per minute is a rate established in the agreement between BellSouth and MFS in Florida and denies the remaining averments in Paragraph 25 of the Complaint.

26. BellSouth denies the averments in Paragraph 26 of the Complaint.

27. BellSouth denies the averments in Paragraph 27 of the Complaint.

BellSouth affirmatively asserts the FCC has reiterated on numerous occasions that it has jurisdiction over traffic that is jurisdictionally interstate, which includes Enhanced Service Providers' ("ESPs") traffic, of which ISP traffic is a sub-set. *See MTS and WATS Market Structure*, 97 FCC 2d 682, 711-12 (1983); Amendments of Part 69 of the Commission's Rules Relating to Enhance Service Providers, 2 FCC RCD 4305, 4306 (1987); Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, 4 FCC RCD 3983, 3987 (1989). The fact that the FCC has granted ISPs an exemption from interstate access charges for policy reasons does not change the jurisdictional nature of ISP traffic from interstate access traffic to local. *See Access Charge Reform*, Notice of Proposed Rulemaking Third Report and Order and Notice of Inquiry, CC Docket No. 96-

262, at 284-84 (Dec. 24, 1996). Indeed, by definition, ISP traffic would have to be an interstate access arrangement to which interstate access charges would otherwise apply in order for the FCC to have jurisdiction to grant the exemption.

28. BellSouth states the FCC Order in the universal service docket speaks for itself and denies the remaining averments in Paragraph 28 of the Complaint. BellSouth admits the FCC exempted ISPs from universal service contributions in *In re: Federal-State Joint Board on Universal Service*, Report and Order, CC Docket 96-45 (May 8, 1997) ("Universal Service Order"), but affirmatively asserts that nothing in the FCC's Universal Service Order lends credence to a finding that ISP calls originate on the network facilities of one local exchange carrier and terminate on the facilities of another for purposes of reciprocal compensation. BellSouth further states the FCC has repeatedly rejected "two call" jurisdictional theories, employing instead an "end-to-end" analysis in determining the jurisdictional nature of the call. See, e.g., *Petition for Emergency Relief and Declaratory Ruling* filed by BellSouth Corporation, 7 FCC Rcd 1619 (1992), *aff'd Georgia Public Service Comm'n v. FCC*, 5 F.3d 1499 (11th Cir. 1993).

29. The Access Charge Reform Order referred to in Paragraph 29 of the Complaint speaks for itself. BellSouth affirmatively asserts that the FCC's Access Charge Order only treats ISPs as "end users" -- a term defined in the FCC's access charge rules-- "for purposes of the access charge system." Nothing in the FCC's Access Charge Reform Order indicates an intent by the

FCC to forsake or limit its authority over interstate ISP traffic, either in the context of access charges or for purposes of reciprocal compensation. To the contrary, the FCC's most recent decision that ISPs should not be subject to interstate access charges is a demonstration of the FCC's continued jurisdiction over ISP traffic, which belies e.spire's contention that such traffic is "local."

30. BellSouth states the Non-Accounting Safeguards Order referred to in Paragraph 30 of the Complaint speaks for itself. BellSouth affirmatively asserts that nothing in the provision of the FCC's Non-Accounting Safeguards Order cited by e.spire applies to the facts of this case or supports a finding that ISP calls originate on the network facilities of one local exchange carrier and terminate on the facilities of another for purposes of reciprocal compensation.

31. BellSouth states the FCC's April 10, 1998, Report to Congress speaks for itself and denies the remaining averments of Paragraph 31 of the Complaint. BellSouth affirmatively states that nothing in the Report to Congress lends credence to a finding that ISP calls originate on the network facilities of one local exchange carrier and terminate on the facilities of another local exchange carrier for purposes of determining reciprocal compensation. In fact, the FCC expressly stated that:

[w]e make no determination here [4-10-98 Report to Congress] on the question of whether competitive LECs that serve Internet service providers (or Internet service providers that have voluntarily become competitive LECs) are entitled to reciprocal compensation for terminating Internet traffic. That issue, which is now before the [Federal Communications] Commission, does not turn on the status of the Internet service provider as a telecommunications carrier or information service provider. [citations omitted].

*In the matter of Federal-State Joint Board on Universal Service,*  
Report to Congress, CC Docket No. 96-45 (April 10, 1998) at n.  
220.

32. BellSouth admits the FCC is presently conducting two proceedings to consider use of the public switched network by ISPs, that the FCC has continued to exercise its jurisdiction over ISP traffic, and denies the remaining averments in Paragraph 32 of the Complaint.

33. BellSouth states the Commission and FCC orders speak for themselves and denies the remaining averments in Paragraph 33 of the Complaint. BellSouth affirmatively asserts that notwithstanding the state commission decisions referred to in Paragraph 33, the FCC has continued to exercise its jurisdiction over ISP traffic and the FCC is presently conducting two proceedings<sup>2</sup> to consider use of the public switched network by ISPs. It is the jurisdictional nature of ISP traffic as interstate access traffic that permits the FCC to do so. It is precisely the same jurisdictional nature of ISP traffic that takes it outside the scope of reciprocal compensation.

34. The Department of Public Utility Control in Connecticut order referred to in Paragraph 34 of the Complaint speaks for itself.

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<sup>2</sup> There are at least two proceedings in which the FCC is specifically considering the use of the public switched network by ISPs: (1) *Access Charge Reform*, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, CC Docket No. 96-262, at 284-84 (Dec. 24, 1996); and (2) *Request by ALTS for Clarification of the Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic*, CCB/CPD 97-30 (released July 2, 1997).

35. The Virginia Corporation Commission order referred to in Paragraph 35 of the Complaint speaks for itself.

36. The Texas Public Utility Commission order referred to in Paragraph 36 of the Complaint speaks for itself.

37. BellSouth denies the averments in Paragraph 37 of the complaint.

38. BellSouth states §§ 251 and 252 of the Telecommunications Act referred to in Paragraph 38 of the Complaint speak for themselves.

39. BellSouth denies the averments in Paragraph 39 of the Complaint. BellSouth affirmatively states that in the call-flow scenario described in Paragraph 39, although e.spire transports the call to its ISP customer, the call does not terminate there. BellSouth specifically denies it is receiving anything free from e.spire or that it is violating §§ 251-252 of the Act.

40. BellSouth denies the averments in Paragraphs 40, 41, and 42 of the Complaint.

41. BellSouth specifically denies e.spire is entitled to the relief sought in its Complaint or to any relief whatsoever.

42. BellSouth denies any averments in the Complaint not expressly admitted herein.

WHEREFORE, BellSouth demands:

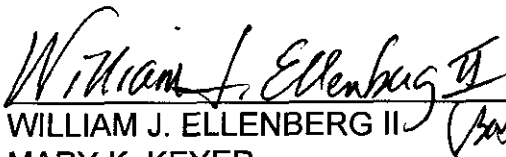
(1) the Complaint against it be dismissed; or

(2) in the alternative, since the issue of whether ISP traffic is subject to reciprocal compensation is pending before the FCC, this Commission should hold this matter in abeyance until such time as the FCC renders a decision.

Respectfully submitted this 31st day of August, 1998.



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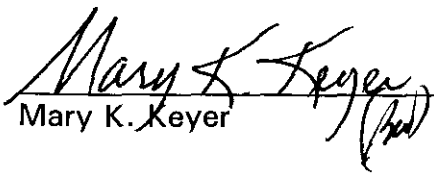
**CERTIFICATE OF SERVICE**  
**Docket No. 981008-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. Mail this 31st day of August, 1998 to the following:

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