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ORIGINAL

December 21, 1998

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

RE: Docket No. 981745-TP

Dear Mrs. Bayo:

Enclosed are an original and 15 copies of BellSouth Telecommunications, Inc.'s Response to e.spire Communications, Inc.'s Petition for Arbitration. Please file these documents 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,

Mary K. Keyer
Mary K. Keyer

Enclosures

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

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CERTIFICATE OF SERVICE
Docket No. 981745-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by

U.S. Mail this 21st day of December, 1998 to the following:

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Mary K. Reyer (ce)
Mary K. Reyer

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In the Matter of:

**Petition by E.SPIRE COMMUNICATIONS, INC.)
And AMERICAN COMMUNICATION)
SERVICES OF TAMPA, INC., AND)
AMERICAN COMMUNICATION SERVICES OF)
JACKSONVILLE, INC. for Arbitration) DOCKET NO. 981745-TP
of an Interconnection Agreement with)
BELLSOUTH TELECOMMUNICATIONS, INC.)
Pursuant to Section 252(b) of the)
Telecommunications Act of 1996)**

**BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE
TO E.SPIRE COMMUNICATIONS, INC.'S PETITION FOR ARBITRATION**

Pursuant to 47 U.S.C. § 252(b)(3), BellSouth Telecommunications, Inc. ("BellSouth") for its response to the Petition for Arbitration under the Telecommunications Act of 1996 ("1996 Act") filed by e.spire Communications, Inc. (formerly known as "American Communication Services, Inc.") and its local exchange operating subsidiaries in Florida, American Communication Services of Tampa, Inc. and American Communication Services of Jacksonville, Inc. (collectively "e.spire") states:

I. INTRODUCTION

Sections 251 and 252 of the 1996 Act encourage negotiations between parties to reach voluntary local interconnection agreements. Section 251(c)(1) requires incumbent local exchange companies to negotiate the particular terms and conditions of agreements to fulfill the duties described in §§ 251(b) and 251(c)(2-6).

Commission's consideration of any petition (and any response thereto) to the unresolved issues set forth in the petition and in the response.⁶

BellSouth and e.spire entered into a two-year Interconnection Agreement ("Agreement") on July 25, 1996, effective September 1, 1996, and amended October 17, 1996. Through mutual consent, the parties began renegotiating the Agreement on June 24, 1998. Although BellSouth and e.spire negotiated in good faith, the parties were unable to reach agreement on some issues. As a result, e.spire filed this petition for arbitration. Pursuant to the 1996 Act, when parties cannot successfully negotiate an interconnection agreement, either may petition a state commission for arbitration of unresolved issues between the 135th and 160th day from the date a request for negotiation was received.⁶ It is clear from the 1996 Act that e.spire's Petition must identify the issues resulting from the negotiations that are resolved, as well as those that are unresolved.⁷

Through the arbitration process, the Commission must resolve the unresolved issues ensuring that the requirements of Sections 251 and 252 of the 1996 Act are met. The obligations contained in those sections of the 1996 Act are the obligations that form the basis for negotiation, and if negotiations are unsuccessful, then form the basis for

⁵ 47 U.S.C. § 252(b)(4).

⁶ 47 U.S.C. § 252(b)(1). e.spire initially requested renegotiation of the Agreement on March 11, 1998. However, as the parties were in the process of resolving a number of issues, they mutually agreed that June 24, 1998, was the start date for negotiations under Section 252(b) of the 1996 Act. The 160th day from the start date of negotiations was November 30, 1998. e.spire filed its petition for arbitration on November 25, 1998.

⁷ See generally, 47 U.S.C. §§ 252(b)(2)(A) and 252(b)(4).

5. BellSouth states the provisions of the Act speak for themselves and admits the remaining allegations in Paragraph 5 of the Petition.

6. BellSouth denies all the issues presented by e.spire are unresolved and admits the remaining allegations in Paragraph 6 of the Petition.

7. BellSouth admits the allegations in Paragraph 7 of the Petition, but specifically denies that all issues listed or referred to therein are unresolved or are appropriate for arbitration.

8. BellSouth is without knowledge or information sufficient to form a belief as to the truth of e.spire's compulsions and feelings, therefore, denies the same, and states that the remaining allegations in Paragraph 8 of the Petition do not state allegations of fact to which BellSouth need respond.

9. BellSouth denies the parties have been unable to reach agreement on all the issues listed in e.spire's Petition or that all the issues listed are appropriate for arbitration, and admits the remaining allegations in Paragraph 9 of the Petition.

10. The allegations in Paragraph 10 of the Petition state legal conclusions to which BellSouth need not respond.

11. Sections 251(b), 251(c) and 252 of the 1996 Act, referred to in Paragraph 11 of the Petition, speak for themselves.

12. Section 251(b) of the 1996 Act, referred to in Paragraph 12 of the Petition speaks for itself.

13. Section 251(c) of the 1996 Act, referred to in Paragraph 13 of the Petition speaks for itself.

14. Section 252(d) of the 1996 Act, referred to in Paragraph 14 of the Petition speaks for itself.

15. In accordance with Section 252(b)(3) of the 1996 Act, BellSouth sets forth its position on the issues raised by e.spire in Paragraph 15 of its Petition as follows:

General Terms and Conditions

GTC-1 What should be the Term of the Agreement?

BellSouth has consistently maintained a willingness to negotiate a reasonable term of the agreement between the parties. Based upon past experience, BellSouth believes that a two-year term is reasonable. As a practical matter, if a one-year term is used, the parties would essentially begin the renegotiation process shortly after having entered into the agreement. If the parties are unable to reach agreement on all the issues between them, as in the instant proceeding, either party may pursue arbitration before a state Commission. This would require both parties, as well as the Commission and its Staff conducting the arbitration, to commit time and resources to that process, potentially on a yearly basis.

BellSouth specifically denies it has refused to agree to a most favored nation ("MFN") provision during the negotiations. BellSouth has offered an MFN clause consistent with the 1996 Act and with the decision of the United States Court of Appeals for the Eighth Circuit in *Iowa Utilities Board v. FCC*. BellSouth's clause would allow e.spire to accept in its entirety the agreement of another CLEC.

GTC-2(a) Should the failure to provide interconnection, services and facilities under the Interconnection Agreement at parity as established by the Performance Standards and Measurements appended to the Interconnection Agreement as Attachment 10, be classified as a Specified Performance Breach?

BellSouth has agreed to language in its negotiations with e.spire that BellSouth will provide e.spire with non-discriminatory access as is required under the Act. BellSouth is also in agreement with the Performance Standards and Measurements appended as Attachment 10 to the Draft Interconnection Agreement attached as an exhibit to e.spire's Petition. BellSouth is willing to provide to e.spire those performance measurements ordered by the Commission for BellSouth to provide to other CLECs in this state. However, BellSouth does not agree that if it does not always achieve the target levels established by such Performance Standards and Measurements, that such failure should be classified as a Specified Performance Breach.

GTC-2(b) If so, should Liquidated Damages be imposed for the occurrence of such Specified Performance Breach?

BellSouth does not agree that penalties should be the subject of arbitration. There are legal questions as to whether it is appropriate for the Commission to award monetary damages or financial penalties. The only remedies that should be included in an interconnection agreement between BellSouth and e.spire are those which are mutually agreed upon by the parties. For example, BellSouth is willing to waive nonrecurring charges under a number of circumstances when it does not provide a certain level of service to e.spire. However, e.spire is requesting that the Commission mandate a system of penalties in the form of liquidated damages that would apply every time BellSouth does not meet a Specified Performance Standard, even though e.spire may be receiving nondiscriminatory access in full compliance with the 1996 Act. e.spire's proposal for liquidated damages is not required by the 1996 Act and represents a supplemental enforcement scheme that is inappropriate and unnecessary. e.spire has

adequate recourse before the Commission or in a court of law in the event BellSouth breaches its interconnection agreement.

GTC-3 Should e.spire be able to substitute the rates, terms and conditions of portions of its Interconnection Agreement with comparable portions of agreements between BellSouth and other Telecommunications Carriers?

Contrary to e.spire's allegations, BellSouth has consistently offered a most favored nation ("MFN") provision for inclusion in the interconnection agreement. BellSouth will accept a MFN clause consistent with Section 252(i) of the 1996 Act and with the *Iowa Utilities Board* decision, interpreting the 1996 Act and the FCC's Orders and rules. BellSouth's clause would allow e.spire to accept in its entirety the agreement of another CLEC.

GTC-4 Should a "fresh look" period be established to enable End Users bound to long term agreements with BellSouth to switch local carriers without penalty?

BellSouth does not believe the "fresh look" issue is an appropriate issue for arbitration because there is an existing docket before this Commission that will address "fresh look." BellSouth is under no statutory obligation to establish a "fresh look" period on term contracts. BellSouth has agreed to make all such term contracts available for resale and to not require the payment of termination liability charges where e.spire assumes the term contract on behalf of e.spire's end-user customer. Therefore, no "fresh look" is necessary or appropriate.

GTC-5 Should both Parties be required to absorb their own costs of complying with subpoenas and government orders for intercept devices?

appealable." To do otherwise would create confusion between the parties as to their obligations under the interconnection agreement at a particular point in time. This approach also avoids the expense of starting and stopping development and other work on systems and processes as the applicable law proceeds through the appeal process until it becomes final and non-appealable.

GTC-8 Should dial-up calls placed to Internet Service Providers ("ISPs") be defined as "local traffic" for purposes of the e.spire/BellSouth Interconnection Agreement?

Contrary to e.spire's contentions, neither the 1996 Act nor any FCC rule or order requires the payment of reciprocal compensation to a local exchange carrier when it delivers traffic to information service providers, including internet service providers, that originated by an interconnecting local exchange carrier (hereinafter referred to as "ISP traffic"). While the issue of reciprocal compensation under existing interconnection agreements has been litigated in Florida, e.spire is seeking a contractual right to the payment of reciprocal compensation for ISP traffic, which BellSouth does not believe is appropriate as a matter of fact, law, or policy. ISP traffic is not "local" for purposes of reciprocal compensation. Thus, contrary to e.spire's position, dial-up calls placed to internet service providers should not be defined as "local traffic" for purposes of the parties' interconnection agreement.

e.spire is not entitled to the relief it seeks under existing FCC rulings, which, for more than a decade, have treated services such as ISP traffic as interstate, not local. See, e.g., *Memorandum Opinion and Order, MTS and WATS Market Structure*, 97 F.C.C.2d 682, 715 ¶ 83(1983); *Amendment of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, 3 FCC Rcd 2631, ¶ 2 (1988) (describing

companies that provide such services as "providers of interstate services"); and Notice of Proposed Rulemaking, *Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, 2 FCC Rcd 4305, 4306, ¶ 7 (1987) ("enhanced service providers . . . use the network to provide interstate services").

The fact that ISP traffic is not "local" was underscored by the FCC in its October 30, 1998, decision in CC Docket No. 98-79, *In re: GTE Telephone Operating Cos., GTOC Tariff No. 1*, that involved the FCC's investigation of an access offering filed by GTE which permits ISPs to provide to their end-user customers with high-speed access to the internet. In its Order, the FCC found that this service is an interstate service and is properly tariffed at the federal level. While the FCC was careful to note that it was not addressing whether local exchange carriers are entitled to reciprocal compensation when they deliver to ISPs circuit-switched traffic originated by interconnecting carriers, the FCC's analysis in reaching its decision in this docket is fatal to e.spire's position.

GTC-9 Should the e.spire local switch be defined as constituting both an "End Office" and a "Tandem Switch"?

A tandem switch connects one trunk to another and is an intermediate switch or connection between an originating telephone call location and the final destination of the call. An end office switch is connected to a telephone subscriber and allows the call to be originated or terminated. BellSouth's position is that if a call is not handled by a switch on a tandem basis, it is not appropriate to pay reciprocal compensation for the tandem switching function. If e.spire's local switch is an end-office switch as e.spire states, then it is handling calls that originate from or terminate to customers served by that local switch, and thus e.spire's switch is not providing a tandem function. BellSouth

compensates a CLEC for facilities and elements that the CLEC actually uses to terminate traffic to customers on the CLEC's network. Likewise, the CLEC should compensate BellSouth for its facilities and elements used for traffic terminating to customers on BellSouth's network. e.spire simply is seeking to be compensated for the cost of equipment it does not own and for functionality it does not provide.

Attachment 1 (Resale)

ATT1-1 Should e.spire be permitted to resell flat and measured rate service on the same business premise (sic) to End Users when BellSouth previously allowed such End Users to purchase both flat and measured Services at the same premise (sic)?

BellSouth's position is that when e.spire resells BellSouth's tariffed services, it should comply with the tariff just as BellSouth does. If the tariff provides for instances that an end user may utilize both flat and measured rate services at the same premises, then e.spire may then resell the service consistent with the tariff. If e.spire discovers any instances of BellSouth's end users purchasing both flat and measured services at the same business location in violation of BellSouth's tariffs, BellSouth will, when it learns of such situations, take the appropriate action to bring the provision of its services into compliance with its own tariffs. BellSouth believes that any such instances are limited and are not knowing violations of its own tariffs and since BellSouth takes corrective action to bring the provision of its own services into compliance with its own tariffs, e.spire should also be required to comply with BellSouth's tariff's provisions regarding flat and measured rate services to customers at the same business premises or location.

ATT1-2(a) Should the failure to provide Resale Services under the Interconnection Agreement at parity as established by the Performance Standards and Measurements set forth in

Attachment 10 to the Interconnection Agreement be classified as a Specified Performance Breach?

BellSouth adopts its response to issue GTC-2(a) as if fully restated herein.

ATT1-2(b) If so, should Liquidated Damages be assessed upon the occurrence of a Specified Performance Breach ?

BellSouth adopts its response to issue GTC-2(b) as if fully restated herein.

BellSouth denies that it maintained during negotiations that performance measurements should be considered "informational." BellSouth's position is that performance measurements are targets that are valuable tools for monitoring BellSouth's performance under the parties' interconnection agreement. Additionally, these measurements are useful as documentation by either party concerning a claim that BellSouth is not providing service at parity, thus, such measurements are more than "informational."

ATT1-3 Should BellSouth be permitted to impose extra or special charges to process e.spire's requests for installation of Resale Services?

BellSouth's position is that if BellSouth tariff allows BellSouth to charge its own end-users extra or special charges, such as for expedite requests, then BellSouth will charge e.spire similar charges when e.spire makes such expedite requests on behalf of its end-user customers.

ATT1-4 Should BellSouth be required to provide e.spire prompt notification of all cutovers of Resale Services to e.spire End Users?

BellSouth denies it has taken the position that it should not be required to provide prompt notice of cutovers to e.spire. BellSouth's position is that it does provide timely notice of such cutovers to e.spire and other CLECs.

ATT1-5 Should BellSouth be required to promptly notify e.spire of any installation Due Dates for Resale Services that are in jeopardy of being missed?

BellSouth denies it has taken the position that it should not be required to provide notice of when installation Due Dates are in jeopardy of being missed. BellSouth's position is that it does provide timely Jeopardy Notices ("JN") to e.spire and other CLECs.

ATT1-6 Should BellSouth be required to notify e.spire in advance of the date upon which "win-back" customers of Resale Services will be switched back to BellSouth?

BellSouth's position is that it should not be required to provide e.spire with advanced notice of the date upon which so-called "win-back" customers of resale services will be switched back to BellSouth. e.spire does not need this information in advance for any legitimate business purpose. BellSouth provides notice of such "win-back" situations after such customer has been switched back to BellSouth, thus, e.spire's alleged billing concerns are not an issue. This is consistent with how BellSouth handles customer changes between two CLECs, e.g. between e.spire and MCI.

ATT1-7 Should BellSouth be required to provide advance notice to e.spire of maintenance contacts with e.spire End Users whenever reasonably possible?

BellSouth denies it has taken the position that it should not be required to provide advance notice to e.spire of maintenance contacts between it and e.spire's end-users. As a general rule, e.spire will be contacted by its own customer about maintenance and e.spire in turn will contact BellSouth. BellSouth's position is that it does provide advanced notice, where reasonably possible, to e.spire of such maintenance contacts. For example, the issuance of repair tickets is advance notice to e.spire of such

ATT2-1

Should BellSouth be required to make available at pre-established TELRIC-based rates an assortment of xDSL-compatible loops (2 wire ADSL-compatible, 2-wire HDSL-compatible, 4-wire HDSL-compatible, ISDL, SDSL-compatible)?

BellSouth denies it has not made its position known to e.spire on this issue.

BellSouth's position is that it makes different types of xDSL-compatible loops available to e.spire and other CLECs at cost-based rates. BellSouth has agreed to provide e.spire (as well as any other CLEC) with access to the following unbundled loops: 2-wire ADSL-compatible, 2-wire HDSL-compatible, and 4-wire HDSL-compatible. These network elements are and have been available at Commission-approved cost-based rates for sometime. Additionally, BellSouth has issued a public-domain Technical Reference entitled *TR-73600 Unbundled Local Loop-Technical Specifications*, that describes in detail the different types of unbundled local loops BellSouth offers.

e.spire has also requested two other specific loop types. Although BellSouth is not familiar with the acronym ISDL (sic), BellSouth believes this may be a typographical error and that it should be IDSL. In the event e.spire intended for this to be IDSL, BellSouth notes there is no industry standard for IDSL. The acronym generally refers to a DSL product that can be used to provide service at a level similar to Basic Rate Access ISDN at the "u" reference point. If this is what e.spire intends, then the Basic Rate Access ISDN unbundled loop (also described in TR-73600) may be used to transport IDSL.

e.spire also requested an SDSL-compatible loop. BellSouth's position is that although the meaning of the acronym itself is clear (Symmetrical Digital Subscriber Line), the underlying technology is not specified in any industry standards of which

BellSouth is aware. Thus, BellSouth's position is that given the lack of definition, BellSouth cannot develop an unbundled loop specifically for SDSL.

ATT2-2(a) Should BellSouth be required to make xDSL-equipped loops available where present in its own network?

An xDSL-equipped loop is not an unbundled network element but is a service provided through BellSouth's Access Tariff. BellSouth's position is that to the extent e.spire is seeking to purchase xDSL-equipped (rather than xDSL-compatible) loops, e.spire may purchase xDSL services (i.e., xDSL-equipped loops) under BellSouth's Federal Access Tariff.

ATT2-2(b) If so, should e.spire be able to purchase the voice and data channels separately?

BellSouth adopts its response to issue ATT2-2(a) as if fully restated herein.

ATT2-2(c) If so, should each channel be priced at no more than one-half of the charge of the comparable ULL?

BellSouth adopts its responses to issue ATT2-2(a) and ATT2-2(b) as if fully restated herein.

ATT2-2(d) When e.spire purchases only the data channel, should BellSouth be required to provide voice services over the remaining channel upon consumer request?

BellSouth adopts its responses to issues ATT2-2(a); ATT2-2(b); and ATT2-2(c) as if fully restated herein.

ATT2-2(e) Should BellSouth be required to publish and apply reasonable Loop qualification procedures, including reasonable standards for addressing spectral interference, and be prohibited from denying access to Loops due to alleged spectral interference?

BellSouth denies it did not make its position known to e.spire regarding this issue. e.spire is confusing the issue of loop qualification with the establishment of loop

BellSouth will consider providing e.spire with access to OC3, OC12, and OC48 unbundled loops where it is technically feasible to do so subject to the FCC's pending proceedings in CC Docket Nos. 98-146 and 98-147 regarding the deployment of advanced telecommunication services under Section 706 of the 1996 Act.

ATT2-7 Should BellSouth be required to make available Dark Fiber loops where available at pre-established TELRIC-based rates?

BellSouth's position is that although the Commission did not determine in earlier arbitrations that dark fiber was a UNE, BellSouth agrees to make dark fiber available to e.spire (and other CLECs) where it is currently available in BellSouth's network.

ATT2-8 Should BellSouth be required to make available a "Bit Stream" UNE/Loop?

Although the meaning or definition e.spire intends for a "Bit Stream" UNE/Loop is not clear, it appears that e.spire intends to define this UNE/Loop as a data channel that BellSouth provides via its DSL equipment. BellSouth's ADSL service provides such functionality and e.spire may purchase this service as described in BellSouth's response to issue ATT2-2(a).

ATT2-9 Should BellSouth be required to provide "Extended Link" Loops (2-wire voice grade, 4-wire voice grade, 2-wire digital, 4-wire digital, 2-wire ADSL-compatible, 2-wire HDSL-compatible, 4-wire HDSL-compatible)?

e.spire's request for an "Extended Link" loop would require BellSouth to provide a combination of UNEs which would violate the Eighth Circuit's decision in *Iowa Utilities Board v. FCC*. e.spire apparently would have the Commission define this combination as an unbundled network element. Indeed, this tactic cannot be squared with the plain language of the 1996 Act, which specifically requires BellSouth to provide requesting

There is only one type of 2-wire analog voice grade loop available in Florida. Therefore, all such loops are priced at the same nonrecurring rate.

ATT2-12(a) Should BellSouth be required to provide loop conditioning to make specified loops capable of supporting advanced services?

BellSouth is not clear what e.spire means by providing loop conditioning in order to make "clean copper" loops available upon request. It appears that e.spire considers "loop conditioning" to include, but not be limited to, removal of load coils and bridge-taps. BellSouth believes there are a number of questions that need to be resolved before BellSouth can fully respond to this issue. However, BellSouth will agree to perform services in connection with removing load coils and bridge-taps upon request for the applicable special construction charges.

ATT2-12(b) If so, should NRCs for loop conditioning be established at the associated TELRIC cost and what should be the resulting rates?

BellSouth adopts its response to issue ATT2-12(a) as if fully restated herein.

ATT2-12(c) Should e.spire receive a credit for such NRCs if the conditioned loop is later taken back by BellSouth for a "win-back" sale or to sell to another CLEC ?

BellSouth adopts its responses to issues ATT2-12(a) and ATT2-12(b) as if fully restated herein. Additionally, BellSouth's position on this issue is that e.spire, or any other CLEC, who requests BellSouth to perform extra work in provisioning loops, should pay for such extra work. e.spire, just as any other CLEC, must make its own business case for requesting such "special" loops or "specially conditioned" loops and it must assume the risk of making its business decisions just as BellSouth and other CLECs do.

means collocation, BellSouth offers physical and virtual collocation within its central offices. BellSouth also adopts its response to issue ATT2-16 as if fully restated herein.

ATT2-15 **Where BellSouth provides loops through Integrated Digital Loop Carrier ("IDLC") systems, should BellSouth be required to make alternative arrangements available to e.spire or each such loop to permit e.spire a contiguous local loop?**

BellSouth denies it did not make its position known to e.spire on this issue.

BellSouth's position is that it agrees with the provision as stated in Attachment 2.3.11.1 in the draft agreement attached to e.spire's Petition. BellSouth has identified several alternative methods for provisioning CLECs, such as e.spire, with unbundled loops where such facilities are currently provided over IDLC. In those cases where alternative facilities do not exist, special construction charges will apply. The parties are not in agreement on how special construction charges should be calculated and charged under this issue.

ATT2-16 **Should BellSouth be required to provide "sub-loop unbundling" by providing feeder, distribution and concentration separately at pre-established TELRIC-based rates, and allowing e.spire to collocate at its Remote Terminals, unless BellSouth can affirmatively demonstrate that a particular location (i) sub-loop unbundling is not "technically feasible"; or (ii) there is insufficient space at the Remote Terminal to accommodate the request?**

BellSouth denies it did not make its position known to e.spire on these issues.

BellSouth's position is that the sub-loop element loop distribution is available to e.spire at the cost-based rates approved by the Commission.

BellSouth opposes e.spire's proposal that it be allowed to collocate in BellSouth's remote terminals. In most remote terminals, space is quite limited, which makes collocation impossible. Furthermore, remote terminals (specifically digital loop carrier

cabinets) have severe power and heat dissipation limitations, which make collocation impractical even if space were available. Additionally, allowing collocation at the remote terminals raises serious questions of maintaining the integrity and security of the network. Requiring BellSouth to prove in each case that denial of collocation in remote terminals was proper would impose an enormous and costly burden on BellSouth without increasing significantly the level of access that e.spire can obtain.

Moreover, collocation in remote terminals is unnecessary and is not the only means available for e.spire to access loops that pass through IDLC systems. For example, BellSouth has successfully negotiated and implemented arrangements that provide competitors with access to sub-loop elements without providing collocation at the remote terminals. Instead of collocation, a cross-box to cross-box interconnection arrangement is the established method of providing CLECs with full access to all necessary sub-loop elements. Not only is this solution technically feasible, it has the additional advantage of allowing e.spire to access the UNEs it needs without compromising the security or integrity of its (or BellSouth's) network. Furthermore, because e.spire would be utilizing its own DSL equipment within its own housing, e.spire would have greater control over the technical characteristics of the DSL service it offers.

ATT2-17 Should BellSouth be required to provide loop concentration at Remote Terminals as a UNE?

BellSouth denies it did not make its position known to e.spire on this issue. BellSouth adopts its response to issue ATT2-16 as if fully restated herein with respect to the sub-loop element, loop concentration.

ATT2-18 Should BellSouth be required to permit Physical Collocation of e.spire equipment at BellSouth's Remote Terminal?

BellSouth denies it did not make its position known to e.spire on this issue. BellSouth's position is that it will attempt to provide FOCs within 24 hours for correctly submitted electronic orders received from e.spire. BellSouth will provide FOCs within 48 hours for correctly submitted manual orders. BellSouth will follow its Service Order Interval Guide, available on the Internet, which provides reasonable and appropriate time intervals for firm order confirmations.

ATT2-21 Should BellSouth be required to provide high-capacity interoffice transport facilities at prescribed (non-ICB) TELRIC-based rates (i.e., DS3, OC3, OC12, and OC48)?

BellSouth denies it did not make its position known to e.spire on this issue. BellSouth's position is that it has agreed to provide e.spire with dedicated interoffice transport facilities for DS3, OC3, OC12 and OC48. BellSouth has not yet developed rates for DS3, OC3, OC12, and OC48 unbundled dedicated interoffice transport, so proposes to charge as interim prices for these services those rates contained in BellSouth's Access Tariff.

ATT2-22 Should Dedicated Transport be made available both between BellSouth Central Offices and as a "Local Channel"?

BellSouth denies it did not make its position known to e.spire on this issue. BellSouth's position is that it provides dedicated transport at the DS-1 and lower transmission speeds between BellSouth's central offices (dedicated interoffice transport) and between a BellSouth central office and a CLEC location (DS-1 local channel).

ATT2-23 Should BellSouth be required to make available interoffice Dark Fiber at pre-established TELRIC-based rates?

Supreme Court rules on the pending appeal of that decision, the Eighth Circuit's interpretation of the 1996 Act is controlling, which means that 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 of the Southern States, 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 agreements 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").

Similarly, e.spire's request for "Extended Link" loops (see issue ATT2-9) is equally untenable. Requiring BellSouth to do so would violate the Eighth Circuit's decision in *Iowa Utilities Board*. Although e.spire apparently takes the position that the Commission can simply redefine this combination as a "new UNE," this argument cannot be squared with the plain language of the 1996 Act which specifically requires BellSouth to provide requesting carriers with access to unbundled local loops (47 U.S.C. § 271)(c)(2)(B)(iv)) as well as access to unbundled local transport (47 U.S.C. § 271)(c)(2)(B)(v)). Furthermore, the FCC specifically identified local loops and interoffice transmission facilities (transport facilities) as separate unbundled network elements that incumbents are required to provide. First Report and Order, ¶ 366. Thus, e.spire's request for an "Extended Linked" loop impermissibly seeks to blur the obvious distinction between unbundled loops and unbundled transport.

ATT2-25(b) If so, should BellSouth be precluded from assessing special recombination charges?

BellSouth adopts its response to issue ATT2-25(a) as if fully restated herein.

BellSouth's position is that it will agree to enter into voluntary negotiations with respect to any combinations of UNEs that espire or any other CLEC requests. Such negotiations are outside the requirements of the 1996 Act and are outside the scope of this arbitration.

ATT2-26(a) Should the failure of BellSouth to provide UNEs at parity as measured by the Performance Standards and Measurements specified in Attachment 10 be classified as a Specified Performance Breach?

BellSouth adopts its response to issue GTC-2(a) as if fully restated herein.

ATT2-26(b) If so, should Liquidated Damages be imposed for each such Specified Performance Breach?

BellSouth adopts its response to issue GTC-2(b) as if fully restated herein.

ATT2-27 Should the rates applicable to the recurring charges for unbundled loops be deaveraged on a geographic basis?

BellSouth's position is that the 1996 Act does not require rates for unbundled network elements to be deaveraged. The FCC's rule 51.507(f) requiring geographical deaveraging was vacated by the United States Court of Appeals for the Eighth Circuit in *Iowa Utilities Bd. v. FCC*. Additionally, geographical deaveraging has not been ordered by this Commission and, therefore, it is not required of BellSouth. Although BellSouth is not categorically opposed to deaveraging local loop prices, unbundled loop prices should not be deaveraged until such time as the Commission can fully evaluate all of the implications of such a policy change.

ATT2-28 Should BellSouth be required to offer volume and term discounts for UNEs consistent with those available for its special access services?

Neither the 1996 Act nor any FCC order or rule requires volume and term discount pricing as requested by e.spire. With respect to UNEs, recurring rates that e.spire will pay to BellSouth will be the cost-based rates determined in accordance with the requirements of Section 252(d) and derived using least cost, forward-looking technology in accordance with the 1996 Act. The fallacy in e.spire's apparent belief that it should receive "volume and term" discounts when purchasing UNEs is that there are no "economies" affecting the state-wide average recurring rate for unbundled network elements, and BellSouth's nonrecurring rates already reflect the economies involved when multiple unbundled network elements are ordered and provisioned at the same time.

ATT2-29(a) Should e.spire be permitted to convert its special access facilities to Extended Link UNEs?

BellSouth denies it has opposed e.spire migrating customers from one service to another. BellSouth does not, however, provide the combination of UNEs that e.spire refers to as an "Extended Link" loops. BellSouth is not required to do so under the 1996 Act and the Eighth Circuit's decision in *Iowa Utilities Bd. v. FCC*. BellSouth further adopts its response to issue ATT2-9 as if fully restated herein.

ATT2-29(b) If so, should the NRCs (i) be established at the direct additional cost of conversion where no physical facilities rearrangement is required, and (ii) at charges net of credits for previously paid Special Access NRCs where facilities rearrangement is necessary?

BellSouth adopts its response to issue ATT2-29(a) as if fully restated herein.

proposed surrogate rate proposal be adopted on an interim basis?

BellSouth adopts its response to issue ATT3-1(a) as if fully restated herein.

ATT3-2 Should BellSouth be required to meet the Performance Standards established in Attachment 10 for local interconnection, and pay Liquidated Damages for breaches of specified performance metrics or parity requirements?

BellSouth adopts its responses to issues GTC-2 (a) and GTC-2 (b) as if fully restated herein.

ATT3-3 Should e.spire be permitted to charge a single "blended" reciprocal compensation rate for reciprocal compensation?

BellSouth denies e.spire's recitation of BellSouth's position on this issue in its Petition "that there is no difference in the functionality provided." BellSouth pays the Commission-approved rates for reciprocal compensation. BellSouth further adopts its response to issue GTC-9 as if fully restated herein.

ATT3-4 Should e.spire's proposed rate level for Reciprocal Compensation be adopted for use when e.spire terminates local traffic routed to it by BellSouth?

BellSouth's position is that e.spire is not entitled to its "blended" reciprocal compensation rate as proposed in the Petition. BellSouth further states that pursuant to Section 251(b)(5) of the 1996 Act, all telecommunications carriers have the "duty to establish reciprocal compensation arrangements for the transport and termination" of local traffic. BellSouth asserts that public policy should encourage the building of efficient networks. e.spire's proposal for asymmetrical rates based upon e.spire's less efficient network is contrary to sound public policy in that it implicitly encourages service

providers to build less efficient networks and be subsidized through reciprocal compensation for doing so.

ATT3-5 Should dial-up calls placed to ISPs be classified as local traffic for purposes of assessing reciprocal compensation?

BellSouth adopts its response to issue GTC-8 as if fully restated herein.

ATT3-6(a) Should BellSouth be required to provide interconnection which is "equal in quality" to that provided to itself, its Affiliates or any other Telecommunications Carrier?

BellSouth denies it has not made its position known to e.spire on this issue.

BellSouth's position is that it provides nondiscriminatory access consistent with the requirements set forth by the FCC in 47 CFR § 51-305.

ATT3-6(b) If so, should "equal in quality" be defined to mean that BellSouth would employ the same technical criteria and service standards that BellSouth uses within its own network, including the same or equivalent interface specifications, provisioning, installation, maintenance, testing, repair intervals, call blocking incidence, grade of service, and transmission clarity for purposes of providing service and facilities to e.spire?

BellSouth denies it has not made its position known to e.spire on this issue.

BellSouth's position is it provides nondiscriminatory access consistent with the requirements set forth by the FCC in 47 C.F.R. § 51.305.

Attachment 4 (Physical Collocation)

ATT4-1(a) Should e.spire be permitted to sublease its existing and future physical collocation space to third party telecommunications carriers?

BellSouth admits it opposes e.spire's request that it be permitted to sublease a portion of its existing and future physical collocation space to third party telecommunications carriers. BellSouth, however, is willing to permit e.spire to share

is undisputed between the parties. In virtual collocation arrangements, BellSouth provides the maintenance services.

ATT4-4 Should e.spire be required to pay BellSouth for a security escort and/or the installation of security cameras or computerized tracking systems to monitor e.spire employees and vendors when accessing or working in the e.spire collocation space?

BellSouth denies e.spire has correctly stated its position on this issue.

BellSouth's position is that e.spire should be required to pay its reasonable share of the security cost at BellSouth's facilities where e.spire is collocated. Under 47 CFR 51.323, BellSouth is permitted to impose reasonable security arrangements in connection with physical collocation. Since e.spire "recognizes the importance of security" that BellSouth takes to protect the integrity and reliability of its own network, as well as the collocation space of OLECs, e.spire's position must be rejected. BellSouth attempts to minimize situations where escorted access to collocation space is required. BellSouth denies it has taken any unreasonable or extraordinary measures to secure and/or monitor e.spire, its vendors or employees.

ATT4-5 Should BellSouth be permitted to establish intervals of 120 days (plus time for obtaining government permits) under "ordinary" conditions and 180 days (plus time for obtaining government permits) under "extraordinary" conditions, for construction of enclosed collocation cages?

BellSouth's position is that the 120-day guideline under "ordinary" conditions and the 180-day guideline under "extraordinary" conditions are reasonable. Each central office is unique and the 120-day and 180-day guidelines reflect the differences between the type and amount of work required to provision physical collocation arrangements.

Further, these intervals exclude the time required to obtain government permits, which is beyond the control of BellSouth.

ATT4-6 Should BellSouth be required to make cageless Collocation space available within 30 days of receipt by BellSouth of a Bona Fide Request from e.spire?

BellSouth's position is that the 120-day and 180-day guidelines apply to both enclosed and unenclosed physical collocation arrangements. Construction of the enclosure, if requested, occurs at the same time as other construction and provisioning activities which are the factors that actually have a greater impact on the ability to meet physical collocation guidelines. BellSouth strives to provision collocation arrangements as quickly as possible within the 120-day and 180-day guidelines.

ATT4-7 Should BellSouth be required to reimburse e.spire the reasonably demonstrable and mitigated expenses incurred as a direct result of BellSouth's failure to deliver Collocation Space within the required interval?

BellSouth denies e.spire has correctly stated its position on this issue. BellSouth's position is that it has agreed to reimburse e.spire in an amount equal to e.spire's reasonably demonstrable and mitigated expenditures incurred as a direct result of delays to the completion and turnover dates caused by BellSouth.

ATT4-8 Should e.spire be allowed to order "caged" collocation space of any size with no minimum space requirement?

BellSouth currently requires that enclosed physical collocation arrangements are subject to a 100-square foot minimum, with additional increments of 50 square feet. However, BellSouth is currently reconsidering its position on this issue.

ATT4-9 Should BellSouth be required to credit NRCs paid by e.spire for establishing Virtual Collocation when space was unavailable in

the event space for Physical Collocation subsequently becomes available?

BellSouth's position is that BellSouth will credit e.spire its NRCs paid to establish virtual collocation arrangements in instances where BellSouth denied e.spire's physical collocation application and physical collocation became available within 180 days of BellSouth's denial.

ATT4-10 What factor should be applied to the square footage of space leased by e.spire to compensate BellSouth for use of common areas?

BellSouth's position, pursuant to industry standards, is that its factor for unenclosed physical collocation arrangements (the shadow print plus 2.5 times the shadow print) correctly allocates the space that is required for access to e.spire's equipment, including access in front of and behind the collocated equipment.

ATT4-11 Should e.spire be permitted a "walk-through" verification when BellSouth denies it Collocation Space in a Central Office on the basis that space is not available?

BellSouth denies e.spire has correctly stated BellSouth's position on this issue. BellSouth's position is that it is willing to provide e.spire with a reasonable opportunity to "walk-through" or tour BellSouth's premises when there is an exhaust situation, but only after BellSouth files for an exemption pursuant to Section 251(c)(6) of the 1996 Act, with this Commission.

ATT4-12 Should e.spire be able to assign its rights and obligations under the collocation agreement to a corporate parent, subsidiary, or affiliate without obtaining the prior consent of BellSouth?

BellSouth denies e.spire has correctly stated its position on this issue. BellSouth's position is that either party (e.spire or BellSouth) may, without the consent of

the other party, assign any rights, duties or obligations under this Agreement to only a parent corporation, an affiliate or a majority-owned subsidiary.

ATT4-13 Should e.spire be permitted to self-supply a direct cross-connection to another Telecommunications Carrier collocated in the same BellSouth Central Office?

BellSouth's position is that it will allow certified vendors to perform direct cross-connection between e.spire's physical collocation arrangement and another telecommunications carrier's collocation arrangement which are located in the same BellSouth central office. If e.spire desires to do this work, e.spire may have its own employees certified under BellSouth's non-discriminatory vendor certification program. e.spire may also elect to have BellSouth perform this work. BellSouth also adopts its response to issue ATT4-3 as if fully restated herein.

ATT4-14 Should e.spire be permitted to collocate in a BellSouth Remote Terminal on a space-available basis?

BellSouth adopts its response to issue ATT2-16 as if fully restated herein. Additionally, collocation in remote terminals is unnecessary and is not, as e.spire alleges, "a critical component of efficient and effective interconnection." BellSouth further maintains there is no statutory or legal requirement that it must make collocation space available at its remote terminal locations.

ATT4-15 Should the Space Preparation Fee be established on an ICB basis?

BellSouth's position is correctly stated in e.spire's Petition. BellSouth does not believe this is an issue appropriate for further arbitration since this Commission has previously determined that the Space Preparation Fee should be established on an individual case basis ("ICB").

Attachment 5 (Numbering)

ATT5-1 When permanent LNP is implemented, should BellSouth be required to make available a procedure allowing e.spire (i) to extend the period during which the base of existing INP customers shall be converted to LNP and (ii) to expand the period during which INP-based orders will be processed?

BellSouth's position is that, consistent with both the 1996 Act and with FCC orders and rules regarding number portability, once a long-term database method of providing number portability ("LNP") has been implemented, interim methods of number portability ("INP") are no longer available. See *Second Memorandum Opinion and Order on Reconsideration, CC Docket No. 95-116* ("Because transitional number portability methods do not meet the performance criteria established for long-term number portability, LECs may not continue to utilize such measures once long-term solutions have been implemented."); and *47 C.F.R. § 52.27* ("All LECs shall provide transitional measures, which may consist of remote call forwarding . . . until such time as the LEC implements a long-term database method for number portability in that area.").

BellSouth has reached an agreement via industry working groups as to an appropriate procedure for transitioning existing INP customers of CLECs to LNP. The industry-accepted transition plan was originally that all existing INP lines would be converted to LNP within 90 days. However, at the request of various CLECS, BellSouth agreed to expand the transition period for INP lines to be converted to LNP to 120 days after the date which LNP has been implemented in a given geographic area. BellSouth submits that its position on transitioning existing INP customers to LNP (i.e. 120 days after LNP has been implemented in an area) and its position that after having given

CLECs advanced notice of the date that LNP will be implemented that no new orders for INP will be accepted, are both reasonable and necessary.

ATT5-2 For coordinated cutovers of Loops, should all associated INP switch translations be completed within 5 minutes after the physical Loop cutover is completed?

BellSouth adopts its response to issue ATT2-19 as if fully restated herein.

ATT5-3 Should BellSouth be required to remit to e.spire the interconnection charge, local switching charge and pro rata portions of transport and CCL charges, when BellSouth receives access revenue for traffic terminated to ported numbers?

BellSouth's denies that this issue is appropriate for arbitration since it involves the interpretation of BellSouth's Access Tariff.

Attachment 6 (OSS)

ATT6-1 Should BellSouth be required to make its RNS interface available to e.spire?

BellSouth's position is that neither the 1996 Act nor the FCC requires identical access to OSS, but rather requires non-discriminatory access to OSS. See 47 C.F.R. § 51.319(f)(an incumbent LEC shall provide non-discriminatory access to its Operations Support Systems Functions). The Regional Negotiation System ("RNS") would not provide CLECs with the required non-discriminatory access to BellSouth's preordering and ordering functions. In addition, RNS contains proprietary marketing information which BellSouth is not required to disclose. RNS is used by BellSouth retail only for pre-ordering and ordering functions for its residential customers throughout BellSouth's region. BellSouth provides CLECs with access to its preordering and ordering OSS via

the Telecommunications Access Gateway ("TAG"), Electronic Data Interchange ("EDI"), and the Local Exchange Negotiated System ("LENS") interfaces.

ATT6-2 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 position is that it provides integratable machine-to-machine interfaces for pre-ordering, ordering, and provisioning functions (via TAG) and for the ordering and provisioning functions (via EDI). Additionally, BellSouth is not required to provide a single point of contact; it is only required to provide integratable pre-ordering and ordering interfaces.

ATT6-3 Should BellSouth be required to provide prices charged to its End Users over a pre-ordering interface?

BellSouth's position is that it should not be required to provide prices that it charges to its own end-user customers over a pre-ordering interface. BellSouth's tariffed retail rates are available today in hard copy form as filed with the Commission. Also, e.spire and other CLECs may obtain copies of BellSouth's tariffed retail rates via on-line electronic means at BellSouth's website. BellSouth also asserts that e.spire does not have any legitimate business need for access to BellSouth's prices to its own end-users since e.spire will charge its own retail rates to its own end-users.

ATT6-4 Should failure to provide pre-ordering functions at parity as measured by specified Performance Measurements be treated as a Specified Performance Breach requiring the payment of Liquidated Damages?

BellSouth adopts its response to issues GTC-2(a) and GTC-2(b) as if fully restated herein.

ATT6-5 Should BellSouth be required to develop systems which provide end-to-end pre-ordering and ordering processes (including legacy BellSouth applications) without manual intervention (i.e., "flow-through")?

BellSouth denies e.spire correctly stated BellSouth's position on this issue.

BellSouth's position is that it has developed electronic systems that provide end-to-end pre-ordering and ordering without manual intervention for thirty (30) resale services and four (4) UNEs. All other services are available to CLECs in substantially the same time and manner as they are for BellSouth retail. BellSouth developed such systems consistent with the requirements of the 1996 Act and with FCC orders that require such systems be provided on a non-discriminatory basis and that access to BellSouth's OSS be in "substantially the same time and manner" as BellSouth's access to its OSS.

ATT6-6 Should BellSouth be required to notify e.spire in advance via EDI or facsimile of an order to switch Resale Services of ULLs for e.spire End Users to BellSouth or another CLEC?

BellSouth's position is that it should not be required to provide e.spire with advanced notice of an order to switch resale services of unbundled local loops from e.spire end users to BellSouth or to another CLEC. BellSouth adopts its response to issue ATT1-6 as if fully restated herein.

ATT6-7 Should BellSouth be prohibited from initiating disconnection or service rearrangement of any e.spire End User for Resale Services, UNEs or Combinations, unless directed by e.spire?

BellSouth's position is that it should not be prohibited from initiating disconnection or service rearrangement of any e.spire end user unless directed to do so by e.spire. e.spire will receive reasonable and adequate notice of such occurrence in

The Eighth Circuit further declared unequivocally that the FCC's Rule "47 C.F.R. § 51.315(b), which prohibits an incumbent LEC from separating network elements that it may currently combine, is contrary to § 251(c)(3)" of the Act. *Id.* Until the United States Supreme Court rules on the pending appeal of that decision, the Eighth Circuit's interpretation of the 1996 Act is controlling, which means that BellSouth is permitted to separate network elements in order to provide them on an unbundled basis to CLECs and that 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. C97742WD, at 7(W.D. Wash., July 1998); *AT&T Communications of the Southern States, Inc. v. BellSouth Telecommunications, Inc.*, No. 5:97-CV-405-BR at 19 (E.D. N.C. May 22, 1998) (striking down a provision in the 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".) Since CLECs themselves are responsible for recombining physically separated UNEs, incumbent LECs may fulfill their statutory obligation by delivering physically separated UNEs to CLECs, so long as those UNEs are furnished in a manner that permits the recombination.

BellSouth denies the issue of whether BellSouth may impose additional charges such as a professional services coordination fee to perform the recombination of UNEs should BellSouth voluntarily agree to do so is subject to arbitration. BellSouth contends that since it is not obligated or required to perform such recombination under the Act,

Process, and BellSouth is an active participant in the Change Control Committee Meetings. BellSouth works toward ensuring that approved and applicable industry changes are implemented by BellSouth as appropriate.

ATT6-14 **Should BellSouth be required to transmit a Firm Order Commitment ("FOC"), or, in the alternative, notification of the lack of available facilities, within four (4) hours of receiving a complete and correct order from e.spire via an electronic interface and within 24 hours of receiving orders via manual submission?**

BellSouth denies it did not make its position known to e.spire on this issue.

BellSouth's position is that it will attempt to return a Firm Order Confirmation ("FOC") within 24 hours of receiving a valid order from e.spire via an electronic interface and within 48 hours of receiving a valid order via manual submission. BellSouth will follow BellSouth's Products and Services Interval Guide, available on the Internet, which provides reasonable and appropriate intervals for such orders.

ATT6-15 **Should BellSouth be required to provide notification via an electronic interface of rejections, errors and edits for any data field in an e.spire service request?**

BellSouth denies it did not make its position known to e.spire on this issue.

BellSouth's position is that it does provide CLECs, such as e.spire, with electronic notification of order rejections, errors and edits as determined in e.spire's valid electronically submitted local service requests ("LSRs").

ATT6-16 **Should BellSouth be required to provide electronic notification of work completion within four (4) hours of such work completion?**

BellSouth denies it did not make its position known to e.spire on this issue.

BellSouth's position is that it will provide electronic notification of work completion to

e.spire on valid electronically submitted orders pursuant to the service installation interval set forth in BellSouth's Products and Services Interval Guide available on the Internet.

ATT6-17 Should BellSouth be required (i) to exercise best efforts to make e.spire's specified Desired Due Dates ("DDD") for Network Element installation, and (ii) not complete such orders prior to the DDD unless needed for testing purposes?

BellSouth denies it has not made its position known to e.spire on this issue. BellSouth's position is that it will agree to exercise its best efforts (i) to meet e.spire's specified Desired Due Dates ("DDD") for UNE installation orders within BellSouth's specified intervals and (ii) to not complete such orders prior to the DDD unless needed for testing purposes.

ATT6-18(a) Should BellSouth be required to commit to an out-of-service interval of five (5) minutes or less in connection with coordinated cutovers of unbundled Loops?

BellSouth adopts by reference its response to issue ATT2-19 as if fully restated herein.

ATT6-18(b) Should coordinated conversions of multiple local Loops be completed with out-of-service conditions of less than thirty (30) minutes for orders involving up to ten (10) loop conversions, and of less than sixty (60) minutes for loop conversions of eleven (11) to thirty (30) Loops?

BellSouth is willing to negotiate reasonable and achievable out-of-service intervals for multiple local loop conversions.

ATT6-19 Should BellSouth be required to warrant that intervals for provisioning unbundled Loops and Resale Services for e.spire shall not exceed the average intervals experienced when BellSouth converts "win-back" accounts from e.spire?

BellSouth's position is that it is not willing to "warrant" or "guarantee" that it will never exceed the average intervals experienced when BellSouth converts "win-back" customer accounts from e.spire. However, BellSouth will agree to, and has offered to provide e.spire nondiscriminatory access consistent with the requirements of the 1996 Act as well as the FCC orders and rules. Additionally, BellSouth asserts there is no retail analog for a win-back of an unbundled local loop.

ATT6-20 Should BellSouth be required to provide "help desk" coverage for inquiries relating to the electronic interfaces for ordering and provisioning?

BellSouth denies it has not made its position known to e.spire on this issue. BellSouth's position is that it provides numerous employees to assist e.spire and other CLECs in doing business with BellSouth through the purchasing of unbundled network elements and resale services, including a help desk for electronic interfaces. However, the development and utilization of electronic interfaces require a coordinated effort with knowledgeable employees on both e.spire and BellSouth's behalf. Each side should be responsible to train and maintain its own competent staff of employees in order to carry out business with one another through electronic interfaces.

Attachment 10 (Performance Standards)

ATT 10-1 Should failure to meet the prescribed intervals or to provide service at parity as measured by the specified Performance Measurements be classified as a Specified Performance Breach? If so, should Liquidated Damages be imposed for each such breach?

BellSouth adopts by reference its responses to issues GTC-2(a) and GTC-2(b) as if fully restated herein. Additionally, BellSouth notes that the performance measurements attached to e.spire's draft agreement as Attachment 10 are the

performance measurements BellSouth offered to e.spire, thus, BellSouth agrees that such measurements are acceptable.

Attachment 11 (Rates)

ATT11-1 **What pricing should be applied to e.spire's purchase of UNEs? Specifically, what prices should be established for: (1) Unbundled Loops (recurring and non-recurring charges); (2) Interoffice Transport (recurring and non-recurring charges); (3) Packet-Switched UNEs; (4) Remote Terminal UNEs; and (5) Loop Concentration?**

BellSouth's position is that its proposed rates are set forth in Attachment 11 of the draft interconnection agreement which is attached to e.spire's Petition. BellSouth's position is that it has offered cost-based rates approved by this Commission for all UNEs and interconnection that it currently provides today. BellSouth will conduct and provide cost studies for any new UNEs that the parties agree upon. However, BellSouth's position is that some of the five UNE types listed in this issue are not appropriate for unbundling.

ATT11-2 **Should UNE rates be deaveraged on a geographic basis?**

BellSouth adopts its response to issue ATT2-27 as if fully restated herein.

ATT11-3 **Should volume and term discounts be available for UNEs?**

BellSouth adopts its response to issue ATT2-28 as if fully restated herein.

ATT11-4 **What rate should be established for Reciprocal Compensation for transport and termination when charged by e.spire to BellSouth?**

BellSouth adopts its responses to issues ATT3-3 and ATT3-4 as if fully restated herein.

Attachment 12 (Directory Listings)

ATT12-1 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 denies this issue is appropriate for arbitration between itself and e.spire since e.spire should reach an independent and separate agreement with an affiliate of BellSouth, BellSouth Advertising and Publishing Company ("BAPCO"), rather than BellSouth Telecommunications, Inc.

ATT12-2 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 adopts its response to issue ATT12-1 as if fully restated herein.

ATT12-3 (Incorrectly identified as ATT 12-2 in e.spire's Petition).

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

BellSouth adopts its response to issue ATT12-1 herein as if fully restated herein.

16. Paragraph 16 states no allegations of fact to which BellSouth need respond.

17. BellSouth denies any allegation in the Petition not specifically admitted herein.

WHEREFORE, BellSouth requests the Commission arbitrate this proceeding and grant the relief requested by BellSouth.