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RECORDS AND  
REPORTING

December 22, 1998

**BY HAND DELIVERY**

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

Re: Docket No. 981008-TP

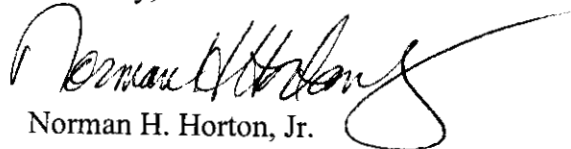
Dear Ms. Bayo:

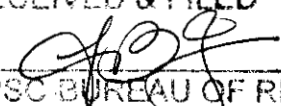
Enclosed for filing in the above captioned docket on behalf of e.spire Communications, Inc. are an original and fifteen copies of a Prehearing Statement. Also enclosed is a 3 1/2" diskette with the document on it in WordPerfect 6.0/6.1.

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.

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FPSC BUREAU OF RECORDS

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- AS \_\_\_\_\_
- TH \_\_\_\_\_

NHH/amb  
Enclosures  
cc: James C. Falvey, Esq.  
Parties of Record

DOCUMENT NUMBER-DATE  
14476 DEC 22 88  
FPSC-RECORDS/REPORTING

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Request for arbitration concerning )  
complaint of American Communication )  
Services of Jacksonville, Inc. d/b/a )  
e.spire Communications, Inc. and ACSI )  
Local Switched Services, Inc. d/b/a e.spire )  
Communications, Inc. against BellSouth )  
Telecommunications, Inc. regarding )  
reciprocal compensation for traffic )  
terminated to Internet service providers. )  
\_\_\_\_\_ )

DOCKET NO. 981008-TP  
FILED: December 22, 1998

**PREHEARING STATEMENT OF e.spire COMMUNICATIONS, INC.**

American Communication Services of Jacksonville, Inc. d/b/a e.spire Communications, and ACSI Local Switched Services, Inc. d/b/a e.spire Communications, Inc. (collectively "e.spire" or the "Company"), through undersigned counsel, submits this prehearing statement.

**A. APPEARANCES**

Norman H. Horton, Jr., Esq.  
Floyd R. Self, Esq.  
Messer, Caparello & Self, P.A.  
Post Office Box 1876  
Tallahassee, FL 32302-1876

James C. Falvey, Esq.  
e.spire Communications, Inc.  
133 National Business Parkway, Suite 200  
Annapolis Junction, MD 20701

On behalf of e.spire Communications, Inc.

**B. WITNESSES**

| <u>Witness</u>  | <u>Subject Matter</u>  | <u>Issues</u> |
|---|--|---------------|
| Kevin Cummings<br>(Direct Testimony)                  | Calculation of Traffic<br>and Compensation                                       | 2             |
| James C. Falvey<br>(Direct and Rebuttal<br>Testimony) | Discussion of Nature of<br>Traffic and Obligations of<br>Parties Under Agreement | 1 - 4         |

DOCUMENT NUMBER-DATE

14476 DEC 22 88

FLORIDA PUBLIC SERVICE COMMISSION REPORTING

**C. EXHIBITS**

| <u>Number</u> | <u>Witness</u> | <u>Description</u>   |
|---------------|----------------|--|
| _____ (KAC-1) | Cummings       | Diagram of e.spire-BellSouth trunk groups in Jacksonville                                  |
| _____ (KAC-2) | Cummings       | Lucent 5ESS Division of Revenue Report   |
| _____ (JCF-1) | Falvey         | Portions of Interconnection Agreement  |
| _____ (JCF-2) | Falvey         | Letter dated 11/14/97 from e.spire to BellSouth re: usage reports                          |
| _____ (JCF-3) | Falvey         | Portions of MFS Interconnection Agreement  |
| _____ (JCF-4) | Falvey         | Letters dated 12/23/97 and 1/8/98 from e.spire to BellSouth re: usages reports             |
| _____ (JCF-5) | Falvey         | Letter dated 1/8/98 from BellSouth responding to e.spire's 1/8/98 letter re: usage reports |
| _____ (JCF-6) | Falvey         | Letter dated 3/17/98 from e.spire to BellSouth replying to BellSouth's 1/8/98 letter       |
| _____ (JCF-7) | Falvey         | FPSC Order No. 98-1216-FOF-TP  |
| _____ (JCF-8) | Falvey         | Initial Decision of the Hearing Officer in Georgia Docket No. 9281-U                       |

#### **D. BASIC POSITION**

BellSouth has failed to comply with its Interconnection Agreement with e.spire by failing to record usage, refusing to recognize traffic terminating to ISPs as local, declining to establish a compensation rate and refusing to pay e.spire millions of dollars. The Interconnection Agreement between e.spire and BellSouth requires the parties to exchange traffic and compensate each other for termination of local traffic. The Agreement also provides that the compensation rate is to be agreed upon between the parties. Despite the clear language of the agreement, BellSouth has not recognized calls terminated by e.spire to ISPs as local traffic. This is contrary to the Agreement and decisions of regulatory agencies, including the Florida Public Service Commission. Furthermore, BellSouth has refused to establish a rate for this traffic, again, contrary to the requirements of the Agreement and Act.

#### **E. ISSUES AND POSITIONS**

**ISSUE 1: Is ISP traffic included in the definition of “local traffic” as that term is defined in the Interconnection Agreement between BellSouth and e.spire?**

e.spire’s Position: Yes. Section VIA of the Agreement and Attachment B define local traffic as calls that originate in an exchange and terminate in that exchange or in a corresponding EAS exchange. Calls to ISPs are not excluded under the Agreement or under any decision.

**ISSUE 2: Did the difference in e.spire’s minutes of use for terminating local traffic exceed two million minutes in Florida on a monthly basis?**

e.spire’s Position: Yes. Pursuant to the Agreement, BellSouth was required to report local minutes of use but has failed to provide these reports. According to reports generated by

e.spire, traffic has exceeded 2 million minutes. BellSouth has agreed to these reports and they should be used absent BellSouth's compliance with the Interconnection Agreement.

**ISSUE 3: In this instance, how should the reciprocal compensation rate, if any, be determined under the parties' Interconnection Agreement?**

e.spire's Position: The rate should be established at \$.009, the rate provided to MFS and requested by e.spire pursuant to the MFN of the Agreement.

**ISSUE 4: What action, if any, should the Commission take?**

e.spire's Position: The Commission should require BellSouth to comply with its agreement and recognize ISP traffic as local, establish a rate and pay e.spire the amounts due under the Agreement. Furthermore, since e.spire has been forced to incur expenses to record traffic due to BellSouth's failure to comply with its obligations, e.spire should be entitled to reimbursement for these expenses as well as interest and the expenses associated with this case.

#### **F. PENDING MOTIONS**

There are no pending motions.

#### **G. REQUIREMENTS THAT CANNOT BE COMPLIED WITH**

All requirements of the procedural orders can be met by e.spire Communications, Inc.

Dated this 22nd of December, 1998.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Norman H. Horton, Jr.", written over a horizontal line.

NORMAN H. HORTON, JR.

FLOYD R. SELF

Messer, Caparello & Self, P.A.

Post Office Box 1876

Tallahassee, FL 32302-1876

(850) 222-0720

Attorneys for e.spire Communications, Inc.

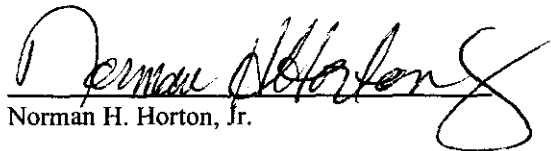
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that true and correct copies of e.spire Communications, Inc.'s Prehearing Statement have been served upon the following parties by Hand Delivery (\*) and/or U. S. Mail this 22nd day of December, 1998.

Beth Keating, Esq.\*  
Division of Legal Services, Room 370  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Ms. Nancy White\*  
c/o Ms. Nancy Sims  
BellSouth Telecommunications, Inc.  
150 S. Monroe Street, Suite 400  
Tallahassee, FL 32301

  
Norman H. Horton, Jr.