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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. 981745-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 the following documents:

1. The Direct Testimony of James C. Falvey; 14478-98
2. The Direct Testimony of Marvin H. Kahn; 14479-98
3. The Direct Testimony of William Stipe, III; and 14480-98
4. The Direct Testimony of Tony Mazraani. 14481-98

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

Thank you for your assistance with this filing.

Sincerely,

Norman H. Horton, Jr.

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

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ORIGINAL

BEFORE THE
STATE OF FLORIDA
PUBLIC SERVICE COMMISSION

In the Matter of	)	
	)	
Petition by E.SPIRE COMMUNICATIONS, INC.,	)	Docket No. 981745-TP
and ACSI LOCAL SWITCHED SERVICES, INC. and	)	
AMERICAN COMMUNICATION SERVICES,	)	
OF TAMPA, INC., and AMERICAN COMMUNICATION	)	
SERVICES OF JACKSONVILLE, INC.	)	
for Arbitration of an Interconnection Agreement	)	
with BELLSOUTH TELECOMMUNICATIONS,	)	
INC. Pursuant to Section 252(b) of the	)	
Telecommunications Act of 1996	)	

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

DECEMBER 22, 1998

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and by testimony of Tony Mazraani relating to packet switched services. Also, expert economic testimony concerning facilities, interconnection and pricing issues will be presented on e.spire's behalf by Dr. Marvin Kahn.

Q. PLEASE DESCRIBE E.SPIRE'S BUSINESS.

A. e.spire, formerly known as ACSI, through its operating subsidiaries, provides competitive access and local exchange services in thirty-eight separate local markets across the United States, including Miami/Fort Lauderdale, Tampa and Jacksonville in Florida. e.spire has constructed local fiber optic networks and installed state-of-the-art Lucent 5ESS local exchange switches in each of these Florida cities. In that sense, e.spire functions as what is commonly referred to as a Competitive Local Exchange Carrier or "CLEC". e.spire also provides long distance services, Internet access services, and a wide array of data communications services nationwide, such as Frame Relay and ATM services.

e.spire provides these services using a combination of its own fiber optic transmission facilities, equipment collocation, Unbundled Network Elements ("UNEs") obtained from Incumbent Local Exchange Carriers ("ILECs"), and the resale of ILEC local exchange services and long distance services of facilities-based IXCs.

Q. HAS E.SPIRE INTERCONNECTED WITH BELLSOUTH?

A. Yes. e.spire and BellSouth executed an initial local interconnection agreement covering eight states in the BellSouth operating territory in July 1996 (the "ACSI-BellSouth Interconnection Agreement"). The ACSI-BellSouth Interconnection Agreement was scheduled to expire on September 1, 1998, but has been extended

by mutual agreement of the parties until a successor agreement is executed. Pursuant to that initial ACSI-BellSouth Interconnection Agreement, e.spire has in fact established collocation arrangements and interconnected with BellSouth at numerous points. We have been exchanging Local Traffic for termination, purchasing UNEs and reselling local services for over two years under that agreement.

Q. BRIEFLY DESCRIBE THE PARTIES' EFFORTS TO NEGOTIATE A SUCCESSOR INTERCONNECTION AGREEMENT.

A. As the expiration date of the initial ACSI-BellSouth Interconnection Agreement approached, e.spire made a new request for interconnection to BellSouth pursuant to the terms of Sections 251-252 of the Telecommunications Act of 1996 ("1996 Act"). The parties conducted numerous meetings and conference calls to discuss literally hundreds of contract issues. Many draft agreements were exchanged. In our view, both parties negotiated in good faith, and most issues were successfully resolved through negotiation. Not surprisingly, however the parties were unable to agree on a number of critical points, and e.spire is seeking Commission resolution of the disputed issues by arbitration in accordance with the terms of Section 252 of the Federal Telecommunications Act of 1996 (the "Act").

Q. PLEASE DESCRIBE HOW THE ISSUES ARE PRESENTED, AND HOW E.SPIRE WOULD LIKE THEM TO BE RESOLVED.

A. The final draft version of the successor interconnection agreement between e.spire and BellSouth (hereafter referred to simply as the "Agreement") is attached to the e.spire Petition for Arbitration as Attachment A thereto. The Agreement is

Finally, I note that where I use capitalized terms in my prepared testimony, I intend to use them as defined herein or in the draft Agreement.

Q. DO YOU HAVE ANYTHING TO ADD BEFORE DISCUSSING THE INDIVIDUAL ISSUES RAISED?

A. Yes. I believe that most of the issues presented have not been squarely addressed by the Commission previously. Others, – pricing concerns for example – may look more familiar to you. However, we respectfully request that you consider each such issue anew. We think a fresh look at previously considered areas is appropriate for several reasons: (i) they may have been inadequately presented or lost in the midst of issues raised in the initial arbitrations and costing dockets; (ii) we now have the benefit of two years actual operating experience against which to test the earlier determinations; (iii) e.spire's business plans have evolved, requiring a new emphasis on different elements and arrangements; and (iv) the telecommunications is a rapidly changing industry, and yesterday's decisions may not fit today's circumstances.

General Terms and Conditions

Q. WERE THE PARTIES ABLE TO SUCCESSFULLY NEGOTIATE A SET OF GENERAL TERMS, CONDITIONS AND DEFINITION?

A. I am pleased to report that we were able to reach agreement on the vast majority of issues relating to general terms and conditions of the contract, as well as the applicable definitions. However, we were not able to resolve disagreements relating to: (i) term of the agreement; (ii) the scope of MFN provisions; (iii) imposition of liquidated damages; (iv) establishment of a fresh look period;

availability of commercial arbitration; (v) subpoenas processing; and (vi) reformation due to changes in applicable law. We also were unable to agree on the definitions applicable to the terms "Local Traffic" and "Tandem Switch" as used in the Agreement.

Q. WHAT IS THE DISAGREEMENT OVER THE TERM OF THE AGREEMENT?

A. BellSouth believes that the Agreement should be for a minimum term of two years in order to avoid the need to initiate negotiation of the replacement agreement within a year after the effective date. e.spire shares BellSouth's concern, and its desire to avoid a need to begin negotiations again within the next year, but we believe that a shorter one year term is required *if* BellSouth does not agree to an acceptable Most Favored Nation ("MFN") clause.

The fact is that interconnection issues are evolving rapidly. New technical developments such as xDSL are creating new requirements. While policy evolution in proceedings involving Section 271 long distance reentry, Section 706 Advanced Telecommunications Services development, and the like, are steadily causing the ILECs to offer new services and elements previously denied by them. In short, e.spire cannot afford to take the competitive business risk that BellSouth will offer substantially better terms to other carriers during the term of the Agreement.

Q. HOW DOES THE TERM ISSUE RELATE TO E.SPIRE'S REQUEST FOR AN MFN PROVISION?

A. If e.spire can be assured that it can "opt in" to the improved terms of other interconnection agreements, then a longer term agreement would not place e.spire at competitive risk. The two year term of e.spire's initial interconnection agreement with BellSouth worked fine, because we had an expansive "pick and choose" MFN clause. BellSouth has refused to include a similar provision in the replacement agreement.

Q. WHAT IS AN "MFN" PROVISION?

A. An MFN clause allows a carrier to replace provisions of its own interconnection agreement with the corresponding provisions of another interconnection agreement. It is a critical competitive safeguard because it prevents an ILEC from providing preferential interconnection arrangements to some carrier(s) to the detriment of carrier(s) with previously executed interconnection arrangements. Since contracts are used in place of tariffs for local interconnection, the MFN clause is the key remaining protection against nondiscriminatory conduct by ILECs in establishing interconnection agreements. Notably, the need for an MFN is recognized in the Act itself, by way of Section 252(i) which entitles all carriers to elect the terms and conditions of existing interconnection agreements.

Q. EXPLAIN E.SPIRE'S MFN PROPOSAL.

A. e.spire's strong preference is for an MFN which would enable it to replace any term in its agreement with a more favorable term taken from another interconnection agreement that BellSouth reaches with an e.spire competitor. However, in response to BellSouth's refusal to consider such a broad MFN

provision, e.spire has offered to accept an MFN provision which has been described as the "chunky" approach.

Under the "chunky" approach, a CLEC is entitled to avail itself of either (i) the other agreement in its entirety or (ii) the prices, terms and conditions of the other agreement that relate to any of the following duties taken as a whole:

1. Interconnection
2. Exchange Access
3. Unbundled Network Elements
4. Resale
5. Collocation
6. Number Portability
7. Access to Rights-of-Way
8. Databases and Signaling
9. Operator Services
10. Directory Assistance
11. Operation Support Systems
12. Directory Listings
13. Performance Measurements and Intervals
14. General Terms and Conditions

This is a compromise position. In the more expansive "pick and choose" approach incorporated into the initial ACSI– BellSouth Interconnection Agreement, e.spire could select any discrete rate, term or condition of another agreement to replace the corresponding provision of its own agreement. The "pick and choose" approach is incorporated into many existing BellSouth interconnection agreements, including agreements reached with Sprint as recently as 1997, for example. By contrast, BellSouth takes the extreme position, *i.e.*, that an MFN should enable e.spire only to replace a whole agreement in its entirety by assuming the "entire agreement" of another carrier without change.

Q. WHAT IS WRONG WITH THE BELLSOUTH "ENTIRE AGREEMENT" APPROACH?

A. The "entire agreement" approach enables the ILEC to insert "poison pills" anywhere in an extremely lengthy agreement which makes it effectively unavailable to other carriers.

For example, assume that BellSouth sets up an "Advanced Services" Affiliate. Under the "entire agreement" approach, BellSouth would be able to give such Affiliate preferential terms for access to UNEs at Remote Terminals, but make that option effectively unavailable to others by providing that local service Resale is unavailable under that agreement, or by stating that the option is available only if you elect to interconnect in every BellSouth LATA. The opportunity for mischief is great, and a critical competitive safeguard is lost.

Q. DIDN'T THE EIGHTH CIRCUIT LIMIT MFN RIGHTS UNDER LOCAL INTERCONNECTION AGREEMENTS?

A. The Eighth Circuit struck down an FCC rule which required use of the "pick and choose" approach under the Telecom Act. e.spire's position is that the Court did not preclude use of a "chunky" approach, nor did it preclude state Commissions from imposing broader MFNs as a matter of state law. Finally, e.spire believes that the U.S. Supreme Court is likely to reverse the Eighth Circuit on this issue and, at a minimum, e.spire should not be locked into a useless "entire agreement" MFN clause should the FCC's "pick and choose" rule be reinstated as expected.

Q. WHAT IS THE DISPUTE CONCERNING THE ASSESSMENT OF LIQUIDATED DAMAGES?

A. e.spire signed one of the first region-wide local interconnection agreements with BellSouth under the 1996 Telecommunications Act. More importantly, unlike most carriers which have entered such agreements, e.spire is providing both facilities-based and resale-based competitive local exchange services across the BellSouth region. Thus, we now have more than two years of actual hands-on experience with trying to order and install both local resale services and UNEs such as unbundled local loops from BellSouth.

To date, it has not worked well. In our experience, BellSouth continues to provide pre-ordering, ordering and installation for both resale services and UNEs which are not at parity to the equivalent functions that it provides to itself or the explicit requirements of our contract. For example, our initial agreement stated expressly that consumers would not be out-of-service for more than five (5) minutes during cutovers to unbundled Loops with Interim Number Portability ("INP"), but BellSouth has not in fact consistently adhered to that standard. The same can be said of numerous other functions such as return of Firm Order Commitments ("FOCs") and Committed Due Dates ("CDDs"), standard provisioning intervals, and collocation intervals. I observe that this experience is not limited to e.spire. The FCC repeatedly determined in recent Section 271 proceedings that BellSouth's nonperformance prevents it from satisfying key elements of the so-called "competitive checklist".

These are not isolated annoyances. The lack of dependable performance has been systemic and continuous, and has severely impeded e.spire's ability to deploy services and compete. BellSouth's failure to provision unbundled Loops

with INP, for example, effectively caused e.spire to stop marketing services using 2-wire unbundled Loops to consumers. BellSouth's failures in loop cutover performance reflected poorly on e.spire, and – as a new entrant – e.spire could not afford risking further damage to its reputation.

However, BellSouth's erratic performance is not surprising since there are few consequences for it. Under our initial agreement, if BellSouth failed to perform, our only recourse was to file complaints with regulators. Although e.spire attempted to pursue this course, the remedy is not effective since the lead time to resolution is very long (complaints have been pending for nearly two years), and the damages (particularly damage to reputation) which resulted are very difficult to calculate.

e.spire believes strongly that some form of self-executing penalty is required in order to create an incentive for BellSouth to perform as promised. BellSouth will never consistently deliver parity in service levels if there is no immediately apparent penalty for failure to honor that commitment. The situation will only improve if BellSouth employees at all levels realize that sanctions will be imposed immediately and automatically if they fail to provide the promised level of service.

Our proposal is to establish a set of agreed performance measurements. After evidentiary hearings in Georgia and Louisiana, stemming partly from e.spire complaints, BellSouth established performance measurements which e.spire finds acceptable. However, to give those measurements meaning, we propose to define the failure to (i) meet a prescribed interval, or (ii) provide service at parity as

established by the Performance Measurements, as a Specified Performance Breach. As importantly, Liquidated Damages would be assessed automatically upon the occurrence of any such Specified Performance Breach. We believe that this approach is most likely to encourage BellSouth to provide high quality, dependable service, and to avoid the necessity of filing countless performance-related complaints with regulators.

Liquidated Damages are intended to deter sub-par BellSouth service. e.spire would hope that they would not actually have to be imposed because they succeed in encouraging BellSouth to provide service at parity. Notably, the FCC has recommended self-enforcing penalties as a means to ensure service quality after RBOCs obtain permission to reenter the long distance market.

Q. WHAT IS THE SCOPE OF E.SPIRE'S LIQUIDATED DAMAGES PROPOSAL?

A. Although our request for a system of Specified Performance Breaches and Liquidated Damages is first addressed in the General Terms and Conditions of the Agreement, the issue recurs in many of the Attachments. Our view is that Liquidated Damages should be imposed for failure to provide Resale Services at parity (Attachment 1), UNEs as committed (Attachment 2), Interconnection that is equal in quality (Attachment 3), Ordering, Provisioning, and Repair at parity (Attachment 6), etc.

Q. WHAT IS "FRESH LOOK"?

A. "Fresh Look" is the term used to describe a period prescribed by regulators during which customers who purchased services from monopoly service providers (or

when only limited choice was available) may opt-out of long term contracts without termination liability in order to establish service with a new market entrant. The FCC, for example, established a "fresh look" period for 800 Service customers when AT&T first lost its monopoly over toll-free services. California and Ohio also adopted "fresh look," and, here in Florida, the Commission has a "fresh look" rulemaking currently underway. If the Commission's goal is to spur local competition, "fresh look" will serve that purpose. The Pennsylvania Commission even went so far as to automatically switch some End Users who had not previously been given a competitive choice. A "fresh look" policy is an acknowledgement that customers of long term agreements with monopolies entered those arrangements when little or no choice was available, and should not be denied the benefits of competition when it develops.

Q. WHAT IS E.SPIRE'S "FRESH LOOK" PROPOSAL?

A. e.spire's sales efforts have been frustrated by the fact that BellSouth enticed many customers to enter into long term agreements for the purchase of local services before they had a choice of LECs. While many such customers are interested in converting to e.spire services, the applicable early termination penalties effectively preclude them from doing so.

Thus, our proposal is that consumers who wish to convert to e.spire services should be permitted to terminate their BellSouth long term (one year or more) agreements without fault or penalty for a period of 180 days from the later of (i) the Effective Date of the new interconnection agreement, or (ii) the date that e.spire begins offering facilities-based competitive local service in a particular

local service area. We believe that this proposal is both pro-consumer and pro-competitive. I observe that similar "fresh-look" periods for conversion to CLEC services have been adopted in other states.

Q. WHAT IS THE DISPUTE CONCERNING THE AVAILABILITY OF BINDING COMMERCIAL ARBITRATION?

A. e.spire believes that either party that believes that the other has breached the agreement should be able to seek redress from any of the following: (i) a regulatory agency with jurisdiction; (ii) a court with jurisdiction; or (iii) through binding AAA-based commercial arbitration. BellSouth disagrees with making commercial arbitration available where the Parties are able to seek State commission arbitration.

Commercial arbitration is available under the initial ACSI-BellSouth Interconnection Agreement, and e.spire has found it to be a useful tool. For disputes which are common to multiple states covered by such a region-wide interconnection agreement, e.spire has found it to be more efficient to present the issues to a single commercial arbitration panel, rather than relitigating the identical dispute in front of eight separate state Commissions. e.spire, for example, has filed a AAA arbitration against BellSouth seeking resolution of a dispute over reciprocal compensation payments in several states.

Q. PLEASE EXPLAIN THE DISPUTE REGARDING THE PROCESSING OF SUBPOENAS AND PLACEMENT OF INTERCEPT DEVICES.

A. The situation is simple. Since e.spire is purchasing resale services and UNEs from BellSouth, either party could receive a subpoena for records relevant to the

associated End Users, or a government order compelling the placement of a wiretap or similar intercept device. e.spire believes that each party should bear its own costs of complying, while BellSouth believes that e.spire should pay the costs incurred by *both* parties of complying.

Compliance with such government requirements is a cost of doing business, and BellSouth should include such costs in the cost studies supporting the establishment of its Resale and UNE prices. Indeed, to my knowledge, BellSouth did *not* identify such costs as "avoided costs" in computing the wholesale discount for Resale services, so to charge e.spire again for processing costs would amount to a double-recovery.

Q. WHAT IS THE DISAGREEMENT OVER THE EFFECT OF CHANGES IN APPLICABLE LAW?

A. Both Parties agree that the Agreement should be reformed as necessary to conform to changes in applicable law, such as court decisions, FCC rulings, or state Commission requirements. The dispute is over timing. e.spire believes that the Agreement should be conformed as soon as any such change in law becomes *"effective"*. By contrast, BellSouth believes that the changes should not be made until the change in law become *"nonappealable"*. BellSouth's proposal could deny either party the benefit of important FCC or Commission determinations – such as anticipated reforms to accelerate the deployed of Advanced Telecommunications Services – for years, while appeals are pending. It is no secret that BellSouth and other RBOCs are inclined to appeal adverse orders. Indeed, the disaffected party would be encouraged to file appeals just to avoid

reforming its interconnection agreements as necessary to comply. Accordingly, the Agreement should be reformed as soon as the change in law is final and effective (*i.e.*, not stayed).

Total Service Resale

Q. DID THE PARTIES AGREE UPON RATES, TERMS AND CONDITIONS APPLICABLE TO TOTAL SERVICE RESALE?

A. The terms specifically applicable to resale by e.spire of BellSouth's retail local exchange services are included in Attachment 1 to the draft Agreement. Although there were many items to negotiate, we were able to close nearly all disputes. However, a few items remain which must be decided by the Commission. Namely, the availability of certain services for Resale at wholesale rates; terms of Customer Specific Arrangements, simultaneous resale of flat and measured rate services to selected End Users; application of liquidated damages; expedite charges; notification for missed due dates; notification of conversion of "win back" customers, and notification of maintenance contracts.

Q. WHAT IS THE SPECIFIC DISPUTE CONCERNING RESALE OF CSAs?

A. The Parties have agreed that BellSouth must make its CSAs available for resale by e.spire at the retail rate minus the prescribed wholesale discount. The unresolved issues relate to the terms and conditions applicable to such CSA resale arrangements. Specifically, the unresolved language relates to the application of non-recurring early termination charges and the universe of customers to whom such CSAs may be resold.

Q. WHAT IS E.SPIRE'S POSITION ON THE ASSESSMENT OF EARLY TERMINATION CHARGES?

A. This issue concerns the treatment of customers of CSAs that wish to convert to e.spire services during the term of their existing CSA. Simply put, provided that e.spire agrees to execute a valid assumption letter and undertake all of the affected End User's financial obligations, e.spire believes that BellSouth should be prohibited from imposing any early termination, roll-over, service rearrangement or similar non-recurring charges on either the End User or e.spire. Since e.spire is agreeing to honor the existing terms of the CSA without change (excepting application of the avoided cost, resale discount), BellSouth is not disadvantaged financially by the change, and only a nominal resale service order charge should apply. This approach is consistent with the FCC's interpretation of BellSouth's resale obligations as expressed in the BellSouth Section 271 application orders.

Q. IN E.SPIRE'S VIEW, TO WHOM SHOULD YOU BE ALLOWED TO RESELL BELLSOUTH CSAs?

A. This issue relates to the treatment of End Users that do not currently have CSAs with BellSouth, but would benefit from entering CSAs on the same terms that BellSouth has them made available to other consumers. e.spire believes that it should be able to resell CSAs to any similarly situated End User, provided of course that e.spire is willing to execute an agreement to honor the terms of the CSA as the customer-of-record. Any other result would discriminate between like End Users in violation of all notions of common carrier obligations. It would also be anti-competitive because it would limit e.spire's sales efforts to those

customers which already have signed long term agreements with BellSouth. Again, e.spire's proposal is consistent with the FCC's view of BellSouth's obligations as expressed in the BellSouth Section 271 application orders.

Q. EXPLAIN THE DISPUTE OVER SIMULTANEOUS RESALE OF FLAT AND MEASURED SERVICES.

A. BellSouth proposes to prohibit e.spire from furnishing both flat and measured rate services on the same business premise to the same End Users. This treatment reflects a tariff restriction that BellSouth has in place against business customers simultaneously ordering both flat and measured services to a single premise. e.spire is willing to agree to BellSouth's proposed restriction as a general matter. However, we do not believe that it should apply to an "as is" conversion of local services provided to existing customers. "As is" conversions are those where a customer's existing services are switched over without change. Where such "as is" conversions involve customers that currently receive both flat and measured service at a single premise, we believe that the existing service mix should be "grandfathered".

Q. WHY SHOULD "AS IS" CONVERSIONS BE GRANDFATHERED AND IMMUNE FROM THE RESTRICTION?

A. Although BellSouth has existing tariff prohibitions against the simultaneous use of flat and measured service at a single business premise, we have discovered in the marketplace that BellSouth commonly does not enforce this restriction against its own End Users. In such instances, e.spire's requests to make an "as is" conversion is refused because it would violate the tariff restriction. This

effectively precludes e.spire from providing the same mix of services to the affected End User that BellSouth in fact offers to that customer. Worse yet, it puts e.spire in the untenable position of policeman of BellSouth's failure to enforce its own tariffs. We ask only to step into BellSouth's shoes where it has chosen to effectively waive any tariff restrictions and provide both flat and measured services in the past. To do otherwise would be discriminatory and anticompetitive.

Q. WHAT IS THE DISPUTE OVER PERFORMANCE STANDARDS AND LIQUIDATED DAMAGES?

A. This is the same problem that I alluded to earlier, and I will not re-state the point.

Q. WHY DOES E.SPIRE OBJECT TO THE APPLICATION OF EXTRA OR SPECIAL CHARGES WHEN IT ASKS BELLSOUTH TO EXPEDITE INSTALLATION OF CERTAIN ORDERS FOR RESALE SERVICES?

A. It is a matter of equity. For two years, BellSouth has routinely missed the Due Date for installation of orders for resale orders, but pays absolutely no penalty for its non-performance. It would be unfair to require e.spire to pay extra for early delivery, but impose no penalty upon BellSouth for late delivery. If reasonable intervals were established, and Liquidated Damages were imposed for nonperformance, we would consider reasonable expedite charges.

Q. YOU HAVE LISTED SEVERAL ISSUES RELATING TO NOTIFICATIONS E.SPIRE WISHES TO RECEIVE FROM BELLSOUTH IN CONNECTION WITH ITS PROVISION OF RESALE SERVICES. PLEASE EXPLAIN THAT SITUATION.

A. A steady and reliable exchange of critical information is required to ensure that good service quality to End Users is maintained. End Users have a right to be fully informed of the status of their orders, not to be left out-of-service by surprise, and not to be double-billed for services due to a change in LECs. In order to honor these customer commitments, e.spire needs certain information which BellSouth refuses to provide. Namely:

- e.spire has requested "prompt notification of any installation due dates for Resale Services that are in jeopardy of being missed." This information is required to keep End Users informed of the status of their orders, and advise them if a cutover will happen later than promised or expected.
- e.spire has requested that BellSouth provide "prompt notification to e.spire of all cutovers of Resale Services to e.spire End Users." Timely notification of the actual (as opposed to expected) conversion date is required so that we can assume responsibility for the customer's services, and initiate customer service and billing functions.
- e.spire has requested prior notification, and e.spire approval, when BellSouth desires to begin providing its local services to "win-back" customers, including notification of the planned date that the customer will be switched back to BellSouth's services. This information is required to avoid double-billing the customer for

services in the month of conversion, and to provide customer service functions.

- e.spire requests advance notice, "whenever reasonably possible," of any contact that BellSouth initiates with End Users of e.spire for maintenance purposes. Simply put, the End Users in question are customers of e.spire, not of BellSouth. Any maintenance work performed by BellSouth would be performed by BellSouth as a customer or agent of e.spire, and e.spire would presumably be accountable for the resulting charges. Thus, e.spire should receive advance notice so that it can direct and approve the effort. In the interest of ensuring quality service, we have specifically exempted emergency services from this requirement.

BellSouth's refusal to provide this information is disturbing. There is little question that the information is readily available, can be conveyed easily, and would be useful in providing high quality service to customers of resale services. Thus, either BellSouth simply does not want to be bothered, or it perceives a competitive advantage to be gained by refusing to cooperate. Either way, the affected End Users deserve more.

Unbundled Network Elements

Q. WHAT RELIEF DOES E.SPIRE SEEK RELATING TO BELLSOUTH'S PROVISION OF UNBUNDLED NETWORK ELEMENTS?

A. The current state of the negotiations between the parties related to the provisioning of UNEs is included as Attachment 2 to the draft Agreement. In

Beyond the loop, I will explain e.spire's need for unbundled access to high-capacity interoffice transport facilities and interoffice Dark Fiber – at prescribed cost-based rates. I also will discuss e.spire's need for unbundled access to certain functionalities in common configurations or "combination UNEs".

With regard to provisioning, I will explain why the Commission should not allow BellSouth to backslide from the five minute coordinated cutover interval voluntarily agreed to in its initial interconnection agreement with e.spire. In addition, I will explain why this Commission should impose Liquidated Damages on BellSouth for failures to meet specified performance intervals.

Finally, I will explain why the Commission should require BellSouth to offer volume and term discounts and to allow e.spire to convert its special access facilities to Extended Loop UNEs.

Q. PLEASE EXPLAIN WHAT "ADVANCED TELECOMMUNICATIONS SERVICES" ARE AND WHY E.SPIRE NEEDS UNBUNDLED ACCESS TO BELLSOUTH UNEs IN ORDER TO PROVIDE THEM.

A. So called "Advanced Telecommunications Services" have garnered enormous attention at the FCC during the past year. While Section 706 of the 1996 Act provides a definition for "advanced telecommunications capability" and the FCC is in the midst of conducting an inquiry and a rulemaking that likely will shed light on the types of services that such capability will make possible, the scope of services that fall into the category of advanced services is not perfectly clear at

this time. Indeed, the scope of services that fall within this category is likely to evolve just as the technology that makes such services possible evolves.

However, the FCC's recently issued *Advanced Services Order* makes it certain that "xDSL" services – which make possible the delivery of "broadband" services, such as high-speed Internet access, over existing copper pairs – are Advanced Telecommunications Services. xDSL technology also makes it possible to derive two separate high speed digital channels (one voice and one data, for instance) over a single existing copper loop facility. The FCC's *Advanced Services Order* also makes it certain that packet switched data services, such as Frame Relay, also come under the rubric of Advanced Telecommunications Services.

Although most of the attention thus far given to xDSL services has been at the federal level, Section 706 of the 1996 Act charges the FCC *and each State Commission* to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans." With xDSL, the case for state jurisdiction is obvious. xDSL is a loop technology not unlike ISDN or other capacity-increasing applications – the service is provided by hanging electronics on customers' existing local loops. These electronics, which consist of a modem at the customer's premise and a Digital Subscriber Line Access Multiplexer or "DSLAM" located at the Central Office or Remote Terminal, give End Users high-speed broadband access to the Internet and enable them to simultaneously use the same line for separate voice and data transmissions.

BellSouth has begun rolling out several types of xDSL services in various parts of its service territory. Because xDSL service requires "clean copper loops" generally under 18,000 feet in length, it may not be technically possible to provide xDSL service ubiquitously at this time. A clean copper loop is one without electronic impediments such as loading coils and bridged taps. In many cases a loop may be cleaned or "conditioned" for xDSL service, by removing such impediments. Nevertheless, not all of BellSouth's existing loops are "xDSL-capable" – some cannot be conditioned and others are just too long to support current xDSL technology. Moreover, the cost of loop conditioning and xDSL electronics may not make it economically feasible – even for BellSouth – to provide xDSL service outside of dense urban and suburban markets.

e.spire also is planning to roll-out xDSL service offerings. To accelerate the pace and maximize the scope of this roll-out, e.spire needs unbundled access to BellSouth's conditioned loops – and xDSL-equipped loops. In most cases, e.spire anticipates that it will transition xDSL customers served via BellSouth's DSLAMs to its own DSLAMs. However, as I will explain later, it may take time before some of that transitioning is technically or economically feasible. To facilitate its xDSL service roll-out and its own deployment of DSLAMs, e.spire also will need nondiscriminatory access to physical loop specification information which BellSouth uses to determine whether a loop is xDSL-capable.

In sum, to promote the most widespread availability of xDSL services, this Commission should require BellSouth to provide (i) nondiscriminatory access to loop information and (ii) unbundled access to both loops that are conditioned for

xDSL service and to loops that are conditioned and connected to BellSouth DSLAMs. Such action will not only ensure that e.spire will be able to bring xDSL services to a broader customer base; by providing BellSouth with a wholesale UNE market for its DSLAMs, it also will allow BellSouth to justify additional and more widespread deployment of such equipment.

Q. TO PROVIDE ADVANCED SERVICES, WHAT KINDS OF LOOPS DOES E.SPIRE NEED FROM BELLSOUTH?

A. As I just discussed in my overview of Advanced Telecommunications Services, e.spire needs unbundled access to conditioned or clean copper loops for the purpose of providing xDSL services through its own DSLAMs. Specifically, e.spire has sought – and BellSouth has not unequivocally agreed to provide – unbundled access to an assortment of conditioned or "xDSL-Compatible" loops including, but not limited to 2-Wire ADSL-Compatible, 2-Wire HDSL-Compatible, 4-wire HDSL-Compatible, and 4-Wire SDSL-Compatible loops, at predesignated TELRIC based rates. Although BellSouth agreed generally to provide ADSL and HDSL "capable" loops under certain circumstances, it balked at agreeing to terms, conditions and pricing which make them available to e.spire in a manner which is nondiscriminatory and would provide e.spire with a meaningful opportunity to compete in the market for such Advanced Telecommunications Services.

Q. IS BELLSOUTH'S POSITION CONSISTENT WITH FCC ORDERS THAT HAVE ESTABLISHED AND CONFIRMED THAT BELLSOUTH HAS AN AFFIRMATIVE OBLIGATION TO CONDITION LOOPS SO

THAT COMPETITORS CAN PROVIDE ADVANCED TELECOMMUNICATIONS SERVICES?

A. No. Back in its 1996 *Local Competition Order*, the FCC found that ILECs such as BellSouth have an affirmative obligation under the 1996 Act to condition loops so that competitors can provide Advanced Telecommunications Services over the ILECs' ubiquitous loop plant. Significantly, this aspect of the *Local Competition Order* was left unscathed by the Eighth Circuit's review of FCC's decision and was reaffirmed by the FCC in its August 1998 *Advanced Services Order*. In fact, in its *Iowa Utilities Board* decision, the Eighth Circuit explicitly endorsed the FCC's view that the obligations imposed by Sections 251(c)(2) and 251(c)(3) of the Act include modifications to ILEC facilities – such as loop conditioning – to the extent necessary to accommodate interconnection or access to network elements.

In light of these decisions – and this Commission's charge under Section 706 of the Act to promote the deployment of Advanced Telecommunications Services, e.spire believes that BellSouth should be required to incorporate provisions regarding its affirmative obligation to condition loops into its interconnection agreement with e.spire.

Q. SHOULD BELLSOUTH PROVIDE E.SPIRE WITH ELECTRONIC ACCESS TO INFORMATION THAT WOULD ALLOW IT TO DETERMINE WHETHER EXISTING LOOP PLANT IS xDSL-CAPABLE?

A. Yes. Again, it is well established that BellSouth has an affirmative obligation under the 1996 Act to provide e.spire with nondiscriminatory access to its Operations Support Systems or "OSS". This includes an obligation to provide e.spire with electronic access to information that BellSouth has regarding the physical specifications of its loop plant. Such information is essential for determining whether clean copper is in place or, if electronic impediments exist on the loop, whether the loop can be conditioned for advanced applications by removing them, and whether the loop is of a length that will support currently available xDSL applications.

Rather than provide e.spire with electronic access to loop information BellSouth likely already has at its disposal, BellSouth would rather force e.spire to engage in an expensive and dilatory game of hide and seek by which e.spire requests information on a loop and BellSouth manually processes the request and sends technicians into the field to examine the loop. Obviously, such a process is both wasteful and anticompetitive if BellSouth already has the information in loop inventories and databases. Although BellSouth offered to provide e.spire with an one-time "snapshot" of existing xDSL-capable loops, that offer is sorely deficient because it does not account for the steady upgrade of relevant facilities, and does not afford e.spire equivalent access to the information as is made available to BellSouth's own sales and provisioning organizations.

The FCC already has recognized this problem and has proposed, in its ongoing *Advanced Services Rulemaking*, additional OSS rules that explicitly will make clear that the OSS unbundling obligations of BellSouth and other ILECs

A. Naturally, e.spire, like BellSouth, must recover these costs – over time – in its End User rates. That is why it is so important that these NRCs be established at predetermined cost-based rates. However, assuming that recovery of these costs is spread over a two-year period (which is the customer churn rate e.spire generally assumes for NRC cost-recovery purposes), e.spire should receive a proportional credit for loop conditioning NRCs paid to BellSouth on loops that revert back to BellSouth (by way of a customer "win-back") or are transferred to another competitor within two years' time. By establishing a two-year recovery period for loop conditioning NRCs, this Commission can reduce the risks for all carriers that incur considerable expenses in making loops compatible with advanced services technologies. In so doing, the Commission, consistent with its Section 706 mandate, will provide an incentive for carriers to enter the new advanced services market.

Such a system for crediting loop conditioning NRCs is critical to avoid anti-competitive gamesmanship. If CLECs such as e.spire are required to pay the full cost of loop conditioning, and include the cost in their rate structure, while the second carrier to compete (either BellSouth or another CLEC) can avoid the loop conditioning expense altogether, than rational carriers will avoid being "first to market," and may target only "win-back" sales. Such an outcome clearly is inconsistent with the Section 706 mandate to the Commission to encourage the deployment of Advanced Services.

Q. DOES E.SPIRE NEED UNBUNDLED ACCESS TO xDSL-EQUIPPED AS WELL AS xDSL-COMPATIBLE LOOPS?

A. Yes. If this Commission, consistent with its Section 706 mandate, wishes to accelerate the pace and expand the scope of CLECs' deployment of advanced services, such as xDSL, it must require BellSouth to offer unbundled access both to loops that have been conditioned so that they are compatible with xDSL technologies (*i.e.*, "xDSL-Capable") *and* to loops that are conditioned and connected to BellSouth's own xDSL electronics (*i.e.*, "xDSL-Equipped"). In other words, BellSouth must offer unbundled access to loops connected to its own DSLAMs. In its *Advanced Services Order*, the FCC already has determined that ILEC equipment used to provide advanced services must be unbundled pursuant to Section 251(c)(3). Although the FCC currently is considering whether it will permit BellSouth and other ILECs to move such equipment to separate advanced services affiliates outside the scope of Section 251(c), the simple fact is that the Act and current FCC rules and decisions require BellSouth to unbundle its DSLAM-Equipped loops and other equipment essential to providing advanced services.

This Commission should uphold current law and should require BellSouth to provide for unbundled access to its DSLAM-Equipped loops in its interconnection agreement with e.spire. Consistent with the Commission's charge under Section 706, such action will promote the deployment of advanced services in at least three ways. First, as is the case with other unbundling requirements, unbundled access to BellSouth DSLAM-Equipped loops provides e.spire with a means to provide xDSL services to customers served from End Offices where economics do not yet justify e.spire's placement of its own redundant DSLAM.

available digital channel. Why should BellSouth be able to block a customer from doing this? Clearly, it should not. If a customer wants to choose a CLEC, such as e.spire for data services, but wishes to remain with BellSouth for its voice services, BellSouth should be required to accommodate the wishes of that customer.

Any barriers to such an arrangement are merely regulatory, not technical, and the Commission should not create regulatory restrictions that impede consumer choice. The issues presented by "Loop Spectrum Unbundling" are not so complex as they might appear. The Commission merely would have to establish how to divide the costs of the loop and DSLAM between the two carriers – after the DSLAM, voice traffic would be routed to the voice carrier's circuit switched network and data traffic would be sent to the data carrier's packet switched network.

Q. HOW SHOULD THE COSTS OF THE LOOP BE APPORTIONED BETWEEN SERVING LECs WHEN xDSL LOOP SPECTRUM IS UNBUNDLED?

A. In fact, BellSouth already has filed a tariff at the FCC which suggests how this should be done. In its federal xDSL tariff, BellSouth is able to offer highly attractive rates on xDSL services because it apparently assigns all of the costs associated with an xDSL-Equipped loop to the voice side. If this Commission were to accept such an allocation, data carriers would pay virtually nothing for their use of the data channel on an xDSL-Equipped loop and they, too, could offer consumers the same artificially low xDSL service rates that BellSouth offers

through its FCC tariff. This way, consumers will have a choice in data products and carriers and – if they choose BellSouth for voice services and a competitive carrier for data services – they will pay BellSouth directly *and only once* for the underlying costs of an xDSL-Equipped loop. The Commission should ensure that these separate voice and data channels are not artificially "tied" together by regulatory constraints that are unnecessary from a technical perspective.

Q. WHAT IS THE DISPUTE CONCERNING RESALE OF VOICE SERVICES IN A SITUATION WHERE xDSL LOOP SPECTRUM IS UNBUNDLED?

A. We simply seek a clarification that we have the option of providing our own facilities-based services over the data channel, while simultaneously reselling BellSouth exchange services over the voice channel.

Q. ARE THERE OTHER UNEs THAT E.SPIRE NEEDS TO PROVIDE ITS ADVANCED DATA SERVICES?

A. Yes. In order to provide Frame Relay, ATM and similar advanced packet switched services, e.spire requires unbundled access to elements of BellSouth's packet switched network. However, I will discuss these Frame Relay UNEs later in connection with my discussion of interconnection of the e.spire and BellSouth packet switched networks.

Q. SHIFTING FOCUS SLIGHTLY, PLEASE EXPLAIN WHY BELLSOUTH SHOULD BE REQUIRED TO PROVIDE E.SPIRE WITH UNBUNDLED ACCESS TO SUB-LOOP ELEMENTS.

A. The main arguments in favor of Sub-Loop Unbundling is that it will provide competitive carriers – and consumers – with more options, and enable competition carriers to serve consumers more efficiently. Indeed, in its ongoing *Advanced Services Rulemaking*, the FCC tentatively has concluded that it will include Sub-Loop Unbundling in its revised and expanded minimum national unbundling standards. This Commission does not need to wait for the FCC to act, as it has ample authority in its own right to mandate Sub-Loop Unbundling requirements.

Because of BellSouth's heavy deployment of IDLCs in Remote Terminals, Sub-Loop Unbundling – and Remote Terminal Collocation, which I will discuss later in this testimony – are essential to e.spire's efforts to bring xDSL services to consumers. By using its authority to impose Sub-Loop Unbundling requirements, this Commission also will promote competitive investment in optical Feeder plant and Concentration equipment, as CLECs with sufficient traffic volume through a Remote Terminal clearly will want to install their own optical Feeder plant and Concentration devices to reduce costs and save consumers money.

Q. WHAT IS "SUB-LOOP UNBUNDLING"?

A. By "Sub-Loop Unbundling," we are referring to the ability to order discrete components of an end-to-end loop as separate network elements. Specific Sub-Loop elements requested by e.spire include the Network Interface Device ("NID"), Sub-Loop Distribution plant, Concentration equipment (*i.e.*, DLC, IDLC, DSLAM, Multiplexing) at the Remote Terminal and Sub-Loop Feeder plant. Generally speaking, Feeder facilities connect the Central Office to a

Remote Terminal, while Distribution facilities connect the Remote Terminal to the End User premise.

Requiring Sub-Loop Unbundling facilitates efficient network design and development. For example, it may be economic in places for e.spire to construct its own fiber optic Feeder facilities, but not to replace the existing ILEC Distribution plant. By requiring Sub-Loop Unbundling in such a situation, the Commission would simultaneously encourage competitive deployment of competitive, state-of-the-art Feeder facilities, while avoiding the unnecessary and uneconomic duplication and stranding of ILEC Distribution plant.

Perhaps even more importantly, Sub-Loop Unbundling is critical to the competitive deployment of Advanced Telecommunications Services. As I will explain in a moment, competitors may otherwise be foreclosed from offering advanced services where Integrated Digital Loop Carriers ("IDLCs") are deployed remotely in BellSouth's network.

Q. WHAT WAS BELLSOUTH'S RESPONSE TO E.SPIRE'S REQUEST FOR SUB-LOOP UNBUNDLING?

A. BellSouth simply refused to make Sub-Loop unbundling available in most states. In other areas, it offered to provide it only on a BFR basis or failed to provide predesignated TELRIC-based prices.

Notably, despite claims made by BellSouth to the contrary only two years ago, there is no question that Sub-Loop unbundling is technically feasible in many, if not most areas. Indeed, BellSouth already makes it available on a

limited basis in several states. The technology does not differ materially from state to state.

Q. WHY WILL SUB-LOOP UNBUNDLING BE PARTICULARLY IMPORTANT WITH RESPECT TO LOOPS DELIVERED THROUGH REMOTE IDLCs?

A. As I discussed earlier, current xDSL technology generally does not work on loops longer than 18,000 feet. Many loops delivered through remote IDLCs exceed that length. In such cases, xDSL services can only be provided by connecting a DSLAM to Sub-Loop Distribution plant at the Remote Terminal. Unless the Commission requires Sub-Loop unbundling of BellSouth's Distribution plant and Remote Terminal collocation, there may be many cases where BellSouth's choice in network architecture makes it the only carrier capable of offering xDSL services to customers. Without any need to respond to competitive pressure, BellSouth may forego additional investment in favor of keeping customers on its current highly profitable mix of services and consumers may not only be denied a choice in xDSL service providers – they may be denied access to xDSL services altogether.

Q. WHAT IS THE RELEVANCE OF REMOTE TERMINAL COLLOCATION?

A. In order to interconnect with the Distribution Sub-Loop element, e.spire may need to collocate its equipment at the BellSouth Remote Terminal. This is an issue I will address more fully later in my discussion of disputed Collocation issues.

Capable loops, xDSL-Equipped loops and Sub-Loop elements dependant on Remote Terminal collocation. Notably, BellSouth has refused e.spire's request for a Bit-Stream UNE outright.

In sum, the Commission should require BellSouth to provide e.spire with unbundled access to a broadband channel to End Users, regardless of the loop technologies and configurations it chooses to deploy. By doing so, the Commission will provide an alternate solution that will be immediately available, even in cases where disputes over Sub-Loop Unbundling or access to loop information remain unresolved.

Q. MOVING TO HIGH-CAPACITY LOOPS AND OTHER LOOP ISSUES, PLEASE EXPLAIN WHY BELLSOUTH SHOULD BE REQUIRED TO MAKE 4-WIRE DIGITAL DS-1 AND 56/64 KBPS CAPABLE LOOPS AVAILABLE.

A. BellSouth's loop unbundling obligation does not differ with regard to the capacity of or technology used in specific loops. Yet in e.spire's view, BellSouth has not agreed to provide e.spire with unbundled access to 4-wire DS-1 and 56/64 kbps loops at TELRIC-based rates. I will discuss pricing issues more fully later.

Q. SHOULD BELLSOUTH ALSO BE REQUIRED TO UNBUNDLE FIBER DS-3, OC-3, OC-12, OC-48, OC-96 AND SONET LOOPS?

A. Yes. Apparently, BellSouth would like force e.spire to replicate its high capacity loop plant. This, however, is nothing other than a crude road-block designed to close off UNEs as a method of entry into the high-end market. Indeed, nothing in the Act or in FCC and state Commission rules interpreting it suggests that

BellSouth can choose to unbundle some loops and not others. BellSouth cannot unilaterally pick and choose which loops it is willing to unbundle.

A DS-1, DS-3 or OC-3 loop going to an office building meets the requirements for unbundling just the same as a 2-wire analog loop going to a home. Moreover, as BellSouth is well aware, it is precisely these facilities that e.spire requires to provide e.spire's flagship "Platinum" products – which currently are generating strong consumer demand. Ratepayers financed the construction of all kinds of BellSouth loops – they should not be denied a choice in carriers simply because their telecommunications needs call for high capacity loops that are highly profitable for BellSouth.

Like 2-wire analog and 4-wire digital DS-1 loops, a fiber loop constitutes an essential network element which must be unbundled pursuant to the FCC's minimum national unbundling standards. This Commission should act to protect consumer choice and bolster competition by requiring BellSouth to incorporate the appropriate terms and conditions for unbundling all types of high capacity loops in its interconnection agreement with e.spire.

Q. WHERE DARK FIBER EXISTS IN BELLSOUTH'S LOOP PLANT, SHOULD BELLSOUTH BE REQUIRED TO MAKE IT AVAILABLE TO E.SPIRE AS A UNE?

A. Yes. I must state that we are not entirely clear on BellSouth's position on this point. BellSouth has agreed to make Dark Fiber loops available, but is not clear that the commitment extends to all states, or that it will make them available at

predefined TELRIC-based prices. e.spire requests that BellSouth's obligation be made explicit.

The FCC currently is considering whether to incorporate a Dark Fiber UNE into its minimum national unbundling standards. As I have said before, this Commission need not wait for the FCC to act. The only reason why BellSouth refuses to unbundle Dark Fiber in its loop plant is because it has decided that it is more advantageous to stymie its competitors' every move than it is to make money on its unlit loop plant by leasing it as a UNE. The Commission should not countenance such obstructive behavior. If BellSouth will not cooperate during the ongoing transition from a monopoly to a competitive paradigm, then this Commission must act to wrest the vestiges of monopoly from its control. By requiring BellSouth to unbundle Dark Fiber in its loop plant, the Commission can ensure that ratepayers have access to all parts of the network that BellSouth built with ratepayer dollars over the course of a century. If carriers, such as e.spire have unbundled access to Dark Fiber loop plant, these ratepayers will be offered more options – usually at better rates – than if BellSouth were permitted to shield parts of its loop plant from competitors.

Q. WITH REGARD TO ALL LOOP TYPES, SHOULD BELLSOUTH BE REQUIRED TO GEOGRAPHICALLY DEAVERAGE ITS LOOP RATES?

A. Yes. Although I will address most pricing issues later in my testimony and Dr. Kahn will address this issue at greater length, I think that it is important to make this point now. The Act's cost-based pricing standard is intended to make UNE inputs available at cost-based rates so that new entrants can use UNEs as a means

of competing with incumbents. Unless TELRIC loop rates are geographically deaveraged to account for the different costs of building and maintaining networks in geographic areas with varying loop lengths, topography and population density, CLECs will be placed at a distinct competitive disadvantage. BellSouth realizes this and seeks to secure an anticompetitive price advantage in lower cost urban and suburban markets by refusing to geographically deaverage its loop rates. In short, by this device, e.spire's loop costs in these areas are made to exceed BellSouth's.

If left unchecked, BellSouth's refusal to geographically deaverage loop rates will significantly decrease and, in some cases, eliminate altogether facilities-based competitors' opportunities to compete effectively for small business and residential customers in low cost urban and suburban markets. To prevent this anticompetitive result, this Commission should require BellSouth to offer geographically deaveraged loop rates and to incorporate provisions for doing so in its interconnection agreement with e.spire.

I acknowledge that the Commission may have touched on this issue in previous proceedings. However, I strongly urge the Commission to consider the issue anew as BellSouth's loop pricing has become a major barrier to competitive entry. We believe that the anticompetitive impact of BellSouth's high rates for unbundled loops can be substantially ameliorated through the use of widely acknowledged geographic deaveraging techniques.

I also observe that BellSouth has affirmed the advisability of pricing its facilities on a geographically deaveraged basis where it faces competitive pressure

itself. Specifically, BellSouth has incorporated the use of three density zones in its special access tariffs as a way to compete with e.spire and other CLECs in the market for dedicated access circuits.

I also submit that our proposal is not particularly radical. Geographically deaveraged of loop prices already are available in many states, including, for example, Texas, New York and Illinois.

Q. WILL HIGHER LOOP RATES OUTSIDE DENSE, URBAN AREAS IMPEDE THE INTRODUCTION OF FACILITIES-BASED COMPETITION THERE?

A. No. Recall that BellSouth has itself filed deaveraged special access rates. e.spire simply proposes to match BellSouth's own cost structure, and the resulting rate structure that BellSouth has established. Thus, e.spire's relatively higher loop rates in low density areas will match-up with BellSouth's costs, and both will be able to compete fairly there.

Q. BELLSOUTH CURRENTLY PROVIDES E.SPIRE WITH EXTENDED LOOPS. IN LIGHT OF BELLSOUTH'S REFUSAL TO AGREE TO *CONTINUE* OFFERING AN EXTENDED LOOP UNE, SHOULD THE COMMISSION REQUIRE BELLSOUTH TO CONTINUE TO MAKE EXTENDED LOOPS AVAILABLE ON AN UNBUNDLED BASIS?

A. Yes. It is exceedingly important that this Commission require BellSouth to continue to make Extended Loops available on an unbundled basis. Extended Loops provide an important functionality – composed of loop, multiplexing and transport – that can allow CLECs to reach customers served from BellSouth End

Offices in which they have not yet collocated. Thus, Extended Loops provide a way for competitors to test markets and to expand both traditional and advanced competitive service offerings to new areas in advance of collocation (if it seems likely that the customer base served from the End Office can justify the expense involved with additional equipment purchases and a new collocation arrangement) or in lieu of collocation (if such expenses cannot be justified). Moreover, by maximizing the number of customers that can be reached through a single collocation arrangement, Extended Loops can help alleviate collocation space constraints in BellSouth's End Offices.

BellSouth voluntarily agreed to provide Extended Loops to e.spire in the parties' initial ACSI-BellSouth Interconnection Agreement. Now BellSouth refuses to offer Extended Loops in the successor Agreement, and threatens to tear apart Extended Loops that already are in place. Once again, there simply is no sound justification for BellSouth's position. The FCC currently is considering whether to incorporate the Extended Loop into minimum national unbundling standards. The Kentucky Commission already has decided that BellSouth must keep existing elements combined, as would be the case with an Extended Loop UNE. The Maryland and Texas Commissions have ordered the Extended Loops be made available and the New York Commission is considering whether Bell Atlantic must offer its tariffed Extended Loop as a UNE, but some form of Extended Loop will be available there as well. This Commission, too, should define Extended Loop as a UNE which BellSouth must make available to its competitors at cost-based rates.

To ensure that defining an Extended Loop UNE will have its intended effect, the Commission should make clear that an Extended Loop can incorporate any type of loop, including the high-capacity DS-1, DS-3 and xDSL loops described above, and any type of transport. For example, an Extended Loop featuring a 4-Wire Digital Loop in conjunction with a DS-1 Dedicated Transport is essential to e.spire's efforts to expand the reach of its Frame Relay network. Finally, because the functionality defined does not differ on the basis of whether the loop component of the Extended Loop UNE employs "home run" copper or a remote DLC configuration, BellSouth attempts to limit access on the basis of that technology-based distinction – or any other – also should be prohibited.

Q. SHOULD BELLSOUTH BE REQUIRED TO PERMIT E.SPIRE TO CONVERT SPECIAL ACCESS FACILITIES TO EXTENDED LOOP UNEs?

A. Yes. Despite having provisions for Extended Loops incorporated into its Commission-approved interconnection agreement with BellSouth, e.spire has experienced considerable difficulty – including long term delays – ordering Extended Loops from BellSouth. To expedite market entry, e.spire, in many cases, bypassed wrangling with BellSouth by purchasing the same functionality from BellSouth in the form of tariffed Special Access. However, the costs of purchasing Special Access facilities from BellSouth's Access Tariff greatly exceed the TELRIC-based rates that would apply to the same functionality if ordered as an Extended Loop UNE.

In short, BellSouth should not be permitted to drive up its competitors' costs by refusing to abide by the terms of an interconnection agreement that this Commission has approved. If the Commission agrees that BellSouth should be required to renew – and for the first time effectively implement – its contractual obligation to furnish Extended Loops to e.spire, e.spire asks the Commission to take corrective action by which it explicitly finds that BellSouth must accommodate e.spire requests to convert Special Access Services into UNEs.

Specifically, e.spire requests that the Commission compel BellSouth to cooperate in implementing a Special Access Migration Plan to convert existing Special Access Services designated by e.spire to UNEs. Under the Migration Plan, the Parties would establish an agreed conversion timetable and implement it within thirty (30) days of the Effective Date of the Agreement. Critically, under the Migration Plan, the normal NRCs for provisioning of UNEs should not apply. Instead, (i) where no physical changes to the network are required, NRCs should be limited to the direct, incremental cost of processing a service order, and (ii) where a physical rearrangement is required (*i.e.*, connections to e.spire Physical Collocation space), the normal UNE NRCs should be applied net of credits for the NRCs, previously paid by e.spire to BellSouth for provisioning the associated Special Access Services.

Q. MOVING NOW TO THE TOPIC OF INTEROFFICE TRANSPORT, PLEASE EXPLAIN WHY BELLSOUTH SHOULD BE REQUIRED TO PROVIDE UNBUNDLED ACCESS TO HIGH-CAPACITY INTEROFFICE TRANSPORT AT PREDETERMINED COST-BASED RATES.

A. Although BellSouth has agreed in principle to make high capacity dedicated transport options available, it has not offered pricing for those facilities. BellSouth's position seemingly is that e.spire must seek prices on an ICB basis pursuant to the BFR process. This process is cumbersome, uncertain, and does not facilitate rational business planning.

BellSouth's unbundling obligations are not limited by the capacity of the UNEs to which its competitors seek access. As is true for the various loop types, with regard to interoffice transport, BellSouth simply does not have the authority to choose unilaterally which varieties it will unbundle and which it will not. The FCC already has concluded that ILECs must provide all technically feasible transmission capabilities, such as DS-1, DS-3, OC-3, OC-12, OC-48 and OC-96, that a competing carrier could use to provide telecommunications services. Moreover, e.spire's desire to obtain unbundled access to optical and other high-capacity interoffice transport, including SONET, should not trigger an ICB pricing mechanism by which BellSouth continuously seeks to end-run the cost-based pricing requirements of the 1996 Act. There is absolutely no valid reason why a high-capacity interoffice transport UNE cannot be set at a predetermined TELRIC-based rate. BellSouth's insistence on ICB pricing in this and other areas is just another way in which it anticompetitively seeks to drive-up competitors' costs and keep End User prices artificially high. The Commission can and should put an end to these practices by finding that (1) BellSouth cannot impose unilaterally limitations on the capacity of interoffice transport – and other UNEs –

capabilities, and that the ILEC may not limit the facilities to which such interoffice transport facilities are connected.

Q. HAS BELLSOUTH ATTEMPTED TO LIMIT THE FACILITIES BETWEEN WHICH IT PROVIDES INTEROFFICE TRANSPORT?

A. Yes. BellSouth has not agreed to a proposed definition of Dedicated Transport which would provide e.spire "local channel" interoffice transport. Local channel interoffice transport is a transmission facility (the capacity of which can range from DS-0 to OC-48 and above) that connects a BellSouth Serving Wire Center ("SWC") and a CLEC's POP. BellSouth argues that it simply is not required to provide interoffice transport between such facilities. However, the FCC's rules make no such exception. As I just explained, ILECs, such as BellSouth, may not limit the facilities to which interoffice transport facilities are connected – nor may they limit the capacity of such facilities. In its recent *Second Louisiana Section 271 Order*, the FCC emphasized that BellSouth must offer transport between all BellSouth Central Offices, BellSouth End Offices and BellSouth Tandems, and Bell Central Offices and IXC/CLEC POPs. According to the FCC, this includes transmission between BellSouth End Offices and SWCs and between its SWCs and IXC/CLEC POPs.

Q. MUST LOCAL CHANNEL INTEROFFICE TRANSPORT BE OFFERED AT TELRIC RATES?

A. Yes. Like all other UNEs, interoffice transport facilities – regardless of capacity – must be offered to competitors at cost-based prices. BellSouth's attempts to impose ICB pricing or, in some cases, retail rates, must be rejected. As I have

said before, BellSouth's frequent attempts to resort to ICB pricing are baldly designed to inhibit new entry by CLECs. There is no reason why BellSouth cannot produce forward-looking cost studies that will aid this Commission in setting appropriate and certain rates.

Q. SHOULD BELLSOUTH BE REQUIRED TO MAKE AVAILABLE INTEROFFICE DARK FIBER AT COST-BASED RATES?

A. Yes. BellSouth's response to e.spire's request for access to interoffice Dark Fiber was to offer it in a few states, but not all, and either to not provide pricing elsewhere, or not provide TELRIC-based prices. Again, for the same reasons that Dark Fiber should be unbundled when it exists in BellSouth's loop plant, it also should be unbundled wherever it exists in BellSouth's interoffice transport network. As I discussed earlier, the FCC currently is considering whether to define Dark Fiber as a UNE. It is well within this Commission's authority to do so on its own. Doing so would promote competitive entry by facilities-based CLECs such as e.spire who could buy and hang their own electronics on the un-lit fiber leased from BellSouth. Such action also would ensure BellSouth a return on facilities that otherwise might be used for nothing other than a depreciation expense. Again, in anticipation of excessive BellSouth pricing, I also urge the Commission to establish predetermined cost-based prices and affirmatively prohibit BellSouth from imposing an ICB pricing scheme for Dark Fiber transport facilities.

Q. TURNING TO COMBINATION UNEs, PLEASE EXPLAIN WHY BELLSOUTH SHOULD BE REQUIRED TO PROVIDE THE UNE

Distribution, Concentration and Feeder Sub-Loop elements. By combining each of these components into a single functional UNE, the FCC and the state Commissions have made it easier for competitors to take on entrenched incumbents like BellSouth. e.spire does not have to install – or, even worse, have BellSouth install – cross-connects between the NID and distribution plant, between the distribution plant and concentration equipment and so on – those connections are already there. Accordingly, the "loop" definition is somewhat arbitrary; and creating new loop elements such as the Extended Loop is consistent with prior practice of including several loop components into a single UNE.

Oddly, BellSouth does not argue that the Unbundled Loop is a "combination" that it cannot be made to provide. Rather, BellSouth argues – for equally implausible reasons – that it should not be made to separate the combination of elements that comprise the loop UNE for the purpose of Sub-Loop Unbundling. This transparent conflict in positions taken by BellSouth suggests that its arguments against offering UNE combinations, on the one hand, and dismantling combinations to accommodate facilities placed by competitors, on the other, cannot be squared.

The fact of the matter is that the FCC and this Commission both can order BellSouth to unbundle UNEs that incorporate one piece of equipment or several. And, as demonstrated by the presence of a NID UNE and a loop UNE in the FCC's national minimum unbundling standards and by Sub-Loop Unbundling required in some states, BellSouth can be required to unbundle UNEs that also are incorporated into functionalities that are themselves separately defined as a UNE.

Again, e.spire respectfully requests that this Commission follow the lead of other states – such as New York, Texas and Maryland – that have already ordered ILECs to make available similar UNE Combinations.

Q. HOW WOULD THE CREATION OF UNE COMBINATIONS AND EXTENDED LOOP RELIEVE THE PROBLEM OF EXHAUSTION OF PHYSICAL COLLOCATION SPACE?

A. These options alleviate the need for CLECs to collocate in each End Office, thereby reducing the demand for limited space.

Q. IS THE COMMISSION'S ABILITY TO REQUIRE BELLSOUTH TO COMBINE UNEs LIMITED BY THE EIGHTH CIRCUIT COURT OF APPEALS' INTERPRETATION OF THE 1996 ACT?

A. No. The Eighth Circuit has never addressed the scope of this Commission's or any other state Commission's ability to require an incumbent, such as BellSouth to unbundle combinations. Rather, the Eighth Circuit addressed multiple aspects of the FCC's interpretation of the 1996 Act and, with regard to combinations, decided in its *Iowa Utilities Board* decision only that the FCC could not order incumbents to combine separately defined network elements. In its later *Shared Transport* decision, the Eighth Circuit made clear that the effect of its earlier decision regarding combinations actually is quite limited. Indeed, the Eighth Circuit found that the FCC had the discretion to define UNEs and that it could define them in a way that requires that combinations of elements be offered as a single UNE. Shared Transport and the loop are examples of UNEs that are themselves comprised of other UNEs in combination.

For our purposes here today, it is important to note that, while the FCC can require combinations only by defining them as a single UNE, this Commission is not bound by that same limitation – it can define UNEs to include combinations or it can require combinations of UNEs. Section 251(d)(2) of the Act, and the FCC's rules, allow state Commissions to define additional UNEs as they see fit.

Q. SHOULD BELLSOUTH BE PRECLUDED FROM ASSESSING SPECIAL "RE-COMBINATION" CHARGES?

A. Yes. BellSouth should be precluded from assessing combination NRCs or "glue charges" for the simple reason that it incurs no additional costs when it offers UNEs in combination. As my pre-school daughter could tell you, there is no need for "glue" when there is nothing to stick together. By prohibiting BellSouth from pulling the pieces apart, the Commission can obviate the need for "glue".

Because the costs of UNEs are fully reflected in rates set by this Commission, allowing BellSouth to impose a "glue charge" merely would validate one of the many ways in which BellSouth seeks to double-recover from competitors – and End Users. BellSouth certainly should be permitted to recover its legitimate costs – but, it should do so only once. Thus, the NRCs for UNE Combinations should be limited to an incremental service order processing charge.

Q. WITH REGARD TO PROVISIONING, SHOULD BELLSOUTH BE ALLOWED TO BACKSLIDE FROM PROVISIONS IN ITS CURRENT INTERCONNECTION AGREEMENT WITH E.SPIRE AND ITS OWN

CLAIMS MADE TO THE FCC THAT IT MUST AND CAN PERFORM COORDINATED LOOP CUTOVERS IN FIVE MINUTES OR LESS?

A. Once again, the only reason the parties are at an impasse is because BellSouth, at nearly every turn, seeks to make it difficult, if not impossible for competitors to compete. Here, we are arguing over whether BellSouth should be required to renew the five minute coordinated loop cutover provisioning interval it voluntarily agreed to two years ago in the ACSI-BellSouth Interconnection Agreement. In real terms, what this argument boils down to is the amount of time a customer who chooses to switch from BellSouth will be without phone service.

How much time would you be willing to go without phone service? For a huge premium, BellSouth offers a 15 minute window for each access line. That would mean that a customer with as few as 32 access lines would have lines out of service for an entire (eight hour) business day. Obviously, business, safety and convenience each suggest that this interval should be shorter and as close to a flash-cut as possible. And BellSouth's own data suggests that it can be. Indeed, BellSouth reported to the FCC as part of the Section 271 application process that it performs coordinated cutovers of ULLs without number portability, *on average*, in under four and a half minutes. This record suggests that meeting a five minute coordinated cutover interval with number portability is not only possible, but that it also is reasonable.

If competition is to prosper, customers must be assured that, if they choose to switch to e.spire – or back to BellSouth, that they will be out of service for only five minutes or less per line. Otherwise, the cost of lost calls will discourage or

prevent customers from switching and competition from taking hold. Indeed, as I will discuss in detail later as part of my discussion of general Ordering and Provisioning requirements, the interval actually should be is far less than five (5) minutes per line for multiple line installations.

Q. DOES BELLSOUTH'S SL1/SL2 LOOP PROVISIONING STRUCTURE ADEQUATELY ADDRESS THIS PROBLEM?

A. No, it does not. Although e.spire's technical witness, Bill Stipe, will explore this issue further, it should be noted that nowhere in BellSouth's SL1/SL2 proposal does BellSouth propose to meet a reasonable interval for loop provisioning. Instead, BellSouth proposes a "15 minute to one hour" interval – per line – and intends to extract a non-cost-based premium for meeting a 15 minute interval. On an SL1 loop, this premium is set forth in a separate "manual order coordination" surcharge. On an SL2 loop, the premium evidently is wrapped into the grossly inflated basic NRC. Notably, BellSouth has not proposed to offer the five minute cutover interval – which it agreed to in the ACSI-BellSouth Interconnection Agreement and which it represents to the FCC that it meets regularly – at any price.

BellSouth also proposes to extract a per line premium for allowing e.spire to schedule 30 minute conversion windows for its customers – otherwise, customers would be forced to accept a four (4) hour conversion window. Under the ACSI-BellSouth Interconnection Agreement, the costs of affording Florida End Users this common courtesy were built into the basic NRC. Now, on both the SL1 and SL2, BellSouth proposes to extract a non-cost-based premium for it.

There is no legal basis on which BellSouth can propose to extract non-cost based premiums for performing cutovers within five (5) minutes and for performing them within a pre-set 30 minute window. Florida End Users deserve no lower level of service. To ensure that they are not forced to accept and pay a non-cost-based premium for BellSouth's proposed inferior level of service, the Commission should renew the loop cutover provisions incorporated into the ACSI-BellSouth Interconnection Agreement. To be sure, e.spire is willing to pay BellSouth its costs of provisioning loops. However, all of BellSouth's costs must be set out in forward-looking cost studies that should result in this Commission setting a single, rational TELRIC-based NRC for provisioning loops.

Q. SHOULD BELLSOUTH BE OBLIGATED TO PROVIDE FOCs FOR LOOP ORDERS WITHIN 4 HOURS OF SUBMISSION BY E.SPIRE?

A. Yes. An industry standard has evolved which requires ILECs to return FOCs within four (4) hours for orders submitted via an *electronic* interface, and within twenty-four hours for orders submitted *manually*. e.spire submits that BellSouth should be required to conform to this industry standard. The Act requires that BellSouth's FOC provisioning intervals be nondiscriminatory. Unless BellSouth can provide conclusive data demonstrating that it makes its own retail customers wait more than four (4) hours before it can confirm an order, there is no legal basis on which BellSouth should refuse e.spire's request.

Adopting these FOC intervals also would give BellSouth an additional incentive to continue developing its OSS so that End Users are not penalized for switching from BellSouth. Again, BellSouth data supplied to the FCC in support

Volume and term discounts are consistent with the cost-based pricing mandate of the Act and the way in which BellSouth prices many of its retail services. Without volume and term discounts, it is possible that retail rates through BellSouth CSAs may be less than wholesale rates on UNEs that e.spire uses to provide a competitive service offering. By requiring BellSouth to incorporate such discounts into its interconnection agreement with e.spire, this Commission can prevent this form of price discrimination and ensure that high volume consumers have a choice in local service providers.

Q. ARE THERE ANY OTHER ISSUES TO BE RESOLVED REGARDING UNEs?

A. Yes. During the negotiation, e.spire asked BellSouth to expressly commit, in connection with the provision of each discrete UNE, that such UNEs would continue to be made available to e.spire on terms which are no less favorable than those provided to any BellSouth Affiliate or any other Telecommunications Carrier. Despite the unambiguous requirement of Section 251(c)(3) of the Act, which requires ILECs to provide" nondiscriminatory access" to UNEs, BellSouth refused to agree to e.spire's proposed language. We are gravely concerned by BellSouth's refusal to commit to nondiscriminatory treatment on a going-forward basis, and we ask the Commission to order inclusion of e.spire's proposed language in the Agreement.

Circuit Switched Interconnection

Q. WHAT AREAS OF DISAGREEMENT EXIST WITH RESPECT TO THE INTERCONNECTION OF CO-CARRIER NETWORKS FOR THE MUTUAL EXCHANGE OF TRAFFIC?

A. There are two principal areas of disagreement. The first relates to the applicability and pricing of Reciprocal Compensation for traditional circuit-switched traffic. The second relates to the terms applicable to interconnection of packet-switched networks. We also have not resolved how to define "equal in quality" and how to establish performance breaches.

Q. WHY IS IT NECESSARY FOR E.SPIRE TO INTERCONNECT WITH BELLSOUTH FOR THE PURPOSE OF EXCHANGING LOCAL TRAFFIC?

A. Since e.spire is a new market entrant with plans to expand its facilities based local telecommunications services within BellSouth's territory, many of the calls placed by e.spire's customers on e.spire's local network are made to or received from BellSouth's customers. e.spire must interconnect with ILECs such as BellSouth for the purpose of exchanging such traffic. Thus, pursuant to the terms of a local interconnection agreement, the parties must agree to exchange Local Traffic and provide "Transport and Termination" to their respective End Users. Absent such arrangements, e.spire customers would not be able to call BellSouth customers, and vice versa. As Congress recognized in enacting the Act, complete and nondiscriminatory local interconnection arrangements are fundamental to the implementation of any competitive local telephone network.

Q. WHAT IS TRANSPORT AND TERMINATION?

A. "Transport" and "Termination" are the two primary network functions involved in the exchange of Local Traffic between telecommunications carriers. The FCC has defined "Transport," for purposes of establishing reciprocal compensation arrangements, as the "transmission of terminating traffic that is subject to section 251(b)(5) [of the Act] from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party." The FCC has defined "Termination" for purposes of Section 252(b)(5) as "the switching of traffic . . . at the terminating carrier's end office switch (or equivalent facility) and delivery of that traffic from that switch to the called party's premises."

Although Transport and Termination require essentially the same network functions, the FCC treats them as distinct for legal and regulatory purposes. The major reason for this distinction is that while alternative arrangements often exist for the provision of transport between two carriers' networks, a service provider typically has no practical alternative for termination of local calls other than use of the called party's carrier. This is especially true when the called party's carrier is the ILEC in the region. In the context of the proposed interconnection arrangements at issue here, "Transport and Termination" refers to the delivery by a telecommunications carrier of Local Traffic to its End Users where the Local Traffic was routed to it at the agreed Point of Interconnection by another carrier on whose network the traffic originated.

Q. PLEASE EXPLAIN WHY COMPENSATION FOR TRANSPORT AND TERMINATION OF LOCAL TELECOMMUNICATIONS TRAFFIC IS AN IMPORTANT ISSUE?

A. As described above, the Transport and Termination of Local Traffic is critical to the business of a CLEC such as e.spire. While the network architecture for accomplishing such an exchange of Local Traffic is critical, the compensation exchanged between interconnected local companies for providing the services is equally important. Simply put, physical interconnection is useless unless the resulting exchange of Local Traffic is made on fair and economic terms. Section 252(d) of the Act requires that rates, terms and conditions associated with Reciprocal Compensation be just and reasonable.

It also is important to understand that ILECs such as BellSouth have an incentive to demand excessive compensation arrangements from CLECs such as e.spire. BellSouth owns and operates essential bottleneck local exchange facilities that are required to reach BellSouth's local exchange customers. In the absence of government intervention, BellSouth possesses ample monopoly power to demand compensation arrangements which are uneconomic, and which unfairly favor BellSouth's local exchange operations.

Fortunately, both Congress and the FCC have taken steps to restrain BellSouth's potential misuse of its monopoly power in this area. Sections 251 and 252 of the Act, and the FCC's rules implementing them, require BellSouth to interconnect with e.spire for purposes of exchanging, transporting and terminating each other's Local Traffic. Importantly, Section 252 guarantees the "recovery by

each carrier of costs associated with the Transport and Termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier." Both the Act and FCC rules implementing it require that BellSouth and e.spire formulate a nondiscriminatory compensation arrangement which is reciprocal (*i.e.*, two-way) and provides for a mutual recovery of associated costs. It is up to the Commission in this proceeding to enforce and implement these requirements.

The state Commission in reviewing the proposed compensation scheme should not approve the proposed rates unless such rates allow for mutual recovery by each party of the costs associated with Transport and Termination of traffic on each party's respective networks. Since ILEC and CLEC network infrastructure differ, reasonable compensation terms would reflect different costs that are derived from different network configurations. Such is the case with BellSouth and e.spire's network configurations, and therefore the costs associated with Transport and Termination of traffic by each LEC are different.

Q. HOW DOES THE ACT ADDRESS THIS ISSUE?

A. The 1996 Act incorporates three critical notions which are intended enable new entrants to provide competitive local services to customers within and incumbents local service areas. First, the Act makes clear that the pricing for Transport and Termination must be truly cost-based. Specifically, Section 252(c)(2)(A)(i) of the Act requires that prices be based on a "reasonable approximation of the *additional costs* of terminating such calls." Second, Section 252 (d)(2)(A)(i) of the Act also makes explicit that the recovery of the costs of providing local Transport and

Termination services must be "mutual and reciprocal." Last, but not least, under the express terms of Section 251(c)(2)(D) of the Act, ILECs such as BellSouth have a legal duty to interconnect with all other telecommunications companies on rates, terms and conditions which are "just, reasonable, and nondiscriminatory." This precludes BellSouth from demanding compensation arrangements which discriminate in favor of itself or its affiliates.

Q. WHAT IS BELLSOUTH'S POSITION WITH RESPECT TO HOW RECIPROCAL COMPENSATION ARRANGEMENTS FOR TRANSPORT AND TERMINATION OF LOCAL TRAFFIC SHOULD BE ESTABLISHED?

A. BellSouth prefers a Reciprocal Compensation rate structure which takes an "elemental" approach. Different charges are assigned to the use of interoffice "Transport," "End Office Termination," and "Tandem" switching. e.spire does not object to the use of this rate structure *as it applies to BellSouth's charges to e.spire*. e.spire also does not object to BellSouth's proposed Reciprocal Compensation rate level, *as they apply to BellSouth's charges to e.spire*.

However, BellSouth suggests that the same rate structure and rate levels should be utilized by e.spire when charging Reciprocal Compensation to BellSouth. e.spire strenuously objects to this proposal. As I will explain hereafter, BellSouth's proposed rate structure – while fine for BellSouth – does not accurately reflect the way that e.spire's network is designed and the manner in which e.spire incurs costs in providing Transport and Termination to BellSouth.

Similarly, BellSouth's proposed rate levels would not enable e.spire to recover the costs which it incurs in providing Transport and Termination to BellSouth.

In order to be consistent with the requirements of Act, e.spire believes that any Reciprocal Compensation arrangements must meet three discrete tests. First, Reciprocal Compensation rates, if any, should recover the TELRIC of providing Transport and Termination. This subject is addressed more fully elsewhere herein and in the testimony prepared on e.spire's behalf by Dr. Marvin Kahn. Second e.spire has the right to employ a Reciprocal Compensation rate structure which reflects the costs e.spire itself incurs. Third, e.spire has the right to establish rates at a level which assures recovery of these costs. One alternative is to mirror the rate levels proposed by BellSouth. However, in the alternative, e.spire may provide its own cost study to determine its rates. We have chosen the latter course.

Q. WHAT RECIPROCAL COMPENSATION SYSTEM WOULD BE APPROPRIATE?

A. As I mentioned earlier, the Transport and Termination rate should be established at the associated TELRIC cost as established through a review of forward-looking cost studies – a subject to which I defer to Dr. Kahn's testimony. Perhaps more importantly, however, it is imperative that we have the option to elect *different* compensation rates to be billed by both carriers. This would allow for both parties to recover the actual costs associated with the Transport and Termination of traffic on their respective networks, which as I mentioned are configured and operate differently. e.spire should not be forced to accept the rate proposed by

BellSouth, which does not compensate it for the costs of Transport and Termination of traffic on its network. Otherwise, BellSouth will glean an unfair competitive advantage simply through an exchange of Local Traffic, even if the amount of traffic exchanged is in balance.

It is particularly important that the compensation rate be technologically neutral. What matters is that each party is compensated for its costs of providing area-wide termination of Local Traffic delivered to it by the other party at the Point of Interconnection. The network architecture selected by the service provider is irrelevant.

Q. WHAT ARE THE COMPETITIVE BENEFITS TO BASING COMPENSATION ON TELRIC?

A. As noted by the FCC in its *Interconnection Order*, the TELRIC methodology is based on forward-looking, economic costs which replicate, to the extent possible, the conditions of a competitive market. Basing the compensation rate on each carrier's TELRIC also levels the playing field between the larger incumbent LECs such as BellSouth and the interconnecting carriers. Because TELRIC is pre-established, larger carriers are limited in their ability to force other carriers to interconnect at unreasonably high or low rates, which do not reflect the carrier's forward-looking costs.

TELRIC also permits the Commission to take into account the advanced technology used by interconnecting carriers. In the *Interconnection Order*, the FCC concluded that state Commissions may establish rates for Transport and Termination that vary according to whether traffic is routed through a Tandem

switch or directly to an End Office. States were given specific authorization to consider whether new technologies, such as CLEC SONET ring networks, perform functions equivalent to the ILEC's Tandem switch, thereby requiring the higher price generally paid for calls transported or terminated on the ILECs' Tandem switches. This option is of particular significance to carriers such as e.spire whose switches provide functionality covering that of a Tandem *and* an End Office.

Q. WHAT ARE E.SPIRE'S SPECIFIC OBJECTIONS TO BELLSOUTH'S PROPOSED RATE STRUCTURE FOR TRANSPORT AND TERMINATION?

A. BellSouth has attempted to create a rate structure which gives it an inherent advantage. BellSouth's network employs a "hub and spoke" architecture in which numerous BellSouth End Offices subtend a BellSouth Tandem Switch. Thus, if a CLEC delivers traffic to the Tandem for delivery to a BellSouth End User, the call is switched by Tandem, routed over trunk-side interoffice Transport facilities, and then delivered to the End Office Switch for "Termination." This elemental approach enables BellSouth to collect three (3) separate charges.

But e.spire has configured its network in a fundamentally different manner. We normally install a single large switch and fiber optic SONET ring in a local area that performs two distinct functions. First, for "on net" traffic delivered to the e.spire switch, we will switch the traffic once and then transport the call relatively long distances over line-side transport facilities to reach any End User anywhere in the local area. For "off-net" traffic, we switch the traffic at

the e.spire switch and then transport the calls to e.spire's collocated equipment at an ILEC End Office, where it is routed over Unbundled Loop facilities for termination. In the latter situation, the ILEC End Offices effectively sub-tend e.spire's "Tandem" switch. The bottom line is that e.spire's single local switch provides the same essential functionality as the ILEC Tandem to an interconnecting carrier – *i.e.*, the ability to deliver traffic to the carrier's customers anywhere in the local area.

Nevertheless, BellSouth wants to classify e.spire's switch as exclusively an "End Office," and pay e.spire only the charges which BellSouth itself collects for its End Office element. In this manner, BellSouth seeks to reap a windfall for every minute of traffic exchanged. Through this sleight-of-hand, BellSouth is able to craft an asymmetric system of Reciprocal Compensation in which it would profit handsomely even when the traffic exchanged for termination is in perfect balance!

It is hard to imagine a more anticompetitive outcome. Congress carefully crafted a system of mutual traffic exchange which was intended to prevent ILECs from using their monopoly power to extract such one-way compensation. BellSouth's plan is neither "reciprocal" nor "symmetrical". BellSouth's proposal would undo the Congressional plan and poison the model for local competition.

Q. DOES THE E.SPIRE SWITCH PERFORM THE SAME OR SIMILAR FUNCTIONS AS THE BELLSOUTH TANDEM SWITCH?

A. Absolutely. It is critical to understand that both parties are providing the same service to the other party. If e.spire delivers Local Traffic to the BellSouth local

Tandem switch, BellSouth will terminate the call to any of its End Users located anywhere within the local exchange boundary. Similarly, if BellSouth delivers Local Traffic to the e.spire switch, e.spire will terminate the call to any e.spire End User located anywhere within its local service area. In that respect, the e.spire switch functions simultaneously as a Tandem and an End Office switch. The e.spire switch represents state-of-the-art technology which enables the Company to serve the entire service area in the most efficient and technologically-advanced manner. While it may be true that BellSouth has elected to use a different, less efficient switching architecture, the end-to-end service is virtually identical.

Q. IS BELLSOUTH'S PROPOSED RECIPROCAL COMPENSATION RATE STRUCTURE IN THE PUBLIC INTEREST?

No. Acceptance of BellSouth's proposal would create at least two perverse incentives. First, it would penalize carriers such as e.spire for deploying the most economically suitable switching systems available, and encourage them to utilize out-moded Tandem-End Office switch configurations in their place. Second, it would encourage carriers to deploy both Tandem and End Office switches even where it is technically inefficient, thereby artificially driving up the cost of service. Third, to the extent that such an architecture would be prohibitively expensive for most CLECs, it would ultimately provide the ILEC with another artificial market advantage.

The BellSouth proposal is intended to turn its inefficient network design into an unfair competitive advantage. While e.spire does not believe that

BellSouth should be penalized for its selection of its network architecture, neither should it be rewarded for it. Certainly, e.spire should not be penalized for deploying state-of-the-art network facilities in BellSouth's local service areas.

Q. IS E.SPIRE'S INVESTMENT IN ITS SWITCH AS COSTLY AS THE INVESTMENT MADE BY BELLSOUTH IN ITS TANDEM SWITCHING?

A. Based simply on our understanding of the list prices for Tandem and End Office switches commonly used by BellSouth, we believe that our switching cost is actually larger than that made by BellSouth on a relative basis.

Q. DOES THE ACT REQUIRE TREATMENT OF E.SPIRE'S LOCAL SWITCH AS AN END OFFICE RATHER THAN A HYBRID WHICH EMPLOYS QUALITIES OF TANDEM SWITCHING AND END OFFICE SWITCHING?

A. No, the Act only requires that ILECs enter into Reciprocal Compensation arrangements with CLECs that provide for mutual recovery of the costs incurred by such carriers for the Transport and Termination of traffic. In interpreting the Act, the FCC determined that state Commissions "shall . . . consider whether new technologies (*e.g.*, fiber ring or wireless networks) perform functions similar to those performed by an incumbent LEC's Tandem switch and thus, whether some or all calls terminating on the new entrant's network should be priced the same as the sum of Transport and Termination via the incumbent LEC's Tandem switch."

Notably, a number of state Commissions have concluded that an interconnecting carrier's single switch is the equivalent of both the ILEC's Tandem and End Office switches. State Commissions have held that it is not

necessary that the interconnecting carrier duplicate the ILEC's traditional "hub and spoke" architecture. For example, the Illinois Commerce Commission held that TCG should be compensated at the Tandem rate, because its switch serves a geographic area comparable to or greater than the area served by Ameritech's switch. The Commission found that TCG was not required to duplicate Ameritech's architecture, since "applying such a narrow standard is contrary to the pro-competitive policy of the Act and FCC order which clearly recognize that competitive local exchange carriers should be encouraged to take full advantage of the capabilities of new technology when designing their networks." The Commission further found that TCG's switch performed both Tandem and End Office functions. The Commission held that it was not necessary to establish a precise correspondence between TCG's switch and Ameritech's Tandem switch. TCG was entitled to the Tandem rate, because its switch served a geographic area at least as great as Ameritech's and performed Tandem functions. Other states such as Arizona, Pennsylvania, Maryland and Texas have reached similar conclusions.

Based on the geographic coverage and functionalities performed by one e.spire switch, there is no justification for BellSouth's proposal to treat the e.spire switch as an End Office for purposes of assessing Reciprocal Compensation. e.spire should be compensated at a single "blended" Tandem rate for calls originated on BellSouth's network and terminated on e.spire's network.

Q. WHAT RATE LEVEL DOES E.SPIRE PROPOSE TO CHARGE BELLSOUTH FOR TRANSPORT AND TERMINATION?

A. We have offered to charge a single "blended" region-wide (all BellSouth states) rate of $0.009 per minute of use. We believe that this charge of slightly less than a penny per minute of use fairly reflects our cost of terminating BellSouth's local traffic. I understand that the proposed rate also matches the one BellSouth previously agreed to with another CLEC – KMC – on a region-wide basis. I also observe that e.spire's proposed rate is substantially lower than BellSouth's own rates for terminating Switched Access traffic.

Q. ARE THERE ANY OTHER DISAGREEMENTS RELATING TO THE PAYMENT OF RECIPROCAL COMPENSATION?

A. Yes. e.spire believes that calls placed to Internet Service Providers ("ISPs") should be classified as "Local Traffic" subject to the payment of Reciprocal Compensation. By contrast, BellSouth refuses to treat such calling as "local" and refuses to compensate e.spire for terminating such calling on BellSouth's behalf.

Q. WHY DO YOU BELIEVE THAT CALLS PLACED TO ISPS SHOULD BE TREATED AS "LOCAL TRAFFIC" FOR THESE PURPOSES?

A. There are a number of reasons why I believe that calls terminated by e.spire to ISPs fit the contractual definition of "local" traffic.

First, while this matter is more appropriate for legal briefing, the FCC has repeatedly ruled that ISPs are End Users that may order their inbound services under local exchange tariffs. Indeed, e.spire's ISP customers all ordered service from e.spire pursuant to e.spire's applicable local exchange tariffs. Specifically, the FCC has stated in its Access Charge Reform order that "[a]s a result of the decisions the Commission made in the *Access Charge Reconsideration Order*,

ISPs may purchase services from incumbent LECs under the same intrastate tariffs available to End Users." The FCC also has noted that:

> ISPs do pay for their connections to incumbent LEC networks by purchasing services under state tariffs. Incumbent LECs also receive incremental revenue from Internet usage through higher demand for second lines by consumers, usage of dedicated lines by ISPs, and subscriptions to incumbent LEC Internet access services. To the extent that some intrastate rate structures fail to compensate incumbent LECs adequately for providing service to customers with high volumes of incoming calls, incumbent LECs may address their concerns with state regulators.

In addition, the FCC has consistently viewed dial-up calls to ISPs as consisting of two components: "telecommunications" and "information." For instance, the FCC stated in its *Universal Service Order* that "[w]e agree with the Joint Board's determination that Internet access consists of more than one component. Specifically, we recognize that Internet access includes a network component, which is the connection over an LEC network from a subscriber to an Internet Service Provider, in addition to the underlying information service." The FCC also observed that "[w]hen a subscriber obtains a connection to an Internet service provider via voice grade access to the public switched network, that connection is a telecommunications service and it is distinguishable from the Internet service provider's service offering." Thus, in a switched communications system, the service termination point generally is the point at which the common carrier service ends and user-provided service begins, *i.e.*, the interface point between the communications system equipment and the user equipment, under applicable tariffs.

This view of ISP calls was reinforced by Congress in the 1996 Act where it carefully defined "telecommunications" as something distinct from "information services." Indeed, the FCC has observed in its Universal Service Report to Congress that "Congress intended 'telecommunications service' and 'information service' to refer to separate categories of services" despite the appearance from the End User's perspective that it is a single service because it may involve telecommunications components.

Second, a call placed over the public switched network normally is considered "terminated" when it is delivered to the exchange bearing the called telephone number. Call termination occurs when a connection is established between the caller and the telephone exchange service to which the dialed number is assigned, answer supervision is returned, and a call record is generated. This is true whether the call is received by a voice grade phone, a fax machine, an answering machine, or, as in this case, an ISP modem. Indeed, the FCC has defined call termination for purposes of reciprocal compensation obligations as "the switching of traffic . . . at the terminating carrier's end office switch . . . and delivery of that traffic from that switch to the called party's premises." There is no question that e.spire is providing terminating switching services and is terminating the calls to the ISP.

Third, I note that the customers originating the calls to the ISPs over BellSouth's local network order service from BellSouth pursuant to local exchange tariffs. Moreover, BellSouth bills the calls placed by its customers to ISPs as "local" calls.

Fourth, BellSouth routes calls placed by its End Users to ISPs served by e.spire over the trunk groups expressly reserved for the exchange of "local" traffic. Separate trunk groups are available for interexchange calls, and BellSouth uses them to transmit access services traffic. When BellSouth routes calls to e.spire over the "local" traffic trunk groups, e.spire completes the traffic in good faith per BellSouth's instructions, and justifiably expects to be compensated for the service.

Finally, BellSouth's refusal to compensate e.spire for terminating ISP traffic is inconsistent with BellSouth's own treatment of such traffic. BellSouth itself treats calls to ISPs as "intrastate" when compiling cost studies and making jurisdictional separations. BellSouth should not be able to reclassify traffic jurisdictionally on a unilateral basis for its own benefit in each situation.

Q. DOES THE FCC'S RECENT ORDER REGARDING THE GTE DSL TARIFF HAVE ANY IMPACT ON E.SPIRE'S POSITION?

A. No. The *GTE DSL Tariff Order* was limited to a dedicated service, and specifically did not address dial-up calls. All of e.spire's traffic constitutes dial-up traffic and is therefore not impacted by this order.

Q. DOES E.SPIRE INCUR COSTS IN TERMINATING THIS TRAFFIC FOR BELLSOUTH?

A. Yes. In fact, e.spire has incurred, and continues to incur, substantial costs related to the provision of Transport and Termination for this traffic. e.spire, like other CLECs, has invested a great deal of money in the development of facilities that are capable of handling this traffic. Since e.spire, like other LECs, is prohibited

from charging ISPs switched access charges, when e.spire is not compensated for Transport and Termination of this traffic under the Reciprocal Compensation provisions of its Agreement with BellSouth, e.spire is not compensated at all. Effectively, e.spire will be forced to provide free Transport and Termination of ISP traffic to BellSouth's customers. This would be an impossible situation for e.spire, and an unjustifiable windfall for BellSouth. Obviously, such an outcome is not only unfair and inequitable, but also anticompetitive.

Q. HAVE THERE BEEN DECISIONS BY STATE COMMISSIONS IN THE BELLSOUTH REGION THAT CLASSIFY DIAL-UP CALLS PLACED TO ISPS AS "LOCAL" FOR PURPOSES OF PAYING RECIPROCAL COMPENSATION?

A. Yes. In fact, on September 15, 1998, this Commission issued a decision which specifically addressed the issue of "whether ISP traffic should be treated as local or interstate for purposes of reciprocal compensation . . ." After reviewing all of the arguments, the Commission stated, "while there is some room for interpretation, we believe the current law weighs in favor of treating the traffic as local, regardless of jurisdiction, for purposes of the Interconnection Agreement. Moreover, the Commission noted, among other things, that BellSouth rates the traffic of its own ISP customers as local traffic, and that "[i]t would hardly be just for BellSouth to conduct itself in this way while treating WorldCom differently."

Similarly, on October 19, 1998, the Hearing Officer presiding over the e.spire/BellSouth complaint before the Georgia Public Service Commission ("Georgia Commission") issued an Initial Decision in favor of e.spire. In this

Initial Decision, the Hearing Officer found, among other things, that ISP traffic is Local Traffic subject to reciprocal compensation, and that e.spire is contractually entitled to collect the $0.0087 per minute rate from BellSouth.

Also, on November 4, 1998, the North Carolina Utilities Commission ("North Carolina Commission") issued an order wherein it held that the "reciprocal compensation provision contained in the Interconnection Agreement between Intermedia and BellSouth is fully applicable to telephone exchange service calls that terminate to ISPs when the originating caller and the called number" are in the same local calling area. Thus, the North Carolina Commission ordered BellSouth to pay reciprocal compensation for all such calls.

Notably, these decision are consistent with the decisions of more than 20 other states that have determined that termination of calls placed to ISPs are subject to the payment of reciprocal compensation.

Q. WHAT RELIEF ARE YOUR SEEKING FROM THE COMMISSION?

A. e.spire requests that the Commission: (1) determine that calls terminated to ISPs are subject to reciprocal compensation; and (2) approve the e.spire proposed rate for reciprocal compensation of $0.009.

Q. ARE THERE ANY OTHER UNRESOLVED ISSUES RELATED TO INTERCONNECTION OF THE PARTIES' CIRCUIT SWITCHED NETWORKS FOR THE PURPOSE OF MUTUAL TRAFFIC EXCHANGE?

A. Yes. The Parties have not agreed to a definition of service quality to be incorporated into the agreement. e.spire proposes a definition that requires each

party to provide interconnection at service levels that are "equal in quality" to that which are provided to itself or other affiliated entities. Specifically, the language proposed by e.spire defines "equal in quality" to mean "the same technical criteria and service standards that a party uses in 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." This definition is reasonable and consistent with the requirements imposed on ILECs such as BellSouth by Section 251(c) of the Act. Moreover, the obligations of providing interconnection that is "equal in quality" are reciprocal and therefore requires e.spire to provide interconnection at service levels that are not required by the Act.

In order to ensure that e.spire is receiving parity in the functionality of interconnection it receives from BellSouth, e.spire requests that BellSouth design its interconnection methods and facilities so that they are capable of meeting the same performance criteria that BellSouth requires for its own network. BellSouth is the incumbent in the market and has years of knowledge that enable it to build a robust network. The added requirements for equal technical criteria and performance quality are intended to ensure that the interconnection services ordered by e.spire provide the same level of service that BellSouth relies on in running its local network. It is e.spire's intention that equality in service criteria and technical specifications will help e.spire construct a network that is as versatile and flexible as that constructed by BellSouth.

Q. DOES THE SAME DISPUTE DISCUSSED EARLIER RELATING TO PERFORMANCE MEASUREMENT AND LIQUIDATED DAMAGES APPLY TO INTERCONNECTION TRUNKING?

A. Yes. Once again, e.spire believes that failure to provide service at parity as established by the agreed Performance Measurements should trigger the assessment of Liquidated Damages. BellSouth disagrees.

Frame Relay UNEs and Interconnection

Q. PLEASE DESCRIBE E.SPIRE'S PACKET-SWITCHING OPERATIONS IN BELLSOUTH'S TERRITORY.

A: e.spire plans to compete with BellSouth's Frame Relay services both by reselling BellSouth's own Frame Relay services *and* by providing service to End Users over e.spire's own Frame Relay Network. e.spire has deployed 48 Newbridge Asynchronous Transfer Mode ("ATM") packet switches nationwide. Where we deploy our own Frame Relay facilities, we plan to use a mixture of our own Frame Relay switches and fiber optic transport facilities, *and* complement them with components of BellSouth's network purchased as UNEs.

Q: WHAT ACTION MUST THE COMMISSION TAKE TO FACILITATE E.SPIRE'S DEPLOYMENT OF COMPETITIVE FRAME RELAY SERVICES?

A: Two portions of the draft Agreement require attention. First, the parties must establish cost-based interconnection arrangements. Since Frame Relay services are public packet-switched networks, such interconnection is required to enable Frame Relay customers of e.spire and BellSouth to send messages to one another.

It is the data equivalent of interconnection for the Transport and Termination of mutually exchanged voice traffic. Second, e.spire requests that several new UNEs be prescribed by unbundling components of the BellSouth Frame Relay network and making them available at cost-based rates. As is the case with the voice network, such UNEs are necessary to round-out e.spire's own facilities, and expand the coverage of the e.spire Frame Relay network.

Q. PLEASE DESCRIBE THE STATUS OF INTERCONNECTION NEGOTIATIONS WITH BELLSOUTH.

A. Interconnection of Frame Relay networks was not included in the original ACSI-BellSouth Interconnection Agreement. However, we recently negotiated an amendment to that Agreement which facilitates physical interconnection, but results in some double-charging to e.spire, and does not provide the cost-based rates that we require in order to compete on a level playing field with BellSouth for the long term. e.spire agreed to this approach on a temporary basis in order to get into business, but it does not afford an acceptable long-term solution.

Q. WHAT WAS E.SPIRE'S POSITION DURING THE MOST RECENT NEGOTIATIONS?

A. e.spire's position consistently has been that BellSouth's obligations, embodied in Section 251(c)(3) and Section 252(d)(2) of the Act, require that BellSouth provide Frame Relay network interconnection and access to Frame Relay UNEs at cost-based rates. The FCC's August 1998 *Advanced Services Order* confirms e.spire's position.

the establishment of the access link to a Frame Relay End User. As for the NNI port, the Colorado Commission recognized the equivalent functionality of the unbundled port element utilized in providing unbundled transport for voice switched services, and held that the NNI port charges established in its costing proceeding be applicable to the NNI ports used to provide switched transport for Frame Relay services as well.

Q. WHAT IS YOUR CURRENT UNDERSTANDING OF BELLSOUTH'S POSITION?

A. It is my understanding that BellSouth proposes that e.spire pay for NNI interconnection services at retail rates out of its tariff for the interLATA portion of traffic exchanged between the Parties. In addition to providing NNI as a retail service at tariffed rates, BellSouth proposes that e.spire pay a monthly recurring charge for each PVC established between the parties, to serve the Parties respective End Users of Frame Relay services. This proposal is inadequate for three reasons: (i) the rates set forth in the tariff are not cost-based in accordance with Section 252(d); (ii) the tariff does not allow for reciprocal recovery of costs by both carriers as required by Section 252(d)(2) of the Act; (iii) the monthly PVC charge is not cost-based; and (iv) as currently structured, the combination of the PVC, port and transport charges double-charges e.spire for interconnection.

Q. CAN YOU EXPLAIN WHY IT IS CRITICAL THAT YOU INTERCONNECT WITH BELLSOUTH AT COST-BASED RATES?

A. In enacting the local interconnection requirements of the 1996 Act, Congress neutralized one of the key barriers to the emergence of a competitive local

Q. WHAT COMPENSATION ARRANGEMENT DOES E.SPIRE PROPOSE FOR THE INTERCONNECTION OF ITS FRAME RELAY NETWORK WITH THAT BELLSOUTH?

A. Tony Mazraani, in his testimony, describes the nature of the Frame Relay interconnection e.spire seeks in detail. As he makes clear, there are three components to the interconnection e.spire seeks: (i) NNI ports at the e.spire and BellSouth Frame Relay switches that will be interconnected, (ii) the transmission or transport facility between the ports, and (iii) the process of setting up the DLCIs for every link (or "PVC") that traverses the physical interconnection. This third element, the customer access link or UNI, is the functional equivalent of the unbundled loop for voice switched services.

The port and transmission facilities can carry both intraLATA (local) and interLATA PVCs. This arrangement is more efficient and is administratively manageable, as Tony Mazraani explains. Under such an arrangement, the parties would determine, using a Percent Local Circuit Use (or "PLCU") factor, as described below, to allocate the costs of the port and transmission facilities to the intraLATA and interLATA jurisdictions. As you will see, e.spire proposes a different rate structure for the two jurisdictions, which would be applied to the percentage of the TELRIC-based charges for the intraLATA and interLATA jurisdictions, respectively.

e.spire's compensation proposal for this interconnection is based upon concepts of reciprocity inherent in Sections 251(b)(5) and 251(c)(2) of the Act. In addition, e.spire's proposal is based upon the cost based pricing standards of

Section 252(d) of the Act.

Q. WHAT RATE STRUCTURE DOES E.SPIRE PROPOSE FOR INTRALATA TRAFFIC?

A. e.spire believes that the costs for the transport facility between NNI ports should be shared evenly by the parties, to the extent that the facility is used to exchange local (intraLATA) Frame Relay traffic. For transport, those costs should be the same as the TELRIC-based rates for direct trunked transport of facilities-based circuit switched services. Where BellSouth provisions that facility, e.spire's cost should be 50 percent of TELRIC-based rates for dedicated transport, to the exte- that facility is used for local Frame Relay traffic. Similarly, both BellSouth and e.spire should bear the burden of providing their own respective NNI ports, as is common practice in the industry for the provisioning of interconnection trunks for voice switched traffic between local carriers.

Reciprocity in each case is appropriate because the NNI ports and the interconnection trunks are dedicated facilities such that there is no economical way to measure the volume and directionality of traffic over the bi-directional PVCs. Moreover, the functionality performed by both parties is the same. Accordingly, the best surrogate is to assume the traffic is flowing equally in each direction.

Q. HOW DOES YOUR BASIC COMPENSATION PROPOSAL FOR THE TRANSPORT AND THE NNI PORTS CHANGE TO THE EXTENT THE INTERCONNECTION IS USED TO TRANSPORT INTERLATA FRAME RELAY TRAFFIC?

A. At least until BellSouth can provide interLATA service, e.spire proposes that BellSouth may charge e.spire for the NNI port at BellSouth's switch and the interconnection transport facility between the carriers' switches up to the percentage of non-local use of the facilities. In these circumstances, the facilities are used for "transmission and routing of exchange access" as contemplated in Section 251(c)(2) of the Act either: (1) e.spire is acting as a provider of interLATA service itself, or (2) BellSouth and e.spire are jointly providing the equivalent of exchange access service for a third-party interexchange Frame Relay provider. Because e.spire will be acting as a provider of exchange access services to others and itself, it is entitled to interconnection for that purpose under Section 251(c)(2) and pricing under the standards of Section 252(d) of the Act for the non-local portion of interconnection transport and the BellSouth NNI. That provision covers all interconnection for either telephone exchange service or exchange access service. Such interconnection should be priced at TELRIC-based rates.

Q. HOW SHOULD THE COSTS OF ESTABLISHING DLCIs BE ALLOCATED BETWEEN THE PARTIES?

A. As Tony Mazraani explains in his testimony, each party will have to establish a DLCI at its NNI port for each PVC that traverses the interconnection facility. For local PVCs, each party should bear its own costs of establishing these DLCIs. For interLATA PVCs, e.spire is willing to pay BellSouth's costs to establish the DLCI on BellSouth's end, but at TELRIC-based or other incremental cost-based rates. As Mr. Mazraani explains, establishment of the DLCI is a one-time activity

performed at the time each PVC is set-up. Accordingly, the only charge for the DLCI or set-up piece should be a non-recurring charge. Unlike the NNI port and the interconnection facility, e.spire believes any recurring charges for DLCI establishment are unwarranted and unsupported by costs incurred by BellSouth. Therefore, there should be not monthly recurring charge for PVCs, as proposed by BellSouth.

Q. HOW DOES E.SPIRE PROPOSE THE PARTIES DETERMINE THE EXTENT TO WHICH INTERCONNECTION FACILITIES ARE USED FOR LOCAL FRAME RELAY?

A. e.spire proposes that all intraLATA Frame Relay traffic be considered local. In other words, where both End User locations are in the same LATA, PVCs between those locations should be treated as local. Treating something less than all intraLATA Frame Relay traffic as local would be inconsistent with BellSouth's own retail tariff for Frame Relay services. Unlike its voice services, BellSouth's Frame Relay tariff makes no geographic distinctions (*i.e.*, local versus non-local) among its intraLATA Frame Relay services, meaning, in effect, that the entire LATA is local. e.spire, too, plans to make no geographic distinctions among its intraLATA Frame Relay services. To determine how much of the traffic between Frame Relay switches is local, e.spire proposes that the parties simply take the total number of PVCs over the transport facilities between the switches divided into the number of local PVCs over that transport facility. The result is what e.spire calls the Percent Local Circuit Use, or

"PLCU." Given that PVCs are dedicated and the traffic over the PVCs is not measured, using the PLCU is a reasonably cost-effective approach.

Q. WHAT PRICING METHODOLOGY OR METHODOLOGIES ARE APPROPRIATE FOR ESTABLISHING COMPENSATION FOR TRANSPORT AND TERMINATION OF LOCAL TELECOMMUNICATION TRAFFIC?

A. Under Section 252(d)(2) of the 1996 Act, the terms and conditions for Transport and Termination of traffic are just and reasonable if (1) they provide for the mutual and reciprocal recovery of costs, and (2) costs are determined on the basis of a reasonable approximation of the additional costs of terminating calls. The Act does not preclude arrangements that waive mutual recovery, such as bill-and-keep arrangements (Section 252(d)(2)(B)). Each party is entitled to recover its *net* additional cost in terminating the other party's traffic. Since the local traffic exchanged in a Frame Relay application is balanced (because the channel both ways is always "on"), the costs should be equivalent, and no exchange of billing is required.

The facilities in BellSouth's network on the end-user side of the NNI port – the access link and UNIT – are recovered from its End User customers on a dedicated basis through flat rate monthly charges. The same is true with e.spire's End User charges and network. Since the carriers thus will fully recover their costs for both originating and terminating Frame Relay traffic through End User monthly charges, there are no additional costs for which compensation will be necessary.

Q. WITH AN INTERLATA PVC, HOW WILL BELLSOUTH BE COMPENSATED FOR THE PIECE OF THE FRAME RELAY LINK ON ITS END USER'S SIDE OF THE NNI PORT?

A. As Tony Mazraani indicates in his testimony, the interconnection of Frame Relay networks, in this case, BellSouth's and e.spire's, is very similar in structure to the interconnection of a CLEC's and ILEC's circuit switched service networks. The transport which interconnects both Frame Relay "clouds" and circuit switched networks is similar to the transport which enables a facilities-based CLEC to originate and terminate voice communications with BellSouth's customers in other LATAs. For example, a circuit switched call that originates on e.spire's network and is bound for a BellSouth customer in another LATA, is terminated by the Serving Wire Center and then routed to the appropriate Central Office or Tandem where it is then handed off and transported by the customer's interexchange carrier to BellSouth's network for exchange access services.

As discussed elsewhere in my testimony, in such instances e.spire is either providing exchange access services for itself or on behalf of other interexchange carriers. With Frame Relay services, the transmission of packet-switched communications between LATAs is essentially the same. Specifically, in the case of an e.spire Frame Relay End User originating a call that is bound for a BellSouth Frame Relay customer in another LATA, the call would first terminate to e.spire's Frame Relay switch and then be handed off either to the End User's Frame Relay IXC or to e.spire, where e.spire is providing exchange access

services on behalf of itself. It would then be terminated to BellSouth via the NNI for exchange access services.

Q. WHICH NETWORK ELEMENTS MUST BELLSOUTH PROVIDE ACCESS TO ON AN UNBUNDLED BASIS SO THAT E.SPIRE CAN PROVIDE COMPETITIVE EXCHANGE ACCESS SERVICES TO ITS FRAME RELAY END USERS WITH INTERLATA PVCs THAT TERMINATE TO BELLSOUTH FRAME RELAY END USERS?

A. In order to provide exchange access services to its Frame Relay End Users, e.spire must have unbundled access to transport, NNI port, and the access link to BellSouth Frame Relay End Users' premises. In order for e.spire's customers to complete packet-switched communications to BellSouth's Frame Relay customers, e.spire must have access to the customer's premise via BellSouth's network infrastructure. As with the circuit-switched example, BellSouth is entitled to compensation for providing access to UNEs of its Frame Relay infrastructure utilized by e.spire to terminate packet-switched telecommunications services to BellSouth's End Users.

Q. COULD E.SPIRE PROVIDE EXCHANGE ACCESS SERVICES TO ITS FRAME RELAY CUSTOMERS WITHOUT UNBUNDLED ACCESS TO BELLSOUTH'S NNI PORT, TRANSPORT AND THE CUSTOMER ACCESS LINK?

A. No. Without access to each of these elements, e.spire would not be able to complete Frame Relay switched communications to BellSouth End Users for which PVCs have been established. The PVC, once established, extends from

e.spire's proprietary Frame Relay network to BellSouth's End User's premises. This virtual link requires transport in the form of xDSL compatible interconnection services between the parties' Frame Relay networks, access to BellSouth's Frame Relay switches and access links from BellSouth's Frame Relay switches to its customers' premise equipment. As described in Tony Mazraani's testimony, the PVC is established by setting up pairs of DLCIs in both parties' networks. Therefore, the PVC which is utilized to provide switched Frame Relay services between the parties utilizes the infrastructure of both parties' Frame Relay networks to complete transmissions from one Frame Relay customer to the other.

Any interruption in this infrastructure would prevent the Frame Relay transmission from reaching the destination which is pre-specified by the DLCIs at the request of the End Users. Therefore, e.spire requires unbundled access to the network infrastructure of BellSouth which supports the PVC from the Frame Relay switch to BellSouth's network demarcation point at its Frame Relay customer's premises. BellSouth refers to this demarcation point as the Network to User Interface or "UNI" which is functionally the equivalent of the NID for voice switched services. The combination of the PVC and network infrastructure utilized by BellSouth between the Frame Relay Switch and the UNI is commonly referred to as the customer's access link. The customer access link must be unbundled in order for Frame Relay transmissions to be completed between the parties. Without unbundled access to these three UNEs, e.spire will not be able to

provide exchange access services on behalf of itself or other carriers to BellSouth's Frame Relay End Users.

Q. IS THERE PRECEDENT FOR THE COMMISSION TO DEFINE THE FRAME RELAY CUSTOMER ACCESS LINK AS AN UNBUNDLED NETWORK ELEMENT SUBJECT TO THE CONDITIONS OF SECTION 251 AND 252 OF THE ACT?

A. Yes. In its first report and order implementing the provisions of the Act, pursuant to Section 251(d) of the Act, the FCC enacted rules to implement the Act which set fort a minimum list of UNEs and recognized the state Commissions' authority to further define UNEs in accordance with Section 252(e) of the Act. The Eighth Circuit upheld the FCC's rules defining the legal standard of review for defining a new unbundled network element and the state Commissions' authority to require further unbundling consistent with the FCC's rules.

Q. PLEASE SUMMARIZE E.SPIRE'S PROPOSAL FOR COST-BASED FRAME RELAY INTERCONNECTION?

A. Each party should be responsible for recovering the costs for the UNIT (or its equivalent) on its network and its End User's loop or access link from its End Users. The Commission should order BellSouth to provide unbundled access to its customer's access link from the Frame Relay switch to the UNI. Pricing should be at TELRIC-based rates. The DS1 or DS3 circuit between Frame Relay switches should be set at the cost-based rates adopted for Dedicated Transport. In the absence of TELRIC-based rates for NNI ports, the Commission should grant a surrogate. Thus, e.spire proposes that the NNI ports should be priced at the

TELRIC-based rate for local switching ports. In the absence of TELRIC-based rates for DLCI establishment, e.spire submits that a surrogate of one-half of the incremental Non-Recurring Charge ("NRC") for PVCs in BellSouth's Frame Relay tariff. Since, as Tony Mazraani explains, each PVC requires two DLCIs, one half of the PVC NRC is an appropriate surrogate, as both e.spire and BellSouth will establish one DLCI in every PVC carried over the interconnection.

Collocation

Q. WHAT ISSUES REMAIN TO BE RESOLVED IN CONNECTION WITH PHYSICAL COLLOCATION OPTIONS?

A. The availability of Physical Collocation space – and the terms upon which such space is made available – is one of the hottest topics in the interconnection area. In light of the ILECs' reticence to cooperate in combining UNEs, Physical Collocation arrangements often provide the only satisfactory means to obtain access to UNEs. Without dwelling on the subject, our experience is that Virtual Collocation is a very poor alternative. Flexibility is sorely limited, and reliance on the ILEC for service is less than ideal. Indeed, the sudden interest in Advanced Telecommunications Services has made Physical Collocation issues even more important, since Physical Collocation may be the only feasible way to interconnect with UNEs required to provide xDSL services.

The problems with Physical Collocation fall into five general categories: (i) space is scarce or unavailable in many critical Central Offices; (ii) the expense of Physical Collocation is so high as to create a barrier to entry outside of major business centers; (iii) delays in obtaining Physical Collocation arrangements are

impeding market entry substantially; (iv) restrictions on the types of equipment permitted in the Collocation space sometimes prevents efficient networking; and (v) restrictive work rules unduly drive up operational costs. The FCC currently is tackling those issues in its Advanced Services Rulemaking, but e.spire believes that state Commissions can resolve many of the issues without federal involvement.

I am happy to report that we made significant progress on some of these issues during our negotiations. For example, BellSouth – to its credit – agreed for the first time to make available "cageless" collocation (in shared space), allow limited "sharing" of collocation cages, to provide such cageless space without a minimum space requirement and to charge e.spire only its pro rata portion of Space Preparation Fees, even if it is one first collocated carrier at a particular Central Office. These are very important developments.

However, as I will discuss hereafter, a number of critical issues remain to be resolved. And Commission action is required to insure that limitations on Collocation alternatives do not become a key barrier to the development of local competition.

Q. SHOULD E.SPIRE BE PERMITTED TO SUBLEASE ITS PHYSICAL COLLOCATION SPACE TO OTHER TELECOMMUNICATIONS CARRIERS?

A. Yes. There are several measures that the Commission can and should take to ensure that competitors can collocate more efficiently and effectively. Requiring BellSouth to allow for shared cage collocation and cage subleasing of existing and

future collocation space are two of them. Recognizing that current ILEC Physical Collocation practices constitute one of the most formidable barriers to competitive entry, the FCC and many state Commissions already are considering mandating shared cage collocation and cage subleasing. In comments filed in the FCC's *Advanced Services Rulemaking*, even some ILECs supported these alternatives to traditional collocation.

By requiring BellSouth to allow competitors, such as e.spire to share cages with and sublease Physical Collocation space to other telecommunications carriers, this Commission can reduce collocation expenses and increase the efficiency of End-Office space utilization significantly – both results will lead to an increase in competitive service alternatives available to End Users. Shared cage collocation and subleasing reduce competitors' collocation expenditures by allowing them to split overhead costs with other carriers. Shared cages and subleasing also will help maximize the number of carriers that can collocate in a Central Office by allowing carriers the flexibility to more closely match their space procurement with their actual needs. e.spire and other competitors have been forced by BellSouth to secure at least 100 square feet of collocation space – in many cases, there is extra space in competitors' cages that, unless subleased to another competitor, would be wasted. By maximizing the number of competitors that can collocate in a Central Office, shared cage collocation and subleasing also conserve scarce collocation space in BellSouth's Central Offices. To ensure that all of these benefits are realized, the Commission should require BellSouth to

incorporate provisions allowing for shared cage collocation and cage subleasing in its interconnection agreement with e.spire.

Q. IF THE COMMISSION DECLINES TO ENDORSE A GENERAL SUBLEASING REQUIREMENT, SHOULD AN EXCEPTION BE MADE TO ALLOW E.SPIRE TO SUBLEASE ITS EXISTING PHYSICAL COLLOCATION SPACE?

A. Yes. As I just explained, e.spire and many other CLECs have been forced to take Physical Collocation space from BellSouth in 100 square foot minimums with 50 square foot additional increments. In this arbitration proceeding, e.spire hopes that the Commission will take action to eliminate BellSouth's arbitrary and potentially wasteful minimum space requirements. To the extent the Commission eliminates or reduces BellSouth's minimum space requirements, e.spire believes that the Commission also should allow e.spire to sublease its existing Physical Collocation space, so that e.spire no longer is penalized by the exceedingly large minimums imposed by BellSouth in the past.

Q. SHOULD E.SPIRE BE ABLE TO ESTABLISH ADJACENT COLLOCATION ARRANGEMENTS WITH BELLSOUTH?

A. Yes. Adjacent Collocation is an attractive alternative to Physical Collocation that has been approved by some states and currently is being considered for incorporation into national collocation requirements by the FCC. There are two general varieties of Adjacent Collocation. With the first, "Adjacent On-Site Collocation", the ILEC builds a structure on the same property as the Central Office and permits CLECs to place their equipment in this structure. The ILEC

then provides a connection for CLEC equipment to the Main Distribution Frame ("MDF") in the Central Office. The second form of Adjacent Collocation, "Adjacent Off-Site Collocation" involves the construction or rental by either the ILEC or CLEC of property near the Central Office, but not on the same property as the Central Office. Carriers establish a Mid-Span Meet, including both fiber and copper connectivity that connects the CLEC's equipment to the Central Office and the MDF therein. Adjacent Collocation provides CLECs with the same functionality as direct Physical Collocation while alleviating space exhaust and security concerns, and Physical Collocation overpricing concerns. Having this alternative available will give CLECs more opportunity to optimize the available collocation arrangements, and their own resources.

Despite these benefits, BellSouth has not agreed to incorporate provisions allowing for Adjacent Collocation in its interconnection agreement with e.spire. Although, BellSouth's reasons for refusing to agree to the use of Adjacent Collocation are not clear, I should point out that BellSouth's position is directly at odds with its position on Remote Terminal collocation, as articulated by BellSouth in comments filed in the FCC's Advanced Services Rulemaking. There, BellSouth argued against the FCC's tentative conclusion that Remote Terminal collocation must be made available by ILECs and argued that "cross-box to cross-box" collocation should be used instead. As I understand it, cross-box to cross-box collocation is the same thing as adjacent collocation. If BellSouth can offer Adjacent Collocation at the remote terminal, there is no valid reason why it

should be allowed to foreclose competitors from using Adjacent Collocation at End Offices.

In light the benefits that can be gained by allowing CLECs to use Adjacent Collocation and with BellSouth's own indirect admission that such an option is both useful and feasible, the Commission should require that provisions that allow for Adjacent Collocation be incorporated into the e.spire/BellSouth interconnection agreement. Further, with respect to "Adjacent Off-Site Collocation", the Commission should make clear that the cost of the Mid-Span Meet must be shared by BellSouth and e.spire.

Q. SHOULD BELLSOUTH BE ABLE TO IMPOSE RESTRICTIONS ON THE TYPES OF EQUIPMENT THAT E.SPIRE CAN COLLOCATE?

A. No. The issue here is whether compliance with "NEBS Level 1" safety standards is sufficient to protect the public switched network. e.spire believes that it is and it is willing to comply with NEBS safety standards to the extent that BellSouth complies with those standards itself. However, e.spire is not willing to accept BellSouth's attempt to unilaterally impose NEBS performance and reliability standards – or any other stamps of approval on its collocated uipment. Permitting such policing by BellSouth gives it undue control over its competition's network deployment – in terms of both timing and equipment choices. There are no valid reasons why BellSouth should have any role in mandating the performance and reliability standards of its competitors. Similarly, there are no valid reasons why compliance with NEBS performance standards and completion of associated testing should provide BellSouth with another means by

which it can obstruct competitors efforts to collocate equipment. e.spire has experienced first-hand the mischief that RBOCs can create by abusing such requirements to delay CLEC equipment deployment. Simply put, except where safety is an issue, BellSouth should not be permitted to dictate our choice of an equipment vendor.

Q. SHOULD E.SPIRE BE REQUIRED TO UTILIZE A CERTIFIED VENDOR TO PERFORM INSTALLATION, PROVISIONING AND MAINTENANCE WORK IN ITS OWN COLLOCATION SPACE?

A. No. There is no valid reason why BellSouth, as it proposes, should be able to require e.spire to hire a BellSouth-certified vendor to work on e.spire's own equipment in e.spire's own collocation space. This simply is another unjustifiable BellSouth position that serves no purpose other than to obstruct competitor's efforts to collocate and drive up the costs of doing so. e.spire has every interest in hiring and will make every effort to hire vendors that properly will perform installation, provisioning and maintenance work on its collocated equipment. In some cases, e.spire may use the same vendors used by BellSouth. In others, it will not. In all cases, e.spire will seek to avoid paying a premium for using a "BellSouth certified" vendor. The choice of which outside vendors will work in e.spire's collocation space should be e.spire's alone. BellSouth has no right to set e.spire's outside sourcing standards – the Commission should reject its attempt to do so. e.spire particularly objects to BellSouth's refusal to agree to e.spire's desire to use its own employees for this work.

Q. SHOULD E.SPIRE BE REQUIRED TO PAY BELLSOUTH FOR A SECURITY ESCORT AND/OR INSTALLATION OF SECURITY CAMERAS OR COMPUTERIZED TRACKING SYSTEMS TO MONITOR E.SPIRE EMPLOYEES AND VENDORS WHEN ACCESSING OR WORKING IN E.SPIRE's COLLOCATION SPACE?

A. No. BellSouth should not be permitted to complicate collocation and raise its competitors costs by unilaterally imposing completely unnecessary monitoring expenses on its competitors. Again, we are talking about e.spire employees and vendors in e.spire's space. Here, too, e.spire has every reason to make sure that there is no unauthorized entry or activity in its collocation space. However, the security concerns involved are exclusively e.spire's. Nevertheless, e.spire has offered to indulge BellSouth's desire to maintain an Orwellian degree of control over leased Central Office space by allowing BellSouth, at its own expense, to use cameras and tracking systems to monitor activity in e.spire's collocation space. If such solutions are implemented, strict confidentiality requirements will be required to ensure that BellSouth does not misuse information gleaned from monitoring e.spire's activities. The Commission may decide that consumers will be better off if such unnecessary costs are avoided altogether. In any event, I urge the Commission to find that BellSouth may not impose unnecessary monitoring costs on e.spire and, in turn, on its customers.

Q. HAS E.SPIRE BEEN ABLE TO REACH AN AGREEMENT WITH BELLSOUTH ON STANDARDIZED PROCEDURES REGARDING

SPACE AVAILABILITY INFORMATION AND EXHAUST NOTIFICATION?

A. No. The issue here is whether e.spire has a right to access information necessary to plan its business strategy in general and collocation strategy in particular. What e.spire seeks, and what BellSouth has not agreed to provide, is a monthly space availability report for its central offices and remote terminals. In its *Advanced Services Rulemaking*, the FCC already has tentatively concluded that ILECs must provide CLECs with information on the availability and use of collocation space in ILEC End Offices. This conclusion is consistent with FCC precedent which establishes that competitors should have access to the same information that ILECs have access to.

Commission action requiring BellSouth to report on space utilization will significantly aid e.spire in developing collocation plans. In instances where space is not available in e.spire's Central Office of choice, e.spire will know to apply for a Virtual Collocation arrangement, collocate in a nearby Central Office so that Extended Loop facilities can be used, collocate at an off-site location, or negotiate or subleasing arrangement with another CLEC. In sum, accurate, publicly available summary reports on collocation space utilization will enable CLECs to more efficiently identify collocation alternatives for the End Offices in which they need to collocate. Under the Act, BellSouth has an obligation to provide e.spire with nondiscriminatory access to this information. This Commission can ensure that BellSouth does so by incorporating provisions for a monthly collocation space utilization report in the e.spire/BellSouth interconnection agreement.

Another aspect of this dispute over collocation space information centers on the means by which e.spire is notified of BellSouth's inability to meet its Physical Collocation requests. What e.spire seeks, and what BellSouth has not agreed to provide, is notification within 30 days of such an event and same or next day service of any waiver petition filed with the Commission, complete with all attachments (including floor plans). These requests are reasonable and necessary to allow e.spire to quickly explore alternatives for collocation plans that, at that point, already could be set back by more than 30 days. Space exhaust is a potentially serious impediment to ubiquitous facilities-based competition; one of the ways in which this Commission can alleviate the negative impact caused by space exhaust is to ensure that competitors are advised of the problem as quickly as possible.

Q. 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?

A. No. These intervals are far too long to support competitive market entry and they are unnecessary as a technical matter. In addition, exclusion of time attributable to obtaining government permits introdu[illegible]n unreasonable level of uncertainty. The Commission should reject BellSouth's proposed intervals and adopt in their place, the approach agreed to by Southwestern Bell and its competitors and

approved by the Texas Commission. Under the provisioning intervals agreed to in the Texas Section 271 collaborative proceeding, Southwestern Bell must provision collocation space within 35 business days. e.spire also urges the Commission to adopt a Liquidated Damages provision like that contained in Southwestern Bell's interconnection agreement with AT&T. Under that agreement, AT&T has the right to Liquidated Damages when Southwestern Bell misses provisioning intervals. Under Texas Commission rules, all CLECs have a right to obtain Liquidated Damages from Southwestern Bell for missed collocation provisioning intervals. In sum, e.spire urges the Commission to adopt the Texas model for collocation intervals and liquidated damages. Doing so will provide BellSouth with a tangible incentive to provision collocation arrangements in a timely and predictable manner that is necessary for competition to take hold and for consumers to gain a choice in local carriers.

Q. SHOULD BELLSOUTH BE REQUIRED TO MAKE CAGELESS COLLOCATION SPACE AVAILABLE WITHIN 30 DAYS OR RECEIPT OF A BONA FIDE REQUEST FROM E.SPIRE?

A. Yes. Since no construction is required for cageless collocation, there simply is no reason why such arrangements cannot be provisioned in 30 days or less. Despite this, BellSouth insists that the provisioning intervals for "caged" and "cageless" collocation should be the same. This position is patently unreasonable and serves no purpose other than to delay e.spire's entry into BellSouth's local markets. The Commission should reject such anticompetitive and dilatory tactics and require

that the reasonable 30 day interval proposed by e.spire be incorporated into its interconnection agreement with BellSouth.

Q. SHOULD BELLSOUTH BE REQUIRED TO REIMBURSE E.SPIRE FOR ITS REASONABLE, DEMONSTRABLE AND MITIGATED EXPENSES INCURRED AS A DIRECT RESULT OF BELLSOUTH'S FAILURE TO DELIVER COLLOCATION SPACE WITHIN THE REQUIRED INTERVALS?

A. Yes. If the Commission declines to adopt automatic Liquidated Damages for BellSouth failures to meet provisioning intervals, it, nevertheless, should require BellSouth to reimburse e.spire for its reasonable, demonstrable and mitigated expenses incurred as a direct result of BellSouth's failure to deliver collocation space with the required interval. Unless BellSouth has such an incentive to provision collocation in a timely manner, the "best efforts" it promises likely will delay competition and deny consumers the choices and savings that competition promises to bring. To ensure that BellSouth actually uses its best efforts, the Commission should incorporate into the e.spire/BellSouth interconnection agreement a provision under which BellSouth must reimburse e.spire for its reasonable, demonstrable and mitigated expenses incurred as a direct result of BellSouth's failure to deliver collocation space with the required interval.

Q. SHOULD E.SPIRE BE ALLOWED TO ORDER "CAGED" COLLOCATION SPACE OF ANY SIZE WITH NO MINIMUM SPACE REQUIREMENT?

A. Yes. As I explained earlier, BellSouth's policy of requiring 100 square foot minimum and 50 square foot additional increments is arbitrary and wasteful. Because efficient space utilization is critical to supporting competitive entry, this Commission should reject minimum square footage requirements and should require BellSouth to allow CLECs to take only the space they need. Even if the Commission is convinced that there is some benefit to be gained by allotting collocation space in standard-sized parcels, the minimum size measures should be reduced. GTE, for example, recently agreed with e.spire to establish a 25 square foot minimum for collocation space, with 25 foot increments for addition of space. e.spire believes that the GTE approach represents a reasonable compromise position.

Q. SHOULD BELLSOUTH BE REQUIRED TO CREDIT NRCs PAID BY E.SPIRE FOR ESTABLISHING VIRTUAL COLLOCATION DUE TO UNAVAILABLE SPACE WHEN PHYSICAL COLLOCATION SPACE LATER BECOMES AVAILABLE?

A. Yes. e.spire should *not* be required to pay NRCs twice in instances where it was forced to establish Virtual Collocation temporarily while waiting for BellSouth to make Physical Collocation space available. Significantly, BellSouth agrees with e.spire in principle. What the parties disagree on is BellSouth's desire to put a time limit on the availability of such a credit. Specifically, BellSouth takes the position that credits should be available only if Physical Collocation space becomes available within 180 days of submission of the order for Virtual Collocation . e.spire urges the Commission to reject BellSouth's attempt to

impose such a limitation because there simply is no justifiable legal or policy reason for it.

Indeed, BellSouth's 180 day window should be rejected because it provides BellSouth with no incentive to expedite and, in fact, a perverse incentive to delay provisioning of Physical Collocation. For example, in Georgia today, for example, a number of e.spire requests for Physical Collocation already have been pending for over 180 days. For competition to take hold and prosper, BellSouth must have every incentive to accommodate competitors' requests for Physical Collocation. Accordingly, e.spire asks the Commission to reject BellSouth's proposed time limitation and require – without time limitation – BellSouth to credit NRCs paid by e.spire for Virtual Collocation in instances where it was forced to establish Virtual Collocation temporarily while waiting for BellSouth to make Physical Collocation space available.

Q. WHAT FACTOR SHOULD BE APPLIED TO THE SQUARE FOOTAGE OF SPACE ACTUALLY OCCUPIED BY E.SPIRE EQUIPMENT TO COMPENSATE BELLSOUTH FOR USE OF COMMON AREAS?

A. e.spire does not object to paying its fair share for use of common space in BellSouth Central Offices. However, it does object to paying more than that – as, BellSouth has asked it to do by proposing a contribution factor of 2.5. BellSouth's proposed contribution factor is so excessively high that it likely would result in competitors paying all of BellSouth's share of common space costs, with enough left over to wallpaper the common space with hundred dollar bills. Obviously, competitors and consumers should not have to pay such a

premium. Indeed, the Act prohibits it. Collocation must be provided at cost-based rates. Although the science of establishing these rates is rough, the fact that GTE sought a 0.5 contribution factor in its collocation agreement with e.spire should indicate that BellSouth's figure – which is five times as high – simply bears no reasonable relation to cost. The Commission should reject this attempt by BellSouth to drive up its competitors costs – and, indirectly, consumer rates. *At most*, a 0.5 contribution factor should be incorporated into the interconnection agreement between e.spire and BellSouth.

Q. SHOULD E.SPIRE BE ALLOWED A "WALK-THROUGH" VERIFICATION WHEN BELLSOUTH DENIES IT COLLOCATION SPACE IN A CENTRAL OFFICE DUE TO ALLEGED UNAVAILABILITY OF SPACE?

A. Yes. By subjecting BellSouth to the possibility of having to demonstrate space exhaustion in a face-to-face, on premises meeting, this Commission likely would eliminate many disputes over space exhaust. The FCC already recognized that allowing for such tours could act as a valuable deterrent against false claims of space exhaustion and has tentatively concluded in its *Advanced Services Rulemaking* that competitors should be permitted to verify ILEC claims of space exhaust by requesting a walkthrough. Indeed, the record in that proceeding shows that ILEC claims of space exhaust often are factually incorrect. BellSouth, however, has not agreed to allow e.spire to verify claims of space exhaust by visual inspection. e.spire believes that BellSouth's position lacks any credible legal or policy justification and should be rejected by the Commission. To

provide a deterrent against false claims of space exhaustion, the Commission should incorporate into the e.spire/BellSouth interconnection agreement provisions that allow e.spire to tour BellSouth offices to visually verify claims of space exhaust.

Q. 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?

A. Yes. To be clear, e.spire does not dispute BellSouth's right to be notified of such assignments. However, BellSouth's position that e.spire must obtain consent from it prior to making such assignments is preposterous. Surely, BellSouth would not give e.spire the right to approve or reject its own corporate transactions – it should not be permitted to use its unequal bargaining power to impose reverse conditions on e.spire. Because there is no valid legal or policy justification for BellSouth's position, the Commission should reject and strike it from the interconnection agreement between e.spire and BellSouth.

Q. SHOULD E.SPIRE BE PERMITTED TO SELF-SUPPLY A DIRECT CROSS-CONNECTION TO ANOTHER COLLOCATED TELECOMMUNICATIONS CARRIER IN THE SAME BELLSOUTH CENTRAL OFFICE?

A. Yes. The Commission should specify that BellSouth may not limit e.spire's efforts to cross-connect collocated equipment – either within the same collocation area or between different areas of the same Central Office. The Texas

Commission already has adopted rules that require ILECs to allow CLECs to install their own cross-connections, even in instances where two CLEC collocation arrangements are located on separate floors or are otherwise noncontiguous. The Texas rules also specify that the CLECs *themselves* are allowed to perform all installation associated with the cross-connects. The FCC currently is considering whether to incorporate similar rules in its national collocation rules.

BellSouth's attempt to impose restrictions on cross-connects lacks any legal, policy or technical justification. Moreover, BellSouth's attempt to insert itself into the process is just another ploy by which it hopes to drive up the costs of its competitors and, indirectly, the rates of consumers The Commission should reject this BellSouth's position in favor of the Texas approach which e.spire espouses.

Q. SHOULD E.SPIRE BE PERMITTED TO COLLOCATE IN BELLSOUTH REMOTE TERMINALS?

A. Yes. e.spire is entitled to interconnect with BellSouth at any technically feasible point. Collocation is an essential component of efficient and effective interconnection. In its *Advanced Services Rulemaking*, the FCC already has tentatively concluded that collocation at Remote Terminals is technically feasible and should be provided. BellSouth's proposal for "cross-box to cross-box" collocation at remote terminals also recognizes that technical feasibility and practical importance of Remote Terminal collocation. While cross-box to cross-box collocation is an attractive alternative for cases in which Remote Terminal

collocation is not feasible due to space constraints, it should be offered *in addition to* Remote Terminal collocation and not in place of it.

As I explained earlier, Remote Terminal collocation is essential to competitors' efforts to obtain access to Subloop elements and to the provisioning of advanced services such as xDSL. Without Remote Terminal collocation, competitors' efforts to break down BellSouth's monopoly stranglehold on the loop will be stymied and their efforts to provide xDSL services, in some cases, will be foreclosed entirely. This Commission should act now to prevent both of these outcomes. To ensure competitive access to Sub-Loop elements and to encourage the deployment of Advanced Telecommunications Services, this Commission should require BellSouth to offer both Remote Terminal collocation *and* the cross-box to cross-box alternative proposed by BellSouth.

Q. SHOULD SPACE PREPARATION FEES BE ESTABLISHED ON AN ICB BASIS?

A. No. Again, e.spire seeks predetermined cost-based rates and BellSouth refuses and offers only highly unpredictable ICB pricing for collocation space preparation. As with numerous other attempts by BellSouth to impose ICB pricing, e.spire objects on the grounds that ICB rates frequently do not end up bearing a reasonable relation to cost – that is, ICB rates typically recover costs plus monopoly profits. On the other hand, having predetermined cost-based rates for space preparation likely would control expenses and would allow competitors, such as e.spire, to better plan collocation and market entry. ICB rates for space preparation have varied enormously across BellSouth's regional service territory.

Unfortunately, by the time e.spire is presented with the rates, it must proceed with collocation and it has virtually no opportunity to challenge BellSouth's rates by requesting a rate case at the Commission. To correct this problem, the Commission should establish permanent rates in this proceeding.

Numbering and Number Portability

Q. WHAT PROGRESS WAS MADE DURING THE NEGOTIATION ON THE SUBJECTS OF NUMBERING AND NUMBER PORTABILITY?

A. Again, the vast majority of issues were resolved through negotiations. However, a few issues remain to be resolved by the Commission

Q. WHAT ISSUES ARE OPEN?

A. The key disagreement relates to the transition from Interim Number Portability ("INP") arrangements to permanent Local Number Portability ("LNP"). "Number portability" refers to the ability to change providers of local exchange services without the necessity of changing the affected customer's local telephone number. Initially, number portability was provided via interim means, while a permanent LNP was being developed and deployed in accordance with roll-out schedules established by the FCC. The parties agree on how INP and permanent LNP should be provided, but disagree on the process of conversion from INP to LNP.

Q. PLEASE EXPLAIN E.SPIRE'S POSITION ON THE PROCESS THAT SHOULD APPLY TO CONVERSION OF INP TO LNP.

A. When an ILEC converts its systems from INP to LNP in a particular geographic market, it has two immediate impacts upon e.spire. First, we must convert our existing base of customers form INP to LNP. Second, we must cease submitting

INP-based orders for installation. e.spire does not object to either of these circumstances, but we submit that the carriers involved need to work together cooperatively on the timing of each.

You must understand that actual timing of a conversion form INP to LNP is largely within the control of the ILEC. Although the FCC has published a market-by-market set of deadlines, ILECs often have sought extensions. In other cases, they have elected to convert ahead of schedule. This presents tremendous coordination problems for CLECs such as e.spire that have networks and customers in cities served by numerous ILECs across the country.

Thus, we propose that a temporary extension procedure be incorporated into the INP-to-LNP conversion process. Specifically, e.spire has requested that BellSouth allow e.spire to extend the period during which the base of INP customers need to be converted to LNP and that INP-based orders will be accepted for processing. The extension should be available automatically upon request for a one-time transition period of up to six (6) months. This recognizes that the parties are acting as co-carriers, and that neither side should be able to unilaterally dictate the conversion schedule.

Q. ARE THERE ANY OTHER DISPUTES RELATING TO NUMBER PORTABILITY?

A. Yes. In many markets, INP will still be utilized for some time to come. Where INP is used, it is critical that the installation of a physical loop and the associated INP for that line be coordinated so that they happen as close to simultaneously as

possible. If the provisioning of INP is delayed, a customer's incoming calls will be misdirected.

e.spire has asked BellSouth to commit to update the switch translations for INP within five minutes of the cutover of an unbundled Local Loop. As I discussed earlier, this interval is consistent with the terms included in e.spire's initial interconnection agreement with BellSouth, and with what BellSouth told the FCC it is capable of doing in its requests for Section 271 long distance authority. There is no reason why BellSouth should not be required to include its representation to the FCC as a commitment in the Agreement. This is a critical quality-of-service issue which should not be left unaddressed.

Q. EXPLAIN THE DISAGREEMENT OVER THE ASSESSMENT OF SWITCHED ACCESS CHARGES FOR CALLS PLACED TO INP-PORTED NUMBERS.

A. Billing of interexchange Switched Access charges is complicated when calls are terminated to INP-ported numbers utilizing the Remote Call Forwarding ("RCF") technology. In these situations both carriers involved provide a portion of the Switched Access Service. Namely, BellSouth incurs some cost in redirecting the call to e.spire via RCF, and e.spire incurs the cost of terminating the call to the ported number. As I understand it, the problem is further compiicated by the fact that BellSouth normally is in possession of the billing records needed to render an invoice to the IXCs for whom the terminating access service is provided.

The solution is to establish a system where (i) associated Switched Access revenue is split on a Meet Point Billing-like basis, and (ii) BellSouth bills the

charges and settles with e.spire by remitting its portion of the revenue to it. We have included such a proposal in the draft Agreement, and ask the Commission to order its adoption.

OSS, Ordering, Provisioning and Repair

Q. DID THE PARTIES RESOLVE ALL ISSUES RELATED TO OPERATIONAL SUPPORT SYSTEMS, ORDERING AND PROVISIONING?

A. Again, we made significant progress, but a number of critical items remain to be resolved by the Commission. Some of these issues may appear mundane, but they germanely affect customer service, and are critical parts of the "blocking and tackling" required to provide efficient, high quality and seamless service to End Users.

Q. WHAT TYPES OF ELECTRONIC INTERFACES HAS BELLSOUTH OFFERED TO E.SPIRE FOR ORDERING AND PROVISIONING OF UNEs AND RESALE SERVICES OFFERED IN ITS INTERCONNECTION AGREEMENT?

A. BellSouth has offered a combination of electronic interfaces to fulfill e.spire's pre-ordering, ordering, billing and maintenance requirements. At some point BellSouth has promised to provide access to Electronic Data Interchange which will comply with all relevant and current industry standards for pre-ordering, ordering, maintenance and billing. Initially, only the following applications will be made available: LENS for pre-ordering, EC-Lite and API for ordering and provisioning, and ECTA and TAFI for maintenance and repair issues. The OSS

interfaces that BellSouth has offered prior to the availability of API, EDI, version 7.0 does not provide consolidated access to one electronic interface which is capable of providing access to pre-order, order, maintenance and billing functions.

Q. WHAT TYPE OF INTERFACE IS E.SPIRE REQUESTING?

A. Our request is simply that BellSouth keep pace with the evolving industry standards in this area. There is general agreement that it is desirable to have a Single Point of Connect ("SPOC") EDI interface available for all pre-ordering, ordering, provisioning, and repair functions. EDI Version 8.0 moves in that direction, and further work is being done by the industry standard-setting bodies, *i.e.*, ATIS, OBF and ANSI. We ask that BellSouth be obligated to implement these systems as they are developed.

Q. WHY DOES E.SPIRE REQUEST ACCESS TO A CONSOLIDATED INTERFACE WHICH PROVIDES ACCESS TO PRE-ORDERING, ORDERING AND PROVISIONING, MAINTENANCE AND BILLING FUNCTIONS?

A. There are two primary reasons why e.spire must have access to an integrated OSS interface. The first reason is to reduce training and systems development costs that are spent on interim OSS solutions. Prior to the adoption of API and EDI Version 7.0 interface, e.spire must spend time and resources to train its employees to order, provision and monitor local services to its customers on each of the ordering and maintenance systems BellSouth has offered. It would be more efficient for e.spire to train its employees to use one system, especially since

access to LENS, EC-Lite, ECTA and TAFI will only be utilized prior to the date EDI becomes commercially available. e.spire also will have to internally provision its ordering and provisioning systems with software compatible to what BellSouth is providing.

The second reason why e.spire requires access to a single OSS interface is so that it can have a meaningful opportunity to compete with BellSouth in its local serving area. In its *Louisiana Section 271 Order*, the FCC commented on the lack of a degree of integration in the OSS applications BellSouth provided to CLECs as one of the factors contributing to its failing to meet its Section 271 burden for providing unbundled access to OSS. In order to compete effectively with BellSouth, e.spire employees must have the same access to pre-order, order, provisioning, maintenance and billing systems (collectively "OSS systems") that BellSouth employees have access to. In its *Michigan Section 271 Order*, the FCC held that a Bell Operating Company ("BOC"), such as BellSouth, must offer competing carriers access to OSS "that are analogous to OSS functions that a BOC provides itself."

For example, BellSouth employees have access to RNS which is a system application that provides a single interface for pre-order, ordering, provisioning, maintenance and billing information. Therefore, e.spire requires access to RNS or its functional equivalent in order for there to be parity in the OSS used by BellSouth employees and that which is offered to e.spire.

Q. WHAT IS BELLSOUTH'S POSITION ON PROVIDING ACCESS TO RNS OR A FUNCTIONALLY SYSTEM?

A. BellSouth has offered CLECs an array of systems, none of which to date has been utilized by a CLEC, alone or in combination, successfully to replicate BellSouth's internal systems. The FCC consistently has ruled that BOCs must provide OSS on a nondiscriminatory basis and at parity to the OSS it provides to itself. Such parity requires access to systems with equivalent speed and ease of use, and nondiscriminatory access to information provided by such systems.

Q. HAS BELLSOUTH OBJECTED TO PROVIDING ACCESS TO OSS INTERFACES, SUCH AS RNS, ON THE BASIS OF THE TYPE OF INFORMATION THAT IS MAINTAINED IN THAT DATABASE?

A. Yes. BellSouth has objected to providing access to pre-order information that is contained in some of its databases on the basis that such information belongs to BellSouth, and should not be available as a part of a customer's records. BellSouth has also refused to provide e.spire access to RNS which is a single interface that BellSouth employees utilize to access information regarding OSS functions, based on its assertion that it has a proprietary interest in the information contained with in this system. This position is wholly inconsistent with the FCC's *Local Competition Order* and its *Louisiana Section 271 Order*. According to the FCC, the ILEC is required to provide nondiscriminatory access to OSS "systems" and "information" contained therein.

Q. HAS BELLSOUTH DENIED E.SPIRE ACCESS TO IMPORTANT PRE-ORDER INFORMATION?

A. Yes. BellSouth has refused to provide e.spire access to the results of pre-testing of complex resale and UNE orders provisioned by BellSouth technicians on

behalf of e.spire. This information is necessary for e.spire to maintain accurate service records on its own customers. e.spire should be afforded access to this information on an electronic basis as a part of BellSouth's OSS offering. BellSouth refuses to provide the results to e.spire electronically or in written form.

Q. ARE THERE ANY INDUSTRY STANDARDS THAT BELLSOUTH HAS NOT COMPLIED WITH IN ITS OSS PROPOSAL FOR INTERCONNECTION AGREEMENTS WITHIN ITS REGION?

A. Yes. BellSouth's proposal is littered with inconsistency with regards to providing access to OSS functions in accordance with relevant industry standards. In particular, BellSouth refuses to agree to language regarding the applicability of OBF and ATIS and ANSI standards. The Ordering and Billing Forum or "OBF" and the Alliance for Telecommunications Industry Solutions or "ATIS" are industry associations that specialize in creating and maintaining industry standards for pre-order, order and billing information, whereas ANSI specializes in creating industry standards for Electronic Bonding ("EBI") applications. The FCC has relied on standards setting organizations such as OBF, ATIS and ANSI to create national and uniform standards for OSS. Despite the credentials and broad participation of the industry in setting standards through these organizations, BellSouth refuses to uniformly and unequivocally commit itself to adopt forthcoming OSS standards, business rules and specifications adopted by these organizations for the term of the interconnection agreement between the Parties.

The reluctance of BellSouth to continue to implement OSS standards as they are adopted by these organizations is inapposite to their representations on point to the FCC in its 271 Petition for authority to provide in-region interLATA services. In its Louisiana petition, BellSouth instructed the FCC that it had met all industry standards with regards to provisioning UNEs. The FCC in that proceeding commended BellSouth for its compliance with such standards, but instructed BellSouth that industry standards do not exist for all aspects of OSS, such as pre-ordering functions, and therefore compliance with industry standards is not sufficient to meet the statutory requirements of providing nondiscriminatory access to OSS.

BellSouth's proposed terms of the interconnection agreement for performance intervals on issuing Firm Order Confirmations ("FOCs"), notices of completion, jeopardy reporting and reject notification are all inconsistent with existing OBF standards for ordering and provisioning of these notifications. For example, the time to provision a FOC or a notification of order completions for electronic orders is four hours, not the 24 hour intervals proposed by BellSouth.

Q. HOW WILL THE PARTIES MANAGE THEIR INTERIM ORDERING AND PROVISIONING SYSTEMS AS THEY MOVE FROM THE CURRENT ORDERING INTERFACES, *i.e.*, LENS, TO EDI 7.0?

A. Within the industry, CLECs and ILECs routinely implement new upgrades to existing systems or conversions to intermediate OSS while the long-term interface solutions, *i.e.*, EDI, are being developed. The process commonly is referred to as "change management". Through the course of these negotiations, the Parties have

been unable to come to mutual terms and conditions governing the change management process.

It is e.spire's position that the change management process should have some degree of flexibility to accommodate the parties review and implementation of new industry standards. Despite the need for flexibility, the change management process must include precise terms and conditions for forward notification of system upgrades, review of draft specifications and determination of mutually agreeable time-frame during which BellSouth continues to offer access to the existing interface. For the notification and review requirements, e.spire seeks to require BellSouth to produce draft specifications within 60 days of when a new industry standard is adopted and that e.spire is provided 15 days to review BellSouth's proposal. As for a commitment by BellSouth to keep existing access to existing OSS interface functional, this time-frame should be at least as long in duration as the mutually agreed to implementation interval.

These requirements will create a smooth transition from interim interface solutions to EDI, with minimal impact to the processing, billing and maintenance of customer orders.

Q. WILL CHANGE MANAGEMENT BE NECESSARY AFTER THE PARTIES MOVE TO A SINGLE EDI INTERFACE FOR OSS?

A. Yes. Even after EDI 7.0 is fully implemented, the industry standard setting organizations will continue to make recommendations to the industry regarding software and equipment upgrades. Should OBF, ATIS, ANSI or another industry forum endorse new standards or recommend system upgrades, e.spire will need a

process to manage the conversion to new industry standards. The change management provisions proposed by e.spire would be applicable to current and future implementation of industry standards.

Q. SINCE THE FCC HAS HELD THAT MEETING INDUSTRY STANDARDS IS NOT SUFFICIENT INDICATION THAT BELLSOUTH HAS MET ITS STATUTORY OBLIGATIONS TO PROVIDE OSS FUNCTIONS, WHAT OTHER PRE-ORDERING, ORDERING, PROVISIONING, BILLING OR MAINTENANCE NOTIFICATIONS DOES E.SPIRE REQUIRE IN ORDER TO COMPETE EFFECTIVELY WITH BELLSOUTH?

A. e.spire requires prior notification by BellSouth, preferably on an electronic basis, of when one of its customers contacts BellSouth for disconnection of service. BellSouth refuses to provide this information to e.spire, prior to disconnecting the customer. BellSouth should be prohibited from disconnecting a customer without receiving a disconnect for the e.spire end-user from e.spire's ordering and provisioning center. Without this safeguard, it will be impossible for e.spire to determine why the customer issued the disconnect order, confirm that such order was in fact requested, or prepare its billing and other systems for the disconnect. Moreover, this situation represents another example of the lack of parity within the ordering and provisioning of CLEC orders and orders that BellSouth provisions for itself. If a BellSouth customer requested to migrate to e.spire, e.spire could not provision the disconnect order without first contacting BellSouth and providing adequate authorization that the customer was authorizing such

change in local carrier. Yet, BellSouth can unilaterally disconnect service of an e.spire customer without first contacting e.spire to validate the order.

Not only does this disparity present an opportunity for unauthorized changes of a customer's local exchange carrier, critically it prevents e.spire from receiving necessary information which it needs to accurately bill its customer. If e.spire does not have notice of disconnects, it will still continue to bill the customer for services which it is no longer providing. This will result in the perception of poor customer service quality attributable to e.spire. e.spire must have forward notification of disconnect orders in order to provide local services at parity to that which BellSouth provides to its customers.

Q. WHY IS IT IMPORTANT FOR E.SPIRE TO RECEIVE NOTICES OF COMPLETION OF ORDERS IN A TIMELY MANNER?

A. Notification of when an order complete is completed is the only means by which e.spire is informed that a customer's services have been initiated, disconnected or changed as requested by an order. Prior to notification of completion, e.spire does not update its billing systems to reflect changes in service that are implemented pursuant to completion of such orders. By contrast, BellSouth has first hand knowledge of the completion of the order when its technicians perform the work requested. Without notification of that orders are completed, e.spire will generate bills to its customers that do not accurately reflect the services being provided to that customer.

The OBF standard for sending a notice of completion ("NOC") via EDI is four hours from the time of completion of the order. e.spire requests that a four

hour interval be adopted and implemented by the parties. This requirement will contribute to greater accuracy in customer billing.

Q. WHY IS IT IMPORTANT FOR E.SPIRE TO BE NOTIFIED AS SOON AS POSSIBLE WHEN BELLSOUTH CHANGES A CUSTOMER'S DESIRED DUE DATE BY MOVING THE DUE DATE TO AN EARLIER TIME?

A. Many Desired Due Dates ("DDD") are pre-scheduled with customers prior to the orders being submitted. These due dates are prescheduled to insure that the technicians completing the orders have access to the necessary equipment on the customer's premise ("CPE") or require that service be interrupted while test and turn-up activities are conducted. When BellSouth notifies e.spire that it will have to change the time or date of a customer's DDD, the customer will presume that such change is a reflection on the service quality of e.spire. Therefore, it is essential that e.spire have as much notice as possible to contact the customer and reschedule the DDD for a time that is convenient for the customer, not just BellSouth.

Many of the work orders that require access to CPE also involve providing INP and LNP services to the customer. If BellSouth provisions the facilities too early, this may result in an unforeseen service outage. The provisioning of INP and LNP requires coordination with the customer, and both parties' End Office technicians. If the cut is too early, the customer will not only be out of service during the cutover which should only be a five minute interval for a single loop. The customer will continue to experience service outage until the End Office technicians have implemented the RCF services required to port the number. The

same scenario also holds true when BellSouth is late in provisioning the cutover. In either case, prompt notification of missed DDD will help e.spire minimize the impact to its customer. This issue becomes more critical as we migrate to LNP. e.spire will order the LNP through the NPAC, not through BellSouth. If e.spire does not receive notice of a delayed cutover, it cannot adjust its independent LNP request accordingly.

Q. WHAT SHOULD THE INTERVAL BE FOR NOTIFICATION OF A CHANGE IN DDD?

A. Whether BellSouth provides services earlier than anticipated by the DDD or later, it should be required to provide notification of a missed due date, as soon as it discovers that it cannot make the DDD. This notification of a missed due date is commonly referred to as a "jeopardy" within the industry. e.spire proposes that BellSouth be required to notify e.spire via an electronic interface or any interim manual method *as soon as it determines* it cannot meet the scheduled due date and time. This process will help mitigate the impact to customers.

Q. WHAT OTHER TYPE OF PERFORMANCE CRITERIA DOES E.SPIRE REQUEST FROM BELLSOUTH WITH RESPECT TO OSS FUNCTIONALITY?

A. e.spire seeks complete electronic "flow-through" of orders for local services. "Flow-through" represents the degree to which an ordering process is mechanized and orders are provisioned without manual intervention. The benefits of a high degree of flow-through is that it enhances the reliability of provisioning intervals, by reducing the amount of delay and error caused by manual intervention. In

order for e.spire to compete effectively with BellSouth, it must be able to provide equivalent service quality to its customers. Without complete electronic flow-through of its orders, service reliability will be effected. The FCC found in the *Louisiana Section 271 Order* that BellSouth has never met parity of service for the percentage flow through of CLEC orders and BellSouth orders. In light of BellSouth poor performance with respect to providing flow-through at parity, it should be required to meet a specified performance level. e.spire proposes that BellSouth be required to provide flow-through at parity to what it provides to itself, its affiliates, and any other Telecommunications Carrier.

Q. WHAT SPECIFIC REQUIREMENTS DOES E.SPIRE BELIEVE SHOULD APPLY TO THE PROVISIONING OF UNBUNDLED LOCAL LOOPS?

A. e.spire requests that BellSouth be required to provision loop cutovers within a five minute interval. During the cutover process, the customer who orders a ported number, must be out of service while the loop is being connected to e.spire's collocated facility. If the cutover process does not go smoothly, the End User may attribute such provisioning issues to the new carrier. Therefore, it is imperative that service outages are minimized. A five minute cutover period will lessen the inconvenience of service outages to e.spire's new customers. In its current interconnection agreement with e.spire, BellSouth agreed to provision "live cutovers" within the five minute interval. Under the effective terms between the parties, the penalty for not meeting the five minute cutover is for BellSouth to waive the applicable line connection charge when the interval is 15 minutes or more. The purpose of the interval and the associated remedy is for the parties to

DS-3 loops should be considered as one physical loop for these purposes (as opposed to 24 or more channels).

Q. WHAT SHOULD THE INTERVAL FOR A CONVERSION BE WHEN BELLSOUTH REGAINS A CUSTOMER THAT HAD MIGRATED TO E.SPIRE?

A. This situation is commonly referred to as a customer "win-back". If BellSouth regains a customer that had migrated to e.spire's facilities-based services, the interval for performing a win-back conversion should be at parity to the intervals BellSouth performs the equivalent work for e.spire. BellSouth should not be able to perform these cutovers in a shorter timeframe than what it provide to e.spire, because the work involved to perform such cutover is exactly the same in a win-back situation as when the originally customer migrated to e.spire. Any performance that is above parity in this respect should constitute a performance breach on the part of BellSouth.

Q. WHAT TYPE OF ANCILLARY SUPPORT IS NECESSARY FOR E.SPIRE TO OPERATE BELLSOUTH'S OSS?

A. e.spire requires access to trained personnel, *i.e.*, an operational support help desk, provided by BellSouth on a twenty-four hour a day, seven days a week basis. e.spire requires 24 hour access, seven days a week, because the OSS interface is required for maintenance and trouble shooting of customers' services in addition to the establishment or discontinuance of services. Service outages may occur at any time during the week. Therefore, in order for e.spire to provide maintenance

functions at parity to BellSouth, it must have 24 hour access to OSS support personnel 7 days per week.

Directory Listings

Q. HOW DOES E.SPIRE PROPOSE TO REDUCE THE INCIDENCE OF ERRORS IN THE DIRECTORY LISTINGS OF ITS CUSTOMERS PRIOR TO PUBLICATION OF DIRECTORIES?

A. e.spire has proposed language at Attachment 12 of the attached draft interconnection agreement that requires BellSouth to provide information via an electronic interface sufficient for e.spire to confirm the validity of the directory listing information for its end users. The designated time frame during which e.spire should receive this electronic feed is within 48 hours of when BellSouth sends this information to be published. In addition to the requirement that e.spire be provided the electronic feed, e.spire requests that it be provided the opportunity to review the galley proofs of directories prior to publication of the proofs.

The language requested by e.spire will provide two opportunities to correct the information of its end users prior to it being published in directories. Once the information is published – or worse yet, not published – there is no opportunity for e.spire to correct any errors to the information included under its own customers' listings. After publication, it is foreseeable that errors in these listings may cause economic harm to e.spire's end users which may be attributable to the negligence of e.spire or BellSouth. If there are mistakes in the data provided by e.spire's order entry personnel, access to electronic confirmations will alert e.spire of the errors and give it the opportunity to notify

BellSouth in order to have such errors corrected prior to publication. Having sufficient time to review of the galley proofs of e.spire's end users will aiso contribute to the accuracy of the listings, provided e.spire has enough time to contact BellSouth or its publishing affiliate and correct any mistakes in the galley proofs, prior to publication.

It is my understanding that BellSouth is demanding to limit its liability to the amount of one dollar for any errors that get published in its directories. Such a limitation of liability is unacceptable to e.spire unless it has a reasonable opportunity to verify inclusion of its customer' listing information in advance of publication as we have proposed. e.spire proposes the above review process which will greatly reduce the chances for errors committed by e.spire order entry personnel and BellSouth's employees or affiliates that produce the galley proofs and the directories.

Performance Standards/Measurements

Q. WHAT ISSUES REMAIN TO BE RESOLVED IN CONNECTION WITH PERFORMANCE MEASUREMENTS AND STANDARDS?

A. I have touched on this topic throughout my testimony, and I will only briefly restate the point here. The parties have agreed to incorporate a set of Performance Measurements established by the Georgia and Louisiana Commissions, as they are strengthened from time to time by other regulators. However, BellSouth believes that the resulting statistics should be for informational purposes only. e.spire believes that performance at parity to the service BellSouth affords *itself* should be mandatory, as established by the Performance Measurements.

Moreover, e.spire believes that Liquidated Damages should apply automatically whenever services provided to e.spire fall below a level at parity to the service BellSouth provides to itself.

Rates

Q. WERE THE PARTIES ABLE TO AGREE ON RATES FOR UNEs?

A. No, for many UNEs, the parties were unable to agree on Monthly Recurring Charges ("MRCs") and Non-Recurring Charges ("NRCs"), or both. Accordingly, we ask that this Commission establish arbitrated rates consistent with Section 252 of the Act.

Geographic Deaveraging

Q. DO THE PARTIES DISAGREE OVER THE ISSUE OF "GEOGRAPHIC DEAVERAGING"?

A. Yes, as I discussed earlier – and as e.spire's expert witness, Dr. Marvin Kahn, also will discuss, e.spire's inability to obtain geographically deaveraged loop rates constitutes a substantial barrier to entry that must be removed by this Commission. Specifically, e.spire seeks, and BellSouth refuses to provide, ULL rates that are geographically deaveraged into three density zones. The FCC and the US Department of Justice consistently have found that in order for rates to be truly cost-based, they cannot be based on statewide averaged costs but, rather, they must reflect the costs incurred in relevant density zones within the particular state. This is consistent with BellSouth's own practice of deaveraging prices for certain special access services in three density zones.

If e.spire must price its end-user offerings to reflect BellSouth's state-wide loop costs, it will have difficulty competing in dense urban markets where BellSouth can compete on the basis of its lower costs of provisioning loops there. e.spire will have difficulty absorbing this cost-differential and only will be able to do so where volumes are high. Accordingly, BellSouth's anticompetitive practice of building statewide averaged costs into its loop rates effectively raises e.spire's costs so that it is difficult or impossible for e.spire to compete in the low-end business or residential markets. To ensure that consumers in these markets realize the benefits made possible only by competition, this Commission should act now to remove this barrier by requiring BellSouth to offer geographically deaveraged loop rates in three density zones.

Current TELRIC Studies and New "Permanent" Prices

Q. DO BELLSOUTH'S CURRENT "PERMANENT" RATES ACCURATELY REFLECT COSTS?

A. No, and there are many reasons why they do not. e.spire consistently has challenged whether BellSouth conducted its initial round of TELRIC studies consistent with forward looking pricing principles. Nevertheless, BellSouth's current "permanent" rates are now based on cost studies that are two or even more years old. Technological advancements – particularly the conversion of many network inputs to digital technology – continue to place substantial downward pressure on the forward looking costs of UNEs. Thus, consistent with the cost-based pricing mandate of the FTA – and in conjunction with this second round of interconnection negotiations and arbitrations – e.spire believes that it also is time

that a second round of so called permanent rates be established. *Thus, e.spire requests new and current TELRIC based rates – MRCs and NRCs – for all UNEs.*

Monthly Recurring Charges for Loops

Q. PUTTING ASIDE FOR THE MOMENT THE NEED FOR UPDATED TELRIC PRICES, PLEASE EXPLAIN OTHER ISSUES E.SPIRE HAS WITH REGARD TO BELLSOUTH'S PROPOSED MONTHLY RECURRING CHARGES – *MRCs* – FOR 4-WIRE VOICE GRADE ANALOG LOOPS.

A. The dispute here centers on whether BellSouth's 4-wire rates accurately reflect TELRIC pricing principles. e.spire does not think that they do and believes that this proceeding presents the Commission with an appropriate opportunity to review the matter. Dr. Marvin Kahn, e.spire's expert witness will discuss at length TELRIC principles and specific rates. What I want to do today is to provide some reality checks that, at the very least, should raise considerable doubt as to whether BellSouth's MRCs for 4-wire voice grade analog loops are appropriately TELRIC based.

First, and as a general manner, the relationship between the MRC for 2-wire and 4-wire voice grade analog loops should give the Commission pause. Throughout its region, BellSouth has proposed MRCs for 4-wire voice grade analog loops that are up to 76 percent more than their 2-wire counterparts. Although it is conceptually convenient to think that a 4-wire loop would cost much more or even double what a 2-wire loop costs, this is not the case. In

Mindful of BellSouth's history of ignoring TELRIC pricing mandates and inflating its purported costs in numerous ways, I am going to take a moment to offer an external reality check for guidance. Although, with respect to 56/64 kbps loops, there is not a lot to go on, I can offer the $29.92 rate from Georgia as a benchmark and note that Louisiana and Mississippi, the only two states other than Georgia that have set 56/64 kbps loop rates, ended up with rates that were 17 and 19 percent higher.

Q. IN ADDITION TO ITS GENERAL DISPUTE REGARDING THE NEED FOR UPDATED TELRIC STUDIES AND RATES, ARE THERE INDICATIONS THAT THE PROPOSED MRCs FOR DIGITAL 4-WIRE LOOPS DO NOT ACCURATELY REFLECT TELRIC PRICING PRINCIPLES?

A. Yes. e.spire already has requested that all BellSouth UNE rates, including its DS-1 loop MRC, be checked and reset at current TELRIC-based levels. Putting that aside for the moment, e.spire also takes issue with BellSouth's proposed DS-1 loop MRC because it greatly exceeds corresponding MRCs for DS-1 loops in other BellSouth states. To illustrate my point, let me offer as a barometer BellSouth's DS-1 rate for Alabama. That MRC of $64.19 is similar to the rates established by the Georgia and Kentucky Commissions. The rates proposed by BellSouth for Louisiana and South Carolina are 14 and 21 percent higher. Then there is the rate for North Carolina – that rate is a staggering 136 percent higher. This Commission approved a rate that is 25 percent higher and is exceeded only by the grossly excessive rate established in North Carolina. All other things being

equal, there is no reason to believe that labor and materials costs in Florida are 25 percent higher than they are in Alabama. Accordingly, of this doubt, e.spire requests that close scrutiny of new BellSouth cost studies is warranted to ensure that BellSouth is not permitted to overprice its DS-1 loops again.

With respect to 56/64 kbps loops, e.spire's dispute is that BellSouth simply has not proposed any rates and, as a result, has refused to negotiate with e.spire. Again, BellSouth's failure to produce rates cannot be condoned as a means to stave off competition. Governing law is plain – TELRIC studies must be produced and prices must be set. Although there is not much regionally that can be looked to for a reality check, I offer the $29.92 rate from Georgia as a reference point and note that Louisiana and Mississippi, the only two states other than Georgia that have set 56/64 kbps loop rates, ended up with rates that were 17 and 19 percent higher.

Q. ARE THERE SIMILAR PROBLEMS WITH BELLSOUTH'S 2-WIRE ISDN DIGITAL GRADE LOOP MRCs?

A. Yes. Again, the range of rates for this UNE across BellSouth territory suggests that rates in many BellSouth states do not properly reflect TELRIC pricing principles. Here, in Florida, the MRC for 2-wire ISDN digital grade loops is 25 to 122 percent higher than in all other BellSouth states. Is it possible that costs in Florida are up to 122 percent higher than they are elsewhere in BellSouth's service territory? Such a tremendous discrepancy suggests that Florida competitors – and consumers – are getting fleeced by BellSouth. I encourage the

Commission to take a closer look so that BellSouth's high speed ISDN loop costs can be deflated back to a level where they lawfully should be set.

Q. ARE THERE SIMILAR PROBLEMS WITH BELLSOUTH'S 2-WIRE ADSL DIGITAL GRADE LOOP MRC?

A. Yes. Here, too, the range of rates across BellSouth territory suggests that its rates in many states may not appropriately reflect TELRIC pricing principles. Here in Florida, BellSouth's 2-wire ADSL digital loop rate is 34 percent higher than the corresponding rate in Kentucky and 22 percent higher than that in Georgia. I think it is highly unlikely that BellSouth's 2-wire ADSL loop costs in Florida could exceed the costs in Kentucky and Georgia by that much. This should give the Commission reason enough to take a fresh look at BellSouth's cost methodology – and at fresh and properly conducted TELRIC studies.

Q. ARE THERE SIMILAR PROBLEMS WITH BELLSOUTH'S 2-WIRE HDSL DIGITAL GRADE LOOP MRC?

A. Yes. Here, too, the range of rates across BellSouth territory suggests that its rates in many states may not appropriately reflect TELRIC pricing principles. In Florida, BellSouth's 2-wire HDSL digital loop rate is 42 percent higher than the corresponding rate in Kentucky and 32 percent higher than that in Georgia. Once again, I think do not think it is remotely possible that BellSouth's 2-wire HDSL loop costs in Florida could exceed its costs in Kentucky and Georgia by so great a margin as to lead to such a wide variation in rate levels. This significant degree of variation should give the Commission reason enough to take a fresh look at

BellSouth's cost methodology – and at fresh and properly conducted BellSouth TELRIC studies.

Q. ARE THERE SIMILAR PROBLEMS WITH BELLSOUTH'S 4-WIRE HDSL DIGITAL GRADE LOOP MRC?

A. Yes. Again, the range of rates for this UNE across BellSouth territory suggests that they may not appropriately reflect TELRIC pricing principles. Here in Florida, BellSouth's 4-wire HDSL digital loop rate is a staggering 76 percent higher than the corresponding rate in Kentucky and 51 percent higher than that in Georgia. Could BellSouth's 4-wire HDSL loop costs in Florida exceed the costs in Kentucky and Georgia by that much? Again, e.spire requests that the Commission compel the production of new TELRIC studies so that it can properly set rates that afford BellSouth a reasonable profit, competitors a chance to compete, and Florida consumers value in telecommunications services.

Non-Recurring Charges for Loops

Q. OUTSIDE OF THE NEED FOR UPDATED TELRIC STUDIES AND RATES, DOES E.SPIRE TAKE ISSUE WITH BELLSOUTH'S NON-RECURRING CHARGES – NRCs – FOR ULLs?

A. Yes. NRCs are up-front costs that a carrier incurs in providing service to a customer. Generally, e.spire is not able to recover all of these costs in installation charges from end users at the time they receive service. A customer becomes profitable only if e.spire can recoup its initial investment over the length of time that an average customer can be expected to remain with e.spire's service. If

NRCs are too high, e.spire will have no reasonable expectation that serving a customer will be profitable, and it will not enter the market for these customers. In other words, inflated NRCs can represent a significant barrier to entry for competitors such as e.spire. BellSouth's NRCs for ULLs are so excessive that they constitute such a barrier to entry. If facilities-based competition is going to develop and prosper as intended by Congress, this Commission must take action now to reduce BellSouth's NRCs to true TELRIC-based rates.

Q. WHY DO YOU BELIEVE THAT BELLSOUTH'S NRCs EXCEED TELRIC?

A. One indication that BellSouth's proposed NRCs exceed TELRIC is that they exceed the NRCs that BellSouth imposes on its own retail customers. Indeed, BellSouth's proposed NRCs are significantly higher than its retail rates, some nearly four and others nearly six times higher. For example, BellSouth's proposed NRCs for installing a new 2-wire analog voice-grade loop total $195, without taking account for a cross-connect NRC. BellSouth business customers pay only $56 for comparable service. For ISDN lines, the proposed NRCs are nearly six times higher than comparable retail rates.

Comparison to rates outside BellSouth territory also offers strong support for the proposition that BellSouth's proposed NRCs exceed TELRIC. For example, BellSouth's NRCs for 2-wire analog voice grade loops – including the specified conversion time surcharge – are ten times higher than those charged by Bell Atlantic in New York. Even without the specified conversion time surcharge penalty, BellSouth's $140.00 NRC is nearly eight times higher than the $18.27 charged by Bell Atlantic in New York. It is difficult to imagine that costs in New

York City are eight times less expensive than they are here in Tallahassee. Further comparisons reveal similar results. The NRC for a 2-wire digital ISDN loop is $306 – this figure is more than $250 – or six times higher – than the $48 NRC charged by Bell Atlantic in Maryland – again, that is a differential of $250 per loop. And it gets even worse for DS-1 loops. BellSouth's $540 NRC is almost $464 – or seven times – higher than the $76.01 NRC imposed by Bell Atlantic in Pennsylvania.

I have attached a chart of representative ULL NRCs from other states hereto as Attachment 1, and it shows that BellSouth's proposed charges are several times higher than the rates for equivalent services elsewhere. The tasks performed by the ILECs in other states in provisioning UNEs do not differ significantly from those undertaken by BellSouth.

Q. PLEASE PROVIDE AN ILLUSTRATION OF HOW THESE DIFFERENCES AFFECT E.SPIRE'S ABILITY TO COMPETE.

A. I'll use a typical business customer with five POTS lines to illustrate. Applying BellSouth's tariffed rates, the customer would pay a total of $280 in NRCs to BellSouth. (This is calculated as five lines at $56 per line.) If e.spire were to win that customer over, however, e.spire would be charged at least $583 in NRCs. (This represents the sum of BellSouth's proposed NRCs for a first line ($140.00), for order coordination(5 @ $55.00 = $275), and additional lines (4 @ $42.00 = 168).) Thus, in this example, BellSouth's proposed NRCs would be at least 108

percent higher (not accounting for cross-connect NRCs) – or more than twice as much – for e.spire than for its own retail customers.

In order to compete with BellSouth's retail services, e.spire must offer high-quality telecommunications services at rates which are equal to or lower than BellSouth's retail rates. The high NRCs proposed by BellSouth would significantly limit the number of customers to whom e.spire could provide service at economic rates.

As a practical matter, e.spire would not be able to recover its costs in up-front charges from end users. At most, e.spire would be able to pass through only an amount equal to what BellSouth charges its retail customers. However, e.spire has found in its experience so far that, as a new entrant, it often must charge even less than the comparable ILEC rate in order to induce customers to switch carriers.

Even if it can assess a charge equal to the full BellSouth retail rate, e.spire still would have a significant deficit that it would need to recover over the time it serves the customer. In the example of the five-line business customer that I previously described, BellSouth's proposed ULL NRCs exceed the corresponding retail rate by more than $303. This differential is really nothing more than a penalty unilaterally imposed by BellSouth on e.spire for competing and on e.spire's customers for switching from BellSouth.

Assuming e.spire could expect to retain that customer for two years (the minimum period e.spire uses for planning purposes), it would have to charge its customers at least an additional $12.62 a month for 24 months in order to recover

this cost differential. Notably, this is a cost that BellSouth does not recover in its own retail rate, making it difficult for e.spire to recover the additional cost. In sum, if e.spire were forced to accept BellSouth's excessive proposed NRCs, it would be impossible for e.spire to compete for many smaller business customers and most, if not all, residential customers.

Q. ARE THERE OTHER COMPARISONS THAT CAN BE MADE THAT WOULD SUGGEST THAT BELLSOUTH'S PROPOSED ULL NRCs ARE NOT TRULY TELRIC-BASED?

A. Yes. As I have done with BellSouth's proposed MRCs, I can compare several of BellSouth's proposed NRCs for Florida with corresponding rates from elsewhere in BellSouth service territory – the result simply begs the question "how can these rates be TELRIC-based?" For example, BellSouth's proposed first NRCs for 2-wire analog loops are 62 percent higher than comparable NRCs in North Carolina. Proposed NRCs for additional 2-wire analog lines are 51 percent higher. The differential is slightly greater for 4-wire analog loop NRCs. For 2-wire ISDN lines, the NRCs proposed for Florida – first and additional – are 32 and 82 percent higher than comparable NRCs in Louisiana. Each of these comparisons strongly suggest that BellSouth should be required to establish new, lower TELRIC rates during this proceeding.

Q. DOES E.SPIRE HAVE A PROBLEM WITH BELLSOUTH'S NRC FOR ORDER COORDINATION FOR A SPECIFIED CONVERSION TIME?

A. Yes. The Commission should not permit BellSouth to impose a separate NRC for order coordination – *virtually all loop cutovers must be coordinated.* Notably,

BellSouth only proposes to impose this NRC when 2-wire analog loops are involved. As a result, the NRCs for 2-wire analog loops exceeds those for 4 wire analog and xDSL loops.

Q. DOES E.SPIRE HAVE AN ADDITIONAL ISSUE REGARDING BELLSOUTH'S NRCs?

A. Yes. The issue is that the drop between first and additional NRCs may not adequately reflect the cost differential realized by BellSouth when multiple loop orders are placed. For example, the additional NRCs for a 2- and 4- wire analog loops are 70 percent less than the first NRCs. Yet, first and additional NRCs for 2-wire ISDN, and 2- and 4-wire xDSL loops differ by only 8 and 13 percent, respectively. Similarly, the drop between first and additional NRCs for DS-1 loops is only 17 percent. Here, too, we believe BellSouth should be compelled to submit updated cost studies to justify these discrepancies.

Sub-Loop Pricing

Q. MOVING TO SUB-LOOP PRICING ISSUES, PLEASE EXPLAIN E.SPIRE'S DISPUTE WITH REGARD TO BELLSOUTH'S PROPOSED MRCs FOR CENTRAL OFFICE LOOP CHANNELIZATION SYSTEMS.

A. Here, too, e.spire questions whether BellSouth's rates are truly cost-based. In Florida, the MRCs are 70 percent higher than they are across the border in Georgia. In fact, the MRCs proposed by BellSouth are higher than those proposed for every BellSouth state, other than Tennessee. BellSouth's first and additional NRCs for central office loop channelization systems also appear high.

Corresponding first NRCs in Georgia and Louisiana are 13 and 19 percent lower, respectively. Additional NRCs are 18 and 24 percent higher.

Q. DOES E.SPIRE ALSO DISPUTE BELLSOUTH'S PROPOSED PER CIRCUIT CHANNEL INTERFACE *MRCs* FOR CENTRAL OFFICE LOOP CHANNELIZATION SYSTEMS?

A. Yes. BellSouth's proposed per circuit MRC for central office 2-wire voice grade channel interfaces is the highest in the region exceeding the corresponding MRC in other BellSouth states by up to 66 percent.

Q. DOES E.SPIRE HAVE ADDITIONAL PROBLEMS WITH REGARD TO SUB-LOOP UNBUNDLING RATES?

A. Yes. For certain subloop elements related to loop concentration outside the central office, BellSouth has failed to propose any rates. e.spire submits that the Commission should compel BellSouth to fill-out its subloop rate proposals based on current TELRIC cost-studies.

Charges for xDSL-Equipped Loops

Q. TURNING NOW TO xDSL-EQUIPPED LOOPS, PLEASE EXPLAIN THE PARTIES' DISPUTE OVER RATES.

A. Once again, the problem here is that BellSouth has refused to propose rates for xDSL-equipped loops. Thus, even though the FCC recently affirmed that ILECs must unbundle all network elements used in provisioning advanced services, BellSouth still refuses to establish MRCs and NRCs for ULLs equipped with DSLAMs. However, like all other UNE rates, the rates for DSLAM-equipped loops should be set at TELRIC plus a reasonable profit. So that consumers can

exercise a separate choice for voice and data traffic (if they so desire), TELRIC-based MRCs and NRCs also should be established for the individual voice and data channels of an xDSL-equipped loop. To expedite the deployment of advanced telecommunications services, e.spire requests that the Commission expeditiously establish the appropriate TELRIC rates during this proceeding.

Charges for High Capacity Loops, Dark Fiber Loops, Bit-Stream Links and Extended Links

Q. DOES E.SPIRE HAVE RATE ISSUES WITH REGARD TO HIGH CAPACITY AND DARK FIBER LOOPS, AS WELL AS BIT-STREAM AND EXTENDED LINKS?

A. Yes. As I discussed earlier with respect to UNEs, BellSouth simply has not proposed rates for fiber DS-3 loops and other high capacity loops, including OC-3, OC-48, OC-96 and SONET loops. BellSouth also has failed to propose rates for dark fiber loop plant, Bit-Stream Links, and all varieties of Extended Links, including 2-wire voice grade, 4-wire voice grade, 2-wire digital, 4-wire digital, 2-wire ADSL compatible, 2-wire ADSL equipped, 2-wire HDSL compatible, 2-wire HDSL equipped, 4-wire HDSL compatible, and 4-wire HDSL equipped Extended Links. e.spire requests that the Commission compel BellSouth to file cost studies based on forward-looking TELRIC pricing principles for each of these UNEs. With regard to the xDSL-equipped loops, Bit-Stream Links and Extended Links, e.spire urges the Commission to ensure that the MRCs and NRCs for the whole do not exceed the sum of the parts. The Commission also should avoid awarding BellSouth with the ability to impose a non-cost-based glue charge for resisting the

impulse to tear apart common network configurations requested by its competitors.

Q. DO YOU HAVE ANY ADDITIONAL CONCERNS WITH REGARD TO BELLSOUTH'S PRICING OF EXTENDED LINKS?

A. Yes. My concern is with the NRCs that BellSouth might seek to attach to such configurations. As I have expressed earlier, I believe that there is ample reason to believe that few – if any – of BellSouth's UNE prices are consistent with the forward looking, cost-based pricing principles of the FTA. As I also have discussed, BellSouth's proposed NRCs are so high that they constitute a barrier to entry. Right now, if e.spire were to assemble Extended Links from individually priced UNEs, the related NRCs would nearly equal those applicable to the same facilities ordered under BellSouth's special access tariff ($741 for a DS-1 Extended Link (based on proposed UNE NRCs and no "glue charge") versus $745 for DS-1 special access). I cannot belief that the appropriate TELRIC studies could produce NRCs that rival those incorporated into BellSouth's subsidy-laden special access tariff. Accordingly, I ask the Commission to compel updated TELRIC studies so that prices for Extended Links and high capacity loops can be set at rates consistent with the 1996 Act.

Charges for Transport

Q. TURNING TO UNBUNDLED TRANSPORT, PLEASE EXPLAIN THE ISSUES E.SPIRE HAS WITH REGARD TO BELLSOUTH'S RATES.

A. First, e.spire believes that BellSouth's shared transport rates are not appropriately TELRIC-based. BellSouth's proposed per minute facilities termination rate is the

highest in the nine state BellSouth territory. In fact, the rate is 6 to 36 percent higher than in other BellSouth states. Similarly, BellSouth's proposed per mile/per mou rate is based on the highest permanent rate established in the region. It is almost two-and-one-half times higher than the corresponding rate in Kentucky and is still 32 percent higher than the next highest non-interim rate.

Q. DOES E.SPIRE HAVE OTHER ISSUES REGARDING TRANSPORT RATES?

A. Yes. An additional – and critical – problem is that BellSouth simply has not proposed rates for dedicated interoffice transport at any speed other than DS-1. BellSouth should be compelled to produce TELRIC-based rates for DS-3, OC-3, OC-12, OC-96 and SONET transport in the context of this proceeding. No ICB pricing should be permitted. Moreover, BellSouth should be forced to justify its DS-1 rates which, like those proposed for shared transport, appear to be too high to bear an appropriate relationship to cost. For example, the proposed per mile and termination rates are 33 and 85 percent higher than those in Kentucky.

Q. PLEASE EXPLAIN WHY E.SPIRE IS DISPUTING BELLSOUTH'S RATES FOR UNBUNDLED DARK FIBER TRANSPORT FACILITIES.

A. Again, the problem is that BellSouth has not proposed any rates for dark fiber transport facilities. Thus, e.spire requests that the Commission require BellSouth to produce current TELRIC studies so that appropriate rates can be established.

Charges for Frame Relay UNEs

Q. DOES E.SPIRE ALSO DISPUTE THE RATES FOR FRAME RELAY UNEs?

A. Yes. As I discussed earlier in this testimony, BellSouth has not yet proposed TELRIC-based rates for frame relay interconnection and UNEs. e.spire requests that the Commission establish TELRIC-based prices for frame relay interconnection and UNEs, after reviewing current BellSouth cost studies. In so doing, e.spire recommends that the trunk port charge for local switching be used as an external reality check to guard against any attempts to inflate costs and the rates which consumers ultimately must pay.

Reciprocal Compensation Rates

Q. DOES E.SPIRE ALSO DISPUTE THE RATES PROPOSED FOR RECIPROCAL COMPENSATION FOR LOCAL TRANSPORT AND TERMINATION?

A. Yes. As I discussed earlier – and as Dr. Kahn discusses in his testimony, e.spire and BellSouth costs may not be identical. Therefore, e.spire proposes that BellSouth should pay $0.009 per minute to e.spire for traffic terminated on e.spire's network. e.spire does not object to paying BellSouth the rates it proposed for e.spire to pay for traffic terminated on BellSouth's network.

Charges for UNE Combinations

Q. DOES E.SPIRE ALSO HAVE AN ISSUE WITH RATES FOR UNE COMBINATIONS?

A. Yes. Here, too, BellSouth has refused to provide rate proposals. As I discussed earlier, this Commission should establish combination UNE rates by adding the MRCs and NRCs for each UNE incorporated into the specified combination to arrive at price ceilings. e.spire also urges the Commission to resist any attempts

by BellSouth to drive-up its competitors' costs – and End User rates – by imposing a non-cost-based glue charge for refraining from tearing apart common network configurations.

Charges for Physical Collocation

Q. DOES E.SPIRE ALSO TAKE ISSUE WITH BELLSOUTH'S PHYSICAL COLLOCATION SPACE PREPARATION FEE?

A. Yes. As, I discussed earlier, BellSouth should not be permitted to price physical collocation on an ICB basis. So that competitors can plan their collocation and local market entry strategies efficiently and effectively, e.spire requests that the Commission establish TELRIC-based rates for physical collocation after reviewing current BellSouth TELRIC studies.

Volume and Term Discounts

Q. DOES E.SPIRE ALSO HAVE AN ISSUE WITH REGARD TO VOLUME AND TERM DISCOUNTS?

A. Yes. As I discussed earlier, e.spire believes that it should be entitled to volume and term discounts when it agrees to purchase UNEs in volumes greater or in terms longer than those contemplated in the base pricing established for particular UNEs. Accordingly, e.spire asks the Commission to establish UNE volume and term discounts that reflect the economies of scale realized in such situations. By establishing volume and term discounts for UNEs, the Commission will continue to put downward pressure on wholesale inputs and end user rates.

Q. DOES E.SPIRE HAVE SPECIFIC RATES TO SUGGEST TO THE COMMISSION FOR ADOPTION?

A. Our position is that we should calculate proposed rates *after* reviewing the latest relevant BellSouth cost information. We have developed an extensive set of discovery requests seeking that information. However, since the Commission's rules indicate that we should suggest rates at the time of filing of our petition, we have produced two sets of estimated rates. The first is a limited set of rates included in Dr. Kahn's testimony based on non-Bell cost models and relevant public information. The second is a set of stakeholder rates which I have attached to my direct testimony as Attachment 1. These rates represent a compilation of rates which BellSouth accepted elsewhere, and we submit should be acceptable here – at least until they sufficiently demonstrate a substantial cost differential between jurisdictions. However, each of the rates should be geographically deaveraged in accordance with Dr. Kahn's testimony, and we reserve the right to revise them based upon the results of Dr. Kahn's expert analysis of the BellSouth cost information during discovery.

Conclusion

Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A. Yes. However, I reserve the right to modify and supplement my testimony after having an opportunity to examine BellSouth's responses to e.spire's discovery requests. On behalf of e.spire, I hereby thank the Commission in advance for its consideration of our requests.

Nonrecurring Charges For Unbundled Loops In Selected BOC Territories

SOUTHWESTERN BELL

STATE	UNBUNDLED LOOP	NONRECURRING CHARGE Initial	Additional
Arkansas (SWB - AT&T Agreement)	Unbundled Loops 2-Wire Analog Conditioning for dB Loss 4-Wire Analog 2-Wire Digital BRI 4-Wire Digital PRI Service Order	$24.15/$0.00[1]	$24.15/$0.00[1]
California (AT&T - PacBell Arbitration)	Installation/service order	$37.31	$3.11
Missouri (SWB - AT&T Agreement)	Unbundled Loops 2-Wire Analog (8dB Loop) Conditioning for dB Loss 4-Wire Analog 2-Wire Digital ISDN-BRI Loop) 4-Wire Digital (DS1 Loop) 4-Wire Digital (ISDN-PRI Loop) Loop Cross Connects without Testing MDF to Collocation 2-Wire Analog 4-Wire Analog 2-Wire Digital (ISDN-BRI) 4-Wire Digital (DS1)	 $26.07 $22.76 $28.77 $57.77 $136.63 $136.63 $19.96 $25.38 $19.96 $34.48	 $11.09 $8.58 $11.09 $30.22 $53.94 $53.94 $12.69 $17.73 $12.69 $28.57
Oklahoma (Sprint – SWB Agreement)	2-Wire Analog (8dB Loop) Loop Conditioning (5 dB Loop)[2] Basic Rate Interface (BRI) Primary Rate Interface Loop (4-Wire)	$47.45 $43.00 $118.00 $278.75	$19.80 $16.00 $61.85 $109.85

[1] Rate proposed by SWBT/Rate proposed by AT&T
[2] For a 5dB Loop. 8dB prices plus Loop Conditioning Prices

Nonrecurring Charges For Unbundled Loops In Selected BOC Territories

SOUTHWESTERN BELL

Texas (MCIm – SWB Agreement)	**2-Wire Analog** **Conditioning for dB loss (8dB to 5dB)[2]** **4-Wire Analog** **2-Wire Digital** **4-Wire Digital**	$15.03 $17.54 $15.03 $15.03 $73.25	$6.22 $16.13 $6.22 $6.22 $26.68

[1] Rate proposed by SWBT/Rate proposed by AT&T
[2] For a 5dB Loop. 8dB prices plus Loop Conditioning Prices

Nonrecurring Charges For Unbundled Loops In Selected BOC Territories

NYNEX

STATE	UNBUNDLED LOOP	NONRECURRING CHARGE	
		Per Order	Per Link (Loop)
New York	2-Wire Analog		
	Service Order		
(P.S.C. Tariff	1 Link	$0.00	
No. 916)	2-9 Links	$0.00	
	10 or more Links	$0.00	
	Manual Intervention Surcharge		
	1 Link	$12.74	$11.04
	2-9 Links	$33.29	$11.04
	10 or more Links	$148.73	$148.73
	Service Connection Central Office Wiring		$18.27
	Service Connection – Other		$10.17
	Customer Loop Information		$9.12
	Installation Dispatch		
	1 Link		TBD
	2-9 Links		TBD
	10 or more Links		TBD
	TC Not Ready – per occasion	$66.09	
	2-Wire Digital		
	Service Order		
	1 Link	$12.82	
	2-9 Links	$12.82	
	10 or more Links	$21.37	
	Manual Intervention Surcharge		
	1 Link	$12.74	$11.04
	2-9 Links	$33.29	$11.04
	10 or more Links	$148.73	$148.73
	Service Connection Central Office Wiring		$18.27
	Service Connection – Other – Per link		$10.17
	Customer Loop Information – Per link		$9.12
	Installation Dispatch		
	1 Link		TBD
	2-9 Links		TBD
	10 or more Links		TBD
	TC Not Ready – per occasion	$66.09	

Nonrecurring Charges For Unbundled Loops In Selected BOC Territories

NYNEX

STATE	UNBUNDLED LOOP	NONRECURRING CHARGE	
		Per Order	Per Link (Loop)
New York (Cont'd) (P.S.C. Tariff No. 916)	1.5 Mbps		
	Service Order		$67.47
	Manual Intervention Surcharge		
	1 Link	$12.74	$11.04
	2-9 Links	$33.29	$11.04
	10 or more Links	$148.73	$11.04
	Service Connection Central Office Wiring		$51.33
	Service Connection – Other		$133.98
	Installation Dispatch		
	1 Link	TBD	
	2-9 Links	TBD	
	10 or more Links	TBD	
	TC Not Ready – per occasion	$66.09	
	45 Mbps		
	Service Order		$45.77
	Service Connection Central Office Wiring		$48.73
	Service Connection – Other		
	Circuit Provisioning Center		$20.17
	Network Design Center		$70.34
	Installation Dispatch		$236.28
	TC Not Ready – per occasion	$66.09	
	4-Wire Analog		
	Service Order		
	1 Link	$0.00	
	2-9 Links	$0.00	
	10 or more Links	$0.00	
	Manual Intervention Surcharge		
	1 Link	$12.74	$11.04
	2-9 Links	$33.29	$11.04
	10 or more Links	$148.73	$148.73
	Service Connection Central Office Wiring		$18.27
	Service Connection – Other		$10.17
	Customer Loop Information		$9.12
	Installation Dispatch		
	1 Link		TBD
	2-9 Links		TBD
	10 or more Links		TBD
	TC Not Ready – per occasion	$66.09	

Nonrecurring Charges For Unbundled Loops In Selected BOC Territories

BELL ATLANTIC

STATE	UNBUNDLED LOOP	NONRECURRING CHARGE	
		Initial	Additional
Pennsylvania (MCIm - Bell Atlantic Agreement)	2 Wire Analog Loops (POTS Loops) and 4 Wire Loops		
	Service Order	$37.00	
	Installation Per Loop	$36.00 [1]	
	4 Wire Loops	$15.49	
	If premises visit not required	$60.52	$60.52
	If premises visit required	$141.62	$94.38
	ISDN Loops		
	Service Order	$141.62	
	If premises not required	$17.50	$17.50
	If premises visit required	$85.68	$38.43
	DS-1 Loops		
	Service Order	$15.49	
	If premises not required	$60.52	$60.52
	If premises visit required	$141.52	$94.38
Virginia (MCIm - Bell Atlantic Arbitration)	2 Wire Analog Loops (POTS Loops) and 4 Wire Loops		
	Service Order	$20.21/loop	
	Existing Customers	$13.91/loop	
	New Customers	$27.02/loop	
	ISDN Loops		
	Service Order	$23.93	
	If premises not required	$18.47	$18.47
	If premises visit required	$90.87	$40.02
	DS-1 Loops		
	Service Order	$17.72	
	If premises not required	$70.58	$70.58
	If premises visit required	$156.29	$105.43

Nonrecurring Charges For Unbundled Loops In Selected BOC Territories

AMERITECH

STATE	UNBUNDLED LOOP	NONRECURRING CHARGE
Illinois (Ameritech - MCIm Agreement)	Service Order Establish/Change (Bus. Or Res.) Line Connection (Bus. Or Res.)	$14.71 [1] $36.54 [2]
Indiana (Ameritech - AT&T Agreement)	Service Order – Establish (Bus. Or Res.) Line Connection: (Bus. Or Res.) Record Change Provision Change	$46.42 [1] $20.00 [2] $13.00 $13.50
Michigan (Ameritech - MCIm Agreement)	Service Order Establish/Change (Bus. Or Res.) Line Connection (Bus. Or Res.)	$38.44 [1] $32.76 [2]
Ohio (Ameritech - MCIm Agreement)	Service Order Establish/Change (Bus. Or Res.) Service Order – Add/Change Record Change Line Connection (Bus. Or Res.)	$25.50 [1] $9.30 $9.30 $24.35 [2]
Wisconsin (Ameritech - AT&T Wisconsin)	Service Order Establish/Change (Bus. Or Res.) Line Connection (Bus. Or Res.)	$43.27 [1] $41.82 [2]

e.spire Communications, Inc.
Proposed "Stakeholder" Rates
(Tentative Pending Expert Analysis of BellSouth Cost Studies)
(Each ULL Would be Deaveraged into Three Density Zones)

UNE	Recurring Charge ("RC")	Nonrecurring Charge ("NRC")	Source
2W Analog VG ULL with NID	Undisputed	1st – $51.20 Add'l – $27.80	NRC – BellSouth proposed rates in South Carolina (1st) and North Carolina (Add'l)
4W Analog VG ULL with NID	$18.00	1st – $51.20 Add'l – $27.80	RC – BellSouth proposed rate in Tennessee NRC – BellSouth proposed rates in South Carolina (1st) and North Carolina (Add'l)
2W ADSL ULL with NID	$11.89	$51.20	RC – BellSouth proposed rate in Kentucky NRC – BellSouth proposed rate in South Carolina
2W HDSL ULL with NID	$8.51	$51.20	RC – BellSouth proposed rate in Kentucky NRC – BellSouth proposed rate in South Carolina

UNE	Recurring Charge ("RC")	Nonrecurring Charge ("NRC")	Source
4W HDSL ULL with NID	$10.39	$51.20	RC – BellSouth proposed rate in Kentucky NRC – BellSouth proposed rate in South Carolina
4W DS1 ULL with NID	$64.19	1st – $300.00 Add'l – $250.00	RC – BellSouth proposed rate in Alabama NRC – BellSouth proposed rate in South Carolina
4W 56/64 Kbps ULL with NID	$29.92	1st – $333.28 Add'l – $230.50	RC – BellSouth proposed rate in Georgia NRC – BellSouth proposed rate in Louisiana
High Capacity ULLs – DS3 – OC3 – OC48	DS3 – $600.00 OC3 – $1228.00 OC48 – $4224.00	DS3 – $67.19 OC3 – $67.19 OC48 – $67.19	DS3 – BellSouth proposed rate for South Carolina OC3, OC48 – Assume 52% Discount on RCs based on comparison of DS1 UNE loop rates and DS1 special access channels – *See*, BellSouth FCC Tariff No. (§7.5.9(A)(3)(ao)-(as)
Subloop – Feeder	$8.58	1st – $206.44 Add'l – $170.05	BellSouth proposed rates for Georgia
Subloop – Distribution	$8.57	1st – $78.28 Add'l – $58.33	BellSouth proposed rates for Florida

UNE	Recurring Charge ("RC")	Nonrecurring Charge ("NRC")	Source
DS1 Dedicated Transport	$6.72 per mile $36.00 fixed	$93.60	Assume 40% Discount on NRCs and 52% Discount on RCs based on comparison of DS1 UNE loop rates and DS1 special access channels – *See*, BellSouth FCC Tariff No. 1 §7.5.9(B)(2)
DS3 Dedicated Transport	$40.00 per mile $600.00 fixed	$67.19	BellSouth proposed rates for South Carolina
High Capacity Dedicated Transport – OC3 – OC48	OC3 – $165.60 per ¼ mile – $14.40 fixed OC48 – $165.60 per ¼ mile – $14.40 fixed	OC3 – $300.00 OC48 – $300.00	Assume 40% Discount on NRCs and 52% Discount on RCs based on comparison of DS1 UNE loop rates and DS1 special access channels – *See*, BellSouth FCC Tariff No. 1 §7.5.14(A)(3)-(4)
Dark Fiber	$44.22/month + $0.008375/mile	1st – $1000.00 Add'l – $273.69	RC – BellSouth proposed rate for Georgia NRC – BellSouth proposed rate for Alabama (1st) and Georgia (Add'l)

UNE	Recurring Charge ("RC")	Nonrecurring Charge ("NRC")	Source
Frame Relay UNEs			Assume 40% Discount on NRCs and 52% Discount on RCs based on comparison of DS1 UNE loop rates and DS1 special access channels – *See*, BellSouth FCC Tariff No. 1 §21.1.10(A)-(B)
– FR Switch Port			
– Per UNI	– Per UNI	– Per UNI	
– 56 Kbps	56 Kbps – $21.12	56 Kbps – $180.00	
– 64 Kbps	64 Kbps – $24.00	64 Kbps – $180.00	
– 1.536 Mbps	1.536 Mbps – $100.00	1.536 Mbps – $246.00	
– 44.210 Mbps	44.210 Mbps – $822.72	44.210 Mbps – $630.00	
– Per NNI	– Per NNI	– Per NNI	
– 56 Kbps	56 Kbps – $21.12	56 Kbps – $180.00	
– 64 Kbps	64 Kbps – $24.00	64 Kbps – $180.00	
– 1.536 Mbps	1.536 Mbps – $100.00	1.536 Mbps – $246.00	
– 44.210 Mbps	44.210 Mbps – $822.72	44.210 Mbps – $630.00	
– DLCI	$0.72	$15.00	
– DLCI (CIR)			
– 56-64 Kbps	$6.24	NA	
– >64-128 Kbps	$8.64	NA	
– >128-256 Kbps	$11.52	NA	
– >256-384 Kbps	$13.44	NA	
– >384-512 Kbps	$15.36	NA	
– >512-768 Kbps	$17.28	NA	
– >768 Kbps-1.536 Mbps	$26.40	NA	

UNE	Recurring Charge ("RC")	Nonrecurring Charge ("NRC")	Source
(continued) –>1.536 - 4 Mbps –>4 – 10 Mbps –>10 – 16 Mbps –>16-34 Mbps –>34-44.736 Mbps	 $57.60 $76.80 $100.48 $120.00 $177.60	 NA NA NA NA NA	
Reciprocal Compensation (Transport and Termination)	$0.009	N/A	e.spire cost study and KMC agreement