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RECORDS AND REPORTING

January 8, 1999

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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

990036-TP

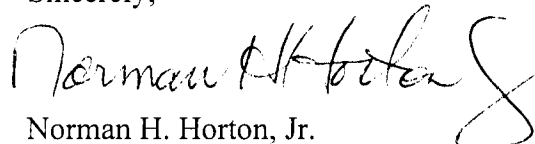
Dear Ms. Bayo:

Enclosed for filing on behalf of e.spire Communications, Inc. are an original and fifteen copies of the Complaint of e.spire Communications, Inc. for Enforcement of its Interconnection Agreement with BellSouth Telecommunications, Inc.

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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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

COMPLAINT OF e.spire)
COMMUNICATIONS, INC. FOR)
ENFORCEMENT OF ITS INTERCONNECTION)
AGREEMENT WITH BELLSOUTH)
TELECOMMUNICATIONS, INC.)
_____)

Docket No.
Filed: January 8, 1999

COMPLAINT OF
e.spire COMMUNICATIONS, INC.

e.spire Communications, Inc., on behalf of its operating subsidiaries, American Communication Services of Jacksonville, Inc. d/b/a e.spire Communications, Inc., and ACSI Local Switched Services, Inc. d/b/a e.spire Communications, Inc. (collectively "e.spire" or the "Company"), by their counsel, hereby file this complaint against BellSouth Telecommunications, Inc. ("BellSouth") for refusal to perform its obligations under its Interconnection Agreement with e.spire to provide for the ordering and provisioning of combinations of unbundled network elements.

PRELIMINARY

1. e.spire is an alternative local exchange company certificated to provide local exchange services in Florida. e.spire's address is:

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

2. Copies of pleadings, notices and other documents in this docket should be provided to:

Norman H. Horton, Jr., Esq.
Messer, Caparello & Self, P.A.
215 South Monroe Street, Ste. 701
Tallahassee, FL 32301

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

3. e.spire is a competitive local exchange carrier authorized to provide dedicated and switched local exchange services in Florida and numerous other states. e.spire currently provides services in Florida through the resale of BellSouth wholesale products, by using its own network facilities exclusively and in combination with unbundled elements purchased from BellSouth.

4. BellSouth is an incumbent local exchange company (ILEC) that, among other things, provides switched local exchange and other telecommunications services in nine southern states. BellSouth is an ILEC, as defined in 47 U.S.C. § 251(h), authorized to provide local exchange services in areas of Florida currently served by e.spire.

5. e.spire and BellSouth entered into an Interconnection Agreement on July 25, 1996 (the "Agreement"). An Amendment to the Agreement, dated October 17, 1996, was also filed with the Commission and approved by the Commission by Order No. PSC-96-1509-FOF-TP, issued December 12, 1996. A copy of the relevant portions of the Agreement and amendment are attached hereto as Exhibit A.

LAW

6. The Telecommunications Act of 1996, at 47 U.S.C. 251(c)(3), requires that

ILECs:

[P]rovide to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonable and nondiscriminatory.

7. Sections VI.C.3 - C.5 of the Agreement provides as follows for the ordering of combinations of unbundled network elements (UNEs) as follows:

C.3 “Particular combinations of elements, hereafter referred to as combinations, identified and described by ACSI [e.spire] can be ordered and provisioned as combinations, and not require the enumeration of each element within that combination in each provisioning order, consistent with OBF or other mutually agreed upon procedures.

C.4 Appropriate ordering/provisioning codes will be established for each identified combination, consistent with OBF or other mutually agreed upon procedures.

C.5 When combinations are ordered where the elements are currently interconnected and functional, those elements will remain interconnected and functional (except for the integrated SLC).”

8. The FCC required, in its First Report and Order issued August 8, 1996, that BellSouth and other incumbent LECs provide such combinations of unbundled network elements. However, the Eighth Circuit Court of Appeals in the *Iowa Utils. Bd.* decision, [*Iowa Utilities Board v. FCC*, 120F3 753 (8th Cir. 1997)] determined that the FCC rule in question was not valid, and required CLECs to be physically collocated to purchase such combinations.

9. Importantly, the Eighth Circuit decision affected the FCC's rules, but had no effect on private contractual arrangements, including interconnection agreements, particularly those signed prior to the issuance of the FCC's rules. The e.spire Agreement was signed prior to the issuance of those rules, and does not provide for any reformation of the contract to account for future rulemakings or court decisions. Accordingly, the Agreement language quoted above is not impacted by the FCC rules, or the Eighth Circuit decision voiding certain of those rules.

JURISDICTION

10. e.spire and BellSouth negotiated the Agreement, which the Commission subsequently approved under the authority granted to it in Section 252(e) of the Act. The Commission has jurisdiction to hear this Complaint regarding that Commission-approved Agreement pursuant to Section 252 of the Act. Furthermore, in *Iowa Utilities Board v. FCC*, the Eighth Circuit held that the Act vests in the state commissions the power to enforce the interconnection agreements they approve. Specifically, the Court stated in relevant part:

We also believe that state commissions retain the primary authority to enforce the substantive terms of the agreements made pursuant to sections 251 and 252. Subsection 252(e)(1) of the Act explicitly requires all agreements under the Act to be submitted for state commission approval. 47 U.S.C.A. § 252(3)(1) (West Supp. 1997). We believe that the state commissions' plenary authority to accept or reject these agreements necessarily carries with it the authority to enforce the provisions of agreements that the state commissions have approved.

Id., 120 F.3d at 804 [emphasis added].

11. With respect to interconnection agreements filed pursuant to Chapter 364, Florida Statutes, Section 364.162(2) provides the Commission the authority to arbitrate any dispute regarding interpretation of interconnection or resale prices and terms and conditions. This

commission has jurisdiction to interpret and enforce the terms of the Agreement.

FAILURE TO PROVIDE UNBUNDLE NETWORK ELEMENT COMBINATIONS

12. Since e.spire began interconnection negotiations with BellSouth in March, 1996, e.spire consistently expressed an interest in the ability to order combinations of network elements in a manner whereby the elements would never be separated by BellSouth. e.spire has attempted to purchase from BellSouth transmission from e.spire's point of presence through the BellSouth central office to the customer premises, unbundled from local switching. e.spire installs its own Lucent 5ESS switches and does not require unbundled local switching. e.spire's Agreement with BellSouth specifically includes the ability to order combinations of unbundled network elements.

13. Pursuant to the Agreement, e.spire seeks to order the unbundled transport and unbundled loop combination, in some instances combined with unbundled multiplexing, without collocation and priced at TELRIC rates. Pursuant to its Agreement, e.spire is entitled to order this UNE combination, at a minimum, at DS-1 transport levels, with or without 1/0 multiplexing. To the extent they are made available, e.spire would be entitled to order higher transport levels with appropriate multiplexing.

14. Purchasing such combinations has at least two advantages. First, combinations give e.spire the option of obtaining unbundled access at as little as a single collocation instead of multiple collocations in a metropolitan area. A single collocation can cost more than \$500,000, and without combinations, a city such as Jacksonville may require many collocations just to serve a portion of the metropolitan area. More importantly, collocations take as long as six months or more to establish. Thus, the failure to provide combinations imposes substantial costs on new entrants, and causes extensive delays in the development of facilities-based local competition in

Florida.

15. Second, in addition to forcing CLECs to undergo the expensive and time-consuming collocation process, not having access to combinations forces CLECs to purchase more expensive special access services to attempt to reach customers. Without combinations, e.spire must purchase non-cost-based, special access services to reach its customers. A special access circuit, assuming 5 miles of transport, purchased from BellSouth's Florida tariff would be more than twice as expensive than an UNE combination.

16. When e.spire purchases special access or UNE combinations, it does not do so in order to offer the service as is to its customers. e.spire uses these circuits to offer services that BellSouth has never offered in Florida. Specifically, e.spire offers a unique service called Platinum that offers the customer a channelized DS-1 circuit which the customer can then use as it wishes. The 24 channels can be dedicated at the customers' request to any combination of local, including Internet, and long distance services.

17. BellSouth has never cooperated with e.spire to support in any systematic or consistent manner, orders for UNE combinations. Earlier this year, BellSouth attempted to unilaterally rescind e.spire's right to UNE combinations. BellSouth had processed a certain number of e.spire orders for unbundled loops out of end offices in which e.spire was not collocated. Once recognized, BellSouth considered these to be orders for UNE combinations. At this point, BellSouth sent e.spire a letter arguing that there was no right to such combinations in e.spire's agreement. The letter, dated April 21, 1998, attached as Exhibit B, states:

This is to clarify ACSI's right to recombine unbundled network elements in locations where ACSI is not collocated. Based on our discussions with Richard Robertson, your contract negotiator at the time our interconnection agreement was negotiated, his intent was

to have all unbundled network elements terminate at ACSI's collocation arrangement. In fact, in Section B of the contract you will find this intent explained.

The letter goes on to state that combinations would not be permitted after May 15, 1998, unilaterally rescinding the provisions in the Agreement specifically permitting such combinations.

18. Upon receipt of this letter, e.spire brought its right to combinations to BellSouth's attention and requested that the letter in question be withdrawn. BellSouth, by letter dated April 28, 1998, attached as Exhibit C, continued to deny e.spire's legal right to combinations, and offered to continue such combinations through September 1, 1998:

BellSouth is not withdrawing the position taken in Jerry Hendrix's 4/21/98 letter to James Falvey. However, in an effort to strengthen and maintain a mutually beneficial working relationship, BellSouth has agreed to extend its offer to allow e.spire to order combinations through the term of the Interconnection Agreement, which expires 9/1/98. The provision of unbundled network elements will be discussed at length during contract negotiations. BellSouth is willing to explore various options that will address UNE combinations.

BellSouth in short offered to support UNE combination orders as a courtesy, but denied that e.spire had any legal right to such combinations, ignoring the Interconnection Agreement's express language to the contrary. e.spire's rights after September 1, 1998 were left subject to some question. Furthermore, interconnection negotiations did not yield an acceptable alternative to UNE combinations, and the issue of combinations is currently subject to arbitration in Florida.

19. In a series of meetings on operational issues, BellSouth indicated in response to an e.spire request in the late summer and early fall of 1998 that it would be willing to accept orders for UNE combinations from e.spire. e.spire arranged a meeting to address the pricing for DS-1

level combinations. Consistent with the Agreement, e.spire indicated which elements should be included in the combination: DS-1 level combinations comprised of DS-1 transport in combination with DS-1 loops. BellSouth committed to provide such combinations in all BellSouth states, at least until a new interconnection agreement was negotiated. BellSouth agreed on the pricing for the elements comprising this combination. At the close of the meeting, it was agreed that orders would be placed and that they would be "hand-held" by specific BellSouth personnel.

20. Although committing to support these orders, when they were actually placed, BellSouth proved to lack a system for efficiently handling UNE combination orders in accordance with the Agreement. When e.spire placed the orders, it was told that the transport portion of the order must be ordered through the ICSC Service Center, and that the loop portion must be ordered through the LCSC Service Center. This is in direct violation of the Agreement, which provides that combinations of elements identified by e.spire can be ordered and provisioned as combinations, and not require the enumeration of each element within that combination in each provisioning order. (See Section IV.C.3 of the Agreement, cited above). At this point, it became clear that BellSouth was not willing to process UNE combination orders consistent with the Agreement.

21. During this process, e.spire requested that it be permitted to transition its embedded base of special access lines to UNE combinations by submitting an order that would require an administrative and billing change but not a physical circuit change. e.spire has only ordered special access circuits over the course of the last year because of BellSouth's refusal to process UNE combination orders. The request to transition the special access lines to UNE

combinations was based on e.spire's experience with Southwestern Bell, which is willing to permit a transition of this kind. BellSouth refused to cooperate in such a transition. Instead, BellSouth insisted that all of e.spire's special access circuits be turned down, and that they be physically replaced by UNE combinations. Implementing the BellSouth proposal would be disruptive impact on e.spire's customer base. Again, e.spire considered that it was at an impasse as to how to transition these special access circuits to UNE combinations - which were ordered only because of BellSouth's refusal and inability to process UNE combinations.

22. Adding to BellSouth's confusing approach to fulfilling its obligation under the Agreement to provide UNE combinations to e.spire, BellSouth has consistently stated in public hearings in several states over the course of the last year that it would not provision UNE combinations without a physical collocation. As noted above, the Eighth Circuit decision impacts the FCC rules, but has no impact on contractual commitments made in interconnection agreements. Nonetheless, BellSouth has repeatedly asserted that it will not provide combinations of unbundled network elements at TELRIC pricing without physical collocation. Most recently, in a public workshop at the Georgia Public Service Commission, several BellSouth employees still took the public position that it is against BellSouth policy to support combinations. BellSouth's personnel had to be showed BellSouth's own letter which concedes that, at some level and for some period of time, it would support orders for combinations. Accordingly, e.spire has been denied access to extended loops or combinations under its Agreement.

23. e.spire can no longer operate its business in Florida based on BellSouth's hot and cold interpretations of its contractual obligations. Pursuant to the Agreement, e.spire should be able to order UNE combinations from BellSouth. BellSouth has refused to perform this

obligation under the Agreement by refusing to allow e.spire to order combinations of UNEs from the same ordering center of BellSouth with the same ease of ordering and provisioning as BellSouth tariffed services such as special access.

24. e.spire has been unable to resolve this dispute with BellSouth. Therefore, e.spire respectfully requests that the Commission direct BellSouth to comply with the Agreement by allowing e.spire to order and provision UNE combinations at cost-based rates.

RELIEF SOUGHT

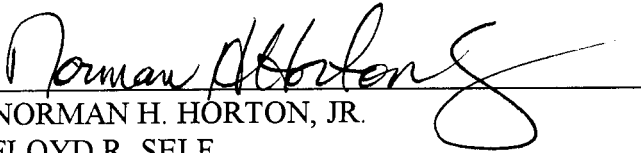
WHEREFORE, e.spire hereby requests that the Commission issue the following relief in response to this Complaint:

- (a) Determine that BellSouth is obligated under the Agreement to make available to e.spire particular combinations of elements identified and described by e.spire;
- (b) That combinations of elements can be ordered and provisioned as combinations, and not require the enumeration of each element within that combination in each provisioning order, and shall be processed with the same ease and consistency as BellSouth end user services, such as special access circuits;
- (c) That when e.spire orders combinations of elements that are currently interconnected and functional, those elements shall remain interconnected and functional;
- (d) Order BellSouth to issue a credit to e.spire for all e.spire new and embedded special access circuits equal to the difference between (a) the price of the DS-1s that e.spire ordered from the BellSouth access tariff to provision its customers' service from e.spire's switch, and (b) the price of a combination of DS-1 loops and DS-1 local transport per the Agreement for those loops, for the period from which e.spire first

- placed its orders for DS-1 UNE combinations until the date of BellSouth's conformance with the Agreement;
- (e) Order BellSouth to provision all future requests of e.spire for DS-1 loop and DS-1 transport as UNE combinations and shall charge the UNE prices contained in the Agreement;
 - (f) Order BellSouth to transfer e.spire's embedded base of special access circuits to UNE combinations by an administrative or billing change without a physical transition and e.spire customer disruption;
 - (g) Order BellSouth to cease and desist from continuing to take the actions described herein;
 - (h) Order appropriate interest on all charges paid by BellSouth to e.spire;
 - (i) Order BellSouth to pay e.spire's attorneys' fees pursuant to the Agreement;
 - (j) Order such other relief as the Commission deems appropriate.

This 8th day of January, 1999.

Respectfully submitted,



NORMAN H. HORTON, JR.
FLOYD R. SELF
Messer, Caparello & Self, P.A.
Post Office Box 1876
215 S. Monroe Street, Ste. 701
Tallahassee, FL 32302
(850) 222-0720

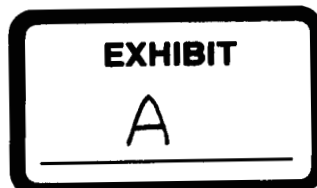
BRAD E. MUTSCHELKNAUS
Kelley Drye & Warren, LLP
1200 19th Street, NW, Suite 500
Washington, D.C. 20036
(202) 955-9600

RILEY M. MURPHY
JAMES C. FALVEY
e.spire Communications, Inc.
133 National Business Parkway, Suite 200
Annapolis Junction, MD 20701
(301) 617-4215

Attorneys for American Communication Services of
Jacksonville, Inc. d/b/a e.spire Communications, Inc.
and ACSI Local Switched Services, Inc., d/b/a
e.spire Communications, Inc.

C. Order Processing

- C.1 ACSI shall place orders for unbundled loops (and other network elements) through completion and submission of the Service Order form specified in the FBOG. The installation time intervals which shall apply thereto are as expressed in subsection IV.D hereafter.
- C.2 Order processing for unbundled loops shall be mechanized, in a form substantially similar to that currently used for the ordering of special access services. Automated interfaces shall be provided into a centralized operations support systems database for determining service availability on loops (e.g., ISCON), confirmation of order acceptance and ongoing order status. If made available by BellSouth to any other telecommunications carrier, automated interfaces shall be provided in a centralized operations support systems database for installation scheduling, confirmation of circuit assignments and completion confirmation.
- C.3 Particular combinations of elements, hereafter referred to as combinations, identified and described by ACSI can be ordered and provisioned as combinations, and not require the enumeration of each element within that combination in each provisioning order, consistent with OBF or other mutually agreed upon procedures.
- C.4 Appropriate ordering/provisioning codes will be established for each identified combination, consistent with OBF or other mutually agreed upon procedures.
- C.5 When combinations are ordered where the elements are currently interconnected and functional, those elements will remain interconnected and functional (except for the integrated SLC).
- C.6 When the open network access platform is available, BellSouth will provide ACSI with the ability to have the BellSouth end office AIN triggers initiated via an appropriate service order from ACSI.
- C.7 ACSI and BellSouth will negotiate in good faith to create a mutually acceptable standard service order/disconnect order format, consistent with OBF or other mutually agreed upon procedures.
- C.8 BellSouth shall exercise best efforts to provide ACSI with the "real time" ability to schedule installation appointments with the customer on-line and access to BellSouth's schedule availability beginning in the second calendar quarter of 1997. In the interim, BellSouth will install unbundled loops and other network elements by the Customer Desired Due Date (CDDD) where facilities permit.



BellSouth Telecommunications, Inc.
Room 34S91 BellSouth Center
675 West Peachtree Street, N.E.
Atlanta, Georgia 30375

April 21, 1998

Mr. James C. Falvey
Vice President - Regulatory Affairs
American Communications Services, Inc.
Suite 100
131 National Business Parkway
Annapolis Junction, Maryland 20701

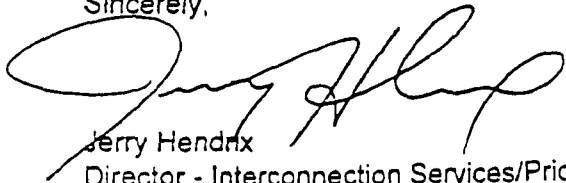
Dear Mr. Falvey,

This is to clarify ACSI's right to recombine unbundled network elements in locations where ACSI is not collocated. Based on our discussions with Richard Robertson, your contract negotiator at the time our interconnection agreement was negotiated, his intent was to have all unbundled network elements terminate at ACSI's collocation arrangement. In fact, in Section B of the contract you will find this intent explained.

As some of ACSI's orders, contrary to the intent and understanding of the parties, have been worked by BellSouth in error and in the spirit of compromise to further the BellSouth/ACSI relationship, BellSouth will allow ACSI to continue to send such orders to BellSouth until May 15, 1998. This authorization does not reflect any admission or liability on the part of BellSouth and should be accepted in the spirit in which it is offered. During the negotiations for the new agreement, the provision of unbundled network elements will be discussed fully.

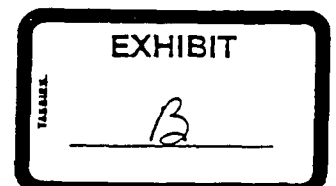
Should you have any questions, you may contact me at (404) 927-7503.

Sincerely,



Jerry Hendrix
Director - Interconnection Services/Pricing

cc: Marc Cathey
Bill Bolt
Diane Cheng



BellSouth Interconnection Services 205 977-0535
South 57C1 Fax 205 977-1151
3535 Colonnade Parkway Pager 800 728-1372
Birmingham, Alabama 35243

William D. French
Sales Director

April 28, 1998

Mr. Ron Spears
e•spire Communications
133 National Business Parkway
Suite 200
Annapolis Junction, Maryland 20701

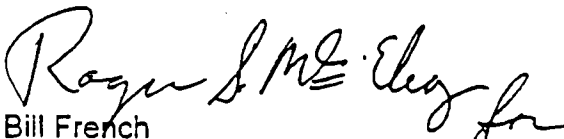
Dear Mr. Spears,

This letter is a follow-up to our conversation on Friday, April 24th regarding UNE combinations. To reiterate, BellSouth is not withdrawing the position taken in Jerry Hendrix' 4/21/98 letter to James Falvey. However, in an effort to strengthen and maintain a mutually beneficial working relationship, BellSouth has agreed to extend its offer to allow e•spire to order UNE combinations through the term of the Interconnection Agreement, which expires 9/1/98.

The provision of unbundled network elements will be discussed at length during contract renegotiations. BellSouth is willing to explore various options that will address UNE combinations.

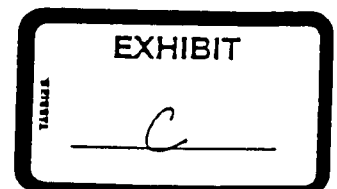
Should you have any questions, you may contact me at (205) 977-0535.

Sincerely,



Bill French
Sales Director - Interconnection Services

cc: Jerry Hendrix
Pat Finlen



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this date served the following persons with a true, correct and complete copy of the foregoing Complaint of e.spire Communications, Inc. by depositing same in the United States mail, with sufficient postage affixed thereon, properly addressed to:

Fred McCallum, Jr., Esq.
Lisa Spooner Foshee, Esq.
BellSouth Telecommunications, Inc.
125 Perimeter Center West
Room 376
Atlanta, Georgia 30346

Mr. Jim Hurt, Director
Mr. John McLean
Consumers' Utility Counsel
2 Martin Luther King, Jr. Drive
Plaza Level East
Atlanta, Georgia 30334

This 28th day of December, 1998.



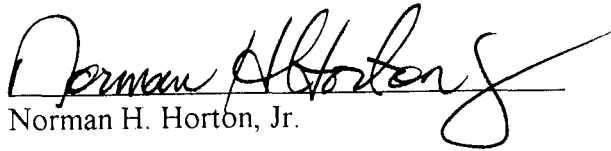
Frank B. Strickland

WILSON STRICKLAND & BENSON PC
One Midtown Plaza, Suite 1100
1360 Peachtree Street, N.E.
Atlanta, Georgia 30309
(404) 870-1800

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Complaint of e.spire Communications, Inc. was provided this 8th day of January, 1999, by hand delivery to:

Nancy B. White, Esq.
BellSouth Telecommunications, Inc.
150 South Monroe Street, Ste. 400
Tallahassee, FL 32301


Norman H. Horton, Jr.