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September 1, 1999

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

Re: Docket No. 981008-TP

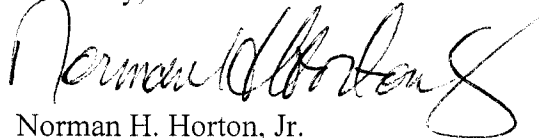
Dear Ms. Bayo:

Enclosed for filing on behalf of e.spire Communications, Inc., are an original and fifteen copies of e.spire's Reply to BellSouth's Motion for Stay in the above captioned docket.

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.

AFA _____
APP _____
CAF _____
CMU 4 cc: James C. Falvey, Esq.
CTR _____
EAG _____
LEO Keating
MAS 2 _____
OPC _____
PAI _____
SEC 1 _____
WAW _____
JTH _____

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Enclosure

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 981008-TP
FILED: September 1, 1999

**e.spire COMMUNICATIONS, INC.'S REPLY TO
BELLSOUTH'S MOTION FOR STAY**

COMES NOW, American Communication Services of Jacksonville, Inc. d/b/a e.spire Communications, and ACSI Local Switched Services, Inc. d/b/a e.spire Communications, Inc. (collectively "e.spire" or the "Company") through undersigned counsel and files this Reply to the Motion for Stay filed by BellSouth Telecommunications, Inc.'s ("BellSouth"). As its Reply, e.spire would state:

1. On August 20, 1999, BellSouth Telecommunications, Inc. filed a Motion to Stay Order No. PSC-99-0658-FOF-TP issued April 5, 1999. Order 98-0658 was an order of the Commission resolving a complaint filed by e.spire against BellSouth regarding the treatment of traffic terminated to internet service providers ("ISP") for purposes of payment of reciprocal compensation. The Commission resolved the dispute by determining, inter alia, that the interconnection agreement between e.spire and BellSouth included ISP traffic within the definition of local traffic for purposes of reciprocal compensation. This conclusion was reiterated in Order No. PSC-99-1453-FOF-TP issued July 26, 1999, wherein the Commission denied BellSouth's Petition

for Reconsideration of Order No. 99-0658. BellSouth now wants the Commission to stay its order, citing Rule 25-22.061, Florida Administrative Code.

The rule cited by BellSouth permits the party to seek a stay of an order while that order is subject to judicial review. In the Motion, BellSouth states that it “intends to seek judicial review . . .” (emphasis added) but as of the date of this response, e.spire has not received any complaint, notice or other document that would substantiate that judicial review has indeed been sought. Rule 25-22.061(2), Florida Administrative Code, cited by BellSouth, permits a party to seek a stay “pending judicial review” (emphasis added) thus a prerequisite to seeking a stay is that there be a pending judicial review, not just a mere intent to seek judicial review. There being no pending judicial review, the Motion is improper — at best it is premature — consequently the Motion should be denied.

Notwithstanding the foregoing, and without waiving the foregoing argument, should the Commission accept the Motion and consider it under Rule 25-22.061(2), the Motion should similarly be denied. BellSouth states that it is entitled to a stay under Rule 25-22.061(2) but it is for the Commission to determine whether the Motion should be granted, modified or denied based on consideration of the support in the Motion. Here, BellSouth has not demonstrated the likelihood of prevailing on appeal, that BellSouth will suffer irreparable harm or that the delay will not cause substantial harm or be contrary to the public interest (Rule 25-22.06(2)(a) - (b), Florida Administrative Code). Consequently, there is no merit to the Motion and it should be denied.

a. Whether BellSouth is likely to prevail on appeal.

BellSouth's sole argument to support a conclusion that it is likely to prevail is that the Commission's findings are at issue with those of the FCC in its ISP Order. (Declaratory Ruling in CC Docket 96-98 and Notice of Proposed Rulemaking in CC Docket 99-68; FCC Order No. 99-38 released February 26, 1999.)

This is substantially the same argument made to the Commission on Motion for Reconsideration and considered by the Commission. In Order No. 99-38 the FCC indicated that it would not interfere with state commission findings as to whether ISP traffic should be treated as local and again BellSouth chose to overlook this language. Specifically the FCC found:

Against the backdrop, and in the absence of any contrary Commission rule, parties entering into interconnection agreements may reasonably have agreed, for the purposes of determining whether reciprocal compensation should apply to ISP-bound traffic, that such traffic should be treated in the same manner as local traffic. When construing the parties' agreements to determine whether the parties so agreed, state commissions have the opportunity to consider all the relevant facts including the negotiation of the agreements in the context of this Commission's longstanding policy of treating this traffic as local, and the conduct of the parties pursuant to those agreements. For example it may be appropriate for state commissions to consider such factors as whether incumbent LECs serving ESPs (including ISPs) have done so out of intrastate or interstate tariffs; whether revenues associated with those services were counted as intrastate or interstate revenues; whether there is evidence that incumbent LECs or CLECs made any effort to meter this traffic or otherwise segregate it from local traffic, particularly for the purpose of billing one another for reciprocal compensation; whether, in jurisdictions where incumbent LECs bill their end users by message units, incumbent LECs have included calls to ISPs in local telephone charges; and whether, if ISP traffic is not treated as local and subject to reciprocal compensation, incumbent LECs and CLECs would be compensated for this traffic. These factors are illustrative only; *state*

commissions, not this Commission, are the arbiters of what factors are relevant in ascertaining the parties' intentions. (emphasis added).

(Declaratory Ruling in CC Docket 96-98 and Notice of Proposed Rulemaking in CC Docket 99-68, para. 24, released Feb. 26, 1999.)

BellSouth has not demonstrated that it is likely to prevail on appeal. Indeed, e.spire submits that BellSouth is unlikely to prevail on appeal. That BellSouth is unlikely to prevail is highlighted by the fact there is no pending complaint or notice of judicial review.

b. Whether BellSouth has demonstrated that it is likely to suffer irreparable harm if the stay is not granted.

BellSouth asserts that if the stay is not granted, it will be required to pay substantial amounts of money which it might not be able to recoup should BellSouth prevail. Such speculation should not form the basis for a stay.

The amounts of money due e.spire are due pursuant to agreements willingly signed by BellSouth and to grant a stay would relieve BellSouth of its obligation under that agreement to the detriment of e.spire. BellSouth has given no supported reasoned basis to establish that it will suffer irreparable harm.

c. Whether further delay of implement will cause substantial harm and be contrary to the public interest.

In support of this point of consideration by the Commission, BellSouth merely states that delay will not cause harm to e.spire or be contrary to the public interest. That simply is not true.

The Commission has determined that the Interconnection Agreement requires the inclusion of ISP traffic in local traffic for purposes of reciprocal compensation. BellSouth owes e.spire

substantial sums of money — a fact acknowledged by BellSouth on page 3 of the motion — and further delay causes significant and substantial harm to e.spire. The continued delay sought by BellSouth impedes the ability of e.spire to provide viable competition and thwarts the efforts of Florida to encourage competition in the telecommunications industry. Such delay does not serve the public and certainly is adverse to e.spire. BellSouth states that the harm to the public if a stay is granted will be “inconsequential” in contrast to the harm to BellSouth if a stay is not granted (p. 4). The harm to the public and e.spire is not “inconsequential,” it is significant. To deny the public the opportunities and benefits derived from competition is not inconsequential. The Stay should be denied.

d. Whether a bond should be required.

BellSouth should be directed to comply with the Commission Order and immediately pay to e.spire all amounts due. e.spire recognizes that the Commission can require a bond if a stay is issued, but there is no basis for a Stay.

BellSouth recommends that a bond be set at zero and that no bond is necessary “because some of the moneys at issue have already been escrowed . . .” e.spire is unaware of any escrow arrangement. If BellSouth is in fact escrowing moneys at issue then the Commission should require BellSouth to submit a report forthwith explaining the precise arrangements of the escrow and the amounts in the account.

CONCLUSION

The Commission should deny the Motion for Stay as there is no pending judicial review of the Commission’s Orders. Alternatively, if the Commission considers the Motion, the Stay should

be denied and BellSouth directed to comply with the Order of the PSC and pay all amounts due to e.spire.

Finally, e.spire respectfully reserves the opportunity to supplement this reply should judicial review be sought.

Respectfully submitted,

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

NORMAN H. HORTON, JR.
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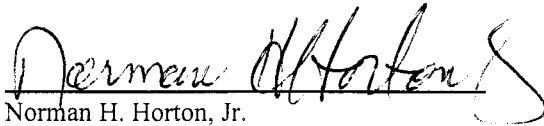
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of e.spire Communications, Inc.'s Reply to Bellsouth's Motion for Stay have been served upon the following parties by Hand Delivery (*) and/or U. S. Mail this 1st day of September, 1999.

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