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RECORDS AND
REPORTING

January 12, 1999

Mrs. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 981008-TP

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of BellSouth Telecommunications, Inc.'s Response to Motion to Strike Direct and Rebuttal Testimony of Albert Halprin, which we served today. Please file them in the captioned matter.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

- ACK _____
- AFA _____
- APP _____
- CAF _____
- CMD _____
- CTR _____ Enclosures
- EAG _____
- LEG 2 cc: All parties of record
- LIN 3 M. M. Criser, III
- OPC _____ N. B. White
- RCH _____ William J. Ellenberg II (w/o enclosures)
- SEC I
- WAS _____
- OTH _____

Sincerely,

Mary K. Keyer
(AK)

Mary K. Keyer

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DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

COMPLAINT OF e.spire)
COMMUNICATIONS, INC. AGAINST)
BELLSOUTH TELECOMMUNICATIONS,)
INC. REGARDING RECIPROCAL)
COMPENSATION FOR TRAFFIC)
TERMINATED TO INTERNET SERVICE)
PROVIDERS)
_____)

Docket No. 981008-TP

Dated: January 12, 1999

**BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE
TO MOTION TO STRIKE DIRECT AND REBUTTAL TESTIMONY
OF ALBERT HALPRIN**

BellSouth Telecommunications, Inc. ("BellSouth") provides the following response to the Motion to Strike Direct and Rebuttal Testimony of Albert Halprin filed by American Communication Services of Jacksonville, Inc. d/b/a e.spire Communcations, Inc. (collectively "e.spire"). For the reasons stated herein, e.spire's motion to strike must be denied.

1. e.spire seeks to exclude testimony of one of BellSouth's witnesses, Albert Halprin, because he is an attorney and adjunct law professor. e.spire claims Mr. Halprin's testimony is "substantively and wholly legal in nature" and should be excluded. e.spire's arguments that Mr. Halprin's testimony is inadmissible are without merit for several reasons.

2. Mr. Halprin is an expert witness in the area of regulatory issues, who is particularly qualified to render an opinion in the area of Internet regulatory issues. Mr. Halprin has expertise in telecommunication regulation by virtue of his past positions with the Federal Communication Commission (FCC) prior to his

current position, including being Chief of the FCC's Common Carrier Bureau, where he was responsible for the regulation of all interstate telecommunications services in the United States. Mr. Halprin also served as a Senior Attorney and Chief of the Bureau's Policy and Program Planning Division. Additionally, Mr. Halprin has testified as an expert witness in seven other state Commission proceedings on the matters at issue in this proceeding.

3. Contrary to e.spire's claim, Mr. Halprin's testimony is substantively factual in nature. His testimony primarily addresses the central factual issue in dispute in this proceeding: whether Internet communications that are placed through Internet Service Providers (ISPs) terminate at the ISP or elsewhere. The legal definition of the term "terminates" is obviously germane to this factual analysis. Mr. Halprin's consideration of this and other legal concepts does not alter the fundamentally factual nature of his testimony.

4. Although Mr. Halprin is an attorney, he has extensive experience in the area of telecommunications. His expertise in these matters qualifies him to serve as a witness in this case. e.spire will have ample opportunity to cross-examine Mr. Halprin and address any concerns it has as to Mr. Halprin's testimony. The weight the Commission chooses to give his testimony is up to the Commission.

5. This is a regulatory proceeding. The Commission has never been bound by the strict rules of evidence in conducting its hearings and is presumed to have the expertise necessary to weigh the evidence presented to it and to discount any evidence it finds not credible or inappropriate. The rules of

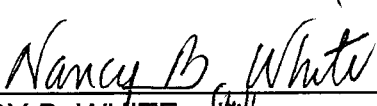
evidence are relaxed before the Commission to ensure that the Commission is provided with all the information necessary to render sound decisions, and recognize that the Commission, like judges conducting bench trials, are better situated than jurors to sift through the evidence and weigh it accordingly.

6. e.spire itself has presented the testimony of Mr. James Falvey, also an attorney, in this proceeding. Mr. Falvey provides opinions as to what the law is and how it should be interpreted. BellSouth did not file a motion to strike Mr. Falvey's testimony, but believes the Commission should give whatever weight it believes is appropriate to the testimony submitted by both parties.

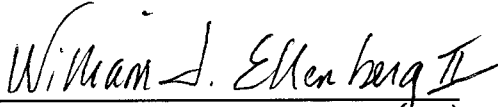
7. For the reasons stated above, e.spire's motion to strike the testimony of Albert Halprin should be denied.

Respectfully submitted this 12th day of January, 1999.

BELLSOUTH TELECOMMUNICATIONS, INC.



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CERTIFICATE OF SERVICE

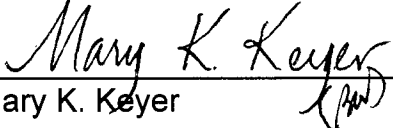
Docket No. 981008-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. Mail this 12th day of January, 1999 to the following:

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