

ORIGINAL

e.spire Exhibit
Revised Testimony of James C. Falvey

**BEFORE THE
STATE OF FLORIDA
PUBLIC SERVICE COMMISSION**

In the Matter of

**Petition by E.SPIRE COMMUNICATIONS, INC.,
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 BELL SOUTH TELECOMMUNICATIONS,
INC. Pursuant to Section 252(b) of the
Telecommunications Act of 1996**

Docket No. 981745-TP

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

FEBRUARY 4, 1998*

****Resubmitted on February 19, 1999 with cross-references to the Florida Issues List as it appears in e.spire's February 18, 1999 Issues List Letter. Text that pertained exclusively to settled issues has been deleted. Where necessary, the Table of Contents also has been adjusted.***

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Introduction

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Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS FOR THE RECORD.

A. My name is James C. Falvey. I am Vice President – Regulatory Affairs for e.spire Communications, Inc. (“e.spire”), which formerly was known as American Communications Services, Inc. or “ACSI”. My business address is 133 National Business Parkway Suite 200, Annapolis Junction, Maryland 20701.

Q. PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE AND BACKGROUND.

A. Prior to joining e.spire as Vice President – Regulatory Affairs in 1996, I practiced law as an associate with the Washington, D.C. firm of Swidler & Berlin. In the course of my practice, I represented Competitive Local Exchange Carriers (“CLECs”), Interexchange Carriers (“IXCs”), and cable operators before state and federal regulators. Prior to my employment at Swidler & Berlin, I was an associate in the Washington, D.C. office of the law firm of Johnson & Gibbs, where I practiced in the area of antitrust litigation. I graduated from Cornell University in 1985 with honors and received my law degree from the University of Virginia School of Law in 1990. I am admitted to practice law in the District of Columbia and Virginia.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to present e.spire’s business position on each of the unresolved issues presented for arbitration in this proceeding. My testimony will be supported by technical testimony submitted by my colleague, Bill Stipe,

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

5 **Q. PLEASE DESCRIBE E.SPIRE'S BUSINESS.**

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

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

20 **Q. HAS E.SPIRE INTERCONNECTED WITH BELL SOUTH?**

21 A. Yes. e.spire and BellSouth executed an initial local interconnection agreement
22 covering eight states in the BellSouth operating territory in July 1996 (the "ACSI-
23 BellSouth Interconnection Agreement"). The ACSI-BellSouth Interconnection

1 Agreement was scheduled to expire on September 1, 1998, but has been extended
2 by mutual agreement of the parties until a successor agreement is executed.
3 Pursuant to that initial ACSI-BellSouth Interconnection Agreement, e.spire has in
4 fact established collocation arrangements and interconnected with BellSouth at
5 numerous points. We have been exchanging Local Traffic for termination,
6 purchasing UNEs and reselling local services for over two years under that
7 agreement.

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

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

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

22 **A.** The final draft version of the successor interconnection agreement between e.spire
23 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 structured in a modular manner, and is comprised of the following discrete sections:

General Terms and Conditions

- Part A: Terms and Conditions
- Part B: Definitions
- Part C: Schedule of e.spire Operating Subsidiaries

Attachments

- 1: Resale
- 2: Unbundled Network Elements
- 3: Local Interconnection
- 4: Collocation
- 5: Numbering and Number Portability
- 6: OSS, Ordering, Provisioning, Maintenance and Repair
- 7: Billing
- 8: Rights of Way/Pole Attachments
- 9: Bona Fide Requests
- 10: Performance Standards/Measurements
- 11: Rates
- 12: Directory Listings
- 13: LIDB
- 14: Blanket Letter of Authorization
- 15: Standard Intervals

We have organized our issues according to each such discrete section, and

I have prepared my testimony to proceed in the same order. When you examine the draft Agreement, you will note the interposition of language which is shaded in gray. The shaded areas represent contract language which remains in dispute, and will need to be finalized after the Commission renders its decision in this arbitration. The non-shaded language has been agreed-upon by the parties, and will be incorporated into the final agreement as indicated, unless otherwise agreed by the parties.

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

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

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

16 **General Terms and Conditions**

17 **Q. WERE THE PARTIES ABLE TO SUCCESSFULLY NEGOTIATE A SET**
18 **OF GENERAL TERMS, CONDITIONS AND DEFINITION? [ISSUES 10,**
19 **13, 14, 15]**

20 A. I am pleased to report that we were able to reach agreement on the vast majority
21 of issues relating to general terms and conditions of the contract, as well as the
22 applicable definitions. However, we were not able to resolve disagreements
23 relating to: (i) term of the agreement; (ii) the scope of MFN provisions; (iii)

1 imposition of liquidated damages; (iv) establishment of a fresh look period; (v)
2 availability of commercial arbitration; (vi) subpoenas processing; and (vii)
3 reformation due to changes in applicable law. We also were unable to agree on
4 the definitions applicable to the terms "Local Traffic" and "Tandem Switch" as
5 used in the Agreement.

6 [Q&A DELETED]

7 [Q&A DELETED]

8 [Q&A DELETED]

9 [Q&A DELETED]

10 [Q&A DELETED]

11 [Q&A DELETED]

12 Q. WHAT IS THE DISAGREEMENT OVER THE EFFECT OF CHANGES
13 IN APPLICABLE LAW? [ISSUE 13]

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

1 Indeed, the disaffected party would be encouraged to file appeals just to avoid
2 reforming its interconnection agreements as necessary to comply. Accordingly,
3 the Agreement should be reformed as soon as the change in law is final and
4 effective (i.e., not stayed).

5 **Total Service Resale**

6
7 [Q&A DELETED]

8 [Q&A DELETED]

9 [Q&A DELETED]

10 [Q&A DELETED]

11 [Q&A DELETED]

12 [Q&A DELETED]

13 [Q&A DELETED]

14 [Q&A DELETED]

15 Q. YOU HAVE LISTED SEVERAL ISSUES RELATING TO
16 NOTIFICATIONS E.SPIRE WISHES TO RECEIVE FROM BELL SOUTH
17 IN CONNECTION WITH ITS PROVISION OF RESALE SERVICES.
18 PLEASE EXPLAIN THAT SITUATION. [ISSUE 15]

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

- 1 • [TEXT DELETED]
- 2 • [TEXT DELETED]
- 3 • e.spire has requested prior notification, and e.spire approval, when
- 4 BellSouth desires to begin providing its local services to "win-
- 5 back" customers, including notification of the planned date that the
- 6 customer will be switched back to BellSouth's services. This
- 7 information is required to avoid double-billing the customer for
- 8 services in the month of conversion, and to provide customer
- 9 service functions.

- 10 • [TEXT DELETED]

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

17 **Unbundled Network Elements**

18 **Q. WHAT RELIEF DOES E.SPIRE SEEK RELATING TO BELL SOUTH'S**
19 **PROVISION OF UNBUNDLED NETWORK ELEMENTS? [ISSUES 1, 2, 3,**
20 **4, 5, 6, 20, 21]**

21 **A. The current state of the negotiations between the parties related to the**
22 **provisioning of UNEs is included as Attachment 2 to the draft Agreement. In**
23 **some instances, BellSouth has refused to make requested UNEs available. Other**

1 times, BellSouth has offered to make them available only on a case-by-case basis
2 pursuant to the cumbersome Bona Fide Request ("BFR") process, or has not
3 provided pricing.

4 In this testimony, I will identify the types of network elements that e.spire
5 is seeking to obtain from BellSouth pursuant to Section 251(c)(3) of the Act and
6 that BellSouth, thus far, has not agreed to provide – and, in the case of the
7 Extended Loop, has not agreed to *continue* to provide. In addition to the
8 Extended Loop, I will explain why e.spire must have unbundled access to xDSL-
9 compatible loops, xDSL-equipped loops, 4-wire digital DS-1 and 56/64 kbps
10 capable loops, fiber DS-3 loops, Dark Fiber loops, and a "Bit-Stream Loop".

11 **[TEXT DELETED]**

12 I also will discuss several items related – and essential – to e.spire's
13 effective use of BellSouth's UNEs as part of its own advanced
14 telecommunications service offerings. Among these items, is the need for the
15 Commission to establish TELRIC-based Non-Recurring Charges ("NRCs") for
16 BellSouth's loop conditioning efforts. I also will explain why the Commission
17 should compel BellSouth to provide e.spire with electronic access to information
18 that will enable e.spire to identify whether loops are capable of supporting xDSL
19 and other advanced services.

20 Beyond the loop, I will explain e.spire's need for unbundled access to
21 high-capacity interoffice transport facilities and interoffice Dark Fiber – at
22 prescribed cost-based rates. I also will discuss e.spire's need for unbundled

1 access to certain functionalities in common configurations or "combination
2 UNEs".

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

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

11 **Q. PLEASE EXPLAIN WHAT "ADVANCED TELECOMMUNICATIONS**
12 **SERVICES" ARE AND WHY E.SPIRE NEEDS UNBUNDLED ACCESS**
13 **TO BELL SOUTH UNES IN ORDER TO PROVIDE THEM. [ISSUES 1, 2,**
14 **3, 4, 6, 12, 20, 21]**

15 **A.**So called "Advanced Telecommunications Services" have garnered enormous
16 attention at the FCC during the past year. While Section 706 of the 1996 Act
17 provides a definition for "advanced telecommunications capability" and the FCC
18 is in the midst of conducting an inquiry and a rulemaking that likely will shed
19 light on the types of services that such capability will make possible, the scope of
20 services that fall into the category of advanced services is not perfectly clear at
21 this time. Indeed, the scope of services that fall within this category is likely to
22 evolve just as the technology that makes such services possible evolves.

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

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

21 BellSouth has begun rolling out several types of xDSL services in various
22 parts of its service territory. Because xDSL service requires "clean copper loops"
23 generally under 18,000 feet in length, it may not be technically possible to

1 provide xDSL service ubiquitously at this time. A clean copper loop is one
2 without electronic impediments such as loading coils and bridged taps. In many
3 cases a loop may be cleaned or "conditioned" for xDSL service, by removing
4 such impediments. Nevertheless, not all of BellSouth's existing loops are "xDSL-
5 capable" – some cannot be conditioned and others are just too long to support
6 current xDSL technology. Moreover, the cost of loop conditioning and xDSL
7 electronics may not make it economically feasible – even for BellSouth – to
8 provide xDSL service outside of dense urban and suburban markets.

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

18 In sum, to promote the most widespread availability of xDSL services, this
19 Commission should require BellSouth to provide (i) nondiscriminatory access to
20 loop information and (ii) unbundled access to both loops that are conditioned for
21 xDSL service and to loops that are conditioned and connected to BellSouth
22 DSLAMs. Such action will not only ensure that e.spire will be able to bring
23 xDSL services to a broader customer base; by providing BellSouth with a

1 wholesale UNE market for its DSLAMs, it also will allow BellSouth to justify
2 additional and more widespread deployment of such equipment.

3 **Q. TO PROVIDE ADVANCED SERVICES, WHAT KINDS OF LOOPS DOES**
4 **E.SPIRE NEED FROM BELL SOUTH? [ISSUES 1, 2, 3, 12, 20]**

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

18 **[Q&A DELETED]**

19 **[Q&A DELETED]**

1 **Q. HOW SHOULD BELLSOUTH RECOVER ITS COSTS FOR**
2 **CONDITIONING ITS LOOP PLANT SO THAT IT CAN SUPPORT xDSL**
3 **AND OTHER ADVANCED SERVICES APPLICATIONS? [ISSUES 1, 2]**

4 **A. BellSouth should be permitted to establish a TELRIC NRC for loop conditioning.**
5 **Because the FCC already has determined that loop conditioning is an integral part**
6 **of BellSouth's loop unbundling obligation, any charge BellSouth imposes for**
7 **loop conditioning must be consistent with the FCC's prescribed TELRIC pricing**
8 **methodology. In the event that BellSouth has not yet completed the necessary**
9 **TELRIC cost studies, e.spire believes that BellSouth's current installation rates to**
10 **its own End Users, minus the prescribed avoided cost wholesale discount, should**
11 **be established in this proceeding as interim rates (but without a true-up).**

12 **Q. HOW WILL E.SPIRE, IN TURN, RECOVER THE COSTS ASSOCIATED**
13 **WITH ITS PAYMENT OF THESE NRCs? [ISSUES 1, 2]**

14 **A. Naturally, e.spire, like BellSouth, must recover these costs – over time – in its**
15 **End User rates. That is why it is so important that these NRCs be established at**
16 **predetermined cost-based rates. However, assuming that recovery of these costs**
17 **is spread over a two-year period (which is the customer churn rate e.spire**
18 **generally assumes for NRC cost-recovery purposes), e.spire should receive a**
19 **proportional credit for loop conditioning NRCs paid to BellSouth on loops that**
20 **revert back to BellSouth (by way of a customer "win-back") or are transferred to**
21 **another competitor within two years' time. By establishing a two-year recovery**
22 **period for loop conditioning NRCs, this Commission can reduce the risks for all**
23 **carriers that incur considerable expenses in making loops compatible with**

1 advanced services technologies. In so doing, the Commission, consistent with its
2 Section 706 mandate, will provide an incentive for carriers to enter the new
3 advanced services market.

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

12 **Q. DOES E.SPIRE NEED UNBUNDLED ACCESS TO xDSL-EQUIPPED AS**
13 **WELL AS xDSL-COMPATIBLE LOOPS? [ISSUE 20]**

14 **A. Yes.** If this Commission, consistent with its Section 706 mandate, wishes to
15 accelerate the pace and expand the scope of CLECs' deployment of advanced
16 services, such as xDSL, it must require BellSouth to offer unbundled access both
17 to loops that have been conditioned so that they are compatible with xDSL
18 technologies (*i.e.*, "xDSL-Capable") and to loops that are conditioned and
19 connected to BellSouth's own xDSL electronics (*i.e.*, "xDSL-Equipped"). In
20 other words, BellSouth must offer unbundled access to loops connected to its own
21 DSLAMs. In its *Advanced Services Order*, the FCC already has determined that
22 ILEC equipment used to provide advanced services must be unbundled pursuant
23 to Section 251(c)(3). Although the FCC currently is considering whether it will

1 permit BellSouth and other ILECs to move such equipment to separate advanced
2 services affiliates outside the scope of Section 251(c), the simple fact is that the
3 Act and current FCC rules and decisions require BellSouth to unbundle its
4 DSLAM-Equipped loops and other equipment essential to providing advanced
5 services.

6 This Commission should uphold current law and should require BellSouth
7 to provide for unbundled access to its DSLAM-Equipped loops in its
8 interconnection agreement with e.spire. Consistent with the Commission's charge
9 under Section 706, such action will promote the deployment of advanced services
10 in at least three ways. First, as is the case with other unbundling requirements,
11 unbundled access to BellSouth DSLAM-Equipped loops provides e.spire with a
12 means to provide xDSL services to customers served from End Offices where
13 economics do not yet justify e.spire's placement of its own redundant DSLAM.
14 Second, in cases where BellSouth deploys IDLCs, it may not be technically
15 possible for a CLEC to provide customers with the same quality of service unless
16 BellSouth's DSLAM is used on an unbundled basis. Third, given the current
17 scarcity of physical collocation space, there may not be room available to
18 collocate e.spire's own DSLAM in a given End Office or Remote Terminal.
19 Finally, by providing BellSouth with a wholesale market for its DSLAMs,
20 BellSouth's investment risks are reduced and, in turn, it can economically justify
21 the deployment of DSLAMs in Central Offices where it may not otherwise have
22 done so.

1 Q. WHEN BELLSOUTH ALREADY HAS AN xDSL-EQUIPPED LOOP IN
2 PLACE, SHOULD E.SPIRE BE ABLE TO PURCHASE EITHER THE
3 VOICE OR DATA CHANNEL AND NOT BE REQUIRED TO PURCHASE
4 THE ENTIRE xDSL-EQUIPPED LOOP? [ISSUE 20]

5 A. Yes. One of the most significant advances offered by xDSL technology is that, by
6 funneling traffic into separate voice and data channels, an End User may
7 simultaneously use the same line for voice and data traffic. Since separate digital
8 channels are made available by the use of xDSL technology, each channel is
9 capable of being separately unbundled as a separate network element. For
10 example, a customer with developing data needs may want to take advantage of
11 e.spire's expansive Frame Relay network, but may prefer to stay with the same
12 voice service they have used for the past hundred years.

13 Nonetheless, BellSouth has refused e.spire's request for "Loop Spectrum
14 Unbundling" in which consumers are free to choose separate carriers for each
15 available digital channel. Why should BellSouth be able to block a customer
16 from doing this? Clearly, it should not. If a customer wants to choose a CLEC,
17 such as e.spire for data services, but wishes to remain with BellSouth for its voice
18 services, BellSouth should be required to accommodate the wishes of that
19 customer.

20 Any barriers to such an arrangement are merely regulatory, not technical,
21 and the Commission should not create regulatory restrictions that impede
22 consumer choice. The issues presented by "Loop Spectrum Unbundling" are not
23 so complex as they might appear. The Commission merely would have to

1 establish how to divide the costs of the loop and DSLAM between the two
2 carriers – after the DSLAM, voice traffic would be routed to the voice carrier's
3 circuit switched network and data traffic would be sent to the data carrier's packet
4 switched network.

5 **Q. HOW SHOULD THE COSTS OF THE LOOP BE APPORTIONED**
6 **BETWEEN SERVING LECs WHEN xDSL LOOP SPECTRUM IS**
7 **UNBUNDLED? [ISSUE 20]**

8 **A. In fact, BellSouth already has filed a tariff at the FCC which suggests how this**
9 **should be done. In its federal xDSL tariff, BellSouth is able to offer highly**
10 **attractive rates on xDSL services because it apparently assigns all of the costs**
11 **associated with an xDSL-Equipped loop to the voice side. If this Commission**
12 **were to accept such an allocation, data carriers would pay virtually nothing for**
13 **their use of the data channel on an xDSL-Equipped loop and they, too, could offer**
14 **consumers the same artificially low xDSL service rates that BellSouth offers**
15 **through its FCC tariff. This way, consumers will have a choice in data products**
16 **and carriers and – if they choose BellSouth for voice services and a competitive**
17 **carrier for data services – they will pay BellSouth directly *and only once* for the**
18 **underlying costs of an xDSL-Equipped loop. The Commission should ensure that**
19 **these separate voice and data channels are not artificially “tied” together by**
20 **regulatory constraints that are unnecessary from a technical perspective.**

1 **Q. WHAT IS THE DISPUTE CONCERNING RESALE OF VOICE**
2 **SERVICES IN A SITUATION WHERE xDSL LOOP SPECTRUM IS**
3 **UNBUNDLED? [ISSUE 20]**

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

7 **Q. ARE THERE OTHER UNEs THAT E.SPIRE NEEDS TO PROVIDE ITS**
8 **ADVANCED DATA SERVICES? [ISSUE 1, 12]**

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

14 **[Q&A DELETED]**

15 **[Q&A DELETED]**

16 **[Q&A DELETED]**

17 **[Q&A DELETED]**

18 **[Q&A DELETED]**

1 Q. IS THERE ANOTHER WAY IN WHICH THE COMMISSION CAN
2 ENSURE THAT COMPETITORS - AND CONSUMERS - ARE NOT
3 DISADVANTAGED BY TECHNICAL CONSTRAINTS CAUSED BY
4 BELL SOUTH'S CHOICE IN NETWORK ARCHITECTURE? [ISSUE 1]

5 A. Yes, and because Sub-Loop Unbundling and Remote Terminal collocation may
6 not always be technically or economically feasible, e.spire believes that both Sub-
7 Loop Unbundling and a "Bit-Stream UNE" (also referred to as a "Shared Loop")
8 should be adopted to ensure that consumers have access to competitive data
9 service offerings. The FCC currently is considering whether to define a Bit-
10 Stream UNE as a national minimum unbundling requirement. This Commission
11 need not wait for the FCC to act. Rather, it can define a functional UNE that
12 provides a broadband channel between the End User customer premise and the
13 CLEC's Point of Presence, and offers CLECs the *functionality* that enables them
14 to provide broadband services to End Users, regardless of the loop or Central
15 Office technology used by BellSouth.

16 By adopting this technology-neutral Bit-Stream UNE approach, the
17 Commission will allow CLECs to obtain access to End Users to provide any kind
18 of advanced services currently available, or that may be developed in the future.
19 Because the Bit-Stream UNE approach is not tied to any particular technology or
20 network design, it also reduces ILECs' ability to manipulate technology to
21 anticompetitive effect. Most importantly, however, the Bit-Stream UNE provides
22 an alternative entry strategy for CLECs in situations where technical difficulties
23 and disputes defeat or delay the ability to obtain other UNEs such as xDSL-

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

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

10 **Q. MOVING TO HIGH-CAPACITY LOOPS AND OTHER LOOP ISSUES,**
11 **PLEASE EXPLAIN WHY BELL SOUTH SHOULD BE REQUIRED TO**
12 **MAKE 4-WIRE DIGITAL DS-1 AND 56/64 Kbps CAPABLE LOOPS**
13 **AVAILABLE. [ISSUE 2]**

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

18 **[Q&A DELETED]**

19 **Q. WHERE DARK FIBER EXISTS IN BELL SOUTH'S LOOP PLANT,**
20 **SHOULD BELL SOUTH BE REQUIRED TO MAKE IT AVAILABLE TO**
21 **E.SPIRE AS A UNE? [ISSUE 2]**

22 **A. Yes. I must state that we are not entirely clear on BellSouth's position on this**
23 **point. BellSouth has agreed to make Dark Fiber loops available, but is not clear**

1 that the commitment extends to all states, or that it will make them available at
2 predefined TELRIC-based prices. e.spire requests that BellSouth's obligation be
3 made explicit.

4 [TEXT DELETED]

5 **Q. WITH REGARD TO ALL LOOP TYPES, SHOULD BELL SOUTH BE**
6 **REQUIRED TO GEOGRAPHICALLY DEAVERAGE ITS LOOP RATES?**

7 [ISSUE 2]

8 **A. Yes.** Although I will address most pricing issues later in my testimony and Dr.
9 Kahn will address this issue at greater length, I think that it is important to make
10 this point now. The United States Supreme Court reinstated the FCC's
11 geographic deaveraging rule in its January 25, 1999 *Iowa Utilities Board*
12 decision. This arbitration presents the Commission with an opportunity to address
13 this issue and, in so doing, bring BellSouth into compliance with that rule.

14 As the Commission is well aware, the Act's cost-based pricing standard is
15 intended to make UNE inputs available at cost-based rates so that new entrants
16 can use UNEs as a means of competing with incumbents. Unless TELRIC loop
17 rates are geographically deaveraged to account for the different costs of building
18 and maintaining networks in geographic areas with varying loop lengths,
19 topography and population density, CLECs will be placed at a distinct
20 competitive disadvantage. BellSouth realizes this and seeks to secure an
21 anticompetitive price advantage in lower cost urban and suburban markets by
22 refusing to geographically deaverage its loop rates. In short, by this device,
23 e.spire's loop costs in these areas are made to exceed BellSouth's.

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

8 In light of the Supreme Court's recent decision reinstating the FCC's
9 geographic deaveraging rule, I urge the Commission to consider the issue
10 immediately in this proceeding, as BellSouth's loop pricing has become a major
11 barrier to competitive entry. We believe that the anticompetitive impact of
12 BellSouth's high rates for unbundled loops can be substantially ameliorated by
13 compelling BellSouth to bring its UNE rates into compliance with FCC Rule
14 51.507(f) which requires the establishment of different UNE prices that reflect
15 geographic cost differences in at least three geographic zones.

16 Independent of that requirement, I also note that BellSouth has affirmed
17 the advisability of pricing its facilities on a geographically deaveraged basis
18 where it faces competitive pressure itself. Specifically, BellSouth has
19 incorporated the use of three density zones in its special access tariffs as a way to
20 compete with e.spire and other CLECs in the market for dedicated access circuits.

1 **Q. WILL HIGHER LOOP RATES OUTSIDE DENSE, URBAN AREAS**
2 **IMPEDE THE INTRODUCTION OF FACILITIES-BASED**
3 **COMPETITION THERE? [ISSUE 2]**

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

9 **Q. BELLSOUTH CURRENTLY PROVIDES E.SPIRE WITH EXTENDED**
10 **LOOPS. IN LIGHT OF BELLSOUTH'S REFUSAL TO AGREE TO**
11 **CONTINUE OFFERING AN EXTENDED LOOP UNE, SHOULD THE**
12 **COMMISSION REQUIRE BELLSOUTH TO CONTINUE TO MAKE**
13 **EXTENDED LOOPS AVAILABLE ON AN UNBUNDLED BASIS? [ISSUE**
14 **1, 2]**

15 **A. Yes. It is exceedingly important that this Commission require BellSouth to**
16 **continue to make Extended Loops available on an unbundled basis. Indeed, the**
17 **United States Supreme Court recently affirmed regulators' authority to require**
18 **ILECs to provision UNEs in combination. Moreover, the Court reinstated an**
19 **FCC rule which prohibits ILECs from tearing apart combinations that already are**
20 **in place in the network.**

21 Extended Loops provide an important functionality – composed of loop,
22 multiplexing and transport – that can allow CLECs to reach customers served
23 from BellSouth End Offices in which they have not yet collocated. Thus,

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

9 BellSouth voluntarily agreed to provide Extended Loops to e.spire in the
10 parties' initial ACSI-BellSouth Interconnection Agreement. Now BellSouth
11 refuses to offer Extended Loops in the successor Agreement, and threatens to tear
12 apart Extended Loops that already are in place. Once again, there simply is no
13 sound justification for BellSouth's position. Moreover, it cannot be squared with
14 the Supreme Court's January 25, 1999 *Iowa Utilities Board* decision which
15 affirms regulators' authority to require combinations and the FCC's rule which
16 prevents ILECs from tearing them apart.

17 Additionally, I note that the FCC currently is considering whether to
18 incorporate the Extended Loop into minimum national unbundling standards. The
19 Kentucky Commission already has decided that BellSouth must keep existing
20 elements combined, as would be the case with an Extended Loop UNE. The
21 Maryland and Texas Commissions have ordered the Extended Loops be made
22 available and the New York Commission is considering whether Bell Atlantic
23 must offer its tariffed Extended Loop as a UNE, but some form of Extended Loop

1 will be available there as well. This Commission, too, should define Extended
2 Loop as a UNE which BellSouth must make available to its competitors at
3 TELRIC-based rates.

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

14 **Q. SHOULD BELL SOUTH BE REQUIRED TO PERMIT E.SPIRE TO**
15 **CONVERT SPECIAL ACCESS FACILITIES TO EXTENDED LOOP**
16 **UNES? [ISSUE 4]**

17 **A.** Yes. Despite having provisions for Extended Loops incorporated into its
18 Commission-approved interconnection agreement with BellSouth, e.spire has
19 experienced considerable difficulty – including long term delays – ordering
20 Extended Loops from BellSouth. To expedite market entry, e.spire, in many
21 cases, bypassed wrangling with BellSouth by purchasing the same functionality
22 from BellSouth in the form of tariffed Special Access. However, the costs of
23 purchasing Special Access facilities from BellSouth's Access Tariff greatly

1 exceed the TELRIC-based rates that would apply to the same functionality if
2 ordered as an Extended Loop UNE.

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

10 Importantly, e.spire believes that such action follows clearly from the
11 Supreme Court's affirmation of regulators' authority to require ILECs to provide
12 UNE combinations and reinstatement of the FCC's rule prohibiting ILECs from
13 tearing apart combinations that already are in place in their networks.

14 Specifically, e.spire requests that the Commission compel BellSouth to
15 cooperate in implementing a Special Access Migration Plan to convert existing
16 Special Access Services designated by e.spire to UNEs. Under the Migration
17 Plan, the Parties would establish an agreed conversion timetable and implement it
18 within thirty (30) days of the Effective Date of the Agreement.

19 Critically, under the Migration Plan, the normal NRCs for provisioning of
20 UNEs should not apply. Instead, (i) where no physical changes to the network are
21 required, NRCs should be limited to the direct, incremental cost of processing a
22 service order, and (ii) where a physical rearrangement is required (*i.e.*,
23 connections to e.spire Physical Collocation space), the normal UNE NRCs should

1 be applied net of credits for the NRCs, previously paid by e.spire to BellSouth for
2 provisioning the associated Special Access Services.

3 **Q. MOVING NOW TO THE TOPIC OF INTEROFFICE TRANSPORT,**
4 **PLEASE EXPLAIN WHY BELL SOUTH SHOULD BE REQUIRED TO**
5 **PROVIDE UNBUNDLED ACCESS TO HIGH-CAPACITY INTEROFFICE**
6 **TRANSPORT AT PREDETERMINED COST-BASED RATES. [ISSUE 2]**

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

12 BellSouth's unbundling obligations are not limited by the capacity of the
13 UNEs to which its competitors seek access. As is true for the various loop types,
14 with regard to interoffice transport, BellSouth simply does not have the authority
15 to choose unilaterally which varieties it will unbundle and which it will not. The
16 FCC already has concluded that ILECs must provide all technically feasible
17 transmission capabilities, such as DS-1, DS-3, OC-3, OC-12, OC-48 and OC-96,
18 that a competing carrier could use to provide telecommunications services.
19 Moreover, e.spire's desire to obtain unbundled access to optical and other high-
20 capacity interoffice transport, including SONET, should not trigger an ICB
21 pricing mechanism by which BellSouth continuously seeks to end-run the cost-
22 based pricing requirements of the 1996 Act. There is absolutely no valid reason
23 why a high-capacity interoffice transport UNE cannot be set at a predetermined

1 TELRIC-based rate. BellSouth's insistence on ICB pricing in this and other areas
2 is just another way in which it anticompetitively seeks to drive-up competitors'
3 costs and keep End User prices artificially high. The Commission can and should
4 put an end to these practices by finding that (1) BellSouth cannot impose
5 unilaterally limitations on the capacity of interoffice transport -- and other UNEs --
6 it is obligated to offer, and (2) ICB pricing is inappropriate for interoffice
7 transport -- and other UNEs.

8 **Q. SHOULD BELL SOUTH BE REQUIRED TO PROVIDE E.SPIRE WITH**
9 **COST-BASED UNBUNDLED ACCESS TO OPTICAL AND SONET**
10 **INTERFACES? [ISSUE 2]**

11 **A.** Yes. Without unbundled access to these interfaces at predetermined cost-based
12 prices, e.spire will not be able to efficiently interconnect its state of the art
13 network to BellSouth's own optical and SONET facilities. BellSouth already has
14 agreed to unbundle these facilities for another requesting carrier. However, it has
15 insisted that prices be determined on an ICB basis through the BFR process. As I
16 have said repeatedly, ICB pricing is a mechanism by which BellSouth attempts to
17 skirt the cost-based pricing standards of the 1996 Act and drive up its
18 competitors' costs. The Commission should put an end to this practice, mandate
19 cost studies and establish predetermined TELRIC-based prices for optical and
20 SONET interfaces and all other UNEs.

21 **[Q&A DELETED]**

22 **[Q&A DELETED]**

1 **Q. MUST LOCAL CHANNEL INTEROFFICE TRANSPORT BE OFFERED**
2 **AT TELRIC RATES? [ISSUE 2]**

3 **A. Yes. Like all other UNEs, interoffice transport facilities – regardless of capacity**
4 **– must be offered to competitors at cost-based prices. BellSouth's attempts to**
5 **impose ICB pricing or, in some cases, retail rates, must be rejected. As I have**
6 **said before, BellSouth's frequent attempts to resort to ICB pricing are baldly**
7 **designed to inhibit new entry by CLECs. There is no reason why BellSouth**
8 **cannot produce forward-looking cost studies that will aid this Commission in**
9 **setting appropriate and certain rates.**

10 **Q. SHOULD BELL SOUTH BE REQUIRED TO MAKE AVAILABLE**
11 **INTEROFFICE DARK FIBER AT COST-BASED RATES? [ISSUE 2]**

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

1 Commission to establish predetermined cost-based prices and affirmatively
2 prohibit BellSouth from imposing an ICB pricing scheme for Dark Fiber transport
3 facilities.

4 **Q. TURNING TO COMBINATION UNEs, PLEASE EXPLAIN WHY**
5 **BELLSOUTH SHOULD BE REQUIRED TO PROVIDE THE UNE**
6 **COMBINATIONS LISTED IN SCHEDULE 1 TO ATTACHMENT 2 TO**
7 **THE AGREEMENT. [ISSUE 3]**

8 **A. e.spire requested – and BellSouth refused – that several common facility**
9 **configurations be made available as preordained UNE Combinations. They are**
10 **listed in Schedule V to Attachment 2 to the draft Agreement.**

11 **As I already have mentioned, the Supreme Court's *Iowa Utilities Board***
12 **decision confirms that the FCC – and the states – have the authority to require**
13 **ILECs to provide UNE combinations. Moreover, that same decision reinstated an**
14 **FCC rule which prevents ILECs from tearing apart existing combinations.**

15 **Aside from the clear legal basis for a decision requiring BellSouth to**
16 **provide access to UNE combinations, there are many compelling policy reasons**
17 **why the Commission should require BellSouth to offer these common network**
18 **configurations on an unbundled basis. First – as Commissions in Kentucky,**
19 **Maryland and Texas have found – is that there is no valid, common sense reason**
20 **why BellSouth should be permitted to take apart that which already is combined**
21 **and then impose on its competitors a charge for putting it all back together again.**
22 **The only valid reason for dismantling BellSouth network configurations is so that**
23 **they can be connected with e.spire or another competitor's facilities. BellSouth's**

1 current policy of tearing apart network configurations and requiring collocation to
2 reconnect the pieces is simply anticompetitive and wasteful. Consumers
3 ultimately foot the bill. They should not be made to pay to rebuild network
4 configurations that they already have paid to put in place.

5 A second policy reason for mandating the Combinations set forth in
6 Schedule 1 to Attachment 2 is that, by packaging common network configurations
7 in a single UNE, the Commission offers competitors more options for bringing
8 competitive service offerings to consumers. More options for competitors
9 translates into more options for consumers. Perhaps the best way to illustrate this
10 point is to look at the Unbundled Local Loop UNE itself. The loop UNE includes
11 the NID, Distribution, Concentration and Feeder Sub-Loop elements. By
12 combining each of these components into a single functional UNE, the FCC and
13 the state Commissions have made it easier for competitors to take on entrenched
14 incumbents like BellSouth. e.spire does not have to install – or, even worse, have
15 BellSouth install – cross-connects between the NID and distribution plant,
16 between the distribution plant and concentration equipment and so on – those
17 connections are already there. Accordingly, the “loop” definition is somewhat
18 arbitrary; and creating new loop elements such as the Extended Loop is consistent
19 with prior practice of including several loop components into a single UNE.

20 Oddly, BellSouth does not argue that the Unbundled Loop is a
21 “combination” that it cannot be made to provide. Rather, BellSouth argues – for
22 equally implausible reasons – that it should not be made to separate the
23 combination of elements that comprise the loop UNE for the purpose of Sub-Loop

1 Unbundling. This transparent conflict in positions taken by BellSouth suggests
2 that its arguments against offering UNE combinations, on the one hand, and
3 dismantling combinations to accommodate facilities placed by competitors, on the
4 other, cannot be squared.

5 The fact of the matter is that the FCC and this Commission both can order
6 BellSouth to unbundle UNEs that incorporate one piece of equipment or several.
7 And, as demonstrated by the presence of a NID UNE and a loop UNE in the
8 FCC's national minimum unbundling standards and by Sub-Loop Unbundling
9 required in some states, BellSouth can be required to unbundle UNEs that also are
10 incorporated into functionalities that are themselves separately defined as a UNE.
11 Again, e.spire respectfully requests that this Commission use its authority – the
12 same authority already exercised by state commissions in Kentucky, New York,
13 Texas and Maryland – to order BellSouth to make available UNE
14 Combinations, as requested by e.spire.

15 **Q. HOW WOULD THE CREATION OF UNE COMBINATIONS AND**
16 **EXTENDED LOOP RELIEVE THE PROBLEM OF EXHAUSTION OF**
17 **PHYSICAL COLLOCATION SPACE? [ISSUES 1, 3, 7, 9]**

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

1 Q. IS THE COMMISSION'S ABILITY TO REQUIRE BELL SOUTH TO
2 COMBINE UNEs LIMITED BY THE EIGHTH CIRCUIT COURT OF
3 APPEALS' INTERPRETATION OF THE 1996 ACT? [ISSUE 3]

4 A. No. The Eighth Circuit has never addressed the scope of this Commission's or
5 any other state Commission's ability to require an incumbent, such as BellSouth
6 to unbundle combinations. Indeed, in light of the Eighth Circuit's *Shared*
7 *Transport* decision and the Supreme Court's *Iowa Utilities Board* decision, it is
8 quite clear that this Commission can define UNEs to include combinations or it
9 can require UNE combinations.

10 Q. SHOULD BELL SOUTH BE PRECLUDED FROM ASSESSING SPECIAL
11 "RE-COMBINATION" CHARGES? [ISSUE 3]

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

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

1 **Q. WITH REGARD TO PROVISIONING, SHOULD BELL SOUTH BE**
2 **ALLOWED TO BACKSLIDE FROM PROVISIONS IN ITS CURRENT**
3 **INTERCONNECTION AGREEMENT WITH E.SPIRE AND ITS OWN**
4 **CLAIMS MADE TO THE FCC THAT IT MUST AND CAN PERFORM**
5 **COORDINATED LOOP CUTOVERS IN FIVE MINUTES OR LESS?**

6 **[ISSUE 21]**

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

14 How much time would you be willing to go without phone service? For a
15 huge premium, BellSouth offers a 15 minute window for each access line. That
16 would mean that a customer with as few as 32 access lines would have lines out
17 of service for an entire (eight hour) business day. Obviously, business, safety and
18 convenience each suggest that this interval should be shorter and as close to a
19 flash-cut as possible. And BellSouth's own data suggests that it can be. Indeed,
20 BellSouth reported to the FCC as part of the Section 271 application process that
21 it performs coordinated cutovers of ULLs without number portability, *on average*,
22 in under four and a half minutes. This record suggests that meeting a five minute

1 coordinated cutover interval with number portability is not only possible, but that
2 it also is reasonable.

3 If competition is to prosper, customers must be assured that, if they choose
4 to switch to e.spire – or back to BellSouth, that they will be out of service for only
5 five minutes or less per line. Otherwise, the cost of lost calls will discourage or
6 prevent customers from switching and competition from taking hold. Indeed, as I
7 will discuss in detail later as part of my discussion of general Ordering and
8 Provisioning requirements, the interval actually should be is far less than five (5)
9 minutes per line for multiple line installations.

10 **[Q&A DELETED]**

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

13 **[ISSUE 22]**

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

22 Adopting these FOC intervals also would give BellSouth an additional
23 incentive to continue developing its OSS so that End Users are not penalized for

1 switching from BellSouth. Again, BellSouth data supplied to the FCC in support
2 of its Louisiana Section 271 application suggest that the goal is reasonable and
3 attainable. There, BellSouth represented that it provided FOCs within 24 hours
4 for 93 percent of accurate business resale orders submitted electronically and 99
5 percent of accurate residential orders submitted electronically. Customers have a
6 right to switch from BellSouth, and, under the 1996 Act, BellSouth must allow
7 them to do so as quickly as it would process a similar order for new services from
8 BellSouth. I will add to this discussion later in my discussion of general Ordering
9 and Provisioning requirements.

10 **[Q&A DELETED]**

11 **Q. SHOULD BELL SOUTH BE REQUIRED TO OFFER VOLUME AND**
12 **TERM DISCOUNTS FOR UNEs CONSISTENT WITH THOSE**
13 **AVAILABLE FOR ITS SPECIAL ACCESS SERVICES? [ISSUE 5]**

14 **A.** Yes. In cases where e.spire proposes to purchase UNEs in volumes greater or in
15 terms longer than those contemplated in the base pricing established for particular
16 UNEs, discounts reflecting the economies of scale that result should apply.
17 Volume and term discounts are consistent with the cost-based pricing mandate of
18 the Act and the way in which BellSouth prices many of its retail services.
19 Without volume and term discounts, it is possible that retail rates through
20 BellSouth CSAs may be less than wholesale rates on UNEs that e.spire uses to
21 provide a competitive service offering. By requiring BellSouth to incorporate
22 such discounts into its interconnection agreement with e.spire, this Commission

1 can prevent this form of price discrimination and ensure that high volume
2 consumers have a choice in local service providers.

3 **Q. ARE THERE ANY OTHER ISSUES TO BE RESOLVED REGARDING**
4 **UNEs? [ISSUE 6]**

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

15 **Circuit Switched Interconnection**

16 **Q. WHAT AREAS OF DISAGREEMENT EXIST WITH RESPECT TO THE**
17 **INTERCONNECTION OF CO-CARRIER NETWORKS FOR THE**
18 **MUTUAL EXCHANGE OF TRAFFIC? [ISSUES 10, 14]**

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

1 **Q. WHY IS IT NECESSARY FOR E.SPIRE TO INTERCONNECT WITH**
2 **BELLSOUTH FOR THE PURPOSE OF EXCHANGING LOCAL**
3 **TRAFFIC? [ISSUES 10, 14]**

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

15 **Q. WHAT IS TRANSPORT AND TERMINATION? [ISSUES 10, 14]**

16 **A. "Transport" and "Termination" are the two primary network functions involved in**
17 **the exchange of Local Traffic between telecommunications carriers. The FCC**
18 **has defined "Transport," for purposes of establishing reciprocal compensation**
19 **arrangements, as the "transmission of terminating traffic that is subject to section**
20 **251(b)(5) [of the Act] from the interconnection point between the two carriers to**
21 **the terminating carrier's end office switch that directly serves the called party."**
22 **The FCC has defined "Termination" for purposes of Section 252(b)(5) as "the**
23 **switching of traffic . . . at the terminating carrier's end office switch (or**

1 equivalent facility) and delivery of that traffic from that switch to the called
2 party's premises."

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

14 **Q. PLEASE EXPLAIN WHY COMPENSATION FOR TRANSPORT AND**
15 **TERMINATION OF LOCAL TELECOMMUNICATIONS TRAFFIC IS**
16 **AN IMPORTANT ISSUE. [ISSUES 10, 14]**

17 **A.** As described above, the Transport and Termination of Local Traffic is critical to
18 the business of a CLEC such as e.spire. While the network architecture for
19 accomplishing such an exchange of Local Traffic is critical, the compensation
20 exchanged between interconnected local companies for providing the services is
21 equally important. Simply put, physical interconnection is useless unless the
22 resulting exchange of Local Traffic is made on fair and economic terms. Section

1 252(d) of the Act requires that rates, terms and conditions associated with
2 Reciprocal Compensation be just and reasonable.

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

10 Fortunately, both Congress and the FCC have taken steps to restrain
11 BellSouth's potential misuse of its monopoly power in this area. Sections 251
12 and 252 of the Act, and the FCC's rules implementing them, require BellSouth to
13 interconnect with e.spire for purposes of exchanging, transporting and terminating
14 each other's Local Traffic. Importantly, Section 252 guarantees the "recovery by
15 *each carrier* of costs associated with the Transport and Termination on each
16 carrier's network facilities of calls that originate on the network facilities of the
17 other carrier." Both the Act and FCC rules implementing it require that BellSouth
18 and e.spire formulate a nondiscriminatory compensation arrangement which is
19 reciprocal (*i.e.*, two-way) and provides for a mutual recovery of associated costs.
20 It is up to the Commission in this proceeding to enforce and implement these
21 requirements.

22 The state Commission in reviewing the proposed compensation scheme
23 should not approve the proposed rates unless such rates allow for mutual recovery

1 by each party of the costs associated with Transport and Termination of traffic on
2 each party's respective networks. Since ILEC and CLEC network infrastructure
3 differ, reasonable compensation terms would reflect different costs that are
4 derived from different network configurations. Such is the case with BellSouth
5 and e.spire's network configurations, and therefore the costs associated with
6 Transport and Termination of traffic by each LEC are different.

7 **Q. HOW DOES THE ACT ADDRESS THIS ISSUE? [ISSUES 10, 14]**

8 **A. The 1996 Act incorporates three critical notions which are intended enable new**
9 entrants to provide competitive local services to customers within and incumbents
10 local service areas. First, the Act makes clear that the pricing for Transport and
11 Termination must be truly cost-based. Specifically, Section 252(c)(2)(A)(i) of the
12 Act requires that prices be based on a "reasonable approximation of the *additional*
13 *costs* of terminating such calls." Second, Section 252 (d)(2)(A)(i) of the Act also
14 makes explicit that the recovery of the costs of providing local Transport and
15 Termination services must be "mutual and reciprocal." Last, but not least, under
16 the express terms of Section 251(c)(2)(D) of the Act, ILECs such as BellSouth
17 have a legal duty to interconnect with all other telecommunications companies on
18 rates, terms and conditions which are "just, reasonable, and nondiscriminatory."
19 This precludes BellSouth from demanding compensation arrangements which
20 discriminate in favor of itself or its affiliates.

1 **Q. WHAT IS BELL SOUTH'S POSITION WITH RESPECT TO HOW**
2 **RECIPROCAL COMPENSATION ARRANGEMENTS FOR TRANSPORT**
3 **AND TERMINATION OF LOCAL TRAFFIC SHOULD BE**
4 **ESTABLISHED? [ISSUES 10, 14]**

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

11 **However, BellSouth suggests that the same rate structure and rate levels**
12 **should be utilized by e.spire when charging Reciprocal Compensation to**
13 **BellSouth. e.spire strenuously objects to this proposal. As I will explain**
14 **hereafter, BellSouth's proposed rate structure -- while fine for BellSouth -- does**
15 **not accurately reflect the way that e.spire's network is designed and the manner in**
16 **which e.spire incurs costs in providing Transport and Termination to BellSouth.**
17 **Similarly, BellSouth's proposed rate levels would not enable e.spire to recover the**
18 **costs which it incurs in providing Transport and Termination to BellSouth.**

19 **In order to be consistent with the requirements of Act, e.spire believes that**
20 **any Reciprocal Compensation arrangements must meet three discrete tests. First,**
21 **Reciprocal Compensation rates, if any, should recover the TELRIC of providing**
22 **Transport and Termination. This subject is addressed more fully elsewhere herein**
23 **and in the testimony prepared on e.spire's behalf by Dr. Marvin Kahn. Second,**

1 e.spire has the right to employ a Reciprocal Compensation rate structure which
2 reflects the costs e.spire itself incurs. Third, e.spire has the right to establish rates
3 at a level which assures recovery of these costs. One alternative is to mirror the
4 rate levels proposed by BellSouth. However, in the alternative, e.spire may
5 provide its own cost study to determine its rates. We have chosen the latter
6 course.

7 **Q. WHAT RECIPROCAL COMPENSATION SYSTEM WOULD BE**
8 **APPROPRIATE? [ISSUES 10, 14]**

9 A. As I mentioned earlier, the Transport and Termination rate should be established
10 at the associated TELRIC cost as established through a review of forward-looking
11 cost studies -- a subject to which I defer to Dr. Kahn's testimony. Perhaps more
12 importantly, however, it is imperative that we have the option to elect *different*
13 compensation rates to be billed by both carriers. This would allow for both
14 parties to recover the actual costs associated with the Transport and Termination
15 of traffic on their respective networks, which as I mentioned are configured and
16 operate differently. e.spire should not be forced to accept the rate proposed by
17 BellSouth, which does not compensate it for the costs of Transport and
18 Termination of traffic on its network. Otherwise, BellSouth will glean an unfair
19 competitive advantage simply through an exchange of Local Traffic even if the
20 amount of traffic exchanged is in balance.

21 It is particularly important that the compensation rate be technologically
22 neutral. What matters is that each party is compensated for its costs of providing
23 area-wide termination of Local Traffic delivered to it by the other party at the

1 Point of Interconnection. The network architecture selected by the service
2 provider is irrelevant.

3 Q. WHAT ARE THE COMPETITIVE BENEFITS TO BASING
4 COMPENSATION ON TELRIC? [ISSUES 10, 14]

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

13 TELRIC also permits the Commission to take into account the advanced
14 technology used by interconnecting carriers. In the *Interconnection Order*, the
15 FCC concluded that state Commissions may establish rates for Transport and
16 Termination that vary according to whether traffic is routed through a Tandem
17 switch or directly to an End Office. States were given specific authorization to
18 consider whether new technologies, such as CLEC SONET ring networks,
19 perform functions equivalent to the ILEC's Tandem switch, thereby requiring the
20 higher price generally paid for calls transported or terminated on the ILECs'
21 Tandem switches. This option is of particular significance to carriers such as
22 e.spire whose switches provide functionality covering that of a Tandem and an
23 End Office.

1 **Q. WHAT ARE E.SPIRE'S SPECIFIC OBJECTIONS TO BELL SOUTH'S**
2 **PROPOSED RATE STRUCTURE FOR TRANSPORT AND**
3 **TERMINATION? [ISSUES 10, 14]**

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

11 **But e.spire has configured its network in a fundamentally different**
12 **manner. We normally install a single large switch and fiber optic SONET ring in**
13 **a local area that performs two distinct functions. First, for "on net" traffic**
14 **delivered to the e.spire switch, we will switch the traffic once and then transport**
15 **the call relatively long distances over line-side transport facilities to reach any**
16 **End User anywhere in the local area. For "off-net" traffic, we switch the traffic at**
17 **the e.spire switch and then transport the calls to e.spire's collocated equipment at**
18 **an ILEC End Office, where it is routed over Unbundled Loop facilities for**
19 **termination. In the latter situation, the ILEC End Offices effectively sub-tend**
20 **e.spire's "Tandem" switch. The bottom line is that e.spire's single local switch**
21 **provides the same essential functionality as the ILEC Tandem to an**
22 **interconnecting carrier - i.e., the ability to deliver traffic to the carrier's customers**
23 **anywhere in the local area.**

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

8 It is hard to imagine a more anticompetitive outcome. Congress carefully
9 crafted a system of mutual traffic exchange which was intended to prevent ILECs
10 from using their monopoly power to extract such one-way compensation.

11 BellSouth's plan is neither "reciprocal" nor "symmetrical". BellSouth's proposal
12 would undo the Congressional plan and poison the model for local competition.

13 **Q. DOES THE E.SPIRE SWITCH PERFORM THE SAME OR SIMILAR**
14 **FUNCTIONS AS THE BELL SOUTH TANDEM SWITCH? [ISSUE 10, 14]**

15 **A.**Absolutely. It is critical to understand that both parties are providing the same
16 service to the other party. If e.spire delivers Local Traffic to the BellSouth local
17 Tandem switch, BellSouth will terminate the call to any of its End Users located
18 anywhere within the local exchange boundary. Similarly, if BellSouth delivers
19 Local Traffic to the e.spire switch, e.spire will terminate the call to any e.spire
20 End User located anywhere within its local service area. In that respect, the
21 e.spire switch functions simultaneously as a Tandem and an End Office switch.
22 The e.spire switch represents state-of-the-art technology which enables the
23 Company to serve the entire service area in the most efficient and technologically-

1 advanced manner. While it may be true that BellSouth has elected to use a
2 different, less efficient switching architecture, the end-to-end service is virtually
3 identical.

4 **Q. IS BELL SOUTH'S PROPOSED RECIPROCAL COMPENSATION RATE**
5 **STRUCTURE IN THE PUBLIC INTEREST? [ISSUES 10, 14]**

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

15 The BellSouth proposal is intended to turn its inefficient network design
16 into an unfair competitive advantage. While e.spire does not believe that
17 BellSouth should be penalized for its selection of its network architecture, neither
18 should it be rewarded for it. Certainly, e.spire should not be penalized for
19 deploying state-of-the-art network facilities in BellSouth's local service areas.

1 **Q. IS E.SPIRE'S INVESTMENT IN ITS SWITCH AS COSTLY AS THE**
2 **INVESTMENT MADE BY BELL SOUTH IN ITS TANDEM SWITCHING?**
3 **[ISSUES 10, 14]**

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

7 **Q. DOES THE ACT REQUIRE TREATMENT OF E.SPIRE'S LOCAL**
8 **SWITCH AS AN END OFFICE RATHER THAN A HYBRID WHICH**
9 **EMPLOYS QUALITIES OF TANDEM SWITCHING AND END OFFICE**
10 **SWITCHING? [ISSUES 10, 14]**

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

19 **Notably, a number of state Commissions have concluded that an**
20 **interconnecting carrier's single switch is the equivalent of both the ILEC's**
21 **Tandem and End Office switches. State Commissions have held that it is not**
22 **necessary that the interconnecting carrier duplicate the ILEC's traditional "hub**
23 **and spoke" architecture. For example, the Illinois Commerce Commission held**

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

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

20 **Q. WHAT RATE LEVEL DOES E.SPIRE PROPOSE TO CHARGE**
21 **BELLSOUTH FOR TRANSPORT AND TERMINATION? [ISSUES 10, 14]**

22 **A. We have offered to charge a single "blended" region-wide (all BellSouth states)**
23 **rate of \$0.009 per minute of use. We believe that this charge of slightly less than**

1 a penny per minute of use fairly reflects our cost of terminating BellSouth's local
2 traffic. I understand that the proposed rate also matches the one BellSouth
3 previously agreed to with another CLEC – KMC – on a region-wide basis. I also
4 observe that e.spire's proposed rate is substantially lower than BellSouth's own
5 rates for terminating Switched Access traffic.

6 **Q. ARE THERE ANY OTHER DISAGREEMENTS RELATING TO THE**
7 **PAYMENT OF RECIPROCAL COMPENSATION? [ISSUES 10, 14]**

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

12 **Q. WHY DO YOU BELIEVE THAT CALLS PLACED TO ISPS SHOULD BE**
13 **TREATED AS "LOCAL TRAFFIC" FOR THESE PURPOSES? [ISSUES**
14 **10, 14]**

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

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

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

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

12
13 In addition, the FCC has consistently viewed dial-up calls to ISPs as
14 consisting of two components: "telecommunications" and "information." For
15 instance, the FCC stated in its *Universal Service Order* that "[w]e agree with the
16 Joint Board's determination that Internet access consists of more than one
17 component. Specifically, we recognize that Internet access includes a network
18 component, which is the connection over an LEC network from a subscriber to an
19 Internet Service Provider, in addition to the underlying information service." The
20 FCC also observed that "[w]hen a subscriber obtains a connection to an Internet
21 service provider via voice grade access to the public switched network, that
22 connection is a telecommunications service and it is distinguishable from the
23 Internet service provider's service offering." Thus, in a switched communications
24 system, the service termination point generally is the point at which the common
25 carrier service ends and user-provided service begins, i.e., the interface point
26 between the communications system equipment and the user equipment, under
27 applicable tariffs.

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

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

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

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

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

13 **Q. DOES THE FCC'S RECENT ORDER REGARDING THE GTE DSL**
14 **TARIFF HAVE ANY IMPACT ON E.SPIRE'S POSITION? [ISSUES 10,**
15 **14]**

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

19 **Q. DOES E.SPIRE INCUR COSTS IN TERMINATING THIS TRAFFIC FOR**
20 **BELLSOUTH? [ISSUES 10, 14]**

21 **A. Yes. In fact, e.spire has incurred, and continues to incur, substantial costs related**
22 **to the provision of Transport and Termination for this traffic. e.spire, like other**
23 **CLECs, has invested a great deal of money in the development of facilities that**

1 are capable of handling this traffic. Since e.spire, like other LECs, is prohibited
2 from charging ISPs switched access charges, when e.spire is not compensated for
3 Transport and Termination of this traffic under the Reciprocal Compensation
4 provisions of its Agreement with BellSouth, e.spire is not compensated at all.
5 Effectively, e.spire will be forced to provide free Transport and Termination of
6 ISP traffic to BellSouth's customers. This would be an impossible situation for
7 e.spire, and an unjustifiable windfall for BellSouth. Obviously, such an outcome
8 is not only unfair and inequitable, but also anticompetitive.

9 **Q. HAVE THERE BEEN DECISIONS BY STATE COMMISSIONS IN THE**
10 **BELLSOUTH REGION THAT CLASSIFY DIAL-UP CALLS PLACED TO**
11 **ISPS AS "LOCAL" FOR PURPOSES OF PAYING RECIPROCAL**
12 **COMPENSATION? [ISSUES 10, 14]**

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

22 Similarly, on October 19, 1998, the Hearing Officer presiding over the
23 e.spire/BellSouth complaint before the Georgia Public Service Commission

1 ("Georgia Commission") issued an Initial Decision in favor of e.spire. In this
2 Initial Decision, the Hearing Officer found, among other things, that ISP traffic is
3 Local Traffic subject to reciprocal compensation, and that e.spire is contractually
4 entitled to collect the \$0.0087 per minute rate from BellSouth.

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

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

15 **Q. WHAT RELIEF ARE YOU SEEKING FROM THE COMMISSION?**

16 **[ISSUES 10, 14]**

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

20 **[Q&A DELETED]**

21 **[Q&A DELETED]**

Frame Relay UNEs and Interconnection

1
2 **Q: PLEASE DESCRIBE E.SPIRE'S PACKET-SWITCHING OPERATIONS**
3 **IN BELL SOUTH'S TERRITORY. [ISSUE 12]**

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

11 **Q: WHAT ACTION MUST THE COMMISSION TAKE TO FACILITATE**
12 **E.SPIRE'S DEPLOYMENT OF COMPETITIVE FRAME RELAY**
13 **SERVICES? [ISSUE 12]**

14 A: Two portions of the draft Agreement require attention. First, the parties must
15 establish cost-based interconnection arrangements. Since Frame Relay services
16 are public packet-switched networks, such interconnection is required to enable
17 Frame Relay customers of e.spire and BellSouth to send messages to one another.
18 It is the data equivalent of interconnection for the Transport and Termination of
19 mutually exchanged voice traffic. Second, e.spire requests that several new UNEs
20 be prescribed by unbundling components of the BellSouth Frame Relay network
21 and making them available at cost-based rates. As is the case with the voice
22 network, such UNEs are necessary to round-out e.spire's own facilities, and
23 expand the coverage of the e.spire Frame Relay network.

1 **Q. PLEASE DESCRIBE THE STATUS OF INTERCONNECTION**
2 **NEGOTIATIONS WITH BELL SOUTH. [ISSUE 12]**

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

10 **Q. WHAT WAS E.SPIRE'S POSITION DURING THE MOST RECENT**
11 **NEGOTIATIONS? [ISSUE 12]**

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

17 **Q: WHAT ARE THE RELEVANT ELEMENTS OF THE BELL SOUTH**
18 **NETWORK WHICH REQUIRE UNBUNDLING? [ISSUE 12]**

19 A: Frame Relay services, ATM and other packet-switched services employ a form of
20 packet-switching that is capable of supporting packetized data, voice, and video
21 communications. Access to packet switching is over a dedicated digital circuit
22 through a Frame Relay Access Device ("FRAD") or similar interface device at the
23 user end. A Frame, ATM, or other packet switch is the equipment that routes and

1 forwards the packetized messages to the addressee(s) designated in the frames.

2 Access to the user side of the packet switch is via a User-Network Interface

3 ("UNI") port, and access to the common network (i.e., carrier) side of the packet

4 switch is via a Network-Network Interface ("NNI") port. A "Data Link

5 Connection Identifier" or "DLCI" and a Committed Information Rate" is

6 necessary to establish the Permanent Virtual Circuit" ("PVC") for transport of the

7 packet traffic. e.spire respectfully requests that the Commission order BellSouth

8 make each of these UNEs available at TELRIC-based rates.

9 **Q. HAVE ANY OTHER STATE COMMISSIONS RULED ON WHETHER**
10 **TELRIC PRICING APPLIES TO UNEs AND INTERCONNECTION**
11 **USED TO PROVIDE FRAME RELAY SERVICES? [ISSUE 12]**

12 **A. Yes. On October 29, 1998, the Colorado Public Utilities Commission ("Colorado**
13 **Commission") ruled that the rates for UNEs required to provide Frame Relay**
14 **services must be priced at nondiscriminatory cost-based rates in accordance with**
15 **Section 252(d) of the Act. Specifically, the Colorado Commission held that cost-**
16 **based rates apply to the transport and termination of packet-switched traffic and**
17 **the establishment of the access link to a Frame Relay End User. As for the NNI**
18 **port, the Colorado Commission recognized the equivalent functionality of the**
19 **unbundled port element utilized in providing unbundled transport for voice**
20 **switched services, and held that the NNI port charges established in its costing**
21 **proceeding be applicable to the NNI ports used to provide switched transport for**
22 **Frame Relay services as well.**

1 **Q. WHAT IS YOUR CURRENT UNDERSTANDING OF BELL SOUTH'S**
2 **POSITION? [ISSUE 12]**

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

14 **Q. CAN YOU EXPLAIN WHY IT IS CRITICAL THAT YOU**
15 **INTERCONNECT WITH BELL SOUTH AT COST-BASED RATES?**
16 **[ISSUE 12]**

17 A. In enacting the local interconnection requirements of the 1996 Act, Congress
18 neutralized one of the key barriers to the emergence of a competitive local
19 market. Due to its historic monopoly power in the local market, the vast majority
20 of customers receive their local services from ILECs such as BellSouth. Just as
21 in the circuit switched world, unless our packet switched customers can
22 communicate with BellSouth's customers, very few customers would be willing
23 to purchase local service from e.spire, or any other CLEC for that matter. This is

1 equally true of circuit switched and packet switched services. Thus, if we want to
2 offer a truly competitive *local* Frame Relay service offering at competitive prices,
3 e.spire must interconnect with BellSouth to exchange local packet switched
4 traffic, as well as transmit and rate interLATA traffic. Of course, as with voice
5 services, it is critical that this interconnection be established at cost-based rates to
6 avoid having anticompetitive pricing that would effectively void the
7 interconnection obligation. e.spire's expert economist witness, Marvin Kahr
8 will provide additional explanation of e.spire's position in his own testimony.

9 **Q. WAS THE TELECOMMUNICATIONS ACT WRITTEN PRIMARILY**
10 **WITH THE PUBLIC SWITCHED NETWORK IN MIND AS THE**
11 **NETWORK IN WHICH NEW COMPETITION WOULD DEVELOP**
12 **RATHER THAN FRAME RELAY NETWORKS? [ISSUE 12]**

13 **A. No. The FCC has specifically ruled that the Telecommunications Act was**
14 intended to be "technologically-neutral", and that the Section 251(c)
15 interconnection requirements apply equally to circuit switched *and* packet
16 switched data networks such as Frame Relay.

17 **Q. WHAT COMPENSATION ARRANGEMENT DOES E.SPIRE PROPOSE**
18 **FOR THE INTERCONNECTION OF ITS FRAME RELAY NETWORK**
19 **WITH THAT BELL SOUTH? [ISSUE 12]**

20 **A. Tony Mazraani, in his testimony, describes the nature of the Frame Relay**
21 interconnection e.spire seeks in detail. As he makes clear, there are three
22 components to the interconnection e.spire seeks: (i) NNI ports at the e.spire and
23 BellSouth Frame Relay switches that will be interconnected, (ii) the transmission

1 or transport facility between the ports, and (iii) the process of setting up the
2 DLCIs for every link (or "PVC") that traverses the physical interconnection. This
3 third element, the customer access link or UNI, is the functional equivalent of the
4 unbundled loop for voice switched services.

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

14 e.spire's compensation proposal for this interconnection is based upon
15 concepts of reciprocity inherent in Sections 251(b)(5) and 251(c)(2) of the Act.
16 In addition, e.spire's proposal is based upon the cost based pricing standards of
17 Section 252(d) of the Act.

18 **Q. WHAT RATE STRUCTURE DOES E.SPIRE PROPOSE FOR**
19 **INTRALATA TRAFFIC? [ISSUE 12]**

20 **A.** e.spire believes that the costs for the transport facility between NNI ports should
21 be shared evenly by the parties, to the extent that the facility is used to exchange
22 local (intraLATA) Frame Relay traffic. For transport, those costs should be the
23 same as the TELRIC-based rates for direct trunked transport of facilities-based

1 circuit switched services. Where BellSouth provisions that facility, e.spire's cost
2 should be 50 percent of TELRIC-based rates for dedicated transport, to the extent
3 that facility is used for local Frame Relay traffic. Similarly, both BellSouth and
4 e.spire should bear the burden of providing their own respective NNI ports, as is
5 common practice in the industry for the provisioning of interconnection trunks for
6 voice switched traffic between local carriers.

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

13 **Q. HOW DOES YOUR BASIC COMPENSATION PROPOSAL FOR THE**
14 **TRANSPORT AND THE NNI PORTS CHANGE TO THE EXTENT THE**
15 **INTERCONNECTION IS USED TO TRANSPORT INTERLATA FRAME**
16 **RELAY TRAFFIC? [ISSUE 12]**

17 **A.** At least until BellSouth can provide interLATA service, e.spire proposes that
18 BellSouth may charge e.spire for the NNI port at BellSouth's switch and the
19 interconnection transport facility between the carriers' switches up to the
20 percentage of non-local use of the facilities. In these circumstances, the facilities
21 are used for "transmission and routing of exchange access" as contemplated in
22 Section 251(c)(2) of the Act either: (1) e.spire is acting as a provider of
23 interLATA service itself, or (2) BellSouth and e.spire are jointly providing the

1 equivalent of exchange access service for a third-party interexchange Frame
2 Relay provider. Because e.spire will be acting as a provider of exchange access
3 services to others and itself, it is entitled to interconnection for that purpose under
4 Section 251(c)(2) and pricing under the standards of Section 252(d) of the Act for
5 the non-local portion of interconnection transport and the BellSouth NNI. That
6 provision covers all interconnection for either telephone exchange service or
7 exchange access service. Such interconnection should be priced at TELRIC-
8 based rates.

9 **Q. HOW SHOULD THE COSTS OF ESTABLISHING DLCIs BE**
10 **ALLOCATED BETWEEN THE PARTIES? [ISSUE 12]**

11 **A.** As Tony Mazraani explains in his testimony, each party will have to establish a
12 DLCI at its NNI port for each PVC that traverses the interconnection facility. For
13 local PVCs, each party should bear its own costs of establishing these DLCIs.
14 For interLATA PVCs, e.spire is willing to pay BellSouth's costs to establish the
15 DLCI on BellSouth's end, but at TELRIC-based or other incremental cost-based
16 rates. As Mr. Mazraani explains, establishment of the DLCI is a one-time activity
17 performed at the time each PVC is set-up. Accordingly, the only charge for the
18 DLCI or set-up piece should be a non-recurring charge. Unlike the NNI port and
19 the interconnection facility, e.spire believes any recurring charges for DLCI
20 establishment are unwarranted and unsupported by costs incurred by BellSouth.
21 Therefore, there should be not monthly recurring charge for PVCs, as proposed
22 by BellSouth.

1 **Q. HOW DOES E.SPIRE PROPOSE THE PARTIES DETERMINE THE**
2 **EXTENT TO WHICH INTERCONNECTION FACILITIES ARE USED**
3 **FOR LOCAL FRAME RELAY? [ISSUE 12]**

4 **A. e.spire proposes that all intraLATA Frame Relay traffic be considered local. In**
5 other words, where both End User locations are in the same LATA, PVCs
6 between those locations should be treated as local. Treating something less than
7 all intraLATA Frame Relay traffic as local would be inconsistent with
8 BellSouth's own retail tariff for Frame Relay services. Unlike its voice services,
9 BellSouth's Frame Relay tariff makes no geographic distinctions (*i.e.*, local
10 versus non-local) among its intraLATA Frame Relay services, meaning, in effect,
11 that the entire LATA is local. e.spire, too, plans to make no geographic
12 distinctions among its intraLATA Frame Relay services. To determine how
13 much of the traffic between Frame Relay switches is local, e.spire proposes that
14 the parties simply take the total number of PVCs over the transport facilities
15 between the switches divided into the number of local PVCs over that transport
16 facility. The result is what e.spire calls the Percent Local Circuit Use, or
17 "PLCU." Given that PVCs are dedicated and the traffic over the PVCs is not
18 measured, using the PLCU is a reasonably cost-effective approach.

1 Q. WHAT PRICING METHODOLOGY OR METHODOLOGIES ARE
2 APPROPRIATE FOR ESTABLISHING COMPENSATION FOR
3 TRANSPORT AND TERMINATION OF LOCAL
4 TELECOMMUNICATION TRAFFIC? [ISSUE 12]

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

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

1 **Q. WITH AN INTERLATA PVC, HOW WILL BELL SOUTH BE**
2 **COMPENSATED FOR THE PIECE OF THE FRAME RELAY LINK ON**
3 **ITS END USER'S SIDE OF THE NNI PORT? [ISSUE 12]**

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

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

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

3 **Q. WHICH NETWORK ELEMENTS MUST BELL SOUTH PROVIDE**
4 **ACCESS TO ON AN UNBUNDLED BASIS SO THAT E.SPIRE CAN**
5 **PROVIDE COMPETITIVE EXCHANGE ACCESS SERVICES TO ITS**
6 **FRAME RELAY END USERS WITH INTERLATA PVCs THAT**
7 **TERMINATE TO BELL SOUTH FRAME RELAY END USERS? [ISSUE**
8 **12]**

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

18 **Q. COULD E.SPIRE PROVIDE EXCHANGE ACCESS SERVICES TO ITS**
19 **FRAME RELAY CUSTOMERS WITHOUT UNBUNDLED ACCESS TO**
20 **BELL SOUTH'S NNI PORT, TRANSPORT AND THE CUSTOMER**
21 **ACCESS LINK? [ISSUE 12]**

22 **A.** No. Without access to each of these elements, e.spire would not be able to
23 complete Frame Relay switched communications to BellSouth End Users for

1 which PVCs have been established. The PVC, once established, extends from
2 e.spire's proprietary Frame Relay network to BellSouth's End User's premises.
3 This virtual link requires transport in the form of xDSL compatible
4 interconnection services between the parties' Frame Relay networks, access to
5 BellSouth's Frame Relay switches and access links from BellSouth's Frame
6 Relay switches to its customers' premise equipment. As described in Tony
7 Mazraani's testimony, the PVC is established by setting up pairs of DLCIs in
8 both parties' networks. Therefore, the PVC which is utilized to provide switched
9 Frame Relay services between the parties utilizes the infrastructure of both
10 parties' Frame Relay networks to complete transmissions from one Frame Relay
11 customer to the other.

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

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

3 **Q. IS THERE PRECEDENT TO SUPPORT COMMISSION ACTION**
4 **DEFINING THE FRAME RELAY CUSTOMER ACCESS LINK AS AN**
5 **UNBUNDLED NETWORK ELEMENT SUBJECT TO THE CONDITIONS**
6 **OF SECTION 251 AND 252 OF THE ACT? [ISSUES 1, 2, 12]**

7 **A.** Yes. In its first report and order implementing the provisions of the Act, pursuant
8 to Section 251(d) of the Act, the FCC enacted rules to implement the Act which
9 set forth a minimum list of UNEs and recognized the state Commissions' authority
10 to further define UNEs in accordance with Section 252(e) of the Act. The Eighth
11 Circuit upheld the FCC's rules defining the legal standard of review for defining
12 a new unbundled network element and the state Commissions' authority to
13 require further unbundling consistent with the FCC's rules. And, finally, the
14 Supreme Court recently affirmed regulators' authority to require ILECs to
15 provide UNE combinations. Thus, whether defined as a discrete UNE or as a
16 UNE combination, this Commission clearly has the authority to require BellSouth
17 to provide TELRIC-based unbundled access to Frame Relay Access Links.

18 **Q. PLEASE SUMMARIZE E.SPIRE'S PROPOSAL FOR COST-BASED**
19 **FRAME RELAY INTERCONNECTION? [ISSUE 12]**

20 **A.** Each party should be responsible for recovering the costs for the UNIT (or its
21 equivalent) on its network and its End User's loop or access link from its End
22 Users. The Commission should order BellSouth to provide unbundled access to
23 its customer's access link from the Frame Relay switch to the UNI. Pricing

1 should be at TELRIC-based rates. The DS1 or DS3 circuit between Frame Relay
2 switches should be set at the cost-based rates adopted for Dedicated Transport. In
3 the absence of TELRIC-based rates for NNI ports, the Commission should grant a
4 surrogate. Thus, e.spire proposes that the NNI ports should be priced at the
5 TELRIC-based rate for local switching ports. In the absence of TELRIC-based
6 rates for DLCI establishment, e.spire submits that a surrogate of one-half of the
7 incremental Non-Recurring Charge ("NRC") for PVCs in BellSouth's Frame
8 Relay tariff. Since, as Tony Mazraani explains, each PVC requires two DLCIs,
9 one half of the PVC NRC is an appropriate surrogate, as both e.spire and
10 BellSouth will establish one DLCI in every PVC carried over the interconnection.

Collocation

12 **Q. WHAT ISSUES REMAIN TO BE RESOLVED IN CONNECTION WITH**
13 **PHYSICAL COLLOCATION OPTIONS? [ISSUES 7, 9]**

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

1 The problems with Physical Collocation fall into five general categories:
2 (i) space is scarce or unavailable in many critical Central Offices; (ii) the expense
3 of Physical Collocation is so high as to create a barrier to entry outside of major
4 business centers; (iii) delays in obtaining Physical Collocation arrangements are
5 impeding market entry substantially; (iv) restrictions on the types of equipment
6 permitted in the Collocation space sometimes prevents efficient networking; and
7 (v) restrictive work rules unduly drive up operational costs. The FCC currently is
8 tackling those issues in its Advanced Services Rulemaking, but e.spire believes
9 that state Commissions can resolve many of the issues without federal
10 involvement.

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

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

1 Q. SHOULD E.SPIRE BE PERMITTED TO SUBLEASE ITS PHYSICAL
2 COLLOCATION SPACE TO OTHER TELECOMMUNICATIONS
3 CARRIERS? [ISSUES 7, 9]

4 A. Yes. There are several measures that the Commission can and should take to
5 ensure that competitors can collocate more efficiently and effectively. Requiring
6 BellSouth to allow for shared cage collocation and cage subleasing of existing and
7 future collocation space are two of them. Recognizing that current ILEC Physical
8 Collocation practices constitute one of the most formidable barriers to competitive
9 entry, the FCC and many state Commissions already are considering mandating
10 shared cage collocation and cage subleasing. In comments filed in the FCC's
11 *Advanced Services Rulemaking*, even some ILECs supported these alternatives to
12 traditional collocation.

13 By requiring BellSouth to allow competitors, such as e.spire to share cages
14 with and sublease Physical Collocation space to other telecommunications
15 carriers, this Commission can reduce collocation expenses and increase the
16 efficiency of End-Office space utilization significantly – both results will lead to
17 an increase in competitive service alternatives available to End Users. Shared
18 cage collocation and subleasing reduce competitors' collocation expenditures by
19 allowing them to split overhead costs with other carriers. Shared cages and
20 subleasing also will help maximize the number of carriers that can collocate in a
21 Central Office by allowing carriers the flexibility to more closely match their
22 space procurement with their actual needs. e.spire and other competitors have
23 been forced by BellSouth to secure at least 100 square feet of collocation space –

1 in many cases, there is extra space in competitors' cages that, unless subleased to
2 another competitor, would be wasted. By maximizing the number of competitors
3 that can collocate in a Central Office, shared cage collocation and subleasing also
4 conserve scarce collocation space in BellSouth's Central Offices. To ensure that
5 all of these benefits are realized, the Commission should require BellSouth to
6 incorporate provisions allowing for shared cage collocation and cage subleasing
7 in its interconnection agreement with e.spire.

8 **Q. IF THE COMMISSION DECLINES TO ENDORSE A GENERAL**
9 **SUBLEASING REQUIREMENT, SHOULD AN EXCEPTION BE MADE**
10 **TO ALLOW E.SPIRE TO SUBLEASE ITS EXISTING PHYSICAL**
11 **COLLOCATION SPACE? [ISSUES 7, 9]**

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

1 **Q. SHOULD E.SPIRE BE ABLE TO ESTABLISH ADJACENT**
2 **COLLOCATION ARRANGEMENTS WITH BELL SOUTH? [ISSUES 7, 9]**

3 **A. Yes. Adjacent Collocation is an attractive alternative to Physical Collocation that**
4 **has been approved by some states and currently is being considered for**
5 **incorporation into national collocation requirements by the FCC. There are two**
6 **general varieties of Adjacent Collocation. With the first, "Adjacent On-Site**
7 **Collocation", the ILEC builds a structure on the same property as the Central**
8 **Office and permits CLECs to place their equipment in this structure. The ILEC**
9 **then provides a connection for CLEC equipment to the Main Distribution Frame**
10 **("MDF") in the Central Office. The second form of Adjacent Collocation,**
11 **"Adjacent Off-Site Collocation" involves the construction or rental by either the**
12 **ILEC or CLEC of property near the Central Office, but not on the same property**
13 **as the Central Office. Carriers establish a Mid-Span Meet that connects the**
14 **CLEC's equipment to the Central Office and the MDF therein. Adjacent**
15 **Collocation provides CLECs with the same functionality as direct Physical**
16 **Collocation while alleviating space exhaust and security concerns, and Physical**
17 **Collocation overpricing concerns. Having this alternative available will give**
18 **CLECs more opportunity to optimize the available collocation arrangements, and**
19 **their own resources.**

20 **Despite these benefits, BellSouth has not agreed to incorporate provisions**
21 **allowing for Adjacent Collocation in its interconnection agreement with e.spire.**
22 **Although, BellSouth's reasons for refusing to agree to the use of Adjacent**
23 **Collocation are not clear, I should point out that BellSouth's position is directly at**

1 odds with its position on Remote Terminal collocation, as articulated by
2 BellSouth in comments filed in the FCC's *Advanced Services Rulemaking*. There,
3 BellSouth argued against the FCC's tentative conclusion that Remote Terminal
4 collocation must be made available by ILECs and argued that "cross-box to cross-
5 box" collocation should be used instead. As I understand it, cross-box to cross-
6 box collocation is the same thing as adjacent collocation. If BellSouth can offer
7 Adjacent Collocation at the remote terminal, there is no valid reason why it
8 should be allowed to foreclose competitors from using Adjacent Collocation at
9 End Offices.

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

17 **[Q&A DELETED]**

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

21 **7]**

22 **A.** No. There is no valid reason why BellSouth, as it proposes, should be able to
23 require e.spire to hire a BellSouth-certified vendor to work on e.spire's own

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

13 **Q. SHOULD E.SPIRE BE REQUIRED TO PAY BELL SOUTH FOR A**
14 **SECURITY ESCORT AND/OR INSTALLATION OF SECURITY**
15 **CAMERAS OR COMPUTERIZED TRACKING SYSTEMS TO MONITOR**
16 **E.SPIRE EMPLOYEES AND VENDORS WHEN ACCESSING OR**
17 **WORKING IN E.SPIRE'S COLLOCATION SPACE? [ISSUE 7]**

18 **A.** No. BellSouth should not be permitted to complicate collocation and raise its
19 competitors costs by unilaterally imposing completely unnecessary monitoring
20 expenses on its competitors. Again, we are talking about e.spire employees and
21 vendors in e.spire's space. Here, too, e.spire has every reason to make sure that
22 there is no unauthorized entry or activity in its collocation space. However, the
23 security concerns involved are exclusively e.spire's. Nevertheless, e.spire has

1 offered to indulge BellSouth's desire to maintain an Orwellian degree of control
2 over leased Central Office space by allowing BellSouth, at its own expense, to use
3 cameras and tracking systems to monitor activity in e.spire's collocation space. If
4 such solutions are implemented, strict confidentiality requirements will be
5 required to ensure that BellSouth does not misuse information gleaned from
6 monitoring e.spire's activities. The Commission may decide that consumers will
7 be better off if such unnecessary costs are avoided altogether. In any event, I urge
8 the Commission to find that BellSouth may not impose unnecessary monitoring
9 costs on e.spire and, in turn, on its customers.

10 **[Q&A DELETED]**

11 **Q. SHOULD BELLSOUTH BE PERMITTED TO ESTABLISH INTERVALS**
12 **OF 120 DAYS – PLUS TIME FOR OBTAINING GOVERNMENT**
13 **PERMITS – UNDER “ORDINARY” CONDITIONS AND 180 DAYS –**
14 **PLUS TIME FOR OBTAINING GOVERNMENT PERMITS – UNDER**
15 **“EXTRAORDINARY” CONDITIONS FOR CONSTRUCTION OF**
16 **ENCLOSED COLLOCATION CAGES? [ISSUE 7]**

17 **A.** No. These intervals are far too long to support competitive market entry and they
18 are unnecessary as a technical matter. In addition, exclusion of time attributable
19 to obtaining government permits introduces an unreasonable level of uncertainty.
20 The Commission should reject BellSouth's proposed intervals and adopt in their
21 place, the approach agreed to by Southwestern Bell and its competitors and
22 approved by the Texas Commission. Under the provisioning intervals agreed to
23 in the Texas Section 271 collaborative proceeding, Southwestern Bell must

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

12 **Q. SHOULD BELL SOUTH BE REQUIRED TO MAKE CAGELESS**
13 **COLLOCATION SPACE AVAILABLE WITHIN 30 DAYS OR RECEIPT**
14 **OF A BONA FIDE REQUEST FROM E.SPIRE? [ISSUE 7]**

15 **A.** Yes. Since no construction is required for cageless collocation, there simply is no
16 reason why such arrangements cannot be provisioned in 30 days or less. Despite
17 this, BellSouth insists that the provisioning intervals for "caged" and "cageless"
18 collocation should be the same. This position is patently unreasonable and serves
19 no purpose other than to delay e.spire's entry into BellSouth's local markets. The
20 Commission should reject such anticompetitive and dilatory tactics and require
21 that the reasonable 30 day interval proposed by e.spire be incorporated into its
22 interconnection agreement with BellSouth.

23 **[Q&A DELETED]**

1 **Q. SHOULD E.SPIRE BE ALLOWED TO ORDER "CAGED"**
2 **COLLOCATION SPACE OF ANY SIZE WITH NO MINIMUM SPACE**
3 **REQUIREMENT? [ISSUE 7]**

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

15 **Q. SHOULD BELL SOUTH BE REQUIRED TO CREDIT NRCs PAID BY**
16 **E.SPIRE FOR ESTABLISHING VIRTUAL COLLOCATION DUE TO**
17 **UNAVAILABLE SPACE WHEN PHYSICAL COLLOCATION SPACE**
18 **LATER BECOMES AVAILABLE? [ISSUE 8]**

19 A. Yes. e.spire should *not* be required to pay NRCs twice in instances where it was
20 forced to establish Virtual Collocation temporarily while waiting for BellSouth to
21 make Physical Collocation space available. Significantly, BellSouth agrees with
22 e.spire in principle. What the parties disagree on is BellSouth's desire to put a
23 time limit on the availability of such a credit. Specifically, BellSouth takes the

i position that credits should be available only if Physical Collocation space
2 becomes available within 180 days of submission of the order for Virtual
3 Collocation. e.spire urges the Commission to reject BellSouth's attempt to
4 impose such a limitation because there simply is no justifiable legal or policy
5 reason for it.

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

17 **Q. WHAT FACTOR SHOULD BE APPLIED TO THE SQUARE FOOTAGE**
18 **OF SPACE ACTUALLY OCCUPIED BY E.SPIRE EQUIPMENT TO**
19 **COMPENSATE BELL SOUTH FOR USE OF COMMON AREAS? [ISSUE**
20 **7]**

21 **A.** e.spire does not object to paying its fair share for use of common space in
22 BellSouth Central Offices. However, it does object to paying more than that – as,
23 BellSouth has asked it to do by proposing a contribution factor of 2.5.

1 BellSouth's proposed contribution factor is so excessively high that it likely
2 would result in competitors paying all of BellSouth's share of common space
3 costs, with enough left over to wallpaper the common space with hundred dollar
4 bills. Obviously, competitors and consumers should not have to pay such a
5 premium. Indeed, the Act prohibits it. Collocation must be provided at cost-
6 based rates. Although the science of establishing these rates is rough, the fact that
7 GTE sought a 0.5 contribution factor in its collocation agreement with e.spire
8 should indicate that BellSouth's figure – which is five times as high – simply
9 bears no reasonable relation to cost. The Commission should reject this attempt
10 by BellSouth to drive up its competitors costs – and, indirectly, consumer rates.
11 *At most*, a 0.5 contribution factor should be incorporated into the interconnection
12 agreement between e.spire and BellSouth.

13 **[Q&A DELETED]**

14 **[Q&A DELETED]**

15 **[Q&A DELETED]**

16 **[Q&A DELETED]**

17 **Q. SHOULD SPACE PREPARATION FEES BE ESTABLISHED ON AN ICB**
18 **BASIS? [ISSUE 7]**

19 **A. No.** Again, e.spire seeks predetermined cost-based rates and BellSouth refuses
20 and offers only highly unpredictable ICB pricing for collocation space
21 preparation. As with numerous other attempts by BellSouth to impose ICB
22 pricing, e.spire objects on the grounds that ICB rates frequently do not end up
23 bearing a reasonable relation to cost – that is, ICB rates typically recover costs

1 plus monopoly profits. On the other hand, having predetermined cost-based rates
2 for space preparation likely would control expenses and would allow competitors.
3 such as e.spire, to better plan collocation and market entry. ICB rates for space
4 preparation have varied enormously across BellSouth's regional service territory.
5 Unfortunately, by the time e.spire is presented with the rates, it must proceed with
6 collocation and it has virtually no opportunity to challenge BellSouth's rates by
7 requesting a rate case at the Commission. To correct this problem, the
8 Commission should establish permanent rates in this proceeding.

Numbering and Number Portability

9
10
11 **Q. WHAT PROGRESS WAS MADE DURING THE NEGOTIATION ON THE**
12 **SUBJECTS OF NUMBERING AND NUMBER PORTABILITY? [ISSUE**
13 **11]**

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

16 **Q. WHAT ISSUES ARE OPEN? [ISSUE 11]**

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

1 **Q. PLEASE EXPLAIN E.SPIRE'S POSITION ON THE PROCESS THAT**
2 **SHOULD APPLY TO CONVERSION OF INP TO LNP. [ISSUE 11]**

3 **A. When an ILEC converts its systems from INP to LNP in a particular geographic**
4 **market, it has two immediate impacts upon e.spire. First, we must convert our**
5 **existing base of customers from INP to LNP. Second, we must cease submitting**
6 **INP-based orders for installation. e.spire does not object to either of these**
7 **circumstances, but we submit that the carriers involved need to work together**
8 **cooperatively on the timing of each.**

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

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

1 **Q. ARE THERE ANY OTHER DISPUTES RELATING TO NUMBER**
2 **PORTABILITY? [ISSUE 11]**

3 **A. Yes. In many markets, INP will still be utilized for some time to come. Where**
4 **INP is used, it is critical that the installation of a physical loop and the associated**
5 **INP for that line be coordinated so that they happen as close to simultaneously as**
6 **possible. If the provisioning of INP is delayed, a customer's incoming calls will**
7 **be misdirected.**

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

16 **Q. EXPLAIN THE DISAGREEMENT OVER THE ASSESSMENT OF**
17 **SWITCHED ACCESS CHARGES FOR CALLS PLACED TO INP-**
18 **PORTED NUMBERS. [ISSUE 11]**

19 **A. Billing of interexchange Switched Access charges is complicated when calls are**
20 **terminated to INP-ported numbers utilizing the Remote Call Forwarding ("RCF")**
21 **technology. In these situations both carriers involved provide a portion of the**
22 **Switched Access Service. Namely, BellSouth incurs some cost in redirecting the**
23 **call to e.spire via RCF, and e.spire incurs the cost of terminating the call to the**

1 ported number. As I understand it, the problem is further complicated by the fact
2 that BellSouth normally is in possession of the billing records needed to render an
3 invoice to the IXCs for whom the terminating access service is provided.

4 The solution is to establish a system where (i) associated Switched Access
5 revenue is split on a Meet Point Billing-like basis, and (ii) BellSouth bills the
6 charges and settles with e.spire by remitting its portion of the revenue to it. We
7 have included such a proposal in the draft Agreement, and ask the Commission to
8 order its adoption.

9 **OSS, Ordering, Provisioning and Repair**

10 **Q. DID THE PARTIES RESOLVE ALL ISSUES RELATED TO**
11 **OPERATIONAL SUPPORT SYSTEMS, ORDERING AND**
12 **PROVISIONING? [ISSUES 15, 16, 21, 22, 23]**

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

18 **[Q&A DELETED]**

19 **[Q&A DELETED]**

20 **[Q&A DELETED]**

21 **[Q&A DELETED]**

22 **[Q&A DELETED]**

1 **Q. HAS BELL SOUTH DENIED E.SPIRE ACCESS TO IMPORTANT PRE-**
2 **ORDER INFORMATION? [ISSUE 16]**

3 **A. Yes. BellSouth has refused to provide e.spire access to the results of pre-testing**
4 **of complex resale and UNE orders provisioned by BellSouth technicians on**
5 **behalf of e.spire. This information is necessary for e.spire to maintain accurate**
6 **service records on its own customers. e.spire should be afforded access to this**
7 **information on an electronic basis as a part of BellSouth's OSS offering.**
8 **BellSouth refuses to provide the results to e.spire electronically or in written form.**

9 **Q. ARE THERE ANY INDUSTRY STANDARDS THAT BELL SOUTH HAS**
10 **NOT COMPLIED WITH IN ITS OSS PROPOSAL FOR**
11 **INTERCONNECTION AGREEMENTS WITHIN ITS REGION? [ISSUE**
12 **22]**

13 **A. Yes. BellSouth's proposal is littered with inconsistency with regards to providing**
14 **access to OSS functions in accordance with relevant industry standards. In**
15 **particular, BellSouth refuses to agree to language regarding the applicability of**
16 **OBIF and ATIS and ANSI standards. The Ordering and Billing Forum or "OBIF"**
17 **and the Alliance for Telecommunications Industry Solutions or "ATIS" are**
18 **industry associations that specialize in creating and maintaining industry**
19 **standards for pre-order, order and billing information, whereas ANSI specializes**
20 **in creating industry standards for Electronic Billing ("EBI") applications. The**
21 **FCC has relied on standards setting organizations such as OBIF, ATIS and ANSI**
22 **to create national and uniform standards for OSS. Despite the credentials and**
23 **broad participation of the industry in setting standards through these**

1 organizations, BellSouth refuses to uniformly and unequivocally commit itself to
2 adopt forthcoming OSS standards, business rules and specifications adopted by
3 these organizations for the term of the interconnection agreement between the
4 Parties.

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

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

21 [Q&A DELETED]

22 [Q&A DELETED]

1 **Q. SINCE THE FCC HAS HELD THAT MEETING INDUSTRY**
2 **STANDARDS IS NOT SUFFICIENT INDICATION THAT BELL SOUTH**
3 **HAS MET ITS STATUTORY OBLIGATIONS TO PROVIDE OSS**
4 **FUNCTIONS, WHAT OTHER PRE-ORDERING, ORDERING,**
5 **PROVISIONING, BILLING OR MAINTENANCE NOTIFICATIONS**
6 **DOES E.SPIRE REQUIRE IN ORDER TO COMPETE EFFECTIVELY**
7 **WITH BELL SOUTH? [ISSUE 15]**

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

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

9 **[Q&A DELETED]**

10 **[Q&A DELETED]**

11 **[Q&A DELETED]**

12 **[Q&A DELETED]**

13 **[Q&A DELETED]**

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

16 **[ISSUE 21]**

17 **A. e.spire requests that BellSouth be required to provision loop cutovers within a five**
18 **minute interval. During the cutover process, the customer who orders a ported**
19 **number, must be out of service while the loop is being connected to e.spire's**
20 **collocated facility. If the cutover process does not go smoothly, the End User**
21 **may attribute such provisioning issues to the new carrier. Therefore, it is**
22 **imperative that service outages are minimized. A five minute cutover period will**
23 **lessen the inconvenience of service outages to e.spire's new customers. In its**

1 current interconnection agreement with e.spire, BellSouth agreed to provision
2 "live cutovers" within the five minute interval. Under the effective terms between
3 the parties, the penalty for not meeting the five minute cutover is for BellSouth to
4 waive the applicable line connection charge when the interval is 15 minutes or
5 more. The purpose of the interval and the associated remedy is for the parties to
6 minimize the disruption to the customer and compensate e.spire for non-
7 compliance attributable to a performance breach by BellSouth. The Georgia and
8 Louisiana Commissions explicitly have recognized this five minute interval in
9 their Performance Measurement requirements, demanding measurement of how
10 often loop and number portability are cut over within five minutes.

11 **Q. HOW DOES THE SIZE OF A CUSTOMER ORDER IMPACT THE**
12 **AMOUNT OF TIME IT TAKES TO PERFORM A LIVE CUSTOMER**
13 **CUTOVER? [ISSUE 21]**

14 **A.** The size of a customer's cutover will change the amount of work to be done in
15 disconnecting and reconnecting the customer's loop(s) from BellSouth's facilities
16 to e.spire's facilities, but the effect of this increase is not directly proportional to
17 the number of loops, digital or optical equivalents being cutover. For example, if
18 a customer had requested to change his facilities-based services from BellSouth to
19 e.spire and these services were provisioned on a T-1 (the equivalent of 24 loops),
20 it would not take the technicians twenty-four times the length of time it takes to
21 cut-over a single loop.

22 The intervals proposed by e.spire take this principle into account. As
23 indicated above in this testimony, the time it takes to make a single loop

1 conversion should be at maximum, five minutes. For upwards of ten (10) loops,
2 the BellSouth technicians should be able to complete the conversion within thirty
3 (30) minutes. For loop cutovers not exceeding thirty loops, the interval for the
4 conversion should be one hour. All intervals for more than 30 loops or complex
5 orders of at least 10 loops, shall be mutually agreed to by the Parties. DS-1 or
6 DS-3 loops should be considered as one physical loop for these purposes (as
7 opposed to 24 or more channels).

8 **Q. WHAT SHOULD THE INTERVAL FOR A CONVERSION BE WHEN**
9 **BELLSOUTH REGAINS A CUSTOMER THAT HAD MIGRATED TO**
10 **E.SPIRE? [ISSUES 15, 21]**

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

20 **Q. WHAT TYPE OF ANCILLARY SUPPORT IS NECESSARY FOR E.SPIRE**
21 **TO OPERATE BELLSOUTH'S OSS? [ISSUE 23]**

22 A. e.spire requires access to trained personnel, i.e., an operational support help desk,
23 provided by BellSouth on a twenty-four hour a day, seven days a week basis.

1 e.spire requires 24 hour access, seven days a week, because the OSS interface is
2 required for maintenance and trouble shooting of customers' services in addition
3 to the establishment or discontinuance of services. Service outages may occur at
4 any time during the week. Therefore, in order for e.spire to provide maintenance
5 functions at parity to BellSouth, it must have 24 hour access to OSS support
6 personnel 7 days per week.

7 **Directory Listings**

8 **Q. HOW DOES E.SPIRE PROPOSE TO REDUCE THE INCIDENCE OF**
9 **ERRORS IN THE DIRECTORY LISTINGS OF ITS CUSTOMERS PRIOR**
10 **TO PUBLICATION OF DIRECTORIES? [ISSUES 17, 18, 19]**

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

19 **The language requested by e.spire will provide two opportunities to**
20 **correct the information of its end users prior to it being published in directories.**
21 **Once the information is published – or worse yet, not published – there is no**
22 **opportunity for e.spire to correct any errors to the information included under its**
23 **own customers' listings. After publication, it is foreseeable that errors in these**

1 listings may cause economic harm to e.spire's end users which may be
2 attributable to the negligence of e.spire or BellSouth. If there are mistakes in the
3 data provided by e.spire's order entry personnel, access to electronic
4 confirmations will alert e.spire of the errors and give it the opportunity to notify
5 BellSouth in order to have such errors corrected prior to publication. Having
6 sufficient time to review of the galley proofs of e.spire's end users will also
7 contribute to the accuracy of the listings, provided e.spire has enough time to
8 contact BellSouth or its publishing affiliate and correct any mistakes in the galley
9 proofs, prior to publication.

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

18 **[HEADING DELETED]**

19 **[Q&A DELETED]**

Rates

1
2 **Q. WERE THE PARTIES ABLE TO AGREE ON RATES FOR UNEs?**

3 **[ISSUES 2, 3, 4, 5, 6 20]**

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

8 **Geographic Deaveraging**

9 **Q. DO THE PARTIES DISAGREE OVER THE ISSUE OF "GEOGRAPHIC**
10 **DEAVERAGING"? [ISSUES 2, 3, 4, 5, 6, 20]**

11 A. Yes, as I discussed earlier – and as e.spire's expert witness, Dr. Marvin Kahn,
12 also will discuss, e.spire's inability to obtain geographically deaveraged loop rates
13 constitutes a substantial barrier to entry that must be removed by this
14 Commission. Specifically, e.spire seeks, and BellSouth refuses to provide, ULF
15 rates that are geographically deaveraged into three density zones.

16 As I have mentioned previously, the FCC's geographic deaveraging rule
17 was reinstated by the Supreme Court in its *Iowa Utilities Board* decision.
18 Consistent with the reasoning that led the FCC to adopt its geographic
19 deaveraging rule, the FCC and the US Department of Justice consistently have
20 found that in order for rates to be truly cost-based, they cannot be based on
21 statewide averaged costs but, rather, they must reflect the costs incurred in
22 relevant density zones within the particular state. This also is consistent with

1 BellSouth's own practice of deaveraging prices for certain special access services
2 in three density zones.

3 If e.spire must price its end-user offerings to reflect BellSouth's state-wide
4 loop costs, it will have difficulty competing in dense urban markets where
5 BellSouth can compete on the basis of its lower costs of provisioning loops there.
6 e.spire will have difficulty absorbing this cost-differential and only will be able to
7 do so where volumes are high. Accordingly, BellSouth's anticompetitive practice
8 of building statewide averaged costs into its loop rates effectively raises e.spire's
9 costs so that it is difficult or impossible for e.spire to compete in the low-end
10 business or residential markets. To ensure that consumers in these markets realize
11 the benefits made possible only by competition, this Commission should act now
12 to remove this barrier by requiring BellSouth to offer geographically deaveraged
13 loop rates in three density zones, as is required by FCC Rule 51.507(f).

14 **Current TELRIC Studies and New "Permanent" Prices**

15 **Q. DO BELL SOUTH'S CURRENT "PERMANENT" RATES ACCURATELY**
16 **REFLECT COSTS? [ISSUES 2, 3, 4, 5, 6, 7, 9, 20]**

17 **A. No, and there are many reasons why they do not. e.spire consistently has**
18 **challenged whether BellSouth conducted its initial round of TELRIC studies**
19 **consistent with forward looking pricing principles. Indeed, e.spire believes that**
20 **BellSouth's interconnection, UNE and collocation pricing are inconsistent with**
21 **the FCC's designated TELRIC pricing standards and could not withstand review**
22 **by that agency.**

Moreover, 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 BELL SOUTH'S PROPOSED MONTHLY RECURRING CHARGES – MRCs – FOR 4-WIRE VOICE GRADE ANALOG LOOPS. [ISSUES 2, 20]

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.

1 First, and as a general manner, the relationship between the MRC for 2-
2 wire and 4-wire voice grade analog loops should give the Commission pause.
3 Throughout its region, BellSouth has proposed MRCs for 4-wire voice grade
4 analog loops that are up to 76 percent more than their 2-wire counterparts.
5 Although it is conceptually convenient to think that a 4-wire loop would cost
6 much more or even double what a 2-wire loop costs, this is not the case. In
7 reality, the cost of a 4-wire loop is only marginally more than that of a 2-wire
8 loop. Recognizing this fact, the Tennessee Commission requires that BellSouth
9 charge the same rate – \$18.00 – for either kind. The same is true for Texas, where
10 Southwestern Bell has no cost differential between the two. The same is true for
11 Bell Atlantic in Maryland and Virginia.

12 In states outside BellSouth's service territory where there is a cost
13 differential, it generally is small. For example, the Arizona Commission found
14 that U S West's costs for 4-wire loops only exceeded its 2-wire costs by less than
15 5 percent. In Missouri, Southwestern Bell's 4-wire/2-wire cost differential is
16 roughly 10 percent. Within BellSouth territory, the cost differential ranges from
17 zero in Tennessee to 76 percent here in Florida. Assuming that all other factors
18 are constant, it must be determined whether the TELRIC of the equipment
19 installed for a 4-wire voice grade analog loop exceeds its 2-wire counterpart by
20 that great an amount – the external reasonableness tests I have just set forth
21 strongly suggest that it does not.

1 **Q. PLEASE EXPLAIN THE PROBLEM E.SPIRE HAS WITH REGARD TO**
2 **THE MRC FOR DIGITAL 4-WIRE 56/64 kbps LOOPS? [ISSUE 2]**

3 **A. The problem we have identified with respect to BellSouth's MRC for 56/64 kbps**
4 **loops is that BellSouth has not proposed *any* rates for them. Competition simply**
5 **cannot be held hostage to the bureaucratic wrangling between BellSouth's**
6 **interconnection and accounting departments. It is impossible for e.spire to**
7 **negotiate a rate, if BellSouth makes no proposal. Accordingly, e.spire requests**
8 **that the Commission set TELRIC rates in this arbitration proceeding.**

9 Mindful of BellSouth's history of ignoring TELRIC pricing mandates and
10 inflating its purported costs in numerous ways, I am going to take a moment to
11 offer an external reality check for guidance. Although, with respect to 56/64 kbps
12 loops, there is not a lot to go on, I can offer the \$29.92 rate from Georgia as a
13 benchmark and note that Louisiana and Mississippi, the only two states other than
14 Georgia that have set 56/64 kbps loop rates, ended up with rates that were 17 and
15 19 percent higher.

16 **Q. IN ADDITION TO ITS GENERAL DISPUTE REGARDING THE NEED**
17 **FOR UPDATED TELRIC STUDIES AND RATES, ARE THERE**
18 **INDICATIONS THAT THE PROPOSED MRCs FOR DIGITAL 4-WIRE**
19 **LOOPS DO NOT ACCURATELY REFLECT TELRIC PRICING**
20 **PRINCIPLES? [ISSUE 2]**

21 **A. Yes. e.spire already has requested that all BellSouth UNE rates, including its DS-**
22 **1 loop MRC, be checked and reset at current TELRIC-based levels. Putting that**
23 **aside for the moment, e.spire also takes issue with BellSouth's proposed DS-1**

1 loop MRC because it greatly exceeds corresponding MRCs for DS-1 loops in
2 other BellSouth states. To illustrate my point, let me offer as a barometer
3 BellSouth's DS-1 rate for Alabama. That MRC of \$64.19 is similar to the rates
4 established by the Georgia and Kentucky Commissions. The rates proposed by
5 BellSouth for Louisiana and South Carolina are 14 and 21 percent higher. Then
6 there is the rate for North Carolina – that rate is a staggering 136 percent higher.
7 This Commission approved a rate that is 25 percent higher and is exceeded only
8 by the larcenous rate established in North Carolina. All other things being equal,
9 is there any reason to believe that labor and materials costs in Florida are 25
10 percent higher than they are in Alabama? I doubt that there is one. Because of
11 this doubt, e.spire requests that close scrutiny of new BellSouth cost studies is
12 warranted to ensure that BellSouth is not permitted to overprice its DS-1 loops
13 again.

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

1 **Q. ARE THERE SIMILAR PROBLEMS WITH BELLSOUTH'S 2-WIRE**
2 **ISDN DIGITAL GRADE LOOP MRCs? [ISSUE 2]**

3 **A. Yes. Again, the range of rates for this UNE across BellSouth territory suggests**
4 **that rates in many BellSouth states do not properly reflect TELRIC pricing**
5 **principles. Here, in Florida, the MRC for 2-wire ISDN digital grade loops is 25 to**
6 **122 percent higher than in all other BellSouth states. Is it possible that costs in**
7 **Florida are up to 122 percent higher than they are elsewhere in BellSouth's**
8 **service territory? Such a tremendous discrepancy suggests that Florida**
9 **competitors -- and consumers -- are getting fleeced by BellSouth. I encourage the**
10 **Commission to take a closer look so that BellSouth's high speed ISDN loop costs**
11 **can be deflated back to a level where they lawfully should be set.**

12 **Q. ARE THERE SIMILAR PROBLEMS WITH BELLSOUTH'S 2-WIRE**
13 **ADSL DIGITAL GRADE LOOP MRC? [ISSUE 2]**

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

1 **Q. ARE THERE SIMILAR PROBLEMS WITH BELL SOUTH'S 2-WIRE**
2 **HDSL DIGITAL GRADE LOOP MRC? [ISSUE 2]**

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

13 **Q. ARE THERE SIMILAR PROBLEMS WITH BELL SOUTH'S 4-WIRE**
14 **HDSL DIGITAL GRADE LOOP MRC? [ISSUE 2]**

15 **A. Yes. Again, the range of rates for this UNE across BellSouth territory suggests**
16 **that they may not appropriately reflect TELRIC pricing principles. Here in**
17 **Florida, BellSouth's 4-wire HDSL digital loop rate is a staggering 76 percent**
18 **higher than the corresponding rate in Kentucky and 51 percent higher than that in**
19 **Georgia. Could BellSouth's 4-wire HDSL loop costs in Florida exceed the costs**
20 **in Kentucky and Georgia by that much? Do e.spire's Florida customers really**
21 **need to pay that much? Again, e.spire requests that the Commission compel the**
22 **production of new TELRIC studies that it can properly set rates that afford**

1 BellSouth a reasonable profit, competitors a chance to compete and Florida
2 consumers value in telecommunications services.

3 **Non-Recurring Charges for Loops**

4 **Q. OUTSIDE OF THE NEED FOR UPDATED TELRIC STUDIES AND**
5 **RATES, DOES E.SPIRE TAKE ISSUE WITH BELL SOUTH'S NON-**
6 **RECURRING CHARGES - NRCs - FOR ULLs? [ISSUE 2]**

7 **A. Yes. NRCs are up-front costs that a carrier incurs in providing service to a**
8 **customer. Generally, e.spire is not able to recover all of these costs in installation**
9 **charges from end users at the time they receive service. A customer becomes**
10 **profitable only if e.spire can recoup its initial investment over the length of time**
11 **that an average customer can be expected to remain with e.spire's service. If**
12 **NRCs are too high, e.spire will have no reasonable expectation that serving a**
13 **customer will be profitable, and it will not enter the market for these customers.**
14 **In other words, inflated NRCs can represent a significant barrier to entry for**
15 **competitors such as e.spire. BellSouth's NRCs for ULLs are so excessive that**
16 **they constitute such a barrier to entry. If facilities-based competition is going to**
17 **develop and prosper as intended by Congress, this Commission must take action**
18 **now to reduce BellSouth's NRCs to true TELRIC-based rates.**

19 **Q. WHY DO YOU BELIEVE THAT BELL SOUTH'S NRCs EXCEED**
20 **TELRIC? [ISSUE 2]**

21 **A. One indication that BellSouth's proposed NRCs exceed TELRIC is that they**
22 **exceed the NRCs that BellSouth imposes on its own retail customers. Indeed,**
23 **BellSouth's proposed NRCs are significantly higher than its retail rates, some**

1 nearly four and others nearly six times higher. For example, BellSouth's
2 proposed NRCs for installing a new 2-wire analog voice-grade loop total \$195,
3 without taking account for a cross-connect NRC. BellSouth business customers
4 pay only \$56 for comparable service. For ISDN lines, the proposed NRCs are
5 nearly six times higher than comparable retail rates.

6 Comparison to rates outside BellSouth territory also offers strong support
7 for the proposition that BellSouth's proposed NRCs exceed TELRIC. For
8 example, BellSouth's NRCs for 2-wire analog voice grade loops – including the
9 specified conversion time surcharge that preemptively applies only to simple
10 POTS lines – are *ten times higher* than those charged by Bell Atlantic in New
11 York. Even without the specified conversion time surcharge/penalty, BellSouth's
12 \$140.00 NRC is nearly eight times higher than the \$18.27 charged by Bell
13 Atlantic in New York. It is difficult to imagine that costs in New York City are
14 eight times *less expensive* than they are here in Tallahassee.

15 Further comparisons reveal similar results. The NRC for a 2-wire digital
16 ISDN loop is \$306 – this figure is more than \$250 – or six times higher – than the
17 \$48 NRC charged by Bell Atlantic in Maryland – again, that is a differential of
18 \$250 per loop. And it gets even worse for DS-1 loops. BellSouth's \$540 NRC is
19 almost \$464 – or seven times – higher than the \$76.01 NRC imposed by Bell
20 Atlantic in Pennsylvania.

21 I have attached a chart of representative ULL NRCs from other states
22 hereto as Attachment i, and it shows that BellSouth's proposed charges are
23 several times higher than the rates for equivalent services elsewhere. The tasks

1 performed by the ILECs in other states in provisioning UNEs do not differ
2 significantly from those undertaken by BellSouth.

3 **Q. PLEASE PROVIDE AN ILLUSTRATION OF HOW THESE**
4 **DIFFERENCES EFFECT E.SPIRE'S ABILITY TO COMPETE. [ISSUE 2]**

5 A. I'll use a typical business customer with five POTS lines to illustrate. Applying
6 BellSouth's tariffed rates, the customer would pay a total of \$280 in NRCs to
7 BellSouth. (This is calculated as five lines at \$56 per line.) If e.spire were to win
8 that customer over, however, e.spire would be charged at least \$93 in NRCs.
9 (This represents the sum of BellSouth's proposed NRCs for a first line (\$140.00),
10 for order coordination(5 @ \$55.00 = \$275), and additional lines (4 @ \$42.00 =
11 168).) Thus, in this example, BellSouth's proposed NRCs would be at least 108
12 percent higher (not accounting for cross-connect NRCs) – or more than twice as
13 much – for e.spire than for its own retail customers.

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

19 As a practical matter, e.spire would not be able to recover its costs in up-
20 front charges from end users. At most, e.spire would be able to pass through only
21 an amount equal to what BellSouth charges its retail customers. However, e.spire
22 has found in its experience so far that, as a new entrant, it often must charge even

1 less than the comparable ILEC rate in order to induce customers to switch
2 carriers.

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

10 Assuming e.spire could expect to retain that customer for two years (the
11 minimum period e.spire uses for planning purposes), it would have to charge its
12 customers at least an additional \$12.62 a month for 24 months in order to recover
13 this cost differential. Notably, this is a cost that BellSouth does not recover in its
14 own retail rate, making it difficult for e.spire to recover the additional cost. In
15 sum, if e.spire were forced to accept BellSouth's excessive proposed NRCs, it
16 would be impossible for e.spire to compete for many smaller business customers
17 and most, if not all, residential customers.

18 **Q. ARE THERE OTHER COMPARISONS THAT CAN BE MADE THAT**
19 **WOULD SUGGEST THAT BELL SOUTH'S PROPOSED ULL NRCs ARE**
20 **NOT TRULY TELRIC-BASED? [ISSUE 2]**

21 **A.** Yes. As I have done with BellSouth's proposed MRCs, I can compare several of
22 BellSouth's proposed NRCs for Florida with corresponding rates from elsewhere
23 in BellSouth service territory – the result simply begs the question “how can these

1 rates be TELRIC-based?" For example, BellSouth's proposed first NRCs for 2-
2 wire analog loops are 62 percent higher than comparable NRCs in North Carolina.
3 Proposed NRCs for additional 2-wire analog lines are 51 percent higher. The
4 differential is slightly greater for 4-wire analog loop NRCs. For 2-wire ISDN
5 lines, the NRCs proposed for Florida – first and additional – are 32 and 82 percent
6 higher than comparable NRCs in Louisiana. Each of these comparisons strongly
7 suggest that BellSouth should be required to establish new TELRIC rates during
8 this proceeding.

9 **Q. DOES E.SPIRE HAVE A PROBLEM WITH BELL SOUTH'S NRC FOR**
10 **ORDER COORDINATION FOR A SPECIFIED CONVERSION TIME?**
11 **[ISSUE 2]**

12 **A.** Yes. The Commission should not permit BellSouth to impose a separate NRC for
13 order coordination – *virtually all loop cutovers must be coordinated*. Notably,
14 BellSouth only proposes to impose this NRC when 2-wire analog loops are
15 involved. As a result, the NRCs for 2-wire analog loops *exceeds* those for 4 wire
16 analog and xDSL loops.

17 **Q. DOES E.SPIRE HAVE AN ADDITIONAL ISSUE REGARDING**
18 **BELL SOUTH'S NRCs? [ISSUE 2]**

19 **A.** Yes. The issue is that the drop between first and additional NRCs may not
20 adequately reflect the cost differential realized by *BellSouth* when multiple loop
21 orders are placed. For example, the additional NRCs for a 2- and 4- wire analog
22 loops are 70 percent less than the first NRCs. Yet, first and additional NRCs for
23 2-wire ISDN, and 2- and 4-wire xDSL loops differ by only 8 and 13 percent,

1 respectively. Similarly, the drop between first and additional NRCs for DS-1
2 loops is only 17 percent. Here, too, we believe BellSouth should be compelled to
3 submit updated cost studies to justify these discrepancies.

4 **Sub-Loop Pricing**

5 **Q. MOVING TO SUB-LOOP PRICING ISSUES, PLEASE EXPLAIN**
6 **E.SPIRE'S DISPUTE WITH REGARD TO BELL SOUTH'S PROPOSED**
7 **MRCs FOR CENTRAL OFFICE LOOP CHANNELIZATION SYSTEMS.**
8 **[ISSUE 2]**

9 **A.**Here, too, e.spire questions whether BellSouth's rates are truly cost-based. In
10 Florida, the MRCs are 70 percent higher than they are across the boarder in
11 Georgia. In fact, the MRCs proposed by BellSouth are higher than those
12 proposed for every BellSouth state, other than Tennessee. BellSouth's first and
13 additional NRCs for central office loop channelization systems also appear high.
14 Corresponding first NRCs in Georgia and Louisiana are 13 and 19 percent lower,
15 respectively. Additional NRCs are 18 and 24 percent higher.

16 **Q. DOES E.SPIRE ALSO DISPUTE BELL SOUTH'S PROPOSED PER**
17 **CIRCUIT CHANNEL INTERFACE MRCs FOR CENTRAL OFFICE**
18 **LOOP CHANNELIZATION SYSTEMS? [ISSUE 2]**

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

1 **Q. DOES E.SPIRE HAVE ADDITIONAL PROBLEMS WITH REGARD TO**
2 **SUB-LOOP UNBUNDLING RATES? [ISSUE 2]**

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

7 **Charges for xDSL-Equipped Loops**

8 **Q. TURNING NOW TO xDSL-EQUIPPED LOOPS, PLEASE EXPLAIN THE**
9 **PARTIES' DISPUTE OVER RATES. [ISSUE 20]**

10 **A. Once again, the problem here is that BellSouth has refused to propose rates for**
11 **xDSL-equipped loops. Thus, even though the FCC recently affirmed that ILECs**
12 **must unbundle all network elements used in provisioning advanced services,**
13 **BellSouth still refuses to establish MRCs and NRCs for ULLs equipped with**
14 **DSLAMs. However, like all other UNE rates, the rates for DSLAM-equipped**
15 **loops should be set at TELRIC plus a reasonable profit. So that consumers can**
16 **exercise a separate choice for voice and data traffic (if they so desire), TELRIC-**
17 **based MRCs and NRCs also should be established for the individual voice and**
18 **data channels of an xDSL-equipped loop. To expedite the deployment of**
19 **advanced telecommunications services, e.spire requests that the Commission**
20 **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? [ISSUE 2]**

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.

1 Q. DO YOU HAVE ANY ADDITIONAL CONCERNS WITH REGARD TO
2 BELLSOUTH'S PRICING OF EXTENDED LINKS? [ISSUE 2]

3 A. Yes. My concern is with the NRCs that BellSouth might seek to attach to such
4 configurations. As I have expressed earlier, I believe that there is ample reason to
5 believe that few – if any – of BellSouth's UNE prices are consistent with the
6 forward looking, cost-based pricing principles of the FTA. As I also have
7 discussed, BellSouth's proposed NRCs are so high that they constitute a barrier to
8 entry. Right now, if e.spire were to assemble Extended Links from individually
9 priced UNEs, the related NRCs would nearly equal those applicable to the same
10 facilities ordered under BellSouth's special access tariff (\$741 for a DS-1
11 Extended Link (based on proposed UNE NRCs and no "glue charge") versus
12 \$745 for DS-1 special access). I cannot believe that the appropriate TELRIC
13 studies could produce NRCs that rival those incorporated into BellSouth's
14 subsidy-laden special access tariff. Accordingly, I ask the Commission to compel
15 updated TELRIC studies so that prices for Extended Links and high capacity
16 loops can be set at rates consistent with the 1996 Act.

17 **Charges for Transport**

18 Q. TURNING TO UNBUNDLED TRANSPORT, PLEASE EXPLAIN THE
19 ISSUES E.SPIRE HAS WITH REGARD TO BELLSOUTH'S RATES.
20 [ISSUE 2]

21 A. First, e.spire believes that BellSouth's shared transport rates are not appropriately
22 TELRIC-based. BellSouth's proposed per minute facilities termination rate is the
23 highest in the nine state BellSouth territory. In fact, the rate is 6 to 36 percent

1 higher than in other BellSouth states. Similarly, BellSouth's proposed per
2 mile/per mou rate is based on the highest permanent rate established in the region.
3 It is almost two-and-one-half times higher than the corresponding rate in
4 Kentucky and is still 32 pe. cent higher than the next highest non-interim rate.

5 **Q. DOES E.SPIRE HAVE OTHER ISSUES REGARDING TRANSPORT**
6 **RATES? [ISSUE 2]**

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

15 **Q. PLEASE EXPLAIN WHY E.SPIRE IS DISPUTING BELL SOUTH'S**
16 **RATES FOR UNBUNDLED DARK FIBER TRANSPORT FACILITIES.**
17 **[ISSUE 2]**

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

Charges for UNE Combinations

1
2 **Q. DOES E.SPIRE ALSO HAVE AN ISSUE WITH RATES FOR UNE**
3 **COMBINATIONS? [ISSUE 3]**

4 A. Yes. Here, too, BellSouth has refused to provide rate proposals. As I discussed
5 earlier, this Commission should establish combination UNE rates by adding the
6 MRCs and NRCs for each UNE incorporated into the specified combination to
7 arrive at price ceilings. e.spire also urges the Commission to resist any attempts
8 by BellSouth to drive-up its competitors' costs – and End User rates – by
9 imposing a non-cost-based glue charge for refraining from tearing apart common
10 network configurations.

Charges for Physical Collocation

11
12 **Q. DOES E.SPIRE ALSO TAKE ISSUE WITH BELL SOUTH'S PHYSICAL**
13 **COLLOCATION SPACE PREPARATION FEE? [ISSUES 7, 9]**

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

Volume and Term Discounts

19
20 **Q. DOES E.SPIRE ALSO HAVE AN ISSUE WITH REGARD TO VOLUME**
21 **AND TERM DISCOUNTS? [ISSUE 5]**

22 A. Yes. As I discussed earlier, e.spire believes that it should be entitled to volume
23 and term discounts when it agrees to purchase UNEs in volumes greater or in

1 terms longer than those contemplated in the base pricing established for particular
2 UNEs. Accordingly, e.spire asks the Commission to establish UNE volume and
3 term discounts that reflect the economies of scale realized in such situations. By
4 establishing volume and term discounts for UNEs, the Commission will continue
5 to put downward pressure on wholesale inputs and end user rates.
6

7 **Q. DOES E.SPIRE HAVE SPECIFIC RATES TO SUGGEST TO THE**
8 **COMMISSION FOR ADOPTION? [ISSUES 2, 3, 4, 5, 6, 20]**

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

Conclusion

1

2 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

3 **A. Yes. However, I reserve the right to modify and supplement my testimony after**
4 **having an opportunity to examine BellSouth's responses to e.spire's discovery**
5 **requests. On behalf of e.spire, I hereby thank the Commission in advance for its**
6 **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)	<u>Unbundled Loops</u> 2-Wire Analog Conditioning for dB Loss 4-Wire Analog 2-Wire Digital BRI 4-Wire Digital PRI Service Order	\$24.15/ <u>\$0.00</u> ¹	\$24.15/ <u>\$0.00</u> ¹
California (AT&T - PacBell Arbitration)	Installation/service order	\$37.31	\$3.11
Missouri (SWB - AT&T Agreement)	<u>Unbundled Loops</u> 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 (SDN-PRI Loop) <u>Loop Cross Connects without Testing</u> 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 (MCI - SWB Agreement)	2-Wire Analog	\$15.03	\$6.22
	Conditioning for dB loss (8dB to 5dB)¹	\$17.54	\$16.13
	4-Wire Analog	\$15.03	\$6.22
	2-Wire Digital	\$15.03	\$6.22
	4-Wire Digital	\$73.25	\$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 (P.S.C. Tariff No. 916)	<u>2-Wire Analog</u>		
	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	
	<u>2-Wire Digital</u>		
	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)	<u>1.5 Mbps</u>		
	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	
	<u>45 Mbps</u>		
	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	
	<u>4-Wire Analog</u>		
	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
Maryland (Bell Atlantic – AT&T Agreement)	<u>2-Wire Analog (POTS loops)</u>		
	<u>& 4-Wire Analog</u>		
	Service Order	\$47.00	
	Installation	\$51.50	
	ISDN Loops		
	Service Order	\$29.51	
	Installation – Premises visit not required	\$18.49	\$18.49
	– Premises visit required	\$83.44	\$40.29
	DS-1 Loops		
	Service Order	\$23.20	
New Jersey (Bell Atlantic - Sprint Agreement)	Installation – Premises visit not required	\$58.05	\$58.05
	– Premises visit required	\$146.86	\$93.31
	POTS (analog 2-Wire)		
	Service Order	\$23.55	
	If premises not required	\$8.61	\$8.61
	If premises visit required	\$83.69	\$29.58
	ISDN		
	Service Order	\$30.26	
	If premises not required	\$20.19	\$20.19
	If premises visit required	\$95.26	\$41.15
	Customer Specified Signaling – 2 Wire		
	Service Order	\$23.55	
	If premises not required	\$54.84	\$54.84
	If premises visit required	\$146.87	\$92.76
	Customer Specified Signaling – 4 Wire		
	Service Order	\$23.55	
	If premises not required	\$58.84	\$58.84
	If premises visit required	\$146.87	\$92.76
	DS-1		
	Service Order	\$23.55	
	If premises not required	\$58.84	\$58.84
	If premises visit required	\$146.878	\$92.76

¹ Not applicable when MCIm orders both loop and switching elements together where Bell Atlantic does not perform an installation function.

**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 Loop (POTS Loops) and 4 Wire Loops Service Order Installation Per Loop	\$37.00 \$36.00 ¹	
	4 Wire Loops If premises visit not required	\$15.49 \$60.52	
	If premises visit required	\$141.62	\$60.52 \$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 Existing Customers New Customers	\$20.21/loop \$13.91/loop \$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 - MCI Agreement)	Service Order Establish/Change (Bus. Or Res.)	\$14.71 ¹
	Line Connection (Bus. Or Res.)	\$36.54 ²
Indiana (Ameritech - AT&T Agreement)	Service Order -- Establish (Bus. Or Res.)	\$46.42 ¹
	Line Connection: (Bus. Or Res.)	\$20.00 ²
	Record Change	\$13.00
	Provision Change	\$13.50
Michigan (Ameritech - MCI Agreement)	Service Order Establish/Change (Bus. Or Res.)	\$38.44 ¹
	Line Connection (Bus. Or Res.)	\$32.76 ²
Ohio (Ameritech - MCI Agreement)	Service Order Establish/Change (Bus. Or Res.)	\$25.50 ¹
	Service Order -- / dd/Change	\$9.30
	Record Change	\$9.30
	Line Connection (Bus. Or Res.)	\$24.35 ²
Wisconsin (Ameritech - AT&T Wisconsin)	Service Order: Establish/Change (Bus. Or Res.)	\$43.27 ¹
	Line Connection (Bus. Or Res.)	\$41.82 ²

**e.spire Communications, Inc.
Proposed "Placeholder" 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	1 st - \$51.20 Add'l - \$27.80	NRC - BellSouth proposed rates in South Carolina (1 st) and North Carolina (Add'l)
4W Analog VG ULL with NID	\$18.00	1 st - \$51.20 Add'l - \$27.80	RC - BellSouth proposed rate in Tennessee NRC - BellSouth proposed rates in South Carolina (1 st) 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	1 st - \$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	1 st - \$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)(a)-(a))
Subloop - Feeder	\$8.58	1 st - \$206.44 Add'l - \$170.05	BellSouth proposed rates for Georgia
Subloop - Distribution	\$8.57	1 st - \$78.28 Add'l - \$58.33	BellSouth proposed rates for Florida

UNE	Recurring Charge ("RC")	Nonrecurring Charge ("NRC")	Source
Subloop - Distribution	\$8.57	1 st - \$78.28 Add'l - \$58.57	BellSouth proposed rates for Florida
Unbundled Network Terminating Wire	\$2.00/month/pair	\$225.00	BellSouth proposed rates for Florida, Georgia, Kentucky, and Tennessee
Loop Concentration/ Channelization	\$80.16	\$81.00	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 §7.5.9(D)(1)(c)
CO Channel Interface - 2W Cross-connect	\$0.09016	\$5.75	RC - BellSouth proposed rate for Georgia NRC - BellSouth proposed rate for Florida
DS0 Dedicated Transport	\$1.92 per mile \$19.20 fixed	\$14.41	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)(1)

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(A)(1)
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	1 st – \$1000.00 Add'l – \$273.69	RC – BellSouth proposed rate for Georgia NRC – BellSouth proposed rate for Alabama (1 st) and Georgia (Add'l)

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

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