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July 29, 1998

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

Re: Docket No. 980000B-SP

Dear Ms. Bayo:

Enclosed for filing in the captioned docket are an original and fifteen copies of the Comments and Responses of e.spire™ Communications, Inc. Also enclosed is a 3 1/2" diskette with the document on it in WordPerfect 6.0/6.1 format.

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

Thank you for your assistance with this filing.

Sincerely,

Norman H. Horton, Jr.

NHH/amb
Enclosures
cc: James C. Falvey, Esq.
Florida House Committee on Utilities and Communications

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ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Undocketed Special Project Access by Telecommunications Companies to Customers in Multi-Tenant Environments	)))))	Docket No. 980000B-SP

COMMENTS AND RESPONSES OF
e.spire™ COMMUNICATIONS, INC.

July 29, 1998

e.spire provides the following comments concerning the necessity of building access legislation in Florida. The comments track the topics agreed upon by the parties.

I. The Florida Local Telecommunications and Data Markets Cannot be Opened to Competition Without Building Access Legislation

The Telecommunications Act of 1996 ("Act") endeavored to eliminate all barriers to entry into the local telecommunications markets. The task is a daunting one, given the local monopolies held by incumbent providers over the course of the century. Incumbent providers have a wide variety of advantages in the local marketplace. They have entrenched name recognition, they have a relationship with every customer in the market, at home and at work, they have a ubiquitous network, and they began with 100% of the market. The Act undertook to make it possible for new entrants to become "co-carriers," that is, carriers that are placed on equal footing with the incumbents in every respect. Unlike early attempts to nibble at the margins of the local markets by shared tenant service providers or centrex resellers, alternative local exchange carriers ("ALECs") sought and are entitled to equal treatment vis a vis the incumbents. The goal of the Act is to promote local competition, in order to decrease prices, increase service quality, and increase innovation. Ultimately, the purpose of the Act is to improve the level of service to ***consumers*** by ensuring that the incumbent monopoly markets became competitive markets.

The Act imposes some very stringent requirements on a wide variety of parties to achieve its ends. For example: 1) Sections 251 and 252 imposes interconnection and

unbundling requirements on the companies largest local exchange companies to ensure that ALECs have equal access to existing ubiquitous networks; 2) Section 253 limits the rights of States and cities to impose regulations that would inhibit local competition and to ensure that ALECs have equal access to municipal and other rights of way; and 3) Section 703 regulates large utility companies, to ensure that ALECs have equal access to utility poles and conduits.

Unfortunately, the Act failed to address access to multi-tenant buildings that represent the "last 100 feet" to the customer premises. Building owners, like incumbent local exchange companies, own bottleneck facilities: they control the entrance to their buildings. Like the other bottleneck facilities mentioned above – incumbent facilities, municipal rights of way, and utility pole and conduit – these bottleneck facilities must be regulated to ensure that they are not abused in a manner that inhibits the delivery of competitive local service to Florida consumers. This regulation is all the more important today because, as discussed below, experience has shown that building owners, left to their own devices, ***have*** abused their bottleneck control by extracting unfair and discriminatory payments, terms, and conditions from ALECs entering the Florida markets.

Texas, Connecticut, and Ohio have taken the lead in enacting legislation in this area. The Texas statute represents a fair balance that e.spire would support in Florida. The Texas legislation has been instrumental in helping e.spire with actual negotiations in Texas. On numerous occasions, e.spire personnel in Texas have had to resort to the Texas statute to ensure that building owners would give e.spire nondiscriminatory building access. Time and time again, the Texas statute has worked, by forcing building

owners to sit down and negotiate nondiscriminatory building access arrangements with e.spire. Initially, e.spire was categorically denied access to several large multi-tenant buildings in downtown Dallas. Typically, these buildings were owned by large out-of-state corporations that were not aware of the Texas statute. As soon as e.spire brought the statute to their attention, the negotiations began to progress and, in each case, e.spire ultimately obtained agreements based on the terms of the Texas statute.

Although e.spire is just beginning to enter the Florida markets, e.spire has already encountered several building owners that have effectively refused access, or offered contracts of adhesion which were not subject to negotiation. The following are just two examples of e.spire negotiations in Florida in which building owners have abused their bottleneck control of building access.

In one instance in Jacksonville, a national real estate company offered e.spire a contract of adhesion for building access. e.spire knew that, not only did BellSouth not pay for access, but other ALECs had entered the building without paying for building access. Nonetheless, the real estate company would only permit access at an excessive rate. When e.spire attempted to negotiate the rates, terms, and conditions of access, the company refused to change a single word, and only agreed to permit e.spire entry on its own terms. When e.spire is forced to sign agreements such as this, it completely changes our business plan for recovering our investment and breaking even in a given building. This severely impacts the spread of local competition in Florida.

In a second instance, the landlord similarly offered an off-the-rack agreement that was completely unacceptable to e.spire. Not only were the rates, terms, and conditions unacceptable, but the agreement was gauged for a wireless provider, and could not begin

to meet e.spire's needs. The landlord refused to accept e.spire's standard agreement, which was much better suited for e.spire's purposes. Ultimately, the landlord refused to return e.spire's phone calls and e.spire is still not in this building today. Again, this type of response from landlords makes it impossible to provide ubiquitous, robust competition.

In general, legislation should be simple and straightforward, like the Texas legislation. The hallmark of any legislation must be nondiscriminatory access. If the incumbent pays for access, then, and only then, can ALECs be required to pay for access. Ultimately, what most ALECs are requesting is merely the right to run a few small strands of fiber into the building. The Commission and the Legislature should also be wary of claims that ALECs are creating a grave imposition on building owners. While the Texas statute, for example, does account for the legitimate interests of building owners, excessive restrictions on building access could completely undermine the intent of any putative legislation. If legislation permits building owners to take shelter behind multiple exceptions to the rule of nondiscriminatory access, it will not serve the purpose of providing ALECs with the necessary leverage to gain access to buildings.

e.spire will briefly address the specific issues raised in the issue identification, and will provide further input at the August workshops.

Considerations for Building Access Legislation

A. Definition of Multi-Tenant Environment: The definition should be as broad as possible. In fact, it should not be limited to a "multi" tenant environment to the extent that a single tenant could just as easily be denied access by a landlord. Again, attempts to limit the definition will only serve to curb the development of competition in

areas that are not regulated. In e.spire's experience in Texas, when the statute is cited, the parties still actively negotiate building access contracts, meeting their specific needs and addressing particular concerns. The Texas statute wisely incorporated this idea that the parties have interests to protect. The advantage of a statute is that it brings the parties to the negotiating table, and provides a context that moves the negotiation forward.

B. Services Included: At a minimum, the definition should be broad, to include all telecommunications and data services. These should be defined broadly in a manner that will permit the inclusion of new technologies.

C. Restrictions on Access to Buildings: Restrictions on access to multi-tenant buildings will discourage the development of local competition in Florida. e.spire finds the compromise restrictions included in the Texas statute to be acceptable. For example, if no tenant in a building is interested in purchasing service, there might be no need to permit access. For the most part, however, restrictions on access are restrictions on competition, competition which provides multiple pro-consumer benefits.

In addition, the Commission should recommend that any contract that has the effect of discouraging nondiscriminatory building access be deemed illegal. For example, BellSouth has established an extremely troubling program that first came to e.spire's attention because it was being shopped around by BellSouth to influential building owners in Florida. The program appears intended to effectively lock CLECs out of major office buildings, office parks, shopping centers and other similar locales. Specifically, BellSouth is enticing property management companies to enter *exclusive* arrangements with BellSouth under which the property managers are paid handsomely for promoting BellSouth's services to tenants of the property, and for refusing to establish

similar promotional agreements with CLECs. BellSouth provided a copy of its Letter Agreement in for Property Management Services in response to a hearing request in Georgia, and a copy is attached hereto.

Under the terms of BellSouth's standard form Property Management Services Agreement, BellSouth obtains access – free of charge -- to building entrance conduits, equipment room space and riser/horizontal conduits for placement of BellSouth equipment and other telecommunications facilities needed to serve building tenants. The property manager also commits to designate BellSouth as the local telecommunications "provider of choice" to building tenants and to promote BellSouth as such. Many building tenants may not understand that they could choose to order service from a CLEC competitor. In return, BellSouth agrees to establish a "Credit Fund" which the property manager can use itself or distribute to tenants. The Credit Fund is usable to pay for selected BellSouth services (*i.e.*, seminars, non-recurring installation charges, etc.).

This program has at least two anticompetitive effects, largely attributable to the fact that this arrangement is expressly an *exclusive* one. First, since BellSouth is given "free" (no cash payment) access to the building conduit and riser, BellSouth is given an inherent cost advantage in obtaining use of these essential bottleneck facilities. Second, since the property manager must agree to promote BellSouth services exclusively in order to be compensated, BellSouth has created an incentive for property managers to refuse to cooperate with ACSI and other CLECs in promoting services to building tenants. The property manager is a critical gatekeeper in obtaining access to business end users, and BellSouth has conspired with them in these instances to prevent ACSI from obtaining unfettered access to building tenants. Interestingly, BellSouth argued strenuously a few

years ago that regulators must prevent shared tenant service ("STS") providers from impeding their access to end users in STS-controlled office buildings -- now, BellSouth itself is engaging in the same activity about which it protested so vociferously. If these types of agreements are not nullified, local competition in Florida will suffer.

Definition of "Demarcation Point" be Defined: e.spire will provide input on this issue at the workshop.

E. Right and Extent of Access: ALECs each have unique needs for access. For the most part, ALECs and landlords can work these issues out for themselves. The Texas statute addresses many of the more difficult issues in an equitable manner and should be closely considered as a model in these workshops.

F. Compensation: The critical issues with respect to compensation are: 1) compensation must be nondiscriminatory; 2) at a minimum, compensation cannot be required until the incumbent is actually paying compensation to the landlord; and 3) compensation should not exceed the landlords cost of providing access.

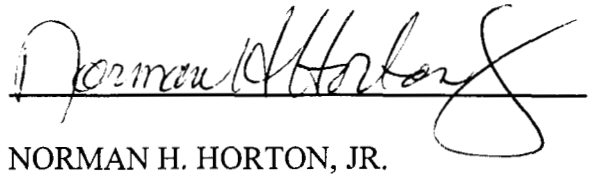
Integrity of E911: e.spire will address this issue at the workshops.

III. Conclusion

The issue of building access is critical to e.spire. e.spire is encouraged by the interest of the Commission and the Legislature in this issue. e.spire looks forward to addressing these issues at greater length at the upcoming workshops and throughout the course of this proceeding.

Dated this 29th day of July, 1998.

Respectfully submitted,



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