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November 6, 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 Nos. 980800-TP

Dear Ms. Bayo:

Enclosed for filing on behalf of e.spire Communications, Inc. and Nextlink Florida, Inc. are an original and fifteen copies of a Petition for Reconsideration and a Request for Oral Argument in the above captioned docket. Also enclosed is a 3 1/2" diskette with the documents on it in WordPerfect 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.

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Sincerely,

*Norman H. Horton, Jr.*

Norman H. Horton, Jr.

NHH/amb  
Enclosures  
cc: James C. Falvey, Esq.  
Parties of Record

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## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Emergency Relief of Supra	)	
Telecommunications and Information Systems, Inc.	)	Docket No. 980800-TP
against BellSouth Telecommunications, Inc.	)	Filed: November 6, 1998
_____)		

JOINT PETITION FOR RECONSIDERATION

Comes now, American Communications Services, Inc. - Jacksonville, Inc., d/b/a e.spire™ Communications, Inc. ("e.spire") and Nextlink Florida, Inc. (collectively the "parties"), pursuant to Rule 25-22.060, Florida Administrative Code and file this Joint Petition for Reconsideration of Order No. PSC-98-1417-PCO-TP. This Petition is also supported by the Florida Competitive Carriers Association. As the basis for the reconsideration the parties would state:

1. This matter comes before the full Commission as a result of an order entered pursuant to a decision by a three member Panel ("Panel") to allow Supra Telecommunications and Information Systems, Inc. ("Supra") to improve its priority for physical collocation in BellSouth's West Palm Beach Gardens ("Gardens") and North Dade Golden Glades ("Golden Glades") central offices. The parties seek reconsideration because this decision mistakenly construes the "first come, first served" requirement for establishing a priority for physical collocation contained in 47 CFR §51.323(f)(1) and is contrary to established rules and policies of this Commission.

2. On June 30, 1998 Supra filed a Petition for Emergency Relief against BellSouth asserting that the Commission require BellSouth to permit Supra to establish a physical collocation arrangement in the Gardens and Golden Glades central offices. Since this was deemed a contract complaint between Supra and BellSouth, there were no other parties. However, during the course of the complaint, it was discovered that Supra was not the only Alternative Local Exchange Company ("ALEC") to have requested physical collocation in the affected central offices. Having

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recognized this, and apparently recognizing the potential conflict with established rules and policies, the Staff brought to the Commission Panel the question of whether Supra should be considered to have first priority for physical collocation in the central offices because of the fact that they had filed a complaint and the other ALECs had not.

3. e.spire, NextLink and NorthPoint had requested physical collocation in one or more of the offices and were notified by BellSouth of the pending issue and oral argument. On October 22, 1998 the Panel issued its order determining that Supra should be considered to have first priority for physical collocation in the central offices because Supra had filed a complaint. Because both e.spire and Nextlink had requested physical collocation prior to Supra the decision of the Panel to move Supra to the “head of the line” penalizes them for following the standard waiver procedure as specified in the Telecommunications Act of 1996 and for not following a complaint. Neither e.spire nor Nextlink, nor any other competitive provider had notice, of course, that a complaint would be an appropriate means of seeking a remedy given the Act’s established procedures, and FCC rules implementing those procedures.

4. In its order, the Commission stated that it would “contradict fundamental principles of fairness to subjugate Supra’s rights to physical collocation in BellSouth’s Gardens and Golden Glades central offices to rights of the other ALECs that did not actively pursue the issue.” Order at p. 9. As a threshold matter, it is inaccurate to state that e.spire did not actively pursue the issue because e.spire has intervened along with several other carriers, in the waiver dockets. In addition, in reaching this decision the Panel failed to consider that the decision directly contradicts federal law, is inconsistent with the fundamental principles of fairness relative to the other ALECs that requested collocation prior to Supra, improperly and penalizes the parties for pursuing their remedy

in the waiver, rather than by a complaint and mistakenly injected requirements into the rules regarding collocation which do not exist. Further, the action overlooked prior decisions of the full Commission.

5. Physical collocation is of extreme importance to e.spire and all other ALECs. Without the ability to physically collocate in BellSouth's central offices, competitive carriers do not have the opportunity to offer services to customers which are competitive with those services offered by BellSouth. Increasingly, due to the need to provision XDSL services and to recombine elements, physical collocation is critical to the business plans for ALECs in Florida. Because of the importance of physical collocation, any action which affects the ability to collocate, or as in this case the determination of the place in line for physical collocation, is of critical concern to ALECs. (In fact, as noted above, the Florida Competitive Carriers Association ("FCCA") has concern about the decision of the Panel and supports this effort to obtain reconsideration of the order).

6. With respect to collocation, section 251(c)(6) of the Telecommunications Act of 1996 provides that

the incumbent LEC has the duty to provide on rates, terms and conditions that are just, reasonable and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the state commission that physical collocation is not practical for technical reasons or because of space limitations.

Rules implementing section 251(c)(6) adopted by the FCC require incumbent LECs to provide physical collocation to requesting telecommunications carriers (47 CFR §51.323 (a)), and, of particular import in this proceeding, subsection 51.323(f)(1) which requires:

an incumbent LEC shall make space available within or on its premises to requesting telecommunications carriers on a first come, first served basis . . . (Emphasis supplied.)

The Eight Circuit upheld this rule as valid and effective. There are no other requirements placed on ALECs by the FCC. Despite the clear standard for establishing priority, the Commission has permitted Supra to improve its position thus revising the established process. In doing so the Commission has mistakenly construed the requirements of the rules.

7. By permitting Supra to improve its position, the Commission also failed to properly consider the language of §51.323(f)(1) which requires the LEC to make space available on a “first come, first served” basis. There are no other requirements in FCC rules, PSC rules or in orders of either agency which impose or authorize imposing additional requirements for establishing a position for physical collocation or for establishing procedures whereby that position may be changed. In fact, the Commission Order is in direct conflict with the requirement of subsection 51.323(f)(1).

8. The Panel also failed to recognize that the change to the “first come, first served” requirement is inconsistent with prior decisions and orders of this Commission. In Docket No. 921074-TP the Commission considered issues with respect to expanded interconnection and physical and virtual collocation. In Order No. PSC-95-0034-FOF-TP issued January 9, 1995, the Commission specifically found that the FCC requirement of “first come, first served” space allocation for voluntary physical collocation would be required in Florida. That policy has not changed and remains the requirement of the Commission. Again there is no requirement that an applicant for collocation file a complaint to maintain a place in line thus the “law” of this Commission has been “first come, first served” and the Supra decision is a departure from the policy.

9. The Panel decision also failed to consider that the Commission lacks the authority to modify the “first come, first served” requirement of subsection 51.323(f)(1). The only criteria for establishing an order of priority for physical collocation is the sequence of the request. There is no requirement that a request be accompanied by a complaint, that denial be followed with a complaint or that a BellSouth waiver and corresponding ALEC petition be filed by a time certain. In fact, if there is no space for physical collocation, it is incumbent upon the LEC to seek a waiver of the requirement to provide physical collocation; the burden is not on the ALEC to file a complaint. Moreover, it is through the waiver process that the objections from requesting collocators are heard. By reestablishing Supra’s place in priority because they filed a complaint, the Commission amended the “first come, first served” requirement by adding an inconsistent provision to the rule which they have no authority to do. Further they failed to consider that the proper and permissible remedy is by means of the waiver request process.

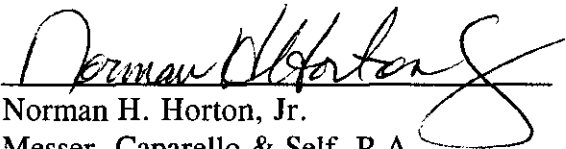
10. The Panel decision is also inconsistent with the Commission’s “encouragement” with respect to complaints. In deliberations in Docket No. 960786-TP which involved the 271 application of BellSouth, the Commission encouraged parties to seek resolution of differences rather than having to file complaints. The decision of the Panel in this instance rewards Supra for filing a complaint and penalizes other carriers for opting to challenge BellSouth in the existing statutory waiver process. Furthermore, the Panel decision relied, in substantial part, upon the Staff’s recommendation that the Supra complaint constituted a unique situation. That is not the case. In the parties’ collective experiences, disputes on priority for physical collocation have arisen in other jurisdictions as well. Consequently, the circumstances surrounding the Supra complaint are not likely to be a

unique event or one-time occurrence. For this reason, the Panel's decision was therefore factually misplaced.

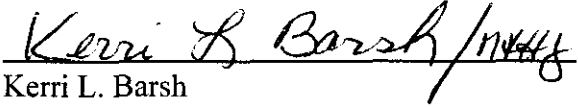
11. In summary, reconsideration and reversal of Order No. PSC-98-1417 is entirely appropriate and required in this instance. The decision to allow Supra to improve its position in line for physical collocation is a departure from and directly conflicts with the "first come, first served" requirements of the FCC and this Commission. In reaching this decision, the Panel overlooked or failed to recognize prior orders of this Commission, the plain federal statutory language and standard for physical collocation in subsection 51.323(f)(1), and mistakenly relied upon the purported "unique" circumstances of this case and the consequences of the ruling.

Respectfully submitted

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## CERTIFICATE OF SERVICE

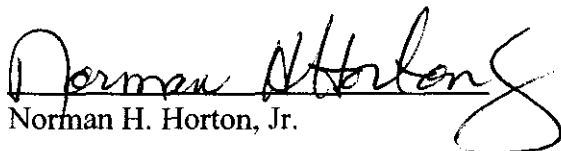
I HEREBY CERTIFY that a true and correct copy of e.spire Communications, Inc.'s and Nextlink Florida, Inc.'s Petition for Reconsideration in Docket No. 980800-TP has been furnished by Hand Delivery (\*) and/or U.S. Mail to the following parties of record this 6th day of November, 1998:

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