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October 28, 1999

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ORIGINAL

Re: Docket 981834-TP

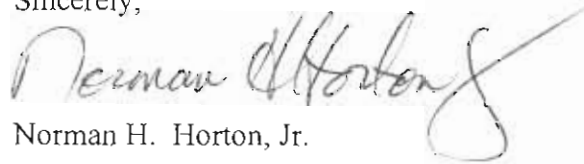
Dear Ms. Bayo:

Enclosed for filing on behalf of e.spire Communications, Inc., are an original and fifteen copies of the Direct Testimony of James C. Falvey in the above captioned docket.

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

Thank you for your assistance with this filing.

Sincerely,



Norman H. Horton, Jr.

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APP \_\_\_\_\_ Enclosure  
CAF \_\_\_\_\_  
cc: James C. Falvey  
CMU Simmons Parties of Record  
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FPSC-RECORDS REPORTING

In re: Petition of Competitive )  
Carriers for Commission Action )  
to Support Local Competition )  
in BellSouth's Service Territory )  
\_\_\_\_\_ )

Docket No. 981834-TP  
Filed: October 28, 1999

**DIRECT TESTIMONY**  
**OF**  
**JAMES C. FALVEY**  
**ON BEHALF OF**  
**E.SPIRE COMMUNICATIONS, INC.**  
**AND ITS SUBSIDIARIES**

**October 28, 1999**



1 e.spire obtains access to the equipment in its network, e.spire can manage the  
2 maintenance and repair of its equipment and resolve network issues more  
3 easily. e.spire's substantial experience with virtual collocation has confirmed  
4 that not having access causes delays and makes it much more difficult to  
5 access its equipment. In addition, over time, it becomes expensive to have  
6 another company maintain e.spire's equipment. Physical collocation may  
7 cost more up front, but avoids excessive and unpredictable costs in the long  
8 run.

9 **Q. What are the other advantages of physical collocation?**

10 A. Physical collocation has two principle additional advantages. First, e.spire  
11 cannot obtain certain combinations of unbundled elements without physical  
12 collocation. Without digressing into problems of obtaining combinations,  
13 BellSouth has advocated a policy whereby combinations of unbundled  
14 network elements are not available without physical collocation. While  
15 e.spire is pressing to obtain combinations and new unbundled elements  
16 without physical collocation, e.spire must also ensure that it has access to  
17 physical collocation in order to be able to order combinations - and  
18 specifically combinations of unbundled loops and unbundled transport - in  
19 the current environment. Second, e.spire is interested in providing xDSL  
20 services in order to offer advanced services to its customers. In order to offer  
21 xDSL services, physical collocation is necessary to obtain access to loops and  
22 install the necessary electronics. For all of the above reasons, physical

1 collocation has become increasingly important to e.spire.

2 **Q. Why is physical collocation space often not available in BellSouth**  
3 **Central Offices?**

4 A. The main reason that physical collocation space would not be available in a  
5 central office is that BellSouth restricts the manner in which it offers physical  
6 collocation. The best example of this is in the very concept of “virtual”  
7 collocation. When an ALEC receives “virtual” collocation, the same  
8 equipment that is placed in a physical arrangement is collocated in the LEC  
9 central office, but the LEC retains ownership of the equipment, and restricts  
10 the ALEC’s access to the equipment. Clearly there was space available for  
11 the equipment all along; there just was not enough space to accommodate the  
12 LEC’s burdensome physical collocation tariff requirements. Typically, these  
13 include minimum space requirements, requirements that the ALEC build, and  
14 pay for, a cage around the equipment, and so on. In order to accelerate the  
15 development of local competition in Florida, the Commission should remove  
16 artificial restrictions on ALECs’ access to physical collocation space, at a  
17 minimum consistent with the new requirements of the FCC’s recent  
18 collocation order.<sup>1</sup>

19 **Q. What alternatives should be considered?**

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20 <sup>1</sup> First Report and Order and FNPR, *In the Matter of Deployment of Wireline Services*  
21 *Offering Advanced Telecommunications Capability*, CC Docket No. 98-147,  
22 Released March 31, 1999 (the “*FCC Collocation Order*”).

1 A. The Commission should consider, at a minimum, shared, cageless, smaller  
2 space, and adjacent alternatives. The Commission should also closely  
3 examine the manner in which existing virtual collocation arrangements, given  
4 the *FCC Collocation Order*, must be allowed to be converted to physical  
5 collocation in the same space. These alternatives should be considered, and  
6 the Commission should ensure that they become available as soon as  
7 practically feasible consistent with the terms of the *FCC Collocation Order*.

8 **SPECIFIC ISSUES**

9 **Q. When should an ILEC be required to respond to a complete and correct**  
10 **application for collocation and what information should be included in**  
11 **that response (Issue 1)?**

12 A. An ILEC should be required to respond to an ALEC's complete and correct  
13 collocation application within ten business days. *See FCC Collocation Order*  
14 *at paragraphs 57 - 60.*

15 **Q. If the information included in the ILEC's initial response is not sufficient**  
16 **to complete a firm order, when should the ILEC provide such**  
17 **information or should an alternative procedure be implemented (Issue**  
18 **2)?**

19 A. Upon receipt of an initial application, the ILEC should have five business  
20 days to identify any deficiencies in the application and notify the ALEC of  
21 such deficiencies. Once the deficiencies have been corrected, the application  
22 should be considered complete. Moreover, upon receipt of an application for

1 collocation containing sufficient information to determine what space will be  
2 required, regardless of whether it is “complete”, the ILEC should perform,  
3 within five business days, a feasibility study to ascertain whether space is  
4 available. If physical collocation space is available, the ILEC should have an  
5 additional ten business days to complete planning and quote preparation.

6 **Q. To what areas does the term “premises” apply, as it pertains to physical**  
7 **collocation and as it is used in the Act, the FCC’s Orders, and FCC**  
8 **Rules (Issue 3)?**

9 A. “Premises” is defined broadly by the FCC, as required by the FCC’s First  
10 Report and Order, paragraph 573:

11 In light of the 1996 Act’s procompetitive purposes, we find  
12 that a broad definition of the term ‘premises’ is appropriate in order  
13 to permit new entrants to collocate at a broad range of points under  
14 the incumbent LEC’s control. A broad definition will allow  
15 collocation at points other than those specified for collocation under  
16 the existing Expanded Interconnection requirements. We find that  
17 this result is appropriate because the purposes of physical and virtual  
18 collocation under section 251 are broader than those established in  
19 the Expanded Interconnection proceeding. We therefore interpret the  
20 term ‘premises’ broadly to include LEC central offices, serving wire  
21 centers and tandem offices, as well as all buildings or similar  
22 structures owned or leased by the incumbent LEC that house LEC  
23 network facilities. We also treat as incumbent LEC premises any  
24 structures that house LEC network facilities on public rights-of-way,  
25 such as vaults containing loop concentrators or similar structures.<sup>2</sup>

26 **Q. What obligations, if any, does an ILEC have to interconnect with ALEC**

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27 <sup>2</sup> First Report and Order, *In the Matter of Implementation of the Local Competition*  
28 *Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, para.573,  
29 Released August 8, 1996.

1           **physical collocation equipment located “off-premises” (Issue 4)?**

2           A.     The FCC determined in its Collocation Order that ILECs are required, when  
3           space is legitimately exhausted in a particular LEC premises, to permit  
4           collocation in adjacent controlled environmental vaults or similar structures  
5           to the extent technically feasible.<sup>3</sup> The FCC reasoned that this requirement  
6           is the best means of addressing the issue of space exhaustion by ensuring that  
7           competitive carriers can compete with the ILECs, even when there is no  
8           space inside the LEC’s premises.<sup>4</sup> In general, the FCC declared that ILECs  
9           must permit the new entrant to construct or otherwise procure such an  
10          adjacent structure, subject only to reasonable safety and maintenance  
11          requirements.<sup>5</sup> The ILEC is also required to provide power and physical  
12          collocation services and facilities, subject to the same nondiscrimination  
13          requirements as traditional collocation arrangements.<sup>6</sup>

14          **Q.     What terms and conditions should apply to converting virtual**  
15          **collocation to physical collocation (Issue 5)?**

16          A.     As I explained above, the principal distinction between a virtual and physical  
17          collocation is the ALEC’s right of access to the equipment for purposes of  
18          maintenance and upgrades. Thus, the terms for converting virtual collocation

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19          <sup>3</sup> FCC Collocation Order at para. 44.

20          <sup>4</sup> Id.

21          <sup>5</sup> Id.

22          <sup>6</sup> Id.



1 space to cageless physical space should involve nothing more than reversing  
2 the ownership of the virtually collocated equipment and ensuring that the  
3 ALEC's employees are familiar with ILEC security procedures as they apply  
4 to cageless physical collocations. Accordingly, ILECs should be required to,  
5 as a matter of policy, to convert virtual collocations to cageless physical  
6 collocation by leaving the equipment in its existing space. The Commission  
7 must ensure that the ILEC is prevented from requiring that the physical  
8 equipment itself be relocated or disrupted in any way.

9 **Q. What are the responsibilities of the ILEC and collocators when a**  
10 **collocator shares space with, or subleases space to, another collocator;**  
11 **and when a collocator cross-connects with another collocator (Issue 7)?**

12 A. The FCC *Collocation Order* recently ordered that shared collocation space  
13 must be made available. (*Collocation Order* at para. 41). In making shared  
14 caged arrangements available, ILECs may not increase the cost of site  
15 preparation or nonrecurring charges above the cost for provisioning such a  
16 cage of similar dimensions and material to a single collocating party. In  
17 addition, the ILEC must prorate the charge for site conditioning and  
18 preparation undertaken by the ILEC to construct the shared collocation cage  
19 or condition the space for collocation use, regardless of how many carriers  
20 actually collocate in that cage, by determining the total charge for site  
21 preparation and allocating that charge to a collocating carrier based on the  
22 percentage of the total space utilized by that carrier. In other words, as the

1 FCC stated, a carrier should be charged only for those costs directly  
2 attributable to that carrier.

3 Moreover, the ILEC may not place unreasonable restrictions on an  
4 ALEC's use of a collocation cage, such as limiting the new entrant's ability  
5 to contract with other ALECs to share the new entrant's collocation cage in  
6 a sublease arrangement. In addition, if two or more ALECs who have  
7 interconnection agreements with an ILEC utilize a shared collocation  
8 arrangement, the ILEC must permit each ALEC to order UNEs to and  
9 provision service from that shared collocation space, regardless of which  
10 ALEC was the original collocater.

11 Shared cage collocation and subleasing reduce ALECs' collocation  
12 costs by allowing them to divide overhead costs with other carriers. Shared  
13 cages and subleases also help maximize the number of carriers that can  
14 collocate in an end office by allowing carriers the flexibility to more closely  
15 match their space procurement with their actual needs. By maximizing the  
16 number of competitors that can collocate in an end office, shared cage  
17 collocation and subleasing also conserve scarce collocation space in  
18 BellSouth's end offices.

19 With regard to the cross-connect issue, the Commission should  
20 specify that an ILEC may not limit an ALEC's efforts to cross-connect  
21 collocated equipment - either within the same collocation area or between  
22 different areas of the same central office. The FCC has ruled in its

1           *Collocation Order* that ILECs must allow ALECs to provision their own  
2 cross connects between collocation arrangements in the central office even  
3 where the ALEC equipment is collocated in the same room as the ILEC's  
4 equipment (i.e., the equipment is 'virtually' collocated) (para. 33). ILECs are  
5 prohibited from requiring ALECs to purchase ILEC tariffed equipment or  
6 services in order to establish such cross-connects.

7       **Q.   What is the appropriate provisioning interval for cageless physical**  
8       **collocation (Issue 8)?**

9       A.   Thirty days or less. Because no construction is required for cageless  
10 collocation, there simply is no reason why such arrangements cannot be  
11 provisioned in 30 days or less. Despite this, some ILECs have demanded in  
12 the past that the provisioning intervals for caged and cageless collocation  
13 should be the same. That position is not reasonable and serves no purpose  
14 other than to delay an ALEC's entry into the ILEC's local market. The  
15 Commission should reject such anticompetitive and dilatory tactics and  
16 require that the reasonable 30 day interval be adopted.

17           Moreover, the FCC *Collocation Order* requires cageless collocation  
18 (para. 42). Given the requirements of the FCC *Collocation Order*, ILECs  
19 should also be required to convert existing virtual collocations to physical  
20 collocations in place. The FCC has made it clear that ALEC collocators  
21 cannot be quarantined in a particular area of a central office. Accordingly,  
22 if there is sufficient space for a virtual collocation, an ALEC should be

1 permitted to transition, in place, that virtual collocation to a physical  
2 collocation through a seamless, speedy process.

3 **Q. What are reasonable parameters for reserving space for future ILEC and**  
4 **ALEC use (Issue 10)?**

5 A. It is critical that the Commission be able to determine the degree to which an  
6 ILEC is actually utilizing equipment in its central offices. ILECs have both  
7 the incentive and opportunity to maintain outdated and unnecessary  
8 equipment in their central offices in order to deny ALECs access to these  
9 central offices. The underutilization of equipment could have the  
10 anticompetitive effect of minimizing or eliminating available space for  
11 collocation by ALECs. The Commission should focus on “reserved space,”  
12 because ILECs can prohibit collocation entirely by reserving all the space not  
13 already occupied by its own equipment. The Commission must ensure that  
14 space on the premises which ALECs could use immediately is not taken out  
15 of available space by being reserved for future use by the ILEC.

16 Any space reserved for future use by an ILEC must be identified by the ILEC  
17 for a particular future use. The ILEC must identify the nature of that  
18 intended use, the expected date of that use, and measures that the ILEC is  
19 taking to make additional space available for physical collocation. The ILEC  
20 should be required to reclaim central office space. Warehousing of inactive  
21 and underutilized equipment and the reservation by an ILEC or ALEC of  
22 unutilized space in a central office should not be permitted by the

1 Commission.

2 **Q. What types of equipment are the ILECs obligated to allow in a physical**  
3 **collocation arrangement (Issue 12)?**

4 A. ILECs may impose only safety requirements upon collocated equipment up  
5 to NEBS Level 1. (*FCC Collocation Order* para. 35). However, ILECs may  
6 not impose more stringent requirements upon ALECs than they impose upon  
7 themselves (para. 36). Indeed, the FCC Collocation Order requires that when  
8 an ILEC denies collocation of an ALEC's equipment, citing safety standards,  
9 it must provide to the ALEC within five business days a list of all equipment  
10 that the ILEC locates within the premises in question, together with an  
11 affidavit attesting that all of that equipment meets or exceeds the safety  
12 standard that the ILEC contends the ALEC's equipment fails to meet.  
13 Further, ILECs may not preclude the collocation of equipment on the basis  
14 that it does not meet NEBS reliability or performance standards (para. 35).

15 **Q. Should an ALEC be permitted to hire an ILEC certified contractor to**  
16 **perform space preparation, racking and cabling, and power work (Issue**  
17 **15)?**

18 A. Yes, if the ALEC so chooses, but it should not be required to do so. There  
19 is no valid reason why an ILEC should be able to require an ALEC to hire an  
20 ILEC-certified vendor to perform space preparation, racking and cabling and  
21 power work. This is simply another position that would serve no purpose  
22 other than to obstruct an ALEC's efforts to collocate and drive up the costs

1 of doing so. The ALECs have every interest in hiring contractors that  
2 properly perform installation, provisioning and maintenance work in a  
3 collocated space. In some cases the ALEC will use the same contractors as  
4 the ILEC. In others, it will not. The choice of which contractor will work on  
5 the ALEC's collocated space should be the ALEC's alone.

6 **Q. How should the costs of security arrangements, site preparation,**  
7 **collocation space reports, and other costs necessary to the provisioning**  
8 **of collocation space, be allocated between multiple carriers (Issue 17)?**

9 A. The FCC has determined that ILECs must recover space preparation, security  
10 measures, and other collocation charges on a pro-rata basis, so that the first  
11 collocater in a particular ILEC premises will not be required to pay the entire  
12 cost of site preparation. (*FCC Collocation Order*, para. 51). In order to  
13 ensure that the first entrant into an ILEC's premises does not bear the entire  
14 cost of site preparation, the ILEC must develop a system of partitioning the  
15 cost by comparing, for example, the amount of conditioned space actually  
16 occupied by the new entrant with the overall space conditioning expense.

17 **Q. If insufficient space is available to satisfy the collocation request, should**  
18 **the ILEC be required to advise the ALEC as to what space is available**  
19 **(Issue 18)?**

20 A. Absolutely. The ILEC must comply with all requirements as set forth in the  
21 FCC's *Collocation Order*. Specifically, an ILEC must permit an ALEC that  
22 has been denied collocation due to space constraints to tour the entire

1 premises in question, not just the room in which space was denied, without  
2 charge, within ten days of the denial of space (para. 57). Additionally, an  
3 ILEC must submit to an ALEC within ten days of the submission of the  
4 request a report indicating the ILEC's available collocation space in a  
5 particular LEC premises (para. 58). This report must specify the amount of  
6 collocation space available at each requested premises, the number of  
7 collocators, and any modifications in the use of the space since the last report.  
8 The report must also include measures that the ILEC is taking to make  
9 additional space available for collocation. In addition to this reporting  
10 requirement, an ILEC must maintain a publicly available document, posted  
11 for viewing on the Internet, indicating all premises that are full, and must  
12 update such a document within ten days of the date at which a premises runs  
13 out of physical collocation space.

14 **Q. If an ILEC has been granted a waiver from the physical collocation**  
15 **requirements for a particular CO, and the ILEC later makes**  
16 **modifications that create space that would be appropriate for**  
17 **collocation, when should the ILEC be required to inform the**  
18 **Commission and any requesting ALECs of the availability of space in**  
19 **that office (Issue 19)?**

20 A. Immediately upon the "new" space becoming "available."

21 **Q. Applying the FCC's "first-come, first-served" rule, if space becomes**  
22 **available in a central office because a waiver is denied or a modification**

1           **is made, who should be given priority (Issue 21)?**

2           A.     The ALEC that first requested collocation space in the ILEC central office at  
3           issue.

4           **Q.     Does this conclude your testimony?**

5           A.     Yes, it does.



## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the Direct Testimony of James C. Falvey on behalf of e.s.pire Communications, Inc.'s in Docket 981834-TP have been served upon the following parties by Hand Delivery (\*) and/or U. S. Mail this 28th day of October, 1999.

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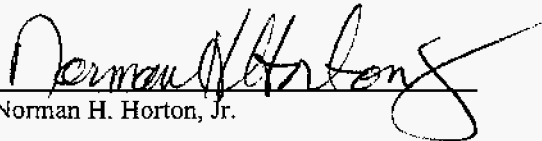
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