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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Deployment of Wireline Services Offering)
Advanced Telecommunications Capability)

CC Docket No. 98-147

**REPLY COMMENTS OF
e.spire COMMUNICATIONS, INC.**

e.spire COMMUNICATIONS, INC.

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e.spire Communications, Inc. (“e.spire”), by its attorneys, respectfully submits these reply comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking (“*NPRM*”) issued in the above-captioned docket.¹ Although e.spire cannot support the proposal to establish ILEC advanced services affiliates, e.spire strongly commends the Commission for raising many proposals in the *NPRM* which would greatly facilitate competitive entry into the market for advanced telecommunications services.

SUMMARY AND INTRODUCTION

For wildly different reasons, competitive local exchange carriers (“CLECs”) and incumbent local exchange carriers (“ILECs”) alike oppose the Commission’s proposal to establish ILEC advanced services affiliates. e.spire agrees with the numerous commenters who believe that such advanced services affiliates could actually restrain the deployment of advanced

¹ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Memorandum Opinion and Order, and Notice of Proposed Rulemaking (rel. Aug. 7, 1998) [hereinafter “*Advanced Services Order*” and “*NPRM*”, respectively]. See Public Notice, CC Docket Nos. 98-146, DA 98-1624 (rel. Aug. 12, 1998).

telecommunications services by competitors, because ILECs could conceivably use such affiliates to deny CLECs cost-based access to critical facilities. e.spire submits that the only way to forestall this outcome is to adopt substantially more stringent requirements applicable to the separation of the ILEC from these advanced services affiliates, and to draw a bright line barring any transfers of assets or resources from the ILEC to the affiliate.

e.spire agrees with the numerous commenters who believe that the goals of Section 706 are far better served by eliminating some of the existing barriers to the deployment of advanced telecommunications services by new entrants. Reform of national collocation rules is an important starting point. The initial round of comments demonstrates that ILEC policies which make physical collocation unduly expensive, time-consuming – and, in many cases, unavailable entirely – are inhibiting CLEC efforts to roll out advanced services. The Commission can solve these problems by mandating cageless collocation, shared cages, cage subleasing, adjacent collocation, elimination of minimum space requirements, and use of pro-rata allocations for assessing space preparation charges. In addition, reform of the Commission’s virtual collocation rules will help level the competitive disparities currently involved when physical collocation is not available.

Equally importantly, the creation of a new “Extended Link” UNE is needed to overcome the need to establish physical collocation in each end office, even when a CLEC can reasonably hope to attract only a few customers there in the near term. e.spire also strongly supports ALTS’ proposal that the Commission adopt a “Bit-stream” UNE. Use of a Bit-stream UNE is a technology neutral approach to solving technical impediments to CLECs obtaining access to end users for the purpose of offering advanced telecommunications services.

I. BEFORE ADOPTING ITS ILEC ADVANCED SERVICES AFFILIATE PROPOSAL, THE COMMISSION MUST ENSURE THAT SUCH ACTION WILL NOT CRIPPLE CLEC ENTRY INTO THE ADVANCED SERVICES MARKET

As stated in its initial comments, e.spire maintains that the Commission's ILEC advanced services affiliate proposal cannot be squared with either Section 251 or 706 of the Communications Act. The record reveals that competitors and incumbents alike join e.spire in challenging the legality and propriety of the Commission's proposed authorization of Section 251(c)-free ILEC alter egos.² Although e.spire will not now attempt to catalogue the legal arguments presented by commenters exposing the lack of any statutory foundation for the Commission's ILEC advanced services affiliate proposal, it respectfully requests that the Commission should carefully reevaluate the justifications offered for its proposed course of action.

Indeed, ALTS and many other commenters concur in e.spire's view that the Commission's ILEC advanced services affiliate proposal has significant potential to constrain the deployment of advanced telecommunications capability by upsetting the congressional plan establishing three methods of competitive entry into the advanced services market.³ Accordingly, e.spire holds firm to all the positions taken in its initial comments with respect to the Commission's ILEC advanced services affiliate proposal. Most significantly, e.spire notes that the record contains substantial support for its view that the transfers of *any* assets or sharing of *any* resources will make such an affiliate an assign fully subject to the interconnection,

² E.g., Ameritech Comments at 49-53; AT&T Comments at 6; ALTS Comments at 4-5.

³ ALTS Comments at ii; *see also*, e.g., Qwest Comments at 17-18.

unbundling and resale provisions of Section 251(c).⁴ A review of the comments in this proceeding makes clear to e.spire that it now needs to underscore that no transfers of any nature should be permitted – not even under a *de minimis* or time-limited exception. As set forth below, the record demonstrates that there is neither a legal nor policy basis for such exceptions – allowing them could have a debilitating effect on competition in the advanced services market.

Also of paramount importance, e.spire notes that competitors virtually are unanimous in their calls for the Commission to strengthen its proposed structural safeguards.⁵ In this context, review of the record makes clear that the Commission must attempt to make its separations requirements “air-tight” and it must prepare to engage in vigilant enforcement efforts to curb discriminatory and anticompetitive actions that otherwise would constitute rational economic behavior by the ILEC monopolies. To emphasize these concerns and to support the positions taken by e.spire and the competitive industry, e.spire demonstrates below, through an example of U S West’s naked defiance of the Commission’s rules and orders, the extent to which ILECs will go to thwart competition in the market for advanced services – and, the extent to which rigorous separations requirements and enforcement will be needed to mitigate the harms done by deregulating monopolists who refuse to open their networks and share the benefits of incumbency in the ways that Congress intended.

⁴ E.g., ALTS Comments at 26; CompTel Comments at 9-14, 33-35.

⁵ E.g., CompTel Comments at 19-22; MCI/WorldCom Comments at 37-43.

A. The Commission Should Require ILECs to Retain All Functionalities Necessary to Provide Competitors with All Three Methods of Entry Into the Advanced Services Market

The record contains substantial support for the proposition that the Commission should bar all transfers between ILECs and ILEC advanced services affiliates and should ensure that all functionalities necessary to provide competitors with all three methods of competitive entry remain with the Section 251(c) ILEC.⁶ Indeed, arguments that *de minimis* or time-limited transfers (transfers that would render an affiliate an ILEC under any well-reasoned interpretation of Section 251(h)) would be harmless are based on a false premise which holds that the ILECs' bottleneck must stop somewhere and that it stops at the loop. Based on this false premise, the ILECs argue that they have no market power in the provisioning of advanced services.⁷ GTE, for example, argues that "ILECs have no bottleneck control over any essential input to advanced services."⁸ As demonstrated by ALTS and other commenters, this statement is simply wrong.⁹ The ILECs' ubiquity creates market power: their control of loops, collocation space, interoffice transport and OSS information databases affords them a significant advantage over and opportunity to discriminate against competitors in the advanced services market.¹⁰

Indeed, the ILECs' control of the rate-payer financed public switched network ("PSN") gives them a head start that competitors like e.spire simply do not have. For example, GTE's ADSL services consist of electronics hung on its own bottleneck loops, provided from its own

⁶ *E.g.*, Qwest Comments at 17-18; ALTS Comments at ii.

⁷ *See, e.g.*, GTE Comments at 2-6.

⁸ GTE Comments at 6-8.

⁹ ALTS Comments at iii; *see also, e.g.*, PageNet Comments at 10.

ubiquitous network of central offices (obviating the need for collocation) and combined, in many cases, with its own preexisting switching and interoffice transport facilities. Thus, the essential components of broadband service come from the rate-payer financed PSN that GTE and other ILECs now control.

Unless adopted in a way that completely bars sharing of resources and transfers of assets, the Commission's ILEC advanced services affiliate approach will permit ILECs to move many of these essential components outside of the scope of Section 251(c). In so doing, the Commission effectively will foreclose UNEs and resale as methods of entry. In light of this danger, e.spire notes that the record contains substantial support for its view that, under Section 251(h), *any* transfer, under any circumstances, from the ILEC to its affiliate, whether of equipment, facilities, real estate, information, personnel, or any other asset enumerated in the *NPRM*, regardless of where the asset is located, would render the affiliate an assign subject to the requirements of Section 251(c).¹¹ Importantly, numerous commenters, including two state commissions, recognize that this bar should extend beyond facilities and include customer accounts and CPNI.¹²

Notably, the record also contains substantial support for e.spire's view that there should be no time-limited or *de minimis* exception to the prohibition on transfers required by the definition of ILEC supplied by Congress.¹³ As one competitor notes, the *de minimis* exception

¹⁰ ALTS Comments at iii; HAI White Paper at 24-25.

¹¹ *E.g.*, ACTA Comments at 3-7; CompTel Comments at 9-14, 33-35.

¹² Minnesota DPS Comments at 16; Texas PUC Comments at 4.

¹³ *Id.*

contemplated by the Commission is: “not ‘*de minimis*’ by any stretch of the imagination.”¹⁴ In this regard, e.spire emphasizes and adopts ALTS’ view that there is no meaningful distinction between an outright transfer of assets to an affiliate, or the acquisition of facilities by the affiliate.¹⁵ In the event that the Commission does permit transfers in some form, e.spire agrees with the many commenters who suggest that ILECs should be required to offer any equipment available for transfer to all CLECs on a nondiscriminatory basis.¹⁶ However, in no case should the Commission permit an ILEC to transfer to its affiliate facilities necessary to provide competitors with unbundled access to the functionalities required to provide competitive broadband access.¹⁷

Predictably, the ILECs attempt to eliminate any practical distinction between themselves and their affiliates by suggesting that all or, at least some, transfers should be permitted.¹⁸ All of these arguments are made, however, without any rational explanation as to how they can be reconciled with Section 251(h) and the Commission’s reasons for determining that, in some instances, ILECs can create affiliates that are not themselves ILECs.

¹⁴ KMC Comments at 5.

¹⁵ ALTS Comments at 30.

¹⁶ KMC Comments at 8; *see also, e.g.*, MCI/WorldCom Comments at 56.

¹⁷ ALTS Comments at 30.

¹⁸ BellSouth Comments at 43-44; Bell Atlantic Comments at 28-31; U S West Comments at 33; GTE Comments at 28.

B. U S West's Continuing and Brazen Refusal to Negotiate Section 251(c) Frame Relay Interconnection with e.spire Indicates the Extent to Which ILECs Will Go To Thwart Advanced Services Competition

Competitors were virtually unanimous in their support for structural separations requirements more rigorous than those the Commission proposed.¹⁹ Indeed, many commenters join e.spire in advocating that the Commission require a significant degree of outside ownership²⁰ – some call for complete divestiture.²¹ e.spire affirms its support for each of the separations proposals it made in its initial comments and submits that the importance of strong structural safeguards cannot be overstated. Indeed, e.spire's ongoing difficulties in obtaining Section 251(c) interconnection to U S West's frame relay network illustrate the lengths to which ILECs will go to thwart competition in the advanced services market.

Even in the wake of the Commission's *Advanced Services Order*, U S West refuses to provide e.spire with Section 251(c) interconnection to its frame relay network. In its *Advanced Services Order*, the Commission concluded that the obligations created by Section 251(c) apply as equally to advanced telecommunications services offered over ILECs' packet-switched networks as they do to traditional analog local exchange services offered over circuit-switched

¹⁹ See, e.g., FTC Comments at 3; Minnesota DPS Comments at 11-16.

²⁰ See, e.g., AT&T Comments at 20; CompTel Comments at 22-24; e.spire Comments at 11-12; ICG Comments at 8-15.

²¹ Level 3 Comments at 4-6 (arguing that true structural separation requires complete separation of ownership); MCI/WorldCom Comments at 37-43 (arguing that the Commission should require ILECs to completely spin-off advanced services affiliates); see also, e.g., KMC Comments at 9 (advocating an AT&T-style transfer of ownership to stockholders); MGC Comments at 34-37 (calling for a divestiture in which wholesale and retail operations would be split along the lines of the proposal originally submitted by LCI); Mindspring Comments at 12-17 (calling for divestiture of last mile ownership); TRA Comments at 31-32 (calling for divestiture of majority ownership of affiliate).

networks.²² More particularly, the Commission addressed the Section 251(c)(2) obligation of ILECs to interconnect with requesting carriers for the transmission and routing of telephone exchange service and exchange access. In this regard, the Commission “conclude[d] that advanced services offered by incumbent LECs are either ‘telephone exchange service’ or ‘exchange access.’”²³

Finding that Section 251(c)(2) applies to the interconnection to the ILECs’ packet switched networks, the Commission explained that “we reject U S WEST’s contention that [telephone exchange service and exchange access] refer only to local circuit-switched voice service or close substitutes, and the provision of access to such services.”²⁴ For similar reasons, the Commission also rejected U S West’s argument that, in providing advanced communications services, U S West is not acting as an ILEC and that Section 251(c) obligations therefore do not apply.²⁵ Finding that adopting a national rule would ensure “[t]he ability of competitive LECs to interconnect with incumbent LEC data networks ‘will permit all carriers, including small entities and small incumbent LECs, to plan regional or national networks using the same interconnection points in similar networks nationwide,’”²⁶ the Commission declared that “the interconnection

²² *Advanced Services Order*, Notably, U S West tariffs frame relay services as an “Advanced Telecommunications Service” (U S West Advanced Communications Services Tariff (New Mexico), § 5).

²³ *Id.*, ¶ 40.

²⁴ *Id.* ¶ 41 (citing U S West arguments). *See also id.* ¶ 43, further explaining the FCC’s rejection of U S West’s argument that two-way voice service is a necessary component of telephone exchange service and exchange access.

²⁵ *Id.* ¶ 44.

²⁶ *Id.* ¶ 48 (quoting *Local Competition Order*, CC Docket No. 96-98, 11 FCC Rcd 15499, 15592 (1996) (subsequent history omitted)).

obligations of sections 251(a) and 251(c)(2) apply to incumbents' packet-switched telecommunications networks and the telecommunications services offered over them."²⁷

Despite such clarity and in the absence of any stay of the Commission's *Advanced Services Order*, U S West now stands in naked defiance of the Commission's findings in that order, as e.spire has been forced to take the issue of Section 251(c) frame relay interconnection to arbitration in Arizona, Colorado and New Mexico. Notably, in hearings before the Colorado Commission, U S West's witness did not deny that the FCC's conclusion and ruling was that Section 251(c) applies to the interconnection of frame relay networks. Instead U S West's witnesses contended that the FCC did not address U S West's argument that Section 251(c) does not apply because its frame relay services allowed its customers to establish virtual private networks when it denied U S West's Section 706 Petition in the *Advanced Services Order*. The crux of U S West's position is that the frame relay services are private and outside the scope of Section 251(c) because end user locations on the frame network are able to communicate only with those locations with which the carrier (or carriers) have established permanent virtual connections ("PVCs"). In other words, unlike the voice network, an end user customer cannot contact any other customer on the network simply by picking up the phone and dialing. In response, e.spire submits that U S West cannot avoid its obligations under Section 251(c)(2), as clarified in the *Advanced Services Order*, based on the contention that the FCC failed to take this argument into account. In light of U S West's current position, e.spire submits that it should have filed a petition for reconsideration with the Commission. U S West chose not to do so.

²⁷ *Id.* ¶ 48 (emphasis added).

Moreover, e.spire believes that the Commission did address U S West's argument. The Commission was fully cognizant of the factors that U S West says makes frame relay service and networks "private":

Subscribers typically set up what are termed "permanent virtual connections" in routing their traffic across a packet-switched network. Such a connection, which gives the end user an "always-on" connection over a preset physical path, is easier to provision than a "switched virtual circuit," in which the connection path is determined on a call-by-call basis. A "permanent virtual connection," however, is not so "permanent" as the term would suggest. Any subscriber located on a packet-switched network can request the establishment of a permanent virtual connection connecting its own computers with those of any other subscriber. Indeed, it appears that customers can easily create and tear down different permanent virtual connections to different destinations on the network, giving them a degree of "switched" functionality.²⁸

In other words, the Commission did not find the need for end users to establish PVCs to communicate with others a reason for moving packet-switched networks out of the coverage of Section 251(c)(2) interconnection obligations of the Act:

Every end-user's traffic is routed onto the same packet-switched network, and there is no technical barrier to any end-user establishing a connection with any customer located on that network (or, indeed, on any network connected to that network). We see nothing in this service architecture mandating a conclusion that advanced services offered by incumbent LECs fall outside of the "telephone exchange service" or "exchange access" definitions set forth in the Act.²⁹

In short, U S West's current reason for denying e.spire interconnection to its frame relay network has been considered and denied.

²⁸ *Advanced Services Order*, n.73.

²⁹ *Id.* ¶ 42 (footnote omitted).

In sum, e.spire believes that this demonstration of bald-faced defiance by U S West demonstrates the need to incorporate structural safeguards significantly more stringent than those proposed in the *NPRM*. As many commenters noted, these measures also will have to be accompanied by rigorous enforcement and meaningful remedies.³⁰

II. REFORMED NATIONAL COLLOCATION RULES WILL EXPEDITE THE PACE AND EXPAND THE SCOPE OF COMPETITIVE ENTRY INTO VOICE AND BROADBAND DATA MARKETS

The record contains substantial support for the Commission's proposed collocation reforms and for the numerous proposals put forth by e.spire and other competitors. Many of these proposals significantly could reduce space exhaust problems and eliminate anticompetitive and discriminatory ILEC physical collocation practices and provisioning. Because virtual collocation may in some cases remain unavoidable, the Commission also must take action to eliminate some of the competitive disparity caused by its now outdated rules.

A. Alternatives to Traditional Physical Collocation Should Be Incorporated into National Minimum Standards

e.spire notes that competitors unanimously support the Commission's proposed collocation reforms. Many competitors join e.spire in urging the Commission to go further by adopting additional innovative collocation practices and alternatives identified in state commission proceedings. Based on substantial support in the record for each of the following collocation alternatives and practices, e.spire believes that the Commission should incorporate every one of them into its national minimum collocation standards. Doing so significantly will

³⁰ ALTS Comments at 42; Intermedia Comments at 8, 14-5; Covad Comments at 28.

facilitate competitive entry by minimizing space constraints and maximizing opportunities for efficient collocation by competitors.

1. Cageless Collocation

The record demonstrates that the competitive community agrees that cageless collocation may be the single most effective way for the industry and regulators to combat space exhaustion problems in ILEC central offices.³¹ Notably, GTE supports cageless collocation (but remains opposed to common space collocation),³² and U S West confirms that it already makes cageless collocation available to competitors.³³ Thus, there can be no dispute that cageless collocation is technically feasible. Because of the enormously positive impact this proposal could have on collocation space availability, e.spire believes that cageless collocation should be incorporated into a list of nationally mandated collocation alternatives.

³¹ *E.g.*, Allegiance Comments at 4-5; AT&T Comments at 7-9; Cable & Wireless Comments at 11-13; CIX Comments at 24; Covad Comments at 17-19, 32; CTSI Comments at 9; GST Comments at 31-32; ICG Comments at 21-25; Intermedia Comments at 31; KMC Comments at 16; MCI/WorldCom Comments at 65; MGC Comments at 24-29; Rhythms Netconnections Comments at 28-30; TRA Comments at 40; Transwire Comments at 22-32.

³² GTE Comments at 66-73. Bell Atlantic takes a similar position. *See* Bell Atlantic Comments at 32.

³³ U S West Comments at 40.

2. Shared Cages and Cage Subleasing

The record contains substantial support for incorporating shared collocation and cage subleasing into national minimum collocation standards.³⁴ Again, GTE is among the carriers that supports this collocation alternative, and another major ILEC, Bell Atlantic in New York, is committed to offer such arrangements. Because of the benefits this alternative offers, and the lack of any plausible objections to it, e.spire submits that the Commission should incorporate shared cages and cage subleasing into national minimum standards.

3. Adjacent Collocation

Several competitors join e.spire in calling on the Commission to incorporate adjacent or nearby collocation into its minimum national standards.³⁵ Because adjacent collocation provides CLECs with the same functionality as direct physical collocation while eliminating concerns over security or space exhaust, and because there do not appear to be any plausible objections to the use of this practice, e.spire submits that the Commission should incorporate this option into its national minimum collocation standards.

4. Common Area Collocation

e.spire submits that the Commission should incorporate common area collocation into its national minimum collocation standards. Indeed, e.spire agrees with Covad that the separation of

³⁴ *E.g.*, AT&T Comments at 83; ICG Comments at 26; Intermedia Comments at 26; MGC Comments at 24-29; Qwest Comments at 58; Rhythms Netconnections Comments at 28-30.

³⁵ *E.g.*, Nextlink Comments at 16; Rhythms Netconnections Comments at 30-31; MGC Comments at 24-29.

CLEC and ILEC bays on a bay-to-bay basis is sufficient,³⁶ and believes that ILEC objections to common area collocation based on “network security” concerns are overstated.³⁷ e.spire believes that video cameras and electronic badge tracking can adequately address any security concerns that may arise.³⁸ Moreover, as Covad notes, since the time of the AT&T divestiture, AT&T and RBOC equipment in central offices often have been separated by nothing more than painted lines on the floor.³⁹ The record contains no evidence of a history of security problems caused by this arrangement.

5. Extended Link

As discussed in its initial comments, e.spire believes that adopting the Extended Link as a UNE would be one of the most effective ways in which the Commission can address collocation space exhaust concerns.⁴⁰ Use of the Extended Link makes it possible for CLECs to reach customers through a single transmission facility composed of a loop, multiplexing, and transport that extends to the customer premise from the CLEC’s point of interface. Thus, the Extended Link can be of tremendous value to ILECs facing collocation space constraints. At the same time, the Extended Link affords CLECs the opportunity to extend the reach of their service offerings beyond commercial centers by reducing the exorbitant costs associated with having to collocate in every ILEC central office. In light of these benefits, e.spire submits that the

³⁶ Covad Comments at 28.

³⁷ *E.g.*, GTE Comments at 66-73.

³⁸ *See also, e.g.* MCI/WorldCom Comments at 59.

³⁹ Covad Comments at 28.

⁴⁰ e.spire Comments at 23, 34.

Commission should establish that Extended Link arrangements must be offered as both a required collocation alternative and as a UNE.

6. Elimination of Minimum Space Requirements for Collocation

e.spire joins the many competitors who call on the Commission to eliminate arbitrary ILEC minimum space requirements by incorporating a bar on such requirements into its national minimum collocation standards.⁴¹ As an alternative, the Commission could adopt “small space collocation” in which it would set a ceiling on minimum space requirements that could be imposed by the ILECs.⁴² Either proposal represents a vast improvement over the 100 square foot minimums frequently imposed by ILECs today. Because an outright prohibition on minimum space requirements provides competitors and ILECs with additional flexibility, e.spire submits that the Commission should incorporate such a standard into its national rules.

7. Presumptively Feasible Collocation Arrangements

The record indicates that many competitors share e.spire’s view that the Commission should establish a presumption of feasibility with regard to collocation arrangements provided by ILECs or required by state commissions.⁴³ If one type of collocation is offered by an ILEC, it should be presumed technically feasible for *all* ILECs to offer it. By making the standard rebuttable, the

⁴¹ *E.g.*, GST Comments at 30-32; ICG Comments at 21-25; Level 3 Comments at 8-13; MGC Comments at 24-29; NorthPoint Comments at 7-15; Sprint Comments at 19.

⁴² *E.g.*, GTE Comments at 66-73.

⁴³ *See, e.g.*, ACTA Comments at 6-19; Allegiance Comments at 2-3; AT&T Comments at 73; NorthPoint Comments at 7-15.

Commission can address genuine ILEC objections and constraints, while eliminating substantial barriers to physical collocation.

8. Efficient Space Management Requirements

e.spire agrees with competitors who call for the incorporation of general central office space management principles into the Commission's national minimum collocation standards.⁴⁴ In particular, e.spire submits that national minimum rules should require ILECs to: (1) remove obsolete and unused equipment from central offices; (2) remove non-critical administrative functions from central offices; (3) make collocation a design criterion for new or expanded central offices; and (4) comply with existing anti-warehousing rules.⁴⁵ The Commission's adoption of each of these measures will ease space exhaustion problems and facilitate competitive entry into local voice and broadband markets.

9. Pro-Rata Charges for Space Preparation

Numerous competitors join e.spire in identifying the New York Commission's approach regarding ILEC recovery of collocation space preparation costs as a standard that should be incorporated into the FCC's national rules.⁴⁶ Even though ILECs typically condition collocation space to serve multiple future collocators, many initially impose *all* the costs associated with such conditioning on the first CLEC to collocate. In reviewing this practice, the New York

⁴⁴ *E.g.*, Allegiance Comments at 5-6; AT&T Comments at 88; NorthPoint Comments at 7-15; Sprint Comments at 15-16.

⁴⁵ NorthPoint Comments at 15-16; *see also, e.g.*, AT&T Comments at 88-89; ICG Comments at 25-27.

Commission determined that it is an anticompetitive barrier to entry and, thus, ordered Bell Atlantic to charge the initial collocator no more than its *pro rata* share of space preparation costs. By elevating this standard to a national minimum requirement, the Commission can eliminate a substantial barrier to competitive entry that competitors still face outside of New York.

10. Unrestricted Cross-Connects Between Collocated CLECs

e.spire notes that there is widespread support for its view that the Commission should adopt a national rule barring cumbersome and costly ILEC limitations on CLECs' ability to interconnect with each other in the same collocated space or between different areas of the same central office.⁴⁷ Indeed, the Texas Commission already has rejected the standard ILEC rationale for imposing such requirements and found that: (1) CLECs can install their own cross-connections, even in instances where two CLEC collocation arrangements are located on separate floors or are otherwise noncontiguous; and (2) CLECs *themselves* can perform all installation associated with such cross-connects.⁴⁸ By elevating the Texas standard to a national minimum requirement, the Commission can foreclose one of the many ways in which ILECs seek to inflate the costs of their competitors.

⁴⁶ *E.g.*, Covad Comments at 28-29; e.spire Comments at 32; Intermedia Comments at 43-44; NorthPoint Comments at 7-15; Sprint Comments at 16.

⁴⁷ *E.g.*, ICG Comments at 16-20; Intermedia Comments at 27-28, 39. Level 3 Comments at 8-13. Texas PUC Comments at 8.

⁴⁸ *See* Intermedia Comments at 27-28.

11. Tours to Verify ILEC Space Exhaust Claims

The record shows substantial support for the Commission's proposal to incorporate into its national minimum collocation standards a requirement for ILECs to grant CLEC requests to tour central offices to verify claims of space exhaust.⁴⁹ In opposition to this proposal ILECs raise industrial espionage arguments that are far-fetched.⁵⁰ Indeed, Bell Atlantic's argument that space exhaust verification tours might result in the unwanted detection of improper space warehousing by an ILEC or other CLECs actually cuts in favor of adopting the Commission's proposal, not against it.⁵¹

12. Collocation Space Report

The record contains substantial support for adopting a national standard requiring ILECs to issue and maintain a collocation report on space utilization and availability.⁵² It is well established that competitors should have access to the same information that ILECs have access to. Adopting a collocation space report requirement is not unduly burdensome, as some ILECs claim.⁵³ Moreover, incorporation of this proposal into national minimum standards significantly diminishes delays associated with obtaining collocation space information.

⁴⁹ *E.g.*, ICG Comments on 25-27; Illinois CC Comments at 10; Intermedia Comments at 43; KMC Comments at 18; MCI/WorldCom Comments at 6; Texas PUC at 12; Sprint Comments at 18.

⁵⁰ *See, e.g.*, Bell Atlantic Comments at 41-42.

⁵¹ *Id.*

⁵² AT&T Comments at 88; *see also, e.g.*, Allegiance Comments at 5-6.

⁵³ Ameritech Comments at 47.

13. Collocation Intervals and Liquidated Damages

Numerous competitors echo e.spire's call for the adoption of minimum national collocation performance intervals and for associated liquidated damages provisions, in the event of noncompliance.⁵⁴ The adoption of standard collocation intervals and associated liquidated damages provisions will facilitate competition by providing ILECs with an incentive to fill collocation requests in a timely manner. Indeed, the Texas Commission recently adopted a 35 day interval for SBC's provisioning of collocation and currently is considering rules that would allow CLECs to obtain liquidated damages from ILECs who miss collocation provisioning intervals.⁵⁵ By elevating the Texas intervals to national standards, and by adopting related liquidated damages provisions, e.spire believes that the Commission can provide ILECs with much needed incentives to improve their performance in this critical area.

B. Reformed Virtual Collocation Rules Will Ease Competitive Disparities Involved When Physical Collocation is Not Available

e.spire agrees with those competitors who maintain that the Commission must reform its virtual collocation rules.⁵⁶ In light of the explicit authority to adopt collocation rules granted to the Commission in Section 251(c), e.spire believes that the existing restrictions – which address a lack of “takings” authority – are no longer needed. Specifically, e.spire supports reform of the

⁵⁴ *E.g.*, Covad Comments at 28-29; Level 3 Comments at 8-13; MGC Comments at 29-33; NextLink Comments at 23; NorthPoint Comments at 7-15; Sprint Comments at 17.

⁵⁵ Intermedia Comments at 29.

⁵⁶ *E.g.*, NorthPoint Comments at 28-29; Covad Comments at 35-36.

Commission's virtual collocation rules to allow for CLECs ownership of the equipment that they virtually collocate with ILECs, and to allow CLECs to hire independent third-party vendors to service their virtually collocated equipment (thus, obviating the need for security escorts). With these measures in place, CLECs would gain a reasonable degree of control of their facilities and would no longer face competitive barriers caused by their having no alternative other than to turn to ILECs for the maintenance and repair of virtually collocated equipment. Thus, by reforming its outdated virtual collocation rules, the Commission can tremendously improve the competitive viability and diminish the discriminatory effects of virtual collocation.

III. DEFINING ADDITIONAL UNES AND CLARIFYING EXISTING UNBUNDLING REQUIREMENTS WILL PROMOTE LOCAL COMPETITION AND ACCELERATE THE DEPLOYMENT OF ADVANCED TELECOMMUNICATIONS CAPABILITY

The record provides overwhelming support and demonstrates a compelling need for the additional national unbundling standards that reflect the experience gained by the Commission and its state counterparts over the past two years.⁵⁷ Already, the Commission has taken a substantial step forward by clarifying that advanced services and facilities are telecommunications services subject to Section 251(c), and by affirming its longstanding requirement that ILECs have an affirmative duty to provide competitors with unbundled access to conditioned loops.⁵⁸ By enhancing and expanding its unbundling rules, e.spire believes that the Commission will create a competitive environment of clarity and certainty – an environment

⁵⁷ See e.g., ICG Comments at 33; Intermedia Comments at 47-49.

⁵⁸ *Advanced Services Order*, ¶ 52.

the Commission will create a competitive environment of clarity and certainty – an environment that is necessary for competitive entry into both the local voice and advanced services markets.⁵⁹

A. Commission Adoption of a Bit-stream UNE Will Accelerate the Pace and Expand the Scope of Competitive Deployment of Advanced Telecommunications Services

e.spire supports ALTS' proposal for Commission adoption of a "Bit-stream" UNE as a national standard.⁶⁰ As described in the HAI White Paper appended to ALTS' comments, the Bit-stream UNE provides a broadband channel between the end user customer premise and the CLEC's point of presence, and offers CLECs the *functionality* that enables them to provide broadband services to end users, regardless of the loop or central office technology used by the ILEC. e.spire believes that defining a Bit-stream UNE would have many benefits. First, the Bit-stream UNE provides a technology-neutral approach that will allow CLECs to obtain access to end users to provide any kind of advanced services currently available, or that may be developed in the future.

Second, the Bit-stream UNE reduces ILECs' ability to manipulate technology to anticompetitive effect. ILECs have the ability and incentive to manipulate the technology they deploy and the network architectures they favor in order to disadvantage competitors. Because

⁵⁹ Significantly, the Minnesota and Texas Commissions both recognize the importance of maintaining minimum national standards on which they can build to meet particular needs in their respective states. Minnesota DPS Comments at 19; Texas PUC Comments at 12.

⁶⁰ ALTS Comments at 57-58; HAI White Paper at 75-80 and *passim*.

the Bit-stream UNE approach is not tied to any particular technology or network design, it effectively eliminates the potential for this form of anticompetitive conduct.

Third, the Bit-stream UNE provides an alternative entry strategy for CLECs in situations where technical difficulties and disputes defeat or delay the ability to obtain other UNEs such as electronically-capable and electronically-equipped loops or subloop elements dependant on remote terminal collocation. Indeed, ILECs can provide CLECs with unbundled access to a virtual channel to end users, regardless of the loop technologies and configurations they deploy. Thus, the Bit-stream UNE provides a solution that will be immediately available, even in cases where disputes over IDLC unbundling or OSS access remain unresolved. Notably, e.spire emphasizes that the Bit-stream UNE is not intended to replace any of the Commission's existing unbundling obligations or those proposed by e.spire in its initial comments. Rather, the Bit-stream UNE is merely an alternative unbundling method that will increase market entry opportunities for CLECs and, therefore, will accelerate the pace and expand the scope of competitive deployment of advanced services.

B. Commission Adoption of an Extended Link UNE Will Spur Local Competition

e.spire notes that it is joined by Intermedia and other ALTS members in its view that the Commission should define an Extended Link UNE.⁶¹ Indeed, use of the Extended Link in BellSouth territory (BellSouth has refused to renew provisions of e.spire's interconnection

⁶¹ e.spire Comments at 41-42; Intermedia Comments at 47-49.

agreement in which it agreed to provide it) and in Texas (since the Eighth Circuit's *Iowa Utilities Board* decision, SBC similarly has refused to agree to provide it), and the New York Commission's experience working toward developing an Extended Link UNE (Bell Atlantic has agreed to provide it on a "voluntary" basis) demonstrate that it provides an important functionality – composed of loop, multiplexing and transport – that can maximize the number of customers that can be reached through a single collocation arrangement.⁶² In addition, as discussed by both e.spire and Intermedia in their initial comments, use of the Extended Link will help to alleviate space constraints in ILEC end offices.⁶³ Thus, unbundled access to such functionality also will accelerate and expand competitors' roll outs of both traditional voice and advanced services offerings.

⁶² *Id.*

⁶³ *Id.*

CONCLUSION

e.spire urges the Commission to adopt rules and policies consistent with the foregoing discussion regarding comments filed on the Commission's tentative conclusions and requests for additional proposals to promote local competition and ensure the timely deployment of advanced telecommunications services.

Respectfully submitted,

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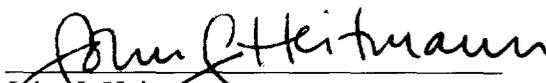
October 16, 1998

CERTIFICATE OF SERVICE

I, John J. Heitmann, hereby certify that I have served a copy of the "Reply Comments of e.spire Communications, Inc." this 16th day of October, 1998, upon the following parties *via* hand delivery:

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