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December 15, 1998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Magalie R. Salas, Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: Notification of Ex Parte Presentation; CC Docket No. 96-147

Dear Ms. Salas:

Pursuant to Sections 1.1206(b)(1) and (2) of the Commission's rules, e.spire Communications, Inc. ("e.spire"), by its attorneys, provides this notice of an *ex parte* presentation. On Tuesday, December 15, 1998, Riley Murphy and Charles Kallenbach of e.spire and Brad Mutschelknaus and John Heitmann of Kelly Drye & Warren LLP met with Larry Strickling, Chief, Common Carrier Bureau and Jordan Goldstein and Jonathan Askin, also of the Common Carrier Bureau, to discuss positions taken by e.spire in its comments and reply comments on the Commission's Notice of Proposed Rulemaking in the above-captioned docket. The discussion focused on the Commission's authority to define an Extended Link UNE and on the Commission's ILEC advanced services affiliate and collocation reform proposals. The attached chart was distributed at the meeting.

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Pursuant to Sections 1.1206(b)(1) and (2), e.spire submits an original and one copy of this notification for inclusion in the public record of the above-referenced proceeding. If you have any questions regarding this matter, please contact Brad Mutschelknaus or John Heitmann at (202) 955-9888.

Respectfully submitted,

John J. Heitmann, Esq.

cc: Larry Strickling
Jordan Goldstein
Jonathan Askin

e.spire Communications, Inc.

***Ex Parte* Presentation**

Deployment of Wireline Services Offering
Advanced Telecommunications Capability (Section 706 NPRM)
CC Docket No. 98-147

Riley Murphy
Executive Vice President and General Counsel – e.spire

Charles Kallenbach
Vice President Regulatory Affairs – e.spire

Brad Mutschelknaus, John Heitmann
Kelley Drye & Warren LLP

December 15, 1998

Reformed National Collocation Rules Will Spur Local Competition and the Deployment of Advanced Telecommunications Services

- ***Six efficient and effective alternatives to traditional physical collocation should be incorporated into minimum national standards:***
  - Cageless collocation
  - Shared cages and cage subleasing
  - Adjacent collocation
  - Common area collocation
  - No minimum space requirements or small space/small increment collocation
  - Extended Link
- ***The Commission should adopt a national presumption of feasibility: if one ILEC offers a particular collocation arrangement, all ILECs should be able to provide that arrangement.***

Reformed National Collocation Rules *(continued)*

- ***Minimum national standards should include the following measures to preclude unnecessary and anticompetitive collocation requirements:***
  - No ICB or TBD pricing for space preparation
  - Pro-rata charges for space preparation
  - Physical and virtual collocation rates and charges must be cost-based
  - Unrestricted cross-connects between collocated CLECs
  - Tours to verify space exhaust claims
  - Use of video surveillance, electronic badges or security cards in lieu of escorts
  - Collocation space availability and utilization reporting
  - Efficient space management requirements
  - Provisioning intervals and liquidated damages for missed intervals
  - Accelerated Docket for resolution of collocation disputes

Reformed National Collocation Rules *(continued)*

- ***Restrictions on the types of equipment that can be collocated should be limited.***
  - To compete effectively in the advanced services market, CLECs must be able to collocate any equipment that contains routing, aggregating or multiplexing functionality, *including* remote switching modules, frame relay switching equipment, xDSL electronics, IP routers and other advanced data equipment.
  - Any restrictions should be based on the size of – and not the functionality provided by – particular pieces of equipment.
  - All equipment should be NEBS safety standards compliant, to the extent that the ILEC's own equipment complies with those standards.
  - ILECs should not be permitted to impose NEBS performance or any other standards.

Reformed National Collocation Rules *(continued)*

- ***Reformed virtual collocation rules will ease competitive disparities involved when physical collocation is not available.***
  - CLECs should be permitted to own – and to hire independent third-party vendors to service – virtually collocated equipment.
- ***Virtual collocation must be available as a means of connecting UNEs.***
  - Relying on a misinterpretation of the Eighth Circuit's *Iowa Utilities Board* decision, ILECs are refusing to allow virtual collocation as a means of connecting UNEs.
  - Virtual collocation must be made available at all points of aggregation along the loop including the controlled environmental vault or its above-ground equivalent, and other points of aggregation where DLCs, MUXs, OLTMs and DSL electronics are deployed.

National Unbundling Requirements Should Be Clarified and Expanded to Facilitate Competitive Entry Into the Advanced Services Market

- ***The Commission should make clear that ILECs must make the following categories of loops available on a cost-based/unbundled basis:***
  - 2-wire analog
  - 4-wire analog
  - 2-wire digital
  - 4-wire digital
- ***The Commission should make clear that ILECs must make three varieties of digital loops available on a cost-based/unbundled basis:***
  - basic
  - conditioned
  - electronically-equipped
- ***The Commission should make clear that subloop electronics, including DSL, DLC, ISDN, MUX and OLTM, must be made available on a cost-based/unbundled basis.***

National Unbundling Requirements *(continued)*

- ***The Commission should clarify that ILECs' existing obligation to provide nondiscriminatory access to OSS includes access to loop information.***
  - Loop information including physical specifications such as loop type and length, and indicating the presence of impediments and electronics, should be consolidated into a electronically accessible Loop Inventory which should be updated on no less than a monthly basis.
- ***The Commission should make clear that two different service providers can offer services over the same loop.***
  - Voice and data channels must be available separately on an unbundled basis – a CLEC should not be obligated to purchase both channels.

National Unbundling Requirements *(continued)*

- ***If an ILEC uses a conditioned digital loop for its own services, it should be deemed technically feasible for the ILEC to provide access to that same loop on an unbundled basis, regardless of whether or not that loop passes through an RT.***
  - An ILEC must make available, in a nondiscriminatory manner, to CLECs the same methods that it or its advanced services affiliate uses to provide advanced telecommunications capability, including xDSL services.
  - An ILEC must provide a CLEC with the same loops it provides to itself or to its affiliate, regardless of whether the loop is "home run" copper or one that passes through a remote terminal.
  - Deployment intervals for provisioning xDSL-compatible loops should be the same for ILECs and CLECs regardless of whether the loop passes through a remote concentration device.

National Unbundling Requirements *(continued)*

- ***Definition of an Extended Link UNE would accelerate competitive deployment of traditional voice and advanced services and ease collocation space constraints.***
  - Extended Link provides an important functionality – composed of loop, multiplexing and transport (including the appropriate electronics and cross-connects) – that can maximize the number of customers that can be reached through a single collocation arrangement.
  - ILECs should be required to offer Extended Links for all loop and transport types (for example, an Extended Link consisting of a T-1 loop and DS-1 transport can be used as a FRAL).
- ***The Commission should define a Bit-Stream UNE.***
  - Because the Bit-Stream UNE is not tied to any particular technology or network design, it reduces ILECs' ability to manipulate technology and network design to anticompetitive effect.
  - 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.

The Commission Should Abandon Its ILEC Advanced Services Affiliate Proposal

- ***The Commission's ILEC advanced services affiliate proposal represents an untenable solution to a problem that does not exist.***
  - In response to competitive pressure from CLECs, ILECs have made and continue to make tremendous investments in advanced telecommunications networks and technologies. They have done – and will continue to do – this without any certainty of deregulation.
  - Because the Communications Act is technology neutral, the Commission should avoid adopting a regulatory structure that differentiates based on technology.
  - All carriers, including the ILECs, are deploying digital equipment for voice and data services. It is impossible to create a workable regulatory policy based on technologies that are intertwined, interchangeable and difficult to distinguish.
  - Permitting ILECs to place advanced telecommunications facilities in separate subsidiaries so that they can avoid the unbundling, resale and cost-based pricing obligations of Section 251(c) impermissibly would undermine and rewrite the 1996 Act.

ILEC Advanced Services Affiliates *(continued)*

- ***If the Commission adopts its ILEC advanced services affiliate proposal, such action should incorporate the following safeguards and principles:***
  - ILECs must retain functionalities necessary to provide competitors with all three methods of entry into the advanced services market – full broadband competition depends on much more than access to conditioned loops.
    - The ILECs' ubiquity creates market power: their control of loops, collocation space, interoffice transport and OSS affords them a significant advantage over and opportunity to discriminate against CLECs, regardless of the specific technologies used and services provided.
  - *Any* transfers of assets or sharing of resources renders the ILEC affiliate an assign subject to the requirements of Section 251(c) – no *de minimis* or time-limited exceptions apply.
  - *No* joint ownership of facilities; *no* joint marketing; *no* sharing of brands, names, marks, administrative functions, operational functions, employees, management, research and development, intellectual property, or CPNI; *no* virtual collocation for affiliates; *no* obtaining credit from, or based on their relationship to, their ILEC parents.

ILEC Advanced Services Affiliate Safeguards *(continued)*

- An ILEC must file, and the Commission must approve, a compliance plan prior to the establishment of a Section 251(c)-free advanced services affiliate.
- ILECs must tariff all aspects of their relationships with their advanced services affiliates.
- ILEC advanced services affiliates should not be eligible to resell the ILEC's services pursuant to Section 251(c)(4) – without such a restriction, there would be little incentive for ILECs to improve OSS and UNE provisioning and their affiliates would not be placed in the shoes of a CLEC (which could not rely on resale as a sustainable market entry strategy).

RBOC InterLATA Relief Is Neither Necessary Nor Appropriate at This Time

- The Commission's fact-specific, case-by-case approach to LATA modification requests must be retained – the grant of general modifications (even if "targeted") would exceed the Commission's authority to modify provisions of the Act.
- Grant of generally applicable "targeted" changes in LATA boundaries would be functionally the same as forbearing from Section 271 – which the Commission is not permitted to do in the absence of RBOC compliance with that section.
- The Commission may not grant relief similar to that granted by Congress for "incidental interLATA services" defined in Section 271(g). Congress already carefully has carved-out these exceptions to the RBOC interLATA services restriction. Section 10(d) forbids the Commission from adding to them.
- Even to the extent the Commission has authority to modify LATA boundaries, there is no evidence any interLATA relief is necessary to further the goals of Section 706 at this time.

The Commission Must Adopt an Effective Enforcement Posture

- ***The Commission has the requisite jurisdiction to hear and adjudicate all disputes involving its collocation, unbundling and separations rules.***
  - To maximize the effectiveness of the Accelerated Docket, the Commission preemptively should strike ILEC arguments that unbundling and collocation disputes fall within the exclusive jurisdiction of the states.
  - The Accelerated Docket will be of paramount importance in cases where state commissions may not have jurisdiction over ILEC advanced services affiliates.
- ***The Commission must adopt and impose meaningful remedies for violations of any collocation, unbundling, or separations rules it adopts.***
  - The Commission should adopt national minimum provisioning intervals for collocation and UNEs. Liquidated damages rules should be established to encourage ILEC compliance.
  - Preferential treatment of affiliates, or any violation of the Commission's separations rules should result in substantial fines.