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March 29, 2000

Magalie R. Salas, Secretary
Federal Communications Commission
445 – 12th Street, SW
Washington, D.C. 20554

EX PARTE OR LATE FILED

Re: **Written *Ex Parte* Statement of Winstar Communications and e.spire Communications in CC Docket No. 96-98: Collocation May Not Be Required As a Precondition for EEL Availability**

Dear Ms. Salas:

Pursuant to § 1.1206(b)(1) of the Commission's Rules, Winstar Communications Inc. ("Winstar") and e.spire Communications Inc. ("e.spire") jointly submit this written *ex parte* presentation regarding the Commission's rules, adopted in the above-captioned proceeding, governing the enhanced extended link ("EEL").

Winstar and e.spire have actively participated in CC Docket No. 96-98, and have been strong proponents of the EEL since the concept was developed. Both carriers firmly believe that EELs are necessary to the continued development of facilities-based local services competition, and commend the Commission's mandate that EELs be made available without delay. To this end, both Winstar and e.spire have been willing to support limited restrictions on the use of EELs, to the extent that such restrictions are necessary to clarify the terms under which EELs will be made available, and to eliminate unnecessary uncertainty and delay that may hinder EEL deployment. Recently, Winstar was a signatory to the letter proposing EEL use restrictions that was submitted by a group of four CLECs and five ILECs on February 28, 2000 (the

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“ILEC/CLEC letter”).¹ e.spire supports the use restriction approach advocated by ALTS in its written *ex parte* filing of March 24, 2000 (the “ALTS *ex parte*”).

While Winstar and e.spire have supported alternative approaches to EEL use restrictions, both carriers agree that, whatever approach the Commission ultimately takes in defining EELs, it should not make collocation a necessary precondition to a CLEC’s ability to obtain the EEL. As the carriers discuss below, there appears to be no legal or policy basis on which to impose such a restriction.

While some provisions of the *UNE Remand Order* suggest that collocation is a prerequisite to obtaining EELs,² the rules established by the Commission are ambiguous on this matter. During the proceeding that resulted in the *UNE Remand Order*, a collocation requirement was actively considered as a means of excluding entrance facility transport from EEL loop/transport combinations. This restriction was proposed by ALTS and CompTel in a joint filing expressly as a means of preventing the largest IXCs from converting to EELs existing Special Access circuits used to transport interexchange access traffic. At that time, it could have been argued that a collocation requirement was necessary to prevent a substantial short-term decline in ILEC Special Access service revenues.

Winstar and e.spire understand, however, that immediately after the *UNE Remand Order* was released, a number of ILECs argued to the Commission that the collocation requirement was inadequate to prevent a substantial reduction in ILEC access revenues. These ILECs apparently argued that the largest IXCs could simply terminate the EEL to a serving wire center, and obtain the “entrance facility” transport to their points of presence from a competitive carrier. In this way, the IXCs purportedly could substitute EELs for Special Access, and precipitate a substantial reduction in ILEC access revenues. In order to avoid this problem, Winstar and e.spire understand that the ILECs sought the local usage restriction that was adopted in the Commission’s *Supplemental Order*.³

1 Winstar joined the ILEC/CLEC Letter because it contained an option by which a CLEC could obtain EELs without the need for collocation.

2 *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order, CC Docket No. 96-98, FCC 99-238 (Nov. 5, 1999), at ¶ 486.

3 *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Supplemental Order, CC Docket No. 96-98, FCC 99-370 (Nov. 24, 1999), at ¶ 4.

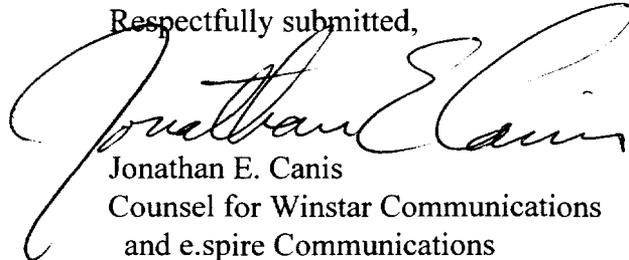
When the Commission adopted the “significant amount of local traffic” test in its *Supplemental Order*, however, the collocation requirement – and the concomitant exclusion of entrance facilities from EELs – became unnecessary. If, as Winstar and e.spire understand, the Commission adopted the local use restriction in response to ILEC complaints that the collocation requirement would not be effective in preventing massive IXC conversion of Special Access services, the collocation requirement is now superfluous. In fact, the ILECs have already argued that the collocation requirement is ineffective in preventing the loss of access revenues, and so making collocation a precondition to obtaining EELs cannot be justified on those grounds.⁴ Moreover, as the ILEC/CLEC letter and the ALTS *ex parte* make clear, there is broad industry support for the proposition that local use requirements will be effective in providing the ILECs the revenue protection they seek. As a result, there are no legitimate legal or policy grounds to support the imposition of additional costs and provisioning delays that would result from denying EELs to non-collocated carriers. This is the case whether the CLECs convert to EELs circuits that are already connected, or are purchasing UNEs that are being combined for the first time.

Winstar and e.spire fully support the Commission in acting expeditiously in clarifying the local usage requirements that will apply to EELs, and to enforce its mandate that the ILECs provision EELs quickly and without disruption of existing services. For the reasons discussed above, during this process, Winstar and e.spire urge the Commission to clarify that, whatever the option under which CLECs qualify to obtain EELs, and whether the EELs are new combinations or conversion of pre-existing circuits, they will not be required to collocate as a prerequisite.

4 This is, in fact, the position taken by the New York Public Service Commission, which adopted use restrictions to guard against excessive loss of ILEC access revenue, but did not impose a collocation requirement on CLECs.

Pursuant to 1.1206(b)(1), an original and one copy of this written *ex parte* notification is submitted for inclusion in the public record of the above-referenced proceeding. Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,



Jonathan E. Canis
Counsel for Winstar Communications
and e.spire Communications

cc: Chairman William E. Kennard
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Commissioner Harold Furchtgott-Roth
Commissioner Michael K. Powell
Commissioner Gloria Tristani
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