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March 1, 2001

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Ms. Blanca Bayó, Director
Division of Records and Reporting
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: FPSC Docket No. 000121-TP


Dear Ms. Bayó:

Enclosed for filing on behalf e.spire Communications, Inc. are an original and fifteen copies of the Direct Testimony of James C. Falvey on behalf of e.spire Communications, Inc. in the above-referenced 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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Enclosure
cc: James C. Falvey, Esq.
Parties of Record

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the Establishment of)
Operations Support Systems Permanent)
Performance Measures for Incumbent Local)
Exchange Telecommunications Companies)
_____)

Docket No. 000121-TP

DIRECT TESTIMONY

OF

JAMES C. FALVEY

ON BEHALF OF

E.SPIRE COMMUNICATIONS, INC.

Dated: March 1, 2001

1 **Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS**
2 **ADDRESS FOR THE RECORD.**

3 A. My name is James C. Falvey. I am Senior Vice President - Regulatory
4 Affairs for e.spire Communications, Inc. (“e.spire”), which formerly
5 was known as American Communications Services, Inc. or “ACSI”.
6 My business address is 131 National Business Parkway, Suite 100,
7 Annapolis Junction, Maryland 20701.

8 **Q. PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE**
9 **AND BACKGROUND.**

10 A. Prior to joining e.spire as Vice President - Regulatory Affairs in 1996,
11 I practiced law as an associate with the Washington, D.C. law firm of
12 Swidler and Berlin for two and a half years. In the course of my
13 practice, I represented competitive local exchange providers,
14 competitive access providers, cable operators and other common
15 carriers before state and federal regulatory authorities. Prior to my
16 employment at Swidler and Berlin, I was an associate in the
17 Washington, D.C. office of Johnson & Gibbs, where I practiced
18 antitrust litigation for three years. I graduated from Cornell University
19 in 1985 with honors and received my law degree from the University
20 of Virginia School of Law in 1990. I am admitted to practice law in
21 the District of Columbia and Virginia.

22 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS**
23 **PROCEEDING?**

1 A. I am testifying on behalf of e.spire and its local operating subsidiaries
2 in the state of Florida. e.spire is a facilities-based ALEC that, through
3 its operating subsidiaries, provides a full range of local and long
4 distance telecommunications services in more than 30 markets
5 throughout the northeastern, southeastern and southwestern United
6 States. In Florida, e.spire has an Interconnection Agreement with
7 BellSouth.

8 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

9 A. The purpose of my testimony in this proceeding is to present some
10 examples of e.spire's experiences with BellSouth as a competitive
11 carrier in Florida and illustrate how lack of adequate performance
12 measurements adversely impacts the development of local competition
13 and ultimately denies Florida consumers the benefits of competition.

14 **Q. WHAT MEASURES OR CHANGES TO THE BELL SOUTH**
15 **MEASURES WOULD YOU PROPOSE?**

16 A. e.spire proposes changes to BellSouth's FOC (Firm Order
17 Confirmation) process because the process is flawed. In addition,
18 e.spire proposes that the Commission establish a performance measure
19 for EEL conversions and require routine trunk testing. BellSouth's
20 lack of routine trunk testing and current process for issuing FOC dates
21 and conducting EEL conversions have a negative impact on the
22 competitive telecommunications market, as I will discuss in further
23 detail below.

1 **Q. WHY DO YOU PROPOSE CHANGES TO THE FIRM ORDER**
2 **CONFIRMATION (FOC) PROCESS.**

3 A. Based on e.spire's experiences, there are several deficiencies in the
4 current FOC process. e.spire believes that it is insufficient for FOC
5 performance measures to merely capture the amount of time that it
6 takes for BellSouth issue FOC dates. For example, after e.spire places
7 an order with BellSouth for unbundled network elements, even if
8 e.spire obtains a timely FOC date from BellSouth, the order can be
9 placed in Pending Facility (PF) status, while BellSouth conducts a
10 facilities check. In addition, BellSouth does not conduct an
11 engineering test as part of the facilities check.

12 **Q. WHAT IS THE COMPETITIVE AND CUSTOMER IMPACT**
13 **OF INADEQUATE FOCs?**

14 A. The FOC date that BellSouth provides to e.spire is used to determine
15 e.spire's customer due dates. To the extent that e.spire and other
16 ALECs are unable to rely on the BellSouth FOC date, this in turn
17 adversely impacts the ability of e.spire and other ALECS to meet their
18 customer due dates. Thus, the business reputation of ALECS with
19 respect to the ability to meet customer expectations of timely service is
20 placed in jeopardy, if competitive carriers have to contact customers to
21 cancel or reschedule service appointments. Meeting customer
22 expectations is a crucial component of successful local competition,
23 especially in the current environment. If customers have the

1 perception that e.spire and other ALECS are unable to meet scheduled
2 appointments, these customers may very well return to BellSouth.
3 Thus, BellSouth's failure to conduct a facilities check prior to issuance
4 of the FOC date has potentially crippling effects on local competition.
5 In addition, this also causes e.spire and other ALECS to tie-up limited
6 resources and needlessly juggle internal operations to meet customer
7 due dates because the FOC date is not reliable.

8 **Q. HOW DOES E.SPIRE PROPOSE TO ADDRESS THE FOC**
9 **INADEQUACIES?**

10 In order to make the FOC date meaningful, e.spire proposes that the
11 Commission require BellSouth to complete a facilities check prior to
12 issuing a FOC, and establish a performance measure for instances in
13 which BellSouth places orders in PF status, after FOCs have been
14 issued. These changes should make the FOC date more reliable for
15 ALEC planning purposes and allow the parties to monitor the FOC
16 process.

17 **Q. WHAT DO YOU PROPOSE WITH RESPECT TO ENHANCED**
18 **EXTENDED LINK (EEL) PROVISIONING.**

19 A. e.spire proposes additional measures for enhanced extended link (EEL)
20 provisioning. For example, e.spire submitted data to BellSouth nearly
21 a year ago around March 24, 2000, for EEL conversion. As of today,
22 BellSouth still has not processed e.spire's order. This delay runs
23 counter to The Federal Communications Commission's (FCC)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Direct Testimony of James C. Falvey on behalf of e.spire Communications, Inc.'s Petition to Intervene in Docket No. 000121-TP has been served upon the following parties by Hand Delivery (*) and/or U.S. Mail this 1st day of March, 2001.

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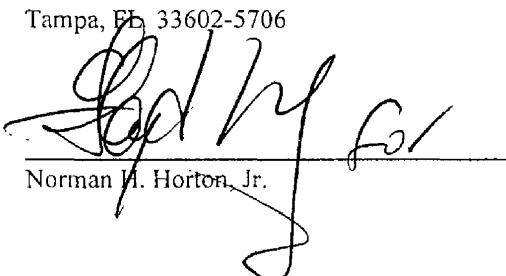
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Norman H. Horton, Jr.

1 recognition that ... “the process by which special access circuits are
2 converted to unbundled loop-transport combinations should be simple
3 and accomplished without delay.”¹ These delays are therefore,
4 unacceptable and illustrate the need for provisioning intervals in this
5 area.

6 **Q. WHAT IS THE COMPETITIVE AND CUSTOMER IMPACT**
7 **OF NO EEL PERFORMANCE MEASURES?**

8 A. EELS are important to the widespread and efficient deployment of
9 competitive local exchange services by ALECS. A robust local
10 competitive market will provide the consumers of Florida with more
11 service options at a lower price. As I have testified, e.spire has been
12 waiting nearly a year for BellSouth to process its EEL order. As stated
13 above, because the EELs conversion process should be “simple ... and
14 ... without delay,” an EELS performance measure would provide an
15 invaluable tool by which this process may be monitored and
16 compliance enforced. Therefore, it is critical for the Commission to
17 establish EEL provisioning measures. Indeed, the FCC recognizes the
18 importance of EEL conversion to competitive carriers and is currently
19 conducting an EELs Summit to address issues related to the EEL
20 conversion process. In the absence of an EELs performance measure,
21 e.spire and other ALECS may be forced to individually demonstrate

¹ See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket 96-98, Supplemental Order Clarification, 15 FCC Rcd 9587 para. 30

1 that BellSouth has failed to process EEL requests in a timely manner
2 before the Commission, which could needlessly tie-up both ALEC and
3 Commission resources.

4 **Q. REGARDING TRUNK TESTING, HAS BELL SOUTH**
5 **INSTITUTED ADEQUATE PREVENTIVE MEASURES?**

6 A. No, this is an area of concern to e.spire. Currently, BellSouth does not
7 conduct routine tests on BellSouth's end office tandem trunks to
8 e.spire switches. As a result, calls may not be competed, if there are
9 technical problems with the trunk. The customer disruption of service
10 in this situation could have been avoided, if BellSouth had conducted
11 the simple preventive measure of routine trunk testing prior to turning
12 up service on the trunk. This is yet another example of BellSouth
13 providing ALECS with inferior service that adversely impairs ALECS'
14 ability to provide services on par with that of BellSouth.

15 **Q. DO YOU HAVE ADDITIONAL OPERATING CONCERNS**
16 **WHERE YOU THINK THAT PERFORMANCE MEASURES**
17 **WOULD IMPROVE QUALITY OF SERVICE.**

18 A. Yes, three specific situations come to mind. e.spire has experienced
19 Access Customer Advocacy Center (ACAC) answer/hold times that
20 are excessive. When e.spire has called the ACAC to report problems,
21 we have experienced hold times as long as 90 minutes. Second, when
22 e.spire's circuits are down during the evening hours, in some instances,

1 BellSouth may not correct the problem at that time, and e.spire's
2 customer will be out of service overnight. Even though BellSouth may
3 fix the problem the next day, in the business world, customers expect
4 that repairs should be made promptly, during hours that cause the least
5 disruption to their business. Also, e.spire has experienced problems
6 with BellSouth failing to show up promptly at the scheduled time or
7 not at all, particularly after hours, for e.spire customer cutovers.
8 Collectively, these problems constitute a drain on e.spire's valuable
9 resources (financial, time, and personnel), constitute a barrier to
10 competition, and reduce the ability of Florida consumers to obtain the
11 benefits of competition in the local telecommunications arena – more
12 service options and lower prices.

13 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

14 A. Yes, it does. Thank you.