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September 10, 1999

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Re: Docket No. 990649-TP

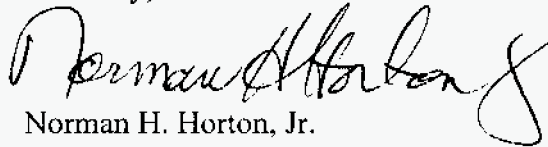
Dear Ms. Bayo:

Enclosed for filing on behalf of e.spire Communications, Inc. are an original and fifteen copies of the Rebuttal Testimony of James C. Falvey on behalf of e.spire Communications, Inc. 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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cc: James C. Falvey, Esq.  
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10906 SEP 10 99

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**ORIGINAL**

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

**In Re: Investigation into Pricing of )  
Unbundled Network Elements. )  
\_\_\_\_\_ )**

**Docket No. 990649-TP**

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

**September 10, 1999**

DOCUMENT NUMBER-DATE  
**10906 SEP 10 88**  
FPSC-RECORDS/REPORTING

## REBUTTAL TESTIMONY OF JAMES C. FALVEY

1       **Q.   PLEASE STATE YOUR NAME.**

2       A.   My name is James C. Falvey. I am filing rebuttal testimony on behalf of  
3       e.spire Communications, Inc. I previously filed direct testimony in this  
4       proceeding.

5       **Q.   WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

6       A.   The purpose of my rebuttal testimony is to address a number of issues raised  
7       by BellSouth Telecommunications, Inc. ("BellSouth") in its direct pre-filed  
8       testimony filed herein in this docket.

9       **Q.   IN GENERAL, WHY IS BELL SOUTH'S APPROACH TO**  
10       **UNBUNDLING INCONSISTENT WITH THE 1996 ACT?**

11       A.   The Telecommunications Act of 1996 (the "Act") calls for the market for  
12       telecommunications services to be transformed from one of regulated  
13       monopoly to one of market competition. The approach adopted by Congress  
14       accomplishes this through a policy of open and expedited entry, rather than  
15       through divestiture forced upon the incumbent LECs (ILECs). Thus, the  
16       success of this transition to competition rests critically on whether  
17       commissions are able to remove artificial barriers to entry into these market.  
18       The framework laid out in the Act to accomplish this has two critical  
19       components: pricing and access (availability). The pricing concerns are  
20       addressed further below. Adequate access requires that all segments of the  
21       ILEC network be available, just as they are to BellSouth, through unbundled

1 network elements and combinations of unbundled network elements provided  
2 at TELRIC. Limitations on access to UNEs, and UNE combinations such as  
3 the Extended Link, conditioned on requirements which artificially and  
4 unnecessarily increase the cost to CLECs, as advocated by BellSouth  
5 Telecommunications Inc. ("BellSouth") will deter or even eliminate  
6 competition and give BellSouth better and cheaper access to the network than  
7 its competitors. The successful achievement of the goals of the Act  
8 (competitive outcome) requires that all segments of the ubiquitous ILEC  
9 network be made available to CLECs pursuant to the unbundling provisions  
10 of the Act on a seamless, unmitigated and non-discriminatory basis.  
11 Inadequate unbundling as advocated by BellSouth creates barriers to entry  
12 which work to inhibit competition and to perpetuate a system in which  
13 BellSouth retains preferential access to the networks.

14 Q. HOW CAN UNBUNDLING AFFECT BARRIERS TO ENTRY?

15 A. ILECs have an obvious incentive to increase the costs of competing providers  
16 whenever possible. One way to do this, as advocated by BellSouth, is to  
17 bundle elements or develop rate structures in such a way that CLECs are  
18 forced to take and to pay for unnecessary elements. From a financial  
19 perspective, inflated costs can be an entry barrier, and as such frustrate a  
20 policy of promoting the competition. The level of bundling, the rate  
21 structure, and the flexibility of the offerings to CLECs by ILECs should be  
22 such that CLECs do not pay unnecessary or uneconomic costs.

1 In addition to other requirements of Section 251(c), each ILEC has a duty to  
2 provide to any requesting telecommunications carrier, the following:

3 nondiscriminatory access to network elements on an  
4 unbundled basis at any technically feasible point at  
5 rates, terms and conditions that are just, reasonable  
6 and nondiscriminatory in accordance with ... this  
7 section and section 252.

8 Thus, ILECs have a duty to provide nondiscriminatory access to equipment  
9 and facilities needed to provide voice and advanced services to the extent  
10 technically possible, and at rates based on forward-looking costs.

11 **Q. DOES THE FCC'S 706 ORDER ADDRESS UNBUNDLING?**

12 A. Yes. The FCC's finding in the 706 Order concluded that efficient entry and  
13 the competitive outcome require the widespread unbundling of network  
14 elements. Specifically, the FCC found that the facilities used in the provision  
15 of all advanced services, including packet-switched services and collocation  
16 are subject to the unbundling requirements of Section 251 (c). In that Order,  
17 the FCC ruled that ILECs must offer unbundled access to the "equipment  
18 used in the provision of advanced services." This ruling is subject only to  
19 consideration of technical feasibility. BellSouth ignores this order in  
20 suggesting that "advance services" are somehow insinuated from the Act.

21 **Q. SHOULD THE COMMISSION ADDRESS THE "NECESSARY AND  
22 IMPAIR" STANDARD IN THIS PROCEEDING?**

23 A. No. BellSouth is recommending that this Commission conduct debate as to  
24 how the FCC should interpret and apply the "necessary and impair" standard

1 as set forth in the federal Telecommunications Act of 1996. This issue is  
2 beyond the scope of this docket, and is appropriately being considered by the  
3 FCC at this time.

4 The Supreme Court issued its ruling on the Eighth Circuit's decision  
5 on the FCC's First Report and Order on Local Competition (Docket No. 96-  
6 98). This decision vacated 47 CFR Sect. 51.319 (Rule 319), which is the  
7 section of the FCC rules listing the elements which, at minimum, must be  
8 provided by ILECs. The Supreme Court did not rule on the propriety of the  
9 specific elements in Rule 319, but found that the FCC must establish a  
10 "standard" as the basis for determining which elements must be made  
11 available. This standard according to the Supreme Court decision must take  
12 into account the objectives of the Act and give some substance to the  
13 "necessary" and "impair" requirements" as set forth in the Act. The total  
14 impact of this standard on the FCC's list of minimum elements remains to be  
15 seen.

16 The FCC must first interpret the "necessary and impair" standard, and  
17 apply the standard to determine the minimum list of network elements that  
18 must be offered by ILECs.

19 The purpose of this docket is to deaverage and update network  
20 element prices. If the Commission determines that some question as to the  
21 "necessary and impair" standard is relevant here, then e.spire would request  
22 the opportunity to file supplemental rebuttal testimony to respond to

1 BellSouth's claims.

2 **Q. SHOULD BELLSOUTH BE REQUIRED, FOR EXAMPLE, TO**  
3 **PROVIDE EXTENDED LINKS, FOUR-WIRE DS0 LOOPS AND DS3,**  
4 **OC3, OC12 OR OC 48 LOOPS AS UNBUNDLED ELEMENTS?**

5 A. Yes. Unless BellSouth can demonstrate a technical reason why it cannot  
6 provide an element, including any particular loop, these loops, and the  
7 Extended Link, should be available at cost-based rates. Fulfilling the goals  
8 of the Act requires that all segments of the ILEC network be available at  
9 economically based prices and at non-discriminatory terms and conditions.  
10 What I have referred to as adequate access or availability does not exclude  
11 certain loops, or certain combinations of UNEs such as the Extended Link,  
12 or unbundled transport, or any other element/function/service simply because  
13 they have not been offered before, or because the ILEC has not yet completed  
14 cost studies, or because the loop, UNE or UNE combination or function is  
15 associated with an advanced service rather than a voice grade service. The  
16 mandates of the Act, and not the ILEC's commercial interests, should be the  
17 basis of decisions on the extent of unbundling.

18 Attempts by BellSouth to encourage this Commission to exclude any  
19 UNE, service or function is inconsistent with the Act. The successful  
20 elimination of entry barriers requires that access to all such elements be  
21 available at forward-looking cost based rates, to begin to put ALECs on an  
22 equal footing with incumbents, which have unmitigated access to the

1 network. The loop elements listed above, as well as other elements sought  
2 by e.spire, are not constrained by technical feasibility.

3 **Q. DO ADVANCED SERVICES MEET THE NECESSARY AND IMPAIR**  
4 **STANDARDS?**

5 A. Yes. BellSouth incorrectly states that advanced services represent a new  
6 market where ILECs have no competitive advantage. The Communications  
7 Act has established UNEs as one of the primary methods of achieving  
8 competitive entry into local services markets. This method of entry is as  
9 important for advanced services - in particular, high capacity data services  
10 provided over Digital Subscriber Line, Asynchronous Transfer Mode,  
11 Internet Protocol and Frame Relay technologies - as it is for traditional  
12 circuit-switched "plain old telephone service." Indeed, the FCC has already  
13 found that "Congress made clear that the 1996 Act is technologically neutral  
14 and is designed to ensure competition in all telecommunications markets."<sup>1</sup>  
15 This finding, contrary to BellSouth's assertions, compels the conclusion that  
16 the unbundling requirements of the Communications Act must extend to  
17 UNEs necessary for the provision of advanced data services.

18 Moreover, the ILECs' control of loops and critical aggregation points  
19 that provide access to the loops is identical for POTS and advanced services.

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20 <sup>1</sup> Deployment of Wireline Services Offering Advanced Telecommunications  
21 Capability, CC Docket No. 98-147, First Report and Order, at para. 11 (March 31,  
22 1999).



1           The solution to promoting competitive entry in the technology-neutral  
2           manner dictated by the Act is also identical - the FCC must identify data  
3           UNEs necessary to allow transport of DSL, Frame Relay, IP and ATM traffic  
4           between a CLEC's data switch and an end user located on an ILEC network.  
5           The nomenclature for the different elements may differ among these various  
6           technologies, but the functions remain the same: ILECs must unbundle the  
7           ports on their data switches, and the connectivity between the ports.  
8           Thus, advanced services meet the necessary and impair standards of the Act  
9           and must be unbundled by the ILECs.

10       **Q.   DO YOU AGREE WITH BELLSOUTH'S VIEWS WITH RESPECT**  
11       **TO INTEROFFICE TRANSMISSION FACILITIES?**

12       A.   No. BellSouth argues that transport alternatives are readily available to  
13       CLECs in certain areas and thus, unbundling of interoffice transport facilities  
14       of ILECs should not be required. e.spire is requesting that the FCC reaffirm  
15       and expand the definition of interoffice transport under the "necessary and  
16       impair" standard in the Rule 319 remand proceeding. Interoffice transport by  
17       no means qualifies as "proprietary." Access to interoffice transmission  
18       facilities is critical to new entrants seeking to enter local markets, and  
19       Congress recognized this by including "local transport" in the Section 271  
20       competitive checklist. As the FCC has indicated "[a]n efficient new entrant  
21       might not be able to compete if it were required to build interoffice facilities

1 where it would be more efficient to use the incumbent LEC's facilities."<sup>2</sup>

2 When e.spire purchases interoffice transport, it obtains the vast  
3 majority of such transport from the ILECs because there is no ubiquitous  
4 substitute available today from other competitors. When such substitutes  
5 become available actual substitution will occur. BellSouth deliberately  
6 emphasizes the "availability" of competitive alternatives, but does not  
7 emphasize actual transport purchases of ALECs, which are the time test of  
8 whether substitution has occurred. In an event, most of BellSouth's efforts  
9 to phase out UNEs before they have even been offered is premature, because  
10 the FCC has yet to set the standard that will determine when UNEs must be  
11 offered.

12 **Q. DO YOU AGREE WITH BELLSOUTH'S VIEWS REGARDING THE**  
13 **PRICING OF UNEs AND UNE COMBINATIONS?**

14 A. No. The purpose of this proceeding is to determine the extent to which UNEs  
15 and UNE combination rates should be deaveraged and to update any other  
16 cost analysis appropriate to UNE pricing. The prices of UNEs and UNE  
17 combinations should be set using forward-looking costs, not historic costs or  
18 "full market value" as advocated by Mr. Varner in his testimony. Thus, the  
19 appropriate cost methodology to be used in conjunction with a policy  
20 intending to promote efficient pricing, efficient production and the

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21 <sup>2</sup> Local Competition First Report and Order at para. 440.

1 competitive outcome is one which focuses on forward-looking costs. The  
2 TELRIC/TSLRIC methodology which has been adopted by the FCC and  
3 relied upon by this Commission in setting prices for interconnection and  
4 network elements is such an approach.

5 **Q. WHY DOES TELRIC PROVIDE A REASONABLE MEASURE OF**  
6 **COSTS FOR PRICING PURPOSES?**

7 A. Using TELRIC will result in prices for network elements which reflect  
8 forward-looking, efficiently incurred costs. Decisions in a competitive  
9 market are based on forward-looking costs, not historic costs. It is  
10 appropriate that prices be based on forward-looking costing methodologies.  
11 To ensure that price signals are correct and that market entry is efficient,  
12 forward-looking costs should be used.

13 The appropriate cost study is also long run in nature. It is based on  
14 a time horizon long enough to allow entry or exit to occur and/or for  
15 substantial changes in capacity or technology to occur. Costs affecting entry,  
16 exit, capacity expansion or technology adoption decisions are forward-  
17 looking and variable.

18 **Q. HAS THE COMMISSION ADOPTED A COSTING STANDARD FOR**  
19 **THE PRICING OF UNES?**

20 A. Yes. The Commission's TSLRIC or TELRIC forward-looking pricing policy  
21 for UNES was first adopted by the Commission in 1996 (Order PSC 96-0811-  
22 FOF-TP, Docket 950974-TP) and has been reaffirmed in several arbitrations

1 since then. Therefore, the Commission should not adopt BellSouth's  
2 recommendation that UNE prices be priced to cover "actual costs." while  
3 UNE combinations should be "market priced" (See Varner Testimony, page  
4 21).

5 **Q. WHAT IS THE APPROPRIATE METHOD TO PRICE UNE**  
6 **COMBINATIONS?**

7 A. As stated above, the appropriate method for pricing network elements is the  
8 same whether the element is used alone or in combination. That method is  
9 TELRIC. As set forth in my direct pre-filed testimony, the Commission  
10 should require ILECs to file cost studies based on forward-looking TELRIC  
11 pricing principles for all varieties of Extended Links (loop/transport  
12 combination).

13 **Q. WHICH NETWORK ELEMENT SHOULD BE DEAVERAGED AT**  
14 **THIS TIME?**

15 A. The most important UNE to deaverage at this time is the local loop network  
16 element. As the Commission knows, the Act's cost-based pricing standard  
17 is intended to make UNE inputs available at cost-based rates so that new  
18 entrants can use UNEs as a means of competing with incumbents.

19 Moreover, any UNE combination that includes a loop, e.g., the  
20 Extended Link, which is comprised of an unbundled loop, transport and  
21 multiplexing, should be deaveraged to reflect the deaveraged loop price.

22 Additionally, as set forth more fully in my direct testimony, the

1 appropriate basis to deaverage UNEs is cost. If geographically deaveraged  
2 rates are to be established consistent with the intent of the Act, then the rates  
3 must be cost based. The structure of rates should be driven by cost  
4 differences, not an ILEC marketing strategy. This would suggest, for  
5 instance, that geographically deaveraged rates could be based on wire centers,  
6 but not on exchanges. Exchanges often include several wire centers. Where  
7 this is the case, the exchange cost represents an average of the costs of the  
8 individual wire centers. In that manner, cost differences are masked, and not  
9 allowed to serve as the basis of geographically deaveraged rates.

10 **Q. IS IT NECESSARY TO REBALANCE RATES OR IMPLEMENT A**  
11 **FLORIDA UNIVERSAL SERVICE FUND PRIOR TO**  
12 **DEAVERAGING NETWORK ELEMENT RATES?**

13 A. No. BellSouth has requested that the Commission delay the deaveraging of  
14 network element prices until it has rebalanced its retail rates or a Florida  
15 universal service fund has been implemented. The Commission should not  
16 wait to deaverage UNE rates.

17 The Commission should adopt deaveraged network element prices in  
18 this proceeding as soon as possible without any preconditions of ILECs  
19 rebalancing rates or waiting for the establishment of a Florida universal  
20 service fund. There are mechanisms in place for the ILECs to respond to  
21 competitive market conditions as they develop by rebalancing their rates or  
22 obtaining universal service relief if conditions warrant. Competition to date

1 has been extremely limited and the change predicted by BellSouth has not  
2 materialized. See Commission Order PSC-95-1592-TP, December 27, 1995,  
3 where the Commission established that ILECs may file petitions with the  
4 Commission for universal service relief if market conditions warrant.  
5 Moreover, BellSouth is regulated pursuant to a price cap plan in Florida.  
6 Under such a plan, it is free to respond to competitive pressures by reducing  
7 their prices. Thus, there is no reason to condition deaveraging of network  
8 element prices on rebalancing ILEC retail rates, or establishing a Florida  
9 universal service fund. These are merely delay tactics by BellSouth to allow  
10 it to continue to price above cost.

11 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

12 **A. Yes.**

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Rebuttal Testimony of James C. Falvey on behalf of e.spire Communications, Inc. in Docket No. 990649-TX has been furnished by Hand Delivery (\*) and/or U.S. Mail to the following parties of record this 10th day of September, 1999:

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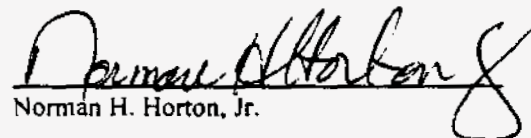
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