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RECORDS AND
REPORTING

April 6, 1999

Mrs. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 990321-TP

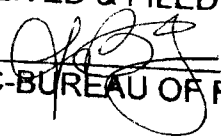
Dear Ms. Bayó:

Enclosed are an original and 15 copies of BellSouth's Response to Petition of ACI Corp. for Generic Investigation Into Terms and Conditions of Physical Collocation. Please file this document in the captioned matter.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me.

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Sincerely,



J. Phillip Carver
(PC)

FPSC-BUREAU OF RECORDS

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- WAS _____
- OTH _____

Enclosures

cc: All parties of record
M. M. Criser, III
N. B. White
William J. Ellenberg II (w/o enclosures)

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of ACI Corp. d/b/a)	
Accelerated Connections, Inc. for)	Docket No. 990321-TP
Generic Investigation into Terms and)	
Conditions of Physical Collocation)	Filed: April 6, 1999
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**BELLSOUTH'S RESPONSE TO PETITION
OF ACI CORP. FOR GENERIC INVESTIGATION INTO TERMS
AND CONDITIONS OF PHYSICAL COLLOCATION**

BellSouth Telecommunications, Inc. ("BellSouth"), hereby files, pursuant to Rule 25-22.037, F.A.C., its Response to the Petition of ACI Corp. ("ACI"), and states the following:

1. The Petition of ACI should be denied. ACI states in its Petition, in a Section entitled "Disputed Issues and Material Facts," that it has set forth in the remainder of its Petition the ultimate facts that entitle it to relief. What follows is a discourse of more than 30 pages that includes a wide-ranging combination of opinions, legal interpretations, and conclusory allegations. There is, however, very little in the way of specific factual allegations. Given this, as well as the generic nature of the relief requested, BellSouth has not filed an answer per se, but rather a response that it believes to be appropriate to address the issues raised by ACI and the reasons that the Petition should be denied. In other words, BellSouth will not indulge in an equally lengthy discourse in which it rebuts every one of the many allegations of ACI with which it disagrees.

However, to the extent that the Petition may contain specific factual allegations directed to BellSouth, BellSouth denies each and every such allegation.

2. Some of the contentions set forth in ACI's Petition are flatly wrong. For example, ACI makes the bald assertion that incumbent ALECs have the "absolute obligation" to provide ALECS with collocation (Petition, p. 5), a statement that conveniently ignores the fact that physical collocation is not required when it is not technically feasible, safe, or when no space is available. Likewise, at another point, ACI states that "the Commission should not sanction traditional virtual collocation as a satisfactory substitute when physical collocation's space is exhausted." (Petition at 20-21). The Act, however, specifically requires precisely this process in Section 251(c)(6). In fact, the Act provides that virtual collocation is acceptable as an alternative to physical collocation, not only in a "exhaust situation", but in any situation which physical collocation is not "practical for technical reasons or because of space limitations." (Id.). Thus, ACI requests the Commission to issue a rule that violates the Act.

3. Other portions of the Petition, although not facially, legally invalid, are just as fundamentally wrong headed. For example, ACI proposes an elaborate procedure for ALECs to obtain collocation waivers, which appears to be calculated to make the entire process as unwieldy as possible (thus, presumably, making it more difficult to obtain a waiver.) Likewise, ACI proposes that when seeking a collocation waiver, an ILEC should have to sustain some vague, undefined "high threshold of proof." (Petition, p. 10). ACI gives no guidance as to how procedurally (or legally) this higher standard of proof would

work. Finally, the Petition contains other proposals that simply duplicate the procedure that is already put in place before the Commission, i.e., the proposal that testimony be filed to support a party's position in a contested proceedings.

4. Suffice to say that BellSouth disagrees with much of what is contained in the petition. The proper disposition of this Petition, however, should have less to do with its substantive infirmities, than the fact that ACI has no legal right to that which it requests. Again, ACI states in its Petition the assertion that its extended factual argument somehow "entitle[s] ACI to relief." The Petition, however, is not a complaint that ACI is filing against BellSouth or any other entity. Instead, it is a request that the Commission engage in rulemaking. Yet ACI has cited to no authority--and, indeed, BellSouth believes that there is none—for the proposition that it, or any other party, is "entitled" to a generic proceeding that will culminate in rulemaking. To the contrary, "[r]ulemaking cannot be forced upon an agency and its policy may be developed, at the agency's choice, through the adjudication of individual cases." Florida League of Cities v. Administrative Commission, 586 So. 2d 397, 406 (Fla. 1st DCA 1991); See also, City of Tallahassee v. Florida Public Service Commission, 433 So. 2d 505 (Fla. 1983). Thus, whether to initiate a rulemaking proceeding, or not, is entirely within the sound discretion of this Commission.

5. In this particular instance, ACI's Petition for a generic proceeding and rulemaking should be denied because it essentially duplicates a process that is already taking place in another docket. Specifically, in Docket No. 981834-TP, a variety of parties joined in filing a petition that requested the imposition of a

wide ranging variety of procedures that appear to share the single objective of delaying BellSouth's entry into the long distance market pursuant to Section 271 for as long as possible. BellSouth, of course, opposed this Petition. In response to the Petition, however, the Commission Staff recommended a more moderate approach that would entail generic treatment of a number of matters, including OSS and collocation. Although the Commission voted at the Agenda Session of March 30, 1999, to delay its ruling on this recommendation until the Staff has refined its proposal somewhat, it would appear that, in the context of the above-referenced docket, a generic collocation proceeding will take place.

6. BellSouth is not opposed to a generic collocation proceeding. BellSouth is, however, opposed to multiple, duplicative collocation proceedings, which is what will result if the Commission allows ACI's petition to stand while also addressing the same subject matter in Docket No. 981834-TP. Further, all of ACI's positions (leaving aside for a moment the question of their validity) can be raised in the proposed collocation phase of Docket No. 981834-TP. For this reason, BellSouth suggests that the appropriate course of action is to deny (or dismiss) the Petition of ACI, but allow ACI to intervene in the generic collocation proceeding that will likely arise from Docket No. 981834-TP for the purpose of raising whatever issues may appropriately be raised there.

7. As stated above, BellSouth is not opposed to a generic collocation docket. BellSouth notes, however, that the timing of any activity in a generic proceeding is important. Many collocation issues are currently being considered by the Federal Communications Commission in CC Docket No. 98-147. In fact,

the First Report and Order and Further Notice of Proposed Rulemaking was released March 31, 1999 (Order 99-48), and it provides for a comment cycle that will not conclude until July of 1999. At the same time, the FCC expressed in this Order its intention to “establish national rules for collocation.” (Order 99-48, ¶ 23). The FCC’s pronouncement, of course, begs the question of why this Commission should develop rules for collocation in Florida when the FCC is in the process of developing national rules. The FCC appears to contemplate that states will develop rules of their own, which will complement the national rules. (Id.). At the same time, there is no way to know how to establish Florida rules that complement the FCC’s prospective rules, or to avoid conflict with them, if this Commission engages in rulemaking that precedes the completion of the FCC’s efforts. Instead, this Commission should wait until after the FCC’s rules have been promulgated.

8. The Staff recommendation in Docket No. 981834-TP was that the generic collocation proceeding would run, along with an OSS pricing proceeding, after the conclusion of OSS operational workshops and a UNE pricing docket. This sequencing will likely allow time for the FCC’s rules to develop before this Commission proceeds with collocation rulemaking (or, for that matter, decides whether, in light of the FCC rules, state-specific rules are even necessary). Thus, this is one more reason that ACI’s petition should be denied, and, instead, any collocation rulemaking should be developed in the proper sequence, and in Docket No. 981834-TP.

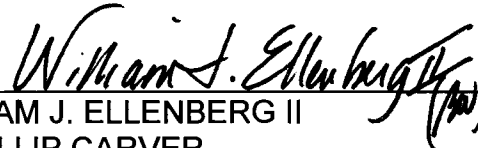
WHEREFORE, for the reasons set forth above, BellSouth respectfully requests that the Petition of ACI be either dismissed or denied, but that ACI be allowed leave to intervene in any generic collocation proceeding that takes place in Docket No. 981834-TP.

Respectfully submitted this 6th day of April, 1999.

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CERTIFICATE OF SERVICE
Docket No. 990321-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

U.S. Mail this 6th day of April, 1999 to the following:

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