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February 14, 2000

**VIA HAND DELIVERY**

ORIGINAL

Blanca S. Bayo, Director  
Division of Records and Reporting  
Betty Easley Conference Center  
4075 Esplanade Way  
Tallahassee, Florida 32399-0870

Re: Docket No.: 981834-TP/990321-TP

Dear Ms. Bayo:

Enclosed for filing and distribution are the original and 15 copies of the following:

- ▶ Joint Post-Hearing Statement of Issues and Positions and Post-Hearing Brief.

Please acknowledge receipt of the above on the extra copy of same and return the stamped copy to me in the envelope provided.

I am also enclosing an IBM-formatted disk of the same in Wordperfect 8 format.

Thank you for your assistance.

Yours truly,

*Vicki Gordon Kaufman*

Vicki Gordon Kaufman

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MCWHIRTER, REEVES, MCGLOTHLIN, DAVIDSON, DECKER, KAUFMAN, ARNOLD & STEIN, P.A.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**In re: Petition of Competitive Carriers** :  
**for Commission action to support local** : **DOCKET NO. 981834-TP**  
**competition in BellSouth Telecommunications,** :  
**Inc.'s service territory.** :

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**In re: Petition of ACI Corp. d/b/a Accelerated** : **DOCKET NO. 990321-TP**  
**Connections, Inc. for generic investigation to** :  
**ensure that BellSouth Telecommunications,** : **Filed: February 14, 2000**  
**Inc., Sprint-Florida Incorporated and GTE Florida** :  
**comply with obligation to provide alternative local** :  
**exchange carriers with flexible, timely, and** :  
**cost efficient physical collocation.** :

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**JOINT POST-HEARING STATEMENT OF ISSUES AND POSITIONS**  
**AND**  
**JOINT POST-HEARING BRIEF**  
**OF**  
**FLORIDA COMPETITIVE CARRIERS ASSOCIATION,<sup>5</sup>**  
**AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC.,**  
**COVAD COMMUNICATIONS COMPANY,**  
**FLORIDA CABLE TELECOMMUNICATIONS ASSOCIATION,**  
**INTERMEDIA COMMUNICATIONS, INC.,**  
**MCI WORLDCOM, INC.,**  
**MGC COMMUNICATIONS, INC.,**  
**MEDIAONE FLORIDA TELECOMMUNICATIONS, INC.,**  
**AND RHYTHMS LINKS, INC.**

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## PRELIMINARY STATEMENT

Pursuant to rule 28-106.215, Florida Administrative Code, the Florida Competitive Carriers Association, AT&T Communications of the Southern States, Inc., Covad Communications Company, the Florida Cable Telecommunications Association, Intermedia Communications, Inc., MCI WorldCom, Inc., MediaOne Florida Telecommunications, Inc., MGC Communications, Inc, and Rhythms Links, Inc. file their Joint Post-Hearing Statement of Issues and Positions and their Post-Hearing Brief.<sup>1</sup>

## INTRODUCTION

The collocation of ALEC facilities in ILEC central offices is an important prerequisite to local competition and a clear goal of the Telecommunications Act of 1996 (the Act). The case-by-case procedures that characterize collocation today result in needless delay, inflated costs and market uncertainty. Local competition is hindered, innovation is frustrated, and consumers are denied new services, lower prices and the other benefits of competition.

The fundamental purpose of this docket should be to standardize the offering of collocation space -- i.e., to make it routine -- and through this standardization reduce provisioning intervals and establish clear prices. The specific issues in this proceeding should be resolved with the goal of achieving a standard offering, with standard intervals, to reduce the cost, delay and uncertainty that confronts entrants today.

"Collocation space" is nothing more than "space prepared to house telecommunications equipment." The largest user of "collocation space" is the ILEC itself. Processes used to provide this space to other carriers can and must be standardized, just like other ILEC services. The FCC is looking to state commissions to play a vital role in making efficient collocation a reality by fleshing

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<sup>1</sup> The following abbreviations are used in this brief. The parties listed above and on whose behalf this brief is filed are referred to as the Competitive Carriers. The Florida Public Service Commission is referred to as the Commission. BellSouth Telecommunications, Inc. is called BellSouth and GTE Florida Incorporated is called GTE. Sprint-Florida Incorporated and Sprint Communications Company Limited Partnership are called Sprint. The Federal Communications Commission is called the FCC.

fleshing out specific standards to facilitate collocation and thus, local market entry. In addition, the Commission must ensure that the Florida ILECs adhere to the requirement that a collocation method used by an incumbent or mandated by a state commission is presumptively technically feasible for any other ILEC.

The difference between BellSouth's position and that of GTE and Sprint on the issue of standardization of collocation (BellSouth is opposed to standardization; GTE and Sprint are not) underscores the need expressed by many parties for standardized collocation offerings. (Levy, Tr. 921; Nilson, Tr. 999; Gillan, Tr. 1020; Jackson, Tr. 1150). By knowing in advance the rates, terms and conditions that apply to collocation requests, ALECs will be able to avoid the cost, delay and uncertainty that exists when every collocation application is treated as a unique request. As Mr. Gillan testified:

[T]he environment of ICB [individual case basis] treatment for collocation has outlived its usefulness, it's outlived its relevancy and that particularly with the advent of cageless collocation it is time to move this ball forward and create a standardized offering with standard intervals and standard pricing and a tariff environment for collocation.

(Gillan, Tr. 1051).<sup>2</sup>

In order to "move the ball forward," the Competitive Carriers urge the Commission to conduct a generic proceeding to establish standardized TELRIC-based prices for the provisioning

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<sup>2</sup> During the hearing, the word "tariff" was used to connote a standardized collocation offering. The use of this word in the context of a general collocation offering is not meant to imply a tariff as that term is used in Chapter 364, Florida Statutes-- a unilateral filing by an ILEC which becomes automatically effective and which the ILEC may change at will. Rather, as the term is used here, it is meant to suggest a standardized offering whose terms, conditions and prices have been reviewed in a Commission proceeding in which all interested parties have the opportunity to participate. Further, such a filing could only be changed upon the ILEC's petition to the Commission and the participation of all interested parties. The Competitive Carriers urge the Commission to move forward to require a standardized collocation filing by each ILEC and to review such filings in a generic proceeding.

of collocation space to supplement the standardized intervals and other guidelines that will result from this docket. The availability of such a standardized offering would not preclude an ALEC's ability to negotiate, or ultimately arbitrate, for different terms and conditions under Sections 251 and 252 of the Act. (Gillan, Tr. 1053-55). However, as Mr. Gillan explained in an extended discussion with Commissioners Deason and Clark, the experience in analogous situations demonstrates that the adoption of standardized rates, terms and conditions will greatly reduce the likelihood that such issues will require arbitration. (Gillan, Tr. 1076-1091).

## ARGUMENT

### ISSUE 1

#### **WHEN SHOULD AN ILEC BE REQUIRED TO RESPOND TO A COMPLETE AND CORRECT APPLICATION FOR COLLOCATION AND WHAT INFORMATION SHOULD BE INCLUDED IN THAT RESPONSE?**

**Competitive Carriers' Position:**\* An ILEC should respond within 10 calendar days as to whether space is available and within 15 days with all information needed to place a firm order. If the application is not complete when received, the ILEC should notify the ALEC of the specific deficiencies within 5 calendar days.\*

The Commission can play a crucial role in furthering the pro-competitive goals of the Act and Chapter 364, Florida Statutes, by establishing guidelines and standards for collocation that, in conjunction with the FCC's rules, will ensure that collocation is available to ALECs in a timely manner and on reasonable terms and conditions. (See, *Deployment of Wireline Service Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-48, et. al. (rel. Mar. 31, 1999), hereinafter, *Advanced Services Order*, ¶ 23). As the FCC stated, "Because of the importance of ensuring timely provisioning of collocation space, we encourage state commissions to ensure that incumbent LECs are given specific time intervals within which they must respond to collocation requests." (*Advanced*

*Services Order*, ¶ 54).

The Commission should require an ILEC to respond to a complete and correct collocation application within 10 calendar days by advising the applicant as to whether or not the requested space is available. (Moscaritolo, Tr. 834; Levy, Tr. 899; Nilson, Tr. 978). This is consistent with the FCC's view that 10 days is "a reasonable time period within which to inform a new entrant whether its collocation application is accepted or denied." (*Advanced Services Order*, ¶ 55). Sprint supports this 10-day time limit and, as an ILEC, is prepared to meet this requirement. (Closz, Tr. 601, 629, 670, 673). Ten days is also consistent with FCC Rule §51.321(h) which requires an ILEC to provide a report on the available collocation space at a particular ILEC premises within 10 days of an ALEC request. If 10 days is a reasonable time to make a determination of space availability in the context of a request for a report, it is likewise a reasonable time to make the same determination in response to a collocation application.

In addition to the initial 10-day notification of space availability, the Commission should require an ILEC to provide within 15 calendar days of receipt of the application all the information needed for the ALEC to place a firm order. (Williams, Tr. 762; *see*, Martinez, Tr. 692-93). The ILEC's response should include all the information necessary for an ALEC to make a business decision as to whether to place a firm order for collocation. Specifically, this includes pricing information, dimensions of the offered space, and information on obstructions, diversity, power considerations, hazards, engineering considerations and proposed due date. (Martinez, Tr. 693, 694; Williams, Tr. 762, 784-785).

Finally, if the ALEC's application is not complete and correct when received by the ILEC, the Commission should require the ILEC to describe with specificity all errors or omissions in the application within 5 calendar days of receipt. Without such a requirement, an ALEC could be trapped in a process of submission and resubmission that would undermine the integrity of the required response intervals.

BellSouth is the only ILEC that opposes providing within 15 calendar days the information necessary for an ALEC to place a firm order. BellSouth proposes to respond within 30 calendar days, but would extend that interval if 6 or more applications are submitted within a 15-day window. (Hendrix, Tr. 24-25). GTE, which recently filed tariffs for collocation both at the FCC and in Florida, is prepared to respond within 15 days with the price information necessary for an ALEC to place a firm order. (Reis, Tr. 411-14, 450-51; Ex. 18). Similarly, Sprint is prepared to respond with pricing information within a 15-day period whenever collocation prices are either tariffed or covered by the ALEC's interconnection agreement. (Closz, Tr. 603).

## ISSUE 2

### **IF THE INFORMATION INCLUDED IN THE ILEC'S INITIAL RESPONSE IS NOT SUFFICIENT TO COMPLETE A FIRM ORDER, WHEN SHOULD THE ILEC PROVIDE SUCH INFORMATION OR SHOULD AN ALTERNATIVE PROCEDURE BE IMPLEMENTED?**

**Competitive Carriers' Position:** \*The ILEC should provide all information needed for an ALEC to place a firm order within 15 calendar days of receipt of an order. ILECs should be required to streamline their collocation practices, maintain space inventory information, and standardize their pricing so that this provisioning interval can be satisfied.\*

As discussed in Issue 1, the Commission should require the ILECs to provide all information necessary for an ALEC to place a firm order within 15 calendar days of the ILEC's receipt of a collocation application. (E.g., Closz, Tr. 601; Martinez, Tr. 692-93). No alternative procedure needs to be employed; the existence of an alternative procedure would simply allow the ILECs to side-step the required response interval. (Martinez, Tr. 694-95).

Also as discussed in Issue 1, the ILEC's response should include all the information necessary for an ALEC to make a business decision as to whether to place a firm order for collocation. Specifically, this includes pricing information, dimensions of the offered space, and information on obstructions, diversity, power considerations, hazards, engineering considerations

and proposed due date. (Martinez, Tr. 693-94; Williams, Tr. 762, 784-85). To the extent the ILEC's response includes anything less, it would introduce unwarranted delay into collocation provisioning, which would be detrimental to ALECs. (Williams, Tr. 762).

To ensure that ILECs can meet this provisioning interval, the Commission should require ILECs to streamline their collocation practices, maintain space inventory information and standardize their pricing. In fact, the standardized offering of collocation is one of the required reforms adopted by the FCC in the *Advanced Services Order*. (Gillan, Tr. 1023-24). In explaining the ILECs' obligations, the FCC said:

We require the incumbent LECs to make each of the arrangements outlined below [i.e. shared, cageless and adjacent collocation] available to competitors as soon as possible, *without waiting until a competitive carrier requests a particular arrangement*, so that competitors will have a variety of collocation options from which to choose.

(*Advanced Services Order*, ¶40, emphasis added).

Accordingly, as explained in more detail in Issue 1, the Competitive Carriers urge the Commission to conduct a generic proceeding to establish TELRIC-based rates for the provisioning of collocation space to supplement the standardized intervals and other guidelines that will result from this docket.

### ISSUE 3

#### **TO WHAT AREAS DOES THE TERM "PREMISES" APPLY, AS IT PERTAINS TO PHYSICAL COLLOCATION AND AS IT IS USED IN THE ACT, THE FCC'S ORDERS, AND THE FCC'S RULES?**

**Competitive Carriers' Position:** \*The term "premises" applies to all ILEC buildings or similar structures that house network facilities, including remote terminals. Collocation is permitted *at* ILEC premises, which includes collocation *in* ILEC buildings, *on* ILEC property, and *in* or *on* adjacent property owned or controlled either by the ILEC or by other parties.\*

In this proceeding, the ILECs attempted to avoid their obligation to provide collocation at



their premises, including at remote and off-site locations, by focusing only on the definition of premises. The term "premises" appearing in the Act, the FCC's Orders, and FCC Rules, means "an incumbent LEC's central offices and serving wire centers, as well as all buildings or similar structures owned or leased by an incumbent LEC that house its network facilities." (47 C.F.R. Part 51.5). The ILECs and ALECs unequivocally agree that the word "premises" applies to all ILEC buildings or similar structures housing network facilities. (Milner, Tr. 209, 242, 276-277, 356; Reis, Tr. 409; Hunsucker, Tr. 516, 547, 577; Martinez, Tr. 695-696, 727; Williams, Tr. 791; Levy Tr. 926; Mills, Tr. 1200). Determining the areas that pertain to physical collocation as intended by the Act, the FCC's Orders, and Rules, however, requires an examination of the language in the Act, the FCC's Orders, and FCC Rules.

Section 251(c)(6) of the Act requires each ILEC to provide "for physical collocation of equipment necessary for interconnection or access to unbundled network elements *at the premises* of the local exchange carrier" (emphasis added). In defining the ILECs' statutory obligation to permit collocation, the FCC's Orders and Rules similarly direct the ILECs to provide physical collocation to competitors *at their premises*. (See, e.g., 47 C.F.R. §§51.321(b)(2),(c)). Specifically, in Paragraph 39 of the *Advanced Services Order*, the FCC ordered the ILECs to provide alternative collocation arrangements, such as adjacent collocation, "to optimize the space available at *incumbent LEC* premises, thereby allowing more competitive LECs to collocate equipment and provide service." Because the Act, the FCC's Rules, and FCC's Orders require ILECs to provide all forms of physical collocation to competitors at *ILEC premises*, the question is actually what exact areas does the phrase, "at the ILEC premises" comprise.

With the release of the FCC's Order in *Implementation of the Local Competition Provisions*

of the *Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238 (rel. Nov. 5, 1999) (*UNE Remand Order*), the proper construction of the phrase "at the ILEC premise" becomes even more crucial in light of the new-found acknowledgment by the ILECs of their obligation to provide collocation at remote locations. (Milner, Tr. 285, 356). In Paragraph 221 of the *UNE Remand Order*, the FCC recognized that competitors must have access to loop facilities at remote terminals because the ILECs' obligations to collocate at the ILEC premises, as defined in the *Advanced Services Order*, "apply to collocation at any technically feasible point, from the largest central office to the most compact [feeder distribution interface]." (See also, 47 C.F.R. Part 51.319(a)(2)). The FCC also concluded that "the remote terminal has, to a substantial degree, assumed the role and significance traditionally associated with the central office."

To encourage advanced services, such as DSL service, for all Florida consumers, the Commission should now recognize the FCC's remote terminal collocation requirement to ensure that Florida consumers receive DSL services wherever possible.<sup>3</sup> If the Commission limits collocation to locations in or on the ILEC premises, competitors will likely never benefit from collocation at almost any remote location, as the compact terminals comprise the ILECs' "premises" in that remote location and were "not designed to house additional equipment of competitors." In other words, the ILECs have designed remote terminals to preclude competitors from collocating *in* the terminal; therefore, competitors must be able to collocate *at* the remote terminal.

Having access to loop facilities at remote terminals is particularly critical for DSL providers,

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<sup>3</sup> Furthermore, BellSouth in subsequent contract negotiations continues to deny competitors' requests for remote terminal collocation arrangements, though BellSouth has acknowledged its obligation to provide collocation at the remote terminal in this proceeding.

who typically must have copper connectivity from their customer's premises to their DSLAM equipment. (Williams, Tr. 795). However, BellSouth acknowledges that, as a general rule, remote terminals lack sufficient space for physical collocation. (Milner, Tr. 248, 356). Mr. Milner proceeds to describe one technically feasible method to gain access to unbundled loops at the remote terminal in that "space exhaustion" situation; namely, for the ALEC to install its own structure alongside BellSouth's, with BellSouth then extending a tie-cable between the two structures. The most productive means of accomplishing collocation at the remote terminals is for the Commission to acknowledge that the ILECs must collocate *at* the premises, not merely on or in their premises.

To determine the areas on which an ILEC must allow competitors to procure collocation arrangements to interconnect with the ILECs' networks, the Commission must merely ascertain the meaning of the phrase "at the ILEC premises." Physical collocation at the ILEC premises includes not only the space available *in* or *on* the premises, but also that space that the competitors are able to procure *at* the "premises" of the ILECs. The Commission may surmise the answer of what areas are "at the ILEC premises" from the literal meaning of the phrase, as well as from the FCC's distinct usage of the phrase in its Rules and Orders. First, Rhythms demonstrated in a simple analogy on redirect that areas *at the ILEC premises* are not necessarily limited to those areas *in* or *on* the ILEC premises, because sitting "at" at table does not necessarily mean sitting "in" or "on" the table. (Williams, Tr. 800, 821-822). Simply put, it is possible to be, or to place equipment, *at* a location without being, or placing equipment, *in* or *on* the location.

Second, by using both phrases distinctly, the FCC recognizes the differential effect of using "*at the ILEC premises*" when defining the ILECs' obligation to collocate. Although the ILECs continually substitute words like "within," "on," and "in" for the term "at" in the phrase "at the ILEC

premises," nowhere in the FCC's Rules or Orders are the phrases used interchangeably. The FCC mentions physical collocation *in* the ILEC premises solely in the context of space exhaustion "*in* a particular incumbent LEC premises." (*Advanced Services Order* ¶44; *see also*, 47 C.F.R. Part 51.323(k)(3)). The FCC, in its statutory interpretations, expressly chose not to limit physical collocation to *inside* the ILEC central offices or *on* the ILEC property; instead, the FCC requires physical collocation "at the premises." Therefore, the ILECs cannot restrict collocation to arrangements in or on their premises, but must allow competitors to collocate anywhere at the ILEC premises.

#### ISSUE 4

#### WHAT OBLIGATIONS, IF ANY, DOES AN ILEC HAVE TO INTERCONNECT WITH ALEC PHYSICAL COLLOCATION EQUIPMENT LOCATED "OFF-PREMISES?"

**Competitive Carriers' Position:** \*When space is exhausted in an ILEC central office or remote terminal, the ILEC is required under the "best practices" rule to interconnect with ALEC equipment on property adjacent to those premises. If requested, such interconnection must use the same copper facilities that would be permitted inside the ILEC premises.\*

First, as discussed in detail in Issue 3, the Act, the FCC's Rules, and FCC's Orders require ILECs to provide physical collocation *at the ILEC premises*. This permits collocation arrangements located *near* the ILEC premises, including adjacent collocation arrangements which the ILECs refer to as "off-premises."<sup>4</sup>

Second, the FCC requires ILECs to provide adjacent collocation to competitors. (47 C.F.R. §51.323(k)(3)). Specifically, in Paragraph 44 of the *Advanced Services Order*, the FCC mandated

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<sup>4</sup> The term "off-premises" inaccurately suggests that these arrangements fall outside the area where the ILECs are obligated to provide collocation; however, "off-premises" is merely an off-site collocation arrangement and will be referred to as such.

adjacent collocation arrangements under the following circumstances:

[I]ncumbent LECs, when space is legitimately exhausted in a particular LEC premises, [must] permit collocation in adjacent controlled environmental vaults or similar structures *to the extent technically feasible*. Such a requirement is . . . the best means suggested by commenters, both incumbents and new entrants, of addressing the issue of space exhaustion by *ensuring that competitive carriers can compete with the incumbent, even when there is no space inside the LEC's premises*.

(Emphasis added). All ILECs have the indisputable obligation to interconnect with ALEC equipment located at the ILEC premises if the arrangement is technically feasible and meets safety and maintenance requirements.

The *Advanced Services Order* also established a clear standard for determining the technical feasibility of a physical collocation arrangement. "A collocation method used by one incumbent LEC or mandated by a state commission is presumptively technically feasible for any other incumbent LEC." (*Advanced Services Order*, ¶8). The FCC found that such a "best practices" approach would promote competition. (*Id.* ¶45). This best practices requirement was codified in Rule §51.321(e), which confirms that "a previously successful method of obtaining interconnection or access to unbundled network elements at a particular premises or point on any incumbent LEC's network is substantial evidence that such a method is technically feasible in the case of substantially similar network premises or points." Once that rebuttable presumption is established, the Florida ILECs can overcome it *only* by demonstrating to the Commission that the arrangement is technically infeasible for their networks in Florida.

The record demonstrates that ILECs in several states offer off-site adjacent collocation arrangements where the ALECs' equipment resides in a third-party building at the ILEC premises. Rhythms currently has adjacent collocation arrangements located in third-party off-site structures adjacent to GTE's premises in California and North Carolina. (Williams, Tr. 793, 767). Moreover,

the Texas Commission has mandated that Southwestern Bell Telephone Company (SWBT) permit such "off-site" adjacent collocation within roughly a city block of its central office when space is legitimately exhausted within that office. (*Investigation of SWBT's Entry into the Texas InterLATA Telecommunications Market*, Project No. 16251, Order No. 52, Section 6.1.1; Martinez, Tr. 697-698, 722, 732). The Pennsylvania Commission also ordered Bell Atlantic to provide off-site adjacent arrangements. (*Joint Petition of Nextlink Pennsylvania, Inc., et al*, Docket Nos. P-00991648 et al, Opinion and Order (PA PUC Order) at 95). The fact that ILECs, whether voluntarily or in compliance with state regulations, are permitting off-site adjacent collocation in other states creates the rebuttable presumption that such arrangements are technically feasible. The ILECs have not rebutted that presumption in this case by presenting any evidence of Florida-specific circumstances that would make it technically infeasible to offer such collocation arrangements in Florida.

Third, additional collocation requirements beyond those minimum requirements established in the *Advanced Services Order* would also be appropriate under Section 706(a) of the Act to encourage the deployment of advanced services. In this regard, Section 706 of the Act states that each state commission "shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans...." Although the FCC has attempted to further local competition by taking an intentionally broad approach to defining the ILECs' collocation obligations, the FCC's standards and rules merely serve as minimum requirements, leaving the state commissions the task of imposing additional requirements to further implementation. (*Advanced Services Order*, ¶23).

Specifically, the FCC found that "[s]tate commissions play a crucial role in furthering the

goals of our collocation rules by enacting rules of their own that, in conjunction with federal rules, ensure that collocation is available in a timely manner on reasonable terms and conditions. (*Id.*) Even if the Commission were to conclude for some reason that Florida's ILECs are not required to provide off-site adjacent collocation under either the plain language of the FCC's Rules or the best practices standard, the Commission should still impose an off-site adjacent collocation requirement to maximize competition, particularly competition in the provision of advanced services.

Of equal importance to the basic requirement to permit adjacent off-site collocation are guidelines and standards governing the provisioning of the collocation. Instead of directly denying off-site adjacent collocation arrangements, BellSouth has inadvertently prohibited competitors from collocating from off-site adjacent collocation arrangements merely by requiring that all entrance facilities into their central offices be fiber facilities. As Mr. Williams testified, DSL providers require end-to-end copper connectivity between their customer premises and their collocated DSLAM equipment. (Williams, Tr. 795). Assuming that off-site adjacent collocation is mandated, BellSouth's practice of requiring that all entrance facilities into their central office be fiber facilities would effectively preclude competitive DSL providers from utilizing such collocation arrangements by denying them the necessary copper connectivity. By enforcing such a fiber facility requirement, BellSouth would violate FCC Rule §51.323(k)(3), which explicitly requires that:

*Adjacent space collocation* .... The incumbent must provide power and physical collocation services and facilities, subject to the same nondiscrimination requirements as applicable to any other physical collocation arrangement. The incumbent LEC must permit the requesting carrier to place its own equipment, including, but not limited to, copper cables, coaxial cables, fiber cables, and telecommunications equipment, in adjacent facilities constructed by either the incumbent LEC or by the requesting carrier itself.

Thus, adjacent collocation must offer the same type of interconnection facilities (*e.g.*, copper)

as are available within a central office. Although BellSouth claims that permitting copper interconnection would exhaust the capacity of the entrances too quickly (Milner, Tr. 211-212), the record demonstrates that any impact is marginal at most. (Williams Tr. 815-816). This is particularly true since ILECs are required to permit adjacent collocation only in the infrequent circumstances in which space for physical collocation is legitimately exhausted within the central office.

BellSouth should not be permitted to confuse this issue by referring to early FCC orders that allow ILECs to prohibit competitors from using copper entrance facilities into central offices, unless it is in the public interest to do so. (Milner, Tr. 212-213). First, these orders pre-date the Act and, in fact, refer only to virtual collocation, not physical, collocation. Second, in Paragraph 612 of its *Order Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd. 15, 499, 15809 (1996) (*Local Competition Order*), the FCC expressly recognized that "section 251 is broader than our *Expanded Interconnection* requirements." Finally, Congress' inclusion of Section 706 in the Act clearly evidences a national policy that deployment of advanced services is in the public interest. Taken together, these factors show that it clearly is in the public interest for copper interconnection facilities to be permitted in the circumstances at issue in this case, *i.e.*, when space for required physical collocation is legitimately exhausted within the four corners of a central office or remote terminal at an ILEC premises.

## ISSUE 5

### **WHAT TERMS AND CONDITIONS SHOULD APPLY TO CONVERTING VIRTUAL COLLOCATION TO PHYSICAL COLLOCATION?**

**Competitive Carriers' Position:** \*An ILEC should complete the conversion of virtual collocation to cageless physical collocation within 10 calendar days of receipt



of written request. Conversion of virtual collocation to cageless collocation should not require the relocation of an ALEC's equipment even if the equipment is in the same line-up as ILEC equipment.\*

As discussed in Issue 4, "[a] collocation method used by one incumbent LEC or mandated by a state commission is presumptively technically feasible for any other incumbent LEC." (*Advanced Services Order*, ¶ 8). On August 31, 1999, the New York Public Service Commission required Bell Atlantic to convert virtual collocation to cageless collocation *without relocating the ALEC's equipment, even if the ALEC's equipment is located in the same line-up as the ILEC's equipment.* (*Order Directing Tariff Revisions* at 7, Case Nos. 99-C-0715 & 95-C-0657, Before the Public Service Commission, State of New York (Aug. 31, 1999) (NY PSC Order). In particular, the Order stated:

If these virtual collocation racks are interspersed among BA-NY racks and there are security concerns, additional security measures such as cameras, monitors or badges associated with monitoring equipment may be used. *Spending time and effort to move a virtual arrangement from one area of a central office to another would be an unnecessary and time-consuming burden.*

(NY PSC Order at 7) (emphasis added). Thus, under the *Advanced Services Order*, the NY PSC "No Relocation" policy is presumptively technically feasible.

The ILECs have not introduced evidence or testimony sufficient to rebut this presumption of technical feasibility. Indeed, the only argument offered by the ILECs against the "no relocation" policy is the claim that such a policy would limit an ILEC's opportunity to construct a cage around its own equipment as contemplated by the *Advanced Services Order*. (Hendrix. Tr. 27; Reis, Tr. 411).

This argument is unpersuasive. First, the *Advanced Services Order* requires ILECs to "give competitors the option of collocating equipment in any unused space within the incumbent's

premises, to the extent technically feasible, and may not require competitors to collocate in a room or isolated space separate from the incumbent's own equipment." (*Advanced Services Order*, ¶ 42). Although the *Advanced Services Order*, allows an ILEC to impose reasonable security measures, one of which *may* be the enclosure of an ILEC's equipment in its own cage, the FCC did not provide ILECs with an absolute right to use cage enclosures. By affirmatively stating that an "incumbent ILEC *may not* use unreasonable segregation requirements to impose unnecessary additional costs on competitors," (*Advanced Services Order*, ¶ 42), the FCC limited an ILEC's use of cage enclosures to those situations in which such the security measure does not impose additional costs (*e.g.*, the cost of relocating equipment) on competitors. Indeed, the NY PSC recently rejected the ILECs' alleged need for caged enclosures, finding that the ILEC's security concerns may be addressed through the use of less costly measures, such as security badges or cameras. (NY PSC Order at 7).

Accordingly, this Commission should not require ALECs to relocate their equipment when converting virtual collocation arrangements to cageless collocation arrangements because (1) BellSouth and GTE have not rebutted the presumption of technical feasibility of the "no relocation" policy adopted by the New York Commission, and (2) the *Advanced Services Order* does not allow an ILEC to enclose its equipment in a cage when other, less costly security measures are available.

Virtual collocation, like cageless collocation, is the placement of an ALEC's equipment in an unenclosed space within the ILEC's central office. In a virtual collocation arrangement, the ILEC leases the equipment from the ALEC and assumes responsibility for maintenance and repair of the equipment for a fee. (Hendrix, Tr. 28). Cageless collocation requires the same amount of space as virtual collocation, but allows an ALEC to maintain its own equipment and avoid unnecessary fees charged by the ILEC.

If an ILEC has provisioned virtual collocation for an ALEC, the ILEC has completed the primary tasks required to provision cageless collocation—*i. e.*, locating available space, determining the location and arrangement of the ALEC’s equipment, installing the ALEC’s equipment, provisioning necessary power feeds, and provisioning necessary heating, ventilation, and air conditioning (HVAC). (Moscaritolo, Tr. 842). Converting virtual collocation to cageless collocation, therefore, merely requires an ILEC to allow the ALEC to have access to its equipment for maintenance and repair, (Moscaritolo, Tr. 839), and to make minor administrative changes, billing changes, and engineering record updates. (Closz, Tr. 608).

BellSouth and GTE contend that a request for conversion of virtual collocation to all types of physical collocation should be governed by the provisioning intervals applicable to new requests for physical collocation. This position, however, fails to distinguish between conversions to cageless collocation and conversions to caged collocation. For example, BellSouth witness Hendrix contends that tasks such as evaluating availability of space, provisioning of HVAC and power, and installation of equipment justifies an ILEC’s inflated intervals for conversion of virtual to cageless collocation. (Hendrix, Tr. 28; *see also*, Reis, Tr. 410). Although the relocation of equipment associated with the conversion of virtual collocation to *caged* physical collocation may require some of these tasks, the conversion of virtual collocation to *cageless* physical collocation does *not* require such work because the relocation of equipment is not required. Considering the limited work required, an ILEC should perform conversions from virtual collocation to cageless collocation within 10 calendar days.

BellSouth and GTE contend that an ALEC’s request to convert virtual collocation to cageless collocation should be subject to the ILEC’s standard application fees, which are often in excess of

\$5,000. The adoption of such a policy, however, would provide ILECs with an unjust windfall and would deter competitive entry by ALECs. ILECs charge application fees to compensate them for the engineering work required to provision new collocation space. As shown above, the conversion of virtual collocation to cageless collocation does not require the engineering work necessary to provision new collocation space because the ILEC already has resolved issues regarding space availability, location of equipment, availability of HVAC, and availability of power when processing the ALEC's first application for virtual collocation. The only work required by an ILEC is the making of minor administrative changes, billing changes, and update to engineering records. Thus, allowing an ILEC to charge an additional application fee for requests to convert virtual collocation to cageless collocation would allow the ILEC to double-recover the costs associated with such work. (NY PSC Order at 7, rejecting Bell Atlantic's attempt to impose standard application fees and limiting conversion fees to "any reasonable costs associated with the changeover").

Under FCC Rules, the obligations imposed by the *Advanced Services Order* became effective on June 1, 1999. Under the *Advanced Services Order*, an ILEC has the obligation "to make [cageless collocation arrangements] as soon as possible, without waiting until a competing carrier requests a particular arrangement, so that competitors will have a variety of collocation options from which to choose." (*Advanced Services Order*, ¶ 40). Virtual collocation and cageless collocation require the same amount of space. By failing to make cageless collocation available by June 1, 1999, BellSouth and GTE forced ALECs to request virtual collocation in those central offices without sufficient space to accommodate caged collocation. An ALEC should not be penalized through additional application and engineering fees merely because an ILEC failed to honor its obligations under FCC regulations. Accordingly, if an ILEC did not make cageless collocation

available by June 1, 1999, the costs of converting all virtual collocation arrangements provisioned after June 1, 1999 should be borne solely by the ILEC.

In sum, Competitive Carriers recommend the following terms for conversions of virtual collocation space to cageless collocation space:

- An ILEC should complete the conversion of virtual collocation to cageless physical collocation within 10 calendar days of receipt of a written request.
- Conversion of virtual collocation to cageless collocation should not require the relocation of an ALEC's equipment even if the equipment is in the same line-up as ILEC equipment.
- An ALEC should be able to obtain timely conversion of virtual collocation space to cageless collocation space merely by submitting a written request to the ILEC.
- Conversions requests should not be subject to the ILEC's standard collocation application fee.
- If an ILEC was forced to request a virtual collocation arrangement after June 1, 1999 because an ILEC did not make cageless collocation available by that date, then any cost of the conversion should be borne solely by the ILEC.
- Because a converted cageless collocation arrangement uses existing central office space, a request for conversion of virtual collocation to physical cageless collocation should have priority over new requests for physical collocation.

## ISSUE 6

### **WHAT ARE THE APPROPRIATE RESPONSE AND IMPLEMENTATION INTERVALS FOR ALEC REQUESTS FOR CHANGES TO EXISTING COLLOCATION SPACE?**

**Competitive Carriers' Position:** \*If the requested change does not exceed the ALEC's initial space and power estimates, there should simply be a notification process so the ILEC is aware of what equipment has been installed. Changes exceeding initial requirements should be based on best practices.\*

Any change which an ALEC makes within its *own* collocation space should not require implementation intervals, additional applications or additional application fees. (Martinez, Tr. 699).

This is the ALEC's space and it is not imposing any additional costs on the ILEC through changes

it makes. So long as changes to the ALEC's space do not exceed the ALEC's initial forecast of space and power requirements, there should be no obligation to seek the ILEC's permission for changes or to pay additional fees. At most, the ALEC should provide the ILEC with an informational notice so that it can update its records as to the types of equipment actually installed by the ALEC. (Martinez, Tr. 700).

In situations where the space must be physically modified, best practices should apply. See for example, *Investigation of Southwestern Bell Telephone Company's Entry into the Texas IntraLata Telecommunications Market*, Order 52, page 22, for guidelines as to specific augments. (See also, Ex.10, Interrogatory No. 3).

#### ISSUE 7

##### **WHAT ARE THE RESPONSIBILITIES OF THE ILEC AND COLLOCATORS WHEN:**

- A. A COLLOCATOR SHARES SPACE WITH, OR SUBLEASES SPACE TO, ANOTHER COLLOCATOR;**
- B. A COLLOCATOR CROSS-CONNECTS WITH ANOTHER COLLOCATOR?**

**Competitive Carriers' Position:**\*An ILEC may not increase the preparation costs for shared space above that for a single cage and the ILEC must prorate preparation charges. Shared collocation should occur on terms and conditions that are not inconsistent with the *Advanced Services Order*.\*

The FCC's *Advanced Services Order* requires "incumbent LECs to make shared collocation cages available to new entrants. (*Advanced Services Order*, ¶ 41). The FCC defines a "shared collocation cage" as "a caged collocation space shared by two or more competitive LECs pursuant to terms and conditions agreed to by the competitive LECs." (*Id.*; see also, 47 C.F.R. § 51.323(k)). In providing shared collocation space, an ILEC may not increase the cost of site preparation or nonrecurring charges above the cost for provisioning a similar cage to a single collocating party. (47 C.F.R. § 51.323(k)). In addition, an ILEC must prorate the charges for site conditioning and

preparation based on the percentage of total space used by a collocating carrier, may not place unreasonable restrictions on the use of a collocation cage, and must permit each ALEC to order unbundled network elements and to provision service from shared collocation space. (*Id.*).

The *Advanced Services Order* does not specifically address the details of how shared collocation must be provisioned. Thus, it remains incumbent on the Commission to adopt practices consistent with the general principles set forth in the *Advanced Services Order*, (*i.e.*, to *strengthen* collocation requirements and to *reduce costs and delays* faced by ALECs in collocating). (*Id.* at ¶¶ 6, 18). In particular, the Commission should prohibit ILECs from dictating the terms and conditions under which ALECs may enter into shared collocation arrangements, as proposed by both BellSouth and GTE. Such a requirement serves no purpose other than to make it more difficult and more costly for ALECs to enter into shared collocation arrangements.

It is reasonable for the Commission to require that the initial collocator enter into a shared collocation agreement with subsequent collocators and to require that the shared collocation agreement include terms and conditions that are not inconsistent with the *Advanced Services Order* or the security and safety provisions of the underlying collocation agreement between the initial collocator and the ILEC. It also is appropriate, as a matter of courtesy, to require that the initial collocator notify the ILEC of shared collocation arrangements. However, it is not reasonable to require ALECs to file their shared collocation agreements with the ILECs. Nor is it reasonable to allow the ILEC to dictate the terms and conditions of the shared collocation agreement by requiring that it include all the terms and conditions of the collocation agreement between the ILEC and the initial collocator. Such burdens hinder the ability of ALECs to collocate and thus violate the principles of the *Advanced Services Order*.

FCC Rule 51.323(h) addresses the issue of cross connection between two collocators. Specifically, ILECs shall permit a collocating telecommunications carrier to interconnect its network to the networks of other collocating carriers, when the telecommunications carrier does not request

ILEC construction of such facilities. Additionally, the ILEC must do the construction upon request. The ILEC also must provide shared cable racking, cable routing, and other engineering services as part of its underlying collocation obligations. To the extent that the ILEC does not actually provide any of the ALEC-to-ALEC interconnection, the interconnecting ALECs should not be required to pay any fees, including any additional application fees, or await the approval of the ILEC before performing the work. Since the ILEC performs no work in such circumstances, it clearly would be improper to allow the ILEC to charge fees for such activity or to control in any way the conduct of such activity. To do so would only hinder the ability of the ALECs to collocate and would needlessly raise their costs, in violation of the principles of the *Advanced Services Order*. However, as a matter of courtesy, it would be appropriate to require ALECs to inform the ILEC upon completion of any ALEC-to-ALEC interconnection arrangements.

## ISSUE 8

### WHAT IS THE APPROPRIATE PROVISIONING INTERVAL FOR CAGELESS PHYSICAL COLLOCATION?

**Competitive Carriers' Position:**\* When space and power are readily available, an ILEC should provision cageless collocation space within 45 calendar days of receiving a request. When space and power are not readily available, an ILEC should provision cageless collocation space within 60 calendar days of receiving a request.\*

As discussed earlier, “[a] collocation method used by one incumbent LEC or mandated by a state commission is presumptively technically feasible for any other incumbent LEC.” (*Advanced Services Order*, ¶ 8). Under its interconnection agreement with Covad, US West provisions cageless collocation space within 45 days of receipt of Covad’s deposit when space and power is available. (Ex. 21). Under the contract, therefore, Covad receives most cageless collocation space within 45 calendar days.

BellSouth’s and GTE’s arguments that cageless collocation intervals should be no shorter than caged collocation intervals are limited to the claim that the construction of a cage is not the



limiting factor in provisioning caged collocation space. (Hendrix, Tr. 32-33; Reis, Tr. 417-418). These contentions fail.

First, the claim that the construction of a cage does not add to the provisioning interval for caged collocation is not credible. By removing cage construction from the provisioning process, an ILEC is not required: (1) to locate ALEC collocation space separate from its own equipment line-ups (and importantly, this means the space can be prepared ahead of time); (2) to design a cage and its support structure; (3) to procure cage materials; (4) to install cage support structures; (5) to construct an entrance to the cage; (6) to erect the cage itself; or (7) to perform the extra labor of running appropriate cabling through the cage. (Moscaritolo, Tr. 849). Eliminating these tasks greatly reduces the provisioning interval for cageless collocation. Both US West and SWBT-TX offer shorter provisioning intervals for cageless collocation than for caged collocation. (Moscaritolo, Tr. 850).

Second, the arguments of BellSouth and GTE incorrectly assume that their proposed intervals for caged collocation are reasonable. Neither BellSouth nor GTE submitted evidence demonstrating that such standard collocation intervals are reasonable. Indeed, the evidence in the record suggests the opposite: BellSouth and GTE provision collocation space to Covad in median intervals of 253 days and 184 days, respectively. (Moscaritolo, Tr. 849; Ex. 23). Because the ILECs use outside contractors (for which they are adequately compensated through ALEC collocation fees), the only reason for such delays is the ILECs' refusal to hire the contract labor required. (Hendrix, Tr. 118-119). Thus, this Commission should not assume that the ILECs' proposed benchmark of physical collocation intervals is reasonable.

Accordingly, under the *Advanced Services Order*, this Commission should require ILECs to provision cageless collocation space within 45 calendar days when space and power are available and within 60 calendar days when space and power are not available.

Presently, BellSouth and GTE require ALECs to endure a "price estimate" interval, in

addition to application and provisioning intervals, to allow the ILEC to prepare a price estimate for the requested collocation space. For example, BellSouth requires, at a minimum, over 42 calendar days to provide an estimate in response to an ALEC's application. (Ex. 11). These price estimates, however, are often meaningless because they are subject to true-up to actual costs after provisioning is complete. (Hendrix, Tr. 24; Moscaritolo, Tr. 847). Thus, the interval required to prepare such estimates only serves to delay the provisioning of ALECs' collocation space.

This unnecessary delay will be eliminated, however, by requiring ILECs to file a standardized collocation offering with standard pricing. By ordering collocation from an appropriately detailed offering, an ALEC could reasonably estimate the price of various collocation arrangements without waiting for a cost estimate from the ILEC. When an ILEC desired collocation space in a central office, it would submit its application with a deposit of 50% of the standardized price. The ILEC would begin provisioning the space immediately upon receipt of the application.

In the interim, until standardized collocation offerings are in place, the Commission could require ILECs to implement this procedure in the absence of a Commission-approved offering. The parties would agree upon a flat rate to be charged initially for standard cageless collocation arrangements in two-, four-, and six-bay increments. Again, the ILEC would begin provisioning the requested space upon receipt of the ALEC's deposit. During the ILEC's preparation of the collocation space, the ILEC also would gather its cost information. Upon delivery of the collocation space, the parties would "true-up" (up or down) the price of the collocation space according to actual costs prior to standardized offerings. This Commission should adopt the flat-rate ordering procedure described above in the interim to eliminate unnecessary provisioning delays associated with the ILEC's preparation of non-binding "price estimates."

## ISSUE 9

**WHAT IS THE APPROPRIATE DEMARCATION POINT BETWEEN ILEC AND ALEC FACILITIES WHEN THE ALEC'S EQUIPMENT IS CONNECTED DIRECTLY TO THE ILEC'S NETWORK WITHOUT AN**

## INTERMEDIATE POINT OF INTERCONNECTION?

**Competitive Carriers' Position:**\*The ALEC, not the ILEC, has the right to designate the demarcation point. Technically feasible demarcation points include, but are not limited to, the ALEC's collocation space and an intermediate frame, such as POT bays. An ILEC, however, cannot require interconnection at an intermediate frame unless requested by the ALEC.\*

Despite the clear mandate by the FCC to permit ALECs to determine the point of interconnection with the ILECs' network, the Florida ILECs have perpetually defined the point of interconnect with the use of an intermediate frame. First, an ILEC cannot require an ALEC to construct or designate an intermediate distribution frame as the point of demarcation between the facilities of the two parties. Second, the ALEC has the right to designate the point of interconnection, subject only to considerations of technical feasibility.

The FCC has long recognized that competitors have more incentive to make economically efficient decisions about where to interconnect." (*See, Local Competition Order*, ¶209). Specifically, the FCC reasoned that "because competing carriers must usually compensate incumbent ILECs for the additional costs incurred by providing interconnection, competitors have an incentive to make economically efficient decisions about where to interconnect. (*Id.*). The FCC went on to conclude in Paragraph 549 of that Order that any requesting carrier may choose any technical feasible method of interconnection or access to unbundled networks elements at a particular point. (Martinez, Tr. 716). This requirement for the ILEC to permit access to unbundled network elements at any technically feasible point was codified in Section 51.307(a) of the FCC Rules. Even before the ILECs were prohibited from requiring ALECs to use POT Bays, the FCC concluded that the competitors have the right to determine the placement of that POT Bay, and thus the point of interconnection. (*Local Exchange Carriers' Rates, Terms and Conditions for Expanded Interconnection Through Physical Collocation for Special Access and Switched Transport*, CC Docket No. 93-162, Second Report and Order, FCC 97-208, 12 FCC Rcd. 18730, 18799-18783)

rel. June 13, 1997 ¶¶104-113).

In the *Advanced Services Order*, ¶42, the FCC took the next step and prohibited ILECs from forcing competitors to use intermediate interconnection arrangements (such as POT Bays) in lieu of direct connection to the incumbent's network if technically feasible. This requirement was based on the FCC's conclusion that "such intermediate points of interconnection simply increase collocation costs without a concomitant benefit to customers." (*Id.*).

In their testimony in this case, both BellSouth and GTE ignore the FCC's clear mandate that allows ALECs to designate the point of interconnection and prohibits the ILECs from requiring an intermediate point of interconnection. For example, Mr. Milner states that BellSouth "will designate the point[s] of interconnection" and that "the demarcation point shall be a common block on BellSouth's designated conventional distributing frame." (Milner, Tr. 214). GTE similarly states that "[t]he appropriate demarcation point is the ALEC-provided block that connects to the main distribution frame (MDF) or a digital signal cross connect (DSX) panel." (Reis, Tr. 418). Consistent with their testimony, both BellSouth and GTE are currently requiring competitors to interconnect with their networks in Florida at intermediate interconnection arrangements in blatant violation of federal law.

As stated above, the only limitation the FCC places on an ALEC's ability to designate the point of interconnection is that the point be technically feasible.<sup>5</sup> However, both BellSouth and GTE admit that interconnection at other points, including the ALEC's own collocation space, are technically feasible options. For example, Mr. Milner testified on rebuttal, and confirmed on cross-examination, that the ALEC collocation site is one of several appropriate demarcation points.

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<sup>5</sup> The limitations notably absent in the FCC mandate are also the *only* justifications provided by ILECs for denying the ALECs' designation of the interconnection point -- the security and reliability of the network. Moreover, the competitors themselves have wagered their own economic viability on the security and reliability of the network creating a significant disincentive against intentionally jeopardizing the network.

(Milner, Tr. 253, 293-294; *see also*, Reis, Tr. 449-450, 483-482). Similarly, Sprint acknowledges that the ALEC's collocation site is an appropriate point of demarcation and that the ALEC should have the option to use or not use a POT Bay, either inside or outside the ALEC's collocation space. (Closz, Tr. 614).

No ILEC should be allowed to hinder market entry by requiring competitors to incur additional and unnecessary costs of interconnecting with the ILEC network at inefficient and cost-prohibitive points. The Commission should determine that it is technically feasible for ALECs to interconnect with the ILEC network at points other than the ILEC-provided intermediate interconnection arrangements and should expressly forbid BellSouth and GTE from forcing ALECs to use such intermediate arrangements. The Commission should establish collocation guidelines that expressly permit ALECs to define their own points of demarcation. Any other result would only serve to drive up the cost of competition with no concomitant benefit to consumers.

#### **ISSUE 10**

##### **WHAT ARE THE REASONABLE PARAMETERS FOR RESERVING SPACE FOR FUTURE LEC AND ALEC USE?**

**Competitive Carriers' Position:**\*The Commission should limit ILEC reservation of space to one year. Where space is nearing exhaust, the ALECs and ILECs should be required to release space to carriers with an immediate need.\*

All parties appear to agree that ILECs must provide parity to ALECs regarding the amount of time for which space may be reserved for future use in accordance with FCC Rule 51.323(f)(4). Each ILEC should be limited to one year for its space reservations in its own central offices. At the point that space is nearing exhaust, ILECs and ALECs should be required to relinquish space to carriers with an immediate need. Because of their unique position, ILECs should give up their space before reclaiming ALEC space. BellSouth's Mr. Milner agrees that in a situation where there is not sufficient space and BellSouth is not using its reserved space, it should relinquish it. (Milner, Tr. 308).

Collocation is essential to the propagation of facilities-based competition. The purpose of reserving space is to provide for the opportunity for a local provider to have space available to meet its forecasted growth. (Hunsucker, Tr. 553). Given the nascency of local competition, it is difficult to project growth/demand beyond a twelve-month period. (Hunsucker, Tr. 553). The longer the planning period, the more unreliable forecasts become. (Hunsucker, Tr. 553). The forecasts needed to support the longer reservation periods sought by other parties, such as BellSouth's request for two years (Milner, Tr. 216), increase the likelihood that the forecasts will not match actual space needs. Moreover, BellSouth's relatively short forecasting period of 12-18 months (Milner, Tr. 216) more appropriately supports a one-year space reservation limit than a two-year limit. In addition, a one-year time limit better limits the possibility of the warehousing of space. (Hunsucker, Tr. 554).

To further limit the possibility of warehousing of space, when space is nearing exhaust, ILECs and ALECs should be required to release space to carriers with an immediate need. (Milner, Tr. 216). As was noted by FCCA's witness Gillan, any current use for space should be given priority over future use. (Gillan, Tr. 1029-30). Moreover, since the ILEC is in the unique position of having the most complete knowledge of total demand for collocation space in its central offices as well as complete control over whether and when to add new space to a central office, (Milner, Tr. 310), ILEC reservations of space should be reclaimed first. It is inappropriate for an ILEC to use its space reservations as a means to deny space to other carriers with immediate needs. (Gillan, Tr. 1029).

ALEC reservations of collocation space should not be encumbered by GTE's proposals regarding business plans, or other such obstructions. GTE's restrictions have the singular effect of increasing ALEC costs without any corresponding benefit. An advance cage construction requirement would effectively preclude cageless collocation in violation of Rule 51.323(k)(2) and is unfair and anticompetitive. (Hunsucker, Tr. 557). Subjective judgments over "adequate" or "funded" business plans do nothing but increase the probability for dispute. The one-year limit is

a far more effective check on ILEC or ALEC behavior. (Hunsucker, Tr. 555). Similarly, charges for reserved space are also inappropriate. There are no incremental costs associated with the reservation of space. (Hunsucker, Tr. 555).

## ISSUE 11

### **CAN GENERIC PARAMETERS BE ESTABLISHED FOR THE USE OF ADMINISTRATIVE SPACE BY AN ILEC, WHEN THE ILEC MAINTAINS THAT THERE IS INSUFFICIENT SPACE FOR PHYSICAL COLLOCATION? IF SO, WHAT ARE THEY?**

**Competitive Carriers' Position:** \*Yes. ILECs should be required to relocate all office administrative personnel before denying physical collocation requests. Administrative personnel should be defined as personnel that are not essential to the function of a particular premise.\*

Every party except BellSouth, GTE and ALLTEL agree that generic parameters can be established for the use of administrative space in an ILEC premises subject to collocation. (Hunsucker, Tr. 527; Mills, Tr. 1180). The unique details of each central office, either individually or collectively, do not in any way affect the imposition of parameters or guidelines for determining appropriate use of administrative space. (Hunsucker, Tr. 558). There should be an overriding guideline that requires ILECs to relocate nonessential personnel in favor of making space available for collocation. (Hunsucker; Tr. 558; Mills, Tr. 1181). Further, the space in ILECs' premises available for use in collocation should be maximized by sizing space used for administrative personnel and activities appropriately to serve the essential personnel. (Hunsucker Tr. 559). Maximization of space available for collocation is consistent with the pro-competitive goals of the Act and is the reason that the FCC amended its collocation rules in its *Advanced Services Order*.

The Commission must reject BellSouth's argument that simple "productive" use of the ILEC's premises for activities not essential to the operation and maintenance of the central office should immunize space from availability for collocation. Allowing an ILEC to maintain nonessential personnel and activities in space otherwise available for collocation creates a barrier

to entry and allows an ILEC to manipulate the available space to suit its own needs. (Mills, Tr. 1181). Collocation is a critically important public policy issue that has tremendous affect on the development of facilities-based competition. (Hunsucker ,Tr. 558-59). Maximization of all space available for collocation in the furtherance of competition is the most appropriate and most productive use of central office space. (Mills, Tr. 1181).

## ISSUE 12

### **WHAT TYPES OF EQUIPMENT ARE THE ILECS OBLIGATED TO ALLOW IN A PHYSICAL COLLOCATION ARRANGEMENT?**

**Competitive Carriers' Position:**\* An ILEC must permit the collocation of any type of equipment that is "used or useful" for interconnection or access to unbundled network elements. This includes, but is not limited to, transmission equipment, optical terminating equipment and multiplexers, DSLAMs, routers, ATMs and remote switching modules.\*

At hearing, there did not appear to be any disagreement among the parties over this issue. BellSouth (Milner, Tr. 224), GTE (Reis, Tr. 419-420) and Sprint (Closz, Tr. 617) quote the FCC's *Advanced Services Order* as do the Competitive Carriers. (Martinez, Tr. 705; Moscaritolo, Tr. 842; Levy, Tr. 913; Nilson, Tr. 958-959; Prehearing Order). The *Advanced Services Order* specifically addresses what types of equipment may be placed in collocation space. The Order states:

Our rules obligate incumbent LECs to "permit the collocation of any type of equipment used for interconnection or access to unbundled network elements." Stated differently, an incumbent LEC may not refuse to permit collocation of any equipment that is "used or useful" for either interconnection or access to unbundled network elements, regardless of other functionalities inherent in such equipment. . . . [I]ncumbent LECs [must] permit competitors to collocate such equipment as DSLAMs, routers, ATM multiplexers, and remote switching modules. Nor may incumbent LECs place any limitations on the ability of competitors to use all the features, functions, and capabilities of collocated equipment, including, but not limited to, switching and routing features and functions. Nor may incumbent LECs place any limitations on the ability of competitors to use all the features, functions, and capabilities of collocated equipment, including, but not limited to, switching and routing features and functions.



(*Advanced Services Order*, ¶ 28, footnotes omitted).

As the FCC recognized, it is important to permit a broad range of equipment to be collocated given the "rapid pace of technological change in the telecommunications marketplace" and the need to eliminate obstacles to competition. (*Advanced Services Order*, ¶ 29). The standard discussed above is codified in FCC rule 51.323(b), which provides that an incumbent LEC must permit the collocation of any type of equipment used or useful for interconnection or access to unbundled network elements. Thus, the Commission should endorse the same position.

### ISSUE 13

**IF SPACE IS AVAILABLE, SHOULD THE ILEC BE REQUIRED TO PROVIDE PRICE QUOTES TO AN ALEC PRIOR TO RECEIVING A FIRM ORDER FOR SPACE IN A CENTRAL OFFICE (CO)?**

- A. IF AN ILEC SHOULD PROVIDE PRICE QUOTES TO AN ALEC PRIOR TO RECEIVING A FIRM ORDER FROM THAT ALEC, WHEN SHOULD THE QUOTE BE PROVIDED?**
- B. IF AN ILEC SHOULD PROVIDE PRICE QUOTES TO AN ALEC PRIOR TO RECEIVING A FIRM ORDER FROM THAT ALEC, SHOULD THE QUOTE PROVIDE DETAILED COSTS?**

**Competitive Carriers' Position:** \*As discussed in Issue 1, ILECs should be required to provide price quotes within 15 calendar days after receipt of a collocation application, prior to receiving a firm order. The price quote should contain detailed cost information sufficient to enable the ALEC to verify the reasonableness of the estimate.\*

As discussed in Issue 1, the Commission should require ILECs to provide a firm price quote no later than 15 calendar days after receipt of an ALEC's collocation application. Such price quotes are necessary for an ALEC to be able to make a business decision on whether to place a firm order that commits it to the collocation space. (Martinez, Tr. 706; Levy, Tr. 914) .

Moreover, the cost estimate must contain enough detail to enable the ALEC to verify the reasonableness of the ILEC's price quote. (Nilson, Tr. 960; Jackson, Tr. 1115-16). The type of response represented by the BellSouth price quote contained in Exhibit 13 is woefully insufficient --

it contains three line items totaling \$315,133 with no detail to support the make-up of the proposed charges. Without supporting detail, experience shows that a cost estimate can contain significant overcharges, or even double charges. (Nilson, Tr. 976-77). Once charges for collocation are standardized and tariffed, the need for detailed price quotes will be reduced or eliminated.

#### ISSUE 14

##### **SHOULD AN ALEC HAVE THE OPTION TO PARTICIPATE IN THE DEVELOPMENT OF THE ILEC'S PRICE QUOTE, AND IF SO, WHAT TIME FRAMES SHOULD APPLY?**

**Competitive Carriers' Position:** \* Yes. The ILEC should permit an ALEC to participate in the development of the ILEC's price quotes. Standard pricing would greatly expedite the price quote process. The Commission should conduct an investigation that will establish standard pricing for collocation.\*

#### ISSUE 15

##### **SHOULD AN ALEC BE PERMITTED TO HIRE AN ILEC CERTIFIED CONTRACTOR TO PERFORM SPACE PREPARATION, RACKING AND CABLING, AND POWER WORK?**

**Competitive Carriers' Position:** \*Yes. An ALEC, at its option, should be allowed to hire an ILEC-certified contractor to perform space preparation, racking and cabling. In no instance, should the ILEC certification process unduly delay collocation.\*

ALECs should have the right to train and obtain certification for other contractors, as well as their employees, to broaden the available workforce. This work force should be able to perform any function (*i.e.*, site preparation, equipment installation, equipment maintenance...) that is required within the collocation space. (Martinez, Tr. 706).

ISSUE 16

**FOR WHAT REASONS, IF ANY, SHOULD THE PROVISIONING INTERVALS BE EXTENDED WITHOUT THE NEED FOR AN AGREEMENT BY THE APPLICANT ALEC OR FILING BY THE ILEC OF A REQUEST FOR AN EXTENSION OF TIME?**

**Competitive Carriers' Position:**\*An ILEC should not be allowed to extend unilaterally provisioning intervals established by this Commission. Such unilateral extension rights would create an incentive for ILECs to prolong the provisioning of collocation space to delay the market entry of their competitors.\*

Only BellSouth contends that this Commission should allow it to unilaterally extend the collocation provisioning intervals without agreement from a requesting ALEC or approval by this Commission. This contention should be rejected. As shown by the testimony of Michael Moscaritolo, when ILECs are allowed to set provisioning intervals with no oversight, they generally deliver collocation space in intervals greater than 6 months or more. (Moscaritolo, Tr. 849).

Moreover, because of the ILEC's unique control over the particular central office space requested by an ALEC, BellSouth's proposal merely would shift the burden of seeking Commission relief from the ILEC to ALEC. For example, if BellSouth has a unilateral right to extend provisioning intervals (for any reason) and an ALEC disagrees with BellSouth's grounds for the extension, the ALEC must file a complaint with the Commission to serve its customers in the areas served by that central office. Because of the busy docket of the Commission, the complaining ALEC may not receive relief for several months, during which the ALEC's customers remain unserved. Thus, because the ILEC controls the collocation space, any delay in resolving disputes favors the ILEC and harms the ALEC.

If an ILEC must seek Commission approval to extend the provisioning deadline when a requesting ALEC does not agree with the ILEC's grounds for extension, the dispute will be

expeditiously resolved under the Commission's waiver procedures. This policy not only correctly places the burden of seeking Commission relief on the party requesting to deviate from Commission rules, it ensures that any disputes regarding the extension will be resolved in a reasonable amount of time. This is exactly what the Commission has provided for in its collocation guidelines. *Order No. PSC-99-1744-PAA-TP* and there is no justification for deviating from it. Further, because both ALECs and ILECs seek to maintain credibility with the Commission, both parties have incentive to resolve an ILEC's request to extend provisioning interval through agreement instead of Commission intervention.

Accordingly, an ILEC should not be allowed to extend the provisioning interval promulgated by this Commission without agreement from the requesting ALEC or approval by this Commission.

#### ISSUE 17

#### **HOW SHOULD THE COSTS OF SECURITY ARRANGEMENTS, SITE PREPARATION, COLLOCATION SPACE REPORTS, AND OTHER COSTS NECESSARY TO THE PROVISIONING OF COLLOCATION SPACE, BE ALLOCATED BETWEEN MULTIPLE CARRIERS?**

**Competitive Carriers' Position:** \*The Commission should conduct a generic cost investigation to establish standard collocation prices for the ILECs. In general, standardized collocation prices should be consistent with TELRIC principles. Further, it should be understood that measures like security protect both collocators and the incumbent and should be priced accordingly.\*

The Competitive Carriers urge this Commission to require each ILEC to file a proposed standard collocation offering and initiate a cost investigation to review those offerings and establish standard collocation prices. Thus, the appropriate treatment of the costs addressed in this issue should be determined through the development of a statewide collocation rate for each ILEC in which all parties participate. (Gillan, Tr. 1031-1032). The current proceeding did not address cost issues in sufficient detail to establish prices or even to adopt a specific methodology.

Any costs of collocation should not be allocated after the fact or on a case-by-case basis. Rather, these costs should be determined in advance in a generic cost proceeding and computed into a tariffed rack-space charge that recognizes that the space will either be used by collocators or by the ILEC itself. (Gillan, Tr. 1032).

Generally, standardized collocation prices should be established in a manner consistent with TELRIC principles. Further, the Commission should recognize that measures like security, which inure to the benefit of both incumbents and collocators, must be fairly allocated because both groups benefit from nondiscriminatory security arrangements. (Gillan, Tr.1032). Of course, if there are any security arrangements designed only to protect the ILEC's equipment, such costs must be borne solely by the ILEC. (Williams, Tr. 764-765).

#### ISSUE 18

#### **IF INSUFFICIENT SPACE IS AVAILABLE TO SATISFY THE COLLOCATION REQUEST, SHOULD THE ILEC BE REQUIRED TO ADVISE THE ALEC AS TO WHAT SPACE IS AVAILABLE?**

**Competitive Carriers' Position:** \*Yes. The ILEC should notify the ALEC of what portion of the requested space is available. If the ALEC accepts the smaller space, there should be no extension of the provisioning intervals or additional application fees. Space verification procedures should apply if any portion of the space request is denied.\*

All the ILECs appear to agree that they should notify the ALEC if only a portion of the requested space is available. (Hendrix, Tr. 41-42; Reis, Tr. 424; Closz, Tr. 624-25). If the smaller space is acceptable, the ALEC should be allowed to amend its request, without paying additional application fees, to take the available space. (Martinez, Tr. 709; Hendrix, Tr. 97). Upon receiving a firm order for the smaller space, the ILEC should provision the space without delay and no additional response interval should apply. (Moscaritolo, Tr. 844; Hendrix, Tr. 114).

The space exhaustion verification procedures of both the FCC and the Commission, including the ALEC's right to a central office tour, should apply when an ILEC denies any portion

of an ALEC's space request. (Moscaritolo, Tr. 844). Without such a requirement, an ILEC would be able to circumvent space exhaustion procedures by denying most, but not all, of an ALEC's request for space. (Moscaritolo, Tr. 844-845). BellSouth and Sprint agree that tours should be permitted in such situations. (Hendrix, Tr. 114-15; Cloz, Tr. 626). GTE opposes tours in such situations on the grounds that such tours are not required by the FCC's Rules and that ALECs should not be allowed to "abuse" their tour rights. (Reis, Tr. 442, 476). It is hard to imagine an opportunity for abuse, however, when tours are granted only in the event of a partial or total denial of space. To the extent the FCC Rules do not clearly impose a tour requirement when a space request is partially denied, the Competitive Carriers urge the Commission to impose such a requirement.

#### ISSUE 19

**IF AN ILEC HAS BEEN GRANTED A WAIVER FROM THE PHYSICAL COLLOCATION REQUIREMENTS FOR A PARTICULAR CO, AND THE ILEC LATER MAKES MODIFICATIONS THAT CREATE SPACE THAT WOULD BE APPROPRIATE FOR COLLOCATION, WHEN SHOULD THE ILEC BE REQUIRED TO INFORM THE COMMISSION AND ANY REQUESTING ALECS OF THE AVAILABILITY OF SPACE IN THAT OFFICE?**

**Competitive Carriers' Position:** \*When collocation space becomes available, the ILEC should advise the Commission and all ALECs who previously requested space in that office by mail and by posting on its Internet site within 10 calendar days of the decision that will result in the availability of space.\*

When an ILEC has been granted a waiver from the physical collocation requirements for a particular central office, and later makes modifications or additions that create space appropriate for collocation, parity requires that the ILEC advise the ALECs who previously requested space in that central office as soon as it knows the approximate date of that such space will become available. (Martinez, Tr. 710). It is reasonable to require the ILEC to advise the ALECs and the Commission by mail and by posting on the ILEC's Internet site no later than 10 calendar days of the decision to reconfigure or add space in the central office. This is consistent with FCC Rule 51.321(h), which

requires that an ILEC must update its Internet site within 10 days of the date at which a premises runs out of available space. (Martinez, Tr. 710-711).

The Commission should reject Mr. Hendrix' suggestion that BellSouth not be required to give more than 60 days' notice of space availability. (Hendrix, Tr. 97-98). Assuming a 30-day interval for an ALEC on the waiting list to indicate its intention to proceed with collocation (*see*, Issue 21), and a 90-day provisioning interval for physical collocation, BellSouth's approach could lead to space sitting idle simply because BellSouth is unwilling to share information it possesses regarding upcoming space availability. That is neither parity nor good public policy.

Once the ILEC has notified the parties of the approximate date that space will become available, it should be required to post updates to that information on its Internet site every 30 days. (*See*, Hunsucker, Tr. 539).

## ISSUE 20

### **WHAT PROCESS, IF ANY, SHOULD BE ESTABLISHED FOR FORECASTING COLLOCATION DEMAND FOR CO ADDITIONS OR EXPANSIONS?**

**Competitive Carriers' Position:** \* ILECs must consider aggregate space demand in planning central office additions. The ILEC is and likely will be the largest "purchaser" of central office space to house its own equipment. The ILEC should augment its demand forecasts with those of ALECs to plan and construct sufficient space to prevent exhaust. \*

Pursuant to the FCC's *First Report and Order*, 96-325, ILECs are "required to take collocator demand into account when renovating existing facilities and constructing or leasing new facilities, just as they consider demand for other services when undertaking such projects. (FCC 96-325 at p.585). All parties appear to agree that ALEC forecasts should be used in conjunction with ILEC forecasts to forecast total demand for collocation space. (Gillan, Tr. 1035-36). The issue is to what extent to an ILEC plans for renovation of facilities to expand space accommodates the forecasted needs of the ALECs. ALECs and ILECs should jointly prepare annual forecasts of space

requirements not already subject to collocation agreement. (Hunsucker, Tr. 540). Based on this, the ILECs should be planning upgrades to its existing facilities to meet to total forecasted total demand for conditioned space. (Gillan, Tr. 1036). Moreover, these forecasts of total demand for both ILEC and ALEC space needs should form the basis of the ILECs' planning for relief at exhaust.

## ISSUE 21

### **APPLYING THE FCC'S "FIRST-COME, FIRST-SERVED" RULE, IF SPACE BECOMES AVAILABLE IN A CENTRAL OFFICE BECAUSE A WAIVER IS DENIED OR A MODIFICATION IS MADE, WHO SHOULD BE GIVEN PRIORITY?**

**Competitive Carriers' Position:** \*The ILEC should keep a prioritized waiting list of all ALECs who have requested space, and should notify all ALECs on the list within 10 calendar days after it knows when space will become available. ALECs should have 30 days to indicate their interest in maintaining their priority.\*

FCC Rule §51.323(f)(1) requires ILECs to make space available within or on its premises to requesting telecommunications carriers on a first-come, first-served basis. Neither the Act nor the rule makes any exception to this "first-come, first-served" requirement. There are three implementation issues the Commission should address: is the ILEC required to maintain a waiting list of ALECs who have applied for space; how should ALECs on the list be notified when space becomes available; and what is required for an ALEC to maintain its priority on the waiting list.

Today, both BellSouth and Sprint maintain a waiting list of all ALECs who request space in a central office in which space is unavailable. When space subsequently becomes available, the ALECs are given priority based on the dates their collocation applications were received. (Hendrix, Tr. 43; Hunsucker, Tr. 541-542). This is the appropriate approach to ensure that each party is treated fairly. (*See*, Nilson, Tr. 969; Martinez, Tr. 711). GTE, however, maintains a waiting list only in California, where the state commission has specifically ordered it to do so. (Reis, Tr. 466-468). The Commission should require GTE to maintain a waiting list in Florida in the same manner as other



Florida ILECs.

As discussed in Issue 19, once the ILEC knows that space will become available in a central office that was previously exhausted, it should be required to notify each ALEC on the waiting list within 10 calendar days. All waiting list ALECs should be notified simultaneously and given a short but reasonable time -- perhaps 30 days -- to assess their current needs and reaffirm their interest in collocation space. Notifying the ALECs concurrently avoids the unnecessary delay that would occur if they were notified one-by-one in the order they appear on the waiting list. An ALEC that reaffirms its interest would keep its place in the queue; an ALEC that fails to reaffirm its interest would move to the bottom of the list.

Finally, the Commission should reject Sprint's proposal to require waiting list ALECs to periodically submit updated expressions of interest to avoid being moved to the bottom of the list. (*See*, Hunsucker, Tr. 543). So long as all ALECs are notified simultaneously, and are required to respond promptly when space does become available, there is no reason to demand interim notifications to the ILEC of continuing interest in the central office.

### CONCLUSION

The ability of ALECs to quickly and efficiently collocate in ILEC central offices is a critical component of achieving of the Act's goal of local competition. Carriers must have certainty in terms and conditions as well as pricing so that they can make reasonable and prompt business decisions. Thus, in resolving the issues in this case, the Commission should look to those solutions which will enhance, not impede local competition, and remove barriers to entry.

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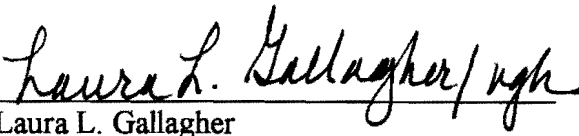
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I HEREBY CERTIFY that a true and correct copy of the foregoing Joint Post-Hearing Statement of Issues and Positions and their Post-Hearing Brief have been furnished by (\*)hand-delivery or by U.S. mail this 14<sup>th</sup> day of February, 2000 to the following parties of record:

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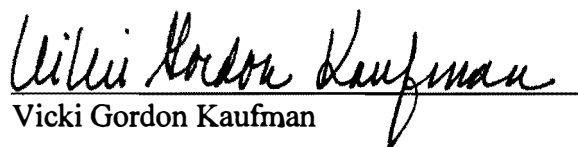
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