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May 26, 2000

Ms. Blanca S. Bayo, Director
Division of Records & Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 981834-TP
Petition of Competitive Carriers for Commission Action to Support Local Competition in BellSouth Telecommunications Inc.'s Service Territory

Docket No. 990321-TP
Petition of ACI Corp. d/b/a Accelerated Connections, Inc. for generic investigation to ensure that BellSouth Telecommunications, Inc., Sprint-Florida, Incorporated, and GTE Florida Incorporated comply with obligation to provide alternative local exchange carriers with flexible, timely, and cost-efficient physical collocation

Dear Ms. Bayo:

Please find enclosed an original and fifteen copies of GTE Florida Incorporated's Petition for Reconsideration for filing in the above matters. Service has been made as indicated on the Certificate of Service. If there are any questions regarding this filing, please contact me at 813-483-2617.

Sincerely,

Kimberly Caswell

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Competitive Carriers for Commission action to support local competition in BellSouth Telecommunications, Inc.'s Service territory	Docket No. 981834-TP
In re: Petition of ACI Corp., d/b/a Accelerated Connections, Inc. for generic investigation to to ensure that BellSouth Telecommunications, Inc., Sprint-Florida, Incorporated, and GTE Florida Incorporated comply with obligation to provide alternative local exchange carriers with flexible, timely,and cost-efficient physical collocation	Docket No. 990321-TP Filed: May 26, 2000

GTE FLORIDA INCORPORATED'S PETITION FOR RECONSIDERATION

GTE Florida Incorporated (GTE) asks the Commission to reconsider certain aspects of its May 11, 2000 Order in this case because it has overlooked or failed to consider some key facts and events. *Diamond Cab Co. of Miami v. King*, 146 So. 2d 889, 891 (1962); *State ex rel. Jaytex Realty Co. v. Green*, 105 So. 2d 817, 818-19 (Fla. 1st DCA 1958). Chief among these is the March 17, 2000 federal court decision overturning certain provisions of the FCC's collocation rules adopted in *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, FCC 99-46 (March 31, 1999) (*Advanced Services Order). GTE Service Corp., et al. v. F.C.C.*, 205 F.3d 416 (D.C. Cir. 2000). Although the Court issued its decision almost two months before the Commission's Order, that Order neglects to even mention the Court's decision, which is directly relevant to the issues in this docket. To the extent that the Commission relied on FCC rules that have been vacated, its decision must be reversed. The Order should be revised in certain other respects, as well, to recognize federal cost

recovery requirements and to conform the space reservation policy to the objective of maintaining central office viability.

I. The ILECs Cannot Be Required to Keep ALEC Equipment in Their Line-Ups When Converting from Virtual to Cageless Physical Collocation .

The Order provides that an ILEC cannot require relocation of ALEC equipment when performing virtual to cageless physical collocation conversions. Order at 30. This ruling is rooted in the Commission's belief that "ILECS cannot require that all physical collocation arrangements be located in a segregated collocation area." *Id.* In fact, they can. The D.C. Circuit Court ruling made clear that ILECs can require segregated collocation areas for physical collocation, including cageless arrangements. The FCC's attempt to prohibit segregated collocation areas in its *Advanced Services Order* was held to violate section 251(c)(6) of the Telecommunications Act of 1996 ("the Act"):

> The FCC offers no good reason to explain why a competitor, as opposed to the LEC, should choose where to establish collocation on the LEC's property...nor is there any reasonable justification for the rule prohibiting LECs from requiring competitors to use separate or isolated rooms or floors. It is one thing to say that LECs are forbidden from imposing unreasonable minimum space requirements on competitors; it is quite another thing, however, to say that competitors, over the objection of LEC property owners, are free to pick and choose preferred space on the LECs' premises, subject only to technical feasibility.

205 F.3d at 426. ILECs with the statutory authority to require separate areas for cageless collocation clearly can decline to locate such arrangements in line-ups housing the ILEC's own equipment. There is no reason to treat a conversion request differently from a request for a new cageless collocation arrangement.

The Commission, however, attempts to justify such a distinction by citing the cost impact and burden that will be imposed on CLECs if equipment relocation is required: "It appears that to require relocation of equipment under these circumstances would be unduly burdensome and costly to the ALEC." (Order at 30.) The same, cost-driven rationale used by the FCC in support of equipment specification provisions in the *Advanced Services Order* was rejected expressly by the D.C. Circuit on the basis of the U.S. Supreme Court ruling in *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999):

> The FCC's Collocation Order seeks to justify this broad rule by contending that "competitive telecommunications providers must be permitted to collocate integrated equipment that lowers costs and increases the services they can offer their customers." It was precisely this kind of rationale, based on presumed cost savings, that the Supreme Court flatly rejected in Iowa Utilities Board.

205 F.3d at 424 (citations omitted).

> [A]s noted by the Court in Iowa Utilities Board, "delay and higher costs for new entrants ... [that may] impede entry by competing local providers and delay competition" cannot be used by the FCC to overcome statutory terms in the Telecommunications Act of 1996.

205 F.3d at 426 (citations omitted).

The Commission's decision prohibiting an ILEC from relocating ALEC equipment in its line-up must thus be revised because it violates the Act. In addition, it is inconsistent with the FCC's ruling that ILECs have a right to cage their own equipment. As Mr. Ries testified, this right cannot be exercised if an ALEC's equipment is in the ILEC's line-up.

The ILECs' existing, statutory entitlement to prohibit intermingling of ALEC equipment with their own does not depend upon the FCC changing its own rules to

conform to the Court's ruling. Moreover, it makes no sense to require ILECs to take actions based on an invalid FCC ruling that will only be altered later. As the Commission itself observes, it does "not have the authority to extend or broaden FCC rules and orders, or to make a contradictory interpretation." Order at 19. Because the Court has made clear that ILECs have a right to segregate ALEC equipment, the FCC will have to revise its rules accordingly. It would be wasteful and inefficient for this Commission to require the ILECs to move forward with virtual-to-cageless conversions in accord with a standard that will change. In practical terms, this would mean that cageless conversions that leave ALEC equipment in the ILEC's line-up will only need to be relocated later, when new FCC rules recognize the ILEC's right to move the equipment to a separate area. This process will entail unnecessary expense, delay, and inevitable disputes about who will pay for such changes. Recognizing the ILEC's right to relocate the ALEC's equipment now will avoid much greater problems later.

II. The ILECs Cannot Be Required to Follow Vacated Provisions Concerning Collocator-to-Collocator Cross Connects.

The Commission's Order requires companies to follow FCC rules on collocator-to-collocator cross connects. Order at 39-40. At least a portion of the FCC rules on collocator-to-collocator cross connects, however, has been vacated by the D.C. Circuit Court Ruling.

In the *First Report and Order* implementing the Telecommunications Act of 1996,[1] the FCC required an ILEC to permit a collocating telecommunications carrier to

[1] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98, 95-185 (Aug. 8, 1996).

interconnect with the network of another collocating telecommunications carrier at the ILEC's premises, provided that the collocated equipment is used for interconnection or access to unbundled network elements. *First Report and Order* ¶¶ 594-95; 47 C.F.R. § 51.323(h). The ILEC was not required to allow cross-connects anywhere outside of the actual physical collocation space. *First Report and Order* ¶ 595; 47 C.F.R. § 51.323(h). The *First Report and Order* gave the ILEC the option of providing the connection or permitting the collocating parties to provide this connection themselves. *First Report and Order* ¶ 595; 47 C.F.R. § 51.323(h).

The *Advanced Services Order* revised the rules from the *First Report and Order* "to require incumbent LECs to permit collocating carriers to construct their own cross-connect facilities between collocated equipment located on the incumbent's premises." *Advanced Services Order* ¶ 33; 47 C.F.R. § 51.323(h). The D.C. Circuit, however, ruled that the "obvious problem" with the FCC's cross-connect requirements was that they had "no apparent basis in the statute":

> One clear example of a problem that is raised by the breadth of the Collocation Order's interpretation of "necessary" is seen in the Commission's rule requiring LECs to allow collocating competitors to interconnect their equipment with other collocating carriers.... Section 251(c)(6) is focused solely on connecting new competitors to LECs' networks. In fact, the Commission does not even attempt to show that cross-connects are in any sense "necessary for interconnection or access to unbundled network elements."

205 F.3d at 423. Accordingly, the Court vacated the FCC's rule requiring collocator-to-collocator cross connects, and its rationale rendered all associated requirements to be of dubious legality.

Yet the Commission's Order would apply these FCC requirements to require collocator-to-collocator cross connects in Florida. In order to be consistent with governing federal law and to avoid a costly and inefficient revisitation of this issue once the FCC issues new collocation rules, the Commission should make clear that ILECs are not obliged to follow the FCC's vacated cross-connect rules.

III. The ILECs Cannot Be Required to Follow Vacated FCC Equipment Specification Requirements.

The Commission has ruled that it "shall require ILECs to allow the types of equipment in a physical collocation arrangement that are consistent with FCC rules and orders." Order at 64. Among the FCC rules quoted by the Commission were:

- "[A]n 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."

- "Nor may incumbent LECs place any limitations on the ability of competitors to use all features, functions, and capabilities of collocated equipment, including, but not limited to, switching and routing features and functions."

Order at 62. The D.C. Circuit Court Ruling vacated these provisions of the *Advanced Services Order* for violating the Act's section 251(c)(6) requirement that equipment be collocated only if it is "necessary for interconnection or access to unbundled network elements." 205 F.3d at 424. Specifically, the FCC's rules appear to require collocation of equipment that may do more than what is necessary to achieve interconnection or access.

For example, the D.C. Circuit raised an example of a competitor's equipment that included multi-purpose features, such as enhancements that might facilitate payroll or

data collection, that have nothing to do with interconnection or access to unbundled elements. *Id.* The FCC's broad rules, on their face, would require such equipment to be collocated, in violation of the Act's "necessary" standard. By mirroring these vacated FCC rules, this Commission's Order would require collocation of equipment that goes beyond what is required under the Act.

In fact, the Order relies on reasoning that the Court explicitly rejected. The Commission explains that the FCC's interpretation of the word "necessary" in section 251(c)(6) "does not mean 'indispensable' but rather 'used or useful'." Order at 61. This accurately describes the FCC's interpretation repudiated by the D.C. Circuit Court. Specifically, the Court interprets "necessary" in section 251(c)(6) as requiring collocation of equipment that is "directly related to and thus necessary, required, or indispensable to" interconnection or access to unbundled network elements. 205 F.3d at 424 (emphasis added).

This is the interpretation that this Commission, as well as the FCC, must use. Under the Act, ILECs cannot be required to permit collocation of equipment beyond that which is "necessary" for interconnection or access to unbundled network elements. To the extent that the Order imposes such requirements, it must be reconsidered.

IV. The Commission's Space Reservation Period Ignores Differing Equipment Requirements.

The Commission has imposed an 18-month period for reserving central office floor space for both ILECs and CLECs. Order at 55. This ruling does not distinguish among the types of equipment that will utilize the floor space. In this regard, GTE

believes the Commission has overlooked or failed to consider the significance of evidence concerning differences in equipment placed in the central office.

As Mr. Ries pointed out in his prefiled testimony and at the hearing, floor space needs to be reserved for a period of time greater than the 18 months for certain equipment that performs functions necessary to maintain the viability of the central office. For example, it is imperative to assure the availability of floor space for equipment necessary for switching, power and main distribution functions. These features are critical to the continued, smooth operation of the public switched network. This should be a foremost consideration for this Commission, as GTE remains the carrier of last resort and its network provides the foundation for its competitors' services. In addition, floor space for these central office functions does not invoke non-discrimination concerns because ALECs are not responsible for equipment necessary to maintain the central office, as are ILECs.

For equipment that is used by both ILECs and ALECS, such as digital cross-connect systems, D4 channel banks, SONET terminals, DWDM equipment, and loop treatment equipment, a shorter reservation period for floor space remains appropriate. Although GTE prefers a two-year reservation policy for this type of equipment, it does not seek reconsideration of the Order's imposition of an 18-month period.

The Commission should reconsider its 18-month space reservation policy for floor space to be used for equipment essential for the continued viability of the central office. In its place, the Commission should allow a four-year reservation period for switching, but decline to specify any reservation policy that would restrict growth of items such as power, main distribution frames, and cable vault areas, which are critical

to maintaining central office infrastructure and operation. This approach, which is within the recommendation made by Mr. Ries, would recognize important equipment differences and the need to maintain the viability of the central office.

V. The Commission Must Provide for Proper Recovery of the ILECs' Site Preparation Costs.

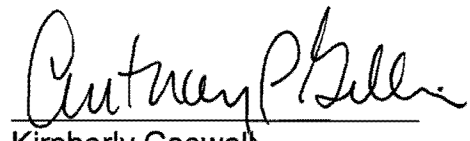
If the ILECs' expenditures in preparing a collocation site will benefit both current and future collocating parties, the Order requires cost allocation based on the amount of floor space occupied by the collocating party, relative to the total collocation space for which site preparation was performed. Order at 86. An analogous measure is to be used when the ILEC, as well as collocating parties, will benefit from the space preparation. Id. at 86 (amount of square feet used by the collocator or ILEC relative to total useable square feet in the central office). Thus, an ILEC may charge the first (and perhaps only) collocating party only a fraction of the site preparation costs of preparing a central office for collocation, such as those incurred to install security equipment, air conditioning or power upgrades. Consequently, the ILEC bears the entire financial risk of the space not being fully occupied immediately and permanently.

The D.C. Circuit Court and the FCC both envisioned that it was the role of state commissions to ensure that the ILEC did not, in fact, end up shouldering this risk. As the Court observed, the FCC has charged states "with the responsibility of 'determin[ing] the proper pricing methodology'." 205 F.3d at 427, *citing Advanced Services Order* ¶ 51. In the FCC's view, this methodology "contemplates mechanisms for the recovery of [a LEC's] prudently incurred costs." 205 F.3d at 427. In fact, the

FCC's Brief before the Court proposes a procedure—presumably to be implemented by state commissions—to amortize unrecovered space preparation costs over five years and recover them from collocating CLECs. (Brief for Respondents at 49-51, dated Oct. 15, 1999.)

This Commission's Order, however, neglects to recognize or address the possible under-recovery of collocation costs incurred by ILECs. The Commission must implement such a mechanism to accompany its plan to allocate site preparation, security and other costs benefiting multiple collocators according to occupied floor space. Otherwise, the Commission will abdicate its responsibility under the *Advanced Services Order* to ensure that the ILEC does not bear the serious financial risk of preparing collocation space that remains unused.

Respectfully subrnitted on May 26, 2000.

By: 

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of GTE Florida Incorporated's Petition for Reconsideration in Docket Nos. 981834-TP and 990321-TP were sent via U. S. mail on May 26, 2000 to the parties on the attached list.

for Kimberly Caswell

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