State of Florida

Public Service Commission

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-M-E-M-O-R-A-N-D-U-M-

DATE: 07/20/00

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF COMPETITIVE SERVICES (HINTON, ILERI, FULWOOD, DOWDS, BARRETT, AUDU, SIMMONS)
DIVISION OF LEGAL SERVICES (B. KEATING)

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.

AGENDA: 08/01/00 - REGULAR AGENDA - MOTIONS FOR RECONSIDERATION - ORAL ARGUMENT REQUESTED

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\981834RC.RCM

CASE BACKGROUND

On December 10, 1998, the Florida Competitive Carriers Association (FCCA), the Telecommunications Resellers Association, Inc. (TRA), AT&T Communications of the Southern States, Inc. (AT&T), MCImetro Access Transmission Services, LLC (MCImetro), Worldcom Technologies, Inc. (Worldcom), the Competitive Telecommunications Association (Comptel), MGC Communications, Inc. (MGC), and Intermedia Communications Inc. (Intermedia) (collectively, "Competitive Carriers") filed their Petition of

Competitive Carriers for Commission Action to Support Local Competition in BellSouth's Service Territory.

At the March 30, 1999, Agenda Conference, the Commission denied BellSouth's December 30, 1999, Motion to Dismiss and subsequently, indicated, among other things, that it would conduct a Section 120.57(1), Florida Statutes, formal administrative hearing to address collocation and access to loop issues as soon as possible following the UNE pricing and OSS operational proceedings. See Order No. PSC-99-0769-FOF-TP, issued April 21, 1999 and Order No. PSC-99-1078-PCO-TP, issued May 26, 1999.

On March 12, 1999, ACI Corp. d/b/a Accelerated Connections Inc., now known as Rhythms Links Inc., (Rhythms) filed a Petition for Generic Investigation into Terms and Conditions of Physical Collocation. On April 6, 1999, GTEFL and BellSouth filed responses to ACI's Petition. On April 7, 1999, Sprint filed its response to the Petition, along with a Motion to Accept Late-Filed Answer.

By Proposed Agency Action Order No. PSC-99-1744-PAA-TP, issued September 7, 1999, the Commission accepted Sprint's late-filed answer, consolidated Dockets Nos. 990321-TP and 981834-TP for purposes of conducting a generic proceeding on collocation issues, and adopted a set of procedures and guidelines for collocation, focused largely on those situations in which an ILEC believes there is no space for physical collocation. The guidelines addressed: A. initial response times to requests for collocation space; B. application fees; C. central office tours; D. petitions for waiver from the collocation requirements; E. post-tour reports; F. disposition of the petitions for waiver; G. extensions of time; and H. collocation provisioning time frames.

On September 28, 1999, BellSouth filed Protest/Request for Clarification of Proposed Agency Action. That same day, Rhythms filed a Motion to Conform Order to Commission Decision or, in the Alternative, Petition on Proposed Agency Action. Commission staff conducted a conference call on October 6, 1999, with all of the parties to discuss the motions filed by BellSouth and Rhythms, and to formulate additional issues for the generic proceeding to address the protested portions of Order No. PSC-99-1744-PAA-TP. By Order No. PSC-99-2393-FOF-TP, issued December 7, 1999, the Commission approved proposed stipulations resulting from that call and identified the portions of the Order that could go into effect by operation of law.

Thereafter, the Commission conducted an administrative hearing to address collocation issues beyond the issues addressed in the

approved collocation guidelines. By Order No. PSC-00-0941-FOF-TP, issued May 11, 2000, the Commission rendered its post-hearing decision on these additional issues. Therein, the Commission addressed the following: 1) ILEC responses to an application for collocation; 2) the applicability of the term "premises"; 3) ILEC obligations regarding "off-premises" collocation; 4) the conversion of virtual to physical collocation; 5) response and implementation intervals for changes to existing space; 6) the division of responsibilities between ILECs and collocators for sharing and subleasing space between collocators and for cross-connects between collocators; 7) the provisioning interval for cageless collocation; 8) the demarcation point between ILEC and ALEC facilities; 9) the parameters for reserving space for future use; 10) whether generic parameters may be established for the use of administrative space; 11) equipment obligations; 12) the timing and detail of price quotes; 13) ALEC participation in price quote development; 14) the use of ILEC-certified contractors by ALECs; 15) the automatic extension of provisioning intervals; 16) allocation of costs between multiple carriers; 17) the provision of information regarding limited space availability; 18) the provision of information regarding post-waiver space availability; 19) forecasting requirements for CO expansions and additions; and 20) the application of the FCC's "first-come, first-served" Rule upon denial of waiver or modifications.

On May 26, 2000, GTEFL filed a Petition for Reconsideration. BellSouth and Sprint also filed separate Motions for Reconsideration and Clarification of the Commission's Order. Sprint included a Request for Oral Argument with its Motion.

On June 7, 2000, Sprint filed its Response to GTEFL's and BellSouth's motions for reconsideration. BellSouth also filed its Response to Sprint's Motion for Reconsideration and/or Clarification. MCI/WorldCom and Rhythms Links also filed timely Responses to all three motions for reconsideration. In addition, that same day FCCA and AT&T filed a joint Response to the Motions for Reconsideration and a Cross-Motion for Reconsideration. On June 14, 2000, BellSouth filed its Response to FCCA and AT&T's Cross-Motion for Reconsideration.

This is staff's recommendation on the motions and cross-motions for reconsideration and requests for clarification of Order No. PSC-00-0941-FOF-TP.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Sprint's Request for Oral Argument?

RECOMMENDATION: No. The pleadings more than adequately address the legal and factual issues presented in Sprint's motion. As such, oral argument would not aid the Commission in rendering its decision. **(B. KEATING)**

STAFF ANALYSIS:

Sprint contends that the complex nature of the issues presented in its Motion for Reconsideration necessitate oral argument. Sprint emphasizes that its Motion addresses matters of both state and federal law, and how these laws should be applied to complicated factual scenarios regarding virtual and physical collocation. Therefore, Sprint contends that oral argument will assist the Commission in rendering its decision.

No responses to the Request for Oral argument were filed.

Staff recommends that there is no need for the Commission to hear oral argument on Sprint's Motion for Reconsideration. Staff believes that the pleadings more than adequately address the legal and factual issues presented in Sprint's motion. As such, oral argument would not aid the Commission in rendering its decision. Therefore, staff recommends that Sprint's request for oral argument be rejected.

ISSUE 2: Should the Commission grant GTEFL's Petition for Reconsideration, BellSouth's Motion for Reconsideration and Clarification and Sprint's Motion for Reconsideration and Clarification?

RECOMMENDATION: Staff recommends that the Motions for Reconsideration and/or Clarification be granted, in part, and denied, in part, as follows:

I. Copper Entrance Facilities

Staff recommends that BellSouth's request for clarification regarding the Commission's determination on copper entrance facilities be granted. The Commission should clarify that the Commission's decision only addresses the use of copper entrance cabling within the context of collocation outside a central office (CO), but does not reach the issue of copper cabling in other situations. The Commission should also clarify that only collocation between an ALEC's controlled environmental vault (CEV) on an ILEC's property and an ILEC CO was considered in this decision, not interconnection between BellSouth's CO and the ALEC's CO.

II. Conversion of Virtual to Physical Collocation

Staff recommends that BellSouth and GTEFL's Motions for Reconsideration regarding conversion of virtual to physical collocation be granted. In view of the fact that a federal court has now rendered an interpretation of federal law that is directly contrary to this Commission's interpretation on this point, staff believes that the Commission's decision on this point may be considered in error. In conformance with the U.S. Court of Appeals for the D.C. Circuit's ruling (DC Circuit or Court), the Commission should determine that the ILEC, rather than the ALEC, may determine where the ALEC's physical collocation equipment should be placed within a central office, even in situations where the ALEC is converting from virtual to physical collocation.

III. Billing for Conversion

Staff recommends that BellSouth's request for clarification on this point be denied. This issue has been fully and clearly addressed in the Commission's Order. Furthermore, there is no evidence in the record to support BellSouth's requested clarification regarding a space preparation charge.

IV. Cross-Connects between Collocators

Staff recommends that BellSouth's and GTEFL's Motions for Reconsideration regarding the Commission's decision on cross-connects between collocators be granted. The FCC's Order 99-48 and the FCC Rules upon which the Commission relied for its decision on this point have been vacated by the DC Circuit. In view of the fact that a federal court has now rendered an interpretation of federal law that is directly contrary to this Commission's interpretation on this point, staff believes that the Commission's decision on this point may be considered in error. In conformance with the Court's decision, the Commission should find that ILECs are not required to allow collocators to cross-connect within a CO. Staff recommends, however, that ILECs be encouraged to consider requests by ALECs for permission to cross-connect.

V. Reservation of Space

Staff recommends that BellSouth's and GTEFL's Motions for Reconsideration be denied as they pertain to reservation of space within a CO. Arguments regarding reservation of space were fully addressed in the Commission's Order. Therefore, BellSouth and GTEFL have failed to identify a mistake of fact or law made by the Commission in rendering its decision.

VI. First-Come, First-Served Rule

Staff recommends that the Commission grant BellSouth and Sprint's Motions for Reconsideration regarding application of the FCC's first-come, first-served rule. The motions for reconsideration demonstrate a mistake made by the Commission in rendering its decision on this point. The Commission should determine that an applicant's place on the waiting list for collocation space should be based upon the date the ILEC received the applicant's collocation application.

VII. Implementation Date

Staff recommends that BellSouth's request for clarification regarding the implementation date of the Commission's Order be denied. The implementation date of the Commission's Order was the issuance date of that Order, May 11, 2000.

VIII. Equipment

Staff recommends that the Commission grant GTEFL's Motion for Reconsideration regarding the Commission's decision on equipment

that an ILEC must allow to be collocated, to the extent that the decision indicates that parties should rely upon the portions of FCC Order 99-48 that have now been vacated by the DC Circuit. The Commission's decision should, however, remain in place to the extent that it relies upon FCC Order 96-325 and the FCC rules promulgated prior to FCC Order 99-48. Staff further recommends that Sprint's request for clarification be denied.

IX. Site Preparation Cost Recovery

Staff recommends that the Commission deny GTEFL's Motion for Reconsideration as it pertains to site preparation cost recovery. GTEFL has not identified any mistake of fact or law made by the Commission in rendering its decision on this point.

X. Tour for Partial Collocation Space

Staff recommends that the Commission deny Sprint's Motion for Reconsideration regarding CO tours when an ILEC denies an ALEC part of the collocation space requested. The arguments presented by Sprint were fully addressed in the Commission's Order. Sprint has not identified any mistake of fact or law made by the Commission in rendering its decision on this point.

XI. Response to Application

Staff recommends that the Commission deny Sprint's Motion for Reconsideration as it applies to the Commission's decision on the timing of responses to applications for collocation space. Sprint has failed to identify any mistake of fact or law made by the Commission in rendering its decision on this point. The issue of collocation at remote sites was not raised at hearing in addressing this issue, even though it could have been.

XII. Demarcation Point

Staff recommends that the Commission grant Sprint's request for clarification regarding the appropriate demarcation point. The Commission should clarify that POT bays are permissible as demarcation points, but may not be required.

XIII. Price Quotes

Staff recommends that Sprint's request for clarification regarding price quotes be denied. There is nothing in the record to support the requested clarification.
(B.KEATING, SIMMONS, DOWDS, FULWOOD, ILERI, HINTON, BARRETT, AUDU)

STAFF ANALYSIS: The proper standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its Order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959); citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315, 317 (Fla. 1974).

I. Copper entrance facilities

MOTIONS

BELLSOUTH

In its Motion, BellSouth seeks clarification of the Commission's decision to allow ILECs to require ALECs to use fiber entrance cabling only after the ILEC proves that the entrance capacity is near exhaustion at a particular central office. BellSouth seeks clarification to the extent that it believes that the Commission intended to limit situations in which an ALEC could use copper entrance cabling to those in which the ALEC is using a controlled environmental vault (CEV) or some similar type of structure on the same land where BellSouth's central office is located, a collocation arrangement referred to by BellSouth as adjacent collocation. BellSouth explains that only in adjacent collocation arrangements is an ALEC unable to use fiber. BellSouth further explains that in ¶44 of the FCC's Advanced Services Order, FCC Order 99-48, the FCC stated that adjacent collocation is available when space inside the central office (CO) is exhausted. In collocation situations within the CO, BellSouth maintains that fiber optic entrance cabling must be connected to a fiber optic terminal, or multiplexer, inside the CO in order to connect to the network. However, in adjacent collocation situations, BellSouth contends that there is no room for the fiber optic connection, and therefore, copper should be allowed between the CO and the ALEC's CEV. Thus, BellSouth seeks clarification of this point.

BellSouth seeks further clarification that cabling between a BellSouth CO and an ALEC's CEV is collocation, while cabling

between BellSouth's CO and the ALEC's CO is interconnection. BellSouth explains that the FCC has stated in ¶69 of the Second Report and Order, in the Expanded Interconnection docket, CC Docket 91-141, that ILECs are not required to provide expanded interconnection for switched transport for non-fiber optic cable facilities and for switched transport expanded interconnection. BellSouth adds that the FCC stated earlier in the same docket, in ¶99 of its October 19, 1992, Report and Order, that while a party did support interconnection of non-fiber optic cable facilities, many LECs maintained that it would be undesirable, because it would limit the amount of conduit and riser space available. BellSouth contends that the FCC agreed that the adverse effects on conduit and riser space supported that interconnection of non-fiber facilities should only be allowed upon FCC approval on a case-by-case basis.

For these reasons, BellSouth believes that the Commission should clarify its Order to state that BellSouth is not required to accommodate requests for non-fiber optic facilities placed in BellSouth's entrance facilities.

RESPONSES

RHYTHMS LINKS

Rhythms Links contends that BellSouth seeks to "impede" competition by limiting the ALECs' ability to obtain access to copper entrance facilities in an effort to interconnect with BellSouth's network. Rhythms Links argues, however, that the Commission did not indicate any such limitation in its Order. Although BellSouth argues that allowing ALECs access to copper entrance facilities would accelerate the exhaust of the entrance facilities, Rhythms Links notes that the Commission determined that requiring fiber optic entrance facilities could prove to be a competitive obstacle for ALECs. Thus, Rhythms Links maintains that the Commission's Order is very clear that ILECs should not be allowed to restrict copper entrance facilities and as such, the Motion for Reconsideration should be denied.

MCI WORLDCOM

MCI WorldCom agrees with BellSouth that this docket only addressed entrance facilities within the context of collocation outside the central office when space inside the office is exhausted. Thus, MCI WorldCom believes clarification would be appropriate to clarify the Commission's decision only as it

pertains to the use of copper entrance cabling within the context of collocation outside of the CO.

MCI WorldCom argues, however, that BellSouth's additional request for clarification that ILECs need not consider requests for copper entrance facilities in other circumstances should be rejected. MCI WorldCom contends there is no basis for this clarification, and it was not an issue considered in this proceeding. MCI WorldCom adds that FCC Rule 51.323(d)(3) specifically permits "interconnection of copper or coaxial cable if such interconnection is first approved by the state commission."

MCI WorldCom argues that whether or not non-fiber interconnection is allowed between ILEC and ALEC switches was not addressed in this docket. MCI WorldCom notes that it is an issue in its arbitration with BellSouth, Docket No. 000649-TP. As such, MCI WorldCom cautions that the Commission should not grant this "clarification," because it would prejudge the issue in the other docket.

RECOMMENDATION

Staff recommends that the Commission make the requested clarifications regarding the use of copper entrance cabling. The Order could be misconstrued, as the parties have indicated. As such, the Commission should clarify that the Commission's decision only addresses the use of copper entrance cabling within the context of collocation outside of a CO, but does not reach the issue of copper cabling in other situations. In rendering this clarification, the Commission should also clarify that only collocation between an ALEC's CEV and an ILEC CO was considered in this decision.

II. Conversion of Virtual to Physical Collocation

MOTIONS

BELLSOUTH

BellSouth seeks reconsideration of the Commission's decision that an ALEC's equipment may remain in place in an ILEC's line-up when converting from virtual to cageless physical collocation and the decision that ILECs may not require an ALEC's equipment to be located in a segregated area.

BellSouth contends that on March 17, 2000, the DC Circuit issued its decision on review of the FCC's Advanced Service Order.

GTE Service Corp. v. FCC, 205 F.3d 416 (D.C. Cir. 2000). Therein, the Court vacated portions of the Advanced Services Order, including ¶42 of the Order, which provide that ILECs must give ALECs the option of choosing any unused space in a CO and must not require ALEC's equipment to be segregated. The Court remanded this issue to the FCC, stating that there was nothing in the Telecommunications Act of 1996 (the Act) that supports this approach. BellSouth maintains that the Court found that the ILEC should be allowed to choose the collocation space.

BellSouth argues that while the Court's order gives control over the CO space back to the ILEC, the Commission's order takes it away, in direct conflict with the DC Circuit's opinion.

BellSouth adds that while this Commission determined that relocation of equipment would be unduly burdensome and costly, the FCC's similar argument before the DC Circuit was dismissed as "weak." BellSouth further contends that the US Supreme Court has even emphasized that higher costs for competitors do not outweigh the statutory terms of the Act.[1] Thus, BellSouth argues that the Commission overlooked the evidence that BellSouth's management of space is an important consideration in the placement of a collocation arrangement, and as such, should reconsider its decision.

Further, BellSouth contends that conversion could circumvent the ILEC's right to reserve space for future use. BellSouth notes that while the Commission has acknowledged an ILEC's right to reserve space for an 18-month period, an ILEC must still give up space for virtual collocation when space for physical collocation is exhausted. Thus, if space is exhausted in an office, an ALEC could elect for virtual collocation, then simply convert in place to physical collocation. BellSouth believes this conflicts with the ILEC's right to reserve space as set forth in the FCC's rules and the DC Circuit's order.

GTEFL

GTEFL also seeks reconsideration on this point. GTEFL contends that the Commission completely overlooked the decision in GTE Service Corp. V. FCC, 205 F.3d 416 (D.C.Cir. 2000), wherein the Court determined that the FCC failed to justify its prohibition against ILECs segregating competitors' equipment and found the

[1]Citing AT&T Corp. v. Iowa Utilities Board, 525 U.S. 366 at 389-390 (1999).

requirement was inconsistent with Section 251(c)(6) of the Act. GTEFL contends that since ILECs may segregate cageless collocation, they must also be allowed to segregate conversions to cageless collocation, because there is no basis for doing otherwise.

Like BellSouth, GTEFL also argues that the US Supreme Court has emphasized that higher costs for competitors do not outweigh the statutory terms of the Act. Thus, GTEFL contends that the Commission's decision prohibiting an ILEC from deciding where to locate ALEC equipment violates the Act. GTEFL adds that it would be a waste of time to require ILECs to proceed based on an FCC ruling that will have to be changed to accord with the DC Circuit's decision. Otherwise, conversions in place to cageless collocation will only have to be relocated later.

RESPONSES

SPRINT

Sprint responds that the Commission need not reverse those portions of its Order that rely upon the FCC's rules and the Advanced Services Order simply because the DC Circuit has remanded certain issues back to the FCC for further consideration. Sprint believes that it would be premature for the Commission to change its decision based on "speculation" as to what the FCC might do. Furthermore, Sprint maintains that the Act and the FCC rules give the Commission authority to develop generic collocation guidelines on its own, and in the past, the Commission has also adopted collocation requirements on its own pursuant to Chapter 364, Florida Statutes.[2]

Sprint contends that the Commission made its decisions in this case based upon a full and complete record and should not change its decisions simply because the FCC's rules and Advanced Services Order are currently on remand. Sprint believes that the DC Circuit's remand decision is simply insufficient to invalidate this Commission's decisions made on the record in this case.

Specifically, with regard to conversions from virtual to physical collocation, Sprint contends that the DC Circuit did not allow ILECs to "require" segregated collocation areas for physical collocation. Sprint maintains that, instead, the DC Circuit simply determined that the FCC has not sufficiently explained its

[2]Citing In re: Expanded Interconnection Phase II and Local Transport Restructure, Order No. PSC-95-0034-FOF-TP.

rationale for determining that ILECs are prohibited from requiring such segregation of equipment. Contrasting this Commission's decision, Sprint points out that the decision in this case was based upon evidence in the record that segregation and relocation of equipment could impose an undue and anticompetitive cost burden on the ALEC, as well as lead to possible service interruptions.

As for BellSouth's arguments that the Commission's decision would prevent the ILEC from recovering costs related to virtual collocation, Sprint contends that the Commission addressed all of these scenarios and more. As such, Sprint contends that BellSouth has not presented any point of fact or law that the Commission overlooked or upon which it made a mistake. Thus, Sprint contends that both BellSouth's and GTEFL's Motions for Reconsideration on this point should be denied.

RHYTHMS LINKS

Rhythms Links argues that the DC Circuit's decision does not affect the Commission's decision establishing any of its collocation guidelines. Rhythms Links explains that the DC Circuit's decision vacated certain portions of the FCC's Advanced Services Order, and made a "limited" holding regarding the FCC's interpretations of "necessary" and "physical collocation." Rhythms Links believes that the Motions for Reconsideration, however, misstate the implications for this Commission's decision, because the Florida Commission has independent authority, federal and state, to set up guidelines for collocation. Rhythms Links emphasizes that in Section 251(d)(3) of the Act, Congress specifically recognized the states' authority to make regulations, orders or policies consistent with Section 251(c)(6) of the Act. Rhythms Links adds that Section 706 of the Act charges the state commission with taking action necessary to encourage the deployment of advanced services. Rhythms Links adds that the FCC even acknowledged this responsibility of the states at ¶ 23 of the Advanced Services Order.

Rhythms Links also contends that the Commission has state authority to encourage competition and to oversee the transition to the competitive provision of telecommunications services, pursuant to Section 364.01(3), Florida Statutes. In addition, Rhythms Links states that the Commission is charged with encouraging new or experimental technologies and ensuring all providers are treated fairly, in accordance with Section 364.01(4)(g), Florida Statutes. Rhythms Links contends that throughout the Commission's decision, the Commission found that the ILECs were providing collocation in

a manner inconsistent with fair competition, and therefore, collocation guidelines were necessary.

Furthermore, Rhythms Links contends that it is not clear what effect the FCC's determination on remand will have on the minimum collocation requirements for ILECs. Nevertheless, Rhythms Links believes that it is premature to grant reconsideration based on the DC Circuit's decision.

As for the specific determination regarding conversion of virtual to physical collocation, Rhythms Links argues that there is nothing in the Act that prohibits an ALEC's equipment from remaining in an ILEC's line-up when converting from virtual to physical. Although BellSouth and GTEFL contend that this conflicts with the DC Circuit's decision, Rhythms Links responds that there is no legal or technical necessity for relocating the converting ALEC's equipment. Rhythms Links adds that this Commission based its decision upon concerns regarding service interruption, security measures, time delays, unnecessary costs, technical issues, and reasonableness, and as such, the Commission's decision clearly must stand because it is based upon the record of this case. Rhythms Links states that the Commission's decision has an independent basis.

FCCA/AT&T

FCCA/AT&T contend that the DC Circuit's decision vacating ¶ 42 of the FCC's Advanced Services Order does not address the situation where equipment is already in the ILEC's line-up. FCCA/AT&T contend that ¶ 42 specifically addresses the initial placement of equipment, instead of the relocation of equipment. Even though the Court rejected the 'cost savings' arguments, FCCA/AT&T believe that in situations where the equipment is already in place, there can be no dispute that there will be significant cost savings if relocation is not required, as set forth in witness Gillan's testimony at hearing.[3]

In addition, FCCA/AT&T contend that the Commission did not base its decision on ¶ 42 of the FCC's Advanced Services Order, but instead stated that

> [R]egarding relocation of equipment, the record supports that the ALEC's equipment may remain in place even if it is in the ILEC's

[3]Referencing Transcript at p. 1045.

> equipment line-up when converting from virtual to cageless physical collocation. It appears that to require relocation of equipment under these circumstances would be unduly burdensome and costly to the ALEC without any benefit.

Order at p. 30.

Based on the foregoing, FCCA/AT&T contend the Commission's independent decision based upon the record should stand, because no basis for reconsideration has been identified.

RECOMMENDATION

Staff recommends that reconsideration be granted as it pertains to relocation of equipment when converting from virtual to physical collocation. Although there is a significant amount of testimony in the record that supports the Commission's decision, the DC Circuit has specifically rejected similar rationale used by the FCC in FCC Order 99-48. In fact, the Court held that:

> There is nothing in §251(c)(6) that endorses this approach. The statute requires only that LECs reasonably provide space for "physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier," nothing more.

GTE Service Corp. V. FCC, 205 F.3d 416, 426 (D.C.Cir. 2000). In view of the fact that a federal court has now rendered an interpretation of federal law that is directly contrary to this Commission's interpretation, staff believes that the Commission's decision on this point may be considered in error. Therefore, staff recommends that the Commission reconsider its decision on relocation of equipment when converting from virtual to physical collocation. In conformance with the DC Circuit's ruling, the Commission should determine that the ILEC, rather than the ALEC, may determine where the ALEC's physical collocation equipment should be placed within a central office, even in situations where the ALEC is converting from virtual to physical collocation.

III. Billing for Conversion

MOTIONS

BELLSOUTH

BellSouth also seeks clarification of the requirement that if no physical changes are necessary to make the conversion from virtual to physical collocation, then the only charges that should apply are for administrative, billing, and engineering record updates. BellSouth contends that the Commission overlooked the fact that in a virtual arrangement BellSouth is responsible for installing the equipment, while in a physical arrangement the ALEC is responsible for installing the equipment. BellSouth explains that there is no space preparation charge associated with virtual collocation, while there is one for physical collocation. If, however, BellSouth cannot charge for the conversion, BellSouth contends that it will be unable to recover the space preparation costs. BellSouth argues that this should not be allowed, because competitors may choose to obtain virtual collocation, then convert to physical collocation simply to avoid the space preparation charge.

BellSouth also contends that the FCC has stated that the cost of converting virtual to physical collocation should not be borne by the ILEC[4]; therefore, BellSouth must be provided a method to recover its costs. BellSouth also expresses concern that this may also provide a means for an ALEC to bypass a collocation waiver by converting from virtual to physical collocation in place at no cost. As such, BellSouth asks the Commission to clarify its Order on this point.

RESPONSES

FCCA/AT&T

FCCA/AT&T contend that there is no need to grant clarification or reconsideration on this point. FCCA/AT&T argue that the Commission's Order is clear that if no physical changes are needed, there would be no space preparation charges. FCCA/AT&T emphasize that the record supports that when converting from virtual to physical collocation, the only real distinction is the change in the entrant's right to access the equipment. Thus, the conversion

[4]Citing FCC First Report and Order, FCC Order 96-325 at ¶550, footnote 1340.

should really be no more than a conversion of "ownership."[5] Therefore, FCCA/AT&T ask that clarification and/or reconsideration be denied.

RECOMMENDATION

Staff does not believe that clarification is necessary on this point. The issue of billing for conversions from virtual to physical collocation when no physical changes are made has been addressed to the extent necessary in the Commission's Order. Based on the testimony of Sprint witness Closz and Intermedia witness Jackson, the Commission determined that if there are no physical changes made, the only charges that should apply are administrative, billing, and engineering record updates. If there will be no change to the space, and hence, no incremental cost, there is no basis for a space preparation charge. Furthermore, there was no evidence regarding such a charge presented at the hearing. As such, staff recommends rejecting this request for clarification.

Staff notes that BellSouth has not requested clarification with regard to situations where there is a change to the space or configuration. This aspect was, however, addressed in the Commission's Order.

IV. Cross-Connects between Collocators

MOTIONS

BELLSOUTH

BellSouth also seeks reconsideration of the Commission's decision that the FCC has supplied adequate rules regarding collocation cross-connects, which should be followed in Florida. BellSouth believes this decision is in direct conflict with the DC Circuit's order.

BellSouth explains that in the DC Circuit's order, the Court found that the FCC had not demonstrated that requiring ILECs to allow collocators to cross-connect with one another is necessary to implement Section 251(c)(6) of the Act. The Court determined that the requirement had "no apparent basis in the statute." GTE Service Corporation, 205 F.3d at 423. Thus, BellSouth believes that the Commission should reconsider its decision.

[5]Referencing Transcript at p. 1029.

GTEFL

GTEFL also seeks reconsideration on this point. GTEFL contends that although the Commission has stated that companies should rely on the FCC's rules regarding cross-connects, portions of those rules have been vacated by the DC Circuit's decision. GTEFL notes that even the FCC Order issued prior to the Advanced Services Order did not require ILECs to allow cross-connects outside the actual collocation space. The Advanced Services Order, however, revised the rules to allow a collocator to cross-connect with other collocated equipment anywhere in the ILEC's premises. GTEFL maintains that the DC Circuit determined that there was no basis in the Act for the FCC to implement this rule. GTEFL notes that the Court emphasized that the Act only focused on connecting new entrants to the ILEC's network, not to each other. Thus, GTEFL believes that the Commission should reconsider its decision in order to avoid having to revisit this issue when the FCC issues its new collocation rules.

RESPONSES

SPRINT

Again, Sprint contends that the Commission made its decisions in this case based upon a full and complete record and should not change its decisions simply because the FCC's rules and Advanced Services Order are currently on remand. Sprint believes that the DC Circuit's remand decision is simply insufficient to invalidate this Commission's decisions made based upon the complete record in this case.

As for the decision on cross-connects, Sprint acknowledges that the Commission was guided by the FCC's decision in the Advanced Services Order. Nevertheless, Sprint argues that the Commission's ultimate decision was based upon evidence in the record and can stand alone pending FCC action on the remand. Sprint argues that the Commission should deny the requests for reconsideration, instead of changing its decision without any indication as to how the FCC might respond to the DC Circuit's remand decision.

RHYTHMS LINKS

Again, Rhythms Links argues that the DC Circuit's decision does not affect the Commission's decision establishing any of its collocation guidelines. Rhythms Links emphasizes that in Section 251(d)(3) of the Act, Congress specifically recognized the states' authority to make regulations, orders or policies consistent with

Section 251(c)(6) of the Act. Rhythms Links adds that Section 706 of the Act charges the state commission with taking action necessary to encourage the deployment of advanced services. Rhythms Links also contends that the Commission has state authority to encourage competition and to oversee the transition to the competitive provision of telecommunications services, pursuant to Section 364.01(3), Florida Statutes.

Regarding cross-connects, Rhythms Links argues that GTEFL and BellSouth

> would prefer to monopolize the provision of cross-connects at their premises by prohibiting the ALECs from cross-connecting with one another while at the ILEC's premises.

Response at 12. Rhythms Links argues, however, that the Commission made an independent determination that collocators can cross-connect, and that when they do so in contiguous spaces, no application fees are necessary. Rhythms Links contends that the Commission's decision is based on the record and that GTEFL and BellSouth have not identified any basis for reconsideration.

RECOMMENDATION

Staff recommends that reconsideration be granted as it pertains to cross-connects between collocators. In its Order, the Commission specifically determined that the FCC had developed sufficient rules regarding cross-connects and that those rules should be followed by the parties. Those same FCC Rules have, however, been overturned by the DC Circuit. The Court even emphasized that:

> 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." Rather, the Commission is almost cavalier in suggesting that cross-connects are efficient and therefore justified under §251(c)(6). This will not do. The statute requires LECs to provide physical collocation of equipment as "necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier," and nothing more. As the Supreme Court made clear in Iowa Utilities Board, the FCC cannot reasonably

> blind itself to statutory terms in the name of efficiency. Chevron deference does not bow to such unbridled agency action.

GTE Service Corp. V. FCC, 205 F.3d 416, 423-424 (D.C.Cir. 2000). In view of the fact that a federal court has now rendered an interpretation of federal law that is directly contrary to this Commission's interpretation, staff believes that the Commission's decision on this point may be considered in error. Therefore, staff recommends that the Commission reconsider its decision to rely upon the FCC's rules regarding cross-connects, because the basis for that decision has now been vacated. Furthermore, the Commission should acknowledge the clear ruling of the DC Circuit and refrain from determining that cross-connects between ALECs are required. In conformance with the DC Circuit's ruling, the Commission should determine that the ILECs are not required to allow collocators to cross-connect. Staff notes, however, that there is significant testimony in the record regarding the efficiency of allowing cross-connects. Therefore, staff suggests that ILECs be encouraged to, at least, consider requests by ALECs for permission to cross-connect within a CO.

V. Reservation of Space

MOTIONS

BELLSOUTH

BellSouth also seeks reconsideration of the 18-month limitation on reservation of space. BellSouth contends that the Commission failed to consider that the normal time for completing a building addition is 24 months. BellSouth argues that if it does not have the ability to reserve space for at least as long as it takes to complete an addition, then there is a risk that space will be depleted in COs.

GTEFL

GTEFL also seeks reconsideration on this point. GTEFL argues that the Commission's decision that space may be reserved for only an 18-month period does not take into account different types of equipment and the space necessary to accommodate that equipment. Thus, GTEFL believes the Commission overlooked or failed to consider the significance of evidence regarding the impact of different types of equipment upon the reservation of space in a CO.

GTEFL contends that its witness Ries stated at the hearing that floor space in a CO must be reserved for a period longer than

18 months for certain types of equipment. As an example, GTEFL maintains that witness Ries referred to equipment necessary for switching, power, and main distribution functions. GTEFL argues that this equipment is necessary for the smooth operation of the public switched network and should have been considered by the Commission. GTEFL adds that additional time and floor space does not constitute discrimination against ALECs, because the equipment is necessary to maintain the CO, a task for which only the ILEC is responsible.

GTEFL also argues that for equipment such as digital cross-connect systems, D4 channel banks, SONET terminals, DWDM equipment, and loop treatment equipment, a shorter reservation period is appropriate. Thus, GTEFL does not contest the 18-month reservation policy as it applies to this equipment. GTEFL states that it believes that the Commission need only reconsider this policy as it applies to equipment necessary for the viability of the central office. For this type of equipment, GTEFL believes that a 4-year reservation is more appropriate for switching, and that no policy should be implemented limiting the length of time for which space can be reserved for power, main distribution frames, and cable vault areas.

RESPONSES

SPRINT

With regard to reservation of space, Sprint argues that neither GTEFL nor BellSouth identify any facts overlooked by the Commission or any mistake of law in the Commission's decision. Sprint emphasizes that GTEFL's argument regarding the specific types of equipment was noted at page 52 of the Commission's Order. Sprint points out that BellSouth's arguments were also fully addressed at page 54 of the Order. Therefore, Sprint argues that reconsideration should be denied.

RHYTHMS LINKS

Regarding reservation of space, Rhythms Links notes that the Commission specifically addressed the arguments raised by both GTEFL and BellSouth, and decided, at page 56 of the Order, that

> evidence is clear that space within a central office is a limited resource, and that limiting the length of time space is allowed to be reserved will promote efficient use of space.

Rhythms Links further emphasizes that the Commission considered and rejected GTEFL's arguments for a flexible standard dependent upon the type of equipment. Rhythms also contends that the Commission considered BellSouth's concerns regarding building additions at page 55 of the Order. Nevertheless, the Commission determined that 18 months was a sufficient amount of time for the reservation of space, that this standard should be evenly applied to ILECs and ALECs, and that the standard should not be equipment dependent. Therefore, Rhythms Links asks that the Commission deny the motions for reconsideration on this point, because the arguments raised have already been addressed and rejected by the Commission.

FCCA/AT&T

FCCA/AT&T argue that BellSouth has not identified any basis for reconsideration on this issue. In addition, FCCA/AT&T contend that a longer reservation period would lessen the effectiveness of forecasting for actual space needs.

As for GTEFL's arguments, FCCA/AT&T contend that the policies suggested are patently unreasonable, anti-competitive, and would impair the growth of competition. FCCA/AT&T contend that not only has GTEFL provided no basis for the suggested policy, but for reconsideration of the Commission's original decision that an 18-month space reservation policy is appropriate.

RECOMMENDATION

Staff recommends that the Motions for Reconsideration be denied with regard to reservation of space. These arguments were fully addressed and considered at pages 51-56 of the Commission's Order. Neither BellSouth nor GTEFL has identified any mistake of fact or law made by the Commission in rendering its decision.

VI. First-Come, First-Served Rule

MOTIONS

BELLSOUTH

BellSouth contends that the Commission should also reconsider its decision regarding first-come, first-served, because the decision is inconsistent with the FCC's rule, 47 C.F.R. §51.323(f)(1). BellSouth explains that the Commission required that the ILECs keep a list of ALECs that had been denied space based upon the denial date. Thereafter, should space become available, the first to be denied would be the first to be offered

the newly available space. However, BellSouth contends that the FCC's rule speaks specifically to requesting carriers, and that carriers should be offered space based upon when the request for space was submitted. BellSouth contends that there is no rationale for the Commission's decision that space should be offered based upon the denial date, and adds that this approach could lead to unfair results for any carrier that submits multiple applications, since the Commission has also established staggered intervals for responses to multiple applications. Therefore, BellSouth asks that the Commission reconsider this portion of the Order.

SPRINT

Sprint agrees that the Commission should reconsider its decision regarding the application of the first-come, first-served rule. Sprint contends that the Commission apparently misinterpreted the testimony in the proceeding, which Sprint believes overwhelmingly supported the application date as the appropriate date to determine an ALEC's place on the waiting list, as opposed to the denial date. Sprint refers to the testimony of witnesses Hendrix, Hunsucker, Martinez, Nilson, Strow, and Mills. Sprint notes that while witness Mills did state that newly available space should be offered to the first requesting carrier denied, Sprint does not believe the witness clearly advocated a date to establish priority on the waiting list. Also, Sprint notes that witness Martinez advocated use of the date of the rejection of an application as the date for determining priority in line, but only in situations where the date of the rejection was earlier than the date of the receipt of the applicant ALEC's firm order for space. Based on this testimony, Sprint believes the Commission should reconsider its decision regarding first-come, first-served, and mandate that the date of the ALEC's application serve as the date for establishing priority on the waiting list.

RESPONSES

BELLSOUTH

BellSouth simply notes in its response that it agrees with Sprint's suggestion that the Commission reconsider its decision regarding application of first-come, first-served.

RECOMMENDATION

Staff recommends that the Commission grant reconsideration on this point. As pointed out by BellSouth and Sprint, the emphasis on the relevant date for determining an applicant's place on the

waiting list was misplaced and contrary to the testimony in the proceeding. Upon review of the testimony in the record, staff agrees that the Commission should grant the requests for reconsideration and should determine that an applicant's place on the waiting list for collocation space should be based upon the date the ILEC received the applicant's collocation application.

VII. Implementation Date

MOTIONS

BELLSOUTH

Finally, BellSouth seeks clarification of the implementation date of the Order. BellSouth notes that the Commission did not include an implementation date in its Order. BellSouth contends that the processes approved by the Commission cannot be effectuated by BellSouth overnight, because BellSouth will have to modify many of its processes. Therefore, BellSouth seeks clarification of the Order that the effective date of the Order is 30 days from the issuance date, June 11, 2000.

RESPONSES

RHYTHMS LINKS

Rhythms Links argues that as with any other Commission Order, unless an implementation date is specified in the Order, the issuance date of the Order itself is the implementation date. In this case, that date is May 11, 2000. Rhythms Links further contends that Rule 25-22.060, Florida Administrative Code, states that although a final order is not deemed rendered for purposes of appeal until any motions for reconsideration are addressed, such motions do not automatically stay the effectiveness of the order. Rhythms Links adds that there is no basis for BellSouth's argument that the implementation date should be June 11, 2000.

RECOMMENDATION

As with any other Final Order issued by the Commission, the implementation date should be the issuance date, unless otherwise stated. There is no basis in the record for BellSouth's request that the implementation date be June 11, 2000. Therefore, staff recommends that this request for clarification be denied.

VIII. Equipment

GTEFL

GTEFL contends that the Commission determined that the ILEC should allow in a physical collocation arrangement the types of equipment that are consistent with the FCC's rules and orders, relying upon the FCC's rules that an ILEC cannot prohibit collocation of any equipment "used or useful" for interconnection or access to the ILEC network and prohibiting ILECs from limiting competitors' use of the features, functions and capabilities, including switching and routing, of any collocated equipment. GTEFL contends that the DC Circuit's decision vacated these rules, because they appear to do more than is necessary for interconnection.[6] By "mirroring" the FCC's rules, GTEFL contends that the Commission's decision is also in violation of the Act. GTEFL further contends that the specific rationale used by the Commission in its Order was rejected by the Court. GTEFL explains that the Commission stated that allowable equipment need not be indispensable, but merely 'used or useful.' GTEFL argues that the Court, however, stated that the equipment must, in fact, be indispensable according to the Act. Therefore, GTEFL contends that the Commission must reconsider its decision.

SPRINT

Sprint also asks that the Commission clarify its decision regarding the types of equipment an ILEC must allow in a collocation arrangement. Sprint contends that the relevant portions of the FCC's rules and orders addressing equipment have now been vacated by the DC Circuit's decision in GTE Service Corp. V. FCC. Sprint asks, therefore, that the Commission clarify its decision to eliminate any reference to the now vacated FCC rules and orders, and explicitly state the types of equipment that ILECs must allow the ALECs to collocate.

RESPONSES

SPRINT

In response to GTEFL's motion, Sprint contends that the DC Circuit determined that the FCC did not properly apply the "necessary" standard set forth in the Act, and instead, applied a "used and useful" standard that conflicts with the Act. Sprint

[6]Citing GTE Service Corporation, 205 F.3d at 424.

notes that the DC Circuit's decision is similar to the US Supreme Court's decision in AT&T Corp. v. Iowa Utilities Board, 525 U.S. 366 (1999), on the types of UNEs that must be made available to ALECs. The DC Circuit simply required the FCC to reevaluate its assessment of equipment based upon the proper standard.

Sprint further emphasizes that the DC Circuit did not specifically determine the types of equipment "necessary" for collocation; therefore, the FCC could respond with substantially the same requirements, as it did in response to the US Supreme Court's remand on the issue of UNEs. Thus, Sprint contends that it is premature for the Commission to change its decision based on the DC Circuit's remand of the FCC's rules and Advanced Services Order.

Sprint reiterates that the Commission should, however, clarify its Order to specifically identify the types of equipment that must be allowed for physical collocation in Florida, and eliminate any reference or reliance upon the FCC's rules or Advanced Services Order. Sprint believes the Commission could do so by specifically identifying the types of equipment set forth in the FCC's rules and portions of the Advanced Services Order that the Commission incorporated by reference into its final decision on this point.

BELLSOUTH

In response to Sprint's request for clarification on this point, BellSouth first argues that the Commission has already stated in this Docket that clarification of a Commission Order is not appropriate.[7] Thus, BellSouth believes that the request by Sprint must be treated as a request for reconsideration or reversal.

BellSouth argues that the Commission specifically considered the approach that Sprint suggests and rejected it. BellSouth references page 64 of the Order, where the Commission stated that ". . . it would not be possible, or desirable, to draw up an exhaustive list of equipment that could be collocated." BellSouth argues that Sprint is now recommending exactly that same approach. In doing so, BellSouth maintains that Sprint has not identified any fact overlooked by the Commission or any mistake of law made by the Commission in rendering its decision. Therefore, BellSouth asks that Sprint's motion be rejected on this point.

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[7]Citing Order No. PSC-99-2393-FOF-TP, issued December 7, 1999.

FCCA/AT&T

FCCA/AT&T argue that even though the DC Circuit vacated portions of the Advanced Services Order, the Court remanded the issue to the FCC for further consideration. FCCA/AT&T contend that it is expected that the FCC will respond with new rules, but that this Commission's decisions will likely be consistent with those new rules. As such, FCCA/AT&T believe there is no need for reconsideration on this point. FCCA/AT&T add that the Court specifically stated that:

> We do not mean to vacate the Collocation Order to the extent that it merely requires LECs to provide collocation of competitors' equipment that is directly related to and thus necessary, required, or indispensable to "interconnection or access to unbundled network elements.

GTE Services Corp. v. FCC, 205 F. 3d at 424. To the extent there is any dispute as to whether specific equipment does not meet this standard, FCCA/AT&T argue that such disputes should be resolved on an individual basis.

RECOMMENDATION

Staff recommends that the Commission grant reconsideration on this point to the extent that the Commission's decision addressing equipment that an ILEC is obligated to allow in a physical collocation arrangement may indicate that parties should rely on the portions of FCC Order 99-48 that have now been vacated by the DC Circuit. Regarding FCC Order 99-48, the Court indicated that:

> In the Collocation Order, however, the FCC appears to ignore the statutory reference to "necessary" in requiring LECs to collocate any competitors' equipment that is " 'used or useful' for either interconnection or access to unbundled network elements, regardless of other functionalities inherent in such equipment." . . . The petitioners' argument has merit, for the Collocation Order as presently written seems overly broad and disconnected from the statutory purpose enunciated in §251(c)(6). . . . In other words, the Collocation Order appears to permit competitors to collocate equipment that may do

> more than what is required to achieve interconnection or access.

GTE Services Corp. v. FCC, 205 F. 3d at 422-423. The Commission's decision should, however, remain in place to the extent that it relies upon FCC Order 96-325 and FCC rules promulgated prior to FCC Order 99-48. Staff emphasizes that the provisions of Order 96-325 and pre-Advanced Services Order rules addressing collocation remain in effect and, therefore, may continue to serve as the basis for the Commission's decision.

With regard to Sprint's request for clarification, there is little basis in the record to identify specific equipment. As stated in the Commission's Order:

> There appears to be very little disagreement among the parties on this issue. In fact, the parties do little more than cite relevant FCC orders.

Order at p. 62.

The Commission also stated that it would not be possible or desirable to establish an exhaustive list of equipment that must be allowed to be collocated. Order at p. 64. Therefore, Sprint's request for clarification should be denied.

Finally, regarding BellSouth's statements that clarification of a Commission Order, in general, is not proper, staff emphasizes that the statements upon which BellSouth relies pertain to clarification of a Proposed Agency Action Order. As stated in Order No. PSC-99-2393-FOF-TP, to which BellSouth refers:

> Clarification of a proposed agency action order is not recognized under our rules, and reconsideration of a proposed agency action order is contrary to Rule 25-22.060(1)(a), Florida Administrative Code.

Order No. PSC-99-2393-FOF-TP at p. 3. [Emphasis added]. Clarification and/or reconsideration of a Final Order of the Commission is, however, proper and contemplated by Commission rule. Staff notes that BellSouth has, in fact, asked for clarification of certain points regarding the Commission's decision at issue here. Nevertheless, as set forth above, Sprint's request for clarification should be rejected in this instance.

IX. Site Preparation Cost Recovery

MOTIONS

GTEFL

GTEFL also argues that the Commission determined that the costs for site preparation should be based upon the amount of space occupied by the collocating party, relative to the amount of space prepared, and that consideration should be given to whether the ILEC, as well as ALECs, will benefit from the prepared space. Thus, the ILEC can only charge the first collocating ALEC a fraction of the cost of the site preparation, which requires the ILEC to bear the cost and risk that the prepared space may never become fully occupied. GTEFL contends that the DC Circuit and the FCC have stated that the ILEC should not bear this entire risk, and that the states have been charged with developing a proper price methodology.[8] GTEFL notes that the FCC proposed a methodology for cost recovery in its brief before the DC Circuit, whereby site preparation costs would be amortized over five years and costs would be recovered from the ALECs. GTEFL argues that the Commission has overlooked this evidence and should, therefore, reconsider its decision and further address cost recovery by ILECs for site preparation.

RESPONSES

SPRINT

On this point, Sprint contends that GTEFL has also failed to identify a fact overlooked by the Commission or any mistake of law made by the Commission in rendering its decision. Sprint argues that GTEFL simply reiterates arguments it has also presented to the Commission. Sprint notes that the Commission even discussed cost recovery at the Agenda Conference where the Commission made its decision in this case. As a result of that discussion, the Commission declined to take action on cost recovery, because it was not an issue presented for consideration in this proceeding. Therefore, Sprint argues that GTEFL's motion on this point should be rejected, because it presents an improper issue for reconsideration.

[8]Citing GTE Service Corporation, 205 F.3d at 427, citing FCC Advanced Service Order at ¶ 51.

RHYTHMS LINKS

On this point, Rhythms Links also believes that the Commission's decision was based upon the record and that the Motions for Reconsideration have not identified anything the Commission overlooked or upon which it made a mistake. Rhythms Links states that the Commission set forth a plan for site preparation costs at page 85 of its Order that attributes costs according to floor space occupied by the collocating party relative to the total cost for site preparation. Rhythms Links explains that the Commission established this plan based upon the framework set forth in the FCC's Advanced Services Order, as well as considerations of the needs of past and present collocators, in an effort to develop a plan that does not discriminate against any carrier. Rhythms Links also notes that the Commission specifically rejected any plans that would result in the ILECs having to absorb all of the costs, contrary to GTEFL's assertions in its Motion. Rhythms Links also points out that the Commission specifically considered and rejected GTEFL's proposal that GTEFL be allowed to recover its actual costs at page 80 of the Order.

Rhythms Links contends that the DC Circuit has now rejected the same arguments presented by GTEFL in this case, which further supports this Commission's decision. Specifically, Rhythms Links references the DC Circuit's response to GTEFL's arguments, wherein the DC Circuit stated that the Advanced Services Order ". . . simply notes that state commissions are charged with the responsibility of determin[ing] the proper pricing methodology, which undoubtedly may include recovery mechanisms for legitimate costs." GTE Services Corp. v. FCC, 205 F. 3d at 427. Rhythms Links contends that this Commission has determined the appropriate pricing methodology -- even the ILECs will bear some of the risk. As such, Rhythms Links asks that the Motions for Reconsideration be denied on this point, because no error, oversight, or mistake has been identified in the Commission's decision.

FCCA/AT&T

FCCA/AT&T emphasize that the DC Circuit specifically upheld the very paragraph, ¶ 51, of the FCC's Advanced Services Order upon which the Commission relied in rendering its decision on this issue. FCCA/AT&T add that the Court recognized that the approach taken by the FCC was a reasonable means to ensure that LECs do not impose prohibitive requirements. As such, FCCA/AT&T contend that GTEFL has shown no basis for the Commission to reconsider its decision on this issue.

RECOMMENDATION

On this point, staff recommends that the Motion for Reconsideration be denied. GTEFL has failed to identify any mistake of fact or law made by the Commission in rendering its decision in this case. Staff notes, as has FCCA/AT&T, that §51 of the Advanced Services Order, upon which the Commission relies, in part, for its decision on this point, was specifically upheld by the DC Circuit. Furthermore, the Commission considered and addressed all of the arguments regarding allocation of costs in rendering its decision in this matter. There was no evidence presented in this proceeding regarding rates or a pricing methodology. Therefore, GTEFL has not identified anything the Commission overlooked or upon which it made a mistake. Finally, to the extent GTEFL asks the Commission to reconsider its decision and establish a specific price methodology, the Commission specifically stated in its Order at p. 85 that rates and methodology were a matter for a future proceeding. Thus, staff recommends that GTEFL's Motion for Reconsideration on this point be denied.

X. Tour for Partial Collocation Space

MOTIONS

SPRINT

In its Motion, Sprint believes the Commission should also reconsider its decision that ILECs should not be required to conduct a site tour when an ALEC is provided only part of the space requested in its collocation request. Sprint notes that the Commission determined that the ALEC would be allowed to participate in the tour conducted by the ILEC as part of the Petition for Waiver process. Sprint argues that this decision incorrectly makes two assumptions. First, Sprint contends that a second request that actually initiates a denial, and thus a Petition for Waiver, may not follow in a reasonable amount of time after the first ALEC is provided only partial space. Therefore, the ALEC may have to wait quite some time before it is allowed to tour the CO.

Second, Sprint contends that the ILEC could manipulate requests for space to such an extent that it only provides partial space to a number of requesting ALECs, thereby avoiding a Waiver proceeding for quite some time. Sprint believes this decision by the Commission is based upon an inaccurate interpretation of the FCC's Advanced Services Order at ¶ 56. Sprint contends that the FCC did, in fact, intend for ALECs to be given an opportunity to tour a CO any time the ILEC is unable to complete an ALEC's full

request for space. Sprint believes that this interpretation is supported by the FCC's indication that the purpose of the tour is to give ALECs a chance to determine whether there is any unused or improperly reserved space in a CO. Otherwise, the ILECs will be able to manipulate space to keep ALECs out of COs. Sprint contends that the Commission failed to consider this anti-competitive effect, and should, therefore, reconsider its decision that a tour is not appropriate when an ALEC's request for space in a CO is only partially filled.

RESPONSES

BELLSOUTH

BellSouth argues that the Commission fully considered the evidence and testimony presented regarding whether or not tours should be required when an ALEC only gets part of the collocation space it requests. BellSouth contends that the Commission carefully weighed the evidence and determined that a tour was not required. As such, BellSouth maintains that Sprint has failed to identify any fact overlooked by the Commission or any mistake of law made by the Commission in rendering its decision on this point, and therefore, Sprint's motion should be rejected.

RECOMMENDATION

Staff also recommends that the Motion for Reconsideration on this point be denied. The arguments presented by Sprint were fully addressed in the Commission's Order at pages 90-91. Furthermore, staff believes that Sprint has misinterpreted the Commission's prior Orders on collocation, Order No. PSC-99-1744-PAA-TP and PSC-99-2393-FOF-TP. Pursuant to those Orders, an ILEC must proceed with the collocation waiver process if space is denied. The Orders do not define whether the denial must be of all the space requested by the ILEC. Therefore, staff believes that even when the ILEC partially denies space in a CO, the Commission's Collocation Orders require the ILEC to Petition for a Waiver of the collocation requirements. As such, a tour of the CO will be conducted in accordance with the waiver procedures, and the ALEC that was denied part of its request should be allowed to participate in that tour.

XI. Response to Application

MOTIONS

SPRINT

Sprint argues that the Commission should also reconsider its decision as stated at page 15 of the Order:

> When an ALEC submits ten or more applications within ten calendar days, the initial 15-day response period will increase by 10 days for every additional 10 applications or fraction thereof when the ALEC submits 10 or more applications within a 10-day period.

Sprint contends that the Commission has overlooked factual distinctions between the types of equipment and space that can be requested. For instance, Sprint contends that there may be multiple requests for collocation at multiple remote collocation sites within a 10-day time frame, but conditioning is not necessary to implement collocation at remote sites. Therefore, Sprint does not believe the additional time is necessary or appropriate, because it will hamper an ALEC's ability to bring its competitive services to market. Therefore, Sprint asks that the Commission reconsider its decision and apply a 15-day response interval to all requests for collocation at remote sites. Sprint adds that the Commission should clarify that the extended intervals set forth in the Order apply only to collocation at COs and other premises that would require conditioning to meet collocation needs.

RESPONSES

BELLSOUTH

BellSouth argues that Sprint has not identified anything in the record that the Commission overlooked with regard to this point. BellSouth contends that Sprint simply argues that allowing ILECs additional time to respond to multiple orders would delay the deployment of advanced services. BellSouth emphasizes that Sprint even states that multiple orders could be submitted within the 10-day time frame set forth in the Order, which BellSouth argues only further justifies the extra time provided by the Commission's decision. As such, BellSouth argues that Sprint has failed to identify any basis for the Commission to reconsider its decision.

RECOMMENDATION

Staff recommends that Sprint's request for reconsideration on this point be denied, because Sprint has failed to identify any point of fact or law upon which the Commission made a mistake in rendering its decision on application response times. Sprint argues that the Commission failed to consider collocation at remote collocation sites. Sprint did not, however, raise the issue of collocation at remote sites at hearing when addressing the issue of responses to applications, even though it could have. Sprint appears to simply be trying to raise an argument on reconsideration that it neglected to raise at hearing. As such, Sprint has failed to identify a basis for reconsideration of the Commission's decision on this point.

XII. Demarcation Point

MOTIONS

SPRINT

In its Motion, Sprint asks that the Commission clarify its decision set forth at page 51 of the Order:

> Therefore, the ILECs and ALECs may negotiate other demarcation points up to the CDF. However, if terms cannot be reached between the carriers, the ALEC's collocation site shall be the default demarcation point.

Sprint contends that testimony was presented at the hearing on whether or not a POT bay or some other intermediate point could be used at the ALEC's option, even though the FCC's Advanced Services Order prohibits ILECs from requiring an intermediate point. While Sprint believes that the language set forth above indicates that a POT bay is permissible, Sprint is concerned that it could be misconstrued. Therefore, Sprint asks that the Order be clarified to state that POT bays are permissible as demarcation points.

No responses were filed addressing this point.

RECOMMENDATION

Staff recommends that the Commission grant Sprint's request for clarification on this point. To the extent that there may be room for misinterpretation of the Commission's Order, staff

recommends that the Commission clarify that POT bays are permissible as demarcation points, but may not be required.

XIII. Price Quotes

MOTIONS

SPRINT

Sprint further contends that the Commission should clarify its decision set forth on page 68 of the Order, where the Commission discusses the requirement that the ILEC provide a price quote within 15 days and acknowledges testimony regarding true-up of the price to actual costs. Sprint asks that the Commission clarify its decision to specifically state that the estimate provided within 15 days is a "best estimate," and is subject to true-up when the provisioning of collocation is complete.

RESPONSES

BELLSOUTH

On this point, BellSouth emphasizes that Sprint is unable to identify anything upon which the Commission made a mistake or which it overlooked. As such, BellSouth contends that Sprint attempts to find another avenue by asking for "clarification" of the Commission's decision. However, BellSouth argues that the Commission acknowledged in its decision that there are valid arguments supporting a standard pricing system, which would render true-up unnecessary. BellSouth emphasizes that the Commission decided, nevertheless, that a determination on a standard platform or process was inappropriate at this time. BellSouth contends that Sprint asks the Commission to reverse its decision on this point in a move that would eliminate the possibility of such a standardized pricing system. In making its request, BellSouth contends that Sprint has failed to identify any oversight or mistake made by the Commission in rendering its decision. Therefore, BellSouth asks that Sprint's motion be denied to the extent Sprint seeks a true-up process.

FCCA/AT&T

FCCA/AT&T contend that the Commission's Order is clear and that clarification is not necessary. FCCA/AT&T state that the Commission did not consider true-up, but instead, required ILECs to provide "detailed costs." Therefore, FCCA/AT&T ask that Sprint's request for clarification on this point be rejected.

RECOMMENDATION

Staff recommends that Sprint's request for clarification on this point be denied. There is no basis for Sprint's request. In the Order, the Commission clearly stated that:

> The price quote should provide sufficient detail for the ALEC to submit a firm order, but we shall refrain at this time from specifying the quantity of detail which should be included in the price quote.

Order at p. 68.

There is nothing in the record to support either Sprint's "best estimate" approach, or a true-up process. The Commission clearly contemplated that the price quote provided should be enough for the ALEC to place a firm order for space, and that is what should be provided. Sprint has identified no basis for clarification. Therefore, staff recommends that the request be denied.

ISSUE 3: Should the Commission grant the FCCA/AT&T's Cross-Motion for Reconsideration?

RECOMMENDATION: FCCA/AT&T's Cross-Motion raises identical points raised by the Motions for Reconsideration addressed in Issue 2, and merely indicates that FCCA/AT&T agree with the movants. As such, the Cross-Motion appears to be redundant, and therefore, inappropriate. If, however, the Commission wishes to rule upon the Cross-Motion for Reconsideration, the Cross-Motion should be granted, in part, and denied, in part, as follows:

Tour for Partial Collocation Space

Staff recommends that the Commission deny FCCA/AT&T's Cross-Motion for Reconsideration regarding CO tours when an ILEC denies an ALEC part of the collocation space requested. The arguments presented were fully addressed in the Commission's Order.

FCCA/AT&T have not identified any mistake of fact or law made by the Commission in rendering its decision on this point.

First-Come, First-Served Rule

Staff recommends that the Commission grant FCCA/AT&T's Cross-Motion for Reconsideration regarding application of the FCC's first-come, first-served rule. The cross-motion for reconsideration demonstrates a mistake made by the Commission in rendering its decision on this point. The Commission should determine that an applicant's place on the waiting list for collocation space should be based upon the date of the ILEC's receipt of that applicant's collocation application.

Staff's recommendations on Issue 3 are consistent with its recommendations for Issue 2 on these points. If, however, the Commission modifies or rejects staff's recommendations on Issue 2 with regard to these points, the Commission's decision on Issue 3 should be consistent with the Commission's decision on the same points in Issue 2. **(B.KEATING)**

STAFF ANALYSIS: The proper standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its Order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959); citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315, 317 (Fla. 1974).

MOTION

Tour for Partial Collocation Space

In its Cross-Motion, FCCA/AT&T ask that the Commission reconsider its decision that a CO tour is not required when an ALEC's request for collocation can only be partially filled. FCCA/AT&T believe that the Commission has misunderstood what can occur in situations where only partial space is made available. FCCA/AT&T contend that the collocator could ultimately take less

than the entire remaining space, or could decide the partial space is insufficient and take no space at all. In these situations, an ILEC would not have to request a waiver, because space would still be available in the CO. FCCA/AT&T argue that because ILECs have an incentive to understate the amount of space available in COs, tours must be permitted to ensure that ALECs have an opportunity to confirm the availability of collocation space, or lack thereof.

First-come, First-served

FCCA/AT&T argue that the Commission should reconsider its decision that a collocator's place in line on the waiting list for new space should be determined by the date the collocator was denied space in the CO. FCCA/AT&T believe that use of such a process would allow ILECs to manipulate the process and could lead to disputes between applicants. FCCA/AT&T believe that using the application date as the determinative date would be much simpler.

RESPONSE

BellSouth agrees with FCCA/AT&T's Cross-Motion as it pertains to the Commission's decision on application of the first-come, first-served rule.

BellSouth disagrees, however, with FCCA/AT&T's arguments regarding the necessity of a CO tour when a collocation request is only partially filled. BellSouth notes that Sprint raised this same issue in its Motion for Reconsideration, and neither Sprint nor FCCA/AT&T have even referenced the standard for a motion for reconsideration, much less met it. BellSouth argues that the Commission's indication in its Order that a waiver request is likely to follow a partial denial of space was not the basis of its decision. Instead, BellSouth contends that it was merely dicta. BellSouth argues that the basis of the Commission's decision was paragraph 57 of the FCC's Advanced Services Order, Order 99-48, as set forth on page 94 of the Commission's Order:

> We are also not persuaded than an ALEC should be allowed to tour a CO if it is offered partial collocation space because of insufficient collocation space in the CO. We do not believe that the FCC order suggests that the ILECs should allow tours when partial collocation is provisioned; instead, an argument can be made that the FCC only anticipated CO tours in cases where

> collocation requests are denied. It appears that the ALECs' proposed CO tours for partial collocation space are inconsistent with provisions of FCC Order 99-48, which reads, in part:
>
> > Specifically, we require the incumbent LEC to permit representatives of a requesting telecommunications carrier that has been denied collocation due to space constraints to tour the entire premises in question, ...
>
> FCC Order 99-48 at Paragraph 57.

Order at 94.

Essentially, BellSouth argues, the FCCA/AT&T's request simply asks the Commission to change its mind. FCCA/AT&T have not, however, identified any basis for reconsideration. Therefore, BellSouth asks that the Cross-Motion be denied on this point.

RECOMMENDATION

Rule 25-22.060(1)(b), Florida Administrative Code, provides for cross-motions for reconsideration. Although not defined, the practice has been to raise in a cross-motion points not raised in the motion for reconsideration. Here, FCCA/AT&T have raised in their Cross-Motion for Reconsideration the identical points raised in the Motions for Reconsideration and have merely indicated that they agree with the movants. Thus, it would appear that the Cross-Motion is redundant, and therefore, not appropriate. If, however, the Commission prefers to rule upon the Cross-Motion, staff's analysis is set forth below.

Consistent with staff's recommendation in Issue 2 regarding tours for partial denial of collocation space, staff recommends that FCCA/AT&T's Cross-Motion for Reconsideration on this point be denied. The arguments presented on this issue were fully addressed in the Commission's Order at pages 88-94. Furthermore, staff believes that FCCA/AT&T have misinterpreted the Commission's prior Orders on collocation, Order No. PSC-99-1744-PAA-TP and PSC-99-2393-FOF-TP. Pursuant to those Orders, an ILEC must proceed with the collocation waiver process if space is denied. The Orders do not define whether the denial must be of all the space requested by the ILEC. Therefore, staff believes that even when the ILEC

partially denies space in a CO, the Commission's Collocation Orders require the ILEC to Petition for a Waiver of the collocation requirements. As such, a tour of the CO will be conducted in accordance with the waiver procedures, and the ALEC that was denied part of its request should be allowed to participate in that tour.

As for "first-come, first-served," as set forth in Issue 2, staff recommends that the Commission grant reconsideration on this point. As pointed out by BellSouth and Sprint, as well as FCCA/AT&T, the emphasis on the relevant date for determining an applicant's place on the waiting list was misplaced and contrary to the testimony in the proceeding. Upon review of the testimony in the record, staff agrees that the Commission should grant the requests for reconsideration and should determine that an applicant's place on the waiting list for collocation space should be based upon the date the ILEC received the applicant's collocation application.

ISSUE 4: Should these Dockets be closed?

RECOMMENDATION: No. Whether the Commission approves or rejects Staff's recommendations on Issues 1-3, these Dockets should remain open to address pricing for collocation in further proceedings.

STAFF ANALYSIS: Whether the Commission approves or rejects Staff's recommendations on Issues 1-3, these Dockets should remain open to address pricing for collocation in further proceedings. **(B.KEATING)**