

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for waiver of physical collocation requirements in the Mandarin-Loretto central office by BellSouth Telecommunications, Inc.

DOCKET NO. 991761-TL
ORDER NO. PSC-00-0534-FOF-TL
ISSUED: March 15, 2000

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
E. LEON JACOBS, JR.
LILA A. JABER

ORDER GRANTING PETITION FOR WAIVER OF
PHYSICAL COLLOCATION REQUIREMENTS AND DENYING REQUEST TO ACCEPT
LATE-FILED OBJECTIONS

BY THE COMMISSION:

I.

BACKGROUND

On September 7, 1999, this Commission issued Proposed Agency Action (PAA) Order No. PSC-99-1744-PAA-TP, which established procedures by which incumbent local exchange companies (LECs) would process alternative local exchange companies' (ALECs) requests for collocation and also established procedures for demonstrating space depletion for physical collocation in LEC central offices. On September 28, 1999, BellSouth Telecommunications, Inc. (BellSouth) filed a Protest/Request for Clarification of Proposed Agency Action. That same day, Rhythms Links, Inc. (Rhythms) filed a Motion to Conform Order to Commission Decision or, in the Alternative, Petition on Proposed Agency Action. Because motions for clarification/conformity are not contemplated by the PAA process, the motions were treated as protests to the PAA Order. On December 7, 1999, we issued Order No. PSC-99-2393-FOF-TP, the Final Order Approving Stipulated Modifications to Collocation Guidelines, Amendatory Order, and Consummating Order. These Orders established the procedures by which a LEC could request a waiver of the

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physical collocation requirements from this Commission. We established these procedures based on our belief that the handling of collocation waiver requests would be expedited, and the number and scope of collocation disputes might be limited because our expectations would be defined.

Pursuant to Order Nos. PSC-99-1744-PAA-TP and PSC-99-2393-FOF-TP, BellSouth filed a Notice of Intent to Request Waiver of the Physical Collocation Requirements for its Mandarin-Loretto central office on November 24, 1999. BellSouth, our staff and Florida Digital Network, Inc., one of the ALECs that had requested space for physical collocation, toured this central office on December 8, 1999.

BellSouth filed its Petition for Waiver of Physical Collocation Requirements in the Mandarin-Loretto central office on December 14, 1999. In accordance with the above-mentioned Orders, BellSouth filed its Post-Tour Report for this central office on December 22, 1999. Florida Digital Network, Inc., did not file a Post-Tour Report.

II. Covad's Late-Filed Objections

On January 6, 2000, Covad Communications Company filed Objections to BellSouth's Petition for Extension of Time. On January 12, 2000, Covad filed a Request to Accept Filing of Objections Out of Time. On January 25, 2000, BellSouth filed a Motion to Strike, Deny Covad Communications Company's Request to Accept Objections, or In the Alternative, Opposition to Covad Communications Company's Objections.

First, we address Covad's Request to Accept Late Filed Objections Out of Time, and BellSouth's Motion to Strike, Deny Covad Communication Company's Request to Accept Late Filed Objections, or in the Alternative, Opposition to Covad Communication Company's Objections. For the reasons provided below, we deny Covad's Request, and reject the arguments in BellSouth's responsive pleading.

In support of its Request to Accept Late Filed Objections, Covad states that it was unable to attend the tour, and due to the pendency of the holiday season, was unable to file a report within 20 days, as required by the collocation procedures. More importantly, Covad maintains it needed to wait until BellSouth filed its post-tour report because it was the only document that

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provided sufficient information on which to make an evaluation of available office space. Covad notes that its objections were less than one week past the December 28, 1999, deadline for filing of post-tour reports.

BellSouth argues that Covad's late filing should not be accepted because Covad did not provide a valid reason for its failure to comply with the collocation procedures. First, BellSouth notes that the tour was on December 8, 1999, two weeks before the holiday season. Second, BellSouth argues that the collocation procedures grant the LEC and the ALECs the same amount of time in which to file a post-tour report. BellSouth further argues that the guidelines do not envision that an ALEC will be allowed to respond to a LEC's post-tour report. Finally, BellSouth notes that the collocation procedures allow for the filing of a post-tour report so that the participants may state their findings from the tour. BellSouth contends that Covad's objections do not constitute a post-tour report because Covad never went on the tour.

We acknowledge that BellSouth's Notice of Intent was filed the day before Thanksgiving and the post-tour reports were due three days after Christmas. The timing of events was somewhat problematic. Nevertheless, the collocation procedures provide that a post-tour report shall be filed 20 days after a tour, and that the tour will be scheduled in response to the Notice of Intent to Request Waiver. We emphasize that the collocation procedures do not prevent a party unable to attend the tour from responding to the Petition for Waiver, which contains detailed information on space availability at the central office. The procedures do, however, contemplate that any comments, be they responsive to the tour or the Petition for Waiver, will be filed 20 days after the tour. A party need not actually participate in the tour in order to file comments.

The procedures clearly do not contemplate any pleadings or comments filed subsequent to the post-tour reports or in response to the post-tour reports. Allowing reply briefs or comments would necessarily extend the time for processing the collocation waiver request. This was clearly not intended by the collocation procedures. Therefore, Covad's Request to Accept Late Filed Objections is denied. In addition, we reject BellSouth's Objections for the same reason that reply briefs were not contemplated. We also note that denial of Covad's Motion to Accept Late Filed Objections renders BellSouth's Motion to Strike moot.

III. Petition for Waiver

The central issue in this docket is whether BellSouth should be granted a Waiver of the Physical Collocation Requirements for the Mandarin-Loretto central office. The procedures for handling physical collocation waiver requests are provided in Order Nos. PSC-99-1744-PAA-TP and PSC-99-2393-FOF-TP.

BellSouth states in its Notice of Intent that it is currently unable to provide collocation in the Mandarin-Loretto central office due to lack of space. However, BellSouth states that it has plans to complete a building addition to this central office some time in the second quarter of 2000. Once the addition is complete, sufficient space for physical collocation will be available.

BellSouth states that the Mandarin-Loretto central office houses a 5ESS switch providing local dial tone. BellSouth states that circuit equipment located in this central office consists of fiber optic terminals, digital cross-connect systems, multiplexers, digital channel banks, subscriber carrier terminals, and digital cross-connect panels, and provides connectivity to other central offices and local customers.

BellSouth states in its Petition for Waiver that the area served by the Mandarin-Loretto central office is growing rapidly and, therefore, the facility is under enormous space constraints. It argues that the space limitations are the "result of the use of space by the amount of existing BellSouth equipment, and the planned installation of additional equipment essential to the effective service of BellSouth customers." BellSouth further states that this central office currently serves 42,291 access lines and 8,880 T1 circuits. BellSouth points out that to meet the growing needs of its customers, it currently has projects planned such as incremental additions to the switching system, frame and transmission equipment.

BellSouth used the following procedure to identify space currently available for physical collocation in the Mandarin-Loretto central office.

1. Determine the total square footage within the facility;

2. Determine the unavailable space (i.e., restrooms, hallways, stairs, etc.);
3. Determine assigned space currently occupied by the BellSouth switch, transmission, power and other equipment, as well as necessary administrative space;
4. Determine the space reserved for future defined uses necessary to adequately serve BellSouth customers, including consideration given to BellSouth's future switch growth plans;
5. Identify any unusable space (such as basements subject to flooding); and
6. Determine available collocation space by subtracting Items 2-5 from item 1.

The Telecommunications Act of 1996 (Act) places certain obligations on LECs. One such obligation is collocation. The Act reads:

COLLOCATION.-The duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations. (47 U.S.C. 251(c)(6))

Thus, the Act clearly acknowledges that state commissions will make the determination of whether there is sufficient space in a LEC central office for physical collocation. BellSouth alleges in its petition that it lacks sufficient space in its Mandarin-Loretto central office to provide physical collocation.

Order No. PSC-99-1744-PAA-TP identifies the LEC, ALEC and Commission responsibilities in processing waiver requests. In brief, these Orders state that once an ALEC files a completed

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application for physical collocation with a LEC, and the LEC does not believe that space is available in that particular central office for physical collocation, the LEC must file, within fifteen days of the application, a Notice of Intent to Request a Waiver of the Physical Collocation Requirements with this Commission. The LEC will file its actual Petition for Waiver of the Physical Collocation Requirements for this central office within twenty days of filing its Notice of Intent. Further, the LEC, the ALEC(s) denied space, and our staff will tour the central office within ten days after the Notice of Intent is filed with us. Twenty days after the central office tour the LEC and ALEC(s) must file a post-tour report containing certain specific information and other information that the parties believe to be relevant. We then use this information to evaluate whether the LEC's Petition for Waiver should be granted.

The only ALEC on the tour, Florida Digital Network, did not file a post-tour report. The following is a summary of BellSouth's post-tour report.

BellSouth reports that the Mandarin-Loretto central office contains 8,680 gross square feet. There are 7,341 square feet occupied by BellSouth's equipment and 562 square feet of administrative space. BellSouth considers administrative space as any space not directly supporting the installation and repair of telephone equipment and customer service. Examples include storerooms, lounges, shipping-receiving rooms and training rooms. BellSouth also reports that there are 630 square feet of unavailable space in this central office. Unavailable space is defined as space assigned to building functions as required by code or national design standards, which include restrooms, air handler and chiller rooms, mechanical equipment such as pumps, controls, compressors, house service panel/electrical system distribution panels, stairs, elevator shafts and equipment rooms.

BellSouth also reports that it has 147 square feet reserved for its own future use. There are 66.5 square feet reserved for the growth of its switching equipment and 80.5 square feet reserved for the growth of its circuit equipment. We note that the FCC does allow a LEC to reserve space for its own future use:

Incumbent LECs are allowed to retain a limited amount of floor space for its own future uses. Allowing competitive entrants to claim space that incumbent LECs had specifically planned

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to use could prevent incumbent LECs from serving their customers effectively. Incumbent LECs may not, however, reserve space for future use on terms more favorable than those that apply to other telecommunications carriers seeking to hold collocation space for their own future use. (FCC 96-325, ¶1604)

In regards to its policy of reserving space, BellSouth states:

Generally, reserved space is held for the various space usages described in step C with forecasted needs for the next 2-year shipping interval. There is one exception. There are several types and families of equipment requiring fixed layouts. That is, this equipment cannot be split up into several different locations in the central office without degrading service or capping the size or customer service levels for that type of equipment.

Concerning BellSouth's policy for reserving space, we previously stated, in Order No. PSC-99-0060-FOF-TP, that:

BellSouth indicated that it reserves space for two years of forecasted equipment growth, and that it allows collocators to do the same. We find that this policy is reasonable.

We note that the issue of the appropriate parameters for reserving space for LEC and ALEC future use is at issue in a generic collocation proceeding currently before the Commission in Docket Nos. 981834-TP and 990321-TP. Until we examine the evidence and make a ruling in that proceeding, we believe that the two-year reservation policy is reasonable for purposes of ruling on this Petition for Waiver.

BellSouth states that a building addition is planned for the Mandarin-Loretto central office. BellSouth's expected completion date for this addition is the second quarter of 2000. This addition will add 6,148 square feet to the central office. BellSouth states that once this addition is complete, there will be sufficient space to provide requesting ALECs collocation in this office. We note that when planning additions or renovations to

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central offices, LECs are obligated by the FCC to consider requests for collocation. See 47 CFR §51.323(f)(3). It appears that BellSouth is complying with this FCC Rule.

We do, however, note that BellSouth has provided different dates for completion of this addition without any explanation. In its letter advising us of several planned building additions, BellSouth provides an estimated completion date of April 2000 for the Mandarin-Loretto central office, and in its Notice of Intent BellSouth provides an estimated completion date of "sometime in the second quarter of 2000." We will use the April 2000, date provided by BellSouth in its letter.

IV. Conclusion

Based on the information provided, we find that BellSouth's Petition for Waiver of the Physical Collocation Requirements for its Mandarin-Loretto central office is reasonable, and grant a waiver until April 30, 2000. If the addition will not be complete by April 30, 2000, BellSouth must file for an extension of time with this Commission. Pursuant to Section 251(c)(6) of the Act, however, BellSouth must continue to provide virtual collocation.

BellSouth is reserving 147 square feet for its own future use. According to the FCC Rules, a LEC may reserve space for its own future use, and we believe that this is an important consideration given that BellSouth does have Carrier of Last Resort responsibilities. Further, BellSouth has demonstrated that the 147 square feet that BellSouth is reserving for its switch and circuit equipment growth is reasonable.

We also note that during the tour of the Mandarin-Loretto central office, our staff did not observe any space that appeared to be wasted or inefficiently used.

Finally, BellSouth has indicated that it has an addition under construction at the Mandarin-Loretto central office. Upon completion of this building addition, there will be additional space available for physical collocation by ALECs.

Therefore, it is

ORDERED by the Florida Public Service Commission that BellSouth Telecommunications, Inc.'s Petition for Waiver of

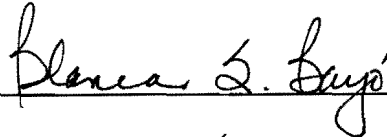
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Physical Collocation Requirements in the Mandarin-Loretto Central Office is hereby granted until April 30, 2000. It is further

ORDERED that Covad Communication Company's Request to Accept Filing of Objections Out of Time is denied. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 15th day of March, 2000.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

MKS

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme

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Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.