

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for temporary
waiver of physical collocation
in the J.T. Butler Central
Office by BellSouth
Telecommunications, Inc.

DOCKET NO. 000780-TL
ORDER NO. PSC-00-1604-FOF-TL
ISSUED: September 7, 2000

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
E. LEON JACOBS, JR.
LILA A. JABER
BRAULIO L. BAEZ

FINAL ORDER APPROVING TEMPORARY WAIVER
OF COLLOCATION REQUIREMENT

BY THE COMMISSION:

I. Case Background

On September 7, 1999, we 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. That Order 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 from us a waiver of the physical collocation requirements. In establishing these procedures, we set forth 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.

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FPSC-RECORDS/REPORTING

These procedures clearly outline the LEC, ALEC, and Commission responsibilities in processing waiver requests. In brief, these Orders require that once an ALEC files a completed application for physical collocation with a LEC, and the LEC does not believe that space is available for physical collocation in that particular central office, the LEC must file with us, within fifteen days of the application, a Notice of Intent to Request a Waiver of the Physical Collocation Requirements. The LEC is to 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, ALEC(s) denied space, and our staff will conduct a tour of the central office within ten days of the filing of the Notice of Intent. While the LEC must allow both the ALEC(s) denied space and our staff to tour the premises, the ALEC(s) do so at their option. Twenty days after the central office tour, the LEC must file a post-tour report containing certain specific information and other information that it believes to be relevant. The ALEC(s) may also file a post-tour report within twenty days of the tour outlining their findings. Our staff will then use this information to evaluate whether the LEC's Petition for Waiver should be granted.

Pursuant to Orders Nos. PSC-99-1744-PAA-TP and PSC-99-2393-FOF-TP, on June 27, 2000, BellSouth filed a Notice of Intent to Request Temporary Waiver of Physical Collocation Requirements in the J. T. Butler Central Office. On July 13, 2000, BellSouth and our staff conducted a tour of this central office. We note that, to date, BellSouth has not denied any ALEC(s) space in the J. T. Butler Central Office. No ALEC(s) participated in the tour.

BellSouth filed its Petition for Temporary Waiver of Physical Collocation Requirements in the J. T. Butler Central Office on July 17, 2000. It should be noted, however, that in the body of the Petition BellSouth is requesting that any waiver be permanent. In accord with the above-mentioned orders, BellSouth filed its Post-Tour Report for this central office on July 17, 2000.

II. Discussion of the Issues

The central issue before us is to determine whether BellSouth should be granted a Permanent Waiver of the Physical Collocation Requirements for the J. T. Butler Central Office. This request for waiver of collocation requirements is unique from other waiver requests because this is the only central office in the BellSouth system housed in space BellSouth leases, rather than owns. As a

result, there are a number of problems to be considered in the J. T. Butler Central Office which may be beyond the control of BellSouth. The issues that stem from BellSouth not owning the premises in which the J. T. Butler Central Office is housed are 1) lease issues, 2) landlord issues, and 3) building permitting issues. These issues must first be resolved before we can decide whether a permanent waiver should be granted.

Section 251 (c) (6) of the Telecommunications Act of 1996 (Act) places upon incumbent LECs:

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. (Emphasis added) (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's central office for physical collocation.

The term "premises" has been clearly defined by both the FCC and by us to include incumbent LEC owned and leased buildings. (Order No. PSC-00-0941-FOF-TP, p.20) Accordingly, it would initially appear that physical collocation in the J. T. Butler Central Office cannot be avoided merely because of leased premises. There are lease provisions and other practical problems, however, which may render physical collocation impractical.

First, BellSouth explains that the J. T. Butler Central Office is located in a multi-tenant, multi-story office building owned by others. BellSouth leases its space under terms that allow for renewals on 10-year intervals at pre-negotiated, below-market rates through the remaining life of the lease. BellSouth states that the owner of the building requires a sublease arrangement for collocation and, under the lease, one or more sublease arrangements waives and terminates BellSouth's right to renewal options, as well

as the option to lease additional space, at the landlord's discretion.

The lease under which BellSouth houses the J. T. Butler Central Office in the Paragon Building provides: "Tenant shall not assign the right of occupancy under this lease, or any other interest therein, or sublet the premises, or any portion thereof, without the prior written consent of Landlord, which the parties agree may be withheld at Landlord's discretion." Physical collocation, by its very nature, "sublets the premises, or a portion thereof" to the collocator.

Second, BellSouth states that in the Paragon building, with the exception of BellSouth, most office space is of a low risk, administrative-type nature. On the other hand, the nature of the equipment installed in a telephone central office poses a large risk of fire and various other problems which could affect other tenants. This liability issue has been dealt with in the BellSouth lease, but collocators would pose the same risk. Therefore, the landlord will not approve collocators as tenants, absent a proper showing of indemnification, including credit and financial status, for the building and other tenants therein. However, to date, the landlord has not responded to requests for such approval.

Third, when and if the landlord and lease issues are overcome, BellSouth must overcome a building code requirement. BellSouth states that it had previously fought for and received a release from sprinkler requirements in its present space at the J. T. Butler Central Office location some time ago. BellSouth subsequently acquired approximately 1,148 square feet of additional space, thinking that the exception would be granted for this new space as well, thus providing growth space for BellSouth and future collocators. However, due to building code changes and very specific code restrictions, BellSouth claims that the Fire Marshall adamantly refuses to extend the exception. BellSouth states that the Fire Marshall will relent only to allow a dry pipe system in the expanded space, which means that the sprinkler system pipes will not carry water until a fire alarm in any part of the building activates the system.

Under these conditions, BellSouth does not believe its equipment can be safely relocated to the expanded area to provide more growth space. Moreover, BellSouth does not believe ALECs will agree to place their equipment under such a system, although BellSouth has not formally asked collocators.

Therefore, even if BellSouth had sufficient space in the J. T. Butler Central Office, BellSouth would be unable to provide physical collocation as a result of the above constraints. In fact, until the lease implications are resolved, the matters of sprinklers and expanded leased space appear immaterial, including whether or not the J. T. Butler Central Office has sufficient space for physical collocation. However, our staff has made a complete analysis of the availability of space.

BellSouth states that the J. T. Butler Central Office is housed in space BellSouth leases. The building, known as the Paragon Building, in which the office is housed also houses other tenants. BellSouth leases approximately 5000 square feet for use as a central office. The J. T. Butler Central Office contains the full array of equipment necessary to provide telecommunications services.

BellSouth states that it used the following procedure to identify space currently available for physical collocation in the J. T. Butler Central Office:

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

BellSouth alleges in its Post-Tour Report that it lacks sufficient room in the existing space in its J. T. Butler Central

Office to provide physical collocation. They state that there is space reserved for defined future use for BellSouth to meet the growing needs of its customers through the year 2001. However, once that forecasted space is exhausted, BellSouth plans to serve all growth in this area by transfers to other offices or by establishing new locations.

BellSouth admits that there is sufficient space, if ALECs agree to accept it, for BellSouth to offer physical collocation in BellSouth's expanded leased space.

POST-TOUR REPORT

We will summarize the relevant information contained in BellSouth's post-tour report of the J. T. Butler Central Office.

BellSouth reports that the J. T. Butler Central Office contains 4,937 gross square feet. There are 3,269 square feet occupied by BellSouth's equipment. There are 0 square feet of administrative space. BellSouth considers as administrative space any space not directly supporting the installation and repair of both telephone equipment and customer service. Examples include storerooms, lounges, shipping-receiving rooms and training areas. BellSouth also reports that there are 270 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. This type of space typically contains restrooms, air handling and chiller rooms, mechanical equipment such as pumps, controls, compressors, house service panel/electrical system distribution panels, stairs, elevator shafts, equipment rooms and exits. BellSouth also reports that there are 1,148 square feet of unusable space due to building code requirements.

BellSouth reports that there are 0 square feet of assigned physical collocation space in this office, and that there is one virtual collocator utilizing space in this office; however, due to lease, landlord and building code issues, the virtual collocator cannot convert to physical collocation.

BellSouth reports that it has 250 square feet reserved for its own future use. There are 77 square feet reserved for the growth of its switching equipment, 7 square feet reserved for the growth of its circuit equipment, 61 square feet reserved for the growth of

its frame equipment, and 105 square feet reserved for the growth of its power equipment. We note that the FCC allows 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 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, ¶604)

In regard 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. (Post-Tour Report, p.2)

Concerning BellSouth's policy for reserving space, we ruled at the April 18, 2000 Agenda Conference and in Order No. PSC-00-0941-FOF-TP, that eighteen (18) months is a reasonable period for both ALECs and incumbent LECs to reserve space. BellSouth states in its petition that "[T]here is space reserved for defined future use for BellSouth to meet the growing needs of its customers through the year 2001." The end of year 2001 is roughly sixteen (16) months from this Order. It appears, therefore, that BellSouth is in compliance with our space reservation policy. We note that this requirement is currently the subject of Motions for Reconsideration.

BellSouth is reserving 250 square feet for its own future use. We acknowledge that, according to the FCC Rules, a LEC may reserve space for its own future use. We believe that this is important as

a LEC, such as BellSouth, does have carrier of last resort responsibilities. Further, we believe that the 250 square feet that BellSouth is reserving for its switch, circuit, power and frame equipment growth is reasonable. We also note that, during the tour of the J. T. Butler Central Office, our staff did not observe any space that appeared to be wasted or inefficiently used.

III. Analysis and Determination

Under the terms of the lease, any sublease would void all lease renewal options now held by BellSouth. In addition, the landlord has been unwilling to approve collocation arrangements, unless the collocator provides indemnification to all other tenants in this large, multi-tenant building. Thus, the granting of a Petition for Physical Collocation could result in the loss of use of the building for both BellSouth and collocators.

Rule 47 C.F.R. §51.321(e) states that, in the event an incumbent LEC cannot provide physical collocation of equipment necessary for interconnection or access to unbundled network elements at the incumbent LEC's premises due to technical infeasibility or space limitations,

. . .the incumbent LEC shall be required to provide virtual collocation, except where the incumbent LEC proves to the state commission that virtual collocation is not technically feasible.

We note that BellSouth continues to offer virtual collocation to petitioners for collocation. However, the offer of virtual collocation is based on the practical barrier to BellSouth offering physical collocation. Moreover, in the event that virtual collocators attempt to convert to physical collocation, the same legal and practical barriers will exist.

The next barrier centers around the unoccupied adjoining space for which BellSouth is paying rent, but not using. The space is adequate for numerous collocators, but for the existence of a fire sprinkler system. This system makes it an unsuitable location for the type of equipment for which collocation is sought. BellSouth has inquired about a waiver of the fire code sprinkler requirements from the Fire Marshall of Duval County and the Landlord, and has been assured that such a waiver will not be granted in a large, multi-tenant building.

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Based on the above reasons, BellSouth should not be required to provide physical collocation because it is "not practical for technical reasons or because of space limitations." However, BellSouth continues to offer virtual collocation to petitioners.

Although we agree that physical collocation is not practical for the J. T. Butler Central Office, we are reluctant to grant BellSouth a permanent waiver of physical collocation requirements at that office, since the circumstances surrounding this case or the terms of the lease may change.

Although the pleading in this docket is styled as a "Temporary Waiver of Physical Collocation Requirements," in the body of its Petition, BellSouth is requesting permanent relief. BellSouth's Request for Permanent Waiver of Physical Collocation Requirements in the J. T. Butler Central Office will be denied. Instead, we grant BellSouth a temporary waiver of physical collocation requirements, until the renewal date of the current lease, since the terms of the existing lease and other factors preventing BellSouth from offering physical collocation may change. In the interim, BellSouth should attempt to resolve the issues listed in this recommendation, so that physical collocation may be possible in the future. If BellSouth is unable to do so, the company will be allowed to seek another waiver, if necessary.

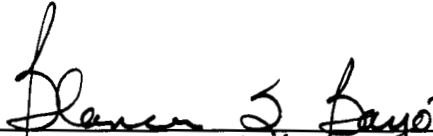
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that BellSouth Telecommunications, Inc.'s Request for Temporary Waiver of Physical Collocation Requirements is hereby granted as set forth in the body of this Order. It is further

ORDERED that this docket be closed.

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By ORDER of the Florida Public Service Commission this 7th day
of September, 2000.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

CLF

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 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.

M E M O R A N D U M

September 6, 2000

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RECORDS AND
REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (FORDHAM) *c.l.f.* *AK*

RE: DOCKET NO. 000780-TL - REQUEST FOR TEMPORARY WAIVER OF
PHYSICAL COLLOCATION IN THE J.T. BUTLER CENTRAL OFFICE BY
BELLSOUTH TELECOMMUNICATIONS, INC.

1604-FOF

Attached is an FINAL ORDER APPROVING TEMPORARY WAIVER OF COLLOCATION REQUIREMENT, to be issued in the above-referenced docket. (Number of pages in order - 10)

CLF/anc

Attachment

cc: Division of Competitive Services (T. Watts)

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