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FROM: DIVISION OF LEGAL SERVICES (B. KEATING, PELLEGRINI)
DIVISION OF DIVISION OF COMMUNICATIONS (SIRIANNI, *MRB*
NORTON, KING) *MRB* *MRB*

RE: DOCKET NO. 960757-TP - PETITION BY METROPOLITAN FIBER
SYSTEMS OF FLORIDA, INC. FOR ARBITRATION WITH BELLSOUTH
TELECOMMUNICATIONS, INC. CONCERNING INTERCONNECTION
RATES, TERMS, AND CONDITIONS, PURSUANT TO THE FEDERAL
TELECOMMUNICATIONS ACT OF 1996.

DOCKET NO. 960833-TP - PETITION BY AT&T COMMUNICATIONS OF
THE SOUTHERN STATES, INC. FOR ARBITRATION OF CERTAIN
TERMS AND CONDITIONS OF A PROPOSED AGREEMENT WITH
BELLSOUTH TELECOMMUNICATIONS, INC. CONCERNING
INTERCONNECTION AND RESALE UNDER THE TELECOMMUNICATIONS
ACT OF 1996.

DOCKET NO. 960846-TP - PETITION BY MCI TELECOMMUNICATIONS
CORPORATION AND MCI METRO ACCESS TRANSMISSION SERVICES,
INC. FOR ARBITRATION OF CERTAIN TERMS AND CONDITIONS OF
A PROPOSED AGREEMENT WITH BELLSOUTH TELECOMMUNICATIONS,
INC. CONCERNING INTERCONNECTION AND RESALE UNDER THE
TELECOMMUNICATIONS ACT OF 1996.

AGENDA: APRIL 6, 1998 - SPECIAL AGENDA - REQUEST FOR APPROVAL OF
INTERPRETATION OF ORDER NO. PSC-96-1579-FOF-TP -
PARTICIPATION LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\960833RI.RCM

CASE BACKGROUND

On December 16, 1996, in Docket No. 960757-TP, the Commission
issued Order No. PSC-96-1531-FOF-TP, its final order in the
arbitration proceeding of MFS Communications Company Inc., (MFS)

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with BellSouth Telecommunications, Inc. (BellSouth). The arbitration was conducted pursuant to the provisions of 47 USC §252 of the Telecommunications Act of 1996 (the Act). On December 31, 1996, the Commission issued Order No. PSC-96-1579-FOF-TP, its final order in the arbitration proceedings of AT&T Communications of the Southern States, Inc., (AT&T) and MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc., (MCI) with BellSouth. (See Docket Nos. 960833-TP and 960846-TP). This proceeding is a continuation of these cases, in which the Commission will set permanent rates for a number of network elements for which it set only interim rates in its arbitration initial orders. The Commission conducted a hearing in this Docket on January 26 - 28, 1998.

On February 9, 1998, BellSouth filed a Notice and Request for Approval of Interpretation of Order No. PSC-96-1579-FOF-TP. By its Request, BellSouth seeks approval of its interpretation of the part of Order No. PSC-96-1579-FOF-TP regarding the maximum time period for establishing physical collocation. See Order No. PSC-96-1579-FOF-TP at pgs. 101-102. On February 17, 1998, WorldCom filed its response to BellSouth's Request. On February 23, 1998, AT&T filed its response, and on February 25, 1998, MCI filed its response. None of the parties requested oral argument.

This is staff's recommendation on BellSouth's Notice and Request for Approval of its Interpretation of Order No. PSC-96-1579-FOF-TP.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant BellSouth's Request for Approval of its Interpretation of Order No. PSC-96-1579-FOF-TP?

RECOMMENDATION: No. The Commission should deny BellSouth's Request for Approval of its Interpretation of Order No. PSC-96-1579-FOF-TP. There is no basis in the record to approve BellSouth's interpretation. Furthermore, the meaning of Order No. PSC-96-1579-FOF-TP is clear. Any further interpretation is not necessary.

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STAFF ANALYSIS:

BellSouth

In its Request for Approval of its Interpretation of Order No. PSC-96-1579-FOF-TP, BellSouth asks that the Commission approve its interpretation of what "triggers" the beginning and end times of the three month period for the establishment of physical collocation. BellSouth also asks that the Commission approve its interpretation of the phrase "ordinary conditions."

With regard to the "triggers" for the three month interval, BellSouth asks that the Commission agree that the interval begins when BellSouth receives a complete and accurate Firm Order for physical collocation from an ALEC. BellSouth adds that this would mean that the ALEC had actually completed the Application/Inquiry process, had decided to collocate, and had provided the necessary Firm Order information and fees to BellSouth.

BellSouth also asks that the Commission agree that the three month interval would stop when BellSouth applies for a building permit and resume only when the permit has been received. BellSouth argues that the permitting process can take several months, particularly in some areas of the state. BellSouth asserts that there is no "typical" permitting period. BellSouth asks, therefore, that the permitting process be omitted from the three month interval.

In addition, BellSouth asks that the three month interval terminate on the date when all construction work for the collocation space is finished, a Certificate of Occupancy has been received, BellSouth has completed the installation of its equipment, and the collocator has been notified in writing that the collocation space is ready for equipment installation. BellSouth notes that sometimes municipal inspectors delay issuing a Certificate of Occupancy. In such circumstances, BellSouth asks that the situation be considered extraordinary.

As for the phrase "ordinary conditions," BellSouth asks that the Commission approve its definition that "ordinary conditions" are those situations where space is available and only minor changes are necessary to the network or infrastructure. BellSouth states that it interprets the Commission's order to mean that when extraordinary conditions are present, BellSouth must negotiate with

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the collocator to establish an acceptable time period. BellSouth also states that it does not understand the requirement that it inform the Commission when it cannot meet the three month interval to apply in situations where extraordinary events have intervened and where BellSouth is able to negotiate an acceptable time frame with the ALEC.

BellSouth included two attachments setting forth intervals and time lines for establishment of physical collocation in accordance with its interpretation of the Commission's order.

WorldCom

In its Response, WorldCom first states that it does not believe that the provisions of Order No. PSC-96-1579-FOF-TP apply to it. WorldCom asserts that the Order was issued in a docket different from the one in which WorldCom's arbitration with BellSouth took place. WorldCom asks, therefore, that the Commission not try to apply any additional interpretation of that Order to WorldCom. WorldCom adds that it does not believe that BellSouth intends to try to apply any interpretation of Order No. PSC-96-1579-FOF-TP to its relationship with WorldCom, but WorldCom states that it should be clarified that any attempt to do so would be improper.

WorldCom also states that it has already agreed with BellSouth on agreement provisions covering physical collocation. To the extent that BellSouth experiences problems meeting those agreed upon terms, WorldCom states that BellSouth is obligated to try to resolve those problems with WorldCom, in accordance with Section 33, of the parties' Florida Partial Interconnection Agreement. WorldCom asserts that any attempt by BellSouth to apply an interpretation of Order No. PSC-96-1579-FOF-TP to WorldCom without first contacting WorldCom would be a violation of the parties' agreement.

WorldCom states that it did not address the merits of BellSouth's request because WorldCom does not believe that BellSouth intends to apply any interpretation of Order No. PSC-96-1579-FOF-TP to WorldCom. WorldCom reserves the right to do so, however, if BellSouth does intend to apply an interpretation of the Order to WorldCom.

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MCI

In its Response, MCI states that the Commission should deny BellSouth's request because the issues raised by BellSouth are covered by provisions in the MCI/BellSouth interconnection agreement. MCI argues that BellSouth cannot ignore the provisions in its approved agreement. MCI states that Attachment V of the MCI/BellSouth agreement contains specific provisions regarding space turnover for physical collocation. MCI adds that the agreement includes a three month period for completion and includes specific exceptions to that three month period.

MCI argues that the parties have already resolved the meaning of the phrase "ordinary conditions." MCI further asserts that according to the parties' agreement, only the specific extraordinary condition of "abatement of an Environmental Hazard or Hazardous Materials" would extend the three month period. MCI states that BellSouth now wants to add more exceptions to the three month period. MCI argues that BellSouth should not be allowed to do so, particularly in this manner.

MCI states that BellSouth also would like the Commission to determine that the permitting process does not count towards the three month period. MCI argues, however, that any delay caused by this process would be covered by Part A, Section 18, Force Majeure, of the parties' agreement. MCI argues that in light of the provisions in the parties' agreement, BellSouth should not be allowed to try to create additional exceptions or make changes to the parties' obligations under the agreement by asking the Commission to approve its interpretation of Order No. PSC-96-1579-FOF-TP.

AT&T

In its Response and Objection to BellSouth's request, AT&T states that BellSouth's request raises questions regarding the amount of time that it would take to complete an actual request for physical collocation. First, AT&T argues that delaying the start date, as suggested by BellSouth, raises questions regarding what constitutes an acceptable application for collocation. AT&T notes that BellSouth's request does not include any guidelines that would help CLECs determine what would constitute an acceptable application. Thus, AT&T argues that BellSouth could control the start date just by finding any errors and rejecting an application.

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AT&T also argues that many of the time lines set forth in Exhibit A to BellSouth's request appear to be too long. AT&T notes in particular the 30 days indicated that would be required to review an initial application.

In addition, AT&T argues that any problems that may occur due to delay in receiving building permits should be investigated before BellSouth's interpretation is applied. AT&T argues that it is not clear that building permits would necessarily apply to the types of activity involved with a physical collocation arrangement. AT&T also argues that any problems involved in receiving building permits in South Florida should not be applied to the rest of the state. AT&T argues, therefore, that a more thorough investigation of the permitting process should be done before BellSouth's position is approved.

Furthermore, AT&T argues that BellSouth's definition of "ordinary conditions" would exclude most of BellSouth approximately 193 central offices in Florida. AT&T adds that BellSouth has not included a time line proposal for central offices that do not fall within the definition of "ordinary conditions."

AT&T argues that BellSouth is simply attempting to add new conditions on the Commission's previously established time line for physical collocation. AT&T argues that these new conditions would cause CLECs additional delays in obtaining collocation. AT&T asks, therefore, that the Commission conduct an investigation and hearing to determine the detailed time lines necessary for physical collocation that will be consistent with Order No. PSC-96-1579-FOF-TP.

Staff Analysis

Order No. PSC-96-1579-FOF-TP, issued December 31, 1996, in Dockets Nos. 960833-TP, 960846-TP, and 960916-TP, states, in pertinent part:

Upon consideration we conclude that maximum time periods for the establishment of physical collocation of three months and virtual collocation of two months are reasonable for ordinary conditions. If MCI and BellSouth cannot agree to the required time for a particular collocation request, BellSouth must demonstrate why additional time is necessary.

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Order No. PSC-96-1579-FOF-TP, at p. 102.

Staff believes that the Commission should deny BellSouth's request for approval of its interpretation of Order No. PSC-96-1579-FOF-TP. As set forth above, the Commission clearly stated that three months is a reasonable amount of time for establishment of physical collocation under ordinary conditions. The Commission further indicated that BellSouth may reach an agreement as to a required time for a particular collocation request. If BellSouth is unable to reach an agreement with the requesting party on the time for a particular collocation request, then the parties may seek the Commission's guidance. In seeking the Commission's guidance, the Commission clearly stated that BellSouth must be prepared to demonstrate why more than three months is necessary.

Specifically, staff does not believe that the Commission needs to, or should, clarify the phrase "ordinary conditions," or indicate what would amount to extraordinary conditions, as BellSouth has requested. While the Commission did hear testimony from MCI witness Caplan and BellSouth witness Scheye regarding suggested time frames and potential problems associated with physical collocation, there was no testimony regarding the particularities that BellSouth would now have the Commission address. Based on that limited testimony, the Commission determined that three months was sufficient under "ordinary conditions" for establishment of physical collocation. BellSouth now asks that the Commission approve its interpretation of the meaning of "ordinary conditions." BellSouth's interpretation is, however, beyond the scope of the testimony presented on this matter. Staff does not, therefore, believe that the Commission should approve BellSouth's interpretation on this point because there is not a basis in the record for that interpretation.

Staff also does not believe that it is necessary for any further interpretation of the Commission's use of the phrase "ordinary conditions." The Order states, "If MCI and BellSouth cannot agree to the required time for a particular collocation request, BellSouth must demonstrate why additional time is necessary." (Emphasis added.) As stated in the Order, the parties may reach an agreement as to the time for a particular collocation request. Because the parties may agree to a different time than that which is set forth in the Order, staff believes that the purpose of the three month time frame is to serve as a guideline of what the Commission considers reasonable. Staff also believes that the Order is clear that the Commission intended that the parties to a request for collocation would attempt to resolve any problems with that time frame on a case by case basis, and would only come

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to the Commission if they were unable to resolve their problems. Furthermore, if the parties have already agreed to a specific time period for completing collocation requests, staff believes the Commission intended that BellSouth would be bound by the agreed upon term, not the three month guideline.

BellSouth also indicated that it believed that the Commission required BellSouth to notify the Commission whenever BellSouth is unable to meet the three month deadline. Staff does not agree that this was a requirement included in the Commission's Order. The Commission only stated that if BellSouth is not able to reach an agreement for the time for completing a particular request, BellSouth must demonstrate to the Commission why additional time is necessary. Clearly, this requirement that BellSouth provide reasons for requesting an extension of time does not include a requirement that BellSouth notify the Commission every time it exceeds the three month guideline.

In addition, BellSouth's Exhibit B to its Request, Attachment A to this Recommendation, demonstrates that BellSouth has been able to negotiate extensions of the three month requirement with ALECs. Staff also believes that it is noteworthy that both WorldCom and MCI have provisions in their agreements with BellSouth regarding collocation. Both agreements also contemplate that the parties will first attempt to negotiate a resolution of any problems arising out of their agreement before bringing such disputes to the Commission for resolution. While the AT&T/BellSouth agreement contains no provisions on collocation, Section 4., Good Faith Performance, requires the parties to further negotiate the resolution of new or open issues under the Agreement. Plainly, that is the intent indicated by the Commission's Order -- that the parties first attempt to work out problems with the three month guideline between themselves on a case-by-case basis.

As for WorldCom's assertions that the three month time frame set forth in Order No. PSC-96-1579-FOF-TP does not apply to WorldCom, staff agrees. The Order was issued in Dockets Nos. 960833-TP, 960846-TP, and 960916-TP. WorldCom did not participate in that arbitration proceeding and did not have an opportunity to address the matter. Nonetheless, staff believes that, as a general guideline, the three month time frame set forth in Order No. PSC-96-1579-FOF-TP is reasonable.

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Furthermore, with regard to AT&T's request for a hearing on BellSouth's request, staff does not believe that such a hearing is necessary or prudent. As stated above, the Commission intended the three month time frame as a guideline for collocation under ordinary conditions. The Commission did not determine what would constitute an extraordinary condition, nor did it intend to do so. Instead, the Commission indicated that the parties should try to agree to time periods for collocation requests on a case by case basis. Any unresolved disputes would then be resolved by the Commission. As indicated by some of the problems and issues raised in AT&T's Response, there are far too many variables involved in fulfilling collocation requests to be able to make a finding of specific collocation time lines that would be applicable in every possible instance. It is more appropriate that problems with specific requests be addressed on a case by case basis, taking into consideration the specific circumstances surrounding the request. Thus, staff believes that it is not necessary to conduct a hearing on BellSouth's Request.

ISSUE 2: Should this Docket be closed?

RECOMMENDATION: No. This Docket should remain open pending the Commission's final post-hearing determination.

STAFF ANALYSIS: This Docket should remain open pending the Commission's final post-hearing determination.