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September 22, 1998

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RECORDS AND
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Re: Docket No. 980947-TL

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Teleport Communications Group Inc./TCG South Florida ("TCG") are the original and fifteen copies of the Petition of Teleport Communications Group Inc./TCG South Florida for Leave to Intervene.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely,

Kenneth A. Hoffman
Kenneth A. Hoffman

- ~~ACK~~ _____
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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: BellSouth Telecommunications,) Docket No. 980947-TL
Inc.'s Petition for Temporary Waiver)
for Boca Raton Boca Teeca) Filed: September 22, 1998
Central Office)
_____)

**PETITION OF TELEPORT COMMUNICATIONS GROUP INC./
TCG SOUTH FLORIDA FOR LEAVE TO INTERVENE**

Teleport Communications Group Inc. and its Florida affiliate, TCG South Florida (hereinafter referred to collectively as "TCG"), by and through its undersigned counsel, and pursuant to Rule 28-106.205, Florida Administrative Code, hereby requests the Commission to grant TCG intervention and full party status in this proceeding. In support of its Petition, TCG states as follows:

1. The exact name of the Petitioner and its address is:

Teleport Communications Group Inc.	TCG South Florida
2 Lafayette Centre	1 East Broward Boulevard
1133 Twenty-First Street, N.W.	Suite 910
Suite 400	Fort Lauderdale, FL 33301
Washington, DC 20036	(954) 453-4200 (telephone)
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2. Copies of all notices, pleadings, staff recommendations, orders, and other documents filed or served in this proceeding should be provided to the following on behalf of TCG:

Kenneth A. Hoffman, Esq.
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FPSC-RECORDS/REPORTING

3. TCG is certificated by the Commission to provide both local and long distance telecommunications services. TCG is currently providing these services in the State of Florida.

4. TCG has approved interconnection and collocation agreements with BellSouth Telecommunications, Inc. ("BellSouth")¹ and operates as a facilities-based alternative local exchange company ("ALEC") in BellSouth's territory in Florida.

5. In this proceeding, BellSouth seeks a waiver and exemption from the physical collocation requirements set forth in the Telecommunications Act of 1996 (the "Act") and the Federal Communications Commission's ("FCC") Local Competition Order² for Boca Raton Boca Tecca central office. TCG's substantial interests as a facilities-based provider of local exchange services, interexchange services and additional telecommunications and enhanced services are affected by BellSouth's request for waiver of the physical collocation requirements set forth in the Act and the Local Competition Order and by the Commission's determinations in this docket concerning the provision of physical collocation by BellSouth to TCG and/or other ALECs from the Boca Raton Boca Tecca central office.

I. BACKGROUND

A. The Importance of Physical Collocation for ALECs

6. Physical collocation is an important method of establishing interconnection and accessing unbundled network elements ("UNEs") for the successful development of facilities-based

¹See Order Nos. PSC-96-1313-FOF-TP issued October 29, 1996 in Docket No. 960862-TP and Order No. PSC-98-0504-FOF-TP issued April 13, 1998 in Docket No. 980030-TP.

²In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, FCC Docket No. 96-98, FCC 96-325, First Report and Order, ¶ 602-607 (August 8, 1996) ("Local Competition Order").

competition. It is essential for effective facilities-based competition. Physical collocation enables a competitive carrier to locate its own transmission equipment within the Incumbent Local Exchange Company's ("ILEC") central offices. If physical collocation is improperly denied or is not provided in an efficient and timely manner, no carrier can have a fair opportunity to offer service competitive to that offered by the ILEC.

7. The importance of physical collocation is highlighted by the Act, which identifies "the duty to provide physical collocation" as one of the specific duties required of ILECs by the Act, along with such essential elements of competition as interconnection and access to unbundled elements.³ As the FCC has stated: "It is clear that the success of efficient competitive entry through interconnection depends on the interconnectors' ability to obtain access to the LECs' transmission facilities at rates that reflect costs and under terms and conditions that are just and reasonable."⁴

8. Physical collocation is the more efficient and desirable approach to interconnection for facilities-based competitors rather than virtual collocation or mid-span meet arrangements.⁵ Under the physical collocation model, an ALEC can own, install and maintain its own equipment without interference from the ILEC. Importantly, an ALEC is able to have much greater control over the quality of service it provides. The ability to ensure high quality service is essential for a

³47 U.S.C. §251(c)(6).

⁴Second Report and Order, In re: Local Exchange Carriers' Rates, Terms and Conditions for Expanded Interconnection Through Physical Collocation for Special Access and Switched Transport ("Expanded Interconnection"), CC Docket No. 93-162, FCC 97-208, released June 13, 1997.

⁵TCG recognizes that although the FCC has stated that certain ALECs may prefer virtual collocation, that does not affect BellSouth's duty to provide or TCG's right to demand physical collocation.

new entrant to be successful in the telecommunications marketplace.

9. In contrast, alternative approaches, including virtual collocation and mid-span meet arrangements, impose additional burdens on interconnectors. For example, virtual collocation arrangements often raise significant equipment ownership issues - - most ILECs require that the competing carrier turn over ownership of the collocated equipment to the ILEC for the nominal sum of \$1.00. Under such an arrangement, an ALEC is unable to install its equipment or to access the equipment for provisioning, augmentation or maintenance. Further, once the ALEC has turned over control of the "virtually collocated" equipment, the parties must develop elaborate, and often unsatisfactory, procedures for ILEC-controlled use of the equipment by the interconnector. Virtual collocation essentially prevents an ALEC from providing as high a quality of service as that provided by the ILEC. It also prevents an ALEC from rapidly introducing new technology into their networks. The introduction of each new type, or even brand, of equipment requires the ALEC to train ILEC personnel in its use.⁶ This is not only a slow and costly process, but eliminates much of the incentive that ALECs have to innovate. The inefficiency and inconvenience are compounded by the fact that the ILEC charges the interconnector for these "services." The end result is that an ALEC's competitive advantage gained by acting quickly to incorporate new technologies within its network is effectively canceled.

B. Federal and State Jurisdiction Over Collocation

10. Among the obligations that the Act establishes for ILECs is the duty to provide

⁶Moreover, the training expense issue may, in effect, limit an ALEC to using the same equipment used by the ILEC, even if such equipment would otherwise not be optimal for the ALEC.

physical collocation to competitors. Specifically, Section 251(c)(6) of the Act imposes:

The duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, 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.⁷

The Act thus requires that BellSouth provide physical collocation unless it can "demonstrate" to the Commission that the requested physical collocation is "not practical ... because of space limitations."

The Act also requires that BellSouth provide interconnection that is "at least equal in quality to that provided by the local exchange carrier to itself," and access to unbundled network elements at any technically feasible point "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of [section 251] and section 252."⁸

11. In discussing the term "space limitations" in its order implementing this provision of the Act, the FCC cautioned that "incumbent LECs have the incentive and capability to impede competitive entry by minimizing the amount of space that is available for collocation by competitors."⁹ The FCC also adopted filing requirements and suggested guidelines for state commission review.

[W]e require that incumbent LECs provide the state commission with detailed floor plans or diagrams of any premises where the incumbent

⁷47 U.S.C. §251(c)(6).

⁸Id. §§251(c)(2)(C), 251(c)(3); Local Competition Order, at par. 602, 603.

⁹Local Competition Order, at ¶ 585.

alleges that there are space constraints, submission of floor plans will enable state commissions to evaluate whether a refusal to allow physical collocation on the grounds of space constraints is justified. We also find that the approach detailed by AT&T in its July 12 Ex Parte submission to be useful and believe that state commissions may find it a valuable guide.¹⁰

C. BellSouth's Exemption Request

12. In its Petition, BellSouth requests that the Commission grant an exemption from the physical collocation requirement of the Act. BellSouth asserts that available and remaining space is exhausted in the Boca Raton Boca Teeca central office.

II. BELLSOUTH HAS NOT DEMONSTRATED THAT PHYSICAL COLLOCATION IS NOT PRACTICAL FOR TECHNICAL REASONS OR BECAUSE OF SPACE LIMITATIONS.

A. BellSouth's Petition Was Not Timely Filed

13. The Act requires that BellSouth provide physical collocation to a requesting interconnector unless it can demonstrate to a state commission that collocation is not practical because of either technical reasons or space limitations.¹¹ BellSouth should not be able to deny a physical collocation request unless it has a Commission exemption in hand. BellSouth should be required to survey its central offices on a regular basis in order to ascertain those central offices where physical collocation is not feasible, or will not be feasible in the immediate future.¹² As soon

¹⁰Id. ¶ 602; accord 47 C.F.R. §51.321(f). The AT&T submission referenced by the FCC would require the specific identification of the space on ILEC premises that is used for various purposes, and specific plans for rearrangement/expansion and identification of steps taken to avoid exhaustion. Local Competition Order, at ¶ 602, fn. 1461.

¹¹47 U.S.C. §251(c)(6).

¹²Such a requirement would not be burdensome on BellSouth. As a matter of common sense, it would seem that BellSouth would already maintain sufficient information to make the

as BellSouth is aware that there is (or will be) a space limitation in a central office, BellSouth should immediately file a petition seeking an exemption from the physical collocation requirement. If the Commission has not granted a BellSouth petition for exemption, BellSouth has a statutory obligation to provide physical collocation.

14. At a minimum, BellSouth should file a petition for exemption immediately after receiving a request from an interconnector seeking physical collocation. If BellSouth is in a position to deny such a request, it, of course, must have sufficient information to demonstrate the basis for the denial to the Commission. There is no sound rationale for delaying such a straight forward filing.

15. BellSouth, however, appears to have its own unique interpretation of the timing of the filing of a petition for exemption under the Act. Instead of filing when it is first aware (or should be aware) of space limitations at a central office, or even immediately after BellSouth receives a request for physical collocation that it denies, BellSouth seems to believe it may file based solely at its own convenience. For example, in its Petition, BellSouth never explains when it first became aware of alleged space constraints for the Boca Raton Boca Teeca central office. BellSouth may have been aware for months of the alleged space constraints. Nor does BellSouth provide the dates upon which it denied physical collocation requests for potential interconnectors.

16. BellSouth's delay in filing its petition directly harms competitors. To the extent that an ALEC does not know whether space is available at a certain office until after it files a formal application for collocation space makes ALEC network planning more difficult. There is no

necessary demonstration to the Commission.

compelling reason that would require ALECs to wait until BellSouth files an application to know whether physical collocation is possible at a given central office. Indeed, the lack of a formal process under which BellSouth should file for exemption of the federal requirement is directly harmful to competitors. The Commission should require BellSouth to file its exemption requests when it first becomes aware (or reasonably should have become aware) of the space constraints at a particular central office.

17. In addition, it is possible that the Commission would ultimately deny the exemption request by finding sufficient space to allow for physical collocation. In such a case, ALECs would be harmed by the operational and administrative inconvenience of proceeding with virtual collocation and switching to a physical collocation arrangement a short time later. In addition, there are expenses associated with such a conversion that fall squarely on the requesting ALEC. At a minimum, TCG submits that if BellSouth has not received an exemption at the time it denies a request for physical collocation, and ultimately the Commission denies the BellSouth exemption request, BellSouth should be responsible for all of the costs associated with migrating a virtual collocation arrangement to a physical collocation arrangement and any additional costs related to BellSouth's improper denial. Such a policy would only put a ALEC in the same position it would have been in had BellSouth timely filed its exemption request.

18. Allowing BellSouth to file for exemption with the timing left solely to BellSouth's discretion eviscerates the protections contained in Section 251(c)(6) of the Act. The pro-competitive benefit of requiring physical collocation unless an exemption is obtained becomes meaningless if the filing by the ILEC is not timely. If BellSouth is under no time constraint within which to file for an exemption, the question becomes whether BellSouth's filing of an exemption petition is ever

too late. For example, would filing an exemption request two years after BellSouth denied a ALEC request for collocation be timely?

19. BellSouth's inadequate filing is either due to the fact that it does not have the evidentiary basis necessary to receive an exemption; that it is attempting to delay the provisioning of physical collocation; or that it did not desire to take the time to make a comprehensive filing. In any event, BellSouth should not be permitted to "supplement" this filing. To permit BellSouth to supplement at this late stage would send a message that BellSouth can engage in delay tactics without fear of the consequences. Indeed, to the extent that BellSouth's filing is found tardy and incomplete, the Commission should take the strongest possible steps to ensure future compliance on collocation filings.

Accordingly, TCG submits that the Commission should find that BellSouth failed to timely file its instant Petition. TCG further submits that the Commission should require prospectively BellSouth to file its exemption requests when it reasonably should be aware of space constraints at a particular central office.

B. BellSouth has Failed to Provide the Necessary Evidence to Meet the Federal Statutory Language.

20. BellSouth has not in any sense of the word demonstrated to the Commission that space constraints require the issuance of an exemption. BellSouth proffers only conclusory statements regarding the alleged exhaustion of space. Although BellSouth alleges that the remaining space in the central office must be reserved for its own exclusive use,¹³ it does not provide any forecasts or specific data to the Commission or the other parties for examination. Close scrutiny of

¹³See, e.g., Petition, at ¶ 7.

the reasonableness of any such forecasts and underlying assumptions is critical for making the determination requested by BellSouth. In other words, if the forecast is suspect, BellSouth's exemption request is undermined. Moreover, BellSouth's assertion that BellSouth shall be afforded the exclusive use of remaining space in the central office violates the FCC's mandate against ILEC reservation of "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."¹⁴

21. In addition, BellSouth's Petition admits that BellSouth has failed to relocate office and administrative occupants of central office space.¹⁵ ALECs directly suffer when BellSouth is able to consume central office space with administrative occupancy while simultaneously asserting that there is no room for physical collocation. Further, BellSouth's Petition fails to address whether BellSouth has relocated administrative use of central office space for its own benefit.

22. Finally, BellSouth failed to file information consistent with the following nine items derived from the AT&T *Ex Parte* submission to the FCC:

- (i) Central Office Common Language Identifier;
- (ii) the amount of space requested by a competing LEC;
- (iii) the total amount of space at each of the central office;
- (iv) the space occupied;
- (v) the space not occupied;
- (vi) expansion and rearrangement plans;
- (vii) efforts to avoid exhaustion;
- (viii) plans to provide service on space is exhausted; and
- (ix) a supporting affidavit.¹⁶

¹⁴Local Competition Order, at ¶ 604; 47 C.F.R. §51.323(f)(4).

¹⁵Petition, at ¶ 6.

¹⁶See Local Competition Order at ¶ 602, fn. 1461.

BellSouth has virtually ignored a substantial portion of this material, critical information in its Petition and accompanying documents.

23. Among other things, BellSouth failed to provide information on item (ii) regarding the amount of space requested by ALECs; nor did BellSouth provide an adequate discussion of its expansion and rearrangement plans required under item (vi). Although BellSouth made occasional references to central office expansion, it appears that BellSouth is to be the only beneficiary of these undertakings. BellSouth in particular failed to address rearrangements plans and specifically did not represent that there are no possible rearrangement opportunities (equivalent to those which BellSouth undertakes or would undertake on its own behalf) that could be developed to make space available for ALECs.

24. In addition, BellSouth failed to provide information on item (vii) regarding efforts to avoid exhaustion. BellSouth failed to indicate what efforts, if any, it undertook or considered regarding the removal of obsolete equipment, or the rearrangement of inefficiently configured equipment. BellSouth did not provide credible information regarding plans to provide service once space is exhausted (item (viii)). Although BellSouth referenced the availability of virtual collocation, it failed to address reasonably the timing and availability that would result from a number of space creating operations such as switch change outs.

25. BellSouth's Petition, by virtually ignoring many of the requirements described through the AT&T FCC *Ex Parte* submission, falls dismally short of demonstrating that an exemption should be issued for the Boca Raton Boca Teeca central office. BellSouth's Petition fails to provide sufficient credible evidence to demonstrate the unavailability of space for physical collocation.

C. A Physical Inspection Should Be Permitted to Verify BellSouth's Assertions

26. Although floor plans and other documents should be helpful in examining the validity of BellSouth's claims of space constraints in a particular location, these documents alone are insufficient to meet BellSouth's burden to demonstrate that physical collocation is not practical. In many cases, building plans do not accurately describe the "as built" portion of a site. For example, building modifications made after the drafting of blue prints may not be accurately reflected in the blue prints. Therefore, a site inspection should be held in conjunction with the provision of the specified documents. Site inspections are well-accepted tools for verifying Regional Bell Operating Company space limitation claims in other jurisdictions.¹⁷

27. A site inspection that includes a Commission representative and all affected or potentially affected parties would provide the opportunity to verify the accuracy of BellSouth's allegations of space constraints. Such an inspection would be neither time consuming nor burdensome. Significantly, it would allow for very speedy resolution of these time-sensitive issues. In addition to verifying space limitations, site inspections by the interested parties would also allow parties to discuss whether alternative collocation arrangements were possible. For example, instead of a 10' x 10' collocation cage, a modified space may be acceptable and workable for the ALEC. After examining floor plans and participating in a site inspection, ALECs may be able to propose alternative arrangements that would fit within existing space. ALECs, however, would have limited

¹⁷ For example, in Delaware, the Delaware Public Service Commission has ordered Bell Atlantic to make available its central offices for inspections in order to resolve requests for exemption from the physical collocation requirements. In the Matter of the Petition by Bell Atlantic - Delaware, Inc. for Exemption from Physical Collocation Under Section 251(c) of the Telecommunications Act of 1996, PSC Docket No. 97-009T, Order No. 4621 at 3-4 (April 15, 1997).

ability to propose alternative arrangements without access to floor plans and a site visit.

WHEREFORE, TCG respectfully requests that the Commission grant this Petition for Leave to Intervene, grant TCG intervention and full party status in this proceeding, and deny BellSouth's Petition for Waiver.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to the following by U. S. Mail this 22nd day of September, 1998:

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