

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for temporary waiver of physical collocation requirements set forth in the 1996 Telecommunications Act and the FCC's First Report and Order, for the Daytona Beach Port Orange Central Office, by BellSouth Telecommunications, Inc.

DOCKET NO. 980946-TL

In re: Petition for waiver of physical collocation requirements set forth in the Telecommunications Act of 1996 and the FCC's First Report and Order, for the Boca Raton Boca Teeca Central Office, by BellSouth Telecommunications, Inc.

DOCKET NO. 980947-TL

In re: Petition for waiver of physical collocation requirements set forth in the 1996 Telecommunications Act and the FCC's First Report and Order, for the Miami Palmetto Central Office, by BellSouth Telecommunications, Inc.

DOCKET NO. 980948-TL

In re: Petition for waiver of physical collocation requirements set forth in the Telecommunications Act of 1996 and the FCC's First Report and Order, for the West Palm Beach Gardens Central Office, by BellSouth Telecommunications, Inc.

DOCKET NO. 981011-TL

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

ORDER NO. PSC-99-0538-PCO-TL  
DOCKET NOS. 980946-TL, 980947-TL, 980948-TL, 981011-TL,  
981012-TL, 981250-TL  
PAGE 2

In re: Petition for waiver of physical collocation requirements set forth in the Telecommunications Act of 1996 and the FCC's First Report and Order, for the North Dade Golden Glades Central Office, by BellSouth Telecommunications, Inc.

DOCKET NO. 981012-TL

In re: Petition for temporary waiver of physical collocation requirements set forth in the 1996 Telecommunications Act and the FCC's First Report and Order, for the Lake Mary Main Central Office, by BellSouth Telecommunications, Inc.

DOCKET NO. 981250-TL  
ORDER NO. PSC-99-0538-PCO-TL  
ISSUED: March 24, 1999

ORDER ON DISPUTED ISSUE

I. CASE BACKGROUND

On July 27, 1998, BellSouth Telecommunications, Inc. (BellSouth) filed a Petition for Temporary Waiver and two Petitions for Waiver from provisions set forth in the Telecommunications Act of 1996 (Act) and the Federal Communication Commission's (FCC) First Report and Order, FCC Order 96-325, which require the company to allow ALECs to physically collocate in its central offices unless it

. . . 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). On August 7, 1998, BellSouth filed two more Petitions for Waiver from the physical collocation requirements, Dockets No. 981011-TL and 981012-TL, and on October

ORDER NO. PSC-99-0538-PCO-TL  
DOCKET NOS. 980946-TL, 980947-TL, 980948-TL, 981011-TL,  
981012-TL, 981250-TL  
PAGE 3

1, 1998, BellSouth filed a sixth Petition for Temporary Waiver from the physical collocation requirements, Docket No. 981250-TL. The central offices at issue in these Dockets are the Daytona Beach Port Orange office, the Boca Raton Boca Teeca office, the Miami Palmetto office, the West Palm Beach Gardens office, the North Dade Golden Glades office, and the Lake Mary office, respectively.

Workshops were conducted regarding these Dockets on November 19, 1998, and February 19, 1999. In addition, BellSouth conducted walk-throughs of these central offices on January 29, 1999, and February 11-12, 1999, which our staff and the intervenors attended.

No resolution was reached regarding BellSouth's Petitions; therefore, these Dockets have been set for an administrative hearing on June 9-11, 1999. Because these Dockets address the same subject matter, these Dockets have been consolidated for hearing purposes by Order No. PSC-99-0476-PCO-TL, issued March 8, 1999.

The second workshop, which was conducted on February 19, 1999, also served as an issues identification meeting. At that workshop, the parties agreed to the wording of all issues, except for one. The following issue, Issue 2, is the disputed issue:

2. What factors (and/or alternative physical collocation arrangements) should be considered by the Commission in making its determination on BellSouth's Petitions for Waiver and Temporary Waiver of the requirement to provide physical collocation for the following central offices:

- a) Daytona Beach Port Orange
- b) Boca Raton Boca Teeca
- c) Miami Palmetto
- c) West Palm Beach Gardens
- d) North Dade Golden Glades
- e) Lake Mary

Specifically, the phrase that is in parentheses is disputed. BellSouth believes that it should be excluded, while the other parties believe that it is necessary to include it. The parties were asked to submit written summaries of their arguments as to the appropriate wording of this issue by February 26, 1999. BellSouth, Intermedia, WorldCom, ACI, Sprint L.P., TCG, and Time Warner all submitted summaries. Subsequently, this matter was set for an Emergency Oral Argument on March 17, 1999.

## II. ARGUMENTS

BellSouth argues that this phrase should not be included, because it is not necessary for us to consider alternative collocation arrangements in order to rule upon BellSouth's petitions for waivers. BellSouth argues that if we agree with BellSouth that there is no space for physical collocation, then the issue of other types of collocation arrangements is moot. If we decide that there is space available, BellSouth states that it would offer the space on a first-come, first-served basis. BellSouth adds that we do not need to get involved in the details of what kind of physical collocation arrangement is to be used unless there is disagreement between the parties over the technical feasibility or security of a particular arrangement. BellSouth further argues that including this language in Issue 2 may lead us to make a determination on the feasibility of alternative forms of physical collocation, even though this is an issue that would be more appropriately addressed by all carriers as a generic issue in a generic collocation docket. BellSouth adds that how a collocator will use any space that we may find available is irrelevant to our determination of whether there is space or not in these offices.

Intermedia argues that in order for us to determine whether space is available in a central office, the parties should be able to demonstrate to us the various ways that physical collocation can be arranged.

WorldCom argues that we must consider how much space is necessary for physical collocation in order to make a determination on whether there is space in these central offices for physical collocation. Thus, WorldCom believes that we should consider the various physical collocation arrangements that are possible. WorldCom notes that some forms of physical collocation, such as "cageless," take up much less space than do traditional "caged" forms of collocation. Exclusion of the disputed language in Issue 2 would eliminate from consideration by us such factors as how the space is laid out and where space is located in a building. WorldCom notes that BellSouth maintains that physical collocators must be physically separated from BellSouth's equipment and accessible from a separate entrance. WorldCom notes that a minimal amount of space would be inappropriate for physical collocation as BellSouth defines it, but a small amount of space may be sufficient for some different arrangement not contemplated by BellSouth. Worldcom adds that it believes that if the disputed language is

ORDER NO. PSC-99-0538-PCO-TL  
DOCKET NOS. 980946-TL, 980947-TL, 980948-TL, 981011-TL,  
981012-TL, 981250-TL  
PAGE 5

retained, the parties will likely present evidence regarding the basic issue of whether there is any space at all in these offices, as well as evidence of how alternative forms of collocation may make best use of the space available.

ACI states that the disputed language should be included. ACI asserts that the focus of this proceeding will be on whether space exists in these offices. In analyzing these offices, ACI believes that it is important to consider how BellSouth currently uses the space in these offices and whether there are more efficient means of using that space. ACI argues that in making this analysis, we will have to consider different types of physical collocation arrangements, not just those arrangements currently allowed by BellSouth. ACI argues that the feasibility of different arrangements may demonstrate that BellSouth does, in fact, have space sufficient for physical collocation. ACI believes that this will insure that the greatest number of competitors are able to get into BellSouth's central offices. ACI emphasizes that denial of space in these offices limits consumer choice by preventing a competitor from having access to customers. In order to be fair, ACI believes that we must consider all technically feasible, reasonable forms of physical collocation. ACI argues that we should not limit ourselves to BellSouth's limited definition of physical collocation.

Sprint argues that the parties should be allowed to demonstrate that there are physical collocation options, because there may be space in an office for one type of physical collocation arrangement, but not for another. For example, Sprint notes that an office might have space for "cageless" collocation, but not for "caged" collocation. Sprint does not believe we can decide whether there is space in these office for physical collocation without looking at the various means of achieving physical collocation. Sprint adds that foreclosing the parties' ability to present testimony on alternative forms of physical collocation would be inconsistent with the Act.

TCG argues that the disputed language should be included. TCG also joins in the positions offered by WorldCom and Intermedia.

Time Warner also believes the disputed language should be included. Time Warner further asserts that we cannot decide the primary issue of whether BellSouth's Petitions for Waiver from the Physical Collocation Requirements should be granted or denied

without deciding whether there is space in these offices and if there is space, whether that space is sufficient to allow a competitor to physically collocate. In order to reach that determination, Time Warner believes we must consider evidence regarding how much is enough space for physical collocation. Time Warner states that such evidence would include evidence regarding how much space alternative arrangements require.

### III. DETERMINATION

It does not appear to be necessary to include the disputed language in the wording of Issue 2. Upon consideration of the parties' arguments, it does, however, appear to be necessary to add additional issues to clarify the matters that we will be addressing in this proceeding. In addition, it is emphasized that the parties shall not be precluded from presenting evidence pertaining to various types of physical collocation arrangements.

BellSouth's Petitions seek waivers from the requirements in the Act and the FCC's rules that require BellSouth to provide physical collocation unless it is incapable of doing so due to technical or space limitations. In its Petitions, BellSouth asserts that it does not have sufficient space in these central offices to provide physical collocation. We must, therefore, decide if there is space in these central offices for physical collocation. Some assessment of how much space is sufficient for physical collocation appears essential to any determination of whether there is space in these offices for physical collocation. The ALEC parties to this proceeding believe that evidence regarding alternative physical collocation arrangements will assist us in assessing how much space is necessary for physical collocation. They believe that alternative arrangements are a factor that should be considered by us in making our final determination on BellSouth's petitions. It appears that we should, at a minimum, have the opportunity to consider such evidence.

It should be emphasized that we will not be making any determination in this proceeding regarding which types of physical collocation arrangements are appropriate in specific offices, and which ones are not appropriate. Furthermore, even if evidence is presented regarding the space requirements of various, alternative physical collocation arrangements, we could determine that other factors have greater significance on our ultimate decision. Nevertheless, the parties shall not be precluded at the outset from

ORDER NO. PSC-99-0538-PCO-TL  
DOCKET NOS. 980946-TL, 980947-TL, 980948-TL, 981011-TL,  
981012-TL, 981250-TL  
PAGE 7

presenting evidence as to what we should take into consideration in rendering our decision on these petitions. We must have the opportunity to review and consider all relevant evidence in making our determination.


Based on the foregoing, the disputed language shall be taken out of the issue, but the parties' shall not be precluded from presenting evidence regarding alternative physical collocation arrangements for consideration in this proceeding. In addition, the issues will be amended as set forth in Attachment A to this Order in an effort to further clarify this proceeding.

It is therefore

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that the dispute regarding the language for the issues to be considered in this proceeding is resolved as set forth in the body of this Order. It is further

ORDERED that the issues for resolution in this proceeding shall be amended as set forth in Attachment A to this Order.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 24th Day of March, 1999.

  
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SUSAN F. CLARK  
Commissioner and Prehearing Officer

( S E A L )

BK

ORDER NO. PSC-99-0538-PCO-TL  
DOCKET NOS. 980946-TL, 980947-TL, 980948-TL, 981011-TL,  
981012-TL, 981250-TL  
PAGE 8

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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.



**ATTACHMENT A**

Revised List of Issues

1. What obligation does BellSouth have to make space available at these central offices to permit physical collocation pursuant to the Act and applicable state and federal requirements?
2. What factors should be considered by the Commission in making its determination on BellSouth's Petitions for Waiver and Temporary Waiver of the requirement to provide physical collocation for the following central offices:
  - a) Daytona Beach Port Orange
  - b) Boca Raton Boca Teeca
  - c) Miami Palmetto
  - c) West Palm Beach Gardens
  - d) North Dade Golden Glades
  - e) Lake Mary
3. Based on the factors identified in Issue 2, how much space should be considered available in the following central offices:
  - a) Daytona Beach Port Orange
  - b) Boca Raton Boca Teeca
  - c) Miami Palmetto
  - c) West Palm Beach Gardens
  - d) North Dade Golden Glades
  - e) Lake Mary
4. If space is considered available in any of these central offices, is the space sufficient for physical collocation?
5. Should BellSouth's Petitions for Waiver and Temporary Waiver of the requirement to provide physical collocation in the following central offices be granted:
  - a) Daytona Beach Port Orange
  - b) Boca Raton Boca Teeca
  - c) Miami Palmetto
  - c) West Palm Beach Gardens
  - d) North Dade Golden Glades
  - e) Lake Mary

ORDER NO. PSC-99-0538-PCO-TL

ATTACHMENT A

DOCKET NOS. 980946-TL, 980947-TL, 980948-TL, 981011-TL,  
981012-TL, 981250-TL

PAGE 10

6. If the Commission determines that a waiver request should be denied, how should BellSouth effectuate FCC Rule 47 C.F.R. § 51.323(f)(1) in processing requests for physical collocation in those central offices?

FLORIDA PUBLIC SERVICE COMMISSION - RECORDS AND REPORTING

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March 19, 1999

RECORDS AND REPORTING

16/2

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (B. KEATING) *BK*

RE: DOCKET NO. 980946-TL - PETITION FOR TEMPORARY WAIVER OF PHYSICAL COLLOCATION REQUIREMENTS SET FORTH IN THE 1996 TELECOMMUNICATIONS ACT AND THE FCC'S FIRST REPORT AND ORDER, FOR THE DAYTONA BEACH PORT ORANGE CENTRAL OFFICE, BY BELLSOUTH TELECOMMUNICATIONS, INC.

DOCKET NO. 980947-TL - PETITION FOR WAIVER OF PHYSICAL COLLOCATION REQUIREMENTS SET FORTH IN THE TELECOMMUNICATIONS ACT OF 1996 AND THE FCC'S FIRST REPORT AND ORDER, FOR THE BOCA RATON BOCA TEECA CENTRAL OFFICE, BY BELLSOUTH TELECOMMUNICATIONS, INC.

DOCKET NO. 980948-TL - PETITION FOR WAIVER OF PHYSICAL COLLOCATION REQUIREMENTS SET FORTH IN THE 1996 TELECOMMUNICATIONS ACT AND THE FCC'S FIRST REPORT AND ORDER, FOR THE MIAMI PALMETTO CENTRAL OFFICE, BY BELLSOUTH TELECOMMUNICATIONS, INC.

DOCKET NO. 981011-TL - PETITION FOR WAIVER OF PHYSICAL COLLOCATION REQUIREMENTS SET FORTH IN THE TELECOMMUNICATIONS ACT OF 1996 AND THE FCC'S FIRST REPORT AND ORDER, FOR THE WEST PALM BEACH GARDENS CENTRAL OFFICE, BY BELLSOUTH TELECOMMUNICATIONS, INC.

DOCKET NO. 981012-TL - PETITION FOR WAIVER OF PHYSICAL COLLOCATION REQUIREMENTS SET FORTH IN THE TELECOMMUNICATIONS ACT OF 1996 AND THE FCC'S FIRST REPORT AND ORDER, FOR THE NORTH DADE GOLDEN GLADES CENTRAL OFFICE, BY BELLSOUTH TELECOMMUNICATIONS, INC.

DOCKET NO. 981250-TL - PETITION FOR TEMPORARY WAIVER OF PHYSICAL COLLOCATION REQUIREMENTS SET FORTH IN THE 1996 TELECOMMUNICATIONS ACT AND THE FCC'S FIRST REPORT AND ORDER, FOR THE LAKE MARY MAIN CENTRAL OFFICE, BY BELLSOUTH TELECOMMUNICATIONS, INC.

*99-0538-PCO-TL*

Attached is an ORDER ON DISPUTED ISSUE to be issued in the above-referenced docket. (Number of pages in order - 10)

**MUST GO TODAY**

BK/anr

Attachment

cc: Division of Communications

I: 981250oa.bk