



May 7, 1999

VIA FEDERAL EXPRESS

Ms. Blanca Bayo, Director
Divisions of Records and Reporting
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

**RE: Protective Agreement for Docket Nos. 980946-TL, 980947-TL,
980948-TL, 981011-TL, 981012-TL and 981250-TL**

Dear Ms. Bayo,

Enclosed for filing is an original and fifteen (15) copies of Covad Communications Company's Prehearing Conference Statement and Notice of Appearance in the above captioned proceedings. Copies have been served on the enclosed service list.

If you should have any questions, please do not hesitate to contact me.

Very truly yours,

Christopher V. Goodpastor
Senior Counsel
Covad Communications Company

- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG _____
- LEG _____enclosures
- MAS _____
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: BellSouth Telecommunications, Inc.'s § Docket No. 980946-TL
Petition for Waiver of the Collocation § (Consolidated)
Requirements Set Forth in the §
Telecommunications Act of 1996 and the FCC's §
First Report and Order for the Daytona Beach Port §
Orange Central Office §
§

In re: BellSouth Telecommunications, Inc.'s § Docket No. 980947-TL
Petition for Waiver of the Collocation § (Consolidated)
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 §
§

In re: BellSouth Telecommunications, Inc.'s § Docket No. 980948-TL
Petition for Waiver of the Collocation § (Consolidated)
Requirements Set Forth in the §
Telecommunications Act of 1996 and the FCC's §
First Report and Order for the Miami Palmetto §
Central Office §
§

In re: BellSouth Telecommunications, Inc.'s § Docket No. 981011-TL
Petition for Waiver of the Collocation § (Consolidated)
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 §
§

In re: BellSouth Telecommunications, Inc.'s § Docket No. 981012-TL
Petition for Waiver of the Collocation § (Consolidated)
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 §
§

In re: BellSouth Telecommunications, Inc.'s § Docket No. 981250-TL
Petition for Waiver of the Collocation § (Consolidated)
Requirements Set Forth in the §
Telecommunications Act of 1996 and the FCC's §
First Report and Order for the Lake Mary Main §
Central Office §
§

PREHEARING STATEMENT OF COVAD COMMUNICATIONS COMPANY

Pursuant to Orders PSC-99-0476-PCO-TL, PSC-99-0538-PCO-TL and to
Commission Rule 25-22.038, Covad Communications Company ("Covad") submits its
Prehearing Statement.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

Witnesses

Tom Regan will testify for Covad regarding collocation requirements and availability in BellSouth central offices.

Exhibits

Covad may use the following exhibits at the hearing:

1. All documents produced by BellSouth in these proceedings;
2. All documents produced by the intervenors in these proceedings;
3. All exhibits designated by BellSouth in these proceedings;
4. All exhibits designated by other intervenors in these proceedings.

If necessary, the exhibits shall be sponsored by witnesses or counsel for the producing parties. Covad reserves its right to amend or supplement this list.

Statement of Position

BellSouth's petitions for waiver of the collocation requirements for the Daytona Beach Port Orange, Boca Raton Boca Teeca, Miami Palmetto, West Palm Beach Gardens, North Dade Golden Glades, and Lake Mary Main Central Offices ("BellSouth COs") should be denied. First, the waiver of BellSouth's collocation obligations are moot under the requirements of the Federal Communications Commission's First Report and Order, FCC 99-48, in CC Docket No. 98-147, In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability (the "FCC Order 99-48"). Second, BellSouth's requested waiver would conflict with FCC Order 99-48 and previous FCC orders and federal regulations.

The FCC issued Order 99-48 on March 31, 1999, requiring the implementation of, inter alia, new collocation practices that significantly affect the obligations of BellSouth. First, the FCC Order 99-48 requires BellSouth to provide cageless physical collocation "as soon as possible." FCC Order 99-48 ¶ 40; *see also id.* ¶¶ 38-43. To date, BellSouth has refused to provide cageless physical collocation. Moreover, none of the allegations in BellSouth's Petitions for Waiver appear to address the availability of collocation space in a cageless arrangement. Because cageless physical collocation requires significantly

less space than traditional, caged, physical collocation, BellSouth cannot demonstrate "that physical collocation is not practical . . . because of space limitations," as required by the Telecommunications Act of 1996. 47 U.S.C. § 251(c)(6) ("1996 Act"). Indeed, cageless collocation generally requires the same amount of space required for virtual collocation, which BellSouth offers to provide in the disputed central offices. *E.g.*, Pet. Waiver, No. 981011 (West Palm Beach Gardens) ¶ 8; Pet. Waiver, No. 980948 (Miami Palmetto) ¶ 8. Accordingly, BellSouth's petitions are moot and may be denied on this ground alone.

Additionally, BellSouth has not satisfied the space exhaustion verification requirements specified in the Order, FCC Order 99-48 ¶¶ 57-60, and has not shown that it has removed all obsolete and retired equipment from the BellSouth COs. *Id.* ¶ 60.

Further, BellSouth can not show that space for "adjacent" physical collocation is unavailable. FCC Order 99-48 requires incumbent local exchange carriers ("ILECs") to permit adjacent physical collocation in controlled environmental vaults or other spaces if space in the central office is exhausted. FCC Order 99-48 ¶ 44. If no existing adjacent structure is available, ILECs must allow competitive local exchange carriers ("CLECs") to construct or otherwise procure an adjacent physical collocation space. *Id.* Because BellSouth has not permitted adjacent physical collocation in the disputed COs, it can not demonstrate that physical collocation is not practical because of space limitations.

Finally, BellSouth has not shown that space for "shared" physical collocation is unavailable. FCC Order 99-48 requires ILECs to allow CLECs to share collocation space under any leasing arrangement they wish. FCC Order 99-48 ¶ 41. BellSouth's Petitions do not address the availability of "shared" collocation. Thus, BellSouth has not demonstrated that physical collocation is not practical.

Federal law, administrative orders, and regulations promulgated before FCC Order 99-48 also prohibit BellSouth's requested waivers. First, BellSouth cannot demonstrate that all available physical collocation space in the disputed COs is exhausted as required by the 1996 Act. Second, as stated in BellSouth's petitions, a primary cause

of the alleged exhaustion of collocation space is BellSouth's reservation of space for its own future use. BellSouth, however, has not shown that it allowed CLECs to reserve space for future use under the same terms, as required by 47 C.F.R. § 51.323(f)(4). *E.g.*, Pet. Waiver, No. 981011 (West Palm Beach Gardens) ¶¶ 2,4-5, 7; Pet. Waiver, No. 980948 (Miami Palmetto) ¶¶ 2, 4-5, 7.

In sum, BellSouth's Petitions for Waiver are moot under FCC Order 99-48. Moreover, the requested waivers would violate federal collocation requirements at the expense of competitive local exchange carriers and Florida consumers. Accordingly, this Commission should deny BellSouth's Petitions for Waiver.

Statement of Position on Issues of Law, Fact and Policy

I. Preliminary Issue of Law

BellSouth's petitions should be denied as a matter of law because the petitions are moot under FCC Order 99-48. FCC Order 99-48 requires ILECs to provide cageless collocation "as soon as possible." The Order also requires ILECs to provide "Adjacent" collocation and "shared" collocation. BellSouth's petitions seek waiver of federal collocation obligations, claiming that no additional space is available for physical collocation. None of BellSouth's petitions, however, states that BellSouth has implemented the collocation requirements of FCC Order 99-48 or has considered the collocation arrangements required by the Order when determining availability of collocation space. Thus, BellSouth's petitions fail to even allege, much less prove, "that physical collocation is not practical . . . because of space limitations," as required by the Telecommunications Act of 1996. Accordingly, BellSouth's Petitions for Waiver should be denied without further factual or policy hearings.

II. Remaining Issues Identified by the Commission

Issue 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?

BellSouth must comply with all the provisions of FCC Order 99-48 regarding cageless collocation, including without limitation, the requirement

- a. to provide cageless collocation “as soon as possible,” FCC Order 99-48 ¶ 40;
- b. to verify claims of space exhaustion according to the procedures identified in the Order, FCC Order ¶¶ 57-60;
- c. to remove all obsolete and retired equipment from central offices, FCC Order ¶ 60;
- d. to permit “adjacent” physical collocation in controlled environmental vaults or other spaces or, if such space is exhausted, to allow CLECs to construct or otherwise procure an adjacent physical collocation space, FCC Order 99-48 ¶ 44; and,
- e. to permit “shared” collocation, FCC Order ¶41.

BellSouth must also comply with the provisions of Title 47 of Code of Federal Regulations, including, without limitation 47 C.F.R. § 51.323, which requires BellSouth to allow CLECs to reserve space in central offices for future use under the same terms it allows itself to make such space reservations. In addition, BellSouth must comply with all other collocation requirements under federal and state law and regulations.

Issue 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*
- d. West Palm Beach Gardens*
- e. North Dade Golden Glades*
- f. Lake Mary?*

The Commission should consider the following factors, without limitation, when determining BellSouth’s Petitions for Waiver for all of the above central offices:

- a. BellSouth's Petitions are moot under FCC Order 99-48 because they do not address the availability of collocation space in a cageless, adjacent, or shared arrangement;
- b. BellSouth has not provided cageless collocation as required by FCC Order 99-48;
- c. BellSouth has not satisfied the space exhaustion verification requirements of FCC Order 99-48;
- d. BellSouth has not shown that it has removed all obsolete and retired equipment as required by FCC Order 99-48;
- e. BellSouth has not shown that "adjacent" physical collocation, as required by FCC Order 99-48, is unavailable;
- f. BellSouth has not provided "adjacent" collocation as required by FCC order 99-48;
- g. BellSouth has not shown that "shared" physical collocation, as required by FCC Order 99-48, is unavailable;
- h. BellSouth cannot provide evidence to demonstrate "that physical collocation is not practical . . . because of space limitations," as required by the 1996 Act;
- i. BellSouth has not shown that it allowed CLECs to reserve space for future use under the same terms it allows itself to make such space reservations.

Issue 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*
- d. *West Palm Beach Gardens*
- e. *North Dade Golden Glades*
- f. *Lake Mary?*

Specific amounts of available collocation space is difficult to quantify because BellSouth has not offered cageless collocation and has not complied with FCC Order 99-

48 or 47 C.F.R. § 51.323(f)(4). At the very least, additional collocation space is available in (1) any space saved by converting pending applications for traditional physical collocation to applications for cageless physical collocation; (2) any space previously designated as insufficient for “caged” collocation, but that would accommodate cageless collocation; (3) any space occupied by obsolete or retired equipment or other items that should not be stored in central offices; (4) any space available in shared collocation spaces; (5) any space available in “adjacent” collocation spaces; (6) any space that BellSouth has reserved for future use without contemporaneously offering CLECs the same rights to reserve space; and (7) any available space identified by the Intervenors during their inspections of the disputed central offices.

Issue 4: If space is considered available in any of these central offices, is the space sufficient for physical collocation?

Covad believes that the additional space, as described above and as described in Tom Regan’s prefiled testimony, is available for physical collocation.

Issue 5: Should BellSouth’s Petitions for Waiver and Temporary Waiver of the requirement of provide physical collocation in the following central offices be granted?

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

For the reasons outlined above, all of BellSouth’s Petitions for Waiver should be denied.

Issue 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?

Upon denial of the waivers, CLECs should be provided a specific period of time to submit proof of the timing of their previous applications or requests for collocation

space. After receiving proof of a previous application or request during the specified time period, BellSouth should assign priority to the applications/requests according to the date the application/request was submitted and notify each CLEC of this assignment. In addition, BellSouth should be required to accept cageless applications, or requests for conversion of pending traditional applications to cageless applications, immediately. All requests for conversion of an application to cageless should be assigned the same relative priority as the original application. Requests for conversion should not increase the provisioning interval assigned to the original application.

In the event that BellSouth demonstrates that only virtual collocation is available, CLECs should be allowed to convert any pending physical collocation applications to applications for virtual collocation without any change in the relative priority of the application or any delay of the original provisioning interval.

Statement of Stipulated Issues

Presently, Covad has not stipulated to any issue in this proceeding.

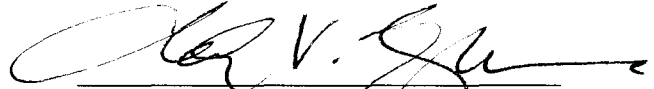
Statement of Pending Motions or Other Matters

Presently, no motion submitted by Covad is pending. Covad respectfully requests the Commission to address the preliminary issue of law identified above at the prehearing conference on May 17, 1999.

Dated: May 7, 1999

Respectfully submitted,

COVAD COMMUNICATIONS
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on the enclosed service list via US Mail on May 7, 1999.

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