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ORIGINAL

February 14, 2000

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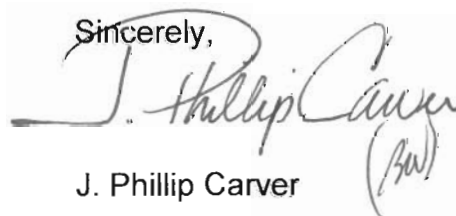
**Re: Docket No. 981834-TP and 990321-TP**

Dear Ms. Bayó:

Enclosed please find the original and fifteen copies of BellSouth Telecommunications, Inc.'s Brief of the Evidence, which we ask that you file in the above-referenced matter.


A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

  
J. Phillip Carver

cc: All Parties of Record  
Marshall M. Criser III  
R. Douglas Lackey  
Nancy B. White

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FPSC-RECORDS/REPORTING

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Competitive Carriers )  
for Commission action to support local )  
competition in BellSouth Telecommunications, )  
Inc.'s service territory )

Docket No. 981834-TP

In re: Petition of ACI Corp. d/b/a Accelerated )  
Connections, Inc. for generic investigation to )  
ensure that BellSouth Telecommunications, Inc., )  
Sprint-Florida, Incorporated, and GTE Florida )  
Incorporated comply with obligation to provide )  
alternative local exchange carriers with flexible, )  
timely, and cost-efficient physical collocation )

Docket No. 990321-TP

Dated: February 14, 2000

ORIGINAL

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BRIEF OF THE EVIDENCE

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## STATEMENT OF THE CASE

On December 10, 1998, the Florida Competitive Carriers Association (“FCCA”), along with a number of other parties, filed a Petition requesting that generic dockets be instituted to address a variety of issues (Docket No. 981834-TP). On March 12, 1999, Rhythms Link (formerly ACI Corp.) filed a Petition for Generic Investigation into Terms and Conditions of Physical Collocation (Docket No. 990321-TP). On March 31, 1999, the Federal Communications (“FCC”) released its First Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 98-147 (“FCC Collocation Order” or “Advanced Services Order”) in which the FCC addressed, among other things, the rules that pertain nationally for collocation. On September 7, 1999, the Florida Public Service Commission (“Commission”) entered a Proposed Agency Action Order that consolidated Docket Nos. 981834-TP and 990321-TP for the purpose of conducting a generic proceeding to address collocation issues. In this Order, the Commission also adopted a set of procedures and guidelines for collocation. BellSouth subsequently filed a protest and request for clarification of the proposed agency action. On December 7, 1999, the Commission issued its Final Order Approving Stipulated Modifications to the Collocation Guidelines, Amendatory Order and Consummating Order in which it clarified certain aspects of the collocation guidelines.

The hearing of this matter took place January 12-14, 1999. BellSouth presented the Direct and Rebuttal Testimony of Jerry D. Hendrix and W. Keith Milner. A total of eleven other witnesses gave testimony on behalf of ten other interested parties. The hearing produced a transcript of 1224 pages and 24 exhibits.

## STATEMENT OF BASIC POSITION

A general position regarding collocation is difficult to develop since this topic involves a variety of very specific smaller issues having to do with the technical requirements of collocation, coordinating the requests of a variety of different collocators, and doing so as promptly as possible. Nevertheless, in the evidence presented to the Commission, three general themes arose. One, BellSouth is in a significantly more difficult position than any of the ALECs because BellSouth must administer the space available for collocation in its central offices in a way that is as fair as possible to all parties. The individual ALECs, on the other hand, generally advanced only what they believed to be appropriate for their particular business needs, and were frequently quite candid in stating that they had no knowledge of what other ALECs might need.

Two, BellSouth has considerably greater experience in collocation issues than does any particular ALEC. For this reason, BellSouth has a better grasp of what it is practical to offer, and what is an appropriate timeframe for these offerings.

Three, it is clear that collocation requests vary significantly from one to the next, and that these requests require both individual attention and a certain amount of time to satisfy. Collocation cannot be treated as a “one size fits all” type process. This simple point is illustrated by the fact that each of the ALECs, representing their individual business needs, posited a variety of differing perspectives as to what should be done regarding collocation.

BellSouth submits that the positions that it has taken in this case (which will be described more fully below) are consistent with the collocation guidelines issued by this Commission, with the FCC Collocation Order and with the need to provide safe, efficient collocation in a way that balances the needs of all parties.

## STATEMENT OF POSITIONS ON THE ISSUES

### **Issue 1: When should an ILEC be required to respond to a complete and correct application for collocation and what information should be included in that response?**

**\*\*Position:** BellSouth will inform an ALEC within 15 calendar days of receipt of an application whether the application is accepted or denied as a result of space availability. BellSouth will also advise the applicant whether the application is complete and correct and, if not, the changes that must be made.

BellSouth's position, as stated above, is consistent with the guidelines set forth by this Commission in its Proposed Agency Action dated September 7, 1999 (Docket No. 981834-TP). A number of parties to this proceeding agree with BellSouth that 15 days is an appropriate time frame for an initial response. The parties that do not agree, in the main, premise their positions upon a mistaken reading of the FCC's Collocation Order. Specifically, some witnesses contended that the FCC has ruled that ten days is the only appropriate response time (e.g., Mills, Tr. 1171-72; Mascarotolo, Tr. 834).<sup>1</sup> To the contrary, the FCC did not set ten days as a required timeframe for an initial response. Instead, the FCC Order stated the following:

Both GTE and Ameritech state that they respond to physical collocation requests within ten days by advising the requesting carrier whether space is available or not. We view ten days as a reasonable time period within which to inform a new entrant whether its collocation application is accepted or denied.

(Paragraph 55).

The FCC did not make this ten day time period a requirement. Neither did the FCC state that

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<sup>1</sup> Mr. Mills of AT&T in fact appeared to confuse Rule 51.321(h), which involves an ILEC report of available collocation space with the time for an initial response. (Tr. 1171-72).



any other time period is unreasonable. The 15-day time period set by this Commission is reasonable and should not be altered.

The other principle contention of some ALEC witnesses regarding this issue was that ILEC's should be required to do more in the initial response than state whether the application is accepted or denied. Covad's witness, Mr. Moscaritolo, for example, testified that not only should the incumbent be required to respond within 10 days but that "the response should include without limitation, a cost estimate for the collocation space." (Tr. 834). Upon cross-examination, however, Mr. Moscaritolo admitted that the FCC did not require that a cost estimate to be provided within the initial response period. (Tr. 858). Thus, BellSouth's position that the initial response need not contain a cost estimate is entirely consistent with what the FCC actually did rule.

Several ALEC witnesses advocated that collocation be made available by way of tariff rather than on the sort of "individual case basis" currently offered by BellSouth. Although this contention does not fit neatly into any of the issues in the proceeding, it bears discussion, even if only because it consumed a substantial amount of the hearing.

As BellSouth's witness, Mr. Hendrix testified, the tariffing of collocation presents certain practical concerns. One concern is that "if BellSouth were to file a physical collocation tariff, it would probably still negotiate agreement for the vast majority of ALEC Collocation requests, making the development of the tariff a wasted effort." (Tr. 47-48). Apparently this is a well-founded concern, based upon the testimony at the hearing of the principle advocate of a collocation tariff, Mr. Gillan. Mr. Gillan testified that he was appearing on behalf of an organization (FCCA) that has approximately 12 members, many of whom are parties to the proceeding. (Tr. 1053). Mr. Gillan, however, readily conceded that he had no authority to

represent that any of these parties would buy collocation from a tariff. (Tr. 1055). Further, the FCCA members that were also parties to this proceeding (e.g., AT&T) did not, for the most part, even mention the tariff issue in their testimony, much less pledge that they would purchase from a tariff if one were offered.

BellSouth's second concern with the offering of the tariff includes how to structure and implement the tariff. In order to tariff any service, the area in which it is offered must be defined. If a service is to be offered statewide, the tariff must be developed on a statewide basis. Thus, reading Mr. Gillan's pre-filed testimony raised the prospect of BellSouth having to build out every central office in the state to accommodate collocation even though there have been no requests in some central offices and there might never be any. At the hearing, however, Mr. Gillan clarified his testimony to say that he believed that BellSouth should only be required to tariff collocation in those central offices in which it is building out space for its own business needs. (Tr. 1070). Limited in this way, the tariffing proposal sounds more reasonable, although there is a question as to whether this proposal would result in a tariff that is truly "generally available." In other words, limited in this way, one has to question how many central offices would actually be subject to this proposed tariff. The answer is that no one really knows, although BellSouth believes that it might be a relatively small number.

Perhaps the more difficult issue relating to tariffing is whether it would result in the potential for pricing arbitrage. As Mr. Gillan conceded, any tariff would be based upon the cost of collocation averaged over all central offices to which the tariff applied. (Tr. 1072). Any individual request for collocation might result in a higher price or might result in a lower price (Tr. 1075-76). Thus, as Mr. Gillan admitted, filing a tariff would create a situation in which an ALEC could apply for collocation in a particular central office, obtain a specific cost estimate,

and then order collocation either based on the specific price for that specific arrangement, or the tariff, whichever one is lower.<sup>2</sup> Further, in response to inquiries from the Commission, Mr. Gillan stated that the Commission could not prevent this situation by prohibiting individual negotiation of collocation requests. (Tr. 1087-88).

Of course, Mr. Gillan attempted to minimize the impact of any arbitrage by arguing that the potential for arbitrage created by tariffing collocation exists with any standardized offering. In fact, this is not the case. When an ALEC negotiates the purchase of UNEs—loops, for example--it does not negotiate the price loop by loop. Instead, when an ALEC individually negotiates loop rates, the cost-based price is the result of the same type of averaging that would go into a cost study to support a generally available offering. The unique aspect of collocation is that each individual collocation arrangement in each central office can be individually negotiated. It is this fact, which is unique to collocation, that would result in the unique opportunity for an ALEC to use negotiation to engage in pricing arbitrage if collocation is tariffed.

**Issue 2: If the information included in the ILEC’s initial response is not sufficient to complete a firm order, when should the ILEC provide such information or should an alternative procedure be implemented?**

**\*\*Position:** BellSouth will provide an application response within 30 calendar days of receipt of the complete and correct application and application fee. The application response will include estimates of the various fees, the estimated date the space will be available, and the configuration of the space.

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<sup>2</sup> Although Mr. Gillan contended that there is nothing unique in this respect about collocation, he stated that having a standard offering “does not eliminate the rights of a carrier under the Act to come to . . . [BellSouth] . . . and try and negotiate for their particular circumstances a different arrangement at different prices” (Tr. 1076). He further opined: “Will some take advantage of it? Certainly, will some seek lower prices? Probably.” (Tr. 1077).

BellSouth proposes, in effect, a two-step response. The first step is to state within 15 days whether a collocation request is accepted or denied. The second step is to provide an Application Response to a request for physical collocation within 30 days of the receipt of a Completed Application and Application Fee. This Application Response will include fees for space preparation and cable installation, a confirmation of the space available, and an estimate of the date upon which the space will be available. (Tr. 25-26) (Tr. 25). For virtual collocation requests, BellSouth's policy is to provide an Application Response within 20 business days of the completed application and application fee. (Id.).

Although some of the ALECs in this proceeding do not take issue with BellSouth's proposed intervals, most appear to believe that a shorter timeframe is in order. The proposed shorter timeframes vary from a total response time of 10 days to 20 days. [CITE] Although the reason that the ALECs would like to have as short a response time as possible is obvious, they collectively provided little support for the position that an appropriate response can be completed within the short timeframe they advocate.

At the same time, Mr. Hendrix described in his testimony what is necessary to prepare a complete application response. Specifically, he stated that when the application is received by the account team coordinator, it is verified to ensure that the application is complete and accurate, and it is then distributed to "six different departments within BellSouth and to one BellSouth certified vendor." (Tr. 23). The various groups work to evaluate the impact of the applicant's equipment placement on the central office building support systems, assess the central office infrastructure related to the application, determine construction necessary to place any requested entrance facility for the ALEC and analyze the impact of the application on existing power capacity. (Tr. 23-24). Further, each of these groups has to estimate the cost to

provision the supporting infrastructure. Finally, the interconnection network access coordinator (“INAC”) reviews the response, verifies the accuracy of the response, and coordinates the response back to the account team coordinator. (Tr. 24).

The exceedingly short response time that the ALECS desire is simply inconsistent with the planning requirements necessary to provide adequate collocation to all new entrants. Collocation cannot be made available unless necessary infrastructure is in place (including heating and ventilation), the necessary construction is performed, and safety and security is assured. This process requires time, and the total of 30 days that BellSouth advocates is certainly a reasonable time to complete this process.

**Issue 3: To what areas does the term “premises” apply, as it pertains to physical collocation and as it is used in the Act, the FCC’s Orders, and FCC Rules?**

**\*\*Position:** The term “premises” applies to LEC central offices, serving wire centers and tandem offices, all buildings or similar structures owned or leased by the ILEC that house LEC network facilities, and any structures that house LEC network facilities on public rights-of-way.

As stated by BellSouth’s witness, Keith Milner, the Telecommunications Act of 1996 “does not provide a definition for the term ‘premises’ nor is the term discussed in the legislative history.” (Tr. 208). Mr. Milner then quoted the FCC’s Order 96-325 as the source for the FCC’s definition of the term premises. Specifically, the FCC stated the following:

We, therefore, interpret the term ‘premises’ broadly to include LEC central offices, serving wire centers and tandem offices, as well as all buildings or similar structures owned or leased by the incumbent LEC that house LEC network facilities. We also treat as incumbent LEC premises any structures that house LEC network facilities on public rights-of-way, such as vaults containing loop concentrators or similar structures.

(Tr. 208, quoting, FCC Order, ¶ 573).

Thus the FCC's definition of premises is fairly straightforward. A number of other witnesses also cited to this definition. Some witnesses, however, attempted to expand this definition to include either buildings (such as administrative offices) that do not house network facilities or adjacent controlled environment vaults ("CEVs") and other such structures that are on BellSouth's property, but that are built by and owned by parties other than BellSouth. Apparently the confusion on this point resulted from mixing together the FCC's definition of premises and the FCC's requirements for adjacent collocation when central office space is exhausted. The fact remains, however, that the prospect of an exhaustion situation (and any requirements that may apply in that instance) does not broaden the FCC's definition of the term "premises." As Mr. Milner stated, ILEC premises necessarily means property owned by the ILEC. Although an ALEC may construct or procure a CEV or similar structure on BellSouth's property, these structures "are not BellSouth's 'premises' because the adjacent CEVs and similar structures are not BellSouth's and the equipment housed within the adjacent CEV or similar structure is not part of BellSouth's network facilities." (Tr. 209). BellSouth's central offices (such as administrative or support buildings) that do not house network facilities also do not constitute "premises." Although these buildings are owned by BellSouth, they do not house ILEC network facilities, and, therefore, cannot meet the FCC's definition of premises. For this reason, "they are not subject to requirements for collocation" (Tr. 210).

**Issue 4: What obligations, if any, does an ILEC have to interconnect with ALEC physical collocation equipment located "off-premises"?**

**\*\*Position:** An ILEC must allow adjacent collocation in exhaust situations. Also, a LEC has the obligation to accommodate ALEC requests for fiber optic facilities to be placed in BellSouth's entrance facilities.

It would appear that at least a portion of the dispute regarding this issue can be resolved by simply reading the statement of the issue. Specifically, the question involves the incumbent's responsibility to interconnect with an ALEC's physical collocation equipment that is located off premises. The issue does not relate to interconnection generally. Thus, witnesses, such as Mr. Nilson (Supra), who make general reference to an incumbent's duty "to interconnect at any technically feasible point within the carrier's network" (Tr. 954) appear to miss the specific point of this question. (Tr. 246). Likewise, since the issue relates to an ALEC's physical collocation equipment, it does not involve ALEC equipment within the ALEC's own central office. (Tr. 211). Once it is understood that the issue relates specifically to the collocation of an ALEC's collocation equipment, the answer to this issue is rather straightforward. Specifically, the FCC stated in its Collocation Order the following:

44. Finally, we require incumbent LECs, when space is legitimately exhausted at a particular LEC premises, to permit collocation in adjacent controlled environmental vaults or similar structures to the extent technically feasible.

(FCC Order, ¶ 44).

The more controversial aspect of this issue involves the type of entrance facilities an ALEC can use in the ILEC's central offices. Witnesses for several parties have taken the position that ALECs should be allowed to have either copper or fiber optic cable as an entrance facility. (e.g. Williams, Tr. 766; Levy, Tr. 903). BellSouth believes that the better approach is to limit these facilities to fiber. Mr. Milner provides in his testimony an explanation of the practical reasons why BellSouth takes this position:

The trend in the telecommunications industry is for cables and equipment to be reduced in size, not increased in size. For example, yesterday's 3600 pair copper cable required its own four-inch conduit. The capacity provided by that copper cable could now easily be provided by a fiber optic cable, which is a little more

than one half inch in diameter, an eight-fold reduction. Accommodation of ALEC's requests to use BellSouth's entrance facilities to bring new copper cables into BellSouth's central offices would accelerate the exhaust of entrance facilities at its central offices at an unacceptable rate, as compared to current technologies such as fiber optic cable.

(Tr. 211-12).

If there is any fact that is obvious in this proceeding, it is that a number of parties are interested in collocation and, at least in some central offices, the space available to accommodate all potential collocators is extremely limited. Given this, it is clear that if an ALEC is allowed to use entrance facilities that take up to eight times as much space as other types of facilities, then the available space for these facilities will be depleted much more quickly. For this reason, BellSouth believes that it is in the best interests of all parties to conserve space to the greatest extent possible by utilizing fiber optic cable for this purpose.

Moreover, the FCC's decisions support this result. In its First Report and Order (CC Docket 96-98, August 8, 1996, ¶ 565), the FCC adopted the existing Expanded Interconnection requirements, with some modifications, as applying to collocation under Section 251. The earlier FCC cases that set forth these requirements stated that, in the absence of a showing that would support an exception in a particular case, expanded interconnection should be provided for fiber facilities rather than copper. Second Report and Order, In the Matter of Expanded Interconnection with Local Telephone Company Facilities, CC Docket 91-141, released October 19, 1992 (Para. 99); Second Report and Order, In the Matter of Expanded Interconnection with Local Telephone Company Facilities, CC Docket 91-141, Transport Phase I released September 2, 1993.

**Issue 5: What terms and conditions should apply to converting virtual collocation to physical collocation?**



**\*\*Position:** The terms and conditions that should apply for converting virtual to physical collocation should be consistent with the terms and conditions of the assessment and provisioning of physical collocation. In addition, the terms should be negotiated between the carriers and formalized in a collocation agreement.

BellSouth believes that an ALEC should apply to convert virtual collocation to physical collocation in the same manner as when making an initial request for physical collocation. This is a reasonable approach since there are certain inherent differences in virtual collocation and physical collocation. For example, since only the ILEC need have access to virtually collocated equipment, it is frequently installed within the line up of the ILEC. Physical collocation would never be done by initially placing the equipment of the ALEC so that it is intermingled with ILEC equipment. Thus, the two are plainly different. (Tr. 27-28).

It would seem that most parties acknowledge this difference at least to an extent. No one appears to take the position that it is possible to convert a virtual collocation arrangement to a caged physical collocation arrangement without relocating equipment. The more controversial situation occurs when there is a request for a conversion from virtual collocation to cageless collocation. Many of the ALEC witnesses take the position that, in this instance, the conversion should occur in place. In other words, the equipment should not be moved from, for example, a position that it occupies within BellSouth's line-up. BellSouth's witness, Mr. Hendrix, however, testified, to the contrary, stating that "the conversion of an existing virtual collocation arrangement to a physical collocation arrangement usually necessitates either the relocation of the virtual collocation equipment to the space designated for the new physical collocation arrangement or the placement of new equipment in the physical collocation space and the decommissioning of the old virtual collocation arrangement" (Tr. 28). One reason for this is found in the FCC's Collocation Order, which states that "the incumbent LEC may take

reasonable steps to protect its own equipment, such as enclosing the equipment in its own cage” (FCC 99-48, ¶ 42). If virtually collocated equipment is converted to a physical collocation arrangement, then it is simply not possible to leave it in place within BellSouth’s line up and to enclose BellSouth’s equipment in the way that the FCC has clearly given BellSouth the right to do.

This fact notwithstanding, Mr. Hendrix also testified that it is not BellSouth’s proposal to simply deny “conversion in place” in every instance. Instead, there are a number of factors that should be considered, and conversion requests should be reviewed on a case-by-case basis. (Tr. 50-51). The factors to consider include whether there are extenuating circumstances or technical reasons that would cause the arrangement to become a safety hazard, the terms and conditions of the collocater’s collocation agreement, and factors such as “cabling distances, the distances between related equipment, the grouping of equipment in the families of equipment, the equipment of electrical grounding requirements and future growth needs.” (Tr. 51).

The ALEC witnesses, in the main, have requested this Commission to rule that conversion in place should always be available upon ALEC demand, regardless of the individual circumstances. BellSouth submits that its case by case approach is a more reasonable alternative.

**Issue 6: What are the appropriate response and implementation intervals for ALEC requests for changes to existing collocation space?**

**\*\*Position:** The response interval for change to an ALEC’s existing collocation space should not exceed 30 days and the implementation interval should not exceed 60 days for normal conditions or 90 days for conditions other than normal.

Mr. Hendrix testified in support of the above-noted intervals. (Tr. 29). He also testified that the distinction between normal and unusual circumstances is that normal conditions apply when there is no need for “material equipment ordering . . . HVAC or power upgrades or additions, additions to floor space, racks or bays.” (Id.).

The intervals suggested by the ALEC witnesses vary somewhat, but, predictably, all believe that the timeframes should be shorter. The difficulty with shorter timeframes is that not all changes to existing collocation space are the same, and shorter timeframes cannot be met in every instance. Conceivably, a request for a change could be as extensive as the original application. Under these circumstances, there is no reason to require BellSouth to either respond to or provision the request in less time than would be needed for a new collocation request (in other words, respectively, 30 and 90 days). It is true that there are some circumstances in which the changes would not be so extensive. In these situations, BellSouth has offered an accelerated timeframe, 60 days.

In some instances, it may be possible to do changes in less time, and BellSouth will, of course, endeavor to comply with every change request as quickly as possible. It is important to remember, however, that the topic is the maximum allowable time to respond to a change, not the minimum time or the average time. For this reason, BellSouth submits that the ALECs that believe that changes should be done in 10 days, 15 days, or even 20 days are proposing unreasonably short timeframes given the variety of action that may be necessary to respond to even a change request that falls within Mr. Hendrix’ definition of a “normal” request. For these reasons, BellSouth submits that its proposed intervals are more reasonable, and should be adopted.

**Issue 7: What are the responsibilities of the ILEC and collocators when:**

- A. a collocator shares space with, or subleases space to, another collocator;**
- B. a collocator cross-connects with another collocator**

**\*\*Position:**

(a) The appropriate terms and conditions regarding shared/subleased caged collocation are contained in Section 3.1. of Exhibit JDH-1;

(b) The appropriate terms and conditions for co-carrier cross connects are located in Section 5.6 of Exhibit JDH-1.

As to subpart (a) of Issue 7, the FCC has defined a shared collocation cage as a “caged collocation space shared by two or more competitive LECs pursuant to terms and conditions agreed to be the competitive LECs.” (Collocation Order, ¶ 41). The FCC further stated that “the incumbent may not place unreasonable restrictions on a new entrant’s use of the collocation cage, such as limiting the new entrants’ ability to contract with other competitive carriers to share the new entrants’ collocation cage in a sublease-type arrangement.” (Id.). Consistent with the FCC Order, BellSouth proposes to allow shared collocation in every instance except when local building codes do not allow this arrangement, or when BellSouth’s central office premises are located within a leased space and the lease prohibits BellSouth from offering this arrangement (Tr. 30).

However, when an ALEC chooses to share its space with other ALECs, this creates a host-guest type situation. Under these circumstances, BellSouth proposes that it deal only with the host ALEC for the purpose of submitting initial equipment applications for its guest, for the payment of charges contained in the collocation agreement between the host and BellSouth, and “for the purposes of ensuring that the safety and security requirements of the Collocation

Agreement are fully complied with by the guests, its employees and agents.” (Tr. 31). The FCC has defined the relationship between collocators sharing space as being a “sublease-type arrangement.” (§ 41). Mr. Hendrix testified that this arrangement “should be no different than any other sublease arrangement where the host takes full responsibility for all issues surrounding the leased item.” (Tr. 55).

A number of ALECs take the position that when collocation space is shared, each collocator should be directly responsible to BellSouth, but that the host would have no responsibility for other collocating parties. BellSouth submits that this proposal is ripe with the potential for administrative difficulties. Assume that, for example, a single collocator decides to share its space with three other collocators. Presumably the four of them would enter into some sort of an agreement to set forth specifically how the space would be shared and what each would do with its space. In the view of some ALECs, it would be the responsibility of BellSouth to take the recurring rates due under the original collocation agreement and divide these charges up among the four parties in some fashion. At the same time, the host collocator, although having signed an Agreement to be responsible for the space (and for associated recurring charges) would, by adding a second, third or fourth collocator, have a proportionate reduction in the responsibility for which it had contracted. BellSouth believes it is unfair to reduce the valid contractual responsibilities of the first collocator in this way.

In the testimony of one ALEC witness, Rhythms Link’s Mr. Williams, he stated that the host should be able to pick any additional collocator, but have no responsibility to the incumbent for the actions of the guest collocator it selects. (Tr. 802-03). Mr. Williams also testified that the Commission should require an agreement between the collocators sharing a space that makes the guest responsible for any violation of applicable laws. (Tr. 770).

However, the host would have no obligation to the ALEC for the actions of the guest collocator it selects. BellSouth submits that this is a patently unfair proposal. The better alternative is for the host collocator to continue to have the responsibilities that it had under the original collocation agreement, even if it subsequently decides to share its space.

As to subpart (b) of Issue 7, BellSouth believes that an ALEC should be allowed to directly connect to other collocating ALECs within a particular central office, assuming that the cross connection is made in addition to, rather than in place of, “obtaining interconnection with, or access to, BellSouth Telecommunications services, unbundled network elements, and facilities.” (Tr. 31). If one ALEC is connecting to another ALEC that has contiguous collocation spaces, then BellSouth believes it is appropriate for them to have the option of deploying the cross connects between the two sets of equipment themselves (Tr. 32). If, however, the collocation spaces are not contiguous, so that it is necessary for the cross connect to go through common area in the central office, then BellSouth believes that the ALEC should be required to use a BellSouth certified vendor to place the co-carrier cross connect. (Id.).

Finally, BellSouth believes that if an ALEC requests the co-carrier cross connect after its initial installation, it should pay an appropriate application fee. Mr. Martinez on behalf of MCI testified that an ALEC should be able to place co-carrier cross connects without the payment of an application fee (Tr. 701-03). BellSouth does not believe this is appropriate, however, because whenever an ALEC requests a cross connect, there must be an assessment of the infrastructure available for the cross connect (e.g., cable racking). This assessment is necessary in order to do the appropriate engineering and planning for the installation. To the extent this planning has a cost associated with it, it is appropriate for this cost to be born by the ALEC that caused the cost. (Tr. 55).

**8: What is the appropriate provisioning interval for cageless physical collocation?**

The appropriate provisioning interval for cageless physical collocation should be 90 calendar days under normal conditions.

Generally speaking, BellSouth believes that the provisioning intervals for physical collocation should be 90 days for typical requests, and 130 days under extraordinary circumstances (Tr. 33). As Mr. Hendrix stated, however, BellSouth makes every effort to meet the 90 day timeframe set by the Commission in its Collocation guidelines (Id.).

The core issue is whether there should be a shorter timeframe for cageless collocation than for caged collocation. BellSouth believes that there should be no difference for the following reasons stated by Mr. Hendrix:

The controlling factors in the overall provisioning interval actually include the time required to complete the space conditioning, add to or upgrade the heating, ventilation, and air conditioning system for that area, add to or upgrade the power plant capacity and power distribution mechanism, and build out network infrastructure components such as the number of cross-connects requested. When the construction of an arrangement enclosure is not required or is not performed by BellSouth, all other collocation area and network infrastructure work must still take place.

(Tr. 33).

The witnesses that testified to the contrary essentially fall into one of two groups. Ms. Close on behalf of Sprint, for example, testified that since cageless physical collocation requires no cage, the interval should be shorter. While this makes sense in concept, Mr. Hendrix testified that the building of the cage takes a relatively minor percentage of the total time spent to provision collocation. Obtaining necessary permits, as well as space preparation and network infrastructure work, is much more time consuming. (Tr. 55-56).

The second group of witnesses with a contrary view opined that virtual collocation is essentially identical to cageless physical collocation, so that, in effect, no construction work needs to be done. (e.g. Nilson, Tr. 838-39). This view is misguided. As Mr. Hendrix testified, virtual collocation is a situation in which an ALEC simply leases equipment from the ILEC, the ILEC has sole access to the equipment, and the ILEC has the responsibility for maintaining the equipment. (Tr. 56). In some instances, of course, it may be possible to convert virtual collocation to cageless physical collocation without any relocation of equipment. In most instances, however, it is simply not appropriate to have ALEC equipment that is physically collocated (either caged or cageless) intermingled with ILEC equipment. For this reason, “BellSouth typically places physical collocation arrangements outside of its line up, in unused space. This unused space often requires space preparation and infrastructure construction activities before equipment may be placed within it.” (Tr. 56-57). For this reason, the provisioning activities for virtual and physical collocation are not the same, nor should the intervals for provisioning these two distinct arrangements be the same.

**Issue 9: What is the appropriate demarcation point between ILEC and ALEC facilities when the ALEC’s equipment is connected directly to the ILEC’s network without an intermediate point of interconnection?**

**\*\*Position:** BellSouth should designate the point of interconnection between the ALEC’s network and/or equipment and BellSouth’s network. The demarcation point should be a common block on the BellSouth designated conventional distributing frame for 2- and 4-wire connections. For other terminations, BellSouth should designate a demarcation point for each arrangement.

The question of the location of an appropriate demarcation point has largely been settled. (Tr. 252). The FCC stated in its Collocation Order that “incumbent LECs may not require competitors to use an intermediate interconnection arrangement in lieu of direct connection to



the incumbent's network if technically feasible, because such intermediate points of interconnection simply increase collocation costs without a concomitant benefit to incumbents. (Order, ¶ 42). Thus, as Mr. Milner testified "the question is not 'where' the point of interconnection should be but 'how' or what device should be used for interconnection." (Id.).

BellSouth proposes to designate a point of interconnection between the ALEC's equipment and/or network and BellSouth's network. For two-wire and four-wire connections to BellSouth's network, the demarcation point should be a common block on a BellSouth designated conventional distributing frame. The ALEC should be responsible for installing and properly labeling the common block and for necessary cabling. (Tr. 214). For all other terminations, BellSouth proposes to designate a demarcation point on a per arrangement basis. (Id.). Further, the ALEC may have the option of placing a point of termination (POT) bay or frame in the collocation space, but under the above-quoted FCC rule, this POT bay cannot serve as the demarcation point between BellSouth's facilities because a connection at this point would not constitute a "direct connection." (Id.).

**Issue 10: What are reasonable parameters for reserving space for future LEC and ALEC use?**

**\*\*Position:** BellSouth and ALECs should be allowed to reserve space for two-year forecast. Both BellSouth and ALECs must forfeit space not used within this time.

In its First Report and Order, the FCC made clear that restrictions on warehousing space by interconnectors is appropriate, because the "inefficient use of space by one entrant could deprive another entrant of the opportunity to collocate." (Milner, Tr. 215, quoting, First Report and Order, CC Docket 96-325, ¶ 586). The FCC also made clear in this same Order that incumbent LECs shall have reservation policies for themselves that are no more favorable than

those that apply to other telecommunications carriers (Id., ¶ 604). BellSouth complies fully with this standard (Tr. 216). Specifically, BellSouth believes that it should be allowed to reserve space for two years, and that ALECs should have comparable ability. (Tr. 216).

In Mr. Milner's testimony, he described in some detail the way in which BellSouth forecasts equipment requirements for access tandems, local switches, traffic operator position system switches, and signal transfer point and service control point systems, as well as requirements for the interoffice network, DC power, and alternate engines. (Tr. 216-22). Based on the process outlined in Mr. Milner's testimony, two years is an appropriate amount of time for space reservation.

Although most of the ALEC witness appear to agree, at least in concept, with the idea that ALECs and ILECs should receive equal treatment, there are notable exceptions. For example, in the testimony of Mr. Jackson (replacing Ms. Strow) on behalf of Intermedia, he suggests that ILECs should be required to have enough space for at least two collocators in each central office at all times. He further suggests that if there is less space available, the ILEC should be required to give up space that is reserved for future growth, and it should also be required to begin plans for expansion of the central office. (Tr. 1112). First, it must be noted that there is absolutely no basis, either in FCC Orders, Rules of this Commission, or otherwise, for this proposal. Further, as Mr. Milner testified, "any such requirement would put BellSouth at a distinct disadvantage to ALECs if the ALECs reserve space without the possibility of being required to relinquish reserved space, but BellSouth must surrender its reserve space." (Tr. 256-57).

In a similar proposal, Covad's witness, Mr. Moscaritolo testified that ILECs should be required to disclose all planned future use for central offices. (Tr. 841). Upon cross

examination, Mr. Moscaritolo stated that Covad would also be willing to share information with BellSouth, but that ALECs should not exchange information with each other. (Tr. 861). This position, of course, begs the question of what good it would do Covad, or any other ALEC, to have BellSouth's future growth plans if it does not know the growth plans of all collocators in a particular central office who will be making demands on available collocation space in the future. For this reason, BellSouth submits that it is not reasonable to expect BellSouth to provide its growth forecasts to ALECs.

**Issue 11: Can generic parameters be established for the use of administrative space by an ILEC, when the ILEC maintains that there is insufficient space for physical collocation? If so, what are they?**

**\*\*Position:** Administrative space should be defined as any space not directly supporting the installation or repair of both telephone equipment and customer service. Generic parameters cannot be established because there are space, equipment, building code, manpower and other requirements unique to each central office.

This issue received mixed interest from the parties. Supra, Covad, and Rhythms had no position on the issue, while BellSouth and GTE opined that given the unique circumstances of each central office, it was not feasible to establish generic parameters for the use of administrative space. (Tr. 223, 419). Some of those unique circumstances are: the amount of space, the types of equipment, building codes, manpower, the need for breakrooms and restrooms, OSHA and collective bargaining agreement requirements. Thus, BellSouth contends that any assessment of administrative space must be done on an individual case basis, taking into account the particular circumstances of any given central office.

While the remaining parties desired generic parameters, none of them suggested specific guidelines for determining which personnel and workspace are "nonessential" to any given central office, the manner and circumstances under which "nonessential" personnel would be

relocated, and who bears the cost for a relocation. Sprint, in fact, agreed with BellSouth and GTE that each central office is different (Tr. 558), but believes the Commission should develop “an overriding guideline that requires ILECs to relocate nonessential personnel in favor of making space available for collocation.” (*Id.*) As to the need for breakrooms and restrooms, Sprint testified that “Obviously these types of facilities are required as a quality of life working condition and in fact, may be required by labor contracts.” (Tr. 559). Being significantly less concerned about the quality of life for BellSouth’s employees, MGC takes the position that, “all space within a central office should be used for this purpose, with the exception of minimal amounts of work space for technicians that work in that office and bathrooms to be used by that staff and collocators.” (Tr. 912). Less certain is whether MGC believes that the work space and bathroom space should be one and the same.

There seems to be general consensus among the parties addressing the issue of cost that in the event a relocation is deemed appropriate, the ILEC should be reimbursed for the cost of that relocation. (Tr. 528-29) In the end, given the lack of uniformity among the ILEC central offices and the personnel housed in those central offices, the Commission should decline to establish generic parameters. Instead, the Commission should evaluate each instance on a case-by-case basis.

**Issue 12: What types of equipment are the ILECs obligated to allow in a physical collocation arrangement?**

**\*\*Position:** Equipment that can be used to provide telecommunications service, such as Digital Subscriber Line Access Multiplexers (DSLAMS), routers, Asynchronous Transfer Mode (ATM) multiplexers, Remote Switching Modules (RSMs), and stand-alone switching equipment should be allowed in a physical collocation arrangement. Equipment used solely to provide enhanced services should not be allowed in a physical collocation arrangement.

The types of equipment an ILEC is required to allow in a physical collocation space were clearly delineated by the FCC:

We agree with commenters that our existing rules, correctly read, require incumbent LECs to permit collocation of all equipment that is necessary for interconnection or access to unbundled network elements, regardless of whether such equipment includes a switching functionality, provides enhanced services capabilities, or offers other functionalities.

(Advanced Services Order, at ¶ 28).

The FCC, however, continued to decline to require ILECs “to permit the collocation of equipment that is not necessary for either access to UNEs or for interconnection, such as equipment used exclusively for switching or for enhanced services.” (*Id.*, at ¶ 30)

The FCC’s ruling in the Advanced Services Order appears to be consistent with FCC Rule 51.323(b), which provides that “An incumbent LEC shall permit the collocation of any type of equipment used for interconnection or access to unbundled network elements.” Thus, the Commission should establish guidelines consistent with the Advanced Services Order and FCC Rule 51.323(b).

**Issue 13: If space is available, should the ILEC be required to provide price quotes to an ALEC prior to receiving a firm order for space in a central office (CO)?**

- A. If an ILEC should provide price quotes to an ALEC prior to receiving a firm order from that ALEC, when should the quote be provided?**
- B. If an ILEC should provide price quotes to an ALEC prior to receiving a firm order from that ALEC, should the quote provide detailed costs?**

**\*\*Position:** An ILEC should be required to provide price quotes to an ALEC prior to receiving a firm order. BellSouth provides price estimates (subject to true-up) to an ALEC within 30 days of receipt of a complete and accurate application and application fee.

Every party to this proceeding agrees that an ALEC is entitled to a price quote from the ILEC prior to the ALEC submitting a firm order for collocation. In fact, BellSouth’s thirty-day

application response to an ALEC's complete and accurate collocation application contains a price quote, which is subject to true-up. The parties, however, disagree as to: (1) the timing of when the price quote should be provided; and (2) the amount of cost detail to be provided with the price quote.

As discussed above in Issue 2, BellSouth provides a thirty-day response to a complete and accurate collocation application that includes all of the information necessary for the ALEC to submit a firm order. The thirty-day response includes, among other things, price estimates and information about the collocation space. While some ALECs request a shorter interval to provide price quote information, Sprint, AT&T, Supra and Intermedia consider the thirty-day interval to be reasonable.

As to the amount of cost detail to be provided with the price quote, BellSouth provides a breakout of the following elements: space construction, cable, power buildout, cable support structure, and cable installation. (Tr. 34) BellSouth's witness, Mr. Hendrix, testified that providing a cost estimate is "a complex endeavor" (Tr. 58), and no party offered a rational challenge to that fact. In addition, the price quote is subject to true-up, (Tr. 34) thus ensuring that an ALEC does not over-pay for the work performed on its behalf.

In conclusion, the Commission should adopt guidelines requiring ILECs to provide price quotes within thirty days of the receipt of a complete and accurate collocation request. Where the price quote is subject to true-up, the level of cost detail should be sufficient for the ALEC to have a general understanding of the total cost of the collocation project.

**Issue 14: Should an ALEC have the option to participate in the development of the ILEC's price quote, and if so, what time frames should apply?**

**\*\*Position:** No. The ILEC's price estimate is an estimate of the cost of the work that will be done by the ILEC. The ALEC's participation in this estimate should be limited to providing detailed and accurate information regarding the collocation arrangement it is requesting.

It is interesting that many ALECs did not take a position on this issue (MCI, Rhythms, Intermedia and MCG). In response to those ALECs that did take a position, BellSouth contends that an ALEC's ability to participate in the development of the price quote provided by the ILEC should be limited to submitting with the collocation request detailed and accurate information concerning the requested collocation arrangement. Other than this initial information, an ALEC should not participate in the development of the ILEC's price quote for three basic reasons.

First, the work that needs to be accomplished to timely provision the ALEC's collocation request will be handled by the ILEC. (Tr. 34). Second, the cost estimate provided by the ILEC will be trued-up against actual construction cost. (*Id.*) Therefore, the ALEC is at no risk of overpaying for the work that was done. Finally, ALEC participation will most likely take the form of ALECs complaining about construction costs, arguing over the necessity of permitting and safety measures such as adequate power and ventilation, and demanding that the ILEC "bid out" every element of the project to ensure optimal cost savings, even at the cost of quality. For instance, Supra wants the ability to choose to subcontract the work itself, relieving the ILEC of a portion of the job. (Tr. 961). Supra also defines participation to include team meetings, site visits, and mutual agreement on the provisioning plan, which according to Supra, might reduce provisioning cost, the need for construction requiring permits, and overall collocation time. (Tr. 987).

It is fairly intuitive that ALEC involvement in the price quote process will result in overall delay in the ILEC's response to an ALEC's collocation request. (Tr. 59). It is equally apparent that the ALECs are not willing to extend the ILEC's response interval in those instances where the ALEC participates in the price quote. (Tr. 961). Thus, BellSouth requests that ALECs be allowed to participate in pricing quotes only to the extent of their initial collocation application.

**Issue 15: Should an ALEC be permitted to hire an ILEC certified contractor to perform space preparation, racking and cabling, and power work?**

**\*\*Position:** An ALEC should be allowed to use a certified contractor to perform work on the ALEC's dedicated collocation space. An ALEC should not be allowed to hire a certified contractor to perform site readiness work for collocation.

This question encompasses one of the most critical issues in this proceeding, which is who will be the steward of the ILEC's central office. BellSouth wholeheartedly agrees that an ALEC should be allowed to use a certified contractor to perform work in the ALEC's collocation space. (Tr. 35). This practice is consistent with FCC Rule 51.323(j), which provides, "An incumbent LEC shall permit a collocating telecommunications carrier to subcontract the construction of physical collocation arrangements with contractors approved by the incumbent LEC...".

Many ALECs, however, seek the ability to perform work in the common areas of the central office, which is outside of the ALEC's collocation space. This common area work is also known as site readiness work. (Tr. 36). There are a number of policy reasons why the Commission should refuse the ALECs request to perform site readiness work. First, the ILEC is responsible for the overall planning of space in the central office based on the collocation



requests of all ALECs. Thus, the ILEC is in the best position to evaluate collocation requests based on what is best for all collocated ALECs, not just a single collocator. This same analysis applies to power plant and cabling issues as well. For example, instead of power plant upgrades that are sufficient to meet the needs of a single collocator, the ILEC is in the best position to determine whether a more comprehensive upgrade is needed based on total current and projected ALEC demand.

Second, allowing every ALEC to perform site readiness work will increase overall collocation costs by duplication of effort in planning, design and construction. (Tr. 37) Finally, without the ILEC to coordinate activities, the possibility of service outages due to improper wiring significantly increases. (Tr. 38) In the end, the ALECs will hold the ILECs responsible for service outages, power failures, improper wiring and overall space planning. If the ILECs are to be held responsible for what happens in their central offices, equity demands that the ILECs be allowed to be the stewards of their central offices. The ALECs offer no legal or logical basis to be allowed to perform site work outside of their dedicated collocation space.

**Issue 16: For what reasons, if any, should the provisioning intervals be extended without the need for an agreement by the applicant ALEC or filing by the ILEC of a request for an extension of time?**

**\*\*Position:** There are three situations where provisioning intervals should be extended. They are: 1) provisioning of collocation arrangements encountering extraordinary conditions; 2) provisioning of collocation arrangements encountering delays in the permitting process; and 3) provisioning collocation arrangements associated with central office building additions.

There are three general instances of delay in which ILECs should not be required to seek an extension of the collocation intervals from the Commission. These are: (1) provisioning of collocation arrangements encountering extraordinary conditions; (2) provisioning of collocation arrangements encountering unusual delays in the permitting process; and (3) provisioning

collocation arrangements associated with central office building additions. (Tr. 225-26).

BellSouth defines extraordinary conditions to include major equipment re-arrangements or additions, power plant additions or upgrades, major mechanical additions or upgrades, major upgrades for ADA compliance, environmental hazards or hazardous materials abatement. (Tr. 226).

BellSouth contends that there are some circumstances in the provisioning of collocation space that are out of the control of the ILEC. A prime example of this is the permitting process. (*Id.*) It cannot be rationally disputed that BellSouth is required to obtain certain building permits from the local municipality during the implementation of certain collocation requests. Equally obvious is the fact that BellSouth has no influence over the speed in which the municipality approves the requested permit. (Tr. 227)

Interestingly, most ALECs do not dispute the fact there are delays that can arise that are beyond the control of the ILEC. For example, Sprint testified that “major infrastructure upgrades and other factors beyond the control of the ILEC are appropriate for the ILEC to seek an extension of the provisioning intervals from either the requesting collocator or the FPSC. Examples include power plant upgrades, vendor shipments beyond the ILEC’s control and other acts of God.” (Tr. 624) Supra also took the position that “because time is an important factor for ALECs, the extension should only be granted for extreme emergency situations which are clearly out of the ILEC’s control.” (Tr. 963)

The issue to be decided is not whether circumstances beyond the ILEC’s control will arise that cause delay in provisioning an ALEC collocation request – certainly they will. The issue is whether the parties need to involve the Commission in circumstances where the delay is clearly outside of the ILEC’s control. In other words, the Commission should establish a set of

circumstances that will always result in an extension being granted, thus obviating the need for the parties to come before the Commission when those circumstances arise. This process will result in the preservation of Commission time and resources for issues that truly need Commission attention.

**Issue 17: How should the costs of security arrangements, site preparation, collocation space reports, and other costs necessary to the provisioning of collocation space, be allocated between multiple carriers?**

**\*\*Position:** The recovery of volume insensitive costs associated with security arrangements, site preparation, and collocation space reports will be allocated among all parties that benefit and in an equitable manner.

For security arrangements and collocation space reports, the costs associated with these items should be borne by the ALECs. BellSouth's position is supported by the Advanced Services Order, wherein the FCC ruled that "We expect that state commissions will permit incumbent LECs to recover the costs of implementing these security measures from collocating carriers in a reasonable manner." (Advanced Services Order, at ¶48) In requiring collocation space reports (FCC Rule 51.321(h)), the FCC again ruled that "We expect that state commissions will permit incumbent LECs to recover the costs of implementing these reporting measures from collocating carriers in a reasonable manner." (Advanced Services Order, at ¶58)

BellSouth is clearly entitled to recover these costs from collocating ALECs, so long as the recovery is done in a reasonable manner. BellSouth proposes that the volume insensitive security costs be allocated among collocators, *including BellSouth*, based on a good faith estimate of the anticipated number of collocators for that central office. (Tr. 40) For security and collocation space report costs that are volume sensitive, those costs should be borne by the

requesting ALEC. (*Id.*) BellSouth's proposal spreads the costs among all the parties that benefit from the particular item in a nondiscriminatory manner. (Tr. 39)

As to space preparation costs, BellSouth pro-rates these costs on a per square foot basis, then charges the ALEC based on the number of square feet utilized by the ALEC. (Tr. 41) As with volume insensitive security costs, the pro-ration of these costs ensures that "the first collocator in a particular incumbent premises will not be responsible for the entire cost of site preparation." (Advanced Services Order, at ¶51) All of the parties appear to be in agreement as to the pro-ration of costs on a per square foot basis. While the ALECs disagree with the pro-ration of volume insensitive security costs based on the anticipated number of collocators, such a methodology is unquestionably consistent with FCC Rules and Orders. Therefore, BellSouth submits that the Commission should adopt BellSouth's cost methodology for these costs.

**Issue 18: If insufficient space is available to satisfy the collocation request, should the ILEC be required to advise the ALEC as to what space is available?**

**\*\*Position:** Yes. BellSouth will notify the applicant what space is available if insufficient space is available to satisfy the collocation request.

BellSouth agrees that in a situation where an ALEC submits a collocation application requesting a certain amount of physical collocation space, and that space is not available, the ILEC should be required to advise the ALEC how much physical collocation space is actually available. (Tr. 41). Generally, all the parties seem to be in agreement on this issue.

Sprint, however, cites FCC Rule 51.321(h), one of the new FCC rules developed in conjunction with the Advanced Services Order, as authority for requiring BellSouth to advise an ALEC, within ten days of a collocation application, as to the amount of available collocation space in a given central office. (Tr. 624-25) Sprint's reliance on this rule is misplaced. FCC

Rule 51.321(h) provides that, “Upon request, an incumbent LEC must submit to the requesting carrier within ten days of the submission of the request a report indicating the incumbent LEC’s available collocation space in a particular LEC premises.” None of the obligations imposed upon ILECs under this rule apply to a response to an ALECs collocation application. These obligations are triggered by an independent request by an ALEC apart from the collocation application.

The remaining issue to be considered involves the procedure in the event the ALEC decides to modify its collocation request consistent with the amount of available space. In this case, the request should be submitted and the clock restarted for both the response and provisioning intervals.

**Issue 19: If an ILEC has been granted a waiver from the physical collocation requirements for a particular CO, and the ILEC later makes modifications that create space that would be appropriate for collocation, when should the ILEC be required to inform the Commission and any requesting ALECs of the availability of space in that office?**

**\*\*Position:** When space becomes available in a previously exhausted central office, BellSouth will notify the ALECs that can be accommodated and will also notify the Commission, a maximum of 60 days prior to the date on which space will be available.

BellSouth certainly agrees that when space is created via modification of a central office previously at exhaust, the ILEC should inform both the Commission and the ALECs that can then be accommodated of the space availability. In that regard, BellSouth maintains a waiting list of all ALECs that have previously submitted physical collocation applications for each central office in an exhaust situation. (Tr. 42). Once the new space becomes available, BellSouth notifies the ALECs that can be accommodated, based on their respective space requests, a maximum of 60 days prior to the space availability date. (*Id.*)

BellSouth disagrees with MCG, which suggests that space availability notification should be three months in advance. (Tr. 918). Given the current levels of collocation activity and the uncertainty associated with construction deadlines, BellSouth cannot in good faith commit to space availability deadlines three months prior to the completion of a modification project. Equally unnecessary is Sprint's suggestion that thirty-day status letters be provided to the Commission and requesting ALECs. (Tr. 539). Such status reports will in no way expedite the completion of the modification, and will only serve to place additional administrative expenses upon the ILEC.

Once the additional space becomes available, BellSouth agrees that ILECs should be required to promptly notify the Commission so that the collocation waiver can be rescinded.

**Issue 20: What process, if any, should be established for forecasting collocation demand for CO additions or expansions?**

**\*\*Position:** The Commission should encourage ALECs to provide forecasts periodically for a planning horizon of two years such that BellSouth can take ALEC forecasts into account as one factor when planning for central office additions, expansions, or replacements.

Currently, BellSouth plans for collocation space based on forecasts derived from these sources: space currently allocated for collocation, the amount of space requested in either current applications or collocators on a waiting list for that central office, and the amount of collocation space in central offices in the surrounding area. (Tr. 274) The issue of using ALEC demand forecasts is addressed in FCC Rule 51.323(f)(3), which provides, "When planning renovations of existing facilities or constructing or leasing new facilities, an incumbent LEC shall take into account projected demand for collocation of equipment." While BellSouth agrees that ILECs should utilize an ALEC's demand forecast, there is disagreement over the term of the demand forecast. BellSouth contends that the Commission should require ALECs to

provide a two-year planning forecast to the ILECs. This will enable the ILECs to factor in future ALEC growth when planning central office additions, expansions or replacements. (Tr. 235). Further, the burden should be on the ALECs to provide the demand forecasts, as BellSouth is not privy to the business plans of its competitors and can only estimate future ALEC collocation needs. (Tr. 274).

The provision of demand forecasts, however, should not be construed to require ILECs to lease or construct additional space in exhaust situations. Such a construction would clearly violate FCC Rule 51.323(f)(1), which provides that "... the incumbent LEC shall not be required to lease or construct additional space to provide for physical collocation when existing space has been exhausted." If the Commission deems it appropriate to establish a demand forecasting process, this process should only require ILECs to take ALEC demand forecasts *into consideration* for future expansion. Under no circumstances should the process require ILECs to lease or construct additional space based on the ALEC demand forecasts.

**Issue 21: Applying the FCC's "first-come, first-served" rule, if space becomes available in a central office because a waiver is denied or a modification is made, who should be given priority?**

**\*\*Position:** BellSouth will maintain a waiting list of ALECs and the amount of space each requested in the order of BellSouth's receipt of each collocation application. When space becomes available, space will be offered in a "first-come, first right of refusal" manner.

This would appear to be one of the less controversial issues in the case since only a single witness filed testimony suggesting an approach that differs from BellSouth's proposal, AT&T's witness, Mr. Mills. Mr. Mills testified that in general, a first-come, first-served approach is appropriate. However, he believes that if an ALEC challenges the assertion of an incumbent that space is exhausted in a particular central office, and prevails, then it should be

able to “leap frog” over other ALECs that have filed earlier applications, but did not engage in the challenge. (Tr. 1187). In Mr. Mill’s testimony, he cites no authority for this position, and does not contend that it is fair or equitable. Instead, he appears to create an approach that is not so much “first come-first served” as “most litigious-first served.” Under his approach, if an ALEC believes that an incumbent’s waiver request is well taken (in other words, that there is in reality no space available), it could only act upon its belief at the risk of losing its spot in line. Put differently, an ALEC that really did believe that there was no space available would, nevertheless, have to join in a challenge to a waiver request because, if the challenge were successful, it would lose its place in line.

BellSouth submits that the challenge to a waiver request should be like any other position that a party takes in a regulatory proceeding; it should be used upon a good faith belief that the action taken is appropriate. It would be exceedingly bad policy for this Commission to create a situation in which parties are forced to engage in legal challenges that the party itself does not believe to be appropriate simply because failing to do so might result in the loss of something to which it is otherwise entitled.

### CONCLUSION

Based on the foregoing, BellSouth requests that the Commission enter an Order adopting BellSouth’s positions.



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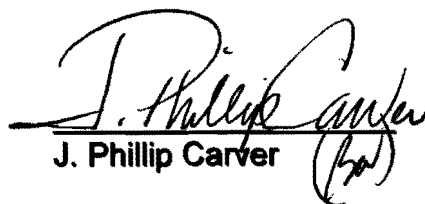
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