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RECORDS AND  
REPORTING

May 26, 2000

Mrs. Blanca S. Bayó  
Director, Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Docket Nos. 981834-TP and 990321-TP (Generic Collocation)

Dear Ms. Bayó:

Enclosed please find the original and fifteen copies of BellSouth Telecommunications, Inc.'s Motion for Reconsideration and for Clarification, 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,

*Nancy B. White*  
Nancy B. White (PW)

APP \_\_\_\_\_  
CAF \_\_\_\_\_  
CMP 3  
COM 3  
CTR \_\_\_\_\_  
ECR \_\_\_\_\_  
LEG 2  
OPC \_\_\_\_\_  
PAI \_\_\_\_\_  
RGO \_\_\_\_\_  
SEC 1  
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cc: All Parties of Record  
Marshall M. Criser III  
R. Douglas Lackey

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**CERTIFICATE OF SERVICE**  
**Docket No. 981834-TP and 990321-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

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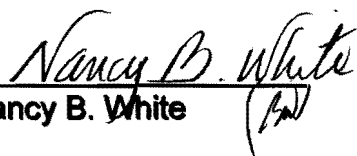
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ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Carriers for Commission Action	)	Docket No. 981834-TP
To Support Local Competition	)	
In BellSouth's Service Territory	)	
In re: Petition of ACI Corp. d/b/a	)	
Accelerated Connections, Inc. for	)	Docket No. 990321-TP
Generic Investigation into Terms and	)	
Conditions of Physical Collocation	)	Filed: May 26, 2000
_____	)	

**BellSouth Telecommunications, Inc.'s  
Motion for Reconsideration and for Clarification**

BellSouth Telecommunications, Inc. ("BellSouth"), pursuant to Rule 25-22.060, Florida Administrative Code, files its Motion for Reconsideration and for Clarification of Order No. PSC-00-0941-FOF-TP ("Order"), issued on May 11, 2000 by the Florida Public Service Commission ("Commission") in the above referenced dockets. Reconsideration is required because the Commission overlooked or failed to consider evidence affecting the outcome of this proceeding or because the ruling is not in compliance with the law. In addition, there are other issues that require clarification. For the reasons set forth below, the Commission should reconsider and/or provide clarification on its Order:

**I. Procedural Background**

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

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Generic Investigation into Terms and Conditions of Physical Collocation (Docket No. 990321-TP). On March 31, 1999, the Federal Communications Commission ("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 its Proposed Agency Action 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 Order. 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. This matter subsequently went to hearing on the protested, as well as other, issues.

On May 11, 2000, the Commission issued its Order holding, among other things, that BellSouth must allow Alternative Local Exchange Company ("ALEC") equipment to remain in place, even in the Incumbent Local Exchange Company's ("ILEC") equipment line-up, when converting from virtual to cageless physical collocation; that BellSouth must follow the rules of the Federal Communications Commission ("FCC") regarding collocation cross-connects; that BellSouth, as well as ALECs, are allowed only 18 months of reserved space; and

that the waiting list of denied ALECs must be kept in order of the application denial date. The Commission, in reaching a decision on these issues, either overlooked or failed to consider certain evidence applicable to these dockets. See, Diamond Cab Co. of Miami v. King, 146 So.2d 889 (Fla. 1962). Further, the Commission's decision lacks the requisite foundation of competent and substantial evidence.

With regard to the evidence, the Commission must rely upon evidence that is "sufficiently relevant and material that a reasonable man would accept it as adequate to support the conclusion reached." DeGroot v. Sheffield, 95 So.2d 912, 916 (Fla. 1<sup>st</sup> DCA 1957). See also, Agrico Chem. Co. v. State of Fla. Dept. of Environmental Reg., 365 So.2d 759, 763 (Fla. 1<sup>st</sup> DCA 1979); and Ammerman v. Fla. Board of Pharmacy, 174 So.2d 425, 426 (Fla. 3d DCA 1965). The evidence must "establish a substantial basis of fact from which the fact at issue can reasonably be inferred." DeGroot, 95 So.2d at 916. The Commission should reject evidence that is devoid of elements giving it probative value. Atlantic Coast Line R.R. Co. v. King, 135 So.2d 201, 202 (1961). "The public service Commission's determinative action cannot be based upon speculation or supposition." 1 Fla. Jur. 2d, §174, citing Tamiami Trail Tours, Inc. v. Bevis, 299 So.2d 22, 24 (1974). "Findings wholly inadequate or not supported by the evidence will not be permitted to stand." Caranci v. Miami Glass & Engineering Co., 99 So.2d 252, 254 (Fla. 3d DCA 1957).



In addition, the Order allows the ILEC to require the ALEC to use fiber entrance cabling; set forth the demarcation point between the ALEC and the ILEC; and requires certain information to be provided regarding limited space availability. In connection with these issues, BellSouth will request clarification herein. BellSouth also seeks clarification on certain timing issues and a definitive implementation date.

The sections below examine the grounds for reconsideration and clarification.

## **II. ILEC OBLIGATIONS REGARDING “OFF-PREMISES” COLLOCATION (Issue 4)**

For “all premises”, the Commission ordered that ILECs may require an ALEC to use fiber entrance cabling only after the ILEC proves that entrance capacity is near exhaustion at a particular central office. Order, p. 24. BellSouth seeks clarification of this portion of the Order.

BellSouth seeks to clarify that the Commission intended to limit the situation in which an ALEC could use copper entrance cabling to that involving the use by an ALEC of a controlled environmental vault (“CEV”) or similar structure constructed or otherwise provided by the ALEC on the same parcel of land as BellSouth’s central office (what BellSouth calls adjacent collocation). The rationale for this clarification is simple. Only in an adjacent collocation situation is an ALEC unable to use fiber entrance facilities and must use copper. The FCC stated in paragraph 44 of the Advanced Services Order that adjacent collocation is available to ALECs when space inside the central office is

legitimately exhausted. Fiber optic entrance cabling must be connected to a fiber optic terminal (multiplexer or other of the ALEC's equipment in the ALEC's physical collocation arrangement) inside the central office in order to connect with BellSouth's network. The predicate, however, for the ALEC to obtain adjacent collocation is that space for physical collocation within the office is exhausted. If space is exhausted, there is no room for the installation of the ALEC's fiber optic terminal or other equipment in the ALEC's physical collocation arrangement. Therefore, in an adjacent collocation situation, the Order should be clarified to allow the ALEC to use copper entrance cabling between the CEV and the inside of BellSouth's central office.

In addition, BellSouth seeks clarification from the Commission that the entrance cabling between the ALEC's CEV and BellSouth's central office is distinct from a cabling between the ALEC's central office and BellSouth's central office. The former should be considered as part of a collocation arrangement; the latter should be considered interconnection.

The FCC's First Report and Order in CC Docket 96-98, August 8, 1996, Paragraph 565, adopted the existing Expanded Interconnection requirements with some modifications, as the rules applicable for collocation under section 251 of the Telecommunications Act of 1996. More specifically, this issue was addressed in the FCC's Second Report and Order, in the Matter of Expanded Interconnection with Local Telephone Company Facilities in CC Docket 91-141, Transport Phase I, released September 2, 1993. Paragraph 69 of that Report and Order states: "LECs are not required to provide expanded interconnection

for switched transport for non-fiber optic cable facilities (e.g., coaxial cable). In the Special Access Order, we [that is, the FCC] concluded that given the potential adverse effects of interconnection on the availability of conduit or riser space, interconnection should be permitted only upon Common Carrier Bureau approval of a showing that such interconnection would serve the public interest in a particular case. We adopt this approach for switched transport expanded interconnection.”

Further, the FCC’s Report and Order, in the Matter of Expanded Interconnection with Local Telephone Company Facilities, CC Docket 91-141, Released October 19, 1992 at Paragraph 99 states: “At least one party supported interconnection of non-fiber optic cable facilities (e.g., copper coaxial cable) provided by Third parties. A number of the LECs, however, have argued that such a requirement is undesirable because it would make limited conduit and riser space available to technologies that are much less space efficient than fiber. Given the potential adverse effects of such interconnection on the availability of conduit and riser space, we [that is, the FCC] believe that interconnection of non-fiber optic cable should be permitted only upon Commission approval of a showing that such interconnection would serve the public interest in a particular case.”

This authority should affirm that, consistent with the FCC’s Rules in CC Dockets 96-98 and 91-141, BellSouth is not required to accommodate requests for non-fiber optic facilities placed in BellSouth’s entrance facilities and the Commission’s Order should be clarified on this issue.

### **III. CONVERSION OF VIRTUAL TO PHYSICAL COLLOCATION (Issue 5)**

In the Order, the Commission held that the ALEC's equipment may remain in place even if it is in the ILEC's equipment line-up when converting from virtual to cageless physical collocation. Order, p. 30. Moreover, the Commission found it unreasonable for an ILEC to require physical collocation arrangements to be located in a segregated collocation area inasmuch as ILECs were required to utilize any unused space for physical collocation. Id. As the Commission erred in reaching this decision, BellSouth seeks reconsideration of this portion of the Order.

On March 17, 2000, the District of Columbia Circuit issued its decision on the review of the FCC's Advanced Services Order in GTE Service Corporation v. FCC, issued on March 17, 2000. (205 F.3d 416). In its decision, the Court vacated certain portions of the Advanced Services Order and remanded those portions to the FCC for further consideration. Id. at p. 427. One such portion was paragraph 42 of the Advanced Services Order, which provides that ILECs "must give competitors the option of collocating equipment in any unused space within the incumbent's premises, to the extent technically feasible, and may not require competitors to collocate in a room or isolated space separate from the incumbent's own equipment." Id. at p. 426.

The Court vacated paragraph 42 of the Advanced Services Order. Paragraph 42 of the Advanced Services Order held that competitors were not

free to pick and choose preferred space on the ILEC's premises, subject only to technical feasibility and over the objection of the ILEC property owners. (205 F.3d at 426). The Court found that nothing in the Telecommunications Act, and specifically Section 251(c)(6) therein, endorsed that approach. Id. The Court held that the FCC had gone too far in its interpretation of the Act and had favored ILEC competitors in a way that exceeded what was necessary to achieve physical collocation. Id.

Essentially, the Court found that the ILEC, as the property owner, had the right of control over its property, a right that could not be dismissed arbitrarily in connection with the provision of physical collocation. The Court noted that even the FCC counsel suggested that the ILEC should be allowed to choose the collocation space. Id. What the Commission has decided in this instance, flies in the face of the Court's order.

Under the Court's ruling, BellSouth has the authority to determine exactly where in the central office virtual and physical collocation arrangements should be located. BellSouth makes space available for both virtual and physical collocation arrangements. When a conversion request is received, BellSouth determines whether the arrangement must be relocated from the virtual collocation space to the physical collocation space. This decision is not made lightly. BellSouth takes numerous factors into account in order to manage its space in the most effective manner. Order, p. 27. The Order takes this control away from BellSouth and, in this respect, is contrary to the D.C. Circuit's Order. Thus, it must be reconsidered.

In its Order the Commission also ruled that relocation of equipment in a conversion situation “would be unduly burdensome and costly to the ALEC without any benefit.” Order, p. 30. No evidence, however, was produced by any party to support this allegation. The FCC made a similar argument in support of the Advanced Services Order. The D.C. Circuit Order, finding this argument unpersuasive, noted that this cost savings claim was ““weak”. 205 F.3d 326. The Court ruled that, “merely saying [there may be a cost savings] does not make it so.” Id. Moreover, as noted by the United States Supreme Court in Iowa Utilities Board, “delay and higher costs for new entrants...[that may] impede entry by competing local providers and delay competition” cannot be used by the FCC to overcome the statutory terms of the Telecommunications Act. Id., 525 U.S. at 389-90. The Commission apparently overlooked the fact that evidence was produced by BellSouth demonstrating that BellSouth’s effective management of its space is an important consideration in the placement of a collocation arrangement, whether it be virtual or physical. Transcript pp. 27-29. Thus, the Commission should reconsider this portion of its Order.

BellSouth also seeks clarification of the Order wherein the Commission ruled that, if there are no physical changes required by the ILEC to the collocation arrangements in a conversion of virtual to physical collocation, the only charges that should apply are for the administrative, billing, and engineering record updates. Order, p. 30. In reaching its decision, the Commission overlooked the fact that, in a virtual collocation arrangement BellSouth is responsible for installing the equipment; whereas in a physical collocation

arrangement, the ALEC is responsible for installing the equipment.

Consequently, there is no space preparation charge associated with virtual collocation, as there is in a physical collocation arrangement. Therefore, when a virtual arrangement converts to a physical arrangement there is no method by which the ILEC can recover space preparation costs it has incurred when the original virtual arrangement was established. This should not be allowed by the Commission, inasmuch as it could lead to ALECs initially choosing virtual collocation and then converting to physical collocation solely to avoid the space preparation charge. Moreover, the FCC in the First Report and Order in Order 96-325 rejected the suggestion that the cost of converting from virtual to physical collocation should be borne by the ILEC. First Report and Order, paragraph 550, footnote 1340. Consistent with FCC rules, BellSouth must be provided a method of recovering its costs in this situation. In addition, the ALEC could bypass a waiver by applying for virtual collocation, then converting to physical collocation in place at no cost while other ALECs are kept out. This would also undermine the ILEC's right of control over the central office. Thus, the Commission should clarify and/or modify its Order on this point.

Similarly, the virtual to physical conversion could be used to circumvent the ILEC's right to reserve space for future growth. This Commission has acknowledged that an ILEC can reserve space for future growth for 18 months. The ILEC is not required to permit physical collocation in its reserved growth space but must give up this space for virtual collocation in a space exhaust situation. The Commission's ruling on virtual conversion effectively negates its

ruling on space reservation, allowing a CLEC to place a virtual arrangement in the ILEC reserved space and immediately convert to a physical arrangement. This inconsistency in the Commission's Order is in direct contravention of the current FCC Rules and the D. C. Circuit's ruling.

#### **IV. CROSS-CONNECTS BETWEEN COLLOCATORS (Issue 7(b))**

In its Order, the Commission found the FCC had provided sufficient guidance in its rules and orders regarding ILEC and ALEC responsibilities regarding collocation cross-connects and, therefore, ILECs and ALECs would be required to follow those FCC rules and orders. Order, p. 40. BellSouth seeks reconsideration of that portion of the Order to the extent it conflicts with the order of the D.C. Circuit.

In the D.C. Circuit Order, the Court held that the FCC failed to show that the requirement placed upon ILECs to allow collocating carriers to cross-connect equipment was "necessary" to effectuate Section 251(c)(6) of the Telecommunications Act. D. C. Circuit Order, at 423. Section 251(c)(6) of the Act merely requires ILECs to provide for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier. The Court held "that the cross-connects requirement had no apparent basis in the statute." *Id.* Therefore, the Court found the cross-connect requirement not to be supported by the evidence. For this reason, the Commission should reconsider its ruling on this issue.



## **V. RESERVATION OF SPACE FOR FUTURE USE (Issue 10)**

BellSouth seeks reconsideration of that portion of the Order that limits reservation of space in a central office to 18 months. Order, p. 56. The Commission, in reaching that limitation, failed to consider the fact that the completion time for a building addition is approximately 24 months. In fact, in the Commission audit conducted in 1999 concerning certain pending collocation waivers, the auditors concurred in this fact. If BellSouth is not allowed to reserve space equivalent to the amount of time it takes for a building addition to take place (24 months), then there is a strong potential that space could be completely exhausted in the central office. In that event, BellSouth would not be able to place equipment for growth to serve customer demand.

## **VI. APPLICATION OF THE FIRST-COME, FIRST-SERVED RULE (Issue 21)**

In its Order, the Commission required that the waiting list of denied ALECs should be kept in order of application denial date, with the first application to be denied being first on the list. Order, p. 106. BellSouth seeks reconsideration of this portion of the Order to the extent it is inconsistent and contrary to FCC rule.

The FCC's first-come, first-served rule is codified at 47 C.F.R. §51.323(f)(1) and states that an ILEC must make "space available within or on its premises to requesting telecommunications carriers on a first-come, first-served basis." (Emphasis added). This rule specifically speaks to requesting carriers, not denied carriers. There is no rationale for the Commission's decision to

choose the application denial date over the date the application was received, as the appropriate order for the waiting list. First-come, first-served means exactly what it says. The rule is not "first-denied, first-served". The most reasonable and rational approach is that the first request for space received should be first in line. If that ALEC does not want the space, the ILEC should move to the next request in line and so on. This is the only approach that comports with the FCC rule.

Moreover, BellSouth is concerned that the Commission's "first-denied, first-served" approach will result in unfair treatment to ALECs who have submitted multiple applications. In its Order, the Commission allowed for staggered response intervals when multiple applications were submitted by an ALEC. Order, p. 15. Under a possible scenario, an ALEC may have applied first, but been denied later than another ALEC. In this instance, the first denied ALEC would have priority over the first applied ALEC. This result would not be appropriate or equitable. BellSouth, therefore, asks the Commission to reconsider this portion of the Order.

## **VII. IMPLEMENTATION DATE**

In its Order, the Commission did not set forth a specific date by which the ILECs were to have the Order implemented. BellSouth has various processes and procedures that must be revised in order to be in compliance with the Order. In addition, BellSouth must retrain its affected employees on the requirements of the Order. BellSouth is in the process of accomplishing this but it is not something that can be completed overnight. Therefore, BellSouth seeks

clarification and concurrence from the Commission that an implementation deadline is appropriate. Specifically, BellSouth asserts that an implementation date of June 11, 2000 (30 days from the date the order was issued) is a reasonable implementation deadline.

Respectfully submitted this 26th day of May, 2000

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