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June 7, 2000
VIA Hand Delivery

Blanca S. Bayo, Director
Division of Records and Reporting
Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida 32399-0870

Re: Docket No. 981834-TP

Dear Ms. Bayo:

Enclosed for filing and distribution are the original and 15 copies of:

- The Florida Competitive Carriers Associations's and AT&T Communications of the Southern States, Inc.'s Cross-Motion for Reconsideration and Response to Motions for Reconsideration.

Please acknowledge receipt of the above on the extra copy enclosed herein and return it to me. Thank you for your assistance.

Yours truly,

Vicki Gordon Kaufman

Vicki Gordon Kaufman

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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 comply with obligation to provide alternative local exchange carriers with flexible, timely, and cost efficient physical collocation. /	Docket No. 990321-TP Filed: June 7, 2000

The Florida Competitive Carriers Association's and AT&T Communications of the Southern States, Inc.'s Cross-Motion for Reconsideration and Response to Motions for Reconsideration

The Florida Competitive Carriers Association (FCCA) and AT&T Communications of the Southern States, Inc. (AT&T), pursuant to rule 25-22.060, Florida Administrative Code, file their Cross-Motion for Reconsideration and their Response to the Motions for Reconsideration filed by BellSouth Telecommunications, Inc. (BellSouth), GTE Florida Incorporated (GTE) and Sprint-Florida Incorporated and Sprint Communications Company Limited Partnership (Sprint).

Cross-Motion for Reconsideration

Introduction

This docket began as the result of a petition filed by the FCCA in which it asked the Commission to take certain action to support local competition in the BellSouth service territory. A petition filed by Rhythms Links Inc. (Rhythms) for a generic collocation investigation was

consolidated with the FCCA petition. The point of both filings, as they related to collocation, was to put in place uniform collocation intervals and guidelines so as to facilitate the rapid deployment of collocation.

Though some issues were disposed of in Order No. PSC-99-1744-PAA-TP, other unresolved issues went to hearing on January 12-13, 2000. Order No. PSC-00-0941-FOF-TP (Order), issued on May 11, 2000 embodies the Commission's decision on the issues heard by it at the January hearing. As to that Order, FCCA and AT&T file this Cross-Motion for Reconsideration regarding the Commission's determination that no tour is required in a partial exhaust situation and that a collocator's space in the line for new space shall be governed by an application's *denial* date.

Tour in a Partial Exhaust Situation

In the Order at page 94, emphasis added, the Commission states:

> We are not persuaded that an ALEC should be allowed to tour a CO if it is offered partial collocation because of insufficient space in a CO. . . . While we are not requiring an ILEC to conduct a tour when only partially filling a request for space, we do emphasize that a tour must still be conducted by the ILEC as part of the process of seeking a waiver of the collocation requirements, and *in situations where an ILEC can only partially fill a request for space, it is expected that the ILEC will need to request a waiver due to lack of space in the CO. Therefore, the ALEC will have an opportunity to participate in a tour as a part of our previously defined waiver process.*

The main basis for the Commission's conclusion above seems to be a misapprehension of the facts regarding what is required to happen in a partial exhaust situation. That is, the Commission appears to conclude that even in a partial exhaust situation, the ILEC will need to request a waiver because it will have fully exhausted all available space in the central office.

However, many factual situations may arise where this is not the case. For example, in a partial denial situation, due to a particular collocator's circumstances, the collocator may take less

than the entire amount of remaining space. In that situation, space would still remain in the central office and so there would be no total exhaust necessitating a tour. Or a collocator may decide that the amount of partial space offered is not sufficient for its needs and take no space at all. Again, there would be no total exhaust requiring a tour as the Commission envisions in its Order.

Because ILECs have an incentive to minimize the amount of available collocation space, tours must be permitted when less than the full amount of space requested is provided so that ALECs can assure themselves as to available space. Therefore, the Commission should reconsider this portion of the Order and find that a tour is required when only part of a collocation request can be filled.[1]

First-Come, First-Served

In the Order at page 106 , emphasis supplied, the Commission states:

> [W]e find that the first collocator request for physical collocation that was *rejected* shall be the first in line and must be given first opportunity to submit a FOC for physical collocation in the new space.

Thus, the Commission found that a denied collocator's place in line for new space shall be determined by the date the collocation's request is *denied* rather than the date on which the collocation space is *requested.* As other parties have noted in motions for reconsideration[2], the date of the collocation application should govern one's position in the queue not the date a particular application is denied.

Using the denial date rather than the application date interjects the ILECs into the process

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[1]Sprint raised this issue in its motion at pp. 3-5.

[2] This issue was raised by Sprint at p. 7 of its motion and by BellSouth at pp. 12-13 of its motion.

and provides the opportunity for them to control an applicant's position in the queue. It could also lead to unnecessary disputes surrounding when an application should have been considered as well as whether the ILEC's time of denial was chosen to frustrate a particular ALEC's opportunity to collocate. A much simpler and more reasonable approach is to provide that the date of the application governs a collocator's space in the queue in the event sufficient space is not available to fulfill the request.

Response to Motions for Reconsideration

BellSouth, GTE and Sprint filed motions for reconsideration asking the Commission to reconsider its findings on a number of issues. FCCA and AT&T will not address every issue[3] raised by these parties but rather focus on the issues delineated below.

Conversion of Virtual to Physical Collocation

Both BellSouth and GTE argue that the Commission should reconsider its finding that an ALEC's equipment must remain in place in an ILEC's line-up when the ALEC converts from virtual collocation to cageless physical collocation and that it is unreasonable for an ILEC to require segregation of collocation equipment. They ask the Commission to reconsider these findings based on the Court's decision in *GTE v. FCC*, 205 F.3d 416 (D.C.Cir. 2000), which vacated ¶ 42 of the *Advanced Services Order*.

However, BellSouth and GTE overlook several important points in their argument. The Court's vacation of ¶ 42 does *not* address the situation at issue here where the equipment is *already*

[3]To the extent, FCCA and AT&T do not specifically address an issue raised on reconsideration, they rely on the responses of the other competitive carrier intervenors in this case and advocate that the Commission's Order not be reconsidered.

located in the ILEC line-up. And in fact, ¶ 42 appears to specifically address the initial placement of equipment in an ILEC central office *not* the subsequent relocation of that equipment which is the issue the Commission considered. While the Court rejects the "cost savings" argument made by petitioners in that case, in this case it is beyond dispute that savings will result if relocation is not required. For example, as Mr. Gillan testified:

> Here we begin with equipment that is located in racks, in the central office, in the same area as the ILEC's equipment. The end-point must be that the same equipment be located in rack space, in the same central office, in the same area as the ILEC's equipment. What possible gain is achieved by requiring that the equipment be located in *different* rack space?
>
> . . .
>
> What could be a more reasonable space assignment than keeping equipment where the ILEC first placed it? How could any other space be more efficient? Clearly, moving the equipment for the sake of moving the equipment is as artificial an increase in cost as one could imagine.

(Tr. 1045, emphasis in original).

Further, the Commission did *not* base its finding, that no relocation of equipment should be required, on ¶ 42 of the *Advanced Services Order*. Rather, the Commission said:

> [R]egarding relocation of equipment, *the record supports* 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. It appears that to require relocation of equipment *under these circumstances* would be unduly burdensome and costly to the ALEC without any benefit.

Order at 30, emphasis added. Also, based on the *record in this case*, the Commission concluded that requiring relocation would be burdensome and costly to the ALEC with no corresponding benefit.

These factual findings and considerations support the Commission's decision on this issue and it

should not be reconsidered.

BellSouth also seeks "clarification" of the Commission's finding that if no physical changes are required by the conversion, the only applicable charges are those for administrative, billing and engineering record updates. However, no clarification is necessary. The Order is clear that *if* there are *no* physical changes needed, obviously there would be no space preparation charges. In the vast majority of situations, the conversion is nothing more than a record keeping change so there is no physical work to be done:

> The principal distinction between a virtual and cageless collocation arrangement concerns the entrant's right to visit its equipment for purposes of maintenance and upgrade. Consequently, terms for converting virtual collocation space to cageless space should require no more than reversing the "ownership" of the virtually collocated equipment and assuring that the ALEC's employees are familiar with whatever security procedure applies to cageless collocation more generally.

(Tr. 1029). Reconsideration should be denied on this point.

Space Reservation for Future Use

At page 56 of the Order, the Commission finds that "an 18-month reservation period is appropriate for reserving space." In supporting its conclusion, the Commission said:

> The evidence is clear that space within a central office is a limited resource, and limiting the length of time space is allowed to be reserved will promote efficient use of central office space and allow current and future collocators the ability to reserve space and enter new markets, thereby stimulating competition. We believe that this 18-month reservation policy will also allow requesting collocators to accurately forecast and adjust space requirements.

BellSouth argues in its motion that the space reservation period should be 24 months, which it alleges is the time needed for a building addition. However, it provides no basis for a claim that the Commission has overlooked or failed to consider a pertinent fact in its analysis above. Further, the longer a reservation period, the less likely it is that the forecasts will match the actual space needs

of either BellSouth or collocators.

GTE takes a different tack and argues that the Commission's Order does not take into consideration the types of equipment placed in central offices. GTE argues that it must be able to reserve space for longer than 18 months for certain kinds of equipment and in fact suggests a *four-year* reservation policy for certain types of equipment and *no* reservation policy at all for other kinds of equipment, meaning that GTE could reserve space for as long as it wanted in certain circumstances.

The "policies" suggested by GTE are unreasonable on their face. Collocation is critical to facilities-based competition. Space reservation policies such as those suggested by GTE, which give the ILEC preferential space reservation authority and which are for extended periods of time, are anticompetitive and will do nothing more than drastically hinder the growth of competition. Not only has GTE demonstrated no basis for reconsideration on this issue but to embrace GTE's suggestions would be contrary to the Telecommunications Act and its implementing rules.

At hearing and in its brief, FCCA and AT&T argued that space should be reserved for no more than 12 months but the Commission selected 18 months. BellSouth has provided no basis to support the 24-month period and GTE has provided no basis for its 4-year or unlimited reservation policy. Therefore, the Commission's Order should stand on this point.

Equipment Requirements

GTE argues that the Commission's finding on page 65 of the Order that "we shall require ILECs to allow the types of equipment in a physical collocation arrangement that are consistent with FCC rules and orders" should be reconsidered due to *GTE v. FCC*. Despite the fact that the Court vacated certain portions of the FCC rules related to this issue, the Court also remanded the case to

the FCC for further consideration. Thus, it is expected that the FCC will repromulgate rules in light of the Court's opinion and that any Commission order will consistent with those rules. Thus, there is no need for reconsideration on this point.

Further, the Court said:

> We do not mean to vacate the Collocation Order to the extent that it merely requires LECs to provide collocation of competitors' equipment that is directly related to and thus necessary, required, or indispensable to "interconnection or access to unbundled network elements."

Id. at 424. To the extent there is any dispute about whether equipment meets this standard, it can be resolved by the Commission on an individual basis.

Cost Recovery

GTE complains that the Order fails to address possible underrecovery by ILECs of space preparation costs and further states that the Commission must implement a mechanism to allocate such costs. GTE attempts to rely upon the Court's decision in *GTE v. FCC*; however, that decision upholds the very paragraph (¶ 51) of the *Advanced Services Order* upon which the Commission relies for its decision in this case. And in fact, the Court recognized, just as this Commission did that "[t]he approach adopted by the Commission [FCC] is fully justified as a reasonable way to ensure that LECs do not impose prohibitive requirements on new competitors and thus kill competition before it ever gets started." *Id.* at 427. Thus, GTE has shown no basis for overturning the Commission's decision.

True-Up

Finally, Sprint requests that the Commission "clarify" that its decision requiring an ILEC to provide a price quotation requires that such quotation be subject to true-up. However, the Order is

is clear and does not require clarification nor does it contemplate a true-up to the price quotation. The Order requires the ILEC to provide "detailed costs" which indicates that the costs should be firm at the time the order is placed. As Mr. Martinez testified:

> An ILEC should be required to provide a firm price quote as part of its initial response to an ALEC's application for collocation. An ALEC is making a substantial business decision when it makes the determination to place a firm order for collocation space. As such, the ILEC should provide a price quote which represents a "Firm Price" for the space requested at the same time the ILEC responds to the ALEC's request for space.

(Tr. 706). Sprint's motion on this point should be denied.

WHEREFORE, FCCA and AT&T request that reconsideration, as delineated in this cross-motion, be granted and that the motions of BellSouth, GTE and Sprint for reconsideration be denied as set forth herein.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing The Florida Competitive Carriers Association's and AT&T Communications of the Southern States, Inc.'s Cross-Motion for Reconsideration and Response to Motions for Reconsideration have been furnished by (*)hand-delivery or by U.S. mail this 7th day of June, 2000 to the following parties of record:

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