

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

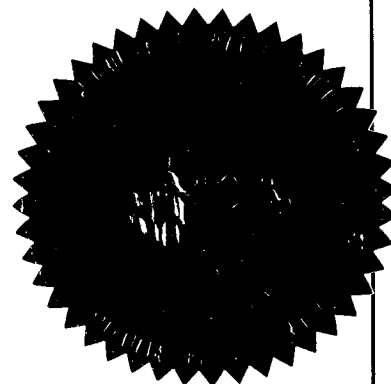
In the Matter of

PETITION OF COMPETITIVE CARRIERS
FOR COMMISSION ACTION TO SUPPORT
LOCAL COMPETITION IN BELLSOUTH
TELECOMMUNICATIONS, INC.'S
SERVICE TERRITORY.

DOCKET NO. 981834-TP

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



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VOLUME 1

PAGES 1 THROUGH 116

PROCEEDINGS: HEARING

BEFORE: CHAIRMAN LILA A. JABER
COMMISSIONER J. TERRY DEASON
COMMISSIONER BRAULIO BAEZ
COMMISSIONER RUDOLPH "RUDY" BRADLEY
COMMISSIONER CHARLES M. DAVIDSON

DATE: Monday, August 11, 2003

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FLORIDA PUBLIC SERVICE COMMISSION

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FPSC-COMMISSION CLERK

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TIME: Commenced at 9:30 a.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
Chief, Office of Hearing Reporter Services
FPSC Division of Commission Clerk and
Administrative Services
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I N D E X

WITNESSES

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21
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NAME:

PAGE NO.

A. WAYNE GRAY

Direct Examination by Ms. White	40
Prefiled Direct Testimony Inserted	43
Prefiled Rebuttal Testimony Inserted	68
Cross Examination by Mr. Feil	96
Cross Examination by Mr. Watkins	99
Cross Examination by Mr. Self	100
Cross Examination by Ms. Keating	105
Redirect Examination by Ms. White	114

EXHIBITS

	NUMBER:		MRKD.	ADMTD.
1				
2				
3	1	Staff Stip 1	39	39
4	2	Staff Stip 2	39	39
5	3	VZ Stip 1	39	39
6	4	VZ Stip 2	39	39
7	5	(Late Filed) Composite	37	
8	6	Misc. Stip 1	39	39
9	7	BST Stip 1	39	39
10	8	BST Stip 1	39	39
11	9	Misc. Stip 2	39	39
12	10	ATT Stip 1	39	39
13	11	ATT Stip 2	39	39
14	12	ATT Stip 3	39	39
15	13	ATT Stip 4	39	39

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P R O C E E D I N G S

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CHAIRMAN JABER: Staff, let's read the notice.

MR. TEITZMAN: Pursuant to notice issued June 25th, 2003, this time and place has been set for hearing in Docket Numbers 981834-TP, petition of competitive carriers for Commission action to support local competition in BellSouth Telecommunication, Inc.'s service territory; and 990321-TP, petition of ACI Corp. doing business as Accelerated Connections, Inc., for generic investigation to ensure that BellSouth Telecommunications, Inc., Sprint Florida, Incorporated, and GTE Florida, Incorporated, comply with obligations to provide alternative local exchange carriers with flexible, timely, and cost-efficient physical collocation.

CHAIRMAN JABER: Thank you. Let's take appearances. We will start from my left.

MS. WHITE: Nancy White and Phil Carver for BellSouth Telecommunications, Incorporated.

MS. MASTERTON: Susan Masterton representing Sprint Florida, Incorporated, and Sprint Communications Company, Limited Partnership.

MR. McCUAIG: Dan McCuaig and Catherine Ronis with the law firm of Wilmer Cutler & Pickering representing Verizon Florida, Incorporated.

CHAIRMAN JABER: Give me your last name one more time?

1 MR. McCUAIG: McQuaig. It's M-C-C-U-A-I-G.

2 CHAIRMAN JABER: And your co-counsel's name?

3 MR. McCUAIG: Catherine Ronis, R-O-N-I-S.

4 CHAIRMAN JABER: Thank you.

5 MR. FEIL: Matthew Feil with FDN Communications.

6 MR. WATKINS: Gene Watkins with COVAD Communications.

7 I will appear in pleadings as Charles E. Watkins. The E is for
8 Eugene.

9 MR. HATCH: Tracy Hatch appearing on behalf of AT&T
10 Communications of the Southern States LLC. Also appearing with
11 me is Floyd Self of the Messer Caparello and Self law firm.

12 CHAIRMAN JABER: Thank you.

13 MR. TEITZMAN: Adam Teitzman, Beth Keating, and Jason
14 Rojas on behalf of the Florida Public Service Commission.

15 CHAIRMAN JABER: Thank you. I understand that there
16 is a motion for leave to substitute a witness and that was
17 filed by Verizon.

18 MR. TEITZMAN: That is correct. That is to
19 late-filed direct testimony.

20 CHAIRMAN JABER: Okay. Is it appropriate to take
21 that up as the first order of business?

22 MR. TEITZMAN: Yes, Chairman.

23 CHAIRMAN JABER: And I understand, Verizon, that
24 there is no objection to this motion?

25 MR. McCUAIG: That is correct.

1 CHAIRMAN JABER: Okay. The motion of Verizon Florida
2 Inc. for leave to file direct testimony of Charles Bailey, and
3 I suppose as a substitution of witnesses, is included in this
4 motion.

5 MR. McCUAIG: Actually the Commission had noted in
6 its prehearing order that Mr. Bailey would be testifying for
7 Verizon having adopted John Ries' prefiled testimony, and this
8 is testimony that makes that clear. So, yes, I suppose it is a
9 substitution of witnesses, although it is not couched that way.

10 CHAIRMAN JABER: Okay. Well, with that
11 clarification, your motion is granted.

12 MR. McCUAIG: Thank you.

13 CHAIRMAN JABER: Staff counsel, what is next?

14 MR. TEITZMAN: The parties have agreed to
15 stipulations of Issue 1B, 1C, and 2A through D. And if you
16 would like, I can read those into the record.

17 CHAIRMAN JABER: Commissioners, I have asked staff to
18 give you all a copy of the issues and the positions. What I
19 would like to do, consistent with how we have handled these in
20 the past, is have staff read the stipulated language into the
21 record and ask for a motion. Is that acceptable? Okay. Let's
22 go issue-by-issue, staff.

23 MR. TEITZMAN: Issue 1B. When should billing of
24 monthly recurring charges begin? If the CLEC accepts the
25 collocation space before or within the time designated by the

1 interconnection agreements between the CLEC and the ILEC, or if
2 there is no ICA between the parties, or the ICA is silent on
3 the period allowed for a walk-through, or the arrangement was
4 ordered out of the ILEC's tariff within 15 calendar days after
5 the space ready date, billing of monthly recurring charges
6 should begin in the next billing cycle and should include
7 prorated charges for the period from the CLEC acceptance date
8 to the bill issuance date.

9 If the CLEC does not conduct a walk-through within
10 the time designated by the ICA, or if there is no ICA between
11 the parties, or the ICA is silent on the period allowed for a
12 walk-through, or the arrangement was ordered out of the ILEC's
13 tariff within 15 calendar days after the space ready date,
14 billing of monthly recurring charges should begin in the next
15 billing cycle and should include prorated charges for the
16 period from the space ready date to the bill issuance date.

17 If the CLEC conducts the walk-through but does not
18 accept the collocation space, the ILEC and the CLEC should work
19 together to resolve any problems with the space.

20 If the CLEC occupies the collocation space prior to
21 the space ready date, billing should begin in the next billing
22 cycle and should include prorated charges for the period from
23 the CLEC occupancy date to the bill issuance date. Disputes
24 concerning the reasonableness of an acceptance or refusal of
25 space should be resolved under the parties' ICA. If the

1 dispute cannot be resolved by the parties pursuant to their
2 ICA, it should be submitted to the Commission for resolution.

3 CHAIRMAN JABER: Thank you, staff. And it is my
4 understanding that the parties, all of the parties in this
5 docket have agreed to this language? Okay. Great.

6 Commissioners, do you have any questions?

7 COMMISSIONER DEASON: I don't have any questions, I
8 just -- I think it is a fair resolution except for the last
9 phrase, which indicates it should be submitted to the
10 Commission for resolution. I think that should be a very last
11 resort. But even with that language, I can move adoption of
12 the stipulation.

13 CHAIRMAN JABER: There has been a motion to accept
14 the stipulation for Issue 1B. And a second. All those in
15 favor say aye.

16 (Unanimous affirmative vote.)

17 CHAIRMAN JABER: Issue 1B is approved.

18 MR. TEITZMAN: The next issue is Issue 1C. What
19 cancellation charges should apply if an ALEC cancels its
20 request for collocation space? When the CLEC cancels its
21 request prior to the space ready date, there should not be a
22 cancellation charge. All parties agree the CLEC should be
23 responsible for reimbursing the ILEC for costs specifically
24 incurred by the ILEC on behalf of the cancelling CLEC up to the
25 date that the written notice of cancellation is received.

1 CHAIRMAN JABER: Commissioners, any questions?

2 COMMISSIONER DAVIDSON: One question, Chairman.

3 CHAIRMAN JABER: Commissioner Davidson.

4 COMMISSIONER DAVIDSON: Does the should mean there
5 will not be a cancellation charge, or there should not be a
6 cancellation charge?

7 CHAIRMAN JABER: Parties?

8 MR. WATKINS: Commissioner Davidson, it is the
9 position of Covad that that means there will not be a
10 cancellation charge, per se. That the remainder of the
11 language should be the only charges that are incurred by the
12 CLEC.

13 CHAIRMAN JABER: Ms. White, do you want to confirm
14 that?

15 MS. WHITE: Yes, that would be BellSouth's position,
16 as well.

17 MR. McCUAIG: That is also Verizon's understanding.

18 MS. MASTERTON: And Sprint's.

19 COMMISSIONER DAVIDSON: And one follow-up. Should in
20 the next line, is that should or will? All parties agree that
21 the CLEC will be responsible for reimbursing the ILEC for costs
22 specifically incurred by the ILEC?

23 MR. WATKINS: And, similarly, Commissioner Davidson,
24 that is the position of Covad Communications, that we will be
25 responsible for any specific charges incurred by the ILEC prior

1 to the cancellation receipt.

2 MS. WHITE: BellSouth would agree with that. I think
3 the reason the word should was used was because that was the
4 word that was used in the issue itself.

5 COMMISSIONER DAVIDSON: Yes, I saw that. But I think
6 it would be -- it would clarify it for everyone if we just make
7 the obligation clear, if that is acceptable to the Commission
8 and the parties.

9 CHAIRMAN JABER: It is acceptable to me, Commissioner
10 Davidson. Parties?

11 MR. WATKINS: It is acceptable to Covad.

12 MR. HATCH: It is acceptable to AT&T.

13 CHAIRMAN JABER: So, let's see, Commissioner
14 Davidson, it should read when the CLEC cancels its request
15 prior to the space ready date there won't or will not be a
16 charge. All parties agree that the CLEC will be responsible.
17 Any other changes?

18 COMMISSIONER DAVIDSON: If that is acceptable to the
19 parties and the Commission as it appears it is, I would move
20 Commission adoption of the modified stipulation to Issue 1C.

21 COMMISSIONER BRADLEY: So --

22 CHAIRMAN JABER: Let me read it again for everyone,
23 but we should also reflect -- and, parties, this is your last
24 chance to speak up -- that there is no objection to this
25 language.

1 Commissioner Bradley, the language will read when the
2 CLEC cancels its request prior to the space ready date there
3 will not be a cancellation charge. And then all parties agree
4 the CLEC will be responsible for reimbursing the ILEC for costs
5 specifically incurred by the ILEC on behalf of the cancelling
6 CLEC up to the date that the written notice of cancellation is
7 received.

8 COMMISSIONER BRADLEY: Thank you.

9 CHAIRMAN JABER: And there was a motion and a second
10 to accept the stipulated language for Issue 1C. All those in
11 favor say aye.

12 (Unanimous affirmative vote.)

13 CHAIRMAN JABER: Issue 1C is approved as modified.

14 MR. TEITZMAN: The next stipulation covers Issues 2A
15 through D. 2A, should an ALEC be required to justify its space
16 reservation needs to the ILEC when an ILEC is forced to
17 consider a building addition to accommodate future space
18 requirements? 2B, under what conditions should an ILEC be
19 allowed to reclaim unused collocation space? 2C, what
20 obligations, if any, should be placed on the ALEC that
21 contracted for the space? 2D, what obligations, if any, should
22 be placed on the ILEC?

23 An ILEC should be allowed to reclaim unused
24 collocation space when the ILEC's central office is at or near
25 space exhaustion and a CLEC cannot demonstrate that the CLEC

1 will utilize the space within a reasonable time. In the event
2 of space exhaust or near exhaust within a premise, the ILEC
3 must provide written notice to the CLEC requesting that the
4 CLEC release nonutilized collocation space to the ILEC when 100
5 percent of the space in the CLEC's collocation arrangement is
6 not being utilized.

7 The CLEC within 20 days of receipt of a written
8 notification from the ILEC, shall either, one, return the
9 nonutilized collocation space to the ILEC, in which case the
10 CLEC shall be relieved of all obligations for charges for that
11 portion of the collocation space so released; or, two, provide
12 the ILEC information to demonstrate that the space will be
13 utilized within 18 months from the date the CLEC accepted the
14 collocation space.

15 Disputes concerning the ILEC's claim of exhaust, or
16 near exhaust, or the CLEC's refusal to return requested
17 collocation space should be resolved by parties pursuant to the
18 parties' interconnection agreements. If the dispute cannot be
19 resolved by the parties pursuant to their ICA, it should be
20 submitted to the Commission for resolution.

21 CHAIRMAN JABER: Thank you, staff.

22 Commissioners, do you have questions on this
23 language?

24 COMMISSIONER BRADLEY: Yes. My question is along the
25 same line as Commissioner Deason's question, and this is a

1 question of staff. If this is returned to the Commission, what
2 would be or might be the Commission's options as it relates to
3 this particular issue in resolving any dispute that might
4 arise?

5 MR. TEITZMAN: Commissioner, it would depend at that
6 time what the dispute was regarding. Obviously we would have a
7 lot of options to resolve the dispute, but it would depend
8 primarily on what that dispute was.

9 CHAIRMAN JABER: Any other questions, Commissioners?

10 COMMISSIONER BRADLEY: No.

11 COMMISSIONER DEASON: Well, along that line, is it
12 possible that it is something that could be handled by a PAA
13 order, or is that something that it would just depend on at the
14 time?

15 MS. KEATING: I think it depends on if it is a
16 dispute about what is in their interconnection agreement or
17 whether it is a dispute over whether or not there is actually
18 space or they should be allowed in there. If it is space,
19 probably PAA would be appropriate. If it is interconnection
20 agreement, then possibly a final order might be appropriate.

21 CHAIRMAN JABER: And, of course, we shouldn't rule
22 out mediation.

23 MS. KEATING: That is correct; absolutely.

24 CHAIRMAN JABER: Because, of course, ultimately and
25 ideally we wouldn't want it to come to the Commission at all,

1 now, would we? Right, parties? And if you haven't met David
2 Smith, you really need to take an opportunity to meet him
3 today.

4 Commissioner Davidson, you had a question?

5 COMMISSIONER DAVIDSON: Thank you, Chairman. Along
6 the same lines of the question I had with regard to Issue 1C,
7 in the first line, an ILEC should be allowed to reclaim, is
8 that -- does the should mean should or does it mean shall or
9 will? What is staff's understanding?

10 MR. TEITZMAN: Well, I would leave it to the parties,
11 it's their stipulation.

12 CHAIRMAN JABER: Well, but you are recommending
13 approval of it, so what is your --

14 COMMISSIONER DAVIDSON: Right. I would like to start
15 with your understanding of whether that is should, or shall, or
16 will as the case may be, and then turn to the parties.

17 MR. TEITZMAN: As with the previous stipulation, my
18 understanding is that it will be allowed.

19 COMMISSIONER DAVIDSON: Parties.

20 MS. WHITE: BellSouth's position is that it would be
21 shall or will.

22 COMMISSIONER BRADLEY: Okay. And I think I
23 understand what the Commissioner is getting at. Is this
24 permissive language or is this a mandate?

25 MR. WATKINS: Commissioner Davidson, it is COVAD's

1 position that that first sentence is kind of a general gist of
2 what the remainder of the stipulation details. So whether it
3 is a should or will as far as we are concerned isn't as
4 important as the details about how it is going to be
5 implemented.

6 COMMISSIONER DAVIDSON: If I could, if I could follow
7 up for a moment just on that point. When the ILEC's central
8 office is at or near space exhaustion and a CLEC cannot
9 demonstrate that the CLEC will utilize the space within a
10 reasonable time, will an ILEC be allowed to reclaim unused
11 collocation space or might it be allowed to, given that that
12 sentence also has to be read in conjunction with the rest of
13 the stipulation?

14 MR. WATKINS: Given the fact that it has got a
15 subjective term in terms of reasonable time that is clarified
16 further down in the stipulation, and the parties recognize in
17 the stipulation that there may be a disagreement about that
18 that would need to be submitted either to dispute resolution
19 within the interconnection agreement itself or to the
20 Commission for resolution, I would assert that that should
21 remain should, because it recognizes -- it is a general
22 statement of the stipulation itself.

23 COMMISSIONER BRADLEY: Well, I think it would be
24 clearer to me if we used either may or shall, then that makes
25 it either permissive or it makes it clear that it is a mandate,

1 they shall be. May means that it is open-ended, it just
2 depends on the situation.

3 MR. WATKINS: If I might. I mean, the reason that I
4 said in the first place that I don't think it matters whether
5 it is a should or will is it is a general statement together
6 with the remainder of the stipulation. So, I do not object if
7 we want to make it will, because it has got a subjective
8 element to the sentence itself. So, whether it says will in
9 the first instance and then has a subjective portion to it will
10 make it may anyway.

11 COMMISSIONER DAVIDSON: And I only raise the issue
12 because there is a roomful of lawyers here. And you say today
13 it doesn't matter, and then a year from now --

14 CHAIRMAN JABER: Is what you are trying to establish,
15 the spirit of the stipulation is that ILECs are allowed to
16 reclaim the unused collocation space, and what follows are the
17 conditions that will allow it. Commissioners, honestly
18 whatever your pleasure is is fine with me. But I think with
19 the explanation that the remainder of the paragraphs are where
20 the specific criteria can be found, I am okay with the first
21 sentence being general. But saying that, if there is a desire
22 to clarify it further, no problem here.

23 COMMISSIONER BRADLEY: And I don't disagree with
24 that, but the last portion of the last sentence says the
25 Commission for resolution, and I am just trying to get a grasp

1 of one or two concepts here. Is it that this language is
2 designed to allow for the Commission to maybe rule on
3 unforeseen consequences, or unforeseen occurrences, or is it
4 crystal clear that this shall happen?

5 CHAIRMAN JABER: Let's establish with the ILECs
6 whether it is crystal clear. I think the Commissioners are
7 asking a fair question, Ms. White. And, Verizon, you need to
8 speak to this. Is it your understanding that the spirit of the
9 stipulation is that you will be allowed to reclaim unused
10 collocation space with the three parameters outlined?

11 MS. WHITE: Yes, ma'am. I mean, the first sentence
12 says essentially if the CLEC can't demonstrate either to the
13 ILEC or to the Commission's satisfaction that they are going to
14 use the space, then the ILEC will take it back. And then it
15 goes into the details of how they show it, when they show it,
16 that kind of thing. So I think will is probably the
17 appropriate term.

18 CHAIRMAN JABER: Verizon?

19 MR. McCUAIG: Verizon agrees with BellSouth. And I
20 think that to the extent there are arguments about whether it
21 is appropriate, those arguments would be based not on whether
22 the ILEC should or should not be able to reclaim the space, but
23 more defined features of whether the ILEC's central office is
24 at or near exhaust on the one hand, or whether the ALEC's
25 refusal to give back the space was reasonable or unreasonable

1 on the other hand. So I think it is fine to turn this from a
2 should into a shall.

3 CHAIRMAN JABER: Sprint?

4 MS. MASTERTON: We agree with BellSouth and Verizon,
5 but I would say will rather than shall, I think that is the
6 appropriate.

7 CHAIRMAN JABER: Okay. FDN, Covad?

8 MR. FEIL: FDN, Matt Feil. I don't know that it
9 makes a big difference whether or not it is will or may, I can
10 live with either one.

11 CHAIRMAN JABER: Okay.

12 MR. WATKINS: Covad has no objection to changing it,
13 as well.

14 CHAIRMAN JABER: AT&T.

15 MR. HATCH: Commissioner Davidson, the point with a
16 roomful of lawyers, at the end of the day I'm not sure that it
17 makes a lot of difference whether it is will or shall, but we
18 can live with any of that.

19 CHAIRMAN JABER: Mr. Self? All righty.

20 Commissioners, questions or a motion?

21 COMMISSIONER DAVIDSON: One more question. Where we
22 talking about the should in the very first line just now --

23 CHAIRMAN JABER: Yes.

24 COMMISSIONER DAVIDSON: -- if we look at the fourth
25 line from the bottom, disputes concerning the ILEC's claim of

1 exhaust, or near exhaust, or the CLEC's refusal to return
2 requested collocation space, I would change that should to a
3 shall, shall be resolved by the parties. Or perhaps that is a
4 should. But, in any event, this needs to be more mandatory.
5 First, they turn to the interconnection agreement, and then if
6 the dispute cannot be resolved it shall be submitted to the
7 Commission. So perhaps the first one is a should and the last
8 one in the next to the last line is a shall.

9 CHAIRMAN JABER: I would change the last one to a
10 may.

11 COMMISSIONER DAVIDSON: Okay.

12 CHAIRMAN JABER: That's okay.

13 COMMISSIONER DAVIDSON: No, let's just strike that
14 last clause.

15 CHAIRMAN JABER: Exactly. Okay. So, Commissioner
16 Davidson, your question -- and I think your suggested change is
17 to change the should four sentences from the bottom to a shall
18 is the question, or whether it should remain --

19 COMMISSIONER DAVIDSON: Right. That is a question of
20 whether it should remain a should because there remains the
21 possibility that the parties can't resolve it. So the shall
22 imposes a mandate, and typically --

23 CHAIRMAN JABER: Okay. Parties, let's start. Ms.
24 White.

25 MS. WHITE: I don't feel strongly about it, either

1 what is there or the change that Commissioner Davidson has made
2 is fine.

3 CHAIRMAN JABER: Okay. And just to be clear, the
4 question is can the sentence read disputes concerning the
5 ILEC's claim of exhaust, or near exhaust, or the CLEC's refusal
6 to return requested collocation space shall be resolved by the
7 parties pursuant to their agreement. Sprint?

8 MS. MASTERTON: Yes. I mean, I don't have a problem
9 with should in this instance, but I guess shall hopefully
10 wouldn't force the parties to do something they wouldn't
11 otherwise.

12 COMMISSIONER DAVIDSON: I don't have a problem with
13 should in the first line, I suppose, but in the second line,
14 if -- I just want to be clear. Are the parties obligating to
15 submit their dispute to this Commission if it can't be
16 resolved? If they are, change that to a shall. If they are
17 not, then what will occur?

18 MR. WATKINS: Commissioner Davidson, to respond to
19 your question, Covad would object to changing that to should
20 for this reason: There are going to be times --

21 COMMISSIONER DAVIDSON: Changing it to shall.

22 MR. WATKINS: Covad would object to changing it to
23 shall because there may be times when it is clear that either
24 of the parties are not going to agree, and it should
25 immediately be submitted to either mediation itself, or if the

1 time is so limited that it has got to come to this Commission
2 directly, that that should be an option for the parties. We
3 will submit this to dispute resolution within the terms of the
4 interconnection agreement when we can.

5 COMMISSIONER DAVIDSON: Well, that's fine. It sounds
6 like that should was the language that was negotiated in that
7 first line. But now what I am hearing is it won't necessarily
8 be submitted to the Commission for resolution, you may try
9 something else. And if that is the parties' intent, I am fine
10 with the language as is.

11 CHAIRMAN JABER: In both places, Commissioner
12 Davidson?

13 COMMISSIONER DAVIDSON: Yes, Chairman.

14 CHAIRMAN JABER: Commissioner Bradley.

15 COMMISSIONER BRADLEY: And theoretically I guess what
16 I'm trying to come to grips with is are we getting away from
17 this body serving as a regulatory issue as it relates to
18 competition or is it that we are trying to formulate language
19 that lets competition take care of some of these issues. It
20 just depends on the concept that we want to function under as
21 it relates to competition. It has always been my opinion that
22 less regulation is better, and it takes care of issues, or is
23 it that we want to have more oversight or maintain the status
24 quo as it relates to --

25 CHAIRMAN JABER: We will let the parties address your

1 question. But as one Commissioner, I have to tell you I was
2 pleased with Covad's response a minute ago to Commissioner
3 Davidson's question. I think they are thinking outside the
4 box, that if their interconnection agreement allows for
5 mediation alternatives or the parties on their own agree to a
6 mediator, that is a good thing, that is not a bad thing. I
7 hear some flexibility that they are not necessarily wed to
8 bringing issues here. That is not to say they are not shy
9 about bringing issues here, either.

10 But, Commissioners, do you have any other feedback?

11 COMMISSIONER DEASON: Well, just let me add that I
12 agree with you. I think that the spirit of this language is
13 that the parties should work this out realizing the competitive
14 nature of it and that bringing it to the Commission is a last
15 resort, and that there are avenues available to them, one being
16 procedures within the interconnection agreement. I am
17 comfortable with the language.

18 CHAIRMAN JABER: Commissioner Bradley, I think you
19 are asking it of us, or did you want the parties to comment?

20 COMMISSIONER BRADLEY: The parties. It's just a
21 matter of concept as it relates to the --

22 MS. WHITE: Well, I think I agree with you,
23 Commissioner Bradley. I think if you leave the language on the
24 last sentence as should, then it does give the parties more
25 flexibility and hopefully it doesn't come to you. I mean, even

1 if there is still a dispute between the parties, they may
2 decide -- one of the parties may decide to drop it and back
3 off. They might decide to go to mediation or some other form
4 of resolution before coming to the Commission. So I think if
5 you leave it as should, then it does give the parties
6 flexibility and hopefully allow competition to take care of the
7 issue.

8 MR. WATKINS: Commissioner Bradley, Covad entirely
9 concurs with your opinion with regards to deregulation when it
10 is appropriate. In this particular instance there is a
11 disadvantage in negotiation on this type of topic because we
12 are the tenant, they are the landlord, and we are competitors
13 with each other. So it is a very difficult situation in which
14 sometimes things won't work out and we need the flexibility to
15 work amongst each other when we can, but we also need the
16 ability to come to you as a dispute resolution body to resolve
17 that relationship if it is not working out in a competitive
18 sense.

19 COMMISSIONER DEASON: Madam Chairman, I'm ready to
20 make a motion.

21 CHAIRMAN JABER: I think the only change that I heard
22 go forward was a desire to have the first sentence read an ILEC
23 will be allowed to reclaim, is that right, Commissioner?

24 COMMISSIONER DEASON: That is my understanding and
25 that is my motion, and I think the parties have agreed to that

1 language and that we would approve the stipulation with that
2 one modification.

3 CHAIRMAN JABER: Commissioner Davidson has a
4 question.

5 COMMISSIONER DAVIDSON: A follow-up. And I hate to
6 harp on this, the last line, but it really is language that in
7 private practice I would have -- if I wanted to fight, would
8 have in a dispute, and I want to be clear that I understand the
9 parties' intents. If the dispute cannot be resolved by the
10 parties pursuant to their interconnection agreement, it should
11 be submitted to the Commission for resolution. That, while it
12 is not a shall, has enormative connotation; which if there is
13 an option other than the Commission for resolution, such as
14 medication, do the parties all understand this language to
15 allow them to do something other than submit a dispute to the
16 Commission?

17 And if the parties can go on record saying that they
18 understand that language to provide for something other than
19 going to the Commission, then if a party tries to do something
20 other than going to the Commission, the other party can't
21 initially, I think, be heard to object. For example, if a
22 party want to try mediation. I'm trying to figure out, let's
23 assume there is a dispute, what happens.

24 CHAIRMAN JABER: Mr. Watkins.

25 MR. WATKINS: And I think Commissioner Davidson

1 properly foresees disputes about dispute resolution. Covad
2 reads that language to be permissive in what happens if we
3 cannot resolve a dispute over this issue within the confines of
4 our interconnection agreement.

5 COMMISSIONER DAVIDSON: What would happen if one
6 party wanted mediation outside of a Commission proceeding and
7 another party wanted the dispute submitted to the Commission
8 for resolution at the same time you exchange letters? No, this
9 needs to go to the Commission. And Sprint, for example, you
10 get a letter from Ms. Masterton saying, no, we need this
11 dispute to be heard at the Commission. What happens?

12 MR. WATKINS: Commissioner Davidson, that would be
13 resolved within the terms of the interconnection agreement; and
14 if that was silent, within the rules of this Commission.

15 CHAIRMAN JABER: So if your interconnection agreement
16 spoke to mediation as the first option, that would be the first
17 option. And the complaint might be, Commissioners, pursuant to
18 the interconnection agreement we are supposed to try mediation.
19 Is that your understanding on this side?

20 MS. MASTERTON: I just wanted to explain from
21 Sprint's perspective the reason why we were okay with that
22 language is the dispute resolution provisions in our agreement
23 have the ultimate resolution with the Commission if the parties
24 can't otherwise work it out. So we saw this just basically
25 reflecting what we had already agreed to.

1 CHAIRMAN JABER: Is that traditional language? Give
2 me a historical perspective, because frankly I haven't sat on
3 an arbitration in probably a year. Remind me. Is that
4 traditional language that there is dispute resolution which
5 ultimately if the dispute is not resolved you come to the
6 Commission?

7 MS. WHITE: I think in just about every
8 interconnection agreement that BellSouth has there is dispute
9 resolution language, yes.

10 MS. MASTERTON: I can say the same for Sprint.

11 MS. WHITE: The great majority of it has come to the
12 Commission.

13 CHAIRMAN JABER: Commissioners, I heard a voice up
14 here, but I couldn't tell who was --

15 COMMISSIONER BAEZ: I just --

16 CHAIRMAN JABER: Commissioner Baez.

17 COMMISSIONER BAEZ: I had a question. There seems to
18 be a lot of concern on the part of the Commissioners, I'm
19 wondering if that last sentence is even necessary. I'm not
20 sure that it is creating any new rights in the parties to avail
21 themselves of the process that is already there. And, again,
22 I'm not -- I'm okay with the language the way it is,
23 personally, but it seems to me that it may be stating the
24 obvious, to the extent that we need it at all.

25 CHAIRMAN JABER: Mr. Hatch.

1 COMMISSIONER BAEZ: And it is your stipulation, Mr.
2 Hatch. You know, you all put it in what you want, but --

3 MR. HATCH: These are always touchy things. Because
4 everybody has got a little tiny piece of it, and when it starts
5 to shift even a little bit, it starts to unravel. But I guess
6 to your point is that if you eliminate that last sentence,
7 certainly what we would want to see is if your interconnection
8 agreement does not have a go-to-the-Commission provision, we
9 don't want to view this as a bar to getting the Commission to
10 resolve it if we can't resolve it any other way.

11 COMMISSIONER BAEZ: Now, remind me. I mean, has that
12 situation ever --

13 MR. HATCH: I don't believe that it has.

14 COMMISSIONER BAEZ: -- arisen. And to the extent
15 that -- I mean, perhaps early on where there weren't ADR
16 clauses in the interconnection agreements, was there ever, has
17 there ever been a dispute between the parties as to whether the
18 Commission has the authority or certainly is a vessel in which,
19 or a proper forum in which to decide those kinds of disputes?

20 MR. HATCH: I believe it has been a live question. I
21 believe there have been some interconnection agreements that
22 provided for essentially private arbitration. And then the
23 question arose are you stuck with that or can you go to the
24 Commission, and that question has arisen, I believe, before.

25 COMMISSIONER BAEZ: And it hasn't been resolved?

1 MR. HATCH: I honestly don't know. This is kind of
2 anecdotal on my part.

3 COMMISSIONER BAEZ: I would like to hear if anyone
4 else has any other information on this.

5 MS. WHITE: Actually it was raised in the Supra case
6 between BellSouth and Supra in which I believe the complaint
7 was filed by BellSouth and it involved some issues that
8 occurred before a certain date, therefore, under an old
9 contract, and some issues that occurred after a certain date
10 under a new contract. The old contract had mandatory
11 arbitration under the tribunals; the new contract had
12 Commission. And I think we filed in a complaint that
13 encompassed both time periods, and I believe the Commission
14 ruled that the part of the complaint that dealt with the time
15 period under the old contract had to go to a tribunal under
16 that contract. So to that extent you did rule on it.

17 COMMISSIONER BAEZ: Well, but, your -- and I guess
18 you are describing a different -- you are describing a
19 situation where rather than -- I don't know that the question
20 of whether after arbitration or if arbitrations was
21 unsuccessful, although arbitration is binding, so that kind of
22 changes the landscape a little bit. And I think our decision
23 was that, well, here are terms that actually deal with it. We
24 are dealing with a situation where there is no -- that there
25 isn't anything as definitive as that. Again, you know, maybe

1 we are just kicking a dead horse here.

2 MR. WATKINS: I believe that under most of the
3 interconnection agreement terms as they exist right now, that
4 last sentence is redundant. However, Covad hears the door
5 squeaking open very slightly to the argument that later if we
6 do strike that sentence, and we are in an interconnection
7 agreement negotiation, that the Commission has taken the
8 position that we have to resolve this pursuant to the
9 interconnection agreement. And we are concerned about that
10 coming in later.

11 CHAIRMAN JABER: The reason I asked about whether it
12 was traditionally included or not, it has been my
13 understanding -- and, staff, you can correct me if I'm wrong --
14 that the resolution of each of those issues also serve to give
15 the parties guidance on what to include in your interconnection
16 agreements. So I am personally okay with the should because
17 this sends you a message to go back and negotiate language on
18 dispute resolution in your interconnection agreement. Saying
19 all of that, Commissioners, if you feel strongly about it --

20 COMMISSIONER DAVIDSON: I'm fine with the language,
21 as well, given everything that has been said on the record here
22 and the parties understanding. I don't necessarily think it is
23 a model of clarity, but we may all have different language we
24 would prefer. And I am absolutely fine with the language with
25 the parties understanding. With that I would second

1 Commissioner Deason's motion.

2 COMMISSIONER BRADLEY: Before you second that --

3 CHAIRMAN JABER: Commissioner Bradley had a question.

4 COMMISSIONER BRADLEY: -- I just want to make sure I
5 understand exactly what has transpired here. Did we agree that
6 alternative mediation methods may be applied, or is it
7 directly -- or it is going to come to the Commission if there
8 is a dispute?

9 COMMISSIONER DAVIDSON: My understanding was -- I'm
10 sorry, Chairman, but if it was included in the interconnect
11 agreement, if there were alternative dispute resolution
12 language in the agreement itself, that would be followed as
13 part of the agreement. Failing, though, an ability to resolve
14 the dispute under the agreement itself, and absent some other
15 agreement between the parties to do mediation, it comes here.

16 COMMISSIONER BRADLEY: Okay. I'm fine.

17 CHAIRMAN JABER: There has been a motion and a second
18 to accept the stipulated language to resolve Issues 2A through
19 2D with the minor change in the first sentence, "an ILEC will
20 be allowed." All those in favor say aye.

21 (Unanimous affirmative vote.)

22 CHAIRMAN JABER: The stipulation is accepted
23 unanimously. I have been dying to ask, are you the first
24 witness?

25 THE WITNESS: Yes, ma'am.

1 CHAIRMAN JABER: Okay. Staff, that resolves the
2 issues that had proposed stipulated language. And I understand
3 there are exhibits which may be stipulated.

4 MR. TEITZMAN: Before we move on to the exhibits, it
5 was brought to my attention before the hearing that AT&T has
6 one additional preliminary matter they would like to address.

7 CHAIRMAN JABER: Mr. Hatch.

8 MR. HATCH: Yes, ma'am. Madam Chairman, we would
9 like official recognition or request official recognition of
10 two orders. One is the recent Georgia UNE cost order that was
11 recently adopted by the Georgia Commission. The other one is
12 an order from the Illinois Commerce Commission in the State of
13 Illinois. I have copies here for the record for you. And if
14 parties would like copies of them, I will be glad to supply
15 them. I don't have a gazillion copies of them here this
16 morning. I can describe the orders for the record, if you
17 would like.

18 CHAIRMAN JABER: Well, Legal Staff, remind me, I
19 thought that as it relates to orders and federal decisions we
20 no longer need to officially recognize them, that there is an
21 understanding that this Commission recognizes its own orders
22 and orders of other state commissions and federal agencies. Is
23 that correct?

24 MS. KEATING: That is correct, Madam Chairman. We
25 have moved away from the use of official recognition.

1 MR. HATCH: It has gone both ways. I'm just trying
2 to cover my bases here.

3 CHAIRMAN JABER: Not when I am presiding it hasn't.
4 Okay. Anything else?

5 MR. SELF: Madam Chairman, just one point of
6 clarification. The prehearing order identifies ITC DeltaCom as
7 a party, and they filed and withdrew from the docket subsequent
8 to the prehearing conference. And I just wanted that noted for
9 the record.

10 CHAIRMAN JABER: Thank you. And that is noted. Does
11 that take us to the stipulated exhibits?

12 MR. TEITZMAN: Yes, Chairman.

13 CHAIRMAN JABER: And you have given the court
14 reporter, the Commissioners, and the parties a list of the
15 exhibits?

16 MR. TEITZMAN: Yes.

17 CHAIRMAN JABER: Great. Let's get started.

18 MR. TEITZMAN: Staff has a total of 13 stipulated
19 exhibits. The first of which is SP Stip 1 which is made up of
20 Sprint's responses to staff's PODs.

21 CHAIRMAN JABER: Okay.

22 MR. TEITZMAN: Let me make a correction, Sprint's
23 responses to staff's interrogatories. I apologize.

24 CHAIRMAN JABER: Stipulation 1, Staff Exhibit
25 Stipulation 1 is identified as Hearing Exhibit 1.

1 MR. TEITZMAN: SP Stip 2, that is Sprint's responses
2 to staff's PODs.

3 CHAIRMAN JABER: Staff Stip 2 is identified as
4 Hearing Exhibit 2.

5 MR. TEITZMAN: VZ Stip 1, Verizon's responses to
6 staff's PODs.

7 CHAIRMAN JABER: Verizon Stipulation 1 is identified
8 as Hearing Exhibit 3.

9 MR. TEITZMAN: VZ Stip 2, Verizon's responses to
10 staff's interrogatories.

11 CHAIRMAN JABER: Verizon Stipulation 2 is identified
12 as Hearing Exhibit 4.

13 MR. TEITZMAN: The fifth exhibit is made up of
14 late-filed discovery from several different companies that is
15 due today. I can list off each, if you would like.

16 CHAIRMAN JABER: No, I think, Commissioners, you have
17 got the list in front of you. If you don't have any questions
18 with regard to the late-filed exhibit, I will go ahead and
19 identify it.

20 COMMISSIONER DAVIDSON: Is this due today or has it
21 been submitted today?

22 CHAIRMAN JABER: I just heard Mr. Teitzman say it was
23 due today. I am assuming by the close of business you want
24 this information?

25 MR. TEITZMAN: That is correct.

1 CHAIRMAN JABER: What we will do is we will identify
2 it. I won't admit it into the record until you can tell us
3 that you have received it, but we will go ahead and identify
4 it. Are the parties clear with regard to what is due today by
5 the close of business? Because I notice that it effects all
6 the parties. Staff, is that correct?

7 MR. TEITZMAN: That would be Sprint, Verizon,
8 BellSouth, and AT&T.

9 CHAIRMAN JABER: Parties, do you have any questions
10 about what is expected of you today?

11 MR. HATCH: This is with AT&T. We are clear what is
12 due today. It is not clear that it will actually be received
13 by the Commission staff today. It is in the pipeline and we
14 are getting ready for the hearing, so I'm not sure it will
15 exactly hit the doorstep at 5:00 o'clock.

16 CHAIRMAN JABER: Well, this hearing has been
17 scheduled for a second day tomorrow. As far as admitting the
18 information into the record, remind me tomorrow morning. But
19 with regard to parties' ability to use it, I hope you have your
20 own copies and enough copies for the court reporter. Okay.
21 All right. The late-filed exhibits numbered 1 through 8 on
22 staff's sheet of exhibits will be identified as Hearing Exhibit
23 5.

24 (Late-filed Exhibit 5 marked for identification.)

25 MR. TEITZMAN: Next would be Miscellaneous Stip 1,

1 which is made up of Covad, FDN, Supra, and staff's responses to
2 discovery.

3 CHAIRMAN JABER: Miscellaneous Stip 1 is identified
4 as Hearing Exhibit 6.

5 MR. TEITZMAN: BST Stip 1, BellSouth's responses to
6 staff's PODs.

7 CHAIRMAN JABER: BST Stip 1 is decided as Hearing
8 Exhibit 7.

9 MR. TEITZMAN: BST Stip 2, BellSouth's responses to
10 staff's interrogatories.

11 CHAIRMAN JABER: BST Stip 2 is identified as Hearing
12 Exhibit 8.

13 MR. TEITZMAN: Miscellaneous Stip 2, AT&T's
14 supplemental responses, Verizon's supplemental responses, and
15 Sprint's response to staff's eighth request for production of
16 documents.

17 CHAIRMAN JABER: Miscellaneous Stip 2 is identified
18 as Hearing Exhibit 9.

19 MR. TEITZMAN: AT&T's Stip 1, AT&T's responses to
20 staff's PODs and interrogatories.

21 CHAIRMAN JABER: AT&T's Stip 1 is identified as
22 Hearing Exhibit 10.

23 MR. TEITZMAN: AT&T's Stip 2, AT&T responses to
24 Sprint and Verizon's discovery requests.

25 CHAIRMAN JABER: AT&T Stip 2 is identified as Hearing

1 Exhibit 11.

2 MR. TEITZMAN: AT&T's Stip 3; BellSouth, AT&T, and
3 Verizon responses to AT&T discovery requests.

4 CHAIRMAN JABER: AT&T Stip 3 is identified as Hearing
5 Exhibit 12. And without objection, Exhibits 1 through 4 are
6 admitted into the record. And without objection, Exhibits 6
7 through 12 are admitted into the record.

8 (Exhibits 1-4 and 6-12 marked for identification and
9 admitted into the record.)

10 MR. TEITZMAN: Chairman, there is one more. AT&T's
11 Stip 4, which is comprised of BellSouth, Sprint, and Verizon
12 responses to AT&T's discovery requests.

13 CHAIRMAN JABER: AT&T's Stip 4 will be identified as
14 Exhibit 13, and Exhibit 13 will be admitted into the record
15 without objection.

16 (Exhibit 13 marked for identification and admitted
17 into the record.)

18 MR. TEITZMAN: That concludes staff's stipulated
19 exhibits.

20 CHAIRMAN JABER: Staff, I will just leave it on you
21 to remind me about Exhibit 5 tomorrow, okay?

22 MR. TEITZMAN: Yes.

23 CHAIRMAN JABER: And it is my understanding, parties,
24 that you have waived your opening statements, and that you have
25 agreed that that direct and rebuttal may be taken up at the

1 same time, is that correct? All right.

2 At this time I would like to ask the witnesses to
3 stand and raise their right hand.

4 (Witnesses sworn collectively.)

5 CHAIRMAN JABER: Ms. White, I would love to tell you
6 to call your first witness, but he has been so ready.

7 MS. WHITE: We thought we would help by getting him
8 up there before the Commission came into session.

9 CHAIRMAN JABER: Thank you.

10 MS. WHITE: Our witness is Mr. Wayne Gray.

11 A. WAYNE GRAY

12 was called as a witness on behalf of BellSouth
13 Telecommunications, Inc., and, having been duly sworn,
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MS. WHITE:

17 Q Mr. Gray, would you please state your name and
18 address for the record?

19 A My name is A. Wayne Gray, and my address is 675 West
20 Peachtree Street, Atlanta, Georgia.

21 Q By whom are you employed and in what capacity?

22 A I am employed by BellSouth. I am Director of
23 Regional Planning and Engineering.

24 Q Have you caused to be prefiled in this case direct
25 testimony consisting of 25 pages?

1 A Yes, I have.

2 Q Do you have any changes to that testimony?

3 A No, I do not.

4 Q If I were to ask you the questions contained in your
5 prefiled direct testimony today, would your answers be the
6 same?

7 A Yes, they would.

8 MS. WHITE: I would ask that Mr. Gray's direct
9 testimony be entered into the record as though read.

10 CHAIRMAN JABER: The prefiled direct testimony of A.
11 Wayne Gray shall be inserted into the record as though read.

12 BY MS. WHITE:

13 Q And, Mr. Gray, you did not have any exhibits to your
14 direct testimony, is that correct?

15 A No, I did not.

16 Q And did you also cause to be filed in this case
17 rebuttal testimony consisting of 26 pages?

18 A Yes, I did.

19 Q Do you have any changes to that testimony?

20 A No, I do not.

21 Q If I were to ask you the questions contained in your
22 prefiled rebuttal testimony today, would your answers be the
23 same?

24 A Yes, they would.

25 MS. WHITE: I would ask that the rebuttal testimony

1 of Mr. Gray be entered into the record as though read.

2 CHAIRMAN JABER: The prefiled rebuttal testimony of
3 A. Wayne Gray shall are inserted into the record as though
4 read.

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1 BELLSOUTH TELECOMMUNICATIONS, INC.
2 DIRECT TESTIMONY OF A. WAYNE GRAY
3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
4 DOCKET NOS. 981834-TP/990321-TP
5 DECEMBER 19, 2002
6
7

8 Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND POSITION
9 WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH").
10

11 A. My name is A. Wayne Gray. I am employed by BellSouth as Director Regional
12 Planning and Engineering Center in the Network Planning and Support
13 organization located at 675 West Peachtree Street, Atlanta, Georgia, 30375.
14

15 Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.
16

17 A. I graduated from Georgia Tech in 1979 with a Bachelor of Electrical Engineering
18 degree. In 1992, I graduated from Emory University with a Master of Business
19 Administration degree. I began working for Southern Bell in 1979 in the
20 Equipment Engineering organization in Miami, Florida. Throughout my 23-year
21 career with BellSouth, I have held various line and staff positions in Equipment
22 Engineering, Traffic Engineering (Capacity Management), Infrastructure
23 Planning and Project Management. From November 1999 to November 2001, I
24 held the position of Director-Collocation in the Network Planning and Support
25 organization. In December 2001, my scope of responsibility was expanded and

1 my title was changed to Director – Regional Planning and Engineering Center. In
2 this position, I am responsible for ensuring that BellSouth provisions collocation
3 space in the timeframes established by contractual agreements and governmental
4 mandates, as well as managing the planning and engineering of BellSouth’s
5 Advanced Intelligent Network, Common Channel Signaling Network, Link
6 Monitoring System, Public Packet Switching Network, MemoryCall® Service
7 platform, Pooled Internet Access Platforms, and corporate transport network. My
8 responsibilities also include the activities performed by BellSouth’s Numbering
9 and Technology Forecasting groups. In addition, I also direct switch software
10 upgrades and contract administration for the purchase of network technologies.

11
12 Q. HAVE YOU TESTIFIED PREVIOUSLY BEFORE ANY STATE PUBLIC
13 SERVICE COMMISSION, AND IF SO, BRIEFLY DESCRIBE THE SUBJECT
14 OF YOUR TESTIMONY?

15
16 A. Yes. I have previously testified before the state public service commissions in
17 Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, and South
18 Carolina, the Tennessee Regulatory Authority, and the Utilities Commission in
19 North Carolina on BellSouth’s expanded calling areas, unbundling, collocation
20 processes and other collocation issues. Most recently, I testified on various
21 collocation issues before the Florida Public Service Commission (“Commission”)
22 in Docket No. 960786-TL, In re: Consideration of BellSouth
23 Telecommunications, Inc.’s entry into interLATA Services pursuant to Section
24 271 of the Federal Telecommunications Act of 1996.

25

1 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?

2

3 A. The purpose of my testimony is to provide the Commission with BellSouth's
4 position in regard to Collocation Issues 1A, 1B, 1C, 2A, 2B, 2C, 2D, and 3 in this
5 proceeding.

6

7 **Issue 1A: When should an ALEC be required to remit payment for non-recurring**
8 **charges for collocation space?**

9

10 Q. WHAT NONRECURRING CHARGES DOES BELLSOUTH CURRENTLY
11 ASSESS FOR COLLOCATION SPACE?

12

13 A. BellSouth currently assesses nonrecurring charges for application fees, the Bona
14 Fide Firm Order, cable installation, cable records, security access administration,
15 access card or key replacement, a space availability report and security escort
16 service. It is appropriate to apply nonrecurring charges to recover work activities
17 that are one-time in nature. FCC Rule 51.507(a) states:

18

19 Element rates shall be structured consistently with the manner in
20 which the costs of providing the elements are incurred.

21

22 These items recover the nonrecurring charges for certain collocation elements
23 based on the fact that the work required to comply with an ALEC's request is
24 one-time or nonrecurring. The nonrecurring charge allows BellSouth to recover

1 costs (such as those incurred in the determination of space availability – the
2 application fee) which are not recovered anywhere else.

3
4 Q. WHEN SHOULD AN ALEC BE REQUIRED TO REMIT PAYMENT FOR
5 THESE NONRECURRING CHARGES?

6
7 BellSouth bills the ALEC an application fee, via a service order, at the time
8 BellSouth provides its Application Response to the ALEC. The Application
9 Response includes a price quote for the space requested by the ALEC, unless the
10 central office is currently in space exhaust. BellSouth must provide the
11 Application Response within fifteen (15) calendar days of receipt of a Bona Fide
12 Application (a complete and accurate application), pursuant to the Application
13 Response interval established by this Commission in FPSC Order No. PSC-00-
14 0941-FOF-TP, issued May 11, 2000, in Docket No. 981834-TP/990321-TP
15 (“FPSC May 11, 2000 Collocation Order”). On page 15 of this Order, the
16 Commission stated:

17
18 [W]e hereby require ILECs to respond to a complete and accurate
19 application for collocation within 15 calendar days. This response
20 shall provide sufficient information to enable an ALEC to place a
21 firm order, including information on space availability and price
22 quotes.

23
24 Billing of the application fee when BellSouth provides its Application Response
25 is appropriate because the application fee is designed to recover the costs

1 associated with assessing the ALEC's space requirements and developing the
2 associated price quote. When BellSouth provides the ALEC with the Application
3 Response, these activities have been completed. Therefore, billing the application
4 fee at the time that BellSouth provides the Application Response to the ALEC for
5 the space requested makes sense.

6
7 In contrast, if BellSouth were to require the ALEC to remit the application fee at
8 the time the ALEC submits its application, BellSouth would have to refund the
9 fee if the application were not a Bona Fide Application or if there was no space
10 available in the requested central office. This would result in extra administrative
11 work and expense for the ALEC in issuing the check, processing the refund, and
12 reissuing the check (in the case of a non-Bona Fide Application) and for
13 BellSouth in tracking ALEC applications (both incomplete/inaccurate and Bona
14 Fide) and issuing refunds when the application was not Bona Fide or when space
15 was unavailable. Therefore, it would be inappropriate to bill the ALEC until
16 BellSouth has determined that space is available, the assessment of the space has
17 been completed and a price quote has been performed.

18
19 The non-recurring fees associated with the Bona Fide Firm Order, cable
20 installation, cable records, and security access administration are billed at the time
21 the ALEC submits its Bona Fide Firm Order. A Bona Fide Firm Order document
22 would be submitted by an ALEC to BellSouth to indicate its intent to proceed
23 with the equipment installation in the central office requested on the Bona Fide
24 Application (for which BellSouth has already provided an Application Response).
25 The activities associated with installing cable, building cable records in

1 BellSouth's central office databases, and setting up the appropriate security access
2 records in BellSouth's security access database for the ALEC's employees and
3 vendors would only be performed on a one-time basis. Therefore, BellSouth's
4 position is that it is appropriate to bill the costs of performing these activities on a
5 non-recurring basis. Once these activities have been completed, there would be
6 no need to repeat them unless the ALEC changes its employee access
7 requirements or modifies its collocation space or equipment requirements on a
8 future augment application, which would entail a whole new request.

9
10 The assessment of the non-recurring fees for the replacement of a security access
11 card or key, the provision of a space availability report and/or security escort
12 service occurs after BellSouth has provided the ALEC with the requested product
13 or service. Specifically, when an ALEC requests that a security access card or
14 key be replaced due to theft, loss or destruction, BellSouth will provide a
15 replacement to the ALEC after it has updated its security access database to
16 remove the original access card or key (so there can be no unauthorized entry by
17 someone using this card or key) and a new access card or key has been created.

18 In this instance, BellSouth would begin billing the ALEC for this service based on
19 the date the change was made in BellSouth's security access database. The
20 charge would appear on the ALEC's next billing statement.

21
22 In regard to the billing for a Space Availability Report, BellSouth bills the ALEC
23 for this report at the time BellSouth provides the requested report to the ALEC.
24 Since the charge for the report is assessed on a one-time basis per central office,

1 the billing for this report would appear on the next billing statement following the
2 date that BellSouth provides the report to the ALEC.

3
4 Finally, BellSouth bills the ALEC for any security escort services (in excess of
5 those provided at no charge pursuant to the ALEC's Interconnection Agreement)
6 that it provides pursuant to the ALEC's request at the time the service is
7 performed. Security escort services would be required when an ALEC's
8 employees or vendors require access to the entrance manhole or its collocation
9 space at the ALEC's request prior to the ALEC's completion of BellSouth's
10 Security Training requirements. Security escort fees are billed in quarter-hour or
11 half-hour increments, depending upon the ALEC's Interconnection Agreement,
12 and are rounded up to the next quarter-hour or half-hour increment, respectively,
13 when the duration of the escort falls between two quarter-hour or two half-hour
14 increments. If an ALEC's employees or vendors fail to show up for a scheduled
15 escort appointment within thirty (30) minutes of the agreed-upon appointment
16 time, BellSouth will bill the ALEC for one-half hour of security escort services.
17 Security escort fees are billed to the ALEC based on the amount of time a
18 BellSouth employee spends performing the escort service for the ALEC to access
19 the entrance manhole or the ALEC's collocation space. Billing of the appropriate
20 security escort fees will appear on the ALEC's billing statement within two
21 billing cycles of when the actual escort service was performed.

22
23 All of the above activities (the replacement of a security access card or key and
24 the provision of a space availability report and/or security escort service) would
25 be performed on an as-requested basis by the ALEC. Therefore, it is appropriate

1 for BellSouth to bill these items on a non-recurring basis and to bill them at or
2 immediately after the activity generating the non-recurring costs has been
3 performed.

4
5 **Issue 1B: When should billing of monthly recurring charges begin?**

6
7 Q. WHEN SHOULD BELLSOUTH BEGIN BILLING MONTHLY RECURRING
8 CHARGES FOR COLLOCATION SPACE?

9
10 A. If an ALEC conducts an acceptance walkthrough of the collocation space within
11 fifteen (15) calendar days of the Space Ready Date, which is defined as the date
12 BellSouth completes the space and notifies the ALEC, monthly recurring charges
13 begin on the date that the ALEC accepts the space ("Space Acceptance Date"). If
14 the ALEC fails to conduct the acceptance walkthrough within this fifteen-calendar
15 day period, the monthly recurring charges begin on the Space Ready Date. If
16 BellSouth permits the ALEC to occupy its collocation space prior to the Space
17 Ready Date, BellSouth begins billing the monthly recurring charges on the date
18 the ALEC occupies the space, which would then be deemed the Space Acceptance
19 Date.

20
21 BellSouth's position is that the monthly recurring charges are appropriately
22 assessed when it has completed its space conditioning and provisioning work and
23 turned the now "functional space" over to the ALEC. Functional space is defined
24 as space that is completely conditioned according to the ALEC's specifications
25 and can be immediately utilized to interconnect with BellSouth's network and/or

1 access BellSouth's unbundled network elements ("UNEs") in the provision of
2 telecommunications services. Once BellSouth has turned this functional space
3 over to the ALEC, it is the ALEC's responsibility to install and begin operating its
4 equipment as quickly as possible. There is nothing further that BellSouth needs to
5 do to the space for the ALEC to begin utilizing it for the purpose for which it was
6 designed.

7
8 As noted above, BellSouth begins its billing of monthly recurring charges on
9 either the Space Acceptance Date or the Space Ready Date, because these
10 collocation items reflect activities requiring capital investments which are
11 recovered on a recurring cost basis, instead of on a one-time basis.

12
13 Q. PLEASE LIST SOME OF THE MORE COMMON ELEMENTS FOR WHICH
14 MONTHLY RECURRING CHARGES WOULD BE ASSESSED BY
15 BELLSOUTH.

16
17 A. Some of the more common elements for which BellSouth assesses monthly
18 recurring charges are Space Preparation – C.O. Modifications per square foot,
19 Space Preparation – Common Systems Modifications – Cageless per square foot,
20 Space Preparation – Common Systems Modifications – Caged per Cage, DC
21 Power per fused amp, Welded Wire Cage, and Floor Space per Square Foot. The
22 Space Preparation fees (for C.O. Modifications and Common Systems
23 Modifications) and the power plant construction (investment) rate were billed on
24 an Individual Case Basis prior to the FPSC May 11, 2000 Collocation Order,
25 which mandated a fifteen (15) calendar day Application Response interval,

1 including the associated price quote, to an ALEC's request for physical
2 collocation space. BellSouth changed its methodology for these items pursuant to
3 the FPSC May 11, 2000 Collocation Order, because the fifteen (15) calendar day
4 Application Response interval was premised upon the use of standard rates for
5 physical collocation space preparation.

6
7 The space preparation charges recover the costs associated with preparing the
8 collocation space, which include the survey, engineering of the collocation space,
9 and design and modification costs for network, building and support systems. The
10 DC power rate recovers the costs associated with the power plant investment
11 required to convert AC power to DC power for central office usage and the
12 monthly AC power utility costs associated with powering the ALECs' collocation
13 equipment.

14
15 It is appropriate for Space Preparation fees and the DC power rate to be billed on
16 a monthly recurring charge basis, because these charges allow BellSouth to
17 properly recover capital investments associated with collocation space preparation
18 work. The only alternative to using standard space preparation fees and a
19 standard DC Power charge would be to go back to ICB billing. Many CLECs
20 requested recurring space preparation charges to avoid the up-front costs resulting
21 from ICB space preparation charges. Returning to ICB pricing is not the
22 preferable option for BellSouth, nor the ALECs, because BellSouth would not be
23 able to provide a fifteen (15) calendar day Application Response that included a
24 *firm* price quote (since ICB pricing is necessarily not *firm* until the work is
25 completed and the costs from the contractors is known) and the ALECs would be

1 required to pay all space preparation charges up-front. Moreover, to my
2 knowledge, there have been no complaints from the ALECs regarding the use of
3 standard monthly recurring rates for space preparation fees and the DC power
4 charge.

5
6 The welded wire cage fee and floor space charges, which are based on square
7 footage, includes reasonable costs for providing a welded wire cage, lighting,
8 HVAC, other allocated expenses and associated maintenance of the collocation
9 space within the central office, but does not include any power-related costs
10 incurred by BellSouth. Since these charges are to assess BellSouth's tenants
11 (ALECs) for ongoing expenses and maintenance activities that must be performed
12 in the central office on an ongoing basis, it makes sense that these charges should
13 be billed as monthly recurring charges.

14
15 In further support of BellSouth's position that the above items should continue to
16 be billed as monthly recurring charges, the Commission approved BellSouth's
17 cost study methodology in the Covad Arbitration Proceeding, FPSC Order No.
18 PSC-01-2017-FOF-TP, Docket No. 001797-TP, dated October 9, 2001 ("Covad
19 Arbitration Order") in which all of the above rates, with the exception of Space
20 Preparation - Common Systems Modification - Cageless per square foot, were
21 approved. The proposed monthly recurring charge for Space Preparation -
22 Common Systems Modification - Cageless per square foot was not approved in
23 this proceeding, because BellSouth did not adequately satisfy the Commission's
24 concerns regarding this rate element. However, BellSouth intends to file the
25 necessary supporting documentation in the pricing issues portion of this

1 proceeding to substantiate the appropriateness of this rate element. This will be
2 included in BellSouth Witness Bernard Shell's testimony that will be filed on
3 February 4, 2003.

4

5 **Issue 1C: What cancellation charges should apply if an ALEC cancels its request for**
6 **collocation space?**

7

8 Q. IF AN ALEC CANCELS ITS REQUEST FOR COLLOCATION PRIOR TO
9 THE DATE THE MONTHLY RECURRING CHARGES WOULD
10 COMMENCE (I.E., EITHER THE SPACE ACCEPTANCE DATE OR THE
11 SPACE READY DATE), WHAT CANCELLATION CHARGES SHOULD THE
12 ALEC BE REQUIRED TO PAY?

13

14 A. If an ALEC cancels its order anytime from the Bona Fide Firm Order to the date
15 monthly recurring charges commence (either at the Space Acceptance Date or the
16 Space Ready Date), the ALEC should be required to reimburse the ILEC for any
17 non-recoverable costs (expenses) incurred by the ILEC for the work performed up
18 to the date that the written notice of cancellation is received and acknowledged by
19 the ILEC. Non-recoverable costs include the non-recoverable cost of equipment
20 and material ordered, provided or used; the non-recoverable cost of installation
21 and removal, including the costs of equipment and material ordered, provided or
22 used; labor; transportation and any other associated costs. It is appropriate for an
23 ILEC to recover these costs since the ILEC has begun and completed some
24 measure of the associated work activities required to meet the Commission's
25 provisioning intervals for the ALEC's space request. Moreover, the ILEC should

1 not be penalized just because an ALEC changes its mind about collocating in the
 2 central office before its space request has been completed and turned over to the
 3 ALEC for occupancy.

4
 5 **Issue 2A: Should an ALEC be required to justify its space reservation needs to the**
 6 **ILEC when an ILEC is forced to consider a building addition to accommodate**
 7 **future space requirements?**

8
 9 Q. WHEN AN ILEC IS FORCED TO CONSIDER A BUILDING ADDITION TO
 10 ACCOMMODATE FUTURE SPACE REQUIREMENTS, SHOULD AN ALEC
 11 BE REQUIRED TO JUSTIFY ITS EXISTING SPACE RESERVATION? IF
 12 THE ALEC CANNOT JUSTIFY ITS RESERVATION OF SPACE TO THE
 13 ILEC, SHOULD THE ILEC BE PERMITTED TO RECLAIM THE SPACE
 14 AND RETURN IT TO ITS SPACE INVENTORY FOR REASSIGNMENT?

15
 16 A. Yes. Any ALEC collocated in a central office should be prepared to justify the
 17 amount of its reserved collocation space and provide a timeline for occupation to
 18 the ILEC. Specifically, when a central office is at or near space exhaust, the
 19 ALECs should be required to substantiate their reserved unused space. If an
 20 ALEC cannot provide justification, then the space should be returned to the
 21 ILEC's available space inventory so that it can be reallocated to other ALECs that
 22 have requested space, according to the FCC's first-come, first-served rules.

23
 24 Pursuant to the FCC's rules, an ILEC must provide collocation to requesting
 25 telecommunications carriers, but the ILEC is not required to construct additional

1 space to provide for physical collocation when existing space has been exhausted
2 in order to accommodate the ALECs' collocation requests. (See *47 U.S.C.*
3 *§51.323(a) and §51.323(f)(1)*). However, if an ILEC is forced to consider a
4 building addition to accommodate its future space requirements, as well as those
5 of the ALECs, the ALECs should be required to justify any unused space
6 reservations they have in the office to ensure that there is no unused space that
7 should be returned to the ILEC's space inventory prior to launching a major
8 building renovation or addition. To achieve this objective, the ILEC and the
9 ALECs should endeavor to work together in a mutually cooperative manner to
10 efficiently utilize all available central office space in order to delay or avoid, if
11 possible, an unnecessary building addition, when a central office is at or near
12 space exhaust.

13
14 When an ILEC is faced with the possibility of constructing a new building
15 addition, justification of the ALEC's space reservation is warranted, because
16 reserved space was allocated based on the ALEC's forecasted growth
17 requirements being reasonably contemplated to accommodate its needs for an
18 eighteen (18) month period at the time the ALEC submitted its space reservation
19 request.¹ Arguably, an ALEC's failure to occupy the reserved space within a
20 reasonable amount of time is evidence that the space reservation may not have
21 been reasonably contemplated to accommodate an eighteen (18) month growth
22 period or in some instances, the ALEC's plans may have simply changed,
23 resulting in a reduction of its space requirements. When an ALEC has reserved

¹ This Commission determined that an eighteen (18) month reservation period was appropriate for both the ILECs and ALECs, under the same terms and conditions, in the FPSC May 11, 2000 Collocation Order.

1 unused collocation space within a central office and the ILEC must construct a
2 building addition to ensure future space is available for its, or another ALEC's,
3 use, the ALEC should either justify its reserved space or return the space to the
4 ILEC for inclusion in the inventory of available space.

5
6 The need for an ALEC to justify reserved space is even more compelling in a
7 situation where the building addition is in a central office at or near space exhaust.
8 To allow ALECs to retain unused, reserved space, without adequate justification,
9 in a space exhaust situation is inconsistent with the FCC's mandate that an ILEC
10 must offer collocation on rates, terms and conditions that are just, reasonable and
11 nondiscriminatory. (See 47 U.S.C. §251 (c)(6)). To allow ALECs to retain
12 unused reserved space in this situation is inconsistent with this mandate for two
13 reasons: 1) it forces the ILEC to allocate space to the ALECs in an inherently
14 unreasonable manner, and 2) it allows a situation to exist where ALECs first
15 collocating in a central office may practice anticompetitive behavior.

16
17 First, where ALECs are permitted to retain reserved space, without justification,
18 in a central office requiring a building addition due to space exhaust, the ILEC is
19 forced to allocate space among ALECs in a manner inconsistent with the FCC's
20 mandate. Although ILECs are required to allocate space on a first-come, first-
21 served basis, the FCC mandates that the allocation be "*reasonable*." (See 47
22 U.S.C. §251 (c)(6)). To allocate available space to the ALEC that first applies for
23 the space seems reasonable on its face. However, to allocate space to the ALEC
24 that first applies, but then fails to occupy the space and as a direct result, prevents,
25 delays or economically burdens subsequent applicants belies the FCC mandate

1 and should be considered presumptively unreasonable. In order to overcome this
2 presumption, all collocated ALECs should be required to justify their space
3 reservations in a central office that is at or near space exhaust. Any reserved
4 space that cannot be justified should be returned to the available inventory for
5 reassignment.

6
7 Secondly, when ALECs are permitted to retain reserved space, without
8 justification, in a central office requiring a building addition due to space exhaust,
9 a potential risk is created that the collocated ALECs may stifle competition. In
10 this situation, an ALEC could prevent, delay or economically burden subsequent
11 applicants and potential competitors by simply refusing to relinquish unused
12 reserved space. This could ultimately result in space exhaust within the central
13 office, thereby precluding a competitor from collocating and competing in that
14 market, or it could force the ILEC to incur the unnecessary expense of
15 constructing a building addition and necessitate the resultant delay in
16 accommodating a competitor's collocation request. This practice would permit,
17 condone or perhaps even encourage, anticompetitive behavior among the ALECs
18 and thus is inconsistent with the FCC's mandate.

19
20 The FCC has indicated that an ILEC may impose reasonable restrictions on the
21 warehousing of unused space by ALECs, provided that the ILEC may not set
22 maximum space limitations applicable to the ALECs unless the ILEC proves to
23 the State Commission that space constraints make such restrictions necessary (See
24 *47 U.S.C. §51.323(f)(6)*) In other words, this Commission has the authority to
25 determine whether specific requirements should be imposed on the ALECs (such

1 as documentation justifying the ALECs' reserved space), when it appears that the
2 ALECs may be warehousing (or hoarding) unused reserved space in a central
3 office that is at or near space exhaust. BellSouth believes that it is appropriate for
4 the Commission to require ALECs to justify their reserved unused space
5 requirements when an ILEC is forced to consider a building addition to
6 accommodate future space requirements.

7
8 Q. YOU HAVE ADDRESSED THE NEED FOR AN ALEC TO JUSTIFY ITS
9 CURRENT SPACE RESERVATIONS WHEN AN ILEC IS FORCED TO
10 CONSIDER A BUILDING ADDITION AND THE ALEC HAS RESERVED
11 UNUSED SPACE. SHOULD THE ALEC BE REQUIRED TO JUSTIFY
12 FUTURE SPACE RESERVATIONS EVEN IF IT DOES NOT HAVE
13 RESERVED UNUSED SPACE?

14
15 A. Yes. For the reasons I've discussed, ALECs should have to justify any reserved
16 unused space when the ILEC is considering a building addition to accommodate
17 future space requirements. However, even if the ALEC does not have reserved
18 unused space, it should still be required to justify its future space reservation in
19 this situation.

20
21 The FCC requires that when an ILEC plans renovations to its existing facilities or
22 construction of new facilities, the ILEC must take into account the projected
23 demand for collocation of equipment by the ALECs. (See 47 U.S.C.
24 §51.323(f)(3)) Therefore, when an ILEC has already determined the need for a
25 building addition to accommodate its future space requirements (and the needs of

1 the ALECs) for a particular central office, the ALECs should be required to
 2 justify their current and future reservation needs for the office to assist the ILEC
 3 in substantiating the large capital expenditure associated with the new building
 4 addition.

5

6 The ILEC and the ALECs should work together to develop an appropriate
 7 forecast of the collocation space that will be needed upon completion of the
 8 building and how much space should be reserved for collocation purposes for a
 9 period of at least two years following the building's completion. To accomplish
 10 this objective, the ILEC should be allowed to require each ALEC collocated in the
 11 central office to justify its current reserved unused space and provide an
 12 appropriate forecast, along with supporting documentation, of its anticipated
 13 collocation needs when the building addition is completed. The ALEC should
 14 also provide a forecast of its space reservation needs for least two years after
 15 completion of the new building. This will enable the ILEC to forecast the
 16 appropriate level of collocation space that will be needed in the new building
 17 addition for at least two years after the building addition has been completed.



18
 19 Q. HOW SHOULD ALECS JUSTIFY THEIR SPACE RESERVATIONS?

20

21 A. Supporting documentation that could be used to substantiate an ALEC's reserved
 22 unused space requirements might include, but not be limited to, demand forecasts,
 23 including supporting historical data, and collocation equipment orders.

24

25

1 **Issue 2B: Under what conditions should an ILEC be allowed to reclaim unused**
2 **collocation space?**

3
4 Q. UNDER WHAT CONDITIONS SHOULD AN ILEC BE ALLOWED TO
5 RECLAIM UNUSED COLLOCATION SPACE?

6
7 A. For the reasons previously discussed, an ILEC should be allowed to reclaim
8 reserved unused collocation space from an ALEC prior to the expiration of the
9 eighteen (18) month reservation period, when a central office is at or near space
10 exhaust, if an ALEC cannot justify its plans for utilizing the space within this
11 period.

12
13 **Issue 2C: What obligations, if any, should be placed on the ALEC that contracted**
14 **for the space?**

15
16 Q. WHAT OBLIGATIONS, IF ANY, SHOULD BE PLACED ON THE ALEC
17 THAT CONTRACTED FOR THE COLLOCATION SPACE?

18
19 A. ALECs should be required to justify their space reservations in the manner
20 previously discussed in Issues 2A and 2B above.

21
22 **Issue 2D: What obligations, if any, should be placed on the ILEC?**

23
24 Q. WHAT OBLIGATIONS, IF ANY, SHOULD BE PLACED ON THE ILEC?

25

1 A. With respect to the reclamation of space from an ALEC in a central office that is
 2 at or near space exhaust, the ILEC should be obligated to notify all of the ALECs
 3 collocated in the central office that they must justify their space in the manner
 4 discussed earlier, and provide the circumstances necessitating the justification.
 5 The ILEC should then review the documentation submitted by each ALEC as
 6 justification for its reserved unused space. Any space that the ALEC is unable to
 7 justify should be reclaimed and returned to the ILEC's available space inventory
 8 for reassignment. If the justification submitted by the ALEC is inadequate or
 9 appears unreasonable, the ILEC should request additional documentation from the
 10 ALEC to substantiate its reserved unused space requirements. If the ALEC is
 11 unable to submit the additional information, the ILEC should file a petition with
 12 the Commission requesting expedited relief and authority to reclaim the space and
 13 return it to the ILEC's available space inventory for reassignment.

14
 15 **Issue 3: Should an ALEC have the option to transfer accepted collocation space to**
 16 **another ALEC? If so, what are the responsibilities of the ILEC and ALECs?**

17
 18 Q. SHOULD AN ALEC HAVE THE OPTION TO TRANSFER ACCEPTED
 19 COLLOCATION SPACE TO ANOTHER ALEC?

20
 21 A. Yes, the ALEC should be allowed to transfer collocation space to another ALEC
 22 if the central office is not in space exhaust and the transfer of the collocation
 23 space is in conjunction with the ALEC's sale of in-place collocation equipment to
 24 the same ALEC.

25

1 In a transfer of existing collocation space that is made in conjunction with an in-
2 place equipment sale (where the central office is not in space exhaust), BellSouth
3 will require the acquiring ALEC to apply for collocation by submitting an
4 application in the same manner as if it were ordering a new collocation
5 arrangement and requesting collocation in the central office pursuant to an
6 existing Interconnection Agreement between BellSouth and the acquiring ALEC,
7 if the acquiring ALEC already has an Interconnection Agreement with BellSouth.
8 If the acquiring ALEC does not have an existing Interconnection Agreement with
9 BellSouth, then after the acquiring ALEC and BellSouth have properly executed
10 either the Standard Interconnection Agreement or a negotiated Interconnection
11 Agreement, BellSouth would submit this document to the Commission for
12 approval. The application for the space must match exactly the configuration of
13 the particular collocation arrangement and the equipment that will be transferred,
14 as it currently exists in the central office. BellSouth will begin the process of
15 transferring the right to occupy the collocation space ("Transfer Process") upon
16 receipt of the application.

17
18 As part of the Transfer Process, the acquiring ALEC would be required to provide
19 the correct contact information including billing information, update BellSouth's
20 collocation database inventory records, update physical records maintained on-
21 site, update assignment records at the POT frame (if applicable), and perform
22 equipment stenciling in the collocation space. BellSouth will work closely with
23 the acquiring ALEC to identify all of the changes required. These responsibilities
24 would be performed by the acquiring ALEC's BellSouth Certified Supplier no
25 later than thirty (30) calendar days following the acquiring ALEC's execution of a

1 Transfer Agreement with BellSouth. The Transfer Process would be completed
2 after all of the responsibilities set forth above have been discharged. This would
3 then become the "Transfer Date".
4

5 After the Transfer Date, BellSouth will authorize the acquiring ALEC to maintain
6 the collocation arrangement in accordance with the rates, terms and conditions of
7 its Interconnection Agreement. The acquiring ALEC will not be permitted to
8 make any changes to the collocation arrangement or services ordered until after
9 the Transfer Date.
10

11 The acquiring ALEC will also be responsible for payment of all recurring and
12 nonrecurring charges pursuant to its Interconnection Agreement, in the same
13 manner and to the same extent as if such collocation arrangement had been
14 requested as a new arrangement by the acquiring ALEC, including but not limited
15 to, the payment of monthly recurring space preparation charges.
16

17 The primary responsibilities of the ALEC that would be transferring its
18 collocation space ("ALEC-1") to another ALEC ("ALEC-2") are:

- 19 a. Notifying BellSouth that it will be transferring ownership of some (or all) of
20 its existing collocation arrangements to ALEC-2 without changing the type of
21 existing collocation arrangement;
- 22 b. Submitting a Letter of Authorization to BellSouth for the transfer and release
23 of its existing facilities;
- 24 c. Entering into a Transfer Agreement with BellSouth and ALEC-2; and
- 25 d. Returning all access devices (keys and cards) to BellSouth.

1 The primary responsibilities of ALEC-2 (the ALEC acquiring the collocation
2 space(s)) are:

- 3 a. Submitting an application to BellSouth for transfer of the collocation
4 arrangement;
- 5 b. Satisfying all of the legal requirements of its Interconnection Agreement with
6 BellSouth;
- 7 c. Submitting a letter to BellSouth for the assumption of services;
- 8 d. Entering into a Transfer Agreement with ALEC-1 and BellSouth; and
- 9 e. Re-stenciling all of the equipment and facilities.

10
11 BellSouth's responsibility is to work cooperatively and in good faith with both
12 ALECs to ensure that the above responsibilities have been completely satisfied
13 and that the transfer of the collocation space is handled as smoothly as possible in
14 accordance with the Transfer Agreement. BellSouth will also work closely with
15 the acquiring ALEC in processing the application to transfer the space as quickly
16 as possible.

17
18 Q. WHAT IF AN ALEC WISHES TO TRANSFER COLLOCATION SPACE IN A
19 CENTRAL OFFICE THAT IS IN SPACE EXHAUST?

20
21 A. If a central office is in space exhaust, the ALEC should only be allowed to
22 transfer collocation space if the transfer is part of a transfer of all or substantially
23 all of the transferring ALEC's assets to another ALEC **and** if the Commission has
24 approved the transfer in the space exhausted central office. This will avoid those
25 situations in which an ALEC could effectively circumvent the space exhaust

1 waiting list by assuming another ALEC's collocation space on a location by
2 location basis.

3

4 Q. WHY ARE BELLSOUTH'S PROCEDURES FOR THE TRANSFER OF
5 COLLOCATION SPACE APPROPRIATE?

6

7 A. BellSouth's procedures reflect the most appropriate requirements for transferring
8 accepted collocation space from one ALEC to another, because the transfer of
9 existing space would be limited to only those situations in which the in-place
10 collocation equipment is being sold to an acquiring ALEC in the existing
11 configuration. In other words, when the acquiring ALEC assumes ownership of
12 the existing collocation space, the configuration of the space and the installed
13 equipment would remain unchanged until after the Transfer Process has been
14 completed and an appropriate Transfer Date determined by BellSouth. Once the
15 Transfer Process has been completed, the ALEC would be able to modify its
16 space and/or equipment requirements via an augment application submitted in
17 accordance with the terms and conditions of its Interconnection Agreement.
18 BellSouth believes that its transfer of ownership procedures appropriately define
19 the circumstances in which a transfer would be permitted, the responsibilities of
20 all parties involved in the transfer (including BellSouth), the steps that each
21 ALEC must follow to effect the transfer of space and equipment, and how
22 BellSouth will process the transfer of space from one ALEC to another.
23 Furthermore, BellSouth's procedures are reasonable, orderly and will prevent an
24 ALEC from circumventing the FCC's first-come, first-served space allocation
25 rules in offices currently at space exhaust.

1 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

2

3 A. Yes.

4

5

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BELLSOUTH TELECOMMUNICATIONS, INC.
REBUTTAL TESTIMONY OF A. WAYNE GRAY
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NOS. 981834-TP/990321-TP
JANUARY 21, 2003

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH").

A. My name is A. Wayne Gray. I am Director - Regional Planning and Engineering Center in the Network Planning and Support organization for BellSouth. My business address is 675 West Peachtree Street, Atlanta, Georgia, 30375.

Q. ARE YOU THE SAME A. WAYNE GRAY WHO FILED DIRECT TESTIMONY IN THIS PROCEEDING?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. My rebuttal testimony responds to the direct testimony of Jeffrey A. King on behalf of AT&T Communications of the Southern States, LLC and TCG South Florida, Inc. ("AT&T") regarding issues 1A, 1B, 1C, 2A, 2B, 2C, 2D, and 3 in this docket. These issues include the billing and payment of non-recurring and

1 recurring charges, cancellation charges, justification of space reservation needs,
2 reclaimed unused space, the contractual obligations for ALECs (Alternative Local
3 Exchange Carriers), and the transfer of space from one ALEC to another.

4

5 **Issue 1A: When should an ALEC be required to remit payment for non-recurring**
6 **charges for collocation space?**

7 Q. ON PAGE 4 OF HIS DIRECT TESTIMONY, MR. KING INDICATES THAT
8 THERE ARE GENERALLY THREE CATEGORIES OF NON-RECURRING
9 CHARGES ASSOCIATED WITH COLLOCATION SPACE: (1)
10 APPLICATION FEE, (2) SPACE PREPARATION – FIRM ORDER
11 PROCESSING AND (3) OTHER. DOES BELLSOUTH AGREE WITH MR.
12 KING’S STATEMENTS, ON LINES 9 THROUGH 19, REGARDING THE
13 BILLING FOR EACH CATEGORY?

14

15 A. Not entirely. BellSouth does concur with Mr. King’s statements on Lines 9
16 through 15, which address the billing of the non-recurring charges associated with
17 the Application Fee (Item 1) and the Space Preparation – Firm Order Processing
18 Fee (Item 2). However, BellSouth does not agree with Mr. King’s comments on
19 Lines 16 through 19, regarding the non-recurring charges associated with Other
20 activities, such as Cable Installation and Cross-Connects (Item 3). On Lines 16
21 through 19, Mr. King states, “the non-recurring charges for other (e.g., cable
22 installation, cross-connects, etc.) are billed within a 30-day billing cycle of the
23 date that the ALEC has accepted the requested collocation UNE (i.e., the date the
24 ALEC has tested and interconnected its facilities to the ILEC).” This statement
25 does not accurately reflect when BellSouth actually bills these other nonrecurring

1 charges. As stated in my direct testimony, non-recurring fees for cable
2 installation, cable records, and security administration are billed at the time the
3 ALEC submits its Bona Fide Firm Order to BellSouth. This is because the
4 activities associated with installing cable, building cable records in BellSouth's
5 central office databases, and setting up the appropriate security access records in
6 BellSouth's security access database for the ALEC's employees and vendors
7 would begin at the time the ALEC submits the Bona Fide Firm Order. In other
8 words, while BellSouth is provisioning the space for the ALEC's occupancy, it is
9 also installing cable, building the cable records in BellSouth's central office
10 databases, and setting up the appropriate security access records in BellSouth's
11 security access database for the ALEC's employees and vendors.

12
13 The assessment of the non-recurring fees for the replacement of a security access
14 card or key, the provision of a space availability report and/or security escort
15 service occurs after BellSouth has provided the ALEC with the requested product
16 or service and would appear on the ALEC's next billing statement. In regard to
17 security escort service, it may be two billing cycles after the actual escort service
18 was performed before the associated fees would appear on the ALEC's billing
19 statement. In any case, BellSouth bills these non-recurring activities at or
20 immediately after the activity generating the non-recurring cost has been
21 performed.

22
23 Q. HOW ARE CROSS-CONNECT FEES ASSESSED BY BELLSOUTH?
24
25

1 Cross-connect fees, not to be confused with co-carrier cross-connect fees, are assessed by
2 BellSouth on both a non-recurring and a monthly recurring basis. An ALEC would
3 submit its request for cross-connects to BellSouth on a Local Service Request (“LSR”) or
4 Access Service Request (“ASR”). BellSouth would not begin billing the non-recurring
5 charges or monthly recurring charges until after the LSR or ASR had been completed and
6 the requested cross-connects installed as requested. BellSouth would determine the
7 appropriate non-recurring and monthly recurring charges based on the type (2-wire, 4-
8 wire, DS-1, DS-3, 2-fiber, or 4-fiber) and number of cross-connects ordered by the
9 ALEC. The ALEC’s billing statement that immediately follows the completion of the
10 LSR or ASR would reflect the non-recurring charges and any partial month’s billing for
11 the current month’s recurring charges, plus the following month’s recurring charges
12 (since BellSouth bills for one month of service in advance), for the installed cross-
13 connects. Once the initial monthly billing has commenced, the ALEC would be billed
14 the monthly recurring charges (one month in advance), associated with the installed
15 cross-connects on its normal monthly billing statement.

16

17 Q. YOU HAVE EXPLAINED HOW BELLSOUTH BILLS THE ALECS FOR
18 WHAT MR. KING REFERS TO AS “OTHER” NON-RECURRING FEES,
19 SUCH AS CABLE INSTALLATION AND CROSS-CONNECTS. WHY IS
20 THIS APPROPRIATE?

21

22 A. As I stated in my direct testimony, it is appropriate to apply nonrecurring charges
23 to recover work activities that are one-time in nature. FCC Rule 51.507(a) states:

24

25 Element rates shall be structured consistently with the manner in
26 which the costs of providing the elements are incurred.

27

1 These items recover the nonrecurring charges for certain collocation elements
2 based on the fact that the work required to comply with an ALEC's request is
3 one-time or nonrecurring. The nonrecurring charge allows BellSouth to recover
4 costs which are not recovered anywhere else.

5
6 BellSouth expects payment from the ALECs for "other" non-recurring charges,
7 such as those associated with cable installation fees and cross-connect charges,
8 within thirty (30) calendar days of the billing date for these charges. This is an
9 appropriate period of time for the ALECs to remit payment, because it reflects the
10 industry standard of time permitted for carriers to submit payment of their
11 outstanding accounts. (It also reflects the normal length of time most businesses
12 allow for payment of all outstanding invoices by their customers/creditors.)

13
14 **Issue 1B: When should billing of monthly recurring charges begin?**

15 Q. MR. KING IN HIS DIRECT TESTIMONY AT THE BOTTOM OF PAGE 4
16 STATES, "THE ILEC SHOULD BILL THE ALEC WITHIN A THIRTY (30)
17 DAY BILLING CYCLE FOR THE FLOOR SPACE" AFTER THE ALEC HAS
18 ACCEPTED THE SPACE. PLEASE RESPOND.

19
20 A. As stated in my direct testimony, if an ALEC conducts an acceptance
21 walkthrough of the collocation space within fifteen (15) calendar days of the
22 Space Ready Date (the date BellSouth completes the space and notifies the
23 ALEC), then BellSouth agrees with AT&T that the monthly recurring charges for
24 floor space (as well as all of the other monthly recurring charges associated with
25 the requested collocation space) should begin on the date that the ALEC accepts

1 the space ("Space Acceptance Date"). However, if the ALEC fails to conduct an
2 acceptance walkthrough within this fifteen-calendar day period, BellSouth would
3 begin assessing the monthly recurring charges on the Space Ready Date.
4 Furthermore, if BellSouth permits the ALEC to occupy its collocation space prior
5 to the Space Ready Date, BellSouth will begin billing the monthly recurring
6 charges on the date the ALEC occupies the space, which would then become the
7 Space Acceptance Date.

8

9 Q. AT THE TOP OF PAGE 5 OF HIS DIRECT TESTIMONY, MR. KING
10 CONTENDS THAT THE ILECS SHOULD NOT BE PERMITTED TO ASSESS
11 ALL OF THE MONTHLY RECURRING CHARGES FOR THE REQUESTED
12 COLLOCATION SPACE, EXCLUDING FLOOR SPACE, UNTIL AFTER THE
13 ALEC HAS ACTUALLY INSTALLED, TESTED AND INTERCONNECTED
14 ITS EQUIPMENT TO THE ILEC'S INTEROFFICE FACILITIES AND
15 POWERED UP ITS EQUIPMENT. DO YOU AGREE?

16

17 A. Absolutely not. Apparently, Mr. King's argument is based on his belief that
18 AT&T's requested collocation space is not "Ready" until AT&T has completed
19 the installation of its equipment, turned up its power, and interconnected with
20 BellSouth's network or ordered access to BellSouth unbundled network elements
21 ("UNEs") in the provision of its telecommunications services. This assumption is
22 incorrect. As soon as the space is available for the ALEC's occupancy and
23 installation of equipment, the ALEC should have to pay for the provisioned
24 collocation space, which has been prepared by the ILEC in accordance with the
25 ALEC's individual specifications. This space, and the power requirements

1 associated with this space, cannot be used for any other purpose by any other
2 entity, including the ILEC. It is dedicated to the ALEC's exclusive use.
3 Therefore, it is appropriate for an ILEC to immediately begin billing the
4 appropriate monthly recurring charges for the space that it has provisioned in
5 accordance with the ALEC's request.

6
7 Not only has BellSouth acted in good faith to provision the ALEC's requested
8 space requirements in the central office pursuant to the ALEC's individual
9 specifications, but BellSouth has completed its required work activities in
10 accordance with the provisioning intervals established by this Commission in the
11 FPSC September 1999 Collocation Order (physical caged interval) and the FPSC
12 May 2000 Collocation Order (physical cageless, virtual and augment intervals)¹.
13 During the proceeding leading up to the FPSC May 2000 Collocation Order, the
14 ALECs argued for the shortened provisioning intervals that this Commission has
15 ordered, and BellSouth is in full compliance with these intervals. If BellSouth
16 must complete its infrastructure provisioning work to meet these shortened
17 intervals, then the CLECs should also be expected to install their equipment and
18 begin operations as soon as possible. In other words, they should be held to a
19 standard similar to that applied to the ILECs.

20
21 Furthermore, the difficulty to administer such a plan would place an undue burden
22 on the ILEC. In addition, there would be costs associated with administering this
23 type of cumbersome plan. These costs would need to be passed on to the ALECs,

¹ Florida Public Service Commission Order No. PSC-99-1744-PAA-TP, issued September 7, 1999, in Docket Nos. 981834-TP/990321-TP ("FPSC September 1999 Collocation Order") and Florida Public Service Commission Order No. PSC-00-0941-FOF-TP, issued May 11, 2000, in Docket Nos. 981834-TP/990321-TP ("FPSC May 2000 Collocation Order").

1 since they would be the cost-causers of the additional costs that would be incurred
2 by the ILECs to administer this type of plan. The burden of continuously
3 monitoring each collocation space it has provisioned and turned over to an ALEC
4 to determine when the ALEC has completed its equipment installation and
5 interconnected with BellSouth's network or ordered access to UNEs for the
6 provision of its telecommunications services would fall to the ILEC. In addition,
7 the ILEC would have to verify that the ALEC had turned up its operations from
8 its collocation space, before billing could commence.

9
10 BellSouth should not be penalized for an ALEC's lack of planning for its
11 equipment installation or a change in its initial business plans. BellSouth
12 provisioned the collocation space in accordance with the ALEC's request and
13 should be compensated accordingly when the space is turned over to the ALEC
14 for its use. If AT&T or any other ALEC wants to begin its equipment installation
15 concurrent with the ILEC's provisioning of the collocation space, then the ALEC
16 may request an early space acceptance from BellSouth, prior to the Space Ready
17 Date. In this instance, BellSouth would begin billing the ALEC for the monthly
18 recurring charges associated with the early space acceptance, but this would give
19 the ALEC the ability to turn up its equipment and interconnect with BellSouth's
20 network or access BellSouth's UNEs as soon as the provisioning of the space has
21 been completed and turned over to the ALEC (Space Ready Date).

22
23 To illustrate my point, let's assume I decide to lease a 2-bedroom apartment. I
24 tour all of the available 2-bedroom apartments in the complex, pick out the one I
25 want, negotiate my "move-in" date with the landlord, and sign a twelve-month

1 lease. After I have signed the lease and given the landlord a deposit, I am
2 expected to pay my rent every month on the rental due date, regardless of whether
3 I choose to move in or not. I may decide to wait a few months before I move in.
4 This is obviously my choice. The landlord doesn't care when I move in, as long
5 as I continue to pay my rent each month on the due date. It's no different with
6 collocation. The choice of whether to "move-in" to the collocation space
7 immediately is a decision that must be made by the ALEC. As long as the ALEC
8 continues to pay for the leased space, the ALEC can choose to delay its plans to
9 move in until it's ready to do so. BellSouth is just the landlord of the space. The
10 space will be there, ready and waiting, and will remain so, unless or until the
11 ALEC terminates its collocation arrangement.

12

13 **Issue 1C: What cancellation charges should apply if an ALEC cancels its request for**
14 **collocation space?**

15 Q. DO YOU AGREE WITH MR. KING'S COMMENT ON PAGE 5, LINES 11
16 AND 12, THAT THERE SHOULD BE NO SEPARATE CANCELLATION
17 CHARGE IMPOSED ON THE ALEC WHEN COLLOCATION SPACE IS
18 CANCELED?

19

20 A. Yes. BellSouth agrees with AT&T that there should be no separate cancellation
21 charge (i.e., a separate fee for cancellation) imposed upon the ALEC when the
22 ALEC cancels its request for collocation space. However, BellSouth should be
23 able to recover any costs that BellSouth's current cost/rate structure would not
24 permit it to recover if an ALEC cancels a collocation request during the period
25 from the Bona Fide Firm Order to the date the monthly recurring charges would

1 commence (either at the Space Acceptance or Space Ready Date). It is
2 appropriate for an ILEC to recover such costs, since an ILEC should not be
3 penalized just because an ALEC changes its mind about collocating in a central
4 office. One example of a non-recoverable cost would be a cancellation fee that a
5 vendor may charge an ILEC for canceling a project that is associated with an
6 ALEC's canceled collocation request. Due to the nature of non-recoverable costs,
7 each cancellation request would have to be reviewed individually and any non-
8 recoverable charges determined on a case-by-case basis.

9

10 Q. ON PAGE 5, LINES 12 THROUGH 15, MR. KING STATES, "IF A
11 COLLOCATION REQUEST IS CANCELLED BEFORE THE PREPARATION
12 OF THE SPACE IS COMPLETE, THE ALEC SHOULD BE ENTITLED TO A
13 RETURN OF THE PORTION OF THE AMOUNTS ALREADY PAID
14 ATTRIBUTABLE TO WORK THAT WILL NOT BE DONE AS A RESULT
15 OF THE CANCELLATION." PLEASE RESPOND.

16

17 A. To the extent there is any provisioning work that has not yet been performed by
18 BellSouth when the ALEC cancels its order during the period from BellSouth's
19 receipt of the Bona Fide Firm Order up to the date monthly recurring charges
20 would commence (either at the Space Acceptance Date or the Space Ready Date),
21 then BellSouth agrees with AT&T that the ALEC should be reimbursed for any
22 portion of the provisioning work for which it has already paid that has not yet
23 been performed and/or completed by BellSouth. In most cases, the only non-
24 recurring charges that would likely have been paid by an ALEC during this period
25 would be those associated with Firm Order Processing, Cable Installation, Cable

1 Records, and Security Access Administration.

2
3 The ILECs should reimburse the ALEC for the applicable portion of the non-
4 recurring fees that it has already paid, based on the percentage of the work activity
5 performed and/or completed for each of these items. In other words, if an ILEC
6 has completed 50% of the work activities associated with each of the non-
7 recurring charges noted above, as of the cancellation date, then the ALEC would
8 be entitled to a reimbursement of 50% of the non-recurring charges already paid
9 to the ILEC for these activities. The non-recurring charges and their associated
10 work activities would have to be reviewed individually, as of the cancellation
11 date, to determine if any portion of the non-recurring fees should be reimbursed to
12 the ALEC. If so, the ILEC should be given at least sixty (60) calendar days to
13 determine what percentage of the non-recurring charges already paid by the
14 ALEC should be reimbursed to the ALEC for those activities that have not yet
15 been performed and/or completed by the ILEC.

16
17 Q. WHY SHOULD THE ILECS BE PERMITTED TO RECOVER A PORTION OF
18 THESE NON-RECURRING COSTS?

19
20 A. The ILECs should be permitted to recover a portion of these non-recurring costs,
21 because the ILEC would have already begun and completed some measure of the
22 associated work activities required to meet the Commission's provisioning
23 intervals for the ALEC's requested collocation space. Moreover, these costs were
24 incurred to meet the exact specifications required by the ALEC in its Bona Fide
25 Firm Order and should be recovered from the party that initiated the request to

1 begin the provisioning process. Of course, the ALEC should be reimbursed for
2 any portion of the non-recurring provisioning work for which it has already paid
3 that has not yet been performed and/or completed by BellSouth.

4

5 Q. ON PAGE 5, LINES 16 THROUGH 18 OF HIS DIRECT TESTIMONY, MR.
6 KING ARGUES THAT IF THE ALEC CANCELS ITS REQUEST FOR
7 COLLOCATION SPACE WITHIN 20 DAYS AFTER THE SUBMISSION OF
8 THE APPLICATION, THE APPLICATION FEES SHOULD BE FULLY
9 REFUNDABLE TO THE ALEC. DO YOU AGREE?

10

11 A. If it is AT&T's contention that an ALEC should not have to pay an application
12 fee if the request for collocation is canceled prior to the fifteen (15) day
13 Application Response interval (fifteen calendar days from the receipt of a Bona
14 Fide Application, which means that the application is complete and accurate)
15 ordered by this Commission in its May 2000 Collocation Order, then BellSouth
16 would agree with AT&T's position, as long as BellSouth has not provided the
17 Application Response prior to the fifteenth day following the receipt of the Bona
18 Fide Application. However, if BellSouth has provided the Application Response
19 within the required fifteen (15) day interval and an ALEC decides to cancel its
20 Bona Fide Application after the receipt of the Application Response, then the
21 ALEC should be required to remit the entire application fee. This is appropriate,
22 because BellSouth has already completed all of the work associated with
23 determining space availability, evaluating the work necessary to provision the
24 space according to the ALEC's specifications, and preparing the firm price quote
25 for the space requested by the ALEC.

1

2 Q. MR. KING STATES ON PAGE 5, LINES 18 THROUGH 22 OF HIS DIRECT
3 TESTIMONY, THAT THE ILEC WOULD RECEIVE THE BENEFIT OF THE
4 INVESTMENT THAT THE ALEC HAS ALREADY MADE IN THE
5 PREPARATION OF THE SPACE AND COULD USE THE READY MADE
6 COLLOCATION SPACE FOR THE NEXT ALEC THAT ORDERS SPACE.
7 DO YOU AGREE?

8

9 A. To the extent that BellSouth can fully recover its costs for any work performed to
10 provision the space up to the date of cancellation, then the ALEC should not be
11 compelled to reimburse BellSouth for these costs. However, as I have already
12 stated, any non-recoverable costs (such as a cancellation fee imposed on
13 BellSouth by a vendor for canceling a project associated with an ALEC's
14 canceled collocation request) that have been incurred by the ILEC to provision the
15 requested collocation space should be borne by the ALEC.

16

17 In reference to Mr. King's statement that the ILEC would inherit a ready made
18 collocation space that can be used by the next ALEC ordering space in the central
19 office, it has been BellSouth's experience that the chances of another ALEC
20 ordering exactly the same size or type of collocation arrangement, with the very
21 same specifications, as that ordered by another ALEC is highly unlikely. There
22 are so many variables in what the ALECs order for collocation that any so-called
23 "ready made" collocation space would probably have to be re-provisioned to meet
24 the specifications required by the next ALEC requesting space in the office. It
25 would be extremely rare for the next ALEC's specifications to mirror exactly the

1 specifications of the former ALEC that canceled its request.

2

3 Q. FINALLY, AT THE BOTTOM OF PAGE 5 AND TOP OF PAGE 6 OF HIS
4 DIRECT TESTIMONY, MR. KING CONTENDS, "TO THE EXTENT THAT
5 THE COLLOCATION SPACE IS NOT COMPLETE, THE ILEC STILL WILL
6 RECOUP ITS COSTS FOR THE WORK PERFORMED AS WELL AS THE
7 BENEFIT OF THE PREPARATION OF THE SPACE ALREADY
8 ACCOMPLISHED." PLEASE RESPOND.

9

10 A. Again, if BellSouth can fully recover its costs for any work performed to
11 provision the space, then the ALEC should not have to reimburse BellSouth for
12 any of these costs. However, the ILEC should be reimbursed in full by the ALEC
13 for any non-recoverable costs that have been incurred in provisioning the
14 requested collocation space. However, Mr. King appears to assume that the ILEC
15 will always recover these costs. Therefore, he advocates that the ALECs should
16 have no responsibility to reimburse those costs it has caused the ILEC to incur.
17 As explained above, this assumption is incorrect.

18

19 **Issue 2A: Should an ALEC be required to justify its space reservation needs to the**
20 **ILEC when an ILEC is forced to consider a building addition to accommodate**
21 **future space requirements?**

22 Q. ON PAGE 6, LINES 10 AND 11 OF HIS DIRECT TESTIMONY, MR. KING
23 PROPOSES THAT AN ALEC SHOULD BE PERMITTED TO VERIFY THE
24 ILEC'S NEED FOR UNUSED SPACE THROUGH A SITE SURVEY OR
25 OTHER REASONABLE MEANS. DO YOU AGREE?

1

2 A. Yes. If Mr. King is assuming that BellSouth is trying to reclaim unused reserved
3 space to avoid a building addition, then BellSouth would agree that an ALEC
4 should be permitted the opportunity to review a site survey or other reasonable
5 means, which may include a detailed floor plan or diagram of the central office, to
6 verify the ILEC's need to reclaim unused reserved space. As I stated in my direct
7 testimony, the ILEC and ALECs should endeavor to work together in a mutually
8 cooperative manner to efficiently utilize all available central office space in order
9 to delay or avoid, if possible, an unnecessary building addition, when a central
10 office is at or near space exhaust.

11

12 Q. SHOULD THE ALECS BE PERMITTED TO REVIEW A SITE SURVEY OR
13 DETAILED FLOOR PLAN IF BELLSOUTH HAS ALREADY MADE A
14 DECISION TO CONSTRUCT A BUILDING ADDITION?

15

16 A. No. BellSouth is under no obligation or commission mandate to provide the
17 ALECs with a site survey or detailed floor plan to support a decision to construct
18 a building addition in the central office. Additionally, a site survey or detailed
19 floor plan may not have been developed if the decision to move forward with a
20 building addition is in the very early planning stage. When BellSouth makes a
21 decision to construct a building addition in a particular central office, BellSouth
22 has to consider in its space planning efforts, the amount of projected demand for
23 collocation space by the ALECs that would need to be allocated in the building
24 addition for collocation purposes. This is an FCC requirement (See *47 U.S.C.*
25 *§51.323(f)(3)*) Therefore, when an ILEC has already determined the need for a

1 building addition to accommodate its future space requirements (and the needs of
2 the ALECs) for a particular central office, the currently collocated ALECs would
3 have a responsibility to provide, upon reasonable request from BellSouth,
4 justification for their current and future collocation needs for a period of at least
5 two years from the scheduled completion date of the central office building
6 addition.

7
8 Q. WHAT PROOF SHOULD BELLSOUTH BE REQUIRED TO PROVIDE TO
9 AN ALEC TO JUSTIFY ITS NEED TO RECLAIM UNUSED RESERVED
10 SPACE IN A CENTRAL OFFICE THAT IS AT SPACE EXHAUST?

11
12 A. BellSouth should make available, pursuant to a nondisclosure agreement signed
13 by the ALEC, the same documentation that BellSouth would have filed in support
14 of its Petition for Waiver with the Florida Public Service Commission ("FPSC")
15 when it denied space to an ALEC because the central office had reached space
16 exhaust, pursuant to the requirements established by the FPSC in Order No. PSC-
17 99-1744-PAA-TP, issued September 7, 1999 and Order No. PSC-99-2393-FOF-
18 TP, issued December 7, 1999, in these same dockets. In addition to a review of
19 the above documentation, the ALEC should be permitted to participate in the
20 central office tour requested by the ALEC that was denied space in the central
21 office or by the FPSC Staff. If neither of these parties has requested a central
22 office tour or if the FPSC has already granted BellSouth's Waiver Petition, then
23 the ALEC may request that BellSouth provide it with a tour of the central office,
24 so that it may evaluate for itself the fact that no available collocation space exists
25 in the central office.

1

2 As noted above, BellSouth would require the ALEC to sign a confidential
3 agreement prior to providing this information for review.

4

5 Q. ON LINES 11 AND 12, OF PAGE 6 OF HIS DIRECT TESTIMONY, MR.
6 KING ARGUES THAT AN ILEC MUST JUSTIFY THAT THE BUILDING
7 ADDITION IS NEEDED TO MEET DEMAND AND NOT FOR THE
8 CONVENIENCE OF THE ILEC. DO YOU AGREE?

9

10 A. No. BellSouth does not undertake the construction of a building addition without
11 carefully studying the existing and future space utilization and space needs of both
12 BellSouth and the ALECs. As this Commission is well aware, an ILEC's decision
13 to construct additional space at a central office building is determined only after
14 serious consideration of all available alternatives to make additional space
15 available. Moreover, since building additions require significant capital
16 investment and expense, appropriate funding sources must be determined and
17 budgeted by the ILEC to ensure that once construction has been started, there will
18 be adequate funds to complete the project as scheduled. The notion that an ILEC
19 would decide to undertake a building addition for its own convenience is absurd.
20 A building addition would only be considered and approved by the ILEC if there
21 was truly a need for additional central office space.

22

23 As I stated in my direct testimony, an ILEC must provide collocation to
24 requesting telecommunications carriers, but is not required to construct additional
25 space to provide for physical collocation when existing space has been exhausted

1 in order to accommodate the ALECs' collocation requests. (See *47 U.S.C.*
2 *§51.323(a) and §51.323(f)(1)*). However, if the ILEC is forced to consider a
3 building addition to accommodate future space requirements, then the ALECs
4 should be required to justify its reserved space in the office to ensure that there is
5 no unused space that should be returned to the ILEC's space inventory. This is
6 appropriate, since the ILEC must base its decision on if and when a major
7 building renovation or addition is required immediately or in the near future.

8

9 Q. BEGINNING ON LINE 13, OF PAGE 6 OF HIS DIRECT TESTIMONY, MR.
10 KING STATES, "SHOULD THE ALEC BE AFFECTED BY A BUILDING
11 ADDITION, THE ILEC AND [A]LECS SHOULD WORK COOPERATIVELY
12 TO LIMIT THE EXPENSE AND BURDEN, INCLUDING THE OPTION THAT
13 THE ILEC PAY ITS FAIR SHARE OF THE EXPENSE TO MOVE ALECS
14 FROM THEIR SPACE." WHAT IS BELLSOUTH'S POSITION?

15

16 A. BellSouth agrees with AT&T's contention that the ILEC and ALECs should work
17 in a mutually cooperative manner to ensure that the expense and burden to the
18 ALECs is minimized when a building addition directly impacts the collocation
19 space of the ALECs already located in the central office. If the ALECs are asked
20 to move from their existing collocation space into newly constructed space,
21 renovated space, or vacated space that becomes available in the original building,
22 the ILEC should be required to pay an appropriate amount of the expense incurred
23 by the ALEC to move into its newly assigned space. However, if an ALEC
24 requests to move its existing collocation space into the new building addition and
25 BellSouth grants the ALEC's request, then the ALEC should be responsible for

1 the payment of all charges associated with this move.

2

3 Q. FINALLY, ON LINES 15 THROUGH 18, OF PAGE 6 OF HIS DIRECT
4 TESTIMONY, MR. KING COMMENTS THAT AFTER AN ILEC HAS
5 DEMONSTRATED AN IMMEDIATE NEED TO RECLAIM SPACE, AN
6 ALEC SHOULD BE REQUIRED TO SHOW THAT IT HAS NEED OF THE
7 SPACE WITHIN A REASONABLE AMOUNT OF TIME. DO YOU AGREE?

8

9 A. Yes. BellSouth agrees that if it has adequately demonstrated to the ALEC that
10 there is an immediate need to reclaim reserved unused space, the ALEC should be
11 required to either justify its space needs (which must comply with this
12 Commission's eighteen (18) month space reservation period², beginning with the
13 original Space Ready Date upon which BellSouth turned the space over to the
14 ALEC) or return the unused space back to the ILEC for inclusion in the inventory
15 of available space.

16

17 Q. WHAT IS BELLSOUTH'S PROPOSAL FOR A "REASONABLE AMOUNT
18 OF TIME" WITHIN WHICH AN ALEC WOULD BE REQUIRED TO JUSTIFY
19 ITS SPACE NEEDS OR RETURN THE UNUSED SPACE?

20

21 A. BellSouth proposes that this Commission establish a period of thirty (30) calendar
22 days from the date upon which the ILEC has demonstrated its need to reclaim
23 reserved unused space as the "reasonable amount of time" within which an ALEC

² This Commission determined that an eighteen (18) month reservation period was appropriate for both the ILECs and ALECs, under the same terms and conditions, in the May 2000 Collocation Order.

1 should be required to justify its space needs or return the unused space to the
2 ILEC for inclusion in the inventory of available space. This is an appropriate
3 amount of time for the ALEC to determine its space needs, when one considers
4 the urgency of reclaiming any reserved unused space that will not be utilized by
5 the ALEC within the Commission's eighteen (18) month space reservation
6 requirement.

7
8 **Issue 2B: Under what conditions should an ILEC be allowed to reclaim unused**
9 **collocation space?**

10 Q. AT THE BOTTOM OF PAGE 6, BEGINNING ON LINE 21 OF HIS DIRECT
11 TESTIMONY, MR. KING ARGUES THAT AN ILEC SHOULD ONLY BE
12 PERMITTED TO RECLAIM UNUSED COLLOCATION SPACE WHEN THE
13 ILEC HAS DETERMINED THAT THEIR CENTRAL OFFICE SPACE IS
14 COMPLETELY EXHAUSTED, DETERMINED AN IMMEDIATE NEED FOR
15 THE DEPLOYMENT OF EQUIPMENT NECESSARY TO PROVIDE LOCAL
16 SERVICE, **AND** THE ALEC HAS NOT DEMONSTRATED A NEED FOR
17 THE SPACE. (Emphasis Added.) PLEASE RESPOND.

18
19 A. BellSouth's position, as stated in my direct testimony, is that an ILEC should be
20 permitted to reclaim reserved unused collocation space when the central office is
21 at or near space exhaust and the ALEC cannot provide sufficient justification for
22 its space reservation. There should be no requirement on the ILEC that it must
23 have determined an immediate need to deploy equipment necessary to provide
24 local service. In a space exhaust situation, if the ALEC cannot justify the
25 utilization of the reserved space within the Commission's eighteen (18) month

1 space reservation requirement, then the space should be returned to the ILEC's
2 available space inventory for reassignment. An ALEC should not be permitted to
3 hoard space in a central office that is at or near space exhaust when it has no plans
4 to build-out the space, because this could preclude other ALECs from collocating
5 in the central office and competing in the same market. In addition, this anti-
6 competitive behavior could ultimately result in space exhaust within the central
7 office, forcing the ILEC to incur the unnecessary expense of constructing a
8 building addition, which would further delay the ILEC's ability to accommodate a
9 competing ALEC's collocation request in the central office.

10
11 Moreover, as of this date, BellSouth is not aware of any ALECs that have
12 complained to this Commission about an ILEC's efforts to reclaim unused
13 reserved space in a central office at or near space exhaust. The ILECs have not
14 abused their efforts to reclaim space from those ALECs that have not built-out
15 their unused reserved space within the eighteen (18) month reservation period
16 mandated by this Commission.

17
18 To permit ALECs to retain unused, reserved space, without adequate justification,
19 in a space exhaust situation is inconsistent with the FCC's mandate that an ILEC
20 must offer collocation on rates, terms and conditions that are just, reasonable and
21 nondiscriminatory. (See *47 U.S.C. §251 (c)(6)*). The ILECs have an obligation to
22 the ALEC community to reclaim unused reserved space that an ALEC cannot
23 adequately justify in order to satisfy the needs of other ALECs that are requesting
24 collocation space in the central office.

25

1 **Issue 2C: What obligations, if any, should be placed on the ALEC that contracted**
2 **for the space?**

3 Q. ON PAGE 7, LINES 5 THROUGH 7 OF HIS DIRECT TESTIMONY, UNDER
4 ITEM (1), MR. KING STATES, "IF THE ALEC HAS FUTURE PLANS FOR
5 THEIR COLLOCATION SPACE AND PROVIDES WRITTEN
6 NOTIFICATION AS SUCH TO THE ILEC, THEN THE ILEC HAS NO
7 AUTHORITY TO RECLAIM THEIR COLLOCATION SPACE." DO YOU
8 AGREE?

9
10 A. If the ALEC can justify in writing to the ILEC that its future plans for the build-
11 out of the collocation space fall within the Commission's eighteen (18) month
12 space reservation requirements, then BellSouth would agree with AT&T that the
13 ILEC should not be permitted to reclaim the reserved unused collocation space.
14 However, if the ALEC cannot justify its future plans for the build-out of the
15 collocation space within the eighteen (18) month space reservation requirements
16 mandated by this Commission, the ALEC should be required to return this space
17 to the ILEC for inclusion in the available space inventory for this central office.

18
19 **Issue 2D: What obligations, if any, should be placed on the ILEC?**

20 Q. MR. KING COMMENTS ON PAGE 7, LINES 15 THROUGH 17 OF HIS
21 DIRECT TESTIMONY, THAT AFTER THE ILEC RECLAIMS
22 COLLOCATION SPACE FROM AN ALEC, IT MUST STOP ALL MONTHLY
23 RECURRING BILLING CHARGES AND SEND FORMAL NOTIFICATION
24 OF THE STOPPED BILL DATE. PLEASE RESPOND.

25

1 A. BellSouth agrees that once an ILEC has reclaimed unused collocation space from
2 an ALEC, it should be required to stop billing the ALEC for any monthly
3 recurring charges associated with this space. However, BellSouth should be
4 permitted to bill the ALEC for the monthly recurring charges associated with the
5 collocation space up to the date that the ILEC actually reclaims the space (returns
6 the space to the available inventory in that office). In regard to AT&T's
7 contention that the ILEC should be required to send formal notification of the
8 stopped bill date, BellSouth would not object to providing the ALEC with formal
9 notification that the billing associated with the reclaimed collocation space has
10 been stopped as of the date the space was actually reclaimed by the ILEC and
11 returned to the available space inventory for the central office.

12

13 **Issue 3: Should an ALEC have the option to transfer accepted collocation space to**
14 **another ALEC? If so, what are the responsibilities of the ILEC and ALECs?**

15 Q. DOES BELLSOUTH AGREE WITH MR. KING'S POSITION, AT THE
16 BOTTOM OF PAGE 7 OF HIS DIRECT TESTIMONY, THAT AN ALEC
17 SHOULD BE ALLOWED TO TRANSFER ITS ACCEPTED COLLOCATION
18 SPACE TO ANOTHER ALEC THAT HAS EXPRESSED AN INTEREST IN
19 ITS SPACE?

20

21 A. Yes, as long as the central office is not in space exhaust and the transfer of the
22 collocation space is in conjunction with the ALEC's sale of in-place collocation
23 equipment to the same ALEC, then the ALEC should be allowed to transfer its
24 accepted collocation space to another ALEC that is interested in the space.
25 However, if the central office is in space exhaust, then the ALEC should only be

1 allowed to transfer collocation space if the transfer is part of a transfer of all or
2 substantially all of the transferring ALEC's assets to another ALEC **and** if the
3 Commission has approved the transfer in the space exhausted central office. This
4 would prevent an ALEC from circumventing the space exhaust waiting list by
5 assuming another ALEC's collocation space on a location-by-location basis.

6
7 Q. MR. KING INDICATES, AT THE BOTTOM OF PAGE 7 AND TOP OF PAGE
8 8 OF HIS DIRECT TESTIMONY, THAT THE CONTRACTED ALEC (THE
9 ALEC THAT HAS AGREED TO ACCEPT THE TRANSFERRED SPACE)
10 MUST SUBMIT AN APPLICATION TO CHANGE THE ILEC'S
11 COLLOCATION RECORDS. DO YOU AGREE?

12
13 A. Yes. BellSouth agrees with AT&T that the ALEC acquiring the collocation space
14 should be the party that submits the application for transfer of the collocation
15 arrangement. However, there are other responsibilities that must be completed by
16 the acquiring ALEC such as, but not limited to, satisfying all of the legal
17 requirements of its Interconnection Agreement with BellSouth, submitting a letter
18 to BellSouth for the assumption of services, entering into a Transfer Agreement
19 with the ALEC transferring the space and BellSouth, and re-stenciling all of the
20 equipment and facilities.

21
22 The ALEC transferring the collocation space to the acquiring ALEC also has
23 certain responsibilities that it must complete to consummate the transfer. These
24 responsibilities include, but are not limited to, notifying BellSouth that it will be
25 transferring ownership of some (or all) of its existing collocation arrangements to

1 the acquiring ALEC without changing the type of existing collocation
2 arrangement, submitting a Letter of Authorization to BellSouth for the transfer
3 and release of its existing facilities, entering into a Transfer Agreement with the
4 acquiring ALEC and BellSouth, and returning all access devices (keys and cards)
5 to BellSouth.

6

7 Q. ON PAGE 8, LINES 2 AND 3 OF HIS DIRECT TESTIMONY, MR. KING
8 STATES, "THE COLLOCATION PROVISIONING INTERVALS SHOULD
9 NOT APPLY AS THE SPACE HAS ALREADY BEEN COMPLETED."
10 WHAT IS BELLSOUTH'S POSITION?

11

12 A. BellSouth agrees with AT&T that the "collocation provisioning intervals" should
13 not apply to a transfer of ownership situation. However, there would be a certain
14 amount of time involved to complete the transfer process, due to all of the steps
15 required to effectuate the transfer of ownership. For instance, if the acquiring
16 ALEC does not have an existing Interconnection Agreement with BellSouth, the
17 Transfer Process cannot begin until after the acquiring ALEC has properly
18 executed either the Standard Interconnection Agreement or a negotiated
19 Interconnection Agreement with BellSouth, the Commission has approved the
20 interconnection agreement, and the acquiring ALEC has submitted the appropriate
21 application to transfer the collocation arrangement. In addition to the above, the
22 acquiring ALEC would also be required to provide the correct contact information
23 including billing information, update BellSouth's collocation database inventory
24 records, update physical records maintained on-site, update assignment records at
25 the POT frame (if applicable), and perform equipment stenciling in the collocation

1 space. The acquiring ALEC's BellSouth Certified Supplier would perform these
2 responsibilities no later than thirty (30) calendar days following the acquiring
3 ALEC's execution of the Transfer Agreement with BellSouth. The Transfer
4 Process would only be considered complete after all of the responsibilities set
5 forth above have been discharged.

6

7 Q. SHOULD THE CONTRACTED ALEC BE GRANTED IMMEDIATE ACCESS
8 TO THE DESIGNATED COLLOCATION SPACE, AS MR. KING HAS
9 SUGGESTED ON PAGE 8, LINES 3 AND 4 OF HIS DIRECT TESTIMONY?

10

11 A. No. Immediate access to the collocation space should not be granted until both
12 the acquiring ALEC and the transferring ALEC have completed all of the above
13 requirements.

14

15 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

16

17 A. Yes.

18

19

20

21

22

23

24

25

1 BY MS. WHITE:

2 Q And you did not have any exhibits to your rebuttal
3 testimony, is that correct?

4 A No, I did not.

5 Q Mr. Gray, would you please give your summary for the
6 record?

7 A Yes. Good morning, Madam Chairman, Commissioners.

8 CHAIRMAN JABER: Good morning.

9 A Again, my name is Wayne Gray, and I am Director of
10 Regional Planning and Engineering at BellSouth. The purpose of
11 my direct and rebuttal testimonies are to address Issues 1A
12 through 1C, Issues 2A through 2D, and Issue 3 in this docket.

13 Since Issues 1B, 1C, and 2A through D have been
14 stipulated, I will not address them in my summary. Issue 1A
15 addresses when an ALEC should remit payment for nonrecurring
16 collocation charges. BellSouth assesses nonrecurring charges
17 for services that are one time in nature. These include
18 charges for application fees, the bona fide firm order fee,
19 cable installation, cable records, security access
20 administration, access card or key replacement, a space
21 availability report, and security escort service.

22 BellSouth bills nonrecurring fees for application
23 processing, access card or key replacement, space availability
24 reports, and security escort service after BellSouth has
25 provided the ALEC with the requested product or service. This

1 is consistent with the ALEC's desire to be billed at the time
2 services are provided.

3 BellSouth bills for the processing of the bona fide
4 firm order, cable installation, cable records, and security
5 access administration at the time the ALEC submits the bona
6 fide firm order. BellSouth believes this is appropriate
7 because the nonrecurring charges associated with these services
8 represent a good faith, up front fee by the ALEC showing their
9 commitment for BellSouth to proceed with costly construction
10 activities.

11 Issue 3 addresses whether the ALEC should have the
12 option to transfer accepted collocation space to another ALEC.
13 BellSouth agrees that an ALEC should be allowed to transfer
14 collocation space to another ALEC if the central office is not
15 at space exhaust and the transfer of the collocation space is
16 in conjunction with the ALEC's sale of in place collocation
17 equipment to the acquiring ALEC. If the central office is at
18 space exhaust, the ALEC should only be allowed to transfer
19 collocation space if the transfer is part of a transfer of all
20 or substantially all of the transferring ALEC's assets to the
21 other ALEC and the Commission has approved the transfer. This
22 will avoid the possibility that an ALEC can circumvent the
23 space exhaust waiting list.

24 And with that, that concludes my summary.

25 MS. WHITE: Mr. Gray is available for cross

1 examination.

2 CHAIRMAN JABER: Thank you, Ms. White. Sprint?
3 Verizon? For the BellSouth witnesses, I will assume you have
4 no questions unless you tell me, okay? All right.

5 Mr. Feil.

6 MR. FEIL: Yes, ma'am.

7 CROSS EXAMINATION

8 BY MR. FEIL:

9 Q Good morning, Mr. Gray.

10 A Good morning.

11 Q I have a few quick questions for you relative to
12 Issue 3.

13 A Okay.

14 Q In your testimony and in your position statement you
15 refer to in place collocation facilities. I assume by that you
16 mean that there is actually gear or equipment in the
17 collocation space, is that correct?

18 A That is correct, yes.

19 Q And that is as opposed to space that may have just
20 been ordered or reserved, is that correct?

21 A That is correct.

22 Q And why do you make a distinction between the two?

23 A Well, actually, let me back up. What we are saying
24 is if there is equipment in the space, then we want the
25 transfer to include the equipment. If there is not, then that

1 is not a problem. The whole position being that the transfer
2 from one ALEC to another is pretty manual in nature, and so we
3 can't -- it would just be too complex to transfer the space and
4 recondition it at the same time. So we want the transfer to
5 include in-place equipment. Then if the acquiring ALEC wants
6 to change the configuration, they can do that once the transfer
7 is complete.

8 Q Okay. Referring to your rebuttal testimony at Page
9 23, Line 23, you refer to the sale of in-place equipment to the
10 same ALEC. I'm sorry, I didn't mean to jump ahead of you. Did
11 you find the reference? Page 23, Line 23.

12 A Actually, mine doesn't quite line up that way. I've
13 got it on Line 25.

14 Q I'm sorry. But anyway, you refer to a sale of
15 in-place collocation equipment to the same ALEC, and my
16 questions pertain to the same ALEC. What do you mean by the
17 same ALEC? Are you referring to a transfer to only one buyer,
18 or are you referring to one buyer within the state, one buyer
19 per collocation space?

20 A What I am referring to is if a specific collocation
21 space in an office, if say Covad wanted to transfer that space
22 to AT&T, then AT&T would be receiving all of the equipment that
23 is in that collocation space from Covad.

24 Q So it is on a per collocation space basis?

25 A Right.

1 Q That's what I needed clarification on. Thank you.
2 It is your position -- and in your position statement and your
3 testimony you mentioned also in your summary that where a CO is
4 at space exhaust, any transfer of CLEC space would have to be
5 part of a sale or substantially all of the ALEC assets. And I
6 think you mentioned in your summary that one of the reasons for
7 that is because you think that that would indicate, under those
8 circumstances, that the ALECs are not trying to avoid the space
9 exhaust waiting list?

10 A Yes, that is correct.

11 Q Okay. And would you agree with me that if a ALEC
12 sells all of its assets or customer base say in a geographic
13 market such as Orlando or Miami, that that also would indicate
14 that the ALECs are not seeking to avoid the space exhaust
15 waiting list?

16 A Yes, that would be true, also.

17 Q Would you agree with me, Mr. Gray, that sales by and
18 among ALECs can actually be a good thing since it has the
19 potential for making more efficient use of collocation space?

20 A Yes, and that is why BellSouth is agreeable to allow
21 that with the exception of the space exhaust situation.

22 Q You are familiar, are you not, with the
23 Commission's -- this Commission's generic collocation orders
24 entered previously in this docket, I believe?

25 A Yes.

1 Q And you are familiar with the FCC's local competition
2 order in the FCC's rules regarding collocation?

3 A Yes.

4 Q Is it fair to say that neither of those rules or
5 orders directly address situations relative to transfers and
6 the space exhaust waiting list?

7 A I'm just not sure if they address directly transfers
8 associated with the waiting list. Just BellSouth wants to
9 ensure that the waiting list is adhered to.

10 Q Well, is the chief concern with regard to the space
11 exhaust waiting list and the possible circumvention of it, is
12 that your chief concern when it comes to transfers of space?

13 A Yes.

14 MR. FEIL: All right. I have nothing further.

15 CHAIRMAN JABER: Covad.

16 CROSS EXAMINATION

17 BY MR. WATKINS:

18 Q Good morning, Mr. Gray.

19 A Good morning.

20 Q My name is Gene Watkins, I represent Covad
21 Communications. I think I only have maybe one question for
22 you.

23 When you were reading through your testimony you
24 identified nonrecurring charges as those associated with
25 equipment or services that are provided in a one-time event, is

1 that correct, like a security access card?

2 A Right. It is more services, if you want to call an
3 access card equipment, but it is typically services.

4 Q You may not be able to answer this question, so if
5 you can't just let us know. When Covad asks for a collocation
6 space to be prepared by BellSouth, and requests a certain
7 amount of power, are the batteries and rectifiers that are
8 provided to support that power request already in place at the
9 time that Covad takes the space?

10 A At the time Covad takes the space?

11 Q The space ready date.

12 A At space ready date? I would say probably -- I would
13 say yes, but I would also say you would probably be better
14 referring that question to Keith Milner.

15 MR. WATKINS: That's all I have.

16 CHAIRMAN JABER: AT&T.

17 MR. SELF: Thank you, Madam Chairman.

18 CROSS EXAMINATION

19 BY MR. SELF:

20 Q Mr. Gray, I am Floyd Self on behalf of AT&T. Good
21 morning.

22 A Good morning.

23 Q I just have a couple of questions. Looking first at
24 Issue 1A, is it fair to say that you agree Mr. King's
25 characterization with respect to what he identifies as

1 Categories 1 and 2 for the nonrecurring charges? This would be
2 the application fee and the firm order.

3 A Can you -- okay, this is on his direct testimony Page
4 4?

5 Q Yes, sir.

6 A Okay. Let me read through those right quick. Okay.
7 In Issue 1 he says space availability notification occurs
8 within 20 days of the date. In Florida it is 15 days, so he is
9 incorrect on that aspect. And what was the other point, was it
10 two or three?

11 Q Category 2.

12 A Category 2. Okay. Nonrecurring, 30-day billing
13 cycle, ILEC confirms the ALEC's firm order. Yes.

14 Q Thank you. And I believe you said in your summary
15 that for certain activities, services or equipment that would
16 occur after the collocation space was established and
17 operating, like escort services, lost key cards, that you would
18 pay for those after you acquired those, is that correct?

19 A That is correct.

20 Q Okay. I would like to talk then briefly about cable
21 installation and cross-connects. At the time the CLEC places a
22 firm order, what does that mean?

23 A That means that they are ready to proceed with
24 ordering the collocation space that was included in their
25 application.

1 Q Okay. What is the condition of the collocation space
2 itself at that point in time?

3 A At the time they place the order?

4 Q Yes.

5 A It is most likely just space in an office without any
6 construction work being done.

7 Q Okay. And so what would happen subsequent to that
8 then is the CLEC would install its equipment?

9 A Well, once they placed the firm order, then first
10 BellSouth must ready the space. So we have got a lot of
11 equipment we install to get the space ready for the CLEC.

12 Q Okay. And then you notify the CLEC that it is ready
13 for it to install its equipment?

14 A Yes. But, of course, the CLEC knows way ahead of
15 time when it is going to be ready. We have preplanning
16 meetings, and the CLEC knows exactly when that date is going to
17 come. They know months in advance.

18 Q Okay.

19 A And, in fact, BellSouth allows the CLEC to enter the
20 office many times before we are even finished with the work so
21 that they can install coincident with our installation
22 activities.

23 Q Okay. At the time that the BellSouth construction is
24 completed and the CLEC can then start installing its equipment,
25 is there any cabling or cross-connects that are in place at

1 that point in time?

2 A It depends on whether the CLEC has asked us to
3 provide some of the cabling. If you are getting to the cable
4 installation fee that I mentioned in my testimony, that is
5 specifically BellSouth installing cable provided by the CLEC
6 for two cases. One is riser cable, that is the cable from the
7 central office vault to the collocation space. In that case
8 the CLEC can install that cable themselves, have their
9 certified vendor do that, or they have the option of hiring
10 BellSouth to do it. And that is only an installation charge
11 because BellSouth doesn't provide the cable, the CLEC does. So
12 that is the one I refer to in my testimony.

13 The other is bringing the CLEC's entrance cable into
14 the vault. And, again, that is work that the CLEC provides the
15 cable, BellSouth pulls it into the vault. So that is an
16 installation-only charge. Those would both be done before the
17 CLEC -- as part of the BellSouth installation activity for the
18 CLEC.

19 Q Okay. And then the cross-connects would occur
20 actually after the CLEC equipment was in place, is that
21 correct?

22 A Yes. And the cross-connects are billed like the
23 other services, when we provide the service. I don't believe
24 we bill for cross-connects up front.

25 Q Okay. I would like to change gears for a moment and

1 just talk very briefly about the transfer situations. And I
2 would like for you to clarify something for me. Your testimony
3 discusses an application that is required at the time that the
4 transfer is going to occur from one ALEC or CLEC to another
5 one.

6 A That is correct.

7 Q What is involved with that application and
8 application fee?

9 A Well, the application is the notification to us that
10 the tenant is changing, so to speak. And what is involved is
11 basically updating all of our records to show the new CLEC
12 owner of the space. That includes all the billing records, all
13 the floor plan records. Quite a bit of manual paperwork, so to
14 speak; office drawings, updates, et cetera.

15 Q All right. But it is not the same kind of
16 application or application fee as an original collocation
17 application, is it?

18 A I'm not sure what the fee is. It is not the same
19 type application, because we restrict the CLEC to taking
20 equipment in place. So, no, there is no construction
21 associated with it, so it would not be the same type of
22 activity to process the application.

23 Q It would be less?

24 A Yes, I would say so, probably.

25 Q Because you already have the drawings, you know what

1 equipment is already in place, those sorts of things?

2 A Right. It is a matter of researching the records and
3 changing the name.

4 MR. HATCH: Okay. That's the only questions I have,
5 thank you.

6 CHAIRMAN JABER: Staff.

7 CROSS EXAMINATION

8 BY MS. KEATING:

9 Q Good morning, Mr. Gray. I've got just a couple of
10 clarification questions here, and the first one is going to
11 Issue 1A. I am referring to Page 6 of your direct testimony,
12 and this is where you have indicated that BellSouth feels
13 nonrecurring charges associated with replacement of security
14 cards when BellSouth makes the change in its database and
15 creates the card. However, if you look on Page 3 of your
16 rebuttal, you have indicated that BellSouth bills for the
17 security card when it is actually provided to the CLEC, and I
18 am just wondering which is correct?

19 A I'm sorry, I'm having trouble hearing you, and I
20 didn't hear the second part. In my rebuttal?

21 Q In your rebuttal you have indicated that BellSouth
22 charges for the new security card when it is actually provided
23 to the CLEC.

24 A Okay. Now, go back to my -- if up could, could you
25 refer back in my direct.

1 Q In your direct you have indicated that BellSouth
2 charges when the change is made in the database and the card is
3 created. So does BellSouth charge when the change is made in
4 the database or when BellSouth actually provides that card to
5 the CLEC?

6 A To me that is basically one in the same. I mean, you
7 are only talking maybe hours or a day difference there. We
8 update the database, we mail out the cards. To me it is the
9 same.

10 Q So you mail the cards out?

11 A If it is a new access card -- well, if it is a new
12 card, yes. If it is a change in the database. The access
13 cards actually are -- they have a code in them, a number code,
14 and if the CLEC already has an access card, then all it is is a
15 download to the new office their card code so that office knows
16 to let them in. So it just depends. If they need a card, then
17 we send them the card. If they don't need a card, they have
18 already got a card, it is just a matter of updating the
19 database and it is downloaded each night. So it just depends
20 on what is needed. And so if they need a new card, then it
21 would be when the card is provided. If it is a download to the
22 database, it is when the database is updated.

23 Q Okay. So BellSouth charges differently in those two
24 separate instances?

25 A I'm not sure what the charge is.

1 Q Going into Issue 3, and I am referring to Pages 23
2 and 24 of your direct testimony. And this just sort of follows
3 up on some of the earlier questions about the transfer process.
4 You have indicated that you believe it would be appropriate for
5 the Commission to approve a transfer when the space is
6 exhausted in the CO to prevent CLECs from using the transfer
7 process to circumvent the waiting list. How do you envision
8 this process of obtaining Commission approval? And, for
9 instance, who would be responsible for seeking Commission
10 approval?

11 A I would suspect that the two CLECs involved would
12 seek approval. The matter of whether the office is exhausted
13 is evident. We post it on a CLEC website. So there is no --
14 you know, there is no question on whether an office is
15 exhausted or not, and then it would be a matter of the CLECs
16 involved knowing that there is a waiting list to contact the
17 Commission on their desire to do the transfer.

18 Q So just to be clear, you envision it as the CLEC's
19 responsibility to obtain Commission approval?

20 A Yes.

21 MS. KEATING: Thank you, Mr. Gray.

22 CHAIRMAN JABER: Commissioners, do you have any
23 questions of Mr. Gray?

24 Commissioner Davidson.

25 COMMISSIONER DAVIDSON: A couple of questions,

1 Chairman. Thank you. Mr. Gray, on Issue 1A, if you know,
2 could you identify the respects in which BellSouth's position
3 differs from the position of Verizon and from the position of
4 Sprint?

5 THE WITNESS: I'm not sure, sorry.

6 COMMISSIONER DAVIDSON: No problem, thank you. On
7 Issue 3, if CLEC 1 is transferring its collocation space to
8 CLEC 2 in conjunction with the sale of its assets to CLEC 2,
9 even if the central office is in space exhaust, why from a
10 policy standpoint should the Commission have to look at such
11 transfer?

12 THE WITNESS: It is my understanding that the
13 Commission is responsible for ensuring that BellSouth adheres
14 to the waiting list on a first-come/first-serve basis. So it
15 is just a matter of the Commission ensuring that nothing is
16 being done to circumvent that.

17 COMMISSIONER DAVIDSON: So for BellSouth your
18 understanding is it is purely a function of Commission
19 requirements, there is no independent BellSouth reason as to
20 why the Commission should approve?

21 THE WITNESS: Yes, I would agree.

22 COMMISSIONER DAVIDSON: Okay. Aside from that
23 requirement, believed requirement, if the central office space
24 is in space exhaust, would there be any burden to BellSouth
25 from approving a transfer of all collocation space in

1 conjunction with the sale of assets from one CLEC to another?

2 THE WITNESS: No, sir.

3 COMMISSIONER DAVIDSON: Okay. And my last question,
4 on Page 20 of the prehearing order, and this may not be your
5 wording exactly, but I am going to ask you about the wording
6 nonetheless. The last sentence of BellSouth's position on
7 Issue 3 is that this requirement is necessary to prevent ALECs
8 from avoiding the space allocation procedures that would
9 otherwise apply in a space exhaustion situation.

10 Do you have any -- is anything meant by that sentence
11 other than what you testified to just a moment ago, that you
12 believe the Commission has procedures in place for transfers of
13 collocation space?

14 THE WITNESS: Well, what is meant by that, that
15 statement, is that it is my belief that the Commission has the
16 responsibility to ensure in a space exhaust situation that
17 BellSouth honors the waiting list on a first-come/first-serve
18 basis, and so if there is any transfer of space from one CLEC
19 to another in an exhausted office, the Commission ought to want
20 to make sure that it is not a case of someone scalping tickets
21 like at a baseball game or something. That you are ensuring
22 that one CLEC isn't selling off their space and allowing
23 someone else to circumvent the waiting list. So that is the
24 whole purpose of it, is to ensure that the waiting list is
25 adhered to.

1 COMMISSIONER DAVIDSON: Let me ask you one more
2 question and then I have a follow-up question for staff on
3 this. Well, first, let me turn to staff. What are the
4 Commission requirements relating to waiting space on a
5 collocation list or a waiting list? I apologize, on a
6 collocation space list.

7 MS. KEATING: The Commission follows the FCC rule
8 regarding first-come/first-serve.

9 COMMISSIONER DAVIDSON: How does that rule apply in
10 an increasingly competitive market where, say, CLEC 1
11 hypothetically may be having certain problems and wants to just
12 sell all of his assets in a space to CLEC 2? In that type of
13 situation, what outcome do the FCC rules require, instruct,
14 permit?

15 MS. KEATING: I believe actually that is the question
16 before the Commission today. The FCC rules don't delineate
17 what you should do in that situation, and that is the issue
18 that the Commission will decide in this proceeding.

19 COMMISSIONER DAVIDSON: Thank you, counsel. One more
20 question for the witness. Assuming an increasingly competitive
21 marketplace, what type of approach makes most business sense to
22 you, an approach in which -- assuming no additional burden on
23 BellSouth, an approach in which the holder of collocation space
24 can transfer that space to another competitor without a burden
25 on Bell, or an approach in which such a transfer must be

1 approved by the Public Service Commission?

2 THE WITNESS: From a BellSouth standpoint, allowing
3 CLECs to transfer space with the equipment in place is a
4 positive scenario for us. That is why without a space exhaust
5 we support that position. And with space exhaust we even
6 support it provided a substantial transfer of all their assets
7 and Commission approval. The whole issue to BellSouth is the
8 waiting list and the FCC requirements and making sure that
9 someone is not trying to game the situation when a central
10 office is in exhaust.

11 But from a BellSouth standpoint, allowing the CLECs
12 to transfer the space is a good thing. Because the way we
13 recover the costs for the collocation space, the construction
14 cost is on a recurring basis. And the rates which I think you
15 will get into in November in this hearing are based on when the
16 equipment depreciates, the depreciation of the equipment. So
17 the longer we have someone paying the recurring costs the more
18 chance we are going to recover all of our costs. And so it is
19 a good thing for BellSouth to allow the transfers. The
20 question is how do we prevent gaming of the system in an
21 exhaust situation, the scalping of the tickets scenario.

22 COMMISSIONER DAVIDSON: Thank you, Mr. Gray. One
23 more question for staff on this. Do we have any FCC precedent
24 or guidance on this issue, or has the FCC just been completely
25 silent?

1 MS. KEATING: I personally am not aware of any. The
2 parties may have some that they intend to bring to light
3 through the hearing process, but --

4 COMMISSIONER DAVIDSON: And if the parties -- do you
5 know of any FCC precedent on this issue? Thank you. I have no
6 more questions, Chairman.

7 CHAIRMAN JABER: Commissioner Baez, you have your
8 light on.

9 COMMISSIONER BAEZ: A couple of quick questions.

10 CHAIRMAN JABER: Go ahead.

11 COMMISSIONER BAEZ: I want to try and flesh out this
12 scalping of the tickets. How timely with football season
13 coming. Anyway, when you assert that BellSouth would support
14 in an exhaust situation, that it is as part of a sale or
15 transfer of substantially all the assets, I just want it clear
16 in my mind you are speaking to something that will be the sale
17 of the entire company and all its assets, or are we talking
18 about specific locations?

19 THE WITNESS: As the counsel asked, you know, if it
20 were a regional sale, say all of the Orlando area and several
21 central offices, that too would be fine. The main thing is for
22 the Commission to have information at hand that allows them to
23 make a judgment as to whether the sale and that exhaust of the
24 central office is indeed a sale that is associated with the
25 sell of assets, or whether it is a case where someone has a lot

1 of extra space that they don't need and they decide to start
2 putting it on the market for sale. Put it on ebay or whatever,
3 you know.

4 COMMISSIONER BAEZ: And I guess, I think I understand
5 a little better. So we are not talking about, for instance, a
6 decision to sell equipment development and reserve space
7 essentially out of a particular central office that is in
8 exhaust. I think you are just referred to actually selling
9 excess space, and that to me is a different --

10 THE WITNESS: No, that is what I'm referring to.
11 Remember, our position at BellSouth is if the office is in
12 exhaust, then we fully support the ability of the CLECs to
13 trade space.

14 COMMISSIONER BAEZ: If it is not in exhaust.

15 THE WITNESS: If it is not in exhaust. If it is
16 exhaust, then we think that the Commission needs to ensure that
17 that transfer of space is not an effort to game the waiting
18 list, but rather, you know, a legitimate transfer of space for
19 business needs.

20 COMMISSIONER BAEZ: And would you agree or disagree
21 that there can be -- that the Commission's focus, for instance,
22 can be just that simple. That the first come -- that the FCC's
23 policy is not being frustrated, and it is not -- and the
24 requirement that it be a transfer of substantially all the
25 equipment and space necessarily be a requirement, rather that

1 the standard be that the FCC policy is not being frustrated?

2 Is it as simple as -- I mean --

3 THE WITNESS: Yes, sir. Yes, the substantial sale is
4 guidance from BellSouth and what we think would be a legitimate
5 --

6 COMMISSIONER BAEZ: What would constitute not
7 frustrating the --

8 THE WITNESS: Right.

9 COMMISSIONER BAEZ: Okay. Thank you.

10 CHAIRMAN JABER: Commissioners, any other questions?
11 Redirect.

12 REDIRECT EXAMINATION

13 BY MS. WHITE:

14 Q Mr. Gray, when there is a space exhaust situation in
15 the central office, does BellSouth have any requirements with
16 regard to the Florida Commission on getting waivers?

17 A Yes, I believe we do.

18 Q And what does that entail?

19 A Well, we have to -- first off we have to post within
20 ten days of realizing the space is exhausted, and we post it on
21 a CLEC website so that everyone knows. We have to then
22 substantiate our space requirements. We are allowed to reserve
23 up to 18 months, I believe it is, of growth in the office, and
24 we have to substantiate that to the Commission before we can
25 actually place the office on the exhaust list. And then when

1 it comes to dealing with CLEC applications, even at that point
2 a CLEC even though they go on the space exhaust list for future
3 need, they can also request virtual collocation space, which
4 means that I still must build-out space for them or provide
5 base space for the CLEC in my 18-month reserve growth space.

6 Q And so the waiting list comes about as a result of
7 the waiver and there not being any more space left, correct?

8 A That is correct.

9 MS. WHITE: Thank you very much. I have no further
10 questions.

11 CHAIRMAN JABER: Mr. Gray, thank you for your
12 testimony.

13 THE WITNESS: Thank you.

14 MS. WHITE: May Mr. Gray be excused?

15 CHAIRMAN JABER: Yes, absolutely.

16 MS. WHITE: Thank you.

17 CHAIRMAN JABER: Call your next witness.

18 (Transcript continues in sequence with Volume 2.)
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1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON)

4
5 I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter
6 Services, FPSC Division of Commission Clerk and Administrative
7 Services, do hereby certify that the foregoing proceeding was
8 heard at the time and place herein stated.

9 IT IS FURTHER CERTIFIED that I stenographically
10 reported the said proceedings; that the same has been
11 transcribed under my direct supervision; and that this
12 transcript constitutes a true transcription of my notes of said
13 proceedings.

14 I FURTHER CERTIFY that I am not a relative, employee,
15 attorney or counsel of any of the parties, nor am I a relative
16 or employee of any of the parties' attorney or counsel
17 connected with the action, nor am I financially interested in
18 the action.

19 DATED THIS 19th day of August, 2003.

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JANE FAUROT, RPR

Chief, Office of Hearing Reporter Services
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