ORIGINAL

Legal Department

J. Phillip Carver
Senior Attorney

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(404) 335-0710

September 9, 2003

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

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

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of BellSouth Telecommunications, Inc.'s Brief of the Evidence, which we ask that you file in the captioned docket.

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

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

Sincerely,

J. Phillip Carver

J. Phillip Carver (KA)

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

AUS
CAF
CMP
COM 5
CTR
ECR
GCL
OPC
MMS
SEC 1
OTH

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

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Hand Delivery (*), First Class U.S. Mail and Electronic Mail this 9th day of September, 2003 to the following:

Beth Keating, Staff Counsel
Adam Teitzman, Staff Counsel (*)
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Tel. No. (850) 413-6212
Fax. No. (850) 413-6250
bkeating@psc.state.fl.us
ateitzma@psc.state.fl.us

FPSC Staff By E-Mail Only:
amaurey@psc.state.fl.us
bgardner@psc.state.fl.us
bcasey@psc.state.fl.us
cbulecza@psc.state.fl.us
david.dowds@psc.state.fl.us
jschindl@psc.state.fl.us
jebrown@psc.state.fl.us
lking@psc.state.fl.us
plee@psc.state.fl.us
pvickery@psc.state.fl.us
plester@psc.state.fl.us
sasimmon@psc.state.fl.us
sbbrown@psc.state.fl.us
scater@psc.state.fl.us
tbrown@psc.state.fl.us
vmckay@psc.state.fl.us
zring@psc.state.fl.us

Joseph A. McGlothlin
Vicki Gordon Kaufman
Timothy Perry
McWhirter, Reeves, McGlothlin,
Davidson, Decker, Kaufman, Arnold,
& Steen, P.A.
117 South Gadsden Street
Tallahassee, FL 32301
Tel. No. (850) 222-2525
Fax. No. (850) 222-5606
Attys. for FCCA
Attys. for Network Telephone Corp.
Attys. for BlueStar
Attys. For Covad
jmcglothlin@mac-law.com
vkaufman@mac-law.com
tperry@mac-law.com

Richard A. Chapkis (+)
Terry Scobie
Verizon Florida, Inc.
One Tampa City Center
201 North Franklin Street (33602)
Post Office Box 110, FLTC0007
Tampa, Florida 33601-0110
Tel. No. (813) 483-2606
Fax. No. (813) 204-8870
Richard.chapkis@verizon.com
terry.scobie@verizon.com

Paul Turner
Supra Telecommunications & Info. Systems, Inc.
2620 S.W. 27th Avenue
Miami, FL 33133
Tel. No. (305) 476-4247
Fax. No. (305) 476-4282
pturner@stis.com

Susan S. Masterton (+)
Sprint Comm. Co. LLP
1313 Blair Stone Road (32301)
P.O. Box 2214
MC: FLTLHO0107
Tallahassee, FL 32316-2214
Tel. No. (850) 847-0244
Fax. No. (850) 878-0777
Susan.masterton@mail.sprint.com

Sprint-Florida, Incorporated
Mr. F. B. (Ben) Poag
P.O. Box 2214 (MC FLTLHO0107)
Tallahassee, FL 32316-2214
Tel. No. (850) 599-1027
Fax. No. (407)814-5700
Ben.Poag@mail.sprint.com

William H. Weber,Senior Counsel
Gene Watkins
Covad Communications
1230 Peachtree Street, N.E.
19th Floor
Atlanta, Georgia 30309
Tel. No. (404) 942-3494
Fax. No. (404) 942-3495
wweber@covad.com
gwatkins@covad.com

Rodney L. Joyce
Shook, Hardy & Bacon, L.L.P.
600 14th Street, N.W.
Suite 800
Washington, D.C. 20005-2004
Tel. No. (202) 639-5602
Fax. No. (202) 783-4211
Counsel for Network Access Solutions
rjoyce@shb.com

Verizon Florida, Inc.
Ms. Michelle A. Robinson
%Mr. David Christian
106 East College Avenue
Suite 810
Tallahassee, FL 32301-7704
Tel. No. (813) 483-2526
Fax. No. (813) 223-4888
Michelle.Robinson@verizon.com
David.Christian@verizon.com

Ms. Lisa A. Riley
Virginia C. Tate
1200 Peachtree Street, N.E.
Suite 8066
Atlanta, GA 30309-3523
Tel. No. (404) 810-7812
Fax. No. (404) 877-7646
lriley@att.com
vctate@att.com

Florida Digital Network, Inc.
Matthew Feil, Esq.
390 North Orange Avenue
Suite 2000
Orlando, FL 32801
Tel. No. (407) 835-0460
Fax. No. (407) 835-0309
mfeil@floridadigital.net

Catherine K. Ronis, Esq.
Daniel McCuaig, Esq. (+)
Jonathan J. Frankel, Esq.
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, DC 20037-1420
Tel. No. (202) 663-6000
Fax. No. (202) 663-6363
catherine.ronis@wilmer.com
daniel.mccuaig@wilmer.com

Jonathan Audu
c/o Ann Shelfer
Supra Telecommunications and
Information Systems, Inc.
1311 Executive Center Drive
Koger Center - Ellis Building
Suite 200
Tallahassee, FL 32301-5027
Tel. No. (850) 402-0510
Fax. No. (850) 402-0522
ashelfer@stis.com
jonathan.audu@stis.com

Mickey Henry
AT&T
1200 Peachtree Street, N.E.
Suite 8100
Atlanta, Georgia 30309-3523
Tel. No. (404) 810-2078
michaeljhenry@att.com

Mellony Michaux (by e-mail only)
AT&T
mmichaux@att.com

Roger Fredrickson (by e-mail only)
AT&T
rfrederickson@att.com

Tracy W. Hatch, Esq. **(+)**
AT&T Communications of the
Southern States, LLC
101 North Monroe Street, Ste. 700
Tallahassee, FL 32301
Tel. No. (850) 425-6360
Fax No. (850) 425-6361
thatch@att.com

Floyd Self
Messer, Caparello & Self
Post Office Drawer 1876
215 South Monroe Street, Suite 701
Tallahassee, FL 32302-1876
Tel. No. (850) 222-0720
Fax. No. (850) 224-4359
Co-counsel for AT&T
fself@lawfla.com

J. Phillip Carver (CA)

(+) Signed Protective Agreement

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Competitive Carriers for Commission Action To Support Local Competition In BellSouth's Service Territory	)	Docket No. 981834-TP
In re: Petition of ACI Corp. d/b/a Accelerated Connections, Inc. for Generic Investigation into Terms and Conditions of Physical Collocation	)	Docket No. 990321-TP
	)	Filed: September 9, 2003

BELLSOUTH TELECOMMUNICATIONS, INC.
BRIEF OF THE EVIDENCE

NANCY B. WHITE
150 West Flagler Street
Suite 1910
Miami, Florida 33130
(305) 347-5558

R. DOUGLAS LACKEY
J. PHILLIP CARVER
675 West Peachtree Street
Suite 4300
Atlanta, Georgia 30375
(404) 335-0710

ATTORNEYS FOR BELLSOUTH
TELECOMMUNICATIONS, INC.

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STATEMENT OF THE CASE

This docket was opened in 1999. By a Proposed Agency Action issued September 7, 1999), (Order No. PSC-99-1744-PAA-TP, the Commission adopted a set of guidelines for collocation. The Proposed Agency Action was subsequently protested, a hearing was held, and the Commission entered its *Final Order On Collocation Guidelines* on May 11, 2000 (Order No. PSC-00-0941-FOF-TP). The docket was left open, in part, to address pricing issues at a later time.

On November 4, 2002, the Commission entered an Order setting the current phase of this proceeding to address the remaining technical and pricing issues regarding collocation (Order No. PSC-02-1513-TCO-TP). A number of procedural Orders were issued thereafter. In one of these Orders (Order No. PSC-03-0702-FOF-TP, issued June 11, 2003), the Commission approved an agreement between the parties to resolve the Joint Motion to Strike. Under the terms of this Order (and the agreement), the hearing was bifurcated, with the issues that had previously been identified as Issues 1-8 to be presented at the hearing scheduled to begin August 11. These issues involved the terms and conditions of collocation, and also included a number of technical issues. The remaining issues identified in this docket, Issues 9 and 10, involve specifically the costs to provide certain collocation elements. The hearing on these issues is currently set to commence on December 11, 2003.

The first hearing did, in fact, begin on August 11, 2003, and concluded the following day. BellSouth presented the testimony of A. Wayne Gray and W. Keith Milner. Testimony was also presented by two witnesses for Sprint, and one Verizon. A witness also appeared for AT&T, the sole CLEC witness in this proceeding[1]. The hearing produced a transcript of 713 pages and 20

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[1] The acronyms CLEC and ALEC are used interchangeably herein.

exhibits. At the beginning of the hearing, the Commission discussed, then approved stipulations between the parties to resolve Issues 1B, 1C, and 2A through 2D. (Tr. 9-33).

This Brief of the Evidence is submitted in accordance with Commission's rules regarding Post-Hearing Procedures. A summary of BellSouth's position on each issue to be resolved in this docket is set forth in the following pages and marked with an asterisk. As to the issues that were resolved by stipulation of the parties, the stipulation is set forth after the respective statement of the issue.

STATEMENT OF BASIC POSITION

The Commission should adopt each of the practices, terms and conditions regarding collocation that are described below in BellSouth's positions on the issues. BellSouth's positions are consistent with the FCC's Rules and Orders regarding collocation. As to the Issues regarding charges for collocation, BellSouth generally takes two positions: (1) CLECs should pay the costs that ILECs incur to provide collocation to them; (2) the CLECs should pay the non-recurring charges that correspond to these costs, or begin to pay the recurring charges, when the product or service is provided. The positions advocated by BellSouth are both technically feasible and reasonable, and they will allow for collocation in a manner that is fair both to ILECs and ALECs.

STATEMENT OF POSITIONS ON THE ISSUES

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

**BellSouth's Position: ALECs should pay promptly after billing. The ILEC should bill as follows: Application Fees - when it provides an Application Response; charges for the BFFO, cable installation, cable records, and security access administration--when the ALEC submits its BFFO; all other services--after the service is provided.

An ALEC should be required to remit payment for non-recurring charges promptly upon billing by the ILEC. The appropriate time for billing by the ILEC depends upon the particular charge. As stated by BellSouth's witness, A. Wayne Gray, "BellSouth currently assesses non-recurring charges for application fees, the Bona Fide Firm Order, cable installation, cable records, security access administration, access card or key replacement, a space availability report and security escort service." (Tr. 45). BellSouth bills for the Application Fee at the time that it provides the application response. (Tr. 46). Billing at this time is appropriate "because the application fee is designed to recover the costs associated with assessing the ALEC's space requirements and developing the associated price quote." (Tr. 46-47). Once BellSouth has provided the ALEC with the application response, these activities have been completed (Id.).

Non-recurring fees for the Bona Fide Firm Order ("BFFO"), cable installation, cable records and security access administration are all billed by BellSouth when the ALEC submits its BFFO. (Tr. 47). All of these activities are performed on a one-time basis, and are provided very early in the provisioning period. Given this, it is appropriate for BellSouth to bill for these activities through non-recurring charges, and to do so at the time of the BFFO. As to the non-recurring fees to replace security access cards or keys, to provide a space availability report and for security escort, BellSouth proposes to bill the CLEC for each of these after the particular product or service is provided (Tr. 48). In each of these instances, the particular service or product would be ordered by the CLEC on an ad hoc basis. Therefore, it is appropriate for BellSouth to bill for these items on the next bill after the service or product is rendered.

Finally, BellSouth typically bills each ALEC for security escort services at the time the service is performed. As with security access card replacement and space availability

reports, this service is one that is rendered to the CLEC when needed, and it is appropriate for BellSouth to bill for the service as it is rendered. (Tr. 49).

The only CLEC witness to address this issue, Jeffrey King (on behalf of AT&T) did so in a very cursory fashion. Mr. King's entire pre-filed testimony on this point amounted to thirteen lines on a single page of his pre-filed Direct Testimony. (Tr. 581) Mr. King identified three types of non-recurring charges: (1) the application fee, (2) space preparation and processing the firm order, and (3) "other." In this third category, the charges are for cable installation, cross connects, etc. (*Id*). As to the application fee, Mr. King states that this fee should be billed within thirty days of the time "the ILEC notifies the ALEC of space availability." (*Id.*) As stated above, BellSouth proposes that this non-recurring charge be billed at the time an application response is provided. Thus, Mr. King appears to agree with BellSouth's position regarding the application fee. Likewise, concerning space preparation, Mr. King appears to agree with BellSouth that these charges should be billed at the time of the firm order. (*Id.*)

A disagreement appears to exist, however, regarding what Mr. King refers to as "other" non-recurring charges (e.g., cable installation, cross connects). Mr. King states that these "are billed within the thirty day billing cycle of the date that the ILEC has accepted the requested collocation . . ." (Tr. 581). Mr. King's Direct Testimony is somewhat confusing in that he simply presents this timeframe as if it reflects the practice of some or all ILECs. However, Mr. King's statement is not consistent with BellSouth's practice or with BellSouth's position in this proceeding. Instead, as stated previously, BellSouth submits that charges for items such as cable

installation should be made at the time that the provisioning period begins (i.e., at the time of the BFFO).

Mr. King provides no rationale in his testimony for his contention that billing should begin only after the CLEC accepts the space. In contrast, Mr. Gray provided in his testimony specific support for BellSouth's proposal, as follows:

> ... [N]on-recurring fees for cable installation, cable records, and security administration are billed at the time the ALEC submits its Bona Fide Firm Order to BellSouth. This is because the activities associated with installing cable, building cable records in BellSouth's central office databases and setting up the appropriate security access records in BellSouth's security access database for the ALECs employees and vendors would begin at the time the ALEC submits the Bona Fide Firm Order. In other words, while BellSouth is provisioning the space for the ALECs' occupancy, it is also installing cable, building the cable records in BellSouth's central office databases, and setting up the appropriate security access records in BellSouth's security access database for the ALECs, employees and vendors.

(Tr. 70).

In other words, again, these activities represent one-time events that take place early in the provisioning process. Thus it is appropriate for BellSouth to be paid at the time the provisioning period begins.

In contrast, under Mr. King's proposal, these activities would be paid for, not just at the end of the provisioning period, but at some later, undefined time at which the CLEC accepts the collocate space. Although space acceptance should occur promptly after space is ready, this is too frequently not the case. Under Mr. King's proposal, an ALEC that (for whatever reason) delayed space acceptance for weeks or months would pay nothing during this time period for services such as cable installation, even though BellSouth performed the work,

and incurred the necessary costs, well before the Space Ready Date. Clearly, BellSouth's proposal is the more equitable approach.

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

Stipulation of the Parties: If the CLEC accepts the collocation space before or within the time designated by the Interconnection Agreement ("ICA") between the CLEC and the ILEC, or, if there is no ICA between the parties or the ICA is silent on the period allowed for a walkthrough or the arrangement was ordered out of the ILEC's tariff, within 15 calendar days after the Space Ready Date, billing of monthly recurring charges should begin in the next billing cycle and should include prorated charges for the period from the CLEC acceptance date to the bill issuance date. If the CLEC does not conduct a walkthrough within the time designated by the ICA, or, if there is no ICA between the parties or the ICA is silent on the period allowed for a walkthrough or the arrangement was ordered out of the ILEC's tariff, within 15 calendar days after the Space Ready Date, billing of monthly recurring charges should begin in the next billing cycle and should include prorated charges for the period from the Space Ready Date to the bill issuance date. If the CLEC conducts the walkthrough but does not accept the collocation space, the ILEC and the CLEC should work together to resolve any problems with the space. If the CLEC occupies the collocation space prior the Space Ready Date, billing should begin in the next billing cycle and should include prorated charges for the period from the CLEC occupancy date to the bill issuance date. Disputes concerning the reasonableness of an acceptance or refusal of space should be resolved under the parties' ICA; if the dispute cannot be resolved by the parties pursuant to their ICA, it should be submitted to the Commission for resolution.

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

Stipulation of the Parties: When the CLEC cancels its request prior the Space Ready Date, there will not be a "cancellation charge." All parties agree the CLEC will be responsible for reimbursing the ILEC for costs specifically incurred by the ILEC on behalf of the canceling CLEC up to the date that the written notice of cancellation is received.

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

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

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

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

Stipulation of the Parties: An ILEC will be allowed to reclaim unused collocation space when the ILEC's central office is at or near space exhaustion and a CLEC cannot demonstrate that the CLEC will utilize the space within a reasonable time. In the event of space exhaust or near exhaust within a Premise, the ILEC must provide written notice to the CLEC requesting that the CLEC release non-utilized Collocation Space to the ILEC when 100% of the space in the CLEC's collocation arrangement is not being utilized. The CLEC, within twenty (20) days of receipt of a written notification from the ILEC, shall either: (i) return the non-utilized Collocation Space to the ILEC, in which case the CLEC shall be relieved of all obligation for charges for that portion of the Collocation Space so released or (ii) provide the ILEC information to demonstrate that the space will be utilized within the eighteen-months from the date the CLEC accepted the Collocation Space. Disputes concerning the ILEC's claim of exhaust or near exhaust or the CLEC's refusal to return requested collocation space should be resolved by parties pursuant to the parties' interconnection agreement. If the dispute cannot be resolved by the parties pursuant to their ICA, it should be submitted to the Commission for resolution.

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

**BellSouth's Position: Yes, if the central office is not in space exhaust and the ALEC is selling its in place collocation equipment. Otherwise, transfers should only be allowed with Commission approval when the transfer is part of the transfer of all (or substantially all) of the transferring ALECs' assets.

BellSouth generally does not object to the transfer of collocation space from one CLEC ("transferring CLEC" or "First CLEC") to another CLEC ("acquiring CLEC" or "Second CLEC") if the central office is not in space exhaust and the transfer space is in conjunction with the sale of equipment that is in place. To complete the transfer, the First CLEC would be required to notify BellSouth of its intention to transfer some or all of its existing collocation arrangement, submit a letter of authorization to BellSouth for the transfer, enter into a transfer agreement and return all access devices, such as keys and cards (Tr. 64).

The CLEC accepting the transfer would be required to submit an application to BellSouth for the transfer of the collocation arrangement. If the Second CLEC does not have an interconnection agreement with BellSouth, then it would be required to enter into one. BellSouth would also require Second CLEC to provide a letter to BellSouth for the assumption of services, and enter into a transfer agreement with the First CLEC and with BellSouth. Finally, the second CLEC would be required to perform any necessary restenciling of equipment. (Tr. 63-65)

If a CLEC wishes to transfer its collocation space when the central office is at space exhaust, the transfer should only be allowed if the CLEC is transferring all or substantially all of its assets and the Commission's approves the transfer. As Mr. Gray testified on behalf of BellSouth, this approach "would prevent an ALEC from circumventing the space exhaust waiting list by assuming another ALEC's collocation space on a location-by-location basis." (Tr. 91). To be specific, FCC Rule 51.323(f)(1) states that "[a]n incumbent LEC shall make space available within or on its premises to requesting telecommunications carriers on a first-come, first-served, basis."[2] Thus, the ILEC has the responsibility, when a central office is at space exhaust, to maintain a waiting list, and to assign collocation space that subsequently becomes available to CLECs as they appear on the list. The ILEC does not have the option of, for example, bypassing the first CLEC on the list and offering the space to the second or third listed CLEC instead. BellSouth believes that a CLEC that is attempting to transfer its space to another CLEC should not be allowed to circumvent these restrictions.

If a transferring CLEC were allowed to transfer without limitation, it could not only circumvent the FCC's wait list rule, it could do so for improper purposes. For example, a CLEC

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[2] 47 C.F.R. § 51.323(f)(1).

could simply ignore the order of CLECs on the waiting list, and transfer the space to the highest bidder. Perhaps even worse, the CLEC could make decisions concerning the transfer based on competitive (or more accurately, anti-competitive) factors. For example, a CLEC that believes that the first CLEC on the wait list in a given central office is its most robust competitor, could simply decide that it would transfer the space to some other CLEC that it perceives to be less of a competitive threat. Clearly, such action would be improper, and the Commission should not sanction any process that would allow this type of transfer to occur. For this reason, BellSouth submits that when a central office is in space exhaust, transfer should be allowed only under the very limited circumstances proposed by BellSouth above.

Regarding the situation in which the central office is not in space exhaust, AT&T's witness, Mr. King appears to agree with BellSouth's position. Specifically, in his prefiled Rebuttal Testimony, Mr. King answered a question as to whether he agrees with Mr. Gray's testimony on this point as follows: "Yes, generally in regard to the transfer in a central office that is not subject to exhaust." (Tr. 618) Mr. King did not further address this situation in his prefiled testimony.

On the witness stand, Mr. King stated that he agreed with BellSouth's position on this part of the issue, except the portion of Mr. Gray's prefiled testimony in which he states that the acquiring CLEC should be responsible for paying all charges as if it had requested a new collocation arrangement (Tr. 637)[3]. Mr. King also said, however, that he believed that Mr. Gray limited this testimony somewhat on cross examination, and that he agreed with Mr. Gray in light of these limitations. (*Id.*) Mr. King was referring to testimony given by Mr. Gray in which, during cross examination, he clarified that the fees associated with an application by the acquiring CLEC would

[3] Mr. King was referring to the portion of Mr. Gray's testimony that appears at Tr. 64, lines 11-15.

likely be less than the fees associated with an initial application because less work would need to be performed on behalf of the acquiring CLEC. (Tr. 104). Thus, with this clarification, Mr. King, the only CLEC witness to address this issue, agreed with BellSouth's position.

As to transfers when the central office is at space exhaust, Mr. King initially filed testimony in which he appeared to express the view that the ALEC should not be bound by the first-come, first-serve rule. (Tr. 619) At the hearing, Mr. King also provided an answer to a question by Commissioner Davidson that appeared to reflect this same view:

> Q. (by Commissioner Davidson) . . . If AT&T is next in line on a wait list for collocation space in an ILEC's central office, does Covad have, in your opinion, and this is a hypothetical, the unfettered right to sell its collocation assets and rights to the Florida Digital Network without objection from AT&T? You are next on the wait list.
>
> A. Technically, yes. It is their space, they reserved that space. If business conditions have changed and they can satisfy the conditions for transfer, we would not object to that type of transfer.

(Tr. 638).

However, at the hearing, Mr. King also testified that he agreed with all of the restrictions on transfer proposed by Mr. Gray on behalf of BellSouth when the central office is in exhaust. After Mr. King stated his general agreement on cross examination with Mr. Gray's testimony on this point, he was directed specifically to the portion of Mr. Gray's testimony that sets forth the restrictions that BellSouth proposes when the central office is at space exhaust.[4] This question and Mr. King's answer followed:

> Q. [Mr. Gray's testimony] says if a central office is in space exhaust, the ALEC should only be allowed to transfer collocation space if the transfer is part of a transfer of all or substantially all of the transferring ALEC's assets to another ALEC, and if

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[4] This portion of Mr. Gray's testimony appears at Tr. 65, lines 21-24.

> the Commission has approved the transfer in the space exhausted central office. Those are the restrictions that you are agreeing to, at least in part?
>
> A. Well, I believe a condition of transfer is generally that all assets or substantially all the assets are part of that transfer, so I agree with that part. On the second part of the conditions relative to the Commission, I did have notes as to how that process actually works, and I believe it is BellSouth's – that the ALEC has the responsibility of approaching the Commission to have approval for that transfer. I think that is reasonable to expect.

(Tr. 641)

Thus, it appears that Mr. King may not agree that a transferring ALEC should not be able to subvert the first-come, first-serve rule, but he did agree that all such transfers should require Commission approval. Again, BellSouth believes that the restrictions it proposes, including the requirement of Commission approval, should be sufficient to allow the Commission to ensure that no improper transfers occur.

Finally, during the hearing, Sprint's witness, Jimmy R. Davis, testified that any unpaid balances of the transferring should be addressed at the time of the transfer. (Tr. 509) This led to a discussion, and a subsequent request from Chairman Jaber that the parties address in their briefs the issue of whether ILECs that are faced with the prospect of a CLEC transferring its space to another CLEC, are more concerned with nonpayment by the transferring CLEC or potential nonpayment by the acquiring CLEC. (Tr. 506) BellSouth's position is that the CLEC acquiring the space would be required to go through the same application process as if it were applying for unoccupied central office space. Further, an interconnection agreement would be in place between the acquiring CLEC and BellSouth. Given this, BellSouth believes it would have as much protection against potential defaults by this collocator as it would with any other. Therefore, BellSouth does not have any particular concerns regarding a possible default by the second CLEC.

As to the CLEC/collocator that is transferring space, BellSouth understands the concerns expressed by Mr. Davis on behalf of Verizon regarding possible problems with allowing this CLEC to transfer the space even though it has unpaid bills. Nevertheless, BellSouth has not proposed that the transferring CLEC would have to pay all outstanding indebtedness before the transfer takes place. BellSouth has not proposed this requirement because, if the transferring CLEC is unable to meet its financial obligations, then BellSouth would prefer to have the collocation space taken over by a CLEC that is able to pay for the products and services supplied to it by BellSouth. Thus, BellSouth views having a viable CLEC in the space that is capable of paying its financial obligations as the paramount goal in this situation. BellSouth also believes that, in this situation, the ILEC would have the option to pursue all the normal remedies for collecting the unpaid debt of the transferring CLEC that would otherwise apply. Given this, BellSouth does not propose to make the payment of the outstanding debt of the First CLEC a condition of transfer.

Issue 4: Should the ILEC be required to provide copper entrance facilities within the context of a collocation inside the central office?

**BellSouth's Position: Generally, no. Consistent with the FCC's Orders and Rules in CC Dockets 96-98 and 91-141, ILECs are not required to accommodate requests for non-fiber optic facilities to be placed in the ILECs' entrance facilities unless the Commission determines in a particular case that this placement is necessary.

BellSouth's position is that it should not be required to accommodate CLEC requests that non-fiber optic (i.e., copper) facilities be placed in BellSouth's entrance facilities unless this Commission determines in a particular case that this placement is necessary. This is the only result that is consistent with the FCC's applicable Orders and Rules.

Specifically, FCC Rule 51.323(d)(3) (which was adopted in the FCC's CC Dockets 96-98 and 95-185)[5] provides the following:

> (d) When an incumbent LEC provides physical collocation, virtual collocation, or both, the incumbent LEC shall:
>
> • • •
>
> (3) Permit interconnection of copper or coaxial cable if such interconnection is first approved by the state commission[.]

Although this language does not specifically state that the approval must be on a case-by-case basis, this is the only interpretation that is consistent with the FCC's Orders on this issue. As Mr. Milner testified:

> The FCC clearly anticipated that this authority to place non-fiber optic entrance facilities will be granted by State Commission on a location-by-location basis. For any state Commission to permit copper entrance facilities universally would undermine the importance the FCC attributed to this issue and would be to the detriment of other ALECs desiring to collocate in an office with limited entrance space available.

(Tr. 144-45).

In the FCC's *First Report and Order*, the FCC concluded that it "should adopt the existing *Expanded Interconnection* requirements, with some modifications, as the rules applicable for collocation under section 251" (11 FCC Rcd at 15787, ¶ 565). The pertinent expanded interconnection requirement was set forth in the FCC's *Second Report and Order and Third Notice of Proposed Rulemaking.*[6] In that *Order*, the FCC specifically stated the following:

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[5] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection Between Local Exchange Carriers and Commercial Mobile Service* Providers, CC Docket Nos. 96-98 and 95-185, First *Report and Order*, 11 FCC Rcd 15499, (1996) ("*First Report and Order*").

[6] *In the Matter of Expanded Interconnection with Local Telephone Company facilities, Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board,* CC Docket 91-141, Transport Phase One, CC Docket No. 80-286, *Second Report and Order and Third Notice of Proposed Rulemaking,* 8 FCC Rcd 7374 (1993).

> LECs are not required to provide expanded interconnection for switched transport for non-fiber optic cable facilities (e.g., coaxial cable). In the *Special Access Order*, we concluded that given the potential adverse effects of interconnection on the availability of conduit and riser space, interconnection of non-fiber optic cable facilities should be permitted only upon Common Carrier Bureau approval of a showing that such interconnection would serve the public interest in a particular case. We adopt this approach for switched transport expanded interconnection.

(8 FCC Rcd at 7415-16, ¶ 69). (emphasis added).

Thus, the FCC, in recognition of the potential adverse effects of the use of copper facilities, clearly stated in the context of switched transport that it would only allow this interconnection after a case-by-case review and approval. Then, in the *First Report and Order*, the FCC applied this same standard to collocation. In that same *Order*, the FCC promulgated Rule 51.323, which provides that copper facilities can only be used for collocation if first approved by the State Commission. Logically, this rule can only be interpreted to require case-by-case approval. The alternative interpretation, that one-time "blanket" Commission approval is sufficient, would require the non-sensical conclusion that the FCC generally adopted one approach (case-by-case reviews) then sanctioned a conflicting approach for State Commission reviews.

On behalf of AT&T, Mr. King appeared to take the position in his pre-filed testimony that a CLEC should be allowed to use copper entrance facilities for collocation in any instance that it chooses to do so. (Tr. 585, 621). The only rationale offered for this position is Mr. King's statement that "copper technology, including copper entrance facilities, is still an integral part in the telecommunications industry." (Tr. 585). At the same time, Mr. King stated on cross examination that AT&T has been collocating in Florida for a number of years, and that it currently has 34 physical collocation arrangements in place. (Tr. 642). However, Mr. King also admitted that AT&T has never made a single request for copper entrance facilities to be placed in any of these central offices

for purposes of collocation. (Tr. 643). Mr. King also stated that AT&T has never made such a request of BellSouth anywhere in BellSouth's entire nine state region. (*Id*). Finally, Mr. King admitted that such a request would be a "very rare occurrence." (*Id.*) Thus, it is hard to understand what Mr. King means when he states that the copper facilities are an integral part of the network, given the fact that AT&T has never utilized them even one time in the many years that it has been collocating.

Moreover, on cross examination, Mr. King appeared to change his position on this issue (just as he did on Issue 3, discussed previously). Mr. King first stated that he is "amenable to addressing ... [CLEC requests to use copper facilities] ... on a case by case basis. (Tr. 644). Mr. King also proposed a process whereby, if a CLEC wishes to use copper entrance facilities, it would go first to the ILEC and attempt to work out an arrangement whereby this could be done. (Tr. 644-45). If the request could not be accommodated by mutual agreement of the ILEC and the CLEC, then it would be necessary for the Commission to resolve the dispute. (*Id.*)

Mr. King's proposal is, at least from a practical standpoint, agreeable to BellSouth. Further, to the extent that the ILEC and the CLEC cannot reach an agreement, having the Commission review the specifics of the request, then resolve the dispute by the entry of an Order is consistent with the case-by-case approach required by Rule 51.323(d)(3). The problem with Mr. King's proposal is that, in the instances in which an agreement can be reached, it would allow the placement of copper entrance facilities without Commission approval, which would constitute a technical violation of Rule 51.323. Thus, BellSouth submits that if the Commission decides to adopt this approach, then it must insure compliance with the FCC rule by requiring the parties in this situation to obtain a Commission Order approving any agreement to provide copper entrance

facilities in each case. Presumably, the parties would jointly come before the Commission and request an Agreed Order to allow the mutually acceptable arrangement. Thus, entering an Order under these circumstances should not place any undue burden on either the Commission or the Parties. At the same time, this essentially ministerial process would be necessary to satisfy the pertinent FCC rule.

During the hearing, the Commission requested that parties address in their briefs how this issue has been resolved in other states. (Tr. 265). In BellSouth's region, North Carolina is the only state other than Florida to hold a generic collocation proceeding. The North Carolina Commission found that "the unfettered use of copper entrance facilities . . . would accelerate the exhaust of ILEC central office entrance conduit and subduct." (*Order Addressing Collocation Issues*, issued December 28, 2001, Docket No. P-100, Sub 133j, p. 333). Accordingly, the North Carolina Commission ruled that, "central office entrance facilities should be limited to fiber optic cable unless the ILEC and CLP mutually agree to placement of copper entrance facilities or the CLP can convince the Commission, in a complaint proceeding, to authorize such placement at a particular premises on a case-by-case basis." (Id.).

This issue has also been addressed three times by State Commissions in the context of arbitrations between BellSouth and MCI. The Georgia Commission allowed the use of copper entrance facilities (*Order*, issued February 6, 2001 in Docket 11901-U, p. 20). The Tennessee Regulatory Authority found that "using copper facilities would certainly accelerate the exhaust of entrance facilities quicker than if providers used only non-copper entrance facilities." (*Interim Order of Arbitration Award*, issued April 3, 2002, Docket No. 00-00309, pp. 47-48). Therefore, the TRA concluded that WorldCom can use copper entrance facilities only if there "is no space constraint in

BellSouth's central offices" (Id., p. 48). If the parties disagree as to whether space constraints exist, the TRA will resolve the issue upon the filing of a petition by WorldCom. (Id.).

Finally, this Commission has previously ruled in the context of an arbitration between BellSouth and MCI that, "BellSouth shall not be required to allow the use of non-fiber entrance facilities except where WorldCom has an adjacent collocation arrangement." (*Final Order on Arbitration*, Order No. PSC-01-0824-FOF-TP, issued March 30, 2001, Docket No. 000649-TP, pp. 123-24).

Issue 5: Should an ILEC be required to offer, at a minimum, power in standardized increments? If so, what should the standardized power increments be?

**BellSouth's Position: Yes. An ALEC may obtain power from BellSouth in all available power increments from 10 amps to 100 amps. If, however, the CLEC installs its own BDFB inside its collocation space to order power directly from BellSouth's main power board a standard 225 amp power feed is required.

BellSouth proposes to make power available to CLECs in standardized increments. As Mr. Milner testified, there are three options under which the CLEC can order power for collocation. First, the CLEC may request power from BellSouth's Battery Distribution Fuse Board ("BDFB") if "in all available power increments that range from as low as 10 amps all the way up to 100 amps, or any combination thereof, to each piece of equipment in the collocation space." (Tr. 130). Second, the CLEC may "install its own BDFB inside its collocation space and order power directly from BellSouth's main power board." (Tr. 131). In this case, "a standard 225-amp power feed is required to connect the ALEC's BDFB to BellSouth's main power board." (Id.). As Mr. Milner explained, the main power board is the main DC power distribution source for all equipment, both BellSouth's and the ALEC's. BellSouth opposes the use of a protection device smaller than

225 amps at the main power board. The 225 amp circuit breaker standard has been used by BellSouth for safety reasons since 1993. (*Id.*) Also, this standard complies with specific National Electric Code ("NEC") requirements for electrical system coordination. (*Id.*).

As Mr. Milner also testified, TPS type fuses (which are most commonly used in BellSouth's central office) have a three-to-one ratio for upstream protection versus downstream protection. For example, if a 60-amp fuse is used in the BDFB equipment buys, at least a 180-amp upstream device is required to serve the BDFB. For example, assuming a particular equipment bay requires a 40-amp drain and a 60-amp protection device, it would be a violation of the National Electric Code for BellSouth to serve the ALECs' BDFB with a smaller protection device (such as one rated at 125 amps). (Tr. 132-33).

Under the third option, the ALEC would install its own BDFB in the collocation space and obtain power from BellSouth's BDFB. (Tr. 133-34). Again, if the CLEC chose this option, then it could order power in increments that range from 10 to 100 amps. In summary, as Mr. Milner stated, "each ALEC must make its own determination as to which option it wishes to use for obtaining DC power into its collocation space ... [A]ll ALECs have the ability to obtain small units of DC power (i.e., in as low as 10 amps) from BellSouth." (Tr. 134)

Thus, BellSouth appears to offer what the CLECs have requested in this proceeding (at least based on Mr. King's testimony), with one exception: Mr. King states in his testimony that ILECs should be required to provision power in fused increments of 5 to 225 amps. (Tr. 585). As discussed above, BellSouth makes available to the CLEC power in the increments specified by Mr. King, except that 10 amps is the smallest increment offered.

Beyond this Mr. King also states that "power, as defined for purposes of charges 'per amp', should be offered in one (1) amp increments." (Tr. 585). This contention, however, really relates more to the billing matters addressed in Issue 6. As will be discussed below as part of Issue 6, BellSouth proposes to bill for power based on what the CLEC orders. Mr. King proposes on behalf of AT&T that CLECs only pay for the power they use (in increments as small as one amp), regardless of what they order on their collocation application, or the cost that ILEC's must incur to comply with the CLEC's order. This is, however, an issue that is beyond the scope of Issue 5 in that it involves how the charges for power should be developed, rather than whether power should be offered in standardized increments.

Issue 6A: Should an ILEC's per ampere (amp) rate for the provisioning of DC power to an ALEC's collocation space apply to amps used or fused capacity?

**BellSouth's Position: The per amp charge should apply to the fused capacity of an ALEC's equipment in its collocation space. Since protection devices are sized at 1.5 times the anticipated power drain, the recurring power rate is assessed by BellSouth by applying a 0.67 multiplier to the fused capacity.

Issue 6B: If power is charged on a per-amp-used basis or on a fused capacity basis, how should the charge be calculated and applied?

**BellSouth's Position: The rate for DC power should be calculated on a per-amp basis. The charge by BellSouth should reflect the difference between fused capacity and rated capacity by using an adjustment factor of .67. This factor reflects the 1/1.5 relationship of fused capacity to rated capacity.

BellSouth's position is that the per amp charge to the ILEC for DC power should be based on the fused capacity of equipment that the ALEC installs in its collocation space. (Tr. 135). As Mr. Milner explained, "fuse type protection devices are sized of 1.5 times the anticipated drain to ensure that the equipment can be operated at full capacity without operating the protection device while allowing the protection device to safely clear any fault conditions (short circuits or overloads)

that may occur." (*Id.*). Accordingly, BellSouth proposes to take the size of the fused protection device on the equipment in question, and multiply it by 0.6667 to arrive at the monthly recurring charge to the ILEC (Id.).

As Mr. Milner also noted in his testimony, the Commission has already resolved this issue in the context of an arbitration between BellSouth and WorldCom.[7] In the Final Order in that arbitration, the Commission adopted BellSouth's proposal and stated the following:

> ... [W]e agree with BellSouth witness Milner that metering WorldCom's actual usage would be costly and time consuming. While specific numbers were not provided, we suspect that the costs of metering could exceed the difference in costs of applying the rate to fused capacity versus amperes used. Therefore, we find that the per ampere rate for the provision of DC power to WorldCom's collocation space shall apply to fused capacity.

(*Id.*, P. 126).

Although a great deal of Mr. King's Testimony was devoted to this issue, there has been nothing presented either in the prefiled testimony or at the hearing that would provide a basis for the Commission to reverse the previous resolution of this issue.

AT&T's witness, Mr. King, testified that "ALECs should have the option of having their power charges billed based on the power usage consumed by the ALEC's equipment." (Tr. 609). Mr. King also proposed the installation of power meters to determine the precise amount of electricity used by the ALEC. (Tr. 610). BellSouth continues to believe that the installation of power meters is not a particularly workable approach because of both the technical issues involved

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[7] *Petition by MCImetro Access Transmission Services LLC and MCI WorldCom Communications, Inc. for arbitration of certain terms and conditions of a proposed agreement with BellSouth Telecommunications, Inc. concerning interconnection and resale under the Telecommunications Act of 1996,* Order No. PSC-01-0824-FOF-TP, FPSC Docket No. 000649-TP, (rel. Mar. 30, 2001) ("Florida MCI Arbitration Order").

and the cost associated with metering. BellSouth also agrees, however, that such a solution is theoretically possible.

The real issue, however, is not that the CLECs want metering. Instead, the far bigger issue is that the CLECs wish to use metering as a way to avoid paying for the costs that they cause.[8] In essence, AT&T and the other CLECs are willing to pay for what they use, but not what they order. This means that if AT&T (or any other CLEC) orders much more power than it actually needs, then under Mr. King's proposal, it would only pay for the relatively small percentage of the ordered power that it actual uses. This would also mean, of course, that the ILEC would be left to absorb the excess costs of building the infrastructure to provide what the CLEC represented that it would use. In one of the many analogies offered during the hearing for the CLEC's position on this issue, Sprint's witness, Mr. Davis, made the comparison to a customer in a restaurant, ordering a steak, eating one fourth of the steak, then insisting that he would pay only for the portion of the steak that he ate. (Tr. 360-61).

The recurring, per amp charge for power is composed of two components: the power itself (i.e., the electrical current) and the infrastructure that is utilized to supply the current. Upon cross examination, Mr. King agreed that the infrastructure necessary to supply power is comprised of items such as rectifiers, fuses, cables, batteries, and fuse bays. (Tr. 677). This infrastructure comprises most of the cost of DC power. Mr. Milner estimated that infrastructure comprises approximately 70% to 80% of the total cost of DC power, on average. (Tr. 201). Mr. Davis, on behalf of Sprint, testified that infrastructure comprises 80% of the cost of DC power. (Tr. 362). Again, BellSouth's proposal is to bill a CLEC for power based upon what it states in its application

[8] Although Mr. King was the only CLEC witness to testify in this proceeding, all CLECs that participated

that it will need, and the equipment that BellSouth must install or otherwise make available to meet these needs. For example, if a CLEC states that it needs fifty amps and the appropriate protection device is sized at 75 amps, then the CLEC would ultimately be billed for the 50 amps that it has told BellSouth that it will use. Thus, if a CLEC makes reasonably accurate estimates of its power needs on its collocation application, then, under BellSouth's approach, the CLEC will be correctly billed for both the power it uses and the infrastructure necessary to supply that power.

In marked contrast, under Mr. King's proposal, if the CLEC tells the ILEC that it requires 50 amps for the equipment it will collocate, and the ILEC builds infrastructure having the appropriate capacity to meet the stated needs of the CLEC, the CLEC would still only pay for the power it actually uses, even if it turns out to be only a very small portion of what it has represented to the ILEC that it will need. It is obvious that in this scenario the ILEC would be forced to inequitably bear the cost of the CLECs poor planning. On cross examination, Mr. King conceded that if, for example, AT&T tells BellSouth that it needs 50 amps in a particular central office, then BellSouth is required to provide that capacity. (Tr. 676). BellSouth cannot simply assume that AT&T has over-ordered, and ignore what AT&T has told BellSouth that it will need. As Mr. King stated in response to a question from Commissioner Davidson, "the engineering had to be done of the 50 amps, because the plant needs to be capable of delivering what the CLEC requests." (Tr. 680). This holds equally true for all CLECs. Thus, Mr. King also conceded that if there are five CLECs, and each represents to BellSouth that it needs 50 amps of power for its collocated equipment, then BellSouth must provide a power plant sufficient to supply a total of 250 amps to these CLECs. (*Id.*)

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took the same position on this issue in their Pre-Hearing Statements.

Nevertheless, Mr. King asserted that, using the same example, if AT&T only uses three amps of power in a given month (despite the order of 50), then they should only pay for three. Obviously, in this situation, the CLEC is grossly underpaying the costs that it has caused the ILEC to incur. On the same point, Mr. Davis testified (for Sprint), that "the ILEC is required to provide the DC power plant investment, which includes the batteries and rectifiers, power boards, et cetera, necessary to produce 100 percent of the power the ALEC orders and does not avoid the cost of doing so irrespective of how little DC power the ALEC actually uses." (Tr. 355).

During cross examination, Mr. King agreed that AT&T pays BellSouth, under the Interconnection Agreement between the parties, approximately $7.50 per month per amp for DC power. (Tr. 675)[9] Thus, under this particular hypothetical, if AT&T used three amps in a given month, then it would pay to BellSouth $22.50 per month. Sprint witness, Mr. Davis, estimated that DC power plant has an average cost of approximately $500 per amp. (Tr. 365). Thus, in this hypothetical, providing equipment sufficient to allow AT&T to draw 50 amps of power would cost approximately $25,000. It is clearly unreasonable for AT&T to contend that it should be required to pay only $22.50 a month for a $25,000 investment that BellSouth has been required to make on its behalf.

Mr. King, however, claimed during cross-examination that, even at this low rate of payment, the power plant would be paid for eventually. (Tr. 677). Mr. King is, of course, wrong on this point. At a payment rate of $22.50 a month, AT&T would pay BellSouth in this hypothetical $270 per year. Assuming a $25,000 power plant, AT&T would pay BellSouth for the cost that it has

[9] Mr. King estimated that the current rate was "maybe $7.80." (*Id.*) However, the current Interconnection Agreement between AT&T and BellSouth, dated October 26, 2001, lists a rate of $6.95 per fused amp (Attachment 4, Ex. B, p. 1). The Agreement has been filed with the commission and is a matter of public record.

incurred on AT&T's behalf in approximately 92 years, long after the expiration of the useful life of any piece of equipment that comprises the power plant. Moreover, even this calculation assumes that there is no debt service for the investment that BellSouth makes on AT&T's behalf. Given the fact that this is not a reasonable assumption, and that the debt service on a $25,000 investment even on the most favorable terms would be more than $270 (i.e., 1.08%) per year, the reality is that AT&T would never pay BellSouth for the cost that BellSouth has incurred to provide power to AT&T.

Moreover, although the above example is hypothetical, it is not unrealistic. In his prefiled rebuttal testimony, Mr. King stated that in 2001, AT&T's collocation sites throughout Florida had primary fuses that totaled 18,025 amps. (Tr. 608). Mr. King also testified that the total usage measured during that time by AT&T statewide was 666.97 amps. (Id.). Although he does not say so specifically, Mr. King appeared to testify that this amount is the average monthly usage over the entire year. Mr. King does not provide in his testimony any indication of how much power AT&T actually represented to BellSouth on its application that it would need. However, if we make the conservative assumption that AT&T ordered one half of the fused capacity that was provided, then this would mean that AT&T used a little more than seven percent of the power that it ordered, and which BellSouth was required to provide infrastructure to supply. Mr. King gave the above-noted testimony in the context of claiming that, under BellSouth's proposed billing method, AT&T would be over billed. The simple response to this contention is that any over billing could be avoided if AT&T would make a more reasonable estimate of what it actually will use. Mr. King's testimony on this point, however, does provide a dramatic example of the way in which AT&T would be grossly underbilled under AT&T's proposal.

Under AT&T's proposed billing method, BellSouth would be required to invest

hundreds of thousands of dollars to provide power to AT&T, while AT&T would only pay a miniscule percentage of the cost actually incurred on AT&T's behalf. Again, assuming AT&T ordered 9,000 amps of DC power in 2001 at a cost of $500 per amp, this means that BellSouth was required to make available to AT&T statewide infrastructure at a cost of approximately $450,000. The undeniable fact is that a CLEC's gross overestimation of its power needs (e.g., AT&T in 2001), undoubtedly results in the generation of costs that someone must pay. Mr. King provided no rationale whatsoever as to why, in this situation, the ILEC should be required to pay these costs, as opposed to the CLEC that caused the costs.

During cross examination, Mr. King also advanced the novel theory that the ILEC would somehow be fully compensated because the central office power plant would be used by the ILEC and all collocating CLECs, and somehow, this would result in the ILECs' costs being paid in full. (Tr. 677-78.) This theory, first of all, prompts the question that was posed to Mr. King by Commissioner Davidson: why should the CLEC not pay costs that, "but for the CLEC's request, the ILEC would never incur."? (Tr. 669). The real answer to this questions is that is no reason. Each CLEC should be responsible for paying the cost that it incurs, and Mr. King's proposal obviously violates this principle.

More to the point, Mr. King's notion that the ILEC's infrastructure costs would somehow be compensated by the aggregate of ILEC and CLEC usage is pure fantasy. Again, Mr. King admitted on cross examination that BellSOuth is obligated to provide each CLEC with the infrastructure necessary to supply the power that the CLEC orders on its application. Going back to the previously discussed hypothetical, if each of five CLECs orders 50 amps of power for a particular central office, BellSouth must provide a power plant sufficient to supply 250 amps. If AT&T uses

only seven percent of what it orders, as it did in 2001, then it is patently implausible that the other CLECs will use power that exceeds their projections to such an extent to allow full recovery of the infrastructure costs. Even if we assume that there are multiple collocators in the central office other than AT&T, and even if we make the (essentially groundless) assumption that they would all exceed their projected use, it is doubtful that they could exceed their individual power projections by enough to make up the short fall in AT&T's usage while still remaining within the capacity of the fuses and other equipment dedicated to them. In fact, Mr. King admitted during the hearing that he had no record evidence to support his theory. (Tr. 679)

Moreover, as a practical matter, what Mr. King suggested as a method of cost recovery simply would not occur. Mr. King's testimony demonstrated that AT&T, despite having several years of experience with collocation, grossly overestimated in 2001 the amount of power that it would use. This occurred in a situation in which AT&T was, effect, required to pay for what it ordered. One can only imagine the extent to which AT&T and other CLECs would over-order power plant infrastructure if they could do so without having any responsibility whatsoever for the cost that they would force the particular ILEC to incur.

Mr. King also advanced the theory that the ILEC can recover its costs even if a CLEC (or all CLECs) under uses the infrastructure capacity it orders because the rates are set to achieve full recovery without full usage. In the context of an analogy posed by Commissioner Baez, Mr. King testified that the owner of a parking lot with 500 spaces would price parking so that the lot owner has full recovery if 375 spaces are used on average. (Tr. 685). The analogy, however, really only demonstrates the fundamental flaw in AT&T's position. In this example, the parking lot owner uses a set utilization factor of 75% (375 of 500). Mr. King's testimony demonstrated that in 2001 AT&T

utilized only a very small portion of the power plant capability it ordered in its application. Further, Mr. King made a point of noting that the CLECs usage would vary from one time period to the next. (Tr. 677). Obviously, a set utilization factor cannot be used to accurately price power unless the factor is, on average, an accurate assessment of the percentage of actual power plan use. Mr. King, however, argued that the CLEC should pay for whatever power it uses, whatever that may be, and regardless of how it compares to what the CLEC ordered (e.g., it could be 6% one year, 70% the next, 17% the next, etc). It is obviously impossible for the ILEC to use a static utilization factor (such as 75%) to set rates to fully recover costs when actual usage (and in AT&T's view, actual payment) constantly varies in ways that only the CLEC could predict.

Although the Commissioner asked many questions of Mr. King during the hearing, in an effort to make sense of his proposal, the only proper conclusion concerning AT&T's position was articulated by Chairman Jaber, who expressed to Mr. King the hope that he took seriously "the absurdity of [his] argument." (Tr. 687) The position of AT&T and the other CLECs on this issue is, in fact, absurd. As stated previously, the Commission has already adopted BellSouth's proposed approach to billing for power, and there was no evidence presented at the hearing that would provide a basis for the Commission to change its approach.

Finally, during the hearing, several witnesses discussed the possibility of splitting out the infrastructure charge from the charge for the actual electrical current. Under this proposal, the CLEC would pay for the infrastructure necessary to provide the power that it orders, but would only pay for the actual energy that it consumes. Mr. King stated that AT&T would be willing to consider this. Mr. King also stated, however, that AT&T would take the position that its infrastructure "usage" should not be based on what it orders (i.e., the cost that the ILEC incurs on its behalf), but

rather on its power usage. (Tr. 655) Thus, this alternative approach to billing, which has certain attractive characteristics from a practical standpoint, would still not resolve the fundamental problem that AT&T and the other CLECs do not wish to pay for the costs they cause the ILEC to incur.

Issue 6C: When should an ILEC be allowed to begin billing an ALEC for power?

**BellSouth's Position: Billing should begin at the same time as the recurring charges addressed in Issue 1B, i.e., upon space acceptance, if the CLEC conducts a walk through within 15 days of the Space Ready Date; otherwise, billing should begin on the Space Ready Date.

Power is billed on a recurring basis. Therefore, BellSouth's position, as stated in the testimony of Mr. Milner, is that recurring power charges should be handled in precisely the same manner as the recurring charges addressed in Issue 1B. (Tr. 139). Specifically, if the ILEC conducts an acceptance walkthrough of the space within 15 calendar days of the Space Ready Date, then the recurring charges would begin on the date the ALEC accepts the space. If the ALEC does not conduct the walkthrough within 15 days, then the monthly charges would begin on the Space Ready Date. (*Id.*). As Mr. Milner testified, when BellSouth turns the space over to the CLEC, the CLEC has the ability to begin using power at this time. Further, at this time, "BellSouth has performed work on the ALEC's behalf for power plant construction and associated components such as batteries and rectifies as well as circuit breaker positions at the main power board." (Tr. 151). Since BellSouth has incurred costs to serve the CLEC at this time, billing should begin at this time.

Prior to the hearing, the parties stipulated to a procedure for billing the recurring charges addressed in Issue 1B that is almost identical to BellSouth's proposal on this issue.[10] All parties agreed that the recurring charges at issue in 1B, which would typically include the installation

[10] The stipulation of the parties on Issue 1B entails a more detailed procedure than BellSouth has proposed

of cable racking, power augments, and other physical modifications to the space, (Tr. 51) would begin, essentially, upon space acceptance. Inexplicably, the CLECs have refused to take the same approach to the recurring charges that relate specifically to power. Instead, the only CLEC witness to address this issue, Mr. King, was adamant that the CLECs should only pay for power when the power is actually used.

Mr. King he stated in his pre-filed Direct Testimony that "as . . . discussed in Issue 1B, an ALEC "should be billed for power once power is being provided and used by the ALEC" (Tr. 538)[11] (emphasis added). Thus, Mr. King tacitly acknowledges in his testimony that the issue regarding the recurring charges for power and the recurring charges addressed in 1B are the same. This makes the refusal of AT&T and the other CLECs to agree to the same procedures stipulated for Issue 1B impossible to understand. Cable racking is a physical modification that is encompassed by Issue 1B, and that the parties have stipulated should be billed on a recurring basis as soon as the space is accepted. The cable racking, might not be used by the CLEC immediately upon space acceptance. For example, there might be a delay between space acceptance and actual occupation and use. Nevertheless, by the time space acceptance occurs, BellSouth has already installed the cable racking and has already incurred the cost to do so. Therefore, BellSouth should be entitled to begin to recapture on a recurring monthly basis the cost that it has already expended on behalf of the CLEC. Apparently AT&T and the other CLECs agreed with this proposition because they did agree to the stipulation in 1B, which would, cover cable racking.

The issues are precisely the same regarding recurring charges for power. Power can only be supplied once the infrastructure is in place, and this infrastructure must be put in place before

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here, but the two are conceptually identical.

the CLEC accepts the space. As discussed previously as part of Issues 6A and 6B, the per amp charge for power is comprised of approximately 20-30% for the actual electrical current, and 70-80% for the infrastructure. This infrastructure must be in place before the CLEC accepts the space. This means that BellSouth has incurred most of the cost to supply power before the CLEC accepts this space. Given this, this issue is very much like 1B and should be resolved on the same basis. The CLEC should pay for power on a recurring basis, commencing at the time that it accepts the collocation space.

Issue 7: Should an ALEC have the option of an AC power feed to its collocation space?

**BellSouth's Position: Yes, the ALEC should have the option of obtaining an AC power source in accordance with the requirements of the National Electric Code in those instances in which a local authority having jurisdiction permits this arrangement.

The only CLEC witness to testify, Mr. King, advocated that ALECs should have the option of an AC power feed in their collocation space. (Tr. 588). In his testimony on behalf of BellSouth, Mr. Milner stated of that BellSouth is willing to provide this power "for convenience outlets as well as to power any AC equipment." (Tr. 141). Thus, it would appear that BellSouth's offering is generally acceptable to AT&T, and presumably the other CLECs as well. The only apparent area of disagreement is that Mr. King also states in his testimony that the ALECs should have the option of having the AC power feed in order to "convert AC power to DC power if needed." (Tr. 588).

[11] This testimony was, of course, filed before AT&T changed its position and entered into the stipulation on Issue 1B.

As Mr. Milner testified, BellSouth is opposed for both technical and safety reasons to CLECs using convenience outlets to convert AC power to DC power. (Tr. 152). BellSouth already provides DC power in its central office, so this conversion is really not necessary (Id.). Moreover, conversion from AC power to commercial electric utility DC power is accomplished through rectifiers. Batteries and generators are necessary to provide backup DC power in the event of a loss of AC power, either from the commercial electric utility or from rectifier failure. (Tr. 152-53) Therefore, if an ALEC used AC power in the way that Mr. King proposes, it would be necessary for it to maintain its own backup power supply. (Tr. 153). This power supply would have to be located in the central office in the way that would meet with the strict code requirements that apply for power equipment. (Id.). However, as Mr. Milner stated "the collocation area of the central office is not an area that would comply with these strict code requirements." (*Id.*).

Thus, this particular aspect of Mr. King's proposal is simply not plausible, given the practical and technical limitations that apply within the central office. BellSouth is otherwise agreeable to the CLECs' request that AC power be provided, but it must be provided in a way that encompasses the practical realities of collocation, and is compliant with all applicable safety requirements.

Issue 8: What are the responsibilities of the ILEC, if any, when an ALEC requests collocation space at a remote terminal where space is not available or space is nearing exhaustion?

**BellSouth's Position: The ILEC should allow the requested collocation if space exists at the remote terminal. If no space exists, the ILEC (1) should be allowed to file a waiver request if it has not collocated its own equipment; or (2) should augment the space if its own equipment is in the DLC.

BellSouth's position regarding the responsibilities of an ILEC when an ALEC requests collocation space at a remote terminal were set forth succinctly in the testimony of BellSouth's witness, Keith Milner, as follows:

> If sufficient space exists within the DLC remote terminal, BellSouth will allow the ALEC to collocate its equipment, including Digital Subscriber Line Access Multiplexer ("DSLAM") equipment, regardless of whether BellSouth has installed its own equipment or DSLAM at the remote terminal location ... If sufficient space does not exist within the DLC, and BellSouth has not installed its own DSLAM equipment, then BellSouth may deny the request and file a collocation waiver request with this Commission for that DLC remote terminal site. ... If sufficient space does not exist within the DLC, and BellSouth has installed its own DSLAM equipment at that DLC remote terminal location, then BellSouth will take whatever action is required to augment the space at the DLC remote terminal such that the ALEC can install its own equipment, including a DSLAM, at that DLC remote terminal.

(Tr. 141-42).

The only CLEC witness to file testimony, Mr. King, did not oppose BellSouth's proposal in his rebuttal testimony. Further, Mr. King's direct testimony on this point was almost completely limited to the assertion that "the ILEC should be responsible for notifying the ALEC community via its form of communications such as website postings or Carrier Notification Letters of the remote terminal sites that are exhausted." (Tr. 588). Mr. King also asserted that, in these cases, the ILEC should provide to the CLECs a plan of action to remedy any exhaust situations. (*Id.*)

As Mr. Milner testified, however, Mr. King's proposed notification requirement is patently unworkable. There are over 10,000 remote collocation sites in Florida. (Tr. 154). While the Commission has addressed processes for notification of waiver requests for central offices, there are only 200 central offices in Florida. It is one thing to require notification for 200 central offices, it is quite another to require notification when there is a potential for exhaust in any of the 10,000

remote sites. Mr. Milner also testified that, "since BellSouth is not privy to ALECs' plans to collocate equipment in particular remote terminals, BellSouth cannot determine with precision where and when space within remote terminals will be exhausted." (Id.). In other words, given the limited amount of space available in remote terminals, exhaust could occur rather quickly, and it would be difficult for BellSouth to anticipate when this might occur in a way that would allow it to give the notice that Mr. King proposes. Finally, as Mr. Milner also testified, "there are no pending requests for remote site collocation in Florida" at this time. (Id.).

Thus, even if it were possible for BellSouth to somehow intuit the intentions of ALECs and give advance notice of space exhaust, this would propose a tremendous financial burden that is simply not justified by the current demand (or lack of demand) for collocation at remote terminals. Again, there are over 10,000 remote terminals in Florida, and there is not a single pending CLEC request for collocation at these terminals. Given this, there is no justification for imposing on BellSouth a costly and burdensome notification process in the absence of any showing that there is a practical need for this process.

CONCLUSION

For the reasons set forth above, the Commission should adopt the position of BellSouth on each of the disputed issues.

Respectfully submitted this 9th day of September, 2003.

NANCY B. WHITE (LEA)
Museum Tower
150 West Flagler Street
Suite 1910
Miami, Florida 33130

R. DOUGLAS LACKEY
J. PHILLIP CARVER
General Attorneys
Suite 4300, BellSouth Center
675 West Peachtree Street, N.E.
Atlanta, GA 30375
(404) 335-0710

502427