DOCKET FILE COPY ORIGINAL

FCC MAIL SECTION

JUN 16 8 24 AM '97

DISPATCHED

FCC 97-208

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Local Exchange Carriers'	)	CC Docket No. 93-162
Rates, Terms, and Conditions	)	
for Expanded Interconnection	)	
Through Physical Collocation	)	
for Special Access and Switched Transport	)	

SECOND REPORT AND ORDER

Adopted: June 9, 1997 Released: June 13, 1997

By the Commission:

TABLE OF CONTENTS

Paragraph No.

I. INTRODUCTION 1

II. BACKGROUND

A. Expanded Interconnection Rulemaking Proceeding 6
B. Expanded Interconnection Tariff Investigation 10

III. PHYSICAL COLLOCATION TARIFF INVESTIGATION

A. Legal Authority to Impose Refund Liability 13
B. Rate Structure 23
1. Nonrecurring Charges for Recurring Costs 26
2. Nonrecurring Charges for Equipment 31
3. Charges for Additional, Extraordinary, or Individually Determined Costs 34
4. Advance Payment of Central Office Construction Charges 39
5. Responsibility for Payment of Common Construction Costs 43
6. Payment of Interconnector-Specific Charges by Subsequent Interconnector 52
7. Electric Power 57
8. Unbundling 62

Paragraph No.

C. Direct Costs 63
1. Case-by-Case Direct Cost Analysis
a. Annual Cost Factors 69
b. Floor Space Costs 94
c. US West's Common Construction Costs and SWB's Tenant Accommodation Charge 98
d. Charges for Repeaters and POT Bay 103
e. Bell Atlantic's Rates for Cable Racking 121
2. Average Cost Analysis
a. The Rationale for Industry Average Cost Analysis 124
b. Legal Authority for Making Rate Prescriptions on the Basis of Industry Average Costs 144
c. Methodology for Calculating Industry Average Direct Costs for Physical Collocation Service 150
d. Floor Space Costs 179
e. Power Costs 193
f. Cross-Connection and Termination Equipment Costs 212
g. Security Costs 232
h. Construction Costs 253
i. Entrance Facility Costs 264
3. Time and Materials Rates 278
4. TRP Data and Subsequent Direct Cost Adjustments 299
D. Overhead Loadings 304
E. Terms and Conditions 317
1. Floor Space for Physical Collocation 320
2. Inspection Provisions 339
3. Insurance Requirements 343
4. LECs' Liability Provisions 356
5. Termination of Service 362
6. Catastrophic Loss 368
7. Relocation 371
8. Dark Fiber 376
9. Channel Assignment 377
10. Letters of Agency 380
11. Billing From State/Interstate Tariffs 382
12. Payment of Taxes 387
F. Compliance Filings 389

IV. BELLSOUTH'S PETITION FOR RECONSIDERATION OF THE *INTERIM OVERHEAD ORDER* 397

Paragraph No.

V. **APPLICATIONS FOR REVIEW OF THE *PHYSICAL COLLOCATION TARIFF SUSPENSION ORDER*** 411

VI. **BELL ATLANTIC'S PETITION FOR CLARIFICATION OF THE *SUPPLEMENTAL DESIGNATION ORDER*** 421

VII. **ORDERING CLAUSES** 431

APPENDIX A: List of Pleadings

APPENDIX B: Physical Collocation Direct Costs

APPENDIX C: Calculating New Rates to Reflect Statistical Disallowances

APPENDIX D: LECs' Comparable DS1 and DS3 Service Lowest Overhead Loading Factors

APPENDIX E: Pleading Summaries

I. INTRODUCTION

1. During the past four years, this Commission has taken a number of steps to remove significant barriers to the growth of competition in the interstate access market. Given the historic dominance and ubiquity of the incumbent local exchange carriers (LECs),[1] and their control of bottleneck facilities to which new entrants need access in order to compete, we found that it would be in the public interest to impose expanded interconnection obligations on LECs. In a series of orders,[2] we required LECs to offer expanded interconnection -- that is, to allow competitors to collocate network equipment dedicated to their use at the LECs' central offices. These orders have enabled new telecommunications providers to rely in part on the telecommunications facilities of LECs to offer interstate access services on a competitive basis in markets where LECs have traditionally been the only providers. We believe that expanded interconnection at reasonable rates, terms, and conditions will bring numerous public interest benefits, including expanded service choices for telecommunications users, heightened incentives for efficiency, technological innovations, rapid deployment of new technology, and pressure on LECs to offer certain interstate access services at prices closer to economic cost.

2. It is clear that the success of efficient competitive entry through interconnection depends on the interconnectors' ability to obtain access to the LECs' transmission facilities at rates that reflect costs and under terms, and conditions that are just and reasonable. Pursuant to Sections 201 through 205 of the Communications Act of 1934, as amended (Act), we are using the tariff review process to ensure that LECs provide interstate expanded interconnection service at rates, terms and conditions that are just, reasonable, and nondiscriminatory. We are ordering modifications to numerous tariff provisions and rates that we conclude are unjust, unreasonable, or unreasonably discriminatory, and thus impede competitive provision of interstate access.

3. This physical collocation tariff investigation began when the Common Carrier Bureau (Bureau) partially suspended LECs' physical collocation tariffs pursuant to Section 204(a) of the Act, initiated an investigation into the lawfulness of these tariffs, imposed an

---

[1] For purposes of this order, we use the term "LECs" to refer to incumbent Tier 1 LECs. Tier 1 local exchange carriers are companies having annual revenues from regulated telecommunications operations of $100 million or more. Commission Requirements for Cost Support Material To Be Filed with 1990 Annual Access Tariffs, Order, 5 FCC Rcd 1364 (Com. Car. Bur. 1990). The *Special Access Expanded Interconnection Order* excluded participants in the National Exchange Carrier Association (NECA) pools from this filing requirement. Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd 7369, 7398 (1992) ("*Special Access Expanded Interconnection Order*"), *first recon.*, 8 FCC Rcd 127 (1992) ("*First Reconsideration Order*"), *second recon.*, 8 FCC Rcd 7341 (1993) ("*Second Reconsideration Order*"), *vacated in part and remanded sub nom. Bell Atlantic Telephone Companies v. FCC*, 24 F.3d 1441 (D.C. Cir. 1994) ("*Bell Atlantic v. FCC*" or "*Bell Atlantic*") (vacating in part this Commission's expanded interconnection orders mandating expanded interconnection through physical collocation).

[2] *See* paras. 6-9 *infra*.

accounting order, rejected as patently unlawful certain terms and conditions contained in the tariffs, and ordered other tariff revisions in the *Physical Collocation Tariff Suspension Order*.[3] The following LECs are subject to this investigation: Ameritech Operating Companies (Ameritech); Bell Atlantic Telephone Companies (Bell Atlantic); BellSouth Telecommunications, Inc. (BellSouth); Cincinnati Bell Telephone Companies (CBT); GTE System Telephone Companies (GSTC); GTE Telephone Operating Companies (GTOC) (GTOC and GSTC are also referred to collectively in this Order as "GTE");[4] Lincoln Telephone and Telegraph Company (Lincoln); Nevada Bell (Nevada);[5] New York Telephone Company (NYT) and New England Telephone and Telegraph Company (NET) (collectively, NYNEX); Pacific Bell (Pacific); Rochester Telephone Corporation (Rochester); Southern New England Telephone Company (SNET); Southwestern Bell Telephone Company (SWB); Central Telephone Companies (Central); United Telephone Companies (United);[6] and U S West Communications, Inc. (US West).[7] In its *Special Access Physical Collocation Designation Order* (*Designation Order*), the Bureau designated for investigation: (1) whether the rate levels established in the LECs' physical collocation tariffs are excessive; (2) whether the rate structures established in the LECs' physical collocation tariffs are reasonable; and (3) whether the terms and conditions in the physical collocation tariffs are reasonable.[8] Subsequently, the Bureau released the *Supplemental Designation Order and Order to Show*

---

[3] Ameritech Operating Companies, etc., et al., CC Docket No. 93-162, Order, 8 FCC Rcd 4589 (Com. Car. Bur. 1993) ("*Physical Collocation Tariff Suspension Order*").

[4] We note that, during the period under investigation, GSTC never had a physical collocation customer at any of its central offices and no longer offers physical collocation service. *See* Letter from F. Gordon Maxson, Director - Regulatory Affairs, GTE, to William F. Caton, Secretary, FCC (dated November 27, 1995). We do not make a determination in this Order as to the reasonableness of this company's rates, terms, and conditions because it is not required to file any tariff revisions or make any refunds.

[5] Although Nevada and Pacific both are owned by Pacific Telesis Group, the two operating companies have separate and very different tariffs, and are treated separately in this Order.

[6] During the period under investigation, United never had a physical collocation customer at any of its central offices and no longer offers physical collocation service. *See* Letter from Warren D. Hannah, Director - Federal Relations, Sprint to William F. Caton, Secretary, FCC (dated December 7, 1995). We do not make a determination in this Order as to the reasonableness of this company's rates, terms, and conditions because it is not required to file any tariff revisions or make any refunds. Although both United and Central are owned by the Sprint Corporation, the two operating companies have separate and different tariffs, and are treated separately in this Order. References in this Order to "Sprint" refer to the long-distance carrier affiliate, which participated in this proceeding.

[7] Lincoln, Nevada, NYNEX, Pacific, Rochester, and SNET are the six LECs that have physical collocation tariffs in effect, as part of this investigation. Ameritech, Bell Atlantic, BellSouth, CBT, GSTC, GTOC, SWB, Central, United, and US West are the LECs that no longer have physical collocation tariffs in effect as part of this investigation. In order to ensure consistency in style, throughout this Order, we use the present tense to discuss the direct costs, overhead loadings, and terms and conditions of all LECs.

[8] Local Exchange Carriers' Rates, Terms and Conditions for Expanded Interconnection for Special Access, CC Docket No. 93-162, 8 FCC Rcd 6909 (Com. Car. Bur. 1993) ("*Designation Order*").

Cause, which directed certain LECs to file supplemental direct cases regarding their use of time and materials charges for central office construction for physical collocation.[9]

4. In order to promote the development of efficient competition in the interstate access markets, we must ensure that LECs offer expanded interconnection at rates, terms, and conditions that are just and reasonable. Accordingly, we have carefully reviewed the LECs' physical collocation tariffs, the direct cases and cost support that these LECs filed in response to the *Designation Order*, the interconnectors' and other parties' oppositions to these LECs' direct cases, and the rebuttals.[10] Following a thorough review of this record, we conclude in this Order that the LECs subject to this investigation have failed to meet their burden of proving the reasonableness of many of their rates, terms, and conditions. We therefore order certain direct cost disallowances for their physical collocation services, prescribe maximum permissible overhead loading factors, and order tariff revisions to correct unreasonable rate structures. We also order refunds for overcharges associated with physical collocation service offered by LECs after December 14, 1994. Finally, we reject certain terms and conditions that we believe to be unjust, unreasonable, and unreasonably discriminatory, and that effectively serve to impede efficient competition. The rate adjustments and tariff revisions that we are requiring by this Order will create, in our view, new opportunities for competitors to provide interstate access services, using, in part, essential telecommunications facilities over which the LECs retain bottleneck control.

5. In this Order, we also deny the petition for reconsideration of the *Interim Overhead Order*[11] filed by BellSouth, the petition for clarification of the *Supplemental Designation Order*[12] filed by Bell Atlantic, and applications for review of the *Physical Collocation Tariff Suspension Order*[13] filed by NYNEX, SWB, and US West.

---

[9] Local Exchange Carriers' Rates, Terms and Conditions for Expanded Interconnection for Special Access, CC Docket No. 93-3162, Supplemental Designation Order and Order to Show Cause, 9 FCC Rcd 2742 (Com Car. Bur. 1994 ("*Supplemental Designation Order*"). The Bureau also ordered United to show cause why it had not deleted references to individual case basis (ICB) pricing in developing rates for cage construction and site preparation for physical collocation as required in the *Physical Collocation Tariff Suspension Order.*

[10] A complete summary of direct cases, oppositions, and rebuttals are included in Appendix E.

[11] Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection for Special Access, CC Docket No. 93-162, First Report and Order, 8 FCC Rcd 8344 (1993) ("*Interim Overhead Order*").

[12] *Supplemental Designation Order*, 9 FCC Rcd 2742.

[13] *See Physical Collocation Tariff Suspension Order*, 8 FCC Rcd 4589.

II. BACKGROUND

A. Expanded Interconnection Rulemaking Proceeding

6. On October 19, 1992, the Commission released the *Special Access Expanded Interconnection Order*,[14] which required LECs[15] to file tariffs offering interstate special access expanded interconnection service to all interested parties, including, but not limited to, competitive access providers (CAPs), interexchange carriers (IXCs), and end users. Specifically, LECs were required to permit such parties to terminate their own transmission facilities at LEC central offices and to interconnect with LEC special access services.[16] Expanded interconnection is a LEC offering that enables parties, by interconnecting their circuits with those of the LEC at a central office through either physical or virtual collocation, to compete on a facilities basis with certain LEC access services.[17] Physical collocation is an offering that enables an interconnector to locate its own transmission equipment in a segregated portion of the LEC central office. The interconnector pays the LEC a tariffed charge for the use of that central office space, and may enter the central office to install, maintain, and repair the equipment.[18]

7. On September 2, 1993, we removed another barrier to competition in the interstate access market in the *Switched Transport Expanded Interconnection Order*, which permitted CAPs, IXCs, and interested users to terminate their switched access transmission facilities at LEC locations, including central offices, serving wire centers, tandem switches and certain remote nodes.[19] This order required LECs to file tariffs for interstate switched transport expanded interconnection service, and directed them to use the same rate structures they established for special access expanded interconnection, unless they could justify

---

[14] *Special Access Expanded Interconnection Order*, 7 FCC Rcd 7369.

[15] *See* note 1 *supra*.

[16] *Special Access Expanded Interconnection Order*, 7 FCC Rcd at 7372.

[17] Expanded Interconnection with Local Telephone Facilities, CC Docket No. 91-141, Memorandum Opinion and Order, 9 FCC Rcd 5154, 5158 (1994) ("*Virtual Collocation Order*"). We note that several LECs sought review of the *Virtual Collocation Order* before the U.S. Court of Appeals for the District of Columbia Circuit in Docket Nos. 94-1547, 94-1548, and 94-1612. The LECs argued that the Commission lacked statutory authority to order LECs to provide virtual collocation. The court did not review the case on the merits; it remanded the case to the Commission for reconsideration of the *Virtual Collocation Order*, in light of 47 U.S.C. §§ 251(c)(6) & (g), as applied after the date of enactment of the Telecommunications Act of 1996. *See* Pacific Bell v. FCC, Docket Nos. 94-1547, 94-1548 and 94-1612, slip. op., (D.C. Cir. Mar. 22, 1996).

[18] *Virtual Collocation Order*, 9 FCC Rcd at 5158.

[19] Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Transport Phase I, Second Report and Order and Third Notice of Proposed Rulemaking, 8 FCC Rcd 7374 (1993) ("*Switched Transport Expanded Interconnection Order*").

additional rate elements for switched transport expanded interconnection.[20]

8. On June 10, 1994, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit), in *Bell Atlantic v. FCC*, vacated in part the Commission's expanded interconnection orders mandating physical collocation on the ground that the Commission did not have authority under the Communications Act of 1934, as amended, to require LECs to provide expanded interconnection through physical collocation.[21] On July 25, 1994, in response to *Bell Atlantic v. FCC*, the Commission adopted a mandatory virtual collocation policy to preserve the substantial public interest benefits of expanded interconnection in the *Virtual Collocation Order*.[22] Under the *Virtual Collocation Order,* LECs that chose to offer physical collocation in lieu of virtual collocation were exempt from the virtual collocation requirement. Therefore, following the *Virtual Collocation Order,* LECs had a choice in how they met their expanded interconnection obligations; they could offer physical collocation, virtual collocation, or both.[23] Lincoln, Nevada, NYNEX, Pacific, Rochester, and SNET chose to provide expanded interconnection through physical collocation. All other LECs provided expanded interconnection through both physical collocation and virtual collocation while they phased out physical collocation during a transition period.

9. On March 22, 1996, the Court remanded for reconsideration the Commission's *Virtual Collocation Order,* concluding that the Commission's regulations implementing the 1996 Act would render moot questions about the future effect of the order.[24] On August 8, 1996, we adopted the *Local Competition Order*, in which, among other things, we concluded that the standards we adopted in the *Virtual Collocation Order* should continue to apply with respect to expanded interconnection for interstate special access and switched transport services.[25]

---

[20] *Id.* at 7417-18. We note that the LECs model their switched transport expanded interconnection tariffs on their special access expanded interconnection tariffs.

[21] *Bell Atlantic v. FCC*, 24 F.3d 1441.

[22] *Virtual Collocation Order,* 9 FCC Rcd 5154.

[23] *Id.* at 5156.

[24] *Pacific Bell v. FCC*, Docket Nos. 94-1547, 94-1548 and 94-1612, slip. op., (D.C. Cir. Mar. 22, 1996).

[25] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 15787 (1996) ("*Local Competition Order*"), Order on Reconsideration, CC Docket No. 96-98, 11 FCC Rcd 13042 (1996); *petition for review pending* and *partial stay granted sub nom. Iowa Utilities Board et al. v. FCC*, 109 F.3d 418 (8th Cir. 1996). This portion of the *Local Competition Order* was not stayed by the U.S. Court of Appeals for the 8th Circuit. *Iowa Utilities Board et al. v. FCC*, 109 F.3d 418 (8th Cir. 1996).

B. Expanded Interconnection Tariff Investigation

10. On February 16, 1993, the LECs listed in Appendix A filed physical collocation expanded interconnection tariffs with accompanying cost support data. These tariffs were scheduled to become effective May 16, 1993, but were subsequently deferred to June 16, 1993. On June 9, 1993, the Bureau released the *Physical Collocation Tariff Suspension Order*, which partially suspended the physical collocation tariffs, initiated an investigation into the lawfulness of these tariffs, and imposed an accounting order.[26] The Bureau partially suspended for five months these LECs' physical collocation rates to the extent they included excessive direct costs and overhead loadings that exceeded, without adequate justification, the overhead loading factors derived from the Automated Reporting Management Information System (ARMIS) fully distributed cost data for special access services.[27] Moreover, the Bureau partially suspended certain rates imposed by Bell Atlantic, BellSouth, GTE, and United after finding that they had miscomputed their direct costs, resulting in excessive recovery of certain costs.[28] The Bureau also rejected certain unlawful terms and conditions, and ordered several LECs to file tariff revisions to delete references to individual case basis (ICB) charges from their physical collocation tariffs and to include specific rates or time and materials charges for those rate elements in those tariffs.[29] In the *Designation Order*, the Bureau directed the LECs to file additional cost support information to resolve the rate level, rate structure, and terms and conditions issues raised by the physical collocation tariffs.[30] With respect to overheads, the Bureau required the LECs to provide the overhead loading factors used to develop each expanded interconnection rate element, to explain these factors, and to demonstrate how the factors were derived. These LECs were also required to provide overhead loading factors for all comparable DS1 and DS3 services and to explain the reason for any difference in overheads between expanded interconnection services and the DS1 and DS3 services.[31]

11. Prior to the end of the five-month suspension period, the Commission released the *Interim Overhead Order*, which concluded that the physical collocation tariff rate levels were unreasonable because LECs had failed to justify their proposed overhead loading factors.[32] To ensure that expanded interconnection would be available at just and reasonable

---

[26] *Physical Collocation Tariff Suspension Order*, 8 FCC Rcd at 4589.

[27] *Id.* at 4597.

[28] *Id.* at 4598.

[29] *Id.* at 4600, 4602.

[30] *Designation Order*, 8 FCC Rcd at 6909.

[31] *Id.*

[32] *Interim Overhead Order*, 8 FCC Rcd at 8356.

rates, we used the Bureau's approach in the *Physical Collocation Tariff Suspension Order*, to prescribe, on an interim basis, maximum permissible overhead loading factors for physical collocation expanded interconnection rates, pending further investigation.[33] We used ARMIS data to calculate the overhead loading factors for each LEC's special access services and required these LECs to assign overhead loading factors for physical collocation service that do not exceed the overhead loading factors derived from ARMIS for their special access services. We concluded that, because these LECs had failed to justify their overhead loading factors assigned to physical collocation service, the special access overhead loading factors derived from ARMIS represented the best currently available, verifiable, and reasonable surrogate for the maximum permitted overhead loading factors assigned to expanded interconnection for the interim period until the tariff investigation concluded.[34]

12. In the *Switched Transport Physical Collocation Tariff Suspension Order*, released on February 14, 1994, the Bureau found that the switched transport expanded interconnection tariffs also raised significant questions of lawfulness. These tariffs were subsequently suspended for one day, an investigation was initiated, and an accounting order was imposed.[35] The special access and switched transport expanded interconnection tariff investigations were consolidated in the *Switched Transport Consolidation Order*.[36]

III. PHYSICAL COLLOCATION TARIFF INVESTIGATION

A. Legal Authority to Impose Refund Liability

1. Introduction

13. In this section, we examine the scope of our authority to impose refunds and determine the refund liability period applicable to LECs subject to this investigation. In light of the *Bell Atlantic* decision, which vacated in part the Commission's expanded interconnection orders after finding that the Commission had exceeded its statutory authority in requiring LECs to offer physical collocation, we are confronted with the issue of the scope of our authority to impose refund liability on the LECs that provided physical collocation

---

[33] *Id.* at 8356-57.

[34] *Id.* at 8360-61.

[35] Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection for Switched Transport, Memorandum Opinion and Order, 9 FCC Rcd 817 (Com. Car. Bur. 1994) ("*Switched Transport Physical Collocation Tariff Suspension Order*").

[36] Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection for Switched Transport Services, CC Docket No. 93-162, Order, 10 FCC Rcd 12,227 (Com. Car. Bur. 1995) ("*Switched Transport Consolidation Order*").

prior to the *Bell Atlantic* decision.[37] We decline to order refunds for overcharges imposed by LECs for physical collocation service they provided between June 16, 1993, the date that LECs' physical collocation tariffs took effect, and December 14, 1994, the day before LECs' virtual collocation tariffs took effect. We do, however, order refunds for overcharges associated with physical collocation service offered by LECs after December 14, 1994.

2. Background

14. On June 10, 1994, the D.C. Circuit in *Bell Atlantic v. FCC* vacated in part the Commission's expanded interconnection orders on the ground that the Communications Act of 1934, as amended, did not expressly authorize the Commission to require LECs to provide expanded interconnection through physical collocation.[38] The Court reasoned that because the orders requiring physical collocation raised constitutional issues, it would apply a "strict test" to the Commission's statutory authority, overriding the customary deference courts generally give to determine the Commission's interpretation of its own authority.[39] The Court held that Section 201(a) of the Act, which authorizes the Commission to order carriers "to establish physical connections with other carriers,"[40] does not empower the Commission "to grant third parties a license to exclusive physical occupation of a section of the LECs' central offices."[41] Underlying the Court's statutory construction was its concern that our physical collocation requirement might constitute a "taking" of property.[42] The Court remanded our orders to permit us to consider whether and to what extent we should impose virtual collocation requirements in lieu of a physical collocation requirement and to consider whether to impose a "fresh look" requirement in the absence of mandatory physical collocation.[43] The Court stated that "[t]he orders are vacated insofar as they require physical [collocation]; in all other respects the orders are remanded to the Commission for further proceedings."[44]

---

[37] *Bell Atlantic v. FCC*, 24 F.3d 1441.

[38] *Id.*

[39] *Id.* at 1443, 1447. *See Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

[40] 47 U.S.C. § 201(a).

[41] *Bell Atlantic v. FCC*, 24 F.3d at 1446.

[42] *Id.* at 1445-47.

[43] *Id* at 1447. The "fresh look" policy, which was set out in the *Special Access Expanded Interconnection Order*, permits special access customers to terminate certain long-term LEC special access arrangements if those customers wish to obtain the benefits of new, more competitive alternatives. Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd 7369, 7463-64 (1992) ("*Special Access Expanded Interconnection Order*").

[44] *Bell Atlantic*, 24 F.3d at 1447.

15. Following the Court's decision in *Bell Atlantic*, the Commission released the *Virtual Collocation Order* on July 25, 1994.[45] This order sought to preserve the substantial public interest benefits of expanded interconnection and to ensure uninterrupted availability of expanded interconnection services by requiring LECs to offer expanded interconnection no later than December 15, 1994 for both special access and switched transport through generally available virtual collocation tariffs.[46] The order exempted from this requirement LECs that voluntarily choose to offer physical collocation in lieu of virtual collocation service, subject to regulation as a communications common carrier service.[47] The order required that LECs electing to provide physical collocation service follow the same tariffing requirements as LECs that provide virtual collocation.[48] In addition, the order required that the charges for both physical collocation and virtual collocation service be based on direct costs plus a reasonable share of overhead loadings.[49] After December 14, 1994, Pacific, Nevada, Lincoln, NYNEX, Rochester, and SNET voluntarily chose to provide physical collocation in lieu of virtual collocation service. Although Ameritech, Bell Atlantic, BellSouth, Central, CBT, GTOC, SWB, and US West elected to provide virtual collocation, these carriers continued to provide physical collocation service voluntarily in some of their central offices even after the effective date of our mandatory virtual collocation rules.[50]

16. In *Pacific Bell v. FCC*,[51] several LECs challenged the Commission's virtual collocation rules on essentially the same grounds raised in their challenges to the Commission's mandatory physical collocation requirement -- that is, LECs claimed that the virtual collocation rules also constitute an unauthorized taking. The D.C. Circuit in *Pacific Bell* did not reach the merits of these claims. Instead, the Court addressed the scope of Section 251 of the Telecommunications Act of 1996 immediately after its enactment and before the FCC had adopted rules implementing that provision. The Court stated that regulations enacted to implement the 1996 Act would render moot questions regarding the future effect of the *Virtual Collocation Order* under review.[52] The Court did not vacate the

---

[45] *Virtual Collocation Order*, 9 FCC Rcd 5154.

[46] *Id.* at 5155-56.

[47] *Id.* at 5156, 5163.

[48] *Id.* at 5176.

[49] *Id.* at 5187-88.

[50] As noted above, while GSTC and United were required to offer physical collocation service, they never had a physical collocation customer at any of their central offices and, therefore, never provided physical collocation service. *See* notes 4, 6 *supra*.

[51] *Pacific Bell v. FCC*, Docket Nos. 94-1547, 94-1548 and 94-1612, slip. op., (D.C. Cir. Mar. 22, 1996).

[52] *Id.*

Virtual Collocation Order, but remanded to the Commission the issues presented in that case.[53] In our recently released *Local Competition Order*, among other things, we reaffirmed, on remand, our legal authority to require virtual collocation under Section 201 of the Communications Act of 1934, as amended.[54] In the *Local Competition Order*, we stated: "[F]or the reasons stated in the *Virtual Collocation Order*, we continue to believe that virtual collocation, as we have defined it, is not a taking, and that our authority to order such collocation (under section 251 or section 201) is not subject to the strict construction canon announced in *Bell Atlantic*."[55]

3. Discussion

a. Refund liability from June 16, 1993 to December 14, 1994

17. We are confronted with the issue of whether, in light of *Bell Atlantic*, we have the authority to impose refund liability on all 16 LECs that provided physical collocation between June 16, 1993, the date physical collocation tariffs went into effect, and December 14, 1994, the day before each of the LECs was authorized to provide virtual collocation in lieu of physical collocation service. Although the Bureau had designated the rates set forth in the LECs' physical collocation tariffs for investigation pursuant to section 204(a)(1)[56] and had imposed an accounting order for the purpose of requiring refunds if the rates were not justified,[57] the court in *Bell Atlantic* determined that we had exceeded our authority in requiring LECs to offer physical collocation.[58] Because the LECs were not offering physical collocation voluntarily and our attempt to require them to do so was found to be unlawful, the LECs were not required explicitly by any statute under our supervision to charge just and reasonable rates.[59] Under the acknowledged test, a service may be regarded as "common carriage" either because the carrier voluntarily has undertaken to offer it indifferently or

---

[53] *Id.*

[54] *Local Competition Order*, 11 FCC Rcd at 15811.

[55] *Id.*

[56] 47 U.S.C. § 204(a)(1).

[57] *See Designation Order*, 8 FCC Rcd 6909 (designating issues in the LECs' physical collocation tariffs for investigation); *Physical Collocation Tariff Suspension Order*, 8 FCC Rcd 4589 (suspending the LECs' physical collocation tariffs and imposing an accounting order).

[58] *Bell Atlantic v. FCC*, 24 F.3d 1441.

[59] Section 201(b) applies the "just and reasonable" standard only to common carrier services. 47 U.S.C. § 201(b).

because the Commission has required it to do so.[60]

18. The inapplicability of our rate investigation authority under section 204(a), however, would not necessarily foreclose remedial action. We might well undertake such action pursuant to section 4(i) of the Act under a theory of *quantum meruit* if considerations of equity demanded a remedy in the nature of refunds to do equity.[61] Under the circumstances here, there are no compelling equities that would warrant such extraordinary relief. We cannot ignore the harm to LECs that arose from our unlawful requirement that they unwillingly permit interconnectors to occupy space in their central offices and provide service in competition to services provided by LECs. To the extent that the rates charged to interconnectors exceeded those permissible under cost-based regulation, we must balance that harm against the fact that the physical collocation customers received a service that, absent our order, may not have been available under any terms. Weighing all the circumstances, therefore, we conclude that there is no basis for finding that the equities require us to fashion an extraordinary remedy for the customers.

b. Refund liability after December 14, 1994

19. We require LECs that provided physical collocation service after December 14, 1994 to refund all overcharges after that date. The *Virtual Collocation Order* required LECs to provide expanded interconnection service through virtual collocation beginning on December 15, 1994.[62] We exempted carriers from this requirement, however, if they elected to provide physical collocation in lieu of virtual collocation.[63] We stated that "[a] LEC will be exempted from our mandatory virtual collocation requirements at any specific central office or offices for which the LEC opts to offer under tariff expanded interconnection through physical collocation, subject to full regulation by the Commission as a communications common carrier service, including the standards we adopt [in the *Virtual Collocation Order*] for such offerings."[64] The order made clear that LECs that chose to provide physical collocation after December 14, 1994 would have their rates, terms, and conditions subject to full Commission review. We stated that "[b]ecause we envision, under the new collocation policy, that some local telephone companies may voluntarily provide physical collocation as a regulated common carrier service, we are also reaffirming many of

---

[60] *See National Association of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630, 640-42 (1976) ("*NARUC v. FCC*"), *cert. denied*, 425 U.S. 992 (1976).

[61] *See* 47 U.S.C. § 154(i).

[62] *Virtual Collocation Order*, 9 FCC Rcd at 5156.

[63] *Id.*

[64] *Id.* at 5166.

our rules relating to the rates, terms, and conditions of physical collocation offerings."[65]

20. We have legal authority to regulate expanded interconnection service provided through a physical collocation arrangement because physical collocation is an interstate "communications service" provided on a common carrier basis.[66] Section 3 of the Communications Act defines "communication" by wire or radio to include "all instrumentalities, facilities, apparatus, and services . . . incidental to" the transmission of signals by wire or radio.[67] We find that the provision of central office space for physical collocation is incidental to communications, thus rendering it a communications service under Section 3 of the Communications Act,[68] and that provision of such space is a common carrier service. Offerings are incidental to communications and therefore are communications themselves, if they are an integral part of, or inseparable from, transmission of communications.[69] Physical collocation service is an integral part of a communications service because the use of central office space is necessary to allow CAPs to interconnect their communications services with the LECs' networks.

21. Physical collocation is a common carrier service because it provides expanded interconnection to all interested parties on a nondiscriminatory basis, regardless of their status.[70] The nondiscriminatory provision of expanded interconnection through physical collocation requires that LECs offer central office space to all interconnectors, rather than making individualized decisions whether and on what terms to make this offering available. We therefore conclude that we have authority to impose regulations under Part I of Title II of the Act, including tariffing requirements, on the provision of such space.[71] Under these regulations, LECs that offer physical collocation service must do so at rates that are just and

---

[65] *Id.* at 5157. *See id.* at 5166.

[66] *Id.* at 5160.

[67] 47 U.S.C. §§ 153(33) & (51).

[68] 47 U.S.C. § 153(51).

[69] *See, e.g.*, Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, CC Docket No. 91-115, Report and Order and Request for Supplemental Comment, 7 FCC Rcd 3528, 3531-32 (1992) (LEC validation and screening services are "not severable from the underlying local exchange transmission service" and are a "byproduct of [the LECs'] local exchange service"). *See also* Cincinnati Bell Telephone Company, Revisions to Tariff F.C.C. No. 35, CC Docket No. 89-323, Memorandum Opinion and Order, 5 FCC Rcd 805, 808 (1990), Memorandum Opinion and Order, 6 FCC Rcd 3501, 3504 (1991), *recon.*, 8 FCC Rcd 4409; Graphnet Systems, Inc., CC Docket No. 79-6, Memorandum Opinion and Order, 73 FCC 2d 283, 287-289 (1979).

[70] *See NARUC v. FCC*, 525 F.2d at 640-42.

[71] *See Special Access Expanded Interconnection Order*, 7 FCC Rcd at 7444-47; *Virtual Collocation Order*, 9 FCC Rcd at 5160.

reasonable.[72] If the Commission determines that LECs' rates are not just and reasonable, Section 204 of the Act provides us with broad discretion to impose refund liability on LECs for overcharging their customers.[73]

c. Conclusion

22. Accordingly, the LECs that chose to provide physical collocation in lieu of virtual collocation after December 14, 1994 -- Lincoln, Nevada, NYNEX, Pacific, Rochester, and SNET -- are subject to refund liability for any overcharges between December 15, 1994 and the day before these LECs' new physical collocation rates take effect pursuant to this Order. We also find that Ameritech, Bell Atlantic, BellSouth, Central, CBT, GTOC, SWB, and US West, the LECs that elected to provide virtual collocation service but continued to provide physical collocation after December 14, 1994, are subject to refund liability for any overcharges related to the provision of physical collocation service from December 15, 1994 to the date each LEC discontinued providing physical collocation service.[74] LECs that provided physical collocation service between June 16, 1993, and December 14, 1994, are not required to refund any amounts associated with the provision of physical collocation service during that time period.

B. Rate Structure

23. We determined in the *Special Access Expanded Interconnection Order* that we would not require any particular detailed rate structure for expanded interconnection offerings, although we required the LECs to establish a cross-connect element to apply uniformly to both physical and virtual collocation.[75] Instead, we directed the LECs to establish reasonably disaggregated rate elements for connection charges for expanded interconnection. In the *Second Reconsideration Order*, we clarified that two standards must be met in order for a rate structure to be considered reasonable: (1) rate structures must reflect cost-causation principles, *i.e.*, the manner in which costs are incurred in providing expanded interconnection service; and (2) rate structures must be unbundled to ensure that interconnectors are not forced to pay for services that they do not need.[76] In the *Virtual Collocation Order*, we affirmed these principles with respect to both virtual collocation and physical collocation and clarified that

---

[72] *See* 47 U.S.C. § 201(b); 47 C.F.R. § 69.121.

[73] 47 U.S.C. § 204(a)(1).

[74] Some LECs that discontinued offering physical collocation have filed new tariffs reinstating physical collocation service. Ameritech Tariff F.C.C. No.2, Transmittal No. 981 (filed July 2, 1996); Bell Atlantic Tariff F.C.C. No. 1, Transmittal No. 883 (filed June 4, 1996). These tariff filings, as well as any other carriers' future filings reinstating physical collocation, will be evaluated in separate proceedings.

[75] *Special Access Expanded Interconnection Order*, 7 FCC Rcd at 7425.

[76] *Second Reconsideration Order*, 8 FCC Rcd at 7368.

LECs' rate structures should be clear and easy to understand and that each rate element should logically relate to the service function provided under that rate element.[77] In the *Designation Order*, the Bureau stated that, although the *Special Access Expanded Interconnection Order* did not require a specific rate structure, "the Commission has a long-standing precedent that rates and rate structures must be cost-causative" and the interconnectors had raised issues of rate structure for which an investigation is warranted.[78]

24. We apply these principles in our evaluation of the reasonableness of the LECs' rate structures for physical collocation service. As discussed below, we are requiring certain modifications to those LEC rate structures that may unreasonably raise the interconnectors' cost of doing business or have anticompetitive effects. For example, rates that recover costs that are unrelated to the assets and services that an interconnector actually needs for expanded interconnection service would improperly increase interconnectors' costs for the services. This, in turn, would impede efficient competitive entry by making it difficult for an interconnector to price its interstate access service at a level that is both compensatory for the interconnector and competitive with a LEC's price for the same service. Accordingly, we are requiring LECs to modify rate structures that result in rates, terms, and conditions that are unjust, unreasonable, or unreasonably discriminatory. At the same time, we are approving certain LECs' rate structures that reasonably ensure they are able to recover all of their costs of providing physical collocation.

25. In this section of the Order, we consider the following issues: (1) whether it is reasonable for LECs to recover recurring costs through nonrecurring charges; (2) whether it is reasonable for LECs to assess a nonrecurring charge for equipment; (3) whether tariff provisions that allow LECs to recover additional, extraordinary, or individually determined costs are reasonable; (4) whether it is reasonable for LECs to require advance payment of all or a percentage of all construction costs; (5) the reasonableness of the LECs' methods for recovering common construction costs; (6) the reasonableness of the LECs' methods for avoiding the double recovery of interconnector-specific construction costs when a subsequent interconnector reuses the assets that comprise the physical collocation module constructed for the original interconnector; (7) the reasonableness of pricing electric power on a flat rate basis as opposed to an actual usage basis; and (8) whether LECs unreasonably bundle their rates to require interconnectors to purchase services that they do not need in order to purchase services that they do need.

1. Nonrecurring Charges for Recurring Costs

a. Background

26. Ameritech, BellSouth, GTE, and US West develop nonrecurring rates based on

---

[77] *Virtual Collocation Order*, 9 FCC Rcd at 5186.

[78] *Designation Order*, 8 FCC Rcd at 6916.

the present value of certain recurring costs.[79] The other LECs develop nonrecurring rates to recover nonrecurring costs and recurring rates to recover recurring costs, and do not impose nonrecurring rates that recover more than the initial capital outlay for the investment used to provide a particular physical collocation service function.[80] In the *Physical Collocation Tariff Suspension Order*, the Bureau partially suspended BellSouth's rate for space construction and GTE's rate for building modification to exclude recovery of recurring expenses in those rates and to limit such rates to the recovery of nonrecurring material and labor costs.[81] In the *Designation Order*, the Bureau asked all the LECs to explain how computing nonrecurring charges based on the present value of future taxes, maintenance, or other recurring costs is reasonable.[82]

b. Discussion

27. We find that it is unreasonable for Ameritech, BellSouth, GTE, and US West to recover recurring costs of providing physical collocation service through nonrecurring charges. Recurring costs like income taxes, maintenance expenses, and administrative expenses are costs that are incurred not initially, but over time. These LECs do not demonstrate that recovering these recurring costs of expanded interconnection through nonrecurring charges is just and reasonable. In theory, paying the present value of such recurring costs would be equivalent to paying those costs on a recurring basis, assuming the customer continues taking the service for a predictable and substantial period of time. In practice, however, different customers are likely to take expanded interconnection service for different periods of time. Given the uncertainties of how competitive markets will develop, it is difficult to predict the length of time that an interconnector will take service, and Ameritech, BellSouth, GTE, and US West fail to meet their burden of proving the reasonableness of their projections. Moreover, advance charges to recover costs that will be incurred over time create pressures for expanded interconnection customers to take service for a longer period of time than they might have, absent such a rate structure, and the LECs do not show that such a "lock-in" effect is reasonable or that such a rate structure bears any relation to the manner in which costs are incurred.[83] Finally, if an interconnection customer

---

[79] Ameritech Direct Case at 12; BellSouth Direct Case at 16; GTE Direct Case at 11; and US West Direct Case at 14.

[80] *See, e.g.*, NYNEX Direct Case at 18; Pacific Direct Case at 37; SNET Direct Case at 4; SWB Direct Case at 10; and United Direct Case at 6.

[81] *Physical Collocation Tariff Suspension Order*, 8 FCC Rcd at 4598.

[82] *Designation Order*, 8 FCC Rcd at 6913.

[83] We do not address the reasonableness of term discount plans for expanded interconnection service because none of the tariffs subject to this investigation contains such plans. *Compare Special Access Expanded Interconnection Order*, 7 FCC Rcd at 7463; *Switched Access Transport Expanded Interconnection Order*, 8 FCC Rcd at 7433.

discontinues taking service before all the recurring costs recovered by the nonrecurring charge are incurred, then these charges will overcompensate the LEC, and these LECs fail to justify this effect or provide a refund mechanism to customers under such circumstances.

28. In contrast, a recurring charge for a recurring cost would ensure both that a LEC recovers its costs of providing expanded interconnection and that an interconnector is charged only for the costs that the LEC incurs to provide service to the interconnector. Moreover, when the recurring costs associated with expanded interconnection service change, the LEC can make appropriate adjustments to the recurring charges at the time such cost changes occur.

29. Accordingly, we will not permit the LECs subject to this investigation to recover recurring expanded interconnection costs through nonrecurring charges. Instead, we require that nonrecurring charges be set to recover no more than the nonrecurring costs that LECs incur initially to provide expanded interconnection service. To the extent that LECs recover such costs through nonrecurring charges, they may not recover depreciation expenses associated with such costs because this would result in double recovery of the costs. In addition, LECs may not earn a return or recover income taxes associated with a return on assets, the costs of which are recovered through nonrecurring charges, because the costs of money and income taxes arise only when the costs of assets are recovered over time. To the extent that the LECs can demonstrate with specificity that there are recurring costs, such as property taxes, maintenance expense, and administrative expenses, associated with the physical capital outlay, separate recurring charges to recover these recurring costs would not necessarily be unreasonable.

30. We therefore affirm the disallowances the Bureau made in the *Physical Collocation Tariff Suspension Order* for GTOC and BellSouth.[84] GTOC's nonrecurring charge for building modification should not exceed the amount of the material and labor costs incurred to modify the building. In addition, BellSouth's rate for space construction should not exceed an amount equaling the direct cost of BellSouth's construction prior to the present value calculations.[85] We note that this rate is lower than the rate that we tentatively allowed in the *Physical Collocation Tariff Suspension Order* because BellSouth reduced its estimate of the initial capital outlay in its subsequent transmittal. We order these LECs to calculate the appropriate refunds for the improper nonrecurring charges assessed on the interconnectors. We also require Ameritech and US West to calculate refunds based on the difference between the nonrecurring charges that they collected and the dollar amount of the initial central office investment or other capital outlay. As discussed above, these refund obligations apply to all

---

[84] *Physical Collocation Tariff Suspension Order*, 8 FCC Rcd at 4598.

[85] According to BellSouth, the dollar amount of the construction prior to the present value calculation is $25,775.08. Data Request Response from W. W. Jordan, Executive Director, Federal Regulatory, BellSouth to William F. Caton, Acting Secretary, FCC (dated April 26, 1994). Therefore, BellSouth's rate for space construction should have reflected a direct cost no greater than this amount.

nonrecurring charges that recover recurring costs imposed on December 15, 1994 and thereafter.

2. Nonrecurring Charges for Equipment

a. Background

31. In the *Designation Order,* the Bureau asked LECs that assess a nonrecurring charge for equipment[86] rather than recovering the cost through recurring charges to explain why this practice is reasonable.[87] The Bureau also asked the LECs to explain whether the equipment is dedicated for its full life to the interconnector that pays the nonrecurring charge.[88]

b. Discussion

32. While carriers typically recover investment costs through recurring charges, we find that it is not unreasonable for LECs to assess nonrecurring charges to recover the cost of equipment. Inasmuch as physical collocation is a new service, LECs may have difficulty projecting either the length of time that equipment will be used by an interconnector or the useful life of that equipment for depreciation purposes. When a LEC imposes a recurring charge to recover the depreciation of an asset over time, overestimating the life of the equipment or the length of time that an interconnector would use the equipment could prevent the LEC from recovering the total cost of its investment. We will not, however, permit LECs to recover initially an amount greater than the total installed cost of the equipment, plus a reasonable overhead loading.[89] Therefore, if a LEC chooses to impose a nonrecurring charge equal to the total installed cost of the equipment, the LEC may not impose recurring charges to recover depreciation expense, the cost of capital, or income tax expense for that same equipment, because these are capital costs that do not arise where a LEC has recovered the full cost of equipment through a nonrecurring charge. The LEC may, however, recover recurring operating costs such as maintenance expenses for that equipment through a recurring charge when it elects to recover initially the total installed cost of the

---

[86] The equipment to which we are referring in this section is the equipment that a LEC provides as part of its physical collocation service. Such equipment may include, for example, DSX-1 or DSX-3 panels, jumpers, fuse panels, point of termination (POT) frames, coaxial cables, power distribution cables, grounding cables, circuit breaker panels, POT locking covers, fiber cable ironwork, cable racking, bus bars, and telephone service distribution terminals. The equipment to which we are referring does not include the equipment owned and operated by the interconnector within the caged enclosure. We are not, for example, referring to the interconnector's fiber optic terminals, multiplexers, or DSX panels.

[87] *Designation Order,* 8 FCC Rcd at 6916.

[88] *Id.*

[89] *See* Section III.D *infra.*

equipment.

33. We do not agree with ALTS' position that nonrecurring charges developed in conformance with these requirements constitute a barrier to entry. To the extent that the equipment needed for expanded interconnection service is dedicated to a particular interconnector, we believe that requiring that interconnector to pay the full cost of the equipment up front is reasonable because LECs should not be forced to underwrite the risk of investing in equipment dedicated to the interconnector's use, regardless of whether the equipment is reusable. To the extent that the equipment needed to provide expanded interconnection service is reusable, we believe that the pro rata refund requirement that we set forth in Section II.B.6 below properly compensates interconnectors for the assets for which they have already paid fully, but that the LEC can use to provide service to another company after the interconnector disconnects. At the same time, LECs will not recover twice the cost of reusable equipment. We conclude, therefore, that LECs may impose a nonrecurring charge for equipment, if such charges are developed in accordance with the requirements set forth in this section of the Order.

3. Charges for Additional, Extraordinary, or Individually Determined Costs

a. Background

34. Ameritech, Bell Atlantic, CBT, GTE, SWB, SNET, United, and Nevada all have tariff provisions that allow them to recover additional, extraordinary, or individually determined costs, but these provisions do not specify the rates that would apply. In the *Designation Order*, the Bureau asked LECs with tariff provisions that appear to allow them to recover costs not specifically and individually listed in their tariffs through unspecified charges to explain why such provisions are reasonable.[90] These LECs were also instructed to define the terms they used to permit recovery of such costs.[91]

b. Discussion

35. We find that LECs' additional, extraordinary, or individually determined cost provisions violate the Commission's requirement that expanded interconnection rate levels be uniform for all interconnectors and that the LECs' tariffs identify the actual rates for expanded interconnection service. In the 1992 *Special Access Expanded Interconnection Order,* the Commission stated that cross-connect elements must be provided pursuant to generally available tariffs at study-area-wide averaged rates.[92] The Commission also stated

---

[90] *Designation Order*, 8 FCC Rcd at 6917.

[91] *Id.*

[92] *Special Access Expanded Interconnection Order*, 7 FCC Rcd at 7442.

that, with respect to "certain other connection charge rate elements," charges under general tariffs may reasonably differ by central office due to variations in costs -- but should be uniform for all interconnectors in each individual central office.[93] These policies were affirmed in the July 25, 1994 *Virtual Collocation Order*, when the Commission stated that "virtual collocation offerings . . . must be made generally available to all similarly situated interconnectors, and the actual rate levels (as well as the general methodology) must be reflected in the tariffs."[94]

36. Tariff provisions permitting LECs to recover unspecified charges for additional, extraordinary, or individually determined costs deny interconnectors advance notice of all the costs associated with physical collocation, creating an uncertainty for the interconnector. This uncertainty, in turn, may serve as a barrier to entering the interstate access market by interfering with the interconnector's ability to implement its business plans and to market its services. In addition, this uncertainty may increase the risk of the interconnector's business and the price that the interconnector is required to pay to attract debt and equity capital to finance its business. To the extent, therefore, that any of the LECs incur additional, extraordinary, or individually determined costs in conjunction with physical collocation service, they must file new tariffs identifying the service they are providing, the price of that service, the costs associated with providing the service, and justification for these costs. This will ensure that interconnectors receive advance notice of all costs associated with physical collocation service and will permit the Commission to judge the reasonableness of the services proposed by LECs and the costs of providing these services. We also direct SNET, Nevada, and any other LEC that currently provides physical collocation with generalized additional, extraordinary, or individually determined cost provisions to file tariff revisions that delete these provisions.

37. We find that SWB's nonrecurring charges for asbestos abatement are unreasonable because SWB did not demonstrate that other SWB customers will not benefit from asbestos removal in cases where SWB charges the full costs of asbestos removal solely to interconnectors. We therefore require SWB to refund any amounts it collected from interconnectors on or after December 15, 1994 for asbestos abatement. If any LECs wish to apportion the costs of asbestos removal among interconnectors and file to recover such apportioned costs as extraordinary costs through a one-time nonrecurring charge, they must file appropriate justification and cost support, demonstrating that the allocated portion of the asbestos abatement costs is for work that benefits only interconnectors.

38. With respect to NYNEX's provisions for extraordinary costs for microwave expanded interconnection, we note that we modified our requirements for microwave interconnection in the *Virtual Collocation Order*. In that order, we stated that microwave interconnection must be tailored to specific interconnectors and to specific central offices and

---

[93] *Id.*

[94] *Virtual Collocation Order*, 9 FCC Rcd at 5188.

that it does not readily lend itself to uniform tariff arrangements.[95] We found that the LECs must tariff microwave interconnection on a central office-specific, individual case basis, in response to *bona fide* requests.[96] Therefore, we find that NYNEX's tariff provisions for microwave interconnection are consistent with our orders.

4. Advance Payment of Central Office Construction Charges

a. Background

39. All LECs recover the majority of their construction costs through nonrecurring charges.[97] United and Central do not require partial or total construction nonrecurring charges prior to commencement of construction.[98] Bell Atlantic, GTE, SWB, NYNEX, and US West require advance payment of 50 percent of all construction charges.[99] Pacific, Nevada, and BellSouth require advance payment of 100 percent of the construction charges.[100] Moreover, CBT and SNET include charges for design and construction in their application fees and these charges vary depending on the amount of work required to process each interconnector's request.[101] Lincoln requires a $7,500 advance payment for service preparation and cable installation.[102]

40. In the *Designation Order*, the Bureau asked LECs to justify the reasonableness of requiring interconnectors to pay some or all of the nonrecurring charges before commencement of construction.[103]

---

[95] *Id.* at 5178.

[96] *Id.*

[97] With the exception of Pacific, Nevada, Lincoln, and GTOC, all LECs subject to this investigation recover all of their construction costs through nonrecurring charges. Pacific, Nevada, Lincoln,and GTOC recover their construction costs through both recurring and nonrecurring charges. *See* Data Request Response from Jo Ann Goddard, Director, Federal Regulatory Relations, Pacific Bell to Gregory J. Vogt, Chief, Tariff Division, FCC (dated April 28, 1994); Data Request Response from Jo Ann Goddard, Director, Federal Regulatory Relations, Pacific Bell to Carol C. Canteen, Tariff Division, FCC (dated May 20, 1994); Data Request Response from Robert Mazer, Lincoln to Gregory J. Vogt, Chief, Tariff Division, FCC (dated April 25, 1994); GTE Direct Case, Attachment 1.

[98] United and Central Direct Case at 14.

[99] Bell Atlantic Direct Case at 32; GTE Direct Case at 31-33; SWB Direct Case at 25; NYNEX Direct Case at Appendix B, page 5; US West Direct Case at 68-69.

[100] Pacific Direct Case at 55-56; Nevada Direct Case at 11-12; BellSouth Direct Case Exhibit 5 at 3.

[101] CBT Direct Case, Exhibit A; SNET Direct Case at 6.

[102] Lincoln Direct Case at 4.

[103] *Designation Order*, 8 FCC Rcd at 6916.

b. Discussion

41. We find that it is not unreasonable for LECs to require interconnectors to pay up to 50 percent of the cost of construction or other nonrecurring costs before commencement of work. Based on the record, we are convinced that advance payment of up to 50 percent of the construction costs would not only cover the LECs' initial construction costs, but would help ensure that LECs recover all their construction costs from interconnectors. We agree with NYNEX that the advance payment of up to one-half of the construction or other nonrecurring costs is a reasonable requirement that is consistent with standard commercial construction contracts.

42. We find that it is unreasonable for Pacific, Nevada, and BellSouth to require full payment of nonrecurring construction costs prior to construction. We agree with Sprint that full payment before the provision of service deprives interconnectors of leverage if work is not performed to their satisfaction, particularly because there are no specific requirements governing the amount of time that a LEC may take to complete construction. Accordingly, we order Pacific and Nevada to file tariff revisions that delete the requirement for full advance payment of construction costs.[104] Finally, we require all LECs that currently offer physical collocation and are subject to this investigation to state in their tariffs that if a customer withdraws a request for physical collocation, the customer will only be responsible for those amounts already expended on its behalf.

5. Responsibility for Payment of Common Physical Collocation Construction Costs

a. Background

43. Common construction costs are the costs associated with central office construction required for provision of physical collocation services that are not attributable to any particular interconnector. Bell Atlantic, CBT, Pacific, and GTE charge the full amount of construction costs that may be incurred to provide service to multiple interconnectors to the first interconnector, and provide a pro rata refund to the first interconnector if a subsequent interconnector takes service in the central office within a specific period.[105] GTE and Pacific impose a one-year limit on the time for receiving refunds,[106] and limit the number of interconnectors eligible for refunds to three and four interconnectors, respectively.[107] CBT

---

[104] We are not requiring BellSouth to file tariff revisions because it no longer offers physical collocation service.

[105] Bell Atlantic Direct Case, Attachment B at 31; CBT Direct Case, Appendix A at 3; Pacific Direct Case at 53-54; GTE Direct Case at 28-29.

[106] GTE Direct Case at 28-29; Pacific Direct Case at 53-54.

[107] Pacific Direct Case at 53-54.

does not impose a time limit on refunds.[108] Most of the other LECs estimate demand by interconnectors for central office space and average among interconnectors those costs incurred to serve multiple interconnectors.[109] Nevada does not include such costs in its nonrecurring charge because its offices have substantial vacant space.[110] Lincoln recovers such common physical collocation construction costs through its recurring floor space rate.[111] US West splits the common construction costs among each group of three interconnectors that occupy the same central office location.[112] Rochester does not address this issue in its tariff.

44. In the *Designation Order*, the Bureau asked LECs that charge interconnectors a portion of common construction costs based on total estimated demand to explain and document their demand estimates.[113] The Bureau also noted that some LECs charged common costs to the first interconnector, with a pro rata refund if other interconnectors take service within a specific time period. The Bureau asked these LECs to justify their time limit on refunds. The Bureau directed LECs that do not provide pro rata refunds to explain why this does not unreasonably disadvantage the first interconnector.[114]

b. Discussion

45. LECs recover common construction costs by (1) initially charging the first interconnector for all common construction costs through a nonrecurring charge; (2) initially charging the first interconnector for all common construction costs through recurring charges; or (3) charging the first interconnector a portion of common construction costs based on total estimated demand of central office space by interconnectors. We find that these common construction cost recovery mechanisms are not unreasonable, provided that such costs are equitably shared by all interconnectors benefiting from shared facilities. We find that common construction costs can be equitably shared in three ways.

46. LECs may charge their initial interconnectors the full amount of common costs that may be incurred for the purpose of eventually serving the initial interconnector as well as additional interconnectors. We require, however, that if this approach is taken and subsequent

---

[108] CBT Direct Case, Appendix A at 3.

[109] SWB Direct Case at 22-23; Ameritech Direct Case at 22; United Direct Case at 24; NYNEX Direct Case, Appendix B at 3; BellSouth Direct Case, Exhibit 5 at 3; SNET Direct Case at 8-10.

[110] Nevada Direct Case at 11.

[111] Lincoln Direct Case at 10.

[112] US West Direct Case at 68.

[113] *Designation Order*, 8 FCC Rcd at 6916.

[114] *Id.*