Spectrum management is thus not an artificial restriction on the functionality of equipment that can be operated on a loop -- it is a necessary part of ensuring an operational network that can provide services. Accordingly, to avoid those negative consequences, the SBC LECs have developed the PSD set forth in the technical publication based upon ANSI T1.413 -- the only ADSL standard that exists -- and after extensive testing. The SBC LECs do not claim infallibility, however, and would welcome copies of the technical studies and test results that support use of a different PSD that both accommodates ANSI T1.413 and does not significantly increase the risk of interference. Similarly, the SBC LECs are also willing to consider and discuss technical studies and results that indicate ADSL is a disturber so that a review can be performed to determine whether additional spectrum management functions are needed to ensure the reliability of ADSL services.

B. The Facility Availability and Loop Qualification Tests Are Wholly Reasonable and Neutral

As part of the provision of ADSL-compatible loops, the SBC LECs propose to perform "Facility Availability" and "Loop Qualification" checks. These checks, respectively, determine whether an ADSL-capable loop is available to the requested location, and determine whether its loop length is likely to support ADSL service. However, even those checks are subject to criticisms by various parties. The SBC LECs have presumed that when a carrier wants a loop to provide ADSL on, it does not just want a loop but rather wants some degree of comfort that the loop will actually support ADSL. There is nothing unreasonable about the checks that SBC LECs are proposing to perform.

VI. THERE IS NO DISPUTE THAT COLLOCATION FROM THE SBC LECS IS ALREADY AVAILABLE FOR ADSL EQUIPMENT

Although various claims are made about the provision of collocation by the SBC LECs, the Commission should note that there is absolutely no dispute that the SBC LECs already provide physical collocation for ADSL equipment. Indeed, Covad Communications Inc. would have the Commission ignore the fact that Covad is occupying multiple physical collocation arrangements with Pacific and is able to provide ADSL service from those offices. Similarly, carriers can install ADSL equipment at their decisions in the over 200 other physical collocation arrangements provided by Pacific, the three arrangements provided by Nevada, and 90 arrangements provided by SWBT (all numbers as of the end of May 1998). In the aggregate at that time, the SBC LECs combined have over additional 400 physical collocation arrangements in the process of being prepared. The SBC LECs clearly provide on a widespread basis physical collocation that can be used in the provision of ADSL service at any time.

As to the specific claims made by various commenters, many are erroneous, and none afford a basis for rejecting the Petition. The SBC LECs fully appreciate their collocation obligations, and are working to meet the unprecedented and unexpected demand by going beyond what the 1996 Act or the FCC rules require. Moreover, contrary to the clear desires of some commenters, this proceeding is not a proper forum for expanding the collocation obligations of incumbent LECs.

A. The SBC LECs Collocation Terms, Conditions, and Practices are Just and Reasonable, Meet Applicable Legal Obligations, and Are Being Improved

Various commenters are seeking to use this proceeding as a forum to debate the terms and conditions (including price) of collocation as provided by the SBC LECs, and collocation matters generally. The Petition does not provide carriers yet another bite at the apple -- in every instance where any SBC LEC provide collocation, the terms and conditions of that collocation arrangement (including price) have either been agreed to by the relevant carrier or have been determined to be meet the applicable legal and regulatory standards by either the FCC or a State commission. This proceeding does not act as a forum for a "re-debate" on those issues or an appellate avenue from those determinations. In short, extraneous collocation matters cannot afford a basis for rejecting or delaying the relief sought in the Petition.

The SBC LECs provide physical and virtual collocation pursuant to fully negotiated agreements, arbitrated agreements, or under interstate or state tariffs. For example, Pacific provides physical collocation under interstate tariffs that have been determined by the FCC to be just and reasonable;[28] under State tariffs under the jurisdiction and oversight of the California Public Utilities Commission; and under agreements that provide for discounts from the intrastate tariffed rates. Nevada's physical collocation is also provided under interstate tariffs determined to be just and reasonable, and under approved agreements. SWBT has arbitrated the terms and

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[28] *See Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Physical Collocation for Special Access and Switched Transport*, CC Docket No. 93-162, Second Report and Order, 12 FCC Rcd 18730 (1997).

conditions of physical collocation in each of the five States in which it operates, and has been required to effectively tariff physical collocation provided under section 251(c)(6) in Texas, with a virtual collocation tariff similarly being finalized and approved before the Texas Public Utility Commission. In negotiations and arbitrations, carriers have sought -- and have been successful more often than not -- obligations and abilities that go beyond what the 1996 Act or the FCC's rules require. In sum, those carriers had more than amply opportunity to debate collocation provisioning issues; to the extent that they are dissatisfied with the results, the avenue of review is with the Courts under section 252(e)(6) and not with this Commission, and especially not in this proceeding.

Of particular note is the demand for "cageless" collocation, the motive for which appears to be a combination of space exhaustion issues, dissatisfaction with virtual collocation, and the claims of excessive charges for secured space. None of those claims warrants the adoption of "cageless" collocation, and particularly not in this proceeding.

The issue of "cageless"collocation has already been rejected by the Commission once. In the Interconnection Order,[29] the Commission recognized that the legitimate security and competitive concerns of incumbent LECs:

> Based upon on comments in this proceeding and our previous experience with physical collocation in the *Expanded Interconnection* docket, we will continue to

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[29] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, ¶ 282 (1996) ("Interconnection Order"), *vacated in part on other grounds*, Iowa Utilities Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997), *amended on reh'g*, 1997 U.S. App. LEXIS 28652 (October 14, 1997), *cert. granted sub noms*. 66 U.S.L.W. 3490 (1998).

> permit LECs to require reasonable security arrangements to separate an entrant's collocation space from the incumbent LEC's facilities. The physical security arrangements around the collocation space protect both the LEC's and competitor's equipment from interference from unauthorized parties. We reject the suggestion of ALTS and MCI that security measures be provided only at the request of an entrant since LECs have legitimate security concerns about having competitors' personnel on their premises as well.

Interconnection Order, ¶ 598 (italics in original). There has been no change in circumstance or experience that in any way justifies a change in the FCC's decision. The legitimate security and competitive concerns remain and, indeed, are heightened as the intensity of competition increases and the number of collocators grows.

To the extent that a collocator believes that the charge for a cage is too high, the collocator has the option of hiring its own contractor to install a cage under the FCC's rules. *See* 47 C.F.R. § 51.323(j). The Commission adopted that rule to specifically permit collocators to subcontract the provision and install of their own cages in order to address the concern over the potential for excessive charges while maintaining reasonable security measures. Interconnection Order, ¶ 598.

As to complaints about the lack of space generally, denial of physical collocation for that reason is specifically contemplated by the 1996 Act, and Commission rules dating back to at least 1994. Both Congress and the Commission have correctly understood that the space available for collocation is limited, and there is nothing inherently unlawful, or unreasonable about such wholly expected denials (which can only increase as more and more physical collocation arrangements are demanded, and the amount of available space remains largely the

same). In any event, to address this issue as space exhaustion approaches for a central office, the SBC LECs are working to identify and make available more space for physical collocation (*e.g.*, moving administrative personnel where practical, resurveying central offices, space subleasing).

Where space for physical collocation is not available, the SBC LECs will provide virtual collocation of ADSL equipment (*e.g.*, DSLAM). As the Commission has stated, virtual collocation is the recognized substitute for physical collocation where space does not exist. Indeed, the Commission crafted virtual collocation in part for that reason, and Congress agreed that, where physical collocation cannot be accommodated, incumbent LECs have an obligation to provide virtual collocation. The fact that a carrier would prefer to obtain physical collocation rather than virtual collocation is no basis for rejecting the Petition.

Finally, those that seek to find something inconsistent with the lack of space for physical collocation and the ability of an incumbent LEC to install its own similar equipment are seeking to create an issue where one does not exist. From a space perspective, such a situation is no different than the ability to provide virtual when space is unavailable for physical. With virtual, the same telecommunications equipment would be used as would have been deployed in a physical arrangement; it is the lack of the need to place cage around a set amount of space that makes virtual a possibility when physical is not. For that reason, both the statute and the FCC implicitly recognize that space may be available for the equipment when virtually collocated, even though space is not available for physical.

B. The Demand for Physical Collocation Has Been Heavy

Nevertheless, there have been instances where the SBC LECs have been unable to meet the demands and requirements of carriers wishing to collocate.[30] Those instances have not been the result of a failure to appreciate collocation obligations, but rather the unexpectedly heavy demand for physical collocation from multiple carriers. To address these issues and improve performance, the SBC LECs are improving its processes, working to identify more space for physical collocation, and discussing alternatives with collocators.

C. Collocation by Internet Service Providers is Not Required or Authorized, and Would Only Accelerate Space Exhaust

Physical collocation is only authorized for telecommunications carriers for purposes of interconnection for telephone exchange and exchange access services, and for access to unbundled network elements. *See* 47 U.S.C. § 251(c)(6).; 47 C.F.R. § 51.323. Prior to the imposition of that obligation, the Court of Appeals in Bell Atlantic v. FCC, 24 F.2d 1441 (D.C.Cir. 1994) determined that the FCC did not have the requisite authority to require physical collocation. Internet service providers (or any other entity acting as an information service provider) dispute any claim that they are carriers;[31] as such, they are not entitled to physical

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[30] The SBC LECs are not here addressing the negotiations and arbitrations of collocation agreements, but rather only the provision of collocation under such agreements or tariffs. Much more often than not, carriers wanted collocation arrangements under terms and conditions that differed greatly from what had previously been acceptable to carriers or had previously determined to be reasonable by the FCC and State commissions, and thus often lengthy negotiations and arbitrations ensured.

[31] The FCC has apparently reached the same conclusion even when the ISP is providing pure telecommunications services.

collocation and virtual collocation is only available pursuant to the *Expanded Interconnection* orders. For the same reason, incumbent LECs have no obligation to provide ADSL-conditioned loops to ISPs.[32]

Moreover, as the Pacific's California experience demonstrates, the space available for physical collocation is hardly infinite, and is rapidly being exhausted. Making collocation available to non-carriers will increase demand for that space and accelerate exhaustion, and result in more space being dedicated for non-telecommunications purposes. In light of the continued assertions by carriers that physical collocation is a critical component in competing with incumbent LECs, requiring the collocation of ISPs can only work to the detriment of telecommunications competition.

VII. THE SBC LECS HAVE NOT ASKED FOR ANY RELIEF FROM ANY OBLIGATION TO PROVIDE ADSL-COMPATIBLE LOOPS OR COLLOCATION FOR ADSL EQUIPMENT

At least one commenter apparently believes that the SBC LECs' request for limited relief from the "most favored nation" obligation somehow is a request for a relief from the obligation to provide ADSL-compatible loops or collocation for ADSL equipment.[33] The requested relief is totally misconstrued or misunderstood; the SBC LECs are not seeking any such relief.

Rather, the relief that is being sought is aimed at those potential situations where an SBC LEC is providing unbundled ADSL equipment or ADSL service at a wholesale discount as a

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[32] *See* CIX, p. 12. An incumbent LEC can, of course, voluntarily choose to provide space and unbundled loops for ISPs if it wishes to do so.

[33] KMC Telecom Inc., pp. 6-7.

result of obligations that arose prior to any relief granted in this proceeding, and even then the relief would be only prospective. The SBC LECs are understandably concerned that any such relief would be circumvented to the point of evisceration if the "most favored nation" obligation of section 251(i) remains available to carriers. For example, a carrier that could not require a wholesale discount on ADSL service would possibly still be able to demand under section 251(i) the same terms and conditions of an earlier interconnection agreement which provided for such a wholesale discount. Moreover, continuing to provide unbundled ADSL equipment and wholesale discounts under those pre-existing agreements could have the exact same negative effects on the efficacy of the relief provided by the FCC (particularly if in advance of such relief, every carrier MFNs into the agreement as a precautionary measure).

To reiterate, the SBC LECs are not seeking to disrupt the unbundling arrangements or resold services that may exist on the date that the FCC issues an order granting the Petition. Those will be grandfathered for the life of the applicable interconnection agreement. Going forward, however, those carriers would either need to purchase ADSL service for resale under section 251(b), purchase for resale from another carrier providing ADSL, or to deploy its own ADSL equipment in furtherance of the goal of section 706.

VIII. CONCLUSION

The SBC LECs urge the Commission to expeditiously address the Petition, as well as section 706 issues in general. The public interest would be served by more competition, more investment, and more deployment of high-speed data services. By granting the Petition, the

Commission can help ensure that the Congressional goals of encouraging technology investment and deployment, and the offering of new advanced services will be fulfilled in a prompt and reasonable manner.

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CERTIFICATE OF SERVICE

I, Mary Ann Morris, hereby certify that the foregoing, "REPLY COMMENTS OF SOUTHWESTERN BELL TELEPHONE COMPANY, PACIFIC BELL, AND NEVADA BELL," in CC Docket No. 98-91 have been filed this 1st day of July, 1998 to the Parties of Record.

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