

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Deployment of Wireline Services Offering
Advanced Telecommunications Services

CC Docket No. 98-147

PETITION FOR PARTIAL RECONSIDERATION
AND/OR CLARIFICATION

I. INTRODUCTION

Sprint Corporation hereby submits a petition for partial reconsideration and/or clarification of portions of the Commission's *First Report and Order* in CC Docket No. 98-147. Deployment of Wireline Services Offering Advanced Telecommunications Capability, *First Report and Order*, FCC 99-48, CC Docket No. 98-147 (rel. March 31, 1999) (*Advanced Services First R&O*). In particular, Sprint requests the Commission to clarify, or to the extent necessary modify, certain of its holdings with respect to adjacent and cageless collocation arrangements (§§41-44); service degradation disputes (§75); collocation space exhaustion at ILEC premises (§54); and collocation provisioning intervals (§54).

II. REQUESTS FOR CLARIFICATION AND/OR MODIFICATION

A. **The Commission should clarify that the definition of ILEC "premises" includes Adjacent Controlled Environmental Vaults**

For the reasons described below, Sprint respectfully requests that the Commission clarify that ILECs must provide requesting carriers with adjacent space collocation on property that is adjacent to ILEC premises when space inside ILEC premises is actually exhausted. To the

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extent necessary, the Commission may provide this clarification by broadening explicitly the current definition of the term "premises," codified at Section 51.5, 47 C.F.R. §51.5.

In Paragraph 44 of the *Advanced Services First R&O*, the Commission required ILECs to permit new entrants to collocate in adjacent controlled environmental vaults ("CEVs") or similar structures when space inside ILEC premises is legitimately exhausted. It also required ILECs to permit requesting collocators to construct or otherwise procure such a structure, subject only to reasonable safety and maintenance requirements. Last, it required the ILEC to provide power and physical collocation services and facilities on a nondiscriminatory basis. *See also id.* at Appendix B, 47 C.F.R. §51.323(k)(3). In adopting these and other alternative physical collocation requirements, the Commission's stated goal was to foster the deployment of advanced services by facilitating market entry by competing carriers. In addition, the Commission noted that the alternative collocation requirements should also encourage CLECs to provide advanced services to areas of low population density by reducing their collocation costs. *See id.* at ¶39.

In addition, Section 251(c)(6) of the Act, 47 U.S.C. §251(c)(6), requires ILECs to provide physical collocation for the purposes of interconnection or access to unbundled elements "at the premises of the local exchange carrier." In the *Local Competition First Report and Order*, CC Docket 96-98, 11 FCC Rcd 15499, 1571 (¶573)(1996), the Commission decided that, consistent with the Act's procompetitive goals, it would define the term ILEC premises "broadly" to include LEC central offices; serving wire centers and tandem offices; buildings or similar structures owned or leased by the incumbent LEC that house LEC network facilities; and any structures that house LEC network facilities on public rights-of way. *Id.* (emphasis added); *see also* 47 C.F.R. §51.5, "Terms and Definitions." Thus, the Commission adopted a very broad,

procompetitive definition of "premises," and the example of locations it mentioned did not purport to be the only locations falling within that definition.

Contrary to the Commission's mandate, BellSouth and other carriers are interpreting the Commission's *Order* as not requiring adjacent space collocation on the grounds that such space would not be located at ILEC "premises." These ILECs contend that the FCC's adjacent space collocation requirement imposed on ILECs is in complete conflict with Section 251(c)(6) the Act, 47 U.S.C. §251(c)(6), and the Commission's definition of that term in Section 51.5, 47 C.F.R. §51.5. *See e.g.*, Direct Testimony of W. Keith Milner, BellSouth Telecommunications, Inc. before the Florida Public Service Commission, April 9, 1999 at pages 17-20, attached hereto as Appendix A. The actions of BellSouth and other ILECs are not only directly opposed to the Commission's rules, but also undermine the Commission's policy goals of fostering widespread deployment of advanced services.

Of course, incumbents have a natural incentive to deny competitors' requests for collocation. As Sprint pointed out in its *Advanced Services First R&O* comments, ILECs such as BellSouth have lucrative local telephone monopolies and, not surprisingly are unwilling to cede these monopolies except insofar as they are forced to by regulators or the market place. *See* Sprint reply comments at 5-6. BellSouth's argument that property adjacent to an ILEC structure (*e.g.*, an ILEC central office) is not "at" an ILEC premises is clearly at odds with the Commission's adjacent space collocation requirements. In requiring adjacent space collocation, the Commission considered the phrase in Section 251(c)(6) "at the [ILEC's] premises" to comprehend not only the ILEC structure itself (*e.g.*, the structure within which a switch is located), but also the surrounding land owned or leased by the ILEC.

From a policy standpoint, it makes no difference whether competing carriers collocate within an ILEC central office or on property owned or leased by the ILEC that is adjacent to the central office. In either case, the ILEC is reimbursed for the costs it reasonably incurred in providing these collocation arrangements and has no legitimate basis for complaint. Assuming that the ILEC claim of space exhaustion is legitimate, the space available for collocation by requesting carriers is increased by requiring that the ILEC provide requesting carriers the opportunity to construct adjacent CEVs. Thus, ILECs cannot thwart competition by claiming that collocation space is exhausted within an ILEC central office. In such cases, the requesting carrier still can meet its collocation needs by placing its equipment within an adjacent CEV.

Alternatively, if the Commission finds that BellSouth has made a reasonable argument (and Sprint does not believe that such a finding is required or even permissible), the Commission should modify the definition of "premises" itself to include physical structures (such as an ILEC central office building) and all of the land and buildings owned or leased by an ILEC surrounding such structures. There could then be no claim that the Commission's requirement violates Section 251(c)(6).

B. The FCC should clarify that ILECs may not require the construction of a wall or similar structure to separate ILEC and collocator equipment under cageless collocation arrangements

Sprint requests the Commission to clarify that ILECs may not require the construction of a wall or similar structure to separate ILEC equipment from CLEC equipment under cageless collocation arrangements. Sprint makes this request due to recent attempts by BellSouth and SBC to require such costly and inefficient constructions and to refuse CLECs' requests to commingle CLEC equipment in the same bays that house ILEC equipment.

Under Paragraphs 42 and 43 of the Commission's *Advanced Services First R&O*, ILECs are required to make cageless collocation arrangements available to requesting carriers so as to offer them a choice of collocation arrangements. In addition, the Commission required ILECs, when providing cageless collocation, "to give competitors the option of collocating equipment in any unused space within the incumbent's premises, to the extent technically feasible, and may not require competitors to collocate in a room or isolated space separate from the incumbent's own equipment." *Id.* (emphasis added); *see also id.* at Appendix B, 47 C.F.R. §51.323(k). The Commission also prohibited ILECs from requiring competitors to use separate rooms or floors, or imposing any unreasonable segregation requirements. Finally, the Commission required ILECs to make collocation space available in single-bay increments.

Sprint previously argued in this proceeding that requesting carriers must be permitted to maintain and install their own equipment commingled with ILEC and/or CLEC equipment, including in the same bays that house ILEC and CLEC equipment. *See* Sprint comments at 14-15. Thus, Sprint fully supports these requirements and the Commission's underlying policy goals, which are to prohibit ILECs from artificially raising the cost of collocation and prematurely decreasing the amount of available collocation. Sprint further agrees with the Commission's statement that these rules and underlying policy goals are "crucial to the continued development of the competitive telecommunications market." *Id.* at ¶¶42-43.

ILECs such as BellSouth and SBC appear to require improperly the physical separation of collocator equipment from ILEC equipment despite the Commission's explicit requirements to the contrary. *See Milner Testimony*, Appendix A at 8-9 (stating that there is no industry accepted definition of "cageless collocation," but BellSouth interprets the term to mean that CLEC equipment must be segregated from BellSouth equipment by a wall or similar structure within its

central offices). By taking such actions, these ILECs seek to maintain their market power and thwart CLEC attempts to undermine their lucrative monopolies. Assuming that the requesting carrier's equipment does not cause electrical interference to the ILEC's equipment, there is no public policy reason that supports ILEC construction of a "wall or similar structure" to isolate CLEC equipment. By taking such action, ILECs simply seek to improperly raise the cost of collocation to requesting carriers and limit the amount of available collocation space, without any legitimate offsetting benefit to the ILEC. It is Sprint's view that the ILECs' misinterpretation of the Commission's rules will result in difficult and expensive cageless collocation arrangements and premature exhaustion of ILEC physical collocation space.

Because disputes have already arisen, Sprint respectfully requests the Commission to clarify that ILECs may not require the construction of walls or similar structures to improperly separate ILEC from CLEC equipment and that CLECs are indeed permitted to commingle their equipment with ILEC equipment. In addition, Sprint respectfully requests the Commission to confirm that ILECs are also required to permit CLECs to collocate equipment in any cageless collocation arrangements, ranging from CLEC-designated space marked off by nothing more than tape on the floor, to commingling CLEC equipment in the same bays as ILEC equipment.

C. The Commission should clarify that ILECs are in all instances the initial point of contact for inter-CLEC charges of service degradation

In Paragraph 75 of the Commission's *Advanced Services First R&O*, the Commission concluded that if a carrier claims that a service is significantly degrading the performance of other advanced services or traditional voice band services, then that carrier must notify the causing carrier and allow a reasonable opportunity to correct the problem. It is Sprint's view that in all or almost all such disputes between CLECs, ILEC facilities such as binder/cable groups will be also implicated. It is clear from the *Order* that the ILEC will always notify, or be notified

by, a CLEC when an ILEC and a CLEC are the only parties to a service degradation dispute. What is less clear is that notifications in disputes involving two or more CLECs must first go to the ILEC.

In light of the above, Sprint believes that Paragraph 75 requires a complaining CLEC to notify the ILEC of the alleged service degradation in all instances, and to require the ILEC to have the responsibility of notifying the other CLEC(s) whenever CLEC services are claimed to be degrading the services of the other CLEC(s). Sprint submits that this process would: 1) allow for the most efficient resolutions of such disputes and 2) properly require the CLEC to put the ILEC, whose equipment is always or almost always involved, on notice of all service degradation claims. Because the benefits of this process for resolving service degradation disputes are clear, an explicit requirement that the ILEC should always be the initial point of contact comports with sound public policy. Thus, Sprint respectfully requests the Commission to clarify this rule accordingly.

**D. The Commission should reconsider and expand the scope of its rules
Regarding ILEC and CLEC reservation of space in collocation facilities**

For reasons described in detail below, Sprint respectfully requests the Commission to reconsider its *Advanced Services First R&O* to require incumbents and collocators to limit any reservation of collocation space to one year and only if that reservation is made pursuant to specific business plans to utilize that space. Moreover, the Commission should require incumbent LECs claiming that physical collocation space is exhausted at a central office, to detail to a state commission the portion of unavailable space that the incumbent has reserved for its own or any of its affiliates' future use and provide a description of the specific future uses for which the incumbents have reserved that space.

In its comments in the *Advanced Services* proceeding, Sprint urged the Commission to permit ILECs to reserve space needed for their network needs for one year (on a rolling basis). *See* Sprint comments at 18. Because, as noted above, an ILEC has no incentive to cooperate with its competitors, it will seek to employ strategies to thwart competitors' attempts to undermine its monopoly power. One such strategy is to reserve space for its own or its affiliates' use indefinitely, thereby limiting the amount of collocation space available to competitors. To prevent such subterfuge, the Commission should clarify that an ILEC must limit any reservation of collocation space to one year and only if that reservation is made pursuant to specific business plans to utilize that space. This limitation should also apply to CLECs that already have facilities in the ILEC's central office, as they would to some extent share the ILEC's incentive to limit competition as much as possible.

The Commission has already adopted some safeguards to prevent ILECs from prematurely claiming that space is exhausted at a particular ILEC premises. For example, in its *Local Competition First Report and Order*, the Commission required an incumbent LEC that denies requests for physical collocation on the basis of space exhaustion to provide the relevant state commission with detailed floor plans or diagrams of its premises. *Advanced Services First R&O* at ¶56 (citations omitted). In addition, in the *Advanced Services First R&O*, the Commission required ILECs that deny physical collocation requests to allow requesting CLECs to tour the relevant ILECs' premises at no charge. *Id.* at ¶54; Appendix B, 47 C.F.R. §51.321(f). The Commission adopted these measures to counteract the incentive and the ability of ILECs to impede competition by reducing the space available for collocation by competitors. *Id.*

ILECs have the same incentive and, absent Commission intervention, the same ability to impede competition by reserving indefinitely, and without justification, space for its own (or its

affiliates') undefined future use. Consequently, the Commission should require state commissions to scrutinize any ILEC reservation of space for future use to ensure that any such reservation is limited to one year and is made pursuant to specific business plans to utilize that space. Absent such a requirement, ILECs will be able to reserve such space indefinitely and with no other purpose other than to thwart competition.

E. The Commission should reconsider its decision not to provide States with even minimum time frames for provisioning of collocation space

At Paragraph 54 of the *Advanced Services First R&O*, the Commission decided not to adopt collocation provisioning intervals because it "did not yet have sufficient experience with the implementation of . . . new collocation arrangements." Nevertheless, the Commission recognized the importance of timely provisioning, and acknowledged that the public record in this proceeding provided ample evidence of CLEC-requested collocation space not being available for as long six to eight months. The Commission also acknowledged that CLECs suffer significant harm when ILECs delay implementation of the CLECs requests. In light of these considerations, the Commission reserved the right to adopt specific time frames in the future, and encouraged state commissions to ensure that ILECs indicate that collocation space "is available in a timely and procompetitive manner that gives new entrants a full and fair opportunity to compete." *Id.* at ¶¶54-55 (citations omitted).

The Commission's new rule at Section 51.321(h) requires an ILEC to respond to a requesting carrier within ten days of the submission of its request, a report indicating the ILEC's available collocation space at a particular ILEC premises. It also requires an ILEC to post on its publicly available Internet web site a list of all premises that have run out of collocation space, and update such a list within 10 days of space exhaustion at a particular ILEC premises. While laudable, these measures should be strengthened in order to minimize the incentive and ability of

ILECs to delay implementation of requesting carriers' collocation requests as a way of impeding competition.

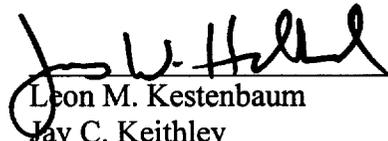
Sprint therefore respectfully requests the Commission to impose a minimum standard interval of no more than 90 calendar days in which a requesting carrier must be allowed to physically collocate at a particular LEC premises, so long as previously conditioned or prepared space is available. This interval should run from the date that a CLEC submits its application to the ILEC to the date in which the CLEC is able to physically collocate. Furthermore, if the incumbent believes that an insufficient amount of previously conditioned or prepared floor space is not available, it should continue to be required to provide the requesting carrier with such a response within ten days and post such information on its web site. It should also be required to provide the collocation space in no more than 180 calendar days from the date the requesting carrier submitted its application.

III. CONCLUSION

Sprint urges the Commission to clarify, or to the extent modify, the rules and policies adopted in the *Advanced Services Order First Report and Order* as described above.

Respectfully submitted,

SPRINT CORPORATION



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Petition For Partial Reconsideration And/Or Clarification** of Sprint Communications Company L.P. was send by hand or by United States first-class mail, postage prepaid, on this the 1st day of June, 1999 to the parties on the attached list.


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BELLSOUTH TELECOMMUNICATIONS, INC.
DIRECT TESTIMONY OF W. KEITH MILNER

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NOS. 980946-TL, 980947-TL, 980948-TL, 981011-TL,
981012-TL AND 981250-TL

APRIL 9, 1999

Q. PLEASE STATE YOUR NAME, ADDRESS, AND POSITION WITH
BELLSOUTH TELECOMMUNICATIONS, INC.

A. My name is W. Keith Milner. My business address is 675
West Peachtree Street, Atlanta, Georgia 30375. I am
Senior Director - Interconnection Services for
BellSouth Telecommunications, Inc. ("BellSouth"). I
have served in my present role since February 1996 and
have been involved with the management of certain
issues related to local interconnection, resale and
unbundling.

Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

A. My business career spans over 28 years and includes
responsibilities in the areas of network planning,
engineering, training, administration and operations.

1 A. Yes. Even before the FCC issued its recent Order,
2 BellSouth's policy was to allow the sharing of
3 collocation arrangements between two or more carriers
4 in those cases where space is unavailable for physical
5 collocation. The FCC's Order would apparently go
6 beyond BellSouth's offer and require sharing of
7 collocation "cages" without the precondition of a space
8 exhaust situation.

9
10 Q. WHAT IS MEANT BY THE TERM "CAGELESS" COLLOCATION?

11
12 A. The FCC's recent Order does not specifically define
13 "cageless" collocation. In paragraph 42, however, it
14 may be implied that what the FCC refers to as
15 "cageless" collocation is met by the requirement that
16 "incumbent LECs must allow competitors to collocate in
17 any unused space in the incumbent LEC's premises,
18 without requiring the construction of a room, cage, or
19 similar structure, and without requiring the creation
20 of a separate entrance to the competitor's collocation
21 space." While there is no industry accepted definition
22 of this term, heretofore BellSouth has used the term
23 "cageless" collocation to mean a physical collocation
24 arrangement that is not separated by walls or other
25 structures from the physical collocation arrangements

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INDEXED
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1 of other collocators, but is separated by a wall or
2 similar structure from BellSouth's equipment within the
3 BellSouth central office. BellSouth also uses the term
4 "unenclosed physical collocation arrangement" to
5 describe this same arrangement.

6

7 Q. DOES BELLSOUTH PROVIDE CAGELESS COLLOCATION AND, IF SO,
8 WHAT TYPES OF CAGELESS COLLOCATION DOES BELLSOUTH
9 PROVIDE?

10

11 A. Yes. Consistent with BellSouth's use of the term
12 "cageless" collocation, where local building code
13 permits the placement of unenclosed arrangements, these
14 unenclosed arrangements will be located in the area
15 designated for physical collocation within the
16 BellSouth premises. A collocator may designate a
17 specific amount of unenclosed space, provided that such
18 designation is adequate to accommodate the requested
19 equipment installation per industry standards.
20 Alternatively, if a square footage amount is not
21 designated, floor space will be assigned to accommodate
22 for wiring and maintenance aisle space based on the
23 shadow print of the equipment and racking plus a factor
24 of 2.5 times the shadow print. This factor equates to
25 one-half of the width for industry standard forward and

SEARCHED
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INDEXED
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1 have approved the wire cage. It is believed that
2 successes in some jurisdictions will help gain
3 approvals from other code authorities.

4

5 Q. WHAT IS A "CEV"?

6

7 A. The term "CEV" stands for Controlled Environment Vault.
8 It is a separate, stand-alone structure containing
9 equipment to regulate the "environment" within it such
10 as air temperature. The CEV, in some cases, is buried
11 with an entryway at ground level for ingress and
12 egress. In this context, the CEV is used to house
13 telecommunications equipment outside a central office
14 building. It is called a vault because it is often
15 constructed of steel reinforced, poured concrete wall,
16 floor, and ceiling members.

17

18 Q. WHAT IS BELLSOUTH'S POLICY REGARDING COLLOCATION IN
19 ADJACENT CEVs AND SIMILAR STRUCTURES IN CASES WHERE
20 SPACE IS NOT AVAILABLE FOR PHYSICAL COLLOCATION?

21

22 A. BellSouth's policy heretofore has been to not allow
23 collocators to construct or otherwise procure CEVs and
24 similar structures on BellSouth's property. The FCC's
25 rules would apparently require BellSouth to accommodate

1 such a request to the extent technically feasible.

2

3 Q. IS IT YOUR OPINION THAT THE FCC'S RECENT RULES
4 PERMITTING THE PLACEMENT OF ADJACENT CEVS OR SIMILAR
5 STRUCTURES HAS CHANGED THE FCC'S DEFINITION OF THE TERM
6 "PREMISES"?

7

8 A. No. First of all, the Telecommunications Act of 1996
9 does not provide a definition for the term "premises",
10 nor is the term discussed in the legislative history.
11 In the FCC's Order 96-325, the FCC defined the term
12 "premises" as follows:

13 "We therefore interpret the term 'premises'
14 broadly to include LEC central offices, serving
15 wire centers and tandem offices, as well as all
16 buildings or similar structures owned or leased by
17 the incumbent LEC that house LEC network
18 facilities. We also treat as incumbent LEC
19 premises any structures that house LEC network
20 facilities on public rights-of-way, such as vaults
21 containing loop concentrators or similar
22 structures." [Paragraph 573]

23

24 Further, I believe that if the FCC intended to broaden
25 its definition further, it could have done so in its

1 recent Order. It did not do so, instead the FCC would
2 permit "the new entrant to construct or otherwise
3 procure such an adjacent structure, subject only to
4 reasonable safety and maintenance requirements."

5
6 Q. DO ADJACENT CEVs OR SIMILAR STRUCTURES FIT THE FCC'S
7 DEFINITION OF THE TERM "PREMISES"?

8
9 A. No. The FCC's definition of adjacent CEVs and similar
10 structures is inconsistent with its own definition of
11 "premises" and the Act's requirement for collocation
12 within BellSouth's premises. This is because the
13 resulting structure, whether constructed by the
14 collocator or otherwise procured, would not be owned by
15 BellSouth and thus would not fit the definition of
16 being any one of the types of structures named in the
17 FCC's definition; specifically, "LEC central offices,
18 serving wire centers and tandem offices, as well as all
19 buildings or similar structures owned or leased by the
20 incumbent LEC that house LEC network facilities."
21 Further, the resultant structure constructed or
22 otherwise procured by the collocator (that is, the
23 adjacent CEV or similar structure) would not fit the
24 FCC's definition because it would not house BellSouth's
25 "network facilities." To summarize, the FCC's

1 requirement for adjacent CEVs and similar structures is
2 inconsistent with the requirements of the Act that
3 BellSouth provide collocation at its premises because
4 adjacent CEVs and similar structures are not
5 BellSouth's premises and the equipment housed within
6 the adjacent CEV or similar structure is not part of
7 BellSouth's network facilities.

8
9 Q. HAVE OTHER PARTIES SOUGHT TO FURTHER BROADEN THE FCC'S
10 DEFINITION OF THE TERM "PREMISES"?

11
12 A. Apparently so. Some parties have suggested that
13 buildings that house BellSouth's administrative or
14 other support personnel and which are on parcels of
15 land adjacent to or near BellSouth's central offices
16 should likewise be considered "premises" under the
17 FCC's definition. Since these buildings do not house
18 network facilities (that is, switches or transmission
19 equipment, for example), they are not subject to
20 requirements for collocation.

21
22 Q. THE FCC'S RULES REQUIRE THAT INCUMBENT LECs ALLOW ALL
23 EQUIPMENT USED FOR INTERCONNECTION OR ACCESS TO UNES TO
24 BE COLLOCATED. WHAT TYPE OF EQUIPMENT DOES THE FCC'S
25 RECENT ORDER SPECIFICALLY REQUIRE?