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VIA HAND DELIVERY

Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals - TW-A325
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: *Ex Parte*, CC Docket No. 98-147

Dear Ms. Salas:

DSLnet Communications, LLC ("DSLnet"), by its counsel, submits this *ex parte* filing to urge the Federal Communications Commission ("Commission") to act on reconsideration to strengthen the *Collocation Order* issued in the above-referenced docket on March 31, 1999.[1] While the *Collocation Order* resulted in substantial improvements to the collocation process, additional measures are needed to ensure the timely availability of efficient, affordable and effective collocation options to Competitive Local Exchange Carriers ("CLECs") and providers of advanced services.

I. Collocation Delays are Stifling the Development of Advanced Services.

DSLnet was founded in 1998 to provide high-speed data communications services and Internet access using Digital Subscriber Line ('xDSL") technology. DSLnet aims to be the first nationwide provider of xDSL service in Tier 2 and Tier 3 markets. DSLnet has initiated service in thirty-six markets and plans to enter selected markets in almost every state by the end of the first quarter of 2000. So that it may broaden its service offerings, DSLnet has within the past twelve months obtained authority to provide intrastate telecommunications services in 47 states and in the District of Columbia, and it has applications pending in the remaining three states.

DSL offers one of the most promising opportunities to expand the availability of high-speed advanced services because it utilizes affordable, already-ubiquitous copper loops. An xDSL provider is able to sustain high-speed digital data transmissions over these copper wires

[1] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-48 (rel. March 31, 1999) ("*Collocation Order*").

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for short distances by locating DSL modems at each end of the loop, one at the customer's premises and the other at or near the Incumbent Local Exchange Carrier ("ILEC") central office.

In implementing its nationwide roll-out of service, DSLnet has found that the acquisition of efficient, affordable and timely collocation arrangements at or near ILEC central offices is perhaps the single most formidable obstacle to the provision of competitive advanced telecommunications services in the United States today. To date, DSLnet has filed approximately 500 applications for cageless collocation with ILECs across the country, and it has accepted 141 completed sites in 23 states. DSLnet has discovered significant variation in the quality and responsiveness among ILEC provisioning practices, with a strong correlation between reasonable practices and aggressive state regulation. Because most states have not implemented improved collocation provisioning procedures since the adoption of the *Collocation Order*, however, unreasonable ILEC collocation provisioning schedules, many as long as six to nine months, have stalled DSLnet's entry into new markets and threaten to undermine competition in markets where the ILECs introduce their own xDSL services.

II. National Collocation Intervals Would Boost Competitive Entry.

In its *Collocation Order*, the Commission recognized the difficulty faced by CLECs in obtaining timely collocation, but deferred to state commissions the establishment of provisioning intervals because it found that it did not have sufficient information at that time to set appropriate intervals.[2] Regrettably, most state commissions have not addressed collocation intervals during the eight months since the issuance of the *Collocation Order*. Therefore, the lengthy and unpredictable collocation provisioning process experienced by CLECs in most U.S. markets remains as one of the most significant barriers to the proliferation of competitive advanced telecommunications services.

However, a few state commissions have acted to establish reasonable provisioning intervals, including an order by the Texas Public Utilities Commission ("Texas PUC") creating expedited collocation provisioning intervals applicable to Southwestern Bell ("SWBT").[3] Although the its new collocation tariff took effect only recently, SWBT began to implement expedited intervals in mid-1999. SWBT has provided quotations for all of DSLnet's applications within its expedited quotation interval, and in November 1999 it completed construction of DSLnet's first eleven cageless collocation arrangements within its fifty-five day construction interval. DSLnet understands that SWBT has been able to complete timely provisioning for other CLECs as well. In the intervening period since the adoption of the *Collocation Order*, the Texas example has provided sufficient evidence to the Commission that can be used to establish appropriate minimum national collocation intervals.

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[2] *Id.* at ¶ 54.

[3] *Investigation of Southwestern Bell Telephone Company's Entry Into the Texas interLATA Telecommunications Market*, Project No. 16251, Order No. 55 Approving the Texas 271 Agreement (located at http//www.puc.state.tx.us/telecomm/projects/16251/16251.cfm Nov. 15, 1999).

There should be no question that the Commission has the authority to establish collocation provisioning intervals. The Commission noted in its *Collocation Order* that it would "retain authority to adopt specific time frames in the future as [it] deemed necessary."[4]

National intervals should supercede any longer intervals in effect today, but should not preclude the establishment of shorter intervals by state commissions or in interconnection agreements. The length of the intervals should be re-evaluated by the Commission after one year to incorporate ongoing developments and experiences with collocation.

III. DSLnet's Proposal for National Minimum Collocation Intervals

The timetable for collocation provisioning is typically expressed by two intervals, the quotation interval and the construction interval. DSLnet proposes that, at a minimum, the Commission adopt a modified version of the provisioning schedule developed by the Texas PUC.

A. Quotation Intervals

Most ILECs employ quotation intervals of at least 30 business days (equivalent to approximately 42 calendar days) from receipt of an application, increasing steadily when a CLEC files more than a handful of applications within a specified period. By comparison, the new SWBT Texas interval allows ten business days for the provision of a quotation for 1-5 applications, twenty-five business days for 6-20 applications, and five additional business days for every five additional applications thereafter. At a recent hearing before the Connecticut Department of Public Utility Control, SBC representatives acknowledged that SWBT has been able to provide quotations for all applications within these intervals.

An important improvement should be made to the Texas quotation interval. When an ILEC is permitted additional quotation time due to a high volume of simultaneous applications, quotations should be provided in sequential, equal intervals, rather than one longer concurrent interval. Therefore, DSLnet proposes that ILECs should be required to provide quotations within ten days for each ten applications filed by a CLEC within a ten-day period. If a CLEC submits within ten days more than ten applications, it should designate at the time of application which ten applications it wants to receive a quote for within the first ten-day period. While DSLnet understands that ILECs cannot be expected to provide quotations on an unlimited number of applications within ten days, the filing of multiple applications should not be an excuse to delay the provision of quotations for all applications, but only for the additional applications.

Finally, the Commission should clarify that ILECs must ensure that CLECs receive quotations within the allotted interval. It should be insufficient for an ILEC to send a quote by mail on the last day of an interval.

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[4] *Collocation Order* at ¶ 54.

B. Construction Intervals

The second collocation interval establishes the period for the ILEC to complete its construction of a collocation arrangement once a CLEC has accepted a price quotation. The Texas intervals also offer a reasonable starting point for construction intervals. The Texas PUC has required SWBT to complete construction of cageless collocation in active central office space within 55 calendar days when the CLEC installs the bays and racks and requests no more than 50 amps of power, and within 70 calendar days otherwise. Caged collocation in active central office space must be completed within 90 calendar days.

The Texas provisioning plan includes two kinds of construction intervals: one for prepared, or "active" space, and a longer interval when SWBT determines that additional infrastructure must be installed in unprepared space. DSLnet believes that this distinction, which despite definition remains difficult to verify in practice, is unnecessary and invites abuse. By comparison, Bell Atlantic-North does not differentiate between "active" central office space and "other" space, as its provides the same construction interval for all collocation construction. Therefore, DSLnet urges the Commission not to include this aspect of the Texas plan.

If the Commission determines that ILECs should have additional time to complete construction under certain conditions, DSLnet proposes to limit this additional time to 30 days. Accordingly, the intervals for cageless collocation would be 85 days when a CLEC installs its own bays and racks and 100 days when it does not, and for caged collocation the interval would be 120 days. The additional 30 days provides more than enough time to supply power or other infrastructure necessary to complete collocation in previously unprepared central office space.

DSLnet is concerned that it has no means of verifying or challenging an ILEC's determination that no "active" space is available for collocation. To safeguard against improper invocation of the additional thirty day construction period, DSLnet proposes that any ILEC proposing an extended construction interval be required to offer a site visit within five business days as part of the quotation. The availability of site inspections would serve the same purpose as the site visit option required by the FCC when an ILEC it informs a CLEC that no space is remaining for physical collocation in a central office.

Finally, the Commission should clarify that an ILEC is required to offer a date *within* the construction interval period on which the completed collocation site will be turned over to the CLEC. It should be insufficient for an ILEC to state that construction has been completed within the interval but only to offer a site visit and turnover date that would occur beyond the interval.

C. Modifications to Existing Collocation

It is also important to establish intervals for modifications to collocation arrangements. The potential for anticompetive provisioning delays for such modifications will otherwise increase as the market for advanced services matures. The Texas Public Utility Commission has required SWBT to complete specified categories of alterations to existing collocation

arrangements within 15, 30, and 60 days based upon type and quantity. DSLnet supports the adoption of these intervals nationwide.

IV. Enforcement

Because timely provisioning is crucial to CLECs, the best enforcement mechanism would be the existence of strong penalties that provide ILECs with a strong incentive to complete collocation on time. Therefore, the Commission should require ILECs to rebate a specified portion of the non-recurring charges for collocation that is not completed within a construction interval. As a condition on the SBC-Ameritech merger, the FCC required SBC/Ameritech subsidiaries to rebate all non-recurring collocation costs if they fail to complete a collocation site within 60 days of its construction interval. Prior to the adoption of the FCC merger conditions, the Texas and Ohio Commissions also adopted penalties for late collocation projects. The condition on SBC-Ameritech should be extended to all ILECs.

However, it is also important for the Commission to establish intermediate penalties that would be incurred for all late collocation construction. All delays cause significant competitive injuries to CLECs. DSLnet's business reputation and its budding relationships with prospective customers are threatened by these delays. Like most CLECs, DSLnet begins to market in areas in advance of providing service in reliance upon the collocation intervals. If DSLnet's collocation is not completed within the interval, DSLnet will likely be forced to delay service to new markets and perhaps to signed customers. Because many of these new and prospective customers may not yet have developed significant affinity for DSLnet, they may become frustrated with DSLnet over these delays, and may decide to obtain service from one of DSLnet's competitors, *including the ILEC*. When ILECs fail to complete its construction on time, delays to the DSLnet are compounded by the fact that DSLnet may also be forced to reschedule its agreements with its vendors to complete its own construction work at the central offices, as this work must often be scheduled in advance of the completion date.

One ILEC recently failed to complete several DSLnet collocation sites within the quoted interval. The sites were completed between a few days and approximately one month late. DSLnet was forced to delay indefinitely promised service to more than twenty customers, and it is still working to re-schedule its vendors to complete DSLnet's own work at these sites. DSLnet's experience – which could have been much worse had that ILEC already offered DSL service in the affected markets – demonstrates that collocation delays manifest themselves immediately, and ILECs must be made accountable for all missed deadlines for which they are responsible, including delays of less than sixty days.

Accordingly, DSLnet proposes that the Commission establish penalties as follows: 50% of the non-recurring charges if an ILEC fails to complete its construction within its quoted intervals, 75% if construction is not completed within 30 days of the deadline, and 100% if the space is provisioned 60 or more days late. The existence of such rebates would likely improve the ILECs' provisioning practices and expedite the spread of competitive advanced services.

V. ILECs Should be Required to Accommodate Adjacent and Nearby Collocation Options.

The *Collocation Order* requires ILECs to offer adjacent collocation when space is legitimately exhausted inside a central office. Many ILECs have limited their accommodation of adjacent collocation to the literal terms of the *Collocation Order*, refusing to accept adjacent collocation under any circumstances except when space is exhausted. DSLnet urges the Commission to clarify that adjacent collocation, and a similar arrangement described as nearby collocation, should be provided to CLECs as a matter of right, regardless of the availability of space in a central office.[5]

A CLEC utilizing adjacent collocation locates its equipment outside a central office, typically in a controlled environmental vault or other structure located near the ILEC central office, and constructs a connection from the equipment to the ILEC's facilities. It is also technically feasible and practical in some instances for a CLEC to locate its equipment in a structure beyond ILEC property, linked to the central office by means of a facility connection such as fiber or copper. This variation of adjacent collocation could be described as "nearby collocation" - a technically feasible means of interconnection that must be considered a viable option. The Pennsylvania Public Utility Commission recently required Bell Atlantic to offer adjacent and nearby collocation to all CLEC applicants.[6]

The overriding objective of the *Collocation Order* is the optimization of central office and adjacent space so that as many carriers as possible will be able to collocate and provide service. When preferred by the CLEC, adjacent and nearby collocation offer maximum utility because they demand little of the central office's limited resources. By preserving limited central office space, such a rule would benefit not only CLECs that prefer adjacent or nearby collocation, but also subsequent CLEC collocation applicants for which more central office space would remain available. Because ILEC restrictions on these forms of collocation undermine the goal of the *Collocation Order* to optimize collocation resources, the Commission should reject them.

The availability of diverse collocation alternatives would serve as a check to the ILEC's control over interconnection and collocation. When ILECs charge excessive rates for traditional types of collocation, CLECs will be encouraged to explore alternative collocation options, such as adjacent and nearby collocation, the cost of which are more difficult for ILECs to inflate.

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[5] SBC has taken the position before the Connecticut Department of Public Utility Control that adjacent and nearby collocation do not qualify as collocation under 47 U.S.C. § 251(c)(6) because the CLECs equipment would not be located "at" the central office. However, to the extent that adjacent and nearby collocation is not collocation as defined in Section 251(c)(6), it is clear that they qualify as a technically feasible form of interconnection that the ILECs must make available pursuant to Section 251(c)(2).

[6] *Joint Petition of Senators Fumo, Madigan and White, Pennsylvania Cable & Telecommunications Association, and Seven Competitive Local Exchange Carriers for Adoption of Partial Settlement Resolving Pending Telecommunications Issues*, Docket No. P-00991648, and *Joint Petition of Bell Atlantic-Pennsylvania, Inc.; Conectiv Communications, Inc., Network Access Solutions, and Rural Telephone Company Coalition for Resolution of Global Telecommunications Proceedings*, Docket No. P-00991649, pp. 93-96 (September 30, 1999).

The Commission should also establish provisioning intervals for adjacent and nearby collocation. Most of the preparation required for adjacent and nearby collocation is the responsibility of the CLEC. Therefore, in lieu of preparing a unilateral construction quotation, ILECs should be required to coordinate with the requesting CLEC to develop jointly a construction schedule. While the parties should be free to agree upon any reasonable schedule, ILECs should be required to be prepared to implement a construction schedule that permits completion within 30 days of the CLEC's application. While DSLnet recognizes that the circumstances pertaining to construction for adjacent collocation can vary, a reasonable interval must be established to ensure the ILECs' timely cooperation.

Even if the Commission elects not to require ILECs to accommodate adjacent and nearby collocation even when central office space is available, it should at least clarify that a CLEC that exercise its right to obtain adjacent collocation cannot be forced to relocate into a central office if space later becomes available. SNET has included such a rule in its proposed collocation tariff in Connecticut. If a CLEC's adjacent collocation facilities adequately serve the interests of the CLEC and its customers, it is counterproductive and unreasonable to allow an ILEC to demand that the CLEC disrupt its services and pay for the cost of an unnecessary reconfiguration of its collocation. Furthermore, it would be nonsensical to force an unwilling CLEC into valuable collocation space that may soon be desired by a different CLEC for which adjacent collocation is less attractive. CLECs with adjacent or nearby collocation should have the right, but not the obligation, to move into available central office space.

VI. All ILECs Should be Required to Tariff Collocation Rates and Terms with the State Commissions

Most ILECs maintain tariffs on file in their incumbent states that set forth their rates, terms and conditions for the provision of collocation. However, Southwestern Bell has not filed a collocation tariff in Arkansas, Missouri or Oklahoma.[7] SWBT prices collocation in these states on an Individual Case Basis, and the resulting non-recurring charges are among the highest in the nation. Some of the non-recurring charges assessed to DSLnet in these states were nearly seven times the cost for identical collocation requests charged by other ILECs, including SWBT in neighboring Texas, where SWBT has tariffed rates. DSLnet urges the Commission to require all ILECs that have not already done so to file collocation tariffs in their respective jurisdictions. The existence of tariffs helps to ensure that all collocators are treated equally and fairly, and provides an alternative forum to expensive and lengthy arbitration proceedings for CLECs to challenge the reasonableness of the ILECs' rates and practices.

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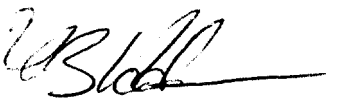
[7] The Kansas Corporation Commission recently required SWBT to file a collocation tariff. *In the Matter of an Investigation into Southwestern Bell Telephone Company's Cost to Provide Local Service, as required by K.S.A. 1996 Supp. 66-2008(d)*, Docket No. 98-SWBT-677-GIT, Order Establishing Procedural Schedule (October 26, 1999).

VII. Conclusion

DSLnet respectfully submits that the adoption of the proposals outlined herein would significantly further the purpose of the March 31, 1999 *Collocation Order* to promote the deployment of advanced services throughout the United States. We would be pleased to provide any additional information upon request. Thank you very much for your consideration of these important matters.

Very Truly Yours,



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