

Given the D.C. Circuit's decision not to require caged collocation and Section 251(c)(6)'s limitation on ILECs denying physical collocation, it does not make sense to allow ILECs to require or request CLECs to collocate in separate or isolated areas. Even if ILECs were allowed to require separate or isolated collocation, what would happen when all of that space was exhausted? Assuming separate or isolated space were permissible, once separate or isolated space is legitimately exhausted, ILECs would still be required to offer physical collocation in other unused space on the premises unless it "is not practical for technical reasons or because of space limitations."¹²² Accordingly, there is no reason to mandate separate or isolated space; not requiring separate or isolated space does not infringe on ILEC property rights. Allowing such isolation is only likely to increase procedural burdens on CLECs and to delay the introduction of advanced services. Allowing such isolation is only likely to increase CLECs' procedural hurdles to obtain collocation space, delaying the introduction of competitive services.

D. THE COMMISSION SHOULD NOT ALLOW SEPARATE ENTRANCES

Similarly, the Commission should not allow separate entrances because they only make sense if CLEC equipment is separated from the ILEC's equipment. If CLEC equipment is not separated from ILEC equipment, as it need not be for the foregoing reasons,¹²³ CLECs need access to the same space as ILECs. The Commission already requires that ILECs provide competitors with direct access to their equipment.¹²⁴ Moreover, separate entrances would add unnecessary expense and delay to the collocation process. Separate entrances could also waste

¹²² 47 U.S.C. § 251(c)(6).

¹²³ See *supra* Section IV.,C.

¹²⁴ *Advanced Services First Report and Order*, 14 FCC Rcd at 4788-4789.

space, as new doors, walls and hallways would be needed to create separate entrances.¹²⁵ The only justification for separate entrances would be to ensure security. The Commission and the court already have recognized that there are adequate alternative methods for meeting the security requirements of the ILECs.¹²⁶ Therefore, separate entrances are not only not required by the statute, they work against the goals of the statute by imposing additional costs, adding delay, and using space that might otherwise be used for collocation.¹²⁷

E. THE COSTS OF SECURITY FOR CAGELES COLLOCATION SHOULD BE ALLOCATED ON A COMPETITIVELY NEUTRAL BASIS

The Joint Commenters urge the Commission to take this opportunity to establish a cost allocation model for equitable recovery of ILEC costs added by security measures related to collocation. Both ILECs and CLECs benefit from the security measures installed on the ILEC's premises as the Commission found in the *Advanced Service Order*.¹²⁸ As a result, the ILEC and CLECs should each pay for their share of these costs on a competitively neutral basis. The cost model should be based on square footage used by the ILEC and CLECs on the ILEC's premises, similar in concept to constructs that the Commission has found acceptable to share interim

¹²⁵ As discussed above, the FCC considers the "efficient use of collocation space to be crucial to the continued development of the competitive telecommunications market." *Advanced Services First Report and Order*, 14 FCC Rcd at 4784-85, ¶ 42.

¹²⁶ *Advanced Services First Report and Order*, 14 FCC Rcd at 4784-85, ¶ 42; *GTE v. FCC*, 205 F. 3d at 425.

¹²⁷ *See GTE Service Corp.*, 205 F. 3d at 425.

¹²⁸ *Advanced Services First Request and Order*, 14 FCC Rcd at 4787-88, ¶ 47 ("the incumbent LEC may not impose...security requirements that result in increased collocation costs without the concomitant benefit of providing necessary protection of the incumbent LEC's equipment.") *See also New York Telephone Company*, Opinion and Order in Module 2 (Collocation), Case 98-C-1357, Opinion No. 00-08 (NY PSC, June 1, 2000) ("NY PSC Collocation Order" at 30) ("CLECs are not the only beneficiaries" of security measures).

number portability costs.¹²⁹ In such a model, the ILEC should pay the percentage of costs based on the percentage of square footage of space it uses in the premises while each CLEC should pay for the costs based on the square footage it uses. This is equitable since the ILEC, presumably, has more equipment to protect. The need for more express guidance is made manifest by the difficulties that some State commissions have had when facing these issues.¹³⁰

V. CROSS CONNECTIONS BETWEEN COLLOCATORS ARE NECESSARY FOR INTERCONNECTION AND ACCESS TO UNES WITHIN THE MEANING OF SECTION 251(C)(6)

A. WHEN ONE COLLOCATED CARRIER CONNECTS TO ANOTHER INTERCONNECTED WITH THE ILEC OR BUYING ACCESS TO UNES, A CROSS-CONNECT BETWEEN THE TWO IS INTEGRALLY RELATED TO SUCH INTERCONNECTION OR ACCESS

1. CROSS-CONNECTIONS BETWEEN COLLOCATED CARRIERS ARE INTEGRALLY RELATED TO THE PURPOSES OF SECTIONS 251(C)(2) AND 251(C)(3) AND THE OPERATIONS OF INTERCONNECTION AND ACCESS TO UNES

When a carrier providing competitive interoffice transport collocates and connects to a carrier that is directly purchasing UNEs from the ILEC, for example, the transport carrier facilitates and supports the other carrier obtaining access to interconnection and UNEs.¹³¹ But

¹²⁹ *Telephone Number Portability*, 11 FCC Rcd 8352, 8419-23 (FCC found that, for example, a cost recovery allocation based on each carrier's number of access lines in a service area would be competitively neutral).

¹³⁰ *See, e.g., NY PSC Collocation Order* at 30 ("The record lacks any clear indication of the proper disallowance or share to be assigned to Bell Atlantic-New York"); *compare Petition of Competitive Carriers*, Dockets Nos. 981834-TP *et al.*, Order No. PSC-00-0941-FOF-TP (Fl. PSC May 11, 2000) (The Florida PSC found that costs of security arrangements that benefit collocating carriers *and* the ILEC must be recovered from both the ILEC and collocating carriers based on relative use of square footage in the central office).

¹³¹ The Joint Commenters do not intend to imply by these comments that cross-connects should only be found necessary to enable collocators to access alternate suppliers of interoffice transport. Cross-connects are also necessary, for example, if the Commission finds that ILECs are not required to provide splitter functionality as a UNE. In that event, (continued...)

for the collocation of the transport carrier, the second carrier might not find it justifiable to collocate and interconnect or access the ILEC's UNEs. The Commission should hold, therefore, that the transport carrier's collocation and thus its cross-connection is "necessary" for the purpose of interconnection and access to UNEs by the second carrier. Certainly, the transport carrier, even if through the second carrier, is interconnecting with the ILEC and accessing its UNEs. That is its purpose for being there: otherwise other collocating carriers would have no need for its services. In short, the Commission should conclude that collocation and cross-connects are needed to further the goals of 251(c)(2) and 251(c)(3), and are thus necessary for the reasons discussed in Section III.

2. THE DEVELOPMENT OF A COMPETITIVE TRANSPORT MARKET WOULD FURTHER THE PURPOSES OF SECTIONS 251(C)(2) AND 251(C)(3) OF THE ACT

In addition to facilitating interconnection and access to UNEs by other collocators, collocation by a transport carrier furthers other Section 251(c) goals. In the *UNE Remand Order*, the Commission found that requesting carriers are impaired without access to unbundled dedicated and shared transport. The Commission held that "self-provisioning ubiquitous interoffice transmission facilities, or acquiring these facilities from non-incumbent LEC sources, materially increases a requesting carrier's costs of entering a market or of expanding the scope of its service, delays broad-based entry, and materially limits the scope and quality of a requesting carrier's service offerings."¹³² The Commission found that self-provisioned transport and transport from non-ILEC sources "is not sufficiently available as a

(...continued)

UNE-platform providers and collocating data CLECs will be dependent upon carrier-carrier cross-connects within the ILEC premises to provide their services.

¹³² *UNE Remand Order*, at ¶ 321.

practical, economic, and operational matter to warrant exclusion of interoffice” from unbundling requirements.¹³³ Because third party providers and self-provisioning were insufficient, the Commission mandated interoffice transport as a UNE under Section 251(c)(3).

Denial of collocation for competitive transport providers would have a chilling effect on carriers’ abilities to provide advanced services and would conflict with the act’s pro-competitive goals. In paragraph 84 of the *Second Further Notice*, the Commission seeks comment on the effect that various definitions of “necessary” would have on the ability of collocators to provide the services they wish to offer, and specifically, whether providers of dark fiber or interoffice transport services may collocate in ILEC central offices. As a threshold issue, of course these carriers can, and indeed already are, collocated throughout the country. They are providing a telecommunications service – interoffice transport and dark fiber – to themselves and to other requesting carriers. Congress could not have intended interoffice transport providers to operate at a disadvantage and to preserve interoffice transport as an ILEC monopoly indefinitely. Any definition of “necessary” that would deny collocation to these carriers and restrict this line of business to a perpetual monopoly by ILECs would be in conflict with Act.

Providers of interoffice transport and dark fiber need collocation in order to connect their networks directly to the ILEC where they themselves are purchasing UNEs from the ILEC, and to connect indirectly to the ILEC when they are providing services as carriers’ carriers to other CLECs. The Act’s purpose is to promote competition, including advanced services competition, not to place artificial limits on such competition. There simply is no policy justification for a reading of the Act that would deny carrier's carriers the opportunity to

¹³³ *UNE Remand Order*, at ¶ 321.

collocate and cross-connect to CLECs, or for CLECs to connect to each other. Many of these carriers represent the cutting edge of technology and the promise of unlimited bandwidth sought after by both businesses and individual consumers. As the Commission correctly suggested in the *Second Further Notice*, a definition of “necessary” that would prevent such carriers from providing a desired service would conflict with the purposes of Sections 251(c)(2), (c)(3), and (c)(6) as well as the goals of the Act. In addition, such a definition, by placing competing providers at a disadvantage *vis a vis* the ILEC would be unjust, unreasonable, and unreasonably discriminatory in violation of Sections 251(c)(2), (c)(3), and (c)(6) of the Act.

Innovative carriers such as the Joint Commenters and others are attempting to provide competitive transport services as an alternative to many different types of carriers offering advanced services. These carriers provide virtually unlimited bandwidth through state-of-the-art fiber deployments. ILECs have pointed to this “frenzy” of fiber deployment as an indicia that competition is growing. However, restricting these carriers’ ability to collocate would stop this fiber deployment and the competition it represents in its tracks, forcing carriers to rely solely on ILEC transport.¹³⁴

Numerous carriers stand ready and waiting to provide unbundled transport to CLECs and, ultimately, to relieve ILECs of this UNE obligation, but their progress thus far has been thwarted. A significant reason that third party providers have not deployed ubiquitous networks as the Commission envisioned stems from their difficulty in negotiating collocation, and increasingly, their inability to obtain carrier-carrier cross-connects in the wake of *GTE v.*

¹³⁴ At least one ILEC, Qwest, recently stated in a teleconference through counsel that its fiber resources are being strained in the former U S West region. Given the potential shortage in availability of fiber from ILECs, the Commission should not consider placing restrictions on the many carrier’s carrier CLECs waiting to provide this service.

FCC. To the extent interoffice transport alternatives do exist, it is because ILECs have voluntarily agreed to allow collocation and cross-connects to a handful of carriers. The few instances of voluntary action, however, have not obviated the need for action by the Commission. Voluntary commitments can be reversed at the ILEC's whim when existing contracts expire.

As the Commission recognized in the *UNE Remand Order*, denial of collocation and cross-connections for competitive transport providers would substantially limit the ability of competitors to transport telecommunications traffic generated through interconnection or access to UNEs.¹³⁵ Failure to allow cross-connects and collocation for interoffice transport providers will prevent the development of competitive alternatives for interoffice transport, leaving competitors dependent on the ILEC. Carving a perpetual monopoly for ILECs for this crucial part of the network is in conflict with Congress's intent and the statutory objectives in the Act. In contrast, allowing collocation and cross-connects will further the purposes of Section 251 such as the rapid introduction of competition into all markets and the promotion of facilities-based competition, investment, innovation, and deregulation.

B. THE COMMISSION SHOULD DEFINE CROSS CONNECTIONS BETWEEN COLLOCATORS TO BE A UNE

In the event the Commission concludes that co-carrier cross-connects and collocation by transport carriers are not necessary under Section 251(c)(6), the Commission should establish cross-connects as independent UNEs. Cross-connects are ubiquitous within an ILEC's network and there can be little doubt they are network elements. Moreover, cross

¹³⁵ See *UNE Remand Order*, at ¶ 332.

connections between collocators satisfy the definition of the Commission's existing dedicated transport and inside wiring network elements. "Dedicated transport" is defined as incumbent LEC transmission facilities dedicated to a particular customer or carrier that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers.¹³⁶ ILEC-provided cross-connections over existing cable routes within an ILEC premises, which often contain multiple wire centers, satisfies the existing definition of Dedicated Transport. Because it fits within this existing definition, cross-connections, like dedicated transport, also should be found to be a network element.¹³⁷

Similarly, cross connections also fit the definition of another already declared UNE, inside wiring. Inside wire is defined as all loop plant owned by the incumbent LEC on end-user customer premises as far as the point of demarcation, including the loop plant near the end-user customer premises. Under the Commission's rules, carriers may access the inside wire subloop at any technically feasible point including, but not limited to, the network interface device, the minimum point of entry, the single point of interconnection, the pedestal, or the pole. Access to an ILEC-provided cross-connection over existing cable routes within a central office is essentially similar, providing additional justification for the Commission to declare a cross connection UNE.

Cross-connects would qualify as network elements under the Commission's current framework for identifying UNEs. Cross-connects, - simple fiber or copper cable

¹³⁶ *UNE Remand Order*, at ¶ 322 (citing *Local Competition First Report and Order*, 11 FCC Rcd at 15718, ¶ 440).

¹³⁷ This comports with the practice in Texas, where dark fiber cross-connects are a UNE under Texas' "T2A" model interconnection agreement.

connectors between two pieces of equipment - extremely low-tech cable splices, are ubiquitous throughout the ILECs' networks and are currently used to connect the ILECs' own equipment as well as that of CLECs within the ILEC central office. Carrier-to-carrier cross connects, would be considered non-proprietary elements and, therefore, would be evaluated under the "impair" standard applicable to non-proprietary elements. Such elements, whether used by CLECs to interconnect with each other or to obtain access to interoffice transport offerings, must be unbundled under the "impair" standard. The Commission found in its *UNE Remand Order* that an incumbent LEC's failure to provide access to a non-proprietary network element "impairs" a requesting carrier within the meaning of Section 251(d)(2)(B) if, taking into consideration the availability of alternative elements outside the incumbent's network, including self-provisioning by a requesting carrier or acquiring an alternative from a third-party supplier, lack of access to that element materially diminishes a requesting carrier's ability to provide the services it seeks to offer. In order to evaluate whether there are alternatives actually available to the requesting carrier as a practical, economic, and operational matter, the Commission looks at the totality of the circumstances associated with using an alternative. In particular, the Commission considers the cost, timeliness, quality, ubiquity, and operational issues associated with use of the alternative. In addition, the Commission also considers whether unbundling obligations will further the goals of the Act, such as the rapid introduction of competition into all markets, the promotion of facilities-based competition, investment, and innovation, will reduce regulation, provide certainty in the market, and whether the unbundling obligations will be administratively practical for the Commission to apply.

Pulling a single piece of fiber up – which can cost as much as \$100,000 per fiber pull – for each CLEC customer of the interoffice transport provider would be prohibitively

expensive and economically wasteful, for such additional expense would be totally unnecessary if the ILEC permits such carriers to collocate in the central office or establish a “stable manhole” as described below. Such additional expense - ultimately borne by the end-user customer - would dictate that no carrier could afford the interoffice transport provider’s service, and therefore, that the service would not be available. In addition, the predictability offered by the Commission declaring cross-connects to be a UNE would allow carrier’s carriers to deploy ubiquitous networks reaching every ILEC central office, thereby furthering competition, the creation of new networks, and removing reliance on ILEC facilities. Accordingly, lack of access to carrier-to-carrier cross-connects would impair the provision of service by collocated CLECs and carrier’s carriers. The Commission should mandate that these elements be unbundled.

That the lack of cross connects impairs requesting carriers becomes readily apparent by considering the CLECs’ alternative course of action if cross connections are not available. Using cross-connects, a two-foot long jumper of cable can be used to interconnect CLECs collocated in the central office. Often, these carriers are located a mere few feet away within the ILEC central office. With cageless collocation some collocated CLECs are so close to one another that they are actually touching. Absent cross-connects, the two carriers would need to deploy hundreds of feet of cable, and possibly additional electronics, in order to interconnect somewhere outside of the ILEC central office.

Requiring expensive pulls of fiber outside of the central office to accomplish what could be done with a much shorter piece of cable within the central office, maybe as little as two feet in some cases, is unnecessary and wasteful. Cross-connects also are needed to avoid the inconvenience caused to commuters and pedestrians caused by digging new conduit outside the ILEC central office, typically located in the busiest part of a central business district, to make a

an interconnection that could have been made using a short cross-connect of cable. Indeed, in many communities, space in public right of way is actually becoming depleted and should not be hastily wasted for such purposes when such an obvious and efficient alternative is available. Requiring carriers to go outside of the central at considerable expense is an unnecessary burden placed on competitors. Such a requirement is an impairment on CLECs. Accordingly, cross-connects are "necessary" pursuant to the Act.

C. THE COMMISSION SHOULD MODIFY ITS COLLOCATION RULES TO INCLUDE THE "STABLE MANHOLE" IN ITS DEFINITION OF "PREMISES"; ALTERNATIVELY, THE COMMISSION SHOULD DECLARE THAT MFN'S "STABLE MANHOLE ZERO" PROPOSAL IS MANDATED PURSUANT TO THE ACT

The high cost of multiple "pulls" of fiber to various CLEC and other customers collocating within the same ILEC central office forecloses CLECs from self-provisioning transport, as described above. To the extent that the Commission finds a carrier may not collocate or cross-connect to other collocators under Section 251(c)(6), as sought above, the Commission should adopt the "Stable Manhole Zero" proposal described in the *Second Further Notice*.

As the Commission stated in the *Second Further Notice*, an ILEC central office may be surrounded by 8-10 different manholes. Currently, the ILEC exercises exclusive discretion over determining which of these manholes will act as a point of entry for the fiber of collocated carriers (this is usually designated as "manhole zero" for that particular carrier). It is not unusual for the ILEC to assign different collocated carriers different manholes as a method of accessing the central office. Because fiber providers do not know in advance which of these manholes their customer will be using, they cannot know which manholes should be included on their backbone network. Once the network is built, if the ILEC designates a different manhole

zero for the customer, the fiber provider must dig up the streets to build conduit from its backbone network to that particular manhole.

“Stable Manhole Zero” removes this problem. The “stable manhole” configuration would enable carriers to establish points of fiber distribution entirely outside the ILEC’s central office, i.e., at two ILEC manholes that provide access to the office, allowing a carrier to build entrance conduit directly from the manholes to the ILEC’s central office vault. Absent such an arrangement, a competitive interoffice transport provider will have no way of knowing where its customers will be located, and will be forced to tear up streets each time it receives a new customer, at prohibitive expense to the customers, and great inconvenience to the citizens where the build takes place. With “Stable Manhole Zero,” one (or more) interoffice transport providers can build to all of the ILEC central offices, providing an alternative to the ILEC’s transport. CLECs can then obtain fiber from this provider through the typical means that it employs when it receives fiber from the ILEC: by pulling a strand of fiber up from the “stable” manhole to its collocated equipment.¹³⁸

In *GTE v. FCC*, the D.C. Circuit indicated that “no good reason” was given in the *Advanced Services Order* why a competitor, as opposed to the ILEC, should choose where to establish collocation on the LEC’s premises. As explained in Section IV, the Joint Commenters believe that CLECs must have that ability to further the purposes of Sections 251(c)(2) and 251(c)(3). Nonetheless, in this context, a competitive transport provider is obligated to tear up the streets and deploy fiber to manholes that surround the central office one CLEC and interexchange carrier customer at a time, the delay and expense of such a buildout would destroy

¹³⁸ Where a CLEC is self-provisioning transport and directly purchasing UNEs, it should be permitted to cross-connect to other carriers so that they may use its excess fiber.

the economies of the fiber distribution. In contrast, if an ILEC designates two manholes through which it would pull cable to reach all collocated carriers within the central office, it would ensure efficient fiber distribution.

Using this justification, the Commission should modify its definition of “premises” to expressly provide for “stable manhole” collocation, even in instances where there is no space exhaustion in the ILEC central office. Nothing in Section 251(c)(6) suggests that collocation must take place in the ILEC central office at all. Accordingly, collocation in stable manholes should be permitted, at least for interoffice transport providers that do not intend to directly serve end-users from the ILEC central office. Moreover, the same reasoning set forth above that requires the Commission to declare a carrier-to-carrier cross connect UNE also mandates that, in the alternative, the Commission amend its collocation rules to require designation of diverse stable manholes.

D. AT A MINIMUM, THE ACT REQUIRES THAT ILECS PROVIDE A TARIFFED CROSS-CONNECT SERVICE TO SATISFY THEIR INDIRECT INTERCONNECTION OBLIGATIONS

In paragraph 89 of the Notice, the Commission asks whether an ILEC can be compelled to provide cross-connects under other provisions of the Act, such as Sections 251(a)(1). The answer is “yes.” Section 251(a)(1), in conjunction with Section 201(a), authorizes the Commission to take this step. However, this tariffed availability is no substitute for any of the relief sought above and in fact is the least preferred of all the alternatives described herein.

Section 251(a)(1) imposes on all carriers the duty to interconnect “directly or indirectly” with the facilities and equipment of other telecommunications carriers. Section

201(a), in turn, requires ILECs to provide telecom services on request, pursuant to just and reasonable rates. As a result, ILECs are required by the Act to provide tariffed services to effect indirect interconnection. This obligates ILECs to provide CLECs with a cross-connection service, pursuant to tariff. Whether or not the Commission establishes cross-connects as a form of direct interconnection and access to UNEs – and we explain above that it should – the Commission must find that ILECs are obligated by the Act to provide cross-connect service.

Section 201(a) authorizes the Commission, where necessary or desirable in the public interest, to order common carriers to establish physical connections with other carriers, whether or not the common carriers might choose to do so voluntarily.¹³⁹ Similarly, the separate language in Section 201(a) requiring telephone companies to "furnish communications service upon reasonable request" independently gives the Commission authority to order the LECs to provide interconnection services to carriers, or even to noncarrier interconnectors.¹⁴⁰ In the past, the Commission has used its authority under Section 201 to produce substantial public interest benefits by removing unnecessary barriers to increased competition.¹⁴¹

Should the Commission determine that it lacks authority under *GTE v. FCC* to mandate carrier-to-carrier cross connects pursuant to Section 251 of the Act, it should require ILECs to provide such cross connects on a tariffed basis pursuant to its power to require interconnection under Sections 201 and 251 of the Act. The Commission should require ILECs to file this service in their federal tariffs. Because the Commission authority for such action

¹³⁹ *Expanded Interconnection With Local Telephone Company Facilities*, Memorandum Opinion and Order, 59 FR 38922 (1994) at ¶ 18. See, also, e.g., *Lincoln Tel. & Tel. Co. v. FCC*, 659 F2d 1092, 1103-06 (DC Cir 1981); *Bell Telephone Co. of Pa. v. FCC*, 503 F2d 1250, 1268-73 (3rd Cir 1974), cert. denied, 422 US 1026 (1975).

¹⁴⁰ *Expanded Interconnection Order* at ¶ 19.

¹⁴¹ *Id.*

would derive from Section 201, such a service need not be priced at TELRIC as would be required under Section 251. However, the service must be priced on a cost basis, as required by Section 202 of the Act. As the Commission recognized in the *UNE Remand Order*, that cross-connections would be available pursuant to tariff would not render them unnecessary.¹⁴²

VI. THE COMMISSION SHOULD ADOPT ADDITIONAL NATIONAL COLLOCATION STANDARDS.

A. THE COMMISSION'S 90-DAY PROVISIONING INTERVAL FOR CAGED PHYSICAL COLLOCATION SHOULD BE SHORTENED FOR CAGELESS COLLOCATION, VIRTUAL COLLOCATION, MODIFICATIONS TO EXISTING COLLOCATION ARRANGEMENTS, AND COLLOCATION WITHIN REMOTE ILEC STRUCTURES

In the *Second Further Notice*, the Commission seeks comment on the adoption of overall maximum provisioning intervals for different types of collocation arrangements. The Commission specifically asks whether the 90-day provisioning interval adopted in the *Order* for caged collocation should be shortened for other types of collocation such as cageless collocation.¹⁴³

The Joint Commentors strongly support the adoption of national standards for the provisioning of *all* types of collocation. As the Commission recognizes in its *Order*, the timely provisioning of collocation space is essential to the CLECs' ability to compete effectively in the markets for advanced services and other telecommunications services.¹⁴⁴ A delay in the deployment of collocation space causes significant competitive injury to a CLEC in a number of ways. If a CLEC's collocation space is not available in a timely manner, the CLEC will likely be forced to delay services to new markets and, perhaps, to signed customers. If these customers

¹⁴² *UNE Remand Order*, ¶ 354.

¹⁴³ *Second Further Notice*, ¶¶ 114-115.

¹⁴⁴ *Order*, at ¶ 17.

have not developed significant affinity for the CLEC, they may become frustrated with the delays and decide to take service from one of the CLEC's competitors, including the ILEC.

Delays in the availability of collocation space also impact the CLEC's own construction schedule at the central office in question. Such delays forces a CLEC to reschedule its agreements with vendors to complete construction work on site. Expensive equipment and transmission facilities must be left idle, and cannot be placed into revenue-bearing service. The costs associated with delays in the availability of collocation space are compounded for those CLECs that are building networks nationwide. Typically these CLECs attempt to collocate equipment in hundreds of central offices in a roll-out schedule that coordinates financing, equipment purchasing, site preparation, marketing, and the like on a rolling market-by-market basis. Thus, delays at one site can effectively force the CLEC to delay the implementation of service in other markets that are farther down on the schedule. This lack of certainty in schedule implementation can have broader ramifications for the CLEC, as the inability to adhere to a firm business plan can negatively impact the CLEC's ability to attract and maintain capital financing.

In its *Order*, the Commission recognized that ILECs have the incentive and ability to delay the availability of collocation space for CLECs in adopting provisioning intervals for caged collocation.¹⁴⁵ The incentive and ability of the ILECs to behave in an anticompetitive manner do not magically disappear if collocation is provided in a different fashion. Indeed, the record in this proceeding suggests that the ILECs, forced by the Commission's rules to provision caged collocation within 90 days, have simply shifted their anticompetitive tactics to other forms of collocation. For example, Southwestern Bell and Ameritech have reportedly insisted on as

¹⁴⁵ See *Order*, ¶ 22.

long as 180 days to provision cageless collocation space – twice as long as required to provision caged collocation space, which requires more work.¹⁴⁶ Some CLECs have been asked by Ameritech to accept inferior collocation intervals for *all* types of collocation in order to obtain cageless collocation.¹⁴⁷ Verizon ties its intervals for cageless collocation to the presence or absence of a cage for its own equipment, with longer intervals (105 business days v. 90 business days) quoted if Verizon's own equipment is not secured.¹⁴⁸

These instances underscore the need to adopt national standards for provisioning forms of collocation other than caged. Fortunately, the only issue that must be addressed is the length of the interval for each type of collocation. To that end, the Joint Commentors recommend that the Commission limit application of the 90-day provisioning interval adopted in the *Order* to caged collocation. The Commission's standards for cageless, virtual, and collocation within remote structures should specify 60 days as the maximum provisioning interval, simply because these forms of collocation can reasonably be provisioned materially more quickly than caged collocation. Modifications to existing collocation arrangements, such as expansion of cages, additions to cageless arrangements, and additional power outlets, should be provisioned within 30 days.

The states have generally recognized that the work required for an ILEC to provision caged collocation is much more extensive than the work required to provision other forms of collocation, and thus that shorter intervals are appropriate in the latter case. For

¹⁴⁶ Ex Parte Filing of BroadSpan Communications, Inc. in CC Docket No. 98-147, Dec. 12, 1999, at 2.

¹⁴⁷ Ex Parte Filing of Covad Communications Company in CC Docket No. 98-147, Aug. 10, 1999 at 2.

¹⁴⁸ *Id.* at 5.

example, Florida has established 60 days as the provisioning interval for virtual collocation under “ordinary conditions.”¹⁴⁹ Texas allows 55 days for the provisioning of cageless collocation in active collocation space when the CLEC installs its own bays.¹⁵⁰ The experience of at least some CLECs suggests that it has not been difficult for SWBT in Texas to meet this requirement.¹⁵¹ Texas has also set intervals for modifications to existing physical collocation space. The interval set for provisioning many of the modifications specified is 30 days or less.¹⁵²

In adopting national standards for provisioning intervals, the Commission should clearly establish that these standards are a ceiling and not a floor. As demonstrated by the record in this proceeding and the discussion herein, the states have provided – and should continue to provide – important guidance in determining what provisioning intervals are appropriate and necessary to facilitate effective competitive entry. Thus, the states should have the flexibility to respond to specific issues by mandating shorter provisioning intervals for the ILECs than provided in the Commission rules. Should an ILEC meet a state-established provisioning interval that is shorter than the national standard, such action should give rise to a rebuttable presumption that the provisioning interval is technically feasible in any state served by that ILEC. This approach is consistent with the “best practices” rule adopted by the Commission in

¹⁴⁹ *In re Petition of Metropolitan Fiber Systems of Florida, Inc. for Arbitration with BellSouth Telecommunications, Inc. Concerning Interconnection Rates, Terms, and Conditions, Pursuant to the Federal Telecommunications Act of 1996*, Docket No. 960757-TP, Order No. PSC-96-1579-FOF-TP, at 102 (FL PSC Dec. 31, 1996).

¹⁵⁰ *Investigation of Southwestern Bell Telephone Company's Entry Into the Texas InterLATA Telecommunications Market, Project No. 16251*, Order No. 51 Approving Time Intervals for Provisioning Collocation Under Revised Physical Collocation Tariff, at 1 (Texas PUC Aug. 18, 1999) (*Texas Commission Order No. 51*).

¹⁵¹ See December 3, 1999 Ex Parte Filing of DSLnet Communications, LLC in CC Docket No. 98-147 at 2 (reporting that SWBT completed construction of 11 cageless collocation arrangements for DSLnet in November 1999 within the 55-day construction interval).

¹⁵² *Texas Commission Order No. 51* at 3-5.

its *Advanced Services Order*¹⁵³ and is already being followed by some states.¹⁵⁴ Similarly, the Commission should hold that if an ILEC provides more expeditious collocation to an affiliate, subsidiary, or strategic partner, such shorter interval must become the standard for competitive requesting carriers.

B. THE COMMISSION SHOULD ADOPT NATIONAL STANDARDS FOR COLLOCATION SPACE RESERVATION SIMILAR TO THOSE ADOPTED BY THE STATES

In the *Second Further Notice*, the Commission seeks comment on whether it should adopt national standards for collocation space reservation that would apply where a state does not set its own standard.¹⁵⁵ The Joint Commentors strongly urge the Commission to adopt a national space reservation policy.

As the Commission recognizes in its *Order*, excessive space reservations can create artificial space exhaustion that would prevent the timely deployment of advanced services.¹⁵⁶ Furthermore, the ILECs have every incentive to reserve space for their own use or the use of their affiliates, since such action limits the amount of collocation space available to competitors. Indeed, the record in this proceeding suggests that some CLECs have already encountered situations in which ILECs have reserved significant amounts of space within their central offices for their own advanced services equipment.¹⁵⁷ While the Joint Commentors

¹⁵³ *Advanced Services First Report and Order*, 11 FCC Rcd at 4786-4787 ¶ 45.

¹⁵⁴ For example, Connecticut has imposed on Southern New England Telephone Company the same provisioning intervals adopted by Texas for SWBT. *See Application of the Southern New England Telephone Company for Approval of a Tariff for Collocation*, Docket No. 99-08-05, Connecticut Dept. of Public Utility Control, March 9, 2000, at 56.

¹⁵⁵ *Second Further Notice*, ¶ 117.

¹⁵⁶ *Second Further Notice*, ¶ 50.

¹⁵⁷ Sprint Corp. Reply to Oppositions to Sprint's Petition for Partial Reconsideration and/or Clarification in CC Docket No. 98-147, July 27, 1999, at 8.

recognize the needs of ILECs to reserve space to meet the future requirements of their customers, those needs must be balanced against the needs of competitors to gain access to valuable central office space, and against the interest of the Commission in ensuring that the CLECs have an opportunity to compete. As such, the suggestions of some ILECs that they must be able to reserve space for their equipment for as long as 10 years¹⁵⁸ are simply unreasonable.

Under these circumstances, the establishment of national standards on collocation space reservation would serve the public interest. In establishing these standards, the Commission should follow the lead of those states such as California,¹⁵⁹ Florida,¹⁶⁰ Texas,¹⁶¹ and Washington¹⁶² that have already adopted space reservation policies. Based on the approaches of these states, the Joint Commenters submit that the Commission should permit reservations of space by ILECs to 12 months for transmission equipment¹⁶³ (including but not limited to concentration equipment, multiplexers, and multifunction or integrated equipment performing,

¹⁵⁸ SBC Communications, Inc. Opposition to Sprint's Petition for Partial Reconsideration and/or Clarification in CC Docket No. 98-147, July 12, 1999, at 9.

¹⁵⁹ *Rulemaking on the Commission's Own Motion to Govern Open Access to Bottleneck Services and Establish a Framework for Network Architecture Development of Dominant Carrier Networks*, Decision 98-12-069, Rulemaking 93-04-003 (Cal. PUC Dec. 17, 1998) ("*California Commission Order*").

¹⁶⁰ *In re Petition of Competitive Carriers for Commission Action to Support Local Competition in BellSouth Telecommunications, Inc. Service Territory*, Docket No. 981834-TP, Order No. PSC-00-0941-FOF-TP (Fla. PSC May 11, 2000 ("*Florida Commission Order*").

¹⁶¹ *Investigation of Southwestern Bell Telephone Company's Entry Into the Texas InterLATA Telecommunications Market, Project No. 16251*, Order No. 59 Approving Revised Physical and Virtual Collocation Tariffs (Texas PUC Oct. 29, 1999) (*Texas Commission Order No. 59*).

¹⁶² *In re MFS Communication Company, Inc., Petition for Arbitration Pursuant to 47 U.S.C. § 252(b) of the Interconnection Rates, Terms and Conditions with U S West Communications, Inc.*, Docket No. UT-960323 (Wash. Util. and Trans. Comm. Sept. 11, 1998) ("*Washington Commission Decision*").

¹⁶³ See *Texas Commission Order No. 59* at 3; *Washington Commission Decision* at ¶11; *California Commission Order* at 187.

inter alia, transmission functions) and to 18 months for all other equipment, e.g., pure switches.¹⁶⁴ Non-ILECs (including ILEC affiliates and subsidiaries) should be allowed to reserve space for no more than 12 months, since the types of equipment they are permitted to collocate are either transmission equipment or multifunction or integrated equipment. Such reservations must be supported by legitimate and demonstrable anticipated need and should be subject to challenge by CLECs on an expedited basis. Moreover, the Commission should also make clear that ILECs may not deny requests for physical collocation in specific space (per the procedures set forth in Section IV. B.3., *supra*, on the basis that the space is reserved for virtual collocation.¹⁶⁵

Adopting the national space reservation standards proposed herein will help ensure that central office space is used in an efficient manner and that CLECs have the ability to reserve space and enter new markets, thereby promoting competition to the ultimate benefit of U.S. consumers.

¹⁶⁴ See *Florida Commission Order* at 93.

¹⁶⁵ See *Washington Commission Decision* at 57. As rereferenced in the attached letter (Attachment 1) from Edward A. Yorkgitis, Jr., Counsel for Light Networks, to Raelynn Tibayan Remy, Deputy Division Chief, Investigations and Hearings, Enforcement Bureau, FCC, dated February 11, 2000, page 2, at least one carrier has requested cageless collocation at the same office. While the Joint Commenters understand that BellSouth has accommodated Light Networks to its satisfaction in resolving the disputes in this letter, the Commission should make clear that CLECs cannot be denied cageless collocation and offered virtual collocation as a substitute.

VII. CONSISTENT WITH THE TECHNOLOGY NEUTRAL UNDERPINNINGS OF THE ACT, THE COMMISSION SHOULD CLARIFY THAT ILECS MUST PROVIDE ACCESS TO ALL UNBUNDLED LOOPS, INCLUDING LOOP ELECTRONICS AND TRANSMISSION EQUIPMENT PROVIDING DWDM OR SIMILAR MULTIPLEXING FUNCTIONALITY

In the *Fifth FNPRM* the Commission seeks comment on whether it should amend its loop unbundling rules¹⁶⁶ to provide CLECs with unbundled access to individual optical wavelengths generated by Dense Wave Division Multiplexing (“DWDM”) equipment deployed by ILECs in addition to the DS1, DS3, fiber and other high capacity loops that are currently required to be offered on an unbundled basis pursuant to Section 251(c)(3) of the Act.¹⁶⁷ In addition, the Commission asks whether the features, functions and capabilities of the subloop such as various quality of service (“QoS”) classes such as Constant Bit Rate (“CBR”) and Variable Bit Rate (“VBR”) must be made available to competitors even if the ILEC is not itself utilizing such capability, and whether the provision of such access over the same fiber feeder facility presents interference or congestion issues that could lead to service degradation.¹⁶⁸

The Joint Commenters submit that the Commission should amend its loop unbundling rules to require unbundled access to the loops consisting of optical wavelengths generated by DWDM equipment, in addition to DS1, DS3, fiber, other high capacity loops. Further, the Commission should clarify that as part of their unbundling obligations, the ILEC must provide access to all technically feasible transmission speeds and quality of service classes, including CBR and VBR, even if the ILEC does not offer such QoS classes itself.

¹⁶⁶ 47 C.F.R. § 51.319(a)(1).

¹⁶⁷ *Fifth FNPRM*, ¶¶120-121.

¹⁶⁸ *Id.*, ¶ 125.

A. THE COMMISSION SHOULD AMEND ITS UNBUNDLING RULES TO CLARIFY THAT ILECS MUST PROVIDE UNBUNDLED ACCESS TO ALL FEATURES AND FUNCTIONS OF THE LOOP INCLUDING THOSE FEATURES AND FUNCTIONS PROVIDED BY DWFM FUNCTIONALITY

It is undeniable that the Act does not distinguish among the services that competing carriers may deploy over UNEs. In fact, in establishing the access standards for UNEs, Congress directed the Commission to consider whether “the failure to provide access to such network elements would impair the ability of the *telecommunications carrier seeking access to provide the services that it seeks to offer.*”¹⁶⁹ In other words, CLECs have the discretion to determine what services and technologies they wish to provide over UNEs purchased from the ILEC. Moreover, CLECs have a statutory right to provide any telecommunications service that the UNEs it is buying are technically capable of supporting. In the *UNE Remand Order* the Commission clarified that the technologically neutral underpinnings of the Act inform the loop unbundling obligation. The Commission concluded that ILECs must make available all types of loops, including “all features, functions, and capabilities of the transmission facilities, including dark fiber and attached electronics.”¹⁷⁰ The Commission stated that its “intention is to ensure that the loop definition will *apply to new as well as current technologies*, and to ensure that competitors will continue to be able to access loops as an unbundled network element as long as that access is required pursuant to section 251(d)(2) standards.”¹⁷¹

Obviously, the 251(d)(2) standards are in full force and effect, and accordingly, the Joint Commenters urge the Commission to amend its loop unbundling rules as described

¹⁶⁹ 47 U.S.C. § 251(d)(2)(B) (emphasis added).

¹⁷⁰ *UNE Remand Order*, ¶ 167.

herein. Moreover, consonant with this request the Joint Commenters urge the Commission to adopt the rule clarifications requested in the ALTS Loop Provisioning Petition.¹⁷²

- Hold that Rule 51.319 requires ILECs to provide high-capacity loops, including DS-1 and DS-3 level loops, to any requesting CLEC on an unbundled and nondiscriminatory basis;
- Hold that Rule 51.319 requires ILECs to provide entire loops to CLECs providing integrated voice and data services over a shared line;
- Adopt maximum intervals for provisioning of UNE loops and subloop elements;
- Require ILECs to provide nondiscriminatory access to all subloops and subloop components, including intra-building wiring, wherever possible and in a manner that will support provision of multiple services over a shared line;
- Require ILECs to promptly establish reasonable rates for all subloops and subloop components, including intra-building wiring;
- Determine a federal deadline by which all ILEC OSS interfaces must electronically provide all loop information to which the ILEC has access;
- Ensure that all loop de-conditioning charges and other recurring and non-recurring charges adhere to forward-looking, incremental cost principles; and
- Set *prima facie* federal penalties for ILEC failure to comply with these rules.

Only in this way can the Commission assure that the benefits of broadband communications services are competitively available to all Americans as soon as technically and economically feasible.

(...continued)
¹⁷¹ *Id.* (emphasis added).

¹⁷² *Pleading Cycle Established for Comments on ALTS Petition for Declaring Ruling: Loop Provisioning*, DA 00-114 (rel. May 24, 2000).

B. CLECS MUST HAVE ACCESS TO ALL FEATURES, FUNCTIONS AND CAPABILITIES OF FIBER SUBLOOPS, INCLUDING ALL TRANSMISSION SPEEDS AND QOS CLASSES, INCLUDING CBR AND VBR

As noted above, the Commission sought comment on whether access to all features functions and capabilities of the subloop created by DLC deployment includes “access to all technically feasible transmission speeds and QoS classes such as Constant Bit Rate (“CBR”) and real time and non-real time Variable Bit Rate (“VBR”) that exist in the attached electronics.”¹⁷³ In addition, the Commission sought comment “on whether the provision of multiple CBR and or VBR channels, circuits, paths, or connections over the same fiber feeder facility would cause interference or congestion that could lead to service degradation” and “on how to eliminate or control such interference.”¹⁷⁴ The Commission also asked whether, in providing access to the features, functions, and capabilities of the subloop, whether ILECs must provide access to all technically feasible transmission speeds and QoS classes even if the incumbent (or any ILEC affiliate) is not itself using such capability.

The Joint Commenters submit that ILECs should be required to provide access to all technically feasible transmission speeds and QoS classes that exist in the attached electronics of the loop. As the Commission recognized in the *Line Sharing Order*, the risk of interference from provision of multiple channels over the same facility is minimal and easily managed.¹⁷⁵ In the *Line Sharing Order* the Commission declined to adopt a federal rule on specific methods of achieving spectrum compatibility and instead deferred to conclusions to be reached by industry

¹⁷³ *Fifth FNPRM*, ¶ 125.

¹⁷⁴ *Id.*

¹⁷⁵ *Line Sharing Order*, ¶ 111-118 (1999).