Service quality issues are also presented by the collocation of line cards. CLECs would have to provide the incumbent with spare line cards to replace promptly defective cards. Tracking these maintenance spares would place a severe burden on the ILEC, particularly when multiple CLECs own multiple types of line cards. The incumbent's technicians would be required to identify the owner of the defective line card, determine whether the owner has a spare, and locate that spare. This could significantly increase the repair interval for the end user's POTS and/or data service, which means longer service outages, customer dissatisfaction, and complaints.

Finally, the Commission should reject Metromedia's request that it be allowed to collocate Fiber Distribution Frames ("FDFs") in the ILEC's cable vault to provide transport services to CLECs. Metromedia Comments at i-ii. As an initial matter, FDFs do not qualify as "equipment" under the 1996 Act. FDFs are passive devices without any electronics that allow two fiber strands to be cross-connected. As Metromedia states in its comments, "[a]n FDF is the technical equivalent of a splice between the two networks." *Id.* at 14. But a splice or cross-connect point is not "equipment" for purposes of collocation, just as line cards are not. Moreover, even if FDFs were deemed equipment for purposes of section 251(c)(6), they are not necessary for access to UNEs or for interconnection. Metromedia requests that they be allowed to place FDFs on the ILEC's premises for the purpose of providing interoffice transport fiber to CLECs. Such an arrangement does not provide interconnection with the incumbent or access to UNEs. Indeed, Metromedia's interoffice transport fiber is wholly *independent* of the ILEC's network. For these reasons, Metromedia's request that FDFs be considered "necessary" equipment should be denied. *See also* PF.Net Comments at 3-4.[15]

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[15] Metromedia has also requested that the Commission require ILECs to provide a "stable

III. The Commission Lacks Authority To Order the Collocation of Cross-Connects

Several commenters have requested that the FCC impose upon ILECs the obligation to allow CLEC-to-CLEC cross-connects. *See, e.g.*, AT&T Comments at 32-34; Covad Comments at 30; CompTel Comments at 7; Conectiv Comments at 19-21; CoreComm Comments at 29; NorthPoint Comments at 8-14. These commenters claim that section 251(c)(6) contemplates interconnection between CLECs instead of interconnection merely with the incumbent's network. *See, e.g.*, Covad Comments at 30.

These commenters have no answer, however, to the "obvious problem" with a cross-connect requirement identified by the D.C. Circuit; requiring ILECs to allow collocation of cross-connects "imposes an obligation on LECs that has no apparent basis in the statute." *GTE Serv. Corp.*, 205 F.3d at 423. The commenters seeking a cross-connect requirement simply

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manhole" configuration, which involves the designation of two manholes at which the facilities of two carriers may meet. Metromedia Comments at 15-16. These manholes, though outside the ILEC's central office, are owned by the ILEC. Metromedia has made no showing that this arrangement is "necessary" under section 251(c)(6). On the contrary, Metromedia's sole basis for making this request is to avoid the cost of providing their own manholes and conduit by "piggy-backing" on existing ILEC infrastructure. *Id.* at 16. But nothing in the 1996 Act authorizes the Commission to order ILECs to subsidize such arrangements. Metromedia is requesting free space to perform splicing of fiber on the ILEC's premises. As noted above, section 251(c)(6) allows for the "collocation of equipment necessary for interconnection or access to UNEs," not the collocation of fiber splices between a CLEC and an alternative provider. Moreover, Metromedia can secure the proper rights-of-way and construct its own manhole. CLECs can then place their fiber tails in Metromedia's manhole, which are then pulled by the ILEC into the cable vault and the CLEC's collocation arrangement. In this way, CLECs can utilize Metromedia's services without wasting space in the ILECs' manholes or requiring the improper collocation of non-equipment. This also allows Metromedia to pull as much fiber as it wants into its own manhole without exhausting ILEC entrance facilities. In addition to falling short of the 1996 Act's "necessary" threshold, there are also technical impediments to Metromedia's proposal. Manholes are small spaces that can exhaust quickly, especially if Metromedia ran 432- or 864-strand fiber cables. *See id.* at 16.

MFN and others may, however, continue to work with SBC to achieve nondiscriminatory means of assisting collocated CLECs that wish to use fiber of providers such as MFN, including arrangements to facilitate SBC's pulling of such fiber from its manholes to the collocator's space.

ignore the D.C. Circuit's holding, making no attempt whatsoever to wrestle with its necessary consequences for their argument. But the Commission is not free to turn away from the court's opinion. The D.C. Circuit held, in no uncertain terms, that section 251(c)(6) "is focused *solely* on connecting new competitors to LEC's networks," not connecting competitors to each other. *Id.* (emphasis added). Section 251(c)(6) authorizes the Commission to require LECs to provide collocation "as 'necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier,' *and nothing more.*" *Id.* (emphasis added).

The D.C. Circuit's interpretation is also the only one that is consistent with the language, structure, and purpose of the 1996 Act. Section 251(c)(6) was enacted to give the Commission the authority to implement its expanded interconnection regime, which the D.C. Circuit had vacated as unauthorized in *Bell Atlantic Telephone Cos. v. FCC*, 24 F.3d 1441, 1446 (D.C. Cir. 1994). That regime was solely concerned with allowing competitive providers to interconnect with the *incumbent* network, not with allowing competitive providers to interconnect with each other. *See* Report and Order and Notice of Proposed Rulemaking, *Expanded Interconnection with Local Telephone Company Facilities*, 7 FCC Rcd 7369 (1992); Second Report and Order and Third Notice of Proposed Rulemaking, *Expanded Interconnection with Local Telephone Company Facilities*, 8 FCC Rcd 7374 (1993). Thus, when Congress vested the Commission with authority to implement that regime in section 251(c)(6), its intent was to allow collocators to place equipment that is necessary for access to the incumbent's network, whether it be to obtain UNEs from the incumbent or to interconnect with the incumbent's network. "Interconnection" in section 251(c)(6) must be read against this backdrop. It also must be read *in pari materia* with "access to unbundled network elements," both of which refer to the incumbent's network. *See Beecham v. United States*, 511 U.S. 368, 371 (1994) ("That several

items in a list share an attribute counsels in favor of interpreting the other items as possessing that attribute as well."). Thus, in light of the language of section 251(c)(6) and its structure and purpose, it is unsurprising that the D.C. Circuit concluded that the statute authorized a taking of incumbent property only if the equipment to be placed there would be necessary for access to or interconnection with the incumbent's network.

Cross-connections between collocating carriers, however, are in no sense necessary for, and indeed have absolutely nothing to do with, connecting collocating carriers to the ILEC's network.[16]

AT&T tries to avoid this fatal flaw in its argument by asserting that the Commission's cross-connect requirement is grounded not in the "necessary" language of section 251(c)(6), but the "just, reasonable, and nondiscriminatory" language in that same provision. AT&T Comments at 33; *see also* Covad Comments at 26; NorthPoint Comments at 11. AT&T made this very argument to the D.C. Circuit in its vain attempt to defend the prior cross-connect rule, and the D.C. Circuit rejected it. *See* Intervenors Br. at 13-14. The D.C. Circuit's opinion is hardly surprising – before cross-connects can be collocated, they must be necessary for interconnection or access to UNEs. Only after that threshold inquiry is satisfied does the Commission get to the second step of determining the terms under which a piece of equipment will be collocated.

AT&T's brief attempt to show "necessity" under the statutory language is also meritless. *See* AT&T Comments at 33-34. AT&T claims cross-connects are necessary for two CLECs to

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[16] For this reason, both CLEC-constructed cross-connects and ILEC-provided cross-connects fail the statutory test. *See* NorthPoint Comments at 10 (arguing that the D.C. Circuit's opinion vacated only the CLEC-constructed cross-connect rule); Sprint Comments at 13-14. Both types of cross-connects are used for CLECs to interconnect with each other, not the ILEC. Accordingly, neither requirement is permissible under section 251(c)(6) and the rationale of the

engage in line splitting. But the line splitting arrangement discussed by AT&T does not involve access to a UNE. The only UNE to which CLECs are entitled is the high-frequency portion of the loop *when the ILEC is the voice provider*. Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 14 FCC Rcd 20912, 20947, ¶ 72 (1999) ("*Line Sharing Order*"). CLECs have no right to the high-frequency portion of the loop UNE when another CLEC provides the voice service. Moreover, because a CLEC can collocate to obtain access to the loop, that CLEC can split the line with another CLEC by extending the line to another location outside the central office.[17]

AT&T and others simply want to use the ILEC central office to conduct their entire business and interconnect, not with the incumbent, but other CLECs. The D.C. Circuit has flatly rejected this interpretation. The 1996 Act allows the collocation of only that equipment that is necessary for access to UNEs or interconnection with the ILEC network. *GTE Serv. Corp.*, 205 F.3d at 423.

Even if such interconnection between carriers were permitted, it would fail the "necessary" test. CLECs have available a variety of economically feasible alternatives for interconnecting with other CLECs that do not require an unlawful taking of an ILEC's property. For example, CLECs can interconnect directly through their own facilities, or through facilities leased from a host of third parties. Alternatively, CLECs can obtain transmission services from an ILEC out of the incumbent's Access Service Tariffs. Telecommunications carriers –

D.C. Circuit's opinion.

[17] CompTel's defense of the cross-connect requirement borders on the frivolous. CompTel argues that merely because CLECs desire to engage in this practice, it should be permitted. CompTel Comments at 7. It is hard to imagine a standard of "necessary" that is more meaningless.

including the BOCs, interexchange carriers, independent ILECs, as well as CLECs – have been using each of these methods for decades. As such, there is no basis for concluding that CLEC-to-CLEC cross-connection at an ILEC's premises is somehow "necessary" for requesting carriers to interconnect with each other, even if the Commission could require such cross-connection under section 251(c)(6), which it cannot.[18]

Covad relies on various subsections of section 251 to support its claim that CLEC-to-CLEC cross-connects are authorized. *See* Covad Comments at 27-28. The Commission cannot rely on any other statutory provision, such as sections 201(a), 251(a)(1), 251(c)(2), or 251(c)(3), to require ILECs to provide or permit cross-connections between collocated carriers. In *Bell Atlantic Telephone*, the D.C. Circuit held that a statute must be narrowly construed so as to avoid raising constitutional questions, 24 F.3d at 1445-46, and thus a provision must provide express authority to an administrative agency before it may order a taking through physical occupation of property, *id.* at 1447.[19] And, because it concluded that neither section 201(a) nor any other provision of the 1996 Act (prior to enactment of section 251(c)(6)) provided such authority to the Commission, the court vacated the Commission's prior physical collocation regime. *Id.* Congress did not expand or amend section 201(a) in the 1996 Act; it added section 251(c)(6) to give the Commission collocation authority. Thus, the Commission must adhere to the terms of that provision.

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[18] For these same reasons, a cross-connect fails the statutory threshold for being declared a UNE. *See, e.g.*, Joint Comments at 53; Focal Comments at 21-22; NorthPoint Comments at 14-18.

[19] *Bell Atlantic Tel.*, 24 F.3d at 1446 ("The Commission's power to order 'physical connections' [under section 201(a) of the Communications Act], undoubtedly of broad scope, does not supply a clear warrant to grant third parties a license to exclusive occupation of a section of the LECs' central offices.").

Sections 251(a)(1), 251(c)(2), and 251(c)(3) fail for the same reasons. None of these provisions even mentions collocation, much less provides the requisite "explicit congressional authorization," *GTE Serv. Corp.*, 205 F.3d at 419, for a taking of ILEC property through physical occupation of ILEC premises. Consequently, the Commission cannot reasonably construe sections 201(a), 251(a)(1), 251(c)(2), or section 251(c)(3) to provide authority for requiring an ILEC to provide or permit CLEC-to-CLEC cross-connects on the ILEC's property.

IV. The Commission Cannot Reinstate its Prior Space Assignment Regime

Several commenters have requested the reinstatement of paragraph 42 of the *Advanced Services Collocation Order*, which required that CLECs be permitted to collocate in any unused space within the ILEC premises to the extent technically feasible and with allowances for ILEC security measures. Covad Comments at 31-33; Conectiv Comments at 22; Rhythms Comments at 34-37; CoreComm Comments at 30-31; CTSI Comments at 16-18.

As the D.C. Circuit held, "nothing in § 251(c)(6) . . . endorses" the approach that allows "competitors, over the objection of LEC property owners, . . . to pick and choose preferred space on the LECs' premises." *GTE Serv. Corp.*, 205 F.3d at 426. *See also* Sprint Comments at 14 (conceding that the D.C. Circuit's opinion gives the Commission little choice but to allow the ILEC to choose which unused space it will make available for collocation). Some commenters nevertheless argue that the Commission can reinstate the prior regime, where the CLEC determines its own collocation space, by simply "clarify[ing]" the requirement. Conectiv argues that the Commission can reinstate the requirement by explaining that the requirement allows ILECs to place "'just and reasonable' restrictions on placement of non-'necessary' equipment in collocation space." Conectiv Comments at 22. Of course, non-necessary equipment is not authorized to be collocated under section 251(c)(6) *in any event*, so this clarification does

nothing to address the D.C. Circuit's concern. Similarly, CoreComm's suggested fix – that the Commission clarify that CLECs are not authorized to "collocate equipment at their whim" – does little to resolve the D.C. Circuit's concern that it is simply not necessary to have CLECs choose their own space to the deprivation of the ILEC property owners. *See* CoreComm Comments at 31. Covad argues that the Commission's task in this remand is simply "to do a better job explaining" its prior regime. Covad Comments at 32. But the Commission cannot work backwards from a desired result and attempt to formulate reasons to support it, for that is the very definition of arbitrary and capricious. The D.C. Circuit has cautioned against "the danger that an agency, having reached a particular result, may become so committed to that result as to resist engaging in any genuine reconsideration of the issues." *Food Marketing Institute v. ICC*, 587 F.2d 1285, 1290 (D.C. Cir. 1978). "The agency's action on remand must be more than a barren exercise of supplying reasons to support a pre-ordained result." *Id.*

The Joint Commenters argue that, "[j]ust as the ILEC should be able to choose where it wants to locate its equipment, competitors should be allowed to choose where to locate their equipment in the central office." Joint Comments at 40-41. This ignores the critical distinction between the ILEC and the CLEC: it is the ILEC's premises, not the CLEC's. *See* GTE Tr. at 32. And it is for that reason that the D.C. Circuit vacated the Commission's requirements. Any intrusion or limitation on the incumbent's property rights must be necessary, and that includes stripping the ILEC's authority to allocate space.

NorthPoint's requests for restrictive guidelines for space assignment also ignore the D.C. Circuit's opinion and section 251(c)(6). NorthPoint Comments at 18-21. NorthPoint suggests that maximum distances between collocation space and the Main Distribution Frame ("MDF") and the Battery Distribution Fuse Bay ("BDFB") be established. *Id.* at 20-21. NorthPoint

incorrectly assumes that collocation could only occur at some hypothetical optimal point within the central office. ILECs locate equipment on multiple floors and at multiple areas within a central office. Placement of CLEC equipment is certainly "reasonable" if an ILEC would place its own equipment in that designated space. NorthPoint's suggested requirements would unreasonably infringe upon the right of the property-owning ILEC to administer its property and would therefore violate the D.C. Circuit's opinion.

To be sure, an incumbent cannot impose restrictions in a discriminatory fashion, nor can it do so in a way that prevents a CLEC from collocating equipment that is "necessary for interconnection or access to unbundled network elements." 47 U.S.C. § 251(c)(6). Thus, the Joint Commenters' concern that the ILEC will favor its affiliate is unwarranted. *See* Joint Comments at 40. But nothing in the 1996 Act authorizes the Commission to prohibit the incumbent from allocating the use of space on its own property. Although Covad, Rhythms, and NorthPoint argue in favor of such prohibitions, the Commission cannot adopt rules that "favor the LECs' competitors in ways that exceed what is 'necessary' to achieve reasonable 'physical collocation' and in ways that may result in unnecessary takings of LEC property." *GTE Serv. Corp.*, 205 F.3d at 426.

Not only does the language of the 1996 Act and the D.C. Circuit's opinion command that the ILEC choose how space is assigned; that is the only space assignment policy that makes sense. As SBC explained in its initial comments, the ILEC is the only party with the knowledge of all CLEC collocation plans as well as all other space demands. SBC Comments at 27-28. "A CLEC, in contrast, only has knowledge concerning the needs of the particular piece of property it wishes to collocate." *Id.* at 28. For instance, NorthPoint states that "the Commission should require incumbent LECs to provide requesting carriers collocation space within 300 feet from the

MDF and 100 feet from the [BDFB], where such space is available." NorthPoint Comments at 20. Such rules would require discriminatory space assignment and preclude the ILEC from assigning space in the most efficient manner. This proposal confirms what the Commission has already acknowledged: the ILEC is in the best position to plan effectively its own central offices and premises.[20]

If the Commission were nevertheless to reinstate its prior regime, contrary to the D.C. Circuit's opinion, it should reject the proposed process for assigning space recommended by the Joint Commenters. The Joint Commenters argue that, within five business days of receiving a collocation request, an ILEC must send a written response indicating whether space is available and include a map that shows what space is occupied by ILEC and CLEC equipment, as well as any other space the ILEC or CLECs are planning to use within the next six months. Joint Comments at 43. The letter must also, according to the Joint Commenters, include when during the next ten business days the CLEC can visit the ILEC's office. *Id.*

Under current law, incumbents must provide a response as to whether or not space is available. And, SBC offers sketches of the collocation area, which indicate the cage location and dimensions, cage door location, and possible obstructions. One walk-through is also permitted. Incumbents cannot be required, however, to furnish floor space drawings of the entire office to each collocator. This would be costly, unnecessary, and unlawful. It would provide CLECs with far more information than is necessary to secure interconnection or access to UNEs, in violation of the Act and the D.C. Circuit's opinion. It would also inappropriately furnish CLECs with proprietary incumbent and CLEC network information. Presumably, the Joint Commenters want

[20] Second Report and Order, *Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Physical Collocation for Special Access and Switched Transport*, 12 FCC Rcd 18730, 18863, ¶ 324 (1997) ("*Expanded Interconnection Order*").

this information to contest the best places for their equipment to be collocated. The D.C. Circuit's decision confirms that authority rests with the incumbent property owner.

The Commission should also reject Metromedia's request to place an FDF in the cable vault to provide interoffice transport for CLECs. Metromedia Comments at i. First, the cable vault is not a controlled environment, as it was not built to accommodate equipment. The vault was designed exclusively for the running of cables from outside the central office to the inside. Second, there is no supporting infrastructure (overhead racking, grounding cabling, etc.) in a cable vault to support the installation of an FDF. Third, the installation of an FDF mitigates the ILEC's right to plan efficiently the use of its central office space by placing unintended, and inappropriate, hardware in the cable vault. The cable vault was not designed for the relay racks and hardware that would be necessary under Metromedia's proposal. Fourth, the ceiling of the cable vault in some locations is lower than seven feet, which falls below the height of a standard relay rack. There are some locations in which it is impossible to place a relay rack. For these reasons, this Commission should decline to rule that collocation of FDFs in the cable vault is permissible.

Commenters' objections to the requirement that a collocator construct or pay for a wall, structure, or buffer separating the ILEC's equipment from collocator equipment are meritless. *See, e.g.*, Joint Comments at 45-47; Rhythms Comments at 38-43; NorthPoint Comments at 21-22; Sprint Comments at 15; @Link Comments at 29-30; Conectiv Comments at 22-23; CoreComm Comments at 30-31; DSLnet Comments at 41-42. In the *Advanced Services Collocation Order*, the Commission concluded that an ILEC "may take reasonable steps to protect its own equipment, such as enclosing the equipment in its own cage." 14 FCC Rcd at 4784-85, ¶ 42. An ILEC is also permitted to take further "reasonable security measures,"

including security cameras and other monitoring equipment. *Id.* at 4788, ¶ 48. The Commission further held that it "expect[s] that state commissions will permit incumbent LECs to recover the costs of implementing these security measures from collocating carriers." *Id.*

Some commenters ignore these findings and claim that incumbents must pay when they use separate or isolated space. These commenters dismiss the security risks associated with collocation. But just as CLECs have the right to secure the equipment they collocate in an enclosure for security reasons, so, too, do ILECs. Thus, when an ILEC constructs a structure to protect its equipment from harm by a collocating CLEC, the cost for these structures must be borne by the CLEC, as it is only because of collocation that this additional security measure is necessary.

Finally, commenters raise a variety of specific issues regarding the process by which carriers obtain collocation. CTSI has claimed that SBC will only accept an application for one type of collocation at a time, and that, if that one type of collocation is unavailable, a separate new application must be filed. CTSI Comments at 22-23. In fact, SBC's physical collocation application allows for the selection of three choices when applying for collocation. If the first choice is not available, then the second and third choices will be considered. This feature of the application process was implemented in the spring of 2000 to address this exact issue raised by other CLECs.

Covad argues that the Commission should require ILECs to permit CLECs to convert their existing virtual collocation arrangements to cageless applications within ten days. Covad Comments at 36. Covad further argues that they should be permitted to make this conversion without moving their equipment. Although SBC would be willing to facilitate a CLEC's move and cut-over from their virtual collocation arrangement to a new and separate physical

collocation arrangement (as long as it is able to recover the costs), in-place conversions present an entirely different scenario. In-place conversions are problematic and contrary to law for a number of reasons.

First, in-place conversions would violate the first-come, first-served requirement for assigning space to CLECs for physical collocation. *Local Competition Order*, 11 FCC Rcd at 15797-98, ¶ 585. If an office is closed due to space constraints, then CLEC orders for space will be processed in the order that they were received if and when space for physical collocation becomes available. Under Covad's proposal, if a CLEC is on the waiting list for physical collocation space, that CLEC would be able to jump ahead of others on the list by ordering a virtual collocation arrangement, which must be provided even when physical space is exhausted. The CLEC could then convert that virtual arrangement to a physical arrangement immediately. The California Public Utilities Commission has recognized that this would be a "a clear violation of the 'first come, first served' rule."[21]

Second, in-place conversions from virtual to physical ignore the fundamental distinction between the two forms of collocation recognized in the 1996 Act and the Commission's rules. "Congress was aware of the differences between virtual and physical collocation when it adopted section 251(c)(6)." *Local Competition Order*, 11 FCC Rcd at 15807, ¶ 607. Virtual collocation must be made available in those central offices where the ILEC has no space for physical collocation. *Id.* at 15797-98, ¶ 585. Thus, Congress envisioned that virtual collocation was appropriate in certain spaces even when physical collocation was not, because CLECs do not have access to their equipment in a virtual arrangement and therefore do not pose security risks.

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[21] Final Arbitrator's Report, *Application of AT&T Communications of California, Inc.* (U 5002 C), *et al. for Arbitration of an Interconnection Agreement with Pacific Bell Tel. Co. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, A.00-01-022, at 310-11 (Cal.

Allowing a conversion from virtual to physical would eviscerate this distinction; there would never be a need for "virtual" collocation because a CLEC could always "convert" its arrangement. The Covad proposal is therefore in defiance of Congress's clear intent to mandate two very different forms of collocation with different space and security requirements.

Third, and for the same reason, in-place conversions would violate the ILEC's right to protect its network and equipment. In a virtual collocation arrangement, the incumbent maintains and repairs the CLEC's equipment. The CLEC is not allowed access to the equipment. Accordingly, there is no additional need for security in virtual collocation, because CLEC personnel will not be working in the ILEC's equipment area. If in-place conversions are allowed and the virtual arrangement is converted to a physical arrangement, the CLEC would have 24-hour, 7-day access to its equipment. This type of access could pose grave security risks because, while equipment may be placed in sensitive areas when CLEC personnel do not have access, those same areas may be inappropriate for physical collocation because of the threat to security posed by outside personnel having access to sensitive equipment. Both the D.C. Circuit's opinion and the *Advanced Services Collocation Order* recognize the ILECs' right to protect their equipment, including reasonable segregation from CLECs' equipment. *See GTE v. FCC*, 205 F.3d at 426; *Advanced Services Collocation Order*, 14 FCC Rcd at 4788, ¶ 48. In-place conversions of virtual to cageless physical collocation arrangements would unlawfully preclude an ILEC from effectively segregating its own equipment and securing the network.

Fourth, the price a CLEC originally would have paid for its virtual collocation installation would not cover the CLEC's subsequent request for physical collocation. For instance, in a

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virtual arrangement, limited security is needed because the ILEC maintains and repairs the CLEC's equipment. However, if this virtual arrangement were converted to cageless physical collocation, the incumbent would incur a new set of costs to protect its own equipment by implementing security measures.

Fifth, in-place conversion would essentially permit the CLEC to pick-and-choose its physical collocation space, even though the D.C. Circuit rejected that very requirement. Because virtually collocated equipment does not need additional security, it can be placed in areas where physical collocation would be inappropriate. Giving CLECs the right to in-place conversion would allow them to collocate physically in areas the incumbent would not choose because of the grave security risks to the network – and Congress left the choice of collocation space up to the ILEC precisely because the ILEC is in the best position to make such decisions and protect against such risks.

Finally, in-place conversions would violate space reservation rules which state that all ILECs may reserve a limited amount of space for specific future uses. *Local Competition Order*, 11 FCC Rcd at 15805-06, ¶ 604; 47 C.F.R. § 51.323(f)(4). ILECs are not required to relinquish legitimately reserved space for physical collocation. However, in cases where an office is closed to physical collocation for reasons of space exhaustion, an ILEC must offer virtual collocation, even if that virtual collocation uses the ILEC's validly reserved space in a central office. *Local Competition Order*, 11 FCC Rcd at 15806, ¶ 606. Under Covad's proposal, any CLEC could obtain a virtual arrangement in central office space that the ILEC planned to use for its own equipment and then convert that arrangement "in-place" to a physical arrangement, thereby effectively depriving the ILEC of its space reservation right.

Covad also asks for "free and unfettered access" to its virtually collocated equipment. Covad Comments at 41. This request ignores the incumbent's right to manage and protect its own property, and is at odds with the distinction Congress drew between physical and virtual collocation. In a virtual collocation arrangement, "[t]he competing provider . . . does not have physical access to the incumbent's premises." *Advanced Services Collocation Order*, 14 FCC Rcd at 4771, ¶ 19 n.27. "Instead, the equipment is under the physical control of the incumbent LEC." *Id.*; *see also Local Competition Order*, 11 FCC Rcd at 15784-85, ¶ 559. The incumbent is responsible for maintaining and repairing the competing provider's equipment. Indeed, this is one of the core distinctions between the two forms of collocation, and it is the reason that virtual collocation is permitted in areas where physical collocation is not. Virtual collocation permits the placement of CLEC property in sensitive areas and in space-constrained areas precisely because incumbents control the maintenance and care of that equipment and the threat of outside interference is not present as it would be with physical collocation. If a CLEC were permitted the same access to equipment that is virtually collocated as to equipment that is physically collocated, the distinction between these two types of collocation would be rendered completely meaningless. This result would be at odds with the plain language of section 251(c)(6) and Congress's intent when it enacted section 251(c)(6) with the intent of codifying the Commission's expanded interconnection regime – a regime that recognized very different forms of access for virtual and physical collocation. It would also undercut the incumbent's right to secure its own network and equipment. *See Advanced Services Collocation Order*, 14 FCC Rcd at 4788, ¶ 48. The Commission has always recognized that the incumbents' "protection of their equipment is crucial to the incumbents' own ability to offer service to their customers." *Id.* Covad's proposal would destroy incumbents' right to protect their property.

Covad once again ignores serious security concerns in its request for access to the incumbent frame for troubleshooting purposes. Covad Comments at 41. CLECs cannot be given access to frames – or the areas that contain those frames – because of the threat it would pose to network security. Incumbents have been using the frames for years in a standardized fashion; these standards are essential to frame integrity and to ensure network reliability for both CLECs and ILECs. If multiple CLECs had access to the frame, they could use different practices for wiring and labeling that would threaten this security and reliability. There is no authority in the Act for a regime where CLECs have, not merely a right to collocate necessary equipment, but a right to direct access to incumbent equipment.

Winstar asks the Commission to clarify that microwave transmission facilities should be treated like any other collocated equipment and that the Commission should remove "obstacles" to the collocation of these facilities. Winstar Comments at 5-7. Specifically, Winstar argues that requests to collocate microwave transmission facilities should not be subject to the individual case basis ("ICB") process based on *bona fide* requests. *Id.* at 7. The Commission, however, has already determined this process is appropriate because of the unique nature of these facilities. *See Expanded Interconnection Order*, 12 FCC Rcd at 18751-52, ¶ 38 (1997) ("the LECs must tariff microwave interconnection on a central office-specific, individual case basis, in response to *bona fide* requests"). Winstar has provided no argument to support a change in this policy. The ICB process is appropriate because each location and arrangement can be very different in terms of what is required for the placement of such microwave facilities.[22]

[22] For example, some arrangements require "specialized antenna grounding."

V. The Commission Cannot Require Collocation In Increments Smaller than a Rack

Covad asks the Commission to adopt a requirement that would allow it to collocate equipment on a "bay-to-bay" increment basis. *See, e.g.*, Covad Comments at 36. Covad ignores the problems associated with minimum space requirements at an ILEC's premises as well as the Commission's lack of authority to adopt such a requirement.

As noted, the collocation provision was enacted in order to provide the Commission with authority to impose its expanded interconnection regime. The expanded interconnection regime entailed lease-like arrangements *for floor space*.[23] Requiring collocation in increments smaller than a rack or bay would have no relationship to floor space, but would instead involve collocation within racks or bays. Thus, it would result in collocation well beyond what Congress could have intended when it passed section 251(c)(6) and would render virtual collocation meaningless. *See* SBC Comments at 30-31.

Moreover, this request is at odds with the D.C. Circuit's opinion in *GTE Serv. Corp.*, which allows ILECs to separate their equipment from the CLECs. 205 F.3d at 426 (Commission offers no "good explanation of why LECs are forbidden from requiring competitors to use separate entrances to access their own equipment; nor is there any reasonable justification for the rule prohibiting LECs from requiring competitors to use separate or isolated rooms or floors"); *see also* Sprint Comments at 15 (noting that, in light of *GTE Serv. Corp.*, "it is not clear that the Commission would be able to require ILECs to provide partial racks of space to CLECs when the rest of the rack or bay houses ILEC equipment").

Covad also ignores the safety, security, and reliability issues associated with a sub-rack/bay requirement that SBC described in its initial comments. *See* SBC Comments at 30-34;

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[23] An ILEC "leases" floor space in central offices to requesting carriers, not racks or

see also Verizon Comments at 20-21; Verizon's Poling Decl. ¶¶ 18-22; *see generally* Verizon's Maples Decl.; BellSouth Comments at 12-13. The FCC has recognized that ILECs' "protection of their equipment is crucial to [their] own ability to offer service to their customers."[24] It would not be possible to protect the ILEC's network or equipment if stacking different companies' equipment in the same rack/bay is permitted.

Commenters' suggestion of constructing lockable cabinets or other means for isolating equipment on the same rack would be technically infeasible. *See, e.g.*, Rhythms Comments at 43.[25] There is not enough room between equipment racks to enclose each and every bay in a cabinet. The installation of hundreds of lockable equipment cabinets around ILEC equipment to accommodate just one CLEC's request would result in unreasonable cost and effort, and would delay the implementation of collocation arrangements. Moreover, as Sprint points out, "attempting to physically secure one carrier's equipment from another through the use of cabinets can result in damage to adjacent equipment when doors are opened carelessly." Sprint Comments at 15. Such an installation would also decrease the space available for collocation in the ILEC's premises. Bays with cabinets will require more floor space, which in turn will limit the number of collocators that can be accommodated. Thus, adopting smaller increments would not create additional space but would instead *decrease* the amount of available space on ILEC premises because of the safety measures that would need to be adopted to make such a proposal workable.

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bays.

[24] *Advanced Services Collocation Order*, 14 FCC Rcd at 4788, ¶ 48.

[25] Moreover, under the Eighth's Circuit's holding in *Iowa Utilities Board*, ILECs cannot be required to alter their existing network to suit CLECs' purposes. *See Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 812-813 (8th Cir. 1997), *aff'd in relevant part*, 219 F.3d 744 (8th Cir. 2000). Thus, the Commission cannot, consistent with the 1996 Act and the Eighth Circuit's opinion, require ILECs to construct new cabinets or otherwise modify their existing networks.

The security threat posed by sub-rack/bays is not outweighed by the need for such spaces. Indeed, commenters have failed to demonstrate a need for a minimum space requirement by describing the equipment that must be/can be placed there. Nortel states that its Passport 15000/7000 would not completely fill a standard bay in a collocation arrangement. Nortel Comments at 2-3. This is incorrect. The dimensions Nortel provides for the Passport 15000 Footprint and the Passport 7480 Footprint are both greater than the industry standards for racks and bays. The industry standard for the depth of equipment in a standard rack/bay for several years has been 12 inches and only recently has changed to 15 inches. The equipment Nortel mentions would require a larger rack/bay because the depths of the Passport 15000/7000 are 23.62 inches and 21.75 inches.

Thus, there is no evidence before the Commission that a minimum space requirement is necessary or appropriate. Rather, even if the Commission had the authority to impose such a requirement, the harms would far outweigh the benefits.

VI. The Commission's Rules Regarding Remote Terminal Collocation Need Not Be Modified

Various commenters have suggested that SBC does not currently allow for physical and virtual collocation at RTs. Not only does SBC provide for collocation at RTs; carriers have all the access they need to obtain subloops. CLECs have a right to access the subloop at multiple locations in the distribution plant, including the Serving Area Interface ("SAI"), the network interface device ("NID"), and the RT. SBC has voluntarily agreed to further commitments that allow CLECs even greater access to RTs. In addition, when constructing new NGDLC CEVs and huts, SBC will include floor space within the structure for collocation. *See Pronto Modification Order*, App. A ¶ 16.

Allegiance states that "ILECs can effectively block CLECs from collocating in remote terminals by a combination of undersizing and overforecasting." Allegiance Comments at 83. But Allegiance has provided no basis for this accusation. In fact, SBC ILECs have made a commitment to allow 20 percent of the available collocation space in CEVs and huts to be reserved for collocation, as well as 15 percent for cabinets on a going forward basis.[26] Additionally, SBC ILECs reserved a reasonable amount of space for the growth of their existing equipment. The Commission has never called into question a LEC's legitimate need for such space reservation. Allegiance's accusation is therefore baseless.[27]

CoreComm claims that CLECs should automatically be granted easements or access to the same rights-of-way available to ILECs. CoreComm Comments at 38. Sprint would place the burden on the ILEC to try to obtain the necessary permission from the property owner. Sprint Comments at 25. As SBC pointed out in its initial comments, these rights are simply not the incumbent's to give, and it does not make sense to require ILECs to act as intermediaries between CLECs and the property owners. SBC Comments at 39-41. Indeed, the Commission itself has already concluded that a CLEC should bear that responsibility. *See UNE Remand Order*, 15 FCC Rcd at 3792, ¶ 213.

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[26] The Joint Commenters and CoreComm claim that ILECs must reserve 50 percent of available space in remote premises for use by CLECs. CoreComm Comments at 38; Joint Comments at 80-81. Such a requirement would amount to an unlawful taking of the incumbent's property because it would prevent the incumbent from growing its equipment in the manner that is necessary to provide service to the customers. Once again, it appears these commenters are of the mistaken view that competitors and ILECs are entitled to equal access to the incumbent's property.

[27] Allegiance's complaints regarding the special construction arrangement ("SCA") in the voluntary commitments in the *Pronto Modification Order* are also meritless. Although Allegiance contends that SBC has imposed "draconian" restrictions, Allegiance Comments at 82, Allegiance ignores the fact that the SCA process is a voluntary offering by SBC that *expands* CLECs' ability to offer service to customers.

Several commenters have also stated a desire for demographic information about each RT. For instance, CoreComm argues that ILECs should provide, within ten days of a request, a "schematic drawing[]" of the RT with the available collocation space, the space occupied by the ILEC, the number of collocators and the space they occupy, any modifications to the space since the last report, and plans to make the space available. CoreComm Comments at 39. CoreComm wants this information, moreover, for all RTs in the area in which the CLEC requests the information. *Id.* CTSI and DSLnet make a similar request. CTSI Comments at 28-29; DSLnet Comments at 49-50. Sprint claims "detailed information" should be made available and lists a variety of facts the incumbent must provide. Sprint Comments at 21-23.

The Commission should not impose these onerous requirements. SBC ILECs do not have an existing database where such information is available. It would require a Herculean effort for SBC to assemble that information by visiting each site and assessing its specific capabilities, in light of the large number of existing RTs (more than 30,000) and the high percentage of those RTs that are cabinets. Moreover, there is no assurance that the CLEC will actually collocate; there is a danger that CLECs will make requests either to burden the ILEC or for competitive information, but not to collocate. This costly requirement would go far beyond any authorization in the 1996 Act and cannot be justified under the Regulatory Flexibility Analysis or the Paperwork Reduction Act. *See* 44 U.S.C. § 3506(c)(3)(C) (under the Paperwork Reduction Act, an agency must, among other things, certify that "each collection of information . . . reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency"); *see also id.* § 3507(a)(1)(C).

VII. Changes to the Line Sharing Rules Are Unnecessary

As SBC pointed out in its initial comments, carriers have all the access they need to obtain access to the high-frequency portion of the loop. SBC Comments at 41. Some commenters, however, seek modifications to the current rules.

Sprint, for instance, has requested that this Commission require ILECs to allow CLECs to add line splitters to an existing collocation arrangement without submitting an augment application, as long as the equipment does not require electrical power. Sprint Comments at 25-26. Providing power to a CLEC's equipment, however, is not the only purpose for filing augment applications. An ILEC needs to know what equipment is being installed on its premises. Through the application process the CLEC informs the ILEC what equipment it is placing, what the equipment will be used for, and whether the equipment meets the NEBS safety standard. Additional equipment also has an impact on the floor loading for a particular collocation space. Without knowledge of all the equipment located in a given area, the ILEC cannot make correct calculations to determine if the structure, including its supporting infrastructure system, is in jeopardy.

Sprint also requests that the Commission reiterate its requirements regarding 24-hour, seven-day-a-week access to remote terminals. *Id.* at 26. The FCC has already made clear rulings on this issue. In the *Advanced Services Collocation Order*, the FCC stated that a CLEC has 24-hour/seven-day access to its physically collocated equipment located on the ILEC's premises, and premises is defined to include RTs. 14 FCC Rcd at 4784-85, ¶ 42, 4788-89, ¶ 49. Any further clarification is simply unwarranted.

Allegiance has requested that CLECs be given flexibility to collocate equipment for line sharing as long as that equipment is used for the purposes of accessing the "features, functions,

and capabilities" of the high-frequency portion of the loop. Allegiance Comments at 85-92. As noted above, any equipment that is collocated must pass the statutory "necessary" threshold. If a piece of equipment is necessary for access to the high-frequency portion of a loop UNE, such as a splitter, it can be collocated.

Allegiance and CoreComm go further, however, and ask the Commission to impose a requirement that would give CLECs a "menu" of options regarding where a splitter could be placed. *Id.* at 88-89; CoreComm Comments at 56-58. The D.C. Circuit's opinion made clear, however, that CLECs are not permitted to pick and choose space for collocation. Where the splitter is placed on the incumbent's property is for the ILEC to decide in the first instance. *GTE Serv. Corp.*, 205 F.3d at 426. Moreover, CLECs already have different splitter configurations available for their choosing. They can purchase and place splitters in their physical collocation arrangements in ILEC central offices, place splitters in virtual collocation arrangements in ILEC central offices, place splitters in ILEC RTs, place splitters in their own RT, and/or use the ILEC's splitters, if the ILEC has so offered.

VIII. The Proposed National Provisioning Intervals Would Be Inappropriate and Infeasible

As SBC explained in its initial comments, its ILECs are simply not capable of consistently providing collocation in intervals of less than 90 days. SBC Comments at 42; *see also* Verizon Comments at 21-22. SBC pointed out that an interval of 90 days is difficult to meet consistently. SBC Comments at 42. Even Sprint – whose petition for reconsideration sparked adoption of the 90-day interval – now admits that the 90-day interval "was unrealistically short to be a general rule." Sprint Comments at 28. Some commenters, however, ask the Commission to establish even more abbreviated intervals for cageless collocation in conditioned space, virtual collocation, and augmentations to existing space. Although some of these commenters cite

particular states that have adopted their proposed interval, they make no attempt to argue that such an interval is appropriate on a national basis. Moreover, these commenters choose the states with the shortest interval and then argue that that interval should be the ceiling. *See, e.g.*, CoreComm Comments at 34; Joint Comments at 64. But there is no evidence in the record that the intervals would be feasible in other states or as applied to other networks. As the Florida Public Service Commission makes clear, the states are in the best position to resolve questions such as the appropriate provisioning intervals, because of the variations among networks and the need for a case-by-case determination. Florida PSC Comments at 2-3. If the Commission adopts these brief intervals as a national standard and more time is required, the Commission will find itself inundated with waiver requests. *See* Sprint Comments at 31 (noting that "there will be a legitimate need for waivers on the part of ILECs").

A. Conditioned Space and Cageless Collocation

Several commenters assert that the Commission should adopt a truncated interval for the provision of cageless collocation when conditioned space is available. AT&T and Sprint, for instance, argue that the Commission should adopt a 60-day interval. AT&T Comments at 70; Sprint Comments at 28; *see also* CoreComm Comments at 33; Joint Comments at 63. GSA similarly argues that the Commission should adopt a variable standard with shorter time allocations for cageless collocation. GSA Comments at 9. NorthPoint suggests a 45-day time frame. NorthPoint Comments at 22.

These commenters allege that a shortened interval is justified because the incumbent saves preparation time involving the installation of the cage. *See, e.g.*, AT&T Comments at 70; GSA Comments at 8-9; Joint Comments at 63; NorthPoint Comments at 22-23. As SBC explained in its initial comments, however, it is not necessarily the case that less time is needed