Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of

Promotion of Competitive Networks In Local Telecommunications Markets	))	WT Docket No. 99-217
	)	
Wireless Communications Association International, Inc. Petition for Rulemaking To Amend Section 1.4000 of the Commission's Rules to Preempt Restrictions On Subscriber Premises Reception or Transmission Antennas Designed to Provide Fixed Wireless Services	)))))))	
	)	
Implementation of The Local Competition Provisions in the Telecommunications Act Of 1996	)))	CC Docket No. 96-98
	)	
Review of Sections of Sections 68.104 and 68.213 of The Commission's Rules Concerning Connection of Simple Inside Wiring To The Telephone Network	))))	CC Docket No. 88-57

PETITION FOR RECONSIDERATION

BellSouth Corporation, by counsel and on behalf of itself and its affiliated companies ("BellSouth"), pursuant to Section 1.429 of the Commission's rules hereby, requests the Commission to reconsider a portion of the revised Demarcation Point definition adopted in the *First Report and Order* in the above referenced proceeding.[1]

[1] *In the Matter of Promotion of Competitive Networks in Local Telecommunications Markets, Wireless Communications Association International, Inc. Petition for Rulemaking to Amend Section 1.4000 of the Commission's Rules to Preempt Restrictions on Subscriber Premises Reception or Transmission Antennas Designed to Provide Fixed Wireless Services; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning Connection of*

I. THE COMMISSION SHOULD REQUIRE SUBSCRIBER CONCURRENCE TO ALL PREMISES OWNER REQUESTS TO RELOCATE DEMARCATION POINTS TO THE MPOE.

The Commission's revised rule requires telephone companies to comply with the request of a multi-tenant environment ("MTE") premises owner to relocate network demarcation points to the minimum point of entry ("MPOE").[2] The Commission appears not to have considered whether it had the authority to allow non-regulated third-party non-subscribers to initiate service affecting network reconfigurations at the expense of providers of wireline telecommunications[3] and their actual service subscribers, or to have considered the effects of such activities on end user customers.

1. Premises Owners act in their Capacity as Non-Regulated Non-Subscribers.

In comments filed in response to the recent *Further Notice of Proposed Rulemaking* in this proceeding, the Real Access Alliance clarified that "building owners are in the business of leasing space:"

> Furthermore, the telecommunications provider's purpose is not to provide service to the building or to the building owner, but to subscribers within the building.

Simple Inside Wiring to the Telephone Network, WT Docket No. 99-217 and CC Docket Nos. 96-98 and 88-57, *First Report and Order and Further Notice of Proposed Rulemaking* in WT Docket 99-217, *Fifth Report and Order and Memorandum Opinion and Order* in CC Docket No. 96-98, and *Fourth Report and Order and Memorandum Opinion and Order* in CC Docket No. 88-57, FCC 00-366, released October 25, 2000, ¶ 1 ("*Competitive Networks Order*" or "*FNPRM*").

[2] Competitive Networks Order at ¶ 54, to be codified at 47 C.F.R. § 68.3(b)(3).

[3] In the *2000 Biennial Regulatory Review of Part 68 of the Commission's Rules and Regulations*, the Commission replaced the language "telephone company" with the phrase "providers of wireline telecommunications" in order to "clarify that all wireline carriers, including incumbent LECs, competitive LECs, IXCs, and other entities that offer wireline telecommunications and whose network may be affected by direct connection of terminal equipment" are subject to the Commission's Part 68 Rules. *In the Matter of 2000 Biennial Regulatory Review of Part 68 of the Commission's Rules and Regulations*, CC Docket No. 99-216, Report and Order, FCC 00-400, released December 21, 2000, at ¶ 75. BellSouth uses the term "provider of wireline telecommunications" in this petition instead of the term "telephone company" that appears in App. B of the *Competitive Networks Order*.

> The subscribers, not the building owner, pay for the service. The subscribers, not the building owner, get the direct benefit of the provider's presence. The owner benefits because the tenants benefit, and for no other reason.[4]

By allowing non-subscriber building owners to control the individual service arrangements between wireline telecommunications providers and their tenant-subscriber customers, the Commission has engaged in an unwarranted deviation from its fundamental mission to "ensure that telephone subscriber have reliable service at reasonable rates."[5] The Commission has directed incumbent LECs and competitive LECs to conclude negotiations with requesting building owners within 45 days of the building owners request and allowed building owners to file complaints against incumbent LECs and competitive LECs at the FCC, even though building owners neither take nor pay for telecommunications services. These actions could result in service impairment for actual telecommunications service customers and in significant cost and inconvenience for both subscribers and affected carriers.

2. Wireline Telecommunications Carriers Should Not Be Required to Comply with a Request from the Premises Owner to Relocate the Demarcation Point to the MPOE Unless the Request is Accompanied by the Consent of All Service-Subscribers.

Conspicuously absent from the Commission's new rule is any requirement or recognition that the needs and concerns of actual service-subscribers, those individuals and entities that actually benefit from and pay for ILEC or CLEC service, must be taken into account when a premises owner requests an MPOE demarcation relocation. In some states, applicable tariffs do not permit moves or rearrangements unless tenant subscribers consent.[6]

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[4] Comments of Real Access Alliance, January 22, 2001 at 36.

[5] *Id.* at 29, *citing Essential Communications Systems, Inc. v. AT&T,* 610 F.2d 1114,1118 (3d Cir. 1979).

[6] North Carolina General Subscriber Service Tariff, A2.15.1.A.3.b.

Carriers are not in a position to relocate a previously determined premises demarcation to the MPOE without tenant concurrence for a number of reasons. BellSouth is subject to tariffed service guarantees which under certain circumstances it may not be able to maintain in the event of a relocation of the network facility demarcation to the MPOE. Particularly with respect to high speed data and other advanced services, there are likely to be service guarantees, technical feasibility constraints or significant economic impacts associated with the relocation of the demarcation point specific to various tenants. For instances, in some cases customer-owned or leased premises equipment, such as channel banks, may have to be moved from existing locations as a result of an MPOE demarcation relocation. Under these circumstances, carriers must not be subject to a charge by a building owner that they are engaging in bad faith bargaining simply because they insist that affected customers consent both to the MPOE relocation and its consequent impact on their current service configuration.

Although the Commission's 45-day negotiation rule would seem to allow carriers to obtain consent from tenant-subscribers prior to relocating, there is no requirement in the new rule that MTE owners actually act in accordance with tenant-subscriber desires. The rule as adopted by the Commission should therefore be modified as follows:

(1) In any multiunit premises where the demarcation point is not already at the MPOE, the *provider of wireline telecommunications* must comply with a request from the premises owner to relocate the demarcation point to the MOE, *provided that all of the telecommunications service subscribers within the premises provide the provider of wireline telecommunications their written acknowledgement and consent* to the relocation. The *provider of wireline telecommunications* must negotiate terms in good faith and complete the negotiations within forth-five days from said request. Premises owners may file complaints with the Commission for resolution of allegations of bad faith bargaining by *providers of wireline telecommunications.* See 47 U.S.C. Section 208; 47 C.F.R. Sections 1.720-1.736

II. CONCLUSION

The Commission should require building owners to provide satisfactory evidence of tenant consent concurrent with any request to relocate the demarcation point, and modify its new rule as shown herein.

Respectfully submitted,

BELLSOUTH CORPORATION

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Date: February 12, 2001

CERTIFICATE OF SERVICE

I do hereby certify that I have this 12th day of February 2001 served the following parties to this action with a copy of the foregoing **PETITION FOR RECONSIDERATION** by electronic filing to the parties listed below.

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+ **VIA ELECTRONIC FILING**