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

REPLY

BellSouth Corporation, by counsel and on behalf of itself and its affiliated companies ("BellSouth"), replies to the comments filed earlier in this 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 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.

I. DISPUTES OVER ACCESS TO ILEC FACILITIES SHOULD BE RESOLVED IN THE STATES

Some carriers argue that, because of difficulties allegedly encountered in dealing with ILECs for the purpose of accessing ILEC intra-building facilities, the Commission should impose severe, tenant-punishing rules on ILECs only or should adopt special rules governing procedures for CLEC access to ILEC facilities.[2] The Commission should do neither. Rather, the Commission should allow state commissions to continue to resolve questions arising out of interconnection disputes relating to the provisioning of subloop network elements. Allowing CLECs to pursue parallel federal and state regulatory and legal challenges to ILEC practices will do nothing to promote efficiency or the prompt resolution of any legitimate issues specifically identified in state arbitration or federal rulemaking proceedings**.**

Although these matters are properly before the state commissions, BellSouth is constrained to respond to the allegations of AT&T and others. BellSouth seeks to unbundle its network and provide access to in-building facilities required by the Commission's *UNE Remand Order*.[3] BellSouth provides requested pairs to CLECs (unless the customer will continue to receive service from BellSouth over the requested pairs) in such a way that a BellSouth technician is not required to be present at the time of service cut over. When a CLEC requests the use of in-building facilities that are already being used by a tenant in a multiple tenant

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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*").

[2] *See e.g.*, AT&T at 9.

[3] *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-98, *Third Report and Order and Fourth Further Notice of Proposed Rulemaking,* 15 FCC Rcd 3696 (1999) ("*UNE Remand Order"*).

environment ("MTE"), a process analogous to a "hot" cut inside the central office takes place and BellSouth makes its own technician available on the premises to ensure that the cut over is accomplished without any loss of service to the customer. The problem has arisen, however, when CLECs have helped themselves to BellSouth's in-building facilities without notifying BellSouth to ensure the proper cut-over of its facilities. As a result, tenants, including BellSouth customers who were not switching to the CLEC, have had their service disrupted by the CLEC technician.[4] These customers remained without service, including access to 911 emergency services, until a BellSouth technician arrived at the premises. In these cases, BellSouth's mechanized system that records facilities available for assignment for use either by other CLECs or BellSouth, are rendered inaccurate, thus compromising service delivery and maintenance processes. Unnecessary service problems for BellSouth and other CLECs result because BellSouth's mechanized inventory and assignment systems will automatically assign such "presumed vacant" facilities upon the receipt of a service order requiring the use of those facilities.

Because the cut-over procedure recommended by AT&T and others are the subject of current proceedings before state commissions, the Commission should decline to address these issues in this rulemaking.

[4] BellSouth provided examples of this in its Reply Comments, filed in this proceeding on Sept. 27, 1999, at 8-10.

II. ANY RULES ADOPTED BY THE FCC IN THIS PROCEEDING SHOULD APPLY TO ALL SERVICE PROVIDERS

AT&T argues that ILECs alone should be prohibited from entering into preferential marketing agreements with building owners.[5] In the first place, the weight of the comments demonstrates that preferential marketing agreements encourage competitive facilities deployment and do not convey any access advantage.[6] In the second place, a prohibition that applies only to ILECs would not only be inconsistent with Commission precedent established in this proceeding, it would confer a direct advantage to AT&T, the undisputed dominant provider of long distance and broadband services under the most formidable brand name in the business.

As Carolina Broadband points out, successful penetration in the competitive market for MTE access is dependent on "the bundled provision of four categories of service—video distribution services, high-speed Internet access, local exchange telephone and long distance telephone services – instead of the typical one or two services offered by the incumbent local exchange carriers ("LECs") and the incumbent cable service providers."[7] AT&T, unlike ILECs, has no legal or regulatory restrictions relating to the provision or bundling of these services. Moreover, AT&T, as the dominant cable broadband service provider in the country, has entered into exclusive contracts with MTE owners for cable service and can easily leverage this cable exclusivity (and any asymmetrical preferential marketing rules adopted by the Commission) to obtain an unfair advantage over other carriers. Similarly, the Commission should reject arguments that any expanded definition of section 224 apply only to ILECs, and not other

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5 AT&T at 43-46.

6 *See e.g.*, CoServ at 7-8, Real Access Alliance at 66, and Sprint at 9-10.

7 Carolina Broadband at 3.

utilities covered by the statute.[8] There is no statutory basis on which to make this distinction, and no principled reason to explain why Congress should have enacted access legislation for outside non-ILEC wire distribution plant but not for inside non-ILEC distribution plant.

III. THE FCC HAS NO JURISDICTION TO ADOPT A RULE THAT REQUIRES LECs TO CUT OFF LOCAL SERVICE TO TENANTS WHEN LANDLORDS REFUSE TO DEAL

The Real Access Alliance ("RAA") appropriately distinguishes the *Ambassador* case.[9] Unlike the hotel in *Ambassador*, MTE building owners are generally neither subscribers nor resellers of tariffed telecommunications services. Moreover, this Commission must bear in mind that in 1945, when *Ambassador* was decided, all of the equipment used to provide telephone service, including the "private branch exchange, known as PBX board, connected with a number of outside or trunk lines and also with extension lines to each serviced room, and other items," was installed and owned by the telephone company and provided to the hotel as regulated telephone services.[10] Indeed, *Ambassador* was decided more than half a century ago, decades ahead of the time in which federal telecommunications regulatory policy was increasingly informed by principles of competition, deregulation, consumer choice in CPE and inside wiring, and even the clear articulation of federal and state jurisdictional responsibilities announced in *Louisiana Public Service Commission v. FCC*,[11] let alone the policies underlying the Telecommunications Act of 1996, adopted more than 50 years later. *Ambassador* was decided in a context of pervasive federal regulation of a network controlled by the pre-divestiture AT&T

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8 Florida Power & Light Comments at 16-18.

9 *See* RAA Comments at 35-36.

10 *Ambassador, Inc. v. United States*, 325 U.S 317, 318-319 (1945) ("*Ambassador*"). Today, of course all of this equipment is deregulated, and has been for decades.

11 *Louisiana Public Service Commission v. F.C.C.*, 476 U. S. 355 (1986).

right up to the telephone hand-sets on the bedside table in each hotel room. There is a nexus between the hotelier/subscriber in *Ambassador* and the monopoly telephone company providing the underlying (and resold) federally-regulated interstate message toll telephone services and its attendant phones, lines, wires and equipment ("CPE") that simply does not exist in today's context of a non-subscriber MTE owner in a post-divestiture, multiple carrier, detariffed and deregulated CPE environment.

In any event, not only is the Commission's jurisdiction over MTE owners problematic, but its enthusiasm to regulate MTE owners indirectly through direct regulation of LECs must be tempered by its own statutory jurisdictional limitations, consistent with any precedent drawn from *Ambassador*. The Commission does not have jurisdiction over LEC provision of intrastate telephone services.[12] *Ambassador* itself did not deal with local service, but rather for message *toll* telephone service. Indeed the injunction forbid charges in connection with "any interstate or foreign message toll service. . ."[13] The Commission's jurisdictional authority, if any, would be limited to a remedy pertaining to interstate telecommunications originating from a premises where the MTE owner has a policy of not dealing with all LECs on a non-discriminatory basis. But, even assuming such limited authority, BellSouth believes that any interference with a tenant's interstate services would be an extraordinarily cruel punishment that is unjustified by the record in this proceeding.

The RAA has appropriately characterized service cut-off as a "nuclear sanction" that is as impractical as it is unlawful.[14] Other carriers have demonstrated that, as BellSouth pointed out,

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[12] 47 U.S.C. § 152(b). *See Louisiana Public Service Commission v. F.C.C.*, 476 U. S. 355 (1986).

[13] *Ambassador*, 325 U.S. at 318.

[14] RAA Comments at 52.

the rule would punish the very Americans that the policies underlying the Communications Act are designed to benefit.[15] No party advocating the rule has shown why enforcement of the Commission's current rule prohibiting carriers from entering into exclusive arrangements with building owners will not be sufficient to deter inappropriate carrier conduct. Moreover, the line of applicants seeking special exemption from the application of such a harsh rule proves that the rule is inappropriate for general application. Interstate calls are as critical to tenants in MTE as intrastate calls, and a prohibition limited to jurisdictionally interstate service would create as much havoc in the American public as an unqualified prohibition on all services.

IV. THE COMMISSION SHOULD NOT ALLOW THIRD PARTIES TO INTERFERE WITH THE LOCATION OF EXISTING NETWORK DEMARCATION POINTS

The Nebraska Public Service Commission states that their rules require "that upon the request of a competitive local exchange carrier ("CLEC") or a MDU owner, the incumbent local exchange carrier ("ILEC") must provide a minimum point of entry ("MOIE") at the MDU property line or at a location mutually agreeable to all parties. However, we did not require the demarcation pint to be moved unless agreed by the parties."[16] BellSouth understands that the agreement qualification in the Nebraska rule does not permit CLECs to make a request for an ILEC premises demarcation relocation to the minimum point of entry when the building owner has not requested MPOE relocation, or if all the parties, including tenants and the ILEC, do not agree to the relocation.

The Nebraska PSC goes on, however, to "encourage the FCC to consider expanding its

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[15] Broadband Office Communications at 6-9, RAA Comments 35-57,Verizon Comments at 9.

[16] Nebraska PSC Comments at 1.

[*Competitive Networks*] order to allow for a CLEC to also make such a [MPOE relocation] request in the case where the Owner does not."[17] The Commission should not adopt such a rule. LECs should not be obligated to respond to unilateral requests to relocate demarcation points to the MPOE made by non-subscribers or non-MDU owners. As demonstrated in BellSouth's recent petition for limited reconsideration of the *Competitive Networks Order*, the relocation of a premises demarcation point to the MPOE could require tenant service reconfigurations, including equipment moves and alterations that affect existing service levels. It is impractical that third parties should be allowed to displace existing arrangements satisfactory to building owners, tenants and current service providers, especially when access to that wire can be made available through subloop unbundling requirements.[18] Moreover, the reasoning underlying the Commission's decision not to require a mandatory MOPE relocation proceeding applies to the Nebraska PSC's request. Because the Commission has already found that it is not in the public interest to require such a nationwide relocation, no regulatory authority should delegate the ability to require such relocations on an arbitrary and piece meal basis to non-subscriber, non-MDU owner third parties. In any event, it is not clear that such changes will actually foster competition, especially in the short term. As the Florida Public Service Commission comments:

> If the FCC's purpose of moving the demarcation point to the MPOE is to foster competition, we believe there may be a better approach. Currently, in Florida, a competitive local exchange company (CLEC) must enter into an interconnection agreement with the incumbent LECs to acquire dial tone, collocation, or unbundled network elements. The CLECs may obtain the entire local loop, connect at the MPOE and lease the wire to the customer's

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17 *Id*.

18 To the extent CLECs have no such unbundling requirements, they should. *See, e.g.*, Florida PSC Comments at 5 ("It appears that equal application of Florida's demarcation point rule to CLECs and LECs might ensure the FPSC's authority to best serve the interests of the public.

> premises from the entity that owns it, or acquire the loop all the way to the customer's premises. The wire from the MPOE to the customer's premise is considered network wire in Florida. Landlords, CLECs, or LECS are not precluded from owning the wire installed between the MPOE and demarcation point within the customer's premises. The local service provider and the owner of the wire between the MPOE and the demarcation point can be required to reach an agreement on the use of the wire. This approach would eliminate the landlord's concern of having to provide any additional conduit access for other companies to place their own wiring.[19]

V. THE COMMISSION SHOULD NOT ADOPT A BROADER INTERPRETATION OF "RIGHT-OF-WAY"

The RAA has demonstrated conclusively in its recently filed petition for reconsideration that it is simply impossible for a building access right, however denominated, to be a right-of-way.[20] Indeed, the Commission's recently adopted definition of "right-of-way" uses other section 224 terms as part of its definition: "ducts" or "conduits" that are being used or have been specifically identified for use as a part of the utility's transportation and distribution network.[21] Obviously, "ducts" and "conduits" are already covered under section 224; there is no need to define the term "right-of-way" to include them.[22] When Congress enacted the Pole Attachments Act in 1978, it used these discreet, self-explanatory terms to describe specific distribution plant used by utilities (poles, ducts, and conduits, tangible personal property[23]), and the right-of-way (tangible real property[24]) obtained by utilities from state and local franchising authorities in order

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19 Florida PSC Comments at 5.

20 Petition for Reconsideration of the Real Access Alliance, filed February 12, 2001 at 19.

21 *Competitive Networks Order* at ¶ 76.

22 47 U.S.C. § 224 (Supp. 1999).

23 Florida Power & Light Company Comments at 6-7.

24 *Id*.

to locate their main network wire distribution facilities, including distribution plant.[25] It clearly did not mean to include intra-building facilities, particularly with respect to the term "right-of-way". Indeed, when Congress uses the term right-of-way outside of section 224, the term appears in section 253 to refer to the public right-of-way managed by local governments.[26] The Commission should not adopt an expanded definition in this proceeding.

CONCLUSION

The Commission should not enact any further building access regulation, other than to apply the existing obligations of ILECs on a competitively neutral basis to all LECs, including CLECs and BLECs.

Respectfully submitted,

BELLSOUTH CORPORATION

By: /s/ Theodore R. Kingsley
Theodore R. Kingsley
Angela N. Brown

Its Attorneys

BellSouth Corporation
Suite 4300
675 West Peachtree Street, N. E.
Atlanta, Georgia 30309-0001
(404) 335-0720

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[25] "As used in § 224, the term right-of-way refers to the longtime understanding and practice within the industry as to what constitutes a right-of-way." *Id.*

[26] 47 U.S.C. § 253 (Supp. 1999).

CERTIFICATE OF SERVICE

I do hereby certify that I have this 21st day of February 2001 served the following parties to this action with a copy of the foregoing **REPLY** by electronic filing and by placing a copy of the same in the United States Mail, addressed to the parties listed on he attached service list.

/s/ Juanita H. Lee
Juanita H. Lee

SERVICE LIST WT DOCKET NO. 99-217

Robert N. Kittel, Chief
Regulatory Law Office- Office of
The Judge Advocate General
U.S. Army Litigation Center
901 N. Stuart Street-Suite 713
Arlington, VA 22203-1837

Garrett Mayer, Chief
Regulatory Affairs Bureau
County of Los Angeles California
9150 E. Imperial Highway
Room V-121
Downey, California 90242

Peter Arth, Jr.
Lionel B. Wilson
Jonady Hom Sun
Public Utilities Commission
State of California
505 Van Ness Avenue
San Francisco, CA 94102

Dana Frix
Kemal Hawa
ELink Communications, Inc.
O'Melveny & Meyers LLP
1650 Tysons Boulevard, Suite 1150
McLean, VA 22102

David L. Nace
B. Lynn F. Ratnavale
PrimeLink, Inc.
Lukas, Nace, Gutierrez & Sachs Chartered
1111 19th Street, N. W., Suite 1200
Washington, D. C. 20036

+Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
The Portals, 445 Twelfth Street, S. W.
TW-A325
Washington, D. C. 20554

+International Transcription Service
The Portals, 445 Twelfth Street, S. E.
Suite CY-B400
Washington, D. C. 20554

Nebraska Public Service Commission
300 The Atrium
12200 N Street
P. O. Box 94927
Lincoln, NE 68509

Chip Parker
General Attorney-Regulatory
Cypress Communications, Inc.
Fifteen Piedmont Center, Suite 100
Atlanta, Georgia 30305

Anthony Tanzi, RCCD
President
ACUTA, Inc.
152 W. Zandale Drive, Suite 200
Lexington, KY 40503

Jean G. Howard
Florida Power & Light Company
9250 West Flagler Street
Miami, Florida 33174

Laurence Brown
Senior Attorney
Edison Electric Institute
701 Pennsylvania Avenue, N.W.
Washington, D. C. 20004

Brett Kilbourne
Associate Counsel
United Telcom Council
1140 Connecticut Avenue, N. W.
Suite 1140
Washington, D.C 20036

David L. Lawson
Paul J. Zodlicky
Jennifer M. Rubin
AT&T Corporation
Sidley & Austin
1722 Eye Street, N. W
Washington, D. C. 20006

Mark C. Rosenblum
Stephen C. Garavito
Teresa Marrero
AT&T Corporation
295 North Maple Avenue
Basking Ridge, NJ 07920

Paul Glist
Chris Savage
AT&T Corporation
Cole, Raywind & Braverman, LLP
1919 Pennsylvania Avenue, N. W.
Washington, D.C. 20006

Rachelle B. Chong, Esq.
Kathleen Q. Abernathy, Esq.
Aimee M. Cook, Esq.
Broadband Office Communications, Inc.
951 Mariner's Island Blvd.
Suite 700
San Mateo, CA 94404

Steven J. Erd
Director, Government & Public Affairs
Community Associations Institute
225 Reinekers Lane, Suite 300
Alexandria, VA 22314-2875

Shirley S. Fujimoto
Christine M. Gill
Thomas P. Steindler
Commonwealth Edison Company
And Duke Energy Corporation
McDermott, Will & Emery
600 13th Street, N. W.
Washington, D.C. 20005-3096

Lawrence R. Freedman
Richard Davis
CoServ
Fleischman & Walsh, LLP
1400 Sixteenth Street, N. W.
Suite 600
Washington, D.C. 20036

J. G. Harrington
Cox Communications, Inc.
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, N. W.
Suite 800
Washington, D. C. 20036

Cynthia B. Miller, Esq.
Bureau of Intergovernmental Liaison
State of Florida Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Charles A. Rohe, Alan M. Shoer
Wendy M. Creeden
RCN Telecom Services, Inc.
UtiliCom Networks LLC
Carolina Broadband, Inc.
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N. W., Suite 300
Washington, D. C. 20007

Matthew C. Ames, Nicholas P. Miller
Mitsuko R. Herrera
Real Access Alliance
Miller & Van Eaton, P.L.L.C.
Suite 1000
1155 Connecticut Avenue, N. W.
Washington, D. C. 20036

Gerara Lavery Lederer,Vice President
Industry and Government Affairs
Building Owners and Manger
Association International
Real Access Alliance
Suite 300,1201 New York Avenue, N. E.
Washington, D. C. 20005

Suzanne Yelen
SBC Communications Inc.
Wiley, Rein & Fielding
1776 K Street, N. W.
Washington, D. C. 20006

Philip L. Verveer, Gunnar D. Halley
Angie W. Kroneberg, Sophie J. Keefer
Jeneba Jalloh Ghatt
Smart Buildings Policy Project
Willkie Farr & Gallagher
Three Lafayette Centre, 1155 21st Street, N.W
Washington, D.C. 20036

Norina Moy
Craig T. Smith
Sprint Corporation
401 9th Street, N.W., 4th Floor
Washington, D. C. 20004

Dirck A. Hargraves
Counsel
Telecommunications Research
and Action Center
Post Office Box 27279
Washington, D. C. 20005

Lawrence W. Katz
Verizon
1320 North Court House Road
Eighth Floor
Arlington, Virginia 22201

Joseph M. Sandri
Russell C. Merbeth
Winstar Communications, Inc.
1615 L Street, N. W.
Suite 1260
Washington, D. C. 20036

John P. McCann
John S. Schneider
United Dominion Realty Trust, Inc.
UniteDominion
400 East Cary Street
Richmond, VA 23219-3816

Roger K. Toppins
Paul Mancini
SBC Communications, Inc.
1401 Eye Street, N. W.
Washington, D. C. 20005

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