DOCKET FILE COPY ORIGINAL

RECEIVED
APR 02 2001
FCC MAIL ROOM

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 oppositions of AT&T Corp., Cypress Communications, Inc. ("Cyress") the Real Access Alliance ("RAA") and the Smart Building Policy Project ("SBPP") to BellSouth's proposal that end-user tenants' needs be taken into account when their network demarcation points are ordered to be moved from their premises to the building's minimum point of entry ("MPOE") by the property owner.

No. of Copies rec'd 0
List A B C D E

I. BELLSOUTH'S PETITION IS PROPER , IS NOT INTERPOSED FOR ANTICOMPETITIVE PURPOSES, AND DOES NOT OPPOSE MPOE DEMARCATION.

The Commission should reject arguments that there is no evidence in the record as to the potential impact of a demarcation relocation from the customer's premises to the MPOE.[1] BellSouth's Comments and Reply Comments, and detailed ex partes and white papers filed by BellSouth and other carriers created a record in this proceeding concerning the potential operational and economic effects of the relocation of an existing premises demarcation point to the MPOE.[2] Indeed, in light of legal and practical difficulties, and especially in light of the disadvantages a mandatory MPOE move could cause those competitive local exchange carriers ("CLECs") and DSL providers that rely on leasing unbundled loops and unbundled subloops, the Commission declined to adopt a mandatory MPOE demarcation point rule for multiple tenant environments ("MTE").[3]

---

[1] Cypress Opposition at 5. Also, SBPP's quote from paragraph 35 of the *1990 Report and Order* in CC Docket 88-57 is inappropriate and taken out of context. SBPP Opposition at n. 46. In the *1990 Report and Order* the Commission was considering a different section of Part 68, dealing with the consequences of customer installation of a jack at the network interface. More on point is this Commission's long-standing concern that, "in multi-unit buildings in which riser cable and loop distribution facilities are under the control of the building owner, troublesome issues involving the terms and conditions of telephone network access may develop." *In the Matters of Petitions Seeking Amendment of Part 68 of the Commission's Rule* Concerning Connection of Telephone Equipment, Systems and Protective Apparatus to the Telephone Network, *et al.*, CC Docket No. 81-216 *et al.*, First Report and Order, 97 FCC 2d 527, 533 (1984).

[2] *See* BellSouth's Comments (filed Jan. 22, 2001) and BellSouth's Reply Comments (filed Feb. 21, 2001). *See also* BellSouth's *Ex Parte*, filed June 7, 2000; BellSouth's *ex parte*, filed August 24, 2000; Verizon's *ex parte*, filed August 24, 2000; and BellSouth's *ex parte*, filed September 6, 2000 at p. 5.

[3] *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.

The same technical and policy issues and concerns that animated the Commission's decision not to establish a mandatory MPOE rule have the potential to arise anytime that an existing premises demarcation point is relocated to the MPOE, whether the relocation is accomplished by federal rule or at the behest of a building owner. The Commission has determined from evidence in the record that there have been situations where tenants have been prevented from exerting their will with regard to telecommunications access.[4] BellSouth's Petition simply seeks to provide an explicit opportunity for tenants to be fully informed of the effects of a demarcation point change, because MPOE relocations will always result in some modification of the manner in which the tenant end user receives service from the incumbent provider or from a CLEC providing service using unbundled loops or subloops.

BellSouth has never contended that all demarcation point relocations will necessarily require that equipment be moved or that service be interrupted. Indeed, in the narrow band, copper "plain old telephone service" ("POTS") world, BellSouth agrees with SBPP to the extent that a majority of demarcation relocations could probably be accomplished without physically altering the embedded copper facilities.[5] It is wrong, however, to generalize from this that demarcation relocations will never require equipment moves or cause tenant inconvenience, particularly with respect to the increasing deployment of broadband facilities (fiber optic cable and associated electronic equipment).[6] Even if these events are infrequent, BellSouth's petition

---

88-57, FCC 00-366, released October 25, 2000 ¶ 53 ("*Competitive Networks Order*" or "*FNPRM*").

4 *Competitive Networks Order*, ¶ 23.

5 SBPP at 16. SBPP's categorical statement that customer facilities are never affected is incorrect.

6 These are among the practical difficulties which counseled the Commission against adopting a mandatory MPOE rule. The photographs accompanying BellSouth's June 7, 2000 *ex parte* demonstrate vividly the complexities involved in situations involving high capacity broadband facilities.

merely seeks assurance that a service provider will not be deemed to be negotiating in bad faith in those (perhaps limited) circumstances in which an end-users' service will be affected in an unusual way as the result of a building owner's request to relocate a previously established premises demarcation point to the MPOE.[7]

A footnote in the Commission's *Competitive Network Order* is cited by opposing parties as a legal bar to BellSouth raising the possibility that service degradation could result when a building-owner requests to relocate a demarcation point to the MPOE.[8] Footnote 125 states that the Commission "finds no support for BellSouth's assertion that service quality would suffer if the demarcation point were moved." This statement is arbitrary and capricious and unsupported by the administrative record in this proceeding. The statement cites only a single page of BellSouth's August 27, 1999 comments in which BellSouth stated "[in] the very few cases where an MPOE demarcation point has been chosen by the building owner, end-user (tenant) complaints about untimely and inefficient service delivery have increased dramatically."[9] There is absolutely no reason for the Commission to question the veracity of this statement, and the Commission offered no countervailing record evidence to rebut it. Indeed, BellSouth's September 27, 1999 Reply Comments supplemented its statement with five pages of record evidence and described two actual cases of service degradation that took place in Tennessee, one of which was resolved by the Tennessee Regulatory Authority in BellSouth's favor. BellSouth's June and August, 2000 ex partes provided further record evidence, none of which was undermined.[10]

---

7 BellSouth Petition at 4.

8 RAA at 9, AT&T at 11.

9 BellSouth Comments at 8.

10 *See* n.2 *supra*, especially the photographs accompanying the June 7, 2000 *ex parte*.

Further, on January 29, 2001, the Florida Public Service Commission filed Comments in response to the Commission's Further Notice of Proposed Rulemaking in this docket in which it specifically raised that Commission's "concerns regarding the FCC's change in procedures for moving the demarcation point to the minimum point of entry (MPOE)".[11] The Florida PSC stated that it needed to be able to "pinpoint responsibility when there is a problem," and stated that "[i]n the past, we have filed comments expressing concern that the customer may be harmed if the demarcation point is defined as the minimum point of entry (MPOE)."[12] In its voluminous Report on Access by Telecommunications Companies to Customers in Multitenant Environments (February 1999), the Florida PSC stated "[m]oving to the MPOE may resolve some access issues by possibly giving the [alternative local exchange companies] quicker access to the wiring; however, inhibiting the [carrier of last resort's] ability to deliver service standards directly to the customer and potentially allowing an unregulated third party to become a factor in service may outweigh benefits of moving to MPOE."[13]

BellSouth advocated in this proceeding against a mandatory MPOE rule. However, BellSouth has never argued that the Commission should "reduce the likelihood that the location of the demarcation point will be at the MPOE."[14] Moreover, BellSouth has not advocated in this proceeding against building owner selection and control over the initial location of the demarcation point, whether at the MPOE or at individual customer's premises. BellSouth has only argued for a rule that expressly protects service providers and their customers in connection

---

[11] Florida PSC Comments at 1.

[12] Florida PSC Comments at 4.

[13] *See* Volume I, p. iii, attached as an exhibit to Florida PSC Comments. *See also Florida PSC Comments at* 27-28. (MPOE demarcation moves"...sets the stage for the possible degradation of service quality...").

[14] *Competitive Networks Order*, ¶ 54, n. 125. This statement misattributes anticompetitive motives to BellSouth's advocacy, a mistake shared by the opposing carriers.

with their respective investments in and expectations of service quality. Where end-users and service providers have relied on the initial determination by the building owner to locate communications facilities configured and engineered based upon regulated service provisioned up to the end user's premises (or to obtain the provision of resold services or unbundled network elements), the building owner's unilateral decision to change the demarcation point could have a range of effects on those pre-existing arrangements.

Building owners argue that, on a case by case basis, they will make the decisions that will satisfy all of the public interest concerns underlying the Commission's decision not to mandate an MPOE demarcation relocation, in the context of individual requests to relocation demarcation points.[15] BellSouth is asking the Commission to explicitly recognize that the class with the potentially largest stake in such a move, end-user subscribers, have meaningful participation in demarcation point changes where (1) the movement of equipment is required; or (2) where the end-user's level of service cannot be maintained as promised through existing service provider contracts or tariffs.[16]

II. OPPOSING PARTIES RAISE LEGITIMATE CONCERNS REGARDING THE BREADTH OF BELLSOUTH'S PROPOSED RULE MODIFICATION

RAA contends that BellSouth's proposed modification of the Commission's new rule is unworkable, and both RAA and AT&T state that the rule could delay relocations that would otherwise be in the best interests of all concerned. Although BellSouth does want the

---

[15] RAA Opposition at 8. See also Cypress Opposition at 5 ("no rational building owner would take action in relocating the demarcation point to the MPOE that would jeopardize its tenants' telecommunications services.").

[16] BellSouth does not object under any usual circumstance to a request by *an end user* for a specific demarcation point location, or to a move of an existing demarcation point. In such circumstances where the end user is specifying the location, BellSouth has the opportunity to fully explain BellSouth's changed service responsibilities and the end user's options relative to extension of BellSouth's service beyond the end user's chosen demarcation point. This is done

Commission to recognize the legitimate interests of tenants whose service may be affected by a demarcation relocation, it does not want the Commission to adopt an unworkable rule, or a rule that would unnecessarily delay relocations.

BellSouth originally requested that the Commission modify its rule to make clear that all end-user service subscribers provide their written consent and acknowledgment to the relocation. The RAA states (1) that tenants and their respective providers will have varying and even conflicting opinions on the most advantageous location of the demarcation point; (2) that one tenant satisfied with the *status quo* could withhold consent to a relocation that would materially benefit other tenants, even though the tenant withholding consent is not "materially disadvantage[d];" and (3) even assuming all tenants' interests are reconcilable, it would be hard to obtain actual written consent.[17] Similarly, AT&T states that requiring all tenants in an MTE to affirmatively consent to the transfer of a demarcation point likely would prevent many, if not all requests to transfer the demarcation point to the MPOE, and, at a minimum, would erect an unnecessary barrier to delay such transfers without any corresponding benefit.[18]

BellSouth did not propose an "all tenant's consent requirement" as a ruse to delay MPOE relocations.[19] There are legitimate reasons why all tenants should be given an opportunity to concur in the interposition of new, deregulated facilities between them and their original service

---

on a daily basis today without any problems. It is only in circumstances where end users are not "in the loop" relative to these decisions that problems arise.

[17] RAA Opposition at 9.

[18] AT&T Opposition at 11. SBPP points out that BellSouth's recommended revision may not permit a carrier to avoid the service impairment risk. SBPP at 15. The point is that tenants should have adequate notice and understand any possible service impairment resulting from a relocation.

[19] AT&T Opposition at 11.

provider of choice, even where a move of tenant equipment may not be required.[20] For example, in simple MTE installations where a CLEC services all tenants through resale or the use of UNEs, the landlord's request would require the CLEC to obtain the former ILEC facilities from new parties pursuant to conditions that might affect the terms of the availability of its continued service to existing tenants.

Another concern could arise in scenarios where the service provider's responsibility ends at the MPOE following a demarcation relocation because the owner has chosen to assign this responsibility to another party. In these cases, without adequate notice, understanding and preparation, including engagement of the end user, a range of confusion and delays could result. At a minimum, tenants need to know that at least two different parties are providing their local service, particularly in the context of E-911 outages.

BellSouth's proposal ensures that tenants will at least receive notice of a change in their relationship with their current service provider that, at one end of the spectrum, may require them to make two trouble calls instead of one, or, at the other end, may require them to bear expense in connection with equipment moves or to lose some or all of the features and functions of service from their chosen provider. BellSouth agrees with RAA, however, that circumstances may arise in which not all tenants agree to a building owner's request to change the demarcation

[20] Regardless of whether the facilities beyond the MPOE demarcation continued to be maintained and administered on a deregulated basis by the incumbent local exchange carrier ("ILEC") or, alternatively by the building owner or another carrier, the end user's existing service is always "impacted" by the interposition of deregulated facilities between the MPOE and the end user's premises. Typically, end users have an expectation and desire for end-to-end service responsibility from a single carrier, and when such service is ordered from a fully regulated carrier, they expect such service to be subject to tariff provisions and oversight by the appropriate regulatory authorities.

point to the MPOE, even if the change would have no unusual impact on the objecting end-user.[21] This could result in the delay that AT&T predicts.[22]

BellSouth therefore proposes that end-user concurrence be limited to situations where: (1) the movement of equipment is required; or (2) where the end-user's service will be substantially impacted, relative to the end user's expectations. And, accordingly BellSouth withdraws its proposed draft rule in favor of this alternative:

> (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 MPOE. The *provider of wireline telecommunications* must negotiate terms in good faith and complete the negotiations within forty-five days from said request. *In situations where the physical relocation of equipment is required, or where a customer's service will be substantially affected as a consequence of the relocation, the provider of wireline telecommunications may request the affected customer's consent prior to actually initiating a change in the existing demarcation point location.* 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

The RAA states that "ensuring that the needs and concerns of tenants are met is one of the highest priorities of building owners and there is no reason to believe that a building owner would ignore them in this situation."[23] By limiting BellSouth's proposed modification to those circumstances where a service provider has a good faith belief that a tenant's service-related needs and concerns will be substantially affected by a relocation of the demarcation point to the MPOE, and by making the request for consent optional rather than mandatory, the objections

---

21 RAA Opposition at 9.

22 AT&T Opposition at 11.

23 RAA Opposition at 8.

posed by AT&T and RAA to BellSouth's proposed rule on the grounds that it is overbroad should be overcome.

In the alternative, the Commission could clarify that a carrier's request for a tenant's concurrence with a building owner's request for demarcation relocation does not constitute bad faith negotiations where the request is made by the carrier only when it has a good faith basis to believe that its end-user customer's service will be affected from an economic or operational standpoint. This alternative would not require any modifications to the Commission's existing rule, but would clarify that carriers may, in specific and limited circumstances, raise legitimate tenant concerns in the context of a demarcation relocation negotiation.

CONCLUSION

Although the oppositions to BellSouth's Petition for Reconsideration are not well taken on procedural grounds, and misconstrue BellSouth's motive, some opposition concerns regarding the breadth of BellSouth's proposed rule are reasonable. BellSouth requests that the Commission either substitute the more limited modification proposed, or, in the alternative to a rule change, grant the clarification requested, in this Reply.

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

Date: March 26, 2001

CERTIFICATE OF SERVICE

I do hereby certify that I have this 26th day of March 2001 served the following parties to this action with a copy of the foregoing **REPLY** by electronic filing and/or by placing a copy of the same in the United States Mail, addressed to the parties listed on the attached service list.

/s/ Juanita H Lee
Juanita H. Lee

Service List WT Docket No. 99-217

Philip L. Verveer
Gunnar D. Halley
Smart Buildings Policy Project
Willkie Farr & Galagher
Three Lafayette Centre
1155 21st Street, N. W.
Washington, D. C. 20036

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

John T. Scott, III,
Vice President & Deputy
General Counsel
Verizon Wireless
1300 Eye Street, N. W.
Suite 400 West
Washington, D.C. 20005

Andre J. Lachance
Regulatory Counsel
Verizon Wireless
1300 Eye Street, N. W.
Suite 400 West
Washington, D.C 20056

Matthew C. Ames
James R. Hobson
Nicholas P. Miller
Real Access Alliance
Miller & Van Eaton, P.L.L.C.
Suite 1000
1155 Connecticut Avenue, N. W.
Washington, D.C. 20036-4306

Gerard Lavery Lederer
Vice President-Industry & Gov. Affairs
Building Owners & Managers
Association International
Suite 300
1201 New York Avenue, N. W.
Washington, D. C. 20005

Roger Platt
Vice President and Counsel
Real Estate Roundtable
Suite 1100
1420 New York Avenue, N. W.
Washington, D. C. 20005

Bruce Lundegren
Regulatory Counsel
National Associations of Home Builders
1201 15th Street, N. W.
Washington, D. C. 20005-2800

Reba Raffaelli
Vice President & General Counsel
National Association of Industrial
& Office Properties
2201 Cooperative Way
Herndon, VA 20171

Tony Edwards
General Counsel
National Association of Real
Estate Investment Trusts
1875 Eye Street N. W.
Suite 600
Washington, D. C. 20006

Clarinne Nardi Riddle
General Counsel
National Multi Housing Council
Suite 540
1850 M Street, N. W.
Washington, D. C. 20036

Margaret L Tobey
Cristina Chou Pauze
Counsel for the Satellite Broadcasting and
Communications Association/Satellite
Industry Association Satellite Broadband
& Internet Division
Morrison & Foerster, LLP
Suite 5500, 2000 Pennsylvania Avenue, NW
Washington, DC 20006

Russell H. Fox
Russ Taylor
Triton Network Systems, Inc.
Mintz, Levin, Cohn, Ferris, Glovsky
And Popeo, P. C.
701 Pennsylvania Avenue, N. W.
Washington, D. C. 20004

Paul J. Sinderbrand
Robert D. Primosch
The Wireless Communications
Association International, Inc.
Wilkinson Barker Knauer, LLP
Suite 700, 2300 N Street, N. W.
Washington, D. C. 20037

David L Lawson
Paul J. Zidlicky
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

Howard J. Symons
Michelle Mundt
AT&T Corporation
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P. C.
701 Pennsylvania Avenue, N. W.
Suite 900
Washington, D. C. 20004

Douglas I. Grandon
AT&T Wireless Services, Inc.
1150 Connecticut Avenue, N. W.
Washington, D. C. 20036

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

Steven T. Berman
Senior Vice President
Business Affairs and General Counsel
National Rural Telecommunications
Cooperative
2121 Cooperative Way
Herndon, VA 20171

Jack Richards
Kevin G. Rupy
National Rural Telecommunications
Cooperative
Keller and Heckman, LLP
1001 G Street, N. W.
Washington, D. C. 20001

Norman P. Leventhal
David S. Keir
Starband Communications, Inc.
Leventhal, Senter & Lerman, P.L.L.C.
Washington, D. C. 20006

James R. Hobson
NATOA ENR BETWIRJ CWT1
Miller & Van Eaton, P.L.L.C.
Suite 1000
1155 Connecticut Avenue, N. W.
Washington, D. C. 20036

Lawrence E. Sarjeant, Linda Kent
Keith Townsend, John Hunter
Julie E. Rones
United States Telephone Association
Suite 600, 1401 H Street, N W.
Washington, D. C. 20005

Brain Thomas O'Connor, Vice President
Robert A. Calaff, Corporate Counsel
Dan Menser, Corporate Counsel
VoiceStream Wireless Corporation
401 9th Street, N W., Suite 550
Washington, D. C. 20004

+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

Steven S. Rosenthal
Cooper, Carvin & Rosenthal, PLLC
Suite 200
1500 K Street, N. W.
Washington, DC 20005

+ VIA ELECTRONIC FILING