ORIGINAL

BELLSOUTH

BellSouth
Suite 900
1133-21st Street, N.W.
Washington, D.C. 20036-3351

kathleen.levitz@bellsouth.com

Kathleen B. Levitz
Vice President-Federal Regulatory

202 463-4113
Fax 202 463-4198

RECEIVED

JUN 25 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

June 25, 2001

WRITTEN EX PARTE

EX PARTE OR LATE FILED

Ms Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W., Room TWB-204
Washington, D.C. 20554

Re: CC Docket No. 98-147
CC Docket No. 96-98

Dear Ms. Salas:

BellSouth writes this letter to present its views on issues related to collocation currently before the Commission in the Advanced Services proceeding, CC Docket No. 98-147.[1] The specific issues we discuss here are: what types of equipment may a competitive local exchange carrier ("CLEC") collocate in an incumbent local exchange carriers ("ILEC") premises; whether an ILEC must allow cross connections between CLECs that are collocated in that ILEC's premises; and where a CLEC may place its collocated equipment in an ILEC's premises. For the reasons we set forth below, BellSouth believes that ILECs should not be required to permit CLECs: to collocate equipment that performs functions other than those necessary for interconnection or access to UNEs; to obtain cross connections among other CLECs collocated in a central office; or to determine where in the central office they may place its equipment.

[1] *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability,* CC Docket No. 98-147.

No. of Copies rec'd 0+3
List ABCDE

The Commission initially established collocation rules addressing these and other issues in the *First Report and Order* in the Advanced Services proceeding[2]. Portions of these rules were vacated by the D.C. Court of Appeals in *GTE v. FCC*, 205 F.3d 416 (D.C. Cir. 2000). Subsequently the Commission issued a notice of proposed rulemaking to focus on collocation, especially the rules that had been vacated.[3] BellSouth believes the above stated issues to be of significant importance to the industry and to the Commission in establishing collocation policy.

Collocation of Multi-Purpose Equipment

The Telecommunications Act of 1996 ("1996 Act") imposed on ILECs "[t]he duty to provide ...collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier."[4] In interpreting this portion of the 1996 Act, the Court of Appeals for the District Of Columbia Circuit, following precedent set by the United States Supreme Court, found that "necessary" must be construed in a fashion that is consistent with the ordinary and fair meaning of the word. The Court of Appeals went on to find that the Supreme Court's ruling was particularly relevant in the area of collocation because "a broader construction of 'necessary' under § 251(c)(6) might result in an *unnecessary* taking of private property." Based on this finding the Court of Appeals vacated the Commission's rules that required an ILEC to collocate multi-purpose equipment, *i.e.,* equipment that performs functions beyond those necessary to interconnect to an ILEC's network or obtain access to an ILECs unbundled network elements. The court reasoned that allowing the collocation of such equipment demonstrated an interpretation of "necessary" that was impermissibly broad.

Clearly, the Court of Appeals got it right. Carried to its logical conclusion, the Commission's interpretation that ILECs must permit collocation of multi-purpose equipment pursuant to § 251(c)(6) would place no limit on the type of unnecessary features that could be included as part of the multi-purpose equipment.[5] Accordingly, the Commission must adhere to the Supreme Court's interpretation of "necessary," as

---

[2] *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability,* CC Docket No. 98-147, *First Report and Order*, 14 FCC Rcd 4761 (1999) ("*Collocation Order*")

[3] *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* CC Docket Nos. 98-147 and 96-98, *Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC docket No. 98-147 and Fifth Further Notice of Proposed Rulemaking in CC Docket 96-98,* 15 FCC Rcd 17806 (2000) ("*Second Further Notice*").

[4] 47 U.S.C. § 251(c)(6).

[5] Indeed, even the Court of Appeals noted that the Commission's rules requiring ILECs to allow collocation of multi-purpose equipment would allow CLECs to collocate equipment that perform such functions unrelated to interconnection or access to unbundled network elements ("UNEs") as facilitating payroll or collecting data.

followed by the Court of Appeals, and not read that word out of the statute when establishing collocation rules.

Moreover, the Commission must be mindful of the difference between obligations and duties mandated by Congress under § 251(c)(6) and voluntary collocation arrangements that an ILEC may agree to provide to a CLEC. For example, as it explained in its *ex parte* presentation, a notice of which was filed with the Commission on May 29, 2001, BellSouth is willing to permit CLECs to collocate multi-purpose equipment that performs not only functions that allow a carrier to interconnect to BellSouth's network but also other functions such as enhanced services. BellSouth does not interpret the Commission's rules, following the Circuit Court's opinion, to require such a collocation arrangement pursuant to section 251(c)(6), however. BellSouth's allowing such a collocation arrangement arises instead from its voluntary decision to allow its § 272 affiliate to collocate a switch in one of its central offices. Pursuant to § 272(c), BellSouth now allows other carriers' collocation arrangements under the same terms and conditions that it extends to its § 272 affiliate. The decision to allow its § 272 affiliate to collocate multi-purpose equipment in a central office was a voluntary business decision. BellSouth was obviously not compelled to do so under Congress's mandate nor the Commission's collocation rules. Indeed, if BellSouth later decided to have its § 272 affiliate remove the multi-purpose equipment from the central office, it would no longer have a § 272(c) obligation to allow other carriers to collocate multi-purpose equipment.[6]

Accordingly, although it allows the collocation of multi-purpose equipment, BellSouth does so not because of § 251(c)(6) or any Commission rules interpreting that statute, but rather because of the statutory obligations that flow under § 272(c) from BellSouth's voluntary decision to allow its § 272 affiliate to collocate such equipment. As BellSouth has stated in its comments in this proceeding, Congress carefully limited the obligations of an ILEC under § 251. Thus, the duty to provide for interconnection with the ILEC's network is only "for the transmission and routing of telephone exchange service and exchange access."[7] Likewise, the duty to provide unbundled network elements is only "for the provision of a telecommunications service."[8] The duty to collocate is limited to "equipment *necessary* for interconnection or access to unbundled network elements...."[9] Since the interconnection and unbundled network element obligations are limited to the provision of telecommunications services, so is the duty to collocate. The Commission therefore must not attempt to establish any rules that would obligate an ILEC to collocate multi-purpose equipment.

---

[6] If a carrier had already collocated multi-purpose equipment, it could continue such arrangement until its collocation agreement expired.
[7] 47 U.S.C. § 251(c)(2)(A).
[8] 47 U.S.C. § 251(c)(3).
[9] 47 U.S.C. § 251(c)(6) emphasis added.

Cross-Connections Between CLECs Collocated on ILEC Premises

BellSouth also believes that the decision in *GTE v. FCC* precludes the Commission from requiring an ILEC to permit cross-connections between and among CLECs collocated on the ILEC's premises. The Court there expressly rejected the conclusion that any reasonable interpretation of "necessary" as used in § 251(c)(6) could not encompass such a requirement:

> One clear example of a problem that is raised by the breadth of the Collocation Order's interpretation of "necessary" is seen in the Commission's rule requiring LECs to allow collocating competitors to interconnect their equipment with other collocating carriers. See Collocation Order, 14 FCC Rcd at 4780, p 33 ("We see no reason for the incumbent LEC to refuse to permit collocating carriers to cross-connect their equipment, subject only to the same reasonable safety requirements that the incumbent LEC imposes on its own equipment.") The obvious problem with this rule is that the cross-connect requirement imposes an obligation on LECs that has no apparent basis in the statute. Section 251(c)(6) is focused solely on connecting new competitors to LECs' networks. In fact, the Commission is almost cavalier in suggesting that cross-connects are efficient and therefore justified under Section 251(c)(6). This will not do. The statute requires LECs to provide physical collocation of equipment as "necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier," and nothing more. As the Supreme Court made clear in Iowa Utilities Board, the FCC cannot reasonably blind itself to statutory terms in the name of efficiency. Chevron deference does not bow to such unbridled agency action.[10]

The Court has clearly held that "Section 251(c)(6) is focused solely on connecting new competitors to LECs' networks." The Commission is statutorily bound to give effect to that finding.[11]

Placement of CLEC Equipment on ILEC Premises

In *GTE v. FCC* the Court also vacated the Commission's requirements that allowed collocators to select any unused space in the LEC central office. The Court found there is nothing in § 251(c)(6) that allows competitors, over the objection of the LEC property owners, to pick and choose preferred space on the LECs' premises. The Court held that the statute requires only that the LECs make space available for physical collocation, nothing more. The additional requirements imposed by paragraph

---

[10] *GTE v. FCC*, 205 F.3d at 423-24.

[11] 47 U.S.C. § 402(h), provides, in pertinent part, "In the event that the court shall render a decision and enter an order reversing the order of the Commission, it shall remand the case to the Commission to carry out the judgment of the court and it shall be the duty of the Commission, in the absence of the proceedings to review such judgment, to forthwith give effect thereto ...."

42 of the *Collocation Order* were found to exceed what is "necessary" to achieve reasonable "physical collocation" and in ways that may result in unnecessary takings of LEC property. "Once again we find that the FCC's interpretation of Section 251(c)(6) goes too far and thus 'diverges from any realistic meaning of the statute.'"[12]

The Court of Appeals decision makes it clear that the ILECs have the full bundle of rights of a property owner, subject only to the statutory right of a competing carrier to collocate its equipment for purposes of interconnection with the incumbent's network or to access unbundled network elements. The Commission may invade those property rights only to the extent "necessary."

There is no need for the Commission to adopt a national space assignment policy. Each ILEC central office is unique, as are zoning and permitting intervals that vary from state to state. If there are disputes about an ILEC's space assignment policies, the state commissions are best situated to resolve those disputes on a case-by-case basis.

An ILEC not only has a legal right to assign space within its premises, but also is the proper party to do so from a policy perspective. The ILEC is best positioned to assign space in the most efficient fashion to maximize the space available for future use by the ILEC and CLECs alike. If each requesting CLEC is allowed to select any unused space in the central office based only on its own self-interest, the resulting assignments of space will not be efficient and will not maximize the amount of space available. BellSouth's policy is to assign space for collocated equipment that requires a minimum amount of space preparation and that the collocator can occupy in the shortest period of time. BellSouth does reserve growth floor space for its own needs that is contiguous to its existing equipment. If adequate space is available, BellSouth provides collocators with the same opportunity to reserve growth space contiguous to their installed equipment. No further regulations are required.

There are also technical factors that must be considered in determining where a CLEC's equipment should be located within a central office. Such factors include:

- **Overall cable length.** Cable congestion and related expense can be avoided or at least minimized by careful consideration of existing and future equipment requirements of both the collocating CLEC and others that have already collocated or will collocate in the future. Orderly equipment growth, *i.e.*, grouping like equipment together, allows economic efficiencies while reducing excessive cable rack congestion and resultant re-routing of cables.

- **Distance between related equipment**. Some equipment components, *e.g.*, switch call processors, must be placed so that the cable length between the components does not exceed an amount recommended by the equipment manufacturer.

[12] *GTE v. FCC*, 250 F.3d at 426.

- **Grouping of equipment into families of equipment.** Families of equipment, *e.g.*, switching equipment or transmission equipment, must be placed together for technical reasons, such as electrical grounding, discussed below, as well as to maximize the contiguous space within a given central office recovered when existing equipment is replaced by more modern equipment. Having all such equipment located in the same part of the central office allows the recovery of larger "blocks" of floor space rather than smaller parcels of floor space interspersed among other racks of equipment.

- **Electrical grounding requirements.** Switching equipment typically requires an "isolated grounding" source while transmission equipment typically requires an "integrated grounding" source. Safety codes require that equipment served by different grounding sources be physically separated in order to protect technicians from receiving electrical shocks or being electrocuted because they simultaneously contact dissimilar grounding sources.

- **"Holes" in existing equipment line-ups.** "Holes" in equipment line-ups are spaces intentionally left empty to accommodate future growth and still to assure adherence to the principles described above. (In some cases, cables and framework are modular in nature and economic efficiency results from pre-assembly and provision of such cables or framework.)

Finally, the ILEC's right to assign space is necessary to insure that the incumbent LEC's constitutional rights, as a property owner, are not subordinated to any statutory right of the CLECs. Constitutional issues aside, rules that would subordinate the ILEC's ability to control its property to each individual CLEC's ability to choose where in a central office it would collocate its equipment would yield results inconsistent with economic efficiency, as explained above, as well as pre-existing Commission decisions. For example, the Commission stated in the *Local Competition Order* that incumbent LECs may reserve space for future use.[13] Moreover, in ordering cageless collocation in its *Collocation Order,* the Commission explicitly granted the incumbent LECs the right to put their equipment in cages.[14] Each of these rights would become meaningless if CLECs were allowed to choose the placement of their equipment in an ILEC's facility. Someone must have responsibility for allocating the limited space within an ILEC's central office. For all the reasons listed above, that someone should be the owner of that office, the ILEC.

---

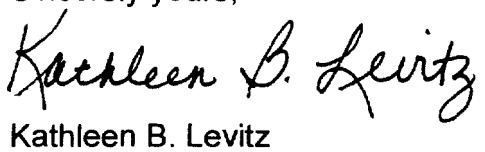
[13] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *First Report and Order*, 11 FCC Rcd 15499 (1996)(*"Local Competition Order"*) ¶ 604, *modified on reconsideration*, 11 FCC Rcd 13042, (the Commission "allowed [ILECs] to retain a limited amount of floor space for defined future use.").

[14] *Collocation Order* ¶ 42.

Conclusion

In summary, BellSouth believes that the Commission should not require ILECs to permit a CLEC: to collocate equipment that performs functions other than those necessary for interconnection or access to UNEs; to obtain cross connections among other CLECs collocated in a central office; or to determine where in the central office it may place its equipment. Such requirements would be inconsistent with the language and intent of § 251(c)(6) of the 1996 Act, the Court's decision in *GTE v. FCC*, and sound telecommunications policy. Accordingly, the Commission should refrain from imposing such obligations upon incumbent local exchange carriers.

Sincerely yours,



Kathleen B. Levitz

cc: Chairman Michael Powell
Kyle Dixon
Commissioner Gloria Tristani
Deena Shetler
Commissioner Kathleen Abernathy
Matt Brill
Commissioner Michael Copps
Jordan Goldstein
Dorothy Attwood
Glenn Reynolds
Jared Carlson
Michelle Carey
Brent Olson
William Kehoe