

**Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
ClickQuick II, LLC,)	
San Marina at Laguna Lakes, L.L.C.)	WC Docket No. 03-112
a/k/a Bear Lakes Associates, Ltd. and)	
Villa Del Sol, L.L.C. a/k/a VDS)	
Associates, Ltd.)	
)	
Petition for Declaratory Ruling)	
)	

**COMMENTS OF AT&T CORP. AND
SMART BUILDINGS POLICY PROJECT**

Pursuant to Section 1.415 of the Commission’s rules, 47 C.F.R. § 1.415, AT&T Corp. (“AT&T”) and the Smart Buildings Policy Project¹ respectfully submit these comments in response to the Commission’s *Notice* on ClickQuick II, LLC, San Marina at Laguna Lakes, L.L.C. a/k/a Bear Lakes Associates, Ltd., and Villa Del Sol, L.L.C. a/k/a

¹ The Smart Buildings Policy Project (“SBPP”) is a coalition of telecommunications carriers, equipment manufacturers and other firms and organizations that support nondiscriminatory telecommunications carrier access to multi-tenant environments. The SBPP’s members include: Alcatel USA, American Electronics Association, Association for Local Telecommunications Services, AT&T Corp., Comcast Business Communications, Competitive Telecommunications Association, Cox Communications, Inc., Focal Communications Corporation, The Harris Corporation, Information Technology Association of America, Lucent Technologies, MCI, Network Telephone Corporation, Nokia Inc., International Communications Association, Siemens, Telecommunications Industry Association, Teligent, Time Warner Telecom, Winstar Communications LLC, and XO Communications, Inc.

VDS Associates Ltd. (“Petitioners”) Petition to Preempt the Florida Public Service Commission’s Multi-tenant Environment (“MTE”) Demarcation Rules (“Petition”).²

I. The Commission’s Minimum Point of Entry Demarcation Rule Promotes Facilities-Based Local Exchange Competition.

The Commission has long supported competitive access to MTEs by implementing a series of rules that promote decreased reliance on incumbent local exchange providers (“LECs”) by competitive carriers. Such decreased reliance enables competitive local exchange carriers (“CLECs”), through arrangements with building owners, to install their own facilities or lease or control the intra-building facilities of the building owner. In 1984, for example, the Commission established a “demarcation point” that marks the end of wiring under the control of the LEC and the beginning of wiring under the control of the property owner or subscriber.³ In 1990, the Commission increased the amount of wiring that could be controlled by the property owner or subscriber,⁴ and in 1997 the Commission clarified that the incumbent LEC must relocate

² Comment Request on Petition for Declaratory Ruling that the Location of the Demarcation Point Pursuant to § 47 C.F.R. § 68.105(d)(2) Preempts the Location of the Demarcation Point Pursuant To § 25-4.0345(1)(B)(2) of the Florida Administrative Code, *Public Notice*, DA 03-1511, WC Docket No. 03-112 (rel. May 5, 2003) (“*Notice*”).

³ See Petitions Seeking Amendment of Part 68 of the Commission’s Rules Concerning the Connection of Telephone Equipment System and Protective Apparatus to the Telephone Network, *First Report and Order*, 97 FCC 2d 527 (1984).

⁴ See Review of Sections 68.104 and 68.213 of the Commission’s Rules Concerning Connection of Simple Inside Wiring to the Telephone Network, *Report and Order and Further Notice of Proposed Rulemaking*, 5 FCC Rcd 4686 (1990).

the demarcation point to the minimum point of entry (“MPOE”)⁵ if a building owner requests the relocation.⁶

These rules permitted telecommunications subscribers and premises owners to have responsibility for installation, maintenance and repair of inside wiring – the wiring that connects customer premises equipment (“CPE”) to the public switched telephone network and to other CPE. Previously, inside wiring could be managed only by the incumbent LECs, and, consequently, competitors had no choice but to rely on the incumbent LECs for access to virtually all MTEs. Thus, the Commission’s demarcation rules helped pave the way for facilities-based competition by allowing competitive carriers to enter into arrangements with building owners rather than depending solely on the incumbent LEC – their competitor.

Despite these pro-competitive initiatives by the Commission, incumbent LECs continued to forestall local competition. They thus (1) failed to inform the building owners of the demarcation point – making it difficult for the building owners to determine who owned or controlled the intra-building facilities; (2) refused to offer the facilities to CLECs at UNE rates, arguing that the building owner controlled the facilities

⁵ The MPOE is defined as “either the closest practicable point to where the wiring crosses a property line or the closest practicable point to where the wiring enters a multiunit building or buildings.” 47 C.F.R. § 68.105(b).

⁶ See Review of Sections 68.104 and 68.213 of the Commission’s Rules Concerning Connection of Simple Inside Wiring to the Telephone Network and Petition for Modification of Section 68.213 of the Commission’s Rules, *Order on Reconsideration, Second Report and Order and Second Further Notice of Proposed Rulemaking*, 12 FCC Rcd 11897 (1997) (“1997 Demarcation Point Order”).

within the building (even where building owners denied ownership or control); and (3) denied building owners' requests to move the demarcation point to the MPOE.⁷

In an effort to alleviate these problems and further promote facilities-based competition in the local telecommunications markets, the Commission recently clarified that "in all multiunit premises, the incumbent carrier must move the demarcation point to the minimum point of entry ("MPOE") upon the premises owner's request," and set forth specific timelines by which the ILEC must (1) inform the premises owner of its options and rights regarding the placement of the demarcation point; (2) make available information on the location of the demarcation point within ten business days; and (3) complete within 45 days negotiations with the building owner to relocate the demarcation point to the MPOE.⁸ The Commission found that "it would impede the development of facilities-based competition if a carrier could refuse a premises owner's request to move the demarcation point to the property line in order to prevent the connection of inside wiring to a competitive carrier."⁹ Thus, the Commission again mandated that a carrier *must* move the demarcation point to the MPOE if a premises owner so requests.¹⁰

⁷ See generally Promotion of Competitive Networks in Local Telecommunications Markets, *Notice of Proposed Rulemaking*, 14 FCC Rcd 12673 (1999), comments filed by CLECs describing a host of building access problems that CLECs face in dealing with the ILECs.

⁸ Promotion of Competitive Networks in Local Telecommunications Markets, *First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 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*, 15 FCC Rcd 22983, ¶ 54 (2000) ("Building Access Order"). The Commission required that if the carrier does not elect to place the demarcation point at the MPOE, the premises owner shall determine the number and location of the demarcation point(s) (e.g. single point at the MPOE). 47 C.F.R. § 68.105(d)(2).

⁹ *Building Access Order* at ¶ 54.

¹⁰ *Id.*

Last, the Commission affirmed its single definition of the demarcation point for both simple and complex wiring, finding that a single definition avoids confusion that could result from separate demarcation point definitions for simple and complex wiring.¹¹ The Commission correctly noted that a single demarcation point is “simple, and consistent, and promotes consumer control over inside wiring by restricting the extent of network wiring on the customer’s premises, yet is flexible enough to respond to the demands of complex, multiunit inside wiring facilities design.”¹² Although the Commission has declined thus far to preempt state demarcation rules, it has cautioned that “to the extent state local inside wiring policies negate federal policies, the Commission will review the need to preempt at that time.”¹³

II. The Florida Public Service Commission Rules Conflict with the Commission’s MPOE Requirement and Should Be Preempted.

Petitioners argue that the time is ripe for this Commission to preempt a state’s demarcation rules. They assert that the Florida Public Service Commission’s (“PSC’s”) demarcation rules prevent ClickQuick, an internet access service provider acting as an agent to the building owners, from interconnecting its facilities at a single point of entry – the device which Petitioners refer to as the “66 block” located in the utilities room of each building.¹⁴ Specifically, Petitioners claim that the Florida PSC’s rule -- which states that the demarcation point for single line/multi-customer buildings must be “[w]ithin the

¹¹ *Id.* at ¶ 60. See also *1997 Demarcation Point Order*, 12 FCC Rcd at 11905-07.

¹² *Id.* at ¶ 61.

¹³ See *1997 Demarcation Point Order*, 12 FCC Rcd at 11919.

¹⁴ Petition at 2.

customer's premises at a point easily accessed by the customer"¹⁵ -- permits BellSouth to deny interconnection at the 66 blocks.¹⁶ Thus, to the extent the buildings in question are classified as "single line/multi-customer buildings," neither the buildings' owners nor their agent, ClickQuick, may take advantage of the Commission's well thought out rules granting building owners the right to relocate the demarcation point to the MPOE. Consequently, to the extent the buildings in question are single wire MTEs, the Florida PSC's rules prohibit ClickQuick from interconnecting in the common area at the 66 block.

AT&T and SBPP support the Petition and urge the Commission to find that a state demarcation rule that circumvents the ability of a building owner (or its agent) to move the demarcation point to the MPOE or its equivalent, is preempted by the federal rule. State requirements that prohibit building owners from moving the demarcation point to the MPOE serve to increase a competitive provider's dependence on the incumbent LEC. As the comments filed in the *Building Access* proceeding demonstrate – and as the Commission acknowledged – the incumbent LECs continue to bear responsibility for the most significant barriers to entry.¹⁷

¹⁵ 25 FL ADC 25-4.0345(1)(b)(2). For multi-line systems, however, the Florida rules appear to require that the demarcation point be located at a single point in the common area. Rule 25-4.0345(1)(b)(3) states that the demarcation point must be "within the same room and within 25 feet of the FCC registered terminal equipment or cross connect field." 25 FL ADC 25-4.0345(1)(b)(3). BellSouth and Petitioners differ on whether the buildings in question are single line or multi-line buildings. Petition at 4.

¹⁶ Petition at 4.

¹⁷ See, e.g., AT&T Comments at 4-8; AT&T Replies at 3 ("[c]ompetitive carriers face incumbent LEC 'lock-outs,' in which the incumbent LEC claims, frequently with no proof whatsoever, that it owns the MTE wiring, and then denies the new entrant access – even if the new entrant offers to pay reasonable fees to the incumbent LEC for the purchase or lease of the wiring"); RCN Corporation at 5 (incumbent LECs appear to use any opportunity to block entry by new competitors).

As the Commission correctly noted, incumbent LECs often use their control over on-premises wiring to frustrate competitive access to MTEs. For example, LECs sometimes fail to timely provide non-proprietary information in their possession, require the presence of their own technicians to supervise CLEC wiring, and take unreasonable amounts of time in scheduling such visits.¹⁸ Clearly, if the demarcation point is located at the MPOE, the CLEC would be able to avoid these problems when dealing with cooperative building owners.¹⁹

Moreover, the Commission correctly recognized the significance of establishing clear-cut procedures by which the building owner may move the demarcation to the MPOE, acknowledging that the availability of alternative providers for local telecommunications service is often a significant selling point in leasing negotiations between building owners and prospective tenants.²⁰ Therefore, cooperative building owners often are encouraged to enter into building access agreements with CLECs. Permitting the building owner to relocate the demarcation point to the MPOE and setting forth timelines by which a LEC must comply with such a relocation request enhances the ability of a CLEC to offer competitive services within an MTE.

The Florida demarcation rules undercut the Commission's pro-competitive building access requirements. Unlike the Commission's single demarcation definition for

¹⁸ *Id.* at ¶ 19. See also Comments filed by AT&T, Nextlink Communications, Inc., MCI WorldCom, Inc., Teligent, Inc., and Winstar Communications Inc. in the Promotion of Competitive Networks in Local Telecommunications Markets, *Notice of Proposed Rulemaking and Notice of Inquiry*, 14 FCC Rcd 12673 (1999), describing CLEC problems in dealing with the ILEC.

¹⁹ See generally comments filed by CLECs in the FCC proceeding Promotion of Competitive Networks in Local Telecommunications Markets, *Further Notice of Proposed Rulemaking*, FCC 00-366, WT Dkt. 99-217 (rel. Oct. 25, 2000) describing the specific problems the CLECs encounter in dealing with certain building owners.

²⁰ *Building Access Order* at ¶ 16.

both simple and complex wiring, the Florida PSC requires different demarcation points depending on the type of wiring within an MTE.²¹ The confusion and delay this Commission sought to avoid by establishing a single demarcation definition appear to exist here. Petitioners claim that they arguably are entitled to interconnection at each of the 66 blocks located in the utility room of each building, asserting that the Florida demarcation rules for buildings with multi-line wiring systems should apply.²² According to Petitioner, however, BellSouth believes that the demarcation point should be at the wall plate inside each dwelling unit because the buildings in question fall under the Florida demarcation rules for single line wiring, rather than multi-line wiring.²³ Application of the Commission's single demarcation point requirement would avoid the inevitable confusion and delay that can result when a state requires different demarcation points for simple and complex wiring.²⁴

The Commission's demarcation rules serve to decrease CLEC reliance on the ILEC in providing competitive services to end users. State rules that prohibit a building owner from establishing the demarcation point at the MPOE circumvent the Commission's rules and clearly conflict with this important goal. Therefore, AT&T and SBPP urge the Commission to preempt the Florida PSC's rule that requires the

²¹ See 25 FL ADC 25-4.0345(1)(b).

²² *Petition* at 4.

²³ *Id.* Thus, because the Florida rules for single line MTEs require that the incumbent LEC own the facilities within a building up to the customer premises, CLECs must rely on the incumbent for these facilities.

²⁴ Moreover, although the ILEC-owned facilities within a MTE may be available to CLECs at cost-based rates, the incumbent may charge entities such as ClickQuick whatever the incumbent can collect -- a rate that may be significantly higher than what the building owners, who strongly desire ClickQuick's entry, may charge.

demarcation point for single line MTEs to be “[w]ithin the customer’s premises at a point easily accessed by the customer.”²⁵ Such action would provide building owners the ability to establish the demarcation point at the MPOE, regardless of whether the MTE is configured with simple or complex wiring, and would promote customer choice of providers in MTEs throughout the country.

CONCLUSION

For the reasons set forth herein, AT&T and SBPP urge the Commission to preempt the Florida PSC rule requiring that the demarcation point be located at the customer premises.

Respectfully submitted,

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²⁵ 25 FL ADC 25-4.0345(b)(2).

Certificate of Service

I, Theresa Donatiello Neidich, do hereby certify that I caused one copy of the foregoing Comments of AT&T Corp. and the Smart Buildings Policy Project to be served by U.S. first class mail on the parties on the attached service list on this 4th day of June, 2003.

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