

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Clarification of the Commission's Rules and	)	
Policies Regarding Unbundled Access to	)	WC Docket No. 01-338
Incumbent Local Exchange Carriers' Inside	)	
Wire Subloop	)	

**COMMENTS**

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Dated: December 6, 2004

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**COMMENTS**

BellSouth Corporation, on behalf of itself and its wholly-owned subsidiaries, ("BellSouth"), opposes the Petition for Declaratory Ruling filed by Cox Oklahoma Telcom, L.L.C. ("Cox Oklahoma" and "Cox Oklahoma Petition").<sup>1</sup>

**INTRODUCTION AND SUMMARY**

Cox Oklahoma, like all competitive local exchange carriers ("CLECs"), already has a federal right to non-discriminatory, unbundled access to incumbent local exchange carrier ("ILEC") Inside Wire Subloops ("IWS") within multiunit premises (including multi-tenant environments, or "MTEs") at any technically feasible point in the ILEC IWS network architecture. In the context of CLEC access to unbundled network element ("UNEs"), this Commission has defined "technical feasibility" to include network operations and service concerns and has consistently given state commissions discretion to determine, on a case-by-case basis, what is "technically feasible" within a locally specific factual context. It appears on the record submitted by Cox Oklahoma that the Oklahoma Corporation Commission ("OCC") properly assessed network security, customer service and operational concerns consistent with

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<sup>1</sup> *Pleading Cycle Established for Comments on Cox's Petition for a Declaratory Ruling, for Clarification of the Commission's Rules and Policies Regarding Unbundled Access to Incumbent Local Exchange Carriers' Inside Wire Subloop, WC Docket No. 01-338, Public Notice, DA 04-3520 (Nov. 4, 2004).*

the Commission's rules and orders and rendered a fact-specific determination that allows non-discriminatory, unbundled access to ILEC IWS at a technically feasible point.

What neither the FCC, the OCC, nor any state commission in BellSouth's serving territory has endorsed, is a categorical and unqualified federal preemptive right of CLEC "self-help" to ILEC networks in all factual circumstances, a right that Cox Oklahoma euphemistically refers to as either "direct access" or "direct physical access." Cox Oklahoma's "direct access" semantics are misleading because the Commission's rules already allow pro-competitive access to IWS through procedural safeguards that permit state commissions to balance the needs and requirements of CLEC and ILEC alike in the event the carriers themselves are unable to negotiate mutually satisfactory access arrangements

Fundamentally, this Commission has never specified an all-encompassing, one-size-fits-all solution to nondiscriminatory, unbundled IWS access; indeed, such an approach is inimical to the Commission's general reluctance to impose uniform engineering solutions on an evolving Public Switched Telephone Network ("PSTN") architecture that varies widely from state to state, community to community, even premises to premises. What the Commission has established is a federal context for state commission resolution of any disputes that may arise between carriers: a suggested range of potential technically feasible access points, and parameters for implementing its IWS unbundling obligations in a way that is consistent with the pro-competitive, deregulatory nature of the 1996 Act. Both the serving arrangement approved by the OCC, as well as that approved by the Georgia Public Service Commission and damned with faint praise by Cox Oklahoma in its petition, comply with this Commission's IWS access requirements.

Cox Oklahoma's effort to establish a preemptive federal right of direct, unmediated physical access to ILEC terminals in all cases, in all states, at all times, should be rejected because it is as unsupported in law as it is unnecessary in fact. Cox Oklahoma overstates the requirements of both the *Triennial Review Order* and the *Virginia Arbitration Order*, and exaggerates the existence of "an emerging split among the state commissions" as well as the need to establish a "uniform national standard" beyond that already established by this Commission.<sup>2</sup> Rather than grant the relief sought by Cox, the Commission should clarify that under its rules and under the appropriate circumstances, states may find that technically feasible access to IWS may include serving arrangements that preclude unconditional, unsupervised physical access to ILEC terminals and facilities.

**I. THE COMMISSION HAS CONSISTENTLY AND PROPERLY GIVEN STATE COMMISSIONS THE DISCRETION TO DETERMINE TECHNICALLY FEASIBLE INSIDE WIRE SUBLOOP ACCESS ARRANGEMENTS**

Beginning with the 1996 *Local Competition Order*, this Commission has articulated the standards for determining technically feasible access to UNEs, and, continuing with the 1999 *UNE Remand Order* and the 2003 *Triennial Review Order*, outlined the state commission's particular role in assessing technical feasibility in the context of IWS UNEs. Thus, in 1996, the Commission concluded that "the term technically feasible refers solely to technical or operational concerns, rather than economic, space, or site considerations."<sup>3</sup> The Commission's language in this regard is mandatory, as "[s]pecific, significant and demonstrable network reliability concerns associated with providing . . . access at a particular point . . . will be regarded

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<sup>2</sup> Cox Oklahoma Petition at 1.

<sup>3</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98 & 95-185, *First Report and Order*, 11 FCC Rcd 15499, 15602, ¶ 198 (1996) ("*First Local Competition Order*").

as relevant evidence that . . . access at that point is technically infeasible.”<sup>4</sup> Most importantly for present purposes, the Commission made clear that forms of access that threaten network security are not technically feasible for these purposes:

[L]egitimate threats to network reliability and security must be considered in evaluating the technical feasibility of interconnection or access to incumbent LEC networks. Negative network reliability effects are necessarily contrary to a finding of technical feasibility. Each carrier must be able to retain responsibility for the management, control and performance of its own network.<sup>5</sup>

Having itself first established the “test” (or, at least, the parameters) for determining “technical feasibility,” the Commission next established the mechanism for assessing technical feasibility: determinations by state commission on a fact-specific, case-by-case basis. In 1996, the Commission assigned the burden of proof to ILECs generally to persuade state commissions of any “specific and significant adverse impacts” that result from CLEC requested access to UNEs.<sup>6</sup> When it created the IWS UNE in 1999, the Commission again made clear that the “issues of technical feasibility are best determined by state commissions, because state commissions can examine the incumbent’s specific architecture and the particular technology used over the loop, and thus determine whether, in reality, it is technically feasible to unbundle the subloop where a competing carrier requests.”<sup>7</sup>

There can be no doubt that this Commission continues to hold this view, for in the *Triennial Review Order* the Commission, though continuing to encourage voluntary agreement between interconnecting carriers over the issues, reiterated that state commissions are to resolve

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 15605, ¶ 203.

<sup>6</sup> *Id.* at 15605-06, ¶ 203.

<sup>7</sup> *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, 3798, ¶ 224 (1999) (“*UNE Remand Order*”).

any disagreement between the carriers with respect to what is technically feasible with respect to IWS access at MTEs.<sup>8</sup> The Commission explained: “To the extent there is disagreement with respect to what is ‘technically feasible’ with respect to subloop access at a multiunit premises, this issue is left to the state in the context of particular interconnection agreements pursuant to section 252 of the Act, which can take into account the particular incumbent LEC’s network architecture as well as the requesting carrier’s network.”<sup>9</sup>

Thus, Cox Oklahoma’s assertion that the *Triennial Review Order* stands for the proposition that CLECs have a preemptive federal right to “direct access” or “direct physical access” to ILEC terminal blocks in MTEs, or any other similar ILEC facility, is an egregious misstatement of the law.<sup>10</sup> The definitive rules resulting from the *Triennial Review Order* make clear that “[a] point of technically feasible access [for IWS unbundling] is *any* point in the incumbent LEC’s outside plant at or near a multiunit premises where a technician can access the wire or fiber within the cable without removing a splice case to reach the wire or fiber within to access the wiring in the multiunit premise” and that “[s]uch points include, *but are not limited to*, a pole or pedestal, the network interface device, the minimum point of entry, the single point of interconnection, and the feeder/ distribution interface.”<sup>11</sup> These rules further codify the *Triennial Review Order*’s observation that the issue of what is “technically feasible” with respect to subloop access at a multiunit premises is a fact-specific, case-by-case matter that is left to the

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<sup>8</sup> *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98 & 98-147, *Report and Order and Order on Remand and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 16978, 17191-92, ¶ 350 & n.1057 (2003) (“*Triennial Review Order*” or “*TRO*”).

<sup>9</sup> *Id.*

<sup>10</sup> Cox Oklahoma Petition at 8-9.

<sup>11</sup> 47 C.F.R. § 51.319(b)(2)(i) (emphasis added).

determination of each state commission in the context of particular negotiation agreements in the event that the parties cannot themselves agree.<sup>12</sup>

Indeed, the only limit established by the Commission in the *Triennial Review Order* when it revisited the subloop unbundling rules it established in the *UNE Remand Order* was an express prohibition against a very specific type of “collocation” in response to a fact-specific complaint by Cox Corporation, Cox Oklahoma’s parent:

For instance, at least one ILEC treats any request to use inside wire subloops as a collocation request for the MTE premises and a UNE subloop that must be ordered individually through the ILEC’s operations support systems (“OSS”). This ILEC requires Cox to make a request for special construction for a new terminal block at the MTE. *As is the case for collocation at an end office, ordering this collocation and having it constructed typically takes approximately four months.* Even after the construction is completed, however, this ILEC requires the submission of per-customer orders for the subloop and also requires that its own technicians disconnect and reconnect inside wire subloops at the accessible terminal. This means that Cox must depend on the ILEC to process Cox’s order correctly and to schedule its technicians. Then Cox must coordinate its own installers with the ILEC schedule, must hope that the ILEC technicians show up on time and must pay an installation fee to boot.<sup>13</sup>

In its subsequent *Triennial Review Order*, the Commission, revisiting the subloop unbundling rule it established in the *UNE Remand Order*, specifically referred to Cox’s collocation

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<sup>12</sup> 47 C.F.R. § 51.319(b)(3); *Triennial Review Order*, 18 FCC Rcd at 17192, n.1057.

<sup>13</sup> Letter from J.G. Harrington, Counsel for Cox Communications, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (filed Dec. 19, 2002) (“Cox Dec. 19, 2002 *Ex Parte* Letter”) at 2 (emphasis added). Because the Commission considered the Cox Dec. 19, 2002 *Ex Parte* Letter in the context of its *Triennial Review* proceeding, the Cox Oklahoma Petition, to the extent it reiterates any facts and or relief requested in the Cox Dec. 19, 2002 *Ex Parte* Letter, may be an untimely petition for reconsideration of the Commission’s *Triennial Review Order*. 47 U.S.C. § 405(a) (a petition for reconsideration must be filed within thirty days from the date upon which public notice is given of the order, decision, report, or action complained of).

complaint, and prohibited, as anti-competitive, traditional collocation arrangements.<sup>14</sup> But neither the OCC Order, nor the order of the Georgia Public Service Commission alluded to in the Cox Oklahoma Petition, run afoul of this prohibition. Instead, both orders represent the legitimate exercise of state commission authority to apply this Commission's "technical feasibility" requirements for subloop unbundling access to specific local conditions.

## II. BELLSOUTH PROVIDES LAWFUL ACCESS TO IWS SUBLOOPS

Cox Oklahoma attacks, collaterally, the decision of the Georgia Public Service Commission to "allow indirect access, but create a different arrangement than any other state has used, requiring the incumbent LEC to construct, at its own cost, intermediate facilities to which the competitive LEC is entitled free and direct access."<sup>15</sup> Cox Oklahoma states that these facilities are "like those proposed by SWBT before the OCC," and characterizes the Georgia Commission's ruling as having "denied competitive LECs' direct access to incumbent LEC terminal facilities" even though the decision to require the ILEC to "build and pay for the facility and provide competitive LECs with access to" the facility is, according to Cox Oklahoma, "more pro-competitive and faithful to the Commission's rules than the OCC decision."<sup>16</sup>

The Georgia Commission found that CLECs should not have to bear access costs that BellSouth does not incur, that BellSouth was required to pay for the intermediary access terminal, and that a one-tier rate structure applied that allows AT&T to access both network

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<sup>14</sup> *Triennial Review Order*, 18 FCC Rcd at 17192, n.1055 ("The record contains evidence that at least one incumbent LEC imposes a collocation requirement on requesting carriers ordering subloops at multiunit premises. See Letter from J.G. Harrington, Counsel for Cox Communications, to Marlene H. Dortch, Secretary, FCC, CC docket Nos. 01-338, 96-98, 98-147 (filed Dec. 19, 2002) (discussing issues associated with accessing multiunit premises wiring) (Cox Dec. 19, 2002 *Ex Parte* Letter)").

<sup>15</sup> Cox Oklahoma Petition at 1-2.

<sup>16</sup> *Id.* at 17-18.

terminating wire and riser cable in order to “reduce AT&T’s costs and reduce the delay to AT&T’s customer.”<sup>17</sup> Cox Oklahoma appears to argue that “direct access” to an “intermediary access terminal” provided at the ILEC’s cost is not, as a matter of law, “technically feasible access” to IWS as required under the Commission’s rules because the intermediary access terminal, as provisioned pursuant to the Georgia Order is a kind of collocation arrangement that is prohibited by both the *Triennial Review Order* and *Virginia Arbitration Order*. Cox Oklahoma is wrong. The provisioning of the access terminal and its subsequent use by both BellSouth and a requesting CLEC for IWS access on third-party-owned multiunit premises is not a form of collocation.

This Commission’s prohibition of certain collocation arrangements in the *Triennial Review Order*, was as shown above, based on the specific record evidence of an ILEC that Cox Corporation alleged required Cox to obtain, as a practical matter, end-office type collocation before having access to the IWS.<sup>18</sup> BellSouth does not require this kind of collocation arrangement in Georgia or any of its other states. In any event, an intermediary access terminal (as provisioned by BellSouth) is simply not “collocation” as that term is commonly used and understood, but is rather a legitimate, technically feasible and pro-competitive access point to the BellSouth IWS. It is generally distinguished from collocation in a myriad of ways, and is specifically distinguished from the kind of requirements Cox Communications described as anticompetitive in 2002.

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<sup>17</sup> *Petition of AT&T Communications of the Southern States, Inc. and Teleport Communications Atlanta, Inc. for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Under the Telecommunications Act of 1996*, Docket No. 11853-U, 2001 Ga. PUC LEXIS 68, at \*16 (Ga. Pub. Utils. Comm’n Mar. 6, 2001) (“Georgia Order”).

<sup>18</sup> *Supra* notes 13-14 and accompanying text.

In the first place, collocation, by its terms, means that a CLEC obtains space at BellSouth's premises. That is, when a CLEC collocates its equipment, it does so in space that is under the ownership or control of BellSouth. This is simply not the case with an IWS access terminal, which is located on the private property of the multiunit premises owner. Moreover, the ordering and provisioning process and intervals are vastly different. In order to obtain an IWS access terminal, a CLEC initiates a service inquiry, and BellSouth responds with a site visit, during which the CLEC identifies each building for which it desires IWS access. If there are access terminals present, no further set up is required; the CLEC simply attaches to needed wiring and issues a local service request to initiate billing for any wiring pairs it uses. If no access terminal is present, BellSouth will install a new access terminal adjacent to BellSouth's garden terminal or inside the multiunit premises wiring closet, as the case may be.

In the case of central office collocation, CLECs submit an electronic application using BellSouth's "e.App System" to initiate a request. BellSouth's central office personnel then review the application and determine if space is available at the requested BellSouth premises. Once this has been determined, BellSouth provides notification to the CLEC within 10-15 days, depending upon the applicable state requirements. BellSouth's response indicates whether the CLEC application has sufficient information to proceed with collocation provisioning, and identifies, if necessary, any additional information required from the CLEC. If the amount of requested space is not available, BellSouth so informs the CLEC, and the CLEC may resubmit an application for whatever space is available. In the event of a BellSouth denial because no space is available, a CLEC may request virtual collocation and be placed on a waiting list for any physical collocation space that may become available in the future.

If space is available, BellSouth provides an Application Response (“AR”) within 15-20 days of its receipt of the initial application and bills the CLEC for the appropriate application fee (there are no charges for an application that is denied for lack of available space). The AR provides CLECs with sufficient information to place a Firm Order covering the configuration of the collocation space, the Cable Installation Fee, the Cable Records Fee, and any other applicable space preparation fees. If the CLEC desires to proceed, it submits a Bona Fide Firm Order (“BFFO”) to BellSouth no later than 30 days after its receipt of BellSouth’s AR. If BellSouth receives a timely BFFO, a Firm Order dated is established based upon the actual date of BellSouth’s receipt of the CLEC’s BFFO.

Thus, the ordering and provisioning intervals for IWS access terminals and central office collocation are different, though both are largely in control of the requesting CLEC. Moreover, the charges are different. In the case of central office collocation, CLECs are billed monthly space rental and other charges, including those associated with space preparation, electrical power, collocation cross connects, security access, entrance cable support structure, as well as the nonrecurring application processing costs related to collocation space requested. With IWS access terminals, there may be immediate use of existing terminals, or if a new terminal needs to be ordered, BellSouth and the CLEC can coordinate with advance planning to coincide with the CLEC’s own ordering and installation of its equipment and facilities in order to facilitate CLEC entry. Further, the costs are vastly different. Typically, state commissions require BellSouth to share the costs of the access terminal with CLECs, and costs may not be assessed except on a per wire basis as that wire is actually being used. As an example, if an access terminal costs \$500 and contains 100 pairs of wire, BellSouth typically may only charge \$2.50 per pair of copper wire actually used by the CLEC (half of the total terminal cost of \$500 divided by 100 pair of

wire). Thus, unless CLECs utilized 100% of the IWS pairs at a given location (a situation BellSouth has never encountered) BellSouth never fully recovers its costs expended on the access terminal, and, if the CLEC uses only a small percentage of wire, might never come close. Despite the possibility of its never fully recovering these costs, BellSouth believes the use of access terminals is necessary to minimize the risks to network reliability and security that unfettered access would otherwise cause.

More specifically, BellSouth's provisioning of CLEC access terminals is completely different from the situation alleged by Cox Communications in the Triennial Review proceeding and which prompted the Commission's discussion of prohibited collocation arrangements in the *Triennial Review Order*. BellSouth responds to a CLEC's request for access to IWS at a given multiunit premises address not already equipped for CLEC access to BellSouth's IWS by jointly planning and deciding the style and location of the access terminals with the requesting CLEC. Once jointly decided, and after the requesting CLEC places its firm order with BellSouth, BellSouth installs the access terminal, an activity that often occurs at the same time that the CLEC is preparing its own facilities at that customer address. Thus, with timely notification and reasonable planning, there need not be any delay to the CLEC necessitated by BellSouth's installation of a new access terminal.

Further, unlike a policy that "requires that [the ILEC's] own technicians disconnect and reconnect inside wire subloops at the accessible terminal," BellSouth's policy does not require that its technician be present at the time particular inside wire subloops are disconnected and reconnected. Instead, the CLEC's own technicians perform these tasks. Lastly, BellSouth's experience has been that, upon receipt of a CLEC's firm order, it installs access terminals in about 30 days rather than the four (4) months about which Cox originally complained, and which

the Commission obviously found objectionable. Since the particular manufacturer of the access terminal to be used at a given location is decided by BellSouth and the requesting CLEC, the 30-day interval includes the time to order and receive the access terminal from the manufacturer.

There are, of course, important issues of technical feasibility that make the use of access terminals a necessity. In a recent proceeding in Florida, BellSouth's expert witness provided actual examples of instances in Florida in which CLEC technicians "start[ed] unilaterally taking off pairs [of BellSouth wires]" without notifying BellSouth.<sup>19</sup> The BellSouth witness discussed three specific cases, providing precise addresses in Florida where CLEC technicians had caused outages and other disruptions to BellSouth's network.<sup>20</sup> Unlimited CLEC access to BellSouth's own terminals would mean that record keeping would be virtually impossible, as customer services would be at the mercy of an untold number of CLEC technicians. BellSouth would only know which facilities CLECs were using if the CLEC volunteered that information to BellSouth. The problem is exacerbated in high-rise multiunit premises, where the records of which facilities are serving which customers are mechanized and not available at the access terminal location.<sup>21</sup>

What is lacking from the Cox Oklahoma Petition is any kind of meaningful detail that would enable this Commission to appreciate the precise kinds of connections Cox Oklahoma alleges it makes, whether these connections took place in outside pedestals, or in wiring room closets, etc., or how Cox Oklahoma performed the connections. IWS architectures are simply

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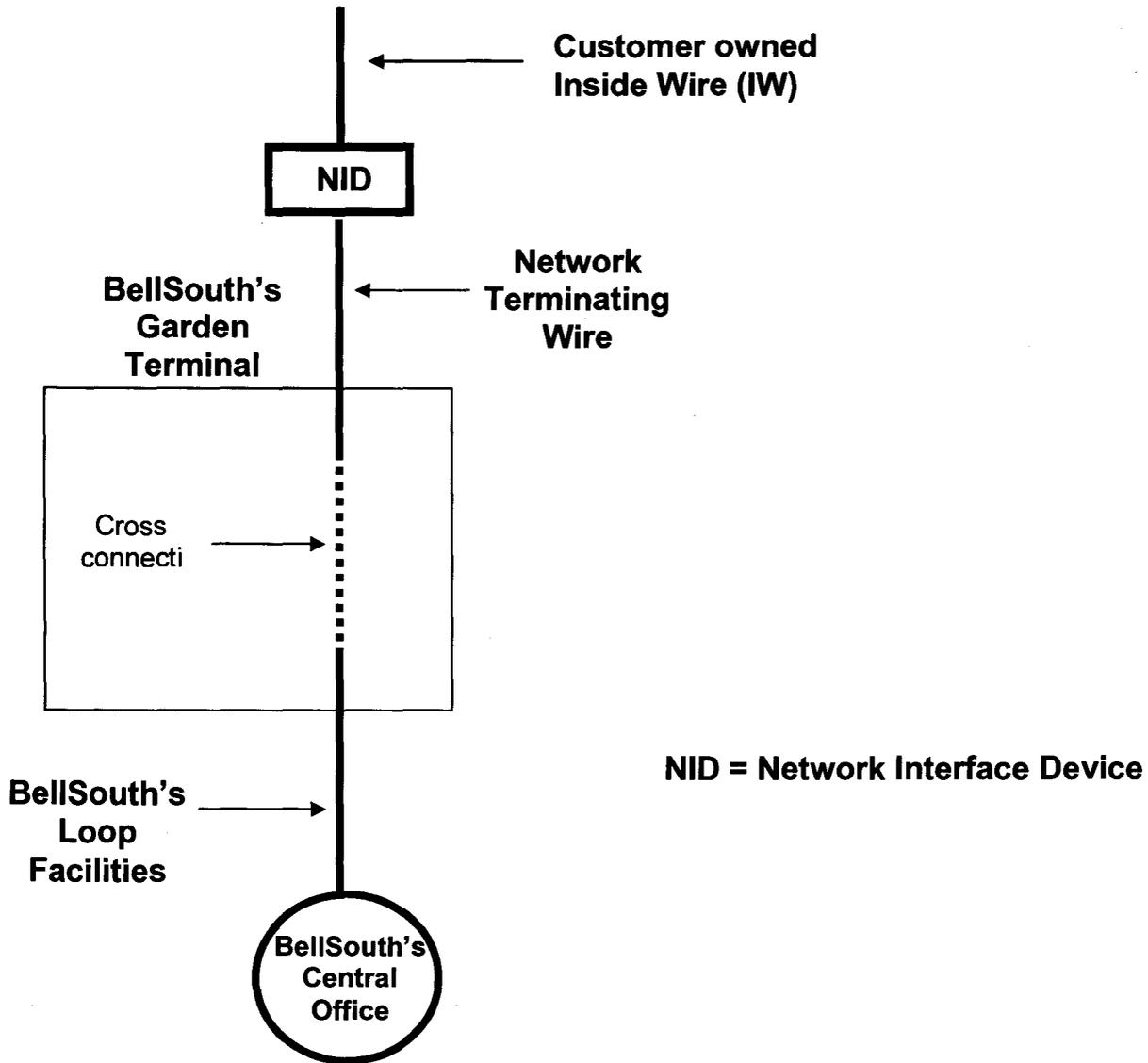
<sup>19</sup> *Petition of AT&T Communications of the Southern States, Inc. d/b/a AT&T for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. Section 252*, Fla. Pub. Svc. Comm'n Docket No. 000731-TP, hearing transcript at 1161-62 (Feb. 15, 2001); *see id.* at 1162 ("Unfortunately, there have been cases where . . . they used those facilities without BellSouth's knowledge they disrupted other customers' service.).

<sup>20</sup> *See id.* at 1180-81.

<sup>21</sup> In garden-style apartments, the facilities serving each customer typically have paper tags that allow the service technician to identify which facility serves which customer, provided that accessing CLEC technicians respect the integrity of the system.

too varied and nuanced to allow the Commission to make an overbroad declaratory ruling on an inclusive, generalized factual record. This is precisely why the Commission has allowed the state commissions the discretion to resolve issues of technical feasibility on a case-by-case basis. Furthermore, a competitively neutral access terminal arrangement can provide CLECs with direct efficient access to the IWS, and the Cox Oklahoma Petition offers no persuasive evidence that the Georgia Order was incorrect.

It is especially dangerous for this Commission to make rules of general applicability in this context. The following schematic diagram illustrates a basic BellSouth IWS architecture:



The general statements about troubles that Cox Oklahoma makes may arise from different interconnection arrangements and thus have the potential for being misused to support an argument that ILECs must permit unqualified direct access to BellSouth's facilities. BellSouth's own practices and procedures allow CLECs direct access to the access terminal in order for the CLEC's technician (without BellSouth's technician being present) to disconnect cross connections referred to as "jumpers" that carry dial tone to a NTW connector block and then connect the CLEC's facilities network to the NTW block. What BellSouth opposes is unqualified CLEC entry into BellSouth's pedestals, so-called "garden terminals" and similar devices – since

those devices simply cannot accommodate multiple CLEC cables. It is not technically feasible (as this Commission has defined the scope of the term) to allow third party CLECs to disconnect ILEC NTW pairs from pedestals and other cross connection devices at will. It is, however, technically feasible to allow tie cables to be used to connect a pedestal or other ILEC cross connection device to another terminal (that is, the access terminal) to which CLECs have direct physical access without the risk of disrupting ILEC operations and service at the ILEC facility – which is exactly what BellSouth does when it establishes an access terminal that is accessible by multiple CLECs.

BellSouth provisions access terminals in order to accommodate the physical presence of multiple users of NTW. The Cox Oklahoma Petition is worded in such a way that the distinction between regulated NTW and unregulated customer-owned inside wire may be missed. BellSouth has no quarrel with the Virginia Commission's requirement that CLECs have "direct access" to unregulated, customer-owned wiring, or carrier-owned wiring on the customer side of the NID. In such an instance the CLEC would simply remove such inside wire from the customer side of the NID and reattach the inside wire to the CLEC's loop facilities. Importantly, the incumbent's loop facilities would remain attached to the network side of the NID thus preserving the electrical protection afforded by the NID. Nonetheless, when a CLEC seeks unfettered access to disconnect BellSouth's NTW pairs and then reconnect the NTW pairs to the CLEC's own facilities, serious network security, reliability and service provisioning and maintenance issues are created. Unless the relevant hardware at the point of interconnection access is engineered to accommodate multiple users, (which is not the case for the pedestals and terminals BellSouth uses within its network) there categorically will be disruption of service when a CLEC attempts to introduce its facilities into an already crowded terminal. A dedicated access terminal solves

these problems by providing ample space for multiple CLECs to terminate their facilities in a robust and secure environment.<sup>22</sup>

High-rise multiunit premises may raise different issues than garden style apartment buildings.<sup>23</sup> In multi-story buildings BellSouth typically installs “riser” cable which is sometimes referred to as Intra-Building Network Cable (“INC”). INC typically extends from an equipment room in the basement or first floor, and terminates in equipment closets on each floor. These INC pairs are inventoried by BellSouth’s mechanized operations support systems and the inventory information is used by BellSouth’s automated service provisioning systems. The NTW then extends from the equipment closet on each floor to the customer’s premise on each floor. Obviously, were CLECs to have unfettered access, then the inventory records would soon become erroneous resulting in delayed service provisioning and repair activities as inventory errors were corrected. BellSouth has developed a UNE product called “Unbundled INC,” which requires an access terminal be placed in the equipment room. The CLEC places a Service Inquiry with BellSouth. In response, BellSouth’s technicians install the access terminal thus providing the CLEC access to the requested INC pairs over which the CLEC provides service to its customer. As with the use of access terminals in the “garden apartment” setting, BellSouth, upon notification by the CLEC, extend the request INC pairs where CLEC service technicians can then access loops without a BellSouth technician being present. Given the variety of network serving arrangements and the variety of CLEC requests possible, the broad relief

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<sup>22</sup> Moreover, BellSouth’s access terminal process accomplishes more than merely setting up a convenient and efficient hardware access facility where CLECs may access and use BellSouth NTW without a dispatch from a BST technician, because the process includes ordering, billing and other administrative concerns. Even in cases where CLECs may negotiate for or otherwise obtain direct physical access to ILEC facilities without the use of an access terminal, provisions must still be made for proper records assignment, billing, contract administration and verification.

<sup>23</sup> *Supra* note 21.

requested in the Cox Oklahoma Petition could override these pro-competitive, considered arrangements required by the Georgia Commission. Unbridled CLEC access to BellSouth's mechanized inventoried plant would result in unwarranted confusion, delay and service risk in the context of future site installations and maintenance visits.

Indeed, in the context of the Commission's Competitive Networks proceeding, BellSouth provided record evidence of troubles that arose when CLECs accessed BellSouth's network facilities in multistory, multiunit premises.<sup>24</sup> First, in downtown Nashville, Tennessee, a reputable facilities-based CLEC competed for and won one of several tenants occupying the fifth floor of a nine-story office building in which BellSouth owned and maintained riser cable extending from a cross connection point located in an equipment room on the first floor to individual terminals on each of the remaining eight floors. BellSouth also owned and maintained network terminating wire extending from the individual riser cable floor terminals to the network demarcation points in each of the multiple tenant customer premises. When the CLEC switched the tenant from BellSouth to its own services, BellSouth's services were prematurely disconnected.

A subsequent joint investigation conducted BellSouth and the CLEC revealed that the CLEC had attempted to fulfill a service order to install thirteen (12) new lines for its new customer; that the CLEC deployed its own fiber facilities through to an equipment room located on the second floor of the building; that, rather than continuing to deploy its own facilities from the second floor to the fifth floor premises, the CLEC technician simply, and without authority or prior notice, used the BellSouth riser cable facilities between the second and fifth floors as well as BellSouth's network terminating wire on the fifth floor. Because the BellSouth facilities

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<sup>24</sup> BellSouth Reply, CC Docket No. 99-217, at 8-10 (filed Sept. 27, 1999).

serving the riser cable terminal facility on the second floor did not also serve the BellSouth terminal facility on the fifth floor, the CLEC technician cross-connected the BellSouth riser cable pairs to install 13 CLEC circuits and, in the process, disconnecting 13 BellSouth circuits.<sup>25</sup>

In the second case involving the same CLEC, BellSouth's network facilities consisted of a cable serving a terminal located in the equipment room on the first floor of a three-story building. From this point, BellSouth's 25-pair cable network terminating wire connected BellSouth's cable facilities to NIDs located at each of several tenant customer premises on each floor. A BellSouth technician was dispatched to install nine (9) new lines for a BellSouth tenant customer that shared space with other tenants on the first floor, using available wire in the 25-pair BellSouth cable. Upon arrival, the technician discovered that someone (not BellSouth) had used most of the remaining wire pairs in the 25-pair cable. BellSouth's investigation revealed that its tenant customer had also recently requested service from the facilities-based CLEC and that the facilities-based CLEC had simply used BellSouth wire facilities to fulfill their customer's service orders. BellSouth was forced to install an additional cable facility in order to connect the BellSouth circuits and, in the event, missed the tenant customer's requested due date.

A dedicated CLEC access terminal could have been employed to avoid these problems. Clearly, parties may agree to "CLEC" access terminal arrangements, where CLECs have direct access to the ILEC IWS at the access terminal, as the Commission made clear in the TRO:

This is not to suggest that a requesting competitive LEC and an incumbent LEC may not agree that some method of "collocating" a competitor's terminal to cross-connect with the incumbent LEC's terminal at a subloop access point at a multiunit premises is desirable, taking into account space availability.<sup>26</sup>

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<sup>25</sup> The BellSouth service working on the facilities that were disconnected was still serving the CLEC's new tenant customer and had not yet been slated for disconnection by the tenant customer.

<sup>26</sup> *Triennial Review Order*, 18 FCC Rcd at 17192, n.1056.

Even where the parties can't agree on a specific voluntary arrangement, by codifying the *Triennial Review Order's* observation that the issue of what is "technically feasible" with respect to subloop access at a multiunit premises is left to the state in the context of particular negotiation agreements in the event that the parties cannot themselves agree,<sup>27</sup> the Commission's rules clearly allow state commissions, like the OCC and the Georgia Commission,<sup>28</sup> to find that on the specific facts of a specific case, pro-competitive access arrangements may be required that do not run afoul of the *Triennial Review Order's* prohibition against central office-type collocation.

Cox's rhetorical legerdemain is to attempt to build a right of "direct physical access" to regulated network inside wire subloop plant, just as all carriers already have to unregulated customer-owned inside wiring.<sup>29</sup> In the *Virginia Arbitration Order*, the Commission used the phrase "direct access" in the context of unregulated, customer-owned inside wiring, or carrier-

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<sup>27</sup> 47 C.F.R. § 51.319(b)(3); *Triennial Review Order*, 18 FCC Rcd at 17192, n.1057.

<sup>28</sup> There is simply no evidence that BellSouth's provisioning of an intermediary terminal access block is equivalent to the kind of costs and delays experienced by Cox Communications as a result of the practices and policies of the unnamed ILEC referred to in the Cox Dec. 19, 2002 *Ex Parte* Letter, and which led to the Commission's prohibition of collocation requirements in the context of IWS access. For these and other reasons, the recent decision of the United States District Court for the Northern District of Florida, Tallahassee Division, that remanded a similar ruling of the Florida Public Service Commission on the grounds that the intermediary access terminal could not be a technically feasible access point to inside wire subloop because the terminal was a kind of prohibited "collocation" was erroneously decided, and BellSouth has lodged its appeal with the United States Court of Appeals for the 11th Circuit. *AT&T Communications of the Southern States, Inc. v. BellSouth Telecommunications, Inc.*, Case No. 4:02cv10-RH (Aug. 20, 2004), *appeal pending*, No. 04-14910-CC (11th Cir. filed Sept. 17, 2004).

<sup>29</sup> Indeed, in the Cox Dec. 19, 2002 *Ex Parte* Letter, Cox Oklahoma's parent transparently asserted that "[n]evertheless, a few ILECs do not permit CLECs to disconnect and reconnect inside wire subloops *in the same way as they disconnect and reconnect customer-owned inside wire.*" Cox Dec. 19, 2002 *Ex Parte* Letter at 2 (emphasis added). *Cf.* Cox Oklahoma Petition at 5 ("Nevertheless, a few incumbent LECs do not permit competitive LECs direct physical access to inside wire subloops at the MTE terminal block.")

owned wiring on the customer side of the NID.<sup>30</sup> Moreover, the Commission has never used the phrase that Cox Oklahoma uses, “direct *physical* access”, in the context of regulated network wiring and facilities. Even if “direct access” were the appropriate legal standard for access to the unbundled IWS (and it is not), there is no argument that, under the appropriate circumstances, non-discriminatory physical access to intermediary access terminals located at technically feasible points of the inside wire subloop must constitute “direct access” to the inside wire subloop. Cox’s “direct physical access” requirement has no basis in the *Triennial Review Order*, the *Virginia Arbitration Order*, or the Commission’s rules, and is a semantic invention that should not be adopted by this Commission.

Finally, Cox completely overstates its case for a “split” among the State Commissions. As demonstrated above, the Commission’s *Triennial Review Order* and rules provide for an appropriate role for the states in resolving differences of opinion regarding “technically feasible” inside wire subloop access, and the rules also build in a procedural “best practices” mechanism that allocates the burden of proof to the ILEC when other state commissions have adopted rulings that pertain to inside wire subloop access that are apparently contrary to those advocated

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<sup>30</sup> See, e.g., *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*; *Petition of Cox Virginia Telcom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia, Inc. and for Arbitration*; *Petition of AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection Disputes With Verizon Virginia Inc.*, CC Docket Nos. 00-218, 00-249 & 00-251, *Memorandum Opinion and Order*, 17 FCC Rcd 27039, 27247, ¶ 428 (2002) (“*Virginia Arbitration Order*”) (finding that language enabling CLEC technicians to have “direct access to the customer side” of the ILEC NID is appropriate “[b]ecause the wire on the customer side of the NID is dedicated to and owned by the customer.” Similarly, although in paragraph 421 of the *Virginia Arbitration Order*, *id.* at 27243, AT&T was given “direct access to all wire on the customer side of the NID, even when that wire is owned by Verizon” – this ruling cannot be used to support any contention that CLECs may access ILEC remote terminal blocks on the network side of the NID.

by an ILEC.<sup>31</sup> Cox has demonstrated no compelling reason to overturn these settled rules and to set aside appropriate state-by-state determinations within the procedural and legal framework established by this Commission.

### CONCLUSION

The Commission should deny the Cox Oklahoma Petition. If it clarifies or declares anything, it should clarify that negotiating carriers and state commissions may determine in appropriate circumstances that non-discriminatory access to intermediary access terminals in MTEs constitutes technically feasible inside wire subloop access.

Respectfully submitted,

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<sup>31</sup> 47 C.F.R. § 51.319(b)(3)(i)-(ii).

**CERTIFICATE OF SERVICE**

I do hereby certify that I have this 6<sup>th</sup> day of December 2004 served the following parties to this action with a copy of the foregoing **COMMENTS** by electronic filing and/or by placing a copy of the same in the United States Mail, addressed to the parties listed below.

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+ VIA ELECTRONIC FILING