Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

REPLY COMMENTS

BellSouth Corporation, on behalf of itself and its wholly owned subsidiaries, ("BellSouth"), replies to comments filed in this proceeding on December 6, 2004.

I. STATE COMMISSIONS MAY REQUIRE INTERMEDIATE ACCESS TERMINALS FOR INSIDE WIRE SUBLOOP ACCESS WITHOUT VIOLATING THE TRIENNIAL REVIEW ORDER

SBC is correct when it states that, "the *Triennial Review Order* fully supports the decision of the OCC to prohibit Cox from directly accessing SBC-Oklahoma's terminals."[1] As SBC points out, "the mere lack of a collocation requirement does not dictate unfettered direct access or in any way prohibit an ILEC from requiring reasonable security measures on the manner in which CLECs gain access to ILEC subloops."[2] Because none of SBC-Oklahoma's proposals, including its proposal of an "intermediate access terminal constructed by it or Cox Oklahoma – requires Cox Oklahoma to occupy SBC-Oklahoma's premises, they are not, by definition, "collocation" of the type prohibited by the *Triennial Review Order*.[3]

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[1] SBC's Opposition to Cox's Petition for Declaratory Ruling, CC Docket No. 01-338 (Dec. 6, 2004) (SBC Opp.) at 13.

[2] SBC Opp. at 16.

[3] *Id.*

"Collocation" is a term of art under the 1996 Act and the FCC's rules, and it refers to specific arrangements under which CLECs put their equipment on the ILEC's property.[4] The *Triennial Review Order* does nothing more than prohibit the use of this legally inapplicable set of "collocation" procedures to impose unreasonable delay and complication on entrants seeking to access inside wire subloops. As the Commission explained, it was necessary to clarify this issue because its own prior regulation had created confusion as to whether "collocation" applied to subloop access.[5] At the same time that the Commission was prohibiting the improper use of collocation requirements, the Commission did not state that CLECs are always and invariably entitled to "direct access" and that state commissions were precluded from considering whether,

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[4] *See* 47 U.S.C. § 251(c)(6) (requiring that ILECs permit "collocation" of equipment "on the premises of the local exchange carrier"); 47 C.F.R. § 51.5 (defining "physical collocation" in terms of an ILEC enabling a "requesting telecommunications carrier" to "[p]lace its own equipment" at the ILEC's "premises"); *id.* (defining "premises" as "land owned, leased, or otherwise controlled by an incumbent LEC").

[5] *See 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 (2003) ("*Triennial Review Order*") (explaining that prior rules "may have been interpreted" to mandate collocation). The fact that the FCC's order is limited to prohibiting the use of inapplicable collocation rules to delay subloop access is further demonstrated by the Cox Communications letter to which the FCC referred and upon which the district court relied. In particular, the Cox letter indicates that an unidentified ILEC was treating a request for subloop access as a "collocation request," with all the attendant ordering and construction requirements, so that it took "approximately four months" to complete. Letter from J.G. Harrington, Counsel for Cox Communications, Inc. to Marlene H. Dortch, Secretary, FCC, at 2, CC Docket Nos. 01-338, 96-98, 98-147, Dec. 19, 2002. As demonstrated in our Comments, the text of the *Triennial Review Order* makes clear that the Commission responded to this letter (and to the extreme delay that Cox described) by specifically clarifying that collocation requirements were inapplicable here; the Commission did not respond by holding that direct access to ILEC facilities must always be required and that state commissions were stripped of their power to address technical feasibility issues.

in a specific factual context, a direct-access request raised technical feasibility concerns that could be resolved through the use of such cross-connection arrangements.

On the contrary, in the same paragraph that the Commission rejected the improper use of the inapposite collocation process in this context, it specifically and repeatedly confirmed that state commissions retain the authority to make case-specific technical feasibility determinations. Indeed, the *Triennial Review Order* itself reiterates that CLECs are only entitled to access in any "technically feasible manner."[6] Moreover, that order reiterates that state commissions should resolve disputes as to technical feasibility "in the context of particular interconnection agreements," which is precisely what the OCC did in this case.[7]

Thus, the *Triennial Review Order* simply clarifies that the FCC's prior rules were not intended to make "collocation" a prerequisite for subloop access. "Collocation" is both legally and substantively distinct from what the OCC adopted in this case, and in what the Florida, Georgia and North Carolina state commissions have adopted in BellSouth's serving territories. Simply put, collocation refers to a relatively complex process for allowing a competitor to arrange to place its equipment (such as its switches) on the ILEC's premises. Both the statute and the Commission's rules make clear that collocation involves allowing CLECs to place their equipment on the premises of an ILEC.[8] Moreover, because permitting competitors to place their facilities at an ILEC's premises involves a series of issues and tasks (including ensuring the availability of space, determining the cost of creating the collocation space, and building out the

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[6] *Triennial Review Order* ¶ 350.

[7] *Id*, n. 1057.

[8] *Supra,* n.4.

location), the FCC has a long series of rules detailing the specific requirements for collocation. [9] In the case of an intermediate access terminal, a CLEC does not "collocate" any equipment in the access terminal (which itself is not located within an ILEC "premises"). It simply cross connects to a panel, such that a CLEC facility at one end is cross connected to a facility in the other end. This is fundamentally very different from collocation where CLECs are authorized to put a facility in an ILEC's physical space.

As noted above, in the *Triennial Review Order* the Commission at the same time reiterated that state commissions have broad authority to determine based on the record of a particular case whether a form of subloop access to multiunit premises creates technical feasibility issues. The FCC stressed that, "[t]o the extent there is disagreement with respect to what is 'technically feasible' with respect to subloop access at a multiunit premises," the issue is best left "to the state in the context of particular interconnection agreements pursuant to section 252 of the Act," because the state commission "can take into account the particular incumbent LEC's network architecture as well as the requesting carrier's network."[10]

Thus, the rules promulgated with the *Triennial Review Order* establish unequivocally that state commissions should resolve issues of technical feasibility, and that the ILEC (here, SBC-Oklahoma) has the burden of proof on that point.[11] ILECs may, as SBC Oklahoma has done,

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[9] *See* 47 C.F.R. § 51.323. Among other things, those rules permit an ILEC 90 days to complete provisioning of a collocation arrangement after receiving an application that meets established standards. *See Id.* § 51.323(l)(2).

[10] *Triennial Review Order* ¶ 350, n.1057.

[11] "If parties are unable to reach agreement through voluntary negotiations as to whether it is technically feasible . . . to unbundle a copper subloop or subloop for access to multiunit premises wiring at the point where a telecommunications carrier requests, the incumbent LEC shall have the burden of demonstrating to the state commission, in state proceedings under section 252 of the Act . . . that it is not technically feasible to unbundle the subloop at the point requested." 47 C.F.R. § 51.319(b)(3)(i).

provide evidence to the state commission that the form of "direct access" that a CLEC seeks would create – and indeed already had created – network security problems.[12] State commissions, evaluating the evidence, may lawfully choose to credit such evidence and conclude that "direct access" to subloops as proposed by a CLEC in a particular circumstance is not technically feasible. It may further find that an intermediate access terminal could have substantial benefits to both parties with respect to records maintenance and other issues. State commissions have so held in BellSouth's serving territories, and have imposed additional requirements to ensure that significant delays are not imposed on CLECs.[13] These judgments are based on a fact-record compiled in accordance with the procedures established by the *Triennial Review Order* itself, and are fully consistent with that order.

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[12] SBC Opp. at 11-3, Affidavit of William E. Weydeck on Behalf of SBC Communications Inc., pp. 3-11 and Ex. A; Comments of BellSouth Corporation, CC Docket No. 01-338 (Dec. 6, 2004) (BellSouth Comments) at 17-18.

[13] Cox Oklahoma Petition at 1-2 (characterizing *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*"); Docket No. 000731-TP, Order No. PSC-01-1402-FOF-TP (Fla. Pub. Serv. Commission Jun. 28, 2001) 56. For instance, the Florida PSC mandated that BellSouth provide the access terminals within five calendar days of a request (or in another agreed time-period) and stressed that AT&T could petition for relief before the PSC if it experienced delays in BellSouth's provisioning of the terminals. See id. at 56. The reasonableness of the PSC's opinion is further confirmed by the fact that other state commissions in BellSouth's region have independently concluded that an access terminal was necessary in this context to avoid network security concerns. The Georgia Public Service Commission twice concluded that BellSouth could rely upon an intermediate access terminal to provide access to subloops. *See Order on MediaOne Telecommunications of Georgia LLC's Request for Declaratory Interpretation, Interconnection Agreement Between MediaOne Telecomms. of Georgia, LLC and BellSouth Telecomms., Inc.*, No. 01418-U (Mar. 22, 2001) ("BellSouth shall provide an Intermediary Access Terminal that will be suitable for use and fully accessible by multiple carriers . . . ."); *Georgia Order*, Petition of AT&T Communications of the Southern States, Inc., No. 11853-U, 2001 Ga. PUC LEXIS at *16 (Mar. 6, 2001). The North Carolina Utilities Commission likewise concluded that it was "persuaded by BellSouth's arguments regarding network reliability and security and agree that these are legitimate concerns." *Recommended Order, Generic Proceeding to Determine Permanent Prices for Unbundled Network Elements*, No. P-100, Sub. 133d, at 87 (NCUC June 7, 2001); *see also Order Addressing Exceptions Filed on Recommended Order, Generic Proceeding to Determine Permanent Prices for Unbundled Network Elements*, No. P-100, Sub. 133d, at 75 (NCUC Dec. 31, 2001) (rejecting AT&T objections to this result).

Even more to the point, the Commission's rule on this point provides unequivocally that "ILECs shall have the burden of demonstrating to a state commission" that a particular form of subloop access is not "technically feasible."[14] Nowhere do those rules suggest that a state commission is not empowered to decide that, on a particular record involving a specific network configuration, direct access to ILEC wires would risk customer outages and thus is not technically feasible. Instead, the Commission (properly) gave the states broad authority to determine technical feasibility based on the particular record presented to them, and did not create any *per se* rule that direct access must always be found to be technically feasible.

Thus the Commission's statement regarding collocation has no preclusive or preemptive effect here, or on the Georgia case referred to in the Cox Oklahoma Petition, or on any of the other orders of the state commissions on this point in BellSouth's serving territories. BellSouth has not sought to impose a collocation requirement, and no state commission within BellSouth's serving territories has adopted one. No IWS-related order involving BellSouth requires a CLEC to place equipment at a BellSouth premises. Rather, permission is generally given to BellSouth to place its own equipment on a third-party's (the building owner's) premises.

Moreover, unlike the 90-day provisioning period applicable to collocation, state commissions generally require BellSouth to provide an access terminal within much shorter intervals, sometimes as short as five calendar days of a CLEC request. Most importantly, the state commissions have authorized BellSouth to use access terminals because they concluded, on an evidentiary record, that without such a facility, the form of access that a particular CLEC sought would cause network reliability problems and thus not be technically feasible.[15]

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[14] 47 C.F.R. § 51.319(b)(3)(i).

[15] *Supra* n.13.

Finally, the notion that the FCC has outlawed the use of access terminals in all cases is inconsistent with its affirmative requirement that ILECs create a "single point of interconnection" at which multiple CLECs can access all the subloops in a particular building.[16] BellSouth's construction of an access terminal serves exactly that purpose. It is thus the kind of access that the FCC intended to promote in imposing a single point of interconnection requirement, not something the FCC intended to prohibit across-the-board and regardless of the agency record.[17] The *Triennial Review Order* cannot not be read to prohibit in one place the kind of arrangement that the agency has elsewhere explained should be created to ensure adequate CLEC access.

II. THE COX OKLAHOMA PETITION IS PROCEDURALLY IMPROPER

Qwest correctly points out that, rather than "clarification," Cox is requesting that the Commission adopt a set of national Inside Wire Subloop access standards that does not currently exist.[18] As shown above, and as demonstrated by Qwest, the process and the outcome described in the Cox Oklahoma Petition is fully consistent with the rules that exist today, and no "clarification" is needed, or even legally permissible. The tactic is, among other things, an improper attempt to gain reconsideration of a portion of the *Triennial Review Order.*[19] Cox Oklahoma overstates the requirements of both the *Triennial Review Order* and the *Virginia*

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[16] 47 C.F.R. § 51.319(b)(2)(ii).

[17] *See Triennial Review Order* ¶ 350 n.1058 (discussing the "current requirement relating to the incumbent LEC's obligation to construct a single point of interconnection (SPOI) at multiunit premises location"); *accord 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, ¶ 226 (1999).

[18] Comments of Qwest Communications International Inc., CC Docket No. 01-338 (Dec. 6, 2004) (Qwest Comments) at 3.

[19] Qwest Comments at 6-7, BellSouth Comments at n.13.

Arbitration Order, and overstates both 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.

CONCLUSION

The Commission should deny the Cox Oklahoma Petition. If the Commission clarifies or declares anything, it should clarify that state commissions may determine in appropriate circumstances that non-discriminatory access to intermediary access terminals in MTEs constitutes technically feasible inside wire subloop access. It may also clarify, as Qwest requests, that ILECs must receive effective prior notice from CLECs when CLECs access or disconnect ILEC Inside Wire Subloops, as well as appropriate compensation for work performed by ILECs to benefit CLECs (and damages caused by CLECs to ILEC network facilities) in connection with Inside Wire Subloop access.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that I have this 21st day of December 2004 served the following parties to this action with a copy of the foregoing **REPLY COMMENTS** 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.

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