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INFORMATION SHEET

PRESIDING: Finley, Beatty, Brown-Bland, Dockham, Patterson, and Clodfelter
PLACE: Dobbs Building, Raleigh, NC
DATE: December 18, 2017
TIME: 1:30 p.m. – 4:48 p.m.
DOCKET NO.: EC-23, Sub 50
COMPANY: Blue Ridge Electric Membership Corporation
DESCRIPTION: Blue Ridge Electric Membership Corporation, Petitioner, -v- Charter Communications Properties, LLC, Respondent
VOLUME: 5

APPEARANCES
FOR BLUE RIDGE ELECTRIC MEMBERSHIP CORPORATION:
Pressly M. Millen, Esq.
Charlotte Mitchell, Esq.
Debbie W. Harden, Esq.
Matthew F. Tilley, Esq.

FOR CHARTER COMMUNICATIONS PROPERTIES, LLC:
Gardner F. Gillespie, Esq.
J. Aaron George, Esq.
Marcus W. Trathen, Esq.

WITNESSES

Patricia Kravtin

EXHIBITS

Charter Kravtin Redirect Exhibit 1 (I/A)
Exhibits 1 – 15 (A)
(Confidential Exhibit PDK 4, filed under seal)
Exhibits LL-1-16 (A) +LL-3
(Confidential Exhibits LL-7-9, filed under seal)
Rebuttal exhibits LL-17-25 (A)
(Confidential Exhibit LL-17, filed under seal)

COPIES ORDERED: Email including Confidential: George, Trathen, Millen, Mitchell, Harden, Tilley
REPORTED BY: Kim Mitchell
TRANSCRIBED BY: Kim Mitchell
DATE TRANSCRIBED: January 12, 2017
TRANSCRIPT PAGES: 156
PREFILED PAGES:
TOTAL: 156

NORTH CAROLINA UTILITIES COMMISSION
APPEARANCE SLIP

DATE 11/8/17
DOCKET #: EC-23, SUB 50
NAME OF ATTORNEY PRESS MILLEN
TITLE
FIRM NAME WOMBLE BOND DICKINSON
ADDRESS 555 FAYETTEVILLE ST, SUITE 1100
CITY RALEIGH
ZIP 27601

APPEARING FOR: BLUE RIDGE EMC

APPLICANT _____ COMPLAINANT ✓ INTERVENO R _____
PROTESTANT _____ RESPONDENT _____ DEFENDANT _____

PLEASE NOTE: Electronic Copies of the regular transcript can be obtained from the NCUC website at HTTP://NCUC.commerce.state.nc.us/docksr ch.html under the respective docket number.

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Email: press.millen@wbd-us.com
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NORTH CAROLINA UTILITIES COMMISSION
APPEARANCE SLIP

DATE 11/8/17
DOCKET #: EC23, SUB 50
NAME OF ATTORNEY MATTHEW TILLEY
TITLE
FIRM NAME WOMBLE BOND DICKINSON
ADDRESS
CITY CHARLOTTE
ZIP

APPEARING FOR: BLUE RIDGE EMC

APPLICANT ____ COMPLAINANT ✓ INTERVENO R ____
PROTESTANT____ RESPONDENT ____ DEFENDANT ____

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NORTH CAROLINA UTILITIES COMMISSION
APPEARANCE SLIP

DATE 11/8/17
DOCKET #: EC23, SUB 50
NAME OF ATTORNEY DEBBIE HARDEN
TITLE PARTNER
FIRM NAME WOMBLE BOND DICKINSON
ADDRESS ONE WELLS FARGO CENTER, SUITE 3500, 301 SOUTH COLLEGE ST
CITY CHARLOTTE NC,
ZIP 28202-6037

APPEARING FOR: BLUE RIDGE EMC

APPLICANT _____ COMPLAINANT ✓ INTERVENO R _____
PROTESTANT _____ RESPONDENT _____ DEFENDANT _____

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Signature: Debbie N Harden
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NORTH CAROLINA UTILITIES COMMISSION
APPEARANCE SLIP

DATE 11/8/17
DOCKET #: EC23, SUB50
NAME OF ATTORNEY CHARLOTTE MITCHELL
TITLE
FIRM NAME LAW OFFICE CHARLOTTE MITCHELL
ADDRESS PO BOX 26212
CITY RALEIGH, NC
ZIP 27611

APPEARING FOR: BLUE RIDGE ELECTRIC MEMBERSHIP CORPORATION

APPLICANT _____ COMPLAINANT ✓ INTERVENO R _____
PROTESTANT _____ RESPONDENT _____ DEFENDANT _____

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NORTH CAROLINA UTILITIES COMMISSION
APPEARANCE SLIP

DATE 11-8-17
DOCKET #: GC-22 Sub 50
NAME OF ATTORNEY Gardner Gillespie, Aaron George
TITLE
FIRM NAME Sheppard Mullin
ADDRESS 2099 Pennsylvania Ave NW Suite 100
CITY Washington D.C.
ZIP 20006

APPEARING FOR: Charter Communications

APPLICANT ____ COMPLAINANT ____ INTERVENO R ____
PROTESTANT ____ RESPONDENT ✓ DEFENDANT ____

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Email: ageorge@sheppardmullin.com
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NORTH CAROLINA UTILITIES COMMISSION
APPEARANCE SLIP

DATE 11-8-17
DOCKET #: EC-23, Sub 50
NAME OF ATTORNEY Marcus Trathen
TITLE
FIRM NAME Brooks Pierce
ADDRESS PO Box 1800
CITY Raleigh NC 27602
ZIP

APPEARING FOR: Charter Communications

APPLICANT ____ COMPLAINANT ____ INTERVENO R ____
PROTESTANT ____ RESPONDENT ✓ DEFENDANT ____

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Email: MTrathen@BrooksPierce.com
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NORTH CAROLINA UTILITIES COMMISSION
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DATE 11/8/17
DOCKET #: EC-23, SUB 50
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ADDRESS 555 FAYETTEVILLE ST, SUITE 1100
CITY RALEIGH
ZIP 27601

APPEARING FOR: BLUE RIDGE EMC

APPLICANT _____ COMPLAINANT ✓ INTERVENO R _____
PROTESTANT _____ RESPONDENT _____ DEFENDANT _____

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NORTH CAROLINA UTILITIES COMMISSION
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DATE 11/8/17
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TITLE
FIRM NAME WOMBLE BOND DICKINSON
ADDRESS
CITY CHARLOTTE
ZIP

APPEARING FOR: BLUE RIDGE EMC

APPLICANT ____ COMPLAINANT ✓ INTERVENO R ____
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Signature: [signature]
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NORTH CAROLINA UTILITIES COMMISSION
APPEARANCE SLIP

DATE 11/8/17
DOCKET #: EC23, SUB 50
NAME OF ATTORNEY DEBBIE HARDEN
TITLE PARTNER
FIRM NAME WOMBLE BOND DICKINSON
ADDRESS ONE WELLS FARGO CENTER, SUITE 3500, 301 SOUTH COLLEGE ST
CITY CHARLOTTE NC,
ZIP 28202-6037

APPEARING FOR: BLUE RIDGE EMC

APPLICANT _____ COMPLAINANT ✓ INTERVENO R _____
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Email: debbie.harden@wbd-us.com
(Required for distribution)

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Signature: Debbie N Harden
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NORTH CAROLINA UTILITIES COMMISSION
APPEARANCE SLIP

DATE 11/8/17
DOCKET #: EC23, SUB50
NAME OF ATTORNEY CHARLOTTE MITCHELL
TITLE
FIRM NAME LAW OFFICE CHARLOTTE MITCHELL
ADDRESS PO BOX 2C212
CITY RALEIGH, NC
ZIP 27611

APPEARING FOR: BLUE RIDGE ELECTRIC MEMBERSHIP CORPORATION

APPLICANT _____ COMPLAINANT ✓ INTERVENO R _____
PROTESTANT _____ RESPONDENT _____ DEFENDANT _____

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NORTH CAROLINA UTILITIES COMMISSION
APPEARANCE SLIP

DATE 11-8-12
DOCKET #: E-22 Sub 50
NAME OF ATTORNEY Gardner Gillespie, Aaron George
TITLE
FIRM NAME Sheppard Mullin
ADDRESS 2099 Pennsylvania Ave NW Suite 100
CITY Washington, DC
ZIP 20006

APPEARING FOR: Charter Communications

APPLICANT _____ COMPLAINANT _____ INTERVENO R _____
PROTESTANT _____ RESPONDENT ✓ DEFENDANT _____

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NORTH CAROLINA UTILITIES COMMISSION
APPEARANCE SLIP

DATE 11-8-17
DOCKET #: EC-23, Sub 58
NAME OF ATTORNEY Maury Tatten
TITLE
FIRM NAME Brooks Pierce
ADDRESS PO Box 1800
CITY Raleigh NC 27602
ZIP

APPEARING FOR: Charter Communications

APPLICANT ____ COMPLAINANT ____ INTERVENO R ____
PROTESTANT ____ RESPONDENT / DEFENDANT ____

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Charter Hearing Request Exhibit 1
I/A
Vol. 5

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

SESSION LAW 2015-119
SENATE BILL 88

AN ACT TO ASSIGN POLE ATTACHMENT DISPUTES TO THE NORTH CAROLINA UTILITIES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-350(a) reads as rewritten:

"(a) A municipality, or a membership corporation organized under Chapter 117 of the General Statutes, that owns or controls poles, ducts, or ~~conduits~~ conduits, but which is exempt from regulation under section 224 of the Communications Act of 1934, as amended, shall allow any communications service provider to utilize its poles, ducts, and conduits at just, reasonable, and nondiscriminatory rates, terms, and conditions adopted pursuant to negotiated or adjudicated agreements. A request to utilize poles, ducts, or conduits under this section may be denied only if there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering principles, and those limitations cannot be remedied by rearranging, expanding, or otherwise reengineering the facilities at the reasonable and actual cost of the municipality or membership corporation to be reimbursed by the communications service provider. In granting a request under this section, a municipality or membership corporation shall require the requesting entity to comply with applicable safety requirements, including the National Electrical Safety Code and the applicable rules and regulations issued by the Occupational Safety and Health Administration. Any fees due from a communications service provider accessing or attaching to poles, ducts, or conduits under this section must be billed by separate invoice and shall not be bundled with charges for electric service."

SECTION 2. G.S. 62-350(c) reads as rewritten:

"(c) In the event the parties are unable to reach an agreement within 90 days of a request to negotiate pursuant to subsection (b) of this section, or if either party believes in good faith that an impasse has been reached prior to the expiration of the 90-day period, either party may ~~bring an action in Business Court in accordance with the procedures for a mandatory business case set forth in G.S. 7A-45.4, and the Business Court~~initiate proceedings to resolve the dispute before the Commission. The Commission shall have exclusive jurisdiction over ~~such actions.~~proceedings arising under this section and shall adjudicate disputes arising under this section on a case-by-case basis. The Commission shall not exercise general rate-making authority over communication service provider utilization of municipal or membership corporation facilities. This section does not impact or expand the Commission's authority under G.S. 62-133.5(h) or (m). The Public Staff may, at the discretion of the Commission, be made a party to any proceedings under this section as may be appropriate to serve the using and consuming public. The parties shall identify with specificity in their respective ~~pleadings~~ filings the issues in ~~dispute, and the Business Court shall (i) establish a procedural schedule which, unless otherwise agreed by the parties, is intended to resolve the action within a time period not to exceed 180 days of the commencement of the action, (ii)~~ dispute. The Commission, in its discretion, may consider any evidence or rate-making methodologies offered or proposed by the parties and shall resolve any dispute identified in the ~~pleadings~~ filings consistent with the public interest and necessity so as to derive just and reasonable rates, terms, and ~~conditions, taking into consideration and applying such other factors or evidence that may be presented by a party, including without limitation the rules and regulations applicable to attachments by each type of communications service provider under section 224 of the Communications Act of 1934, as amended, and (iii)~~ conditions. The Commission shall apply any new rate adopted as a result of the action retroactively to the date immediately following the expiration of the 90-day negotiating period or initiation of the ~~lawsuit,~~proceeding, whichever is earlier. If the new rate is

for the continuation of an existing agreement, the new rate shall apply retroactively to the date immediately following the end of the existing agreement. Prior to ~~commencing any action~~initiating any proceedings under this subsection, a party must pay any undisputed fees related to the use of poles, ducts, or conduits which are due and owing under a preexisting agreement with the municipality or membership corporation. In any ~~action~~ proceeding brought under this subsection, the ~~court~~ Commission may resolve any existing disputes regarding fees alleged to be owing under a preexisting agreement or regarding safety compliance arising under subsection (d) of this section. The provisions of this section do not apply to an entity whose poles, ducts, and conduits are subject to regulation under section 224 of the Communications Act of 1934, as amended."

SECTION 3. G.S. 62-350(d)(4) reads as rewritten:

"(4) All attaching parties shall work cooperatively to determine the causation of, and to effectuate any remedy for, noncompliant lines, equipment, and attachments. In the event of disputes under this subsection, the involved municipality or membership corporation or any attaching party may ~~bring an action in the Business Court in accordance with the procedures for a mandatory business case set forth in G.S. 7A-45.4, and the Business Court~~ initiate proceedings to resolve any dispute before the Commission. The Commission shall have exclusive jurisdiction over ~~such actions.~~ proceedings arising under this section and shall adjudicate disputes arising under this section on a case-by-case basis. The Commission shall not exercise general rate-making authority over communication service provider utilization of municipal or membership corporation facilities. This section does not impact or expand the Commission's authority under G.S. 62-133.5(h) or (m). The Public Staff may, at the discretion of the Commission, be made a party to any proceedings under this section as may be appropriate to serve the using and consuming public. The ~~Business Court~~Commission shall resolve such disputes consistent with the public interest and necessity. Nothing herein shall prevent a municipality or membership corporation from taking such action as may be necessary to remedy any exigent issue which is an imminent threat of death or injury to persons or damage to property."

SECTION 4. G.S. 62-350(f) reads as rewritten:

"(f) The ~~Business Court~~Commission may adopt such rules as it deems necessary to ~~implement its jurisdiction and authority under this section.~~exercise its responsibility to adjudicate any disputes arising under this section."

SECTION 5. G.S. 62-350 is amended by adding a new subsection to read:

"(h) As part of final adjudication, the Commission may assess the costs, not to exceed ten thousand dollars ($10,000), of adjudicating a dispute under this section against the parties to the dispute proceeding. If the Public Staff is a party to a dispute proceeding and the Executive Director of the Public Staff deems it necessary to hire expert witnesses or other individuals with professional expertise to assist the Public Staff in the dispute proceeding, the Commission may assess such additional costs incurred by the Public Staff by allocating such costs against the parties to the dispute proceeding."

SECTION 6. G.S. 7A-45.4(b)(3) is repealed.

SECTION 7. Notwithstanding the deletion of language referencing the factors or evidence that may be presented by a party in Section 2 of this act, the Commission may consider any evidence presented by a party, including any methodologies previously applied.

SECTION 8. This act is effective when it becomes law and applies to any action filed on or after that date.

In the General Assembly read three times and ratified this the 25th day of June, 2015.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 4:00 p.m. this 29th day of June, 2015

I/A
vol4/vol5

EXHIBIT PDK 1

Patricia D. Kravtin

500 Atlantic Avenue, Unit 19A
Boston, MA 02210
pdkravtin@comcast.net

Summary

Consulting economist with specialization in telecommunications, cable, and energy markets. Extensive knowledge of complex economic, policy and technical issues facing incumbents, new entrants, regulators, investors, and consumers in rapidly changing telecommunications, cable, and energy markets.

Experience

CONSULTING ECONOMIST

2000–Present Independent Consulting Swampscott, MA

- Providing expert witness services and full range of economic, policy, and technical advisory services in the fields of telecommunications, cable, and energy.

SENIOR VICE PRESIDENT/SENIOR ECONOMIST

1982–2000 Economics and Technology, Inc. Boston, MA

- Active participant in regulatory proceedings in over thirty state jurisdictions, before the Federal Communications Commission, Federal Energy Regulatory Commission, Canadian Radio-Television and Telecommunications Commission, Ontario Energy Board, and other international regulatory authorities on telecommunications, cable, and energy matters.

- Provided expert witness and technical advisory services in connection with litigation and arbitration proceedings before state and federal regulatory agencies, and before U.S. district court, on behalf of diverse set of pubic and private sector clients (see Record of Prior Testimony).

- Extensive cable television regulation expertise in connection with implementation of the Cable Act of 1992 and the Telecommunications Act of 1996 by the Federal Communications Commission and local franchising authorities.

- Led analysis of wide range of issues related to: rates and rate policies; cost methodologies and allocations; productivity; cost benchmarking; business case studies for entry into cable, telephony, and broadband markets; development of competition; electric industry restructuring; incentive or performance based regulation; universal service; access charges; deployment advanced services and broadband technologies; access to pole attachments, conduit, and other rights-of-way.

- Served as advisor to state regulatory agencies, assisting in negotiations with utilities, non-partial review of record evidence, deliberations and drafting of final decisions.

- Author of industry reports and papers on topics including market structure, competition, alternative forms of regulation, patterns of investment, telecommunications modernization, and broadband deployment.

- Invited speaker before various national organizations, state legislative committees and participant in industry symposiums.

- Grant Reviewer for the Broadband Technology Opportunities Program (BTOP) administered by National Telecommunications and Information Administration (NTIA), Fall 2009.

RESEARCH/POLICY ANALYST

1978–1980 Various Federal Agencies, Washington, DC

- Prepared economic impact analyses concerning allocation of frequency spectrum (Federal Communications Commission).

- Performed financial and statistical analysis concerning the effect of securities regulations on the acquisition of high-technology firms (Securities and Exchange Commission).

- Prepared analyses and recommendations on national economic policy issues including capital recovery. (U.S. Dept. of Commerce).

Education

1980–1982 Massachusetts Institute of Technology, Boston, MA

- Graduate Study in the Ph.D. program in Economics (Abd). General Examinations passed in fields of Government Regulation of Industry, Industrial Organization, and Urban and Regional Economics.

- National Science Foundation Fellow.

1976–1980 George Washington University, Washington, DC

- B.A. with Distinction in Economics.

- Phi Beta Kappa, Omicron Delta Epsilon in recognition of high scholastic achievement in field of Economics. Recipient of four-year honor scholarship.

Prof. Affiliation

American Economic Association

Reports and Studies (authored and co-authored)

Report on the Ohio Municipal Electric Association Pole Attachment Rate Study, prepared for the Ohio Cable Telecommunications Association, November 9, 2012.

Report on the Financial Viability of the Proposed Greenfield Overbuild in the City of Lincoln, California, prepared for Starstream Communications, August 12, 2003.

"Assessing SBC/Pacific's Progress in Eliminating Barriers to Entry, The Local Market in California is Not Yet 'Fully and Irreversibly Open," prepared for CALTEL, August 2000.

"Final Report on the Qualifications of Wide Open West-Texas, LLC For a Cable Television Franchise in the City of Dallas," prepared for the City of Dallas, July 31, 2000.

"Final Report on the Qualifications of Western Integrated Networks of Texas Operating L.P. For a Cable Television Franchise in the City of Dallas," prepared for the City of Dallas, July 31, 2000.

"Price Cap Plan for USWC: Establishing Appropriate Price and Service Quality Incentives in Utah" prepared for The Division of Public Utilities, March, 2000.

"Building a Broadband America: The Competitive Keys to the Future of the Internet," prepared for The Competitive Broadband Coalition, May 1999.

"Broken Promises: A Review of Bell Atlantic-Pennsylvania's Performance Under Chapter 30," prepared for AT&T and MCI Telecommunications, June 1998.

"Analysis of Opportunities for Cross Subsidies Between GTA and GTA Cellular," prepared for Guam Cellular and Paging, submitted to the Guam Public Utilities Commission, July 11, 1997.

"Reply to Incumbent LEC Claims to Special Revenue Recovery Mechanisms," submitted in the Matter of Access Charge Reform in CC Docket 96-262, February 14, 1997.

"Assessing Incumbent LEC Claims to Special Revenue Recovery Mechanisms: Revenue opportunities, market assessments, and further empirical analysis of the 'Gap' between embedded and forward-looking costs," FCC CC Docket 96-262, January 29, 1997.

"Analysis of Incumbent LEC Embedded Investment: An Empirical Perspective on the 'Gap' between Historical Costs and Forward-looking TSLRIC," Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, FCC CC 96-98, May 30, 1996.

"Reply to X-Factor Proposals for the FCC Long-Term LEC Price Cap Plan," prepared for the Ad Hoc Telecommunications User Committee, submitted in FCC CC Docket 94-1, March 1, 1996.

"Establishing the X-Factor for the FCC Long-Terms LEC Price Cap Plan," prepared for the Ad Hoc Telecommunications User Committee, submitted in FCC CC Docket 94-1, December 1995.

"The Economic Viability of Stentor's 'Beacon Initiative,' Exploring the Extent of its Financial Dependency upon Revenues from Services in the Utility Segment," prepared for Unitel, submitted before the Canadian Radio-television and Telecommunications Commission, March 1995.

"Fostering a Competitive Local Exchange Market in New Jersey: Blueprint for Development of a Fair Playing Field," prepared for the New Jersey Cable Television Association, January 1995.

"The Enduring Local Bottleneck: Monopoly Power and the Local Exchange Carriers," Feb. 1994.

"A Note on Facilitating Local Exchange Competition," prepared for E.P.G., Nov. 1991.

"Testing for Effective Competition in the Local Exchange," prepared for the E.P.G., October 1991.

"A Public Good/Private Good Framework for Identifying Pots Objectives for the Public Switched Network" prepared for the National Regulatory Research Institute, October 1991.

"Report on the Status of Telecommunications Regulation, Legislation, and modernization in the states of Arkansas, Kansas, Missouri, Nebraska, Oklahoma and Texas," prepared for the Mid-America Cable-TV Association, December 13, 1990.

"The U S Telecommunications Infrastructure and Economic Development," presented at the 18th Annual Telecommunications Policy Research Conference, Airlie, Virginia, October 1990.

"An Analysis of Outside Plant Provisioning and Utilization Practices of US West Communications in the State of Washington," prepared for the Washington Utilities and Transportation Commission, March 1990.

"Sustainability of Competition in Light of New Technologies," presented at the Twentieth Annual Williamsburg Conference of the Institute of Public Utilities, Williamsburg, VA, December 1988.

"Telecommunications Modernization: Who Pays?," prepared for the National Regulatory Research Institute, September 1988.

"Industry Structure and Competition in Telecommunications Markets: An Empirical Analysis," presented at the Seventh International Conference of the International Telecommunications Society at MIT, July 1988.

"Market Structure and Competition in the Michigan Telecommunications Industry," prepared for the Michigan Divestiture Research Fund Board, April 1988.

"Impact of Interstate Switched Access Charges on Information Service Providers - Analysis of Initial Comments," submitted in FCC CC Docket No. 87-215, October 26, 1987.

"An Economic Analysis of the Impact of Interstate Switched Access Charge Treatment on Information Service Providers," submitted in FCC CC Docket No. 87-215, September 24, 1987.

"Regulation and Technological Change: Assessment of the Nature and Extent of Competition from a Natural Industry Structure Perspective and Implications for Regulatory Policy Options," prepared for the State of New York in collaboration with the City of New York, February 1987.

"BOC Market Power and MFJ Restrictions: A Critical Analysis of the 'Competitive Market' Assumption," submitted to the Department of Justice, July 1986.

"Long-Run Regulation of AT&T: A Key Element of a Competitive Telecommunications Policy," *Telematics*, August 1984.

"Economic and Policy Considerations Supporting Continued Regulation of AT&T," submitted in FCC CC Docket No. 83-1147, June 1984.

"Multi-product Transportation Cost Functions," MIT Working Paper, September 1982.

Record of Prior Testimony

2017

Before the **Kentucky Public Service Commission,** *In the Matter of: Electronic Application of Kentucky Power Company for (1) A General Adjustment of its Rates for Electric Service: (2) An Order Approving its 2017 Environmental Compliance Plan; (3) An Order Approving its Tariffs and Riders; (4) An Order Approving Accounting Practices to Establish Regulatory Assets and Liabilities, and (5) An Order Granting All Other Required Approvals and Relief,* Case No. 2017-00179, Direct Testimony submitted on behalf of The Kentucky Cable Telecommunications Association, October 3, 2017.

Before the **North Carolina Public Utility Commission,** in *Re: In the Matter of Time Warner Cable Southeast LLC, Complainant v. Carteret-Craven Electric Membership Corporation, Respondent,* Docket No. EC-55, SUB 70, Direct Pre-filed May 30, 2017; Rebuttal Pre-filed June 15, 2017; Cross-examination June 20, 2017.

Before the **North Carolina Public Utility Commission,** in *Re: In the Matter of Time Warner Cable Southeast LLC, Complainant v. Jones-Onslow Electric Membership Corporation, Respondent,* Docket No. EC-43, SUB 88, Direct Pre-filed May 30, 2017; Rebuttal Pre-filed June 15, 2017; Cross-examination June 20, 2017.

Before the **North Carolina Public Utility Commission,** in *Re: In the Matter of Time Warner Cable Southeast LLC, Complainant v. Surry-Yadkin Electric Membership Corporation, Respondent,* Docket No. EC-49, SUB 55, Direct Pre-filed May 30, 2017; Rebuttal Pre-filed June 15, 2017; Cross-examination June 20, 2017.

Before the **North Carolina Public Utility Commission,** in *Re: In the Matter of Union Electric Membership Corporation, Complainant v. Time Warner Cable Southeast LLC, Respondent,* Docket No. EC-39, SUB 44, Responsive Pre-filed June 15, 2017; Cross-examination June 20, 2017.

2016

Before the **State of Connecticut Department Of Public Utility Control,** in *Re: In the Matter of the Application of The United Illuminating Company to Increase Its Rates and Charges,* Docket No. 16-06-04, filed September 9, 2016.

Before the **United States District Court, District of Maryland,** *Zayo Group, LLC, et al., Plaintiffs v. Mayor and City of Council of Baltimore, et al., Defendants,* Civil No. 16-cv-592, Declaration filed March 30, 2016; Cross-examination May 17, 2016.

2015

Before the **Arkansas Public Service Commission,** *In the Matter of a Rulemaking Proceeding to Consider Changes to the Arkansas Public Service Commission's Pole Attachment Rules,* Docket No. 15-019-R, Report filed July 22, 2015, Second Report filed August19, 2015; Cross-examination October 27, 2015.

Before the **Public Service Commission of Wisconsin,** Wisconsin Cable Communications Association, Charter Cable Partners, LLC, and Time Warner Cable Midwest LLC, Complainants, v. City of Oconomowoc, Respondent, Docket No. 4340-El-100, Direct Testimony submitted May 29, 2015; Rebuttal Testimony submitted June 19, 2015; Surrebuttal Testimony submitted July 2, 2015; Cross-examination July 9, 2015.

Before the **Kentucky Public Service Commission,** *In the Matter of: Application of Kentucky Utilities Company for An Adjustment of its Base Rates,* Case No. 2014-00371, submitted March 6, 2015.

Before the **Kentucky Public Service Commission** *In the Matter of: Application of Louisville Gas and Electric Company for An Adjustment of its Electric and Gas Base Rates,* Case No. 2014-00372, submitted March 6, 2015.

2013

Before the **Commonwealth of Virginia State Corporation Commission,** in *Application of Northern Virginia Electric Cooperative, For Approval of pole attachment rates and terms and conditions under § 56-466.1 of the Code of Virginia,* Pre-filed Direct Testimony on behalf of Comcast California/Maryland/Pennsylvania/Virginia/West Virginia LLC, August 29, 2013. Live testimony and cross-examination, November 22/25, 2013.

Before the **General Court of Justice Superior Court Division, State of North Carolina, County of Rutherford,** *Rutherford Electric Membership Corporation, Plaintiff, vs. Time Warner Entertainment–Advance/Newhouse Partnership d/b/a Time Warner Cable, Defendant,* 13 CVS 231, submitted July 10, 2013, Deposition July 22, 2013. Live testimony and cross-examination, September 6, 2013.

Before the **Chancery Court for Davidson County, Tennessee at Nashville,** *The Metropolitan Government of Nashville and Davidson County, Tennessee, Plaintiff v. XO Tennessee, Inc., Defendant, Docket No. 02-679-IV; The Metropolitan Government of Nashville and Davidson County, Tennessee, Plaintiff v. TCG Midsouth, Inc., Defendant, Docket No. 02-749-IV,* Affidavit dated January 25, 2013, Reply Affidavit dated February 19, 2013. Live testimony and cross-examination, May 14-15, 2013.

2012

Before the **State of New Hampshire Public Utilities Commission,** in *Time Warner Entertainment Company L.P. d/b/a Time Warner Cable, Petition for Resolution of Dispute with Public Service Company of New Hampshire,* DT 12-084, on behalf of Time Warner Entertainment Company L.P. d/b/a Time Warner Cable, Comcast Cable Communications Management, LLC, Comcast of New Hampshire, Inc., Comcast of Massachusetts/New Hampshire, LLC, and Comcast of Maine/New Hampshire, Inc. Initial Direct Testimony submitted July 20, 2012; Reply Direct Testimony submitted October 31, 2012; Live panel testimony, November 14, 2012.

Before the **Ontario Energy Board,** *In the Matter of the Application by Canadian Distributed Antenna Systems Coalition ("CANDAS"),*File No. EB-2011-1020, Joint Written Statement (with J. Lemay, M. Starkey, A. Yatchew), submitted July 20, 2012.

Before the **Chancery Court for Davidson County, Tennessee at Nashville,** *The Metropolitan Government of Nashville and Davidson County, Tennessee, Plaintiff v. XO Tennessee, Inc., Defendant, Docket No. 02-679-IV; The Metropolitan Government of Nashville and Davidson County, Tennessee, Plaintiff v. TCG Midsouth, Inc., Defendant, Docket No. 02-749-IV,* Expert Report submitted May 15, 2012; Supplemental Report dated November 6, 2012.

2011

Before the **Ontario Energy Board,** *in the Matter of the Application by Canadian Distributed Antenna Systems Coalition ("CANDAS"),* File No. EB-2011-1020, Reply Evidence, filed December 16, 2011.

Before the **Public Utilities Commission of Ohio,** *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company, Individually and, if Their Proposed Merger is Approved, as a Merged Company (collectively, AEP Ohio) for an Increase in Electric Distribution Rates, Case No. 11-351-EL-AIR, Case No. 11-352-EL-AIR; In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company, Individually and, if Their Proposed Merger is Approved, as a Merged Company (collectively, AEP Ohio) for Tariff Approval, Case No. 11-353-EL-ATA Case No. 11-354-EL-ATA; In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company, Individually and, if Their Proposed Merger is Approved, as a Merged Company (collectively, AEP Ohio) for Approval to Change Accounting Methods, Case No. 11-356-EL-AAM, Case No. 11-258-EL-AAM.*filed October 24, 2011.

Before the **Virginia State Corporation Commission,** *In the Matter of Determining Appropriate Regulation of Pole Attachments and Cost Sharing in Virginia,* Case No. PUE-2011-00033, Affidavit submitted June 22, 2011, Live Testimony given July 13, 2011.

Before the **Public Utility Commission of Texas,** State Office of Administrative Hearings, *Petition of CPS Energy for Enforcement Against AT&T Texas and Time Warner Cable Regarding Pole Attachments,* SOAH Docket No.

Before the **Kentucky Public Service Commission**, in *Re: South Central Bell*, 8467, on behalf of the Commonwealth of Kentucky, cross-examination August 26, 1982.

473-09-5470, PUC Docket No. 36633, Supplemental Testimony submitted March 17, 2011; Further Supplemental Testimony submitted April 22, 2011, Cross-examination, September 13, 2011.

2010

Before the General **Court of Justice Superior Court Division, State of North Carolina, County of Rowan,** *Time Warner Entertainment– Advance/Newhouse Partnership, Plaintiff, V. Town Of Landis, North Carolina, Defendant,* 10 CVS 1172, submitted October 20, 2010, Deposition December 1, 2010, Live testimony and cross-examination July 20, 2011.

Before the **Federal Communications Commission,** *In the Matter of Implementation of Section 224 of the Act; Amendment of the Commission's Rules and Policies Governing Pole Attachments,* WC Docket No. 07-245, GN Docket No. 09-51. Report submitted August 16, 2010, Attachment A to Comments filed by the National Cable and Telecommunications Association.

Before the **Public Utility Commission of Texas,** State Office of Administrative Hearings, *Petition of CPS Energy for Enforcement Against AT&T Texas and Time Warner Cable Regarding Pole Attachments,* SOAH Docket No. 473-09-5470, PUC Docket No. 36633, Direct Testimony submitted July 23, 2010.

Before the **Kentucky Public Service Commission**, *In the Matter of: Application of Kentucky Utilities Company for An Adjustment of its Base Rates*, Case No. 2009-00548, submitted April 22, 2010.

Before the **Kentucky Public Service Commission** *In the Matter of: Application of Louisville Gas and Electric Company for An Adjustment of its Electric and Gas Base Rates*, Case No. 2009-00549, submitted April 22, 2010.

Before the **Arkansas Public Service Commission**, *Coxcom, Inc., D/B/A Cox Communications, Complainant V. Arkansas Valley Electric Cooperative Corporation, Respondent.* Docket No. 09-133-C, submitted March 17, 2010.

2009

Before the **Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County**, *State of Florida, Tampa Electric Company, Plaintiff, vs. Bright House Networks, LLC, Defendant,* Case No. 06-00819, Division L. Expert Report submitted December 30, 2009, Deposition February 2, 2010, Live testimony and cross-examination, March 24, 2010.

Before the **Superior Court of the State Of Washington for the County of Pacific,**, *Pacific Utility District No. 2 Of Pacific County, Plaintiff, V. Comcast of Washington Iv, Inc., Centurytel of Washington, Inc., and Falcon Community Ventures I, L.P. D/B/A Charter Communications, Defendants, Case No. 07-2-00484-1,* Expert Report submitted September 18, 2009, Reply Report submitted October 16, 2009, Deposition December 21, 2009, Deposition December 21, 2009, Live testimony and cross-examination October 12-13, 2010.

Before the **Public Utilities Commission of Ohio,** *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates, Case No. 08-709-EL-AIR,In the Matter of the Application of Duke Energy Ohio, Inc., for a Tariff Approval, Case No. 08-710-EL-ATA, In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods, Case No. 08-11-EL-AAM, In the Matter of the Application of Cincinnati Gas & Electric Company for Approval of its Rider BDP, Backup Delivery Point, Case No. 06-718-EL-ATA,* filed February 26, 2009.

2008

Before the **Arkansas Public Service Commission,** *In the Matter of a Rulemaking Proceeding to Establish Pole Attachment Rules In Accordance With Act 740 of 2007*, Docket No. 08-073-R, filed May 13, 2008, reply filed June 3, 2008, Cross-examination June 10, 2008.

Before the **Federal Communications Commission,** *In the Matter of Implementation of Section 224 of the Act; Amendment of the Commission's Rules and Policies Governing Pole Attachments,* WC Docket No. 07-245, RM 11293, RM 11303, filed March 7, 2008, reply filed April 22, 2008.

2006

Before the **State of New Jersey Board of Public Utilities**, Office of Administrative Law, *in the Matter of the Verified Petition of TCG Delaware Valley, Inc. and Teleport Communications New York for an Order Requiring PSE&G Co. to Comply with the Board's Conduit Rental Regulations*, OAL Docket PUC 1191-06, BPU Docket No. EO0511005, filed September 29, 2006; rebuttal filed November 17, 2006.

Before the **Federal Communications Commission**, *In the Matter of Florida Cable Telecommunications Association, Inc., Comcast Cablevision of Panama City, Inc.; Mediacom Southeast, L.L.C.; and Cox Communications Gulf, L.L.C.; Complainants v. Gulf Power Company, Respondent.* EB Docket No. 04-381. Testimony on behalf of Complainants, March 31, 2006, Deposition March 15, 2006, Live Cross April 26-27, 2006.

2005

Before the **United States District Court for the Eastern District of New York**, *Coastal Communication Service, Inc. and Telebeam Telecommunications Corporation, Plaintiffs - against –The City of New York and New York City Department of Information Technology and Telecommunications*, 02 Civ. 2300 (RJD) (SMG), Expert Report filed February 4, 2005; Rebuttal Expert Report, filed August 29, 2005, Deposition December 1, 2005.

2004

Before the **Ontario Energy Board**, *In the Matter of the Ontario Energy Board Act* 1998, S.O.1998, c.15, (Schedule B); and *In the Matter of an Application pursuant to section 74 of the Ontario Energy Board Act*, 1998 by the Canadian Cable Television Association for an Order or Orders to amend the licenses of electricity distributors, RP-2003-024, Reply Evidence, filed September 27, 2004 (joint w/ Paul Glist), Cross-examination October 26-27, 2004.

2003

Before the **United States District Court for the Southern District of California,** *Level 3 Communications, LLC v. City of Santee,* Civil Action No. 02-CV-1193, Rebuttal Expert Report, filed July 18, 2003.

2002

Before the **New York State Public Service Commission**, *In the Matter of the Cable Television & Telecommunications Association of New York, Inc., Petitioner, v. Verizon New York, Inc., Respondent*, Case 02-M-1636, Affidavit filed December 19, 2002.

Before the **West Virginia Public Service Commission**, Community Antenna Service, Inc. v. Charter Communications, Case No. 01-0646-CTV-C, Live Direct Testimony and Cross-examination, June 12, 2002.

Before the **Public Service Commission of the District of Columbia,** Comcast Cablevision of the District, L.L.C., Complainant, v. Verizon Communications Inc. – Washington, D.C., Respondent, Formal Case No. 1006, Direct Testimony filed June 11, 2002; Rebuttal Testimony filed June 24, 2002.

Before the **Federal Communications Commission,** in *Cavalier Telephone, LLC, Complainant, v. Virginia Electric & Power Co., D/b/a Dominion Virginia Power, Respondent*, Case No. EB-02-MD-005, Declaration filed May 21, 2002.

Before the **Puerto Rico Telecommunications Regulatory Board,** in *Re: Petition of Centennial Puerto Rico License Corp. for arbitration pursuant to Sections 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Puerto Rico Telephone Company*, on behalf of Centennial Puerto Rico License Corp., Direct Testimony filed April 16, 2002; Deposition May 7, 2002, May 14, 2002; Reply Testimony, May 20, 2002, Cross-examination May 22, 2002.

Before the **Federal Energy Regulatory Commission**, *in Re: In the Matter of* ***Transcontinental Gas Pipe Line Corporation,*** Docket No. RP01-245, on behalf of the University of Maryland-College Park, Johns Hopkins University and Johns Hopkins University Health System, and the North Carolina Utilities Commission, Cross-answering Testimony, January 23, 2002; Rebuttal Testimony, May 31, 2002, Cross-examination July 31, 2002.

2001

Before the **United States District Court for the Northern District of New York,** *TC Systems, Inc. and Teleport Communications-New York vs. Town of Colonie, New York,* Civil Action No. 00-CV-1972, Expert Report filed November 16, 2001; Deposition Dec. 7, 2001, Rebuttal Report December 20, 2001, Deposition Jan. 9, 2002.

Before the **Federal Energy Regulatory Commission**, *in Re: In the Matter of Transcontinental Gas Pipe Line Corporation,* Docket No. RP01-245, on behalf of the University of Maryland-College Park, Johns Hopkins University and Johns Hopkins University Health System, and the North Carolina Utilities Commission, filed November 15, 2001.

Before the **Public Service Commission of the District of Columbia,** Comcast Cable Communications, Inc. d/b/a/Comcast Cable of Washington, D.C., Complainant, v. Verizon Communications Inc. – Washington, D.C., Respondent, filed September 21, 2001.

Before the **Public Utility Commission of Texas,** State Office of Administrative Hearings, SOAH Docket No. 473-00-1014, PUC Docket No. 22349, *Application of Texas-New Mexico Power Company for Approval of Unbundled Cost of Service Rate Pursuant to PURA § 39.201and Public Utility Commission Substantive Rule §25.344*, on behalf of Cities Served by Texas-New Mexico Power, filed January 25, 2001.

2000

Before the **Puerto Rico Telecommunications Regulatory Board,** in *AT&T of Puerto Rico, Inc. et al v. Puerto Rico Telephone Company, Inc.,Re: Dialing Parity,* Docket Nos. 97-Q-0008, 98-Q-0002, on behalf of Lambda Communications Inc., Cross-examination October 19-20, 2000.

Before the **Department of Telecommunications and Energy of the Commonwealth of Massachusetts,** Docket No. DTE 98-57 – Phase III, *Re: Bell Atlantic- Massachusetts Tariff No. 17 Digital Subscriber Line Compliance Filing and Line Sharing Filing*, (Panel Testimony with Joseph Riolo, Robert Williams, and Michael Clancy) on behalf of Rhythms Links Inc. and Covad Communications Company, filed July 10, 2000.

Before the **New York State Public Service Commission** in *Re: Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements* on behalf of the Cable Television & Telecommunications Association of New York, Inc., Direct Testimony filed June 26, 2000, Supplemental Testimony filed November 29, 2000.

Before the **Maryland Public Service Commission,** on behalf of Rhythms Links Inc. and Covad Communications Company, filed jointly with Terry L. Murray and Richard Cabe, May 5, 2000.

Before the **Public Utility Commission of Texas,** in *Re: Proceeding to Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecommunications Act of 1996,* CC Docket No. 21982, on behalf of AT&T Communications of Texas, L.P., TCG Dallas, and Teleport Communications Houston, Inc., filed March 31, 2000.

Before the **Federal Communications Commission**, in *Re: In the Matter of Price Caps Performance Review for Local Exchange Carriers, Access Charge Reform*, CC Dockets 94-1, 96-262, on behalf of Ad Hoc Telecommunications Users Committee, filed January 24, 2000.

Before the **Federal Energy Regulatory Commission,** in *Re: In the Matter of Northern Border Pipeline Company*, on behalf of the Canadian Association of Petroleum Producers and the Alberta Department of Resource Development, filed January 20, 2000.

1999

Before the **Connecticut Department of Public Utilities,** in *Re: Evaluation and Application to Modify Franchise Agreement by SBC Communications Inc., Southern New England telecommunications Corporation and SNET Personal Vision, Inc.*, Docket No. 99-04-02, on behalf of the Office of Consumer Counsel, filed June 22, 1999; cross- examination July 8, 1999

Before the **Illinois Commerce Commission,** in *Re: Illinois Commerce Commission on its own Motion v. Illinois Bell Telephone Company; et al: Investigation into Non-Cost Based Access Charge Rate Elements in the Intrastate Access Charges of the Incumbent Local Exchange Carriers in Illinois, Illinois Commerce Commission on its own Motion Investigation into Implicit Universal Service Subsidies in Intrastate Access Charges and to Investigate how these Subsidies should be Treated in the Future, Illinois Commerce Commission on its own motion Investigation into the Reasonableness of the LS2 Rate of Illinois Bell Telephone Company,* Docket No. 97-00601, 97-0602, 97-0516, Consolidated, on behalf of City of Chicago, filed January 4, 1999; rebuttal February 17, 1999.

Before the **Puerto Rico Telecommunications Regulatory Board,** in *Re: In the Matter of Arbitration of Interconnection Rates, Terms and Conditions between Centennial Wireless PCS Operations Corp., Lambda Communications Inc., and the Puerto Rico Telephone Company,* behalf of Centennial Wireless PCS Operations Corp. and Lambda Communications Inc., cross-examination February 16, 1999.

1998

Before the **California Public Utilities Commission,** in *Re: In the Matter of the Application of Pacific Bell (U 1001 C), a Corporation, for Authority for Pricing Flexibility and to Increase Prices of Certain Operator Services, to Reduce the Number of Monthly Assistance Call Allowances, and Adjust Prices for Four Centrex Optional Features,* Application No. 98-05-038, on behalf of County of Los Angeles, filed November 17, 1998, cross-examination, December 9, 1998.

Before the **Puerto Rico Telecommunications Regulatory Board,** in *Re: In the Matter of PRTC's Tariff K-2 (Intra-island access charges),* Docket no. 97-Q-0001, 97-Q-0003, on behalf of Lambda Communications, Inc., filed October 9, 1998, cross-examination October 9, 1998.

Before the **Connecticut Department of Public Utility Control,** in *Re: Application of the Southern New England Telephone Company,* Docket no. 98-04-03, on behalf of the Connecticut Office of Consumer Counsel, filed August 17, 1998, cross-examination February 18, 1999.

Before the **California Public Utilities Commission,** in *Re: Pacific Gas & Electric General Rate Case,* A.97-12-020, on behalf of Office of Rate Payers Advocates CA PUC, filed June 8, 1998.

1997

Before the **South Carolina Public Service Commission,** in *Re: Proceeding to Review BellSouth Telecommunications, Inc.' s Cost for Unbundled Network Elements,* Docket no. 97-374-C, on behalf of the South Carolina Cable Television Association, filed November 17, 1997.

Before the **State Corporation Commission of Kansas,** in *Re: In the Matter of and Investigation to Determine whether the Exemption from Interconnection Granted by 47 U.S.C. 251(f) should be Terminated in the Dighton, Ellis, Wakeeney, and Hill City Exchanges,* Docket No. 98-GIMT-162-MIS, on behalf of Classic Telephone, Inc., filed October 23, 1997.

Before the **Georgia Public Services Commission,** in *Re: Review of Cost Studies, Methodologies, and Cost-Based Rates for Interconnection and Unbundling of BellSouth Telecommunications Services,* Docket No. 7061-U, on behalf of the Cable Television Association of Georgia, filed August 29, 1997, cross-examination September 19, 1997.

Before the **Federal Communications Commission,** in *Re: In the Matter of Price Caps Performance Review for Local Exchange Carriers, Access Charge Reform,* CC Dockets 94-1, 96-262, on behalf of Ad Hoc Telecommunications Users Committee, filed July 11, 1997.

Before the **Federal Communications Commission,** in *Re: In the Matter of Amendment of Rules and Policies Governing Pole Attachments,* CS Docket 97-98, on behalf of NCTA, filed June 27, 1997.

Before the **Public Utilities Commission of the State of California,** in *Re: Rulemaking on the Commission' s Own Motion to Govern Open Access to Bottleneck Services and Establish a Framework for Network Architecture Development of Dominant Carrier Networks,* R.93-04-003, I.93-04-002AT&T, filed March 19, 1997, reply April 7, 1997.

Before the **Puerto Rico Telecommunications Regulatory Board,** in *Re: In the Matter of Centennial Petition for Arbitration with PRTC,* on behalf of Centennial Cellular Corporation, filed February 14, 1997, supplemental March 10, 1997.

Before the **Federal Communications Commission,** in *Re: In the Matter of Access Charge Reform,* CC Docket 96-262, on behalf of AT&T, filed January 29, 1997, reply February 14, 1997.

1996

Before the **New Jersey Board of Public Utilities**, in *Re: In the Matter of the Investigation Regarding Local Exchange Competition for Telecommunications Services*, TX95120631, on behalf of New Jersey Cable Television Association, filed on August 30, 1996, reply September 9, 1997, October 20, 1997, cross-examination September 12, 1996, December 20, 1996.

Before the **State Corporation Commission of the State of Kansas**, in *Re: In the Matter of a General Investigation Into Competition Within the Telecommunications Industry in the State of Kansas*, 190, 492-U 94-GIMT-478-GIT, on behalf of Kansas Cable Telecommunications Association, Inc., filed July 15, 1996, cross-examination August 14, 1996.

Before the **Federal Communications Commission**, in *Re: Price Caps Performance Review for Local Exchange Carriers*, CC Docket 94-1, on behalf of Ad Hoc Telecommunications Users Committee, filed July 12, 1996.

Before the **State Corporation Commission of the State of Kansas**, in *Re: In the Matter of a General Investigation Into Competition Within the Telecommunications Industry in the State of Kansas*, 190, 492-U 94-GIMT-478-GIT, on behalf of Kansas Cable Telecommunications Association, Inc., filed June 14, 1996, cross-examination August 14, 1996.

Before the **Federal Communications Commission**, in *Re: In the Matter of Implementation of the Local Competition Provisions of Telecommunications Act of 1996*, CC Docket 96-98, filed May 1996.

Before the **Federal Communications Commission**, in *Re: Puerto Rico Telephone Company (Tariff FCC No, 1)*,Transmittal No. 1, on behalf of Centennial Cellular Corp., filed April 29, 1996.

Before the **United States District Court for the Eastern District of Tennessee at Greeneville**, in *Re: Richard R. Land, Individually and d/b/a The Outer Shell, and on behalf of all others similarly situated, Plaintiffs, vs. United Telephone-Southeast, Inc., Defendant*, CIV 2-93-55, filed December 7, 1996.

1995

Before the **Federal Communications Commission**, in *Re: Bentleyville Telephone Company Petition and Waiver of Sections 63.54 and 63.55 of the Commission's Rules and Application for Authority to Construct and Operate, Cable Television Facilities in its Telephone Service Area*, W-P-C-6817, on behalf of the Helicon Group, L.P. d/b/a Helicon Cablevision, filed November 2, 1995.

Before the **US District Court for the Eastern District of Tennessee**, in *Re: Richard R. Land, Individually and d/b/a The Outer Shell, and on behalf of all others similarly situated, Plaintiffs, vs. United Telephone-Southeast, Inc., Defendant*, 2-93-55, Class Action, filed June 12, 1995.

Before the **Connecticut Department of Public Utility Control**, in *Re: Application of SNET Company for approval to trial video dial tone transport and switching*, 95-03-10, on behalf of New England Cable TV Association, filed May 8, 1995, cross-examination May 12, 1995.

Before **Canadian Radio-Television and Telecommunications Commission**, in *Re: CRTC Order in Council 1994-1689*, Public Notice CRTC 1994-130 (Information Highway), filed March 10, 1995.

Before the **Federal Communications Commission**, in *Re: GTE Hawaii's Section 214 Application to provide Video Dialtone in Honolulu, Hawaii*, W-P-C- 6958, on behalf of Hawaii Cable TV Association, filed January 17, 1995 (Reply to Amended Applications).

Before the **Federal Communications Commission**, in *Re: GTE Hawaii's Section 214 Application to provide Video Dialtone in Ventura County*, W-P-C 6957, on behalf of the California Cable TV Association, filed January 17, 1995 (Reply to Amended Applications).

Before the **Federal Communications Commission**, in *Re: GTE Florida's Section 214 Application to Provide Video Dialtone in the Pinellas County and Pasco County, Florida areas*, W-P-C 6956, on behalf of Florida Cable TV Association, filed January 17, 1995 (Reply to Amended Applications).

Before the **Federal Communications Commission,** in *Re: GTE Virginia' s Section 214 Application to provide Video Dialtone in the Manassas, Virginia area,* W-P-C 6956, on behalf of Virginia Cable TV Association, filed January 17, 1995 (Reply to Amended Applications).

1994

Before the **Federal Communications Commission,** in *Re: NET' s Section 214 Application to provide Video Dialtone in Rhode Island and Massachusetts,* W-P-C 6982, W-P-C 6983, on behalf of New England Cable TV Association, filed December 22, 1994 (Reply to Supp. Responses).

Before the **State Corporation Commission of the State of Kansas,** in *Re: General Investigation into Competition,* 190, 492-U 94-GIMT-478-GIT, on behalf of Kansas CATV Association, filed November 14, 1994, cross-examination December 1, 1994.

Before the **Federal Communication Commission,** in *Re: Carolina Telephone' s Section 214 Application to provide Video Dialtone in areas of North Carolina,* W-P-C 6999, on behalf of North Carolina Cable TV Association, filed October 20, 1994, reply November 8, 1994.

Before the **Federal Communication Commission,** in *Re: NET' s Section 214 Application to provide Video Dialtone in Rhode Island and Massachusetts,* W-P-C 6982, W-P-C 6983, on behalf of New England Cable TV Association, filed September 8, 1994, reply October 3, 1994.

Before the **California Public Utilities Commission,** in *Re: Petition of GTE-California to Eliminate the Preapproval Requirement for Fiber Beyond the Feeder,* I.87-11-033, on behalf of California Bankers Clearing House, County of LA, filed August 24, 1994.

Before the **Federal Communications Commission,** in *Re: BellSouth Telecommunications Inc., Section 214 Application to provide Video Dialtone in Chamblee, GA and Dekalb County, GA,* W-P-C 6977, on behalf of Georgia Cable TV Association, filed August 5, 1994.

Before the **Federal Communications Commission,** in *Re: Bell Atlantic Telephone Companies Section 214 Application to provide Video Dialtone within their Telephone Services Areas,* W-P-C 6966, on behalf of Mid Atlantic Cable Coalition, filed July 28, 1994, reply August 22, 1994.
Before the **Federal Communication Commission,** in *Re: GTE Hawaii's 214 Application to provide Video Dialtone in Honolulu, Hawaii,* W-P-C 6958, on behalf of Hawaii Cable TV Association, filed July 1, 1994, and July 29, 1994.

Before the **Federal Communication Commission,** in *Re: GTE California's Section 214 Application to provide Video Dialtone in Ventura County,* W-P-C 6957, on behalf of California Cable TV Association, filed July 1, 1994, and July 29, 1994.

Before the **Federal Communication Commission,** in *Re: GTE Florida's 214 Application to provide Video Dialtone in the Pinellas and Pasco County, Florida areas,* W-P-C 6956, on behalf of Florida Cable TV Association, filed July 1, 1994, and July 29, 1994.

Before the **Federal Communication Commission,** in *Re: GTE Virginia's 214 Application to provide Video Dialtone in the Manassas, Virginia area,* W-P-C 6955, on behalf of the Virginia Cable TV Association, filed July 1, 1994, and July 29, 1994.

Before the **Federal Communications Commission,** in *Re: US WEST's Section 214 Application to provide Video Dialtone in Boise, Idaho and Salt Lake City, Utah,* W-P-C 6944-45, before the Idaho and Utah Cable TV Association, filed May 31, 1994.

Before the **Federal Communication Commission,** in *Re: US WEST's Section 214 Application to provide Video Dialtone in Portland, OR; Minneapolis, St. Paul, MN; and Denver, CO,* W-P-C 6919-22, on behalf of Minnesota & Oregon Cable TV Association, filed March 28, 1994.

Before the **Federal Communications Commission,** in *Re: Ameritech's Section 214 Application to provide Video Dialtone within areas in Illinois, Indiana, Michigan, Ohio, and Wisconsin,* W-P-C-6926-30, on behalf of Great Lakes Cable Coalition, filed March 10, 1994, reply April 4, 1994.

Before the **Federal Communications Commission,** in *Re: Pacific Bell's Section 214 Application to provide Video Dialtone in Los Angeles, Orange County, San Diego, and Southern San Francisco Bay areas,* W-P-C-6913-16, on behalf of Comcast/Cablevision Inc., filed Feb. 11, 1994, reply March 11, 1994.

Before the **Federal Communications Commission,** in *Re: SNET's Section 214 Application to provide Video Dialtone in Connecticut,* W-P-C 6858, on behalf of New England Cable TV Association, filed January 20, 1994, reply February 23, 1994.

1993

Before the **Arkansas Public Service Commission,** in *Re: Earnings Review of Southwestern Bell Telephone Company,* 92-260-U, on behalf of Arkansas Press Association, filed September 2, 1993.

Before the **United States District Court for the Eastern District of Tennessee at Greenville,** in *Re: Cleo Stinnett, et al. Vs. BellSouth Telecommunications, Inc. d/b/a/ South Central Bell Telephone Company, Defendant,* Civil Action No 2-92-207, Class Action, cross-examination May 10, 1993, and Feb. 10, 1994.

Before the **Federal Communications Commission,** in *Re: NJ Bell' s Section 214 Application to provide Video Dialtone service within Dover Township, and Ocean County, New Jersey,* W-P-C-6840, on behalf of New Jersey Cable TV Association, filed January 21, 1993.

1992

Before the **New Jersey Board of Regulatory Commissioners,** in *Re: NJ Bell Alternative Regulation,* T092030358, on behalf of NJ Cable TV Association, filed September 21, 1992.

Before the **New Hampshire Public Utilities Commission,** in *Re: Generic competition docket,* DR 90-002, on behalf of Office of the Consumer Advocate, filed May 1, 1992, reply July 10, 1992, Surrebuttal August 21, 1992.

Before the **New Jersey General assembly Transportation, Telecommunications, and Technology Committee,** *Concerning A-5063,* on behalf of NJ Cable TV Association, filed January 6, 1992.

1991

Before the **New Jersey Senate Transportation and Public Utilities Committee,** in *Re: Concerning Senate Bill S-3617,* on behalf of New Jersey Cable Television Association, filed December 10, 1991.

Before the **119th Ohio General Assembly Senate Select Committee on Telecommunications Infrastructure and Technology,** in *Re: Issues Surrounding Telecommunications Network Modernization,* on behalf of the Ohio Cable TV Association, filed March 7, 1991.

Before the **Tennessee Public Service Commission,** in *Re: Master Plan Development and TN Regulatory Reform Plan,* on behalf of TN Cable TV Association, filed February 20, 1991.

1990

Before the **Tennessee Public Service Commission,** in *Re: Earnings Investigation of South Central Bell,* 90-05953, on behalf of the TN Cable Television Association, filed September 28, 1990.

Before the **New York Public Service Commission,** in *Re: NYT Rates, 90-C-0191, on behalf of User Parties NY Clearing House Association,* filed July 13, 1990, Surrebuttal July 30, 1990.

Before the **Louisiana Public Service Commission,** in *Re: South Central Bell Bidirectional Usage Rate Service,* U-18656, on behalf of Answerphone of New Orleans, Inc., Executive Services, Inc., King Telephone Answering Service, et al, filed January 11, 1990.

1989
Before the **Georgia Public Service Commission,** in *Re: Southern Bell Tariff Revision and Bidirectional Usage Rate Service*, 3896-U, on behalf of Atlanta Journal Const./Voice Information Services Company, Inc., GA Association of Telemessaging Services, Prodigy Services, Company, Telnet Communications, Corp., filed November 28, 1989.

Before the **New York State Public Service Commission,** in *Re: NYT Co. - Rate Moratorium Extension - Fifth Stage Filing*, 28961. Fifth Stage, on behalf of User Parties NY Clearing House Association Committee of Corporate Telecommunication Users, filed October 16, 1989.

Before the **Delaware Public Service Commission,** in *Re: Diamond State Telephone Co. Rate Case*, 86-20, on behalf of DE PSC, filed June 16, 1989.

Before the **Arizona Corporation Committee,** in *Re: General Rate Case*, 86-20, on behalf of Arizona Corporation Committee, filed March 6, 1989.

1988
Before **New York State Public Service Commission,** in *Re: NYT Rate Moratorium Extension*, 28961, on behalf of Capital Cities/ ABC, Inc., AMEX Co., CBS, Inc., NBC, Inc., filed December 23, 1988.

1989
Before **Rhode Island Public Utilities Commission,** in *Re: New England Telephone*, 1475, on behalf of RI Bankers Association, filed August 11, 1987, cross-examination August 21, 1987.

Before the **New York State Public Service Commission,** in *Re: General Rate Case Subject to Competition*, 29469, on behalf of AMEX Co., Capital Cities/ ABNC, Inc., NBC, Inc., filed April 17, 1987, cross-examination May 20, 1987.

Before the **Minnesota Public Utilities Commission,** in *Re: Northwestern Bell*, P-421/ M-86-508, on behalf of MN Bus. Utilities Users Counsel, filed February 10, 1987, cross-examination March 5, 1987.

1986
Before the **Kansas Public Utilities Commission,** in *Re: Southwestern Bell*, 127, 140-U, on behalf of Boeing Military, et al., filed August 15, 1986.

1985
Before the **Washington Utilities and Transportation Commission,** in *Re: Cost of Service Issues bearing on the Regulation of Telecommunications Company*, on behalf of US Department of Energy, filed November 18, 1985 (Reply Comments).

1984
Before the **Maine Public Utilities Commission,** in *Re: New England Telephone*, 83-213, on behalf of Staff, ME PUC, filed February 7, 1984, cross-examination March 16, 1984.

Before the **Kentucky Public Service Commission,** in *Re: South Central Bell*, U-4415, on behalf of MS PSC, filed January 24, 1984, cross-examination February 1984.

1983
Before the **Kentucky Public Service Commission,** in *Re: South Central Bell*, 8847, on behalf of KY PSC, filed November 28, 1983, cross-examination December 1983.

Before the **Florida Public Service Commission,** in *Re: Southern Bell Rate Case*, 820294-TP, on behalf of Florida Department of General Services, FL Ad Hoc Telecommunications Users, filed March 21, 1983, cross-examination May 5, 1983.

1982
Before the **Maine Public Utilities Commission,** in *Re: New England Telephone*, 82-142, on behalf of Staff, ME PUC, filed November 15, 1982, cross-examination December 9, 1982.

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FCC Formulas

The FCC employs two different pole attachment formulas: the cable-only formula and the telecom formula. The cable-only formula applies to cable television operators that provide only cable service. The telecom formula applies to all providers of telecommunications services except for wholesale telecom providers (i.e., carriers' carriers) and incumbent local exchange carriers (ILECs), whose rates are negotiated, not regulated. To the extent that cable operators provide telecommunications services, they become subject to the telecom rate.

The cable-only and telecom formulas are expressed as follows:

$$\text{Maximum rate (cable-only)} = \frac{\text{space occupied}}{\text{total usable space}} \times \text{net cost of a bare pole} \times \text{carrying charge rate}$$

$$\text{Maximum rate (telecom)} = \text{attacher responsibility percentage} \times \text{net cost of a bare pole} \times \text{carrying charge rate}$$

The annual costs of owning and maintaining a pole are calculated in the same manner for both the cable-only and telecom formulas. In both of these formulas, the net cost of a bare pole is multiplied by the carrying charge rate to determine the annual cost of owning and maintaining a single pole. That annual cost figure is then multiplied by the percentage of those costs that are allocated to the attacher.

The only difference between the two formulas is the method by which the annual costs of owning and maintaining a pole are allocated. In most circumstances, and as explained fully below, the cost allocations included in the telecom formula will result in a rate for telecom attachments that is significantly higher than the cable-only rate.

Each of the elements of these formulas is discussed in more detail below. Special considerations apply to the rate calculation for electric cooperatives. First, since the vast majority of cooperatives are tax exempt, several items in the calculation may not be applicable. For example, the vast majority of cooperatives will not have any accumulated deferred income taxes. Also, three of Federal Energy Regulatory Commission's (FERC) "taxes" accounts (410.1, 411.4, and 411.1) may not apply. Instead, the only FERC taxes accounts that may apply are FERC accounts 408.1 (covering property taxes) and 409.1 (covering gross receipts taxes).

Second, the applicable rate of return may be calculated by the Goodwin formula, and that figure may replace the FCC's 11.25% default rate of return. The Goodwin formula calculates the rate of return needed to support the financing of plant growth and the retirement of capital credits. The formula is:

$$\text{Rate of return} = \frac{(1+g)^{n+1} - (1+g)^n}{(1+g)^n - 1} \times 100$$

where g is the growth of capitalization and n is the capital credit retirement cycle.

CALCULATING THE NET COST OF A BARE POLE

The net cost of a bare pole, as used in the formulas, represents the depreciated current value of a single pole minus accumulated deferred income taxes, multiplied by a factor of 0.85. The factor of 0.85 was devised by the FCC to remove the 15% of the total pole costs that the FCC believes is attributable to cross-arms and other utility pole items not used by attachers.

The calculations used to determine the net cost of a bare pole are listed below. For electric utilities, the accounts used by the FCC to calculate pole attachment rates are reported on FERC Form 1. A description of the various FERC Form 1 accounts is contained in the Code of Federal Regulations, at 18 C.F.R. Part 101.

$$\text{Net cost of a bare pole} = \frac{\text{factor } (0.85) \times (\text{net pole investment})}{\text{number of poles}}$$

$$\text{Net pole investment} = \begin{matrix}\text{gross pole investment} \\ \text{(account 364)}\end{matrix} - \begin{matrix}\text{accumulated depreciation} \\ \text{(account 108) (poles)}\end{matrix} - \begin{matrix}\text{accumulated deferred income taxes} \\ \text{(accounts 190, 281-293)}\end{matrix}$$

CALCULATING THE CARRYING CHARGE RATE

The carrying charge rate is expressed in terms of a percentage and represents the percentage of the net costs of a bare pole that is attributable each year to the administration, maintenance, and depreciation of poles, as well as to the payment of taxes and the collection of a return on the pole owner's investment in those poles. The annual cost to the utility of owning and maintaining a pole is determined by multiplying the carrying charge rate by the net cost of a bare pole.

The carrying charge rate is composed of five elements, as follows:

Carrying charge rate = administrative + maintenance + depreciation + taxes + return

Each of these five components is calculated as follows:

$$\text{Administrative element} = \frac{\begin{matrix}\text{total general and administrative} \\ \text{(account 920-935)}\end{matrix}}{\begin{matrix}\text{gross plant investment} \\ \text{(electric)} \\ \text{(accounts 350-373)}\end{matrix} - \begin{matrix}\text{accumulated depreciation} \\ \text{(account 108-electric)}\end{matrix} - \begin{matrix}\text{accumulated deferred taxes} \\ \text{(electric plant)} \\ \text{(accounts 190, 281-283)}\end{matrix}}$$

$$\text{Maintenance element} = \frac{\begin{matrix}\text{account 593} \\ \text{(maintenance of overhead lines)}\end{matrix}}{\begin{matrix}\text{pole investment in} \\ \text{accounts 364, 365, 369}\end{matrix} - \begin{matrix}\text{depreciation (poles)} \\ \text{related to} \\ \text{accounts 364, 365, 369}\end{matrix} - \begin{matrix}\text{accumulated deferred} \\ \text{income taxes related to} \\ \text{accounts 364, 365, 369}\end{matrix}}$$

$$\text{Depreciation element} = \frac{\text{gross pole investment (account 364)}}{\text{net pole investment}} \times \text{depreciation rate for gross pole investment}$$

$$\text{Depreciation rate} = \frac{100\% - \text{accumulated depreciation \%} - \text{future net salvage \%}}{\text{average remaining life}}$$

$$\text{Taxes element} = \frac{\text{accounts (408.1)+(409.1)+(410.1)+(411.4)+(411.1)}}{\text{gross plant investment (total plant) (accounts 350-399)} - \text{accumulated depreciation (account 108)} - \text{accumulated deferred taxes (plant) (accounts 190, 281-283)}}$$

Return element = applicable rate of return

Attacher Responsibility Percentage

After the net cost of a bare pole is multiplied by the carrying charge rate to determine the total annual cost of owning and operating a pole, that total annual cost is multiplied by the attacher's "responsibility percentage" to determine how much of the annual cost the attacher is obligated to pay.

Cable-Only Rate Responsibility Percentage

In the cable-only formula, this responsibility percentage is easy to calculate. It is determined by taking the space occupied by the attachment and dividing that figure by the total amount of usable space on the pole. This calculation is expressed as follows:

$$\text{Cable-only responsibility percentage} = \frac{\text{space occupied}}{\text{total usable space}}$$

For purposes of its rate calculations, the FCC presumes that the space occupied by an attachment is 1 foot, and that the total amount of usable space on an average 37.5-foot pole is 13.5 feet. According to these rebuttable presumptions, the cable-only responsibility percentage equals 1/13.5, or 7.4%. Accordingly, the FCC's cable-only formula requires cable companies to pay 7.4% of the total annual pole costs.

Telecom Rate Responsibility Percentage

The telecom rate allocation is viewed by the utility industry as inequitable, but it does allocate more costs to attachers than the cable-only rate. According to the telecom formula, the total annual pole costs are divided pro rata into usable space and unusable space portions, based on the percentage of the total pole height (presumed to average 37.5 feet) that the usable space (13.5 feet presumed) and unusable space (24 feet presumed) occupy. The costs assigned to the usable and unusable space portions of the pole are then allocated to the attachers, but different allocations are used for the usable portion than for the unusable portion.

The costs associated with the usable space portion of the pole are allocated to the attacher on the basis of the percentage of the usable space (presumed to be 1/13.5, or 7.4%) used by the attacher. The costs associated with the unusable space portion of the pole are allocated differently.

One-third of the unusable space costs are allocated exclusively to the utility pole owner. The other two-thirds of unusable space costs are allocated equally among all attachers, including the utility pole owner. Combining these allocations for usable and unusable space, the formula for determining the responsibility percentage for telecom attachers is:

$$\text{Telecom responsibility percentage} = \frac{\text{space occupied} + \left(\frac{2}{3} \times \frac{\text{unusable space}}{\text{no. of attaching entities}}\right)}{\text{pole height}}$$

COMPARISON OF THE FCC'S CABLE-ONLY AND TELECOM RATE FORMULAS

As explained, the cable-only and telecom rates are calculated by using the net costs of a bare pole and the carrying charge rate. In both cases, these two elements of the formula are multiplied together to determine the annual cost of owning and maintaining a pole. The sole difference between the cable-only and telecom formulas lies in how those annual costs are allocated to the attacher.

A comparison of rates resulting from the two FCC formulas is instructive. For purposes of this comparison, the FCC's rebuttable presumptions relating to space occupied, unusable space, and pole height will be used. Accepting these assumptions, if only two entities are attached to the pole, the telecom rate results in the regulated attacher being responsible for 24% of the total annual pole costs, which is 3.2 times greater than the 7.4% responsibility percentage calculated for the cable-only rate. The telecom rate, in fact, will always be higher than the cable-only rate until the number of attaching entities under the telecom rate equals nine. Table 3.2 compares the differences between the cable-only and telecom rates, on the basis of the number of attachers used for the telecom formula:

TABLE 3.2: Responsibility Percentages

Cable-only rate	**0.074**
Telecom rate	
2 attachers	**0.24 (3.2 times greater)**
4 attachers	**0.13 (1.8 times greater)**
6 attachers	**0.098 (1.3 times greater)**
8 attachers	**0.080 (1.1 times greater)**
9 attachers	**0.074 (same as cable)**

PHASE-IN OF THE FCC TELECOM RATE FORMULA

The 1996 Telecommunications Act recognized that higher pole attachment rental rates would result from implementation of the telecom formula, and required that those rate increases be phased in at the rate of 20% per year, beginning on February 8, 2001 (five years after the effective date of the 1996 Telecommunications Act). Thus, in July 2003, regulated utility pole owners whose attachments are subject to the FCC formula are entitled to charge their telecom attachers the cable-only rate plus 60% of the difference between the cable-only and telecom rates.

UNREGULATED CO-OPS AND THE LOWER CABLE-ONLY RATE

Neither the House Report, Senate Report, or Conference Report leading up to enactment of the 1996 Telecommunications Act explains why Congress adopted a higher rate for telecom attachments than for cable-only attachments. The House Report, however, did indicate that cable companies were furnished with a low pole attachment rate in 1978 in order "to spur the growth of the cable industry, which in 1978 was in its infancy." (H.R. Rep. No. 104-204, at 91 (1995).)

When deciding whether to adopt a formula that results in higher pole attachment rates, cooperatives should bear in mind that when Congress enacted the original Pole Attachment Act in 1978, it exempted cooperatives from FCC regulation in part because cooperatives were in the best position to determine what is best for their members and were charging attachers low pole attachment rates. Congress recognized that many members of cooperatives were cable subscribers themselves and stated that co-ops could be relied on to determine an equitable distribution of pole costs between themselves and the cable companies. (S. Rep. No. 95-580, at 18 (1977).) For these reasons, among others, the decision whether to impose higher pole attachment rates has been left largely to the discretion of the co-ops.[1]

ADVANTAGES AND DISADVANTAGES TO USING THE FCC RATE FORMULAS

Unregulated electric co-ops should consider the following advantages to using the FCC formulas to calculate pole attachment rates:

- If used according to FCC rules, the rates are unimpeachable. The rate formulas are sanctioned by the U.S. Congress, have been adopted by most of the states that regulate pole attachments, and are the most widely accepted methodologies for calculating pole attachment rates.
- The FCC has a history of rate regulation and individual administrative decisions that can be relied on in case of dispute.
- The formulas produce a cost-based rate and, therefore, satisfy the federal tax law requirement that cooperatives operate on a cost basis.
- The FCC rate formulas would invite the least amount of either state or federal regulation.

Unregulated electric co-ops should consider the following disadvantages to using the FCC formulas to calculate pole attachment rates:

- The formulas do not allocate costs to attachers that, it can be reasonably argued, should be allocated to them.
- The FCC's rate regulation decisions generally are unfavorable to electric utilities.
- There is no current justification for the different treatment of cable-only and telecommunications company attachers,

except that Congress wanted to encourage the growth of cable in 1978 when cable was in its infancy

- The formulas are not all-inclusive and do not address rates for carrier's carriers, Internet-only companies, and incumbent local exchange carriers, whose rates are negotiated, not regulated.

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[1]See "Legal and Regulatory Issues," for a full discussion on the legislative history of the Pole Attachment Act of 1978.

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EXHIBIT PDK 3

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

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DOCKET NO. P-100, SUB 133j

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Generic Proceeding on the Provisioning of Collocation Space	))	ORDER ADDRESSING COLLOCATION ISSUES

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, beginning November 28, 2000 and ending November 30, 2000

BEFORE: Chairman Jo Anne Sanford, Presiding; Commissioners Ralph A. Hunt, Judy Hunt, William R. Pittman, Robert V. Owens, Jr., and Sam J. Ervin, IV

APPEARANCES:

FOR ALLTEL COMMUNICATIONS, INC. (ALLTEL):

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FOR AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC. (AT&T):

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FOR BELLSOUTH TELECOMMUNICATIONS, INC. (BELLSOUTH):

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FOR THE NEW ENTRANTS:

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FOR WORLDCOM, INC., AND MCIMETRO ACCESS TRANSMISSION SERVICES, L.L.C. (WORLDCOM OR MCIM)

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FOR THE USING AND CONSUMING PUBLIC:

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BY THE COMMISSION: On August 5, 1999, BlueStar Communications, Inc. (BlueStar), Hyperion Communications, Inc. (Hyperion), ICG Telecom Group, Inc. (ICG), KMC Telecom Inc. (KMC), NEXTLINK (NEXTLINK), and the Southeastern Competitive

Carriers Association (SECCA)[1], collectively referred to as the New Entrants filed a Petition in Support of the Establishment of a Generic Docket Concerning the Provisioning of Collocation Space in North Carolina. In the Petition, which was filed in Docket No. P-100, Sub 133, the New Entrants stated that the provisioning of collocation space has become a key hurdle hindering the New Entrants' attempts to enter local exchange markets in North Carolina.

In their Petition, the New Entrants acknowledged the Federal Communications Commission's (FCC's) most recent order prescribing some national standards for collocation (First Report and Order and Further Notice of Proposed Rule Making (FNPRM), CC Docket No. 98-147, released March 31, 1999). In that Order, the FCC stated that, "we strengthen our collocation rules to reduce the costs and delays faced by competitors that seek to collocate equipment in an incumbent LEC's central office" (¶ 6). However, the New Entrants stated that standards and rules concerning the provisioning of collocation space have been left for State implementation, as have issues concerning enforcement of those standards and rules.

Specifically, the New Entrants noted the following paragraphs of the First Report and Order and FNPRM:

> ". . .We urge the states to ensure that collocation space is available in a timely and pro-competitive manner that gives new entrants a full and fair opportunity to compete." ¶ 55
>
> ". . .Because of the importance of ensuring timely provisioning of collocation space, we encourage state commissions to ensure that incumbent LECs are given specific time intervals within which they must respond to collocation requests." ¶ 54

The New Entrants maintained in their Petition that they face widespread problems in obtaining collocation space from the incumbent local exchange companies (ILECs) in North Carolina. The New Entrants stated that the problems range from delays in responses to collocation requests, failure to allow tours of facilities, repeated delays in provisioning collocation space and improper denials of collocation requests. The New Entrants stressed that the ability to have collocation space on a reasonable schedule is essential to the New Entrants' ability to do business in North Carolina.

The New Entrants correctly noted that there are several complaint proceedings pending before the Commission concerning collocation issues. The New Entrants

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[1] SECCA's members are: ITC^DeltaCom, Inc., ICG Communications, MCI WorldCom, e.spire Communications, Business Telecom, Inc., Competitive Telecommunications Association, Time Warner Telecom, NEXTLINK, Telecommunications Resellers Association, Qwest Communications, AT&T Communications of the Southern States, State Communications, US LEC Corporation and NewSouth Communications, Corp.

maintained that while those complaints bring individual problems to the Commission's attention, complaint proceedings are not a customary or practical forum for developing statewide standards and rules.

The New Entrants noted that one of the complaints, filed by Sprint Communications Company, L.P. on June 10, 1999, requests that a generic docket be created for the purpose of establishing procedures for managing the provisioning and denial of collocation (Docket No. P-19, Sub 330).[2] The New Entrants stated that they join in Sprint's request for a generic docket to establish standards and rules for the provisioning of collocation space in North Carolina. The New Entrants also stated that they believe that practical and meaningful enforcement procedures should be established.

On September 1, 1999, the Commission issued an Order Ruling on Petition in Support of a Generic Docket Concerning Provisioning of Collocation Space. In its Order, the Commission acknowledged that the provisioning of collocation is crucial to the New Entrants in providing local exchange telephone service in North Carolina. The Commission stated that it was of the opinion that it is important for the Commission to encourage the resolution of collocation issues as discussed by the New Entrants in their Petition through negotiation and, if necessary, a generic investigation. The Commission also stated that it believed that in order for the Commission to effectively and efficiently participate in establishing any State collocation standards or rules, specific, generic collocation issues should be presented to the Commission for resolution.

In the Order, the Commission requested that the New Entrants form a Task Force open to all competing local providers (CLPs) and ILECs in North Carolina which wish to participate. The Commission further requested that the Public Staff participate on the Task Force and invited the Attorney General to participate on the Task Force if he so chooses. The Commission also requested that the Task Force select a facilitator to assist in the Task Force's attempt to generate mutually agreeable State standards and rules concerning the provisioning of collocation to be submitted to the Commission. The Commission further requested that the Task Force inform the Commission in a timely manner of the date, time, and location of all Task Force meetings. The Commission instructed that after all attempts to resolve any outstanding collocation issues have been exhausted, the Task Force should create a list of specific, detailed collocation issues on which the Task Force could not agree for consideration on a generic basis as well as those upon which it could agree. The Commission stated it would then conduct a generic investigation to consider the specific collocation issues which the Task Force was unable to resolve.

On October 29, 1999, the Task Force filed its First Report.

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[2] On August 6, 1999, Sprint filed its Voluntary Dismissal, Without Prejudice of Complainant Sprint Communications Company L.P. Sprint stated that after extensive discussions, the Companies have come to an understanding which will, when implemented, resolve the issues in the Complaint proceeding. By Order dated August 10, 1999, the Commission granted Sprint's Voluntary Dismissal, Without Prejudice.

On January 28, 2000, the Commission issued an Order in Docket No. P-100, Sub 133d ruling on comments and reply comments filed regarding the cost studies filed by the ILECs on September 17, 1999 in response to the Commission's August 18, 1999 Order Ruling on Motion for Reconsideration and Clarification and Comments in Docket No. P-100, Sub 133d (the general proceeding to determine permanent pricing for unbundled network elements). In its Order, the Commission noted that it first required TELRIC-based collocation cost studies in its August 18, 1999 Order and that from the comments received on the ILECs' cost studies, it appeared that there was considerable debate whether the collocation cost studies were indeed TELRIC-based. The Commission stated that it believed that the issue of collocation rates was of great significance in the future development of local competition in the State and, therefore, the Commission deferred the issue of final collocation rates to this docket in order to fully examine and consider the ILECs' collocation cost studies. However, the Commission ordered that the collocation rates filed by the ILECs on September 17, 1999 should be used as the interim collocation rates until final rates were established by the Commission.

On January 31, 2000, the Task Force filed its Second Report on the progress of the Task Force.

On May 19, 2000, the Task Force filed its Third and Final Collocation Report. In its Final Report, the Task Force attached as Exhibit A a form of the Standard Offering agreed to by the CLPs and Sprint and proposed a specific procedural schedule for the docket.

On June 2, 2000, the Commission issued an Order Setting Hearing in this docket. The Commission scheduled the evidentiary hearing to begin on November 27, 2000, with direct testimony to be filed on September 1, 2000, rebuttal testimony on November 1, 2000, and rebuttal testimony on rates and cost studies to be filed on November 10, 2000.

On July 20, 2000, Carolina, Central, and Sprint filed a Motion to Hold Proceedings in Abeyance pending a decision from the Eighth Circuit. On July 21, 2000, the Commission issued an Order Extending the Time for Intervenor Testimony and Deferring Ruling on Sprint's Motion in the collocation docket calling the Motion premature.

On July 28, 2000, Verizon (f/k/a GTE South, Inc.) filed an Expedited Motion to Hold Proceedings in Abeyance citing the same issues as Sprint did in its July 20, 2000 Motion. On August 2, 2000, the Commission issued its Order Denying Verizon's Motion to stay the proceedings. On August 9, 2000, Verizon filed a Motion for Reconsideration of the Commission's August 2, 2000 Order. By Order dated August 14, 2000, the Commission denied Verizon's Motion for Reconsideration.

On August 22, 2000, the Commission issued an Order Regarding Resolution of Issues wherein the Commission granted recommendations of MCIm and BellSouth to transfer certain arbitration issues to this generic collocation docket.

On August 24, 2000, the Commission issued an Order Extending Time for Filing Direct Testimony based on a Motion filed by Sprint. The filing date for direct testimony was extended to September 15, 2000.

On September 20, 2000, the Commission issued an Order Concerning Transfer of Additional Issues wherein the Commission transferred an arbitration issue from the Sprint/BellSouth arbitration docket to this generic collocation docket.

On October 3, 2000, BellSouth filed a Motion to request that the Commission establish interim intervals for collocation provisioning pending the establishment of permanent intervals as part of the Commission's final order in this docket. On October 9, 2000, the New Entrants filed a Response to BellSouth's Motion stating that the proposed intervals were too long and unnecessary. Also on October 9, 2000, the Public Staff filed its Response to BellSouth's Motion. The Public Staff agreed with BellSouth that the Commission should adopt interim intervals but proposed intervals different from those proposed by BellSouth. On October 12, 2000, Verizon filed a Response to BellSouth's Motion and on October 13, 2000, the New Entrants filed a Reply to the Public Staff's Response. Also, on October 13, 2000, the Public Staff filed a correction to its Response.

On October 16, 2000, the New Entrants filed an Objection and Motion to Strike the supplemental direct testimony of BellSouth witnesses Caldwell and Hendrix as well as the supplemental cost study filed by BellSouth on October 13, 2000 which concerned the issues of virtual collocation and remote site collocation. By Order dated October 26, 2000, the Commission granted the Motion to Strike Supplemental Direct Testimony and requested that the Collocation Task Force re-convene at a convenient point after the Proposed Orders and Briefs were filed in this docket to consider virtual collocation and remote site collocation.

On October 17, 2000, the Commission issued its Order Denying Motion to Establish Interim Intervals. The Commission noted that it would be a misuse of resources to devote an inordinate amount of time to the alternative resolution of an issue on an interim basis when default intervals have already been set by the FCC and the whole matter would be resolved in a relatively short time frame.

On October 26, 2000, the Commission issued an Order rescheduling the hearing in this docket as requested by BellSouth to begin on November 28, 2000.

On November 22, 2000, a Pre-Hearing Order was issued which outlined the order of witnesses and other procedural issues.

The hearing was held as scheduled, starting on November 28, 2000 and ending on November 30, 2000.

On January 18, 2001, as indicated at the close of the hearing, the New Entrants and Sprint jointly filed their Composite Standard Offering. The Parties noted that the revised Composite Standard Offering included several errata changes, a provision concerning self-insurance, and language agreed to by the New Entrants and Sprint that resolved Sprint Issues Nos. 2, 3, and 7.

After a Motion for Extension of Time, Proposed Orders and Briefs were filed by the Parties on February 16, 2001.

On March 20, 2001, the Parties filed a Notification that Issue No. 72 had been resolved. On April 18, 2001, the Parties filed a Notification that Issue No. 73 had been resolved. Finally, on April 19, 2001, the Parties filed a Notification that Issue No. 67 had been resolved.

On April 27, 2001, the New Entrants filed a letter with the Commission stating that they prefer to leave the issues of remote site physical collocation and virtual collocation to individual company negotiations and will not be pursuing Task Force negotiations or a hearing on these issues.

On August 8, 2001, the FCC issued its Fourth Report and Order in CC Docket No. 98-147, Deployment of Wireless Service Offerings Advanced Telecommunications Capability (Collocation Remand Order or Remand Order) in which the FCC re-evaluated provisions of its collocation rules on remand from the United States Court of Appeals for the District of Columbia Circuit. On August 14, 2001, the Commission issued an Order soliciting comments from the Parties on the impact of the Collocation Remand Order on this docket.

A Motion for Extension of Time to file comments was filed, and on August 20, 2001, the Commission granted the Motion. Comments were filed by the Parties on September 14, 2001.

On October 19, 2001, BellSouth filed a Motion to Allow Expedited Filings of Cost Studies. In its Motion, BellSouth informed the Commission of its willingness and desire to file its responsive cost studies/rates sooner than the traditional 30-day period. BellSouth proposed a flexible filing schedule to be applied to assist the Commission in finalizing the rates at issue in this generic collocation docket. BellSouth requested that the Commission allow BellSouth, Carolina/Central, and Verizon the flexibility to file compliant cost studies/rates as soon as possible, but not to exceed 30 days from the date of the Commission's final order and then instruct the Public Staff to conduct its review of the ILEC cost studies/rates in a staggered fashion and make its recommendations to the Commission upon its completion of its review of each ILEC's cost studies.

On October 24, 2001, Intermedia Communications, Inc. filed a letter seeking to substitute as its counsel in this proceeding, Ralph McDonald, with the firm of Bailey and Dixon, for its current counsel, Parker, Poe, Adams & Bernstein L.L.P.

A glossary of the acronyms referenced in this Order is attached hereto as Appendix A.

WHEREUPON, based upon a careful consideration of the entire record in this proceeding, the Commission now makes the following

FINDINGS OF FACT

1. The terms of the Standard Offering should be made available to the Parties when a CLP makes a bona fide written request for interconnection. The Parties may file it as an attachment to their interconnection agreement; amendments to the interconnection agreement should be express and in writing; the ILECs may not negate or supersede the terms of the Standard Offering; the Parties may negotiate additional terms that are expressly related to collocation; and logically related sections of the Standard Offering should be available on a "pick and choose" basis. The Commission will not arbitrate as to issues that deviate from the Standard Offering.

2. The appropriate use of collocation space by a CLP should be in accordance with the Conclusions set out in the discussion of Issue No. 2.

3. CLPs obtaining collocation through the Standard Offering are obligated to pay the rates and charges as determined by the Commission in this docket.

4. A definitive term is not appropriate for the Standard Offering because the document, which merely sets forth the minimum, or default, terms and conditions by which a CLP may physically collocate equipment within an ILEC's facilities, will remain in effect after approval by the Commission until the Commission adopts changes to its terms or rates.

5. Prior to Commission approval of an interconnection agreement, the Standard Offering, not tariffs, is the mechanism for provisioning collocation space.

6. The Commission may supplement the FCC rules when necessary to carry out collocation in a timely and procompetitive manner that is consistent with the Act and its goal of furthering competition.

7. Section 2.1 of the Standard Offering outlines the conditions under which an ILEC must make collocation space in its premises available to competitors. That section provides, in the initial sentence thereof, that there shall be a rebuttable presumption that

space is available for physical collocation in an ILEC premises. Such sentence should be eliminated from the text of Section 2.1 because it serves no purpose.

8. It is appropriate to require CLPs to file a separate application and pay a separate application fee for each central office in which they wish to collocate. The Parties should amend Section 2.1 of the Standard Offering in accordance with the Conclusions set out in the discussion of Issue No. 9.

9. A CLP proposing to collocate must submit an initial application to the ILEC that is sufficiently detailed to enable the ILEC to accurately estimate the quantities of space, power, air conditioning, and other infrastructure and services the ILEC would be expected to furnish for a period of 24 months following the initial collocation space occupancy date. Sections 6.1 through 6.1.3 of the Standard Offering should be revised in conformity with the Conclusions set out in the discussion of Issue No. 10.

10. CLPs must submit a subsequent application and appropriate fee to ILECs whenever the CLP proposes changes to its collocation space that exceed the 24-month forecast of collocation requirements. Sections 6.1.2 and 6.1.3 of the Standard Offering should be revised to reflect that the subsequent application and any infrastructure changes that are required in response to it should be handled just as for an initial collocation application. The subsequent application, like the initial application, will include a 24-month forecast of collocation requirements.

11. Section 6.1.4 of the Standard Offering addresses whether a CLP may apply for different methods of collocation on one application while only paying the rate for a single type of collocation per application. Section 6.1.4 should be amended to reflect that an ILEC cannot charge more than a single application fee for any collocation application that requests caged and cageless collocation.

12. If the CLP's collocation space must be moved within an ILEC's premises, then the CLP should not have to pay application fees - the ILECs should be aware of the CLP's needs from provisioning the initial collocation space. If, however, the CLP must move from one ILEC premises to another, from an adjacent space collocation structure to an ILEC premises, then the CLP should bear the costs of this move, including any necessary application fees. If the ILEC had to similarly relocate, it would also bear these costs. Since neither the CLP nor the ILEC is at fault for a government-required relocation, the equitable remedy is to require the CLP to bear the costs of its own relocation. Sections 14.2 and 14.3 of the Standard Offering should be revised in conformity with the Conclusions set out in the discussion of Issue No. 13.

13. With respect to the issue of the appropriate terms and conditions applicable to revisions to an initial request for physical collocation (both before and after a Firm Order), including but not limited to application type, interval, and appropriate application

fees, Section 6.3.4 of the Standard Offering should be revised to be in compliance with the language in the Conclusions set out in the discussion of Issue No. 14.

14. An ILEC is obligated to begin construction and implementation of a collocation arrangement once it receives a completed application and 50% of the nonrecurring charges from a CLP, even if the CLP has not yet received state certification and has not yet entered into an effective interconnection agreement. Section 6.12 of the Standard Offering should be revised in conformity with the Conclusions set out in the discussion of Issue No. 15.

15. Intervals should be stated in calendar days and if the time interval is 10 days or fewer, the intervals should exclude national holidays. Further, if a due date falls on a national holiday or a weekend, then the next workday should be the due date. It is appropriate to recognize as national holidays those which govern time computation in federal court, as follows: New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, and Christmas Day.

16. Section 2.2.2 of the Standard Offering should be revised to include the following intervals to recognize multiple collocation applications:

1-5 applications - 15 calendar days
6-10 applications - 20 calendar days
11-15 applications - 25 calendar days
16-20 applications - 30 calendar days
21-25 applications - 35 calendar days
etc. . . .

Further, no variance to the intervals is to be recognized due to the location of the requested space within the top 100 MSAs.

17. Concerning provisioning intervals, the Commission adopts the following provisioning intervals for inclusion in the Standard Offering:

(a) Space Availability Notification after receipt of Application	15 calendar days (See also Issue No. 18(j))
(b) Notification of carriers on the waiting list of space availability	10 calendar days
(c) Reaffirmation by CLP of collocation request	10 calendar days
(d) Updates to space availability list on website	10 calendar days
(e) ILEC review of CLP plans and specifications	15 calendar days

(f) CLP notification to ILEC of Guest/Host arrangements	12 calendar days after execution of agreement
(g) ILEC review of CLP plans and specifications for adjacent collocation arrangement	30 calendar days
(h) ILEC notification to CLP that space is ready for occupancy	5 calendar days
(i) ILEC notification to CLP prior to ILEC gaining access to Collocation Space	3 calendar days
(j) Application Response	15 calendar days - complete with firm price quote
(k) Application Response for multiple applications (See Issue No. 17)	1-5 in 15 calendar days 6-10 in 20 calendar days 11-15 in 25 calendar days 16-20 in 30 calendar days 21-25 in 35 calendar days etc. . . .
(l) CLP acceptance of ILEC quotation for Collocation Space	7 calendar days
(m) Bona Fide Firm Order	7 calendar days
(n) ILEC acknowledgment of receipt of Bona Fide Firm Order	7 calendar days
(o) Construction and Provisioning Intervals for Caged Space (See Issue No. 69)	90 calendar days from application date
(p) Joint Planning Meeting	12 calendar days from Bona Fide Firm Order
(q) Acceptance Walk Through	7 calendar days
(r) Construction and Provisioning Intervals for Cageless Space (See Issue No. 69)	60 calendar days from application
(s) ILEC provision of written report regarding space availability and multiple requests	1-5 in 15 calendar days 6-10 in 20 calendar days 11-15 in 25 calendar days 16-20 in 30 calendar days 21-25 in 35 calendar days etc. . . .

(t) Tour of ILEC premises upon denial of space	10 calendar days and floor plans/diagrams 48 hours prior to tour

18. There should be no differentiation between active and inactive collocation space.

19. Consistent with Findings of Fact Nos. 17 and 18, ILECs are not obligated to precondition space such that the space be defined as "active space".

20. Procedures for evaluating space denials by the ILECs should be included in the Standard Offering and not established in a separate procedural order. The procedures are established in Finding of Fact No. 30.

21. Section 2.6 of the Standard Offering should be amended to require ILECs to include additional useful information on their websites. Accordingly, in this regard, the ILECs should include the following information on their websites:

(1) list of its central offices with no available collocation space;
(2) measures that the ILEC is taking at each central office to create additional collocation space;
(3) projected date when more collocation space will be available; and
(4) notice whenever space becomes available at any of the previously exhausted locations.

22. Section 2.1.3 should be removed from the Standard Offering. Section 2.3.1 is adopted without modification for inclusion in the Standard Offering. The phrase "and to the Commission" should be removed from Section 2.3.2 such that the ILEC will provide the detailed information regarding a denial of space only to the CLP and not also to the Commission at this particular point in the procedures for space denial.

23. Sections 2.1.4 and 2.1.5 of the Standard Offering should be removed, and Section 2.3 should be adopted without modification.

24. Section 2.2 should be revised to reflect new Rule 51.321(h). Section 2.2 is amended as follows:

> **2.2** - Reporting Requirement. Upon request from the CLP, the ILEC will provide a written report (space availability report) within 10 days of the submission of the request describing in detail the space that is available for collocation in a particular ILEC premises. The report must specifying the amount of collocation space available at ~~the~~ each ~~Premises~~ requested Premises, the number of collocated CLPs present at the

> Premises, any modifications in the use of the space since the last report on the Premises requested and the measures the ILEC is taking to make additional space available for collocation arrangements.

Further, Section 2.2.1, pertaining to premises CLLI code reporting, should be included in the Standard Offering without modification.

25. Section 2.3.3 of the Standard Offering is adopted with an amendment to reflect that the information provided to the Third-Party Engineer is subject to proprietary protections.

26. Section 3.7 of the Standard Offering which requires that an ILEC remove unused, obsolete equipment prior to making a determination that space is legitimately exhausted should be included in the Standard Offering without modification.

27. Section 3.7.1 of the Standard Offering, as proposed by the CLPs, which requires ILECs to relocate administrative office personnel that are not essential to the function of the central office before denying physical collocation requests is appropriate and should be included without modification in the Standard Offering.

28. The appropriate space reservation period is two years or 24 months for both CLPs and ILECs, and Section 2.1.1 of the Standard Offering should be amended as follows:

> 2.1.1 Space Reservation. The ILECs and CLPs may reserve floor space for their own specific uses for ~~the remainder of the current year, plus twelve (12) months~~ a maximum of two years (or 24 months). . .

29. ILECs should proactively remove obsolete, unused equipment from their central offices and bear the costs of removing such equipment.

30. The following procedure is appropriate for ILECs seeking waivers (i.e., acknowledgments) that a particular central office has no available collocation space:

(1) ILEC denies a CLP application for collocation based on lack of space;
(2) CLPs requests a tour of the central office and is granted a tour within 10 calendar days of denial;
(3) CLP also receives supporting documentation as outlined in Sections 2.3.1 and 2.3.2 (and addressed in Finding of Fact No. 22);
(4) In accordance with Section 2.3.1, the CLP will advise the ILEC, both orally and in writing, if, **after the inspection tour**, it disagrees with the ILEC's denial of space based on space exhaust;

(5) The CLP and the ILEC, in accordance with Section 2.3.1, will concurrently prepare a report detailing its own filings of the inspection tour and each party should concurrently serve the reports on each other however the Parties will not file the reports with the Commission at this time in conjunction with the Commission's conclusions in Finding of Fact No. 22;

(6) In accordance with Section 2.3.3, the CLP which contests the ILEC's position concerning the denial of space has the option of requesting a third-party engineer to review the denial. If the CLP, after reviewing the third-party engineer's report, still disagrees with the ILEC's denial, then, and **only then**, will the dispute come before the Commission for resolution;

(7) At this time, the CLP and the ILEC should file a copy of the reports provided in Item #5 with the Commission. The CLP should also file a copy of all of the supporting documentation it has received based on Sections 2.3.1 and 2.3.2 along with the report issued by the third-party engineer, if one was requested, with the Commission for its review; and

(8) The Commission will make a determination on the appropriateness of the ILEC's denial of space due to space exhaust.

The Commission does not believe that it must issue blanket waivers to ILECs for space denials and that it should not address denials for space due to exhaust **unless a CLP actually disagrees** with such a finding.

31. Local building codes, especially relating to permitting issues, should not affect the collocation intervals provided for elsewhere in this Order, provided however, that if an intractable timing problem exists, an ILEC may seek a waiver from the Commission upon a showing of extraordinary circumstances.

32. CLPs should use an ILEC-certified vendor when having work performed at an ILEC's premises. Additionally, the guidelines and specifications which address and insure safety and network security and thus protect the integrity of the network should be complied with by the CLPs.

33. ILECs are entitled to inspection rights in accordance with the Conclusions set out in the discussion of Issue No. 34.

34. ILECs are required to provide AC and DC power from the central office to adjacent collocation, upon request, where technically feasible. This power should have the same performance and reliability characteristics as the power that the ILEC provides to collocations within its central office. The CLP should have the option to secure its own AC power to the adjacent structure from the same provider that furnishes commercial AC power to the ILEC. The ILEC should only be required to provide the power to the

demarcation point of the adjacent collocation site. Any converting or fusing of the power source beyond that point will be the responsibility of the CLP. If an ILEC receives a request to provide power to an adjacent collocation space, within 45 days the ILEC and the CLP shall either negotiate a mutually agreed-upon price or the ILEC shall submit a cost study and proposed generic rates for providing power to adjacent collocation spaces for Commission approval.

35. The following language should be included in the Standard Offering:

> Neither Party shall knowingly deploy or maintain any circuits, facilities or equipment that: Interferes with or impairs service over any facilities of the other party or a third-party, in excess of interference or impairment explicitly permitted by Applicable Law or national standards; causes damage to the other Party's plant; or creates unreasonable hazards to any person. The Parties are required to ensure that voice-grade service, especially when it provides access to emergency services and the like, not be subject to degradation, impairment, or interference and that the parties must act in the public interest when working out any disputes.

36. The issue of whether the ILEC may require the use of ILEC-certified vendors for janitorial services has been resolved between the Parties.

37. ILECs and CLPs should all be required to abide by the Environmental Hazard Guidelines (EHG), and language to that effect should be included in the interconnection agreement. The EHG should also be attached to the interconnection agreement.

38. Section 6.10 of the Standard Offering should be amended to direct the ILECs to exercise prudent judgment and avoid unnecessary relocations of virtual collocation arrangements, and to take all necessary steps to reduce the possibility of service disruptions to CLP customers whenever these relocations are required.

39. A CLP that cancels a collocation order should reimburse the ILEC for its nonrecoverable expenses up to the time the ILEC receives written notification. The reimbursement of costs to the ILEC should be based on the costs incurred by the ILEC, less the estimated net salvage value of the work performed up to the time of the cancellation notification.

40. The CLPs should be required to meet Network Equipment and Building Specifications (NEBS) Level 1 and any safety requirements proposed by the ILEC that are no more stringent than the requirements the ILEC imposes on its own equipment. An ILEC that denies collocation of a CLP's equipment citing a failure to meet safety standards, must provide a list within five business days of the denial of all of the equipment that the

ILEC locates at the premises in question, together with an affidavit attesting that such equipment meets or exceeds the safety standard(s) that the ILEC claims the collocator's equipment fails to meet.

41. The ILEC should provision the same power and ground source to the collocation space as it provides for itself.

42. The Standard Offering should be amended to retain those provisions of Section 1.3 - Use of Space and Section 3.8 - Microwave Collocation which are consistent with current FCC rules and statutory interpretations of those rules, and are useful and acceptable to both parties, and to delete all other provisions.

43. ILECs are not required to provide circuit facility assignments (CFAs) until the collocation space is ready for use by the CLP and the equipment to be installed in the collocation space has been verified by the CLP. Furthermore, the ILEC should not be placed in a position of having to provide collocation space, without compensation, well before the CLP has determined its own equipment requirements.

44. The ILEC may designate the number and location(s) of demarcation points at each central office. The point of termination (POT) bay or frame may be used as a demarcation point. The Parties should negotiate the standards by which the ILEC will designate the demarcation points using the Standard Offering and the FCC's rule regarding space designation to guide the negotiations.

45. The Commission declines to accept either BellSouth's or Sprint's proposed language on the issue of the appropriate terms and conditions for the provision of cross-connects in the ILEC premises and instead requires the Parties to negotiate and develop mutually agreeable language for inclusion in the Standard Offering that is consistent with the findings of the FCC in its *Collocation Remand Order*. Generally, the Standard Offering should be amended to reflect that an ILEC may, but is not required, to allow collocating CLPs to provision their own cross-connects. The Standard Offering should instead reflect that, at the request of a collocating CLP, the ILEC must provide cross-connects between equipment in the collocated space of two or more telecommunications carriers, unless the ILEC allows the CLP to provision its own cross-connects or the cross-connect is not required as established by Rule 51.323(h)(2).

46. An ILEC should be required to conduct two accompanied site visits: one after the ILEC receives the bona fide firm order and a second at, or prior to, the transfer of the completed collocation space to the CLP.

47. As a policy, it is more appropriate to begin with the cost studies filed by the ILECs in this proceeding instead of looking toward the Texas Collocation Tariff rates as a starting point in establishing collocation rates.

Rate Issue No. 1 - Rate for Floor Space: BellSouth and Carolina/Central are instructed to re-examine their floor space cost studies and refile proposed rates that are more aligned with (1) the market rate of $1.00, (2) the rates the ILECs themselves receive for leased central office floor space, and (3) Verizon's proposed floor space rate of $2.02 per square foot. Further, Verizon's proposed floor space rate is adopted and approved for Verizon.

Rate Issue No. 2 - Availability Fee/Application Fee for Collocation: The ILECs should revise their cost studies for application fees to reflect no more than 24 labor hours.

Rate Issue No. 3 - Construction of a Cage: It is appropriate to apply Sprint's proposed nonrecurring charge of $559.81 per cage and $25.37 per linear foot for construction of a cage to BellSouth and Verizon.

Rate Issue No. 4 - DC Power: The Commission finds it appropriate to:

(1) require the ILECs to provide power in single amp increments if requested by a CLP to do so;
(2) require each ILEC to review its calculation of the annual charge factor (ACF) and remove any power expenses from the ACF;
(3) require the ILECs to use AC power costs from the applicable electric tariffs; and
(4) require ILECs to charge power costs on a "per fused amp" basis.

Rate Issue No. 5 - Rates for Cross-connects: The Parties should negotiate rates for cross-connects. The Commission directs the Parties to file negotiated rates for cross-connects for inclusion in the Standard Offering by January 28, 2002 and if such rates are not negotiated, then the Parties are required to instead file Supplemental Briefs discussing this issue in more depth by February 11, 2002.

Rate Issue No. 6 - Cable Installation: The Parties should negotiate rates for cable installation. The Commission directs the Parties to file negotiated rates for cable installation for inclusion in the Standard Offering by January 28, 2002 and if such rates are not negotiated, then the Parties are required to instead file Supplemental Briefs discussing this issue in more depth by February 11, 2002.

Rate Issue No. 7 - Security Costs:

(1) It is appropriate to allocate security costs to carriers based on square footage occupied in the central office as a recurring charge.
(2) The appropriate nonrecurring rate for security cards and keys is $15.00 per card or key issued.
(3) The ILECs should review their calculations of the ACF and remove any security costs.

Rate Issue No. 8 - Augmenting: The Parties should negotiate appropriate rates for augments. The Commission directs the Parties to file negotiated rates for inclusion in the Standard Offering by January 28, 2002 and if such rates are not negotiated, then the Parties are required to instead file Supplemental Briefs discussing this issue in more depth by February 11, 2002.

Rate Issue No. 9 - Adjacent Collocation: The Parties should negotiate appropriate rates for adjacent collocation. The Commission directs the Parties to file negotiated rates for inclusion in the Standard Offering by January 28, 2002 and if such rates are not negotiated, then the Parties are required to instead file Supplemental Briefs discussing this issue in more depth by February 11, 2002.

Rate Issue No. 10 - Premises Space Report: The Parties should negotiate appropriate rates for a Premises Space Report. The Commission directs the Parties to file negotiated rates for inclusion in the Standard Offering by January 28, 2002 and if such rates are not negotiated, then the Parties are required to instead file Supplemental Briefs discussing this issue in more depth by February 11, 2002.

48. The appropriate terms and conditions for shared collocation, including allocation of indemnities and payment for charges, should be in accordance with the Conclusions set out in the discussion of Issue Nos. 50 and 75.

49. The ILECs ultimately have the right to designate the sites of adjacent collocation arrangements, subject to 47 CFR 51.323(f)(7), the FCC's revised rules governing space designation. It is impermissible for the ILECs to discriminate unfairly between themselves and CLPs or between distinct CLPs. If a CLP believes that an ILEC has inappropriately refused to honor its reasonable request, the CLP may file a complaint with the Commission. The Parties should negotiate the details regarding this matter, including mutually agreeable language for Section 3.6 of the Standard Offering to reflect the conclusions reached herein by the Commission.

50. The ILECs have the right to designate the placement of cageless collocation equipment in their central offices; provided, however, that such designation is done in a just, reasonable, and nondiscriminatory manner which is consistent with the provisions of 47 CFR 51.323(f)(7)(A)-(D) and 47 CFR 51.323(i)(4)(i)-(v). If a CLP believes that it is being treated in a discriminatory manner by an ILEC in the siting of its collocation equipment, the CLP may file a complaint with the Commission. The Parties should negotiate the details regarding this matter, including mutually agreeable language for Section 3.1 of the Standard Offering to reflect the conclusions reached herein by the Commission.

51. The CLPs have failed to provide sufficient evidence that copper cable should generally be allowed other than in an adjacent collocation situation. Thus, central office entrance facilities should be limited to fiber optic cable unless the ILEC and CLP mutually

agree to placement of copper entrance facilities or the CLP can convince the Commission, in a complaint proceeding, to authorize such placement at a particular premises on a case-by-case basis. The CLPs should be required to provide and install fire retardant riser cable. The Parties should negotiate mutually agreeable language for Section 5.2 of the Standard Offering to reflect the conclusions reached herein by the Commission and those subsequently addressed in conjunction with Issue No. 70.

52. The ILECs are required by FCC rules to provide at least two interconnection points for each ILEC premises where there are at least two entry points for the ILEC's cable facilities and where space is available. If there are less than two entry points available or if there is no entry space available, the ILEC must provide the requesting CLP a tour of the entry facilities only (cable vault, manhole, etc.). Should the ILEC's central office require additional entry facilities and construction, then the ILEC must consider the CLP's request for additional entry facilities in its planning and design of the new entry facilities. The costs for these new facilities should be shared by the ILEC and requesting CLP on a use cost basis determined by negotiations between the two companies. The Parties should negotiate mutually agreeable language for Section 5.2.1 of the Standard Offering to reflect the conclusions reached herein by the Commission and those subsequently addressed in conjunction with Issue No. 71.

53. If a CLP augments its equipment within the initial forecast and no space preparation is required, then no fees or additional intervals should apply. Provisioning intervals for augmentations and additions should be as follows: (a) 30 days for administrative work, (b) 20 days for simple augments, (c) 45 days for minor augments, (d) 60 days for intermediate augments, and (e) 90 days for major augments.

54. The provisioning intervals for augmentations should be as follows: (a) 30 days for administrative work, (b) 20 days for simple augments, (c) 45 days for minor augments, (d) 60 days for intermediate augments, and (e) 90 days for major augments.

55. The proper levels of insurance for a CLP to obtain prior to occupying collocation space are set forth in Section 8 of the Standard Offering. The CLPs' proposed Section 8.1.4 should be included along with BellSouth's proposed changes to the wording of the section on workers' compensation insurance (BellSouth's Section 8.2.2), the addition of language informing the CLP of its right to procure business interruption and contingent business interruption insurance (BellSouth's Section 8.2.4), the inclusion of a requirement that certificates of insurance be submitted 10 days prior to the commencement of work in the collocation space (BellSouth's Section 8.5), and a requirement that the CLP must conform to the recommendations made by an ILEC's fire insurance company (BellSouth's Section 8.6).

56. Section 16.3 of the Standard Offering should be revised to require the ILECs to give CLPs seven calendar days' notice prior to undertaking construction activities which may pose risks to the CLPs' service.

57. Each ILEC may impose security requirements on CLP personnel that it believes are necessary to ensure the security and safety of the ILEC premises so long as these requirements are no more stringent than the requirements the ILEC places on its own employees or authorized contractors who are allowed access to its premises and that the security requirements are set out in writing and provided to the CLP in advance.

58. The inclusion of a provision requiring alternative or expedited dispute resolution in the Standard Offering is not required but the Parties are strongly encouraged to use some form of alternative dispute resolution.

59. The Commission declines to set terms and conditions for off-site arrangements for inclusion in the Standard Offering at this time. However, if a Party can demonstrate a significant need for an off-site arrangement, the Commission may be willing to revisit this issue pursuant to FCC requirements as they then exist.

60. The appropriate provisioning interval for caged collocation is 90 calendar-days from the collocation application date and the appropriate provisioning interval for cageless collocation is 60 calendar-days from the collocation application date. The provisioning intervals for caged and cageless collocation will be extended for any additional time beyond the seven calendar day interval established for the CLPs to place a bona fide firm order. Further, ILECs may **not** exclude time required to obtain building permits from the provisioning intervals provided however, if an intractable timing problem exists, an ILEC may seek a waiver from the Commission upon a showing of extraordinary circumstances. Thus, the need, if any to obtain building permits should generally not extend the collocation provisioning interval.

61. The CLPs have failed to provide sufficient evidence that copper cable should generally be allowed other than in an adjacent collocation situation. Thus, central office entrance facilities should be limited to fiber optic cable unless the ILEC and CLP mutually agree to placement of copper entrance facilities or the CLP can convince the Commission, in a complaint proceeding, to authorize such placement at a particular premises on a case-by-case basis. The Parties should negotiate mutually agreeable language for Section 5.2 of the Standard Offering and Section 7.21.1 of the MCIm/BellSouth Interconnection Agreement to reflect the conclusions reached herein by the Commission.

62. The CLPs are entitled to verify the ILEC's assertion, when made, that dual entrance facilities are not available. Through good faith negotiations, the ILECs should provide an inspection or tour for the requesting CLP to inspect the cable vaults and entrance manholes of central offices where dual entry facilities are not available. The ILECs should maintain waiting lists for entrance space and notify the CLPs, such as MCIm, when such space becomes available. The Parties should negotiate mutually agreeable language for Section 5.2.1 of the Standard Offering and Section 7.21.2 of the MCIm/BellSouth Interconnection Agreement to reflect the conclusions reached herein by the Commission.

63. Due to an insufficient record, the Commission is unable to make a conclusion regarding Issue No. 84 at this time.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

ISSUE 1: Under what circumstances are the terms of the Standard Offering available?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue.

AT&T:[3] AT&T stated that the Standard Offering should be available to a CLP certificated or upon becoming certificated in North Carolina. Related sections of the Standard Offering should be available on a "pick and choose" basis. In addition, AT&T can accept the arrangement offered by BellSouth provided that: (1) the ILECs would not seek to negate or supersede a provision of the Standard Offering through any provision of the interconnection agreement that does not deal expressly with collocation; (2) logically distinct sections of the Standard Offering would be available on a "pick and choose" basis; and (3) parties would remain free to negotiate additional or different terms expressly relating to collocation.

BELLSOUTH: The Standard Offering should be made available as an attachment to an interconnection agreement and should be governed by the terms and conditions of the interconnection agreement rather than as a stand-alone agreement. The offering would be available to all CLPs in the state of North Carolina requesting physical collocation.

MCIm: MCIm did not address this issue in its Brief.

NEW ENTRANTS: New Entrants took the same position as AT&T.

PUBLIC STAFF: The Standard Offering should be available to the parties when a CLP makes a bona fide written request for interconnection. The parties may file it as an attachment to their interconnection agreement. Amendments to the interconnection agreement that add collocation terms to the Standard Offering should be express and in writing.

SPRINT: Sprint stated that the Standard Offering should be an attachment to an interconnection or other agreement identifying the parties and stating the terms.

VERIZON: Terms should only be available to parties with an effective interconnection agreement.

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[3] AT&T, the New Entrants, and WorldCom filed a Joint Proposed Order.

WORLDCOM: WorldCom took the same position as AT&T.

DISCUSSION

Section 1.1 of the Standard Offering states, "The rates, terms, and conditions contained within this Standard Offering apply when the CLP is occupying the collocation space as a sole occupant or as a Host within a Premises location pursuant to Section 4." The CLPs contend that the Standard Offering should operate as a stand-alone document, setting forth all of the terms and conditions for collocation in North Carolina. BellSouth and Verizon disagreed with the CLPs' position and instead proposed that the Standard Offering operate as an attachment to an interconnection agreement.

In his prefiled rebuttal testimony, CLP witness Gillan stated that the CLPs could accept the position that the Standard Offering operate as an attachment to an interconnection agreement provided that:

(a) The ILECs would not seek to negate or supersede a provision of the Standard Offering through any provision of the Interconnection Agreement that does not deal expressly with collocation;

(b) Logically related sections of the Standard Offering (i.e. sections dealing with cageless or caged collocation) would be available on a pick and choose basis; and

(c) The parties remain free to negotiate and arbitrate additional or different terms that expressly relate to collocation.

In other words, the CLPs wanted the right to adopt the entire Standard Offering (or logically related sections) as an attachment to their interconnection agreement. In addition, the CLPs do not want the interconnection agreement to reverse or supersede provisions of the Standard Offering without a CLP's consent.

The Public Staff's view was that the Standard Offering should be available to the parties when the CLP makes a bona fide written request for interconnection. The parties should file it or an amended version of it as an attachment to the interconnection agreement, but such amendments should be express and in writing.

To ensure that collocation space is available in a timely and pro-competitive manner, the FCC, in its *Advanced Services Order*, urged the states to enact their own rules in certain areas relating to provisioning of collocation space.[4] Therefore, on

[4]See Development of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking paragraph 55 (Mar. 31, 1999) [hereinafter "Advanced Services Order"].

September 1, 1999, this Commission ordered that the CLPs and ILECs form a task force to resolve as many specific collocation issues as possible collectively.[5] The Commission anticipated that the result of the task force negotiations would be "mutually agreeable state standards and rules concerning the provisioning of collocation . . .".[6]

To provision collocation space in North Carolina effectively, unnecessary delay, uncertainty, and cost should be eliminated from the process. The Commission, therefore, agrees that if collocation terms, conditions, prices and provisioning intervals are known in advance, carriers can plan their entry and order these arrangements without experiencing the cumbersome procedures that impose unnecessary delay and cost. While not all terms and conditions can be standardized, this Commission should standardize all terms and conditions possible to ensure that collocation space is available in a "timely and pro-competitive manner."

With this goal in mind, the Commission concludes that upon receipt of a bona fide written request for interconnection pursuant to Commission Rule R17-4(c), the ILEC should make the Standard Offering available to a CLP to govern the collocation process. Since the Standard Offering sets forth terms and conditions that dictate the initial steps of provisioning collocation, it logically should apply to the parties when the collocation process begins. In this way, the Standard Offering will provide notice and guidance to all parties of their duties regarding collocation.

Such a decision is consistent with the FCC's statement in Paragraph 53 of the *Advanced Services Order* that an ILEC may not refuse to consider an application for collocation space even before an interconnection agreement is final. Therefore, prior to the conclusion of the interconnection agreement, the collocation terms may exist as a stand-alone document. However, once the interconnection agreement is concluded, the parties should file the Standard Offering, or an amended version, with the Commission as an attachment to their interconnection agreement. Any amendments to the Standard Offering should be made expressly in writing and filed with this Commission. *See* Commission Rule R17-4(d) (stating that interconnection agreements are to be filed for approval with the Commission).

Furthermore, the Commission agrees with the CLPs that certain conditions should be adopted. First, the ILECs may not unilaterally negate or supersede the terms of the Standard Offering in their interconnection agreements. The parties also may negotiate additional terms that are expressly related to collocation. Moreover, logically related sections of the Standard Offering shall be available on a "pick and choose" basis.

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[5]Docket Nos. P-100, Sub 133 and P-100, Sub 133j, Order Ruling on Petition in Support of a Generic Docket Concerning Provisioning of Collocation Space, Docket Nos. P-100, Sub 133 and P-100, Sub 133j, (Sept. 1, 1999) [hereinafter "Task Force Order".

[6]Id.

Section 1.1 of the Standard Offering should be rewritten in conformity with this determination.

Finally, the Commission notes that one of the main purposes of this generic docket is to arrive at comprehensive collocation terms and thereby to reduce the number of disputes that agitate the parties and burden the Commission. Although not an arbitration in itself, a generic docket is closely connected to arbitrations because it resolves on a widespread basis issues which would otherwise be issues in arbitrations. It is an efficient method to "fill in the terms" that are of interest to all. In practical terms, the Commission can be said to have already arbitrated the relevant issues when it establishes the Standard Offering.

Therefore, the Commission wishes to emphasize that, in opening the door to other collocation terms being made into an attachment to the interconnection agreement and allowing these other terms to deviate from those of the Standard Offering, the Commission is not opening the door to arbitration of these other terms. If the parties disagree on them, the choice for the parties is either the Standard Offering or mutually agreeable terms that are different from the Standard Offering. If the parties cannot mutually agree on the other terms, the default is to the Standard Offering, not to arbitration by this Commission of other terms.

CONCLUSIONS

The Commission concludes that the Standard Offering should be available to the parties when a CLP makes a bona fide written request for interconnection, that the parties may file it as an attachment to their interconnection agreement, that amendments to the interconnection agreement should be express and in writing, that the ILECs may not negate or supersede the terms of the Standard Offering, that the parties may negotiate additional terms that are expressly related to collocation, and logically related sections of the Standard Offering should be available on a "pick and choose" basis. The Commission will not arbitrate as to issues that deviate from the Standard Offering.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

ISSUE 2: What is the appropriate use of collocation space by a CLP?

Note: On August 8, 2001, the FCC released its Fourth Report and Order in CC Docket No. 98-147, Deployment of Wireless Service Offering Advanced Telecommunications Capabilities (Collocation Remand Order) in which the FCC reevaluated provisions of its collocation rules on remand from the United States Court of Appeals for the District of Columbia Circuit. On August 14, 2001, the Commission requested comments from the parties in the form of amendments to the Proposed Order and/or brief. This write-up reflects the amended comments.

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue.

AT&T: AT&T did not file revised comments but in its original comments argued that the appropriate use of collocation space is for CLPs for the installation of equipment "used and useful" for interconnection or access to unbundled network elements. CLPs should not be required to disassemble equipment tc remove integrated pieces that may undertake additional functions.

BELLSOUTH: The appropriate use of collocation space is for the CLP to install, maintain, and operate equipment that is necessary for, and for which the primary purpose and function shall be interconnection with BellSouth's Network or accessing UNEs for the provision of telecommunications services. BellSouth will comply with 47 C.F.R. 51.323(b) and other pertinent requirements regarding space availability.

MCIm: MCIm did not address this issue in its Brief.

NEW ENTRANTS: New Entrants did not file revised comments but in their original comments indicated they agreed with AT&T.

PUBLIC STAFF: The Public Staff amended its Proposed Order to reflect that the FCC has amended 47 CFR 51.323(b), which defines what equipment is "necessary" for collocation within Section 251(c)(6) of the Telecommunications Act of 1996 (TA96 or the Act). Pursuant to the new definition, equipment is "necessary" for collocation only if an inability to deploy that equipment would, as a practical, economic, or operational matter, preclude the requesting carrier from obtaining interconnection or access to unbundled network elements as contemplated by Section 251(c)(2) and 251(c)(3).

Multi-functional equipment is "necessary" only if the primary purpose and function of the equipment, as the requesting carrier seeks to deploy it, are to provide the requesting carrier with "equal in quality" interconnection or "nondiscriminatory access" to unbundled network elements. Additional functions unnecessary for collocation must not cause the equipment to increase significantly the burden on the ILEC's property.

The Public Staff had recommended in its Proposed Order that ILECs had the sole responsibility to designate and locate collocation space and entrance facilities to collocation space. This recommendation stands, but is now subject to new policies and practices as set forth by the FCC in its amended regulations.

SECCA: SECCA noted the new FCC Collocation Remand Order requirements but noted that FCC rules only set minimum standards. The CLP Coalition, which includes SECCA, had entered into a compromise Standard Offering with Sprint, which was submitted to the Commission on May 18, 2000, and revised on January 18, 2001. SECCA urged the

Commission to adopt the Standard Offering in the respects previously agreed to between Sprint and the CLP Coalition, which includes some provisions which are more liberal for CLPs than those set out in the Collocation Remand Order.

SPRINT: Sprint endorsed the new FCC standards set out in the Collocation Remand Order.

VERIZON: Verizon endorsed the new FCC standards set out in the Collocation Remand Order, characterizing them as simply supporting "the position that Verizon has taken throughout this proceeding".

WORLDCOM: WorldCom filed no revised comments, but its original comments supported the AT&T position.

DISCUSSION

The Collocation Remand Order has necessitated the resolution in this docket of several sub-issues related to this issue They are:

A. Interpretation of "Necessary"

i. Background

Section 251(c)(6) of the Act requires ILECs to collocate CLPs' equipment that is "necessary" for interconnection or access to UNEs. In the Deployment of Wireline Services Offering Advanced Telecommunications Capability (Advanced Services Order or Collocation Order) Paragraph 28, the FCC determined what equipment should be collocated by defining the term "necessary" as "used and useful." Therefore, 47 CFR 51.323(b) required an ILEC to permit the collocation of any type of equipment used or useful for interconnection or access to unbundled network elements. The CLPs, relying upon that interpretation, then asserted that ILECs must allow collocation of equipment "used and useful" for interconnection.

In the GTE Serv. Corp. v. FCC, 205 (F)(3)(d) 416 (D.C. Cir. 2000), however, the D.C. Circuit rejected the FCC's definition of "necessary" as overly broad, vacated that part of the Collocation Order, and remanded it to the FCC. The D.C. Circuit stated that "necessary" meant "required or indispensable to achieve a certain result." Thus, the Collocation Order was not vacated to the extent it required ILECs to collocate equipment directly related to and thus necessary, required, or indispensable for interconnection or access to UNEs. The D.C. Circuit admonished that, "[a]nything beyond this, however, demands a better explanation from the FCC, for the current rules under the Collocation Order make no sense in light of what the statute itself says. And the Commission must operate within the limits of the ordinary and fair meaning of the statute's terms."

In the comments, there was general agreement that the appropriate use of collocation space must be determined with reference to the FCC's recent decisions in the Collocation Remand Order, although SECCA viewed them as setting a "floor" rather than a "ceiling."

ii. FCC's Amended Interpretation of "Necessary"

Pursuant to the D.C. Circuit's remand, the FCC reevaluated its definition of "necessary in the Collocation Remand Order." Because Sections 251(c)(6) and 251(d)(2)(A) both use the term "necessary", the FCC determined that it should interpret "necessary" in the two provisions similarly. In the UNE Remand Order, which construed the term "necessary" in Section 251(d)(2)(A), the FCC concluded that a proprietary network element is "necessary" if a lack of access to that element would, "as a practical, economic, and operational matter, preclude a requesting carrier from providing the services it seeks to offer." Therefore, the FCC concluded that the term "necessary" in Section 251(c)(6) should mean that equipment is "necessary" for interconnection or access to UNEs if an inability to deploy that equipment would, as a practical, economic, or operational matter, preclude the requesting carrier from obtaining interconnection or access to unbundled network elements

The FCC then elaborated on what "necessary" for interconnection and "necessary" for access to UNEs meant. First, with regard to interconnection, the Act requires an ILEC to provide interconnection at any technically feasible point to any requesting telecommunications carrier. That interconnection must be "at least equal in quality to that provided by the [incumbent LEC's] network . . . at any technically feasible point within the [incumbent's] network." Therefore, "Section 251 (c)(6) allows the interconnecting carrier to collocate any equipment necessary for interconnecting with the incumbent LEC at a level equal in quality to that which the incumbent obtains within its own network or the incumbent provides to any affiliate, subsidiary, or other party."

With regard to access to UNEs, the Act requires ILECs "to provide to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory . . . " ILECs must provide requesting carriers with nondiscriminatory access to all features, functions, and capabilities of a UNE. Therefore, the FCC concluded that "Section 251(c)(6) allows a requesting carrier to collocate any equipment necessary for obtaining 'nondiscriminatory access' to an unbundled network element, including any of its features, functions, or capabilities "

Based upon the above rationale, the FCC amended 47 CFR 51.323(b)(1) to provide that equipment is necessary for interconnection if an inability to deploy that equipment would, as a practical, economic, or operational matter, preclude the requesting carrier from obtaining: (1) interconnection with the ILEC equal in quality to that which the ILEC obtains

within its own network or provides to any affiliate, subsidiary, or other party; or (2) nondiscriminatory access to a UNE, including any of its features, functions, or capabilities.

B. Designation of Space and Entrance Facilities

i. Designation of Space

In the GTE case, the D.C. Circuit also held that the FCC had gone too far in allowing CLPs to choose where to collocate on the ILEC's property and remanded the matter to the FCC for a revision of those regulations. Based on this case, the Public Staff and BellSouth originally contended that ILECs had the sole responsibility to designate collocation space so long as the ILEC did not unfairly discriminate between either itself and the CLPs or between distinct CLPs

In the Collocation Remand Order, the FCC's revisions to this issue are substantially similar to the Public Staff's original position. The FCC found that "each incumbent should maintain ultimate responsibility for assigning collocation space within its premises." An ILEC, however, must assign space "on rates, terms, conditions that are just, reasonable, and nondiscriminatory." To implement this requirement of the Act, the FCC amended 47 CFR 51.323(f) to add the requirement that ILECs allow each carrier requesting physical collocation to submit space preferences prior to assigning physical collocation space to that carrier. Additionally, an ILEC's space assignment policies must not materially increase a requesting carrier's collocation costs; materially delay a requesting carrier's occupation and use of the incumbent LEC's premises; impair the quality of service or impose other limitations on the service a requesting carrier wishes to offer; or unreasonably reduce the total space available for physical collocation or preclude unreasonably physical collocation within the incumbent's premises.

ii. Placement of Entrance Facilities

In response to the GTE decision, the FCC also amended its rules regarding the placement of entrance facilities for the CLPs to access their collocation space. The FCC provided that an ILEC could require the construction and use of a separate entrance for CLPs to access their physical collocation space, but only in certain circumstances. In summary, where an ILEC requires CLPs to access their collocated equipment through a separate entrance, ILEC employees must be subject to the same restriction. In Paragraph 103 of the Collocation Remand Order, the FCC found that an ILEC may construct or require the collocating CLP to construct a separate entrance only when: (i) construction of a separate entrance is technically feasible; (ii) either legitimate security concerns, or operational constraints unrelated to the ILEC's or any of its affiliates' or subsidiaries' competitive concerns, warrant such separation; (iii) construction of a separate entrance will not artificially delay collocation provisioning; and (iv) construction of a separate entrance will not materially increase the requesting carrier's costs.

C. Removal of Integrated Equipment (Multi-functional Equipment)

The FCC further amended 47 CFR 51.323(b) by removing a list of specific equipment necessary for collocation and adding a subsection that provides for collocation of multi-use equipment. Multi-functional equipment "combines functions that meet [the FCC's] equipment standard with functions that would not meet the standard as stand-alone functions." Based on the FCC's revised definition of "necessary", an ILEC must allow collocation of multi-function equipment if, "the primary purpose and function of the equipment, as the requesting carrier seeks to deploy it, are to provide the requesting carrier with 'equal in quality' interconnection or 'nondiscriminatory access' to one or more unbundled network elements." If the additional functions, however, significantly "increase the overall demand on the incumbent's space and other resources above the levels that would prevail if the functions were excluded from the equipment or not activated", then the equipment would not be "necessary." As noted by the FCC in Paragraph 39 of the Collocation Remand Order, examples of a "significant" increase in overall demand are: (1) if an ILEC had to reconfigure the outer boundaries of a carrier's physical collocation space to accommodate the additional functions; (2) if the ILEC had to provide floor support beyond that typically available; or (3) if the ILEC had to upgrade otherwise sufficient power, air conditioning, or heating to accommodate the additional functions. Accordingly, the Commission believes that Section 5.1 of the Standard Offering should be amended to reflect these provisions.

D. Burden of Proof

If an ILEC rejects collocation of certain equipment, the ILEC shall have the burden of proving to the state commission that the equipment is not "necessary." Pursuant to the previous version of 51.323(b), the ILEC had to prove that the equipment was not "necessary" or "used and useful" for interconnection or access to UNEs. With the FCC amendments to 47 CFR 51.323(b) and 47 CFR 51.323(c), subsection (b) no longer discusses how the ILEC can meet its burden of proof. Subsection (c) now provides that the ILEC shall have to show the state commission that the equipment does not meet the FCC's new definition of "necessary." Otherwise, the FCC did not disturb its previous regulation regarding the burden of proof.

Although the FCC has expressly stated that state commissions may impose additional space assignment requirements on ILECs, this Commission has no basis for so doing at this time. Based on the amendments to 51.323(b) and the FCC's rationale for the amendments, the Commission is persuaded that the Standard Offering should be amended to reflect the new 51.323(b) by inserting the language directly from the regulation or by reference to the regulation.

CONCLUSIONS

The Commission concludes the following:

1. The appropriate use of collocation space is for installation, maintenance, and operation of equipment necessary for interconnection or access to UNEs. Equipment is necessary for interconnection or access to UNEs if an inability to deploy that equipment would, as a practical, economic, or operational matter, preclude the requesting carrier from obtaining: (1) interconnection equal in quality to that the ILEC obtains within its own network or provides to any affiliate, subsidiary, or other party; or (2) nondiscriminatory access to that UNE, including any of its features, functions, or capabilities.

2. Multi-functional equipment shall be deemed necessary only if the primary purpose and function of the equipment, as the requesting carrier seeks to deploy it, meets at least one of the standards. The collocation of those functions of equipment that, as stand-alone functions, do not meet either of the standards above must not cause the equipment to increase significantly the burden on the ILEC's property.

3. An ILEC may locate and designate collocation space. An ILEC must allow each carrier requesting physical collocation to submit space preferences prior to assigning physical collocation space to that carrier. At a minimum, the ILEC's space assignment policies and practices must not: (A) materially increase a requesting carrier's collocation costs; (B) materially delay a requesting carrier's occupation and use of the ILEC's premises; (C) impair the quality of service or impose other limitations on the service a requesting carrier wishes to offer; or (D) reduce unreasonably the total space available for physical collocation or preclude unreasonably physical collocation within the ILEC's premises.

4. An ILEC may require the construction and use of a separate entrance for CLPs to access their physical collocation space in limited circumstances. An ILEC may require employees and contractors of collocating carriers to use a central or separate entrance to the ILEC's building, provided, however, that its own employees are subject to the same restriction. An ILEC may construct or require the collocating CLP to construct a separate entrance to access physical collocation space only when: (i) construction of a separate entrance is technically feasible; (ii) either legitimate security concerns, or operational constraints unrelated to the ILEC's or any of its affiliates' or subsidiaries' competitive concerns, warrant such separation; (iii) construction of a separate entrance will not artificially delay collocation provisioning; or (iv) construction of a separate entrance will not materially increase the requesting carrier's costs.

5. Whenever an ILEC objects to the collocation of equipment by a CLP, that ILEC shall prove to this Commission that the equipment is not necessary for interconnection or access to UNEs under the standards set forth in 47 CFR 51.323(b).

6. The parties should revise Section 5.1 of the Standard Offering in accordance with the requirements set out above.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

ISSUE 3: Should the Standard Offering include an obligation on the part of the CLP to pay the rates and charges set forth in the Standard Offering?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue.

AT&T: The Standard Offering should deal with collocation comprehensively and should set out the rates, which should be based on forward-evolving costs. Tariffs may be changed unilaterally and are not desirable in this context.

BELLSOUTH: The Standard Offering should include an obligation on the part of the CLP to pay the rates and charges set forth therein.

MCIm: MCIm did not address this issue in its Brief.

NEW ENTRANTS: New Entrants took the same position as AT&T.

PUBLIC STAFF: CLPs obtaining collocation through the Standard Offering are obligated to pay the rates and charges to be determined by the Commission.

SPRINT: Sprint agreed with the New Entrants.

VERIZON: The ILEC is entitled to receive compensation for the costs of provision of collocation to the CLP.

WORLDCOM: WorldCom took the same position as AT&T.

DISCUSSION

It appears that there is no substantial dispute between the Parties on this issue. As such, the Commission believes that CLPs obtaining collocation through the Standard Offering are obligated to pay the rates and charges determined by the Commission in this docket.

CONCLUSIONS

The Commission concludes that CLPs obtaining collocation through the Standard Offering are obligated to pay the rates and charges as determined by the Commission in this docket.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

ISSUE 4: Should the Standard Offering set forth a definitive term?

ISSUE 5: If a definitive term is appropriate, what should the term be?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue in its Brief.

AT&T: No, a definitive term is not appropriate. The "term" of the Standard Offering should be the same period as that used to establish cost-based rates. That is, the Standard Offering, including its rates, should remain in effect after approval by the Commission for an initial period of two years, and should continue until the Commission makes changes to the terms or rates in the Standard Offering.

BELLSOUTH: Yes, a definitive term is appropriate, and the term should be for a period of two years. The Standard Offering should set forth a definitive term which clearly identifies the period for which the parties are obligated to perform under the rates, terms, and conditions of the Standard Offering. The term of the Standard Offering should coincide with the term of the interconnection agreement to which it is attached – in BellSouth's case, the standard term for an interconnection agreement is two years. Thus, all attachments to that agreement – including the physical collocation attachment, should have the same two-year term. The term of the Standard Offering should not preclude an amendment to the Standard Offering to incorporate state or federal regulatory agency ordered procedures or intervals applicable to the CLP that are different from procedures or intervals set forth in the Standard Offering.

MCIm: MCIm did not address this issue in its Brief.

NEW ENTRANTS: New Entrants took the same position as AT&T.

PUBLIC STAFF: Yes, a definitive term is appropriate. The Standard Offering should remain in effect unchanged for a period of two years from the effective date, unless the Commission orders modifications pursuant to requests for reconsideration, or implements changes to conform the Standard Offering to controlling federal or state laws, regulations, or court rulings.

SPRINT: While Sprint did not insist that a definitive term must be set forth in the Standard Offering itself, Sprint did not disagree that contracts to which the terms and conditions of the Standard Offering will apply should have maximum terms of two years, unless agreed to otherwise by the Parties.

VERIZON: Yes, a definitive term is appropriate, and the term should be for a period of two years. It is customary for an agreement between parties to have a definite term.

WORLDCOM: WorldCom took the same position as AT&T.

DISCUSSION

Section 1.5 of the Standard Offering states, "The minimum term of this Standard Offer shall be for an initial period of two (2) years."

BellSouth witness Hendrix testified that the agreement should expire two years after it is executed, but proposed adding language to address the obligation to renegotiate after the two-year period expires. BellSouth suggested that the concept of a limited term for the Standard Offering is consistent with standard contract principles.

CLP witness Gillan recommended that the Standard Offering remain in effect after approval by the Commission until the Commission made changes to its terms or rates. Witness Gillan explained that an automatic extension beyond two years would eliminate the need for renegotiation and arbitration.

The Public Staff argued that the Standard Offering should have definite minimum term, and that the term should be a period of two years from the effective date of the Standard Offering.

The Commission believes the disagreements among the Parties on this issue are not substantive, but semantical. The Standard Offering is itself not a contract, but merely a document approved by the Commission which sets forth the minimum, or default, terms and conditions by which a CLP may physically collocate equipment within an ILEC's facilities. As such, the Commission does not believe a definitive term provision is necessary in the Standard Offering because it will remain in effect after approval in this docket until the Commission adopts changes to its terms or rates. The actual collocation agreement between a CLP and an ILEC will be memorialized as an attachment to the parties' interconnection agreement and will remain in effect for the term of the interconnection agreement. The parties to an interconnection agreement, of course, may negotiate specific terms and conditions related to collocation which differ from the Standard Offering.

Regarding BellSouth's argument that a two year period would be appropriate for reevaluating the interconnected parties' obligations regarding the Standard Offering, the

Commission reiterates that the Standard Offering merely sets forth the minimum, or default, terms and conditions for collocation. The terms and conditions of collocation may be reevaluated, of course, coincident with the expiration of the interconnection agreement to which they are attached, as recommended by BellSouth, but the minimum terms and conditions set forth in the Standard Offering will remain in effect until modified by the Commission.

The Commission, therefore, concludes that the Parties should delete Section 1.5 of the Standard Offering.

CONCLUSIONS

The Commission concludes that a definitive term provision is not necessary in the Standard Offering and that Section 1.5 of the Standard Offering should be deleted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

ISSUE 6: Should the terms and conditions for services that the CLP is using the collocation arrangement to access be included in the Standard Offering where such services are provided pursuant to terms and conditions contained in other contracts or tariffs?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue.

AT&T: Yes. That an ILEC may tariff a term that is contained in the Standard Offering does not remove that term from the Standard Offering or prevent a CLP from invoking the Standard Offering to govern that term. The terms and conditions that the CLP is using in the collocation arrangement to access should be included in the Standard Offering to provide predictability.

BELLSOUTH: No. Such terms and conditions should not be included in the Standard Offering. These services, by definition, are not related to the terms and conditions of provisioning physical collocation arrangements, which is what the scope of the Standard Offering covers.

MCIm: MCIm did not address this issue in its Brief.

NEW ENTRANTS: New Entrants took the same position as AT&T.

PUBLIC STAFF: Prior to Commission approval of an interconnection agreement, the Standard Offering is the mechanism for provisioning collocation space. ILECs should not be allowed to unilaterally change terms

SPRINT: Sprint was generally agreeable to the New Entrants' position.

VERIZON: No. Such terms and conditions should be addressed with the individual service being ordered.

WORLDCOM: WorldCom took the same position as AT&T.

DISCUSSION

The CLPs maintained that the Standard Offering should be comprehensive, containing all terms and conditions necessary to establish collocation, even if those terms are included elsewhere in tariffs and contracts. In his prefiled rebuttal testimony, CLP witness Gillan argued that terms and conditions should be contained in the Standard Offering and not in a tariff since an ILEC may change a tariff unilaterally and the CLPs do not have the resources to contest each tariff filing.

BellSouth and Verizon, however, contended that the Standard Offering should not include terms and conditions for services that the CLP is using the collocation arrangement to access where these services are provided pursuant to terms and conditions contained in other contracts or tariffs. BellSouth witness Hendrix stated that these services are beyond the scope of the Standard Offering, which is limited to the provisioning of physical collocation space. As examples, BellSouth witness Hendrix cited to Sections 16.4-16.7 of the Standard Offering which refer to trouble reports and contact names if a tariffed service offering experiences service outages. According to BellSouth, these terms and conditions should be contained, therefore, in the tariff. Otherwise, the Standard Offering could conflict with the terms of the tariff, resulting in discriminatory treatment of the customers governed by the tariff and the customers governed by the Standard Offering.

The Public Staff maintained that, generally speaking, prior to Commission approval of an interconnection agreement, the Standard Offering would be the mechanism for provisioning collocation space. The ILECs should not be allowed unilaterally to change terms.

On cross-examination by MCIm, BellSouth witness Hendrix addressed the CLPs' concern that if the Commission adopted BellSouth's position, then ILECs could unilaterally remove terms and conditions from the Standard Offering and include them in the tariff. Witness Hendrix explained that, if the Standard Offering were adopted by the Commission, a CLP would have two choices to obtain collocation: (1) a tariff that BellSouth would file in lieu of having to negotiate with each customer or (2) a contract that might mirror the Standard Offering or terms that were agreed to between the parties. The terms and conditions that were in the option selected by a CLP would then govern the relationship between BellSouth and that CLP; the CLP then could not "jump from tariff to contract."

The Commission concurs with the CLP's position on this issue. The Commission's intent in initiating this generic docket was to provide comprehensive and standard procedures to implement collocation in this state. Negotiation between the parties, followed by determination by this Commission of any unresolved issues, were the means to accomplish this goal. Therefore, the Standard Offering, while subject to express written amendment by the parties, should set forth the means for provisioning collocation in this state.

The Commission, therefore, rejects the argument that an ILEC may offer collocation alternatively through a tariff. The Commission is persuaded by the rationale of the Idaho Public Utilities Commission in addressing a similar issue. In that case, GTE had sought Idaho Commission approval of its collocation tariff.[7] The Idaho Commission denied approval, stating:

> Section 252 of the Act sets forth the means, through negotiation, mediation and arbitration, for competitors to reach interconnection agreements with incumbent companies. Once reached, interconnection agreements must be submitted to state commissions for approval. Nothing in the Act or in related regulations of the Federal Communications Commission, however, authorizes or directs the filing of a collocation tariff with state commissions.

Moreover, allowing an ILEC to unilaterally change the terms and conditions of the procedures for collocation runs counter to the Commission's goal of *negotiated* terms and conditions controlling collocation in this state. Although as witness Hendrix testified, a CLP could choose to avail itself of either the Standard Offering or the tariff, the Commission believes that having both a tariff and a Standard Offering could lead to confusion through duplicative or contradictory terms. Therefore, the Commission concludes that collocation tariffs are unnecessary in this state and that the Standard Offering should provide the means for provisioning collocation space. The Standard Offering should not be amended with regard to this Issue. Furthermore, the Standard Offering hereby supersedes any collocation tariff applicable to CLPs in existence in North Carolina.

CONCLUSIONS

The Commission concludes that, as a general matter, prior to the Commission approval of an interconnection agreement the Standard Offering, not tariffs, is the mechanism for provisioning collocation space in this state.

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[7] GTE Northwest Inc., Case No. GTE-T-00-7, Order No. 28490 (Idaho Pub. Utils. Comm'n August 24, 2000)

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

ISSUE 7: Under what circumstances, if any, is it appropriate for the Commission to require ILECs to go beyond the FCC collocation rules in the Standard Offering?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue in its Brief.

AT&T: The FCC rules only set minimum standards. The FCC intends the state to establish more standardized terms and intervals. The Standard Offering is consistent with the FCC's rules and contains three substantial concessions: (1) it adopted the end-product of the Texas tariff; (2) it used BellSouth's standard contract as the basic framework; and (3) it incorporated the BellSouth contract language as the initial CLP *proposal unless that language clearly conflicts with the Texas tariff.*

BELLSOUTH: It may be appropriate, under some circumstances, for the Commission to require ILECs to go beyond the FCC collocation rules in the Standard Offering. The Commission should determine whether or not to impose requirements that may exceed those promulgated by the FCC on a case-by-case basis.

MCIm: MCIm did not address this issue in its Brief.

NEW ENTRANTS: The New Entrants agreed with AT&T's position on this issue.

PUBLIC STAFF: The Commission may supplement the FCC rules when necessary to carry out collocation in a timely and procompetitive manner. The Commission must do so, however, in a manner consistent with the Act.

SPRINT: Sprint did not specifically address this issue in its Proposed Order.

VERIZON: The FCC rules permit collocation arrangements demonstrated to be technically feasible, in accordance with either national standards or industry practice. There is no need to go beyond these requirements.

WORLDCOM: WorldCom agreed with AT&T's position on this issue.

DISCUSSION

The issue here is the extent to which this Commission should permit/require the Standard Offering to go beyond the FCC's rules and regulations in determining the procedures for collocation in this state.

CLP witness Gillan testified that the Standard Offering reflects the FCC's goal of making the collocation process predictable and efficient. As such, the Standard Offering, while consistent with the FCC's rules, contains more detail and specificity than the FCC has provided in its rules and orders. In his prefiled rebuttal testimony, witness Gillan stated that the FCC's rules and standards are minimum requirements and that states should require the ILECs to do more than the FCC has already required.

BellSouth witness Hendrix stated in his prefiled direct testimony that "in situations where the FCC has specifically addressed an area, however, the language of the offering should track the language in the FCC Order or rules." Witness Hendrix asserted that the Commission should require the ILECs to go beyond the FCC's collocation rules in the Standard Offering in only limited circumstances: (1) when the FCC states that the collocation rules set forth in an FCC Order serve as minimum or default standards; (2) when the FCC permits states to adopt additional requirements consistent with the Act and its implementing rules; and (3) when the FCC invites or urges state commissions to adopt policies that promote competition in line with its implementing rules.

Verizon agreed with BellSouth on this issue. Verizon witness Ries testified that the FCC and the courts have developed rules and regulations that balance the ability of CLPs to join the market competitively with the protection of the rights of ILECs. In addition, witness Ries stated that the Standard Offering contained rules that far exceed the FCC guidelines by imposing unnecessary requirements on ILECs.

In support of their position, the CLPs cite Paragraph 558 of the *Local Competition Order,* in which the FCC states:

> We conclude that we should adopt explicit national rules to implement the collocation requirements of the 1996 Act. We find specific rules defining minimum requirements for nondiscriminatory collocation arrangements will remove barriers to entry by potential competitors and speed the development of competition. Our experience in the *Expanded Interconnection* proceeding indicates that incumbent LECs have an economic incentive to interpret regulatory ambiguities to delay entry by new competitors. We and the states should therefore adopt, to the extent possible, specific and detailed collocation rules. We find, however, that states should have flexibility to apply additional collocation requirements that are otherwise consistent with the 1996 Act and our implementing regulations.

The CLPs also cite Paragraph 8 of the *Advanced Services Order,* which provides that the collocation rules set forth in that Order are "minimum standards and permit any state to adopt additional requirements." Finally, the CLPs also rely upon Paragraph 45 of the *Advanced Services Order* that provides that a collocation method used by one ILEC or mandated by one state commission is presumptively technically feasible for any other ILEC.

The Public Staff believes that the Commission has the authority to supplement the FCC rules when necessary to ensure that collocation is effectuated in a timely and procompetitive manner. The Public Staff further stated that any additional rules promulgated by the Commission must be consistent with the Act.

To determine the extent to which this Commission may permit the Standard Offering to extend beyond FCC rules and regulations, the Commission looks first to the Act itself. Pursuant to the Act, "the Federal Communications Commission is charged with the responsibility of promulgating regulations necessary to implement the Act itself . . ." *MCI Telecommunications Corp. v. US West Communications*, 204 F.3d 1262, 1265 (9th Cir.), *cert. denied, sub nom, Qwest Corp. v. MCI Worldcom Network Services, Inc.*, 121 S. Ct. 504 (2000). Nevertheless, "the Act reserves to states the ability to impose additional requirements so long as the requirements are consistent with the Act and 'further competition.'" *Id.*, citing 47 U.S.C. Section 251(d). As the FCC stated in Paragraph 23 of the *Advanced Services Order*, "[s]tate commissions play a crucial role in furthering the goals of [the FCC's] collocation rules by enacting rules of their own that, in conjunction with federal rules, ensure that collocation is available in a timely manner and on reasonable terms and conditions." Thus, where the FCC has promulgated a rule, that rule is binding on this Commission. *See U.S. West Communications v. Hix*, 57 F. Supp. 2d 1112, 1117 (D. Colo. 1999). Nevertheless, the Commission may enact its own rules which, in conjunction with federal rules, ensure that collocation is available, so long as these Commission-enacted rules are consistent with the Act and further competition. Therefore, in reviewing the Standard Offering, the Commission may supplement the FCC's regulations in a manner that is consistent with the Act and its goal of furthering competition.

CONCLUSIONS

The Commission concludes that it may supplement the FCC rules when necessary to carry out collocation in a timely and procompetitive manner that is consistent with the Act and its goal of furthering competition.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

ISSUE 8: What should be the standard for assessing space availability?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue in its Brief.

AT&T: There is a rebuttable presumption that collocation space is available. The incumbents are required to take the needs of competing local providers into consideration when managing central office space. Incumbents, therefore, should be prepared for collocation requests, not just react to them.

BELLSOUTH: The standard for assessing space availability should be based upon the FCC's *Advanced Services Order* (CC Docket No. 98-147), and rules. BellSouth is obligated to provide collocation in unused space subject to space constraints and/or technical feasibility. BellSouth defines unused space as either space not currently in use in a particular central office or reserved for future use by BellSouth or other Parties.

MCIm: MCIm did not address this specific issue in its Brief.

NEW ENTRANTS: The New Entrants took the same position on this issue as AT&T.

PUBLIC STAFF: No federal law or rule gives CLPs the right to presume that collocation space is available in ILEC premises. The initial sentence of Section 2.1 of the Standard Offering should be eliminated from the text because it serves no purpose.

SPRINT: In its Proposed Order, Sprint stated that its position on this issue was consistent with the New Entrants.

VERIZON: Space must be technically feasible, accessible, and meet all safety and security standards.

WORLDCOM: WorldCom took the same position on this issue as AT&T.

DISCUSSION

Section 2.1 of the Standard Offering outlines the conditions under which an ILEC must make collocation space in its premises available to competitors and is stated as follows:

> 2.1 Availability of space. There shall be a rebuttable presumption that space is available for physical collocation in an ILEC Premises. Upon submission of an application or collocation order pursuant to Section 6, the ILEC shall permit the CLP to physically collocate, pursuant to the terms of this Standard Offer, at any ILEC Premises, unless the ILEC has determined that there is no space available due to space limitations or no space available due to technical infeasibility.

CLP witness Gillan testified that there should be a rebuttable presumption that collocation space is available and that incumbents are required to take the needs of competing local providers into consideration when managing central office space. Witness Gillan testified that the "rebuttable presumption" is drawn from specific language taken from Order No. 59 of the Texas Public Utilities Commission (Texas PUC). This presumption is a logical extension of the ILECs' obligations pursuant to Section 251(c)(6) of the Act as well as the requirement that ILECs:

* seek a waiver from a denial of collocation space and justify denials of space, through tours and otherwise (47 C.F.R. 51.321(f));

* indicate the measures they are taking to make additional space available and known (47 C.F.R. 51.321(h));

* remove obsolete unused equipment from their premises to increase the amount of space available (47 C.F.R. 51.321(i)); and

* provide several types of collocation methods to be used (47 C.F.R. 51.323(k)).

In its Proposed Order, BellSouth stated that the Commission should reject the CLP Coalition's position, as articulated by witness Gillan, that there should be a "rebuttable presumption" that collocation space is available in each ILEC central office. BellSouth witness Hendrix observed that BellSouth is obligated to provide collocation in unused space subject to space constraints and/or technical feasibility, consistent with the FCC's *Advanced Services Order* (CC Docket No. 98-147). BellSouth contended that witness Gillan conceded that his "rebuttable presumption" premise was drawn from an order issued by the Texas Public Utility Commission. BellSouth argued that there is no basis for the CLP Coalition's "rebuttable presumption" requirement in either the Act or the FCC's rules or orders and the Commission should eliminate the "rebuttable presumption" language proposed by the CLP Coalition. BellSouth stated that the language requires the ILEC to permit physical collocation "unless the ILEC has demonstrated that there is not space available due to space limitations or no space available due to technical infeasibility."

MCIm did not address this issue directly but in its Brief stated that it supported the New Entrants' and Sprint's compromise Standard Offering, as revised.

In its Proposed Order, the Public Staff recommended that the first sentence of Section 2.1 of the Standard Offering which states that "[t]here shall be a rebuttable presumption that space is available for physical collocation in an ILEC Premises" serves no purpose and should be deleted. The Public Staff stated that while this sentence arguably has rhetorical value, removing it will not materially affect the ILECs' obligations to make collocation space available to competitors and to demonstrate to prospective collocators and, if necessary, to this Commission, that collocation space is unavailable.

In its Proposed Order, Sprint stated that its position on this issue was consistent with that of the New Entrants.

In its Proposed Order, Verizon stated that space must be conditioned to support telecommunications equipment and meet safety and security standards. Verizon contended that the proposed Standard Offering would create a "rebuttable presumption" that space is available for physical collocation within a particular premises. Verizon further

contended that given the diverse spatial needs of potential collocators, such a presumption is unwarranted. Verizon stated that the ILEC should review space availability for each collocation request. In that process, Verizon further stated, it should consider limitations and technical feasibility of the request, and then report the results to the CLP. Verizon suggested that the appropriate standard for assessing space availability is identifying unused space that is technically feasible, accessible, and meets the ILEC's safety and security standards.

The Commission agrees with the Public Staff that there is not any FCC Order or rule which gives CLPs the right to presume that collocation space is available in ILEC premises. Therefore, we recommend that the initial sentence of Section 2.1 of the Standard Offering be eliminated from the text because it serves no purpose and removing it will not materially affect the ILECs' obligations to make collocation space available to competitors and to demonstrate to prospective collocators and, if necessary, to this Commission, that collocation space is unavailable.

CONCLUSIONS

The Commission concludes that the initial sentence of Section 2.1 of the Standard Offering should be eliminated from the text because it serves no purpose.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

ISSUE 9: Should the CLP file an application for each office in which it wishes to collocate?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue in its Brief.

AT&T: No. The CLP's application should indicate which offices in which it seeks to collocate, but there should be no obligation to provide multiple applications, and, therefore, pay multiple fees. The underlying issue is for what purpose and costs application fees are assessed. To the extent such fees relate to the mere act of applying, rather than to engineering or space assessment functions that are attributable to distinct intervals in ordering and provisioning space, they should not be imposed (see Issue No. 49).

BELLSOUTH: Yes. A CLP should file an application for each office in which it wishes to collocate. The application serves as the vehicle through which the process for ordering collocation is initiated.

MCIm: MCIm did not address this issue in its Brief.

NEW ENTRANTS: The New Entrants took the same position on this issue as AT&T.

PUBLIC STAFF: Yes. Each CLP should be required to file a separate application for each office in which it wishes to collocate. The language proposed by BellSouth should be substituted for that which currently appears in Section 2.1 of the Standard Offering.

SPRINT: Sprint stated that its position on this issue was consistent with that of the New Entrants.

VERIZON: Yes. Each location amounts to a separate collocation request.

WORLDCOM: *WorldCom took the same position on this issue as AT&T.*

DISCUSSION

In this issue, the Commission must determine whether it is appropriate to require a CLP to file a separate application and pay a separate application fee for each office in which it seeks to collocate. The ILECs are concerned that the second sentence of Section 2.1 (see discussion and conclusions for Issue No. 8 above) would potentially allow a CLP to file a single application for collocation space and then to physically collocate, pursuant to the terms of the Standard Offering, at any ILEC premises.

CLP witness Gillan testified that the CLP's application should indicate which offices in which it seeks to collocate, but there should be no obligation to provide multiple applications and therefore pay multiple application fees.

The CLPs contended that availability fees for the leasing of office space do not exist in the real estate market and advising a prospective tenant as to what space is available in a building is a function provided by management without any specific charge to that prospective tenant. The CLPs argued that imposing such fees as part of the application process, before the CLP is told whether space is available, would serve as a barrier to entry. In refuting the ILECs' argument that space availability fees include certain engineering expenses, the CLPs contended that this engineering expense should be included as part of an engineering fee during construction, not an application fee to determine whether space is available. The CLPs argued that it is illogical to require a CLP to pay a fee to determine if space is available when, as Verizon admitted, space is available in every one of its offices in North Carolina.

In its Proposed Order, BellSouth stated that an application fee, which is assessed for each request for collocation, is based on the specific work that must be performed to provide an application response for each central office request, not for multiple requests on one form. BellSouth argued that a complete and accurate Application Inquiry document allows ILEC equipment engineers, space planners and facility planners to provide a comprehensive written response, including a firm price quote, based on the needs and requirements identified for a particular location. BellSouth contended that if the CLPs were permitted to file one application for several locations, the application fee would not recover

the costs of multiple assessments that the ILEC must perform to provide multiple application responses. BellSouth has proposed that the CLPs' proposed language be amended as follows:

> Availability of space: Upon submission of a firm order pursuant to Section 6, the ILEC shall permit the CLP to physically collocate, pursuant to the terms of this Standard Offer at the Premises requested in the application, unless the ILEC has determined that physical collocation is not practical due to space limitations or technical infeasibility.

In their separate Brief, the New Entrants argued that application fees for the leasing of office space do not exist in the real estate market. The New Entrants stated that a fee for determining whether space is available also defies common sense because it is widely known that space is available in most central offices, a fact which is known to anyone who has made even a cursory inspection of the central offices in North Carolina. Moreover, the New Entrants contended that to attempt to charge a fee in the few cases where space is not available is most inequitable, because incumbents are already required to maintain a document on their websites indicating all premises that are full.

In refuting the incumbents' argument that their space availability fees include certain engineering expenses, the New Entrants argued that the engineering expense should be included as part of an engineering fee during construction, not an application fee to determine whether space is available.

In its Proposed Order, the Public Staff pointed out that CLP witness Gillan provided no substantive support for his position that a CLP should be allowed to apply for collocation at multiple locations in a single application. Further, the Public Staff stated that witness Gillan provided no coherent explanation why the Commission should prohibit ILECs from requiring a separate collocation application and application fee to collocate at each separate ILEC premises.

The Public Staff recommended that the amended language which BellSouth proposed for Section 2.1 of the Standard Offering was appropriate and should be substituted for the existing language in that section.

In its Proposed Order, Sprint stated that its position on this issue was consistent with that of the New Entrants.

Verizon, in its Proposed Order, contended that determination of the type of space a CLP needs requires an engineering study, including a review of existing HVAC and power capacity. Verizon stated that those costs should be recovered through an initial application fee. In response to New Entrants' witness Birch who opined that application fees are not charged to evaluate typical office space and, therefore, such fees should not be assessed for collocation analysis, Verizon stated that witness Birch does not recognize

that providing traditional office space and providing collocation space are very distinct undertakings. Verizon argued that provision of collocation space not only involves a market quite different from that of providing traditional office space, it entails engineering analysis of the collocator's special needs which carries a cost that must be paid. Verizon contended that application fees are standard in collocation agreements and tariffs, sanctioned by both the FCC and state commissions. Verizon contended that responses to applications necessarily are specific to the central office where space is sought, and applications should be made to each office individually.

The Commission agrees with the Public Staff, BellSouth, and Verizon that it is appropriate to require CLPs to file a separate application and pay a separate application fee for each central office in which they wish to collocate. Each collocation request is likely to differ in some, if not many respects, and the building design and infrastructure elements that exist at each central office are undeniably unique to that location. For an ILEC to evaluate collocation requests effectively, its personnel must independently examine each central office and assess the unique changes in air conditioning, power, facilities, and building design necessary to accommodate a prospective collocator. These tasks must logically be performed on a per-central office basis, as BellSouth and Verizon have suggested. The current industry norm of one application for each central office is inherently reasonable and should be retained.

The Commission agrees that the amended language which BellSouth proposed for Section 2.1 of the Standard Offering is appropriate and should be substituted for the existing language in that section.

CONCLUSIONS

The Commission concludes that the Parties should be directed to amend the Standard Offering consistent with these findings.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

ISSUE 10: Should the CLP be required to file an application for any request regarding collocation space (whether an initial request or modification) prior to any analysis of the request by the ILEC?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue in its Brief.

AT&T: No. There does not appear to be an issue. When a CLP installs any additional equipment that is within the initial space and power requirements of the collocation space, even if not explicitly detailed in the initial application, it should only need to notify the ILEC of the additional equipment. There is no need for the CLP to file a subsequent application

and pay additional application fees to use the space in the manner it has already informed the ILEC that it intended. Further, there are no additional burdens on the ILEC for the CLP to install equipment within the initial space and power forecast. BellSouth agrees with these notions and offers a position differing minimally, if any, from the Standard Offering. Section 6.1.3 of the Standard Offering should be accepted as a reasonable compromise.

BELLSOUTH: If, in an initial application, the detailed collocation needs to accommodate the CLP over a two-year forecasted growth period are provided, an additional application would not be required for placement of equipment or for use of collocation space. The CLP, however, cannot substitute a forecast for an application.

MCIm: MCIm did not address this issue in its Brief.

NEW ENTRANTS: The New Entrants took the same position on this issue as AT&T.

PUBLIC STAFF: A CLP should be required to submit a 24-month forecast of collocation requirements when it files its initial application for collocation space. The ILEC should be responsible for ensuring that central office infrastructure exists to accommodate these requirements. As long as the CLP's equipment additions fall within the forecasted levels, the CLP is only required to provide the ILEC with appropriate prior notice of the additions.

SPRINT: Sprint is willing to accept the New Entrants' position on this issue to the extent it is consistent with the terms and conditions of the Standard Offering filed with the Direct Testimony of Sprint witness Hunsucker, it is included in the Standard Offering, and the Standard Offering is made applicable to all parties in its entirety.

VERIZON: Yes. The CLP shall be required to file an application for any request regarding collocation space (whether an initial request or modification) prior to any analysis of the request by the ILEC.

WORLDCOM: WorldCom took the same position on this issue as AT&T.

DISCUSSION

Section 6.1.3 of the Standard Offering states:

> No Subsequent Application Fee. Where CLECs add equipment within initial forecasted demand parameters that require no additional space preparation work on the part of the ILEC, the ILEC will not impose additional charges or additional intervals that would delay the CLP's operation. The CLPs will notify the ILEC of the additional equipment prior to installation.

CLP witness Gillan testified that "[w]hen a competing local provider installs additional equipment that is within the initial space and power requirements, it should only

notify the incumbent of the additional equipment. There is no need for the CLP to file a subsequent application and pay additional application fees to use the space in the manner in which it has already informed the incumbent that it would."

BellSouth witness Hendrix testified:

> If, in an initial application (and not in a general forecast as defined by the CLPs), the detailed collocation request will accommodate the CLP over a two-year forecasted growth the CLP would not need to submit an additional application for placement of equipment or for use of that collocation space.

Witness Hendrix also drew a distinction between the "general and broad" information that a CLP would provide in a forecast of future collocation space requirements and the specific details it would be expected to provide in a collocation application. Witness Hendrix argued that a complete application was necessary for BellSouth to provide a firm quotation that accurately accounts for the floor space, power, HVAC, and cable termination requirements of the CLP. On cross-examination by the Public Staff, witness Hendrix further argued that "a cookie-cutter arrangement is not something that (BellSouth) currently offer(s)," and added that BellSouth would need a prospective collocator to specify "the power, the floor space, its racking, how many bays he's going to need, how many racks, and exactly how he's wanting to lay his equipment out."

The Public Staff stated that it believes that the best solution is to require a prospective collocator to file a plan that details its collocation requirements for a period of 24 months with its initial application for collocation at a central office. The Public Staff further stated that during the 24-month period, the ILEC has an obligation to efficiently manage the infrastructure improvements and minimize the costs to the CLP while meeting the infrastructure requirements over time. The Public Staff contended that after giving reasonable notice to the ILEC, the CLP should be permitted to install equipment as needed in the space for which its application was filed, so long as it does not install equipment beyond the amounts forecasted in the initial application. The Public Staff stated that when the CLP seeks to install equipment exceeding its initial forecast, whether within the initial two-year forecast period or not, the ILEC shall require the CLP to submit a new application and application fee. In addition, the Public Staff contended, a new plan forecasting the CLP's collocation requirements for a 24-month period should also accompany the new application. The Public Staff recommended that Sections 6.1 through 6.1.3 of the Standard Offering should be amended to reflect these requirements.

In its Proposed Order, Verizon stated that a request must be submitted for the ILEC to determine the engineering effects of any collocation proposal. Verizon further stated that proposed modifications that exceed originally forecasted demands will also need to be reviewed.

The Commission recognizes that, in an increasingly competitive industry environment, ILECs must spend capital resources prudently while simultaneously ensuring that adequate collocation space is made available to competitors. These twin goals, we believe, are best achieved by requiring each prospective collocator to submit an initial application that is sufficiently detailed to enable the ILEC to accurately estimate the quantities of space, power, air conditioning, and other infrastructure and services it would be expected to furnish for some period of time following the initial collocation space occupancy date. We also recognize that ILECs face significant costs whenever they upgrade their existing HVAC or electrical systems or modify other elements of central office infrastructure. To manage their capital expenditures prudently in any given central office, ILECs must have reliable foreknowledge of their own company's plans and the plans of every collocator for some uniform period of time. If a CLP forecasts equipment placements too far in advance of needs, the ILEC may install supporting infrastructure prematurely, thereby incurring unnecessary costs which will ultimately be borne by all telephone customers. On the other hand, forecasts that are too conservative may cause an ILEC to delay the installation of infrastructure, thereby delaying the implementation of collocation space upgrades.

The Commission agrees that the best solution is to require a prospective collocator to file a plan that details its collocation requirements for a period of 24 months with its initial application for collocation at a central office. During the 24-month period, the ILEC has an obligation to efficiently manage the infrastructure improvements and minimize the costs to the CLP while meeting the infrastructure requirements over time. After giving reasonable notice to the ILEC, the CLP should be permitted to install equipment as needed in the space for which its application was filed, so long as it does not install equipment beyond the amounts forecasted in the initial application. When the CLP seeks to install equipment exceeding its initial forecast, whether within the initial two-year forecast period or not, the ILEC shall require the CIP to submit a new application and application fee. In addition, a new plan forecasting the CLP's collocation requirements for a 24-month period should also accompany the new application. The Commission agrees that Sections 6.1 through 6.1.3 of the Standard Offering should be amended to reflect these requirements.

CONCLUSIONS

The Commission concludes that Sections 6.1 through 6.1.3 of the Standard Offering be amended to reflect the requirements set out in the discussion above.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

ISSUE 11: What are the appropriate criteria for the assessment of a Subsequent Application Fee?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue in its Brief.

AT&T: The only time a Subsequent Application should be needed is when the CLP requires more space, more power, or both. Otherwise, no additional application, or fee based on such an application, should be required.

BELLSOUTH: A Subsequent Application Fee is the fee that is assessed when an application is submitted by the CLP pursuant to any type of requested augmentation to the collocation space, subsequent to collocation space being completed. The fee is based on what modifications, if any, to the Premises are required to accommodate the augment requested by the CLP in the subsequent application. Such necessary modifications to the Premises may include, but are not limited to, floor loading changes, changes necessary to meet HVAC requirements, changes to power plant requirements, equipment additions, etc.

MCIm: MCIm did not address this issue in its Brief.

NEW ENTRANTS: The New Entrants took the same position on this issue as AT&T.

PUBLIC STAFF: A subsequent application should not be required except when a CLP proposes changes to its collocation space exceeding the 24-month forecasted requirements in the initial application. The subsequent application and any infrastructure changes that are required to accommodate the request should be handled in the same manner as an initial collocation application.

SPRINT: Sprint is willing to accept the New Entrants' position on this Issue to the extent it is consistent with the terms and conditions of the Standard Offering filed with the Direct Testimony of Sprint witness Hunsucker, it is included in the Standard Offering, and the Standard Offering is made applicable to all parties in its entirety.

VERIZON: Major augments require complete application and Engineering Fee. Minor augment fee will apply when request requires the ILEC to perform certain services or functions on behalf of the CLP.

WORLDCOM: WorldCom took the same position on this issue as AT&T.

DISCUSSION

Section 6.1.2 of the proposed Standard Offering addresses subsequent application fees:

6.1.2 Subsequent Application Fee. In the event the CLP or the CLP's Guest(s) desire to modify the use of the Collocation space in a manner that exceeds forecasted demand parameters and which requires additional physical work by the ILEC, the CLP shall complete an Application document detailing all information regarding the modification to the Collocation Space together with payment of the appropriate Application Fee as stated in Section 7. Said minimum Subsequent Application Fee shall be considered a partial payment of the applicable Subsequent Application Fee that shall be calculated as set forth below. The ILEC shall determine what modifications, if any, to the Premises are required to accommodate the change requested by the CLP in the Application. Such necessary modifications to the Premises may include but are not limited to, floor loading changes, changes necessary to meet HVAC requirements, changes to power plant requirements, and equipment additions. The fee paid by the CLP for its request to modify the use of the Collocation Space shall be dependent upon the level of assessment needed for the modification requested as set forth in Section 7.

CLP witness Gillan testified that a subsequent application should only be required in cases where a CLP required more power or more space for collocation. Witness Gillan stated that while BellSouth opposes the CLPs' proposed language describing the subsequent application fee, this portion of the Standard Offering was drawn nearly verbatim from BellSouth's own standard collocation agreement. The only difference, witness Gillan stated, concerns the CLPs' position that no additional fees should apply when no work needs to be done.

Witness Gillan also testified that the Standard Offering already addresses the concerns raised by Verizon. Witness Gillan stated that the CLPs readily concede that additional costs may well be involved with "use of the Collocation Space in a manner that exceeds forecasted demand parameters and which requires additional physical work by the ILEC." Witness Gillan contended that the proposed language of Sprint and the CLPs adequately and fairly deals with the situation.

Witness Gillan stated that Sprint and the CLPs agreed to Sections 6.1.2 and 6.1.3 to reduce the frequency of the circumstances in which a CLP is ordered back to "Square One" by an ILEC. Witness Gillan stated that the CLPs disagree with Verizon's proposal to categorically foreclose any augments based on the need for more power or HVAC. Witness Gillan further stated that the CLPs, however, do agree with the idea -- which is expressed in Section 6.1.3 -- that, as expressed by Verizon, "(n)o fee will be required for augments performed solely by the CLP, that do not require the ILEC to provide a service or function on behalf of the CLP."

BellSouth witness Hendrix described the Subsequent Application Fee as "the fee that BellSouth assesses when a CLP submits an application to obtain any type of

requested augmentation to the CLP's collocation space, subsequent to collocation space being completed." Witness Hendrix stated that BellSouth had to evaluate, for example, power requirements, floor loadings, and HVAC requirements in connection with any proposed augmentation to a collocation space, and that the Subsequent Application Fee would allow BellSouth to recoup these costs. Witness Hendrix stated that even if BellSouth later determined that no additional physical work was required, it would still have to perform these assessments, and only in cases where no assessment was performed should the prepaid Subsequent Application Fee be refunded to the CLP.

The Public Staff stated that a subsequent application should not be required except when a CLP proposes changes to its collocation space exceeding the 24-month forecasted requirements in the initial application. The Public Staff stated that the subsequent application and any infrastructure changes that are required to accommodate the request should be handled in the same manner as an initial collocation application.

In its Proposed Order, Verizon stated that subsequent application fees are appropriate where the collocation arrangement already has been turned over to the CLP. Verizon further stated that subsequent application fees should depend on the magnitude of the augment. Verizon contended that major augments (requests requiring additional power, adding equipment that generates more BTUs of heat, or increasing caged floor space beyond the CLP's original application) require a complete application and an engineering fee. Verizon further contended that a minor augment fee should apply when a request requires the ILEC to perform certain services or functions on behalf of the CLP, including but not limited to: requests to pull cable for CLP to CLP interconnects, DSO, DS1 and DS3 facility terminations.

After examining Section 6.1.2 of the Standard Offering and reviewing the testimony presented concerning this issue, the Commission believes that Section 6.1.2 should be modified to accommodate the legitimate concerns of the ILECs and to provide protection to the CLPs from inappropriate charges. Any ILEC that is hosting collocators in its central office must be continuously aware of the total space, power, heating and cooling requirements that it must satisfy to fulfill its current and future collocation responsibilities. The only way to ensure that an ILEC has such comprehensive information at all times is to require every CLP to file a subsequent application that provides complete details concerning any proposed augmentations to existing collocation space that exceed previously forecasted requirements.

The Commission believes that a CLP should be required to submit a subsequent application and appropriate fee to the ILEC whenever the CLP proposes changes to its collocation space that exceed the 24-month forecasted requirements in the initial application. Accordingly, the subsequent application and any infrastructure changes that are required in response to it should be handled just as for an initial collocation application. The subsequent application, like the initial application, will include a 24-month forecast of collocation requirements. The ILEC will be expected to upgrade its central

office infrastructure in order to accommodate this forecast. So long as the CLP does not exceed its forecasted space and equipment requirements, it may add equipment to the collocation space after giving appropriate notice to the ILEC.

CONCLUSIONS

The Commission concludes that a CLP must submit a subsequent application and appropriate fee to the ILEC whenever the CLP proposes changes to its collocation space that exceed the 24-month forecast of collocation requirements. The Commission further concludes that Sections 6.1.2 and 6.1.3 of the Standard Offering be revised to reflect that the subsequent application and any infrastructure changes that are required in response to it should be handled just as for an initial collocation application. The subsequent application, like the initial application, will include a 24-month forecast of collocation requirements.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

ISSUE 12: May a CLP apply for different methods of collocation on one application while only paying the rate for a single type of collocation per application?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue in its Brief.

AT&T: Yes. The CLP should be able to submit a conditional request for different types of collocation on the same form. For example, caged collocation may be initially requested, but the form may indicate that, if such request cannot be met, then cageless collocation would be acceptable. This proposal provides an efficient solution for both the CLP and ILEC.

BELLSOUTH: No. BellSouth response intervals and application fees have been determined based on consideration of a single request for physical collocation. Each method of collocation requires detailed analysis and assessment of central office and network infrastructure to comply with the requirements of the requested method.

MCIm: MCIm did not address this issue in its Brief.

NEW ENTRANTS: The New Entrants took the same position on this issue as AT&T.

PUBLIC STAFF: CLPs may request caged and cageless methods of collocation on a single application with payment of a single application fee. A request for any other collocation method would require a separate application.

SPRINT: Sprint is willing to accept the New Entrants' position on this Issue to the extent it is consistent with the terms and conditions of the Standard Offering filed with the Direct Testimony of Sprint witness Hunsucker it is included in the Standard Offering, and the Standard Offering is made applicable to all parties in its entirety.

VERIZON: Yes. A CLP may submit a caged and cageless application together with one Engineering fee for a given location.

WORLDCOM: WorldCom took the same position on this issue as AT&T.

DISCUSSION

Section 6.1.4 of the Standard Offering addresses requests for multiple collocation alternatives in a single application:

> 6.1.4 Multiple Methods. A CLP that wishes the ILEC to consider multiple methods for collocation on a single application will need to include in each application a prioritized list of its preferred methods of collocating, e.g., caged, shared, or other, as well as adequate information (e.g., specific layout requirements, cage size, number of bays, requirements relative to adjacent bays, etc.) for the ILEC to process the application for each of the preferred methods. If a CLP provides adequate information and its preferences with its application, the ILEC may not require an additional application, nor would the CLP be required to restart the quotation interval should its first choice not be available in a requested Premises. The ILEC will not select for the CLP the type of collocation to be ordered.

CLP witness Gillan argued that BellSouth's primary objection to this proposal is that it has not yet established procedures to handle multiple forms of collocation on the same application. Witness Gillan further argued that if this were a reasonable objection, then there would never be the possibility of a Standard Offering for all the ILECs in the State, and all the negotiations that have occurred over the past year would have been a waste. Witness Gillan contended that the nature of a Statewide Standard Offering is that every ILEC will have to make some administrative concession to implement it. Witness Gillan stated that the other ILECs began this negotiation with the concession that BellSouth's language would be the starting point, yet here BellSouth rejects one of its key terms simply because it has not yet prepared the administration functions to comply.

Witness Gillan stated that in theory, a CLP could propose caged collocation, a shared caged arrangement, cageless collocation, and adjacent collocation. Witness Gillan further stated that, "as a practical matter, the number of alternatives to be requested by CLPs will be limited." For example, witness Gillan contended, "a CLP will not request a shared arrangement unless it is prepared to act as a Host CLP, and adjacent collocation space is not an issue unless space is legimately exhausted in a particular premises."

BellSouth witness Hendrix testified that BellSouth's application fees are based on a single request for physical collocation per application, and that each method of collocation requires detailed analysis and assessment of central office and network infrastructure to comply with the requirements of the requested method. Witness Hendrix contended that since the assessment required for different collocation methods varies, BellSouth's current application fee would not enable BellSouth to recover its costs if several methods were permitted on one application.

Witness Hendrix asserted, for example, that "caged collocation would require assessment of sufficient space to accommodate an enclosed arrangement and specific HVAC requirements, floor loading, as well as cable racking and support." Witness Hendrix explained that cageless collocation would have to take into account equipment size and availability of bays to accommodate such equipment. Witness Hendrix recommended that the Commission delete Section 6.1.4 from the Standard Offering in its entirety.

The Public Staff stated that CLPs may request caged and cageless methods of collocation on a single application with payment of a single application. The Public Staff contended that a request for any other collocation method would require a separate application.

Verizon witness Ries stated that Verizon is willing to allow CLPs to pay a single application fee and to request both caged and cageless collocation on a single application. He stated that the language of Section 6.1.4, as proposed by the CLPs, would allow CLPs to simultaneously request more than two forms of collocation. Witness Ries also stated that ILECs might have difficulty handling multiple requests due to the mandatory time limits they face in responding to an application.

The Commission believes that Verizon's position is reasonable and should be adopted by the Commission. Many of the infrastructure evaluations that an ILEC would undertake in evaluating separate applications for caged and cageless collocation of the same equipment would be redundant. For example, when an ILEC receives a CLP's request for caged collocation of three bays of equipment, it must necessarily determine that adequate space, power, and HVAC capacity are available. The presence or absence of the cage should not affect the power or HVAC requirements, and the adjustments that the ILEC would be required to make for floor space and floor loading due to the presence of a cage are unlikely to be very onerous.

The Commission further finds it appropriate to reject the CLPs' proposal to require ILECs to consider more than caged and cageless collocation methods in a single application. The Commission believes that an application for adjacent collocation would require the ILEC to evaluate a completely different set of circumstances than it would have to evaluate in handling a collocation request inside the central office. For these reasons, the Commission declines to allow CLPs to apply simultaneously for any collocation methods other than caged and cageless collocation.

The Commission further finds it appropriate to reject BellSouth's contention, that it assumed it would only have to conduct assessments for one type of collocation method when it proposed rates for application fees, and that its proposed rates would be too low if multiple collocation methods had to be considered in a single application. BellSouth knew prior to filing testimony in this docket that the CLPs had raised this issue, and it had ample opportunity to develop application fees which contemplated both single- and multiple-collocation method scenarios. Since BellSouth neglected to do so, and particularly because the Commission believes the difference between the alternatives would be insignificant, the Commission concludes that the ILEC cannot charge more than a single application fee for any collocation application that requests caged collocation and cageless collocation options. Section 6.1.4 of the Standard Offering should be amended to reflect these conclusions.

CONCLUSIONS

The Commission concludes that Section 6.1.4 of the Standard Offering should be amended to reflect the conclusions in the discussion above.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

ISSUE 13: What are the appropriate terms and conditions applicable to the relocation of collocation space, whether within a single premise, or from adjacent to another ILEC premise, including, but not limited to, appropriate application fees and provisioning costs?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue in its Brief.

AT&T: Where a CLP is required to move as a result of circumstances beyond its control (as listed in Section 14.2 of the Standard Offering - i.e., zoning changes, condemnation or government order), no application fee or process should apply. These fees and processes should only apply when the CLP moves at its own request.

BELLSOUTH: The appropriate terms and conditions applicable to the relocation of collocation space are addressed in Section 13 of Exhibit JDH-1. In general, if the whole of a Collocation Space or Adjacent Arrangement is taken by any public authority under the power of eminent domain, then the agreed upon terms and conditions relative to that Collocation Space or Adjacent Arrangement shall terminate as of the day possession is taken by such public authority and rent and other charges for the Collocation Space or Adjacent Arrangement shall be paid up to that day with proportionate refund by the ILEC of such rent and charges as may have been paid in advance for a period subsequent to the date of the taking.

MCIm: MCIm did not address this issue in its Brief.

NEW ENTRANTS: The New Entrants took the same position on this issue as AT&T.

PUBLIC STAFF: If the CLP's collocation space must be moved within an ILEC's premises, then the CLP should not have to pay an application fee; the ILEC should be aware of the CLP's needs from provisioning the initial collocation space. If the CLP must move from one ILEC premise to another, from an adjacent collocation structure to a different adjacent collocation structure, or from an adjacent collocation structure to an ILEC premises, due to zoning changes, condemnation, government order or regulation, then the CLP should bear the costs of this move, including any necessary application fees, as a cost of doing business.

SPRINT: Sprint is willing to accept the New Entrants' position on this Issue to the extent it is consistent with the terms and conditions of the Standard Offering filed with the Direct Testimony of Michael R. Hunsucker, it is included in the Standard Offering, and the Standard Offering is made applicable to all parties in its entirety.

VERIZON: CLPs shall pay for the internal costs of relocating unless requested to relocate by the ILEC. For such relocations, a new application must be submitted and will be considered in accordance with the regular application process.

WORLDCOM: WorldCom took the same position on this issue as AT&T.

DISCUSSION

The issue is whether the ILEC or the CLP should pay for the relocation of collocation space if zoning changes, condemnation, government order, or regulation require a CLP to relocate its collocation space at no fault of either the CLP or the ILEC. Pursuant to Section 14.2 of the Standard Offering:

> When the ILEC determines that because of zoning changes, condemnation, or government order or regulation that it is necessary for the Collocation Space to be moved within an ILEC Premises, to another ILEC Premises, from an adjacent space collocation structure to a different adjacent space collocation structure, or from an adjacent space collocation structure to an ILEC Premises, the CLP is required to move its Collocation Space or adjacent collocation structure.

If the CLP is required to relocate under the above circumstances, then the CLP "will not be required to pay any application fees associated with arranging for new space." Standard Offering, Section 14.3. The ILECs disagree with this provision of the Standard Offering, contending that the CLPs should bear the costs of relocating in the above-cited circumstances. No party offered any evidence where a CLP has been required to move under these circumstances.

CLP witness Gillan testified that where a competing local provider is required to move due to circumstances beyond its control (as listed in Section 14.2), no application fee or process should apply. These fees and processes should only apply when the competing local provider moves at its own request. Witness Gillan also testified that excusing application fees is reasonable in light of the fact that the ILEC already knows the CLP's power and space requirements, which not only have been "applied for" once, but are also already being provided.

BellSouth witness Hendrix testified that the terms and conditions applicable to relocation of collocation space were adequately addressed by BellSouth's standard collocation offering (Exhibit JDH: Section 13). BellSouth stated that, in general, that Section 13 provides that if a CLP's collocation space is taken by public authority under eminent domain, the collocation relationship between the CLP and BellSouth ends and rents/charges for the space shall be paid up to that date, with a proportionate refund by BellSouth of any rents/charges paid in advance for a period after the taking.

BellSouth contended that the principal issue in dispute here is whether the CLP should be required to pay an application fee as a result of the relocation necessitated by circumstances beyond the CLP's control. BellSouth contended that, while it is true that a CLP would have no control over a public authority condemning its collocation space, the fact remains that the ILEC will unavoidably incur costs processing the application and provisioning the new space, and the ILEC should be compensated for those costs.

BellSouth noted that another disputed issue concerns the interval given by the ILEC for notifying the CLP of the relocation. BellSouth stated that BellSouth will commit to notify the CLPs within 180 days if BellSouth itself has received information that a relocation will be necessary.

The Public Staff stated that if the CLP's collocation space must be moved within an ILEC's premises, then the CLP should not have to pay an application fee; the ILEC should be aware of the CLP's needs from provisioning the initial collocation space. The Public Staff contended that if the CLP must move from one ILEC premise to another, from an adjacent collocation structure to a different adjacent collocation structure, or from an adjacent collocation structure to an ILEC premises, due to zoning changes, condemnation, government order, or regulation, then the CLP should bear the costs of this move, including any necessary application fees, as a cost of doing business.

Verizon witness Ries testified that Verizon agreed with Sections 14.2, 14.3, and 14.4 of the CLP/Sprint Proposal on relocation of space, except for the provision that the CLP not be required to pay any application fees associated with arranging for new space if relocation is mandated by zoning changes, condemnation, or government order or regulation. Witness Ries testified that such relocation would not be the fault of the ILEC

and would be treated by the ILEC as any other relocation request through the application process.

The Commission believes that if the CLP must be moved within an ILEC's premises, then the CLP should not have to pay application fees -- the ILEC should be aware of the CLP's needs from provisioning the initial collocation space. If, however, the CLP must move from one ILEC premises to another, from an adjacent space collocation structure to a different adjacent collocation structure, or from an adjacent space collocation structure to an ILEC premises, then the CLP should bear the costs of this move, including any necessary application fees. If the ILEC had to similarly relocate, it would also bear these costs. Since neither the CLP nor the ILEC is at fault for a government-required relocation, the equitable remedy is to require the CLP to bear the costs of its own relocation. The Commission concludes that Sections 14.2 and 14.3 should be rewritten in conformity with this determination.

CONCLUSIONS

The Commission concludes that Sections 14.2 and 14.3 should be rewritten to reflect the following:

> If the CLP's collocation space must be moved within an ILEC's premises, then the CLP should not have to pay an application fee; the ILEC should be aware of the CLP's needs from provisioning the initial collocation space. If the CLP must move from one ILEC premise to another, from an adjacent collocation structure to a different adjacent collocation structure, or from an adjacent collocation structure to an ILEC premises, due to zoning changes, condemnation, government order or regulation, then the CLP should bear the costs of this move, including any necessary application fees, as a cost of doing business.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

ISSUE 14: What are the appropriate terms and conditions applicable to revisions to an initial request for physical collocation (both before and after a Firm Order), including but not limited to application type, interval, and appropriate application fees?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue in its Brief.

AT&T: Different procedures should apply whether a modification is major or minor. Minor modifications (i.e., adding bays that do not require additional power or space, adding

lighting that is within the existing systems and the like) should not impact the provisioning interval or require different fees. Major revisions, on the other hand, may require change in interval or fees. Unlike BellSouth's language, the Standard Offering tries to distinguish between major and minor revisions and to establish reasonable intervals. The Standard Offering's approach is reasonable, and where unique circumstances exist, either BellSouth or Verizon may request a modification of the terms of the Standard Offering, or additional time. The language of this provision, like other provisions in the Standard Offering, was taken directly from the applicable Texas PUC orders, in which the terms and conditions for collocation pertaining to SWBT were established in a collaborative process.

BELLSOUTH: Prior to a Bona fide firm order, if the ILEC has to reevaluate the CLP's application as a result of changes requested by the CLP to the CLP's original application, then the CLP should be charged a rate based upon the additional engineering hours required to do the reassessment. Major changes, such as requesting additional space or adding additional equipment, may require the CLP to resubmit the application with an Application Fee. After Bona fide firm order, any modifications to the initial request shall require submission of a subsequent application to be assessed as an augment to the initial arrangement, along with the appropriate subsequent application fee. The applicable response and provisioning intervals shall apply.

MCIm: MCIm did not address this issue in its Brief.

NEW ENTRANTS: The New Entrants took the same position on this issue as AT&T.

PUBLIC STAFF: Revisions in the billing contact, or billing contact information require no additional fee or change in the interval. If a revision is submitted before receipt of a Bona Fide Order, the ILEC should respond in the interval for the initial response. The fee for minor revision is 10% of the Subsequent Application Fee and the fee for a major revision is 50% of the Subsequent Application Fee. After the Bona Fide Offer has been submitted, the interval would be extended by two weeks for a minor revision and by two months for a major revision. The fee for a minor revision is 20% of the Standard Application Fee and the entire Standard Application Fee is applicable for a major revision. A Subsequent Application must be submitted for major and minor revisions.

SPRINT: Sprint proposed: (1) 30 days for administrative work, (2) 20 days for simple augments, (3) 45 days for minor augments, (4) 60 days for intermediate augments, and (5) 90 days for major augments. Sprint revised its proposed provisioning intervals based on further internal discussions. The practical result of these internal discussions was to further refine the interval so that it better affords CLPs with a meaningful opportunity to compete while still allowing ILECs a reasonable time period for provisioning of augments and additions.

VERIZON: All written revisions to initial requests should be handled according to Verizon's proposed policy on augments set forth previously in Issue No. 11.

WORLDCOM: WorldCom took the same position on this issue as AT&T.

DISCUSSION

CLP witness Gillan proposed in Section 6.3.4 of the Standard Offering that revisions be divided into two classes: major and minor. Witness Gillan contended that, for minor changes such as adding bays that do not require additional power or space, supplementing light that is within the existing systems, or increasing the square footage of the requested cage area by less than 10%, the provisioning intervals should remain unchanged and no additional fee should be charged. CLP witness Gillan agrees with BellSouth and Verizon that major revisions might require a change in the interval or fees and proposed that the interval be increased by a maximum of two months for major revisions. Witness Gillan pointed out that, while the CLP's proposal may result in some cases where the ILEC is unable to meet the interval, such a case would be the exception and the ILEC could request a waiver.

BellSouth witness Hendrix stated that prior to a bona fide firm order, if a modification or revision is made to any information on an initial request for Physical Collocation or Adjacent Collocation, either at the request of the CLP or necessitated by technical considerations, with the exception of modifications to Customer Information, Contact Information, or Billing Contact Information, BellSouth will respond to the changes within the specified timeframe for an initial response to a request for physical or adjacent collocation space, or at such other date as the ILEC and CLP agree.

Witness Hendrix stated that after the bona fide firm order, the Standard Offering should provide that any modifications to the initial request shall require submission of a subsequent application to be assessed as an augment to the initial arrangement, along with the appropriate subsequent Application Fee. Witness Hendrix stated that the applicable response and provisioning intervals for an augmentation should apply.

The Public Staff stated that revisions in the billing, contact, or billing contact information require no additional fee or change in the interval. The Public Staff contended that if a revision is submitted before receipt of a bona fide firm order, the ILEC should respond in the interval for the initial response. The Public Staff stated that the fee for a minor revision is 10% of the subsequent Application Fee and the fee for a major revision is 50% of the Subsequent Application Fee. The Public Staff contended that after the bona fide firm order has been submitted, the interval should be extended by two weeks for a minor revision and by two months for a major revision. The fee for a minor revision is 20% of the Standard Application Fee and the entire Standard Application Fee is applicable for a major revision. The Public Staff stated that a Subsequent Application must be submitted for major and minor revisions. The Public Staff recommended that Verizon's position that increasing square footage of the cage by less than 10% be included in the major revision category.

In its Proposed Order, Sprint stated that it had proposed provisioning intervals of: (1) 30 days for administrative work, (2) 20 days for simple augments, (3) 45 days for minor augments, (4) 60 days for intermediate augments, and (5) 90 days for major augments. Sprint stated that witness Hunsucker's rebuttal testimony contained examples of each. Sprint contended that these intervals would afford CLPs a meaningful opportunity to compete while allowing ILECs a reasonable time period for provisioning of augments and additions.

Verizon witness Ries stated that Verizon's position is somewhat similar to that proposed by the CLPs in that it groups the revisions into classes of major, minor, and not applicable depending on the magnitude of the revision. Witness Ries stated that the intervals would be dependent on the extent of the revisions. Witness Ries further opined that the two-month increase in the interval for major revisions proposed by the CLPs could be inadequate in some cases and that any increase in the requested square footage of the cage area could constitute a major revision.

The Commission believes that the CLPs' proposal of classing revisions into the categories of major and minor is the best method of separating revisions which could vary widely in the time and costs required for evaluation by the ILEC. Nonetheless, adopting standard intervals and fees for revisions will reduce disputes between ILECs and CLPs and provide CLPs with information necessary to make the decision to submit a revision. The Commission agrees with the Public Staff that Verizon's position that increasing square footage of the cage by less than 10% be included in the major revision category should be rejected.

The Commission believes that revisions in the billing, contact, or billing contact information require no additional fee or interval and should not be considered either minor or major modifications. If either a major or a minor revision is submitted before the ILEC has received the bona fide firm order, the ILEC should respond in the interval for an initial response to request for collocation, and thereafter, the intervals for an initial application would apply. Because the ILEC would incur some cost in handling even a request for a minor revision, it is necessary to assess fees for both minor and major revisions. The Commission finds that the fee for a minor revision prior to receipt of the bona fide firm order should be 10% of the Subsequent Application Fee, and 50% of the Subsequent Application Fee for a major revision. In either case, the CLP should submit a Subsequent Application.

After the bona fide firm order has been received, the Commission agrees with the CLPs that the intervals for major revisions should be increased by two months. However, the Commission believes that the interval should be increased by two calendar weeks for minor revisions to give the ILEC adequate time to process the request. In either case, the CLP must submit a Subsequent Application. After receipt of the bona fide firm order, the CLP must submit 20% of the Subsequent Application Fee for minor modifications, and the entire Subsequent Application Fee for major modifications. As in the case of all standard

intervals, if the ILEC believes it will be unable to meet this prescribed period and the parties are unable to agree to an extension, the ILEC shall seek an extension of time from this Commission within 30 days of receipt of the bona fide firm order. The Commission believes that the charges for revisions will adequately compensate the ILECs for the additional costs they will incur. Section 6.3.4 of the Standard Offering should be revised in conformity with this determination.

CONCLUSIONS

The Commission concludes that Section 6.3.4 of the Standard Offering be revised to be in compliance with the discussion above.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

ISSUE 15: Under what circumstances if any, is the ILEC obligated to incur costs to provision collocation space for a CLP prior to the CLP receiving state certification and a final approved interconnection agreement?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not take a position on this issue in its Brief.

AT&T: "[A]n incumbent LEC may not refuse to consider an application for collocation space submitted by a competitor while that competitor's state certification is pending, or before the competitor and incumbent LEC have entered into a final interconnection agreement." *Advanced Services Order, Paragraph 53.* A CLP should be entitled to proceed with collocation once it has applied for a certificate, but prior to receiving certification. The collocation process includes payment of deposits where appropriate. The incumbent should not be able to delay the CLP's preparation by waiting until the CLP receives a certificate or has an approved interconnection agreement. The Standard Offering already addresses the issue of a "pre-certificated" CLP in Section 6.12, which states that "collocation equipment cannot go into service until any necessary state certifications are received and an interconnection agreement is approved." Sprint and Verizon have agreed with this reasonable position and there is no reason to modify the Standard Offering in this area.

BELLSOUTH: Under no circumstances should an ILEC be obligated to incur costs to provision collocation space for a CLP prior to the CLP receiving state certification and having executed a final approved interconnection agreement. BellSouth's position on this issue is supported by the FCC in the *Advanced Services Order, Paragraph 53* which only requires that an ILEC begin processing a collocation application prior to certification and an interconnection agreement, because the CLP will have paid an application fee to cover the costs associated with consideration of the application. This ruling evidences the FCC's recognition that BellSouth only is obligated to incur costs for which it will be reimbursed.

MCIm: MCIm did not address this issue in its Brief.

NEW ENTRANTS: The New Entrants took the same position on this issue as AT&T.

PUBLIC STAFF: Construction may begin on the collocation space prior to the CLP obtaining the necessary state certification or approval of an interconnection agreement. Collocation equipment may not go into service until the receipt of any necessary state certifications and Commission approval of an interconnection agreement.

SPRINT: Sprint is willing to accept the New Entrants' position on this Issue to the extent it is consistent with the terms and conditions of the Standard Offering filed with the Direct Testimony of Sprint witness Hunsucker, it is included in the Standard Offering, and the Standard Offering is made applicable to all parties in its entirety.

VERIZON: Regardless of the status of state certification or an interconnection agreement, Verizon will begin construction and implementation of a collocation arrangement once it receives a completed application and 50% of the nonrecurring charges.

WORLDCOM: WorldCom took the same position on this issue as AT&T.

DISCUSSION

With this issue, the Commission must determine whether ILECs should incur the costs of preparing collocation space when the CLP is not certified in North Carolina or has no effective interconnection agreement with the ILEC. Section 6.12 of the Standard Offering states:

> The CLP, at its own expense, will be solely responsible for obtaining from governmental authorities, and any other appropriate agency, entity, or person, all rights, privileges, and licenses necessary or required to operate as a provider of telecommunications services to the public (if any) or to occupy the Collocation Space. The ILEC shall not refuse to process an application for collocation space and shall not refuse to provision the collocation space submitted by a CLP while that CLP's state certification is pending or prior to an approved interconnection agreement. However, collocation equipment cannot go into service until any necessary state certifications are received and an interconnection agreement is approved.

In his prefiled rebuttal testimony, CLP witness Gillan addressed the CLPs' positions on this issue. Witness Gillan stated that Verizon's proposal is quite similar to the Standard Offering, agreeing that the ILEC must begin provisioning of collocation space prior to a CLP's certification. Witness Gillan stated further that the Standard Offering already addresses the issue of a "pre-certificated" CLP in Section 6.12, which states that "collocation equipment cannot go into service until any necessary state certifications are

received and an interconnection agreement is approved." Witness Gillan argued that although Verizon indicated that it wants to collect 50% of the nonrecurring charges up-front, the Standard Offering recognized that pricing issues were deferred until cost studies were completed. Witness Gillan contended that the Standard Offering does indicate that the application is to be submitted with an appropriate application fee (Section 6.1.1), and that space cannot begin until the ILEC receives the firm order and "all applicable fees" (Section 6.1.3). Consequently, witness Gillan argued that the Standard Offering already addresses Verizon's concerns.

In addressing BellSouth's position on this issue, witness Gillan stated that in contrast to Verizon's position, BellSouth's position is that nothing should occur until a CLP is certificated and an interconnection agreement has been executed. Witness Gillan contended that such a procedure injects unnecessary delay, delay that neither Verizon nor Sprint believes is appropriate. Witness Gillan contended that there is no reason to modify the Standard Offering in this area.

BellSouth witness Hendrix testified that under no circumstances should an ILEC be obligated to incur costs to provision collocation space for a CLP prior to the CLP receiving state certification and having executed a final approved interconnection agreement. Witness Hendrix stated that BellSouth's position on this issue is supported by the FCC in Docket No. 98-147, *Advanced Services Order,* Paragraph 53, which only requires that an ILEC begin processing a collocation application prior to certification and an interconnection agreement, because the CLP will have paid an application fee to cover the costs associated with consideration of the application. Witness Hendrix contended that this ruling evidences the FCC's recognition that BellSouth only is obligated to incur costs for which it will be reimbursed. Witness Hendrix stated that in accordance with FCC directives, BellSouth will review and respond to an application with space availability, as well as a price quote, to permit a CLP to submit Bona fide firm order (Firm Order). A Firm Order, witness Hendrix argued, may not be submitted until such time that an agreement has been executed and the CLP has been certified by the state. Witness Hendrix contended that Sections 6.1, and 6.1.1 of the CLP's Standard Offering need to be amended to make clear this policy.

The Public Staff stated that construction may begin on the collocation space prior to the CLP obtaining the necessary state certification or approval of an interconnection agreement. Collocation equipment may not go into service until the receipt of any necessary state certifications and Commission approval of an interconnection agreement.

The Public Staff noted that Verizon presented an ostensible, compromise position on this issue. The Public Staff stated that Verizon proposes to begin construction and implementation of the collocation arrangement once it receives a completed application and 50% of the nonrecurring charges, even if the CLP has not yet received state certification and has not yet entered into an effective interconnection agreement. Thus, under Verizon's proposal, the Public Staff stated that the collocation space could be turned

over to the CLP and the equipment installed prior to state certification or an effective interconnection agreement, that equipment, however, would not be connected to the ILEC's network unless and until certifications and agreements are final.

Verizon witness Ries testified that Verizon will begin construction and implementation of a collocation arrangement once it receives a completed application and 50% of the nonrecurring charges. Witness Ries stated that this activity may occur prior to the CLP receiving state certification and an approved interconnection agreement. However, witness Ries contended, while space may be turned over to the CLP and equipment installed, the equipment cannot be connected to the ILEC network unless certifications and agreements are final. Witness Ries stated that tying construction commencement with 50% of nonrecurring charges is appropriate because the ILEC should not incur significant costs to process a collocation request until the CLP has become vested in the project. Witness Ries contended that the 50% of nonrecurring charges make certain that the CLP has a stake in ensuring that the collocation arrangement goes forward. Witness Ries further contended that because Sections 6.1 and 6.1.1 of the Standard Offering only connect implementation of a collocation arrangement with payment of an application fee by the CLP, it should be rejected.

The controlling authority from the FCC on this issue is from the Advanced Services Order, Paragraphs 52-53 which are as follows:

> In the Advanced Services Order and NPRM, we sought comment on how to address the entry barrier posed by delays between the ordering and provisioning of collocation space. . . . Currently some incumbent LECs require a new entrant to obtain state competitive LEC certification before it can begin to negotiate an interconnection agreement. In addition, competitive LECs asserted that some incumbent LECs will not allow a requesting carrier to order collocation space until an interconnection agreement becomes final.
>
> We [the FCC] conclude that an incumbent LEC may not impose unreasonable restrictions on the time period within which it will consider applications for collocation space. Specifically, we conclude that an incumbent LEC may not refuse to consider applications for collocation space submitted by a competitor while that competitor's state certification is pending, or before the competitor and incumbent LEC have entered into a final interconnection agreement. We agree with commenters who contend that there is no legitimate reason for an incumbent LEC to refuse to begin processing a collocation application, especially given that competitors pay an application fee to the incumbent to cover the costs associated with consideration of the application.

The Commission believes that the above-cited authority compels the ILEC to begin processing an application for collocation space as soon as it receives it. The purpose of the Standard Offering is to facilitate the provisioning of collocation space as early as possible. G.S. 62-110(a) requires public utilities to obtain a certificate prior to beginning any construction thereof. The Commission expects the CLP to timely request waiver of this statute and to seek authority to begin construction. The ILEC, therefore, should not delay construction of the collocation space until a CLP is certified in this state or until the Commission approves the interconnection.

The Commission believes that the ILECs have expressed valid concerns about expending costs that they will not recoup because the CLP has not been certified or because the parties have not agreed on interconnection. The Commission, therefore, agrees with the Public Staff and concludes that it is appropriate to adopt Verizon's compromise position described above and that the Standard Offering should be amended to reflect Verizon's proposal on this issue.

CONCLUSIONS

The Commission concludes that Verizon's compromise proposal to begin construction and implementation of the collocation arrangement once it receives a completed application and 50% of the nonrecurring charges, even if the CLP has not yet received state certification and has not yet entered into an effective interconnection agreement, should be adopted. Section 6.12 of the Standard Offering should be revised in conformity with this conclusion.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

ISSUE 16: Should intervals be stated in calendar days or business days?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue in its Brief.

AT&T: AT&T did not specifically address this issue in its Joint Proposed Order but in its recommendations for provisioning intervals under Issue No. 18, AT&T referred to calendar days. AT&T also stated that for intervals of 10 days or less, national holidays should be excluded in calculating the due date, and, if a due date falls on a weekend or holiday, the next work day should be considered the due date. In its Joint Issues Matrix attached to its Proposed Order and Brief as Exhibit B, AT&T noted that the FCC has clarified its rules with respect to its collocation orders to make clear that "days" means calendar days. AT&T noted that BellSouth and the CLPs agree on this issue while Verizon does not.

BELLSOUTH: Collocation intervals should be stated in calendar days. For all intervals, if the due date falls on a weekend or a national holiday, the next work day should be considered the due date.

MCIm: MCIm did not address this issue in its Brief.

NEW ENTRANTS: The New Entrants filed a Joint Proposed Order with AT&T and WorldCom. Therefore, the position as outlined for AT&T above represents the New Entrants' position on this issue.

PUBLIC STAFF: Intervals should be stated in calendar days. If the time interval is 10 days or fewer, then the interval should exclude national holidays. If the last day of an interval falls on either a weekend or national holiday, then the due date should be extended to the next business day.

SPRINT: Intervals should be stated in calendar days.

VERIZON: The amount of time that the ILEC has to respond with a space assessment and a price quote should be stated in business days.

WORLDCOM: WorldCom filed a Joint Proposed Order with AT&T and the New Entrants. Therefore, the position as outlined for AT&T above represents WorldCom's position on this issue.

DISCUSSION

CLP Coalition witness Gillan stated in rebuttal testimony that this issue is not still open. Witness Gillan maintained that the FCC has clarified its rules to make clear that "days" means calendar days with respect to its collocation order. Witness Gillan also noted that BellSouth and Verizon have both modified their position to acknowledge that intervals should be stated in calendar days.

The Public Staff noted in its Proposed Order that both BellSouth and the CLPs agree that intervals should be stated in calendar days. The Public Staff also maintained that the CLPs agree with BellSouth's proposal that if the time interval is 10 days or fewer, the interval should exclude national holidays. The Public Staff also noted that the CLPs agree that if the due date falls on a national holiday or a weekend, then the next workday should be the due date.

The Public Staff also commented that according to 47 C.F.R. 51.5, "day" means calendar day. Therefore, the Public Staff recommended that the Commission conclude that intervals should be measured in calendar days, that when the interval is 10 days or fewer, the interval should exclude national holidays, and that if the due date falls on a weekend or national holiday, the next workday should be the due date.

Further, the Public Staff noted that Rule 6 of the Federal Rules of Civil Procedure which governs time computation in federal court lists the "legal" holidays that are excluded from computation as: New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, and Christmas Day. The Public Staff recommended that the Commission adopt the federal list of national holidays as the national holiday list for the purpose of this proceeding and instruct the Parties to rewrite the Standard Offering to conform with this list.

Verizon noted in its Proposed Order that employees and contractors do not work on weekends or holidays and the costs that were used to develop collocation rates do not include overtime or expedite charges. Verizon maintained that an interval based on calendar days may be significantly shorter when requests are received on a Thursday or Friday. Verizon commented that the proposed Standard Offering's interval of 10 calendar days for response to a collocation request could leave the ILEC with only six business days to respond to a request that was submitted on a Thursday or Friday, and only five business days if that period contained a holiday. Therefore, Verizon concluded, business days are more realistic for scheduling purposes.

Based on the record of evidence, the Commission concludes that intervals should be stated in calendar days and if the time interval is 10 days or fewer, the intervals should exclude national holidays. Further, the Commission finds that if a due date falls on a national holiday or a weekend, then the next workday should be the due date. The Commission believes that it is appropriate to recognize as national holidays those which govern time computation in federal court, as follows: New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, and Christmas Day.

CONCLUSIONS

The Commission concludes that intervals should be stated in calendar days and if the time interval is 10 days or fewer, the intervals should exclude national holidays. Further, the Commission finds that if a due date falls on a national holiday or a weekend, then the next workday should be the due date. The Commission finds it appropriate to recognize as national holidays those which govern time computation in federal court, as follows: New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, and Christmas Day.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

ISSUE 17: Should intervals vary depending on the number of collocation spaces involved?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue in its Brief.

AT&T: AT&T did not specifically address this issue in its Joint Proposed Order. In its Joint Issues Matrix attached as Exhibit B to its Joint Proposed Order, AT&T argued that intervals should vary depending on the number of collocation spaces involved with regards to space availability. AT&T stated that Section 2.2.2 of the Standard Offering provides a reasonable compromise position to this issue; thus the terms of the Standard Offering should be adopted without further modification.

BELLSOUTH: When a CLP submits multiple collocation applications within a short span of time, a staggered response time should apply as set forth in Section 6.2 of the BellSouth proposed Standard Offering. This staggered response time should take into account the total volume of requests that are being worked on in a state to allow for a complete and accurate assessment and analysis of each request.

MCIm: MCIm did not address this issue in its Brief.

NEW ENTRANTS: The New Entrants filed a Joint Proposed Order with AT&T and WorldCom. Therefore, the position as outlined for AT&T above represents the New Entrants' position on this issue.

PUBLIC STAFF: The Public Staff did not specifically address this issue in its Proposed Order.

SPRINT: Sprint was willing to accept the New Entrants' position on this Issue to the extent that it is consistent with the terms and conditions of the Standard Offering filed with the direct testimony of Sprint witness Hunsucker, it is included in the Standard Offering, and the Standard Offering is made applicable to all parties in its entirety.

VERIZON: Verizon's forecasting process should be adopted with the understanding that applications exceeding specified forecasts may require longer intervals.

WORLDCOM: WorldCom filed a Joint Proposed Order with AT&T and the New Entrants. Therefore, the position as outlined for AT&T above represents WorldCom's position on this issue.

DISCUSSION

Section 6.2 of BellSouth's Standard Offering states in pertinent part:

> . . . When multiple applications are submitted in a state within a fifteen (15) calendar day window, ILEC will respond to the Bona Fide Applications as soon as possible, but no later than the following: within thirty (30) calendar days for Bona Fide Applications 1-5; within thirty-six (36) calendar days for Bona Fide Applications 6-10; within forty-two (42) calendar days for Bona Fide Applications 11-15. Response intervals for multiple Bona Fide Applications submitted within the same timeframe for the same state in excess of 15 must be negotiated. All negotiations shall consider the total volume from all requests from telecommunications companies for collocation.

BellSouth stated in its Proposed Order that there appears to be no disagreement that when multiple collocation applications are submitted in a state within a short span of time, it is appropriate that a staggered application response time apply. BellSouth recommended that the Commission agree with it that it would be inefficient to obligate an ILEC to staff its organization for the potentially rare situation in which a CLP submits 20 collocation applications in one day, regardless of whether the arrangements are confined to that ILEC's major markets. BellSouth argued that it is more efficient to require an ILEC to staff its collocation team to respond to the average number of applications within the standard interval and allow for staggered intervals to account for exceptions to the rule. BellSouth recommended that the Commission find that BellSouth's proposed staggered application response intervals are the most reasonable and adopt those intervals for inclusion in the Standard Offering.

Section 2.2.2 of the New Entrants' Standard Offering states:

> The ILEC will respond to a request regarding space availability for a particular ILEC Premise in accordance with the following intervals from receipt of such request. The ILEC will respond in ten (10) calendar days to requests for space availability in the top 100 MSAs. For those requests that do not fall within the top 100 MSAs, the ILEC will respond in ten (10) calendar days to such a request when the request includes up to and including ten (10) ILEC Premises locations within the same State. The ILEC will respond within fifteen (15) calendar days to the request for the eleventh to fifteenth locations within the same State. The ILEC will respond within twenty (20) calendar days to the request for the sixteenth to twentieth locations within the same State. When a CLP requests greater than

twenty (20) locations within a State, the ILEC's time for response will increase in a similar five calendar day intervals for the additional five locations requested [e.g. twenty-five (25) days for twenty-first to twenty-fifth locations; thirty (30) days for twenty-sixth to thirtieth locations, etc.]

Verizon maintained in its Proposed Order that nationally, the demand for collocation has doubled every year for the last few years and shows no sign of abating. Verizon stated that with the intense amount of construction in the telecommunications industry, quicker performance from suppliers and vendors is unlikely. Verizon maintained that in order for ILECs to provision collocation requests in a responsible manner, it is important for the ILEC to work closely with CLPs in determining demand and that the implementation of a forecasting process will help assure the CLPs that collocation space will be provided to them in a timely manner if their requests for collocation align with their forecasts.

Verizon recommended that the Commission conclude that the ILEC should ask CLPs to submit forecasted space needs twice a year, with each forecast covering a two-year period. Further, Verizon proposed that the CLPs be required to update the near-term (six month) forecasted application dates with each submission and that if the CLP applied for space that was part of the previously submitted forecast, the 76-business day interval would apply. Verizon noted that the forecast information should include the name of the central office(s) where space is to be requested, the month applications that are expected to be sent, the requested in-service month, preference for virtual and physical collocation, square footage required, high-level list of equipment to be installed, and anticipated splitter arrangements.

Verizon proposed that unforecasted demand be given a lesser priority than forecasted demand, although the ILEC will make every effort to meet standard intervals for unforecasted requests. Verizon noted that if unanticipated requests push demand beyond the ILEC's capacity limits, the ILEC will negotiate longer intervals as required and within reason. Verizon recommended that if forecasts are received less than two months prior to the application date, the interval date may be postponed as follows:

Forecast Received	**Interval Start Date Commences**
No forecast	2 months after application date
Forecast received 1 month prior to application date	2 months after application date
Forecast received 2 months before application date	1 month after application date

Verizon also proposed other details in its forecasting process.

Verizon recommended that the Commission adopt Verizon's forecasting process with the understanding that applications exceeding specified forecast will require longer intervals.

Verizon witness Ries stated in rebuttal testimony that whether or not the requested collocation site falls outside the top 100 MSAs should not determine whether the interval should be increased, as proposed in the Standard Offering. Witness Ries argued that when the ILEC must process numerous applications, the classification of the requested site as urban or rural does not affect the amount of time needed for review.

The Commission notes that the CLPs appear to agree with BellSouth that intervals should vary based on the number of collocation spaces involved. However, the Parties differ on the appropriate intervals for a certain amount of applications. The following demonstrates the differences:

BELLSOUTH:
1-5 applications - 30 calendar days
6-10 applications - 36 calendar days
11-15 applications - 42 calendar days
Greater than 15 applications - negotiated

NEW ENTRANTS:
For applications that are within the top 100 MSAs - 10 calendar days
For applications outside of the top 100 MSAs:
10 or less applications - 10 calendar days
11-15 applications - 15 calendar days
16-20 applications - 20 calendar days
21-25 applications - 25 calendar days
26-30 applications - 30 calendar days

The Commission agrees that it is reasonable to have intervals vary based on the number of applications submitted. However, the Commission believes that BellSouth's proposal is too generous and that the New Entrants' proposal is too demanding. The Commission believes that a more reasonable and appropriate interval for ILEC response to multiple applications is as follows:

1-5 applications - 15 calendar days
6-10 applications - 20 calendar days
11-15 applications - 25 calendar days
16-20 applications - 30 calendar days
21-25 applications - 35 calendar days
etc. . . .

Further, the Commission does not believe that it is reasonable to require the ILECs to respond differently to collocation requests in central offices within the top 100 MSAs as the New Entrants proposed. The Commission agrees with Verizon witness Ries that whether or not the requested collocation site falls outside the top 100 MSAs should not determine whether the interval should be increased and that when the ILEC must process

numerous applications, the classification of the requested site as urban or rural does not affect the amount of time needed for review.

In addition, the Commission believes that Verizon's forecasting proposal would create unnecessary procedures for provisioning intervals.

In summary, the Commission concludes that the Parties should revise Section 2.2.2 of the Standard Offering to reflect the intervals outlined above without variance due to the location of the requested space within the top 100 MSAs.

CONCLUSIONS

The Commission concludes that Section 2.2.2 of the Standard Offering should be revised to include the following intervals:

1-5 applications - 15 calendar days
6-10 applications - 20 ca endar days
11-15 applications - 25 calendar days
16-20 applications - 30 calendar days
21-25 applications - 35 calendar days
etc. . . .

The Commission concludes that no variance to the intervals is to be recognized due to the location of the requested space within the top 100 MSAs.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

ISSUE 18: What are the appropriate intervals for the following:

(a) Space Availability Notification after receipt of application
(b) Notification of carriers on the waiting list of space availability
(c) Reaffirmation by CLP of collocation request
(d) Updates to space availability list on website
(e) ILEC review of CLP plans and specifications
(f) CLP notification to ILEC of Guest/Host arrangement
(g) ILEC review of CLP plans and specifications for adjacent collocation arrangement
(h) ILEC notification tc CLP that space is ready for occupancy
(i) ILEC notification to CLP prior to ILEC gaining access to Collocation Space
(j) Application Response
(k) Application Response for multiple applications
(l) CLP acceptance of ILEC quotation for Collocation Space
(m) Bona Fide Firm Order

(n) ILEC acknowledgment of receipt of Bona Fide Firm Order
(o) Construction and Provisioning Intervals for Caged Space
(p) Joint Planning Meeting
(q) Acceptance Walk Through
(r) Construction and Provisioning Intervals for Cageless Space
(s) ILEC provision of written report regarding space availability and multiple requests
(t) Tour of ILEC premises

ISSUE 63: Should BellSouth be required to provide a response, including a firm cost quote, within 15 days of receiving a collocation application? (See Issue 18(j) - Application Response)

ISSUE 79 (Sprint 5): When should an ILEC respond to a complete and accurate application for collocation? (See Issue 18(j) - Application Response)

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue in its Brief.

AT&T: Maximum intervals for collocation should be established. These intervals should begin at the time that the ILEC receives an initial application or an application seeking an augmentation. The collocation space should be ready for CLP occupancy by the expiration of the interval. The intervals regarding caged and cageless collocation provisioning should assume that the CLP will respond to the firm price quote within seven days; if the CLP does not respond within that period, any additional days should be added to the interval. The intervals and the sections in the Standard Offering to which they refer should be as follows:

Administrative Work	5 calendar days (Section 9.2.1)
Response to initial application	10 calendar days (Section 6.2)
Firm Price Quote	15 calendar days (Section 6.2)

The Standard Offering should incorporate these intervals. For intervals of 10 days or less, national holidays may be excluded in calculating the due date, and if a due date falls on a weekend or holiday, the next work day should be considered the due date. MCIm's proposed intervals for response to an application, including a firm price quote, and for provisioning of caged, cageless, and virtual collocation for its interconnection agreement with BellSouth are consistent with these intervals and should be incorporated into the Parties' interconnection agreement.

BELLSOUTH: The following provisioning intervals are appropriate:

(a) Space Availability Notification after receipt of Application	10 calendar days
(b) Notification of carriers on the wait ng list of space availability	60 calendar days to the extent known
(c) Reaffirmation by CLP of collocation request	30 calendar days
(d) Updates to space availability list on website	10 calendar days
(e) ILEC review of CLP plans and specifications	15 calendar days after submission of Bona Fide Firm Order
(f) CLP notification to ILEC of Guest/Host arrangements	10 calendar days prior to firm order associated with the installation of the guest arrangement
(g) ILEC review of CLP plans and specifications for adjacent collocation arrangement	30 calendar days for review of CLPs plans and specifications
(h) ILEC notification to CLP that space is ready for occupancy	best efforts to provide notice 5 days prior to the date space becomes ready
(i) ILEC notification to CLP prior to gaining access to Collocation Space	at least three calendar days, except in the case of an emergency in which case BellSouth shall notify as soon as possible
(j) Application Response	30 calendar days
(k) Application Response for multiple applications	Applications / Cal. Days 2-5 / 30 6-10 / 36 11-15 / 42 16+ / Negotiated
(l) CLP acceptance of ILEC quotation for Collocation Space	30 calendar days
(m) Bona Fide Firm Order	See above

(n) ILEC acknowledgment of receipt of Bona Fide Firm Order	within 7 calendar days of receipt of Bona Fide Firm Order
(o) Construction and Provisioning Intervals for Caged Space	90 calendar days for ordinary conditions; 130 calendar days for extraordinary conditions
(p) Joint Planning Meetings	A maximum of 10 calendar days from receipt of Bona Fide Firm Order to contact the CLP in order to schedule the joint planning meeting
(q) Acceptance Walk Through	5 business or 7 calendar days unless otherwise agreed to by the parties
(r) Construction and Provisioning Intervals for Cageless Space	90 calendar days for ordinary conditions; 130 days for extraordinary conditions
(s) ILEC provision of written report regarding space availability and multiple requests	intervals proposed by CLPs are acceptable
(t) Tour of ILEC premises	within 10 days of denial of an application

MCIm: Addressing Issue 63, MCIm stated in its Brief that CLPs require a complete response, including a firm cost quote, to prepare and submit a firm order for collocation space. MCIm argued that the Commission should establish a firm interval within which BellSouth must supply a complete response to a collocation application. MCIm noted that the FCC has required ILECs to provision physical collocation within 90 days and hence, the New Entrants, as well as MCIm, advocate provisioning be completed within 90 days of the application.

NEW ENTRANTS: The New Entrants filed a Joint Proposed Order with AT&T and MCIm. Therefore, the position as outlined for AT&T above represents the New Entrants' position on this issue.

PUBLIC STAFF: The Commission should decline to approve detailed intervals that are best worked out in good-faith negotiations. Instead, the Commission should choose to

prescribe the following values for what the Public Staff believes to be the most critical intervals:

(a) ILEC to provide space availab lity notification to the CLP following receipt of the application	10 calendar days
(h) ILEC notification to CLP, prior to completion of collocation space, that space will be ready for occupancy	5 calendar days
(m) Deadline from receipt of price quote by CLP to receipt of bona fide firm order by ILEC	30 calendar days
(n) ILEC acknowledgment to CLP following receipt of bona fide firm order	5 calendar days
(o) Construction and provisioning intervals for caged space, from receipt of a complete application by ILEC	90 calendar days
(r) Construction and provisioning intervals for cageless space, from receipt of a complete application by ILEC	75 calendar days
(t) Tours of ILEC premises	schedule within 3 calendar days of request/ tour within 10 calendar days of request

The FCC's Order on Reconsideration mandates that an ILEC should complete any technically feasible collocation arrangement in 90 calendar days after receiving the collocation application. The Public Staff's recommended intervals should be attainable and promote a competitive environment. The Standard Offering should be amended to reflect the intervals recommended by the Public Staff.

SPRINT: While Sprint expressed agreement with the New Entrants on several of the intervals, Sprint disagreed with the New Entrants on others such as when an ILEC should respond to an application for collocation, when ILECs should provide Circuit Facility Assignments (CFAs), and the appropriate provisioning intervals for augmentations and additions. Specifically, regarding when an ILEC should respond to a complete and accurate application for collocation, Sprint's evidence was that an ILEC's response should be broken down into two parts: (1) space availability, and (2) price quote; and that ILECs should respond on space availability in a 10 calendar-day interval (longer periods may be appropriate consistent with Section 2.2.2 of the Standard Offering) and should have an additional five calendar day period to respond with price quotes. Sprint's evidence was that it does not have a mechanized space-inventory system, yet it is committing to a 10 calendar-day interval for responding on space availability. However, in the Standard

Offering, the New Entrants agreed to scaling space availability responses outside the top 100 MSAs based on the volume of collocation applications received. The real issue is the amount of time to provide price quotes. At present, some collocation rate elements are determined on a per foot basis and cannot be computed without some level of pre-engineering work to be done on cable routing, etc. Sprint requested an additional five calendar days to accomplish this work. It was also Sprint's position that the construction and provisioning intervals for both caged and cageless collocation established in Section 6.4 and 6.4.4 of the Standard Offering should be measured from receipt of a complete and accurate Bona fide firm order.

VERIZON: The following provisioning intervals should be established:

(j) Application Response	8 business days
(k) Multiple Applications	Applications exceeding a specified forecast will require longer intervals

WORLDCOM: WorldCom filed a Joint Proposed Order with AT&T and the New Entrants. Therefore, the position as outlined for AT&T above represents WorldCom's position on this issue.

DISCUSSION

The discussion of these issues will be addressed in two sections. Section I will be a discussion of general issues and Section II will be a specific discussion addressing each of the 20 specific provisioning intervals (items (a) through (t)) listed in Issue No. 18.

SECTION I - GENERAL

AT&T, the New Entrants, and WorldCom (the CLPs) noted in their Joint Proposed Order that collocation is a routine activity that is a permanent feature of the competitive landscape. They maintained that there is no reason why collocation provisioning intervals should not be standardized so that carriers can plan their market entry and order these arrangements without experiencing the unnecessary delay and costs inherent in the current ILEC approach which presumes that collocation must be a highly customized offering. The CLPs argued that maximum standard intervals for collocation should be established by the Commission and should begin at the time that the ILEC receives a collocation application whether an initial application or a request for an augmentation.

BellSouth witness Hendrix stated in rebuttal testimony that CLP Coalition witness Gillan did not offer any testimony to support the position of the CLPs regarding the appropriate intervals for the processes and/or procedures outlined in Issue No. 18. Witness Hendrix maintained that witness Gillan simply referenced the section from the Standard Offering that purportedly sets forth the CLPs' position as to the appropriate interval for each of the identified activities. Witness Hendrix stated that despite not having

any testimony to clarify the CLPs' position, BellSouth still set forth its position on each interval in its testimony.

The CLPs noted that the two arbitration issues between MCIm and BellSouth regarding intervals: (1) concern the interval(s) for response to an initial application for collocation; and (2) concern provisioning for physical caged and cageless, and for virtual collocation. The Commission notes that the first issue of intervals for response to an initial application is discussed under Issue No. 18(j) below; the second issue concerning provisioning for physical caged and cageless collocation, and for virtual collocation is discussed under Issue No. 69.

The Public Staff noted the following differences in positions of the Parties concerning intervals:

Interval	***CLPs***	***BellSouth***	***Verizon***
(a) Space Availability Notification after receipt of Application	10 calendar days	10 calendar days	8 business days
(b) Notification of carriers on the waiting list of space availability	10 calendar days	60 calendar days	not necessary
(c) Reaffirmation by CLP of collocation request	30 calendar days	30 calendar days	CLP should monitor
(d) Updates to space availability list on website	10 calendar days	10 calendar days	10 calendar days
(e) ILEC review of CLP plans and specifications	15 calendar days	15 calendar days	15 calendar days
(f) CLP notification to ILEC of Guest/Host arrangements	12 calendar days	10 calendar days prior to firm order of guest arrangement	CLP provides with application
(g) ILEC review of CLP plans and specifications for adjacent collocation arrangement	30 calendar days	30 calendar days	30 calendar days
(h) ILEC notification to CLP that space is ready for occupancy	"best efforts" for 5 calendar days	5 calendar days	5 calendar days

Interval	*CLPs*	*BellSouth*	*Verizon*
(i) ILEC notification to CLP prior to ILEC gaining access to Collocation Space	3 calendar days	2 calendar days	3 calendar days
(j) Application Response	10 calendar days	30 calendar days	8 business days
(k) Application Response for multiple applications	1-10 - 10 calendar days; 11-15 - 15 calendar days	2-5 - 30 calendar days; 6-10 - 36 calendar days	1-10 - 10 calendar days; 11-20 - 20 calendar days
(l) CLP acceptance of ILEC quotation for Collocation Space	65 calendar days	30 calendar days	90 calendar days
(m) Bona Fide Firm Order	7 calendar days after price quote	30 calendar days after price quote	5 business days after receipt of price quote
(n) ILEC acknowledgment of receipt of Bona Fide Firm Order	5 calendar days	7 calendar days	acceptance of nonrecurring payment
(o) Construction and Provisioning Intervals for Caged Space	90 calendar days from application date	90 calendar days from Bona Fide Firm Order	76 business days if included on forecast schedule
(p) Joint Planning Meeting	5 calendar days from Bona Fide Firm Order	10 calendar days from Bona Fide Firm Order	Reasonable Schedule
(q) Acceptance Walk Through	5 calendar days for corrections after Walk Through	5 business days / 7 calendar days	5 calendar days

Interval	*CLPs*	*BellSouth*	*Verizon*
(r) Construction and Provisioning Intervals for Cageless Space	60 calendar days from application	90 calendar days from Bona Fide Firm Order	76 business days if included on forecast schedule 91 days if special construction
(s) ILEC provision of written report regarding space availability and multiple requests	10 calendar days if in Top 100 MSAs / 1-10 - 10 calendar days; 11-15 - 15 calendar days	Agrees with CLP proposal	10 calendar days from request
(t) Tour of ILEC premises	Schedule in 72 hours / tour in 10 calendar days	10 calendar days from day of denial	10 calendar days from request

The Public Staff recommended that the Commission only address certain critical intervals identified in Issue No. 18 at this time. The Public Staff recommended that the Commission instruct the Parties to negotiate the remaining intervals so that they fit into the framework of the critical intervals proposed by the Public Staff. The Public Staff defined the critical intervals and recommended that the Commission adopt the following intervals for them:

(a) Space Availability Notification After Receipt of Application - 10 calendar days
(h) ILEC Notification to CLP that Space is Ready for Occupancy - 5 calendar days
(m) Bona Fide Firm Order - 30 calendar days
(n) ILEC Acknowledgment of Receipt of Bona Fide Firm Order - 5 calendar days
(o) Construction and Provisioning Intervals for Caged Space - 90 calendar days
(r) Construction and Provisioning Intervals for Cageless Space - 75 calendar days
(t) Tour of ILEC Premises - schedule within 3 calendar days of request/ tour within 10 calendar days of request

Sprint did not provide extensive discussion on this issue in its Proposed Order and all of its comments are reflected under Positions of Parties - Sprint.

SECTION II - PROVISIONING INTERVALS

(a) Space Availability Notification After Receipt of Application

BellSouth maintained that this interval concerns when an ILEC must notify a CLP of space availability in a central office for which a CLP has submitted a collocation application. BellSouth noted that Section 2.1.2 of the CLPs' proposed offering entitled "Availability Notification" does not include an interval for space availability notification upon receipt of an application. Instead, BellSouth asserted, this section refers to Section 2.2.2 for the intervals desired by the CLPs. However, BellSouth noted, Section 2.2.2 discusses the interval for a space availability report as required by the FCC in its Advanced Services Order and is totally separate from an ILEC's space availability notification after receipt of an application. BellSouth recommended that the appropriate interval for this notice should be 10 calendar days and proposed that the Commission accept this interval as the appropriate time to assess whether or not space is available in a particular central office for which a CLP has applied for collocation.

In their Joint Issues Matrix attached as Exhibit B to their Joint Proposed Order, the CLPs stated that space availability notification should be given 10 days from the application. The CLPs proposed that the ILEC respond in 10 calendar days to requests for space availability in the top 100 MSAs and that for those requests that do not fall within the top 100 MSAs, the ILEC should respond in 10 calendar days to such a request when the request includes up to and including 10 ILEC premises locations within the same state. The CLPs propose that the ILEC respond within 15 calendar days to the request for the 11th to 15th locations within the same State. The CLPs further propose that the ILEC respond within 20 calendar days to the request for the 16th to 20th locations within the State. The CLPs recommended that when a CLP requests greater than 20 locations within the State, the ILEC's time to respond should increase in a similar five calendar day interval for the additional five locations requested.

CLP Coalition witness Gillan stated in rebuttal testimony that Paragraphs 24 and 37 of the FCC's Order on Reconsideration set a national maximum interval of 10 days for an ILEC to accept or deny a collocation application.

Verizon maintained that each application requires an ILEC visit and complete review of all forecasted growth requirements as well as a review of any pending activity. Verizon commented that this process includes input from various design and services groups. Verizon proposed that eight bus ness days are necessary to compile the required information to respond to an application on space availability.

The Commission believes that 15 calendar days is a reasonable interval for the ILEC to provide space availability notification after the receipt of a collocation application. The Commission notes that this issue is directly related to Issue No. 18(j) - Application Response and is consistent with the Commission's conclusions therein. The Commission

agrees with BellSouth that the interval represents when an ILEC is to respond to a CLP whether space is available or not in a particular central office.

COMMISSION CONCLUSIONS: The Commission concludes that the appropriate interval for ILECs to provide CLPs with space availability notification is within 15 calendar days of receipt of a collocation application, consistent with the Commission's conclusions on Issue No. 18(j).

(b) Notification of Carriers on the Waiting List of Space Availability

BellSouth noted that this interval concerns how far in advance an ILEC should notify a CLP of space becoming available in a particular central office. BellSouth maintained that it is its practice, to the extent possible, to notify CLPs that are on a waiting list 60 calendar days in advance of space availability. Therefore, BellSouth stated this suggested interval by the CLPs is essentially undisputed and should be incorporated into the Standard Offering.

In their Joint Issues Matrix attached as Exhibit B to their Joint Proposed Order, the CLPs stated that the ILEC should simultaneously notify the CLPs on the waiting list when space becomes available within 10 days if there is enough space to fulfill the requirements of all the CLPs.

The CLPs noted that Verizon disagrees with the requirement of a waiting list for space, on the basis that the Advanced Services Order does not prescribe a waiting list. The CLPs stated that Verizon fails to recognize that the provisions of the Advanced Services Order serve as minimum requirements. The CLPs noted that in the First Interconnection Order, the FCC recognized that ILECs have an economic incentive to interpret regulatory ambiguities to delay entry by new competitors.

The CLPs maintained that the Florida Public Service Commission ordered the provision of waiting lists. The CLPs stated that the Commission's role is to reduce uncertainty and opportunities for delay and litigation, by approving language in interconnection agreements that comprehensively deals with the terms, conditions, intervals, and rates for collocation. The CLPs argued that the Standard Offering is appropriate.

The CLPs asserted that a waiting list would not be excessively burdensome to the ILECs. The CLPs stated that a waiting list would only be necessary where a CLP has requested space and has been informed that no space is currently available. The CLPs noted that the ILEC would then maintain a waiting list to provide the CLP with a sense of demand for space.

Verizon stated that a waiting list is not required by the FCC and that, furthermore, maintaining such a list would be burdensome and would provide only a limited benefit

given the existence of the website and the requirement that the website be updated within 10 days of the date at which a premises runs out of physical collocation space. Verizon maintained that CLPs seeking to collocate at an ILEC premises that is full should monitor the ILEC's website for changes to see if space becomes available. Verizon argued that if a waiting list were used, when space is created at a location, CLPs that were at the top of the list to receive notification may well have implemented other alternatives to enter that market area. Verizon stated that the t me spent by each CLP, within the waiting list, to decide on space acquisition can delay use of the space by a CLP which stands ready to immediately place a firm order and enter the market.

Section 2.5 of the Standard Offering states:

> **2.5 Waiting List**. On a first come, first served basis, the ILEC will maintain a waiting list of requesting carriers who have either received a Denial of Application or, where it is publicly known that the Premises is out of space, have submitted a Letter of Intent to collocate. The ILEC will simultaneously notify the telecommunications carriers on the waiting list when space becomes available within 10 calendar days if there is enough space to fulfill the requirements of all the CLPs. Subsequent to the granting of a Petition for Waiver under Section 2.4 above, if a CLP that has been denied space at an ILEC's premises challenges the ILEC on space availability at said premises that CLP will be given priority for space assignment if, as a result of the challenge, space is found to be available. Additional space will be provided to other CLPs based on their respective collocation requests and according to their position on the waiting list, until all available space has been offered to CLPs on the waiting list. The CLP will reaffirm its collocation request within thirty (30) calendar days of such notification; otherwise, it will be dropped to the bottom of the list. Upon request, the ILEC will advise the CLP as to its position on the list.

The Commission believes that it would be beneficial for ILECs to maintain a waiting list for collocation space. The Commission further believes that there would be limited ILEC burden other than maintaining, presumably on computer, a waiting list with a contact telephone number when space becomes available. The Commission believes that the 10 calendar day interval proposed in Section 2.5 is appropriate.

However, the Commission is concerned by Verizon's observations about when space is created at a location, CLPs that were at the top of the list to receive notification may well have implemented other alternatives to enter that market area. As Verizon noted, the time spent by each CLP, within the waiting list, to decide on space acquisition can

delay use of the space by a CLP which stands ready to immediately place a firm order and enter the market. Therefore, the Commission finds it appropriate to insert language into Section 2.5 which requires the CLPs to accept some accountability when they request that they be placed on a waiting list. The Commission believes that it is reasonable to require CLPs to have their name removed from the waiting list if at any time their business plans change and they no longer desire to have collocation space in the particular central office. The Commission believes that CLPs that are on waiting lists should be ready to act as soon as any space becomes available for a central office and they should not be placed on a waiting list and remain on a waiting list without any true intention to act on a notice that space has become available.

Further, the Commission finds it appropriate to change the sentence "The CLPs will reaffirm its collocation request within thirty (30) calendar days of such notification" to require CLPs to reaffirm within 10 calendar days. The Commission believes that if a CLP is on a waiting list, it should be ready to move immediately and affirm its collocation request as soon as collocation space becomes available.

Therefore, the Commission finds it appropriate to revise Section 2.5 as follows:

> **2.5 Waiting List**. On a first come, first served basis, the ILEC will maintain a waiting list of requesting carriers who have either received a Denial of Application or, where it is publicly known that the Premises is out of space, have submitted a Letter of Intent to collocate. The ILEC will simultaneously notify the telecommunications carriers on the waiting list when space becomes available within 10 calendar days if there is enough space to fulfill the requirements of all the CLPs. Subsequent to the granting of a Petition for Waiver under Section 2.4 above, if a CLP that has been denied space at an ILEC's premises challenges the ILEC on space availability at said premises that CLP will be given priority for space assignment if, as a result of the challenge, space is found to be available. Additional space will be provided to other CLPs based on their respective collocation requests and according to their position on the waiting list, until all available space has been offered to CLPs on the waiting list. A CLP has the responsibility to notify the ILEC in writing if at any time its business plans change and the CLP no longer desires to have collocation space in the particular central office. After receipt of such letter, the ILEC will remove the CLP from the waiting list. The CLP will reaffirm its collocation request within ten (10) ~~thirty (30)~~ calendar days of its receipt of ILEC notification of space becoming available ~~such notification~~; otherwise, it will

be dropped to the bottom of the list. Upon request, the ILEC will advise the CLP as to its position on the list.

COMMISSION CONCLUSIONS: The Commission concludes that Section 2.5 concerning waiting lists should be revised as stated above.

(c) Reaffirmation by CLP of Collocation Request

BellSouth noted that this interval was agreed upon by the Parties (30 calendar days) and should be incorporated into the Standard Offering.

In their Joint Issues Matrix attached to their Joint Proposed Order as Exhibit B, the CLPs stated that CLPs will reaffirm their collocation requests within 30 calendar days.

Verizon maintained that CLPs should monitor the website and file applications when space becomes available. Verizon stated that this request is not required by the FCC and would impose an undue burden in exchange for little or no benefit, given the existence of the ILECs' websites addressing space availability.

As noted under Issue 18(b) - Notification of Carriers on the Waiting List of Space Availability, the Commission believes that CLPs on a waiting list should have every intention of moving forward on a request for collocation if space does become available. Therefore, although BellSouth and the CLPs agreed on this interval, the Commission believes that it is reasonable to expect the CLPs to be able to reaffirm their collocation request within 10 calendar days instead of the 30 calendar days proposed by BellSouth and the CLPs. The Commission believes that a 30 calendar-day interval is too long and would delay provisioning of the obviously desired collocation space.

Therefore, the Commission finds that the appropriate interval for reaffirmation by CLPs of a collocation request should be 10 calendar days.

COMMISSION CONCLUSIONS: The Commission concludes that the appropriate interval for reaffirmation by a CLP of a collocation request is 10 calendar days.

(d) Updates to Space Availability on Website

BellSouth noted that this interval was agreed upon by the Parties (10 calendar days) and should be incorporated into the Standard Offering.

In their Joint Issues Matrix attached as Exhibit B to their Joint Proposed Order, the CLPs stated that the ILEC should update the notification document within 10 calendar days.

Verizon advocated 10 calendar days, as the FCC has required in Paragraph 58 of its Advanced Services Order.

The Commission notes that the Parties all agree that 10 calendar days is the appropriate interval for ILECs to provide updates to space availability on their website. Therefore, the Commission finds it appropriate to adopt this interval.

COMMISSION CONCLUSIONS: The Commission concludes that the appropriate interval for ILECs to provide updates on space availability on their website is 10 calendar days.

(e) ILEC Review of CLP Plans and Specifications

BellSouth maintained that this interval concerns when an ILEC must review a CLP's plans and specifications for proposed collocation space. BellSouth stated that the CLPs' proposed collocation offering sets no parameters around this review period. BellSouth noted that it could agree to a 15 calendar day review period after the submission of a Bona fide firm order by the CLP. BellSouth stated that in this way, the ILEC will not have wasted valuable resources on review before the CLP accepts the offer of the collocation space. BellSouth asserted that 15 days from the receipt of the Bona fide firm order is a reasonable interval and that the Commission should incorporate it into the Standard Offering.

In their Joint Issues Matrix attached as Exhibit B to their Joint Proposed Order, the CLPs stated that the ILEC should complete its review within 15 calendar days.

Verizon proposed that if the CLP is constructing its own cage, the ILEC should be entitled to review plans prior to the start of construction. Verizon stated that 15 days for review is reasonable and has been agreed to by all of the Parties.

The Commission notes that the Parties all agree that 15 calendar days after submission of a Bona fide firm order by the CLP is the appropriate interval for ILECs to review CLP plans and specifications for collocation. Therefore, the Commission finds it appropriate to adopt this interval.

COMMISSION CONCLUSIONS: The Commission concludes that the appropriate interval for ILECs to review CLP plans and specifications for collocation is 15 calendar days after submission of a Bona fide firm order by the CLP.

(f) CLP Notification to ILEC of Guest/Host Arrangement

BellSouth maintained that this interval concerns when a CLP must notify an ILEC of a Guest/Host arrangement involving collocation space used by a CLP. BellSouth noted that the CLPs' proposal for this interval was to submit a notice "within 12 days of execution" of "any agreement" between the Host and Guest. BellSouth stated that its

witness Hendrix testified that notification by the CLP 10 calendar days prior to a firm order associated with the installation of the Guest arrangement would be a reasonable interval. Further, BellSouth noted that as witness Hendrix observed, prior to provisioning, the ILEC would need to be assured that the Host and Guest had some agreement in place regarding the terms and conditions under which the Guest was collocating which incorporated the terms and conditions of the Standard Offering. BellSouth argued that the CLPs' proposal of "within 12 days of execution" is not clear and could, for example, allow for notice to an ILEC after collocation space provisioning or space completion. BellSouth recommended that the Commission adopt its proposed 10 calendar day interval and incorporate it into the Standard Offering as proposed in Section 3.3 of BellSouth's Standard Offering.

In their Joint Issues Matrix attached as Exhibit B to their Joint Proposed Order, the CLPs stated that the CLP should notify the ILEC within 12 days of the execution of a Guest/Host agreement.

Verizon stated that such notification should be given upon submission of application. Verizon maintained that guest requirements should be processed in conjunction with host requirements or augments.

This interval concerns Section 3 5 of the CLPs' Standard Offering which states:

> **3.5 Shared (Subleased) Caged Collocation**. The CLP may allow other telecommunications carriers to share the CLP's caged collocation arrangement pursuant to terms and conditions agreed to by the CLP ("Host") and other telecommunications carriers ("Guests"). The CLP shall notify the ILEC in writing upon execution of any agreement between the Host and its Guest within twelve (12) calendar days of its execution. Further, such notice shall include the name of the Guest(s) and their term of agreement, and shall contain a certification by the CLP that said agreement imposes upon the Guest(s) the same terms and conditions (excluding rates) for collocation space as set forth in this Agreement between the ILEC and the CLP.

The Commission notes that BellSouth's concern with this interval is that prior to provisioning, it would need to be assured that the Host and Guest had some agreement in place regarding the terms and conditions under which the Guest was collocating which incorporated the terms and conditions of the Standard Offering. The Commission believes that Section 3.5 of the CLPs' proposed Standard Offering specifically states that the CLP must certify that any Guest/Host agreement that it enters into imposes upon the Guest the same terms and conditions for collocation space as set forth in the Standard Offering. The Commission interprets the phrase "the same terms and conditions" in Section 3.5 as protecting BellSouth or any ILEC from additional demands or burdens being placed on it

concerning the collocation space if a Guest takes over the space since the exact same terms and conditions should apply. Therefore, the Commission believes that BellSouth's concerns are adequately addressed in Section 3.5.

The Commission finds that the appropriate interval for a CLP to notify an ILEC of a Guest/Host arrangement is within 12 calendar days of its execution. Therefore, the Commission finds it appropriate to incorporate Section 3.5 as outlined above into the Standard Offering without modification

COMMISSION CONCLUSIONS: The Commission concludes that the appropriate interval for a CLP to notify an ILEC of a Guest/Host arrangement is within 12 calendar days of its execution. Therefore, the Commission finds it appropriate to incorporate Section 3.5 as outlined above, and as proposed by the CLPs, into the Standard Offering without modification.

(g) ILEC Review of CLP Plans and Specifications for Adjacent Collocation Arrangement

BellSouth noted that the Parties agreed on this interval (30 calendar days) and that the interval should be incorporated into the Standard Offering.

In their Joint Issues Matrix attached as Exhibit B to their Joint Proposed Order, the CLPs stated that the ILEC should complete its review of CLP plans and specifications for adjacent collocation arrangements within 30 calendar days.

Verizon argued that plans must pass all zoning and local municipality requirements as well as ILEC safety and standards requirements. Verizon maintained that ILECs are entitled to review plans since they may require construction on the ILEC property. Verizon proposed that 30 days for review is reasonable and has been agreed to by all of the Parties.

The Commission notes that the Parties all agree that 30 calendar days is the appropriate interval for ILECs to review CLP plans and specifications for adjacent collocation space. Therefore, the Commission finds it appropriate to adopt this interval.

COMMISSION CONCLUSIONS: The Commission concludes that the appropriate interval for ILECs to review CLP plans and specifications for adjacent collocation space is 30 calendar days.

(h) ILEC Notification to CLP that Space is Ready for Occupancy

BellSouth noted that the Parties agree that five calendar days notice is a reasonable interval, but they disagree whether the ILEC must "guarantee" the notice within five days of the space becoming ready for occupancy or whether a "best efforts" standard

should be applied. BellSouth noted that its witness Hendrix testified that BellSouth would provide notice to the CLP that space is ready no later than the day that it becomes ready. Further, BellSouth noted, witness Hendrix stated that BellSouth would use its "best efforts" to provide notice to the CLP five days prior to the date space becomes ready. BellSouth maintained that although it establishes a committed due date with the CLP soon after receipt of the CLP's firm order, witness Hendrix observed that BellSouth must rely on due dates committed to by its vendors in order to meet the due date it establishes with the CLP. BellSouth noted that given this reality, witness Hendrix stated that BellSouth could not "guarantee" that five days advance notice could be provided or was even possible. BellSouth recommended that the Commission agree with witness Hendrix's reasoning on this point and incorporate BellSouth's suggested language in Section 4.2 of the Standard Offering.

In their Joint Issues Matrix attached as Exhibit B to their Joint Proposed Order, the CLPs stated that the ILEC should notify the CLP in writing five calendar days prior to the date the space becomes ready.

Verizon recommended five calendar days as is the customary procedure used by the industry.

The Commission believes that BellSouth's proposal to provide notice to the CLP that space is ready no later than the day that it becomes ready but using a "best efforts" standard to provide notification sooner is unreasonable. The Commission believes that CLPs should have written notice five days prior to the date the collocation space becomes ready for occupancy for planning purposes. The Commission also notes that Verizon agrees that five calendar days is the customary procedure used by the industry. The Commission finds that ILECs should be required to give written notice at least five calendar days in advance to CLPs that space is ready for occupancy.

COMMISSION CONCLUSIONS: The Commission concludes that ILECs should be required to give written notice at least five calendar days in advance to CLPs that space is ready for occupancy.

(i) ILEC Notification to CLP Prior to ILEC Gaining Access to Collocation Space

BellSouth noted that the Parties agreed on this interval (at least 48 hours) and that the interval should be incorporated into the Standard Offering.

In their Joint Issues Matrix attached as Exhibit B to their Joint Proposed Order, the CLPs stated that the ILEC should give three calendar days notice when access to the CLP's collocation space is required.

Verizon recommended three calendar days for nonemergencies which is the customary procedure in existence.

The Commission believes that three calendar days is an appropriate interval for ILECs to give notice to CLPs prior to ILECs gaining access to collocation space. The Commission also notes that Verizon maintained that three calendar days is the customary procedure in existence for such access. Therefore, the Commission finds it appropriate to adopt this interval.

COMMISSION CONCLUSIONS: The Commission concludes that the appropriate interval for ILECs to give notice to CLPs prior to ILECs gaining access to collocation space is three calendar days.

(j) Application Response

BellSouth noted that when an ILEC has determined, upon a CLP's request, that space is available for collocation and has received a Bona Fide Application from the CLP for that space, the ILEC should have 30 calendar days upon which to provide an Application Response. BellSouth stated that at a minimum, the Application Response should include the configuration of the space, the cable installation fee, additional engineering fee, and the space preparation fee. BellSouth recommended that the Commission reject Sprint witness Hunsucker's contention that the FCC has set a 10-day national price quote interval. BellSouth noted that in the FCC Order on Reconsideration, the FCC declined to specify any deadlines for completion of any design, planning, and price quotation processes. BellSouth noted that the 10-day interval referenced by witness Hunsucker applies to the time frame in which an ILEC may tell the CLP whether a collocation space is available after receiving the application.

In their Joint Issues Matrix attached as Exhibit B to their Joint Proposed Order, the CLPs stated that the ILECs should respond to a complete and accurate application within 10 calendar days and that the ILECs should have an additional five calendar days in which to provide a Firm Price quote.

The CLPs stated that if there were competitive alternatives to collocation in the ILEC central office - and the ILEC wanted the business - there is no way that it would design a system that required a month to produce a price quote.

Addressing the interval(s) for response to an initial application from the MCIm/BellSouth arbitration docket, the CLPs maintained that CLPs require a complete response, including a firm cost quote, to prepare and submit a firm order for collocation space. The CLPs argued that the response that BellSouth gives to collocation applications in part determines the period in which provisioning of collocation requests is completed, and, ultimately, when BellSouth will be subject to competition. The CLPs stated that BellSouth's proposed interval of 30 days from the application for it to furnish a comprehensive written response, including a firm price quote, does not leave sufficient time for BellSouth to provision physical collocation. The CLPs noted that although the FCC Order on Reconsideration did not set an interval for providing price quotes, clearly

it addressed the concerns of ILECs about what provisioning intervals they would need, as well as the need of CLPs for efficient, expedited collocation, and established a national default standard of 90 days as a maximum period for provisioning. The CLPs noted that it is difficult to understand how BellSouth could meet the national standard on provisioning if its position is adopted as to the interval in which a firm price quote must be conferred. Therefore, the CLPs stated, MCIm's position is that BellSouth should be required to provide a complete response, including a firm price quote, within 15 calendar days of receiving a collocation application.

The CLPs noted that there is compelling state commission precedent that establishes that 15 calendar days is adequate for BellSouth to provide a complete response to a collocation application, including providing a firm quote and configuration. The CLPs noted the following language out of a Florida Public Service Commission Order:

> Upon consideration, we are persuaded . . . that the initial response to an application for collocation should contain sufficient information for the ALEC to place a firm order. We are also persuaded . . . that price quotes must be included in the response because they are essential to placing a firm order.
>
> We have also considered the evidence regarding the intervals in which such information should be provided to the ALEC. While BellSouth argues that it will only provide acceptance or denial due to space availability within the 15 calendar day interval, two other ILECs have provided testimony in this proceeding that supports that price quotes can also be provided within an interval of 15 calendar days . . . .
>
> Upon consideration, we find that 15 calendar days is an appropriate interval to provide the information needed to place a firm order, i.e., information regarding space availability and a price quote.

The CLPs noted that, therefore, MCIm's position has been vindicated by a state commission in the BellSouth region.

MCIm stated that although the FCC's Order on Reconsideration did not set a separate interval for providing price quotes, in addressing the concerns of ILECs as well as CLPs, the FCC included the furnishing of a price quote within the provisioning interval. MCIm quoted Paragraph 24 of the FCC's Order on Reconsideration as follows:

> The incumbent LEC also may have to determine the price it will charge for the proposed collocation arrangement. We

> conclude that an incumbent LEC should normally be able quickly to complete any necessary design, planning, and price quotation processes. We decline, however, to specify any deadlines for completion of these processes. We conclude that the better course is to specify deadlines within which an incumbent LEC must complete the provisioning of all physical collocation arrangements, absent specific state action or an interconnection agreement setting different deadlines. An incumbent LEC then will have every incentive to complete its design, planning, and price quotation processes expeditiously so as to allow more time for actually provisioning collocation arrangements. We note that an incumbent LEC can streamline its design, planning, and price quotation processes by developing standardized rates, terms, and conditions for different collocation arrangements.

MCIm noted that consistent with Paragraph 55 of the Advanced Services Order, the Order on Reconsideration also set a national maximum standard, to the extent a state commission does not otherwise set its own deadlines based on specific and unique facts, of 10 days for an ILEC to accept or deny a collocation application. MCIm commented that this involves informing a CLP of any deficiency in its application and is more than a notification of space availability.

Therefore, MCIm noted, it is proposing the following language as set forth in its Attachment 5 to its proposed MCIm/Be lSouth Interconnection Agreement:

> **2.1.1.3 Application Response**. BellSouth will respond as soon as possible, but no longer than 15 days after receipt of an Application whether the Application is Bona Fide, and if it is not Bona Fide, the items necessary to cause the Application to become Bona Fide. BellSouth shall provide a comprehensive written response and notice of space availability within 15 days of receipt of a complete application. When MCIm submits ten or more applications within ten calendar days, the initial 15-day response period will increase by 10 days for every additional 10 applications or fraction thereof. The Application Response will detail whether the amount of space requested is available or if the amount of space requested is not available, the amount of space that is available. The response will also include the configuration of the space. The response also must include all information necessary for MCIm to place a firm order, including a detailed price quote. When BellSouth's response includes an amount of space less than that requested by MCIm or differently

configured, MCIm must amend its application to request no more than the space available.

Therefore, MCIm stated, its position is that BellSouth should be required to provide a complete response, including a firm price quote, within 15 days of receiving a collocation application. Also, MCIm maintained, minor changes that do not cause the ILEC to make available more space than has been initially requested, or that do not cause it to change its provisioning of power, should not restart the ordering process.

MCIm maintained that BellSouth no longer proposes an interval measured in business days and instead advocates an interval of 10 calendar days to initially respond to an application and furnish a space availability report, as well as a 30 calendar-day interval, also commencing with the application, to furnish a comprehensive written response, which includes a firm price quote. MCIm noted that as long as BellSouth's proposed interval of 10 days with regard to space availability reports encompasses the information contemplated by the Order on Reconsideration, MCIm stated that that interval is not the issue. MCIm contended that the problem is with BellSouth's proposed interval of 30 days for a price quote. MCIm footnoted the fact that BellSouth stated that it would provide a price quote within 15 days of the application if standard space preparation pricing is applied to all application requests, including requests from CLPs with current agreements that do not contain such pricing. MCIm stated that it supports the standard pricing as urged by the New Entrants, which is discussed subsequently in Issue No. 49.

MCIm noted that BellSouth concluded that it needs the additional 15 days beyond what MCIm proposes for a price quote to consider the existing building configuration, space usage and forecasted demand, building code and regulatory requirements, and certain design practices. MCIm stated that it does not disagree that existing configurations, space usage, and forecasted demand must be taken into account by an ILEC. However, MCIm argued, like the New Entrants, it strongly disagrees with any implication that space occupied or reserved by an ILEC can be invariably and unilaterally removed by it from further consideration, or that local building codes and regulatory requirements can or should be used to unilaterally justify a denial of collocation, or to preempt the requirements of TA96. MCIm maintained that ILECs have long delayed acting on collocation requests based on the same kinds of considerations that BellSouth cites here as ostensibly justifying a long interval before complete information can be furnished CLPs.

MCIm noted that there is compelling state commission precedent, which BellSouth did not refute, which establishes that 15 days is adequate time for BellSouth to provide a complete response to a collocation application, including providing a firm quote and configuration and availability information. MCIm noted that the Florida Public Service Commission declared that "15 calendar days is an appropriate interval [for ILECs] to provide the information needed to place a firm order, i.e., information regarding space availability and a price quote."

Sprint believes that an ILEC response to a complete and accurate application should be broken down into two parts: (1) space availability, and (2) price quote. ILECs should respond on space availability in a 10 calendar day interval (longer periods may be appropriate consistent with Section 2.2.2 - henceforth provided in the discussion of Issue No. 17 - of the Standard Offering) and ILECs should have an additional five calendar day period to respond with price quotes. Sprint does not have a mechanized space-inventory system, yet it is committing to a 10 calendar-day interval for responding on space availability. However, in the Standard Offering negotiated between Sprint and the New Entrants, the New Entrants agreed to a scaling on space availability responses outside the top 100 MSAs based on the volume of collocation applications received. The real issue, then, is the amount of time to provide price quotes. At the current time, certain collocation rate elements are based on a per foot basis that cannot be determined without some level of pre-engineering work to be done on cable routing, etc. Sprint has requested an additional five calendar days to get this work done.

Sprint stated in its Brief that as its witness Hunsucker testified, determination of space availability requires only a site visit and at that time, it is only necessary to determine if sufficient space is available to meet the CLP's request for floor space. However, Sprint maintained, the price quote process requires a significant amount of pre-engineering work to determine the amount of cabling, conduit, etc. . . required to fulfill a CLP's request.

Sprint also stated that because larger ILECs typically serve larger metropolitan areas, Sprint believes that these ILECs should be staffed to handle a larger, relatively consistent number of collocation requests while more rural ILECs, including Sprint, should be required to handle only a smaller, less consistent volume of collocation requests. Sprint noted that witness Hunsucker presented empirical evidence in support of Sprint's position that rural ILECs receive fewer and less stable numbers of collocation requests.

Sprint noted that the FCC in its August 10, 2000 Order on Reconsideration adopted a national standard interval for space availability and price quotes of 10 days, but argued that this Commission may adopt different standards. Sprint argued that it believes that this Commission can and should adopt a 10-day (or longer if allowed under Section 2.2.2 of the Standard Offering) space availability interval and a price quote interval equal to the space availability plus an additional five days. Sprint noted that provisioning intervals for virtual and physical collocation were mutually agreed upon by Sprint and the CLPs and, thus, are consistent with the FCC's Order which allows deviation from the national standards.

Verizon argued that eight business days is sufficient time for ILECs to provide a response to a collocation application.

The Commission believes based on the record of evidence presented that an ILEC should be able to provide a CLP with a complete response to a collocation application,

including space availability and a firm price quote, within 15 calendar days. Therefore, the Commission finds that a 15 calendar-day interval is appropriate. The Commission notes that this conclusion is made in conjunction with the conclusions reached for Issue No. 18(a).

COMMISSION CONCLUSIONS: The Commission concludes that an ILEC should provide a CLP with a complete response to a collocation application, including space availability and a firm price quote, within 15 calendar days.

(k) Application Response for Multiple Applications

This interval has been previously addressed under Finding of Fact No. 16.

COMMISSION CONCLUSIONS: The Commission concludes that this issue has been previously addressed under Finding of Fact No. 16.

(l) CLP Acceptance of ILEC Quotation for Collocation Space

BellSouth noted that this interval refers to when a CLP should be required to accept or reject an ILEC price quote in response to a Bona fide firm order. BellSouth asserted that its witness Hendrix testified that the CLPs' proposed interval of 65 days was too long and could operate to the detriment of other CLPs submitting applications if limited space is available at the premises. Rather, BellSouth noted, witness Hendrix stated that 30 days is an appropriate time frame in which a CLP should accept an ILEC price quote. BellSouth recommended that the Commission agree and find that 65 days is especially unreasonable given that, with standardized pricing, all a CLP must decide is whether or not to accept the requested space.

In their Joint Issues Matrix attached as Exhibit B to their Joint Proposed Order, the CLPs stated that a CLP should have 65 calendar days from receipt of the quotation to accept the quotation.

Verizon noted that applying rates from a tariff would not require an acceptance period. Verizon maintained that for rates for configurations outside a tariff, 90 calendar days is reasonable. Verizon stated that exceeding this timeframe may necessitate changes in the ILEC's costing and pricing of the configuration to ensure consistency with the current central office environment.

The Commission believes that the CLPs' proposed interval of 65 calendar days is too long. The Commission believes that if a CLP submitted a collocation application, it should at that point in time have an idea of what range of a price quote would be acceptable to the company and if the space is necessary for its business plans. Further, in considering the overall provisioning timeframe, the Commission believes that seven calendar days is a reasonable period of time for a CLP to accept an ILEC's price quote.

Therefore, the Commission believes that CLPs should provide acceptance of a price quote within seven calendar days.

COMMISSION CONCLUSIONS: The Commission concludes that the appropriate interval for CLPs to provide acceptance to an ILEC's price quote for collocation space is seven calendar days.

(m) Bona Fide Firm Order

In their Joint Issues Matrix attached as Exhibit B to their Joint Proposed Order, the CLPs stated that a CLP should have 65 calendar days from receipt of the quotation to accept the quotation. However, the CLPs maintained, the firm order should be within seven days of the quotation, per the FCC Order on Reconsideration, for provisioning to occur within 90 days of an application for caged collocation, and within 60 days of an application for cageless collocation.

Verizon stated that the proposed Standard Offering would allow CLPs to proceed with the collocation project and subsequent equipment installation by submitting a bona fide firm order without payment. Verizon stated that this bona fide firm order process should be triggered only upon submission of 50% of the nonrecurring charges. Verizon maintained that this payment must be made within five business days after receipt of the price quote and space assessment from the ILEC in order for the collocation provisioning interval to remain on schedule.

The Commission does not understand how this interval differs from the interval in Issue No. 18(l) - CLP acceptance of ILEC quotation for collocation space presented above. It is confusing that the CLPs are proposing that they be given 65 calendar days from receipt of an ILEC quote to accept the price quote and then only seven calendar days for the CLP to provide the ILEC with a firm order. In this case, the CLP would provide a firm order before knowing if it would accept the ILEC price quote or not. The Commission believes that it is reasonable to require the ILECs to provide a price quote within 15 calendar days of a collocation application and then allow the CLPs seven calendar days within which to place a bona fide firm order. The seven calendar day interval for a bona fide firm order is necessary in the confines of a 90 calendar day overall provisioning interval as the Commission has concluded is appropriate in Finding of Fact No. 60.

COMMISSION CONCLUSIONS: The Commission concludes that CLPs must provide a bona fide firm order within seven calendar days of receipt of an ILEC price quote.

(n) ILEC Acknowledgment of Receipt of Bona Fide Firm Order

BellSouth stated that although the CLPs proposed a five day interval, the Commission should agree with BellSouth that seven calendar days is the minimum amount

of time to adequately review the firm order document for completeness and accuracy and to prepare a written acknowledgment of such receipt.

In their Joint Issues Matrix attached as Exhibit B to their Joint Proposed Order, the CLPs stated the ILEC should acknowledge receipt of the CLP's bona fide firm order within five calendar days of receipt indicating that the bona fide firm order has been received.

Verizon maintained that the ordering process defined by Verizon requires the CLP to submit a complete application in order for the ILEC to begin the determination of space assessment, price quote, and key deliverables. Verizon stated that the bona fide order becomes firm once the CLP submits 50% payment of the nonrecurring charges. Verizon stated that there should be no additional requirement for the ILEC to acknowledge receipt of the firm order since receipt is shown by the ILEC's acceptance of the nonrecurring payment.

The Commission believes that if a CLP is allowed seven calendar days to decide whether to place the order, then it appears reasonable that an ILEC should have seven calendar days as BellSouth proposed to acknowledge receipt of the bona fide firm order. Therefore, the Commission finds that the appropriate interval for an ILEC to acknowledge receipt of a CLP bona fide firm order is seven calendar days.

COMMISSION CONCLUSIONS: The Commission concludes that the appropriate interval for an ILEC to acknowledge receipt of a CLP bona fide firm order is seven calendar days.

(o) Construction and Provisioning Interval for Caged Space

This provisioning interval is discussed under Finding of Fact No. 60.

(p) Joint Planning Meeting

BellSouth noted that its witness Hendrix testified that BellSouth had entered into many collocation agreements in which a maximum 20 calendar day interval from receipt of bona fide firm order was the agreed upon time frame for a joint planning meeting to take place and that BellSouth has negotiated the interval down to 10 days based on past experience with collocation. BellSouth recommended that the Commission find the 10-day interval reasonable because the ILEC needs adequate time in which to review the Firm Order, acknowledge receipt of the Firm Order submitted by the CLP, and make contact for scheduling of the joint planning meeting. BellSouth also argued that from a practical standpoint, it is not realistic to set an interval of less than 10 days given the demands of CLPs to collocate.

In their Joint Issues Matrix attached as Exhibit B to their Joint Proposed Order, the CLPs stated that a joint planning meeting should commence within a maximum of five calendar days from the ILEC's receipt of a bona fide firm order.

Verizon argued that joint planning meetings should be scheduled as reasonably required to ensure all known issues are discussed. Verizon stated that a CLP initially should receive a collocation schedule identifying milestones with the space assessment and price quote. Verizon maintained that the Standard Offering would require meetings to be held within five calendar days of receipt of the bona fide firm order. Verizon argued that this does not provide enough time for the coordination of such a meeting.

The Commission believes that 12 calendar days is a reasonable amount of time for the Parties to schedule a joint planning meeting. The Commission believes that with scheduling considerations a 12 calendar-day interval is reasonable and not too long as to hinder the collocation process. Therefore, the Commission concludes that 12 calendar days from the ILEC's receipt of a bona fide firm order is the appropriate interval for the joint planning meeting. The Commission notes that previously in Issue No. 18(n), the Commission concluded that the ILECs have seven calendar days to acknowledge receipt of a bona fide firm order. Therefore, under BellSouth's proposed 10 calendar day interval for a joint planning meeting, there would only be three days between the time the ILEC would provide acknowledgment of its receipt of the bona fide firm order and the joint planning meeting. The Commission concludes that there should be five calendar days between the ILEC's acknowledgment of its receipt of the bona fide firm order and the joint planning meeting, and therefore concludes that the appropriate interval for a joint planning meeting is 12 calendar days from the ILEC's receipt of a bona fide firm order.

COMMISSION CONCLUSIONS: The Commission concludes that 12 calendar days from the ILEC's receipt of a bona fide firm order is the appropriate interval for the joint planning meeting.

(q) Acceptance Walk Through

BellSouth noted that although the CLPs did not propose an interval for when the acceptance walk through should occur, BellSouth offered a seven calendar-day interval from the date the ILEC makes the space ready for the CLP. BellSouth recommended that the Commission agree with this interval and incorporate it into Section 6.4.3 of the Standard Offering.

In their Joint Issues Matrix attached as Exhibit B to their Joint Proposed Order, the CLPs stated that a CLP and an ILEC should complete an acceptance walk through of each Collocation Space requested by the CLP. The CLPs argued that the ILEC should correct any deviations to the CLP's original or jointly amended requirements within five calendar days.

Verizon proposed five calendar days which is the customary procedure in existence.

The Commission believes that BellSouth's proposed interval of seven calendar days from the date the ILEC makes the space ready for the CLP for an acceptance walk through

is reasonable and appropriate. Therefore, the Commission concludes that the appropriate interval for the acceptance walk through is seven calendar days from the date the ILEC makes the space ready for the CLP.

COMMISSION CONCLUSIONS: The Commission concludes that the appropriate interval for the acceptance walk through is seven calendar days from the date the ILEC makes the space ready for the CLP.

(r) Construction and Provisioning Interval for Cageless Space

This provisioning interval is discussed under Finding of Fact No. 60.

(s) ILEC Provision of Written Report Regarding Space Availability and Multiple Requests

BellSouth stated that the Parties agreed upon the intervals set forth in Section 2.2.2 of the Standard Offering and, therefore, the Commission should incorporate them into the Standard Offering.

Verizon maintained that 10 calendar days is generally an appropriate period for the ILEC to provide a written report on the space availability, called the premises space report, to the CLP. Verizon proposed that for CLPs that submit 10 or more requests within a 10-day period, the response interval should be increased by 10 days for every 10 additional requests received.

The Commission notes that Issue No. 18(a) concerned the appropriate interval for the ILEC to provide a CLP with space availability notification. The Commission questions whether the space availability notification referenced in Issue No. 18(a) is the same as the written report on space availability proposed in this interval. Based on the positions of the Parties as outlined in their Proposed Orders and Briefs, it appears that these are the same issue. Therefore, the Commission believes that the it should make the same conclusion for this interval as previously made in Issue No. 18(a). Also, consistent with the Commission's conclusions concerning multiple requests previously discussed in Finding of Fact No. 16, the Commission finds that it is appropriate to allow for additional days based on the number of requests, as follows:

1 to 5 requests	15 calendar days
6 to 10 requests	20 calendar days
11 to 15 requests	25 calendar days
16 to 20 requests	30 calendar days
21 to 25 requests	35 calendar days
etc. . . .	

COMMISSION CONCLUSIONS: The Commission concludes that the appropriate interval for ILECs to provide CLPs with a written report regarding space availability is within 15 calendar days of receipt of a collocation application, consistent with the Commission's conclusions on Issue No. 18(a). Further, the Commission concludes that the interval should be extended based on the number of requests for a written report regarding space availability, consistent with the Commission's conclusions in Finding of Fact No. 16, as follows:

1 to 5 requests	15 calendar days
6 to 10 requests	20 calendar days
11 to 15 requests	25 calendar days
16 to 20 requests	30 calendar days
21 to 25 requests	35 calendar days
etc. . . .	

(t) Tour of ILEC Premises

BellSouth stated that the Parties agreed that upon a denial of an application, the ILEC should give the CLP a tour of the premises. BellSouth stated that as it has recommended, an ILEC's obligation to conduct a tour exists only after notifying the CLP that the ILEC has no available space in the requested premises. BellSouth noted that as it has proposed, there should be no classification of space as Active/Inactive in the Standard Offering, therefore, a CLP should not be allowed to use the Active/Inactive classification as a basis to require a tour. BellSouth proposed that if an ILEC denies an application due to lack of space, the ILEC should provide the CLP with a tour within 10 days as set forth in Section 2.3 of the Standard Offering.

In their Joint Issues Matrix attached as Exhibit B to their Joint Proposed Order, the CLPs stated that a tour should occur within 10 calendar days of ILEC notification to a CLP that the CLP's collocation request has been denied, or that a CLP's request for collocation in Active Collocation Space has been placed in Inactive Collocation Space.

Verizon noted that the only tour of an ILEC's premises required by the FCC is upon denial of a request for physical collocation due to space limitations. Verizon noted that the proposed Standard Offering requires such a tour within 10 calendar days and states that the ILEC must provide labeled floor plans/diagrams to the CLP representative 48 hours prior to the tour; however, that may be an insufficient amount of time to coordinate and provide the requisite information. Verizon stated that depending on the timing of the CLP's request, such a provision could force the ILEC to turn around labeled floor plans within 24 hours which are parameters that are simply unworkable. Moreover, Verizon noted, the proposed Standard Offering suggests that the ILEC should provide a tour within a minimum of 72-hours written notice from the CLP or a maximum of 10 days from the ILEC's original notice that no space is available. Verizon noted that for the parties to determine a mutually agreeable time, coordinate travel schedules, and prepare the appropriate

documentation, Verizon offers a reasonable proposal of providing a tour within 10 calendar days of a request. Verizon argued that ILECs should not provide CLPs with tours of its premises when the ILEC has assigned a location for the CLP's collocation space and the CLP is simply unhappy with that assignment.

Verizon stated in its Brief that, as set forth in the FCC Advanced Services Order, the ILEC must provide a tour of its premises if it denies a physical collocation request due to space limitations. However, Verizon stated, the CLPs are requesting that a tour be provided within 10 calendar days and that an ILEC must provide labeled floor plans/diagrams to the CLP representative 48 hours prior to the tour. Verizon noted that depending on the timing of the CLP's request, the provision could force the ILEC to turn around labeled floor plans within 24 hours which are parameters that are simply unworkable.

Verizon also argued that the CLPs' proposed language in Section 2.1.4 of the Standard Offering suggests that the ILEC must provide a tour within a minimum of 72 hours written notice from the CLP or a maximum of 10 days from the ILEC's original notice that no space is available. Verizon maintained that to allow the parties to determine a mutually agreeable time, coordinate travel schedules, and prepare the appropriate documentation, the Commission should not adopt a proposal that could allow the CLP to request a tour within 72 hours. Verizon contended that ILECs will not provide CLPs with tours of its premises when the ILEC has assigned a location for the CLP's collocation space and the CLP is simply unhappy with that assignment. Verizon concluded that there is no existing requirement for a tour to be provided in such circumstances, and none should be imposed.

The Commission notes that in Finding of Fact No. 18 of this Order it has decided not to allow designation of active and inactive space. Further, the Commission notes that ILECs are required by the FCC in its Advanced Services Order to provide a tour to the CLP after denial of collocation space due to space limitations within 10 calendar days of said denial. Therefore, the Commission concludes that ILECs should give CLPs tours of central offices in which collocation space has been denied due to space limitations within 10 calendar days of said denial.

Further, the Commission believes that it is reasonable for ILECs to be required to provide labeled floor plans/diagrams to the CLP representative 48 hours prior to the tour. Therefore, the Commission concludes that ILECs should provide labeled floor plans/diagrams to the CLP representative 48 hours prior to the tour.

COMMISSION CONCLUSIONS: The Commission concludes that ILECs should give CLPs tours of central offices in which collocation space has been denied due to space limitations within 10 calendar days of said denial. Further, the Commission concludes that ILECs should provide labeled floor plans/diagrams to the CLP representative 48 hours prior to the tour.

OVERALL COMMISSION CONCLUSIONS: Concerning provisioning intervals, the Commission adopts the following provisioning intervals for inclusion in the Standard Offering:

(a) Space Availability Notification after receipt of Application	15 calendar days (See also Issue No. 18(j))
(b) Notification of carriers on the waiting list of space availability	10 calendar days
(c) Reaffirmation by CLP of collocation request	10 calendar days
(d) Updates to space availability list on website	10 calendar days
(e) ILEC review of CLP plans and specifications	15 calendar days
(f) CLP notification to ILEC of Guest/Host arrangements	12 calendar days after execution of agreement
(g) ILEC review of CLP plans and specifications for adjacent collocation arrangement	30 calendar days
(h) ILEC notification to CLP that space is ready for occupancy	5 calendar days
(i) ILEC notification to CLP prior to ILEC gaining access to Collocation Space	3 calendar days
(j) Application Response	15 calendar days - complete with firm price quote
(k) Application Response for multiple applications (See Finding of Fact No. 16)	1-5 in 15 calendar days 6-10 in 20 calendar days 11-15 in 25 calendar days 16-20 in 30 calendar days 21-25 in 35 calendar days etc. . . .
(l) CLP acceptance of ILEC quotation for Collocation Space	7 calendar days
(m) Bona Fide Firm Order	7 calendar days
(n) ILEC acknowledgment of receipt of Bona Fide Firm Order	7 calendar days
(o) Construction and Provisioning Intervals for Caged Space (See Finding of Fact No. 60)	90 calendar days from application date

(p) Joint Planning Meeting	12 calendar days from Bona Fide Firm Order
(q) Acceptance Walk Through	7 calendar days
(r) Construction and Provisioning Intervals for Cageless Space (See Finding of Fact No. 60)	60 calendar days from application
(s) ILEC provision of written report regarding space availability and multiple requests	1-5 in 15 calendar days 6-10 in 20 calendar days 11-15 in 25 calendar days 16-20 in 30 calendar days 21-25 in 35 calendar days etc. . .
(t) Tour of ILEC premises upon denial of space	10 calendar days and floor plans/diagrams 48 hours prior to tour

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 18

ISSUE 19: Should there be differentiation between active and inactive collocation space?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue in its Brief.

AT&T: AT&T originally supported the need for a differentiation between active and inactive collocation space stating it was necessary to provide the potential collocator and the ILEC with a better understanding of what would be required to make space in a particular central office ready. In its matrix, however, it stated that this distinction was effectively mooted by the FCC's *Order on Reconsideration*, which states as a default interval a maximum period of 90 days for provisioning physical collocation, commencing upon receipt of the application. Upon the Commission's acceptance of the 90-day provisioning interval, there is no need for a distinction between active and inactive collocation space.

BELLSOUTH: No. BellSouth strongly disagreed with the use of the terms "active" and "inactive" as classifications of collocation space in its central office buildings.

MCIm: MCIm did not address this issue in its Brief.

NEW ENTRANTS: The New Entrants agreed with AT&T's position on this issue.

PUBLIC STAFF: No. This issue is moot because of the provisioning intervals proposed by the Public Staff in Issue No. 18 which make no distinction between active and inactive collocation space.

SPRINT: Sprint stated in its Proposed Order that it was willing to accept the New Entrants' position on this issue to the extent it is consistent with the terms and conditions of the Standard Offering filed with the direct testimony of Michael R. Hunsucker, it is included in the Standard Offering, and the Standard Offering is made applicable to all parties in its entirety.

VERIZON: Yes. Verizon proposed to provision collocation space in active areas where available and make inactive space available when active space is exhausted.

WORLDCOM: WorldCom agreed with AT&T's position on this issue.

DISCUSSION

Active (conditioned) collocation space is defined as space within an ILEC premises that has sufficient telecommunications infrastructure systems to house telecommunications equipment. Inactive (unconditioned) collocation space is defined as space within the central office where infrastructure systems do not currently exist and must be constructed and where active collocation space has been exhausted.

BellSouth vehemently objected to the active space distinction. BellSouth witness Milner testified that BellSouth cannot predict how to precondition collocation space within a central office that will perfectly match all potential applications for collocation. Since BellSouth cannot know ahead of time what types of equipment collocators will choose to place in their central offices, it cannot provide adequate HVAC systems or electrical systems for the CLP's needs in advance of the CLP's request. BellSouth witness Milner was also concerned that if it preconditions space beyond that required to accommodate an application, then it would not be able to recover that cost. Witness Milner also noted that there was no FCC obligation for the ILEC to precondition space.

Verizon, however, stated that the Standard Offering should distinguish between active and inactive space. Verizon proposed to provision active space, where available, and make inactive space available when active space is exhausted. Since inactive space requires major modifications, witness Ries asserted that the provisioning intervals should be extended when provisioning that type of space.

Responding to BellSouth's objection in his prefiled rebuttal testimony, CLP witness Gillan stated that the purpose of the active/inactive distinction was to apply slightly shorter intervals where conditioned space is already available. According to witness Gillan, BellSouth's objection reflected its opposition to planning for collocation or placing collocation equipment in space that is already available. Witness Gillan further stated that

"adoption of the FCC's intervals (which are the same for both active and inactive space) renders this issue moot."

On cross-examination by BellSouth, CLP witness Gillan reaffirmed that the distinction between active and inactive space was moot if this Commission adopted the FCC's provisioning intervals. The provisioning intervals originally negotiated by the Task Force allowed an ILEC a certain number of days to honor a CLP's request for collocation if it had active space available and an additional number of days if it did not. After the FCC adopted provisioning intervals that did not contain provisions for active or inactive space, the CLPs preferred those intervals to intervals distinguishing between active and inactive space. Thus, the CLPs were only offering the active/inactive distinction as an alternative for this Commission to adopt if it declined to adopt the CLPs' provisioning intervals.

The Public Staff stated that this issue is moot because of the provisioning intervals proposed in Issue No. 18. These intervals make no distinction between active and inactive space. The ILEC must comply with these intervals regardless of what type space it provisions for collocation. There is no need, and indeed the CLPs have shown none, to give an ILEC a longer or shorter time period for provisioning space, based on the condition it is in prior to the request.

The Public Staff was also persuaded by BellSouth's objection that it cannot know ahead of time how much or what type equipment collocators will choose to place in its collocation space so that BellSouth could provide in advance the necessary HVAC or electrical systems. As BellSouth's cross-examination of CLP witness Gillan showed, defining active space with specificity is difficult. The Public Staff rejected Verizon's proposal for this reason as well. Finally, as BellSouth noted, speculative preconditioning of collocation space based on what collocators *might* need could prove unduly costly to the ILECs.

The Commission agrees with the Public Staff's assertion that the provisioning intervals adopted by the Commission in Issue No. 18 render this issue moot since the intervals make no distinction between active and inactive collocation space. The proposed intervals would provide sufficient incentive for ILECs to provision collocation space in a timely manner.

CONCLUSIONS

The Commission concludes that the provisioning intervals previously adopted in Issue No. 18 will provide sufficient incentive for the ILECs to provision collocation space in a timely manner, without the active/inactive space distinction. The Standard Offering should be modified in conformity with this conclusion by removing all references to active or inactive space.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 19

ISSUE 20: Is the ILEC obligated to incur the costs to precondition space such that the space meets the proposed definition of "Active Space" and maintain a certain amount of preconditioned space at all times?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue in its Brief.

AT&T: If the CLPs' proposed provisioning intervals (which take as their starting point the FCC's *Order on Reconsideration*) are accepted by the Commission, it may no longer be necessary generally to distinguish, in a separate provision, between active and inactive space. ILECs, however, know those central offices where demand exists and should provide conditioned space to a requesting collocator prior to assigning a CLP to unconditioned space.

BELLSOUTH: No. FCC rules do not require ILECs to incur the cost of creating and maintaining so called "active" collocation space nor do they require ILECs to precondition space.

MCIm: MCIm did not address this issue in its Brief.

NEW ENTRANTS: The New Entrants agreed with AT&T's position on this issue.

PUBLIC STAFF: The Public Staff believes that the intervals it proposed in this docket which make no distinction between active and inactive space should also be sufficient to render this issue moot.

SPRINT: Sprint stated in its Proposed Order that it was willing to accept the New Entrants' position on this issue to the extent it is consistent with the terms and conditions of the Standard Offering filed with the direct testimony of witness Hunsucker, it is included in the Standard Offering, and the Standard Offering is made applicable to all parties in its entirety.

VERIZON: No. The ILEC is not obligated to incur the costs of preconditioning space, nor is it obligated to maintain a certain amount of preconditioned space at all times.

WORLDCOM: WorldCom agreed with AT&T's position on this issue.

DISCUSSION

In Finding of Fact No. 18, the Commission concluded that the provisioning intervals adopted in Finding of Fact No. 17 would provide sufficient incentive for the ILECs to provision collocation space in a timely manner, without the active/inactive space distinction. Therefore, addressing the question posed in this issue, i.e., whether an ILEC should precondition and maintain a certain amount of active space, is unnecessary.

CONCLUSIONS

The Commission concludes that the provisioning intervals adopted in Finding of Fact No. 17 along with the conclusions in Finding of Fact No. 18 which make no distinction between active and inactive space are sufficient to render this issue moot.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 20

ISSUE 21: Given the Commission's obligation to review waiver petitions, should procedures for evaluating space denials by the ILECs be included in the Standard Offering or established by the Commission in a separate procedural order?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue in its Brief.

AT&T: AT&T did not specifically address this issue in its Joint Proposed Order. In its Joint Issues Matrix attached as Exhibit B to its Joint Proposed Order, AT&T stated that procedures must be established, and they should be in the Standard Offering. AT&T noted that they may also be reflected in a Commission Rule or Order. AT&T stated that the Commission should end the cycle of debate by approving the Standard Offering, including its waiver provisions.

BELLSOUTH: The procedures for evaluating space denials by ILECs should be established by the Commission in a procedural order separate and apart from the Standard Offering.

MCIm: MCIm did not specifically address this issue in its Brief.

NEW ENTRANTS: The New Entrants filed a Joint Proposed Order with AT&T and WorldCom. Therefore, the position as outlined for AT&T above represents the New Entrants' position on this issue.

PUBLIC STAFF: Procedures for ILEC denial of an application for collocation due to space exhaustion should be established in the Standard Offering.

SPRINT: Sprint was willing to accept the New Entrants' position on this Issue to the extent that it is consistent with the terms and conditions of the Standard Offering filed with the direct testimony of Sprint witness Hunsucker, it is included in the Standard Offering, and the Standard Offering is made applicable to all parties in its entirety.

VERIZON: The Commission's review of waiver petitions should be done on a case-by-case basis and procedures for evaluating space denials should be established in a separate procedural order. The procedures for waiver review should not be included in the Standard Offering.

WORLDCOM: WorldCom filed a Joint Proposed Order with AT&T and the New Entrants. Therefore, the position as outlined for AT&T above represents WorldCom's position on this issue.

DISCUSSION

BellSouth noted in its Proposed Order that the Commission should establish procedures for evaluating space denials by ILECs in a procedural order separate and apart from the Standard Offering. BellSouth maintained that such a procedure worked successfully in Georgia where the Georgia Public Service Commission conducted a workshop in which the parties reached consensus regarding the procedures for handling ILEC collocation waiver requests. BellSouth asserted that state commissions have an obligation to address waiver petitions under FCC Rule 51.321(f), independent of any agreements between the ILEC and the CLP. BellSouth argued that because of these legal obligations, the procedures for filing waiver petitions and challenging those petitions should be developed as rules of the Commission which exist separate and apart from the Standard Offering.

BellSouth recommended that the Commission agree with BellSouth and Verizon that it should promulgate procedures for evaluating space denials by ILECs through a separate procedural order. BellSouth proposed that the Commission find that it will best discharge its legal obligation to address waiver petitions through rules that are separate and apart from the process outlined in the Standard Offering. BellSouth recommended that the Commission convene a workshop as soon as practicable to allow the parties an opportunity to reach a consensus on the details for handling waiver petitions.

BellSouth witness Hendrix stated in rebuttal testimony that the Commission has an obligation to address waiver petitions under FCC rule 47 C.F.R. 51.321(f), independent of any agreements between the ILEC and the CLP. Witness Hendrix maintained that because of this obligation, the procedures for filing waiver petitions and challenging those petitions should be developed as Rules of the Commission which exist separate and apart from the Standard Offering. Witness Hendrix asserted that by addressing these procedures in an Order, the Commission will ensure that its rules will apply equally and

consistently to all CLPs whether their physical collocation is provided pursuant to the Standard Offering, in a separately negotiated contract, or through a tariff.

As referenced above, witness Hendrix noted 47 C.F.R. 51.321(f) which states:

> An incumbent LEC shall submit to the state commission detailed floor plans or diagrams of any premises where the incumbent LEC claims that physical collocation is not practical because of space limitations.

The Public Staff stated in its Proposed Order that New Entrants witness Gillan testified that the CLPs want the procedures for space denials by the ILECs to be clear and well-documented. The Public Staff commented that witness Gillan testified that these procedures could be set out in a separate order or rule, but that including them in the Standard Offering would be more useful to the Parties.

The Public Staff maintained that BellSouth and Verizon contended that the procedures should not be included in the Standard Offering. The Public Staff noted that Verizon also suggested that the Commission establish the procedures in a separate order confirming that the Commission would review denial of collocation space on a case-by-case basis.

The Public Staff stated that for the reasons it set forth in its recommendations on Issue No. 6, the Commission should set its goal as having the Standard Offering alone set forth the guidelines for collocation. Therefore, the Public Staff recommended that the Commission require inclusion of procedures for the Parties to follow when the ILEC denies space in the Standard Offering.

Sprint did not provide extended discussion on this issue in its Proposed Order and all of its comments are reflected under the Positions of Parties - Sprint.

Verizon argued in its Proposed Order that procedures for evaluating space denials by ILECs should be established by the Commission in a separate procedural order, not included in the Standard Offering. Verizon maintained that the Commission's evaluation of space denials must be done on a case-by-case basis since each case presents facts peculiar to the central office where space is sought. Verizon explained that space exhaustion can be due to physical limitations, operational considerations, or personnel requirements.

Verizon proposed that in its separate rulemaking, the Commission should specify how often an ILEC must justify a denial of space. Verizon noted that once the Commission goes through the process of analyzing and accepting a denial, it should not have to expend the resources to review space availability at the same central office for at least another year since availability of space is not likely to change within a year.

Verizon maintained that since the Commission must evaluate space denials by ILECs on a case-by-case basis, procedures for evaluating the denial of space should be established by the Commission in a separate procedural order and not included in an ILEC's tariff or the Standard Offering. Verizon argued that even a reporting requirement as detailed as that of Section 2.3.1-.4 of the Standard Offering cannot include all factors that may be relevant to the Commission when reviewing space exhaustion and that this approach would require a substantial data collection process that may not produce information that is relevant to the reason space is not available. Verizon recommended that this requirement be rejected.

The Commission agrees with the Public Staff and CLP witness Gillan that clear, well-defined procedures outlined in the Standard Offering should be established for the denial of collocation space. The Commission believes that the Standard Offering is an appropriate place for such procedures to be outlined since these procedures are to be used uniformly by all carriers. The Commission discusses and provides conclusions for well-defined procedures for denial of collocation space in Finding of Fact No. 30.

CONCLUSIONS

The Commission concludes that procedures for evaluating space denials by the ILECs should be included in the Standard Offering.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 21

ISSUE 22: What space availability information, if any, should the ILEC post at a publicly accessible location?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue in its Brief.

AT&T: AT&T did not specifically address this issue in its Joint Proposed Order. In its Joint Issues Matrix attached as Exhibit B to its Joint Proposed Order, AT&T stated that an ILEC should post on its website the information contained in Section 2.6, in particular: premises without available space; and a general notice when space becomes available in ILEC premises previously on the exhaust list.

BELLSOUTH: The required space availability information should coincide with what the FCC requires to be publicly available. That is, a notification document that indicates all central offices that are without available space for collocation and for which the ILEC has filed a waiver petition. If space subsequently becomes available, BellSouth puts a general notice to that effect on its website as well.

In its revised Proposed Order filed on September 14, 2001 in response to the FCC's August 8, 2001 Collocation Remand Order, BellSouth argued that the FCC in its Collocation Remand Order requires that the ILEC provide in its Space Availability Report, not on its website, detailed information about the Central Office which will facilitate a CLP requesting specific collocation space within the office. BellSouth recommended that the Commission conclude that this information is to be provided only upon request of a CLP and is compiled based on the condition of the central office at that time. BellSouth did not propose any changes to its proposed Section 2.6 of the Standard Offering.

MCIm: MCIm did not address this issue in its Brief.

NEW ENTRANTS: The New Entrants filed a Joint Proposed Order with AT&T and WorldCom. Therefore, the position as outlined for AT&T above represents the New Entrants' position on this issue.

PUBLIC STAFF: Section 2.6 of the Standard Offering should be revised to require each ILEC to: (1) post a web page accessible to the public listing its premises with no collocation space available; (2) list, for each central office, the measures it is taking to create collocation space and the anticipated date on which collocation space will be available; and (3) post a conspicuous notice on the web page whenever space actually becomes available at any of these locations.

SPRINT: Sprint was willing to accept the New Entrants' position on this Issue to the extent that it is consistent with the terms and conditions of the Standard Offering filed with the direct testimony of Sprint witness Hunsucker, it is included in the Standard Offering, and the Standard Offering is made applicable to all parties in its entirety.

VERIZON: ILECs should post at a publicly accessible location a list of all premises without available space and general notice when space has become available for a central office previously on the space exhaust list.

WORLDCOM: WorldCom filed a Joint Proposed Order with AT&T and the New Entrants. Therefore, the position as outlined for AT&T above represents WorldCom's position on this issue.

DISCUSSION

BellSouth maintained in its Proposed Order that the space availability information that an ILEC should post at a publicly accessible location is described in Section 2 of BellSouth's proposed Standard Offering, as follows:

> **2.6 - Public Notification**. The ILEC will maintain on its website a notification document that will indicate all Premises that are without available space. The ILEC shall update such

> document within ten (10) calendar days of the date at which a Premises runs out of physical collocation space. The ILEC will also post a document on its website that contains a general notice where space has become available in a Central Office previously on the space exhaust list. The ILEC shall allocate said available space pursuant to the waiting list referenced in Section 2.5

BellSouth recommended that the Commission agree that the CLP proposal regarding information the ILEC should be obligated to post on the ILEC website is substantially different from what the FCC requires. BellSouth noted that the FCC requires a notification document that indicates all central offices that are without available space for collocation and for which the ILEC has filed a waiver petition to be publicly available (See FCC Rule 51.321(h)). BellSouth maintained that under its current procedures, that document is updated within 10 calendar days of the denial of application due to space exhaust. BellSouth noted that when space subsequently becomes available in a central office previously on the space exhaust list, BellSouth also puts a general notice to that effect on the website as well.

BellSouth further recommended that the Commission agree with BellSouth that the amount of "active" versus "inactive" space should not be specified on the website. BellSouth maintained that even if the Commission were to order such a designation, posting this type of information would amount to daily, if not hourly, updates to the website to account for the continuous amounts of space being depleted at any given time across all central offices within BellSouth's North Carolina territory. BellSouth argued that, therefore, posting such information would be neither practical nor useful.

The Public Staff stated in its Proposed Order that the FCC imposes space availability reporting requirements on ILECs in Paragraph 58 of its Advanced Services Order. The Public Staff noted that the last half of that paragraph requires ILECs to maintain an Internet site that lists ILEC premises unavailable for collocation due to space exhaust:

> . . . In addition to this reporting requirement, we adopt the proposal of Sprint that incumbent LECs must maintain a publicly available document, posted for viewing on the Internet, indicating all premises that are full, and must update such a document within ten days of the date at which a premises runs out of physical collocation space. Such requirements will allow competitors to avoid expending significant resources in applying for collocation space in an incumbent LEC's premises where no such space exists. We expect that state commissions will permit incumbent LECs to

recover the costs of implementing these reporting measures from collocating carriers in a reasonable manner.

The Public Staff noted that the proposed Section 2.6 of the CLPs' Standard Offering would expand these Internet reporting obligations significantly. Specifically, Section 2.6 states:

> **2.6 - Public Notification**. The ILEC will maintain in its website a notification document that will indicate all Premises that are without available space. The ILEC shall update such document within ten (10) calendar days of the date at which a Premises runs out of physical collocation space. The ILEC will also post a document on its website that contains a general notice where space has become available in a Central Office previously on the space exhaust list. The ILEC shall allocate said available space pursuant to the waiting list referenced in Section 2.5. In addition, the website should specify the amount of active and other (inactive) collocation space available at each Premises where CLPs have requested space, the number of CLPs, any modifications in the use of the space since the last update, and should also include measures that the ILEC is taking to make additional space available for collocation.

The Public Staff recommended that the Commission conclude that the Internet web page that the ILECs use to indicate their premises that are exhausted should be upgraded to include additional information. The Public Staff proposed that in addition to the list of locations that have no available space for collocation, the Commission require each ILEC to list the specific measures that it is taking at each location to create additional collocation space and to show the projected date by which it anticipates having collocation space available. The Public Staff further recommended that the Commission require ILECs to post a clear, conspicuous notice on their web page whenever space becomes available at any of the previously exhausted locations. The Public Staff stated that it believes that these changes will benefit CLPs that are seeking collocation space without presenting any extraordinary burdens or challenges to the ILECs. However, the Public Staff recommended that the Commission decline to require the ILECs to post any of the additional information proposed in Section 2.6.

Sprint did not provide extended discussion on this issue in its Proposed Order and all of its comments are reflected under the Positions of Parties - Sprint.

Verizon stated in its Brief that Paragraph 58 of the FCC Advanced Services Order requires each ILEC to maintain a notification document (typically on a website) indicating all premises without available space and must update that document when space becomes

available in a central office previously on the space exhaust list. Verizon noted that the website will be updated within 10 days after a premises runs out of physical collocation space. Therefore, Verizon maintained, all CLPs will have current information on space availability easily accessible to them.

Verizon also noted that the New Entrants proposed the additional unnecessary burden of requiring the ILECs' websites to include and continually update an extensive list of information such as the amount of active and other collocation space available at each premises, the number of CLPs collocating at a premises, and modifications or measures being undertaken to make additional space available for collocation. Verizon argued that this extreme level of detail, including information which may be competitively sensitive, can be obtained by requesting a premises space report which is required by the FCC. Therefore, Verizon maintained, there is no reason for this Commission to require it. Nor, Verizon argued, is there any need for the ILECs to expend yet more resources in creating and maintaining websites for each central office that has been the subject of a collocation request or updating the website every time the footprint of space within the central office changes. Verizon also commented that there is no need, likewise, for a public listing of space that is considered "active" or "inactive" since Verizon will provide collocation space under the same tariff terms and rates regardless of whether it is "active" or "inactive" at the time of the request.

Verizon stated in its Proposed Order that the ILECs' websites established pursuant to the FCC's Advanced Services Order indicate all premises without available space. Verizon noted that these documents are updated when space becomes available in a central office previously on the space exhaust list. However, Verizon noted, the proposed Standard Offering would require that the website include an extensive list of information that would be burdensome to develop and is not required by the FCC.

Verizon further noted that the CLPs would require that such a website be maintained for each central office that has ever received a collocation request and that additional resources would be expended for the ILEC to keep such a website updated every time the footprint of space within the central office changed.

Verizon maintained that the proposed Standard Offering would require that each ILEC maintain a waiting list, at its own expense, to inform CLPs when space becomes available. Verizon noted that the FCC's Advanced Services Order does not prescribe a waiting list system but rather contemplates that each ILEC will maintain a website on space availability that is publicly accessible to CLPs.

Verizon recommended that the Commission conclude that ILECs should post at a publicly accessible location a list of all premises without available space and general notice when space has become available for a central office previously on the space exhaust list.

The Commission believes that the FCC was very clear in Paragraph 58 of its Advanced Services Order on what an ILEC is required to include on its website. However, the Commission agrees with the Public Staff that additional information could be included which will not impose an extraordinary burden on the ILECs and would benefit CLPs looking to collocate. Therefore, the Commission concludes that the ILECs should upgrade their websites to include the following information:

(1) list of its central offices with no available collocation space;
(2) measures that the ILEC is taking at each central office to create additional collocation space;
(3) projected date when more collocation space will be available; and
(4) notice whenever space becomes available at any of the previously exhausted locations.

The Commission finds it appropriate to alter Section 2.6 of the CLP Standard Offering as follows:

> The ILEC will maintain in its website a notification document that will indicate all Premises that are without available space. The ILEC shall update such document within ten (10) calendar days of the date at which a Premises runs out of physical collocation space. The ILEC will also post a document on its website that contains a general notice where space has become available in a Central Office previously on the space exhaust list. The ILEC shall allocate said available space pursuant to the waiting list referenced in Section 2.5. In addition, the website should ~~specify the amount of active and other (inactive) collocation space available at each Premises where CLPs have requested space, the number of CLPs, any modifications in the use of the space since the last update, and should also~~ include measures that the ILEC is taking to make additional space available for collocation and the projected date when more collocation space will be available.

Finally, addressing BellSouth's September 14, 2001 revised Proposed Order, the Commission notes that BellSouth did not propose any changes to its proposed Section 2.6 of the Standard Offering. The Commission does not believe that it should address BellSouth's September 14, 2001 filing or make any changes to this issue due to that filing.

CONCLUSIONS

The Commission concludes that Section 2.6 of the Standard Offering should be amended as presented above to require ILECs to include additional useful information on

their websites. Accordingly, in this regard, the ILECs should include the following information on their websites:

(1) list of its central offices with no available collocation space;
(2) measures that the ILEC is taking at each central office to create additional collocation space;
(3) projected date when more collocation space will be available; and
(4) notice whenever space becomes available at any of the previously exhausted locations.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 22

ISSUE 23: What information should the ILEC provide to the CLP in support of the ILEC's designation of space (whether such designation is active, inactive, or denial of space)?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue in its Brief.

AT&T: AT&T did not specifically address this issue in its Joint Proposed Order. In its Joint Issues Matrix attached as Exhibit B to its Joint Proposed Order, AT&T stated that the ILEC should provide all of the information designated in Sections 2.1.2, 2.1.3, 2.3.1, and 2.3.2, which pertains to space availability and denial of space. AT&T argued that this type of information is relevant to the determination of whether space is available and that rather than procure it through litigation, this information should be made available as a matter of course.

BELLSOUTH: BellSouth will respond to a CLP within 10 days of submission of an application as to whether space is available or not within the requested premises. In the event that a lesser amount of space is available or a different type of space is available than that requested, BellSouth will so state in its response. If space is available, the information in support of such designation of space will appear in the form of a written Application Response which includes but is not limited to the configuration of space, cable installation, space preparation, and additional engineering fees, etc. In cases in which a request is denied due to space exhaust or technical restrictions, BellSouth will file a petition for waiver with the Commission and will follow waiver procedures established by the Commission.

In its revised Proposed Order filed on September 14, 2001 in response to the FCC's August 8, 2001 Collocation Remand Order, BellSouth proposed that the Commission conclude that if the CLP has specified a space preference as a result of requesting a Space Availability Report and BellSouth is unable to accommodate such a preference, then BellSouth should state the reason in its Application Response.

MCIm: MCIm did not specifically address this issue in its Brief.

NEW ENTRANTS: The New Entrants filed a Joint Proposed Order with AT&T and WorldCom. Therefore, the position as outlined for AT&T above represents the New Entrants' position on this issue.

PUBLIC STAFF: Section 2.1.3 should be removed from the Standard Offering since the Public Staff's recommendation for the issue of intervals (addressed in Issue No. 18) makes the issue of active/inactive space designations moot. Further, the Public Staff addressed Section 2.1.3 in its discussion of Issue No. 21.

SPRINT: Sprint was willing to accept the New Entrants' position on this Issue to the extent that it is consistent with the terms and conditions of the Standard Offering filed with the direct testimony of Sprint witness Hunsucker, it is included in the Standard Offering, and the Standard Offering is made applicable to all parties in its entirety.

VERIZON: The ILEC is not required to provide the CLP with any information supporting the ILEC's designation of space; however, the ILEC should provide the information relevant to the denial of space.

In its revised Proposed Order filed on September 14, 2001 in response to the FCC's August 8, 2001 Collocation Remand Order, Verizon proposed that the Commission conclude that ILECs, as part of the Site Survey/Report, provide a detailed description and amount of caged and cageless collocation space available. Verizon also proposed that the Commission conclude that when the ILEC denies collocation space to a CLP, the ILEC should provide sufficient information supporting the denial. Finally, Verizon also recommended that the Commission conclude that if collocation space is made available, no additional information needs to be provided to the CLP. Verizon maintained that ILECs have the authority to assign collocation space to the CLP.

WORLDCOM: WorldCom filed a Joint Proposed Order with AT&T and the New Entrants. Therefore, the position as outlined for AT&T above represents WorldCom's position on this issue.

DISCUSSION

This issue concerns Sections 2.1.2, 2.1.3., 2.3.1, and 2.3.2 of the Standard Offering as follows:

> **2.1.2** Availability Notification. The ILEC shall notify the CLP in writing as to whether its request for collocation space has been granted or denied due to lack of space as outlined in 2.2.2. The notification will also include a possible future space relief date, if applicable. Upon

notification that no space is currently available, subject to provisions of section 7, all charges (if any) collected with the application will be returned to the CLP.

2.1.3 In its notification, the ILEC shall also inform the CLP if *the space available for the requested premises will be* Active or Other (Inactive) Collocation Space, as those terms are defined in Section 3.2 and 3.3. If the CLP's space is placed in Inactive Space, then the notification shall also include rationale for placing the requested space in such category, including all power and other factors used in making the determination.

2.3.1 The ILEC will provide all relevant documentation to the CLP representative, subject to executing a nondisclosure agreement. Relevant documentation shall include blueprints and plans for future facility expansions or enhancements, as well as all information listed in 2.3.2 below. The ILEC shall submit current clearly labeled floor plans/diagrams of the premise of at least a 1/8"=1' scale to the CLP representative 48 hours prior to the tour. The ILEC representative will *accompany and supervise the CLP representative on* the inspection tour. The inspection tour shall be conducted no later than ten (10) calendar days following the filing of the request for the tour. If the CLP agent believes, based on the inspection tour of the ILEC Premises, that the denial of collocation space is unsupportable, the CLP representative shall promptly so advise the ILEC, both orally and in writing. The CLP and ILEC shall then each concurrently prepare a report detailing its own findings of the inspection tour. The CLP and the ILEC reports shall be concurrently served on each other and submitted to the Commission.

2.3.2 At the same time that the ILEC notifies the CLP of a denial of space, the ILEC will file a copy of the letter at the Commission. In addition, and at the same time as its notification, the ILEC will provide the following *information to the CLP and to the Commission in* support of its denial, subject to proprietary protections:

1. Exchange, Wire Center, Central Office Common Language Identifier (CLLI), if applicable,

address, a brief description of the premises and the V&H coordinates;

2. The identity of the requesting CLP, including amount of space sought by the CLP;
3. Total amount of space at the premises;
4. A detailed explanation of the reason for the exemption waiver;
5. A clearly labeled engineering floor plan/diagrams of the premise of at least 1/8" to 1', accompanied with proper legend and scale to assist in the interpretation of the floor plan showing:

    a. Space housing the ILEC network equipment in use including number of lines wired, equipped and in-service and its function (e.g., switching, transmission, power, etc.);

    b. Space housing nonregulated services and administrative offices;

    c. Space housing obsolete unused equipment, equipment being phased out, not in use and/or stored, including the expected retirement and/or removal date(s);

    d. Space occupied by the ILEC affiliates;

    e. Space which does not currently house the ILEC equipment or administrative offices but is reserved by the ILEC for future use by ILEC or its affiliates, and the expected time-frame of use;

    f. Space occupied by and/or reserved for CLPs for the purpose of network interconnection or access to unbundled network elements, by type of arrangement (e.g., physical, cageless, shared, virtual, etc.);

g. Space, if any, occupied by third parties for other purposes, including identification of the uses of such space;

h. Identification of turnaround space for switch or other equipment; removal plans and timelines, if any; and

i. Planned Central Office rearrangement/expansion plans, if any.

6. Description of other plans, if any, that may relieve space exhaustion, including plans showing any adjacent space.

7. A detailed description and analysis of any equipment rearrangements, administrative office space relocation and/or building expansion plans, including timelines;

8. A detailed description of any efforts or plans to avoid space exhaustion in the premise including a proposed timeline of any such plans and estimation of the duration of the exemption; and

9. A demand and facility forecast including, but not limited to, three to five years of historical data, and forecasted growth, in twelve month increments, by functional type of equipment (e.g., switching, transmission, power, etc.).

BellSouth stated in its Proposed Order that the Standard Offering proposed by the CLPs in Sections 2.1.2, 2.1.3, 2.3.1, and 2.3.2 is too broad and should not be adopted by the Commission. BellSouth maintained that Section 2.1.2 of the CLP Standard Offering refers to Section 2.2.2 for the intervals for availability notification. BellSouth stated that the intervals set forth in Section 2.2.2 are for a Space Availability Report which is a report that the FCC ordered in its Advanced Services Order at Paragraph 58 to be made available at the request of the CLP for a cost. BellSouth argued that it has nothing to do with the notification of space availability upon submission of an application for collocation. BellSouth asserted that it has already stated that it will respond to a CLP within 10 calendar days for submission of an application as to whether space is available or not within the requested premises. BellSouth noted that its disagreement with the CLPs' proposed Section 2.1.3 is that an ILEC should not be obligated to designate space as active or inactive.

BellSouth recommended that the Commission agree with BellSouth that the language proposed in Sections 2.3.1 and 2.3.2 which requests the ILEC to provide voluminous documentation to the CLP when space is exhausted is simply not necessary. BellSouth argued that the ILEC has an obligation to support its claim of space exhaust to the Commission and, therefore, should provide documentation required by the Commission when asked by the Commission.

BellSouth also argued that the CLPs propose not only that the ILEC allow a tour by the CLP when space is exhausted, but also that the ILEC provide to the CLP a staggering volume of supporting documentation. BellSouth recommended that the Commission find this approach to be inappropriate not only because of the obvious burden that it unnecessarily creates but also because it adopts the mistaken view that the CLP should be the judge of whether space is exhausted rather than the Commission. BellSouth also noted that there is no basis for such a production of documents in any FCC order or rule.

BellSouth concluded that upon a denial of space, the ILEC will provide the CLP with the opportunity for a tour which will provide the CLP with all of the information necessary to assess the exhaust status of a particular premises. BellSouth stated that as noted by the FCC in its Advanced Services Order at Paragraph 57, if the parties still disagree about the space limitations in that particular central office, they can present their arguments to the Commission.

BellSouth witness Hendrix stated in rebuttal testimony that there are several things wrong with the CLPs' proposal for this issue. Witness Hendrix maintained that Section 2.1.2 refers to 2.2.2 for the intervals for availability notification. Witness Hendrix noted that the intervals set forth in Section 2.2.2 are for a Space Availability Report, which is a report that the FCC ordered be made available at the request of the CLP for a cost. Witness Hendrix asserted that it has nothing to do with the notification of space availability upon submission of an application. Witness Hendrix noted that BellSouth had already stated that it would respond to a CLP within 10 calendar days of submission of an application as to whether space is available or not within the requested premises.

Witness Hendrix also noted that BellSouth disagrees with the language in Sections 2.3.1 and 2.3.2 which requires the ILEC to provide voluminous documentation to the CLP when space is exhausted. Witness Hendrix maintained that BellSouth has an obligation to support its claim of space exhaust to the Commission, and therefore should provide documentation required by the Commission to the Commission.

The Public Staff stated in its Proposed Order that the CLPs are requesting that the Commission require the ILECs to provide the information listed in Sections 2.1.2, 2.1.3, 2.3.1, and 2.3.2 of the Standard Offering and discussed in Issue Nos. 18 and 21. The Public Staff noted that the CLPs contended that this information is relevant to the determination that space is available. The Public Staff maintained that the CLPs, to support their position, cite Paragraph 58 of the FCC Advanced Services Order which

states that in the case of space exhaustion, an ILEC must submit a report indicating the ILEC's available collocation space at the ILEC's premises to a CLP within 10 days of submission of the request. The Public Staff noted that the report, according to the CLPs, must also contain the amount of collocation space available, the number of collocators, and any modifications in the use of the space since the last report and that the report must also include measures the ILEC is taking to make additional space available.

The Public Staff noted that Verizon argued that the ILEC should not have to provide any information regarding the designation of space. Further, the Public Staff maintained that BellSouth objected to the inclusion of any of the above-cited sections in the Standard Offering.

The Public Staff recommended that the Commission conclude that it has already addressed notification intervals found in Sections 2.2.1 and 2.2.2 in its discussion of Issue No. 18 and that the Commission has already stated that the active/inactive space designation is moot in light of the intervals proposed by the Public Staff. The Public Staff recommended that the Commission remove Section 2.1.3 from the Standard Offering.

Sprint did not provide extended discussion on this issue in its Proposed Order and all of its comments are reflected under the Positions of Parties – Sprint.

Verizon stated in its Proposed Order that no information is necessary on designation of space because the CLP is charging one set of rates, regardless of whether the space was originally active or inactive. Further, Verizon contended, the D.C. Circuit Court made it clear that the ILEC "should choose where to establish collocation on the LEC's property." Therefore, Verizon contended, the requirement in the proposed Standard Offering that the ILEC provide information to the CLP justifying placement of the CLPs collocation space should be rejected. Verizon stated that as for information to be provided by an ILEC to a CLP to support denial, the ILEC should determine what information to provide based on the unique characteristics or circumstances relevant to denying a particular request.

Verizon recommended that the Commission conclude that the ILEC is not required to provide the CLP with any information supporting the ILEC's designation of space, however, the ILEC should provide information relevant to the denial.

The Commission notes that in Finding of Fact No. 18, the Commission concluded that it was not appropriate to differentiate between active and inactive space. Therefore, the Commission agrees with the Public Staff in concluding that Section 2.1.3 should be removed from the Standard Offering.

Concerning the other Sections noted above, the Commission believes that the information noted in Sections 2.3.1 and 2.3.2 is relevant information that will aid CLPs in determining whether the ILEC's denial of collocation space was appropriate. The

Commission notes that Verizon argued that the ILEC should determine what information to provide based on the unique characteristics or circumstances relevant to denying a particular request, however, the Commission believes that it is beneficial to have a standardized listing of pertinent information and if for any particular denial, any of the information required is not applicable (N/A), the ILEC would be free to list N/A for that item. Therefore, the Commission believes that it is appropriate to require the ILECs to provide the information outlined in Sections 2.3.1 and 2.3.2, in addition to any other information the ILEC deems appropriate, to the CLP to enable the CLP to determine if the denial of space was appropriate. The Commission finds it appropriate to adopt Section 2.3.1 without modification and remove certain language from Section 2.3.2 which references filings with the Commission based on the Commission's conclusions for Issue No. 31. Specifically, the Commission finds it appropriate to strike from Section 2.3.2 "and to the Commission", such that the ILEC will provide the detailed information regarding a denial of space only to the CLP and not also to the Commission at this particular point in the procedures for space denial.

Addressing Verizon's September 14, 2001 filing proposing changes to this issue in light of the FCC's Collocation Remand Order, the Commission does not believe that Verizon's proposed changes need to be addressed since they appear not to alter Verizon's original position.

Finally, addressing BellSouth's September 14, 2001 filing proposing changes to this issue in light of the FCC's Collocation Remand Order, the Commission believes that BellSouth's proposed change is inappropriately discussed in this issue. BellSouth was commenting on information to be stated in the application response which is not the subject of this issue. Therefore, the Commission finds it appropriate to disregard BellSouth's September 14, 2001 filing with regard to this issue.

CONCLUSIONS

The Commission concludes that Section 2.1.3 should be removed from the Standard Offering. Further, the Commission finds it appropriate to adopt Section 2.3.1 without modification and remove the phrase "and to the Commission" from Section 2.3.2, such that the ILEC will provide the detailed information regarding a denial of space only to the CLP and not also to the Commission at this particular point in the procedures for space denial.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 23

ISSUE 24: When should ILECs provide CLPs tours of ILEC premises?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue in its Brief.

AT&T: AT&T did not specifically address this issue in its Joint Proposed Order. In its Joint Issues Matrix attached as Exhibit B to its Joint Proposed Order, AT&T stated that tours should be provided whenever an ILEC claims that space is either unavailable, or available only under conditions that increase the CLP's costs. AT&T argued that tours should be held within 10 calendar days of space denial, and scheduled in advance to accommodate ILEC and CLP schedules. AT&T maintained that the FCC has explicitly ordered the ILEC to permit representatives of a requesting CLP that has been denied collocation due to space constraints to tour the entire premises in question, not just the room in which space was denied, without charge, within 10 days of the denial of space.

BELLSOUTH: An ILEC should provide a tour of central offices in any case in which a CLP has been denied space for physical collocation because of space exhaustion in that central office. However, BellSouth is not obligated to provide a tour for a CLP resulting from a CLP's dispute regarding the ILEC's placement of the CLP's collocation arrangement in the central office.

In its revised Proposed Order filed on September 14, 2001 in response to the FCC's August 8, 2001 Collocation Remand Order, BellSouth proposed that the Commission conclude that through requesting a Space Availability Report showing in detail the space available and by requesting specific space reflected in that report, the Commission should find that the CLP is permitted to have first hand knowledge of the space available. BellSouth proposed that the Commission find that BellSouth should respond in its Application Response to what space has been allocated to the CLP and if the preferred space is not allocated BellSouth would be obligated to justify such to the Commission.

MCIm: MCIm did not specifically address this issue in its Brief.

NEW ENTRANTS: The New Entrants filed a Joint Proposed Order with AT&T and WorldCom. Therefore, the position as outlined for AT&T above represents the New Entrants' position on this issue.

PUBLIC STAFF: Sections 2.1.4 and 2.1.5 should be removed from the Standard Offering.

SPRINT: Sprint was willing to accept the New Entrants' position on this Issue to the extent that it is consistent with the terms and conditions of the Standard Offering filed with the direct testimony of Sprint witness Hunsucker, it is included in the Standard Offering, and the Standard Offering is made applicable to all parties in its entirety.

VERIZON: Tours should not be provided regarding inactive and active space classifications. A tour should be provided only if the application is denied due to lack of space.

WORLDCOM: WorldCom filed a Joint Proposed Order with AT&T and the New Entrants. Therefore, the position as outlined for AT&T above represents WorldCom's position on this issue.

DISCUSSION

This issue concerns Sections 2.1.4, 2.1.5, and 2.3 of the Standard Offering stated as follows:

> **2.1.4** In the event that the CLP disputes the ILEC's placement of the space into Inactive Space, then the CLP may request a tour of the ILEC Premises to verify the Active/Inactive space availability. The request shall be submitted to the ILEC's designated representative in writing. The inspection tour will be scheduled within a minimum of seventy-two (72) hours notice, and will occur within ten (10) calendar days of such notice that the ILEC has placed the CLP's request in Inactive Space. At the CLP's request, the request for inspection tour for determination of Active/Inactive space may be conducted concurrently with a tour involving space availability disputes.
>
> **2.1.5** The ILEC will provide all relevant documentation to the CLP agent supporting its placement of CLP's requested collocation arrangement in Inactive Space. The ILEC shall submit current clearly labeled floor plans/diagrams of the premise of at least a 1/8" = 1' scale to the CLP representative 48 hours prior to the tour and information listed in 2.3.2 below. The burden of proof shall be on the ILEC to justify the basis for placement of the CLP's space in Inactive Space.
>
> **2.3** Denial of Application. After notifying the CLP that the ILEC has no available space in the requested Central Office ("Denial of Application"), the ILEC will allow the CLP, upon request and with a minimum of seventy-two (72) hours notice, to tour the entire Central Office within ten (10) calendar days of such Denial of Application.

BellSouth stated in its Proposed Order that the Parties agree that in cases in which the CLP's application for physical collocation is denied due to space exhaust, the CLP is entitled to a tour in accordance with FCC orders and rules. However, BellSouth noted, the Parties disagree about whether a tour is required to allow a CLP to contest the location of its collocation space within the ILEC premises.

BellSouth recommended that the Commission agree with BellSouth and Verizon that ILECs are not obligated to provide a tour for a CLP resulting from a CLP's dispute regarding the ILEC's placement of the CLP's collocation arrangement in the central office. BellSouth noted that a recent opinion from the D.C. Circuit in GTE Serv. Corp. v. FCC (D.C. Cir. 2000) made it very clear that the ILECs have the discretion to designate where collocators are located in the ILEC's premises (See GTE Services Corp. et al. v. FCC consolidated case 99-1176 U.S. Court of Appeals on March 17, 2000). BellSouth maintained that indiscriminate use of space by the CLPs would lead to a chaotic use of available space as each CLP would make decisions in its best interests with little or no regard for the interests of the ILEC or other CLPs collocated at the same ILEC premises. BellSouth therefore stated that since a CLP does not possess the ability to dictate to the ILEC where the CLP's collocation space should be in a particular central office, it is unnecessary for the Commission to allow CLPs a tour to challenge its location within the central office. BellSouth recommended that the Commission conclude that an ILEC is required to allow CLP tours of collocation space only upon a space exhaustion denial by an ILEC.

The Public Staff stated in its Proposed Order that this issue concerns Sections 2.1.4 and 2.1.5 of the Standard Offering. The Public Staff noted that since these sections relate to the active/inactive space designation, which the Public Staff recommended the Commission reject, they should be removed from the Standard Offering.

Sprint did not provide extended discussion on this issue in its Proposed Order and all of its comments are reflected under the Positions of Parties.

Verizon maintained in its Proposed Order that tours should be provided only upon denials of collocation applications, not for a decision by the ILEC as to where to place a CLPs collocation space. Verizon proposed that the ILEC be free to locate a CLP's collocation space and not charge a CLP different amounts for collocation in active or inactive space.

The Commission agrees with BellSouth and Verizon that an ILEC should be required to provide a tour of central offices in any case in which a CLP has been denied space for physical collocation because of space exhaustion in that central office. Further, the Commission agrees that BellSouth is not obligated to provide a tour for a CLP resulting from a CLP's dispute regarding the ILEC's placement of the CLP's collocation arrangement in the central office. The Commission notes that in Finding of Fact No. 18, the Commission concluded that it is not appropriate to recognize differences between inactive and active space designations. Therefore, the Commission finds it appropriate to remove Sections 2.1.4 and 2.1.5 from the Standard Offering.

The Commission also notes that this issue concerns when an ILEC should provide a CLP with a tour of its premises and not the issue of whether ILECs should have the discretion to designate where collocators are located in their premises as discussed by

BellSouth. The Commission believes that the FCC has been clear that an ILEC is required to provide a CLP a tour of its central office when collocation space has been denied to the CLP. The Commission does not believe that this issue is the appropriate place to address the question of whether ILECs have the discretion to designate where collocators are located in their central offices. That issue is discussed in Finding of Fact No. 50. The Commission finds it appropriate to adopt Section 2.3 of the Standard Offering without modification.

Finally, addressing BellSouth's September 14, 2001 filing proposing changes to this issue in light of the FCC's Collocation Remand Order, the Commission believes that BellSouth's proposed change is inappropriately discussed in this issue. BellSouth was commenting on information to be stated in the application response which is not the subject of this issue. Therefore, the Commission finds it appropriate to disregard BellSouth's September 14, 2001 filing with regard to this issue.

However, the Commission notes that its decision in this regard is in no way intended to impact the rights of any CLP in circumstances where the CLP believes that the ILEC's space assignment decision violates the anti-discrimination provisions in the FCC's Collocation Remand Order.

CONCLUSIONS

The Commission concludes that Sections 2.1.4 and 2.1.5 should be removed from the Standard Offering and that Section 2.3 should be adopted without modification.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 24

ISSUE 25: What information should the ILEC provide the CLP in the written space availability report?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue in its Brief.

AT&T: AT&T did not specifically address this issue in its Joint Proposed Order. In its Joint Issues Matrix attached as Exhibit B to its Joint Proposed Order, AT&T stated that the ILEC should provide the CLP the information required by Section 2.2 of the Standard Offering. AT&T noted that this section generally mirrors Paragraph 58 of the FCC Advanced Services Order.

BELLSOUTH: The information an ILEC should provide the CLP in its written space availability report is as described in Sections 2.2 and 2.2.1 of BellSouth's proposed Standard Offering, as follows:

> **2.2** - Reporting Requirement. Upon request from the CLP, the ILEC will provide a written report (space availability report) specifying the amount of collocation space available at the Premises requested, the number of collocated CLPs present at the Premises, any modifications in the use of the space since the last report on the Premises requested and the measures the ILEC is taking to make additional space available for collocation arrangements.
>
> **2.2.1** - The request for a space availability report from the CLP must be written and must include the Premises and Common Language Location Identification (CLLI) code of the Premises (if applicable).

The Parties have resolved this issue so the Commission should allow the Parties to insert Section 2.2 in the Standard Offering.

In its revised Proposed Order filed on September 14, 2001 in response to the FCC's August 8, 2001 Collocation Remand Order, BellSouth inserted into its position that the ILECs' space availability report should describe in detail the space that is available for collocation.

MCIm: MCIm did not address this issue in its Brief.

NEW ENTRANTS: The New Entrants filed a Joint Proposed Order with AT&T and WorldCom. Therefore, the position as outlined for AT&T above represents the New Entrants' position on this issue.

PUBLIC STAFF: Section 2.2 of the Standard Offering should be adopted without changes.

In its revised Proposed Order filed on September 14, 2001 in response to the FCC's August 8, 2001 Collocation Remand Order, the Public Staff noted that the FCC's Collocation Remand Order expands the reporting requirements. The Public Staff noted in its revised Proposed Order that as it discussed in Issue No. 2, the FCC revised 47 C.F.R. 51.323(f) to require that an ILEC allow each carrier requesting physical collocation to submit space preferences prior to assigning physical collocation space. The Public Staff stated that in doing so, the FCC acknowledged in Paragraph 96 that to request specific space intelligently, a requesting carrier would require more information than the FCC's existing space report rule expressly requires that an ILEC provide. Therefore, the Public Staff acknowledged, the FCC also amended 47 C.F.R. 51.321(h) which now requires that, "Upon request, an incumbent LEC must submit to the requesting carrier within ten days of the submission of the request a report describing in detail the space that is available for collocation in a particular incumbent LEC premises." The Public Staff

maintained that the first sentence of Section 2.2 of the Standard Offering should be amended to reflect the revised 47 C.F.R. 51.321(h) as follows:

> **Section 2.2** - Within ten days of a CLP's request, an ILEC must submit a report describing in detail the space available for collocation in its premises, the amount of collocation space available at each requested premises, the number of collocated CLPs present at the premises, any modifications in the use of the space since the last report on the premises, and the measures the ILEC is taking to make additional space available for collocation.

SPRINT: Sprint was willing to accept the New Entrants' position on this Issue to the extent that it is consistent with the terms and conditions of the Standard Offering filed with the direct testimony of Sprint witness Hunsucker, it is included in the Standard Offering, and the Standard Offering is made applicable to all parties in its entirety.

In its revised Proposed Order filed on September 14, 2001 in response to the FCC's August 8, 2001 Collocation Remand Order, Sprint noted that the FCC's Collocation Remand Order revised Rule 51.321(h) wherein upon request, an ILEC must submit to the requesting carrier a report describing in detail the space that is available for collocation in a particular ILEC premises.

VERIZON: The amount of collocation space available at each requested premises, the number of collocators, any modifications in use of space since the last report, and measures the ILEC is taking to make additional space available for collocation should be provided in the written space availability report.

In its revised Proposed Order filed on September 14, 2001 in response to the FCC's August 8, 2001 Collocation Remand Order, Verizon noted that pursuant to Paragraph 58 of the FCC's Collocation Remand Order, the Commission should require the ILECs to provide a detailed description of the space that is available at each requested premises, including the amount of available space, the number of collocators, any modifications in the use of space since the ILEC's last report, and any measures the ILEC is taking to make additional space available for collocation.

WORLDCOM: WorldCom filed a Joint Proposed Order with AT&T and the New Entrants. Therefore, the position as outlined for AT&T above represents WorldCom's position on this issue.

DISCUSSION

CLP Coalition witness Gillan stated in rebuttal testimony that it was his understanding that BellSouth agrees with Section 2.2 of the Standard Offering.

The Public Staff noted in its Proposed Order that the first part of Paragraph 58 of the *FCC Advanced Services Order details the information which must be provided to CLPs* whenever they request information on the availability of collocation space at a particular ILEC premises (the space availability report). In pertinent part, Paragraph 58 states the following:

> We also adopt our tentative conclusion that an incumbent LEC must submit to a requesting carrier within ten days of the submission of the request a report indicating the incumbent LEC's available collocation space in a particular LEC premises. This report must specify the amount of collocation space available at each requested premises, the number of collocators, and any modifications to the use of the space since the last report. The report must also include measures that the incumbent LEC is taking to make additional space available for collocation. . . .

The Public Staff maintained that these requirements from Paragraph 58 are codified in Section 2.2 of the Standard Offering, as follows:

> 2.2 - Reporting Requirement. Upon request from the CLP, the ILEC will provide a written report (space availability report) specifying the amount of collocation space available at the Premises requested, the number of collocated CLPs present at the Premises, any modifications in the use of the space since the last report on the Premises requested and the measures the ILEC is taking to make additional space available for collocation arrangements.

The Public Staff noted that the Parties appear to agree that Section 2.2 of the Standard Offering faithfully mirrors the requirements set forth by the FCC in the Advanced *Services Order. The Public Staff maintained that BellSouth witness Hendrix actually* testified that BellSouth considers the issue resolved and noted that Verizon did not offer any testimony concerning this issue. Therefore, the Public Staff recommended that the Commission approve Section 2.2 of the Standard Offering without any changes.

Sprint did not provide extended discussion on this issue in its Proposed Order and all of its comments are reflected under the Positions of Parties - Sprint.

Verizon maintained in its Proposed Order that according to Paragraph 58 of the FCC's Advanced Services Order, all that is required in the written space availability report is the amount of collocation space available at each requested premises, the number of collocators, any modifications in use of space since the last report, and the measures the ILEC is taking to make additional space available for collocation.

Verizon recommended that the Commission conclude that the amount of collocation space available at each requested premises, the number of collocators, any modifications in use of space since the last report, and measures the ILEC is taking to make additional space available for collocation should be provided in the written space availability report.

The Commission notes that the FCC revised its rules related to this issue in its August 8, 2001 Collocation Remand Order. FCC Rule 51.321(h) currently reads:

> Upon request, an incumbent LEC must submit to the requesting carrier within ten days of the submission of the request a report describing in detail the space that is available for collocation in a particular incumbent LEC premises. This report must specify the amount of collocation space available at each requested premises, the number of collocators, and any modifications in the use of the space since the last report. This report must also include measures that the incumbent LEC is taking to make additional space available for collocation. The incumbent LEC must maintain a publicly available document, posted for viewing on the incumbent LEC's publicly available Internet site, indicating all premises that are full, and must update such a document within ten days of the date at which a premises runs out of physical collocation space.

The Commission notes that prior to the FCC's Collocation Remand Order it would have agreed with BellSouth and the Public Staff that Section 2.2 outlined the requirements noted in Paragraph 58 of the FCC's Advanced Services Order. The Commission also notes that there was apparently no controversy among the Parties on this Issue.

However, based on the September 14, 2001 revised Proposed Orders and the FCC's Collocation Remand Order, the Commission agrees with BellSouth, the Public Staff, and Verizon that Section 2.2 should be revised to reflect new Rule 51.321(h). Therefore, the Commission finds the following narrative appropriate for Section 2.2:

> 2.2 - Reporting Requirement. Upon request from the CLP, the ILEC will provide a written report (space availability report) within 10 days of the submission of the request describing in detail the space that is available for collocation in a particular ILEC premises. The report must specifying the amount of collocation space available at ~~the~~ each ~~Premises~~ requested Premises, the number of collocated CLPs present at the Premises, any modifications in the use of the space since the last report on the Premises requested and the measures the

ILEC is taking to make additional space available for collocation arrangements.

CONCLUSIONS

The Commission concludes that Section 2.2, pertaining to reporting requirements of space availability, should be modified as noted above and that Section 2.2.1, pertaining to premises CLLI code reporting, should be included in the Standard Offering without modification.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 25

ISSUE 26: Should the Commission utilize a Third-Party Engineer to evaluate waiver petitions and/or space denial?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue in its Brief.

AT&T: AT&T did not specifically address this issue in its Joint Proposed Order. In its Joint Issues Matrix attached as Exhibit B to its Joint Proposed Order, AT&T stated that the CLPs agree with Verizon's position that a CLP contesting an ILEC's justification for denial may request review by a third-party engineer. AT&T maintained that the goal of the Standard Offering is to reduce disputes regarding collocation and to aid in dispute resolution where a dispute does arise. AT&T noted that BellSouth admits that CLPs, by proposing the use of a third-party engineer, are not trying to increase the length, cost, or complexity of resolving disputes. AT&T maintained that the use of a third-party engineer will enhance the dispute resolution process by providing an impartial source for information and analysis of the circumstances in dispute.

BELLSOUTH: A third-party engineer is not necessary to evaluate waiver petitions and/or space denials. Use of a third-party engineer would duplicate the role played by the Commission and/or the Public Staff in determining the facts regarding a specific central office where space for physical collocation is exhausted. The waiver procedures endorsed by BellSouth will include a provision for a tour of the premises in question by the Commission.

MCIm: MCIm did not specifically address this issue in its Brief.

NEW ENTRANTS: The New Entrants filed a Joint Proposed Order with AT&T and WorldCom. Therefore, the position as outlined for AT&T above represents the New Entrants' position on this issue.

PUBLIC STAFF: The Parties should attempt to resolve space denial issues themselves before presenting them to the Commission and may rely upon third-party engineers. The Commission should reserve the right to resolve space denial issues on its own.

SPRINT: Sprint was willing to accept the New Entrants' position on this Issue to the extent that it is consistent with the terms and conditions of the Standard Offering filed with the direct testimony of Sprint witness Hunsucker, it is included in the Standard Offering, and the Standard Offering is made applicable to all parties in its entirety.

VERIZON: A CLP contesting an ILEC's denial of space may request a review by a third-party engineer once a year for a given central office.

WORLDCOM: WorldCom filed a Joint Proposed Order with AT&T and the New Entrants. Therefore, the position as outlined for AT&T above represents WorldCom's position on this issue.

DISCUSSION

BellSouth noted in its Proposed Order that it already proposed that the Commission decide that it will convene a workshop through which the procedures for waiver petitions will be developed [See Issue No. 21]. BellSouth recommended that the Commission agree with it that there does not appear to be a need for the Commission to engage the services of a third-party engineer in waiver proceedings but rather have the Commission and/or Public Staff involved in making an unbiased recommendation as to the validity of the ILEC's exhaust designation. BellSouth argued that incorporating a third-party engineer into the process will likely do nothing more than increase the length, cost, and complexity of the proceeding with no appreciable increase in expertise.

CLP Coalition witness Gillan stated in rebuttal testimony that the use of third-party engineers would greatly simplify the process and provide more information and assistance to the process. Witness Gillan stated that the goal is to reduce the number of disputes brought by the Parties to the Commission whenever possible and that the third-party engineer is an important contribution to this goal and should be retained.

The Public Staff noted in its Proposed Order that Section 2.3.3 of the Standard Offering provides that when a CLP contests the ILEC's denial of space request, the CLP may request review of the premises by a third-party engineer. The Public Staff further stated that Section 2.3.3 also outlined the procedures for selection of an unbiased third-party engineer: either the ILEC and CLP may agree on an engineer or the Commission may assign one from a list of engineers that it maintains. The Public Staff explained that the CLPs and the ILECs would have input in creating this list. Further, the Public Staff noted, after selection, the third-party engineer would review the reports by the ILEC and the CLP and also independently evaluate whether collocation space is available in the disputed ILEC premises. The Public Staff reported that the CLP would pay the

entire fee of the third-party engineer review and that if the third-party engineer determines that space is available, and the Commission upholds this determination, then the ILEC would reimburse the CLP for the costs of the third-party engineer.

The Public Staff maintained that the CLPs and Verizon do not object to Section 2.3.3 of the Standard Offering providing for review by a third-party engineer. The Public Staff commented, however, that BellSouth requested that the Commission and the Public Staff evaluate ILECs' denials of collocation space, arguing that a third-party engineer is unnecessarily duplicative. The Public Staff noted that BellSouth proposed that instead, when BellSouth has denied a space request, it would provide a tour of the premises in question to the Commission.

The Public Staff recommended that the Commission conclude that the Standard Offering should permit third-party engineers to evaluate space denials. The Public Staff noted that the FCC regulations require an ILEC to provide a tour of the premises after an ILEC denies a space request by a CLP. The Public Staff maintained that allowing an unbiased, third-party engineer to tour the premises would be helpful in making an initial and unbiased determination about space availability. Also, the Public Staff noted, the possibility of a review by a third-party engineer would compel the ILEC to evaluate thoroughly its premises before denying space. The Public Staff remarked that contrary to BellSouth's assertion that third-party engineers would complicate the process, this step could actually eliminate the need for the Commission's involvement or provide a more complete record for the Commission to examine should it become involved. The Public Staff concluded that permitting a third-party engineer to address a dispute over space exhaustion is also consistent with the FCC's conclusion that the parties should attempt to resolve space disputes before bringing them to a state commission.

The Public Staff noted that Section 2.3.3 does provide that the third-party engineer shall review not only the reports by the ILEC and the CLP, but also shall examine the factors listed in Sections 2.3.1 and 2.3.2. The Public Staff recommended that the Commission decline to address this specific requirement; however, find that the ILEC should provide the third-party engineer with whatever information he deems relevant to his inquiry, potentially including but not limited to the information provided in Sections 2.3.1 and 2.3.2.

Section 2.3.3 of the Standard Offering states:

> The burden of proof shall be on the ILEC to justify the basis for any denial of a collocation request. A CLP that contests the ILEC's position concerning the denial of a collocation request shall have the option of requesting a Third-Party Engineer review. If requested, the CLP shall pay 100% of the fee associated with the Third-Party Engineer review. A Third-Party Engineer may be selected through agreement by

> the ILEC and CLP, or shall be assigned on a rotating basis from a list maintained by the Commission with input from the ILEC and CLPs. The CLP does not have to obtain agreement from the ILEC on the selection of the Third-Party Engineer from the approved list. The Third-Party Engineer shall review not only the reports by the ILEC and the CLP, but shall also undertake an independent evaluation to determine whether collocation space is available in the disputed ILEC Premises. The Third-Party Engineer shall examine the factors listed above, as well as any other factors that are specified elsewhere (e.g., definition of "Legitimately Exhausted"), and any other information the Third-Party Engineer deems to be relevant to his determination. The Third-Party Engineer shall also conduct its review under the presumption that the burden of proof shall be on the ILEC to justify the basis for any denial of collocation requests. After determination by the Third-Party Engineer and, if appealed, determination by the Commission, the ILEC shall reimburse the CLP's costs associated with the Third-Party Engineer process if it is determined that space is available. In the event a Third-Party Engineer or the Commission determines that space is not available, the ILEC will not be required to conduct a review of floor space availability in the same ILEC Premises more frequently than once every six months.

The Public Staff noted that its recommendations are not intended to say that the Commission or the Public Staff relinquishes the right to make tours or become involved *sua sponte* in any space denial. Rather, the Public Staff maintained, using third-party engineers in the manner described in Section 2.3.3 of the Standard Offering will likely reduce the amount of litigation before the Commission, the purpose of the Commission in organizing the Collocation Task Force. The Public Staff recommended that Section 2.3.3 of the Standard Offering be amended to state that: "The ILEC shall provide the Third-party Engineer with all information he deems relevant to his determination, subject to proprietary protections." Otherwise, the Public Staff proposed, Section 2.3.3 should remain as written.

Sprint did not provide extended discussion on this issue in its Proposed Order and all of its comments are reflected under the Positions of Parties - Sprint.

Verizon asserted in its Proposed Order that a third-party engineer would provide an impartial analysis when there is conflict between the two parties. Verizon stated that the proposed Standard Offering, however, would permit a review by a third-party engineer once every six months. Verizon argued that such justifications should only be required to take place once a year.

The Commission agrees with the Public Staff that a third-party engineer would be helpful in making an initial and unbiased determination about space availability. Also, the Commission agrees with the Public Staff that the possibility of a review by a third-party engineer should compel the ILEC to evaluate thoroughly its premises before denying space. The Commission believes that the Public Staff is correct in asserting that employing a third-party engineer could actually eliminate the need for the Commission's involvement or provide a more complete record for the Commission to examine should it become involved. However, the Commission does not agree with the Public Staff's proposed amendment to Section 2.3.3. The Commission notes that Section 2.3.3 as proposed in the Standard Offering states, "The Third-party Engineer shall examine the factors listed above, as well as any other factors that are specified elsewhere (e.g., definition of "Legitimately Exhausted"), and any other information the Third-Party Engineer deems to be relevant to his determination." Therefore, the Commission does not believe that all of the Public Staff's proposed amendment is necessary, only the part referencing the proprietary protections. Therefore, the Commission finds it appropriate to include language relating to proprietary protections such that the ILEC shall provide relevant information to the Third-Party Engineer subject to proprietary protections.

Further, the Commission believes that the language which asserts that after an initial review by a third-party engineer, the ILEC will not be required to conduct a review of floor space availability in the same ILEC Premises more frequently than once every six months is reasonable and appropriate. The Commission believes that Verizon's proposal of one year is too long given the importance of the availability of collocation space to competition in the State.

The Commission finds it appropriate to adopt Section 2.3.3 into the Standard Offering with an amendment to reflect that the information provided to the Third-Party Engineer is subject to proprietary protections.

CONCLUSIONS

The Commission concludes that Section 2.3.3 should be included in the Standard Offering with an amendment to reflect that the information provided to the Third-Party Engineer is subject to proprietary protections.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 26

ISSUE 27 AND ISSUE 85 (Sprint 11): What is the appropriate definition of "Legitimately Exhausted"?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue in its Brief.

AT&T: AT&T did not specifically address this issue in its Joint Proposed Order. In its Joint Issues Matrix attached as Exhibit B to its Joint Proposed Order, AT&T stated that central office space is legitimately exhausted when there is no conditioned space available and no space suitable for conditioning regardless of the type of equipment to be installed. AT&T argued that in accordance with the FCC's Advanced Services Order, the ILEC must remove unused, obsolete equipment and make the space available for collocation. AT&T maintained that the Standard Offering provides predictability; hence it does not automatically provide ILECs with additional time to remove obsolete equipment, since ILECs should be preparing for collocation. AT&T stated that the distinction in the Parties' positions is between whether the waiver process should address exceptions (the CLPs' approach) and whether the Standard Offering should automatically waive intervals for a variety of circumstances for which the ILECs should prepare.

BELLSOUTH: The term "legitimately exhausted" denotes that all space in an ILEC's premises that is unused is exhausted or completely occupied. Unused space is space not currently in use or reserved for future use for an ILEC or by the CLPs.

In its revised Proposed Order filed on September 14, 2001 in response to the FCC's August 8, 2001 Collocation Remand Order, BellSouth argued that the FCC acknowledged in its Collocation Remand Order that certain space would never be considered available for collocation. BellSouth argued that the CLPs' proposed language for Section 3.7 would be in conflict with the FCC's Rules.

BellSouth recommended that the Commission conclude that space should not be available for collocation if it is (1) physically occupied by nonobsolete equipment; (2) assigned to another collocator; (3) used to provide physical access to occupied space; (4) used to enable technicians to work on equipment located within occupied space; (5) properly reserved for future use, either by BellSouth or by another carrier; or (6) essential for the administration and proper functioning of BellSouth's premises.

BellSouth also proposed a new Section 1.3, as follows:

> **1.3 - Space Allocation** - . . . Space shall not be available for collocation if it is: (a) physically occupied by non-obsolete equipment; (b) assigned to another collocator; (c) used to provide physical access to occupied space; (e) properly reserved for future use, either by BellSouth or by another carrier; or (f) essential for the administration and proper functioning of BellSouth's premises. . . .

MCIm: MCIm did not specifically address this issue in its Brief.

NEW ENTRANTS: The New Entrants filed a Joint Proposed Order with AT&T and WorldCom. Therefore, the position as outlined for AT&T above represents the New Entrants' position on this issue.

PUBLIC STAFF: The appropriate definition of "legitimately exhausted" is provided in Section 3.7 of the Standard Offering. ILECs should proactively remove unused, obsolete equipment from their central offices, and they should bear the costs of removing this equipment.

SPRINT: Sprint's evidence was that "legitimately exhausted" means all space in an ILEC's premise that can be used or is useful to locate telecommunications equipment using any of the methods of collocation available is exhausted or completely occupied, and that before an ILEC may make a determination that space is legitimately exhausted the ILEC must have removed all unused, obsolete equipment from the premises and made such space available for collocation. Sprint also presented evidence that removal of equipment should not cause unreasonable delay in the ILEC's response to a CLP's application or in provisioning collocation arrangements.

VERIZON: Space is "legitimately exhausted" when all space in a premises that can be used or is useful to locate telecommunications equipment is exhausted or completely occupied.

WORLDCOM: WorldCom filed a Joint Proposed Order with AT&T and the New Entrants. Therefore, the position as outlined for AT&T above represents WorldCom's position on this issue.

DISCUSSION

BellSouth maintained in its Proposed Order that the major point of disagreement between the Parties on this issue concerns the treatment of obsolete equipment. BellSouth noted that according to the CLPs, before an ILEC can declare space to be "legitimately exhausted", the ILEC must have removed all unusable, obsolete equipment from the premises and have made such space available for collocators. BellSouth argued that it should not be required to remove all obsolete equipment at its own expense if a CLP asks BellSouth to remove the equipment ahead of schedule. BellSouth stated that while an ILEC should proactively remove unused, obsolete equipment prior to a central office reaching exhaust, it should not be required to forebear from declaring an exhaust situation without having removed obsolete equipment at its own expense. BellSouth proposed that if, at a CLP's request, an ILEC is required to remove unused, obsolete equipment ahead of its scheduled removal, the ILEC should comply with such a request at the expense of the CLP. BellSouth noted that it also discussed this issue under Issue No. 30.

BellSouth also commented that its witness Milner argued that the CLPs' proposed definition of "legitimately exhausted" fails to consider space reserved for future defined use

by both the ILEC and the CLP. BellSouth maintained that FCC Rule 51.323(f)(4) allows for reserving space for future use and that such a practice allows efficient installation and maintenance of an ILEC's equipment and CLPs' equipment. BellSouth maintained that, therefore, reserved space should not be deducted from total space for purposes of determining when the building is at exhaust.

BellSouth also noted that witness Milner testified that the CLPs' proposed treatment of this issue fails to take into account adjacent collocation which is a method of collocation not provided until such time as space inside the central office building is exhausted. BellSouth maintained that the use of adjacent collocation, to a degree, mitigates the effects of exhausting space within the central office, because the CLP can still locate its equipment in proximity to an ILEC's equipment for interconnection and access to UNEs.

BellSouth recommended that the Commission not include the CLPs' proposed definition of "legitimately exhausted" in the Standard Offering but rather, state that it believes that the CLPs' interest in this regard will be protected by Section 2.4 of the Standard Offering and the waiver proceedings that will be developed by the Parties to allow CLPs to contest an ILEC's claim that space has been exhausted in a particular central office.

Section 2.4 of BellSouth's Standard Offering as included as Attachment A to its Proposed Order states:

> Filing of Petition for Waiver. Upon denial of Application ILEC will timely file a petition with the Commission pursuant to 47 U.S.C. §251 (c)(6). ILEC shall provide to the Commission any information requested by the Commission. Such information shall include which space, if any, ILEC or any of ILEC's affiliates have reserved for future use and a detailed description of the specific future uses for which the space has been reserved. Subject to an appropriate nondisclosure agreement or provision, ILEC shall permit CLP to inspect any floor plans or diagrams that ILEC provides to the Commission.

The Public Staff noted in its Proposed Order that Section 3.7 of the CLPs' Standard Offering provides the following definition of "Legitimately Exhausted":

> **Section 3.7 - Legitimately Exhausted** - Denotes when all space in an ILEC Premise that can be used or useful or is useful to locate telecommunications equipment in any of the methods of collocation available is exhausted or completely occupied. Before an ILEC may make a determination that space is legitimately exhausted, the ILEC must have removed all unused obsolete equipment from the Premises and make

such space available for collocation; however, removal of equipment shall not cause unreasonable delay in the ILEC's response to a CLP's application or in provisioning collocation arrangements.

[**COMMISSION NOTE:** Attachment A to BellSouth's Proposed Order, its proposed *Standard Offering*, provides no Section 3.7 defining "Legitimately Exhausted". Instead, BellSouth's Section 3.7 relates to another unrelated matter of co-carrier cross-connects. The Commission found no definition for legitimately exhausted in BellSouth's proposal.]

The Public Staff stated that BellSouth raised three objections to the definition of "Legitimately Exhausted" outlined in the CLPs' Standard Offering. The Public Staff noted that BellSouth objected to the Section's treatment of obsolete equipment. Also, the Public Staff maintained, BellSouth contended that the definition fails to account for space reserved for the future-defined use by the CLPs and the ILECs. The Public Staff stated that BellSouth also objected to the fact that the definition fails to address adjacent collocation, which occurs when space inside a central office is exhausted. The Public Staff recommended that the Commission only consider the treatment of obsolete equipment in this issue and address the other two issues raised by BellSouth in its discussion and conclusions for Issue Nos. 29 and 51, respectively.

The Public Staff noted that as Section 3.7 shows, this issue encompasses Issue No. 30 concerning the removal of obsolete equipment. The Public Staff noted that the Standard Offering further discusses "obsolete equipment" at Section 2.1.1 which provides in pertinent part:

> In order to increase the amount of space available for collocation, the ILEC will remove obsolete unused equipment, at its costs, from its Premises to meet a request for collocation for a CLP.

The Public Staff maintained that the governing authority on this issue is 47 C.F.R. 51.321(i) which provides that an ILEC must, upon request, remove obsolete, unused equipment from its premises to increase the amount of space available for collocation. The Public Staff further noted that the FCC explained its position on the removal of obsolete equipment in Paragraph 60 of its Advanced Services Order which states:

> . . . to increase the amount of space available for collocation, incumbent LECs must remove obsolete equipment from their premises upon reasonable request by a competitor or upon the order of a state commission. There is no legitimate reason for an incumbent LEC to utilize space for obsolete or retired

equipment that the incumbent LEC is no longer using when such space could be used by competitors for collocation.

The Public Staff maintained that the Standard Offering, while reflective of the FCC's minimum requirements, imposes additional requirements on the ILEC, namely, that the ILEC bear the costs of removal when requested by a CLP. The Public Staff noted that the FCC does not speak to who should incur this cost and that the Commission may make that determination.

The Public Staff recommended that the Commission conclude that the ILEC should bear the costs of removal of obsolete, unused equipment. The Public Staff maintained that the CLPs should not have to bear these costs when BellSouth has already scheduled the equipment's removal at some later date. The Public Staff argued that BellSouth's proposal could result in an ILEC's neglecting to remove obsolete equipment until a CLP requests removal, thereby enabling the ILEC to pass along the costs of removal to the CLP. The Public Staff noted that while BellSouth witness Hendrix testified that no unused, obsolete equipment would remain in place under BellSouth's schedules, he provided no compelling safeguard to prevent this occurrence.

The Public Staff also contended that by requiring the ILEC to pay for the removal of equipment at the request of a CLP, the Commission removes any incentive for an ILEC to delay removal. The Public Staff noted that in Paragraph 55 of the Advanced Services Order, the FCC encouraged the states to ensure that collocation space is available in a timely and procompetitive manner that gives new entrants a full and fair opportunity to compete. The Public Staff believes that the ILECs should proactively remove unused, obsolete equipment from their central offices and that the Commission should approve Section 3.7 and the applicable sentence from Section 2.1.1 of the Standard Offering as written. Section 2.1.1 states in applicable part, ". . . . In order to increase the amount of space available for collocation, the ILEC will remove obsolete unused equipment, at its costs, from its Premises to meet a request for collocation from a CLP."

Sprint stated in its Brief that it does not disagree with the language in Section 3.7 of the Standard Offering, however, that it has experienced a problem with an ILEC in another state. Sprint stated that the situation arose where the ILEC had some remaining physical collocation space available, but the amount was insufficient for Sprint. Sprint stated that it then requested adjacent collocation due to the lack of physical collocation space but that the ILEC rejected Sprint's request because the physical collocation space was not completely exhausted. Sprint maintained that to avoid this situation, space should be considered legitimately exhausted where the ILEC has acknowledged that adequate floor or rack space is not available for the equipment or arrangement the CLP is seeking to collocate.

Verizon maintained in its Proposed Order that Paragraph 60 of the FCC's Advanced Services Order states that ILECs must remove unused, obsolete equipment from their

premises upon reasonable request by a CLP or upon the order of a state commission. Verizon recommended that the Commission conclude that space is "legitimately exhausted" when all space in a premises that can be used or is useful to locate telecommunications equipment is exhausted or completely occupied.

The Commission agrees with the Public Staff that the only issue to be decided here concerns the appropriate treatment of obsolete equipment. The Commission further does not agree with BellSouth that while an ILEC should proactively remove unused, obsolete equipment prior to a central office reaching exhaust, it should not be required to forebear from declaring an exhaust situation without having removed obsolete equipment. The Commission believes that it is reasonable to expect ILECs to remove all obsolete, unused equipment prior to declaring an exhaust situation in any of their central offices. Therefore, the Commission finds it appropriate to adopt Section 3.7, pertaining to "Legitimately Exhausted", for inclusion in the Standard Offering without modification. The issue of which party should pay for the removal of unused, obsolete equipment is addressed subsequently in Finding of Fact No. 29.

Concerning BellSouth's September 14, 2001 revisions to its Proposed Order in response to the FCC's Collocation Remand Order, the Commission does not believe that BellSouth's proposed Section 1.3 as previously quoted in the Positions of Parties - BellSouth is necessary for inclusion in the Standard Offering. The Commission notes that this issue concerns whether ILECs should be required to remove unused, obsolete equipment from their central offices before declaring the office is "legitimately exhausted", and the Commission believes that such actions by the ILECs are required. Further, the Commission does not believe that the Collocation Remand Order alters its conclusions on this issue.

CONCLUSIONS

The Commission concludes that Section 3.7 should be included in the Standard Offering without modification. Section 3.7 requires that an ILEC remove unused, obsolete equipment prior to making a determination that space is legitimately exhausted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 27

ISSUE 28: Under what circumstances, if any, should the ILEC relocate administrative space from ILEC premises to provide collocation?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue in its Brief.

AT&T: AT&T did not specifically address this issue in its Joint Proposed Order. In its Joint Issues Matrix attached as Exhibit B to its Joint Proposed Order, AT&T stated the Standard

Offering recognizes that personnel that have job functions related to operating a central office need not be moved. AT&T argued that nonessential administrative personnel should be required to relocate, if necessary, since central office space is a critical and scarce resource. AT&T stated that nonessential administrative functions can be moved elsewhere, whereas collocation must occur at the central office.

BELLSOUTH: BellSouth denied that it has an absolute obligation to remove administrative personnel from its central offices prior to denying a request for physical collocation. Rather, use of administrative space should be evaluated on a case-by-case basis because there are different space, equipment, building code, manpower, and other requirements unique to each central office. Not only do these central offices house telecommunications equipment but also the people, tools, and computers, used to administer, provision, maintain, and repair such telecommunications equipment.

In its revised Proposed Order filed on September 14, 2001 in response to the FCC's August 8, 2001 Collocation Remand Order, BellSouth argued that in accordance with the FCC's Collocation Remand Order, administrative space is a legitimate use of central office space and BellSouth may allocate central office space for uses other than collocation.

MCIm: MCIm did not specifically address this issue in its Brief.

NEW ENTRANTS: The New Entrants filed a Joint Proposed Order with AT&T and WorldCom. Therefore, the position as outlined for AT&T above represents the New Entrants' position on this issue.

PUBLIC STAFF: The question of whether personnel and space are essential will likely vary from case to case and therefore, a blanket rule is inappropriate here. Section 3.7.1 of the Standard Offering should be removed to comply with this recommendation. Also, the Public Staff has recommended procedures to address ILEC denials of space, and the Commission should conclude that the Parties, the third-party engineer, or the Commission may consider the relocation of administrative personnel in the determination of whether space has been legitimately exhausted in a central office.

SPRINT: Sprint was willing to accept the New Entrants' position on this Issue to the extent that it is consistent with the terms and conditions of the Standard Offering filed with the direct testimony of Sprint witness Hunsucker, it is included in the Standard Offering, and the Standard Offering is made applicable to all parties in its entirety.

VERIZON: The ILEC should evaluate potential relocation of administrative space on a case-by-case basis. If a move is determined to be appropriate in a particular case, the CLP causing the move shall pay the associated costs.

WORLDCOM: WorldCom filed a Joint Proposed Order with AT&T and the New Entrants. Therefore, the position as outlined for AT&T above represents WorldCom's position on this issue.

DISCUSSION

BellSouth stated in its Proposed Order that this issue arises from the CLPs' desire to require the ILECs to relocate administrative office personnel housed in the premises in question before denying physical collocation requests. BellSouth stated that its witness Milner testified that administrative space inside the central office is any space not directly supporting the installation or repair of both telephone equipment and customer service. BellSouth maintained that examples of this type of space include storerooms, break rooms, shipping and receiving rooms, and training areas. BellSouth stated that rooms of this type are necessary to meet safety codes or contractual requirements. BellSouth argued that administrative space can also include regular office space used by work groups performing company functions outside of the equipment support described above. BellSouth maintained that according to witness Milner, BellSouth allocates space to these types of administrative groups in response to changes in the regulatory environment, increases or decreases in company manpower requirements, or in response to new service offerings.

BellSouth asserted that it disagrees with the CLPs' claim that ILECs should have an absolute obligation to remove administrative personnel from their central offices prior to denying requests for physical collocation. BellSouth contended that use of administrative space needs to be evaluated on a case-by-case basis because there are different space, equipment, building codes, manpower, and other requirements unique to each central office.

BellSouth noted that although CLPs may argue that some or all of the purposes (i.e., people, tools, and computers, used to administer, provision, maintain, and repair such telecommunications equipment) are not indispensable and contend that an ILEC must relocate or dispose of administrative space, employee break rooms, and the like, all of these constitute productive use of floor space essential to the administration of an ILEC's business. BellSouth argued that the amount of administrative space necessary per central office varies by the types of equipment in use, building limitations and design, and the expertise and number of people necessary to ensure proper operation of the central office.

BellSouth also maintained that TA96 simply states that space limitations justify a state commission's grant of a physical collocation waiver. BellSouth argued that neither TA96 nor the FCC rules specify to what purposes an ILEC may use the space within its central office. Therefore, BellSouth asserted, the term "use" has its plain language meaning here.

BellSouth specified that Paragraph 579 of the FCC First Interconnection Order states:

> We believe that section 251(c)(6) generally requires that incumbent LECs permit the collocation of equipment used for interconnection or access to unbundled network elements. Although the term "necessary", read most strictly, could be interpreted to mean "indispensable", we conclude that for the purposes of section 251(c)(6) "necessary" does not mean "indispensable" but rather "used" or "useful." This interpretation is most likely to promote fair competition consistent with the purposes of the Act.

BellSouth recommended that the Commission conclude that the same doctrine of fairness should be applied to an ILEC's use of its own space within its central office. BellSouth proposed that the Commission conclude that it will review this issue on a case-by-case basis and will not include the CLPs' proposed language on this issue in the Standard Offering.

BellSouth witness Milner stated in direct testimony that administrative space inside the central office is any space not directly supporting the installation or repair of both telephone equipment and customer service. Witness Milner maintained that examples of this type of space include storerooms, break rooms, shipping and receiving rooms, and training areas. He also noted that administrative space can also include regular office space used by work groups performing company functions outside of the equipment support previously described.

On cross-examination, witness Milner explained that having certain administrative personnel inside a central office constitutes a legitimate use of that space. Witness Milner asserted that nothing in the FCC orders or rules requires ILECs to remove administrative personnel in order to make the space available for collocation.

CLP Coalition witness Gillan stated in rebuttal testimony that it is important that administrative functions be moved to accommodate collocation because administrative functions can be moved elsewhere, whereas collocation must occur in the central office.

The Public Staff maintained in its Proposed Order that Section 3.7.1 of the CLPs' Standard Offering states

> ILECs should be required to relocate administrative office personnel before denying physical collocation requests. Administrative office personnel would be defined as personnel that are not essential to the function of a particular premise, i.e., marketing personnel, human resources personnel, etc.

The Public Staff stated that the CLPs contended that because central office space is a critical and scarce resource, the Standard Offering should require ILECs to relocate

any nonessential administrative personnel to assure that space is available for collocation. The Public Staff noted that in support of their position, the CLPs cite Section 251(c)(6) of TA96 which states that an ILEC must provide physical collocation space unless it is not practical for technical reasons or due to space limitations. The Public Staff maintained that the CLPs also cite Paragraph 604 of the FCC First Interconnection Order which permits an ILEC to retain a limited amount of floor space for specific future use.

The Public Staff maintained that, alternatively, both BellSouth and Verizon propose that review be done on a case-by-case basis. The Public Staff noted that BellSouth pointed out that TA96 does not mandate that ILECs relinquish administrative areas in their central offices to accommodate requests for collocation. Further, the Public Staff stated that Verizon agrees with BellSouth's position on this issue and cited the collocation order of the Florida Public Service Commission.

The Public Staff concluded that the testimony in this docket shows that the amount of space and personnel vary between both the ILECs and their individual central offices and that the question of whether personnel and space are essential would likely vary from case to case. Therefore, the Public Staff recommended that the Commission not adopt a blanket rule and remove Section 3.7.1 of the Standard Offering to comply with its recommendation.

Sprint did not provide extended discussion on this issue in its Proposed Order and all of its comments are reflected under the Positions of Parties.

Verizon stated in its Proposed Order that the Florida Public Service Commission found that it is infeasible to define rules for administrative space in central offices because each office is unique. In this regard, Verizon maintained, there should be no blanket requirement to relocate administrative office personnel before denying physical collocation requests as stated in the proposed Standard Offering. Verizon argued that any evaluation of the ILEC's use of central office space, including the type of personnel housed there, should be done on a case-by-case basis with due consideration of the effect on the ILEC's business and its employees' lives. Verizon noted that in certain cases, there may not be reasonable alternatives for the relocation of administrative personnel and the Florida Public Service Commission agreed.

The Commission believes that it is reasonable to require ILECs to relocate administrative personnel from their central offices. The Commission agrees with the CLPs that central offices are unique locations that are needed to provide telecommunications services by both ILECs and CLPs. The Commission notes that under no circumstances would CLPs be allowed to house their administrative personnel in central offices since the space is limited and essential. Therefore, the Commission believes that it is reasonable to require ILECs to only allow personnel that are essential to the function of the central office to remain in the central office and relocate other personnel. The Commission will not provide a concrete definition of personnel that are not essential to the function of the

central office other than to note its belief that marketing personnel and human resource personnel are not essential to the function of the central office. Further, the Commission notes that its decision in this regard is subject to the right of an ILEC to seek a waiver of this requirement from the Commission. The Commission concludes that it is appropriate to adopt Section 3.7.1 which requires ILECs to relocate administrative office personnel that are not essential to the function of the central office.

Addressing BellSouth's revised Proposed Order filed on September 14, 2001 in response to the FCC's August 8, 2001 Collocation Remand Order, the Commission notes that BellSouth did not reference any part of the FCC's Order that states that administrative space (for administrative functions that do not support the operation of the central office) is a legitimate use of central office space.

However, the Commission notes that the FCC stated in Paragraph 95 of its Collocation Remand Order:

> . . . . We find that space within an incumbent's premises is generally suitable for physical collocation unless it is: (a) physically occupied by non-obsolete equipment; (b) assigned to another collocator in accordance with our rules; (c) used to provide physical access to occupied space; (d) used to enable technicians to work on equipment located within occupied space; (e) properly reserved for future use, either by the incumbent LEC or by another carrier; or (f) essential for the administration and proper functioning of the incumbent LEC's premises.

The Commission believes that the FCC's Collocation Remand Order supports the Commission's conclusions on this issue. The Commission does not believe that the FCC's Order can be interpreted to mean that administrative office personnel that are not essential to the function of the central office must be allowed to remain in the central office. The Commission, therefore, believes that its conclusions on this issue are consistent with the FCC's Collocation Remand Order.

CONCLUSIONS

The Commission concludes that Section 3.7.1, as proposed by the CLPs, which requires ILECs to relocate administrative office personnel that are not essential to the function of the central office before denying physical collocation requests is appropriate and should be included without modification in the Standard Offering.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 28

ISSUE 29: What is an appropriate space reservation period for ILECs and CLPs?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue in its Brief.

AT&T: AT&T did not specifically address this issue in its Joint Proposed Order. In its Joint Issues Matrix attached as Exhibit B to its Joint Proposed Order, AT&T stated that there needs to be limits on an ILEC's ability to reserve space for its own alleged needs. AT&T argued that the remaining year, plus twelve months, is reasonable. AT&T maintained that reserving space for a longer period of time, such as BellSouth proposed, may unduly limit opportunities to collocate.

BELLSOUTH: CLPs and ILECs should be able to reserve space for a two-year (i.e., 24 months) forecast period. Forecasts longer than two years become increasingly less reliable. If it is apparent the space will not be utilized and BellSouth has a need for the space itself or for another interconnector following the expiration of the two-year period, the CLP must forfeit the use of that space. Likewise, BellSouth will forfeit any of its reserved space that will not be used following the expiration of the two-year period, if needed by a CLP.

MCIm: MCIm did not specifically address this issue in its Brief.

NEW ENTRANTS: The New Entrants filed a Joint Proposed Order with AT&T and WorldCom. Therefore, the position as outlined for AT&T above represents the New Entrants' position on this issue.

PUBLIC STAFF: The appropriate central office space reservation period for both ILECs and CLPs is 24 months.

SPRINT: Sprint was willing to accept the New Entrants' position on this Issue to the extent that it is consistent with the terms and conditions of the Standard Offering filed with the direct testimony of Sprint witness Hunsucker, it is included in the Standard Offering, and the Standard Offering is made applicable to all parties in its entirety.

VERIZON: The ILEC should be able to retain floor space for its own specific uses on the same terms as CLPs may reserve collocation space for their own future uses. A three-year reservation period for growth should be used on all transmission and miscellaneous equipment. This includes Sonet terminals, digital cross-connect systems, D4 channel banks, dense wavelength division multiplexing (DWDM) equipment, and loop treatment equipment. Space that is utilized for switching, power, and main distribution frames is critical for the viability of the central office and the continued, efficient operation of the public switched network. A five-year reservation period should be used for all switching equipment. Power areas, main distribution frame space, and cable vault areas should

require a seven-year reservation period in order to properly maintain the central office infrastructure and operation.

WORLDCOM: WorldCom filed a Joint Proposed Order with AT&T and the New Entrants. Therefore, the position as outlined for AT&T above represents WorldCom's position on this issue.

DISCUSSION

BellSouth noted in its Proposed Order that two years or 24 months is an appropriate time frame in which to forecast growth space based on the time it takes to act on notification that space will be exhausted within a central office, and to remedy the exhaust situation by constructing a building addition. BellSouth argued that two years is adequate to secure funding, plan and design an expansion project, obtain additional land if necessary, obtain permits, and perform the actual construction of a building addition. BellSouth maintained that 13 months (which could occur under the CLPs' proposed Section 2.1.1 - the remainder of the current year which could be one month plus 12 additional months) would likely not give an ILEC adequate time to complete these tasks.

BellSouth noted that another deficiency in the CLPs' proposed language on this point is that it places the ILEC in the position of deciding which CLP has a greater claim upon space based on specific circumstances. BellSouth maintained that competing claims between CLPs for space should be submitted to the Commission, not to the ILEC. Therefore, BellSouth recommended that the Commission reject Section 2.1.1 proposed by the CLPs and adopt BellSouth's proposed language in Section 2.1.1 for inclusion in the Standard Offering.

BellSouth witness Hendrix stated in direct testimony that BellSouth applies the same standards it applies to itself regarding the reservation of space. Witness Hendrix argued that CLPs may reserve space for a two-year forecast period and that forecasts longer than two years become increasingly less reliable. Witness Hendrix maintained that the problem with proposed Section 2.1.1 is that the CLPs propose a space reservation period of the current year plus twelve months which, in other words, is a reservation period anywhere between 13 and 24 months. Witness Hendrix asserted that anything less than 24 months is insufficient time to forecast space utilization. He argued that two years is the projected time to adequately secure funding, plan and design an expansion project, obtain additional land if necessary, obtain permits, and perform the actual construction of a building addition.

The Public Staff noted in its Proposed Order that Section 2.1.1 of the CLPs' Standard Offering sets forth the terms for space reservation in central offices:

2.1.1 - Space Reservation. The ILECs and CLPs may reserve floor space for their own specific uses for the remainder of the current year, plus twelve (12) months. Prior to denying any CLP request for physical collocation, an ILEC shall be required to provide justification for the reserved space to the requesting CLP based on a demand and facility forecast, supported by the information required by 2.3.2(8) below. In estimating the space requirement for growth, ILECs shall provide the information in 2.3.2(8) and shall use the most recent access line growth rate and use the space requirement data applicable to any planned changes that reflect forward looking technology as it relates to switching, power, MDF and DCS. The ILEC shall not exclusively and unilaterally reserve active space that is supported by existing telecommunications infrastructure space. The ILEC shall disclose to CLPs the space it reserves for its own future growth and for its interLATA, advanced services, and other affiliates. In order to increase the amount of space available for collocation, the ILEC will remove obsolete unused equipment, at its cost, from its Premises to meet a request for collocation from a CLP. Consistent with FCC Rule 51.323(f)(5), the ILEC shall relinquish any space held for future use prior to denying a CLP request for virtual collocation.

The Public Staff noted that in its Order on Reconsideration, the FCC declined to mandate specific central office space reservation periods for ILECs and CLPs that would apply in the absence of state-established standards. However, the Public Staff commented, both the FCC Advanced Services Order and Order on Reconsideration require that an ILEC may not reserve space for future use on terms more favorable than those that apply to other telecommunications carriers seeking to reserve collocation space for their own future use. The Public Staff explained that under these Orders, the Commission must adopt a space reservation period that is applied equally to both ILECs and collocators.

The Public Staff noted that CLP witness Gillan endorsed the reservation period set out in Section 2.1.1. Further, the Public Staff commented that BellSouth witness Hendrix observed that the space reservation period described in Section 2.1.1 could range from 13 to 24 months and that a minimum two-year reservation period was needed to give ILECs sufficient time to adequately secure funding, plan and design an expansion project, obtain additional land if necessary, obtain permits, and perform the actual construction of a building addition to house future collocation space. The Public Staff also noted that Verizon proposed an equipment-specific reservation period of much longer than that outlined in Section 2.1.1.

The Public Staff stated that it is of the opinion that BellSouth witness Hendrix was the only witness who offered a reasonable space reservation period and who presented logical testimony to support his recommendation. The Public Staff maintained that adoption of this time frame should ensure that BellSouth has sufficient space to handle collocation space requests on a going-forward basis. The Public Staff also noted that it believes that, despite Verizon's assertions to the contrary, a two-year space reservation period will also give Verizon and other ILECs suitable time to anticipate additions within their ILEC central offices. The Public Staff recommended that the Commission amend Section 2.1.1 to reflect a 24-month maximum period for advance floor space reservations.

Sprint did not provide extended discussion on this issue in its Proposed Order and all of its comments are reflected under the Positions of Parties - Sprint.

Verizon noted that Section 2.1.1 of the Standard Offering prescribes that both ILECs and collocating CLPs may reserve space the remainder of the current year plus 12 months. Verizon argued that this rigid reservation system may be both too long, allowing a CLP to tie up an undue amount of collocation space, and too short, denying the ILEC the ability to assure sufficient space for required central office growth. Verizon maintained that it is critical to consider the use of the space and the type of equipment when establishing reservation guidelines because the ILEC has additional network responsibilities: a carrier of last resort, a host for interconnection agreements for the exchange of traffic, a reseller of network services, and a provider of 911 services, operator services, and other enhanced services. Verizon argued that an ILEC that is the carrier of last resort will have longer reservation timeframes for facilities such as switching, power, and main distribution equipment than it will for transmission or advanced services equipment. Verizon contended that Section 2.1.1 of the Standard Offering does not take into account differences and would impose a one year reservation period on all equipment. Verizon suggested the following language to account for the different planning horizons associated with different types of equipment:

> The ILEC may retain floor space for its own specific future uses, provided that it may not reserve space for future use on terms more favorable than applicable to other CLPs seeking to reserve collocation space for their own future use. The amount of time available for space reservation is dependent upon the type of equipment that is being utilized in that space. Verizon proposes that a three-year reservation period for growth be used on all transmission and miscellaneous equipment. This includes SONET terminals, digital cross-connect systems, D4 channel banks, dense wavelength division multiplexing (DWDM) equipment and loop treatment equipment. Space that is utilized for switching, power, and main distribution frame function is space that is critical for the viability of the central office and the continued, smooth

operation of the public switched network. A five-year reservation period should be used for all switching equipment. Power areas, main distribution frame space, and cable vault areas would require a seven-year reservation period in order to properly maintain the central office infrastructure and operation.

The Commission agrees with BellSouth and the Public Staff that a two-year maximum reservation period for both the ILECs and CLPs is reasonable. The Commission notes that although the CLPs' proposal would not always result in a 13-month reservation period, in the times that it does, 13 months is simply too short of a time span. Therefore, the Commission finds it appropriate to require a two-year or 24-month space reservation period for both the ILECs and the CLPs. The Commission believes that Verizon's proposal to base reservation periods on the type of equipment utilized appears relatively reasonable, however, the reservation periods Verizon recommended are entirely too long.

Therefore, the Commission concludes that Section 2.1.1 should be amended as follows:

> 2.1.1 Space Reservation. The ILECs and CLPs may reserve floor space for their own specific uses for ~~the remainder of the current year, plus twelve (12) months~~ a maximum of two years (or 24 months). . .

CONCLUSIONS

The Commission concludes that the appropriate space reservation period is two years or 24 months for both CLPs and ILECs and that Section 2.1.1 of the Standard Offering should be amended as follows:

> 2.1.1 Space Reservation. The ILECs and CLPs may reserve floor space for their own specific uses for ~~the remainder of the current year, plus twelve (12) months~~ a maximum of two years (or 24 months). . .

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 29

ISSUE 30: Under what terms and conditions should an ILEC remove obsolete equipment from ILEC premises? Who bears the costs for expediting the removal of obsolete equipment?

ISSUE 83 (SPRINT 9): Who should pay for the removal of obsolete equipment in the conditioning of collocation space?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address these issues in its Brief.

AT&T: ILECs should not unilaterally decide whether obsolete, unused equipment is to be removed or force recovery of the costs of removing such equipment on CLPs. Such equipment must be removed upon reasonable request from a CLP, or the ILEC may remove it prior to the space becoming legitimately exhausted. Also, ILECs should not be able to house obsolete, unused equipment to the detriment of competitive providers. As such, the ILEC should pay for removal of any such equipment.

BELLSOUTH: BellSouth removes unused, obsolete equipment from its premises on a schedule in line with other similar activities to be performed. If, at a CLP's request, BellSouth is required to remove unused, obsolete equipment ahead of its scheduled removal, BellSouth will comply with such an expedited request partially at the expense of the CLP. The costs incurred by the CLP shall be limited to a share of the cost of initiating a work order request, establishing Method of Procedures (MOPs), contracting engineers, etc., that is proportionate to its share of the space that is made available by the expedited removal of equipment.

MCIm: MCIm did not address these issues in its Brief.

NEW ENTRANTS: The New Entrants agreed with AT&T's position on this issue.

PUBLIC STAFF: ILECs should proactively remove obsolete, unused equipment from their central offices, and they should bear the costs of removing this equipment.

SPRINT: Any obsolete unused equipment removed from an ILEC's premise should be removed at the ILEC's cost.

VERIZON: ILECs should remove unused, obsolete equipment before denying collocation at its own expense. The costs to expedite (if feasible) the process should be borne by the CLP.

WORLDCOM: WorldCom agreed with AT&T's position on these issues.

DISCUSSION

The governing authority on Issue No. 30 is 47 C.F.R. 51.321(i) which provides that, "[a]n incumbent LEC must, upon request, remove obsolete, unused equipment from their premises to increase the amount of space available for collocation". The FCC explained its position on the removal of obsolete equipment in Paragraph 60 of the *Advanced Services Order*:

> . . . to increase the amount of space available for collocation, incumbent LECs must remove obsolete equipment from their premises upon reasonable request by a competitor or upon the order of a state commission. There is no legitimate reason for an incumbent LEC to utilize space for obsolete or retired equipment that the incumbent LEC is no longer using when such space could be used by competitors for collocation.

The Standard Offering discusses obsolete equipment at Section 2.1.1 and provides, in pertinent part:

> In order to increase the amount of space available for collocation, the ILEC will remove obsolete, unused equipment, at its cost, from its Premises to meet a request for collocation from a CLP.

The Standard Offering, while reflective of the FCC's minimum requirements, imposes additional requirements on the ILEC, namely, that the ILEC bear the costs of removal when requested by a CLP. The FCC does not speak to who should incur this cost.

The ILECs disagree that they should always bear the costs for removal of unused, obsolete equipment from their central offices. BellSouth proposed to "proactively" remove unused, obsolete equipment from its central offices prior to space exhaustion. BellSouth agrees that it should bear the cost of this removal since BellSouth removes unused, obsolete equipment on its own schedule. Whenever BellSouth removes unused, obsolete equipment at the request of a CLP, however, BellSouth believes that the CLP must bear the incremental costs of removal. BellSouth witness Milner described the incremental costs as the interest payments that BellSouth would have made by keeping the money in the bank rather than using it to remove equipment early.

Based on BellSouth's proposal, then, whoever pays the "incremental" cost for removal depends upon whether the equipment is removed pursuant to BellSouth's schedule or to a CLP's request. BellSouth witnesses Hendrix and Milner both testified that BellSouth engineers developed the schedule for removal based on many factors, but the schedule varies between central offices. Instead of having a standard schedule, BellSouth engineers "routinely" look at what equipment is obsolete and unused, and when there is a sufficient amount of it, remove it from a central office. In addition, BellSouth considers a CLP request for removal of unused, obsolete equipment prior to its "scheduled" removal as an "extraordinary circumstance" that would extend the time BellSouth had to provision the space.

In its Proposed Order, the Public Staff stated that the ILEC should bear the costs of removal of obsolete, unused equipment. The CLPs should not have to bear these costs when BellSouth has already scheduled the equipment removal at some later date. BellSouth's proposal could result in an ILEC neglecting to remove obsolete equipment until

a CLP requests removal, thereby enabling the ILEC to pass along the costs of removal to the CLP. While BellSouth witness Hendrix testified that no unused, obsolete equipment would remain in place under BellSouth's schedules, the Public Staff asserted that he provided no compelling safeguard to prevent this occurrence.

In addition, the Public Staff is of the opinion that by requiring the ILEC to pay for the removal of equipment at the request of a CLP, the Commission would remove any incentive for an ILEC to delay removal. In Paragraph 55 of the *Advanced Services Order*, the FCC encouraged the states to "ensure that collocation space is available in a timely and pro-competitive manner that gives new entrants a full and fair opportunity to compete." Specifically, with regard to this issue, the FCC has provided that " [t]here is no legitimate reason for an incumbent LEC to utilize space for obsolete or retired equipment that the incumbent LEC is no longer using when such space could be used by competitors for collocation." *Advanced Services Order*, *supra*. Indeed, the Public Staff stated, it believes that BellSouth has not provided any legitimate reason here. Hence, removal of unused obsolete equipment should not prolong the intervals for space provisioning.

The Commission is persuaded by the reasoning set forth by the Public Staff and the CLPs. The FCC's *Advanced Services Order* clearly requires ILECs to remove from their premises obsolete equipment to increase the amount of space available for collocation, and further states that there is no legitimate reason for an ILEC to utilize space for obsolete or retired equipment when such space could be used by competitors for collocation. The CLPs should not have to bear these costs when the equipment has already been scheduled for removal at some later date. Therefore, the Commission concludes that the ILECs should proactively remove obsolete, unused equipment from their central offices and should bear the costs of removing this equipment.

CONCLUSIONS

The Commission concludes that ILECs should proactively remove obsolete, unused equipment from their central offices, and they should bear the costs of removing such equipment.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 30

ISSUE 31: What are the appropriate procedures for the Commission to implement with respect to ILEC waiver petitions?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue in its Brief.

AT&T: AT&T did not specifically address this issue in its Joint Proposed Order. In its Joint Issues Matrix attached as Exhibit B to its Joint Proposed Order, AT&T stated that

consideration of the Georgia waiver process should be deferred to a separate proceeding. AT&T maintained that BellSouth's proposed process was never discussed and it is inappropriate to raise it now. AT&T argued that the burden of proof should be on the ILEC to justify the denial of a collocation request. AT&T stated that Sections 2.3 - 2.4 of the Standard Offering set out a practical and fair method of handling waiver disputes and should be adopted without modification.

BELLSOUTH: The Commission should establish procedures for considering waiver petitions through a collaborative workshop to be convened in the near future.

MCIm: MCIm did not specifically address this issue in its Brief.

NEW ENTRANTS: The New Entrants filed a Joint Proposed Order with AT&T and WorldCom. Therefore, the position as outlined for AT&T above represents the New Entrants' position on this issue.

PUBLIC STAFF: The Commission should not issue blanket collocation waivers to ILECs based on their denial of applications on the grounds of space exhaustion. Complaints to the Commission concerning space denial should be addressed on a case-by-case basis.

SPRINT: Sprint was willing to accept the New Entrants' position on this Issue to the extent that it is consistent with the terms and conditions of the Standard Offering filed with the direct testimony of Sprint witness Hunsucker, it is included in the Standard Offering, and the Standard Offering is made applicable to all parties in its entirety.

VERIZON: Since the assessment of a CLP could reveal an exhaust condition, the ILEC should file a waiver petition with the Commission once space exhaustion has been determined.

WORLDCOM: WorldCom filed a Joint Proposed Order with AT&T and the New Entrants. Therefore, the position as outlined for AT&T above represents WorldCom's position on this issue.

DISCUSSION

This issue concerns Sections 2.3, 2.3.1, 2.3.2, and 2.4 of the Standard Offering, as follows:

> **2.3 Denial of Application**. After notifying the CLP that the ILEC has no available space in the requested Central Office ("Denial of Application"), the ILEC will allow the CLP, upon request and with a minimum of seventy-two (72) hours notice, to tour the entire Central Office within ten (10) calendar days of such Denial of Application.

2.3.1 Outlined for Issue No. 23 on page 119.

2.3.2 Outlined for Issue No. 23 on page 119.

2.4 Filing of Petition for Waiver. Upon Denial of Application the ILEC will timely file a petition with the Commission pursuant to 47 U.S.C. §251(c)(6).

BellSouth stated in its Proposed Order that as BellSouth recommended earlier under Issue No. 21, the Commission should establish a workshop at its earliest convenience to allow the Parties to reach mutual agreement on the procedures for waiver petitions. Therefore, BellSouth argued that there is no reason for the Commission to adopt the waiver procedures proposed by the CLPs in Section 2.3 of their proposed Standard Offering.

BellSouth witness Hendrix stated in direct testimony that BellSouth recommends that the Commission adopt the same procedures for waiver petitions as those established by the Georgia Public Service Commission in its collocation workshop. Witness Hendrix noted that those procedures were created through a collaborative process and would provide the Commission with a thorough and meaningful opportunity to assess an ILEC waiver petition. [**COMMISSION NOTE:** A copy of the Georgia procedures is attached to witness Hendrix's direct testimony as Exhibit JDH-2.]

Witness Hendrix noted in rebuttal testimony that the procedures for evaluating space denial/exhaust by ILECs should be established by the Commission and that an ILEC must establish the denial of a collocation request to the Commission, not the CLP.

The Public Staff commented in its Proposed Order that Sections 2.3.1 through 2.4 of the Standard Offering outline the procedures for an ILEC to follow when it denies a space request for collocation. The Public Staff noted that Section 2.3 provides that upon denial of an application, the ILEC will allow the CLP to tour the entire Central Office within 10 calendar days of such denial and that Section 2.3.1 provides that, subject to a nondisclosure agreement, the ILEC will provide all relevant documentation to the CLP representative. The Public Staff maintained that this information shall include blueprints and plans for future facility expansions and enhancements and that the ILEC shall also submit current clearly labeled floor plans/diagrams of the premise of at least 1/8"=1' scale to the CLP representative 48 hours before the tour. The Public Staff further summarized that the ILEC representative will accompany and supervise the CLP representative on the tour that the CLP representative will conduct 10 days after the tour request and that if, after the tour, the CLP representative believes that the ILEC's denial of space is unsupportable, then the CLP representative will promptly advise the ILEC orally and in writing. The Public Staff noted that then, both parties would prepare a report detailing their findings and serve the report on each other and the Commission. The Public Staff commented that Section 2.3.2 provides that the ILEC will notify the Commission of the denial of space by

letter at the same time it denies a space request and that this Section then lists in detail the information that the ILEC shall provide in the letter and, concurrently, to the CLP. The Public Staff noted that Section 2.3.3 assigns the burden of justifying the basis for denial of a collocation request: if a CLP contests the ILEC's denial, the CLP has the option of requesting a third-party engineer to review the denial. The Public Staff noted that Section 2.4 provides that the ILEC should also file a petition for waiver, pursuant to 47 U.S.C. 251(c)(6) with the Commission.

The Public Staff commented that BellSouth proposed that the Commission reject the procedures outlined above and instead adopt the procedures for handling waiver petitions as established by the Georgia Public Utilities Commission. The Public Staff noted that BellSouth specifically objected to Sections 2.3-2.4 because they require BellSouth to provide as detailed or more detailed information to the CLP than to the Commission in its waiver petition and that this amount of information was burdensome.

The Public Staff further noted that Verizon contended that the actual procedures set forth in the Standard Offering are inadequate to guide the Commission's review of an ILEC's denial of a collocation request.

The Public Staff maintained that the FCC has established required procedures for waiver requests in 47 C.F.R. 51.321(f):

> An incumbent LEC shall submit to the state commission, subject to any protective order as the state commission may deem necessary, detailed floor plans or diagrams of any premises where the incumbent LEC claims that physical collocation is not practical because of space limitations. . . An incumbent LEC that contends space for physical collocation is not available in an incumbent LEC premises must also allow the requesting carrier to tour the entire premises in question, not just the area in which space was denied, without charge, within ten days of the receipt of the incumbent LEC's denial of space. . . .

The Public Staff also outlined that Paragraphs 56-57 of the FCC Advanced Services Order provided additional guidance regarding implementation of the regulations in 47 C.F.R. 51.321(f):

> . . . . Pursuant to the Act, incumbent LECs must provide physical collocation unless they demonstrate to the state commission's satisfaction that "physical collocation is not practical for technical reasons or because of space limitations." Because incumbent LECs have the incentive and capacity to impede competition by reducing the amount of

> space available for collocation by competitors, the Commission, in the Local Competition First Report and Order, required incumbent LECs that deny requests for physical collocation on the basis of space limitations to provide the state commission with detailed floor plans or diagrams of their premise. The Commission concluded that such submissions would aid the state commission in evaluating whether the denial of physical collocation was justified. Paragraph 56 [footnotes omitted].
>
> We now adopt our tentative conclusion that an incumbent LEC that denies a request for physical collocation due to space limitations should, in addition to providing the state commission with detailed floor plans, allow any competing provider that is denied physical collocation at the incumbent LEC's premises to tour the premises. . . . If, after the tour of the premises, the incumbent LEC and competing provider disagree about whether space limitations at that premise make collocation impracticable, both carriers could present their arguments to the state commission. . . .

Based on the Orders of the FCC, the Public Staff recommended that the Commission require the Standard Offering to reflect the above-cited authorities. Therefore, the Public Staff proposed, when an ILEC denies space, it should (1) submit a detailed floor plan of the entire premises to the state commission and (2) permit representatives of the requesting telecommunications carrier that has been denied collocation to tour the entire premises, without charge, within 10 days of denial. The Public Staff commented that the Standard Offering contains these minimum requirements but supplements them with more detailed requirements. The Public Staff maintained that while BellSouth and Verizon expressed general dissatisfaction with the procedures, they both failed to present evidence showing how any specific procedure is unduly burdensome to them. The Public Staff also stated that it believes that all of the information listed in Section 2.3.1 and 2.3.2 which goes beyond that required by the FCC may not be relevant or necessary in every space denial. Therefore, the Public Staff recommended that the Commission decline to address the specific procedures contained in Sections 2.3.1-2.3.2 that require more detail from the ILEC than the FCC has mandated.

However, the Public Staff stated that it believes that Section 2.4 deserves comment. The Public Staff noted that Section 2.4 provides that upon denial of a collocation application, the ILEC will timely file a petition with the Commission pursuant to 47 U.S.C.§ 251(c)(6), which states:

> **Collocation**: The duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for

> physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations.

The Public Staff noted that the Parties seem to agree that the Commission is obligated to review waiver petitions, however, the Public Staff disagrees for several reasons. The Public Staff stated that the FCC never mentions the word waiver in its Orders and instead the FCC provides for the parties to submit their disputes to the state commission after they are unable to resolve a dispute after a tour. Also, the Public Staff noted, Section 2.3.3 provides that after a third-party engineer or the Commission has upheld a finding of space denial, the ILEC is not required to conduct a review of floor space availability in the same ILEC premises more frequently than every six months. Therefore, the Public Staff opined, the Commission should decline to address petitions seeking a blanket waiver. Rather, the Public Staff recommended, the Commission should address each denial that comes before it on a case-by-case basis and the Standard Offering should be amended by removing all references to waiver or waiver petitions.

Sprint did not provide extended discussion on this issue in its Proposed Order and all of its comments are reflected under the Positions of Parties - Sprint.

Verizon noted in its Proposed Order 47 C.F.R. 51.321(f) as previously quoted. Verizon recommended that the Commission conclude that since the assessment of a CLP could reveal an exhaustion condition, the ILEC should file a waiver petition with the Commission once space exhaustion has been determined.

The Commission notes that BellSouth has previously filed temporary waiver petitions. On March 3, 2000, BellSouth filed Petitions for Temporary Waivers with respect to three central offices. BellSouth stated that it was unable to meet physical collocation requests due to space limitations and that it needed only a temporary waiver because it expected to have more space available for physical collocation upon completion of planned building additions.

In its Petitions, BellSouth noted that Section 251(c)(6) of TA96 establishes a preference for physical collocation but also contains a clause "except that the carrier may provide virtual collocation if the local exchange carrier demonstrates to the State Commission that physical collocation is not practical for technical reasons or because of space limitations."

On May 12, 2000, the Commission issued its Order Holding Petitions in Abeyance. The Commission noted that it found good cause to hold the petitions in abeyance pending

the outcome of the generic collocation docket which is at issue herein. The Commission also questioned the need for BellSouth or any ILEC to request a waiver for a central office where there is no available collocation space prior to a CLP bringing a grievance regarding denial of collocation before the Commission.

The Commission notes that 47 C.F.R. 51.321(f) states:

> An incumbent LEC shall submit to the state commission detailed floor plans or diagrams of any premises where the incumbent LEC claims that physical collocation is not practical because of space limitations.

The Commission notes that the above cited Rule does not state **when** the ILEC should submit the detailed floor plans or diagrams to the state commission.

The Commission notes after reviewing TA96 and the FCC's Orders, no actual time frame is mandated for carriers to provide information such as detailed floor plans or diagrams. The Commission believes based on the entire record of evidence that the following procedure would be appropriate for ILECs seeking waivers (i.e., acknowledgments) that a particular central office has no available collocation space:

(1) ILEC denies a CLP application for collocation based on lack of space;
(2) CLPs requests a tour of the central office and is granted a tour within 10 calendar days of denial;
(3) CLP also receives supporting documentation as outlined in Sections 2.3.1 and 2.3.2 (and addressed in Finding of Fact No. 22);
(4) In accordance with Section 2.3.1, the CLP will advise the ILEC, both orally and in writing, if, **after the inspection tour**, it disagrees with the ILEC's denial of space based on space exhaust;
(5) The CLP and the ILEC, in accordance with Section 2.3.1, will concurrently prepare a report detailing its own filings of the inspection tour and each party should concurrently serve the reports on each other, however, the Parties will not file the reports with the Commission at this time consistent with the Commission's conclusions in Finding of Fact No. 22;
(6) In accordance with Section 2.3.3, the CLP which contests the ILEC's position concerning the denial of space has the option of requesting a third-party engineer to review the denial. If the CLP, after reviewing the third-party engineer's report, still disagrees with the ILEC's denial, then, and **only then**, will the dispute come before the Commission for resolution;
(7) At this time, the CLP and the ILEC should file a copy of the reports provided in Item #5 with the Commission. The CLP should also file a copy of all of the supporting documentation it has received based on Sections 2.3.1 and 2.3.2 along with the report issued by the third-party engineer, if one was requested, with the Commission for its review; and

(8) The Commission will make a determination on the appropriateness of the ILEC's denial of space due to space exhaust.

The Commission believes that the above-outlined procedures will ensure that the Commission is not confronted with disagreements on space denial until all possible routes for resolution of the issue are followed. The Commission advises the Parties to attempt to resolve any space denial disputes before they come to the Commission for resolution since the Commission only has a limited amount of resources and does not desire to be confronted with cases where the supporting documentation, the ILEC report, and the third-party engineer report all clearly indicate that the ILEC did, in fact, appropriately deny the application due to space exhaust.

The Commission does not believe that it must issue blanket waivers to ILECs for space denials and that it should not address denials for space due to exhaust **unless a CLP actually disagrees** with such a finding. The Commission believes that the CLPs should take all available avenues to determine if the denial was appropriate before involving the Commission.

CONCLUSIONS

The Commission concludes that the eight procedures outlined above for waivers due to space exhaust should be adopted and reflected in the Standard Offering.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 31

ISSUE 32: Should the Standard Offering be subject to local building safety codes?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue.

AT&T: No. Permits are generally not a hindrance to work within ILEC buildings. The Parties should cooperate to secure such as are necessary. The Standard Offering should not be subject to building codes.

BELLSOUTH: Yes. Failing to do so would be tantamount in some instances to requiring BellSouth to knowingly violate applicable building and safety codes.

MCIm: MCIm did not address this issue in its Brief.

NEW ENTRANTS: New Entrants took the same position as AT&T.

PUBLIC STAFF: ILECs should be allowed to inspect the plans and specifications for collocation space prior to construction and may inspect collocation spaces after

completion. ILECs should be able to remove or correct the collocation arrangement if it does not comply with approved plans.

SPRINT: Sprint was generally agreeable to the New Entrants' position.

VERIZON: All parties must abide by applicable building codes, zoning regulations, etc. Parties may seek waivers, alterations, or exemptions.

WORLDCOM: WorldCom took the same position as AT&T.

DISCUSSION

This issue is whether local building codes and safety codes should be taken into consideration when developing appropriate intervals for the provisioning of collocation space. Specifically, the question at hand is whether the time it takes to seek and obtain a required permit should be excluded from the collocation intervals (such as the interval from the submission of the bona fide firm order to the turnover of the collocation space to the CLP).

The Public Staff's view was that ILECs should be allowed to inspect plans and specifications prior to construction and may inspect collocation spaces after completion. ILECs should be able to remove or correct the arrangement if it does not comply with approved plans.

CLP witness Wagoner addressed BellSouth's arguments that it had little or no influence over the time it took to obtain necessary permits for the construction of collocation space. Mr. Wagoner questioned whether BellSouth actually needed permits to install a cage in its own central office. CLP witness Gillan proposed that CLPs and ILECs cooperate on securing permits and waivers. He opposed allowing ILECs to defer construction when they had not "cooperated in securing such permit or waiver."

BellSouth witness Milner expressed concern that code officials at the state and local levels, due to their unfamiliarity with FCC requirements, could delay construction of collocation space by delaying issuance of permits for "certain construction work that modifies mechanical, electrical, architectural, or safety factors within [BellSouth's] central offices." He testified that the time required to obtain necessary permits was "in the critical path for provisioning collocation space," and that this time should be excluded from the provisioning interval, since it was beyond BellSouth's control. He contended that permits from local governments were frequently required before BellSouth began collocation work. Witness Milner stated that BellSouth had experienced permitting intervals that range from 15 to 60 days, and that intervals of 60 days were often encountered in Raleigh and Charlotte. He also claimed there had been instances where code conflicts, such as conflicts in building classification for fire codes or ADA compliance issues, had caused delays in obtaining needed permits.

On cross-examination by the CLPs, however, witness Milner acknowledged that he did not know whether permits would be required in all instances when collocation work was being done, or whether they were required for installation of a collocation cage. He indicated that they would be needed "if there are certain types of power work that's to be done or if the heating and air conditioning plant had to be upgraded." Witness Milner also acknowledged that BellSouth had only been required to obtain three permits from the City of Raleigh in connection with the creation of three virtual and 25 physical collocations at the Raleigh Morgan Street central office. Witness Milner also testified that he could not cite specific instances where conflicts between FCC rules and state or local building code ordinances had created collocation delays in North Carolina. On the other hand, Verizon witness Ries testified that Verizon had stated in response to a data request from the CLPs that it did not normally obtain building or electrical permits prior to installing collocations, and that, typically, Verizon had "not experienced a need for building and electrical permits in North Carolina."

Sprint witness Hunsucker contended that permit-processing times should not be excluded from ILEC collocation provisioning intervals. He argued that, even though an ILEC had no "specific control over the actions of permitting officials," it still had "complete control over the manner and frequency with which it follows up with the appropriate officials in order to assure that permits are obtained in a timely manner." He also insisted that an ILEC had "complete control over the extent to which it compresses its provisioning processes so that work activities run as concurrently as possible." Witness Hunsucker testified that the Louisiana PSC Staff had actually recommended including the permit time in the interval, because doing so would "provide BellSouth with an incentive to conduct parallel work activities or work with government agencies for expeditious issuance of permits."

The available evidence indicates permits are rarely, if ever, required during the construction of physical collocation space in an ILEC's central office. In those rare instances when permits are required, the ILEC should be able to arrange its construction schedule so that work could continue during the permitting period. If an intractable timing problem does in fact exist, then an ILEC may seek a waiver from the Commission upon a showing of extraordinary circumstances. No credible evidence has been presented to suggest that the standard collocation intervals should be extended as a matter of course to allow for permitting considerations. Accordingly, the Commission concludes that permitting issues should not as a regular matter affect the collocation intervals.

CONCLUSIONS

The Commission concludes that permitting issues should not affect the collocation intervals which have been adopted elsewhere herein, provided however, that if an intractable timing problem exists, an ILEC may seek a waiver from the Commission upon a showing of extraordinary circumstances.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 32

ISSUE 33: When should a CLP be required to comply with the ILECs' technical guidelines and specifications for collocation space within an ILEC premises (including Adjacent Collocation), including the use of an ILEC-certified vendor?

POSITIONS OF PARTIES

AT&T: AT&T took the same position as the New Entrants and WorldCom.

ALLTEL: This issue was not addressed in ALLTEL's Brief.

BELLSOUTH: CLPs should be required to comply with the LEC's technical guidelines and specifications for collocation space in all cases where work for or on behalf of the CLP is required in the central office. BellSouth's guidelines and specifications are based on safety and security requirements and the need to maintain the reliability of the network. The CLP and the CLP's BellSouth Certified Supplier ("vendor") must follow and comply with all BellSouth requirements outlined in the following BellSouth Technical References (TRs): TR 73503, TR 73519, TR 73564, and TR 73572. These guidelines and specifications are no more stringent than those used by BellSouth and are intended solely to ensure that all work conducted within the central office is performed in a safe, workmanlike manner.

MCIm: This issue was not addressed in MCIm's Brief.

NEW ENTRANTS: The Standard Offering recognizes that CLPs use ILEC-certified vendors. ILECs should consider certification of CLPs and other vendors, and said certification should not be unreasonably withheld. Except where CLP equipment requires special technical considerations, cageless space should be available in single bay increments in conventional racks. Industry standards should apply to technical issues.

PUBLIC STAFF: CLPs should be required to comply with ILEC technical guidelines and specifications for collocation space on ILEC premises when guidelines relate directly to safety. CLPs should be required to use an ILEC-certified vendor when having work performed for or on behalf of themselves within the ILEC premises. These guidelines and specifications should be reasonable and no more stringent than those used by the ILEC itself. The ILEC should provide the guidelines and specifications, including vendor certification information, to CLPs upon request.

SPRINT: Sprint adopted New Entrants's position on this issue.

VERIZON: Verizon proposed that CLPs must adhere to the ILEC's technical guidelines and specifications and CLPs must select ILEC-certified Vendors to perform engineering and installation work (the ILEC will provide CLPs with a list of certified vendors).

WORLDCOM: WorldCom took the same position as AT&T and the New Entrants.

DISCUSSION

BellSouth stated in its Proposed Order that CLPs should be required to comply with the ILEC's technical guidelines and specifications for collocation space in all cases where work for or on behalf of the CLP is required in the central office, not just for technical issues. BellSouth witness Milner testified that BellSouth's guidelines and specifications are based on safety and security requirements and the need to maintain the reliability of the network. Furthermore, BellSouth stated that the practices for CLPs are no more stringent than what BellSouth imposes upon itself.

Additionally, BellSouth commented that the CLP should select a vendor that has been approved as an ILEC-certified vendor to perform all engineering and installation work required in the CLP's collocation arrangement. BellSouth stated that if the CLPs were not required to comply with an ILEC's guidelines and specifications, there would certainly arise security and safety concerns that could lead to lessened network reliability and security as well as cause service interruptions.

The New Entrants commented in its Issues Matrix that CLPs should use ILEC-certified vendors. Furthermore, New Entrants stated that ILECs should consider certification of CLPs and other vendors, and said certification should not be unreasonably withheld. Additionally, the New Entrants contended that except where CLP equipment requires special technical considerations, cageless space should be available in single bay increments in conventional racks; and, industry standards should apply to technical issues.

Verizon stated that the FCC permits ILECs to require CLPs to use ILEC approved contractors. Verizon concluded its remarks stating that CLPs must adhere to the ILECs technical guidelines and specifications and must select ILEC-certified vendors to perform engineering and installation work (the ILEC will provide CLPs with a list of certified vendors).

In its Proposed Order, the Public Staff commented that pursuant to the FCC's Order on Reconsideration, CLPs should only be required to comply with ILEC guidelines and specifications if they address safety issues. The FCC stated in Paragraph 56 of its Collocation Reconsideration Order that "because we remain unconvinced that the NEBS safety standards address all legitimate safety concerns that may arise, we do not preclude incumbent LECs from imposing on their own equipment and collocators' equipment safety standards in addition to the NEBS Level 1 safety requirements." The Public Staff stated that there was insufficient information provided to determine whether the BellSouth's technical guidelines meet this requirement, and therefore declined to require CLPs to adhere to these specific guidelines. The Public Staff commented that these same considerations should also apply to discussions concerning adjacent collocation.

The Public Staff stated that the CLPs should be required to use ILEC-certified vendors. As stated by the Public Staff, the FCC has authorized an ILEC to certify the vendors that operate on its premises provided that an ILEC does not unreasonably withhold approval of contractors. Furthermore, the Public Staff commented that certification of a vendor should be based on guidelines previously established by the ILEC, and that the CLPs should be provided with these guidelines.

The Public Staff concluded its comments stating that CLPs should be required to use an ILEC-certified vendor when having work performed at an ILEC's premises. Furthermore, the Public Staff stated that CLPs should also be required to comply with technical guidelines and specifications for collocation space in and adjacent to an ILEC's premises when those guidelines and specifications relate directly to safety. Additionally, the guidelines and specifications should be reasonable and no more stringent than those used by the ILEC itself. Upon request, the ILEC should promptly provide guidelines and specifications and vendor certification information.

The Commission finds that CLPs should be required to use an ILEC-certified vendor when having work performed at an ILEC's premises. The Commission also believes that the guidelines and specifications which address and insure safety and network security thus protect the integrity of the network should be complied with by the CLPs. ILECs should certify vendors currently operating on their premises and make the listing available to the CLPs as approved and certified vendors to be used in and adjacent to ILEC collocated equipment. Furthermore, while insuring that guidelines and specifications and vendor certification information, as previously discussed, is promptly made available to the CLPs upon request, this information should also be made available and kept current on company and relevant industry websites. While the Commission believes that ILECs should be responsible for the certification of vendors working on its premises, such certification should be strictly concerned with safety and network security, applicable to the ILEC itself, and reasonably based on generally accepted industry standards and practices. The Commission believes that all Parties should adhere to safety practices to insure network security and reliability based upon industry adopted safety procedures governing equipment installation.

CONCLUSIONS

The Commission concludes that CLPs should be required to use an ILEC-certified vendor when having work performed at an ILEC's premises. Additionally, it is concluded that the guidelines and specifications which address and insure safety and network security thus protecting the integrity of the network should be complied with by the CLPs.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 33

ISSUE 34: What are the inspection rights to which the ILEC is entitled?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue.

AT&T: The ILEC should have an opportunity to review plans and specifications for collocation space before and after construction, but it should not create unreasonable delay. An ILEC can require a CLP to correct deviations.

BELLSOUTH: BellSouth should have the right to review plans and specifications before and the space after construction and should also have the right to require the CLP to remove or correct a CLP's collocation arrangement including the "cage" if it is not compliant.

MCIm: MCIm did not address this issue in its Brief.

NEW ENTRANTS: New Entrants took the same position as AT&T.

PUBLIC STAFF: The ILEC should have the right to inspect plans and specifications prior to construction and the collocation space after construction. The plans should be thorough enough to allow the ILEC to determine if the design is compliant. The ILEC should have the right to require the CLP to remove noncomplying structures. The review process for inspections should not cause unreasonable delay. This ruling should apply to any construction done for or on behalf of the CLP in ILEC premises.

SPRINT: Sprint was generally agreeable to the New Entrants' position.

VERIZON: The ILEC has the right to review equipment layout, including spatial dimensions, and CLP plans and specifications prior to construction as well as to inspect the enclosure after construction.

WORLDCOM: WorldCom took the same position as AT&T.

DISCUSSION

This issue involves the ILEC's right to review the plans and specifications for collocation space prior to construction, and to inspect the collocation space after construction. BellSouth, Verizon, and the CLPs agree that the ILEC should have these rights, but apparently disagree on the language that appears in the Standard Offering submitted by the CLPs.

Consistent with its views regarding Issue 32, the Public Staff believed that the ILECs should have the right to inspect plans and specifications prior to construction and collocation. The plans should be sufficiently detailed to allow compliance to be assessed, and ILECs should be able to remove noncompliant structures. The review process should

not cause unreasonable delay, and these principles should apply to any construction done for or on behalf of the CLP in ILEC premises.

Sections 3.4.1 and 3.6.2 of the Standard Offering authorize the ILEC to inspect the collocation plans and specifications prior to allowing construction to start and to inspect the collocation arrangement after construction is completed. These sections also allow the ILEC to require the CLP to remove or correct any structure that does not meet with approved plans.

BellSouth did not believe the Standard Offering gives the ILECs enough authority over their own premises. BellSouth witness Milner maintained that "it is necessary that BellSouth have the right to require the CLP to remove or correct the CLP's collocation arrangement including the collocation enclosure ("cage") if it is not in compliance with BellSouth's guidelines and specifications." Mr. Milner asserted that ILECs should have this right pursuant to the *GTE* decision, which he feels gave the ILEC ultimate control over its central offices. He stated that "BellSouth needs these rights to ensure that the central office is maintained in a safe and operational manner for itself and CLPs alike."

The Commission does not agree with BellSouth that the *GTE* opinion applies to this issue. The section to which witness Milner is referring only addresses an ILEC's right to choose where a CLP will collocate. We do not believe that this opinion automatically extends to this issue of inspection rights. We do feel, however, that the language in the Standard Offering gives the ILEC the continued ability to maintain the integrity of its central office premises. It gives the ILEC the opportunity to ensure that, based on the construction plans, the collocation space will comply with its guidelines and specifications. It also gives the ILEC incentive to thoroughly review the plans prior to construction instead of after construction has been completed. This could reduce time and money spent by the CLP on corrections and help to ensure that CLPs have the ability to become operational in a reasonable amount of time.

The Commission, therefore, concludes that the ILEC should have the right to inspect plans and specifications prior to construction and the collocation space after completion. The plans should be thorough enough to allow the ILEC to determine if the design complies with its guidelines and specifications. The ILEC should have the right to require the CLP to remove or correct the collocation arrangement if it does not comply with approved plans. The review process for these inspections should not cause unreasonable delay. This ruling applies to any construction done for or on behalf of the CLP on ILEC premises. Time intervals for this process are addressed as part of the discussion of Issue No. 18. No change to the Standard Offering is required on this Issue.

CONCLUSIONS

The Commission concludes that ILECs have the right to inspect the plans and specifications of a CLP prior to construction of collocation space and the right to inspect

such space after completion. The ILECs should have the right to require the CLP to remove or correct collocation arrangements not compliant with approved plans. This ruling should apply to any construction done for or on behalf of a CLP on ILEC premises. No change in the Standard Offering is necessary on this issue.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 34

ISSUE 35: What power source should ILECs provide to an adjacent collocation space?

ISSUE 64: Should BellSouth be required to provide DC power to adjacent collocation space?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this ssue in its Brief.

AT&T: AT&T stated that BellSouth should provide DC power to CLPs in adjacent collocation space. Collocation equipment runs on DC power. The opportunity to discriminate against CLPs is particularly acute in this situation, because it occurs only when space is exhausted in a particular ILEC premises. If an ILEC categorically refuses to provide DC power, CLPs must incur significant costs to accommodate AC power, provided by the ILEC or from some other source, and convert that power to DC. Since BellSouth has offered to provide CLPs with DC power at its remote terminals, providing DC power is demonstrably technically feasible. This is a matter both of parity and the requirement to provide collocation on terms that are nondiscriminatory.

BELLSOUTH: BellSouth stated that the FCC's rules do not require BellSouth to provide DC power to an adjacent collocation arrangement. 47 C.F.R. 51.323 (k)(3) only requires that an ILEC provide a power source to an adjacent arrangement. It does not specify the type of power. BellSouth will provide AC power, as requested, subject to being technically feasible and subject to BellSouth's receiving authorization from local authorities having jurisdiction. In making adjacent collocation available, BellSouth will do so in a nondiscriminatory manner and at parity with itself.

MCIm: MCIm stated that BellSouth should be required to provide DC power to adjacent collocation space. MCIm would agree to provide the cabling to BellSouth's power distribution board. BellSouth would provide the conduit to the adjacent collocation space. MCIm stated that pricing would be based on the rates determined in this proceeding.

NEW ENTRANTS: The New Entrants took the same position as AT&T.

PUBLIC STAFF: The Public Staff stated that the ILEC should provide AC and DC power from the central office to the adjacent collocation space upon request where technically feasible. This power should have the same performance and reliability characteristics as

the power that the ILEC provides to collocation within the central office. The CLP should have the option to secure its own AC power to the adjacent structure from the same provider that furnishes commercial AC power to the ILEC. Any converting or fusing of the power source beyond the demarcation point should be the responsibility of the CLP. The price of providing this power should be negotiated on an individual case basis.

SPRINT: Sprint stated that this issue has been resolved between Sprint and the New Entrants by adoption of the following language as Section 3.6.3 of the Standard Offering: "The ILEC shall also provide DC power, as requested, subject to technical feasibility. The price for DC power shall be determined on an individual case basis." Sprint accepted this resolution of this issue contingent upon inclusion of this provision in the Standard Offering made applicable to all parties.

VERIZON: Verizon stated that ILECs are obligated to provide access for either utility or ILEC provision of AC power to adjacent collocation space.

WORLDCOM: WorldCom took the same position as AT&T.

DISCUSSION

In Paragraph 44 of the *Advanced Services Order*, the FCC stated that:

> Finally, we require incumbent LECs, when space is legitimately exhausted in a particular LEC premises, to permit location in adjacent controlled environment vaults or similar structures to the extent technically feasible.

Thus, the FCC requires ILECs to make adjacent collocation space available to CLPs when physical collocation space within the central office is exhausted. The adjacent collocation space would be located on the ILEC's premises in a controlled environment vault or similar structure.

Issue Nos. 35 and 64 concern the type of power source, if any, that an ILEC should be obligated to provide to an adjacent collocation space. These sites would require AC power for lights, environmental controls, etc. and DC power for the switching and transmission collocation equipment. The FCC's rule on adjacent collocation, 47 C.F.R. 51.323 (k)(3) mandates that:

> The incumbent LEC must provide power and physical collocation services and facilities, subject to the same nondiscrimination requirements as applicable to any other physical collocation arrangement.

The CLPs believe this FCC rule requires the ILECs to provide power to an adjacent collocation space. MCIm witness Bomer testified that BellSouth must provide DC power to a CLP's equipment in an adjacent collocation space if it provides DC power to the

equipment in the central office. Witness Bomer also testified that BellSouth has offered to provide DC power in other collocation arrangements outside the central office at remote terminals. Therefore, the CLPs contended that the mandate of federal law, which requires ILECs to provide power to adjacent collocation facilities subject to the same nondiscrimination requirements applicable to any other physical collocation arrangement, together, with the principal of technical feasibility by which requests for physical collocation are to be considered, strongly suggest that an ILEC cannot categorically refuse to provide DC power. CLP witness Gillan testified that without the provision of DC power by the ILEC, CLPs will incur significant costs to accommodate AC power and to convert that power to DC. He added that these costs will be incurred, moreover, as a result of being relegated to collocate equipment outside of an ILEC central office. The CLPs also point out that, in Order No. 54, *Investigation of Southwestern Bell Telephone Company's Entry into the Texas InterLATA Telecommunications Market, Public Utility Commission of Texas, Project No. 16251*, the Texas PUC ordered Southwestern Bell to provide DC power to adjacent collocation.

After the hearing, on January 18, 2001, Sprint and the New Entrants filed a revised Standard Offering which resolved Sprint Issue No. 2. Section 3.6.3 of the revised Standard Offering is as follows:

> The ILECs will provide AC power, as requested, subject to being technically feasible. At its option, the CLP may choose to provide its own AC power to the adjacent structure as long as the AC power source is from the same power source as the ILEC's. The ILEC shall also provide DC power, as requested subject to technical feasibility. The price for DC power shall be determined on an individual case basis.

BellSouth witness Milner testified that the FCC rules do not require ILECs to provide DC power to an adjacent collocation arrangement. According to his testimony, 47 C.F.R. 51.323 (k)(3) only requires that an ILEC provide a power source to an adjacent collocation arrangement. At all BellSouth's remote terminal sites, AC power runs to the site and BellSouth then converts the AC power to DC power inside the remote site location. In making adjacent collocation available, BellSouth will treat all CLPs in a nondiscriminatory manner and at parity with itself. Therefore, witness Milner testified that BellSouth will provide AC power, as requested, subject to technical feasibility and receiving authorization from local authorities having jurisdiction. He submitted that approval from local authorities must be obtained because Article 225 of the National Electric Safety Code does not specifically allow power circuits to be run between buildings with different owners. In addition, he stated that the cable historically used in the telecommunications industry for DC power inside a central office is not rated for use outdoors, and thus, is not appropriate for use in collocation arrangements.

Verizon witness Ries testified that because of the properties of DC power, the ILEC should be required to provide AC power to an adjacent structure. He stated that DC power

cannot be used because its properties prevent it from being run over long distances, as would be necessary to reach adjacent structures. According to his testimony, the CLP can convert the AC power to DC power to operate its telecommunications equipment in the adjacent structure. The ILEC would provide power to itself in the same manner if it were using the adjacent structure for its own purposes.

While both BellSouth and Verizon agree to provide the adjacent collocation space with AC power, these ILECs argue they should not be required to supply DC power as a matter of parity to the power supply arrangements at their own remote terminal sites or if they were using the adjacent structure. For example, BellSouth explained that AC power runs to its own remote terminal sites, then BellSouth converts the AC power to DC power within the remote site location. However in its Proposed Order, the Public Staff states its belief that the FCC rule on adjacent collocation requires the ILEC to provide power to the adjacent collocation space at parity with other physical collocation arrangements, not at parity with the ILEC's own power supply arrangements at an ILEC remote site. The Commission agrees with the Public Staff's interpretation of the FCC's rule with respect to this issue.

The Public Staff's Proposed Order also addressed several alleged technical limitations raised by the ILECs. For example, BellSouth submitted that the cable traditionally used by the industry to transmit DC power inside the central office is not rated for outdoor use, but the Public Staff noted that BellSouth did not claim that a proper cable could not be provisioned. Verizon contended that DC power does not efficiently travel the long distance necessary to reach adjacent structures. The Public Staff opined that adjacent collocation spaces should be closer to the central offices than the remote terminal sites of the ILECs. BellSouth also stated that in order to provide even AC power to the adjacent site, approval must be obtained from the appropriate local authority given Article 225 of the National Electric Code. However, MCIm believes that BellSouth's interpretation and application of the Code is incorrect. The Commission agrees with the Public Staff these alleged technical limitations are insufficient reasons to categorically deny the provisioning of DC power.

In summary, the Commission believes that 47 C.F.R. 51.323 (k)(3) requires ILECs to provide the same power to adjacent collocation space as it supplies to physical collocation within the central office and that it would be discriminatory for the ILECs not to provide DC power. The Commission also believes that neither BellSouth nor Verizon satisfactorily demonstrated that it would not be technically feasible to provide DC power to adjacent collocation spaces. However, the Commission recognizes the possibility that it may not always be technically feasible for the ILEC to deliver AC or DC power to every adjacent collocation space. In such a situation, the ILEC should be required to demonstrate technical infeasibility to the Commission.

CONCLUSIONS

The Commission concludes that ILECs should be required to provide AC and DC power from the central office to adjacent collocation, upon request, where technically feasible. This power should have the same performance and reliability characteristics as the power that the ILEC provides to collocations within its central office. The CLP should have the option to secure its own AC power to the adjacent structure from the same provider that furnishes commercial AC power to the ILEC. The ILEC should only be required to provide the power to the demarcation point of the adjacent collocation site. Any converting or fusing of the power source beyond that point will be the responsibility of the CLP. If an ILEC receives a request to provide power to an adjacent collocation space, within 45 days the ILEC and the CLP shall either negotiate a mutually agreed-upon price or the ILEC shall submit a cost study and proposed generic rates for providing power to adjacent collocation spaces for Commission approval.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 35

ISSUE 36: To what extent may the ILEC limit the equipment and facilities in the Collocation Space so that such equipment does not impair other equipment.

ISSUE 78 (Sprint 4): What are the responsibilities of the CLP and ILEC with respect to impairment or interference?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue in its Brief.

AT&T: Collocated equipment should not interfere with or impair service over any facilities of another party in excess of that permitted by national standards or applicable law, or to a level that causes service disruption, physical harm to premises or equipment, or otherwise creates a hazard. The New Entrants' proposed language in this regard should be added to Section 5.11 of the Standard Offering.

BELLSOUTH: BellSouth did not specifically address this issue in its Proposed Order or Brief.

MCIm: MCIm did not specifically address this issue in its Brief.

NEW ENTRANTS: The New Entrants filed a Joint Proposed Order with AT&T and WorldCom. Therefore, the position as outlined for AT&T above represents the New Entrants' position on this issue.

PUBLIC STAFF: The language proposed by the CLPs should satisfactorily address the problem of impairment and interference. If such a problem does occur, FCC Rule 51.233

sets out a procedure for resolution of the problem. The following sentence should be added to the CLPs' proposed language: "Any disputes between carriers over degradation of the performance of advanced services or traditional voiceband services by a deployed advanced service should be resolved pursuant to FCC Rule 51.233". Further, the Commission should not adopt the guidelines proposed by Sprint, but should request that the parties ensure that voice-grade service, especially when it provides access to emergency services and the like, not be subject to degradation, impairment, or interference. The Commission should state that it expects the parties to act in the public interest in working out any disputes.

SPRINT: Sprint urged the Commission to require impairment and interference language in interconnection agreements rather than collocation agreements. Sprint argued that collocation, in and of itself, does not create impairment or interference. Sprint asserted that impairment or interference is created by the deployment of services, i.e., the purchase of UNEs (e.g., loops, line sharing, etc.) or the self-provisioning of elements by the CLP to provision a retail end-user product. In the event it is decided to include impairment and interference provisions in the Standard Offering, Sprint proposed several principles to resolve conflicts. Among these, it was Sprint's position that universal service and access to emergency services such as 911 should be given priority by ensuring that analog circuit-switched voice-grade service takes precedence over advanced services.

VERIZON: Verizon did not address this issue in its Proposed Order or Brief.

In its revised Proposed Order filed on September 14, 2001 in response to the FCC's August 8, 2001 Collocation Remand Order, Verizon proposed that the Commission conclude that an ILEC may require that CLP equipment not endanger, damage, interfere with, or impair the facilities of the ILEC or any other connector to the ILEC's facilities. Verizon argued that an ILEC is entitled to require that a CLP's equipment and use of space meet the same safety standards that the ILEC imposes on itself.

WORLDCOM: WorldCom filed a Joint Proposed Order with AT&T and the New Entrants. Therefore, the position as outlined for AT&T above represents WorldCom's position on this issue.

DISCUSSION

BellSouth witness Milner stated in direct testimony that the CLPs' position on this issue is that their equipment and facilities placed in the collocation space shall not endanger or damage the facilities of the ILEC or any other interconnector, the collocation space, or the ILEC premises. Despite this, witness Milner contended, the CLPs do not want to include the phrase "interfere with or impair" in the Standard Offering which would prohibit such interference or impairment.

Witness Milner explained that BellSouth believes that it should be permitted to limit the equipment and facilities in the collocation space any time it reasonably believes that such equipment and facilities would (1) endanger or damage the equipment, facilities, or other property of BellSouth or of any other entity or person; (2) significantly degrade, interfere with, or impair service provided by BellSouth or by another entity or any person's use of its telecommunications service; (3) create an unreasonable risk of injury or death to any individual or to the public; and/or (4) compromise the privacy of any communications.

In rebuttal testimony, witness Milner stated that BellSouth agrees with the CLP Coalition's language to a point but believes that the language falls far short of addressing the issue. Witness Milner asserted that there is no mention made of a critical part of the issue which is interference or impairment of service provided by BellSouth or by another entity or any end user's enjoyment of its telecommunications service. Witness Milner also argued that there is no mention made of a proposed remedy by the CLPs should interference or impairment of service occur.

Witness Milner asserted that FCC Rule 47 C.F.R. 51.233 allows ILECs broad latitude to ensure that one carrier's equipment does not interfere with or impair the operation of another carrier's equipment.

The Public Staff noted in its Proposed Order that while none of the Parties presenting testimony on this issue used identical language, it appears that there is agreement that CLPs should adhere to the same technical and safety guidelines that the ILECs impose on their own equipment. Further, the Public Staff believes that the CLP's facilities should not damage the ILEC's or any other CLP's equipment.

The Public Staff noted that the CLPs proposed that the following language adapted from the BellSouth/MCIm Interconnection Agreement be included in the Standard Offering:

> Neither Party shall knowingly deploy or maintain any circuits, facilities or equipment that: Interferes with or impairs service over any facilities of the other party or a third-party, in excess of interference or impairment explicitly permitted by Applicable Law or national standards; causes damage to the other Party's plant; or creates unreasonable hazards to any person.

The Public Staff commented that BellSouth opposes the CLPs' proposed language on the basis that no mention is made of interference or impairment of service provided by BellSouth or any other entity's or end user's enjoyment of its telecommunications service.

The Public Staff recommended that the Commission conclude that the language proposed by the CLPs should satisfactorily address the problem of impairment and interference and that if such a problem does occur, FCC Rule 51.233 sets out a procedure

for resolution of the problem. The Public Staff recommended that the Commission add the following sentence to the CLPs' proposed language:

> Any disputes between carriers over degradation of the performance of advanced services or traditional voiceband services by a deployed advanced service should be resolved pursuant to FCC Rule 51.233.

The Commission notes that FCC Rule 51.233 states:

> Section 51.233 Significant degradation of services caused by deployment of advanced services
>
> (a) Where a carrier claims that a deployed advanced service is significantly degrading the performance of other advanced services or traditional voiceband services, that carrier must notify the deploying carrier and allow the deploying carrier a reasonable opportunity to correct the problem. Where the carrier whose services are being degraded does not know the precise cause of the degradation, it must notify each carrier that may have caused or contributed to the degradation.
> (b) Where the degradation asserted under paragraph (a) of this section remains unresolved by the deploying carrier(s) after a reasonable opportunity to correct the problem, the carrier whose services are being degraded must establish before the relevant state commission that a particular technology deployment is causing significant degradation.
> (c) Any claims of network harm presented to the deploying carrier(s) or, if subsequently necessary, the relevant state commission, must be supported with specific and verifiable information.
> (d) Where a carrier demonstrates that a deployed technology is significantly degrading the performance of other advanced services or traditional voice band services, the carrier deploying the technology shall discontinue deployment of that technology and migrate its customers to technologies that will not significantly degrade the performance of other such services.
> (e) Where the only degraded service itself is a known disturber, and the newly deployed technology satisfies at least one of the criteria for a presumption that it is acceptable for deployment under Sec. 51.230, the degraded service shall not prevail against the newly-deployed technology.

The Public Staff also proposed that the Commission request that the Parties ensure that voice-grade service, especially when it provides access to emergency services and the like, not be subject to degradation, impairment, or interference. The Public Staff proposed that the Commission state that it expects the Parties to act in the public interest when working out any disputes.

Sprint stated in its Brief that impairment and interference language should not be included in the Standard Offering because collocation, in and of itself, does not cause impairment or interference. Sprint maintained that impairment or interference is caused by the deployment of services which are covered by interconnection agreements.

Sprint argued that the Commission may well view access to emergency services as an even a more important reason for refusing to accept the position of the New Entrants on this issue. Sprint noted that the New Entrants effectively oppose the guiding principle that places a priority on universal service by ensuring that traditional analog circuit-switched, voice-grade service take precedence over advanced services. Sprint argued that clearly a priority must be placed on ensuring that end-users have access to emergency services such as 911 reached via traditional analog circuit-switched, voice-grade service.

However, Sprint stated that if the Commission should decide to include impairment and interference language in the Standard Offering, Sprint proposes (1) traditional analog circuit-switched, voice-grade service take precedence over advanced services; (2) the interfering party should immediately stop any new deployment until a problem is resolved; (3) if the parties are unable to resolve a problem, factual evidence should be presented to the Commission for review and determination; (4) the Commission should remedy the problem by reducing the number of existing customers utilizing the technology by migrating them to another technology that does not create interference; and (5) if a degraded service itself is a known disturber and a newly deployed technology is presumed acceptable according to FCC standards, the degraded service should not prevail against the newly deployed technology. Sprint believes that these principles will ensure that impairment and interference language places a priority on the provision of voice-grade service and that there is parity between the ILEC and the CLP as to whose service has priority.

Sprint witness Hunsucker stated in direct testimony that the Standard Offering should not include language relative to impairment or interference because collocation, in and of itself, does not create impairment or interference. Witness Hunsucker testified that impairment and interference is created by the deployment of services or the self-provisioning of elements by the CLP to provision a retail end-user product. Witness Hunsucker stated that both Sprint's ILEC and CLP include impairment and interference language in interconnection agreements and not in collocation agreements. Witness Hunsucker provided a list of guidelines should the Commission decide, against Sprint's recommendation, to include impairment and interference language in the Standard Offering.

The Commission agrees with the New Entrants that their proposed language is appropriate and should be included in the Standard Offering. The Commission notes that neither BellSouth nor Verizon addressed this issue in its Proposed Order or Brief. Further, the Commission believes that the Public Staff's recommendation that the Commission request that the Parties ensure that voice-grade service, especially when it provides access to emergency services and the like, not be subject to degradation, impairment, or interference and that it expects the Parties to act in the public interest when working out any disputes is appropriate. However, since this issue is of critical importance, the Commission concludes that instead of just requesting certain action in this regard, the Commission should require that the Parties insert the following language in the Standard Offering:

> The Parties are required to ensure that voice-grade service, especially when it provides access to emergency services and the like, not be subject to degradation, impairment, or interference and that the parties must act in the public interest when working out any disputes.

Concerning Verizon's revised Proposed Order filed on September 14, 2001 in response to the FCC's August 8, 2001 Collocation Remand Order, the Commission notes that Verizon did not reference a particular section of the FCC's Order which mandated the recommended change to its position. The Commission also notes that Verizon did not address this issue in its original Proposed Order or Brief. Further, the Commission believes that its conclusions on this issue are consistent with Verizon's position as outlined in its September 14, 2001 filing.

CONCLUSIONS

The Commission concludes that the following language comprised of the CLPs' proposed language and language adopted by the Commission should be included in the Standard Offering:

> Neither Party shall knowingly deploy or maintain any circuits, facilities or equipment that: Interferes with or impairs service over any facilities of the other party or a third-party, in excess of interference or impairment explicitly permitted by Applicable Law or national standards; causes damage to the other Party's plant; or creates unreasonable hazards to any person. The Parties are required to ensure that voice-grade service, especially when it provides access to emergency services and the like, not be subject to degradation, impairment, or interference and that the parties must act in the public interest when working out any disputes.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 36

ISSUE 37: May the ILEC require the use of ILEC-certified vendors for janitorial services?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this specific issue in its Brief.

AT&T: AT&T stated that the CLP should be responsible for the general upkeep and cleaning of its collocation space. The CLP should have the option to clean its own space or hire ILEC-certified janitors. The Parties are in agreement as to this issue.

BELLSOUTH: BellSouth stated that the CLP is responsible for the general upkeep and cleaning of its caged collocation space. If a janitorial service is to be used, the CLP shall arrange directly with a BellSouth certified contractor for janitorial services. At the hearing, the Parties agreed that if a CLP decided to use a janitorial service to clean its collocation space, it would use an ILEC-certified janitorial service. However, the Parties agreed that a CLP could decide to use its own personnel to clean its own space.

MCIm: MCIm did not address this specific issue in its Brief.

NEW ENTRANTS: The New Entrants took the same position on this issue as AT&T.

PUBLIC STAFF: The Public Staff stated in its Matrix that this issue had been resolved.

SPRINT: In its Proposed Order, Sprint stated that it was willing to accept the New Entrants' position on this issue to the extent it is consistent with the terms and conditions of the Standard Offering filed with the direct testimony of Sprint witness Hunsucker, it is included in the Standard Offering, and the Standard Offering is made applicable to all parties in its entirety.

VERIZON: Verizon stated that general upkeep and cleaning must meet ILEC requirements.

WORLDCOM: WorldCom took the same position on this issue as AT&T.

DISCUSSION

Based on the positions filed by the Parties, the Commission understands that this issue has been resolved.

CONCLUSIONS

The Commission finds that this issue has been resolved between the Parties.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 37

ISSUE 38: Is it appropriate to include Environmental Hazard Guidelines (EHG) in the Standard Offering?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue in its Brief.

AT&T: No. An incumbent may not impose safety requirements that are more stringent than the safety requirements it imposes on its own equipment. These specific industry standards do not need to be included in the Standard Offering.

BELLSOUTH: Yes. BellSouth believes that the EHG needs to be included in any Standard Offering for the protection of BellSouth's and the CLPs' equipment, facilities, and personnel in the central office premises.

MCIm: MCIm did not specifically address this issue.

NEW ENTRANTS: The New Entrants agreed with AT&T's position on this issue.

PUBLIC STAFF: Yes. If BellSouth agrees to abide by its EHG, then CLPs collocating on its premises should also agree to the same. The Public Staff further believes that BellSouth should be directed to indicate to the Commission its intent on whether it will abide by its own guidelines. If so, the parties should insert language in the interconnection agreement providing that both parties agree to abide by the EHG, which is to be attached to the interconnection agreement.

SPRINT: Sprint stated in its Proposed Order that it was willing to accept the New Entrants' position on this issue to the extent it is consistent with the terms and conditions of the Standard Offering filed with the direct testimony of Michael R. Hunsucker, it is included in the Standard Offering, and the Standard Offering is made applicable to all parties in its entirety.

VERIZON: Yes. It is appropriate to include EHG in the Standard Offering for the protection of the equipment, facilities, and personnel in the ILEC's premises.

WORLDCOM: WorldCom agreed with AT&T's position on this issue.

DISCUSSION

The CLPs contended that they should meet the same safety and environmental hazard guidelines as the ILECs impose on themselves. CLP witness Gillan testified on rebuttal that the CLPs had not discussed BellSouth's proposed environmental guidelines

with Sprint to determine its position as to inclusion of the guidelines. It is unclear from the record whether the CLPs and Sprint ever resolved this matter.

BellSouth stated that the EHG are necessary for BellSouth to comply with federal, state, and local environmental requirements and laws and should be included in the Standard Offering. BellSouth pointed out that it is ultimately responsible for hazards on its premises, and the guidelines protect both BellSouth's and the CLPs' equipment, facilities, and personnel in the central office premises.

The Public Staff stated that it is unclear from the record if BellSouth has agreed to abide by the EHG itself. If BellSouth agrees to abide by its guidelines, then CLPs collocating on its premises should also agree to the same guidelines. The Public Staff further stated that the Commission should direct BellSouth to advise the Commission whether it will abide by its own guidelines. If so, the parties should insert language in the interconnection agreement providing that both parties agree to abide by the EHG, which will be attached to the interconnection agreement.

The Commission is of the opinion that all Parties should be required to comply with the EHG for the protection of equipment, facilities, and personnel in the central office premises. The Public Staff questions whether BellSouth has agreed to abide by the EHG, however, BellSouth stated that the guidelines are necessary for it to be in compliance with environmental regulations and laws. The Commission believes that this answers the Public Staff's concern. Furthermore, the Commission is of the opinion that the guidelines should be attached to the interconnection agreement.

CONCLUSIONS

The Commission concludes that ILECs and CLPs should all be required to abide by the EHG and that language to that effect be included in the interconnection agreement. The EHG should also be attached to the interconnection agreement.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 38

ISSUE 39: What are the appropriate terms and conditions for conversion of virtual collocation to physical collocation?

POSITIONS OF PARTIES

ALLTEL: Reasonable time frames and procedures must be established to assure CLPs that conversion from virtual to physical collocation can be accomplished quickly, efficiently, and at reasonable cost. Section 6.10 of the Standard Offering should be adopted as it provides reasonable and reliable terms, conditions, and procedures under which virtually collocated CLPs may migrate to physical collocation arrangements.

AT&T: Such conversions should occur without disruption. CLPs should not be required to relocate their equipment, unless it is co-mingled with the ILEC's equipment and unless the CLP's equipment occupies less than a single bay and the CLP does not rent the whole bay. Verizon's ICB (individual case basis) approach is at odds with the purpose of this proceeding. Contrary to BellSouth's assertions, the Standard Offering does not enable the CLP to "pick and choose" its collocation space; instead, it simply requires that the ILEC continue to honor the choice it has already made for a piece of equipment. The disruption of CLP equipment should be a rare event.

BELLSOUTH: BellSouth will authorize the conversion of virtual collocation arrangements in accordance with the terms and conditions specified in Section 6.8 of the Standard Offering attached to its Proposed Order.

MCIm: MCIm did not address this issue in its Brief.

NEW ENTRANTS: The New Entrants took the same position on this issue as AT&T.

PUBLIC STAFF: ILECs may relocate virtual collocation arrangements when they are converted to physical arrangements, but they should exercise prudent judgment and avoid unnecessary moves. CLPs should not be charged for these relocations. ILECs should also be required to take steps to minimize the extent of service disruptions that may occur during the moves.

SPRINT: Sprint is willing to accept the New Entrants' position on this Issue to the extent it is consistent with the terms and conditions of the Standard Offering filed with the direct testimony of Sprint witness Hunsucker, it is included in the Standard Offering, and the Standard Offering is made applicable to all parties in its entirety.

VERIZON: Conversions from virtual to physical collocation should be reviewed on a case-by-case basis: in some cases, conversions can take place without relocation of equipment, in others, relocation may be necessary to achieve reasonable separation between equipment.

WORLDCOM: WorldCom took the same position on this issue as AT&T.

DISCUSSION

Conversions from virtual to physical collocation are covered by Section 6.10 of the CLP Proposed Standard Offering which states as follows:

> Upon request by the CLP, virtual collocation arrangements provisioned prior to the availability of physical cageless collocation in a central office shall be converted without disruption or reconfiguration of the equipment and without additional charges, except for administrative fees to process the request and

if no relocation of equipment is required. Relocation will only be required if a CLP is occupying space that is in less than a single-bay increment and there is any vertical commingling of equipment either with an ILEC or CLP. Where relocation of equipment is not required, equipment ownership will revert back to the CLP upon payment of the same charge used to sell such equipment to the ILEC; the CLP's cageless rack space will be clearly marked though floor-markings or other identification; and the CLP will comply with all security requirements applicable to cageless collocation as outlined in Section 11.

ALLTEL witness Caldwell recommended that the Commission resolve Issue No. 39 by adopting Section 6.10 of the Standard Offering. Witness Caldwell objected to the ILECs' requirements that CLPs migrating from virtual to physical collocation first be required to establish a physical collocation site. He also recommended that the Commission deny ILECs the authority to unilaterally reject or alter conversion requests or to set dates for the conversions. Witness Caldwell cited BellSouth's policies as being unreasonable because he claimed they gave BellSouth 30 days to respond to a CLP's migration request and 90 days to effect the transition from virtual to physical collocation. Witness Caldwell claimed that during 60 days of this 90-day transition period, the CLP would be prohibited from submitting customer orders to BellSouth, even though the migration process only took a few days.

BellSouth witness Milner testified that the CLPs' proposal on this issue is unreasonable, because it does not adequately address the very real differences between virtual and physical collocation, both from a technical and a regulatory perspective. Witness Milner testified that under BellSouth's proposal, BellSouth would authorize the conversion of virtual collocation arrangements to physical collocation arrangements without requiring the relocation of the virtual arrangement where there are no extenuating circumstances or technical reasons that would make the arrangement a safety hazard within the premises or otherwise not be in conformance with the terms and conditions of the collocation arrangement.

According to witness Milner, BellSouth allows the conversion of virtual collocation to physical collocation "in place" where: (1) there is no change in the amount of equipment and no change to the arrangement to the existing equipment, such as re-cabling of the equipment; (2) the conversion of virtual arrangement would not cause the arrangement to be located in the area of the premises reserved for BellSouth's forecast of future growth; and (3) the conversion of said arrangement to a physical arrangement, due to the location of the virtual collocation arrangement, would not impact BellSouth's ability to secure its own facilities.

Witness Milner noted that other considerations with respect to the placement of a collocation arrangement include cabling distances between related equipment, grouping of equipment into families of equipment, the equipment's electrical grounding

requirements, and future growth needs. Witness Milner stated that BellSouth considers all these technical issues with the overall goal of making the most efficient use of available space to ensure that as many CLPs as possible are able to collocate in the space available.

Witness Milner further noted that, notwithstanding the foregoing, if the BellSouth premise is at or near space exhaust, BellSouth may, at its option, authorize the conversion of the virtual arrangement to a physical arrangement even though BellSouth could no longer secure its own facilities.

BellSouth stated that the Commission should be guided by the opinion of the D.C. Circuit in GTE Serv. Corp. v. FCC (D.C. Cir. 2000), that the ILECs have ultimate control over their central offices, and that CLPs are not free to pick and choose preferred space on the ILEC's premises (whether for virtual collocation or physical collocation) when requesting collocation on the ILEC's property.

The Public Staff stated that ILECs may relocate virtual collocation arrangements when they are converted to physical arrangements, but they should exercise prudent judgment and avoid unnecessary moves. The Public Staff stated that CLPs should not be charged for these relocations. The Public Staff further stated that ILECs should also be required to take steps to minimize the extent of service disruptions that may occur during the moves.

In its Proposed Order, Verizon stated that requests for in-place conversions of virtual collocations to cageless collocation must be reviewed on a case-by-case basis. In some instances, Verizon stated, conversions can occur without relocation of the equipment, however, in others, the equipment must be relocated to achieve reasonable separation between the ILEC and the CLP network. Verizon stated that, for example, relocation will be necessary when the virtual equipment is commingled within an ILEC bay or if the virtual bay is integrated within the ILEC lineup. Verizon contended that the proposed Standard Offering does not permit a case-by-case analysis and does not permit the ILEC to charge the engineering fees necessary to accommodate requests for conversion of virtual to cageless collocation. Verizon stated that ILEC control over collocation locations was upheld in GTE Serv. Corp. v. Fed. Communications Comm'n, 205 F. 3d 416, 426 (D.C. Cir. 2000).

The Commission has carefully considered the testimony presented on this issue. The most compelling testimony, presented by Verizon witness Ries, concerns the holding in the *GTE* case vacating Paragraph 42 of the *Advanced Services Order*. Paragraph 42 *authorized the CLPs to select where they wished to collocate in an ILEC's central office*, saying, in part, that ILECs "must give competitors the option of collocating equipment in any unused space within the incumbent's premises, to the extent technically feasible, and may not require competitors to collocate in a room or isolated space separate from the incumbent's own equipment." The D.C. Circuit rejected this position, ruling that

Section 251(c)(6) of the Act only requires the ILEC to provide the physical collocation at its premises, and nothing more.

In the *Florida Order*, the Florida PSC declared it unreasonable for ILECs to segregate all physical collocation arrangements in one area of the central office, and required ILECs to utilize any unused space for physical collocation. The Florida PSC then concluded that ILECs should be required to convert virtually-collocated equipment to cageless physical collection without relocating it, even if it were located in an ILEC's equipment lineup.

On November 17, 2000, in response to petitions for reconsideration filed by BellSouth and GTE Florida Incorporated, the Florida PSC reversed its previous position on in-place conversions. The PSC acknowledged that it had erred in the May 11, 2000 order by failing to take notice of the *GTE* case, and concluded that "the ILEC, rather than the ALEC (Alternative Local Exchange Carrier), may determine where the ALEC's physical collocation equipment should be placed within a central office, even in situations where the ALEC is converting from virtual to physical collocation." (*Order Granting in Part and Denying in Part Motion for Reconsideration*, Order No. PSC-00-2190-PCO-TP, page 13).

The Commission concurs with the reasoning of the D.C. Circuit Court and the Florida PSC. It is clear that the D.C. Circuit intended to uphold the right of ILECs to control where CLPs may physically collocate in ILEC central offices. Accordingly, the Commission believes that ILECs have the authority to relocate CLP equipment that is being converted from virtual to physical collocation. ILECs should exercise this right judiciously, and should make every effort to avoid unnecessary moves. They should also take appropriate steps to minimize inconveniences to the CLPs and the risks of service disruptions to the CLPs' customers.

The Commission also believes that CLPs should not be required to bear the cost of relocating virtually-collocated equipment in ILEC's central offices in order to convert it to cageless collocation, provided that no additions or reconfigurations of that equipment are necessary. The record in this docket indicates that BellSouth sometimes planned poorly by installing equipment for virtual collocation in its own equipment lineups, even when alternative locations in the central office were available. BellSouth stated that it eventually corrected this problem by installing new virtual arrangements in places where they could be converted in place to cageless physical arrangements. CLPs should not be required to bear costs that arise because of inadequate foresight on the part of the ILECs. In the case of Verizon, there should be very little cost involved, even if moves are necessary, since Verizon serves only three virtual collocation arrangements in North Carolina.

The Commission directs the ILECs to exercise prudent judgment in accordance with applicable law and avoid unnecessary relocations of virtual collocation arrangements, and to take all necessary steps to reduce the possibility of service disruptions to CLP

customers whenever these relocations are required. Section 6.10 of the Standard Offering should be amended to reflect these changes.

CONCLUSIONS

The Commission concludes that Section 6.10 of the Standard Offering should be amended to direct the ILECs to exercise prudent judgment and avoid unnecessary relocations of virtual collocation arrangements, and to take all necessary steps to reduce the possibility of service disruptions to CLP customers whenever these relocations are required.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 39

ISSUE 40: Is the ILEC entitled to recover its costs if a CLP cancels a collocation order?

POSITIONS OF PARTIES

AT&T: AT&T took the same position as the New Entrants and WorldCom.

ALLTEL: This issue was not addressed in ALLTEL's Brief.

BELLSOUTH: Yes. If a CLP cancels its order for collocation space at any time, the CLP should reimburse BellSouth for any expenses incurred up to the date that written notice of the cancellation is received, in addition to any costs incurred by BellSouth as a direct result of canceling the order. In no event, however, should the level of reimbursement exceed the maximum amount the CLP would have otherwise paid for work undertaken by BellSouth if no cancellation of the order had occurred.

MCIm: This issue was not addressed in MCIm's Brief.

NEW ENTRANTS: The CLP should reimburse the ILEC for non-reimbursable expenses incurred up to the date that the notice is received.

PUBLIC STAFF: A CLP that cancels a collocation order should reimburse BellSouth for its non-recoverable expenses up to the time BellSouth receives written notification of the cancellation minus the estimated net salvage value.

SPRINT: Sprint adopted the New Entrants's position on this issue.

VERIZON: Yes. The ILEC is entitled to recover all expenses it incurred up to the date of written notification.

WORLDCOM: WorldCom took the same position as AT&T and the New Entrants.

DISCUSSION

BellSouth stated in its Proposed Order that the parties agree that, in the event of cancellation, the CLP is responsible for certain costs. As stated by BellSouth, the Parties disagree on what those costs should be. BellSouth further stated that it and Verizon submit that the CLP is responsible for all costs incurred by the ILEC up until the CLP provides notification of cancellation. BellSouth pointed out that the CLP contended that the level of reimbursement should not exceed the non-recoverable costs, less estimated net salvage. BellSouth suggested that there are too many ways in which to calculate net salvage estimates and therefore opined that this method would be unnecessarily complicated and impractical.

The New Entrants stated that the CLP should reimburse the ILEC for otherwise non-recoverable expenses incurred up to the date that the notice is received. The New Entrants opined that the Standard Offering fully compensates ILECs for the costs they have incurred, less the net salvage value. The New Entrants stated that an ILEC should not be allowed to recover more than its costs by first charging the CLP for all work performed, then retaining the value of the space thus constructed.

Verizon in its Proposed Order stated that a CLP should be responsible for any costs it causes the ILEC to incur.

The Public Staff stated that, both BellSouth and the CLPs agree that a CLP that cancels a collocation order should reimburse BellSouth for its expenses up to the time of the cancellation notification. The Public Staff further stated that the CLPs propose that the reimbursement not exceed all of BellSouth's non-recoverable costs minus the estimated net salvage value. BellSouth opposed subtracting the net salvage value because it contended that it would be difficult to estimate such a value and would possibly lead to disputes. The Public Staff stated that, while calculation of net salvage value would be an estimate and might result in some disputes, it is unfair to allow BellSouth to reap a windfall in the event of a cancellation of a collocation order.

The Commission agrees with the Public Staff that a CLP that cancels a collocation order should reimburse BellSouth for its non-recoverable expenses up to the time BellSouth receives written notification. Furthermore, the Commission supports the reasoning that the reimbursement of costs to the ILEC should be based on the costs incurred by the ILEC, less the estimated net salvage value of the work performed up to the time of the cancellation notice of the collocation order by the CLP. The Commission opines that BellSouth, as the ILEC, would certainly retain some value for the construction work performed before the notice of cancellation.

CONCLUSIONS

The Commission concludes that the reimbursement of costs to the ILEC should be based on the costs incurred by the ILEC, less the estimated net salvage value of the work performed up to the time of the cancellation notice of the collocation order by the CLP.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 40

ISSUE 41: Under what terms and conditions should ILEC equipment meet Bellcore Network Equipment and Building Specifications (NEBS)?

POSITIONS OF PARTIES

AT&T: AT&T took the same position as the New Entrants and WorldCom.

ALLTEL: This issue was not addressed in ALLTEL's Brief.

BELLSOUTH: BellSouth will not impose safety requirements on the CLPs that are more stringent than the safety requirements it imposes on its own equipment. Equipment must, at a minimum, meet the following: Bellcore (Telcordia) Network Equipment Building Systems (NEBS) General Equipment Requirements: Criteria Level 1 requirements as outlined in the Bellcore (Telcordia) Special Report SR-3580, Issue 1; equipment design spatial requirements per GR-063-CORE, Section 2; thermal heat dissipation per GR-063-CORE, Section 4, Criteria 77-79; acoustic noise per GR-063-CORE, Section 4, Criterion 128, and National Electric Code standards.

MCIm: This issue was not addressed in MCIm's Brief.

NEW ENTRANTS: All equipment to be collocated should meet Level 1 safety requirements of the Bellcore Network Equipment and Building Specifications (NEBS). The ILEC should not impose safety requirements on CLPs that are more stringent than the safety requirements on its own equipment.

PUBLIC STAFF: The CLP should be required to meet NEBS Level 1 and any safety requirements proposed by the ILEC that are no more stringent than the requirements the ILEC imposes on its own equipment. These standards should be reasonable and should not discriminate against the CLP. The ILEC will make these requirements available to the CLP upon request. An ILEC that denies collocation of a CLP's equipment citing a failure to meet safety standards, must provide a list within five business days of the denial of all of the equipment that the ILEC locates at the premises in question, together with an affidavit attesting that such equipment meets or exceeds the safety standard(s) that the ILEC claims the collocator's equipment fails to meet. The affidavit should include the exact safety requirements at issue and the ILEC's basis for concluding why failure of this requirement would compromise network safety.

SPRINT: Sprint adopted New Entrants's position on this issue.

VERIZON: All CLP equipment must meet NEBS Level 1 safety requirements to be installed. CLP must meet other specific risk, safety and hazard criteria specified by ILEC on its own equipment.

WORLDCOM: WorldCom took the same position as AT&T and the New Entrants.

DISCUSSION

BellSouth in its Proposed Order stated that BellSouth will not impose safety requirements on the CLPs that are more stringent than the safety requirements it imposes on its own equipment. As indicated by BellSouth, the FCC in its Order on Reconsideration allows ILECs to require NEBS safety as well as additional safety standards, if reasonable and nondiscriminatory. The Order states:

> We [FCC] recognized, however, in the Advances Services First Report and Order, that an incumbent LEC may impose safety standards in addition to the NEBS safety standards, provided that the incumbent does not impose safety requirements that are more stringent than the safety requirements it imposes on its own equipment that it locates at its premises. Because we [FCC] remain unconvinced that the NEBS safety standards address all legitimate safety concerns that may arise, we [FCC] do not preclude incumbent LECs from imposing on their own equipment and collocators' equipment safety standards in addition to the NEBS Level 1 safety requirements. Any such standards must be reasonable and nondiscriminatory.

BellSouth concluded its comments by stating that the Commission should find that ILECs may, in fact, impose on CLPs the same safety standards they impose on themselves. BellSouth commented that if a CLP believed that a particular standard is discriminatory, it may bring this contention to the Commission's attention.

The New Entrants commented in its Issues Matrix that some of the ILECs' own equipment is not compliant with industry standards. Furthermore New Entrants commented that there will always be some interference with other's equipment, given the electrical fields and currents generated. The New Entrants stated that, to insure that the ILEC does not use safety concerns as a guise for restricting collocators' equipment choices, the FCC requires that within five business days the ILEC provide a list of all the equipment that the ILEC located at the premises in question, together with an affidavit attesting that such equipment meets or exceeds the safety standard(s) that the ILEC claims the collocators' equipment fails to meet. Additionally, New Entrants stated that the affidavit should include the exact safety requirement(s) at issue, the ILEC's basis for

concluding that the equipment fails such requirement(s), and the ILEC's basis for concluding why failure of this requirement would compromise network safety.

Verizon stated that in its Proposed Order that, under Paragraphs 35 and 36 of the Advanced Services Order, the ILEC may impose NEBS Level 1 safety requirements and other safety requirements that are no more stringent than the safety requirements it imposes for its own equipment. Verizon commented that the proposed Standard Offering includes the NEBS Level 1 safety standards, but ignores the right of the ILEC to impose the same safety requirements it imposes on its own equipment. Verizon concluded its remarks stating that this parity of treatment for safety considerations of equipment must be included in the collocation technical requirements.

In its Proposed Order, the Public Staff commented that it finds that the language in the Order of Reconsideration clearly gives the ILECs the right to require CLPs to comply with safety guidelines other than NEBS Level 1. The Public Staff stated that the language in the Standard Offering goes far enough in allowing an ILEC to enforce its safety requirements.

The Public Staff commented that Section 5.1.3 of the Standard Offering states:

> ...An ILEC that denies collocation of a competitor's equipment, citing safety standards, must provide to the CLP within five (5) business days of the denial a list of all equipment that the ILEC locates within the premises in question, together with an affidavit attesting that all of that equipment meets or exceeds the safety standard that the ILEC contends the competitor's equipment fails to meet. In the event that the ILEC believes that the collocated equipment will not be or is not being used for interconnection or access to unbundled network elements or determines that the CLP's equipment does not meet NEBS Level 1 safety requirements, the CLP will be given ten (10) calendar days to comply with the requirements or remove the equipment from the collocation space. If the parties do not resolve the dispute, the ILEC or CLP may file a complaint at the Commission seeking a formal resolution of the dispute.

Furthermore, the Public Staff commented that the CLP should be required to meet NEBS Level 1 and any safety requirements proposed by the ILEC that are no more stringent than requirements imposed on its own equipment. These standards should be reasonable and should not discriminate against the CLP. The Public Staff concluded its comments stating that the ILEC should make all requirements available to the CLP upon request. The Commission agrees with the Public Staff on this issue.

CONCLUSIONS

The Commission concludes that the CLP should be required to meet NEBS Level 1 and any safety requirements proposed by the ILEC that are no more stringent than the requirements the ILEC imposes on its own equipment. These standards should be

reasonable and should not discriminate against the CLP. The Commission finds that the ILEC be required to make these requirements available to the CLP upon request. An ILEC that denies collocation of a CLP's equipment citing a failure to meet safety standards, must provide a list within five business days of the denial of all of the equipment that the ILEC locates at the premises in question, together with an affidavit attesting that such equipment meets or exceeds the safety standard(s) that the ILEC claims the collocator's equipment fails to meet. Further, the Commission finds it appropriate to require that the affidavit should include the exact safety requirements at issue and the ILEC's basis for concluding why failure to meet such requirements would compromise network safety.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 41

ISSUE 42: What are the appropriate terms and conditions for grounding of the CLP equipment?

POSITIONS OF PARTIES

AT&T: AT&T took the same position as the New Entrants and WorldCom.

ALLTEL: This issue was not addressed in ALLTEL's Brief.

BELLSOUTH: BellSouth's power equipment that supports a CLP's equipment will provide an appropriate central office ground conductor. This ground source will be connected to a common ground electrode located within BellSouth's premises. BellSouth will provide performance and restoration at parity with that which BellSouth provides for its own equipment. For DC power, BellSouth does provide a non-interruptible power supply; however, for AC power, this is not provided. This is consistent with the way BellSouth provides AC power for its own needs.

MCIm: This issue was not addressed in MCIm's Brief.

NEW ENTRANTS: The ILECs power equipment supporting the CLPs' equipment should provide the central office ground connected to a common ground electrode located within the ILECs' premises. AC power is needed for CLP equipment to convert AC power to 24V DC for some station accessories and range extenders. ILECs provide AC power to themselves; hence this issue is one of parity.

PUBLIC STAFF: The ILEC should provide power and ground in the same manner that it provides for its own equipment.

SPRINT: Sprint was willing to accept the New Entrants position on this Issue to the extent it is consistent with the terms and conditions of the standard Offering filed with the direct testimony of Sprint witness Michael Hunsucker.

VERIZON: Grounding of CLP equipment in caged space should be by a ground bar provided by the ILEC. For cageless collocation, a floor ground bar centrally located in the cageless area should be provided. For both caged and cageless, relay racks (frames) must be isolated with isolation hardware from the floor and the superstructure.

WORLDCOM: WorldCom took the same position as AT&T and the New Entrants.

DISCUSSION

BellSouth in its Proposed Order stated that BellSouth's power equipment that supports a CLP's equipment will provide an appropriate central office ground conductor. BellSouth stated that this ground source will be connected to a common ground electrode located within BellSouth's premises. BellSouth commented that AC power is not provided because most telecommunications equipment does not operate on AC power; rather, it operates on -48V DC power. BellSouth further stated that commercial AC power (that is, AC power acquired from the power company) is converted to DC power when necessary.

The New Entrants commented in their Issue Matrix that the ILECs' power equipment supporting the CLPs' equipment should provide the central office ground connected to a common ground electrode located within the ILECs' premises. The New Entrants stated that, AC power is needed for CLP equipment to convert AC power to 24V DC for some station accessories and range extenders. The New Entrants commented that ILECs provide AC power to themselves; hence this issue is one of parity.

Verizon stated in its Proposed Order that caged ground bars will accommodate the grounding conductors from the collocated equipment. Verizon stated further that for cageless collocation, a floor ground bar centrally located in the cageless area should be provided.

In its Proposed Order, the Public Staff commented that the ILEC should not be required to provide the CLP with a source of power that it does not provide itself. The Public Staff stated that the ILEC should provision the same power and ground source to the collocation space as it provides for itself. The Public Staff concluded its comments stating that the power supplied to the collocation space should have the same performance and reliability characteristics as the power that the ILEC provides for itself. The Commission agrees with the Public Staff on this issue.

CONCLUSIONS

The Commission concludes that the ILEC should provision the same power and ground source to the collocation space as it provides for itself.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 42

ISSUE 43: Under what circumstances, if any, can a CLP place microwave equipment in or around the ILEC premises?

POSITIONS OF PARTIES

AT&T: AT&T took the same position as the New Entrants and WorldCom.

ALLTEL: This issue was not addressed in ALLTEL's Brief.

BELLSOUTH: Where technically feasible and where space is available, BellSouth will provide for physical collocation of a CLP's microwave equipment on the roofs of BellSouth's central office buildings.

MCIm: This issue was not addressed in MCIm's Brief.

NEW ENTRANTS: Certain transmission technologies require the use of microwave equipment. Collocation with these technologies requires an unobstructed line of sight.

PUBLIC STAFF: Sections 1.3 and 3.8 of the Standard Offering should be revised to provide for microwave collocation.

SPRINT: Sprint was willing to accept the New Entrants' position on this Issue to the extent it is consistent with the terms and conditions of the standard Offering filed with the Direct Testimony of Michael Hunsucker.

VERIZON: An ILEC is entitled to require that the CLP configurations meet the same standards that the ILEC imposes on itself.

WORLDCOM: WorldCom took the same position as AT&T and the New Entrants.

DISCUSSION

BellSouth in its Proposed Order stated that the dispute involved in this issue is whether a CLP can place microwave facilities on the roof of an ILEC's premises without limitation. BellSouth stated that it will provide for physical collocation of a CLP's microwave equipment on the roofs of BellSouth's central office buildings where technically feasible and where space is available. Furthermore, BellSouth commented that such equipment would be limited to that necessary for interconnection of the CLP's network facilities to BellSouth's unbundled network elements. BellSouth stated that if a CLP needs rooftop space for microwave equipment for the CLP's needs other than for interconnection or for access to unbundled network elements, BellSouth has no obligation to provide such space. BellSouth commented that a CLP's ability to place microwave equipment on the

roof of an ILEC central office shall be limited to that necessary for interconnection of the CLP's network facilities to the ILEC's network or access to an ILECs unbundled network elements.

The New Entrants commented in its Issues Matrix that the CLPs should be permitted to collocate microwave equipment when such equipment does not interfere with the line of sight of other carrier's equipment. The New Entrants also stated that Parties should resolve line of sight issues in a joint planning meeting.

Verizon stated that in its Proposed Order that the CLP is entitled to place microwave equipment in or around (e.g. on the roof of) the ILEC's premises when technically feasible and if an unobstructed line of sight is available. Verizon also stated that ILECs may require, at a CLP's expense, placement of supporting masts and non-penetrating roof mounts (NPRMs). Lastly, Verizon commented that the ILEC is entitled to require that the CLP microwave configurations meet the same standards that the ILEC imposes on itself.

In its Proposed Order the Public Staff stated that the Standard Offering should be amended to retain those provisions of Section 1.3 and 3.8 which appear to be consistent with current FCC rules and statutory interpretations of those rules, and are useful and acceptable to both parties, and to delete all other provisions. In the CLP's proposed Standard Offering, Section 1.3 addresses the Use of Space and Section 3.8 addresses Microwave Collocation. The Public Staff commented further, stating that these revisions would not preclude CLPs and ILECs from negotiating, independent of the Standard Offering, terms which will enable CLPs to collocate microwave equipment at the ILECs' premises.

The Public Staff recommended that the Parties delete the following line from Section 1.3, Use of Space:

> Interconnector may also place microwave equipment on the ILEC's rooftop to the extent space is available and technically feasible.

Additionally, the Public Staff stated that Section 3.8, Microwave Collocation should be revised from the proposed five paragraphs to one revised paragraph to read as follows:

> 3.8 Microwave Collocation
>
> Where permissible, technically feasible, and not otherwise prohibited by law, the ILEC will provide for collocation of the CLP's microwave equipment on the rooftops of the ILECs central office buildings. Such equipment will be limited to that necessary for interconnection of the CLP's network facilities to the ILEC's unbundled network elements. The specific rates and terms applicable to microwave collocation will be negotiated between the ILEC and the CLP and incorporated into the Parties interconnection agreement.

The Commission agrees with the Public Staff and concludes that Section 1.3 and Section 3.8 of the Standard Offering should be revised as stated above.

CONCLUSIONS

The Commission concludes that Section 1.3 and Section 3.8 of the Standard Offering should be revised as indicated herein to provide for microwave collocation.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 43

ISSUE 44: Under what circumstances, if any, should the ILEC provide circuit facility assignments (CFAs) to the CLP?

ISSUE 66: Should collocation space be considered complete before BellSouth has provided CFAs?

ISSUE 80 (Sprint 6): When should an ILEC provide CFAs to CLPs? **Resolved by Sprint and the New Entrants**

POSITIONS OF PARTIES

AT&T: AT&T took the same position as the New Entrants and WorldCom.

ALLTEL: This issue was not addressed in ALLTEL's Brief.

BELLSOUTH: Collocation space should be completed prior to providing CFAs to the CLP. BellSouth will complete all work under its control, which includes the preparation of the requested collocation space. At that point, the collocation space is considered complete since it is available for use by the CLP

MCIm: Collocation space is unusable unless a CLP has been provided with CFAs. The ILEC should provide CFAs before the space is considered complete.

NEW ENTRANTS: Collocation space is not "complete" until CFAs have been provided by the ILEC.

PUBLIC STAFF: The ILEC is required to provide CFAs when the CLP has installed its equipment in the collocation space. The ILEC may assign the CFAs before installation of the CLP's equipment if the CLP has provided sufficient information for the ILEC to do so.

SPRINT: CFAs should be provided upon completion of the collocation project.

VERIZON: The ILEC should provide circuit facility assignments to the CLP during the walk-through when the collocation space is turned over to the CLP equipment.

WORLDCOM: WorldCom took the same position as AT&T and the New Entrants.

DISCUSSION

BellSouth in its Proposed Order stated that the collocation space should be completed prior to providing the CFAs to the CLP. BellSouth reasoned that the collocation space is considered complete when it is available for use by the CLP. BellSouth stated that if the space were not to be considered complete (and, hence, billing would not start) until after the CFAs are provided, the CLP would be able to occupy the space indefinitely without paying floor space charges until the CLP actually gets around to installing equipment and provides BellSouth with the information necessary to assign the CFAs. BellSouth stated that BellSouth is entitled to compensation for collocation as soon as the collocation space is available for use by the CLP and not when the CLP begins to actually use the space to provide end-user service.

The New Entrants commented in its Issues Matrix that the CLPs should be provided CFAs before the work is completed for the collocation application. The New Entrants reasoned that in order for a CLP to have a usable, working collocation there must be a connection between that site and some network. Further the New Entrants stated that the orders for DS-1 or DS-3 orders requiring cross-connect between the DSX panel and the CLP collocation typically requires 30 days to process. Therefore, the New Entrants opined that the CFAs be processed before the work order for the conditioning of the collocation space is completed.

Verizon stated in its Proposed Order that the ILEC should provide CFAs to the CLP during the walk-through when the collocation space is turned over to the CLP for equipment installation. Verizon stated that the CLP at the conclusion of the walk-through can begin installation of its equipment and will have the information necessary to order circuits to that equipment.

In its Proposed Order, the Public Staff stated that the CFAs identify the CLP's facilities connecting its collocation arrangement to an ILECs distributing frame.. No party disputes that CFAs are necessary for a CLP to interconnect to the ILEC from its collocation space. The Public Staff stated that the questions here are: (1) whether collocation should be considered "complete" before the ILEC provides the CFAs; and, (2) when should the ILEC provide the CFAs.

The Public Staff stated that the ILEC should provide the CFAs to the CLP at the time it turns over the collocation space, so long as the CLP has provided sufficient information for the ILEC to do so. Furthermore, the Public Staff stated that the provision of the CFAs is unnecessary until the CLP can give the ILEC sufficient verification of the equipment it will be installing. Furthermore, the Public Staff disagrees with the CLPs' position on this issue because it could delay collocation and hinder competition. The Public Staff shares BellSouth's concern that if collocation space were not to be considered

complete until after the CFAs were provided, then the CLP may delay installation of its equipment, for whatever reason, without paying the ILEC floor space charges.

The Public Staff concluded its comment stating that the Standard Offering, Section 6.4.6, should be amended to state: "The ILEC is required to provide CFAs when the CLP has installed its equipment in the collocation space. The ILEC may assign the CFAs before installation of the CLP's equipment if the CLP has provided sufficient information for the ILEC to do so."

The Commission agrees with the Public Staff in that the CFAs should not be provided until the collocation space is ready for use by the CLP and the equipment to be installed in the collocation space has been verified by the CLP. The completion of the collocator's space and the assignment of CFAs are two entirely separate provisioning project paths. As such, the Parties must agree on the date certain for the in-service (e.g., requirement) of CFAs for DS-1 or DS-3 services. The Commission believes that the ILEC should not be placed in a position of having to provide collocation space, without compensation, well before the CLP has determined its own equipment requirements.

CONCLUSIONS

The Commission concludes that the ILEC should not be required to provide CFAs until the collocation space is ready for use by the CLP and the equipment to be installed in the collocation space has been verified by the CLP. Furthermore, the ILEC should not be placed in a position of having to provide collocation space, without compensation, well before the CLP has determined its own equipment requirements.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 44

ISSUE 45: Which party may designate the point of demarcation? What is the appropriate demarcation point?

ISSUE 46: Is the Point of Termination (POT) frame an appropriate demarcation point?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue in its Brief.

AT&T: AT&T stated that the ILEC shall identify technically feasible points and the CLP should designate the point of demarcation which, in most cases, will be in or adjacent to its collocation space. In general, the CLPs' facilities should be as near to their collocated space as possible. The CLPs' concern is that their equipment and cabling not extend beyond the area that it controls. The GTE Order is not relevant because it refers to the ability to allocate collocation space, not the demarcation point. A POT bay or frame should not be required in order for CLPs to interconnect with an ILEC. If a CLP chooses another

type of equipment or arrangement, it should be allowed to do so. ILECs may not require competitors to use an intermediate connection to the incumbent's network if technically feasible, because such intermediate points of interconnection simply increase collocation costs without a concomitant benefit to incumbents. Thus, a terminal block or other intermediate arrangement cannot be required. However, a POT bay or frame is an appropriate demarcation point in collocated space if a CLP chooses to interconnect at a POT bay or frame.

BELLSOUTH: BellSouth stated that there is nothing in the TA96 or the FCC rules that allows the CLP to choose the point of demarcation on the ILEC's network. Thus, BellSouth has the authority to determine the demarcation point within the central office for CLPs choosing collocation as their method of interconnecting with BellSouth's network so as to ensure that space is efficiently administered. For 2-wire or 4-wire connections to BellSouth's network, the demarcation point shall be a common block on the BellSouth designated conventional distributing frame (CDF). The CLP shall be responsible for providing, and the CLP's BellSouth Certified Vendor shall be responsible for installing and properly labeling/stenciling the common block and necessary cabling pursuant to the established construction and provisioning interval. For all other terminations, BellSouth shall designate a demarcation point on a per arrangement basis. At the CLP's option, a POT bay or frame may be placed in the collocation space, but this POT bay will not serve as the demarcation point.

MCIM: *MCIm took the same position as AT&T.*

NEW ENTRANTS: The New Entrants took the same position as AT&T.

PUBLIC STAFF: The Public Staff stated that the ILEC may designate the number and location(s) of demarcation points at each central office. The Parties should negotiate the standards by which the ILEC will designate the demarcation points using the FCC's revised rules regarding space designation to guide the negotiations. The POT bay may be used as a demarcation point.

SPRINT: Sprint stated that it was willing to accept the New Entrants' position on Issue Nos. 45 and 46 to the extent it is consistent with the terms and conditions of the Standard Offering (Sections 5.4; 5.5) filed with the direct testimony of Sprint witness Hunsucker, if it is included in the Standard Offering and the Standard Offering is made applicable to all parties.

VERIZON: Verizon stated that the ILEC shall designate the point of demarcation. The ILEC will use its best efforts to identify the closest demarcation point to the CLP's equipment that is available. At the CLP's option and expense, a POT bay, frame or digital cross-connect may be placed in or adjacent to the collocation space that may serve as the demarcation point. If the CLP elects not to provide a POT frame, the ILEC will agree to handoff the interconnection cables to the CLP at its equipment.

WORLDCOM: WorldCom took the same position as AT&T.

DISCUSSION

Section 5.4 of the Standard Offering addresses the provision of demarcation points, including POT frames, by the ILEC to the CLP:

> 5.4 Demarcation Point. Unless otherwise requested by the CLP, the CLP will designate the point of demarcation in or adjacent to its collocation space. At the CLP's request, the ILEC will identify to the CLP the location(s) of other possible demarcation points available to the CLP, and the CLP will designate from these location(s) the point(s) of demarcation between its collocated equipment and the ILEC's equipment. The ILEC will use its best efforts to identify the closest demarcation point to the CLP's equipment that is available. Each party will be responsible for maintenance and operation of all equipment/facilities on its side of the demarcation point. For 2-wire and 4-wire connections to the ILEC's network, ILEC may offer, as an option to the CLP, a demarcation point that is a common block on the ILEC designated conventional distributing frame. The CLP shall be responsible for providing, and the CLP's ILEC-Certified Vendor shall be responsible for installing and properly labeling/stenciling, the common block, and necessary cabling pursuant to Section 5.5. The CLP or its agent must perform all required maintenance to equipment/facilities on its side of the demarcation point, pursuant to subsection 5.5 following, and may self-provision cross-connects that may be required within the collocation space to activate service requests. At the CLP's option and expense, a POT bay, frame, or digital cross-connect may be placed in or adjacent to the Collocation Space that may, at the CLP's option, serve as the demarcation point. If the CLP elects not to provide a POT frame, the ILEC will agree to handoff the interconnection cables to the CLP at its equipment, at the CLP's designated demarcation point. When the CLP elects to install its own POT frame/cabinet, the ILEC must still provide and install the required DC power panel.

CLP witness Gillan testified that the CLPs take the general position that the CLP should have the right to designate the point of demarcation. He stated that, by definition, the point of demarcation is the point where one carrier's facilities end and the other carrier's facilities begin. He believed that if the CLP's collocation is limited to a particular area within the ILEC office, then the CLP's facilities should be contained as near to that collocated space as possible. He added that any other arrangement would result in the CLP's cabling and other equipment extending beyond the area that the CLP controls. Witness Gillan testified that the Standard Offering proposes that the ILECs identify possible demarcation points, using their best efforts to identify the closest point to the CLP's equipment that is available, and the CLPs will designate the point.

With respect to whether or not a POT frame or bay is an appropriate demarcation point, witness Gillan stated that a POT bay or frame should not be required in order for CLPs to interconnect with an ILEC. He contended that the FCC had prohibited ILECs from requiring CLPs to use an intermediate frame between the main distributing frame (MDF) and the collocation space as the demarcation point, citing the following language from Paragraph 42 of the Advanced Services Order:

> Incumbent LECs may not require competitors to use an intermediate interconnection arrangement in lieu of direct connection to the incumbent's network if technically feasible, because such intermediate points of interconnection simply increase collocation costs without a concomitant benefit to incumbents.

However, he testified that a POT bay or frame is an appropriate demarcation point in collocated space if a CLP chooses to interconnect at a POT bay or frame.

Finally, witness Gillan testified that the GTE decision, which dealt with the designation of space for collocation within the central office, was not relevant to the demarcation point issue in this case. Rather, he contended that the issue concerns what information is relevant to the decision to collocate which would assist both the ILEC and the CLPs and he argued there is no legitimate reason why it should be withheld.

BellSouth witness Milner testified that there was nothing in either the Act or the FCC's rules that allowed CLPs to choose demarcation points. He stated that the appropriate demarcation point was the common block on BellSouth's CDF, which is an intermediate frame located in the common area between BellSouth's main distributing frame and the CLP's collocation space. Witness Milner argued that the GTE case confirmed that "ILECs have the authority to designate collocation locations within the central office," which he interpreted as meaning that ILECs also had the authority to designate demarcation points. This view was echoed by Verizon witness Ries who also argued that allowing the CLPs to access the MDF or any other ILEC facility termination points would create network reliability and security issues.

In the Public Staff's Proposed Order, it cited the GTE case, where the Court stated:

> It is one thing to say that LECs are forbidden from imposing unreasonable minimum space requirements on competitors; it is quite another thing, however, to say that competitors, over the objection of LEC property owners, are free to pick and choose preferred space on the LECs' premises, subject only to technical feasibility. There is nothing in § 251(c)(6) [of the Act] that endorses this approach. The statute requires only that the LEC reasonably provide space for "physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier," nothing more.

> The sweeping language in paragraph 42 of the Collocation Order appears to favor the LECs' competitors in ways that 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 § 251(c)(6) goes too far and thus "diverges from any realistic meaning of the statute." (Massachusetts v. Department of Transp., 93 F.3d at 893)

The Public Staff pointed out that pursuant to these findings, the Court vacated the provisions of Paragraph 42 of the *Advanced Services Order* that gave collocators the option of collocating equipment in any unused space in the ILEC's premises, to the extent technically feasible. It also vacated provisions that prohibited ILECs from requiring competitors to locate in a room or isolated space separate from the ILEC's own equipment. Relying heavily upon the GTE case cited above, the Public Staff believes that a CLP has no more right to choose a preferred location for its demarcation point in an ILEC central office than a CLP has to choose a preferred location for physical collocation space.

The Commission concludes that the ILEC may designate the number and location(s) of demarcation points at each central office as a regulatory policy determination. The testimony in this case indicates that the ILECs are willing to provide a demarcation point that is either proximate to the CLP's collocation space, (i.e., in the POT bay or frame) or adjacent to the main distributing frame where the ILEC connects its own outside plant to the switching network. The Commission agrees with the Public Staff that either demarcation point will meet the legitimate needs of CLPs for collocation. However, the ILEC should not deliberately choose a location in the central office that simply causes a CLP to face substantially higher costs or a significantly higher risk of service disruption than the CLP would face if the demarcation point were located at another location within the building.

Although Section 5.4 of the Standard Offering contains language which is contrary, in parts, to the Commission's conclusions on this issue, the Commission encourages the ILECs to work cooperatively with the CLPs in provisioning collocation space, including the point of demarcation issue. For example, nothing prevents the ILECs from offering CLPs multiple demarcation points, as described in the Standard Offering, if the ILEC chooses to do so. Therefore, the Commission urges the ILECs and the CLPs to further negotiate the demarcation point issue using the Standard Offering and the FCC's revised rules and new policies and practices regarding space designation, as set forth in the *Collocation Remand Order*, as a starting point for further negotiations to develop mutually agreed upon language for inclusion in the Standard Offering.

CONCLUSIONS

The Commission concludes that the ILEC may designate the number and location(s) of demarcation points at each central office. The POT bay or frame may be used as a demarcation point. The Parties should negotiate the standards by which the ILEC will

designate the demarcation points using the Standard Offering and the FCC's rule regarding space designation to guide the negotiations.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 45

ISSUE 47: What are the appropriate terms and conditions for the provision of cross-connects in the ILEC premises?

POSITIONS OF PARTIES

ALLTEL: This issue was not addressed in ALLTEL's Brief. Additionally, ALLTEL did not file comments on the Collocation Remand Order which was released August 8, 2001.

AT&T: AT&T did not file comments on the Collocation Remand Order. In its Proposed Order which was filed prior to the issuance of the Collocation Remand Order, AT&T contended that the CLP may provision its own cross-connect facilities, or the ILEC should provide, at the CLP's request, the connections between carriers' equipment, at the rates provided for in New Entrants witness Feldman's testimony. CLPs should follow the same reasonable safety requirements that the ILEC uses for its own equipment. CLPs may construct their own cross-connect facilities using copper or optical facilities, subject to the same safety requirements ILECs impose on their similar facilities.

BELLSOUTH: In its Amended Proposed Order, filed after the Collocation Remand Order was issued, BellSouth stated that it would provide co-carrier cross-connects in accordance with the Collocation Remand Order and would permit CLPs to self provision co-carrier cross-connects in accordance with Section 3.7 of BellSouth's Standard Offering. Whereas, in its initial Proposed Order, BellSouth had contended that it was not obligated to provide or to allow co-carrier cross-connects.

MCIm: MCIm did not file comments on the Collocation Remand Order. MCIm filed a Brief which only addressed its proposed resolution of the arbitration issues which were raised between MCIm and BellSouth in Docket No. P-474, Sub 10, pertaining to physical collocation, that were transferred to this generic proceeding. This issue was not one of those transferred issues. Thus, this issue was not specifically addressed in MCIm's Brief, except to the extent that MCIm stated that it supported the New Entrants' and Sprint's compromise Standard Offering, as revised.

NEW ENTRANTS: The New Entrants did not file comments on the Collocation Remand Order. The New Entrants, AT&T, and WorldCom filed a joint Proposed Order. Additionally, the New Entrants also filed a separate Brief, but provided no specific comments, therein, on this issue. The New Entrants supported the position noted above for AT&T.

PUBLIC STAFF: The Public Staff filed an Amendment to its Proposed Order after the Collocation Remand Order was issued. In its initial Proposed Order, the Public Staff had commented that the Standard Offering should be amended to reflect that the ILEC bears no obligation to provide or allow co-carrier cross-connects. However, the Public Staff now believes that the Standard Offering should be amended to reflect that an ILEC may, but is not required to allow collocating CLPs to provision their own cross-connects. Further, the Public Staff stated that the Standard Offering should instead reflect that, at the request of a collocating CLP, the ILEC must provide cross-connects between equipment in the collocated space of two or more telecommunications carriers, unless the ILEC allows the CLP to provision its own cross-connects or the cross-connect is not required.

SECCA: SECCA did not file a Brief or Proposed Order, but SECCA filed comments pertaining to the Collocation Remand Order. SECCA commented that the Collocation Remand Order requires ILECs to provision cross-connects between CLPs as unbundled network elements, subject to the provisions of Section 251 of the Act.

SPRINT: Sprint filed an Amendment to its Brief after the Collocation Remand Order was issued. In its filing prior to its Amendment, Sprint would have accepted the New Entrants' position on this issue to the extent it was consistent with the terms and conditions of the Standard Offering filed with the direct testimony of Sprint witness Hunsucker, it was included in the Standard Offering, and the Standard Offering was made applicable to all Parties in its entirety. In its amended filing, Sprint's position was that CLPs may no longer self-provision cross-connects through common areas since their cabling and equipment is considered collocated equipment which does not meet the "necessary" standard. ILECs are now required to provide CLPs connections using copper, dark fiber, lit fiber, or other transmission media as requested by the CLP.

VERIZON: Verizon filed additional comments after the Collocation Remand Order was issued. Verizon noted that the Collocation Remand Order affected its position on this issue and concluded that its Proposed Order should be amended. In its additional comments, Verizon stated that the ILEC should provide dedicated transport service (cross-connections between collocated CLPs' arrangements) for DS0, DS1, DS3, and dark fiber circuits. Additionally, the ILEC should also provide other technically feasible cross-connection arrangements, including lit fiber, on an individual case basis, as requested by a CLP. In its filing prior to the issuance of the Collocation Remand Order, Verizon had stated that the CLP may directly connect to other interconnectors within the ILEC premises through facilities owned by the CLP or through ILEC facilities designated by the CLP, at the CLP's option and that provisioning had to be implemented by an ILEC-approved, certified contractor when facilities traverse outside the CLP collocated space.

WORLDCOM: WorldCom did not file comments on the Collocation Remand Order. WorldCom, AT&T, and the New Entrants filed a Joint Proposed Order, and thus, WorldCom supported the position noted above for AT&T.

DISCUSSION

This issue concerns the provisioning of cross-connects between CLPs that are collocated, i.e., co-carrier cross-connects, in an ILEC's premises. On August 8, 2001, the FCC released its Collocation Remand Order providing a reevaluation by the FCC of its collocation rules on remand from the United States Court of Appeals for the District of Columbia Circuit in the case of GTE Serv. Corp. v. FCC (D.C. Cir. 2000). That Order addressed several matters, one being the issue of the FCC's remanded rules requiring that ILECs allow collocating CLPs to install and maintain cross-connects between other collocated CLPs within an ILEC's premises. In the Collocation Remand Order at Paragraph 58, the FCC provided a definition and a description of the various cross-connect schemes as follows:

> As an initial matter, we believe it is important to define cross-connects and describe how prevalent they are in a typical central office. "A cross-connection [or cross-connect] is a cabling scheme between cabling runs, subsystems, and equipment using patch cords or jumper wires that attach to connection hardware on each end." Typically, in a central office, the cabling scheme might run from a piece of equipment up into an overhead racking system, through that system and down from the racks to connect with another piece of equipment. Cross-connects can run through the main distribution frame or an intermediate distribution frame when being used to connect two pieces of equipment or when being used to connect equipment to a transmission facility, such as a loop or trunk. When two pieces of equipment are in close proximity to each other, the cross-connect may progress directly from one piece of equipment to the other without entering the racking system. Cross-connects generally are present throughout the incumbent's premises. Cross-connects interconnect incumbent LEC equipment to other incumbent LEC equipment and incumbent LEC equipment to collocator equipment. Cross-connects also interconnect one piece of a collocator's equipment to another piece of that collocator's equipment. Finally, because of the Commission's previous cross-connect rule adopted in the *Local Competition Order*, cross-connects have been used to interconnect one collocator's equipment to another collocator's equipment. (Footnotes omitted.)

In the Proposed Order jointly entered between AT&T, the New Entrants, and WorldCom which was filed prior to the issuance of the Collocation Remand Order, AT&T, et al., contended that the CLP may provision its own cross-connect facilities, or that the ILEC should provide, at the CLP's request, the connections between carriers' equipment. AT&T, et al., remarked that the CLPs should follow the same reasonable safety requirements that the ILEC uses for its own equipment and that CLPs should be permitted to construct their own cross-connect facilities using copper or optical facilities, subject to the same safety requirements ILECs impose on their similar facilities. In support of their position, they asserted that requiring ILECs to provide CLP-to-CLP cross-connection under

section 251(c)(6) of the Act is consistent with the structure of the statute. Further, they pointed out that Section 251(a) requires all carriers — including the CLPs — to interconnect with other carriers and that section 251(c)(6) requires any conditions imposed on interconnection to be "nondiscriminatory." Accordingly, they argued that a denial of cross-connection would violate the requirement that ILECs provide collocation on a nondiscriminatory basis because the ILEC could connect with a collocating CLP at the ILEC's central office, but another CLP could not. Given that CLPs need to collocate at ILEC central offices, AT&T, et al., stated that ILECs have the opportunity to interconnect with CLPs on an efficient and readily available basis. Thus, AT&T, et al., remarked that cross-connection is necessary to put each collocating CLP in a position to achieve the same interconnection with other CLPs as the ILEC itself is able to do. Furthermore, AT&T, et al., explained that even if "interconnection" were to be defined narrowly to encompass only interconnection with the ILEC's network, any condition denying cross-connection would violate the statute's prohibition against "nondiscriminatory" conditions. AT&T, the New Entrants, and WorldCom did not file comments on the Collocation Remand Order. Thus, they were silent on the manner in which the revised CLP/Sprint Standard Offering language would need to be further revised to conform with the findings set forth in the FCC Collocation Remand Order.

As indicated above in the narrative of each party's position, only a portion of the Parties filed additional comments or amendments specifically addressing changes in their positions based upon the FCC's Collocation Remand Order, which was released on August 8, 2001. These parties were BellSouth, the Public Staff, SECCA, Sprint, and Verizon.

In its initial Proposed Order, BellSouth's position had been that an ILEC was not obligated to provide or allow co-carrier cross-connects. BellSouth had commented in its initial Proposed Order that the D.C. Circuit's GTE Serv. Corp. v. FCC (D.C. Cir. 2000) decision of March 17, 2000, specifically addressed the issue of ILEC obligations to provide cross-connects and that BellSouth's reading of the decision was that an ILEC was not required to provide CLPs with cross-connects. Specifically, in that decision, under Section B. "Necessary", the D.C. Circuit held as follows:

> . . . .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 the 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-connects 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 does not even attempt to show that cross-connects are in any sense

"necessary for interconnection or access to unbundled network elements." Rather, the Commission is almost cavalier in suggesting that cross-connects are efficient and therefore justified under s 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. . . .

Consequently, based upon its interpretation of the GTE Serv. Corp. v. FCC (D.C. Cir. 2000) decision, BellSouth had concluded that an ILEC was not required to provide CLPs with cross-connects. However, now based upon the Collocation Remand Order released on August 8, 2001, BellSouth's position is that it would provide co-carrier cross-connects in accordance with the Collocation Remand Order and would permit CLPs to self provision co-carrier cross-connects in accordance with its proposed Section 3.7 of BellSouth's Standard Offering. In its Amended Proposed Order, BellSouth filed specific language in regard to this issue, which it proposed for inclusion in the Standard Offering as follows:

BellSouth's Proposed Language (Sections 3.7, 3.7.1, and 3.7.2):

3.7 Co-Carrier Cross-Connect (CCXC). The primary purpose of collocating CLP equipment is to interconnect with the ILEC's network or access the ILEC's unbundled network elements for the provision of telecommunications services. The ILEC will permit the CLP to interconnect between its virtual or physical collocation arrangements and those of another CLP. At no point in time shall the CLP use the Collocation Space for the sole or primary purpose of cross-connecting to other CLPs.

3.7.1 Except as provided herein, the CCXC, may be provisioned through facilities owned by the CLP or through the ILEC's facilities, at the CLP's option. Such connections to other carriers may be made using either optical or electrical facilities. The CLP may deploy such optical or electrical connections directly between its own facilities and the facilities of other interconnector(s) without being routed through the ILEC's equipment. If the ILEC provisions the CCXC, then the connection between both CLPs will be made between the CFA termination points of both arrangements through the ILEC's Distribution Frame, DSX or LGX. The CLP may not self provision CCXC on any ILEC distribution frame, Pot Bay, DSX or LGX. The CLP is responsible for ensuring the integrity of the signal. In the event the CLP determines that signal degradation will occur, the CLP should request a four-wire cross-connect arrangement. The four-wire

cross-connect arrangement will require that the CLP and the cross-connected CLP provide multiplexing equipment within their Collocation Space.

3.7.2 A request from the CLP for CCXC must include authorization from the other CLP(s) involved, including designation of the terminations for CCXC. The CLP must use an ILEC Certified Supplier to place the CCXC. For the CLP-provisioned CCXC, there will be a recurring charge per linear foot of common cable support structure used. The CLP-provisioned CCXC shall utilize common cable support structures except in the case of two contiguous collocation arrangements.

Similar to BellSouth, the Public Staff, in its initially filed Proposed Order, had also agreed that in conformity with the GTE Serv. Corp. v. FCC (D.C. Cir. 2000) decision, ILECs were not obligated to provide or allow co-carrier cross-connects. However, now based upon the Collocation Remand Order, the Public Staff's position is that the Standard Offering should be amended to reflect that an ILEC may, but is not required, to allow collocating CLPs to provision their own cross-connects. Further, the Public Staff stated that the Standard Offering should instead reflect that, at the request of a collocating CLP, the ILEC must provide cross-connects between equipment in the collocated space of two or more telecommunications carriers, unless the ILEC allows the CLP to provision its own cross-connects or the cross-connect is not required. The Public Staff explained that a cross-connect is not required if the connection is requested pursuant to Section 201 of the Act, unless the CLP certifies that more than 10% of the traffic through the cross-connect is interstate. In that case, the Public Staff commented that an ILEC may not refuse to provision the cross-connect. Additionally, the Public Staff stated that if the ILEC wishes to challenge the certification, it may do so through a Section 208 complaint to the FCC. However, the Public Staff noted that no such certification is required if the request is pursuant to Section 251 of the Act. Accordingly, the Public Staff commented that the CLP/Sprint Standard Offering, Sections 1.3 and 5.6, et. seq., should be amended to reflect the new FCC Rule 51.323(h), (1), and (2). Specifically, the Public Staff stated that language which permits a CLP to provision and maintain its own cross-connects should be removed. However, the Public Staff did not provide specific proposed language for inclusion in a Standard Offering Agreement.

SECCA, a member of the CLP Coalition, did not originally file a Brief or Proposed Order, but SECCA did file brief comments pertaining to the Collocation Remand Order. The CLP Coalition entered into a compromise Standard Offering with Sprint, which was submitted to the Commission on May 18, 2000, and was revised on January 18, 2001. In its comments, SECCA acknowledged that the Collocation Remand Order related to certain provisions of the Standard Offering. SECCA commented that the Collocation Remand Order requires ILECs to provision cross-connects between CLPs as unbundled network elements, subject to the provisions of Section 251 of the Act. Further, SECCA stated that "the Standard Offering as revised represents a reasonable, well-balanced compromise that should be adopted as a whole, subject to certain changes and decisions regarding

disputed issues not here relevant." However, SECCA did not specifically set forth any suggested changes to the CLP/Sprint Standard Offering.

In its initial filing of its Brief, Sprint would have accepted the New Entrants' position on this issue to the extent it was consistent with the terms and conditions of the Standard Offering filed with the direct testimony of Sprint witness Hunsucker, it was included in the Standard Offering, and the Standard Offering was made applicable to all Parties in its entirety. However, in its Amendment to its Brief, filed after the Collocation Remand Order was issued, Sprint's position now was that CLPs may no longer self-provision cross-connects through common areas since their cabling and equipment is considered collocated equipment which does not meet the "necessary" standard. Sprint commented that ILECs should now be required to provide CLPs connections using copper, dark fiber, lit fiber, or other transmission media as requested by the CLP. Sprint believes that cross-connects should be provided to any lawfully collocated carrier, such as a connection between a CLP and a competitive transport provider. Sprint stated that the impact of the Collocation Remand Order upon the CLP/Sprint Standard Offering, as it pertains to cross-connects, would consist of the deletion of references to CLP provisioned cross-connects. In its Amendment to its Brief, Sprint filed specific language in regard to this issue, which it proposed for inclusion in the Standard Offering as follows:

Sprint's Proposed Language (Sections 5.6, 5.6.1, and 5.6.2):

5.6 Co-Carrier Cross-connect. In addition to, and not in lieu of, obtaining interconnection with, or access to, the ILEC telecommunications services, unbundled network elements, and facilities, the CLP may directly connect to other Interconnectors within the designated ILEC Premises (including to its other virtual or physical collocated arrangements). Where technically feasible, the incumbent LEC shall provide the connection using copper, dark fiber, lit fiber, or other transmission medium, as requested by the collocating telecommunications carrier. In immediately adjacent collocation arrangements, the CLP may deploy such optical or electrical connections directly between its own facilities and the facilities of other Interconnector(s) without being routed through ILEC equipment.

5.6.1 Within the ILEC Premises, the ILEC will provide, at the CLEC's request, the connection between equipment in the collocation spaces of two or more telecommunications carriers, or permit CLECs to construct their own cross-connect facilities, and to connect to other physical CLECs using copper or optical facilities between collocated equipment located within the same ILEC premises, subject only to the same reasonable safety requirements that the ILEC imposes on its own equipment. If the facility run is over ILEC or other CLEC

in-service equipment, the requesting CLEC must use an approved ILEC contractor or one that meets ILEC contractor qualifications.

5.6.2 If a physical CLP and a virtual CLP both have dedicated appearances not then in use on a DSX-1 panel, DSX-3 panel, or FDF located within contiguous areas within the eligible structure, then the ILEC will provide the interconnection of physically and virtually collocated equipment by connection of copper or optical facilities to the CLPs' dedicated appearances on the DSX-1 panel, DSX-3 panel, or FDF. The connections shall be made by the ILEC within ten (10) calendar days of a joint request by the CLPs.

In its filing prior to the issuance of the Collocation Remand Order, Verizon had stated that the CLP may directly connect to other interconnectors within the ILEC premises through facilities owned by the CLP or through ILEC facilities designated by the CLP, at the CLP's option and that provisioning had to be implemented by an ILEC-approved, certified contractor when facilities traverse outside the CLP collocated space. However, Verizon, in its additional comments provided after the Collocation Remand Order was issued, remarked that the Collocation Remand Order affected its position on this issue and concluded that its Proposed Order should be amended. In its additional comments, Verizon stated that the ILEC should provide dedicated transport service (cross-connections between collocated CLPs' arrangements) for DS0, DS1, DS3, and dark fiber circuits. Additionally, Verizon noted that the ILEC should also provide other technically feasible cross-connection arrangements, including lit fiber, on an individual case basis, as requested by a CLP. Further, Verizon continued to advocate the use of a collocation tariff. In its additional comments provided after the issuance of the Collocation Remand Order, Verizon provided no specific proposed language for inclusion in a Standard Offering Agreement in this regard.

Based upon our review of the Collocation Remand Order, the Commission provides the following discussion and conclusions on this issue. In the Collocation Remand Order, at Paragraph 12, the FCC stated that it took several actions in that Order, one being the following:

- We eliminate the Commission's previous requirement, adopted pursuant to section 251(c)(6), that an incumbent LEC allow competitive LECs to construct and maintain cross-connects outside of their immediate physical collocation space at the incumbent's premises. We find, however, that sections 201 and 251(c)(6) authorize us to require that an incumbent LEC provision cross-connects between collocated carriers, and we require that an incumbent LEC provide such cross-connects upon reasonable request.

In summary, the FCC has now concluded that it cannot require ILECs to allow CLPs to provision cross-connects outside their collocation space, but that it can require ILECs to provision cross-connects between collocated CLPs.

The discussion provided in the Collocation Remand Order includes a Section C narrative which addresses "Cross-Connections Between Collocators". That discussion is presented in Paragraphs 55 through 84 of said Order. In Paragraph 55, the FCC briefly stated its prior decisions relating to cross-connects between collocators as follows:

> In the *Local Competition Order*, the Commission required incumbent LECs to provision (i.e., install and maintain) cross-connects to allow a collocator to connect its collocated equipment to the collocated equipment of another carrier within the same incumbent LEC premises so long as each collocator's equipment was used for interconnection with the incumbent or access to the incumbent's unbundled network elements. In the *Advanced Services First Report and Order*, the Commission further required incumbent LECs to permit collocating carriers to provision their own cross-connect facilities between equipment collocated at the incumbent's premises, subject only to the same reasonable safety requirements the incumbent places on its own facilities. (Footnotes omitted.)

In Paragraph 56, the FCC noted the D.C. Circuit's findings in GTE Serv. Corp. v. FCC (D.C. Cir. 2000), as follows:

> In *GTE v. FCC*, the D.C. Circuit vacated and remanded the cross-connects rule adopted in the *Advanced Services First Report and Order*. The court stated that "requiring [incumbent] LECs to allow collocating competitors to interconnect their equipment with other collocating carriers . . . imposes an obligation on [incumbent] LECs that has no apparent basis in the statute." The court found that the Commission had not shown that cross-connects between collocators are "necessary for interconnection or access to unbundled network elements" within the meaning of that provision. (Footnotes omitted.)

In Paragraphs 59 and 60, the FCC summarized its findings on remand regarding this issue as follows:

> 59. At issue in this *Order* are the cables that cross-connect two collocated competitive LECs. As explained below, we find that, in light of *GTE v. FCC*, we may not require an incumbent LEC to allow competitive LECs to provision cross-connects outside of their immediate physical collocation space at the incumbent's premises. However, we find that pursuant to section 201 that it would be unjust and unreasonable for an incumbent LEC to refuse to provision cross-connects between two collocated competitive LECs. We also find that, in the alternative, such a refusal would be unjust, unreasonable, and discriminatory within the meaning of section 251(c)(6). Accordingly, we return to the obligations set forth in the *Local Competition Order* that required incumbent LECs to provision cross-connects to collocators.

60. We find that there are significant differences between requiring the incumbent to provision the cross-connects for collocated competitive LECs and requiring an incumbent LEC to allow competitive LECs to provision cross-connects within the incumbent's premises. First, there is a fundamental difference as to who owns and controls the cross-connect cabling. When competitive LECs provision their own cross-connects, the competitive LECs own and control the cabling; whereas, when the incumbent provisions the cross-connects, the incumbent owns and controls the cabling. Second, for competitive LECs to provision cross-connects, they typically must access common areas, which may include a racking system, of the incumbent's premises to install and maintain the cross-connects.[155] In contrast, if the incumbent provisions the cross-connects, the competitive LECs need not have access to the common areas for the purpose of provisioning the cross-connects. Thus, the latter approach is substantially less invasive of the incumbent's property rights (e.g., in terms of security, safety, and risk to incumbent LEC equipment). (Footnote No. 156 omitted.)

Footnote 155: As used in this Order, "common areas" refers to areas on an incumbent LEC's premises outside of a physical collocator's immediate collocation space. Many common areas contain facilities or equipment serving multiple carriers.

As noted above in Paragraph 59, the FCC based its decision, in this regard, on both Section 201 and Section 251(c)(6) of the *Communications Act of 1934 As Amended By The Telecommunications Act of 1996.* Title II — Common Carriers, Part I — Common Carrier Regulation, Section 201 —Service and Charges, Paragraph (a) requires, in pertinent part, that "[i]t shall be the duty of every common carrier engaged in interstate or foreign communication by wire or radio to furnish such communication service upon a reasonable request therefor . . . where the Commission, after opportunity for hearing, finds such action necessary or desirable in the public interest, to establish physical connections with other carriers . . . ." Additionally, Title II — Common Carriers, Part II — Development of Competitive Markets, Section 251 — Interconnection, Paragraph (c), Subparagraph (6) requires an ILEC to provide collocation ". . .. on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. . . ."

The Collocation Remand Order provided a discussion Section C, Part 1 titled "Competitive LEC Self-Provisioning of Cross-Connects" composed of a single Paragraph 61. Therein, the FCC found that "neither section 201 nor section 251 authorizes us to adopt a rule requiring physical collocation by which incumbent LECs allow competitive LECs to provision cross-connects outside of their immediate collocation space." The FCC concluded that because "the competitive-LEC provisioning of cross-connects constitutes physical collocation, we must conclude that our authority under section 201 does not extend to requiring that an incumbent LEC allow such provisioning."

Further, the Collocation Remand Order provided a discussion Section C, Part 2 titled "Incumbent LEC Provisioning of Cross-Connects — Section 201" composed of

Paragraphs 62 through 78. Pursuant to Section 201, the FCC concluded in Paragraph 62 that it had the authority "to require incumbent LECs to provision cross-connects for carriers collocated at the incumbent's premises, and we exercise this authority to require such cross-connects upon reasonable request." The FCC, in Paragraph 63, found that "incumbent LEC-provisioned cross-connects between collocators within the incumbent's premises constitute a 'communications service' 'necessary or desirable in the public interest' within the meaning of section 201(a)." In Paragraph 65, the FCC found that "cross-connects between collocators within an incumbent's premises are essential to the development of a fully competitive transport market." The FCC, in Paragraph 67, found that "providing cross-connects between collocated carriers will not materially burden incumbent LECs." Further, in Paragraph 69 the FCC stated that "requiring incumbent LECs to provision cross-connects between collocated carriers furthers Congress' decision in the 1996 Act to open all telecommunications markets to competition and is consistent with (though less intrusive than) the Act's requirement that incumbent LECs allow physical collocation within their premises under Section 251(c)(6)."

Additionally, in Paragraphs 77 and 78, the FCC stated the following:

> 77. We recognize, of course, that the Commission's exercise of its authority under section 201 historically has been limited to interstate and foreign communication by wire or radio. Physical connections between collocators and other carriers, like other portions of the telecommunications network, typically transmit both interstate and intrastate traffic. We have previously determined that special access lines carrying both interstate and intrastate traffic are subject to the Commission's jurisdiction where it is not possible to separate the uses of the special access lines by jurisdiction. We have typically exercised that jurisdiction, however, only when the amount of interstate traffic transmitted over a special access line constitutes more than 10% of all traffic transmitted over that line. We have reasoned that lesser percentages of interstate traffic should be considered *de minimis.* (Footnotes omitted.)
>
> 78. We conclude that a similar approach is appropriate with regard to a cross-connect service between collocators and other carriers provided pursuant to section 201. As with special access traffic, we would expect that the traffic carried through these cross-connects typically includes interstate or foreign communication. To the extent that our cross-connect requirements are dependent upon our authority under section 201, we require incumbent LECs to provide a cross-connect within its premises where: (1) two collocated carriers request such a cross-connect; and (2) more than a *de minimis* amount of the traffic to be transmitted through the cross-connect will be interstate. Where the interstate or foreign traffic would be more than *de minimis*, the incumbent LEC must provision the cross-connect through its interconnection facilities or equipment. Where a collocator is requesting this cross-connect solely pursuant to our action

> under section 201, it shall provide a certification to the incumbent that it satisfies the *de minimis* threshold of 10%. Upon receipt of such certification, the incumbent shall promptly provision the service. The incumbent cannot refuse to accept the certification but instead must provision the service promptly. If the incumbent feels that the certification is inaccurate, it can file a section 208 complaint with the Commission. (Footnotes omitted.)

Herein above, the FCC acknowledged that "its authority under section 201 historically has been limited to interstate and foreign communication by wire or radio", however, the FCC explained that "[a]s with special access traffic, we would expect that the traffic carried through these cross-connects typically includes interstate or foreign communication." Accordingly, the FCC decided to exercise its authority under section 201 and concluded that an ILEC should provide a cross-connect within its premises where (1) two collocated carriers request such a cross-connect and (2) more than a *de minimis* amount, i.e., more than 10% of the traffic to be transmitted through the cross-connect, will be interstate.

The Collocation Remand Order also provided a discussion Section C, Part 3 titled "Incumbent LEC Provisioning of Cross-Connects — Section 251" composed of Paragraphs 79 through 84. In Paragraph 79, the FCC stated that "[s]imilar to our reasoning under section 201, we find, as a second, alternative ground, that incumbent LEC-provisioned cross-connects between two collocators, and the attendant obligations to make dark fiber available as a cross-connect and to use the most efficient arrangement available, are also supported by section 251 of the Act." Further, the FCC explained that ILEC-provisioned cross-connects "are properly viewed as part of the terms and conditions of the requesting carrier's collocation in much the same way as the incumbent LEC provisions cables that provide electrical power to collocators."

In Paragraph 80, the FCC commented that its requirement that ILECs provision cross-connects between collocated CLPs "is consistent with the original obligation for cross-connects that the Commission imposed in the *Local Competition Order*." The FCC further stated that "[a]lthough we now conclude that the Commission overreached in further extending competitors' cross-connect rights in the *Advanced Services First Report and Order*, we believe the initial approach in the *Local Competition Order* was a reasonable interpretation of the applicable statutory language."

In Paragraph 82, the FCC explained that the "provisioning of cross-connects within the incumbent's premises merely puts the collocator in position to achieve the same interconnection with other competitive LECs that the incumbent itself is able to achieve." Consequently, the FCC concluded that "the refusal to provision such cross-connects would be discriminatory toward competitive LECs." Additionally, in Paragraph 83, the FCC stated that "because incumbents provide cross-connects within their premises to those collocators that purchase the incumbents' transport services, an incumbent LEC's failure to provide cross-connects within its premises to collocators that wish to utilize a competitive transport provider also raises this nondiscrimination issue." Further, the FCC noted that a failure to provide such cross-connects "would in effect force the competitive

LEC to purchase incumbent LEC transport in order to access a competitive provider's transport service." Finally, in Paragraph 84, the FCC commented that "[r]equiring incumbent LECs to provision cross-connects between requesting carriers is consistent with the statutory scheme outlined in section 251 and is consistent with Congress' explicit goal of ensuring interconnected networks."

Based upon its reevaluation as reflected in the foregoing discussion of the Collocation Remand Order, the FCC amended its rules. Paragraph (h) and Subparagraphs (1) and (2) of FCC Remanded Rule 51.323, as presented in Appendix B of the FCC Advanced Services Order released March 31, 1999, are as follows:

> (h) An incumbent LEC shall permit a collocating telecommunications carrier to interconnect its network with that of another collocating telecommunications carrier at the incumbent LEC's premises and to connect its collocated equipment to the collocated equipment of another telecommunications carrier within the same premises provided that the collocated equipment is also used for interconnection with the incumbent LEC or for access to the incumbent LEC's unbundled network elements.
>
> (1) An incumbent LEC shall provide, at the request of a collocating telecommunications carrier, the connection between the equipment in the collocated spaces of two or more telecommunications carriers. The incumbent LEC must permit any collocating telecommunications carrier to construct its own connection between the carrier's equipment and that of one or more collocating carriers, if the telecommunications carrier does not request the incumbent LEC's construction of such facilities. The incumbent LEC must permit the requesting carrier to construct such facilities using copper or optical fiber equipment.
>
> (2) An incumbent LEC shall permit collocating telecommunications carriers to place their own connecting transmission facilities within the incumbent LEC's premises outside of the actual physical collocation space, subject only to reasonable safety limitations.

Paragraph (h) and Subparagraphs (1) and (2) of the FCC's Final Rule 51.323, as presented in Appendix B of the FCC Collocation Remand Order released August 8, 2001, are as follows:

> (h) As described in subparagraphs (1) and (2) of this paragraph, an incumbent LEC shall permit a collocating telecommunications carrier to interconnect its network with that of another collocating telecommunications carrier at the incumbent LEC's premises and to connect its collocated equipment to the collocated equipment of another telecommunications carrier within the same premises, provided that the collocated equipment is

also used for interconnection with the incumbent LEC or for access to the incumbent LEC's unbundled network elements.

(1) An incumbent LEC shall provide, at the request of a collocating telecommunications carrier, a connection between the equipment in the collocated spaces of two or more telecommunications carriers, except to the extent the incumbent LEC permits the collocating parties to provide the requested connection for themselves or a connection is not required under paragraph (h)(2) of this section. Where technically feasible, the incumbent LEC shall provide the connection using copper, dark fiber, lit fiber, or other transmission medium, as requested by the collocating telecommunications carrier.

(2) An incumbent LEC is not required to provide a connection between the equipment in the collocated spaces of two or more telecommunications carriers if the connection is requested pursuant to section 201 of the Act, unless the requesting carrier submits to the incumbent LEC a certification that more than 10 percent of the amount of traffic to be transmitted through the connection will be interstate. The incumbent LEC cannot refuse to accept the certification, but instead must provision the service promptly. Any incumbent LEC may file a section 208 complaint with the Commission challenging the certification if it believes that the certification is deficient. No such certification is required for a request for such connection under section 251 of the Act.

By comparing the remanded rules (former rules) and the final rules provided above, the Commission recognizes that the FCC's former Rule 51.323(h) has been amended by inserting a restrictive clause as follows: "[a]s described in subparagraphs (1) and (2) of this paragraph." The FCC has amended Rule 51.323(h)(1) by removing the requirement that an ILEC "must permit any collocating telecommunications carrier to construct its own connection between the carrier's equipment and that of one or more collocating carriers . . . ." The FCC has also revised its former Rule 51.323(h)(2) by removing its requirement that an ILEC should permit collocating CLPs to place their own connecting transmission facilities within the ILEC's premises outside of the actual physical collocation space. Further, the FCC has amended Rule 51.323(h)(1) such that the final rule states that an ILEC shall provide, at a CLP's request, a connection between equipment in the collocated spaces of two or more CLPs, except to the extent that the ILEC permits the collocating CLPs to provide the connection themselves or a connection is not required under the final Rule 51.323(h)(2). Specifically, according to the final Rule 51.323(h)(2), a connection is not required if the connection is requested pursuant to Section 201 of the Act, unless the CLP certifies that more than 10% of the traffic through the connection will be interstate. Further, said Rule provides that the ILEC may file a complaint with the FCC challenging the certification if it believes the certification is deficient. Additionally, final Rule 51.323(h)(2) also provides that if the request for a connection is made pursuant to Section 251 of the Act, then no such certification is necessary.

As stated previously, Section 1.3 of the CLP/Sprint revised Standard Offering which, in pertinent part, stated that "[i]n addition to, and not in lieu of, interconnection to the ILEC's services and facilities, the CLP may connect to other interconnectors within the designated ILEC Premises (including to its other virtual or physical collocated arrangements) through co-carrier cross-connect facilities designated by the CLP pursuant to §5.6 following" and Sections 5.6, 5.6.1, and 5.6.2 of the CLP/Sprint revised Standard Offering, set forth the terms and conditions for the provisions of cross-connects. Generally, those sections provided that an ILEC would provide a connection between equipment in the collocation spaces of two or more telecommunications carriers if requested or would permit the CLPs to construct their own cross-connect facilities and to connect to other physically collocated CLPs using copper or optical facilities between collocated equipment located within the same ILEC premises, subject to the same reasonable safety requirements that the ILEC imposes on its own equipment.

Based upon the foregoing, the Commission concludes that Sections 1.3, 5.6, 5.6.1, and 5.6.2 of the CLP/Sprint revised Standard Offering need to be rewritten to be consistent with the findings of the Collocation Remand Order and final Rules therein, as discussed herein above. Essentially, the Standard Offering should be amended to reflect that an ILEC may, but is not required, to allow collocating CLPs to provision their own cross-connects. The Standard Offering should instead reflect that, at the request of a collocating CLP, the ILEC must provide cross-connects between equipment in the collocated space of two or more telecommunications carriers, unless the ILEC allows the CLP to provision its own cross-connects or the cross-connect is not required as established by Rule 51.323(h)(2).

In the revised filings of the Parties provided after the Collocation Remand Order was released, as noted previously, BellSouth and Sprint, the only parties presenting amended language, have provided differing language which they now propose to be included in the Standard Offering. Rather than choosing either BellSouth's proposal or Sprint's proposal or making modifications thereto, which might also need to include language on rates and/or provisioning intervals, the Commission believes that it would be more appropriate and efficient to require the Parties to negotiate mutually agreeable language for inclusion in the Standard Offering in this regard. Accordingly, the Commission concludes that Sections 1.3, 5.6, 5.6.1. and 5.6.2 should be rewritten in conformity with the Collocation Remand Order, recognizing that in said Order the FCC eliminated "its previous requirement that an incumbent carrier allow competitive carriers to construct and maintain cross-connects outside of their immediate physical collocation space at the incumbent's premises", found that "an incumbent carrier must provision cross-connects between collocated carriers", and required "an incumbent carrier to provide such cross-connects upon reasonable request."

The matter of the appropriate rates for cross-connects are subsequently addressed in Finding of Fact No. 47.

CONCLUSIONS

The Commission declines to accept either BellSouth's or Sprint's proposed language on this issue and instead requires the Parties to negotiate and develop mutually agreeable language for inclusion in the Standard Offering that is consistent with the findings of the FCC in its Collocation Remand Order. Generally, the Standard Offering should be amended to reflect that an ILEC may, but is not required, to allow collocating CLPs to provision their own cross-connects. The Standard Offering should instead reflect that, at the request of a collocating CLP, the ILEC must provide cross-connects between equipment in the collocated space of two or more telecommunications carriers, unless the ILEC allows the CLP to provision its own cross-connects or the cross-connect is not required as established by Rule 51.323(h)(2).

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 46

ISSUE 48: How many accompanied site visits should the ILEC be required to conduct?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue in its Brief.

AT&T: At least two site visits should be required of the ILEC at no cost. These should include an initial central office visit and a second visit at, or prior to, completion of a collocation site. Thereafter, routine inspections may be needed at reasonable intervals mutually agreed upon by the parties.

BELLSOUTH: BellSouth will permit one accompanied site visit free of charge after receipt of a bona fide firm order. BellSouth is not required to give escorted tours (except in the case where space has been denied because of space exhaust) and is not obligated to give a tour prior to the CLP sending BellSouth a bona fide firm order. However, if the CLP agrees to applicable security provisions, the CLP may visit the premises without escort after BellSouth receives the CLP's bona fide firm order.

MCIm: MCIm did not address this issue in its Brief.

NEW ENTRANTS: New Entrants took the same position as AT&T.

PUBLIC STAFF: The ILEC should provide each prospective collocator two escorted tours of the central office. These may be taken anytime after the ILEC receives the bona fide firm order and prior to the transfer of the completed collocation space to the CLP. CLP personnel who have met the ILEC's standard security requirements should be granted unescorted access to the area where the CLP's collocation space is being built. ILECs should not be required to provide central office tours prior to submission of a collocation

application, except in cases where the ILEC alleges that space for collocation is unavailable.

SPRINT: Sprint was willing to accept AT&T's position on this Issue to the extent it is consistent with the terms and conditions of the Standard Offering filed with the direct testimony of Sprint witness Hunsucker, it is included in the Standard Offering, and the Standard Offering is made applicable to all parties in its entirety.

VERIZON: Verizon will permit one visit during the provisioning period and a second visit when space is relinquished to the CLP.

WORLDCOM: WorldCom took the same position as AT&T.

DISCUSSION

Sections 6.1.5 and 6.3.2 of the Standard Offering specify the number and types of accompanied site visits that an ILEC is required to conduct. Section 6.1.5 provides that, prior to submitting an application for collocation space, "the prospective CLP may elect to arrange with the ILEC a full site visit to an ILEC Premises for the purpose of permitting the CLP to determine if the structure meets the potential CLP's business needs and if space is available in the structure for the potential CLP's physical collocation arrangement." Section 6.3.2 provides for "an accompanied site visit to the CLP's designated collocation arrangement location mid-way through the project and a final inspection once completed."

CLP witness Gillan testified that ILECs should be required to provide two site visits free of charge: an initial central office visit and a second visit during the preparation of the collocation site, or after completion. This testimony was at odds with Section 6.1.5 of the Standard Offering, which states that "[t]he CLP shall be billed as specified in Section 7" for the initial, or pre-application, visit, but consistent overall with the proposal in the Standard Offering for two accompanied site visits at no cost to the CLP.

BellSouth witness Milner testified that BellSouth would permit an accompanied site visit after receipt of a bona fide firm order, but argued that it was not required to give escorted tours prior to that time. He also stated that CLP personnel who met "applicable security provisions" could visit the premises without escort after receipt of the bona fide order.

Witness Milner contended that the preapplication visit would not be useful, because the CLP's exact collocation space requirements are still unknown prior to preparation of the application. He also asserted that it was unreasonable to require BellSouth to expend resources on CLPs "who might not be serious about purchasing a collocation arrangement."

Verizon witness Ries proposed that two accompanied site visits be allowed, one during the ILEC provisioning period and a second when the space was turned over to the CLP. He suggested that any additional visits would be unproductive and "unnecessarily disruptive." He also argued that the CLPs' proposed preapplication visits exceeded the FCC guidelines in the *Order on Reconsideration*, which he said contemplated access to the collocation arrangement "only after the application has been accepted and is moving towards completion."

The Public Staff argued that the ILEC should provide each prospective collocator two escorted tours of the central office. These may be taken anytime after the ILEC receives the bona fide firm order and prior to the transfer of the completed collocation space to the CLP. CLP personnel who have met the ILEC's standard security requirements should be granted unescorted access to the area where the CLP's collocation space is being built. ILECs should not be required to provide central office tours prior to submission of a collocation application, except in cases where the ILEC alleges that space for collocation is unavailable.

Paragraph 59 of the *Order on Reconsideration* specifies that "a requesting telecommunications carrier also must have reasonable access to its designated collocation space while the incumbent LEC prepares that space for collocation." The FCC noted that this access "will help the requesting carrier promptly identify any defects in the incumbent LEC's work and thus reduce collocation delays."

The Commission, therefore, concludes that the ILEC should provide each prospective collocator two escorted tours of the central office: first, after the ILEC receives the bona fide firm order, and then again at, or prior to, the transfer of the completed collocation space to the CLP. CLPs may use these tours to examine the collocation area, power and cabling arrangements, and demarcation point(s), and may also use the tours to familiarize themselves with central office features and functions which may be necessary to enable them to interconnect with the ILEC's network or to obtain access to UNEs. The Commission also concludes that CLP personnel who have met the security requirements, as discussed in Issue No. 59, should be granted unescorted access to the area where the CLP's collocation space is being built. The Commission does not find it appropriate to require ILECs to allow central office tours prior to submission of a collocation application except in cases where the ILEC alleges that space for collocation is unavailable.

Sections 6.1.5 and 6.3.2 of the Standard Offering should be amended to reflect these changes.

CONCLUSIONS

The Commission concludes that an ILEC should be required to conduct two accompanied site visits: one after the ILEC receives the bona fide firm order and a second

at, or prior to, the transfer of the completed collocation space to the CLP, and that Sections 6.1.5 and 6.3.2 of the Standard Offering should be amended accordingly.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 47

ISSUE 49: What are the appropriate rates and charges for collocation?

ISSUE 62: Should security charges be assessed for collocation in offices with existing card key systems and how should security costs be allocated in central offices where new card key systems are being installed?

ISSUE 68: What rates, terms, and conditions should govern the provision of DC power to collocation space? (This is related to the issue of how to calculate a rate for power - See Issue 49)

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue in its Brief.

AT&T: The statewide average monthly recurring rate for central office floor space should be $1.00 per square foot per month. The floor space rates for cageless racks, security charges, relay racks, and cabinets should be adjusted in accordance with the testimony of New Entrants witness Feldman and Exhibits LF-4, LF-5, and LF-6. ILECs should not charge an availability fee for collocation space. They may be able to, however, impose a fee for reasonable engineering costs that are incurred in connection with the construction of collocation space. The rates for the construction of cage enclosures should be those proposed by Sprint. The nonrecurring and monthly recurring rates for DC power should be adjusted based on the testimony of New Entrants witness Feldman and should be based upon amps used rather than amps fused. MCIm's proposed language with regard to this issue which is consistent with this recommendation should be incorporated into the interconnection agreement with BellSouth. The rates for cross-connects should be those proposed by the New Entrants. Cable installation should be made available at the rates proposed by the New Entrants in Exhibit LF-4.

BELLSOUTH: The rates proposed by BellSouth are appropriate.

MCIm: MCIm did not specifically address this issue in its Brief.

NEW ENTRANTS: The New Entrants filed a Joint Proposed Order with AT&T and WorldCom. Therefore, the position as outlined for AT&T above represents the New Entrants' position on this issue.

PUBLIC STAFF: The rates proposed by the ILECs, with the adjustments and changes recommended by the Public Staff, are the appropriate rates for collocation.

SPRINT: TELRIC floor space rates should be based upon the forward-looking cost to construct a building from the ground up. This would be determined by using a third-party construction estimator which assumes that the central offices are prepared for collocation by CLPs. Sprint proposed recovering floor space on a monthly recurring basis only and would not include further site preparation charges. Sprint believes that recovering both the cost of a newly constructed building and the cost of site preparation (the methodology BellSouth proposed) would allow for double recovery of building costs. Sprint also believes that security costs should be allocated on a per square foot basis with the cost of security being spread over the entire building, not just the collocation space allocated to the CLPs. Sprint's recommendation has been adopted by the Florida Commission.

VERIZON: Rates should be aligned with underlying costs, assessed to the cost-causer, and divided into nonrecurring and monthly recurring charges. Verizon's Expanded Interconnection Services Cost Study (EIS study) should be adopted.

WORLDCOM: WorldCom filed a Joint Proposed Order with AT&T and the New Entrants. Therefore, the position as outlined for AT&T above represents WorldCom's position on this issue.

DISCUSSION

Due to the complexity of this issue, it will be discussed in separate sections. **Section I** will be a general discussion of the issue of collocation rates. **Section II** will be a specific discussion detailing the following contentious rate issues:

Rate Issue No. 1 - Rate for Floor Space
Rate Issue No. 2 - Availability Fee / Application Fee for Collocation
Rate Issue No. 3 - Construction of Cage
Rate Issue No. 4 - DC Power
Rate Issue No. 5 - Rates for Cross-connects
Rate Issue No. 6 - Cable Installation
Rate Issue No. 7 - Security Costs
Rate Issue No. 8 - Augmenting
Rate Issue No. 9 - Adjacent Collocation
Rate Issue No. 10 - Premises Space Report

SECTION I - GENERAL DISCUSSION ON COLLOCATION RATES

The Commission notes that the following charts demonstrate that the ILECs **all presented various collocation rate elements** for recurring and nonrecurring charges and that a direct comparison of the ILECs' proposals is not possible.

The following chart summarizes the **recurring** collocation rates proposed by BellSouth in this proceeding:

Element	BellSouth
Central Office Modification	$2.42
Common Systems Modification - Cageless	$2.88
Common Systems Modification - Caged	$97.98
Space Enclosure - Welded Wire-mesh - per first 100 sq. ft.	$192.79
Space Enclosure - Welded Wire- per add'l 50 sq. ft.	$18.91
Floor Space - Per Sq. Ft.	$7.26
Cable Support Structure - Per entrance cable	$20.57
Power - 48V DC power	$8.50
Power - 120V AC power single phase	$5.50
Power - 240V AC power single phase	$11.01
Power - 120V AC power three phase	$16.51
Power - 277 AC power three phase	$38.12
Cross-connects - 2-wire	$0.31
Cross-connects - 4-wire	$0.62
Cross-connects - DS-1	$1.38
Cross-connects DS-3	$17.62
Cross-connects 2-fiber	$3.50
Cross-connects 4-fiber	$6.20
Security Access Security System	$41.03
New Access Card Activation	$.062
POT Bay 2-wire cross-connect	$0.11
POT Bay 4-wire cross-connect	$0.21
POT Bay DS1 cross-connect	$1.49
POT Bay DS3 cross-connect	$13.27

POT Bay 2 fiber cross-connect	$45.30
POT Bay 4 fiber cross-connect	$61.09

The following chart summarizes the **nonrecurring** collocation rates proposed by BellSouth in this proceeding:

Element	BellSouth
Application Fee	$3,741.00
Subsequent Application Fee	$3,119.00
Space Prep - Firm Order Processing (Project Mgmt.)	$1,196.00
Cable Installation	$1,701.00
Cross-connects - 2-wire First/Additional	$33.53/$31.65
Cross-connects - 4-wire	$33.67/$31.70
Cross-connects - DS-1	$52.87/$39.86
Cross-connects - DS-3	$51.97/$38.59
Cross-connects - 2-fiber	$51.97/$38.59
Cross-connects - 4-fiber	$64.53/$51.15
New Access Card Activation	$55.30
Administrative change, existing card	$15.51
Replace lost or stolen card	$45.34
Initial key	$26.06
Replace lost of stolen key	$26.06
Space Availability Report	$2,140.00
Security Escorts - Basic time Per half hr./Add'l half hr.	$33.68/$21.34
Security Escorts - Overtime	$43.87/$27.57
Security Escorts - Premium Time	$54.06/$33.80
Additional Engineering Fee - Basic time	$31.00/$22.00
Additional Engineering Fee - Overtime	$37.00/$26.00

The following chart summarizes the **recurring** collocation rates proposed by Carolina and Central in this proceeding:

Element	Carolina	Central
Floor Space (cost per square foot)	$5.94	$6.00
Floor Space (cost per equipment bay)	$58.22	$58.81
Power Cost - Per Fused Ampere	$15.25	$17.43
Power Cost - Connection to Power Plant 50 Amps	$87.45	$86.24
Power Costs - Connection to Power Plant 100 Amps	$162.61	$159.63
Power Costs - Connection to Power Plant 200 Amps	$310.05	$303.34
Monthly Cost per Outlet/Overhead Light	$33.95	$33.95
Grounding Charge per 100 SF Secured	$23.27	$25.25
Grounding Charge per Cageless or Virtual Eq. Bay	$2.91	$3.15
Cross-connect - DS0- Per 100 DS0	$29.46	$27.40
Cross-connect - DS1 - Per 28 DS1	$43.33	$39.85
Cross-connect - DS3 - Per DS3	$24.88	$22.79
Cross-connect - Optical - Per 4 fibers	$40.41	$37.62
Riser Space - Cost per Foot from Vault to Cage	$0.08	$0.08
Vault - Cost per Cable Access	$9.58	$9.58
Conduit Space - Cost per Foot From First Manhole to Vault	$0.09	$0.09
Internal Cabling	$83.33	$77.51
Virtual Coll - Maintenance per quarter hour	$11.39	$12.12

The following chart summarizes the **nonrecurring** collocation rates proposed by Carolina and Central in this proceeding:

Element	Carolina	Central
Application Fee	$3,793.08	$3,793.08
Augmentation Fee	$1,294.08	$1,294.08
Security Cage Construction - Engineering	$559.81	$559.81
Security Cage Construction - Construction	$25.37	$25.37
Power Costs - Connection to Power Plant 50 Amps	$3,624.53	$3,669.37
Power Costs - Connection to Power Plant 100 Amps	$6,474.63	$6,528.90
Power Costs - Connection to Power Plant 200 Amps	$11,992.69	$12,053.97
Cost per AC Outlet (per 20 Amps)	$883.15	$883.15
Cost for Overhead Lighting	$1,098.35	$1,098.35
Security Card - Per Card	$15.00	$15.00

The following chart summarizes the **recurring** collocation rates proposed by Verizon in this proceeding:

Element	Verizon
Floor Space	$2.02
Cable Space - Subduct Space - Manhole	$3.04
Cable Space - Subduct Space - Subduct	$0.03
DC Power Facility - Power Supply	$316.46
DC Power Facility - Fuses and Fuse Panels	$41.81
DC Power Facility - Power Cable Pull - Labor	$57.20
DC Power Utility	$87.22
Facility Termination - DSO Cable - Material	$2.35
Facility Termination - DS1 Cable - Material	$9.67
Facility Termination - DS3 Cable - Material	$6.80
Building Modification - Storage Security	$47.81

Building Modification - Security Access - Card Reader	$80.76
Building Modification - Security Access - Controller	$34.14
Site Modifications - Demolition and Site Work	$13.45
Site Modifications - Dust Partition	$20.48
HVAC Minor	$17.13
Environmental Conditioning	$61.30
Electrical - Lighting	$9.28
Electrical - Electrical Outlet	$8.35
Electrical - Floor Grounding Bar	$39.06
Fiber Cable - 48 Fiber - Material	$5.48
Fiber Cable - 48 Fiber - Utilization Factor	$0.55
Fiber Cable - 96 Fiber - Material	$15.65
Fiber Cable - 96 Fiber - Utilization Factor	$0.55
Cable Rack - Metallic DS0 - Utilization Factor	$0.0094
Cable Rack - Metallic DS1 - Utilization Factor	$0.0058
Cable Rack - Fiber Cable - Utilization Factor	$0.0131
Cable Rack - Coaxial Cable - Utilization Factor	$0.0019

The following chart summarizes the **nonrecurring** collocation rates proposed by Verizon in this proceeding:

Element	Verizon
Engineering - New Collocation Site	$1,267.64
Engineering - Existing Collocation Site	$1,071.73
Engineering - Augment/Change Current Svc Arrangements	$199.42
Building Modification - Access Card - New/Replacement	$19.56
Building Modification - Access Card - Change	$2.68
Electrical - Cage Grounding Bar	$1,387.08
Overhead Superstructure - Engineering Costs	$33.82

Overhead Superstructure - Installation	$13.31
Overhead Superstructure - Travel Time	$44.37
Overhead Superstructure - Materials - Racking	$20.59
Cage Fencing - 100 and over square feet floor space	$7.66
Cage Fencing - 75-99 square feet floor space	$8.17
Cage Fencing - 50-74 square feet floor space	$9.02
Cage Fencing - 25-49 square feet floor space	$10.93
Cage Gate	$471.53
DC Power Facility - Termination	$66.56
DC Power Facility - Power Cable Pull - Labor	$11.09
DC Power Facility - Engineering Costs	$33.82
DC Power Facility - Travel Time	$44.37
Fiber Cable Pull - Engineering Costs	$606.30
Fiber Cable Pull - Place Innerduct	$2.27
Fiber Cable Pull - Pull Cable	$0.93
Fiber Cable Pull - Cable Fire Retardant	$44.37
Fiber - Engineering Costs	$30.32
Fiber - Splicing (48 fiber cable or less)	$49.33
Fiber - Splicing (greater than 48 fiber cable)	$41.54
Facility Pull - Engineering Costs	$33.82
Per DSO Cable - Per Foot Pull Labor	$1.11
Per DSO Cable - Per Termination (C)	$4.44
Per DSO Cable - Travel Time	$44.37
Per DS1 Cable - Per Foot Pull Labor	$1.11
Per DS1 Cable - Per Termination (C)	$1.11
Per DS1 Cable - Travel Time	$44.37
Per DS3 Cable - Per Foot Pull Labor	$1.11

Per DS3 Cable - Per Termination (C)	$1.11
Per DSO Cable - Per Termination (UC)	$11.09
Per DS3 Cable - Travel Time	$44.37
Per Fiber Cable - Per Foot Pull (Labor)	$1.11
Per Fiber Cable - Travel Time	$44.37

BellSouth stated in its Proposed Order that it used the cost methodology previously approved by the Commission in Docket No. P-100, Sub 133d (the UNE cost docket). BellSouth maintained that its proposed rates are TELRIC-based and were developed using a forward-looking network configuration, a forward-looking cost of capital, economic depreciation rates, and a reasonable allocation of forward-looking common costs. BellSouth argued that its forward-looking economic costs do not include embedded costs, retail costs, opportunity costs, or revenues to subsidize other services.

BellSouth clarified that it filed cost support for both physical and virtual collocation elements. BellSouth noted that physical collocation allows the CLP to install CLP-owned equipment and facilities within leased space in BellSouth's premises. BellSouth explained that virtual collocation permits the CLP to install equipment within BellSouth's existing line-up, and BellSouth does not own the equipment. However, BellSouth noted, it will maintain the equipment at the CLP's request, pursuant to the rates and charges in Section 20 of Tariff FCC No. 1. BellSouth noted that by Order dated October 26, 2000, the Commission ordered the Collocation Task Force to reconvene after the filing of briefs and proposed orders to consider virtual collocation and remote site collocation. [**COMMISSION NOTE**: By letter filed April 27, 2001, the New Entrants stated that they prefer to leave the issues of remote site physical collocation and virtual collocation to individual company negotiations and prefer not to pursue Task Force negotiations or a hearing on these issues.] Therefore, BellSouth pointed out, the Commission will only be setting rates for **physical collocation** in this pending proceeding.

BellSouth further argued that based on a review of CLP witness Feldman's rebuttal testimony and his Exhibit LF-3, it appears that witness Feldman believes that the only way to obtain a consistent set of collocation rate elements in North Carolina is to introduce yet more rate elements and another rate structure from Texas. BellSouth contended that the most reasonable approach would be to work with rate structures that currently exist in North Carolina today and build on them.

BellSouth noted that while the Parties addressed many issues and concerns regarding collocation over several months, a proposal to include all of the rate elements and the rate structure from the Texas tariff was never made by any Party. BellSouth argued that at a minimum, the CLPs should have informed the ILECs several months ago

that they had a concern with the rate structure and would propose the Texas tariff structure through prefiled testimony.

BellSouth further maintained that even if the Commission considered the Texas rate structures, the Texas collocation tariff has rate elements that do not exist in any of the ILECs' cost proposals in North Carolina. BellSouth noted that witness Feldman confirmed this in his prefiled testimony and on cross-examination. BellSouth also quoted a portion of the transcript where witness Feldman agreed that the rates from the Texas tariff were not modified in any way to reflect circumstances in North Carolina.

BellSouth argued that another problem with using the Texas tariff is that it includes items (such as timing source arrangement and adjacent off-site collocation) that are not offered in North Carolina by BellSouth and that are not required collocation offerings.

BellSouth noted that the final problem with adopting witness Feldman's proposed rate structure is that it will require the Parties to once again agree on what is required under the various rate elements included in the Texas tariff, and BellSouth will have to revamp its billing, service order process, and other internal processes just to be able to implement a Texas rate structure.

BellSouth contended that witness Feldman's Exhibit LF-6.0 which compares BellSouth's proposed rates with the New Entrants' proposed corrected rates included errors that misstated the costs that BellSouth filed. BellSouth maintained that the value witness Feldman included for Application Fee Augment ($1,920.31) is not contained in BellSouth's cost study and the correct value for this element (Subsequent Application Fee) is $3,119. BellSouth also stated that the value witness Feldman placed under Project Management Initial, $1,196, is actually the Firm Order Processing Fee associated with Space Preparation. BellSouth finally noted that witness Feldman included a nonrecurring charge of $5,817.60 for Redundant Connection to Power Plan 40 Amps Leads. BellSouth maintained that its study does not include this element, and it is difficult for BellSouth to determine how witness Feldman arrived at this value.

BellSouth asserted that witness Feldman's accusation that BellSouth used embedded investments in its cost study is incorrect and that booked amounts were used in some cases to develop relationships between investments but that, however, they were not used as direct investment input into the study.

BellSouth recommended that the Commission conclude that BellSouth's collocation cost study complies with the TELRIC methodology adopted by the Commission in the generic cost docket and has produced rates that are forward-looking in compliance with TA96.

BellSouth argued in its Brief that what the CLPs have done with their so-called "compromise" offering is to take a Texas collocation tariff (including, incredibly, even rates that are Texas-specific) and attempt to force it down the throats of North Carolina

regulators and ILECs, all the while taking offense to any suggestion that their offering might be inappropriate for use in North Carolina. BellSouth also maintained that of all the North Carolina ILECs, BellSouth's central office space is in the greatest demand because BellSouth serves the larger, more urban areas of North Carolina where competition has emerged and is growing at a rapid rate. BellSouth stated that while the CLPs crowed that their standard offering must be "ILEC friendly" because Sprint had few objections to it, the truth is that Sprint's collocation activity in its predominately rural service territory is a gnat in comparison with collocation requests BellSouth receives in its urban central offices.

BellSouth also noted that not only do CLPs want collocation provisioning completed at an unrealistic pace, but they want the collocation process completed for a fraction of the ILECs' TELRIC costs. BellSouth argued that to "analyze and correct" the ILECs' collocation cost studies, the CLPs offered the testimony of one witness, witness Feldman (1) who has never performed a TELRIC cost study for an ILEC; (2) who has never worked in any capacity in an ILEC's cost organization; (3) who has an undergraduate degree in economics and a law degree but has no degree in engineering and does not consider himself an economist; (4) whose stated working experience to date consists of working for a consulting firm; as a staffer for the Texas Public Service Commission; and as president of a small CLEC in Texas; (5) who recommends that collocation rates in Texas be approved for use in North Carolina, even though no North Carolina ILEC offers those rate elements, and also recommends that Texas rates be used for those elements; (6) who admittedly performed no cost study to support the rates he proposed in this proceeding; and (7) whose own analysis was riddled with errors.

BellSouth asserted that the CLPs tried mightily to create confusion and doubt where there is none with respect to BellSouth's TELRIC-compliant collocation cost study. BellSouth argued that in considering the CLPs' attacks on BellSouth's collocation cost study, the Commission should keep in mind the following undisputed points:

(1) BellSouth used the same cost methodology previously approved by the Commission in its generic cost proceeding that established permanent rates for a number of UNEs;
(2) BellSouth included the same Commission-ordered adjustments for the cost of capital, depreciation rates, and tax factors in its collocation cost study;
(3) Many of the CLPs' proposed changes include errors; and
(4) Clearly more weight should be given to the testimony of an ILEC witness, such as BellSouth witness Caldwell, who oversaw and sponsored the cost study, than to a witness who "analyzed" and "corrected" those studies after the fact in a manner that ignored prior Commission orders and that included numerous errors.

BellSouth witness Hendrix maintained in his cost issue rebuttal testimony that it would seem that the reasonable approach would be to work with what currently exists in North Carolina today and build on it. Witness Hendrix stated that while there may be some

positives to be gained by reviewing other states and region rates and rate structures, a wholesale change is both drastic and inappropriate.

Witness Hendrix also noted that while the Parties addressed many concerns and issues during the time the Task Force was actively negotiating, a proposal to include all the rate elements and the rate structure from the Texas tariff was never made. Witness Hendrix maintained that it is inconceivable that such a significant proposal would be made at this the eleventh hour and that during the entire negotiation sessions, the CLPs would not discuss the issue of rates or the issue of rate structures. Witness Hendrix noted that the language in Section 7, Rates and Charges, of the Collocation Task Force Final Report simply states that "Discussions Concerning Rates and Charges are Deferred Until Agreement on Terms." Witness Hendrix asserted that the CLPs should have at a minimum informed BellSouth several months ago that they had a concern with the rate structure and would propose the Texas tariff structure.

BellSouth witness Caldwell stated in rebuttal testimony that witness Feldman proposed a rate structure that is incompatible with BellSouth's cost study.

The New Entrants maintained in their Brief that the ILECs' proposed rates are grossly overstated and frequently double count costs. The New Entrants argued that the ILECs' overstatement of rates was demonstrated at the hearing by specific evidence concerning four proposed rates: (1) application fees; (2) central office floor space; (3) cage construction; and (4) power rates.

The New Entrants recommended that the Commission adopt their proposed collocation rates which were attached as Exhibit C to the New Entrants' Brief. The New Entrants urged the Commission to not split the difference between the rates proposed by the New Entrants and the ILECs because splitting the difference between reasonable rates and highly inflated rates would result in rates that are still too high. The New Entrants also noted that to the extent the permanent collocation rates are less than the interim collocation rates, the Commission should require its customary true-up to the approved rates.

New Entrants witness Feldman stated in rebuttal testimony that the ILECs' proposed cost studies fail to define the rate elements for which charges are proposed. Witness Feldman maintained that without a common understanding of what is included in collocation terms and conditions, Parties cannot formulate meaningful rates. Witness Feldman noted that in order to correct this problem and create consistency, he used the rate elements from the Texas collocation tariff to provide a consistent set of materials and services which are to be offered to CLPs. He maintained that while he used the Texas definitions to create a consistent set of rate elements, the rates themselves were recalculated using the ILECs' models and the proposed rates are company specific and do reflect the specific operations of each ILEC.

During cross-examination, witness Feldman explained that sometimes Sprint filed rates that were not filed by Verizon and rates filed by Verizon that were not filed by BellSouth. He noted that his proposal tries to harmonize and create a standard menu offering.

Further on cross-examination, witness Feldman stated that depending on the type of cost, costs tend to vary from state to state. Witness Feldman stated that labor rates, floor space, and real estate can vary from state to state. He argued that other costs such as power supplies and large material costs like generators and battery plans do not vary much from state to state.

Witness Feldman explained on cross-examination that he corrected the ILECs' cost studies wherever he could and where there was not a rate proposed, he could not offer any corrections. He noted that he pulled from North Carolina studies where he could and corrected North Carolina studies where he could. He maintained that where he could not pull from other studies, he looked to the Texas study. He further agreed that in some places he simply used the rate in the Texas tariff and in other places he used the basis of the Texas tariff but developed a different rate. He answered that in some instances the Texas rates were higher because "they incorporated some of the same mistakes that you incorporated in your cost studies."

The Public Staff maintained in its Proposed Order that there was considerable testimony regarding the appropriate rate elements that the ILECs should include in their collocation cost studies. The Public Staff stated that while it was unable to identify any issues between the Parties regarding the terms and conditions governing the provision of DC power, several issues arose regarding the proper rates. Specifically, the Public Staff noted, much testimony dealt with whether DC power costs should be recovered on a per fused or per used basis. In addition, the Public Staff commented, CLP witness Feldman proposed to segregate the ILECs' application fees into two separate fees, one for submitting the application and another for managing the collocation request once a firm order has been placed.

The Public Staff noted that there were also arguments raised that CLPs would be charged incorrectly if the ILECs' proposed rate elements were adopted.

The Public Staff recommended that the Commission require the ILECs to modify their cost studies and proposed rates to reflect the Public Staff's recommended conclusions for each individual ILEC as discussed below.

BellSouth - The Public Staff noted that there are considerable differences in some of the proposed rates between the original BellSouth collocation cost study filed in Docket No. P-100, Sub 133d in September 1999 and the study filed in September 2000 in this docket. The Public Staff noted the following differences:

Cost Element	September 1999 Study	September 2000 Study
Physical Collocation -		
Application Cost Initial	$7,008.00	$3,741.00
Floor Space per sq. ft.	$3.45	$7.26
Power per Amp	$6.65	$8.50

The Public Staff commented that these wide differences in cost study results over only a period of one year raise questions as to the assumptions and amounts used in the studies. The Public Staff recognized that some differences simply reflect the fact that BellSouth has had more time to develop its study in this docket and to refine its original study. However, the Public Staff alleged that there are still areas in which the costs appear to be overstated and excessive. The Public Staff stated that the rate for the power per amp in the September 2000 study reflects fused amps, while the September 1999 study reflected used amps.

The Public Staff specifically stated that the hours reflected for the Account Team Collocation Coordinator, Interexchange Network Access Coordinator, Circuit Capacity Management, and Common Systems Capacity Management should be reduced by half. Also, the Public Staff stated that the nonrecurring additive for Corporate Real Estate and Support should be eliminated from the cost study. The Public Staff argued that BellSouth has not provided support for this cost item. The Public Staff opined that these revised amounts more appropriately reflect the ongoing costs that BellSouth will incur in processing initial collocation applications in a TELRIC environment. The Public Staff commented that these same types of costs are also included, to some extent, in the application charges for virtual collocation, adjacent collocation, and physical collocation in the remote terminal. The Public Staff recommended that the Commission require BellSouth to make comparable adjustments to these rate elements as well.

Verizon - The Public Staff noted that unlike BellSouth, Verizon did not have great variations between the cost calculations included in its September 1999 and September 2000 cost studies and that in many instances, there was no difference in the costs calculation in the two studies.

The Public Staff commented, however, that CLP witness Feldman testified that many of Verizon's costs were overstated or inaccurate.

Sprint - The Public Staff noted that as with BellSouth, there are considerable differences between Sprint's September 1999 and September 2000 cost studies that give reason to question the accuracy of the costs. The Public Staff outlined the following differences in Carolina's cost studies:

Cost Element	September 1999 Study	September 2000 Study
Physical Collocation -		
Application Cost Initial	$3,132.93	$3,793.08
Floor Space per sq. ft.	$2.16	$5.94
Power per Amp	$27.63	$15.25

The Public Staff commented that the wide differences in cost study results over a period of only one year raise questions as to the assumptions and amounts used in the studies. The Public Staff opined that certainly some of the difference is due to Sprint having more time to study and develop the costs supporting its proposed rates, but that it is also concerned that some of Sprint's costs are overstated.

Finally, the Public Staff noted that while its discussion was limited to Sprint's collocation rate elements for its Carolina subsidiary, the Commission should direct Sprint to make comparable adjustments to the study produced for its Central subsidiary.

Sprint stated in its Brief that Section 7 of the Standard Offering was left incomplete. Sprint maintained that this was necessary because the rates and charges for each ILEC will be unique and, therefore, could not be included in the Standard Offering applicable to all Parties, but lack of closure on this issue was also symbolic of its significance.

Sprint noted that the Parties are required to use a TELRIC analysis to determine rates and that neither the ILECs nor the CLPs are at liberty to use TELRIC when it suits them and some other method when it does not, and efforts by the New Entrants to use what purported to be a "market" analysis were simply inappropriate.

Sprint maintained that the two biggest costs for a CLP entering a central office for collocation are DC power and floor space. Sprint noted that as its study demonstrated, these two costs alone constitute approximately 50% to 60% of total collocation costs.

Sprint argued that its cost study should be accepted without modification. Sprint noted that while it is critical that the cost methodology used be a correct one, it is equally critical that the methodologies used by the various ILECs be consistent.

Verizon stated in its Brief that the Verizon Expanded Interconnection Services Cost Study (Verizon Collocation Cost Study or EIS Study) determines the actual costs Verizon will incur going forward to provide collocation in North Carolina and comports with the TELRIC approach reflected in the FCC's pricing rules. Verizon argued that its Collocation Cost Study is the only study in the record defining Verizon's collocation costs. Verizon noted that many of its proposed rates were not contested or were even endorsed by other Parties so approval of these costs is the only approach consistent with reasoned

decisionmaking. Verizon maintained that as to the study elements that were contested, no party provided any reliable or legitimate cost proposals as an alternative to Verizon's Collocation Cost Study. Therefore, Verizon proposed that those costs should also be accepted by the Commission.

Verizon explained that collocation costs are divided into two groups in its Collocation Cost Study: those that will be recovered through nonrecurring charges and those that will be recovered through monthly recurring charges. Verizon noted that to provide collocation, it may perform the following nonrecurring charge activities to incur associated costs: engineering, building modification, DC power facility, fiber cable pull, metallic cable pull, cable fire retardant, cable splice, facility pull, relay rack, telecommunications equipment cabinet, building integrated timing supply (BITS), premises space report, fiber optic cross-connect, and cable material. Verizon noted that nonrecurring charges do not include a mark-up by Verizon and are developed based directly on the cost per unit. Verizon maintained that through exploratory field visits to central offices, meetings with employees at regional headquarters, and consultation with subject matter experts, Verizon has identified the following costs which can be recovered through recurring charges: floor space, floor space for relay racks and cabinets, cable space, DC power facility, DC power utility, facility termination, building modification, cable vault splice, cable vault utilization, cable rack utilization, fiber optic cross-connect, and BITS.

Verizon noted that in an effort to address the CLPs' stated primary concern, the unpredictability of the cost of a collocation arrangement, Verizon's pricing structure charges CLPs the same rates for all central offices in North Carolina and the same rates for each application, regardless of whether the arrangement is placed in active/conditioned or inactive/unconditioned space.

Verizon maintained that its collocation prices were developed through several steps as follows:

(1) each cost element was mapped into an associated rate element;
(2) the number of units and their frequency were developed and applied to the costs to reflect the average usage for selected rate elements; and
(3) a fill factor was developed and applied to the costs to reflect the average number of collocators expected to share certain building modification rate elements.

Verizon noted that consistent with its overall pricing policy, costs recovered through monthly recurring charges include a mark-up of 14% to provide recovery for common costs. Verizon maintained that this is a straightforward application of the TELRIC methodology with appropriate mark-ups for common costs that have already been established by the Commission for the pricing of other UNEs such as the loop, ports, and switching.

Verizon explained that the costs associated with the central office are premised upon collocation occurring in Verizon's existing North Carolina central offices. Verizon noted that since its central offices originally were not designed to provide collocation, the cost study identifies costs associated with building modifications such as demolition, security systems, and environmental conditioning, as well as costs associated with provisioning collocation to each new entrant.

Verizon argued that the position of the New Entrants that TELRIC estimates should be based upon a hypothetical central office design incorporating collocation requirements of CLPs results in unrealistic cost estimates that are unobtainable by any party. Verizon maintained that its cost modeling decision to modify its central offices to accommodate collocation is the least cost alternative available to provide collocation space to the CLPs.

Verizon also argued that all costs associated with modifying a central office to accommodate a collocator should be borne by the collocators, as the FCC has confirmed in Paragraphs 50-51 of the FCC Advanced Services Order. Verizon argued that New Entrants witness Feldman's arbitrary 56% reductions in costs do not reflect the costs of a Verizon central office in today's dollars. Verizon maintained that witness Feldman's analysis falls far short of a cost study upon which the Commission can rely.

Verizon contended that the following building cost elements would be recovered on a nonrecurring basis:

(1) Access card administration;
(2) Cage grounding bar;
(3) Overhead superstructure;
(4) Cage enclosure; and
(5) Cage gate.

Verizon also noted that the following building modification costs would be recovered on a recurring charge basis:

(1) Storage security;
(2) Card reader;
(3) Demolition and site work;
(4) Dust partition;
(5) HVAC-minor;
(6) Environmental conditioning; and
(7) Electrical.

Verizon noted that various Parties took exception to the following building modification costs: storage security; access card administration; demolition and site work; dust partition; HVAC-minor; and electrical.

In its Proposed Order, Verizon stated that its cost studies and proposed rates comply with the FCC's TELRIC pricing rules, a number of which have been vacated by the Eighth Circuit. Verizon stated that it will nevertheless continue to support its FCC-compliant studies in this proceeding but reserves the right to petition for rate changes later when the issue of appropriate cost methodology is settled at the federal level.

SECTION 1 - COMMISSION DISCUSSION AND CONCLUSIONS:

Generally, the Commission notes that the Collocation Task Force **did not attempt** to negotiate collocation rates. The Task Force did not address the issue and proposals were first presented in prefiled testimony. The Commission notes that much of the evidence on the record concerning collocation rates is confusing and inadequate. The Commission notes that the record basically consists of the ILECs' cost studies and the New Entrants' proposal. The New Entrants' proposal consists of witness Feldman's proposal wherein he corrected the ILECs' cost studies wherever he could and where there was not a rate proposed, he could not offer any corrections. Witness Feldman also pulled from North Carolina studies where he could and corrected North Carolina studies where he could. Where he could not pull from other studies, he looked to the Texas study. Witness Feldman also in some places simply used the rate in the Texas tariff and in other places he used the basis of the Texas tariff but developed a different rate.

The Commission believes that there are two general issues to discuss. The first concerns the CLPs' proposal to adopt the Texas collocation tariff rates in this proceeding. The second issue concerns the differences noted between the ILECs' September 1999 and September 2000 cost studies.

Texas Collocation Tariff Rates - The Commission believes based on a review of the evidence that it is not appropriate to simply use the Texas Collocation Tariff Rates. The Commission agrees with BellSouth witness Hendrix that the reasonable approach would be to work with what currently exists in North Carolina today and build on those cost studies. The Commission also believes as witness Hendrix noted that while there may be some positives to be gained by reviewing other states' and regions' rates and rate structures, a wholesale change would be both drastic and inappropriate.

COMMISSION CONCLUSION: The Commission concludes that as a policy, it is more appropriate to begin with the cost studies filed by the ILECs in this proceeding instead of looking toward the Texas Collocation Tariff rates as a starting point in establishing collocation rates.

Cost Study Variances - The Commission notes that the Public Staff pointed out the significant variances in the rates proposed by the ILECs in their September 1999 cost studies versus their September 2000 cost studies. As the Public Staff illustrated, BellSouth approximately doubled its floor space charge and reduced by half its application fee. For Sprint, Sprint approximately doubled its floor space charge and reduced by half

its power charge. The Commission does not reach a conclusion here on this point, only notes the significant changes in the proposed charges between the 1999 and 2000 cost studies.

SECTION II - DISCUSSION ON SPECIFIC AREAS OF CONTENTION ON COLLOCATION RATES

Rate Issue No. 1 - Rate for Floor Space

BellSouth addressed the adjustments CLP witness Feldman and others attempted to make to BellSouth's floor space costs. BellSouth noted that both witnesses Feldman and Mitus proposed the use of the RS Means cost estimator to derive a cost per square foot for floor space. BellSouth recognized that its witness Caldwell testified that the use of actual costs for actual telephone company building additions are more reflective of the costs that BellSouth will incur in providing additional floor space to the CLPs on a going forward basis. BellSouth also maintained that witness Caldwell testified that floor space cost recently experienced is reflective of future expenditures. BellSouth recommended that the Commission agree with witness Caldwell on these points. BellSouth noted that the document upon which both witnesses Feldman and Mitus rely on has the term "Estimator" in its title and that the 1997 version of the RS Means publication had the following disclaimer: "caution should be exercised when using Division 17 [square foot and cubic foot] costs." BellSouth argued that this caution is just as valid today as it was then.

BellSouth also noted that New Entrants witness Birch testified to the appropriate rates for any ILEC central office floor space based on his opinion that BellSouth central office space constitutes "Class B" office space in the Raleigh, North Carolina real estate market. BellSouth contended that on cross-examination, witness Birch conceded to the following points: (1) he is not familiar with TELRIC pricing and would not know if his highest and best use analysis was appropriate under TELRIC pricing; (2) he did not consider whether the two central offices he visited had been adapted or constructed in a special way that would affect their rental rate; (3) that Class B office space in Raleigh typically did not share the characteristics of a telephone central office vis-a-vis reinforced floors, 12 foot ceilings, and generators to supply continuous power; (4) his analysis really only considered the value of the building if used as office space rather than as a telephone central office; (5) Class B office space in Raleigh typically is not available in increments as small as nine square feet as is central office space; (6) market rates for Class B office space vary from city to city but he only visited two central offices in Raleigh; (7) he did not know the statewide average for Class B office space in North Carolina; and (8) his analysis would not say anything about the market rate for office space in other cities where BellSouth and other ILECs have central offices.

BellSouth recommended that the Commission reject the proposed adjustments to BellSouth's floor space charge that were advocated by witness Birch. BellSouth argued that the standard cost methodology established by the FCC and adopted by the

Commission is TELRIC and witness Birch's reliance on "market-based" pricing is in direct violation of that standard. BellSouth argued that even if a "market-based" approach were appropriate, and even if Class B office space were the appropriate surrogate for the Commission to use, witness Birch's floor space calculation, which would apply to all ILECs in North Carolina, is deficient because it is not based on a statewide calculation of Class B office space. BellSouth maintained that it used the costs for actual telephone company building additions in North Carolina to calculate floor space costs to use for collocation purposes.

Witness Caldwell maintained in rebuttal testimony that witness Birch's proposed rates for floor space based on market rates is not appropriate. Witness Caldwell noted that the standard cost methodology established by the FCC and adopted by the Commission is the TELRIC methodology. Witness Caldwell asserted that witness Birch's reliance on market-based pricing is in direct violation of the TELRIC standard.

On cross-examination, witness Caldwell agreed that BellSouth's proposed $7.26 per square foot proposed price is three times higher than Verizon's proposed cost of $2.30 per square foot. Witness Caldwell explained that BellSouth looked at the cost BellSouth will incur for the floor space on a going-forward basis to arrive at its proposed rate. However, witness Caldwell did state that central offices are similar.

In discussing TELRIC versus market prices, witness Caldwell stated that she did not agree that there is some correlation between what someone is offering at the market rate versus what a TELRIC rate is because if the TELRIC rate is higher, one would just go to the market vendor. The Commission believes that this comment is misleading. The Commission notes that ILECs are the only entities in possession of central offices which are necessary for CLPs to collocate equipment in to be able to interconnect to the ILEC's network. Therefore, the Commission believes that it is worth noting that ILECs are the sole provider of central office space and CLPs do not have the freedom to find a market vendor to provide access to such collocation space.

Witness Caldwell agreed that the cost input into BellSouth's study per square foot is $363.36 and that the cost is based on building additions, not existing floor space. Witness Caldwell maintained that it is from building additions because these are new services that BellSouth is actually offering as UNEs in terms of providing space to collocators. She explained that BellSouth looked at what it would cost BellSouth to provide the space on a going-forward basis.

The CLPs included a proposed Finding of Fact No. 3 — The statewide average monthly recurring rate for central office floor space should be $1.00 per square foot per month — in their Joint Proposed Order.

The CLPs also included a proposed Finding of Fact No. 4 — The floor space rates for cageless racks, security charges, relay racks, and cabinets should be adjusted in

accordance with the testimony of New Entrants witness Feldman and Exhibits LF-4, LF-5, and LF-6 — in their Joint Proposed Order.

The CLPs stated in their Joint Proposed Order that the rates proposed by the ILECs (particularly BellSouth and Sprint) for collocation space occupancy are dramatically in excess of the cost that would be incurred by an efficient provider of such space. The CLPs maintained that this is underscored by the fact that rational investors are constructing similar space today in the Raleigh market in the expectation of earning a profit at rents far less than those proposed by the ILECs. The CLPs commented that given that the market rents for such space are approximately $1.00 per square foot per month, this is a reasonable price to charge for collocation space.

The CLPs also asserted that the $1.00 market rate is confirmed by the cost analysis of New Entrants witness Feldman who corrected the cost studies of each of the ILECs. The CLPs listed the following errors that were identified by witness Feldman of the ILECs' proposed rates for floor space:

(1) Sprint used the RS Means Building Cost Data Publication, rather than the RS Means Square Foot Cost Publication, which RS Means itself states is more precise "for estimating the replacement cost of specific buildings." This error resulted in Sprint's double counting of the investment associated with power.

(2) Sprint inaccurately calculated floor space.

(3) Sprint's use of a fill factor results in double recovery of a common space factor.

(4) All three ILECs used an inappropriately high annual charge factor (ACF). Based on the testimony of witness Birch that a market cap rate of .10 is prevalent for this type of space, witness Feldman used an ACF of .10.

(5) Verizon used its historical cost data, indexed, while BellSouth inadequately supported and used unindexed historical data. For both Verizon and BellSouth, witness Feldman replaced that data with the amount he derived from the RS Means Square Foot Cost Publication.

The CLPs noted that when the cost studies were corrected for the errors identified by witness Feldman, the resulting rates, per square foot per month were:

Sprint	$0.88
Verizon	$1.01
BellSouth	$1.04

The CLPs also commented that witness Feldman observed that Verizon's floor space study did not conform to the requirements of TELRIC in that Verizon (1) ignored its own demand for central office space, power, cabling and the like, thus failing to consider the total element aspect of TELRIC, and (2) calculated floor space costs predicated upon the assumption that existing offices would be modified to accommodate collocators, rather than that offices would be built with collocation in mind in the first place, as required by the long run aspect of TELRIC.

The CLPs also argued that the ILECs lease central office space themselves from third parties for $0.20 to $0.80 per square foot per month. The CLPs maintained that the ILECs attempt to impeach their own discovery responses by contending that one or more of these leases are for switching equipment rather than central office space. The CLPs argued that the ILECs failed, however, to present witnesses who were competent to testify on this subject. The CLPs maintained that for the size of at least two of the leases, it is readily apparent that the space involved actually is for central offices. Therefore, the CLPs contended, this confirms the reasonableness of the $1.00 per square foot per month figure advocated by the New Entrants.

The CLPs also noted that when the ILECs' own cost studies are corrected for methodological errors identified by witness Feldman, who relied upon witness Birch for his ACF rate, but otherwise followed the RS Means guide, all three ILEC models produce costs close to $1.00 per square foot per month.

The CLPs also asserted that the ILECs, particularly BellSouth and Verizon, failed to adhere to the requirements of TELRIC. The CLPs stated that BellSouth examined the costs of an addition to a central office, rather than the cost of building a new central office suitable for collocation. The CLPs also noted that Verizon based its cost study on the cost of building the original structure, plus the cost of modifying it for collocation. The CLPs maintained that neither of these approaches complies with the costing methodology dictated by the FCC in Paragraph 685 of the First Interconnection Order which requires the assumption that a new building suitable for multiple tenants will be built from the ground up, in the location of the old central office.

The CLPs noted that the Michigan Public Service Commission was recently faced with this same issue and ruled, as follows:

> The Commission concludes that it should not adopt Ameritech Michigan's model, which assumes that the cost of the existing central office building plus the cost of modifications are a proper basis for determining the forward-looking cost of central office space. Contrary to Ameritech Michigan's argument, TSLRIC [which is indistinguishable for these purposes from TELRIC] principles require the assumption that the location of the buildings remains unchanged, but does not require the

> assumption that the existing buildings with their current configuration will be used.

The CLPs recommended that the Commission agree with the Michigan Commission that the approach, used in this docket by BellSouth and Verizon, in which the ILEC starts with the cost of the building as it exists today, then adds the cost of improvements to accommodate collocation, is not TELRIC-compliant, at least as the law stands today. The CLPs stated that should the Eighth Circuit's decision in the Iowa Utilities Board v. FCC, which is now stayed pending appeal, become effective, the Commission may wish to revisit the issue. The CLPs also recommended that the Commission agree with them that Verizon's decision to ignore its own needs for central office space when it calculates TELRIC cost violates TELRIC principles in that it disregards a major component of demand for central office space — the ILEC's own demand. The CLPs pointed out that FCC Rule 51.511(a) states:

> The forward-looking economic cost per unit of an element equals the forward-looking economic cost of the element, as defined in §51.505, divided by a reasonable projection of the sum of the total number of units of the element that the incumbent LEC is likely to provide to requesting telecommunications carriers and the total number of units of the element that the incumbent LEC is likely to use in offering its own services, during a reasonable measuring period.

The CLPs also addressed the criticisms the ILECs made concerning the testimony of witness Birch. The CLPs noted that while the ILECs suggested that central office space had to meet more stringent floor loading and HVAC requirements, witness Birch, however, testified that the equipment he viewed in BellSouth's central offices did not impose atypical floor loadings or HVAC requirements. The CLPs maintained that if offices were built many years ago to more exacting specifications required by that day's heavier equipment, such additional costs are a classic example of embedded costs which have no place in TELRIC cost analysis per FCC Rule 51.505(d)(1).

The CLPs also addressed the ILECs attempt to impeach witness Birch's testimony by reference to the fact that he did not examine market rents in parts of the State other than Raleigh. The CLPs noted, however, that as witness Birch observed, rents tend to be higher in larger cities than in smaller towns and that there is no basis in the record for the Commission to assume that costs in smaller towns would be higher than in Raleigh.

The CLPs maintained that the ILECs also attempted to impeach witness Birch's testimony by reference to the fact that the ILECs were not willing lessors of space. The CLPs stated that they view this argument as a red herring; the issue is not whether the ILEC desires to have its competitor as its tenant. The CLPs argued that Congress has taken away that argument by mandating that collocation be provided, and the FCC's Rules require that collocation be provided at TELRIC cost. The CLPs asserted that if an ILEC

can build space at a cost of $7.26 per square foot per month or lease it at a cost of $1.00 per square foot, it is self-evident that an efficient provider would lease it at a cost of $1.00 per square foot per month. The CLPs argued that the additional $6.26 per square foot per month is reflective of inefficient expenditures, which may not be considered in a TELRIC analysis.

Finally, the CLPs noted that the ILECs attempted to impeach witness Feldman's use of a market capitalization rate of .10 for his ACF by pointing out that the Commission had adopted higher ACFs in the UNE cost docket. The CLPs argued, however, that ACFs must be specific to the element costs, and the Commission has not previously established an approved ACF for collocation floor space.

The CLPs contended that witness Feldman corrected the ILECs' floor space cost studies for cageless racks, security charges, relay racks, and cabinets in the same manner as he corrected the ILECs' floor space cost studies for caged collocation for essentially the same reasons. The CLPs also noted that witness Feldman corrected Sprint's cost study for cageless rack space because it contained an incorrect multiplication of the floor space by 9.8. The CLPs also stated that on cross-examination, witness Feldman corrected the figures contained in his Exhibit LF-6 for cageless collocation space, and he explained that the rate listed in his exhibit was intended to be a rate per rack, rather than a rate per linear foot of rack.

The CLPs recommended that the Commission conclude, for the reasons they set forth under their proposed Finding of Fact No. 3, that the adjustments proposed by witness Feldman are well supported. The CLPs also noted that Sprint did not challenge witness Feldman's assertion that Sprint's calculation of cageless rack space contained an incorrect multiplication of the floor space by 9.8. Therefore, the CLPs proposed, the ILECs' floor space rates for cageless racks, security charges, relay racks, and cabinets should be based on the adjustments proposed by witness Feldman in his testimony and Exhibits LF-4, LF-5, and LF-6.

The New Entrants asserted in their Brief that central office floor space should not lease for more than $1.00 per square foot per month. The New Entrants noted that they provided evidence from the following sources that $1.00 per square foot per month is the correct rate: (1) the Raleigh real estate market; (2) the ILECs' leases of central office and switching equipment space; and (3) analysis of Verizon's actual construction costs.

The New Entrants argued that central offices are categorized as Class B office shell space which are offices that do not require unusual construction for floor strength or heating, ventilation, and air conditioning. The New Entrants noted that although the ILECs claim that central office space requires reinforced flooring and additional HVAC, they failed to present an engineer who could testify competently on these subjects. The New Entrants maintained that even if central office space did require reinforced flooring and additional HVAC, these costs would amount to just $0.10 to $0.20 per square foot per month. The New Entrants asserted that Class B office shells in the Raleigh market, one of the most

expensive markets in North Carolina, lease for approximately $1.00 per square foot per month.

The New Entrants also contended that the ILECs lease central office space for themselves from third parties for $0.20 to $0.80 per square foot per month. The New Entrants asserted that the fact that suitable space is available for lease at affordable prices by rational businesses earning a profit is overwhelming evidence that the costs proposed by the ILECs are grossly inflated.

Finally, the New Entrants asserted that while the Verizon model proposes a rate that is over twice the market rate, when the Verizon model is adjusted to actual costs and reflects an annual charge factor of 10%, the resulting rate is approximately $1.00 per square foot per month. The New Entrants maintained that this amount, like the ILECs' leases for central office space and market data from Raleigh, confirms the accuracy of the corrections made by the New Entrants.

New Entrants witness Birch stated in rebuttal testimony that BellSouth, Sprint, and Verizon are proposing to charge many multiples in excess of the market rate for Class B "office shell" space. Witness Birch noted that BellSouth is proposing $7.26 per square foot, Sprint is proposing $5.94 per square foot, and Verizon is proposing $2.04 per square foot. Witness Birch alleged that the rates proposed by the ILECs are simply inconsistent with the real estate market in Raleigh.

Witness Birch admitted on cross-examination that prior to the work he performed for the CLPs in this proceeding, he had not appraised any telephone central offices and had not visited any central offices. He also admitted that when he toured the central offices, he could not look at the concrete floor and tell how dense or strong it was.

Further, witness Birch stated that he does not know if a CLP who wanted to collocate equipment could use any office building in downtown Raleigh for that purpose. He also admitted that he did not have a statewide average per square foot rental rate for Class B office space.

Witness Birch stated that extraordinary power, heating, ventilating, and air conditioning needs would be considered trade fixtures that either the tenant would have to put in at his own expense and absorb the loss when he moved out or take it with him.

Witness Feldman noted that Sprint used a software program from RS Means to create a per square foot amount and then adjusted that amount by applying security costs. Then, witness Feldman noted, Sprint increased the per foot investment by applying egress factors, common space factors, and a fill factor. Witness Feldman explained that Sprint applied an annual charge factor and a common cost factor to get a rate per square foot.

The Public Staff commented in its Proposed Order that in an interesting shift, the CLPs recommended rates for floor space using an approach that reflects market-based

pricing. The Public Staff noted that in making this argument, the CLPs essentially recommend that the Commission reject its prior approach to TELRIC pricing and adopt a hybrid approach in which TELRIC prices apply to some rate elements while market-based prices apply to other rate elements.

The Public Staff argued that what the CLPs seem to ignore with their approach is that market-based pricing is in constant flux and noted that the CLPs have not, of course, proposed that the ILECs be given any flexibility to modify the market-based prices that were proposed for floor spacing when market conditions change. Nor, the Public Staff noted, have they indicated whether the market-based prices recommended in this docket are based on an equilibrium between supply and demand, an excess of supply, or even an excess of demand. The Public Staff recommended that the Commission find that long-run incremental cost pricing, which is the basis of TELRIC studies, relies upon the premise that costs are calculated for a period long enough to smooth out any period differences in costs over time. The Public Staff noted that beginning with the cost studies filed in Docket No. P-100, Sub 133b, through the studies filed in Docket No. P-100, Sub 133d, the Commission has found that rates should reflect costs using the TELRIC approach. The Public Staff maintained that the CLPs have not presented sufficient evidence to reject TELRIC-based rates for floor space.

The Public Staff also noted that BellSouth has completely revised the methodology used in its calculation of the proposed rates for floor space. The Public Staff argued that the RS Means cost data used by BellSouth in its original collocation cost study is the reasonable level of building investment for BellSouth and, accordingly, the Commission should order that the building investment used by BellSouth in its September 1999 cost study should be substituted for the building investment reflected in the September 2000 cost study for calculating the floor space costs for physical collocation, virtual collocation, and adjacent collocation.

Also, the Public Staff indicated that Sprint's workpaper notes that the rate for floor space includes the costs of security and that this cost is recovered in the building ACF and should not be included separately. The Public Staff noted that Sprint used an unusable space factor of 25% which it then compounded by an egress factor of 25% and further with an unoccupied space factor of 80%. The Public Staff commented that witness Feldman testified that these factors will cause Sprint to overrecover the costs associated with common spaces. The Public Staff agreed with witness Feldman that the egress and unoccupied space factors should be excluded from the calculation of floor space investment. The Public Staff also agreed with witness Feldman that a common space (or unusable space) factor of 20% rather than 25% should be applied to Sprint's investment amounts. The Public Staff argued that the 20% factor appears to be more reflective of the actual amount of common space.

Sprint noted in its Proposed Order that the second greatest cost to collocate in a central office is floor space. Sprint maintained that there are two correct ways for recovering costs for floor space. Sprint stated that it uses the RS Means Cost

Works 2000, a nationally recognized construction estimator, to determine these costs. Sprint maintained that these costs include any collocation site preparation, and all of the costs are recovered on a monthly recurring basis. Sprint also noted that another acceptable method, which Verizon used, is to base the monthly recurring charge on the current booked investment of the building and then charge a make ready nonrecurring fee for upgrade of the central office where the CLP will be located.

Sprint argued that a third, but incorrect method, was used by BellSouth. Sprint stated that BellSouth's methodology is not reasonable because a building addition inherently costs more per square foot than construction of a new building. Sprint maintained that even though BellSouth uses forward-looking building costs, it adds site preparation fees when, based upon FCC Rule 51.323(f)(3), the cost of construction projects should already have been taken into consideration.

Sprint argued that clearly the preferred manner of determining floor space rates is Sprint's methodology because it is based on reconstruction costs recovered over a period of time, thus allowing for lower up-front costs to CLPs.

Sprint witness Mitus agreed on cross-examination that Sprint leases central office space in five locations in North Carolina. Witness Mitus also agreed that one of the leases in Fayetteville is $3,000 per month for 9,701 square feet of space which calculates out to $0.32 per square foot per month. Witness Mitus noted that Sprint is responsible for upgrading the building, preparing all maintenance costs, preparing all janitorial services, and all leasehold improvements. Witness Mitus stated that he did not know how much leasehold improvement was put into that office but that the cost would have to be added to the monthly rental fee.

Verizon maintained in its Proposed Order that floor space costs are incurred to provide environmentally conditioned floor space to the collocator, based on an average cost per square foot, plus costs to account for shared floor space. Verizon stated that it developed its average floor space costs per square foot of $2.02 by calculating the building investment amounts, square footage, and monthly maintenance/utility expenses of a selected sample of central offices by varying switching technology and size utilized by Verizon across the state of North Carolina. Verizon explained that the representative sample of central offices was selected based on line size, wire center, and whether the building was purchased or built after 1945. Witness Richter stated in direct testimony that Verizon used index factors from RS Means, "Building Construction Cost Data 55 Annual Edition 1997", an industry publication on building construction cost data, to bring the original building investments and subsequent investments in the building to present value, and then divided the present value by the total square footage of the building to determine the cost per square foot.

Verizon argued that New Entrants witness Birch's use of Class B office space costs as a proxy for central office space costs is completely unfounded. Verizon noted that witness Birch admitted that most, if not all, Class B office space does not have 12 foot

ceilings, generators, trickle charge batteries, reinforced floors, or can be rented out in nine square foot increments. Verizon also stated that witness Birch admitted that he only examined Class B office space in Raleigh, ignoring admittedly different market rates in other North Carolina cities. Verizon asserted that witness Birch's suggestion that office space for lawyers is comparable to collocation space for telephone equipment for the purposes of determining a market rate for floor space is utter nonsense.

Verizon maintained that in developing their floor space costs, the New Entrants have failed to recognize that the specialized market for telecommunications space transcends the traditional real estate categories familiar to witness Birch. Verizon concluded that collocation floor space is not comparable to typical commercial real estate space and should not be priced in the same way.

Verizon also argued that witness Feldman's adjustments to Verizon's floor space costs are also unrealistic and unsupported. Verizon noted that witness Feldman suggested a 56% reduction in Verizon's per square foot cost for floor space without offering any credible support for this reduction. Verizon concluded that witness Feldman's proposed cost adjustments, based in part on witness Birch's flawed market analysis and other, unsupported assumptions, should be rejected in favor of the costs and prices Verizon has submitted in this proceeding.

Verizon witness Ellis noted in direct testimony that Verizon's cost study develops an average floor space cost based on the existing central offices in North Carolina using a forward-looking methodology. Witness Ellis explained that since the real estate market varies considerably within a state or town, obtaining current market information for each central office is difficult. Therefore, witness Ellis noted, central office investments were brought to current dollars by adjusting for inflation and other factors through the use of the RS Means Index.

In rebuttal testimony, witness Ellis noted that New Entrants witness Birch's testimony was based on a review of two BellSouth central offices, his research on tenant installation costs for Class B office space, and his experience in the Raleigh real estate market. Witness Ellis argued that none of those factors justify revisions to Verizon's company-specific figures on floor space costs.

Witness Ellis agreed on cross-examination that according to a lease Verizon has for central office space in Durham, the monthly rental rate is $375.50 for 468 square feet of space which calculates to a rental rate of $0.80 per square foot per month. However, witness Ellis maintained that she does not know what type of equipment Verizon places in the leased space and stated that the leased buildings are not central offices. After being presented with evidence from counsel for the New Entrants, witness Ellis agreed that the leased Durham building is used for switching equipment and that switching equipment typically is mounted on racks. Witness Ellis also noted that the leased space is unconditioned space and that any upfits or construction required for the equipment would have to be done by Verizon.

Further, witness Ellis agreed that the Verizon lease of office space in Fontana Village of $250 per month calculates out to $0.48 per square foot per month, however, she indicated that she did not know whether switching equipment was placed there.

The Commission notes that this issue considers a significant cost for collocation. The Commission notes the following after a review of the record of evidence:

- The ILEC cost studies from 1999 to 2000 show wide variances in the proposed cost for floor space.
- The Commission does not believe that market rates can be considered TELRIC.
- It is concerning that the market rate for Class B office space in Raleigh is $1.00 per square foot and BellSouth and Sprint especially are proposing rates **many times** that amount.
- There is evidence in the record that the ILECs lease central office space for $0.20 to $0.80 per square foot per month.
- It is also concerning that BellSouth is proposing $7.26 per square foot, Carolina is proposing $5.94 per square foot, and Central is proposing $6.00 per square foot while Verizon is proposing $2.02 per square foot. BellSouth is proposing a rate almost three times as much as Verizon and Carolina and Central are proposing rates around two times as much as Verizon.

The Commission believes that there is adequate evidence to conclude that BellSouth's proposed rate of $7.26 per square foot and Carolina and Central's proposed rates of $5.94 and $6.00, respectively, are overstated and unreasonable. However, the Commission does not believe that it is appropriate to apply the $1.00 market rate proposed by the CLPs since that is a market rate and is not in conformity with a TELRIC methodology. The Commission also believes that it is reasonable to have differences in the floor space rates depending upon the ILEC. Therefore, the Commission finds it appropriate to instruct BellSouth and Carolina/Central to re-examine their floor space cost studies and re-file proposed rates that are more aligned with (1) the market rate of $1.00, (2) the rates the ILECs themselves receive for leased central office floor space, and (3) Verizon's proposed floor space rate of $2.02 per square foot. The Commission finds it appropriate to approve and adopt Verizon's proposed floor space rate for Verizon.

COMMISSION CONCLUSIONS - Rate Issue No. 1 - Rate for Floor Space: The Commission finds it appropriate to instruct BellSouth and Carolina/Central to re-examine their floor space cost studies and re-file proposed rates that are more aligned with (1) the market rate of $1.00, (2) the rates the ILECs themselves receive for leased central office floor space, and (3) Verizon's proposed floor space rate of $2.02 per square foot. Further, the Commission hereby approves and adopts Verizon's proposed floor space rate for Verizon.

Rate Issue No. 2 - Availability Fee/Application Fee for Collocation

BellSouth witness Hendrix stated in his cost issue rebuttal testimony that BellSouth cannot find any reason why the recent FCC Order on Reconsideration would require a different rate structure (i.e., separate rate elements for an application and for project management as proposed by CLP witness Feldman) and since no cites were provided to support this statement, BellSouth cannot agree.

Witness Hendrix noted that BellSouth currently does have separate application fees and space preparation fees. Witness Hendrix maintained that even though witness Feldman considered BellSouth's categories of rate elements as outdated, the only change he made was to change the name of the term "firm order processing" to "project management." Witness Hendrix also noted that witness Feldman removed the rate element that recovers the cost for the optional space availability report and did not give a reason for such removal.

BellSouth witness Caldwell maintained that witness Feldman did not offer detailed information on his statement that BellSouth's rate structure reflects "outdated ideas of collocation" and that BellSouth witness Hendrix did support the rate structure that BellSouth is proposing. Witness Caldwell also noted that witness Feldman proposed substantial reductions in the work times BellSouth proposed and that the reductions should be ignored because they were not supported by any evidence, nor reflective of the costs BellSouth incurs.

On cross-examination, witness Caldwell explained that the application fee consists of more than just looking to see if there is space available in any given central office.

The New Entrants argued that a fee for determining whether collocation space is available defies common sense because it is widely known that space is available in most central offices. Also, the New Entrants asserted, to attempt to charge a fee in the few cases where space is not available is most inequitable, because ILECs are already required by FCC Order to maintain a document on their websites indicating all premises that are full.

The New Entrants noted that the ILECs argue that their space availability fees include certain engineering expenses. However, the New Entrants argued, those engineering expenses should be included as part of an engineering fee during construction and not an application fee to determine whether space is available.

The New Entrants argued that application fees for the leasing of office space do not exist in the real estate market. The New Entrants noted that the ILECs admit that they are not aware of any such availability fee being charged when they lease central office and switching equipment space.

New Entrants witness Birch stated in rebuttal testimony that he has never heard of landlords demanding nonrefundable application fees before advising prospective tenants whether space is available for lease. Witness Birch stated that advising a prospective tenant as to what space is available in a building is a function provided by management without any specific charge to that prospective tenant and that such application fees simply do not exist in the Raleigh office market.

New Entrants witness Feldman stated in rebuttal testimony that under Paragraphs 13-26 of the FCC's Order on Reconsideration, there are two distinct functions relating to the application for and project management of collocation in an ILEC's central offices. One function, he explained, relates to the initial application. Witness Feldman stated that the work performed in processing the application to obtain a firm order is appropriate for inclusion in an application fee. Witness Feldman maintained that the work that occurs after a firm order for collocation has been made is appropriate for inclusion in a project management fee. Witness Feldman argued that the reason for separating out the two fees is that if a CLP cannot place a firm order or decides not to place a firm order, that CLP should not have to pay for costs associated with project management.

Witness Feldman stated that he proposed two distinct fees and adjusted the time estimates by the ILECs to remove overstatements. Witness Feldman proposed the following rates:

Rate Element	ILEC Rate	New Entrants Rate
Application Fee - Sprint	$3,789.60	$136.91
Augment Application Fee - Sprint	$1,292.92	$82.97
Project Management Initial - Sprint	None proposed	$2,574.15
Project Management Augment - Sprint	None proposed	$266.52
Application Fee - Verizon	$1,217.52	$338.20
Project Management - Verizon	$1,128.53	$602.76
Application Fee - BellSouth	$3,741.00	$157.19
Augment Application Fee - BellSouth	$1,920.31	$110.12
Project Management Initial - BellSouth	$1,196.00	$1,445.11
Project Management Augment - BellSouth	None proposed	$305.88

The CLPs included a proposed Finding of Fact No. 5 — ILECs should not charge an availability fee for collocation space. They may, however, impose a fee for reasonable engineering costs that are incurred in connection with the construction of collocation space — in their Joint Proposed Order.

The CLPs argued that availability fees have no place in the leasing of office space, and availability fees for the leasing of office space do not exist in the real estate market. The CLPs maintained that the ILECs must not be allowed to impose an onerous and inequitable term on CLPs making lawful requests to collocate. The CLPs contended that a fee for determining whether space is available defies common sense because it is widely known that space is available in most central offices. The CLPs also maintained that to attempt to charge a fee in the few cases where space is not available is most inequitable, especially in view of the fact that ILECs are already required to maintain a publicly available document on their websites indicating all premises that are full and must update such a document within 10 days of the date at which a premises runs out of physical collocation space.

The CLPs argued that advising a prospective tenant as to what space is available in a building is a function provided by management without any specific charge to that prospective tenant. The CLPs maintained that imposing such fees as part of the application process, before the CLP is told whether space is available, would serve as a barrier to entry. The CLPs noted that while the ILECs argue that their space availability fees include certain engineering expenses, this engineering should be included as part of an engineering fee during construction, not an application fee to determine whether space is available. The CLPs maintained that it is illogical to require a CLP to pay a fee to determine if space is available when, as Verizon admitted, space is available in every one of its central offices in North Carolina.

The CLPs recommended that the Commission conclude that engineering expenses associated with the construction of collocation space should be recovered as part of an engineering fee during construction, not an application fee to determine whether space is available.

The Public Staff noted in its Proposed Order that some of the proposed changes, such as witness Feldman's proposal to require the application fee to be broken into two components and charged separately, completely change the manner in which the ILECs calculated their cost studies. However, for the most part the Public Staff commented, the reasoning given by the CLPs for these changes is to be consistent with the Texas collocation tariff. The Public Staff stated that it does not believe that being consistent with the Texas collocation tariff is a sufficient reason to require a modification of the ILECs' cost studies. The Public Staff stated that it agrees that CLPs need to be aware of the manner in which they incur charges for collocation services, however requiring the ILECs to provide a clear explanation and description of each of the rate elements should be sufficient. Therefore, the Public Staff recommended that the Commission find that the collocation rate elements as proposed by the ILECs are appropriate.

The Public Staff noted that witness Feldman testified that BellSouth had included excessive labor hours in its application fee costs, however, a review of the cost study for the application fee shows more than 51 hours of labor costs plus an additional nonrecurring rate additive of over $1,000. The Public Staff stated that although the

application rate is considerably less than the rate produced in the September 1999 cost study, the hours reflected in the application fee are excessive. The Public Staff stated that it agrees, in part, with witness Feldman's position that BellSouth has reflected too much labor cost in its application fee.

The Public Staff noted that a review of Sprint's workpapers indicates that the cost in calculating the application fee for Carolina reflects 77 hours of labor and that the Public Staff believes that this represents an excessive amount of labor and does not reflect an on-going level. The Public Staff argued that Sprint should be capable of processing an application fee using much less labor. The Public Staff recommended that the Commission conclude that Sprint should recalculate the application fee with one-half of its proposed NASC and Administrative labor and that engineering labor should not exceed 10 hours and Legal labor should not exceed two hours. The Public Staff maintained that this provides Sprint sufficient time to process Application filings made by CLPs.

Verizon maintained in its Proposed Order that New Entrants witness Birch opined that application fees are not charged to evaluate typical office space and therefore such fees should not be assessed for collocation analysis. Verizon argued that witness Birch ignored the fact that providing traditional office space and providing collocation space are very distinct undertakings. Verizon maintained that provision of collocation space not only involves a market quite different from that of providing traditional office space, it entails engineering analysis of the collocator's special needs and additional costs. Verizon noted that even witness Birch admitted as such. Verizon argued that as such, application fees are standard in collocation agreements and tariffs, sanctioned by both the FCC and state commissions.

Verizon also noted that it incurs costs to plan and engineer CLPs' requests for collocation space within a central office. Verizon noted that engineering costs are recovered through the application fee.

Verizon witness Ellis agreed on cross-examination that Verizon is proposing that a $1,200 application fee be paid in North Carolina even though space is available in every Verizon central office at least in some amount.

The Commission notes that in Finding of Fact No. 21 of this Order, the Commission concluded that it is appropriate to alter Section 2.6 of the CLP Standard Offering to require the ILECs to provide additional information on their websites. Among the requirements of revised Section 2.6 is for the ILECs to post a document which lists all premises that are without available space. Therefore, the Commission believes that the CLPs' statement that the ILECs are already required to maintain a publicly available document on their websites indicating all premises that are full and must update such a document within 10 days of the date at which a premises runs out of physical collocation space is reasonable. However, the Commission also agrees with Verizon that providing collocation space is distinctly different than providing traditional office space. Further, the Commission is

concerned about the labor hours reflected in the cost studies (51 hours for BellSouth and 77 hours for Sprint) as noted by the Public Staff. The Commission believes that 24 hours (or three, eight-hour days) is a reasonable level of labor hours for ILECs to process collocation applications. Therefore, the Commission concludes that the ILECs should revise their cost studies for application fees to reflect no more than 24 labor hours.

COMMISSION CONCLUSIONS - Rate Issue No. 2 - Availability Fee/Application Fee for Collocation: The Commission concludes that the ILECs should revise their cost studies for application fees to reflect no more than 24 labor hours.

Rate Issue No. 3 - Construction of Cage

The CLPs included a proposed Finding of Fact No. 6 — The rates for the construction of cage enclosures should be those proposed by Sprint — in their Joint Proposed Order.

The CLPs noted that they advocate the application to all ILECs of Sprint's proposed charge of $1,584.61 for ILEC construction of a cage enclosure for a 10 foot by 10 foot space.

The CLPs proposed that the Commission find that if Sprint can contract with an outside vendor to construct a cage for a nonrecurring cost of less than $1,600, it is not credible that Verizon's proposed rate of more than $4,000 and BellSouth's proposed recurring rate of $192.79 per month represent properly calculated TELRIC costs. The CLPs noted that BellSouth witness Caldwell even admitted that it was possible that the physical life of the cage might be as long as 10, 20, or even 30 years, and that if the monthly recurring rate proposed by BellSouth remained in effect for even 10 years, BellSouth would receive approximately $23,000 in revenues for the cage construction. The CLPs argued that there is no basis for the Commission to believe that the contractors that will build a cage for Sprint at a cost of less than $1,600 would charge appreciably more to construct a cage for BellSouth or Verizon. Therefore, the CLPs recommended that the Commission find it appropriate to apply Sprint's proposed nonrecurring costs of $559.81 per cage and $25.37 per linear foot to all three ILECs.

The New Entrants noted in their Brief that Sprint is proposing a rate of approximately $1,600 to install a collocation cage that is 10 feet long on each side of a square space. The New Entrants stated that the rate includes engineering fees and costs for construction of the wire mesh and is a one-time, nonrecurring charge. The New Entrants noted that BellSouth is proposing a recurring charge which may well result in costs of $10,000 to $25,000 per cage and Verizon is proposing a nonrecurring charge of over $4,000. The New Entrants maintained that both of these charges are unreasonable and reflect the inflated nature of the rates being proposed in this proceeding.

The New Entrants asserted that in the face of Sprint's $1,600 charge and in the absence of evidence showing that Sprint's costs are lower than the other ILECs, the costs proposed by BellSouth and Verizon reflect inefficient practices and should be rejected.

Verizon maintained that its Collocation Cost Study examines the two elements necessary to build a collocator's cage: the cage enclosure itself and the cage gate providing access and security to the cage. Verizon noted that its cost for the cage enclosure, including the fencing, poles, and the other items necessary to build a cage, is between $7.66 per square foot for a 100 square foot cage or larger and $10.93 per square foot for the smallest cage; Verizon's cost for the cage gate is $471.53. Verizon explained that these costs were derived by averaging contractor invoices for collocation jobs in Verizon central offices in Texas and California. Verizon maintained that by representing a number of different collocation jobs, the invoices provide a representative sample of the costs likely to be incurred for cage enclosures and gates going forward. Verizon noted that the costs from the contractor invoices were adjusted through an area modification factor obtained from National Construction Estimator to provide a North Carolina-specific cost.

The Commission agrees with the New Entrants that in the face of Sprint's proposed nonrecurring costs of $559.81 per cage and $25.37 per linear foot and in the absence of evidence showing that Sprint's costs are lower than BellSouth's and Verizon's, the costs proposed by BellSouth and Verizon reflect inefficient practices and should be rejected. Therefore, the Commission finds it appropriate to apply to BellSouth and Verizon, Sprint's proposed nonrecurring charge of $559.81 per cage and $25.37 per linear foot for ILEC construction of a cage enclosure.

COMMISSION CONCLUSIONS - Rate Issue No. 3 - Construction of a Cage: The Commission concludes that it is appropriate to apply Sprint's proposed nonrecurring charge of $559.81 per cage and $25.37 per linear foot for construction of a cage to BellSouth and Verizon.

Rate Issue No. 4 - DC Power

BellSouth next addressed witness Feldman's allegations that there are flaws in BellSouth's method of developing the costs associated with power. BellSouth noted that MCIm witness Bomer was also critical of BellSouth's power cost development. BellSouth recommended that the Commission disagree with the allegations by witnesses Feldman and Bomer.

BellSouth alleged that witness Feldman was incorrect in his statement on the power issue that BellSouth applied power costs as a loading to all rates elements. BellSouth stated that there is no support for his statement in BellSouth's cost study. BellSouth noted that the supporting equipment and power loading is only applied to those elements that involve central office equipment, not all elements.

BellSouth noted that witness Feldman also suggested that BellSouth consider some revenue offset in its loading factor development. BellSouth stated that its witness Caldwell noted that witness Feldman's suggestion is mixing apples with oranges. BellSouth maintained that the loading factor was designed by BellSouth to identify investments and that clearly revenues are not investments and, therefore, a one-to-one relationship between the two does not exist. BellSouth argued that it makes no sense to subtract the revenues from the power investment.

BellSouth also commented that witness Feldman further adjusted BellSouth's cost per fused amp to account for the error in usage versus billed per amp fuse charge. BellSouth argued that its cost study reflects the costs incurred in order to provide the incremental power drawn by the CLP's equipment. BellSouth noted that the redundant power leads are required to do this and, therefore, the investment for the two leads is appropriately considered in BellSouth's cost study. However, BellSouth maintained, it only applies the charges on a per fused amp basis, not twice the fused amp amount as witness Feldman implied.

BellSouth noted that witness Feldman also made other adjustments to BellSouth's power calculations, and BellSouth argued that those too are invalid. BellSouth maintained that witness Feldman's reduction in the cost per kilowatt hour and change in efficiency factor appear arbitrary and do not reflect the costs BellSouth will incur in order to provide power to CLP's on a going-forward basis.

BellSouth also argued that witness Feldman's proposed annual cost factor of .20 is not appropriate. BellSouth stated that as witness Caldwell observed, in the calculation of BellSouth's Plant Specific factor, expenses related to the maintenance of power equipment are normally considered for central office equipment and this expense identifies the costs related to the transmission of power for the central office equipment.

BellSouth noted that witness Feldman's Exhibit LF-6.3 concerns power calculations. BellSouth argued that the information labeled "BellSouth's Proposal" is not BellSouth's calculation and witness Feldman should not have presented it as such. BellSouth contended that witness Feldman evidently took certain outputs from BellSouth's cost study and forced them into a spreadsheet, thus distorting the other values not obtained from BellSouth's study. BellSouth also questioned witness Feldman's representations of BellSouth's annual charge factor and common cost factor.

BellSouth maintained that MCIm witness Bomer also had criticisms of BellSouth's proposed power costs. BellSouth noted that witness Bomer testified that power should be charged "on a per fused ampere basis, taking into account the rated capacity of the equipment actually installed." BellSouth stated as witness Caldwell testified that fused refers to the protection device rating and that protection devices are fuses or circuit breakers, with fuses being the most common. BellSouth maintained that rated indicates the amount of current the equipment is expected to draw during normal operating conditions and that protection devices are selected at 1.5 times the power drain for fuses.

BellSouth observed that telecommunications equipment requires power in much the same way that the television in one's home does - when it is on, it pulls about the same amount of power all the time. Therefore, BellSouth maintained, if the telecommunications equipment were rated at 20 amps, it would be protected at 30 amps.

BellSouth noted that its witness Caldwell testified that BellSouth developed the recurring costs for power based on the assumption that the charge would be per fused amp and, therefore, BellSouth's cost study accounts for the difference between fused capacity and rated capacity.

Witness Caldwell explained that BellSouth developed the recurring costs for power based on the assumption that the charge would be per fused amp. Witness Caldwell noted that BellSouth's costs study accounts for the difference between fused capacity and rated capacity. Witness Caldwell maintained that BellSouth's cost study contains a Protection Device Adjustment factor of 67% which reflects the relationship between fused and rated capacities (Fused = 1.5 x Rated). Witness Caldwell asserted that by multiplying the Average Monthly Cost per kilowatt hour by the 67% (1/1.5), this relationship is recognized and ensures that the CLP is not overcharged.

Witness Caldwell also addressed the comments of witness Feldman concerning BellSouth's power cost.

The CLPs included a proposed Finding of Fact No. 7 — The nonrecurring and monthly recurring rates for DC power should be adjusted in accordance with the testimony of the New Entrants witness Feldman, and should be based upon amps used, rather than amps fused — in their Joint Proposed Order.

The CLPs noted that witness Feldman identified and corrected a number of errors in each of the ILECs' cost studies regarding power.

The CLPs noted that for Sprint, witness Feldman identified the following errors:

(1) Double charging for the establishment of leads to the battery distribution fuse bay (BDFB).

(2) Circularly including the recovery of power costs to provide power, resulting in an excessive ACF.

(3) Overstating investment costs for the power plant.

(4) Charging for power on the basis of amps fused, rather than amps used.

(5) Limiting the increments of power to 50, 100, and 200 amp leads, instead of more standard increments, such as 20, 40, and 60 amps.

(6) Using an excessive ACF to establish its monthly rate.

The CLPs further noted that witness Feldman identified in Verizon's power cost studies the following errors:

(1) An error in its formula used to calculate per amp investment.

(2) Use of excessive installation times for DC power cable pulls.

(3) Use of excessive installation times to install the power facility at a central office.

(4) Circularly including the recovery of power costs to provide power, resulting in an excessive ACF.

(5) Failing to provide for the purchase of DC power in increments of less than 40 amps.

Finally, the CLPs also noted that witness Feldman identified the following errors in BellSouth's power cost studies:

(1) Use of embedded, rather than forward-looking, investments.

(2) Application of power costs as a loading to all rate elements without any offset for anticipated revenues derived through power charges.

(3) Charging for power supplied through both the primary and secondary lead, even though only one lead will be used at a time.

(4) Use of an excessive cost for commercial AC power.

The CLPs maintained that the issue of what rates should apply to the provision of DC power by BellSouth to MCIm's collocation space was transferred from the Parties' arbitration to this proceeding. The CLPs stated that the Parties' original Interconnection Agreement which was approved by the Commission contemplates pricing power on a per used ampere basis and, thus, the rate to be applied should apply on a per used ampere basis, taking into account the rated capacity of the equipment actually installed in the collocation space. The CLPs noted that BellSouth concedes that the rate for DC power was established by the Commission on a per ampere basis, but argues that MCIm should not be assessed based on what amperes MCIm uses. Instead, the CLPs maintained, BellSouth would include additional language, taken from its internal, self-serving procedures, into the original Interconnection Agreement between MCIm and BellSouth. The CLPs noted that BellSouth has proposed rates on a per fused ampere capacity basis. The CLPs also maintained that BellSouth proposes to charge a large up-front nonrecurring charge for construction of power supply plus a recurring rate that also will reflect the cost

of the power supply. The CLPs argued that this method represents a double recovery of the costs by BellSouth, is obviously inconsistent with the approach taken by the Commission in establishing rates, and would allow BellSouth to recover from MCIm more than MCIm's share of the costs. The CLPs concluded that BellSouth should bill MCIm a recurring rate per amp equal to the forward-looking cost of power supply times the number of amps consumed by MCIm.

The CLPs maintained that BellSouth is mistaken when it argues that power costs, like floor space costs, must be calculated by reference to the cost that the ILEC actually will incur, without reference to any efficiency requirement. The CLPs asserted that BellSouth is apparently operating on the premise that the Eighth Circuit's decision is effective.

The CLPs alleged that BellSouth's proposal charges for power usage on the premise that 67% of the fused amperage will be used and that this accounts for the fact that the actual drain on a fuse will not exceed 67% of the fuse's amperage rating. However, the CLPs contended, this factor does not account for the fact that two redundant power leads and fuses are used to deliver power to each equipment item. The CLPs maintained that it is appropriate to measure the power consumption of the CLP by taking 67% of the amperage of one of the two fuses which amounts to 33% of the combined amperage rating of the two fuses.

The CLPs stated that a similar adjustment should also be made for Verizon, which also conceded that it was charging for power for both of two redundant leads. The CLPs noted that while Verizon contended that the CLP has the option not to order the second lead, the fact that the CLP has this option does not entitle Verizon to charge an above-TELRIC price if the CLP, in fact, orders redundant leads.

The CLPs recommended that the Commission conclude that power should be charged for on the basis of per amps used, rather than amps fused. The CLPs noted that this is how power is calculated by the Texas Public Service Commission. The CLPs asserted that the Parties all recognize that fuses are installed that significantly exceed the power actually drawn by the CLP's equipment. The CLPs maintained that BellSouth acknowledges this fact by employing a 67% adjustment factor which would result in a charge for 40 amps of power even though the fuse was rated at 60 amps. The CLPs noted that Verizon charges on the basis of amps used. The CLPs stated that while recognizing that its fuses exceed the power of the CLP's equipment, Sprint seeks to justify charging for fused amps by calling the excess amperage a "fill factor." The CLPs argued that they do not agree that this concept has validity here. The CLPs contended that if a CLP installs equipment that draws at a maximum 40 amps of power, and Sprint chooses to install a 60 amp fuse, the fuse may provide a desirable safety margin, but Sprint is not required to provide 60 amps of power. Rather, the CLPs maintained, Sprint is only required to provide 40 amps of power and should not be permitted to charge a CLP for providing an additional 20 amps of power that the CLP does not want and cannot use.

The CLPs also argued that power should be offered in single amp increments. The CLPs noted that BellSouth and Sprint offered to do so in their original proposals and that while Verizon originally offered 40 amp increments, in rebuttal it agreed to offer single amp increments.

The CLPs also noted that Verizon stated that its allegedly excessive work times are valid because they were provided by subject matter experts (SMEs). The CLPs argued that there is a conflict as to the appropriate times between Verizon's unsworn SMEs, who did not submit testimony and were not available for cross-examination, and New Entrants witness Feldman.

In conclusion, the CLPs recommended that the Commission should adopt the monthly recurring and nonrecurring rates for DC power costs proposed by witness Feldman but with a correction of BellSouth's common cost factor, and that the DC power rates should be based on amps used, rather than amps fused.

The New Entrants also argued in their Brief that the ILECs' proposed power costs are unreasonable. The New Entrants stated that AC power costs the ILECs approximately $2.18 per amp. The New Entrants argued that the ILECs convert this power to DC power and then transmit this electricity to CLPs through batteries. The New Entrants maintained that for this conversion and transmission, the ILECs propose rates that are many multiples of their power costs.

The New Entrants argued that the cost-based rate for DC power is approximately $3.50 per amp. The New Entrants also maintained that power should be charged on the basis of electricity used, not on the size of multiple fuses or redundant lines. The New Entrants stated that although hesitant to admit it, Verizon itself charges for power based on amps used. The New Entrants further noted that power costs are recovered in several network elements and, hence, the rates for power to collocation equipment are just one of the ways in which the ILECs are compensated for power.

New Entrants witness Feldman stated in rebuttal testimony that Sprint used RS Means estimated costs, as well as equipment prices from vendors and estimated costs from subject matter experts, to tabulate power related to investment within a central office. Then, witness Feldman maintained, Sprint went through a series of calculations to come up with rates for both AC power and DC Power on a nonrecurring and recurring basis. Witness Feldman proposed corrections which would have the rates for collocation power of $4.48 per used amp rather than $17.41 proposed by Sprint.

The Public Staff recommended in its Proposed Order that the Commission reject witness Feldman's proposal to require ILECs to charge DC power based on the amount of amps used. The Public Staff maintained that if costs are calculated on a basis of fused amps, then it is appropriate to reflect fused amps as the rate element. The Public Staff commented that if the DC power costs are calculated on a basis of used amps, then used amps are appropriate to use as the rate element. In either case, the Public Staff asserted,

there should be no difference to CLPs as to whether the proposed rates are based on per fused or per used amps, so long as the costs are reflected appropriately for each in the cost study. The Public Staff maintained that with the charges required by its other recommendations, it believes that the costs and rate elements are appropriately matched for the ILECs' cost studies.

The Public Staff noted that witness Feldman did point out one problem with the ILECs' studies that BellSouth at least partially corrected. The Public Staff explained that the problem is the inclusion of costs associated with DC power in the annual charge factors (ACF) used to calculate the rates for collocation. The Public Staff commented that as witness Feldman pointed out, since DC power is charged for separately in the collocation studies, the ACF for calculating DC power should properly exclude any expense associated with DC power. The Public Staff commented that witness Feldman noted that BellSouth has appropriately excluded the expense associated with DC power from the ACF used to calculate its DC power rate element.

The Public Staff argued that since DC power is recovered in a specific rate element, there appears to be no basis for any collocation rate elements reflecting costs associated with DC power. The Public Staff noted that it is unclear whether costs associated with DC power are included in any ACF other than the digital switching ACF, which was used to calculate the specific DC power rate elements. However, the Public Staff believes that it is prudent for the ILECs to review the calculation of ACFs and remove, to the extent necessary, any costs associated with DC power, as BellSouth did for its digital switching ACF.

Concerning power costs, the Public Staff recommended that the Commission decline to adjust the investment per amp used by BellSouth in its study and note that the rate element proposed by BellSouth for DC power reflects fused amps, not used amps.

The Public Staff also stated that it concurs with witness Feldman's assessment that BellSouth's input amount for AC power cost is excessive and recommended that the Commission find that based upon tariffed rates for commercial power in North Carolina, BellSouth's cost of power should not exceed $.06 per kilowatt hour.

The Public Staff maintained that it is unpersuaded by witness Feldman's arguments concerning Sprint's proposed rates for DC power. The Public Staff commented that a review of the workpapers filed by BellSouth, Verizon, and Sprint, shows comparable per amp investment amounts for the ILECs' studies.

The Public Staff also noted that Sprint failed to make an adjustment to its investment per amp, as was done by BellSouth, to reflect the use of rate elements on a per fused basis instead of a per used basis. The Public Staff commented that since Sprint proposes to charge for DC power on a fused amp basis, an adjustment to its DC power investment per amp is necessary. The Public Staff stated that the adjustment should

divide the per amp investment contained in Sprint's workpapers by 1.5 to recognize this standard engineering practice.

The Public Staff maintained that Sprint appears to have slightly overstated a reasonable rate for its cost of commercial power, and the Commission should require Sprint to revise its cost study to reflect a cost per kilowatt-hour that does not exceed $0.06.

Concerning witness Feldman's criticisms of Sprint's proposed rates for AC outlets and overhead lighting, the Public Staff stated that it believes that the costs for AC outlets and overhead lighting are included in the building ACF. The Public Staff maintained that Sprint is recovering these costs in its floor space rate elements.

Sprint explained that telecommunications equipment runs on DC power and that different ILECs do not have the same DC power costs because DC power costs vary based on the sizes of central offices. Sprint maintained that BellSouth enjoys economies of scale as BellSouth serves more densely populated urban areas while Sprint serves more sparsely populated rural areas. Logically, Sprint asserted, BellSouth's DC power costs should be lower than Sprint's. Sprint argued that care must be taken in comparing costs from company to company and even greater care must be taken with costs from country to country. Sprint argued that New Entrants witness Feldman's testimony on the appropriate cost per amp figure was based on price quotes from a company in Canada and is not useful in this proceeding in North Carolina for obvious reasons.

Sprint maintained that other errors in witness Feldman's testimony included his allegations that Sprint is double charging for DC power redundancy and that Sprint double recovers for DC power. Sprint argued that its cost studies for DC power were conformed with real world experience and that Sprint built each element of its power cost analysis from the ground up using Sprint's current engineering standards as they are the best predictors of forward-looking costs.

Verizon contended in its Proposed Order that collocation equipment runs off of DC power. Verizon noted that the DC power facility is comprised of material and labor costs incurred to provide DC power to the collocator's area. Verizon stated that the power plant cost to provide DC power for a central office was calculated using central office switch requirements based on the line size of the central office. Verizon also explained that the DC power facility costs to be recovered through nonrecurring charges are those for installing the power cables that run from the battery distribution fuse bay (BDFB) to the collocator's individual location. Verizon noted that the hours reflected in Verizon's power plant model are those necessary to provision the type of power plant needed to furnish power for various size switches.

Verizon argued that New Entrants witness Mitus incorrectly contended that Verizon is double recovering for power by grossing up power investment and charging on a per fuse amp basis. Verizon stated that although he correctly stated that the cost per amp for the DC power plant is developed using an 80% operating capacity, he apparently

misunderstood Verizon's DC power provisioning and billing practices. Verizon explained that under its practices, CLPs are not billed at the fuse rate even though the fuse placed at the BDFB is larger than necessary to provide the amps requested by the CLP. Verizon noted that this larger fuse is installed to compensate for the peaks experienced in provisioning power. However, Verizon contended, it is receptive to providing and billing in smaller amp increments or even single amp increments.

Verizon also argued that New Entrants witness Feldman provides no substantive evidence for his claims that Verizon's costs are overstated and does not appear to grasp the complexities of pulling, wrapping, and tying down power cables. Verizon maintained that without conducting any studies of his own, witness Feldman arbitrarily reduces Verizon's hours required to install various power facilities such as cables. Verizon contended that power cables, unlike flexible voice transmission cables, are very rigid and heavy, and thus difficult to handle. Verizon maintained that they cannot be pulled but must be slowly passed often from floor to floor, and placed in relay racks 10 feet off the floor. Verizon also noted that normally power cables are not placed in a straight line, but must be bent around central office structures and equipment. Verizon argued that it may take five to 10 people to complete these tasks and not just one or two as witness Feldman implied. Verizon asserted that its cost estimates are provided by subject matter experts who are engaged in power cable placement and have extensive experience in performing the tasks at issue. Verizon concluded that there is no reason to supplant the Verizon experts' well-considered estimates with witness Feldman's own unsubstantiated opinions.

In direct testimony, Verizon witness Richter explained that the DC power facility includes the power cables run from the BDFB to the collocator's individual location. Witness Richter noted that the size of the cables will be engineered in accordance with the requested amps, the voltage drop, and the distance to the collocator's area and that the cables can be provided by the collocator or purchased from Verizon. Witness Richter maintained that the cost of installing the required power cables is based on the loaded labor rate for a Central Office Equipment (COE) Installer in North Carolina and the hours-per-unit to perform this activity.

Witness Richter also explained that the costs associated with the DC power facility element is comprised of material and labor costs incurred to provide DC power to the collocator's area. Witness Richter noted that costs also will be incurred to extend power from the power plant to the collocator's area BDFB, including material and labor costs for the associated power cable, fuse panels, relay racks, and distribution bays.

On cross-examination, witness Richter agreed that it is the norm in the industry to have two sets of power leads to central office equipment. He also stated that witness Mitus' testimony that Verizon is double recovering for DC power by both grossing up the DC power investment and charging on a per fuse amp basis is in error. Witness Richter explained that witness Mitus misinterpreted Verizon's cost study and that Verizon does not bill on the fuse of the amp and that Verizon bills based on the CLPs requested amperage.

On cross-examination, Verizon witness Steele agreed that Verizon is proposing to charge on per amps used as opposed to per amps fused.

The Commission, after reviewing the record of evidence, has the following comments and conclusions:

* It appears that all of the Parties agree to provide power in single amp increments if so desired by the CLPs.
* The Commission does not believe that it is appropriate to reflect power costs separately in the ACF and therefore the Commission will require each ILEC to review its calculation of the ACF and remove any power expense from the ACF.
* The Commission notes that Verizon argued that its cost estimates are provided by subject matter experts who are engaged in power cable placement and have extensive experience in performing the tasks at issue. The Commission agrees with Verizon that there is no reason to supplant the Verizon experts' well-considered estimates since the evidence presented by the CLPs was unpersuasive. However, the Commission notes that as the ILECs have significant knowledge to develop cost studies, they also have significant incentive to overstate proposed rates.
* The Commission concludes that the ILECs should input AC power costs from the applicable electric tariffs.
* The Commission notes that BellSouth and Sprint reflect power of per fused amp and Verizon reflects power based on amps used. It is the Commission's understanding that the term "per fused amp" means that the collocator's equipment has a protection device rating and more amps are used to provide this protection. The Commission also believes that there is credible evidence that the protection device rating is necessary. Therefore, the Commission agrees with BellSouth and Sprint that power costs should be based on "per fused amp" rather than "per amp used."

COMMISSION CONCLUSIONS - Rate Issue No. 4 - DC Power: The Commission finds it appropriate to:

(1) require the ILECs to provide power in single amp increments if requested by a CLP to do so;
(2) require each ILEC to review its calculation of the ACF and remove any power expenses from the ACF;
(3) require the ILECs to use AC power costs from the applicable electric tariffs; and
(4) require ILECs to charge power costs on a "per fused amp" basis.

Rate Issue No. 5 - Rates for Cross-connects

The CLPs included a proposed Finding of Fact No. 8 — The rates for cross-connects should be those proposed by the New Entrants — in their Joint Proposed Order.

The CLPs noted that there are two types of cross-connects at issue in this case: (1) a cross-connect that includes the cost of both the common frame and a POT bay, and (2) a cross-connect that connects a CLP appearance to the appearance of another CLP. The CLPs alleged that none of the ILECs properly prepared a cost study for the nonrecurring cost of such cross-connects, the cost of both types of which should be equal. The CLPs noted that Sprint prepared no cost study at all, and Verizon submitted a study of the installation of a fiber optic cable across an office from one location to another. The CLPs stated that BellSouth provided a cost study for cross-connects to an intermediate distribution frame but not to a main distribution frame. The CLPs alleged that BellSouth's study is irrelevant since the FCC has ruled that an ILEC cannot require a CLP to use an intermediate distribution frame.

The CLPs asserted that the requirement of Section 251(c)(6) of TA96 that ILECs provide physical collocation of equipment necessary for interconnection at the premises of the LEC should be read to require an ILEC to afford a CLP interconnection at the ILEC central office with other CLPs' networks as well as with the ILEC network, provided the other CLPs have interconnection points at the premises of the LEC. The CLPs maintained that under the literal definition of the statutory language, cross-connection between CLPs is interconnection at the premises of the LEC.

The CLPs argued that requiring ILECs to provide CLP-to-CLP cross-connection under Section 251(c)(6) is consistent with the structure of the statute.

The CLPs recommended that the Commission adopt the costs of MDF, DSX-1, DSX-3, and Optical cross-connects as calculated by witness Feldman and also permit the CLPs to perform their own cross-connects.

The ILECs presented rates for cross-connects in their cost studies but their prefiled testimony does not address the rate element specifically.

The Commission does not believe that adequate evidence was presented on the appropriate rates for cross-connects. Therefore, the Commission finds it appropriate to instruct the Parties to attempt to negotiate rates for cross-connects. The Commission directs the Parties to file negotiated rates for cross-connects for inclusion in the Standard Offering by January 28, 2002 and if such rates are not negotiated, directs the Parties to instead file Supplemental Briefs discussing this issue in more depth by February 11, 2002.

COMMISSION CONCLUSIONS - Rate Issue No. 5 - Rates for Cross-connects: The Commission hereby instructs the Parties to attempt to negotiate rates for cross-connects. The Commission directs the Parties to file negotiated rates for cross-connects for inclusion in the Standard Offering by January 28, 2002 and if such rates are not negotiated, directs the Parties to instead file Supplemental Briefs discussing this issue in more depth by February 11, 2002.

Rate Issue No. 6 - Cable Installation

BellSouth argued that New Entrants witness Feldman's corrections and recalculation of BellSouth's proposed collocation rates should not be adopted by the Commission. BellSouth contended that witness Feldman's corrections to Section 6.5 should be rejected since the record reflects that the CLPs and the ILECs have met several times to discuss the processes associated with physical collocation in the central office. BellSouth noted that neither the Parties nor the Commission listed this cabling issue as an issue that needed resolution and that it would be inappropriate to add another issue at this late date. BellSouth also argued that witness Feldman's rationale that the FCC's Order on Reconsideration obligates ILECs to provide cabling and connections is simply not based on any language that BellSouth finds in that Order. BellSouth argued that there are no words in the paragraphs referenced by witness Feldman which state that ILECs are obligated to install connections to the distribution frame. Therefore, BellSouth noted that it did not develop and propose rate elements for this purpose.

The CLPs included a proposed Finding of Fact No. 9 — Cable installation shall be made available at the rates proposed by the New Entrants in Exhibit LF-4.0 — in their Joint Proposed Order.

The CLPs maintained that Sprint's proposed costs for cable installation which Sprint referred to as cross-connects when installed by Sprint are reasonable. The CLPs argued that it is important to have a rate for the installation by the ILEC of a cable from the CLP's collocation to the main distribution frame. The CLPs asserted that since BellSouth and Verizon failed to submit cost studies for these rate elements, Sprint's costs should be applied to cable installation when installed by the other ILECs as well.

The CLPs noted that neither Sprint, BellSouth, nor Verizon presented testimony on this issue.

The CLPs maintained that it is important to have a rate for the installation by the ILEC of a cable from the CLP's collocation to the MDF. The CLPs recommended that the Commission conclude that Sprint's costs for the installation of such cable by Sprint is reasonable and that since BellSouth and Verizon did not submit cost studies for these rate elements, that the Commission should apply Sprint's costs to cable installation when installed by the other ILECs as well.

The Commission notes that as with cross-connects, insufficient evidence was presented on this issue. The Commission also questions whether there is a difference between cross-connects and the issue of cable installation. Therefore, the Commission finds it appropriate to instruct the Parties to attempt to negotiate rates for cable installation. The Commission directs the Parties to file negotiated rates for cable installation for inclusion in the Standard Offering by January 28, 2002 and if such rates are not negotiated, directs the Parties to instead file Supplemental Briefs discussing this issue in more depth by February 11, 2002.

COMMISSION CONCLUSIONS - Rate Issue No. 6 - Cable Installation: The Commission hereby instructs the Parties to attempt to negotiate rates for cable installation. The Commission directs the Parties to file negotiated rates for cable installation for inclusion in the Standard Offering by January 28, 2002 and if such rates are not negotiated, directs the Parties to instead file Supplemental Briefs discussing this issue in more depth by February 11, 2002.

Rate Issue No. 7 - Security Costs

BellSouth also addressed the issue of security costs. BellSouth noted that MCIm witness Bomer testified that "security charges should not be assessed for collocation in central offices with existing card key systems." BellSouth commented that apparently MCIm believes that if a card reader already exists, then assessment of security charges in these offices has no basis in cost. BellSouth recommended that the Commission not endorse MCIm's position on security costs. BellSouth also recommended that the Commission not adopt witness Bomer and witness Mitus' proposal of recovering security costs based on square footage.

BellSouth proposed that the Commission find that the correct allocator should be one that bears some relationship to what caused the cost to be incurred. BellSouth argued that clearly there is no direct relationship between security access costs and the square footage occupied.

BellSouth also maintained that its proposal to pro-rate the cost of the security system based on the number of providers in the central office is consistent with rulings of the FCC.

BellSouth witness Caldwell stated in rebuttal testimony that WorldCom witness Messina incorrectly implied that if a card reader already exists, then assessment of security charges in these offices has no basis in cost. Witness Caldwell maintained that the development of forward-looking economic costs is not dependent on an analysis of when something has actually been deployed. Instead, witness Caldwell maintained, economic costs are based on long-run incremental costs that identify the forward-looking replacement cost of the equipment.

Witness Caldwell stated that she did not agree with witnesses Messina and Mitus that security costs should be recovered based on square footage. Witness Caldwell argued that cost methodology dictates that the costs should bear some relationship to the action that caused the costs to be incurred, not based on the relationship of the benefits derived by each party. Witness Caldwell questioned whether a CLP who occupies 500 square feet "benefits" more than another CLP who occupies 100 square feet. Witness Caldwell asserted that BellSouth's proposal to pro-rate the cost of the security system based on the number of providers in the central office is consistent with rulings of the FCC.

The CLPs included a proposed Finding of Fact No. 12 — ILECs may recover forward-looking costs for security pro rata on a per square foot basis across all usable space in the central office, as part of the recurring floor space charge — in their Joint Proposed Order.

The CLPs noted that MCIm proposed that the following language be added to Attachment 5, Section 7.3 of its Interconnection Agreement with BellSouth:

> BellSouth shall recover the costs for security for the Premises pro rata on a per square foot basis across all usable space in the Premises.

The CLPs noted that BellSouth has been upgrading its security systems for its own purposes throughout its network, and now seeks to recover costs from CLPs for having previously installed card reader systems in central offices. The CLPs alleged that when BellSouth or any other ILEC decides to install a new card reader system, it does so mainly because it has chosen to protect its equipment, not to protect collocators' equipment. The CLPs conceded that to the extent that both BellSouth and the collocators benefit from reasonable security measures, a reasonable allocation of the forward-looking costs between them should be developed and a reasonable allocation must bear some relationship to the benefits derived by each party. The CLPs asserted that BellSouth's preferred allocation method based on a per capita allocation is not reasonable and is arbitrary because it bears no relationship to the different level of benefits derived by each carrier which is related to the area occupied from a security system.

The CLPs maintained that to the extent that ILECs are permitted to assess CLPs for security costs, those costs should be part of the recurring monthly space charges, and should be based on forward-looking principles rather than the retrofitting of existing central office configurations. The CLPs asserted that a carrier that occupies a good deal of space and protects a large amount of telecommunications equipment should be assessed a greater share of the security costs than a carrier that occupies a small space and is protecting only a small amount of equipment. Therefore, the CLPs maintained, a pro rata allocation of security costs based on the square footage occupied by the ILEC and each collocator in the central office is reasonable.

The CLPs noted that the FCC has ruled in its Advanced Services Order that an ILEC may adopt reasonable security measures to protect their central office equipment and that, hence, the FCC expects that state commissions will permit ILECs to recover the costs of implementing these security measures from collocating carriers in a reasonable manner. The CLPs asserted that these FCC provisions support MCIm's position that the costs of new security card systems should be allocated on a pro-rata basis, based on the square footage that the new entrant occupies relative to the total space that the card system is designed to secure.

The CLPs noted that the Florida Public Service Commission ruled in support of the position advocated by MCIm on the issue of compensation for security measures. The Florida Commission ruled as follows:

> First, we are persuaded and so find that the costs of security arrangements, site preparation, and other costs necessary to the provisioning of collocation space incurred by the ILEC that benefit only a single collocating party in a central office should be paid for by that collocating party . . . (R)ecovering costs only from the party that benefits will eliminate the burden on ILECs and other collocators of paying for costs of collocation they did not cause to be incurred.
>
> Second, we find it appropriate that the costs of security arrangements, site preparation, and other costs necessary for the provisioning of collocation space incurred by the ILEC that benefit both current and future collocating parties shall be recoverable by the ILEC from current and future collocating parties. In this case, these costs shall be allocated based on the amount of floor space occupied by a collocating party, relative to the total collocation space for which site preparation was performed.
>
> Third, we find that the costs of security arrangements, site preparation, and other costs necessary for the provisioning of collocation space incurred by the ILEC that benefit current or future collocating parties and the ILEC shall be recoverable by the ILEC from current and future collocating parties, and a portion shall be attributed to the ILEC itself. We note that the ALEC's addressed their concerns over security issues that not only benefit collocating parties, but also benefit the ILEC. Acknowledging those concerns, we shall require that when multiple collocators and the ILEC benefit from modifications or enhancements, the cost of such benefits or enhancements shall be allocated based on the amount of square feet used by

the collocator or the ILEC, relative to the total usable square footage in the central office.

The CLPs concluded by recommending that the Commission find that assuming that an ILEC's security enhancements provide benefits to both the ILEC and the CLPs, the forward-looking costs should be allocated to parties on a per square foot of occupancy basis, as part of the recurring floor space charge. Further, the CLPs proposed that the Commission conclude that a pro-rata cost-based rate adequately allows ILECs to recover the costs of a security system.

The Public Staff noted in its Proposed Order that another area of contention concerns security costs. The Public Staff commented that testimony was submitted on the appropriate methodology to allocate these costs as well as when the costs should be recovered by the CLPs.

The Public Staff argued that with regard to the manner in which security costs should be recovered, when considered in a vacuum, the BellSouth and Verizon proposals provide for a reasonable approach to allocating security costs. However, the Public Staff stated that the Commission would be remiss if it failed to recognize the tremendous difference in square footage used by the CLPs versus the space used by the ILECs. The Public Staff maintained that this vast difference makes the per capita proposals of BellSouth and Verizon considerably less reasonable than the allocation per square foot used and recommended by Sprint.

The Public Staff stated that it does not necessarily question the costs for security included in the studies filed by the ILECs, however, to the extent that security costs are recovered through the building ACF when calculating the cost of floor space, adding a separate rate element for assessing security costs would constitute double recovery of this cost item. The Public Staff noted that it is persuaded that security costs, which are a necessary part of the cost of central offices, have long been incurred by the ILECs in the normal course of business and will be recovered by the ILECs through the floor space rate element and included in the building ACF. Therefore, the Public Staff maintained, having separate rate elements for assessing security costs constitutes a double recovery of these costs.

The Public Staff also noted that Verizon included numerous costs associated with security and that these items range from costs associated with securing cabinets, which are used wholly by Verizon, to the installation of card readers and cameras in the central offices. The Public Staff stated that it is not convinced by Verizon's arguments that securing cabinets which Verizon only uses is a cost that should be borne by CLPs. In any event, the Public Staff argued that security costs are normal costs of operating a central office and should be included in the building ACF used to calculate the floor space cost.

The Public Staff also recommended that the Commission find that the cost of providing security cards or keys to the CLPs should not be included in the normal security

costs. The Public Staff proposed that the Commission find that the cost of security cards or keys is a cost incremental to the provision of collocation spaces and should be recovered by the ILECs through a separate rate element.

The Public Staff noted that it already proposed that, in general, security costs are covered in the common and shared factors that are applied to the collocation rate elements. However, the Public Staff stated, CLPs should be assessed an amount for security cards or keys which they obtain for entry into the ILECs' central offices or remote terminals. The Public Staff commented that in reviewing the proposed rates of BellSouth for security cards and keys, it concluded that the rate for these items are excessive. The Public Staff noted that in reviewing the workpapers filed by BellSouth, there are three areas in which the costs appear to be overstated:

(1) The material cost of the card or key should be reviewed. Any cost exceeding $2.00 for a card or key appears to be excessive on its face and the Public Staff has seen no justification presented by BellSouth for the higher costs included in its study.

(2) The postage costs included by BellSouth, which exceed $3.00 for both the card and key, also appear to be excessive. The Public Staff believes that a more reasonable on-going postage cost would not exceed $2.00.

(3) BellSouth has vastly overstated the labor cost.

The Public Staff recommended that the Commission have BellSouth review the support for the nonrecurring rates for security cards and keys, for activation, administrative changes, and replacement and make appropriate modifications to ensure that these rates do not exceed $20.00. The Public Staff noted that this is comparable to the $15.00 per security card rate recommended by Sprint.

The Public Staff recommended that the Commission conclude that costs exceeding $20.00 for security cards and keys are excessive and do not reflect long run incremental costs. Therefore, the Public Staff proposed, Verizon should be required to review the support for the nonrecurring rates for security cards and keys, for activation, administrative changes, and replacement and make appropriate modifications to ensure that these rates do not exceed $20.00. Also, the Public Staff noted that its recommendation is comparable to the $15.00 rate recommended by Sprint.

Sprint maintained in its Proposed Order that security measures should be calculated on a per square foot basis, not on the per capita basis argued by BellSouth and Verizon. Sprint noted that this is in line with the Florida Commission's and Sprint's methodology.

The Commission notes that BellSouth stated in its Opening Statement at the hearing

> . . . [central] offices are really, truly the nerve centers of networks that incumbent companies like BellSouth have built over many, many decades. Needless to say, not just anyone can walk off the street and stroll through one of our central offices. Security is very tight, access is guarded, and people really who are the folks that work on this equipment are highly trained and highly skilled.

Therefore, it appears that at least for BellSouth, security measures have been implemented in central offices long before TA96 was enacted.

The Commission notes that there are both recurring and nonrecurring charges to address for security costs. For recurring costs, the Commission agrees with the CLPs and Sprint that it is appropriate to pro rate security costs on the basis of square footage. The Commission believes that this is a reasonable and appropriate methodology to allocate costs and ensures that carriers pay costs based on the amount of square footage that is protected by these security measures.

Concerning nonrecurring charges, the Commission agrees with the Public Staff that the cost of security cards or keys is a cost incremental to the provision of collocation spaces and should be recovered by the ILECs through a separate rate element. The Commission also finds credible the Public Staff's analysis of how the security card and key charges for BellSouth and Verizon appear overstated. The Commission believes that security card and key charges should be uniform among the ILECs and that there is no reason such costs should vary. Therefore, the Commission concludes that the appropriate nonrecurring rate for security cards and keys is $15.00 as proposed by Sprint.

The Commission is also persuaded, as is the Public Staff, that security costs, which are a necessary part of the cost of central offices, have long been incurred by the ILECs in the normal course of business and will be recovered by the ILECs through the floor space rate element and included in the building ACF. Therefore, the Commission agrees with the Public Staff that having separate rate elements for assessing security costs constitutes a double recovery of these costs. The Commission finds it appropriate to require the ILECs to review the calculations of the ACF and remove security costs from that calculation. The Commission notes that since it is ordering separate rate elements for security costs it would be inappropriate to allow the ILECs to also include security costs in their calculations of the ACF.

COMMISSION CONCLUSIONS - Rate Issue No. 7 - Security Costs: The Commission:

(1) concludes that it is appropriate to allocate security costs to carriers based on square footage occupied in the central office as a recurring charge;

(2) concludes that the appropriate nonrecurring rate for security cards and keys is $15.00 per card or key issued; and

(3) concludes that the ILECs should review their calculations of the ACF and remove any security costs.

Rate Issue No. 8 - Augmenting

The Public Staff noted that it previously recommended adding the appropriate rates to charge for augmenting collocation spaces and modifying application and that the ILECs should revise their proposed rates accordingly.

The Commission notes that as with cross-connects and cable installation, insufficient evidence was presented on this issue. Therefore, the Commission finds it appropriate to instruct the Parties to attempt to negotiate rates for augmenting. The Commission directs the Parties to file negotiated rates for augmenting for inclusion in the Standard Offering by January 28, 2002 and if such rates are not negotiated, directs the Parties to instead file Supplemental Briefs discussing this issue in more depth by February 11, 2002.

COMMISSION CONCLUSIONS - Rate Issue No. 8 - Augmenting: The Commission hereby instructs the Parties to attempt to negotiate appropriate rates for augments. The Commission directs the Parties to file negotiated rates for inclusion in the Standard Offering by January 28, 2002 and if such rates are not negotiated, directs the Parties to instead file Supplemental Briefs discussing this issue in more depth by February 11, 2002.

Rate Issue No. 9 - Adjacent Collocation

The Public Staff noted that Sprint proposed to set rates on a case-by-case basis for adjacent onsite costs, asserting that it has received no requests for adjacent collocation. The Public Staff commented that this lack of demand should not excuse Sprint from the need to file rates for adjacent collocation as neither Verizon nor BellSouth have received much demand, if any, for adjacent collocation but they have proposed rates as required by the FCC. The Public Staff argued that Sprint should do so as well.

The Commission again notes that insufficient evidence was presented on this issue. Therefore, the Commission finds it appropriate to direct the Parties to file negotiated rates for adjacent collocation for inclusion in the Standard Offering by January 28, 2002 and if such rates are not negotiated, directs the Parties to instead file Supplemental Briefs discussing this issue in more depth by February 11, 2002.

COMMISSION CONCLUSIONS - Rate Issue No. 9 - Adjacent Collocation: The Commission finds it appropriate to instruct the Parties to attempt to negotiate appropriate rates for adjacent collocation. The Commission directs the Parties to file negotiated rates for inclusion in the Standard Offering by January 28, 2002 and if such rates are not negotiated, directs the Parties to instead file Supplemental Briefs discussing this issue in more depth by February 11, 2002.

Rate Issue No. 10 - Premises Space Report

Verizon noted that a CLP that has been denied collocation space in a central office may require Verizon to prepare a Premise Space Report for any specific office. Verizon contended that in compiling the Premise Space Report, Verizon incurs costs for the engineers to visit a particular central office and to create a detailed report explaining the space availability in that central office. Verizon maintained that its costs of providing such a report were determined by examining the estimated amount of time that it would take the Network Designer and Building Services and the Local Network Designer to complete the comprehensive evaluation necessary to produce the report. Verizon contended that the amount of time was multiplied by the appropriate employee's North Carolina labor rate to determine the cost. Verizon maintained that for a comprehensive evaluation, the costs is $5,411.20. Verizon noted that the rate for the report takes into account that additional collocators could request the report and the price is $1,217.52. Verizon argued that once again, witness Feldman inappropriately reduced the hours necessary to produce the Premises Space Report and that his arbitrary cost reductions fail to account for the effort required for that task.

The Commission notes that no other Party presented evidence concerning this issue. The Commission also questions what additional information would be provided in the Premises Space Report that the ILEC would not already be required to provide in Sections 2.3.1 and 2.3.2 (See Finding of Fact No. 22) and Section 2.2 (See Finding of Fact No. 24). With this observation, the Commission finds it appropriate to direct the Parties to file negotiated rates for a Premises Space Report for inclusion in the Standard Offering by January 28, 2002 and if such rates are not negotiated, directs the Parties to instead file Supplemental Briefs discussing this issue in more depth by February 11, 2002.

COMMISSION CONCLUSIONS - Rate Issue No. 10 - Premises Space Report: The Commission hereby instructs the Parties to attempt to negotiate appropriate rates for a Premises Space Report. The Commission directs the Parties to file negotiated rates for inclusion in the Standard Offering by January 28, 2002 and if such rates are not negotiated, directs the Parties to instead file Supplemental Briefs discussing this issue in more depth by February 11, 2002.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 48

ISSUE 50: What are the appropriate terms and conditions for shared collocation, including allocation of indemnities?

ISSUE 75 (Sprint 1): Whether ILECs should be required to accept payment from the Guest CLP for charges applicable to collocation space?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue.

AT&T: AT&T stated that terms and conditions should be: (1) Both CLPs must have interconnection agreements with the ILEC, (2) the ILEC may not increase the cost of site preparation or nonrecurring charges above the cost of provisioning a cage of similar dimension for a single party, (3) the Standard Offering should provide for shared collocation based on FCC rules, (4) ILECs should not enter into leases purporting to prohibit federally-protected activity, (5) actual problems with ILEC leases should be addressed through the waiver process, and (6) there should be reciprocal language concerning liability for shared collocation space. ILECs should be required to accept payment directly from the Guest CLP in a shared arrangement, but the Host CLP remains the ultimate responsible party.

BELLSOUTH: The appropriate terms and conditions are those as set forth in Section 3.3 of BellSouth's Standard Offering. This allows for shared collocation arrangements but places primary responsibility on the Host, including an indemnity provision regarding Guests except in case of ILEC gross negligence or willful misconduct.

MCIm: MCIm did not address this issue in its Brief.

NEW ENTRANTS: New Entrants took the same position as AT&T.

PUBLIC STAFF: The Host CLP should be responsible for payment to the ILEC of all charges associated with rental of a shared collocation space. Application and site preparation charges should be prorated and billed separately to each CLP based on the percentage of shared space that is used by the CLP. ILECs are prohibited from signing leases that would keep them from fulfilling their collocation obligations. BellSouth's proposed language limiting liability to gross negligence and willful misconduct is inequitable and unnecessary.

SPRINT: Sprint believed that the Host collocator should be the sole interface and responsible party to the ILEC for the purpose of submitting applications for initial and additional equipment placements for all CLPs in a shared space, for assessment and payment of all rates and charges for the space, and for the purpose of safety and security requirements.

VERIZON: A CLP Host may share caged collocation arrangements with other CLPs, but the Host is sole interface with the ILEC for applications, payments, and safety and security arrangements. However, the Guest may arrange directly with the ILEC for provision of interconnecting facilities, provision of services, access to UNEs and the ILEC will bill the Guest for these services.

WORLDCOM: WorldCom took the same position as AT&T.

DISCUSSION

Sections 3.5, 3.5.1, 3.5.2, and 3.5.3 of the Standard Offering set forth provisions for shared caged collocation. These address (1) procedures for giving notice to the ILEC concerning the sharing of collocation space; (2) the responsibilities of the "Host" and "Guest" collocators and ILEC; and (3) total and prorated costs for shared space.

BellSouth witness Hendrix testified: "The appropriate terms and conditions for shared collocation are set forth in Section 3.4 of the standard [BellSouth physical collocation] agreement." The BellSouth agreement would allow shared collocation unless the BellSouth premises were located in leased space where the lease prohibited such sharing of space. CLP witness Gillan suggested that ILECs should simply avoid entering into leases that "prohibit activity that is expressly provided for under federal law."

Witness Gillan testified that BellSouth had not indicated that it was willing to prorate charges, particularly application fees, for shared collocation spaces. Such proration is consistent with the FCC's requirement that "the ILEC may not increase costs above the cost of provisioning space for a single party." He also recommended that ILECs be required to accept separate payments from the host CLP and each guest CLP for its portions of the shared collocation space, with the host CLP retaining overall responsibility for ensuring that all floor space charges are paid. Mr. Gillan further argued that the administrative burdens CLPs would face in accepting and accounting for payments from guest CLPs were unreasonable and should be borne by the ILECs.

Sprint witness Hunsucker described the CLP proposal as "the insertion of an ILEC into a commercial arrangement (i.e., subleasing of floor space) that has been voluntarily entered into by two CLPs," adding that:

> the host collocator should be the sole interface and responsible party to the ILEC for the purpose of submitting applications for initial and additional equipment placements for all CLPs collocated in the shared space, for assessment and payment of rates and charges applicable to collocation space (e.g., floor space) and for purposes of ensuring that all applicable safety and security requirements are met.

Witness Hunsucker contended that the CLPs' position on accepting payments from shared collocators failed to take into account the inconveniences that this arrangement would place on ILECs. He illustrated his argument with the following example:

> Let's assume that the Host CLP originally places a collocation order for 300 square feet of collocation space. Subsequently, the Host CLP enters into a voluntary commercial arrangement with three guest CLPs -- Guest 1, Guest

2 and Guest 3 for 20 square feet, 30 square feet and 50 square feet respectively. In this example, Sprint would require the Host CLP to provide payment for all 300 square feet of floor space on a monthly basis, while the CLPs would (at the CLP option), require Sprint to accept payment from four CLPs, track and match the payments to the 300 square feet of space originally requested and provided to the Host CLP and perform bill validations to ensure that all of the floor space has been paid for. To complicate matters even more, the CLPs are free to change their subleasing arrangements on a daily basis by modifying existing Guest CLP space or by adding new Guest CLPs to the equation. Each and every time, the ILEC would have to be notified to ensure that its internal tracking systems are modified to ensure proper matching of payments to the exact floor space being utilized by each CLP. This is clearly burdensome to the ILEC. The practical result of such an arrangement is to place the ILEC in the position of being the billing and audit agent for the Host CLP. . . ."

The Public Staff's view was that the Host CLP should be responsible for payment to the ILEC of all charges associated with rental of shared collocation space. Application and site preparation changes should be prorated and billed separately to each CLP based on the percentage of shared space used by the CLPs. The ILECs should be prohibited from signing leases that would keep them from fulfilling their collocation obligations, and BellSouth's proposed language limiting liability to gross negligence and willful misconduct goes too far.

The Commission agrees with Sprint and BellSouth that the CLPs' proposal to require ILECs to accept payments from individual CLPs for floor space charges related to shared collocation could pose significant administrative burdens for the ILECs. While Paragraph 41 of the *Advanced Services Order* requires ILECs to "permit each competitive LEC to order UNEs and to provision service from that shared collocation space, regardless of which competitive LEC was the original collocator," it does not obligate ILECs to bill each individual CLP for the fraction of shared collocation space that it uses. As Sprint suggested, such an arrangement could easily be interpreted as requiring the ILECs to painstakingly measure the space occupied by each CLP in a shared collocation space every month, and to calculate, bill, and collect the monthly charges without receiving any compensation for these services. Accordingly, the Commission finds it appropriate to require the Standard Offering to be revised to require the host CLP to pay the ILEC directly for all charges associated with the rental of a shared collocation space, unless the host CLP and the ILEC work out another mutually acceptable arrangement.

Paragraph 41 of the *Advanced Services Order* does, however, require ILECs to prorate other charges for construction and conditioning of shared collocation space. It says, in part:

In addition, the incumbent must prorate the charge for site conditioning and preparation undertaken by the incumbent to construct the shared collocation

> cage or condition the space for collocation use, regardless of how many carriers actually collocate in that cage, by determining the total charge for site preparation and allocating that charge to a collocating carrier based on the percentage of the total space utilized by that carrier. In other words, a carrier should be charged only for those costs directly attributable to that carrier.

Accordingly, ILECs and CLPs should be directed to develop Standard Offering language consistent with this requirement. For example, CLPs that apply for a single caged collocation space as a group should be billed individually for their application and site preparation costs, prorated in proportion to the relative amount of collocation space they are requesting. With respect to the CLPs' concern regarding leases, the Commission believes that ILECs should forbear from signing any leases that would keep them from fulfilling the collocation obligations imposed on them by the FCC.

Turning to the issue of allocation of indemnities, BellSouth proposed that the host indemnify and hold BellSouth harmless from all claims, actions, causes of action, of whatever kind or nature arising out of the presence of the guest in the collocation space except if caused by BellSouth's gross negligence or willful misconduct. The CLPs oppose BellSouth's proposal because it is inconsistent with Section 17 of the Standard Offering and would absolve BellSouth in some instances when its negligence does not rise to the level of gross misconduct. Witness Hendrix admitted on cross-examination that the current BellSouth collocation attachment does include reciprocal language as to the allocation of indemnities, but that its proposed language is not reciprocal.

BellSouth has not explained why it should not be liable for negligence that is not gross or for misconduct that is not willful. It is unclear why the ordinary rules regarding liability for negligence and misconduct should not apply. It troubles the Commission that under BellSouth's proposal the allocation of indemnities will not be reciprocal, but will only accrue to the benefit of BellSouth. The Commission finds it appropriate to reject BellSouth's proposed language that limits its liability only to acts of gross negligence or willful misconduct regarding guest collocators because it is inequitable and unnecessary. Thus, no change is necessary to the Standard Offering in regard to allocation of indemnities for Guest/Host collocation arrangements.

CONCLUSIONS

The Commission concludes that the Host CLP in a shared collocation arrangement is responsible for the payment to the ILEC of all changes associated with the removal of a shared collocation space. However, application and site preparation changes should be prorated and billed separately to each CLP based upon the CLPs' percentage of shared space used. ILECs should not be allowed to sign leases that would impair them in fulfilling their collocation obligations and proposed language limiting liability of ILECs only to acts of gross negligence or willful misconduct regarding Guest collocators should be rejected.

No change is necessary to the Standard Offering regarding the allocation of indemnities for Guest/Host collocation arrangements.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 49

ISSUE 51: Under what circumstances may the ILEC designate the location of an adjacent collocation arrangement such that the arrangement will not interfere with access to existing or planned structures?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not take a position on this issue in its Brief.

AT&T: The ILEC may only designate the location of an adjacent collocation arrangement if the placement requested by the CLP would not be technically feasible. The ILEC has the burden of demonstrating that such location is not technically feasible. Also, zoning and municipal (state or local) regulations may give the ILEC certain rights or obligations to control the construction and location of adjacent collocation space. But the ILEC may not reserve space or plan uses for adjacent space without taking collocation demand into account.

BELLSOUTH: The ILEC should retain sole discretion to designate the location of an adjacent collocation arrangement because only the ILEC can determine if the location may interfere with access to existing or planned structures or facilities on the premises property.

MCIm: MCIm did not take a position on this issue in its Brief.

NEW ENTRANTS: The New Entrants supported the position taken by AT&T on this issue.

PUBLIC STAFF: The ILEC may not unfairly discriminate between itself and CLPs or between distinct CLPs; however, the ILEC ultimately has the right to designate the site of adjacent collocation arrangements, subject to the FCC's revised rules governing space designation. The Commission should encourage the parties to negotiate these details. If the CLP believes that the ILEC has unreasonably refused to honor its reasonable request, the CLP may file a complaint with the Commission.

SPRINT: Sprint accepted the position taken on this issue by the CLPs to the extent it is consistent with the terms and conditions of the Standard Offering filed with the direct testimony of Sprint witness Hunsucker, it is included in the Standard Offering, and the Standard Offering is made applicable to all parties in its entirety.

VERIZON: The ILEC shall designate the location of an adjacent collocation arrangement such that the arrangement will not interfere with access to existing or planned structures.

Adjacent arrangements shall be available only where space within the central office is legitimately exhausted, subject to technical feasibility. The ILEC and CLP shall mutually agree on an adjacent location, but agreement is conditioned on zoning or other state and local regulations, as well as reasonable safety and maintenance requirements.

WORLDCOM: WorldCom supported the AT&T position on this issue.

DISCUSSION

The CLPs contended that the parties should mutually agree on the placement of an adjacent collocation arrangement, unless it is technically infeasible, and that the ILEC bears the burden of proving technical infeasibility. The CLPs acknowledged that zoning and municipal regulations may give an ILEC some control over the construction and location of adjacent collocation space. The CLPs also contended that the ILECs should not be allowed to reserve or plan uses for adjacent collocation space without taking the demand for collocation into account.

BellSouth contended that the ILECs should have the sole discretion of determining where adjacent collocation will be sited, because only the ILECs can determine whether the site will interfere with access to existing or planned structures or facilities on the premises.

Verizon asserted that the CLPs' proposal that the ILECs may designate the locations of adjacent arrangements only when the CLPs' requests are technically infeasible is far too restrictive. Verizon explained that the ILECs designate all collocation spaces on their property, including spaces adjacent to central offices.

In its Proposed Order, the Public Staff contended that the ILECs may not unfairly discriminate between themselves and CLPs or between distinct CLPs; however, the ILECs ultimately have the right to designate the site of adjacent collocation arrangements, subject to the FCC's revised rules governing space designation. According to the Public Staff, the Commission should encourage the parties to negotiate these details. If a CLP believes that an ILEC has unreasonably refused to honor its reasonable request, the CLP may file a complaint with the Commission.

Based on the language from the *GTE* case cited in the discussion of Issue No. 2 *supra,* the Commission determines and concludes that the ILECs may choose where to establish collocation on their own property. It is impermissible for the ILECs to discriminate unfairly between themselves and CLPs or between distinct CLPs; however, the ILECs ultimately have the right to designate the sites of adjacent collocation arrangements, subject to the FCC's revised rules governing space designation. The Commission also encourages the Parties to negotiate these details and state that if a CLP believes that an ILEC has inappropriately refused to honor its reasonable request, the CLP may file a complaint with this Commission. The Commission finds it appropriate to require

the Parties to negotiate mutually agreeable language for Section 3.6 of the Standard Offering to reflect these conclusions.

CONCLUSIONS

The Commission concludes that the ILECs ultimately have the right to designate the sites of adjacent collocation arrangements, subject to the FCC's revised rules governing space designation; i.e., 47 CFR 51.323(f)(7). The Commission also encourages the Parties to negotiate these details and state that if a CLP believes that an ILEC has inappropriately refused to honor its reasonable request, the CLP may file a complaint with this Commission. Further, the Commission requires the Parties to negotiate mutually agreeable language for Section 3.6 of the Standard Offering to reflect these conclusions.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 50

ISSUE 52: Under what circumstances may the ILEC designate the location of the cageless collocation arrangement within the central office?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not take a position on this issue in its Brief.

AT&T: The ILEC may designate the location of cageless collocation equipment in its central office. When a CLP has a virtual collocation arrangement and wants to convert it to physical cageless collocation, however, the ILEC's right to designate is limited. Moreover, the sole purpose of requiring a separate entrance is to increase the CLPs' costs. Verizon has not justified the need categorically for a separate entrance.

BELLSOUTH: The ILEC should designate the location of the cageless collocation arrangement within its central office premises in all cases. There is nothing in the Act or the FCC rules that allows the CLP to designate the location. Further, the D.C. Circuit Court and the FCC have ruled that the ILEC, rather than the CLP, shall determine where the CLP's physical collocation equipment should be placed within a central office. Removing such control from the ILEC would result in a chaotic use of available space, as each CLP would make decisions in its best interest without regard to the interests of the ILEC or other CLPs.

MCIm: MCIm did not take a position on this issue in its Brief.

NEW ENTRANTS: The New Entrants supported the position taken by AT&T on this issue.

PUBLIC STAFF: The ILEC has the right to designate the placement of cageless collocation space in its central office. The ILEC may separate a CLP's collocation equipment from its own equipment only if the proposed separated space is: (a) available

in the same or shorter time frame as nonseparated space; (b) at a cost not materially higher than the cost of nonseparated space; and (c) is comparable, from a technical and engineering standpoint, to nonseparated space. The ILEC may require such separation measures only when warranted by legitimate security concerns, or operational constraints unrelated to the competitive concerns of the ILEC or its affiliates or subsidiaries.

SPRINT: Sprint accepted the position taken on this issue by the CLPs to the extent it is consistent with the terms and conditions of the Standard Offering filed with the direct testimony of Sprint witness Hunsucker, it is included in the Standard Offering, and the Standard Offering is made applicable to all parties in its entirety. In consideration of the FCC's *Collocation Remand Order*, Sprint proposed to revise the first sentence of Paragraph 3.1 of the Standard Offering to read as follows:

> The ILEC shall offer Collocation Space to allow the CLP to collocate the CLP's equipment and facilities, without requiring the construction of a cage or similar structure, and without requiring the creation of a separate entrance to the Collocation Space that would add delays or materially higher costs than an arrangement without a separate entrance.

VERIZON: The ILEC shall designate the location of cageless collocation within a central office, including prohibiting commingling of CLP equipment with existing ILEC lineups. The ILEC shall assign collocation space to CLPs in a just, reasonable, and nondiscriminatory manner. In consideration of the FCC's *Collocation Remand Order*, the ILEC shall assign cageless collocation space in accordance with the provisions of 47 CFR 51.323(f)(7)(A)-(D) and 47 CFR 51.323(i)(4)(i)-(v). The ILEC shall allow the CLP direct access to its equipment and facilities 24 hours a day, seven days a week without need for a security escort. The ILEC may require the CLP's employees and contractors to use a central or separate entrance, so long as the employees and contractors of the ILEC's affiliates and subsidiaries will be subject to the same restriction. The ILEC should designate the space available for cageless collocation in single bay increments.

WORLDCOM: WorldCom supported the AT&T position on this issue.

DISCUSSION

On this issue, the CLPs contended that they may designate the location of cageless collocation equipment within the central offices. Verizon, BellSouth, and, ultimately, the Public Staff contended that the *GTE* decision gave ILECs the right to designate the placement of caged and cageless equipment in their central offices.

Pursuant to the remand, the FCC revised its rules regarding designation of the location of cageless collocation and arrangement within the ILECs' central offices. The provisions of 47 CFR 51.323(f)(7)(A)-(D) and 47 CFR 51.323(i)(4)(i)-(v) govern the circumstances under which an ILEC may designate the location of cageless collocation

arrangements within central offices. An ILEC must assign collocation space to requesting carriers in a just, reasonable, and nondiscriminatory manner, according to the following principles: (1) an ILEC's space assignment policies and practices must not materially increase a requesting carrier's collocation costs; (2) an ILEC's space assignment policies and practices must not materially delay a requesting carrier's occupation and use of the ILEC's premises; (3) an ILEC must not assign physical collocation space that will impair the quality of service or impose other limitations on the service a requesting carrier wishes to offer; and (4) an ILEC's space assignment policies and practices must not reduce unreasonably the total space available for physical collocation or preclude unreasonably physical collocation within the ILEC's premises.[8] To be consistent with the *GTE* decision, and to balance the ILECs' security concerns with the CLPs' competition concerns, the FCC further concluded that an ILEC may require the separation of equipment from its own equipment only if each of the following conditions is met: (1) either legitimate security concerns, or operational constraints unrelated to the ILEC's or any of its affiliates' or subsidiaries' competitive concerns, warrant such separation; (2) any physical collocation space assigned to an affiliate or subsidiary of the ILEC is separated from space housing the ILEC's equipment; (3) the separated space is available in the same or shorter time frame as nonseparated space; (4) the cost of the separated space to the requesting carrier will not be materially higher than the cost of the nonseparated space; and (5) the separated space is comparable, from a technical and engineering standpoint, to nonseparated space.[9] The issue raised by the CLPs as to what happens when a CLP has a virtual collocation arrangement which it wants to convert to physical collocation has been addressed and decided in conjunction with Issue No. 39. If a CLP believes that it is being treated in a discriminatory manner by an ILEC in the siting of its collocation equipment, it may file a complaint with the Commission. The Commission finds it appropriate to require the Parties to negotiate mutually agreeable language for Section 3.1 of the Standard Offering to reflect these conclusions.

CONCLUSIONS

The Commission concludes that the ILECs have the right to designate the placement of cageless collocation equipment in their central offices; provided, however, that such designation is done in a just, reasonable, and nondiscriminatory manner which is consistent with the provisions of 47 CFR 51.323(f)(7)(A)-(D) and 47 CFR 51.323(i)(4)(i)-(v). The Commission also encourages the Parties to negotiate these details. The Commission reaffirms the decision previously reached in conjunction with Issue No. 39 on the issue raised by the CLPs as to what happens when a CLP has a virtual collocation arrangement which it wants to convert to physical collocation; i.e., the appropriate terms and conditions for conversion from virtual collocation to physical collocation. If a CLP believes that it is being treated in a discriminatory manner by an ILEC in the siting of its collocation equipment, the CLP may file a complaint with this

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[8] 47 CFR 51.323(f)(7)(A)-(D)
[9] 47 CFR 51.323 (i)(4)(i)-(v)

Commission. The Commission also requires the Parties to negotiate mutually agreeable language for Section 3.1 of the Standard Offering to reflect these conclusions.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 51

ISSUE 53: What are the appropriate terms and conditions for the placement of entrance facilities?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not take a position on this issue in its Brief.

AT&T: The collocator will place its entrance facilities (copper or fiber) at a point (cable vault or manhole) that is mutually agreeable to the parties and physically accessible by the ILEC and CLP. The cable will be spliced into fire-retardant riser cable and connected to the collocator's equipment. The ILECs have not explained why the Standard Offering is not reasonable. Microwave facilities may be used for interconnection where technically feasible.

BELLSOUTH: CLPs may elect to place CLP-owned or CLP-leased fiber entrance facilities into the collocation space but they may not place nonfiber optic cable entrance facilities. Some copper cables currently enter BellSouth central offices. These older cables are associated with BellSouth's loop facilities. Entrance facilities for CLPs, on the other hand, are a form of interconnection. All of BellSouth's interconnection trunk cables entering BellSouth central offices are optical fiber facilities. The rules regarding an ILEC's collocation obligation under the Act established by the FCC in its First Report and Order clearly state that the ILEC has no obligation to accommodate nonfiber optic entrance facilities (that is, copper entrance facilities) unless and until such interconnection is first ordered by the state commission. This analysis should be done on a case-by-case basis by the Commission after the Commission has had an opportunity to review the CLP's need for copper facilities at a particular premises.

MCIm: MCIm and the other CLPs are entitled to use any technically feasible entrance cable, including copper facilities.

NEW ENTRANTS: The New Entrants supported the position taken by AT&T on this issue.

PUBLIC STAFF: The CLPs may place their owned or leased entrance facilities into the collocation space, but they are required to provide entrance facilities that meet the ILEC's standards. The FCC only requires ILECs to allow fiber optic cable for interconnection. Copper and coaxial cable are limited to adjacent collocation situations and are otherwise left to the discretion of the state commissions.

SPRINT: Sprint accepted the position taken on this issue by the CLPs to the extent it is consistent with the terms and conditions of the Standard Offering filed with the direct testimony of Sprint witness Hunsucker, it is included in the Standard Offering, and the Standard Offering is made applicable to all parties in its entirety.

VERIZON: The CLPs may elect to place CLP-owned or leased entrance facilities into the collocation space. The parties will mutually designate points of interconnection in close proximity to the building housing the collocation. The CLPs will provide and place fiber cable at the point of interconnection of sufficient length to be pulled through conduit, cable vault, and through the central office to the collocator's equipment location. A CLP may request that either the ILEC or a vendor authorized by the ILEC install fiber entrance facility cable.

WORLDCOM: WorldCom supported the AT&T position on this issue.

DISCUSSION

Section 5.2 of the Standard Offering describes the CLPs' position concerning the use of entrance facilities:

> Entrance Facilities. The CLP may elect to place CLP-owned or CLP-leased entrance facilities into the Collocation Space. The CLP will designate the point of interconnection in close proximity to the building housing the Collocation Space, such as an entrance manhole or a cable vault which are physically accessible by both parties. The CLP will provide and place fiber cable at the point of interconnection of sufficient length to be pulled through conduit and into the splice location with the ILEC inspector present. The CLP will provide fire retardant fiber cable, at parity with the ILEC's practices, that is approved for inside and outside use per manufacturers specifications at the point of interface (manhole) of sufficient length to be pulled through the conduit and cable vault to the CLP's equipment in the collocation space. If the CLP's cable is not fire retardant, the ILEC will install a fire retardant riser cable from the cable vault to the CLP's equipment in the collocation space. The CLP will splice the entrance cable to the fire retardant riser cable in the cable vault with an ILEC inspector present. If the cable has a metallic member, at the ILEC's option, either the ILEC or the CLP will ground the metallic member. If Fiber Optic Cable (FOC) is routed into the switching and/or transmission environment and the FOC is provisioned with a metallic shield or with metallic strength member, such metallic shield/strength members must be isolated and bonded to the designated OSP ground at the point of entry into the office environment (cable vault). Placement of the cable will be at the discretion of the ILEC. The CLP must contact the ILEC for instructions prior to placing the entrance facility cable in the manhole. The CLP is responsible for maintenance of the entrance facilities. At the

CLP's option, the ILEC will accommodate where technically feasible a microwave entrance facility pursuant to separately negotiated terms and conditions. The ILEC will permit copper or coaxial cable as the transmission medium except where the ILEC can demonstrate to the CLP that use of such cable will impair the ILEC's ability to service its own customers or subsequent CLPs.

In response to Verizon's statement that it is the obligation of the CLP rather than the ILEC to install fire retardant riser cable from the cable vault to the CLP's equipment, CLP witness Gillan stated that "the CLPs do not necessarily disagree with this statement, as a general matter, however, the CLPs note that Verizon has not articulated why the Standard Offering is unreasonable in this respect." Witness Gillan further testified that CLPs are generally entitled to use any technically feasible entrance cable, including copper facilities. Copper facilities are necessary to provide xDSL when adjacent or offsite collocation is employed. Furthermore, the CLPs remarked that BellSouth acknowledged that copper cables enter ILEC central offices today, and this clearly demonstrates technical feasibility. Hence, the CLPs believe that there should be a presumption that copper cables should be allowed.

BellSouth witness Milner contended that the FCC's *Advanced Services Order* states that "[t]he ILEC has no obligation to accommodate non-fiber optic entrance facilities (that is, copper entrance facilities) unless and until such interconnection is first ordered by the state commission." He pointed out that, while some copper cables currently enter BellSouth central offices, "going forward our technology choice is fiber optic cable, so for our -- both for our interconnection trunking we use fiber optics as well as for our loop facilities. In other words, we don't place new copper loops. We use fiber optic cable out to a midpoint, digital loop carrier equipment, and then copper loop distribution that goes onto the premises." Witness Milner asserted that no CLP should be permitted to place copper entrance facilities, except to adjacent collocation arrangements, since this would accelerate the exhaust of entrance facilities at BellSouth's offices at an unacceptable rate.

Verizon witness Ries raised two objections to the Standard Offering's language concerning the placement of entrance facilities. First, the proposal specifies that if the CLP's fiber cable is not fire retardant, the ILEC will install a fire retardant riser cable from the cable vault to the CLP's equipment room in the collocation space. It is not the ILEC's obligation to satisfy this requirement for the CLP. Second, Section 5.2 of the Standard Offering would permit the use of copper entrance facilities. The diameter of equivalent copper cable is much larger than fiber cable and this inefficiently would require additional conduit and subduct space. The ILEC should allow copper entrance facilities only for onsite adjacent collocation, and only when sufficient duct space is available to accommodate the request, the arrangement is technically feasible and the arrangement meets ILEC safety requirements.

In its Proposed Order, the Public Staff took the position that the CLPs may place their owned or leased entrance facilities into the collocation space, but they are required

to provide entrance facilities that meet the ILEC's standards. According to the Public Staff, the FCC only requires ILECs to allow fiber optic cable for interconnection. Copper and coaxial cable are limited to adjacent collocation situations and are otherwise left to the discretion of the state commissions.

47 C.F.R. Section 51.323(d)(3) requires an ILEC providing physical collocation, *virtual collocation, or both, to allow for the interconnection of copper or coaxial cable if the* state commission first approves such interconnection. This point was addressed as follows in the Florida Public Service Commission's (Florida PSC's) *Order for Reconsideration:*

> In its Motion, BellSouth seeks clarification of our decision to allow ILECs to require alternative local exchange companies (ALECs) to use fiber entrance cabling only after the ILEC proves that the entrance capacity is near exhaustion at a particular central office. BellSouth seeks clarification to the extent that it believes that we intended to limit situations in which an ALEC could use copper entrance cabling to those in which the ALEC is using a controlled environmental vault (CEV) or some similar type of structure on the same land where BellSouth's central office is located, a collocation arrangement referred to by BellSouth as adjacent collocation. BellSouth explains that only in adjacent collocation arrangements is an ALEC unable to use fiber. BellSouth further explains that in ¶ 44 of the FCC's Advanced Services Order, FCC Order 99-48, the FCC stated that adjacent collocation is available when the space inside the central office (CO) is exhausted. In collocation situations within the CO, BellSouth maintains that fiber optic entrance cabling must be connected to a fiber optic terminal, or multiplexer, inside the CO in order to connect to the network. However, in adjacent collocation situations, BellSouth contends that there is no room for the fiber optic connection, and therefore, copper should be allowed between the CO and the ALEC's CEV.
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> * * *
>
> Upon consideration of the foregoing, we make the requested clarifications regarding the use of copper entrance cabling. We find that the Order could be misconstrued, as the parties have indicated. As such, we clarify our decision in that it only addresses the use of copper entrance cabling within the context of collocation outside of a CO, but does not reach the issue of copper cabling in other situations. In rendering this clarification, we also clarify that only collocation between an ALEC's CEV and an ILEC CO was considered in our decision.

The Commission believes the Standard Offering generally provides a good format for achieving guidelines that meet the administrative, technical and safety issues associated with collocation. However, the CLPs have failed to provide sufficient evidence

that copper cable should generally be allowed other than in an adjacent collocation situation. The Florida PSC's *Order For Reconsideration* clarifies that the use of copper entrance facilities only addressed situations where collocation was outside of a central office, and did not reach the issue of copper cabling in other situations.

The Commission believes that the unfettered use of copper entrance facilities, as requested by the CLPs, would accelerate the exhaust of ILEC central office entrance conduit and subduct. There are no FCC rules regarding fire retardant cable, but the CLPs are aware that they are required to meet the same safety standards that apply to ILECs. Thus, the burden should be on the CLPs to provide and install fire retardant riser cable. Central office entrance facilities should be limited to fiber optic cable unless the ILEC and CLP mutually agree to placement of copper entrance facilities or the CLP can convince the Commission, in a complaint proceeding, to authorize such placement at a particular premises on a case-by-case basis.

CONCLUSIONS

The Commission concludes that the CLPs have failed to provide sufficient evidence that copper cable should generally be allowed other than in an adjacent collocation situation. Thus, central office entrance facilities should be limited to fiber optic cable unless the ILEC and CLP mutually agree to placement of copper entrance facilities or the CLP can convince the Commission, in a complaint proceeding, to authorize such placement at a particular premises on a case-by-case basis. Further, the Commission finds it appropriate to require the CLPs to provide and install fire retardant riser cable. The Commission also requires the Parties to negotiate mutually agreeable language for Section 5.2 of the Standard Offering to reflect these conclusions and those subsequently addressed in conjunction with Issue No. 70.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 52

ISSUE 54: What are the appropriate terms and conditions for the placement of dual entrance facilities?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not take a position on this issue in its Brief.

AT&T: Dual entrances provide an opportunity to prevent some network failures. Section 5.2 of the Standard Offering does not require dual entrances. It requires parity. If multiple entry points are available, and if the collocator desires, multiple entry points will be made available. The collocator will use the ILEC's certified vendor for engineering and installation. All shared cost incurred by the CLP will be prorated, based upon the number of cables placed in the entry points by the involved parties.

BELLSOUTH: BellSouth will provide at least two interconnection points at each premises where there are at least two such interconnection points available and where capacity exists.

MCIm: MCIm did not take a position on this issue in its Brief.

NEW ENTRANTS: The New Entrants supported the position taken by AT&T on this issue.

PUBLIC STAFF: The ILECs shall provide two interconnection points for each ILEC premises where there are at least two entry points for the ILEC's cable facilities and where space is available.

SPRINT: Sprint accepted the position taken on this issue by the CLPs to the extent it is consistent with the terms and conditions of the Standard Offering filed with the direct testimony of Sprint witness Hunsucker, it is included in the Standard Offering, and the Standard Offering is made applicable to all parties in its entirety.

VERIZON: The ILEC will permit two interconnection points at each premise whenever there are two such interconnection points available for the ILEC cable.

WORLDCOM: WorldCom supported the AT&T position on this issue.

DISCUSSION

Section 5.2.1 of the Standard Offering provides the proposed conditions under which ILECs shall provide dual entrance facilities:

> Dual Entrance. The ILEC will permit the CLP to designate and the ILEC will provide at least two interconnection points at each Premise wherever there are at least two such interconnection points for the ILEC cable. The ILEC will also provide nondiscriminatory access to any entry point into the Premises in excess of two points in those locations where ILEC also has access to more than two such entry points. Where such dual points of entry are not immediately available, the ILEC shall perform work as is necessary to make available such separate points of entry for the CLP at the same time that it makes such separate points of entry available for itself. In each instance where ILEC performs such work in order to accommodate its own needs and those specified by the CLP in the CLP's written request, the CLP and the ILEC shall share the costs incurred by pro-rating those costs using the number of cables to be placed in the entry point by both the ILEC and the CLP(s) in the first twelve (12) months.

CLP witness Gillan asserted that "Whenever multiple entry points are available to the ILEC, they must similarly be available to the CLP." In his rebuttal testimony,

witness Gillan pointed out that physically diverse entrances into a wire center provide redundancy and survivability in case of network failures (e.g., if there is a cable cut at one entrance, the overall service is not affected). He also pointed out that Section 5.2.1 does not require that there be dual entrances, but merely requires parity; i.e., if there are multiple entry points then the ILEC must provide access to those points to CLPs.

BellSouth witness Milner stated in his rebuttal testimony that:

> BellSouth has no obligation to provide for second entrances to its central office buildings where only one exists. BellSouth will provide at least two points at each premise where there are at least two such interconnection points available and where capacity exists. Upon receipt of a request for physical collocation, BellSouth will provide the CLP with information regarding BellSouth's capacity to accommodate dual entrance facilities. If conduit in the serving manhole(s) is available and is not reserved for another purpose for utilization within 12 months of the receipt of an application for collocation, BellSouth will make the requested conduit space available for installing a second entrance facility to CLP's arrangement. The location of the serving manhole(s) will be determined at the sole discretion of BellSouth. Where dual entrances are not available due to lack of capacity, BellSouth will so state in its response to the CLP's application.

Verizon witness Ries testified that dual entrances are usually defined as two entry points for cable facilities, which allow a carrier to have diversity with its cable routes. However, the CLPs suggest in Section 5.2.1 of the Standard Offering that if an ILEC has additional entry points to a central office, the CLP should have access to all those multiple points. Witness Ries goes on to say that entry for the CLPs at all these points is unnecessary for any legitimate purpose. The ILEC may have multiple entry points to connect to multiple destinations within its network, as well as to fulfill multiple interconnection requirements with various carriers. The CLP does not require multiple points to connect to its single collocation node. Under FCC Rules, the ILEC will provide two entry points, when two points are available.

In its Proposed Order, the Public Staff took the position that the ILECs must provide two interconnection points for each ILEC premises where there are at least two entry points for the ILEC's cable facilities and where space is available.

47 C.F.R. Section 51.323(d)(2) states that an ILEC must:

> Provide at least two such interconnection points at each incumbent LEC premises at which there are at least two entry points for the incumbent LEC's cable facilities, and at which space is available for new facilities in at least two of those entry points.

The Commission is of the opinion that ILECs are required by FCC rules to provide at least two interconnection points for each ILEC premises where there are at least two entry points for the ILEC's cable facilities and where space is available. If the ILEC's central office has at least two entry points and space is available, the Commission believes that this will allow for redundancy and survivability and will provide for parity between the requesting CLP and the ILEC. If there are less than two entry points available or if there is no entry space available, the ILEC shall provide the requesting CLP a tour of the entry facilities only (cable vault, manhole, etc.). Should the ILEC's central office require additional entry facilities and construction, then the ILEC shall consider the CLP's request for additional entry facilities in its planning and design of the new entry facilities. Costs for these new facilities should be shared by the ILEC and requesting CLP on a use cost basis determined by negotiations between the two companies.

CONCLUSIONS

The Commission concludes that ILECs are required by FCC rules to provide at least two interconnection points for each ILEC premises where there are at least two entry points for the ILEC's cable facilities and where space is available. If there are less than two entry points available or if there is no entry space available, the ILEC shall provide the requesting CLP a tour of the entry facilities only (cable vault, manhole, etc.). Should the ILEC's central office require additional entry facilities and construction, then the ILEC shall consider the CLP's request for additional entry facilities in its planning and design of the new entry facilities. Further, the Commission concludes that the costs for these new facilities should be shared by the ILEC and requesting CLP on a use cost basis determined by negotiations between the two companies. The Commission also requires the Parties to negotiate mutually agreeable language for Section 5.2.1 of the Standard Offering to reflect these conclusions and those subsequently addressed in conjunction with Issue No. 71.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 53

ISSUE 55: What are appropriate terms and conditions for additions and/or augmentations for requested or in-place collocation space?

ISSUE 81 (Sprint 7): What are the appropriate provisioning intervals for the Augments contained in Sections 9.2 - 9.5?

POSITIONS OF PARTIES

AT&T: AT&T took the same position as the New Entrants and WorldCom.

ALLTEL: The terms and conditions for augmentation of existing collocation agreements reasonably should provide for shorter provisioning intervals, and lower prices, as the

intervals and costs associated with applications for augmentations may be less than the time and cost required for establishment of entirely new collocation arrangements.

BELLSOUTH: The same terms and conditions that apply for an initial collocation request should apply for additions and/or augmentations to requested or in-place collocation space. An application by the CLP is the appropriate method to request any modifications to a collocation space. The application will provide all of the CLP's equipment and service specifications that would allow BellSouth to provision or augment the collocation space. This is necessary because it is BellSouth, rather than the CLP, that must determine the sufficiency of infrastructure systems.

MCIm: This issue was not addressed in MCIm's Brief.

NEW ENTRANTS: It is not reasonable to treat additions or augmentations the same as initial requests for space. An application fee, in particular, is not invariably appropriate, because provisioning for space has already occurred.

PUBLIC STAFF: If a CLP augments its equipment within the initial forecast and no space preparation is required, then no fees or additional intervals should apply. The categories detailed by Sprint are the most reasonable divisions of the different types of augments, as well as the proposed intervals if the CLP submits a blind firm order confirmation and an augment application with the appropriate fees for the requested augment. If a CLP uses a third-party vendor, the interval for administrative work will be 20 days, the same interval as for a minor augment. An ILEC may request an extension of the interval from the Commission within 30 days of the receipt of the firm order.

SPRINT: An addition or augmentation to requested and/or in-place collocation space should adhere to the same equipment standards (NEBS and NEC) that other collocation arrangements include and that augmentations must adhere to appropriate environmental and safety guidelines. Proposed provisioning intervals for augmentations and additions are as follows: (a) 30 days for administrative work, (b) 20 days for simple augments, (c) 45 days for minor augments, (d) 60 days for intermediate augments, and (e) 90 days for major augments.

VERIZON: Verizon proposed that when initial forecasted demand parameters with no additional space preparations are required, no additional charges or additional intervals should apply. When space preparation work (e.g., increase in AC or DC power, generation of additional BTUs, increases in floor space requirements over additional applications) is involved, complete application and engineering fees would apply.

WORLDCOM: WorldCom took the same position as AT&T and the New Entrants.

DISCUSSION

ALLTEL commented in its Brief that the majority of augmentation requests involve less work than requests for initial establishment of a collocation arrangement. ALLTEL stated that BellSouth is unwilling to agree to any provisioning interval shorter than the same 90-day interval it advocates for establishing an entirely new collocation. In concluding its comments, ALLTEL commented that the terms and conditions for augmentation should reasonably and rationally recognize the difference between augmentation of existing arrangements and establishment of entirely new collocations.

BellSouth stated that the same terms and conditions that apply for any collocation request should apply for additions and/or augmentations to requested or in-place collocation space and that an application by the CLP is the appropriate method to request any modifications to a collocation space. BellSouth commented that having all of the CLPs service and equipment information on the augmentation request would allow the ILEC to provision or augment the collocation space. According to BellSouth, it is the ILEC, rather than the CLP, that must determine the sufficiency of infrastructure systems. These infrastructure systems (for example, the power plant) must accommodate all the equipment in the central office, both the ILECs and all collocators. BellSouth further commented, that since a CLP could not know an ILEC's need in this regard, the CLP is not in a position to determine the sufficiency of those infrastructure systems.

In its Brief, BellSouth stated that the ILECs are in a significantly more knowledgeable position than any of the CLPs with respect to the mechanics of the collocation process, because it is the ILEC, obviously, that must administer the space available for collocation in its central offices in a way that is as fair as possible for all parties. Furthermore, BellSouth stated that its central offices are in greater demand because BellSouth serves the larger, more urban areas of North Carolina where competition has emerged and is growing at a rapid rate. BellSouth commented that ILECs like BellSouth have considerably greater experience/responsibility in managing the collocation process than does any particular CLP and, for this reason, have a more realistic grasp of what constitutes safe, efficient collocation and what are the appropriate time frames for provisioning physical collocation requests. BellSouth also stated that it had met current provisioning intervals it had promised to CLPs through individual interconnection agreements. BellSouth stated that the CLPs have not used a significant amount of the space to begin offering competitive services.

The New Entrants commented in their Proposed Order in the Proposed Finding of Fact No. 2 that, Verizon and BellSouth have taken the position that even the simplest augments to collocation space should be treated from a provisioning perspective as though they were a new collocation arrangement. Additionally, the New Entrants stated that augmentations are generally shorter than the standard physical collocation interval because power and permit requirements are not needed. The New Entrants stated that plainly augmentation does not require as much time to provision as a full collocation. Furthermore, the New Entrants commented that augments come in varying sizes and

levels of complexity, and as such, should be treated differently from new applications for collocation space. The New Entrants proposed that the Commission adopt the standards of the Texas PUC which require that small augments be provisioned in 15 days, medium augments be provisioned in 30 days, and larger augments be provisioned in 45 days.

In their Brief, the New Entrants stated that augments to existing collocations typically involve attaching equipment to existing structures with bolts and attaching prepared cables. Accordingly, the New Entrants commented that such augments do not require as much time to provision as a new collocation. However, the New Entrants commented, that the incumbents take the position that even the smallest augment should be treated from a provisioning perspective as though it is a new collocation. The New Entrants concluded that this position is unreasonable and should be rejected.

In the New Entrants' Issues Matrix, the New Entrants stated that it is not reasonable to treat additions or augmentations the same as initial requests for space. Furthermore, the New Entrants commented that unlike other arrangements (caged, cageless, virtual and adjacent) an augmentation should have a shortened interval. The New Entrants also stated that Sprint had proposed 20-30 days for administrative, 45 days for small, 60 days for medium and 60-90 days for large. The New Entrants concluded their comments by stating that it is just as important to standardize the augmentation process as it is to standardize the initial collocation process, to reduce cost and delay. Lastly, the New Entrants stated that unusual circumstances that may necessitate an increased period for provisioning may be processed through a waiver.

In its Brief, Sprint proposed the following intervals for augmentations and additions: (a) 30 days for administrative work, (b) 20 days for simple augments, (c) 45 days for minor augments, (d) 60 days for intermediate augments, and (e) 90 days for major augments. Sprint commented that these intervals afford CLPs meaningful opportunity to compete while still allowing ILECs a reasonable time period for provisioning of augments and additions.

On behalf of Sprint, witness Hunsucker's Rebuttal Testimony provided the following definition of varying augmentations:

> Simple Augments, such as the placement of additional AC convenience outlets, or only a fuse change for additional DC power, should be provided within 20 days of receipt of a complete augment application.
>
> Minor Augments, consisting primarily of interconnection cabling arrangements where the panels, relay racks, and other infrastructure exist should be provided within 45 days of receipt of a complete augment application.
>
> Intermediate Augments, consisting of additional interconnection panels/blocks, cabling, DC power arrangements, where minor infrastructure work is required, should be provided within 60 days of receipt of a complete augment.

Major Augments, requiring major infrastructure work (e.g., cage expansion, power cabling) should be provided within 60-90 days of receipt of a complete augment application.

Verizon stated that the terms and conditions for additions and augmentations to collocation space depend on the nature of the change to the space. Verizon commented that application fees for additions and/or augmentations are applicable where the collocation arrangement has been inspected and turned over to the CLP. The amount of such fees would depend on the magnitude of the requested change. Verizon commented that major augments (e.g., those requiring AC or DC power, adding equipment that generates more BTUs of heat, or increasing caged floor space beyond the CLP's original application) require a complete application and an engineering fee. Verizon further commented that a minor augment fee would apply when a request requires the ILEC to perform certain services or functions on behalf of the CLP, including but not limited to requests to pull cable for CLP to CLP interconnects, DS0, DS1, and DS3 facility terminations.

Verizon in its Brief stated that augmentation requests may or may not require less work than the initial provisioning, and one cannot assume that the interval for an augmentation always will be shorter than the initial setup. Verizon commented that ALLTEL witness Caldwell acknowledged that simply because the request is an augmentation rather than a new request does not by definition decrease the amount of work that an ILEC might have to perform and that work may be greater for an augmentation than it is for an initial request. Verizon further commented that the amount of work required to handle augmentations will vary depending upon the nature of the augment and may cause major modifications in existing HVAC, power, or other infrastructure requirements. Verizon concluded that augment requests should be treated using the standard intervals for collocation provisioning.

Verizon commented that the CLPs attempted to identify a myriad of augments and then pre-determine specific intervals for completing these types of augments. Verizon stated that this recommendation should be rejected in favor of a more realistic and flexible case-by-case process by which augments would be addressed and completed for the CLPs. Verizon stated the augments suggested by the New Entrants do not permit case-by-case analysis of augments and inevitably would be out-of-date quickly given the ever-changing dynamics in the telecommunications industry.

The Public Staff stated that the time to complete augments indeed will vary widely, just as will the time to complete an initial collocation arrangement. Nonetheless, the Public Staff commented that augments will require less time for completion than requests for collocation. The Public Staff stated that it agreed with the CLPs that if a CLP augments its equipment within its initial forecast and no space preparation is required, then no fees or additional intervals should apply. Further, the Public Staff stated that the categories detailed by Sprint are the most reasonable divisions of the different types of augments. The Public Staff commented that if a CLP used a third-party vendor, the interval for

administrative work will be 20 days, the same interval as for a simple augment. The Public Staff concluded its comments stating that it agreed with BellSouth that an ILEC may request an extension of the interval within 30 days of the receipt of the firm order.

The Commission agrees with the Public Staff, in that, the positions of the parties varied widely on the terms and conditions for augments to existing collocation space. Also, the Commission agrees that the categories of augments proposed by Sprint are the most reasonable. The Commission believes that augments, as a practical matter, will be required from time to time and that CLPs should not be unduly delayed in having reasonable requests completed in a timely manner.

CONCLUSIONS

The Commission concludes that if a CLP augments its equipment within the initial forecast and no space preparation is required, then no fees or additional intervals should apply. The categories detailed by Sprint are the most reasonable divisions of the different types of augments, as well as the proposed intervals if the CLP submits a blind firm order confirmation and an augment application with the appropriate fees for the requested augment. If a CLP uses a third-party vendor, the interval for administrative work will be 20 days, the same interval as for a simple augment. An ILEC may request an extension of the interval from the Commission within 30 days of the receipt of the firm order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 54

ISSUE 56: Should augmentations to existing collocation space be treated differently from new applications for collocation space?

POSITIONS OF PARTIES

AT&T: AT&T took the same position as the New Entrants and WorldCom.

ALLTEL: Procedures for augmentation of existing arrangements should be flexible, should recognize that augmentation of existing arrangements can involve less effort and cost than establishment of a new arrangement. Thus, intervals for augmentation should necessarily be less than intervals for new collocation applications, due to the less demanding tasks and construction requirements involved.

BELLSOUTH: Equipment augmentations should be treated the same as new applications. The amount of work performed by BellSouth in response to the collocator's applications depends on the nature and scope of the request and the particular premises involved rather than whether the equipment will be placed in a "new" collocation arrangement or an augmentation rather than a new request does not necessarily decrease the amount of work that will need to be done to provision the request. In fact, in some cases, the work may be greater than that initially required.

MCIm: This issue was not addressed in MCIm's Brief.

NEW ENTRANTS: There will be variations (less engineering/installation versus more) as to the degree of difficulty and work required of some augmentations. Accordingly, augmentations should be treated differently from new applications for collocation space. Generally, augmentations should be processed and provisioned more quickly and at less cost than new application for collocation space.

PUBLIC STAFF: As discussed in Issue No. 55, if a CLP augments its equipment within the initial forecast and no space preparation is required, then no fees or additional intervals should apply. The categories detailed by Sprint are the most reasonable divisions of the different types of augments, as well as the proposed intervals if the CLP submits a blind firm order confirmation and an augment application with the appropriate fees for the requested augment. If a CLP uses a third-party vendor, the interval for administrative work will be 20 days, the same interval as for a minor augment. An ILEC may request an extension of the interval from the Commission within 30 days of the receipt of the firm order.

SPRINT: Sprint's position pertaining to augmentation and provisioning intervals for augmentation is set forth under Issue No. 55.

VERIZON: Verizon proposes that augmentations to existing collocation space should be treated as follows: 1) if the CLP requests a change in the physical environment, space preparation or an increase in power, the CLP should pay an engineering fee and submit an application; 2) if the CLP requests an augment where the ILEC does some work but the request does not impact the size requirements of the space or require an increase in power supplied, the CLP should pay a minor augment fee and submit an application; and 3) if an augment request does not require additional space preparation by the ILEC and does not result in the original specifications of the CLP's previously filed application being exceeded, such as CLP to CLP connections, the CLP should submit an application with no fee.

WORLDCOM: WorldCom took the same position as AT&T and the New Entrants.

DISCUSSION

ALLTEL commented in its Brief that collocation procedures should establish intervals for augmentation of existing collocations that are rationally related to the nature and extent of the work required by the augmentation. ALLTEL commented that an ILEC should have a shorter provisioning interval for a simple augmentation and a longer interval for a complex augmentation. Furthermore, less demanding tasks and construction requirements are typically involved in augmenting existing collocation arrangements. ALLTEL stated that, therefore less time should be allowed for completion of these tasks.

ALLTEL stated that BellSouth takes the position that augmentations should be treated the same as establishments of new collocation arrangements, with a 90-day interval under ordinary circumstances and a 130-day interval in extraordinary cases. ALLTEL commented that in taking this position BellSouth ignores the fact that augmentation of existing arrangements will generally involve less effort and cost than establishment of a new arrangement. ALLTEL concluded its remarks stating that to rigidly require identical intervals for augmentation and establishment of an entirely new collocation is to arbitrarily and unnecessarily impede the growth of local competition.

BellSouth stated that equipment augmentations should be treated the same as new applications. As stated by BellSouth, the amount of work performed in response to the collocator's application depends on the nature and scope of the request and the particular premises involved rather than whether the equipment will be placed in a "new" collocation arrangement or an augmentation to an existing collocation arrangement. BellSouth commented that simply because a request is an augmentation rather than a new request does not necessarily decrease the amount of work that will need to be done to provision the request. In fact, in some cases, the work may be greater than that initially required.

In the New Entrants' Issues Matrix, the New Entrants stated that BellSouth and Verizon fail to recognize the difference between leasing new space and improving space that is already subject to an existing arrangement. The New Entrants commented that augmentations should be treated differently from new applications for collocation space. As stated by the New Entrants, an augment should be treated differently from a new application because it may not require items such as power and special permits. The New Entrants commented that generally augmentations should be processed and provisioned more quickly and at less cost than new applications for collocation space. Furthermore, the New Entrants stated that it was just as important to standardize the augmentation process as it is to standardize the initial collocation process to reduce cost and delay. The New Entrants further commented that unusual circumstances that may necessitate an increased period for provisioning may be processed through a waiver.

In its Proposed Order, Sprint stated that its position pertaining to augmentation and provisioning was set forth under Issue No. 55. As discussed under Issue No. 55, Sprint agreed with the New Entrants that a request for an addition or augmentation to requested and/or in-place collocation space should adhere to the same equipment standards (NEBS and NEC) that other collocation arrangements include and that augmentations adhere to appropriate environmental and safety guidelines. Because Sprint did not agree with the New Entrants' provisioning intervals, Sprint laid out its proposed provisioning intervals under Issue No. 55.

Verizon stated that the terms and conditions for additions and augmentations to collocation space depend on the nature of the change to the space. Verizon's comments on this issue were presented previously in Verizon's discussion of Issue No. 55. Verizon in its Brief stated that augmentation requests may or may not require less work than the initial provisioning, and one cannot assume that the interval for an augmentation always

will be shorter than the initial setup. Verizon concluded that augment requests should be treated using the standard intervals for collocation provisioning.

Verizon commented that the CLPs attempted to identify a myriad of augments and then pre-determine specific intervals for completing these types of augments. Verizon stated that this recommendation should be rejected in favor of a more realistic and flexible case-by-case process by which augments would be addressed and completed for the CLPs. As presented in the discussion of Issue No. 55, Verizon stated the augments suggested by the New Entrants do not permit case-by-case analysis of augments and inevitably would be out-of-date quickly given the ever-changing dynamics in the telecommunications industry.

The Public Staff combined its discussion of Issue Nos. 55 and 56. As presented in the discussion of Issue No. 55, the Public Staff stated that the time to complete augments indeed will vary widely, just as will the time to complete an initial collocation arrangement. Nonetheless, the Public Staff commented that augments will require less time for completion than requests for collocation. The Public Staff stated that it agreed with the CLPs that if a CLP augments its equipment within its initial forecast and no space preparation is required, then no fees or additional intervals should apply. Further, the Public Staff stated that the categories detailed by Sprint are the most reasonable divisions of the different types of augments. The Public Staff commented that if a CLP used a third-party vendor, the interval for administrative work will be 20 days, the same interval as for a simple augment. The Public Staff concluded its comments stating that it agreed with BellSouth that an ILEC may request an extension of the interval within 30 days of the receipt of the firm order.

As presented in the discussion of Issue No. 55, the Commission agrees with the Public Staff, in that, the positions of the Parties varied widely on the terms and conditions for augments to existing collocation space. Also, the Commission agrees that the categories of augments proposed by Sprint are the most reasonable. The Commission believes that augments, as a practical matter, will be required from time to time and that CLPs should not be unduly delayed in having reasonable requests completed in a timely manner.

CONCLUSIONS

The Commission concludes that if a CLP augments its equipment within the initial forecast and no space preparation is required, then no fees or additional intervals should apply. The categories detailed by Sprint are the most reasonable divisions of the different types of augments, as well as the proposed intervals if the CLP submits a blind firm order confirmation and an augment application with the appropriate fees for the requested augment. If a CLP uses a third-party vendor, the interval for administrative work will be 20 days, the same interval as for a simple augment. An ILEC may request an extension of the interval from the Commission within 30 days of the receipt of the firm order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 55

ISSUE 57: What are the proper levels of insurance for a CLP to obtain prior to occupying collocation space?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue in its Brief.

AT&T: Reasonable and standard amounts of insurance set forth as a compromise in Section 8 of the Standard Offering should be provided by CLPs. Insurance should be provided by an insurer with a Best rating of A- or above who is licensed to do business in all jurisdictions covered by the agreement.

BELLSOUTH: At its sole cost and expense, the CLP must procure, maintain, and keep in force insurance underwritten by insurance companies licensed to do business in the states applicable to the agreement between BellSouth and the CLP and having a Best rating of A- at levels set forth in BellSouth's standard collocation attachment.

MCIm: MCIm did not address this issue in its Brief.

NEW ENTRANTS: The New Entrants agreed with AT&T's position on this issue.

PUBLIC STAFF: The Public Staff stated that the insurance requirements in Section 8 of the Standard Offering are satisfactory.

SPRINT: Subject to the provision that a CLP seeking to self-insure must have adequate net worth (equal to or not less than five times the liability to be self-insured) to cover any liability, Sprint agreed with the position taken by the New Entrants.

VERIZON: A CLP shall carry, and cause subcontractors to carry insurers with a Best rating of not less than A- and licensed to do business in jurisdictions covered by the Standard Offering. Verizon supports the following levels of insurance: workers compensation-$1,000,000; commercial general liability-$1,000,000; business auto-$1,000,000; umbrella or excess liability amounts-$10,000,000; all risk property insurance-full replacement cost. CLPs requesting to self-insure should be reviewed on a case-by-case basis.

WORLDCOM: WorldCom agreed with AT&T's position on this issue.

DISCUSSION

Section 8 of the Standard Offering provides that the CLP and its subcontractors shall carry insurance from an insurer with a Best rating of A- or above who is licensed to do business in all jurisdictions covered by the agreement.

CLP witness Gillan stated that the following provisions should be included in the Standard Offering: the insurance must include workers' compensation insurance with an employer's liability limit of no less than $1,000,000; commercial general liability insurance with coverage for contractual liability and products/completed operations liability of not less than $1,000,000 combined single limit per occurrence; business auto insurance with a limit of no less than $1,000,000 combined single limit per accident; umbrella or excess liability insurance not less than $5,000,000 combined single limit per occurrence and aggregate in excess of the other insurance; and all risk property insurance on a full replacement cost basis. In addition, the CLPs' liability will not be limited to the policy limits, and the CLP must furnish the ILEC with certificates of insurance. The insurance policies will all be primary policies. Finally, a CLP may self-insure if its net worth is at least five times greater than the liability it is self-insuring. According to witness Gillan, these amounts are standard in the industry.

BellSouth proposed that a CLP maintain insurance underwritten by insurance companies licensed to do business in the applicable states and with a Best rating of A-. BellSouth proposed that the coverage must include $10,000,000 of commercial general liability coverage or a combination of $10,000,000 of commercial general liability insurance and excess/umbrella coverage with BellSouth named as an additional insured; workers' compensation and employers' liability coverage of $100,000 per accident, $100,000 per disease, and $500,000 policy limit by disease; and all risk property coverage on a full replacement cost basis insuring all of the CLP's real and personal property in the central office. If the CLP's net worth exceeds $500,000,000, the CLP may be self-insured. According to BellSouth, the CLP may opt to obtain business interruption and contingent business interruption insurance with the understanding that BellSouth assumes no liability for loss of profit or revenues if interruption occurs. Certificates of insurance should be submitted 10 days before commencement of work in the collocation space. The CLP must conform to recommendations made by BellSouth's fire insurance company.

Verizon recommended that CLPs and their subcontractors carry insurers with a Best rating of no less than A- and with a license to do business in the jurisdictions covered by the agreement. They must have $1,000,000 coverage each for workers' compensation, commercial general liability, and business auto coverage, and $10,000,000 coverage for umbrella or excess liability amounts and all risk property insurance (full replacement cost). Verizon also proposed reviewing requests for self-insurance on a case-by-case basis.

The Public Staff stated its support for Section 8 of the Standard Offering as proposed by the CLPs. It reasoned that the CLPs' proposal was the result of negotiations

by the CLPs and Sprint and that the insurance provisions should be reasonable to provide proper insurance coverage for damages by collocators. The Public Staff also supported inclusion in the Standard Offering BellSouth's proposed wording in the section on workers' compensation insurance, the addition of language informing the CLP of its right to procure business interruption and contingent business interruption insurance, the inclusion of a requirement that certificates of insurance be submitted 10 days prior to the commencement of work in the collocation space, and a requirement that the CLP must conform to the recommendations made by an ILEC's fire insurance company.

The major difference in the Parties' proposals is that BellSouth and Verizon are seeking an umbrella policy of at least $10,000,000 and the CLPs recommend that the limits of the policy be no less than $5,000,000. According to BellSouth, it has assessed the level of risk posed by collocators in central offices and the appropriate amount is $10,000,000. BellSouth has also suggested changes to the wording of Section 8 on workers' compensation insurance, the addition of language informing the CLP of its right to procure business interruption and contingent business interruption insurance, the inclusion of a requirement that certificates of insurance be submitted 10 days prior to the commencement of work in the collocation space, and the inclusion of a requirement that a CLP must conform to recommendations made by an ILEC's fire insurance company.

None of the Parties presented the Commission with any data to support either a $5,000,000 or $10,000,000 umbrella policy limit. The CLPs maintained that their proposal is standard in the industry, and BellSouth and Verizon contended that the possible harm caused by collocators is more likely to be covered by $10,000,000 rather than $5,000,000. The Commission notes, as does the Public Staff, that the CLPs' proposal was the result of negotiation by CLPs and Sprint, and is of the opinion that the insurance provisions should be reasonable to provide proper insurance coverage for damages by collocators. Thus, the CLPs' proposed Section 8.1.4 should be included in the Standard Offering.

In addition, the Commission agrees with the Public Staff's position that the Standard Offering should include BellSouth's proposed changes to the wording of the section on workers' compensation insurance (BellSouth's Section 8.2.2) as discussed herein, the addition of language informing the CLP of its right to procure business interruption and contingent business interruption insurance (BellSouth's Section 8.2.4), the inclusion of a requirement that certificates of insurance be submitted 10 days prior to the commencement of work in the collocation space (BellSouth's Section 8.5), and a requirement that the CLP must conform to the recommendations made by an ILEC's fire insurance company (BellSouth's Section 8.6).

CONCLUSIONS

The Commission concludes that the CLPs' proposed Section 8.1.4 should be included in the Standard Offering along with BellSouth's proposed changes to the wording of the section on workers' compensation insurance (BellSouth's Section 8.2.2) as

discussed herein, the addition of language informing the CLP of its right to procure business interruption and contingent business interruption insurance (BellSouth's Section 8.2.4), the inclusion of a requirement that certificates of insurance be submitted 10 days prior to the commencement of work in the collocation space (BellSouth's Section 8.5), and a requirement that the CLP must conform to the recommendations made by an ILEC's fire insurance company (BellSouth's Section 8.6).

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 56

ISSUE 58: What obligations does the ILEC have to notify CLPs with respect to conditions in the central office?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue.

AT&T: The ILEC should notify the CLP regarding all service affecting conditions in the central office. The notification should recognize that time is of the essence and should be made by expeditious means and confirmed in writing.

BELLSOUTH: BellSouth is agreeable to informing the CLP by telephone of an emergency related activity that BellSouth or its subcontractors may be performing that may substantially affect the CLPs collocation space or supporting circuits. BellSouth will give three calendar days notice before access is required for making BellSouth equipment and building modifications and five business days where BellSouth or its subcontractors are performing non-emergency work that could affect CLP space or circuits.

MCIm: MCIm did not address this issue in its Brief.

NEW ENTRANTS: New Entrants took the same position as AT&T.

PUBLIC STAFF: Section 16.3 of the Standard Offering should be revised to require the ILECs to give CLPs seven calendar days' notice prior to undertaking construction activities which may pose risks to the CLPs service.

SPRINT: Sprint was generally agreeable to the New Entrants position.

VERIZON: For construction activities within the central office for which the ILEC takes or would take action to protect its own equipment, it should notify affected CLPs in the same manner and at the same time that it notifies ILEC personnel.

WORLDCOM: WorldCom took the same position as AT&T.

DISCUSSION

This issue concerns Section 16.3 of the Standard Offering:

> Construction Notification. The ILEC will notify the CLP prior to the scheduled start dates of all construction activities (including power additions or modifications) in the general area of the CLP's Collocation Space with potential to disrupt the CLP's services. The ILEC will provide such notification to the CLP at least twenty (20) calendar days before the scheduled start of such construction activity. The ILEC will inform the CLP as soon as practicable by telephone of all emergency-related activities that the ILEC or its subcontractors are performing in the general area of the CLP's Collocation Space, or in the general area of the AC and DC power plants which support the CLP's equipment. If possible, notification of any emergency-related activity will be made immediately prior to the start of the activity so that the CLP may take reasonable actions necessary to protect the CLP's Collocation Space.

In his direct testimony, CLP witness Gillan proposed adding to Section 16.3 the requirement that notifications of service-affecting conditions be "confirmed in writing." He objected to Verizon's proposal to give only 24 hours' notice prior to "starting construction activities that could potentially cause service outage," and to BellSouth's proposal to provide 48 hours' notice prior to making equipment and building modifications in a CLP's collocation space. He also recommended that ILECs be required to provide notice of possible service-affecting conditions "in a manner that gets to the CLPs immediately."

BellSouth witness Hendrix suggested the following arrangements for alerting CLPs to potential service-disrupting activities:

1. At least 48 hours notice before BellSouth requires "access to the collocation space for purposes of making BellSouth equipment and building modifications (e.g., running, altering or removing racking, ducts, electrical wiring, HVAC, and cables)."

2. Five business days' notice prior to those instances where BellSouth or its subcontractors may be performing non-emergency work that has a substantial likelihood of directly affecting the collocation space occupied by the CLP, or that is directly related to circuits that support CLP equipment.

3. Telephone notification "as soon as practicable" of any "emergency-related activity that BellSouth or its subcontractors may be performing that has a substantial likelihood of directly affecting the collocation space occupied by the CLP, or is directly related to circuits that support CLP equipment."

Witness Hendrix criticized the 20-calendar day notice requirement set forth in Section 16.3, and the provision that requires notice, if possible, prior to any emergency-related activity, as being "totally unreasonable." He also opposed witness Gillan's suggestion that ILECs should be required to provide written notice to the CLPs of possible service-affecting conditions.

The Public Staff's view was that Section 16.3 of the Standard Offering should be revised to require ILECs to give the CLPs seven calendar days notice prior to undertaking construction activities which may pose risks to CLP service.

Verizon witness Ries testified that "Verizon's practice requires that Central Office Engineering and Installation employees notify Central Office personnel at least 24 hours prior to starting construction activities that could potentially cause service outages" and suggested that the same standard that applies to Verizon personnel should apply to CLP personnel. He argued that the 20-day period proposed in Section 16.3 was "entirely too long."

After examining Section 16.3 and evaluating the Companies' testimonies presented on this issue, the Commission concludes that Section 16.3 is acceptable as written, with the sole exception of the 20-calendar day notice requirement for scheduled construction activities that may pose risks to the CLPs' service. We believe that BellSouth's proposal to give five business days notice strikes a reasonable balance between the ILECs' scheduling needs and the CLPs' service concerns. However, we choose to substitute an interval of "seven calendar days" because of the ambiguity of the term "business days" as it is applied to various organizations. A seven-day notice period should allow the CLP adequate time to take measures to protect its equipment, if necessary.

The Commission will not require ILECs to contact CLPs in writing concerning possible service-affecting conditions in the central office. However, ILECs should take care to maintain records which show the dates and times that CLP representatives were contacted and which furnish basic details concerning these contacts.

Accordingly, Section 16.3 should be modified to change the phrase "at least twenty (20) calendar days" to "at least seven (7) calendar days."

CONCLUSIONS

The Commission concludes that Section 16.3 of the Standard Offering should be revised to require the ILECs to give CLPs seven calendar days' notice prior to undertaking construction activities which may pose risks to the CLPs' service.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 57

ISSUE 59: What security measures and safety requirements are reasonable to protect the ILEC premises and the ILEC personnel?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue in its Brief.

AT&T: Reasonable security measures have been addressed in the FCC's *Advanced Services Order* regarding an ILEC's protection of its equipment and assets. The use of equipment such as cameras, monitoring systems, badges and badges with computerized tracking systems are reasonable. The proposed Standard Offering contains reasonable security measures.

BELLSOUTH: BellSouth will impose additional specific security and safety measures that are no more stringent than those imposed by BellSouth on its own employees or for authorized contractors.

MCIm: MCIm did not address this issue in its Brief.

NEW ENTRANTS: New Entrants took the same position as AT&T.

PUBLIC STAFF: The *Advanced Services Order* clearly gives each ILEC the right to impose security measures upon the CLPs as long as they are reasonable and no more stringent than the measures it imposes upon itself or its contractors. The Standard Offering should be changed to allow each ILEC to impose additional security requirements on CLP personnel that it feels are necessary to ensure the security and safety of the ILEC premises. These requirements will be no more stringent than the requirements the ILEC places on its own employees or authorized contractors who are allowed access to these premises.

SPRINT: Sprint was willing to accept AT&T's position on this Issue to the extent it is consistent with the terms and conditions of the Standard Offering filed with the direct testimony of Sprint witness Hunsucker, it is included in the Standard Offering, and the Standard Offering is made applicable to all parties in its entirety.

VERIZON: Only ILEC employees, ILEC certified vendors and authorized employees, authorized Guests, or authorized agents of the CLP will be permitted on the ILEC's premises. Verizon will require picture identification and background checks of all CLP employees and agents.

WORLDCOM: WorldCom took the same position as AT&T.

DISCUSSION

This issue concerns the extent to which an ILEC can require a CLP to comply with the ILEC's security standards. The FCC made the following determination regarding security standards in Paragraph 47 of the *Advanced Services Order*:

> We [FCC] conclude, based on the record, that incumbent LECs may impose security arrangements that are as stringent as the security arrangements that incumbent LECs maintain at their own premises either for their own employees or for authorized contractors. To the extent existing security *arrangements are more stringent for one group than for the other, the* incumbent may impose the more stringent requirements. Except as provided below, we conclude that incumbent LECs may not impose more stringent security requirements than these. Stated differently, the incumbent LEC may not impose discriminatory security requirements that result in increased collocation costs without the concomitant benefit of providing necessary protection of the incumbent LEC's equipment.

Section 12 of the Standard Offering addresses security measures. The CLPs believe that the security measures outlined in the Standard Offering are reasonable. CLP witness Gillan opined that BellSouth's measures are unnecessary, and BellSouth has not shown any justification to impose additional measures.

BellSouth witness Hendrix testified as to several areas in Section 12 of the Standard Offering that BellSouth feels are inadequate. Verizon, similarly, argued that the language in the Standard Offering requires less comprehensive background checks than Verizon conducts on its own employees and, therefore, is inadequate.

The Public Staff argued that the *Advanced Services Order* clearly gives each ILEC the right to impose security measures upon the CLPs as long as they are reasonable and no more stringent than the measures it imposes upon itself or its contractors. The Standard Offering should be changed to allow each ILEC to impose additional security requirements on CLP personnel that it feels are necessary to ensure the security and safety of the ILEC premises. These requirements will be no more stringent than the requirements the ILEC places on its own employees or authorized contractors who are allowed access to these premises.

The Commission agrees that the *Advanced Services Order* clearly gives each ILEC the right to impose security measures upon the CLPs as long as they are reasonable and no more stringent than the most stringent measures it imposes upon itself or its contractors. The Commission does not believe that any of BellSouth's or Verizon's additional measures are unreasonable or discriminatory to the CLPs under the FCC's standard. Both companies assert that these requirements are the same measures that they impose on themselves. The Commission concludes that the Standard Offering should be modified to allow each ILEC to impose additional security requirements on CLP

personnel that it feels are necessary to ensure the security and safety of the ILEC premises so long as these requirements are no more stringent than the requirements the ILEC places on its own employees or authorized contractors who are allowed access to its premises.

The Commission does not believe that it is necessary to impose a common set of security measures on all ILECs. To be enforceable, however, an ILEC's security policies (e.g., requirements for background check, etc.) for its own employees or for authorized contractors sought to be imposed on CLPs must be set out in writing to be provided to the CLP. Section 12 of the Standard Offering, therefore, should be rewritten to incorporate by reference the respective ILEC's security policy document.

CONCLUSIONS

The Commission concludes that each ILEC may impose additional security requirements on CLP personnel that it believes are necessary to ensure the security and safety of the ILEC premises so long as these requirements are no more stringent than the requirements the ILEC places on its own employees or authorized contractors who are allowed access to its premises and that Section 12 of the Standard Offering should be amended accordingly.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 58

ISSUE 60: It is appropriate to include an expedited dispute resolution (EDR) procedure in the Standard Offering or should disputes be handled by the Commission according to the Commission-established procedures?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue.

AT&T: When adopted, such procedure should be included in the Standard Offering. Given the number of issues in this proceeding, as well as use of EDR in other contexts, the form and extent of EDR procedures should be dealt with in a separate proceeding.

BELLSOUTH: Inclusion of EDR is unnecessary and inappropriate. Current Commission standards are already sufficient.

MCIm: MCIm did not address this issue in its Brief

NEW ENTRANTS: New Entrants took the same position as AT&T.

PUBLIC STAFF: The Commission should not require the inclusion of a provision requiring EDR in the Standard Offering. BellSouth's proposed language is adequate if the language

referring to the reservation of the right to seek judicial review is removed. The parties may agree to use some form of EDR, however.

SPRINT: Sprint was generally agreeable to the New Entrants' position.

VERIZON: Disputes should be handled through normal dispute resolution procedures as identified within the interconnection agreements.

WORLDCOM: WorldCom took the same position as AT&T.

DISCUSSION

In CLP witness Gillan's direct testimony, he proposed that the parties develop an expedited dispute resolution procedure outside of the Standard Offering negotiations and reference it in the Standard Offering to handle disputes arising over collocation. In his rebuttal testimony, he advocated that the Commission establish alternative dispute resolution procedures. BellSouth instead proposed that the Commission hear the disputes with each party reserving its right to seek judicial review of the Commission's decision. Verizon recommended that any dispute be handled by the dispute resolution mechanism set out in the interconnection agreement. The Public Staff opposed the mandatory inclusion of a provision requiring EDR. It endorsed BellSouth's proposed language as adequate if the language referring to the right to seek judicial review is removed.

As an initial matter, the Commission notes that a collocation arrangement may exist prior to an interconnection agreement. Consequently, Verizon's proposal that the dispute resolution mechanism provided in the interconnection agreement should be used to resolve collocation disputes is inadequate. Moreover, the Commission has considered the issue of expedited or alternative dispute resolution previously in the context of arbitration. Although we have not rejected the idea of mandatory EDR per se, we have declined to mandate that the parties resolve disputes through private adjudication and forego the right to seek Commission review of an issue due to lack of record explaining and supporting the process. Accordingly, we will not at this time require the inclusion of a provision requiring alternative or expedited dispute resolution in the Standard Offering. BellSouth's proposed language is adequate if the language referring to the reservation of the right to seek judicial review is removed. It is unclear why such language preserving appeal rights is necessary, when the law already provides such appeal rights. Finally, the Parties are encouraged to mutually agree to use some form of alternative dispute resolution. The Standard Offering should be modified to reflect these conclusions.

In addition, it should be emphasized that in Issue No. 1 it was stated that the Commission would not arbitrate as to the terms which deviate from the Standard Offering. This remains true. The disputes which the Commission might entertain with respect to collocation generally will relate to compliance with the Standard Offering or mutually agreed-upon amendments thereto.

CONCLUSIONS

The Commission concludes that the inclusion of a provision requiring alternative or expedited dispute resolution in the Standard Offering not be required, but that the Parties are strongly encouraged to agree to use some form of alternative dispute resolution.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 59

ISSUE 61: Is it appropriate to include adjacent off-site collocation terms and conditions in the Standard Offering?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue in its Brief.

AT&T: Yes. AT&T stated that ILECs should provide both adjacent (on-site) collocation and off-site arrangements when space legitimately exhausts within an ILEC's premises, subject to technical feasibility. Off-site arrangements include CLP-owned or leased structures in proximity (i.e., generally within a city block) to the ILEC central office. The ILEC should perform cabling from the ILEC's premises to the CLP's facilities, prices would be at UNE costs, and ILECs would not be required to provide power to the off-site arrangement. The Texas PUC recognized that if space for physical collocation is legitimately exhausted, the ILEC must offer both adjacent on-site collocation and adjacent off-site arrangements. A collocation method mandated by a state commission is presumptively technically feasible for any other ILEC. Without the requirement to include off-site arrangements, CLPs would be precluded from providing competitive services where physical collocation is not possible at the central office or in an adjacent facility. State commissions have the flexibility to respond to specific issues by imposing additional requirements.

BELLSOUTH: No. It is not appropriate to include terms and conditions for off-site adjacent collocation in the Standard Offering because such "off-site" collocation is neither required nor permitted by the FCC. BellSouth should not be required to provide adjacent collocation in locations that are not on its premises.

MCIM: MCIm took the same position as AT&T.

NEW ENTRANTS: The New Entrants took the same position as AT&T.

PUBLIC STAFF: The Public Staff stated that it agrees with the ILECs that they are not required to provide collocation arrangements for off-site collocation. While the FCC does mandate adjacent collocation in certain circumstances, adjacent collocation differs from off-site collocation. The ILECs are required to interconnect with such facilities. The Commission should decline to go beyond the requirements of the FCC and the Act and set

terms and conditions for off-site collocation at this time. However, the Commission could revisit this issue if a party can demonstrate there is a significant need for off-site collocation.

SPRINT: Sprint stated that this issue has been resolved between Sprint and the New Entrants by adoption of the following language as Section 3.6.6 of the Standard Offering:

> CLP off-site Equipment Arrangement: The CLP shall have the responsibility for the provisioning of all aspects of collocation in their off-site arrangement. The ILEC and the CLP shall have mutual responsibility for the provisioning of interconnection facilities between the ILEC's premises and the CLP's off-site arrangement subject to the terms and conditions of the interconnection agreement between the two parties.

Sprint accepted this resolution of this issue contingent upon inclusion of this provision in the Standard Offering made applicable to all parties.

VERIZON: No. Verizon stated that off-site arrangements are not collocation and should be handled within an interconnection agreement or through a sub-loop unbundling contract.

WORLDCOM: WorldCom took the same position as AT&T.

DISCUSSION

CLP witness Gillan testified that adjacent collocation is one of the required forms of collocation and, as such, the terms and conditions concerning adjacent collocation should be included in the Standard Offering. According to his testimony, when space is legitimately exhausted within an ILEC's premises, ILECs should provide both adjacent (on-site, i.e., under the control of an ILEC) collocation and off-site arrangements. He elaborated that off-site arrangements include CLP-owned or leased structures within a city block of the ILEC central office. He stated that the ILEC should perform cabling from the ILEC's premises to the CLP's premises, while the CLPs were willing to agree that the facilities provided by the ILEC would be subject to UNE pricing considerations and that ILECs would not be required to provide power to the off-site arrangement. In response to an ILEC contention that off-site arrangements constitute interconnection rather than collocation, he argued that the need for off-site arrangements may occur only if space within a central office is legitimately exhausted and there is no adjacent collocation space available. This situation may occur with respect to those central offices that are most in demand for collocation and without an off-site arrangement CLPs could not provide some services. He believed that an interconnection arrangement would be "besides the point" if the absence of an off-site arrangement foreclosed competition in areas served by wire centers that are most attractive to new entrants.

As authority for this request, witness Gillan cited two Texas Public Utility Commission Orders which required an ILEC to provide off-site collocation arrangements as a condition to obtain a recommendation of Section 271 authority. He also noted that the FCC's rule on adjacent collocation, 47 C.F.R. 51.323(k)(3), does not expressly limit its terms to on-site arrangements. In addition, he cited Paragraph 558 of the *Local Competition Order*, which allows states to impose additional collocation requirements. Finally, he quoted 47 C.F.R. 51.321(c), which provides that a presumption exists of technical feasibility if an ILEC has deployed a certain collocation arrangement in another ILEC's premises.

BellSouth witness Hendrix stated that the FCC limited adjacent collocation to those premises in which the ILEC has an ownership interest and excluded land and buildings in which the ILEC has no ownership interest. Therefore, in his opinion, it is not appropriate to include terms and conditions for off-site adjacent collocation in the Standard Offering because such so-called "off-site" collocation is neither required nor permitted by the FCC and BellSouth should not be required to provide adjacent collocation in locations that are not on its premises. He cited Paragraph 42 of the Advanced Services Order, wherein the FCC stated that Section 251(c)(6) requires physical collocation at the premises of the local exchange carrier encompassing land owned, leased, or controlled by an ILEC as well as any ILEC network structure on such land.

Verizon witness Ries also testified that it was not appropriate to include adjacent off-site collocation terms and conditions in the Standard Offering. He stated that terms and conditions for off-site arrangements should be handled as a sub-loop unbundling request and such arrangements do not constitute collocation at the ILEC's "premises" as required by the TA96 and as confirmed by the FCC.

Sprint witness Hunsucker testified at the hearing that the ILECs should not be required to provide off-site arrangements. As noted above, following the hearing Sprint and the New Entrants resolved this issue by adoption of the following language as Section 3.6.6 of the Standard Offering:

> CLP Off-site Equipment Arrangement: The CLP shall have sole responsibility for the provisioning of all aspects of collocation in their off-site arrangement. The ILEC and the CLP shall have mutual responsibility for the provisioning of interconnection facilities between the ILEC's premises and the CLP's off-site arrangement subject to the terms and conditions of the interconnection agreement between the two parties.

In its Proposed Order, the Public Staff agreed with the ILECs that they are not required to provide collocation arrangements for off-site collocation. The Public Staff stated that while the FCC mandates adjacent collocation in certain circumstances, adjacent collocation differs from off-site collocation and ILECs are required to interconnect with such facilities. The Public Staff recommended that the Commission should decline to go beyond the FCC and the Act and set terms and conditions for off-site collocation at this

time and noted that the Commission may revisit this issue if a party can demonstrate there is a significant need for off-site collocation.

The Commission finds it appropriate to decline to set the terms and condition for off-site arrangements for inclusion in the Standard Offering at this time. While the FCC does mandate adjacent collocation in certain circumstances, the FCC has not directly addressed off-site arrangements in terms of collocation and it is not clear what obligations, if any, ILECs have with regard to collocation on premises not owned or controlled by ILECs. Further, as a practical matter, there is no evidence which clearly demonstrates that a need currently exists for collocation on premises not owned or controlled by ILECs. However, if a party can demonstrate a significant need for an off-site arrangement, the Commission may be willing to revisit this issue pursuant to FCC requirements as they then exist.

CONCLUSIONS

The Commission concludes that it should decline to set terms and conditions for off-site arrangements for inclusion in the Standard Offering at this time. However, if a party can demonstrate a significant need for an off-site arrangement, the Commission may be willing to revisit this issue pursuant to FCC requirements as they then exist.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 60

ISSUE 69: Should BellSouth be required to provision caged collocation space (including provision of the cage itself) within 90 days and virtual and cageless collocation within 60 days?

ISSUE 74: Is it appropriate for BellSouth to exclude permit time from its physical caged collocation interval the time required to secure the necessary building licenses and permits?

ISSUE 82 (Sprint 8): Should an ILEC be able to exclude from its collocation provisioning interval the time that is required to secure building licenses and permits?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue in its Brief.

AT&T: BellSouth should be required to provision caged collocation space within 90 calendar days and virtual and cageless collocation within 60 calendar days of an application for collocation.

BELLSOUTH: BellSouth has proposed that it be required to provision caged and cageless collocation space within 90 calendar days for ordinary conditions and 130 calendar days

for extraordinary conditions upon receipt from the CLP of a bona fide firm order. BellSouth believes that it should be allowed to exclude permit time from its physical caged collocation interval required to secure the necessary building licenses and permits.

MCIm: In its Brief, MCIm stated that the issue of intervals in which collocation requests will be provisioned is a key issue for collocators and ILECs. MCIm advocated a provisioning period of 90 days for caged collocation, commencing with the collocation application; and a provisioning period of 60 days for cageless and virtual collocation, again commencing with the application. MCIm argued that it is reasonable to expect that BellSouth should be required to provision caged collocation space within those periods.

NEW ENTRANTS: The New Entrants filed a Joint Proposed Order with AT&T and WorldCom. Therefore, the position as outlined for AT&T above represents the New Entrants' position on this issue.

PUBLIC STAFF: The appropriate construction and provisioning intervals for caged space, from receipt of a complete application by the ILEC is 90 calendar days. The appropriate construction and provisioning intervals for cageless space, from receipt of a complete application by the ILEC is 75 calendar days. The Public Staff did not address the issue of permit time.

SPRINT: Sprint was willing to accept the New Entrants' position on this Issue to the extent that it is consistent with the terms and conditions of the Standard Offering filed with the direct testimony of Sprint witness Hunsucker, it is included in the Standard Offering, and the Standard Offering is made applicable to all parties in its entirety.

Sprint argued that an ILEC should not be allowed to stop and restart the provisioning clock based on its submission of permit requests. Sprint believes that it is not appropriate to exclude permit-processing times from the ILEC's collocation provisioning interval. Sprint maintained that the ILEC should be required to manage the provisioning of collocation so the permitting process runs concurrently with other work activity the ILEC performs in order to complete the collocation provisioning process as expeditiously as reasonably possible. Sprint stated that if the ILEC is held accountable for the entire collocation provisioning interval, the ILEC will be properly motivated to better manage its work activities and concurrent processes.

VERIZON: Space preparation for cageless, caged, and virtual collocation should be within 76 business days if the application was forecasted properly and the request is made for a standard collocation arrangement. A "standard collocation arrangement" means that the collocation request does not require the ILEC to undertake extraordinary conditioning, remove asbestos, or other special construction activities to implement the arrangement. Virtual collocation has the added requirement for the ILEC to install, test, and turn-up CLP equipment. This should take place within 30 days after the receipt of the equipment.

WORLDCOM: WorldCom filed a Joint Proposed Order with AT&T and the New Entrants. Therefore, the position as outlined for AT&T above represents WorldCom's position on this issue.

DISCUSSION

BellSouth noted in its Brief that one of the major themes in the testimony in this case concerns the provisioning intervals for caged and cageless collocation. BellSouth noted that even AT&T witness Gillan for the CLP Coalition conceded that the Commission can lengthen the "default" intervals adopted by the FCC for collocation provisioning. BellSouth noted that the FCC stated in Paragraph 29 of its Order on Reconsideration:

> We recognize, however, that a state may establish different provisioning intervals, either shorter or longer than the national default standard, based on the facts before that state, which may differ from our record here.

BellSouth argued that its witness Milner provided ample justification for the provisioning intervals recommended by BellSouth based upon BellSouth's real world experience in North Carolina and elsewhere in its region.

BellSouth maintained that two compelling facts were elicited in connection with the testimony concerning provisioning intervals. First, BellSouth noted, no CLP showed that BellSouth was missing current provisioning intervals it had promised to the CLP through individual interconnection agreements. Second, BellSouth commented, even when BellSouth has provisioned collocation space in a good faith, timely manner, the CLPs have not used a significant amount of that space to begin offering competitive services. BellSouth noted that witness Milner's undisputed testimony was that, as of September 2000, almost 38% of the CLPs' physical collocation arrangements in North Carolina did not have service working on their collocated equipment/facilities. BellSouth argued that far from being presented with a record showing that local competition is being harmed by BellSouth's delay in provisioning collocation requests, the Commission is presented with a record that shows that many CLPs are in a "hurry up and wait" mode - they "hurry up" BellSouth to provision their space and then wait until it suits them to begin offering competitive services through that space.

BellSouth stated that in its Advanced Services Order, the FCC declined to adopt provisioning intervals within which ILECs would have to provide collocation. BellSouth maintained that the FCC encouraged state commissions to ensure the ILECs were given specific time intervals within which to respond to collocation requests. BellSouth also specified that the FCC stated in its Order on Reconsideration that it

> should adopt national standards for physical collocation provisioning that will apply when the state does not set its own

> standards or if the requesting carrier and incumbent LEC have not mutually agreed to alternative standards. A state could set its own standards by statute, through an existing or future rulemaking order, by enforcing a state tariff, or by applying the precedent of a state arbitration decision.

BellSouth noted that with respect to provisioning physical collocation arrangements, the FCC concluded that an ILEC should be able to complete any technically feasible physical collocation arrangement, whether caged or cageless, no later than 90 calendar days after receiving an acceptable collocation application. BellSouth stated that the FCC recognized that its 90-day calendar interval was "somewhat tighter than those that certain State commissions have set for caged physical collocation." In fact, BellSouth maintained, the FCC recognized that the New York Public Service Commission, for example, required Bell Atlantic in New York to provide caged and cageless collocation within 76 business days (roughly 105 calendar days) and virtual collocation within 105 business days (roughly 147 calendar days) of receiving a collocation request. BellSouth noted that this interval can be extended by 60 days whenever a CLP does not provide a specific collocation forecast within 90 days prior to the CLP submitting its application.

BellSouth maintained that consistent with the FCC's view as expressed in its Order on Reconsideration, the Commission should engage in a "balancing of competing considerations" when it addresses these two provisioning intervals. BellSouth recommended that the Commission recognize the potential benefits from timely deployment by CLPs of advanced services and other telecommunications services that will compete with ILEC offerings. On the other hand, BellSouth proposed that the Commission ensure that any provisioning intervals it adopts are grounded in reality and recognize that ILECs are not in total control of the processes that result in a completed physical collocation arrangement. BellSouth proposed that the Commission establish provisioning intervals for North Carolina based on the record developed in this state which would be consistent with the FCC's Order on Reconsideration. BellSouth noted that the FCC stated in its Order on Reconsideration that a state commission may establish different provisioning intervals, either shorter or longer than the national default standards, based on the facts before that state which may differ from the record before the FCC.

BellSouth argued that an ordinary condition would exist when the space within an ILEC's premises has sufficient telecommunications infrastructure to house the telecommunications equipment the CLP intends to place and preparation of collocation space under these conditions does not involve any environmental work, shipping intervals, removal of equipment, or other conditions outside an ILEC's control that negatively impact the provisioning interval. BellSouth maintained that infrastructure systems include floors capable of supporting equipment loads, heating, ventilating and air conditioning systems, and electrical systems. BellSouth noted that if an ILEC encounters any conditions not expressly provided for in its definition that it considers to be an extraordinary condition, in the absence of agreement between the parties, BellSouth proposed that the ILEC be

allowed to petition the Commission for any extension of the provisioning interval to 130 calendar days.

BellSouth noted that its witness Milner testified that there are three critical phases that BellSouth must complete to provide space for collocation in North Carolina: (1) design; (2) building construction; and (3) telecommunications power and infrastructure completion. BellSouth argued that it cannot commence any building construction activities until necessary North Carolina building permits have been obtained. BellSouth stated that witness Milner strongly disagreed with the CLPs' suggestion that provisioning intervals could be shortened by requiring ILECs to "pre-condition" collocation space, first because such a practice unfairly puts financial risk on an ILEC by having to prepare space in case a CLP may at some point in the future want to use that space and second because it would be impossible to execute effectively. BellSouth stated that witness Milner maintained that no ILEC could reasonably possess all of the needed information and would sometimes guess wrong and the result would be that the ILEC would make expenditures for collocation that would never be recovered. BellSouth recommended that the Commission find that it is not reasonable to require ILECs to precondition collocation space.

BellSouth further noted that witness Milner testified that another factor controlling overall provisioning intervals is the time required for ILECs to obtain building permits. BellSouth argued that the interval for obtaining required building permits is in most cases out of an ILEC's control and that BellSouth has experienced permitting intervals that range from 15 days to 60 days. BellSouth maintained that witness Milner testified that exclusion of permit time from the provisioning interval by the Commission would not encourage BellSouth to be less diligent in managing the permitting process.

BellSouth recommended that the Commission find that the permit interval should be excluded from provisioning intervals because the permit interval is in the critical path for provisioning collocation space, yet is not under the ILEC's control. Further, BellSouth proposed that the Commission conclude that the appropriate construction and provisioning intervals for caged and cageless collocation space in North Carolina are 90 calendar days for ordinary conditions and 130 days for extraordinary conditions from receipt of a bona fide firm order.

BellSouth witness Hendrix stated on cross-examination that BellSouth's proposed interval is longer than what the FCC has established in its Order but argued that BellSouth is wanting to do what is appropriate for this state. Witness Hendrix testified that ". . . the FCC strongly urged [was for] the states to look at the issues for their states and make some judgement as to what is appropriate."

Further on cross-examination, witness Hendrix agreed that BellSouth's Interconnection Agreement with ITC^DeltaCom presented as New Entrants Cross-Examination Exhibit 8 stated that a request for cageless physical collocation will be made available within 30 days after receipt by BellSouth of a complete and accurate bona fide firm order. However, witness Hendrix stated, he does not believe BellSouth would

have entered voluntarily into this agreement and believes that it may be the result of an arbitration order in one of the BellSouth states. Witness Hendrix stated that inserting this language would not be something that BellSouth would have just done without being obligated to do so by a state commission order.

Addressing permits, BellSouth witness Milner agreed on cross-examination that of 28 collocations at the BellSouth Morgan Street central office, only three permits were required. When asked whether he was familiar with the City of Raleigh's express permitting where you can make an appointment and get a permit issued within two days after the review of the filing, witness Milner stated that he was not aware of that and that he personally does not submit requests for permits.

In addressing the MCIm/BellSouth arbitration issue concerning provisioning intervals deferred to this docket, the CLPs noted in their Joint Proposed Order that BellSouth is advocating 90 calendar days for physical collocation and not to exceed 60 days for virtual collocation, commencing in either instance from the firm order. The CLPs argued that cageless collocation, by definition, should be easier to provision than caged collocation and that BellSouth has given no justification as to why cageless collocation cannot be accomplished in less than 90 days. The CLPs maintained that cageless and virtual collocation are set up physically the same way and, thus, any time frame in which cageless collocation can be provisioned is also appropriate for virtual collocation. The CLPs argued that because certain considerations related to space availability and configuration, as well as not having to construct a cage, are different for cageless and virtual collocation than for caged collocation, cageless and virtual collocation should be subject to a shorter interval. The CLPs maintained that given these points and the FCC's Collocation Reconsideration Order, MCIm, like the New Entrants, advocates: (1) a provisioning period of 90 days for caged collocation, commencing with the collocation application; and (2) a provisioning period of 60 days for cageless and virtual collocation, also commencing with the application.

The CLPs noted that the FCC's Collocation Reconsideration Order, consistently with paragraph 55 of the FCC's Advanced Services Order, sets a national maximum standard, to the extent a state commission does not otherwise set its own deadlines, of 10 calendar days for an ILEC to accept or deny a collocation application. The CLPs also commented that the FCC set default national standards of 90 days from the initial application for both cageless and caged collocation.

The CLPs further maintained that although the FCC established a default national standard for collocation provisioning intervals, the FCC also determined that state commissions have authority to establish these provisioning intervals. The CLPs noted that the Commission has the authority to establish maximum collocation provisioning intervals for North Carolina that are different from the 90-day default national interval established by the FCC.

The CLPs argued that the ILECs have presented no persuasive evidence in this proceeding that should prompt the Commission to enlarge the 90-calendar day standard set by the FCC. The CLPs maintained that while the ILECs set forth their positions requesting several more weeks for collocation, they provided no specific evidence as to why they cannot meet the FCC's default national standard in North Carolina. In fact, the CLPs noted, several other states have set shorter intervals thereby demonstrating the feasibility and reasonableness of provisioning intervals of 90 days or less. The CLPs specifically noted that the Washington Utilities and Transportation Commission established rules which require ILECs to complete construction of and deliver collocation space and related facilities within 45 calendar days after the CLP's acceptance of the written quote and payment of one-half of the nonrecurring charges. The CLPs also commented that Qwest has voluntarily agreed to a 45-day provisioning interval for cageless collocation provided a forecast has been given by the CLP, thereby proving that relatively short provisioning intervals are practical.

The CLPs noted that they presented evidence that the ILEC performance in provisioning collocation space in North Carolina has often been slow. The CLPs also argued that they have demonstrated that physical collocation is a relatively routine activity and that the CLPs estimate that the on-site work by ILECs takes three to four days for caged collocation space.

The CLPs further commented that New Entrants witness Wagoner provided a demonstration during the hearing using typical CLP equipment and a standard rack that underscored the routine nature of collocation tasks. The CLPs maintained that the demonstration showed that many collocation engineering and installation tasks are simplified through the common CLP practice of preinstalling CLP equipment in standard rack sizes. The CLPs noted that BellSouth and Verizon provided no convincing evidence as to why collocation provisioning intervals should not be standardized and shortened so that carriers can plan their market entry and order these arrangements without experiencing the unnecessary delay and costs inherent in the current ILEC approach which presumes that collocation must be a highly customized offering justifying lengthy provisioning intervals.

The CLPs noted that BellSouth's most recent position is that the collocation provisioning intervals should be no greater than 90 calendar days for caged and cageless collocation under "ordinary" conditions, and 130 calendar days under all other conditions. The CLPs maintained that BellSouth proposed that ordinary conditions exist when the ILEC premises have sufficient telecommunications infrastructure and the collocation space does not involve any environmental work, shipping intervals, or other conditions outside of BellSouth's control that may negatively impact the provisioning interval. Also, the CLPs noted, BellSouth claimed that obtaining local building permits can take 15 to 60 days and is the "critical path" for provisioning collocation space because BellSouth cannot commence any building construction activities until the permits have been obtained. The CLPs stated that BellSouth concluded that because the permit interval is outside of its control, the permit interval should be excluded from its proposed provisioning intervals.

The CLPs noted that BellSouth's unsupported assertion that 60 days is routinely required for local permits in Raleigh, Charlotte, and other areas in North Carolina was proven incorrect by the CLPs at the hearing. The CLPs noted that they presented evidence that local permits are rarely, if ever, required for collocation. The CLPs noted that they demonstrated that at BellSouth's central office on Morgan Street in Raleigh, BellSouth produced only three permits for 28 collocations and that it is not clear that any of those permits relate directly to those collocations. Further, the CLPs maintained, the evidence reveals that even if permits were required under some extraordinary circumstances, the required permits can be obtained in eight days as opposed to the 60 days alleged by BellSouth. The CLPs also noted that Verizon and Sprint both agreed with the CLPs that local permitting is generally not required for collocation. Based on the foregoing, the CLPs recommended that the Commission conclude that the need to obtain local permits, if any, does not justify extending the FCC's default provisioning intervals.

The CLPs further commented that BellSouth and Verizon both contended that provisioning intervals for cageless collocation should be the same as for caged collocation. The CLPs noted that they advocated that while 90 days from the application is reasonable for caged collocation, 60 days is more appropriate for cageless collocation. The CLPs noted that they presented evidence that cageless collocation takes less time because the cage does not have to be installed and grounded, and the CLP is responsible for cabling and equipment installation. The CLPs argued that since cageless collocation involves less work by the ILEC, the provisioning interval for cageless collocation should be shorter. The CLPs noted that other states have imposed shorter intervals and that BellSouth has contracted with ITC^DeltaCom to provide a 30-day interval for cageless collocation. The CLPs recommended that based on the evidence presented, the Commission conclude that the provisioning interval for cageless collocation in North Carolina should be 60 days from the collocation application date.

In conclusion, the CLPs recommended that the Commission find that the maximum provisioning intervals should begin at the time that the ILEC receives a collocation application and that collocation space must be ready for CLP occupancy by the expiration of the interval. The CLPs proposed that the Commission adopt the following provisioning intervals for insertion in the Standard Offering:

Caged collocation	90 calendar days
Cageless collocation	60 calendar days

The CLPs maintained that MCIm's proposal of 90 calendar days from the application to provision caged collocation, and 60 calendar days from the application to provision cageless and virtual collocation, is consistent with these intervals. The CLPs further argued that MCIm's proposed contract language with regard to the response to an application, including a firm price quote, is also consistent with these intervals. The CLPs maintained that the intervals for provisioning caged and cageless collocation should assume that the CLP will respond within seven days of receiving a firm price quote; if the CLP does not respond within the seven days, any additional days used by the CLP to

respond to a firm price quote should be added to the total provisioning interval (i.e., if the CLP takes 10 days to respond to the firm price quote, then the overall provisioning interval should be 90 days plus an additional 3 days (10 days - 7 days) or 93 days).

CLP Coalition witness Gillan stated in rebuttal testimony that he chose to address the issue of provisioning intervals separately from the other issues since intervals are a very important competitive dimension of collocation and addressing the issue separately would give the issue the prominence it deserves. Witness Gillan also observed that the FCC has now set national maximum intervals that should be reflected in the Standard Offering wherever the interval in the Standard Offering would otherwise exceed the national maximum.

Concerning cageless collocation, witness Gillan maintained that cageless collocation should be subject to a shorter interval because it should be no more complicated to provide than making available space for the ILECs' own equipment. Witness Gillan noted that the Georgia Public Service Commission recognized that it is practical to have a significantly shorter interval for cageless collocation when compared with caged collocation.

During cross-examination, witness Gillan stated that the CLPs' primary recommendation is to adopt a 90-calendar day provisioning interval for caged collocation and a 60-calendar day interval for cageless collocation. He explained that the CLPs do not care about the designation or distinction between active and inactive space [**COMMISSION NOTE:** See Issue No. 19] as long as the provisioning intervals are established at 90 and 60 calendar days. Witness Gillan stated that if BellSouth would agree to the CLPs' proposed provisioning intervals then the CLPs would agree to remove Section 3.2 concerning active collocation space from the Standard Offering. However, BellSouth counsel stated that BellSouth cannot agree to remove the Section concerning active collocation space.

CLP witness Wagoner stated in his summary at the hearing that Mpower, his employer, has 11 collocation sites in Charlotte in BellSouth central offices. Witness Wagoner stated that Mpower began submitting applications in the January 2000 time frame and that actual space ready dates for those collocations were at the end of July 2000, with acceptance in early August 2000. Witness Wagoner stated that Mpower received a response from BellSouth to its applications on March 22, 2000 and Mpower submitted its firm order with payment in April 2000. Witness Wagoner noted that the collocations were not completed until August 4, 2000 which was 115 days later. Witness Wagoner testified that the long time frames for collocation "definitely hinder our ability to enter into a new market."

During cross-examination, witness Wagoner agreed that Mpower has an Interconnection Agreement with BellSouth in which collocation terms and conditions are set out. Witness Wagoner further stated that he was not aware that Mpower revised its January 2000 applications for collocation in Charlotte on February 21, 2000. Witness

Wagoner admitted that under the Interconnection Agreement, BellSouth has 30 business days to respond to a revised collocation application. He also agreed that if Mpower revised its application on February 21, 2000, then BellSouth's response on March 22, 2000 was within the allowed interval. Also, witness Wagoner admitted that under the Interconnection Agreement, BellSouth has 120 days from the receipt of a firm order to provision collocation space. Witness Wagoner agreed that August 4, 2000 (the date the collocation space was completed) was within the 120 days of the April 10, 2000 firm order date.

Witness Wagoner did concede on cross-examination that collocation arrangements can vary from CLP to CLP.

Concerning building permits, witness Wagoner stated on cross-examination that he does not know what permits BellSouth would need to install a cage in its own space. Witness Wagoner stated that the only permitting issues he has experienced were with Sprint in Florida where they were building a brand new building, not constructing in an existing building.

MCIm stated in its Brief that the issue of intervals in which collocation requests will be provisioned is a key issue for collocators and ILECs. MCIm noted that BellSouth initially proposed an ICB basis with regard to provisioning but later changed its position to advocate intervals based on business days. Now, MCIm asserted, BellSouth advocates 90 calendar days for physical collocation and "not to exceed" 60 days for virtual collocation, commencing in either instance from the firm order. MCIm stated that Verizon seeks to provide physical collocation in 76 business days, commencing upon the application (i.e., about 107 calendar days from the application, if there are no holidays). MCIm noted that Sprint requests 90 days and 60 days, respectively, for provisioning caged and cageless collocation, commencing with the firm order, and applicable to conditioned space only (which amounts to 112 calendar days from the application).

MCIm stated that initially it advocated a provisioning period of 45 days for cageless, as well as for virtual collocation, with a provisioning interval of 90 days for caged collocation. MCIm maintained that these periods were to have commenced from the date BellSouth would receive the firm price order. MCIm stated that in the wake of the Order on Reconsideration, MCIm advocates for the purposes of this proceeding a provisioning period of 90 days for caged collocation, commencing with the collocation application and a provisioning period of 60 days for cageless and virtual collocation, again commencing with the application. MCIm noted that its proposed intervals are approximately equivalent to 15 days for a firm price quote, followed upon acceptance by a 45-day provisioning period for cageless or virtual collocation, which was MCIm's initial proposal.

MCIm noted that under the FCC's Order on Reconsideration, the ILEC should complete any technically feasible physical collocation arrangement, whether caged or cageless, no later than 90 calendar days after receiving a collocation application, where space, whether conditioned or unconditioned, is available in the ILEC's premises and the

state commission does not set a different interval or the ILEC and the requesting carrier have agreed to a different interval. MCIm contended that the FCC's 90-day interval is a maximum standard that the FCC presumes ILECs are capable of meeting. Further, MCIm pointed out, the FCC specifically noted that states have the authority to establish collocation provisioning intervals that are different from the national standard established by the FCC.

MCIm explained that cageless and virtual collocation are set up physically the same way. MCIm noted that the main difference between the two is that, with a physical (cageless) arrangement, tape is placed on the floor around a collocator's equipment to identify it, and the collocator itself is allowed access to the equipment; whereas, in a virtual arrangement the ILEC maintains the CLP's equipment. Therefore, MCIm contended, any time frame in which cageless collocation can be provisioned is also appropriate for virtual collocation.

MCIm noted that Alabama requires cageless collocation to be provisioned in 60 calendar days of "a request for cageless collocation." Consequently, MCIm maintained, the interval for cageless collocation should be 60 days, commencing with the application.

The New Entrants stated it their Brief that collocation is a routine activity involving (a) identification of space, and if necessary, (b) installation of a grounded cage. The New Entrants argued that in cageless collocation, the ILEC just identifies space to be made available and provides overhead racking for that space. The New Entrants explained that for caged collocation, the ILEC may also be requested to install a cage, although overhead racking need not be installed within the caged area. The New Entrants maintained that for provisioning of collocation space there are no complex activities, and the process involves just a small amount of work. The New Entrants noted that the FCC has set default standards of 90 days from the initial application for both cageless and caged collocation and encouraged the states to adopt shorter intervals where appropriate.

The New Entrants argued that while 90 days from the application is reasonable for caged collocation, 60 days is appropriate for cageless collocation. The New Entrants argued that cageless collocation involves less work by the ILECs and, therefore, the provisioning interval should be shorter.

The New Entrants noted that although the ILECs set forth their positions requesting several more weeks for collocation, they failed to provide specific evidence as to why they need additional time in North Carolina. The New Entrants stated that US West has agreed throughout virtually all of its region to provide cageless collocation space within 45 days after receiving a requesting telecommunications carrier's deposit when space and power are available. Further, the New Entrants noted, BellSouth has contracted with ITC^DeltaCom for a 30-day interval for cageless collocation.

The Public Staff noted in its Proposed Order that the FCC's Order on Reconsideration mandates that an ILEC should complete any technically feasible collocation arrangement in 90 calendar days after receiving the collocation application.

Sprint did not provide extended discussion on this issue in its Proposed Order and all of its comments are reflected under the Positions of Parties - Sprint.

Sprint witness Hunsucker stated in rebuttal testimony that an ILEC should not be allowed to stop and restart the provisioning clock based on its submission of permit requests. Witness Hunsucker maintained that ILECs should be held accountable for the time required to complete all of the necessary tasks related to the provisioning of physical collocation which includes the time required to obtain necessary building permits. Witness Hunsucker argued that Sprint believes that it is not appropriate to exclude permit-processing times from the ILEC's collocation provisioning interval and that the ILEC should be required to manage the provisioning of collocation so that the permitting runs concurrently with other work activity the ILEC performs in order to complete the collocation provisioning process.

Witness Hunsucker noted that while an ILEC does not have specific control over the actions of permitting officials, it does have complete control over the extent to which it compresses its provisioning processes so that work activities run as concurrently as possible. Further, witness Hunsucker testified that BellSouth asserts its lack of control, but that it possesses substantially more control over the situation than the CLP, who is entirely dependent on the ILEC to provision physical collocation arrangements in a timely manner.

Witness Hunsucker noted that the Louisiana Public Service Commission ordered that BellSouth should not be allowed to exclude permit time from the collocation arrangement time.

On cross-examination, witness Hunsucker agreed that Sprint is not required in many cases to get building permits for collocation.

In answering a question from the Commission, witness Hunsucker stated that Sprint does not believe that the Commission should automatically extend the provisioning interval for permits since ILECs are not required to get building permits in a lot of situations to do collocation. Witness Hunsucker explained that in those instances where permits are required, the ILEC can do a lot concurrently with a lot of the collocation work that the ILEC is required to do. Witness Hunsucker stated that in his opinion, permit time is not a hindrance to the time frames.

Verizon maintained in its Brief that determining the time required to provision collocation space is a continual challenge and that national demand for collocation has doubled each year for the past few years and shows no sign of abating. Verizon stated that it proposes a forecasting process that would define standard parameters for

collocation arrangements and would help assure that collocation space will be provided in a timely manner, assuming the collocation requests align with the CLPs' forecasts. Verizon proposed that CLPs would submit semiannual forecast for future requirements on a rolling two-year period so Verizon and its vendors can proactively identify any spatial problems. Verizon maintained that if it augments it workforce based on these forecasts and after discussions with the CLPs, the CLP should be held accountable for the accuracy of their forecasts.

For unforecasted collocation applications, Verizon proposed that they may cause provisioning delays, but they should not exceed 60 calendar days. Verizon recommended that for forecasts received less that two months prior to the application date, the interval may be postponed as follows:

Forecast Received	Interval Start Date Commences
No Forecast	2 months after application date
Forecast received 1 month prior to app. date	2 months after application date
Forecast received 2 months prior to app. date	1 month after application date

Verizon maintained that each application requires a site visit and a complete review of all forecasted growth requirements as well as pending activity. Verizon noted that given these tasks, Verizon's proposal to respond to a collocation request within eight business days is very reasonable. Verizon stated that its response will include a schedule describing Verizon's ability to meet the collocation request and also include a space assessment and a price quote. Verizon maintained that if the application is deficient, Verizon will ask the CLP for additional information within the eight-day response period. Verizon also proposed that if the CLP applies for space that was previously forecasted, Verizon will provision the collocation space within 76 business days, as opposed to the New Entrants' proposal of 90 calendar days. Verizon stated that although the FCC has recently prescribed that the default measurement should be 90 calendar days from the application date if a state has not established provisioning intervals, as the CLPs admitted at the hearing, "when it comes to intervals, . . . the FCC decision is not a minimum. In other words, states could make the intervals shorter; they could make the intervals longer."

Verizon asserted that its proposed 76-business day interval is a measurement that the FCC has supported on a statewide basis for Verizon unless the New York Public Service Commission chooses to adopt a different interval - which it has not. Verizon argued that the biggest constraint on provisioning collocation space is the time it takes to order and receive material from manufacturers and for vendors to complete installation work. Verizon maintained that given the sharp increase in collocation requests and the resulting difficulty for suppliers and contractors to meet demand timely, a 45 calendar day schedule has become typical just for the engineering, ordering, and receiving of cabling materials necessary for a collocation request. Verizon stated that, in fact, according to its equipment vendor, current projects requiring iron work used for overhead superstructure and cable racking can have lead times of 63 to 84 calendar days to receive material.

Verizon concluded that its proposed 76-business day interval for standard collocation arrangements is reasonable and should be adopted.

Verizon argued that the CLPs' proposed 60-calendar day provisioning interval for cageless collocation is unrealistic. Verizon maintained that space assessments and engineering are required for cageless collocation, just as they are for caged arrangements. Verizon asserted that the only difference between cageless and caged collocation is the construction of the cage and that is neither a critical path item nor a particularly lengthy undertaking. Verizon noted that New Entrants witness Wagoner acknowledged that intervals are determined by considerations that apply equally to caged and cageless arrangements and that vendor delays in processing and shipping material to the ILEC, as well as the availability of contractors to provision the request, can further extend the interval process. Verizon commented that the Florida Public Service Commission acknowledged this basic similarity and required one construction and provisioning interval for all physical collocation.

Verizon maintained that virtual collocation is distinguished from physical collocation (caged or cageless) because the CLP equipment is not segregated from the ILEC's equipment. Therefore, Verizon argued, the time interval for providing virtual collocation (30 days) should be tied to receipt of the equipment, which is typically under the CLP's control.

Verizon stated in its Proposed Order that for Standard Arrangements where the request was properly forecasted six months prior to the application date, the ILEC should provision the caged space and turn over the multiplexing node to the CLP within 76 business days from receipt of the CLP application and associated fee. Verizon maintained that a standard arrangement means that the collocation request does not require the ILEC to conduct extraordinary conditioning, remove asbestos, or undertake special construction activities in order to implement the arrangement. Verizon argued that the provisioning intervals for these more complex projects will likely fall outside the normal interval and are negotiated on an individual case basis. Verizon stated that the ILEC will use its best efforts to minimize the time required to condition collocation space and will inform the CLP of the time estimates as soon as possible.

Verizon commented that the biggest constraint on determining the appropriate provisioning interval is external - the time it takes to order and receive material from manufactures and for vendors to complete installation work. Verizon maintained that it has been standard to experience a 45-calendar day window just for the engineering, ordering, and receiving of cabling materials required for a collocation request. Verizon noted that it has been informed by its equipment vendor that current projects that require iron work, which is used in overhead superstructure and cable racking, can have lead times of 63 to 84 calendar days to receive material. Verizon stated that as for contractors, ILECs compete with other telecommunications carriers, including the same CLPs, to obtain these services. Verizon noted that during a recent three month period, vendors turned down 150 collocation contracts that Verizon put out for bid in Pennsylvania. Verizon stated that

the 76-business day window proposed by Verizon is the interval that has been approved by the New York State Commission and despite the unrelenting pace of collocation orders, Verizon has been able to meet those intervals with an average of 95% on-time performance and better in New York.

Verizon stated that the construction and provisioning intervals for cageless collocation should be the same as caged collocation because the tasks required to prepare the space are not significantly different. Verizon maintained that the requirements shown under the caged provisioning for the CLP to submit forecasts and meet critical interval dates would apply for cageless collocation as well. Verizon proposed that the appropriate interval for construction and provisioning of cageless space is 76 business days if the application is for a standard arrangement that was properly forecasted and other requests should be negotiated.

The Commission will address (1) the provisioning issue (Issue No. 69) and (2) the issue of building permits (Issue Nos. 74 and 82) separately.

ISSUE 69: The Commission believes that the language in the FCC's Order on Reconsideration is clear - that the national default interval is 90 calendar days, however, states are encouraged to set intervals, ***either longer or shorter***, as they see fit. The Commission notes that BellSouth witness Hendrix implied on cross-examination that BellSouth's proposed interval of 127 calendar days is appropriate for North Carolina. The Commission does not believe that the record of evidence supported either a longer or a shorter interval than the FCC's national default interval of 90 calendar days.

Addressing BellSouth's arguments, the Commission does not believe that it is relevant that BellSouth is not missing current provisioning intervals that it had promised CLPs through individual interconnection agreements. Those interconnection agreements were developed through negotiations while this proceeding represents an ongoing generic process with evidentiary evidence on the issue. Therefore, the Commission does not believe that there is any relevancy to the fact that BellSouth apparently has been meeting its current provisioning intervals as outlined in its interconnection agreements.

Second, the Commission does not believe that BellSouth's arguments that many of the collocation spaces that it has provisioned are not being used to offer competitive services hold any merit. BellSouth noted that as of September 2000, almost 38% of the CLPs' physical collocation arrangements in North Carolina did not have service working on their collocated facilities/equipment. The Commission believes that the purpose of this proceeding is to develop a comprehensive and fair collocation Standard Offering which will allow CLPs to obtain collocation space. TA96 requires ILECs to provide the collocation space, period.

In addition, the Commission believes that there was persuasive evidence that the provisioning of cageless collocation should require less time than caged collocation.

Therefore, the Commission finds it appropriate to adopt a 90-calendar day provisioning interval from the collocation application date for caged collocation and a 60-calendar day provisioning interval from the collocation application date for cageless collocation.

The Commission also notes that Paragraph 26 of the FCC's Collocation Reconsideration Order states:

> . . . We believe that the requesting carrier should be able to inform an incumbent LEC that physical collocation should proceed within seven calendar days after receiving the incumbent LEC's price quotation. If the requesting carrier meets this deadline, the incumbent LEC must comply with the 90 calendar day provisioning interval set forth in paragraph 27, below, or any alternative interval set by a state commission or agreed to by the requesting carrier and the incumbent LEC. If the requesting carrier fails to meet this deadline, the provisioning interval will begin on the date the requesting carrier informs the incumbent LEC that physical collocation should proceed (i.e., makes clear its intent to obtain a particular collocation arrangement from the incumbent) or any alternative date set by a state commission or agreed to by the parties. Restarting the collocation interval when the *requesting carrier fails to respond to a price quotation within* seven calendar days will facilitate the incumbent LEC's collocation provisioning operations and will prevent the requesting carrier from imposing unnecessary burdens on those operations to the potential detriment of other requesting carriers. [emphasis added]

The Commission finds it appropriate to conclude that if a CLP fails to meet the seven calendar day deadline for a bona fide firm order as outlined in Issue No. 18(m), the overall provisioning intervals of 90 calendar days for caged collocation and 60 calendar days for cageless collocation will be extended by the additional days the CLP takes to place a bona fide firm order. For example, if a CLP takes 10 calendar days to place a bona fide firm order for caged collocation, then the overall provisioning interval will be extended to 93 calendar days (10 days - 7 days = 3 days + 90 days = 93 calendar days).

COMMISSION CONCLUSIONS: The Commission finds it appropriate to establish a provisioning interval of 90 calendar days from the collocation application date for caged collocation and 60 calendar days from the collocation application date for cageless collocation. The provisioning intervals for caged and cageless collocation will be extended for any additional time taken by a CLP beyond the seven calendar day interval established for the CLPs to place a bona fide firm order.

ISSUE 74 AND ISSUE 82: The Commission notes that BellSouth is advocating that the time required to obtain building permits be excluded from the provisioning interval. Further, the Commission notes that both Sprint and Verizon maintained that permits are **not required for collocation**.

The Commission also notes the evidence presented that in BellSouth's Morgan Street central office, only three building permits were produced for 28 collocations and it was not clear that any of those permits related directly to those collocations.

The Commission believes that the record of evidence indicates that the need, if any, to obtain building permits should not extend the collocation provisioning interval, i.e., the time required to obtain a permit should not be excluded from the provisioning interval. However, if an intractable timing problem does in fact exist, then an ILEC may seek a waiver from the Commission upon a showing of extraordinary circumstances.

COMMISSION CONCLUSIONS: The Commission finds it appropriate to generally **not** allow the ILECs to exclude time required to obtain building permits from the provisioning intervals. Thus, the need, if any, to obtain building permits should generally not extend the collocation provisioning interval. If an intractable timing problem does in fact exist, then an ILEC may seek a waiver from the Commission upon a showing of extraordinary circumstances.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 61

ISSUE 70: Are MCIm and other CLPs entitled to use any technically feasible entrance cable, including copper facilities?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not take a position on this issue in its Brief.

AT&T: AT&T supported the position taken by MCIm on this issue.

BELLSOUTH: CLPs may elect to place CLP-owned or CLP-leased fiber entrance facilities into the collocation space but they may not place nonfiber optic cable entrance facilities. Some copper cables currently enter BellSouth central offices. These older cables are associated with BellSouth's loop facilities. Entrance facilities for CLPs, on the other hand, are a form of interconnection. All of BellSouth's interconnection trunk cables entering BellSouth central offices are optical fiber facilities. The rules regarding an ILEC's collocation obligation under the Act established by the FCC in its First Report and Order clearly state that the ILEC has no obligation to accommodate nonfiber optic entrance facilities (that is, copper entrance facilities) unless and until such interconnection is first ordered by the state commission. This analysis should be done on a case-by-case basis

by the Commission after the Commission has had an opportunity to review the CLP's need for copper facilities at a particular premises.

NEW ENTRANTS: The New Entrants supported the position taken by MCIm on this issue.

MCIm: MCIm and the other CLPs are entitled to use any technically feasible entrance cable, including copper facilities. The FCC allows collocators to use copper cable. A significant amount of copper cable owned by BellSouth certainly enters the BellSouth central offices, and BellSouth does not categorically reject its installation. Thus, the issue is one of parity; the CLPs must be able to bring copper cable into the central offices. The Florida Commission has approved the use of copper entrance cable. The North Carolina Commission should approve the use of copper cable. If BellSouth does not believe that copper cable is feasible in a given instance, it should file an appropriate waiver petition.

PUBLIC STAFF: There is no federal law or rule that requires ILECs to allow CLPs to place copper as an entrance facility. Copper and coaxial cable are limited to adjacent collocation situations and are otherwise left to the discretion of the state commissions.

SPRINT: Sprint accepted the position taken on this issue by the CLPs to the extent it is consistent with the terms and conditions of the Standard Offering filed with the direct testimony of Sprint witness Hunsucker, it is included in the Standard Offering, and the Standard Offering is made applicable to all parties in its entirety.

VERIZON: Other than for an adjacent collocation arrangement, fiber must be used for entrance facilities. Use of other types of entrance facilities would have to be reviewed on a case-by-case basis.

WORLDCOM: WorldCom supported the position taken by MCIm on this issue.

DISCUSSION

Section 5.2 of the Standard Offering describes the CLPs' position concerning the use of entrance facilities. The corresponding provision in the MCIm/BellSouth Interconnection Agreement is Section 7.21.1.

WorldCom witness Bomer testified that MCIm is entitled to use any technically feasible entrance cable, including copper facilities. BellSouth has many copper cables that enter its central offices. Therefore, as a matter of parity and nondiscriminatory treatment, witness Bomer testified that MCIm should be allowed to bring copper cable into the central offices. Copper entrance ducts merely present another factor in considering what space and facilities are available for collocation. Hence there should be a presumption that copper entrance facilities should be allowed. If BellSouth alleges space exhaustion, it may request the Commission to find that copper should not be placed. If copper were eliminated as an entrance facility, CLPs would be forced to install more

expensive fiber optic systems, which would raise everyone's costs, and may cause undue financial burden on a new entrant. Some start-up CLPs could be forced out of business.

CLP witness Gillan stated that CLPs are entitled to use any technically feasible entrance cable, including copper facilities. Since BellSouth acknowledges that copper cables enter ILEC central offices today, that demonstrates technical feasibility. Hence, there should be a presumption that copper entrance facilities are allowed. Witness Gillan further testified: "If BellSouth alleges space exhaustion, it may request the Commission to find that copper should not be permitted. Therefore, as a matter of parity and nondiscriminatory treatment, CLPs should be entitled to bring copper into the central office."

BellSouth witness Milner testified that currently some copper cables enter BellSouth central offices, but these are older cables associated with BellSouth's loop facilities, and all of BellSouth's interconnection trunk cables entering BellSouth central offices are optical fiber facilities. Witness Milner also testified that "the FCC rules regarding an ILEC's collocation obligation under the Act established by the FCC state that the ILEC should only accommodate non-fiber optic entrance facilities if such interconnection is first ordered by the state commission." Witness Milner asserted that no CLP should be permitted to place non-fiber optic (copper) entrance facilities in a premises until the state commission has reviewed the particular circumstances of the premises and the specific needs of the requesting CLP at that location, and has determined that the CLP's needs override BellSouth's and other CLPs' concerns, if any, with entrance space availability in those premises. Witness Milner further asserted that "going forward, our technology choice is fiber optic cable, so for our – both for our interconnection trunking we use fiber optics as well as for our loop facilities. In other words, we don't place new copper loops. We use fiber optic cable out to a midpoint, digital loop carrier equipment, and then copper loop distribution that goes onto the premises."

Verizon witness Ries testified that a CLP is required to use fiber entrance facilities unless they are being served through an adjacent on-site collocation arrangement. Any requests to use other types of entrance facilities would have to be carefully reviewed on a case-by-case basis to determine technical feasibility and space availability requirements.

In its Proposed Order, the Public Staff took the position that there is no federal law or rule that requires ILECs to allow CLPs to place copper as an entrance facility. According to the Public Staff, copper and coaxial cable are limited to adjacent collocation situations and are otherwise left to the discretion of the state commissions.

47 C.F.R. Section 51.323(d)(3) requires an ILEC providing physical collocation, virtual collocation, or both, to allow for the interconnection of copper or coaxial cable if such interconnection is first approved by the state commission.

The matter of whether CLPs are entitled to use any technically feasible entrance cable, including copper facilities, was previously addressed in conjunction with

Issue No. 53, as well by the Florida PSC in its *Order For Reconsideration*. The Commission believes that the CLPs, including MCIm, have failed to provide sufficient evidence that copper cable should generally be allowed other than in an adjacent collocation situation. The Florida *Order For Reconsideration* clarifies that the use of copper entrance facilities only addressed situations where collocation was outside of a central office, and did not reach the issue of copper cabling in other situations.

As previously stated in conjunction with Issue No. 53, the Commission believes that the unfettered use of copper entrance facilities, as requested by the CLPs, would accelerate the exhaust of ILEC central office entrance conduit and subduct. Central office entrance facilities should be limited to fiber optic cable unless the ILEC and CLP mutually agree to placement of copper entrance facilities or the CLP can convince the Commission, in a complaint proceeding, to authorize such placement at a particular premises on a case-by-case basis.

CONCLUSIONS

The Commission concludes that the CLPs, including MCIm, have failed to provide sufficient evidence that copper cable should generally be allowed other than in an adjacent collocation situation. Thus, central office entrance facilities should be limited to fiber optic cable unless the ILEC and CLP mutually agree to placement of copper entrance facilities or the CLP can convince the Commission, in a complaint proceeding, to authorize such placement at a particular premises on a case-by-case basis. The Commission also requires the Parties to negotiate mutually agreeable language for Section 5.2 of the Standard Offering and Section 7.21.1 of the MCIm/BellSouth Interconnection Agreement to reflect these conclusions.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 62

ISSUE 71: Is MCIm entitled to verify BellSouth's assertion, when made, that dual entrance facilities are not available? Should BellSouth maintain a waiting list for entrance space and notify MCIm when space becomes available?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not take a position on this issue in its Brief.

AT&T: AT&T supported the position taken by MCIm on this issue.

BELLSOUTH: The FCC's Rule requires BellSouth to provide at least two interconnection points at a premises "at which there are at least two entry points for the incumbent LEC's cable facilities, and at which space is available for new facilities in at least two of those entry points." 47 C.F.R. 51.323(d)(2). The right to tour a premises only applies when an ILEC "contends space for physical collocation is not available" in a given central office.

BellSouth is not denying physical collocation when it does not have dual entrance facilities available. BellSouth should not be required to incur the time and expense of maintaining a waiting list simply because dual entrance facilities may not be available.

NEW ENTRANTS: The New Entrants supported the position taken by MCIm on this issue.

MCIm: MCIm is not requesting a "formal tour" of the central offices; instead, a limited inspection of entrance facilities is what is required, and BellSouth has acceded to that request. MCIm has a right to verify, and should be permitted to verify, BellSouth's assertion that dual entrance facilities are not available. BellSouth should maintain a waiting list for entrance space and notify MCIm when space becomes available.

PUBLIC STAFF: While ILECs are not required to provide central office tours when access to dual entrance facilities has been denied, the Commission should encourage the parties to negotiate this issue. At least two entrance facilities are required, if available, when collocation space is requested by a CLP. If no entrance facility or only one is available when collocation space is requested, then the requesting CLP will be provided documentation (central office floor plans, etc.) on what facilities exist. No federal law or rule requires ILECs to maintain a waiting list for collocation space or entrance facilities.

SPRINT: Sprint accepted the position taken on this issue by the CLPs to the extent it is consistent with the terms and conditions of the Standard Offering filed with the direct testimony of Sprint witness Hunsucker, it is included in the Standard Offering, and the Standard Offering is made applicable to all parties in its entirety.

VERIZON: A CLP may request supporting documentation from the ILEC when it asserts that dual entrance facilities cannot be accommodated, but the CLP is not entitled to visit the central office for such verification. As addressed under Issue No. 54, requests for dual entry should be handled by the ILEC on an individual case basis. The ILEC should not be required to maintain a waiting list.

WORLDCOM: WorldCom supported the position taken by MCIm on this issue.

DISCUSSION

Section 5.2.1 of the Standard Offering provides the conditions under which an ILEC deals with dual entrances to its central offices in a competitive environment. The corresponding provision in the MCIm/BellSouth Interconnection Agreement is Section 7.21.2.

WorldCom witness Bomer, who adopted and sponsored the direct testimony prefiled by witness Messina, testified that a CLP should be permitted to verify, through physical inspection, an ILEC's assertion that dual entrances are not available. This is particularly true when the ILEC is claiming a lack of capacity, and it is a reasonable requirement,

particularly in light of the FCC's similar, but even more expansive rule allowing CLPs to tour an incumbent's premises in order to verify an assertion that physical collocation space is not available. MCIm is not asking for such a tour, but should be allowed to verify a claim that dual entrances are not available by inspecting the entrance locations. Witness Bomer also testified that since the FCC has declared that a denial of space triggers a requirement that an inspection be permitted, it is a reasonable conclusion that a denial of dual entrances, which permit the necessary diversity that a CLP needs, triggers the requirement of permitting verification of that claim.

Addressing whether ILECs must maintain a waiting list for entrance space, WorldCom witness Bomer pointed out that the lack of dual entrances will determine whether collocation is advisable at a given location, and thus maintenance of a waiting list is a reasonable requirement for the ILEC. This Commission has the authority to require ILECs to engage in practices that supplement the minimal standards that the federal rules require.

WorldCom witness Bomer, who also adopted and sponsored the testimony prefiled by witness Lathrop, further stated that, in many instances, a physical inspection is not necessary when dual entrances are lacking. Instead, a visual inspection from the street or drawings provided by the ILEC will document any exhausted entrance facilities at a central office. Witness Bomer remarked that physical inspection is necessary when the entrance facilities are underground and no documented floor plan is available. MCIm is not seeking a formal tour of the entire office, only an inspection of the ducts entering the cable vaults.

BellSouth witness Milner contended that when there is only one entrance point, a CLP can visually verify that another entrance point does not exist by a cursory review of the central office building floor plan; a tour is not necessary. BellSouth has agreed to provide documentation to MCIm verifying the lack of dual entrance facilities. Witness Milner also testified that the FCC rules which obligate an ILEC to provide a tour of its facilities in order to prove that physical collocation space is not available have absolutely nothing to do with the situation where space is available, but dual entry points do not exist. He stated that BellSouth was agreeable if all MCIm wants is a cursory inspection of the cable vault, but BellSouth was not amenable to a tour of the entire building when the purpose of that tour was to verify the existence of two entrance facilities.

Witness Milner further testified that aside from the time and expense associated with maintaining a waiting list for each central office in which dual entrance facilities are not available, there is no reason for BellSouth to maintain such a list when BellSouth has space available for CLP collocation, but does not have dual entrance facilities available. He maintained that if the FCC had intended for the ILECs to maintain a waiting list for dual entrance facilities (as it did for physical collocation space), it would have so stated.

Verizon witness Ries stated that the ILEC should provide supporting documentation when a dual entrance is not available. However, an inspection of the facilities should be

required only if the ILEC asserts that there is no entrance space for any cable facility. Witness Ries testified that the CLP always has the option of leasing facilities from the ILEC in lieu of constructing its own to the ILEC premises. Establishing and maintaining a waiting list is of little benefit and would be unnecessarily burdensome for the ILEC, especially when entrance facility augmentations are an infrequent occurrence.

In its Proposed Order, the Public Staff took the position that while ILECs are not required to provide central office tours when access to dual entrance facilities has been denied, the Commission should encourage the parties to negotiate this issue. According to the Public Staff, at least two entrance facilities are required, if available, when collocation space is requested by a CLP. If no entrance facility or only one is available when collocation space is requested, then the requesting CLP will be provided documentation (central office floor plans, etc.) on what facilities exist. No federal law or rule requires ILECs to maintain a waiting list for collocation space or entrance facilities.

47 C.F.R. Section 51.323(d)(2) states that an ILEC must:

> Provide at least two such interconnection points at each incumbent LEC premises at which there are at least two entry points for the incumbent LEC's cable facilities, and at which space is available for new facilities in at least two of those entry points.

The Commission believes that while the ILECs are technically not required by the FCC to provide inspections when access to dual entrance facilities has been denied, the CLPs, including MCIm, should be entitled to verify the ILEC's assertion, when made, that dual entrance facilities are not available. Dual entrances are physically diverse entrances into a wire center; i.e., having dual entrances provides an opportunity to design redundancy into the network, thereby preventing some network failures (e.g., if there is a cable cut at one entrance facility, the overall service is not affected). MCIm is simply seeking an inspection of the ducts entering the cable vaults. From the testimony of the WorldCom and BellSouth witnesses, it appears that the Parties have come to general agreement on this issue sufficient to allow them to negotiate the appropriate terms and conditions for a satisfactory inspection or tour. The Commission believes that, through good faith negotiations, the ILECs should provide an inspection or tour for the requesting CLP to inspect the cable vaults and entrance manholes of central offices where dual entry facilities are not available. In addition, floor plans for central offices, provided to CLPs on request, could provide enough clarity to verify the number of entrance facilities in a specific central office and thereby avoid the need for a physical tour.

The Commission also believes that it is reasonable to require the ILECs, including BellSouth, to maintain waiting lists for entrance space and notify the CLPs, such as MCIm, when such space becomes available. Regarding MCIm's request for a waiting list, this Commission has the authority to require ILECs to engage in practices that are in addition to and consistent with the minimum standards required by the FCC rules. Because the lack of dual entrances may, as a practical matter, determine whether collocation is

advisable at a given location, it is reasonable and not overly burdensome under the circumstances to require the ILECs to maintain waiting lists. The potential benefits to the CLPs of requiring waiting lists outweigh the potential detriments to the ILECs.

CONCLUSIONS

The Commission concludes that the CLPs, including MCIm, should be entitled to verify the ILEC's assertion, when made, that dual entrance facilities are not available. Through good faith negotiations, the ILECs should provide an inspection or tour for the requesting CLP to inspect the cable vaults and entrance manholes of central offices where dual entry facilities are not available. The Commission further finds it appropriate to require the ILECs, including BellSouth, to maintain waiting lists for entrance space and notify the CLPs, such as MCIm, when such space becomes available. The Commission also finds it appropriate to require the Parties to negotiate mutually agreeable language for Section 5.2.1 of the Standard Offering and Section 7.21.2 of the MCIm/BellSouth Interconnection Agreement to reflect these conclusions.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 63

ISSUE 84 (SPRINT ISSUE 10): Should an ILEC deny priority to a CLP that challenges an ILEC's denial of space should space become available as a result of the challenge?

POSITIONS OF PARTIES

Sprint is the only Party who mentioned this in its Proposed Order. Sprint's position is that the CLP initiating a successful challenge should have priority over available space. FCC rules establish a process whereby CLPs are afforded the opportunity to challenge an ILEC's denial of available space. Specifically, CLPs can tour the entire premises at no charge, and ILECs are required to provide certain information to substantiate lack of space claims.

CONCLUSIONS

The Commission concludes that, because of an insufficient record, it will not make a conclusion regarding this issue at this time. However, consistent with the conclusions previously reached in Finding of Fact No. 20, the Commission finds that procedures for evaluating space denials by the ILECs should be included in the Standard Offering.

IT IS, THEREFORE, ORDERED as follows:

1. That no later than January 28, 2002, the Parties shall jointly file a Standard Offering modified pursuant to the Commission's conclusions in this Order. The modified Standard Offering should include a Table of Contents.

2. That BellSouth's Motion to Allow Expedited Filings of Cost Studies is hereby granted. Therefore, barring any Motions for Reconsideration concerning collocation rates,

BellSouth, Carolina/Central, and Verizon shall refile their cost studies and resulting rates as soon as possible, but in no event later than January 28, 2002. The Public Staff is requested to review the cost studies and resulting rates as soon as possible after they are filed and submit comments on its reviews as soon as possible but in no event later than 30 days after receipt of said cost study and rates.

3. That BellSouth, Carolina/Central, and Verizon shall file hard copies and electronic copies (in Microsoft Excel format) of their collocation rates as set forth herein.

4. That the cost studies and supporting documentation shall be filed by the ILECs in electronic form and shall, upon request, be provided to all Parties subject to previous restrictions on disclosure of information for which proprietary treatment has been requested.

5. That the Parties are hereby instructed to attempt to negotiate appropriate rates for inclusion in the Standard Offering for cross-connects, cable installation, augments, adjacent collocation, and premises space reports by January 28, 2002 and if such rates are not negotiated, the Parties are instructed to file Supplemental Briefs discussing these issues in more depth by February 11, 2002.

6. That, after approval by the Commission, the rates filed pursuant to this Order shall be deemed permanent prices pursuant to Section 252(d) of TA96 for purposes of replacing interim prices adopted in Docket No. P-100, Sub 133d.

7. That BellSouth, Carolina/Central, and Verizon shall, by February 26, 2002, file proposals to refund the difference between revenues collected for services provided under interim prices subject to true-up and revenues that would have been collected under the permanent prices established in this docket.

ISSUED BY ORDER OF THE COMMISSION.

This the 28th day of December, 2001.

NORTH CAROLINA UTILITIES COMMISSION

Geneva S. Thigpen

Geneva S. Thigpen, Chief Clerk

Commissioner William R. Pittman resigned from the Commission effective January 24, 2001, and he did not participate in this decision.

Commissioner Ralph A. Hunt's term ended effective June 30, 2001, and he did not participate in this decision.

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GLOSSARY OF ACRONYMS
Docket Nos. P-100, Sub 133j

AC	Alternating Current
ACF	Annual Charge Factor
Act	Telecommunications Act of 1996
ADR	Alternative Dispute Resolution
ALEC	Alternative Local Exchange Carrier
ALLTEL	ALLTEL Communications, Inc.
AT&T	AT&T Communications of the Southern States, Inc.
BDFB	Battery Distribution Fuse Bay
BellSouth	BellSouth Telecommunications, Inc.
CCXC	Co-Carrier Cross-Connect
CDF	Conventional Distributing Frame
CFA	Channel/Connecting Facility Assignment
CLEC	Competitive Local Exchange Company (Carrier)
CLLI	Common Language Location Identification
CLP	Competing Local Provider
CLP Coalition	New Entrants (See New Entrants)
CO	Central Office
COE	Central Office Equipment
Commission	North Carolina Utilities Commission
DC	Direct Current
DS0	Digital Signal Level Zero
DS1	Digital Signal Level One
DS3	Digital Signal Level Three
DSX	Digital Signal Cross-Connect

DWDM	Dense Wavelength Division Multiplexing
EDR	Expedited Dispute Resolution
EHG	Environmental Hazard Guidelines
FCC	Federal Communications Commission
FDF	Fiber Distribution Frame
FOC	Fiber Optic Cable
HVAC	Heating, Ventilation, and Air Conditioning
ICB	Individual Case Basis
ILEC	Incumbent Local Exchange Company (Carrier)
LEC	Local Exchange Company (Carrier)
MCIm	MCI Telecommunications Corporation
MDF	Main Distributing Frame
MOPs	Method of Procedures
NEBS	Network Equipment Building Systems
New Entrants	Adelphia Business Solutions, Covad Communications, Inc., Business Telecom, Inc. DSLnet, Inc., Intermedia Communications, Inc., KMC Telecom, Inc., Mpower Communications, Corp., New Edge Networks, XO Communications, Inc., SECCA, US LEC, WorldCom, Inc., AT&T Communications of the Southern States
NPRMs	Non-Penetrating Roof Mounts
NRC	Nonrecurring Charge
POT	Point of Termination
Public Staff	Public Staff-North Carolina Utilities Commission
SECCA	Southeastern Competitive Carriers Association
Sprint	Carolina Telephone and Telegraph Company, Central Telephone Company, and Sprint Communications Company L.P.

SR	Special Report
SWBT	Southwestern Bell Telecommunications
TA96	Telecommunications Act of 1996
Texas PUC	Texas Public Utilities Commission
TR	Technical Requirement
SMEs	Subject Matter Experts
UNE	Unbundled Network Element
Verizon	Verizon South, Inc., f/k/a GTE South, Inc.
WorldCom	WorldCom, Inc., including MCImetro Access Transmission Services, LLC