BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Competitive Carriers for Commission action to support local competition in BellSouth Telecommunications, Inc.'s service territory.	DOCKET NO. 981834-TP
In re: Petition of ACI Corp. d/b/a Accelerated Connections, Inc. for generic investigation to ensure that BellSouth Telecommunications, Inc., Sprint-Florida, Incorporated, and GTE Florida Incorporated comply with obligation to provide alternative local exchange carriers with flexible, timely, and cost-efficient physical collocation.	DOCKET NO. 990321-TP ORDER NO. PSC-00-2190-PCO-TP ISSUED: November 17, 2000

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
E. LEON JACOBS, JR.

ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR RECONSIDERATION

BY THE COMMISSION:

I. Background

On December 10, 1998, the Florida Competitive Carriers Association (FCCA), the Telecommunications Resellers Association, Inc. (TRA), AT&T Communications of the Southern States, Inc. (AT&T), MCImetro Access Transmission Services, LLC (MCImetro), WorldCom Technologies, Inc. (WorldCom), the Competitive Telecommunications Association (Comptel), MGC Communications, Inc. (MGC), and Intermedia Communications Inc. (Intermedia)

(collectively, "Competitive Carriers") filed their Petition of Competitive Carriers for Commission Action to Support Local Competition in BellSouth's Service Territory. Docket No. 981834-TP was assigned to the Petition.

At the March 30, 1999, Agenda Conference, we denied BellSouth Telecommunications, Inc.'s (BellSouth) December 30, 1999, Motion to Dismiss and subsequently, indicated, among other things, that we would conduct a Section 120.57(1), Florida Statutes, formal administrative hearing to address collocation and access to loop issues as soon as possible following the UNE pricing and OSS operational proceedings. See Order No. PSC-99-0769-FOF-TP, issued April 21, 1999, and Order No. PSC-99-1078-PCO-TP, issued May 26, 1999.

On March 12, 1999, ACI Corp. d/b/a Accelerated Connections Inc., now known as Rhythms Links Inc., (Rhythms) filed a Petition for Generic Investigation into Terms and Conditions of Physical Collocation. Docket No. 990321-TP was assigned to this Petition. On April 6, 1999, GTE Florida, Inc. (GTEFL) and BellSouth filed responses to Rhythm's Petition. On April 7, 1999, Sprint filed its response to the Petition, along with a Motion to Accept Late-Filed Answer.

By Proposed Agency Action Order No. PSC-99-1744-PAA-TP, issued September 7, 1999, we accepted Sprint's late-filed answer, consolidated Dockets Nos. 990321-TP and 981834-TP for purposes of conducting a generic proceeding on collocation issues, and adopted a set of procedures and guidelines for collocation, focused largely on those situations in which an incumbent local exchange company (ILEC) believes there is no space for physical collocation. The guidelines addressed: A. initial response times to requests for collocation space; B. application fees; C. central office tours; D. petitions for waiver from the collocation requirements; E. post-tour reports; F. disposition of the petitions for waiver; G. extensions of time; and H. collocation provisioning time frames.

On September 28, 1999, BellSouth filed Protest/Request for Clarification of Proposed Agency Action. That same day, Rhythms filed a Motion to Conform Order to Commission Decision or, in the Alternative, Petition on Proposed Agency Action. Commission staff conducted a conference call on October 6, 1999, with all of the

parties to discuss the motions filed by BellSouth and Rhythms, and to formulate additional issues for the generic proceeding to address the protested portions of Order No. PSC-99-1744-PAA-TP. By Order No. PSC-99-2393-FOF-TP, issued December 7, 1999, we approved proposed stipulations resulting from that call and identified the portions of the protested Order that could go into effect by operation of law.

Thereafter, we conducted an administrative hearing to address collocation issues beyond the issues addressed in the approved collocation guidelines. By Order No. PSC-00-0941-FOF-TP, issued May 11, 2000, we rendered our post-hearing decision on these additional issues. Therein, we addressed the following: 1) ILEC responses to an application for collocation; 2) the applicability of the term "premises"; 3) ILEC obligations regarding "off-premises" collocation; 4) the conversion of virtual to physical collocation; 5) response and implementation intervals for changes to existing space; 6) the division of responsibilities between ILECs and collocators for sharing and subleasing space between collocators and for cross-connects between collocators; 7) the provisioning interval for cageless collocation; 8) the demarcation point between ILEC and ALEC facilities; 9) the parameters for reserving space for future use; 10) whether generic parameters may be established for the use of administrative space; 11) equipment obligations; 12) the timing and detail of price quotes; 13) ALEC participation in price quote development; 14) the use of ILEC-certified contractors by ALECs; 15) the automatic extension of provisioning intervals; 16) allocation of costs between multiple carriers; 17) the provision of information regarding limited space availability; 18) the provision of information regarding post-waiver space availability; 19) forecasting requirements for CO expansions and additions; and 20) the application of the FCC's "first-come, first-served" Rule upon denial of waiver or modifications.

On May 26, 2000, GTEFL filed a Petition for Reconsideration. BellSouth and Sprint also filed separate Motions for Reconsideration and Clarification of the Commission's Order. On May 25, 2000, Sprint included a Request for Oral Argument on Motion for Reconsideration of Order No. PSC-00-0941-FOF-TP. No responses to the Request for Oral argument were filed. The Motion was

granted at the August 1, 2000, Agenda Conference. Oral argument was heard on August 25, 2000.

On June 7, 2000, Sprint filed its Response to GTEFL and BellSouth's Motions for Reconsideration. BellSouth also filed its Response to Sprint's Motion for Reconsideration and/or Clarification. MCI/WorldCom and Rhythms Links also filed timely Responses to all three Motions for Reconsideration. In addition, that same day FCCA and AT&T filed a Joint Response to the Motions for Reconsideration and a Cross-Motion for Reconsideration. On June 14, 2000, BellSouth filed its Response to FCCA and AT&T's Cross-Motion for Reconsideration. Each of the issues raised in the Motions for Reconsideration will be addressed separately.

II. Standard of Review

The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its Order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959); citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315, 317 (Fla. 1974).

III. Copper entrance facilities

A. Motions

BELLSOUTH

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 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. Thus, BellSouth seeks clarification of this point.

BellSouth seeks further clarification that cabling between a BellSouth CO and an ALEC's CEV is collocation, while cabling between BellSouth's CO and the ALEC's CO is interconnection. BellSouth explains that the FCC has stated in ¶69 of the Second Report and Order, in the Expanded Interconnection docket, CC Docket 91-141, that ILECs are not required to provide expanded interconnection for switched transport for non-fiber optic cable facilities and for switched transport expanded interconnection. BellSouth adds that the FCC stated earlier in the same docket, in ¶99 of its October 19, 1992 Report and Order, that while a party did support interconnection of non-fiber optic cable facilities, many LECs maintained that it would be undesirable, because it would limit the amount of conduit and riser space available. BellSouth contends that the FCC agreed that the adverse effects on conduit and riser space supported that interconnection of non-fiber facilities should only be allowed upon FCC approval on a case-by-case basis.

For these reasons, BellSouth believes that we should clarify our Order to state that BellSouth is not required to accommodate requests for non-fiber optic facilities placed in BellSouth's entrance facilities.

B. Responses

RHYTHMS LINKS

Rhythms Links contends that BellSouth seeks to "impede" competition by limiting the ALECs' ability to obtain access to copper entrance facilities in an effort to interconnect with BellSouth's network. Rhythms Links argues, however, that we did not indicate any such limitation in our Order. Although BellSouth argues that allowing ALECs access to copper entrance facilities would accelerate the exhaust of the entrance facilities, Rhythms Links notes that we determined that requiring fiber optic entrance facilities could prove to be a competitive obstacle for ALECs. Thus, Rhythms Links maintains that our Order is very clear that ILECs should not be allowed to restrict copper entrance facilities and as such, the Motion for Reconsideration should be denied.

MCI WORLDCOM

MCI WorldCom agrees with BellSouth that this docket only addressed entrance facilities within the context of collocation outside the central office when space inside the office is exhausted. Thus, MCI WorldCom believes clarification would be appropriate to clarify our decision only as it pertains to the use of copper entrance cabling within the context of collocation outside of the CO.

MCI WorldCom argues, however, that BellSouth's additional request for clarification that ILECs need not consider requests for copper entrance facilities in other circumstances should be rejected. MCI WorldCom contends there is no basis for this clarification, and it was not an issue considered in this proceeding. MCI WorldCom adds that FCC Rule 51.323(d)(3) specifically permits "interconnection of copper or coaxial cable if such interconnection is first approved by the state commission."

MCI WorldCom argues that whether or not non-fiber interconnection is allowed between ILEC and ALEC switches was not addressed in this docket. MCI WorldCom notes that it is an issue in its arbitration with BellSouth, Docket No. 000649-TP. As such, MCI WorldCom cautions that we should not grant this

"clarification," because it would prejudge the issue in the other docket.

C. Decision

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.

IV. Conversion of Virtual to Physical Collocation

A. Motions

BELLSOUTH

BellSouth seeks reconsideration of our decision that an ALEC's equipment may remain in place in an ILEC's line-up when converting from virtual to cageless physical collocation and the decision that ILECs may not require an ALEC's equipment to be located in a segregated area.

BellSouth contends that on March 17, 2000, the DC Circuit issued its decision on review of the FCC's Advanced Service Order. GTE Service Corp. v. FCC, 205 F.3d 416 (D.C. Cir. 2000). Therein, the Court vacated portions of the Advanced Services Order, including ¶42 of the Order, which provide that ILECs must give ALECs the option of choosing any unused space in a CO and must not require ALEC's equipment to be segregated. The Court remanded this issue to the FCC, stating that there was nothing in the Telecommunications Act of 1996 (the Act) that supports this approach. BellSouth maintains that the Court found that the ILEC should be allowed to choose the collocation space.

BellSouth argues that while the Court's Order gives control over the CO space back to the ILEC, our Order takes it away, in direct conflict with the DC Circuit's opinion.

BellSouth adds that while we determined that relocation of equipment would be unduly burdensome and costly, the FCC's similar argument before the DC Circuit was dismissed as "weak." BellSouth further contends that the US Supreme Court has even emphasized that higher costs for competitors do not outweigh the statutory terms of the Act.[1] Thus, BellSouth argues that we overlooked the evidence that BellSouth's management of space is an important consideration in the placement of a collocation arrangement, and as such, should reconsider our decision.

Further, BellSouth contends that conversion could circumvent the ILEC's right to reserve space for future use. BellSouth notes that while we have acknowledged an ILEC's right to reserve space for an 18-month period, an ILEC must still give up space for virtual collocation when space for physical collocation is exhausted. Thus, if space is exhausted in an office, an ALEC could elect for virtual collocation, then simply convert in place to physical collocation. BellSouth believes this conflicts with the ILEC's right to reserve space as set forth in the FCC's rules and the DC Circuit's order.

GTEFL

GTEFL also seeks reconsideration on this point. GTEFL contends that we completely overlooked the decision in GTE Service Corp. V. FCC, 205 F.3d 416 (D.C.Cir. 2000), wherein the Court determined that the FCC failed to justify its prohibition against ILECs segregating competitors' equipment and found the requirement was inconsistent with Section 251(c)(6) of the Act. GTEFL contends that since ILECs may segregate cageless collocation, they must also be allowed to segregate conversions to cageless collocation, because there is no basis for doing otherwise.

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[1]Citing AT&T Corp. v. Iowa Utilities Board, 525 U.S. 366 at 389-390 (1999).

Like BellSouth, GTEFL also argues that the US Supreme Court has emphasized that higher costs for competitors do not outweigh the statutory terms of the Act. Thus, GTEFL contends that our decision prohibiting an ILEC from deciding where to locate ALEC equipment violates the Act. GTEFL adds that it would be a waste of time to require ILECs to proceed based on an FCC ruling that will have to be changed to accord with the DC Circuit's decision. Otherwise, conversions in place to cageless collocation will only have to be relocated later.

B. Responses

SPRINT

Sprint responds that we need not reverse those portions of our Order that rely upon the FCC's rules and the Advanced Services Order simply because the DC Circuit has remanded certain issues back to the FCC for further consideration. Sprint believes that it would be premature for us to change our decision based on "speculation" as to what the FCC might do. Furthermore, Sprint maintains that the Act and the FCC rules gives us authority to develop generic collocation guidelines on our own, and in the past, we have also adopted collocation requirements on our own pursuant to Chapter 364, Florida Statutes.[2]

Sprint contends that we made our decisions in this case based upon a full and complete record and should not change our decisions simply because the FCC's rules and Advanced Services Order are currently on remand. Sprint believes that the DC Circuit's remand decision is simply insufficient to invalidate our decisions made on the record in this case.

Specifically, with regard to conversions from virtual to physical collocation, Sprint contends that the DC Circuit did not allow ILECs to "require" segregated collocation areas for physical collocation. Sprint maintains that, instead, the DC Circuit simply determined that the FCC has not sufficiently explained its rationale for determining that ILECs are prohibited from requiring

[2]Citing In re: Expanded Interconnection Phase II and Local Transport Restructure, Order No. PSC-95-0034-FOF-TP.

such segregation of equipment. Contrasting our decision, Sprint points out that the decision in this case was based upon evidence in the record that segregation and relocation of equipment could impose an undue and anticompetitive cost burden on the ALEC, as well as lead to possible service interruptions.

As for BellSouth's arguments that our decision would prevent the ILEC from recovering costs related to virtual collocation, Sprint contends that we addressed all of these scenarios and more. As such, Sprint contends that BellSouth has not presented any point of fact or law that we overlooked or upon which we made a mistake. Thus, Sprint contends that both BellSouth's and GTEFL's Motions for Reconsideration on this point should be denied.

RHYTHMS LINKS

Rhythms Links argues that the DC Circuit's decision does not affect our decision establishing any of our collocation guidelines. Rhythms Links explains that the DC Circuit's decision vacated certain portions of the FCC's Advanced Services Order, and made a "limited" holding regarding the FCC's interpretations of "necessary" and "physical collocation." Rhythms Links believes that the Motions for Reconsideration, however, misstate the implications for our decision, because the we have independent federal and state authority to set up guidelines for collocation. Rhythms Links emphasizes that in Section 251(d)(3) of the Act, Congress specifically recognized the states' authority to make regulations, orders, or policies consistent with Section 251(c)(6) of the Act. Rhythms Links adds that Section 706 of the Act charges the state commission with taking action necessary to encourage the deployment of advanced services. Rhythms Links adds that the FCC even acknowledged this responsibility of the states at ¶23 of the Advanced Services Order.

Rhythms Links also contends that we have state authority to encourage competition and to oversee the transition to the competitive provision of telecommunications services, pursuant to Section 364.01(3), Florida Statutes. In addition, Rhythms Links states that we are charged with encouraging new or experimental technologies and ensuring all providers are treated fairly, in accordance with Section 364.01(4)(g), Florida Statutes. Rhythms Links contends that throughout our decision, we found that the

ILECs were providing collocation in a manner inconsistent with fair competition, and therefore, collocation guidelines were necessary.

Furthermore, Rhythms Links contends that it is not clear what effect the FCC's determination on remand will have on the minimum collocation requirements for ILECs. Nevertheless, Rhythms Links believes that it is premature to grant reconsideration based on the DC Circuit's decision.

As for the specific determination regarding conversion of virtual to physical collocation, Rhythms Links argues that there is nothing in the Act that prohibits an ALEC's equipment from remaining in an ILEC's line-up when converting from virtual to physical. Although BellSouth and GTEFL contend that this conflicts with the DC Circuit's decision, Rhythms Links responds that there is no legal or technical necessity for relocating the converting ALEC's equipment. Rhythms Links adds that we based our decision upon concerns regarding service interruption, security measures, time delays, unnecessary costs, technical issues, and reasonableness, and as such, our decision clearly must stand because it is based upon the record of this case. Rhythms Links states that our decision has an independent basis.

FCCA/AT&T

FCCA/AT&T contend that the DC Circuit's decision vacating ¶42 of the FCC's Advanced Services Order does not address the situation where equipment is already in the ILEC's line-up. FCCA/AT&T contend that ¶42 specifically addresses the initial placement of equipment, instead of the relocation of equipment. Even though the Court rejected the 'cost savings' arguments, FCCA/AT&T believe that in situations where the equipment is already in place, there can be no dispute that there will be significant cost savings if relocation is not required, as set forth in witness Gillan's testimony at hearing.

In addition, FCCA/AT&T contend that we did not base our decision on ¶42 of the FCC's Advanced Services Order, but instead stated that:

> [R]egarding relocation of equipment, the record supports that the ALEC's equipment may

> remain in place even if it is in the ILEC's equipment line-up when converting from virtual to cageless physical collocation. It appears that to require relocation of equipment under these circumstances would be unduly burdensome and costly to the ALEC without any benefit.

Based on the foregoing, FCCA/AT&T contend our independent decision based upon the record should stand, because no basis for reconsideration has been identified.

C. Decision

Upon consideration of the foregoing, we grant reconsideration as it pertains to relocation of equipment when converting from virtual to physical collocation. Although there is a significant amount of testimony in the record that supports our decision, the DC Circuit has specifically rejected similar rationale used by the FCC in FCC Order 99-48. In fact, the Court held that:

> There is nothing in §251(c)(6) that endorses this approach. The statute requires only that LECs 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.

GTE Service Corp. V. FCC, 205 F.3d 416, 426 (D.C.Cir. 2000). In view of the fact that a federal court has now rendered an interpretation of federal law that is directly contrary to our interpretation, our decision on this point may be considered in error. Therefore, our decision on relocation of equipment when converting from virtual to physical collocation shall be reconsidered. In conformance with the DC Circuit's ruling, we shall determine that the ILEC, rather than the ALEC, 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.

V. Billing for Conversion

A. Motions

BELLSOUTH

BellSouth also seeks clarification of the requirement that if no physical changes are necessary to make the conversion from virtual to physical collocation, then the only charges that should apply are for administrative, billing, and engineering record updates. BellSouth contends that we overlooked the fact that in a virtual arrangement, BellSouth is responsible for installing the equipment, while in a physical arrangement the ALEC is responsible for installing the equipment. BellSouth explains that there is no space preparation charge associated with virtual collocation, while there is one for physical collocation. If, however, BellSouth cannot charge for the conversion, BellSouth contends that it will be unable to recover the space preparation costs. BellSouth argues that this should not be allowed, because competitors may choose to obtain virtual collocation, then convert to physical collocation simply to avoid the space preparation charge.

BellSouth also contends that the FCC has stated that the cost of converting virtual to physical collocation should not be borne by the ILEC[3]; therefore, BellSouth must be provided a method to recover its costs. BellSouth also expresses concern that this may also provide a means for an ALEC to bypass a collocation waiver by converting from virtual to physical collocation in place at no cost. As such, BellSouth asks us to clarify our Order on this point.

B. Responses

FCCA/AT&T

FCCA/AT&T contend that there is no need to grant clarification or reconsideration on this point. FCCA/AT&T argue that our Order is clear that if no physical changes are needed, there would be no

[3]Citing FCC First Report and Order, FCC Order 96-325 at ¶550, footnote 1340.

space preparation charges. FCCA/AT&T emphasize that the record supports that when converting from virtual to physical collocation, the only real distinction is the change in the entrant's right to access the equipment. Thus, the conversion should really be no more than a conversion of "ownership." Therefore, FCCA/AT&T ask that clarification and/or reconsideration be denied.

C. Decision

Upon consideration of the foregoing, we do not believe that clarification is necessary on this point. The issue of billing for conversions from virtual to physical collocation when no physical changes are made has been addressed to the extent necessary in our Order. Based on the testimony of Sprint witness Closz and Intermedia witness Jackson, we determined that if there are no physical changes made, the only charges that should apply are administrative, billing, and engineering record updates. If there will be no change to the space, and hence, no incremental cost, there is no basis for a space preparation charge. Furthermore, there was no evidence regarding such a charge presented at the hearing. As such, we reject this request for clarification.

VI. Cross-Connects between Collocators

A. Motions

BELLSOUTH

BellSouth also seeks reconsideration of our decision that the FCC has supplied adequate rules regarding collocation cross-connects, which should be followed in Florida. BellSouth believes this decision is in direct conflict with the DC Circuit's order.

BellSouth explains that in the DC Circuit's order, the Court found that the FCC had not demonstrated that requiring ILECs to allow collocators to cross-connect with one another is necessary to implement Section 251(c)(6) of the Act. The Court determined that the requirement had "no apparent basis in the statute." GTE Service Corporation, 205 F.3d at 423. Thus, BellSouth believes that we should reconsider our decision.

GTEFL

GTEFL also seeks reconsideration on this point. GTEFL contends that although we have stated that companies should rely on the FCC's rules regarding cross-connects, portions of those rules have been vacated by the DC Circuit's decision. GTEFL notes that even the FCC Order issued prior to the Advanced Services Order did not require ILECs to allow cross-connects outside the actual collocation space. The Advanced Services Order, however, revised the rules to allow a collocator to cross-connect with other collocated equipment anywhere in the ILEC's premises. GTEFL maintains that the DC Circuit determined that there was no basis in the Act for the FCC to implement this rule. GTEFL notes that the Court emphasized that the Act only focused on connecting new entrants to the ILEC's network, not to each other. Thus, GTEFL believes that we should reconsider our decision in order to avoid having to revisit this issue when the FCC issues its new collocation rules.

B. Responses

SPRINT

Again, Sprint contends that we made our decisions in this case based upon a full and complete record and should not change our decisions simply because the FCC's rules and Advanced Services Order are currently on remand. Sprint believes that the DC Circuit's remand decision is simply insufficient to invalidate our decisions made based upon the complete record in this case.

As for the decision on cross-connects, Sprint acknowledges that we were guided by the FCC's decision in the Advanced Services Order. Nevertheless, Sprint argues that our ultimate decision was based upon evidence in the record and can stand alone pending FCC action on the remand. Sprint argues that we should deny the requests for reconsideration, instead of changing our decision without any indication as to how the FCC might respond to the DC Circuit's remand decision.

RHYTHMS LINKS

Again, Rhythms Links argues that the DC Circuit's decision does not affect our decision establishing any of our collocation guidelines. Rhythms Links emphasizes that in Section 251(d)(3) of the Act, Congress specifically recognized the states' authority to make regulations, orders, or policies consistent with Section 251(c)(6) of the Act. Rhythms Links adds that Section 706 of the Act charges the state commission with taking action necessary to encourage the deployment of advanced services. Rhythms Links also contends that we have state authority to encourage competition and to oversee the transition to the competitive provision of telecommunications services, pursuant to Section 364.01(3), Florida Statutes.

Regarding cross-connects, Rhythms Links argues that GTEFL and BellSouth

> would prefer to monopolize the provision of cross-connects at their premises by prohibiting the ALECs from cross-connecting with one another while at the ILEC's premises.

Rhythms Links argues, however, that we made an independent determination that collocators can cross-connect, and that when they do so in contiguous spaces, no application fees are necessary. Rhythms Links contends that our decision is based on the record and that GTEFL and BellSouth have not identified any basis for reconsideration.

C. Decision

Upon consideration of the foregoing, we grant reconsideration as it pertains to cross-connects between collocators. In our Order, we specifically determined that the FCC had developed sufficient rules regarding cross-connects and that those rules should be followed by the parties. Those same FCC Rules have, however, been overturned by the DC Circuit. The Court even emphasized that:

> 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 §251(c)(6). This will not do. The statute requires LECs to provide physical collocation of equipment as "necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier," and nothing more. As the Supreme Court made clear in Iowa Utilities Board, the FCC cannot reasonably blind itself to statutory terms in the name of efficiency. Chevron deference does not bow to such unbridled agency action.

GTE Service Corp. V. FCC, 205 F.3d 416, 423-424 (D.C.Cir. 2000). In view of the fact that a federal court has now rendered an interpretation of federal law that is directly contrary to our interpretation, we believe that our decision on this point may be considered in error. Therefore, we reconsider our decision to rely upon the FCC's rules regarding cross-connects, because the basis for that decision has now been vacated. Furthermore, we acknowledge the clear ruling of the DC Circuit and refrain from determining that cross-connects between ALECs are required. In conformance with the DC Circuit's ruling, we determine that the ILECs are not required to allow collocators to cross-connect. We note, however, that there is significant testimony in the record regarding the efficiency of allowing cross-connects. Therefore, we encourage ILECs to, at least, consider requests by ALECs for permission to cross-connect within a CO.

VII. Reservation of Space

A. Motions

BELLSOUTH

BellSouth also seeks reconsideration of the 18-month limitation on reservation of space. BellSouth contends that we failed to consider that the normal time for completing a building addition is 24 months. BellSouth argues that if it does not have

the ability to reserve space for at least as long as it takes to complete an addition, then there is a risk that space will be depleted in COs.

GTEFL

GTEFL also seeks reconsideration on this point. GTEFL argues that our decision that space may be reserved for only an 18-month period does not take into account different types of equipment and the space necessary to accommodate that equipment. Thus, GTEFL believes we overlooked or failed to consider the significance of evidence regarding the impact of different types of equipment upon the reservation of space in a CO.

GTEFL contends that its witness Ries stated at the hearing that floor space in a CO must be reserved for a period longer than 18 months for certain types of equipment. As an example, GTEFL maintains that witness Ries referred to equipment necessary for switching, power, and main distribution functions. GTEFL argues that this equipment is necessary for the smooth operation of the public switched network and should have been considered by us. GTEFL adds that additional time and floor space does not constitute discrimination against ALECs, because the equipment is necessary to maintain the CO, a task for which only the ILEC is responsible.

GTEFL also argues that for equipment such as digital cross-connect systems, D4 channel banks, SONET terminals, DWDM equipment, and loop treatment equipment, a shorter reservation period is appropriate. Thus, GTEFL does not contest the 18-month reservation policy as it applies to this equipment. GTEFL states that it believes that we need only reconsider this policy as it applies to equipment necessary for the viability of the central office. For this type of equipment, GTEFL believes that a four-year reservation is more appropriate for switching, and that no policy should be implemented limiting the length of time for which space can be reserved for power, main distribution frames, and cable vault areas.

B. Responses

SPRINT

With regard to reservation of space, Sprint argues that neither GTEFL nor BellSouth identify any facts we overlooked or any mistake of law in our decision. Sprint emphasizes that GTEFL's argument regarding the specific types of equipment was noted at page 52 of our Order. Sprint points out that BellSouth's arguments were also fully addressed at page 54 of the Order. Therefore, Sprint argues that reconsideration should be denied.

RHYTHMS LINKS

Regarding reservation of space, Rhythms Links notes that we specifically addressed the arguments raised by both GTEFL and BellSouth, and decided, at page 56 of the Order, that:

> evidence is clear that space within a central office is a limited resource, and that limiting the length of time space is allowed to be reserved will promote efficient use of space.

Rhythms Links further emphasizes that we considered and rejected GTEFL's arguments for a flexible standard dependent upon the type of equipment. Rhythms also contends that we considered BellSouth's concerns regarding building additions at page 55 of the Order. Nevertheless, we determined that 18 months was a sufficient amount of time for the reservation of space, that this standard should be evenly applied to ILECs and ALECs, and that the standard should not be equipment dependent. Therefore, Rhythms Links asks that we deny the motions for reconsideration on this point, because we have already addressed and rejected the arguments raised.

FCCA/AT&T

FCCA/AT&T argue that BellSouth has not identified any basis for reconsideration on this issue. In addition, FCCA/AT&T contend that a longer reservation period would lessen the effectiveness of forecasting for actual space needs.

As for GTEFL's arguments, FCCA/AT&T contend that the policies suggested are patently unreasonable, anti-competitive, and would impair the growth of competition. FCCA/AT&T contend that not only has GTEFL provided no basis for the suggested policy, but for reconsideration of our original decision, an 18-month space reservation policy is appropriate.

C. Decision

Upon consideration of the foregoing, we deny the Motions for Reconsideration with regard to reservation of space. These arguments were fully addressed and considered at pages 51-56 of our Order. Neither BellSouth nor GTEFL has identified any mistake of fact or law we made in rendering our decision.

VIII. First-Come, First-Served Rule

A. Motions

BELLSOUTH

BellSouth contends that we should also reconsider our decision regarding first-come, first-served, because the decision is inconsistent with the FCC's rule, 47 C.F.R. §51.323(f)(1). BellSouth explains that we required that the ILECs keep a list of ALECs that had been denied space based upon the denial date. Thereafter, should space become available, the first to be denied would be the first to be offered the newly available space. However, BellSouth contends that the FCC's rule speaks specifically to requesting carriers, and that carriers should be offered space based upon when the request for space was submitted. BellSouth contends that there is no rationale for our decision that space should be offered based upon the denial date, and adds that this approach could lead to unfair results for any carrier that submits multiple applications, since we have also established staggered intervals for responses to multiple applications. Therefore, BellSouth asks that we reconsider this portion of the Order.

SPRINT

Sprint agrees that we should reconsider our decision regarding the application of the first-come, first-served rule. Sprint

contends that we apparently misinterpreted the testimony in the proceeding, which Sprint believes overwhelmingly supported the application date as the appropriate date to determine an ALEC's place on the waiting list, as opposed to the denial date. Sprint refers to the testimony of witnesses Hendrix, Hunsucker, Martinez, Nilson, Strow, and Mills. Sprint notes that while witness Mills did state that newly available space should be offered to the first requesting carrier denied, Sprint does not believe the witness clearly advocated a date to establish priority on the waiting list. Also, Sprint notes that witness Martinez advocated use of the date of the rejection of an application as the date for determining priority in line, but only in situations where the date of the rejection was earlier than the date of the receipt of the applicant ALEC's firm order for space. Based on this testimony, Sprint believes we should reconsider our decision regarding first-come, first-served, and mandate that the date of the ALEC's application serve as the date for establishing priority on the waiting list.

B. Responses

BELLSOUTH

BellSouth simply notes in its response that it agrees with Sprint's suggestion that we reconsider our decision regarding application of first-come, first-served.

C. Decision

Upon consideration of the foregoing, we grant reconsideration on this point. As pointed out by BellSouth and Sprint, the emphasis on the relevant date for determining an applicant's place on the waiting list was misplaced and contrary to the testimony in the proceeding. Upon review of the testimony in the record, we agree that the requests for reconsideration should be granted and we further determine that an applicant's place on the waiting list for collocation space shall be based upon the date the ILEC received the applicant's collocation application.

IX. Implementation Date

A. Motions

BELLSOUTH

Finally, BellSouth seeks clarification of the implementation date of the Order. BellSouth notes that we did not include an implementation date in our Order. BellSouth contends that the processes approved cannot be effectuated by BellSouth overnight, because BellSouth will have to modify many of its processes. Therefore, BellSouth seeks clarification of the Order that the effective date of the Order is 30 days from the issuance date, June 11, 2000.

B. Responses

RHYTHMS LINKS

Rhythms Links argues that as with any other Commission Order, unless an implementation date is specified in the Order, the issuance date of the Order itself is the implementation date. In this case, that date is May 11, 2000. Rhythms Links further contends that Rule 25-22.060, Florida Administrative Code, states that although a final order is not deemed rendered for purposes of appeal until any motions for reconsideration are addressed, such motions do not automatically stay the effectiveness of the Order. Rhythms Links adds that there is no basis for BellSouth's argument that the implementation date should be June 11, 2000.

C. Decision

As with any other Final Order we issue, the implementation date should be the issuance date, unless otherwise stated. There is no basis in the record for BellSouth's request that the implementation date be June 11, 2000. Therefore, based upon the foregoing BellSouth's request for clarification is denied.

X. Equipment

A. Motion

GTEFL

GTEFL contends that we determined that the ILEC should allow in a physical collocation arrangement the types of equipment that are consistent with the FCC's rules and orders, relying upon the FCC's rules that an ILEC cannot prohibit collocation of any equipment "used or useful" for interconnection or access to the ILEC network and prohibiting ILECs from limiting competitors' use of the features, functions, and capabilities, including switching and routing, of any collocated equipment. GTEFL contends that the DC Circuit's decision vacated these rules, because they appear to do more than is necessary for interconnection.[4] By "mirroring" the FCC's rules, GTEFL contends that our decision is also in violation of the Act. GTEFL further contends that the specific rationale we used in our Order was rejected by the Court. GTEFL explains that we stated that allowable equipment need not be indispensable, but merely 'used or useful.' GTEFL argues that the Court, however, stated that the equipment must, in fact, be indispensable according to the Act. Therefore, GTEFL contends that we must reconsider our decision.

SPRINT

Sprint also asks that we clarify our decision regarding the types of equipment an ILEC must allow in a collocation arrangement. Sprint contends that the relevant portions of the FCC's rules and orders addressing equipment have now been vacated by the DC Circuit's decision in GTE Service Corp. V. FCC. Sprint asks, therefore, that we clarify our decision to eliminate any reference to the now vacated FCC rules and orders, and explicitly state the types of equipment that ILECs must allow the ALECs to collocate.

[4]Citing GTE Service Corporation, 205 F.3d at 424.

B. Responses

SPRINT

In response to GTEFL's motion, Sprint contends that the DC Circuit determined that the FCC did not properly apply the "necessary" standard set forth in the Act, and instead, applied a "used and useful" standard that conflicts with the Act. Sprint notes that the DC Circuit's decision is similar to the US Supreme Court's decision in AT&T Corp. v. Iowa Utilities Board, 525 U.S. 366 (1999), on the types of UNEs that must be made available to ALECs. The DC Circuit simply required the FCC to reevaluate its assessment of equipment based upon the proper standard.

Sprint further emphasizes that the DC Circuit did not specifically determine the types of equipment "necessary" for collocation; therefore, the FCC could respond with substantially the same requirements, as it did in response to the US Supreme Court's remand on the issue of UNEs. Thus, Sprint contends that it is premature for us to change our decision based on the DC Circuit's remand of the FCC's rules and Advanced Services Order.

Sprint reiterates that we should, however, clarify our Order to specifically identify the types of equipment that must be allowed for physical collocation in Florida, and eliminate any reference or reliance upon the FCC's rules or Advanced Services Order. Sprint believes we could do so by specifically identifying the types of equipment set forth in the FCC's rules and portions of the Advanced Services Order that we incorporated by reference into our final decision on this point.

BELLSOUTH

In response to Sprint's request for clarification on this point, BellSouth first argues that we have already stated in this Docket that clarification of a Commission Order is not appropriate.[5] Thus, BellSouth believes that the request by Sprint must be treated as a request for reconsideration or reversal.

[5]Citing Order No. PSC-99-2393-FOF-TP, issued December 7, 1999.

BellSouth argues that we specifically considered the approach that Sprint suggests and rejected it. BellSouth references page 64 of the Order, where we stated that ". . . it would not be possible, or desirable, to draw up an exhaustive list of equipment that could be collocated." BellSouth argues that Sprint is now recommending exactly that same approach. In doing so, BellSouth maintains that Sprint has not identified any fact we overlooked or any mistake of law we made in rendering our decision. Therefore, BellSouth asks that Sprint's motion be rejected on this point.

FCCA/AT&T

FCCA/AT&T argue that even though the DC Circuit vacated portions of the Advanced Services Order, the Court remanded the issue to the FCC for further consideration. FCCA/AT&T contend that it is expected that the FCC will respond with new rules, but that our decisions will likely be consistent with those new rules. As such, FCCA/AT&T believe there is no need for reconsideration on this point. FCCA/AT&T add that the Court specifically stated that:

> We do not mean to vacate the Collocation Order to the extent that it merely requires LECs to provide collocation of competitors' equipment that is directly related to and thus necessary, required, or indispensable to "interconnection or access to unbundled network elements.

GTE Services Corp. v. FCC, 205 F. 3d at 424. To the extent there is any dispute as to whether specific equipment does not meet this standard, FCCA/AT&T argue that such disputes should be resolved on an individual basis.

C. Decision

Upon consideration of the foregoing, we grant reconsideration on this point to the extent that our decision addressing equipment that an ILEC is obligated to allow in a physical collocation arrangement may indicate that parties should rely on the portions of FCC Order 99-48 that have now been vacated by the DC Circuit. Regarding FCC Order 99-48, the Court stated that:

> In the Collocation Order, however, the FCC appears to ignore the statutory reference to "necessary" in requiring LECs to collocate any competitors' equipment that is " 'used or useful' for either interconnection or access to unbundled network elements, regardless of other functionalities inherent in such equipment." . . . The petitioners' argument has merit, for the Collocation Order as presently written seems overly broad and disconnected from the statutory purpose enunciated in §251(c)(6). . . . In other words, the Collocation Order appears to permit competitors to collocate equipment that may do more than what is required to achieve interconnection or access.

GTE Services Corp. v. FCC, 205 F. 3d at 422-423. Our decision, however, remains in place to the extent that it relies upon FCC Order 96-325 and FCC rules promulgated prior to FCC Order 99-48. We emphasize that the provisions of Order 96-325 and pre-Advanced Services Order rules addressing collocation remain in effect and, therefore, may continue to serve as the basis for our decision.

With regard to Sprint's request for clarification, there is little basis in the record to identify specific equipment. As stated in our Order:

> There appears to be very little disagreement among the parties on this issue. In fact, the parties do little more than cite relevant FCC orders.

We also stated that it would not be possible or desirable to establish an exhaustive list of equipment that must be allowed to be collocated. Therefore, Sprint's request for clarification is denied.

Finally, regarding BellSouth's statements that clarification of a Commission Order, in general, is not proper, we emphasize that the statements upon which BellSouth relies pertain to clarification

of a Proposed Agency Action Order. As stated in Order No. PSC-99-2393-FOF-TP, to which BellSouth refers:

> Clarification of a proposed agency action order is not recognized under our rules, and reconsideration of a proposed agency action order is contrary to Rule 25-22.060(1)(a), Florida Administrative Code.

Order No. PSC-99-2393-FOF-TP at p. 3. [Emphasis added]. Clarification and/or reconsideration of a Final Order is, however, proper and contemplated by Commission rule. We note that BellSouth has, in fact, asked for clarification of certain points regarding our decision at issue here. Nevertheless, as set forth above, Sprint's request for clarification is rejected in this instance.

XI. Site Preparation Cost Recovery

A. Motions

GTEFL

GTEFL also argues that we determined that the costs for site preparation should be based upon the amount of space occupied by the collocating party, relative to the amount of space prepared, and that consideration should be given to whether the ILEC, as well as ALECs, will benefit from the prepared space. Thus, the ILEC can only charge the first collocating ALEC a fraction of the cost of the site preparation, which requires the ILEC to bear the cost and risk that the prepared space may never become fully occupied. GTEFL contends that the DC Circuit and the FCC have stated that the ILEC should not bear this entire risk, and that the states have been charged with developing a proper price methodology.[6] GTEFL notes that the FCC proposed a methodology for cost recovery in its brief before the DC Circuit, whereby site preparation costs would be amortized over five years and costs would be recovered from the ALECs. GTEFL argues that we have overlooked this evidence and

[6]Citing GTE Service Corporation, 205 F.3d at 427, citing FCC Advanced Service Order at ¶51.

should, therefore, reconsider our decision and further address cost recovery by ILECs for site preparation.

B. Responses

SPRINT

On this point, Sprint contends that GTEFL has also failed to identify a fact we overlooked or any mistake of law we made in rendering our decision. Sprint argues that GTEFL simply reiterates arguments it has already presented to us. Sprint notes that we even discussed cost recovery at the Agenda Conference where we made our decision in this case. As a result of that discussion, we declined to take action on cost recovery, because it was not an issue presented for consideration in this proceeding. Therefore, Sprint argues that GTEFL's motion on this point should be rejected, because it presents an improper issue for reconsideration.

RHYTHMS LINKS

On this point, Rhythms Links also believes that our decision was based upon the record and that the Motions for Reconsideration have not identified anything we overlooked or upon which we made a mistake. Rhythms Links states that we set forth a plan for site preparation costs at page 85 of our Order that attributes costs according to floor space occupied by the collocating party relative to the total cost for site preparation. Rhythms Links explains that we established this plan based upon the framework set forth in the FCC's Advanced Services Order, as well as considerations of the needs of past and present collocators, in an effort to develop a plan that does not discriminate against any carrier. Rhythms Links also notes that we specifically rejected any plans that would result in the ILECs having to absorb all of the costs, contrary to GTEFL's assertions in its Motion. Rhythms Links also points out that we specifically considered and rejected GTEFL's proposal that GTEFL be allowed to recover its actual costs at page 80 of the Order.

Rhythms Links contends that the DC Circuit has now rejected the same arguments presented by GTEFL in this case, which further supports our decision. Specifically, Rhythms Links references the DC Circuit's response to GTEFL's arguments, wherein the DC Circuit

stated that the Advanced Services Order ". . . simply notes that state commissions are charged with the responsibility of determin[ing] the proper pricing methodology, which undoubtedly may include recovery mechanisms for legitimate costs." GTE Services Corp. v. FCC, 205 F. 3d at 427. Rhythms Links contends that we have determined the appropriate pricing methodology -- even the ILECs will bear some of the risk. As such, Rhythms Links asks that the Motions for Reconsideration be denied on this point, because no error, oversight, or mistake has been identified in our decision.

FCCA/AT&T

FCCA/AT&T emphasize that the DC Circuit specifically upheld the very paragraph, ¶51, of the FCC's Advanced Services Order upon which we relied in rendering our decision on this issue. FCCA/AT&T add that the Court recognized that the approach taken by the FCC was a reasonable means to ensure that LECs do not impose prohibitive requirements. As such, FCCA/AT&T contend that GTEFL has shown no basis for us to reconsider our decision on this issue.

C. Decision

Upon consideration, we deny GTE's Motion for Reconsideration. GTEFL has failed to identify any mistake of fact or law we made in rendering our decision on this point. We note, as has FCCA/AT&T, that §51 of the Advanced Services Order, upon which we rely in part for our decision on this point, was specifically upheld by the DC Circuit. Furthermore, we considered and addressed all of the arguments regarding allocation of costs in rendering our decision in this matter. There was no evidence presented in this proceeding regarding rates or a pricing methodology. Therefore, GTEFL has not identified anything we overlooked or upon which we erred. Finally, to the extent GTEFL asks us to reconsider our decision and establish a specific price methodology, we specifically stated in our Order at p. 85 that rates and methodology were matters for a future proceeding. Thus, we deny GTEFL's Motion for Reconsideration on this point.

XII. Tour for Partial Collocation Space

A. Motion

SPRINT

In its Motion, Sprint believes we should also reconsider our decision that ILECs should not be required to conduct a site tour when an ALEC is provided only part of the space requested in its collocation request. Sprint notes that we determined that the ALEC would be allowed to participate in the tour conducted by the ILEC as part of the Petition for Waiver process. Sprint argues that this decision incorrectly makes two assumptions. First, Sprint contends that a second request that actually initiates a denial, and thus a Petition for Waiver, may not follow in a reasonable amount of time after the first ALEC is provided only partial space. Therefore, the ALEC may have to wait quite some time before it is allowed to tour the CO.

Second, Sprint contends that the ILEC could manipulate requests for space to such an extent that it only provides partial space to a number of requesting ALECs, thereby avoiding a Waiver proceeding for quite some time. Sprint believes our decision is based upon an inaccurate interpretation of the FCC's Advanced Services Order at ¶56. Sprint contends that the FCC did, in fact, intend for ALECs to be given an opportunity to tour a CO any time the ILEC is unable to complete an ALEC's full request for space. Sprint believes that this interpretation is supported by the FCC's indication that the purpose of the tour is to give ALECs a chance to determine whether there is any unused or improperly reserved space in a CO. Otherwise, the ILECs will be able to manipulate space to keep ALECs out of COs. Sprint contends that we failed to consider this anti-competitive effect, and should, therefore, reconsider our decision that a tour is not appropriate when an ALEC's request for space in a CO is only partially filled.

B. Response

BELLSOUTH

BellSouth argues that we fully considered the evidence and testimony presented regarding whether or not tours should be

required when an ALEC only gets part of the collocation space it requests. BellSouth contends that we carefully weighed the evidence and determined that a tour was not required. As such, BellSouth maintains that Sprint has failed to identify any fact we overlooked or any mistake of law we made in rendering our decision on this point, and therefore, Sprint's motion should be rejected.

C. Decision

Upon consideration of the foregoing, we deny Sprint's Motion for Reconsideration on this point. The arguments presented by Sprint were fully addressed in our Order at pages 90-91. Furthermore, Sprint has misinterpreted our prior Orders on collocation, Order No. PSC-99-1744-PAA-TP and PSC-99-2393-FOF-TP. Pursuant to those Orders, an ILEC must proceed with the collocation waiver process if space is denied. The Orders do not define whether the denial must be of all the space requested by the ILEC. Therefore, even when the ILEC partially denies space in a CO, our Collocation Orders require the ILEC to Petition for a Waiver of the collocation requirements. As such, a tour of the CO will be conducted in accordance with the waiver procedures, and the ALEC that was denied part of its request should be allowed to participate in that tour.

XIII. Response to Application

A. Motions

SPRINT

Sprint argues that we should also reconsider our decision as stated at page 15 of the Order:

> When an ALEC 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 when the ALEC submits 10 or more applications within a 10-day period.

Sprint contends that we have overlooked factual distinctions between the types of equipment and space that can be requested.

For instance, Sprint contends that there may be multiple requests for collocation at multiple remote collocation sites within a ten-day time frame, but conditioning is not necessary to implement collocation at remote sites. Therefore, Sprint does not believe the additional time is necessary or appropriate, because it will hamper an ALEC's ability to bring its competitive services to market. Therefore, Sprint asks that we reconsider our decision and apply a 15-day response interval to all requests for collocation at remote sites. Sprint adds that we should clarify that the extended intervals set forth in the Order apply only to collocation at COs and other premises that would require conditioning to meet collocation needs.

B. Responses

BELLSOUTH

BellSouth argues that Sprint has not identified anything in the record that we overlooked with regard to this point. BellSouth contends that Sprint simply argues that allowing ILECs additional time to respond to multiple orders would delay the deployment of advanced services. BellSouth emphasizes that Sprint even states that multiple orders could be submitted within the ten-day time frame set forth in the Order, which BellSouth argues only further justifies the extra time provided by our decision. As such, BellSouth argues that Sprint has failed to identify any basis for us to reconsider our decision.

C. Decision

Upon consideration of the foregoing, we deny Sprint's request for reconsideration on this point because Sprint has failed to identify any point of fact or law upon which we made a mistake in rendering our decision on application response times. Sprint argues that we failed to consider collocation at remote collocation sites. Sprint did not, however, raise the issue of collocation at remote sites at hearing when addressing the issue of responses to applications, even though it could have. Sprint appears to simply be trying to raise an argument on reconsideration that it neglected to raise at hearing. As such, Sprint has failed to identify a basis for reconsideration of our decision on this point.

XIV. Demarcation Point

A. Motions

SPRINT

In its Motion, Sprint asks that we clarify our decision set forth at page 51 of the Order:

> Therefore, the ILECs and ALECs may negotiate other demarcation points up to the CDF. However, if terms cannot be reached between the carriers, the ALEC's collocation site shall be the default demarcation point.

Sprint contends that testimony was presented at the hearing on whether or not a POT bay or some other intermediate point could be used at the ALEC's option, even though the FCC's Advanced Services Order prohibits ILECs from requiring an intermediate point. While Sprint believes that the language set forth above indicates that a POT bay is permissible, Sprint is concerned that it could be misconstrued. Therefore, Sprint asks that the Order be clarified to state that POT bays are permissible as demarcation points.

No responses were filed addressing this point.

C. Decision

Upon consideration, we grant Sprint's request for clarification on this point. To the extent that there may be room for misinterpretation of our Order, we clarify that POT bays are permissible as demarcation points, but may not be required.

XV. Price Quotes

A. Motion

SPRINT

Sprint further contends that we should clarify our decision set forth on page 68 of the Order, where we discuss the requirement that the ILEC provide a price quote within 15 days and acknowledges

testimony regarding true-up of the price to actual costs. Sprint asks that we clarify our decision to specifically state that the estimate provided within 15 days is a "best estimate," and is subject to true-up when the provisioning of collocation is complete.

B. Responses

BELLSOUTH

On this point, BellSouth emphasizes that Sprint is unable to identify anything upon which we made a mistake or which we overlooked. As such, BellSouth contends that Sprint attempts to find another avenue by asking for "clarification" of our decision. However, BellSouth argues that we acknowledged in our decision that there are valid arguments supporting a standard pricing system, which would render true-up unnecessary. BellSouth emphasizes that we decided, nevertheless, that a determination on a standard platform or process was inappropriate at this time. BellSouth contends that Sprint asks us to reverse our decision on this point in a move that would eliminate the possibility of such a standardized pricing system. In making its request, BellSouth contends that Sprint has failed to identify any oversight or mistake we made in rendering our decision. Therefore, BellSouth asks that Sprint's motion be denied to the extent Sprint seeks a true-up process.

FCCA/AT&T

FCCA/AT&T contend that our Order is clear and that clarification is not necessary. FCCA/AT&T state that we did not consider true-up, but instead, required ILECs to provide "detailed costs." Therefore, FCCA/AT&T ask that Sprint's request for clarification on this point be rejected.

C. Decision

Upon consideration of the foregoing, we deny Sprint's request for clarification on this point. There is no basis for Sprint's request. In the Order, we clearly stated that:

> The price quote should provide sufficient detail for the ALEC to submit a firm order, but we shall refrain at this time from specifying the quantity of detail which should be included in the price quote.

There is nothing in the record to support either Sprint's "best estimate" approach, or a true-up process. We clearly contemplated that the price quote provided should be enough for the ALEC to place a firm order for space, and that is what should be provided. Sprint has identified no basis for clarification, therefore, Sprint's request is denied.

XVI. FCCA/AT&T's Cross-Motion for Reconsideration

A. Motion

Tour for Partial Collocation Space

In its Cross-Motion, FCCA/AT&T ask that we reconsider our decision that a CO tour is not required when an ALEC's request for collocation can only be partially filled. FCCA/AT&T believe that we have misunderstood what can occur in situations where only partial space is made available. FCCA/AT&T contend that the collocator could ultimately take less than the entire remaining space, or could decide the partial space is insufficient and take no space at all. In these situations, an ILEC would not have to request a waiver, because space would still be available in the CO. FCCA/AT&T argue that because ILECs have an incentive to understate the amount of space available in COs, tours must be permitted to ensure that ALECs have an opportunity to confirm the availability of collocation space, or lack thereof.

First-come, First-served

FCCA/AT&T argue that we should reconsider our decision that a collocator's place in line on the waiting list for new space should be determined by the date the collocator was denied space in the CO. FCCA/AT&T believe that use of such a process would allow ILECs to manipulate the process and could lead to disputes between applicants. FCCA/AT&T believe that using the application date as the determinative date would be much simpler.

B. Response

BELLSOUTH

BellSouth agrees with FCCA/AT&T's Cross-Motion as it pertains to our decision on application of the first-come, first-served rule.

BellSouth disagrees, however, with FCCA/AT&T's arguments regarding the necessity of a CO tour when a collocation request is only partially filled. BellSouth notes that Sprint raised this same issue in its Motion for Reconsideration, and neither Sprint nor FCCA/AT&T have even referenced the standard for a motion for reconsideration, much less met it. BellSouth argues that we stated in our Order that a waiver request is likely to follow a partial denial of space was not the basis of our decision. Instead, BellSouth contends that it was merely dicta. BellSouth argues that the basis of our decision was paragraph 57 of the FCC's Advanced Services Order, Order 99-48, as set forth on page 94 of the Order:

> We are also not persuaded than an ALEC should be allowed to tour a CO if it is offered partial collocation space because of insufficient collocation space in the CO. We do not believe that the FCC order suggests that the ILECs should allow tours when partial collocation is provisioned; instead, an argument can be made that the FCC only anticipated CO tours in cases where collocation requests are denied. It appears that the ALECs' proposed CO tours for partial collocation space are inconsistent with provisions of FCC Order 99-48, which reads, in part:
>
> > Specifically, we require the incumbent LEC to permit representatives of a requesting telecommunications carrier that has been denied collocation due to space constraints to tour the entire premises in question, ...

FCC Order 99-48 at Paragraph 57.

Order at 94.

Essentially, BellSouth argues, the FCCA/AT&T's request simply asks us to change our mind. FCCA/AT&T have not, however, identified any basis for reconsideration. Therefore, BellSouth asks that the Cross-Motion be denied on this point.

C. Decision

Rule 25-22.060(1)(b), Florida Administrative Code, provides for cross-motions for reconsideration. Although not defined, the practice has been to raise in a cross-motion points not raised in the motion for reconsideration. Here, FCCA/AT&T have raised in their Cross-Motion for Reconsideration the identical points raised in the Motions for Reconsideration and have merely indicated that they agree with the movants. Thus, it would appear that the Cross-Motion is redundant, and therefore, not appropriate.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that BellSouth Telecommunications Inc.'s Request for Clarification regarding copper entrance facilities is granted and its Request regarding the space preparation charge and the implementation date of our Order is denied as discussed in the body of this Order. It is further

ORDERED that BellSouth Telecommunications, Inc. and GTE Florida, Inc.'s Motions for Reconsideration are granted regarding conversion of virtual to physical collocation and cross-connects between collocators and are denied regarding reservation of space within a central office as set forth in the body of this Order. It is further

ORDERED that BellSouth Telecommunications, Inc. and Sprint-Florida, Inc.'s Motion for Reconsideration is granted regarding the application of the FCC's first-come, first-served rule as set forth in the body of this Order. It is further

ORDERED that GTE Florida, Inc.'s Motion for Reconsideration is granted regarding the equipment that an incumbent local exchange company must allow to be collocated and is denied regarding site preparation cost recovery as set forth in the body of this Order. It is further

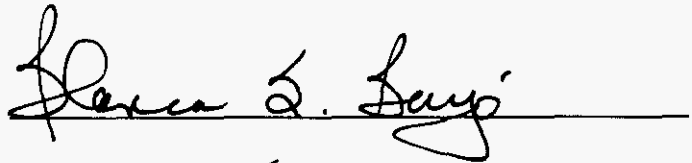
ORDERED that Sprint-Florida, Inc.'s Motion for Reconsideration is denied regarding central office tours and on the timing of responses to applications for collocation space as set forth in the body of this Order. It is further

ORDERED that Sprint-Florida, Inc.'s Request for Clarification is denied regarding the appropriate demarcation point, equipment that an incumbent local exchange company must allow to be collocated, and price quotes as discussed in the body of this Order. It is further

ORDERED that FCCA/AT&T's Cross-Motion is inappropriate for the reason set forth in the body of this Order. It is further

ORDERED that this docket shall remain open to address pricing for collocation.

By ORDER of the Florida Public Service Commission this 17th day of November, 2000.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

BK/DWC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request judicial review in Federal district court pursuant to the Federal Telecommunications Act of 1996, 47 U.S.C. § 252(e)(6).