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May 26, 2000

ORIGINAL

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

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RECORDS AND REPORTING

Re: Docket Nos. 981834-TP, 990321-TP Sprint-Florida,
Incorporated's Motion for Reconsideration and Request for
Oral Argument

Dear Ms. Bayo:

Enclosed for filing is the original and fifteen (15) copies of Sprint-Florida,
Inc. Motion for Reconsideration and Request for Oral Argument.

Please acknowledge receipt and filing of the above by stamping the
duplicate copy of this letter and returning the same to this writer.

Sincerely,

Susan S. Masterton

Susan S. Masterton

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COM *3*
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**CERTIFICATE OF SERVICE
DOCKET NOS. 981834-TP & 990321-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail this 26th day of May, 2000 to the following:

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**Florida Cable Telecommunications
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Michael A. Gross
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**Accelerated Connections, Inc.
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**GTE Florida Incorporated
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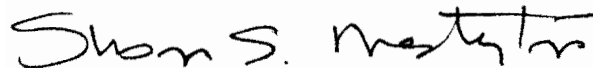
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Susan S. Masterton

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

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 the obligation to provide alternative local exchange carriers with flexible, timely, and cost-efficient physical collocation.

Docket No. 990321-TP

Filed: May 26, 2000

SPRINT'S MOTION FOR RECONSIDERATION AND CLARIFICATION OF ORDER
NO. PSC-00-0941-FOF-TP

Pursuant to Rules 25-22.060 and 28-106.204, F.A.C., Sprint-Florida Incorporated and Sprint Communications Company Limited Partnership ("Sprint") file this Motion for Reconsideration and Clarification of Order No. PSC-00-0941-FOF-TP ("Order"). Sprint seeks reconsideration and clarification of the Florida Public Service Commission's ("Commission") decision relating to generic policies and guidelines for collocation. The specific points on which Sprint seeks reconsideration or clarification are set forth below.

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FPSC-RECORDS/REPORTING

I. RECONSIDERATION

The Order sets forth generic policies and guidelines to be implemented by ILECs to provide collocation to requesting ALECs in Florida. Although the Order was issued pursuant to the formal hearing procedures outlined in s. 120.57, F.S., the nature of the Order is more akin to a rule, defined in s. 120.52 (15), F.S., as "an agency statement of general applicability that implements, interprets, or prescribes law or policy." Similar to a rule, the guidelines set forth in the Order will apply generally to all ILECs and ALECs for future requests for and provisioning of collocation space in Florida.

Reconsideration is appropriate when the decisionmaker ignored, misinterpreted or misapplied the law applicable to the evidence in the proceeding or overlooked and failed to consider the significance of certain evidence. See, Diamond Cab Co. V. King, 146 So. 2d 889 (Fla. 1962). Because of the long-term effects of the policies and guidelines set forth in the Order on all ILECs and ALECs in Florida, Sprint believes that the Commission should be flexible in applying this standard to the evaluation of motions for reconsideration of the Order.

Pursuant to these standards and the arguments set out below, the Commission should reconsider its decision on certain issues with respect to its generic collocation policies and guidelines.

A. SECTION XVIII PARTIAL COLLOCATION SPACE

The specific aspect of the Order for which Sprint seeks reconsideration on this issue is found at page 94 and reads:

We also not persuaded that an ALEC should be allowed to tour a CO if it is offered partial collocation space because of insufficient collocation space in a CO...

While we are not requiring an ILEC to conduct a tour when only partially filling a request for space, we do emphasize that a tour must still be conducted by the ILEC as part of the process of seeking a waiver of the collocation requirements, and in situations where an ILEC can only partially fill a request for space, it is expected that the ILEC will need to request a waiver due to lack of space in the CO. Therefore, the ALEC will have an opportunity to participate in a tour as a part of our previously defined waiver process.

It appears that the Commission's determination that no tour should be granted for ALECs who are granted some amount of space, but less space than was requested, was based on an assumption that an ILEC granting partial space is likely granting all of the available space, so that a complete denial necessitating a tour would follow shortly. The Commission appears to believe that this process will give ALECs who are partially denied space sufficient opportunity to assess the ILEC's determination concerning the amount of available space under the Commission's procedures for obtaining a waiver.

The Commission's assumption misapprehends and overlooks important facts in two ways.

First, at a given location another request for space that would necessitate a denial might not be forthcoming in a reasonable time after the request that was partially granted.

Under this scenario, the ALEC granted partial collocation space would not have a realistic opportunity to assess whether the ILEC's determination of insufficient space

complied with FCC and Commission rules, since no waiver proceeding would be initiated. Second, the ILEC might have an incentive to manipulate its response to applications so that requesting collocators get only a portion of the space requested, thus avoiding a waiver proceeding and allowing the ILEC to improperly use or reserve space in violation of the FCC's Advanced Services Order, FCC Order 99-48 ("Advanced Services Order"). (Moscaritolo, TR. 845; Levy, TR. 919; Nilson, TR. 966.)

The Commission based its determination in part on its interpretation that the Advanced Services Order does not suggest that ILECs should allow tours when partial collocation is provisioned. Sprint believes this is an improper interpretation of the FCC decision. In the Advanced Services Order the FCC recognized the incentive ILECs have to reduce the amount of space available for collocation by competitors (Advanced Services Order ¶56). Sprint believes that the FCC intended to require the ILEC to allow tours any time it asserted that insufficient space is available to meet a collocation request. This interpretation is supported by the purpose for the tours expressed by the FCC, that is, to give ALECs an opportunity to assess the ILEC's facilities to determine if there is any unused space or improperly reserved space that could be used for collocation. (Advanced Services Order ¶57)

By giving the ILECs an incentive to delay or avoid provisioning collocation space to stymie potential competition, the Commission's refusal to require tours for partial denials could result in significant harm to potential competitors. To avoid this anticompetitive

effect, the Commission should reconsider its Order and require ILECs to provide tours of their premises within 10 days of the denial of any space for physical collocation, whether the denial encompasses the entire request for space or only a portion of the request.

B. SECTION II, ILEC RESPONSE TO COLLOCATION APPLICATION

The specific aspect of the Order for which Sprint seeks reconsideration on this issue is found at page 15 and reads as follows:

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.

It appears from the Order that in mandating these extended intervals for all multiple applications for collocation space submitted within a 10-day period, the Commission overlooked important factual distinctions between the types of space that may be requested under the FCC definition of premises in 47 C.F.R. §51.5 and the types of equipment that may be collocated pursuant the Federal Telecommunications Act and the Commission's determination in Section XII of the Order.

Specifically, as discussed in Section III, the FCC defines premises to include not only central offices, serving wire centers and tandem offices, but also other similar structures that house network facilities, including the remote sites necessary to collocate equipment to accomplish subloop unbundling. In its Third Report and Order in Docket No. 96-98, issued on Nov. 5, 1999, the FCC revised its rules relating to unbundled network elements

(in response to a remand from the U.S. Supreme Court) to include subloop unbundling in its UNE requirements. (Hunsucker, TR. 548)

Collocation in remote sites to accomplish subloop unbundling differs from central office collocation in two important ways. First, due to the nature of the facilities to be collocated and the services to be provided, multiple requests from a single ALEC to collocate at multiple remote sites are common within the 10-day time frame defined in the Commission's Order. Second, unlike central office collocations, space conditioning is not commonly required to accomplish collocation at these remote sites.

Because of these differences in the nature of remote site collocation, the intervals adopted by the commission for multiple applications will severely hamper ALECs in bringing competitive advanced services to market, contrary to the FCC's expressed intent in the Advanced Services Order to facilitate the deployment of competition in the advanced services market (Advanced Services Order ¶6). In light of the unintended and unanticipated consequences to applications for collocation at remote sites that could result from the intervals adopted in the Order, Sprint urges the Commission to reconsider its Order and apply the 15 day response to applications for remote site collocation, regardless of the number of applications submitted by an ALEC. The extended intervals for multiple collocation applications should apply only to collocations at central offices and other premises that would commonly require space to be conditioned to meet collocation demands.

C. SECTION XXI FIRST COME - FIRST SERVED

The specific aspect of the Order for which Sprint seeks reconsideration on this issue is found at page 106 and reads as follows:

We also believe that the process suggested by MGC witness Levy is appropriate. Therefore, we find that the first collocator request for physical collocation that was rejected shall be the first in line and must be given first opportunity to submit a FOC for physical collocation in the new space. Furthermore, the evidence supports that the waiting list of denied ALECs must be kept in order of application denial date, with the first application to be denied being first on the list.

The Commission determined that the appropriate date for establishing an ALECs place in line is the application denial date, rather than the date the application was submitted to or received by the ILEC. Sprint believes the Commission erroneously interpreted the testimony in this proceeding, which overwhelmingly supports the application date as the appropriate date for determining an applicant's place on the waiting list (Hendrix, TR. 43, 101; Hunsucker, TR. 542, 543; Martinez, TR. 711; Nilson, TR. 969; Strow, TR. 1113; Mills, TR. 1187). While Witness Mills refers to offering newly available space "to carriers whose requests for physical collocation were denied, beginning with the first such denial" (TR. 1187), he does not clearly advocate that the relevant date to establish priority is the date of denial rather than the date of application. Witness Martinez advocates the use of the date of rejection of an application as the mechanism for determining an ALECs priority for space only if that date is earlier than receipt of an applicant's firm order for space. (TR. 719)

By choosing the denial date, rather than the submittal date, the Commission has given the ILEC control over an ALEC's place in line, with potential unintended consequences. For instance, an ILEC could deny an application from an affiliate on an earlier date than an application from a competitor, to ensure the affiliate would have first place when space becomes available. Also, an ALEC who submitted a more complicated request that took longer to assess, such as a request for caged physical collocation rather than cageless physical collocation, might apply earlier but be denied later than another applicant, thus being bumped to a lower place in line. In addition, this mechanism for determining the place on the waiting list for ALECs that submit an application for collocation is inconsistent with the further recommendation of the commission that, once space is full, ALEC's be allowed to submit a letter of intent and have their place in line determined by the date the letter was submitted (Order at 107).

Based on the Commission's misunderstanding of the testimony and misapprehension of the factual application of a policy that would use the denial date rather than the application date as the determining factor for priority, Sprint requests that the Commission reconsider its decision. The date an application was received by the ILEC should be the date establishing CLEC priority.

II. CLARIFICATION

A. SECTION IX DEMARCATION POINT

The specific aspect of the Order for which Sprint seeks clarification is on page 51 and reads as follows:

Therefore, 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.

Significant testimony was presented at the hearing relating to whether or not a POT bay or other intermediate demarcation point could be used at the ALEC's option, even though the FCC Advanced Services Order prohibits ILECs from requiring demarcation at an intermediate point (Milner, TR. 253, 309, 395; Cloz, TR. 614, 636; Williams, TR. 770; Levy, TR. 911; Mills, TR. 1179). While the Commission's general language reiterated above implies that a POT bay is still permissible, because of the confusion for both ILECs and ALECs concerning the effect of the FCC Order, Sprint requests that the Commission clarify its Order to specifically recognize POT bays as permissible demarcation points.

B. SECTION XII EQUIPMENT

The specific aspect of the Order for which Sprint seeks clarification is on page 65 and reads as follows:

Based on the foregoing, we conclude that the FCC has provided sufficient direction in determining the equipment that may be physically collocated... Therefore, we shall require ILECs to allow the types of equipment in a physical collocation arrangement that are consistent with FCC rules and orders.

Relevant portions of the FCC rules and orders recognized by the Commission were recently vacated by the D.C. Circuit Court of appeals in GTE v. FCC, 205 F. 3d 416 (D.C. Cir. 2000). At the Agenda Conference during which the Commission approved this Order, the Commission indicated that it intended to approve the equipment guidelines embodied in the FCC rule as the appropriate guidelines in Florida, regardless of the status of the FCC rule. To ensure that the guidelines embodied in the rule remain the guidelines in Florida notwithstanding the D.C. Circuit decision, Sprint requests the Commission to clarify its Order to eliminate the incorporation by reference of the FCC rules and explicitly state the types of equipment that ILECs must allow ALECs to collocate.

C. SECTION XIII PRICE QUOTES

The specific aspect of the Order for which Sprint seeks clarification is on page 68 and reads as follows:

Furthermore, the price quotation from the ILEC shall contain detailed costs and sufficient detail for the ALEC to submit a firm order. We do not, however, specify the level of detail that should be included, because there is insufficient evidence in the record to support a specific level of detail. Nevertheless, we emphasize that we believe that an ILEC, including BellSouth, should be capable of providing more detail than three line items in the price quote for collocation space.

While the Order noted that testimony was presented concerning a "true-up" of the ILEC's

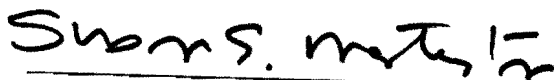
price quote provided within the application response period to reflect the actual costs of provisioning the collocation space (Order at 66-67), the Order does not expressly determine whether the price estimate is subject to a true up. Sprint seeks clarification that the detailed price quote required to be provided to the ALEC within the 15 day period is a "best estimate" and is subject to true-up to reflect actual costs when the provisioning of collocation space is completed.

III. CONCLUSION.

Sprint has requested oral argument by separate pleading due to the complex nature of the issues addressed in this Motion for Reconsideration.

Wherefore, Sprint respectfully requests that the Commission reconsider and clarify its decision for the reasons and in the manner set forth above.

RESPECTFULLY SUBMITTED this 26th day of May 2000.



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