

Appeals for the District of Columbia Circuit in GTE Service Corp. v. FCC, 205 F.3d 416; 2000 U.S. App. LEXIS 4111. There, the Court was asked to decide the validity of the FCC's rules on physical collocation. The Court vacated several provisions of those rules including provisions regarding the type of equipment that an ILEC must allow in a collocation space. The proposed rule currently defines "equipment" as any device or facilities used to provide telecommunications service, including any device or facilities "used or useful for interconnection or access to unbundled network elements." The Court of Appeals, considering identical language implemented as a rule by the FCC, struck down such language as impermissibly broad under the Telecommunications Act. The Telecommunications Act requires ILECs to allow collocation of equipment that is "necessary" for interconnection or access to unbundled elements. The Court noted that something is necessary if it is *required* or *indispensable* to achieve a certain result. The Court further noted that in defining necessary as "used or useful," the FCC impermissibly overstepped the bounds of what is permitted under the Telecommunications Act. The Court concluded that the FCC's interpretation of "necessary" under Section 251 (c)(6) goes too far and thus diverges from any realistic meaning of the statute.

The proposed rule language under Subsection (d) in this rule suffers from the same problems as those identified by the Court of Appeals. As such, the definition of equipment should be modified to define equipment in the context of collocation requirements to mean only devices or facilities *necessary* for interconnection or access to unbundled network elements.

With regard to the question of whether or not any of the other definitions should be changed, U S WEST notes that it proposed changes to the definition of “collocation” and “deliver” or “delivery date” in its earlier comments. U S WEST will not repeat those suggestions here.

Question 2: *In Section (2), paragraph (d), what conditions should apply when adjacent collocation is requested?*

Response:

As set forth in U S WEST’s earlier comments, adjacent collocation must be defined so that it is only required where space is legitimately exhausted in a particular ILEC premises. Adjacent collocation may only be ordered if the “adjacent” properties are still on the ILEC’s “premises.” It was such an interpretation of adjacent collocation that recently survived a challenge in the Court of Appeals in GTE v. FCC. There, the Court noted that as long as the adjacent properties are on the LEC’s “premises,” then the requirement is permitted under the Telecommunications Act. To the extent that the proposed rule will go further than that, U S WEST believes it does not survive the challenge brought in GTE v. FCC. The rule language should, therefore, be changed to conform to the requirements of the Telecommunications Act and the recent Court of Appeals decision.

Question 3: *In Section (3), what intervals have been established by other state commissions for collocation?*

Response:

Refer to Attachment A.

What intervals has the FCC established?

Response:

The FCC has not adopted specific collocation provisioning intervals. However, in its Advanced Services Order,¹ the FCC indicated that it views ten days as a reasonable time period within which to inform a new entrant whether its collocation application is accepted or denied. U S WEST's Service Interval Guide for Resale and Interconnection Services provides for 10 calendar days Notice of Feasibility for Floor Space Availability; 25 calendar days Quote Preparation; and 90 calendar day provisioning. The collocation cost studies submitted in Dockets UT-960369 et al./UT-00313, were based on a 90-day provisioning interval.

How does the availability of equipment and materials, including cable, impact site preparation intervals?

Response:

The collocation intervals contained in U S WEST's Interconnection Agreements and Service Interval Guide for Resale and Interconnection Services are standard intervals based upon ordinary circumstances. U S WEST adheres to published intervals except during circumstances beyond its direct control such as vendor delays. When U S WEST becomes aware of the possibility of vendor delays, it contacts the CLEC(s) involved to attempt to negotiate a new interval. If U S WEST and the CLEC cannot agree, the dispute may be submitted to the Commission for resolution.

Should CLECs be allowed to self-provision equipment and materials necessary for

¹ Deployment of Wireline Services Offering Advanced Telecommunications Capability ("Collocation Order"), 14 FCC Rcd 4761 (March 31, 1999), Section IV.A.2.g. ¶54-55.

collocation?

Response:

Pursuant to FCC 51.323(6)(j), CLECs are permitted to subcontract the construction of physical collocation arrangements with contractors approved by the ILEC.

Question 4: *In Section (4), what conditions has the FCC established for reserving central office space? Must space be made available on a first-come first-served basis?*

Response:

FCC Rule 51.323(f) provides that: " An incumbent LEC shall make space available within or on its premises to requesting telecommunications carriers on a first-come, first-serve basis, provided, however, that the incumbent LEC shall not be required to lease or construct additional space to provide for physical collocation when existing space has been exhausted." The ILEC should provision collocation to CLECs on a first-come, first-served basis according to the date on which the CLEC initially submitted an order.

FCC rules also allow the ILEC to retain a limited amount of floor space for its own specific future uses. The Commission ruled in Docket UT-960323, that reservation of space for U S WEST's own use may be reasonably forecasted for three years. In GTE v. FCC, the court addressed space reservation, finding that, "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 LEC's premises, subject only to technical feasibility. There is nothing in 251(c)(6) that endorses this approach."

U S WEST recommends its current reservation policy, wherein the CLEC submits two collocation preferences. The CLEC is advised of availability for their two choices, and if the requested space is unavailable, the CLEC is provided with available alternatives. See

U S WEST's March 15, 2000, Supplemental Comments for further recommendations concerning reservations and service order policy.

Question 5: *For the following questions, assume that space must be made available on a first-come first-served basis and more than one CLEC has requested space in the same central office.*

What is the best method to inform CLECs as space becomes available?

Response:

The ILEC should maintain a waiting list of all CLECs that have been denied space in each central office by the dates on which each of these CLECs submitted its order for collocation. When space is available, the ILEC should inform these CLECs on a first-come, first-serve basis, according to the date on which each initially submitted its order, and determine whether the CLEC wants the originally requested space. It has been U S WEST's experience that a telephone call is the most expedient method of communication for this purpose.

What should trigger the offer of available space to a CLEC? What is a reasonable time interval for a CLEC to accept space as it becomes available?

Response:

Availability of space, on a first-come first-serve basis, according to the date on which each CLEC initially submitted an order for collocation, should trigger the offer. It is U S WEST's policy to allow the CLEC ten days to accept the space. Due to high space demand in certain central offices, additional acceptance time could result in further delay to other CLECs.

If a CLEC does not timely accept space as it becomes available, how is that CLEC's request impacted?

Response:

If the CLEC does not accept the space within the time interval (e.g. ten days), the CLEC's collocation order is cancelled.

If a CLEC elects to wait until additional space becomes available, how is that CLEC's request impacted?

Response:

The CLEC's original space request will be honored. If a CLEC now desires additional space, the CLEC can either: (1) Proceed with the original space ordered and submit a new order to augment for the additional space. The augment request will follow standard installation intervals and will be completed after the original order, provided there is available space; or (2) The CLEC can cancel their original order for collocation space and submit a new order for the larger space request. The new order will be considered a "new" request, and assigned the standard installation interval. Therefore, regardless of which method the CLEC chooses, it will receive the newly requested additional space on a new first-come, first-serve basis. (i.e. the CLEC should not receive the newly requested larger space ahead of previously received space orders from other CLECs.)

Question 6: *In Section (5), what restrictions should be placed on collocation equipment, other than NEBS Level I compliance? What exceptions should be allowed?*

Response:

Concerning general equipment restrictions, refer to U S WEST's responses to Questions 1, 2, and 7. Concerning technical standards, all equipment shall meet NEBS standards and installed in accordance with the ILEC's Technical Publications. (E.g. U S WEST's Technical Publications 77350, 77351, 77355, 77386 and 77385.) All equipment and installation should meet earthquake-rating requirements.

Virtual collocated equipment must comply with NEBS TR-NWT-000063, and the ILEC's wire center environmental and transmission standards and any statutory (local, state or

federal) and/or regulatory requirements in effect at the time of equipment installation or that subsequently become effective. The CLEC shall provide the ILEC interface specifications, (e.g., electrical, functional, physical and software) of CLEC's virtual collocated equipment.

If, during installation, the LEC determines CLEC activities or equipment do not comply with the NEBs standards, or are otherwise unsafe, non-standard or in violation of any applicable laws or regulations, the ILEC has the right to stop all collocation work until the situation is remedied. If such conditions pose an immediate threat to the safety of ILEC employees, interfere with the performance of ILEC service obligations, or pose an immediate threat to the physical integrity of the conduit system, cable facilities or other equipment in the office, the ILEC may perform such work and/or take action as is necessary to correct the conditions at the CLEC's expense.

For caged physical collocation, the ILEC can construct the cage enclosure or the CLEC may choose from an ILEC approved contractor to construct the cage in accordance with the ILEC's technical publications. All CLEC equipment placed should meet NEBs standards, and comply with any local, state, or federal regulatory requirements in effect at the time of equipment installation or that subsequently become effective.

Question 7: *In Section (6), how should collocating carriers access each others network?*

Response: In accordance with the decision in GTE v. FCC, *supra*, the issue of how carriers may access each others networks is not related to collocation issues. The FCC requirement that ILECs allow CLECs to access each others networks from their collocation spaces has been vacated by the Court of Appeals as inconsistent with the Act. Such a requirement cannot be imposed in this rulemaking either, for the same reason. Thus, carriers may negotiate with each other as to how they will access each others' networks as an issue to be determined separately from collocation issues.

Question 8: *In Section (7), what security costs should ILECs be allowed to recover from collocating CLECs?*

Response:

In its Advanced Services Order,² the FCC stated that it expects state commissions to permit LECs to recover the costs of implementing security measures from collocating CLECs. The FCC found that LECs could establish reasonable security measures to assist in protecting their networks and equipment from harm. Examples cited by the FCC include, but are not limited to: security cameras, monitoring systems, identification badges and access cards with computerized tracking systems. U S WEST should receive cost recovery for these types of security measures and others that may be deemed necessary.

Question 9: *In Section (8), how does the availability or unavailability of loop data impact collocation.*

Response

Consistent with U S WEST's earlier comments which suggested that Section (8) be deleted in its entirety, U S WEST believes that the availability or unavailability of loop data has absolutely no impact whatsoever on collocation or collocation issues.

FCC Ex Parte:

In a related matter, U S WEST received an inquiry from the FCC concerning how the company intends to treat collocated equipment which does not meet the test for collocation articulated in the recent Opinion in GTE v. FCC. In an effort to keep the Commission apprised of this dialogue, U S WEST's response to the FCC is provided at

² Id., ¶ 48.

Attachment B. (See, *Ex parte Filing* on April 24, 2000, in CC Docket No. 98-147.)