

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Telecommunications)	
)	
Collocation Rulemaking)	Docket No. UT-990582
)	
)	Supplemental Comments of
)	Rhythms Links, Inc.
)	
_____)	

INTRODUCTION

Rhythms Links, Inc. (“Rhythms”), formally ACI Corp.¹, supports collocation rules that will enable competitive providers of advanced services, like Rhythms, to deploy new technologies on a faster, more cost-effective basis. Rhythms previously filed extensive comments in its Petition for Rulemaking Proceeding on collocation issues, which it later filed with the Commission as its opening comments in this matter.²

Pursuant to the Commission’s Notice of Opportunity to File Supplemental Comments, dated August 9, 1999, Rhythms provides the following supplemental comments on: (1) the need for specific intervals to prevent delays for collocation space; (2) the necessity of a right of first refusal for contiguous space in an incumbent LEC’s central office, or adjacent space; (3) the importance of not allowing incumbent LECs to require CLECs to move existing equipment in

¹ See Letter from D.Rice, Miller Nash, to Carole Washburn, Executive Secretary, Washington Utilities and Transportation Commission, August 5, 1999.

² ACI Corp.’s Opening Comments on Collocation Rules, June 11, 1999.

order to obtain additional space; and (4) the need for final rejection of the SPOT frame option.

It is in the interest of consumers, and the economic viability of Washington state, to ensure that competitors are able to provide services quickly and cost-effectively by encouraging integration of equipment in the central office that lowers costs and increases services to consumers. By adopting the rules Rhythms suggests, the Commission will further remove barriers to competition, which, in return, will produce benefits for Washington consumers.

SUPPLEMENTAL COMMENTS

I. THE COMMISSION SHOULD REQUIRE ILECS TO MEET SPECIFIC INTERVALS TO ADDRESS UNWARRANTED DELAYS BETWEEN ORDERING AND ACTUAL PROVISION OF COLLOCATION SPACE.

Rhythms recommends that the Commission exercise its clear authority under the Telecommunications Act of 1996 (1996 Act), and the Federal Communications Commission's (FCC's) First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-147, March 31, 1999 (Advanced Services Order), to adopt specific intervals for collocation. In its collocation rules, the FCC declined to mandate national collocation intervals, but encouraged state commissions to set specific and reasonable time frames. "We urge the states to ensure that collocation space is available in a timely and pro-competitive manner that gives new entrants a full and fair opportunity to compete."³ The Commission also stated that "[b]ecause of the importance of ensuring timely provisioning of collocation space, we encourage state commissions to ensure that incumbent LECs are given specific time intervals within which they

³ *Advanced Services Order*, ¶ 55.

must respond to collocation requests.”⁴

A. The Commission Should Require ILECS to Provide Collocation Space on a Predictable and Expedient Schedule.

New entrants such as Rhythms cannot plan effectively for providing its services to a particular local market when incumbent LECs exercise unilateral and arbitrary control over the pace of collocation. CLECs spend significant amounts of time and internal resources in identifying and applying for collocation space. Moreover, unless and until incumbent LECs are required to abide by reasonable collocation intervals, CLECs cannot meet their commitments to their customers.

As the Commission is well aware, the “first-to-market” or “first-mover” effect is very important in the emerging advanced services market. The primary local broadband services, such as DSL and cable modems, generally experience low “churn” rates, due to the time and expense associated with service installation. Therefore, the competitive landscape of the new advanced services marketplace is highly dependant upon equal access to customers during the critical initial phases of market development. Allowing incumbent LECs to delay the benefits of competition from new entrants extends the control incumbent LECs have over the voice market to the local data market.

This Commission must not allow this to continue any longer because uncertainty regarding collocation delivery intervals makes it difficult for Rhythms and other new entrants to estimate their time to market which in turn impede their ability plan their deployment strategy. As a result, consumers must wait for Rhythms’ services to become available. Rhythms therefore

⁴ *Id. at ¶ 54.*

recommends, at minimum, that incumbent LECs be required to meet a 76 business day collocation delivery interval. As noted in Rhythms opening comments, Bell Atlantic in New York provides collocation within 76 business days of receipt of a collocation request.⁵ Clearly, incumbent LECs do not require 6 months to provide collocation space, and they should not be permitted to slow down the deployment of advanced services by delaying collocation delivery intervals to its competitors.

The Commission should adopt delivery intervals comparable to those achieved in New York on an interim basis. Thereafter, the Commission should conduct a study of collocation intervals, which will show that far fewer days (i.e., 6 months) are necessary for provision of collocation space. For example, it is unclear why an incumbent LEC needs 35 days to determine a price quote for CLEC collocation, or 90 days to “condition” a central office and prepare individual collocation space, particularly given the number of CLECs that have requested collocation space for many of the same central office locations. Full investigation of issues such as this will provide the Commission with a complete record on which to set permanent prices for collocation.

The existing process for collocation is expensive, time-consuming and inefficient, and forces CLECs to spend resources and time on determination of whether collocation space is available. Without firm time intervals for collocation, incumbent LECs will continue to exercise capricious and arbitrary control over the process to create further delay for its competitors. CLEC’s resources are better spent on deploying advanced services throughout Washington state

⁵ *ACI Corp. Opening Comments (June 11, 1999), pg. 31.*

than on the enormous amount of energy and time it takes to force incumbent LECs to provide them with reasonable collocation space.

B. ILECs Must Be Required to Disclose all Plans of Central Office Space Exhaust with Regard to Collocation.

Incumbent LECs must be required to promptly identify both, available space that can be made available through rearrangement of central office equipment, and all central office expansion plans that impact collocation space.

When a request for all central office collocation space is denied, US West must be required to provide detailed central office expansion and construction schedules, including details on floor space, reclamation/construction, power additions, quantity and placement of all additional bays. These construction plans must include a reliable commitment by US West to fund the project and successfully complete the central office expansion on the project due date.

The lack of Commission rules in this area allows incumbent LECs to delay collocation, thus delaying new entrants the opportunity to compete fairly.

II. THE COMMISSION SHOULD REQUIRE ILECS TO PROVIDE CLECS ACCESS TO CONTIGUOUS SPACE TO EXISTING COLLOCATION SPACE IF AVAILABLE.

The pace of development of today's innovative technologies, as well as demand for access to the Internet and data applications, increase each day. Further, as more consumers in Washington state become aware of the advantages of access to advanced services, new entrants must meet increasing demand for those services. Thus, as competition develops and a CLEC's business increases, demand for additional collocation space will also increase. In order to accommodate the need for additional space in an efficient manner, the Commission's collocation

rules should require that incumbent LECs make available to CLECs space that is contiguous with their existing collocation space in a central office, or adjacent space, whenever possible.

If a CLEC cannot access additional contiguous space, it will be forced into unnecessary, inefficient and costly collocation arrangements. Therefore, CLECs should be permitted to reserve additional contiguous space subject to a right of first refusal. If additional contiguous space is available, a CLEC should be able to obtain it on an expedited basis, there is no need for repetition of the administrative process and other delays associated with initial application procedures. Nor should incumbent LECs be permitted to claim security concerns when the CLEC is already collocated in the central office, or adjacent space.

If an incumbent LEC claims additional contiguous space is not available, or cannot be made available, then the CLEC should have the right to request a tour, accompanied by a member of the Commission staff to determine whether additional contiguous space is available, or can be made available, through removal of obsolete or unused equipment, or reconfiguration of existing equipment. In its collocation rules, the FCC provided the Commission with authority to determine whether incumbent LECs should create additional space for CLECs:

“There is no legitimate reason for an [incumbent LEC] to utilize space for obsolete or retired equipment that the [incumbent LEC] is no longer using when such space could be used by competitors for collocation...We believe it would be anti-competitive for an [incumbent LEC] to maintain such equipment in its premises and contend that no collocation space is available.”⁶

Clearly, the FCC’s collocation rules requires that obsolete or unused equipment be removed upon reasonable request by the competitor or upon the order of a state commission.⁷ Therefore, the

⁶ *Advanced Services Order*, ¶ 60.

⁷ *Id.*

Commission's collocation rules must also require incumbent LECs to remove equipment once it becomes obsolete or unused, or reconfigure equipment upon reasonable request by a CLEC in order to increase the amount of collocation space available.

If Commission staff finds that additional contiguous space is, or can be made available, the CLEC should be provided access to that space within 45 business days. If an incumbent LEC wishes to dispute the findings of the staff member of the Commission, it should bear the burden of proof demonstrating that the determination of the staff member was incorrect. In order to provide effective enforcement of the obligation of incumbent LECs to provide additional contiguous space, the rules should include a provision that permits the Commission to impose penalties on an incumbent LEC upon a finding that it has breached its obligation to provide additional contiguous space to a CLEC. Or, the Commission should permit a CLEC to recover its costs and attorney fees upon a finding that an incumbent LEC has breached its obligation to provide additional contiguous space. Rhythms offers the following draft rule for consideration:

Draft Language for Expedited Access to Contiguous Space

WAC 480.120.XXX Collocation - CLEC may request, or reserve, additional space contiguous to their existing collocation space on an expedited basis.

CLECs are entitled to, and may reserve, additional space that is contiguous to their existing collocation space. Such contiguous space shall be made available to a requesting CLEC on an expedited basis. If the incumbent LEC disputes that such contiguous space is, or can be made available, a CLEC has the right to a tour of the central office, or adjacent space, accompanied by a member of the Commission staff to make an independent determination on contiguous space availability. The Commission may impose penalties and permit a complaining CLEC to recover its costs and attorney fees to enforce this obligation to provide additional contiguous space.

III. THE COMMISSION SHOULD NOT ALLOW ILECS TO REQUIRE AN EXISTING CLEC TO RELOCATE ITS EQUIPMENT TO ANOTHER LOCATION TO OBTAIN ADDITIONAL SPACE.

The Commission should adopt a rule that once a CLEC accepts collocation space, it should not be required to move its equipment to another space when additional space becomes available, absent its agreement. Requiring CLECs to move equipment would disrupt provision of advanced services and would be unnecessarily burdensome, costly and inefficient. The Commission must make it clear by adopting a rule on this matter that incumbent LECs cannot require CLECs to relocate its equipment to another location, without agreement, for additional space to prevent anti-competitive behavior.

IV. THE COMMISSION MUST REJECT MANDATORY SPOT FRAME REQUIREMENTS, AND ALLOW CLECS TO INTERCONNECT DIRECTLY AT THE ILEC'S CENTRAL OFFICE.

Rhythms and other new entrants strongly dispute the requirement of a shared point of termination (SPOT) frame for any type of collocation arrangement. Although US West claims it plans to abandon the SPOT frame requirement for CLECs, and offer other alternatives, it has yet to provide any specific alternatives or prices. Further, US West's claims that any alternatives would be more expensive to CLECs are both incorrect factually and anti-competitive in effect.

Implementation of a SPOT frame requires US West to install additional cumbersome equipment, which provides less reliable access than US West provides to itself. It creates extra points of failure, creating more repair and maintenance problems for CLECs. Furthermore, it is more expensive to CLECs because they are required to pay incumbent LECs for use of additional

equipment that would otherwise not be required. The FCC expressly prohibits incumbent LECs from requiring the use of a SPOT frame.⁸

Additionally, Commission staff argued in the generic UNE pricing case,⁹ that a SPOT frame is not technically necessary or required for interconnection. In the same matter, AT&T noted to the Commission that SPOT frames have been rejected by multiple state commissions, Iowa, Colorado, Oregon, New Mexico, and Minnesota as discriminatory and inefficient.¹⁰ Further, requiring a SPOT frame, or allowing incumbent LECs to require CLECs to interconnect via a SPOT frame, creates additional work and costs for CLECs. CLECs have the right to obtain access to unbundled network elements, without need for a SPOT frame or additional costs. In short, the SPOT frame offers nothing of benefit to the competitive process, imposes higher costs and fewer efficiencies, and does so only to increase barriers to entry. This Commission should reject the option of a SPOT frame summarily.

CONCLUSION

In order to expedite deployment of advanced services in Washington state, and allow competitors to more rapidly provide high quality advanced services to consumers, the Commission should establish rules that require incumbent LECs to meet specific time intervals for provision of collocation space; expedite access to additional contiguous space as demand for advanced services increases; clarify that incumbent LECs cannot require CLECs to relocate its

⁸ *Advanced Services Order*, ¶ 42.

⁹ *17th Supplemental Order*, Docket No. UT-960369, 960370, 960371, ¶ 333.

¹⁰ *17th Supplemental Order* at ¶ 336.

existing equipment without its agreement; and require incumbent LECs to give CLECs access to the same points of interconnections that they provide to themselves. By doing so, the Commission will fulfill its duties under the 1996 Act and the FCC's directive that incumbent LECs provide collocation on a non-discriminatory basis.

RESPECTFULLY SUBMITTED this 10th day of September, 1999.

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