

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In re:	}	
	}	
Collocation Rulemaking	}	Docket No. UT-990582
	}	
	}	

COMMENTS OF AMERICAN TELEPHONE TECHNOLOGY, INC.

American Telephone Technology, Inc. (“ATTI”), a provider of competitive local exchange services in Washington, submits the following comments to the Washington Utilities and Transportation Commission (“WUTC”) suggesting specific actions to enforce the collocation provision of Section 251(c)(6) of the Telecommunications Act of 1996 in light of current conditions and the March 31, 1999 First Report and Order of the Federal Communications Commission in the Advanced Services Docket, 14 FCC Rcd. 4761, FCC 99-48 (“Advanced Services Order”).

Introduction

ATTI has provided resale service in Washington for several years and is in the process of entering the local market as a facilities-based competitive local exchange carrier (“CLEC”). ATTI aims to serve primarily the small business market, a type of entry which is particularly in the public interest given that it brings the benefits of competition to a larger class of customers. ATTI is pursuing this strategy in several states.

Like other entrants to the facilities-based market, ATTI is undergoing the expense of obtaining costly equipment and paying for engineers and lawyers to do the advance work necessary for entry, including negotiations with the pertinent incumbent local exchange carriers (“ILECs”). Like other entrants, ATTI is incurring these expenses without being able to earn revenue from this investment until all the tasks necessary to begin to provide service to paying customers are completed.

The first crucial task is collocating at the US West and GTE central offices in the areas ATTI will be serving. US West, however, now takes almost six months to go from initial request to delivery of the collocated space. Every day spent waiting for turn-over of collocated space is a day in which interest must be paid on equipment loans (a very large expense) and other expenses paid, all without any return. Each day of delay is also a lost opportunity to market to potential customers and also exposes ATTI to the risks of losing its current resale customers who want the services and service quality ATTI could provide were it able to use its own facilities.

The WUTC is well aware of unreasonable ILEC behavior towards CLECs, as demonstrated in a complaint proceeding brought before it by MCImetro, in which the WUTC made findings that US West had acted unreasonably.¹ Rules should be drafted to eliminate such abuses.

Issues in this Rulemaking

In calling for supplemental comments, the WUTC properly recognized the need to consider specific collocation rules for Washington. The most important task is to promulgate specific rules in areas where the FCC's Advanced Services Order provides only general guidance or was unclear on key points. ATTI discusses four such issues: (1) quote preparation and provisioning intervals, (2) the circumstances under which the CLEC may request adjacent collocation, (3) space exhaustion, and (4) expedited collocation dispute resolution. Finally, ATTI urges the WUTC to require carriers to collect industry standards and "best practices" regarding collocation and provide them to the WUTC, for use by the WUTC and the parties in this rulemaking.

¹ *Final Order, MCImetro Access Transmission Services, Inc. v. U.S. West Communications, Inc., Docket No. UT-971063 (Feb. 9, 1999).*

(1) Quote Preparation and Provisioning Intervals.

In the Advanced Services Order, the FCC declined to establish nationwide maximum periods for ILECs to provide collocation, noting that states were taking action in this area, and encouraging the states to take further action:

Because of the importance of ensuring timely provisioning of collocation space, we encourage state commissions to ensure that incumbent LECs are given specific time intervals within which they must respond to collocation requests

Even with a timely response to their applications, however, new entrants cannot compete effectively unless they have timely access to provisioned collocation space. 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.²

As invited by the FCC, the WUTC should take the necessary steps to ensure timely responses to collocation requests and timely provisioning following acceptance by the CLEC of an ILEC quote. The WUTC has already taken action with regard to the early stages in this process, setting a 15-day deadline for US West to complete a feasibility study and state whether the requested space was available.³ However, the WUTC's action came in an adjudicatory proceeding involving US West and not GTE. Moreover, the FCC in the Advanced Services Order (which sets minimum nationwide obligations) required that ILECs provide a feasibility report and an opportunity for a CLEC representative to walk through the central office within 10 days of the initial request for collocation. Advanced Services Order, para. 55, 57-58 (relying in part on statements of GTE and Ameritech that they inform CLEC within 10 days whether space is available). Accordingly, the WUTC's US West

² Advanced Services Order, para. 54-55.

³ Order of September 11, 1998 in Dockets UT-960323 *et al.*, ordering paragraph no. 23 (“US West Space Exhaustion Order”).

Space Exhaustion Order should be codified into a rule explicitly binding on all large ILECs, changing the 15-day deadline to a 10-day deadline to comply with the Advanced Service Order.

To ATTI's knowledge, the WUTC has not yet adopted specific deadlines for the quote preparation and the provisioning stages in the collocation process. Quote preparation should be complete within 20 (calendar) days of the initial request. The feasibility study already needs to be done (under paragraph 58 of the Advanced Services Order) in the first 10 days from receipt of the request to collocate, and 10 additional days should provide ample time to price the request.⁴ US West and GTE now have had several years of experience with CLEC entry, and quote preparation has become a more routine process.

Once the CLEC accepts the price quote (or a negotiated price is reached), the WUTC should require the ILEC to complete provisioning within 60 additional (calendar) days.⁵ Building a cage (essentially an internal wall in a building -- a task a homeowner could finish in a basement in a weekend) and running cables for connectivity and power should not take longer than 60 days. The process is even shorter for cageless collocation, where no physical divider is necessary, and for adjacent collocation, where working around existing equipment is less likely to be an issue. (For adjacent collocation off ILEC premises, only connectivity is required, as the CLEC provides power.)

⁴ The Advanced Services Order states that 10 days is a reasonable time for ILECs to determine whether a CLEC's application for collocation is "accepted or denied." Advanced Services Order, par. 55. This language supports the argument that the ILEC should provide a price quote within 10 days, as that would seem to be part of any "acceptance" of an application. ATTI's proposal of a 20 day interval for providing a price quote allows the ILEC substantial additional time.

⁵ Setting one interval for the period from the initial request to the price quote and another for the period from quote acceptance / deposit to completion of provisioning is generous to the ILEC's interests. It does not count the price negotiation time against the ILEC, an interval they have an incentive to extend as far as possible.

ILECs should not be permitted to defeat reasonable time requirements on the theory that interconnecting with other carriers is an uncharted area requiring them to proceed with great caution. ILECs have been collocating with other ILECs even before the divestiture of the Bell System.⁶ The FCC adopted collocation rules for the benefit of competitive access providers prior to the passage of the 1996 Act.

A 60-day provisioning period is consistent with a maximum interval recently set in Texas and generous to the ILEC when compared to the much shorter interval which has been in place in New York for at least three years. In Texas, SBC must complete cageless collocation within 60 days of receiving a 50% deposit from the CLEC, and must gradually turn the space over to the CLEC prior to the end of the 60 days so that the CLEC can be ready to provide service on day 61.⁷ The New York Public Service Commission effectively imposes a shorter deadline, in the form of one overall interval of 76 business days (approximately 105 calendar days) for all aspects of physical collocation from initial request to final provisioning, including a contract negotiation phase. Subtracting out the contract negotiation phase, which is part of neither the quote preparation interval nor the provisioning interval proposed by ATTI, the overall New York interval is 46 business days (about 65 calendar days).⁸

⁶ See, e.g., *Northwestern Bell Tel. Co. v. Cascade Tel. Co.*, 234 N.W. 2d 130 (Iowa 1975) (collocation case).

⁷ *Interim Order*, Petition of Accelerated Connections, Inc., d/b/a ACI Corp. for Arbitration to Establish an Interconnection Agreement with Southwestern Bell Telephone Company, Docket No. 20226 (Tex. Pub. Util. Comm., April 26, 1999) (arbitration panel order). A copy of this order is attached as Exhibit 1 to these Comments. The CLEC would presumably pay the 50% deposit no later than when it accepts SBC's quote.

⁸ See *Order Directing Tariff Changes for Non-Price Terms and Conditions for Collocation*, Case Nos. 95-C-0657 *et al.*, pages 6-7 (N.Y. Pub. Serv. Comm., March. 2, 1998) ("1998 Order"); *Order to Resolve Complaint and Clarify ONA Order*, Case No. 96-C-0036 at 4-6 (N.Y. Pub. Serv. Comm., September. 30, 1996) ("1996 Order"). Copies of the *1998 Order* and the *1996 Order* are attached as

ATTI recognizes that there may be exceptional circumstances which would justify a longer provisioning time. Accordingly, ATTI suggests the dispute resolution mechanism allow the ILEC to avoid any penalty or credit for a missed interval by showing good cause for a delay. The maximum interval should thus be set with the average and not the exceptional case in mind.

Almost as important as maximum intervals are the circumstances under which an ILEC can restart the clock by declaring a change order to be a new order. Time to accommodate minor change and adjustments should be built into all intervals, for minor changes and adjustments are a necessary part of any joint building project. Sadly, CLECs have had many experiences where a slight adjustment resulted in an explanation by the ILEC that a whole new application was necessary. The WUTC should adopt rules defining the few types of major changes that justify restarting the clock and, in the event of a dispute, putting the burden on the ILEC to obtain an arbitrator's ruling or a Commission staff ruling that a particular change is major. The issue is too important to let the ILEC be the unilateral judge of what is a major change.

Finally, there are cases where the ILEC and CLEC cannot agree on the price for collocation, forcing the CLEC to choose between (a) litigation and attendant delay, or (b) accepting the ILEC's price in order to start providing service as soon as possible. The WUTC should confirm the CLEC's right to pay under protest, preserving the right to a later true-up following resolution of the pricing dispute. As the ILEC gets money up front in this process, it can hardly complain.

Exhibits 2 and 3. The *1998 Order* reaffirms a 76-business-day standard set in the *1996 Order*, which explains that the initial application starts the clock. The 76 business days includes a 30 business day contract negotiation period. *1996 Order* at 5. The New York Commission recently confirmed that the 76-business-day rule for physical collocation applies to cageless collocation. *Order Directing Tariff Revisions*, Case Nos.99-C-0715 and 99-C-0657, pages 9-10 (N.Y. Pub. Serv. Comm., August 31, 1999).

(2) Choice of Adjacent Collocation

The WUTC should adopt rules confirming that adjacent collocation is a CLEC option, regardless of whether space for physical collocation in the central office equipment room is available. There is no reason to require potentially more expensive central office collocation when less expensive and more open adjacent spaces are available. Where space is available in adjacent areas, the CLEC should reasonably have the option of declining to waste time fighting over whether space is available in the central office. Finally, as noted by the CLEC coalition filing comments in this docket in June, 1999, CLECs which select adjacent collocation are helping to conserve space in the central offices, thereby mitigating the overall space exhaustion problem.⁹

The FCC's Advanced Services Order specifically permits the states to adopt requirements in addition to the minimum national requirements set by the FCC, and stresses the need to defer to the States concerning implementation of adjacent collocation. Advance Services Order, para. 23 and 44. Because the Advanced Services Order can be read as requiring ILECs to provide adjacent collocation only in the event central office space is unavailable, the WUTC should use its jurisdiction to clarify that in Washington, CLECs do have the option of requesting adjacent collocation whenever adjacent space is available. *See* Advanced Services Order, par. 44.

⁹ Joint Comments of NEXTLINK Washington, Inc., Electric Lightwave, Inc. and five other parties, filed June 11, 1999, at page 14.

(3) Space Exhaustion. In the US West Space Exhaustion Order, the WUTC required that US West consolidate existing equipment and remove obsolete equipment and equipment with declining utilization in order to provide more space for collocators. As discussed above, the WUTC also adopted time deadlines for US West to state whether space was available and to make filings justifying any denial of space. The WUTC's rulings are consistent with the FCC's Advanced Services Order and (except for modifications discussed above) should be adopted as general rules applicable to all large ILECs.

(4) Dispute Resolution

The WUTC should adopt rules for resolution of collocation disputes that recognize that CLECs bear the burden of any delay, given the need for CLECs to make large investments far in advance of earning revenue from the investments.¹⁰ The first part of an effective dispute resolution process is the adoption of specific rules setting maximum intervals for accomplishing collocation. Specific deadlines will ease the process of dispute resolution by reducing the likelihood of litigation over compliance, focusing attention on remedy. The second part is a timeline for the dispute resolution itself. ATTI recommends a 20-day period for decision on collocation disputes, measuring from the CLEC complaint. Such a limitation would permit greater certainty in CLEC business planning and thus promote entry. Routine complaints regarding missed intervals and space exhaustion should be addressable during this period. In the case of space exhaustion, the ILEC's

¹⁰ The existing rule for interconnection disputes, WAC 480-09-530, requires that the complainant have an interconnection agreement. Now that the FCC in the Advanced Services Order has confirmed that CLECs have the right to collocate prior to obtaining an interconnection agreement, the WUTC should expand the rule to accommodate resolution of disputes arising before execution of a final interconnection agreement or an interim collocation agreement. *See* Advanced Services Order, par. 53.

feasibility study will be on file before the 20 days begin, assuming codification of the US West Space Exhaustion Order into a general rule.

The last part of an effective dispute resolution process is remedy. ATTI suggests that the Commission adopt a schedule of credits that ILECs must apply to bills owed by CLECs when an interval is not met or any other collocation rule is violated. The credit can be an interim remedy, allowing for true-up following the completion of any fact finding process. As with other local competition issues, the WUTC can look if it wishes to the work of another state commission in this area. The Colorado Commission recently adopted a schedule of credits as remedies for ILEC/CLEC provisioning disputes, as well as a list of specific intervals for completing tasks.¹¹

Simply put, when an ILEC fails to timely provide service in compliance with the WUTC's and the FCC's collocation rules, the CLEC should not have to both (a) bear the costs of delayed entry into business, including financing costs on unused equipment, and (b) pay immediately for the non-compliant services. A credit system matches the remedy to the violation, yet allows for later billing if the ILEC can ultimately prove good cause for missing an interval or the other violation.¹² (The WUTC would retain the right to impose monetary penalties in appropriate cases.) A credit system provides the ILEC with a direct financial incentive to comply with the collocation rules in order to earn revenue for properly done collocation work.

¹¹ See 4 CCR 723-43-10 (credit schedule) and 4 CCR 723-43-6 (specific provisioning intervals). Both rules can be viewed at the web site of the Colorado Commission. The specific location is www.dora.state.co.us/puc/ftp/rlmkng/adoption/c99493a.pdf. The rules were adopted in Decision No. C99-493, Docket No. 97R-153T, 1999 WL 632864 (May 10, 1999) (Westlaw version lacks complete text of rules available at Commission web site), *supplemental rulemaking and reargument pending*, Decision No. C99-496 (May 10, 1999). The undersigned has copies of these decisions and will provide them upon request.

¹² If disputes arise over whether a CLEC is entitled to a credit, the CLEC should have the right to withhold payment of an amount equal to the claimed credit without the ILEC cutting off service. An expedited dispute resolution process can then determine whether the ILEC is entitled to the money.

(5) Industry Standards and Best Practices.

State commissions are often faced with the choice of deciding between the narrow ILEC view of local competition obligations and the more expansive CLEC view. Both sides in the debate are necessarily biased towards their own business viewpoint. Consequently, industry standards and “best practices” documents that have won widespread acceptance may provide a more neutral authority for use in making decisions. *Cf.* Advanced Services Order, par. 45. Such documents can be particularly helpful because they are generally written by engineers and have a practical orientation well suited to typical disputes involving collocation.¹³ Because of the importance of this collocation rulemaking, ATTI suggests that the WUTC require the major ILECs (US West and GTE) to assemble industry standards and best practices related to collocation and file them at the WUTC (with notice to the other parties which need not include copies of any lengthy documents) in time to be of use to the WUTC in this rulemaking. The major ILECs have a much longer history of participating in such industry forums and are in the best position to locate these documents.

¹³ As an example, ATTI is attaching as Exhibit 4 excerpts from a “best practices” document relating to local competition, although not specifically to collocation. The document (Increased Interconnection Task Group II Report) is from the Network Reliability Council, an advisory committee to the FCC with diverse industry membership. *See* Section 5.3.1.5.

Conclusion

ATTI respectfully requests that the WUTC adopt specific maximum intervals for collocation, clarify that adjacent collocation is a CLEC option regardless of whether space exists in the ILEC central office, codify the space exhaustion rules adopted in the earlier US West case, and adopt an expedited collocation dispute resolution mechanism. ATTI also suggest that the WUTC require US West and GTE to provide all available industry standards and “best practices” relating to collocation. Taking these steps will encourage the expansion of local competition in Washington, and the resulting increase of choices available to small businesses in the state.

Respectfully submitted

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Certificate of Service

I certify that on this 24th day of September, 1999, I caused true copies of the forgoing Comments (without copies of decisions from other state public utility commission, which will be provided upon request) to be sent by first-class mail, postage prepaid, to all persons on the official service list attached at the end of the document.

_____/s/_____
James H. Lister

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