

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Deployment of Wireline Services Offering	)	CC Docket No. 98-147
Advanced Telecommunications Capability	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: June 29, 2001**

**Released: July 2, 2001**

**By the Acting Deputy Chief, Common Carrier Bureau:**

**I. INTRODUCTION**

1. In this Order, we address a request that the Commission waive certain aspects of its *Collocation Reconsideration Order*.<sup>1</sup> For the reasons set forth below, we grant Cincinnati Bell Telephone Company (“Cincinnati Bell”) a conditional waiver of certain aspects of the *Collocation Reconsideration Order* pending Commission action on petitions for reconsideration of the 90-day provisioning interval.

**II. BACKGROUND**

2. On August 10, 2000, the Commission released the *Collocation Reconsideration Order*, which established national standards for processing physical collocation applications and provisioning physical collocation arrangements. Specifically, the Commission required that an incumbent local exchange carrier (“incumbent LEC”) must tell a requesting telecommunications carrier whether a collocation application has been accepted or denied within ten calendar days after receiving the application, in instances where neither the state nor the parties to an interconnection agreement set a different deadline.<sup>2</sup> The Commission also required that an incumbent LEC must complete physical collocation provisioning within 90 calendar days after receiving an acceptable collocation application, except to the extent a state sets its own collocation provisioning standard or an interconnection agreement between an incumbent LEC and a requesting carrier sets an alternative standard.<sup>3</sup>

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<sup>1</sup> *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 15 FCC Rcd. 17,806. (“*Collocation Reconsideration Order*”). A summary of the *Collocation Reconsideration Order* was published at 65 Fed. Reg. 54433 (Sept. 8, 2000) (“*Collocation Summary*”).

<sup>2</sup> *Collocation Reconsideration Order* at ¶ 24.

<sup>3</sup> *Id.* at ¶ 29.

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3. In the *Collocation Reconsideration Order*, the Commission recognized that an incumbent LEC may have filed with the state commission a statement of generally available terms (“SGAT”) or a tariff that sets forth the rates, terms, and conditions under which the incumbent LEC provides physical collocation. The Commission required that an incumbent LEC must file with the state commission any amendments necessary to bring its SGAT or physical collocation tariff into compliance with the national standards. The Commission specified that these amendments would be due 30 days after the *Collocation Reconsideration Order’s* effective date (*i.e.*, by November 9, 2000).<sup>4</sup> The Commission also specified that the national standards would take effect within 60 days after the amendments filing for SGATs (*i.e.*, by January 8, 2001), and at the earliest point permissible under state law for tariffs, except to the extent the state commission specifies other application processing or provisioning intervals for a particular type of collocation arrangement.<sup>5</sup>

4. On November 7, 2000, the Common Carrier Bureau granted Verizon, SBC and Qwest conditional waivers of certain aspects of the *Collocation Reconsideration Order* pending Commission action on these carriers’ petitions for reconsideration of the 90-day provisioning interval.<sup>6</sup> On February 20, 2001, the Bureau granted a similar waiver to BellSouth Corporation and BellSouth Telecommunications, Inc. (collectively, “BellSouth”). These waivers were conditioned upon the ILECs’ commitments to implement the applications process and provisioning intervals for collocation described in Attachment C to Verizon’s Petitions for Conditional Waiver, subject to certain modifications. The Bureau also clarified in these orders that the deadlines for amending SGATs and collocation tariffs apply only to the extent a state has not affirmatively set its own application processing and provisioning standards for physical collocation. Finally, the Bureau Order clarified that a state commission does not set such standards when it permits application processing and provisioning intervals to take effect without an affirmative determination that they comply with section 251(c)(6) of the Communications Act of 1934, as amended (“Communications Act” or “Act”).<sup>7</sup>

5. On February 9, 2001, Cincinnati Bell filed a petition for a conditional waiver of the 90-day collocation interval established in the *Collocation Reconsideration Order*. Cincinnati Bell requests the same conditional waiver from the 90-day collocation interval that we granted Verizon and SBC in the *Collocation Waiver Order*. Cincinnati Bell states that it has interconnection agreements with competitive local exchange carriers in Ohio and Kentucky, and that neither of these states has set collocation provision intervals. Cincinnati Bell asserts that it

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<sup>4</sup> See *id.* at ¶ 36; see also *Collocation Summary*, 65 Fed. Reg. at 54433 (establishing an October 10, 2000 effective date for certain rules adopted in the *Collocation Reconsideration Order*); *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 65 FR 57291 (Sept. 22, 2000) (establishing the same effective date for the remaining rules adopted in that *Order*).

<sup>5</sup> *Collocation Reconsideration Order* at ¶ 36.

<sup>6</sup> *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Memorandum Opinion and Order, DA 00-2528 (Com. Car. Bur. rel. Nov. 7, 2000) (“*Collocation Waiver Order*”).

<sup>7</sup> 47 U.S.C. § 251(c)(6).

can generally meet the 90-day interval where preconditioned space exists. However, it states that it will be unable to satisfy this requirement if it receives a request for collocation in unconditioned space, where build-out is required or extraordinary upgrades must be made, such as HVAC augmentation, new power supplies, or asbestos removal. No comments were filed in response to Cincinnati Bell's petition.

### **III. DISCUSSION**

#### **A. Waiver Request**

6. We grant the petition of Cincinnati Bell for a conditional waiver of certain aspects of the *Collocation Reconsideration Order* pending Commission action on petitions for reconsideration of that *Order*. Specifically, Cincinnati Bell requests waiver of the 90-day provisioning interval set by the Commission in the *Collocation Reconsideration Order* pending Commission reconsideration of that interval. Cincinnati Bell proposes that its waiver be conditioned on compliance with alternative application processing and provisioning standards for physical collocation identical to the standards set for SBC and Verizon in the *Collocation Waiver Order*. We conclude that the equities favor the grant of the waiver only because we find that the alternative intervals upon which we condition the waiver will not create substantial additional delay in the provisioning of physical collocation space to competitors. Thus, by granting the waiver, we in no way retreat from the Commission's determination that a national standard for such intervals is essential in the absence of state commission action on such intervals. Accordingly, we condition the waiver on petitioner's implementation of those standards to the extent states within petitioner's region have not set their own application processing or provisioning standards for Cincinnati Bell's physical collocation operations.

7. As stated in our *Collocation Waiver Order*, the Commission may waive any provision of its rules for good cause shown.<sup>8</sup> In their petitions for reconsideration of the *Collocation Reconsideration Order*, Verizon, SBC, and Qwest raised issues as to whether the 90-day interval is appropriate, either generally or for particular types of arrangements. We noted in the *Collocation Waiver Order* and the *BellSouth Collocation Waiver Order* that these petitions for reconsideration and the comments on them greatly expand the record on reasonable physical collocation intervals beyond what was available to the Commission when it adopted the *Collocation Reconsideration Order*. While we express no opinion on the merits of these petitions for reconsideration<sup>9</sup> or on what action the Commission might take in response to them, this greatly expanded record countenances pause before we insist on absolute compliance with that *Order*.

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<sup>8</sup> 47 C.F.R. § 1.3. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (*WAIT Radio*).

<sup>9</sup> Cincinnati Bell has not filed a petition for reconsideration.

8. An additional consideration is that, in adopting the application processing and provisioning standards, the Commission specified that an incumbent LEC need not comply with them to the extent a state sets its own standards for physical collocation.<sup>10</sup> Granting the interim waiver requested by Cincinnati Bell will give state commissions additional time to evaluate whether different intervals are more appropriate in their states, as contemplated in the *Collocation Reconsideration Order*. At the same time, we continue to believe that it would be unfair to competitive local exchange carriers (“competitive LECs”) to allow any incumbent LEC to continue the collocation provisioning performance that led us to adopt the national application processing and collocation provisioning standards. That performance, as the Commission determined in the *Collocation Reconsideration Order*, has substantially delayed many competitive LECs’ efforts to obtain physical collocation and has impeded competitive LECs’ ability to provide facilities-based service in much of the country.<sup>11</sup>

9. We therefore conclude that the public interest would be best served by conditioning waiver on Cincinnati Bell’s commitment to meet reasonable alternative provisioning intervals. Accordingly, we condition our grant on petitioner’s adoption of interim application processing and provisioning intervals in accordance with the procedures specified for SBC and Verizon in the *Collocation Waiver Order*. These intervals will remain in effect pending Commission action on the petitions for reconsideration of the *Collocation Reconsideration Order*, except to the extent a state sets its own intervals. These intervals will provide meaningful relief to many competitive LECs, without forcing Cincinnati Bell to implement the national standards prior to any federal or state consideration of their arguments that the current standards are unreasonably short. Moreover, we find that this waiver test is consistent with the Commission’s goal in the *Collocation Reconsideration Order* of substantially reducing the delays competitive LECs encounter in seeking to use physical collocation to compete against incumbent LECs.<sup>12</sup>

10. Cincinnati Bell’s request for the same conditional waiver of the 90-day interval that was granted to Verizon and SBC in the *Collocation Waiver Order* is a reasonable one. Pursuant to those waivers, Verizon and SBC are required to adhere to collocation intervals adopted by the New York Public Service Commission (“New York Commission”). Specifically, those waivers were, and this waiver is, conditioned upon compliance with New York Commission requirements that the incumbent LEC notify a requesting carrier whether its request can be accommodated within eight business days (roughly, 11 calendar days) of the incumbent LEC’s receipt of a physical collocation application. Competitive LECs that have properly forecast their collocation demands are entitled to obtain physical collocation space within 76 business days (roughly, 105 calendar days) when conditioned space is available. In addition, the New York Commission requires Verizon to provision arrangements involving major construction or special applicant requirements within 91 business days (roughly, 126 calendar days).<sup>13</sup> These provisioning intervals

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<sup>10</sup> *Collocation Reconsideration Order* at ¶ 22.

<sup>11</sup> *Id.* at ¶¶ 20-21.

<sup>12</sup> *See id.* at ¶¶ 20-23.

<sup>13</sup> Verizon Petition for Waiver at Attachment C.

can be extended for 20 business days (roughly, 28 calendar days) if collocation space is not readily available and up to three months if the competitive LEC has not properly forecast its collocation demands.<sup>14</sup> The New York Commission also requires that Verizon provision augments to existing collocation arrangements within 45 business days (roughly, 63 calendar days) of receiving a competitive LEC's application.<sup>15</sup> As we stated in the *Collocation Waiver Order*, the New York Commission's standards are generally consistent with the Commission's goals, as set forth in the *Collocation Reconsideration Order* and we accordingly condition this waiver on compliance with these standards.<sup>16</sup>

11. We remain concerned, however, that the New York Commission's standards may result in excessively long intervals in instances where a competitive LEC has not properly forecast its collocation demands. For instance, under the New York standards, a failure to submit a timely and accurate forecast could subject a competitive LEC to intervals as long as 195 days for arrangements that do not involve major construction or special applicant requirements. In the context of this interim waiver order, we continue to find that this aspect of the New York standard would unfairly disadvantage competitors.<sup>17</sup> We therefore will allow Cincinnati Bell to increase the provisioning interval for a proposed physical collocation arrangement by no more than 60 calendar days in the event a competitive LEC fails to provide a timely and accurate forecast. We note that the waiver we grant herein does not allow Cincinnati Bell to increase provisioning intervals due to failure of a competitive LEC to submit a timely and accurate forecast unless the competitive LEC has not properly forecast its collocation requirements three months in advance.<sup>18</sup> We expect Cincinnati Bell to use its best efforts to minimize any such increases, particularly during the initial implementation period when many competitive LECs may still be in the process of preparing their forecasts. In addition, absent a competitive LEC's express approval, Cincinnati Bell must use collocation forecasts obtained from the competitive LEC only for purposes of providing that carrier with reasonable and nondiscriminatory collocation arrangements.<sup>19</sup>

12. Subject to these modifications, we find that the New York Commission standards, including the 45 business day interval for augments, meet our criterion for an interim waiver of the national standards. To the extent any state has affirmatively specified different application processing or provisioning intervals for Cincinnati Bell's operations within that state, Cincinnati Bell, of course, must implement the alternative intervals in that state. To the extent a state has set

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<sup>14</sup> Verizon Petition for Waiver at Attachment C. We note that the New York Commission standards provide for no penalty for inaccurate competitive LEC forecasts, other than an increase in provisioning intervals.

<sup>15</sup> *Proceeding on Motion of the Commission to Examine Issues Concerning the Provision of Digital Subscriber Line Services*, Opinion and Order Concerning Verizon's Provision of DSL Capabilities, Opinion No. 00-12, 8-10 (New York PSC, Oct. 31, 2000) ("*New York PSC Opinion No. 00-12*").

<sup>16</sup> See *Collocation Waiver Order* at ¶ 14.

<sup>17</sup> *Id.* at ¶ 15.

<sup>18</sup> See Verizon Petition for Waiver at Attachment C.

<sup>19</sup> 47 U.S.C. § 222.

application processing or provisioning intervals for particular types of Cincinnati Bell collocation arrangements, Cincinnati Bell must implement those intervals in that state.<sup>20</sup> To the extent a state does not set such intervals, Cincinnati Bell must comply with the conditional waiver granted in this *Order*. Cincinnati Bell would be required to comply with any new state provisioning intervals when the state sets those intervals.

#### **B. Implementing Procedures**

13. In order to implement the conditions discussed above and thereby to effectuate the requested waivers, Cincinnati Bell must offer to provide all forms of physical collocation in accordance with those intervals, except to the extent a state has affirmatively specified its own application processing and collocation interval deadlines. These offers must be consistent with the procedures set forth in the *Collocation Reconsideration Order*.<sup>21</sup> Cincinnati Bell also must file with the state commissions any amendments necessary to bring its SGATs or collocation tariffs into compliance with the interim standards.<sup>22</sup> Cincinnati Bell will have fifteen days from the release of this *Order* to file these amendments. The interim standards shall take effect within 60 days after the amendments filing for SGATs, and at the earliest point permissible under state law for tariffs, except to the extent the state commission affirmatively specifies other application processing or provisioning intervals for a particular type of collocation arrangement.<sup>23</sup>

#### **IV. ORDERING CLAUSES**

14. Accordingly, IT IS ORDERED, pursuant to sections 1-4, 201, 202, 251-254, 256, 271, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201, 202, 251-254, 256, 271, 303(r), and authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, that the Petition for Conditional Waiver filed February 9, 2001 by Cincinnati Bell Telephone Company IS GRANTED, subject to the conditions stated in Part III of this *Memorandum Opinion and Order*. Cincinnati Bell must implement the application processing and provisioning intervals for physical collocation described in Attachment C to Verizon's Petition for Conditional Waiver, as modified by the New York Commission in Opinion No. 00-12, subject to the modifications set forth in this *Order*.

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<sup>20</sup> See *Collocation Reconsideration Order* at ¶ 37.

<sup>21</sup> See *id.* at ¶ 33.

<sup>22</sup> *Id.* at ¶ 36.

<sup>23</sup> *Id.* The conditional waiver we grant Cincinnati Bell in this *Order* will take effect immediately upon this *Order*'s release.

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15. IT IS FURTHER ORDERED that the conditional waiver granted in this *Memorandum Opinion and Order* IS EFFECTIVE UPON RELEASE, in accordance with Section 1.102(b) of the Commission's rules, 47 C.F.R. § 1.102(b).

FEDERAL COMMUNICATIONS COMMISSION

Glenn T. Reynolds  
Acting Deputy Chief  
Common Carrier Bureau