

1 **Q. Does the Telecommunications Act of 1996 contain any provisions relating to**
2 **collocation?**

3 A. Yes. Section 251(c)(6) of the Telecommunications Act of 1996 (“Federal Act”) imposes an
4 obligation on incumbent LECs "to provide, on rates, terms and conditions that are just,
5 reasonable, and nondiscriminatory, for physical collocation of equipment necessary for
6 interconnection or access to unbundled network elements..." Carriers are allowed to provide
7 for virtual collocation if the local exchange carrier demonstrates to the State commission that
8 physical collocation is not practical for technical reasons or because of space limitations.
9 [Federal Act, §251(c)(6)].

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11 **Q. Has the Federal Communications Commission addressed this provision of the Federal**
12 **Act?**

13 A. Yes. On August 8, 1996, the Federal Communications Commission (“FCC”) released its *First*
14 *Report and Order* in CC Docket No. 96-98, in which it concluded that the Federal Act gave it
15 the express authority to require ILECs to provide physical collocation as a method of providing
16 interconnection. [First Report and Order, ¶ 551] In addition, the FCC concluded

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18 ...requiring incumbent LECs to provide virtual collocation and other technically
19 feasible methods of interconnection or access to unbundled elements is
20 consistent with Congress’s desire to facilitate entry into the local telephone
21 market by competitive carriers. In certain circumstances, competitive carriers
22 may find, for example, that virtual collocation is less costly or more efficient than
23 physical collocation. ... Since requesting carriers will bear the costs of other
24 methods of interconnection or access, this approach will not impose an undue
25 burden on the incumbent LECs. [Id. ¶ 552]

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27 The FCC determined that explicit national rules were necessary to implement the collocation
28 requirements of the Federal Act.

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30 We find that specific rules defining minimum requirements for nondiscriminatory
31 collocation arrangements will remove barriers to entry by potential competitors
32 and speed the development of competition. Our experience in the *Expanded*

1 *Interconnection* proceeding indicates that incumbent LECs have an economic
2 incentive to interpret regulatory ambiguities to delay entry by new competitors.¹
3 We and the states should therefore adopt, to the extent possible, specific and
4 detailed collocation rules. We find, however, that states should have flexibility
5 to apply additional collocation requirements that are otherwise consistent with
6 the 1996 Act and our implementing regulations. [Id., ¶ 558]
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8 With regard to costing and pricing the FCC concluded that the TELRIC pricing methodology it
9 established for interconnection and UNEs should also apply to collocation.

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11 ...because section 251(c)(6) requires that incumbent LECs provide physical
12 collocation on "rates, terms, and conditions that are just, reasonable, and
13 nondiscriminatory," which is identical to the standard for interconnection and
14 unbundled elements in sections 251(c)(2) and (c)(3), collocation should be
15 subject to the same pricing rules. [Id., ¶ 558].
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17 With regard to the type of equipment that may be collocated, the FCC took a very broad view,
18 concluding that the term "necessary" as used in § 251(c)(6) means "used" or "useful". The
19 FCC reasoned that this interpretation "is most likely to promote fair competition consistent with
20 the purposes of the [Federal] Act". [Id., ¶ 579].
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22 Finally, the FCC concluded that the Federal Act did not require collocation to be federally
23 tariffed. [Id., ¶ 567]. However, the FCC stated that its past experience with incumbent LECs
24 "suggests that rates, terms and conditions under which incumbent LECs propose to provide
25 these arrangements pursuant to section 251(c)(6) bear close scrutiny. We strongly urge state
26 commissions to be vigilant in their review of such arrangements". [Id., ¶ 569]
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28 **Q. Has the FCC revisited the collocation rules established through its *First Report and***

¹ Our review of the LECs' initial physical and virtual collocation tariffs raised significant concerns regarding the implementation of our *Expanded Interconnection* requirements and resulted in the designation of numerous issues for investigation. The Commission has not yet reached decisions on most of these issues, though it has found that certain rates for virtual collocation were unlawful. See *Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport*, 10 FCC Rcd 6375 (Com. Car. Bur. 1995) (*Phase I Report and Order*); see also *Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection for Special Access*, 8 FCC Rcd 6909 (Com. Car. Bur. 1993) (*Physical Collocation Designation Order*); *Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport*, 10 FCC Rcd 11116 (Com. Car. Bur. 1995) (*Virtual Collocation Designation Order*).

1 **Order in CC Docket No. 96-98?**

2 A. Yes. On March 31, 1999 the FCC issued its *First Report and Order and Further Notice of*
3 *Proposed Rulemaking* in CC Docket No. 98-147. In this order, the FCC adopted “additional
4 measures to further facilitate the development of competition in the advanced services market
5 [by] strengthen[ing] collocation rules to reduce the costs and delays faced by competitors that
6 seek to collocate equipment in an incumbent LEC's central office”. [First Report and Order, ¶
7 6]. Specifically, the FCC

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- 9 • required incumbent LECs to make available to requesting competitive LECs shared
10 cage and cageless collocation arrangements, and in certain situations, “collocation in
11 adjacent controlled environmental vaults or similar structures”;
 - 12 • determined that a collocation method used by one incumbent LEC or mandated by a
13 state commission is presumptively technically feasible for any other incumbent LEC;
 - 14 • allowed incumbent LECs to adopt reasonable security measures to protect their central
15 office equipment;
 - 16 • prohibited incumbent LECs from requiring competitive LEC equipment to meet more
17 stringent safety requirements than those the incumbent LEC imposes on its own
18 equipment;
 - 19 • required incumbent LECs to permit competitors to collocate all equipment used for
20 interconnection and/or access to unbundled network elements (UNEs), even if it
21 includes a "switching" or enhanced services function, and incumbent LECs cannot
22 require that the switching or enhanced services functionality of equipment be
23 disengaged;
 - 24 • required incumbent LECs to permit a competitive LEC to tour the entire central office
25 in which that competitive LEC has been denied collocation space, to provide a list of all
26 offices in which there is no more space, and to remove obsolete unused equipment, in
27 order to facilitate the creation of additional collocation space within a central office;
28 and,
 - 29 • stated that its collocation rules serve as minimum standards, and permitted any state to

1 adopt additional requirements.

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3 **Q. Has the FCC’s *First Report and Order* in Docket No. 98-147 been reviewed by an**
4 **appellate court?**

5 A. Yes. Several LECs appealed the FCC’s order to the United States Court of Appeals for the
6 District of Columbia. [Docket No. 99-1176]. On review, the appellate court rejected many of
7 the criticisms which had been leveled by the LECs. However, it vacated certain portions of the
8 FCC’s order and remanded certain issues to the FCC for further consideration. First, the
9 appellate court reasoned that the FCC’s interpretation of the term “necessary” was
10 unnecessarily broad, and therefore vacated portions of the order in which the FCC relied upon
11 the “used” or “useful” concept. Second, the appellate court vacated portions of the order
12 relating to the FCC’s interpretation of where and how LECs must provide collocation
13 arrangements. Specifically, the court vacated provisions which 1) allow CLECs to choose
14 where to establish collocation space on the LEC’s property, 2) prohibit LECs from requiring
15 CLECs to use separate entrances and 3) prohibit LECs from requiring CLECs to use separate
16 rooms or floors. The vacated portions of the order were remanded to FCC for further
17 consideration.