BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition by Metropolitan Fiber Systems of Florida, Inc. for arbitration of certain terms and conditions of a proposed agreement with Central Telephone Company of Florida and United Telephone Company of Florida concerning interconnection and resale under the Telecommunications Act of 1996	DOCKET NO. 960838-TP ORDER NO. PSC-96-1532-FOF-TP ISSUED: December 16, 1996

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

APPEARANCES:

Richard M. Rindler and Lawrence R. Freedman, Esquires, Swidler & Berlin, 3000 K Street, N.W., Suite 300, Washington, DC, 20007.
On behalf of MFS Communications Company, Inc.

J. Jeffry Wahlen, Esquire, Ausley & McMullen, P.O. Box 391 Tallahassee, FL 32302.
On behalf of Central Telephone Company of Florida and United Telephone Company of Florida.

Michael Billmeier and Monica M. Barone, Esquires, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Commission Staff.

ORDER ON PETITION FOR ARBITRATION

BY THE COMMISSION:

CASE BACKGROUND

The Federal Telecommunications Act of 1996 (Act), 47 USC § 251 et.seq., governs the development of fully competitive markets in the telecommunications industry. Section 251 of the Act addresses the interconnection, unbundling and resale of incumbent local exchange carriers' networks and facilities with other telecommunications providers. Section 252 of the Act sets forth the procedures for negotiation, arbitration, and approval of interconnection and resale agreements.

Section 252(b) addresses agreements established through compulsory arbitration when parties are unable to negotiate an agreement themselves. Specifically, Section 252(b)(1) states:

> (1) Arbitration. - During the period from the 135th to 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

Section 252(b)(4)(c) states that the State commission shall resolve each issue set forth in the petition and response, if any, by imposing the appropriate conditions as required. This Section requires that the state commission conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the negotiation request.

On February 8, 1996, Metropolitan Fiber Systems of Florida, Inc. (MFS) began negotiations with Central Telephone Company of Florida and United Telephone Company of Florida (collectively Sprint). On July 17, 1996, MFS filed a petition requesting that the Commission arbitrate various issues in its negotiations with Sprint. We held an administrative hearing on the unresolved issues on September 19 and 20, 1996.

On August 8, 1996, the Federal Communications Commission (FCC) released its First Report and Order in CC Docket No. 96-98 (Order). The Order established the FCC's requirements for interconnection, unbundling and resale based on its interpretation of the 1996 Act.

This Commission appealed certain portions of the FCC order, and requested a stay of the order pending that appeal. On October 15, 1996, the Eighth Circuit Court of Appeals granted a stay of the FCC's rules implementing Section 251(i) and the pricing provisions of the Act.

On the day of the hearing, MFS and Sprint announced that they had reached agreement resolving most of the issues in MFS' arbitration petition. MFS withdrew those issues from consideration in the case, and the parties submitted a separate negotiated agreement for approval. Three substantive issues remained to be arbitrated: reciprocal compensation rate and arrangement for local call termination; the appropriate rate for unbundled loops, including 2-wire and 4-wire analog grade and 2-wire ISDN digital grade; and the appropriate rates, terms, and conditions for billing, collection, and rating of information services traffic. This arbitration order will address these remaining unresolved issues. Having considered the evidence presented at hearing and the posthearing briefs of the parties, we make our decision on the issues as described in detail below.

DECISION

I. Reciprocal compensation rate and arrangement for local call termination.

Since the parties have agreed to provide local interconnection on a reciprocal basis using the proxy rates established in the FCC's Order, the only unresolved issue for our consideration is whether MFS can charge Sprint a local interconnection rate that includes an element for transport.

MFS states that it should be permitted to include a transport charge in the local interconnection rate that it charges Sprint. MFS claims that its forward-looking technology combines end office and tandem switching functionality within the same switching fabric. MFS argues that although there is no definite transport element in the technology that it uses, MFS is providing an equivalent facility. It is just the architecture that is different. MFS uses a technology that does not require a tandem, end-office switching hierarchy. MFS concedes that it will not provide a transport or equivalent element when terminating Sprint's local traffic in the Winter Park/Maitland service area. MFS claims, however, that the FCC's rules clearly indicate that if MFS is providing equivalent facilities it should receive reciprocal compensation, and part of that compensation is for transport. MFS contends that Sprint should compensate MFS for the same function it

is performing for Sprint. MFS also argues that it is entitled to receive tandem switching charges when its switch is in the same geographic area as an incumbent local exchange company (ILEC). MFS states that Section 51.711(a)(3) of the FCC's rules provides that as long as a new entrant's switch serves approximately the same area as the ILEC switch, the new entrant is entitled to receive compensation based on the call termination rate plus the tandem differential, or $.0055 per minute of use.

MFS argues that paragraphs 1085-1090 of the FCC Order presumes requirements for symmetrical and reciprocal compensation between incumbent LECs and non-incumbent LECs. MFS points out that the FCC Rules provide for an exception to the requirement for reciprocal compensation for local call transport and termination only where the competitive local exchange company (CLEC) requests such exception and makes a showing that its costs are greater than the ILEC's cost. See Section 51.711(b). MFS states that this is not the case here, and accordingly, the Commission should permit MFS to receive reciprocal compensation for local call transport and termination. MFS points to Section 51.701(c) to support its contention that because MFS will perform an equivalent function it is entitled to the same compensation as Sprint.

Sprint claims that the Act, the Order and the Rules require Sprint to compensate MFS for local transport elements only if MFS actually provides the transport element or an equivalent element. Traditionally, Sprint argues, "transport" has meant the facility linking a carrier's tandem switch to its end office switch. There may also be a separate transport facility linking each end office subtending a tandem switch. Sprint claims that MFS does not provide a "transport" facility under this definition. Sprint contends that neither the Act nor the FCC's Order and Rules contemplate that the compensation for transporting and terminating local traffic be symmetrical when one party does not actually employ the network facility for which it seeks compensation. Sprint states that Section 51.701(c) requires equal compensation only when MFS provides the equivalent facility to that provided by Sprint.

Sprint also contends that Section 51.711 only applies when the ILEC and alternative local exchange company (ALEC) are providing the same transport and termination services. Here, MFS concedes it is not providing Sprint with any transport service in connection with the termination of Sprint's local interconnection traffic, while Sprint is providing both the transport and termination services required to deliver MFS' local telecommunications traffic to Sprint's end users.

Sprint also believes that the FCC established a proxy rate for transport different from the tandem rate, and also established different proxy rates for direct and common transport. See §51.513(c)(3) and (4). According to Sprint, if the FCC had concluded that transport would be a compensation element regardless of whether transport was in fact provided, there would have been no need to set a proxy transport rate in the first place; nor would the FCC, in any event, have differentiated between direct and shared transport and established separate proxy rates. Sprint argues that if MFS is not furnishing Sprint with transport, there is no way of knowing how to calculate the transport charges as required by Section 51.513(c)(3) and (4).

Upon consideration, we believe that the Act is clear regarding reciprocal compensation. Section 252(d)(2)(A)(i) requires that a state commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless

> (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier . . .

Section 51.701(c) of the FCC's rules defines transport as the transmission and any necessary tandem switching of local telecommunications traffic subject to Section 251(b)(5) of the Act, from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC. Since MFS has only one switch, there technically can be no transport. We believe that Section 51.701(c) requires equal compensation only when MFS provides the equivalent facility to that provided by Sprint. MFS does not provide the same or equivalent transport facility as Sprint. Since the record shows that MFS does not perform a transport function, there is no cost to recover, and we find that MFS is therefore not entitled to compensation for transport.

The FCC's Order provides that states may establish transport and termination rates in the arbitration process that vary according to whether the traffic is routed through a tandem switch or directly to the end-office switch. States shall also consider whether new technologies perform functions similar to those performed by an incumbent LEC's tandem switch and thus, whether some or all calls terminating on the new entrant's network should be priced the same as the sum of transport and termination via the

ILEC's tandem switch. In this case, the record indicates that the technology used by MFS is no different than the technology used by Sprint. The only difference is the size of the companies' operations, not the technologies used to provide transport.

The evidence in the record does not support MFS' position that its switch provides the transport element; and the Act does not contemplate that the compensation for transporting and terminating local traffic should be symmetrical when one party does not actually use the network facility for which it seeks compensation. Accordingly, we hold that MFS should not charge Sprint for transport because MFS does not actually perform this function.

II. The appropriate rate for unbundled loops

Both MFS and Sprint agree that 2-wire analog voice grade loops, 4-wire analog voice grade loops, and 2-wire ISDN digital grade loops should be unbundled. Both parties agree that the FCC proxy of $13.68 will apply until total element long run incremental cost (TELRIC) rates can be established. The questions that remain for resolution are whether the $13.68 proxy rate should be geographically deaveraged, and how should the cross-connection element be priced on an interim basis.

Geographic Deaveraging

Since the FCC's Order and Rules regarding geographic deaveraging are subject to the Eighth Circuit's stay pending appeal, we will base our decision on our interpretation of the Act and its application to the record before us.

The Act, in Section 252(d), contains the pricing standards for unbundled network elements. Section 252(d)(1), Interconnection and Network Element Charges, states:

> Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section--
>
> (A) shall be-
>
> (i) based on the cost (determined without reference to a rate-of-return or other

rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and

(ii) nondiscriminatory, and

(B) may include a reasonable profit.

MFS argues that the Florida $13.68 proxy loop rate must be geographically deaveraged. MFS bases its argument primarily upon the FCC's Interconnection Order. Sprint agrees that permanent loop rates should be deaveraged, but not until it is allowed to produce deaveraged rates based on TELRIC cost studies. Sprint does not agree that the FCC Order requires that the proxy rate be deaveraged. Sprint argues that cost-based prices of unbundled loops should be deaveraged, but the FCC's Florida proxy of $13.68 is not a cost-based price. According to Sprint, until TELRIC-based rates can be developed it is appropriate to establish the FCC's proxy rate of $13.68 without any geographic or zone density deaveraging. Sprint also contends that the only evidence in the record to support deaveraged prices is the flawed methodology presented by MFS' witness.

MFS's witness proposes that we establish three zones for deaveraging by clustering wire centers by average loop length. MFS states that loop length is the principal cost driver for loops. Shorter loops (those typically found in metropolitan areas) cost less than longer loops (those typically found in rural areas). MFS states that the unbundled loops in Zone 1 are the least costly to provide, and recommends a deaveraged price of $7.56 per unbundled loop per month. MFS proposes a price of $11.85 for Zone 2. MFS states that Zone 3 should include the wire centers that are most costly to provide and recommends $22.54 per unbundled loop per month. MFS also proposes that no zone should contain less than 25% of the wire centers or more than 50% of the wire centers. The evidence showed that the rates MFS proposes are not based on any underlying cost studies. They are derived from MFS' proposed method of deaveraging of the FCC proxy.

Sprint points out that if we were to adopt MFS' proposed deaveraging methodology, 81 of Sprint's 101 wire centers, including Maitland, Naples, and Tallahassee, would be included in MFS' proposed zone 3, the most costly group. Sprint argues if 80% of Sprint's wire centers are included in Zone 3, MFS' own requirement that zones consist of roughly 25 to 50 % of the total loops would not be met. MFS' proposed Zone 1 would include only 11 Sprint wire centers. This zone includes Kingsley Lake which has a density of 3 loops per square mile, while the average loop density in Florida

is 300 loops per square mile. At the hearing, MFS' witness Harris agreed that loop density is one criteria that could be used to determine loop cost, but MFS did not consider loop density in its methodology. Sprint asserts that even though MFS' proposed deaveraging methodology and recommended loop prices might be beneficial to Sprint during the interim, Sprint still does not believe it is appropriate to geographically deaverage the FCC proxy price.

We will not require that the FCC proxy rate be deaveraged at this time. We do not believe it is appropriate to require deaveraging, for three reasons. First, the Act permits, but does not require geographic deaveraging. Second, the FCC's pricing rules and its order implementing the rules have been stayed pending appeal. Third, the only methodology to deaverage loop prices proposed by the parties to the proceeding is not based on sufficient cost data, and it produces the absurd result of placing some of Sprint's largest and most dense wire centers in the high cost rural Zone 3.

We believe there is a better way to establish interim deaveraged zones. We would use Sprint's currently tariffed special access and switched access zones. These zones are based on the number of DS-1's per wire center. We do not believe, however, that there is sufficient cost evidence in the record to properly deaverage the $13.68 proxy rate for those zones.

We believe that Section 252(d)(1) of the Act allows geographic deaveraging of unbundled elements; but we do not believe that it requires geographic deaveraging. Therefore, because the Act does not require it, and because, the parties have not provided sufficient cost evidence in this case to support it, we will not require that the interim proxy of $13.68 be geographically deaveraged. Sprint should continue to develop TELRIC cost studies in order to establish permanent loop rates that can be deaveraged based on cost.

Cross-connection element

An unbundled cross-connection element is the facility that links unbundled loops to MFS' collocated equipment in the Sprint wire center. MFS proposes a cross-connect rate of $.21 per month in the interim until permanent rates can be set based on appropriate cost studies. Sprint proposes to use its previously approved Florida virtual collocation cross-connection rates in the interim. MFS proposes that the $.21 per cross-connection per month rate should apply to all types of cross-connections. Sprint proposes to use the tariffed cross-connection rates, which vary

depending upon the type of cross-connection requested: DS-0 is $1.30 per month; DS-1 is $4.45 per month; and DS-3 is $53.55 per month. Sprint also states that it will produce a TELRIC study for the cross-connection element, and proposes a true-up when cross-connection rates are finalized.

MFS' proposed interim rate of $.21 per cross-connection is based on Ameritech's tariffed rate. Sprint argues that we should not base the interim rate on Ameritech's rate, because MFS has not demonstrated that the rate is cost-justified or even representative of the same cost structure as Sprint's. Sprint produced some price ranges for the cross-connection rate which were based on preliminary TELRIC studies. The ranges for the preliminary TELRIC-based rates are: $.35 to $1.00 for DS-0; $1.35 to $5.00 for DS-1; and $13.50 to $20.00 for DS-3.

We will use the middle range of Sprint's preliminary TELRIC studies, because it should approximate TSLRIC, to set the interim cross-connection rates, instead of the currently tariffed virtual collocation cross-connection rates. The rates derived from the preliminary TELRIC studies are more closely based on costs than either Sprint's tariffed rates or the Ameritech rates proposed by MFS. These interim rates are consistent with the provisions of the Act and the FCC's Order and rules.

Accordingly, Sprint should provide the unbundled cross-connection element at the following interim rates:

DS-0 Cross-Connect - $ 0.68 per month
DS-1 Cross-Connect - $ 3.18 per month
DS-3 Cross-Connect - $ 16.75 per month

The interim cross-connection rates will be subject to a true-up when TELRIC cost studies are filed and evaluated by this Commission as the parties have agreed. The true-up will, as the FCC states in its Order,". . . ensure that no carrier is disadvantaged by an interim rate that differs from the final rates established pursuant to arbitration." (Order at ¶ 1066) We will not require Sprint to file TSLRIC studies to establish permanent rates, because the parties have agreed to use TELRIC studies.

III. The appropriate rates, terms, and conditions for billing, collection, and rating of information services traffic.

MFS has proposed a specific treatment for the handling (rating and billing) of end user calls to Information Services Providers (ISPs). N11 and 976-XXXX are typical numbers associated with

information services. For example, end users might dial 311 to reach a sports report from an ISP. The LEC would bill the end user a prearranged charge for that call and remit the amount to the ISP, less a specified fee for billing and collecting. The end user charge and the billing and collection fee are specified in a contract between the ISP and the LEC.

In this proceeding, MFS has proposed an arrangement to be used if one of its customers calls an ISP that has a contract with Sprint but not with MFS. MFS proposes that it send the call detail to Sprint, which would rate the call according to its contract with the ISP and send the rated call detail back to MFS. MFS would then bill its own customer, and remit the money to Sprint less $.05 per minute for handling and less uncollectibles. MFS has proposed that this be a reciprocal arrangement in the event that it decides to provide an information services platform.

MFS argues that it requires this arrangement because it does not have the resources to set up contracts with ISPs at the same time that it is setting up its own services. MFS further argues that without this arrangement, calls from its customers to ISPs may be blocked. If the calls are not blocked, MFS customers would still be confused if they received a bill from Sprint instead of from MFS. MFS also argues that if MFS provides an ISP platform for Sprint customers, MFS would require access to Sprint billing names and addresses if billing and rating information were not exchanged. MFS' witness admitted at hearing that MFS had not yet attempted to approach ISPs to discuss billing and collection contracts. MFS' witness stated that MFS intended to do so in the future, but MFS wanted information services to be available to its customers as soon as it offers service.

MFS states that its proposal constitutes a request for an unbundled network element as defined in both the Act and the FCC Order. In both the Act and the Order, an unbundled network element includes "information sufficient for billing and collection," which is what MFS argues it is proposing here.

Sprint's witness acknowledges that Sprint must honor any technically feasible request for an unbundled network element; but he argues that ISP traffic is not an unbundled network element under Section 251 of the Act. Sprint also argues that MFS's proposal is just an attempt to piggy-back on Sprint's relationship with an ISP. Sprint notes that MFS does not contend that this is a LEC monopoly function. Sprint contends that MFS only made this proposal because it has not yet entered into contracts of its own with ISPs. Sprint suggests that MFS should be required to negotiate its own contracts with ISPs. Sprint notes that it

currently has its own agreements with ISPs who are located in BellSouth's adjoining service area but who will serve Sprint customers. Sprint believes that MFS should do the same.

Upon consideration, we agree to some extent with each party's position on this issue. We agree with MFS that a seamless network is preferable for the end-user. As local markets become more competitive, with several providers serving one area, these providers need to cooperate to provide the services that end users want without needless delays and blockages. We also agree with Sprint, however, that it is inappropriate for MFS simply to assume a right to Sprint's contract with an ISP. Therefore, we find that MFS's request for call detail sufficient to bill and collect charges for information services from its customers is a network element, and Sprint should provide it. We approve MFS's proposal, with the exception that MFS should not deduct or retain for itself any portion of the amounts due an ISP, unless MFS and that ISP have a signed agreement specifying the appropriate charge. To the extent Sprint incurs any additional costs as a result of handling the rating and billing of ISP calls for MFS, nothing in our decision will preclude Sprint from recovering those costs through incremental charges to MFS.

Both Sprint and MFS should rate calls to ISPs when requested to do so by each other. We believe rating and billing arrangements for information services traffic should be transparent to an end user. Local carriers should not block calls to ISPs simply because there is no contract with the ISP. This approach should provide an incentive to MFS to enter into its own contracts with ISPs as quickly as possible.

CONCLUSION

We have conducted the arbitration of the unresolved issues in this proceeding pursuant to the directives and criteria of the Telecommunications Act of 1996, 47 USC § 251 and § 252. We believe that our decision is consistent with the terms of section 251 and the provisions of the FCC Rules that have not been stayed pending appeal. Pursuant to the terms of Section 252(e)(4) of the Act, we direct the parties to submit a written agreement memorializing and implementing our arbitration decision within 30 days of the issuance of this arbitration order. Within 30 days of submission of the agreement, our staff will review the agreement. If the agreement comports with our arbitration decisions here, the agreement is deemed approved without further formal Commission action. If the agreement is not consistent with our arbitration decision, our staff will bring the agreement to us for review. If the parties cannot agree to the language of the agreement, they

shall each submit their version of the agreement, and we will decide on the language that best incorporates the substance of our arbitration decision.

Based on the foregoing it is,

ORDERED by the Florida Public Service Commission that the Petition by Metropolitan Fiber Systems of Florida, Inc. for arbitration of certain terms and conditions of a proposed agreement with Central Telephone Company of Florida and United Telephone Company of Florida concerning interconnection and resale under the Telecommunications Act of 1996 is resolved as set forth in the body of this Order. It is further

ORDERED that the parties shall submit a written agreement memorializing this arbitration decision within 30 days of the date this Order is issued. If the agreement is consistent with this arbitration decision, it is deemed approved without further formal Commission action. If the agreement is not consistent with this arbitration decision, our staff shall bring the agreement before us for review. If the parties cannot agree to the language of the agreement, they shall each submit their version, and we will decide on the language that best incorporates the substance of this arbitration decision. It is further

ORDERED that this docket shall remain open pending the submission of the parties written agreement memorializing this decision.

By ORDER of the Florida Public Service Commission, this 16th day of December, 1996.

Blanca S. Bayó

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

MCB

DISSENT

Commissioner Deason dissented from the Commission's decision regarding the appropriate rates, terms and conditions for billing, collection and rating of information services traffic between MFS and Sprint.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.