

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for approval of amendment to interconnection agreement negotiated by BellSouth Telecommunications, Inc. and Metropolitan Fiber Systems of Florida, Inc., pursuant to Sections 251, 252, and 271 of the Telecommunications Act of 1996.

DOCKET NO. 970315-TP
ORDER NO. PSC-97-0772-FOF-TP
ISSUED: July 1, 1997

The following Commissioners participated in the disposition of this matter:

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

ORDER APPROVING AMENDMENT TO INTERCONNECTION,
RESALE AND UNBUNDLING AGREEMENT

BY THE COMMISSION:

On March 13, 1997, BellSouth Telecommunications, Inc. (BST) and Metropolitan Fiber Systems of Florida, Inc. (MFS) filed an amendment to their existing agreement concerning interconnection, resale and unbundling of telecommunications services with the Commission for approval under 47 U.S.C. § 252(e) of the Telecommunications Act of 1996, (the Act). The Commission approved the initial agreement between the companies in Order No. PSC-96-1508-FOF-TP, issued December 12, 1996. The amendment to the agreement is attached to this Order as Attachment A and incorporated by reference herein.

Both the Act and Chapter 364, Florida Statutes, encourage parties to enter into negotiated agreements to bring about local exchange competition as quickly as possible. Under the requirements

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of 47 U.S.C. § 252(e), negotiated agreements must be submitted to the state commission for approval. Section 252(e)(4) requires the state commission to reject or approve the agreement within 90 days after submission or it shall be deemed approved.

This amendment to the existing agreement governs the relationship between the parties pursuant to 47 U.S.C. § 251 of the Act. Under 47 U.S.C. § 252(a)(1), "the agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement." The amendment includes provisions covering terms and conditions for discount rate applicable to MFS for purchase of services from BST for resale, payment and billing arrangements, and establishment and discontinuance of service. The discounts for resale are 18% for residential and 12% for business telecommunications services.

Upon review of the proposed amendment to the agreement, we find that it complies with Florida law and the Telecommunications Act of 1996 and we approve it. BST and MFS must file any supplements or further modifications to their agreement with the Commission for review under the provisions of 47 U.S.C. § 252(e). We note that approval of this amendment to the existing agreement does not constitute a determination that BST has met the requirements of Section 271 of the Telecommunications Act.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the amendment to the existing agreement concerning interconnection, resale and unbundling of telecommunications services between BellSouth Telecommunications, Inc. and Metropolitan Fiber Systems of Florida, Inc. is incorporated by reference into this Order, and hereby approved. It is further

ORDERED that any supplements or modifications to their agreement must be filed with the Commission for review under the provisions of 47 U.S.C. Section 252 (e). It is further

ORDERED that this docket shall be closed.

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By ORDER of the Florida Public Service Commission this 1st,
day of July, 1997.



BLANCA S. BAYO, Director
Division of Records and Reporting

(S E A L)

KMP

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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 in Federal district court pursuant to the Federal Telecommunications Act of 1996, 47 U.S.C. § 252(e)(6).

ATTACHMENT A
Amendment Regarding Resale Arrangement to
The Florida Interconnection Agreement between MFS Communications
Company, Inc. and BellSouth Telecommunications, Inc. dated August 26, 1996

PURSUANT TO THIS AMENDMENT ("the Amendment"), MFS Communications Company, Inc. ("MFS") and BellSouth Telecommunications, Inc. ("BellSouth") hereinafter referred to collectively as the "Parties" hereby agree to amend that certain Florida Interconnection Agreement between the Parties dated August 26, 1996 ("Interconnection Agreement").

NOW, THEREFORE, for and in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, BellSouth and MFS hereby covenant and agree as follows:

I. Term of the Agreement

A. The term of this Agreement shall be consistent with the term set forth in Section 21.0 of the Interconnection Agreement.

B. The rates pursuant to which MFS is to purchase services from BellSouth for resale shall be at a discount rate off of the retail rate for the telecommunications service. The discount rates shall be as set forth in Exhibit A, attached hereto and incorporated herein by this reference.

II. Definition of Terms

A. **CUSTOMER OF RECORD** means the entity responsible for placing application for service; requesting additions, rearrangements, maintenance or discontinuance of service; payment in full of charges incurred such as toll, directory assistance, etc.

B. **DEPOSIT** means assurance provided by a customer in the form of cash, surety bond or bank letter of credit to be held by the Company.

C. **END USER** means the ultimate user of the telecommunications services.

D. **END USER CUSTOMER LOCATION** means the physical location of the premises where an end user makes use of the telecommunications services.

E. **OTHER LOCAL EXCHANGE COMPANY (OLEC)** means a telephone company certificated by the public service commissions of the Company's franchised area to provide local exchange service within the Company's franchised area.

F. **RESALE** means an activity wherein a certificated OLEC such as MFS obtains at wholesale the telecommunications services of the Company and then resells those telecommunications services to the public (with or without "adding value").

G. **RESALE SERVICE AREA** means the area, as defined in a public service commission approved certificate of operation, within which an OLEC, such as MFS, may offer resold local exchange telecommunications service.

III. General Provisions

- A. MFS may resell at wholesale rates any telecommunications service that the Company provides at retail to subscribers who are not telecommunications carrier. However short-term promotions, those in effect for no more than 90 days are not subject to the wholesale discount. Grandfathered service, residential service, and Lifeline/LinkUp services are available for resale only to those end users eligible to purchase such service. As such, residential services are available for resale to only residential customers, Grandfathered services are available for resale to existing grandfathered customers only, and Lifeline and LinkUp services are available for resale to only those end users eligible to receive the service. Further, MFS agrees to abide by any joint marketing restriction, if applicable to MFS, imposed by the Telecommunications Act of 1996.
- B. The provision of services by the Company to MFS does not constitute a joint undertaking for the furnishing of any service. MFS may resell services only within the specific resale area as defined in its certificate.
- C. MFS will be the customer of record for all services purchased from BellSouth. Except as specified herein, the Company will take orders from, bill and expect payment from MFS for all services.
- D. MFS will be the Company's single point of contact for all services purchased pursuant to this Agreement. The Company shall have no contact with the end user except to the extent provided for herein.
- E. The Company will continue to bill the end user for any services that the end user specifies it wishes to receive directly from the Company.
- F. The Company maintains the right to serve directly any end user within the service area of MFS. The Company will continue to directly market its own telecommunications products and services and in doing so may establish independent relationships with end users of MFS.
- G. The Company and MFS agree not to interfere with the right of any person or entity to obtain service directly from the Company or from MFS.
- H. Telephone numbers are assigned to the service furnished. MFS has no property right to the telephone number or any other call number designation associated with services furnished by the Company, and no right to the continuance of service through any particular central office. The Company reserves the right to change such numbers, or the central office designation associated with such numbers, or both, whenever the Company deems it necessary to do so in the conduct of its business. The Company agrees to treat numbers associated with resold services in the same manner as it treats numbers it provides to its end users. Telephone numbers transmitted via any resold service features are intended solely for the use of the end user of the feature. Unless otherwise agreed, resale of this information is prohibited.
- I. Service is furnished subject to the condition that it will not be used for any unlawful purpose.
- J. Service will be discontinued if any law enforcement agency advises that the service being used is in violation of the law.

K. The Company can refuse service when it has reasonable grounds to believe that service will be in violation of the law.

L. The Company accepts no responsibility to any person for any unlawful act committed by MFS or its end users as part of providing service to MFS for purposes of resale or otherwise.

M. The Company will cooperate fully with law enforcement agencies with subpoenas and court orders for assistance with the Company's customer. Law enforcement agency subpoenas and court orders regarding end users of MFS will be directed to MFS. The Company will bill MFS for implementing any requests by law enforcement agencies regarding MFS end users.

N. The characteristics and methods of operation of any direct, facilities or equipment provided by other than the Company shall not:

1. Impair service over any facilities of the Company, its affiliates, or its connecting and co-occurring carriers involved in its service;
2. Cause damage to their plant;
3. Impair the privacy of any communications; or
4. Create hazards to any employees or the public.

O. Facilities and/or equipment utilized by BellSouth to provide service to MFS remains the property of BellSouth.

P. White page directory listings will be provided in accordance with regulations set forth in Section A6 of the General Subscriber Service Tariff and will be available for resale. Yellow page listings will be provided pursuant to the BAPCO Agreement attached to the Interconnection Agreement.

Q. The Company reserves the right to periodically audit services purchased by MFS to establish authenticity of use. Such audit shall not occur more than once in a calendar year. MFS shall make any and all records and data available to the Company or the Company's auditor's on a reasonable basis. The Company shall bear the cost of said audit.

IV. Maintenance of Services

A. Services resold under the Company's Tariffs and facilities and equipment provided by the Company shall be maintained by the Company.

B. MFS or its end users may not rearrange, move, disconnect, remove or attempt to repair any facilities owned by the Company, other than by connection or disconnection to any interface means used, except with the written consent of the Company.

C. MFS accepts responsibility to notify the Company of situations that arise that may result in a service problem.

- D. MFS will be the Company's single point of contact for all repair calls on behalf of MFS's end user.
- E. MFS will contact the appropriate repair centers in accordance with procedures established by the Company.
- F. For all repair requests, MFS accepts responsibility for adhering to the Company's prescreening guidelines prior to referring the trouble to the Company.
- G. The Company will bill MFS for handling troubles that are found not to be in the Company's network pursuant to its standard time and material charges. The standard time and material charges will be no more than what BellSouth charges to its retail customers for the same service.
- H. The Company reserves the right to contact MFS's customers, if deemed necessary, for maintenance purposes.

V. Establishment of Service

- A. After receiving certification as a local exchange company from the appropriate regulatory agency, MFS will provide the appropriate Company service center the necessary documentation to enable the Company to establish a master account for MFS. Such documentation shall include the Application for Master Account, proof of authority to provide telecommunications service, an Operating Company Number (OCN) assigned by the National Exchange Carriers Association (NECA) and a tax exemption certificate, if applicable. When necessary deposit requirements are met, the Company will begin taking orders for the resale of service.
- B. Service orders will be in a standard format as defined in the BellSouth Resale Ordering Guidelines and will adhere to approved industry standards.
- C. When notification is received from MFS that a current customer of the Company will subscribe to MFS's service, standard service order intervals for the appropriate class of service will apply.
- D. The Company will not require end user confirmation prior to establishing service for MFS's end user customer. MFS must, however, be able to demonstrate end user authorization upon request.
- E. MFS will be the single point of contact with the Company for all subsequent ordering activity resulting in additions or changes to resale services except that the Company will accept a request directly from the end user for conversion of the end user's service from MFS to the Company or will accept a request from another OLCB for conversion of the end user's service from the MFS to the other OLCB. The Company will notify MFS that such a request has been processed.
- F. If either party determines that an unauthorized change in local service has occurred, the service will be reestablished with the appropriate local service provider and the party initiating the unauthorized change will be assessed an unauthorized change charge as set forth below. Appropriate nonrecurring charges will also be assessed to the party initiating the unauthorized change.

These charges can be adjusted if the requesting party provides satisfactory proof of authorization.

Unauthorized Charge

(a) each Residence or Business line,
Pay Telephone or trunk
\$19.41

G. In instances where MFS cannot establish appropriate creditworthiness, the Company may, in order to safeguard its interest, require MFS to make a deposit to be held by the Company as a guarantee of the payment of rates and charges, unless satisfactory credit has already been established. Any such deposit may be held during the continuance of the service as security for the payment of any and all amounts accruing for the service. Upon termination pursuant to Articles 21.0, 30.0 or 33.0 of the Interconnection Agreement, any MFS deposits held by BellSouth, may be applied to the account balance.

H. Such deposit may not exceed two months' estimated billing.

I. The fact that a deposit has been made in no way relieves MFS from complying with the Company's regulations as to advance payments and the prompt payment of bills on presentation nor does it constitute a waiver or modification of the regular practices of the Company providing for the discontinuance of service for non-payment of any sums due the Company.

J. The Company reserves the right to increase the deposit requirements when, in its sole judgment, the conditions justify such action.

K. In the case of a cash deposit, interest at the rate of six percent per annum shall be paid to MFS during the continuance of the deposit. Interest on a deposit shall accrue annually and, if requested, shall be annually credited to MFS by the accrual date.

VI Payment And Billing Arrangements

A. When the initial service is ordered by MFS, the Company will establish an accounts receivable master account for MFS. MFS will not be liable for any outstanding charges that a customer owes to BellSouth at the time MFS assumes the customer's account. BellSouth will not disconnect a MFS customer for any dispute that originated prior to the time MFS assumed the customer's account.

B. Payment of all charges will be the responsibility of MFS. MFS shall make payment to the Company for all services billed. The Company is not responsible for payments not received by MFS from MFS's customer. The Company will not become involved in billing disputes that may arise between MFS and its customer. Payments made to the Company as payment on account will be credited to an accounts receivable master account and not to an end user's account. The Company will use the same methods and judgment in processing disputed charges between MFS and any interexchange carrier as whose behalf the Company provides billing, as the Company uses in processing disputed charges between its own end users and interexchange carriers.

C. The Company will render bills each month on established bill days for each of MFS's accounts.

D. The Company will bill MFS, in advance, charges for all services to be provided during the ensuing billing period except charges associated with service usage, which charges will be billed in arrears. Charges will be calculated on an individual end user account level, including, if applicable, any charges for usage or usage allowances. BellSouth will also bill all charges, including but not limited to 911 and E911 charges, telecommunications relay charges, and franchise fees, on an individual end user account level.

E. The payment will be due by the next bill date (i.e., same date in the following month as the bill date) and is payable in immediately available funds. Payment is considered to have been made when received by the Company.

If the payment due date falls on a Sunday or on a Holiday which is observed on a Monday, the payment due date shall be the first non-Holiday day following such Sunday or Holiday. If the payment due date falls on a Saturday or on a Holiday which is observed on Tuesday, Wednesday, Thursday, or Friday, the payment due date shall be the last non-Holiday day preceding such Saturday or Holiday. If payment is not received by the payment due date, a late payment penalty, as set forth in I following, shall apply.

F. Obligations of MFS for taxes and fees shall be set forth in Section 36.17 of the Interconnection Agreement executed between MFS and BellSouth dated August 26, 1996.

G. As the customer of record, MFS will be responsible for, and remit to the Company, all charges applicable to its resold services for emergency services (E911 and 911) and Telecommunications Relay Service (TRS) as well as any other charges of a similar nature.

H. If any portion of the payment is received by the Company after the payment due date as set forth preceding, or if any portion of the payment is received by the Company in funds that are not immediately available to the Company, then a late payment penalty shall be due to the Company. The late payment penalty shall be the portion of the payment not received by the payment due date times a late factor. The late factor shall be the lesser of:

1. The highest interest rate (in decimal value) which may be levied by law for commercial transaction, compounded daily for the number of days from the payment due date to and including the date that MFS actually makes the payment to the Company, or
2. 0.000590 per day, compounded daily for the number of days from the payment due date to and including the date that MFS actually makes the payment to the Company.

I. Any switched access charges associated with interexchange carrier access to the resold local exchange lines will be billed by, and due to, the Company. No additional charges are to be assessed to MFS.

J. The Company will not perform billing and collection services for MFS as a result of the execution of this Agreement. All requests for billing services should be referred to the appropriate entity or operational group within the Company.

K. Pursuant to 47 CFR Section 51.617, the Company will, on an interim basis, bill the charges shown below which are identical to the EUCL rates billed by BST to its end users.

	Monthly Rate
1. Residential	
(a) Each Individual Line or Trunk	\$3.50
2. Single Line Business	
(b) Each Individual Line or Trunk	\$3.50
3. Multi-line Business	
(c) Each Individual Line or Trunk	\$6.00

L. In general, the Company will not become involved in disputes between MFS and MFS's end user customers over resold services. If a dispute does arise that cannot be settled without the involvement of the Company, MFS shall contact the designated Service Center for resolution. The Company will make every effort to assist in the resolution of the dispute and will work with MFS to resolve the matter in as timely a manner as possible. MFS may be required to submit documentation to substantiate the claim.

M. MFS is responsible for payment of all appropriate charges for completed calls, services, and equipment. If objection in writing is not received by the Company within twenty-nine days after the bill is rendered, the account shall be deemed correct and binding upon MFS.

VII. Discontinuance of Service

A. The procedures for discontinuing service to an end user are as follows:

1. Where possible, the Company will deny service to MFS's end user on behalf of, and at the request of, MFS. Upon restoration of the end user's service, restoral charges will apply and will be the responsibility of MFS.
2. At the request of MFS, the Company will disconnect a MFS end user customer.
3. All requests by MFS for denial or disconnection of an end user for nonpayment must be in writing.
4. MFS will be made solely responsible for notifying the end user of the proposed disconnection of the service.
5. The Company will continue to process calls made to the Annoyance Call Center and will advise MFS when it is determined that annoyance calls are originated from one of their end user's locations. The Company shall be indemnified, defended and held harmless by MFS and/or the end user against any claim, loss or damage arising from providing this information to MFS. It is the responsibility of MFS to take the corrective action necessary with its customers who make annoying calls. Failure to do so will result in the Company's disconnecting the end user's service.

- B. The procedures for discontinuing service to MFS are as follows:**
1. Pursuant to the Section 33.0 of the Interconnection Agreement and upon a determination that MFS has violated Section 36.4 of the Interconnection Agreement, BellSouth shall reserve the right to discontinue service to MFS.
 2. The procedures for discontinuing resale service to MFS shall be as delineated in Sections 21.0, 30.0 and 33.0 of the Interconnection Agreement.

VIII. Miscellaneous

- A. The liability and indemnification obligations of the parties shall be as set forth in Section 35.0 of the Interconnection Agreement.**
- B. Issues regarding the treatment of proprietary and confidential information will be governed pursuant to Section 21.0 of the Interconnection Agreement.**
- C. The resolution of disputes shall be governed according to Section 33.0 of the Interconnection Agreement.**
- D. The Parties agree that this Amendment shall not be proffered by either party in another jurisdiction as evidence of any concession or as a waiver of any position taken by the other party in that jurisdiction or for any other purpose.**
- E. Any failure by either party to insist upon the strict performance by the other party of any of the provisions of this Amendment shall not be deemed a waiver of any of the provisions of this Amendment, and each party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Amendment.**
- F. This Amendment shall be governed by, and construed and enforced in accordance with Section 36.8 of the Interconnection Agreement.**
- G. This Amendment was executed after arm's length negotiations between the undersigned Parties and reflects the conclusion of the undersigned that this Amendment is in the best interests of all Parties.**
- H. Every notice, consent, approval, or other communications required or contemplated by this Amendment shall be provided pursuant to Section 34.0 of the Interconnection Agreement.**
- I. More favorable resale arrangements may be available to MFS pursuant to Section 24.0 of the Interconnection Agreement.**
- J. This Amendment may be amended at any time pursuant to Section 36.1 of the Interconnection Agreement.**

K. The Parties agree that all of the other provisions of the Florida Interconnection Agreement dated August 26, 1996 shall remain in full force and effect and by this reference are incorporated herein.

L. The Parties agree that the execution of this Amendment and its submission to the Commission is made without prejudice to the rights of either party to challenge the Commission's decision regarding the resale of BellSouth telecommunications service to new entrants. The Parties further agree to conform this Amendment to any final nonappealable decision of the Commission regarding resale.

BellSouth Telecommunications, Inc.

BY: Jerry D. Hendrup
Signature

NAME: Jerry D. Hendrup
Printed Name

TITLE: Director

MFS Communications Company, Inc.

BY: Kevin A. Anderson
Signature

NAME: KEVIN ANDERSON
Printed Name

TITLE: VP - NETWORK DEVELOPMENT

EXHIBIT "A"
APPLICABLE DISCOUNTS

The telecommunications services available for purchase by MFS for the purposes of resale to MFS end users shall be available at the following discount off of the retail rate.

<u>STATE</u>	<u>RESIDENCE</u>	<u>DISCOUNT</u>	<u>BUSINESS</u>
FLORIDA	18%		12%

If a state commission orders a discount different from those specified above, and if Company has provided those discounts to another OLEC, those same discounts will be offered to MFS.