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VIA FEDERAL EXPRESS

Ms. Blanca S. Bayo
Director, Division of Records & Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 950985-TP

Dear Ms. Bayo:

Please find enclosed for filing in connection with the above-referenced docket the original and 15 copies of the **Posthearing Brief and Statement of Issues and Positions of Metropolitan Fiber Systems of Florida, Inc.** Also enclosed is a double-sided high-density disk using the Windows 3.11 operating system and WordPerfect 5.1 software which contains a copy of the enclosed document.

Also enclosed is an additional copy of the Posthearing Brief. Please date stamp and return this copy in the enclosed self-addressed stamped envelope. Thank you, in advance, for your attention to this matter. If you have any questions, please do not hesitate to contact me at the above telephone number.

Very truly yours,

James C. Falvey

James C. Falvey

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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

Resolution of Petition(s) to establish nondiscriminatory rates, terms, and conditions for interconnection involving local exchange companies and alternative local exchange companies pursuant to Section 364.162, Florida Statutes	)))))))	**Docket No. 950985-TP** **Filed: January 25, 1996**

**POSTHEARING BRIEF
AND STATEMENT OF ISSUES AND POSITIONS
OF METROPOLITAN FIBER SYSTEMS OF FLORIDA, INC.**

Pursuant to Rule 25-22.056, Florida Administrative Code and Order No. PSC-95-0888-PCO-TP, Metropolitan Fiber Systems of Florida, Inc. ("MFS"), by its undersigned attorneys, hereby files this posthearing brief in the Commission's proceeding concerning MFS' petition for interconnection with BellSouth Telecommunications, Inc. ("BellSouth").

Background and Summary of Position

The Florida Legislature has found that "the competitive provision of telecommunications service, is in the public interest and will provide customers with freedom of choice, encourage the introduction of new telecommunications service, encourage technological innovation, and encourage investment in telecommunications infrastructure." Fla. Stat. § 364.01(3). This Commission has before it the historic task of implementing switched local exchange competition in the State of Florida pursuant to the Legislative mandate. The establishment of the prices, terms, and conditions for interconnection in this docket is the most critical step in establishing an environment that will foster competition and permit alternative local exchange companies ("ALECs") such as MFS to have an opportunity to successfully compete against BellSouth and other incumbent local exchange carriers. Like any incumbent, and particularly an incumbent monopolist, BellSouth has significant inherent competitive advantages that will make it extremely difficult for MFS and other new entrants to gain a foothold in Florida.

In the interest of creating local exchange competition, the Florida Legislature established a procedure whereby ALECs may initiate negotiations with incumbent LECs to establish mutually acceptable terms, conditions, and rates for interconnection. Fla. Stat. § 364.162. The statute permits ALECs to petition the Commission for interconnection arrangements should negotiations fail. Pursuant to the statute, MFS initiated negotiations with BellSouth last July, but has been forced to petition the Commission for interconnection arrangements due to its inability to reach a comprehensive operational business agreement with BellSouth on interconnection that would permit MFS to become operational in Florida.[1] Tr. at 154-155.

On many of the central issues of this proceeding -- and particularly compensation for local call termination -- MFS and BellSouth are not even close to agreement.[2] MFS,

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MFS has signed detailed business agreements with LECs in other states, including Massachusetts, Connecticut, New York, and, most recently, California. (Exh. 5) (Staff's First Request for Production to MFS, Nos. 1-3). The form of agreement entered into in California which covers, among other issues, the technical and financial terms of interconnection, unbundling, and number portability, was offered to BellSouth. BellSouth declined to sign this agreement, as well as every other business agreement offered by MFS.

2

MFS and BellSouth are not that far from agreement on many issues, including the following: tariffing of interconnection arrangements (Issue 2); the exchange of intraLATA (continued...)

like many parties to this proceeding, including AT&T (Tr. at 288-290), proposes that "bill and keep" be utilized as the means of compensation for terminating local calls until BellSouth develops and the Commission approves. LRIC studies that could serve as the basis for per minute of use rates.[3] Absent appropriate cost studies, bill and keep is the only compensation arrangement guaranteed to preclude a price squeeze. As an interim arrangement, bill and keep also eliminates substantial administrative costs which would be imposed on entrants under other compensation arrangements.

The appropriateness of an interim initial bill and keep arrangement transitioning to an LRIC-based rate is attested to by the fact that the commissions in other states, including California, Texas, Connecticut, and Michigan, have adopted precisely this approach. Moreover, the use of cost-based rates for co-carrier arrangements has been endorsed by this Commission in its number portability docket. *In re Investigation into Temporary Local Telephone Number Portability Solution to Implement Competition in Local Exchange*

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[2](...continued)
800 traffic (Issue 4); 911 and E-911 arrangements (Issue 5); operator handled traffic (Issue 6); directory assistance (Issue 7); directory listings (Issue 8); billing and collection services (Issue 9); CLASS/LASS service arrangements (Issue 10); and NXX code assignment (Issue 14). MFS is continuing to attempt to reach agreement with BellSouth on these issues. If agreement cannot be reached, however, MFS would like the Commission to decide all of these significant issues.

[3]

It was correctly noted at the hearing that MFS's initial position was bill and keep on a permanent basis. Tr. at 74-82. MFS's position has evolved since it filed testimony last November and, as indicated in the deposition of MFS witness Timothy Devine (Exh. 5 at 67-68), it now advocates a transition to LRIC-based rates once cost studies become available. This docket should be left open for the filing of such cost studies and for further contested proceedings to address these studies.

Markets, Dkt. No. 950737-TP, Order No. PSC-95-1604-FOF-TP, at 17 (Dec. 28, 1995). This approach should be extended to interconnection once the necessary information is available.

In stark contrast, BellSouth's existing switched access rates, advocated by BellSouth as compensation for local call termination, bear no relation to cost, and would lead to a price squeeze that will prevent meaningful competition from developing, a price squeeze which is exacerbated by BellSouth's proposal for the pricing of unbundled loops. Stip. at 4; Tr. at 525; Tr at 82.

BellSouth's position on virtually all of the most critical interconnection issues exhibit two disturbing trends. BellSouth's proposals, if adopted, would discriminate against MFS by offering less than what BellSouth has traditionally paid independent LECs. Scheye, Tr. at 503-504. ***To adopt different arrangements for ALECs and independents is discrimination pure and simple.*** The second disturbing trend is that BellSouth at every turn -- seeks to impose additional costs on or deny revenues to MFS, thereby eating into any MFS margins on local calls and foreclosing competition.

BellSouth's proposal for meet-point subtending arrangements for interconnection illustrates this second trend. BellSouth proposes that it should collect the Residual Interconnection Charge ("RIC") when it performs the tandem function. Stip. at 8. This stands in sharp contrast to the system in place with independents under which the carrier providing the end office switching collects the RIC. Scheye, Tr. at 503.

BellSouth would further deprive MFS of revenue through its proposal for collecting access revenues from IXCs on "ported" calls (those using interim number portability), which, at least initially, will represent the vast majority of ALEC calls. As a co-carrier, MFS is entitled to collect switched access from IXCs just as BellSouth collects switched access revenues today. Despite the fact that BellSouth has agreed in the Stipulation signed by several cable companies (Exh. 15 ("Stipulation and Agreement") (hereinafter referred to as "Stipulation" or "Stip.")) to permit other ALECs to retain switched access payments from IXCs, BellSouth's testimony in this proceeding would deprive MFS of its rightful switched access revenue. Scheye, Tr. at 471. This discriminatory and anticompetitive position must be rejected by this Commission.

MFS also takes issue with the physical interconnection arrangements offered by BellSouth. MFS has proposed that interconnection take place at neutral, mutually agreeable meet-points. This is the manner in which interconnection takes place today between BellSouth and independents, and would permit co-carriers to flexibly come to agreement on the most efficient meet-points. By contrast, BellSouth has offered only tandem and end office interconnection, forcing MFS and other ALECs to construct their networks based on BellSouth's outdated architecture.

Other parties in this proceeding have encouraged the Commission to adopt interconnection arrangements similar to those contained in the Stipulation. Those parties have every right to reach agreement on terms that they might find satisfactory. Based on its real world experience in other states, however, MFS finds the Stipulation totally unacceptable. The Stipulation simply does not cover the basic terms and conditions necessary for co-carrier operations with the requisite level of detail necessary for MFS to begin operating in Florida. The Stipulation, moreover, contains a number of substantive provisions to which MFS cannot agree. The Stipulation applies unequal, nonreciprocal switched access compensation rates to local call termination. Stip. at 4. Those charges bear no relationship to BellSouth's termination costs. The Stipulation permits BellSouth to collect full switched access compensation for local calls if BellSouth unilaterally determines that it cannot distinguish a local call from a toll call (Stip. at 7); it permits BellSouth to collect full switched access on "ported" calls terminated by MFS (Stip. at 15); it permits BellSouth to collect the Residual Interconnection Charge ("RIC") for standard tandem subtending meetpoint billing for interexchange carrier calls when an ALEC terminates a call, contrary to current practice in the industry (Stip. at 14); it includes interim number portability rates that are higher than the Commission-ordered rates (Stip. at 14); and, although it includes a passing reference to loop unbundling (Stip. at 11), it does not begin to adequately address unbundling issues (as further addressed by MFS in a separate docket). Due to the Stipulation's multiple flaws, it does not address interconnection issues in a manner that will permit robust local exchange competition to develop in Florida.

MFS and other ALECs face a daunting task in competing with BellSouth and other LEC monopolists that have been enjoying their monopoly franchises for the better part of this century. But if the Commission implements the appropriate interconnection arrangements -- including adopting bill and keep compensation transitioning to LRIC-based rates, while ensuring that ALECs receive the revenues to which they are entitled and are not subjected to unfair costs -- it will take a major step towards successfully meeting the Legislature's goal of implementing local exchange competition in Florida.

<u>Argument on Specific Issues</u>

<u>Issue 1</u>: What are the appropriate rate structures, interconnection rates, or other compensation arrangements for the exchange of local and toll traffic between the respective ALECs and Southern Bell?

<u>Summary of Position</u>: *** The appropriate interconnection "rate" for local traffic termination between ALECs and BellSouth is the bill and keep method of traffic exchange. Once LRIC studies are available, bill and keep should transition to LRIC-based rates. The Commission should conduct a full hearing to examine BellSouth cost studies.

<u>Discussion</u>: The Commission must establish local compensation rates that are equal, reciprocal, and identical -- that is, that ALECs and BellSouth are charged the same amount to terminate the same call -- if local exchange competition is to take root in Florida. The Commission must also ensure that the compensation system it establishes precludes a price squeeze that could completely foreclose competition. While virtually all of the local traffic originated by ALEC customers will terminate on BellSouth's network, only a small percentage of local calls placed by BellSouth customers will terminate on an ALEC's network. The reciprocal compensation system established in this proceeding is therefore critical to the establishment of competition. In order to ensure that ALECs are not disadvantaged by the compensation system, MFS advocates an interim bill and keep system, transitioning to per minute rates based on LRIC.

A. Bill and Keep is the Ideal Interim Reciprocal Compensation Arrangement

Under "bill and keep", each carrier would be compensated in two ways for terminating local calls originated by customers of other carriers: 1) through its reciprocal right to have local calls made by its own customers terminated to the other carrier's subscribers without cash payment, often referred to as payment "in kind"; and 2) by its own customer, who pays the originating carrier a monthly fee for service. Devine, Tr. at 76.

Bill and keep has been embraced as a compensation solution in this proceeding not only by MFS, but by MCI, AT&T, and McCaw. Cornell, Tr. at 370-371; Guedel, Tr. at 429; Tr. at 288-290. Like MFS, AT&T also believes bill and keep should serve as an ***interim*** solution, followed by a transition to a per minute rate based on LRIC, once BellSouth has completed LRIC cost studies. Tr. at 288-289. MFS supports bill and keep on an interim basis because it is administratively simple and economizes on costs of measurement and billing. If carriers must incur higher measurement and billing costs, these costs will be built into rates and will result in higher prices for consumers. Devine, Tr. at 76-77; Cornell, Tr. at 373. These additional measurement costs would also create entry barriers since they would be added to entrants' costs for nearly all calls (those terminated on BellSouth's network), while being added only to a small fraction of BellSouth calls (those terminated on an ALEC's network). Devine, Tr. at 77.

Bill and keep is particularly attractive because it builds pro-competitive incentives into the reciprocal compensation system. As discussed below, bill and keep precludes the possibility of a price squeeze which could foreclose competition altogether. Bill and keep also provides incentives to carriers to adopt an efficient network architecture. If BellSouth can transfer termination costs to ALECs, BellSouth has no incentive to utilize an efficient call termination design, and current BellSouth inefficiencies are completely insulated from the forces of competition. Devine, Tr. at 78; Cornell, Tr. at 372-374; Tr. at 710 (question of Commissioner Johnson). Bill and keep ensures that the market forces of competition have the desired effect of disciplining all carriers, including BellSouth, to operate efficiently.

Even BellSouth has recognized that there are significant benefits of bill and keep: in the Stipulation signed by certain parties to this docket, BellSouth agrees that "[i]f it is mutually agreed that the administrative costs associated with the exchange of local traffic are greater than the net monies exchanged, the parties will exchange local traffic on an in-kind basis; foregoing compensation in the form of cash or cash equivalent." Stip. at 4.

BellSouth has also recognized the benefits of bill and keep by utilizing bill and keep arrangements in exchanging local and EAS traffic with independent LECs. ***The exchange of local traffic between BellSouth and independents is the only example of the exchange of local traffic with BellSouth in Florida today, and even BellSouth admits that this***

exchange takes place on an in-kind basis. Tr. at 456. The Commission, in order to avoid creating local compensation arrangements that would be discriminatory towards MFS, should therefore implement a bill and keep system of local call termination compensation. In fact, Staff has recommended on a preliminary basis in its prehearing statement that the local call termination compensation arrangements in place between BellSouth and independent LECs should be adopted. Prehearing Order at 17.

Any claim by BellSouth that bill and keep results in "free" use of its network clearly does not apply if traffic is in balance. MFS has introduced the only real-world record evidence on traffic balance in this docket, based on its actual experience exchanging traffic with NYNEX in New York. Exh. 7 (late-filed deposition exhibit of Timothy Devine). MFS has demonstrated, based on tens of thousands of voice grade lines,[4] that it consistently terminated more inbound traffic from NYNEX than it sent out to NYNEX for termination on NYNEX's network. During an eight-month period, the traffic split was approximately 60% inbound minutes of use, and 40% outbound minutes of use. *Id.* This data strongly suggests that bill and keep may well benefit BellSouth: BellSouth would terminate only approximately 40% of the traffic while MFS would terminate approximately 60%. With equal per minute of use interconnection charges, BellSouth would actually

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MFS has provided an estimate of the amount of traffic rather than the precise amount because the amount of traffic and associated revenue is confidential, proprietary business information.

make a net payment to MFS based on this data. Under bill and keep, there would be no payment by BellSouth or MFS.[5]

Even BellSouth recognizes the significance of traffic balance. The Stipulation provides that "a local exchange provider shall not be required to compensate another local exchange provider for more than up to one-hundred-five percent (105%) of the total minutes of use of the local exchange provider with the lower minutes of use in the same month." Stip. at 4. Under this provision of the Stipulation, all but 5% of the traffic flows between BellSouth and the ALECs will effectively be treated as bill and keep with no cash payment from one carrier to the other. Based on the traffic flow figures presented by MFS, the MFS/MCI/AT&T bill and keep proposal would actually permit BellSouth to avoid making terminating access payments to ALECs for at least an interim period. Despite the real world evidence on traffic flows, MFS still prefers bill and keep because it avoids the possibility of a price squeeze, as discussed below, and eliminates substantial administrative costs.

BellSouth has argued that bill and keep cannot be implemented in Florida because under bill and keep "there is no mechanism for recovery of the costs associated with the termination of local calls." Scheye, Tr. at 488, citing Fla. Stat. § 364.162(3). As discussed above, there are in fact two means for BellSouth to recover costs under bill and

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These figures also contradict the BellSouth speculation (Banerjee, Tr. at 635-636) that ALECs will somehow selectively market to certain user groups that generate primarily outbound traffic for MFS.

keep: on an in-kind basis from other carriers, and from BellSouth subscribers who pay BellSouth for service. Given the record evidence on traffic balance, there is no question that bill and keep will permit BellSouth to recover its costs.

More importantly, MFS and AT&T fully support a transition to cost-based rates where acceptable LRIC studies are available. In the interim, BellSouth cannot be heard to complain that bill and keep results in a failure to cover its "costs" since it failed to produce a LRIC cost study for local interconnection. The only cost information provided by BellSouth states that local interconnection costs "approximate those for switched access." Confidential Exh. 14 (BellSouth Response to Staff's First Set of Interrogatories to BellSouth, No. 6). BellSouth's average incremental cost for terminating access is confidential but is measured in tenths of a cent. *Id.* (as explained by BellSouth's witness, Mr. Scheye, Tr. at 548-49). The unreasonableness of BellSouth's proposal is readily apparent when these costs are compared to the rate offered in the Stipulation (1.052¢ per minute) and the rate offered to MFS (4.495¢ per minute). Tr. at 547. In the event that the Commission deemed it appropriate to establish cost-based rates in lieu of bill and keep until LRIC studies are available, BellSouth's approximation for switched access costs would be the appropriate rates and are the only cost-based rates in the record. Moreover, given BellSouth's own approximation of its costs, there simply can be no question that bill and keep will permit BellSouth to recover its costs. Furthermore, even BellSouth has advocated LRIC-based rates in comments by BellSouth Europe to the European

Commission. Ex. 21 at 7. ("Interconnection charges should reflect cost causation and, as such, should be based on long-run incremental costs (LRIC).")

Last month, the Commission in its number portability decision examined the appropriate charges that should be made between co-carriers. In its decision, the Commission found that the legislative mandate encouraging the development of competition is fulfilled by setting cost-based rates and requiring cost studies of BellSouth to confirm that rates are not below cost. *In re Investigation into Temporary Local Telephone Number Portability Solution to Implement Competition in Local Exchange Markets*, Docket No. 950737-TP, Order No. PSC-95-1604-FOF-TP, at 17 (Dec. 28, 1995). Given the evidence in this proceeding, if the Commission adopts bill and keep until BellSouth produces acceptable LRIC cost studies, the Commission will have fulfilled its statutory mandate to reasonably ensure that rates are not below cost, while encouraging the development of local exchange competition.

Bill and keep has been adopted by a number of states, including several states that have adopted bill and keep on an interim basis until cost-based rates can be established. Michigan, California, Connecticut, and Texas, have all adopted precisely the approach advocated by MFS: bill and keep transitioning to cost-based rates. In Michigan, bill and keep is applied as long as traffic is close to being in balance (within 5%). *In the matter of the application of CITY SIGNAL, INC., for an order establishing and approving interconnection arrangements with AMERITECH MICHIGAN,* Case No. U-10647, Opinion and Order, at 32 (Feb. 23, 1995). The California Public Utilities Commission recently endorsed bill and keep on an interim basis, recognizing that in the ***long term*** "it is the policy of this Commission that Commission-approved tariffs for call termination services should be cost-based." *Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service*, R.95-04-043, I.95-04-044, Decision 95-07-054, at 39 (Cal. P.U.C., July 25, 1995); Decision 95-12-056, at 39 (Cal. P.U.C., Dec. 20, 1995). Connecticut has also adopted modified bill and keep with a transition to cost-based rates. *DPUC Investigation Into the Unbundling of the Southern New England Telephone Company's Local Telecommunications Network*, Docket No. 94-10-02, Decision at 62-71 (Conn. D.P.U.C., Sept. 22, 1995). Several other states are following this trend towards bill and keep rates. *See* Texas PURA of 1995, Vernon's Ann.Civ.St. art. 1445c-0, §3.458 (1995); *Washington Utilities and Transportation Comm'n v. US West Communications, Inc.*, Dkt. No. UT-941464, *Fourth Supplemental Order Rejecting Tariff Filings and Ordering Refiling; Granting Complaints, in Part*, at 29 (Wash. U.T.C., Oct. 31, 1995); *In Re: McLeod Telemanagement, Inc.*, Dkt. No. TCU-94-4, *Final Decision and Order*, at p. 16 (Iowa D.C.U.B., March 31, 1995); *In the Matter of the Application of Electric Lightwave, Inc. for a Certificate of Authority to Provide Telecommunications Services in Oregon,*CP1, CP14, CP15, *Order No. 96-021*, at p. 52 (Oregon P.U.C. Jan. 12, 1996). The Tennessee Commission also approved in December final rules that require bill and keep for one year. Rule 1220-4-8.10(3) (effective upon approval of the Attorney General).

While other states are moving towards bill and keep, BellSouth's critique of bill and keep is based on illusory problems that may never develop. For example, BellSouth argues that if other carriers do not mirror BellSouth local calling areas, it will be impossible to distinguish local from toll calling. Scheye, Tr. at 452-453. Yet MFS stated that it will in fact mirror BellSouth local calling areas. Exh. 5 at 42 (Dec. 15, 1995 Deposition of Timothy Devine); Tr. at 575. Moreover, BellSouth could not name one ALEC that has requested bill and keep but has indicated that it will not mirror BellSouth local calling areas. Tr. at 577-579. Similarly, BellSouth states that geographic or location number portability will also impede its ability to distinguish local from toll traffic. Scheye, Tr. at 452-453. Yet, again, BellSouth stated that geographic number portability (as distinguished from provider number portability) is not currently available in Florida. Exh. 20, BellSouth Responses to MFS Interrogatory No. 85. The BellSouth concerns are therefore strawmen, erected solely to discourage the Commission from implementing bill and keep.

Given the clear advantages of bill and keep, the Commission should follow the clear trend in other states, ignore BellSouth's false alarms, and adopt bill and keep on an interim basis until LRIC-based rates can be adopted.

B. BellSouth's Proposed Use of Switched Access Rates Is Fundamentally Flawed

BellSouth's proposal to charge MFS switched access rates for local call termination is fundamentally flawed in several respects: it proposes rates that bear no relationship to cost; it includes contribution for universal service, in derogation of the Legislature's express intent to the contrary; it would impose unequal, nonreciprocal, discriminatory rates on MFS for precisely the same call as one completed by BellSouth; it results in a price squeeze; it is anti-consumer in that it is likely to result in higher rates; and it offers no incentive to BellSouth to reduce its call termination costs because all costs can conveniently be passed on to ALECs. In contrast to these real deficiencies, BellSouth's proposal is premised solely on its alleged need to prevent strawman problems that may never even arise: BellSouth's concerns that ALECs will not mirror their calling areas, and that geographic number portability could cause problems. These concerns have no basis in the record of this proceeding and, in fact, are flatly contradicted.

As described above, the most obvious problem with BellSouth's switched access rate proposal is that it bears no relationship whatsoever to cost. Rather than adopt this inappropriate system of compensation and thereby abandon the position it took in the number portability proceeding, the Commission should require cost-based rates when such rates are available. The total inappropriateness of BellSouth's switched access proposal is underscored by the testimony of BellSouth's witnesses that a portion of the contribution above cost in switched access rates is dedicated to universal service. Scheye, Tr. at 549; Banerjee, Tr. at 617-618. This inclusion of a universal service charge contribution in interconnection charges directly contravenes the intent of the Legislature. The Legislature deliberately separated the issues of interconnection compensation and universal service. This is clearly indicated by both the legislative history, which indicates a clear intent to separate interconnection and universal service, and by the fact that these issues are addressed separately in the statute. As stated when Amendment 44 to the statute was passed, "This completes the delinking between the universal service fund and the interconnect charges." Exh. 1 (Meeting of the House of Representatives Committee on Utilities and Telecommunications, Transcript at 25 (April 12, 1995)). *See also* Devine, Tr. at 54-55. BellSouth's attempt to "re-link" universal service charges and interconnection charges, contrary to the intent of the Legislature, should not be countenanced by the Commission.

Moreover, in the universal service docket, the Commission found that BellSouth has not "adequately demonstrated their alleged need for US/COLR funding, beginning January 1, 1996, or immediately upon competitive entry." *In Re: Determination of Funding for Universal Service and Carrier of Last Resort Responsibilities*, Docket No. 950696-TP, Order No. PSC-95-1592-FOF-TP, at 23 (Dec. 27, 1995) ("*Universal Service Order*"). Since BellSouth has not demonstrated a need for US/COLR funding, any component of local call termination compensation dedicated to universal service is entirely inappropriate.[6]

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The Commission also found that: "LECs should continue to fund their US/COLR obligations as they currently do; that is, through markups on the services they offer. Although not the subject of this proceeding, for ALECs, such markups could presumably extend to services such as local interconnection and number portability." *Universal Service Order* at 28. Pursuant to the Legislature's direction, as detailed above, however, funding for universal service cannot be contained in interconnection charges. To do so (continued...)

The BellSouth switched access proposal tied as it is to the structure of the BellSouth network results in the imposition of unequal, nonreciprocal charges on ALECs for terminating a given call. As demonstrated in the deposition of Robert Scheye (Exh. 17, at 74-83) (Jan. 5, 1996 deposition) under BellSouth's proposal, MFS could terminate a call from point A to point B, but would pay a higher interconnection charge to BellSouth than BellSouth would pay to MFS for terminating the exact same call from point A to point B. The reason for this inequitable treatment is that, under the BellSouth proposal, there is a switching charge imposed every time a call is switched by BellSouth, whether at a BellSouth end office or a tandem. *Id.* at 68. A call terminated by MFS at the BellSouth tandem[7] is likely to pass through more than one switch or tandem, simply because of BellSouth's network architecture. MFS, which has fewer switches and more transport than BellSouth, is likely to switch a call fewer times. Accordingly, MFS is penalized by higher interconnection charges due to the way BellSouth has chosen to construct its network. This inequity is built into the BellSouth switched access proposal and ensures that MFS pays more for interconnection than MFS. *See* Cornell, Tr. at 383 (noting that ALECs would have to mirror the Bell architecture in order to have reciprocal interconnection charges). By adopting a bill and keep proposal and moving towards a LRIC-based

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[6](...continued)
would be to directly contravene the intent of the Legislature.

[7] Significantly, it is technically and economically impractical for MFS to interconnect at every one of BellSouth's numerous end offices.

interconnection charge, the Commission will avoid this unequal, nonreciprocal, and unfair result.

The most anticompetitive aspect of the BellSouth proposal, however, is that it implements a price squeeze on MFS that, by itself, will foreclose economically viable local calling competition. Devine, Tr. at 81; Cornell, Tr. at 382. A price squeeze occurs when a firm with a monopoly over an essential input needed by other firms to compete with the first firm in providing services to end users sells the input to its competitor at a price that prevents the end user competitor from meeting the end user price of the first firm, despite the fact that the competitor is just as efficient as the first firm.[8] Devine, Tr. at 83; Cornell, Tr. at 382. The BellSouth price squeeze is exacerbated by the fact that the BellSouth proposal would also impose a number of additional, often excessive, charges, including additional trunking costs, unbundled loop charges, and interim number portability charges, etc. Devine, Tr. at 81-82. The table provided as Exhibit 8 demonstrates that, particularly in a flat-rate environment, the price squeeze is most acute for larger customers. The table demonstrates that (assuming BellSouth's tariffed intraLATA toll switched access rate of $0.04793/minute, and based on the fact that 460 minutes of use per month is the Average

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A price squeeze is anticompetitive and deters entry into the market because, by raising entrants' costs, it forces an entrant who wishes to match the incumbent's prices to absorb losses as a price of entry. Because of their anticompetitive nature, price squeezes are condemned as contrary to the public policy and prohibited by the antitrust laws. *See, e.g.*, *United States v. Aluminum Co. of America*, 148 F.2d 416, 437-38 (2d Cir. 1945); *Illinois Cities of Bethany v. F.E.R.C.*, 670 F.2d 187 (D.C.Cir. 1981); *Ray v. Indiana & Michigan Elect. Co.*, 606 F.Supp. 757 (N.D. Ind. 1984).

Monthly Usage for a residential customer) monthly access charges from BellSouth to an ALEC will greatly exceed the revenue an ALEC would be able to raise from that customer by charging BellSouth's residential flat monthly rate.

In attempting to defuse the obviously fatal impact of its proposed price squeeze, BellSouth proposes to factor into this analysis a variety of revenues from sources that MFS may or may not receive from customers, such as vertical services. Scheye, Tr. at 458-459. Other jurisdictions faced with the same argument have recognized that, if local exchange competition is to succeed, competition must be possible in all segments of the local exchange market, without cross-subsidization from other services. Devine, Tr. at 84. As the Illinois Commerce Commission recently observed, "The crucial issue is the effect of a given reciprocal compensation proposal on competition. . . . [A]doption of Illinois Bell's [switched access based] proposal and rationale would force new LECs to adopt either a premium pricing strategy or use local calling as a 'loss-leader'. That is not just or reasonable." *Illinois Bell Telephone Proposed Introduction of a Trial of Ameritech's Customers First Plan in Illinois,* Docket No. 94-0096, at 98 (Ill. Comm. Comm'n., April 7, 1995). The best means of ensuring that a price squeeze cannot be effected is by utilizing bill and keep, which precludes a price squeeze, until LRIC-based rates can be established.

Recognizing the flaws inherent in its proposal, BellSouth proposes to avoid a price squeeze by utilizing its very own brand of imputation. BellSouth's "imputation" proposal would either fail to preclude a price squeeze altogether, or would drive up rates for consumers -- hardly the result contemplated by the Legislature. Under BellSouth's imputation approach, contribution charged to ALECs for interconnection (or other essential services) would be imputed to BellSouth's cost in determining whether its end user rates are anti-competitive. Banerjee, Tr. at 617. BellSouth has itself explained one reason why this approach cannot work in Florida: residential end user rates are capped in Florida through the year 2000. Banerjee, Tr. at 657. If significant contribution is added to ALEC interconnection rates, imputation of this contribution into BellSouth's costs could be impossible without increasing end user rates. Cornell, Tr. at 382. The Hobson's choice faced by the Commission under BellSouth's proposal is therefore between increasing end user rates, which would require removing the current cap and would be anticonsumer, or permitting a price squeeze that would foreclose competition.

The Commission can easily avoid this dilemma if it does not permit BellSouth to charge contribution to ALECs and, instead, requires the use of cost-based rates. Permitting contribution to be passed on to ALECs has a further unwanted effect: if BellSouth can charge contribution to ALECs, it will have no incentive to increase its own efficiency, and current inefficiencies will be locked in for posterity. Tr. at 710; Cornell, Tr. at 385-86. If BellSouth is completely insulated from the discipline of market forces, this would eliminate one of the principal purposes of competition: increasing the efficiency of all market participants so as to ***decrease*** prices to end users.

The Commission should therefore adopt a bill and keep system transitioning to LRIC-based rates in order to preclude a price squeeze, while requiring all parties, including BellSouth, to compete.

<u>Issue 2</u>: **If the Commission sets rates, terms, and conditions for interconnection between the respective ALECs and Southern Bell, should Southern Bell tariff the interconnection rate(s) or other arrangements?**

<u>Summary of Position</u>: *** Yes, BellSouth should tariff the interconnection rate(s) or other arrangements.

<u>Discussion</u>: BellSouth should be required to tariff interconnection arrangements to ensure that the arrangements are publicly available and subject to the scrutiny of all interested parties. Public scrutiny will assist in avoiding discriminatory or unjust rates or arrangements.

<u>Issue 3</u>: **What are the appropriate technical and financial arrangements which should govern interconnection between the respective ALECs and Southern Bell for the delivery of calls originated and/or terminated from carriers not directly connected to the respective ALECs' network?**

<u>Summary of Position</u>: *** All carriers should be permitted to subtend the LEC tandem. Meet-point billing should follow established industry guidelines. Collocated ALECs should be permitted to cross-connect without transiting the BellSouth network. The carrier providing terminating access should collect the RIC as is the case between BellSouth and independents today.

Discussion: MFS proposes that if BellSouth operates an access tandem serving a LATA in which MFS operates, it should be required to permit MFS to "subtend" the tandem, so that, upon request, BellSouth would provide tandem switching service to any other carrier's tandem or end office switch serving customers within that LATA. This arrangement is necessary to permit interexchange carriers ("IXCs") to originate and terminate interLATA and intraLATA calls on an ALEC's network without undue expense or inefficiency. As is the case with many arrangements requested by MFS, similar arrangements already exist today between BellSouth and LECs serving adjoining territories. Despite this, BellSouth has not even conceded in this proceeding that it should participate in such arrangements with ALECs. Scheye, Tr. at 460-461.

Where tandem subtending arrangements exist today, LECs divide the local transport revenues under a standard "meet-point billing" formula established by the national standards group known as the Ordering and Billing Forum ("OBF") and set forth in FCC and state tariffs. The same meet-point billing procedures should apply where the tandem or end office subtending the tandem is operated by an ALEC.[9] Although this

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Initially, billing to third parties for the switched access services jointly provided by MFS and BellSouth via the meet-point billing arrangement should be according to the single-bill/multiple tariff method. This method is a standard offering by RBOCs. *See, e.g.*, NYNEX Tariff F.C.C. No. 1 Second Revised Page 2-45 § 2.4.7. Subsequently, billing to third parties for the switched access services jointly provided by MFS and BellSouth via the meet-point arrangement shall be, at MFS' preference, according to the single-bill/single tariff method, single-bill/multiple-tariff method, multiple-bill/single-tariff method, or multiple-bill/multiple-tariff method. Should MFS prefer to change among these billing methods, MFS would be required to notify BellSouth of such change in writing, 90

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might appear to be a noncontroversial point, BellSouth has proposed that a unique (*i.e.*, discriminatory) meet-point formula apply to ALECs. Scheye, Tr. at 460-461. The Commission should ensure that the same meet-point billing procedures that are standard in the industry nationwide apply between BellSouth and ALECs, as well.

BellSouth has also attempted to establish unique and discriminatory arrangements for ALECs for the billing of switched access charges to third parties. Specifically, BellSouth is attempting to deprive ALECs of the Residual Interconnection Charge ("RIC") in circumstances in which any other carrier would normally receive the RIC. MFS believes that switched access charges to third parties should be calculated utilizing the rates specified in MFS' and BellSouth's respective federal and state access tariffs, in conjunction with the appropriate meet-point billing factors specified for each meet-point arrangement either in those tariffs or in the NECA No. 4 tariff. MFS should be entitled to the balance of the switched access charge revenues associated with the jointly handled switched access traffic (for standard tandem subtending meet-point billing for interexchange carrier calls), less the amount of transport element charge revenues to which BellSouth is entitled pursuant to the above-referenced tariff provisions.

BellSouth should not collect the RIC, which in current arrangements between BellSouth and independents, is remitted to the end office provider, in this case, MFS.

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[9](...continued)
days in advance of the date on which such change was to be implemented. Devine, Tr. at 61-62.

BellSouth readily admits that independents, as the end office provider, collect the RIC: "the LEC providing transport and switching collects its charges and ***the LEC terminating the call collects the RIC. This is the most practical way to handle this situation and has an element of fairness.***" Scheye, Tr. at 503. Yet BellSouth no longer believes that this system is practical and fair when it comes to ALECs. The excuse that BellSouth gives is that ALECs do not have a revenue requirement associated with a RIC charge. Scheye, Tr. at 504. Of course, ALECs, even if not rate of return regulated, will provide the service, call termination, that even BellSouth admits has always been associated with the RIC. MFS and AT&T agree that BellSouth should not collect this windfall revenue for a service that is provided by the ALEC. Devine, Tr. at 62; Guedel, Tr. at 435.

The BellSouth proposal is also completely inconsistent with arrangements between LECs and arrangements established with competitive carriers in other states, including New York and Massachusetts. This experience in other states supports MFS' position that the carrier providing the end office switching (*i.e.*, MFS) should receive the RIC.

BellSouth has also taken an unreasonable position concerning the delivery of traffic between two ALECs collocated at the same wire center. Devine, Tr. at 72-73. As discussed in Issue 11, BellSouth insists that interconnection between BellSouth and all ALECs take place at its own end office or tandems, and refuses to interconnect at a mid-fiber meet. Yet when MFS requests that it be permitted to cross-connect with other ALECs where two ALECs are collocated at the same BellSouth wire center, BellSouth—which has insisted that all parties interconnect to it at its locations—refuses to permit two ALECs to cross-connect at that location. Scheye, Tr. at 476. This is simply another attempt to impose hidden costs on ALECs by creating interconnection arrangements that are convenient for BellSouth but extremely ***inefficient*** for ALECs. Scheye, Exh. 17 (Jan. 5, 1996 deposition) at 41-46. The New York Public Service Commission recognized the inequity of this arrangement and mandated that collocated ALECs be permitted to cross-connect in the LEC's collocation space. *Order Instituting Framework for Directory Listings, Carrier Interconnection, and Intercarrier Compensation* (N.Y. P.S.C., Sept. 27, 1995). This Commission should likewise require that such cross-connection be permitted. In the limited instances where MFS must pay for this intermediary function (such as, where both ALECs are not collocated at the same location), it should pay the lesser of: 1) BellSouth's interstate or intrastate switched access per minute tandem switching element; or 2) a per minute rate of $0.002. Devine, Tr. at 106.

In order to ensure that ALEC interconnection rates are not further improperly inflated, MFS has proposed that, where an interconnection occurs via a collocation facility, no incremental cross-connection charges would apply for the circuits. Upon reasonable notice, MFS would be permitted to change from one interconnection method to another (e.g., collocation to a fiber meetpoint) with no penalty, conversion, or rollover charges. Tr. at 148.[10] BellSouth has not agreed to waive these charges, and could use such charges

10 Collocation has historically been used for special access and other services that (continued...)

to impose additional interconnection costs on ALECs. The Commission should address these two collocation issues to ensure that hidden interconnection costs are not imposed on collocated ALECs.

With respect to all of these issues—cross-connection, tandem subtending, meet-point billing, and recovery of the RIC—it is critical that ALECs be treated in the same manner as other LECs currently are treated, and that BellSouth not be permitted to impose significant additional costs on its new ALEC competitors.

Issue 4: What are the appropriate technical and financial requirements for the exchange of intraLATA 800 traffic which originates from the respective ALECs' customer and terminates to an 800 number served by or through Southern Bell?

Summary of Position: *** ALECs cannot route 800 numbers to the appropriate carrier. BellSouth should be required to handle database queries and route ALEC 800 number calls to the appropriate carrier. They will be compensated for this by switched access billed to IXCs and there should therefore be no fee for providing records.

Discussion: New entrants have no ability to route 800 numbers to the appropriate local or long distance carrier. BellSouth should therefore be required to do a database dip and route ALEC 800 number calls to the appropriate carrier. MFS agrees with BellSouth that BellSouth should compensate ALECs for the origination of 800 traffic terminated to

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[10](...continued)
generate revenue for the collocated party. However, traditionally, the exchange of traffic between local carriers is not an independent source of revenue.

BellSouth pursuant to the ALEC's originating switched access charges including database queries. MFS, however, takes issue with the proposal, as contained in the Stipulation (Stip. at 28), that BellSouth and ALECs will mutually provide appropriate records in the standard ASR format for a fee of $0.015 per record. Devine, Tr. at 112-13. MFS believes that there should not be such a fee because it will increase prices for end users. Of course, BellSouth will be compensated for database queries by billing the IXCs switched access. This issue should be viewed in the broader context of the new arrangements to be established between LECs and ALECs: LECs and ALECs will be required to reciprocally exchange significant amounts of information on a number of issues as competition develops. Therefore, these records, like a wide variety of other information, should be reciprocally exchanged without any fees.

Issue 5: a) What are the appropriate technical arrangements for the interconnection of the respective ALECs' network to Southern Bell's 911 provisioning network such that the respective ALECs' customers are ensured the same level of 911 service as they would receive as a customer of Southern Bell?

b) What procedures should be in place for the timely exchange and updating of the respective ALECs' customer information for inclusion in appropriate E911 databases?

Summary of Position: *** a) BellSouth must provide trunk connections to its 911/E-911 selective routers/911 tandems for the provision of 911/E911 services and for access to subtending Public Safety Answering Points ("PSAPs"). Interconnection should be made at the Designated Network Interconnection Point ("D-NIP"). b) BellSouth should provide on-line access for immediate E-911 database updates.

Discussion: As is the case with several issues, MFS and BellSouth appear to be in agreement that 911/E911 issues are critical and must be worked out, either by the parties, or with the assistance of the Commission. Although MFS has had a 911/E-911 proposal on the table since this Summer, BellSouth has been unwilling to sign a business agreement with MFS on this or any other issue. BellSouth attempted to suggest at the hearing that the Stipulation constitutes a comprehensive agreement on 911/E-911 issues. Tr. at 171. The Stipulation signed by several cable companies, however, does not address all the 911/E-911 issues and, like many arrangements in the Stipulation, would not alone be satisfactory to permit MFS to become operational. This tendency to only partially resolve the issues and to create a need for further agreements is precisely the problem with the Stipulation (aside from significant substantive issues, as well). As mentioned at the hearing, by way of example, one of the issues not addressed by the Stipulation and which BellSouth could not commit to in negotiations is the display of both numbers when interim number portability is utilized. The parties agree that 911/E-911 issues are critical; MFS believes that they should be carefully resolved in advance.

As to the MFS position on additional issues, MFS believes that BellSouth must provide trunk connections to its 911/E-911 selective routers/911 tandems for the provision of 911/E911 services and for access to all sub-tending Public Safety Answering Points ("PSAP"). Interconnection should be made at the Designated Neutral Interconnection

Point ("D-NIP") (*See* Issue 11 for description of D-NIP). BellSouth must also provide MFS with the appropriate common language location identifier code and specifications of the tandem serving area. BellSouth must provide MFS with the Master Street Address Guide so that MFS can ensure the accuracy of the data transfer. Additionally, BellSouth should provide to MFS the ten-digit POTS number of each PSAP which subtends each BellSouth selective router/9-1-1 tandem to which MFS is interconnected. Finally, BellSouth should use its best efforts to facilitate the prompt, robust, reliable, and efficient interconnection of MFS systems to the 911/E911 platforms.

BellSouth should provide on-line access for immediate updates of the E-911 database. BellSouth should arrange for MFS' automated input and daily updating of 911/E911 database information related to MFS end users. BellSouth would not commit to either of these arrangements in negotiations with MFS, nor has it committed to these arrangements in the Stipulation. While MFS will continue to attempt to negotiate on this and other issues with BellSouth, it may yet be necessary for the Commission to rule on this issue.

Issue 6: What are the appropriate technical and financial requirements for operator handled traffic flowing between the respective ALECs and Southern Bell including busy line verification and emergency interrupt services?

Summary of Position: *** BellSouth should provide LEC-to-LEC Busy Line Verification and Interrupt ("BLV/I") trunks to one another to enable each carrier to support this functionality. ALECs and BellSouth should compensate one another for the use of BLV/I according to the effective rates listed in BellSouth's tariffs.

Discussion: Because ALECs and BellSouth must be able to interrupt calls in emergency situations, BellSouth and the ALECs should provide LEC-to-LEC Busy Line Verification and Interrupt ("BLV/I") trunks to one another to enable each carrier to support this functionality. ALECs and BellSouth should compensate one another for the use of BLV/I according to the effective rates listed in BellSouth's and MFS' federal and/or state access tariffs, as applicable. Devine, Tr. at 94-95. This is an issue upon which BellSouth and MFS appear to be in substantial agreement. MFS will continue to attempt to negotiate a solution to this and other issues.

Issue 7: What are the appropriate arrangements for the provision of directory assistance services and data between the respective ALECs and Southern Bell?

Summary of Position: *** The Commission should require BellSouth to list competing carriers' customers in their directory assistance databases. All LECs should be required to update their directory assistance databases with data provided by competitors on at least as timely a basis as they update these databases with information regarding their own customers.

Discussion: The establishment of a single, comprehensive directory assistance database is in the public interest. The Commission should require BellSouth to list competing carriers' customers in their directory assistance databases and should require all carriers (both LECs and ALECs) to make their directory listings available to one another. In general, all LECs should be required to update their directory assistance databases with data provided by competitors on at least as timely a basis as they update these databases with information regarding their own customers.

BellSouth should be ordered: (1) to provide to MFS operators or to an MFS-designated operator bureau on-line access to BellSouth's directory assistance database, identical to the access BellSouth's own operators utilize to provide directory assistance services to BellSouth end users; (2) to provide to MFS unbranded and MFS-branded directory assistance service comparable in every way to the directory assistance service BellSouth makes available to its own end users; (3) to allow MFS or an MFS-designated operator bureau to license BellSouth's directory assistance database for use in providing competitive directory assistance services; and (4) in conjunction with (2), to provide caller-optional directory assistance call completion service which is comparable in every way to the directory assistance call completion service BellSouth makes available to its own end users.[11] Devine, Tr. at 95.

The Stipulation does not address all issues, lacks significant detail on any of these issues, and only makes a passing reference to directory assistance database updates. Stip. at 28. In addition, BellSouth has specifically stated that branding is not available at this time (Scheye, Tr. at 465), and has not stated its position on issues such as on-line database access and call completion service. Moreover, BellSouth proposed that directory

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11 If call completion services were to be resold, BellSouth should be required to provide calling detail in electronic format for MFS to rebill the calling services.

assistance storage charges be assessed to ALECs. Scheye, Tr. at 464-465. A single directory assistance database, and competition in general, is in the public interest. ALEC customers should therefore not be assessed any storage or other charges that are not also assessed to BellSouth customers. This is merely another attempt by BellSouth to incrementally raise the cost for ALECs to provide competitive service. Again, MFS has been and will continue to attempt to negotiate the details with respect to directory assistance. If BellSouth is not willing to agree to reasonable, nondiscriminatory terms on these issues, however, it will be necessary for the Commission to ensure that satisfactory directory assistance arrangements are available from BellSouth.

Issue 8: Under what terms and conditions should Southern Bell be required to list the respective ALECs' customers in its white and yellow pages directories and to publish and distribute these directories to the respective ALECs' customers?

Summary of Position: *** BellSouth should be required to list competing carriers' customers in their White and Yellow Pages directories, should be required to distribute these directories to ALEC customers at no charge, and should provide enhanced listings, all in the identical manner that it does for BellSouth customers.

Discussion: The public interest requires that persons be able to obtain telephone listing information for a given locality by consulting only one printed directory. Again, while MFS and BellSouth appear to be in general agreement as to the essential elements with respect to directory listings, some of which are contained in the Stipulation signed by other parties, BellSouth has not signed a detailed business agreement to address this issue.

MFS proposes that BellSouth include MFS' customers' telephone numbers in all its White Pages and Yellow Pages directory listings databases associated with the areas in which MFS provides services to such customers, and distribute such directories to such customers, in the identical manner in which it provides those functions for its own customers' telephone numbers. Devine, Tr. at 93-94. The New York Commission has concluded that fair compensation would consist of free listings to new entrant customers, while new entrants would not be required to compensate Nynex for the value it receives from new entrant listings:[12]

> The inclusion of new entrant listings in incumbent directories enhances the value of the incumbent directories. This enhanced value, with its consequently increased yellow pages revenues, which would be retained by the incumbents, should fairly compensate the incumbents for any costs of including the new entrants listings in their directories and providing copies to the new entrants for their customers' use. New entrants receive the value of a comprehensive directory, without charge.[13]

In fact, the New York Commission also found that "any additional revenues related to the sale of directory listings to third parties should be shared between the new entrant and incumbent. . . ." *Id.* The Commission should recognize the enhanced value of BellSouth directories as a result of ALEC listings in its decision on this issue.

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[12] *Proceeding on Motion of the Commission to Examine Issues Related to the Continued Provision of Universal Service and to Develop a Framework for the Transition to Competition in the Local Exchange Market*, Order Requiring Interim Number Portability Directing a Study of the Feasibility of a Trial of True Number Portability and Directing Further Collaboration at 6 (March 8, 1995).

[13] *Id.*

MFS customers should be provided the same rates, terms and conditions for enhanced listings (*i.e.*, bolding, indention, etc.) as are provided to BellSouth customers. MFS will provide BellSouth with its directory listings and daily updates to those listings in an industry-accepted format; BellSouth should provide MFS with a magnetic tape or computer disk containing the proper format. BellSouth should accord MFS' directory listing information the same level of confidentiality which BellSouth accords its own directory listing information, and BellSouth should ensure that access to MFS' customer proprietary confidential directory information will be limited solely to those BellSouth employees who are directly involved in the preparation of listings.

With regard to Yellow Page maintenance, BellSouth should work cooperatively with MFS to ensure that Yellow Page advertisements purchased by customers who switch their service to MFS (including customers utilizing MFS-assigned telephone numbers and MFS customers utilizing co-carrier number forwarding) are maintained without interruption. Devine, Tr. at 96. BellSouth should allow MFS customers to purchase new yellow pages advertisements at non-discriminatory rates, terms and conditions. BellSouth and MFS should implement a program whereby MFS may, at MFS' discretion, act as a sales, billing and collection agent for Yellow Pages advertisements purchased by MFS' exchange service customers.

BellSouth's proposals, including the Stipulation proposal, although in accord with the MFS proposal on some points, such as BellSouth printing listings and delivering directories at no charge, have been lacking in detail and would leave issues, such as yellow page maintenance and enhanced listings unresolved.

Issue 9: **What are the appropriate arrangements for the provision of billing and collection services between the respective ALECs and Southern Bell, including billing and clearing credit card, collect, third party and audiotext calls?**

Summary of Position: *** BellSouth and ALECs need to exchange records in an accurate and timely manner and therefore need to develop arrangements for the reciprocal exchange of a wide variety of information without the assessment of charges between carriers. For calls provided by BellSouth's interim number portability service, consolidated billing should be required.

Discussion: Generally, MFS believes that BellSouth and ALECs need to exchange records in an accurate and timely manner. LECs and ALECs will need to develop arrangements for the reciprocal exchange of a wide variety of information. This exchange should take place without the assessment of processing or other charges between carriers.

With respect to number portability, consolidated billing should be required where appropriate by providing for a single master bill for each wire center for calls provided by BellSouth's interim number portability service, that will enable an ALEC to re-bill its end users. Carriers should also be required to enter into mutual billing and collection agreements. Exh. 2 ("Co-Carrier Number Forwarding Arrangements") (formerly Exh. TTD-3). *See also* Issue 12. BellSouth should be required to make Line Information Database ("LIDB") updates for ALECs that utilize interim number portability to ensure that collect, calling card, and third-party billed calls are appropriately rated, billed, and collected. Also, BellSouth should provide ALECs with this billing detail to enable ALECs to rebill their customers for these calls.

Where a LEC or ALEC chooses to offer caller-paid information services, such as 976-XXXX services, customers of competing LECs and ALECs in the same service territory should have the ability to call these numbers. Devine, Tr. at 90-92. In this case, either the LEC/ALEC providing the audiotext service or its customer, the information provider, rather than the carrier serving the caller, determines the price of the service. Therefore, a co-carrier arrangement should provide that the originating carrier will collect the information service charge as agent for the service provider, and will remit that charge (less a reasonable billing and collection fee) to the carrier offering the audiotext service. To the extent that any charges apply for the reciprocal termination of local traffic, the originating carrier should also be entitled to assess a charge for the use of its network in this situation. This issue should be addressed in the context of the reciprocal billing and collection arrangements.

MFS will deliver information services traffic originated over its Exchange Services to information services provided over BellSouth's information services platform (*e.g.*, 976) over the appropriate trunks. Devine, Tr. at 90-92. BellSouth should at MFS' option provide a direct real-time electronic feed or a daily or monthly magnetic tape in a mutually-specified format, listing the appropriate billing listing and effective daily rate for each information service by telephone number. To the extent MFS determines to provide a competitive information services platform, BellSouth should cooperate with MFS to develop a LATA-wide NXX code(s) which MFS may use in conjunction with such platform. Additionally, BellSouth should route calls to such platform over the appropriate trunks, and MFS will provide billing listing/daily rate information on terms reciprocal to those specified above.

With respect to compensation issues, MFS will bill and collect from its end users the specific end user calling rates BellSouth bills its own end users for such services, unless MFS obtains tariff approval from the Commission specifically permitting MFS to charge its end users a rate different than the rate set forth in BellSouth's tariff for such services. MFS will remit the full specified charges for such traffic each month to BellSouth, less $0.05 per minute, and less uncollectibles. In the event MFS provides an information service platform, BellSouth should bill its end users and remit funds to MFS on terms reciprocal to those specified above.

MFS has not been able to come to agreement with BellSouth on any of these billing and collection issues to date.

<u>Issue 10</u>: What arrangements are necessary to ensure the provision of CLASS/LASS services between the respective ALECs and Southern Bell's networks?

<u>Summary of Position</u>: *** ALECs and BellSouth should provide LEC-to-LEC CCS to one another, where available, in conjunction with LATA-wide traffic. All CCS signaling parameters should be provided. BellSouth and MFS should cooperate on the exchange of

Transactional Capabilities Application Part ("TCAP") messages to facilitate full interoperability of CCS-based features between their respective networks.

Discussion: ALECs and BellSouth should provide CCS to one another, where available, in conjunction with LATA-wide traffic, in order to enable full interoperability of CLASS features and functions. Devine, Tr. at 70-72. All CCS signaling parameters should be provided, including automatic number identification, originating line information, calling party category, charge number, etc. BellSouth and MFS should cooperate on the exchange of Transactional Capabilities Application Part ("TCAP") messages to facilitate full interoperability of CCS-based features between their respective networks. CCS should be provided by company-wide Signal Transfer Point-to-Signal Transfer Point connections. Such interconnections should be made at the D-NIP and other points, as necessary. Given that CCS will be used cooperatively for the mutual handling of traffic, link facility and link termination charges should be prorated 50% between the parties. For traffic for which CCS is not available, in-band multi-frequency, wink start, and E&M channel-associated signaling with ANI will be forwarded. The originating carrier should also be required to transmit the privacy indicator where it applies. Network signaling information such as Carrier Identification Parameter (CCS platform) and CIC/OZZ information (non-CCS environment) should be provided wherever such information is needed for call routing or billing. Finally, BellSouth should offer use of its signaling network on an unbundled basis at tariffed rates.

While there is general agreement on these CLASS interoperability issues, as indicated by related provisions of the Stipulation (Stip. at 30), BellSouth would not sign a detailed business agreement addressing all of the necessary aspects of this issue.

<u>**Issue 11**</u>: **What are the appropriate arrangements for physical interconnection between the respective ALECs and Southern Bell, including trunking and signaling arrangements?**

<u>**Summary of Position**</u>: *** ALECs and BellSouth should jointly establish at least one location per LATA as a Designated Network Interconnection Point ("D-NIP"). BellSouth should exchange traffic between its network and ALEC networks using reasonably efficient routing, trunking, and signaling arrangements. ALECs and BellSouth should reciprocally terminate LATA-wide traffic via two-way trunking arrangements.

<u>**Discussion**</u>: MFS supports interconnection at neutral interconnection points (referred to by MFS as Default Network Interconnection Points or "D-NIPs"). MFS supports the mutual exchange of traffic based on these interconnection points. Within each LATA, all carriers and BellSouth should jointly establish at least one mutually acceptable location as a D-NIP. MFS and BellSouth should be responsible for providing trunking to the interconnection points for the hand-off of combined local and toll traffic and each carrier should be responsible for completing calls to all end users on their network. In order to establish interconnection points, carriers would pass both local and toll traffic over a single trunk group, utilizing a percent local utilization ("PLU") factor (similar to the currently

utilized percent interexchange utilization ("PIU") factor) to provide the proper jurisdictional call types, and subject to audit.

Where MFS and BellSouth interconnect at a D-NIP, MFS should have the right to specify any of the following interconnection methods: 1) a mid-fiber meet at or near the D-NIP; 2) a digital cross-connection hand-off where both MFS and BellSouth maintain such facilities at the D-NIP; or 3) a collocation facility. In extending network interconnection facilities to the D-NIP, MFS should have the right to extend its own facilities or to lease dark fiber facilities or digital transport facilities from BellSouth or a third party under the most favorable terms BellSouth offers. More than one meet-point could be established if mutually acceptable, and the cost of terminating a call to that meet-point should be identical to the cost of terminating a call to the D-NIP. This proposal permits the interconnecting parties to determine where interconnection should take place, while minimum interconnection requirements ensure that all carriers are interconnected.

The BellSouth proposal for interconnection at the tandem and end office only is designed to consider only BellSouth's network architecture, with complete disregard for the efficiencies of ALECs' networks. Devine, Tr. at 146. Moreover, BellSouth's proposal is completely inconsistent with the manner in which BellSouth currently interconnects with independents by establishing neutral meet-points at the franchise boundaries. Scheye, Exh. 17 (Jan. 5, 1996 deposition) at 46. The Commission should reject BellSouth's proposal and adopt a plan that gives both BellSouth and ALECs the flexibility to determine the meet-point. This approach more accurately reflects existing

LEC-to-LEC arrangements and the basic concept of co-carriers as equal carriers. The Connecticut Department of Utility Control has recently adopted a proposal similar to MFS' in order to maximize the efficiencies of all interconnecting parties. *DPUC Investigation Into the Unbundling of the Southern New England Telephone Company's Local Telecommunications Network*, Docket No. 94-10-02, Decision at 85 (Conn. D.P.U.C., Sept. 22, 1995).

BellSouth should exchange traffic between its network and the networks of competing carriers using reasonably efficient routing, trunking, and signaling arrangements. Devine, Tr. at 69-70. ALECs and BellSouth should reciprocally terminate LATA-wide traffic[14] originating on each other's network via two-way trunking arrangements. These arrangements should be jointly provisioned and engineered, and each local carrier should be required to engineer its portion of the transmission facilities terminating at a D-NIP to provide the same grade and quality of service between its switch and the other carrier's network as it provides in its own network. At a minimum, transmission facilities should be arranged in a sufficient quantity to each D-NIP to provide a P.01 grade of service. MFS and BellSouth should use their best collective efforts to develop and agree upon a Joint Interconnection Grooming Plan prescribing standards to

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The term "LATA-wide traffic" refers to calls between a user of local exchange service where the new entrant provides the dial tone to that user, and a user of a BellSouth-provided local exchange service where BellSouth provides the dial tone to that user and where both local exchange services bear NPA-NXX designations associated with the same LATA.

ensure that trunk groups are maintained at this grade of service. Carriers should provide each other the same form and quality of interoffice signaling (*e.g.*, in-band, CCS, etc.) that they use within their own networks, and SS7 signaling should be provided where the carrier's own network is so equipped. A more detailed description of these proposed arrangements is contained in the November 8, 1995 proposed MFS Stipulation. Exh. 2 (Florida Co-Carrier Stipulation and Agreement at 13-14) (formerly Exh. TTD-4)..

Each carrier should be required to provide the same standard of maintenance and repair service for its trunks terminating at the D-NIP as it does for interoffice trunks within its own network. Devine, Tr. at 71-72. Each carrier should be required to complete calls originating from another carrier's switch in the same manner and with comparable routing to calls originating from its own switches. In particular, callers should not be subject to diminished service quality, noticeable call set-up delays, or requirements to dial access codes or additional digits in order to complete a call to a customer of a different carrier.

Interconnection via two-way trunk groups is critical to ALECs such as MFS and carriers should be required to interconnect using two-way trunk groups wherever technically feasible. Use of two-way trunking arrangements to connect the networks of incumbent LECs is standard in the industry. Two-way trunk groups represent the most efficient means of interconnection because they minimize the number of ports each carrier will have to utilize to interconnect with all other carriers.

BellSouth's testimony does not address this issue in any detail.[15] MFS has not been able to reach an agreement with BellSouth on this issue, nor is it addressed in any detail in the Stipulation. The Commission should therefore mandate specific interconnection, trunking, and signaling arrangements between MFS and BellSouth.

Issue 12: To the extent not addressed in the number portability docket, Docket No. 950737-TP, what are the appropriate financial and operational arrangements for interexchange calls terminated to a number that has been "ported" to the respective ALECs?

Statement of Position: *** Switched access (toll) or local compensation (local) should still apply when calls are completed using interim number portability. BellSouth should compensate ALECs as if traffic were terminated directly to the ALEC. Interim number portability processing and billing procedures should be established herein.

Discussion: The most significant issue that was not addressed in the interim number portability docket is the compensation for termination of remote call forwarded ("ported") calls and the entitlement to terminating network access charges on such calls. Switched access represents a significant revenue source to LECs and, because the majority of ALEC customers will initially be former LEC customers utilizing interim number portability, this is a critical issue for ALECs. ALECs terminating a call should receive the appropriate

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BellSouth's only testimony on this issue states: "It is BellSouth's position that local interconnection, which includes trunking and signaling, should be provided at the access tandem and end office level. This is the only technically feasible arrangement and is the arrangement that currently exists with the interexchange carriers." Scheye, Tr. at 470.

compensation (switched access or local compensation, depending on the type of call) ***regardless of whether a call is completed using interim number portability.***

MFS believes that this is the only approach consistent with the Commission's goal of introducing competition in the local exchange market. Devine, Tr. at 98-103. Only if the customers' carrier collects these revenues will competition be stimulated by interim number portability. Allowing the incumbent LEC to retain toll access charges for calls terminated to a retained number belonging to a customer of another carrier would reward the incumbent LEC for the lack of true local number portability, and therefore provide a financial incentive to delay true number portability for as long as possible. Moreover, it would reinforce the incumbent LEC bottleneck on termination of interexchange traffic, stifling potential competition in the local exchange market. Put simply, it would give incumbent LECs a competitive advantage by preventing new entrants from competing for toll access charges, a key component of LEC revenues.

As noted in the universal service docket, MFS does not subscribe to the LEC conventional wisdom that access charges "subsidize" local exchange service, since there is no evidence that the forward-looking economic cost of the basic local exchange service exceeds its price as a general matter. Nonetheless, access charges clearly provide a significant source of revenue -- along with subscriber line charges, local flat-rate or usage charges, intraLATA toll charges, vertical feature charges, and perhaps others -- that justify the total cost of constructing and operating a local exchange network, including shared and common costs. Devine, Tr. at 100. It is unrealistic to expect ALECs to make the substantial capital investment required to construct and operate competitive networks if they will not have the opportunity to compete for all of the services provided by the LECs and all of the revenues generated by those services. As long as true local number portability does not exist, new entrant opportunities to compete for access revenue would be severely restricted if they had to forfeit access charges in order to use interim number portability arrangements.

Interim number portability is a technical arrangement that will permit competition to take root in Florida. Because interim number portability is necessary to bring to the public the benefits of competition, it benefits all callers, and an ALEC's compensation should not vary depending on whether interim number portability is in place or not. BellSouth should compensate MFS as if the traffic had been terminated directly to MFS' network, except in cases where tandem subtending meetpoint billing arrangements are in place where some elements are shared based on the functionality provided by each carrier. Thus, for LATA-wide calls originating on BellSouth's network and terminating on MFS' network, the effective inter-carrier compensation structure at the time the call is placed should apply. Traffic from IXCs forwarded to MFS via interim number portability should be subject to the appropriate intraLATA, interLATA-intrastate, or interstate switched access rate less those transport elements corresponding to the use of the BellSouth network to complete the call.[16]

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In other words, BellSouth should receive entrance fees, tandem switching, and part (continued..)

Not surprisingly, BellSouth used interim number portability as an excuse to attempt to deprive ALECs of virtually all of their switched access revenue. (BellSouth would also receive a windfall by receiving full switched access revenue despite the fact that the call is terminated over ALEC facilities.) BellSouth is already receiving compensation for interim number portability (incremental cost of transport and switching). In negotiations with MFS, BellSouth has taken the position that BellSouth will also retain switched access charges on ported interLATA calls that terminate through the BellSouth network. Exh. 2 (Oct. 6, 1995 Latham Letter at 2) (formerly Exh. TTD-1). This is also the position that BellSouth agreed to in the Stipulation. Stip. at 14. This is one of the many issues in the Stipulation that made it impossible for MFS to sign the Stipulation, and that the Commission should rectify in order to grant MFS its rightful access revenues and promote the development of competition in Florida.

The details of how a request for interim number portability will be processed and billed were also not addressed in the number portability docket. MFS believes that the Commission should address these issues in this proceeding to ensure that interim number portability is implemented efficiently and without dispute. Based on its experience in other states, these kinds of details are precisely the issues that are most likely to delay

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[16](...continued)
of the tandem transport charges. MFS should receive local switching, the RIC, the CCL, and potentially part of the transport charge depending upon the meet-point billing percentage. The pro-rata billing share to be remitted to MFS should be identical to the rates and rate levels as non-temporary number portability calls. BellSouth will bill and collect from the IXC and remit the appropriate portion to MFS.

competition. Exhibit TTD-3 to the MFS direct testimony in this docket contains the MFS proposal for Co-Carrier Number Forwarding Arrangements. Exh. 2. In sum, these arrangements require that an ALEC requiring temporary number portability submit to BellSouth an order on behalf of the customer. (A similarly signed order would be required for a customer changing from MFS to BellSouth.) BellSouth will then provide temporary number portability for that customer. The ALEC requiring temporary number portability becomes the customer of record for BellSouth and receives a single consolidated master billing statement each month for all collect and third-number billed calls associated with these numbers, with sub-account detail by retained number. BellSouth will update its LIDB listings for retained numbers, and restrict or cancel calling cards associated with those forwarded numbers, as directed by the ALEC requiring temporary number portability.

The ALEC and BellSouth will deliver consolidated billing statements to one another in magnetic tape formats which are compatible with their respective systems in order to re-bill their end users for collect, calling card and third-number billed calls. Additionally, the ALEC and BellSouth will implement a process to coordinate temporary number portability cut-overs with unbundled link conversions. Specifically, to minimize customer downtime and inconvenience, BellSouth should be required to ensure that cut-overs occur within one hour. The ALEC and BellSouth will pledge to use their best efforts to ensure that temporary number portability arrangements will not be utilized in instances where a customer changes locations and would otherwise be unable to retain its number without subscribing to foreign exchange service. The Commission should adopt these procedures in this docket to ensure that interim number portability and the competition it will make possible are quickly and smoothly implemented.

Issue 13: What arrangements, if any, are necessary to address other operational issues?

Statement of Issues: *** The Commission should establish reasonable arrangements to address transfer of service announcements, coordinated repair calls, information pages, and the operator reference database.

Discussion: The Commission should establish detailed arrangements for certain additional operational issues that MFS has found to be important issues for MFS affiliates and their customers in other states. These issues have also been exploited by incumbent LECs to obstruct or delay ALEC operations. The appropriate Commission resolution of issues such as transfer of service announcements, coordinated repair calls, information pages, and the operator reference database will therefore avoid future disputes and facilitate the introduction of competition. Devine, Tr. at 97-98.

When an end user customer changes from BellSouth to MFS or vice versa, and does not retain its original telephone number, the carrier formerly providing service to the end user should provide a transfer of service announcement on the abandoned telephone number. This announcement will provide details on the new number to be dialed to reach this customer. These arrangements should be provided reciprocally, free of charge to either the other carrier or the end user customer.

With respect to misdirected repair calls, MFS and BellSouth should educate their respective customers as to the correct telephone numbers to call in order to access their respective repair bureaus. To the extent the correct provider can be determined, misdirected repair calls should be referred to the proper provider of local exchange service in a courteous manner, at no charge, and the end user should be provided the correct contact telephone number. Extraneous communications beyond the direct referral to the correct repair telephone number should be strictly prohibited. In addition, MFS and BellSouth should provide their respective repair contact numbers to one another on a reciprocal basis.

BellSouth should include in the "Information Pages" or comparable section of its White Pages Directories for areas served by MFS, listings provided by MFS for MFS' calling areas, services installation, repair and customer service and other information. Such listings should appear in the manner and likenesses as such information appears for subscribers of BellSouth and other LECs.

BellSouth should also be required to provide operator reference database ("ORDB") (*i.e.,* emergency agencies, police, fire, etc.) updates on a monthly basis at no charge in order to enable MFS operators to respond in emergency situations.

BellSouth has never provided a substantive response to these issues but rather suggested that these issues be resolved "through the negotiating process." Scheye, Tr. at 471. BellSouth also refers to "the existing Commission complaint procedures" to resolve such issues. *Id.* This is precisely the unwieldy and expensive outcome that MFS would like to avoid, and MFS would therefore like to resolve operational issues that have proven to be obstacles in other states in advance. Such an approach would also be in the public interest. The Commission should therefore establish reasonable arrangements to address transfer of service announcements, coordinated repair calls, information pages, and the operator reference database.

Issue 14: What arrangements, if any, are appropriate for the assignment of NXX codes to the respective ALECs?

Statement of Position: *** MFS is entitled to the same nondiscriminatory number resources as any Florida LEC under the Central Office Code Assignment Guidelines. BellSouth, as Central Office Code Administrator for Florida, should therefore support all MFS requests related to central office (NXX) code administration and assignments in an effective and timely manner.

Discussion: As a co-carrier, MFS is entitled to the same nondiscriminatory number resources as any Florida LEC under the Central Office Code Assignment Guidelines ("COCAG"). BellSouth, as Central Office Code Administrator for Florida, should therefore support all MFS requests related to central office (NXX) code administration and assignments in an effective and timely manner. MFS and BellSouth should comply with code administration requirements as prescribed by the Federal Communications Commission, the Commission, and accepted industry guidelines. As contemplated by the COCAG, MFS will designate within the geographic NPA with which each of its assigned NXX codes is associated, a Rate Center area within which it intends to offer Exchange

Services bearing that NPA-NXX designation, and a Rate Center point to serve as the measurement point for distance-sensitive traffic to or from the Exchange Services bearing that NPA-NXX designation. MFS will also designate a Rating Point for each assigned NXX code. MFS may designate one location within each Rate Center as the Rating Point for the NPA-NXXs associated with that Rate Center; alternatively, MFS may designate a single location within one Rate Center to serve as the Rating Point for all the NPA-NXXs associated with that Rate Center and with one or more other Rate Centers served by MFS within the same LATA.

There does not appear to be any dispute with BellSouth on this issue, but the Stipulation is vague on this issue and, specifically, does not reference the adoption of current practices among LECs in Florida. MFS has not been able to obtain an agreement with BellSouth in writing on this or any other issue.

Conclusion

This proceeding gives the Commission an opportunity to establish a clear and detailed roadmap for the development of local exchange competition in Florida by setting compensation and other arrangements that will permit competition to emerge. MFS strongly urges the Commission to adopt a bill and keep system of reciprocal compensation for local call termination, transitioning to LRIC-based rates in order to ensure that ALECs are not caught in a price squeeze. The MFS compensation proposal would create equal, reciprocal, and identical rates that would permit ALECs to compete. By contrast, BellSouth's switched access rates are not cost-based and will lead to either higher rates for consumers, or a price squeeze for ALECs, while shielding BellSouth from the forces of competition. ALECs should receive the same switched access on "ported" calls as on other calls, and compensation to the terminating carrier should include the RIC, consistent with current industry practice.

MFS also strongly encourages the Commission to establish at the requisite level of detail the appropriate physical interconnection arrangements, including tandem subtending, meetpoint billing, ALEC cross-connection at a collocated site, and two-way trunking. The Commission should also address significant operational issues that may well prove to be stumbling blocks if not addressed in advance. If all of the issues addressed herein are resolved by the Commission, and compensation and rates for other essential services preclude a price squeeze, the Commission will have done what it can to encourage the immediate introduction of robust local competition in Florida consistent with the legislative mandate.

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Dated: January 24, 1996

CERTIFICATE OF SERVICE

I, Sheila M. Beattie, hereby certify that on the 24th day of January, 1996, a copy of the foregoing Posthearing Brief and Statement of Issues and Positions of Metropolitan Fiber Systems of Florida, Inc., Docket No. 950985-TP, was served, via federal express* or first-class mail, postage prepaid, to the following parties:

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