

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In the matter of)
)
MFS COMMUNICATIONS COMPANY, INC.)
)
Petition for Arbitration Pursuant to 47 U.S.C.)
§ 252(b) of Interconnection Rates, Terms, and)
Conditions with)
)
SPRINT UNITED-CENTEL OF FLORIDA, INC.)
)

Docket No. ~~960838-TP~~

Filed: August 23, 1996.

**PREHEARING STATEMENT OF
MFS COMMUNICATIONS COMPANY, INC.**

Pursuant to the Interim Order Establishing Procedure issued July 26, 1996, MFS Communications Company, Inc. ("MFS"), by its undersigned attorneys, hereby files this Prehearing Statement concerning MFS' Petition for Arbitration of Interconnection Rates, Terms, and Conditions ("Petition") with Sprint United Centel of Florida, Inc. (also known as Central Telephone Company of Florida and United Telephone Company of Florida) ("Sprint").

- (a) The Name of All Known Witnesses That May Be Called by MFS, and the Subject Matter of Their Testimony

MFS may call Timothy T. Devine to testify as to the appropriate interconnection and other co-carrier arrangements between MFS and Sprint, as well as the appropriate rates, terms and conditions necessary for a comprehensive interconnection agreement. In addition, he may be called to testify as to the appropriate arrangements for the unbundling of Sprint loops, ports, and other network features, functions, and capabilities, including the appropriate rates for such unbundled elements. Mr. Devine may further be called to testify with respect to any other matter

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in connection with MFS' Petition and MFS' desire for a prompt, comprehensive interconnection agreement.

MFS may call David N. Porter to testify as to the costs and rates for interconnection and unbundling. In addition, Mr. Porter will testify regarding the application of the FCC interconnection rules to the arbitration and any cost studies by Sprint.

MFS may further call such other witnesses as may be appropriate and necessary based upon, among other things, the course of proceedings, matters learned in discovery, and other factors.

(b) A Description of All Known Exhibits That May Be Used by MFS, Whether They May Be Identified on a Composite Basis, and the Witness Sponsoring Each.

Timothy T. Devine, on behalf of MFS, may sponsor Exhibits TTD-1 through TTD-13 to his Testimony. Exhibit TTD-1 are examples of carrier logos contained with the call guide (information pages) of certain white page directories. Exhibit TTD-2 is a co-carrier agreement between Ameritech Illinois and an MFS subsidiary. Exhibit TTD-3 is a co-carrier agreement between New York Telephone Company and an MFS subsidiary. Exhibit TTD-4 is a co-carrier agreement between an MFS subsidiary and GTE. Exhibit TTD-5 are excerpts from the Benchmark Cost Model. Exhibit TTD-6 is a co-carrier agreement between MFS and GTE of California Incorporated. Exhibit TTD-7 is a co-carrier agreement between MFS and Pacific Bell. Exhibit TTD-8 is a selection of the FCC interconnection rules to be codified in Title 47, Code of Federal Regulations, which were released August 8, 1996 (the "FCC Order"). Exhibit TTD-9 is a co-carrier agreement between MFS and Southwestern Bell. Exhibit TTD-10 is a co-carrier agreement between MFS and Bell Atlantic-Maryland. Exhibit TTD-11 is a letter dated August

16, 1996 from Mr. Jack K. Burge of Sprint to Mr. Timothy T. Devine of MFS. Exhibit TTD-12 is an interim co-carrier agreement between MFS and GTE Florida Incorporated. Exhibit TTD-13 is a proposed collocation agreement.

In addition, Mr. Devine will sponsor, separate from his Testimony, the exhibits that were attached to the Petition.^{4/}

David N. Porter may sponsor the following exhibits to his Testimony. Exhibit DNP-1 is a Summary of the Costing Requirements from the FCC's Interconnection Order. Exhibit DNP-2 is an analysis and summary of the FCC Order. Exhibit DNP-3 is a loop deaveraging worksheet.

MFS may further use such other exhibits as may be appropriate and necessary based upon, among other things, the course of proceedings, matters learned in discovery and documents produced, and other factors.

^{4/} The following exhibits were attached to or filed with the Petition:

1. Letter to Mr. Daryl Kelly, United Telephone of Florida, dated February 7, 1996 from Andrew Lipman, Esq., Counsel for MFS, enclosing a proposed comprehensive interconnection agreement.
2. Letter to Mr. Jack K. Burge, Sprint Corporation, dated July 3 1996 ("July 3 Final Offer Letter").
3. Florida Interconnection Agreement between MFS and Sprint dated July 3, 1996 (the "Comprehensive Interconnection Agreement" or "CIA").
4. Sprint's Essential Elements for the Competitive Checklist, dated April 8, 1996.
5. Sprint Terms for LEC/CLEC Interconnection and Other Agreements dated June 13, 1996.

(c) Statement of MFS' Basic Position in the Proceeding.

MFS seeks Commission arbitration of the unresolved issues arising from its proposed comprehensive interconnection agreement, including rates, terms, and conditions between MFS and Sprint. MFS believes that a comprehensive interconnection agreement is required to implement appropriate interconnection arrangements between the parties, and that the Commission should arbitrate any unresolved issue necessary to reach promptly a complete and final agreement. The Telecommunications Act of 1996 ("Act") and the FCC's Orders are designed to ensure that the parties reach such an agreement, and operate from the central premise that the goal of the process is to remove delays and barriers to entry into the telecommunications market. Common sense says that the complex business and technical concerns at issue require a comprehensive agreement. MFS has reached such agreements with at least five of the seven RBOCs and several major independent ILECs. MFS has proposed such an agreement with Sprint, and, indeed, Sprint has proposed its own, reflecting the view that a comprehensive agreement is necessary. MFS believes it is incumbent upon the arbitrator to determine all issues necessary to reach a comprehensive interconnection agreement. MFS seeks to avoid the circumstance where, despite the fact that the Act, the FCC Order, and, in certain instances, the Commission's orders clearly dictate the constituent requirements of an agreement, MFS is delayed in moving forward because of the ILEC's failure, inability or refusal to agree to all of the detailed provisions necessary for a comprehensive agreement. Accordingly, MFS urges the Commission to take all steps to ensure both prompt resolution of all issues and execution of a comprehensive interconnection agreement.

MFS believes that its proposed CIA contains all of the necessary constituent elements of a comprehensive agreement, and that the CIA is a fair, reasonable, and straightforward articulation of the principles and provisions mandated by the Act, the FCC Order, and this Commission's prior Orders. In fact, the provisions of the CIA are specifically cross referenced to the corresponding sections in the Act requiring such provisions. The fact that MFS has been able to enter into such agreements with other diverse, sophisticated parties, shows that the principles and particulars of MFS' proposed agreement are reasonable and appropriate, and further that there is no reason why such a comprehensive agreement cannot be expeditiously completed and concluded here.

In MFS' view, a number of the issues have previously been addressed by the Commission in Order Nos. PSC-96-0811-FOF-TP ("Unbundling Order") (recon. pending) and PSC-96-0668-FOF-TP ("Interconnection Order") (recon. pending), in which the Commission ruled on MFS' petitions brought pursuant to Florida law for interconnection and unbundling terms with Sprint. MFS asks the Commission to take official notice of its prior decisions and incorporate the record of those proceedings here, including testimony, transcripts, and staff recommendations. MFS similarly seeks such official notice of the Act, as well as the FCC's Orders and Rules thereunder, including without limitation the FCC Order. Furthermore, to the extent that the FCC's new interconnection rules conflict with the Commission's prior rulings, MFS believes that the FCC rules must apply. See, FCC Order, ¶ 101 (agreements arbitrated by state commissions must comply with FCC's regulations); and § 253 of the Act (FCC regulations preempt state or local regulations). MFS notes that its positions have been revised to reflect the requirements of the FCC Order. Where possible, those points have been identified in the

Rebuttal Testimony of Mr. Devine and in this Pre-hearing Statement. Other such revisions, if any, shall be identified with specificity prior to the hearing in this case.

MFS refers to, and incorporates by reference herein, the following documents as further reflective of MFS' basic position in this case: (1) the Petition; (2) the Testimony of Timothy Devine (Direct and Rebuttal) and David N. Porter; and (3) the CIA.

(d-f) MFS' Prehearing Positions on the Questions of Fact, Law, and Public Policy Which MFS Considers at Issue and the Witnesses Who Will Address the Issue.^{2/}

1. Issue: What are the appropriate arrangements for the network interconnection architecture between MFS and Sprint?

Position: Under 47 U.S.C. § 251(c)(2)(B), Sprint must provide interconnection at any technically feasible point within its network. MFS proposes in § 4.0 of the CIA that interconnection be accomplished through mutually agreed upon interconnection points, with each carrier responsible for providing facilities and trunking to the meet points for the hand off of local and toll traffic and each carrier responsible for completing calls to all end users on its network. The Commission ordered similar arrangements in its Interconnection Order. Furthermore, the FCC addressed these issues in its Order at ¶¶ 176-225, as well as at 47 C.F.R. § 51.305. In order to implement appropriate interconnection arrangements, a comprehensive agreement must contain appropriate provisions addressing a number of key issues. Obviously, provisions for definitions and interpretation and construction of the CIA are necessary; MFS has provided these in §§ 1.0 and 2.0 respectively of the CIA. More importantly,

^{2/} Mr. Devine will address issues 1 through 14. Mr. Porter will address issues relating to the costs and rates for interconnection and unbundling, the application of the FCC interconnection rules to the arbitration, and any cost studies by Sprint.

an implementation schedule and agreement on interconnection activation dates is a logical and critical element. MFS provides for this in § 3.0 of the CIA. Section 3.0 expressly states that it is provided in the CIA pursuant to Section 4.0. Such a provision is specifically mandated as a standard for arbitration under § 252(c)(3) of the Act. Other necessary provisions will be described below.

2. **Issue:** What is the appropriate reciprocal compensation rate and arrangement for local call termination between MFS and Sprint?

Position: Until the Commission approves a total element long run incremental cost ("TELRIC") based study as required by the FCC Order, the Commission must apply the proxy range of reciprocal compensation rates set out in 47 C.F.R. § 51.513. Specifically, that range is \$0.002-0.004 per minute of use, with an additional \$0.015 per minute of use for tandems. See also, CIA § 5.8.

3. **Issue:** Is it appropriate for Sprint to offer the following unbundled loops, and if so, at what rate:

- a. 2-wire analog voice grade loop;
- b. 4-wire analog voice grade loop;
- c. 2-wire ISDN digital grade loop; and

Position: MFS believes that this Commission's prior Orders as well as the Act and the FCC Order clearly require Sprint to offer all such loops. As to the rate, MFS does not believe that BCM 2 complies with the FCC Order. Until the Commission approves a TELRIC based study as required by the FCC Order, the Commission should use the FCC proxy ceiling

of \$13.68 for unbundled loops in Florida, over three or more geographically deaveraged zones.

See also, CIA § 9.

4. Issue: Is it appropriate for Sprint to provide MFS with 2-wire ADSL compatible, and 2-wire and 4-wire HDSL compatible loops? If so, what are the appropriate rates for these loops?

Position: The FCC Order at ¶¶ 367-396 states that carriers must provide these loops if technically feasible. MFS believes such loops are technically feasible. Ameritech provides these loops to MFS in Illinois, plainly demonstrating that they are technically feasible. MFS does not believe that BCM 2 complies with the FCC Order. Until the Commission approves a TELRIC based study, the Florida proxy ceiling should apply on a deaveraged basis utilizing three zones: urban, suburban, and rural. See also, CIA § 9.

5. Issue: What are the appropriate rates, terms and conditions, if any, for billing, collection and rating of information services traffic between MFS and Sprint?

Position: MFS' position is stated in detail in § 7.1 of the CIA. MFS proposes that the Originating Party (as this and other terms in this paragraph are defined in the CIA) on whose network information services traffic originates shall provide to the Terminating Party recorded call detail information. The Terminating Party shall provide the Originating Party with necessary information to rate information services traffic to the Originating Party's customers pursuant to the Terminating Party's agreements with each information services provider. The Originating Party shall bill and collect such information provider charges and remit the amounts collected to the Terminating Party, less certain adjustments.

6. Issue: What is the appropriate cost recovery mechanism for interim number portability via call forwarding provided by Sprint to MFS pursuant to the order issued July 2, 1996, in FCC Docket 95-116 ("July 2 Order")?

Position: MFS recommends the cost recovery mechanism articulated in more detail in the Testimony of Timothy Devine (Direct & Rebuttal) and endorsed in ¶¶ 117-140 of the FCC's July 2 Order. See also, CIA § 13.

7. a. Issue: Does the Commission have the authority and jurisdiction to require the inclusion of a clause for stipulated damages in an interconnection agreement between MFS and Sprint?

Position: Yes. MFS stated its position on this question in detail in MFS' Opposition to Sprint's Motion to Dismiss, filed in this proceeding on or about August 19, 1996.

b. Issue: Should the interconnection agreement between MFS and Sprint include a provision for stipulated damages for specific performance breaches? If so, what provisions should be included?

Position: Yes, such a provision is appropriate. A stipulated damages provision is appropriate because damages are difficult to measure, and the extent of the damage to MFS' business will go well beyond the immediate economic losses. Section 23.0 of the CIA specifies the types of performance breaches which should be covered and the amount of liquidated damages.

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

Position: MFS' position is stated in detail in Section 14 of the CIA. MFS essentially seeks fair and equal treatment with respect to such assignment.

9. Issue: What are the appropriate arrangements for tandem subtending meet-point billing?

Position: MFS' position is stated in detail in § 6.3 of the CIA. Among other things, MFS proposes that if Sprint operates an access tandem serving a LATA in which MFS operates, it should be required, upon request, to provide tandem switching service to any other carrier's tandem or end office switch serving customers within that LATA, thereby allowing MFS' switch to "subtend" the tandem. See, Interconnection Order at 27. Meet-point billing formulas should apply. See, Interconnection Order at 27-28. MFS and Sprint should exchange all information in a timely fashion necessary to accurately, reliably and promptly bill third parties for switched access services jointly handled by MFS and Sprint via the meet-point arrangement, and should employ calendar month billing and provide appropriate usage data at no charge to facilitate such billing. See, Interconnection Order at 28, 37-39. Billing to third parties should be accomplished according to the single-bill/multiple tariff method, and subsequently, via other methods in accordance with MFS' position stated more specifically in the Testimony of Timothy Devine submitted with the Petition. Switched access charges to third parties should also be calculated in accordance with the regime delineated in such Testimony attached to the Petition.

10. **Issue:** What are the appropriate arrangements for trunking and signaling between MFS-FL and Sprint?

Position: MFS' proposal for trunking and signaling is set out in §§ 5.0 and 6.0 of the CIA. Sprint should exchange traffic between its network and MFS' network using reasonably efficient trunking and signaling arrangements. Interconnection using two-way trunk groups would be required wherever technically feasible. The Commission ordered similar arrangements in its Interconnection Order. Furthermore, 47 U.S.C. § 251(c)(2) requires that MFS receive the same arrangements that Sprint offers other carriers. In addition, the FCC Order requires that Sprint interconnect using two-way trunk groups whenever technically feasible. 47 C.F.R. § 51.305(f).

11. **Issue:** Is it appropriate for Sprint customers to be allowed to convert their bundled service to an unbundled service and assign such service to MFS, with no penalties, rollover, termination or conversion charges to MFS or the customer?

Position: Yes. Such a "fresh look" provision implements the intent of the Act to promote and foster real consumer choice and competition in the market. The Commission has ordered such relief with respect to BellSouth. See Order No. PSC-96-0444-FOF-TP at 16-18 (recon. pending). Furthermore, this is a common consumer protection procedure adopted by this Commission in *Intermedia Communications of Florida, Inc.*, 1994 WL 118370 (Fla. P.S.C.), *reconsidered*, 1995 WL 579981 (Fla. P.S.C., Sep. 21, 1995), the FCC, and in various circumstances by the Commissions in New Jersey, California, and Ohio. See, CIA § 25.

12. **Issue:** What are the appropriate arrangements for the following:

a. Interconnection between MFS and other collocated entities

- b. Information service billing and collection
- c. Information pages

Position: The appropriate arrangements for these items are stated in the CIA in §§ 16 – 19 and in the Testimony of Timothy Devine (Direct & Rebuttal). MFS believes that for each of the above, service platforms must be shared by a competing carrier in order to permit customers to receive similar service. See Interconnection Order at 50. Standards should be adopted for interconnection facilities between MFS and other collocated facilities (see, Interconnection Order at 50). As stated in the Testimony of Timothy Devine, MFS seeks the inclusion of its logo in directories at no cost.

13. **Issue:** What are the appropriate physical collocation terms, conditions and rates?

Position: MFS' position is stated in § 12.0 of the CIA and the proposed collocation agreement attached to the Rebuttal Testimony of Timothy Devine. The FCC adopted explicit national standards to implement the collocation requirements of the Act in the FCC Order. Those standards, which are minimum requirements, support the adoption of MFS' proposed collocation provisions. Collocation rates should be priced according to the standard of 47 U.S.C. § 252(d).

14. **Issue:** Should the provisions of the CIA which MFS believes are necessary elements of an interconnection agreement and which Sprint has not opposed in its Detailed Response (defined below) be adopted?

Position: Yes. MFS requested Sprint to state specifically any provision of the CIA with which it disagrees, both in the July 3 Final Offer Letter to Sprint and in the Petition filed in this case on July 17. Sprint has stated in its response to the Petition that it "agrees with

MFS on many issues," and that there are "really only two major disagreements between the parties, those being the rate(s) for interconnection and the rates for unbundling." Response at 3. After some discussion among the parties, Sprint sent a letter to MFS dated August 16, 1996 (copy attached to the Testimony of Timothy Devine as Exhibit TTD-11) (the "Detailed Response"). The Detailed Response provides a line by line, section by section response to MFS' proposed CIA. In the Detailed Response, there are a number of provisions of the CIA for which Sprint had no comment or objection. Many such provisions are plainly required under the Act and the FCC Order; others are typical legal provisions found generally in these kinds of agreements. All such provisions are found in the agreements reached by MFS with the various other LECs described above.

Sprint raised no issues with respect to the following entire sections of the CIA:

- § 2.0 - Interpretation and Construction
- § 3.0 - Implementation Schedule and Interconnection Activation Dates
- § 8.0 - Joint Grooming Plan and Installation, Maintenance, Testing & Repair
- § 10.0 - Resale of Sprint Local Exchange Services
- § 11.0 - Notice of Changes
- § 14.0 - Dialing and Number Resources, Rate Centers, and Rating Points
- § 15.0 - Access to Rights-of-Way
- § 16.0 - Database Access
- § 18.0 - 911/E911 Arrangements
- § 20.0 - General Responsibilities of the Parties
- § 21.0 - Term & Termination

- § 22.0 - Installation
- § 25.0 - Cancellation, Conversion, Roll-Over Charges
- § 26.0 - Severability
- § 27.0 - Force Majeure
- § 30.0 - Disputed Amounts
- § 31.0 - Non-Disclosure
- § 32.0 - Cancellation
- § 33.0 - Dispute Resolution
- § 34.0 - Notices
- § 36.0 - Miscellaneous

Even where Sprint did raise issues in the Detailed Response, those objections were generally with respect to specific sub-sections, or even sentences, of the CIA. With respect to those sub-sections or provisions not objected to, MFS believes they ought to be adopted as part of the agreement between the parties.

For example, of seventy-seven total "definitions" included in CIA § 1.0, Sprint objected to only two (§§ 1.42 and 1.43). Similarly, Sprint's objections with respect to other sub-sections are specific and can be readily ascertained by review of the Detailed Response. Accordingly, with respect to those provisions not objected to, MFS similarly requests that they be adopted.

Stated differently, MFS views these issues, based upon the Detailed Responses, as now resolved. If, however, Sprint for any reason changes its position with respect to any such resolved issue, and disputes or contests the inclusion of such provisions in the agreement

between the parties, then MFS seeks arbitration of any such disputed issue and otherwise reserves all of its rights.

More importantly, with respect to those issues which appear settled, the Commission should require Sprint to promptly execute an agreement on these points.

(g) Statement of Issues That Have Been Stipulated to by the Parties.

No issues have been formally stipulated as of yet by the parties. However, as described in more detail in the discussion of Issue No. 14 above (which is incorporated herein by reference), it appears that Sprint has accepted MFS' position in the CIA on numerous issues and, accordingly, MFS views those issues as settled. As to these issues, the Commission should ensure that Sprint promptly takes steps to execute an agreement on these points. The Detailed Response also contains Sprint's view of the unresolved issues, which it forwarded to staff (with some modification) for the record in this case. As stated above, if Sprint changes its position as articulated in the Detailed Response, and any resolved issues become contested, MFS requests arbitration of such issues and otherwise reserves its rights.

(h) Statement of All Pending Motions or Other Matters MFS Seeks Action Upon.

MFS may file a motion for clarification of the effect of the Commission's earlier orders regarding interconnection and unbundling and the FCC's Orders on this proceeding. Pending are Sprint's motions to dismiss, objections to discovery, and motion for protective order. MFS has opposed all of these actions, and has filed its motion to compel regarding discovery.

- (i) Statement as to Any Requirement Set Forth in this Order That Cannot Be Complied With, and the Reasons Therefor.

To the extent matters arise in the course of these proceedings and/or in discovery, MFS reserves the right to amend its positions or list of issues, witnesses, and exhibits accordingly. Similarly, MFS reserves its rights, as has Sprint, to supplement its filings and positions in this proceeding after further review of the FCC Order.

Respectfully submitted,

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Dated: August 22, 1996

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of August, 1996, a copy of the foregoing Prehearing Statement of MFS Communications Company, Inc. was served via Federal Express (next day delivery) to:

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