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September 26, 1996

VIA FEDERAL EXPRESS

Mrs. Blanca S. Bayo
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

Re: MFS Communications Company, Inc.'s Posthearing Brief and Statement of
Issues and Positions Docket #260338-TP

Dear Mrs. Bayo:

Enclosed for filing is an original and 15 copies of the Posthearing Brief and Statement of
Issues and Positions of MFS Communications Company, Inc. in the above-captioned docket.


Please date-stamp the extra copy of the Posthearing Brief and return it in the enclosed self-
addressed envelope.

Also enclosed is a computer disk formatted in WordPerfect 6.1 for Windows containing the
enclosed document.

If there are any questions concerning this matter, please contact me.

ACK _____
AFA _____
APP _____
CAF _____
CMU _____
CTR _____ Enclosures
EAG _____
LEG 2 cc (w/o encl.): Andrew D. Lipman, Esq.
LIN 5 cc (w/encl.): Timothy Devine
OPR _____ Richard Rindler, Esq.
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OTH _____

Sincerely,



Morton J. Posner

DOCUMENT NUMBER DATE

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FPSO-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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-CENDEL OF FLORIDA,)
 INC. (Also known as CENTRAL TELEPHONE)
 COMPANY OF FLORIDA AND UNITED)
 TELEPHONE COMPANY OF FLORIDA))
 _____)

Docket No. 960838-TP

**POSTHEARING BRIEF
 AND STATEMENT OF ISSUES AND POSITIONS
 OF MFS COMMUNICATIONS COMPANY, INC.**

Pursuant to Rule 25-22.056, Florida Administrative Code and Order No. PSC-96-0964-PCO-TP, MFS Communications Company, Inc. ("MFS"), by its undersigned attorneys, hereby files its Posthearing Brief in the above captioned arbitration with Sprint United-Centel of Florida, Inc. ("Sprint").

SUMMARY OF POSITION

MFS and Sprint negotiated a partial interconnection agreement subsequent to the filing of MFS' Petition. As a result, MFS has withdrawn from arbitration most of the issues in its Petition. Tr. 6, 111.^{1/} Four main issues remain for Commission resolution: (1) What is the appropriate reciprocal compensation rate between MFS and Sprint for local call transport and termination?; (2) How is the FCC Florida proxy ceiling to be applied to set interim rates for

^{1/} References are to the 286-page transcript of the arbitration hearing held before the Commission on September 19, 1996.

MFS' requested unbundled loops?; (3) How is a cross-connect between MFS and Sprint to be priced?; and (4) What are the appropriate rates, terms and conditions, if any, for billing, collection and rating of information services traffic between MFS and Sprint?

The FCC Interconnection Order^{2/} and Rules^{3/} require that incumbent local exchange carriers ("ILECs") and competitive local exchange carriers ("CLECs") be compensated for call termination and local transport at a symmetrical and reciprocal rate. MFS' network performs the equivalent of the local call transport and termination function provided by Sprint and, accordingly, MFS should receive the same compensation that Sprint receives for performing the local call termination and transport function.

The parties have agreed that since Sprint has not filed a cost study consistent with the FCC's Total Element Long Run Incremental Cost ("TELRIC") methodology, the Commission should apply the FCC proxy rate for unbundled loops. The only issue with respect to pricing of unbundled loops is whether the proxy rate must be geographically deaveraged. The FCC Interconnection Order makes it clear that any such interim rate, like the permanent rate, must be geographically deaveraged into at least three zones. MFS provides a method of geographic deaveraging based on average loop length by wire center. Sprint offers no suggestions for performing the FCC mandated deaveraging of the Florida proxy ceiling.

Unbundled loops have been identified as a fundamental network element. Unbundled loops, however, are virtually useless to MFS without cross-connects. MFS believes that cross-

^{2/} *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, FCC 96-325, CC Docket No. 96-98 (released Aug. 8, 1996).

^{3/} *Id.*, Appendix B (Final Rules to be codified at 47 C.F.R., Part 51).

connects or constitute network elements under the Telecommunications Act of 1996.⁴ As such, they must be priced at TELRIC. In the absence of either a TELRIC-based Sprint rate for cross-connection or an FCC interim proxy rate, MFS proposes that Ameritech's tariffed \$0.21 per cross-connection per month rate be used as a suitable market-based proxy rate.

With respect to information services billing, the Commission should adopt MFS' proposal requiring Sprint to exchange billing and rating information so that MFS' customers can make information services calls from the moment MFS initiates local exchange service. The arrangements MFS seeks are consistent with the 1996 Act, the FCC Interconnection Order and Rules, and interconnection agreements between MFS and other incumbent local exchange carriers.

ARGUMENT ON SPECIFIC ISSUES

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

Summary of Position: *** Under the FCC Interconnection Order, MFS is entitled to compensation for local call termination and transport which is symmetrical and reciprocal to the rate Sprint receives for local call termination and transport.

Discussion: In their Partial Agreement, MFS and Sprint have already agreed to establish a single interconnection for LATA 458. Additionally, MFS and Sprint have agreed that, until such time as Sprint has filed and the Commission has approved TELRIC studies for end office switching, tandem switching, and shared transport facilities between tandem switches and end offices, reciprocal compensation for local traffic transport and termination shall be according to the proxies identified in the FCC Interconnection Order for those functions. MFS and Sprint

⁴ Telecommunications Act of 1996, Pub. L. No. 104-104, 100 Stat. 56 (1996) ("1996 Act").

have agreed to adopt the upper limits of the proxy ranges for end office switching and tandem switching, which are \$0.004 per minute and \$0.0015 per minute respectively. The Partial Agreement does not address any calculation of the shared transport proxy.

MFS and Sprint continue to disagree as to whether: (1) MFS' switch should be considered a tandem switch for compensation purposes; (2) if MFS' switch is in fact considered a tandem switch for compensation purposes, whether MFS should be allowed to charge, in addition to the end office switching and tandem switching rate elements already agreed to, a shared transport rate element equivalent to that which Sprint will charge MFS for transport and termination of local traffic via the Sprint tandem switch. Additionally, as a matter of law, MFS disagrees with the interpretation of the FCC Interconnection Rules regarding calculation of the proxy for the shared transport element which Sprint appeared to advance during the arbitration hearings.

The FCC Interconnection Order and Rules are unambiguously clear that, for purposes of reciprocal compensation for transport and termination of local traffic, MFS' switch is to be considered a tandem switch and that MFS is entitled to charge Sprint the identical "tandem interconnection rate" which Sprint will charge MFS for local traffic which MFS will hand-off via a trunk connecting to a Sprint tandem switch. The FCC Order presumes requirements for symmetry and reciprocity of compensation between incumbent LECs and non-incumbent LECs. FCC Interconnection Order ¶¶ 1085-1090. The FCC Order at ¶ 1090 explicitly concludes that:

Where the interconnecting carrier's switch serves a geographic area comparable to that served by the incumbent LEC's tandem switch, the appropriate proxy for the interconnecting carrier's additional costs is the LEC tandem interconnection rate.

This conclusion is mirrored in 47 C.F.R. § 51.711, Symmetrical reciprocal compensation, at ¶ (a)(3):

Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate.

The FCC Rules provide for an exception to the requirement for reciprocal compensation for local call transport and termination only where the competitive LEC requests such exception and makes a showing that its costs are greater than the incumbent LEC's costs. 47 C.F.R. § 51.711(b). That is clearly not the case here. Accordingly, the Commission should reject Sprint's effort to deprive MFS of reciprocal compensation for local call transport and termination.

There can be no controversy that MFS' switch will serve a geographic area comparable to that served by Sprint's tandem switch. Initially, MFS' switch will serve an area minimally equivalent to that area served by at least four (4) Sprint wire centers (each of which houses at least one, and possibly multiple end office switches). Additionally, MFS expects to expand the area served by its single switch as it ramps up its operations. No single Sprint end office switch serves an area comparable to the entire area which will initially be served by the single MFS switch, let alone comparable to the expanded area that the MFS switch may eventually serve. The only switch in Sprint's network which serves the entire area MFS' switch serves is the Sprint tandem switch. Thus, the Commission must conclude that the geographic area served by the MFS switch is comparable to the area served by the Sprint tandem switch, and must confirm that MFS is entitled to the tandem interconnection rate pursuant to the FCC Order and Rules.

Having so concluded, the Commission must further conclude, as a matter of law, that the "tandem interconnection rate", as identified by the FCC Order and Rules, includes not only the

end office switching and tandem switching rate elements, but also the shared transport rate element as well. Here again, the plain language of the FCC Order and Rules is unambiguously clear. The FCC Order at ¶ 1090 provides:

states shall also consider whether new technologies (e.g., fiber ring or wireless networks) perform functions similar to those performed by an incumbent LEC's tandem switch and thus, whether some or all calls terminating on the new entrant's network should be priced the same as the sum of transport and termination via the incumbent LEC's tandem switch. (emphasis added).

The FCC Rules implementing this conclusion state that interconnecting carriers should be allowed to charge the "tandem interconnection rate". 47 C.F.R. § 51.711(a)(3). This identification of a "tandem interconnection rate," as opposed to a "tandem switching rate," in light of the aforementioned passages from the Order and Rules, clearly establishes that the rate to which MFS is entitled includes not the end office switching and tandem switching rate elements, but also the shared transport element which Sprint is entitled to charge for transport between its end office switches and its tandem switch.

Furthermore, Sprint's arguments as to whether MFS' network actually includes a facility directly mirroring the shared transport facilities between tandem switches and end office switches in Sprint's network are irrelevant, given that the FCC Order and Rules contemplate asymmetric network topologies and require symmetrical compensation based on the provision of functionally equivalent -- not technically identical -- facilities. The FCC Rules 47 C.F.R. § 51.701(c) specifically define transport as:

the transmission and any necessary tandem switching of local telecommunications traffic subject to section 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the

called party, or equivalent facility provided by a carrier other than an incumbent LEC. (emphasis added).

Thus, Sprint's argument that MFS is not entitled to receive a shared transport compensation equal to that which Sprint is entitled to receive is distinctly contradicted by the FCC Order and Rules and should be rejected by the Commission. The Commission must conclude that for all local traffic Sprint hands-off to MFS (regardless whether the traffic is delivered over a trunk connecting directly from a Sprint end office switch or from the Sprint tandem switch), MFS is entitled to charge Sprint a total per minute of use rate identical to the total per minute of use rate Sprint will charge MFS for local traffic MFS hands-off to Sprint via a trunk directly connected to the Sprint tandem switch. This total per minute of use rate is composed of three elements: (1) the end office switching element; (2) the tandem switching element; and (3) the shared transmission facility element.

During the arbitration hearing, Sprint attempted to argue that because MFS network does not contain discretely identifiable shared transport facilities between distinct geographic points, it would be practically impossible to calculate shared transport compensation due to MFS. However, this line of reasoning betrays a thorough misreading of the 47 C.F.R. § 51.513(c)(4), the FCC Rule governing calculation of the shared transport proxy rate element. The Rule states:

Shared transmission facilities between tandem switches and end offices. The proxy-based rates for shared transmission facilities between tandem switches and end offices shall be no greater than the weighted per-minute equivalent of DS1 and DS3 interoffice dedicated transmission link rates that reflects the relative number of DS1 and DS3 circuits used in the tandem to end office links (or a surrogate based on the proportion of copper and fiber facilities in the interoffice network), calculated using a loading factor of 9,000 minutes per month per voice-grade circuit, as described in § 69.112 of this chapter.

This Rule clearly does not authorize the charging of distance-sensitive rates for shared transport, and in fact by its very terms prohibits anything other than a flat, non-distance sensitive per-minute of use rate. The weighted average per minute equivalent required by the Rule necessary dictates a rate based on the weighted average facility distance. The reference to 47 C.F.R. § 69.112, is instructive solely for the calculation of the loading factor, not for the matter of distance sensitivity. This rule requires that a single non-distance sensitive per minute of use shared transport rate be calculated per ILEC tandem. Thus, Sprint's objection on the basis of practical measurement proceeds from a false assumption. The Commission should order Sprint to calculate a single non-distance sensitive per minute of use shared transport rate for the Sprint Winter Park tandem, which MFS will be able to mirror in its charges to Sprint.

Issue 4: 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; and
- c. 2-wire ISDN digital grade loop.

Summary of Position: *** Until Sprint produces an FCC mandated TELRIC study, the parties have agreed that the Commission should apply the FCC proxy ceiling of \$13.68 for an unbundled 2-wire loop. MFS believes that rate must be deaveraged over three or more zones. The Commission should also establish an interim cross-connection rate of \$0.21 per month.

Discussion: The parties agree that until Sprint submits a TELRIC-based study to this Commission, which it approves, the Commission should use the FCC proxy ceiling of \$13.68 for unbundled loops. Tr. 253 (Cheek); FCC Interconnection Order ¶¶ 784, 797. Sprint

asserts, however, that the FCC Interconnection Order does not require that the proxy rate be deaveraged. Tr. 253-55 (Cheek). Sprint is incorrect. The Interconnection Order states that the proxy is to be geographically deaveraged. FCC Interconnection Order ¶ 784. Further, "states [are] to determine the number of density zones within each state provided that they designate at least three zones but require that in all cases the weighted average of unbundled loop prices with weights equal to the number of loops in each zone be less than the proxy ceiling set for the statewide average loop length." *Id.* ¶ 797. The Commission's task is to deaverage the \$13.68 interim proxy ceiling into at least three geographic zones.

MFS' cost witness, Alex Harris, described a method by which this Commission can deaverage the proxy ceiling into three zones.^{5/} Mr. Harris suggested that the Commission derive zones by clustering wire centers by average loop length in each wire center.^{6/} This can be done by one of two means. One way that the Commission could perform the calculation is by first requiring Sprint and other ILECs to identify average loop length for each of its serving wire centers and the number of working loops in each wire center. Armed with this data, the Commission can quickly group wire centers by loop length, compute the average length and total loops in each loop length based zone; and, using this data, determine loop costs by zone. Tr. 170, 176 (Harris).^{7/} This method can be applied relatively simply by the Commission, although

^{5/} By contrast, Sprint had no recommendation as to how to define zones for geographic deaveraging. Tr. 262-63 (Cheek). Mr. Harris adopted the prefiled testimony of David Porter, which proposed a loop deaveraging methodology.

^{6/} Loop length is the principal cost driver for loops. Said differently, short loops (such as those typically found in metropolitan areas) cost less than long loops (typically found in rural areas). Tr. 170, 175, 187 (Harris).

^{7/} Exhibit DNP-3 is a worksheet for applying the loop deaveraging method. Exhibits DNP-3 through -6 were admitted into evidence as part of composite Hearing Exhibit 8.

it requires Sprint and other ILECS to provide information on loop length which may not be available in a timely manner.

The Commission could also implement Mr. Harris' deaveraging methodology with information which already is presently available to the Commission. The Commission can derive data on loop length by wire center using data from the Benchmark Cost Model ("BCM"), which was jointly developed by Sprint, U S West, MCI, and NYNEX and submitted in the FCC's universal service proceeding. Tr. 176 (Harris).⁸⁷ The BCM includes a database with measurements in feet within Florida census blocks and the nearest wire center. By aggregating the data contained in BCM's census block data around existing wire centers, one can develop the total households, total business loops, area in square miles and total loop feet.⁸⁸ Exhibit DNP-6 is an excerpt of the 298-page printout using information from the BCM's Florida database. From this basic data, one can develop the average loop length for each wire center (loop feet divided by total loops). This information, using only data contained in the BCM database, is contained in the 15-page printout marked as Exhibit DNP-5. The wire center data may then be sorted by average loop length, and the wire centers may be grouped into three groups by average loop length. By examining these figures, one could logically

⁸⁷ Benchmark Cost Model: A Joint Submission by Sprint Corporation and U S West, Inc., CC Docket 96-45 (July 3, 1996). While MFS does not necessarily endorse other elements of the BCM that develop the costs of local service, the comprehensive loop length information represents relatively objective numerical data, in the public domain, which can be used to develop wire center-based geographically deaveraged zones.

⁸⁸ Loop feet for a wire center is simply the sum over all the census blocks served by an individual wire center of the distance to each of the census block centroid times the number of loops in each of the census blocks. Loop feet does not measure the actual total loop feet for any individual wire center, nor is it intended to measure the loop feet that a wire center would install in an efficient deployment of network facilities. It is simply an aggregate measure of distance from wire centers to the population served that allows comparisons between wire centers.

divide the first zone to include about 30% of the wire centers with the shortest loop lengths. The next 40% were assigned to the second zone, and the wire centers with the longest average loop lengths were assigned to the third zone. The apportionment of all Florida carriers' wire centers into three zones on this basis is found in Exhibit DNP-4. Average loop lengths and the proxy cost-prices that may be derived from BCM data, which is found in greater detail on page 15 of Exhibit DNP-5 is summarized below:

**Geographically Deaveraged Loop Rates
for Florida**

	Zone description	% of Total Loops	Proxy Cost
Zone 1	Wire centers with average loop lengths less than 6,912'	31%	\$7.56
Zone 2	Wire centers with average loop lengths between 6,912' and 10,836'	40%	\$11.85
Zone 3	Wire centers with average loop lengths greater than 10,836'	29%	\$22.54
	Statewide Average = 12,510'	100%	\$13.68

The FCC's statewide proxy cost-price ceiling is a statewide average loop rate. That is, for the State of Florida, the average over all zones in the state should be less than or equal to the statewide proxy cost-price ceiling of \$13.68. To develop prices for the three zones using Mr. Harris's method, one divides the statewide average loop length (12,510 feet) to obtain an average proxy cost per foot (0.109 cents per foot). By multiplying the cost per foot by the average loop length, one arrives at the proxy cost per zone. For example, the average loop length in the wire centers in Zone 1 is 6,912 feet. Thus, the proxy cost-price for wire center in that zone is \$7.56 ($\$7.56 = 6,912 \text{ feet} \times 0.109 \text{ cents per foot}$). MFS submits that

this is a relatively easy way for the Commission to deaverage the FCC proxy with currently available information.

While the FCC Interconnection Rules at 47 C.F.R. § 51.507(f)(1) contemplate that state commissions could use the zones which may already exist in density-related pricing plans, such as in Sprint's access tariff (Exhibit 10), MFS believes use of Sprint's access tariff for that purpose is inappropriate. The record does not demonstrate how the zones were defined. Tr. 192 (Harris). Thus, the definition of zones in Sprint's access tariff may not reflect the actual cost characteristics of local loops for a given wire center, so they may not reflect Sprint's actual cost of providing loops in its access tariff zones. Tr. 192-93 (Harris). Since the record sheds no light on the relationship between the access tariff zones and cost, the Commission should not use those zones as a basis for deaveraging the FCC proxy ceiling.

MFS also proposes that until this Commission approves a Sprint TELRIC study, it set an interim cross-connect rate of not more than \$0.21 per cross-connect per month. Tr. 115 (Devine), 173 (Harris). Federal and Florida law require ILECs to unbundle local loops. Local loops are almost useless without a cross-connection. Tr. 172 (Harris). Accordingly, cross-connects are network elements¹⁰⁷ and must be unbundled and priced at TELRIC. Tr. 195 (Harris); 47 C.F.R. § 51.501. The FCC Interconnection Order and Rules do not set an interim proxy rate for cross-connects, however. Tr. 114 (Devine). Neither Sprint nor MFS now are able to propose a TELRIC-based rate for cross-connection. Tr. 179 (Harris), 262 (Cheek). MFS' proposed \$0.21 rate is based on Ameritech's tariffed cross-connection rate.

¹⁰⁷ 47 U.S.C. § 153(29); 47 C.F.R. § 51.5.

Tr. 173 (Harris).¹¹ MFS believes the Ameritech rate is an appropriate interim proxy for a market-based cross-connection rate for three reasons. Tr. 180 (Harris). First, it is a rate voluntarily offered by a large ILEC. Second, the rate was accepted by a state commission. Third, a cross-connection is essentially nothing more than a jumper cable and its price should not vary geographically. Tr. 195 (Harris). By contrast, Sprint proposes to charge its tariffed virtual collocation rate for cross-connection. Tr. 262 (Cheek). This rate is inappropriate because it does not comply with TELRIC costing principles. Tr. 196 (Harris), 262 (Cheek). Sprint's witness appeared to admit that Sprint's tariffed rate does not reflect actual cost by testifying that Sprint is offering to true-up the amount it would charge under its virtual collocation tariff with some future TELRIC-based rate. Tr. 262 (Cheek). MFS believes the better practice would be to charge a market-based rate, like the Ameritech rate, which surely covers a carrier's costs.

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

Summary of Position: *** MFS proposes that when its customers place calls to information service providers ("ISPs"), Sprint provide MFS rating information on the call pursuant to Sprint's existing agreements with those ISPs. MFS will then bill and collect from its customers, remitting appropriate amounts to Sprint.

Discussion: Consistent with the Act's intent to ensure a seamless network as competition is introduced, when an incumbent local exchange carrier ("ILEC") such as Sprint chooses to offer caller-paid information services, such as N11 and 976-XXXX services, customers of the ILEC's competitors (such as MFS) should have the ability to call these numbers

¹¹ See Ameritech-Illinois Tariff, Ill. C.C. No. 15, Original Page 876.20.5.

rather than have them blocked. Tr. 113 (Devine), 283 (Cheek). Blocking of MFS' customers' ISP calls would place MFS at a competitive disadvantage relative to Sprint in violation of the 1996 Act. 47 U.S.C. §251(c)(2)(D). Moreover, the public interest is not served by blocking consumers' ISP calls. Exhibit 6, at 11 (Devine). MFS requires arrangements to exchange billing and rating information with Sprint for ISP calls so that MFS' customers may place ISP calls as soon as MFS offers local exchange service. Tr. 120 (Devine). This arrangement is consistent with the 1996 Act, the FCC Interconnection Order, and MFS' agreements with other incumbent LECs.

As written in Sec. 7.1 of MFS' Comprehensive Interconnection Agreement (appended to its Petition), MFS proposes that the Originating Party on whose network information services traffic originates (for example, MFS) shall provide to the Terminating Party (for example, Sprint) recorded call detail information. Sprint shall provide MFS with necessary information to rate information services traffic to MFS' customers pursuant to Sprint's existing agreements with each ISP. MFS would then bill and collect such ISP charges and remit the amounts collected to Sprint, less a \$0.05 per minute handling fee, less uncollectibles. Tr. 55-56 (Devine).^{12/} While this example is couched in terms of MFS customers originating calls carried over Sprint's network to an ISP, this arrangement would be reciprocal between MFS and Sprint once MFS provided the information services platform. Indeed, this arrangement is virtually identical to the one in which Sprint provides billing information regarding calls passed over interexchange carrier lines when MFS provides switched access with Sprint. Exhibit 6, at 12 (Devine).

^{12/} Sprint's witness was neither able to dispute that a \$0.05 handling fee per call covers its costs, nor offer some other rate. Tr. 285 (Cheek).

Without this reciprocal exchange of billing and rating information, practical problems arise. As mentioned above, MFS customers' ISP calls will be blocked. Tr. 113 (Devine), 283 (Cheek). If the calls are not blocked, MFS customers who subscribe to MFS will expect a bill from MFS. These customers will be confused if they get a bill from Sprint, or some other entity, for calls to an ISP. Tr. 57 (Devine). In addition, if MFS provides the ISP platform for Sprint customers, MFS would require access to Sprint billing names and addresses in the absence of reciprocal billing and rating information exchange. Such access, whether it be by MFS or some other CLEC, raises anticompetitive concerns. Tr. 57 (Devine).¹²⁷

MFS' proposal is consistent with the 1996 Act and the FCC Interconnection Order. Under Sec. 153(29) of the 1996 Act, a "network element" is defined as:

a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service. (emphasis added).

MFS' request for the information necessary to bill and rate information services calls simply represents a request for an unbundled network element under Para. 262 of the FCC Interconnection Order, which further defines a network element to include "information required for . . . billing." Thus, exchange of such information falls within the ambit of the 1996 Act.¹²⁸

¹²⁷ Sprint's witness could not rebut that MFS may need access to Sprint customer records if MFS' proposal is not adopted. Tr. 282 (Cheek).

¹²⁸ In its Florida Interconnection Order, this Commission recognized the importance of carrier cooperation with respect to ISP billing and collection, although it stopped short of ordering Sprint to exchange ISP billing information with MFS. Final Order Establishing Nondiscriminatory Rates, Terms, and Conditions for Local Interconnection, *Resolution of petition(s) to establish nondiscriminatory rates, terms, and conditions for interconnection involving local exchange* (continued...)

Sprint acknowledges that it must honor any technically feasible request for an unbundled network element. Tr. 263 (Cheek).

Finally, MFS' proposal is consistent with its interconnection agreements with other incumbent carriers. MFS has identical information services records exchange agreements with Ameritech (Exhibit TTD-2 at 20-21), GTE of Florida and Texas, NYNEX (Exhibit TTD-3 at 15-16), and Pacific Bell (Exhibit TTD-14 at 35-36). Tr. 87 (Devine). The Ameritech agreement covering Illinois (Exhibit TTD-2) was approved by the Illinois Commerce Commission.¹⁴⁷

Issue 14: Should the agreement be approved pursuant to Section 252(e) of the Telecommunications Act?

Summary of Position: *** Any negotiated agreement MFS and Sprint execute, as well as any arbitrated resolution of the issues withdrawn should be approved by the Commission under the standards set forth in the 1996 Act.

Discussion: This issue is before the Commission at the request of Staff. Tr. 7. For the convenience of the Commission, MFS will clarify the standard for reviewing and approving the negotiated agreement reached on the withdrawn issues and any agreement reached as a result of this arbitration. As noted above, MFS withdrew a number of issues from its Petition because it negotiated an agreement on those issues with Sprint. Tr. 6. The Commission must approve or

¹⁴⁷(...continued)

companies and alternative local exchange companies pursuant to Section 364.162, Florida Statutes, Order No. PSC-96-0668-FOF-TP, Docket No. 950985, at 39 (May 20, 1996). As the preceding discussion of federal law demonstrates, however, the 1996 Act and FCC regulations compel Sprint to provide billing information to MFS as a carrier requesting an unbundled network element.

¹⁴⁸ Order, *Ameritech Illinois Agreement dated May 17, 1996 between Ameritech Illinois and MFS Intelenet of Illinois, Inc.*, Docket No. 96 NA-002 (Ill. Commerce Comm'n Aug. 7, 1996). The Ameritech agreement has subsequently been approved in Wisconsin, and is being modified with respect to certain other provisions in Michigan.

reject that agreement under the standards set out in Sec. 252(e)(2)(A) of the 1996 Act. With respect to the unresolved issues of the Petition, MFS seeks Commission arbitration of those issues. The Commission must resolve those issues pursuant to Sec. 252(b) of the 1996 Act, and the resulting agreement must be approved under Sec. 252(e)(2)(B).

CONCLUSION

This arbitration is the process Congress contemplated to resolve the differences between MFS and Sprint and to ensure initiation of local competition in Florida. The FCC Interconnection Order provides that compensation for call termination and local transport or its equivalent are to be reciprocal. The evidence does not support any other result.

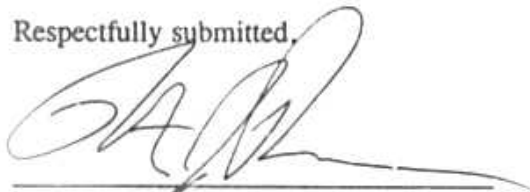
The parties have agreed that in the absence of costs based on the FCC's TELRIC methodology the Commission should adopt the FCC's proxy rate for unbundled loops. The Order requires that that proxy rate be deaveraged. The only deaveraging proposal in this record is MFS' proposed methodology which permits this Commission to readily implement the FCC Order.

Cross-connects are network elements and in the absence of TELRIC studies are appropriate proxy for unbundled cross-connects is Ameritech's tariffed rate. Finally, the Order compels exchange of information services billing information.

A careful application of the FCC's rules to the hearing record will ensure that local competition will become a reality in Florida, with equitable cost-based rates for Florida local exchange customers. For the foregoing reasons, MFS requests that the Commission adopt its arbitration proposals.

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Respectfully submitted,



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Dated: September 26, 1996


CERTIFICATE OF SERVICE

I, Morton J. Posner, hereby certify that on this 26th day of September, 1996, a copy of the foregoing **Posthearing Brief and Statement of Issues and Positions of MFS Communications Company, Inc. Docket No. 960838-TP** was served, via overnight delivery, on the following:

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