FLORIDA PUBLIC SERVICE COMMISSION
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M E M O R A N D U M

October 18, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF COMMUNICATIONS (SHELFER, REITH, CHASE, NORTON, GREER)
DIVISION OF LEGAL SERVICES (PELLEGRINI)

RE: DOCKET NO. 960838-TP - PETITION BY METROPOLITAN FIBER SYSTEMS OF FLORIDA, INC. FOR ARBITRATION OF CERTAIN TERMS AND CONDITIONS OF A PROPOSED AGREEMENT WITH CENTRAL TELEPHONE COMPANY OF FLORIDA AND UNITED TELEPHONE COMPANY OF FLORIDA CONCERNING INTERCONNECTION AND RESALE UNDER THE TELECOMMUNICATIONS ACT OF 1996.

AGENDA: NOVEMBER 1, 1996 - SPECIAL AGENDA - POST HEARING DECISION - PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

SPECIAL INSTRUCTIONS: S:\PSC\CMU\WP\960838TL.RCM

CASE BACKGROUND

Part II of the Federal Telecommunications Act of 1996 (Act), P. L. 104-104, 104th Congress 1995, sets forth provisions regarding the development of competitive markets in the telecommunications industry. Section 251 of the Act deals with interconnection with the incumbent local exchange carrier, and Section 252 sets forth the procedures for negotiation, arbitration, and approval of agreements.

Section 252(b) addresses agreements arrived through compulsory arbitration. Specifically, Section 252(b)(1) states:

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

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

On February 8, 1996, MFS Communications Company, Inc. (MFS) began negotiations with Central Telephone Company of Florida and United Telephone Company of Florida (collectively Sprint). On July 17, 1996, MFS filed a petition requesting that the Commission arbitrate various issues in its negotiations with Sprint. The Commission must, therefore, resolve the issues in this docket by November 8, 1996.

The Initial Order Establishing Procedure identified the key procedural events and set the hearing for September 19-20, 1996. See Order No. PSC-96-0964-PCO-TP, issued July 26, 1996.

A Prehearing Order was issued establishing the list of issues. See Order No. PSC-96-1154-PHO-TP, issued September 17, 1996.

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

On September 18, 1996, this Commission requested a stay of the FCC's Order with the 8th Circuit Court of Appeals.

On September 27, 1996, the Order was temporarily stayed. Oral arguments were heard on October 3, 1996, and a stay was granted on October 15, 1996 on Section 251(i) and the pricing portion of the Order. Staff is providing a recommendation based on the Act, and a recommendation based on compliance with the FCC's Order in case the stay is lifted after the appeal process is over. This approach will provide the most expedient way to get a Commission decision if the stay is lifted.

On the day of the hearing, September 19, 1996, MFS and Sprint announced that they had reached agreement resolving most of the issues in MFS' arbitration petition. MFS withdrew the resolved issues from its arbitration petition. As a result of this agreement, the only issues left for arbitration are Issues 2 (only with respect to transport), 3, 5, and 14 (approval of the agreement).

The only unresolved portion of Issue 2 is whether MFS can charge Sprint for transport. Based on the Act and the Order, staff believes MFS cannot charge Sprint for transport since it does not perform this function.

Issue 3 of this recommendation addresses the pricing of unbundled loops and the cross-connection element. The parties agree that Sprint will provide MFS with unbundled loops at the FCC's proxy of $13.68 until Sprint develops an acceptable TELRIC-based permanent price. Staff recommends that, under the Act, this $13.68 loop proxy should not be geographically deaveraged due to insufficient cost information. If the stay of the Order is lifted, staff recommends that the $13.68 rate should be deaveraged, in the interim, into the same three zones as Sprint's special and switched access density zones. However, staff recommends that the interim loop rates should be the same for each zone since there was insufficient cost information to justify a different rate for the different zones. Staff recommends that the interim cross-connection rates should be $0.68 for a DS-0, $3.18 for a DS-1, and $16.75 for a DS-3. This cross-connection should be subject to a retroactive true-up.

Issue 5 addresses MFS' proposal for the handling of Information Services traffic. Staff has recommended that MFS' proposal be adopted, with the exception that no carrier should be allowed to deduct or retain for itself any portion of the amounts due an Information Service Provider (ISP) unless that carrier has a signed agreement with that ISP. Staff believes this is consistent with the Act and the Order.

Issue 14 deals with the Commission's arbitration of the unresolved issues in this proceeding which has been conducted pursuant to the directives and criteria of Sections 251 and 252 of the Telecommunications Act of 1996. Staff recommends a post-arbitration procedure for approval of the parties written agreement implementing the Commission's decision.

DISCUSSION OF ISSUES

ISSUE 2: What is the appropriate reciprocal compensation rate and arrangement for local call termination between MFS and Sprint United/Centel?

RECOMMENDATION: The parties have agreed to provide local interconnection on a reciprocal basis using the proxy rates established in the FCC's Order. The only unresolved issue is whether MFS can charge Sprint a local interconnection rate that includes an element for transport. Based on Section 251(d)(2)(A)(i) of the Act, staff recommends that MFS not be allowed to charge Sprint for transport. Staff believes this is also consistent with the FCC's Order. [SHELFER]

POSITION OF PARTIES

SPRINT: The parties agree to provide local interconnection on a reciprocal basis using the FCC's proxy rates. The rate Sprint charges MFS will consist of tandem switching, transport, and end office switching. Sprint opposes paying MFS a rate that includes an element for transport unless MFS provides a transport facility.

MFS: 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.

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

MFS states that it has a difference of interpretation in the application of local termination compensation than Sprint. (Devine TR 124) Witness Devine states that MFS uses forward-looking technology which combines end office and tandem switching functionality within the same switching fabric. Even though the witness indicates that there is no discretely defined transport elements in terms of the historical sense of the definition of transport, he contends that MFS could actually be incurring the same costs and transporting the same call, the exact same distance between the exact same two customers in the same building. MFS argues that it is just the architecture that is different, and that MFS is using a forward-looking technology that does not require a tandem, end-office hierarchy of switching. (TR 126)

Witness Devine states that MFS is providing an equivalent facility. (TR 137) The witness emphasizes that the FCC rules are clear that if MFS is providing equivalent facilities it should receive reciprocal compensation, and part of that compensation is for transport. (TR 135) MFS contends that Sprint should compensate MFS for the same function it is performing for Sprint. (TR 64)

MFS also argues that it is entitled to receive tandem switching charges when its switch is in the same geographic areas as an ILEC. (TR 81-82; Order at ¶ 1090) The witness states that Section 51.711(a)(3) provides that as long as a new entrant's switch serves approximately the same area as the ILEC switch, the new entrant is entitled to receive compensation based on the call termination rate plus the tandem differential, or $.0055 per minute of use. (TR 114)

MFS provided additional arguments in its brief in regard to the Order. In summary, MFS states that the FCC Order presumes requirements for symmetrical and reciprocal compensation between incumbent LECs and non-incumbent LECs. (Order at ¶ 1085-1090) MFS argues that 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 cost. See §51.711(b) MFS states in its brief that this clearly is not the case here. Accordingly, MFS argues that the Commission should reject Sprint's effort to deprive MFS of reciprocal compensation for local call transport and termination.

It is Sprint's position that the Act, the Order and the Rules require Sprint to compensate MFS for local interconnection elements only if MFS actually provides the transport element or an equivalent element. MFS concedes that it will not provide a transport or equivalent element when terminating Sprint's local traffic in the Winter Park/Maitland service area. (Devine TR 125-126)

Sprint states that traditionally, and as contemplated by the Act and the FCC's Order and Rules, "transport" consists of the facility linking a carrier's tandem switch to its end office switch. (EXH 4; See also § 51.701(c)) There may also be a separate transport facility linking each end office subtending a tandem switch. (TR 127)

Sprint argues that MFS does not provide transport. Contrary to MFS' representation that its network architecture employs tandem

switches and distance-removed, subtending local end offices that will employ a network architecture which incorporates but one switch that includes tandem and end office functions, it still does not provide transport. (EXH 5) MFS believes this network architecture is more efficient, but since the total length the traffic must be carried under either architecture is the same, MFS is entitled to the same local interconnection compensation, including "transport," even when MFS does not provide a "transport" facility. (TR 138)

Sprint contends that MFS' argument fails for several reasons. First, neither the Act nor the FCC's Order and Rules contemplates that the compensation for transporting and terminating local traffic be symmetrical when one party does not actually employ the network facility for which it seeks compensation. MFS points to Section 51.701(c) to support its contention that because MFS will perform an equivalent function it is entitled to the same compensation as Sprint. (TR 138) Contrary to MFS's assertion, however, Sprint states that Section 51.701(c) requires equal compensation only when MFS provides the equivalent facility to that provided by Sprint. (TR 136) As noted previously, MFS does not provide the same or equivalent transport facility.

Sprint also argues that this Commission can adopt MFS's request for compensation for the "phantom" local transport only if the Commission redefines "transport" to mean the facility from MFS' switch to its end user (the local loop). MFS insists that is should be compensated by Sprint for transporting the call from Sprint's customer to MFS' end user, taking into account the total distance from MFS' switch to the end user. That distance must include all, or a portion, of the local loop because MFS has no transport facility to measure or bill for, and no way to calculate its local transport costs. (EXH 6, pp 25-26, 67-70) Not only would MFS' definition of "transport" be inconsistent with the FCC's Rules, adoption of such a definition would also seriously undermine the current access structure which requires the interexchange carriers (IXCs) to pay the carrier common line (CCL) charge for use of the local loop. (Cheek TR 259-260)

Sprint also states that during MFS' cross-examination of Sprint's witness Cheek, MFS' counsel suggested that Section 51.711 requires symmetrical reciprocal compensation even when the ALEC does not provide a transport facility as MFS concedes it does not do in this case. (TR 265-266) Sprint contends that MFS' suggestion is inappropriate because it ignores the requirement of Section 51.701(c) that an ALEC is entitled to transport compensation only if it provides a transport facility or a facility equivalent to the ILEC's transport facility. Sprint also contends

that Section 51.711 only applies when the ILEC and ALEC are providing the same transport and termination services. Here, MFS concedes it is not providing Sprint with any transport service in connection with the termination of Sprint's local interconnection traffic, while Sprint is providing both the transport and termination services required to deliver MFS' local telecommunications traffic to Sprint's end users. (Devine TR 126)

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

Sprint argues that in view of MFS' total failure of proof, MFS is not entitled to be compensated for transport as part of the local interconnection it will provide to Sprint.

Staff believes that the Act is clear regarding reciprocal compensation. Section 252(d)(2)(A)(i) requires that this Commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless

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

Since MFS does not perform a transport function, there is no cost to recover. Therefore, based on Section 252(d)(2)(A)(i) of the Act, staff believes that MFS is not entitled to compensation for transport.

This interpretation of the Act is also consistent with the FCC's Order. Section 51.701(c) defines transport as the transmission and any necessary tandem switching of local telecommunications traffic subject to Section 251(b)(5) of the Act, from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other

than an incumbent LEC. Since MFS has only one switch, there technically can be no transport. Staff agrees with Sprint that Section 51.701(c) requires equal compensation only when MFS provides the equivalent facility to that provided by Sprint. (TR 136) Staff does not believe that MFS provides the same or equivalent transport facility as Sprint.

Staff's position is further supported by the Order, which provides that states may establish transport and termination rates in the arbitration process that vary according to whether the traffic is routed through a tandem switch or directly to the end-office switch. (Order at ¶ 1090) The Order continues that 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. (Order at ¶ 1090) Staff believes the technology used by MFS is no different than the technology employed by Sprint. The only difference between the two companies is the size of the companies' operations, and not technologies used to provide transport. Sprint's tandem switches provide efficient access to its end offices and customers served by the company. Without this tandem switching technology carriers wanting to interconnect with Sprint would have to go to each end office. At some point in time it may be necessary for MFS to establish a similar network architecture to serve multiple end offices, or actually use a new technology such as fiber rings or wireless networks to provide the function of transport. When that time comes, MFS should be allowed to charge for transport; however, currently it does not appear that MFS performs this function.

Staff does not believe that the evidence in the record supports MFS' position that its switch provides the transport element. The Act does not contemplate that the compensation for transporting and terminating local traffic be symmetrical when one party does not actually use the network facility for which it seeks compensation. This interpretation is also consistent with the FCC's Order. Accordingly, staff recommends that MFS should not charge Sprint for transport because MFS does not actually perform this function.

ISSUE 3: 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

RECOMMENDATION: Yes. Staff recommends that interim rates for each type of loop should be $13.68 as agreed to by the parties. Based on the Act, staff recommends that this interim rate should not be geographically deaveraged. Staff further recommends that Sprint provide the cross-connection element at the following interim rates:

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

Staff further recommends that the interim cross-connection rates should be subject to a true-up when Sprint's TELRIC cost studies are filed and evaluated by the Commission.

If the stay of the FCC Order is lifted, staff recommends that the $13.68 rate should be deaveraged, in the interim, into the same three zones as Sprint's special and switched access density zones. However, staff recommends that the interim loop rates should be the same for each zone. Staff recommends that the interim cross-connection rates should be set at the above rates and subject to the true-up. **[CHASE]**

POSITION OF PARTIES

MFS: 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 the rate must be deaveraged over three or more zones. The Commission should also establish an interim cross-connect rate of $0.21 per month.

SPRINT: The parties agree that Sprint will provide MFS with unbundled loops at the FCC's proxy prices until Sprint develops acceptable, cost-based permanent prices. Sprint does not believe it is required or appropriate that the loop proxy prices be geographically deaveraged. Sprint will, however, provide geographically deaveraged permanent unbundled loop prices. Because the FCC did not establish a proxy for unbundled cross-connection, the Commission should use Sprint's tariffed collocation rates during the interim.

STAFF ANALYSIS: Both MFS and Sprint agree that 2-wire analog voice grade loops, 4-wire analog voice grade loops, and 2-wire ISDN digital grade loops should be unbundled. Both parties agree that the FCC proxy of $13.68 will apply until total element long run incremental cost (TELRIC) rates can be established. (Harris TR 181; Cheek TR 253) The dispute between MFS and Sprint in this issue is whether the $13.68 proxy should be geographically deaveraged. (Harris TR 191; Cheek 256-257) The other unresolved issue regards the interim pricing of the cross-connection element.

Geographic Deaveraging

MFS argues that the FCC's Order is clear that the proxy of $13.68 must be geographically deaveraged. (Harris TR 191) However, the Order and Rules for this requirement are currently stayed. Because of the stay, staff will discuss this issue based on both our interpretation of the Act and the FCC Order.

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

> Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section--
>
> (A) shall be-
> (i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and
> (ii) nondiscriminatory, and
> (B) may include a reasonable profit.

Staff believes that the Act could be read to allow geographic deaveraging of unbundled elements; however, staff does not interpret the Act to require geographic deaveraging. Therefore, if the stay of the FCC Order is not lifted, the interim proxy of $13.68 should not be geographically deaveraged since there has been no cost evidence presented to support such deaveraging.

MFS argues that the Florida $13.68 proxy loop rate must be geographically deaveraged. (Harris TR 191) MFS bases most of its testimony on the FCC's Interconnection Order. MFS asserts that the

Order, at Paragraph 784, states the proxy of $13.68 must be geographically deaveraged:

> [W]e allow states to determine the number of density zones within the 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, should be less than the proxy ceiling set for the statewide average loop cost set forth in Appendix D.

Sprint agrees that permanent loop rates should be deaveraged; however, not until it is allowed to produce deaveraged rates based on TELRIC cost studies. (Cheek TR 273-274) Sprint disagrees with MFS' interpretation of the FCC Order and states that it does not believe the proxy is required to be deaveraged because it makes no sense. (TR 254-255)

The FCC's rules are not clear on whether the proxy should be geographically deaveraged. Section 51.507(f) states:

> State commissions shall establish different rates for elements in at least three defined geographic areas within the state to reflect the geographic cost differences.
>
> > (1) To establish geographically-deaveraged rates, state commissions may use existing density-related zone plans described in Section 69.123 of this chapter, or other such cost-related zone plans established pursuant to state law.

Sprint argues that the Order states that cost-based prices of unbundled loops should be deaveraged and that the FCC's Florida proxy of $13.68 is not a cost-based price. (Cheek TR 272) Sprint asserts that it is committed to submitting TELRIC-based unbundled loop prices on a geographically deaveraged basis, consisting of several geographic zones. (TR 273-74) Sprint's witness Cheek states that until TELRIC-based rates can be set, provision of unbundled loops using the FCC's proxy of $13.68 without any geographic or zone density deaveraging is both fair and appropriate. (TR 271-272)

Sprint states that even if the Commission were to conclude that the FCC Order and Rules authorize the deaveraging of the FCC's proxy price into three zones, there is no evidence in the record to support deaveraged prices except the flawed methodology presented by MFS witness Harris. (Harris TR 145)

MFS proposes that the Commission derive zones by clustering wire centers by average loop length. MFS proposes the establishment of three zones. MFS states that loop length is the principal cost driver for loops, meaning shorter loops (those typically found in metropolitan areas) cost less than longer loops (those typically found in rural areas). (Harris TR 170, 175, 187) MFS states that the unbundled loops in Zone 1 are the least costly to provide, and recommends a deaveraged price of $7.56 per unbundled loop per month. MFS proposes a rate of $11.85 for Zone 2. MFS states that Zone 3 should include the wire centers which are most costly to provide and recommends $22.54 per unbundled loop per month. (Harris TR 186-187; EXH 8, DNP-5, p 15) MFS also proposes that no zone should contain less than 25% of the wire centers or more than 50% of the wire centers. These proposed rates are not based on any underlying cost studies. These rates are based on MFS' proposed method of deaveraging of the FCC proxy. (EXH 8, DNP-5)

Sprint points out that if the Commission were to adopt MFS' proposed deaveraging methodology, 81 of Sprint's 101 wire centers, including Maitland, Naples, and Tallahassee, would be included in MFS' proposed zone 3. (EXH 8, DNP-5; Harris TR 189-190) Sprint asserts that the 80% of the Sprint wire centers in Zone 3 violates MFS' own criteria that zones consist of roughly 25 to 50 percent of the total loops. (Harris TR 176-177) Sprint states that MFS' proposed Zone 1 includes only 11 Sprint wire centers. This zone includes Kingsley Lake which has a density of 3 loops per square mile, while the average loop density in Florida is 300 loops per square mile. (EXH 8, DNP-5) MFS witness Harris agreed that loop density is one criteria that could be used to determine loop cost, but MFS did not consider loop density in its methodology. (TR 187-189) Sprint asserts that even though MFS' proposed deaveraging methodology and recommended loop prices might be beneficial to Sprint during the interim, Sprint still does not believe it is appropriate to geographically deaverage the FCC proxy price.

Staff agrees that Section 51.701(f) of the FCC's Rules does not make it clear if the Florida proxy of $13.68 should be deaveraged; however, staff believes that paragraphs of the Order regarding deaveraging clarify the intent of the rule. Staff believes that the plain language of paragraph 784 of the Order, quoted above, makes it clear that the FCC requires that the proxy be deaveraged.

While staff believes that the FCC's intent was to deaverage the proxy, staff believes it is not appropriate to use MFS' proposed deaveraging methodology because of the lack of sufficient data in the record. MFS' proposal produces absurd results by

placing some of Sprint's largest and most dense wire centers in the high cost rural Zone 3. (EXH 8)

Staff believes a better method of establishing interim deaveraged zones is to use Sprint's currently tariffed special access and switched access zones. (EXH 10, pp. 109 and 129) These zones are based on the number of DS-1's per wire center. Staff believes that this measure is appropriate for interim zones. However, staff does not believe there is sufficient cost evidence in the record that would allow the $13.68 to be properly deaveraged. Therefore, staff recommends that the interim rate for unbundled loops should be the same for each zone. This comports with the Order and the FCC's Rules, which state that the average of the rates for the three zones must be no higher than the $13.68 proxy.

Staff recommends that Sprint should continue to develop TELRIC cost studies in order to establish permanent loop rates that can be deaveraged based on cost. Sprint should file the appropriate cost information so that permanent cost-based deaveraged loop rates can be established.

Cross-connection element

The unbundled cross-connection element is the facility which links the unbundled loops furnished to MFS to MFS' collocated equipment in the Sprint wire center. (Harris TR 178) MFS proposes an Illinois cross-connect rate, for the interim, of $.21 per month. (Harris TR 179) On the other hand, Sprint proposes to use its previously-approved Florida virtual collocation cross-connection elements in the interim. (Cheek 256-257)

MFS proposes that the $.21 per cross-connection per month rate apply to all types of cross-connections. (Harris TR 178) Sprint proposes the tariffed cross-connection rates, which vary depending upon the type of cross-connection requested: DS-0 is $1.30 per month; DS-1 is $4.45 per month; and DS-3 is $53.55 per month. (Cheek TR 256-257; EXH 10, p. 147) Sprint also states that it will produce a TELRIC study for the cross-connect, and proposes a true-up when cross-connection rates are finalized. (TR 278)

MFS' proposed interim rate of $.21 per cross-connection is based on an Ameritech tariffed rate. (Harris TR 160) Sprint argues that the Commission should not base the interim rate on this Ameritech tariffed rate because MFS has not demonstrated that the rate is cost-justified or even representative of the same cost structure as Sprint. (Cheek TR 275) Sprint also produced and offered to MFS during negotiations some price ranges for the cross-

connection which were based on preliminary TELRIC studies. The ranges for the preliminary TELRIC-based rates are: $.35 to $1.00 for DS-0; $1.35 to $5.00 for DS-1; and $13.50 to $20.00 for DS-3. (Cheek TR 277-278; EXH 10, p 102)

Staff believes that the preliminary TELRIC studies, which should approximate TSLRIC, should be used to set the interim cross-connection rates instead of the currently tariffed virtual collocation cross-connection rates. Staff believes that these studies are appropriate to set interim rates since these rates are more closely based on costs than the tariffed rates. Staff recommends that the middle range of the preliminary TELRIC studies should be used as interim rates. Therefore, staff recommends that Sprint provide the cross-connection element at the following interim rates:

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

Staff further recommends that the interim cross-connection rates should be subject to a true-up when TELRIC cost studies are filed and evaluated by the Commission as agreed to by the parties. The true-up will, as the FCC states in its Order,". . . ensure that no carrier is disadvantaged by an interim rate that differs from the final rates established pursuant to arbitration. (Order at ¶ 1066) Staff is not requiring Sprint to file TSLRIC studies since the parties have agreed to use TELRIC. Staff believes that these interim rates are appropriate under both the Act and the Order.

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?

RECOMMENDATION: MFS's request for information to bill and collect its customers should be defined as a network element, and the LECs should provide it. MFS's proposal should be approved with the exception that no telecommunications carrier should be allowed to deduct a charge for billing from the amounts due an Information Service Provider (ISP), unless that carrier has a signed agreement with that ISP.

All local carriers who have entered into arrangements with ISPs, should rate calls to ISPs when requested to do so by other local carriers. The Commission's policy goal should be to make the rating and billing arrangements for information services traffic transparent to the end user. Therefore, local carriers should not block calls to ISPs simply because there is no contract with the ISP. **[NORTON]**

POSITIONS OF PARTIES

MFS: 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.

SPRINT: Sprint does not agree that it is Sprint's responsibility to act as MFS's intermediary with information services providers. This issue was previously decided by this Commission in Docket No. 950985-TP, Order No. PSC-96-0668-FOF-TP, page 39. Nothing has changed since the Commission's prior decision to require any revision.

STAFF ANALYSIS: Staff's recommendation is based on its interpretation of the Act, which in this case, is also consistent with the Order.

MFS has proposed a specific treatment for the handling (rating and billing) of end user calls to Information Services Providers (ISPs). N11 and 976-XXXX are typical numbers associated with information services. End users might dial, for example, 311 to reach a sports report from an ISP. The LEC will bill the end user a prearranged charge for that call, and remit the amount to the ISP less a specified fee for billing and collecting. The end user charge and the billing and collection fee are specified in a contract between the ISP and the LEC.

In this proceeding, MFS has proposed an arrangement to be used if one of its customers calls an ISP which has a contract with Sprint but not with MFS. MFS proposes that it send the call detail to Sprint, who will rate the calls according to the contract it has agreed to with the ISP, and send the rated call detail back to MFS. MFS will then bill its own customer, and remit the money to Sprint less $.05 per minute for handling, less uncollectibles. (Devine TR 56) MFS has proposed that this be a reciprocal arrangement in the event it decides to provide an information services platform. (TR 56)

MFS argues that it requires these arrangements because it does not have the resources to set up contracts with ISPs at the same time that they are setting up their own services. (TR 120) MFS further argues that absent this arrangement, calls from its customers to ISPs may be blocked. (TR 113) Alternatively, if the calls are not blocked, then MFS customers will be confused if they receive a bill from Sprint instead of from MFS. (TR 57) MFS also argues that if MFS provides an ISP platform for Sprint customers, MFS would require access to Sprint billing names and addresses if billing and rating information were not exchanged. (TR 57) In addition, MFS states that its proposal constitutes a request for an Unbundled Network Element as defined in both the Act and the Order (See §153(29); Order at ¶ 262). In both the Act and the Order, an unbundled network element includes "information sufficient for billing and collection," which is what MFS argues it is proposing here. Sprint witness Cheek acknowledged that Sprint must honor any technically feasible request for an unbundled network element. (Cheek TR 263)

Sprint argues first that ISP traffic is not an unbundled network element under Section 251 of the Act. Sprint further argues that MFS's proposal is just an attempt to piggy-back on Sprint's relationship with an ISP. Sprint notes that MFS does not contend that this is a LEC monopoly function, and that its proposal was made because MFS has not yet entered into contracts of its own with ISPs. (TR 120-121)

Sprint suggests that MFS be required to negotiate its own contracts with ISPs. Sprint offers tariffed access to information services, such as N11 or 976, such that the end user can dial a code or a number to be connected to the ISP's network. Sprint may also provide billing and collection for the ISP. Sprint will record the call, bill the end user the tariffed charges, and remit the revenues to the ISP less a billing and collections fee. All this is done pursuant to a contract entered into between Sprint and the ISP. Under MFS's proposal, MFS would bill its end user, deduct its costs and deliver the balance to Sprint for ultimate delivery

to the ISP. (Devine TR 119) Sprint would prefer that MFS set up its own arrangements with ISPs, and rate and bill its own customers' ISP calls. Sprint notes that it currently has its own agreements with ISPs who are located in BellSouth's adjoining service area but who will serve Sprint customers. (Cheek TR 264) Sprint believes that MFS should do the same.

Both parties have valid points. Staff agrees with MFS that from an end user's perspective, a seamless network is preferable. As we move into a more competitive world, with multiple providers serving one local area, this Commission should promote cooperation among these providers to provide the services that end users want without needless delays and blockages. Staff also agrees with Sprint that it is inappropriate for MFS simply to assume a right to Sprint's contract with an ISP.

MFS admitted at hearing that it had not yet attempted to approach ISPs to discuss billing and collection contracts. (Devine TR 120-121) MFS stated that it intended to do so in the future but that it wanted information services to be available to its customers as soon as it offers service. (TR 120)

Based on the above, staff recommends that MFS's request for call detail sufficient to bill and collect its customers should be defined as a network element, and Sprint should provide it. MFS' proposal should be approved, with the exception that no carrier should be allowed to deduct or retain for itself any portion of the amounts due an ISP, unless that carrier has a signed agreement with that ISP.

All local carriers who have entered into arrangements with ISPs, should rate calls to ISPs when requested to do so by other local exchange carriers. The Commission's polic, goal should be to make the rating and billing arrangements for information services traffic transparent to an end user. Therefore, local carriers should not block calls to ISPs simply because there is no contract with the ISP. This recommended approach should provide an incentive to ALECs to enter into their own contracts with ISPs as quickly as possible.

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

SPRINT: Yes. Any interconnection agreement adopted by negotiation or arbitration must be submitted to the Florida Public Service Commission for approval.

MFS: 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.

RECOMMENDATION: Yes. The Commission's arbitration of the unresolved issues in this proceeding has been conducted pursuant to the directives and criteria of Sections 251 and 252 of the Telecommunications Act of 1996. Pursuant to Section 252(e), the parties should submit a written agreement memorializing and implementing the Commission's decision within 30 days of issuance of the Commission's arbitration order. Within 30 days of submission of the agreement, staff should review the agreement, and if it comports with the Commission's arbitration decisions, the agreement shall be deemed approved without further Commission action. If the agreement is not consistent with the Commission's arbitration decision, staff should bring the agreement to the Commission for review. If the parties cannot agree to the language of the agreement, they shall each submit their version of the agreement, and the Commission will decide on the language that best incorporates the substance of the Commission's arbitration decision. **[BROWN]**

STAFF ANALYSIS: Section 252(e) of the Act sets out the standards for approval by state commissions of interconnection agreements adopted by negotiation or arbitration. The section provides, in pertinent part, that any interconnection agreement adopted by negotiation or arbitration must be submitted for approval to the state commission. The state commission must approve or reject the agreement, with written findings concerning any deficiencies. The state commission may only reject an agreement adopted by arbitration if it finds that the agreement does not meet the requirements of section 251, the regulations promulgated by the FCC pursuant to section 251, or the pricing provisions delineated in section 252(d) of the Act. Section 252(e)(4) of the Act provides that the Commission must act to approve or reject the arbitrated agreement within 30 days after its submission by the parties for approval. (See Attachment A)

Staff submitted this issue for the Commission's decision in this arbitration proceeding for two reasons: 1) to confirm that the substantive decisions the Commission has made in the case comply with the criteria for decision prescribed in section 252(e); and, 2) to recommend a post-arbitration procedure by which the parties shall submit a written agreement for approval that memorializes and implements the Commission's arbitration decision.

We believe that the Commission's decision in Issues 2, 3, and 5 complies with the criteria for approval in 252(e)(2)(B). We recommend that the parties should submit written agreement memorializing and implementing the Commission's decision within 30 days of issuance of the Commission's arbitration order. Within 30 days of submission of the agreement, staff should review the agreement, and if it comports with the Commission's arbitration decisions, the agreement shall be deemed approved without further Commission action. If the agreement is not consistent with the Commission's arbitration decision, staff should bring the agreement to the Commission for review. If the parties cannot agree to the language of the agreement, they shall each submit their version of the agreement, and the Commission will decide on the language that best incorporates the substance of the Commission's arbitration decision.

ISSUE 15: Should this docket be closed?

RECOMMENDATION: No. The parties should file an agreement with this Commission that incorporates the decisions made in this arbitration process in accordance with Issue 14.

(i) to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements); or

(ii) to authorize the Commission or any State commission to engage in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls, or to require carriers to maintain records with respect to the additional costs of such calls.

(3) WHOLESALE PRICES FOR TELECOMMUNICATIONS SERVICES.—For the purposes of section 251(c)(4), a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.

(e) APPROVAL BY STATE COMMISSION.—

(1) APPROVAL REQUIRED.—Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.

(2) GROUNDS FOR REJECTION.—The State commission may only reject—

(A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that—

(i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or

(ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity; or

(B) an agreement (or any portion thereof) adopted by arbitration under subsection (b) if it finds that the agreement does not meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251, or the standards set forth in subsection (d) of this section.

(3) PRESERVATION OF AUTHORITY.—Notwithstanding paragraph (2), but subject to section 253, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

(4) SCHEDULE FOR DECISION.—If the State commission does not act to approve or reject the agreement within 90 days after submission by the parties of an agreement adopted by negotiation under subsection (a), or within 30 days after submission by the parties of an agreement adopted by arbitration under subsection (b), the agreement shall be deemed approved. No State court shall have jurisdiction to review the action of a

State commission in approving or rejecting an agreement under this section.

(5) COMMISSION TO ACT IF STATE WILL NOT ACT.—If a State commission fails to act to carry out its responsibility under this section in any proceeding or other matter under this section, then the Commission shall issue an order preempting the State commission's jurisdiction of that proceeding or matter within 90 days after being notified (or taking notice) of such failure, and shall assume the responsibility of the State commission under this section with respect to the proceeding or matter and act for the State commission.

(6) REVIEW OF STATE COMMISSION ACTIONS.—In a case in which a State fails to act as described in paragraph (5), the proceeding by the Commission under such paragraph and any judicial review of the Commission's actions shall be the exclusive remedies for a State commission's failure to act. In any case in which a State commission makes a determination under this section, any party aggrieved by such determination may bring an action in an appropriate Federal district court to determine whether the agreement or statement meets the requirements of section 251 and this section.

(f) STATEMENTS OF GENERALLY AVAILABLE TERMS.—

(1) IN GENERAL.—A Bell operating company may prepare and file with a State commission a statement of the terms and conditions that such company generally offers within that State to comply with the requirements of section 251 and the regulations thereunder and the standards applicable under this section.

(2) STATE COMMISSION REVIEW.—A State commission may not approve such statement unless such statement complies with subsection (d) of this section and section 251 and the regulations thereunder. Except as provided in section 253, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of such statement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

(3) SCHEDULE FOR REVIEW.—The State commission to which a statement is submitted shall, not later than 60 days after the date of such submission—

(A) complete the review of such statement under paragraph (2) (including any reconsideration thereof), unless the submitting carrier agrees to an extension of the period for such review; or

(B) permit such statement to take effect.

(4) AUTHORITY TO CONTINUE REVIEW.—Paragraph (3) shall not preclude the State commission from continuing to review a statement that has been permitted to take effect under subparagraph (B) of such paragraph or from approving or disapproving such statement under paragraph (2).

(5) DUTY TO NEGOTIATE NOT AFFECTED.—The submission or approval of a statement under this subsection shall not relieve a Bell operating company of its duty to negotiate the terms and conditions of an agreement under section 251.