

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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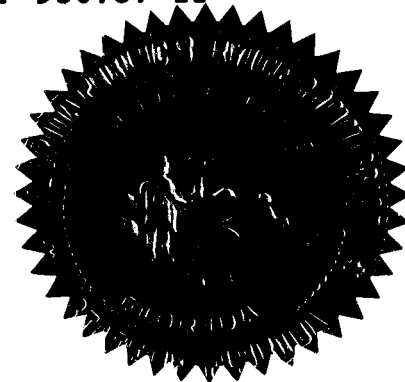
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In the Matter of :  
: DOCKET NO. 950737-TP  
Investigation into temporary :  
local telephone number :  
portability solution to :  
implement competition in local :  
exchange telephone markets. :  
:

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VOLUME 2 - AFTERNOON SESSION

Pages 182 through 301



PROCEEDINGS:

HEARING

BEFORE:

CHAIRMAN SUSAN F. CLARK  
COMMISSIONER J. TERRY DEASON  
COMMISSIONER JULIA L. JOHNSON  
COMMISSIONER DIANE K. KIESLING  
COMMISSIONER JOE GARCIA

DATE:

Monday, November 25, 1996

TIME:

Commenced at 9:30 a.m.  
Concluded at 4:50 p.m.

PLACE:

Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY:

JOY KELLY, CSR, RPR  
Chief, Bureau of Reporting

APPEARANCES:

(As heretofore mentioned.)

DOCUMENT NUMBER-DATE

12834 DEC-38

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**P R O C E E D I N G S**

(Transcript continues from Volume 1.)

**CHAIRMAN CLARK:** Call the hearing back to order. Ms. McMillin.

**MS. McMILLIN:** Thank you, Madam Chairman. MCI would call Elizabeth Kistner as our witness and I believe she's already been sworn.

- - - - -

**ELIZABETH G. KISTNER**

was called as a witness on behalf of MCI Telecommunications Corporation and, having been duly sworn, testified as follows:

**DIRECT EXAMINATION**

**BY MS. McMILLIN:**

**Q** Ms. Kistner, please state your name and address for the record.

**A** My name is Elizabeth G. Kistner. My address is 3 Spoede Ridge, St. Louis, Missouri 63141.

**Q** By whom are you employed and in what capacity?

**A** I'm self-employed as a consultant in the telecommunications regulatory area, and I'm appearing here on behalf of MCI.

**Q** Have you filed direct testimony on behalf of MCI Telecommunications Corporation and MCI Metro

1 Access Transmission Services, Inc. consisting of 16  
2 pages?

3 A Yes, I have.

4 Q Do you have any changes or corrections to  
5 make to that testimony?

6 A No, I do not.

7 Q If I ask you today the same questions as are  
8 contained in your direct testimony, would your answers  
9 be the same?

10 A Yes, they would.

11 MS. McMILLIN: Chairman Clark, MCI would  
12 move that Ms. Kistner's prefiled direct testimony be  
13 inserted into the record as though read.

14 CHAIRMAN CLARK: It will be inserted into  
15 the record as though read.

16 Q (By Ms. McMillin) Ms. Kistner, have you  
17 also prefiled rebuttal testimony consisting of nine  
18 pages?

19 A Yes.

20 Q Do you have any changes or corrections to  
21 make to that testimony?

22 A No, I do not.

23 Q If I ask you the same questions as are  
24 contained in your rebuttal testimony would your  
25 answers today be the same?

1           **A**     Yes, they would.

2           **MS. McMILLIN:** Chairman Clark, MCI would  
3 move into the record Ms. Kistner's prefiled rebuttal  
4 testimony as though read from the stand.

5           **CHAIRMAN CLARK:** It will be inserted into  
6 the record as though read.

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1                   **DIRECT TESTIMONY OF ELIZABETH G. KISTNER**  
2                   **ON BEHALF OF MCI TELECOMMUNICATIONS CORPORATION**

3                   **DOCKET NO. 950737-TP**

4                   **September 23, 1996**

5  
6                   **I. INTRODUCTION**

7  
8           **Q.     PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

9           A.     My name is Elizabeth G. Kistner. My business address is 3 Spodee Ridge, St.  
10           Louis, Missouri 63141.

11  
12           **Q.     PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL**  
13           **BACKGROUND.**

14           A.     I am a consultant in private practice, specializing in analysis of  
15           telecommunications public policy issues. During the past three and a half years,  
16           I have focused on issues related to the introduction of competition in the local  
17           exchange market, and especially on interim and permanent local number  
18           portability ("LNP") implementation issues. With respect to interim LNP  
19           ("ILNP"), I have reviewed numerous Local Exchange Carrier ("LEC") ILNP  
20           tariff filings, and in Michigan, testified on behalf of MCI on appropriate costs  
21           and rates for ILNP. With respect to permanent LNP, I have been involved in all  
22           aspects of national LNP implementation on behalf of MCI, including participation  
23           in numerous state LNP workshops.

24  
25           Before entering private practice, I was employed for eight years by MCI

1 Telecommunications Corporation ("MCIT"). From 1989 to 1990, I was  
2 Manager, Market and Business Analysis, in the Marketing Department,  
3 responsible for providing intrastate pricing and competitive market analysis.  
4 From 1986 to 1989, I was a Staff Analyst in the Regulatory Department --  
5 Southwest Division, responsible for analyzing the impact of LEC intrastate access  
6 and toll tariffs filed in Missouri, Arkansas, Kansas, Oklahoma, and Texas, with  
7 emphasis on tariffs impacting 800 and WATS-type services. From 1982 to 1986,  
8 I worked in MCI's Litigation Support Department in Washington, D.C.,  
9 providing supervisory and analytical support to MCI litigation efforts.

10  
11 I am a graduate of Tufts University, Medford, Massachusetts, with a Bachelor of  
12 Arts in International Relations.

13  
14 **Q. HAVE YOU PREVIOUSLY TESTIFIED IN REGULATORY**  
15 **PROCEEDINGS?**

16 **A.** Yes. I have testified on behalf of MCI in the states of Oklahoma, Missouri,  
17 Texas and Michigan.

18  
19  
20 **II. PURPOSE OF TESTIMONY**

21  
22 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

23 **A.** The purpose of my testimony is to respond to the issues identified by the Florida  
24 Public Service Commission ("PSC") regarding the appropriate cost recovery  
25 mechanisms for ILNP, including the appropriateness of the recovery mechanism



1 previously approved in Order No. PSC-95-1604-FOF-TP in Docket No. 950737-  
2 TP (the "*LNP Order*"). Specifically, I will explain why the *LNP Order* is  
3 inconsistent with the Federal Communication Commission ("FCC") First Report  
4 and Order and Further Notice of Proposed Rulemaking in CC Docket No. 95-119  
5 ("*FCC Order*"), and recommend that the PSC direct each LEC and Alternative  
6 Local Exchange Carrier ("ALEC") to pay for its own costs of ILNP measures.  
7 I will also recommend that the PSC require application of its decision in this case  
8 retroactively to the date of the *FCC Order*. Finally, I will ask the PSC to require  
9 all LECs and ALECs to adopt appropriate meet-point billing arrangements for  
10 access charges paid by Interexchange Carriers ("IXCs") terminating calls via  
11 ILNP measures.

### 12 13 **III. CONSISTENCY OF FLORIDA *LNP ORDER* WITH *FCC ORDER***

#### 14 15 **Q. WHAT IS YOUR UNDERSTANDING OF THE REQUIREMENTS OF THE** 16 **PSC'S *LNP ORDER* WITH RESPECT TO ILNP COST RECOVERY?**

17 **A.** The PSC's *LNP Order* identified costs associated with providing Remote Call  
18 Forwarding ("RCF"), and established rates and a cost recovery mechanism. The  
19 costs identified were: service implementation costs, central office equipment and  
20 software costs, and interoffice networking costs. (*LNP Order* at 15) The rates  
21 approved by the PSC consisted of a monthly per-line charge, a monthly additional  
22 path charge, and a non-recurring charge. (*Id.* at 16-17) These rates were to be  
23 charged to ALECs by BellSouth, GTE Florida ("GTEFL"), and Sprint, for each  
24 ALEC number ported from the incumbent LEC via RCF.

25

1 Q. WHAT IS YOUR UNDERSTANDING OF THE *FCC ORDER* WITH  
2 REGARD TO RECOVERY OF ILNP COSTS?

3 A. Fundamentally, the *FCC Order* requires that ILNP costs be recovered on a  
4 competitively neutral basis. Specifically, the FCC concluded that "...section  
5 251(e)(2) [of the 1996 Act] gives [us] specific authority to prescribe pricing  
6 principles that ensure that the costs of number portability are allocated on a  
7 'competitively neutral' basis." (*FCC Order* at ¶ 126) The FCC rejected  
8 recovering all ILNP costs on new entrants and stated the following:

9 Ordinarily the Commission follows cost causation principles, under  
10 which the purchaser of a service would be required to pay at least  
11 the incremental cost incurred in providing a service. (*FCC Order*  
12 at ¶ 131)

13

14 However, the FCC properly recognized that interim portability is not a service  
15 and rejected the recovery of all the costs of interim number portability from new  
16 entrants on a cost-causative basis:

17 ...number portability is a *network function* that is required for a  
18 carrier to compete with the carrier that is already serving a  
19 customer. Depending on the technology used, to price number  
20 portability on a cost causative basis could defeat the purpose for  
21 which it was mandated. (*FCC Order* at ¶ 131) [Emphasis added.]

22

23 Interim number portability is a mechanism that both enables competition and is  
24 used by carriers to route calls between their networks. If one must find a cost  
25 causer, then it is competition in general, in which all local telecommunications

1 carriers will participate, and all local telecommunications users will benefit. In  
2 addition, local telecommunications carriers and their customers benefit from the  
3 ability to complete calls to any other user on the network -- the value of a  
4 network is directly related to the number of users that can connect and  
5 communicate. The routing of calls should not be considered a service, but rather,  
6 as the 1996 Act recognized in Section 251(b)(2), an obligation between carriers.  
7 In this capacity, number portability helps enable competition and is a network  
8 function, not a service, and it makes no sense to recover the costs of network  
9 routing from only new entrant carriers.

10  
11 **Q. WHAT DID THE FCC ULTIMATELY CONCLUDE REGARDING THE**  
12 **RECOVERY OF INTERIM NUMBER PORTABILITY COSTS?**

13 **A.** The FCC determined that a competitively neutral cost recovery mechanism should  
14 satisfy two criteria:

15 (1) "...a 'competitively neutral' cost recovery mechanism  
16 should not give one service provider an appreciable, incremental  
17 cost advantage over another service provider, when competing for  
18 a specific subscriber. In other words, the recovery mechanism  
19 should not have a disparate effect on the incremental costs of  
20 competing carriers seeking to serve the same customer." (*FCC*  
21 *Order* at ¶ 132)

22  
23 (2) "The second criterion for a 'competitively neutral' cost  
24 recovery mechanism is that it should not have a disparate effect on  
25 the ability of competing service providers to earn normal returns

1 on their investment.” (*FCC Order* at ¶ 135)

2

3 **Q. IS THE PSC’S LNP ORDER INCONSISTENT WITH THE FCC ORDER**  
4 **WITH REGARD TO THE RECOVERY OF ILNP COSTS?**

5 A. Yes, it is. The cost recovery mechanism approved by the PSC, in which ALECs  
6 must pay incumbent LECs tariffed monthly and non-recurring rates in order to  
7 use interim number portability is equivalent to having them pay all the costs of  
8 interim number portability. This is an explicit violation of the FCC’s  
9 competitively neutral cost recovery criteria. In its Order, the FCC gave the  
10 following example to explain its criteria:

11 When a facilities-based carrier that competes against an incumbent  
12 LEC for a customer, the incumbent LEC incurs no cost of number  
13 portability if it retains the customer. If the facilities-based carrier  
14 wins the customer, an incremental cost of number portability is  
15 generated. The share of this incremental cost borne by the new  
16 entrant that wins the customer cannot be so high as to put it at an  
17 appreciable cost disadvantage relative to the cost the incumbent  
18 LEC would incur if it retained the customer. Thus, the  
19 incremental payment by the new entrant if it wins a customer  
20 would have to be close to zero, to approximate the incremental  
21 number portability cost borne by the incumbent LEC if it retains  
22 the customer. (*FCC Order* at ¶ 133)

23

24 The *FCC Order* goes on to conclude that a cost recovery mechanism that imposes  
25 the entire incremental cost of currently available number portability on a

1 facilities-based new entrant would violate the first criterion. Such a cost recovery  
2 mechanism would impose an incremental cost on a facilities-based entrant that  
3 neither the incumbent, nor an entrant that merely resold the incumbent's service,  
4 would have to bear.

5  
6 **IV. APPROPRIATE COST RECOVERY MECHANISMS**

7  
8 **Q. GIVEN THE *FCC ORDER*, WHAT IS AN APPROPRIATE COST**  
9 **RECOVERY MECHANISM FOR FLORIDA?**

10  
11 **A.** In its order, the FCC identified several cost recovery mechanisms that it found  
12 would meet its competitively neutral recovery criteria. (*FCC Order* at ¶ 136) The  
13 simplest and most direct of the recommended mechanisms is one whereby each  
14 local carrier would pay for its own costs of currently available number portability  
15 measures. Such a mechanism is competitively neutral because it recognizes that  
16 both incumbent LECs and ALECs will incur costs to forward calls to another  
17 carrier's network via ILNP methods.

18  
19 **Q. WHAT OTHER TYPES OF COMPETITIVELY NEUTRAL RECOVERY**  
20 **MECHANISMS DID THE FCC IDENTIFY?**

21 **A.** The FCC described the following three additional cost recovery mechanisms that  
22 would satisfy its competitively neutral criteria:

23 1) The method used by carriers in Rochester, New York where a  
24 surcharge based on each carrier's number of ported telephone numbers  
25 relative to the total number of active telephone numbers in the local

1 service area is used.

2 2) A cost recovery mechanism that allocates number portability costs  
3 based on a carrier's number of active telephone numbers (or lines) relative  
4 to the total number of active telephone numbers (or lines) in a service  
5 area.

6 3) A cost recovery mechanism that would assess a uniform percentage  
7 assessment on a carrier's gross revenues less charges paid to other  
8 carriers. (*Ibid.*)

9

10 **Q. WHY DOES MCI PREFER THE MECHANISM WHEREBY LECS AND**  
11 **ALECS EACH RECOVER THEIR OWN COSTS OF ILNP?**

12 A. This mechanism is superior in that it does not require special reporting between  
13 carriers of revenues, minutes of use, number of customer telephone numbers, etc.  
14 In addition, it does not require carriers to produce, or the PSC to review, cost  
15 studies to determine the appropriate incremental costs for recovery. This is  
16 especially important because interim portability measures will soon be replaced  
17 by permanent number portability. Further, industry and state commission  
18 resources are already strained implementing all of the other provisions of the  
19 Telecommunications Act of 1996 without having to draw away resources to  
20 implement a new, temporary mechanism for the recovery of interim number  
21 portability costs. Development and monitoring of the accounting and reporting  
22 systems necessary to implement another, more complicated, competitively neutral  
23 cost recovery mechanism would be extremely inefficient given the short time  
24 frame it will be in place. The other cost recovery mechanisms specified by the  
25 FCC would have nearly the same effect on carriers as the method MCI advocates.

1           However, MCI recommends that the PSC select a cost recovery mechanism that  
2           comes without the additional effort and expense that would accompany other  
3           allocation-based cost recovery schemes.

4

5       **Q.   WHY WOULD ALL THE VARIOUS COMPETITIVELY NEUTRAL COST**  
6       **RECOVERY MECHANISMS IDENTIFIED BY THE FCC HAVE NEARLY**  
7       **THE SAME EFFECT ON CARRIERS?**

8       A.   The recovery mechanism preferred by MCI and the other mechanisms identified  
9       by the FCC are similar in that they all result in an allocation of costs based on  
10       the size of the local carrier's market share. With the method that MCI proposes,  
11       where each carrier must pay for its own costs of number portability, the result is  
12       nearly the same, only with fewer overall costs. This is because in the beginning  
13       it is likely that the number of customers porting away from a carrier will be in  
14       proportion to the market share of that carrier. In this case, most of the customers  
15       who port their number will port away from the incumbent LEC, with a smaller  
16       number porting away from the new entrant. Thus, using any of the suggested  
17       methods requires carriers to pay interim number portability costs based on their  
18       size and related market share. However, with the proposal that MCI advocates  
19       there are no unnecessary expenses and difficulties created with the development  
20       and implementation of allocative processes.

21

22       **Q.   HOW SHOULD THE COSTS OF INTERIM NUMBER PORTABILITY BE**  
23       **DETERMINED FOR ALLOCATION AND RECOVERY?**

24       A.   If MCI's recommended cost recovery mechanism is utilized there is no need to  
25       determine the costs of interim number portability because every carrier recovers

1 its own costs. Further, with this method carriers have no incentive to inflate the  
2 costs of interim number portability. In fact they have an incentive to provide  
3 interim portability as efficiently as possible.

4  
5 However, if the Commission adopts a different method of cost recovery that  
6 allocates the cost of interim portability to carriers based on some specific criteria  
7 it is important that only the *incremental* costs that are incurred due to the  
8 provision of interim portability be accurately identified and recovered. In its  
9 Order the FCC states that “[t]he principles we adopt should also mitigate any  
10 anti-competitive effects that may arise if a carrier falsely inflates the cost of  
11 currently available number portability.” (*FCC Order* at ¶ 125)

12  
13 While apportioning the cost of number portability by market share goes far  
14 toward discouraging the inflation of interim number portability costs it does not  
15 mitigate it as carriers paying their own costs would. Therefore, if carriers  
16 covering their own costs of number portability is rejected, and an allocation  
17 method is used, then the incumbent LECs’ cost studies must still be scrutinized  
18 to determine that costs are not artificially inflated above absolute *incremental*  
19 costs. This must be done because an incentive to inflate costs might still remain  
20 since the portion of costs that the incumbent pays of its own costs may be simply  
21 a matter of “taking money out of one pocket and putting it into the other.”

22  
23 **Q. DOES THE FCC IDENTIFY THE INCREMENTAL COSTS THAT ARE**  
24 **INVOLVED IN THE PROVISION OF INTERIM NUMBER**  
25 **PORTABILITY?**



1 A. The FCC discusses the incremental costs of interim number portability and,  
2 relying on Bell Operating Company ("BOC") claims, states the following:

3 "The BOCs claim, for example, that there are essentially three  
4 costs incurred in the provision of RCF for an intraoffice call:

5 (1) switching costs incurred by the original switch in  
6 determining that the number is no longer resident;

7 (2) switching costs incurred in performing the RCF  
8 translation, which identifies the address of the receiving  
9 switch; and

10 (3) switching costs incurred in redirecting the call from  
11 the original switch to the switch to which the number has  
12 been forwarded.

13 The BOCs further assert that the additional costs incurred for an  
14 interoffice call include:

15 (1) the transport costs incurred in directing the call  
16 from the tandem or end office to the office from which the  
17 number was transferred and back to the tandem or end  
18 office; and

19 (2) remote tandem or end office switching costs."

20 (*FCC Order* at ¶ 129)

21

22 These are essentially the additional, or incremental, costs for the provision of  
23 interim number portability, and will be incurred by any LEC providing interim  
24 number portability, both new and incumbent.

25

1 Q. ARE THESE THE ONLY COSTS THAT ARE INCLUDED IN THE RATES  
2 BELLSOUTH, GTEFL AND SPRINT CURRENTLY CHARGE FOR RCF?

3 A. Apparently not. The PSC determined that the rates it approved in the LNP Order  
4 were above GTEFL's and Sprint's stated costs to provide RCF. The PSC found  
5 BellSouth's cost studies to be questionable, and so directed BellSouth to file new  
6 cost studies by March 31, 1997. (*LNP Order* at 17)

7

8 Q. IS IT NECESSARY FOR THE PSC TO REQUIRE LECS TO RE-FILE  
9 COST STUDIES AND TARIFFS?

10 A. If the cost recovery mechanism that MCI proposes is adopted, that is, if all  
11 carriers recover their own costs of interim number portability, then there will be  
12 no need for tariffs or cost reviews. In this situation carriers treat each other as  
13 part of a network instead of making customers out of each other (producing all  
14 the inherent conflicts that a situation such as this could create). Further, it will  
15 become unnecessary for carriers to produce, and PSC to evaluate, interim number  
16 portability tariff offerings. If this method is adopted it will only be necessary for  
17 the PSC to require LECs to provision number portability in a timely,  
18 non-discriminatory manner and set up safeguards to assure that these standards  
19 are met. If, however, the PSC chooses to distribute the costs of number  
20 portability based on access lines or numbers then it will be necessary to determine  
21 the incremental costs that are valid for recovery.

22

23 V. RETROACTIVE APPLICATION OF DECISION

24

25 Q. SHOULD THE PSC'S DECISION IN THIS CASE BE RETROACTIVELY

1           **APPLIED?**

2           A.    Yes. It is appropriate that the PSC's decision in this case be retroactively applied  
3           to the release date of the FCC Order -- July 2, 1996. LECs should provide full  
4           refunds to ALECs of all amounts collected for RCF between that date and the  
5           date of the PSC's order in this proceeding. Depending on the cost recovery  
6           mechanism chosen, the cost of the RCF provided during that period can be  
7           reallocated accordingly.

8

9

**VI. OTHER ISSUES**

10

11          **Q.    ARE THERE OTHER REQUIREMENTS IN THE *FCC ORDER***  
12          **REGARDING INTERIM NUMBER PORTABILITY THAT SHOULD BE**  
13          **ADDRESSED IN THIS PROCEEDING?**

14          A.    Yes, the *FCC Order* included requirements for the provision of Direct Inward  
15          Dial ("DID") as an ILNP method, and the collection of terminating access  
16          charges, that should be addressed by the PSC in this proceeding.

17

18          **Q.    WHAT DID THE *FCC ORDER* REQUIRE WITH REGARD TO**  
19          **PROVISION OF DID AS AN INTERIM NUMBER PORTABILITY**  
20          **METHOD?**

21          A.    The *FCC Order* required LECs "to offer number portability through RCF, DID,  
22          and other comparable methods because they are the only methods that currently  
23          are technically feasible." (*FCC Order* at ¶ 110) Thus, LECs must provide DID  
24          as a number portability option, along with RCF or other available methods, upon  
25          request from a competing carrier. The PSC should therefore make clear in this

1 proceeding that the cost allocation and recovery mechanism it adopts applies to  
2 DID as well as RCF. This means that, in the event the PSC adopts a mechanism  
3 that requires the calculation of costs for allocation purposes, then the PSC must  
4 review and approve cost studies for DID as well as for RCF.

5

6 **Q. WHAT DID THE *FCC ORDER* REQUIRE WITH REGARD TO**  
7 **TERMINATING ACCESS CHARGES?**

8 A. In response to questions concerning the appropriate treatment of terminating  
9 access charges in the interim number portability context, the FCC concluded that  
10 meet-point billing arrangements between neighboring incumbent LECs provides  
11 the appropriate model for the proper access arrangement for interim number  
12 portability. (*FCC Order* at ¶ 140) Therefore, the PSC should direct the LECs to  
13 adopt meet-point billing arrangements for access charges paid by IXCs  
14 terminating calls directed to new entrants *via* LEC-provided RCF or DID. The  
15 appropriate split of access charges is the following:

16 (1) the forwarding LEC charges the IXC for transport from the  
17 IXC point of presence to the end office where the RCF/DID is  
18 provided; and

19 (2) the terminating LEC charges the IXC for the terminating  
20 LEC's terminating switching function, common line and RIC.

21

22 Any additional intermediate switching and transport costs incurred by the LEC  
23 would be recovered according to the competitively neutral mechanism adopted  
24 in this proceeding. In addition, if MCI is unable to identify the particular IXC  
25 carrying a call subject to forwarding, the forwarding LEC should provide MCI

1 with the necessary information to permit MCI to issue a bill to the IXC. This  
2 may include sharing Percentage Interstate/Intrastate Usage data.

3  
4 **VII. CONCLUSION**

5  
6 **Q. WHAT IS YOUR RECOMMENDATION TO THE COMMISSION TO**  
7 **ELIMINATE INCONSISTENCIES BETWEEN THE PSC'S *LNP ORDER***  
8 **AND THE *FCC ORDER*?**

9 A. The PSC should determine that its prior *LNP Order* is inconsistent with the *FCC*  
10 *Order*, in that it established rates for RCF that are not competitively neutral  
11 according to the FCC's cost recovery criteria. The PSC should determine that  
12 the costs of number portability should be borne by each carrier providing  
13 portability consistent with the competitively neutral requirements of the  
14 Telecommunications Act of 1996 and the *FCC Order*. If the PSC declines to  
15 implement MCI's recommended cost recovery proposal, the Commission should  
16 alternatively allocate the cost of number portability based on the number of active  
17 access lines or telephone numbers. The PSC should then direct BellSouth,  
18 GTEFL, and Sprint to provide cost studies that identify only the necessary  
19 incremental costs that they will incur in the provision of interim number  
20 portability, including cost studies for both RCF and DID. Further, the PSC  
21 should require retroactive application of its order in this proceeding back to the  
22 date of the *FCC Order*, and require refunds to ALECs as appropriate. Finally,  
23 appropriate meet-point billing arrangements should be implemented for the  
24 sharing of terminating access.

25

1 Q. DOES THAT CONCLUDE YOUR TESTIMONY?

2 A. Yes.

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1                   **REBUTTAL TESTIMONY OF ELIZABETH G. KISTNER**  
2                   **ON BEHALF OF MCI TELECOMMUNICATIONS CORPORATION**  
3                   **DOCKET NO. 950737-TP**

4                   **October 7, 1996**

5  
6                   **I. INTRODUCTION**

7           **Q.     PLEASE STATE YOUR NAME.**

8           A.     My name is Elizabeth G. Kistner.

9  
10          **Q.     DID YOU FILE DIRECT TESTIMONY IN THIS PROCEEDING?**

11          A.     Yes, I filed direct testimony on behalf of MCI Telecommunications Corporation  
12               ("MCI") in Docket No. 950737-TP on September 23, 1996.

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14                  **II. PURPOSE OF TESTIMONY**

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16          **Q.     WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

17          A.     The purpose of my rebuttal testimony is to respond to the direct testimony filed in  
18               this proceeding by witnesses for BellSouth Telecommunications, Inc. ("BellSouth"),  
19               GTE Florida Incorporated ("GTEFL"), United Telephone Company of Florida and  
20               Central Telephone Company of Florida ("Sprint"), AT&T Communications  
21               ("AT&T"), AT&T Wireless Services of Florida, Inc. ("AT&T Wireless"), Time  
22               Warner AXS of Florida ("Time Warner"), and the Florida Cable  
23               Telecommunications Association, Inc. ("FCTA"). Specifically, I will show that  
24               nearly all parties are in agreement that the Florida Public Service Commission's

1 (“PSC’s”) Order No. PSC-95-1604-FOF-TP in Docket No. 950737-TP (the “*LNP*”  
2 *Order*”) is inconsistent with the Federal Communication Commission (“FCC”) First  
3 Report and Order and Further Notice of Proposed Rulemaking in CC Docket No.  
4 95-119 (“*FCC Order*”). I will then respond to the parties’ recommendations for an  
5 appropriate cost recovery mechanism for interim local number portability (“*ILNP*”).  
6

7 **III. CONSISTENCY OF FLORIDA *LNP ORDER* WITH *FCC ORDER***  
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9 **Q. DID THE PARTIES FILING DIRECT TESTIMONY AGREE THAT THE**  
10 **FLORIDA *LNP ORDER* IS INCONSISTENT WITH THE *FCC ORDER*?**

11 A. All but one of the parties filing direct testimony were in agreement with MCI that  
12 the Florida *LNP Order* is clearly inconsistent with the *FCC Order*. BellSouth (at 9),  
13 Sprint (at 2), AT&T (at 3), AT&T Wireless (at 3), Time Warner (at 4), and FCTA  
14 (at 1). The current cost recovery mechanism in Florida, where Alternative Local  
15 Exchange Carriers (“*ALECs*”) pay nearly all of the costs of interim number  
16 portability, is an explicit violation of the FCC’s competitively neutral cost recovery  
17 criteria. Only GTEFL appears to disagree.  
18

19 **Q. DOES GTEFL MAINTAIN THAT THE CURRENT COST RECOVERY**  
20 **MECHANISM IN FLORIDA IS CONSISTENT WITH THE *FCC ORDER*?**

21 A. Yes. GTEFL offers two interpretations of the *FCC Order* to support its position that  
22 its current *ILNP* tariffs in Florida are consistent with the *FCC Order*. First, GTEFL  
23 isolates a single line of text from the *FCC Order*, where the FCC allows that states  
24 may require the filing of tariffs for the provision of *ILNP* measures, and concludes



1 that Florida must be in compliance since ILNP is offered in Florida under tariffs.  
 2 (GTEFL at 3) Yet, as GTEFL itself acknowledges, the FCC set forth explicit  
 3 guidelines for competitively neutral cost recovery. No reasonable person could  
 4 interpret the order to mean that the mere filing of *any* tariffs (no matter what is in  
 5 them) satisfies those criteria.

6 Second, GTEFL later in its testimony implies that the existing tariffs in Florida are  
 7 in compliance with the *FCC Order*, insofar as they allow incumbent local exchange  
 8 carriers (“ILECs”) to charge ALECs their tariffed rates, and vice versa. GTEFL  
 9 asserts that this maintains competitive neutrality by allowing each carrier to recover  
 10 its own costs (GTEFL at 5). However, this is *precisely* the type of mechanism that  
 11 the FCC determined is a violation of the competitively neutral cost recovery criteria.  
 12 (Direct Testimony of Mike Guedel (AT&T) at 4-5; *FCC Order* at ¶¶133 and 138).  
 13 Thus, with the exception of GTEFL’s baseless interpretations, the parties agree that  
 14 the Florida *LNP Order* is inconsistent with the *FCC Order*.

15

#### 16 **IV. APPROPRIATE COST RECOVERY MECHANISMS**

17

18 **Q. WHAT DID THE PARTIES RECOMMEND AS APPROPRIATE COST**  
 19 **RECOVERY MECHANISMS FOR INTERIM PORTABILITY COSTS?**

20 **A** Several parties agreed with MCI that the simplest and most efficient of the FCC-  
 21 recommended cost recovery mechanisms is one whereby each local carrier would  
 22 pay for its own costs of currently available number portability ILNP methods.

23 (AT&T at 7; AT&T Wireless at 4; Time Warner at 9; FCTA at 2-3) Currently  
 24 available ILNP methods include Remote Call Forwarding (“RCF”), Direct Inward

1 Dial (“DID”), and similar routing methods. As AT&T correctly points out, this  
2 decision affects only interim number portability, which will begin to be phased out  
3 in Florida within the next 12 months. This method does not carry with it any  
4 administrative costs (Time Warner at 9) and does not require the filing and review  
5 of cost support.

6

7 **Q. WHAT OTHER COST RECOVERY MECHANISMS WERE**  
8 **RECOMMENDED?**

9 A. BellSouth did not offer an alternative cost recovery mechanism, recommending  
10 instead that the Florida PSC do nothing about the inconsistency between orders  
11 (BellSouth at 12,15). GTEFL recommended a pooling and surcharge mechanism  
12 (GTEFL at 5), and Sprint recommends a cost splitting formula (Sprint at 5).

13

14 **Q. WHY DOES BELLSOUTH RECOMMEND THAT THE PSC DO NOTHING**  
15 **ABOUT THE INCONSISTENCY BETWEEN THE FLORIDA AND FCC**  
16 **ORDERS?**

17 A. Most of BellSouth’s testimony is devoted to arguing why the FCC made the wrong  
18 decision in establishing a competitively neutral cost recovery mechanism for ILNP  
19 costs. (BellSouth at 6-7, 9-15) BellSouth witness Alphonso Varner states that  
20 “BellSouth believes that the price of such [ILNP] services should be based on the  
21 cost of providing the network elements and include a reasonable profit,” and that on  
22 the basis of their disagreement with the *FCC Order*, “[t]he Florida Order should  
23 simply be maintained until such time as the solution for permanent number  
24 portability can be implemented.” (BellSouth at 12-13) Mr. Varner concludes by

1 suggesting that, pending resolution of BellSouth's Petition for Reconsideration of the  
2 *FCC Order*, the Florida PSC should take a "wait and see" position. (BellSouth at  
3 15)

4

5 **Q. IS A PENDING PETITION FOR RECONSIDERATION CAUSE FOR THE**  
6 **FCC'S ORDER TO BE IGNORED?**

7 A No. BellSouth is free, of course, to disagree with the *FCC Order*, and it can pursue  
8 appropriate administrative and judicial remedies to have the order reversed.

9 However, absent a stay of the order by the FCC or appropriate court, the regulations  
10 adopted in the order are in effect *now*. The guidelines adopted by the FCC for  
11 interim number portability cost recovery can not be ignored simply because  
12 BellSouth doesn't like them.

13

14 **Q. WILL YOU RESPOND TO BELLSOUTH'S ARGUMENTS AGAINST THE**  
15 ***FCC ORDER*?**

16 A. No. Although I strongly disagree with BellSouth's characterization of and  
17 conclusions about the *FCC Order* and the 1996 Telecommunications Act, as stated in  
18 Mr. Varner's testimony, I believe BellSouth's arguments are irrelevant in this  
19 proceeding. MCI has appropriately responded to all of the same BellSouth  
20 arguments in MCI's Opposition to Petitions for Reconsideration and Clarification,  
21 filed September 27, 1996 in CC Docket No. 95-116, and so I will not burden the  
22 record here with a reiteration of MCI's opposition.

23

24 **Q. DO YOU AGREE WITH GTEFL'S RECOMMENDATION FOR A POOLING**

**AND SURCHARGE MECHANISM?**

1  
2 A. No. GTEFL recommends a highly complex and inefficient pooling and surcharge  
3 mechanism. GTEFL's proposal is a case of regulatory "overkill," given the limited  
4 costs and duration associated with interim number portability. Under GTEFL's  
5 proposal, the PSC would have to: 1) require all carriers to submit cost studies for  
6 RCF and DID, and determine the appropriate incremental costs; 2) review IXC,  
7 ILEC, ALEC, and commercial mobile radio service ("CMRS") traffic information,  
8 estimate the total number of local service and interexchange calls, and update data  
9 on a periodic basis; 3) determine an estimated annual cost of ILNP and compute a  
10 per-call cost; 4) manage the allocation of costs to IXCs, ILECs, ALECs, and CMRS  
11 providers, and collect funds from those carriers; 5) require and review ILEC and  
12 ALEC cost reports on a regular basis to determine the amount of RCF and DID  
13 usage for reimbursement; 6) manage periodic distribution of funds to ILECs and  
14 ALECs, including dispute resolution; 7) determine an end user surcharge and  
15 oversee customer notification and reaction; and 8) determine and manage shortfalls  
16 or excesses in the fund and reapportion as needed. GTEFL describes this system as  
17 "simple" — I would call it a nightmare.

18 In addition to the obvious difficulties of managing such a system, pooling by nature  
19 reduces the incentives for carriers to incur costs in the most economically efficient  
20 manner, and encourages carriers to exaggerate costs in their reports to the pool.  
21 Further, the costs and time associated with establishing and managing all of the  
22 necessary reporting, tracking, end user billing, and auditing processes that are  
23 necessary with pooling, will drain carrier and Commission resources from more  
24 productive efforts to further the introduction of competition to Florida local

1 exchange customers.

2

3 **Q. IS THERE ANY REASON TO EXPECT THAT SUCH A POOLING AND**  
4 **SURCHARGE MECHANISM WILL BE ADOPTED FOR RECOVERY OF**  
5 **LONG-TERM LNP COSTS?**

6 A. Not at this time. Although GTEFL proposed such a pooling and surcharge system  
7 in the FCC's long-term LNP cost recovery proceeding, many commenting parties —  
8 including incumbent LECs, ALECs, and state regulators — opposed pooling  
9 recommendations as an inefficient and undesirable way to recover costs. Similarly,  
10 numerous parties oppose mandatory surcharges on end user bills as anticompetitive  
11 and anti-consumer. The FCC is not expected to make a decision for several months,  
12 but there is certainly no widespread support for them to adopt such a proposal.  
13 Thus, in reviewing GTEFL's proposal, the Florida PSC should consider that such a  
14 system may be used only for Florida, and only for recovery of interim number  
15 portability costs.

16

17 **Q. DOES SPRINT'S PROPOSAL TO SET ILNP RATES AT APPROXIMATELY**  
18 **HALF THEIR COST SATISFY THE FCC'S COMPETITIVELY NEUTRAL**  
19 **CRITERIA?**

20 A. No. Sprint witness Ben Poag characterizes Sprint's proposal as an "approximately  
21 equal sharing of the cost of interim number portability" (Sprint at 5). However,  
22 "equal" does not translate to "competitively neutral" when one carrier's share of the  
23 market is so substantially greater than that of its competitors. A split of ILNP costs,  
24 i.e., allocating approximately half of the costs to new entrants, violates the FCC's

1 directive that costs be allocated on a *proportionate* basis. In fact, the FCC used the  
2 specific example that a method that divided costs equally among four carriers,  
3 including the incumbent and three new entrants, would violate its cost recovery  
4 principles because the new entrants' portion of the costs could be disproportionate to  
5 expected profits (*FCC Order* at ¶135). Thus, Sprint's proposal would not be  
6 competitively neutral unless new entrant carriers had gained 50% of the local  
7 exchange market.

## 8 9 VI. CONCLUSION

10  
11 **Q. COULD YOU PLEASE SUMMARIZE YOUR REBUTTAL TESTIMONY?**

12 **A.** Yes. First, I pointed out that there is near unanimous agreement among the parties  
13 filing testimony that Florida's *LNP Order* is inconsistent with the *FCC Order*. As a  
14 result, most parties made recommendations for an alternative cost recovery  
15 mechanism for ILNP costs. I supported the recommendation of AT&T, AT&T  
16 Wireless, Time Warner and FCTA that the simplest and most efficient cost recovery  
17 mechanism suggested by the FCC is one whereby each local carrier pays for its own  
18 costs of providing interim portability measures. I noted that BellSouth's  
19 disagreement with the *FCC Order* is irrelevant to this proceeding, and disagreed  
20 with their suggestion that the Florida PSC can ignore the FCC guidelines simply  
21 because BellSouth has a pending Petition for Reconsideration. I showed that  
22 GTEFL's proposal for a pooling and surcharge recovery mechanism was inefficient  
23 and overly complex given the limited costs and duration associated with interim  
24 number portability. Finally, I explained why Sprint's proposal to split the

1 incremental costs of interim number portability among ILECs and their competitors  
2 does not meet the FCC's guidelines for competitively neutral cost recovery because  
3 it is not a proportionate allocation mechanism.  
4

5 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

6 **A.** Yes, it does.  
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1 BY MS. McMILLIN:

2 Q Have you prepared a brief summary of your  
3 testimony?

4 A Yes, I have.

5 Q Please give it at this time.

6 A Afternoon, Chairman Clark, and members of  
7 the Commission. Thank you for the opportunity to  
8 address here today the important topic of an  
9 appropriate cost recovery mechanism for interim number  
10 portability.

11 The Telecommunications Act of 1996 requires  
12 that the cost of number portability, including both  
13 interim and long term portability methods, be borne by  
14 all telecommunications carriers on a competitively  
15 neutral basis.

16 Competitive neutrality requires that the  
17 costs be incurred by competing carriers on an equal  
18 per customer basis. If the costs of interim local  
19 number portability are not incurred on an equal basis  
20 per customer, then one carrier will have a cost  
21 advantage over its competitor with regard to number  
22 portability, something the Act intended to prohibit.

23 This interpretation of the Act's competitive  
24 neutrality provision was embodied in the FCC's number  
25 probability Order, and as a result you have set forth



1 as the first issue in this proceeding the question of  
2 whether this Commission's order on number portability  
3 is inconsistent with the FCC's order.

4           There is near unanimous agreement among the  
5 parties here today that the answer is yes, the Florida  
6 Order is inconsistent with the FCC number portability  
7 order. This is not surprising given that the Florida  
8 order predates the Telecommunications Act and the  
9 FCC's order interpreting it.

10           The second and related issue set forth in  
11 this proceeding is what is the appropriate cost  
12 recovery mechanism for interim number portability.  
13 MCI and many other parties --

14           **CHAIRMAN CLARK:** Ms. Kistner, slow down a  
15 little bit, okay? Go ahead.

16           **WITNESS KISTNER:** I'm sorry about that.

17           MCI and many other parties have recommended  
18 that the simplest and most efficient cost recovery  
19 mechanism is one in which competing local carriers pay  
20 for their own costs for interim portability measures.  
21 Requiring all carries to bear their own costs has a  
22 number of significant advantages over other cost  
23 recovery mechanisms.

24           First, since long term portability measures  
25 should be employed in the next 12 to 24 months in

1 Florida, interim number portability is relatively  
2 short lived, and, therefore, it is appropriate to  
3 adopt a cost recovery mechanism that is not complex,  
4 administratively burdensome or costly to implement for  
5 such a short period.

6           Second, if each carrier bears its own costs  
7 it will result in a proportionate sharing of interim  
8 portability costs among incumbent and alternative  
9 local exchange carriers. The true cost of interim  
10 number portability measures, such as remote call  
11 forwarding, include both the costs of providing  
12 interim portability measures to other carriers and the  
13 cost of receiving customers with ported numbers.

14           The incumbent LECs have characterized this  
15 proposal as requiring them to bear virtually all of  
16 the costs of interim number portability, since at  
17 least initially customers will be porting away from  
18 the incumbent carriers. However, alternative LECs  
19 will not only incur similar costs as customers begin  
20 to ask to be ported to other carriers, but they will  
21 also incur costs to accomodate ported customers in  
22 their networks.

23           For example, ALECs will spend significantly  
24 more time in the customer acquisition process and will  
25 have to develop billing and customer service systems

1 to track two numbers for each ported customer, the  
2 ported number and the number assigned by the ALEC.

3           Although incumbent LECs may incur more of  
4 the total network costs in the aggregate on a  
5 proportionate or per customer basis, the cost should  
6 be relatively equal. Thus it makes sense not to  
7 develop and administer a complex recovery mechanism  
8 when allowing each carrier to bear its own cost will  
9 achieve the same purpose.

10           This simple and fair proposal is in contrast  
11 to the proposals of BellSouth, GTE and Sprint.  
12 BellSouth proposes that the Commission leave the  
13 status quo in place, which results in almost all of  
14 the costs of interim number portability falling on new  
15 entrants. This is directly contrary to the Act's  
16 requirement that costs be borne on a competitively  
17 neutral basis.

18           GTE similarly recommends that the Commission  
19 keep the status quo, but in the alternative implement  
20 a complicated pooling and end user surcharge mechanism  
21 just for this limited amount of cost recovery.

22           Sprint's proposal to split the network cost  
23 of interim number portability approximately equally  
24 between incumbent LECs and ALECs at least recognizes  
25 that the status quo is not competitively neutral but

1 it nevertheless misses the mark because it results in  
2 ALECs bearing a disproportionate amount of the total  
3 cost on a per customer basis. And all three of these  
4 ILEC proposals require the Commission to review cost  
5 studies to determine the appropriate incremental cost  
6 for recovery.

7           In summary, MCI urges the Commission to  
8 consider the relatively short duration of interim  
9 number portability methods and the relatively  
10 proportionate way in which ILECs and ALECs will incur  
11 costs absent any contrived cost recovery mechanism,  
12 and determine that requiring each carrier to bear its  
13 own cost of providing interim portability will best  
14 meet the requirements of the Act and the FCC's number  
15 portability order.

16           In addition, MCI urged the Commission to  
17 adopt meet-point billing arrangements as the model for  
18 the sharing of access charges from the IXC's  
19 terminating calls to ported numbers. This is  
20 consistent with the FCC's conclusions regarding access  
21 arrangements in the interim portability context.

22           I'd like to clarify that MCI is not  
23 recommending that ILECs create costly new systems to  
24 automate meet-point billing. Rather MCI is  
25 recommending that carriers use meet-point billing as a

1 model for fairly splitting access charges between the  
2 intermediate LEC and the terminating LEC.

3 Thank you again for the opportunity to speak  
4 to you today.

5 MS. McMILLIN: Thank you, Ms. Kistner.

6 Ms. Kistner is available for cross.

7 CHAIRMAN CLARK: Ms. White.

8 MS. WHITE: Yes.

9 CROSS EXAMINATION

10 BY MS. WHITE:

11 Q I have just a couple of questions,  
12 Ms. Kistner. Nancy White for BellSouth  
13 Telecommunications.

14 Would you agree that the majority of the  
15 costs of interim number portability are going to be  
16 borne by the incumbent local exchange company?

17 A I really can't agree that the majority of  
18 costs, if you include both the cost of porting to  
19 another carrier as well as the cost to a carrier of  
20 receiving porting numbers, I don't know that I could  
21 agree that the majority of the costs would be borne by  
22 the incumbent, but I would say there's probably a good  
23 likelihood.

24 Q Okay. Because I thought I heard you say in  
25 your summary that in the aggregate the incumbent local

1 exchange companies would bear more of the cost than  
2 the alternative local exchange companies. Was I  
3 mistaken in that?

4 A Well, I did say the majority of network  
5 costs, and by that I was referring to the costs of  
6 providing the porting from one carrier's network to  
7 another carrier's network.

8 Q You stated also in your summary that the  
9 cost on a per customer basis will be equal, do you  
10 recall that?

11 A I said they would be roughly equal or  
12 relatively equal.

13 Q Have you done any studies or analyses to  
14 show that that's the case -- that the costs that MCI  
15 on a per customer basis and the costs for BellSouth on  
16 a per customer basis are going to be roughly equal?

17 A No. I made that statement based on my  
18 understanding of the type of costs that would be  
19 incurred, which are relatively small. And when spread  
20 out over the full customer base, I think the amount  
21 per customer is almost impossible to even calculate,  
22 and, therefore, it was easy to say that they would be  
23 approximately equal. They would be very, very  
24 minimal.

25 Q Would you agree that the -- well let me

1 strike that and start over.

2 In the original order of this case this  
3 Commission found that the costs involved in remote  
4 call forwarding were service implementation, central  
5 office equipment, software costs and interoffice  
6 network costs; would you agree with that? That those  
7 are the type of costs that will be involved?

8 A Those are the type. I'd have to look at the  
9 list. Those are some of the costs. I would not agree  
10 those are all of the costs.

11 Q You also stated that ALECs will have to put  
12 in place billing and tracking systems?

13 A Yes.

14 Q Has MCI or have you done any studies or  
15 analyses to show what those costs are?

16 A We have looked at what sort of incremental  
17 difference that makes in our costs of acquiring  
18 customers. And I don't believe anybody has put a  
19 dollar figure on it. But we've looked at, for  
20 example, that acquiring a customer that requires  
21 number portability requires approximately 30% more  
22 time in the acquisition process in order to  
23 appropriately set up that customer and determine, you  
24 know, what specific ordering of the service and the  
25 additional paths. We've looked at how much additional

1 order entry time it takes to make sure that two  
2 numbers are tracked.

3 So we have looked at percentage differences  
4 as opposed to actual cost numbers.

5 Q But you don't know what that 30% equates to  
6 in terms of dollars?

7 A Not offhand.

8 Q Now, are you aware of whether MCI or its  
9 alternative local exchange company has ordered any  
10 interim number portability from BellSouth as of this  
11 date?

12 A I'm not aware that we have yet.

13 Q So would you agree that as far as MCI and  
14 BellSouth are concerned there would be no  
15 retroactivity of this effect of this Commission's  
16 order?

17 A As of today that would be true, I believe.

18 MS. WHITE: Thank you. I have nothing  
19 further.

20 MS. CASWELL: I do have a few questions.

21 CROSS EXAMINATION

22 BY MS. CASWELL:

23 Q Good afternoon, Ms. Kistner.

24 A Good afternoon.

25 Q I think I recall in your deposition that you



1 stated you'd certainly be interested in viewing a cost  
2 study by BellSouth or another incumbent LEC. Do you  
3 recall that statement?

4 A I'm sorry. That I would like to do a cost  
5 study of -- ?

6 Q No. I think in your deposition I recalled a  
7 statement that you made that you would certainly be  
8 interested in seeing a cost study done by BellSouth or  
9 another incumbent LEC. Do you recall that statement?

10 MS. McMILLIN: Do you have a page reference?

11 Q (By Ms. Caswell) Pages 21 to 22 of your  
12 deposition transcript, which I think the Staff  
13 introduced as an exhibit.

14 MS. McMILLIN: I believe it's Exhibit No. 7.  
15 And this would be on line?

16 MS. CASWELL: It would be --

17 A My answer was that I would be interested in  
18 seeing a type of cost study that would identify  
19 specific costs that are marginally incremental to the  
20 provision of RCF for interim number portability  
21 purposes.

22 Q Have you asked the LECs to see their cost  
23 studies?

24 A No, I haven't. I'm not aware that there is  
25 such a cost study to ask for at this point.

1           Q     Haven't the LECs performed incremental cost  
2 studies they have submitted in this docket?

3           A     They have performed total service  
4 incremental cost studies; long term incremental cost  
5 studies.

6           Q     How would you define long term incremental  
7 cost?

8           A     Basically a study that looked at the cost  
9 over a long period of time. I don't know what number  
10 of years the studies were done over.

11                     They would look at many costs, including  
12 shared and common costs, and allocate them to a  
13 particular service. It looks at -- for example, it  
14 looks at RCF as a service, like a retail service, and  
15 allocates percentages of joint and common costs to  
16 that service.

17           Q     Okay. But isn't that just an assumption on  
18 your part since you haven't actually seen the studies?

19           A     I've seen them referred to in pleadings as  
20 total service long run incremental cost, and based on  
21 my understanding of what total service long run  
22 incremental costs are I drew that conclusion.

23           Q     What sort of cost study did MCI recommend  
24 for use in the earlier stages of this proceeding? Was  
25 it a long run incremental cost study?

1           A     I don't have knowledge of that. I know we  
2 haven't made any recommendations for a particular cost  
3 study since the date of the Telecommunications Act and  
4 the FCC's Order interpreting it.

5           Q     I'm sorry, you say you haven't made any  
6 particular recommendations?

7           A     Not in a proceeding, other than my comment  
8 in the deposition.

9           Q     Okay. Maybe I'm confused. You don't  
10 recommend long run incremental cost studies though; is  
11 that right?

12          A     Yes.

13          Q     So what would you recommend as an  
14 alternative to those?

15          A     My recommendation actually is that there not  
16 be any cost studies whatsoever.

17          Q     Okay. Okay. And do you have an alternative  
18 recommendation?

19          A     An alternative to consider is one of the  
20 other FCC recommended cost recovery mechanisms, such  
21 as one that would apportion costs based on carriers'  
22 relative number of working telephone numbers or lines.

23          Q     So you believe that the -- would it be fair  
24 to say that you believe that the ILEC's cost would be  
25 irrelevant to this Commission's decision about a

1 mechanism for cost recovery?

2 A No.

3 Q Okay.

4 A I believe that if -- what I said was if the  
5 Commission were to adopt my primary recommendation, it  
6 would not be necessary to perform a specific cost  
7 study in order for carriers to bear their own costs of  
8 interim number portability, and you wouldn't need it  
9 because each carrier would provide it as efficiently  
10 as possible.

11 Q Wouldn't any of the FCC's mechanisms that  
12 you talk about require this Commission to look at ILEC  
13 cost studies?

14 A Yes, those would.

15 Q Okay. You have no recommendation for the  
16 particular type of cost study that should be used; is  
17 that what I heard you say?

18 A No.

19 Q Okay.

20 A In the event that some other mechanism were  
21 selected that involved apportioning specific costs  
22 among carriers, then it would be necessary for the  
23 carriers to perform cost studies. And I would  
24 recommend that the costs that would be identified for  
25 allocation be those costs that are marginally

1 incremental to the provision of remote call forwarding  
2 or other interim number portability mechanisms for  
3 that purpose.

4 Q So if you looked at a LEC cost study -- have  
5 you ever prepared a cost study?

6 A No. MCI generally has never prepared cost  
7 studies.

8 Q Not having seen LEC cost studies you think  
9 they are not appropriate, correct?

10 A I said I hadn't seen BellSouth's.

11 Q Have you seen GTE's?

12 A Not in Florida. I've seen Bell Operating  
13 Company and GTE cost studies for interim number  
14 portability in other jurisdictions.

15 Q Now, Ms. Kistner, I think you stated that  
16 the ALECs will also have significant portability  
17 costs. And assuming that's true, would it be  
18 important to include those costs in any cost spreading  
19 mechanism? Can you think of any reason why the  
20 Commission would not include those costs?

21 A No.

22 Q So would you recommend that the Commission  
23 have the ALECs do cost studies?

24 A I think that's one way that the Commission  
25 can determine the ALEC's cost.

1           Generally speaking, ALECs don't routinely do  
2 cost studies of their own costs and don't have  
3 personnel and methodologies that they are familiar  
4 with. And when looking, for example, at the ILECs' or  
5 the ALECs' costs of providing RCF to another carrier,  
6 it would be appropriate perhaps to use the ILEC's cost  
7 as a surrogate for the ALEC's cost.

8           Q     I think I just heard you say that the ALECs  
9 don't have methodologies that they are familiar with  
10 for coming up with cost studies. Did you mean that  
11 you are not familiar with the way a long run  
12 incremental cost study works?

13          A     No. As a general -- as a practical matter,  
14 ALECs have historically not been called on to prepare  
15 long run incremental costs of their own services  
16 because they are competitive, nonmonopoly carriers.  
17 ALECs have a great deal of experience, and MCI does  
18 and I have some -- at reviewing the total service long  
19 run incremental cost studies of other carriers.

20          Q     So because the ALECs don't have experience  
21 in doing cost studies, is it your view they shouldn't  
22 be required to produce cost studies?

23          A     I think the value of having an ALEC do a  
24 cost study of that nature is questionable. But if  
25 ordered to do so we would undertake to do it.

1 Q What is the difference in meaning in your  
2 opinion between the words "discourage" and "mitigate"?

3 A Could you give me some context?

4 Q Yeah. If you look at your direct testimony,  
5 Page 10, Lines 13 through 15, you state that "While  
6 apportioning the cost of number portability --"

7 A Excuse me one second. I haven't found it.  
8 Please give me a chance. Page 10.

9 Q It's Page 10, Lines 13 through 15. The  
10 statement is "While apportioning the costs of number  
11 portability by market share goes far toward  
12 discouraging the inflation of interim number  
13 portability costs, it does not mitigate it as carriers  
14 paying their own costs would."

15 A Yes, I see that now.

16 Q What is the difference between "discourage"  
17 and "mitigate"?

18 A Discourage means to make a carrier  
19 disinclined to do something, and mitigate would mean  
20 to eliminate as a possibility altogether.

21 Q Do you know that this Commission routinely  
22 analyzes cost studies, isn't that right?

23 A Yes.

24 Q Don't you think it has the ability and  
25 experience to detect inflated costs should they occur?

1           A     Certainly the Commission could do so. I  
2 think that cost studies among most experts in this  
3 country at looking at cost studies, anyone would tell  
4 you that it's difficult to detect everything in a cost  
5 study. They have been remarkably unreliable  
6 historically for a variety of reasons. They also even  
7 at best are very time consuming. If there are ways to  
8 avoid having to deal with cost studies I urge it.

9           Q     Has MCI taken number portability from GTE at  
10 at this point?

11          A     Not to my knowledge.

12          Q     So isn't retroactivity a moot issue if MCI  
13 hasn't ordered portability?

14          A     It depends on when an order is issued with  
15 regard to it. If an order were issued today, which it  
16 won't be, then it would be irrelevant. If it were  
17 issued six months from now and we had ordered, you  
18 know, sufficient amounts or substantial amounts of  
19 remote call forwarding by then, then it would be  
20 something to look at.

21          Q     Do you agree or disagree with the following  
22 statement: It is axiomatic that all costs must  
23 eventually be recovered from end users?

24          A     Pending a definition of axiomatic I could  
25 probably agree with that.



1           Q     Do you mean that you need a definition of  
2 axiomatic or do you agree with that statement?

3           A     Why don't you define the axiomatic for me in  
4 this context.

5           Q     Let's say essential, it's essential that all  
6 costs must eventually be recovered from end users.  
7 It's a basic principle that has got to be true.

8           A     With the only caveat that there is recovery  
9 from shareholders as well as of certain types of  
10 costs. Most costs certainly are recovered by end  
11 users.

12          Q     What types of costs would be appropriate for  
13 recovery from shareholders as opposed to recovery from  
14 end users?

15          A     I don't even want to venture into that.  
16 It's not an area of my expertise. I only commented  
17 that there are costs that shareholders recover.

18          Q     And you said, I believe, there are certain  
19 types of costs that are recovered from shareholders,  
20 so there must be categories in your view that are fair  
21 to recover from shareholders as opposed to recovering  
22 from end users. Would that be a fair statement?

23          A     Yes.

24          Q     Do you agree or disagree with the following  
25 statement with regard to cost recovery for interim

1 number portability: The ideal public policy for  
2 recover of those costs would be recovery from all  
3 telephone users.

4 A I don't think I could agree with that. I  
5 think that might be too broad a statement. Again,  
6 it's difficult to say because it's a single statement  
7 without any context. But it strikes me as being too  
8 broad.

9 Q Do you know who Don Price is?

10 A Yes, I do. He's an MCI employee,  
11 regulatory.

12 Q Would you be surprised to find out that he  
13 said those things?

14 A No. As I said, a single statement taken  
15 without any context is very difficult for me to  
16 respond to.

17 Q Okay.

18 MS. McMILLIN: Do you have a specific  
19 reference?

20 MS. CASWELL: I'm going to end that line of  
21 questioning. I do have a reference. It's in  
22 Mr. Price's direct testimony in the previous stage of  
23 this proceeding.

24 Q (By Ms. Caswell) Let's go back to your  
25 view about cost recovery. Do you think it would be

1 fair for the Commission to order the institution of a  
2 cost recovery mechanism in this proceeding that would  
3 force the ILECs to recover the costs of interim number  
4 portability from their shareholders?

5 A No. I mean I wouldn't make that  
6 recommendation.

7 Q Okay. Then who are they supposed to recover  
8 the costs from if not the ALECs?

9 A I believe that all interim number  
10 portability costs incurred by both incumbents and  
11 alternative LECs represent network functionality costs  
12 much like SS7, or, you know, the costs of AIN in a  
13 network. These are just general routing costs. I  
14 mean those are not costs that are line item items on a  
15 bill to an end user. They are a cost of doing  
16 business. And as such those costs are recovered  
17 generally from all end users taking service from those  
18 carriers.

19 Q So in this case would you recommend that the  
20 ILEC recover its cost from its end users?

21 A Yes. And I recommend that ALECs recover the  
22 costs from their end users.

23 Q And I think you testified that in the  
24 aggregate at least the ILECs would have most of the  
25 cost of number portability. Correct?

1           A     No. I said most of the network costs. And  
2 on a proportionate basis that would -- both ALEC and  
3 ILEC customers would both be supporting roughly the  
4 same amount of cost associated with interim number  
5 portability.

6           Q     Okay. Your recommendation, your primary  
7 recommendation is cost absorption for each party,  
8 correct?

9           A     Correct.

10          Q     And if the ILEC absorbed its own cost, is  
11 there the possibility that its service prices will go  
12 up?

13          A     I would find that extraordinarily hard to  
14 believe, that they would have to go up as a result of  
15 this level of cost.

16          Q     Where would the costs be recovered if the  
17 services couldn't go up and we couldn't charge the  
18 ALEC, where do those costs go?

19          A     On any given day or any given month, the  
20 multitude of costs that go into -- you know, the giant  
21 cloud of costs that make up an ILEC's cost will  
22 fluctuate to some degree. There are changes in bank  
23 loan rate and there's changes in labor cost; a flood  
24 causes a cable to be unearthed. There are costs that  
25 go up and down, and there's no attempt to try and

1 separately account and recover for each one of those.  
2 Those are simply the costs of doing business. And  
3 your overall rates are designed to recover your  
4 overall costs, and that's how I would expect interim  
5 portability costs.

6 Q And again, the ability of the ILEC to do  
7 that would depend on the level of the cost, right?

8 A I don't understand your meaning there.

9 Q If we had \$6 million in portability costs,  
10 would it just disappear in that cloud you're talking  
11 about?

12 A I can't tell you an actual -- pick a  
13 specific number.

14 Q Would you expect that we would need to  
15 recover a significant amount if we could identify that  
16 amount?

17 A I believe if overall -- not based on some  
18 single item, but if overall you find that -- an  
19 incumbent LEC finds they are not recovering their cost  
20 of doing business, that they have options for  
21 increasing their service prices.

22 MS. CASWELL: Okay. That's all I have.

23 Thank you, Ms. Kistner.

24 CHAIRMAN CLARK: Mr. Wahlen.

25

## 1 CROSS EXAMINATION

2 BY MR. WAHLEN:

3 Q Good afternoon, Ms. Kistner. I'm Jeff  
4 Wahlen for Sprint.

5 A Good afternoon.

6 Q I think you just explained to Ms. Caswell  
7 that the incumbent LECs would be able to increase  
8 their prices and would have a lot of options to  
9 increase prices if their cost burden was more; is that  
10 correct?

11 A I did not say they had a lot of options.

12 Q Well, they have some options. One of them  
13 is increasing prices to end users?14 A Again, in the instance where an ILEC is --  
15 feels necessary that -- believes that their costs are  
16 not being met by their overall rates, I believe there  
17 are options.18 Q And is one of those increasing the price to  
19 end users?20 A I'll say yes with a caveat: Depending on  
21 the regulatory scheme under which they operate, if  
22 it's a price cap scheme where they are in price caps.23 Q Let's approach this from a different angle.  
24 I think you testified earlier that you thought just  
25 generally that maybe MCI would incur a 30% greater

1 cost if one of its customers used remote call  
2 forwarding or one of the temporary number portability  
3 solutions. Is that true?

4       **A**     I said that the acquisition process for a  
5 given customer who was selecting number portability  
6 was higher by a factor of approximately 30%.

7       **Q**     Okay. And is it safe to assume that MCI  
8 will be increasing the prices to those end-user  
9 customers by about 30% when they use the interim  
10 number portability solution?

11       **A**     As a competitive local carrier, our pricing  
12 is very much directed by and influenced by the price  
13 that the incumbent LEC charges their customer. So I'm  
14 not in a position to tell you that MCI any more than  
15 an incumbent LEC can or would line item increase costs  
16 by a certain amount to reflect a particular factor.  
17 So pricing is based on all of the factors that make up  
18 cost.

19       **Q**     So you would agree that there are  
20 competitive pressures here that may impair the ability  
21 of a carrier to increase its prices if it can't  
22 recover costs another way?

23       **A**     I'm saying that a new entrant entering the  
24 market with no market share is highly influenced by  
25 the price that the monopoly carriers are charging.

1 Q And wouldn't you agree that the reverse is  
2 also true?

3 A Not anywhere to the same degree. I mean the  
4 very nature of the monopoly is that they have  
5 substantial ability to control and set prices, so it's  
6 not a reciprocal situation.

7 Q Okay. You have been around the regulatory  
8 process for some time, haven't you?

9 A Yes.

10 Q And have you ever heard anyone say if you're  
11 going to compare the cost burdens incurred by two  
12 parties you need to make sure that the comparison is  
13 apples to apples?

14 A No.

15 Q Have you ever heard an expression like that?

16 A No.

17 Q Have you ever heard anyone say that you have  
18 to make sure when you're comparing the cost burdens  
19 between two parties that you have to make sure that  
20 you're comparing the same kinds of costs?

21 A I've never heard expressions like that  
22 before.

23 Q Would you agree with that as a general  
24 proposition?

25 A I'd be concerned about agreeing because it



1 could be taken out of context. Because I disagree  
2 that comparing a -- you have to have a control when  
3 you're comparing. If you want to compare two items,  
4 and you make an assumption that all other things being  
5 equal, then you can maybe say something about the  
6 comparison of those two single items. But determining  
7 the costs of one carrier versus another is a fairly  
8 complex prospect.

9 Q You haven't reviewed Sprint's cost study in  
10 this case, have you?

11 A No, I haven't.

12 Q So you don't know whether Sprint's cost  
13 study in this case includes administrative costs, do  
14 you?

15 A My recollection of the witness's testimony I  
16 think, subject to check, was a statement or assertion  
17 that it did not include administrative costs.

18 Q So you would agree with me, subject to  
19 check, that Sprint's cost study does not include  
20 administrative costs?

21 A I would agree with you, subject to check,  
22 that the witness said that in their testimony.

23 Q Would you agree with me that administrative  
24 costs are different than network costs?

25 A Yes.

1           Q     Would you agree with me that a comparison of  
2 network costs and administrative costs isn't comparing  
3 the same kinds of costs?

4           A     Yes.

5           Q     Thank you.

6           MR. WAHLEN: That's all I have.

7           MR. WIGGINS: No questions.

8           CHAIRMAN CLARK: Mr. Wiggins.

9           MR. WIGGINS: No questions.

10          CHAIRMAN CLARK: Mr. Rindler.

11                                    **CROSS EXAMINATION**

12   **BY MR. RINDLER:**

13          Q     Good afternoon, Ms. Kistner. I have just  
14 have a couple of questions.

15          A     Good afternoon.

16          Q     We have been talking about long run  
17 incremental costs and TSLRIC. You talked about  
18 something called short run incremental cost I thought  
19 I heard you say.

20          A     Or marginal.

21          Q     What are you measuring in this case and what  
22 are you proposing be measured in this case using that?

23          A     Again, I'm not proposing to measure anything  
24 because I think the most efficient and fair mechanism  
25 to use for this limited cost recovery purpose is that

1 each carrier bear their own cost, in which case you  
2 don't have to measure anything.

3           If, however, a cost recovery mechanism were  
4 adopted that required an identification of costs, then  
5 I think in this case -- and I mean this for very  
6 limited purposes -- that traditional service pricing,  
7 service pricing costing not be used because of the  
8 unique nature of this interim routing function that's  
9 being looked at. And so for this unique circumstance,  
10 that looking at isolating the short run marginal cost  
11 of providing this RCF function would be appropriate.

12           **MR. RINDLER:** Thank you. That's all.

13           **MS. WILSON:** No questions.

14           **MS. WEISKE:** No questions.

15           **MS. DUNSON:** No questions.

16                           **CROSS EXAMINATION**

17   **BY MS. JACOBS:**

18           **Q**     Good afternoon, Ms. Kistner. Gwen Jacobs  
19 with AT&T Wireless.

20                   Does MCI's alternative recommendation plan  
21 include wireless carriers, or apply to wireless  
22 carriers?

23           **A**     None of my recommendations would apply to  
24 wireless carriers unless they happen to be porting,  
25 and I'm not aware that any of them are planning to.

1 MS. JACOBS: Okay. No further questions.

2 CROSS EXAMINATION

3 BY MR. COX:

4 Q Good afternoon, Ms. Kistner. Will Cox on  
5 behalf of the Public Service Commission Staff.

6 A Good afternoon.

7 Q I just have a couple of questions.

8 Earlier in your position summary that you  
9 delivered before the Commission today, you mention  
10 that costly billing modifications will be required to  
11 perform meet-point billing.

12 A Yes, I had understood in listening to some  
13 of the witnesses earlier today there seemed to be a  
14 misunderstanding that MCI was advocating development  
15 of some special meet-point billing systems. And I  
16 wanted to clarify that that was in no way MCI's  
17 recommendation.

18 Q That being the case, do you believe that  
19 GTE's proposal of a surrogate to split access charges  
20 is appropriate?

21 A Yes. I agree that using surrogates is  
22 appropriate. And the point I was trying to make in my  
23 testimony was that a surrogate is fine, but then you  
24 also have to look at what elements are appropriate for  
25 recovery by which carrier. And some carriers have

1 the -- the incumbent carriers have recommended that  
2 this be an item left up to negotiation. As a carrier  
3 that has been the victim at times, if you will, of  
4 negotiations, without a lot of power negotiations,  
5 that a decision by this Commission, or an indication  
6 by this Commission of which elements would be  
7 appropriate for recovery by which party might prevent,  
8 you know, future misunderstandings or difficulties in  
9 negotiations.

10 Q Different parties have negotiated various  
11 rates for temporary number portability in Florida. Do  
12 you believe that the cost recovery mechanism  
13 established in this proceeding would affect those  
14 negotiated rates? And I realize it's not a legal  
15 opinion, but I'm asking for your lay opinion.

16 A I would just certainly expect them to affect  
17 the rates that were specified, because the rates  
18 specified are -- represent a type of cost recovery  
19 that's contrary to the telecommunications statute.  
20 And the carriers when negotiating those agreements,  
21 MCI specifically included -- had clauses included in  
22 there that would recognize decisions by the FCC, for  
23 example, that would differ from what was in those  
24 contracts and provided that the contracts would change  
25 as a result.

1           **MR. COX:** That you, Ms. Kistner. That  
2 concludes Staff's questions.

3           **CHAIRMAN CLARK:** Commissioners.

4           **COMMISSIONER DEASON:** I have a question.

5           Ms. Kistner, I think you indicated in your  
6 summary that your primary recommendation would result  
7 in a sharing of costs on a proportionate basis, I  
8 think is it way you characterized it.

9           **WITNESS KISTNER:** Yes.

10           **COMMISSIONER DEASON:** What do you mean by  
11 proportionate?

12           **WITNESS KISTNER:** I mean proportionate to  
13 the number of end users a carrier would have. So  
14 that, for example, if there was a total pool of  
15 \$10,000 of interim number portability costs that each  
16 carrier's share of that \$10,000 would be proportionate  
17 to how many customers they had, subscribers they had,  
18 from whom to recover all of their costs.

19           **COMMISSIONER DEASON:** Let me interrupt.  
20 Under your primary you're not recommending any type of  
21 pooling of costs, are you?

22           **WITNESS KISTNER:** No I'm not. Excuse me.  
23 Maybe I misunderstood.

24           My recommendation in the event that there  
25 was a sharing mechanism that was, for example, in my

1 alternative recommendation -- in some of the  
2 alternative recommendations, that proportionality  
3 should be viewed as relative to the number of  
4 subscribers a carrier has.

5           **COMMISSIONER DEASON:** I thought that even --  
6 and maybe I misunderstood your testimony, but I  
7 thought in relation to your primary recommendation,  
8 that is, that each carrier pay for their own cost,  
9 that under that situation one of the reasons you  
10 stated why that proposal should be adopted by the  
11 Commission is that there would be a proportionate  
12 sharing of costs, and that is -- I misunderstood; is  
13 that correct?

14           **WITNESS KISTNER:** I believe that the result  
15 of allowing and directing each carrier to bear their  
16 own cost will be that costs will be recovered or  
17 accumulated by each carrier roughly proportionate to  
18 their customer share.

19           **COMMISSIONER DEASON:** To their customer  
20 share.

21           **WITNESS KISTNER:** To their number of  
22 subscribers.

23           **COMMISSIONER DEASON:** But it would be true,  
24 though, that you would expect a higher percentage of  
25 an ALEC's customers to be utilizing a call forwarding

1 technology of some sort as opposed to the percentage  
2 of customers of the ILEC.

3           **WITNESS KISTNER:** Absolutely. But my point  
4 being that if my -- if I have only a hundred customers  
5 and the ILEC has a million customers, the amount of  
6 costs that I would incur through -- you know, relative  
7 to the incumbent, a more limited provision of interim  
8 number portability for customers leaving my network to  
9 go to another network, that that would be -- that  
10 would represent a minuscule amount of cost relative to  
11 my number of customers, just as it would represent a  
12 minuscule amount of cost relative to the ILEC's number  
13 of customers.

14           **COMMISSIONER DEASON:** So have you made any  
15 estimates of the number of customers you will have and  
16 the number of customers that would then be leaving  
17 your network to go to the incumbent network, or are  
18 you just saying that it's just -- a broad look at the  
19 numbers, you think that it would be proportionate?

20           **WITNESS KISTNER:** I say that just based on  
21 my expectation. But also because the more customers  
22 that I have, the more customers are likely to leave.  
23 I say that in spite of the great service that we'll  
24 provide customers. But a certain number of customers  
25 are going to want to go elsewhere. And that may be



1 1%, 2% of my customer base. As my customer base  
2 grows, my aggregate costs are going to go up as more  
3 of those customers, more total customers end up  
4 porting away from my network.

5 **CHAIRMAN CLARK:** Commissioner Keisling.

6 **COMMISSIONER KIESLING:** Yes, I just want to  
7 clarify one thing. If you have trouble understanding  
8 me let me know.

9 **WITNESS KISTNER:** Okay.

10 **COMMISSIONER KIESLING:** Issue 3 in the  
11 prehearing statement is "Should there be any  
12 retroactive application of the Commissions decision in  
13 this proceeding?" And MCI's position is "Yes. The  
14 PSC's decision should be retroactively applied to the  
15 release date of the FCC order." When I look at  
16 Page 13 of your direct testimony, Lines 2 through 7,  
17 you give that same answer in your testimony. But I  
18 can't find anything in your testimony that explains to  
19 me why this should be done or why it's appropriate  
20 that it be retroactive. And I'm trying to understand  
21 the reason for it.

22 **WITNESS KISTNER:** The appropriateness of  
23 retroactivity -- and I offer that as a policy  
24 recommendation, not as a legal one, but that if there  
25 were -- if BellSouth or GTE or an incumbent LEC had

1 been collecting dollar amounts for like RCF, for  
2 example, after the date of the FCC's order, that  
3 having -- I mean the requirement that costs be  
4 recovered on a competitively neutral basis actually  
5 date back to January. The interpretation of that was  
6 not -- was not encompassed in the FCC order until July  
7 or August, perhaps, when it was published in the  
8 federal register. At that time in my opinion it would  
9 be inappropriate for incumbent LECs to be charging  
10 retail-type rates to ALECs for that service.

11           Also I would point that in the agreements  
12 negotiated by BellSouth with MCI, for example, there  
13 was a provision for just that. That the carriers --  
14 if there was a change in, or an FCC order that changed  
15 a part of the agreement, that the carriers would  
16 immediately renegotiate that agreement amount and it  
17 would apply back to the date of whatever the pertinent  
18 FCC order was. And that might be -- I'd have to  
19 check -- a final FCC order; that might include  
20 actually a date up through reconsideration.

21           **COMMISSIONER KIESLING:** I guess that didn't  
22 quite satisfy me. And I'm not looking necessarily at  
23 the date back to which this decision should be  
24 retroactively applied. I'm looking at the theory  
25 behind why it should be retroactively applied at all.

1 And again all I heard you say there was that you think  
2 it's appropriate to do that and I don't understand  
3 why.

4           **WITNESS KISTNER:** I think it's appropriate,  
5 and this is somewhat theoretical now because at least  
6 as of this point in time there doesn't appear to have  
7 been any RCF ordered by MCI or -- by MCI.

8           But the appropriateness to me stems from the  
9 fact that the law really -- and as I said, even going  
10 back to the date the Telecom Order became effective,  
11 established as a matter of law and public policy that  
12 it was inappropriate for one carrier to have another  
13 carrier incur all of the costs of interim number  
14 portability. It was not competitively neutral. And  
15 to me it rewards competitive unneutrality to allow  
16 those amounts to be recovered beyond the date that  
17 that public policy or law was enacted.

18           **COMMISSIONER KIESLING:** Let me ask it this  
19 way: Do you think -- when you state that this  
20 decision should be retroactive back to some date,  
21 whatever date that may be, are you saying that it must  
22 be? Is that what you mean when you use the word  
23 "should"?

24           **A** No. I'm saying it is a recommendation. It  
25 is a policy recommendation.

1           **COMMISSIONER KIESLING:** So it's permissible  
2 to do it retroactively but we don't have to.

3           **WITNESS KISTNER:** Again, I'm not making any  
4 legal recommendation at all as to permissibility of  
5 retroactivity. But I make an assumption that it is  
6 certainly up to the Commission to decide that. I  
7 don't by any means mean to suggest that you are  
8 required to act in that way.

9           The question was put forth as an issue on  
10 which carriers were invited to comment.

11           **CHAIRMAN CLARK:** And that's why I'm trying  
12 to understand it. It's because every other carrier in  
13 this case, every other party in this case either said,  
14 "No, it shouldn't be retroactive," or "It's  
15 permissible for it to be retroactive." Nobody else  
16 said it should be retroactive. And I'm trying to  
17 understand --

18           **WITNESS KISTNER:** I will certainly clarify.  
19 My word "should" was not a "must" but a --

20           **COMMISSIONER KIESLING:** Thank you.

21           **WITNESS KISTNER:** -- recommendation.

22           **COMMISSIONER KIESLING:** Okay. When I looked  
23 in your testimony to try to find something to back up  
24 MCI's stated position, that's all I could find, so I  
25 was confused. Thank you.

1           **CHAIRMAN CLARK:** Other questions,  
2 Commissioners? Redirect.

3           **MS. McMILLIN:** No redirect.

4           **CHAIRMAN CLARK:** Thank you.

5           **MS. McMILLIN:** May Ms. Kistner be excused?

6           **CHAIRMAN CLARK:** She may be excused. And  
7 it's been pointed out to me that we did not move the  
8 exhibits of Mr. Varner into the record.

9           **MR. CARVER:** We'd like to move those in,  
10 please.

11           **CHAIRMAN CLARK:** Without objection, Exhibits  
12 14 and 15 are admitted into the record.

13                   (Exhibit 14 and 15 received in evidence.)

14           Mr. Devine.

15

- - - - -

16

**TIMOTHY T. DEVINE**

17 was called as a witness on behalf of MFS  
18 Communications Company, Inc. and, having been duly  
19 sworn, testified as follows:

20

**DIRECT EXAMINATION**

21 **BY MR. RINDLER:**

22           **Q** Mr. Devine, could you state your name for  
23 the record, please?

24           **A** Timothy T. Devine.

25           **Q** And could you tell me by whom you're

1 employed?

2           **A**     MFS Communications Company, Inc.

3           **Q**     Have you reviewed the testimony that was  
4 filed by Alex Harris on September 23rd, 21 pages in  
5 length?

6           **A**     Yes.

7           **Q**     Do you have any changes to make to that  
8 testimony?

9           **A**     Yes, I have a couple small changes in the  
10 direct and the rebuttal.

11                   In the direct, on Page 1, Lines 1 through  
12 19, and Page 2, Lines 1 through 7, if you can  
13 substitute what Mr. Rindler provided earlier as a  
14 handout of my background instead of Mr. Harris'

15           **Q**     With those changes to the direct testimony,  
16 if I were to ask you the questions today, would your  
17 answers be the same?

18           **A**     Yes.

19           **Q**     Thank you.

20                   **MR. RINDLER:** Madam Chairman, I'd ask that  
21 the direct testimony be put in the record as if read.

22                   **CHAIRMAN CLARK:** The direct testimony as  
23 modified will be inserted into the record as though  
24 read.

25           **Q**     **(By Mr. Rindler)** Mr. Devine, have you also

1 had the opportunity to review the testimony filed by  
2 Mr. Harris on October 7th?

3           **A**     Yes.

4           **Q**     Do you have any changes to that testimony?

5           **A**     Yes. On Page 1, Line 3, if you can change  
6 Alex Harris' name to Timothy Devine's name.

7           **Q**     Mr. Devine, with those changes would the  
8 answers to the questions asked be the same today?

9           **A**     Yes.

10           **MR. RINDLER:** Madam Chairman, I would move  
11 that the rebuttal testimony be inserted into the  
12 record as though read.

13           **CHAIRMAN CLARK:** The prefiled rebuttal  
14 testimony as amended will be inserted in the record as  
15 though read.

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**DIRECT TESTIMONY OF TIMOTHY T. DEVINE  
ON BEHALF OF  
MFS COMMUNICATIONS COMPANY, INC.  
F.P.S.C. Docket No. 950737-TP**

**Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

**A.** My name is Timothy T. Devine. My business address is MFS Communications Company, Inc. ("MFS"), 6 Concourse Parkway, Atlanta, Georgia 30328.

**Q. WHAT IS YOUR POSITION WITH MFS COMMUNICATIONS COMPANY, INC.?**

**A.** I am the Senior Director of Regulatory Affairs for the Southern Region.

**Q. WHAT ARE YOUR RESPONSIBILITIES IN THAT POSITION?**

**A.** I am responsible for the regulatory oversight of commission dockets and other regulatory matters and serve as MFS representative to various members of the industry. I am also responsible for coordinating co-carrier discussions with Local Exchange Carriers within the Southern Region.

**Q. PLEASE DESCRIBE YOUR PREVIOUS PROFESSIONAL EXPERIENCE AND EDUCATIONAL BACKGROUND.**

**A.** I have a B.S. in Political Science from Arizona State University and an M.A. in Telecommunications Policy from George Washington University. I began work in the telecommunications industry in April 1982 as a sales representative for packet switching services for Graphnet, Inc., one of the first value-added common carriers in the United States. From 1983 until 1987, I was employed at Sprint Communications Co., in sales, as a tariff analyst, as a product manager, and as Manager of Product and Market Analysis. During 1988, I worked at Contel Corporation, a local exchange carrier, in its telephone



operations group, as Manager, Network Marketing. I have been working for MFS Communications Company and its affiliates since January 1989. During this time period, I have worked in product marketing and development, corporate planning, regulatory support, and regulatory affairs.

**DIRECT TESTIMONY OF  
ALEX J. HARRIS  
ON BEHALF OF  
MFS COMMUNICATIONS COMPANY, INC.**

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Alex J. Harris. My business address is MFS Communications  
3 Company, Inc. ("MFS"), 33 Whitehall Street, 15th Floor, New York, NY  
4 10004.

5 **Q. BY WHOM ARE YOU EMPLOYED AND WHAT ARE YOUR  
6 RESPONSIBILITIES?**

7 A. I am the Vice President of Regulatory Affairs for MFS. I am responsible for  
8 directing state regulatory activities for MFS. In this capacity, I have been  
9 responsible for overseeing interconnection negotiations with incumbent local  
10 exchange carriers ("LECs") across the country pursuant to the  
11 Telecommunications Act of 1996 ("1996 Act"). At various points during my  
12 tenure with MFS, I have also had supervisory responsibilities relating to  
13 industry affairs, line cost management, and pricing.

14 **Q. PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND  
15 PROFESSIONAL EXPERIENCE.**

16 A. Prior to joining MFS in 1993, I was employed by Teleport Communications  
17 Group in that company's regulatory affairs department. From 1990 to 1991, I  
18 served as Executive Assistant to then-Commissioner and former Chairman  
19 Ellen C. Craig of the Illinois Commerce Commission, advising her on

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1           telecommunications and transportation issues. From 1986 to 1989, I served as  
2           an Analyst in the Illinois Commerce Commission's Policy Analysis and  
3           Research Division's Telecommunications Program. I was an intern with the  
4           Commission staff from 1984 to 1986. I received Bachelor of Arts degrees in  
5           Philosophy and Political Science from the University of Illinois at Urbana-  
6           Champaign in 1984. At present, I am a student in the Executive MBA  
7           Program at New York University's Stern School of Business.

8           **Q. PLEASE DESCRIBE THE OPERATIONS OF MFS AND ITS**  
9           **SUBSIDIARIES.**

10          **A.** MFS is a diversified telecommunications holding company with operations  
11          throughout the country, as well as in Europe. MFS Telecom, Inc., an MFS  
12          subsidiary, through its operating affiliates, is the largest competitive access  
13          provider in the United States. MFS Telecom, Inc.'s subsidiaries provide non-  
14          switched, dedicated private line and special access services.

15                   The operating subsidiaries of MFS Intelenet, Inc. ("MFSI"), an MFS  
16          subsidiary, collectively are authorized to provide switched interexchange  
17          telecommunications services in 48 states and have applications to offer such  
18          service pending in the remaining two states. Where so authorized, MFSI's  
19          operating subsidiaries offer end users a single source for local and long  
20          distance telecommunications services with quality and pricing levels

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1 comparable to those achieved by larger communications users. Apart from  
2 Florida, MFS subsidiaries have been authorized to provide competitive local  
3 exchange service in twelve states. Since July 1993, MFS Intelenet of New  
4 York, Inc. has offered local exchange services in competition with New York  
5 Telephone Company. MFS Intelenet of Maryland, Inc. was authorized to  
6 provide local exchange services in competition with Bell Atlantic-Maryland,  
7 Inc. in April 1994 and is offering competitive local exchange services. On  
8 June 22, 1994, MFS Intelenet of Washington, Inc. was authorized to provide  
9 local exchange services in competition with US West Communications, Inc.  
10 On July 20, 1994, MFS Intelenet of Illinois, Inc. was certificated to provide  
11 local exchange services in competition with Illinois Bell Telephone Company  
12 and Central Telephone Company of Illinois and is providing such services.  
13 MFS Intelenet of Ohio was certificated to provide competitive local exchange  
14 service in competition with Ohio Bell on August 3, 1995. MFS Intelenet of  
15 Michigan, on May 9, 1995, was certificated to provide competitive local  
16 exchange service in competition with Ameritech-Michigan. MFS Intelenet of  
17 Connecticut was certificated to provide local exchange service in competition  
18 with Southern New England Telephone Company on June 28, 1995. MFS  
19 Intelenet of Texas, Inc. was authorized to resell local exchange service in  
20 Houston and Dallas in competition with Southwestern Bell Telephone

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1           Company by Order signed on October 25, 1995. Subsequently, Metropolitan  
2           Fiber Systems of Dallas and Metropolitan Fiber Systems of Houston were  
3           certified to provide resale and facilities-based local exchange service. MFS  
4           Intelenet of Georgia, Inc. was authorized to provide competitive local  
5           exchange service in Georgia on October 27, 1995. MFS Intelenet of  
6           Pennsylvania, Inc. was authorized to provide local exchange service in  
7           Pennsylvania by Order entered October 4, 1995. MFS Intelenet of Oregon,  
8           Inc. was authorized to provide local exchange service in Oregon on  
9           January 12, 1996. MFS Intelenet of Massachusetts was certificated on March  
10          9, 1994 to operate as a reseller of both interexchange and local exchange  
11          services in the Boston Metropolitan Area in competition with New England  
12          Telephone and is providing such services. MFS Intelenet of New Jersey was  
13          certificated in June 1996 to provide competitive local exchange services in  
14          that state.

15                   Metropolitan Fiber Systems of Florida, Inc. ("MFS-FL") was granted  
16                   authority by this Commission to provide switched local exchange service  
17                   effective January 1, 1996.

18

19

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1           **INTRODUCTION AND SUMMARY OF TESTIMONY**

2           **Q.     WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

3           A.     My testimony is designed to address MFS's position on cost recovery issues  
4                   associated with currently available number portability (which I simply refer to  
5                   as "portability" throughout this testimony). The Federal Communications  
6                   Commission's ("FCC") Portability Order in CC Docket No. 95-116,<sup>1/</sup> which is  
7                   binding on the states, requires the Commission to reevaluate its resolution of  
8                   portability issues in Order No. PSC-95-1604-FOF-TP (released December 28,  
9                   1995). Specifically, the Commission must revisit such issues as what  
10                  recurring portability costs are properly recoverable under federal law, from  
11                  which carriers and in what manner. I begin my testimony proposing that the  
12                  Commission require parties to absorb their own costs of providing portability.  
13                  Alternatively, if the Commission desires to create a formal cost recovery  
14                  mechanism, my testimony sets forth the proper method for calculating  
15                  incremental costs of providing portability and for spreading these costs among  
16                  contributing carriers. I first explain that the Commission should permit  
17                  carriers to recover only the total element long run incremental costs

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<sup>1/</sup>

*In the Matter of Telephone Number Portability*, First Report and Order, CC Docket No. 95-116 (released July 2, 1996) (hereinafter "Portability Order").

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1 (“TELRIC”) of portability. Next, I deal with the need to create a  
2 competitively-neutral mechanism for recovering portability costs to comply  
3 with the Portability Order and the 1996 Act. I argue that the Commission  
4 should require all telecommunications carriers within the State of Florida to  
5 contribute to a portability fund in direct proportion to their total revenues from  
6 intrastate telecommunications operations (though with an offset for payments  
7 to other carriers for intermediate telecommunications services employed in the  
8 delivery of revenue-generating retail services).

9 **Q. HOW SHOULD THE COSTS OF PROVIDING PORTABILITY BE**  
10 **RECOVERED CONSISTENT WITH THE 1996 ACT AND THE**  
11 **ORDER?**

12 A. MFS believes that carriers should absorb their own costs of providing  
13 portability arrangements. The FCC has explicitly endorsed this approach as  
14 meeting its standard for competitive neutrality. Portability Order, at ¶ 136  
15 (“we believe that a mechanism that requires each carrier to pay for its own  
16 costs of currently available number portability measures would also be  
17 permissible”). MFS supports the concept because it would considerably ease  
18 the burden of administering the portability cost recovery mechanism and  
19 alleviate the need for most regulatory oversight. If, however, the Commission  
20 is not inclined to accept this proposal, it should consider MFS’s alternative

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1           proposal presented below. The next two sections discuss how the incremental  
2           costs of providing portability should be measured and recovered in a  
3           competitively neutral manner.

4           **MEASURING PORTABILITY COSTS**

5           **Q.    WHAT ARE THE COSTS OF PROVIDING PORTABILITY?**

6           A.    When a telephone user switches LECs, but retains its telephone number, calls  
7           are forwarded to the customer through the new LEC's network via Remote  
8           Call Forwarding ("RCF"), Direct Inward Dial ("DID") or other similar  
9           arrangements.<sup>2/</sup> The original LEC incurs the recurring costs of forwarding  
10          these calls.

11          **Q.    HOW DO YOU MEASURE PORTABILITY COSTS?**

12          A.    In the Portability Order, the FCC declared that:

13                        The costs of currently available number portability are the  
14                        *incremental costs* incurred by a LEC to transfer numbers  
15                        initially and subsequently forward calls to new service  
16                        providers using existing RCF, DID, or other comparable  
17                        measures.

---

<sup>2/</sup>        The Commission approved a stipulation of the parties in Docket No. 950737-TP to use RCF as a "temporary number portability mechanism." Order No. PSC-95-1604-FOF-TP, at Attachment A. The FCC ruled that LECs must provide portability through DID as well. Portability Order, at ¶ 121. MFS therefore requests that the Commission clarify that DID arrangements must be made available for portability purposes.



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1            *Id.*, at ¶ 129 (emphasis added). Incremental cost is the benchmark for  
2            measuring portability costs.

3            One month after issuing the Portability Order, the FCC elaborated  
4            upon the definition of “incremental cost” in its Interconnection Order.<sup>3/</sup> The  
5            FCC stated that the incremental cost of interconnection, unbundled network  
6            elements, and collocation should be calculated according to the TELRIC  
7            methodology.

8            **Q. DID THE FCC EXPLICITLY APPLY TELRIC TO PORTABILITY**  
9            **COSTS?**

10          A. No, not in so many words. The Portability Order, however, preceded the  
11          Interconnection Order by approximately six weeks. Although the FCC simply  
12          used the term “incremental costs” in the Portability Order, TELRIC is the  
13          incremental costing methodology that the FCC has adopted for establishing  
14          the rates for interconnection and network elements. Section 153(29) of the  
15          1996 Act defines network element to include “features, functions, and  
16          capabilities that are provided by means of such facility or equipment,

---

<sup>3/</sup> *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98 & 95-185, First Report and Order (released August 8, 1996) (hereinafter “Interconnection Order”).

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1 including *subscriber numbers . . .*” (Emphasis added). Thus, portability falls  
2 squarely within the definition of a network element under the 1996 Act.  
3 Given that the FCC selected TELRIC as the proper methodology for  
4 calculating the incremental costs” of network elements, the Commission  
5 should apply TELRIC to determine the level of portability costs that are  
6 subject to recovery.

7 **Q. PLEASE EXPLAIN THE HOW THE TELRIC METHODOLOGY**  
8 **WORKS.**

9 A. TELRIC are the forward-looking costs over the long run of the facilities and  
10 functions that are directly attributable to providing a particular element — in  
11 this case, portability. TELRIC has three major components: operating  
12 expenses, depreciation cost and the appropriate risk-adjusted cost of capital  
13 associated with the assets used to provide portability.<sup>4/</sup> In addition, the FCC  
14 specified several aspects of TELRIC, including:

15 ▶ ***Efficient Network Configuration.*** TELRIC is properly estimated  
16 assuming a reconstructed network using the most efficient  
17 telecommunications technology available and the least-cost network

---

<sup>4/</sup> Interconnection Order, at ¶703.

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1 configuration, given the existing location of the incumbent LEC's wire  
2 centers.<sup>5/</sup>

3 ▶ ***Forward-Looking Cost of Capital.*** TELRIC is calculated using a  
4 forward-looking cost of capital that presumably projects market  
5 growth, increased competition and other factors that affect risk and  
6 return. The cost of capital in TELRIC is what investors must be paid  
7 to induce them to invest in the assets used to provide the unbundled  
8 network element. In a sense, it is the profit or return associated with  
9 the unbundled network element.<sup>6/</sup>

10 ▶ ***Depreciation.*** TELRIC is calculated using forward-looking economic  
11 depreciation rates. Depreciation in a TELRIC study is economic  
12 depreciation which measures the expected change in the economic  
13 value of assets used to provide the unbundled network element.<sup>7/</sup>

14 ▶ ***Directly Attributable Costs.*** TELRIC would include all costs and only  
15 those costs that are directly attributable to or caused by portability.  
16 Retailing costs, marketing expenses, billing and collection costs, and  
17 all other costs associated with retail offerings cannot be included in the

---

<sup>5/</sup> Interconnection Order, at ¶682.

<sup>6/</sup> Interconnection Order, at ¶¶699-700.

<sup>7/</sup> Interconnection Order, at ¶703.

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1 directly attributable costs of an unbundled network element. The FCC  
 2 also requires that an incumbent LEC's cost study must explain why or  
 3 how a specific function included in a TELRIC estimate is necessary to  
 4 provide a particular element.<sup>8/</sup>

5 ▶ ***No Embedded Costs, Universal Service Support or Opportunity***  
 6 ***Costs.*** The FCC expressly prohibits the use of embedded costs or  
 7 costs incurred by the incumbent carrier in the past as the basis for  
 8 TELRIC.<sup>9/</sup> The FCC also prohibits the inclusion of universal service  
 9 subsidies or opportunity costs (*i.e.*, the revenues the incumbent carrier  
 10 expected to earn but for offering a particular unbundled network  
 11 element).<sup>10/</sup>

12 **Q. WHAT ARE THE ADVANTAGES OF MEASURING PORTABILITY**  
 13 **COSTS ACCORDING TO TELRIC?**

14 A. Portability costs are most likely to be competitively neutral if they are based  
 15 on TELRIC. Because TELRIC estimates incremental costs using a  
 16 reconstructed, hypothetical network (constrained only by existing locations of  
 17 the incumbent LEC's wire centers), TELRIC portability costs should not vary

---

<sup>8/</sup> Interconnection Order, at ¶¶682, 691 and 47 C.F.R. §51.505(d).

<sup>9/</sup> Interconnection Order, at ¶¶ 704-707.

<sup>10/</sup> Interconnection Order, at ¶¶ 708-711, 713.

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1 with the identity of the carrier forwarding calls to the customer's new service  
2 provider. TELRIC provides a competitively neutral assessment of portability  
3 costs that could not be achieved by a cost study of portability functions within  
4 the incumbent LEC's existing network. Under a TELRIC framework, new  
5 entrants would not be disadvantaged by having to contribute to portability  
6 costs inflated because of inefficiencies inherent in the incumbent LEC's  
7 existing network.

8

9 **COMPETITIVELY NEUTRAL COST RECOVERY MECHANISMS**

10 **Q. WHAT PRINCIPLE SHOULD UNDERLIE ANY COST RECOVERY**  
11 **MECHANISM FOR PORTABILITY?**

12 A. Clearly, that principle is competitive neutrality. The 1996 Act expressly  
13 provides that the costs of portability must be shared by all telecommunications  
14 carriers. Specifically, Section 252(e) states that:

15 The costs of establishing . . . number portability *shall*  
16 *be borne by all telecommunications carriers on a*  
17 *competitively neutral basis* as determined by the  
18 [FCC].

19

20 (Emphasis added).

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1       **Q.     IS IT PERMISSIBLE UNDER THE 1996 ACT AND FCC RULES TO**  
2       **REQUIRE ONLY CARRIERS SUBSCRIBING TO PORTABILITY TO**  
3       **PAY THE COSTS OF PROVIDING IT?**

4       A.     No. The FCC has concluded that Section 251(e)(2) of the 1996 Act mandates  
5       a departure from general cost causation principles, pursuant to which the  
6       purchaser of a service would be required to pay the cost of providing the  
7       service. Portability Order, at ¶ 131. Moreover, the FCC ruled that any cost  
8       recovery mechanism that requires new entrants to bear all of the costs of  
9       portability does not comply with Section 252(e) of the 1996 Act. Portability  
10      Order, at ¶ 138 (“imposing the full incremental cost of number portability  
11      solely on new entrants would contravene the statutory mandate that all carriers  
12      share the cost of number portability”). The tariffed charges currently imposed  
13      by incumbent LECs on purchasers of portability are inconsistent with the Act  
14      and must be suspended immediately.

15      **Q.     HAS THE FCC PLACED THIS POLICY IN THE CONTEXT OF**  
16      **TRADITIONAL COST CAUSATION PRINCIPLES?**

17      A.     Yes, the FCC expressly declared that a competitively-neutral recovery  
18      mechanism for portability costs represents a departure from traditional cost  
19      causation principles:

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1                   With respect to number portability, Congress has directed that  
2                   we depart from cost causation principles if necessary in order  
3                   to adopt a “competitively neutral” standard, because number  
4                   portability is a network function that is required for a carrier to  
5                   compete with the carrier that is already serving a customer.  
6                   Depending on the technology used, to price number portability  
7                   on a cost causative basis could defeat the purpose for which it  
8                   was mandated.

9                   Portability Order, at ¶ 131.

10           **Q.    WHAT CARRIERS SHOULD BE REQUIRED TO CONTRIBUTE TO**  
11           **THE COSTS OF PORTABILITY?**

12           A.    Consistent with Section 251(e) of the 1996 Act, all carriers providing  
13           intrastate telecommunications services in Florida shall contribute to the costs  
14           of portability. This would include incumbent LECs, new LECs, Commercial  
15           Mobile Radio Service providers and interexchange carriers.

16           **Q.    DID THE FCC ENUNCIATE ANY CRITERIA FOR APPLYING THE**  
17           **COMPETITIVELY-NEUTRAL STANDARD?**

18           A.    Yes, the FCC’s Order establishes two criteria that shall govern state  
19           commission determinations of whether or not recovery mechanisms for  
20           portability costs are competitively neutral. First, recovery mechanisms  
21           “should not give one service provider an appreciable, incremental cost  
22           advantage over another service provider, when competing for a specific  
23           subscriber.” Order, at ¶ 132. In other words, new entrants cannot be saddled

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1 with the full costs of portability. Spreading TELRIC portability costs among  
2 all telecommunications carriers would meet this criteria.

3 Second, recovery mechanisms must be proportional so that portability  
4 is affordable for all carriers, large and small. The Commission cannot  
5 implement a recovery mechanism that would grant large carriers a competitive  
6 advantage over small carriers. The following type of recovery mechanism  
7 would be proscribed under the Portability Order:

8 If, for example, the total costs of currently available number  
9 portability are to be divided equally among four competing  
10 local exchange carriers, including both the incumbent LEC and  
11 three new entrants, within a specific service area, the new  
12 entrant's share of the costs may be so large, relative to its  
13 expected profits, that the entrant would decide not to enter the  
14 market.

15 Portability Order, at ¶ 135. Proper recovery mechanisms should assess  
16 contributing carriers proportional shares of the total portability cost fund  
17 based on some competitively neutral allocator that is related to the size of each  
18 contributor.

19 **Q. PLEASE DESCRIBE MFS'S PROPOSAL FOR RECOVERING THE**  
20 **COSTS OF PORTABILITY IN A COMPETITIVELY NEUTRAL**  
21 **MANNER.**

22 A. MFS proposes recovering portability costs from all telecommunications  
23 carriers in Florida, in direct proportion to each company's total revenues from



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1 intrastate telecommunications operations, but with an offset for payments  
2 made to other carriers for intermediate telecommunications services that are  
3 used in the delivery of revenue-generating retail services.<sup>11/</sup> I will call MFS's  
4 proposed cost recovery mechanism the "net revenue approach."

5 **Q. HOW WOULD THE COMMISSION IMPLEMENT THE NET**  
6 **REVENUE APPROACH?**

7 A. The Commission would begin by determining, on a forward-looking basis, the  
8 amount of funds necessary to pay for portability costs throughout the state of  
9 Florida. This task would involve multiplying the incremental cost of  
10 portability arrangements (i.e. TELRIC portability costs) by a prediction of the  
11 demand for portability among LECs in Florida. In assessing demand for  
12 portability, the Commission should use its own expertise in local competition  
13 as well as consultations with representatives of the industry.

14 Once the Commission has ascertained the size of the portability cost  
15 fund, next it should calculate a uniform contribution factor to be applied to all  
16 carriers providing intrastate telecommunications services. The contribution  
17 factor should be derived by dividing the portability cost fund by the total gross  
18 intrastate revenues of all carriers providing service in Florida net of payments

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<sup>11/</sup> Such payments include those for switched access, interconnection, unbundled network elements, reciprocal compensation, and resold bundled services.

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1           made to other carriers. For example, if the portability cost fund is \$1000 and  
2           the total net intrastate revenues of all carriers in Florida is \$10 million, the  
3           contribution factor would be 0.0001 or 0.01%.<sup>12/</sup>

4                     The Commission should compute the exact amount that individual  
5           carriers will contribute to the fund by multiplying the contribution factor (in  
6           the example, 0.01%) by the net revenues of a particular carrier. Thus, if a  
7           certain carrier has \$100,000 in net intrastate revenue and the contribution  
8           factor is 0.01%, it will have to contribute \$10 to the portability cost fund.

9                     As carriers provide portability to other requesting carriers, they would  
10          draw from the fund an amount equal to the number of portability arrangements  
11          they provide times the incremental cost the Commission deems appropriate  
12          for recovery.

13          **Q. PLEASE EXPLAIN HOW THE NET REVENUE APPROACH MEETS**  
14          **FCC CRITERIA FOR COST RECOVERY MECHANISMS.**

15          A. The net revenue approach is competitively neutral within the parameters set  
16          forth by the FCC. It does not saddle new entrants — or incumbent LECs for  
17          that matter — with the entire burden of funding portability and provides

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<sup>12/</sup> These numbers do not reflect any attempt on MFS's part to estimate the actual costs of providing portability in Florida and have been provided for illustrative purposes only.

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1           neither with a competitive advantage. The net revenue approach also ensures  
2           that all carriers will make a proportionate contribution to the costs of  
3           providing portability to end users.

4           **Q.    WHY IS IT IMPORTANT TO BASE CONTRIBUTIONS TO THE**  
5           **PORTABILITY FUND ON NET REVENUE, RATHER THAN GROSS**  
6           **REVENUE, OF TELECOMMUNICATIONS CARRIERS?**

7           A.    An offset for payments to intermediate telecommunications service providers  
8           is necessary to avoid multiple assessments on services that are components of  
9           final end user services or services that are resold one or more times. Pursuant  
10          to MFS's proposal, each carrier's contribution to the portability cost fund will  
11          be based proportionately on the added value it brings to the  
12          telecommunications marketplace, as measured by the net revenue it derives.  
13          Economists have long favored value-added assessment mechanisms because  
14          they ensure maximum neutrality and impose minimal distortions on  
15          competitive market dynamics.

16          **Q.    HAS THE FCC ENDORSED MFS'S NET REVENUE APPROACH?**

17          A.    Yes, it has. In the Portability Order, the FCC approvingly cited MFS's  
18          revenue-based cost recovery proposal. *Id.*, at ¶ 136.

19          **Q.    WOULD THE NET REVENUE APPROACH BE BURDENSOME FOR**  
20          **FLORIDA TELECOMMUNICATIONS CARRIERS?**

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1       A.     No. Telecommunications carriers are thoroughly familiar with revenue  
2             reporting requirements. On the federal level, the FCC itself adopted a net  
3             revenue approach for recovering regulatory fees<sup>13/</sup> and cited it favorably in the  
4             Portability Order (at ¶ 136, n. 384). In Florida, the law requires interexchange  
5             carriers to report gross revenues less payments for access charges under  
6             Sections 350.113, 364.336, and 364.337, Florida Statutes.

7       **Q.     WHAT RULES SHOULD GOVERN HOW CARRIERS RECOVER**  
8             **FROM THEIR CUSTOMERS THEIR CONTRIBUTIONS TO THE**  
9             **PORTABILITY COST FUND?**

10      A.     The Commission should not regulate how new entrants and other non-  
11             dominant carriers gather their contribution to the portability cost fund.

12                     The Commission could allow incumbent LECs to treat their  
13             share of portability costs as exogenous for purposes of adjusting price  
14             caps. To the extent that portability costs are allocated to general end  
15             user services, such allocations should not be considered “avoided”  
16             costs when wholesale rates are set pursuant to Sections 251(c)(4) and  
17             252(d)(3) of the 1996 Act.

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<sup>13/</sup>     *Assessment and Collection of Regulatory Fees for Fiscal Year 1995, Price  
Cap Treatment of Regulatory Fees Imposed by Section 9 of the Act, Report and Order,*  
10 FCC Rcd 13512, 13558-59 (1995).

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1                   The Commission should not permit incumbent LECs to collect  
2                   their contribution to the portability cost fund from customers through a  
3                   discrete line item or surcharge on customers' bills. Nor should the  
4                   Commission tolerate the inclusion of an incumbent LEC's share of  
5                   portability costs in the prices for interconnection and unbundled  
6                   network elements.

7           **Q.    SHOULD THE PRINCIPLES FOR RECOVERING INTERIM**  
8           **PORTABILITY COSTS THAT MFS ADVOCATES HERE APPLY TO**  
9           **THE RECOVERY OF PERMANENT NUMBER PORTABILITY**  
10          **COSTS?**

11          A.    Most certainly. MFS's proposal is designed to satisfy the overall requirement,  
12                contained in both the 1996 Act and the Portability Order, for competitively  
13                neutral recovery of costs associated with all forms of portability. Thus, when  
14                permanent number portability becomes a reality, the Commission should  
15                implement MFS's proposal in the context of recovering costs incurred for  
16                developing and maintaining the industry-wide portability database. I note,  
17                however, that carriers should be responsible for the costs of their own internal  
18                updates and adjustments to software and other equipment necessary to use the  
19                portability database.

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1       **Q.     SHOULD THE COMMISSION TAKE ANY ACTION ON**  
2           **PORTABILITY COST RECOVERY ISSUES IMMEDIATELY?**

3       A.     Yes, it should suspend current tariffs that establish charges for portability  
4           arrangements. Carriers providing portability should book their costs to a  
5           deferred account. Once the Commission determines the level of costs  
6           permitted to be recovered and implements an appropriate cost recovery  
7           mechanism, carriers may recover any costs booked to the deferred account in  
8           accordance with the Commission's ruling in this proceeding.

9       **Q.     DOES THIS CONCLUDE YOUR TESTIMONY?**

10      A.     Yes.

*TIMOTHY DEVINE* REBUTTAL TESTIMONY OF  
~~ALEX J. HARRIS~~  
ON BEHALF OF  
MFS COMMUNICATIONS COMPANY, INC.

1 I. INTRODUCTION AND SUMMARY OF TESTIMONY

2 Q. PLEASE STATE YOUR NAME.

3 A. ~~Alex J. Harris~~ *TIMOTHY DEVINE*

4 Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS  
5 PROCEEDING

6 A. Yes. I filed direct testimony.

7 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

8 A. My rebuttal testimony seeks to address issues raised in the direct testimony of  
9 various parties filed before the Commission on the appropriate cost recovery  
10 mechanism for currently available number portability. As I discussed in my  
11 direct testimony the Federal Communications Commission's ("FCC") Portability  
12 Order in CC Docket No. 95-116,<sup>1/</sup> requires that the recovery method selected  
13 must be competitively neutral.

14 Q. WHAT MECHANISM IS MOST WIDELY RECOMMENDED?

15 A. Almost all of the parties who filed direct testimony in this proceeding proposed  
16 as their first choice the same approach proposed by MFS namely that the  
17 Commission should require all parties to absorb their own costs of providing

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<sup>1/</sup> *In the Matter of Telephone Number Portability*, First Report and Order, CC Docket No. 95-116 (released July 2, 1996) (hereinafter "*Portability Order*").

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1 portability. This approach not only fully complies with the “competitive  
2 neutrality” requirement of the Telecommunications Act of 1996 and the  
3 Portability Order, but is by far the easiest method to administer and most efficient  
4 and cost-effective alternative. The widespread recommendation of this approach  
5 by other parties strongly supports the adoption of this approach, as the one most  
6 consistent with the Portability Order and the Telecommunication Act.

7 **Q. IF THE COMMISSION DOES NOT ADOPT THIS APPROACH WHAT**  
8 **DOES MFS RECOMMEND?**

9 A. If the Commission decides to adopt an alternate cost recovery mechanism for  
10 portability, MFS urges the adoption of the “net revenue” approach as described  
11 more fully in my Direct Testimony. The other cost recovery mechanisms  
12 suggested by the witnesses -- i.e., allocating costs on the basis of “working  
13 numbers” or “active lines” -- simply do not comply with the Telecommunications  
14 Act and the Portability Order. MFS believes that the only appropriate cost  
15 recovery mechanism for portability, other than each carrier bearing its own costs,  
16 is an approach whereby the Commission allocates portability costs on the basis  
17 of the net revenues of all carriers operating in Florida. Under this approach, the  
18 Commission would require all telecommunications carriers within the State of  
19 Florida to contribute to a portability fund in direct proportion to their total  
20 revenues from intrastate telecommunications operations (though with an offset



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1           for payments to other carriers for intermediate telecommunications services  
2           employed in the delivery of revenue-generating retail services). This mechanism  
3           is the only one which fully complies with the Telecommunications Act because  
4           it applies equally to all telecommunications carriers, is competitively neutral, and  
5           other than each carrier bearing their own cost, is the most simple and efficient to  
6           implement.

7           **II. COMPETITIVE NEUTRALITY IS THE FUNDAMENTAL**  
8           **CONSIDERATION IN SELECTING A PORTABILITY COST**  
9           **RECOVERY MECHANISM**

10          **Q. WHAT PRINCIPLE SHOULD GUIDE THE SELECTION OF ANY COST**  
11          **RECOVERY MECHANISM FOR PORTABILITY?**

12          A. Both the Telecommunications Act and the Portability Order establish competitive  
13          neutrality as the fundamental principle in the selection of the appropriate cost  
14          recovery mechanism. The Telecommunications Act expressly provides that the

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1 costs of portability -- calculated using TELRIC<sup>2/</sup> -- must be shared by all  
2 telecommunications carriers. Specifically, Section 252(e) states that:

3 The costs of establishing . . . number portability *shall be*  
4 *borne by all telecommunications carriers on a*  
5 *competitively neutral basis* as determined by the [FCC].

6 (Emphasis added). Thus, consistent with the Act, all carriers providing intrastate  
7 telecommunications services in Florida should contribute to the costs of  
8 portability. This would include incumbent LECs, new LECs, Commercial  
9 Mobile Radio Service providers and Interexchange Carriers.

10 **Q. IS IT PERMISSIBLE UNDER THE 1996 ACT AND FCC RULES TO**  
11 **REQUIRE ONLY CARRIERS SUBSCRIBING TO PORTABILITY TO**  
12 **PAY THE COSTS OF PROVIDING IT?**

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<sup>2/</sup> TELRIC ensures that portability costs are competitively neutral. TELRIC portability costs do not vary with the identity of the carrier forwarding calls to the customer's new service provider because TELRIC estimates incremental costs using a reconstructed, hypothetical network (constrained only by existing locations of the incumbent LEC's wire centers). Such a competitively neutral assessment of portability costs cannot be achieved by a cost study of portability functions within the incumbent LEC's existing network. With TELRIC, new entrants are not disadvantaged by having to contribute to portability costs inflated because of inefficiencies inherent in the incumbent LEC's existing network.

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1           A.     No. The FCC has concluded that Section 251(e)(2) of the 1996 Act mandates a  
2                    departure from general cost causation principles, pursuant to which the purchaser  
3                    of a service would be required to pay the cost of providing the service.  
4                    *Portability Order* ¶ 131. Moreover, the FCC ruled that any cost recovery  
5                    mechanism that requires new entrants to bear all of the costs of portability does  
6                    not comply with Section 252(e) of the 1996 Act. *Portability Order* ¶ 138  
7                    (“imposing the full incremental cost of number portability solely on new entrants  
8                    would contravene the statutory mandate that all carriers share the cost of number  
9                    portability”). The tariffed charges currently imposed in Florida by incumbent  
10                  LECs on purchasers of portability are inconsistent with the Act and must be  
11                  suspended immediately.

12           **Q.     WHAT WOULD BE ANOTHER COMPETITIVELY NEUTRAL BASIS**  
13                    **UPON WHICH TO ALLOCATE PORTABILITY COSTS?**

14           A.     A competitively neutral cost recovery mechanism cannot “give one service  
15                    provider an appreciable, incremental cost advantage over another service  
16                    provider, when competing for a specific subscriber.” *Portability Order* ¶ 132.  
17                    New entrants, therefore, cannot be saddled with the full costs of portability.  
18                    Rather, portability costs must be allocated among all telecommunications  
19                    carriers.

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1                   Consequently, MFS submits that competitive neutrality cannot be  
2                   achieved unless portability costs are recovered from all telecommunications  
3                   carriers in Florida, in direct proportion to each company's total revenues from  
4                   intrastate telecommunications operations, but with an offset for payments made  
5                   to other carriers for intermediate telecommunications services that are used in the  
6                   delivery of revenue-generating retail services.<sup>3/</sup> The way in which this "net  
7                   revenue " approach would be implemented is explained in detail in my Direct  
8                   Testimony.

9                   As described, this approach is competitively neutral because it does not  
10                  saddle new entrants — or incumbent LECs for that matter — with the entire  
11                  burden of funding portability and provides neither with a competitive advantage.  
12                  The net revenue approach also ensures that all carriers will make a proportionate  
13                  contribution to the costs of providing portability to end users. This approach is  
14                  approvingly cited in the FCC's Portability Order. *Portability Order* ¶ 136.

15                  **III. THE ALTERNATE RECOVERY MECHANISMS SUGGESTED**  
16                  **ARE NEITHER COMPETITIVELY NEUTRAL NOR COMPLIANT**  
17                  **WITH APPLICABLE LAW**

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<sup>3/</sup> Such payments include those for switched access, interconnection, unbundled network elements, reciprocal compensation, and resold bundled services.

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1       **Q.   WHILE MOST PARTIES FAVOR THE APPROACH OF EACH**  
2       **CARRIER BEARING ITS OWN COSTS, ARE THE ALTERNATE COST**  
3       **RECOVERY APPROACHES SUGGESTED BY OTHER PARTIES TO**  
4       **THIS PROCEEDING COMPETITIVELY NEUTRAL?**

5       A.   No. Each of the portability cost recovery methods proposed as alternatives --  
6       i.e., allocating costs on the basis of "working numbers" or "active lines" -- in the  
7       event the Commission does not adopt their preferred approach, simply do not  
8       comply with the Telecommunications Act and the Portability Order. Each of  
9       these methods would operate to exclude certain carriers from the obligation to  
10      contribute to the cost of portability. The Act unambiguously mandates that all  
11      carriers must contribute to such costs. The net revenue approach advocated by  
12      MFS is the only method which insures contribution by all carriers on a  
13      competitively neutral basis. While the alternate approach advocated by GTE is  
14      consistent with that of MFS, it is far too complicated to offer a viable alternative.  
15      Of all alternate recovery methods proposed, the net revenue approach is certainly  
16      the most efficient and simple to administer.

17      **Q.   CAN YOU BE MORE SPECIFIC?**

18      A.   Yes. The allocation of costs on the basis of the numbers each carrier has would  
19      operate to exclude IXCs and CMRSs from the obligation to contribute to the  
20      costs of portability as numbers are assigned only to local carriers. A similar

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1 result is obtained if the basis of allocation is a carrier's number of active lines.  
2 In either case, certain carriers are impermissibly excused from participating in the  
3 costs of portability. Thus, while Time Warner's first choice is for each company  
4 to bear its own costs, its alternate approach would exclude CMRSs and IXC's.  
5 ATT Wireless, which also recommends that each carrier bears its own costs,  
6 proposes an alternate that would improperly exclude CMRSs. ATT, while also  
7 favoring the approach of each carrier bearing its own costs, proposes as an  
8 alternate the model adopted prior to the Portability Order in New York that  
9 would conveniently excuse ATT from the obligation to share portability costs.  
10 MCI metre, which also supports each carrier bearing its own costs, proposes an  
11 alternate which would limit cost recovery to CLECs and LECs, a result  
12 inconsistent with the requirement that all carriers bear the costs of portability.  
13 These alternate cost recovery mechanisms fail to satisfy the competitive  
14 neutrality requirement, and, in fact, are inconsistent with the explicit language  
15 of the Act. The Commission must reject any cost recovery method that fails to  
16 impose contribution obligations equally on all carriers.

17 **Q. DO YOU AGREE WITH SPRINT'S PROPOSED METHOD OF COST**  
18 **RECOVERY?**

19 A. No. Sprint's proposal is cumbersome requiring that the Commission at this time  
20 undertake a TELRIC study of the costs of number portability. Sprint's proposal

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1 is apparently based on TSLRIC and not TELRIC. Because TELRIC costs are  
2 based on the costs of a forward-looking network and not Sprint's, Sprint's cost  
3 studies cannot be used. Moreover, Sprint's proposal would exclude Sprint's long  
4 distance company from any obligation to bear a proportionate share of the  
5 number portability costs. An approach which does not include all carriers is not  
6 competitively neutral and fails to recognize that all carriers and all end users  
7 benefit from the availability of number portability as a part of the network.

8 **IV. CURRENT TARIFFS CANNOT BE PRESERVED UNDER THE**  
9 **TELECOMMUNICATIONS ACT AND PORTABILITY ORDER**

10 **Q. SHOULD THE COMMISSION TAKE ANY ACTION ON PORTABILITY**  
11 **COST RECOVERY ISSUES IMMEDIATELY?**

12 A. Yes, it should suspend current tariffs that establish charges for portability  
13 arrangements. Indeed, the FCC has explicitly ruled that any cost recovery  
14 mechanism that requires new entrants to bear all of the costs of portability does  
15 not comply with Section 252(e) of the 1996 Act. *Portability Order* ¶ 138. Thus,  
16 maintaining the current tariffed charges imposed by incumbent LECs on  
17 purchasers of portability violates the Act. The current tariffs must be suspended,  
18 and the Commission must adopt a cost recovery mechanism as mandated by the  
19 Act and the Portability Order. BellSouth's suggestion that the current tariff s  
20 should be maintained is an approach that would have the Commission disregard

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1           the applicable law, and, as such, must be dismissed out of hand. The fact that  
2           BellSouth has sought reconsideration of the Portability Order does not change the  
3           fact that it is a currently effective order which this Commission may not ignore.

4       **V.    RETROACTIVE APPLICATION OF COST RECOVERY IS**  
5       **PERMISSIBLE**

6       **Q.    DOES THE TELECOMMUNICATIONS ACT OR THE PORTABILITY**  
7       **ORDER PRECLUDE THE RETROACTIVE APPLICATION OF THE**  
8       **COMMISSION'S DECISION?**

9       A.    MFS believes that under the Portability Order and the Telecommunications Act  
10       it is permissible for the Commission to apply its decision retroactively. Nothing  
11       in either the Telecommunications Act or the Portability Order precludes such an  
12       application. Indeed, none of the testimony filed with the Commission in this  
13       matter argues the contrary. The Commission will need to resolve the effect of  
14       such action under Florida law. To the extent it may not retroactively change the  
15       number portability rates, as BellSouth argues, it clearly undermines BellSouth's  
16       proposal that the Commission leave the tariffs in place when they clearly violate  
17       the Portability Order.

18       **Q.    DOES THIS CONCLUDE YOUR TESTIMONY?**

19       A.    Yes.



1 BY MR. RINDLER:

2 Q Mr. Devine, have you prepared a summary of  
3 your testimony?

4 A Yes.

5 Q Could you give it at this time?

6 A Yes. Good afternoon. The issue before this  
7 Commission is fairly straightforward: Should the  
8 Commission revise its temporary number portability  
9 cost allocation decision so that it is consistent with  
10 the FCC's decision on the same issue.

11 The FCC's decision came out after the  
12 Commission had made its decision in December. While  
13 it is my understanding that motions to reconsider the  
14 FCC's order have been filed, the FCC's order is in  
15 effect.

16 The FCC in providing guidance on acceptable  
17 methods of cost recovery emphasized the importance of  
18 temporary number portability as new entrants begin  
19 operations in the local exchange market. Competition  
20 will benefit all consumers since all consumers will be  
21 able to continue dialing the same telephone number.

22 Number portability and any resultant cost  
23 are simply part of the cost of doing business in the  
24 new regulatory environment. As such the FCC was  
25 particularly concerned that temporary number

1 portability, an inadequate substitute for true number  
2 portability, not impose additional burdens on new  
3 entrants.

4           As such the FCC was particularly concerned  
5 that any cost recovery for temporary number  
6 portability not result in a burden solely on the new  
7 entrants.

8           Since this Commission's earlier decision  
9 imposes most costs associated with temporary number  
10 portability on new entrants, it is inconsistent with  
11 the FCC order and should be changed.

12           In determining which method of cost recovery  
13 to use, the Commission should keep several facts in  
14 mind. First, temporary number portability is intended  
15 to be just that, temporary. Second, given the time  
16 frame in which temporary number portability is to  
17 become effective, it is highly unlikely that there  
18 will be any significant demand for ported numbers.

19           The carrier's experience since the  
20 Commission's order should provide a factual context to  
21 consider the likely demand.

22           Third, the methods used for temporary number  
23 portability are in use today. No changes to or  
24 different equipment is required. Accordingly, the  
25 incremental cost of such calls is minimal.

1           Fourth, the least cost method of cost  
2 recovery given these circumstances is for each carrier  
3 to simply provide number portability in return for the  
4 right to obtain number portability from other  
5 carriers.

6           Absent this approach, MFS believes that the  
7 Act and the FCC's order are quite clear: All  
8 telecommunications providers are required to  
9 contribute to any costs.

10           Long distance carriers are  
11 telecommunications carriers under the Act, as are CMRS  
12 and other wireless carriers. All telecommunications  
13 carriers should be included in any cost recovery  
14 approach the Commission deems necessary. There is no  
15 legitimate basis to exclude such carriers.

16           In calculating each carrier's share the  
17 method which best meets the requirement for  
18 competitive neutrality among telecommunications  
19 providers is to base any assessment on net revenues.

20           Let me simply underscore that MFS strongly  
21 supports the position espoused by most other  
22 carriers; that is, that each carrier bear its own  
23 cost.

24           Given the temporary nature of the issue the  
25 apparent and likely scope of the demand, this approach

1 is the least cost, most efficient approach and is  
2 specifically included by the FCC in its description of  
3 acceptable cost recovery methodologies. Thank you.

4 MR. RINDLER: Madam Chairman, Mr. Devine is  
5 available for cross.

6 CHAIRMAN CLARK: Thank you. Ms. White.

7 MS. WHITE: BellSouth has no questions.

8 CHAIRMAN CLARK: Ms. Caswell.

9 MS. CASWELL: GTE has no questions.

10 CHAIRMAN CLARK: Mr. Wahlen.

11 CROSS EXAMINATION

12 BY MR. WAHLEN:

13 Q Mr. Devine, this is Jeff Wahlen for Sprint.  
14 You haven't reviewed Sprint's cost study in this  
15 docket, have you?

16 A No, I haven't, but as I understand it, it  
17 was just filed a few days ago.

18 Q And what is your basis for that  
19 understanding?

20 A My counsel informed me of that. I have been  
21 out of the office the last few days.

22 Q Would you be surprised to find that FCTA got  
23 a copy of that cost study right after Mr. Poag's  
24 testimony was filed because they asked for it in  
25 discovery?

1           A     Well, which cost study? Was it a new cost  
2 study in this case or was it a previous --

3           Q     The one that was prepared to support his  
4 Exhibit FBP-1?

5           A     Okay. I guess I don't know.

6           Q     So you wouldn't be surprised to find that  
7 MFS could have reviewed it shortly after it was filed  
8 just like FCTA did, would you?

9           A     Assuming that's correct, yes, you're  
10 correct. I did see a cost study based on our  
11 negotiations with Sprint on interim number portability  
12 back a few months ago. I don't know if it was the  
13 same study or not.

14          Q     You don't have any reason to disagree with  
15 what is contained in Sprint's cost study, do you,  
16 based on a review of that cost study?

17          A     Well, the cost study that you mentioned, if  
18 it's the one FCTA saw, of course, if I haven't seen it  
19 I don't. Although based on the prices that are  
20 proposed in the testimony I just can't understand how  
21 any of that makes a lot of sense.

22          Q     But you haven't reviewed the study.

23          A     That's correct.

24                **MR. WAHLEN:** Thank you, no questions.

25                **MS. McMILLIN:** MCI has no questions.

1 MS. WILSON: No questions.

2 MS. WEISKE: No questions.

3 MS. DUNSON: No questions.

4 CROSS EXAMINATION

5 BY MS. JACOBS:

6 Q Mr. Devine, Gwen Jacobs with AT&T Wireless.

7 Would your alternative proposal allocate  
8 interim number portability cost recovery to wireless  
9 carriers?

10 A Yes. For all telecommunications providers,  
11 yes.

12 Q And is it your belief that wireless carriers  
13 will be requesting interim number portability  
14 associated with the cost recovery at issue in this  
15 proceeding?

16 A No. They probably wouldn't be purchasing it  
17 to use to provide local service unless they are  
18 actually providing local service. But they do benefit  
19 from that capability because their subscribers can  
20 continue to dial the same telephone numbers.

21 MS. JACOBS: Okay. AT&T has no further  
22 questions.

23 CHAIRMAN CLARK: Staff.

24

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## CROSS EXAMINATION

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BY MR. COX:

Q Good afternoon, Mr. Devine.

A Good afternoon.

Q I'm Will Cox appearing on behalf of the  
Commission Staff.

Staff has several questions regarding the  
direct testimony you have adopted today. First  
question refers to Page 5 of the direct testimony,  
Line 17. On Line 17 on Page 5, direct testimony filed  
in this docket, you use TELRIC as the cost  
methodology.

A Yes.

Q Why do you use TELRIC as a cost methodology?

A It was our interpretation of the FCC's  
number portability order that it expressly, you know,  
talks about incremental costs and that the FCC a month  
or so later went with the TELRIC pricing principles  
and, you know, we thought that that seemed to be  
consistent with what they ordered in the number  
portability order.

Q From your lay perspective would you agree it  
is still appropriate to use this methodology since the  
pricing in the FCC order has been stayed?

A Yes. There have been several commissions

1 that have -- despite the stay of the FCC's  
2 interconnection order have continued to apply TELRIC  
3 pricing principles for pricing of unbundled elements.

4 Q Why do you believe it's appropriate?

5 A Well, in Georgia, for instance, the Georgia  
6 Commission applied TELRIC pricing methodology for the  
7 pricing of unbundled loops. They thought that it was,  
8 you know, a prudent way to develop prices for loops.  
9 Several other commissions have gone with TELRIC  
10 pricing, and it seems, you know, to be a good  
11 mechanism to use. There's no reason why the Florida  
12 Commission cannot use it.

13 Q Mr. Devine, we're not asking for the Georgia  
14 Commission's ruling on this. We're asking for your  
15 opinion on whether or not this is appropriate for this  
16 proceeding and why.

17 A We feel it's appropriate because it would,  
18 you know, recover the appropriate costs used for that  
19 function. So if the actual function that's being used  
20 for interim number portability is incremental  
21 switching and incremental transport, since that's  
22 really what is happening on top of regular RCF, that  
23 if you apply the TELRIC pricing methodology to the  
24 incremental cost of switching and transport, that that  
25 would be, you know, the best way to appropriately



1 gauge the costs to make sure they are recovered and  
2 not over- or underallocated.

3 Q What's your understanding of TELRIC,  
4 Mr. Devine?

5 A That it recovers, you know, forward-thinking  
6 based technology. Forward-thinking cost of capital;  
7 that it recovers the direct cost for that function,  
8 and any other, you know, common costs related to that  
9 direct cost of that function. So it would be just the  
10 specific incremental costs of switching and transport  
11 for the function of interim number portability.

12 Q What is your understanding of the difference  
13 between TELRIC and TSLRIC?

14 A I'm not an economist and I don't, you know,  
15 try to pretend to be an economist. But for TELRIC you  
16 actually would be using forward-looking costs,  
17 forward-looking technology and forward-looking costs  
18 of money. Whereas if you're looking just as TSLRIC,  
19 you could be looking just at the existing costs, let's  
20 say, of a LEC rather than what their costs would look  
21 like in a new environment using new technology and new  
22 cost of capital and things like that.

23 Q For purposes of temporary number  
24 portability, which carriers do you believe should be  
25 included?

1           A     Just as the FCC Act and the order states,  
2 all telecommunications carriers, which would be local,  
3 long distance and wireless carriers.

4           Q     That being the case, why should all carriers  
5 pay since not all will benefit from the implementation  
6 of temporary number portability, such as rural LECs  
7 and commercial mobile radio service providers?

8           A     All carrier and consumers do benefit just as  
9 when we had this docket open last year I testified to  
10 the same thing. All carriers, all customers benefit.

11                     When you're a consumer, and if you're in  
12 Siesta Key and you're trying to call a customer in  
13 Tampa, or call somebody in downtown Miami, and if  
14 there's competition in those areas, you can continue  
15 to dial the same phone number. That's a significant  
16 benefit to consumers.

17                     Also what it does is it brings competition  
18 to the marketplace, which lowers prices for consumers.  
19 It's -- historically I mean you can look at the long  
20 distance market, you can look at the competitive  
21 access market for pricing of special access of private  
22 line.

23                     When MFS introduced service in California  
24 for private line and special access back about six  
25 years ago, Pacific Bell lowered their T-1 prices from

1 \$800 to \$200 a month. Well, since they priced those  
2 rates on statewide basis, those rates went down for  
3 everybody in the state overnight just because of  
4 competition in downtown San Francisco and Los Angeles.

5           So I think it's a big misnomer if people  
6 assume that competition, while you might only see  
7 multiple carriers initially in the urban markets, it's  
8 not true that there won't be lower prices in other  
9 markets and choices.

10           Q     So would you agree that the FCC order allows  
11 states to exempt categories of carriers from temporary  
12 cost recovery?

13           A     To exempt -- ?

14           Q     To exempt certain carriers from the cost  
15 recovery involved in temporary number portability?

16           A     What do you mean by that?

17           Q     Would you agree basically, subject to check,  
18 that the FCC order allows states to essentially not  
19 include certain categories of carriers from the cost  
20 recovery involved with temporary number portability?

21           A     Do you mean like Tier 2 LECs and things like  
22 that.

23           Q     Any type of carrier, ILEC, ALEC, resale  
24 providers.

25           A     As I said earlier, certainly there's no

1 language anywhere in the Act or in the FCC Order that  
2 excludes carriers from contributing towards the cost  
3 of number portability. Certainly Tier 2 LECs, that  
4 that could be -- I don't know, I mean that could be a  
5 situation. I'm not sure.

6 Q I'd like to refer you to Page 8 of your  
7 testimony, Line 2; Page 8, Line 2 you state that "The  
8 incremental cost is the benchmark for measuring  
9 portability costs."

10 Would you agree, subject to check, that  
11 Paragraph 123 of the FCC number portability order  
12 states that these rates are not required to be set at  
13 LRIC or TSLRIC?

14 Q Excuse me. Which paragraph number?

15 Q Paragraph 123 of the FCC number portability  
16 order?

17 A If you'd like, I could just read it really  
18 briefly.

19 Q Sure.

20 A Object. Thanks. (Pause) I've read it.

21 Q I'll restate the question. Would you agree  
22 that Paragraph 123 of the FCC number portability order  
23 states that these rates are not required to be set at  
24 LRIC or TSLRIC?

25 A Yes, it does say that in that particular

1 paragraph. It talks a lot about single cost up to  
2 Paragraph 140, 117 through 140.

3 Q The net revenue approach which is advocated  
4 in the direct testimony that you offer in this  
5 proceeding, would you agree that the net revenue  
6 approach for cost recovery in this proceeding is  
7 better than the recovery mechanism using telephone  
8 numbers?

9 A Yes. Because if you just use telephone  
10 numbers you're not having all telecommunications  
11 carriers contribute to the cost of number portability.  
12 As I said earlier, the net revenue, if you take the --  
13 all revenue from all carriers, that would be a more  
14 correct interpretation of the Order and the Act.  
15 Anything other than something like net revenue or  
16 revenue does not include all telecommunications  
17 carriers.

18 MR. COX: That concludes Staff's questions.

19 COMMISSIONER DEASON: I have a question.

20 It's your position that all customers everywhere  
21 benefit from interim number portability?

22 WITNESS DEVINE: Yes.

23 COMMISSIONER DEASON: A customer of a rural  
24 incumbent LEC, how do they benefit by a customer in  
25 Miami having their number ported?

1           **WITNESS DEVINE:** Really in two regards. One  
2 is if they were to dial somebody who is in an area  
3 where they have competition and number portability is  
4 being used, they could continue to dial that customer  
5 at the same telephone number.

6           **COMMISSIONER DEASON:** Whoa, just a second.  
7 You're assuming then that there's some type of ongoing  
8 relationship between the customer in the rural and the  
9 customer in Miami so they know what their number is  
10 without looking into directory.

11           **WITNESS DEVINE:** Sure. Not all customers  
12 will be making calls outside of their local area, so  
13 yes, some customers won't benefit in that regard in  
14 terms of calling the same number.

15           **COMMISSIONER DEASON:** In other words, they  
16 don't have a local directory so that if they wanted to  
17 call someone -- for example, if somebody in Bristol,  
18 Florida wanted to call Joe Garcia in Miami and  
19 complain about their telephone rates, they wouldn't  
20 have a Miami directory to call Joe Garcia in Miami  
21 anyway, would they?

22           **WITNESS DEVINE:** No. If they didn't already  
23 know the customer's phone number, or it hadn't changed  
24 in a directory or something like that, then they  
25 wouldn't --

1           **COMMISSIONER DEASON:** How did that customer  
2 benefit from the customer in Miami being able to have  
3 their number ported?

4           **WITNESS DEVINE:** Well, in that regard they  
5 wouldn't benefit but they would benefit in terms of  
6 competition coming to the state and a precedent being  
7 set. And we all know in long distance, I mean the  
8 first competition was on a private line basis between  
9 St. Louis and Chicago. And now clearly all of the  
10 major long distance carriers offer long distance  
11 service in every LATA in the country. There's also  
12 numerous resellers and regional carriers throughout  
13 the U.S. And those rates for long distance, Sprint  
14 talks about 10 cents a minute all over the place and  
15 that's not restricted just to major urban areas.

16           I think it's something, Day One, some  
17 customers in some small rural areas, sure, they might  
18 not see the benefit they want. But we have to get  
19 this thing jump-started. And I think it seems the  
20 Order and the Act are pretty clear about all  
21 telecommunications carriers being involved in it.

22           **CHAIRMAN CLARK:** Any questions. Redirect?

23           **MR. RINDLER:** I have none, Madam Chairman.

24           **CHAIRMAN CLARK:** No redirect.

25           **MR. RINDLER:** No, ma'am.

1                   **CHAIRMAN CLARK:** Thank you very much,  
2 Mr. Devine.

3                   **MR. RINDLER:** May he be excused?

4                   **CHAIRMAN CLARK:** He may be excused.

5 Mr. Poag.

6                   (Transcript continues in sequence in Volume 3?)

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