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January 3, 1997

VIA FEDERAL EXPRESS

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

Re: Docket No. 950737-TP

Dear Mrs. Bayo:

Enclosed for filing are an original and fifteen (15) copies of a Post-Hearing Brief of MFS Communications Company, Inc. in the above-captioned docket.

A copy of the Brief is also on the enclosed diskette formatted in WordPerfect 6.1 for Windows. Please date stamp the extra copy and return it in the enclosed self-addressed envelope.

Thank you for your attention to this matter.

Sincerely,

Richard M. Rindler

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cc: All parties of record

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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In Re:)	
)	
Investigation Into Temporary Local)	Docket No. 950737-TP
Number Portability Solution to)	
Implement Competition in Local)	Filed January 6, 1997
Exchange Telephone Markets)	

POST-HEARING BRIEF OF MFS COMMUNICATIONS COMPANY, INC.

I. INTRODUCTION AND SUMMARY

Pursuant to Order No. PSC-96-1121-PCO-TP, issued September 4, 1996, MFS Communications Company, Inc. ("MFS"), by its undersigned attorneys, hereby files its Post-Hearing Brief in the above-captioned proceeding.

As a new entrant in local exchange markets throughout the country, MFS believes that the mechanism selected for the recovery of costs associated with currently available number portability (hereinafter "portability") is critical to its ability to compete in local exchange markets.

The FCC's Portability Order in CC Docket No. 95-116,^{1/} requires that the recovery method selected must be competitively neutral. The Portability Order is binding on the states, and requires the Commission to re-evaluate its resolution of portability issues in Order PSC-95-1604-FOF-TP

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

(released December 28, 1995).^{2/} Specifically, under the 1996 Act and Portability Order, the Commission is not permitted to assess charges only on those carriers that subscribe to portability. Consequently, the Commission must revise its decision in Order No. PSC-95-1604-FOF-TP by selecting a competitively neutral recovery mechanism to be applied equally to all carriers, and determining what recurring portability costs are properly recoverable under federal law. The portability cost recovery method most favored by carriers is one under which each carrier is required to absorb its own costs of portability. MFS strongly urges the Commission to adopt this method because it is the most competitively neutral, is consistent with the applicable law, and is the easiest and most efficient method to administer.

If, however, the Commission decides not to require each carrier to bear its own costs, but prefers to implement a formal cost recovery mechanism, the Commission should permit carriers to recover only the total element long run incremental costs (“TELRIC”) of portability, and adopt a competitively-neutral mechanism for recovering portability costs consistent with the Portability Order and the 1996 Act. To that end, MFS believes that the Commission should require all telecommunications carriers within the State of Florida to contribute to a portability fund in direct proportion to their total net revenues from intrastate telecommunications operations, with an offset for payments to other carriers for intermediate telecommunications services employed in the delivery of revenue-generating retail services.

^{2/} It should be noted that the Eighth Circuit’s stay (Iowa Utils. Bd. V. FCC, No.96-3321, Order Granting Stay Pending Judicial Review (8th Cir. issued Oct. 15, 1996)) of selected sections of the FCC’s First Report and Order (CC Docket NO. 96-98) should not delay or otherwise affect the issues before this Commission as the Stay does not apply to any of the FCC’s rules on Interim Number Portability (“INP”).

II. ARGUMENT ON SPECIFIC ISSUES

ISSUE 1:

Is Order No. PSC-95-1604-FOF-TP inconsistent with the Federal Communications Commission's First Report and Order and Further Notice of Proposed Rulemaking in the Matter of Telephone Number Portability in CC Docket No. 95-116?

SUMMARY OF POSITION:

The Commission's temporary number portability order is not consistent with the FCC Order as it imposes all costs on the ALECs requesting number portability.

DISCUSSION:

The 1996 Act expressly provides that the costs of portability must be shared by all telecommunications carriers. Specifically, Section 252(e) states that:

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

(Emphasis added). Under the 1996 Act and Portability Order, the Commission cannot require portability costs to be paid only by those carriers that subscribe to portability, and must revise its decision, accordingly. The FCC has concluded that Section 251(e)(2) of the 1996 Act mandates a departure from general cost causation principles, pursuant to which the purchaser of a service would be required to pay the cost of providing the service. Portability Order, at ¶ 131. The FCC expressly ruled that:

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

Portability Order, at ¶ 131. Moreover, the FCC ruled that any cost recovery mechanism that requires new entrants to bear all of the costs of portability does not comply with Section 252(e) of the 1996 Act. Portability Order, at ¶ 138 (“imposing the full incremental cost of number portability solely on new entrants would contravene the statutory mandate that all carriers share the cost of number portability”). Therefore, consistent with Section 251(e) of the 1996 Act, all carriers providing intrastate telecommunications services in Florida should contribute to the costs of portability. This would include, for example, incumbent LECs, ALECs, and Interexchange Carriers.

The tariffed charges adopted in the Commission’s Order, currently imposed by incumbent LECs on purchasers of portability, are inconsistent with the Act and must be suspended. Carriers providing portability should book their costs to a deferred account. Once the Commission determines the level of costs permitted to be recovered and implements an appropriate cost recovery mechanism, carriers may recover any costs booked to the deferred account in accordance with the recovery mechanism the Commission adopts.

A. CRITERIA FOR APPLYING THE COMPETITIVE NEUTRALITY STANDARD

The FCC’s Order establishes two criteria to govern state commission determinations of whether recovery mechanisms for portability costs are competitively neutral. First, recovery mechanisms “should not give one service provider an appreciable, incremental cost advantage over another service provider, when competing for a specific subscriber.” Portability Order, at ¶ 132. In other words, new entrants cannot be saddled with the full costs of portability. Spreading TELRIC portability costs among all telecommunications carriers would meet this criteria.

Second, recovery mechanisms must be proportional so that portability is affordable for all carriers, large and small. The Commission cannot implement a recovery mechanism that would grant large carriers a competitive advantage over small carriers. A recovery mechanism under the Portability Order would not be lawful if a new entrant's share of the costs may be so large, relative to its expected profits, that the entrant would decide not to enter the market. Portability Order, at ¶ 135. Proper recovery mechanisms should assess contributing carriers proportional shares of the total portability cost fund based on some competitively neutral allocator that is related to the size of each contributor. The Commission's decision fails to comply with the competitive neutrality criteria established by the FCC, and, as such, must be modified.

ISSUE 2:

What is the appropriate cost recovery mechanism for temporary number portability?

SUMMARY OF POSITION:

Carriers should absorb their own costs for portability arrangements. This will significantly ease the burden of administration and alleviate the extent of regulatory oversight. Alternatively, the Commission should require all carriers to contribute to a portability fund in direct proportion to their net total revenues from intrastate telecommunications services.

DISCUSSION:

MFS believes that carriers should absorb their own costs of providing portability arrangements. The FCC has explicitly endorsed this approach as meeting its standard for competitive neutrality. *Portability Order* ¶ 136 (“we believe that a mechanism that requires each carrier to pay for its own costs of currently available number portability measures would also be permissible”). MFS supports the concept because it would considerably ease the burden of

administering the portability cost recovery mechanism and alleviate the need for most regulatory oversight.

Typically, carriers favor this approach over all others. This approach not only fully complies with the “competitive neutrality” requirement of the Telecommunications Act of 1996 and the Portability Order, but is by far the easiest method to administer and most efficient and cost-effective alternative. Consequently, MFS strongly urges the Commission to adopt this mechanism for portability cost recovery.

If the Commission declines to require all carriers to bear their own costs of portability, MFS believes that the only other appropriate cost recovery mechanism for portability is an approach whereby the Commission allocates portability costs on the basis of the net revenues of all carriers operating in Florida. Under the net revenue approach advocated by MFS,^{3/} the Commission would require all telecommunications carriers within the State of Florida to contribute to a portability fund in direct proportion to their total revenues from intrastate telecommunications operations, with an offset for payments to other carriers for intermediate telecommunications services employed in the delivery of revenue-generating retail services.^{4/}

The net revenue approach is competitively neutral within the parameters set forth by the FCC. This mechanism is the only one other than each carrier bearing its own costs which fully complies with the Telecommunications Act because it applies equally to all telecommunications

^{3/} A brief description of the way in which the Commission could implement the net revenue cost recovery mechanism, and in which carriers would recover portability costs is set forth in Attachment A.

^{4/} Such payments include those for switched access, interconnection, unbundled network elements, reciprocal compensation, and resold bundled services.

carriers, is competitively neutral, and other than each carrier bearing their own cost, is the most simple and efficient to implement. It does not saddle new entrants — or incumbent LECs for that matter — with the entire burden of funding portability and provides neither with a competitive advantage. The net revenue approach also ensures that all carriers will make a proportionate contribution to the costs of providing portability to end users. Indeed, in its Portability Order, the FCC approvingly cited MFS's revenue-based cost recovery proposal.^{5/}

Finally, the principles advocated by MFS for the recovery of interim portability costs also apply to the recovery of permanent number portability costs. MFS's proposal is designed to satisfy the overall requirement, contained in both the 1996 Act and the Portability Order, for competitively neutral recovery of costs associated with all forms of portability. Thus, when permanent number portability becomes a reality, the Commission should implement MFS's proposal in the context of recovering costs incurred for developing and maintaining the industry-wide portability database. Carriers, however, should be responsible for the costs of their own internal updates and adjustments to software and other equipment necessary to use the portability database.

B. NET REVENUES ARE A COMPETITIVELY NEUTRAL BASIS FOR ALLOCATING PORTABILITY COSTS

An offset for payments to intermediate telecommunications service providers is necessary to avoid multiple assessments on services that are components of final end user services or services that are resold one or more times. Pursuant to MFS's proposal, each carrier's contribution to the portability cost fund will be based proportionately on the added value it brings to the telecommunications marketplace, as measured by the net revenue it derives. Economists have long

^{5/} *Portability Order* ¶ 136.

avored value-added assessment mechanisms because they ensure maximum neutrality and impose minimal distortions on competitive market dynamics. Moreover, telecommunications carriers are thoroughly familiar with revenue reporting requirements. Indeed, the FCC, itself, adopted a net revenue approach for recovering regulatory fees^{6/} and cited it favorably in the Portability Order.^{7/} In Florida, the law requires interexchange carriers to report gross revenues less payments for access charges under Sections 350.113, 364.336, and 364.337, Florida Statutes.

C. MEASURING PORTABILITY COSTS

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

In the Portability Order, the FCC declared that:

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

Id. ¶ 129 (emphasis added). Incremental cost is the benchmark for measuring portability costs.

^{6/} *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).

^{7/} *Portability Order* ¶ 136, n.384.

One month after issuing the Portability Order, the FCC elaborated upon the definition of “incremental cost” in its Interconnection Order.^{8/} The FCC stated that the incremental cost of interconnection, unbundled network elements, and collocation should be calculated according to the TELRIC methodology.

Clearly, TELRIC applies to portability costs because the Portability Order uses the term “incremental costs,” and TELRIC is the incremental costing methodology that the FCC has adopted for establishing the rates for interconnection and network elements. Section 153(29) of the 1996 Act defines network element to include “features, functions, and capabilities that are provided by means of such facility or equipment, including *subscriber numbers . . .*” (Emphasis added). As TELRIC is the proper methodology for calculating the incremental costs” of network elements, the Commission should apply TELRIC to determine the level of portability costs that are subject to recovery.

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

^{8/} *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*”).

by having to contribute to portability costs inflated because of inefficiencies inherent in the incumbent LEC's existing network.

D. OTHER ALTERNATE RECOVERY MECHANISMS ARE NEITHER COMPETITIVELY NEUTRAL NOR COMPLIANT WITH APPLICABLE LAW

Alternate portability cost recovery methods based on "working numbers" or "active lines" simply do not comply with the Telecommunications Act and the Portability Order. These methods are not competitively neutral, and are far more complicated and costly to implement than the net revenue recovery mechanism proposed by MFS. Indeed, each of these methods would operate impermissibly to exclude certain carriers from the obligation to contribute to the cost of portability. The Act unambiguously mandates that all carriers must contribute to such costs. The net revenue approach advocated by MFS is the only method which insures contribution by all carriers on a competitively neutral basis. Of all alternate recovery methods proposed, the net revenue approach is certainly the most efficient and simplest to administer.

The allocation of costs on the basis of the numbers each carrier has would operate to exclude IXCs for example from the obligation to contribute to the costs of portability as numbers are assigned only to local carriers. A similar result is obtained if the basis of allocation is a carrier's number of active lines. In either case, certain carriers are impermissibly excused from participating in the costs of portability. These alternate cost recovery mechanisms fail to satisfy the competitive neutrality requirement, and, in fact, are inconsistent with the explicit language of the Act. In modifying Order PSC-95-1604-FOF-TP to conform to the 1996 Act and Portability Order, the Commission must reject any cost recovery method that fails to impose contribution obligations equally on all carriers. Any approach which does not include all carriers is not competitively neutral

and fails to recognize that all carriers and all end users benefit from the availability of number portability as a part of the network.^{2/}

ISSUE 3:

Should there be any retroactive application of the Commission's decision in this proceeding?

If so, what should be the effective date?

SUMMARY OF POSITION:

Under the Telecommunications Act, the Commission may do so. MFS takes no position at this time as to whether it should do so.

DISCUSSION:

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

III. CONCLUSION

In establishing a cost recovery mechanism, the Commission must keep in mind that the requirement to make interim number portability available is not simply some whim of new entrants. The lack of number portability has been demonstrated to represent a real and substantial barrier to

^{2/} Clearly, GTE and BellSouth's proposals to continue with the current order fails to include all carriers and must be rejected. The Commission order is not consistent with the statutory mandate.

entry into local exchange markets. In establishing a cost recovery mechanism, the need to open markets to competition should be the guiding principle.

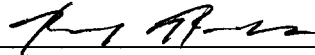
The FCC ruled that any cost recovery mechanism that requires new entrants to bear all of the costs of portability does not comply with the 1996 Act. As such, the tariffed charges currently imposed in Florida, pursuant to Order PSC-95-1604-FOF-TP by incumbent LECs on purchasers of portability are inconsistent with the Act and the Commission's decision must be modified accordingly.

MFS, believes that the each carrier should absorb its own costs of providing portability. This approach, typically, is the one most favored by carriers. More importantly, this method not only fully complies with the "competitive neutrality" requirement of the Telecommunications Act of 1996 and the Portability Order, but is by far the easiest method to administer and most efficient and cost-effective alternative.

If, however, the Commission declines to require carriers to absorb their own portability costs, and prefers to adopt an alternate mechanism for the recovery of portability costs recovery, it should adopt the net revenue approach proposed by MFS, which is the only proposed alternate approach consistent with the 1996 Act.

Finally, MFS believes that neither the Portability Order nor the 1996 Act prevents the retroactive application of the Commission's decision.

Respectfully submitted,



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Dated: January 6, 1997

ATTACHMENT A

IMPLEMENTATION OF AND COST RECOVERY UNDER THE NET REVENUE APPROACH

A. Implementing the Net Revenue Cost Recovery Mechanism

Under the “net revenue” approach, the Commission would begin by determining, on a forward-looking basis, the amount of funds necessary to pay for portability costs throughout Florida. This task would involve multiplying the incremental cost of portability arrangements (i.e. TELRIC portability costs) by a prediction of the demand for portability among LECs in Florida.

Once the size of the portability cost fund is ascertained, the Commission should calculate a uniform contribution factor to be applied to all carriers providing intrastate telecommunications services. The contribution factor should be derived by dividing the portability cost fund by the total gross intrastate revenues of all carriers providing service in Florida net of payments made to other carriers. For example, if the portability cost fund is \$1000 and the total net intrastate revenues of all carriers in Florida is \$10 million, the contribution factor would be 0.0001 or 0.01%.^{1/}

The Commission should compute the exact amount that individual carriers will contribute to the fund by multiplying the contribution factor by the net revenues of a particular carrier. Thus, if a certain carrier has \$100,000 in net intrastate revenue and the contribution factor is 0.01%, it will have to contribute \$10 to the portability cost fund.^{2/}

^{1/} These numbers are provided for illustrative purposes only.

^{2/} *Id.*

B. Recovery by Carriers of Their Contributions to the Portability Cost Fund

As carriers provide portability to other requesting carriers, they would draw from the fund an amount equal to the number of portability arrangements they provide times the incremental cost the Commission deems appropriate for recovery. The Commission should not regulate how new entrants and other non-dominant carriers gather their contribution to the portability cost fund. Rather, incumbent LECs should be allowed to treat their share of portability costs as exogenous for purposes of adjusting price caps. To the extent that portability costs are allocated to general end user services, such allocations should not be considered “avoided” costs when wholesale rates are set pursuant to Sections 251(c)(4) and 252(d)(3) of the 1996 Act.

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

**CERTIFICATE OF SERVICE
DOCKET NO. 950737-TP**

I hereby certify that on this 6th day of January 1997, copies of Post-Hearing Brief of MFS Communications Company, Inc. were served by first class mail, postage prepaid, on the following:

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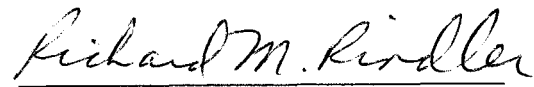
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