

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20054

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APR 10 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Unbundling of Local) RM-8614
Exchange Carrier Common)
Line Facilities)

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COMMENTS

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SUMMARY

MFS requests that the Commission commence a rulemaking to establish rules to provide expanded interconnection to "the common line element of interstate switched access service for use by competing state authorized providers of local exchange service." MFS also requests that the Commission adopt standards for state unbundled loop pricing and cost imputation. For the reasons set forth herein, no purpose would be served by the Commission commencing such a rulemaking at this time.

First, MFS builds its request on the assertion that the facility to subscribers' premises is a bottleneck facility. MFS attempts to persuade the Commission that alternatives to LEC provided facilities are nonexistent or impractical. The facts, however, are unresponsive. A variety of different entities are investing in facilities and technologies aimed at providing alternatives to LEC local exchange services. One merely has to open the newspaper on any given day to see that new partnerships and alliances are being formed for the purpose of offering local telephone service. The promise of wireless alternatives is evidenced by the \$ 7.8 billion in bids the Commission has received on broadband PCS licenses.

In any event, interconnection is not being denied. On the contrary, interstate interconnection, the type of interconnection MFS claims that it requires, is available

through special access tariffs such as BellSouth's. MFS claims that a special access local channel is inadequate, that it is "different" from an unbundled loop. MFS's arguments, however, are meritless. There is nothing in the way that BellSouth provides special access that precludes MFS from providing local exchange service where it is certified to do so.

Finally, the real subject matter of the MFS petition is intrastate local interconnection. Despite MFS's attempts to characterize the situation as interstate and portray a need for Commission guidance, the predominant interest and jurisdiction lies with the individual states, not with the FCC, because local exchange competition is purely an intrastate matter.

If the Commission wants to advance competition, then it should focus on regulatory reform and amend existing regulations to conform them to the new competitive paradigm. Access charge reform still awaits Commission action and Universal Service issues must be addressed. These matters need the Commission's immediate attention.

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COMMENTS

BellSouth Telecommunications, Inc. ("BellSouth") hereby submits the following Comments on the Petition for Rulemaking filed by MFS Communications Company, Inc. ("MFS").

I. INTRODUCTION

In its petition, MFS requests the Commission to commence a rulemaking proceeding for the purpose of establishing rules to provide expanded interconnection to "the common line element of interstate switched access service (that is, the 'local loop') for use by competing state authorized providers of local exchange service."¹ The Commission is also requested to adopt voluntary standards for state unbundled loop pricing and cost imputation.

Although MFS couches its petition as addressing "interstate" interconnection, the stated purpose of the petition is to have the Commission establish rules which in the view of MFS will "ensure that the multiple benefits of local exchange competition are made widely available to the

¹ Petition at 1.

public."² Despite MFS's attempt to characterize the situation as interstate and portray a need for Commission guidance, the thrust of the MFS petition is directed toward local competition. As such the Commission's interest is tangential at best. There can be little doubt the predominant interests lie with the state commissions.

Commission involvement at this point would be premature. First, MFS builds its arguments on the assertion that the facility to a subscriber's premises is an essential facility. MFS dismisses alternatives to LEC provided facilities as non-existent or impractical.³ The facts, however, are otherwise. A wide variety of entities are investing in facilities and technologies aimed at competing with LEC local exchange services and displacing LEC facilities, including the local loop. Considerable sums are being invested in new wireless technologies, in upgrading existing wireless systems and in upgrading and expanding cable systems. The significance here lies not only in the explosion of discrete alternatives to LEC provided services

² Id.

³ Even MFS's own network deployment would contradict their claim. MFS selects the customer locations that it connects directly to its network. Typically, MFS has chosen to direct its efforts toward business locations. The fact that MFS has not chosen to expand its network connections or, even if it does not have the resources to expand its network, does not transform the LEC network components, such as the loop, into an essential facility, particularly in light of the alternatives being deployed that can displace the LECs' services.

and facilities but also that participants from the full range of industry segments are partnering and forming sophisticated strategic alliances to compete on a head to head basis with wireline LECs.⁴

Next, this is not a circumstance where interconnection is being denied. Indeed, MFS acknowledges that as local competition is permitted in a state, state commissions consider and resolve local interconnection matters. With respect to interstate interconnection, the very type of interconnection MFS claims it requires, *i.e.*, a dedicated voice transmission path between a customer's premises and a central office, already is available. For example, BellSouth's interstate access tariff specifies that a local channel "provides the communications path between a customer-designated premises and the serving wire center of the premises."⁵ Just because MFS dislikes the price of the service does not diminish the fact that the interstate loop service exists and is available. The fact that MFS is obtaining certification to provide intrastate local services provides no reason or justification that it should receive special treatment relative to other interstate access customers and be able to obtain an interstate special access service on preferential terms.

⁴ See discussion at 7-9, *infra*.

⁵ BellSouth Telecommunications, Inc., Tariff F.C.C. No. 1, at Section 7.1.2(A), 7th Revised Page 7-4.

Interstate interconnection, however, is tangential at best to the real subject matter of MFS's petition, intrastate local interconnection. Thus, the predominant interests lie with the state commissions--and the state commissions ought to be afforded an unencumbered opportunity to address these original issues.

As MFS's petition makes clear, very few states have actually modified their regulatory frameworks to permit local exchange competition. While several states have the issue under consideration, it will nonetheless take some time for the states' to define the framework for local exchange competition. These frameworks will vary from state to state. In some instances, a necessary predicate will be legislation enacted by the state legislatures authorizing competition. It would certainly be presumptive to believe some federal standard could be determined in advance of the states through their regulatory commissions and where necessary their legislatures defining the intrastate regulatory paradigms.

It would be questionable public policy for the Commission to strike out alone through a rulemaking proceeding to circumscribe the states' ability to manage the introduction of intrastate competition. MFS has not shown why this Commission would be in a better position than the states to establish rules and resolve matters pertaining to

local competition.⁶ Each individual state commission has a clear understanding of the circumstances and public policy issues surrounding local competition. MFS has not shown that the processes used by the states to resolve intrastate interconnection issues are faulty or that Commission involvement at this time would improve the process or the outcome. Even if it was assumed that there was some need for the Commission to participate in these local matters, then a federal-state joint board would be the only approach that would assure adequate state participation.

Nevertheless the efficacy of a joint board proceeding at this time is suspect. Under the current statutory framework, the Communications Act reserves to the states the jurisdiction over the rates, charges and practices concerning intrastate communications. Thus, the terms, conditions and rates concerning intrastate interconnection services are a matter for the state commissions exclusively.

If the Commission wants to advance competition, then it should focus its resources on reforming regulation. Access charge reform still awaits Commission action. Universal Service issues must be addressed. Indeed, resolution of the

⁶ MFS attempts to entice the Commission into action by alluding to the Commission's pro-competitive policies such as expanded interconnection. What MFS overlooks is that even with expanded interconnection, the Commission's policy only reached to interstate access services. States remain free to determine whether they would follow the Commission or whether they would adopt their own approaches.

Universal Service matters could go a long way toward contributing to a satisfactory approach to interconnection pricing. The telecommunications industry and the consuming public can ill afford the Commission's diverting its scarce resources to conduct an unnecessary rulemaking.

II. A RULEMAKING PROCEEDING IS UNNECESSARY

MFS's petition presents a fundamentally local issue-- one that state commissions are in a better position to consider and resolve. As discussed further below, MFS fails to present any compelling reason for the Commission to involve itself with local interconnection matters. Indeed, rather than divert Commission resources to an area where its jurisdiction is limited, the Commission ought to focus its efforts on matters, such as access charge reform and universal service, where its leadership would most certainly foster competition.

A. MFS's Petition Is Built Upon The Incorrect Characterization of the Local Loop As A Bottleneck Facility

MFS attempts to portray the local loop as a bottleneck facility as justification for the Commission to take some form of action. It dismisses, as impractical, alternatives to LEC loops presented by wireless and cable TV companies. It ignores the hundreds of millions of dollars being invested to create new local networks. It maintains a blind eye toward the new partnerships and alliances that are developing for the purpose of offering telephone service.

Daily, the public is reminded of the expanding local competition. In February 1995, The Atlanta Journal/The Atlanta Constitution, reported on US West's acquisition of Wometco Cable Co., metro Atlanta's largest cable operator, and its plans to invest \$300 million in order to offer its 484,000 subscribers new video services and telephone services.⁷ More than just evidence that loop facilities can be economically replicated, it also shows that competitors are making investment decisions and business plans in advance of local exchange competition's being authorized.⁸

The US West entry into Atlanta is not an isolated example. In the Chicago area, several companies have begun competing with Ameritech. Teleport is testing local service using facilities owned by Tele-Communications Inc. Jones Intercable plans to test residential phone service and MCI has announced it would launch local phone service in the Chicago area in 1995.⁹

MCI's plans in Chicago are only part of a much larger plan to enter the local exchange business. MCI has announced that it will spend over \$2 billion over the next

⁷ Charles Haddad, No Longer Just A Phone Company, Atlanta Journal/Constitution, Feb. 5, 1995, at D-1.

⁸ The Telecommunications and Competition Development Act of 1995, SB 137, 1995 Session of the Georgia General Assembly, as passed both houses, March 17, 1995.

⁹ Jon Van, Phone Choices Line Up; Another Alternate Service Plans Test, Chicago Tribune, October 13, 1994, at N-1.

several years to set up local networks to bypass local phone companies in 20 major cities.¹⁰ As a complement to building its own network, MCI also is considering partnering with cable TV companies (who own wires to 60 percent of all homes) and building wireless networks.¹¹

New alliances are also shaping the future of competition. Recently Sprint, TCI, Cox and Comcast teamed up to form a joint venture that would package telephone service and cable offerings to create a single source provider of communications services. The partners would use cable facilities to connect to homes to provide local service.¹²

Not to be overlooked is wireless communications. Wireless provides a formidable competitive force in the local market. As a technology, it provides an alternative to LEC facilities and an alternate means of connecting to end user customers. The promise of wireless is readily evident in AT&T's acquisition of McCaw Cellular and the \$7.7 billion in high bids the Commission has received on broadband PCS licenses. After the Commission completes its auctions, there could be as many as eight wireless providers

¹⁰ James Kim and Del Jones, MCI to Build \$20 Billion Information Highway/ Move Would Bypass Local Phone Firms, USA Today, January 5, 1994, at 1B.

¹¹ Id.

¹² Sprint, TCI, COX, and COMCAST Team Up For 'Unprecedented' Alliance, Communications Daily, October 26, 1994, at 1.

in each market. Not only will these providers represent alternatives to LEC loop facilities but they will also present an opportunity for new strategic alliances.

Rather than establishing the LEC loop as a bottleneck, MFS's petition evidences that it is being left behind in the competitive marketplace. The telecommunications market is changing with a strong trend toward the development of a one-stop shopping provider for communications and entertainment. As such, many companies are positioning themselves to be that communications provider and to compete with the LECs. In so doing they have found their own way of reaching end-users without using LEC facilities.

B. Interconnection Is Being Provided

Whether or not the LEC local loop is a bottleneck is beside the point. Interconnection is being provided. As MFS acknowledges, when intrastate local exchange competition is authorized, the state commissions address the manner in which interconnection is to be provided.

Likewise, interstate interconnection is available. MFS describes the service to which it desires to interconnect as a dedicated voice transmission path that connects a customer's premises to a central office.¹³ That specific connection is available and is provided by BellSouth as an interstate special access local channel. Such a local channel can be used to carry both interstate and intrastate

¹³ See Petition at 5.

communications.

MFS attempts to make a case that an unbundled loop is different than a special access local channel. The first distinction MFS attempts to draw is that an unbundled loop is used to provide switched local exchange service while a special access local channel is not used for such purposes. MFS's functional difference is illusory. MFS overlooks the fact that the service being provided by the LEC is, from the LEC's perspective, a special access service. It is a private line dedicated to MFS's use. The subsequent use of that service by MFS does not alter the nature of the service provided by the LEC. For example, AT&T provides Megacom service. It uses special access to link its customers to its central office switch. If AT&T becomes authorized to provide local exchange service, the special access links that are now used for Megacom service could also be used to provide local exchange service. In such event, the LEC is still providing AT&T with a special access service. AT&T is using the LEC service to provide local and toll services and as to AT&T's services the line is a common line.

The same point can be illustrated by the following example. If a LEC leased a facility from another carrier or a private contractor to use in connection with local exchange service, the fact that the leased facility was used by the LEC as the common line in its service would not affect the status of the facility provided by the owner.

MFS's functional difference, then, is predicated on a confusion of the distinct services provided by different carriers in a multi-carrier environment. The established precedent would recognize that the classification of the LEC provided service is distinct from another carrier's use of that service. MFS would turn the precedent on its head and create an unmanageable and volatile situation. In effect, MFS would have the classification of the service a LEC provides change, not based on the offering of the LEC, but rather on the subsequent use of that service by the customer.

Next, MFS claims that the separations treatment of common lines and special access local channels is of regulatory import. While it is correct that the separations manual has different rules regarding the allocation of investment between the jurisdictions that pertain to private lines and common lines, the underlying separations investment per loop is identical regardless of whether the loop is a subscriber loop (i.e., common line) or a special access loop.

Furthermore, the assignment of 100 percent of the investment of a special access channel to the interstate jurisdiction favors MFS. An interstate special access channel is under the exclusive jurisdiction of the Commission. Thus, the reasonableness of the price of the service would only be subject to existing Commission rules.

The difficulty with this result, however, is that the Commission's rules and policies do not afford MFS any special considerations.¹⁴ Instead, MFS would be no different than any other access customer and that is a result that MFS does not want. MFS's petition is all too clear that it seeks to establish a special class--certified local exchange carriers.

MFS also claims that special access local channels are unacceptable because of the way such channels are provisioned. First, MFS assumes that the unbundled loop it desires would be provisioned differently than a special access local channel because LECs provision local exchange service differently than special access. Provisioning is not altered because the name of the service is changed. What must be borne in mind is that the circuit (from the customer's premises to the central office), no matter how it is defined from a service perspective, will have to be inventoried and identified for maintenance and operational

¹⁴ Indeed, as is evident, MFS seeks a price for interconnection that is no different than the LEC charges the end user. Any interconnection arrangement provided by the LEC should not have to be subsidized by the LEC, as is often the case for local exchange service. MFS's claim that unless the interconnection arrangement price is no higher than the price the LEC charges the end user for local exchange service an anticompetitive price squeeze would result is bogus. LECs are required to subsidize their local exchange services by state commissions but recover their total cost of providing service through rates of all the services that are offered. The fact that MFS too would have to recover its costs across the full range of telecommunications services it offers (such as access) would not place MFS at a competitive disadvantage.

considerations.¹⁵ For a dedicated circuit, the same systems used to provide special access would most readily be able to accommodate the unbundled loop.

Next, MFS argues that special access is unacceptable because there are different installation intervals for special access and local exchange service. With regard to a voice grade special access local channel, there is no discrepancy between the installation intervals for local exchange service and special access.¹⁶

MFS also claims that special access services include unwanted and unneeded features. One example is testing and monitoring functions. MFS claims that its switch would be capable of performing the same function and, therefore, there would be no need for the LEC to perform the same functions. MFS overlooks the dual responsibilities in a multi-carrier environment. As to the dedicated circuit provided to MFS, the LEC has the responsibility of

¹⁵ The LEC will still have the responsibility of trouble isolation and repairing the circuit. In order to perform these functions, the necessary information will have to be maintained in the LEC's systems. Dedicated circuits, i.e., special access circuits are handled differently than switched local exchange circuits. Tracking of local exchange circuits typically is maintained in switching centers. If switching is not provided on the unbundled loop, then the systems used for special access would likely be used, and thus, the treatment of an unbundled loop might well be no different than a special access circuit.

¹⁶ Any extended provisioning interval for voice grade special access would be for service using interoffice facilities and would reflect the necessary design and facility assignments associated with interoffice transport.

monitoring and maintaining that circuit. MFS cannot relieve the LEC of that responsibility. Indeed, even the Commission has recognized the principle that a carrier should be able to monitor and control its own facilities. Thus, in promulgating conditions for expanded interconnection, the Commission required the LECs' expanded interconnection services to be implemented in such a way that the interconnector retained monitoring and control functions of its circuits.¹⁷ Certainly, LECs ought to be afforded the same ability to retain control over their circuits and facilities as the Commission demands that LECs afford interconnectors.¹⁸

In any event, performance monitoring is generally only performed for high capacity digital transport services. Voice grade special access local channels are not usually monitored although some form of remote test access is typically provided.¹⁹

Another unwanted functionality that MFS claims is associated with special access circuits is line

¹⁷ See e.g., Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, 7 FCC Rcd 7369 (1992).

¹⁸ If the issue is one of duplication, then there is no need for MFS to duplicate the functions that are already provided by the LEC.

¹⁹ Remote test access is used to verify and isolate troubles. Without such test access, the cost to BellSouth to perform trouble verification and trouble isolation would increase dramatically because technicians would have to be dispatched to both the central office and the field.

conditioning. BellSouth provides voice grade special access local channels without conditioning. Indeed, conditioning is a separate, unbundled optional feature of voice grade special access. Moreover, the VG 1 technical specification package affords a customer the opportunity to obtain a bare bones special access local channel. There is simply nothing in the way that BellSouth provides special access that precludes MFS from providing local exchange service (where it is certified).²⁰

C. Any New Interconnection Arrangement For Local Exchange Service Is Primarily One of Intrastate Concern

Even assuming that the introduction of local exchange competition warrants the development of a distinct interconnection arrangement, the arrangement itself would primarily be one of intrastate concern. The substance of MFS's petition relates to the terms, conditions and charges

²⁰ MFS argues that to the extent that monitoring and line conditioning are included with a special access local channel, the arrangement constitutes an unlawful tying arrangement. Putting aside the valid purposes in the way special access is provisioned, bundling of line conditioning and monitoring does not constitute an unlawful tying arrangement. The reason for the antitrust laws' prohibition on certain tying arrangements is that they diminish competition in the market for the tied product. Here the tied product (if a separate product at all) would be line conditioning and monitoring. There is no separate market for line conditioning or monitoring. Accordingly, a tying arrangement involving line conditioning and monitoring as the tied product would not be unlawful under the antitrust laws. See, e.g., *Community Builders Inc. v. City of Phoenix*, 652 F.2d 823, 830 (9th Cir. 1981) (city's conditioning the issuance of a building permit upon payment of a water hookup fee is not an illegal tying arrangement because there is no "line of commerce" in the provision of water services.)

for the interconnection service.

The Communications Act provides that "nothing in this chapter shall be construed to apply or give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier...."²¹ The circumstance giving rise to MFS's petition is the advent of local exchange competition, a purely intrastate matter. The states have the jurisdiction to define the parameters of the interconnection arrangement that LECs must make available.

Thus, a state commission could determine that the interconnection arrangement should be made available at the same price as a voice grade special access local channel. Likewise the state could recognize the LEC's responsibility for the services it provides and approve an interconnection arrangement that permits a LEC to monitor its service and facilities.

There is no lawful exercise of jurisdiction by the Commission's under the current statute that can alter the state's authority to promulgate the rates, terms and conditions of the intrastate interconnection arrangement. This is particularly true here because the matter of local competition is exclusively within the jurisdiction of the state.

²¹ 47 U.S.C. § 152 (b).

There is simply no purpose that would be served by the Commission's commencing a rulemaking proceeding at this time. Not only are local interconnection arrangements matters of state jurisdiction, the substantial impact of such arrangements is on intrastate communications. The Commission is hardly in a position to understand the circumstances prevailing in each state. Therefore, the Commission can, at best, be of limited assistance to the states as they address local competition issues. Certainly, the Commission should not interfere with a state commission's consideration of these intrastate matters. The rulemaking MFS requests would seem to have little consequence other than obstructing the states in carrying out their regulatory responsibilities.

It is even more clear that a rulemaking to establish voluntary pricing and costing standards is inappropriate. MFS does not dispute that the Commission's jurisdiction cannot reach charges for intrastate interconnection services. Contrary to MFS's assertion, voluntary standards do not serve any purpose nor would they relieve the state commissions of carrying out their statutory responsibilities in regulating intrastate services. Indeed, for the Commission to proceed as suggested by MFS would represent an unprecedented federal intrusion on regulatory prerogatives

explicitly reserved to the states.²²

D. The Commission Should Focus On Resolving Issues Within Its Jurisdiction That Would Have A Positive Effect On Competition

The Commission should not conclude that there is nothing for it to do. There are many outstanding issues that deserve prompt Commission attention and, if received, would facilitate the competitive environment. Still awaiting Commission action is a USTA petition for rulemaking that called for a comprehensive reform of the access charge rules.²³ Without question, these rules are in dire need of change. The marketplace changes that have occurred since their adoption render these rules virtually obsolete. By commencing a rulemaking to reform these rules, the Commission can also address carrier common line charges and alternative common line recovery mechanisms, a specific request of MFS.

A companion matter that should be addressed by the Commission is the question of universal service. Except for the high cost fund, universal service requirements have been met by the LECs through the contribution they receive in the

²² MFS references two examples of the Commission's issuing guidelines: one relating to technical and operating requirements for cable television (circa 1985) and a recent ruling relating to the administration of the North American Numbering Plan. Neither of these instances compares to interference with intrastate ratemaking which is what MFS is suggesting here.

²³ Reform of the Interstate Access Charge Rules, RM 8356, USTA Petition, filed September 17, 1993.

rates of their non-basic exchange services (including interstate services). In a sole source environment, this form of regulatory/public interest price setting was workable. With the advent of competition, these indirect support flows are not sustainable. Accordingly, it is imperative that universal service be addressed in a comprehensive manner and a competitively neutral support mechanism be established.

These matters need the Commission's immediate attention. If the Commission desires to further its policies of promoting competition, it cannot put resolution of these critical issues off until some unspecified time in the future.

III. CONCLUSION

The rapid change taking place in the telecommunications marketplace places great demands on both the state and federal commissions. Competitive change requires regulatory change. To meet the challenges that competition presents, regulators must stay focused.

MFS's petition would divert the Commission from accomplishing much needed access and regulatory reforms. These are matters that only this Commission can achieve. In contrast, the issues presented in MFS's petition are predominantly intrastate in nature and relate to issues that state commissions are better informed to resolve.

Administrative efficiency is served when each agency addresses the issues for which it is the expert. By so doing, the goal of advancing competition would best be served.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this 10TH day of April, 1995 served all parties to this action with a copy of the foregoing COMMENTS by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties listed below.

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