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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

VIA COURIER

William F. Caton, Secretary
Federal Communications Commission
1919 M Street
Washington, D.C. 20554

Re: Notice of Ex Parte Contact by MFS Communications Company, Inc.,
in CC Docket Nos. 91-141, 93-162 & 94-93

Dear Mr. Caton:

In accordance with §§1.1206(a)(2) of the Commission's Rules, I am filing this letter as notice of an ex parte communication, the attached paper titled "Determining the Jurisdiction for Physical Collocation Accomodations," sent to Paul D'Ari.

If you have any questions or need additional information, please call me at 424-7872.

Sincerely,


Mark Sievers

Enclosures

cc: Regina Keeney Paul D'Ari
James Schlichtling Claudia Fox
Richard Welch ITS
Robert McCausland

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FOR ABUSE

Determining the Jurisdiction for Physical Collocation Accommodations

MFS Communications, Inc.

Two approaches are commonly used to determine the jurisdiction of telecommunications facilities or traffic under traditional practices. First, under the 10% rule,¹ a special access circuit is considered interstate if 10% or more of the traffic carried over that circuit is interstate in nature. Second, for switched access traffic, a Percentage Interstate Usage ("PIU") factor is used to allocate minutes between interstate and intrastate categories. For traffic that originates on Feature Group D or Feature Group C, the local exchange carrier can determine the jurisdiction, and thus, often develops a PIU using the traffic data captured by its switch. For terminating switched access traffic, a local exchange carrier historically could not determine the jurisdiction, so it must rely on a PIU filed by interexchange carriers to assign jurisdiction to terminating minutes.

Under physical collocation, an interconnector collocates its equipment in the space and uses the accommodations provided by a local exchange carrier. Physical collocation accommodations -- space, electrical power, power equipment, cabling equipment, etc. -- are used for both interstate and intrastate traffic and can be used for both special and switched access traffic. Allocating such accommodations between jurisdictions is obviously an artificial exercise since, for example, there is not an intrastate portion of the collocation space or cage that is exclusively for intrastate traffic. However, the allocation is economically meaningful as there is often a significant difference between interstate and intrastate charges for various elements of collocation accommodations.

In an ideal world, there would be no differences between interstate and intrastate collocation charges, and thus, no need to "jurisdictionalize" collocation accommodations. After all, a collocation cage costs the same whether it surrounds equipment that carries interstate or intrastate telecommunications traffic. There ought to be one price for such accommodations. In the real world, however, prices may differ because state and federal regulators differ in the allowed overhead loadings, or simply because local exchange carriers choose to charge higher prices in one jurisdiction and such charges are not challenged or rejected.

Differences between interstate and intrastate collocation tariffs are not limited to prices. In some instances, for example, state tariffs may allow firms greater flexibility in obtaining collocation space than do interstate tariffs. Because the Telecommunications Act is intended to promote competition in all market segments, if the Commission adopts a single set of tariffs for physical collocation it ought to create a tariff that selects the most liberal terms from state and federal tariffs. For example, if an interstate tariff allows a collocater a maximum of 300 square feet for collocation, but a state tariff allows a collocater to have a maximum of 500 square feet, then the state terms should be retained since the interstate terms would restrict competition.

¹

Technically, the jurisdictional rules are not rules that apply to all local telephone companies, but requirements adopted by the Commission in dockets that responded to challenges to access tariffs filed by local exchange carriers.

IMPACT OF THE TELECOMMUNICATIONS ACT

The price of physical collocation for interconnection or access to unbundled network elements must be "just, reasonable and nondiscriminatory" under the Telecommunications Act.² The Telecommunications Act provides explicit guidance for prices of interconnection and unbundled network elements offered by incumbent telephone companies. Section 252(d)(1) of the Telecommunications Act requires that "just and reasonable" interconnection and unbundled network element rates:

- "(A) shall be --
- (i) based on the cost (determined without reference to a rate-of-return or rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and
 - (ii) nondiscriminatory, and
- (B) may include a reasonable profit."

Thus, because the distinctions between interstate and intrastate charges for physical collocation are based on recovery or consideration of interstate and intrastate revenue requirements, tariffs that distinguish between interstate and intrastate physical collocation and charge different interstate and intrastate rates for identical services may violate of the provisions of the Telecommunications Act quoted above.

Rather, the Telecommunications Act requires that "just and reasonable" rates be based on the cost of providing the interconnection or network element (and physical collocation elements could be considered either interconnection or unbundled network elements) without reference to revenue requirements. Also, the Telecommunications Act does not make provisions for interstate and intrastate interconnection and unbundled network charges.

The Telecommunications Act also requires that "just and reasonable" rates shall be nondiscriminatory. If the local exchange carrier uses similar accommodations for its services and equipment, it would be discriminatory for the carrier to charge exorbitant above-cost rates to physical collocators while facing just the economic costs of accommodating its own equipment. It would also be discriminatory to charge one interconnector who provides interstate services a different collocation price than another interconnector who provides predominately intrastate services.

The Telecommunications Act also provides that "just and reasonable" rates may include a reasonable profit. Economic cost calculations, such as long run incremental cost calculations, typically include a return to the capital used to provide the service. Thus, such economic cost estimates already include a reasonable profit, so any additional profits, like overhead loadings, would be redundant and be well beyond what can be considered a reasonable profit. Said differently, traditional approaches that develop prices as economic costs plus an overhead loading violate this provision of the Telecommunications Act.

² 47 U.S.C. §251(c)(6).

One could argue that Section 252(d)(1) applies only to interconnection and unbundled network elements and not to physical collocation. Without physical collocation, however, competitors would not be able to interconnect their equipment in a manner that allows unbundled access to incumbent local exchange carriers' network elements. Therefore, physical collocation is, by definition, a form of unbundled network access. Moreover, the purpose of physical collocation is to interconnect with a local exchange carrier's network or to gain access to unbundled network elements. All of the functionalities of physical collocation can be viewed as interconnection services and/or unbundled network elements. Also, the pricing standards for interconnection, unbundled network elements and physical collocation are identical -- "just, reasonable and nondiscriminatory." It would be a bizarre reading of the Telecommunications Act to interpret "just, reasonable and nondiscriminatory" differently for physical collocation than for interconnection and other unbundled network elements.

As a practical matter, determining the costs of physical collocation elements can build from current physical collocation charges. Certainly, there are no physical collocation charges that are below costs, so current charges can form a price ceiling. For example, if space is presently provided for \$1 a square foot, cost-based space charges cannot be more than \$1 a square foot. Similarly, if intrastate space charges are \$1 a square foot but interstate space charges are \$2 a square foot, the intrastate space charges should be set as the price ceiling unless there is proof that such charges are below costs.

Incremental cost is the appropriate standard to use in developing the costs of physical collocation. Incremental costs are the additional costs imposed on the local exchange carrier associated with offering physical collocation. Incremental costs are consistent with the Telecommunications Act requirements that "just and reasonable" rates be based on the cost of interconnection or unbundled network elements. By definition, setting prices at incremental costs allows incumbent local exchange carriers to recover the additional costs they incur by virtue of offering physical collocation.

Charges for space, which are traditionally set by local exchange carriers based on area real estate market rates for space rather than costs, have incremental costs of zero in instances where the local exchange carrier does not have to physically expand its central office to accommodate collocators. A carrier that has vacant, unused space in its central office incurs no additional building costs when it makes that space available to collocators, although conditioning expenses incurred by the incumbent local exchange carrier are legitimate incremental costs associated with physical collocation. Likewise, charges for power would include only those additional costs incurred by local exchange carriers in adding facilities and providing additional power to collocators given the incumbent carrier's existing power demands and usage.

JURISDICTIONAL OPTIONS

In developing a methodology for jurisdictionalizing physical collocation, the Commission has two options:

1. **Require Parity between Interstate and Intrastate Charges.** Since physical collocation is a requirement of the Telecommunications Act, and the pricing standard is explicitly set out in the Act, then arguably the States cannot set different intrastate charges, terms and conditions. Thus, as described below, the Commission could require one set of cost-based, nondiscriminatory charges for physical collocation equipment.
2. **Develop a Master Factor.** Because physical collocation accommodations are used for both special and switched traffic, it may be appropriate to develop a Master Factor to jurisdictionalize the accommodations. Such an approach, described in detail below, could use a combination of the switched access PIU approach and the special access 10% rule. The jurisdiction of the equipment would be individually determined and aggregated into a Master Factor. Then, the 10% rule would be applied to the Master Factor, so that if the Master Factor was 10% or greater then the collocation accommodations would be considered interstate.

However, both interstate and intrastate charges for collocation accommodations would have to comply with the standards described in the Telecommunications Act. Ideally, the Commission could determine the total costs of the accommodations and jurisdictional recovery would be determined by the application of the 10% rule to those total costs. It would be inappropriate, however, for the Commission to determine one set of collocation costs and state commissions to determine a separate set of collocation costs to be used in determining interstate and intrastate rates.

PARITY

To achieve parity between interstate and intrastate physical collocation, the Commission's physical collocation order should reflect the following:

- ▶ Physical collocation is a form of interconnection or unbundled network access. Pursuant to the requirements of the Telecommunications Act, the price of physical collocation should be cost-based where such costs are not determined by reference to revenue requirements or other rate base methodologies.
- ▶ Because the Telecommunications Act requires prices that are not based on revenue requirements, it is inappropriate to maintain separate interstate and intrastate prices for physical collocation that are based on interstate and intrastate revenue requirements. Incumbent local exchange carriers should have a single physical collocation tariff or identical interstate and intrastate collocation tariffs.

- ▶ Incumbent local exchange carriers should develop prices based on the additional or incremental costs of providing collocation accommodations to interconnectors, and file tariffs that reflect such incremental costs. To the extent that such incremental costs already include a return to capital, they should not include overhead loadings as that would exceed the "reasonable profits" authorized by the Telecommunications Act.
- ▶ Recognizing that collocation has occurred under both interstate and intrastate tariffs, to prevent dislocation of collocation, incumbent local exchange carrier tariffs should reflect the most favorable collocation terms. For example, if a state collocation tariff allows collocators a maximum of 200 square feet but the interstate tariff allows a maximum of 100 square feet, the terms of the state collocation tariff should be incorporated in the new collocation tariff.

MASTER FACTOR DEVELOPMENT

One approach for determining the jurisdiction of physical collocation at each collocation site would involve jurisdictional computations for the services routed through the transmission equipment (e.g., OC3 equipment) since that equipment is the common equipment used for all services provided through the space (even the central office ("CO") collocation IDLCs cross connect to transmission equipment). The aggregate percentage or Master Factor would be developed from the individual equipment factors. The traditional 10% rule would be applied to the Master Factor to determine whether the entire set of infrastructure items for the CO collocation site (i.e., space, power, internal CO conduit/racking, etc.) would be billed from the state or interstate tariff.

For transmission equipment only, this approach would analyze each piece of transmission equipment in the CO space. It would determine the total combined PIU for the special access cross-connects provided through that equipment, the combined PIU for all switched access cross-connects (in a manner consistent with PIU determination for FGD entrance facilities), and the total number of cross connects used for IDLC or other local co-carrier equipment in the space. In order to perform such a calculation, all of these would have to be converted to common elements, such as DS1 cross-connect equivalents.

The Master factor for transmission equipment would be calculated as follows:

#1 Determine interstate DS-1 equivalent cross-connect total =
 $(a \times b) + (c \times (d/e))$

#2 Determine intrastate DS-1 equivalent cross-connect total =
 $(a - (a \times b)) + (c - (c \times (d/e))) + f$

#3 Determine the Master factor = #1 + #2

#4 Apply the 10% rule to the Master factor and bill all infrastructure and accommodation items accordingly
 if #3 \geq 10% then interstate tariffs apply, else intrastate tariffs apply

where

- a = Total special access DS-1 equivalents
- b = Average PIU for all special access DS-1 equivalent cross-connects
- c = Total switched access (Feature groups) DS-1 equivalents
- d = Total interstate minutes of use for recent month
- e = Total minutes of use for the same recent month
- f = Total DS-1 equivalent cross-connects for local dialtone services

For the sake of simplicity, local dialtone services cross-connects are considered exclusively intrastate in the above formula. The formula above can and should be modified where appropriate to accommodate interstate local traffic.