

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

MAY - 7 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Federal-State Joint Board on) CC Docket No. 96-45
Universal Service)

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**REPLY COMMENTS OF
MFS COMMUNICATIONS COMPANY, INC.**

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MFS Communications Company, Inc. ("MFS"), by its undersigned counsel and pursuant to Section 1.415 of the Commission's rules, submits these reply comments in response to the comments filed by others in the above captioned proceeding.¹

INTRODUCTION AND SUMMARY

There is widespread agreement on most of the overarching goals and principles of universal service support. However, as described below, comments on the general goals and principles of universal service funding conflicted with MFS's position in two major areas. First, some incumbent service providers advocated policies that focus on guaranteeing their revenues and earnings in a competitive environment or basing universal service funding on the incumbent's actual costs rather than the costs of the most efficient market entrant. Second, some commentators advocated that NECA administer the universal service fund rather than a neutral third party administrator. MFS believes that universal service funding should not be a mechanism to guarantee the incumbent provider's revenues or earnings. MFS also urges the Commission and Joint Board to appoint a single national administrator that does not have a

¹ *In the Matter of Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking and Order Establishing Joint Board. CC Docket 96-45, FCC 96-93 (released March 8, 1996) ("Notice").

competitive interest in who pays or who receives universal service funding; NECA would not be such a disinterested administrator.

In addition, there was a major divergence among commentors was between those commentors who urged the Commission to narrowly define universal service and those who described the universal need to enable economical high-speed, broadband access to advanced services. As described below, MFS believes that the Commission should promote the deployment of economical high-speed, broadband access in two ways: (1) by requiring that the same advanced network standards that apply to rural telephone companies (at least 1Mb/second transmission speeds) apply to all local telephone companies; and, (2) by augmenting its core universal service components with a requirement that local exchange carriers unbundle local loops in a manner that allows users and competitors to configure such loops for high-speed, broadband access. Specifically, if local loops were unbundled to provide end-to-end metallic connections without telephone company electronics, then incumbents, customers or competitors could add the electronics appropriate for ISDN, ADSL or HDSL to make available economical high-speed, broadband access. MFS believes such unbundling will allow users to derive high-speed, broadband access without adding to the burden of universal service. Further, it will be consistent with the network policies and requirements already mandated by Congress and incorporated in at least 30 state telecommunications modernization plans for rural telephone carriers; it will meet the needs identified by commentors in this docket for high-speed, broadband access; and, it will be consistent with directives of the Telecommunications Act to encourage the deployment of advanced telecommunications services for all citizens.

I. THERE IS WIDESPREAD AGREEMENT ON MOST OF THE OVERARCHING GOALS AND PRINCIPLES OF UNIVERSAL SERVICE SUPPORT

A. Competition will Promote Universal Service

In its comments, MFS observed that competition and market forces will best promote universal service by creating powerful economic incentives for competitors to reduce prices, operate in a cost-efficient manner, and deploy valuable services that will encourage customers to subscribe to telephone service. Many parties also observed that competition will preserve and advance universal service and urged the Commission and Joint Board to rely on competition to the greatest extent possible.² The Commission and Joint Board should fully embrace competition as a key mechanism for advancing universal service.

B. Universal Service Funding, if any, Should be Narrowly Targeted and Should not be Used to Guarantee Incumbent Revenues and Earnings

In its comments, MFS argued that universal service support, if any, should be narrowly targeted to low income customers (urban or rural) who otherwise could not afford telephone service and to limited number of companies serving high-cost areas. MFS argued that universal service support should not be designed to maintain an incumbent carrier's revenues or earnings, nor should support be based on or guaranteed to recover the incumbent's actual costs. MFS suggested that universal service support for high-cost carriers should be based on estimates of or a proxy for the cost of service to high-cost areas (*i.e.*, the incremental costs of a hypothetical firm using the most efficient technology). Specifically, MFS suggested that universal service support for high-cost carriers be no more than the area's proxy costs minus

² See, *e.g.*, Air Touch Communications, Inc. Comments at pp. 10-13; BellSouth Comments at pp. 10-16; California Department of Consumer Affairs Comments at pg. 22; State of California and California Public Utilities Commission Comments at pg. 3; Compuserve Inc. Comments at pp. 4-6; Tele-Communications, Inc. Comments at pp. 2-4; US West Comments at pg. 3 and, Washington Utilities and Transportation Commission Comments at pg. 2.

130% of the national average proxy costs. MFS also suggested that the Commission disallow universal service assistance to high-cost carriers where the average household income was greater than 130% of the national average; cap assistance at no greater than the current levels generated by universal service support mechanisms; and, maintain low income assistance programs (Lifeline and Link Up). In contrast with other commentors,³ MFS does not recommend that the Commission establish a national benchmark local service price; universal service support, if any, should be based on customer income and an independent evaluation of the cost of all basic services available in high-cost service areas.

Many of the incumbent local telephone companies⁴ and the consultants who represent incumbent companies⁵ recommended universal service policies designed to maintain an incumbent provider's revenues or earnings. By and large, their proposals were not focused on assuring affordable telephone service for targeted customers based on any sort of customer means assessment. Perhaps more than any other commentor, Southwestern Bell was the champion of policies aimed at guaranteeing an incumbent's revenues and earnings in a competitive environment. While it nominally supported the "elimination of regulatory mandates that prevent market forces from providing the full benefits of competition to consumers,"⁶ its proposals were entirely focused on using universal service and regulation as mechanisms to guarantee its revenues and earnings. It proposed revenue neutral rate rebalancing as the central element of its universal service plan, and defined the costs of providing universal service

³ See, e.g., AT&T Comments at Appendix A; MCI Comments at pp. 3-4; and, Sprint Comments at pp. 4-9.

⁴ BellSouth Comments at pp. 36-38 & Attachment 1; Bell Atlantic Comments at pp. 10-11; Pacific Telesis Comments at pp. 17-19; and, USTA Comments at pp. 17-18

⁵ Fred Williamson & Associates Comments at pp. 1-13; Frederick and Warinner Comments at pg. 2; and, GVNW Inc./Management Comments at pg. 13.

⁶ Southwestern Bell Comments at pg. 2.

as the incumbent's shortfall between its revenues and costs associated with providing the bundle of services considered part of universal service.⁷ Like other incumbent local exchange carriers, Southwestern Bell opposed the use of a benchmark or proxy cost model because such models do not match (and hence, might not recover) its embedded costs.⁸ It also advocated the elimination of the enhanced service provider access charge exemption and proposed creating a federal funding mechanism to allow it to accelerate recovery of "underdepreciated" assets.⁹ While these issues may be relevant to assuring Southwestern Bell's revenues and earnings, they have little, if any, relationship to customer needs or assuring affordable service for low income customers or high-cost carriers.

In a competitive environment, firms' revenues and earnings are not guaranteed as implied by Southwestern Bell's comments. Competitive market prices are not guaranteed to recover the costs of any particular firm, but will equilibrate at a level to cover at least the incremental costs of the most efficient market entrant. In a competitive environment, if a firm cannot match the prices of the most efficient market entrant, it may not recover its costs. With the passage of the Telecommunications Act, Congress has clearly indicated that the nation's overarching telecommunications policy is "to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."¹⁰ Self-serving policies designed to guarantee

⁷ Southwestern Bell Comments at pp. 3, 13-14.

⁸ Southwestern Bell Comments at pp. 14-16.

⁹ Southwestern Bell Comments at pp. 21-25. Arguably, Southwestern Bell's proposals are outside the scope of this proceeding. As the Commission observed in its Notice, access charge reform issues, like the issues raised by Southwestern Bell in this docket, will be considered in the access reform docket.

incumbent firm revenues and earnings, such as the ones advocated by Southwestern Bell and other incumbent local telephone companies, are adverse to that policy, and should be rejected.

C. Universal Service Funds Should be Made Available to any Carrier Serving Qualified Recipients Regardless of Technology or Service Areas

In its comments, MFS advocated that universal service funds be provided to low income customers as a credit they can apply to whatever telecommunications service or provider the customer chooses. Said differently, universal service support should follow the customer and not the carrier. The Telecommunications Act establishes clear statutory guidelines regarding which carriers are eligible to receive universal service support funds.¹¹ There is nothing in the Act that limits eligibility to the incumbent carrier or to carriers that use any particular technology or cover any specific service area.¹² MFS agrees with the commentators who argued that eligibility for universal service support should be technology independent.¹³ For example, MCI, one of the authors of the benchmark costing model discussed in this proceeding, recommended that the model be modified to account for the most efficient technology.¹⁴ Similarly, Winstar, a wireless local service provider, argued that in many instances wireless technologies may be the most efficient technology for providing local service and that such efficient technologies should be used as the basis for universal service support rather than the incumbent provider's costs and technologies.¹⁵ This is a particularly critical point. In any given area only the costs of the

¹¹ 47 U.S.C. §214(e).

¹² See, for example, NYNEX Comments at pg. 12, arguing inappropriately that only wireline carriers can provide core services supported by universal service funds.

¹³ Alliance for Public Technology Comments at pp. 13-14; Apple Computer, Inc. at pg. 3; State of California and California Public Utilities Commission Comments at pp. 10-12; Citizens for a Sound Economy Comments at pp. 6-7; Council on Competitiveness Comments at pg. 4; and LDDS WorldCom Comments at pp. 4-7.

¹⁴ MCI Comments at pg. 11

¹⁵ Winstar Comments at pp 8-10.

lowest cost, most efficient provider should be used to compute any universal service subsidy.

Some commentators also observed that universal service subsidies should be available only to carriers that agree to serve an entire service area citing the requirements of the Telecommunications Act.¹⁶ The Act, however, does not define “service areas” as either existing study areas (an entire state) or the incumbent provider’s certificated area, but it leaves the definition up to commissions. Obviously, it would be anticompetitive to define the relevant study area to mimic the service area of the incumbent and use receipt of universal service subsidies to force new entrants serve the same territory. A low income customer or a customer that lives in a high cost area should be entitled to use her universal service credits to obtain service from whatever carrier provides service to the customer. It would not be sensible policy to prohibit customers from applying credits to carriers that do not mirror the incumbent’s service territory.

D. Universal Service Support Should be Competitively Neutral Manner and Administered by a National Independent Entity

In its comments, MFS argued that collection and distribution of universal service funds should be competitively neutral -- no firm should reap a competitive advantage because it serves customers who receive universal service support nor be placed at a competitive disadvantage because it contributes to a universal service fund. Administration by an independent third party is essential to competitive neutrality. Obviously, competitive neutrality cannot be assured if the universal service fund administrator has a competitive interest in who pays and receives funds.

NECA volunteered to administer the universal service fund,¹⁷ and several commentators

¹⁶ 47 U.S.C. §214(e)(1).

¹⁷ NECA Comments at pp. 19-23.

(mostly incumbent local exchange carriers) supported NECA as the administrator of the fund.¹⁸ Since its membership consists only of incumbent local telephone companies, NECA is obviously not a disinterested party. The universal service fund will likely be funded by incumbent local telephone carriers as well as other telecommunications providers. If NECA became the fund administrator, it would have a significant conflict of interest administering such a fund and acting as the advocate of local exchange carriers' interests, as it did in this case, and as it does in filing tariffs on behalf on many local exchange carriers. For example, in this proceeding, NECA opposed capping universal service funds even though those who presently provide universal service support (and who are not NECA members) unanimously support such caps or support reducing traditional high-cost support.¹⁹ Given that basic conflict in positions and interests, NECA cannot credibly claim to be an independent entity capable of impartial administration of a federal universal service fund. The Iowa Utilities Board and Sprint suggested that if NECA were the fund administrator, it should be required to expand its membership to include all telecommunications carriers and not just local exchange carriers.²⁰

Some parties suggested that state commissions administer the collection and distribution of universal service funds.²¹ State commissions will assume new and complex roles under many provisions of the Act, so it is questionable whether they will have the additional resources required to administer the assessment, collection and distribution of universal service funds given their current and future duties. In some instances, state commissions will have

¹⁸ See, e.g., Fred Williamson & Associates Comments at pp. 18-19; Frederick & Warinner Comments at pg. 4; and, Southwestern Bell Telephone Comments at pg. 20

¹⁹ NECA Comments at pg. 13

²⁰ Iowa Utilities Board Comments at pg. 6; and Sprint Comments at pp. 23-24.

²¹ See, e.g., Bell Atlantic Comments at pg. 10; State of California and California Public Utilities Commission Comments at pg. 21; Oregon Public Utility Commission Comments at pp. 8-9; Time Warner Comments at pp. 23-25; and, USTA Comments at pg. 25

mixed incentives, as well. In Texas, for example, state law requires that intrastate rates or the intrastate universal service fund automatically increase if there is any decrease in federal Universal Service Fund revenues.²² Such state laws create political pressure on state commissions to maximize federal support payments and obviously create a conflict of interest if the state commission were required to administer a universal service fund. Also, as MFS pointed out in its initial comments, some state commissions may not have jurisdiction over entities that might be required to contribute to a universal service fund (e.g., the South Dakota commission may not be able to compel Metromedia to contribute to a fund that supports universal service in South Dakota unless Metromedia operates in South Dakota). In any event, MFS agrees that one, national administrator should cover all jurisdictions. Thus, MFS generally supports Ameritech's suggestion that a large independent accounting firm be used to administer the universal service fund²³ and other commentators who suggested that a non-governmental, national independent entity administer the fund.²⁴

II. UNIVERSAL SERVICE COMPONENTS MUST BE UNBUNDLED TO PROMOTE ACCESS TO THE ADVANCED SERVICES DEMANDED BY CUSTOMERS, SCHOOLS, LIBRARIES AND RURAL HEALTH CARE PROVIDERS

The comments displayed a schism between those who asserted that universal service

²² The Texas Public Utility Regulatory Act of 1995 (PURA) requires the Texas Commission to increase either the intrastate universal service fund or local service rates to "replace the reasonably projected change in revenues caused by" any reductions in the federal universal service fund. TEX. STAT. ANN. art. 1446c §3.608(b)(3) (Vernon 1995). Thus, the Texas PURA is blatantly designed to guarantee the incumbent local provider's revenues.

²³ Ameritech Comments at pg. 24.

²⁴ America's Carriers Telecommunications Association Comments at pg. 13; AT&T Comments at pg. 22; Frontier Corporation Comments at pp. 9-10; LDDS WorldCom Comments at pp. 19-20; Illinois Commerce Commission Comments at pp. 10-11; Iowa Communications Network Comments at pg. 3; Maine Public Utilities Commission *et al.* Comments at pg. 3; Missouri Public Service Commission Comments at pg. 21; Pennsylvania Public Utility Commission Comments at pp. 24-25; and, Public Utility Commission of Ohio Comments at pg. 17.

should be narrowly defined²⁵ and those who discussed the need for high-speed, broadband access to advanced communications services.²⁶ Generally, some parties argued that schools, libraries and rural health care providers needed economical high-speed, broadband access to advanced services, and that such services should be part of universal service.²⁷ Others argued that it is premature to include high-speed, broadband access as part of universal service, or that universal service would be unduly burdened by including such services.²⁸

The Commission and Joint Board can reconcile these seemingly divergent views and promote the deployment of advanced communications services by augmenting the core components of universal service with a requirement that the capabilities of the incumbent's local loop be provided on an unbundled basis in a manner that allows users the ability to derive high-speed, broadband access to advanced services. Specifically, local loops should be unbundled to provide users with access to two and four wire end-to-end metallic loops that are free of telephone company electronics that would inhibit configuring such loops for high-speed, broadband services, such as ISDN, ADSL or HDSL.²⁹ As explained below, unbundling the local loop should not add to the universal service subsidy requirements as the cost, if any, would be treated as part of a carrier's general costs of a network upgrade. Unbundling the local loop is also entirely consistent the unbundling requirements of the Telecommunications Act.

²⁵ See, e.g., Notice at ¶ 16 for a list of the core capabilities that many commentors focused on.

²⁶ See, e.g., American Library Association Comments at Appendix I which presents a detailed summary of the costs of Internet access for libraries.

²⁷ See, e.g., American Library Association Comments

²⁸ See, e.g., Ad Hoc Telecommunications User Committee Comments at pp. 4-5; America's Carriers Telecommunications Association Comments at pg. 6; and BellSouth Comments at pp. 23-24.

²⁹ ADSL (Asymmetric Digital Subscriber Line) is a technology that uses local loops to provide video or data services by transmitting digital information from the network to the user at rates from 1.5Mb to 6Mb and transmitting from the user to the network at 576Kb per second. HDSL (High-Bit-Rate Digital Subscriber Line) is a new technology that allows DS1 level transmission on two copper wire pairs or a half of a DS1 transmission capability on a single copper wire pair.

Incumbent local exchange carriers could use the same functionality to provide high-speed, broadband services, and should be required to make the same functionality available on an unbundled basis as required by the Telecommunications Act.³⁰ MFS further recommends that the unbundled provision of local loops capable of being used to derive high-speed, broadband access should be a prerequisite for receipt of universal service funds.

A. The Core Components of Universal Service are Generally Well Defined

Like many commentors,³¹ MFS supported the Commission's recommendation that universal service include five core components: (1) access to the public switched network with the ability to place and receive voice-grade calls; (2) touch-tone service; (3) single party service; (4) access to emergency services (911); and, (5) access to operator services.³² MFS suggested that universal service subsidies be determined based on the proxy costs of these core services. But, as MFS pointed out in its comments, subsidized provision of traditional residential dial-tone service will do little to promote access to advanced services by libraries, schools, rural health care providers or any other users since a voice grade line is only marginally acceptable for multimedia or Internet access. As described below, the Commission can best promote the deployment of economical high-speed, broadband services by augmenting its core universal service components with a local loop unbundling requirement.

Most of the core services comprising universal service are well defined. However, the specific network configuration of voice grade access to the public switched network is not.

³⁰ 47 U.S.C. §251(c)(3).

³¹ See, e.g., America's Carriers Telecommunications Association Comments at pg. 5; Ameritech Comments at pp. 6-8; American Foundation for the Blind Comments at pg. 4; BellSouth Comments at pp. 27-30; GTE Comments at pg. 2; GVNW Inc./Management at pg. 8; Illinois Commerce Commission Comments at pg. 3; Ohio Consumer Counsel Comments at pp. 11-12; and USTA Comments at pp. 13-14.

³² Notice at ¶16.

Voice grade access to the public switched network typically consists of a copper wire connection between the customer and whatever facilities (more copper, concentrators, electronics, fiber cable) the telephone company chooses to connect the customer with the remainder of the network. As described below, MFS believes that the components of voice-grade access to the public switched network should be made available to users and competitors on an unbundled basis.

B. The Local Loop Should be Unbundled to Provide Users with the Ability to Derive High-Speed, Broadband Access to Advanced Services

Many commentators observed that economical access to high-speed, broadband transmission capabilities (such as ISDN, T1 connections, video transmission capabilities, high-speed Internet connections, etc.) and less exotic capabilities for Group III facsimile and modern computer modems are essential to provide schools, libraries and rural health care providers

with adequate access to advanced communications services.³³ Voice grade local loops provide an inadequate basis for addressing such needs.

The Commission and Joint Board should take two actions to promote the deployment of high-speed access to advanced services. First, they should require that all local exchange carriers meet the federal network standards required of rural telecommunications carriers. As an eligibility requirement for federal rural utility loans, Congress and 30 state telecommunications modernization plans already impose more stringent network standards on rural telephone companies that should be applied to all telecommunications carriers that receive universal service funding. Second, they should require that incumbent local exchange carriers unbundle their local loops to allow users to derive high-speed, broadband access using end-to-end metallic connections. Simply by requiring that incumbent local exchange carriers unbundle their local loops in a manner that allows users to derive high-speed, broadband

³³ Access to Communications for Education Coalition Comments at pg. 7; State of Alaska Comments at pp. 10-13; Alaska Library Association Comments at pg. 3; Alaska Public Utilities Commission Comments at pp. 1-6 (28.8Kb should be minimum speed); Alaska Telephone Association Comments at pp. 2-3 (ISDN); America's Carriers Telecommunications Association at pg. 6; American Association of Community Colleges and the Association of Community College Trustees Comments at pp. 10-12 (T1 access, Internet connectivity); American College of Nurse Practitioners Comments at p. 2 (ISDN); American Library Association Comments at pp. 4, 9-12; American Telemedicine Association Comments at pg. 7 (112Kb should be minimum); Ameritech Comments at pp. 14-15; Apple Computer Comments at p. 4 (bandwidths ranging from 128Kb to 45Mb should be made available); BellSouth Comments at pg. 19 (DS1 or 1.544Mb for schools); California Department of Consumer Affairs Comments at pg. 22; California Library Association Comments at pg. 3; Governor of Guam Comments at pp. 7, 10 (ISDN, access to NII); Idaho Public Utilities Commission Comments at pg. 11 (providers should contribute access to the Internet); Iowa Communications Network Comments at pg. 2; Iowa Utilities Board Comments at pg. 2; Kinkos, Inc. Comments at pp. 3-6 (community Internet access should be part of universal service); Lincoln Trail Libraries System Comments at pg. 1; Commonwealth of Massachusetts Board of Library Commissioners Comments at pg. 4; Merit Network, Inc. Comments at pp. 2-3 (ISDN, T1 access); Library of Michigan Comments at pg. 4 (ATM, broadband access); Michigan Library Association Comments at pg. 5 (ATM, broadband access); State of Missouri Comments at pp. 1-3 (Internet, teleconferencing capabilities); Mountaineer Doctor Television Telemedicine Program at West Virginia University (T-1 access, ISDN, ATM); National School Boards Association et al. Comments at pp. 13-14, Appendix I (unbundled broadband switching and transmission capable of delivering high-quality video); Nebraska Association of Hospitals and Health Systems Comments at pg. 1 (384Kb minimum, 1.544Mb more likely); New York State Board of Regents and New York Education Department Comments at pg. 11 (broadband on demand); North of Boston Library Exchange, Inc. Comments at pg. 1 (T-1, T-3 access); North Dakota Department of Health Comments at pg. 1 (ISDN); Oakland Unified School District Comments at pp. 10, 13 (T-1 access); Pacific Telesis Comments at pp. 3-6, 8-11 (ISDN provided to schools); U.S. Distance Learning Association Comments at pp. 9-12; US West Comments at pp. 21-23 (56/64Kb on request); and State of Wisconsin Department of Public Instruction Comments at pg. 1.

access, the Commission will partially meet the advanced services needs of schools, libraries and rural health care providers; fulfill its obligations under the Telecommunications Act to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans;”³⁴ and, fulfill one of the the unbundling requirements of the Telecommunications Act.

1. Network Modernization Standards Required of Rural Carriers Should be the Minimum Network Standards for all Local Telecommunications Carriers

As the Commission Staff described in its review of universal service support mechanisms,³⁵ the Rural Electrification Loan Restructuring Act of 1993³⁶ requires state public utility commissions or borrowers to develop network modernization plans as a prerequisite for otherwise eligible carriers to receive federally subsidized loans for telecommunications utilities.

The Act specifically requires that

a telecommunications modernization plan must, at a minimum, meet the following objectives:

- (i) The plan must provide for the elimination of party service.
- (ii) The plan must provide for the availability of telecommunications services for improved business, educational, and medical services.
- (iii) The plan must encourage and improve computer networks and information highways for subscribers in rural areas.
- (iv) The plan must provide for --
 - (I) subscribers in rural areas to be able to receive through telephone lines --
 - (aa) conference calling;
 - (bb) video images; and,
 - (cc) data at a rate of at least 1,000,000 bits of information per second; and,

³⁴ 47 U.S.C. §706(a).

³⁵ Common Carrier Bureau, *Preparing for Addressing Universal Service Issues: A Review of Current Interstate Support Mechanisms*, at pp. 78-89 (Feb. 26, 1996) (“Universal Service Survey”)

³⁶ 107 Stat. 1356, codified in 7 U.S.C. § 935 (1994)

(II) the proper routing of information to subscribers.³⁷

The Rural Utilities Service ("RUS") has promulgated rules implementing the above statute.³⁸ Implementation plans from thirty states have been filed with the RUS and the RUS expects to receive plans from ten more. These network modernization standards unambiguously express the minimum standards that Congress defines as the prerequisite for federal rural telephone loans, and the 30 state plans reflect the network standards state commissions or borrowers believe are appropriate for rural carriers in their states. Clearly, if policy makers (Congress and state commissions) set these minimum standards for rural telephone companies, they should also be the minimum standard for all local telecommunications providers. Said differently, it would not be sensible telecommunications policy to hold rural telephone utilities to a standard higher than other telecommunications providers.

MFS recommends that the same network standards that are required of rural telephone companies be incorporated in the Commission's universal service standard. Compliance with the advanced network standards required of rural telephone companies (lines capable of minimum transmission speeds of 1Mb/second) will go a long ways towards addressing the high-speed, broadband capabilities needed by schools, libraries and rural health care providers identified by many commentators. Just as compliance with the statutory network standards is a prerequisite for receiving federal rural telephony utility loans, compliance with these minimum network standards should be a prerequisite for receipt of federal universal service funds.

³⁷ 7 U.S.C. §935(d)(3)(B). [emphasis added]

³⁸ 7 C.F.R. §1751.106 *et seq*

2. Network Upgrades and Local Loop Unbundling to Provide the Ability to Derive High-Speed, Broadband Access Will not Expand the Universal Service Fund

Many commentators observed that while high-speed, broadband services like ISDN were desirable, it is inappropriate to expand universal service to include such services. Ameritech, for example, argued

It would be a mistake to let regulation, rather than market demand, drive service parameters. For example, some argued in the past that the Commission should order carriers to deploy fiber to the home because they thought fiber was necessary to deliver advanced telecommunications services. As it turned out, however, advances in compression technology facilitated the provision of some advanced services over copper wire and that, in turn, made fiber uneconomic at least in some situations. Thus, while the Act may require the creation of certain support mechanisms, the lesson learned in the case of compression technology suggests that the Commission should avoid mandating the deployment of any particular technology and services or fixed timetables for deployment.³⁹

MFS agrees; such an expansion of services or deployment of facilities would greatly increase the universal service subsidy required for low income customers and likely would distort the development of competition to provide such advanced, high-speed services. However, it is possible to greatly enhance the ability of users, telephone companies and competitors to derive high-speed, broadband access by simply requiring local exchange carriers to unbundle their local networks in a manner that eliminates the impediments to such access. For example, if a carrier unbundles its local loops to provide end-to-end metallic connections (without the electronics and functionality typically applied to such loops in order to provide full-fledged local telephone service),⁴⁰ such unbundled loops could be used by customers and competitors to configure high-speed, broadband services like ISDN, ADSL or HDSL by adding the appropriate

³⁹ Ameritech Comments at pp. 15-16.

⁴⁰ Of course, incumbent carriers have begun deploying electronics in some loop plant. MFS does not seek to "turn back the clock." Rather, the incumbent should be required either to permit competing carriers to collocate wherever it installs loop electronics or it should provide high-speed access from those points to the host central offices. These details are more appropriately addressed in the Commission's interconnection docket, but the Commission and Joint Board should establish the general requirement in this proceeding.

electronics. Just as an incumbent provider has access to its loop components that could be configured to provide ISDN, ADSL or HDSL access, competitors and users should also have access to the same network components on an unbundled basis. A library that wants high-speed access to the Internet could buy an unbundled metallic local loop from the local telephone carrier and could collaborate with the incumbent or a competing carrier to add the appropriate electronics to configure ADSL or HDSL service over that loop. Likewise, a competitor that wishes to serve the library or any other customer could obtain the unbundled local loop from the telephone company, add its own electronics, and provide the customer with the high-speed access it desires.

Requiring that local loops be provided on an unbundled basis as a condition precedent to receiving universal service funds eliminates the need to discount the provision of ISDN, T-1 or other broadband services and address the recovery of ISDN or T-1 service provided below costs. In most cases, the provision of unbundled local loops will require neither new services nor new facilities, but merely a rearrangement and reconfiguration of existing facilities that does not burden incumbent local exchange carriers by requiring them to install new equipment or lines. As the American Library Association argued in its comments, if the unbundled local loops are provided at cost (as measured by the lowest price such unconditioned lines are presently offered at or long run incremental costs), such unbundling places no incremental economic burden on incumbent local telephone companies.⁴¹ No additional subsidies or support are required to provide unbundled loops in most cases.

Incumbent local telephone companies might complain that requiring them to provide unbundled local loops at cost interferes with their ability to sell higher margin special access products, like ISDN which is priced many multiples above where an end-to-end metallic loop

⁴¹ American Library Association Comments at pp. 13-19

would be priced. Such an argument, however, is wrong for at least two reasons. First, provision of unbundled local loops will stimulate demand for advanced services that does not presently exist in part due to the incumbent provider's high special access prices. The incumbent local telephone company may well realize a revenue increase from this growth in demand. Second, the incumbent may have to reprice its special access services to be competitive with the alternatives that might be available using the unbundled local loops. Certainly, an incumbent local telephone company should not be compensated from a universal service fund for reducing its prices to a competitive level, nor should the Commission implement policies designed to guarantee an incumbent firm's revenues in a competitive environment.

Even if an incumbent local telephone company must incur costs to upgrade its network to comply with such an unbundling requirement, it should bear its own costs and not recover them from a universal service fund or unbundled loop prices. General network upgrades are a common cost that should be recovered from all services generally rather than from competitors or the universal service fund. As a competitive local service provider, MFS engineers its network to provide advanced, high-speed services to its customers, and uses those services as a mechanism to attract and retain customers. MFS did not install a POTS-only network. MFS did not expect to and should not recover its additional costs of installing a high-tech network rather than just a POTS network from a universal service fund. Likewise, in a competitive environment, incumbent local telephone companies should not be allowed to recover the incremental costs of upgrading their networks from a federal universal service fund. Other competitive carriers are deploying networks capable of high-speed access, as well. For example, in its comments, Winstar, a wireless service provider indicated that its wireless

network had high-speed, broadband capabilities.⁴² A network upgrade to match or exceed the capabilities of modern competitors should not be funded with universal service subsidies.

III. CONCLUSIONS

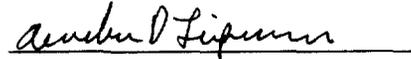
In response to other comments, these comments reiterate MFS's position that universal service support should be narrowly targeted to low income customers and high cost carriers rather than used as a mechanism to guarantee every incumbent carrier's revenues and earnings. MFS believes that universal service support should be collected and distributed in a competitively neutral manner by a national independent administrator, and should be available to any carrier using any technology to serve any eligible customer.

The comments exposed a divergence between those who advocated that universal service support should be limited to a core set of components and those who described the needs of schools, libraries, rural health care providers and other users for economical high-speed, broadband access to advanced communications services. The Commission and Joint Board can reconcile these divergent views by augmenting its core universal service components with a requirement that local exchange carriers unbundle their local loops in a manner that allows users to derive high-speed, broadband access. Such a requirement would be consistent with the network requirements already mandated by Congress and incorporated into 30 state modernization plans for rural telephone companies; it would fulfill the needs of schools, libraries and rural health care providers for broadband access; and, if provided at

⁴² Winstar Comments at pp 1-2

competitive, cost-based rates, would not impose additional universal service funding requirements.

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Dated: May 7, 1996

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of May 1996, copies of the foregoing in
REPLY COMMENTS OF MFS COMMUNICATIONS COMPANY, I NC., Docket 96-45,
were served via Messenger** or First-Class Mail, U.S. postage prepaid, to the parties
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