RECEIVED

MAY 20 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
	)	

DOCKET FILE COPY ORIGINAL

ADDITIONAL COMMENTS OF
MFS COMMUNICATIONS COMPANY, INC.

David N. Porter
Vice President, Government Affairs

MFS COMMUNICATIONS
COMPANY, INC.
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
(202) 424-7709

Andrew D. Lipman
Russell M. Blau
SWIDLER & BERLIN, Chartered
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
(202) 424-7500
Fax (202) 424-7645

Attorneys for
MFS Communications Company, Inc.

May 20, 1996

No. of Copies rec'd 0+16
List ABCDE

Table of Contents

Summary ii

I. INTRODUCTION AND OVERVIEW 1

II. ISSUES RELATING TO NUMBERING 2
- A. Dialing Parity (¶¶ 202-219) 2
  - 1. For Local Services, Dialing Parity Requires Uniform Dialing Patterns, Particularly within Overlay Area Code Plans (¶¶ 211, 214-215) 3
  - 2. IntraLATA Presubscription Should Not Be Mandated for New Entrants Until It is Implemented by Incumbents (¶¶ 210, 212-213) 5
- B. The Commission Must Complete the Process of Selecting a Neutral Number Administrator (¶¶ 250-253) 7
- C. The Commission Should Clarify Its Standards for State Approval of Area Code Overlays (¶¶ 254-258) 7

III. ACCESS TO RIGHTS-OF-WAY (¶¶ 220-225) 9

IV. PUBLIC NOTICE OF TECHNICAL CHANGES (¶¶ 189-194) 12

V. CONCLUSION 17

Summary

In the attached Comments, MFS addresses the four issues specified in the *NPRM* for which a separate comment cycle was established.

Numbering Resources and Number Administration—Dialing parity and nondiscriminatory access to telephone numbers are important in assuring that consumers perceive new entrants' local exchange service offerings as true substitutes for the ILEC's services. In most situations, dialing parity is assured simply by requiring the nondiscriminatory assignment of exchange (NXX) codes to new entrants. In the case of an area code overlay, however, additional requirements should be imposed. First, overlays should be implemented only after number portability is available. Second, any overlay should be accompanied by a mandatory ten-digit dialing plan (as will be implemented in Maryland in 1997). Third, an overlay should be permitted only if there are sufficient NXX codes available to allow all carriers (not just the incumbents) to assign numbers in both the old and new area codes during the initial stages of the overlay.

The Commission should require the implementation of intraLATA presubscription within a reasonable time. For carriers competing against a Bell Operating Company that is allowed to defer implementation of presubscription under the 1996 Act, a reasonable time would be the same time at which the BOC is required to offer presubscription. For LECs in all other areas, a reasonable time would be the later of one year after the adoption of rules in this docket, or at such time as previously ordered by a State commission

LECs should not be under any affirmative obligation to disseminate information about competing intraLATA toll services, other than to respond accurately to customer requests. The toll

carriers themselves have ample opportunity and incentive to educate their customers about the selection process.

The Commission should expeditiously complete the establishment of the North American Numbering Council in order to comply with the requirements of the 1996 Act. MFS supports the Commission's proposal to delegate review of area code relief plans to the State commissions, but suggests modifying the standards for such plans as described above.

Access to Rights-of-Way—The Commission should adopt regulations to enforce the nondiscriminatory access requirement of Secs. 251(b)(4) and 224(f). MFS notes that the "rights-of-way" to which access must be provided include, among other things, manholes, cable entrance ways into buildings, telephone equipment rooms and wiring closets, and LEC-controlled risers, conduits, and lateral ducts within the common areas of multi-tenant buildings and within LEC premises.

"Nondiscriminatory" means what it says; therefore, the Commission should not permit a LEC to refuse access to its rights-of-way on any grounds other than the two specifically authorized in Sec. 224(f)(2). The first of these is insufficient capacity. LECs should have an obligation to rearrange facilities (at the new user's expense) if possible to accommodate additional requests for access to rights-of-way. Also, LECs should not be permitted to reserve capacity for their own future use unless all users have the same opportunity. LECs should be required to allow verification of capacity exhaust claims by providing access to their outside plant records and, if necessary, physical inspection of the rights-of-way.

The second basis for denial of access is generally applicable safety, engineering, and reliability concerns. The LEC should be required to specify its safety, engineering and reliability standards in advance, and not pick and choose them on an *ad hoc* basis when it receives an access

request. Any LEC fees for engineering surveys, design reviews, or similar work should be limited to incremental cost, and no overtime charges should be allowed unless overtime work is specifically requested by the applicant.

Public Notice of Technical Changes—ILECs should be required to disseminate public notice of network changes with sufficient advance notice and sufficient supporting documentation to allow other carriers and the Commission to determine whether the proposed change is discriminatory or otherwise violates any statutory duty. The period of notice required should vary depending on the nature of the change. Major changes in technical standards should require 18 months notice; changes in geographic location should require 12 months notice; and minor changes in numbering, routing instructions, or other changes in network data that do not require replacement of hardware or software should be governed by existing industry standards which are appended to MFS' comments.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
	)	

ADDITIONAL COMMENTS OF
MFS COMMUNICATIONS COMPANY, INC.

MFS Communications Company, Inc. ("MFS"), by its undersigned counsel, hereby submits these additional comments regarding the issue categories listed in para. 290 of the *Notice of Proposed Rulemaking* in the above-captioned docket (FCC 96-182, released April 19, 1996) (the "*NPRM*").[1]

I. INTRODUCTION AND OVERVIEW

In the following Comments, MFS addresses the four issues specified in the *NPRM* for which a separate comment cycle was established. The most significant of these issues from MFS' perspective are those relating to dialing parity, number resources, and number administration. Telephone numbers have become (for better or worse) part of the identity of both businesses and consumers. Dialing the telephone is such a commonplace activity that it becomes habitual, and any change in the pattern of this activity can be upsetting to individuals. Therefore, it is critical to the

[1] As directed in para. 291 of the *NPRM*, each section of these comments corresponds to a specific portion of the *NPRM*, as noted in the outline headings. Paragraphs of the *NPRM* are cited as "para. ---." Sections of the Communications Act of 1934 as amended by the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (hereinafter "1996 Act"), are cited as "Sec. ---."

creation of true competitive opportunities that new entrants not be perceived as "inferior" or even "different" when it comes to telephone numbers and dialing patterns.

Access to rights-of-way is also a critical issue for facilities-based entrants such as MFS. Rights-of-way in many instances are physical bottlenecks, either because obtaining substitute rights-of-way would be prohibitively expensive; because, in many urban areas, municipal ordinances strictly limit construction of above-ground and below-ground transmission facilities; or because these rights-of-way traverse or enter private property whose owners do not wish to allow additional encumbrances on their property The issues identified in this docket explore only a limited aspect of rights-of-way issues,[2] but the adoption of standards for nondiscriminatory access in particular is a key requirement for any meaningful opportunity for facilities-based competition.

Finally, the requirements for advance notice of changes in rights-of-way arrangements and of changes in network interconnection arrangements are important to prevent incumbent local exchange carriers ("ILECs") from abusing their control over network technical standards and geography to put competitors at a disadvantage.

II. ISSUES RELATING TO NUMBERING

A. Dialing Parity (¶¶ 202-219)

In para. 206, the Commission tentatively concludes that the dialing parity requirement of Sec. 251(b)(3) applies to all telecommunications services that require dialing to route a call. Since the statutory language itself does not distinguish among services, the Commission's tentative conclusion

[2] *See also* CC Docket No. 95-184, *Telecommunications Services—Inside Wiring, Customer Premises Equipment,* MFS Comments (filed March 18, 1996), and MFS Reply Comments (filed April 17, 1996).

appears to be correct. Further, in paras. 207-208, the Commission states its belief that presubscription is the most feasible method of achieving dialing parity in long distance markets, but in footnote 284 observes that presubscription is not necessary to achieve dialing parity for local services. MFS agrees with these statements.

1. For Local Services, Dialing Parity Requires Uniform Dialing Patterns, Particularly within Overlay Area Code Plans (¶¶ 211, 214-215)

With respect to local exchange service, dialing parity has not been an issue in most jurisdictions. Beginning with New York,[3] every jurisdiction that authorized local exchange competition prior to the enactment of the 1996 Act required that new entrant LECs have access to exchange (NXX) codes on the same basis as the ILECs. Such access is now mandated by Sec. 251(b)(3), which requires that new entrants receive "nondiscriminatory access to telephone numbers," among other things. *See* paras. 214-215. When a new entrant is assigned one or more NXX codes, it can then assign telephone numbers on the same basis as the ILEC, and these numbers can be dialed by ILEC customers in the same manner as any other call to a telephone number in the same geographic area.[4] To date, no ILEC has tried to force a new entrant to adopt a non-standard dialing plan, but the Commission should expressly declare any such requirement unlawful.

---

[3] *Proceeding on Motion of the Commission to Investigate Performance-Based Incentive Regulation Plans for New York Telephone*, Case 92-C-0665, Communications Division Memorandum dated Sept. 20, 1993; approved as recommended and so ordered by the Commission, Oct. 4, 1993.

[4] Of course, the dialing parity requirement implies that these calls must be dialable in the same manner as calls from one ILEC customer to another. For example, an ILEC could not require "one-plus" dialing for calls to customers of other companies if it does not require the same dialing prefix for calls between its own customers in the same geographic area.

A potential dialing parity issue might arise, however, in the event that an area code overlay (*see* para. 255, n.354) were implemented without a requirement of (at least) ten digit dialing for all local calls. In an overlay plan. customers within the same local calling area may be assigned telephone numbers with different area codes. By necessity, these customers will have to dial ten digits (area code plus telephone number) when calling another party, even one directly across the street, whose telephone number is in the other area code. Calls to other numbers within the same area code, however, may require either seven or ten digits, depending on how the LEC's switch is programmed.[5]

When an overlay is implemented, and existing NXX codes are exhausted, new NXX codes will be assigned from the new area code only. LECs that have been assigned NXX codes in the old area code, however, may continue assigning numbers in the old area code as long as such numbers remain available. Since local exchange competition is in its infancy, virtually all of the NXX codes in the original area code will be assigned to the ILECs. This means that new entrants will be assigned NXX codes from the new area code only, while the great majority of ILEC customers will still be using telephone numbers in the original area code. Therefore, at least until full service provider number portability is implemented, most calls placed by ILEC customers to other ILEC customers will be within the same area code, but most calls placed by ILEC customers to customers of new entrants, and nearly all outgoing calls placed by the latter, will be between different area codes.

---

[5] For example, Bell Atlantic has announced that all local calls within Maryland will require ten-digit dialing when an overlay is implemented there in 1997. However, NYNEX is proposing to allow seven-digit dialing for same area code calls within a proposed overlay area in Massachusetts.

Under these circumstances, compliance with the dialing parity requirement of Sec. 251(b)(3) mandates a ten-digit dialing plan for all local calls within an overlay area (as is currently being implemented in Maryland). Allowing seven-digit dialing for local calls within the same area code would mean that most ILEC-to-ILEC calls could be dialed using seven digits, while most calls placed by or to customers of new entrants would require ten digits. Such an unequal dialing pattern would be a *de facto* denial of dialing parity. The Commission should, therefore, require that ten-digit dialing be required for all local calls within areas subject to an area code overlay.

2. IntraLATA Presubscription Should Not Be Mandated for New Entrants Until It is Implemented by Incumbents (¶¶ 210, 212-213)

The *NPRM* correctly notes that the Act's dialing parity requirement extends to intraLATA toll service, and that this will require the implementation of intraLATA presubscription where it does not already exist. In para. 210, the Commission requests comments regarding specific forms of intraLATA presubscription. It would be preferable that the Commission select a single presubscription approach to be implemented nationwide. Otherwise, carriers seeking to offer local service in many states (like MFS) could be forced to invest in, and train their personnel to operate, a variety of different and inconsistent software packages.

As stated in para. 212, no particular time for implementation of intraLATA presubscription is specified in the Act, except for the BOCs under certain circumstances (sec. 271(e)(2)(A)). It would be irrational to require a LEC that is offering local exchange service in the same geographic area as, and in competition with, a BOC, to implement intraLATA presubscription before the BOC is required to do so. In this situation, a new entrant is seeking to compete against an entrenched, dominant carrier. The ability to offer an attractive package of both local and intraLATA toll services

may be one of the few opportunities it has to differentiate itself from the dominant carrier in the marketplace. Furthermore, it seems doubtful that there would be much benefit to interexchange carriers in offering intraLATA toll services solely to the customers of new entrant LECs, since these customers will constitute a small segment of the market and the costs of marketing to them would be relatively high. Accordingly, the Commission's rules should specify that in any geographic area where a BOC is not required to offer intraLATA presubscription pursuant to Sec. 271(e)(2)(A), no other LEC will be required to offer such presubscription until the BOC does.

In all other situations, such as territories served by ILECs that are not BOCs, single-LATA states, and states where the BOC is already required to implement intraLATA presubscription, the rules should provide that all LECs must implement intraLATA presubscription within one year of the effective date of the rules, or by the date previously ordered by a State commission, whichever is later. In MFS' experience, one year is sufficient in most circumstances for the implementation of presubscription; but, if a State commission has already ordered a different schedule, it could be disruptive to the business plans of the LECs to change that schedule now.

In para. 213, the Commission seeks comments regarding consumer education or notification requirements. MFS submits that no such requirements are necessary. Long-distance carriers have both ample incentive and ability to inform their customers about the procedures for carrier selection. In this respect, the long-distance market today differs markedly from the situation in the mid-1980s, when non-dominant carriers were virtually unknown to most consumers and balloting was mandated as a way of educating consumers to their ability to choose a carrier. No such education is needed today, because most consumers are well aware of their long-distance choices, and the carriers have readily available means of contacting those who are not. The Commission therefore should leave

the responsibility for customer contact with the long-distance carriers. LECs should, however, be required to respond accurately to any requests from customers for information about carrier selection procedures or the identities of carriers participating in presubscription.

B. The Commission Must Complete the Process of Selecting a Neutral Number Administrator (¶¶ 250-253)

In para. 252, the Commission tentatively concludes that its order last year in CC Docket No. 92-237[6] "satisfies the requirement of section 251(e)(1) that the Commission designate an impartial numbering administrator." With all due respect, MFS feels constrained to point out that the Commission has *not* yet "create[d] or designate[d] one or more impartial entities to administer telecommunications numbering[.]" but only has established a process for making this designation. Although the *NANP Order* was released ten months ago, and nominations for membership on the North American Numbering Council (NANC) were solicited shortly thereafter, the Commission has not yet taken any action to constitute the NANC or to begin the actual process of designating a new numbering administrator. Sec. 251(d)(1) appears to require, at a minimum, that the FCC complete the process of establishing the NANC no later than August 8, 1996. Further, the Commission should strive to complete the selection of a new Numbering Plan Administrator as soon as possible.

C. The Commission Should Clarify Its Standards for State Approval of Area Code Overlays (¶¶ 254-258)

MFS agrees with the Commission's tentative conclusion that State commissions should continue to evaluate specific area code relief proposals, since they are more familiar than this

---

[6] *Administration of the North American Numbering Plan*, Report and Order, FCC 95-283 (released July 13, 1995) ("*NANP Order*").

Commission with local conditions. The *Ameritech Order*[7] should continue to provide guidance to the States in exercising this delegated responsibility, albeit with certain clarifications. The *Ameritech Order* makes it clear that a State may not approve an overlay plan that is facially discriminatory; for example, one that reserves all codes in the original area code for ILECs and requires other carriers to receive assignments in the overlay area code. The Commission should clarify that this policy extends to overlay plans that have disproportionate impacts on a particular class of carriers.

First, as discussed above. any overlay plan must be implemented with a mandatory ten-digit dialing plan in order to comply with the dialing parity requirements of Sec. 251(b)(3).

Second, overlays should not be permitted until service provider number portability has been implemented. Absent number portability, a customer who desired to change local exchange providers would not only have to change telephone numbers, but in almost all cases also change area codes. This requirement would undoubtedly be viewed by consumers as another disadvantage of changing carriers and a disincentive to consider competitive alternatives.

Third, even if number portability has been implemented, an overlay should be permitted only if every LEC authorized to operate within the Numbering Plan Area can receive at least one NXX code for each of its exchange areas from the original area code. If this test is not met, then new customers (and customers ordering additional lines) from a new entrant would always be assigned numbers in the overlay area code, but customers ordering numbers from an ILEC could continue to receive numbers in the original area code until those numbers are exhausted. Since the overlay area

---

[7] *Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois*, Declaratory Ruling and Order, 10 FCC Rcd. 4596 (1995).

code will be unfamiliar to callers and most likely perceived as inferior, especially in the first year or two of an overlay plan, this disparity in access to NXX codes would put new entrants at a competitive disadvantage.

MFS agrees with the Commission's tentative conclusions in para. 258 concerning number administration, with the caveat that States should have the authority to implement interim changes in numbering administration if they choose to do so. California is currently evaluating an interim plan under which code assignment functions would be shared between Pacific Bell and the State commission, until a new North American Numbering Plan Administrator assumes this function. If California or any other State chooses to adopt such a plan, it should be able to do so as long as its actions are not inconsistent with the Commission's numbering policy objectives.

III. ACCESS TO RIGHTS-OF-WAY (¶¶ 220-225)

The *NPRM* requests comments on two subsections of Sec. 224 relating to access to LEC-controlled poles, ducts, conduits, innerducts, and rights-of-way, in light of the fact that Sec. 251(b)(4) specifically imposes a duty to comply with the provisions of Sec. 224. In responding to these questions, MFS notes that the "rights-of-way" to which access must be provided include, among other things, manholes, cable entrance ways into buildings, telephone equipment rooms and wiring closets, and LEC-controlled risers, conduits, and lateral ducts within the common areas of multi-tenant buildings and within LEC premises. (For convenience, MFS refers to poles, ducts, conduits, innerducts, and rights-of-way generically as "pathways.")

The Commission seeks comment on implementation of Sec. 224(f), which generally requires that access to LEC pathways be made available on a nondiscriminatory basis, subject to certain conditions set forth in subsection (f)(2). MFS believes that "nondiscriminatory access" means

precisely what it says, and therefore that a LEC may not deny another telecommunications carrier access to its pathways for *any* reason other than those specifically authorized by subsection (f)(2), subject (of course) to the payment of compensation pursuant to the other provisions of Sec. 224.

Sec. 224(f)(2) authorizes the refusal of access "on a non-discriminatory basis" in two circumstances—first, "where there is insufficient capacity"; and second, "for reasons of safety, reliability and generally applicable engineering purposes." The question of whether there is sufficient capacity for another carrier's facilities will generally be dependent on the facts, but the Commission can and should establish certain substantive standards as well as procedures for ascertaining the relevant facts. Substantively, the Commission's rules should provide that access may not be refused due to insufficient capacity if it is possible to rearrange the existing facilities using the pathway (consistent with applicable engineering standards) to accommodate the new user.[8] For example, in the case of underground installations it is often possible to accommodate additional users by installing innerduct in the existing conduit, removing dead cables, or repairing damaged duct. In the case of pole attachments it may sometimes be possible to move existing attachments.[9] The rules should also specify that pathway owners may not reserve unused space for their own future

[8] Under these circumstances, Sec. 224(i) would require the new user to pay all costs associated with any such rearrangement.

[9] It is also possible to accommodate additional users on poles by the placement of arms creating additional space; or by "overlashing," that is, by attaching a new user's cable to an existing cable rather than attaching it directly to the pole. This can cause added strain on the existing cable, however. The pole owner should not be entitled to impose the risk of this added strain on one of its competitors by compelling that competitor to accept overlashing on its attachment. Rather, the statute's mandate of nondiscriminatory access requires that the pole owner establish in advance a neutral procedure for determining which cables will be subject to overlashing, which may not favor the pole owner's own cables over those of other parties.

use unless they provide the same opportunity for future expansion to all other users of the facility on a nondiscriminatory basis. Procedurally, the rules should assure an opportunity for any party contesting a claim of insufficient space to audit the LEC's outside plant records in order to verify the claim, and if necessary to conduct a physical inspection of the pathway in dispute.

The other basis for refusing access is "reasons of safety, reliability and generally applicable engineering purposes." A LEC relying on this provision to refuse access should be prepared to justify its decision based upon published and accepted safety or engineering standards, such as the National Electrical Code. It is important that neutral safety, reliability, and engineering standards be identified in advance in order to avoid the potential for a LEC to use a safety or reliability issue as a pretense for discrimination In addition, the Commission should limit the ability of pathway owners to impose fees for surveys and engineering reviews of proposed facility installations. In MFS' experience, these fees are often inflated by overhead loading factors and other inappropriate costs. LECs should be compensated fully for their relevant pathway costs through the rates to be established under Sec. 224(e), so there is no justification for allowing them to impose additional survey or design review fees recovering anything beyond the incremental costs incurred in the survey or design review activities. Some LECs have also been known to inflate these preparatory fees by claiming that their personnel are unavailable to do the required work except on an overtime basis. LECs should not be entitled to charge for overtime unless the entity requesting the attachment specifically requests that work be done outside of normal business hours.

The *NPRM* also requests comments concerning Sec. 224(h), which applies when the owner of a pathway intends to modify or alter it. First, this provision requires the owner of the pathway to provide written notice of its intended action to all other users of the pathway. MFS believes that

90 days or longer advance notice depending on the scope of work required would be appropriate for relocation or modification of an attachment, except in cases of emergency (for example, where an existing facility is damaged or destroyed and must be replaced immediately), in which case the owner should give as much notice as is practicable. Second, subsection (h) provides that any user that "adds to or modifies its existing attachment" shall bear a proportionate share of the costs incurred by the owner. The term "modifies" in this provision should be interpreted as applying only where there is some improvement or change in the nature of the attachment being used by an entity. If the entity retains precisely the same attachment as it had before the owner's modification or alteration, even if moved to a different location, it should not be assessed a share of the owner's costs. The Conference Committee report discussing this section makes clear that the assessment of cost was only intended to apply to an entity "that takes advantage of [an] opportunity to modify its own attachments[.]"[10] An entity that merely preserves its existing attachment is not "taking advantage" of an "opportunity," but merely maintaining the *status quo ante*, and therefore should not be penalized. On the other hand, Congress clearly did intend that an entity that expands or improves its attachment as a result of changes made by the owner should contribute to the costs incurred by the owner.

IV. PUBLIC NOTICE OF TECHNICAL CHANGES (¶¶ 189-194)

MFS agrees with the Commission's tentative conclusions in paras. 189 and 190, which would define the ILEC's duty to provide notice of technical changes in broad terms. Interconnection and interoperability of networks are key concepts in the 1996 Act. Sec. 251(c)(5) is intended to

[10] H.R. Rep. 104-458, 104th Cong., 2d Sess. 207 (1996).

minimize the risk that an ILEC could take actions inconsistent with those goals, and therefore should be applied as broadly as possible. Furthermore, since an ILEC's only duty under this provision is to provide public notice of information that is already in its possession, a broad interpretation of this duty will impose very little additional burden on the incumbents.

MFS notes that the duty imposed by Sec. 251(c)(5) is purely procedural—that is, this provision only requires the ILECs to disclose their network changes, and does not impose any substantive limits on how the ILECs may alter their networks. Substantive restrictions may be imposed by other statutory provisions, however; for example, a network design change that required competitors to modify their interconnection facilities without requiring the ILEC to do the same would likely violate Sec. 251(c)(2)(C) and (D). Accordingly, the rules adopted by the Commission to implement Sec. 251(c)(5) should assure that ILECs provide their competitors both with sufficient information to detect any violations of other provisions of the statute, and sufficient advance notice to allow those parties to seek a remedy for any such violations.

The Commission's rules should specify that the ILEC must make available all technical specifications and information necessary to enable other parties to modify their own networks, or to make changes in interconnection and access arrangements with the ILEC, so that the other parties can continue to exchange traffic with and obtain access to the network elements of the ILEC. Since this information is likely to be voluminous, however, the "public notice" required by the statute may consist of a summary along with a statement as to how the more detailed information may be obtained. The ILEC should be required to submit a copy of this notice to the Commission. The ILEC should also be required either to make arrangements for copies of the full compilation of technical information to be provided to interested parties (*e.g.*, by posting the information on the

Internet or by arranging for copies to be available from an industry organization), or else to make copies available itself within five working days of receiving a request.

In addition to making disclosure of network information through industry forums and publications as proposed in para. 191, the ILEC should be required to provide notice by certified mail (or another method that is at least equally timely and provides comparable proof of delivery) to any telecommunications carrier with whom it has entered into any interconnection or access agreement pursuant to Sec. 252, and to any other carrier or information service provider who has specifically requested such notice. For each affected party that has an existing interconnection or access arrangement with the ILEC, the ILEC should be required to provide an assessment of (a) the charges that it will apply to the competitor for the change, (b) the specific number of interconnection or access circuits that would be impacted if the change were to occur at the time of notification, (c) the projected minimum, maximum, and average down time per circuit affected, (d) alternatives available to the competitor, and (e) any other pertinent information necessary to evaluate alternatives and effectuate necessary changes or challenges.

MFS suggests that a "reasonable" period of public notice for network changes is likely to depend on the type of information being announced. For example, changes in the numbering plan (such as the opening of new exchange (NXX) codes, splits of area codes, etc.) currently are announced to the industry approximately 45 days in advance. This type of information would constitute a change "in the information necessary for the transmission and routing of services" and therefore is subject to the statutory disclosure requirement. It would not be in the public interest to require more than 45 days' notice for this type of change, because it can be effectuated very simply (by entering information into digital switch software), and any longer notice period would interfere

with carriers' ability to operate their networks. However, a change in technical standards that (for example) required replacement of existing electrical cross-connections with optical SONET connections would also be a change "that would affect the interoperability" of networks, and also would require disclosure. A 45 day notice would be woefully inadequate for this type of significant hardware change.

MFS suggests that the Commission define three categories of changes. "Major changes" would be those introducing any change in network equipment, facilities, specifications, protocols, or interfaces that will require other parties to make any modification to hardware or software in order to maintain interoperability with the ILEC network. Major changes should require a minimum of 18 months advance notice. This period of notice is required to allow other parties to upgrade their own networks and, where necessary, to invoke the procedures of Sec. 252 to negotiate new or modified arrangements with the ILEC for interconnection and access to unbundled elements.

"Location changes" would be those that require changes in the geographic location to which traffic is routed, or at which access to unbundled network elements can be obtained, but do not otherwise change the manner of interconnection or of access. Examples may include the opening of a new central office or closing of an existing office: relocating a meet-point; or changing the access tandem that subtends a particular end office. These changes should require 12 months advance notice, to allow sufficient time for other carriers to construct new facilities (if required) to reach the new location.

"Minor changes" would be changes in numbering, routing instructions, signaling codes or other information required for the exchange of traffic that do not require construction of new facilities or changes in hardware or software. Advance notice of these changes should be governed

by the industry-agreed standard, "RDBS (LERG) Minimum Time Intervals," ICCF 92-0726-004, Revision 2, 1/15/96, Attachment B; a copy of this standard is attached hereto as Attachment 1.

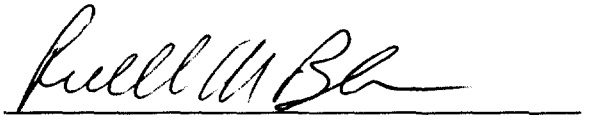
In order to provide effective enforcement of the Sec. 251(c)(5) duty, the Commission should adopt rules that require each ILEC to respond to Commission questions regarding the information previously made available regarding any network changes within the scope of Sec. 251(c)(5), and to supplement that information if requested by the Commission. Also, the Commission should establish a procedure for temporarily blocking any proposed network change until the Commission has time to investigate any alleged violations, with respect to either the provision of notice or the nature of the network change. MFS suggests a rule that authorizes the Commission for good cause to issue an order, without prior notice or hearing, requiring an ILEC to cease and desist from making any specified changes for a period of up to 60 days. This would allow the Commission a reasonable time to investigate any alleged violations and take further action.[11]

[11] After completing its investigation and providing an opportunity for the ILEC to respond, the Commission could, as appropriate, require the ILEC to correct any deficiencies in the public notice; to modify its plans in order to avoid violating its duties under the statute; or to cease and desist permanently from implementing the proposed change.

V. CONCLUSION

For the foregoing reasons, the Commission's rules implementing Section 251 should incorporate the provisions discussed in these comments.

Respectfully submitted,



Andrew D. Lipman
Russell M. Blau
SWIDLER & BERLIN, Chartered
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
(202) 424-7500
Fax (202) 424-7645

Attorneys for
MFS Communications Company, Inc.

David N. Porter
Vice President, Government Affairs

MFS COMMUNICATIONS
COMPANY, INC.
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
(202) 424-7709

RDBS (LERG) MINIMUM TIME INTERVALS

1. At least six months in advance of the effective date:
   - All activity associated with a new or discontinued NPA or a change in the present boundaries of an existing NPA.
   - Finalized information on cutover of an access or Feature Group B tandem.
   - Finalized information on replacement of an end office with the latest equipment.
   - Changes in homing arrangements including SS7 interconnect relationships, downgrade or update of an existing office to access tandem or Feature Group B functions.
2. At least three months in advance of the effective date: **[This document establishes a minimum CO Code activation interval without regard to network infrastructure. There should be understanding that interconnection arrangements and facilities need to be in place prior to activation of a code. Such arrangements are outside the scope of these guidelines.]**
   - Changes in office capability, e.g., Feature Group changes and/or SS7 functionality
   - New or changed rate centers and localities.
   - Rate center V-H coordinate changes. **NOTE:** If the V-H coordinate change is a correction to an existing rate center, immediate notification is required.
   - All Destination Code changes, i.e., modifications involving new or changed rate centers and localities and rate center V-H coordinates.
3. At least 45 days in advance of the effective date: **[This document establishes a minimum CO Code activation interval without regard to network infrastructure. There should be understanding that interconnection arrangements and facilities need to be in place prior to activation of a code. Such arrangements are outside the scope of these guidelines.]**
   - All Destination Code changes, i.e., modification, disconnection, or establishment of new Central Office Codes (COCs), except activity listed in Item 2 above (3 months) and Item 5 below.
   - All Destination Code changes, i.e., modifications involving existing Central Office Codes (COCs) moving or rehoming to a different end office or access tandem. (except as listed in Item 1 above.)
   - All Destination Code changes related to changes in homing arrangements including SS7 interconnect relationships, downgrade or update of an existing office to access tandem or Feature Group B functions.

- All new codes (not currently assigned in RDBS except codes that are vacant because of an NPA split) in a new switch.

4. Applicable code activity that is reported in less than the above time frames should be avoided and may result in the following situations occurring:

   - Credit cards that may not be able to go through for processing.
   - Call failure.
   - Hard to reach locations.
   - Network blockage.

5. Code activity involving multiple changes (modifications) to a COC, when all the changes are to become effective on the same date, should be reported using the time intervals for the activity that has the greatest required time interval. **[This document establishes a minimum CO Code activation interval without regard to network infrastructure. There should be understanding that interconnection arrangements and facilities need to be in place prior to activation of a code. Such arrangements are outside the scope of these guidelines.]**