all tariffed interstate special and switched access service elements. Thus, for example, incumbent LECs must provide connections to SONET Optical Carrier facilities, whether provided as an unbundled network element (*see* para. 440) or as a tariffed interstate access service; and to the interoffice transport facilities used in providing tariffed interstate access services.

The Commission should also clarify that carriers may interconnect with incumbent LECs through the collocated equipment of a third-party carrier, and therefore that the incumbent LECs have an obligation to provide cross-connects to such a third-party carrier. For example, if Carrier A (which may be a competitive LEC or a wireless service provider) desires to interconnect to an incumbent LEC's network at a particular central office, but has no transmission facilities of its own in that vicinity, it may choose to interconnect via the facilities of Carrier B which has collocated equipment in that central office. Even assuming that Carrier B were not otherwise providing telephone exchange service or exchange access (*see* paras. 184-185), the incumbent LEC should be required to provide cross-connections to Carrier B's collocated equipment pursuant to Section 251(c)(6) to enable Carrier A to interconnect at that location as it is entitled to do under the Act and the Commission's rules.

V. PRICING OF INTERCONNECTION AND UNBUNDLED ELEMENTS

A. The Commission Should Clarify Procedural Requirements for State Commission Review of TELRIC Studies

Section 51.505(e)(2) of the rules promulgated by the Commission requires that any state proceeding conducted to review a TELRIC study "shall provide notice and an opportunity for comment to affected parties," and that the cost study shall be included in the factual record of the proceeding. These requirements are also mentioned in paras. 619, 770, and 1089, but none of these references provides any additional guidance or explanation of these procedural requirements. MFS seeks clarification of this rule in two respects.

First, the Commission should clarify whether the requirement for "notice and comment to affected parties" precludes a State commission from reviewing TELRIC studies in an arbitration proceeding between two carriers in which other carriers who may be affected by the outcome have not been permitted to intervene. Many (although not all) State commissions have chosen to limit intervention in arbitrations, in keeping with the intent of the Act to promote bilateral commercial negotiations; and, until the release of the *1st R&O*, MFS generally supported this approach. In light of § 51.505(e)(2), however, it seems that the bilateral approach to arbitrations may not be appropriate in cases where TELRIC studies are in issue, and that State commissions may be required to conduct consolidated or generic proceedings in which all interested parties have an opportunity to contest the TELRIC studies.

Second, the Commission should clarify that the requirement that a cost study be included in the factual record of a proceeding implies that other parties must have a reasonable opportunity to analyze and rebut the study during the course of the State proceeding. In the first round of arbitration proceedings conducted under the 1996 Act, most incumbent LECs have claimed that their cost studies contain proprietary information and have sought protective orders to restrict access to this information. MFS does not necessarily object to such protective orders as long as they do not unreasonably restrict other parties from reviewing and analyzing the data and the underlying algorithms and methodologies used in preparing the studies, and as long as the cost study itself is filed in the record of the proceeding (even if under seal). Any protective order that unreasonably limits access to the data should be found to violate § 51.505(e)(2), however. Examples of unreasonable restrictions include withholding any part of the input data, algorithms, or formulas used to compute TELRIC; denying other parties copies of the study materials, or refusing to make the materials available in computer-readable format so that the data and algorithms can be tested and analyzed; and denying access to cost study materials to costing experts who are employees of a competitor of the incumbent LEC.

B. The Commission Should Clarify the Rules Regarding Geographically Deaveraged Rates

Paras. 764-65 explain the Commission's requirement that rates for interconnection and network elements must be geographically deaveraged, and that States must establish a minimum of three geographic zones to reflect geographic cost differences. MFS seeks clarification of this requirement in several respects. First, the Commission should clarify that the three-zone requirement applies on a State-wide basis, and not to each individual study areas. Some independent LEC study areas are quite small, and it would not be practicable to divide them into three zones. Further, some small study areas may not have nearly as wide a variety of geographic conditions as would be found in an entire State, so dividing a small study area into three zones might not serve any useful purpose even if it were practicable.

Second, it seems likely that there are at least some specific categories of cost that do not vary significantly among geographic areas within a State (for example, non-recurring charges are primarily determined by labor costs, which may be uniform throughout a LEC's serving area due to requirements of union contracts). The Commission should therefore clarify that it is not necessary that every individual rate element or component be geographically deaveraged.

Third, para. 784 provides that when a State uses a proxy rate, it "shall set rates such that the average rate for the particular element *in a study area* does not exceed the applicable proxy ceiling or lie outside the proxy range." (Emphasis added.) MFS does not object to this approach in general, since most of the proxy rates are either based on company-specific data or are not likely to be subject to major geographic variation. The critical exception to this, however, is the proxy loop rate, which is subject to very great geographic variation and which the Commission derived from State-wide rather than company-specific data, as explained in detail in paras. 792-794. Para. 794, in particular, specifically says that Appendix D lists "the proxy ceilings *on a statewide basis*[.]" (Emphasis added.) Also, para. 797, which deals specifically with applying the geographic deaveraging rule to the loop proxies, refers again to the "proxy ceiling set for the *statewide average* loop cost[.]" (Emphasis added.)

Under standard canons of interpretation, a more specific provision such as para. 797 (which relates specifically to unbundled loop proxies) would govern over a more general provision such as para. 784 (which applies to all types of proxies). In order to avoid any ambiguity, however, the Commission should specify that loop proxies are to serve as a ceiling on a statewide average basis, and not on a study area-specific basis. Application of these statewide proxies to individual study areas could produce absurd results—for example, if a State comprises two study areas, one of which is predominantly urban and the other predominantly rural, a literal application of para. 784 would require that the average loop rate be the same in both study areas (on an interim basis), even though the costs would obviously be higher in the rural area and the intent of the Commission's rule was that rates should reflect such cost differences.

VI. RESALE

A. The Presumption Against Restrictions on Resale Should Extend to Geographic and Premises Restrictions That Plainly Target Resellers

The Commission makes it very clear in the *1st R&O* that conditions and limitations that restrict the resale of any telecommunications service are presumed unreasonable. In particular, para. 963 mentions shared tenant services, and states that "restrictions on the resale of flat-rated offerings to multiple end users" shall be presumed unreasonable. The Commission should clarify its order, however, to establish that LECs may not accomplish the same result indirectly through tariff provisions that limit the geographic area within which a service may be used, or the number of premises that may be connected to a particular service. Historically, many LECs have not prohibited shared tenant services and other limited forms of resale, but have effectively limited the scope of resale indirectly through geographic and/or premises restrictions. These restrictions have virtually no effect on end users, since end users by nature almost always occupy either a single premise or a very limited number of closely grouped premises; but they severely limit the ability of resellers to aggregate traffic volumes from multiple end users. The Commission should declare that any tariff condition or limitation that has a disparate or disproportionate effect on resellers as compared to end users (even if it does not on its face single out resellers) should be presumed unreasonable.

B. The Commission Should Reconsider Its Rule Regarding "Grandfathered" Services.

The Commission's decision in para. 968 to require incumbent LECs to permit resale of "grandfathered" services only to those end users who are eligible to buy the service directly under the "grandfathered" tariff falls far short of solving the problem identified in the comments. As explained below, the Commission's approach merely preserves the *appearance* of resale while forfeiting nearly all of its public interest benefits. The Commission should reverse this decision in order to avoid creating a loophole that would defeat the purpose of the resale provisions of the Act.

As the Commission has recognized in past decisions, resale can take a variety of forms. The simplest form may be called "re-branding," in which a reseller utilizes no actual facilities of its own to provide a service, and in fact purchases substantially the entire service in substantially the final form it is delivered to the customer, directly from some other underlying provider. This type of resale is typical in the long distance industry, where it is known as "switchless resale." A second form of resale is "Volume Service Aggregation," in which a carrier purchases a high-volume service or set of high volume services that are typically only available to or usable by very large customers, and then repackages and resells that service in multiple individual increments that resemble the services typically purchased by small and medium-size customers, thus enabling small and medium-size customers to avail themselves of some of the benefits that of volume purchasing that are available to large customers directly from the incumbent. This repackaging may or may not require the carrier to utilize its own equipment to some extent. Shared tenant service is a form of volume service aggregation, as is WATS resale in the interexchange market. A third form of resale is actually a hybrid facilities-based and resale strategy in which a carrier leases discrete facilities or functions from an underlying carrier, such as the use of unbundled network elements pursuant to Section 251(c)(3) of the Act, and combines these elements with features of its own network to provide a service that is functionally different from the underlying service. This method of operation is typical of many "third-tier" interexchange carriers, which combine limited switching and transmission facilities of their own with facilities and services acquired from the larger, national carriers, to provide end-to-end service to customers.

Section 251(c)(4)(B) of the Act, by prohibiting *all* unreasonable and discriminatory conditions and limitations on resale, was plainly intended to promote all these varieties of resale. The public interest benefits of competition will be maximized if competitive entrants have the greatest degree of flexibility in deciding whether to use their own facilities, to resell services of other carriers, or to combine both these approaches in delivering services to their own customers. Under the Commission's order, however, incumbent LECs will be able to eliminate that flexibility by "grandfathering" those services that are most likely to be useful to aggregators and hybrid resellers, as US West has already attempted to do by withdrawing its Centrex Plus tariffs. "Grandfathered" services will still be available to "re-branders" who want to resell the service in precisely the same form as the incumbent LEC provides it to precisely the same user group, but other resellers will no longer have the ability to aggregate traffic from multiple end users or combine the resold service with elements of their own network in order to produce a new service. Consumers will be denied the economic efficiency benefits that could otherwise be obtained by allowing competitors unrestricted resale of the service, while the incumbent LEC will continue to provide the service, perhaps indefinitely, to the closed group of "grandfathered" users. Moreover, the incumbent LEC will presumably be free to design a "new" service that will be attractive to end users but will be designed so that it cannot easily be used by resellers, thereby further frustrating the intent of Congress and defeating the achievement of efficiency gains.

MFS submits that the Commission failed to consider that "grandfathered" services might be used by resellers in other ways beyond simple re-branding. If only re-branding were at issue, the resolution reached in the *1st R&O* might be adequate, but the Commission failed to provide any protection for other types of resale. MFS therefore seeks reconsideration of this aspect of the decision, and requests that the Commission find that LECs are prohibited from "grandfathering" a retail telecommunications service, unless they provide the service to resellers without unreasonable conditions and limitations for the same length of time that the service remains available to grandfathered end users.

VII. RECIPROCAL COMPENSATION

A. The Commission Should Clarify the Circumstances Under Which New Entrants Are Entitled to Symmetric Transport and Tandem-Switching Charges.

The concept of symmetric compensation for transport and termination of traffic is central to the Commission's model establishing the relationship between incumbent carriers and new entrants in the local exchange markets. MFS strongly supports the Commission's decision requiring that the new entrant's rates should be equal to those of the incumbent LEC. Para. 1085; 47 CFR § 51.711(a).

In para. 1090, the Commission concludes that States may establish transport and termination rates that vary according to whether the traffic is routed through a tandem switch or directly to an end office switch. The Commission then applies the principle of symmetry to tandem interconnection in the following terms—

> In such event, states shall also consider whether new technologies (*e.g.*, fiber ring or wireless networks) perform functions similar to those performed by an incumbent LEC's tandem switch and thus, whether some or all calls terminating on the new entrant's network should be priced the same as the sum of transport and termination

> via the incumbent LEC's tandem switch. Where the interconnecting carrier's switch serves a geographic area comparable to that served by the incumbent LEC's tandem switch, the appropriate proxy for the interconnecting carrier's additional costs is the LEC tandem interconnection rate.

Id. The second sentence quoted above (but not the first) is restated in only slightly different terms in 47 CFR § 51.711(a)(3).

This provision has already given rise to controversies over interpretation in several state arbitration proceedings (including MFS' arbitrations with U S West in Arizona, Colorado, Minnesota, Oregon, and Washington, and with Sprint in Florida). Because the concept of symmetry is so critical to establishing a competitive market structure, MFS urges the Commission to resolve these controversies by clarifying its decision in several respects.

First, the Commission should clarify the relationship between the two sentences quoted above from para. 1090. U S West has argued in arbitration that an interconnecting carrier must demonstrate *both* that its network performs tandem-like switching functions *and* serves a geographic area comparable to that served by the LEC's tandem in order to qualify for symmetric compensation. Since § 51.711(a)(3) provides that symmetric rates shall apply if the non-incumbent's switch serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, and does not impose any other requirement, U S West's interpretation is evidently incorrect. The Commission should confirm that a non-incumbent LEC is entitled to symmetric compensation if *either* its switch serves a geographic area comparable to that of the LEC tandem, *or* its network performs functions similar to those performed by a tandem. Further, MFS is installing switches that provide tandem switching functionality. When the company has traffic sufficient to warrant two switches in an area, it likely will use its own switch for tandem features. And, it may use those features immediately by offering tandem switching services to other new local service entrants, interexchange carriers or CMRS operators.

Second, the Commission should clarify that a "comparable" geographic area does not necessarily mean an "identical" geographic area, and that the geographic area served by a new entrant's switch includes areas that may be served exclusively through resale of the incumbent's unbundled network elements. U S West has argued that MFS' switches do not serve a "comparable" geographic area by comparing the physical extent of MFS' network facilities with those of U S West. (Sprint has made a similar argument in Florida.) Since MFS is a new entrant that has only recently begun developing networks, while U S West is an incumbent that has deployed facilities ubiquitously throughout its service territories, this comparison will always favor U S West. But, since MFS can obtain access to unbundled elements of U S West's and other LEC's networks in order to augment its own facilities, the comparison is misleading and irrelevant. MFS, or any other new entrant, should be entitled to symmetric compensation if it demonstrates that its switch will be capable of terminating traffic over a geographic area substantially larger than that served by the incumbent's *end offices*, whether through use of its own facilities or through use of unbundled network elements of the incumbent LEC.

Third, the Commission should clarify that the "tandem interconnection rate" referred to in § 51.711(a)(3) includes all rate elements assessed by the incumbent LEC for transport and termination of traffic routed through a tandem switch. This would include the tandem switching charge, transport between the tandem and the end office, as well as any charges applicable for end office termination. Sprint has argued that the "tandem interconnection" rate should be limited to the tandem *switching* element, with no compensation for transport. This argument, however, is contradicted by para. 1090, where the Commission stated that where a new entrant's network is functionally similar to a tandem, the appropriate charge would be "the same as the *sum of transport and termination* via the incumbent LEC's tandem switch." (Emphasis added.) The Commission should therefore clarify that the "tandem interconnection" rate refers to the sum of all transport and termination charges applicable to termination via the incumbent LEC's tandem switch.

B. The Commission Should Clarify That Reciprocal Compensation Is Due on All Traffic Exchanged by the Parties.

At least one ILEC (U S West) has proposed that reciprocal compensation should not be paid on local traffic destined to an information service provider. This position appears to be based primarily, if not entirely, on U S West's view that information service providers should be paying access charges. That is an issue the Commission will undoubtedly consider in its upcoming access reform docket. It should not be litigated here, nor should carriers or State commissions be permitted to prejudge the issue by manipulating reciprocal compensation arrangements. Further, such a restriction would require MFS or U S West to somehow monitor or limit the use of their communications services. Even if the carriers wanted to do this, which MFS does not, it would violate their obligation as common carriers, and the ban would prove impossible to enforce. Any customer today can decide to offer information services through a variety of technologies. MFS asks the Commission to clarify that reciprocal compensation is due on all exchanged traffic.

VIII. CONCLUSION

MFS respectfully requests that the Commission reconsider and clarify those discrete aspects of its *1st R&O* set forth above. Although the Commission's decision was comprehensive and pro-competitive, it is inevitable that in a decision of this scope (and especially given the limited time allowed by Congress for completion of this monumental task) there are a few rough edges that need to be smoothed out. The relatively minor adjustments proposed in this Petition will help to accomplish the goals of Congress and of this Commission, which MFS strongly supports, of implementing the 1996 Act in an effective and pro-competitive fashion.

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I hereby certify that on this 30th day of September 1996 copies of a Petition For Partial Reconsideration and Clarification of MFS Communications Company, Inc. were served on the attached list by first class mail, postage prepaid.

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