Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185
	)	
Area Code Relief Plan for Dallas and Houston, Ordered by the Public Utility Commission of Texas	)	NSD File No. 96-8
	)	
Administration of the North American Numbering Plan	)	CC Docket No. 92-237
	)	
Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois	)	IAD File No. 94-102

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MFS COMMUNICATIONS COMPANY, INC.
RESPONSE TO PETITIONS FOR RECONSIDERATION
OF SECOND REPORT AND ORDER

MFS Communications Company, Inc. ("MFS"), by its undersigned counsel, hereby responds to certain of the various petitions filed with the Commission for reconsideration and/or clarification of the *Second Report and Order* in the above-captioned dockets, FCC 96-333, released August 8, 1996 (the "*2nd R&O*").[1]

[1] Petitions for reconsideration or clarification are cited by name of party only. MFS is responding only to certain issues in certain petitions, and neither supports nor opposes any request for relief that is not specifically addressed in this Response.

I. TOLL DIALING PARITY RULES

A. The Procedures for Filing Toll Dialing Parity Implementation Plans with the FCC Should be Clarified

GTE (at 10-12) requests clarification of the provisions of 47 CFR § 51.213(c) requiring a LEC to file toll dialing parity implementation plans with this Commission if it determines that a state commission either will not review the plan, or will not complete its review of the plan on a timely basis. For LECs that begin providing "in-region, interLATA or in-region, interstate toll service" before August 8, 1997, this filing must be made by December 5, 1996.

MFS agrees with GTE's petition on this issue. It may be impossible for some LECs to comply with the rule as promulgated, since a LEC simply may not know by December 5, 1996, whether a state commission will review its plan or will complete that review on a timely basis. MFS believes that its local exchange carrier subsidiaries are subject to the December 5 filing deadline. At this time, however, MFS has not yet filed toll dialing parity implementation plans with any State commission (although it is preparing to do so) and therefore cannot determine whether the conditions requiring it to file these plans with the FCC have been (or will be) satisfied.

GTE does not suggest a specific resolution of this problem, although it does ask the Commission for clarification. MFS proposes that the Commission should amend § 51.213(c) to provide as follows:

> (c) A LEC must file its implementation plan with the state commission for each state in which the LEC provides telephone exchange service, except that if a LEC determines that a state commission has elected not to review the plan or will not complete its review in sufficient time for the LEC to meet the toll dialing parity implementation deadlines in § 51.211, the LEC must file its plan with the Commission <u>no later than 14 days after making that determination, except that a LEC need not file its plan with the Commission earlier than</u>:

(1) ~~no later than~~ 180 days before the date on which the LEC will begin providing toll dialing parity in the state, or ~~no later than~~ 180 days before February 8, 1999, whichever comes first; or

(2) for LECs that begin providing in-region, interLATA or in-region, interstate toll service (*see* § 51.211(f)) before August 8, 1997, ~~no later than~~ 90 days after these rules are published in the Federal Register.

Also, MFS requests that the Commission act on this issue on an expedited basis, since the filing deadline for some LECs is extremely imminent.

MFS also supports GTE's request that the Commission provide procedural guidance on other issues related to review of these implementation plans. (GTE at 12.)

B. The "Automatic Assignment" Rule Should Apply Only to New Customers

GTE (at 4-6) and USTA (at 7-8) request that 47 CFR § 51.209(c), which prohibits a LEC from automatically assigning local exchange subscribers either to its own or to another carrier's intraLATA toll services in the absence of an affirmative choice, only applies to "new" customers who subscribe to local exchange service after the implementation of intraLATA toll dialing parity. MFS agrees. The rule as adopted is inconsistent with the Commission's decision in para. 80 of the *2nd R&O* not to adopt detailed balloting and customer notification procedures, as well as with the explicit statement in para. 81 that the prohibition on automatic assignment was intended to apply to "*new* customers who do not affirmatively choose a toll provider." (Emphasis added.) MFS concurs that the language of the rule should be amended, as proposed by GTE, to make it consistent with the discussion in paras. 80 and 81.

On the other hand, NYNEX (at 5-7) urges that the Commission reconsider its decision on this issue and eliminate § 51.209(c) altogether, in favor of deferring to the State commissions to determine whether a LEC should be permitted to default new customers to its own intraLATA toll

services. MFS opposes NYNEX's request. It is not very difficult for a LEC to ask new customers to choose an intraLATA toll provider at the time they sign up for local exchange service. Although NYNEX suggests that problems could occur if a customer were not assigned an intraLATA carrier, this seems unlikely if the LEC provides a clear written or oral reminder to the customer that "IF YOU DO NOT SELECT ONE OF THESE COMPANIES TO BE YOUR INTRALATA TOLL PROVIDER, YOU WILL NOT BE ABLE TO PLACE ANY INTRALATA TOLL CALLS WITHOUT FIRST DIALING AN ACCESS CODE. IS THIS WHAT YOU REALLY WANT?" It is reasonably probable that the vast majority of customers will select an intraLATA toll carrier after receiving this warning and question, and those who do not will make that choice deliberately.

II. NONDISCRIMINATORY ACCESS RULES

A. LECs Should Not Be Permitted to Treat Requesting Carriers Less Favorably Than Themselves

Ameritech (at 7-11) seeks reconsideration of the Commission's interpretation of "nondiscriminatory access," as used in Section 251(b)(3), as meaning that a LEC must provide requesting carriers with access to the services identified in that subsection "that is at least equal in quality to the access that the LEC provides to itself." *2nd R&O*, para. 101. Ameritech made the same argument in its comments on the *Notice of Proposed Rulemaking*, which was expressly considered and rejected by the Commission (*see* para. 99), and should be rejected again on reconsideration.

Ameritech's argument, in essence, is that because Congress specifically required in Section 251(c)(2)(C) that incumbent LECs provide interconnection to requesting carriers that is "at least equal in quality" to what they provide themselves, it must have intended to adopt a lower standard whenever it used the word "nondiscriminatory" elsewhere in the statute without specifically

including the "at least equal in quality" phrase. This interpretation would turn the meaning of the statute on its head. The clear purpose of subsections (b) and (c) of Section 251 was to ensure that requesting carriers would have access to those bottleneck facilities and functions of the local exchange network that they will need in order to compete on even terms with incumbent LECs. It would be starkly inconsistent with this clear purpose to interpret paragraph (b)(3), or, for that matter, any other provision in these subsections, as allowing a LEC to provide requesting carriers with some kind of inferior or restricted access to essential facilities as long as it treats all of its competitors equally unfairly.

Ameritech's statutory construction arguments, which focus on the placement of individual words and phrases within the statute, ignore the underlying purpose of statutory construction which is to effectuate the intent of Congress.[2] The Commission's interpretation is correct because it considers the meaning of the words used in the context of the statute as a whole, while Ameritech's contrary interpretation would take those words out of context and twist their meaning to the opposite of what Congress intended.[3] Therefore, Ameritech's petition should be denied.

B. Nondiscriminatory Access to Customer Guides and Information Pages Should Remain Subject to Arbitration

NYNEX (at 7-8) asks the Commission to "clarify" that incumbent LECs are not required to provide competitors with access to customer guide and informational pages in their published

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[2] "Our objective in a case such as this is to ascertain the congressional intent and give effect to the legislative will." *Philbrook v. Glodgett*, 421 U.S. 707, 713 (1975).

[3] *Id.*; *see also Richards v. United States*, 369 U.S. 1, 11 (1962) ("We believe it fundamental that a section of a statute should not be read in isolation from the context of the whole Act, and that in fulfilling our responsibility in interpreting legislation, 'we must not be guided by a single sentence or member of a sentence, but (should) look to the provisions of the whole law, and to its object and policy.'") (footnotes omitted).

directories. This request should be denied, because the *2nd R&O* already provides sufficient guidance on this issue.

As NYNEX correctly states, the Commission declined to adopt any mandatory rules regarding access to customer guides and informational pages. *2nd R&O,* para.137. Rather, the Commission adopted a "minimum standard" that the term "directory listing" includes "subscriber list information."[4] Although NYNEX suggests that the term "minimum standard" is unclear, MFS submits that this language correctly recognizes the authority of State commissions, when acting as arbitrators under Section 252, to determine the full scope of nondiscriminatory access to directory listing services.[5] Because directory publishing practices vary from State to State, it would be impractical and cumbersome for the Commission to attempt to promulgate nationally uniform rules on this subject.

The "clarification" sought by NYNEX would in fact work a substantive change in the Commission's rules, and would improperly limit the discretion of State commissions acting as arbitrators to impose appropriate conditions to fulfill the requirements of Section 251(b)(3). NYNEX's motion should therefore be denied.

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[4] MFS has separately petitioned for reconsideration of this definition on other grounds, as stated in its Petition for Limited Reconsideration and Clarification.

[5] NYNEX also argues that Section 271(c)(2)(B)(viii) establishes that incumbent LECs are "only" required to provide White Pages listings to requesting carriers. That provision says no such thing. Section 271 only applies to the BOCs, not to all incumbent LECs, and it only establishes conditions that must be satisfied for a BOC to enter the interLATA market. Compliance with Section 271 does not necessarily imply full compliance with Section 251, nor vice versa, except where one of these provisions expressly references or incorporates the other.

III. NUMBERING ADMINISTRATION RULES

A. The 10-Digit Dialing Rule for NPA Overlays Should Be Retained

MFS opposes the requests of NYNEX (at 13-15), the New York Department of Public Service ("DPS") (at 3-10) and the Pennsylvania PUC (at 2-5) that the Commission reconsider its decision to require 10-digit dialing as a condition of any future NPA overlay.[6] As MFS has explained in more detail in its own Petition for Limited Reconsideration and Clarification, 10-digit dialing is a necessary (but not sufficient) condition for competitive neutrality in NPA overlay plans.[7]

The New York and Pennsylvania regulators argue that interim and (later) permanent number portability will ameliorate the anti-competitive effects of overlays, since customers can switch to a new LEC while retaining their old telephone number (and area code). These arguments, however, ignore both the limitations of interim number portability, and the effect of an overlay on customers who cannot retain an old telephone number (either because they are new customers, are obtaining additional lines, or are moving to a location in a different exchange area). The latter group of customers would likely be assigned a number in the new (overlay) area code; and the Commission correctly concluded that such numbers are likely to be perceived as undesirable, especially in the first few years of an overlay plan.

The New York DPS suggests that the incumbent LEC, rather than new entrants, is likely to assign more new telephone numbers in the overlay area code, but its analysis is faulty. The DPS fails to consider the fact that telephone numbers are not assigned to LECs; NXX codes are. Each

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[6] MFS takes no position on whether the 10-digit dialing rule should apply to the existing 917 NPA overlay in New York City, which predates the *2nd R&O*. MFS also takes no position on whether 10-digit dialing should be required for numbers in the 555 NXX code which are assigned on a nationwide basis.

[7] *See also* TCG Petition at 8-11; Cox Communications Petition at 4.

NXX code contains 10,000 telephone numbers, and once that code is assigned all of those numbers are reserved for one LEC whether they are used or not. Once all of the NXX codes in an area are assigned, NPA relief becomes necessary, regardless of how many or how few numbers within each NXX code are actually being used. Therefore, when an overlay plan is implemented, the incumbent LEC, by virtue of having been assigned the vast majority of the NXX codes in the old area code, will very likely have a large reserve of unassigned numbers within those NXX codes which it can continue to assign to new customers for some period of time. New entrants generally will not have such a reserve (or at best will have a much smaller pool of reserve numbers from which to draw). Therefore, new entrants will be forced to assign undesirable numbers in the overlay area code much sooner than will incumbents, and will be put at a competitive disadvantage.

For the reasons stated in MFS' Petition, the Commission should reconsider its decision to permit overlays at all in the absence of permanent number portability. If, however, the Commission continues to permit overlays, then it should retain the 10-digit dialing requirement.

B. The Method of Cost Recovery for Numbering Administration Should Not Be Changed

MFS opposes the petitions of BellSouth (at 7), NYNEX (at 2-5), and USTA (at 5-6) seeking reconsideration of the Commission's decision that the costs of numbering administration should be recovered from all carriers using the same method as the current assessments for the TRS Fund and for the Commission's annual regulatory fees; that is, based on gross receipts minus payments made to other telecommunications carriers. *See 2nd R&O* paras. 342-343.

The petitioners argue that the Commission's assessment method is not competitively neutral and that the Commission should instead base its assessment on gross "retail" revenues; that is, all revenues from end user customers but not from carrier/reseller customers. This argument is factually

wrong. NYNEX itself actually demonstrates numerically that the Commission's assessment method *is* competitively neutral, although it confuses the issue by providing a variety of different (and irrelevant) calculations before performing the correct one. In NYNEX's example, Carrier A has gross revenues of $2 billion from retail sales to end users, and $1 billion from sales to Carrier B. Carrier B has gross revenues of $2 billion, all from retail sales. Under the Commission's assessment method, Carrier A would be subject to assessment on all $3 billion of its revenues, while Carrier B would be assessed based on $1 billion (gross revenues of $2 billion less payments of $1 billion to Carrier A). If total numbering administration costs were $50 million, then Carrier A would pay $37.5 million and Carrier B would pay $12.5 million. In order to recover this cost, Carrier A would have to increase its rates by 1.25% ($37.5 million divided by $3 billion). This additional charge would be passed through to all of Carrier A's customers, including Carrier B, which would pay an additional $12.5 million (1.25% of $1 billion). Carrier B would have to recover from its customers *both* the $12.5 million it would pay to Carrier A, and another $12.5 million it would pay directly for its share of numbering administration costs. Thus, Carrier B would have to recover a total of $25 million, which would amount to a surcharge of 1.25% on its total revenues—exactly the same as the burden on Carrier A.

A surcharge based on gross retail revenues, as urged by the petitioners, would in theory yield the same assessment base and the same net burden on all carriers as the Commission's method, but in practice it would be more difficult to implement. Every carrier already has the information it needs to compute (and report) its assessment base under the Commission's method—its gross telecommunications service revenues, and its total payments to other carriers for telecommunications services. This information is already required to be collected for purposes of the TRS Fund and annual regulatory fee assessments, so there would be no added burden on carriers to report this

information for purposes of recovering numbering administration costs. By contrast, carriers do not have the information needed to determine which of their revenues are "retail" and which are "wholesale," because they do not always know whether a customer intends to resell the services it purchases. Collection of this information would require carriers to create entirely new reporting and record-keeping systems and would impose substantial additional compliance burdens. Furthermore, since carriers would be forced to rely upon their customers to report accurately whether they intend to resell services, there would be an increased risk of fraud and consequent under-reporting of revenues under this approach.

For these reasons, the Commission's assessment method is superior to that proposed by the petitioners, and should not be reconsidered.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of November 1996 copies of MFS Communications Company, Inc.'s Response To Petitions For Reconsideration of Second Report and Order were served on the attached service list by first class mail, postage prepaid.

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