MITEL Inc.
205 Van Buren Street
Suite 400
Herndon, VA 20170-5336
Tel: (703) 318-7020
Fax: (703) 318-0591

ORIGINAL

25
1973•1998

VIA HAND DELIVERY

December 23, 1998

Ms. Magalie Roman Salas, Secretary
Office of the Secretary
Federal Communications Commission
455 Twelfth Street, S.W.
Washington, D.C. 20554

RECEIVED
DEC 23 1998
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RE: Policy and Rules Concerning the Interstate, Interexchange Marketplace; CC Docket No. 96-61
Implementation of Section 254(g) of the Communications Act of 1934, as amended
1998 Biennial Regulatory Review -- Review of Customer Premises Equipment and Enhanced Services Unbundling Rules in the Interexchange, Exchange Access and Local Exchange Markets; CC Docket No. 98-183

Dear Ms. Salas:

Enclosed are the original and four copies of the Reply Comments of Mitel, Inc. for filing in the above-referenced dockets.

Kindly date-stamp and return the extra copy of this cover letter. We have provided a self-addressed stamped envelope for your convenience. If there are any questions about this filing, please feel free to contact me.

Respectfully submitted,

Edward J. Silberhorn

Edward J. Silberhorn
U.S. General Counsel &
Corporate Secretary

EJS:cjl:enclosures

No. of Copies rec'd 0+4
List ABCDE

cc: Mr. William Kennard
Mr. Harold W. Furchgott-Roth
Mr. Michael Powell
Ms. Susan Ness
Ms. Gloria Tristani
Mr. Lawrence E. Strickling
Ms. Carol Mattey
Mr. Michael Pryor
Mr. Peyton L. Wynns
Ms. Jane E. Jackson
Mr. John W. Berresford, Esq.
Robert F. Aldrich, Esq.

RECEIVED

DEC 23 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

RECEIVED
DEC 23 1998
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Policy and Rules Concerning the Interstate, Interexchange Marketplace	)	CC Docket No. 96-61
	)	
Implementation of Section 254(g) of the Communications Act of 1934, as amended	)	
	)	
1998 Biennial Regulatory Review - - Review of Customer Premises Equipment and Enhanced Services Unbundling Rules in the Interexchange, Exchange Access and Local Exchange Markets	)	CC Docket N. 98-183

Reply Comments
of
Mitel, Inc.

Ed Silberhorn &
Ted Wieler

Mitel, Inc.
205 Van Buren Street
Suite 400
Herndon, VA 20170-5336
703-318-7020

Its Attorneys

December 23, 1998

TABLE OF CONTENTS

Summary ii

Public Interest Considerations 1

Market Considerations 1

Anti-Trust Considerations 2

Dominant Carriers and AT&T Reclassification 3

Conclusion 4

Certificate of Service 5

SUMMARY

Mitel, Inc. is a publicly held independent manufacturer of communication solutions, including customer premises equipment ("CPE"). Mitel strongly opposes the Commission's proposal to allow interexchange carriers (including even non-dominate interexchange carriers, given that someone the size of AT&T now qualifies) to once again bundle CPE with transmission services. The Commission seeks to justify its proposal on the grounds that the market conditions have allegedly changed sufficiently to warrant lifting the restrictions on the bundling of CPE and enhanced services with basic telecommunications services. The Commission's CPE No-Bundling Rule was originally intended to do more than merely prevent such carriers ("IXCs") from violating the federal antitrust laws, however; it sought to serve, and has served the public interest by allowing consumers to use the premises equipment that best meets their needs — regardless of whether it is provided by an IXC or by an independent manufacturer.

Rather than promoting competition, elimination of the Commission's highly successful No-Bundling Rule would impair competition while harming the public interest. Smaller independent manufacturers, like Mitel, without the huge financial resources or market clout necessary to join forces with a major IXC would find themselves unable to sell CPE through this major channel. The elimination of the non-bundling rule would jeopardize the profit potential of these entities and harm the consumer because it would tend to eliminate choice and concentrate power with the largest manufacturers – those best able to cooperate and participate, from a cash flow perspective, with the various bundling plans of the major interexchange carriers.

PUBLIC INTEREST CONSIDERATIONS

Adoption of the Commission's rebundling proposal would threaten the survival of a truly independent equipment manufacturing sector. Independent manufacturers have been the primary source of cost-effective, innovative products that are specifically designed to meet the varied needs of end-users.

If the Commission were to adopt the rebundling proposal, IXCs would be able to use transmission service tie-ins to offer CPE at cross-subsidized, deeply discounted prices. This practice would threaten the viability of many independent manufacturers. Those manufacturers that survived, moreover, would shift their orientation from the end-user market and, instead, would act primarily as vendors to the carriers with all the ill effects that would foster overtime. While bundling may be in step with the major IXCs' agendas to build multinational alliances overseas, the Commission must not lose sight of the importance of diversity in maintaining a vibrant U.S. and North American CPE marketplace.

MARKET CONSIDERATIONS

The Commission has based its proposal to allow non-dominant interexchange carriers to bundle CPE solely on the Commission's conclusions that "in light of current technological, market and legal considerations" and "in light of the development of substantial competition in the markets for CPE and interstate, interexchange services" the restrictions are no longer necessary. Yet, the Notice fails to recognize that it is the regulation barring bundling which created, and still maintains, the current environment of innovation and of technological market competition upon which the Commission relies for justification. If the No-Bundling Rule is eliminated, the now-competitive CPE market is likely to return to the anti-competitive and stifled technological conditions that prompted the Commission to adopt the current rule. Those large manufacturers able to afford long term relationships involving deferred paybacks ("rentals") would have a distinct advantage in entering into joint ventures with IXCs. Smaller manufacturers would effectively be squeezed out.

ANTITRUST CONSIDERATIONS

The Commission cites the Independent Data Communications Manufacturers Association ("IDCMA") argument "that an interexchange carrier, even if lacking market power, nevertheless might have the ability to force consumers of their interstate, interexchange service offerings to purchase CPE from that same interexchange carrier." This concern is the same concern that led, in part, to the Commission's adoption of the rule that it now seeks to remove. The argument and concern remains valid today. The ability to lock in customers through the use of long-term contracts and early termination penalties would greatly impede competition in the CPE market. Such tactics would make the cost of switching too high for those consumers who are not sophisticated enough to understand the life cycle pricing considerations of their decisions.[1]

The CPE No-Bundling Rule,[2] which was adopted during the Second Computer Inquiry, has been one of the Commission's most successful policy initiatives. The Rule has allowed consumers to obtain the premises equipment that best meets their needs, whether provided by a carrier or by an independent manufacturer. Mitel recognizes that in the years since the Rule was adopted there have been important changes in both the CPE and interexchange markets. These changes, however, do not alter the Commission's finding --reiterated in 1995 -- that " 'the underlying rationale for the Commission's procompetitive CPE policies and rules remains as valid today as it was during the Computer II decisions.' "

---

1 Eastman Kodak Company v. Image Technical Services, Inc., 504 U.S. 451 (1992)

2 47 C.F.R. § 64.702(e).

Rather than advancing the Commission's pro-competitive policies, permitting IXCs to bundle CPE would turn back the clock to the pre-Carterfone 1960s, when the carrier provided premises equipment as part of its regulated offering, and consumers were unable to deal directly with independent manufacturers. There is simply no justification for returning to such a stagnant telecommunications era as we approach the end of the millennium. The only appropriate action, therefore, is for the Commission to reject the "rebundling" proposal contained in the Notice.

DOMINANT CARRIERS AND AT&T RECLASSIFICATION

Should the Commission determine that the regulation of non-dominant carriers be relaxed, Mitel would respectfully request that the AT&T reclassification decision be revisited along with the impact of the MCI WorldCom merger on concentration of market clout. Mitel also respectfully submits that, in no event, should the dominant local exchange carriers be removed from the strictures of the No Bundling Rule because incumbent local exchange carriers control local service markets such that there would be profound anti-competitive effects of allowing the bundling of CPE with their services..

CONCLUSION

For the foregoing reasons, the Commission should retain the successful, Customer Premises Equipment No-Bundling Rule which continues to promote competition to the benefit of the consumer. The Rule helps ensure the continued development of creative CPE products by independent manufacturers and gives consumers the freedom of choice so vital to a productive society.

Respectfully submitted,

Ed Silberhorn &
Ted Wieler

Mitel, Inc.
205 Van Buren Street
Suite 400
Herndon, VA 20170-5336

703-318-7020

Its Attorneys

Certificate of Service

I, Connie J. Livingston, Legal Executive Secretary for Mitel, Inc., hereby certify that on this 22nd day of December 1998, I caused copies of the foregoing "Reply Comments of Mitel, Inc." to be delivered by hand to the following:

Mr. William Kennard, Chairman
Federal Communications Commission
1919 M. Street, Room 814
Washington, DC 20554

Mr. Harold W. Furchgott-Roth, Commissioner
Federal Communications Commission
1919 M Street, Room 814
Washington, DC 20554

Mr. Michael Powell, Commissioner
Federal Communications Commission
1919 M Street, Room 814
Washington, DC 20554

Ms. Susan Ness, Commission
Federal Communications Commission
1919 M Street, Room 814
Washington, DC 20554

Ms. Gloria Tristani, Commission
Federal Communications Commission
1919 M Street, Room 814
Washington, DC 20554

Mr. Lawrence E. Strickling, Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, Room 500
Washington, DC 20554

Ms. Carol Mattey, Chief
Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, Room 544
Washington, DC 20554

Mr. Michael Pryor, Deputy Chief
Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, Room 544
Washington, DC 20554

Mr. Peyton L. Wynns, Chief
Industry Analysis Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, Room 500
Washington, DC 20554

Ms. Jane E. Jackson, Chief
Competitive Pricing Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, Room 518
Washington, DC 20554

Mr. John W. Berresford, Esq.
Senior Antitrust Attorney
Industry Analysis Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, Room 500
Washington, DC 20554

Robert F. Aldrich, Esq.
Dickstein Shapiro Morin & Oshinsky LLP
2101 L Street NW
Washington, DC 20037-1526

Connie J. Livingston