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December 30, 1996

VIA FEDERAL EXPRESS

Ms. Blanca S. Bayo
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

Re: Docket No. 960838-TP

Dear Ms. Bayo:

Enclosed for filing are an original and fifteen (15) copies of a Motion for Reconsideration of MFS Communications Company, Inc. in the above-captioned docket.

A copy of the Brief is also on the enclosed diskette formatted in WordPerfect 6.1 for Windows. Please date stamp the extra copy and return it in the enclosed self-addressed envelope.

Thank you for your attention to this matter.

Sincerely,

Morton J. Posner

ACK ____
AFA ____
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Enclosures

cc: All parties of record

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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the matter of	)	
	)	
MFS COMMUNICATIONS COMPANY, INC.	)	
	)	
Petition for Arbitration Pursuant to 47 U.S.C. § 252(b) of Interconnection Rates, Terms, and Conditions with	)	Docket No. 960838-TP
	)	
SPRINT UNITED-CENTEL OF FLORIDA, INC. (Also known as CENTRAL TELEPHONE COMPANY OF FLORIDA AND UNITED TELEPHONE COMPANY OF FLORIDA)	)	

MOTION FOR RECONSIDERATION OF MFS COMMUNICATIONS COMPANY, INC.

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Attorneys for MFS Communications Company, Inc.

Dated: December 30, 1996

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MOTION FOR RECONSIDERATION OF
MFS COMMUNICATIONS COMPANY, INC.

MFS Communications Company, Inc. ("MFS"), by its undersigned attorneys, pursuant to Rule 25-22.060, Florida Administrative Code, hereby files its Motion for Reconsideration of Commission Order No. PSC-96-1532-FOF-TP ("Order") in the above-captioned proceeding.

I. INTRODUCTION.

The Commission's Order arbitrates MFS' petition for interconnection terms with Sprint under the Telecommunications Act of 1996 ("1996 Act"). MFS seeks reconsideration of the Commission's decisions regarding geographic deaveraging of unbundled loop rates and compensation for call transport. The purpose of a motion for reconsideration is to bring to the Commission's attention some material and relevant point of fact or law which was overlook, or which it failed to consider when it rendered the order in the first instance. *Diamond Cab Co. v. King*, 146 So.2d 889 (Fla. 1962); *Pingree v. Quaintance*, 394 So.2d 161 (Fla. Dist. Ct. App.

1981). MFS submits that the Commission has misinterpreted and failed to enforce its mandatory obligation under the 1996 Act to institute geographically deaveraged loop rates. Moreover, the Commission has overlooked the fact that neither party to this arbitration disputed this mandatory requirement.

In addition, the Commission has misinterpreted its obligation under the 1996 Act, as further defined and implemented by the FCC's rules,[1/] to institute reciprocal compensation for call transport. The Commission has overlooked the fact that the parties agree that their network facilities are equivalent and worthy of reciprocal call termination (i.e., end-office switching) and transport charges. Applicable law dictates that MFS' network is similarly worthy of receipt of reciprocal compensation for call transport.

II. THE COMMISSION MUST RECONSIDER ITS DECISION NOT TO ORDER GEOGRAPHIC DEAVERAGING OF UNBUNDLED LOOP RATES.

The Commission's Order declined to institute geographically deaveraged unbundled loop rates in this arbitration despite the fact that the 1996 Act requires it and the parties did not dispute the requirement. The Order stated:

> We believe that Section 252(d)(1) of the [1996] Act allows geographic deaveraging of unbundled elements; but we do not believe that it requires geographic deaveraging. Therefore, because the Act does not require it, and because, the parties have not provided sufficient cost evidence in this case to support it, we will not require that the interim proxy of $13.68 be geographically deaveraged.

1/ First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, FCC 96-325, CC Docket No. 96-98 (released Aug. 8, 1996) ("FCC Interconnection Order"), *partial stay pending appeal granted sub. nom Iowa Utilities Board v. FCC*, No. 96-3321 (8th Cir. Oct. 15, 1996).

Order at 8 (emphasis in the original). The Commission's decision must be reconsidered because the 1996 Act requires deaveraging, even if the FCC Interconnection Order is stayed. MFS adduced the only evidence to accomplish the requisite deaveraging, which the Commission was obligated to apply but did not. Further, the Commission has overlooked the fact that MFS' deaveraging presentation was meant only to set interim rates. Any dissatisfaction with that record could be cured either by reopening the record, or by ordering a true-up of interim rates until satisfactory cost-based permanent rates are set.

A. Despite the Eighth Circuit stay, loop rates must be deaveraged.

As a threshold matter, the Commission's assertion that the 1996 Act does not require geographic deaveraging is incorrect. Section 252(d) of the 1996 Act requires cost-based pricing.[2] MFS' uncontradicted evidence was that loop length is the most sensitive variable in determining loop cost. *See* MFS Posthearing Brief at 9.[3] On that record alone, the Commission

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[2] The FCC Interconnection Order, ¶ 797, makes the point more forcefully:

> . . . we believe that cost-based rates *should* be implemented on a geographically deaveraged basis. We allow states to determine the number of density zones within the state, provided that they designate at least three zones, but require that in all cases the weighted average of unbundled loop prices, with weights equal to the number of loops in each zone, should be less than the proxy ceiling set for the statewide average loop cost . . .

(emphasis added). The FCC's use of the word "should" denotes that geographic deaveraging is obligatory in all cases.

[3] It is well documented that distance-sensitive pricing of loops reflects the cost differences due to loop length. For example, in its arbitration of a loop pricing dispute between Bell Atlantic and MFS in Virginia, the Virginia State Corporation Commission deaveraged the FCC's proxy loop cost of $14.13 into three zones. *See* Order No. 961120288, Case No. PUC960100 (Va. Corp. Comm'n).
(continued...)

was obligated to apply MFS' deaveraging method in this arbitration, or to state how it intended to fulfill that obligation if it did not. The Commission has overlooked that it has failed to satisfy the Section 252(d) requirement that it order cost-based unbundled loop rates.

In addition, the Commission has overlooked the fact that no party disputed that geographic deaveraging was necessary. Sprint agreed with MFS that deaveraging was required. *See* Order at 7. Sprint disagreed only with whether the FCC Interconnection Order required deaveraged *interim* rates. As the Commission summarized Sprint's argument:

> Sprint agree[d] that permanent loop rates should be deaveraged, but not until it is allowed to produce deaveraged rates based on TELRIC cost studies. Sprint does not agree that the FCC Order requires that the [interim] proxy rate be deaveraged. Sprint argue[d] that cost-based pricing of unbundled loops should be deaveraged, but that the FCC's Florida proxy rate of $13.68 is not a cost-based price.

Order at 7.

Sprint's assertion that the FCC Interconnection Order does not require deaveraging of interim rates, however, is simply wrong. According to the FCC's Order:

> The proxies that we establish represent the price ceiling or price ranges for the particular element on an averaged basis. [W]e required that rates be set on a geographically deaveraged basis. Consequently, *states utilizing the* [interim] *proxies shall set rates such that the average rate for the particular element in a*

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[1](...continued)
Similarly, in the arbitration between Bell Atlantic and AT&T in Pennsylvania, the Pennsylvania Public Utility Commission deaveraged the FCC proxy rate of $12.30 into four zones. *See* Pa. P.U.C. Docket No. A-310203F0002. Ameritech's proposed Statement of Generally Available Terms and Conditions for Illinois contains loop prices ranging from $4.70 (Zone A - essentially the central Chicago business district) to $15.20 (Zone C - Illinois excluding the Chicago metropolitan area).

MFS' cost witness also suggested that loop density within geographic zones might be another approach to loop cost deaveraging. Order at 8. Sprint offered no proposal in this case for deaveraging.

study area does not exceed the applicable proxy ceiling or lie outside the proxy range.

¶ 784 (emphasis added).[4/]

The Act requires that the Commission set geographically deaveraged permanent rates and the parties did not dispute that fact. The deaveraged rates were to apply on an interim or permanent basis, and regardless of whether the FCC Interconnection Order was stayed. By failing to deaverage the proxy rates the Commission failed to set cost-based rates and must reconsider its decision.

B. The Commission should adopt MFS' geographic deaveraging proposal with a true-up until satisfactory permanent rates are set.

The Commission's dissatisfaction with MFS' proposed interim deaveraging proposal is misplaced. According to the Commission, MFS' deaveraging method was "not based on sufficient cost data" and produced what the Commission considered to be disparate results. Order at 8. On that basis, the Commission declined to institute any deaveraging at all. The Commission has overlooked the fact that MFS' proposal was an interim one. Due to the compressed nature of the arbitration, it simply was not possible to undertake a detailed examination of loop costs.[5/] MFS offered a relatively simple method by which the Commission

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[4/] Staff's recommended decision, which the Commission adopted but did not incorporate in its Order, was to set three geographic zones with the same interim $13.68 rate to apply in each. While such a decision might appear to comply with the requirement that the average rate across the zones not exceed $13.68, the decision plainly would be inconsistent with the 1996 Act's mandate of cost-based rates, a fact the Commission fully recognized in its discussion of Staff's recommendation.

[5/] MFS suggested that the Commission would not be able to obtain necessary information in a timely manner from Sprint to set appropriate cost-based rates in this arbitration. *See* MFS Posthearing Brief at 9-10. "Given the likely asymmetry of information regarding network costs," (continued...)

could deaverage *interim* rates from widely available public industry information, and still issue a decision by its statutory deadline. Because both the methodology and the information is public, the Commission could readily rerun the study to address any anomalies.

The Commission should either reopen the hearing to receive satisfactory Sprint cost evidence, or it should modify its decision to order a true-up of the interim loop rates set using MFS' deaveraging method.[6] If interim rates are trued-up to later-established permanent rates, the Commission should have no concerns about the fact that with further refinement MFS' *interim* deaveraging method likely will produce somewhat different results. Using MFS' method with a true-up will also enable the Commission to comply with the 1996 Act's mandate of cost-based pricing through geographic deaveraging. In any event, the Commission should clarify its decision to state when and how it will consider cost studies Sprint must develop to establish permanent loop rates. *See* Order at 8. The Commission has neither stated when Sprint must file those studies, nor when or how it will examine those studies, nor how MFS will have the opportunity to test the validity of those studies. MFS suggests that the appropriate vehicle to analyze those cost studies is in a separate, generic, contested proceeding to set permanent rates.[7]

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[5](...continued)
Posthearing Brief at 9-10. "Given the likely asymmetry of information regarding network costs," FCC Interconnection Order, ¶ 695, the Commission cannot satisfactorily set *permanent* cost-based rates unless it orders Sprint to provide that information.

[6] The Commission ordered that interim cross-connection rates are to be trued-up to permanent rates which it will set later. Order at 9. The Commission failed to implement a similar procedure with respect to unbundled loop rates.

[7] MFS also suggests that this would be the appropriate forum in which to consider permanent cross-connection rates. *See* Order at 9.

See 47 C.F.R. § 51.505(e)(2) (stayed pending appeal). In addition, Commission commencement of a separate permanent cost proceeding would be consistent with the practice of numerous state commissions, including those of Arizona, Colorado, Georgia, Kansas, Minnesota, and Washington.

III. THE COMMISSION MUST RECONSIDER ITS DECISION TO DENY MFS RECIPROCAL COMPENSATION FOR CALL TRANSPORT.

The Commission decided that MFS is not entitled to receive reciprocal compensation from Sprint for call transport. Under the Commission's analysis, Section 252(d) requires reciprocal compensation only if MFS uses like network facilities to perform the transport function. Order at 5-6. Said differently, the Commission found that reciprocal compensation can only occur if the MFS' and Sprint's network architectures mirror one another. The Commission's decision misapprehends how the 1996 Act applies to call transport compensation and overlooks the fact that Sprint has voluntarily agreed that MFS' facility is to be treated as equivalent to that of Sprint. As a result, the Commission's decision sets non-reciprocal compensation which is inconsistent with the 1996 Act.

To understand how the 1996 Act specifically applies to the financial arrangements between MFS and Sprint, a review of one issue upon which the parties already agree is necessary. In their Partial Interconnection Agreement, the parties agreed to adopt the upper limits of the FCC proxy ranges for end office switching and tandem switching, which are $0.004 per minute and $0.0015 per minute, respectively.[4] In other words, Sprint has voluntarily agreed

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[4] *See* Partial Interconnection Agreement for LATA 458, § 7.5 & Schedule 1.0. The Agreement has been submitted for Commission approval in Docket No. 9601333. While Sprint has filed a (continued...)

per minute and $0.0015 per minute, respectively.[1] In other words, Sprint has voluntarily agreed that whatever MFS' network architecture may be, MFS is entitled to the same rate as Sprint, one that includes both the end office and tandem switching rate.

Section 252(d)(2)(A)(i) of the 1996 Act states that the Commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless:

> such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier...

The FCC defines "transport" as:

> the transmission and any necessary tandem switching of local telecommunications traffic subject to section 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, *or equivalent facility provided by a carrier other than an incumbent LEC.*

47 C.F.R. § 51.701(c) (emphasis added).[2] The parties have already agreed that MFS' facility is equivalent to Sprint's by virtue of the fact that Sprint has agreed to pay MFS a premium tandem switching rate in addition to the charge for call termination. The only question before the Commission was whether MFS is entitled to reciprocal compensation for the call transport

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[1] *See* Partial Interconnection Agreement for LATA 458, § 7.5 & Schedule 1.0. The Agreement has been submitted for Commission approval in Docket No. 9601333. While Sprint has filed a motion requesting that the Commission not approve the agreed-upon provision relating to call transport, MFS has responded to that motion demonstrating that their is no basis on which Sprint can abrogate or ask the Commission to abrogate the agreed-upon terms of the Partial Interconnection Agreement.

[2] While the FCC rules for call termination and transport were stayed, Sprint and MFS used those rules to establish the terms of the contract and the FCC Interconnection Order, therefore, provides appropriate guidance on the terms used in the agreement.

function that Sprint would perform on its own network for calls identical to those that MFS handles. The FCC Interconnection Order directs that this answer is yes.

The FCC rules implementing reciprocal compensation for call transport and termination state that interconnecting carriers should be allowed to charge the "tandem interconnection rate," 47 C.F.R. § 51.711(a)(3), which is generally to be compensated on a reciprocal basis. This identification of a "tandem interconnection rate," as opposed to a "tandem switching rate," clearly establishes that the rate to which MFS is entitled includes not only the end office switching and tandem switching rate elements, for which MFS and Sprint agree to compensate one another reciprocally as if their network architectures were the same, but also the transport element for transport between the end office switches and tandem switches or their equivalents.

This conclusion is buttressed by the language of the FCC Interconnection Order. The FCC Order presumes requirements for symmetricity and reciprocity of compensation between incumbent local exchange carriers ("LECs") and non-incumbent LECs. FCC Interconnection Order, ¶¶ 1085-1090. The FCC Order at ¶ 1090 explicitly concludes that:

> 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.

This conclusion is echoed in 47 C.F.R. § 51.711, Symmetrical reciprocal compensation, at ¶ (a)(3):

> Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate.

The FCC Rules provide for an exception to the requirement for reciprocal compensation for local call transport and termination only where the competitive LEC requests such exception and makes a showing that its costs are greater than the incumbent LEC's costs. 47 C.F.R. § 51.711(b). MFS made no such request in this case.

The Commission did not find, and the record does not demonstrate, that MFS' switch serves a geographic area incomparable to that served by Sprint's switch. The only switch in Sprint's network which will serve the entire area MFS' switch will serve is the Sprint tandem switch. Thus, the Commission must conclude that the geographic area served by the MFS switch will be comparable to the area served by the Sprint tandem switch, and must confirm that MFS is entitled to the tandem interconnection rate pursuant to the FCC Interconnection Order and Rules.

The Commission ruled that "[s]ince MFS only has one switch, there technically can be no transport." Order at 5. This interpretation must be reconsidered in light of the Act and the structure of the agreement between the parties. The Commission's ruling failed to recognize that MFS and Sprint agree that they have equivalent facilities worthy of reciprocal termination and switching charges. That being the case, MFS is similarly worthy of a reciprocal transport charge. MFS is entitled to a transport charge regardless of whether its network architecture is the same as Sprint's, or whether MFS actually incurs equal costs for what would be termed "transport" in other contexts. This conclusion is supported by the distinctions the FCC Interconnection Order makes between tandem "switching" and "interconnection" rates. The FCC Order accurately reflects the 1996 Act's intent that reciprocal compensation is to be based on use of

equivalent facilities, and not on similarity of network architecture. Regardless of whether the FCC's pricing rules are stayed, the 1996 Act requires symmetrical compensation in this case.

IV. CONCLUSION.

The Commission's Order failed to recognize its mandatory obligation to set geographically deaveraged unbundled loop rates. As a result, the Commission's decision is inconsistent with the 1996 Act. To comply with federal law, the Commission must reconsider its decision and apply MFS' interim deaveraging proposal with a true-up to permanent rates once they are set. The Commission also should clarify its Order to specify a timetable and procedure for establishing permanent geographically deaveraged unbundled loop rates. Finally, the Commission also must reconsider its Order to grant MFS reciprocal compensation for call transport so that the Order complies with federal law.

For all the above reasons, MFS respectfully requests that the Commission grant its Motion for Reconsideration.

Respectfully submitted,

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Attorneys for MFS Communications Company, Inc.

Dated: December 30, 1996

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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of December, 1996, copies of the foregoing Motion for Reconsideration of MJ S Communications Company, Inc. in Docket No. 960838-TP were served, via overnight delivery, on the following:

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