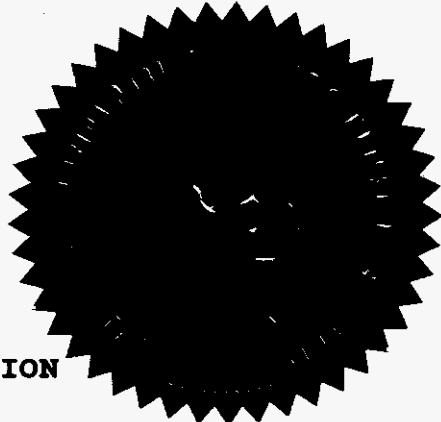


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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of :
Resolution of Petition(s) : DOCKET NO. 950984-TP
to establish nondiscrimi- :
natory rates, terms and :
conditions for resale :
involving local exchange :
companies and alternative :
local exchange companies :
pursuant to Section :
364.161, Florida Statutes. :
:



FIRST DAY - MORNING SESSION

VOLUME 1

Pages 1 through 143

PROCEEDINGS: HEARING

BEFORE: CHAIRMAN SUSAN F. CLARK
COMMISSIONER J. TERRY DEASON
COMMISSIONER JULIA L. JOHNSON
COMMISSIONER DIANE K. KIESLING
COMMISSIONER JOE GARCIA

DATE: Wednesday, March 20, 1996

TIME: Commenced at 9:30 a.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: ROWENA NASH HACKNEY
Official Commission Reporter
(904) 413-6736

DOCUMENT NUMBER-DATE

03440 MAR 22 1996

FLORIDA PUBLIC SERVICE COMMISSION

FPSC-RECORDS/REPORTING

1 **APPEARANCES:**

2 **RICHARD M. RINDLER**, Swidler & Berlin,
3 Chartered, 3000 K Street, N. W., Suite 300,
4 Washington, D. C. 20007, Telephone No. (202) 424-7604,
5 appearing on behalf of **Metropolitan Fiber Systems of**
6 **Florida, Inc.**

7 **ROBIN DUNSON**, 1200 Peachtree Street, N. E.,
8 Promenade I, Room 4038, Atlanta, Georgia 30309, and
9 **MARK LOGAN**, Bryant, Miller and Olive, 201 South Monroe
10 Street, Suite 500, Tallahassee, Florida 32301,
11 Telephone No. (904) 222-8611, appearing on behalf of
12 **AT&T Communications of the Southern States, Inc.**__

13 **WILLIAM GRAHAM** and **LAURA L. WILSON**, Florida
14 Cable Telecommunications Association, Inc., 310 North
15 Monroe Street, Tallahassee, Florida 32301, Telephone
16 No. (904) 681-1990, appearing on behalf of **Florida**
17 **Cable Telecommunications Association, Inc.**

18 **FLOYD R. SELF**, and **NORMAN H. HORTON, JR.**,
19 Messer, Vickers, Caparello, Madsen, Goldman & Metz,
20 P. O. Box 1876, Tallahassee, Florida 32302-1876,
21 Telephone No. (904) 222-0720, appearing on behalf of
22 **WorldCom, Inc., d/b/a LDDS Limited Partnership.**

23
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1 **APPEARANCES CONTINUED:**

2 **ANTHONY GILLMAN, and M. ERIC EDGINGTON, GTE Florida**
3 **Incorporated, Post Office Box 110, MC 7, Tampa, Florida 32301,**
4 **Telephone No. (813) 224-40001, appearing on behalf of GTE**
5 **Florida Incorporated.**

6 **J. JEFFRY WAHLEN, and JOHN P. FONS,**
7 **Macfarlane, Ausley, Ferguson and McMullen, P.O. Box**
8 **391, Tallahassee, Florida 33302, Telephone No. (904)**
9 **224-9115, appearing on behalf of Central Telephone**
10 **Company of Florida and United Telephone Company of**
11 **Florida.**

12 **PATRICK K. WIGGINS, Wiggins & Villacorta,**
13 **P. A., Post Office Drawer 1657, Tallahassee, Florida**
14 **32302, Telephone No. (904) 222-1574, appearing on**
15 **behalf of Intermedia Communications of Florida, Inc.**

16 **APPEARANCES CONTINUED:**

17 **RICHARD D. MELSON, Hopping Green Sams and**
18 **Smith, Post Office Box 6526, Tallahassee, Florida**
19 **32314, Telephone No. (904) 222-7500, appearing on**
20 **behalf of MCI Metro Access Transmission Services, Inc.**

21 **ROBERT S. COHEN, Pennington, Culpepper,**
22 **Moore, Wilkinson, Dunbar & Cunlap, P. A., Post Office**
23 **Box 10095, Tallahassee, Florida 32302-2095, Telephone**
24 **No. (904) 222-3533, appearing on behalf of Time Warner**
25 **AXS of Florida L.P. and Digital Media Partners.**

1 **APPEARANCES CONTINUED:**

2 **EVERETT BOYD**, Ervin, Varn, Jacobs, Odum and Ervin,
3 305 South Gadsden Street, Tallahassee, Florida 32301,
4 Telephone No. (904) 224-9135, appearing on behalf of **Sprint**
5 **Communications Company, L. P.**

6 **DONNA CANZANO** and **SCOTT EDMONDS**, Florida
7 Public Service Commission, Division of Legal Services,
8 2540 Shumard Oak Boulevard, Tallahassee, Florida
9 32399-0870, Telephone No. (904) 413-6199, appearing on
10 behalf of the **Commission Staff**.

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P R O C E E D I N G S

(Hearing convened at 9:35 a.m.)

CHAIRMAN CLARK: Call the hearing to order.

Would you please read the notice?

MR. EDMONDS: Pursuant to notice, this time and place has been designated for a hearing in Docket No. 950984-TP.

CHAIRMAN CLARK: We'll take appearances.

Mr. Graham.

MR. GRAHAM: Good morning, Chairman Clark. I'm Bill Graham, Bateman Graham Law Firm, on behalf of the Florida Cable Telecommunications Association. Appearing later today will be Ms. Laura Wilson.

MR. GILLMAN: Chairman Clark, good morning. My name is Tony Gillman, and with me is Eric Edgington. We're in-house counsel appearing today on behalf of GTE Florida Incorporated, One Tampa City Center, Tampa, Florida 33601.

MR. WAHLEN: Good morning, I'm Jeff Wahlen of the MacFarlane Ausley Ferguson & McMullen Law Firm, P. O. Box 391, Tallahassee, Florida 32302, appearing on behalf Central Telephone Company and United Telephone Company of Florida.

Also appearing for those companies will be Lee L. Willis and John P. Fons of the same law firm

1 and the same address.

2 MR. MELSON: Richard Melson of the law firm
3 Hopping Green Sams & Smith, P. A., P. O. Box 6526,
4 Tallahassee, appearing on behalf of MCI Metro Access
5 Transmission Services, Inc.

6 MS. DUNSON: Robin Dunson, appearing on
7 behalf of AT&T Communications of the Southern States,
8 Inc., 1200 Peachtree Street, Atlanta, Georgia 30309.
9 I'd also like to enter an appearance for Michael W.
10 Tye and Mark Logan of the law firm of Bryant Miller
11 and Olive.

12 MR. HORTON: Norman H. Horton, Jr. and Floyd
13 R. Self of Messer, Caparello, Madsen, Goldman & Metz,
14 P. A., P. O. Box 1876, Tallahassee, on behalf of
15 WorldCom, Inc. d/b/a LDDS WorldCom Communications.

16 MR. COHEN: Bob Cohen of the Pennington,
17 Culpepper Law Firm, P. O. Box 10095, Tallahassee
18 32302, on behalf of Time Warner AxS of Florida L. P.
19 and Digital Media Partners.

20 MR. RINDLER: Richard Rindler, law firm of
21 Swidler & Berlin, 3000 K Street N.W., Washington, D.C.
22 20007, appearing on behalf of petitioner, Metropolitan
23 Fiber Systems of Florida, Inc.

24 MR. WIGGINS: Patrick K. Wiggins, law firm
25 of Wiggins & Villacorta, Post Office Box 1657,

1 Tallahassee, Florida, on behalf of Intermedia
2 Communications of Florida, Inc.

3 MR. BOYD: Everett Boyd of the Ervin, Varn,
4 Jacobs, Odum and Ervin Law Firm, 305 South Gadsden
5 Street in Tallahassee, appearing on behalf of Sprint
6 Communications Company, limited partnership.

7 And, Chairman Clark, since we don't have any
8 witnesses and don't intend to cross examine, we'd ask
9 to be excused from further participation in the
10 hearing.

11 CHAIRMAN CLARK: You will be excused from
12 further participation.

13 Thank you, Mr. Boyd.

14 MR. EDMONDS: Donna Canzano and Scott
15 Edmonds on behalf of Commission Staff, 2540 Shumard
16 Oak Boulevard, Tallahassee, Florida 32399.

17 CHAIRMAN CLARK: I'd like to indicate that
18 Commissioner Garcia is on his way. Commissioner
19 Johnson is on a conference call having to do with
20 joint board matters, but we expect her shortly as
21 well.

22 Are there preliminary matters that we need
23 take up at this time?

24 MS. CANZANO: Yes, there are several.

25 MR. GRAHAM: Chairman Clark, as a very

1 preliminary matter, there is a typographical error on
2 Page 15 of the Prehearing Order.

3 CHAIRMAN CLARK: Is that the Time Warner?

4 MR. GRAHAM: Yes.

5 CHAIRMAN CLARK: That paragraph needs to be
6 deleted?

7 MR. GRAHAM: I would just alter or insert in
8 place of Time Warner, "FCTA."

9 CHAIRMAN CLARK: Okay. All right. Thank
10 you, Mr. Graham. Ms. Canzano.

11 MS. CANZANO: First, Staff has prepared a
12 list that we asked for official recognition. And I
13 believe MFS has also distributed such a list, too.

14 CHAIRMAN CLARK: Okay.

15 These are all orders either issued by this
16 Commission or other Commissions?

17 MS. CANZANO: Yes.

18 CHAIRMAN CLARK: Okay. We will take
19 official notice of the documents listed on Staff's
20 list of orders for official recognition. And I think
21 the court reporter has a copy of that list.

22 MS. CANZANO: We also have one from MFS.

23 CHAIRMAN CLARK: Let me ask a question. Did
24 we mark these as exhibits previously?

25 MS. CANZANO: Yes, we did.

1 CHAIRMAN CLARK: We will mark the Staff's
2 list of orders for official recognition as Exhibit
3 No. 1, and it will be admitted in the record without
4 objection. And MFS has indicated that they would like
5 to have official recognition of a number of orders and
6 decisions in other states.

7 Are these all orders that have been issued
8 either by this Commission or Commissions in other
9 states? And I notice there's one federal statute.

10 MR. RINDLER: Yes, except for the first two
11 which are pending the Commission's release of its
12 decision.

13 CHAIRMAN CLARK: Okay. So you are asking us
14 to take official recognition of those orders once they
15 are issued.

16 MR. RINDLER: Yes, Madam Chairman.

17 CHAIRMAN CLARK: We will take official
18 recognition of the items listed on Metropolitan Fiber
19 Systems of Florida's list entitled: "Request for
20 Judicial Notice of State and Federal Decisions." We
21 will mark that as Exhibit 2 and admit it the record.

22 (Exhibit Nos. 1 and 2 marked for
23 identification and received in evidence.)

24 MR. MELSON: Chairman Clark?

25 CHAIRMAN CLARK: Yes.

1 MR. MELSON: MFS' list for Texas lists
2 "Proposal for Decision of Proposed Order," which I
3 understand is an ALJ's proposal, I would like to
4 have -- and we also understand that that Texas order
5 is scheduled to be issued on April 4th. We would like
6 to ask that when that order is issued, that the
7 Commission also take official notice of the final
8 order of the Texas Commission.

9 CHAIRMAN CLARK: All right. In addition to
10 the "Proposal for Decision in Proposed Order on
11 Remand" in the application of Southwestern Bell
12 Telephone and GTE, Southwest and Contel of Texas, we
13 will likewise take official recognition of the final
14 order issued by the Commission in that case.

15 MR. FONS: Madam Chairman, could we also ask
16 that the parties that are proposing the official
17 notice provide the parties with copies of those
18 decisions if they have not already so provided the
19 decisions. For example, the Texas decision.

20 CHAIRMAN CLARK: I would think that a party
21 who is requesting official recognition of a document
22 has an obligation to make sure the other parties have
23 copies of that decision.

24 MS. CANZANO: Ordinarily what we have done
25 is if a party does not have a copy and wants a copy of

1 that, they ask the person who has requested it for a
2 copy.

3 CHAIRMAN CLARK: Mr. Fons, is that
4 acceptable?

5 MR. FONS: That's acceptable, and I am so
6 requesting.

7 CHAIRMAN CLARK: Mr. Rindler, he is
8 requesting a copy of the Texas decision, and I assume
9 he's asking you, Mr. Melson, to give him a copy of the
10 final order.

11 MR. MELSON: And we will do that.

12 CHAIRMAN CLARK: Thank you. Any others
13 preliminary matters?

14 MR. GILLMAN: Chairman -- go ahead. Go
15 ahead and finish up.

16 MS. CANZANO: The next one would be the
17 proposed stipulation between GTE and MFS. Is that
18 what you were going to raise, Mr. Gillman? Okay.

19 CHAIRMAN CLARK: We need to take that
20 stipulation up, and I will entertain a motion to
21 approve that stipulation. I understand it is attached
22 to Mr. Devine's testimony.

23 MR. GILLMAN: That is correct. It's
24 attached Exhibit TTD-8.

25 MR. RINDLER: Madam Chairman, that

1 stipulation was approved in Docket 85. I don't know
2 whether it needs to be approved again.

3 CHAIRMAN CLARK: Okay.

4 MR. GILLMAN: It is the same stipulation
5 that was approved in 85.

6 MS. CANZANO: But what we are stipulating to
7 are the issues in this case.

8 MR. GILLMAN: Yes.

9 CHAIRMAN CLARK: All right. Then with
10 respect to GTE of Florida and MFS, with respect to
11 which issues?

12 MS. CANZANO: To Issues 1 and 2.

13 MR. GILLMAN: That's correct, Your Honor.

14 CHAIRMAN CLARK: Is it a request that we
15 approve the stipulations as to Issues 1 and 2 as
16 between GTEFL and MFS?

17 MS. CANZANO: Yes.

18 CHAIRMAN CLARK: Is there a motion?

19 COMMISSIONER DEASON: So move.

20 CHAIRMAN CLARK: Without objection, that
21 stipulation is approved.

22 MS. CANZANO: Just a reminder that AT&T has
23 notified us that they are withdrawing Mr. Gillan's
24 testimony.

25 CHAIRMAN CLARK: All right.

1 MS. CANZANO: And as a final preliminary
2 matter from Staff, it's just a reminder that the
3 parties in this docket have agreed to the Commission's
4 ruling on United/Centel's motion on issues and on
5 positions and parties in the 985 docket and that
6 applies to this case.

7 CHAIRMAN CLARK: Thank you, Ms. Canzano.
8 Are there any other preliminary matters to be taken
9 up?

10 MR. GILLMAN: Yes, Chairman Clark.

11 CHAIRMAN CLARK: Mr. Gillman.

12 MR. GILLMAN: Thank you. Just a couple
13 minor things. First, I would like to make the same
14 motion I did in Docket 950985 that the order of cross
15 be dictated such that the parties cross examining --

16 CHAIRMAN CLARK: That motion is granted.
17 And if I get out of line, would you remind me to go to
18 other parties to make sure the order of questioning is
19 right so the friendly cross goes first.

20 MR. GILLMAN: Thank you. I have one other
21 matter on the order of witnesses. Of GTE's witnesses,
22 I would like to put Ms. Menard behind our other two
23 witnesses. Presently, it's scheduled for Mr. Trimble
24 and Ms. Menard and Mr. Duncan. Since Trimble and
25 Duncan's testimony kind of tie together, I think it

1 makes sense to put them together.

2 CHAIRMAN CLARK: All right. So Ms. Menard
3 will follow Mr. Duncan -- Dr. Duncan, excuse me.

4 MR. GILLMAN: Yes.

5 CHAIRMAN CLARK: All right.

6 MR. GILLMAN: That's all I have, Your Honor.

7 CHAIRMAN CLARK: Thank you, Mr. Gillman. No
8 other preliminary matters? Okay.

9 At this time we are ready to call the first
10 witness, Mr. Devine. And as I swear Mr. Devine in, I
11 would like everyone who is going to be presenting
12 testimony today to stand and be sworn in at the same
13 time. Please raise your right hand.

14 (Witnesses collectively sworn)

15 CHAIRMAN CLARK: Thank you, you may be
16 seated. Mr. Rindler.

17 MR. RINDLER: Madam Chairman, would you like
18 us to proceed as we did last week with the GTE
19 petition first, and then separately with the Sprint in
20 terms of the testimony?

21 CHAIRMAN CLARK: That would be fine.

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TIMOTHY T. DEVINE

1
2 was called as a witness on behalf of Metropolitan
3 Fiber Systems of Florida, Inc. and, having been duly
4 sworn, testified as follows:

DIRECT EXAMINATION

5
6 BY MR. RINDLER:

7 Q Mr. Devine, we have before you the direct
8 testimony filed in the petition against GTE in this
9 proceeding.

10 A Yes.

11 Q And that's dated January 24, 1996?

12 A Yes.

13 Q Do you also have before you rebuttal
14 testimony filed February 21, 1996?

15 A Yes.

16 Q In connection with the stipulation between
17 GTE and MFS, are there deletions you would like to
18 make to your testimony at this time?

19 A Yes, the direct.

20 Q Could you tell us what they are, please?

21 A Yes. Delete Page 7, Line 17 through Page
22 11, Line 9. And then also delete --

23 CHAIRMAN CLARK: Just a minute. Indicate to
24 me what the language -- Page 7, Line 17, is that what
25 you indicated?

1 MR. DETERDING: Yes.

2 CHAIRMAN CLARK: All right. What is the
3 language? Is it the question that starts "As a
4 threshold matter"?

5 MR. RINDLER: Yes.

6 CHAIRMAN CLARK: "As a threshold matter,
7 what is meant by the term 'co-carrier arrangements?'"
8 All right. And where is it to be deleted to?

9 MR. DETERDING: Page 11, Line 9.

10 MR. GILLMAN: Madam Chairman, so Pages 8, 9,
11 and 10 are deleted in their entirety?

12 CHAIRMAN CLARK: That's what I understand.

13 WITNESS DEVINE: Yes, all the way through
14 Page 11, Line 9. Yes, that's correct.

15 CHAIRMAN CLARK: Go ahead, Mr. Devine. Any
16 other changes?

17 WITNESS DEVINE: Yes, just one other.
18 Starting on Page 13, Line 15 through Page 20, Line 9.

19 CHAIRMAN CLARK: And that concludes the
20 deletions in your direct testimony?

21 WITNESS DEVINE: Yes.

22 Q (By Mr. Rindler) Do you have any deletions
23 in your rebuttal testimony?

24 A No, no other deletions.

25 Q If I were to ask you the same questions

1 today, would your answers be the same?

2 A Yes.

3 MR. RINDLER: Madam Chairman, I would ask
4 that these be moved into the record as if read.

5 CHAIRMAN CLARK: The prefiled direct
6 testimony of Mr. Timothy T. Devine on behalf of Metro
7 Fiber Systems dated January 24, 1996, as it relates to
8 GTE concerning unbundling with the changes noted will
9 be inserted in the record as though read.

10 And, likewise, the rebuttal testimony of
11 Mr. Timothy T. Devine relating to MFS' petition
12 concerning unbundling of GTE Florida will be inserted
13 in the record as though read.

14 MR. RINDLER: Madam Chairman, on the direct
15 testimony, there were seven attachments to the direct
16 testimony. Of those seven only the last, which is the
17 MFS of Florida response to Staff's first set, Item
18 No. 8, will be requested to be entered at this time.

19 CHAIRMAN CLARK: All right. The Attachment
20 7 to the direct testimony of Mr. Devine, which is
21 labeled Item No. 8, MFS' response to Staff's first
22 sets of interrogatories will be marked as Exhibit 3.

23 MR. RINDLER: On the rebuttal testimony,
24 there was one attachment which is the partial
25 co-carrier agreements that was referenced earlier.

1 CHAIRMAN CLARK: Okay. The partial Florida
2 co-carrier agreement labeled TTD-8 attached to
3 Mr. Devine's rebuttal testimony will be marked as
4 Exhibit 4.

5 (Exhibit Nos. 3 and 4 marked for
6 identification.)

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**DIRECT TESTIMONY OF TIMOTHY T. DEVINE
ON BEHALF OF
METROPOLITAN FIBER SYSTEMS OF FLORIDA, INC.
Docket No. 950984-TP**

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 **A.** My name is Timothy T. Devine. My business address is MFS
3 Communications Company, Inc. ("MFSCC"), Six Concourse Parkway, Suite
4 2100, Atlanta, Georgia 30328-5351.

5 **Q. WHAT IS YOUR POSITION WITH MFS?**

6 **A.** I am the Senior Director of External and Regulatory Affairs for the Southern
7 Region for MFSCC, the indirect parent company of Metropolitan Fiber
8 Systems of Florida, Inc.

9 **Q. WHAT ARE YOUR RESPONSIBILITIES IN THAT POSITION?**

10 **A.** I am responsible for the regulatory oversight of commission dockets and other
11 regulatory matters and serve as MFSCC's representative to various members
12 of the industry. I am also responsible for coordinating co-carrier discussions
13 with Local Exchange Carriers within the Southern Region.

14 **Q. PLEASE DESCRIBE YOUR PREVIOUS PROFESSIONAL
15 EXPERIENCE AND EDUCATIONAL BACKGROUND.**

16 **A.** I have a B.S. in Political Science from Arizona State University and an M.A.
17 in Telecommunications Policy from George Washington University. I began
18 work in the telecommunications industry in April 1982 as a sales
19 representative for packet switching services for Graphnet, Inc., one of the first

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 2

1 value-added common carriers in the United States. From 1983 until 1987, I
2 was employed at Sprint Communications Co., in sales, as a tariff analyst, as a
3 product manager, and as Manager of Product and Market Analysis. During
4 1988, I worked at Contel Corporation, a local exchange carrier, in its
5 telephone operations group, as the Manager of Network Marketing. I have
6 been working for MFSCC and its affiliates since January 1989. During this
7 time period, I have worked in product marketing and development, corporate
8 planning, regulatory support, and regulatory affairs. Most recently, from
9 August 1994 until August 1995, I have been representing MFSCC on
10 regulatory matters before the New York, Massachusetts, and Connecticut state
11 commissions and was responsible for the MFSCC Interim Co-Carrier
12 Agreements with NYNEX in New York and Massachusetts, as well as the
13 execution of a co-carrier Joint Stipulation in Connecticut.

14 **Q. PLEASE DESCRIBE THE OPERATIONS OF MFS**

15 **COMMUNICATIONS COMPANY, INC. AND ITS SUBSIDIARIES**

16 **A.** MFSCC is a diversified telecommunications holding company with operations
17 throughout the country, as well as in Europe. MFS Telecom, Inc., an MFSCC
18 subsidiary, through its operating affiliates, is the largest competitive access
19 provider in the United States. MFS Telecom, Inc.'s subsidiaries, including

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 3

1 MFS/McCourt, Inc., provide non-switched, dedicated private line and special
2 access services.

3 MFS Intelenet, Inc. ("MFSI") is another wholly owned subsidiary of
4 MFSCC. It causes operating subsidiaries to be incorporated on a state-by-
5 state basis. MFSI's operating subsidiaries collectively are authorized to
6 provide switched interexchange telecommunications services in 48 states and
7 have applications to offer such service pending in the remaining states. Where
8 so authorized, MFSI's operating subsidiaries offer end users a single source
9 for local and long distance telecommunications services with quality and
10 pricing levels comparable to those achieved by larger communications users.
11 Apart from Florida, MFSI subsidiaries have been authorized to provide
12 competitive local exchange service in twelve states. Since July 1993, MFS
13 Intelenet of New York, Inc. has offered local exchange services in competition
14 with New York Telephone Company. MFS Intelenet of Maryland, Inc. was
15 authorized to provide local exchange services in competition with Bell
16 Atlantic-Maryland, Inc. in April 1994 and recently has commenced
17 operations. On June 22, 1994, MFS Intelenet of Washington, Inc. was
18 authorized to provide local exchange services in competition with US West
19 Communications, Inc. On July 20, 1994, MFS Intelenet of Illinois, Inc. was

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 4

1 certificated to provide local exchange services in competition with Illinois
2 Bell Telephone Company and Central Telephone Company of Illinois. MFS
3 Intelenet of Ohio was certificated to provide competitive local exchange
4 service in competition with Ohio Bell on August 3, 1995. MFS Intelenet of
5 Michigan, on May 9, 1995, was certificated to provide competitive local
6 exchange service in competition with Ameritech-Michigan. MFS Intelenet of
7 Connecticut was certificated to provide local exchange service in competition
8 with Southern New England Telephone Company on June 28, 1995. MFS
9 Intelenet of Texas, Inc. was authorized to provide local exchange service in
10 Texas in competition with Southwestern Bell Telephone Company by Order
11 signed on October 25, 1995. MFS Intelenet of Georgia, Inc. was certificated
12 to provide local exchange service in the Atlanta and Smyrna Exchanges in
13 competition with BellSouth and GTE on October 27, 1995. MFS Intelenet of
14 Pennsylvania, Inc. was authorized to provide local exchange service in
15 Pennsylvania by Order entered October 4, 1995. MFS Intelenet of California,
16 Inc. was authorized to provide competitive local exchange services in
17 California by Order of the California Public Utilities Commission on
18 December 20, 1995. MFS Intelenet of Massachusetts was certificated on
19 March 9, 1994 to operate as a reseller of both interexchange and local

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 5

1 exchange services in the Boston Metropolitan Area in competition with New
2 England Telephone and is authorized to provide competitive local exchange
3 services in Massachusetts. Finally, on January 12, 1996, MFS Intelenet of
4 Oregon was certificated to offer local exchange services in competition with
5 US West and GTE in Oregon.

6 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS**
7 **COMMISSION?**

8 **A.** Yes. The principal proceedings in which I have filed testimony are as follows:
9 On August 14, 1995 and September 8, 1995, respectively, I filed direct and
10 rebuttal testimony in the universal service docket. *In re: Determination of*
11 *funding for universal service and carrier of last resort responsibilities*, Docket
12 No. 950696-TP. On September 1, 1995 and September 29, 1995, respectively,
13 I filed direct and rebuttal testimony in the temporary number portability
14 docket. *In re: Investigation into temporary local telephone portability*
15 *solution to implement competition in local exchange telephone markets*,
16 Docket No. 950737-TP. On September 15, 1995 and September 29, 1995,
17 respectively, I filed direct and rebuttal testimony in the TCG Interconnection
18 Petition docket. *Resolution of Petition(s) to establish nondiscriminatory*
19 *rates, terms, and conditions for interconnection involving local exchange*

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 6

1 *companies and alternative local exchange companies pursuant to Section*
2 *364.162, Florida Statutes, Docket No. 950985A-TP. On November 13, 1995*
3 *and December 11, 1995, respectively, I filed direct and rebuttal testimony in*
4 *the Continental and MFS Interconnection Petition docket. Resolution of*
5 *Petition(s) to establish nondiscriminatory rates, terms, and conditions for*
6 *interconnection involving local exchange companies and alternative local*
7 *exchange companies pursuant to Section 364.162, Florida Statutes, Docket*
8 *No. 950985A-TP. In this docket, on November 13, 1995 and December 11,*
9 *1995, respectively, I filed direct and rebuttal testimony. Resolution of*
10 *Petition(s) to Establish Unbundled Services, Network Features, Functions or*
11 *Capabilities, and Local Loops Pursuant to Section 364.161, Florida Statutes,*
12 *Docket No. 950984-TP. On November 27, 1995 and December 12, 1995,*
13 *respectively, I filed direct and rebuttal testimony in the MCI Unbundling*
14 *Petition docket. Resolution of Petition(s) to Establish Unbundled Services,*
15 *Network Features, Functions or Capabilities, and Local Loops Pursuant to*
16 *Section 364.161, Florida Statutes, Docket No. 950984B-TP.*

17 **Q. ARE ANY OF THE PARTIES UPON WHOSE BEHALF YOU ARE**
18 **TESTIFYING CURRENTLY CERTIFICATED TO PROVIDE**
19 **SERVICE IN FLORIDA?**

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 7

1 A. Yes. Metropolitan Fiber Systems of Florida, Inc., a certificated Alternative
2 Access Vendor ("AAV"), by letter dated July 5, 1995, notified the
3 Commission of its intent to provide switched local exchange service in
4 Florida. The Commission acknowledged this notification on September 12,
5 1995, and later granted the requested authority.

6 I. PURPOSE AND SUMMARY

7 Q. **WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**
8 **PROCEEDING?**

9 A. MFS-FL has filed its unbundling petition in this docket, as well as a
10 parallel petition in the interconnection docket, because its attempts at
11 negotiations with GTE have failed to yield acceptable co-carrier
12 arrangements. MFS-FL therefore is petitioning the Commission, in
13 accordance with Florida Statute Section 364.161, for GTE to provide
14 unbundled services, network features, functions or capabilities, and
15 specifically the unbundled local loop and the concentration of
16 unbundled loops.

~~17 Q. AS A THRESHOLD MATTER, WHAT IS MEANT BY THE TERM~~
~~18 "CO-CARRIER ARRANGEMENTS"?~~

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 8

1 A. By "co-carrier" arrangements, I refer to a variety of arrangements that will
2 have to be established to allow alternative local exchange carriers ("ALECs")
3 and GTE to deal with each other on a reciprocal, non-discriminatory, and
4 equitable basis. Once the basic principles for such arrangements are
5 established by the Commission, the affected carriers should be directed to
6 implement specific arrangements in conformance with these principles. The
7 term "co-carrier" signifies both that the two carriers are providing local
8 exchange service within the same territory, and that the relationship between
9 them is intended to be equal and reciprocal—that is, neither carrier would be
10 treated as subordinate or inferior. The arrangements needed to implement this
11 co-carrier relationship will encompass, among other things, physical
12 connections between networks; signaling and routing arrangements for the
13 exchange of traffic between networks; and arrangements for joint access to
14 essential service platforms, such as operator and directory assistance services,
15 that must serve all telephone users within a geographic area.

16 MFS-FL believes that customers of all carriers must be assured that
17 they can call each other without the caller having to worry about which carrier
18 serves the other party. To achieve this, not only must carriers physically
19 connect their networks, but they must terminate calls for each other on a

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 9

1 reciprocal basis that is both technically and economically reasonable. Traffic
2 exchange arrangements should be seamless and transparent from the
3 viewpoint of the caller. There should be no difference in how a call is dialed,
4 how long it takes to be completed, or how it is billed depending solely upon
5 the identity of the carrier serving the dialed number. In addition, customers
6 should have access to essential ancillary functions of the network (such as
7 directory listings, directory assistance, inward operator assistance, and CLASS
8 features, to name a few) without regard to which carrier provides their dial
9 tone or originates their call.

10 **Q. SPECIFICALLY WHAT CO-CARRIER ARRANGEMENTS ARE**
11 **REQUIRED FOR MFS-FL TO PROVIDE VIABLE COMPETITIVE**
12 **LOCAL EXCHANGE SERVICE?**

13 **A.** MFS-FL believes that certain co-carrier requirements should apply equally
14 and reciprocally to all local exchange carriers, LECs and ALECs alike. The
15 Florida statute have recognized the necessity for such arrangements by
16 requiring LECs to negotiate both interconnection and unbundling
17 arrangements. Fla. Stat. §§ 364.161 and 364.162. The following are the co-
18 carrier arrangements required by MFS-FL: 1) Number Resources; 2) Tandem
19 Subtending/Meet-point Billing; 3) Reciprocal Traffic Exchange and

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 10

1 Reciprocal Compensation; 4) Shared Platform Arrangements; 5) Unbundling
2 the Local Loop; and 6) Interim Number Portability. Unbundling the local
3 loop will be addressed herein. The remaining arrangements will be addressed
4 in a separate parallel petition and testimony.

5 **Q. WAS THERE AGREEMENT ON ANY OF THESE CO-CARRIER**
6 **ISSUES WITH GTE?**

7 **A.** No. GTE and MFS-FL have been unable to reach an agreement. Beginning
8 on July 19, 1995, MFS-FL attempted to begin negotiations with GTE for
9 interconnection arrangements via a three-page letter outlining the MFS-FL
10 proposed interconnection arrangements. See Exhibit TTD-1, attached to this
11 testimony. Nearly four months later on November 9, 1995, having received
12 no formal written response from GTE to its initial letter, MFS-FL sent GTE
13 a letter and a detailed 31-page proposed co-carrier agreement in an attempt
14 to simplify the negotiations process for GTE. See Exhibit TTD-2, attached
15 to this testimony. On December 7, 1995, MFS-FL received from GTE a
16 three-page facsimile of a listing of GTE's switched access rates. See Exhibit
17 TTD-3, attached to this testimony. On January 3, 1996, following receipt
18 of the facsimile, MFS-FL mailed another letter to GTE in one last attempt at
19 receiving a response and beginning private negotiations. See Exhibit TTD-4,

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 11

1 ~~attached to this testimony. On January 19, 1996, MFS-FL received from~~
2 GTE a counterproposal, the terms of which were unacceptable to MFS-FL.
3 See Exhibit TTD-5, attached to this testimony. MFS-FL indicated the
4 unacceptability of GTE's counterproposal in a letter to GTE dated January
5 22, 1996. See Exhibit TTD-6, attached to this testimony. In its January 22,
6 1996 letter to GTE, MFS-FL indicated its desire to continue discussions to
7 reach an agreement on all or as many issues as possible before Commission
8 hearings commence. As a result, the benefits of local competition have not
9 ~~reached Florida consumers in GTE's territory as the Commission intended.~~

10 **II. UNBUNDLING OF LOCAL LOOP FACILITIES**

11 **Q. YOU STATED ABOVE THAT THE COMMISSION SHOULD**
12 **FACILITATE COMPETITION IN THE LOCAL EXCHANGE**
13 **MARKET BY REQUIRING GTE TO OFFER ITS LOCAL LOOP**
14 **FACILITIES ON AN UNBUNDLED BASIS. WHY IS THIS**
15 **NECESSARY?**

16 **A.** The importance of local loop unbundling to the development of actual
17 competition derives directly from GTE's continued control of significant
18 monopoly elements. Unbundled links will provide access to an essential
19 bottleneck facility controlled by GTE. MFS-FL would strongly urge the

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 12

1 Commission to require GTE to unbundle its services so that each element of
2 the local loop bottleneck is priced separately from other service elements. This
3 will allow competitors and users to pay for only those portions of the loop
4 services that they want or need. Line side interconnection will allow
5 competing carriers to directly reach end user customers who are currently
6 reachable efficiently only through the GTE bottleneck network.

7 GTE continues to have monopoly control over the "last mile" of the
8 telecommunications network. Service between most GTE customers and the
9 GTE central offices remains, and for some time to come will apparently
10 continue to remain, nearly the exclusive province of GTE. This monopoly
11 results from the fact that this loop network consists mostly of transmission
12 facilities carrying small volumes of traffic, spread over wide geographic areas.
13 Presently, it is economically more efficient for competitors to utilize GTE
14 loops at cost-based rates rather than to construct ubiquitous competing
15 transmission and switching facilities. The "last mile" loop network, therefore,
16 is an essential bottleneck facility for any potential provider of competitive
17 local exchange service.

18 Given the protection of its former monopoly status, GTE has
19 constructed virtually ubiquitous loop networks that provide access to

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 13

1 every interexchange carrier and virtually all residential and business
2 premises in its territory. In building these networks, GTE had the
3 singular advantage of favorable governmental franchises, access to
4 rights-of-way, unique tax treatment, access to buildings on an unpaid
5 basis, and protection against competition. Companies such as MFS-
6 FL that now seek to compete in the provision of local exchange service
7 do not share these advantages, and it would be both infeasible and
8 economically inefficient in most cases for them to seek to construct
9 duplicate loop facilities. Replication of the existing LEC loop network
10 (using either facilities similar to the incumbent LECs' or alternative
11 technologies such as wireless loops or cable television plant) would be
12 cost-prohibitive; moreover, competitors cannot obtain public and
13 private rights-of-way, franchises, or building access on the same terms
14 as incumbent LECs enjoy.

15 ~~Q. WHAT SPECIFIC UNBUNDLED ELEMENTS SHOULD BE MADE~~

16 ~~AVAILABLE?~~

17 ~~A. The network access line portion of local exchange service can be represented~~

18 ~~as being comprised of two key components: the loop, or "link," which~~

19 ~~provides the transmission path between the customer and the local exchange~~

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 14

1 central office, and the "port," which represents the interface to the switch, and
2 the capability to originate and terminate calls. Unbundling the local loop
3 consists of physically unbundling the link and port elements, and pricing them
4 individually on an economically viable basis.

5 Specifically, GTE should immediately unbundle all of its
6 exchange services into two separate packages: the link element plus
7 cross-connect element and the port element plus cross-connect
8 element. MFS-FL seeks unbundled access and interconnection to the
9 following forms of unbundled links: (1) 2-wire and 4-wire analog
10 voice grade, also known as a "simple" link, which is simply a path for
11 voice-grade service from an end user's premises to the central office;
12 (2) 2-wire ISDN digital grade; and (3) 4-wire DS-1 digital grade.

13 MFS-FL also requests that the following forms of unbundled ports be
14 made available: (1) 2-wire and 4-wire analog line; (2) 2-wire ISDN
15 digital line; (3) 2-wire analog DID trunk; (4) 4-wire DS-1 digital DID
16 trunk; and (5) 4-wire ISDN DS-1 digital trunk. A diagram of the
17 unbundled elements requested by MFS-FL is attached to this
18 testimony as Exhibit TTD-7.

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 15

1 In order for MFS-FL to efficiently offer telephone services to
2 end users, GTE should unbundle and separately price and offer these
3 elements such that MFS-FL will be able to lease and interconnect to
4 whichever of these unbundled elements MFS-FL requires and to
5 combine the GTE-provided elements with facilities and services that
6 MFS-FL may provide itself.

7 **Q. WHAT IS THE UNBUNDLED LINK TECHNOLOGY REFERRED TO**
8 **AS DIGITAL LOOP CARRIER SYSTEMS?**

9 **A.** MFS-FL seeks unbundled access and interconnection to the link
10 subelements that are resident in the modern digital loop carrier
11 ("DLC") systems (which provide concentration) that LECs have begun
12 to deploy in lieu of copper pair links. These DLC systems typically
13 involve three main sub-elements: (1) a digital transport distribution
14 facility operating at 1.544 Mbps ("DS1"), or multiples thereof,
15 extending from the LEC end office wire center to a point somewhere
16 in the LEC network (this point could be a manhole, pedestal, or even a
17 telephone closet in a large building); (2) digital loop carrier terminal
18 equipment housed in the manhole, pedestal, telephone closet, etc., at
19 which the DS1 terminates and which derives from the DS1 facility 24

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 16

1 or more voice grade telephonic channels; and (3) copper pair
2 feeder/drop facilities (lines) extending from the DLC terminal to a
3 demarcation/connector block at various customers' premises.

4 To the extent these or similar systems are employed in GTE's
5 network, MFS-FL should be allowed to interconnect to the unbundled
6 subelements of these systems, where technically feasible and where capacity
7 allows. This further unbundling of the links into digital distribution and voice-
8 grade feeder/drop sub-elements is necessary in order to ensure that the quality
9 of links MFS-FL leases from the GTE is equal to the quality of links that GTE
10 provide directly to end users.

11 Essentially, MFS-FL would seek to lease as one element, the DS1-rate
12 digital distribution facility and DLC terminal, and to lease as discrete
13 incremental elements individual channels on voice-grade feeder/drop
14 facilities. MFS-FL would expect to interconnect to the DS1 distribution
15 facility at the GTE end office (via expanded interconnection arrangements
16 offered pursuant to Substantive Rule § 23.92), but would also consider
17 arrangements pursuant to which it could interconnect at other points. The
18 generic interface for the DLC-type arrangements is described in Bellcore TR-
19 TSY-000008, Digital Interface Between the SLC-96 Digital Loop Carrier

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 17

1 System and Local Digital Switch, and TR-TSY-000303, Integrated Digital
2 Loop Carrier ("IDLC") Requirements, Objectives and Interface and MFS-FL's
3 Ericsson switch is compatible with these standards.

4 **Q. IS LINK UNBUNDLING TECHNICALLY FEASIBLE?**

5 **A.** Yes. Competitors can interconnect to the unbundled loops at the LEC central
6 office using the same physical collocation arrangements already in place for
7 special access and private line circuits.

8 **Q. HAVE OTHER STATES REQUIRED LOOP UNBUNDLING?**

9 **A.** Yes. Several state public utility commissions have already determined that
10 unbundling of the local loop is essential for the development of local
11 exchange competition and in the public interest. The New York Public
12 Service Commission has found that the unbundling of local loops is in the best
13 interest of consumers because it would allow competitive carriers to expand
14 the market for their services, increase the utility of competitive networks and
15 offer all local exchange customers an alternative to the monopoly local service
16 provider.^{1/}

^{1/} *Proceeding on Motion of the Commission Regarding Comparably Efficient Interconnection Arrangements for Residential and Business Links, 152 PUR4th 193, 194 (NY PSC 1994).*

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 18

1 The Illinois and Michigan Commissions have determined that
2 unbundling of the local loop is necessary to remove a significant barrier to
3 competition. The Michigan Public Service Commission found that
4 "unbundled loops are vital to local exchange competition and in the public
5 interest" and are necessary to allow a competitive local exchange carrier to
6 provide service to every customer within its exchange areas.^{2/} In an Order
7 issued April 7, 1995, the Illinois Commerce Commission concluded that
8 "unbundling LEC networks is essential to permit the development of local
9 exchange competition and is in the public interest."^{3/}

10 On March 31, 1995, the Iowa Utilities Board declared that unbundling
11 of U S West's local loop "is necessary for competition in the local exchange"

^{2/} *In the matter of the application of CITY SIGNAL, INC. for an order establishing and approving interconnection arrangements with Michigan Bell Telephone Company, Case No. U-10647, Opinion and Order at 56, 57 (MI PSC, February 23, 1995).*

^{3/} *See Illinois Bell Telephone Company, Proposed Introduction of a Trial of Ameritech's Customers First Plan in Illinois, Docket Nos. 94-0096, et al., at 48 (Ill. Commerce Comm'n, April 7, 1995).*

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 19

1 because new entrants "are not going to be able to provide loops to all
2 customers. Resale of unbundled facilities is the appropriate answer."^{4/}

3 The Maryland Public Service Commission recently adopted an interim
4 pricing arrangement for unbundled links which requires rates for the links to
5 be set at levels that, when totalled, would equal (or be less than) the price of
6 bundled local dial tone line service. Further, the ratio between the prices for
7 unbundled links and ports must mirror the ratio between the direct costs of
8 these components.^{5/}

9 **Q. SHOULD GTE BE REQUIRED TO OFFER COLLOCATION FOR**
10 **INTERCONNECTION TO UNBUNDLED LINKS?**

11 **A.** Yes. Economic development and expanded competition in the provision of
12 local exchange services will be promoted only if MFS-FL can interconnect to
13 unbundled elements of the local loop. Interconnection should be achieved via
14 collocation arrangements MFS-FL will maintain at the wire center at which
15 the unbundled elements are resident. At MFS-FL's discretion, each link or

^{4/} *In re: McLeod Telemangement, Inc.*, TCU-94-4 (Iowa Utilities Board, March 31, 1995).

^{5/} *In Re: Application of MFS Intelenet of Maryland, Inc.*, Case No. 8584, Phase II, *Order No. 72348* at pp. 37-39, *mimeo* (issued December 28, 1995).

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 20

1 ~~port element should be delivered to the MFS-FL collocation arrangement over~~
2 an individual 2-wire hand-off, in multiples of 24 over a digital DS-1 (or, if
3 technically feasible, higher transmission levels) hand-off in any combination
4 or order MFS-FL may specify, or through other technically feasible and
5 economically comparable hand-off arrangements requested by MFS-FL (e.g.,
6 SONET STS-1 hand-off). In addition, GTE should permit MFS-FL to
7 collocate digital loop carrier systems and associated equipment in conjunction
8 with collocation arrangements MFS-FL maintains at GTE's wire center, for
9 ~~the purpose of interconnecting to unbundled link elements~~

10 **Q. ON WHAT ADDITIONAL TERMS SHOULD GTE'S**
11 **UNBUNDLED ELEMENTS BE MADE AVAILABLE TO MFS-**
12 **FL IN ORDER FOR MFS-FL TO EFFICIENTLY OFFER**
13 **SERVICES?**

14 **A.** GTE should be required to apply all transport-based features,
15 functions, service attributes, grades-of-service, and install,
16 maintenance and repair intervals which apply to bundled service to
17 unbundled links. Likewise, GTE should be required to apply all
18 switch-based features, functions, service attributes, grades-of-service,

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 21

1 and install, maintenance and repair intervals which apply to bundled
2 service to unbundled ports.

3 GTE should permit any customer to convert its bundled service
4 to an unbundled service and assign such service to MFS-FL, with no
5 penalties, rollover, termination or conversion charges to MFS-FL or
6 the customer. GTE should also bill all unbundled facilities purchased
7 by MFS-FL (either directly or by previous assignment by a customer)
8 on a single consolidated statement per wire center. Finally, GTE
9 should provide MFS-FL with an appropriate on-line electronic file
10 transfer arrangement by which MFS-FL may place, verify and receive
11 confirmation on orders for unbundled elements, and issue and track
12 trouble-ticket and repair requests associated with unbundled elements.

13 **Q. WHAT IS MFS-FL'S POSITION WITH REGARD TO GTE'S**
14 **UNBUNDLING PROPOSAL?**

15 **A.**Unfortunately, MFS-FL cannot accept GTE's recommendation of
16 special access rates in lieu of unbundled loops. Hence, MFS-FL and
17 GTE have not yet reached an agreement.

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 22

1 **Q. IS IT IMPORTANT THAT UNBUNDLED ELEMENTS OF THE**
2 **LOCAL LOOP BE AVAILABLE TO NEW ENTRANTS AT A**
3 **REASONABLE PRICE?**

4 **A.** Yes. The availability of loops on an unbundled basis is only half the equation.
5 The loops must be priced in a manner that allows carriers to offer end users a
6 competitively priced service. In order to discourage GTE from implementing
7 anticompetitive pricing policies that would artificially depress the demand for
8 a competitor's service, the Commission should adopt pricing guidelines for
9 unbundled loops that are premised on GTE's' cost in providing the service and
10 that reflect this functional equivalency.

11 Absent any mitigating circumstances that might justify lower rates,
12 GTE's Long Run Incremental Costs ("LRIC") should serve as the target price
13 and cap for unbundled loops where such loops must be employed by
14 competitive carriers to compete realistically and practically with the
15 entrenched monopoly service provider, GTE. LRIC is the direct economic
16 cost of a given facility, including cost of capital, and represents the cost that
17 the LEC would otherwise have avoided if it had not installed the relevant
18 increment of plant -- *i.e.*, local loops in a given region. Thus, by leasing a
19 loop to a competitor, an incumbent LEC would be allowed to recover no less

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 23

1 than the full cost it would otherwise have avoided had it not built the
2 increment of plant that it has made available, through loop unbundling, for use
3 by a competitor in serving the customer to whose premises the loop extends.
4 For purposes of calculating LRIC-capped rates for unbundled loops, the LEC
5 would be required to perform long-run incremental cost studies for each
6 component of the local exchange access line, including the link, port, cross-
7 connect element and local usage elements. In addition, the volume and term
8 discounts that are offered to end users should be made available to competitive
9 local exchange carriers.

10 There is, however, an important qualification to this general
11 principle. LRIC is the appropriate pricing methodology *only* if it is
12 applied consistently in setting the price both for the unbundled services
13 provided to co-carriers and the bundled services offered by GTE to its
14 own end users. New entrants should not be subject to discriminatory
15 charges that GTE does not apply to its own end users. Therefore, the
16 Commission should adopt two additional pricing guidelines to prevent
17 such discrimination:

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 24

- 1 • First, the sum of the prices of the unbundled rate elements (link, port,
2 and cross-connect) must be no greater than the price of the bundled
3 dial tone line.
- 4 • Second, the ratio of price to LRIC for each element and for the
5 bundled dial tone line must be the same.

6 These two guidelines would require that the prices for the unbundled
7 dial tone line components be derived from the existing access line rates
8 established in GTE's effective tariffs. As long as those rates cover
9 LRIC, the unbundled component prices determined by these guidelines
10 would also cover LRIC.

11 **Q. WHAT DO YOU THINK ABOUT A NEW ENTRANT SIMPLY**
12 **PURCHASING A PRIVATE LINE OR SPECIAL ACCESS CHANNEL**
13 **FROM GTE'S EXISTING TARIFF?**

14 **A.**It would not be economical and would not be practical from a time of
15 installation perspective. While there is not much physical difference between
16 an unbundled link and a private line or special access channel, there are
17 differences in technical standards as well as engineering and operational
18 practices. The voice-grade channels offered under the private line and special
19 access tariffs provide a dedicated transmission path between an end user's

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 25

1 premises and a LEC wire center, just as unbundled simple links would. The
2 major differences between these existing services and unbundled simple links
3 are the additional performance parameters required for private line and special
4 access services, beyond what is necessary to provide "POTS" (plain old
5 telephone service); and the methods used by LECs to install and provision the
6 services. Currently, installation of a private line or special access channel
7 typically requires special engineering by the LEC and therefore takes longer
8 and costs more than installation of a "POTS" line. This special engineering
9 begins with a line that would be suitable for "POTS," but then adapts it to
10 conform to specialized performance parameters. Therefore, no single private
11 line service offering provided by GTE is likely to represent the basic co-
12 carrier unbundled loop facility. Private line and special access services also
13 include additional performance standards that are not necessary for the
14 delivery of "POTS" service. MFS-FL's major concern is that, in the future,
15 when a customer decides to replace its existing GTE dial tone service with
16 MFS-FL dial tone service, MFS-FL should be able to have the customer's
17 existing link facility rolled over from the GTE switch to an MFS-FL expanded
18 interconnection node in the same central office, without having the entire link
19 re-provisioned or engineered over different facilities. This roll-over, including

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 26

1 the seamless roll-over to MFS-FL when the customer is taking advantage of
2 number retention, should occur within the same ordering provision interval as
3 GTE provides for bundled local exchange service to end users and with
4 minimal service interruption to those customers.

5 In addition, it has been MFS-FL's experience that, in most
6 cases, the tariffed rate of a private line service exceeds the tariffed rate
7 of a bundled dial tone business or residence line. In fact, private lines
8 or special access channels are typically priced at substantial premiums
9 today. LECs have set prices for these existing services at premium
10 prices, on the basis that these services require additional performance
11 parameters beyond what is necessary to provide POTS. As such,
12 applying the tariffed rate of a private line or special access channel for
13 unbundled loops will place MFS-FL in a "price squeeze," in that it
14 would be paying more for the unbundled loops than it would be
15 allowed to recover through end user retail rates. Left to its own
16 devices, a dominant incumbent LEC such as GTE, would not tariff the
17 unbundled loop facility at the appropriate LRIC price. Instead, it
18 would likely choose to continue to apply the premium rate to an

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 27

1 entrant like MFS-FL in order to raise an additional barrier to
2 competition.

3 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

4 **A. Yes, it does.**

**REBUTTAL TESTIMONY OF TIMOTHY T. DEVINE
ON BEHALF OF
METROPOLITAN FIBER SYSTEMS OF FLORIDA, INC.
(Petition re: GTE Florida)
Docket No. 950984-TP**

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 **A. My name is Timothy T. Devine. My business address is MFS**
3 **Communications Company, Inc., Six Concourse Parkway, Ste. 2100,**
4 **Atlanta, Georgia 30328.**

5 **Q. ARE YOU THE SAME TIMOTHY DEVINE WHO PREVIOUSLY**
6 **FILED TESTIMONY IN THIS PROCEEDING?**

7 **A. Yes.**

8 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**
9 **PROCEEDING?**

10 **A. To respond on behalf of Metropolitan Fiber Systems of Florida, Inc.**
11 **(“MFS-FL”) to the direct testimony in this proceeding, and particularly the**
12 **testimony of Ms. Beverly Y. Menard, Dr. Gregory M. Duncan, and Mr.**
13 **Dennis B. Trimble filed on behalf of GTE Florida, Inc.**

14 **Q. HAS MFS-FL COME TO AGREEMENT ON ANY OF THE ISSUES IN**
15 **THIS DOCKET WITH GTE?**

16 **A. Yes. While MFS-FL has still not succeeded in coming to agreement with**
17 **BellSouth on any of the unbundling or interconnection issues in those**
18 **separate negotiations, MFS-FL has succeeded in negotiating an agreement**

1 with GTE on several of the principal issues in this docket. In this regard,
2 GTE adopted a constructive, reasonable, and positive approach to the
3 negotiations. The agreement is attached hereto as Exhibit TTD-8.
4 Specifically, MFS-FL and GTE have agreed that GTE will provide all of the
5 2-wire and 4-wire unbundled loop and port elements requested by MFS-FL.
6 GTE will also permit MFS-FL to collocate digital loop carriers in order to
7 provide loop concentration. Accordingly, there is currently no dispute
8 regarding the unbundled elements to be provided by GTE (Issue 1). GTE
9 and MFS-FL have also agreed as to the technical arrangements for each
10 such unbundled element (Issue 2), and have agreed to negotiate over the
11 next 60 days certain unresolved operational issues (Issue 4). The
12 Commission should leave this portion of the docket open until these
13 operational issues are fully resolved.

14 **Q. WHAT OTHER ISSUES REMAIN TO BE RESOLVED BETWEEN**
15 **MFS-FL AND GTE?**

16 **A.** MFS-FL and GTE were unable to agree upon the appropriate price for
17 unbundled network elements. This testimony will therefore focus on the
18 issue of the appropriate price for unbundled network elements.

19 **Q. BEFORE ADDRESSING THE ISSUE OF PRICING, DOES THE**
20 **RECENTLY SIGNED "TELECOMMUNICATIONS ACT OF 1996"**
21 **PROVIDE SUPPORT FOR THE MFS-FL UNBUNDLING PETITION?**

22 **A.** Yes. Although I am not a lawyer, it is my understanding that the signing of

1 the Telecommunications Act of 1996 ("Act") on Thursday, February 8,
2 1996 throws additional light on the MFS-FL unbundling petition. The Act
3 creates a federal duty for incumbent LECs such as GTE to provide to any
4 requesting telecommunications carrier for the provision of a
5 telecommunications service, nondiscriminatory access to network elements on
6 an unbundled basis "at any technically feasible point on rates, terms, and
7 conditions that are just, reasonable, and nondiscriminatory." Sec. 251(c)(3).
8 Although GTE and MFS-FL have agreed upon the terms and conditions for
9 unbundled loops, ports, and digital loop carriers, "just, reasonable, and
10 nondiscriminatory" rates remain to be determined.

11 **Q. DOES THE ACT PROVIDE A STANDARD TO DETERMINE WHAT**
12 **WOULD CONSTITUTE "JUST AND REASONABLE" RATES?**

13 **A.** Yes. Under the Act, a carrier such as MFS-FL negotiates unbundling
14 arrangements with the incumbent LEC, and agreements reached by
15 negotiation or arbitration are submitted for approval to State commissions. In
16 approving the pricing of unbundled elements in such arrangements, "just and
17 reasonable" rates must be "based on the cost (determined without reference to
18 a rate-of-return or other rate-based proceeding) of providing" the network
19 element must be "nondiscriminatory," and "may include a reasonable profit."
20 Sec. 252(d)(1).

21 **Q. IS THIS FEDERAL PRICING STANDARD GENERALLY**
22 **CONSISTENT WITH THE STANDARD PROPOSED BY MFS-FL IN**

ITS DIRECT TESTIMONY IN THIS DOCKET?

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A. Yes. The MFS-FL proposal and the federal pricing standard are both based on the fundamental baseline that rates should be based on the cost of providing the network element. This is in stark contrast to GTE's proposal that rates should be based on the current *rates* of providing a *separate, different* network service, special access. As I discussed in my direct testimony, absent mitigating circumstances, GTE's Long Run Incremental Costs ("LRIC") should serve as the target price and cap for unbundled loops where such loops must be employed by ALECs to compete with GTE, with all of the advantages of its historical monopoly franchise. LRIC is the direct economic cost of a given facility, including cost of capital, and represents the cost that the LEC would otherwise have avoided if it had not installed the relevant increment of plant -- *i.e.*, local loops in a given region. MFS-FL would also apply two additional pricing guidelines to prevent discrimination: 1) the sum of the prices of the unbundled rate elements (link, port, and cross-connect) must be no greater than the price of the bundled dial tone line; and 2) the ratio of price to LRIC for each unbundled element must be the same as the ratio of the bundled dial tone line to the bundled LRIC. These two guidelines would require that the prices for the unbundled dial tone line components be derived from the existing dial tone line rates established in GTE's effective tariffs. As long as those rates cover LRIC, the unbundled component prices determined by these guidelines would also cover LRIC. The pricing

1 guidelines recommended by MFS-FL are fully outlined in my Direct
2 Testimony. Devine Direct at 22-25.

3 **Q. WHY IS IT CRITICAL THAT UNBUNDLED LOOPS BE PRICED AT**
4 **A REASONABLE LEVEL IN ORDER FOR ALECS TO COMPETE?**

5 **A.** Physical unbundling of the local loop without ensuring that they are available
6 at reasonable nondiscriminatory prices will not facilitate local competition:
7 loops and ports must be priced in a manner that allows carriers to offer end
8 users a competitively priced service. In order to discourage GTE from
9 implementing anticompetitive pricing policies, the Commission should adopt
10 pricing guidelines for unbundled loops that are premised on GTE's cost in
11 providing the service and that reflect this functional equivalency.

12 **Q. HAS THIS COMMISSION ENDORSED THE CONCEPT OF COST-**
13 **BASED PRICING IN RELATED CONTEXTS?**

14 **A.** Yes. Cost-based pricing for unbundled elements has been endorsed by the
15 Commission, other state commissions, and other parties to this docket.
16 Recently, the Commission in its number portability decision found that the
17 legislative mandate encouraging the development of competition is fulfilled
18 by setting cost-based rates and requiring cost studies of BellSouth to confirm
19 that rates are at cost. *In re Investigation into Temporary Local Telephone*
20 *Number Portability Solution to Implement Competition in Local Exchange*
21 *Markets*, Docket No. 950737-TP, Order No. PSC-95-1604-FOF-TP, at 17
22 (Dec. 28, 1995).

1 **Q. WILL PRICING UNBUNDLED LOCAL LOOPS AT LRIC LEAD TO**
2 **FINANCIAL DISASTER FOR GTE AS DR. DUNCAN SUGGESTS?**

3 **A.** No. Dr. Duncan states that pricing unbundled elements at TSLRIC: 1) drives
4 a firm “to bankruptcy;” 2) will drive firms that react by trying to engage in
5 cross subsidies “out of business;” 3) would cause GTE to “lose money;” will
6 force GTE “to operate at a loss” by failing to recover common costs; and that
7 the value of GTE’s network will be transferred to MFS-FL stockholders.
8 Duncan Direct at 11-13. Dr. Duncan’s doomsday predictions are grossly
9 exaggerated and have no basis in reality.

10 **Q. DO YOU BELIEVE THAT PRICING LOOPS AT LRIC IS**
11 **ANALOGOUS TO GTE SELLING ITS “ENTIRE INVENTORY” TO**
12 **MFS-FL AT COST (DUNCAN DIRECT AT 12)?**

13 **A.** No. Dr. Duncan suggests that selling a *de minimis* number of unbundled
14 elements to new entrant competitors is the equivalent of selling off its entire
15 inventory. The entry of new entrants into the Florida local exchange market
16 will be gradual, as it has been in other states, such as New York, where MFS
17 has substantial experience. GTE, like LECs in other states which MFS has
18 entered, will continue to make substantial profits from providing a wide
19 variety of services, including significant revenue from long distance, switched
20 access, and vertical services. The suggestion that selling a few unbundled
21 loops at cost in order to allow competition to develop will make it impossible
22 for GTE to cover its common costs is preposterous. Moreover, Congress has

1 mandated that a cost-based standard be applied in order to foster the
2 development of competition.

3 **Q. WEREN'T THE ISSUES RAISED IN DR. DUNCAN'S TESTIMONY**
4 **ALREADY RESOLVED IN THE UNIVERSAL SERVICE DOCKET?**

5 **A.** Yes. Like BellSouth's interconnection proposal, GTE's unbundled loop
6 pricing proposal revolves around utilizing the pricing of unbundled loops to
7 recover the alleged but as yet unproven subsidy that GTE and other LECs
8 supposedly provide to universal service. Dr. Duncan states: "If GTEFL is
9 required to wholesale a product heretofore used to help defray the cost of R1
10 service at a price equal to TSLRIC, then GTEFL loses a source for this cross-
11 subsidy and puts additional burden on other services." Duncan Direct at 11.
12 Yet Dr. Duncan ignores the fact that, if its ability to sustain universal service
13 obligation is eroded due to competitive pressure, it has already been given an
14 avenue to rectify the matter by petitioning the Commission pursuant to the
15 recent universal service decision. *In re: Determination of funding for*
16 *universal service and carrier of last resort responsibilities*, Docket No.
17 950696, Order No. PSC-95-1592-FOF-TP at 28 (Dec. 27, 1995). If, as GTE
18 claims, it is "left with no sources of contribution for R1s" (Duncan Direct at
19 11), it can petition the Commission. GTE's repeated references to its
20 universal service obligations (Duncan Direct at 11, 12; Trimble Direct at 7, 8,
21 9, 10, 13) are therefore not relevant in this proceeding.

22 **Q. DO YOU AGREE WITH GTE THAT EACH AND EVERY ALEC**

1 **SHOULD BE REQUIRED TO OVERBUILD THE EXISTING LEC**
2 **NETWORKS?**

3 A. No. Dr. Duncan suggests that any new entrant into the Florida local exchange
4 market should be required to invest hundreds of millions of dollars to
5 overbuild the existing LEC network several times over. Such a requirement
6 would clearly delay the development of competition, and limit the number of
7 competitors in the market. It would also be entirely inconsistent with the
8 competitive model embraced by Congress which features cost-based network
9 unbundling (sec. 252(d)(1)(A)).

10 **Q. WHAT IS THE RATIONALE FOR YOUR PROPOSAL THAT THE**
11 **SUM OF THE UNBUNDLED LOOP, PORT, AND CROSS-CONNECT**
12 **RATE ELEMENTS MUST BE NO GREATER THAN THE PRICE OF**
13 **THE DIAL TONE LINE?**

14 A. Dr. Duncan fails to grasp the rationale underlying this proposal. Duncan
15 Direct at 13. Both the Florida Legislature and the U.S. Congress have
16 determined that unbundling the local loop at reasonable rates is a necessary
17 prerequisite to developing competitive local exchange markets. This is
18 consistent with at least eight states that have already ordered local loop
19 unbundling: Connecticut, New York, Illinois, Michigan, Iowa, Maryland,
20 Washington, and Oregon. *Application of the Southern New England*
21 *Telephone Company For Approval to Offer Unbundled Loops, Ports and*
22 *Associated Interconnection Arrangements*, Docket No. 95-06-17, Decision

1 (D.P.U.C., Dec. 20, 1995); *Interconnection Arrangements for Residential*
2 *and Business Links*, 152 PUR4th 193, 194 (NY PSC 1994); *In the matter of*
3 *the application of CITY SIGNAL, INC. for an order establishing and*
4 *approving interconnection arrangements with Michigan Bell Telephone*
5 *Company*, Case No. U-10647, Opinion and Order at 56, 57 (MI PSC,
6 February 23, 1995); *Illinois Bell Telephone Company, Proposed*
7 *Introduction of a Trial of Ameritech's Customers First Plan in Illinois*,
8 Docket Nos. 94-0096, *et al.*, at 48 (Ill. Commerce Comm'n, April 7, 1995);
9 *In re: McLeod Telemanagement, Inc.*, TCU-94-4 (Iowa Utilities Board,
10 March 31, 1995); *In Re: Application of MFS Intelenet of Maryland, Inc.*,
11 Case No. 8584, Phase II, *Order No. 72348* at pp. 37-39, *mimeo* (issued
12 December 28, 1995); *In the Matter of the Application of Electric Lightwave,*
13 *Inc. for a Certificate of Authority to Provide Telecommunications Services in*
14 *Oregon*, CP1, CP14, CP15, *Order No. 96-021*, at p. 52 (Oregon P.U.C.
15 Jan. 12, 1996); *DPUC Investigation Into the Unbundling of the Southern*
16 *New England Telephone Company's Local Telecommunications Network*,
17 Docket No. 94-10-02, Order (Conn. D.P.U.C., Sept. 22, 1995).

18 The purpose of this MFS proposal is therefore to ensure that
19 unbundled loops are not prohibitively expensive and that ALECs are not
20 caught in a price squeeze. If GTE is permitted to include excessive amounts
21 of contribution in the price of its unbundled elements, ALECs will not be able

1 to compete by purchasing these unbundled elements because, as discussed
2 further below, they will be caught in a price squeeze. If an ALEC pays more
3 for an unbundled loop, port, and cross-connect than it receives from an end
4 user subscriber, it can only provide local service at a loss. Requiring ALECs
5 to provide local service as a loss leader would not encourage local competition
6 and would be poor public policy.

7 **Q. WHAT IS THE RATIONALE FOR THE SECOND PRINCIPLE THAT**
8 **THE RATIO OF THE PRICES OF EACH UNBUNDLED ELEMENT**
9 **TO ITS LRIC SHOULD BE THE SAME?**

10 **A.** Dr. Duncan also fails to comprehend the rationale behind MFS-FL's second
11 principle. Duncan Direct at 14. MFS-FL supports this principle to ensure that
12 one unbundled element—the loop, the port, or the cross-connect—is not
13 overpriced. To provide an extreme example, if the price of the local dial tone
14 line is \$10, MFS-FL's first principle (that the sum of the price of the loop, the
15 port, and the cross-connect not exceed the price of the local dial tone line)
16 would be satisfied if the loop were priced at \$9.98, the cross-connect were
17 priced at one cent and the port were priced at one cent. This pricing structure
18 would allocate a disproportionate share of the price of the dial tone line to the
19 loop element. To ensure that this does not happen, MFS-FL supports this
20 second principle to ensure that the price to LRIC ratio of the loop, the port,
21 and the cross-connect is equal.

22 **Q. SHOULD UNBUNDLED LOOP PRICING TAKE INTO ACCOUNT**

1 **DISTANCE AND DENSITY?**

2 A. MFS-FL and other parties to this docket have recommended that the
3 Commission adopt a loop price structure that takes into account both distance
4 and density. Sprint/United in its direct testimony, referring to “high density
5 low cost exchanges” and “high cost low density exchanges” has noted the
6 correlation between density and cost. Poag Direct at 7. The Commission
7 should adopt distance and density-sensitive rates for GTE unbundled loops.
8 Such rates would account for the fact that loop costs are distance-sensitive
9 and density-sensitive. Any proposed rate that does not take into account this
10 distance-sensitivity, and more importantly, does not take into account
11 population density, is fundamentally flawed.

12 MFS urges the Commission to require GTE to file cost studies that
13 consider both the density and distance characteristics of local exchange loops
14 (*i.e.*, number of loops per square mile). GTE cost studies mandated by the
15 Commission should therefore account for both loop length and density in
16 determining loop costs. The Commission should also require that GTE cost
17 studies be broken down by each unbundled element (including the link, port,
18 cross-connect, and local usage elements) and should conduct a contested
19 proceeding to analyze those costs.

20 In order to price the loops on a usage sensitive basis, GTE should
21 establish price categories calculated on the cost of the average loop length and
22 density by wire center. Based on its experience in other states, MFS would

1 suggest three wire center categories. Category A would include wire centers
2 from which loops of the shortest length and maximum density extend.

3 Category B would include wire centers from which loops of medium length
4 and medium density extend. Finally, Category C would include those wire
5 centers from which loops of the longest length and lowest density extend.

6 Rates for loops in each wire center category would be the same and
7 would be calculated based on the average long run incremental cost of the
8 loops in that category. LECs in other jurisdictions, including Ameritech
9 Illinois, the Southern New England Telephone Company and Pacific Bell,
10 have adopted similar pricing methodologies. Moreover, the Federal
11 Communications Commission ("FCC") endorsed such a pricing scheme when
12 it authorized LECs offering collocation to implement zone density pricing for
13 special access services. Zone density pricing allows LECs the opportunity to
14 price their services in a manner that reflects the cost differences in providing
15 service to major metropolitan business districts, smaller cities and suburban
16 areas, and rural areas. *Expanded Interconnection with Local Telephone*
17 *Company Facilities, Report and Order and Notice of Proposed Rulemaking, 7*
18 *FCC Rcd 7369, 7454 (1992).* Such cost differences are just as characteristic
19 of unbundled loops.

20 **Q. WHAT IS THE FUNDAMENTAL FLAW WITH GTE'S PROPOSAL**
21 **FOR PRICING OF UNBUNDLED LOOPS AT CURRENT SPECIAL**
22 **ACCESS RATES?**

1 A. GTE's prices are based on the current prices of an existing and distinct
2 service, rather than on cost studies of the cost to provide the unbundled loops
3 as required by the federal Act. The Commission should not consider prices
4 that do not take as a starting point the LRIC of providing a simple unbundled
5 loop.

6 **Q. SHOULD NEW ENTRANTS BE REQUIRED TO PURCHASE A**
7 **PRIVATE LINE OR SPECIAL ACCESS CHANNEL FROM GTE'S**
8 **EXISTING TARIFF INSTEAD OF SIMPLE UNBUNDLED LOOPS?**

9 A. Mr. Trimble claims that unbundled loops are currently available through
10 GTE's Facilities for Intrastate Access tariff. Trimble Direct at 9. As I
11 explained in my Direct Testimony (Devine Direct at 24-27), this would not be
12 economical, nor practical from a time of installation perspective. While there
13 is not much physical difference between an unbundled link and a private line
14 or special access channel, there are differences in technical standards as well
15 as engineering and operational practices that render current tariffed services a
16 completely unsatisfactory substitute for unbundled links. The major
17 differences between these existing services and unbundled simple links are the
18 additional performance parameters required for private line and special access
19 services, beyond what is necessary to provide plain old telephone service
20 ("POTS"); and the methods used by LECs to install and provision the
21 services. Currently, installation of a private line or special access channel
22 typically requires special engineering by the LEC and therefore takes longer

1 and costs more than installation of a POTS line. This special engineering
2 begins with a line that would be suitable for POTS, but then adapts it to
3 conform to specialized performance parameters. Therefore, no single private
4 line service offering provided by GTE will satisfy MFS-FL unbundled loop
5 requirements. Private line and special access services also include additional
6 performance standards that are not necessary for the delivery of POTS service.

7 **Q. DOES MR. TRIMBLE RECOGNIZE THESE KEY DIFFERENCES**
8 **BETWEEN PRIVATE LINES AND UNBUNDLED LOOPS?**

9 **A.** No. Mr. Trimble's statement that special access "is (for all practical purposes)
10 an identical type service" is completely inaccurate. Trimble Direct at 10. Mr.
11 Trimble has completely overlooked the significant differences described
12 above, which are reflected in the price of private lines, in order to support his
13 system of premium pricing. These differences are also reflected in the
14 GTE/MFS-FL agreement which specifically excludes monitoring, testing,
15 and maintenance identification responsibilities from the unbundled loop
16 service provided by GTE, responsibilities that are included in special access
17 service. Agreement at 22, § VIII A(3)(a).

18 **Q. WOULD THE TARIFFED RATES FOR PRIVATE LINE SERVICES**
19 **PERMIT ECONOMICALLY VIABLE COMPETITION?**

20 **A..** No. Not surprisingly, the tariffed rate of a private line service exceeds the
21 tariffed rate of a bundled dial tone business or residence line. In fact, private
22 lines or special access channels are typically priced at substantial premiums

1 today because these services require additional performance parameters
2 beyond what is necessary to provide POTS.

3 **Q. IF GTE CHARGES TARIFFED PRIVATE LINE RATES, WILL IT BE**
4 **SUBJECT TO A PRICE SQUEEZE?**

5 **A.** Yes. MFS-FL would be paying more for the unbundled loops than it would
6 be allowed to recover through end user retail rates, resulting in a price
7 squeeze. The Commission should ensure that GTE does not maintain its
8 premium pricing and instead charges the appropriate LRIC price for
9 unbundled loops.

10 **Q. WHY SHOULD GTE NOT BE PERMITTED TO ADD**
11 **CONTRIBUTION TO LRIC IN SETTING PRICES FOR UNBUNDLED**
12 **LOOPS?**

13 **A.** Dr. Duncan and Mr. Trimble believe that contribution should be included in
14 rates for unbundled loops. Duncan Direct at 4-5; Trimble Direct at 12.
15 "Contribution" is often defined in the industry as the difference between the
16 incremental cost of a service and the price charged for that service. Such
17 charges force ALECs to recover from their customers not only the ALEC's
18 own overhead costs, but also a portion of GTE's overhead costs. This
19 effectively insulates GTE from the forces of competition. One of the most
20 significant benefits of competition is that it forces all market participants,
21 including GTE, to operate efficiently, resulting in lower rates for end users.
22 If GTE receives contribution -- in effect, is subsidized by its new entrant

1 competitors -- GTE's overhead costs will not be subjected to the full benefits
2 of competition that result from market pressures. Instead, current
3 inefficiencies in GTE's network will become incorporated into GTE's price
4 floor, locking in current inefficiencies in GTE's operations, despite the
5 introduction of competition. The Commission should therefore not require
6 ALECs to provide contribution in unbundled loop rates because it would
7 foreclose many of the potential benefits of competition.

8 **Q. DO YOU AGREE WITH THE ASSESSMENT OF GTE THAT ITS**
9 **REVENUES WILL BE ADVERSELY IMPACTED BY THE**
10 **INTRODUCTION OF COMPETITION (DUNCAN DIRECT AT 12-13)?**

11 **A.** No. In fact GTE stands to gain more from the introduction of competition
12 that perhaps any other company in the country. *GTE, unlike the Regional*
13 *Bell Operating Companies, was immediately permitted to enter the long*
14 *distance market upon the signing of the Telecommunications Act of 1996.*
15 It is possible that GTE is already providing long distance service in many
16 parts of the country. This is because the Act's special provisions concerning
17 Bell operating company entry into interLATA services (Secs. 271-276), the
18 so-called "checklist," provisions do not apply to GTE. Moreover, the GTE
19 consent decree is no longer in force, removing any restrictions on GTE
20 entering into the long distance market without creating separate subsidiaries.
21 This permits GTE to offer "one-stop shopping" for local and long distance
22 service for the first time. The suggestion that GTE will suffer net losses

1 from the introduction of competition into local markets, accompanied as it is
2 by the removal of the prohibition on GTE entry into long distance, is
3 therefore merely strategic posturing designed to strengthen GTE's
4 dominance of local service within its local service area. In fact, the
5 Commission should be particularly watchful that conditions favorable to the
6 development of local competition are established in GTE's service area to
7 the extent that the "checklist" provisions of the federal Act do not apply to
8 GTE.

9 Moreover, the MFS-FL experience in other states suggests that, even
10 focusing on the local market alone, the short term loss of GTE market share
11 will be negligible. The experience of AT&T in the long distance market
12 strongly suggests that GTE will in fact increase its revenues with the
13 development of competition because of the overall growth of the market.

14 **Q. SHOULD THE COMMISSION CONSIDER THE GTE PROPOSAL**
15 **THAT IT BE PERMITTED TO SHIFT TO ALECS THE**
16 **"IMPLEMENTATION COSTS" ASSOCIATED WITH LOCAL**
17 **COMPETITION (TRIMBLE DIRECT AT 13-14)?**

18 **A.** No, the Commission should not even consider this proposal. GTE does not
19 define what these "implementation costs" are, but MFS-FL suspects that
20 they are similar to the costs that every telecommunications carrier must
21 bear, and new entrants moreso than any other carrier. This cost is a small
22 price for GTE to pay in order to reap substantial additional local and long

1 distance revenues in the new competitive environment. GTE's clear intent
2 in shifting its costs to new entrants, like the inclusion of its overhead costs
3 in the pricing of unbundled loops, is simply another attempt to raise the cost
4 for ALECs to enter the business of providing local exchange service. The
5 Commission should follow the lead of the U.S. Congress, and other state
6 commissions, in ensuring that LRIC-based rates, without additional
7 surcharges, contribution, or other charges, are required for unbundled
8 elements in Florida.

9 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

10 **A.** Yes.

1 MR. RINDLER: Madam Chairman, with that, the
2 witness is available for cross.

3 CHAIRMAN CLARK: Do we need to do the other
4 direct testimony?

5 MR. RINDLER: Oh, yes, sorry.

6 CHAIRMAN CLARK: Go ahead.

7 Q (By Mr. Rindler) Mr. Devine, do you have in
8 front of you the direct testimony filed in connection
9 with the petition against Sprint-United?

10 A Yes.

11 Q On January 24, 1996?

12 A Yes.

13 Q Do you also have in front of you the
14 rebuttal testimony filed on February 21, 1996?

15 A Yes.

16 Q Do you have any changes or deletions to that
17 testimony?

18 A No.

19 MR. RINDLER: I would move that these be
20 entered into the record as though read.

21 CHAIRMAN CLARK: You covered the direct and
22 rebuttal?

23 MR. RINDLER: Yes, ma'am.

24 CHAIRMAN CLARK: All right. The direct
25 testimony of Mr. Timothy T. Devine dated January 24,

1 1996, concerning unbundling of Sprint-United and
2 Sprint-Centel will be inserted in the record as though
3 read. Likewise, the rebuttal testimony of Timothy T.
4 Devine relating to the petition concerning unbundling
5 of Sprint-United and Sprint-Centel will be inserted in
6 the record as though read.

7 MR. RINDLER: Madam Chairman, attached to
8 the direct testimony of Mr. Devine are, I believe, six
9 exhibits which I would ask to be moved in as a
10 composite exhibit.

11 CHAIRMAN CLARK: That will be marked as
12 Exhibit 5, and it's a composite exhibit consisting of
13 six items separately tabbed and attached to his direct
14 testimony.

15 MR. RINDLER: And attached to his rebuttal
16 testimony is the partial agreement and that's already
17 been marked just a minute ago.

18 CHAIRMAN CLARK: So I see no need to mark it
19 as an exhibit now.

20 (Exhibit No. 5 marked for identification.)
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**DIRECT TESTIMONY OF TIMOTHY T. DEVINE
ON BEHALF OF
METROPOLITAN FIBER SYSTEMS OF FLORIDA, INC.
Docket No. 950984-TP**

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 **A.** My name is Timothy T. Devine. My business address is MFS
3 Communications Company, Inc. ("MFSCC"), Six Concourse Parkway, Suite
4 2100, Atlanta, Georgia 30328-5351.

5 **Q. WHAT IS YOUR POSITION WITH MFS?**

6 **A.** I am the Senior Director of External and Regulatory Affairs for the Southern
7 Region for MFSCC, the indirect parent company of Metropolitan Fiber
8 Systems of Florida, Inc.

9 **Q. WHAT ARE YOUR RESPONSIBILITIES IN THAT POSITION?**

10 **A.** I am responsible for the regulatory oversight of commission dockets and other
11 regulatory matters and serve as MFSCC's representative to various members
12 of the industry. I am also responsible for coordinating co-carrier discussions
13 with Local Exchange Carriers within the Southern Region.

14 **Q. PLEASE DESCRIBE YOUR PREVIOUS PROFESSIONAL
15 EXPERIENCE AND EDUCATIONAL BACKGROUND.**

16 **A.** I have a B.S. in Political Science from Arizona State University and an M.A.
17 in Telecommunications Policy from George Washington University. I began
18 work in the telecommunications industry in April 1982 as a sales
19 representative for packet switching services for Graphnet, Inc., one of the first

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 2

1 value-added common carriers in the United States. From 1983 until 1987, I
2 was employed at Sprint Communications Co., in sales, as a tariff analyst, as a
3 product manager, and as Manager of Product and Market Analysis. During
4 1988, I worked at Contel Corporation, a local exchange carrier, in its
5 telephone operations group, as the Manager of Network Marketing. I have
6 been working for MFSCC and its affiliates since January 1989. During this
7 time period, I have worked in product marketing and development, corporate
8 planning, regulatory support, and regulatory affairs. Most recently, from
9 August 1994 until August 1995, I have been representing MFSCC on
10 regulatory matters before the New York, Massachusetts, and Connecticut state
11 commissions and was responsible for the MFSCC Interim Co-Carrier
12 Agreements with NYNEX in New York and Massachusetts, as well as the
13 execution of a co-carrier Joint Stipulation in Connecticut.

14 **Q. PLEASE DESCRIBE THE OPERATIONS OF MFS**
15 **COMMUNICATIONS COMPANY, INC. AND ITS SUBSIDIARIES.**

16 **A.** MFSCC is a diversified telecommunications holding company with operations
17 throughout the country, as well as in Europe. MFS Telecom, Inc., an MFSCC
18 subsidiary, through its operating affiliates, is the largest competitive access
19 provider in the United States. MFS Telecom, Inc.'s subsidiaries, including

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 3

1 MFS/McCourt, Inc., provide non-switched, dedicated private line and special
2 access services.

3 MFS Intelenet, Inc. ("MFSI") is another wholly owned subsidiary of
4 MFSCC. It causes operating subsidiaries to be incorporated on a state-by-
5 state basis. MFSI's operating subsidiaries collectively are authorized to
6 provide switched interexchange telecommunications services in 48 states and
7 have applications to offer such service pending in the remaining states. Where
8 so authorized, MFSI's operating subsidiaries offer end users a single source
9 for local and long distance telecommunications services with quality and
10 pricing levels comparable to those achieved by larger communications users.
11 Apart from Florida, MFSI subsidiaries have been authorized to provide
12 competitive local exchange service in twelve states. Since July 1993, MFS
13 Intelenet of New York, Inc. has offered local exchange services in competition
14 with New York Telephone Company. MFS Intelenet of Maryland, Inc. was
15 authorized to provide local exchange services in competition with Bell
16 Atlantic-Maryland, Inc. in April 1994 and recently has commenced
17 operations. On June 22, 1994, MFS Intelenet of Washington, Inc. was
18 authorized to provide local exchange services in competition with US West
19 Communications, Inc. On July 20, 1994, MFS Intelenet of Illinois, Inc. was

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 4

1 certificated to provide local exchange services in competition with Illinois
2 Bell Telephone Company and Central Telephone Company of Illinois. MFS
3 Intelenet of Ohio was certificated to provide competitive local exchange
4 service in competition with Ohio Bell on August 3, 1995. MFS Intelenet of
5 Michigan, on May 9, 1995, was certificated to provide competitive local
6 exchange service in competition with Ameritech-Michigan. MFS Intelenet of
7 Connecticut was certificated to provide local exchange service in competition
8 with Southern New England Telephone Company on June 28, 1995. MFS
9 Intelenet of Texas, Inc. was authorized to provide local exchange service in
10 Texas in competition with Southwestern Bell Telephone Company by Order
11 signed on October 25, 1995. MFS Intelenet of Georgia, Inc. was certificated
12 to provide local exchange service in the Atlanta and Smyrna Exchanges in
13 competition with BellSouth on October 27, 1995. MFS Intelenet of
14 Pennsylvania, Inc. was authorized to provide local exchange service in
15 Pennsylvania by Order entered October 4, 1995. MFS Intelenet of California,
16 Inc. was authorized to provide competitive local exchange services in
17 California by Order of the California Public Utilities Commission on
18 December 20, 1995. MFS Intelenet of Massachusetts was certificated on
19 March 9, 1994 to operate as a reseller of both interexchange and local

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 5

1 exchange services in the Boston Metropolitan Area in competition with New
2 England Telephone and is authorized to provide competitive local exchange
3 services in Massachusetts. Finally, on January 12, 1996, MFS Intelenet of
4 Oregon was certificated to provide local exchange services in competition
5 with US West and GTE in Oregon.

6 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS**
7 **COMMISSION?**

8 **A.** Yes. The principal proceedings in which I have filed testimony are as follows:
9 On August 14, 1995 and September 8, 1995, respectively, I filed direct and
10 rebuttal testimony in the universal service docket. *In re: Determination of*
11 *funding for universal service and carrier of last resort responsibilities*, Docket
12 No. 950696-TP. On September 1, 1995 and September 29, 1995, respectively,
13 I filed direct and rebuttal testimony in the temporary number portability
14 docket. *In re: Investigation into temporary local telephone portability*
15 *solution to implement competition in local exchange telephone markets*,
16 Docket No. 950737-TP. On September 15, 1995 and September 29, 1995,
17 respectively, I filed direct and rebuttal testimony in the TCG Interconnection
18 Petition docket. *Resolution of Petition(s) to establish nondiscriminatory*
19 *rates, terms, and conditions for interconnection involving local exchange*

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 6

1 *companies and alternative local exchange companies pursuant to Section*
2 *364.162, Florida Statutes, Docket No. 950985A-TP. On November 13, 1995*
3 *and December 11, 1995, respectively, I filed direct and rebuttal testimony in*
4 *the Continental and MFS Interconnection Petition docket. Resolution of*
5 *Petition(s) to establish nondiscriminatory rates, terms, and conditions for*
6 *interconnection involving local exchange companies and alternative local*
7 *exchange companies pursuant to Section 364.162, Florida Statutes, Docket*
8 *No. 950985A-TP. In this docket, on November 13, 1995 and December 11,*
9 *1995, respectively, I filed direct and rebuttal testimony. Resolution of*
10 *Petition(s) to Establish Unbundled Services, Network Features, Functions or*
11 *Capabilities, and Local Loops Pursuant to Section 364.161, Florida Statutes,*
12 *Docket No. 950984-TP. On November 27, 1995 and December 12, 1995,*
13 *respectively, I filed direct and rebuttal testimony in the MCI Unbundling*
14 *Petition docket. Resolution of Petition(s) to Establish Unbundled Services,*
15 *Network Features, Functions or Capabilities, and Local Loops Pursuant to*
16 *Section 364.161, Florida Statutes, Docket No. 950984B-TP.*

17 **Q. ARE ANY OF THE PARTIES UPON WHOSE BEHALF YOU ARE**
18 **TESTIFYING CURRENTLY CERTIFICATED TO PROVIDE**
19 **SERVICE IN FLORIDA?**

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 7

1 A. Yes. Metropolitan Fiber Systems of Florida, Inc., a certificated Alternative
2 Access Vendor ("AAV"), by letter dated July 5, 1995, notified the
3 Commission of its intent to provide switched local exchange service in
4 Florida. The Commission acknowledged this notification on September 12,
5 1995, and later granted the requested authority.

6 **I. PURPOSE AND SUMMARY**

7 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**
8 **PROCEEDING?**

9 A. MFS-FL has filed its unbundling petition in this docket, as well as a
10 parallel petition in the interconnection docket, because its attempts at
11 negotiations with Sprint-United Telephone Company of Florida and
12 Sprint-Central Telephone Company of Florida ("Sprint-United/Centel"
13 collectively) have failed to yield acceptable co-carrier arrangements.
14 MFS-FL therefore is petitioning the Commission, in accordance with
15 Florida Statute Section 364.161, for Sprint-United/Centel to provide
16 unbundled services, network features, functions or capabilities, and
17 specifically the unbundled local loop and the concentration of
18 unbundled loops.

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 8

1 **Q. AS A THRESHOLD MATTER, WHAT IS MEANT BY THE TERM**
2 **"CO-CARRIER ARRANGEMENTS"?**

3 **A.** By "co-carrier" arrangements, I refer to a variety of arrangements that will
4 have to be established to allow alternative local exchange carriers ("ALECs")
5 and Sprint-United/Centel to deal with each other on a reciprocal, non-
6 discriminatory, and equitable basis. Once the basic principles for such
7 arrangements are established by the Commission, the affected carriers should
8 be directed to implement specific arrangements in conformance with these
9 principles. The term "co-carrier" signifies both that the two carriers are
10 providing local exchange service within the same territory, and that the
11 relationship between them is intended to be equal and reciprocal—that is,
12 neither carrier would be treated as subordinate or inferior. The arrangements
13 needed to implement this co-carrier relationship will encompass, among other
14 things, physical connections between networks; signaling and routing
15 arrangements for the exchange of traffic between networks; and arrangements
16 for joint access to essential service platforms, such as operator and directory
17 assistance services, that must serve all telephone users within a geographic
18 area.

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 9

1 MFS-FL believes that customers of all carriers must be assured that
2 they can call each other without the caller having to worry about which carrier
3 serves the other party. To achieve this, not only must carriers physically
4 connect their networks, but they must terminate calls for each other on a
5 reciprocal basis that is both technically and economically reasonable. Traffic
6 exchange arrangements should be seamless and transparent from the
7 viewpoint of the caller. There should be no difference in how a call is dialed,
8 how long it takes to be completed, or how it is billed depending solely upon
9 the identity of the carrier serving the dialed number. In addition, customers
10 should have access to essential ancillary functions of the network (such as
11 directory listings, directory assistance, inward operator assistance, and CLASS
12 features, to name a few) without regard to which carrier provides their dial
13 tone or originates their call.

14 **Q. SPECIFICALLY WHAT CO-CARRIER ARRANGEMENTS ARE**
15 **REQUIRED FOR MFS-FL TO PROVIDE VIABLE COMPETITIVE**
16 **LOCAL EXCHANGE SERVICE?**

17 **A.** MFS-FL believes that certain co-carrier requirements should apply equally
18 and reciprocally to all local exchange carriers, LECs and ALECs alike. The
19 Florida statute have recognized the necessity for such arrangements by

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 10

1 requiring LECs to negotiate both interconnection and unbundling
2 arrangements. Fla. Stat. §§ 364.161 and 364.162. The following are the co-
3 carrier arrangements required by MFS-FL: 1) Number Resources; 2) Tandem
4 Subtending/Meet-point Billing; 3) Reciprocal Traffic Exchange and
5 Reciprocal Compensation; 4) Shared Platform Arrangements; 5) Unbundling
6 the Local Loop; and 6) Interim Number Portability. Unbundling the local
7 loop will be addressed herein. The remaining arrangements will be addressed
8 in a separate parallel petition and testimony.

9 **Q. WAS THERE AGREEMENT ON ANY OF THESE CO-CARRIER**
10 **ISSUES WITH SPRINT-UNITED/CENTEL?**

11 **A.** No. Sprint-United/Centel and MFS-FL's have been unable to reach an
12 agreement. On July 19, 1995, MFS-FL attempted to begin negotiations with
13 Sprint-United/Centel for unbundling and interconnection arrangements via a
14 three page letter outlining the MFS-FL proposed unbundling and
15 interconnection arrangements. *See* Exhibit TTD-1, attached to this
16 testimony. Nearly four months later on November 9, 1995, having received
17 no formal written response from Sprint-United/Centel to its initial letter,
18 MFS-FL sent Sprint-United/Centel a letter and a detailed 31-page proposed
19 co-carrier agreement in an attempt to simplify the negotiations process for

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 11

1 Sprint-United/Centel. *See* Exhibit TTD-2, attached to this testimony. On
2 January 3, 1996, MFS-FL mailed another letter to Sprint-United/Centel in
3 one last attempt at receiving a response and beginning private negotiations.
4 *See* Exhibit TTD-3, attached to this testimony. On January 5, 1996, Sprint-
5 United/Centel sent correspondence to MFS-FL disputing the status of
6 negotiations. On January 18, 1996, Sprint-United/Centel replied to the
7 MFS-FL proposal with a proposed stipulation. (These documents are
8 attached to this testimony as Exhibit TTD-4). However, upon a detailed
9 review by MFS-FL, it became apparent that MFS-FL and Sprint-
10 United/Centel significantly disagree on many. On January 19, 1996, MFS-
11 FL sent Sprint-United/Centel a letter to indicate that it intended to file a
12 Petition with the Commission because both companies disagree on
13 fundamental issues. *See* Exhibit TTD-5, attached to the accompanying direct
14 testimony. MFS-FL indicated its desire to continue discussions to reach an
15 agreement on all or as many issues as possible before the hearings
16 commence in March. As a result of the delay, the benefits of local
17 competition have not reached Florida consumers in Sprint's territory as the
18 Commission intended.

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 12

1 **II. UNBUNDLING OF LOCAL LOOP FACILITIES**

2 **Q. YOU STATED ABOVE THAT THE COMMISSION SHOULD**
3 **FACILITATE COMPETITION IN THE LOCAL EXCHANGE**
4 **MARKET BY REQUIRING SPRINT-UNITED/CENTEL TO OFFER**
5 **ITS LOCAL LOOP FACILITIES ON AN UNBUNDLED BASIS. WHY**
6 **IS THIS NECESSARY?**

7 **A.** The importance of local loop unbundling to the development of actual
8 competition derives directly from Sprint-United/Centel's continued control of
9 significant monopoly elements. Unbundled links will provide access to an
10 essential bottleneck facility controlled by Sprint-United/Centel. MFS-FL
11 would strongly urge the Commission to require Sprint-United/Centel to
12 unbundle its services so that each element of the local loop bottleneck is
13 priced separately from other service elements. This will allow competitors and
14 users to pay for only those portions of the loop services that they want or
15 need. Line side interconnection will allow competing carriers to directly reach
16 end user customers who are currently reachable efficiently only through the
17 Sprint-United/Centel bottleneck network.

18 Sprint-United/Centel continues to have monopoly control over the
19 "last mile" of the telecommunications network. Service between most Sprint-

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 13

1 United/Centel customers and the Sprint-United/Centel central offices remains,
2 and for some time to come will apparently continue to remain, nearly the
3 exclusive province of Sprint-United/Centel. This monopoly results from the
4 fact that this loop network consists mostly of transmission facilities carrying
5 small volumes of traffic, spread over wide geographic areas. Presently, it is
6 economically more efficient for competitors to utilize Sprint-United/Centel
7 loops at cost-based rates, rather than to construct ubiquitous competing
8 transmission and switching facilities. The "last mile" loop network, therefore,
9 is an essential bottleneck facility for any potential provider of competitive
10 local exchange service.

11 Given the protection of its former monopoly status, Sprint-
12 United/Centel has constructed virtually ubiquitous loop networks that
13 provide access to every interexchange carrier and virtually all
14 residential and business premises in its territory. In building these
15 networks, Sprint-United/Centel had the singular advantage of
16 favorable governmental franchises, access to rights-of-way, unique tax
17 treatment, access to buildings on an unpaid basis, and protection
18 against competition. Companies such as MFS-FL that now seek to
19 compete in the provision of local exchange service do not share these

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 14

1 advantages, and it would be both infeasible and economically
2 inefficient in most cases for them to seek to construct duplicate loop
3 facilities. Replication of the existing LEC loop network (using either
4 facilities similar to the incumbent LECs' or alternative technologies
5 such as wireless loops or cable television plant) would be cost-
6 prohibitive; moreover, competitors cannot obtain public and private
7 rights-of-way, franchises, or building access on the same terms as
8 incumbent LECs enjoy.

9 **Q. WHAT SPECIFIC UNBUNDLED ELEMENTS SHOULD BE MADE**
10 **AVAILABLE?**

11 **A.** The network access line portion of local exchange service can be represented
12 as being comprised of two key components: the loop, or "link," which
13 provides the transmission path between the customer and the local exchange
14 central office, and the "port," which represents the interface to the switch, and
15 the capability to originate and terminate calls. Unbundling the local loop
16 consists of physically unbundling the link and port elements, and pricing them
17 individually on an economically viable basis.

18 Specifically, Sprint-United/Centel should immediately
19 unbundle all of its Exchange services into two separate packages: the

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 15

1 link element plus cross-connect element and the port element plus
2 cross-connect element. MFS-FL seeks unbundled access and
3 interconnection to the following forms of unbundled links: (1) 2-wire
4 and 4-wire analog voice grade, also known as a "simple" link, which is
5 simply a path for voice-grade service from an end user's premises to
6 the central office; (2) 2-wire ISDN digital grade; and (3) 4-wire DS-1
7 digital grade. MFS-FL also requests that the following forms of
8 unbundled ports be made available: (1) 2-wire and 4-wire analog line;
9 (2) 2-wire ISDN digital line; (3) 2-wire analog DID trunk; (4) 4-wire
10 DS-1 digital DID trunk; and (5) 4-wire ISDN DS-1 digital trunk. A
11 diagram of the unbundled elements requested by MFS-FL is attached
12 to this testimony as Exhibit TTD-6.

13 In order for MFS-FL to efficiently offer telephone services to
14 end users, Sprint-United/Centel should unbundle and separately price
15 and offer these elements such that MFS-FL will be able to lease and
16 interconnect to whichever of these unbundled elements MFS-FL
17 requires and to combine the Sprint-United/Centel-provided elements
18 with facilities and services that MFS-FL may provide itself.

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 16

1 **Q. WHAT IS THE UNBUNDLED LINK TECHNOLOGY REFERRED TO**
2 **AS DIGITAL LOOP CARRIER SYSTEMS?**

3 **A.** MFS-FL seeks unbundled access and interconnection to the link
4 subelements that are resident in the modern digital loop carrier
5 ("DLC") systems (which provide concentration) that LECs have begun
6 to deploy in lieu of copper pair links. These DLC systems typically
7 involve three main sub-elements: (1) a digital transport distribution
8 facility operating at 1.544 Mbps ("DS1"), or multiples thereof,
9 extending from the LEC end office wire center to a point somewhere
10 in the LEC network (this point could be a manhole, pedestal, or even a
11 telephone closet in a large building); (2) digital loop carrier terminal
12 equipment housed in the manhole, pedestal, telephone closet, etc., at
13 which the DS1 terminates and which derives from the DS1 facility 24
14 or more voice grade telephonic channels; and (3) copper pair
15 feeder/drop facilities (lines) extending from the DLC terminal to a
16 demarcation/connector block at various customers' premises.

17 To the extent these or similar systems are employed in Sprint-
18 United/Centel's network, MFS-FL should be allowed to interconnect to the
19 unbundled subelements of these systems, where technically feasible and where

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 17

1 capacity allows. This further unbundling of the links into digital distribution
2 and voice-grade feeder/drop sub-elements is necessary in order to ensure that
3 the quality of links MFS-FL leases from the Sprint-United/Centel is equal to
4 the quality of links that Sprint-United/Centel provide directly to end users.

5 Essentially, MFS-FL would seek to lease as one element, the DS1-rate
6 digital distribution facility and DLC terminal, and to lease as discrete
7 incremental elements individual channels on voice-grade feeder/drop
8 facilities. MFS-FL would expect to interconnect to the DS1 distribution
9 facility at the Sprint-United/Centel end office (via expanded interconnection
10 arrangements offered pursuant to Substantive Rule § 23.92), but would also
11 consider arrangements pursuant to which it could interconnect at other points.
12 The generic interface for the DLC-type arrangements is described in Bellcore
13 TR-TSY-000008, Digital Interface Between the SLC-96 Digital Loop Carrier
14 System and Local Digital Switch, and TR-TSY-000303, Integrated Digital
15 Loop Carrier ("IDLC") Requirements, Objectives and Interface and MFS-FL's
16 Ericsson switch is compatible with these standards.

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 18

1 **Q. IS LINK UNBUNDLING TECHNICALLY FEASIBLE?**

2 **A.** Yes. Competitors can interconnect to the unbundled loops at the LEC central
3 office using the same physical collocation arrangements already in place for
4 special access and private line circuits.

5 **Q. HAVE OTHER STATES REQUIRED LOOP UNBUNDLING?**

6 **A.** Yes. Several state public utility commissions have already determined that
7 unbundling of the local loop is essential for the development of local
8 exchange competition and in the public interest. The New York Public
9 Service Commission has found that the unbundling of local loops is in the best
10 interest of consumers because it would allow competitive carriers to expand
11 the market for their services, increase the utility of competitive networks and
12 offer all local exchange customers an alternative to the monopoly local service
13 provider.^{1/}

14 The Illinois and Michigan Commissions have determined that
15 unbundling of the local loop is necessary to remove a significant barrier to
16 competition. The Michigan Public Service Commission found that

^{1/} *Proceeding on Motion of the Commission Regarding Comparably Efficient
Interconnection Arrangements for Residential and Business Links, 152 PUR4th 193, 194 (NY
PSC 1994).*

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 19

1 "unbundled loops are vital to local exchange competition and in the public
2 interest" and are necessary to allow a competitive local exchange carrier to
3 provide service to every customer within its exchange areas.^{2/} In an Order
4 issued April 7, 1995, the Illinois Commerce Commission concluded that
5 "unbundling LEC networks is essential to permit the development of local
6 exchange competition and is in the public interest."^{3/}

7 On March 31, 1995, the Iowa Utilities Board declared that unbundling
8 of U S West's local loop "is necessary for competition in the local exchange"
9 because new entrants "are not going to be able to provide loops to all
10 customers. Resale of unbundled facilities is the appropriate answer."^{4/}

11 The Maryland Public Service Commission recently adopted an interim
12 pricing arrangement for unbundled links which requires rates for the links to
13 be set at levels that, when totalled, would equal (or be less than) the price of

^{2/} *In the matter of the application of CITY SIGNAL, INC. for an order establishing and approving interconnection arrangements with Michigan Bell Telephone Company*, Case No. U-10647, Opinion and Order at 56, 57 (MI PSC, February 23, 1995).

^{3/} *See Illinois Bell Telephone Company, Proposed Introduction of a Trial of Ameritech's Customers First Plan in Illinois*, Docket Nos. 94-0096, *et al.*, at 48 (Ill. Commerce Comm'n, April 7, 1995).

^{4/} *In re: McLeod Telemanagement, Inc.*, TCU-94-4 (Iowa Utilities Board, March 31, 1995).

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 20

1 bundled local dial tone line service. Further, the ratio between the prices for
2 unbundled links and ports must mirror the ratio between the direct costs of
3 these components.^{2/}

4 **Q. SHOULD SPRINT-UNITED/CENTEL BE REQUIRED TO OFFER**
5 **COLLOCATION FOR INTERCONNECTION TO UNBUNDLED**
6 **LINKS?**

7 **A.** Yes. Economic development and expanded competition in the provision of
8 local exchange services will be promoted only if MFS-FL can interconnect to
9 unbundled elements of the local loop. Interconnection should be achieved via
10 collocation arrangements MFS-FL will maintain at the wire center at which
11 the unbundled elements are resident. At MFS-FL's discretion, each link or
12 port element should be delivered to the MFS-FL collocation arrangement over
13 an individual 2-wire hand-off, in multiples of 24 over a digital DS-1 (or, if
14 technically feasible, higher transmission levels) hand-off in any combination
15 or order MFS-FL may specify, or through other technically feasible and
16 economically comparable hand-off arrangements requested by MFS-FL (e.g.,
17 SONET STS-1 hand-off). In addition, Sprint-United/Centel should permit

^{2/} *In Re: Application of MFS Intelenet of Maryland, Inc.*, Case No. 8584, Phase II, Order No. 72348 at pp. 37-39, *mimeo* (issued December 28, 1995).

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 21

1 MFS-FL to collocate digital loop carrier systems and associated equipment in
2 conjunction with collocation arrangements MFS-FL maintains at Sprint-
3 United/Centel's wire center, for the purpose of interconnecting to unbundled
4 link elements.

5 **Q. ON WHAT ADDITIONAL TERMS SHOULD SPRINT-**
6 **UNITED/CENTEL'S UNBUNDLED ELEMENTS BE MADE**
7 **AVAILABLE TO MFS-FL IN ORDER FOR MFS-FL TO**
8 **EFFICIENTLY OFFER SERVICES?**

9 **A.** Sprint-United/Centel should be required to apply all transport-based
10 features, functions, service attributes, grades-of-service, and install,
11 maintenance and repair intervals which apply to bundled service to
12 unbundled links. Likewise, Sprint-United/Centel should be required
13 to apply all switch-based features, functions, service attributes, grades-
14 of-service, and install, maintenance and repair intervals which apply to
15 bundled service to unbundled ports.

16 Sprint-United/Centel should permit any customer to convert its
17 bundled service to an unbundled service and assign such service to
18 MFS-FL, with no penalties, rollover, termination or conversion
19 charges to MFS-FL or the customer. Sprint-United/Centel should also

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 22

1 bill all unbundled facilities purchased by MFS-FL (either directly or
2 by previous assignment by a customer) on a single consolidated
3 statement per wire center. Finally, Sprint-United/Centel should
4 provide MFS-FL with an appropriate on-line electronic file transfer
5 arrangement by which MFS-FL may place, verify and receive
6 confirmation on orders for unbundled elements, and issue and track
7 trouble-ticket and repair requests associated with unbundled elements.

8 **Q. WHAT IS MFS-FL'S POSITION WITH REGARD TO SPRINT-**
9 **UNITED/CENTEL'S UNBUNDLING PROPOSAL?**

10 **A.** Unfortunately, Sprint-United/Centel's draft stipulation mirrors the
11 BellSouth/CATV industry agreement which provides special access in
12 lieu of unbundled loops. MFS-FL cannot accept this proposal. Hence,
13 MFS-FL and Sprint-United/Centel have been unable to reach an
14 agreement.

15 **Q. IS IT IMPORTANT THAT UNBUNDLED ELEMENTS OF THE**
16 **LOCAL LOOP BE AVAILABLE TO NEW ENTRANTS AT A**
17 **REASONABLE PRICE?**

18 **A.** Yes. The availability of loops on an unbundled basis is only half the equation.
19 The loops must be priced in a manner that allows carriers to offer end users a

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 23

1 competitively priced service. In order to discourage Sprint-United/Centel
2 from implementing anticompetitive pricing policies that would artificially
3 depress the demand for a competitor's service, the Commission should adopt
4 pricing guidelines for unbundled loops that are premised on Sprint-
5 United/Centel's cost in providing the service and that reflect this functional
6 equivalency.

7 Absent any mitigating circumstances that might justify lower rates,
8 Sprint-United/Centel's Long Run Incremental Costs ("LRIC") should serve as
9 the target price and cap for unbundled loops where such loops must be
10 employed by competitive carriers to compete realistically and practically with
11 the entrenched monopoly service provider, Sprint-United/Centel. LRIC is the
12 direct economic cost of a given facility, including cost of capital, and
13 represents the cost that the LEC would otherwise have avoided if it had not
14 installed the relevant increment of plant -- *i.e.*, local loops in a given region.
15 Thus, by leasing a loop to a competitor, an incumbent LEC would be allowed
16 to recover no less than the full cost it would otherwise have avoided had it not
17 built the increment of plant that it has made available, through loop
18 unbundling, for use by a competitor in serving the customer to whose
19 premises the loop extends. For purposes of calculating LRIC-capped rates for

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 24

1 unbundled loops, the LEC would be required to perform long-run incremental
2 cost studies for each component of the local exchange access line, including
3 the link, port, cross-connect element and local usage elements. In addition,
4 the volume and term discounts that are offered to end users should be made
5 available to competitive local exchange carriers.

6 There is, however, an important qualification to this general
7 principle. LRIC is the appropriate pricing methodology *only* if it is
8 applied consistently in setting the price both for the unbundled services
9 provided to co-carriers and the bundled services offered by Sprint-
10 United/Centel to its own end users. New entrants should not be
11 subject to discriminatory charges that Sprint-United/Centel does not
12 apply to its own end users. Therefore, the Commission should adopt
13 two additional pricing guidelines to prevent such discrimination:

- 14 • First, the sum of the prices of the unbundled rate elements (link, port,
15 and cross-connect) must be no greater than the price of the bundled
16 dial tone line.
- 17 • Second, the ratio of price to LRIC for each element and for the
18 bundled dial tone line must be the same.

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 25

1 These two guidelines would require that the prices for the unbundled
2 dial tone line components be derived from the existing access line rates
3 established in Sprint-United/Centel's effective tariffs. As long as those
4 rates cover LRIC, the unbundled component prices determined by
5 these guidelines would also cover LRIC.

6 **Q. WHAT DO YOU THINK ABOUT A NEW ENTRANT SIMPLY**
7 **PURCHASING A PRIVATE LINE OR SPECIAL ACCESS CHANNEL**
8 **FROM SPRINT-UNITED/CENTEL'S EXISTING TARIFF?**

9 **A.** It would not be economical and would not be practical from a time of
10 installation perspective. While there is not much physical difference between
11 an unbundled link and a private line or special access channel, there are
12 differences in technical standards as well as engineering and operational
13 practices. The voice-grade channels offered under the private line and special
14 access tariffs provide a dedicated transmission path between an end user's
15 premises and a LEC wire center, just as unbundled simple links would. The
16 major differences between these existing services and unbundled simple links
17 are the additional performance parameters required for private line and special
18 access services, beyond what is necessary to provide "POTS" (plain old
19 telephone service); and the methods used by LECs to install and provision the

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 26

1 services. Currently, installation of a private line or special access channel
2 typically requires special engineering by the LEC and therefore takes longer
3 and costs more than installation of a "POTS" line. This special engineering
4 begins with a line that would be suitable for "POTS," but then adapts it to
5 conform to specialized performance parameters. Therefore, no single private
6 line service offering provided by Sprint-United/Centel is likely to represent
7 the basic co-carrier unbundled loop facility. Private line and special access
8 services also include additional performance standards that are not necessary
9 for the delivery of "POTS" service. MFS-FL's major concern is that, in the
10 future, when a customer decides to replace its existing Sprint-United/Centel
11 dial tone service with MFS-FL dial tone service, MFS-FL should be able to
12 have the customer's existing link facility rolled over from the Sprint-
13 United/Centel switch to an MFS-FL expanded interconnection node in the
14 same central office, without having the entire link re-provisioned or
15 engineered over different facilities. This roll-over, including the seamless
16 roll-over to MFS-FL when the customer is taking advantage of number
17 retention, should occur within the same ordering provision interval as Sprint-
18 United/Centel provides for bundled local exchange service to end users and
19 with minimal service interruption to those customers.

Direct Testimony of Timothy T. Devine
MFS Communications Company, Inc.
January 24, 1996
Page 27

1 In addition, it has been MFS-FL's experience that, in most
2 cases, the tariffed rate of a private line service exceeds the tariffed rate
3 of a bundled dial tone business or residence line. In fact, private lines
4 or special access channels are typically priced at substantial premiums
5 today. LECs have set prices for these existing services at premium
6 prices, on the basis that these services require additional performance
7 parameters beyond what is necessary to provide POTS. As such,
8 applying the tariffed rate of a private line or special access channel for
9 unbundled loops will place MFS-FL in a "price squeeze," in that it
10 would be paying more for the unbundled loops than it would be
11 allowed to recover through end user retail rates. Left to its own
12 devices, a dominant incumbent LEC such as Sprint-United/Centel,
13 would not tariff the unbundled loop facility at the appropriate LRIC
14 price. Instead, it would likely choose to continue to apply the
15 premium rate to an entrant like MFS-FL in order to raise an additional
16 barrier to competition.

17 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

18 **A. Yes, it does.**

**REBUTTAL TESTIMONY OF TIMOTHY T. DEVINE
ON BEHALF OF
METROPOLITAN FIBER SYSTEMS OF FLORIDA, INC.
(Petition re: United/Centel)
Docket No. 950984-TP**

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 **A. My name is Timothy T. Devine. My business address is MFS**
3 **Communications Company, Inc., Six Concourse Parkway, Ste. 2100,**
4 **Atlanta, Georgia 30328.**

5 **Q. ARE YOU THE SAME TIMOTHY DEVINE WHO PREVIOUSLY**
6 **FILED TESTIMONY IN THIS PROCEEDING?**

7 **A. Yes.**

8 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**
9 **PROCEEDING?**

10 **A. To respond on behalf of Metropolitan Fiber Systems of Florida, Inc.**
11 **(“MFS-FL”) to the direct testimony in this proceeding, and particularly the**
12 **testimony of Mr. Ben Poag filed on behalf of Sprint-United and Sprint-**
13 **Centel (“United/Centel”).**

14 **Q. HAS MFS-FL COME TO AGREEMENT WITH UNITED/CENTELO ON**
15 **ANY OF THE ISSUES IN THIS DOCKET?**

16 **A. No. Despite some progress in negotiations, and despite the fact that MFS-**
17 **FL was able to negotiate an agreement with GTE, MFS-FL has not come to**
18 **agreement on any issues with United/Centel. All of the issues in this**

1 proceeding therefore remain to be addressed with United/Centel at this time.

2 **Q. WHAT UNBUNDLING ISSUES HAS MFS-FL REACHED**
3 **AGREEMENT ON WITH GTE?**

4 **A.** GTE, unlike BellSouth and United/Centel, signed an agreement with MFS-
5 FL on two of the four issues in this proceeding. The agreement is attached
6 as Exhibit TTD-7. In this regard, GTE adopted a constructive, reasonable,
7 and positive approach to the negotiations. While some progress was made
8 with United/Centel, no agreement was reached. Specifically, MFS-FL and
9 GTE have agreed that GTE will provide all of the 2-wire and 4-wire
10 unbundled loop and port elements requested by MFS-FL. GTE will also
11 permit MFS-FL to collocate digital loop carriers in order to provide loop
12 concentration. In fact, all of issues 1 (elements to be unbundled) and 2
13 (technical arrangements) have been negotiated with GTE and only the issue
14 of pricing, issue 3, and certain operational issues, issue 4, remain.

15 **Q. HAVE YOU ADDRESSED THE ISSUE OF THE PRICING OF**
16 **UNBUNDLED LOOPS IN YOUR GTE REBUTTAL TESTIMONY?**

17 **A.** Yes. I have addressed the issue of pricing, including the cost-based pricing
18 standard contained in the recently signed Telecommunications Act of 1996,
19 in my GTE rebuttal testimony filed today in this docket and, accordingly,
20 adopt that testimony in the portion of this docket concerning the
21 United/Centel petition. I will therefore focus this additional testimony on
22 the unbundled elements that MFS-FL has requested to be provided by

1 United/Centel.

2 **Q. WHAT UNBUNDLED LOOPS AND PORTS HAS UNITED/CENTEL**
3 **AGREED TO OFFER?**

4 **A.** United/Centel has only agreed to provide its currently available special
5 access services. United/Centel refuses to provide 2-wire and 4-wire analog
6 loops and ports, 2-wire ISDN digital grade loops; 4-wire DS-1 digital grade
7 loops; 2-wire ISDN digital line ports; 2-wire analog DID trunk ports; 4-
8 wire DS-1 digital DID trunk ports; and 4-wire ISDN DS-1 digital trunk
9 ports. United/Centel has also refused to provide unbundled digital loop
10 carrier systems ("DLCs"), either by permitting MFS-FL to collocate its own
11 DLCs, or providing access to United/Centel DLCs.

12 United/Centel provides no explanation whatsoever for its refusal to
13 provide these elements, but ignores its statutory duty completely: "At this
14 time, Sprint-United/Centel proposes that the unbundled elements of its
15 special access tariff represent the elements that would be provided to MFS
16 on an unbundled basis." Poag at 2. Like BellSouth, United/Centel suffers
17 from the delusion that the list of elements to be unbundled is generated by
18 the incumbent LEC. Mr. Poag cites no regulatory or statutory basis for
19 raising this possibly insurmountable long term barrier to the development of
20 viable local exchange competition in the United/Centel service area. No
21 such limitation is imposed by statute: "Upon request, each local exchange
22 company shall unbundle all of its network features, functions, and

1 capabilities, including access to signaling databases, systems and routing
2 processes, and offer them to any other telecommunications provider
3 requesting such features, functions or capabilities for resale to the extent
4 technically and economically feasible.” Fla. Stat. 364.161.

5 By defining the loop and port to be unbundled as “two-wire analog”
6 connection service offerings, United/Centel would dramatically limit the
7 ability of ALECs’ to offer competitively a full range of business and data
8 services. This would be completely inconsistent with the Legislature’s
9 mandate to promote local exchange competition in Florida.

10 **Q. DOES THE FEDERAL ACT PROVIDE A STANDARD TO**
11 **DETERMINE WHAT NETWORK ELEMENTS SHOULD BE MADE**
12 **AVAILABLE?**

13 **A.** Yes. The Act requires consideration, at a minimum, of whether “access to
14 such network elements as are proprietary in nature is necessary,” and whether
15 “the failure to provide access to such network elements would impair the
16 ability of the telecommunications carrier seeking access to provide the
17 services that it seeks to offer.” Sec. 251(d)(2). There is no question that the
18 failure of United/Centel to provide the 2-wire and 4-wire analog and digital
19 loops and ports requested by MFS-FL will “impair the ability” of MFS-FL “to
20 provide the services it seeks to offer.” As discussed at greater length below,
21 MFS-FL seeks to offer advanced services that require 2-wire and 4-wire
22 analog and digital loops and ports to the often sophisticated customers that

1 demand them. By denying MFS-FL access to the requested loops and ports,
2 United/Centel would certainly impair MFS-FL's ability to provide these
3 services. Likewise, the failure of United/Centel to permit MFS-FL to
4 collocate DLCs (or, alternatively, to permit unbundled access to United/Centel
5 DLCs) would impair MFS-FL's ability to provide *all of the services it seeks*
6 *to offer*. The failure to unbundle this element would clearly adversely affect
7 the quality and affordability of MFS-FL services. According to the federal
8 standard, all of the elements requested to be unbundled by MFS-FL must be
9 unbundled by United/Centel.

10 **Q. DOES THE GTE AGREEMENT PROVIDE FURTHER EVIDENCE**
11 **THAT THE UNBUNDLING REQUESTED BY MFS-FL IS ALSO**
12 **"TECHNICALLY AND ECONOMICALLY FEASIBLE"?**

13 **A.** Yes. Unbundling is required pursuant to Section 364.161 to the extent that it
14 is "technically and economically feasible." All of the requested elements are
15 already being provided on an unbundled basis elsewhere in the country. There
16 is therefore little question that this unbundling is technically and economically
17 feasible. The MFS-FL agreement with GTE provides further evidence that the
18 requested unbundling is technically and economically feasible.

19 **Q. COULD YOU CLARIFY THE MFS-FL PROPOSAL FOR**
20 **UNBUNDLING WHICH HAS BEEN MISCHARACTERIZED BY**
21 **SEVERAL PARTIES TO THIS DOCKET?**

22 **A.** MFS requested the ability to use its own digital loop carriers ("DLCs")

1 through collocation to provide loop concentration (Devine Direct at 20-21)
2 or, alternatively, to purchase loop concentration from United/Centel.
3 Devine Direct at 16-17. Loop concentration is a multiplexing function
4 utilized by ALECS in several states on a collocated basis that permits a
5 carrier to concentrate the traffic from a number of loops onto a single
6 channel. When an ALEC purchases a number of unbundled loops
7 terminating at the LEC central office, it cannot afford to transport each loop
8 on its own individual channel all the way back to its switch. Loop
9 concentration permits an ALEC to combine the loops for more economical
10 transport to the switch. United/Centel has declined to provide loop
11 concentration. Poag Direct at 2.

12 MFS-FL seeks the ability to collocate its own digital loop carriers at
13 its current United/Centel virtual collocation arrangements, or seeks
14 unbundled access and interconnection to the United/Centel digital loop
15 carrier systems which provide loop concentration. To the extent these or
16 similar systems are employed in United/Centel's network (and it has been
17 confirmed that they are in fact in use), MFS-FL should be allowed to
18 interconnect to the unbundled subelements of these systems, where
19 technically feasible and where capacity allows. This unbundling of DLC
20 systems is necessary in order to ensure that the efficiency of links MFS-FL
21 leases from United/Centel is not impaired, and is equal to the efficiency of
22 links that United/Centel uses.

1 Q. DOES THE FLORIDA STATUTE REQUIRE UNITED/CENTEL TO
2 PERFORM THIS UNBUNDLING?

3 A. Yes. The statute explicitly requires United/Centel to perform this
4 unbundling upon request. Pursuant to statute, each LEC shall, upon
5 request, "unbundle all of its network features, functions, and capabilities,
6 including access to signaling *databases, systems and routing processes*, and
7 offer them to any other telecommunications provider requesting such
8 features, functions or capabilities for resale to the extent technically and
9 economically feasible." Fla. Stat. § 364.161(1).

10 MFS-FL has requested the unbundling of DLC *systems* in order to
11 permit the more efficient *routing* of its traffic. Loop concentration will
12 permit MFS-FL to utilize the same concentration efficiencies United/Centel
13 employs within its network. If MFS-FL is unable to connect to either MFS-
14 collocated or United/Centel-leased DLC systems, MFS-FL will have to
15 install significant amounts of additional equipment that United/Centel can
16 avoid through the use of DLCs. For example, MFS-FL will have to install
17 two multiplexers, one at the wire center and a second at MFS-FL's switch
18 site to connect between MFS-FL's DLC (which MFS-FL will have to locate
19 at its own switch site if it cannot collocate it or obtain access to United/Centel
20 DLCs) and its switch. By imposing this needless architecture on MFS-FL
21 and other ALECs, United/Centel creates additional expense for new entrant
22 competitors, severely restricts its ability to test its circuits, and impairs its

1 ability to provide the services it seeks to provide.

2 **Q. HAVE THESE ARRANGEMENTS BEEN ESTABLISHED IN OTHER**
3 **STATES?**

4 **A.** Yes. There is no question whatsoever as to the technical and economic
5 feasibility of United/Centel allowing MFS-FL to collocate its DLC systems.
6 MFS-FL affiliates are currently utilizing DLCs in collocation arrangements
7 with LECs in numerous other states. In fact, the collocation of DLCs has
8 not even been an issue in these states because LECs have willingly agreed to
9 collocate them. The following LECs currently permit the collocation of
10 DLCs in the following states in which MFS is currently operating: Nynex
11 in New York and Massachusetts; SNET in Connecticut; Rochester
12 Telephone in New York; Bell Atlantic in Maryland; Ameritech in Illinois;
13 and Pacific Bell in California. (Collocation arrangements in place with
14 Ameritech and Bell Atlantic are, like those of United/Centel, virtual
15 collocation arrangements.) Collocation arrangements associated with
16 unbundled loops have been agreed to between MFS and Pacific Bell,
17 including the possibility of purchasing multiplexing, if necessary.
18 Unbundling collocation arrangements are also referenced in the Connecticut
19 Stipulation, including the option to purchase "SNET provided multiplexing."
20 *DPUC Investigation Into the Unbundling of the Southern New England*
21 *Telephone Company's Local Telecommunications Network*, Decision,
22 attached Stipulation at 4 (Jan. 22, 1996). In both of these arrangements,

1 LECs, like LECs in other states, permit the collocation of DLCs. In its refusal
2 to permit the collocation of DLCs, United/Centel is simply out of step with the
3 common practices of LECs around the country.

4 **Q. THERE HAS BEEN A SUGGESTION THAT MFS-FL IS**
5 **REQUESTING TO COLLOCATE REMOTE SWITCHING MODULES**
6 **(MENARD DIRECT AT 3). CAN YOU EXPLAIN WHY THIS IS NOT**
7 **PART OF THE MFS-FL REQUEST AT THIS TIME?**

8 **A.** Other parties have suggested that MFS-FL is requesting in this proceeding to
9 collocate remote switching modules. This is simply not true. A remote
10 switching module is a piece of equipment that performs a different function
11 than a digital loop carrier. While MFS-FL would like to be able to collocate
12 remote switching modules, it is only requesting that it be permitted to
13 collocate digital loop carriers at this time, and its testimony is clear on this
14 point. Devine Direct at 21.

15 **Q. HOW WILL LIMITING THE AVAILABILITY OF CERTAIN TYPES**
16 **OF LOOPS AND PORTS LIMIT COMPETITION IN FLORIDA**
17 **LOCAL EXCHANGE MARKETS?**

18 **A.** In order for ALECs to offer advanced network services such as ISDN to
19 customers who are not yet located along an ALEC's network, ALECs must be
20 able to utilize both two- and four-wire connections in analog or digital format.
21 ISDN, for example, in some cases cannot be offered using standard two-wire

1 analog loop connections. For a large percentage of the business market, key
 2 systems and private branch exchanges ("PBXs") are commonplace. *This*
 3 *customer equipment almost always requires a four-wire connection.*

4 Accordingly, MFS-FL strongly urges the Commission to require
 5 United/Centel to offer, as GTE is offering, both two- and four-wire, as well as
 6 analog and digital loops and ports. By not defining the unbundled loops and
 7 ports necessary for the complete line of analog and digital connection service
 8 offerings, the Commission will undermine the Legislature's unbundling
 9 policies and limit the development of competition in Florida.

10 If the appropriate range of unbundled loops are not offered, ALECs
 11 effectively will be precluded from offering sophisticated telecommunications
 12 services, such as ISDN. United/Centel will be able to continue to offer such
 13 sophisticated services without competition. As a result, the public switched
 14 network will not be used efficiently and United/Centel's monopoly --
 15 particularly with respect to business users -- will be preserved.

16 **Q. HAVE OTHER STATES OFFERED THE LOOP AND PORT**
 17 **UNBUNDLING REQUESTED BY MFS-FL?**

18 **A.** Yes. Other states that have unbundled the local loop have appropriately
 19 extended unbundling beyond two-wire analog loops and ports. For example,
 20 in Michigan, Ameritech offers five types of analog loops, including four-wire
 21 loops, and one digital loop. *See In the Matter on the Commission's Own*
 22 *Motion, to Establish Permanent Interconnection Arrangements Between*

1 *Basic Local Exchange Service Providers*, Direct Testimony of William
2 DeFrance (Ameritech Michigan), Case No. U-10860, Tr. at 325 (filed July
3 24, 1995). In Illinois, similarly, Ameritech offers several four-wire analog
4 loops as well as digital loops. See Ameritech Illinois Commerce
5 Commission Tariff No. 5, Part 2, Section 26. In Connecticut, Southern
6 New England Telephone has agreed to provide all of the elements requested
7 herein by MFS-FL. *Application of the Southern New England Telephone*
8 *Company*, Docket No. 95-06-17, attached Stipulation at 80. (Dec. 20,
9 1995). Mandating only two-wire analog loop connections will unnecessarily
10 impair the Commission's stated intent of encouraging competition for the
11 benefit of Florida consumers. Moreover, the services that will be impacted
12 are the very services most likely to be sought by consumers for purposes of
13 utilizing telecommunications for its most sophisticated uses.

14 **Q. HAVE YOU DESCRIBED THE APPROPRIATE TECHNICAL**
15 **ARRANGEMENTS IN YOUR DIRECT TESTIMONY?**

16 **A.** Yes. While Mr. Poag recommends that the technical arrangements in
17 United/Centel's special access tariff should apply, these arrangements, as
18 discussed at greater length above, are not comparable to the unbundled loop
19 technical arrangements described in my direct testimony. Devine Direct at
20 20-21. GTE was willing to agree to essentially all of the technical and
21 operational arrangements requested by MFS-FL. The Commission should
22 therefore likewise require United/Centel to enter into the technical and

1 operational arrangements described in the my direct testimony. Devine
2 Direct at 20-22.

3 **Q. WHY SHOULD OPERATIONAL ISSUES BE ADDRESSED IN THIS**
4 **PROCEEDING?**

5 **A.** MFS-FL disagrees with Mr. Poag's statement that it is premature to address
6 operational issues. Clearly, GTE did not think this to be the case when it
7 signed an agreement addressing numerous operational issues. The prompt
8 resolution of these operational issues will be essential to establishing co-
9 carrier status. I have described these issues, including requirements to
10 ensure the quality of unbundled loops and conversion charges, in detail in
11 my Direct Testimony. Devine Direct at 20-22. If these issues remain
12 unresolved, ALECs will not have access to unbundled loops on
13 nondiscriminatory terms and conditions. The experience of MFS-FL
14 affiliates in other states suggests that these issues will *not* be easily resolved
15 through negotiations, nor does MFS-FL believe, as Mr. Poag states (Poag
16 Direct at 11), to be resolved by the Commission "on a case-by-case basis
17 when disagreements occur." Poag Direct at 11. These are issues that the
18 parties have already identified as potentially contentious issues. MFS-FL
19 therefore recommends that these issues be addressed by the Commission in
20 the manner described in my Direct Testimony.

21 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

22 **A.** Yes.

1 Q (By Mr. Rindler) Mr. Devine, do you have a
2 summary of your testimony?

3 A Yes.

4 Q Could you read that at this time?

5 A Yes, thank you.

6 Good morning. The Commission has begun to
7 undertake the stark task of implementing switched
8 local exchange competition in the state of Florida. A
9 critical component of local competition will be the
10 unbundling the bottleneck facilities of incumbent
11 LECs, such as GTE Florida and Sprint-United/Centel.
12 If unbundling of bottleneck facilities, and
13 particularly the local loop, is not properly
14 accomplished in this docket, competition will
15 primarily be limited to major urban areas; and the
16 benefits of competition will not be shared by all
17 residents of the states.

18 Given the protection of its former monopoly
19 status, GTE and Sprint have constructed virtually
20 ubiquitous loop networks that provide access to every
21 interexchange carrier and virtually all residential
22 and business premises in their respective service
23 areas. Access by ALECs to these ubiquitous networks
24 is critical to the development of competition.

25 The legislature was mindful of the

1 significance of unbundling when it created a statutory
2 mechanism that permits ALECs, such as MFS, to request
3 unbundled network elements from LECs; and if agreement
4 cannot be reached on rates, terms and conditions,
5 permits ALECs to petition the Commission for
6 unbundling arrangements.

7 Two significant developments have taken
8 place in recent weeks. First, in the midst of this
9 proceeding, the U.S. Congress passed and the President
10 signed into law the Telecommunications Act of 1996,
11 which is essentially consistent with and reinforces
12 the direction which the Florida Legislature and this
13 Commission have taken. The Act creates a federal duty
14 for incumbent LECs, such as GTE and Sprint, to provide
15 to any requesting telecommunications carrier for the
16 provision of telecommunication service
17 nondiscriminatory access to network elements on an
18 unbundled basis at any technically feasible point on
19 rates, terms and conditions that are just, reasonable
20 and nondiscriminatory. That's in Section 251-C(3).

21 The Act also requires that rates for
22 unbundled elements be based on incremental cost. The
23 primary focus of this proceeding is therefor to set
24 just, reasonable, and nondiscriminatory rates for
25 unbundled loops based on incremental cost information

1 available at this time.

2 The second significant development is that
3 MFS, although unable to reach any agreement with
4 Sprint, has signed an agreement with GTE on several of
5 the principal issues in this docket. In this regard
6 GTE adopted a constructive, reasonable and positive
7 approach to negotiations. Specifically, MFS and GTE
8 have agreed that GTE will provide all of the two- and
9 four-wire unbundled loop elements requested by MFS.
10 GTE will also permit MFS to collocate digital loop
11 carriers in order to provide loop concentration.
12 Accordingly, there is currently no dispute between GTE
13 and MFS regarding Issues 1 and 2 in this proceeding,
14 and MFS and GTE have agreed to negotiate Issue 4
15 concerning operational issues.

16 As to Sprint, MFS has been negotiating with
17 Sprint since last summer, but Sprint has not agreed on
18 any of the issues, and the Commission should therefore
19 order all aspects of loop unbundling with respect to
20 Sprint.

21 Specifically, MFS has requested that Sprint
22 unbundle two- and four-wire analog and digital loops.
23 MFS requires this level of loop unbundling to ensure
24 that the quality of links MFS leases from Sprint is
25 equal to the quality of links that Sprint provides to

1 its own end users. In order for MFS to efficiently
2 offer telephone services to its end users, Sprint
3 should unbundle and separately price and offer these
4 elements such that MFS will be able to lease an
5 interconnect to whichever of these unbundled elements
6 MFS requires and to combine LEC provided elements with
7 MFS facilities and services.

8 Under Florida law, Sprint is required to
9 unbundle network elements to the extent technically
10 and economically feasible. There's no question as to
11 the technical and economic feasibility of this form of
12 unbundling because GTE has already agreed to unbundle
13 all of its elements requested by MFS. Moreover,
14 various LECs across the country have unbundled these
15 same elements. And several states, including New
16 York, Illinois, Michigan, Connecticut, Washington,
17 Texas and Iowa, have already ordered loop unbundling.
18 The question of which elements Sprint must unbundle
19 and technical arrangements that should accompany such
20 unbundling is, therefore, an open and shut case.

21 The reason that MFS was unable to come to
22 agreement with Sprint is because Sprint offered only a
23 two-wire voice grade loop. This limited proposal
24 would deprive ALECs of access to the level of
25 technology necessary to provide services that will be

1 competitive for Sprint's current service offerings.

2 The issue of the appropriate price for
3 unbundled network elements remains to be addressed
4 with respect to both GTE and Sprint. Loops must not
5 only be physically unbundled, but they must also be
6 priced at the appropriate level to ensure that ALECs
7 are not subject to a price squeeze, and that the
8 demand for ALEC services is not artificially
9 depressed.

10 Consistent with the Telecommunications Act
11 of 1996, MFS recommends that GTE's and Sprint's
12 respective long run incremental cost should serve as a
13 target price and cap for unbundled loops. LECs should
14 be required to perform LRIC cost studies for each
15 component of the local exchange access line including
16 the link and cross-connect element.

17 MFS and other parties to this docket have
18 also recommended that the Commission adopt a loose
19 loop price structure that takes into account both
20 distance and density. Sprint in its direct testimony
21 referring to high density, low cost exchanges and high
22 cost, low density exchanges has noted the correlation
23 between density and cost. GTE identifies cost
24 differences by high, medium and low density in its
25 recently filed late-filed exhibit from its deposition.

1 The federal act has also recognized the
2 critical public policy goal that rates or unbundled
3 elements be based on incremental cost. Consistent
4 with this policy goal, the Commission should,
5 therefore, adopt distance and density sensitive rates
6 for GTE and Sprint unbundled loops. Such rates would
7 account for the fact that loop costs are distance
8 sensitive and density sensitive. This would also be
9 consistent with states such as Connecticut, California
10 and Texas. Any proposed rate that does not take into
11 account this distance sensitivity, and more
12 importantly, it does not take into account density, is
13 fundamentally flawed.

14 LECs in other jurisdictions, including
15 Ameritech Illinois, Southern New England Telephone
16 Company and Pacific Bell have adopted similar pricing
17 methodologies. Texas appears to be headed in the same
18 direction. Moreover, the Federal Communications
19 Commission endorsed such pricing scheme when it
20 authorized LECs offering collocation to implement zone
21 density pricing for special access services.

22 MFS urges the Commission to require GTE and
23 Sprint to file cost studies that consider both the
24 density and distance characteristics of local exchange
25 loops. GTE and Sprint cost studies mandated by the

1 Commission should account for both loop length and
2 density in determining loop costs. The Commission
3 should also require that GTE and Sprint cost studies
4 be filed as part of a contested proceeding to analyze
5 those costs.

6 GTE's and Sprint's response to the MFS loop
7 unbundling request is that an ALEC can purchase a
8 private line or special access channel out of the
9 companies' respective tariffs. However, due to the
10 significant differences in technical standards, as
11 well as engineering and operational practices,
12 providing simple links at special access pricing would
13 be seriously overcharging ALECs for unbundled links.

14 For example, the installation of a private
15 line requires special engineering by the LEC and,
16 therefore, takes longer and costs more than the
17 installation of plain old telephone service or POTS.
18 Furthermore, GTE recognized these differences in the
19 agreement it signed with MFS in requiring MFS to
20 perform testing of the unbundled loops. Therefore, no
21 single private line service offering by either company
22 is likely to represent the basic co-carrier unbundled
23 loop facility. MFS should not, therefore, be required
24 to pay the substantial premium prices associated with
25 private lines in order to account for additional

1 performance parameters beyond what is necessary to
2 provide POTS.

3 MFS will also require collocation
4 arrangements to interconnect to unbundled loops.
5 Interconnection should be achieved via collocation
6 arrangements MFS will maintain at the wire center at
7 which the unbundled loops are resident. GTE and
8 Sprint should also permit ALECs to convert bundled
9 service to an unbundled service and assign such
10 services to MFS with no penalties, termination or
11 conversion charges to MFS or the customer.

12 The stipulation that certain other ALECs
13 have signed agreeing to special access pricing is
14 plainly inadequate from MFS' perspective. While these
15 rates and arrangements may be acceptable to other
16 ALECs, MFS requires a significantly more detailed and
17 reasonably priced agreement to address the numerous
18 unbundling issues raised in more detail in my
19 testimony. MFS believes that it's only through
20 reasonably priced and comprehensive unbundling that
21 local exchange competition will reach its full
22 potential in Florida. Thank you.

23 CHAIRMAN CLARK: Thank you, Mr. Devine.

24 MR. RINDLER: Madam Chairman, the witness is
25 available for cross.

1 CHAIRMAN CLARK: Okay. Mr. Graham?

2 MR. GRAHAM: FCTA has no questions for the
3 witness.

4 CHAIRMAN CLARK: Mr. Melson.

5 MR. MELSON: No questions.

6 CHAIRMAN CLARK: Mr. Logan.

7 MR. LOGAN: No questions.

8 CHAIRMAN CLARK: Mr. Horton.

9 MR. HORTON: No questions.

10 CHAIRMAN CLARK: Mr. Cohen.

11 MR. COHEN: No questions.

12 CHAIRMAN CLARK: Mr. Gillman -- I'm sorry,
13 Mr. Wiggins.

14 MR. WIGGINS: No questions.

15 CHAIRMAN CLARK: None today?

16 MR. WIGGINS: Not today.

17 MR. GILLMAN: Thank you, Madam Chairman.

18 Good morning, Mr. Devine.

19 WITNESS DEVINE: Good morning.

20 **CROSS EXAMINATION**

21 BY MR. GILLMAN:

22 Q Of course, we will be asking you only
23 questions about your testimony as it relates to GTE.

24 Could you turn to Page 21 of your direct
25 testimony, and specifically Lines 3 through 6.

1 I believe you mention that in your summary
2 that there should be no penalties, rollover,
3 termination or conversion charges to MFS?

4 A Yes.

5 Q Is that your testimony?

6 A Yes.

7 Q Now, would your opinion be the same if GTE
8 incurred costs for that change out of service?

9 A Well, maybe I need to just clarify a little
10 bit more because I mentioned a few words.

11 Q Well, maybe you can answer that first
12 question first. Would your opinion change if GTE
13 incurred costs for such conversions?

14 A Yes, if GTE incurred costs, for instance to
15 roll over a circuit, we'd be expected to pay a service
16 order charge.

17 Q Okay. What about other costs? Would you be
18 expected to or would you be willing to pay for all
19 cost that GTE would incur as a result of the
20 conversion from an MFS customer -- or from a GTE
21 customer to an MFS customer?

22 A Well, yes, partially. Just for the items
23 that need to happen. So if it's a rollover -- so the
24 customer has an existing loop with GTE, and they want
25 to roll it over to MFS, we'd be willing to pay, let's

1 say, the service order charge, or whatever
2 administration would cost to cross connect the circuit
3 from MFS to the MFS interconnection site.

4 Q If that service order charge was not
5 sufficient to cover all of GTE's costs in this sort of
6 situation, would MFS be willing to pay for those
7 additional costs?

8 A Yes, we'll pay for what the costs are to
9 roll a circuit out of central office from GTE to MFS.
10 We don't want to pay full installation charges; we
11 want to just pay -- if it costs you \$15 to do the
12 cross connect, you know, we'll pay the \$15, whatever
13 it is.

14 Q Now, also drawing your attention to Page 25,
15 Line 8.

16 A Excuse me, Page 25, line what?

17 Q Line 8. With the sentence beginning --
18 where you talk about the special engineering. I
19 believe you mentioned that in your summary as well.

20 A Okay. The whole answer to the rest of the
21 page, or --

22 Q I'm sorry?

23 A What's the question then?

24 Q Yes. Are you aware that Ms. Menard
25 testified that when a customer is converting basic

1 exchange service to an bundled service for MFS-FL that
2 there be no need to reprovision or engineer the link
3 to different facilities?

4 A Yes, I remember her generally talking about
5 that. So you are talking about a POTS to a POTS.

6 Q So in that instance there would not be any
7 special engineering as you described in this
8 particular answer, would there?

9 A Well, what I am talking about in here is --
10 there would be, yes. Because what I'm talking about
11 here in the context of my testimony is special access
12 and private line. And GTE has proposed that special
13 access private line be utilized for unbundled loops.
14 If it's an existing unbundled loop, and if GTE is
15 going to use that same loop for MFS, then there would
16 be less engineering in terms of installing the
17 circuit.

18 Q And is it more accurate to say that GTE is
19 proposing to charge the special access rate and not to
20 provide MFS with special access line in this case?

21 A No, not in total because for a new
22 installation -- if it's a new installation, clearly --
23 if it's a private line, there are different parameters
24 in terms of private lines and special access versus
25 unbundled loops.

1 Q With respect to existing lines -- you don't
2 dispute, I guess, what I'm asking, Ms. Menard's
3 testimony that no special engineering would be
4 required?

5 A If GTE is going to use the exact same loop,
6 there would not be any special engineering needed to
7 turn up the circuit. But generally, for special
8 access and private line, LECs have additional
9 parameters in terms of integrity of the circuit and
10 possibly additional circuitry and testing
11 capabilities. I've handled our special access
12 provisioning and been involved for the first five
13 years at MFS. And special access and private line are
14 different circuits. And we had a terrible experience
15 in New York using private lines for unbundled loops.

16 Q Now, if the POTS line is converted from
17 basic local exchange service to ISDN service, you
18 would expect some provisioning to occur in that
19 situation?

20 A If a basic POTS line is converted to an ISDN
21 capable circuit? It depends upon the distance, how
22 far the customer is from the wire center.

23 Q Would it be fair to say that the farther the
24 customer is away from the wire center, there may be
25 some special provisioning?

1 A I believe if the customer is more than, like
2 14,000 to 18,000 feet, there could possibly be some
3 different provisioning.

4 Q And assuming that to be true, then the
5 reprovisioning costs incurred by GTE would be properly
6 recovered from MFS in its unbundled loop rate. Would
7 it not?

8 A If we were asking you to do something
9 uniquely different than what you do now, then, yes.
10 If there were some costs, we would pay for those. I
11 believe there's just some coiling on the actual line.
12 I think it's a pretty minimal thing. And I think some
13 states that have ordered ISDN loops, the price
14 differences, you know, you are talking change.

15 Q But what I'm asking you, if there are costs
16 in special engineering to convert a basic line to an
17 ISDN capable line, that that is a proper cost element
18 that should be considered in the price of an unbundled
19 loop?

20 A Yes, if there's some unique costs.

21 Q Also, if no special engineering is required,
22 that is from a rollover between a POTS line of a GTE
23 customer to a POTS line of an MFS customer, then you
24 wouldn't expect any delay in that rollover which you
25 testified about, would you?

1 I believe your testimony is that you think
2 this special engineering is going to create delays in
3 GTE's providing an unbundled loop to MFS. That would
4 not occur in a situation where a customer, a POTS
5 customer of GTE, rolls over to a POTS customer of MFS,
6 would it?

7 A It should not occur if you are using the
8 exact same loop. That should not occur. Should not.
9 I mean, we don't know until we get there a lot of
10 times with these things.

11 Q Now, on Page 26 of your testimony, again
12 your direct, Lines 8 and 9, where you say, "Special
13 access channels are typically priced at substantial
14 premiums today."

15 A Yes.

16 Q What is the basis of your statement in that
17 regard?

18 A I think if you compare what was seen for
19 loop costs in this state or any other state, and if
20 you compare it to the price of special access in this
21 state or any other state, there's a big premium there.

22 Q When you are saying "looking at these
23 costs," you are looking at the GTE-specific costs that
24 were filed in this docket as responses to discovery?

25 A Yes, and probably most notably what I

1 received last night which would have been the Trimble
2 late-filed exhibit associated with his deposition.

3 Q And it's your understanding that there is a
4 substantial premium being placed upon these services
5 by GTE?

6 A In the context of price, or --

7 Q Yes.

8 A Yes. It's based on what I've seen, that
9 there's huge amounts of contribution in the special
10 access prices that GTE's proposed to use for loops,
11 yes.

12 Q Do you have a definition of what you
13 consider to be substantial?

14 A No, not really. I don't have an exact. I
15 think you can tell when it starts to be -- what I see
16 is order of magnitude in terms of the cost
17 relationship to the price and order of magnitude
18 comparing it to what I've seen in other states, then
19 to me that starts to look substantial when you are
20 talking two to three times.

21 Q You are saying that GTE's proposed rate in
22 this case is two to three times the amount shown on
23 its cost studies filed in this case?

24 A If you -- well, I guess the information is
25 protected, so I don't know how much I can say.

1 Q Can you say whether it's two to three times
2 the cost that was shown by GTE in its confidential
3 exhibits?

4 A Yes. If you look at the high density cost
5 in the late-filed deposition exhibit, and if you
6 compare it to the price that GTE wants to charge, I
7 would say, yes, it's around three times. The price is
8 three times higher than the cost, that's correct.

9 Q So that opinion relates only to the high
10 density figures?

11 A Well, even when you look at the medium
12 density. You know, medium density, too, you are still
13 talking around two times. I mean, the numbers I've
14 seen with GTE, they look consistent with some other
15 states I've seen, especially even GTE in Texas.

16 Q On Page 24 of your testimony, Mr. Devine --
17 I apologize. Let me ask you a follow-up question.

18 So then is it your testimony for something
19 to be a substantial premium, it would have to be two
20 to three times?

21 A No. I think substantial would mean starting
22 to be anything more than, like 10% or so in general.
23 But I mean, are we -- if we are talking about loops,
24 then I would say it starts to be towards 10%, around
25 there.

1 Q 10% regardless of what the starting -- what
2 the cost is? So that would be 10% if it's a penny and
3 10% if it's \$100?

4 A Yes.

5 Q Turn your attention to Page 24, Lines 1 to
6 3.

7 A Yes.

8 Q There you state that "the sum of the prices
9 in the unbundled rate elements must be no greater than
10 the price of the bundled dial tone line."

11 What are you referring to when you say the
12 "bundled dial tone line"?

13 A The price. For instance, what GTE provides,
14 flat rate residence service.

15 Q So it would be the R1 service?

16 A Yes.

17 Q So you are saying that whatever GTE charges
18 to MFS, it should not be any greater than GTE's
19 current R1 service?

20 A Yeah, the objective. This would be in a
21 pricing principle objective and that the link, port
22 and cross connect should not total up to be more than
23 what the bundled dial tone rate is.

24 Q Would your opinion be the same if GTE's R1
25 residential rate did not cover its costs?

1 A I think in Florida I would say, no. Because
2 in Florida with the statute you have your rates
3 capped. And these are pricing principles we would
4 like to meet as an objective. So if we can't meet the
5 first objective, at minimum we just feel that loops
6 should be priced at, you know, long run incremental
7 costs.

8 Q Okay. So in one part of your testimony you
9 say it should be priced at long run incremental cost,
10 and another part of your testimony you say it should
11 be no greater than the bundled dial tone?

12 A Well, these are pricing principles that we
13 think when Commissions make these decisions that those
14 are the principles that they should try to make their
15 decision based on, but it doesn't always work in every
16 state. And it doesn't work with every service type.

17 Q So then if GTE's bundled dial tone rate
18 doesn't cover its cost, then the appropriate rate for
19 an unbundled loop should still be at long run
20 incremental cost even though that may be higher?

21 A Yes. I mean, the best thing to do would be
22 if the Commission had flexibility to go and adjust the
23 dial tone rates, but currently that's not able to be
24 done in Florida.

25 Q Well, I think in your testimony you stated

1 that it was -- in your summary that it was
2 fundamentally flawed for GTE not to consider density
3 and distance for its unbundled loop rates.

4 A Yes.

5 Q Would you also agree that to the extent that
6 density and distance is not considered in GTE's retail
7 rates, that those policies are also fundamentally
8 flawed?

9 A Well, yes and no. If you look from a loop
10 perspective, from a loop perspective it would be
11 fundamentally flawed if things aren't based on the
12 costs because in the state's statute it talks about
13 things based on cost and so does the federal statute.

14 So if GTE were to charge MFS a statewide
15 average rate, let's say of \$15, but its cost in a high
16 density area is, let's say -- I don't know -- \$8, GTE
17 would be charging MFS in those high density areas.
18 There'd be huge amounts of contribution in there that
19 would not be meeting the statutory requirement.

20 From a pricing standpoint, however, GTE
21 would price its bundled service -- I mean, that's up
22 to them, I guess. Sitting back from the side, sure, I
23 think their bundled service more logically should be
24 priced based on its cost for density and things, that
25 kind of makes sense. I know some other LECs do that

1 in other states.

2 Q Now, when you say that MFS would be charged,
3 you know, more than its cost in a high density area, I
4 mean, doesn't GTE -- the GTE's cost of providing
5 service to a high density area would be lower as well.
6 Would it not?

7 A Well, when I made that statement, I was
8 talking about the GTE cost.

9 Q And for GTE's retail rates, because they
10 have average statewide rates. That contribution to
11 which you referred, would be used to keep down the
12 rates in other areas that are more costly to serve.
13 Isn't that true?

14 A I don't know how GTE does its cost
15 allocation and recovery, so I really couldn't answer
16 that question for them.

17 Q Is it fair to say that MFS --

18 COMMISSIONER DEASON: Let me interrupt for
19 just a second.

20 Would you agree that historically under rate
21 base regulation that was the case?

22 WITNESS DEVINE: Yes, I would agree based on
23 historical rate based regulation.

24 Q (By Mr. Gillman) And that's true for
25 Florida as well?

1 A Yes, I think you find that in all states.

2 Q Now, is it fair to say that MFS will
3 concentrate its efforts on these low cost short
4 distance high density areas?

5 A Yes, for its initial entry. Yes.

6 Q And you propose that in those areas that you
7 would pay a rate for an unbundled loop which is less
8 than what the statewide average cost of that unbundled
9 loop is, correct?

10 A Yes. We would propose that the rates for
11 those densities be based on the costs for those areas,
12 yes.

13 Q And then from the standpoint that
14 historically GTE has used that increased contribution
15 to keep costs lower in high cost areas, those
16 contributions would now go away, isn't that correct,
17 if GTE sells an unbundled loop to MFS?

18 A Well, your -- as I said earlier, I don't
19 know how GTE does its internal, you know, cost
20 recovery allocations between its different lines of
21 business. The fact is it's a new world in terms of
22 unbundling the networks and things based on cost so, I
23 mean, that's the intent of the laws in the state and
24 the federal level.

25 Q Now, didn't you also testify in response to

1 a question by Commissioner Deason that historically
2 you would expect that incumbent LECs had lower costs
3 in the dense areas and used the increased contribution
4 to make high cost areas less expensive for the end
5 user? Do you agree with that?

6 A Well, I agree with the statement I said
7 earlier, generally based on rate of return regulation.
8 But I don't know -- I've never seen detail as to how
9 GTE moves its money around. For all I know, they
10 might make substantial premiums in the low density
11 areas. And really, based on the costs that were in
12 the late-filed deposition, the costs of even those low
13 density areas are not out of line.

14 Q Okay. I'd like you to assume that GTE
15 prices its service in accordance with the historical
16 rate of return regulation to which you testified,
17 okay? Can you make that assumption for me?

18 A In terms of a bundled service or unbundled
19 service.

20 Q In terms of utilizing statewide average
21 rates such that rates in high cost areas may not
22 recover their costs and that would be made up by rates
23 charged in low cost areas.

24 A When Commissioner Deason asked the question,
25 he asked a pretty general question. GTE makes money

1 in low density areas if you add up all the components
2 with switched access and vertical features, so -- and
3 especially with GTE's announcement to get into long
4 distance. If you are going to ask questions based on
5 that line of question, I'd want you to be very, very
6 specific because that was a very broad question that
7 Commissioner Deason asked.

8 Q And I want you to assume that your answer to
9 that broad question applies to GTE. Making that
10 assumption --

11 A I don't think I can do that.

12 Q You cannot make that assumption?

13 A That is not appropriate.

14 Q Now, when you say "add up all the
15 components," isn't it MFS's intention to offer the
16 same services that are presently being offered by GTE?

17 A Yes, generally the same services.

18 Q So they would offer toll services?

19 A Yes.

20 Q They would offer vertical services?

21 A Yes.

22 Q They would offer data services and other
23 business related services?

24 A Yes.

25 Q Frame relay sort of service?

1 A Yes.

2 Q ISDN?

3 A Yes.

4 Q Class-related services?

5 A Yes.

6 Q Will MFS charge access charges to
7 interexchange carriers for use of their loops?

8 A Yes, when it's appropriate.

9 Q Might MFS also develop new services that
10 presently are not being offered by GTE?

11 A Yes.

12 Q Do you have any examples of those sort of
13 new services?

14 A We could offer things potentially like
15 statewide or nationwide or global CENTREX-type
16 service.

17 Q Anything else?

18 A I used to be more focused in this area when
19 I did product management, but I think global CENTREX
20 is something pretty hot that not even AT&T offers, so
21 I think I went to the extreme. But certainly,
22 there'll be all kinds of voice data, image related
23 services. I think we've been pretty well known to be
24 the first to offer a lot of things, even though we are
25 a lot smaller than the other carriers.

1 Q And you would obtain or generate revenues
2 from all of these services. Would you not?

3 A Yes, I would hope so.

4 Q And those revenues would be paid by your end
5 user customer or the interexchange carrier. Would
6 they not?

7 A Yes.

8 Q Now, turning you attention to Page 26, Lines
9 13 through 15 of your direct testimony.

10 A Excuse me, what lines?

11 Q Lines 13 through 15, where you talk about
12 that MFS will be put in a price squeeze because it
13 would be paying more for the unbundled loops than it
14 would be allowed to recover through end user retail
15 rates.

16 Now, when you use the term "end user retail
17 rates," are you adding up all of these revenues or
18 just the rate that MFS proposes to charge for basic
19 local exchange service?

20 A It would be the rates provided for both
21 basic local exchange service, just the same way GTE
22 has looked at it themselves for universal service
23 funding and all those other things.

24 Q Except that MFS has no universal service
25 obligations, does it?

1 A No, not currently. But we will be offering
2 service to everybody in our territory so we feel
3 that's an obligation.

4 Q And you have much more flexibility than GTE
5 to define your territory, do you not?

6 MR. RINDLER: To the extent this is a legal
7 opinion he's requesting, Mr. Devine is not a lawyer.
8 With that understanding, I would think he'd be able to
9 answer the question.

10 MR. GILLMAN: Yeah, that's my understanding.

11 A We are under a different form of regulation
12 than GTE, so, yes. From what I've seen, the
13 Commission doesn't have a lot of detailed rules on how
14 exactly we have to define our territory. But once we
15 go into our wire center with collocation, we'll offer
16 service to everybody in the wire center because at
17 that point we can economically offer service and
18 market it. So it will be in a wire center by wire
19 center basis, you know, growing and expanding as we
20 get better economies of scale.

21 Q (By Mr. Gillman) And the location of your
22 area served will be determined by GTE's wire center?

23 A It will be both GTE's wire center and MFS'
24 backbone network and where it goes.

25 Q Now, you would expect, would you not, when

1 you add up all the components of MFS' service offering
2 that that amount of revenue received would exceed the
3 proposed \$23 rate for an unbundled loop in this case,
4 would you not?

5 A If you look at local exchange service, it
6 won't. If you add in everything else in the world
7 that we are going to try to sell, I would think that
8 the total revenue would exceed the cost. I mean,
9 that's why we are getting into business. But I don't
10 think that's the context of my statement in my
11 testimony, nor the proceeding that we are involved in
12 here.

13 Q I mean, you're saying there is a price
14 freeze, because you are only comparing the retail rate
15 charged by GTE and the unbundled loop rate charged to
16 MFS, but you are not considering all these other
17 revenues that may be two, three, four, five times that
18 price, are you?

19 A I'm not including the other revenues, just
20 as GTE when it looks at universal service does include
21 all the other revenues. If all the carriers included
22 all their revenues, we wouldn't need a universal
23 service fund and nobody would have to worry about a
24 lot of these issues.

25 Q There's no universal service in Florida for

1 that reason, correct?

2 A Currently, that's been the Commission's
3 interim decision, yes.

4 Q And to the extent that MFS takes a customer
5 away from GTE, all that contribution that's used for
6 universal service will go to MFS' bottom line?

7 A Well, I don't really agree with that
8 statement because I don't feel GTE needs all this
9 contribution you referenced. I mean, GTE in its
10 rebuttal testimony and testimony talked about they
11 needed loop prices to consider contribution for
12 universal service and everything, so I don't see why
13 it's relevant with what I have to say about loops in a
14 price squeeze.

15 Q Has MFS done any studies as to what it
16 expects to generate from an average business customer
17 when you add up all these components?

18 A Not that I've seen any real detailed -- I've
19 seen no detailed study for Florida. I think we are in
20 the process of doing all that kind of stuff right now.

21 Q And is it accurate to say that those studies
22 will generate revenues well in excess of the \$23
23 proposed rate?

24 A I don't know because I haven't seen the
25 studies, but I should hope so. Because if they don't,

1 whether it's \$23 or \$10, we'll be in a lot of trouble.

2 It really depends upon each customer and situation.

3 Q Now, turning to your rebuttal now, and
4 specifically, the federal act where you discuss it on
5 Page 3, Line 17.

6 A Page 3?

7 Q Yes. And where you say, "Under the federal
8 act the rates must be based on cost" on Line 17?

9 A Yes.

10 Q Now, the federal act doesn't define what
11 "cost" means, does it?

12 A It does in some cases, and in some cases it
13 doesn't. So sometimes, yes.

14 Q But in this particular reference, "cost" is
15 not defined, is it?

16 A I mean, my testimony says what it says. I
17 don't have the act in front of me so I'd really be
18 concerned with answering that question. So I really
19 don't know.

20 Q On Line 19 where it says "may include a
21 reasonable profit," is my understanding correct that a
22 reasonable profit, whatever that might be, would only
23 be added on after the costs are fully recovered?

24 A No. It would be as part of your GTE's cost
25 of money and cost of capital because that provides a

1 return on GTE's investment.

2 Q And that's how you define "reasonable
3 profit"?

4 A Yes.

5 Q And that's not defined in the act, is it?

6 A Like I said, I don't have the act in front
7 of me. I mean, I've read the sections that seem to
8 pertain to what we talked about in the testimony.

9 Q Okay. I mean, based upon what you've read,
10 that definition is not included in the act, is it?

11 A I really don't know. I can't answer that
12 question without having the act and go back and study
13 through it again. This is what I referenced, and this
14 is what I said in my testimony.

15 Q So you referred a cost of capital, and what
16 was the other, cost on return on investment?

17 A Cost of money and capital, yes.

18 Q You consider that a profit and not a cost?

19 A Well, we consider that a profit, yes.

20 Q On -- no, strike that. On Page 11, we
21 touched on this a little bit, but you talked about on
22 Page 11 your recommendation that distance and density
23 be considered in the price in the unbundled loop.

24 A Yes.

25 Q So short distance high density loops would

1 cost less, correct?

2 A Yes, that's the assumption. And that would
3 be the basis of the price for the loop then.

4 Q Then on the other hand, there would be
5 costs -- or the cost would be greater in exchanges or
6 areas where the loops are less dense and of longer
7 distance?

8 A Yes. That's how it's worked in other states
9 and what I've seen in your cost studies.

10 Q Do you intend to serve any of these areas?

11 A I don't know where all these high density,
12 medium density, low density that are described in the
13 GTE exhibit, I don't know where they are in relation
14 to our network, so I don't know.

15 Q Well, you referred to the price squeeze on
16 GTE's average cost of a price squeeze existing.
17 Wouldn't the price squeeze be even greater in areas
18 where the price of the unbundled loop was higher?

19 A Yes, it could be.

20 Q And is it your testimony that you will serve
21 those higher cost areas despite the fact that the
22 unbundled loop is a higher price?

23 A As I mentioned earlier, I don't know exactly
24 where the low density's COs are in relation to our
25 network. We may go by -- once we get our network

1 built out, we may go by high density and low density.
2 Because even within the City of Tampa, I imagine
3 there's some low density. So the incremental cost of
4 adding a wire center may not be a big deal. So we
5 want to get to as many wire centers as possible.

6 Q Even if the price squeeze, as you describe
7 it, is more exacerbated in the high cost areas, you
8 would still serve that customer?

9 A Yes. We are going to look at the whole
10 market. And me, sitting here, I don't have a crystal
11 ball. I don't have all the costs. I don't know where
12 all the wire centers are for where our network is.
13 You know, we are going to try to get to as many
14 customers as we can whether they are high density, low
15 density or medium density. I mean, we want to get as
16 much revenue as we can for our investment.

17 Q Because even in a high cost area, that
18 customer will still generate all those other revenues
19 that you discussed earlier. Would they not?

20 A Well, only if you can get the customer to
21 use you for everything. I mean, one of the big things
22 we are up against is we're MFS; and when you ask a
23 customer, they say, "Well, who's MFS."

24 We don't have the AT&T logo, the MCI logo,
25 the Sprint logo, even the GTE logo. And GTE is going

1 to be getting into long distance even in their own
2 service territory within Tampa. So we may get the
3 local revenue, but we won't get the toll. And we
4 won't get the long distance because 60% of customers
5 already use AT&T, the other 20% use MCI, and the rest
6 use Sprint and other people.

7 Q So is the reason that you are proposing a
8 loop that's based only on LRIC is that MFS is not
9 going to be as good a competitor compared to AT&T and
10 MCI?

11 A No. The reason we are proposing it be based
12 on LRIC is because both the federal and state statute
13 talk about prices being based on cost, and a loop is a
14 critical bottleneck element that all of us need to
15 compete for local service.

16 Q Do you not consider a joint and common cost
17 to be a cost?

18 A In what context?

19 Q In the context of unbundled loops?

20 A No. If they are not --

21 Q Do you not consider that to be a cost?

22 A No, I don't.

23 Q Will MFS have joint and common costs that it
24 incurs as a part of the provision of its service?

25 A I mean, we are going to have all kinds of

1 different costs. I don't know joint and common. We
2 don't define costs.

3 CHAIRMAN CLARK: Is that a yes or a no?

4 WITNESS DEVINE: Yes, we are going to have a
5 lot of costs that may be related to different
6 services, but we don't break them down and identify.
7 We don't have detailed accounting, so I --

8 Q (By Mr. Gillman) do you not consider those
9 elements to be costs?

10 A Well, there's all kinds of costs. I mean,
11 we feel that way when we are doing an actual loop out
12 to a building -- you know, there's costs associated
13 with directly doing that loop. So for the loop,
14 there's direct costs associated with doing the loop.

15 Q And there's shared and common costs. Are
16 there not?

17 A Like what? What extent? What are you
18 talking about?

19 Q Like the central office, the buildings,
20 repair trucks. Are you going to have repair trucks?

21 A Yes, I imagine so. I mean, there'll be
22 costs associated, but I don't know how we account for
23 them.

24 Q But they are costs, are they not?

25 A Yes. We'll have those kind of costs, yes.

1 Q And GTE has the same costs, correct?

2 A Yes. I imagine they have a lot of the same
3 costs.

4 Q I mean, you stated that you'll have repair
5 trucks.-- I mean, you'll have to purchase these repair
6 trucks from someone, won't you?

7 A Yes.

8 Q Is it your testimony that those repair
9 trucks do not include a portion of the sellers
10 overhead costs?

11 A The seller is -- who's the seller?

12 Q Who's the seller? GM.

13 A Could you repeat?

14 Q Who manufactures your repair trucks?

15 A I don't know who does.

16 Q Assuming your repair truck is manufactured
17 by a company such as GM, isn't MFS paying a portion of
18 GM's overhead costs when it purchases that truck?

19 A I have no idea how they are doing it.

20 Q Is it your opinion that the cost to sell
21 something on a bundled basis is identical to the cost
22 of selling something on an unbundled basis?

23 A Could you be more specific? When you say
24 "cost," the cost, big picture --

25 Q Well, as I understand your testimony, you

1 only define cost as long run incremental cost and it
2 doesn't include joint and common cost. So let me ask
3 you that. In your opinion, is the long run
4 incremental cost of providing a service on a bundled
5 basis the same as providing that same service in
6 separate unbundled elements?

7 A Well, the costs of providing an unbundled
8 loop would be less than the cost of providing a
9 bundled service because the bundled service includes
10 more components.

11 Q Now, but if you add up all the elements of
12 the bundled service, is it your opinion that the cost
13 of all the elements sold separately would be the same
14 as the cost if they were sold as a bundled unit?

15 A I really don't know. I mean, they may or
16 may not be. I don't know. I would think -- it
17 depends how efficient both the parties are at
18 procuring each of those items.

19 Q So you would agree with me that it's at
20 least possible that the cost may be more to sell
21 something by separate elements than by selling as a
22 bundled basis?

23 A You're talking about dial tone?

24 Q I'm talking about in general.

25 A I mean, I don't know. I can't answer a

1 broad question like that. It just would be
2 inappropriate for me to answer a question that broad.

3 MR. GILLMAN: I think that's all I have.
4 Thank you.

5 CHAIRMAN CLARK: Thank you. We'll go ahead
6 and take a break until five after 11:00. And Mr. Fons
7 you can cross examine Mr. Devine at that time.

8 MR. FONS: Thank you.

9 (Brief recess.)

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11 (Transcript continues in Volume 2.)

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