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July 8, 1996

VIA FEDERAL EXPRESS

Mrs. Blanca S. Bayo
Director, Division of Records & Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Resolution of Petition(s) to Establish Nondiscriminatory Rates, Terms, and Conditions for Resale Involving Local Exchange Companies and Alternative Local Exchange Companies Pursuant to Section 364.161, Florida Statutes; Docket No. 950984-TP

Dear Mrs. Bayo:

Enclosed for filing is an original and 7 copies of the Motion for Reconsideration by Metropolitan Fiber Systems of Florida, Inc. in the above-referenced docket.

Please date stamp the extra copy, and return it in the enclosed self-addressed envelope.

Also enclosed is a computer disk formatted in WordPerfect 6.1 for Windows containing the enclosed document.

If there are any questions concerning this matter, please contact me.

Sincerely,

Mark P. Sievers

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BEFORE THE

FLORIDA PUBLIC SERVICE COMMISSION

Resolution of Petition(s) to establish nondiscriminatory rates, terms, and conditions for resale involving local exchange companies and alternative local exchange companies pursuant to Section 364.161, Florida Statutes	)	**Docket No. 950984-TP** **Filed: July 8, 1996**

MOTION FOR RECONSIDERATION BY METROPOLITAN FIBER SYSTEMS OF FLORIDA, INC.

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Dated: July 8, 1996

MOTION FOR RECONSIDERATION BY METROPOLITAN FIBER SYSTEMS OF FLORIDA, INC.

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MOTION FOR RECONSIDERATION BY METROPOLITAN FIBER SYSTEMS OF FLORIDA, INC.

Pursuant to Rule 25-22.060, Florida Administrative Code and Order No. PSC-95-0888-PCO-TP ("Order"), Metropolitan Fiber Systems of Florida, Inc. ("MFS-FL"), by its undersigned attorneys, hereby files this Motion for Reconsideration of Order No. PSC-96-0811-FOF-TP ("Order"), issued on June 24, 1996 that addresses petitions filed by MFS-FL requesting Commission assistance in securing unbundled loops provided by GTE Florida Incorporated ("GTEFL") and United Telephone Company of Florida and Central Telephone Company of Florida ("United/Centel").

INTRODUCTION AND SUMMARY

MFS-FL applauds the Order released by the Florida Commission. It settles a number of difficult issues that the parties were unable to successfully resolve through negotiation and makes a significant contribution to the implementation of local service competition in Florida. It also

reflects the leadership role among state regulators that the Florida Commission has historically taken in wrestling with leading edge issues and promoting competition.

However, MFS-FL believes that the Order can be improved in several discrete areas and seeks reconsideration of the Order in those areas. Specifically:

- **Cost Standards**. Much of the Order focuses on the cost standard used in setting unbundled rates and *Florida Statutes* require that unbundled rates not be set below costs. In order to reflect the record in this proceeding, promote competition as intended by *Florida Statutes* and meet the specific cost requirements of *Florida Statutes* and the Federal Telecommunications Act of 1996,[1/] ("Telecommunications Act") the Commission should reconsider its decision and modify the Order to reflect the following:
  - The long run incremental cost or total service long run incremental cost standard used to set unbundled rates should not reflect the incremental costs of the incumbent provider(s), but should reflect the incremental costs of an efficient new entrant using forward looking technologies.
  - Billing and collection costs, marketing costs and customer contact costs should be excluded from estimates of the incremental costs used to set unbundled rates.
  - Loop costs (and the rates charged for unbundled loops) should be geographically deaveraged.

[1/] Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996), *codified at* 47 U.S.C. § 153 *et seq.*

- Non-recurring conversion charges for converting from bundled to unbundled loops should reflect incremental costs rather than being based on incumbent carriers' existing tariffed charges for service termination.
- The charges for unbundled local loops for GTEFL, United/Centel and BellSouth should be similar, and would be consistent if the Commission did not rely on the individual carriers' cost studies and analyses, but used the incremental costs of an efficient market entrant to set unbundled loop rates. The charges for GTEFL's unbundled local loops reflected in this Order, however, are substantially different than the charges for unbundled local loops previously approved by the Florida Commission for BellSouth and United/Centel.

- **Fresh Look**. The Florida Commission should permit any customer to convert its unbundled service with GTEFL or United/Centel to a competitor without penalty. This Order failed to authorize a "fresh look" with regards to customer conversion in contrast with the Florida Commission's prior order for BellSouth.

Under Florida law, a petition for reconsideration should be granted in instances where a decision overlooked or failed to consider the significance of certain evidence presented in a proceeding or where the decision ignored, misinterpreted or misapplied the law.[2/] In each of the areas discussed herein, MFS-FL believes that reconsideration is appropriate because the Order ignored or misapplied the applicable law or failed to considered significant evidence presented in the hearing.

2/ *Diamond Cab Co. V. King*, 146 So. 2d 889 (Fla. 1962).

I. THE COMMISSION SHOULD RECONSIDER AND MODIFY THE COSTING REQUIREMENTS OF ITS ORDER

As the Commission recognized in its Order, *Florida Statutes* find that the competitive provision of local telephone service is in the public interest.

> The Legislature finds that the competitive provision of telecommunications services, including local exchange telecommunications service, is in the public interest and will provide customers with freedom of choice, encourage the introduction of new telecommunications service, encourage technological innovation, and encourage investment in telecommunications infrastructure. The Legislature further finds that the transition from monopoly provision of local exchange service to the competitive provision thereof will require appropriate regulatory oversight to protect consumers and provide for the development of fair and effective competition.[3/]

Florida Statutes direct the Commission to exercise its exclusive jurisdiction to encourage competition, encourage new entrants into telecommunications markets, prevent anticompetitive behavior and act "as a surrogate for competition for monopoly services provided by local exchange telecommunications companies."[4/] Broadly speaking, both the Florida and Federal statutory mechanisms by which local telephone companies interconnect seek to emulate the structure of a competitive market. In competitive markets, buyers and sellers negotiate with one another to arrive at mutually agreeable prices, terms and conditions. Likewise, the structure of Florida's interconnection statutes and the federal Telecommunications Act require that the "buyers" and "sellers" of interconnection and unbundled services negotiate with one another to develop mutually agreeable rates, terms and conditions, just as they would in a competitive market. However, when negotiations fail, *Florida Statutes* and the Telecommunications Act

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3/ Fla. Stat. § 364.01(3).

4/ Fla. Stat. § 365.01(4).

require that the Commission act as surrogate for competition and set the appropriate rates, terms or conditions. That is, the Commission should set prices based on the cost-based rates that would emerge in a competitive market.

In this case, the costing issues in the Order that MFS-FL asks the Commission to reconsider all relate to the Commission's statutory role as a "surrogate for competition." With each issue, MFS-FL asks that the Commission modify its Order to embrace standards consistent with the results that would occur in a competitive market and consistent with the requirements of *Florida Statutes* and the Federal Telecommunications Act.

A. Incremental Cost Standards Should Reflect the Costs of an Efficient Entrant Rather than the Costs of the Incumbent Provider

The Commission ordered that Total Service Long Run Incremental Costs ("TSLRIC") be used to establish rates for unbundled loops or links. MFS-FL agrees with the Florida Commission's conclusion that some measure of long run incremental costs is the appropriate metric for unbundled loop prices. In addition to the requirements of *Florida Statutes*, the Telecommunications Act also requires that when state commissions are called on to set prices for interconnection, access to unbundled network elements, and transport and termination of traffic they are directed to apply an incremental cost standard, specifically:

> (1) INTERCONNECTION AND NETWORK ELEMENT CHARGES: Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section--
> (A) shall be--
> (i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing

the interconnection or network element (whichever is applicable), and

(ii) nondiscriminatory, and

(B) may include a reasonable profit.

(2) CHARGES FOR TRANSPORT AND TERMINATION OF TRAFFIC:

(A) IN GENERAL: For the purposes of compliance by an incumbent local exchange carrier with section 251(b)(5), a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless--

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

(ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

(B) RULES OF CONSTRUCTION: This paragraph shall not be construed--

(i) to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements); or

(ii) to authorize the Commission or any State commission to engage in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls, or to require carriers to maintain records with respect to the additional costs of such calls.[5/]

However, the Commission ordered that "TSLRIC estimates shall be based on the provider's current or prospective network facilities, as opposed to some theoretically optimal network configuration." MFS-FL asks the Commission to reconsider that portion of its Order and require that TSLRIC estimates be based on an estimate of the incremental costs of an efficient entrant using forward-looking technology rather than the costs of the incumbent provider. Using the

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[5/] 47 U.S.C. §252(d). [emphasis added]

TSLRIC of the incumbent is inconsistent with the requirements of both *Florida Statutes* and the above cited provisions of the Telecommunications Act.

1. *Florida Statutes Require that Incremental Costs Used as the Basis for Unbundled Loops be Based on the Costs of the Most Efficient Provider and Not Necessarily the Costs of the Incumbent Provider*

In a competitive market, prices equilibrate at the incremental costs of the most efficient service provider, and not necessarily at the embedded costs or the incremental costs of the incumbent provider. For example, if it costs a cable television provider $10 per line to upgrade its network to provide telephone service, then $10 per line is the incremental costs of adding telephone service to the cable television provider's network. If $10 is the least cost technology, the market price will equilibrate at $10 regardless of the embedded costs or incremental costs of other service providers. Even if the incumbent telephone provider's incremental costs are $15, in a competitive market, it will have to match or beat the $10 price offered by the cable television provider. In a competitive market, the incumbent will either have to reduce its costs to match or exceed the efficiency of a new entrant or it will have to subsist on a market price that does not cover its inefficient network and costs.

If the Florida Commission is to act "as a surrogate for competition" as required by *Florida Statutes*,[6/] then it should adopt a TSLRIC pricing standard that reflects the costs of the most efficient competitor, and not necessarily the costs of the incumbent provider. In a competitive environment, prices will equilibrate at the incremental costs of the most efficient competitor using the latest forward-looking technologies, and not necessarily at the costs of the incumbent provider

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6/ Fla. Stat. § 364.01(4)(i).

that may reflect outdated technologies, inefficient staffing levels, or an inefficient mix of services. The most efficient provider is a firm that uses the latest, least-cost forward-looking technologies. For example, if a wireless loop costs $7 per line, but the incumbent's wireline loop costs $15 per line and a cable television provider's costs are $10 per line to serve a particular group of customers, in a competitive environment, all firms would have to match the more efficient wireless provider to remain competitive. Indeed, a standard that allows the incumbent to continue to recover $15 per line would be grossly inefficient if there are other technologies that could provide service at a lower cost. Allowing the incumbent to recover higher costs from an inefficient technology would be inconsistent with the Florida Legislature's findings that competition should "encourage technological innovation, and encourage investment in telecommunications infrastructure"[7/] and would be inconsistent with the statutory requirements that the Florida Commission act as a surrogate for competition.

Florida Statutes require that unbundled local loops not be set at prices that are below costs[8/] but otherwise give little explicit guidance regarding the interpretation of "costs." If "costs" are interpreted to mean the incumbent's actual costs, such an interpretation is inconsistent with a legislative intent to promote competition and displace traditional regulation with competition since prices will equilibrate at the costs of the most efficient provider and not the costs of the incumbent. Also, using the incumbent's costs as the metric for prices is entirely inconsistent with the price regulation mechanisms in the *Florida Statutes*. *Florida Statutes* mandate price regulation (not cost of service regulation) that sets local service prices based on a price cap

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7/ Fla. Stat. § 364.01(3).

8/ Fla. Stat. § 364.161(1).

indexed to a national inflation measure[9/] rather than the costs of individual firms. Said differently, setting unbundled rates at the incumbent's actual incremental costs, as proposed by the Commission in this Order, is entirely inconsistent with the Florida statute that mandates price regulation of local service rates that does not rely on individual companies' costs. It is illogical to suggest that the Florida Legislature intended that the Commission use the incumbent providers' actual costs in setting rates for unbundled loops, but use hypothetical costs (in the form of the price cap indexes to a measure of national inflation) to set local service rates. In order to harmonize the statutory requirement that unbundled loops not be priced below "costs" with the local service price regulation mechanisms in *Florida Statutes*, the Commission should interpret "costs" to mean the costs of an efficient competitor rather than the costs of the incumbent provider.

Interpreting costs to mean the costs of an efficient provider would be consistent with other sections of the Order, as well. For example, the Florida Commission rejected the use of the Efficient Component Pricing model as a mechanism for setting unbundled loop rates and rejected the use of special access prices because they included substantial levels of contribution. The Commission concluded:

> United/Centel and GTEFL have opted for price cap regulation under which there is an assumption of a greater degree of competitive risk. However, the LECs seem to presume that they are entitled to the same revenue or at least the same contribution protection that they had under rate-of-return regulation. Their positions seem to indicate that they should not be required to assume any competitive risk at all.... Moreover, the evidence in the record indicates that the loops are not going to be competitively provided in any meaningful way in the foreseeable future. Thus, the LEC is the only realistic source for this element. We believe that loops should be priced at a level that approximates TSLRIC.

9/ Fla. Stat. § 364.051.

> Therefore, the LECs' proposed application of their Special Access rates to unbundled loops is denied.[10/]

It is internally inconsistent for the Florida Commission to reject mechanisms intended to preserve revenues or contribution but use the incumbent's costs as the basis for unbundled rates. The Commission should modify that portion of its Order to require that TSLRIC be based on the costs of an efficient competitor rather than the costs of the incumbent provider.

2. *The Telecommunications Act Requires that Incremental Costs be Based on the Costs of an Efficient Provider Rather than the Costs of the Incumbent Provider*

While, technically speaking, the matter before the Florida Commission is not a request for arbitration under the Telecommunications Act, it is important that the Florida Commission employ pricing standards that will be consistent with any future arbitration requests. The Telecommunications Act provides explicit standards to be applied by state regulators when setting rates for interconnection and unbundled network elements. In particular, it requires that prices be "based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the ... network element."[11/] Using the incremental costs of the incumbent provider rather than the costs of an efficient provider are contrary to the federal mandate that costs be determined "without reference to a rate-of-return or other rate-based proceeding."

The congressional intent that incumbent costs should not be used as the basis for pricing is explicitly evidenced by the pricing requirements for the transport and termination of traffic.

10/ Order at pg. 11.

11/ 47 U.S.C. § 252(d)(1)(A) (quoted above).

Congress stated that nothing in the pricing standard for transport and termination of traffic should be interpreted "to authorize ... any State commission to engage in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls, or to require carriers to maintain records with respect to the additional costs of such calls."[12/] The Florida Commission's requirement that TSLRIC be based on GTEFL's or United/Centel's individual incremental costs violates the explicit standard that Congress mandates that state commissions apply to the transport and termination of traffic. While these interpretive provisions technically apply to the transport and termination of traffic, it would be bizarre to conclude that Congress intended to prohibit use of the incumbent's incremental costs in setting transport and termination rates, but to endorse the use of the incumbent's incremental costs in setting unbundled network element rates. In order to be consistent with the requirements of the Telecommunications Act, the Florida Commission should reconsider and modify its Order to require that TSLRIC be based on the incremental costs of an efficient network provider and not employ the incremental costs of GTEFL and United/Centel given their existing networks, technologies, staffing and marketing efforts.

B. Billing and Collection, Customer Contact and Other Marketing Costs Should be Excluded from Estimates of Incremental Costs Used to Set Unbundled Loop Prices

In its Order, the Florida Commission reasons that marketing and customer support costs are 12% of the unbundled 2-wire loop costs, based on GTEFL's incremental cost study. The Florida Commission rejects MFS-FL's argument that GTEFL should exclude all billing and

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12/ 47 U.S.C. §252(d)(2)(B) (quoted above).

collection, customer contact and marketing and spare capacity inventory. Instead, the Commission concludes that "[t]hese types of costs are relevant TSLRIC components because they represent costs that would be avoided in the long run if the LEC did not provide the service."[13/] MFS-FL asks that Commission reconsider this aspect of its Order and eliminate these components from the estimates of incremental costs used to set unbundled loop costs.

The basis of the conclusion that marketing and customer support activities are a significant component of the incremental costs of providing unbundled loops is flawed because it uses GTEFL's estimates of its marketing and customer support activities in the provision of bundled loops as the metric rather than the costs that an efficient, market driven firm would incur in the provision of unbundled loops. GTEFL's current marketing and customer support costs are based on the costs its incurs in a monopoly marketplace. They provide no evidence of the marketing and customer support costs that an efficient firm would face when providing unbundled local loops. If GTEFL's marketing and customer support costs are inflated or "gold-plated," as the economic literature has long suggested is the incentive of regulated firms,[14/] then including those costs in the incremental costs of unbundled loops will merely inflate the price of unbundled loops. In its Order, the Commission reasoned that it was inappropriate to include contribution in unbundled prices by rejecting the Efficient Component Pricing model and rejecting special access prices as the basis for unbundled loop rates.[15/] It would be inconsistent with that reasoning to

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13/ Order at pg. 8.

14/ See, for example, Averch & Johnson, *Behavior of the Firm Under Regulatory Constraint*, 53 AM. ECON. REV. 1053 (1962)

15/ Order at pp. 10-11.

allow incumbent providers to effectively incorporate contribution and inflate unbundled loop rate prices by including their estimates of marketing and customer support costs in the TSLRIC of unbundled loops.

Under the Telecommunications Act, incumbent telephone companies have a duty to provide unbundled network elements at a price based on the costs of providing the unbundled network element.[16/] Under the Telecommunications Act, the price of unbundled elements is not based on the costs that the incumbent saves as a result of providing an unbundled network element. Thus, the Order contradicts the Telecommunications Act by reasoning that GTEFL and other incumbents would "save" various marketing and customer contact costs by providing unbundled loops and including those savings in the price of unbundled loops.

For example, when GTEFL provides loops to its retail customers, it faces marketing costs in the form of billing and collection costs for individual customers (e.g., stamps, envelopes, printing bills, etc.), and the costs of maintaining a customer service center to answer inquiries from those customers. In contrast, if GTEFL provides unbundled loops to MFS-FL, it will render one bill rather than thousands and will not have to staff its offices to provide customer contact and support services for retail customers. Under the logic of the Order, however, GTEFL could include its retail billing and collection costs and other customer contact costs in the TSLRIC of providing unbundled services to MFS-FL. In a very real sense, the Order requires that MFS-FL pay for services (billing and collection, customer contact, mass marketing) that it does not receive, but that GTEFL would incur if it provided loops on a retail basis. Only the costs that are

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16/ 47 U.S.C. § 252(d)(1) (quoted above).

associated with providing unbundled loops to MFS-FL should be included in the estimate of TSLRIC.

Including billing and collection and other marketing costs are inconsistent with the wholesale provisions of the Telecommunications Act, as well. The Telecommunications Act requires that incumbent telephone companies provide service on a wholesale basis and establishes the following pricing standard for wholesale rates:

> WHOLESALE PRICES FOR TELECOMMUNICATIONS SERVICES: For the purposes of section 251(c)(4), a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.[17]

The Order requires that marketing, billing, collection and other costs avoided by GTEFL and United/Centel be included in the price of unbundled loops. If those costs are excluded from the wholesale rates charged for local service by the operation of the Telecommunications Act, the Commission will have set up a classic case of arbitrage that will distort competition by artificially distorting whether a carrier chooses to buy wholesale loops (and avoid incumbent carriers' marketing costs) or unbundled loops (and pay charges that include the incumbent carrier's marketing costs). The Florida Commission should exclude billing and collection, marketing and other customer contact costs from TSLRIC estimates.

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[17] 47 U.S.C. § 252(d)(3).

C. Unbundled Loop Costs (and Rates) Should be Geographically Deaveraged

As the Commission observed in its Order, there was no disagreement that loop costs were a function of density and distance from the central office.[18] The Commission, however, declined to require that unbundled loop rates reflect these geographic dimensions because they were not explicitly raised in negotiations between United/Centel and MFS-FL.[19]

As a matter of logic, the Commission cannot set cost-based unbundled loop rates if it chooses to ignore the geographic components that all parties agree determine the level of TSLRIC. Thus, without geographically deaveraged loop rates and costs, the TSLRIC estimates will be meaningless.

Florida Statutes effectively require that Commission geographically deaverage loop rates and costs. Specifically,

> (1) The price of a nonbasic telecommunications service provided by a local exchange telecommunications company shall not be below its costs by use of subsidization from rates paid by customers of basic services.
>
> (2) A local exchange telecommunications company which offers both basic and nonbasic telecommunications services shall establish prices for such services that ensure that nonbasic telecommunications services are not subsidized by basic telecommunications services. The cost standard for determining cross-subsidization is whether the total revenue from a nonbasic service is less than the total long-run incremental cost of the service. Total long-run incremental cost means service-specific volume and nonvolume costs.
>
> (3) The commission shall have continuing oversight jurisdiction over cross-subsidization, predatory pricing, or similar anticompetitive behavior and

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[18] Order at pp. 12-13.

[19] Order at pg. 13.

> may investigate, upon complaint or on its own motion, allegations of such practices.[20/]

The Order's reasoning that geographic deaveraging is an issue that the Commission cannot decide because it was not explicitly raised in the negotiations is wrong as a matter of Florida law since the above quoted cross-subsidization gives the Commission continuing jurisdiction over cross-subsidization issues and the authority to investigate allegations of such practices.

By geographically averaging unbundled loop rates, the Commission sanctions cross-subsidization between low and high costs areas, and a geographically averaged loop rate that exactly covers costs will, as a matter of basic algebra, result in prices for high cost areas being set below costs and prices in low cost areas substantially above costs. Such below cost pricing is not allowed under Florida law,[21/] and results in a cross-subsidy flowing from low cost to high cost areas. As was discussed in the hearing, this has the potential for distorting competition.[22/]

In this case, the cross-subsidization between low cost high-density areas and higher cost, low density areas was squarely raised in cross examination of MFS-FL's witness Timothy Devine by GTEFL[23/] and in his prefiled rebuttal testimony.[24/] It was also raised by United/Centel on cross-examination of Mr. Devine:

[20/] Fla. Stat. § 364.3381. [emphasis added]

[21/] Fla. Stat. §364.161(1) "In no event, however, shall the local exchange telecommunications company be required to offer such unbundled services, network features, functions or capabilities, or unbundled local loops at prices below cost."

[22/] Tr. at pp. 136-137.

[23/] Tr. at pp. 126-127 & 136-137.

[24/] Tr. at pp. 56-57, Devine GTEFL Rebuttal Testimony at pp. 10-11.

Q. Are you suggesting then that the prices for the unbundled local loops should geographically de-averaged?
A. Yes, based on density. And it seemed that Ben Poag [United/Centel's witness] talks a lot about that in his testimony, too.
Q. Have you asked for a geographic de-averaging of the unbundled local loop in this proceeding?
A. Yes.
Q. Where have you asked for that?
A. In my rebuttal testimony.[25/]

Mr. Devine's GTEFL rebuttal testimony, which was explicitly adopted and incorporated into his United/Centel rebuttal testimony,[26/] contains an explicit recommendation supporting geographic deaveraging. Thus, the Order's conclusion that it is premature to deal with geographic deaveraging because it was not raised in the United/Centel petition is not an accurate reflection of the record and should be reconsidered.

D. Conversion Charges Should Reflect Costs Rather than the Incumbent's Existing Tariffed Rates

The Commission ordered that "[n]onrecurring charges for the conversion of bundled loops to unbundled loops shall be based on their costs." Despite announcing this laudable and

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[25/] Tr. at pp. 191-192.

[26/] Tr. at pp. 95-96.

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

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

appropriate pricing methodology, the Commission's Order contradicts this goal.[27] The Commission ordered that, on an interim basis, United/Centel is to use currently tariffed nonrecurring charges associated with residence and business service as the basis for conversion costs. The Commission did not describe the basis for GTEFL's nonrecurring charges. MFS-FL asserts that any nonrecurring charge based on a tariffed price is contrary to the Commission's order. Tariffed rates are retail rates and do not reflect actual cost. The Commission should reconsider United/Centel's interim use of its tariffed rate for nonrecurring conversion charges and clarify the basis of GTEFL's similar charges, and require that actual costs, if any, be the basis for any conversion charges.

The Commission further ordered that termination liability charges for loop conversions "shall be pursuant to existing tariffs for the specific service." Termination charges are anticompetitive and are not associated with a carrier's actual costs. Termination charges are simply a mechanism to prevent customers from changing service, and in this case, will deter customers from changing carriers thereby frustrating the pro-competition intent of the *Florida Statutes* and the Telecommunications Act. This ruling also contradicts the Commission's directive that nonrecurring conversion charges are to be based on cost. The Commission should reconsider its grant of termination charges and use actual costs (if any) rather than tariffed rates.

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[27] *See* 47 U.S.C. § 252(d)(1)(A) (requiring cost-based prices for unbundled network elements).

E. Unbundled Rates in this Case Should be Comparable to the Unbundled Rates Ordered for BellSouth

This phase of this docket, and the phase that addressed a similar BellSouth petition,[28] dealt with the price of unbundled local loops for the three largest incumbent local telephone companies in Florida. All serve various portions of Florida and use similar technologies to provide local loops. However, the resulting unbundled loop prices are wildly different.

Loop Rate Element	GTEFL	United/Centel	BellSouth
2-Wire voice grade analog loop	$20	$15	$17
4-Wire voice grade analog loop	$25		
2-Wire ISDN digital grade loop	$20		
4-Wire DS-1 digital grade loop	$250 1st system $154 add'l system		
2 & 4 Wire ports	$6	$7	$2

While these prices are all interim prices dependant on the carriers completing and filing an appropriate cost study with the Commission, the range of rates that emerges is disturbing, and illustrates the fundamental flaw with using an individual carrier's incremental costs to develop rates for unbundled elements. Why are GTE's loop rates 33% higher than United/Centel's loop rates and 18% higher than BellSouth? Why are GTE's port charges three times higher than BellSouth's port charges?

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[28] Order No. PSC-96-0811-FOF-TP ("*BellSouth Unbundled Loop Order*") (issued June 24, 1996)

The differences may be due to differences in methodology, or due to what costs each carrier chooses to include or exclude. The differences may be due to differences in the geographic mix of customers (urban vs. rural, density and distance from the serving wire center) served by each carrier, which results in a crude form of geographic deaveraging.

There should be modest, if any, differences between cost-based rates for unbundled local loops if the three carriers use a consistent methodology and data to calculate the TSLRIC of unbundled loops. MFS-FL continues to submit that the costs of an efficient service provider adjusted for density and distance from the serving central office best captures the relevant incremental costs for use in setting unbundled loop rates. Such a carrier independent methodology would best address the variation emerging among the incumbents' rates. Unless the Commission reconsiders its Order and requires that the TSLRIC not be based on the costs of an individual incumbent provider, this range of charges will persist and will distort the distribution of competition throughout Florida. Competitors will focus on the incumbent carriers whose cost studies show that they have the lowest costs irrespective of the costs that a new entrant might experience in providing service.

II. THE COMMISSION SHOULD GRANT CONSUMERS A "FRESH LOOK"

Earlier in this docket, the Commission ordered BellSouth to permit any customer to convert its unbundled service with BellSouth to an unbundled service with an alternative local exchange carrier ("ALEC"), with no penalties, rollover, termination, or conversion charges either

to the ALEC or the customer.[29] Despite the existence of a very similar record, the Commission denied this so-called "fresh look" provision in the instant order. In denying consumers relief from anticompetitive termination charges and other penalties, the Commission has misinterpreted the record evidence and failed to act in conformity with its prior decisions.

In its Order, the Commission stated:

> . . . we do not believe that MFS-FL's request for rolling over service should be at no charge to the ALEC. Witnesses for GTEFL and United/Centel stated that there are specific nonrecurring charges that are necessary to cover the costs of converting service to the ALECs. Even MFS-FL agreed that there are costs and that the ALECs should pay for these nonrecurring costs of conversion. Further, GTEFL points out that there may be situations in which the LEC customer is under a contract and termination liability charges would apply if the contract is terminated early. Therefore, we find that MFS-FL's request that Untied/Centel and GTEFL should permit any customer to convert its bundled service to an unbundled service and assign such service to MFS-FL, with no penalties, rollover, termination or conversion charges to MFS-FL or the customer is denied.[30]

This ruling failed to take notice of MFS-FL's evidence regarding rollover charges and failed to distinguish such charges from termination charges and other penalties.

MFS-FL witness Devine testified that MFS-FL requires a "fresh look" policy in order to compete effectively in the local exchange market.[31] While MFS-FL advocated that termination and other punitive charges should not apply, MFS-FL did assert that there may be legitimate costs associated with converting customers. Mr. Devine testified that MFS-FL is not willing to pay for full installation charges, but rather would be willing to compensate incumbent carriers for the

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[29] Order No. PSC-96-0444-FOF-TP ("*BellSouth Unbundling Order*"), at 16-18 (recon. pending).

[30] Order at pg. 18.

[31] Devine Direct, Tr. 40; Devine Cross, Tr. 115-16.

actual costs of conversion (*e.g.*, cross connect charges).[32/] While the Commission acknowledged this testimony, it does not support the Commission's blanket rejection of all aspects of a "fresh look," including relief from incumbent carrier termination charges and other penalties.

The Commission should reconsider its denial of "fresh look" as it is a commonly accepted consumer protection procedure which ensures the Commission's goal of encouraging local competition. In addition to the *BellSouth Unbundling Order*, this Commission previously adopted "fresh look" in *Intermedia Communications of Florida, Inc.* In that case, the Commission considered whether to allow special access customers to switch to new competitive carriers without incurring substantial financial liabilities for contract termination. Over the objection of GTEFL, the Commission stated that:

> [I]ntroducing competition, or extending the scope of competition, provides end users of particular services with opportunities that were not available in the past. However, these opportunities are temporarily foreclosed to end users if they are not able to choose competitive alternatives because of substantial financial penalties for termination of existing contract arrangements. A fresh look proposal will enhance an end user's ability to exercise choice to best meet its telecommunication needs."[33/]

The Commission's failure to adopt "fresh look" in the instant case is inconsistent with its prior decisions in *Intermedia* and the *BellSouth Unbundling Order*.

Not only is "fresh look" a settled consumer protection principal in Florida, but many other state commission permit consumers to reevaluate, without penalty, their long-term contracts within the new competitive environment. Both the Federal Communications Commission

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32/ Devine Cross, Tr. 115-16.

33/ *Intermedia Communications of Florida, Inc.*, 1994 WL 118370 (Fla. P.S.C.), *reconsidered*, 1995 WL 579981 (Fla. P.S.C., Sep. 21, 1995).

("FCC") numerous state commissions have instituted similar "fresh look" requirements. The FCC has instituted "fresh look" for many telecommunications services reasoning that a changed regulatory climate renders certain utility contracts unreasonable.[34/] Indeed, the FCC has stated in the context of opening the access market to competition that:

> The existence of certain long-term access arrangements also raises potential anticompetitive concerns since they tend to "lock-up" the access market, and prevent customers from obtaining the benefits of the new, more competitive interstate access environment. To address this, we conclude that certain LEC customers with long-term access arrangements will be permitted to take a "fresh look" to determine if they wish to avail themselves of a competitive alternative.[35/]

Numerous state public utility commissions have imposed "fresh look" requirements. The public utility commissions in both New Jersey and California have each approved settlements which include "fresh look" provisions.[36/] The California Public Utilities Commission explicitly requires language in certain customer service contracts stating:

> This Agreement shall at all times be subject to such changes or modifications by the Commission as the Commission may from time to time direct in the exercise of its lawful jurisdiction.[37/]

[34/] *See Expanded Interconnection with Local Telephone Company Facilities,* 9 FCC Rcd 5154, 5207-10 (1994) ("fresh look" available to LEC customers who wish to sign with competitive access providers); *Competition in the Interstate Interexchange Marketplace,* 7 FCC Rcd 2677, 2681-82 (1992) ("fresh look" in context of 800 bundling with interexchange offerings); *Amendment of the Commission's Rules Relative to Allocation of the 849-851/894-896 MHz Bands,* 6 FCC Rcd 4582, 4583-84 (1991) ("fresh look" imposed as condition of grant of licenses under Title III of Communications Act).

[35/] *Expanded Interconnection with Local Telephone Company Facilities*, 7 FCC Rcd 7369, 7463-64 (1992).

[36/] *In re Sprint*, 1994 WL 386294 (N.J. B.P.U.)("fresh look" imposed in a settlement related to the Board's investigation of intraLATA competition); *Alternative Regulatory Frameworks for Local Exchange Carriers*, 1994 WL 780935 (Cal. P.U.C. 1994).

[37/] *See, e.g., Alternative Regulatory Frameworks for Local Exchange Carriers*, 1993 WL (continued...)

When new competitive opportunities exist, the California commission then announces the length of the "fresh look" period during which renegotiation or termination of contracts may occur without penalty.[38/]

The record in this case shows that MFS-FL objects to those charges which it and its potential customers must pay which are not associated with actual conversion costs that incumbent carriers incur. These charges are anticompetitive and impede the public interest in rapid, widespread availability of local competition. MFS-FL does not suggest that there are no costs which accompany conversion and does not seek to have incumbent carriers internalize such costs so that competitors may enter the local market. MFS-FL does seek relief for its potential customers from termination charges and penalties which would prevent them from signing with MFS-FL. The Commission failed to distinguish rollover or conversion charges, which are associated with actual costs, from penalties or termination charges, which are simply meant to lock in customers. MFS-FL asks that the Commission reconsider its denial of MFS-FL's "fresh look" proposal and order that ALECs and customers are not required to pay any charges not associated with actual costs incurred in changing a customer's service to an ALEC.

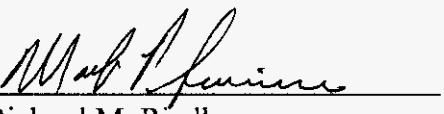
37/ (...continued)
565428 at *92, *rescinded*, 1993 WL 495331 (Cal. P.U.C. 1993).

38/ *See id.*

III. CONCLUSIONS

For the reasons described above, MFS-FL urges the Florida Commission to reconsider and modify its Order in the discrete areas described above.

Respectfully submitted,



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Dated: July 8, 1996

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of July 1996, a copy of the foregoing MOTION FOR RECONSIDERATION BY METROPOLITAN FIBER SYSTEMS OF FLORIDA, INC., Docket No. 950984-TP, was served, by first class mail, postage prepaid, on the attached service list.

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