

Filed Session of October 23, 1996

Approved as Recommended  
and so Ordered  
By the Commission

John C. Crary  
Secretary

Issued & Effective October 24, 1996

STATE OF NEW YORK  
DEPARTMENT OF PUBLIC SERVICE

October 15, 1996

TO: THE COMMISSION

FROM: COMMUNICATIONS DIVISION

SUBJECT: Case 94-C-0095 - Proceeding on Motion of the Commission to Examine Issues Related to the Continued Provision of Universal Service and to Develop a Framework for the Transition to Competition in the Local Exchange Market

Tariff Filings Regarding Interim Number Portability

RECOMMENDATION:

It is recommended that the tariff revisions listed on Appendix 1 which have been in effect on a temporary basis, be allowed to go into effect on a permanent basis and that the subsequent tariff revisions listed on the same Appendix be allowed to go into effect on October 25, 1996, and October 26, 1996 respectively. It is also recommended that the tariff revisions listed on Appendix 2 be allowed to go into effect on October 25, 1996.

SUMMARY

The Commission issued an order on December 12, 1995<sup>1</sup> in which it clarified its March 8, 1995 number portability order. The December 1995 order specifically directed New York Telephone Company and other companies in the State, including new entrants, to file interim number portability (INP)

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<sup>1</sup> Case 94-C-0095, Order Clarifying March 8, 1995 Number Portability Order (issued December 12, 1995).

tariffs within 60 days of the issuance of the order. The tariffs were to be based either on the Rochester plan, outlined in the March 1995 order,

or on any other number portability plan that was unanimously accepted by all companies operating in New York Telephone Company's territory.

Following the December 1995 order, no specific plan received unanimous acceptance; therefore, on February 9, 1996, New York Telephone Company filed revisions to its P.S.C. No. 914 tariff, that are in effect on a temporary basis. The revisions incorporated an interim number portability service based on the Rochester plan. Also, on February 8, 1996, the Commission issued an Order approving on a temporary basis, MCImetro's (MCI) interconnection tariffs, which included an interim number portability offering.

The December 1995 order required all other companies, providing local exchange services, to file a number portability plan. However, incumbents were not required to file tariffs until they received a request for number portability.

As will be discussed below, the companies (listed on Appendix 3) other than incumbents have either: filed tariffs in compliance with the Commission's number portability orders; concurred with New York Telephone Company's P.S.C. No. 914 tariff, as it pertains to number portability, and, therefore can be considered in compliance; or expressed intent to comply as soon as they file tariffs to provide local exchange services. Comments have been received regarding the New York Telephone Company and MCI tariff filings and resolution of the issues raised in these comments will also be addressed.

#### NEW YORK TELEPHONE COMPANY'S FILING

On February 9, 1996 New York Telephone Company (New York Telephone, NYT or the company) filed tariff revisions to introduce interim number portability based on the Rochester plan. These revisions are in effect on a temporary basis pending final approval by the Commission. New York Telephone's offering allows customers to retain their telephone numbers when they change from one local exchange carrier to another while remaining within the same central office boundary. Interim number portability will be

activated when either the customer, or the competitive local exchange company (CLEC), acting as the customer's agent, notifies New York Telephone to initiate the number portability arrangement. The company will cancel the arrangement upon request of either the CLEC or the customer. New York Telephone reserves the right to determine the type of serving arrangement used to redirect, or port, calls to the CLEC network and will use the following interim number portability solutions: (1) remote call forwarding; (2) direct DID trunking; and, (3) tandem route indexing. The second and third options are usually preferred by both companies when large blocks of numbers are being ported.

In its filing, New York Telephone has established an annual surcharge which it will assess to CLECs for number portability; the NYT surcharge is modeled after the Rochester surcharge, with minor modification to the calculation.<sup>2</sup> While Rochester's surcharge recovers additional switching costs incurred as a result of porting a telephone call, New York Telephone, which provides transport in addition to switching, has established a surcharge which recovers both costs incurred as a result of porting a telephone call.

As the Commission deemed reasonable for the Rochester plan, New York Telephone will share in the cost of providing interim number portability.

Specifically, the surcharge will consist of the product of the per minute incremental cost of switching and transport costs relating to redirecting calls apportioned over all working telephone numbers provided by New York Telephone Company (approximately 10 million numbers) multiplied by the number of ported telephone numbers used by the CLEC. Since New York Telephone has 98% of the telephone numbers, by using the above methodology, it will bear the majority of the costs for number portability.

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<sup>2</sup> This modification is acceptable to the Commission -- See Case 94-C-0095, Order Clarifying Mar 8, 1995 Number Portability Order, (Issued and Effective December 12, 1995), page 9.

Comments

Time Warner Communications Holdings, Inc. (Time Warner), MFS Intelenet of New York, Inc. (MFS), and Sprint Communications Company L.P. (Sprint) filed comments regarding New York Telephone's interim number portability tariff filing. Time Warner requests the establishment of a time frame within which NYT will cancel an interim number portability arrangement after it receives a request for cancellation. This is a concern since the CLEC is liable for all charges incurred from the time NYT is notified of the cancellation of INP until the time NYT actually cancels the arrangement.

Additional tariff language allows NYT to cancel INP if the CLEC end user does not pay its final bill to the telephone company. Time Warner asserts that the CLEC should be notified prior to disconnection of INP for nonpayment. Time Warner also seeks modification of tariff language that ultimately allows NYT to determine the type of serving arrangement used to direct INP calls to the CLEC network.

MFS believes that NYT's tariff filing, which adopts the Rochester previous agreements with new entrant LECs. While the Rochester Plan, as clarified by the Commission, allows that no access charges are payable to the terminating carrier, MFS and NYT entered into an interconnection agreement on January 24, 1995, which allows for payment of access charges to MFS as the "full service" new entrant meeting its own universal service obligations. MFS prefers to maintain this agreement and believes that NYT should file tariff revisions making this an alternative INP arrangement.

Sprint notes that NYT's tariff filing varies from the Rochester approach because the company does not appear to be absorbing a portion of the INP costs. Sprint argues that the Rochester plan adopted a pro rata sharing of incremental costs as an INP solution, whereas NYT's plan does not.

New York Telephone responds that Sprint appears to misunderstand the method used to apportion the costs of the INP arrangement, believing that these costs are apportioned to all carriers based on the relative quantity of numbers forwarded to each carrier, as opposed to being spread over all telephone numbers provided by New York Telephone. With regard to MFS's comments, the company believes it followed the Commission's order exactly by first offering the industry an opportunity to accept an alternative arrangement before filing tariffs to adopt the Rochester Plan. In any event, the company states that under the Commission's order it may also offer alternative, optional interim arrangements at its discretion. New York Telephone also indicates that it is willing to work with the industry to establish time frames within which it will disconnect INP and within which it will notify the CLEC, if such disconnection is not CLEC initiated.

Discussion

In response to the comments raised, New York Telephone Company has filed tariff revisions to implement a procedure to notify CLECs of the cancellation of an interim number portability arrangement for nonpayment of telephone coCs prior to termination of INP. As to CLEC liability for charges between the time NYT is notified to cancel an INP arrangement and the time it actually cancels the arrangement, NYT has filed tariff language stipulating that it will disconnect INP within three days. This timeframe is reasonable as the company is using the same standard it uses to disconnect service to its customers upon request. In any event, the charges that could be incurred by the CLEC during this time period are minimal as the CLEC would only be responsible for the per minute charge for NYT to port calls to the end user customer.<sup>3</sup>

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<sup>3</sup> If third party type calls were made in the interim, the CLEC would be authorized to recover these charges directly from the customer.

Staff believes that New York Telephone, as well as any other full service provider, should maintain the ultimate right to determine the type of serving arrangement used to redirect or port calls to another carrier's network as long as the arrangement, at a minimum, is an appropriate level of service, is based on what is available and, considers the preference of the competing CLEC. Therefore, we believe that the tariff language is reasonable and should be approved. If the above criteria are not being met, however, a carrier could petition the Commission for arbitration.

MFS's complaint has been resolved since on July 8, 1996 MFS and NYT filed a joint interconnection agreement for Commission approval that includes a number portability arrangement that provides for a flat rate charge for each number ported, and that allows the forwarding of all access charges to the terminating local exchange carrier. If approved, NYT and MFS will file tariffs to offer the same arrangement to all comers. Finally, Sprint's claim that NYT is not sharing in the cost of interim number portability lacks merit because, as discussed above, NYT is bearing the bulk of such costs. Therefore, New York Telephone Company's revised tariff filing, set out in Appendix 1, is in compliance with the Commission's interim number portability orders and should be allowed to go into effect on a permanent basis.<sup>4</sup>

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<sup>4</sup> On July 2, 1996 the Federal Communications Commission released its First Report and Order (CC Docket No. 95-116) regarding Number Portability in which it adopts rules for interim number portability. In its Report and Order, the FCC states that the surcharge formula adopted by the NY PSC comports with its competitive neutrality requirements for interim number portability; thus, the instant filings comport with the FCC's rules. The FCC also adopted a principle that carriers are to share in the interstate access revenues received for a port call, which differs in principal from the Department's decision that the intermediate local exchange company retain the intrastate access revenues. The FCC language is not preemptive but NYT and other facilities based local exchange carriers should file appropriate tariff revisions to their interstate access tariffs in order to comply with this principle.

In addition, the FCC's interim rules do not preclude companies from entering into other interim number portability agreements as long as competitive neutrality and access charge sharing requirements are met. As mentioned in the body of this memorandum, NYT and MFS have filed such an agreement with the Commission and, if approved, will file tariffs to offer this arrangement to all comers.

MCI METRO ACCESS TRANSMISSION SERVICES, INC.

On December 29, 1995, MCI Metro Access Transmission Services, Inc. (MCI Metro) filed tariff revisions to introduce interim number portability that went into effect on January 28, 1996 on a temporary basis. MCI Metro's filing prompted several comments and questions from New York Telephone Company, Time Warner and the New York State Telephone Association. The concerns expressed in the comments were similar in nature and referred to tariff provisions that would allow MCI to charge "unregulated" intercept rates for discontinued INP arrangements, that give MCI the ability to charge a reciprocal surcharge rate for each ported call, and that allow MCI to deny an INP arrangement if an account is 90 days in arrears. In response to these comments MCI filed tariff revisions to remove the charge for intercept service, to establish its own surcharge rate that mirrors the Rochester model, and to eliminate the prohibition for INP on delinquent accounts. As a result, Staff recommends that MCI's interim number portability tariff, as revised, be allowed to become effective on a permanent basis.

OTHER CARRIERS

The following carriers concur in New York Telephone Company's 914 tariff as it pertains to number portability, and are therefore in compliance with the Commission's orders: TC Systems, Inc. (Teleport Communications); Time Warner Communications Holdings, Inc.; Cablevision Lightpath, Inc.; NewChannels/Hyperion Telecommunications of NY; NHT Partnership; and ACC National Telecom Corp. In addition, Citizens Telecommunications Company d/b/a Citizens Long Distance Company filed tariff revisions which duplicate Rochester Telephone Corporation's number portability offering.<sup>5</sup> MFS has also filed tariffs that are in compliance with the Commission's interim number portability orders.

Many carriers listed in Appendix 3 are currently resellers of telecommunications services, as opposed to facilities based carriers, and therefore do not have telephone numbers at this time. However, the following companies have sent a letter to the Secretary acknowledging their obligation to provide number portability if circumstances change: AT&T Communications of New York, Inc.; Cable & Wireless Communications, Inc., Residential Communications Network of New York, Inc. (formerly UrbanNet of New York, Inc.); and Frontier Communications of Rochester, Inc.

Finally, the following carriers are certified to offer local exchange services but have not yet filed tariffs to do so, or have filed tariffs that are under review. All have acknowledged an obligation to provide interim number portability services in their initial tariff filings: Northland Networks, Ltd.; Fibernet, Inc.; MFS Telecom, Metropolitan Fiber Systems of New York, Inc.; Allnet Communication Services, Inc. d/b/a Frontier Communications Services; Total Tel (which has been

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<sup>5</sup> Tariff filing in Case 95-C-0095 went into effect on April 17, 1996 on a permanent basis.

adopted by Precom USA, Inc.); New York Local Telephone Corp., and SBMS New York Services, Inc. Thus, all companies listed in Appendix A are in compliance with the Commission's interim number portability orders. This item has been reviewed by Counsel's Office (Maureen Farley).

RECOMMENDATION

It is recommended that the tariff revisions listed on Appendix 1 which have been in effect on a temporary basis, be allowed to go into effect on a permanent basis and that the subsequent tariff revisions listed on the same Appendix be allowed to go into effect on October 25, 1996, and October 26, 1996 respectively. It is also recommended that the tariff revisions listed on Appendix 2 be allowed to go into effect on October 25, 1996.

Respectfully

Submitted,

PATRICIA M. CURRAN  
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Approved By:

DANIEL M. MARTIN  
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Filing by: New York Telephone Company

Revisions to: P.S.C. No. 900 - Telephone

Section 4

2nd Revised Page No. 31

2nd Revised Page No. 32

Section 10

2nd Revised Page No. 7

Issued: February 9, 1996

Effective: February 10, 1996\*

\*In effect on a temporary basis in compliance with Order dated December 12, 1995 in Case 94-C-0095.

Revisions to: P.S.C. No. 900 - Telephone

Section 4

4th Revised Page No. 31

4th Revised Page No. 32

Section 10

3rd Revised Page No. 7

Issued: September 26, 1996

Effective: October 26, 1996

SAPA: Not required for a compliance filing.

CASE: 94-C-0095

PUBLIC NOTICE: Newspaper publication waived; customers notified individually.

Filing by: MFS Intelenet of New York, Inc.

Revisions to: P.S.C. No. 4 - Telephone

Section 3

1st Revised Page No. 39

1st Revised Page No. 40

Original Page No. 41

Issued: April 3, 1996

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\*Ultimately postponed until October 25, 1996 by Supplement No. 10.

Revisions to: P.S.C. No. 4 - Telephone

Section 3

2nd Revised Page No. 40

1st Revised Page No. 41

Issued: August 20, 1996

Effective: September 20, 1996\*

\*Ultimately postponed until October 25, 1996 by Supplement No. 10.

SAPA: Not required for a compliance filing.

CASE: 94-C-0095

PUBLIC NOTICE: Newspaper publication waived; customers notified

## LOCAL EXCHANGE CARRIERS - NEW ENTRANTS

ACC Albany Telecom Corp.  
ACC Binghamton Telecom Corp.  
ACC Buffalo Telecom Corp.  
ACC Rochester Telecom Corp.  
ACC Syracuse Telecom Corp.  
Allnet Local Service, Inc.  
AT&T Communications of New York, Inc.  
Avant-Garde Telecommunications of New York, Inc.  
Cable & Wireless Communications, Inc.  
Cablevision Lightpath, Inc.  
Citizens Telecommunications Company  
    dba Citizens Long Distance Company  
Fibernet, Inc.  
Frontier Communications of Rochester, Inc.  
International Calevision, Inc.  
Local Area Telecommunications, Inc. (LOCATE)  
Metropolitan Fiber Systems of New York, Inc.  
MFS Intelenet of New York, Inc.  
MFS Telecom  
MFS Telephone of New York, Inc.  
NewChannels/Hyperion Telecommunications of New York  
New York Local Telephone Corp.  
NHT Partnership  
Northland Networks, Ltd.  
Residential Communications Network of New York, Inc.  
SBMS New York Services, Inc.  
Teleport Communications (TC Systems, Inc.)  
Time Warner AxS of Albany, L.P.  
Time Warner AxS of Rochester, L.P.  
Time Warner AxS of New York City, L.P.  
Total Tel USA, Inc.  
UrbanNet of New York, Inc.