

D.P.U. 93-211

Application of MFS Intelenet of Massachusetts, Inc., under the provisions of G.L. c. 159, for a certificate of public convenience and necessity to operate as a resale, value-added, or interexchange common carrier within the Commonwealth of Massachusetts.

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FOR: MFS INTELENET OF
MASSACHUSETTS, INC.
Applicant

I. INTRODUCTION

On December 7, 1993, pursuant to G.L. c. 159, MFS Intelenet of Massachusetts, Inc. ("Applicant") filed an application with the Department of Public Utilities ("Department") for a certificate of public convenience and necessity ("certificate") to operate as a resale, value-added, or interexchange common carrier within the Commonwealth of Massachusetts. The application was docketed as D.P.U. 93-211. Pursuant to notice duly issued, interested persons were afforded an opportunity to submit comments, objections, or requests for a hearing. On January 28, 1994, New England Telephone and Telegraph Company ("NET") filed comments indicating that it did not object to the Applicant's filing. No other comments were filed. On February 9, 1994, the Applicant responded to 26 information requests issued by the Department (DPU IR 1-1 through 26).

The Applicant is a Delaware corporation, with its principal place of business in Jersey City, New Jersey (Appl. at 1). The Applicant proposes to offer local exchange and intraLATA toll services to business customers (Appl., Att. 2). ¹ The Applicant intends to provide resold local exchange access lines, ² including

¹ InterLATA traffic would be routed to an interexchange carrier (DPU IR 1-1).

² The Applicant proposes to offer resold local exchange access lines by utilizing its own switch and transmission
(continued...)

private branch exchange ("PBX") trunks, key system lines, and direct inward dialing service (Appl., Att. 7). The Applicant also proposes to offer 800 service, operator services and ancillary local telecommunications services ³ to presubscribed business customers in Massachusetts (Appl., Att. 2). In limited instances, the Applicant will also offer alternative operator services ("AOS") at payphone locations (id., Appl. at 7; DPU IR 1-5). ⁴

II. STANDARD OF REVIEW

In approving an application for a certificate, the Department must find that an applicant possesses the managerial, technical, and financial ability to provide the proposed service, and that there is a public need for the proposed service.

²(...continued)

terminating equipment in conjunction with transmission facilities leased from the Applicant's affiliate, MFS-McCourt, Inc., and/or from NET (DPU IR 1-1; 1-3). The Applicant proposes to connect its switch to the public switched network by utilizing NET's Flexpath Digital PBX Service ("Flexpath") (id.). Flexpath would provide the Applicant with primary dial tone and local exchange telephone numbers for the access lines it will offer to its customers (id.).

³ This category would include, for example, directory assistance, directory listings, call waiting, call forwarding, and conference calling services (DPU IR 1-1; 1-2).

⁴ The Applicant will route "0-" calls directly to NET for handling and completion (DPU IR 1-5). All other operator services, i.e., "0+" calls, will be branded, billed, and rated by the Applicant (id.).

Satellite Business Systems, D.P.U. 84-125 (1984); Allnet Communications Services, Inc., D.P.U. 84-177 (1985).

III. ANALYSIS AND FINDINGS

A. Certification

Based on the verified application and related materials filed, the Department finds that the Applicant is financially, managerially, and technically qualified to provide telecommunications services in Massachusetts. As to the issue of public need, the Department has previously found that it is in the public interest to allow competition in Massachusetts.

IntraLATA Competition, D.P.U. 1731 (1985). In both MCI Telecommunications Corporation, D.P.U. 1655 (1984) and GTE Sprint Communications Corporation, D.P.U. 84-12 (1984), the Department determined that intrastate interLATA competition provides substantial benefits to the public in Massachusetts. In addition, the Department further recognized that the presence of competition in the telecommunications market affords Massachusetts consumers a wider variety of service offerings and provides increased incentive for just and reasonable pricing. First Phone, Inc., D.P.U. 1581 (1984); U.S. Telephone, Inc., D.P.U. 85-46 (1985). Therefore, the Department finds that the public convenience and necessity will be served by the approval of the application for certification as an intrastate carrier.

Our determination of public need and the resultant certification of the Applicant is based on the promise of the benefits of AOS price competition developing and flowing to end users. The Department notes that should we find in the future that such advantages of competition do not materialize, we reserve the right to reconsider the issue of public need as conditions in the Applicant's provision and pricing of its services may warrant. International Telecharge, Inc., D.P.U. 87-72/88-72, at 9 (1988) (" ITI").

B. Degree of Regulation

Because of the Applicant's proposal to provide AOS, it is appropriate to discuss the degree of regulation applicable. In IntraLATA Competition, supra, the Department adopted a dominant/nondominant regulatory framework for the intrastate market in Massachusetts. In that Order, we found all interexchange carriers other than AT&T Communications of New England, Inc. ("AT&T") to be nondominant carriers in the interLATA market. Id. at 63. We also found only AT&T and NET to be dominant carriers in the intraLATA market. Id. at 67-69; AT&T, D.P.U. 90-133 (1991).

In addition, the Department has found that AOS companies may be dominant carriers when they provide service to captive customers, i.e., end users unable to choose an alternative source of service at certain locations such as hotels, motels, hospitals

and pay telephones. ITI, supra; IMR Telecom, D.P.U. 89-212 (1990); Fiberline Network Communications Limited Partnership, D.P.U. 90-28/46 (1990).

In determining that AOS companies are dominant carriers, the Department reviewed the AOS companies' relationship to end users rather than to the location owners that selected their services. ITI, supra at 11. We find in this case the same relationship exists between the Applicant and its end users, that existed in the above-cited cases. Accordingly, for the reasons articulated in previous AOS cases, we find that the Applicant requires regulation as a dominant carrier for the provision of AOS.

The provision of the Applicant's telecommunications services other than AOS does not require dominant regulation because customers subscribing to these other services are free to choose a different carrier should they be dissatisfied with the Applicant's rates and charges, quality of service, or any other aspect of its operation. IntraLATA Competition, supra at 63-64; ITT Communications, D.P.U. 88-82/199, at 10 (1989); Fiberline Network, supra at 9.

C. Tariff Issues

We note that although the Applicant has not yet filed a tariff for the Department's consideration, issues relating to AOS rates have been addressed by the Department. In previous cases involving the provision of AOS, the Department has found that AOS

rates would be subject to traditional cost-of-service ratemaking standards requiring the Department to review the reasonableness of expenses, rate base, and rate of return. ITI at 16; NY COM, Inc., D.P.U. 88-69/87, at 13 (1988); ACC Long Distance Corp., D.P.U. 88-129, at 8 (1988). Therefore, because the Applicant's status is that of a dominant carrier for the provision of AOS, the Applicant would be required to file a tariff and supporting materials for AOS so that such rates could be investigated by the Department.

However, the Department is cognizant of the time, expense, and administrative burden involved in presenting a rate case. We would, therefore, accept, in principle, a proposal by the Applicant to base its AOS rates on AT&T's intrastate rates and/or NET's intrastate intraLATA rates for similar services because these rates have been found to be just and reasonable.⁵ Moreover, absent a rate case, all AOS providers must file revised tariffs for intra- and interLATA AOS that reflect any approved changes in AT&T's and NET's tariffs. Accordingly, as an alternative to cost-based rates, the Applicant may file a tariff in which all rates and charges to the end user are equal to or

⁵ On March 19, 1993, the Department issued a memorandum clarifying its policy regarding the rates charged by AOS providers in Massachusetts. Providers of AOS may file statewide rates that are identical to, or lower than, the corresponding rates of AT&T.

lower than the corresponding AT&T and NET rates approved by the Department after taking into account any subscriber surcharges. Therefore, as in ITI, supra, we find that if the Applicant bills and collects a subscriber surcharge, the total amount billed to the end user, including such surcharge, may not exceed the tariffed rates of AT&T and/or NET.

D. Consumer Protection

1. Postings

The potential for confusion among end users necessitates adequate customer notification regarding the provision of operator services. Customer notices in the form required in ITI, supra, must be provided by the Applicant at transient locations to avoid customer confusion and to provide other useful consumer information.⁶ Likewise, federal law provides for consumer notification by AOS providers. 47 U.S.C. § 226. Among these requirements is the mandate for AOS providers to post information labels unless a state has adopted other laws or regulations establishing similar posting requirements. 47 U.S.C. §§ 226

⁶ We acknowledge that certain of the Department's conditions for the provision of AOS, as set forth in ITI, supra, may not be applicable at correctional facilities. Therefore, the Applicant must file with the Department for explicit exemptions from these requirements before providing service to correctional facilities.

(c)(1)(A) and (2). ⁷

Accordingly, the Applicant must include specific language in its tariff indicating that a subscriber is required to post the Applicant's consumer information at all aggregator locations, and that pursuant to the Applicant's tariff, any violation of this provision could result in disconnection of service. The Applicant's tariff also must contain a provision indicating that the end user has the right to appeal any unresolved disputes concerning intrastate calls to the Department. We find that these requirements do not place any undue burdens on the Applicant and that any burden on the Applicant is outweighed by the need for adequate consumer information.

The Applicant included a sample label that conforms to the Department's requirements (DPU IR 1-7 Rev.). The Applicant also shall submit two copies of its final printed label to the Department within 30 days of the date of this Order.

2. Rate Information

The ability to provide rate information upon request is evidence of an AOS provider's technical and managerial

⁷ Because the AOS labelling requirements of the Department are similar to the federal requirements, the Applicant may not need to affix a separate label to comply with federal requirements. However, the Department encourages the Applicant to direct any questions concerning compliance with the federal requirements to the Federal Communications Commission.

capabilities and, therefore, has been an essential condition for certification. ITI at 4-5. Furthermore, federal law requires operator service providers to disclose immediately to the end user upon request and at no charge to the end user: (1) a quote of its rates or charges for the call; (2) the methods by which such rates or charges will be collected; and (3) the methods by which complaints concerning such rates, charges, or collection practices will be resolved. 47 U.S.C. § 226 (b)(1)(C).⁸ Because end users may use the Applicant's AOS at any hour of the day or night, comprehensive intrastate rate information must be available 24 hours per day, seven days a week. We find that the provision of rate information as described by the Applicant meets the Department's requirements.

E. Public Safety

When a caller places an emergency call, the end user dials "0" or "911." Emergency 911 calls would be routed free of charge through the local exchange carrier's ("LEC") network to the appropriate agency which would handle the call (Appl. at 7). If the end user dials "0" to place an emergency call at a location

⁸ Operator services include either automatic or live assistance to a consumer to arrange for billing or completion, or both, of a call through a method other than (A) automatic completion with billing to the telephone from which the call originated; or (B) completion through a carrier-specific access code number used by the consumer with billing to an account previously established with the carrier by the consumer. 47 U.S.C. § 226 (a)(7).

served by the Applicant, the call would be handled by the LEC's operator serving the originating location of the call (id.). Should a caller dial "00" at a coin telephone, the Applicant's operator would dial the appropriate emergency number as requested by the caller (id.). We find that the provision of emergency services as described by the Applicant is sufficient to meet public safety needs.

IV. ORDER

Accordingly, after due notice and consideration, it is
ORDERED: That the application of MFS Intelenet of
Massachusetts, Inc. filed with the Department on
December 7, 1993, for a certificate of public convenience and
necessity to provide intrastate telecommunications services as a
resale, value-added, or interexchange common carrier be and
hereby is approved; and it is

FURTHER ORDERED: That MFS Intelenet of Massachusetts, Inc.
may file a tariff of rates and charges consistent with the
provisions of this Order, but it may not provide intrastate
telecommunications service within Massachusetts until a tariff
has been approved by the Department.

By Order of the Department,