D.P.U. 96-72

Review by the Department of the propriety of the rates and charges set forth in the negotiated interconnection agreement between New England Telephone and Telegraph Company, d/b/a NYNEX and MFS Intelenet of Massachusetts, Inc. pursuant to the Telecommunications Act of 1996 and G.L. c.159.

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I. INTRODUCTION

On February 8, 1996, the Telecommunications Act of 1996 ("Act"), amending the Communications Act of 1934, 47 U.S.C. §§ 151 et seq. was enacted.[1] The Act established a regulatory framework for the expansion of competition in the local telecommunications industry. The Act also established broad requirements for interconnection with incumbent local telephone companies and the procedures for the negotiation, arbitration and approval of the interconnection agreements. The Act also designates the respective state regulatory commissions as the primary forum for review of negotiated and arbitrated interconnection agreements.

II. PROCEDURAL HISTORY

On July 10, 1996, New England Telephone and Telegraph Company, d/b/a NYNEX ("NYNEX") filed a negotiated interconnection agreement ("Agreement") between NYNEX and MFS Intelenet of Massachusetts, Inc. ("MFS") for approval by the Department of Public Utilities ("Department"). The Agreement sets forth terms under which NYNEX and MFS (collectively "Petitioners") will interconnect their respective networks, as well as the network elements, services, and other arrangements that NYNEX will provide to MFS. The Department docketed this matter as D.P.U. 96-72.[2]

Pursuant to notice duly issued, a public hearing was held on August 7, 1996. The

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1 In this Order, references to the Act refer to the respective section of the United States Code, Title 47.

2 The Department did not open an investigation and limited participation to the submission of comments.

Department established August 7, 1996 as the deadline for submission of comments regarding the Agreement,[3] and August 23, 1996 as the deadline for submission of reply comments from NYNEX and MFS. Initial written comments were submitted by the Department of the Attorney General ("Attorney General"); AT&T Communications of New England, Inc.; MCI Telecommunications Corporation ("MCI"); Sprint Communications Company L.P.; New England Cable Television Association, Inc.; and Teleport Communications Group, Inc. Reply comments were submitted by both NYNEX and MFS. In order to allow commenters the opportunity to review the Federal Communications Commission ("FCC") Order implementing the provisions of the Act,[4] the Department allowed additional comments to be filed on September 6, 1996, and additional reply comments to be filed on September 13, 1996. Additional comments were submitted by the Attorney General, and additional reply comments were submitted by both NYNEX and MFS.

III. DESCRIPTION OF NEGOTIATED AGREEMENT

The Agreement, dated June 26, 1996, is a comprehensive set of terms and conditions governing the interconnection of NYNEX's local exchange network with MFS's network, including (1) network architecture; (2) the transmission and routing of exchange service and exchange access traffic; (3) access to NYNEX's unbundled network elements; (4) resale of

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[3] The Department extended the deadline for submission of initial comments through August 14, 1996.

[4] See First Order and Report In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, FCC Docket No. 96-98 (1996) (August 8, 1996).

NYNEX's retail exchange services; (5) collocation; (6) number portability; (7) dialing parity; (8) access to rights-of-way; and (9) directory listings and directory assistance. The Agreement is for interconnection in the 617/508 LATA (Agreement, § 4.2). It has an initial term of three years (id. at § 21.0).

Pursuant to Section 251(c)(2) of the Act, the Agreement provides for transmission and routing of local traffic and intraLATA toll traffic between the respective local exchange customers (Agreement at § 5.1). The parties will compensate each other at the rate of $.008 per minute for transport and termination of local traffic originating on NYNEX's or MFS' network for termination on the other party's network (id. at § 5.8; Pricing Schedule). This rate will be adjusted bi-annually beginning January 1, 1997, based on the following formula:

(MFS-originated peak minutes + NYNEX-originated peak minutes) * Peak Rate/(Total MFS + NYNEX Minutes)

+

(MFS-originated off-peak minutes + NYNEX-originated off-peak minutes) * Off-peak Rate/(Total MFS + NYNEX minutes)

where Peak Rate = $0.009 per minute of use

Off-Peak Rate = $0.0065 per minute of use

(id. at Pricing Schedule).

Pursuant to Section 251(c)(2) of the Act, the Agreement provides for the joint provision of trunks that will connect MFS to NYNEX's tandem switches to allow interexchange carriers to originate and terminate traffic from/to MFS customers (Agreement at

§ 6.2). The parties will use a meet-point billing arrangement for these jointly-provided switched exchange access services (id. at §6.3). The Agreement also addresses the transport and termination of other types of traffic, including information services traffic, Busy Line Verification/Busy Line Verification Interrupt ("BLV/BLVI") traffic, Tandem Transient service, Dedicated Transit service, and a 911/E911 arrangement (id. at §§ 7.1, 7.2, 7.3, 7.4, and 7.5).

Pursuant to Section 251(c)(3) of the Act, MFS can purchase the following unbundled network elements from NYNEX: (1) links (unbundled from local switching and local transport), (2) ports, (3) private lines, (4) special access, and (5) switched local transport from the trunk side of its switches (Agreement at §§ 9.1, 9.3, 9.4). The Agreement provides that the monthly rates for unbundled links will be $16.50, plus the applicable End User Common Line Charge (as specified in the Interim Co-Carrier Agreement ("ICCA")[5] between NYNEX and MFS), but will change when the Department determines interim and final link rates (id. at § 9.9, Pricing Schedule). The Agreement contains a true-up provision that requires NYNEX to compensate MFS for the difference between the current rate for links and the interim and final link rates (id. at § 9.9). The monthly rates for residence and business voice grade ports will be $8 (id.). Under the Agreement, NYNEX also is required to provide, at any technically feasible point, access to other unbundled network elements, at the request of MFS (id. at § 9.6.1). Such requests will be governed by the procedures and timetables for "Network

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[5] The ICCA was adopted by the parties in April, 1996 to govern the terms of interconnection until a more permanent agreement was reached (see attachment to Agreement).

Element Bona Fide Requests" (id. at Att. A). The Agreement provides that if the Department does not set interim or final link rates by December 31, 1996, NYNEX will file a tariff with the Department no later than February 1, 1997 designed to lead to the establishment of final link rates (id. at § 9.9.14).

Pursuant to Sections 251(c)(4) and 251(b)(1) of the Act, MFS will be able to purchase for resale at wholesale rates NYNEX's local exchange services (Agreement at § 10.0). Until the Department approves permanent resale rates, residential and business access lines are being offered to MFS at discounts ranging from 6.5 to 9.5 percent and 6.6 to 9.4 percent off of retail rates, respectively (id. at Pricing Schedule). The parties also may negotiate term and volume discounts (id. at § 10.3). The Agreement requires that MFS also make available to NYNEX its retail services for resale (id. at § 10.2).

Under the Agreement, NYNEX also is required to provide physical collocation for MFS' transport facilities and equipment as necessary for interconnection or for access to unbundled network elements, pursuant to Section 251(c)(6) of the Act (Agreement at § 12.1). The Agreement also provides that the parties provide number portability to each other, in accordance with rules and regulations prescribed by the FCC and/or the Department (id. at § 13.1.1). Until full number portability is implemented in the industry, the parties will provide interim number portability through remote call forwarding and other measures (id. at § 13.2). NYNEX also is required to provide MFS with local dialing parity, as required by Section 251(b)(3) of the Act (Agreement at § 15.0). The Agreement also addresses such issues as access to rights-of-way, and directory listings and directory assistance (id. at §§ 16.0,

19.0).

The Agreement contains performance standards that NYNEX must meet with regard to the installation of links, the provision of interim number portability, and out-of-service repairs, the breach of which may result in the payment of liquidated damages to MFS (id. at § 27.0). Section 28.0 of the Agreement contains a provision that requires the parties to renegotiate any portion of the Agreement which are rejected by the FCC or the Department. Finally, the Agreement contains a stipulation and agreement of the parties that "this Agreement, if fully and completely met by NYNEX, will satisfy the obligation of NYNEX to provide Interconnection under Section 251 of the Act, and the requirements of the Competitive Checklist under section 271 of the Act" (Agreement at 3.0).

IV. POSITIONS OF THE COMMENTERS

A. Commenters

The Attorney General and AT&T argue that the Department should reject the Agreement. Sprint, MCI, Teleport and NECTA, while not explicitly opposing the Agreement, do raise objections to certain aspects.

1. Inconsistency with Public Interest

The Attorney General contends that the proposed prices for reciprocal compensation and resale "exceed the just and reasonable range of rates established by the FCC and would result in an artificially high wholesale rates to MFS and eventually unjust and unreasonable retail rates to consumers in the Massachusetts local exchange market" (Attorney General Initial Comments at 5). Therefore, the Attorney General argues that the agreement is not consistent

with the public interest (id.).

The Attorney General makes four specific arguments on this point. First, the Attorney General, while not requesting that the Department apply the standard for arbitrated agreements,[6] asks that the Department "consider the fact that the Agreement's proposed prices for reciprocal compensation and resale are **not** based on TELRIC [Total Element Long-Run Incremental Cost] studies and avoidable costs studies, and are between two and four-and-one-half times higher than the prices established in the FCC's pricing default proxies" (Attorney General Additional Comments at 3) (emphasis in original; footnote omitted). The Attorney General contends that if the Department approves these rates, it would be neglecting its statutory responsibility to ensure just and reasonable rates and would be departing from its "commitment to the development of economically efficient competition" in Massachusetts (id. at 4-6, citing G.L. c. 159, §§ 12, 14, 16, 17, and 19; Act, § 252(e)(3) (state commissions may reject negotiated agreements that would prohibit the establishment or enforcement of state law).

Second, the Attorney General argues that "[t]he pricing of the NYNEX and MFS networks at a level almost five times higher than economic cost will in all likelihood significantly impede the development of local exchange competition in Massachusetts" (id. at 5). Third, approval of the Agreement, according to the Attorney General, would also be contrary to the Department's findings in Local Competition, D.P.U. 94-185, at 15 (1996), in which the Attorney General contends the Department found that "TSLRIC [Total System

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6 See Section 252(c) of the Act regarding Standards for Arbitrated Agreements.

Long-Run Incremental Cost] is the appropriate cost methodology to determine NYNEX's prices for essential services, which includes end-office and tandem termination of local traffic between competitors" (Attorney General Additional Comments at 6). Finally, the Attorney General argues that approval of the Agreement would "create a two-tier pricing arrangement in Massachusetts" for negotiated and arbitrated agreements, and, thus, "would send the wrong message to CLECs [Competitive Local Exchange Carriers] wanting [to] negotiate" (id. at 7).

2. Section 3.0 "Competitive Checklist"

Most commenters expressed concern with Section 3.0 of the proposed Agreement. The commenters contend that it is premature for the Department to address this issue now and that the Department will have an opportunity to do so, "if and when NYNEX applies to [the FCC] for authority to provide in-region interLATA service" (see, e.g., NECTA Comments at 4). AT&T claims that "inclusion of the statement in this Agreement violates the Act according to the FCC's interpretation of the Act" and Department approval of the provision could be construed as an "endorsement of the proposition that NYNEX has satisfied its obligations under §§ 251 and 271 of the Act, thereby foreclosing further inquiry by interested parties and by the Department on that important issue" (AT&T Comments at 2). MCI and Sprint assert that it is inappropriate for the Department to determine at this time whether NYNEX has met the Competitive Checklist (MCI Comments at 2; Sprint Comments at 1-2). In addition, the Attorney General argues that proposed prices for transport and termination, and resale do not meet the requirements of the Competitive Checklist (Attorney General Initial Comments at 2-5, citing § 271).

3. Precedential Value

NECTA and Teleport argue that the Department should not use the Agreement as precedent for other parties in the Department's decisions on other negotiated agreements or agreements reached through arbitration under Section 252 of the Act (Teleport Comments at 1-2; NECTA Comments at 3). According to NECTA, "the Department should not permit NYNEX to condition negotiation or agreement with other carriers on acceptance of some or all of the provisions of this Agreement, nor should the Department itself consider this Agreement or any of its terms to be a standard or template that should be imposed on other new entrants in subsequent mediation or arbitration proceedings under Section 252(e)" (NECTA Comments at 3).

B. Petitioners

According to the Petitioners, none of the commenters raise grounds for rejection of the Agreement, in whole or in part (NYNEX Reply Comments at 2; MFS Reply Comments at 1). NYNEX and MFS argue that the Agreement meets the very limited standard of review for negotiated agreements under Section 252(e)(2)(A) of the Act (NYNEX Reply Comments at 2-3; MFS Reply Comments at 1-2). Petitioners argue that the Agreement does not discriminate against another carrier and that no commenter alleges otherwise (NYNEX Reply Comments at 6; MFS Reply Comments at 2). MFS notes that pursuant to Section 252(i) of the Act, NYNEX must make the Agreement available to any other requesting telecommunications carrier but no carriers are bound by the Agreement and are free to negotiate their own arrangements (MFS Reply Comments at 2).

In addition, Petitioners argue that the Agreement is not inconsistent with the public interest because it (1) is the product of good faith negotiations as contemplated by the Act, (2) embodies a comprehensive set of terms and conditions for interconnection that will allow MFS to compete with NYNEX as a local exchange carrier, and (3) "furthers the pro-competitive policy underlying the Act" (NYNEX Reply Comments at 6; MFS Reply Comments at 2-3).

The Petitioners argue that the Attorney General's arguments are erroneous because he is applying the standard of review for arbitrated agreements in Section 252(e)(2)(B) of the Act, rather than the standard of review for negotiated agreements in Section 252(e)(2)(A) (NYNEX Reply Comments at 4; MFS Reply Comments at 4). MFS contends that Section 252(a) makes clear that negotiated agreements are not required to comply with the Section 252(d) pricing standards (MFS Reply Comments at 4). NYNEX contends that contrary to the Attorney General's claim, "there is no requirement in the Act that an agreement reached through negotiation reflect the Section 251 interconnection requirements, FCC regulations implementing Section 251, or the pricing standards of Section 252(d) applicable to the elements and services provided under Section 251" (NYNEX Reply Comments at 4). According to MFS, "the FCC repeatedly stated that the pricing standards and proxy rates [in the Act] are to be used by State commissions *only where parties cannot agree on prices voluntarily*" (MFS Reply Comments at 5) (emphasis in original). In addition, the Petitioners contend that "the FCC has expressly ruled that a state agency may approve a negotiated agreement under Section 252(e)(2)(A) even if it does not comply with the FCC's interconnection and pricing rules" (NYNEX Reply Comments at 5, citing First Report and

Order in CC Docket No. 96-98, App. B, ¶ 551.3).

The Petitioners also challenge the Attorney General's claim that the reciprocal compensation and resale rates "would result in artificially high wholesale rates to MFS and eventually unjust and unreasonable rates to consumers" (MFS Reply Comments at 6). MFS argues that "there is no basis for assuming that the reciprocal compensation rates will adversely affect retail rates because the higher rates that MFS pays NYNEX will be offset by the higher revenues that MFS receives from NYNEX" (id.). In addition, MFS argues that even if the negotiated resale rates do not comply with the FCC's pricing standards, the agreement provides that permanent rates, which presumably will be in compliance, will be put in place once approved by the Department (id. at 6-7). MFS states that it accepted a "modest resale discount" (i.e., "90.5% to 93.5% of retail rates" compared with the FCC's resale proxies of "75% to 83% of retail rates") now, thus avoiding a more protracted arbitration process, with the knowledge that it could avail itself of greater discounts that resulted from other negotiated agreements or arbitrations and that it would also be eligible for any permanent resale rates approved by the Department (MFS Response to Attorney General's Additional Comments at 3-5).

In challenging the Attorney General's assertion that an agreement is not in the public interest unless the rate for reciprocal compensation and resale are based on TELRIC and avoided cost studies, NYNEX argues that the Attorney General's position would "force[ ] parties to litigate whenever any matter has not been finally determined by a regulator, and eliminates the incentive for compromise by parties over issues that can be debated, such as

costing methods" (NYNEX Response to Attorney General's Additional Comments at 3). MFS asserts that the Attorney General's position effectively requires that CLECs resort to time consuming and expensive arbitration to reach interconnection agreements (MFS Response to Attorney General's Additional Comments at 3). In addition, MFS argues that the Attorney General misreads Section 252(d)(3) of the Act, in contending that state commissions can reject a negotiated agreement "because state law calls for different prices than are provided in the agreement" (id. at 4). On the contrary, MFS asserts that Section 252(d)(3) only gives the Department authority over "*non-price* terms, such as 'service quality standards or requirements'" (id.) (emphasis in original). NYNEX also contends that the Agreement is consistent with the Department's longstanding policy favoring the development of efficient competition, in that it is based on rates, terms and conditions that MFS believes will enable it to compete effectively in the local exchange market (NYNEX Response to Attorney General's Additional Comments at 4). Moreover, NYNEX claims that until the Department approves a TELRIC or an avoided cost study, the Attorney General simply is speculating about whether the prices for reciprocal compensation and resale are excessive (id.). Finally, the Petitioners assert that there is no evidence that the Agreement will harm Massachusetts customers or that it will impede the development of competition (id.).

With respect to the concerns raised by commenters about Section 3.0 of the Agreement, NYNEX argues that it is not requesting that (1) the Department find that the Agreement meets the Competitive Checklist at this time and (2) the Department make any findings regarding the application of any of the Agreement's terms and conditions in a potential future arbitration

with another carrier (NYNEX Reply Comments at 7). MFS argues that NYNEX's compliance with the Competitive Checklist is not a condition for approval of a negotiated agreement (MFS Reply Comments at 7). NYNEX also claims that AT&T is in error when it claims that Section 3.0 violates the Act because NYNEX has not "made concurrence with the provision a necessary condition either for negotiations or to conclude an agreement on any other term or condition" (NYNEX Reply Comments at 7 n.1, citing First Report and Order in CC Docket No. 96-98, ¶ 152 and App. B, ¶ 51.301).

Finally, MFS notes that if the Department finds one or more provisions of the Agreement to be objectionable, rather than rejecting the Agreement in its entirety, the Department should reject only the objectionable provision(s), as permitted by the Act (MFS Response to Attorney General's Additional Comments at 1, citing § 252(c)).

V. STANDARD OF REVIEW

The Act imposes a general duty of interconnection on telecommunications carriers. 47 U.S.C. § 251(a). The Act places obligations of dialing parity, access to rights of way, reciprocity, and number portability on local exchange carriers. 47 U.S.C. § 251(b). In addition, the Act places the duty upon local exchange carriers to negotiate in good faith, interconnect with other local exchange carriers' networks, and provide nondiscriminatory access to network elements on an unbundled basis. 47 U.S.C. § 251(c). The Act also establishes procedures for negotiation, arbitration, and approval of interconnection agreements. 47 U.S.C. § 252. The Act provides that upon receiving a request for interconnection pursuant to Section 251, an incumbent local exchange carrier may negotiate and enter into a binding

agreement without regard to the standards set forth in subsections (b) and (c) of section 251. 47 U.S.C. § 252(a)(1). Under subsection (e) of Section 252, the agreement must be submitted to the appropriate state commission. Id.

Section 252 of the Act provides for approval by the state commission of negotiated agreements. 47 U.S.C. § 252. The Act provides that any interconnection agreement reached by negotiation shall be submitted for approval, and the state commission shall approve or reject the agreement, with written findings as to any deficiencies. 47 U.S.C. § 252(e)(1). The Act provides that the state commission may only reject an agreement, or any portion thereof, if it finds that (1) the agreement discriminates against a telecommunications carrier not a party to the agreement, or (2) the implementation of such agreement is not consistent with the public interest, convenience, and necessity. 47 U.S.C. § 252(e)(1). The Act does not prohibit a state commission from establishing other non-price requirements in its review of an agreement, including service quality standards. 47 U.S.C. § 252(e)(3).

The Act provides that a state commission must act to approve or reject an agreement adopted by negotiation within 90 days after submission by the parties. 47 U.S.C. § 252(e)(4).[7] The Act states that no state court shall have jurisdiction to review the action of a state commission in approving or rejecting an agreement.[8] Id.

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[7] If a state commission fails to act to carry out its responsibility under this section, the FCC shall issue an order preempting the state commission jurisdiction and act for the state commission. 47 U.S.C. § 252(e)(5).

[8] The proceeding by the FCC, and any judicial review of the FCC's action, shall be the exclusive remedies for a state commission's failure to act. 47 U.S.C. § 252(e)(6). Any party aggrieved by a state commission determination may bring an action in an

VI. ANALYSIS AND FINDINGS

Consistent with the Act's standard of review for negotiated agreements, the Department may reject the Agreement (or some portion(s) thereof) only if it determines that the Agreement (or portion(s)) discriminates against a telecommunications carrier not a party to the Agreement, or implementation of the Agreement (or portion(s)) is not consistent with the public interest, convenience, and necessity. See 47 U.S.C. § 252(e)(1). This standard of review is limited and we believe reflects the intent of Congress to encourage telecommunications carriers, to the extent possible, to reach interconnection agreements through good-faith negotiations, rather than through state commission arbitrations.

As noted above, no commenters have argued that the Agreement is discriminatory to other telecommunications carriers. The Agreement does not bind other carriers. Other carriers are free to negotiate their own arrangements with NYNEX. On the other hand, the Act requires that NYNEX make available to other telecommunications carriers any and all terms and conditions in the Agreement, if so requested. 47 U.S.C. § 252(i). Additionally, the Agreement does not appear to adversely affect other telecommunications carriers. Therefore, the Department finds that the Agreement is not discriminatory to other telecommunications carriers.

With respect to the second part of the standard of review, the Attorney General argues that the Agreement is not consistent with the public interest based on the fact that the reciprocal compensation and resale rates in the Agreement are not consistent with the pricing

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appropriate federal district court. Id.

standards for arbitrated agreements of the Act and the FCC's rules. Therefore, the Department must determine whether the reciprocal compensation and resale rates in the Agreement are in the public interest. Because this is a negotiated agreement, not an arbitrated agreement which is subject to the requirements of Section 251 of the Act, the Department does not, however, need to determine that the reciprocal compensation and resale rates in the Agreement are consistent with Section 251 in order to find that the Agreement is consistent with the public interest.

Section 252(a) states that "an incumbent local exchange carrier may negotiate and enter into a binding [interconnection] agreement with the requesting telecommunications carrier or carriers *without regard to* [the interconnection standards in Section 251]. 47 U.S.C. § 252(a) (emphasis added). In addition, the FCC has stated that "parties that voluntarily negotiate agreements need not comply with the requirements established under Sections 251(b) and (c), including any pricing rules we adopt," and state commissions may approve a negotiated agreement under Sections 252(e)(2)(A) even if it does not comply with the FCC's interconnection and pricing rules. First Report and Order in CC Docket No. 96-98, App. B, ¶¶ 54, 551.3. In contrast, the Act requires that state commissions "ensure" that arbitrated agreements meet the requirements of Section 251, including FCC regulations, and the pricing standards of Section 252(d).

The negotiated rates in the Agreement are the product of good faith negotiations between two competing local exchange carriers. Presumably, parties, who best know their individual business interests, negotiating in good faith will arrive at an agreement that each

deems to be acceptable in order to compete effectively in the local exchange market. If MFS or NYNEX believed that the rates, terms and conditions under negotiation would not allow them to compete effectively in the local exchange, they could seek arbitration from the Department under Section 252(b) of the Act.

The Petitioners also recognize that these rates may not be permanent. As MFS noted, it has accepted these rates in order to avoid the delay associated with the arbitration process, with the knowledge that it could avail itself of greater discounts that resulted from other negotiated agreements or arbitrations and that it also would be eligible for any permanent rates approved by the Department.

Moreover, the Attorney General has not adequately supported the contentions that these rates will adversely affect retail customers or impede competition. Section 252(d)(3) does not give the Department authority to reject the Agreement's pricing terms because they allegedly conflict with Massachusetts statutes and pricing principles. Section 252(d)(3) allows states to enforce state law regarding non-price factors, such as service quality standards, not price factors. Accepting the Attorney General's rationale, the Department would have no discretion to approve a negotiated agreement in which the rates for interconnection, unbundled elements or resold services were higher than the FCC's proxy rates or otherwise deviated from the Act's pricing standards and FCC rules interpreting those standards. This would render meaningless the Act's allowance for negotiated agreements and thus, defeat the intent of Congress to encourage such agreements. To read the section otherwise would go beyond the limited review contemplated in Section 252(e)(1).

The Agreement will facilitate, in a timely fashion, the continued operation of MFS in the local exchange market in Massachusetts, in order to meet the needs of MFS' existing and new customers. The negotiation process has allowed continued operation to proceed more expeditiously than through arbitration, while allowing the MFS the opportunity to avail itself of more favorable terms and conditions obtained by other interconnecting parties, either through negotiation or arbitration.

Finally, the Department addresses the commenters' concerns with Section 3.0 of the Agreement. As noted above, that section states that the parties have stipulated and agreed that if NYNEX fulfills the terms of the Agreement, it will have satisfied its obligation to provide interconnection under Section 251 of the Act and the requirements of the Section 271 Competitive Checklist. Although the Department does not believe that approval of this provision in any way predetermines the issue of NYNEX's satisfaction of its obligations under Sections 251 and 271, such approval may give the impression of a Department finding on this issue. Because NYNEX has not yet made a request to provide in-region interLATA long-distance service, this issue is premature. Pursuant to Section 252(e)(2)(A) of the Act, the Department may reject any portion of a negotiated agreement that is not consistent with the public interest, convenience, and necessity. Therefore, the Department rejects Section 3.0 of the Agreement.

Accordingly, after reviewing the Agreement and comments submitted by the commenters and Petitioners, the Department finds that the Agreement does not discriminate against any other telecommunications carrier, and implementation of the Agreement, exclusive

of Section 3.0, is consistent with the public interest. In approving the Agreement, the Department makes no findings on the applicability of its terms and conditions to other negotiated agreements which may be submitted for Department review.

VII. ORDER

Accordingly, after due notice, hearing, and consideration, it is

ORDERED: That the terms and conditions of the negotiated interconnection agreement, with the exception of Section 3.0, between New England Telephone and Telegraph Company d/b/a NYNEX and MFS Intelenet of Massachusetts, Inc. be and hereby is approved; and it is

FURTHER ORDERED: That New England Telephone and Telegraph Company d/b/a NYNEX and MFS Intelenet of Massachusetts, Inc. shall comply with all provisions of this Order.

By Order of the Department,

John B. Howe, Chairman

Janet Gail Besser, Commissioner