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March 3, 1997

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Docketing Department
Public Utilities Commission
180 East Broad Street
Columbus, Ohio 43266-0573

Attn.: Jeff Jones, Attorney Examiner

Re: Opposition of MFS Intelenet of Ohio, Inc. to Cincinnati Bell's Application for Rehearing

Dear Sir or Madam:

Enclosed for filing on behalf of MFS Intelenet of Ohio, Inc. are an original and ten (10) copies of the Opposition of MFS Intelenet of Ohio, Inc. to Cincinnati Bell's Application for Rehearing. Also attached is a Motion For Leave To Late File Memorandum In Opposition. MFS Intelenet and its undersigned counsel also request that any future correspondence in this docket be addressed to and properly served on the undersigned counsel of record in this matter.

Please date-stamp the additional enclosed copy and return it to the undersigned in the enclosed self-addressed, stamped envelope. Should you have any questions concerning this filing, please do not hesitate to contact the undersigned.

Very truly yours,

Margaret M. Charles
Dalhi N. Myers
Counsel for MFS Intelenet of Ohio, Inc.

cc: Ruth Durbin
John McCluskey
Andrew D. Lipman
Russell M. Blau

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

RECEIVED-PROCEEDINGS DIV
97 MAR 14 PM 12:58
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In the Matter of the Commission)	
Investigation Relative to the Establishment)	
of Local Exchange Competition and Other)	
Competitive Issues.	)	\ Case No. 95-845-TP-COI
In the Matter of MCI Metro Access)	
Transmission Services, Inc. to Add a New	)	\ Case No. 96-808-TP-ATA
Rate)	
In the Matter of the Following)	
Applications for Authority to Provide)	
Local Telecommunication Services in)	
Ohio:)	
Time Warner Communications of Ohio,)	
L.P.	)	\ Case No. 94-1695-TP-ACE
MCI Metro Access Transmission Services,)	
Inc.	)	\ Case No. 94-2012-TP-ACE
MFS Intelenet of Ohio, Inc.	)	\ Case No. 94-2019-TP-ACE
ICG Access Services, Inc.	)	\ Case No. 95-814-TP-ACE
Cablevision Lightpath	)	\ Case No. 95-1131-TP-ACE
AT&T Communications of Ohio, Inc.	)	\ Case No. 96-190-TP-ACE
LCI International Telecom Corp.	)	\ Case No. 96-263-TP-ACE
Scherers Communications Group Inc.	)	\ Case No. 96-298-TP-ACE
Brooks Fiber Communications of Ohio,)	
Inc.	)	\ Case No. 96-349-TP-ACE
TGC Cleveland	)	\ Case No. 96-832-TP-ACE
Preferred Carrier Services, Inc.	)	\ Case No. 96-428-TP-ACE
Communications Buying Group, Inc.	)	\ Case No. 96-431-TP-ACE
Ameritech Communications of Ohio,	)	\ Case No. 96-658-TP-ACE
Sprint Communications Company L.P.	)	\ Case No. 96-879-TP-ACE
Blue Ribbon Rentals II, Inc. d.b.a. Talk One)	
America	)	\ Case No. 96-926-TP-ACE
NEXTLINK	)	\ Case No. 96-1036-TP-ACE
Cable & Wireless	)	\ Case No. 96-1038-TP-ACE
MIDCOM Communications Inc.	)	\ Case No. 96-1123-TP-ACE
WinStar Wireless of Ohio, Inc.	)	\ Case No. 96-1206-TP-ACE
LCI International Telecom Corp.	)	\ Case No. 96-1288-TP-ACE
A.R.C. Networks, Inc.	)	\ Case No. 96-1370-TP-ACE
In the Matter of the Following)	
Applications To Amend Authority:)	

MFS Intelenet of Ohio, Inc.
ICG Telecom Group, Inc.

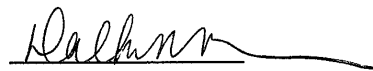
) \ Case No. 96-1240-TP-AAC
) Case No. 96-1336-TP-AAC

MOTION FOR LEAVE TO LATE FILE MEMORANDUM IN OPPOSITION

MFS Intelenet of Ohio, Inc., by its undersigned counsel, hereby requests a waiver of the Commission's Rules, and requests leave to file an Opposition in the above-referenced matter one day after the date established in the Commission's Rules. MFS Intelenet of Ohio respectfully submits that the Company and its undersigned counsel received notice of this Application for Rehearing via the Internet, and service of the Application via the Ohio PUC. Consequently, MFS and its counsel were disadvantaged with regard to reading, analyzing and preparing a response to the Cincinnati Bell Application. Accordingly, MFS Intelenet of Ohio respectfully requests that the attached memorandum contra to the Cincinnati Bell Application be accepted for filing one day late.

MFS Intelenet of Ohio, Inc. and its undersigned counsel also request that any future pleadings in this docket be served properly on its undersigned counsel at their previously stated address as listed below.

Respectfully Submitted,



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Its Attorneys

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission)	
Investigation Relative to the Establishment)	
of Local Exchange Competition and Other)	
Competitive Issues.)	Case No. 95-845-TP-COI
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MFS Intelenet of Ohio, Inc.
ICG Telecom Group, Inc.

) Case No. 96-1240-TP-AAC
) Case No. 96-1336-TP-AAC

**OPPOSITION OF MFS INTELENET OF OHIO, INC. TO CINCINNATI BELL
TELEPHONE'S APPLICATION FOR REHEARING**

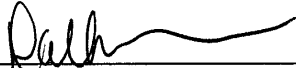
MFS Intelenet of Ohio, Inc. ("MFSI-OH"), by its undersigned counsel, and pursuant to the Ohio Public Utilities Commission's ("PUC" or "Commission") *Order in the Matter of the Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues* ("Order"), No. 95-845-TP-COI, June 12, 1996, Appendix A at 14, hereby opposes Cincinnati Bell Telephone's ("CBT") Application for Rehearing for the following reasons:

- (1) The Commission has heard, considered, and rejected CBT's argument that evaluation of an applicant's financial, managerial and technical ability to provide service is insufficient to satisfy the requirements of Ohio R.C. § 4905.24.
- (2) The Commission has heard, considered, and rejected CBT's claim that a "public paper proceeding" is insufficient to satisfy the requirements of Ohio R.C. § 4905.24.
- (3) CBT's argument that the Commission's believes its Guidelines are not yet final is without merit.

MFSI-OH's reasons supporting this Opposition to CBT's Application are set forth in the attached Memorandum in Support.

Respectfully Submitted,

MFS INTELENET OF OHIO, INC.,

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Its Attorneys

Dated: March 3, 1997

MEMORANDUM IN SUPPORT

I. The Commission has heard, considered, and rejected CBT's argument that evaluation of an applicant's financial, managerial and technical ability to provide service is insufficient to satisfy the requirements of Ohio R.C. § 4905.24.

As it has throughout these proceedings, CBT objects to the Commission's inquiry into an applicant's financial, managerial, and technical ability to provide telecommunications service as sufficient to satisfy the requirements of Ohio R.C. § 4905.24. In its discretion, the Ohio Commission has determined that "[s]atisfactory demonstration of an applicant's technical, financial, and managerial capabilities [to provide the proposed service] establishes that the public convenience is served by certifying the applicant." *Order* at 28. The Ohio Code delegates general authority to the Commission to determine what is necessary for the public convenience through an evaluation of the applicant's financial, technical, and managerial qualifications to provide telecommunications services.

CBT argues that evaluating financial, technical, and managerial capability to gauge whether it is "proper and necessary for the public convenience" to issue certificates to qualified applicants. Predictably, and consistent with its previous unsuccessful motions, CBT's current Application conspicuously fails to identify any public interest issues that are not subsumed by the Commission's analysis of an applicant's financial, managerial, and technical ability to provide service to Ohio residents. CBT should not be permitted to relitigate settled issues and hold hostage the advent of full competition in Ohio. MFSI-OH respectfully submits that CBT's Application should be denied.

II. The Commission has heard, considered, and rejected CBT's claim that a "public paper proceeding" is insufficient to satisfy the requirements of Ohio R.C. § 4905.24.

In its current Application, CBT reasserts its claim that the Commission is without authority to grant certification petitions without holding a "traditional" public hearing. The Commission has fully responded to this argument on numerous occasions, reasoning that a public hearing of the type requested by CBT is only necessary for "good cause shown by an interested person," and that a "public paper proceeding" will allow the Commission to "document that 'exercising of such license, permit, right, or franchise is proper and necessary for the public convenience' as required" by the Ohio Code. *Rehearing* in 95-845-TP-COI, Nov. 7, 1996 at 13. Moreover, the Commission has ruled that requiring mandatory public hearings in certification cases "will only guarantee bureaucratic delays and benefit incumbents over new entrants." *Id.*

In response to this issue raised by CBT in yet another proceeding in docket No. 95-TP-COI (*Supplemental Findings and Order* released on January 16, 1997), the Commission restated its conclusion that a public paper proceeding will fulfill the mandate of R.C. § 4905.24 and allow the Commission to document satisfactorily that the public convenience will be served by a grant of the requested authority. *Supplemental Findings and Order* released on January 16, 1997. In that Order, the Commission stated that it "will not favorably consider requests for a public evidentiary hearing which rely solely on these grounds in the future. . . ." *Supplemental Findings* at 4. CBT has failed to raise any new grounds to support its motion for a rehearing of these previously settled, stale issues. MFSI-OH respectfully submits that CBT is intentionally engaging in dilatory tactics to delay the inevitable start of full competition. Accordingly, MFSI-OH urges the Commission to deny summarily CBT's Application.

III. CBT's argument that the Commission's believes its Guidelines are not yet final is without merit.

It is axiomatic that the Ohio Supreme Court only hears appeals from "final" decisions by the Ohio PUC. *Ohio R.C. § 4903.14*; *Cincinnati v. Pub. Util. Comm'n*, 63 Ohio St. 3d 366, 588 N.E.2d 775 (1992); *Senior Citizens Coalition v. Pub. Util. Comm'n*, 40 Ohio St. 3d 329, 533 N.E.2d 353 (1988); *Toledo Edison Co. v. Pub. Util. Comm'n*, 5 Ohio St. 3d 95, 449 N.E.2d 428 (1983). In its Application for rehearing CBT cites the PUC's Memorandum In Support of Motion To Dismiss ("Commission's Motion") for the proposition that the "Commission applied the certification provisions of its Local Service Guidelines . . . when . . . the Guidelines are not final."¹ This analysis discloses a misreading of the Commission's Motion and a misunderstanding of the Commission's Rules.

In its Motion, the Commission explains that "Appellants [CBT, et al.] have appealed from a November 7, 1996 order of Public Utilities Commission of Ohio. . . which is not a final order." *Commission's Motion* at 1. The Commission further explains that the order is not final because applications for rehearing were filed in the proceeding. Each party to a proceeding before the Commission has the right to request a rehearing. *R.C. § 4905.24*. An appeal to the Ohio Supreme Court from an order of the PUC cannot be had until the PUC completes its review process, which includes an evaluation of and ruling on applications for rehearing. Thus, the Commission correctly objected to CBT's premature appeal to the Ohio Supreme Court on the grounds that it is not ripe. Notwithstanding CBT's misunderstanding of Commission procedure, the Commission must issue a ruling on the applications for rehearing before the matter is ripe for judicial review. CBT's claim that the Commission admitted its Guidelines are not final because

¹ *Cincinnati Bell Telephone Application for Rehearing* at 2, 5.

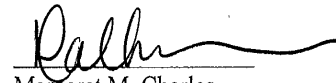
there is an application for rehearing pending is spurious. MFSI-OH, therefore, respectfully submits that CBT's Application for Rehearing should be denied.

CONCLUSION

For the reasons stated herein, MFSI-OH respectfully requests that CBT's Application for Rehearing be denied.

Respectfully Submitted,

MFS INTELENET OF OHIO, INC.



Margaret M. Charles

Dalhi N. Myers

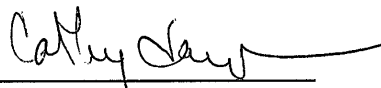
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Dated: March 3, 1997

CERTIFICATE OF SERVICE

I, Cathy Sampson, hereby certify that on this 3rd day of March, 1997, a copy of the foregoing Opposition was served by ordinary U.S. mail, postage prepaid, upon the parties listed on the attached list.



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