BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation in to IntraLATA Presubscription.	)	DOCKET NO. 930330-TP
	)	ORDER NO. PSC-95-0918-FOF-TP
	)	ISSUED: July 31, 1995

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER DENYING MOTIONS FOR RECONSIDERATION, MOTION FOR STAY, MOTION FOR ORAL ARGUMENT AND REQUEST FOR MODIFICATION OF IMPLEMENTATION SCHEDULE

I. BACKGROUND

The instant proceeding was initiated on our own motion to consider whether intraLATA presubscription should be implemented to complement interLATA presubscription and to further open the local exchange company (LEC) toll market to competition.

IntraLATA presubscription is the ability of a telephone customer to preselect a telecommunications company to carry that customer's toll calls by dialing the digit "1", the area code, and the called number. This dialing pattern is referred to as "1+" dialing. Presubscription for interLATA toll calls was implemented beginning in 1984 in conjunction with the divestiture of the Bell Operating Companies from AT&T and the advent of competition in the toll market. While 1+ was available early on for interLATA toll traffic, all 1+ intraLATA toll traffic was reserved to the serving LEC.

The issue of intraLATA presubscription has been addressed in several prior proceedings. The Commission's longstanding policy that 1+, 0-, and 0+ intraLATA traffic be reserved for the LEC was originally established in Order No. 22243. By Order No. 23540, issued in Docket No. 880812-TP, the Commission noted that there was no evidence that indicated that the policy outlined in Order No. 22243 should be changed and once again determined that our 1+, 0+, and 0- dialing policies should be continued. Also in that Order,

the Commission advanced the level of competition by eliminating Toll Monopoly Areas, thereby allowing intraEAEA transmission competition in Florida.

On March 25, 1993 we opened this docket [Docket No. 930330-TP] initiating an investigation into intraLATA presubscription. A technical workshop was held April 26, 1993 to discuss 0+ and 1+ intraLATA presubscription with the participating parties. In addition to the 13 LECs operating in Florida, the following parties intervened and participated in this proceeding: AT&T Communications of the Southern States (ATT-C), MCI Telecommunications Corporation (MCI), Sprint Communications Company (Sprint), Florida Public Telecommunications Association (FPTA), Office of Public Counsel (OPC), and the Florida Interexchange Carriers Association (FIXCA). On April 12, 1993, MCI filed a "proposal for intraLATA presubscription." However, MCI withdrew its proposal on September 21, 1993 due to anticipated action on the part of this Commission.

By Order No. PSC-93-1669-FOF-TP, issued on November 16, 1993, we set the matter of intraLATA presubscription for hearing on our own motion. Hearings were held on September 12-15, 1994, at which time various parties presented their evidence and positions. By Order No. PSC-95-0203-FOF-TP, issued February 13, 1995, we concluded that the implementation of intraLATA presubscription in Florida is in the public interest and directed the four large LECs to implement intraLATA presubscription by year end 1997.

BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company (Southern Bell or the Company) and GTE Florida Incorporated (GTEFL) filed Motions for Reconsideration of the Order on February 28, 1995. In addition, GTEFL filed a Motion for Stay of the Commission's Order.

ATT-C, Sprint, MCI, and FIXCA filed responses in opposition to GTEFL's and Southern Bell's Motions on March 13, 1995.

On April 18, 1995, GTEFL filed a supplement to its Motion for Reconsideration and Motion for Stay. FIXCA and ATT-C responded in opposition to GTEFL's supplemental response on May 1, 1995.

II. MOTIONS FOR RECONSIDERATION

By Order No. PSC-95-0203-FOF-TP, issued February 13, 1995, we concluded that the implementation of intraLATA presubscription in Florida is in the public interest and directed the four large LECs to implement intraLATA presubscription by year end 1997. Southern Bell and GTEFL filed Motions for Reconsideration of the Order on

February 28, 1995. GTEFL filed a supplement to its Motion for Reconsideration on May 1, 1995.

The purpose of a Motion for Reconsideration is to bring to the attention of the Commission some point which it overlooked or failed to consider when it rendered its Order in the first instance. Diamond Cab Co. v. King, 146 So. 2d 889, 891 (Fla. 1962); Pingree v. Quaintance, 394 So. 2d 161 (Fla 1st DCA 1981). It is not intended to be used to re-argue the whole case merely because the losing party disagrees with the order.

As discussed in detail below, we find that neither GTEFL nor Southern Bell have raised any points of fact or law which we overlooked or failed to consider.

A. The Commission's Statutory Mandate and The Takings Clause.

GTEFL argues that the company has been deprived of its property without just compensation and that the Order violates the Commission's statutory directive to ensure that rates are just and reasonable. Specifically GTEFL argues:

> The Order raises serious concerns under the Fifth and Fourteenth Amendments to the United States Constitution, Article 1, Section 9, which proscribe confiscation of the company's property without just compensation. Until those concerns are addressed and resolved, the Commission's decision is arbitrary and capricious.

According to GTEFL, ordering presubscription at this time will create an uncompensated taking of the Company's property, because the implementation of 1+ intraLATA presubscription while the company is not able to compete with Interexchange Companies (IXCs) on an equal basis, will inevitably lead to major revenue losses. GTEFL argues that unless rates are rebalanced to reflect the increased competitive risk, the opening of intraLATA competition raises a serious confiscation concern.

In addition to its constitutional taking argument, GTEFL argues that the order violates the Commission's statutory directive to ensure that rates are just and reasonable because the Commission has failed to adjust rates to compensate it for potential revenue losses.

We are once again asked to look at potential revenue losses, albeit under the guise of alleged statutory and constitutional violations. We did not and do not agree with GTEFL and Southern

Bell that there would necessarily be major revenue losses. On the contrary, we concluded that any reduction the LECs might experience would be minimal. Also, even if it could be predicted with certainty that there would be major revenue losses, GTEFL and Southern Bell do not have a right to toll revenues per se. As much as GTEFL protests that our conclusions regarding its toll revenue losses are speculative, so are GTEFL's allegations of lost revenues equally speculative. Moreover, if the losses come to fruition, the company is free to file for increased rates based on a showing that its rates are insufficient to earn a reasonable rate of return.

The LECs do not have a constitutional property interest in a particular level of toll revenues. Property interests are not created by the Constitution, but rather are delineated by existing rules or understandings that stem from an independent source such as state law. Ruckelshaus v. Mansanto Co., 467 U.S. 986, 1000 (1984) citing Webb's Fabulous Pharmacies, Inc. v. Beckwith, 449 U.S. 155, 161 (1980).

MCI, in response, argues:

> if the introduction of competition in fact causes GTEFL to suffer a revenue loss, and if that revenue loss (coupled with all other changes on revenues, expenses and investments) reduces its earnings to a level below a fair rate of return, and if GTEFL thereafter applies for a rate increase, and if the Commission denies the rate relief necessary to allow GTEFL the opportunity to earn a fair rate of return, then the Commission's action denying rate relief might constitute an unconstitutional taking.

We agree with MCI. Under the applicable law, the Commission's only obligation is to allow public utilities to earn a fair return on their investment. See eg. Section 364.14, Florida Statutes. Even if we agreed with GTEFL that there was a possibility of major revenue losses, a mere possibility would not give rise to a right to an immediate rate increase. There would have to be a showing that a loss of revenues has in fact impaired the utility's ability to earn a fair rate of return. Thus, since there is no evidence that the company is presently unable to earn a fair rate of return, we have not failed in our statutory duty to ensure that the companies' rates are just and reasonable. Further, since GTEFL has failed to demonstrate that it is unable presently to earn a fair rate of return, there is no evidence to analyze whether a taking of public property without just compensation has occurred.

Implicit in GTEFL's argument is the notion that the Commission owes GTEFL a dollar for dollar increase in local rates to replace the company's potential losses. In the thirteen years since divestiture, the LECs have consistently argued that the Commission must in advance give the LECs increased revenues to avert potential revenue losses stemming from the transition to competition. In every such instance we have declined to accept the LECs parade of horribles and taken a more reasonable approach of dealing with "potential" revenue problems when the Company could demonstrate an earnings deficiency.

B. Small/Large LEC distinction

GTEFL and Southern Bell argue that there is no basis in the record to establish different implementation periods for large and small LECs. They conclude that the distinction drawn between the large and small LECs is an unconstitutional classification which denies them equal protection of the law.

It should be noted at the outset that one of the reasons we decided to delay implementation for the small LECs was that no party objected to delaying implementation.

GTEFL argues that persons or entities similarly situated in regard to a state law or other action be similarly treated. (citing F.S. Royster Guano Co. v. Virginia, 253 U.S. 412 (1920)) GTEFL further argues that the Commission's opinion that the large LECs can better absorb the financial impact of presubscription lacks a foundation of competent substantial evidence.

There was testimony that the small LECs have a smaller proportion of business customers and fewer vertical services over which to recover any revenue losses that might occur from the introduction of intraLATA competition. This clearly differentiates the small LECs from the large LECs. The small and large LECs are not similarly situated. Moreover, the differences warrant a more cautious treatment of the small LECs.

The standard on reconsideration is whether we overlooked some point of fact or law in rendering our Order in the first instance. Neither GTEFL nor Southern Bell has met this requirement; hence their respective motions for reconsideration on this issue are denied.

C. Commission Procedures and GTEFL and Southern Bell s constitutional right to impartial process.

GTEFL and Southern Bell argue that they were denied due process under the principles set forth in Cherry Communications, Inc. v. J. Terry Deason, 1995 WL 37648. GTEFL and Southern Bell argue that Cherry's rationale applies to the instant case.

Southern Bell argues that the Commission procedure of using one attorney to conduct discovery, question witnesses, and introduce evidence during the adversarial hearing process, and then using the same attorney in an advisory role in the deliberating process violates procedural due process under Article 1, § 9, Florida Constitution.

This case, GTEFL argues, began with a staff Memorandum dated October 28, 1993, recommending that 1+ intraLATA presubscription was in the public interest. Staff presented its recommendation as a proposed agency action (PAA) for a vote at the Commission's November 9, 1993, agenda conference. The LECs protested Staff's recommendation to implement presubscription, and we set the matter for hearing on our own motion. Formal adjudicatory proceedings, including a full hearing, were conducted in accordance with Florida Statutes section 120.57 and associated Commission rules. After the hearing, the staff again issued a Memorandum recommending implementation of 1+ presubscription on November 18, 1994.

GTEFL asserts that staff's position has been clear from the outset of this case. Further, the Company argues that throughout the process, staff acted as an advocate in an attempt to conform the record to its initial position. The company argues that the fact that the post-hearing record remained devoid of evidentiary support for that position did not cause staff to abandon it. GTEFL argues that the Order reflects that the Commission largely adopted Staff's rationale and acted upon its recommendations. GTEFL concludes that because the Staff was involved from the earliest stages of this proceeding in advancing a clear position to implement presubscription, the Commission has impermissible permitted one advocate "to have a special advantage in influencing the decision."

FIXCA, ATT-C and MCI argue that Cherry is not controlling in the present case for several reasons. First, this case is not a disciplinary proceeding like Cherry. This case, the companies argue, is distinctly different from Cherry in that it involved the determination of the appropriate public policy to be pursued. Since this case involved a public policy determination, the Commission was acting in a quasi-legislative rather than quasi-judicial role. Thus, there were no allegations of specific rule or statute violations. Nor was a penalty imposed.

ATT-C also argues that, unlike Cherry, the staff's function in the instant docket was that of fact finder rather than prosecutor. This, ATT-C asserts, is best evidenced by the fact that staff took no position on the threshold issue in this case until after all of the evidence had been entered and the staff had analyzed the record. Nor did staff present any witness on any issues at the hearings. Nor did staff object to the evidence submitted by Southern Bell, GTEFL or any other party to the proceeding. ATT-C concludes that the record indicates that staff's role in the hearing process was to elicit relevant facts from all parties with the goal of insuring that the Commission had a full and complete record on which to base its decision. This role, the company argues, differs considerably from the prosecutorial role in Cherry.

As FIXCA, MCI and ATT-C pointed out, staff's role in the instant case is similar to the role which the court found appropriate in South Florida Natural Gas v. Florida Public Service Commission, 534 So.2d 695 (Fla. 1988). In fact, the court in Cherry cited the South Florida Natural Gas for the proposition that an "agency should have great flexibility in carrying out its diverse functions and the utilization of staff in a wide variety of functions." Cherry at 37647. This statement recognizes that the rule the court adopted in Cherry for application to quasi-judicial proceedings does not apply to rate cases, which are quasi-legislative in nature.

Finally, ATT-C argued that unlike Cherry, this case did not result from the protest of a show cause order, but, instead, was set for hearing on the Commission's own motion. That fact alone was sufficient to put the parties on notice that staff's role in this case was that of fact finder rather than advocate.

We find GTEFL has mischaracterized the role of staff in this proceeding and drawn improper conclusions based on that mischaracterization.

Regarding GTEFL's assertions regarding staff's role in the PAA process prior to the Commission's Order setting the matter for hearing, it should be noted that the PAA process is designed and intended to eliminate unnecessary litigation while preserving parties' rights to request a hearing. The recommendation of which GTEFL complains was not developed by staff in a vacuum. It was the culmination of many months of information gathering and work with all the parties, including GTEFL and Southern Bell. Based on an analysis of the information provided by all the parties, it was staff's best effort at divining an appropriate result that would avoid litigation. In view of the inevitable aversion of certain parties to the proposed result, we set the matter for hearing. In

view of the lack of any consensus, the staff took no position during the proceeding and left it to parties to argue the merits of their respective positions.

GTEFL characterizes staff's role as that of an "Advocate". This supposition appears premised on staff's limited participation in the case. However, participation does not equal advocacy. GTEFL does not identify any instance in which staff advocated any position. Staff simply gathered and presented information within the confines of the proceeding that it believed necessary to permit us to make an informed decision. Such information was gathered from and subject to test by all parties. Further, staff's subsequent recommendation was confined to the record of the proceeding. Staff clearly did not advocate any position during the proceeding.

Cherry is not controlling in this case. The purpose of the hearing in this case was to elicit evidence from the parties by which a full and complete record could be established and by which we could make our public policy determination. It was not a quasi-judicial proceeding wherein the LECs "lost" any "right" as sole carriers of 1+ intraLATA traffic nor did they suffer any penalty beyond those inherent in a more competitive toll market. Further, the concerns in Cherry focused on staff's role as a prosecutor. GTEFL is attempting to inappropriately expand Cherry to apply to the instant case in which the role of our staff is neither prosecutorial nor adversarial. Accordingly, GTEFL's and Southern Bell's motions for reconsideration on this point are denied.

D. LEC revenue losses, consumer benefits, interLATA prohibition, and regulatory flexibility

GTEFL asserts that we overlooked, failed to properly consider and/or misconstrued the significance of certain evidence in this docket. Further, GTEFL and Southern Bell argue that our conclusions that any LEC revenue losses will be minimal, that there will be increased consumer benefits, and that the interLATA prohibitions will not seriously impede the LECs' ability to compete effectively in the intraLATA toll market are not based on competent and substantial evidence.

We considered the evidence regarding potential LEC revenue losses, consumer benefits, interLATA prohibitions and regulatory flexibility. We simply did not reach the same conclusions desired by Southern Bell and GTEFL. GTEFL and Southern Bell merely re-argue the weight that should be accorded to this evidence. The

companies have failed to meet the Diamond Cab standard for reconsideration, and their Motions on this point are denied.

a) LEC Revenue Losses

Two of the factors considered in this proceeding were whether or not the LECs would incur substantial revenue losses as a result of intraLATA presubscription, and what, if any, impact there would be on local rates. As discussed in the Order, there was unanimity among the LECs that there would be a net loss in revenues due to the implementation of intraLATA presubscription; the IXCs predictably disagreed. The LECs further argued that local rates would have to be increased, and that there would be a negative impact on universal service.

In their Motions for Reconsideration, GTEFL and Southern Bell raise numerous points regarding the significance of LEC revenue losses on the decision to implement intraLATA presubscription. Southern Bell and GTEFL both take issue with the fact that the Commission rejected their evidence on revenue losses.

GTEFL further argues that to determine whether our decision is legally sound, each of the elements of financial impact analysis must satisfy the competent and substantial evidence standard, and that if even one of these elements cannot support the Commission's ultimate finding, that ultimate finding cannot stand.

GTEFL states that the Commission chose to reject the evidence presented by the LECs, particularly their market studies, and instead speculated that the LECs' experience would track that of post-divestiture AT&T. GTEFL correctly notes that we considered several factors in assessing the potential revenue impact from intraLATA presubscription stimulation, access charges, growth in access lines and lack of balloting. Our evaluation of each of these factors was a weighing of conflicting evidence to reach our conclusion. Each of these conclusions weighed in favor of eliminating a competitive barrier that protects the LECs from competition. The barrier is a 1+ dialing monopoly.

We disagree with GTEFL's all or nothing argument regarding whether the Commission's financial impact analysis is legally sound. Nonetheless, as discussed in detail below, our conclusions regarding stimulation, access charges, growth in access lines, new competitive services and lack of balloting are supported by the record in this case.

1. Evidence of stimulation

GTEFL argues that, with regard to the Commission's findings on stimulation, there was no competent and substantial evidence of stimulation, and that predictions of stimulation are contrary to the record. We note that no one factor is a prerequisite for moving ahead with the transition to competition. Each one individually and collectively supports the move ahead. GTEFL points out that the Order states "the majority of the companies voiced no opinion regarding stimulation." However, GTEFL ignores considerable evidence in the record that there would be stimulation. Some of the LECs did believe that there would be a slight mitigation of the losses due to demand stimulation. Further, ATT-C's witness Mertz suggested that the actual volume of calls may increase with the advent of intraLATA presubscription.

GTEFL points out that there was no attempt to quantify any stimulation effects resulting from 1+ competition. It is true that the stimulation effects have not been quantified. However, as discussed above, there is evidence regarding the existence of stimulation. The fact that it has not been quantified does not mean the evidence of its existence must be discarded. It is important to consider that the weight assigned to stimulation by the Commission in reaching its decision was in proper proportion to the weight of the evidence. As we stated, "even if any potential revenue loss is offset only by access charges, and not by growth in access lines and stimulation, the net impact, on average, will only be minimal." Thus, while we considered the impact of stimulation, it was only one of many factors that we considered in making our decision.

2. Evidence that access charge revenues will mitigate losses

GTEFL also argues that the Commission erred in concluding that access charges are a mitigating factor with respect to toll revenue losses. GTEFL states that access charges are lower than the retail toll rates LECs collect today, so the gap between the two represents revenue lost to the LEC from the outset. The Company further contends that there was no attempt to discern how access charges might change, or to quantify the claimed mitigating effect of these charges. We note that in quantifying the potential revenue impact of intraLATA presubscription, GTEFL's own witness Menard took into consideration possible future reductions in access charges. In evaluating her testimony, we also considered the way in which access charges might change.

GTEFL goes on to state that the LECs face substantial access competition, which will only grow more fierce as a result of our expanded interconnection decisions (Order Nos. PSC-95-0034-FOF-TP and PSC-94-0285-FOF-TL, March 10, 1994). GTEFL believes that it is a virtual certainty that the Florida Legislature or the U.S. Congress, or both, will soon open the local exchange market to competition, such that any assumptions about the continuity of the existing access charge scheme are ill-founded. GTEFL argues that the Order's conclusion that access charges will stem LEC revenue losses is grounded in implausible speculation, rather than competent and substantial evidence.

It appears that GTEFL misses the point on the relevance of access charges. Regardless of what the ultimate level of those charges will be, the LECs will get revenue from access charges from those calls carried by an IXC that were previously the monopoly of the LEC. This is a direct contrast to AT&T's experience where a lost toll minute was entirely lost, with no revenue retained at all.

3. Evidence of access line growth

One of the factors we considered in determining the potential for revenue loss was access line growth. Due to the growth levels in Florida, access and toll revenues continue to rise, even in the face of decreasing prices. GTEFL asserts that there was no demographic study or analysis of any kind in this docket relating to access line growth. Contrary to GTEFL's assertion, Exhibit 29 contained access line growth data. In addition, witness Gillan performed an analysis on access line growth, which is implicit in his analysis included in his prefiled testimony. As discussed above, FIXCA's witness Gillan testified that "[t]he toll market is growing at a much faster pace than the number of residential access lines." Witness Gillan used Southern Bell as an example, testifying that "the retail toll market grew by an average of 11%/year from 1984-1993. Over this same period, residential access lines grew by only 4%." There is clearly an analysis on access line growth and the relationship to toll revenues in the record in this proceeding. GTEFL simply disagrees with this evidence.

4. Evidence that LECs will offer new toll services

GTEFL argues that the introduction of new services is highly unlikely as long as the LECs remain subject to restrictions that do not apply to their competitors. Since GTEFL's Consent Decree and Southern Bell's Modified Final Judgment restrictions prevent them

from offering end-to-end discount plans for both intraLATA and interLATA traffic, the companies believe that there is no basis in the record to conclude that LECs will be able to offer the new services which will help them meet the tremendous challenges in the intraLATA toll market. Southern Bell also argues that no new services were identified for the intraLATA market and, other than dialing fewer digits in order to reach a carrier other than the LEC, there are no benefits to be gained by the implementation of intraLATA presubscription.

We believe GTEFL's and Southern Bell's arguments are without merit. These arguments were raised throughout this investigation and appeared again in GTEFL's and Southern Bell's briefs. As acknowledged in our Order, we believe that if 10 years of experience with interEAEA and interLATA competition provides any example, there is a reasonable chance that the introduction of full intraLATA competition will provide similar results. GTEFL and Southern Bell failed to raise anything that we failed to consider or overlooked on this issue.

GTEFL and Southern Bell simply disagree with our conclusion that intraLATA presubscription could potentially lead to new toll services.

5. Evidence that lack of balloting will mitigate LEC losses

GTEFL argues that the Commission is incorrect in finding that the LECs' decline in toll market share would not be precipitous because there would be no balloting. The Order states that interLATA balloting "caused a more sudden decrease in market share than that which would occur with no balloting." GTEFL argues that the Commission has made a mere assumption devoid of any probative value. We disagree. Witness Gillan testified that interLATA presubscription was implemented through the use of balloting, which caused a more sudden decrease in market share than that which would occur without balloting.

In its response to GTEFL's charge, FIXCA contends that the Commission's rationale for its conclusion follows directly after the sentence which GTEFL criticizes. In the interLATA ballot situation, customers who did not return a ballot were automatically assigned to a carrier; thus a major loss in market share occurred immediately. In the intraLATA presubscription instance, the LECs will begin with 100% of the market. The customer must make a conscious decision to change carriers. We believe this is a very important difference between the interLATA and intraLATA scenarios, and it simply cannot be ignored, as GTEFL would have us do.

Additionally, GTEFL argues that the IXCs are better prepared today to market to customers than they were when interLATA presubscription came about. While this may be true, each player will have its unique advantages and disadvantages in the market. The LECs can also market to the customers--most notably, as the point of first contact for each and every customer, and through the monthly provision of a bill to every customer. Regardless of the marketing prowess of each competitor, the fact still remains that the IXCs must make an effort to obtain customers; the customers will not be automatically assigned in the beginning as in the interLATA experience. We do not believe that it is mere conjecture, as argued by GTEFL, that this will slow the rate of loss of market share. Moreover, we also note that 1+ presubscription itself is staggered due to the implementation schedule for switch conversion. This will also slow the rate of market share loss.

6. InterLATA prohibitions

GTEFL argues that one of the major differences between post-divestiture AT&T and the Bell and GTE operating companies is the existence of these LECs' federal prohibitions against the provision of interLATA services. GTEFL argues this artificial market handicap would be the key driver of the Company's extraordinary revenue losses if 1+ intraLATA competition is introduced now. The interLATA restriction figured prominently in the study of potential market share losses submitted by GTEFL. GTEFL argues that the four-and-a-half page section discussing the financial impact of intraLATA presubscription dismisses the impact of the interLATA restrictions with the summary statement that: "The only disadvantage the LECs discuss is that, since GTEFL and Southern Bell cannot provide interLATA toll service, they cannot package their services like the IXCs can." GTEFL opines that this remark does not reflect the "considered response to the evidence" that is a fundamental requisite of administrative rulings.

Southern Bell similarly stressed the effect of its own interLATA restriction, but argues that the Commission expressed no opinion about the effect of the restriction on the LECs' revenues. Even worse, Southern Bell contends, the Commission ignored the prohibition in its comparative analysis of post-divestiture revenue figures for AT&T's interLATA toll and Southern Bell's intraLATA toll performance. Based on this analysis, Southern Bell states that the Order blithely concludes that it does not appear that Southern Bell's toll revenues will necessarily decline with 1+ presubscription.

MCI argues in response that GTEFL's contention that the Commission failed to consider [the interLATA restriction] factor in its revenue loss equation is simply wrong. According to MCI, the GTEFL revenue loss study, which the Commission did consider, rested on the assumption that the interLATA restriction remained in effect, and that IXCs could offer package discounts on both inter- and intraLATA traffic while GTEFL could not. MCI concludes, arguing that the Commission did not overlook or fail to consider this study; GTEFL simply disagrees with the weight it was accorded. MCI notes that disagreement is not a legally sufficient basis for reconsideration.

Sprint joins MCI in the conclusion that the Commission has considered all the evidence in this record, including those arguments advanced by Southern Bell and GTEFL regarding their consent decrees. In support, Sprint quotes our language. Order No. 95-0203:

> We are aware of the potentially adverse effect on Southern Bell and GTEFL because of their interLATA restrictions. However, we disagree with the LECs' arguments that the playing field is not sufficiently level unless they can compete in the interLATA market. We have previously rejected the argument that federal restrictions on Southern Bell or GTEFL should limit our actions to transition to competition.

In contrast to some of the other IXC witnesses, FIXCA witness Gillan did not take exception to any of the studies presented by Southern Bell or GTEFL. "Whether or not they are gloom and doom as portrayed by ATT-C, or whether or not they're state of the art, as portrayed by Southern Bell, isn't really relevant unless it would affect your decision." Witness Gillan goes on to explain that even if Southern Bell's loss projection is correct, according to his analysis, the amount of revenue loss would be offset by growth; therefore, there would be no real threat to local rates.

We agree with MCI and Sprint. We did not fail to consider the impact of the interLATA prohibitions. The results of GTEFL's and Southern Bell's studies were accepted as strong indicators of the potential for market loss as a result of intraLATA presubscription. As pointed out above, notably by GTEFL, the studies considered the effects of the interLATA prohibition in evaluating the market share impacts. However, we determined that losses in market share do not equate to losses in revenue. As clearly shown by the Order, we considered the potential effect of the interLATA prohibition in reaching our decision. We simply did not consider it a decisive factor.

7. The link between LEC losses and local rates

In addition to its arguments regarding the financial effects of intraLATA presubscription, GTEFL argues that the link between LEC losses and local rates must be explicitly considered.

GTEFL acknowledges that our Order states that "if presubscription losses do occur, 'such losses will be addressed through Commission proceedings as appropriate.'" However, GTEFL argues at length that statements by certain Commissioners at the December 1, 1994 agenda conference regarding local rate increases contradict the Order. In particular, GTEFL points to comments regarding a desire on the part of one Commissioner not to increase local rates as a result of intraLATA presubscription.

Southern Bell also expressed concerns that, if the LECs' revenues were affected to the point that local rates would be increased, most parties would concur that the public interest might be adversely affected. Southern Bell argues that the Commission, in order to determine where the public interest lies, should and must actually reach a conclusion regarding the losses that the LECs will experience. Once the door is open to 1+ intraLATA competition, the company argues, it cannot be closed again as a practical matter. According to the company, if we have erred, or if the staff has erred in advising the Commission, it will be the ratepayers of Florida whose telephone rates will rise. According to Southern Bell, the Commission should reconsider its order and actually determine, based on the evidence in the record, the losses the LECs can expect so that a fully informed decision can be reached.

MCI responded that, after weighing this evidence, the Commission was "not persuaded that the LECs have accurately predicted whether any revenue losses would occur and, if so, to what magnitude." Instead, MCI argues, the Commission found that "[t]he LECs may, and we believe will, experience the same phenomenon as ATT-C, who lost market share but experienced increased revenues."

MCI continued that, faced with inconclusive evidence as to whether there would be any LEC revenue losses, knowing that the ratemaking process gives it "adequate tools to address any revenue problems that may arise from intraLATA presubscription", and that "[i]f there are losses from intraLATA presubscription, such losses will be addressed through Commission proceedings as appropriate". MCI argues that the Commission properly concluded that the LECs' claimed losses should not be an overriding consideration in the public interest balance. MCI further argues that it is important

to note that while the LECs argue that market share loss would put "upward pressure" on local rates, they have been careful, both in testimony and in their written filings, never to say that local rates in fact would have to increase.

MCI further argues that, in striking a public interest balance, the Commission was acting primarily in its quasi-legislative policy-making role, not in its quasi-judicial fact-finding role. A decision as to what policy to implement for the future requires the consideration of matters that inherently involve a degree of speculation. No one can know, until after-the-fact, precisely what impact the introduction of competition will have on a market or on the individual participants in that market. To demand, as Southern Bell does, that the Commission "actually determine, based on the evidence in the record, the losses the LECs can expect" places an impossible hurdle in the way of the Commission's decision-making.

MCI believes that this is particularly true where the magnitude of any LEC revenue loss is only one part of the public interest equation. First, if any claimed revenue "losses" do no more than prevent a LEC from over-earning, then the "losses" are not material from a public interest perspective. Second, as discussed below, the record reflects and the Commission found that intraLATA 1+ competition brings benefits to consumers which must be weighed in the public interest balance against any potential for upward pressure on local rates. MCI concludes that the Commission's balancing decision is fully supported by the record and does not overlook or fail to consider any material evidence.

Sprint similarly concluded that, although the Commission was not persuaded that there would be any significant revenue deficiencies, it recognized that "to the extent the LEC experiences revenue problems, other adjustments may be necessary at a later date." According to Sprint, the conclusion reached by the Commission is clearly justified and supported by the record.

FIXCA also takes issue with Southern Bell's and GTEFL's assertions that the Commission erred when it refused to provide an explicit mechanism to allow the LECs to recover any revenue reduction resulting from intraLATA presubscription. According to FIXCA, GTEFL begs the question based on its mistaken notion that the LECs have a toll revenue entitlement which the Commission must protect. According to FIXCA, while the Commission considered various types of recovery mechanisms including witness Gillan's "safety net", the Commission concluded that the LECs were in no imminent danger of substantial revenue reduction. FIXCA argues that, notwithstanding that finding, the LECs, like any other

regulated utility, can petition the Commission, if, and when, they can prove that they are earning below their authorized range. At that time, the Commission will decide, as it does in all rate cases, if a rate increase is appropriate and, if so, how such an increase should be recovered from customers, including IXCs.

Upon consideration, we agree with the IXCs, as succinctly stated by MCI, that "no one can know, until after-the-fact, precisely what impact the introduction of competition will have on a market or on the individual participants in that market." It is impossible to determine, in this or any other docket, the precise losses, if any, that may occur as a result of a Commission decision. There is substantial evidence that there may be no adverse impact at all.

In summary, we considered the possibility of revenue losses and potential impact on local rates. Despite the speculative nature of the LECs loss revenue projections, we clearly indicated that, if the LECs have revenue problems then adequate remedies are available. The LEC's suggestion that they cannot obtain needed relief is incorrect. We simply determined that a better showing than potential loss would be required. Southern Bell and GTEFL have failed to raise any matter of fact or law on this issue that we overlooked or failed to consider. Accordingly, Southern Bell and GTEFL's respective motions are denied.

b) Consumer Benefits

GTEFL argues that there is no credible evidence of consumer benefits from the introduction of intraLATA presubscription. GTEFL asserts that there is no evidence that the lack of dialing parity is a barrier to competition, and that the elimination of this disparity will result in gains in terms of price, service choice, innovation, efficiency, and responsiveness. GTEFL reiterates testimony presented by the IXCs that all of their services are equally available through 1+ and 10XXX dialing. GTEFL also argues that the Commission's presumption that the intraLATA market in 1995 will develop as the interLATA market did in 1984 is misplaced. GTEFL claims that the telecommunications marketplace is vastly different than it was over ten years ago, when competition for telephone service was a new concept. GTEFL finally argues that because no specific new services were identified and no commitments to reduce prices were made, that there is no basis for the Commission's decision.

The IXCs argue that there are numerous benefits listed in the Commission's Order, all which are supported by the record. One benefit noted by MCI, is dialing parity. As MCI states, one of the outcomes of the Modified Final Judgement (MFJ) was that in order to prohibit discrimination to its competitors, the RBOCs were required to provide interLATA equal access (1+ dialing parity) to all IXCs. MCI argues that the Commission appropriately found that dialing extra digits is an unnecessary burden on end users and that dialing parity not only benefits end users, but is necessary for effective competition.

We found it reasonable that intraLATA competition would bring about the same benefits that competition has brought to the interLATA market, including lower prices and increased services. As acknowledged in our Order, it is impossible to predict exactly how the market will react when competition is introduced; however, other examples in similar situations indicate that benefits will flow from a competitive marketplace. Moreover, the evidence in the record regarding price reductions and new service offerings that have resulted from 10 years of competition in the interLATA market provides a substantial basis to infer that similar benefits would likely be realized in the intraLATA market. Hence, the motion for reconsideration on this point are denied.

c) InterLATA Prohibitions

Southern Bell and GTEFL argue that the Commission's decision to open the intraLATA toll market to 1+ competition did not fully consider the fact that neither Southern Bell nor GTEFL can participate in interLATA services. GTEFL's Consent Decree and Southern Bell's MFJ restrictions currently prohibit them from providing interLATA activities. The Companies contend that until these restrictions are removed and they have the ability to package interLATA and intraLATA traffic, consumers may not be able to fully benefit from intraLATA presubscription.

Southern Bell and GTEFL argue that while they are restricted to providing intraLATA toll, their IXC competitors will be able to provide end-to-end discount plans for both intraLATA and interLATA toll traffic. Southern Bell argues that the implementation of 1+ should be delayed until either it can participate fully in the interLATA market, or until the currently pending state and federal legislative activities are resolved. Southern Bell also asserts that its being the end users' first point of contact does not offset the fact that it cannot operate in the interLATA and interstate markets.

Although GTEFL agrees that every company has inherent advantages and disadvantages in a competitive market, it believes that it is unreasonable to subject the company to externally imposed disadvantages of unequal regulatory treatment. GTEFL asserts that while it is able to compete under current conditions, once intraLATA presubscription is implemented the IXCs will have intraLATA/interLATA packaging ability and the LECs will lose the ability to compete effectively.

GTEFL argues that the Commission deliberately chose to ignore the interLATA prohibitions and overlooked evidence regarding the restrictions because they are imposed at the federal level and beyond its control. GTEFL argues that this reasoning is arbitrary and capricious. Moreover, the company argues that there is no competent and substantial evidence to justify the Commission's decision to implement intraLATA presubscription.

In addition, GTEFL filed a supplement to its Motion for Reconsideration regarding its Motion filed with the U.S. District Court on April 13, 1995, asking the Court to terminate its Consent Decree. In its filing, GTEFL argues that the premise for the Consent Decree no longer exists, and without relief from this restriction, consumers will never enjoy the benefits of a fully competitive marketplace.

FIXCA, in its response to the supplemental Motion, contends that GTEFL is simply reiterating the same argument regarding the interLATA prohibitions inhibiting a level playing field. FIXCA argues GTEFL is attempting to promote its position by attaching a Motion in which GTEFL has requested Judge Greene to lift the interLATA prohibition.

MCI asserts that if GTEFL and Southern Bell believe they are handicapped by the interLATA restriction, then the fact that IXCs don't receive access charges on all of their competitors' long distance traffic, are not the first point of contact with every telephone customer, and start with 0% of the intraLATA 1+ market are similar competitive handicaps.

The IXCs, ATT-C, MCI, Sprint and FIXCA argue that Southern Bell's and GTEFL's Motions should be denied because they do not show some point that the Commission failed to consider or overlooked when it issued its Order, and that they are merely attempting to reargue points because Southern Bell and GTEFL disagree with the Order.

We agree with the IXCs and believe that the arguments presented by both GTEFL and Southern Bell are a reiteration of their positions originally considered by us and discussed again in detail in our Order. As we stated:

> We are aware of the potentially adverse effect on Southern Bell and GTEFL because of their interLATA restrictions. However, we disagree with the LECs' arguments that the playing field is not sufficiently level unless they can compete in the interLATA market. We have previously rejected the argument that federal restrictions on Southern Bell and GTEFL should limit our actions to transition to competition. As we stated in Order No. 23540:
>
> > We disagree that the elimination of TMAs should be held in limbo due to the interLATA prohibitions. We have been cognizant of the interLATA prohibition since the inception of TMAs and it has not factored into our decision to create them or to eliminate them. The prohibition is beyond our control. The issue for us is whether, based on all relevant criteria, the public interest is best served by the further retention of TMAs.
>
> We again conclude that the federally imposed interLATA limitations should not in and of themselves impede the implementation of intraLATA presubscription. Moreover, we are not persuaded that the LECs, particularly Southern Bell and GTEFL, will not be able to compete effectively despite the restrictions. Southern Bell and GTEFL have amply demonstrated that they are able competitors under current conditions."(Order at 18)

Neither Southern Bell nor GTEFL have raised a point that we overlooked or failed to consider. It can hardly be argued that we "ignored" the interLATA restrictions. We simply determined that the restriction should not be the decisive factor in transitioning to competition. We concluded that the interLATA restrictions imposed at the federal level in and of themselves did not warrant delaying the implementation of intraLATA presubscription. Additionally, we were not persuaded that the LECs, particularly Southern Bell and GTEFL, would be unable to compete effectively despite the interLATA restrictions.

d) Regulatory Flexibility

Southern Bell asserts that the Commission did not address the necessary regulatory flexibility required to allow it to respond to competition. Southern Bell argues that requiring the Company to petition the Commission if losses are incurred or to obtain authority to respond to competition is not appropriate. Southern Bell asserts that without the appropriate tools to compete in the intraLATA market, the intent of its incentive regulation plan is thwarted because it places both the company and its shareholders at considerable risk due to the competitive disadvantages they face in the 1+ market.

Southern Bell's incentive regulation plan was not discussed throughout this entire proceeding. ATT-C asserts that the fact that Southern Bell requested its incentive regulation plan to be continued, while having full knowledge that intraLATA presubscription could become a reality, is ample evidence that Southern Bell does not truly expect intraLATA presubscription to have a substantial adverse impact on its financial health. Moreover, ATT-C argues that Southern Bell's argument regarding regulatory flexibility impacting its settlement agreement in Docket No. 920260-TL is irrelevant. ATT-C further notes that the settlement does not assure Southern Bell that it will continue to maintain its intraLATA toll monopoly, nor does the settlement guarantee the company additional regulatory flexibility.

GTEFL contends that it is arbitrary and capricious to implement presubscription without granting LECs regulatory flexibility. GTEFL argues that implementing 1+ prior to taking any action affording such flexibility to the LECs is contrary to existing state regulatory schemes. Consistent with the principle that regulation is intended to be a substitute for competition, GTEFL contends that the Commission must exercise its jurisdiction to continue its historical role as a surrogate for competition for monopoly services provided by the LEC. However, GTEFL notes that the Legislature has recognized that federal policies and technological advances may present competition for certain types of telecommunications services in the public interest under certain circumstances. See Section 364.338 (1), Florida Statutes. Consequently, the Legislature directed that where effective competition existed for a particular service, the Commission has the authority to relax traditional regulatory constraints on the LEC and encourage market pricing. Section 364.338 (3)(a), Florida Statutes. GTEFL argues that consistent with the Legislature's intent, the Commission cannot authorize competition in the intraLATA toll market without simultaneously relaxing the regulatory constraints on the LECs' provision of those services.

We note that there was no issue in this proceeding regarding additional regulatory flexibility in the event that we implemented intraLATA presubscription. As Sprint asserts in its response, and we agree, without having raised this issue at the prehearing stage, the LECs are precluded from now arguing that intraLATA presubscription cannot be implemented before resolving these regulatory issues.

Upon consideration, we find that GTEFL's assertion that the Commission cannot statutorily implement intraLATA presubscription until a proceeding under Section 364.338, Florida Statutes has been concluded is incorrect. The legislative intent to foster competition where appropriate is clear. The transition to competition is not controlled by nor limited by Section 364.338, Florida Statutes; nor is this section a barrier to the transition to competition. This section is simply an additional tool to give the Commission more latitude in the regulatory treatment of services if such services have been determined to be effectively competitive.

Moreover, as stated in the Order, regulatory flexibility for the LECs should not be a prerequisite for intraLATA presubscription. The issue of regulatory flexibility has not been the focus of this docket, and there is no sufficient record basis to grant such flexibility. Furthermore, we have an ongoing investigation relating to LEC flexibility and other related issues. See Docket No. 940880-TP. We disagree with GTEFL's and Southern Bell's assertions that we should wait until the conclusion of our ongoing investigation to implement intraLATA presubscription.

The issue of LEC regulatory flexibility is beyond the scope of this docket. Southern Bell and GTEFL have not raised a material and relevant point of fact or law that we overlooked or failed to consider in making our determination.

Summary

We considered GTEFL and Southern Bell's arguments regarding potential revenue losses, consumer benefits, interLATA prohibitions and regulatory flexibility during the hearing process. We simply reached different conclusions than Southern Bell and GTEFL. Accordingly, the Motions for Reconsideration are hereby denied.

e) Implementation Schedule

In its Motion for Reconsideration in this proceeding, Southern Bell argues that there is a need to extend the time frames for the cost recovery tariff filings related to the implementation of 1+ presubscription. The basis for the argument is that our Order was issued two months after the expected date of issuance. The Company argues that the delay allows too little time for filing of tariffs, due July 1, 1995, and meeting the subsequent anticipated effective date of September 1, 1995. Southern Bell requests that the Commission "...allow Southern Bell a full six months from the date of the final order in this proceeding in which to file its tariffs and an appropriate time thereafter to finalize the systems changes that are required by the Commission's order."

ATT-C and FIXCA filed responses to Southern Bell's Motion. FIXCA offers no reason for denying the request, other than that any delay hurts consumers by not allowing them the benefits of competition. ATT-C has stated that it "does not necessarily object to allowing Southern Bell additional time in which to file its cost recovery tariff; however, there is no justification for Southern Bell's request that the implementation dates for intraLATA presubscription be delayed."

We do not believe a delay is necessary. The companies should have begun preparation to meet the ordered date, July 1, 1995, for filing tariffs. Regardless of the date the Order was issued, our decision was publicly known when we made our decision at our Agenda Conference on December 1, 1994, seven months prior to the due date for tariffs. As noted by ATT-C, the Company was represented at the Special Agenda, and heard that decision. Southern Bell is well aware that the filing of a Motion for Reconsideration does not stay the effect of the Order. Moreover, despite having filed its Motion, Southern Bell could not know whether or not its motion would be successful. Consequently, it would be unlikely that the Company has delayed its plans in meeting the July 1, 1995 date.

With respect to Southern Bell's use of the phrase "systems changes," we presume this is in reference to modifying the Company's billing and administration systems to accommodate 1+ presubscription. Regardless, as stated above, the Company was aware of the Commission's decision in December and should have taken the appropriate steps to meet the ordered dates.

Because Southern Bell and, in fact, all parties were aware of the Commission's decision and no one asked for a stay pending reconsideration, we believe it is unlikely that the Company has delayed preparations to meet the July 1, 1995 deadline.

Finally, in its argument regarding implementation dates, Southern Bell points out a typographical error on page 26 of the Order wherein the Commission requests an explanation for any implementation date that is later than December 31, 1996. The date should be December 31, 1997. Southern Bell is correct that the date was incorrectly stated in the Order. The correct date is December 31, 1997, and Order No. 95-0203 is so corrected to reflect this date.

III. GTEFL's MOTION FOR STAY

GTEFL requests that we stay our Order until the conclusion of ongoing state and federal legislative efforts to reform telecommunications regulation, or until conclusion of GTEFL's appeal of the Commission's Order, whichever happens first.

A. State and Federal Legislative Efforts

GTEFL argues that the Commission should stay the Order until the conclusion of state and federal legislative efforts in the telecommunications arena.

State Legislators, GTEFL argues, may wish to treat intraLATA toll competition in a wholly different way. Further, state Legislators, concerned about potential preemptive effects of federal legislation, must retain maximum flexibility to tailor legislation that will remain in place to meet state needs. Prescribing specific conditions, GTEFL argues, for the implementation of 1+ competition undermines that flexibility.

GTEFL asserts that "a very big problem will arise if, as is likely, the full intraLATA competition now authorized in Florida is inconsistent with a federal and/or state scheme that properly treats interLATA and intraLATA market changes as mutually dependent."

FIXCA argues in response, that the Florida Legislature has given the Commission exclusive jurisdiction over all matters regarding the regulation of telecommunications carriers. See Section 364.01, Florida Statutes. According to FIXCA, among the powers delegated to the Commission by the Legislature, the Commission is to:

> Encourage cost-effective technological innovation and competition in the telecommunications industry if doing so will benefit the public by making modern and adequate

telecommunications services available at reasonable prices. Section 364.01(3)(c), Florida Statutes.

Thus, FIXCA concludes, the Legislature, through direct statutory language, clearly envisions that the Commission will take responsibility for ensuring that ratepayers receive the benefits of a competitive market place. This is, FIXCA argues, what the Commission has done through the decision in this case.

FIXCA also argues that GTEFL's arguments regarding possible action with the Legislature or Congress may take in the telecommunications arena is full of "ifs", mays and mights." The fact that such legislative bodies may or may not act does not mean that the Commission should refrain from acting in this most important area.

MCI argues that the issue before the Commission is when and whether to complete the transition to full competition in the intraLATA toll market. The Legislature has previously authorized competition in the intrastate toll market, and has delegated authority to the Commission to determine the pace at which that competition is introduced.

Further, MCI argues, the pending state and federal process involve competition in markets over which the Commission currently lacks authority to control the degree of competition. MCI concludes that there is no basis for the Commission to refrain from taking action regarding markets over which it has jurisdiction until after legislative decisions are made regarding the authority, if any, it will be granted over additional markets.

ATT-C argues that while it is true that proposals have been made in Congress which may impact the telecommunications industry, the question of what, if any, congressional action may be taken in the foreseeable future is highly speculative to say the least. Consumers could be deprived of the benefits of intraLATA presubscription in perpetuity while GTEFL waits for Congress to pass the legislation that it would like to see.

ATT-C concludes that the Florida Statutes empower the Commission to exercise its regulatory discretion under the existing, law, not under a speculative prediction of what future statutes may provide. In this case, according to ATT-C, the Commission properly applied the existing law.

Upon consideration, we do not agree that we should stay our decision. Further, there is nothing in the current law which mandates that we stay our decision based on the mere possibility of

legislative action. We have simply acted on the authority the Legislature has conferred upon us to encourage competition in the telecommunications industry.

B. Pending Judicial Review

GTEFL requests that we grant a stay of the Order pending judicial review. Initially we note that GTEFL's request for stay pending appeal is premature since no notice of appeal has yet been filed. For that reason alone it should be dismissed. Notwithstanding this also addresses the merits.

Rule 25-22.061(2), Florida Administrative Code, states:

> In determining whether to grant a stay, the Commission may among other things, consider: (a) Whether the petitioner is likely to prevail on appeal; (b) whether the petitioner has demonstrated that he is likely to suffer irreparable harm if the stay is not granted; and (c) Whether the delay will cause substantial harm or be contrary to the public interest.

1) Whether the Petitioner is Likely to Prevail On Appeal

GTEFL simply argues "it will prevail on appeal because, as it explained at length in its Motion For Reconsideration, the Order lacks a sufficient evidentiary foundation and is contrary to law for a number of reasons."

Both FIXCA and ATT-C, argue that GTEFL will unlikely prevail on appeal. According to FIXCA, GTEFL has done little more than reargue the evidence in an attempt to try to convince the Commission that it has made the wrong policy decision.

FIXCA points out that the Court's review of the Commission's Order will be governed by section 120.68(10), Florida Statutes which provides in part:

> If the agency's action depends on any fact found by the agency in a proceeding meeting the requirements of section 120.57, the court shall not substitute its judgment for that of the agency as to the weight of the evidence on any disputed finding of fact.

FIXCA asserts that it is well-established that the Court will not second guess the Commission or reweigh the evidence.

We do not believe GTEFL will prevail on appeal. The legislature has made the "fundamental and primary policy decision" that there be competition in long distance telephone service in Florida. Microtel, Inc. v. Florida Public Service Commission, 464 So.2d 1189, 1191 (Fla. 1985) In furtherance of this legislative policy, we decided, after careful consideration of all the evidence, that it is in the public interest to introduce competition into the intraLATA toll market.

2) Whether the Company will suffer irreparable harm

GTEFL states that it will suffer irreparable harm if a stay is not granted. In support of its claim, the company cites to affidavits attached to its Motion for Stay which purportedly contain new evidence.

GTEFL argues:

> The Commission has acknowledged that the LECs will experience market share losses upon implementation of presubscription. The level of GTEFL's expected market share and revenue losses if presubscription is implemented without interLATA authority is illustrated in the attached affidavit of Dr. Gregory M. Duncan (Ex. A). These figures, based on consumer surveys conducted by Intersearch Corporation, show that GTEFL will lose market share of [_____] to [_____] if IXCs price intraLATA toll at parity with GTEFL's rates. Thus, even if LECs are granted flexibility to meet the IXC's prices, the inability to provide both interLATA and intraLATA service will ensure substantial loss of market share.

GTEFL, referring to the Dr. Duncan's affidavit, also argues that the detrimental impact will be greater if the IXC's offer volume discounts.

GTEFL also cites the affidavit of Charles S. Schubart, Manager-Regulatory Planning and Management. Mr. Schubart, the company asserts, has incorporated Dr. Duncan's revenue loss figures into the Florida surveillance report for the twelve months ending December 31, 1994 in order to calculate what GTEFL's return on equity will be under 1+ presubscription. The company concludes that its "return on equity will fall [_____] basis points, for a return on equity of [_____], if the IXCs and GTEFL price at parity.

FIXCA, MCI and ATT-C assert that GTEFL attempts to demonstrate irreparable harm by again arguing the issue of lost revenues. They point out that GTEFL attempts to support its claim through introduction of "new evidence" in the form of affidavits which purport to show revenue losses which will result from implementation of intraLATA presubscription.

ATT-C argues that GTEFL's evidence has the look, smell, and taste of evidence that has already been considered by this Commission. Specifically, both GTEFL and Southern Bell asserted during the hearing proceedings that implementation of intraLATA presubscription would result in lost LEC intraLATA toll revenues. Both parties submitted testimony, based on market research studies, which attempted to prove that the LECs would be financially harmed by intraLATA presubscription. That testimony was subjected to full scrutiny through the discovery process, through cross-examination, and through rebuttal testimony of other parties.

ATT-C points out that the new evidence GTEFL submitted is in redacted form. This attempt to introduce "new evidence" in redacted form subsequent to the conclusion of the proceedings in this case is, ATT-C argues, inherently prejudicial to the rights of the other parties to this case and its arguments should be rejected for that reason alone.

MCI argues, that it is inappropriate to base a request for a stay on new confidential information that has not been subjected to discovery and cross examination. MCI further argues that the affidavits are insufficient on their face to support the relief requested by GTEFL. MCI points out that Mr. Duncan's estimate of revenue loss assumes that the purported revenue loss will occur instantly, despite the fact that implementation is scheduled to occur over a three-year period and the fact that the record indicates that any toll market losses that occur will not happen overnight. In addition, MCI asserts that Mr. Schubart's affidavit substitutes Mr. Duncan's flawed revenue loss figures into GTEFL's 1994 surveillance report to show that the revenue loss would cause GTEFL's return on equity to fall, presumably to a level below its authorized rate of return.

Upon consideration, we agree with FIXCA , ATT-C and MCI. It is inappropriate to request a stay based on "new" information that is nothing more than additional information that should have been presented at hearing. We agree with MCI that even if the affidavit was competent to establish this fact, it has no relevance in light of the implementation schedule adopted by the Order. No IXC has intraLATA 1+ authority in 1994; implementation is not scheduled to begin until September 1995 at the earliest. Therefore, 1994

earnings will not be affected at all by the Order. The affidavit does not address earnings during 1995 or later years. However, evidence in the record shows that GTEFL is projected to have substantial overearnings in 1997, and that those overearnings will occur in 1996 if GTEFL is not successful in obtaining Commission approval for substantial additional depreciation expense.

The irreparable harm alleged by GTEFL is simply one of a decline in toll revenues from increased competition. We continue to disagree with the revenue loss projections of GTEFL. We will not reiterate the details of our disagreement again here. We will reiterate, however that even if GTEFL has the revenue problems it alleges, the company has adequate remedies at its disposal. Accordingly, we find that GTEFL has failed to demonstrate that it will suffer irreparable harm.

3) Whether the delay will cause substantial harm or be contrary to the public interest.

GTEFL argues that it will suffer irreparable harm and that the harm to the public will be inconsequential. The company further argues that the absence of public harm in staying 1+ presubscription is evidenced by the fact that the Commission has stayed implementation for small carriers for two years.

FIXCA asserts that the Commission catalogued in detail the benefits which consumers will realize with the implementation of intraLATA presubscription. Delaying these benefits, it argues, will cause substantial harm to the public and would be in direct conflict with the Commission's explicit finding that intraLATA presubscription is in the public interest.

We addressed GTEFL's harm arguments above. With respect to whether a delay would be contrary to the public interest we find that it would. Since the legislature has determined that it is in the public interest to have competition into the long distance telephone market we have been marching at a carefully considered pace. A delay of IntraLATA presubscription would be contrary to the public interest because the majority of Florida customers would be prevented from receiving the benefits of intraLATA presubscription. We disagree with GTEFL's argument of no public harm from delay of implementation because of our decision to delay implementation for the small LECs. As stated previously, there are significant differences between the large LECs and the small LECs. The small LECs only comprise 1.46% of total access lines; therefore, our decision to delay implementation for the small LECs does not deprive the majority of Florida customers the benefits of

intraLATA presubscription. Granting GTEFL's Motion for Stay, however, would be contrary to the public interest because a majority of Florida Consumers would be deprived of the benefits of intraLATA presubscription.

4) Mandatory Stay based on Constitutional Allegations

GTEFL argues that while the Commission may weigh the constitutional concerns in reconsidering its Order, it does not have the jurisdiction to actually rule on constitutional challenges to its actions. Therefore, GTEFL argues, the Commission must grant its Motion for Stay until the constitutional questions the company has raised are settled on appeal. GTEFL cites 19838 NW, Inc. v. Div. of Alcoholic Bev. and Tobacco of the Dep't of Bus Reg., 410 So.2d 967, 968 (Fla. 4th DCA 1982) which states that "Ordinarily, when a constitutional attack is made upon administrative proceedings, they should be stayed pending resolution of the validity of those proceedings."

ATT-C argues the inherent danger of accepting GTEFL' proposition is that if a party that raises constitutional issues with respect to a Commission order was entitled to have the order stayed, then any party that disagreed with a decision of the Commission could simply delay the inevitable by asserting constitutional issues. The result, the company asserts, would be inordinate delays in the implementation of Commission decisions to the detriment of the consuming public. If that result had been intended by the Legislature, the Legislature undoubtedly would have provided for automatic stays of the Commission orders pending judicial review of constitutional issues.

We note initially that the purpose for granting the stay in the 19838 NW, Inc. case was to determine the validity of the proceedings before concluding. In the instant case, GTEFL has alleged constitutional violations after the conclusion of the administrative proceeding. We also, note that the Rules of Appellate Procedure and the Florida Administrative Code detail the limited number of circumstances that trigger an automatic stay pending judicial review. A mere allegation of a constitutional violation is not one of them. Furthermore, according to rule 9.310(a) of the Rules of Appellate Procedure, a party seeking to stay a final or non-final order pending review shall file a motion in the lower tribunal, which shall have continuing jurisdiction, in its discretion, to grant, modify, or deny such relief. Thus, we have discretion whether or not to GTEFL's Motion for Stay.

5) GTEFL's Supplement to its Motion for Stay

GTEFL submitted a Supplement to its Motion for Stay stating that it had filed a Motion, in the United States District Court for the District of Columbia, to terminate its Consent Decree. The company argues that since the issue of interLATA prohibition is before the court and a ruling will be forthcoming in the near future, that the Commission need not fear that granting a stay pending federal action on the decree restrictions will indefinitely delay intraLATA presubscription in Florida. In short, the company argues, the recent developments regarding GTEFL's interLATA prohibition confirm the reasonableness of granting a stay.

FIXCA and ATT-C, who incorporated FIXCA's response by reference, argue that, without citing any authority and without seeking the Commission's permission to do so, GTEFL has unilaterally filed additional argument in support of its motions. There is no authority for such a filing in the Commission's rules, and; therefore, GTEFL's pleadings should be disregarded.

The companies argue even if the Commission chooses to consider GTEFL's supplemental pleadings, they add nothing new to the issues before the Commission. As these companies state, "GTE simply reiterates the same tired old argument -- that intraLATA presubscription should not be permitted until GTE can provide interLATA service. The Commission considered the Consent Decree during the hearing and concluded: "...we disagree with the LEC's arguments that the playing field is not sufficiently level unless they can compete in the interLATA market. We have previously rejected the argument that federal restrictions on Southern Bell or GTEFL should limit our actions to transition to competition."

We find that the time for filing argument had passed when GTEFL submitted its supplemental motion. Even so, GTEFL has not asserted any new point of fact or law that we failed to consider during the hearing process. GTEFL is asking us to consider its interLATA prohibitions once again simply because it filed a Motion to terminate its Consent Decree. We have already determined that the interLATA prohibitions should not restrict our actions to transition to competition.

Upon consideration, GTEFL's Motion for Stay shall be denied for both procedural and substantive reasons. GTEFL has failed to demonstrate that it will likely prevail on appeal, that it will suffer irreparable harm, or that the delay will not be contrary to the public interest. Further, we are not required to grant a stay pending the conclusion of legislative reform or simply because a

company raises constitutional issues. Finally, GTEFL's Motion for stay pending appeal is premature.

IV. GTEFL's Request for Oral Argument

On February 28, 1995, GTE Florida, Incorporated (GTEFL) filed a Motion for Reconsideration and a Motion for Stay. On May 25, 1995, GTEFL filed a Request for Oral Argument on its Motion for Stay.

Rule 25-22.058(1), Florida Administrative Code states:

> The Commission may grant oral argument upon request of any party to a section 120.57, F.S. formal hearing. A request for oral argument shall be contained on a separate document and must accompany the pleading upon which argument is requested. The request shall state with particularity why oral argument would aid the Commission in comprehending and evaluating the issues before it. Failure to file a timely request for oral argument shall constitute waiver thereof.

GTEFL specifically argues:

1. GTEFL's Motion for Stay represents an issue worth tens of millions of dollars to the Company. The Staff's recommendation on the matter fails to adequately raise and address many of GTEFL's contentions. The Commission cannot make an informed decision based only on that recommendation, which, GTEFL agenda conference participation [sic] will allow this important matter to be accurately presented to the Commission.

2. The Commission's decision to implement 1+ competition was a very close--3-2 vote. At the agenda conference, even Commissioners voting for 1+ competition expressed serious concerns about its implementation at this time. The closeness of this vote and the seriousness of this issue for the future of Florida's telecommunications markets justifies a full airing of the issues raised in the Motion for Stay.

3. There will be no prejudice to any party in allowing GTEFL the oral argument it seeks. All parties will have the right to express their views at the agenda conference... In addition, a brief delay for ruling on the Motion for Stay will not delay implementation of 1+ capability, which has continued since the time of the Commission's Order authorizing 1+ competition.

4. GTEFL submits that it would benefit the Commission and, in turn, consumers, to hear parties' positions on the effect on this issue pending revisions to Florida telecommunications regulatory scheme. Staff's Recommendation indicates that GTEFL will have a statutory recourse to recover undue revenue losses, should they occur. Staff focusses on the current law, which requires the Commission to give companies the opportunity to earn a "fair and reasonable rate of return." The new law offers a dramatic departure from this traditional ratemaking concept. GTEFL believes the commission's decision on the Motion for Stay should fully consider its relationship to the new legislation.

The Florida Interexchange Carrier Association (FIXCA) and AT&T, which incorporated FIXCA's response, argue that GTEFL's Request for Oral Argument is procedurally and substantively inappropriate and should be rejected out of hand. They point out that Rule 25-22.058(1), Florida Administrative Code requires a Motion for Oral Argument to be filed at the time the pleading to which it is directed is filed. They state that the reason for GTEFL's blatant disregard of the Commission's rules is readily apparent. The companies argue that after receiving the Staff's recommendation, which recommends rejection of the positions posited by GTEFL, GTEFL seeks another opportunity to persuade the Commission to its view. That is, it seeks oral argument on the Staff's recommendation. They further argue that it has long been Commission policy to prohibit argument on a Staff recommendation after a hearing has been held and that the Commission should continue to apply that policy in this case. Further, GTEFL raises no issues in its motion which require this Commission to disregard its rules and allow GTEFL yet another chance to argue the same matters which have been at issue in this case all along.

Initially, it should be noted that, during the hearing on this matter, we deliberated whether or not to delay implementation of intraLATA presubscription in view of possible legislative action and chose not to do so. Upon consideration, we find that GTEFL's Motion for Oral Argument shall be denied. The motion does not satisfy the requirements of Rule 25-22.058. First, the Motion for Oral Argument was not filed with the Motion for Stay. The Motion for Stay was filed February 28, 1995; the Motion for Oral Argument was filed on May 25, 1995. Second, the Motion for Oral Argument fails to state with particularity why oral argument would aid the Commission in comprehending and evaluating the issues before it. Accordingly, GTEFL's Request for Oral Argument shall be denied.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Motion for Reconsideration filed by GTE Florida Incorporated is hereby denied as set forth in the body of this Order. It is further

ORDERED that the Motion for Reconsideration filed by BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company is hereby denied as set forth in the body of this Order. It is further

ORDERED that the Motion for Stay filed by GTE Florida Incorporated is hereby denied as set forth in the body of this Order. It is further

ORDERED that GTE Florida Incorporated's Request for Oral Argument is hereby denied as set forth in the body of this Order. It is further

ORDERED that the date, December 31, 1996, on Page 26 of Order No. PSC-95-0203-FOF-TP is hereby amended to reflect the correct date of December 31, 1997. It is further

ORDERED that Order No. PSC-95-0203-FOF-TP is reaffirmed in all other respects. It is further

ORDERED that this docket should be closed once the tariffs filed by the four large LECs are approved and effective.

By ORDER of the Florida Public Service Commission, this 31st day of July, 1995.

Blanca S. Bayó

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

MMB/TWH

Commissioners Deason and Garcia dissented from the Commission's decision to deny GTE Florida Incorporated's Motion for Oral Argument.

NOTICE OF JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.