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On behalf of the Citizens of the State of Florida.

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Commission, 2540 Shumard Oak Boulevard, Tallahassee,
Florida 32399-0850
On behalf of the Commission Staff.

FINAL ORDER

BY THE COMMISSION:

By Order No. PSC-95-0203-FOF-TP, issued on February 13, 1995, in Docket No. 930330-TP, we found that intraLATA presubscription is in the public interest and ordered the four large local exchange companies (LECs) to implement intraLATA presubscription by the end of 1997. In the same proceeding, we ordered the LECs to file tariffs by July 1, 1995, instituting a rate element to allow the recovery of implementation costs for intraLATA presubscription.

On June 30, 1995, BellSouth Telecommunications, Inc. (BellSouth) filed the required tariff. In addition, BellSouth proposed to introduce several new intraLATA presubscription-related services and to reflect tariff language changes in its Access Services and General Subscriber Service Tariffs. On May 23, 1996, we issued Order No. PSC-96-0692-FOF-TP approving BellSouth's tariff. On May 24, 1996, the Florida Interexchange Carriers Association (FIXCA), MCI Telecommunications Corporation (MCI) and AT&T Communications of the Southern States, Inc. (AT&T) (the Complainants) filed a Joint Complaint against BellSouth. The Complainants alleged that BellSouth had devised anticompetitive business practices and unreasonable tariff provisions which, if allowed to remain in effect, would hinder the exercise of competitive choices. The Complainants argued that these practices would enable BellSouth, a dominant incumbent provider of local exchange services, to use its position to gain an unfair advantage over intraLATA competitors, thereby frustrating the purpose of Order No. PSC-95-0203-FOF-TP.

On June 11, 1996, the Complainants protested Order No. PSC-96-0692-FOF-TP and requested a hearing. The Complainants also filed a Motion to Consolidate Proceedings, stating that the tariff items challenged in Docket No. 930330-TP were the same tariff items that were the subject of the Joint Complaint in Docket No. 960658-TP.

By Order No. PSC-96-1162-FOF-TP, issued September 17, 1996, we granted the Motion to Consolidate. On June 13, 1996, BellSouth filed a response to the Joint Complaint, along with a motion to dismiss. The motion to dismiss was withdrawn by BellSouth on October 4, 1996.

On October 17, 1996, we held a hearing to address the issues in this consolidated proceeding.

Based on the evidence presented at the hearing, consideration of the briefs of the parties and the recommendations of our staff, our determination on each of the issues addressed is set forth below.

I. Stipulation Regarding the Use of Terminology Suggestive of Ownership in Directories and Bill Inserts

The parties presented a stipulation on whether BellSouth should be prohibited from utilizing terminology that suggests ownership of the intraLATA toll calling area when referring to the intraLATA service areas in directories and bill inserts. The stipulation states:

BellSouth will modify its practice in a way that is acceptable to Joint Complainants in that it does not use terminology that suggests ownership of the intraLATA toll calling area. As of August 1, 1996, BellSouth's bill inserts in Florida do not refer to that area as the "BellSouth Calling Zone." The reference has been changed to "local toll." Further, BAPCO (the BellSouth entity that actually publishes directories) has agreed that the Customer Guide Pages also will not refer to that area as the "BellSouth Calling Zone." Joint Complainants accept BellSouth's change.

By joining in this stipulation, BellSouth agrees not to use terminology that suggests ownership of the intraLATA toll calling area, and instead to refer to the intraLATA toll calling area as "local toll." The Joint Complainants are satisfied with this modification. The stipulation resolves this issue in an acceptable manner. Therefore, this stipulation is approved.

II. Stipulation Regarding "No-PIC" Option and Cost Recovery Mechanism

The parties also presented a stipulation on whether BellSouth should provide an option whereby customers that have not selected a primary interexchange carrier (PIC) to handle their intraLATA toll traffic may dial an access code to place intraLATA calls, rather than being automatically defaulted to BellSouth. This is the "no-PIC" option. The stipulation regarding this option states:

BellSouth has agreed to use a CIC code to place undecided customers in a "no-PIC" status pending selection by the customer of a carrier to handle intraLATA calls. The "no-PIC" option will be implemented in BellSouth's switches during the regular work schedule; however, implementation of the no-PIC option will be completed no later than April 1, 1997. Under the "no-PIC" option, rather than being defaulted to BellSouth, an undecided customer will dial a special access code to place intraLATA calls until the customer affirmatively selects an intraLATA carrier to handle intraLATA calls on a presubscribed basis. BellSouth's agreement is contingent on recovery of the one-time cost of approximately \$46,000 associated with implementation of the no-PIC option through the cost recovery mechanism established in conjunction with the implementation of 1+ intraLATA competition. Joint Complainants agree to BellSouth's proposal, including the cost recovery aspect.

We agree that BellSouth should be allowed to recover the cost associated with the implementation of the "no-PIC" option. We disagree, however, with BellSouth's proposal to recover the cost via the recovery mechanism established in Docket No. 930330-TP. We are concerned that BellSouth's proposal is inconsistent with the Federal Communications Commission's (FCC) recent Order No. 96-333 establishing the requirements for recovery of the costs to implement local dialing parity. The FCC's cost recovery mechanism mirrors the interim number portability cost recovery mechanism that the FCC established in FCC Order 96-286, issued July 2, 1996. There the FCC required that all telecommunications carriers bear the costs of implementing interim number portability. Since not all telecommunications carriers are represented in this proceeding, we do not find that it is appropriate to establish a cost recovery mechanism at this time. Rather, the issue should be addressed in

a generic proceeding. Until that time, BellSouth shall bear the costs associated with the implementation of the "no-PIC" option.

Based on the foregoing, we reject the stipulation proposed by the parties. We believe the "no-PIC" option is appropriate, however, and BellSouth shall implement it.

III. Communication of Information to New Customers Regarding Customer Choice

FIXCA's witness Seay contended that the parties had agreed to adopt a carrier marketing approach as the method by which carriers would obtain new customers in the new competitive intraLATA markets. This marketing approach would be used instead of the approach based on balloting and allocation of customers that was used during the implementation of interLATA equal access. The Complainants argued that BellSouth's plan to market its own intraLATA service to all new customers, while naming competitors only if requested, departs from the neutral interLATA practice, and is in contravention of Order PSC-95-0203-FOF-TP. The Complainants also asserted that this practice will unfairly bias the presentation of intraLATA options to new customers who must contact BellSouth for service. Specifically, FIXCA's witness Seay asserted that BellSouth encourages its service representatives to position themselves as consultants and then emphasize BellSouth's offerings. Witness Seay argued that the purpose of the consultation is to convince the customer to use BellSouth's intraLATA service.

BellSouth, however, asserted that new customers will be given a balanced presentation of the intraLATA toll alternatives available to them in a fair and nondiscriminatory manner. BellSouth's witness Geer argued that the company has developed methods and procedures that present customers a balanced approach explaining the various alternatives for intraLATA services. Witness Geer stated that this balanced approach is based upon the following guiding principles:

1. Advise the customer that several carriers provide local toll (intraLATA) service.
2. Inform the customer BellSouth is a carrier that can provide local toll service.
3. Offer to read to the customer a list of available carriers.

These principles appear in BellSouth's representatives' on-line documentation. BellSouth's witness Geer explained that the on-line documentation is a system that provides BellSouth's service representatives with suggested phrases and prompts for use during customer contact.

Based on the evidence presented, we find that BellSouth's business practices are inappropriate. BellSouth's present and planned methods of communicating information to new customers about their options for intraLATA carriers unfairly favor BellSouth's intraLATA toll service. BellSouth is likely to create bias for its service by marketing its services to customers before customers have an opportunity to consider their other choices. The evidence does not show that BellSouth has instituted a sufficiently neutral method of conveying information regarding other carriers to new customers. Thus, we find that the following modifications to BellSouth's business practices and prompts are appropriate:

1. BellSouth shall advise customers that due to the newly competitive environment they have an option of selecting a long distance carrier for their local toll calls (calls made within a local calling zone to nearby communities).
2. BellSouth shall offer to read to the customer the list of available carriers. If the customer responds affirmatively, then the list shall be read.
3. If the customer declines, then the customer service representative shall ask the customer to identify the carrier of choice. If the customer's response is ambiguous or non-committal, the service representative shall offer to read the list of available carriers and encourage the customer to make a selection. If the customer does not want to make a selection, the customer shall be advised that he must dial an access code to reach an intraLATA carrier each time he makes an intraLATA call until a presubscribed carrier is chosen.

The prompts set forth above will give customers an opportunity to make an informed decision regarding the available intraLATA toll service providers. BellSouth shall not be allowed to market its intraLATA toll service unless the customer introduces the subject.

IV. BellSouth's Ability to Market Its Services to Existing Customers Changing IntraLATA Carriers

The Complainants argued that any attempt by BellSouth to reverse a customer's decision to change intraLATA carriers was an abuse of BellSouth's role as a dominant LEC. Specifically, FIXCA's witness argued that if a customer calls with a request to change his or her intraLATA carrier from BellSouth to another carrier, BellSouth's service representatives are encouraged to attempt to try to keep the customer with BellSouth. The Complainants argued that BellSouth should not be allowed to initiate this type of marketing effort to retain a customer until the intraLATA market is more evenly distributed, or until the company's competitors are attaining new customers in the intraLATA market. The Complainants did not, however, specify a period during which this marketing prohibition would apply. Witness Seay added that allowing BellSouth to continue this marketing practice would contradict the intent underlying our decision to open the intraLATA toll market in Docket No. 930330-TP.

In response, BellSouth argued that it should be allowed to discuss the customer's proposed change to another intraLATA carrier in an attempt to retain the customer's business. BellSouth's witness Geer testified that any business with existing customers needs to be able to show some concern for its existing customers and a desire to retain those customers. BellSouth asserted that it does have a "Save the Service" directive for its service representatives, but that this directive applies only to BellSouth's small business customers. Witness Geer testified, however, that the company should be allowed to try to retain any customers that consider changing to another intraLATA carrier.

Upon consideration, we believe that as long as BellSouth remains the gateway for customer contact, there is an opportunity for BellSouth to misuse that position. BellSouth could gain a competitive advantage by initiating marketing efforts to retain a customer when a customer calls to change intraLATA providers to a carrier other than BellSouth. Although BellSouth indicated that it only initiates such marketing efforts to retain small business customers, we agree with the Complainants' contention that no mechanism exists to prevent BellSouth from also applying this marketing practice to its residential customers. We conclude that if BellSouth exploits its role as the gateway for customer contact, this would stifle the development of competition in the intraLATA toll market. Therefore, BellSouth shall not be allowed to initiate marketing efforts designed to dissuade customers, business or residential, from changing their intraLATA carrier from BellSouth to another carrier for a period of 18 months. Eighteen months

should be ample time for the major interexchange companies (IXCs), to establish themselves in the intraLATA market. In addition, this 18 month period is enough time to increase customers' awareness of the available intraLATA carriers.

At the conclusion of this period, BellSouth shall be allowed to market its services in the same manner as its competitors.

V. BellSouth's Ability to Initiate Marketing of its IntraLATA Services to Existing Customers Not Seeking to Switch Carriers

The Complainants argued that, as the dominant, incumbent LEC, BellSouth compiles detailed customer information which would give BellSouth an insurmountable advantage in the market, if BellSouth used the information to market intraLATA services during LEC service related calls. FIXCA's witness Seay expressed concern that when customers call BellSouth for information about their local service, to order vertical services, or to inquire about billing information, BellSouth could use that contact to influence customers on their decision for an intraLATA carrier. The Complainants asserted that we should prohibit such marketing efforts until ALECs have meaningful market share.

Specifically, Witness Seay argued that BellSouth should be required to refrain from soliciting customers on unrelated intraLATA toll service calls. According to Witness Seay, BellSouth should refrain from marketing its intraLATA service for at least two years or until the market is more evenly divided. Witness Seay contended that there should be a certain percentage of the market distributed among the competitors before we permit BellSouth to market intraLATA toll service on unrelated calls. Witness Seay did state that MCI was free to market any of its services during any contact with its customers. Witness Seay explained that MCI can attempt to sell the customer both interLATA and intraLATA toll services during any customer contacts.

BellSouth argued that although current practices do not encourage service representatives to discuss intraLATA toll services on all customer initiated contacts, competitive pressures in the future may dictate that these opportunities be used for marketing intraLATA services. BellSouth's witness Geer contended that under its current practices, service representative are not encouraged to discuss intraLATA toll service on all customer initiated contacts. Representatives are encouraged to discuss the subject only when an existing customer requests an additional line. Witness Geer did indicate, however, that customer-initiated contacts are an appropriate, efficient way for BellSouth to advise

customers of its services. BellSouth testified that as competition evolves, it should be allowed to market its services as it deems necessary to compete in the intraLATA toll market. In its brief, BellSouth further argued that it should be as flexible as its competitors in marketing all of its services during calls initiated by its customers for any reason.

Based on the above, we find that as the incumbent LEC, BellSouth has a unique position with respect to customer contacts and customer information, which could give it an advantage over its competitors in the intraLATA market. BellSouth could use routine unrelated customer contacts to market its intraLATA service. BellSouth is also privy to customer information, such as billing history and PIC changes, that its competitors are not. BellSouth could use this information as a marketing tool to persuade customers to select BellSouth as their intraLATA service provider. Therefore, we find that when existing customers contact BellSouth for reasons unrelated to intraLATA toll service, BellSouth shall not use those opportunities to market its intraLATA toll service, unless the customer introduces the subject.

BellSouth may market its intraLATA toll services if a customer inquires about its service. For 18 months from the date of the issuance of this Order, however, BellSouth shall refrain from initiating communication with existing customers about its intraLATA services when existing customers contact BellSouth for reasons unrelated to intraLATA toll service. We believe that BellSouth's competitors can establish a competitive presence in the intraLATA market in 18 months. 18 months is also enough time to increase customers' awareness of the available intraLATA carriers. Upon the expiration of this period, BellSouth shall be allowed to market its services in the same manner as its competitors.

VI. BellSouth's Processing of Customer Requests to Change IntraLATA Carriers

The Complainants argued that BellSouth's obligation to accept customers' PIC change orders is codified in tariffs and is mandated by the FCC. They asserted that BellSouth's plan to refer the customers to new carriers without telling the customers of their choices is flagrantly misleading, anticompetitive, and discriminatory. FIXCA's witness Seay also testified that BellSouth should be required to process all of its existing customers' PIC change requests because the customers are accustomed to contacting their local phone service provider for interLATA PIC change requests.

Witness Seay testified that BellSouth's procedure is inconsistent with its current interLATA procedure. In particular, Witness Seay testified that BellSouth's approach is confusing to customers who call to change their intraLATA carrier to a company other than BellSouth. The customer is told to contact the carrier directly; but, if the customer insists, BellSouth's service representatives will make the change and then advise the customer to contact his or her carrier of choice. Witness Seay indicated that BellSouth's witness Geer had stated that the customer may not call to change his or her intraLATA carrier if they are referred to the IXC. Witness Seay argued that this action may force the customer to retain BellSouth as his or her intraLATA carrier.

BellSouth states that in order for customers to benefit from an IXC's discount plan, they would need to contact their carrier of choice. FIXCA asserted that the customer does not have to contact his or her carrier of choice in order to have intraLATA service at basic rates. Witness Seay contended that BellSouth's approach is irritating to customers. It rewards customers who persist and penalizes those who give up. Furthermore, Witness Seay testified that BellSouth's intraLATA procedure regarding the processing of PIC changes appears inconsistent with its interLATA procedure, unless at some point the company has changed its interLATA procedure. The Complainants argued that MCI routinely receives numerous PIC changes that have been accepted and processed by BellSouth. There has been no marked change in the quantities of change orders that would indicate that BellSouth has changed this practice.

BellSouth argued that it should be allowed to refer customers to their newly-selected carriers to process the PIC change, as the company claims it has done for interLATA PIC changes since divestiture. BellSouth's witness Geer testified that this minimizes the redundancy for the customer during the ordering process when the customer must contact his or her carrier of choice in order to establish an account. Witness Geer also indicated that this approach allows the customer to deal with his or her newly chosen carrier and to determine which of that carrier's full range of services best meets his or her needs. Witness Geer asserted that to process the changes any other way would place a strain on BellSouth's business office resources.

BellSouth also argued that otherwise it would be performing business office functions for the IXCs without compensation for those functions. BellSouth's witness Geer asserted that BellSouth's costs associated with implementing intraLATA presubscription would increase because service representatives'

time to obtain the information necessary to take and issue the PIC change order would increase.

FIXCA's witness Seay countered this argument by stating that BellSouth receives the PIC change fee of \$1.49 as compensation. Witness Seay argued that, therefore, BellSouth's resources would not be strained.

Based on the evidence, we believe that BellSouth's intraLATA procedure regarding the processing of PIC changes appears to be inconsistent with its interLATA procedure. This difference in procedure may be confusing to customers. It is also inappropriate because it penalizes customers who do not insist that BellSouth process their request. BellSouth's procedures for processing PIC changes in the intraLATA market should mirror its interLATA procedure. Thus, we find that, in order to expedite intraLATA competition, BellSouth shall be required to process all intraLATA PIC changes for its local customers. This process will foster competition and provide customers with a centralized point of contact.

VII. Free PIC Change

The Complainants argued that existing customers should be allowed one free PIC change because, until now, existing customers could not select a competing carrier to handle 1+ intraLATA traffic. FIXCA's witness Seay asserted, however, that the Commission may impose a reasonable time limit on such an opportunity. Witness Seay recommended a time period of six months.

Witness Seay believes that BellSouth plans to allow new customers to designate their initial intraLATA PIC without paying a charge. Witness Seay argued that existing customers should be given the same opportunity, since until now, new and existing customers have not had the opportunity to select an alternative carrier for intraLATA presubscription. The Complainants argued that existing customers were assigned to BellSouth because of BellSouth's incumbent monopoly status. AT&T added that existing customers did not affirmatively select BellSouth as their intraLATA carrier. They simply had no other option.

Witness Seay explained that at the time a new customer calls BellSouth to set up service, if the customer does not select a carrier, the customer is designated as "undecided." Later, when this undecided customer calls to presubscribe to a carrier, BellSouth's on-line documentation instructs the customer that no PIC change charge is to be applied to the transaction. Witness

Seay concluded that there is no difference in the availability of prior opportunities or in the costs incurred by BellSouth to make a PIC change for a "new" customer or an "existing" customer. Thus, the Complainants argued that we should direct BellSouth to provide existing customers with the same opportunity as new customers.

FIXCA's witness Seay further contended that to impose a fee on existing customers penalizes those customers for making a move away from BellSouth. Such a penalty could impede competition and the differing treatment of customers could be perceived as discriminatory. Complainants argued that customers should be allowed a window of 90 to 180 days to evaluate the carriers that are participating in the intraLATA market in order to make the best decision. Public Counsel agreed with the Complainants that existing customers should have the opportunity to make one free PIC change, for a reasonable length of time.

BellSouth's witness Honeycutt testified that it would not be appropriate for us to allow one free PIC for customers. Whether or not an existing customer had a choice of intraLATA carriers in the past, BellSouth incurs costs for every PIC change it makes. Thus, Witness Honeycutt contended that the application of a PIC change charge is consistent with the Commission's decision that intraLATA presubscription be implemented via a marketing process. BellSouth further argues that while the FCC's Order on interLATA presubscription allowed for one free PIC change for customers, we did not order the same for intraLATA presubscription. BellSouth also argued that we are using a different implementation mechanism than the FCC.

Nevertheless, BellSouth's witness Honeycutt asserted that if we determine that one free PIC change is in the public interest, the allowable time window should not exceed 90 days from the time the last switch converts to dual PIC capability. Witness Honeycutt testified that this window should begin with the last switch conversion date because BellSouth's billing system does not have the capability to determine which switch provides a customer's service, nor is it able to determine when the switch has been converted.

We agree that existing customers did not affirmatively choose BellSouth as their service provider, but instead were assigned to BellSouth due to its monopoly status. We disagree with BellSouth that the application of a PIC change charge is consistent with our decision in implementing intraLATA presubscription. Our decision did not address the application of a PIC change charge. Our decision to implement intraLATA presubscription was made in order to promote competition in the intraLATA market. It is possible

that a customer will be less likely to switch to a carrier other than BellSouth if the customer would incur a PIC change charge. Consequently, the application of a PIC change charge could hamper the development of competition in the intraLATA market. Also, we note our concern that new and existing customers should be afforded the same opportunities, and that any appearance of discrimination should be carefully avoided.

Upon consideration, we find that existing customers shall be given the opportunity to designate their preferred intraLATA carrier once without incurring a PIC change charge. This one free PIC change shall be available for a period of 90 days from the date of conversion of BellSouth's last end-office switch to provide intraLATA equal access. At the expiration of the 90 days, any end user making a PIC change will be assessed the \$1.49 PIC change charge.

COST RECOVERY

Although the parties differ regarding the issue of the one free PIC, they do agree that there are costs associated with its implementation. The Complainants agreed that BellSouth should be allowed to recover any verified, unrecovered associated costs through the existing intraLATA equal access implementation clause. The Complainants explained that customers were able to select their toll carrier at no charge when interLATA equal access was established. They argued that this same approach is appropriate for intraLATA service. The Complainants agreed that BellSouth could add these costs to the already established intraLATA cost recovery mechanism since the one free PIC was not part of the initial intraLATA presubscription investigation docket.

BellSouth stated in its 1990 interLATA PIC cost study that the PIC change rate element covers the costs incurred when an end user changes his initial PIC. BellSouth further indicated that the initial PIC selection occurs when a central office is equipped for equal access and end users choose or are assigned to a long distance carrier. The company contended that there was no charge for the initial selection since these costs were recovered by the Equal Access Network Reconfiguration element. A charge does apply, however, for changes to the initial selection of a long distance carrier.

BellSouth's witness Honeycutt stated that BellSouth incurs costs for making these PIC changes and should be allowed to recover them from the end user customer or the IXC causing the cost. Witness Honeycutt also argued that the application of an appropriate PIC change charge is inherent in our ordered marketing

approach. Witness Honeycutt added that the application of a PIC change charge is consistent with the interLATA marketing approach taken by the IXCs today. Witness Honeycutt contended that BellSouth should be allowed to recover these costs. He also contended that it would be inappropriate to recover intraLATA, intrastate costs through anything other than a unique intraLATA rate element. He argued that the most appropriate method of recovering these costs is either from the IXC or the end user customer generating the cost.

As stated earlier, in Order No. PSC-95-0203-FOF-TP, we determined that the cost of implementing intraLATA presubscription would be recovered through a separate LEC-specific rate element applicable to all originating interLATA Feature Group D access minutes of use. This cost recovery mechanism was designed to ensure that the LECs would not pay any portion of the cost, and to discourage carriers from delaying participation in the intraLATA market pending the expiration of the rate element.

The FCC's Second Report and Order in CC Docket No. 96-98 notes that parties propose allowing customers a grace period during which they could switch carriers without charge. (96-333 at ¶ 79) The Order requires a different methodology for recovering the costs associated with the implementation of intraLATA presubscription. The Order also indicates that the costs associated with providing dialing parity in the implementation of intraLATA presubscription must mirror the interim number portability cost recovery, which requires these costs to be recovered from all telecommunications carriers. By including the LECs, the Order states that local competition would be implemented on a competitively neutral basis. The Order further notes that this methodology would spread incremental costs over all service providers.

We note that we did not address the costs associated with the possible provision of a one-time free PIC change when we approved the intraLATA presubscription cost recovery mechanism. We find, however, that the provision of one free PIC for existing customers is consistent with our order regarding that cost recovery mechanism. Therefore, BellSouth shall allow existing customers one free PIC, since one free PIC can serve as an incentive to existing customers to exercise their choice of intralata carriers, thus promoting competition in the intralata market.

As noted above, BellSouth's 1990 interLATA PIC cost study indicates that the cost for a customer's initial carrier selection was recovered in the interLATA network reconfiguration. BellSouth did not indicate whether or not this is the case with intraLATA equal access. The parties seem to agree that BellSouth should be

allowed to recover any PIC change costs through the already established intraLATA cost recovery mechanism, but not all carriers are represented in this proceeding. Thus, pending our investigation of the appropriate cost recovery mechanism for intraLATA presubscription in Docket Nos. 930330-TP, BellSouth shall be required to absorb its costs, on an interim basis. BellSouth shall also track the cost of providing a free PIC change during the 90 day period, with sufficient detail to verify the costs in order that we may consider their recovery in a generic proceeding.

VIII. Imposition of a Single PIC Change Charge for Customers Simultaneously Changing InterLATA and IntraLATA Carriers

Until the implementation of intraLATA presubscription, customers could only choose interLATA carriers. Customers only had the option of a single PIC change. Now that customers can designate different carriers for interLATA and intraLATA calls, the question is whether BellSouth should be required to impose a single PIC change charge on a customer who simultaneously changes both interLATA and intraLATA carriers to the same carrier.

FIXCA's witness Seay asserted that allowing BellSouth to impose two PIC change charges would reduce the customers' incentive to exercise their choices. Public Counsel agreed with the Complainants on this point and added that by imposing a single PIC change charge, customers would be less confused. Although BellSouth had previously reduced the PIC change charges for simultaneous selection, Witness Seay still contended that the customer should be able to receive a two-for-one PIC for a simultaneous PIC change to the same carrier. AT&T argued that if a customer selects one carrier for both interLATA and intraLATA at the same time, the customer should only be billed for a single PIC change.

The Complainants alleged that the incremental cost of accomplishing the second PIC change is minimal. FIXCA's witness Seay contended that BellSouth does not plan to assess a PIC change charge to a new customer's first PIC choice because the incremental cost, when performed with the establishment of basic service, is minimal. Witness Seay also argued that in the absence of a cost study that provides quantifiable costs associated with the two-for-one PIC change, the two-for-one PIC change should be treated the same as establishing basic service.

BellSouth agreed that there are economies realized with the simultaneous processing of both interLATA and intraLATA PIC changes. According to BellSouth's witness Honeycutt, there is

approximately a 70% savings when both interLATA and intraLATA PIC changes are processed together, because the two processes are identical. This led BellSouth to adjust its PIC change charges so that when two PIC changes occur, BellSouth charges for the interLATA PIC change, plus 30% of the intraLATA PIC change charge.

Based on the above, we find it appropriate to require BellSouth to charge a single PIC change charge when a customer changes to the same interLATA and intraLATA carrier at one time. The window for this single PIC change charge will expire 90 days from the date of conversion of BellSouth's last end-office switch to provide intraLATA equal access. At the expiration of the 90 day period, the end user will be assessed the additional 30% of the PIC change charge as a rate additive, as well as one PIC change charge.

COST RECOVERY

BellSouth's witness Honeycutt indicated that no detailed cost study was used to derive the 30% incremental cost. He stated that the figure is an estimate based on a panel's analysis of the major work processes performed in the simultaneous processing of interLATA and intraLATA PIC changes. Witness Honeycutt further estimated that the incremental cost of a PIC change is minimal when performed along with setting up a new customer's basic local exchange service. Witness Honeycutt added, however, that the idea that the incremental cost of presubscription is minimal is based solely upon relative relationships and not upon any detailed cost study support.

We find that there is insufficient information in the record to indicate whether the cost of simultaneously processing interLATA and intraLATA PIC changes is greater than the cost of processing a PIC change along with establishing basic local service. Thus, it is impossible for us to conclude that the incremental cost of the two-for-one PIC is similar to the incremental cost of a PIC change associated with setting up basic service.

We agree that BellSouth likely incurs costs in processing an intraLATA PIC change, even when it is performed together with an interLATA PIC change for the same carrier; and it should be allowed to recover such costs. BellSouth does not have a cost study that shows the costs associated with the two-for-one PIC change, or for a PIC change that is processed along with establishing basic service. Nevertheless, BellSouth believes that the costs associated with processing a PIC change along with the establishment of basic service are minimal.

BellSouth also does not have a detailed cost study on the costs associated with the two-for-one PIC change. The available cost data is very limited. We find nothing in the record to demonstrate that the \$1.49 charged for a PIC change does not cover the costs of a two-for-one PIC change. Nor is there evidence that refutes the 30% rate additive derived from the panel's analyses of major work processes. Thus, in our opinion, the 30% rate additive appears reasonable, and will cover the cost of providing to PIC changes.

Upon consideration, we find that, upon the expiration of the 90-day window for the two-for-one PIC change, any end user making a two-for-one PIC change will be assessed the 30% rate additive in addition to the one PIC change charge. Pending further investigation of the appropriate cost recovery mechanisms for intraLATA presubscription in Docket No. 930330-TP we will require BellSouth to absorb its own costs on an interim basis. BellSouth shall track its costs associated with PIC changes during the 90 day period, in implementing intraLATA presubscription. The cost study should be conducted in sufficient detail that we may review it in our generic investigation to determine an appropriate cost recovery methodology for intraLATA presubscription.

IX. Status of Dockets

It appears that certain aspects of Docket No. 930330-TP may be inconsistent with the FCC's requirements for the implementation of intraLATA presubscription. Thus, Docket No. 930330-TP shall remain open so that we may investigate these apparent inconsistencies. Docket No. 960658-TP shall, however, be closed since all issues associated with the complaint have been addressed herein.

Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that the stipulation between the parties, whereby BellSouth Telecommunications, Inc. is prohibited from using terminology suggesting ownership of intraLATA toll calling areas in directories and bill inserts, is approved. It is further

ORDERED that the stipulation between the parties regarding BellSouth Telecommunications, Inc.'s implementation of the "no-PIC" option and cost recovery for implementation of that option is denied. BellSouth Telecommunications, Inc. shall, however, implement the "no-PIC" option and shall bear the one-time cost associated with the implementation of the "no-PIC" option, to the extent set forth herein. It is further

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ORDERED that each and all of the specific findings herein are approved in every respect. It is further

ORDERED that the Complaint of Florida Interexchange Carriers Association, MCI Telecommunications Corporation, and AT&T Communications of the Southern States, Inc. against BellSouth Telecommunications, Inc. is disposed of as set forth in the body of this Order. It is further

ORDERED that BellSouth Telecommunications, Inc. shall perform and file an intraLATA PIC change charge cost study, as set forth in the body of this Order. It is further

ORDERED that Docket No. 930330-TP shall remain open pending further investigation into the Federal Communications Commission's requirements for intraLATA presubscription. It is further

ORDERED that Docket No. 960658-TP is closed.

By ORDER of the Florida Public Service Commission, this 23rd day of December, 1996.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Flynn
Chief, Bureau of Records

(S E A L)

BC/MMB

Dissents without Comment

Chairman Clark dissents, without comment, from the decision contained herein finding BellSouth's present and planned business practices for communicating information to new customers regarding choices of available intraLATA carriers unfair and requiring BellSouth to adopt a carrier-neutral business practice.

Commissioner Johnson dissents, without comment, from the decision contained herein prohibiting BellSouth, for a period of 18 months from the issuance of this order, from initiating communications with existing customers about BellSouth's intraLATA services when customers contact BellSouth for reasons other than selecting their intraLATA carrier.

Dissents with Comment

Commissioner Deason dissents, with comment, from the decision contained herein on the issues identified in the Prehearing Order as Issues 1 and 2.

Commissioner Garcia dissents, with comment, from the decision contained herein prohibiting BellSouth, for a period of 18 months from the issuance of this order, from initiating communications with existing customers about BellSouth's intraLATA services when customers contact BellSouth for reasons other than selecting their intraLATA carrier.

Commissioner Deason

From the evidence presented, I believe that BellSouth's methods for telling new customers about the various intraLATA carriers available are fair. BellSouth should be allowed to inform customers of the services it offers, and should, at least, be allowed to express interest in retaining customers that have contacted the company with the intent of switching intraLATA carriers. To prohibit BellSouth from doing so could, ultimately, be detrimental to fair competition.

Commissioner Garcia

I do not believe it is appropriate to restrict BellSouth's ability to market its services when an open opportunity is presented. BellSouth should be allowed to initiate marketing efforts when an existing customer contacts the company for reasons other than to switch carriers.

It appears to me that our decision on this issue differs from our decision on the issues relating to the implementation of carrier-neutral business practices and the initiation of marketing efforts when current customers contact BellSouth to change to another intraLATA carrier besides BellSouth. Our approval of those two issues merely prevents BellSouth from taking unfair advantage of its position in the marketplace by ensuring BellSouth

communicates information about other carriers in a proper fashion, and by restricting BellSouth's ability to counter-market its services to a customer who has already decided to take advantage of his or her opportunity to choose another carrier. However, by prohibiting BellSouth from initiating communications with existing customers about BellSouth's intraLATA services when customers contact BellSouth for reasons other than selecting their intraLATA carrier, we are taking away BellSouth's opportunity to affirmatively present its services to an existing customer. I believe that taking away this opportunity could harm BellSouth's ability to compete, and, thereby, disable our attempts to promote a competitive environment.

NOTICE OF FURTHER PROCEEDINGS OR 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: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting 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.