

MEMORANDUM

May 22, 1998

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TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (COX) *WPC BK p 22*

RE: DOCKET NO. 970526-TP - GENERIC CONSIDERATION OF INCUMBENT LOCAL EXCHANGE (ILEC) BUSINESS OFFICE PRACTICES AND TARIFF PROVISIONS IN THE IMPLEMENTATION OF INTRALATA PRESUBSCRIPTION.

98-0710-FDE-TP

Attached is an FINAL ORDER ON INCUMBENT LOCAL EXCHANGE COMPANY BUSINESS OFFICE PRACTICES AND TARIFF PROVISIONS IN THE IMPLEMENTATION OF INTRALATA PRESUBSCRIPTION, with attachment, to be issued in the above-referenced docket. (Number of pages in order - 22)

See 344

WPC/slh
Attachment
cc: Division of Communications
I:970526or.wpc

*533 Self mailer
mailed 22*

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Generic Consideration of
Incumbent Local Exchange (ILEC)
Business Office Practices and
Tariff Provisions in the
Implementation of IntraLATA
Presubscription.

DOCKET NO. 970526-TP
ORDER NO. PSC-98-0710-FOF-TP
ISSUED: May 22, 1998

The following Commissioners participated in the disposition of
this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

APPEARANCES:

Marsha Rule, Esquire, 101 North Monroe Street,
Tallahassee, Florida 32301.
On behalf of AT&T Communications of the Southern States,
Inc.

Mark K. Logan, Esquire, Bryant, Miller & Olive, 201 South
Monroe Street, Suite 500, Tallahassee, Florida 32301.
On behalf of AT&T Communications of the Southern States,
Inc.

Kimberly Caswell, Esquire and Anthony P. Gillman,
Esquire, Post Office Box 110, FLTC0007, Tampa, Florida
33601.
On behalf of GTE Florida Incorporated.

Thomas K. Bond, Esquire, 780 Johnson Ferry Road, Suite
700, Atlanta, Georgia 30342.
On behalf of MCI Telecommunications Corp.

Richard D. Melson, Esquire, Hopping, Green, Sams & Smith,
123 South Calhoun Street, Tallahassee, Florida 32314.
On behalf of MCI Telecommunications Corp.

DOCUMENT NUMBER DATE

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J. Jeffrey Wahlen, Esquire, Post Office Box 391,
Tallahassee, Florida 32302.
On behalf of Northeast Florida Telephone Company, ALLTEL,
Florida, Inc., Vista-United Telecommunications.

Charles J. Rehwinkel, Esquire, Post Office Box 2214,
MCFLTLHO0107, Tallahassee, Florida 32301.
On behalf of Sprint-Florida, Incorporated.

William P. Cox, Esquire, Florida Public Service
Commission, 2540 Shumard Oak Boulevard, Tallahassee,
Florida, 32399-0850.
On behalf of the Commission Staff.

FINAL ORDER
ON INCUMBENT LOCAL EXCHANGE COMPANY
BUSINESS OFFICE PRACTICES AND TARIFF PROVISIONS
IN THE IMPLEMENTATION OF INTRALATA PRESUBSCRIPTION

BY THE COMMISSION:

I. BACKGROUND

On May 5, 1997, we opened Docket No. 970526-TP to investigate incumbent local exchange company (ILEC) business office practices and tariff provisions in the implementation of intraLATA presubscription. On June 13, 1997, we issued Proposed Agency Action (PAA) Order No. PSC-97-0709-FOF-TP, placing specific restrictions on ILECS' business office practices and tariff provisions. On July 7, 1997, GTE Florida Incorporated (GTEFL) and Sprint-Florida, Incorporated (Sprint-Florida or Sprint) filed protests of the PAA Order. Subsequently, the matter was set for hearing on February 23, 1998. At the February 9, 1998, Prehearing Conference, the parties stipulated that the February 23, 1998, hearing would only address the issue of whether we should require GTEFL and the small ILECs to provide a two-for-one Primary Interexchange Carrier (PIC) change charge to existing customers.

On February 23, 1998, we conducted an evidentiary hearing in this proceeding.

STIPULATIONS

Attachment A to this Order, which by reference is incorporated herein, contains the Stipulations agreed to by the parties, and approved by us at the February 23, 1998, hearing. These stipulations resolve for all parties Issues 1, 2, 3b, 3c, and 4, identified in the Prehearing Order in this case. See Order No. PSC-98-0299-PHO-TP, issued February 18, 1998.

Issue 3a is resolved for all parties except Sprint. The parties filed briefs on this issue with respect to whether Sprint's inclusion of the statement "in addition to us" prior to reading the list of carriers in its script complies with this restriction on the ILECs' ability to market their services to existing customers changing their intraLATA carriers.

Issue 3d is resolved for all parties except GTEFL. The parties filed briefs on this issue with respect to whether the Commission should restrict the ILECs' (GTEFL's) ability to market their intraLATA services to existing customers when they call for reasons other than soliciting intraLATA carriers.

The parties resolved Issue 5 by stipulation as it relates to Sprint. This issue was addressed at the hearing as it relates to all other ILECs. Issue 5 is whether the Commission should require GTEFL and the small ILECs to provide two-for-one PICs to existing customers.

Our decision on the issues not resolved by stipulation is explained in detail below.

II. SPRINT'S USE OF "IN ADDITION TO US" IN ITS CUSTOMER CONTACT PROTOCOL

In its brief, Sprint argues that the restrictions in Order No. PSC-96-1569-FOF-TP should not apply to it. Sprint argues that the circumstances in this proceeding are vastly different from those in the complaint against BellSouth, since no complaint has been lodged against Sprint. Sprint contends that there are no marketing efforts built into its disclosure of intraLATA carrier options since the Sprint name is not mentioned in the contact.

Further, Sprint argues that its customer contact script meets the principle underlying the restrictions in Order No. PSC-96-1569-

FOF-TP. Sprint contends that the underlying principle is to ensure that customers have "an opportunity to make an informed decision regarding the available intraLATA toll service providers." Sprint argues that its script strikes an appropriate balance between maintaining neutrality and informing the customer, and argues that because Sprint affiliates provide both interLATA and intraLATA toll services, the omission of the disputed phrase could lead a customer to believe that Sprint-LEC is not an intraLATA toll provider. Hence, Sprint concludes that this restriction would create confusion.

Alternatively, Sprint argues that a careful examination of changes in the intraLATA market and information regarding the level of customer knowledge, education and sophistication will allow us to truly decide if these restrictions should be maintained in Florida. Sprint contends that the pending BellSouth petition in Docket 971399-TL will show that "[T]he intraLATA marketplace is sufficiently robust and that any continuing restrictions will be unnecessary."

In contrast, AT&T argues in its brief that Sprint's use of the phrase "in addition to us" effectively segregates Sprint from other intraLATA carriers, and therefore, provides Sprint with a competitive advantage. Further, AT&T argues that this phrasing violates Order No. PSC-96-1569-FOF-TP, which stated that there must not be a bias for the incumbent services established prior to the customer having an opportunity to consider other choices. AT&T contends that as subtle as the phrase may be, it is still anti-competitive and creates a bias in favor of Sprint. AT&T concludes that Sprint's script, as it is, is inconsistent with the spirit and intent of Order No. PSC-96-1569-FOF-TP.

Similarly, MCI argues in its brief that the phrase "in addition to us" in Sprint's script gives Sprint a great advantage over its intraLATA toll competitors. MCI asserts that Sprint is still a monopoly provider of local service and all new customers must come through Sprint. Hence, MCI argues, as a gatekeeper for intraLATA service, Sprint's initial customer contact must be neutral. MCI further argues that Sprint should use the same competitively neutral practices it has used regarding interLATA choice when talking with customers about intraLATA choice. MCI contends that Sprint's attempt to abandon its longstanding neutral interLATA approach is a move to use its gatekeeper status to leverage its intraLATA services. MCI asserts that such a practice

is not acceptable in the interLATA market and should, therefore, not be acceptable in the intraLATA marketplace.

We agree with Sprint that the circumstances in this proceeding are different from those in the complaint against BellSouth. We believe that competition has begun to emerge in the intraLATA toll presubscription market. Further, we disagree with AT&T's assertion that Sprint's use of the "in addition to us" language would somehow violate our earlier Order No. PSC-96-1569-FOF-TP. That Order applied solely to BellSouth Telecommunications, Inc. (BellSouth). This proceeding, however, sought to address similar issues, but in a generic application to all other ILECS.

In addition to the changes in the competitive landscape, the circumstances of the BellSouth case were different in another way. The BellSouth case was generated by a complaint from the Florida Competitive Carriers Association, AT&T, and MCI. There have been no such complaints lodged against Sprint on the same issues addressed in the complaint against BellSouth. We simply have sought to determine whether the restrictions imposed on BellSouth are necessary on an industry-wide basis.

Upon consideration, we believe that Sprint's use of the phrase "in addition to us" is potentially helpful and informative for customers. We disagree with AT&T and MCI that use of the phrase provides Sprint with an unfair competitive advantage. We agree with Sprint that its contact script meets the underlying principle of the restrictions: to insure that customers have an opportunity to make informed decisions regarding the choice of intraLATA toll providers. Further, we agree with Sprint that competitive changes have occurred in the intraLATA market and customer awareness and sophistication have increased. Accordingly, we will not prohibit Sprint from using the phrase "in addition to us" in its customer contact protocol.

III. GTEFL'S ABILITY TO MARKET ITS INTRALATA SERVICES TO EXISTING CUSTOMERS CALLING FOR REASONS OTHER THAN SELECTING INTRALATA CARRIERS

GTEFL argues that while not its general practice, it occasionally markets intraLATA toll service to its customers who call for reasons unrelated to intraLATA toll. GTEFL states that it addresses the customer's needs, and then asks the customer, "[I]f he is interested in hearing about toll offerings." GTEFL contends

that this practice is not anticompetitive; instead, the practice is "pro-consumer."

GTEFL notes that no complaints about anticompetitive conduct have been filed against GTEFL because GTEFL is not engaging in the same conduct that was asserted in the complaint against BellSouth. Thus, GTEFL asserts, no remedial measures are necessary. GTEFL further argues that imposing this restriction will harm consumers and competition because this restriction "[w]ill deny GTEFL's customers information they would otherwise have chosen to hear and which might well be useful to them in terms of saving money or meeting other needs." GTEFL contends that this restriction will not allow GTEFL to market its services to customers PIC'd [who selected GTEFL as their primary (intraLATA) interexchange carrier (PIC)] to GTEFL; hence, a customer that is unaware of GTEFL's toll discount plans cannot be informed of such discount plans.

GTEFL argues that there is no reason to sanction these "anti-consumer" effects, because BellSouth's restrictions were predicated on the fact that the intraLATA market was in its infancy. These restrictions were needed to increase customers' awareness and allow the interexchange carriers (IXCs) time to establish their presence in the intraLATA toll market. GTEFL contends that its market share data does not show such adverse effects on the IXCs anymore, and thus the restrictions are not needed. As of February 1998, GTEFL states it has lost almost 42% of its toll PIC-able lines, and that 67% of customers chose intraLATA carriers other than GTEFL for the sample month of December, 1997. According to GTEFL, similar BellSouth data shows that the company has "lost 26% of toll PIC-able lines and that 34% of new residential customers chose an intraLATA carrier other than BellSouth." GTEFL argues that there is no evidence that it has hindered the exercise of competitive choice, and the IXCs who have traditionally been identified with long-distance service will be given a marketing advantage if this restriction is imposed on GTEFL. GTEFL contends that the intraLATA toll environment has no need for this marketing restriction, because efficient competition will never develop if some market participants remain subject to regulatory restrictions while others do not. GTEFL concludes that restricting it from communicating this information to customers who may otherwise consent to this exchange of information will be a disservice to the customers.

In its brief, AT&T notes GTEFL's acknowledgment that GTEFL occasionally markets its intraLATA services to its existing customers and that such a practice is not anti-competitive or

inappropriate. AT&T argues, however, that GTEFL's acknowledgment is at odds with our findings in Order No. PSC-96-1569-FOF-TP. AT&T further argues that nothing has changed to make ILECs' marketing their intralATA toll services in this manner an acceptable competitive practice. AT&T contends that ILECs such as BellSouth and GTEFL have a marketing advantage by their very nature as ILECs. AT&T argues that GTEFL still remains the incumbent provider of local service and, thus, has a marketing advantage over non-ILEC intralATA carriers. AT&T concludes that we need to prohibit GTEFL from engaging in the same conduct, as was prohibited for BellSouth, for a period of one year from the date of this order.

In its brief, MCI agrees with AT&T that GTEFL is still the monopoly provider of local service and still retains a marketing advantage over non-ILEC intralATA carriers. MCI contends that customers are not calling GTEFL regarding intralATA services. They are calling GTEFL because it is the local monopoly provider. MCI argues that GTEFL's customers are entitled to the same awareness period as was prescribed in the BellSouth Order; MCI recommends that we impose a similar restriction as we imposed on BellSouth in Order No. PSC-96-1569-FOF-TP.

We agree with AT&T that GTEFL's practice of occasionally marketing its intralATA services to its customers calling for reasons unrelated to intralATA toll is at odds with this Commission's findings in Order No. PSC-96-1569-FOF-TP. We agree with AT&T that GTEFL's practice is the same practice that we prohibited in the complaint against BellSouth.

We acknowledge that it is possible that this restriction might prevent GTEFL from providing its customers with information that might be useful in helping these customers. GTEFL is not prohibited, however, from marketing to its customers in the same manner its competitors are marketing to these customers. We also note that GTEFL's competitors have toll discount plans that customers are unaware of and will only learn of via marketing efforts other than the unique opportunity afforded to GTEFL when customers call for reasons unrelated to intralATA toll.

We agree with GTEFL that the erosion of its market share as represented in its brief does not indicate any negative effects on the IXCs. We also agree with GTEFL that there is no evidence in this proceeding that this practice has hindered the exercise of competitive choice. There is also no evidence in this proceeding, however, to corroborate GTEFL's claim regarding its alleged loss of

market share. We believe that the underlying rationale for GTEFL's occasional practice is customer retention; thus, we disagree with GTEFL that this practice is pro-consumer. Based on the information that GTEFL provided, GTEFL's market position with respect to intraLATA PIC-able lines does appear to have deteriorated more quickly than BellSouth's market position. BellSouth's restriction will expire on June 23, 1998. GTEFL argues that if we conclude that a restriction should be imposed, the restriction should last no longer than the same restriction imposed on BellSouth. On the other hand, we note that we approved a stipulation with respect to Sprint which imposes a restriction until August 15, 1998. The Sprint stipulation was not predicated on any market share data. While we believe that an argument can be made to impose either BellSouth's expiration date or Sprint's expiration date on GTEFL, we believe it is more appropriate to order the later expiration date, in the absence of corroborative evidence to support GTEFL's representation of market share erosion.

Upon consideration, we hereby require GTEFL to refrain from its practice of marketing its intraLATA service to customers who call for reasons unrelated to intraLATA service from the issuance of this Order until August 15, 1998.

IV. ILECs' TWO-FOR-ONE INTRALATA/INTERLATA PIC CHANGE FOR EXISTING CUSTOMERS

The question we address here is not whether the ILECs should be required to provide a two-for-one PIC. The question here is at what rate should the two-for-one PIC be provided to customers after the initial 90-day window for one-free-PIC has expired.

GTEFL witness Munsell states that GTEFL currently assesses an intraLATA PIC change charge at a rate identical to the interLATA PIC change charge. He argues that GTEFL's procedures and associated costs to process an intraLATA change are identical to those of an interLATA PIC change charge; hence, the rates are the same for both intraLATA and interLATA changes. Witness Munsell further states that GTEFL made a conscious decision to follow the existing interLATA processes and procedures as closely as possible. He argues that to do anything different for intraLATA equal access would have resulted in customer and employee confusion and possibly allegations of anti-competitive behavior. Thus, GTEFL decided to utilize the same process for intraLATA equal access as existed for interLATA equal access.

Witness Munsell states that there three types of PIC changes involving intraLATA and interLATA carriers that GTEFL executes. The first is a PIC change of a customer's intraLATA carrier, an "able" (an "A") customer transaction. The second is a PIC change of a customer's interLATA carrier, an "E" transaction. Finally, the third transaction is a simultaneous PIC change of both the intraLATA carrier and the interLATA carrier of a customer, a "B" transaction.

Next, witness Munsell states that there are only two methods used to execute these three types of PIC changes. Under the first method, the end-user is in contact with the interexchange carrier, and the IXC sends a Customer Account Record Exchange (CARE) transaction to GTEFL. The CARE transaction is a mechanized transaction that is initiated by the IXC. Under the second method, the customer initiates the change by directly calling the ILEC's business office. In this instance, the customer will provide the business office representative with information such as name, address, telephone number, and the intraLATA toll provider of choice.

Witness Munsell further explains that for a simultaneous PIC change (a "B" for both intraLATA ("A") and interLATA ("E")) request to the same carrier, GTEFL splits this "B" transaction into "A" and "E" CARE or business office transactions. He states that this single order will henceforth be split into "A" and "E" transactions and processed as though individually ordered. He further argues that although PIC changes may be ordered in a single transaction, GTEFL's system is designed to handle these PIC changes individually. He concedes that GTEFL consciously made the decision to split the "B" transactions into "A" and "E" transactions in order to handle the event whereby one of these fields was frozen by the customer, thus resulting in a rejection of half of that transaction.

Witness Munsell contends that splitting the "B" transaction was a design decision because the switch has no field to recognize combined transactions in the presubscription database. This decision was also necessary in order to enable GTEFL to provide a positive date/time stamp confirmation of the completion of the requested "B" PIC change with the switch update information. He argues that it was conceivable that the switch could process one of those fields before the other, providing two different date/time stamps of completion. Thus, GTEFL could not guarantee that the switch would take both PIC changes at exactly the same time.

Hence, GTEFL opted for splitting any "B" transaction into "A" and "E" transactions, thereby enabling GTEFL to provide accurate confirmation back to the IXCs with precise date/time of completion of either of the "A" or "E" transactions.

Witness Munsell further argues that assessing the two PIC change charges is necessary since there are very minimal efficiencies realized when both intraLATA and interLATA PIC changes to a single carrier are executed simultaneously. He agrees that some efficiency is derived when an end user changes both PICs to the same carrier on the same order. He argues that this efficiency is on the service-taking side where the business office representative does not have to take the customer's information twice. He asserts that besides this savings, "[W]e're processing two distinct PIC changes." GTEFL estimates that the time savings from the customer representative handling a two-for-one order, as opposed to two different orders, is two minutes.

In support of its proposal to assess two PIC charges for the two-for-one PIC, GTEFL witness Munsell proffers a cost study that is basically a time and motion study of what costs are associated with changing an interLATA PIC. This study was conducted and filed on October 4, 1989, with the Federal Communications Commission (FCC). He concedes that the study was for intraLATA and interLATA processes, and no subsequent modifications or updates have been made to it. He concedes that GTEFL has more automation in its services today than it did in 1989. He also concedes that it is likely that in 1989 the percent of PIC changes processed through the CARE system was much less than in June, 1996. Witness Munsell asserts that GTEFL's systems have been upgraded, thereby increasing efficiency. While labor wages have risen, and implementation of these new systems have increased overall costs, witness Munsell states that the amount of labor involved in both service order taking and switch translation activities would be lower today than in 1989. Mechanized system expense would be higher today than it was in 1989.

AT&T's witness Guedel agrees that if GTEFL's intraLATA and interLATA procedures are identical, then it follows that the costs would be identical. Witness Guedel argues, however, that the question is not about identical procedures and the resulting efficiencies, but rather how many efficiencies and how these efficiencies affect the cost of a PIC change. Witness Guedel contends that the efficiencies are probably significant relative to the costs of the PIC change process, especially when one combines

the mechanized and the labor intensive pieces. Witness Guedel further argues that GTEFL has not tendered a cost study that outlines these efficiencies.

Witness Guedel argues that GTEFL should be allowed to recover the incremental costs associated with any PIC change. Witness Guedel states, however, that GTEFL is not justified in charging two PICs for the two-for-one PIC change because there is no cost study to support GTEFL's \$4.14 PIC change charge. He contends that GTEFL's assertion with respect to the costs associated with PIC changes is not factually supported.

Witness Guedel further contends that GTEFL has not submitted the entire 1989 study. It has submitted some selected pages from the 1989 study which have no relevance in this proceeding because they do not constitute a complete cost study and fail to provide sufficient backup information. Witness Guedel states that we should follow our decision in the complaint against BellSouth, where we determined that BellSouth did not have a cost study to support its rates, but accepted the 30% rate additive pending any supporting demonstration by BellSouth.

Witness Guedel disagrees with GTEFL's assertion that its policy of a standing first time one-free-PIC is essentially the same as the Commission's two-for-one PIC policy. He argues that GTEFL's policy is essentially for a first time PIC change. He argues that GTEFL's proposal does not accomplish the same thing as our decision regarding the 30% rate additive on a going-forward basis. Witness Guedel further argues that GTEFL's proposal will become a barrier to competition because the PIC change charge is price elastic.

MCI's witness Hyde agrees that GTEFL's intraLATA and interLATA procedures are identical and asserts that for stand-alone PIC changes these costs will be identical. On the other hand, witness Hyde argues, multiple PIC changes should have different costs. Witness Hyde further argues that charging two PIC charges for the two-for-one PIC change is inappropriate. MCI's witness acknowledges that there are incremental costs associated with the PIC change charge for the additional PIC change, but does not believe doubling the existing PIC change charge is appropriate.

Witness Hyde also contends that GTEFL has not provided a verifiable cost study that shows the purported overlaps in the case of a multiple PIC situation, nor one that allows verification of

the flow-through process or support for the number provided. He argues that both the vintage of the study and the fact that the study was based on a stand-alone PIC change renders it inapplicable to this proceeding.

Witness Hyde argues that we should not allow GTEFL to charge two PICs for the two-for-one PIC because this will provide GTEFL with an over-recovery of the costs. He suggests that until GTEFL can furnish a current, verifiable cost study, it is reasonable for us to cap the second PIC at the 30% rate additive established in the complaint against BellSouth.

We agree with AT&T and MCI that by using its legacy systems for both intraLATA and interLATA PIC changes, GTEFL's associated costs are identical for a stand-alone PIC change. We also agree with AT&T that the question is not whether the procedures are identical, but what realizable efficiencies exist in a two-for-one PIC change. There may be significant efficiencies in the combined PIC transaction, especially when one combines the mechanized and manual pieces. Multiple PIC changes should have different costs. It is inappropriate for GTEFL to charge for two PICs in a two-for-one PIC change order.

We disagree with GTEFL that its switch cannot recognize combined transactions, i.e., "B" transactions. All PIC change orders can be executed by GTEFL's CARE system or through the company's business office. The record does not demonstrate any technical constraints that require the split of a "B" transaction.

We do agree with GTEFL that it is conceivable in a "B" transaction that the switch will process one field before the other; therefore, GTEFL might not be able to guarantee that the switch will execute both PIC change requests at the same time. We note, however, that AT&T and MCI state that they would accept a sequential positive date/time stamp confirmation that was within reason.

We are not convinced by GTEFL's assertion that there are minimal efficiencies realized in the two-for-one PIC and that these efficiencies result only from end user orders at the business office. Hence, we disagree with GTEFL's conclusion that absent this saving, "[W]e're processing two distinct PIC changes." We believe that there are time savings associated with the mechanized, as well as the manual, components of the PIC change process.

We note GTEFL's assertion that its subject matter experts estimate the derived efficiency is two minutes. When factored into the two methods of executing PIC changes using the 14%/86% breakdown for end-user/CARE initiated transactions, this efficiency results in approximately \$0.08 savings. We take issue with GTEFL's conclusion because GTEFL is using a 1996 end-user/CARE transaction distribution with a 1989 cost study to arrive at the proposed efficiency savings. We agree with MCI that both the vintage and the fact that this study was conducted for a stand-alone PIC change render this study inappropriate support for this proceeding. GTEFL itself concedes that its systems are more automated today than they were in 1989. We further have concerns with GTEFL's use of a 1996 single month, non-Florida PIC change distribution.

Upon consideration, we recognize that we do have a precedent, namely, the 30% rate additive that we determined appropriate in the complaint against BellSouth. GTEFL is in the same posture as BellSouth, in that neither LEC had a current cost study to support its proposed rates. We find that GTEFL designed its PIC change system without providing for a combined PIC transaction field. We disagree with GTEFL that there are very minimal efficiencies associated with the two-for-one PIC change order (\$0.08 net cost savings), since this conclusion is derived using portions of both a 1989 cost study and a 1996 one month nationwide PIC change sampling. We believe that a current and fully substantiated cost study would outline all the possible overlaps that are or could be avoided with the two-for-one PIC change. Absent such a study, we are unable to conclusively make a determination with respect to the degree of efficiencies and how these efficiencies affect the proposed PIC change charge. Hence, pending the availability of such a study, we hereby require GTEFL and small ILECs to provide the two-for-one PIC change at the rate of one PIC plus a 30% rate additive consistent with Order No. PSC-96-1569-FOF-TP. This rate should apply once the one-free-PIC 90-day window has been provided.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Sprint-Florida, Incorporated may use the phrase "in addition to us" in its customer contact protocol as specified in the body of this Order. It is further

ORDERED that GTE Florida Incorporated shall not market its intraLATA service to customers who call for reasons unrelated to

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intraLATA service from the issuance of this Order until August 15, 1998, as specified in the body of this Order. It is further

ORDERED that GTE Florida Incorporated and the small incumbent local exchange companies shall charge a single PIC change plus the 30% rate additive when a customer changes interLATA and intraLATA carriers at the same time to a single carrier as specified in the body of this Order and the attached Stipulation Agreement. It is further

ORDERED that Attachment A to this Order is incorporated by reference herein. It is further

ORDERED that this docket is closed.

By ORDER of the Florida Public Service Commission this 22nd day of May, 1998.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

WPC

DISSENTS

Commissioner Joe Garcia and Commissioner E. Leon Jacobs dissented on Sections II and III of this Order.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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

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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.

Docket No. 970526-TP

STIPULATION AGREEMENT

The undersigned parties to Florida Public Service Commission Docket No. 970526-TP, in an effort to resolve several of the issues scheduled for consideration at hearing in this docket do hereby agree to the following:

1. The undersigned parties have agreed to submit the stipulated language below to the Commission with respect to each of the issues under consideration. The parties do so with the understanding that this stipulation is made only with respect to the resolution of this docket and that the stipulations are based on certain representations by the ILECs. If these representations are materially inaccurate, this stipulation shall not prohibit any party from filing a complaint or other administrative action in the future with respect to any of the activities below against any other party based upon alleged anticompetitive marketing practices or other violation of Chapter 364, Florida Statutes. This stipulation and agreement is made for the purpose of settling the issues discussed below and shall not be construed as an admission that any ILEC practices mentioned herein have been or may be anticompetitive or otherwise are violative of any order, rule or statute.

2. Subject to the conditions set forth in paragraph 1, the parties submit the following language to the Commission as partial resolution of this docket:

Issue Number 1: Should the Commission prohibit GTEFL, Sprint-LEC, and the small ILECs from utilizing terminology that suggest ownership of the intra-LATA toll calling area when referring to the intra-LATA service areas in directories and bill inserts?

Resolution: The ILECs assert, and the other parties agree not to contest in this proceeding, that the ILECs do not use any terminology which would imply ownership of a

particular intraLATA toll calling area. As long as the ILECs do not imply ownership of the toll calling area, the choice of toll terminology is a marketing decision of each individual company. Accordingly, there is no need for Commission action with respect to this issue at this time.

Issue Number 2: Should the Commission require GTEFL, Sprint-LEC, and the small ILECs to place a new customer who is undecided regarding a choice of intraLATA carrier in a no-PIC status until such a choice is made?

Resolution: The ILECs assert and the other parties agree not to contest in this proceeding, that the ILECs already have the no-PIC option in place. Thus, if a customer does not elect an intraLATA carrier, his 1+ toll will be blocked until he chooses a pre-subscribed carrier. Accordingly, there is no need for Commission action at this time.

Issue Number 3: Should the Commission require GTEFL, Sprint-LEC, and the small ILECs to put in place competitively-neutral customer contact protocols for:

a: Communicating information to new customers regarding intraLATA choices:

Resolution: The ILECs assert and the other parties agree not to contest in this proceeding, that their interLATA and intraLATA procedures for communicating information about toll choices are consistent and in compliance with PSC Order No. PSC-95-0203-FOF-TP, which states that "when new customers sign up for service they should be made aware of their options of intraLATA carriers in the same fashion as for interLATA carriers". The procedures are the same in that the ILECs asks each customer if he has a choice of carrier. If the customer does not, then the ILEC will read a random list of carriers. Accordingly there is no need for Commission action as this time. However, the parties agree to brief the issue of whether Sprint's inclusion of the statement "in addition to us" prior to reading the list complies with this requirement.

b. ILEC processing of all PIC change orders of its customers?

Resolution: The ILECs assert and the other parties agree not to contest in this proceeding, that the ILECs already process all PIC change orders (interLATA and intraLATA) when requested by their local customers. Accordingly, there is no need for Commission action with respect to this issue at this time.

c. [Staff Issue 4a.] ILECs' ability to market their service to existing customers changing their intraLATA carriers? If so, for what period of time should any such requirements be imposed?

Resolution: With respect to GTEFL and Sprint-Florida the ILECs assert and the other parties agree not to contest in this proceeding, that the ILECs are in compliance with the measure adopted for BellSouth in with PSC Order No. PSC-95-0203-POF-TP. That measure specifies that if a customer calls an ILEC to change his pre-subscribed intraLATA carrier from that ILEC to another carrier, the ILEC cannot, on that same call, try to dissuade the customer from changing from the ILEC to the other carrier. GTEFL and Sprint-Florida agree to continue to comply with this policy until at least August 15, 1998. After that time, these ILECs will be able to market their services in the same manner as do their competitors. Accordingly there is no need for Commission action on this issue at this time. If, however, this restriction is eliminated as to BellSouth before June, 1998, GTEFL and Sprint-Florida may also seek elimination of the same restrictions before August 15, 1998. The other parties reserve the right to contest such early elimination.

With respect to the small ILECs, the ILECs assert and the other parties agree not to contest in this proceeding, that the level of activity associated with marketing of intraLATA services is such that Commission action is not required at this time.

d. [Staff's issue 4b] ILECs' ability to market their intraLATA services to existing customers when they call for reasons other than selecting intraLATA carriers? If so, for what period of time should any such requirements be imposed?

Resolution: With respect to GTEFL, the company asserts that none of its practices are anticompetitive or otherwise inappropriate. However, to more efficiently resolve the issue without the need for discovery or other factual investigation, GTEFL asserts that, in some instances, GTEFL does market intraLATA services to existing customers when they call for reasons other than selecting intraLATA carriers. The other parties assert that the commission should impose upon GTEFL the same marketing restrictions imposed upon BellSouth in Order No. PSC-96-1569-POF-TL, and for the same length of time. The parties have agreed to brief the policy and legal issues associated with this practice and whether the Commission should impose any restriction on the same, up to and including the length of time such restrictions were imposed on BellSouth.

With respect to Sprint-Florida, asserts and the other parties agree not to contest in this proceeding, that Sprint-Florida does not currently market intraLATA services when customers call on matters other than selecting an intraLATA carrier consistent with the previous order in this docket concerning BellSouth. The parties stipulate that Sprint-Florida will continue to observe this practice until at least August 15, 1998. After that time, Sprint-Florida will be able to market their services in the same manner as does its competitors. Accordingly there is no need for Commission action on this issue at this time. If, however, this restriction is eliminated by BellSouth before June, 1998, Sprint-Florida may also seek elimination of the same restrictions before August 15, 1998. The other parties reserve the right to contest such early elimination.

With respect to the small ILECs, the ILECs assert and the other parties agree not to contest in this proceeding, that the level of activity associated with the small ILEC intraLATA is such that Commission action is not required at this time.

Issue 4 [Staff Issue 5]: Should the Commission require the ILECs to provide one free PIC to existing customers?

Resolution: With respect to GTEFL, GTEFL asserts and the other parties agree not to contest in this proceeding, that it has already provided the option for one free PIC, as reflected in its tariff. As the company's conversion to intraLATA presubscription was completed in February of 1997 there is no need for further Commission action on this issue with respect to GTEFL.

With respect to Sprint-Florida, Sprint-Florida asserts and the other parties agree not to contest in this proceeding, that it provided the option for one free PIC for customers served by offices converted after the Commission ordered intraLATA presubscription. In lieu of offering one free PIC to all other customers, the company will agree to continue to offer the two-for-one PIC with no additive to existing customers choosing the same provider at the same time until at least December 31, 1998.

With regard to those exchanges already converted on the date this settlement is executed, the small ILECs agree to provide for one free PIC per customer line for 90 days from the date of execution of this settlement or from the date of conversion, whichever time period expires first. With regard to those exchanges not yet converted, the small ILECs agree to provide for one free PIC per customer line for 90 days from the date of conversion. Accordingly there is no need for Commission action with respect to the small ILECs on this issue.

Issue Number 5: Should the Commission require GTEFL, Sprint-LEC and the small ILECs to provide two-for-one PIC to existing customers?

Resolution: With respect to Sprint-Florida, Sprint-Florida will agree to offer the two-for-one PIC with no additive until December 31, 1998, as specified in Issue 4. After that time, Sprint-Florida reserves the right to charge its tariffed rate for the second PIC when selected at the same time as the first, which tariff currently complies with the 30% additive imposed on BellSouth.

There is no resolution of this issue as to other ILECs. If staff agrees, the parties stipulate that they will waive live testimony at hearing, stipulate that the direct and rebuttal testimony already filed in this docket will be inserted into the record of the proceeding as though read, and that they will brief the issue based upon such testimony.

3. This agreement shall not become effective unless and until all parties to the docket execute the same and the document is filed and received by the Commission as part of the Docket Number 970526-TP. In the event the agreement is not signed by all parties or not accepted by the Commission then it shall have not be binding on any party with respect to any of the matters contained herein.

Dated this ____ day of February, 1998.

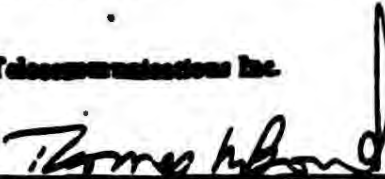
Sprint-Florida, Inc.

By: 
Charles Reinwald

AT&T Communications of the Southern States

By: 
Marina Ruiz

MCI Telecommunications Inc.

By: 
Tom Bond


GTE Florida Inc.

By: 
Jim Powell


ALLTEL Florida Inc.

By:  for AT&T
Jeffrey Rubin

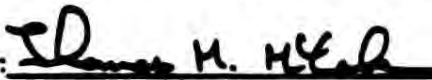
Vista-United Telecommunications

By:  for AT&T
Jeffrey Rubin

Northeast Florida Telephone Company

By:  for AT&T
Jeffrey Rubin

TDS Telecom - Quincy Telephone Company

By: 
Tom McCabe

GTCOM

By: 