FLORIDA PUBLIC SERVICE COMMISSION
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M E M O R A N D U M

MAY 7, 1997

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF COMMUNICATIONS (AUDU)
DIVISION OF LEGAL SERVICES (BARONE)

RE: DOCKET NO. 9[illegible]6-TP - GENERIC CONSIDERATION OF ILECs BUSINESS OFFICE PRACTICES AND TARIFF PROVISIONS IN THE IMPLEMENTATION OF INTRALATA PRESUBSCRIPTION.

AGENDA: MAY 19, 1997 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PARTIES MAY PARTICIPATE

SPECIAL INSTRUCTIONS: S:\PSC\CMU\WP\970526TP.RCM

CASE BACKGROUND

This proceeding was initiated by the Commission to address generic issues that were addressed in Order No. PSC-96-1569-FOF-TP, Docket No. 960658-TP, the Florida Interexchange Carriers Association (FIXCA), MCI Telecommunications Corporation (MCI) and AT&T Communications of the Southern States, Inc. (AT&T) (the Complainants) complaint against BellSouth Telecommunications, Inc. (BellSouth). The Complainants alleged that BellSouth devised anticompetitive business practices and unreasonable tariff provisions which would hinder the exercise of competitive choices in the intraLATA market. The Complainants argued that these practices would enable BellSouth, a dominant incumbent provider of local exchange services, to leverage its position to gain an unfair advantage over intraLATA competitors, thereby frustrating the intent of the Commission in Order No. PSC-95-0203-FOF-TP.

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

On June 30, 1995, pursuant to Order No. PSC-95-0203-FOF-TP, BellSouth filed a tariff to include a new rate element for intraLATA equal access cost recovery. 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, the Commission issued Order No. PSC-96-0692-FOF-TP, in Docket No. 930330-TP, in which BellSouth's tariff was approved. On May 24, 1996, the Complainants filed a Joint Complaint against BellSouth. On June 11, 1996, the Complainants filed a protest to Order No. PSC-96-0692-FOF-TP, in Docket No. 930330-TP, and requested a hearing. On October 17, 1996, a hearing was conducted to address issues pertaining to BellSouth's business office practices and tariff provisions as they relate to intraLATA presubscription. On December 23,1996, Order No. PSC-96-1569-FOF-TP, was issued memorializing the Commission's findings in Docket Nos. 9930330-TP and 60658-TP. On January 7, 1997, BellSouth filed a Motion for Reconsideration of Order No. PSC-96-1569-FOF-TP, Docket No. 960658-TP. On January 21, 1997, the Complainants filed a response to BellSouth's Motion. On April 14, the Commission denied BellSouth's Motion for Reconsideration.

The issues addressed in Order No. PSC-96-1569-FOF-TP, are equally applicable to GTEFL, Sprint-LEC, and the small ILECs (ILECs). Consequently, this recommendation addresses whether the other ILECs should be required to adopt competitively neutral business office practices in implementing intraLATA presubscription, the appropriate handling of PIC change requests, and the appropriate rates, if applicable.

To summarize the issues addressed in this recommendation:

Issue 1 recommends that the ILECs be prohibited from utilizing terminology that suggests ownership of the intraLATA toll calling area when referring to the intraLATA service areas.

Issue 2 recommends that the ILECs be required to place a new customer who is undecided regarding choice of intraLATA carriers in a 'no-PIC' status until a choice is made.

Issue 3 deals with provisions necessary to ensure that the ILECs have competitively-neutral customer contact protocols which foster the Commission's intent as expressed in Order No. PSC-95-0203-FOF-TP. Staff believes that:

1. The ILECs should adopt a carrier-neutral, customer friendly approach as they communicate information to new customers regarding choices of available intraLATA carriers.

2. The ILECs should not be allowed to initiate marketing efforts designed to dissuade customers from changing intraLATA carriers for a period of 18 months from the issuance of the order from this recommendation.

3. The ILECs should refrain from initiating communications with existing customers, when these customers contact the ILECs for reasons other than selecting their intraLATA carrier for a period of 18 months from the issuance of the order from this recommendation.

4. To expedite competition in the intraLATA toll market, the ILECs should process all intraLATA PIC change orders for all their local customers.

Issue 4 deals with whether the ILECs should be required to put in place tariff provisions geared towards fostering competition as intended by Order No. PSC-95-0203-FOF-TP. Staff believes that:

1. Existing customers should be given a one-time opportunity to designate their preferred intraLATA carrier without incurring a PIC change charge. Staff believes that the One Free PIC change is appropriate and should run for a period of 90 days from the date the ILEC converts its last end-office switch to provide intraLATA equal access. If the ILEC has completed the conversion of its switches, the 90 days should run from the date the Order from this recommendation is issued. This could serve as an incentive for customers who seek to exercise their choices.

2. The ILECs should be required to impose a single PIC change charge on a customer who changes both interLATA and intraLATA carriers at the same time to the same carrier. The two-for-one PIC should run for a period of 90 days from the date the ILEC converts its last end-office switch to provide intraLATA equal access. If the ILEC has completed the conversion of its switches, the 90 days should run from the date the Order from this recommendation is issued. At the expiration of the 90 days, staff believes that the ILEC should be required to charge a 30% rate additive in addition to the single PIC

change charge to a customer who changes interLATA and intraLATA carriers at the same time to the same carrier.

ISSUE 1: Should the Commission prohibit GTEFL, Sprint-LEC, and the small ILECs (ILECs) from utilizing terminology that suggests ownership of the intraLATA toll calling area when referring to the intraLATA service areas in directories and bill inserts?

RECOMMENDATION: Yes. The Commission should prohibit GTEFL, Sprint-LEC, and the small ILECs (ILECs) from utilizing terminology that suggests ownership of the intraLATA toll calling area when referring to the intraLATA service areas in directories and bill inserts and instead, to refer to the intraLATA toll calling area as "local toll.".

STAFF ANALYSIS:

When referring to the intraLATA service areas in directories and bill inserts, the ILECs should be prohibited from utilizing terminology that suggests ownership of the intraLATA toll calling area.

In Order No. PSC-96-1569-FOF-TP, Docket No. 960658-TP, the parties agreed on modified language which the Commission approved as resolving this issue. In the stipulation, BellSouth agreed not to use terminology that suggested ownership of the intraLATA toll calling area and instead, to refer to the intraLATA toll calling area as "local toll." The Joint Complainants found this modification satisfactory and accepted the modification.

Staff believes that the modified language is competitively neutral and therefore recommends that the Commission should prohibit the ILECs from using terminology that suggests ownership of the intraLATA toll calling area and instead, refers to the intraLATA toll calling area as "local toll."

ISSUE 2: Should the Commission require GTEFL, Sprint-LEC, and the small ILECs (ILECs) to place a new customer who is undecided regarding a choice of intraLATA carriers in a 'no-PIC' status until a choice is made?

RECOMMENDATION: Yes. The Commission should require GTEFL, Sprint-LEC, and the small ILECs (ILECs) to place a new customer who is undecided regarding a choice of intraLATA carriers in a 'no-PIC' status until a choice is made.

STAFF ANALYSIS:

With respect to a new customer who is undecided regarding choice of intraLATA carriers, the ILECs should be required to designate such a customer in a 'no-PIC' status until a choice is made.

In the Complaint proceedings (Docket Nos. 960658-TP_, BellSouth obtained and agreed to use a CIC code to provide the "no-PIC" option for customers that have not selected a carrier to handle their intraLATA toll. This agreement was contingent on recovering the one-time cost associated with the implementation of the no-PIC option using the recovery mechanism established in Docket No. 930330-TP.

Staff believed that BellSouth should be allowed to recover this cost. However, the cost recovery mechanism referenced in Docket No. 930330-TP was determined to conflict with the FCC's required methodology in its Second Report and Order. In the Second Report and Order, the FCC established that cost recovery for the implementation of toll dialing parity should mirror the FCC's interim number portability cost recovery mechanism (96-333 at ¶ 92).

Staff did not believe it was appropriate to establish a cost recovery mechanism that was inconsistent with the FCC's requirements. Hence, the Commission agreed to decide this issue in a generic proceeding in Docket No. 930330-TP.

The Commission determined in Order No. PSC-96-1569-FOF-TP, that BellSouth should implement the "no-PIC" option and that the one-time cost associated with the implementation of the no-PIC option should be addressed in a Commission generic investigation into an appropriate cost recovery mechanism. Currently, Commission staff has scheduled a workshop for May 15, 1997, to commence this investigation.

Staff recommends that the Commission should require the other ILECs to implement a "no-PIC" option, and that recovery of the one-time cost associated with the implementation of the no-PIC option should be addressed in a separate Commission generic investigation.

ISSUE 3: Should the Commission require GTEFL, Sprint-LEC, and the small ILECs (ILECs) to put in place competitively-neutral customer contact protocols?

RECOMMENDATION: Yes. The Commission should require GTEFL, Sprint-LEC, and the small ILECs (ILECs) to put in place competitively-neutral customer contact protocols. For a period of 18 months from the issuance of the order from this recommendation, the Commission should not allow the ILECs to initiate marketing efforts designed to dissuade customers from changing intraLATA carriers, and should refrain from initiating communications with existing customers about their intraLATA services when customers contact the ILECs for reasons other than selecting their intraLATA carrier. The Commission should require the ILECs to process all intraLATA PIC changes for their local customers.

STAFF ANALYSIS:

In Order No. PSC-95-0203-FOF-TP, in Docket No. 930330-TP, the Commission determined that intraLATA presubscription is in the best interest of the citizens of Florida. In Order No. PSC-96-1569-FOF-TP, Docket No. 960658-TP, the Commission determined that to ensure the proper development of competition in the intraLATA market, BellSouth must maintain competitively neutral customer contact protocols and also provide tariff provisions that will enable customers to exercise their newly available choices of intraLATA carriers. In an effort to be even-handed, this recommendation addresses these issues as they pertain to other ILECs as they implement intraLATA presubscription.

Communicating information to new customers regarding intraLATA choices.

The Complainants argued that the parties had agreed to adopt a carrier marketing approach as a method through which carriers would obtain new customers in the intraLATA markets. (Order No. PSC-95-0203-FOF-TP, Docket No. 930330-TP) The Complainants further argued that BellSouth had contravened this Order by attempting to market its intraLATA service to all new customers but naming competitors only if the new customer requested. This, the Complainants argued, departed from the neutral interLATA practice that the parties agreed upon, which the Commission adopted in Order No. PSC-95-0203-FOF-TP, Docket No. 930330-TP.

In response, BellSouth stated that new customers would be given a balanced presentation of the available toll alternatives in a fair and nondiscriminatory manner. BellSouth argued that it had developed methods and procedures that present customers with a balanced approach, explaining the various alternatives for intraLATA service.

Based on the evidence presented, the Commission found that BellSouth had not put in place sufficiently neutral methods for communicating information regarding other available intraLATA carriers to new customers. Thus, the Commission determined that BellSouth's business practices were inappropriate and unfairly favored BellSouth's intraLATA toll service. The Commission further determined that BellSouth was likely to create a bias for its service by marketing its services to customers before they had the opportunity to consider their other choices. The Commission therefore adopted these customer contact protocols as being competitively neutral communications:

1. The ILEC should 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 your local calling zone to nearby communities).

2. The ILEC should offer to read to the customer the list of available carriers. If the customer responds yes, then the list should be read.

3. If the customer responds no, then the customer service representative should ask the customer to identify the carrier of choice. If the customer responds, I'm not sure, the service representative should 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 should 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 Commission determined that these prompts would give the customer an opportunity to make an informed decision regarding the available intraLATA toll service providers, and that BellSouth should not be allowed to market its intraLATA toll service unless the subject is introduced by the customer.

Staff recommends that the Commission should require the other ILECs to use these competitively-neutral prompts in communicating information to new customers about their intraLATA carrier choices, thus giving the customers the opportunity to make informed decisions.

ILECs' ability to market their services to existing customers changing their intraLATA carriers.

The Complainants argued that as a dominant LEC, any attempt by BellSouth to reverse a customer's decision to change intraLATA carriers was an abuse of its role as an incumbent LEC. Specifically, the Joint Complainants 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 were encouraged to attempt to try to keep the customer with BellSouth. The Complainants therefore argued that BellSouth should not be allowed to initiate this type of marketing effort until the intraLATA market is more evenly distributed.

BellSouth argued in response 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 contended 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 agreed that its "Save the Service" directive for its service representatives only applied to small business customers.

Upon consideration, the Commission determined that as long as BellSouth remains the gateway for customer contact in the intraLATA market, there is an opportunity for BellSouth to misuse that position. The Commission found that BellSouth could gain a competitive advantage by initiating marketing efforts intended to retain a customer when a customer calls to change intraLATA providers to a carrier other than BellSouth. The Commission further noted that although BellSouth indicated that it only initiates such marketing efforts to retain small business customers, there was no mechanism in place to prevent BellSouth from also applying this marketing practice to its residential customers.

The Commission also determined that should BellSouth exploit its role as the gateway for customer contact, this would stifle the development of competition in the intraLATA toll market. Therefore, the Commission ordered BellSouth not 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 from the date of the issuance of this Order. At the conclusion of this period, BellSouth is allowed to market its services in the same manner as its competitors.

Staff thus recommends that the Commission should require the ILECs not to initiate marketing efforts designed to dissuade customers, business or residential, from changing their intraLATA carrier from their current ILEC to another carrier for a period of 18 months from the date of the issuance of this Order. At the conclusion of this period, the ILECs shall be allowed to market their services in the same manner as their competitors.

<u>ILECs ability to market their intraLATA services to existing customers when they call for reasons other than selecting intraLATA carriers.</u>

The Joint 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 chooses to use the information to market its intraLATA services during LEC service related calls. This, the Complainants argued, could influence customers' decisions as it pertains to the choice of intraLATA carriers. The Complainants therefore argued that BellSouth should be required to refrain from soliciting customers who call for reasons unrelated to intraLATA toll service until the market is more evenly distributed. Notwithstanding, the Complainants agreed that MCI, for instance, can attempt to sell the customer both interLATA and intraLATA toll services during any customer contact.

In response, BellSouth argued that while current practices do not encourage such marketing efforts on all customer initiated contacts, competitive pressures in the future may dictate that these opportunities be used for marketing intraLATA services. BellSouth contended that under its current practices, service representatives are not encouraged to discuss intraLATA toll service on all customer initiated contacts, but only when an existing customer requests an additional line.

Based on the above arguments, the Commission determined that as the incumbent LEC, BellSouth has a unique position with respect to customer contacts and customer information, which could give BellSouth an advantage over its competitors in the intraLATA market. BellSouth is also privy to customer information, such as billing history and PIC changes, that its competitors are not, and could use this information as a marketing tool to persuade customers to select BellSouth as their intraLATA service provider.

Therefore, the Commission concluded 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, for a period of 18 months from the date of the issuance of this Order. However, at the expiration of this period, BellSouth shall be allowed to market its services in the same manner as its competitors.

Staff thus recommends that when existing customers contact the ILECs for reasons unrelated to intraLATA toll service, the Commission should require that the other ILECs not use those opportunities to market their intraLATA toll service, unless the customers introduce the subject, for a period of 18 months from the date of the issuance of this Order. However, at the expiration of this period, the ILECs shall be allowed to market their services in the same manner as their competitors.

ILEC processing all PIC change orders of its customers.

The Joint Complainants argued that BellSouth's obligation to accept customers' PIC change orders is codified in tariffs and is mandated by the FCC. They further argued that BellSouth should be required to process all of its existing customers' PIC change requests because the customers are accustomed to contacting their local service provider for interLATA PIC change requests. The Complainants contended that BellSouth's procedure was inconsistent with its current interLATA procedure. In particular, the Complainants argued that BellSouth's approach was confusing to customers who called to change their intraLATA carrier to a company other than BellSouth and were told to contact the carrier directly. The confusion arises because if the customer insists that BellSouth processes his/her change order, then the service representative will make the change and then advise the customer to contact his/her carrier of choice.

The Complainants contended that BellSouth's approach was irritating and rewarded customers who persisted, but penalized those who gave up. Furthermore, the Complainants argued that BellSouth's intraLATA procedure regarding the processing of PIC changes appeared inconsistent with its interLATA procedure. The Complainants indicated that BellSouth stated that the customer may not call to change his/her intraLATA carrier if they are referred to the IXC. Hence, the Joint Complainants concluded that this action may force the customer to retain BellSouth as his/her intraLATA carrier.

However, BellSouth argued that in order for customers to benefit from an IXC's discount plan, they would need to contact their carrier of choice. 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 contended that this minimizes the redundancy for the customer, who must contact his/her carrier of choice in order to establish an account. BellSouth indicated that this approach allows the customer to deal with his/her newly chosen intraLATA carrier and to determine which of the carrier's full range of services best meets his/her needs.

BellSouth further argued that to process the PIC changes any other way would place a strain on BellSouth's business office resources. BellSouth also argued that by so doing, it would be performing the business office functions for the IXCs without compensation for those functions. BellSouth contended that its 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. The Complainants noted, however, that BellSouth receives the PIC change fee as compensation for this activity.

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

Staff recommends that the Commission should determine that the other ILECs procedures for processing PIC changes in the intraLATA market should mirror their interLATA procedures. Also, the Commission should require the ILECs to process all intraLATA PIC changes for their customers.

ISSUE 4: Should the Commission require GTEFL, Sprint-LEC, and small ILECs (ILECs) to put in place tariff provisions as they relate to the One Free PIC and the Two-For-One PIC for their existing customers?

RECOMMENDATION: Yes. The Commission should require GTEFL, Sprint-LEC, and small ILECs (ILECs) to put in place tariff provisions as they relate to the One Free PIC and the Two-For-One PIC for their existing customers as specified in staff analysis. The One Free PIC change and the Two-For-One PIC change should run for a period of 90 days from the date of conversion of the ILEC's last end-office switch to provide intraLATA equal access. If the ILEC has completed the conversion of its switches, the 90 days should run from the date the Order from this recommendation is issued. At the expiration of the 90 day One Free PIC, the end user will be assessed the respective ILEC's PIC change charge. Also at the expiration of the 90 day Two-For-One PIC PIC change, the end user will be assessed the 30% rate additive in addition to the one PIC change charge. Pending further investigation of the appropriate cost recovery mechanism for intraLATA presubscription, the Commission, on an interim basis, should require the ILECs to track their costs with sufficient detail to verify the costs in a generic proceeding. Further, the Commission should require the ILECs to perform an intraLATA PIC change charge cost study with the major cost drivers identified in order to consider recovery of these costs in a generic proceeding.

STAFF ANALYSIS:

One Free PIC

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. The Complainants stated that BellSouth plans to allow new customers to designate their initial intraLATA PIC without paying a charge. Thus, the Complainants 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 traffic. The Complainants also argued that existing customers were assigned to BellSouth because of BellSouth's incumbent monopoly status, and that existing customers did not affirmatively select BellSouth as their intraLATA carrier. They simply had no other option.

The Complainants further argued 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 dissimilar treatment of new and existing customers could be perceived as discriminatory. The Complainants contended 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. The 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.

In its response, BellSouth argued that it was not appropriate 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, BellSouth contended that the application of a PIC change charge was consistent with the Commission's decision that intraLATA presubscription be implemented via a marketing process. BellSouth further argued that while the FCC's Order on interLATA presubscription allowed for One Free PIC change for customers, the Commission did not order the same for intraLATA presubscription. Nevertheless, BellSouth asserted that if the Commission determined that One Free PIC change was in the public interest, the allowable time window should not exceed 90 days from the time the last switch converts to dual PIC capability.

Considering the evidence, the Commission concluded that existing customers did not affirmatively choose BellSouth as their service provider, but instead were assigned to BellSouth due to its monopoly status. The Commission disagreed with BellSouth that the application of a PIC change charge was consistent with its decision in the intraLATA presubscription proceeding. The Commission noted that its findings in the intraLATA presubscription proceeding did not address the application of a PIC change charge, but the development of competition in the intraLATA market. However, the Commission noted that the FCC's Second Report and Order in CC Docket No. 96-98 noted that parties proposed to allow customers a grace period during which customers could switch carriers without charge. (96-333 at ¶ 79) The Commission therefore determined that it was possible that a customer would be less likely to switch to a carrier other than BellSouth if the customer would incur a PIC change charge, and thereby, could impede the development of competition in the intraLATA market.

Hence, the Commission determined that existing customers shall have the opportunity to designate their preferred intraLATA carrier once without incurring a PIC change charge. The Commission noted that new and existing customers should be afforded the same opportunities, and that any appearance of discrimination should be carefully avoided. The Commission also determined that the One Free PIC shall run for a period of 90 days from the date of conversion of BellSouth's last end-office switch to 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, in the case of BellSouth.

Staff thus recommends that the Commission require the other ILECs to provide existing customers the opportunity to designate their preferred intraLATA carrier once without incurring a PIC change charge for a period of 90 days from the date of conversion of the ILEC's last end-office switch to intraLATA equal access. If the ILEC has completed the conversion of its switches, the 90 days should run from the date the Order from this recommendation is issued. At the expiration of the 90 days, any end user making a PIC change will be assessed the respective ILEC PIC change charge.

<u>Two-For-One PIC</u>

Until the implementation of intraLATA presubscription, customers could only choose interLATA carriers. With intraLATA equal access, customers can now designate different carriers for interLATA and intraLATA calls. The question is whether the ILECs 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.

The Joint Complainants argued that to allow BellSouth to impose two PIC change charges on a customer who simultaneously changes both interLATA and intraLATA carriers to the same carrier would reduce the customer's incentive to exercise his/her 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. The Complainants contended that the incremental cost of accomplishing the second PIC change is minimal, and 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 of scale realized with the simultaneous processing of both interLATA and intraLATA PIC changes. According to BellSouth, there is approximately a 70% savings when both interLATA and intraLATA PIC changes are processed together, because the two processes are identical. Thus, BellSouth agreed to adjust its PIC change charges so that when a customer simultaneously changes both interLATA and intraLATA carriers to the same carrier, BellSouth charges for the interLATA PIC change, plus 30% of the intraLATA PIC change charge as an additive.

Upon consideration of the evidence, the Commission found that it is appropriate to require BellSouth to charge a single PIC change charge when a customer changes interLATA and intraLATA carriers to a single carrier in one transaction. The Commission determined that 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.

Staff recommends that the Commission should find that the ILECs shall charge a single PIC change charge when a customer changes interLATA and intraLATA carriers to a single carrier in one transaction for a period of 90 days from the date of conversion of ILEC's last end-office switch to provide intraLATA equal access. If the ILEC has completed the conversion of its switches, the 90 days should run from the date the Order from this recommendation is issued. At the expiration of the 90 days, end users will be assessed the 30% rate additive in addition to the one PIC change charge of the respective ILEC.

<u>COST RECOVERY</u>

While the parties to the proceedings memorialized in Order No. PSC-96-1569-FOF-TP all differ regarding the reasonableness of BellSouth's tariff provisions in the implementation of intraLATA presubscription, they all agreed that there are costs associated with these tariff provisions. Thus, the Joint Complainants agreed that BellSouth should be allowed to recover any verified, unrecovered relevant costs through the existing intraLATA equal access implementation mechanism.

<u>One Free PIC:</u>

The Complainants argued that existing customers were able to select their toll carrier at no charge when interLATA equal access was established; this same approach is appropriate for intraLATA service. The Complainants agreed that BellSouth should be allowed to 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.

In response, BellSouth argued that there are costs incurred in making these PIC changes, and BellSouth should be allowed to recover the costs. BellSouth concluded that the most appropriate method of recovering these costs is either from the IXC or the end user who generates these costs.

In Order No. PSC-95-0203-FOF-TP, the Commission 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 ILECs 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. Notwithstanding, the Commission noted that BellSouth's 1990 interLATA PIC cost study stated that the PIC change charge covers the costs incurred when an end user changes his/her initial PIC. However, the Commission also noted that this cost study did not indicate whether or not this is the case with intraLATA equal access.

However, the FCC's Second Report and Order in CC Docket No. 96-98 required a different methodology for recovering the costs associated with the implementation of intraLATA presubscription. This Order required that the cost recovery of implementing dialing parity in the implementation of intraLATA equal access must mirror that of interim number portability.

Two-For-One PIC

BellSouth agreed that there was no detailed cost study that was used to derive the 30% rate additive. BellSouth stated that the figure was an estimate based on a panel's analysis of the major work processes performed in the simultaneous processing of interLATA and intraLATA PIC changes, and 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. BellSouth warned 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.

The Commission determined that there was insufficient information in the record to indicate whether the cost of simultaneously processing interLATA and intraLATA PIC changes was greater than the cost of processing a PIC change along with establishing basic local service. Thus, the Commission found that it was impossible 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. The Commission agreed 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 therefore be allowed to recover such costs. The Commission noted that BellSouth did not provide any cost study on the Two-For-One PIC change. Indeed, the Commission found 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 was there evidence that refuted the 30% rate additive derived from the panel's analyses of major work processes. Thus, the Commission found the 30% rate additive to be reasonable.

Considering the evidence, the Commission noted that its initial Order did not address the costs associated with these tariff provisions. However, the Commission determined that the provisions of One Free PIC and the Two-For-One PIC for existing customers were consistent with Commission Order No. PSC-PSC-95-0203-FOF-TP, where it found that intraLATA presubscription was in the public's best interest. Therefore, the Commission concluded that BellSouth shall allow existing customers One Free PIC, since the 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. The Commission also concluded that when a customer designates a single carrier for both interLATA and intraLATA in a single transaction, that BellSouth shall charge this customer for a single PIC change. The Commission further determined that the One Free PIC and the Two-For-One PIC shall run for a period of 90 days from the date of conversion of BellSouth's last end-office switch to provide intraLATA equal access. If the ILEC has completed the conversion of its switches, the 90 days should run from the date the Order from this recommendation is issued. At the expiration of the 90-day window, any end user making an intraLATA PIC change or the Two-For-One PIC change will be assessed the intraLATA PIC change charge or the 30% rate additive in addition to the one PIC change charge, respectively. The Commission concluded that pending a generic investigation of the appropriate cost recovery mechanism for intraLATA presubscription in Docket No. 930330-TP, BellSouth shall track its costs, on an interim basis. BellSouth shall track the cost associated with providing a free PIC and the Two-For-One PIC changes during the 90 day period, with sufficient detail to verify the costs in a generic proceeding.

Until the implementation of intraLATA presubscription, these tariff provisions were not available to customers. With intraLATA equal access, customers now have the option of selecting separate carriers for interLATA and intraLATA calls; hence, these tariff provisions are now necessary. Thus, staff recommends that the Commission should determine that the ILECs shall allow existing customers One Free PIC, and that when a customer designates a single carrier for both interLATA and intraLATA in a single transaction, that the ILECs shall charge this customer for a single PIC change. The One Free PIC change and the Two-For-One PIC change should run for a period of 90 days from the date of conversion of the ILEC's last end-office switch to provide intraLATA equal access. If the ILEC has completed the conversion of its switches, the 90 days should run from the date the Order from this recommendation is issued. At the expiration of the 90 day One Free PIC, the end user will be assessed the respective ILEC's PIC change charge. Also at the expiration of the 90 day Two-For-One PIC change, the end user will be assessed the 30% rate additive in addition to the one PIC change charge. Pending further investigation of the appropriate cost recovery mechanism for intraLATA presubscription, the Commission, on an interim basis, should require the ILECs to track their costs with sufficient detail. Further, the Commission should require the ILECs to perform an intraLATA PIC change charge cost study with the major cost drivers identified in order to consider recovery of these costs in a generic proceeding.

ISSUE 5: Should Docket No. 970526-TP be closed?

RECOMMENDATION: Yes. If the Commission approves staff's recommendations in Issues 1 through 4, and if no person(s) whose substantial interests are affected files a protest within 21 days of the issuance of the Order, this docket should be closed.

STAFF ANALYSIS: Staff believes that this docket should be closed if the Commission approves staff's recommendations as addressed herein. If no person(s) whose substantial interests are affected files a protest within 21 days of the issuance of the Order, this docket should be closed.