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March 13, 1998

Ms. Blanca S Bayo  
Director, Division of Records and Reporting  
Florida Public Service Commission  
2450 Shumard Oak Blvd.  
Tallahassee, Florida 32399

Re: In Re: Generic consideration of incumbent local exchange (ILEC) business office practices and tariff provisions in the implementation of intraLATA presubscription.  
Docket No.: 980040-TE 970526-TP (Chargel Ren AT&T/Shannon)  
*Flu*

Dear Ms. Bayo:

Please find enclosed an original and fifteen copies of the Post-Hearing Brief of AT&T Communications of the Southern States, Inc. for filing in the above referenced docket.

I have enclosed a copy of this letter. Please mark it to indicate that the original was filed and return the copy to me.

Please contact me if you have any questions. Thank you for your assistance in the matter.

- ACK \_\_\_\_\_
- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- C/F \_\_\_\_\_
- CMU \_\_\_\_\_
- CIT \_\_\_\_\_
- E \_\_\_\_\_ /akb
- LF \_\_\_\_\_
- LF 5 Enclosures
- cc: All parties of record
- SA \_\_\_\_\_
- WJ \_\_\_\_\_
- OTH \_\_\_\_\_

Sincerely,

MARK K. LOGAN

By: Shanna Kaye Bemby  
Shanna Kaye Bemby

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informing customers that they have a choice when selecting a carrier for intraLATA calls. With that modification, AT&T asserts that Sprint's script would be competitively neutral.

GTE asserts in Issue 3D that in instances when an existing GTE customer calls for reasons other than selecting a intraLATA carrier, the company does in fact market its intraLATA services to the exclusion of other intraLATA carriers. AT&T suggests that the very purpose of this docket was to ensure that other carriers such as GTE were subject to the same set of competitively neutral customer contact protocols as those imposed upon BellSouth in Order No. PSC-96-1569-FOF-TP. Based upon the sound public policy issues articulated by this Commission in mandating competitively neutral customer contact protocols for customer "gateway" ILECs such as GTE, it is wholly appropriate to impose the same customer contact practices on GTE as those found necessary for imposition on BellSouth. The Commission should further impose such competitively neutral protocols for a period of one year from the date of the Commission's order, as it did upon BellSouth.

The last issue for the Commission's determination in this docket is whether the Commission should require GTE and small ILECs to offer a two-for-one PIC ("Primary Interexchange Carrier") change to their existing customers. AT&T suggests that the costs which GTE asserts are appropriate to charge customers changing both interLATA and intraLATA PICs at the same time (approximately \$8.28) are neither appropriate or supported by any competent, substantial evidence submitted in this docket. Thus, the Commission should require GTE and the small ILECs to offer a two-for-one PIC to these customers.

## **ISSUE-BY-ISSUE ANALYSIS**

**ISSUE 1:**      **Should the Commission prohibit GTEFL, Sprint, 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?**

**AT&T:**      **\*This issue was stipulated by the parties and approved by the Commission at hearing (T-10)\***

**ISSUE 2:**      **Should the Commission require GTEFL, Spring-Florida, 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?**

**AT&T:**      **\*This issue was stipulated by the parties and approved by the Commission at hearing (T-10)\***

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

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

**AT&T:**      **\*This issue was stipulated by the parties and approved by the Commission at hearing with the exception of its application to Sprint. The Commission should direct Sprint to remove the words "in addition to us" from its customer-contact script in order to render it competitively neutral.\***

Sprint's witness Khazraee testified at hearing that the company uses a pre-prepared script when informing customers about their choices regarding intraLATA toll PICs. (Khazraee, T-15) The Sprint customer representative first informs the customer that "due to changes in the competitive area/environment you (the customer) now need to choose a carrier to carry calls you make to cities in nearby communities/locations." (Khazraee, T-16) The customer rep goes on to say that, "I am required to read you a list of the companies *in addition to us* who can carry these calls if you wish."

(Id.) (Emphasis supplied) AT&T suggests that the use of "in addition to us" effectively segregates Sprint from another intraLATA carriers and thus provides Sprint with a competitive advantage in the marketplace.

The Commission's public policy posture with respect to even slight competitive advantages in the intraLATA market is clear. In the BellSouth order the Commission stated that there must not be a bias for incumbent services established prior to the customer having an opportunity to consider other choices. Order No. PSC-96-1569-POF-TP at page 6. In the BellSouth order the Commission specifically found it anti-competitive to make a statement that BellSouth could provide local toll service prior to reading a list of available carriers. Id. The Commission stated:

"...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 other choices." Id.

Thus, the Commission ordered BellSouth simply to read a list of available carriers without separate reference to the incumbent provider. Id.

Here, while the language "in addition to us" may be more subtle, the anti-competitive impact is the same. The language creates a bias in favor of Sprint while effectively segregating the remaining available carriers. Sprint's script therefore is inconsistent with the spirit and intent of the Commission's action in the BellSouth order. Accordingly, the Commission should order Sprint to remove the words "in addition to us" from the customer contact script used to field intraLATA calls.

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

AT&T: \*This issue was stipulated by the parties and approved by the Commission at hearing (T-10)\*

ORIGINAL

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Generic consideration of )  
incumbent local exchanges (ILEC) )  
business office practices and tariff )  
provisions in the implementation )  
of intraLATA presubscription. )  
\_\_\_\_\_ )

DOCKET NO.: 970526-TP

FILED: March 13, 1998

**POST-HEARING BRIEF OF AT&T COMMUNICATIONS**  
**OF THE SOUTHERN STATES, INC.**

AT&T Communications of the Southern States, Inc. ("AT&T"), pursuant to Rule 25-22.056, Fla. Admin. Code and Order No. 98-0299-PHO-TP (February 18, 1998) files this post-hearing brief and states:

**SUMMARY**

Pursuant to the stipulation by the parties to this docket which was approved by the Commission at hearing (T-10) the only issues to be briefed are: Issue 3A with respect to Sprint-Florida, Inc. ("Sprint"), Issue 3D with respect to GTE Florida, Incorporated ("GTE"); and Issue 5 with respect to Sprint and the small ILECs.<sup>1</sup> With respect to Issue 3A, Sprint has requested the Commission to determine whether its intraLATA customer script is competitively neutral as set forth in the Commission's previous Order No. PSC-96-1569-FOF-TP (December 23, 1996) ("the BellSouth Orders") (Khazraee, T - 15). AT&T suggests that a comparison of Sprint's intraLATA customer script to the specific customer contact practices and prompts set forth by the Commission in Order No. PSC-1569-FOF-TP with respect to BellSouth Telecommunications, Inc. ("BellSouth") indicates that the Commission should direct Sprint to remove the words "in addition to us" when

<sup>1</sup> The small ILECS, presenting no testimony on this issue, have apparently agreed to be bound by the Commission's determination with respect to Issue 5. (T, 12)

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- c. ILECs' ability to market their services to existing customers changing their intraLATA carriers? If so, for what period of time should any such requirements be imposed?

AT&T: \*This issue was stipulated by the parties and approved by the Commission at hearing (T-10)\*

- d. 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?

AT&T: \*This issue was stipulated by the parties and approved at hearing with respect to all parties except GTE. As to GTE, AT&T states that the Commission should restrict GTE from marketing its intraLATA services to existing customers when those customers call for reasons other than changing their intraLATA carrier.\*

GTE does not deny that it markets intraLATA services to its existing customers when they call about matters other than intraLATA service. Stipulation at page 4. GTE further asserts that such activity is not anti-competitive or otherwise inappropriate. *Id.* However such assertion is at odds with this Commission's previous findings in the BellSouth order. In that order the Commission found, as a matter of public policy:

"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." Order No. PSC -96-1569-POF-TP at 9.

Nothing has changed since the Commission's order on BellSouth's practices with respect to the inherent advantage held by ILECs such as BellSouth or GTE. Thus there is no real argument that

marketing intraLATA services to existing customers calling for reasons unrelated to intraLATA service has somehow become an acceptable competitive practice. It remains anti-competitive. That is true whether the marketing is done by BellSouth, GTE or any other ILEC. Here GTE remains the incumbent provider of local service, thus has the clear marketing advantage over non-ILEC intraLATA carriers. Just as the Commission prohibited BellSouth from engaging in such anti-competitive behavior, the Commission also should prohibit GTE from engaging in substantially identical conduct for a period of one year from the date of this order.

**ISSUE 4:** Should the Commission require GTEFL, Spring-Florida, and the small ILECs (ILECs) to provide One Free PIC to existing customers?

**AT&T:** \*This issue was stipulated by the parties and approved by the Commission at hearing. (T-10)\*

**ISSUE 5:** Should the Commission require GTEFL, Sprint-Florida, and the small ILECs (ILECs) to provide Two-For-One PIC to existing customers?

**AT&T:** \*This issue was stipulated by the parties and approved by the Commission at hearing with respect to Sprint. With respect to GTE and the other small-ILECS, the Commission should order those parties to provide a two-for-one PIC to existing customers for a time certain. Thereafter the costs of any PIC change should be limited to \$.49 or 30% of the ILEC's current PIC charge.\*

The principal concern of AT&T with respect to Issue 5 is the cost that GTE asserts it should be allowed to recover from customers initiating PIC changes for intraLATA service at the same time as they change InterLATA carriers. GTE's position on this matter is straightforward. GTE argues that if it costs GTE \$4.14 to initiate and process one PIC change, then two PIC changes will cost \$8.28. (Munsell, T 23-28) GTE asserts that there are only very small efficiencies (approximately 2%) associated with the simultaneous processing of two PIC changes at once. (Munsell, T 26) GTE

Witness Munsell bases these assertions on "cost" data first submitted to the Commission by Mr. Munsell at his deposition (Exhibit WE-3).

The problem with GTE's position is that it is unsupported by any evidence. GTE provided no real cost data which would support a finding that it should be allowed to recover \$8.28 for processing simultaneous intraLATA and interLATA PIC changes. Yet, even in the absence of any supportable cost data, GTE opposes the imposition of the 30% additive previously found reasonable by this very Commission in the BellSouth proceeding.

GTE's cost data is based upon a re-typed, excerpted interLATA FCC cost study filed in 1989 (Munsell, T 32-33) Mr. Munsell has admitted that he is not the author of the study nor knows who the author is (Munsell, T 32) There was no effort to modify the nearly 10-year old study to reflect increased efficiencies due to technology which have impacted the telecommunications industry in the past decade. (Munsell, T 38-39) In fact, Mr. Munsell could not even give an opinion as to whether the \$4.14 per PIC cost reflected in the study was an accurate figure. (Munsell, T 39) The study is not only outdated, but constitutes unsupported hearsay which cannot provide a basis for the Commission's decision. Section 120.57(1)(c), Florida Statutes.


As both AT&T witness Guedel and MCI witness Hyde testified, GTE's cost data simply does not rise to the level of a study which would actually support recovery of \$4.14 per PIC change. (Hyde, T 75; Guedel T 115) The price charged for a PIC change is a competitive issue. (Guedel, T 129 - 130) Thus a PIC change charge, when set artificially high, will inhibit competition. Id. Therefore, the Commission should not simply accept cost data when the date and character of the data render it unreliable in supporting the establishment of a recoverable charge. Given the lack of



any other evidence that could support this hearsay, it cannot form the basis of a finding in favor of GTE's requested \$8.28 charge for two PIC changes.

Instead the Commission should turn to the next best alternative, which is the 30% additive employed by the Commission in the BellSouth order. Certainly if the recovery of these costs by GTE is so important then the company could have conducted and submitted a verifiable cost study designed actually to support the verifiable costs of processing two PIC changes simultaneously. But until such time, it would be anti-competitive for the Commission to sanction recover of a full \$8.28 for such PIC change processing.

Respectfully submitted,

  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by

U.S. Mail to the parties listed below, on this 13<sup>th</sup> day of March 1998.

  
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