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MEMORANDUM

APRIL 16, 1998

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

FROM: DIVISION OF COMMUNICATIONS (AUDU)  
DIVISION OF LEGAL SERVICES (COX) *WPCO WASH RT*

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

AGENDA: APRIL 28, 1998 - REGULAR AGENDA - POST HEARING DECISION - PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

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

CASE BACKGROUND

On May 5, 1997, the Commission opened Docket No. 970526-TP to investigate the incumbent local exchange company (ILEC) business office practices and tariff provisions in the implementation of intraLATA presubscription. On June 13, 1997, the Commission issued Proposed Agency Action (PAA) Order No. PSC-97-0709-FOF-TP, placing specific restrictions on ILECS' business office practices and tariff provisions involving intraLATA presubscription. 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 the Commission 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, the Commission conducted an evidentiary hearing in this proceeding. At the hearing, the Commission approved the following stipulations.

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**STIPULATIONS**

The parties have agreed to several stipulations which were approved by the Commission at the February 23, 1998, evidentiary hearing. (See Attachment A) These stipulations resolve issues 1, 2, 3b, 3c, and 4 for all parties.

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 have 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.

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

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DISCUSSION OF ISSUES:

**SUMMARY OF ISSUES NOT RESOLVED BY STIPULATION**

Issue 3a addresses whether Sprint's customer contact protocols are competitively neutral and consistent with Order No PSC-96-1569-FOF-TP. Staff recommends that the Commission should prohibit Sprint from using the phrase "in addition to us" in its customer contact script.

Issue 3d addresses whether the Commission should require GTEFL to refrain from marketing its intraLATA toll services to existing customers who call for reasons unrelated to intraLATA toll. Staff recommends that the Commission should require GTEFL to refrain from marketing its intraLATA service to customers who call for reasons unrelated to intraLATA service for a time certain until August 15, 1998. This time certain should start from the date the Commission issues the order in this proceeding.

Issue 5 addresses whether GTEFL and the small ILECs (ILECs) should provide a two-for-one PIC for a simultaneous intraLATA and interLATA PIC to a single carrier in a single transaction, for a single PIC change charge with a 30% rate additive. Staff recommends that pending the availability of a current and fully substantiated cost study, the Commission should require GTEFL and the 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 has been provided per the Stipulation in Issue 4.

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

3a. ILECs' ability to market their services to existing customers changing their intraLATA carriers.

RECOMMENDATION: Yes. The Commission should require Sprint to revise its customer contact protocols to remove the phrase "in addition to us" in order to be competitively neutral and consistent with Order No. P&C-96-1569-FOF-TP. (AUDU)

POSITION OF PARTIES:

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.

GTEFL: See stipulation.

MCI: Yes. Most of the relevant items were stipulated. Sprint's practice of using the phrase "in addition to us" prior to reading the list of interLATA carriers to new customers was not stipulated. It is not a competitively neutral customer contact protocol and should not be permitted.

NETC: See stipulation.

ALLTEL: See stipulation.

VISTA-UNITED: See stipulation.

SPRINT: Sprint-Florida is in compliance with the Commission's decision in the BellSouth Order. Sprint-Florida's use of the phrase "in addition to us" does not violate the letter or spirit of the BellSouth order, nor does it provide an undue advantage to Sprint-Florida. Instead the phrase is a fair statement of fact that the local exchange company is one of the carriers for intraLATA long distance and is sufficiently neutral and does not "market" Sprint-Florida's services in any way. This issue is briefed.

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STAFF ANALYSIS:

In its brief, Sprint argues that the restrictions in the 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. (Sprint Brief, 3)

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, 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 will create confusion. (Sprint Brief, 3)

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 the Commission to truly decide if these restrictions should be maintained in Florida. Sprint contends that the pending BellSouth petition (Docket 9701399-TL) will show that "[T]he intraLATA marketplace is sufficiently robust and that any continuing restrictions will be unnecessary." (Sprint Brief, 4)

However, 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. (AT&T Brief, 4) 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 while effectively segregating other intraLATA toll providers. 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. (AT&T Brief, 4)

Similarly, MCI argues in its brief that the phrase "in addition to us" in Sprint's script gives Sprint a great advantage

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over its intraLATA toll competitors. (MCI Brief, 2) MCI asserts that Sprint is still a monopoly provider of local service and all new customers must come through Sprint. Hence, MCI argues that 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. (MCI Brief, 3)

MCI further argues that Sprint's practice of mentioning its services first then combining all its competitors into a random list allows Sprint to influence the customer to choose Sprint. MCI asserts that this practice is possible solely because Sprint is the exclusive gateway for a majority of its customers to obtain intraLATA service. (MCI Brief, 5) MCI argues that since Sprint is uniquely positioned as the gatekeeper for intraLATA service, Sprint's initial customer contact must be neutral and must not steer the customer toward Sprint's service. (MCI Brief, 6)

Staff agrees with Sprint that the circumstances in this proceeding are vastly different from those in the complaint against BellSouth since there are no complaints against any of the ILECs in this proceeding. However, staff notes that the issues that were addressed in the complaint against BellSouth were not unique to BellSouth. Instead, these issues were determined to have industry-wide effects. Hence, the Commission initiated a generic proceeding to address these issues as they pertained to all ILECs. Staff notes that while there were no complaints lodged against Sprint on the same issues addressed in the complaint against BellSouth, this proceeding has demonstrated the need for neutral customer contact protocols.

Staff disagrees with Sprint that there are no marketing efforts that are built into the phrase "in addition to us." Sprint does not need another marketing effort, because the required marketing effort is the phrase "in addition to us." Staff agrees with AT&T and MCI that in using the phrase "in addition to us," Sprint effectively segregates itself from other intraLATA carriers, hence providing itself a competitive advantage over its intraLATA toll competitors. Staff contends that the phrase "in addition to us" has the effect of placing Sprint first on the list of available carriers, which is not competitively neutral.

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Staff disagrees 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. Staff agrees with AT&T and MCI's assertion that the script seeks effectively to influence the customers before they have a chance to consider other intraLATA toll choices. Staff agrees with AT&T that the phrase is anti-competitive and creates a bias in favor of Sprint, regardless of how subtle it may appear. Staff agrees with MCI's assertion that Sprint's effort to abandon its longstanding competitively neutral interLATA practices in place of its current script is a move to leverage its intraLATA services.

Staff agrees with Sprint that an evaluation of the changes in market share and total number of customers making PIC changes, combined with information regarding the level of customer knowledge, education, and sophistication will enable the Commission to accurately decide if these restrictions should remain in Florida. Staff agrees with Sprint that changes in the intraLATA market along with increased customer awareness are possible grounds for the Commission to reconsider its initial conclusions in the complaint against BellSouth. However, staff observes that Sprint has failed to provide data to demonstrate such market changes in its service territory. Instead, Sprint has referenced the BellSouth Petition that is scheduled for hearing in Docket No. 971399-TL, which addresses BellSouth's Petition to Lift the Marketing Restriction in Order No. PSC-96-1569-FOF-TP. Staff notes that while BellSouth's Petition may demonstrate some market changes, these changes could be limited to BellSouth's market territory and may not be applicable to other LECs' territories. In addition, the Commission has yet to make a final determination. Staff agrees with MCI that Sprint is still the monopoly provider of local service, and it is, therefore, uniquely positioned as the gatekeeper for intraLATA services.

Based on the foregoing arguments, staff believes that there is a marketing effort inherent in the phrase "in addition to us" as it is currently utilized by Sprint in its customer contact script. Staff believes that Sprint's ability to utilize this language in this manner is strictly due to its status as the incumbent local exchange service provider. Further, staff contends that this deviation is inconsistent with the neutral customer contact protocols that this Commission imposed upon BellSouth in Order No. PSC-96-1569-FOF-TP. Hence, staff recommends that the Commission should prohibit Sprint from using the phrase "in addition to us" in its customer contact script.

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Issue 3d: 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?

RECOMMENDATION: The Commission should require GTEFL to refrain from marketing its intraLATA toll services to existing customers who call for reasons unrelated to intraLATA toll service from the date the Commission issues an order from this recommendation until August 15, 1998. (AUDU)

POSITION OF PARTIES:

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

GTEFL: No. GTEFL has lost 41.8% of its toll PIC-able lines, and 67.6% of new customers choose carriers other than GTEFL. GTEFL's competitors can joint market their services, and they clearly need no artificial regulatory advantages over GTEFL. In any case, GTEFL believes it already complies with the proposed restriction.

MCI: Yes. This issue was stipulated for Sprint and the small LECs. For GTEFL, the Commission should impose these marketing restrictions for a period of eighteen months.

NEPTC: This issue has been resolved by the Commission's approval of the stipulation in this docket.

ALLTEL: This issue has been resolved by the Commission's approval of the stipulation in this docket.

VISTA-UNITED: This issue has been resolved by the Commission's approval of the stipulation in this docket.

SPRINT: Sprint-Florida is in compliance with the Commission's decision in the BellSouth Order. Sprint-Florida believes that this issue will be resolved through stipulation.

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STAFF ANALYSIS:

GTEFL argues that while it is not its general practice, it occasionally markets its intraLATA toll service to its customers who call for reasons unrelated to intraLATA toll. GTEFL states that it addresses the customer's needs, and afterward, 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 Brief, 4)

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 that no remedial measures are necessary. (GTEFL Brief, 5) 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 to GTEFL; hence, a customer that is unaware of GTEFL's toll discount plans cannot be informed of such discount plans. (GTEFL Brief, 6)

Furthermore, 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; therefore, these restrictions were needed to increase customers' awareness and allow the IXCs time to establish their presence in the intraLATA toll market. (GTEFL Brief, 6) GTEFL argues that standing alone, this practice would seemingly give GTEFL an unfair advantage. However, GTEFL asserts that its market share data does not show such adverse effects on the IXCs. (GTEFL Brief 9) As of February 1998, GTEFL states that 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. 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 Brief, 7) 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 little 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 Brief, 10) GTEFL concludes that restricting it from communicating

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this information to customers who may otherwise consent to this exchange of information will be a disservice to the customers. (GTEFL Brief, 10)

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. However, AT&T argues that GTEFL's acknowledgment is at odds with the Commission's findings in Order No. PSC-96-1569-POF-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 Brief, 5) AT&T further 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 the Commission needs to prohibit GTEFL from engaging in the same conduct, as was prohibited for BellSouth, for a period of one year from the date of the Commission's order. (AT&T Brief, 6)

MCI echoes the same sentiments as AT&T that GTEFL is still the monopoly provider of local service. MCI contends that these customers are not calling GTEFL regarding intraLATA services, instead they are calling GTEFL because it is the local monopoly. (MCI Brief, 7) MCI argues that GTEFL's customers are entitled to the same awareness period as was prescribed in the BellSouth Complaint; MCI thus recommends that the Commission impose a similar restriction as that which was placed on BellSouth in Order No. PSC-96-1569-POF-TP. (MCI Brief, 8)

Staff agrees 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-POF-TP. Staff agrees with AT&T that GTEFL's practice is the same practice that the Commission addressed in the complaint against BellSouth.

GTEFL alleges that this practice of "occasionally" marketing its intraLATA services to customers who call for reasons unrelated to intraLATA toll is "pro-consumer." Staff cannot, however, confirm or refute GTEFL's argument that imposing this restriction on GTEFL will harm consumers. Staff acknowledges 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. Staff further contends that GTEFL's competitors

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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 in for reasons unrelated to intraLATA toll.

Staff agrees with GTEFL that its market share does not indicate any negative effects on the IXCs, since there is no evidence that "this practice" has hindered the exercise of competitive choice. Since this issue is briefed, there is no evidence to corroborate GTEFL's claim in the record. It is, therefore, impossible for staff to ascertain the validity of GTEFL's claim.

Staff believes that the underlying rationale for GTEFL's "occasional" practice is customer retention; thus, staff disagrees with GTEFL that this practice is pro-consumer. Without proper support, staff is not convinced that this restriction will harm customers. Staff agrees that restricting this practice will limit GTEFL from marketing its intraLATA service (even its toll discount plans) to its customers; however, this restriction does not prohibit GTEFL from marketing its intraLATA service in the same manner its competitors are using to market their intraLATA services to these same customers today. Due to the briefing approach taken on this issue, staff is in the awkward position of not having corroborative evidence to support GTEFL's market share loss figures. Staff would note, however, that GTEFL's market position with respect to intraLATA PIC-able lines appears to have deteriorated more quickly than BellSouth's market position. BellSouth's restriction will expire on June 23, 1998. GTEFL argues that if the Commission concludes, counter to the Company's position, that a restriction should be imposed, the restriction should last no longer than the same restriction imposed on BellSouth. (GTEFL Brief, 10) On the other hand, staff would note that there is a Commission approved stipulation with respect to Sprint, which imposes a restriction until August 15, 1998. The Sprint stipulation was not predicated on any market share data. Thus, staff believes an argument can be made to impose either BellSouth's expiration date or Sprint's expiration date on GTEFL. Staff believes it is appropriate to recommend the later expiration date, in the absence of corroborative evidence to support GTEFL's market share erosion.

Based on the above arguments, staff recommends that the Commission should require GTEFL to refrain from its practice of marketing its intraLATA service to customers who call for reasons unrelated to intraLATA service for a time certain. This restriction should start from the time this Commission issues the

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order in this proceeding and should run until August 15, 1998,  
consistent with Sprint's approved stipulation on this issue.

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

**RECOMMENDATION:** Yes. The Commission should require that, pending the availability of a current and fully substantiated cost study, GTEFL and the small ILECs should 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. This rate should apply once the one free PIC has been provided per the Stipulation in Issue 4. (AUDU)

**POSITION OF PARTIES:**

**AT&T:** This issue was stipulated by the parties and approved by the Commission at hearing with respect to Sprint. With respect to GTEFL and the other small-LECs, 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 \$0.49 or 30% of the ILEC's current PIC change.

**GTEFL:** No. GTEFL should be permitted to retain its separate tariffed interLATA and intraLATA PIC change charges when customers change both PICs. No party has submitted cost information nor have they analyzed GTEFL's work processes to support their claims of lower costs.

**MCI:** Yes. Due to the overlap in work processes and activities, there is a significant costs savings when both the interLATA and intraLATA carriers are changed at the same time to the same carrier. The Commission should approve a rate additive of two-for-one PIC of no more than 30%.

**NEPIC:** Northeast is not opposed to a two-for-one PIC, but believes that small LECs like Northeast should get whatever GTEFL gets if the Commission orders a less than two-for-one PIC as proposed by GTEFL.

**ALLTEL:** ALLTEL is not opposed to a two-for-one PIC, but believes that the Commission should approve for small LECs whatever it approves for GTEFL if the Commission orders a less than two-for-one PIC as proposed by GTEFL.

**VISTA-UNITED:** Vista is not opposed to a two-for-one PIC, but believes that small LECs like Vista should get whatever GTEFL gets if the Commission orders a less than two-for-one PIC as proposed by GTEFL.

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**SPRINT:** Sprint-Florida is in compliance with the Commission's decision in the BellSouth Order. Sprint-Florida believes that this issue will be resolved through stipulation.

**STAFF ANALYSIS:**

The question that must be addressed in order to get to the heart of this issue is not whether the ILECs should be required to provide the two-for-one PIC; instead, the question is at what rate should the two-for-one PIC be provided to customers after the initial 90-day window has expired. GTEFL witness Munsell does argue that GTEFL's existing policy of one-free-PIC for the initial choice of intraLATA carrier since GTEFL's switch conversion, regardless of when the customer exercises this choice, essentially achieves the same result as the two-for-one PIC. (TR 25)

GTEFL witness Munsell testifies that GTEFL currently assesses an intraLATA PIC change charge at a rate identical to the interLATA PIC change charge. The witness 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. (TR 22, 23-24) Witness Munsell testifies that GTEFL made a conscious decision to follow the existing interLATA processes and procedures as closely as possible. (EXH, p.7) GTEFL 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. (EXH, p.8)

GTEFL witness Munsell testifies that there are only two methods utilized to execute PIC changes: one, the end-user is in contact with the interexchange carrier (IXC), and the IXC sends an "able" intraLATA (an "A") Customer Account Record Exchange (CARE) transaction to GTEFL. The "A" CARE transaction is a mechanized transaction that is initiated by the IXC. (EXH, p.13) Under the second method, the customer initiates this 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. (EXH, p.15) For a simultaneous PIC change (a "B" for both) request to the same carrier, GTEFL splits this "B" transaction into "A" and "E" (for interLATA) CARE or business office transactions. GTEFL testifies that this single order will henceforth be split into "A" and "E" transactions and processed as though individually ordered. (EXH, p.16) GTEFL further argues that although PIC changes may be ordered in a single transaction, its

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system is designed to handle these PIC changes individually. GTEFL concedes that it 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 reject of half of that transaction. (TR 25; EXH, p.17)

GTEFL witness Munsell contends that splitting the "B" transaction was a design decision because the switch has no field for recognizing 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. (EXH, pp.17, 24) Witness Munsell argues that it was conceivable that the switch could process one of those fields before the other, thus providing two different date/time stamps of completion. Thus, GTEFL could not guarantee 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 IXC's with precise date/time of completion of either of the "A" or "E" transactions. (EXH, pp.17, 25)

GTEFL witness Munsell 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. GTEFL contends that some efficiency is derived when an end user changes both PICs to the same carrier on the same order. Witness Munsell 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. Witness Munsell asserts that besides this savings, "[W]e're processing two distinct PIC changes." (TR 24; EXH, p.12) GTEFL estimates the time savings from the customer representative handling a two-for-one order, as opposed to two different orders, is two minutes. Witness Munsell asserts that the estimated two minute savings is the time the customer representative spends in validating information such as name and address. (TR 24) GTEFL argues that this savings is minimal, since it estimates that only about 14% of its PIC changes are the result of an end user calling into the business office. The remaining 86% of PIC changes are completed via the mechanized CARE system. (TR 25) Witness Munsell asserts that the 14%/86% breakdown of end user/CARE system transactions was a snapshot of GTEFL's nationwide activity for one month, June, 1996. (EXH, p.21) Witness Munsell concedes that he did not have a similar breakdown for 1989, to match the vintage of the cost study described below. (TR 38)

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In support of its proposed two PIC charges for the two-for-one PIC, GTEFL has proffered a cost study that is basically a time and motion study of what costs are associated with changing an interLATA PIC. GTEFL witness Munsell asserts that this study was conducted and filed on October 4, 1989, with the Federal Communications Commission (FCC). Witness Munsell concedes that this study was for intraLATA and interLATA processes, and no subsequent modifications or updates have been made to this study. (TR 29-30; EXH, p.10) The GTEFL witness conceded that GTEFL has more automation in its services today than it did in 1989. (TR 39) The GTEFL witness further concedes that it is likely that in 1989 the percent of PIC changes processed through the CARE system was much less than depicted in June, 1996. (TR 58) Further, witness Munsell contends that the Service Activities Assignment is more automated today than at the time of the study, and argues that "[G]iven that the majority of our lines are non-CENTREX, I would conjecture that most of it is automated." (TR 48) Witness Munsell asserts that these systems have been upgraded, thereby increasing efficiency. At the same time, labor rates have gone up and these new systems have likewise 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, and that mechanized system expense would be higher today than it was in 1989. (EXH, p.10; TR 58-59)

AT&T's witness Guedel asserts that if GTEFL's intraLATA and interLATA procedures are identical, then it follows that the costs would be identical. (TR 133) However, witness Guedel argues that the question is not about identical procedures and the resulting efficiencies; instead the issue is how many efficiencies and how these efficiencies impact 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 you combine the mechanized and the labor intensive pieces. Witness Guedel further argues that GTEFL has not tendered a cost study that outlines these efficiencies. (TR 115, 135)

AT&T's witness Guedel argues that GTEFL should be allowed to recover the incremental costs associated with any PIC change. However, witness Guedel states 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. (TR 133) Witness Guedel contends that GTEFL has not proffered a cost study in this proceeding. Witness Guedel states that GTEFL had the opportunity to perform a cost study, but instead, GTEFL decided to offer the interLATA PIC change charge for its intraLATA PIC change charge. Witness Guedel contends that GTEFL's assertion with respect to the costs associated with PIC changes is not factually

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supported. (TR 115, 119) The AT&T witness further contends that GTEFL has not submitted the 1989 study; instead, GTEFL has submitted some selected pages from the 1989 study. Witness Guedel argues that the selected pages have no relevance in this proceeding since these pages do not constitute a complete cost study. Witness Guedel asserts that while these pages purport to be a cost study, they simply do not offer any backup or other information to justify what the selected pages say. (TR 137-138) Witness Guedel asserts that since GTEFL has not proffered a cost study, the Commission has a precedent it ought to follow. This precedent, witness Guedel states, is the Commission's decision in the complaint against BellSouth, whereby the Commission 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. (TR 118-119, 127) Witness Guedel takes issue with GTEFL's methodology for calculating the effect of the so-called efficiencies, and argues that to ensure fairness and accuracy, one has to subtract incremental costs from incremental costs, not subtract incremental costs from fully distributed costs. (TR 18)

AT&T's 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 and argues that GTEFL's policy is essentially for a first time change situation. Witness Guedel argues that GTEFL's proposal does not accomplish the same thing as the Commission's decision regarding the 30% rate additive on a going-forward basis. (TR 135-136) Witness Guedel further argues that, as is, GTEFL's proposal will become a barrier to competition because the PIC change charge is price elastic. (TR 129-130, 136)

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. However, witness Hyde argues that 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. (TR 83-84)

MCI's witness Hyde argues that the two-for-one PIC change certainly results in some efficiencies because the multiple PICs mean marking a different data field. Witness Hyde argues that the two-for-one PIC to the same carrier requires far less data transferred and contends that there would be time savings associated with the mechanical as well as manual processes. (TR 93)

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Witness Hyde argues that there are costs savings that result from both the mechanized and manual two-for-one PIC changes, and contends that a verifiable current cost study would show these savings. (TR 93) The MCI witness argues that separating a multiple PIC order into individual orders is no justification for charging two full PIC charges, especially given that these processes are mechanized and comprise a majority of GTEFL's transactions. (TR 101)

MCI's witness Hyde argues 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. (TR 80) Witness Hyde argues that the cost listing or estimate GTEFL has presented does not allow for any kind of verification of any possible overlap nor does it present a substantiation of the numbers provided. The MCI witness contends that the presented study appears to be a manual study, and a study that only focused on the end user calling into the business office. Witness Hyde argues that a study that embodies both mechanized and manual time flows has some back-up data, and explanation of flow-through is necessary. (TR 94-95) The MCI witness contends that the study presented by GTEFL is not appropriate support for this proceeding. Witness Hyde argues that both the vintage of the study and the fact that the study was based on a stand-alone PIC change renders this study inapplicable to this proceeding. (TR 87-88) Witness Hyde asserts that a new cost study would better reflect today's situation. Witness Hyde contends that a new cost study would show that the PIC change is a lower cost and thereby, a lower cost associated with flowing through the multiple PICs. (TR 88)

MCI's witness Hyde argues that the Commission should not allow GTEFL to charge two PICs for the two-for-one PIC because this will provide GTEFL with an over-recovery. Witness Hyde further argues that until GTEFL can furnish a current, verifiable cost study, it is reasonable for the Commission to cap the second PIC at the 30% rate additive established in the complaint against BellSouth. (TR 81, 98)

GTEFL states that it consciously decided to utilize its existing interLATA processes and procedures as closely as possible in the intraLATA market. GTEFL concludes that by utilizing its interLATA legacy systems for intraLATA PIC changes, it is logical that the rates for both intraLATA and interLATA PIC changes are the same. Hence, GTEFL should be allowed to assess two PIC charges for a two-for-one PIC change request. Staff agrees with AT&T and MCI that by using its legacy systems for both intraLATA and interLATA PIC change, GTEFL's associated costs are identical for a stand-alone PIC change. Staff also agrees with AT&T that the question is

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not whether the procedures are identical, but what realizable efficiencies exist in a two-for-one PIC change. Staff further agrees with AT&T's assertion that it is possible there are significant efficiencies in the combined PIC transaction, especially when one combines the mechanized and manual pieces together. Staff agrees with MCI that multiple PIC changes should have different costs, and that it is inappropriate for GTEFL to charge for two PICs in a two-for-one PIC change order.

Staff disagrees with GTEFL that its standing policy of one-free-PIC essentially accomplishes the goal of the two-for-one PIC. Both AT&T and MCI argue that the one-free-PIC policy is not the same as the two-for-one PIC. Staff agrees with AT&T and MCI that the two-for-one PIC option is ongoing. Hence, absent such an option, staff notes AT&T's argument that GTEFL's existing one-free-PIC option could become a barrier to competition. (TR 89, 91) Staff contends that the two-for-one PIC is not designed solely for the purpose of the customer's initial choice of intraLATA carrier, but rather other subsequent choices.

GTEFL states that there are three possible ways to order PIC changes. These are: an "able" intraLATA transaction (an "A" transaction), an interLATA transaction (an "E" transaction), and a simultaneous PIC transaction (a "B" transaction). All of these different ways of ordering PIC changes can either be executed via the CARE system or through the company's business office. However, staff notes GTEFL has not stated any technical constraints that necessitate the split of a "B" transaction. Instead, GTEFL designed its system with only "A" and "E" fields and none for a "B" transaction. Thus, staff disagrees with GTEFL that the "B" transaction must be split into "A" and "E" transactions in order to ensure flow-through in the down stream systems. Staff observes that GTEFL conceded that it consciously decided to split the "B" transaction into "A" and "E" transactions. Staff therefore, disagrees with GTEFL that the switch cannot recognize combined transactions (i.e., "B" transactions).

Staff agrees 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. Thus, to provide the IXCs with an accurate positive date/time stamp confirmation, it might be necessary to split the combined transaction. However, staff is not convinced since GTEFL did not actually run the "B" transaction on its downstream systems to arrive at its conclusion. Staff notes AT&T and MCI's assertion that the IXCs will accept a sequential positive date/time stamp confirmation that is within reason. (TR 92, 139)

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Staff agrees with AT&T that it is possible there are significant efficiencies associated with the two-for-one PIC considering the mechanized and labor intensive pieces of the PIC change processes. Staff also agrees with MCI that a verifiable current cost study would show the presence of time savings associated with the two-for-one PIC. Staff notes MCI's assertion that the two-for-one PIC simply means marking another field in the switch. Staff is 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, staff disagrees with GTEFL's conclusion that absent this saving, "[W]e're processing two distinct PIC changes." Thus, staff believes that there are time savings associated with the mechanized, as well as the manual, components of the PIC change process.

Staff notes 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. (TR 26) Staff disagrees 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. Staff agrees 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 in this proceeding. GTEFL has conceded that its systems are more automated today than they were in 1989. Staff further disagrees with GTEFL's use of a 1996 single month, non-Florida PIC change distribution.

Staff notes that the Commission has a precedent in this regard; namely, the 30% rate additive that it had 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.

Based on the above arguments, staff believes that GTEFL designed its PIC change system without providing for a combined PIC transaction field. Staff disagrees 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. Staff believes 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, staff is unable to conclusively make a determination with respect to the degree of efficiencies and how these efficiencies affect the proposed PIC change charge. Hence,

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staff recommends that pending the availability of such a study, the Commission should 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-POF-TP. This rate should apply once the one free PIC has been provided per the Stipulation in Issue 4.

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ISSUE 6: Should this docket be closed?

RECOMMENDATION: Yes. This docket should be closed upon issuance of the Final Order in this proceeding. (COX)

STAFF ANALYSIS:

The order issued on this recommendation will be final, and there are no further matters for the Commission to address in this docket. Therefore, this docket should be closed upon issuance of the Final Order in this proceeding.

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### 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 intraLATA 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 presubscribed 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-POF-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 at 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.

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**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 as to 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.

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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 tariffs. 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.

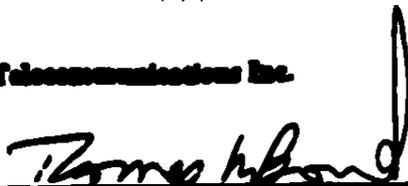
**Sprint-Florida, Inc.**

By:   
Charles Rehwinkel

**AT&T Communications of the Southern States**

By:   
Marsha Rule

**MCI Telecommunications Inc.**

By:   
Tom Bond

**GTE Florida Inc.**

By: \_\_\_\_\_  
Kim Carwell

**ALLTEL Florida Inc.**

By: \_\_\_\_\_  
Jeffrey Walsh

**Vista-United Telecommunications**

By: \_\_\_\_\_  
Jeffrey Walsh

**Northeast Florida Telephone Company**

By: \_\_\_\_\_  
Jeffrey Walsh

**TDS Telecom - Quincy Telephone Company**

By: \_\_\_\_\_  
Tom McCabe

**GTCOM**

By: \_\_\_\_\_

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**MCN Telecommunications Inc.**

By: \_\_\_\_\_  
Tom Sand

**GTS Florida Inc.**

By: \_\_\_\_\_  
Kim Powell

**ALLTEL Florida Inc.**

By: \_\_\_\_\_  
Jeffrey White

**Vista-United Telecommunications**

By: \_\_\_\_\_  
Jeffrey White

**Northeast Florida Telephone Company**

By: \_\_\_\_\_  
Jeffrey White

**TDS Telecom - Quincy Telephone Company**

By: \_\_\_\_\_  
Tom McCabe

**GTCam**

By: \_\_\_\_\_  
Linda Jordan

**MCI Telecommunications Inc.**

By: \_\_\_\_\_  
Tom Bond

**GTE Florida Inc.**

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Kim Carwell

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**Northeast Florida Telephone Company**

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**TDS Telecom - Quincy Telephone Company**

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Tom McCabe

**GTCCom**

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Linda Borden

**MCI Telecommunications Inc.**

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Tom Bond

**GTE Florida Inc.**

By: \_\_\_\_\_  
Kim Carroll

**ALLTEL Florida Inc.**

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Jeffrey Walsh

**Northeast Florida Telephone Company**

By: \_\_\_\_\_  
Jeffrey Walsh

**TDS Telecom - Quincy Telephone Company**

By: \_\_\_\_\_  
Tom McCabe

**GTCOM**

By: \_\_\_\_\_  
*John A. Varga*