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March 13, 1998

Ms. Blanca S. Bayó
Director, Records & Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket 970526-TP

Dear Ms. Bayó:

Enclosed for filing in the above docket on behalf of MCI Telecommunications Corporation are the original and 15 copies of MCI's Post Hearing Brief and a WordPerfect 7.0 diskette.

By copy of this letter this document has been provided to the parties on the attached service list.

Very truly yours,



Richard D. Nelson

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Generic Consideration of)
Incumbent Local Exchange (ILEC)) Docket No. 970526-TP
Business Office Practices and Tariff)
Provisions in the Implementation of) Filed: March 13, 1998
IntraLATA Presubscription)

BRIEF OF MCI TELECOMMUNICATIONS CORPORATION

Comes Now MCI Telecommunications Corporation (MCI) and hereby submits this brief to the Florida Public Service Commission (PSC or Commission).

The majority of the issues in this docket were settled by means of a stipulation signed by all of the parties in this matter. There are, however, three issues which are addressed in this Brief: 1) whether the practice of Sprint-Florida, Inc. (Sprint) of inclusion of the phrase "in addition to us" prior to reading the list of intraLATA carriers to new customers complies with the competitively neutral customer contact protocols; 2) whether and for what length of time the Commission should impose upon GTE Florida, Inc. (GTEFL) the same marketing restrictions imposed upon BellSouth in Order No. PSC-96-1569-FOF-TL relating to marketing to existing customers when they call for reasons other than selecting intraLATA carriers; 3) Whether the Commission should require GTEFL and the small ILECs to provide two-for-one PIC.

MCI believes that it is necessary for the Commission to insure that the local monopoly advantage cannot be used to unfairly disadvantage potential competitors in the intraLATA market. In addition, 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 for 2 for 1 PIC of no more than 30%.

I. DISCUSSION AND CITATION TO RECORD AND AUTHORITY

Issue 3a: Should the Commission require GTEFL, Sprint-LEC, and the small ILECs to put in place competitively-neutral customer contact protocols for: Communicating information to new customers regarding intraLATA choices:

****MCI's Position:** 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 intraLATA carriers to new customers was not stipulated. It is not a competitively neutral customer contact protocol and should not be permitted.**

The only unresolved item under this issue is whether the practice of Sprint-Florida, Inc. (Sprint) of inclusion of the phrase "in addition to us" prior to reading the list of intraLATA carriers to new customers complies with the competitively neutral customer contact protocols. This practice gives Sprint a great advantage over its competitors for intraLATA service. As discussed below, this practice is not a

competitively neutral customer contact protocols and should not be permitted.

Sprint is still the monopoly provider of local service in its service territory. All new customers must, therefore, first come through Sprint. Because of its unique position as the gatekeeper for intraLATA service, Sprint's initial customer contact must be neutral. Sprint should use the same competitively neutral practices when talking to their customers about intraLATA choices as they use when talking to them about interLATA choices. Sprint, however, wants to abandon the longstanding neutral approach mandated in the interLATA market, and use its gatekeeper status to leverage its intraLATA services. This practice would be impermissible in the interLATA market and should be equally impermissible in the intraLATA market. Until the local market is truly competitive, Sprint continues to be the bottleneck for new customers. While there is nothing wrong with such Sprint marketing on an independent basis, separate from customer contacts which result from its position as the incumbent monopoly provider of local exchange service, Sprint should not be allowed to use that position unfairly to disadvantage its competitors and hinder new entrants in the intraLATA equal access market.

In 1995, this Commission ordered that LECs inform their customers of their intraLATA choices in a competitively neutral

manner: [W]hen 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. Order No. PSC-95-0203-FOF-TP, p. 38. In 1995, when the Commission was still considering whether intraLATA presubscription was appropriate and should be implemented, various parties, including MCI and Sprint, stipulated to the following:

If intraLATA presubscription is in the public interest, balloting should not be required. However, central offices converting to interLATA equal access and intraLATA equal access at the same time should be belloted at the same time. In addition, 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. If balloting is required, participation should not be mandatory.

Order No. PSC-95-0203-FOF-TP, p. 38, emphasis added. The Commission approved this stipulation. In other words, MCI gave up its right to argue in favor of balloting as a way to open the intraLATA market in exchange for Sprint agreeing to a competitively neutral practice.

The FCC recognized the necessity for fair, even-handed business office practices when implementing equal access requirements in 1985:

LEC personnel taking the verbal order should provide new customers with the names, and, if requested, the telephone numbers of the IXCs and should devise procedures to ensure that the names of IXCs are provided in random order.

FCC Memorandum Opinion and Order, CC Docket No. 83-1145, Phase I, adopted August 19, 1985, released August 20, 1985. This equal access requirement was specifically continued in section 251(g) of the Telecommunications Act of 1996:

(g) Continued Enforcement of Exchange Access and Interconnection Requirements: On and after the date of enactment of the Telecommunications Act of 1996, each local exchange carrier, to the extent that it provides wireline services, shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding the date of enactment of the Telecommunications Act of 1996 under any court order, consent decree, or regulation, order, or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after such date of enactment. During the period beginning on such date of enactment and until such restrictions and obligations are so superseded, such restrictions and obligations shall be enforceable in the same manner as regulations of the Commission.

Sprint's practice of mentioning its own services first and lumping all of its competitors into a random list allows Sprint to influence the customer to choose Sprint. This ability exists solely because Sprint is the exclusive gateway through which the majority of its customers must pass to obtain intraLATA service. To gain some perspective on this unfair advantage, one need only imagine what would happen if any other competitor could have if

its service mentioned in this fashion. Assuming hypothetically that MCI somehow persuaded Sprint to mention MCI's interLATA or intraLATA services this way: █ Would you like MCI as your intraLATA carrier or would you like me to read a list of other intraLATA carriers.█ It is hard to imagine how any reasonable person could fail to see the anti-competitive impacts of such a scenario.

MCI is not suggesting that Sprint cannot proactively market its services. Because of its unique position as the gatekeeper for intraLATA service, Sprint's initial customer contact must be neutral. It cannot steer the customer toward its own service. Once past that step, however, if a customer requests information about Sprint's service, it should be able to market itself to the interested customer. In that situation, the customer initiated and expressed the interest without prompting or pushing or promoting in that direction by Sprint. In addition, Sprint is free to market in whatever way it chooses outside of that initial customer contact. This would include television, radio, and written advertisements.

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

****MCI's Position:** Yes. This issue was stipulated for Sprint in the small LECs. For GTE, the Commission should impose these marketing restrictions for a period of eighteen months.**

This issue was stipulated for Sprint in the small LECs. For GTE, the parties agreed to brief the issue of whether and for what length of time the Commission should impose upon GTE the same marketing restrictions imposed upon BellSouth in Order No. PSC-96-1569-POP-TL relating to marketing to existing customers when they call for reasons other than selecting intraLATA carriers.

As discussed in regards to Sprint in issue 3(a) above, GTEFL is still the monopoly provider of local service in its service territory. All new customers must, therefore, first come through GTEFL. Because of its unique position as the gatekeeper for intraLATA service, GTEFL's initial customer contact must be neutral. The customers covered by this issue are not calling GTEFL regarding intraLATA presubscription, they are generally calling GTEFL because GTEFL is the local monopoly. The Commission previously considered this issue in regards to BellSouth, stating:

[W]e find that as the incumbent LEC, BellSouth has a unique position with respect to customer contacts and customer information, which could give it an advantage over its competitors in the

intraLATA market. BellSouth could use routine unrelated customer contacts to market its intraLATA service. BellSouth is also privy to customer information, such as billing history and PIC changes, that its competitors are not. BellSouth could use this information as a marketing tool to persuade customers to select BellSouth as their intraLATA service provider. Therefore, we find that when existing customers contact BellSouth for reasons unrelated to intraLATA toll services, BellSouth shall not use those opportunities to market its intraLATA toll service, unless the customer introduces the subject.

Order No. PSC-96-1569-FOF-TP, p. 9. The Commission found that this restriction should last for 18 months in order to allow customers awareness to increase. Id. GTE's customers are entitled to the same awareness of intraLATA presubscription. Therefore, MCI recommends that the Commission impose a similar restriction on GTE.

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

****MCI's Position:** 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 for 2 for 1 PIC of no more than 30%.**

Based on the direct testimony of MCI witness Tom Hyde and the rebuttal testimony of AT&T witness Mike Guedel, it is abundantly clear that any carrier should experience a substantial

savings when both the interLATA and the intraLATA PICs are changed simultaneously on the same order. Because GTE did not file a current verifiable cost study in this case, however, it is impossible to ascertain the exact amount of that savings.

The three page [redacted] cost study[redacted] that GTE filed in this matter essentially provides the Commission with no information on which to base a decision. GTE William Munsell presented the study. He admitted that he is not a costing expert. He did not even know whether the study was based on TSLRIC, embedded costs, or some other methodology. (Ex. 1, p. 31) He admitted that the study did not address the 2 for 1 situation. (Ex. 1, pp. 11-12, 32) He admitted that the study and the data on which it was based were 10 years out of date and were performed for interLATA, not intraLATA, PICs. (Ex. 1, pp. 9-10, 33)

Today GTE claims that 86% of PICs are processed electronically. Mr. Munsell admitted that ten years ago, when the study was done, that percentage was less. (Ex. 1, p. 33) Under Mr. Munsell's recommended method for determining costs savings, the higher the percentage of manual orders today, the greater the savings. If 100% of orders were electronic, Mr. Munsell would calculate no savings.¹ That is simply backwards.

¹ Since Mr. Munsell only acknowledged duplication in manual work processes, he calculated savings based on the percentage of manual orders received. His formula was (2 minutes) times (\$0.30 per minute) times (percent of manual orders). (Ex. 1, p. 34) If the 1989 study was based on 100% manual orders and GTE now had 100% electronic orders, Mr. Munsell would calculate no savings even though processing electronic orders is significantly cheaper than processing manual ones.

Mr. Munsell admitted that GTE had more automation now than it did ten years ago. (Ex. 1, pp. 34-35). The bottom line is that GTE's witness had no idea how the \$4.14 PIC charge he was recommending related to GTE's actual costs:

Q. Okay. But you have no opinion or you don't know whether or not the total cost is more or less than the 4.14, is that correct?

A. That is a correct statement.

(Ex. 1, pp. 36-37)

GTE has failed to produce any competent evidence on the issue of its costs to provide the 2 for 1 PIC. Until such time as GTE produces a current and verifiable cost study for 2 for 1 PIC in Florida, the Commission should restrict GTE, and the small LECs, from charging any more than a 30 percent rate additive when both PICs are changed on the same order.

II. CONCLUSION

Based on the above, the Commission should affirm that the local monopoly advantage cannot be used to unfairly disadvantage potential competitors in the intraLATA market. In addition, due to the overlap in work processes and activities, the Commission should find that 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 for 2 for 1 PIC of no more than 30%.

RESPECTFULLY SUBMITTED this 13th day of March, 1998.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to the following parties by U. S. Mail this 13th day of March 1998.

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