

out its responsibilities under section 252, it has the right to participate in the mediation, arbitration, or review of the Statement of Generally Available Terms at the FCC.<sup>47</sup>

Finally, it is the position of the ICC that the FCC is bound by all of the laws and standards that would have applied to the State commission and must determine whether an agreement is consistent with applicable state law as the State commission would have been under section 252(e)(3). Failure to take the State's laws into account when assuming responsibility under section 252(e)(5) would essentially ignore the federal/state partnership forged by the 1996 Act. Since State laws and standards must be followed, unless they are inconsistent with the 1996 Act, State commission participation is vital at this stage of the proceeding.

At paragraph 267 of the NPRM, the FCC seeks comment on whether, once it assumes responsibility under section 252(e)(5), it retains jurisdiction over that matter or proceeding. It is the position of the ICC that once the FCC assumes responsibility under section 252(e)(5), it does not retain jurisdiction over that matter or proceeding in perpetuity. After the conclusion of the matter for which the State was preempted, the State commission's role under section 252 is restored.

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<sup>47</sup>See, e.g., 18 C.F.R. 4.38(e)(3) ("the failure of [an agency] to timely comply with a provision regarding a requirement ... does not preclude its participation in subsequent stages of the consultation process.").

At paragraph 268 of the NPRM, the FCC seeks comment on whether it should adopt in this proceeding some standards or methods for arbitrating disputes in the event it must conduct an arbitration under section 252(e)(5). It is the position of the ICC that the FCC should establish standards or methods for arbitrating disputes in the event it must conduct an arbitration under section 252(e)(5). The ICC takes this position with the understanding that any such rules promulgated by the FCC would apply only to FCC arbitration proceedings, and would not in any way affect the right of a State commission to conduct its arbitration proceedings under section 252(b) in any manner it deems fit.

**B. Section 252(i)**

At paragraphs 270, 271 and 272 of the NPRM, the FCC seeks comment on several matters related to section 252(i). The ICC is unable to comment because the issues raised in these sections of the NPRM are currently pending before the ICC.<sup>48</sup>

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<sup>48</sup>See Request for Approval filed by Ameritech Illinois on May 6, 1996 requesting ICC review and approval pursuant to section 252 of its agreement with Southwestern Bell Mobile Systems, Inc. d/b/a Cellular One-Chicago (attached).

#### **IV. CONCLUSIONS**

As described in these comments, the ICC is actively involved in many of the same issues addressed by the FCC in the NPRM. Because of this work and the timeline relegated the FCC by Congress, the FCC should look to the States for guidance and defer to the States those issues that can reasonably be handled at the State level. The ICC appreciates this opportunity to convey its comments and looks forward to working with the FCC in implementing the 1996 Act, and in ensuring that effective competition is allowed to develop in the local exchange.

Respectfully submitted,



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Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of Implementation of )  
the Local Competition Provisions )  
in the Telecommunications Act )  
of 1996 )

CC Docket No. 96-98

ATTACHMENTS TO THE COMMENTS OF THE  
ILLINOIS COMMERCE COMMISSION

May 16, 1996

ATTACHMENT A

INTRALATA PRESUBSCRIPTION

April 7, 1995 Interim Order in Docket 94-0048  
August 9, 1995 Second Interim Order in Docket 94-0048  
October 3, 1995 Order in Docket 94-0048  
83 Il. Adm. Code Part 773: Presubscription

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission :  
On Its Own Motion :  
: :  
Adoption of rules relating to :  
intra-Market Service Area : 94-0048  
presubscription and changes in :  
dialing arrangements related to :  
the implementation of such :  
presubscription. :

INTERIM ORDER

April 7, 1995

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STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission :  
On Its Own Motion :  
: :  
Adoption of rules relating to :  
intra-Market Service Area : 94-0048  
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INTERIM ORDER

By the Commission:

**I. BACKGROUND**

Section 13-403 of the Public Utilities Act (Act), 220 ILCS 5/13-100 et. seq., as amended by P.A. 87-856, effective May 14, 1992, authorized the Illinois Commerce Commission ("Commission") to investigate and, upon completion of hearings, order changes in the dialing procedure restrictions found in earlier versions of Section 13-403 of the Act. After a number of workshops were held in 1993 and early 1994, the Commission Staff ("Staff") and several other parties urged the Commission to open a rulemaking regarding intraMSA presubscription. Subsequently, this case was docketed by the Commission by Order entered February 8, 1994. This docket was consolidated for purposes of hearings with Dockets No. 94-0049, 94-0096, 94-0117, 94-0146 and 94-0301.

The following parties intervened or entered appearances in this proceeding: Illinois Bell Telephone Company ("Illinois Bell"); The Illinois Independent Telephone Association ("IITA"); The Central Telephone Company of Illinois ("Centel"); MCI Telecommunications Corporation ("MCI"); Citizens Utility Board ("CUB"); GTE North Incorporated and GTE South Incorporated ("GTE"); Illinois Consolidated Telephone Company ("ICTC"); AT&T Communications of Illinois, Inc. ("AT&T"); The City of Chicago ("Chicago"); The Illinois Attorney General, on Behalf of the People of the State of Illinois ("Attorney General" or "AG"); TC Systems - Illinois, Inc. ("TCG"); The Cable Television and Communications Association of Illinois ("CTC"); Sprint Communications LP ("Sprint"); The Illinois Telephone Association ("ITA"); LDDS Communications, Inc. ("LDDS"); The Cook County State's Attorney, People of Cook County ("Cook County"); MFS Intelenet of Illinois ("MFS"); Southwestern Bell Mobile Systems, Inc. ("d/b/a Cellular One - Chicago"); LCI International Telecom Corp. ("LCI"); Zankle Worldwide Telecom Group; and Jim Meyers. All petitions to intervene were granted by the hearing examiners.

Staff filed its testimony and proposed rules on July 20, 1994. Parties filed direct testimony in this docket on August 8, rebuttal testimony on September 16, and surrebuttal testimony on September 30, 1994. Additionally, Illinois Bell, in its "Customers First" tariff filing (Dockets 94-0096 and 94-0117) and subsequent amended filing, and AT&T, in its petition seeking a Commission investigation of the conditions necessary for competition in Illinois Bell service territory (Docket No. 94-0146), each filed testimony in those dockets. Since those dockets are consolidated with the instant case for the purposes of developing a complete record without needless duplication, that testimony also was made a part of the record in this proceeding.

Pursuant to notice as required by law and the rules of the Commission, prehearing conferences were held in the Commission's offices in Chicago, Illinois on April 19, 1994 and July 5, 1994 to establish and re-establish procedural schedules. Evidentiary hearings were held before duly authorized Hearing Examiners on October 12 through November 15, 1994. On November 15, 1994, the record was marked "Heard and Taken."

Initial and Reply Briefs were filed on December 9 and 23, 1994, on behalf of Staff, Illinois Bell, MCI, Sprint, ITA, IITA, TCG, CTC, ICTC, AT&T, GTE, LDDS, Cook County, AG, Chicago, and MFS. A Hearing Examiners' Proposed Order was served on January 24, 1995.

This rulemaking proceeding is designed to investigate whether implementation of dialing parity for certain portions of intraMSA traffic is in the public interest. Under current dialing arrangements, the LEC carries calls which are dialed using the standard seven digit (NXX-XXXX) or the ten digit (1-NPA-NXX-XXXX) dialing arrangements. Other carriers are legally permitted to handle this traffic, but because of the technical switch characteristics of the LEC network, customers must dial access codes such as 10XXX to reach them. This proceeding was initiated by the Commission to determine whether it would be in the public interest to promulgate a rule to establish dialing parity and, if so, to address the issues surrounding implementation of intraMSA presubscription.

Commission Staff presented an initial set of rules which it attached to its July 20, 1994 testimony and revised rules with its surrebuttal testimony. Staff's final proposals will be used below to set the framework for the discussion of each party's positions and the Commission discussion and findings that ensue.

The proposed rule that results from this order is attached as Appendix A.

## II. DISCUSSION

### A. Section XXX.5 Application

#### 1. Staff's Proposed Rule

##### Section XXX.5 Applicability

- a) This Part shall apply to any telecommunications carrier, as defined in Section 13-202 of the Public Utilities Act ("Act") (Ill. Rev. Stat. 1991, ch. 111 2/3, par. 13-202, as amended by P.A. 87-856, effective May 14, 1992) [220 ILCS 5/13-202] providing local exchange telecommunications service as defined in Section 13-204 of the Act or interexchange telecommunications service as defined in Section 13-205 of the Act. In addition, this Part shall apply to any entity certificated by the Illinois Commerce Commission ("Commission") under Section 13-403 or Section 13-405 of the Act.
- b) This Part shall not apply to any telecommunications carrier that is subject to 83 Ill. Adm. Code 760, "Cellular Radio Exclusion."

#### 2. Positions of the Parties

Illinois Bell and GTE both suggested changes to this section of the proposed rules that, in effect, exempt these two companies from the rules until they are permitted to enter the interMSA long distance business. To support its argument that interMSA relief must be tied to presubscription, Illinois Bell states that the Staff-proposed rule, without the tie it advocates, is unbalanced, asymmetric and asynchronous.

Illinois Bell and GTE asserted that this was so because those two firms are precluded from competing effectively in the interMSA market due to provisions in their respective consent decrees with the U. S. Department of Justice ("Justice"). The restrictions to which they refer prohibit each from competing in the interMSA market, although to different degrees. These restrictions, coupled with a study that seems to indicate a tendency of consumers to one-stop shop, are cited by these two companies as the reason they cannot compete effectively in the intraMSA market without the ability to also offer interMSA services. Both GTE and Illinois Bell provided studies that inferred the existence of a desire of customers to obtain services from a single provider.

Additionally, Illinois Bell stated that it expected to experience losses in the residential market that mirrored its losses in the WATS and 800 markets when those two markets were opened to competition. It stated that it would not be able to meet its investment commitments nor make any additional investments in the state's infrastructure if it suffered these types of revenue losses. Finally, it stated that regulatory constraints only on firms such as Illinois Bell would prevent it from raising rates to recover lost revenue, causing it not to meet its investment commitments.

GTE contends that the record supports a conclusion that intraMSA presubscription will provide only marginal net benefits to consumers. It contends that the only cost-benefit analysis on this issue was performed by its witnesses Mr. Perry and Dr. Tardiff and that those studies showed that customers would benefit only in the range of 14¢ to 27¢ per customer per month.

GTE points out that it is regulated under traditional rate of return rules. Accordingly, it asserts that loss of GTE market share in intraMSA toll will require its basic service rates to be higher than would otherwise be necessary in order to earn its allowable rate of return. In its Brief on Exceptions GTE maintains that the Proposed Orders, which reject linkage, raise serious concerns under the Fifth and Fourteenth Amendments to the United States Constitution, as well as Article I, Sections 2 & 15 of the Illinois Constitution, which proscribe confiscation of GTE's property without just compensation.

GTE also challenges the notion that intraMSA presubscription will provide customer benefits through increased competition. According to GTE, AT&T and other IXCs have raised their toll rates several times in the past eighteen months. It asserts that, although IXCs may provide discounted toll services to large users, residential and small business customers are not the beneficiaries of this discounting and in fact are paying higher rates.

Finally, GTE contends that 10XXX dialing permits IXCs to provide the same quality of service as LECs. There also is evidence in the record which shows that IXCs encourage their business customers to use auto-dialers and other devices to eliminate any alleged perception of inconvenience associated with dialing five extra digits. According to GTE, AT&T's recent promotional effort in the residential and small business segment has resulted in a dramatic increase in the 10XXX traffic AT&T receives. Even though the IXCs' portion of the total intraMSA business may be small, GTE contends that they are clearly able to provide quality service and to make competitive inroads using 10XXX access code dialing.

Staff asserted its belief that this section of the rule, as originally written, should be adopted, and that the Commission should proceed to implement this rule without waiting for Illinois Bell and GTE to obtain relief from their respective consent decrees. Staff cited the consumer benefits it expected to flow from implementation of intraMSA presubscription, including greater consumer choice, lower prices, and innovative products and services in its list of expected consumer benefits. Staff noted that if the Commission were to wait for all of the issues suggested by GTE and Illinois Bell, then competition and its benefits to consumers would be further delayed. Staff also criticized the studies presented by these companies as the types of surveys that were not very reliable in predicting consumer behavior.

MCI characterized the tie of application of these rules to interMSA relief for Illinois Bell and GTE as illogical and beyond the scope of this proceeding. AT&T, Sprint and LDDS agreed with the MCI position. MCI supported its belief that the tie was illogical by stating that the correct prerequisites for Illinois Bell and GTE interMSA relief are found in those parties' respective consent decrees. Along with AT&T and Sprint, it further argued that the Consent Decrees entered into between Justice and GTE as well as Illinois Bell, both of which were subsequently approved by U.S. District Court Judge Harold Greene, were entered voluntarily by GTE and Illinois Bell.

MCI cited Sprint as a company that was, and continues to be, an interMSA/interLATA long distance provider; that was purchased by GTE after its consent decree; and that was subsequently sold to United Telephone Company. Therefore, MCI argues, GTE is free to provide long distance service today, albeit through a separate subsidiary. MCI presented evidence showing that GTE actually provides such service today in a number of states through a separate subsidiary.

In answer to the one-stop shopping argument raised by Illinois Bell and GTE, AT&T and MCI both stated their belief that no vendor will be capable of providing services immediately in all three jurisdictions - local, intraMSA toll and interMSA toll -- for all customers. AT&T additionally noted many advantages of the incumbent LEC that, according to AT&T, make the LEC a formidable contender in the intraMSA toll market. These advantages were listed as 1) being the sole dial tone provider, 2) being the first point of contact for customers new to an area, 3) being providers of repair service to customers and 4) beginning the intraMSA equal access process with 100% of the customers. MCI opined that this last attribute allows the LEC to benefit from customer inertia - the propensity of a customer to stay with his current provider of service.

MCI shared its belief that market losses in a competitive environment should not be allowed to be recovered from increases in the bottleneck monopoly service ratepayers' rates. MCI claimed that Illinois Bell's potential losses of revenue in the intraMSA toll market under presubscription depends in part on the competitive actions and reactions of Illinois Bell, noting that if it does nothing to promote and/or price its services competitively, it deserves to fail. MCI alleges that even if Illinois Bell were to suffer the losses it claims, the only regulatory principle that keeps Illinois Bell from raising rates was entered voluntarily by virtue of the fact that Illinois Bell filed for an alternative form of regulation with the full knowledge that its residential local rates would be frozen. Finally, MCI stated that any reasonable business would react to competitive threats by investing in the infrastructure that allows it to compete successfully.

As to the need for increasing the competition in the interMSA market, MCI alleges that the competition among the IXCs alone is more fierce and rivalrous than anything GTE has ever experienced. MCI asserts that GTE North's entry into the interMSA market will cause negligible, if any, increase in competition if GTE sets rates consistent with Illinois' imputation standard and does not leverage the monopoly power it has in the local exchange market to compete unfairly in the interexchange market.

ICTC maintained that the rule should not be implemented in MSA 8 unless the Primary Toll Carrier ("PTC") plan is simultaneously terminated and other regulatory issues are considered and resolved, including toll rate deaveraging, obligation to serve and carrier-of-last-resort. It cites language in the Commission's Order in Docket 88-0091 in support of that proposition:

The Commission's conclusion that current dialing arrangements be maintained is supported by evidence which demonstrates that changes in dialing arrangements can not be implemented in isolation. The record indicates that changes in dialing arrangements may require corresponding adjustments in a variety of interrelated regulatory policies, such as the PTC system, inter-company compensation arrangements, MSA-wide rate averaging, the obligation to serve, and carrier of last resort designations. The record further indicates that absent such adjustments, implementation of intraMSA equal access could cause unintended adverse impacts on consumers and carriers alike. Finally, the record contains evidence that such policy adjustments could themselves have potentially disruptive effects on the provision of local telephone service in Illinois.

### 3. Conclusion

The linkage issue was discussed extensively in the context of our Order in Docket 94-0096, and we incorporate by reference the evidence and arguments of the parties, and our conclusions in that docket, regarding this matter.

In summary, the Commission concludes that Illinois Bell and GTE have not provided sufficient reasons for the Commission to delay implementation of intraMSA presubscription. Illinois Bell, in its "Customers First" tariff application, claims that intraMSA presubscription is in the public interest and is a logical step in opening its markets to competition. Similarly, even GTE, in its consumer study presented in this docket, found that Illinois consumers expect to gain benefits from being able to choose an intraMSA toll provider. We agree. We do not, however, find that it is necessary to grant Illinois Bell and GTE protection from further competition until such time as it obtains relief from its decree restrictions. To do so would indefinitely deny consumers the benefits that we believe intraMSA presubscription and its accompanying competition will bring to all Illinois consumers.

We also note that we find the arguments of GTE regarding linkage to be particularly disingenuous. GTE's interLATA restriction is based on a consent decree entered with Justice as a condition of being allowed to acquire Sprint. GTE has divested itself of that holding for some years now. It would appear to have a good argument for modification or removal of the restriction. Nevertheless, GTE's witnesses were unaware of any such GTE request in the past, and were also unaware of any plans to make a request. Under the circumstances, adopting GTE's linkage argument and delaying implementation of presubscription would amount to providing GTE with an "option" on the implementation of Commission policies intended to provide public benefit by enhancing competition. This the Commission cannot tolerate.

We also do not find ICTC's arguments persuasive. The language in Docket 88-0091 identified issues potentially implicated by a change in dialing arrangements. It did not state, and it is not the Commission's intention, that a complete resolution of all of these issues is a prerequisite to a change in dialing arrangements. Elsewhere, we determine to open a proceeding to address issues related to elimination of PTC arrangements, including toll rate deaveraging. We also intend to open dockets concerning universal service and carrier of last resort. It is quite possible that the issues ICTC refers to will be sufficiently resolved before implementation of the rule.

**B. Section XXX.10 Definitions**

## 1. Staff's Proposed Rule

## Section XXX.10 Definitions

"Bona fide request" is a written request submitted to a local exchange carrier ("LEC") by an interexchange carrier ("IXC"), in which the IXC requests that the LEC provide presubscription consistent with this Part to customers within an exchange(s) and states that it intends to offer intra-Market Service Area ("MSA") usage services utilizing presubscription to customers in the exchange(s) within six months after the bona fide request, or within one year after the effective date of this Part, whichever is later.

"Customer" means a subscriber to a LEC switched network access service, either a bundled network access line or trunk or an unbundled port.

"Equal access" has the meaning given it in Appendix B of the Modification of Final Judgment ("MFJ") entered by the United States District Court on August 24, 1982 in United States v. Western Electric, Civil Action No. 82-0192 (D.D.C. 1982), as amended by the court in its orders issued prior to the effective date of this Part.

"Equal access exchange" means an exchange in which the LEC has complied with and implemented federal equal access requirements.

"Incumbent local exchange carrier" or "incumbent LEC" means a LEC that provided facilities-based local exchange telecommunications services within an exchange as of December 31, 1993.

"Interexchange carrier" or "IXC" means a telecommunications carrier under the Act that provides interexchange telecommunications services as defined in Section 13-205 of the Act. A telecommunications carrier is both an IXC and a LEC if it provides both interexchange and facilities-based local exchange telecommunications services.

"Local exchange carrier" or "LEC" means a telecommunications carrier under the Act that provides facilities-based local exchange telecommunications services. A telecommunications carrier is both an IXC and a LEC if it provides both interexchange and facilities-based local exchange telecommunications services.

"Modified 1-PIC" is a presubscription method in which a customer's interMSA calls are carried by an IXC of the customer's choice and its intraMSA presubscription calls are carried, at the customer's

choice, by either the LEC (or a primary toll carrier ("PTC")) or by the IXC chosen to carry interMSA calls, without the use of access codes.

"New local exchange carrier" or "new LEC" means a LEC that did not provide facilities-based local exchange telecommunications services within a specified geographic area as of December 31, 1993.

"Presubscription" is a procedure by which a customer can predesignate one or more IXCs to access for its presubscribed switched intraMSA and interMSA calls, without dialing an access code.

"Primary interexchange carrier" or "PIC" means a presubscribed IXC that carries presubscribed calls, without the use of access codes, for a customer following equal access or presubscription implementation.

"Primary toll carrier" or "PTC" means the carrier that was made responsible for intraMSA toll rates, intraMSA compensation, and coordination of the intraMSA toll network by the Sixteenth Interim Order, July 2, 1985, and the Twenty-Fifth Interim Order, July 23, 1986, in Commission Docket 83-0142.

"1-PIC" is a presubscription method in which a customer's presubscribed calls are carried by the IXC of the customer's choice, without the use of access codes.

"2-PIC" is a presubscription method in which a customer's interMSA calls are carried by an IXC of the customer's choice and its intraMSA presubscribed calls are carried, at the customer's choice, by the LEC (or a PTC), by the IXC chosen to carry interMSA calls, or by another IXC, without the use of access codes.

## 2. Positions of the Parties

There was minor disagreement with the Staff's definitions. Illinois Bell proposed several non-substantive changes that clarify the definitions of "bona fide request" "new LEC," and "equal access exchange." Additionally Illinois Bell suggests several additions to the definitions of "presubscription" and "PIC."

AT&T recommended the following three definitions of "Local Service", "Non-presubscribed Calls", and "Presubscribed Calls":

"Local service" means usage for calls originated and terminated within the serving wire center of the LEC providing dial tone to the caller. This usage may also be tariffed in combination with access to the telephone network.

"Non-presubscribed calls" refers to calls which will not be subject to intraMSA equal access and includes calling for: directory assistance (411), repair service (611), emergency assistance (911), operator services using (0-), and pay-per-call services (976).

"Presubscribed calls" refers to calls subject to equal access including: (a) outbound calls in every exchange which are originated over switched access for which timed usage charges apply, to both business and residential customers, according to the applicable tariff or the LEC providing local service to customers on the effective date of these rules, (b) calls dialed "0+", and (c) those calls which the Commission determines in any individual exchange, following the procedures set forth in Section XXX.120, should be provided on a presubscribed basis.

AT&T maintained that clear definitions for use in the rule which reflect the nature of the call by its physical routing would not be dependent upon current definition of local calling areas. AT&T further stated that these definitions would differentiate what traffic could be subject to a waiver request and would spell out in the rule which types of calls are potentially subject to the benefits of competition via presubscription.

IITA vigorously opposed AT&T's proposed changes, stating that it was far too confining in its definition of local service and was an obvious attempt by AT&T to maximize the market available to it. Staff also objected to the inclusion of these definitions on the basis of disparate use of the term "local calling area".

### 3. Conclusion

The Commission adopts the Staff's definitions with the changes to "new LEC," and "equal access exchange" suggested by Illinois Bell. The addition of the words "LEC and/or" to the definition of "presubscription" is redundant and adds nothing to the understanding and meaning in the text. The Commission will not make these changes.

We will not adopt the changes suggested by AT&T for the reasons expressed by Staff and IITA.

#### **C. Section XXX.100 Obligation to Provide Presubscription**

##### 1. Staff's Proposed Rule.

Section XXX.100 Obligation to Provide Presubscription

- a) Each LEC shall provide presubscription consistent with this Part upon the LEC's own initiative or upon a bona fide request, using the 2-PIC method.
- b) Each LEC providing presubscription within an exchange(s) using the 1-PIC method as of December 31, 1993 is exempted from the requirements of this Part as long as it continues to provide 1-PIC presubscription.
- c) Presubscription shall be provided consistent with this part and in accordance with the Federal Communications Commission's ("FCC") Memorandum Opinion and Orders in CC Docket No. 83-1145, Phase I.

## 2. Positions of the Parties.

There are three types of intraMSA presubscription arrangements which were discussed in this Docket. The three options are:

The 1-PIC arrangement, where all of the customer's "non-local" <sup>1</sup> calls are carried by the IXC of the customer's choice without the use of an access code;

The 2-PIC method, where a customer makes two different choices, one for interMSA calls and one for non-local intraMSA calls. The non-local intraMSA calls are carried, at the customer's choice, by the LEC (or PTC), by the IXC chosen to carry interMSA calls or by another IXC, without the use of an access code; and

The Modified 1-PIC arrangement (also called modified 2-PIC), where the customer selects either a single IXC to carry both the interMSA and non-local intraMSA calls, or the customer maintains the status quo where the LEC (or PTC) carries intraMSA calls and the IXC carries interMSA calls.

Under each of the arrangements, certain calls will continue to be carried by the LEC as they are today. These calls are referred to as "local" calls or "calls not subject to presubscription".

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<sup>1</sup> Staff objects to the use of the term "local calling area" and prefers the term "calls not subject to presubscription." We believe its concern is largely one of semantics and the former term aids understanding as we initiate presubscription. Accordingly, we will use these terms interchangeably.

Staff argued that it considered costs, customer choice, and potential effects on LECs in recommending the type of presubscription to be implemented. It asserted that while a 1-PIC method has the surface appeal of eliminating MSA boundaries in Illinois, it also appears to be less expensive than other options. However, Staff rejected the 1-PIC method partly because it would not allow current dialing arrangements to be maintained, in particular, the use of the PTC for non-local intraMSA calling. Staff raised the concern that if customers are forced to switch from the status quo, the current disparity between PTC and short-haul IXC rates could mean automatic rate increases unless IXCs respond with immediate rate reductions.

Staff's proposed rule implicitly allows use of the 1-PIC method only by Moultrie Independent Telephone Company, which chose not to enter into a PTC agreement and has been allowing its customers to access IXCs for all interexchange calls through what is essentially a 1-PIC arrangement.

Under the prescription rule as originally proposed by Staff, Illinois LECs would have been permitted to implement intraMSA presubscription using either the Modified 1-PIC method or the 2-PIC method. In its surrebuttal testimony, Staff determined that the 2-PIC method is preferable for several reasons: (1) the cost factor is less than originally thought because, for some companies, the cost difference may not exist (e.g., Centel); (2) the cost difference may be less than originally estimated for Illinois Bell and, in any event, is extremely small when put on a per-minute of use basis; (3) the implementation time differences are not as significant as initially believed; (4) the modified 1-PIC approach limits customer choice relative to the 2-PIC method; and (5) LECs which are not the PTC could not compete for presubscribed intraMSA traffic, even for their own local exchange customers.

Staff asserted that the only carriers that a customer could choose to provide intraMSA presubscribed traffic would be the IXC chosen for presubscribed interMSA service and the company identified in the past as the PTC for that customer's exchange. Thus, contrary to Staff's recommendation that PTC arrangements be replaced upon implementation of intraMSA presubscription, the modified 1-PIC method would perpetuate the PTC structure in Illinois indefinitely. Staff also noted a national trend to choose the 2-PIC approach. Based on these factors, Staff determined that the presubscription rule should adopt the 2-PIC method as the presubscription method of choice and allow waivers using the modified 1-PIC method only upon a LEC showing that the 2-PIC method is not economically or technically feasible.

According to the Staff proposal, a LEC can seek a waiver pursuant to Section XXX.130(a) from the 2-PIC requirement if it can demonstrate that the 2-PIC method is not technically feasible or that the costs of 2-PIC implementation are expected to exceed the anticipated benefits substantially, in which case the Modified 1-PIC method would be permitted.

Staff proposed that its presubscription rule apply to all incumbent LECs regardless of size, and to new LECs consistent with the market principle that regulatory requirements should not differ among carriers in general. While MFS took the position that the rule should apply to incumbent LECs only, MFS stated that it will offer its customers the ability to presubscribe to multiple IXCs in order to meet market demand. No other potential market entrant opposed presubscription requirements.

Illinois Bell stated a preference for modified 1-PIC and supported the original Staff proposal. It claims to be in the process of implementing modified 2-PIC in all of its Illinois switches as part of its Customer First Filing. It claims that it will realize substantial savings if it is allowed to implement modified 1-PIC instead of 2-PIC. Illinois Bell's witness testified that the cost of implementing the Modified 1-PIC solution exceeds \$2 million, while the cost of implementing the 2-PIC solution is almost \$10 million.<sup>2</sup> He explained that these substantial cost savings are possible in Illinois Bell's case because Modified 1-PIC will be implemented by means of switch translation modifications rather than by means of vendor software upgrades.

Illinois Bell also explained that Modified 1-PIC is much quicker to implement than 2-PIC because 2-PIC requires Illinois Bell to purchase, install and test software packages which, in many instances, have not been developed by the switch vendor. According to Illinois Bell, the earliest it could implement 2-PIC statewide is 1997 or 1998. Modified 1-PIC, on the other hand, can be implemented in early 1995 because Illinois Bell has begun

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<sup>2</sup> Illinois Bell originally claimed proprietary treatment for its cost for intraMSA presubscription implementation. In its Initial Brief, MCI attempted to preserve the confidentiality of the total cost data by using comparative ratios. Unfortunately, the ratios disclosed enough information to make it possible to solve for the approximately total cost figures algebraically. Illinois Bell subsequently submitted a draft order which included the data without a proprietary designation. The Commission concludes that Illinois Bell has waived proprietary treatment of the information.

implementation through software translations. According to Illinois Bell, it is on target for implementation of Modified 1-PIC in early 1995 -- assuming that interMSA relief is granted. Contrary to Staff's position, Illinois Bell contends that time is of the essence because Judge Greene or Congress could lift the interMSA restriction in 1995. Staff's prediction that a 2-PIC solution available in early 1996 will not delay the implementation of intraMSA presubscription could therefore prove to be wrong.

Illinois Bell and Sprint/Centel also dispute that 2-PIC offers "more choice" to customers. Any additional choice is negligible and illusory. These companies claim that 2-PIC merely provides a customer the ability to choose three carriers (a local carrier, an intraMSA carrier and an interMSA carrier) versus two carriers (a local carrier and a carrier for all other traffic). In their view, this additional choice merely will lead to customer confusion and ultimately will be counter-productive.

Finally, Illinois Bell disputes Staff's contention that Modified 1-PIC will perpetuate the PTC structure. Staff's concern is that the existing PTC will be the only alternative to the IXC for handling intraMSA presubscribed traffic. Illinois Bell believes that any LEC which is not the PTC could petition to withdraw from the PTC agreement and could arrange to provide intraMSA presubscribed service to its own customers. In Illinois Bell's view, there is nothing about Modified 1-PIC which prevents LECs from dropping out of the PTC agreement, as they can today. Finally, Illinois Bell contends that any national trend to 2-PIC is irrelevant because those states did not have the option of implementing presubscription using switch translations.

Sprint/Centel points out that the continuing existence of MSA boundaries is open to question. If and when those boundaries are eliminated, presubscription to multiple IXCs would no longer serve any realistic purpose.

MCI supported 2-PIC intraMSA presubscription rather than allowing the LEC to choose between modified 1-PIC and 2-PIC. MCI proposed striking Staff's original words " either the modified 1-PIC method or 2-PIC method" in paragraph a) of Staff's original version and adding the following paragraph in that same subsection:

The Commission, after giving notice to the local exchange carrier, the interexchange carrier providing the bona fide request, and all other carriers providing interMSA service in the exchange, and allowing them an opportunity to comment, may order the modified 1-PIC or

the 1-PIC presubscription methods if it is shown that the carrier cannot implement full 2-PIC presubscription because of insurmountable technical and economic reasons.

MCI recommended these changes because it claimed that full 2-PIC provides the consumers with the widest range of options and choices for intraMSA calling rather than restricting the choices to the PTC and the interMSA carrier. Additionally, MCI asserted that if modified 1-PIC were deployed, the PTC is advantaged when compared to all other interexchange carriers in that the PTC is the only carrier with access to 100% of the customer base. According to MCI, all other IXCs are relegated to access only their portion of the presubscribed interMSA market.

MCI also claimed that both Illinois Bell and Centel had indicated that they would provide modified 2-PIC in at least some switches by using full 2-PIC software, thus incurring all of the costs of full 2-PIC with none of the attendant benefits to consumers. MCI cautioned that leaving the option to LECs could mean the LECs would utilize the option that best fit the toll marketing strategy they intended to pursue. MCI also alleged that the 2-PIC method was emerging as the nationwide industry standard for implementation of intraMSA equal access, citing several state decisions as its evidence.

MCI claims that the costs Illinois Bell used for 2-PIC implementation were overestimated by some \$7.2 million. According to MCI, Siemens has in the past quoted a price of \$7,444 per switch to South Central Bell for 2-PIC software and MCI contends that the same price should be available to Illinois Bell. MCI further reasons that if Siemens can offer 2-PIC software at that price, Northern Telecom and AT&T also should be able to offer software at that price. Based on this reasoning, MCI argues that there is no real cost advantage to Modified 1-PIC over 2-PIC. It claimed that when this amount is spread over the number of minutes subject to the equal access recovery charge, the rate per minute difference in the two numbers is inconsequential.

Illinois Bell responds by pointing out that the only price that Siemens quoted to Illinois Bell and the only price which Illinois Bell and the Commission can use for planning purposes is \$80,000 per switch. Illinois Bell contends that there is no direct, reliable evidence in the record to establish that Siemens in fact sold 2-PIC software to South Central Bell for the price of \$7,444. Even if that were the case, Illinois Bell argues, that this preferential price may have been offered to South Central Bell for reasons which are simply not present here -- such as the resolution of a separate dispute between those two companies. Illinois Bell also contends that there is no basis to assume that

AT&T and Northern Telecom would sell 2-PIC software at the same price as Siemens, no matter how low the Siemens price allegedly was.

Sprint, citing Illinois Bell's cost figures, agreed with Illinois Bell on this issue, and supports modified 1-PIC. GTE supports the 2-PIC method, which requires more expensive software upgrades, and argued that the modified 1-PIC method using switch translations is not a viable option for GTE. Centel preferred the modified 1-PIC method using vendor software upgrades.

IITA advocated that carriers serving fewer than 25,000 access lines should be allowed to provide an extended 1-PIC option in which the customer's interMSA carrier also would become the customer's intraMSA carrier. This section of the rules provides for the grandfathering of any such proposals that were effective as of December 31, 1993. IITA would allow this practice without limitation at the LEC's option.

MFS contends that the intraMSA presubscription rule should not apply to new LECs such as MFS and Teleport. According to MFS, it would be a burdensome and costly requirement to impose upon new LECs at a time when they are just beginning to emerge. Despite this assertion, MFS indicated that competition would force it to offer presubscription to multiple carriers.

No other party supports MFS' view. Staff, AT&T, MCI, Sprint/Centel, Illinois Bell and others contend that the rule should apply to all LECs, including new LECs. Staff responded that it found this MFS position curious and noted that no other potential entrant had raised this issue. Sprint/Centel explained that intraMSA presubscription allows a customer to choose between several different carriers for intraMSA calling without using access codes. Since customers are typically served by only one carrier, customers are denied "equal access" capabilities if a new LEC is not required to provide intraMSA presubscription.

### 3. Conclusion

In its Exceptions, Illinois Bell indicated that it is not opposing the 2-PIC method of presubscription. At the same time, Illinois Bell offers to provide the Commission with a six month progress report on implementing 2-PIC technology. The Commission accepts Illinois Bell's proposal.

We do not agree that the record supports a conclusion that Illinois Bell's cost figures are overstated. There is insufficient information in the record regarding the SW Bell/Siemens transaction to permit us to infer that this reflects the actual market price

for 2-PIC software. We will accept Illinois Bell's data as accurate. We also conclude that implementation of 2-PIC would delay implementation of presubscription in some cases. However, we do not believe that the selection of presubscription approaches should be based merely on a consideration of which approach is least expensive and quickest to implement. We must select a presubscription approach which is sustainable for the future and consistent with other changes to the regulatory environment we are making, or will make, in the future. Under the modified 1-PIC method, LECs which are not the PTC could not compete for presubscribed interMSA traffic, even for their own local exchange customers. A customer could choose only between a presubscribed interMSA service provider and the PTC. This would foreclose a significant source of competition and perpetuate the PTC system. That would be inconsistent with the second market principle we adopted in Docket 94-0096 which is that the Public Switched Telephone Network should minimize artificial geographic boundaries. The 2-PIC method affords customers additional choice, and opens the market to more participants. This is a benefit which is not easily quantified. We particularly disagree with the arguments of several of the parties that additional choice for consumers may be too confusing for them to understand. Choice is at the heart of any reasonable definition of competition.

Moreover, the additional flexibility does not come at significantly greater expense. There is no dispute that the additional cost of 2-PIC is small on a per minute basis. Illinois Bell certainly will be permitted to recover the additional costs incurred as a result of our selection of the 2-PIC method. The Commission also will permit Illinois Bell to apply the additional \$8 million toward the commitment it made in Docket 92-0448 to spend \$3 billion on growth and modernization of the telecommunications infrastructure.

Finally, we agree with Staff that there is a national trend toward selection of the 2-PIC approach. We therefore approve Staff's current proposal regarding Section XXX.100 b).

IITA's proposal to allow small LECs the option to implement extended 1-PIC will not be granted. Consistent with Staff's original proposal, we will not require any LECs already providing this form of intraMSA presubscription to change, but have concerns that such a practice bars participation by Illinois Bell and GTE in the intraMSA market. We believe that the waiver process in XXX.130 adequately addresses IITA's concerns. The Commission also will adopt the position of Staff that these rules apply to all LECs -- both incumbent and new. The Commission does not find persuasive MFS' argument that the customer notification procedures place an undue burden on new carriers or that presubscription is somehow