

inappropriate for customers of new LECs because the new LECs lack market power.

**D. Section XXX.110 Implementation**

**1. Staff's Proposed Rule**

**Section XXX.110 Implementation**

- a) Each incumbent LEC shall, within 120 days after receiving a bona fide request, file intrastate tariffs to provide presubscription consistent with this Part in its equal access exchanges within six months after receiving the bona fide request or within one year after the effective date of this Part, whichever is later.
- b) For each incumbent LEC exchange that was not an equal access exchange as of the effective date of this Part, the incumbent LEC shall file intrastate tariffs to provide presubscription consistent with this Part effective at the time that equal access is implemented within the exchange.
- c) Each new LEC shall, within 120 days after receiving a bona fide request, file intrastate tariffs to provide presubscription consistent with this Part effective within six months after receiving the bona fide request or within one year after the effective date of this Part, whichever is later.
- d) Each LEC may negotiate implementation schedules that differ from the requirements in this section, with the agreement of all IXCs that make bona fide requests within 60 days of the first bona fide request.

**2. Positions of the Parties**

MCI proposed changing the first paragraph in this subsection of the rules as follows:

Each incumbent LEC shall, within 120 days after receiving a bona fide request pursuant to this rule, file intrastate tariffs to provide presubscription consistent with this Part in its equal access exchanges within six months after receiving the bona fide request.

Additionally, MCI proposed similar changes for the third paragraph dealing with new LECs. The reason provided by MCI for these changes was its assertion that the timelines necessary for

implementation of intraMSA presubscription could be met within six months of the effective date of these rules.

ITA, IITA, Illinois Bell, GTE and ICTC all disagreed, stating their belief that more time than six months was necessary to implement this feature. Illinois Bell, Sprint/Centel and ICTC all support the one-year time period because it will take a substantial amount of time and effort to purchase, install and test the required software (if 2-PIC is ordered) and to make the necessary administrative and billing changes. ICTC expected that it would not even be able to obtain the necessary software within this time frame, let alone have it installed, tested, and working.

MCI responded that ICTC reasonably could anticipate the effective date of these rules as they go through their first and second notice periods and begin the process of ordering and planning for their effectiveness. Further, MCI stated, the LECs not able to meet the six-month implementation deadline in this subsection of the rules could either negotiate an extension with any parties submitting bona fide requests, pursuant to the fourth paragraph above, or apply for a waiver pursuant to section XXX.130 below.

Illinois Bell responds that LECs should not be obligated to do any pre-planning because it is difficult and risky to base present action on predictions about the outcome of future regulatory proceedings. Without a firm and final rule, LECs should not be required to begin implementation. Illinois Bell points to its own experience in which it has implemented Modified 1-PIC in many of its switches, only to find that Staff has changed its position and is now recommending 2-PIC.

Several parties noted discrepancies between the deadlines in this section and section XXX.170, proposing either that the six-month deadline in this section be lengthened or the six-month deadline in section XXX.170 be shortened. Parties typically used the same arguments as to whether the change should be made here or in section 170 as they used in arguing for six months or a longer period of time for implementation in general.

GTE testified that its three remaining 2\_EAX switches are scheduled to be converted to digital switches, one in 1996 and two in 1998 pursuant to its modernization plan presented in Docket 93-0301/94-0041. The cost of developing software for 2-PIC for 2-EAX switches is estimated at nearly \$3 million. GTE requests that the Commission provide in any Order that intraMSA presubscription need not be implemented in the exchanges served by each of these three switches until following its replacement with a digital switch.

### 3. Conclusion

The Commission is of the opinion that the time frames proposed by Staff reflect a reasonable balance between the various positions advocated by the parties. This schedule has the advantage of bringing the benefits of presubscription to consumers more quickly than the longer timelines advocated by the LECs. The Commission is aware that there may be some instances in which legitimate delays prevent LECs from providing intraMSA presubscription within the timelines in this rule. We expect all parties to this rulemaking to utilize the negotiations provisions of paragraph d) in this rule in an attempt to arrive at mutually agreeable dates for the conversion to intraMSA presubscription. Only if those negotiations fail, and the parties seek this Commission's intervention, should the waiver process be utilized.

We approve as reasonable GTE's request for a waiver to exempt exchanges served by each of the three GTE 2EAX switches identified by GTE in its testimony until the earlier of 1) the replacement of the switch or 2) the dates set forth by GTE for the replacement of the switch, for each respective switch.

#### **E. Section XXX.120 IntraMSA Calls Not Subject to Presubscription**

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

##### Section XXX.120 IntraMSA Calls Not Subject to Presubscription

- a) In its intrastate presubscription tariff, each LEC shall specify which intraMSA switched calls are not subject to presubscription for each of its exchanges.
- b) For each incumbent LEC exchange, intraMSA calls shall not be subject to presubscription if they originate and terminate within the geographic area within which the LEC provides calling through one or more of the following: flat rate service, residence untimed calling and usage-measured service bands that do not exceed 15 miles from the exchange wire center, and/or flat rate or measured Extended Area Service, as defined in the LEC's tariffs.
- c) The following intraMSA calls shall not be subject to presubscription: local directory assistance (e.g., 411), local repair (e.g., 611), emergency (911), 0- operator services, and local pay-per-call (e.g., 976) calls. Calls using the 500, 700, 800, or 900 service access codes shall be routed in accordance with the North American Numbering Plan.

- d) For incumbent LECs, 0+ calls shall not be subject to presubscription if they originate and terminate within the geographic area described in Section XXX.120(b).
- e) All intraMSA switched calls not subject to presubscription and dialed without the use of access codes shall be carried by the LEC. Those calls dialed using a 500, 700, 800, or 900 service access code shall be routed in accordance with the North American Numbering Plan.

## 2. Positions of the Parties.

There were several contested issues within this subsection of the rules. Under Section XXX.120 an incumbent LEC's intraMSA calls are not subject to presubscription if they originate and terminate within a flat rate service area, a residence untimed calling area, a usage-measured service band that does not exceed 15 miles from the exchange wire center, or a flat rate or measured EAS area, as defined in the LEC's tariff. The limitation does not apply to new LECs. The rule also provides that local directory assistance, local repair, emergency, local pay-per-call and operator calls (O-) are not subject to presubscription.

Staff's definition of the local calling area is based on three pertinent concerns. First, LEC rates for short haul interexchange calls tend to be substantially lower than rates of IXCs, and consumers should be protected from those higher rates. Second, a smaller local calling area could have an adverse financial impact on the LEC by subjecting more of its revenues to potential loss. Third, Staff noted that legislatively mandated untimed calling areas which are not subject to an imputation test can create a difficult competitive situation for IXCs. Staff explained that calls in the first two bands of Illinois Bell's usage-sensitive service were priced below an imputed cost floor. For this reason, and because no competitor reasonably could price its own services below this level, staff proposed to exclude calls from these bands from the presubscription process.

Centel and Illinois Bell agreed with Staff that the 16-mile radius was more appropriate than the eight mile radius proposed by MCI, although Illinois Bell did point out that its Band B mileage stopped at 15-miles. Centel provided several community of interest standards in use in the Chicago metropolitan area that were more closely aligned with the larger radius.

IITA claimed that the one-size-fits-all approach taken in Staff's first draft would result in serious confusion and disruption in the more rural areas of the state. IITA showed that there would be at least four separate calling areas in many of its

exchanges: the local/EAS area, in which service would be provided by the LEC; intramSA interexchange non-EAS calling within 16 miles that would continue to be provided by the PTC; intramSA interexchange calling outside the 16-mile band that would be provided by a new PIC; and, interMSA calling, which would be provided by the current PIC. IITA argued for language that leaves it to the LEC to define the local calling scope in its local exchange tariff.

MCI agreed with IITA that the local calling exchange definition proposed by Staff did not fit the downstate LECs and asserted its belief that MCI's proposal would achieve the same result as would IITA's, at least for the independent telephone companies in IITA.

MCI agreed and further feared that the proposed definition did not accomplish the degree of market-opening that had been intended by Staff with its intramSA presubscription rules. MCI expressed its desire to use a two-part definition for local exchange, bifurcating the definition into one that applies to exchanges in MSA 1 and another for the rest of the state. It supported this definition first, by citing Illinois Bell responses to data requests for the proposition that all of MSA 1 is considered by Illinois Bell and Centel to be one large EAS area. Second, MCI stated its belief that in the remaining areas of the state, the EAS areas were more likely to reflect true community of interest standards. Third, MCI asserted its belief that Centel's MSA 1 flat-rate calling area would be of a more limited geographic size than the entire Chicago exchange as a result of Centel's most recent rate case, but opted to limit its size via the mileage portion of the rule.

For all of these reasons MCI proposed the following changes to paragraph b):

- b) In its intrastate presubscription tariff, each incumbent LEC shall provide that, for each exchange:
  - 1) in MSA 1 (the Chicago MSA), the local calling area is the geographic area within which the LEC provided calling as of July 31, 1994 through one or more of the following: flat rate service within eight miles of the exchange wire center or residence untimed calling.
  - 2) in all MSAs except MSA 1, the local calling area is the geographic area within which the LEC provided calling as of December 31, 1993

through one or more of the following: flat rate service, residence untimed calling, and/or Extended Area Service.

- 3) Calls within the local calling areas defined in XXX.120 b) 1) and 2) are not subject to presubscription pursuant to this rule.

Because of the clarity contained in the proposed definition in Section XXX.10, AT&T proposed that Section XXX.120 be deleted and replaced with the following section to provide additional flexibility for developments in technology, rate settings and the shifting nature of exchange boundaries:

#### Section XXX.120 Calls Subject to Presubscription

In its intrastate presubscription tariff, each LEC shall specify which intraMSA presubscribed calls, as defined in Section XXX.10, are currently available for presubscription. The LEC must provide notice to all other carrier providing service to that exchange and to the local exchange company(ies) providing the service in question on a non-presubscribed basis.

AT&T did not believe that Staff was able to substantiate the reasons for expanding the area not subject to presubscription from 8 to 15 miles, or to justify the exclusion of traffic types as the best way to meet public interest needs.

Illinois Bell notes that the rule does not define the local calling area for newly-certificated LECs, such as MFS and TCG. It believes that the local calling area of new LECs should be identical to the local calling area of incumbent LECs. Staff believes that the local calling area for new LECs can be examined at the time they file tariffs for local exchange service.

The next issue regarding Staff's proposed rules is found in paragraph c). MCI suggested adding to the list of calls not subject to the presubscription rules, calls that use the 500, 700, 800, or 900 service access codes (for instance, calls that are dialed 1-800-NXX-XXXX.) MCI further proposed to make these calls exceptions to the list of calls that are not subject to presubscription and automatically carried by the LEC as listed in paragraph e). Staff agreed with this proposed modification.

Illinois Bell opposes this request and argues that this issue should not be addressed in the rules. Instead, these calls should

be routed under the North American Numbering Plan. Illinois Bell explains that some of these calls, e.g., 700 calls, are already routed to the presubscribed carrier under the North American Numbering Plan. Others, such as 800, are not. In view of this complexity, Illinois Bell contends that the best approach is to allow these calls to be routed as they are today without changing the proposed rules.

Illinois Bell objected to MCI's request that directory assistance calls to 555-1212 be subject to intraMSA presubscription. Illinois Bell opposes this request because 555-1212 rather than 411 is used in many areas of the country to reach local directory assistance. Since directory assistance calls are not subject to presubscription under the rule, 555-1212 should be treated the same. At some point in the future, LECs in Illinois may want to provision local directory assistance using the 555-1212 dialing arrangement. To preserve that capability, Illinois Bell argues that no rules should be promulgated which would require that 555-1212 be subject to intraMSA presubscription.

AT&T proposed that a new subsection be added here to provide for intraMSA presubscription for LEC payphones. It stated that today payphones are presubscribed for interMSA non-sent paid calling. It stated that this rule was necessary to maintain consistency between the interMSA and intraMSA markets and to expand the scope of calling subject to the benefits of competition.

Illinois Bell and Staff disagreed, noting that, absent the consent decree restriction on Illinois Bell, it would have the option of presubscribing its payphones on an interMSA basis. They noted that all other payphone providers have the authority to determine which carrier or carriers will handle the payphone's traffic.

The next issue involves AT&T's proposal that selection of the intraMSA PIC at LEC payphones be made by the premises owner or agent, and not by the LEC. AT&T reasons that such a requirement would make PIC selection consistent for both intraMSA and interMSA calling. Illinois Bell opposes this requirement as both unnecessary and punitive.

### 3. Conclusion

The Commission agrees that Staff's proposal regarding calling areas subject to presubscription appropriately balances the interests of all parties by opening up a substantial amount of traffic to competition, while protecting end users until the prices of short-haul traffic decrease. It has the additional advantage of

moderating the impact of presubscription on those LECs who are subject to restrictions on the provision of interLATA services.

We agree with IITA that we should clarify the rule by expressing our intention that for companies who serve 25,000 or fewer access lines (other than Moultrie) the calling subject to the initial presubscription process is the interexchange switched calling originating from these companies currently being handled by the Primary Toll Carrier Plan.

The issue regarding 500, 700, 800 and 900 calls was appropriately resolved by amending paragraphs c) and d) to provide that these calls shall be handled in accordance with the North American Numbering Plan. This provision maintains the status quo with respect to these types of calls.

We will not adopt AT&T's proposal regarding payphones for the reasons expressed by Illinois Bell and Staff.

Finally we believe that the issue of new LEC calling areas can be considered when they actually have filed their tariffs for local service, or alternatively, in the proceeding we have initiated to examine appropriate regulatory requirements for new LECs.

**F. Section XXX.130 Waivers and Extensions**

1. Staff's Proposed Rule

Section XXX.130 Waivers and Extensions

- a) A LEC may petition for a waiver of the requirement to provide presubscription consistent with Section XXX.100 on the basis that the 2-PIC method is not technically feasible or that under current conditions the costs are expected to exceed reasonably anticipated benefits substantially. The Commission, after hearing, shall grant a waiver and shall allow the modified 1-PIC method to be used upon a showing that the 2-PIC method is not technically feasible or that its costs are expected to exceed reasonably anticipated benefits substantially.
- b) A LEC may petition for an extension of the timing requirements in Section XXX.110 on the basis that presubscription cannot reasonably be provided within the given exchange(s) within the required time frame. The Commission, after hearing, shall grant an extension to a specified date upon a showing that presubscription cannot reasonably be provided within the given

exchange(s) within the time frame required by Section XXX.110 and that the date specified in the extension can reasonably be met.

- c) Any LEC or IXC may petition for a waiver of the requirements in Section XXX.120 on the basis that the requirements regarding calls not subject to presubscription do not meet customers' calling needs and/or do not preserve or promote effective competition. The Commission, after hearing, shall grant a waiver upon a showing that the requirements regarding calls not subject to presubscription do not meet customers' calling needs and/or do not preserve or promote effective competition, and after considering the financial impact and the technical feasibility of alternatives.

## 2. Positions of the Parties

Illinois Bell stated its disagreement with this rule because of its limitation of the issues that could be raised in the course of an LEC pursuing a waiver of any part of this rule. Under Staff's proposal, there are only two factors which the Commission can consider in resolving a petition to expand or contract the area of "calls not subject to presubscription": customer calling needs and promotion of effective competition. Illinois Bell argues that this is an inordinately narrow range of facts and, if adopted, would unreasonably restrict the Commission's ability to consider all relevant factors in resolving such petitions. Illinois Bell proposes that the waiver provision be expanded to permit consideration of technical feasibility, economic feasibility and the overall public interest. It argues that Staff conceded on cross-examination that financial and technical feasibility would be relevant to some types of proposals to change the area of "calls not subject to presubscription". Staff suggested that its rule be modified to include the words "and after considering the financial impact and the technical feasibility of alternatives".

Additionally Illinois Bell and IITA both claimed that the rule as written was unworkable and/or confusing. Other LECs supported Illinois Bell, while most of the remaining parties supported the original Staff rule on this issue.

Staff asserted that this section allows waivers or extensions of time from various presubscription requirements to provide the needed flexibility and to recognize variations in different LECs' circumstances. Staff recognized Illinois Bell's contention that this section is unworkable because it limits the issues that could be considered in ruling on a waiver request. Staff responded that this waiver provision must be designed to minimize excessive and/or frivolous waiver requests, and that the revised waiver language

protects the integrity of the rule while allowing the important facts to be taken into consideration when looking at customer needs or the promotion of competition. Further, Staff asserts that it changed the language in paragraph c) regarding the criteria for assessing alternatives to address this concern.

Centel suggested that there be a three-year stabilization period during which there could be no change in the size of the local calling areas defined in this rule.

MCI, AT&T and IITA disagreed, stating that any party that finds that conditions have changed enough to warrant changing the local calling area to either a larger or smaller area ought not to be bound by an artificial three-year waiting period. MCI, consistent with its position in Section XXX.100, provided alternate language for this Section of the rules. The positions of the other parties on MCI's proposed change here was the same as their positions on MCI's proposal to require 2-PIC.

AT&T suggested that streamlining the regulatory process and accelerating the introduction of competition would result if paragraph a) of this section of the rules were to be changed by deleting the phrase "after hearing" and replacing it with "upon investigation and receipt of written statements (e.g., affidavits) by interested parties." There was little comment on this proposal.

### 3. Conclusion

The Commission will not adopt Centel's calling area stabilization proposal, for the reasons advanced by MCI, AT&T and IITA. We are reluctant to set an arbitrary period of time during which parties cannot petition for changes to the local calling area. We also note our agreement with IITA that it is our intention that LECs (both incumbent and new) and IXCs may, at any time both prior to and after the initial presubscription process apply to the Commission to alter, by either expanding or contracting, the local calling area; i.e. the calls not subject to presubscription. The party applying for any alteration should carry the burden of proof. We are particularly persuaded by the testimony on this point of IITA witness Zimmerman, who noted that the community of interest relevant in rural areas may be altered for many reasons, such as a change in school district boundaries.

We also believe that Staff adequately addressed Illinois Bell's concerns regarding the issues which can be raised during a waiver hearing by adding to paragraph c) the phrase, "and after considering the financial impact and the technical feasibility of alternatives." The use of a standard such as "otherwise not in the public interest", as Illinois Bell suggests, is overly broad and

should generally be avoided if more specific standards are available. We also are concerned that it would invite too many waiver applications.

**G. Section XXX.140 Customer Notification and Presubscription Changes**

1. Staff's Proposed Rule

Section XXX.140 Customer Notification and Presubscription Changes

- a) For each incumbent LEC exchange that was an equal access exchange as of the effective date of this Part, and for each new LEC, the LEC shall provide written notice to its customers of the availability of presubscription, as follows:
- 1) The notice shall be provided to existing customers at least 30 days prior to the implementation of presubscription consistent with this Part.
  - 2) The notice shall be provided to new customers who request network access service between the time the notice is distributed and the date presubscription is implemented consistent with this Part, at the time they request service.
  - 3) The notice shall describe presubscription, the customers' choices, how to select among the presubscription choices, and any related charges in a manner that does not attempt to influence customers regarding their selections.
- b) For each incumbent LEC exchange that was not an equal access exchange as of the effective date of this Part, balloting shall be required for both interMSA and intraMSA usage, as follows:
- 1) Balloting shall be in accordance with the FCC's Memorandum Opinion and Orders in CC Docket No. 83-1145, Phase I, and balloting shall include both interMSA and intraMSA choices.
  - 2) Customers' intraMSA usage subject to presubscription shall not be allocated, and shall continue to be provided by the incumbent LEC (or PTC) until the customer selects a different intraMSA presubscription choice.
- c) For new customers requesting network access service after presubscription consistent with this Part is implemented in an

exchange, the LEC or other carrier receiving the request shall inform the customer, when service is requested, of its presubscription choices and shall provide the following information before either asking for the customer's presubscription selections and/or marketing its own interexchange services:

- 1) The customer service representative shall inform the new customer that the customer can select from a number of IXCs for presubscribed interexchange service, and shall describe the available presubscription choices in a manner that does not attempt to influence customers regarding their selections.
- 2) The representative shall offer to provide the names of IXCs serving that office in random order as well as the telephone numbers of the IXCs.

If the customer indicates its selections, the representative shall not solicit the customer further for the carrier's interexchange services.

- d) Customers shall retain their existing intraMSA dialing arrangements as of the effective date of this Part until they make presubscription selections, and may change their selections at any time, subject to charges specified in Section XXX.160. Procedures for intraMSA and interMSA selection changes shall be in accordance with the FCC's Memorandum Opinion and Orders in CC Docket No. 83-1145, Phase I and 47 CFR Part 64.1100.

## 2. Positions of the Parties.

One issue which received considerable attention was Staff's proposal to regulate customer contact which a LEC may have with new customers requesting network access service. Illinois Bell agrees that some regulation in this area is appropriate, and there appear to be only two issues of disagreement between Staff and Illinois Bell. First, Staff argues that LECs must read to every new customer a list of carriers serving an end office. Illinois Bell contends that Staff's proposal would require this even if the customer did not request the information. Illinois Bell maintains this requirement is unnecessary and that it should be required only to ask each customer whether he would like the list to be read. According to Illinois Bell, customers already may have decided on a carrier or may not wish to sit through a lengthy recitation of PIC selections.

Second, Staff takes the position that the obligation to read the list should continue indefinitely. Illinois Bell contends that the obligation should last only for a one-year transitional period because the IXCs, such as AT&T, MCI, and Sprint, are sophisticated corporations that are well-versed in reaching customers through extensive television and print media campaigns. Illinois Bell argues that, in the face of the IXCs' substantial advertising and marketing expertise, customers will be informed fully and effectively of their intraMSA PIC choices after the one-year transitional period expires.

AT&T and MCI responded that, by advocating this change, Illinois Bell was attempting to leverage its generally first point of contact with a consumer for local telephone service into an unfair and unearned advantage for Illinois Bell's long distance business.

Staff asserted that paragraph c) requires that each LEC (or any other carrier receiving a request for new network access service) inform each new customer, in a neutral manner, of available presubscription choices before marketing its own interexchange choices. Staff asserted that failure by the LEC to disclose the range of presubscription options fully at the time network access is ordered would be detrimental to both customers and the development of effective competition.

Staff defended its rule in paragraph c) by noting that this section was designed to provide all future customers with the information necessary to make an informed choice. It asserts that since LECs may compete for presubscribed intraMSA and (potential interMSA) traffic, it is important that they provide accurate information to both new and existing customers regarding presubscription options. Staff stated that this section leaves many details to the LEC's discretion and, in Staff's opinion, is not overly burdensome. At the same time, if an IXC, Staff, or other party believes that a LEC is behaving anti-competitively, Staff believes this section provides an avenue for corrective Commission action.

AT&T proposed changes in paragraph c) by deleting the phrase "or marketing its own interexchange services" and by deleting the single sentence that followed sub paragraphs 1) and 2) and replacing that sentence with the following:

If customers do not indicate their selection of an intraMSA PIC following 1) and 2), the representative shall advise the customers that they can expect to be contacted by the LEC marketing department and/or IXCs as well about making a PIC selection. Until such time as an

affirmative selection is made, the LEC can arrange for service by a carrier selected at random. Names of new service connects shall be made available upon request to IXCs for use in their marketing efforts. Names of unlisted customers can only be used for marketing purposes for a period of 180 days following service connection.

AT&T claimed that this modification was intended to reduce any undue competitive advantage which the LEC would have as a result of its monopoly position in the local exchange market. GTE and Illinois Bell opposed this position, stating that it unfairly singled out the marketing position of only one competitor. It further argued that it may not always be the first point of contact for a customer's service in an exchange. Staff and Illinois Bell maintain that it would be confusing for customers to have a new carrier foisted upon them, especially since IXC rates for intraMSA services are substantially higher than LEC rates. They contend that AT&T's random assignment proposal would leave customers with unintended and undesired rate increases.

For new LECs and for each incumbent LEC exchange where interMSA presubscription already is available, Staff proposed that written notice be provided to all existing customers at least 30 days prior to the implementation of intraMSA presubscription, in a neutral manner that does not attempt to influence customers regarding their choices. Staff opposed a second balloting in such exchanges for several reasons.

For each incumbent LEC exchange where interMSA presubscription is not yet available, Staff recommended that intraMSA presubscription choices be included in the balloting process which the FCC requires when an exchange converts to equal access. In a departure from the FCC's interMSA approach, customers who do not choose an intraMSA carrier during the balloting process would retain their current intraMSA dialing arrangements rather than being allocated to an intraMSA carrier. Staff opposed allocation of intraMSA usage on the basis that it probably would increase customer confusion and could result in unintended and undesirable rate increases. Staff recommended that, if the Commission were to decide to require intraMSA allocation, it should be limited to allocation between interMSA IXC and the LEC/PTC, in order to minimize customer confusion.

Staff contended that Paragraph d) sets forth the methods by which customers' presubscribed carriers can be changed; in all instances, customers would retain their current intraMSA dialing patterns unless they make an affirmative choice of a different

arrangement. This section of Staff's proposal adopts the FCC's anti-slamming rules.

### 3. Conclusion

The modifications suggested by Illinois Bell will not be adopted. We are particularly puzzled by Illinois Bell's argument that, "LECs must read a list of carriers serving an end office to every customer, regardless of whether the customer requests the information or not." Section XXX.140(c)(2) clearly states that "The representative shall offer to provide the names of IXCs serving that office in random order..." (emphasis added)

We believe that Staff's proposal provides fair and reasonable guidelines for customer marketing while avoiding micro-management of a company's internal procedures. Since the LECs in particular will continue to be the first point of contact for many customers, a continuing customer education process is needed. We do not believe that the need for this process will change after merely one year.

We also reject AT&T's proposals for customer allocation. Imposing a carrier on a customer, particularly when that allocation is likely to lead to an increase in a customer's bills, is heavy-handed and is likely to result in customer complaints.

#### **H. Section XXX.150 Interexchange Carrier Participation**

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

##### Section XXX.150 Interexchange Carrier Participation

Carriers may carry presubscribed intraMSA calls if they have effective intrastate tariffs to provide such services and if they have made the necessary arrangements with the LEC.

##### 2. Positions of the Parties

Illinois Bell proposed to delete the word "Interexchange" from the title of Section XXX.150 and add language to clarify that both LECs and IXCs are carriers which may carry presubscribed calls. It notes that both LECs and IXCs are permitted to carry presubscribed calls if they are properly certificated under the Act.

##### 3. Conclusion

Although the change is not strictly necessary in view of the definition of IXC and LEC in Section XXX.10, we believe the change is a useful clarification and we shall adopt it.

**I. Section XXX.160 Presubscription Charges and Cost Recovery**

1. Staff's Proposed Rule

Section XXX.160 Presubscription Charges and Cost Recovery

- a) Each LEC shall allow customers to change presubscription selections at no charge once within six months following implementation within an exchange of presubscription consistent with this Part, and shall allow each new customer to select presubscription arrangements at no charge at the time network access service is initiated. At other times, each LEC may impose a reasonable, tariffed charge for changes in a customer's presubscription selections.
- b) Each LEC may seek to recover reasonable separated intrastate costs limited to initial incremental expenditures related directly to the provision of presubscription that would not be required absent the provision of presubscription consistent with this Part.
- c) In determining presubscription cost recovery, each LEC shall amortize all separated intrastate presubscription costs over at least a three-year period.
- d) Each LEC that provides noncompetitive services and is not an average schedule company shall use the following procedures for recovery of intrastate presubscription costs:
  - i) A tariffed presubscription cost recovery charge shall be applied to all switched originating intraMSA intrastate minutes of use subject to presubscription and originated by the LEC's customers, whether carried by the LEC or another IXC. If the LEC is a PTC, such charges shall not apply to customers of other LECs with which the LEC has a PTC arrangement.
  - ii) The LEC shall submit the proposed presubscription cost recovery charge and full cost documentation as part of its tariff filing made to implement presubscription consistent with this Part.
  - iii) In non-equal access exchanges where both inter- and intraMSA equal access are implemented concurrently, LECs should develop separate inter- and intraMSA cost recovery charges, consistent with FCC requirements and this Part.
- e) Each LEC that is an average schedule company shall, through its concurrence in the Illinois Small Company

Exchange Carrier Association (ISCECA) intrastate switching tariffs, use the following procedures for recovery of intrastate presubscription costs:

- i) An addition to the local switching rates shall be applied to all switched intrastate minutes of use subject to presubscription and originated by the LEC's customers.
- ii) ISCECA shall submit the proposed addition to its local switching rates and full cost documentation through a tariff filing made to recover intrastate presubscription costs consistent with this Part.
- iii) The addition to the local switching rates shall apply for the amortization period only. At the end of the amortization period, ISCECA shall file the appropriate local switching tariff reflecting the removal of such addition to its local switching rates.

## 2. Positions of the Parties

With respect to paragraph a) Illinois Bell objected to the provision of one free PIC change within six months of conversion of an end office to presubscription, citing the costs it would incur as these types of changes are made. MCI countered that IXCs had not pushed for balloting in order to save time and to avoid unsupported claims from the LECs regarding customer confusion. MCI claimed that this was done despite the huge benefits likely to accrue to the IXCs if balloting had been done. MCI claimed this would have benefited the PTC that will start the process with 100% of the presubscribed customers.

Centel proposed that the incumbent LEC allow one free change of PIC in the first six months following the initial availability of intraMSA presubscription, explaining that this solution allows all competitors to vie for customers on an even footing. Staff, AT&T and Sprint agreed with this position.

Staff asserted that its proposed rule include these provisions to allow customers a reasonable time period in which to make presubscription selections, to protect the LECs from an unreasonable financial burden, and to prevent the institutionalization of a discriminatory presubscription policy.

With respect to paragraph b) Staff stated that its proposal would allow all LECs to recover separated intrastate costs limited to initial incremental expenditures which are directly related to the provisioning of intraMSA presubscription that would not be required absent the provisioning of intraMSA presubscription. The

purpose of this, Staff asserted, is to prevent double recovery of costs and to be consistent with FCC treatment of equal access costs and with the Commission's order in Docket No. 92-0211.

Most of the parties supported recovery of incremental expenditures related to intraMSA presubscription. However, MCI proposed adding language to this section which would preclude LECs such as Illinois Bell that operate under a price cap regime (alternative regulation plan) from recovering their intraMSA presubscription costs.

Specifically, MCI argued that since Illinois Bell wanted and was granted pure price cap status in its Alternative Regulation Docket No. 92-0448, with no adjustments for exogenous cost factors, Ameritech should not now claim that it should be allowed to recover additional charges caused by unanticipated additional costs. MCI believes that Illinois Bell should not be able to recover any of the costs of presubscription. To accomplish this MCI suggested the following change to paragraph b):

- b) Each LEC may seek to recover reasonable separated intrastate costs limited to initial incremental expenditures related directly to the provision of presubscription that would not be required absent the provision of presubscription consistent with this part provided the LEC is not subject to price cap regulation that provides for no exogenous cost adjustments. LECs subject to price caps with no exogenous cost factor adjustments are not eligible for any cost recovery.

Staff took the position that intraMSA presubscription should be treated as a new service option and receive separate cost treatment, and therefore, Staff rejected MCI's position on this point.

GTE also listed additional trunking costs involved with intraMSA equal access. MCI replied that these charges are not part of the incremental costs that the Commission needs to examine in order to determine the public policy of implementing intraMSA equal access. MCI continued that these trunking charges already are covered by the access tariffs of GTE and every other LEC in this state.

It was AT&T's position that to clarify the nature of costs subject to recovery it would appear desirable to reword paragraph b) as follows:

- b) Each LEC may seek to recover reasonable separated intrastate costs limited to initial incremental

expenditures related directly to the provision of presubscription that do not add other service capabilities absent the provision of presubscription.

AT&T asserted that this proposed change relating to the equal access cost recovery plan ensures that only relevant costs are recovered, so that an incumbent LEC, such as Ameritech, does not receive unfair advantages solely as a result of its incumbent position.

With respect to paragraph c), Staff's proposed rule allows LECs seeking to recover their intraMSA presubscription costs to amortize such costs over a period of not less than three years. The intent is to allow LECs some flexibility in setting their intraMSA presubscription cost recovery charges and reducing the likelihood that ratepayers would be unduly burdened by increases in rates for toll calls. It also was Staff's position that a three year recovery period will not cause rate shock.

AT&T and MCI opposed Staff's amortization period. MCI argued that late market entrants might receive a "free ride" from the earlier market participants. AT&T recommended an alternative recovery period of five to eight years. Staff's response to these arguments was that its proposed rule ensures that all toll providers share equally in the recovery of presubscription costs on a per Minute Of Use ("MOU") basis and that the cost recovery charges will not discriminate between carriers or handicap smaller IXC's which may wish to compete in the intraMSA toll market. Staff also contended that it is likely that the former PTCs will carry most of the intraMSA toll traffic following prescription, at least initially. Therefore, Staff asserted that these incumbent LECs, and/or their customers, would incur most of the intraMSA presubscription costs themselves. The majority of parties supported Staff's position.

With respect to paragraph d), Staff asserted that this section describes the parameters within which Illinois' LECs, excluding average schedule companies, must design their intraMSA presubscription cost recovery charges. First, it specifically states that the tariffed charges will apply to all switched MOUs whether carried by the LEC (acting as a toll carrier) or by another IXC and that charges will be applied to those MOUs which are subject to presubscription (i.e., intraMSA MOUs). Staff asserted that this section implicitly contains three rate design parameters that incumbent LECs should use in designing the recovery charges: (1) all intraMSA toll providers should share in the costs of

intraMSA presubscription; (2) charges should be assessed on a per MOU basis; and (3) charges should be assessed on intraMSA toll minutes only.

There was widespread support for making the intraMSA presubscription charges applicable to all providers in the toll markets. Similarly, most of the parties in this proceeding supported recovery as a surcharge on switched MOUs. GTE argued that costs should be recovered only from those companies that provide intraMSA toll services and are not prohibited from providing interMSA toll services, and that those costs should be recovered on a percentage of presubscribed lines basis. Staff felt this proposal was self-serving and opposed it.

Staff's position was that costs would be incurred to provide intraMSA presubscription and that rates designed to recover those costs should be applied only to presubscribed intraMSA MOUs. Staff stated that it would consider supporting a broader recovery mechanism if it were shown that intraMSA MOUs as a basis for recovery would be impracticable for cost or technical concerns.

The next issue is whether the presubscription surcharge should apply only to non-local intraMSA minutes or should apply to all non-local intrastate MOUs. Illinois Bell contends that the surcharge should be imposed on all non-local intrastate switched MOUs because this will put the costs primarily on those carriers which benefit from intraMSA presubscription, *i.e.*, IXCs. Illinois Bell is willing to include its own non-local intrastate switched MOUs in that calculation and to pay its fair share of implementation costs. However, Illinois Bell does not believe that it should pay the lion's share of implementation costs, and this would be the result if the cost recovery surcharge is limited to non-local intraMSA MOUs.

Illinois Bell also argues that it cannot assess the surcharge on intraMSA minutes because it does not track intraMSA and interMSA minutes separately which originate and terminate exclusively on its own network. According to Illinois Bell, it would require substantial reprogramming of its billing systems and substantial coordination with other carriers in order to track this information. In Illinois Bell's view, the expense of these efforts is not justified given the relatively small cost of implementing presubscription.

Staff prefers to assess the surcharge on non-local intraMSA calls on the theory that it is these customers who benefit from

presubscription. In other words, Staff's proposal focuses on customers rather than carriers. Staff also argues that there may be IXCs which do not offer intraMSA services who should not be forced to bear the cost of intraMSA presubscription. Illinois Bell responds that it knows of no such carriers; all of the major interMSA carriers have stated in this proceeding that they will pursue intraMSA usage services aggressively.

Illinois Bell also proposed that the presubscription surcharge not be imposed on PTCs, but rather that it be directly recovered from the LEC's end users. Illinois Bell contends that the relationship between the LEC and PTC is not the same as that of an LEC and an IXC. According to Illinois Bell, under the PTC arrangement the LEC always bills its customer for the PTC toll calls pursuant to its concurrence in the PTC's tariff. Accordingly, it would be much more efficient for the LEC to recover the presubscription surcharge directly from its end users who make PTC toll calls rather than have the PTC incorporate the presubscription surcharge into its toll rates.

In response, Staff argued that presubscription charges were designed to allow each LEC to recover all of its intraMSA presubscription costs in an efficient manner which would not discriminate between PTCs and IXCs. Staff argued further that treating IXCs and PTCs differently would create an unnecessary advantage for the PTCs as they compete against the IXCs in the intraMSA toll markets. That is, in both cases it should assess a cost recovery surcharge on each switched access minute of use. Therefore, Staff opposed Illinois Bell's proposal regarding recovery of intraMSA presubscription costs.

With respect to paragraph d)i), AT&T asserted that for clarification, the phrase "switched intrastate minutes" should be substituted with "switched originating intraMSA minutes" and that it also would be desirable to add the following two subsections to paragraph d):

- iii) In non-equal access exchanges where both inter- and intraMSA equal access are being implemented concurrently, LECs should develop a separate inter- and intraMSA cost recovery charge to be applied to the respective originating minutes of use.
- iv) All LEC equal access cost recovery plans shall be tariffed and submitted to the Commission for review and approval.

IITA suggested that the independent telephone companies ("ICOs") be allowed to recover their intraMSA equal access costs through an end office switching surcharge. MCI agreed with IITA that they should be able to recover their costs consistent with the rules, and that the small ICOs should be able to adjust their end office rate for the period of time over which the costs are recovered rather than implementing a new element. MCI stated that the costs recovered by these LECs should be consistent with those costs identified by AT&T -- that is, limited to those costs that are solely related to, and a result of, presubscription.

With respect to paragraph e), Staff asserts that it provided that average schedule companies will increase their local switching rates for the specified amortization period in order to recover their intraMSA presubscription costs through their concurrence in the ISCECA tariffs. Staff asserted that its rule does not force average schedule companies into the same "mold" or operating procedures as the larger companies, because doing so likely would be burdensome and costly for average schedule companies. Staff further asserted that this section of the rule would allow average schedule companies to recover their intrastate presubscription costs in a manner which is consistent with their present method of recovering intrastate, interLATA presubscription costs.

### 3. Conclusion.

The Commission concludes that the provisions of Section XXX.160 a) are appropriate. Permitting carriers to charge their customers for initial PIC changes creates an obvious disincentive for customers to make a change in carriers. It serves no apparent legitimate purpose. We also note that LECs are not precluded from including initial PIC change costs in the intraMSA presubscription costs that are recovered as described in this section. Section XXX.160 b) permits recovery of costs incremental to the provisioning of intraMSA presubscription. This approach is consistent with the FCC's treatment of equal access costs and with our cost of service rule adopted in Docket 92-0211. We therefore reject the more narrow language proposed by AT&T. Section XXX.160 as proposed by Staff is reasonable. We are not persuaded that the "free ride" problem identified by MCI is of a sufficient potential magnitude to warrant a change in the amortization period.

We reject Illinois Bell's proposed changes to the cost recovery provisions in paragraph d). Staff witness Gasparin's testimony (Staff Ex. 6.02 at 4) and the cross-examination of Illinois Bell witness Kocher (Tr. at 1454) disprove Illinois Bell's argument that

it is not technically feasible to measure and bill intraMSA MOUs separately from interMSA MOUs. Furthermore, Illinois Bell's approach would create a subsidy from the interMSA toll market to the intraMSA toll providers like Illinois Bell. It is the Commission's opinion that Staff properly focuses on the customers that benefit from presubscription, rather than the companies that initially incur the costs.

**J. Section XXX.170 Information Requirements**

1. Staff's Proposed Rule

Section XXX.170 Information Requirements

- a) Within 15 days after receiving a bona fide request, a LEC shall notify all IXCs currently purchasing Feature Group D access service ("FGD service") from the LEC in the affected exchange(s) of the bona fide request.
- b) Each LEC shall provide the following information to all IXCs purchasing FGD service or which place orders for FGD service from the LEC in each exchange where presubscription consistent with this Part is to be implemented:
  - i) Presubscription conversion schedules, to be provided at least three months prior to the cutover date.
  - ii) Ordering procedures, terms, and conditions for the IXC to be eligible for customer presubscription to the IXC, to be provided at least three months prior to the cutover date.
  - iii) Customer lists, within 15 business days of receipt of a written request from an IXC that has made a bona fide request or otherwise has established eligibility for customer presubscription, to be used by the IXC only in connection with presubscription solicitation. Customer lists shall be provided upon request for a period of six months prior to and six months after the implementation of presubscription in an exchange.
- c) Each LEC shall serve all presubscription tariff filings, waiver petitions, and extension of time petitions on all IXCs currently purchasing FGD service from the LEC in the affected exchange(s) and on all other entities that have requested such service.

## 2. Positions of the Parties

With respect to paragraph a), Staff asserts that this section describes the information that is needed from the LECs to allow intraMSA presubscription to be implemented in an orderly and equitable fashion. Staff changed the rule in its rebuttal testimony, in part to take care of a timing inconsistency between Sections XXX.170b) and XXX.110a).

With respect to paragraph b), MCI recommended that the six-month notification in Staff's original Section XXX.170b) i) and ii) be reduced to four months. AT&T recommended that the notification be shortened by about two weeks. Staff's position was that while MCI and AT&T want as much notification as possible, that three months was reasonable because it would balance the interests of the incumbent LECs who need time to develop conversion schedules with the IXCs' need to make their own plans for conversion schedules. ICTC witness Pence testified that ICTC could comply with the three month notice requirement.

Section b) iii) addresses the conditions under which LECs should provide customer lists to IXCs and proved contentious. Staff recommended that customer lists be provided upon request for a period of six months prior to and six months after the implementation of presubscription in an exchange. Staff asserted that, as written, the rule does not address either charges for customer lists or the treatment of unpublished and unlisted numbers. Staff stated that a LEC could propose customer list charges if it believed them to be appropriate. Staff noted that the Commission may wish to require that LECs be prohibited from using unpublished and unlisted telephone numbers in marketing their own interexchange services, unless such numbers are provided in the customer lists made available to IXCs.

In addition, AT&T recommended adding the following sentence to Subpart b)iii):

The names and telephone numbers of customers with unlisted telephone service shall only be used during a 180 day period following the implementation of equal access in an exchange or the customer's obtaining new service in an exchange which has equal access.

AT&T asserts that this modification would serve to mitigate privacy concerns and still extend to customers the benefits of competition.

Illinois Bell argued that the availability of customer lists from the LEC should be curtailed after one year, claiming that perpetuating this requirement after one year is tantamount to requiring the LECs to assist the IXCs in marketing their services. MCI argued that Illinois Bell was attempting to leverage the information it has solely as a result of being in a bottleneck monopoly position into an unearned advantage in other markets. MCI further claimed that this was evidence that the market protections it advocated were needed.

Illinois Bell states that it is willing to include "nonpublished" customer information in its customer lists for a one-year transitional period, provided that IXCs agree to use the information only for the purpose of soliciting customers for interMSA services subject to presubscription. Centel, does not believe that it should be required to disclose the telephone numbers of its "nonpublished" customers at all, and notes that during the balloting process for interMSA presubscription it did not provide unpublished or unlisted telephone numbers to participants in the presubscription process.

AT&T requests that any charge for customer lists be tariffed. Illinois Bell argues that customer lists are a non-telecommunications service which should not be tariffed. According to Illinois Bell, it voluntarily provides customer lists under contract today, and has agreed to continue to do so for at least a one-year transitional period for intraMSA presubscription. Under these circumstances, Illinois Bell contends that a tariffing requirement is unnecessary.

CUB recommended that the Commission restrict LEC use of customer information obtained due to the LEC's position as the incumbent monopoly provider. CUB asserted that this information is private and should not be sold for commercial use nor exploited by Illinois Bell for competitive purposes or any other purposes other than the provision of local telephone service.

CUB further argues that this section of the rule should be modified to specifically state that carriers receiving customer lists shall not contact customers with non-listed or non-published telephone numbers by telephone. It argues that customers who have non-listed or non-published numbers have paid a premium for privacy, and their privacy should be respected by the carriers, and in Commission rules.