

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held December 14, 1995

Commissioners Present:

John M. Quain, Chairman
Lisa Crutchfield, Vice Chairman
John Hanger, Concurring - Statement attached David W. Rolka
Robert K. Bloom

Investigation Into IntraLATA
Interconnection Arrangements

Docket No.
I-00940034

OPINION AND ORDER

BEFORE THE COMMISSION:

I. History of the Proceeding¹

At our Public Meeting on May 4, 1994, we adopted an order initiating the above-captioned investigation. The order was published in the Pennsylvania Bulletin on August 6, 1994, 24 Pa. B.3931, et seq. The purpose of the investigation was to obtain information to assist the Commission in determining whether local exchange telephone subscribers should be allowed to select a long distance carrier for their intrastate IntraLATA toll telephone calls in the same manner that subscribers can now choose their long distance carrier for interstate and intrastate InterLATA toll telephone calls ("Presubscription"). Historically, since shortly after the Divestiture of AT&T, we established policies which

1. The Protective Order, as amended, entered by the presiding Administrative Law Judge in this proceeding protects from public disclosure certain information, as described therein. Accordingly, the opinion and order, as the Recommended Decision, does not contain any direct references to or quotations from the information covered by the terms of that Protective Order, as amended.

permitted intraLATA competition but did not concomitantly require local exchange carriers ("LECs") to allow customers to presubscribe to carriers other than their LEC for the provision of said services. The result of this long-standing policy was that all intraLATA traffic defaulted to the LEC unless the consumer took the extra step of accessing a different carrier either through the use of 10XXX or 1-800 access codes or through manipulation of their telephone equipment. The matter was assigned to the Office of Administrative Law Judge, and, thereafter, Administrative Law Judge ("ALJ") Robert P. Meehan for such proceedings as might be necessary and the issuance of a Recommended Decision.

The following parties participated actively in this proceeding, and presented comments or testimony in response to the questions in this investigation:

A. Interexchange Carriers

AT&T Communications of Pennsylvania, Inc. ("AT&T"); MCI Telecommunications Corp. ("MCI"); Sprint Communications Company, L.P. ("Sprint"); and Keystone Association of Long Distance Companies ("Keystone Altel") participated in the proceeding.²

B. Local Exchange Carriers

Bell Atlantic-Pennsylvania, Inc. ("Bell"); GTE North, Inc. ("GTE North"); The United Telephone Company of Pennsylvania ("United"); North Pittsburgh Telephone Company ("NPTC"); ALLTEL Pennsylvania, Inc. ("ALLTEL's"); and Pennsylvania Telephone Association ("PTA") participated in the proceedings.³

² Keystone Altel is an ad hoc group of small, non-dominant interexchange carriers providing intraLATA toll service on a 950 or 10XXX basis.

³ In this proceeding, the PTA is representing the following LECS: Armstrong Telephone Company-North, Armstrong Telephone Company-Pennsylvania; Bentleyville Telephone Company; Breezewood Telephone Company; Buffalo Valley Telephone Company; Canton

C. Government Entities

The Commission's Office of Trial Staff ("OTS"); the Office of Consumer Advocate ("OCA"); and the Office of Small Business Advocate ("OSBA") participated in the proceeding.⁴

Two prehearing conferences were held, which resulted in the establishment of a schedule for the conduct of discovery and the filing of three (3) rounds of comments/testimony by the active parties. A Protective Order, as amended, was issued in this proceeding, as were several Prehearing orders and a number of orders pertaining to discovery issues.

Nine (9) days of evidentiary hearings were held in Harrisburg, PA, between March 27 and April 6, 1995. The transcript of the hearings totals 1,851 pages. Main Briefs were filed by all active parties. Reply Briefs were filed by all active parties, except Keystone Altel and OSBA.

After the briefs had been filed in this proceeding, the commission, by Order entered June 26, 1995, granted the joint petition of Bell and AT&T to extend the time for the entry of a final Order. In light of this Order, Bell submitted proposed Bell

Telephone Company; Citizens Telephone Company of Kecksburg; citizens Utilities Company of PA; Commonwealth Telephone Company; Denver & Ephrata Telephone Company; Deposit Telephone Company, Inc.; Enterprise Telephone Company; Hancock Telephone Company; Hickory Telephone Company; Ironton Telephone Company; Lackawaxen Telephone Company; Laurel Highland Telephone Company; Mahanoy & Mahantango Telephone Company; Marianna & Scenery Hill Telephone Company; The North-Eastern PA Telephone Company; North Penn Telephone Company; Oswayo River Telephone Company; Palmerton Telephone Company; Pennsylvania Telephone Company; Pymatuning Independent Telephone Company; South Canaan Telephone Company; Sugar Valley Telephone Company; Venus Telephone Corp.; and Yukon Waltz Telephone Company.

4 The OSBA did not submit any comments or testimony. It did, however, conduct cross-examination of a number of witnesses presented by the other parties.

Exs. 36-41, and AT&T submitted proposed AT&T Ex. 12. All of these documents are claimed to be "highly confidential" within the meaning of the amendments to the Amended Protective order made by Interim Order #11, dated May 4, 1995. No objections have been made to these proposed exhibits, and they shall be admitted.

After the submission of these exhibits, Bell, AT&T and MCI filed Supplemental Main Briefs. Bell and AT&T have also filed Supplemental Reply Briefs.

On November 17, 1995, the Recommended Decision ("R.D." hereafter) of ALJ Meehan was issued. Pursuant to the Secretarial Letter issuing the R.D., exceptions were due to be received by the parties and Commission Staff no later than November 29, 1995. Deviations from this procedural schedule were not permitted.

ALJ Meehan's R.D. included the following ordering Paragraphs and recommendations:

1. Bell Exhibits 36-41 and AT&T Exhibit 12 are admitted into the record of this proceeding.
2. All local exchange carriers shall implement intraLATA presubscription pursuant to the following schedule:
 - a. within six (6) months after the entry date of the Commission's Order by all local exchange carriers having 250,000 or more access lines;
 - b. within 12 months after the entry date of the Commission's Order by all local exchange carriers having more than 100,000, but less than 250,000, access lines; and
 - c. within 18 months after the entry date of the Commission's order by all local exchange carriers having less than 100,000 access lines.

3 . The implementation of intraLATA presubscription, as provided in Ordering Paragraph 2, shall be subject to the following conditions:

- a. no local exchange carrier shall be required to revise its existing dialing protocol for intraLATA toll calls by its customers;
- b. the implementation of intraLATA presubscription shall be based on the use of Full 2-PIC method;
- c. any local exchange carrier, having the ability to do so, may implement intraLATA presubscription earlier than the schedule in Ordering Paragraph 2; and
- d. any local exchange carrier, upon a showing of good cause, may petition the commission for a delay in the scheduled implementation of intraLATA presubscription, as otherwise provided in Ordering Paragraph 2.

4. Any local exchange carrier may, prior to its scheduled implementation of intraLATA presubscription, file a revised tariff or tariff supplement to rebalance its existing rate structure, subject to the following conditions:

- a. the revised tariff or tariff supplement shall be revenue neutral;
- b. the revised tariff or tariff supplement shall provide for the elimination of the common carrier line charge;
- c. the revised tariff or tariff supplement shall contain an equal access recovery charge, designed to recover the local exchange carrier's direct incremental cost of providing intraLATA presubscription, within Pennsylvania;
- d. the equal access recovery charge shall be assessed against all providers of intraLATA toll service, amortized over a period not to exceed eight (8) years;
- e. the rates for intraLATA switched access service in any revised tariff or tariff supplement shall be designed to recover the incremental cost and a reasonable proportionate share of the joint and common costs of providing access services;

f. the rates for any local exchange carrier's retail intraLATA toll service shall include an imputation of the local carrier's access charge, calculated so that the local exchange carrier's toll price exceeds a price floor equal to the sum of its incremental cost of supplying toll and its contribution (price less incremental cost) foregone from essential carrier access services that a competitor would have used in its toll service;

g. the revised tariff or tariff supplement shall not propose the recovery of any noneconomic costs through increases in the rates for basic local exchange service;

h. the revised tariff or tariff supplement shall not propose the recovery of any losses anticipated from the implementation of intraLATA presubscription through increases in a local exchange carrier's basic local exchange service rates; and

i. the revised tariff or tariff supplement of any local exchange carrier, whose current rates for basic local exchange service do not recover the total service long run incremental costs of that service, may propose an increase in basic local exchange service rates designed to recover the total service long run incremental cost of that service.

5. Each revised tariff or tariff supplement, filed as permitted by Ordering Paragraph 4, shall be accompanied by a total service long run incremental cost study. The total service long run incremental cost study submitted by each local exchange carrier shall, to the fullest extent possible, be consistent with the Rules Prescribing Principles for Costing and Pricing of Regulated Services of Telecommunications Service Providers, adopted by the Colorado Public Utilities Commission, and included as part of the record in this proceeding as OCA CrossExamination Exhibit No. 3.

6. All questions contained in the body of the order instituting this investigation, included within Appendix A thereto, or within the statements of individual commissioners are severed from this proceeding, and are consolidated with the Commission's pending universal service investigation, at Docket No. I-00940034.

7. The proposals, suggestions, positions, etc., of any party or parties, which have not been included with the preceding ordering Paragraphs, or are not contained within the following recommendations, are rejected.

8. To provide the local exchange carriers pricing flexibility to meet competitive pressures in a presubscribed intraLATA environment, the Commission should establish procedures for the expedited review and approval of proposed tariff changes by the local exchange carriers. Such expedited review and approval procedures, however, should not be utilized for the revised tariffs or tariff supplements permitted by Ordering Paragraph 4. Rather they should be used for proposed tariff revisions made subsequent to such revised tariffs or tariff supplements.

9. The Commission should not impose any cap on a local exchange carrier's access revenues. Similarly, the Commission should not impose any cap on a local exchange carrier's access rates.

10. For those local exchange carriers currently subject to caps on their access rates and revenues, the Commission should invoke its authority under Section 703 (g) of the Public Utility Code, 66 Pa. C. S. §703 (g) , and amend its prior orders imposing or approving such caps to relieve the affected local exchange carrier of these caps.

Exceptions were received from the following parties, Bell, AT&T, PTA, Sprint, MCI, the OTS, the OCA, the OSBA, and ALLTEL.

Upon our consideration of the record, the positions of the parties, and the R.D., we hereby adopt the R.D. in its entirety except as modified below.

II. Discussion

Initially, we note that in disposing of Exceptions we are not required to consider expressly or at great length each and every contention raised by a party to our proceeding. See, generally, University of Pennsylvania v. Pennsylvania Public Utility Commission, 86 Pa. 410, 485 A.2d 1217, (1984). Any exception or argument which is not specifically granted through our disposition herein, either expressly or by necessary implication, shall be deemed to have been duly considered and denied without further discussion.

A. Implementation Time Frame

In his recommendations beginning at page 157 of the R.D., and continuing to page 159, ALJ Meehan recommends the following timetable (summarized) for implementation of intraLATA presubscription:

- (a) six (6) months after the entry date of the Commission's Order for those LECs having 250,000 or more access lines;
- (b) twelve (12) months after the entry date of the Commission's Order for those LECs having more than 100,000 but less than 250,000, access lines;
- (c) eighteen (18) months after the entry date of the Commission's order for those LECs having less than 100,000 access lines;

Also, ALJ Meehan recommended that those LECs who have the ability to do so, implement intraLATA presubscription earlier than set forth in his recommended timetable. Further, ALJ Meehan recommended that we permit individual LECs to seek a delay in implementation of intraLATA presubscription upon petition to the Commission and a showing of good cause for the requested delay. See R.D., p. 159.

Consequently, ALJ Meehan has recommended a three-part phase-in of the proposed implementation. we would agree with the ALJ that implementation of presubscription is in the public interest and should occur as quickly as possible. However, the drive for implementation must be tempered by principles of fundamental fairness. For example, there is little doubt that substantial administrative and technical changes are required to provide a smooth transition to competitive presubscription. Further, the Universal Service Investigation docket should be concluded prior to any uniform implementation of the proposal addressed in the R.D. In this manner, the commission will be in a position to take advantage of the specific findings expected in that investigation.

Moreover, a reasonable effort should be made to coordinate the opening of the intraLATA toll market with Bell's ability to enter the interLATA toll market. We fully expect this latter event to occur as a result of pending federal telecommunications legislation.

Therefore, while we support moving towards implementation with alacrity, a proper balancing of the aforementioned interests must occur. Based on the foregoing, we conclude that this can be accomplished by modifying the ALJ's implementation plan. By so doing, we will ensure a smooth transition without creating undesirable competitive advantages or disadvantages in the market place. We shall, therefore, modify the ALJ implementation plan and direct as follows:

1. Local exchange carriers serving in excess of 250,000 access lines shall implement intraLATA presubscription by June 30, 1997.
2. Local Exchange carriers serving 250,-000 access lines or less shall implement intraLATA presubscription by December 31, 1997.

The presiding ALJ has also recommended that LECs be permitted to extend the implementation period for good cause shown. The good cause standard for a petition for waiver of the applicable time frames for intraLATA presubscription should be elaborated upon consistent with the Exceptions filed by AT&T. Such a petition should be promptly and timely filed, sufficiently far in advance of the implementation deadline for the Commission and other parties to scrutinize and resolve the petition before that date. The petition should itemize the specific steps that the LEC has already undertaken to implement presubscription, the specific problem that has arisen to create a potential delay, the remedial efforts undertaken to date, and a proposed time frame for resolution of the delay. Implementation efforts should continue while the petition is pending and the filing of a petition should not be used to thwart implementation. See AT&T Exceptions, pp. 12-14.

Any LEC that may file a Chapter 30 Petition following the issuance of this Order may petition for waiver of the presubscription implementation deadlines. The LEC must demonstrate that the waiver is necessary to facilitate its timely and reasonably balanced network deployment consistent with the requirements of Section 3003(b), 66 Pa. C.S. §3003(b). The length of the waiver should be considered on a case-by-case basis depending on the specific factual circumstances applicable to each filing LEC.

B. Rate Rebalancing

At page 160 of the R.D., ALJ Meehan recommends that the Commission, at such time as it orders implementation of intraLATA presubscription, adopt remedial measures to ensure that presubscription does not jeopardize the continued provision of basic local exchange service at an affordable price. In this regard, ALJ Meehan recommended (with certain conditions) that LECs be permitted to propose revenue neutral filings.

First, the ALJ recommends that such filings be accompanied by Total Long Service Incremental Cost Studies ("TSLRIC") studies, consistent with the Colorado Commission's format. See R.D., p. 161, citing OCA St. 1.0, at 6-7; and OCA CX Exhibits 2 and 3. We do not adopt this approach. We have already established parameters for TSLRIC studies in our Universal service Investigation Docket No. I-00940035. Consequently, we direct that the studies and methods to be submitted in the Universal Service docket (expected this month), likewise, be used by the companies in their rate rebalancing tariff proceedings.

While a LEC may choose to file a rate rebalancing tariff at any time, the pendency of such a filing cannot serve to delay the implementation' of intraLATA presubscription, but can and perhaps ideally, would be coordinated with the time frames prescribed for intraLATA presubscription. If a LEC chooses to file a rate rebalancing tariff prior to the disposition of the Universal Service Investigation which is anticipated to occur in June or July of 1996, the LEC should take into account that the findings reached in the Universal Service Investigation will nonetheless govern the review and disposition of all rate rebalancing tariffs. While administrative efficiency would suggest that the filing of rate rebalancing tariffs should await the outcome of the Universal Service Investigation, no LEC will be foreclosed from filing a rate rebalancing tariff at any time.

Second, the ALJ recommended that each company's rate rebalancing tariff include the elimination of the Common Carrier Line Charge ("CCLC"). See R.D. at 168 (Emphasis supplied). Although we would agree that the CCLC portion of the access charge is an appropriate starting point to properly align the cost of access, we are not prepared, at this time, to adopt a generic policy which eliminates the CCLC. Moreover, we are cognizant of the fact that the issue of access pricing is included in the Universal Service Investigation. Thus, we believe it appropriate to consider the findings of that investigation to establish the proper access price and cost components. Armed with such generic guidelines, we can then move to apply such principles on a case-by-case basis in the context of each company's expected rate rebalancing filing.

Lastly, it is important to recall that Bell is the only LEC which operates pursuant to an alternative form of regulation. See In re Bell Atlantic - Pennsylvania -Petition and Plan for Alternative Form of Regulation Under Chapter 30, Docket No. P-00930715 (Order entered June 28, 1994) ("Alternative Recrulation Order"). In the Alternative Reciulation Order, entered June 28, 1994, we stated the following:

This Commission concludes that Bell's future tariff filings for noncompetitive services are to be confined to revenue neutral price changes within each market basket with the following caveat. To the extent that Bell can supply rational reasons as to why such a restriction is not feasible or advisable from a public policy standpoint, the Company may also propose an alternative revenue neutral price change tariff filing that provides for reductions in one market basket to be recovered from services included in other market baskets. This filing would be supplementary to and not in lieu of the revenue neutral price change tariffs for each market basket.

Slip Op. at 97.

With respect to Bell Atlantic's eligibility to submit a rate rebalancing tariff, a majority of this Commission recently voted to authorize Bell to submit such a revenue neutral rate filing that could apply to all noncompetitive services, including protected services. In the June 28, 1994 Opinion and Order in the Alternative Regulation Order docket, we also clarified that any such rate filing would have to be revenue neutral within each market basket, and that Bell retained the option of filing a supplemental tariff which would reflect inter-basket revenue neutral rate changes along with its proposed rationale as to why an intra-basket revenue neutral tariff was not feasible or advisable from a public policy standpoint. Since that time, the commission majority has concluded that protected service rates can be changed as part of revenue neutral rate restructurings, notwithstanding the rate freeze on protected services. The inter-basket revenue neutral rate change language contained in the June 28, 1994 Opinion and Order creates the possibility that Bell will seek to increase protected service rates in order to reduce the rates for other services within other market baskets. Consequently, if Bell chooses to propose a revenue neutral rate restructuring tariff that contains inter-basket rate changes, the accompanying rationale will be carefully scrutinized. Judgement on such a revenue neutral filing would be premature at this time, however, since no such filing has yet been submitted.

C. Non-Economic Cost Recovery

The ALJ recommends that rate rebalancing tariffs exclude proposed recovery of non-economic costs for basic exchange services. Non-economic costs are those which currently exist in basic service rates, but may not continue to be just and reasonable in a developing competitive market.

However, it is readily apparent that such costs are impossible to identify at this time. As a result, we are not prepared to include any estimated costs as part of a proposed rate rebalancing tariff. Alternatively, such costs should be addressed on a case-by-case basis subsequent to each company's rate rebalancing proceeding. Moreover, as experience is gained in this area, a proper identification of these costs, (as well as a proposed recovery mechanism) will be much more precise in its implementation. This approach will permit us to benefit from market experience.

D. Imputation

Some of the LECs urge that all providers of intraLATA toll service, including the IXCs, should be subject to an imputation test. The IXCs are opposed to the application of any imputation test to them. The OCA argues that AT&T's proposed application of an imputation test to optional Calling Plans ("OCPs") be rejected. The OSBA urges the adoption of the imputation test proposed by Bell.

According to Bell (Bell St. 3, at 43, and Exhibit D thereto), an economically efficient imputation formula would be one where:

(A LEC'S] toll price must exceed a price floor given by the sum of its incremental cost of supplying toll and its contribution (price incremental cost) foregone from essential carrier access services that a competitor would have used in its toll service.

The IXCs, on the other hand, generally recommend an imputation test where the LECs price floor for toll services would equal the sum of the LECs incremental non-access cost of toll plus the tariffed price of the carrier access services used by the LEC to complete the call.

The ALJ's Recommended Decision concludes that:

After considering the position of the parties on this point, I concur with the positions of the OCA and the OSBA. Accordingly, I recommend the adoption of the imputation test proposed by Bell, and that OCPs be excluded from the need to meet the imputation test. R.D. at 174.

We are troubled by the ALJ's recommendation that imputation requirements be placed on LEC pricing of intraLATA toll services following the implementation of presubscription. At the same time, however, the ALJ does not impose a similar requirement on the pricing of IXC intraLATA toll services. In our view, adopting such a recommendation would create a competitive imbalance between LECs and IXCs in the intraLATA toll market. This is so for the ALJ's approach implicitly permits IXCs to market intraLATA service below cost, to attract Presubscription, and recover the loss through the pricing of other services. At the same time, the imputation requirement imposed on LECs would prevent incumbents from responding to this type of marketing strategy. Hence, they would be placed at a serious competitive disadvantage.

Our concerns with the ALJ's recommendation are heightened by the fact that Chapter 30 of the Code only directly imposes imputation requirements on LEC competitive services, not LEC noncompetitive services. See 66 Pa. C. S. § 3005(e) (2). Although, Section 3005(b) appears to authorize and require the Commission to promulgate regulations to prevent LEC anti-competitive behavior engaged in the provision of any service, our ability to impose such a requirement on noncompetitive services through administrative order may be subject to legal challenge.

Thus, while our preference is to impose reciprocal imputation requirements on both LECs and IXCs, we must abandon this approach for two reasons. First, reciprocal imputation requirements are difficult to implement on a statewide basis. This is particularly true in an environment where various LECs have vastly different access prices.

Second, and more importantly, IXC intraLATA toll service in the Presubscription market, is presently defined by 66 Pa. C.S. § 3008(a) as a competitive services Pursuant to 66 Pa. C.S. §3008(b), the Commission is precluded from regulating the rates, toll charges or rate structures of IXC competitive services. The sole exception to such rate regulation is provided by 66 Pa. C.S. §3008(d) which prohibits IXCs from unilaterally de-averaging MTS rates. However, it does not appear that 66 Pa. C.S. §3008 prohibits IXCs from pricing their competitive services below cost, nor does it appear that the Commission can remedy such a situation without reclassifying the IXC service as noncompetitive. Accordingly, any attempts by the Commission to impose imputation requirements on IXC intraLATA toll services which are classified as competitive begs reversal on appeal.

In view of the foregoing, we have determined that the most balanced and legally defensible approach is to rely on the marketplace to control the pricing of intraLATA toll services, regardless of the service provider. While carriers may initially attempt to market these services below cost, in the long run the marketplace should prevent such activity from being sustainable.

We believe that it is imperative for the Commission to monitor this development in order to assure that balanced competition is achieved. We will not tolerate a situation in which the development of a fully competitive marketplace is hindered by anticompetitive behavior. If such a situation develops, we will undertake appropriate remedial measures. This includes consideration of classifying LEC services as competitive pursuant to 66 Pa. C.S. §3005 (a)(1) , reclassifying IXC services as noncompetitive pursuant

⁵ The only exceptions concern: (1) Interexchange service to aggregator telephones; and (2) optional calling plans required by the Commission to be offered when justified by usage over an interexchange route. See also, Interexchange Carrier Regulation Under 30 of the Public Utility Code, Docket Nos. M-00930496, L-00940099, Declaratory Order, entered on January 10, 1995.

to 66 Pa. C.S. §3008(c) and imposing strict imputation pricing restrictions on LECS, IXCs or both.

In order to monitor this situation, pursuant to our authority set forth in 66 Pa. C. S. §§ 3005 (c) , 3008 (e) and 3009 (d) , we will direct the Executive Director of our Staff to coordinate the development, for Commission consideration and implementation, of reporting requirements or other necessary monitoring tools to enable the Commission and its Staff to assure that a competitive intraLATA marketplace is developed in a timely, unobstructed manner. The Staff recommendation should include procedures for Staff to monitor and inform the commission of the status of the market and shall be submitted for Commission consideration within 120 days of the entry date of this Order.

E. Equal Access Recovery Charges

There is no question that the LECs will incur costs in implementing intraLATA presubscription, not only in the cost of the necessary central office switches and associated hardware and software, but also in the cost of updating administrative systems such as the Customer Record Information System ("CRIS") and the Carrier Access Billing System ("CABS"). Generally, the LECs believe that all costs associated with implementing presubscription should be borne by the carriers seeking the implementation of presubscription. The OTS is generally supportive of this position, proposing a five-year amortization of such costs based on the number of access lines each intraLATA competitor of the LEC will require. AT&T and MCI urge that the costs of implementing presubscription be recovered through an Equal Access Recovery Charge ("FARC"). They propose that only the LECs' direct incremental cost of providing presubscription should be recoverable through an EARC, and that the recovery period should be eight years.

The ALJ recommended that all intraLATA toll service providers share in - the cost of intraLATA presubscription implementation, including the LECS. However, authorizing presubscription in the intraLATA toll services market is a decision which will clearly benefit the IXCs and not the incumbent LECS.. Thus, as our office of Trial Staff argues, the cost responsibility should reflect this fact. As a result, we direct that only the IXCs offering services in the intraLATA market bear the cost of intraLATA presubscription implementation. We further direct that such costs be proportioned on an access line basis to those access lines presubscribed to IXCs offering intraLATA services, and amortized over a thirty-six (36) month period.

F. Local, Exchange Carrier Pricing Flexibility

We agree with the ALJ recommendation that LECs should have some pricing flexibility to react to the marketplace in an intraLATA presubscription environment. The ALJ, at Ordering Paragraph No. 8 of the R.D., recommends that the Commission establish procedures for expedited review and approval of LEC's proposed tariff changes. We believe that the procedures established by this Commission relative to the review and approval of IXC services at Docket Nos. M-009304496 and L-00940099 are appropriate and, as such, they will be utilized in our review of LEC intraLATA toll tariffs. We keep in mind that the underlying cost of service/cost allocation methodology should be consistent with this opinion and Order and the findings in our Universal Service Investigation.

G. Customer Communication Standards Regarding Presubscription

AT&T raised a legitimate concern that LEC communication with customers regarding the customer's choice of intraLATA toll carrier should be fair and impartial. Accordingly, LECs are hereby directed to implement appropriate training measures to ensure that employees interact with customers in a fair and impartial manner when such customer contacts the LEC to presubscribe to the customer's intraLATA toll carrier of choice.

III. Conclusion

In accordance with the foregoing, we adopt the Recommended Decision of Administrative Law Judge Robert P. Meehan, except to the extent modified herein. We are taking this important action today because of the exigent circumstances which exist pertaining to the Commission's efforts to design a Pennsylvaniaspecific policy governing the implementation of intraLATA presubscription. Such efforts relate to the potential enactment of legislation by the United States Congress which is currently considering comprehensive telecommunications legislation which if enacted would have far-reaching impact on the regulation of the telecommunications industry at both the federal and state levels. While we expect that any federal legislation will permit states with established policy concerning the initiation of intraLATA presubscription to implement their state-specific policies, it appears that such deference will only be granted if a given state policy is established in a timely manner as defined by any final federal legislation. This factor and resulting exigent circumstances prompts us to act so as to assure that we are able to implement intraLATA presubscription policy which is specifically designed to meet the unique needs of Pennsylvania consumers; THEREFORE,

IT IS ORDERED:

1. That IntraLATA Presubscription in accordance with the terms and conditions in this Opinion and order is in the public interest.
2. That all local exchange carriers shall implement intraLATA presubscription pursuant to the following schedule:

a. Local exchange carriers serving in excess of 250,000 access lines shall implement intraLATA presubscription by June 30, 1997.

b. Local Exchange carriers serving 250,000 access lines or less shall implement intraLATA presubscription by December 31, 1997.

3. That the implementation of intraLATA presubscription, as provided in Ordering Paragraph No. 2, shall be subject to the following conditions:

a. no local exchange carrier shall be required to revise its existing dialing protocol for intraLATA toll calls by its customers;

b. the implementation of intraLATA presubscription shall be based on the use of Full 2-PIC method;

c. any local exchange carrier, having the ability to do so, may implement intraLATA presubscription earlier than the schedule in Ordering Paragraph No. 2; and

d. any local exchange carrier, upon a showing of good cause, may petition the Commission for a delay in the scheduled implementation of intraLATA presubscription, as otherwise provided in Ordering Paragraph No. 2, and in accordance with the requirements herein.

4. That any local exchange carrier may file a revised tariff or tariff supplement to rebalance its existing rate structure, subject to the following conditions:

a. the revised tariff or tariff supplement shall be revenue neutral;

b. the common carrier line charge shall not, at this time be eliminated, but shall be subject to the findings and anticipated order in the universal service Investigation with regard to access pricing and cost components;

5. That the LECs are authorized to file a surcharge tariff which contains an equal access recovery charge designed to recover the local exchange carrier's direct incremental cost of providing intraLATA presubscription within Pennsylvania. The equal access recovery charge shall be assessed against the Interexchange Carriers providing intraLATA toll service, such costs to be proportioned on an access line basis, amortized over a period not to exceed thirty-six months.

6. That the ALJ recommendation that rate rebalancing filings be accompanied by TSLRIC studies consistent with the Colorado Commission's format is rejected, and each revised tariff or tariff supplement, filed as permitted by Ordering Paragraph 4, shall be consistent with the studies and methods to be submitted in the Universal Service Investigation Docket and the findings reached in the Universal Service Investigation will govern the review and disposition of all rate rebalancing tariffs.

7. That all questions contained in the body of the Order instituting this investigation, included within Appendix A thereto, or within the statements of individual Commissioners relating to universal service are severed from this proceeding, and are consolidated with the Commission's pending Universal service Investigation, at Docket No. I-00940034.

8. That the Executive Director of the Commission is directed to coordinate the development, for Commission consideration and implementation, of reporting requirements or other necessary monitoring tools to enable the Commission and its staff to assure that a competitive intraLATA marketplace is developed in a timely, unobstructed manner. The Staff recommendation should include procedures for Staff to monitor and inform the Commission of the status of the market and shall be submitted for Commission consideration within 120 days of the entry date of this opinion and Order.

9. That to provide the local exchange carriers pricing flexibility to meet competitive pressures in a presubscribed intraLATA environment, the procedures established by this Commission relative to the review and approval of IXC services at Docket Nos. M-00930496 and L-0094009 are appropriate and should be used consistent with this opinion and order and the findings in the Universal Service Investigation.

10. That the Commission rejects the elimination of the cap at this time. However, recognizing that this access price and cost components is included in our Universal Service Investigation, we will apply such principles on a case-by-case basis in the context of each company's expected rate rebalancing filing.

11. That the Recommended Decision of Administrative Law Judge Robert P. Meehan, is adopted, as modified, to the extent consistent with this Opinion and Order.

12. That the Exceptions of the parties are granted in part, and denied in part, consistent with this opinion and Order. Further, the proposals, suggestions, positions, etc., of any party or parties, which have not been included within the preceding Ordering Paragraphs, or are not contained within the following recommendations, are rejected.

13. That all Local Exchange Companies are directed to implement reasonable and necessary training measures to assure that LEC employees who interact with customers do so in a fair and impartial manner when such customers contact the LEC to presubscribe to the customer's intraLATA toll carrier of choice.

BY THE COMMISSION

John G. Alford
Secretary

(SEAL)

ORDER ADOPTED: December 14, 1995

ORDER ENTERED: December 14, 1995

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

**INVESTIGATION INTO INTRALATA
INTERCONNECTION ARRANGEMENTS**

**PUBLIC MEETING -
DECEMBER 14, 1995
DEC-95-ALJ-164*
DOCKET No. I-00940034**

STATEMENT OF COMMISSIONER JOHN HANGER

On May 4, 1994, I moved that this Commission begin this proceeding to decide whether phone customers should be able to choose which phone company will carry their intralata toll calls in the same manner as they now choose which phone company will carry their long-distance toll calls. Intralata toll calls are calls within a local phone company's service territory but which are not part of the customer's local calling package and for which the customer pays an extra charge or toll. For the typical residential phone customer, intralata toll calls amount to about 30% of the total phone costs, including long distance charges. Intralata toll calls usually amount to 50% of the typical residential customer's total bill for local phone service.

Presubscription means that a customer can choose one company to carry all his calls and does not need to dial any access codes before each phone call to implement this choice if the call originates from the customer's phone. Presubscription for many years has been central to the competitive long-distance market. Today, the Commission gives phone customers the ability to presubscribe with the phone company of their choice for all their intralata toll calls. This will greatly increase competition for intralata toll business. Intralata toll rates should decrease once presubscription is operational as phone companies will have to compete for toll business. Consequently, I support beginning intralata presubscription.

Though I concur with the decision to begin intralata presubscription, I issue this statement to highlight some concerns that I have about how presubscription could be implemented in Pennsylvania. Those concerns are: 1) possible attempts by some phone companies to recover lost revenues in the intralata toll market by raising basic telephone rates, even if those basic telephone rates cover the cost of service; 2) the absence of a definitive statement on imputation; and 3) the implementation schedule.

If this Commission allows phone companies that lose revenues as a result of competition in the intralata toll market to recover every lost dollar by raising the rates of basic telephone service, even if basic telephone rates do cover costs, intralata toll presubscription and competition will not produce lower total phone bills and any consumer benefit. Regulators should not use their power to take from customers the benefits produced by competition simply because a company lost market share or revenues when competition began. Competition is tough. Some companies will prosper and grow. Others will lose customers and revenues. While competition will produce winners and losers, phone customers who do not yet have competitive choices cannot be a bank or an insurance policy that pay for revenues lost in competitive markets. The role of regulation today should be to implement full and fair competition where possible, to make sure that customers who do not have competitive choices are protected from cost-shifting, and to create a competitively neutral universal service fund to replace today's patchwork of subsidies.

Any rate rebalancing that this Commission may authorize should focus on the legitimate problem posed when and if a company demonstrates that some existing rates do not cover the costs of service to some existing customers. To the extent that those services and customers have been subsidized by revenues from services that have become competitive or are in the process of becoming competitive, this Commission needs to implement a competitively neutral universal

service fund to provide a new subsidy source. The Universal Service docket will enable this Commission to make such a needed reform.

The action of the Commission today does not include any definitive imputation provision. Its absence normally would have required that I dissent from the whole document, because an imputation requirement is absolutely necessary for fair competition if access fees are not cost-based. I do not dissent today because it is my understanding from my conversations with my colleagues that the Commission again intends to use the Universal Service docket to identify the real cost of access and to set access rates accordingly. Consequently, cost-based access fees should be in place by the time intralata toll presubscription is implemented. If access fees are cost-based, an imputation requirement may not be necessary. I must say that, if this Commission fails to implement cost-based access fees, the imputation issue must be revisited or competition in the intralata toll market will be a farce.

Though implementation of presubscription should follow the completion of the Universal Service Investigation, I believe that beginning presubscription for the major telephone companies 18 months from now is to wait too long. A preferable implementation schedule would have been 12 months from now for the major companies and 24 months from today for companies serving 250,000 access lines or less. While this schedule would have been preferable from my perspective, I am not willing to dissent from the Chairman's Motion as a result of this point alone. Every member of this Commission has demonstrated flexibility on various points to enter promptly an Order approving presubscription.

Indeed, I want to thank the chairman for his commitment to getting this proceeding completed by this Public Meeting. I also want to thank the staff of OSA, the Law Bureau, and ALJ who worked on this docket for a job well done.

When I moved on May 4, 1994 that this Commission begin this proceeding, I was hopeful that intralata toll presubscription could be implemented in a way that fostered full and fair competition and that would allow market forces to provide phone customers with lower intralata toll rates. I believe that today's approval of presubscription is an important step toward that goal. Much work, however, remains to be done over the next 18 months before the full promise of presubscription, competition, and customer choice is realized.

DATED

JOHN HANGER, COMMISSIONER