BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Verizon Florida Inc. to reform intrastate network access and basic local telecommunications rates in accordance with Section 364.164, Florida Statutes.	DOCKET NO. 030867-TL
In re: Petition by Sprint-Florida, Incorporated to reduce intrastate switched network access rates to interstate parity in revenue-neutral manner pursuant to Section 364.164(1), Florida Statutes.	DOCKET NO. 030868-TL
In re: Petition for implementation of Section 364.164, Florida Statutes, by rebalancing rates in a revenue-neutral manner through decreases in intrastate switched access charges with offsetting rate adjustments for basic services, by BellSouth Telecommunications, Inc.	DOCKET NO. 030869-TL ORDER NO. PSC-03-1172-FOF-TL ISSUED: October 20, 2003

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

ORDER ON OPC'S MOTION TO DISMISS THE PETITIONS

BY THE COMMISSION:

I. BACKGROUND

During the 2003 Regular Session, the Florida Legislature enacted the Tele-Competition Innovation and Infrastructure Enhancement Act (Tele-Competition Act or Act). The Act became effective on May 23, 2003.

Part of the new Tele-Competition Act is the new Section 364.164, Florida Statutes, whereby the Legislature established a process by which each incumbent local exchange telecommunications carrier (ILEC) may petition this Commission to reduce its intrastate switched network access rate in a revenue-neutral manner. We are required to issue its final order granting or denying any such petition within 90 days of the filing of a petition. In reaching its decision, Section 364.164 sets forth the criteria we shall consider in determining whether to grant the petition. We must consider whether the petitioners' proposals will:

(a) Remove current support for basic local telecommunications services that prevents the creation of a more attractive competitive local exchange market for the benefit of residential consumers;

(b) Induce enhanced market entry;

(c) Require intrastate switched network access rate reductions to parity over a period of not less than 2 years or more than 4 years; and

(d) Be revenue neutral.

Due to the expedited nature of the proceedings contemplated by the new legislation, our staff submitted a recommendation on August 21, 2003, in Docket No. 030846-TL, addressing a variety of procedural aspects of our proceedings to address the anticipated petitions. We considered our staff's recommendation at the September 2, 2003, Agenda Conference.

On August 27, 2003, Verizon Florida Inc. (Verizon), Sprint-Florida, Incorporated (Sprint), and BellSouth Telecommunications, Inc. (BellSouth), each filed petitions pursuant to Section 364.164,

Florida Statutes, and respective Dockets Nos. 030867-TL, 030868-TL, and 030869-TL have been opened to address these petitions in the time frame provided by Section 364.164, Florida Statutes. On September 4, 2003, the Prehearing Officer issued an Order Establishing Procedure and Consolidating Dockets for Hearing, Order No. PSC-03-0994-PCO-TL. Because of the expedited nature of these proceedings, the schedules and procedures set forth therein recognized and applied our decisions made at the September 2, 2003, Agenda Conference in Docket No. 030846-TL. At the September 15, 2003, Agenda Conference, we addressed the Office of Public Counsel's/Citizens' (hereafter OPC) Motion(s) to Hold, and to Expedite Scheduling of, Public Hearings filed in each of the identified Dockets on August 28, 2003. We decided to hold public hearings in the above referenced dockets.

On September 3, 2003, OPC filed Motions to Dismiss the petitions in each of the dockets. On September 10, 2003, Verizon filed its Response to OPC's Motion to Dismiss. Also on September 10, 2003, Sprint and BellSouth filed their Joint Response to OPC's Motion to Dismiss. This Order addresses OPC's Motions. Due to the similarity of each of these Motions, these Motions are addressed in the same section.

We note that AARP filed its Motion to Dismiss adopting OPC's Motions to Dismiss on September 23, 2003. We have jurisdiction over this matter pursuant to Section 364.164, Florida Statutes.

II. MOTIONS TO DISMISS

As noted in the Background section, OPC filed Motions to Dismiss Verizon's Petition, Sprint's Petition, and BellSouth's Petition for access charge reduction. On September 10, 2003, Verizon filed its Response to OPC's Motion to Dismiss. Also on September 10, 2003, Sprint and BellSouth filed their Joint Response to OPC's Motions to Dismiss.

A. OPC's Motion

In support of its Motion, OPC contends that Verizon's petition should be dismissed. OPC states that Verizon filed its petition with this Commission, pursuant to Section 364.164, Florida Statutes (2003), to reduce its intrastate switched network access rates to

interstate parity in a revenue-neutral manner pursuant to Section 364.164(1), Florida Statutes. OPC asserts that the Legislature, in Section 364.164, Florida Statutes, explicitly delineates several specific criteria, all of which this Commission must consider in determining whether to grant or deny the Company's petition. OPC asserts that one of the criteria, Section 364.164(1)(c), Florida Statutes, provides that this Commission consider whether granting the Company's petition will "[r]equire intrastate switched network access rate reductions to parity over a period of not less than 2 years or more than 4 years."

OPC contends that Verizon and Sprint's Petitions purport to reduce their intrastate switched access composite rate to parity in a revenue neutral manner over two years but, in fact, do not. OPC further claims that BellSouth's petition purports to reduce access rates and increase the rates of residential basic local service customers in far less than two years. OPC cites to witnesses whose testimonies were prefiled with the Verizon, Sprint, and BellSouth Petitions and referenced and utilized in these petitions.[1]

OPC states that Verizon witness Fulp claims that Verizon will reduce its intrastate access total average revenue per minute (ARPM) composite rate from $.0485047 to $.0112453 over two years. Fulp direct testimony pps. 7-8, 25. OPC contends that witness Fulp states that on the consumer side, Verizon will "raise the basic monthly recurring charges in each of its five rate groups by $4.61. These increases will take place **over two years** in increments of $2.25 the first year and $2.36 the second year." (Emphasis added.) Fulp direct testimony at p. 15. OPC also states that Verizon intends to raise the residence non-recurring network establishment charge from $20 to $25 and the central office connection charge from $35 to $40. OPC contends that through further Verizon testimony, the claim that the rate changes will take place "over two years" are belied.

Regarding Sprint's Petition, OPC states that Sprint witness Felz also claims to reduce intrastate access rates to the target interstate levels over a two-year period. OPC contends that

[1]We note that both Sprint and BellSouth's Petitions incorporate their prefiled testimony, whereas Verizon in its Petition extensively cites to and uses its prefiled testimony.

concomitantly, witness Felz asserts that "Sprint will increase rates for basic local telecommunication services over that same two-year period." OPC asserts that witness Felz also states that Sprint will implement 50% of the total switched network access rate reduction and corresponding revenue-neutral rate increases to basic telecommunication services in year 1. The remaining rate reduction and revenue-neutral increases to basic local telecommunications service rates will be accomplished in year 2. OPC states that witness Felz quantified the rate increases for residential basic local service recurring rates of "$3.23 in year 1 and $3.63 in year 2." OPC also claims that further testimony belies the claims of rate changes "over a two-year period."

OPC states that all three companies sponsored witness Gordon's testimony. In its Motions regarding Verizon and Sprint, OPC cites to witness Gordon's testimony. In that testimony, witness Gordon extols the virtue of having all three companies filing at the same time for three reasons. Gordon direct testimony at p. 13. OPC contends that the witness Gordon states "[f]irst, to the extent that basic local rates are simultaneously adjusted closer to their costs throughout the territory of the three companies serving 98 percent of the ILEC customers, the better competition will be benefitted and market entry enhanced." Gordon direct testimony at p. 13. OPC asserts that witness Gordon's second reason is that simultaneous action by all three companies, Sprint, BellSouth, and Verizon, is beneficial. OPC cites witness Gordon stating "[e]nd-users normally make their purchase decisions based in large part on relative price differences among providers. If the rate-rebalancing is not implemented across all companies simultaneously, end-users will make these decisions based on incomplete and imperfect information as they see some providers' rates increasing while other providers' rates remain the same (at least temporarily)." Gordon direct testimony at p. 15. OPC states that witness Gordon further asserts that "[c]oordinated rate rebalancing across all companies will ensure that potential competitors are not artificially disadvantaged when introducing new service offers by artificial boundaries, and that customers are not disadvantaged by incorrect and incomplete information driving their purchase decisions." Id. OPC asserts that witness Gordon states as his third reason that it is beneficial for all three companies effecting their rate changes simultaneously is the benefit to end-users statewide. OPC asserts that witness Gordon states that "IXCs

will be able to implement more meaningful price reductions if they can aggregate their access cost reductions into a single round of pricing changes." Gordon direct testimony at p. 15.

OPC claims that BellSouth's other witnesses, Mr. Ruscilli and Mr. Hendrix, both identify the effective dates of BellSouth's reductions in the intrastate switched network access rates, and increases in the single-line residential basic local service rates. OPC cites to witness Ruscilli's testimony in which he identifies the effective dates of BellSouth's reductions in the intrastate switched network access rate, and increases in the single-line residential basic local service rates, based on two alternative methodologies from which the Commission may choose. Ruscilli Direct Testimony at pps. 5, 7, 8, and 9. OPC states that these dates are January 1, 2004, and January 1, 2005. OPC contends that witness Ruscilli identifies the specific amounts of the rate increases to residential customers to be effected on both those dates, depending on which methodology the Commission chooses: $1.93, if this Commission chooses the Company's "mirroring methodology," and $1.75, with the Company's "typical network composite methodology." OPC also cites witness Hendrix where he also describes these two methodologies and identifies January 1, 2004, and January 1, 2005 as the effective dates for the reduction in the company's intrastate switched network access rate.

OPC claims that witness Gordon confirms that the effective dates for corresponding changes in access charge and basic residential rates for Sprint are also to be January 1, 2004, and January 1, 2005. OPC contends that despite the companies' assertion that the intrastate access charge decrease and the corresponding rate increases for residential customers will take place over a two-year period, the plain fact is that the rate changes, as proposed by the companies, would take place over a one-year period, or twelve months.

OPC asserts that the language of Section 364.164(1)(c), Florida Statutes, is plain and simple. OPC contends that Verizon, among other specific requirements, must require intrastate switched network access rate reductions to parity over a period of "not less than two years." OPC asserts that the statute's wording does not allow for a loose interpretation of effecting those rate reductions and corresponding rate increases over a period of twelve months, as

Verizon sets forth in its filing before this Commission. OPC contends that the rate increases on the first of January in the next two successive years does not comply with the statutory mandate that the rate changes take place over a period of not less than two years. OPC states that the Merriam Webster dictionary describes a "year" variously as "the period of about 365 1/4 solar days required for one revolution of the earth around the sun" or "12 months that constitute a measure of age or duration." OPC contends, therefore, that the statutory definition of "over a period of not less than two years" must therefore encompass a period of not less than 24 months. OPC asserts that rate increases on January first of the next two successive years obviously fails to meet this criteria.

OPC asserts that neither does the statute appear to anticipate a "spot" revision by a company to correct such fatal deficiencies. OPC contends that the petition should either be accepted as having facially met the basic requirements of the statute under whose authority it has been filed, or rejected if it has failed in that regard. OPC asserts that Verizon, in filing its petition pursuant to the authority of Section 364.164, Florida Statutes, has not met the requirements imposed by the same statute. OPC states that it does not advocate that the company's petition be dismissed with prejudice, but strongly believes that the petition should be rightly dismissed without prejudice, with leave to file anew, with a new establishing filing date, when it does comply with the basic requirements of the statute.

B. Verizon Response

Verizon argues that OPC's Motion should be denied for several reasons. Verizon states that a motion to dismiss raises as a question of law whether the petition alleges sufficient facts to state a cause of action. Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla. 1st DCA 1993). Verizon states that in disposing of a motion to dismiss, this Commission must assume all of the allegations of the petition to be true and determine whether the petition states a cause of action upon which relief may be granted. Heekin v. Florida Power & Light Co., Order No. PSC-99-1054-FOF-EI, 199 WL 521480 *2 (citing Varnes, 624 So. 2d at 350). Verizon states that all reasonable inference drawn from the petition must be made in favor of the petitioner. Id. Verizon contends that in order to

determine whether the petition states a cause of action upon which relief may be granted, it is necessary to examine the elements needed to be alleged under the substantive law on the matter. Id. Verizon argues that it is clear that by applying the standard to this case, OPC's motion to dismiss must be denied.

Verizon asserts that this Commission should deny OPC's Motion to Dismiss because it misconstrues Section 364.164, Florida Statutes. Verizon states that Section 364.164(1)(c), Florida Statutes, provides that this Commission shall consider whether granting a rate restructuring petition "will require intrastate switched network access rate reductions to parity over a period of not less than 2 years or more than 4 years." Verizon argues that Section 364.164(2), Florida Statutes, gives meaning to the phrase "not less than 2 years" which provides that "[t]he local exchange company . . . shall . . . adjust the various price and rates . . . once in any 12-month period." Verizon contends that this section allows it to make one set of revenue-neutral rate adjustments during the first 12-month period after its petition is granted, and a final set of revenue neutral adjustments during the second 12-month period. Verizon contends that this means a company cannot make both sets of rate adjustments before the commencement of the second year and the phrase "not less than two years" is therefore properly read to mean "not less than two annual adjustments."

Verizon argues that other provisions in Section 364.164, Florida Statutes, show that the Legislature contemplated that a company would make "annual" or one-year adjustments. Verizon cites to Sections 364.162(2) and 364.164(3), Florida Statutes, which reference "annual rate adjustments" and limitation of discovery to "each annual filing." Verizon asserts that this language means that the Legislature intended that it would make at least two annual filings - one in the first year and another in the second year. Verizon contends that it does not, as OPC asserts, require it to wait until the third 12-month period to make its final set of revenue-neutral adjustments.

Verizon further argues that the overall legislative scheme also demonstrates that the Legislature contemplated that Verizon would make a minimum of two annual adjustments. Verizon contends that the rate changes that are the subject of the two-year limitation in Section 364.164(1)(c), Florida Statutes, must be

revenue neutral. Verizon argues that if a rate change is made in the beginning of a year, revenue neutrality is not achieved until the end of the year. Verizon contends that this is because there are differences in demand for basic local and intrastate access services over the course of a year. Verizon contends that in recognition of this fact, the legislation bases the test for revenue neutrality on the most recent twelve-months billing units. Verizon argues that, therefore, if Verizon were required to make its final adjustments at the beginning of the third year - as OPC urges, it would not achieve revenue neutrality until the end of the third year - a full year after the two-year minimum time frame conceived of by the Legislature.

Verizon asserts that in an effort to prop up the current inefficient rate regime, which distorts competition and harms ratepayers, OPC ignores Sections 364.164(2) and (3), Florida Statutes, and the overall legislative scheme. Verizon states that OPC instead relies on a dictionary definition of a "year" in an attempt to manufacture a result that deviates from the legislature's intent. Verizon concludes that OPC's reliance on a dictionary definition is misplaced given that Section 364.164, Florida Statutes, itself imbues the phrase "not less than two years" with the meaning "not less than two annual adjustments."

Verizon contends that this Commission should also deny OPC's Motion because it is procedurally inappropriate in that it seeks a determination on a substantive matter that will be made in the final order. Verizon asserts that Section 364.164(1), Florida Statutes, provides that this Commission shall "consider" four criteria in reaching its decision on its petition. Verizon contends that whether its petition requires intrastate switched network access rate reductions to parity over a period of not less than two years or more than four years is just one of the four criteria. Verizon argues that this Commission should weigh the relative importance of each of the four criteria and evaluate its case as a whole before deciding on its Petition. Thus, Verizon concludes that the motions to dismiss should not be granted.

C. Sprint and BellSouth's Response

Sprint and BellSouth also contend that OPC's Motions should be denied. They cite to the standard for a motion to dismiss and

contend that OPC's motions fail to meet this standard. They agree with OPC that their Petitions contain two access and basic local rate adjustments which, if the Petitions are granted, will occur on each of the first days of two separate annual periods or years. Sprint and BellSouth argue that these are rate adjustments occurring in a period of not less than two years as contemplated in Section 364.164(1)(c), Florida Statutes. They cite the full text of Section 364.164(1)-(3), Florida Statutes, because they argue the resolution of this issue turns on references to the contextual entirety of the statute. They argue that when viewed together with the entire relevant statutory provisions, the language cited in OPC's motion is entirely consistent with the case the Petitioners have filed. Sprint and BellSouth maintain the terminology used in subsections 364.164(1)-(3), Florida Statutes, provides the necessary clarification of what is meant by "not less than 2 years." They argue that most importantly, subsection (2) provides that upon the granting of its petition:

> The local exchange company . . . shall . . . adjust the various prices and rates . . . <u>once in any 12-month period</u>.

(Emphasis in Response) Response at p. 4.

Sprint and BellSouth contend that the obvious reading of this clarifying language means that the Petitioners can reduce their access rates on day one of the first 12-month period (e.g., 1/1/04) and then again on day one of the second 12-month period (e.g., 1/1/05). They assert that in this example, the two access rate reductions are made over a two-year period. They contend that viewed another way, "not less than 2 years" means that the access rate reductions cannot be made in just one installment, in just one "12-month," or in just one year. In other words, over a period of "not less than 2 years" actually means "in not less than 2 annual installments." Sprint and BellSouth state that in the same example, each rate adjustment will be "annual" as contemplated in the very next sentence of subsection 364.164(2), Florida Statutes. They argue that the Legislature clearly intended that each access rate reduction be made in separate years and that each would be deemed an "annual" filing, and each "annual" filing would constitute one year.

Furthermore, Sprint and BellSouth contend that adoption of OPC's erroneous interpretation that "a period of not less than 2 years" means a "period of more than 2 years" would mean that - having made the initial access and basic local rate change within 45-90 days after the granting of the petition as contemplated in Section 364.164(2), Florida Statutes, Petitioners could not then make the next "annual" adjustment until the second year had elapsed or in other words the first day of the third 12-month period. They assert that this is not the result contemplated by the Act since subsections 364.164 (2) and (3), Florida Statutes, clearly contemplate that annual filings on anniversary dates in two different 12-month periods constitutes in "not less than 2 years."

They argue that OPC, by focusing solely on a narrow portion of the statute, has ignored the overall legislative scheme. They state that the rate changes that are the subject of these Petitions cannot be made unless they are revenue neutral. They assert that the statutory definition of revenue neutrality is a twelve-month minimum time period concept citing to Section 364.164(7), Florida Statutes. They state that in the first instance, the test for revenue neutrality is based on the most recent twelve months' revenues and billing units. They argue this recognizes that a true measure of revenue neutrality depends on a full year of activity. They argue that the achievement of parity in a vacuum on the given day rates change cannot be separated from the fact that revenue neutrality is achieved only when a full year of reduced access revenues are matched against a full year of increased basic local rate revenues. Sprint and BellSouth contend that this leads to the second aspect of achieving parity in a revenue-neutral manner. They assert that in their earlier example, each rate change (based on a historical twelve month period) occurs on the first day of each prospective twelve-month period. They contend that the corollary, and required, revenue neutrality can only be achieved over the ensuing twelve months. Sprint and BellSouth assert that since parity cannot be achieved without revenue neutrality being achieved, the true measure of consistency with Section 364.164(1)(c), Florida Statutes, is whether the rate change(s) yielding parity have been implemented annually in a revenue-neutral manner over a period of at least two years. They argue that this can be done in a two-step process as the Petitioners have proposed.

Finally, Sprint and BellSouth assert that even if this Commission were to harbor some doubt -- despite the clear language of the statute - dismissal is not called for. They state that Subsection 364.164(1)(c), Florida Statutes, directs this Commission to consider whether granting the "petition" will "[r]equire intrastate switched network access rate reductions to parity over a period of not less than 2 years or more than 4 years." They argue that this factor is just one factor to be considered by this Commission. They state that by granting OPC's motion, this Commission would be prejudging consideration of this factor even before it has heard Petitioners' cases addressing this factor or before this Commission has fully examined all of the other factors. They assert that this Commission should err on the side of considering - at hearing - the factor and Petitioners' proposed method(s) of addressing it.

D. Decision

Under Florida law the purpose of a motion to dismiss is to raise as a question of law the sufficiency of the facts alleged to state a cause of action. Varnes v. Dawkins, 624 So. 2d 349, 350 (1st DCA 1993). In order to sustain a motion to dismiss, the moving party must demonstrate that, accepting all allegations in the petition as facially correct, the petition still fails to state a cause of action for which relief can be granted. In re: Application for Amendment of Certificates Nos. 359-W and 290-S to Add Territory in Broward County by South Broward Utility, Inc., 95 FPSC 5:339 (1995); Varnes, 624 So. 2d at 350. When "determining the sufficiency of the complaint, the trial court may not look beyond the four corners of the complaint, consider any affirmative defenses raised by the defendant, nor consider any evidence likely to be produced by either side." Id.

In determining whether the Petitions fail to state a cause of action for which relief can be granted, it must be determined whether we must consider the four criteria set forth in Section 364.164 (1), Florida Statutes, or whether we have discretion to consider the four criteria as suggested by Verizon, Sprint and BellSouth. Section 364.164 (1), Florida Statutes, states that:

> (1) Each local exchange telecommunications company may, after July 1, 2003, petition the commission to reduce its

> intrastate switched network access rate in a revenue-neutral manner. The commission shall issue its final order granting or denying any petition filed pursuant to this section within 90 days. In reaching its decision, the commission **shall consider** whether granting the petition will:
>
> > (a) Remove current support for basic local telecommunications services that prevents the creation of a more attractive competitive local exchange market for the benefit of residential consumers;
> >
> > (b) Induce enhanced market entry;
> >
> > (c) **Require intrastate switched network access rate reductions to parity over a period of not less than 2 years or more than 4 years;** and
> >
> > (d) Be revenue neutral.

(Emphasis added.)

The statute clearly states that we **shall** consider each of the four criteria. There is no discretion regarding whether we will consider some or all of these four criteria. In addition, the petitions must at least allege facts sufficient to satisfy each of these criteria. Because of this, if the petitions fail to allege facts sufficient to meet the plain meaning of the criteria set forth in Section 364.164(1)(c), Florida Statutes, we are unable to grant relief requested by the petitions.

Verizon, Sprint and BellSouth generally allege in their Petitions that their plans will take place over a period of two years.[2] However, in their responses to OPC's Motion, none of the

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[2]In considering a motion to dismiss, the Court is confined exclusively to an examination of the complaint and *any attached documents incorporated therein* and may take judicial notice of a record filed in another case, where the judgment is such case is plead. See, Posigan v. American Reliance Insurance Company of New Jersey, 549 So. 2d 751, 754 (3rd DCA 1989). Further, under Florida law, if an attached document negates a pleader's cause of action, the plain language of the document will control and may be the basis for a motion to

companies dispute the fact that the implementation dates for the rate adjustments are January 1, 2004, and January 5, 2005. The companies do, however, dispute that those dates do not fit within the meaning and intent of Section 364.164(1)(c), Florida Statutes. The companies engage in a tortured reading of the statute to arrive at the conclusion that the language "over a period of not less than 2 years" really means "over a period of two annual adjustments." The companies cite to Sections 364.164(2) and (3), Florida Statutes, to bolster their reading that the wording "years" means "annual."

Section 364.164(2), Florida Statutes, states that upon the approval of the petitions, the companies are authorized to immediately implement the reductions and increases to achieve neutrality and they are allowed to implement these reductions ". . . once in any 12-month period in a revenue-neutral manner." However, it is clear that the authority to immediately implement the total rate reduction is limited by the language in Section 364.164(1)(c), Florida Statutes, which requires that the total rate reductions occur over a period of **not less than 2 years.** So, Section 364.164(2), Florida Statutes, does not lead to the interpretation that the companies are seeking that the Legislature meant "annual" instead of "years" in Section 364.164(1)(c), Florida Statutes.

In the same respect, the requirement in Section 364.164(3), Florida Statutes, that the annual adjustments permitted under Section 364.164(2), Florida Statutes, be based on the previous year's historical pricing units information, does not lead to a reading of Section 364.164(1)(c), Florida Statutes, that "two years" equates to "two annual adjustments." Section 364.164(1)(c), Florida Statutes,, defines that time period over which the companies must make the adjustments. Section 364.164(2), defines

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dismiss. See, Striton Properties, Inc. v. The City of Jacksonville Beach, Florida, et. al., 533 So. 2d 1174, 1179 (1st DCA 1988). BellSouth in its Petition incorporates its prefiled testimony. Witnesses Hendrix at pages 5 and 6 and witness Rusicilli at page 6 clearly state that the implementation dates are January 1, 2004, and January 1, 2005. Sprint incorporates by reference into its Petition, Dr. Gordon's testimony which sets out that all three companies plan on implementing the rate reductions at the same time. Verizon references and utilizes their prefiled testimony throughout the Petition, including witness Gordon's testimony.

the number of times the companies may make any such adjustments in a given year, and Section 364.164(3) indicates the time frame for the historical pricing unit information to be used to make an annual adjustment. Nothing in this statutory scheme could be read to make the term "2 years" mean "2 annual filings." Thus, the plain meaning of Section 364.164(1)(c), Florida Statutes, is that the rate reductions shall occur over, not within, a period of time not less than 2 years (i.e. 24 months). For example, the time between the approval of the first tariff filing and rate reduction to the last rate reduction at which parity is achieved shall be no less than 24 months. Clearly, the time period proposed by the companies in their petitions over which the first rate reduction and the last rate reduction would be made is only 12 months. Therefore, the petitions are facially deficient because the facts alleged by the companies regarding the timing of rate reductions do not meet the statutory criteria and, thus, we are unable to grant the requested relief.

The companies also argue that from the time the rate reduction is put in place, it takes a full year to completely realize the reduction. The companies contend that whether a petition has met the criterion that reductions be over at least a two-year period should be determined based on the period of time to realize the reductions. While we acknowledge that revenue reductions may not be fully realized until the lower rates have been in effect for 12 months, we do not equate the period of time for make rate reductions with the period of time for realizing revenue reductions. Even if one were to use the companies' logic, the companies would still be at least one day short (i.e. the reduction would begin on January 1st and would be realized at the end of the year on December 31st). Moreover, the reductions still occur on January 1, 2004, and January 1, 2005, 12 months apart, regardless of when the reductions were fully realized. Thus, even under this analysis, the facts alleged by the companies in their petitions fail to meet the criteria. Again, the petitions fail to state a cause of action on which we can grant the relief.

For the foregoing reasons, we find that the petitions fail to state a cause of action upon which relief can be granted since the petitions are facially deficient in that they do not allege facts to support that the rate reductions would be implemented over a period of not less than two years. Therefore, we grant OPC's

Motions to Dismiss Verizon's Petition, Sprint's Petition, and BellSouth's Petition in corresponding Dockets Nos. 030867-TL, 030868-TL, and 030869-TL without prejudice to refile amended petitions. Further, we find that the 90-day statutory deadline set forth in the statute is reset at Day 1 upon the filing of the amended petitions. In addition, we find that AARP's Motion to Dismiss adopting OPC's Motions to Dismiss filed on September 23, 2003, is rendered moot by our decision herein.

We note that in deciding to grant the Motions to Dismiss these Petitions, it is not necessary to dispense with the procedural schedule in its entirety. Further, given the short time frames involved in these petitions, it is valuable to preserve the public hearings currently scheduled. Since the companies need amend their petitions, this affects the timing of the rate rebalancing, but not necessarily the overall monetary impact. Thus, any changes in scheduling, the petitions, and the impact of such changes can be addressed at the beginning of the currently scheduled public hearings. Thus, the procedural schedule shall be amended in accordance with the amended petition filing date(s) in a separate order, but the public hearings shall continue on the current schedule and discovery shall be on going. Furthermore, outstanding discovery shall still be considered valid or active, to the extent that it does not go directly to the implementation schedule discussed herein. Consistent, with our decision to grant the Motions to Dismiss, Verizon, Sprint, and BellSouth, shall be granted forty eight (48) hours leave to revise their petitions to correct the error identified in the Motions to Dismiss. Thus, these dockets shall remain open to allow Verizon, Sprint, and BellSouth to file these amended petitions in conformance with our decision.

By Order No. PSC-03-1118-PCO-TL, issued October 7, 2003, the schedule was revised to reflect the decision at the September 30, 2003, Agenda Conference, to change the hearing dates and other filing dates. Those dates were modified in that Order as follows:

Amended Petition with amended Direct Testimony and Exhibits, if any	October 2, 2003
Staff and Intervener Direct Testimony and Exhibits, if any	October 31, 2003

Rebuttal Testimony and Exhibits, if any	November 19, 2003
Prehearing Statements	November 21, 2003
Prehearing Conference	November 24, 2003
Hearing (Includes Closing Summation/Oral Argument; Bench Decision Possible)	December 10-12, 2003
Order	December 29-31, 2003

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Office of Public Counsel's Motions to Dismiss are hereby granted as set forth in the body of this Order. It is further

ORDERED that AARP's Motion to Dismiss adopting OPC's Motions to Dismiss filed on September 23, 2003, is rendered moot by our decision herein. It is further

ORDERED that Verizon, Sprint, and BellSouth are granted forty eight (48) hours leave to revise their petitions to correct the error identified in the Motions to Dismiss. It is further

ORDERED that the 90-day statutory deadline set forth in the statute is reset at Day 1 upon the filing of the amended petitions. It is further

ORDERED that the public hearings shall continue on the current schedule and discovery shall be on going and any outstanding discovery shall still be considered valid or active, to the extent that it does not go directly to the implementation schedule discussed in the body of this Order. It is further

ORDERED that this docket shall remain open for further proceedings.

By ORDER of the Florida Public Service Commission this 20th Day of October, 2003.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

PAC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15)

days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.