

KATZ, KUTTER, HAIGLER, ALDERMAN, BRYANT & YODanis

PROFESSIONAL ASSOCIATION

ATTORNEYS AND COUNSELORS AT LAW

www.katzlaw.com

ORIGINAL

Orlando Office

Suite 900
111 North Orange Avenue
ORLANDO, FL 32801
(407) 841-7100
fax (407) 648-0660

Tallahassee Office

12th Floor
106 East College Avenue
TALLAHASSEE, FL 32301
(850) 224-9634
fax (850) 222-0103

Miami Office

Suite 409
2999 NE 191st Street
AVENTURA, FL 33180
(305) 932-0996
fax (305) 932-0972

Washington, DC Office

Suite 750
801 Pennsylvania Avenue, NW
WASHINGTON, DC 20004
(202) 393-6222
fax (202) 393-5959

Reply to Tallahassee Office

February 18, 2002

Ms. Blanca Bayo, Clerk
Division of Commission Clerk &
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

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CLERK

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Re: Telco Holdings Inc. d/b/a Dial and Save

Dear Ms. Bayo:

During late 1999 and early 2000, Commission Staff performed an audit of Telco Holdings Inc. d/b/a Dial and Save (hereafter "the Company") to determine whether it had effected the flow through of 1998 switched access charge reductions made by GTE-FL and Sprint (United) as required by Florida Statutes and Commission orders. The staff filed its Audit Report on June 20, 2000. The Company has responded to the Audit Report both verbally and in writing. To avoid an unnecessary dispute over the flow through issue, the Company proposes herein to credit to customers a projected total of approximately \$15,784 (\$13,584 plus \$2,200 interest).

As the Company understands, staff is not opposed to this settlement but does have two basic concerns. First, staff is concerned that the Company has not produced sufficient data to accurately establish the amount to be credited. Next, staff remains concerned that the dearth of data suggests non-responsiveness on the part of the Company. The Company appreciates the Staff's candor in this regard, and welcomes the opportunity to put both concerns to rest.

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1 The access charge reductions apply only to that part of Sprint's service territory formerly served by United Telephone Company of Florida.

2 The precise amount of interest cannot be determined until the date of credit is known. This interest amount is an estimate based on the credit being issued within four months.

DOCUMENT NUMBER-DATE

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### **Requirements of Section 364.163(6), Florida Statutes**

In 1998 the Legislature amended<sup>3</sup> Section 364.163(6), Florida Statutes, to modify the then existing requirements for switched access rate reductions and the flow-through of those reductions to Florida's consumers. In a nutshell, each large local exchange company<sup>4</sup> was required to reduce its intrastate switched access rates by 5 percent on July 1, 1998, and by 10 percent on October 1, 1998. In addition, IXC's receiving these access charge reductions were required to flow the benefits through to their customers. As summarized on page 3 of Commission Order No. PSC-98-0795-FOF-TP, issued on June 28, 1998 (hereafter "1998 Flow Through Order"):

Section 364.163(6), Florida Statutes, as amended, requires that IXC's meet three flow-through requirements. First, an IXC's intrastate rates must be decreased by the amount necessary to return the benefits of the switched access reduction to its customers. Second, an IXC shall not reduce per minute intraLATA toll rates by a percentage greater than the required per minute switched access rate reduction. Third, an IXC may determine the specific rates to be decreased, provided that both residential and business customers benefit from the rate decreases.

### **Requirements of the 1998 Flow Through Order**

As reflected in the text of the Flow Through Order, the 1998 amendment to Section 364.163(6) was the latest of legislative mandated access charge reductions and IXC rate reductions. In response to the earlier 1996 statutory precursor, the Commission "ordered IXC's to provide (it) with substantial documentation to verify their compliance with the flow-through requirements." The Commission concluded in the 1998 Flow Through Order, however, that this requirement was too burdensome for small IXC's:

By this Order, we are modifying the filing requirements for smaller IXC's, in order to reduce their regulatory burden. We find that it is *important in a pro-competitive environment* not to burden smaller IXC's unnecessarily with reporting requirements. ... Accordingly, we conclude that any IXC that paid less than \$20 million in total Florida intrastate switched access charges in 1997 *is relieved of the obligation to file the documentation required herein for larger IXC's*. In lieu of filing the documentation, qualifying IXC's must certify by

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<sup>3</sup> Chapter 98-277, Section 4, General Laws of Florida.

<sup>4</sup> LECs with more than 100,000, but fewer than 3 million, basic local telecommunications service access lines in service on July 1, 1995

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letter accompanying their tariff reduction filing that they paid less than \$20 million and that they have met the statutory requirements.<sup>5</sup>

The IXC tariff reductions flowing through the benefits of the 5% and 10% access charge reductions were to be effective on July 1, 1998, and October 1, 1998.

### **The Audit Report's Exceptions and Opinion**

The Audit report noted three exceptions and provided staff's opinion with respect to the Company's compliance with the flow through requirements. These exceptions and the opinion are briefly explained and responded to below. These responses should adequately address staff's two basic concerns. For ease of reference these tariffs will be called the "1998 Flow Through Tariffs."

#### **1. Minutes of Use Report**

##### Exception Number 1:

The Company did not have available to it and could not readily produce the type of use data Staff normally uses in assessing regulatory compliance. Staff requested minutes of use data, which the Company could not provide. Thus the audit exception notes as follows: "These minutes of use were requested on January 6, 2000. Many calls have been made to the Company requesting this information." In effect, the Audit Report criticizes the Company for a lack of responsiveness.

##### Response:

The Audit Report fails to recognize the Company's status as a small IXC. The Commission specifically relieved the smaller IXCs of the obligation of existing filing requirements to avoid imposing on them an unjustifiable regulatory burden. Ironically, the Staff's data request would in effect have required the Company to retroactively compile analogous reports at an exponentially greater burden. The Company estimated that providing a one-month summary of minutes of use would cost the Company between \$370,000 and \$620,000 (not including office space and equipment). This is 20 to 30 times greater than the highest amount that could arguably be credited without violating the statutory percentage limitation on the rate reduction.

#### **2. Tariffs Not Implemented**

##### Exception Number 2:

The second audit exception notes that in April and May of 1998, the Company was charging for certain calls less than required by existing tariffs. The Company designed and filed the 1998 Flow Through Tariffs on the basis of the existing tariffs, i.e., on its

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<sup>5</sup> Id. (emphasis added).

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approved rates, not on what it had been charging. The Audit Report also notes that if the reduction was properly computed from approved rates, the 1998 Flow Through Tariffs "would have met the requirements of the Commission Order PSC 88-0795-FOF-TP."

Response:

To the extent this exception goes to the issue of flow through compliance, please see item 4 below. With respect to other consequences of charging off-tariff, the Company did not attempt to make itself whole for under-charges either through back billing or prospectively through an offset reflected in the flow through tariffs. Rather, the Company appropriately absorbed the lost revenues due to the under-charging, and made the required tariff revisions based on its approved rates. Moreover, the Company in good faith believed that it was required to proceed in this manner. In this regard, as the Audit report avers, there has been no determination that the Company failed to comply with the Order by applying the reduction to approved tariff rates as opposed to the somewhat lower rates that were charged.

**3. Incorrect Plan During September 1998**

Exception Number 3:

Audit Exception No. 3 suggests that the Company used an incorrect plan in billing for a call made on September 4, 1998.

Response:

This was a limited exception. The customer apparently was not a pre-subscribed customer, but a casual "dial-around" caller who used the Company's 457 access code. Under the particular circumstances of that call, the plan used to rate the call was permissible. Moreover, this exception is not germane to the main issue of reducing rates to flow through to the customer the benefit of access charge reductions.

**4. Audit Opinion**

Opinion:

To comply with the 1998 Flow Through Order, the Company filed rate reductions based on its January 22, 1998 tariff. The Audit Report opined that these reductions "would have met the requirements" of the 1998 Flow Through Order had the Company been using the tariff rates. To reiterate, for *interLATA* calls, the Company had been using an earlier rate which was lower than the tariffed rate. Consequently, the Company's "flow-through" rates were lower than its earlier applicable tariffed rates but *in some cases* higher than the rates previously charged. The Audit Report thus concludes that "... (for *interLATA* calls) the company never reduced the actual rates it was charging. This does not appear to be the case for *intraLATA* calls." The Audit Report then opines that

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"Whether the company was in compliance with (the 1998 Flow Through Order) depends on whether the Commission agrees that the reduction should have been from actual rates in effect or approved rates."

Response:

The Commission apparently has adopted the non-rule policy that the starting point for computing the flow-through is the rates actually charged by the Company not the rates contained in the applicable tariff. Without acquiescing in either the correctness or the enforceability of this policy, the Company proposes to credit to customers **\$15,784**. The justification for this amount and the method of credit are addressed below.

The Amount of Credit

The staff's argument for additional flow through is essentially this: the Company allegedly over-charged certain of its customers because the 1998 Flow Through Tariffs were set too high. The customers allegedly overcharged were those who took service under the 1998 Flow Through Tariffs *and* accessed those products through the facilities of GTE-FL and Sprint (United). The amount of the alleged over-charges is the amount of access charge reductions by GTE-FL and Sprint (United) that the Company allegedly failed to flow through to the Florida's consumers. The amount of the credit therefore should be the amount of the alleged over-charges.

As previously indicated, due to data restrictions the credit amount must be estimated. Because the 1998 Flow Through Tariffs applied **statewide**, not just in the territories of GTE-FL and Sprint (United), the estimate of territory specific credit amounts must begin with an estimate of alleged overcharges statewide. After determining the alleged statewide over-charges, the credit amount will be that portion of the statewide total that can be allocated reasonably to originating traffic within the GTE-FL and Sprint (United) service territories.<sup>6</sup>

As explained by the Company (in Ms. Robbin Johnson's letter dated April 25, 2001, transmitting responses to staff's informal data requests and attachments), the estimate of alleged statewide overcharges is **\$32,343**. This amount is conservative in that the assumptions used are designed to overstate the amount of reductions the customers subscribing to the applicable plan would have then received.

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<sup>6</sup> Another consequence results as well. Arguably, the tariff reduction applicable in BellSouth's territory – which was not required – did in fact flow-through to Florida's consumers the benefits of the access charge reduction as required by statute. Nevertheless, this is a case of first impression and the Company prefers a resolution that favors to the extent practicable flow-through to the consumers who reside within the service territories of the ILECs that reduced access charges.

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The next step (which was not addressed in Ms. Johnson's letter) is to allocate \$32,343 between BellSouth on the one hand and GTE-FL and Sprint (United) on the other. The most practical way to do this consistent with statutory intent is on the basis of access lines in place the last quarter of 1998. Based on company specific data on file with the Commission, the three companies had in place during this period approximately 10.5 million access lines, of which some 42% belonged to GTE-FL and Sprint (United).<sup>7</sup> The credit principal is thus 42% of \$32,343 or \$13,584.

The Company does not believe that it is appropriate to apply interest to this amount. The credit is offered as a settlement to avoid a formal dispute over whether the 1998 Flow Through Tariffs were set at the proper level. Nevertheless, it is the Company's understanding that staff believes interest is both appropriate and required in this matter. To resolve this matter, the company will acquiesce in the application of interest.

#### **Method of Credit**

The statute contemplates a rate reduction that returns to the customers the benefits of the access charge reductions – *but not more*. Specifically, the statute prohibits the IXC from imposing a *per-minute rate reduction* that is disproportionate to the access charge reductions. Section 364.163(6), Florida Statutes. Because the amount involved is so small, avoiding a disproportionate rate reduction over any reasonable period is impractical. Thus the Company proposes to effect this "flow-through" by issuing a one-time credit to customers who were with the Company at the time the 1998 Flow Through Tariffs took effect. The Company anticipates that it can issue the one-time credit in the second billing cycle after the Commission approves this proposal, i.e., within 30 to 60 days after the order approving this proposal.

Based on this approach and the principal of \$13,584, the Company estimates that the amount of interest to be included will be approximately \$2,200.00. So the total credit will be approximately \$15,784. There are approximately 475 customers who will receive the credit, which will be approximately \$33.00. The Company is currently determining the specific customers to receive the one-time credit. When the Company is able to determine the date or dates the credits will be issued, it will consult with Staff to determine the applicable interest. The Company will then file with the Commission a supplemental letter stating the details of the credit, i.e., the principal, the interest, the number of customers, the date or dates of the credits, and the notice given to the customers. After the credits are issued, the Company will by letter advise the Commission and address remaining issues, if any.

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<sup>7</sup> Access line totals for 1998: (a) BellSouth – 6,481,986; (b) GTE – 2,368,938; (c) Sprint (United) – 1,619,226; (d) Total for BellSouth, GTE, and Sprint(United) – 10,470,150; (e) Total for GTE and Sprint(United) – 4,416,980.

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**Conclusion:**

The responses to the exceptions and opinion should address Staff's two basic concerns as noted at the beginning of this letter. First, the Company believes that the explanation provided in Ms. Johnson's letter and above provides adequate justification to conclude that the Company has not understated the credit arguably due, assuming that the Flow Through Tariffs were too high. Moreover, if the credit were computed to be greater, the resulting flow through would likely violate the percentage ceiling in the statute. Second, the lack of data is not due to non-responsiveness but rather to the Company's status as a small IXC and the extraordinary difficulty reconstructing billing reports.

The Company trusts that Staff will find this summary sufficient for the purposes of bringing this matter to a close. The Company appreciates the courtesies extended to it by Staff with respect to the filing of this response.

Sincerely,



Patrick K. Wiggins

PKW:plk

cc: Ms. Melinda Watts  
Ms. Robbin Johnson