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JOHNNIE BYRD  
SPEAKER



December 1, 2003

Ms. Blanca S. Bayó, Director  
Division of the Commission Clerk  
and Administrative Services  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0870

COMMISSION  
CLERK

03 DEC -1 PM 3: 37

RECEIVED FPSC

RE: Docket No. 030867-TL, 030868-TL, 030869-TL & 030961-TI

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of Citizens' Response to Joint Motion of Verizon Florida, Inc.; Sprint-Florida, Inc.; and BellSouth Telecommunications, Inc.; for Reconsideration or Clarification of the Prehearing Officer's Second Order Modifying Procedure for Consolidated Dockets to Reflect Additional Docket, Associated Issues and Filing Dates for filing in the above-referenced docket.

Also enclosed is a 3.5 inch diskette containing Citizens' Response to Joint Motion in Microsoft Word 6.0. Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

RECEIVED & FILED

*lh*  
FPSC-BUREAU OF RECORDS

Sincerely,

H F. Mann  
Associate Public Counsel

HFM/dsb

Enclosures

- AUS \_\_\_\_\_
- CAF \_\_\_\_\_
- CMP \_\_\_\_\_
- COM 5 \_\_\_\_\_
- CTR \_\_\_\_\_
- ECR \_\_\_\_\_
- GCL 1 \_\_\_\_\_
- OPC \_\_\_\_\_
- MMS \_\_\_\_\_
- SEC 1 \_\_\_\_\_
- OTH \_\_\_\_\_

*1 copy beach docket*

DOCUMENT NUMBER-DATE

12149 DEC-1 03

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Verizon Florida Inc. to Reform )  
Its Intrastate Network Access and Basic Local ) Docket No. 030867TL  
Telecommunications rates in Accordance with )  
Florida Statutes, Section 364.164 )

In re: Petition of Sprint-Florida, Incorporated, )  
To reduce intrastate switched network ) Docket No. 030868-TL  
Access rates to interstate parity in )  
Revenue neutral manner pursuant to )  
Section 364.164(1), Florida Statutes )

In re: Petition by BellSouth )  
Telecommunications, Inc., ) Docket No. 030869-TL  
To Reduce Its Network Access Charges )  
Applicable To Intrastate Long Distance In )  
A Revenue-Neutral Manner )

In re: Flow-through of LEC Switched Access ) Docket No. 030961-TO  
Reductions by IXCs, Pursuant to Section )  
364.163(2), Florida Statutes ) Filed December 1, 2003

**CITIZENS' RESPONSE  
TO JOINT MOTION OF VERIZON FLORIDA, INC.; SPRINT-FLORIDA, INC.; AND  
BELLSOUTH TELECOMMUNICATIONS, INC.; FOR RECONSIDERATION OR  
CLARIFICATION OF THE PREHEARING OFFICER'S SECOND ORDER MODIFYING  
PROCEDURE FOR CONSOLIDATED DOCKETS TO REFLECT  
ADDITIONAL DOCKET, ASSOCIATED ISSUES, AND FILING DATES**

The Citizens of Florida ("Citizens"), through Harold McLean, Public Counsel, and pursuant to Rules 25-22.0376, and 28-106.204, Florida Administrative Code, hereby file their response to the above-styled motion for reconsideration or clarification ("Joint Motion") of Order No. PSC-03-1269-PCO-TL, by Verizon Florida, Inc, Sprint-Florida, Inc., and BellSouth Telecommunications, Inc. ("ILECs" or "Companies"). In support of this response, Citizens state that:

DOCUMENT NUMBER-DATE

12149 DEC-18

FPSC-COMMISSION CLERK

1. On August 27, 2003, the Companies simultaneously filed petitions pursuant to the authority of section 364.164, Florida Statutes. The Florida Public Service Commission ("Commission") opened three dockets to address these petitions: No. 030867-TL, No. 030868-TL, and No. 030869-TL. Commission Procedural Order No. PSC-03-0994-PCO-TL consolidated these three dockets for hearing.

2. At the Commission's September 30, 2003, Agenda, the Commission granted Citizens' motions to dismiss Companies with leave to amend.

3. On September 30, October 1, and October 2, 2003, respectively, the Companies refiled their petitions and the matter was set for hearing on December 10 through December 12, 2003.

4. On October 2, 2003, the Commission opened Docket No. 030961-TI, to provide guidelines for the interexchange telecommunications companies ("IXCs") in flowing through the ILECs' switched access reductions to the IXCs' respective customers, in the event that the Commission approved the ILECs' petitions.

5. At the Commission's November 3, 2003, Agenda Conference, after extensive discussion, the Commission determined that the subject matter of Docket No. 030961-TI should be considered concurrently with the ILECs' petitions in their consolidated dockets. The Commission also determined at Agenda that it lacked sufficient information upon which to base a decision in any of the respective dockets. The Commission thus consolidated Docket No. 030961-TI for hearing with the ILECs' consolidated docket.

6. On November 10, 2003, the Prehearing Officer issued Order No. PSC-03-1269-PCO-TL, Second Order Modifying Procedure for Consolidated Dockets to Reflect Additional Docket, Associated Issues, and Filing Dates.

7. In addition to consolidating Docket No. 030961-TI into the ILECs' consolidated dockets and modifying filing dates, the order included a list of 11 issues to be considered at hearing.

8. The Companies now argue in their Joint Motion, that issues No. 6 through No. 10 are beyond the scope of these dockets, that the Commission lacks a statutory foundation to consider these issues, that the Prehearing Officer overlooked or failed to consider a point of law in rendering his order (¶ 2), and that the Prehearing Officer's Order No. 1269, imposes "additional criteria" for the ILECs to prove up pursuant to section 364.164(1), which expands the Commission's delegated legislative authority (¶ 3).

9. The Commission should reject in its entirety the Companies' motion. The Prehearing Officer followed the directive of the Legislature, issued through section 364.164(1), which provides a clear statutory foundation for the Commission to consider issues No. 1 through 11. The five issues complained about by the Companies impose no additional criteria to those listed in section 364.164(1), and the inclusion of these issues will not cause the Commission to act beyond its delegated legislative authority. The Prehearing Officer has not overlooked or failed to consider any point of law in issuing his Second Procedural Order.

10. The Companies assert in ¶ 11 of their motion, that the "only consideration by the Commission beyond the elimination of support of basic service rates in a revenue-neutral manner is consideration of whether reduction of the access rates will induce enhanced market entry."

11. The Citizens contend that this assertion is wrong. What the Companies seek is to impose constraints upon this Commission and the regulatory process that would shield

from public view relevant and critical issues that must be investigated by the Commission. Section 364.164(1)(a) clearly provides that the Commission shall consider whether granting a petition will benefit the residential customers. At the November 3, 2003, agenda, the Commission made clear the importance of the Legislature's requirement that the ILEC petitions must result in a benefit to residential customers, as well as the necessity that the Commission receives sufficient evidence that that requirement will be met, before the Commission may, if the other requirements of the statute are also met, grant the ILECs' petitions.

12. At agenda on November 3, the Commission highlighted the critical nature of establishing that the ILECs' petitions either will or will not create a benefit for residential customers, and also highlighted the close association of access charge reductions with the creation of this benefit.

13. Section 364.163 limits the Commission's authority to influence the decisions of the IXCs. The Prehearing Officer has acknowledged this by providing issues No. 6 through 10 as guidelines for the IXCs, not directives. Concomitantly, these issues are designed to gather information in this consolidated docket - - to gather evidence of, and enlighten the Commission about, the intentions of the IXCs in flowing through their access charge reductions. A determination as to whether residential customers will actually derive the benefit of toll reductions, as a result of the access charge reductions that are bestowed upon IXCs, is crucial to a Commission decision to grant an ILEC's petition. Hence, contrary to the ILECs' assertion in ¶ 10, as well as in ¶¶ 2, 3, 8, 11, 13, 15, 16, and 19 of their motion, the Commission's authority to consider Issues No. 6 through No. 10 is inherent in section 364.164, in light of the key importance expressed by the Legislature in section 364.164(1), of

finding there to be in the ILECs' rebalancing plans, a resultant benefit to residential customers.

14. Contrary to the ILECs' assertion in ¶ 10, issues Nos. 6 through 10 are essential to the Commission's ability to make its obligatory finding in section 364.164(1)(a).

Specifically, Issue 6 addresses which, if any, of the Florida IXCs should be required to file tariffs to flow through the benefits of access charge reductions. The Commission clearly must know which carriers will be required to file tariffs in order to determine whether a universal benefit will actually flow through to all of Florida's residential customers.

Issue 7 and Issue 8 relate to the timing of the access charge reductions and the duration of their application, respectively. The benefit returning to residential customers cannot be gauged with any accuracy without some knowledge as to when consumers might expect to see long distance rate reductions and for how long these reductions will be in effect.

Issues 9 and 10 address specifically section 364.164(1)(a), which requires that residential customers, as opposed to other classes, must benefit from the ILECs' rebalancing plans.

15. In ¶ 8, the Companies argue that section 364.164(1) does not provide that the manner or level of long distance revenue reductions be considered in granting an ILEC's petition. They argue in ¶ 9, that "the Prehearing Officer has overlooked or failed to consider the plain language of section 364.164(1) and ignored a clear legislative directive on the issues to be considered."

16. The Prehearing Officer has not ignored a Legislative directive on what issues must be considered. In fact, the Prehearing Officer has carefully followed both the directive

of section 364.164(1), as well as the resolution of the full Commission at the November 3 agenda to follow that Legislative directive.

17. The Companies, in ¶ 12 of their motion, assert that the “clarity” of that Legislative directive is further illustrated by comparing the language of last year’s bill, CS/HB 1683, “which outlined the findings the Commission was required to make in deciding to grant a petition for rate rebalancing.” Provided in footnote 5, is the language of the 2002 bill. The Companies argue that in the 2002 bill, the Legislature granted authority to the Commission to determine whether an ILEC plan would “result in benefits to toll customers.” They argue that this “grant of authority” has been eliminated in the new statute. But the removal of criterion (f) from the 2002 bill, regarding “toll customers,” does not remove a grant of authority for the Commission to investigate the full parameters of what, if any, assurances of “benefit” to residential customers the ILECs’ plans contain. It does remove a secondary item of focus - - toll customers, many of whom may not be paying for the reduction in access charges through increases in their basic local rates. For example, they may be multi-line business customers, who will not be saddled with an increase in their basic local rates. The statute pointedly refocuses the attention of the Commission on residential customers, specifically. It also enhances the criterion itself, through its new word addition and arrangement, providing for the removal of any subsidy that would itself prevent the creation of a more attractive competitive local exchange market for the benefit of residential customers. Thus, it is obvious that the Legislature’s desire is for the Commission to grant a rebalancing plan only if it is demonstrated by evidence that there is a current subsidy for residential basic local service, and only if that subsidy is demonstrated to prevent a more competitive local exchange market, and if so, that the plan benefits residential customers.

Notwithstanding the Companies' arguments to the contrary, they themselves recognize the importance of demonstrating that their residential customers will benefit from their rebalancing plans. For example, BellSouth issued an executive summary directed to the new Act - - section 364.264 (copy attached). This document, obtained through discovery, addresses the prospective ILEC petitions. BellSouth itemizes six criteria that the Commission must find that the petitions will achieve before the Commission may grant the petitions. Indeed, BellSouth understands and makes clear that "This bill clearly give the PSC the authority to deny petitions if any of the above criteria are not met." (Emphasis in BellSouth's original) Item (b), which the Commission must find, asserts that a petition must "benefit residential customers."

The "clarity" that was achieved in the new statute, 364.164(1), is that the Commission is charged with ensuring that residential customers are not only penalized with higher basic local rates by the ILECs' rebalancing plans, but rather, that they are also benefited by those plans. It is insufficient for the ILECs, in paragraph 14 of their motion, to posit with an assumed air of authority, that "Customers will benefit because IXCs are required to reduce their intrastate long distance revenues by the 'amount necessary to return the benefits of such reduction to both its residential and business customers.'" That statement alone does not comprise the evidence that the Commission must have before granting the Companies' petitions.

18. The ILECs have presented no evidence of any benefits that will flow to their residential customers due to the increase in their respective residential basic local rates. For the Commission to fulfill its statutory obligation to the residential customers, the Commission must track the path of the ostensible flow-through of the access charge reductions to the



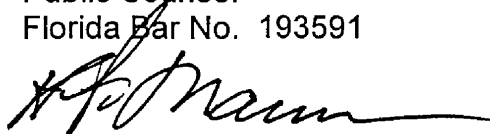
residential recipients of those flow-through reductions. At the November 3 agenda, the Commission made clear the urgency and necessity of doing so. Contrary to the Companies' assertion in footnote 6, of ¶ 14, the Prehearing Officer has not modified this proceeding to "dictate how reductions will benefit certain customers." Rather, with the issues identified in his Second Procedural Order, he has appropriately provided the mechanism by which the Commission may use its available delegated legislative authority to gather sufficient evidence to determine whether the ILECs' plans will, in fact, benefit residential consumers.

19. The Companies' arguments that the Prehearing Officer has positioned the Commission to exercise an *ultra vires* act by exceeding its legislative authority are unfounded. The Prehearing Officer has not added to the criteria listed in section 364,164(1) to be considered by the Commission. The Commission will not be "second guessing the findings of the Legislature," but will instead be diligently following the directive of the Legislature to actually determine what granting the petitions would provide in the way of benefits to residential customers.

For the above-stated reasons, the Commission should deny, in its entirety, the Companies' motion for reconsideration or clarification.

Respectfully submitted,

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Attorneys for Florida's Citizens

**DOCKET NOS. 030869-TL, 030868-TL, 030867-TL and 030961-TI  
CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing Citizens' Response to Joint Motion of Verizon Florida, Inc.; Sprint-Florida, Inc.; and BellSouth Telecommunications, Inc.; for Reconsideration or Clarification of the Prehearing Officer's Second Order Modifying Procedure for Consolidated Dockets to Reflect Additional Docket, Associated Issues and Filing Dates has been furnished by U.S. Mail, hand-delivery and/or overnight delivery to the following parties on this 1st day of December, 2003.

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A handwritten signature in black ink, appearing to read "H. F. Mann", written over a horizontal line.

H F. Mann  
Associate Public Counsel

# Tele-competition, Innovation and Infrastructure Act of 2003

In 1995, with the goal of creating a competitive telecommunications marketplace, the Florida Legislature passed a bill that re-wrote the Florida Telecom Act. It was a first step in the process to give Florida a market driven telecom industry. The proposed Tele-competition Innovation and Infrastructure Act of 2003 is the next step. It provides a framework that will lead Florida into the modern telecom age while still protecting the consumer.

The Tele-competition Innovation and Infrastructure Act of 2003 recognizes that in order to modernize Florida's telecom marketplace it is important that there is a regulatory process that resides with the PSC to make necessary adjustments, when petitioned to do so by the industry and within guidelines set forth by the Legislature.

This legislation does not mandate any rate change, increase or decrease, in access charges or basic local rates. Instead it gives the PSC the absolute authority to make rate decisions.

This legislation makes a number of other significant changes to the current telecom statute designed to establish the framework to modernize Florida's telecom industry, thus making it more competitive while maintaining traditional values of consumer protection.

These changes are listed below:

1. Extends Universal Service and Carrier of last resort obligations for ILECs until January 1, 2009.
2. Enhances the Lifeline program which protects the poor and most vulnerable Floridian's ability to have phone service. Currently there are approximately 800,000 Floridians eligible for Lifeline service. Under this legislation that number would increase to approximately one million and require providers to promote the program.
3. Voice over Internet Protocol (VoIP) is shielded from legacy regulation. Florida will be the first state in the nation to protect this new and emerging technology from the legacy regulation of the last century. This is important because many experts believe that voice communications over the Internet (VoIP) will provide residential customers with a competitive choice among several providers.
4. Changes all references to new entrants from Alternative Local Exchange Companies (ALEC) to Competitive Local Exchange Companies (CLEC). This change is designed to conform Florida's Telecom Act to the prevailing terminology used nationally.

EXECUTIVE SUMMARY

### 5. Deregulation of Intrastate Interexchange Telecom Companies (IXC)

Recognizing that the long distance market is now a highly competitive industry, this bill eliminates IXC companies from the definition of a telecommunication company. This bill does not deregulate IXCs obligations to the following:

- a) filing schedules of rates with the PSC
- b) payment of access charges
- c) one-call cable location identification system
- d) slamming and cramming violations
- e) assessment of taxes
- f) assessment of regulatory fees
- g) Lifeline obligation

### 6. Access Reform

- After July 1, 2003 ILECs may petition the PSC to reduce intrastate access charges in a revenue-neutral manner. The PSC must issue a final order within 90 days granting or denying the petition.
- The bill mandates that the PSC must find that granting petition will:
  - a) make local residential competition more attractive
  - b) benefit residential consumers
  - c) induce market entry
  - d) move access charges to parity
  - e) occur over a period of 2 to 4 years
  - f) be revenue neutral.
- This bill clearly gives the PSC the authority to deny petitions if any of the above criteria are not met.
- In the event that the PSC grants the petition for a rate adjustment, a new revenue basket is created that consists of basic local telecom revenues and access revenues.
- Because this legislation is required to be revenue-neutral, as access rates are reduced to parity, basic local rates are allowed to increase. The PSC will look at the process on an annual basis to assure that rate adjustments are justified.
- Any in-state connection fees charged by IXCs shall be eliminated in a revenue neutral manner.

- In the event the FCC or the PSC issues a final order exempting VoIP from access charges, resulting in an immediate cut in access revenue to the ILECs, the ILECs may accelerate their access reductions and basic local increases in a revenue neutral manner.
7. Exemption of Broadband and Information Services from Local Government Regulation.
- While preserving rights-of-way authority of local governments under federal and state law, this bill exempts broadband services from any other local regulation. This will provide a uniform regulatory framework in Florida that will allow for a rapid rollout of broadband services.
8. After the ILECs' access rates have been reduced to parity, ILECs may elect to treat their basic local service regulated the same way non-basic service is now regulated. This will allow pricing flexibility similar to the flexibility now available for the ILECs' competitive business services. Also allows the ILECs the same service quality levels permitted to their competitors. However, the PSC can step in and restore or adjust the level of service quality changes.
9. After the ILEC's access rates have been reduced to parity, an ILEC may petition the PSC to have its level of regulation reduced to a level equal with its competitors. The ILEC must show that granting the petition would be in the public interest and must reduce its intrastate switched network access rates to less than one cent. PSC must find that the level of competition faced by ILEC is, and will continue to be, sufficient to control ILECs' pricing and market behavior.
10. Enhanced protections against potential ILEC anticompetitive pricing. In addition to all existing protections in Florida law this bill grants the PSC new powers to enjoin alleged anticompetitive basic local reductions by ILECs.

In conclusion, this bill takes the next step in creating a competitive telecom market place in Florida. It provides for a great deal of consumer protection by placing the PSC in charge of rate adjustments and regulatory changes. It allows the PSC to continue to protect the consumer. This bill expands Lifeline to an additional 200,000 Floridians and creates an excellent environment for the deployment of new technology.