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December 1, 2003

Mrs. Blanca S. Bayó
Director, Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 030869-TP: Petition by BellSouth Telecommunications, Inc. to Reduce its Network Access Charges Applicable to Intrastate Long Distance in a Revenue-Neutral manner

Docket No. 030867-TP: Petition by Verizon Florida, Inc. to reform intrastate network access and basic local telecommunications rates in accordance with Section 364.164, Florida Statutes

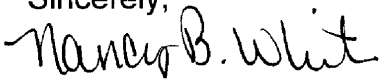
Docket No. 030868-TP: Petition by Sprint-Florida, Incorporated to reduce intrastate switched network access rates to interstate parity in revenue-neutral manner pursuant to Section 364.164(1), Florida Statutes

Docket No. 030961-TP: Flow-through of LEC Switched Access Reductions by IXC's, Pursuant to Section 364.163(2), Florida Statutes

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications Inc.'s Response in Opposition to Attorney General's Motion for Summary Final Order, which we ask that you file in the captioned dockets.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

Nancy B. White (L/A)

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey

DOCUMENT NUMBER-DATE

12172 DEC-18

FPSC-COMMISSION CLERK

CERTIFICATE OF SERVICE
Docket Nos. 030867-TP, 030868, 030869-TL and 030961-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

Electronic Mail and FedEx this 1st day of December, 2003 to the following:

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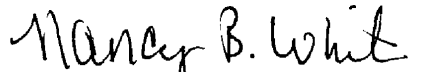
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Nancy B. White (CA)

(+) Protective Agreement

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Flow-through of LEC Switched Access Reductions by IXCs, Pursuant to Section 364.163(2), Florida Statutes)	Docket No. 030961-TI
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 OPC-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 by BellSouth Telecommunications, Inc., To Reduce Its Network Access Charges Applicable To Intrastate Long Distance in A Revenue-Neutral Manner)	Docket No. 030869-TL
)	Filed: December 1, 2003

**BELLSOUTH TELECOMMUNICATIONS, INC.'S
RESPONSE IN OPPOSITION TO ATTORNEY GENERAL'S
MOTION FOR SUMMARY FINAL ORDER**

BellSouth Telecommunications, Inc. ("BellSouth"), pursuant to Rule 28-106.204, Florida Administrative Code, files this Response in Opposition to the Motion for Summary Final order filed by Charles J. Christ, Jr., Attorney General, State of Florida ("Attorney General") and states:

1. BellSouth filed its petition and direct testimony to implement 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 local services. Rebuttal testimony was filed on November 19, 2003. Additional testimony from intervenors is due to be filed. The hearing is scheduled for December 10 – 12, 2003.
2. On November 17, 2003, the Attorney General filed a Motion for Summary Order, alleging that summary judgment was appropriate because there

was “no genuine issue as to whether the Petitions will benefit residential customers.”

3. The Attorney General’s Motion should be denied for two reasons: First, the Attorney General has misread the law and second, the Motion does not meet the standard for summary judgment.

4. The proceedings in the dockets on the ILEC’s petitions are governed by section 364.164, Florida Statutes, which creates a mechanism for rebalancing intrastate switched network access rates and rates for basic service of the ILECs. This section defines and limits the scope of issues to be considered in granting a petition to rebalance the rates of ILECs, providing in relevant part:

- (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;
 - (d) Be revenue neutral as defined in subsection (7) within the revenue category defined in subsection (2).

(Emphasis added).

5. Docket No. 030961-TI is governed by section 364.163(2), which provides how, and to what levels, interexchange telecommunications carriers (“IXCs”) will reduce their intrastate toll rates. The statute requires the interexchange carriers to reduce their long distance revenues by the amount their switched access charges have been reduced; to reduce intrastate rates in a manner benefiting both residential and business customers; and to eliminate any in-state connection fee by July 1, 2006.

6. Thus, to the extent IXCs' switched access rates are reduced as a result of petitions approved pursuant to section 364.164(1), those carriers' long distance revenue decreases are governed by Section 364.163, Florida Statutes. Nothing in Section 364.164(1) provides that the manner or level of long distance revenue reductions is to be considered in granting an ILEC's petition.

7. It is important to note that the plain language of the statute is all that this Commission should consider. Suggestions that statements made during the legislative process when section 364.164 was enacted are somehow relevant is incorrect. See, e.g. *Verizon Florida, Inc. v. Jacobs*, 810 So. 2d 906, 908 (Fla. 2002) (“There is no need to resort to other rules of statutory construction when the language of the statute is unambiguous and conveys a clear and ordinary meaning.”). See also Order No. PSC-03-1331-FOF-TL.

8. The Commission's statutory responsibility with respect to the ILECs' petitions is limited. It is focused on assuring that the revenue support currently provided to local rates by intrastate access charges is eliminated in a revenue-neutral manner. 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.” There is no authority for the Commission to look beyond these matters and make its decision contingent on consideration of issues that may have applicability, if at all, in the implementation of rate reductions by IXCs who will benefit from the reduction in access charges.

9. The clarity of the Legislature’s directive regarding the issues to be considered in deciding to grant the ILECs’ petitions is further illustrated by a comparison of the language in Section 364.164(1) and Committee Substitute for House Bill (CS/HB) 1683, last year’s legislation revising Chapter 364, which passed the Legislature but was vetoed by the Governor. (A copy of CS/HB 1683 is attached as Exhibit A). Section 3 of CS/HB 1683 created section 364.164(2), which outlined the findings the Commission was required to make in deciding to grant a petition for rate rebalancing. Among the “findings” the Commission was required to make was whether elimination of the access charge subsidy of basic rates would benefit residential customers, would create a more favorable competitive market, and would result in benefits to toll customers. § 3, CS/HB (proposed § 364.164(2), Fla. Stat.).¹

¹ The Commission shall grant the petition if it finds that granting the petition:

- (a) Will result in switched network access rate reductions that will be implemented during a period to be determined by the Commission, but such period shall not be less than 2 years or more than 5 years;
- (b) Will benefit residential consumers by reducing or eliminating the subsidy to residential basic local telecommunications service rates provided by intrastate switched network access rates;
- (c) Will more intrastate switched network access rates to parity;
- (d) Will create a more favorable competitive environment;
- (e) Will be revenue neutral to the local exchange telecommunications company as set forth in subsection (3); and
- (f) Will result in benefits to toll customers.

10. The 2003 legislation does not contain a similar grant of authority. Rather, the Commission is asked to consider whether eliminating the support creates a more competitive market for the benefit of residential customers.

11. Likewise, the 2003 legislation eliminates the requirement for a Commission finding on the benefits to toll customers. Customers will benefit because IXCs are required to reduce their intrastate long distance revenues by the “amount necessary to return the benefit of such reduction to both its residential and business customers.” § 364.164(2), Fla. Stat.²

12. By interpreting the statute as requiring “net financial benefits,” the Attorney General is asking the Commission to exceed its legislative authority. The powers of all administrative agencies are measured and limited by the statutes or acts expressly granting the agencies their powers or by those powers implicitly conferred. See Department of Professional Regulation v. Marrerro, 536 So. 2d 1094, 1096 (Fla. 1st DCA 1998); Florida Dep’t of Corrections v. Provin, 515 So. 2d 302 (Fla. 1st DCA 1987); Hall v. Career Serv. Comm’n, 478 So. 2d 1111 (Fla. 1st DCA 1985). Section 364.164(1) establishes the criteria the Commission may apply in evaluating a petition filed pursuant to that section, and the Commission may not add to that criteria without exceeding its statutory authority.

§ 3, CS/HB 1683 (proposed § 364.164(2), Fla. Stat.) (vetoed by gov.)

² The 2002 legislation required the IXCs to ensure that “residential and business customers benefit proportionally from the rate decreases.” (Emphasis added). *Id* However, as noted, section 364.163(2) only requires an IXC to decrease its intrastate long distance revenues by the amount necessary to return the benefits of such reduction to both its residential and business customers.” The Commission cannot use the proceedings on the ILEC’s proceedings to do what it cannot do directly in the IXC’s proceedings, i.e., dictate how reductions will benefit certain customers. In the 2003 legislation, that has been left up to the IXCs.

13. To deny the ILEC's petitions based upon the decisions of the IXCs in carrying out their responsibilities to return the benefits of access charge reductions to their customers would be an ultra vires act on the Commission's part and amount to second guessing the findings of the Legislature with respect to the benefits to the customers that will be achieved by rate rebalancing.

14. Moreover, the Commission's decision to consider concurrently the petitions of the ILECs for rate rebalancing with the Commission-initiated docket titled *In re: Flow-through of LEC Switched Access Reductions by IXCs, Pursuant to Section 364.164(2), Florida Statutes* ("Flow-through Docket") does not provide the basis for expanding the issues to be considered in a decision on the ILECs' petitions. Order No. PSC-03-1240-PCO-TL (the "Consolidation Order") addresses consolidating the dockets for hearing, so the matters that are the subject of the petitions and the matters that are the subject of the Commission-initiated docket can be "considered concurrently." See Order No. PSC-03-1240-PCO-TL, Docket Nos. 030961-TI, 030867-TL, 030868-TL, 030869-TL (issued Nov. 4, 2003) *see also* Order No. PSC-03-1269-PCO-TL (issued Nov. 10, 2003) (stating at page 2 that "it was determined that the matters which are the subject of Docket No. 030961-TI should be considered concurrently with the petitions in Docket Nos. 030867-TL, 030868-TL, and 030869-TL").

15. In addition, the Attorney General's Motion does not meet the standard for a summary judgment.

16. Rule 28-106.204(40, Florida Administrative Code, provides that "any party may move for summary final order whenever there is no genuine issue

as to any material fact.” Pursuant to Section 120.57(1) (b), Florida Statutes, a summary final order shall be rendered if it is determined from the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, that no genuine issue as to any material fact exists and that the moving party is entitled as a matter of law to the entry of a final summary order.

17. Under Florida law, it is well established that a party moving for summary judgment must show conclusively the absence of any genuine issue of material fact and the court must draw every possible inference in favor of the party against whom a summary judgment is sought. Moore v. Moore, 475 So. 2d 666,668 (Fla. 1985). A summary judgment cannot be granted unless the facts are so crystallized that nothing remains but questions of law. Id. and McCraney v. Barberi, 677 So. 2d 355 (Fla. 1st DCA 1996). If the evidence permits different reasonable inferences, it should be submitted as a question of fact. Id.

18. The burden is on the movant to demonstrate that the opposing party cannot prevail. Christian v. Overstreet Paving Co., 679 So. 2d 839 (Fla. 2nd DCA (1996). If the record reflects the existence of any issue of material fact, possibility of an issue or even raises the slightest doubt that an issue might exist, summary judgment is improper. Id.

19. This Commission, in handling requests for summary orders, has recognized that policy considerations need to be taken into account. See Order No. PSC-98-1353-PCO-WS, issued November 20, 1998. The Commission has recognized that cautioned must be exercised in granting a summary judgment because it forecloses the litigant from the benefit of and right to a trial on the

merits of his or her claim. Id. See also Order No. PSC-01-0360-PAA-WS, issued on February 9, 2001.

20. The Attorney General has set forth no arguments to support his contention that there are no genuine issues of material fact. BellSouth has set forth, in its prefiled testimony, evidence that meets the criteria set forth in Section 364.164(1), Florida Statutes. That evidence is disputed by the AARP and the Office of Public Counsel. Therefore, the facts themselves are not stipulated and are appropriate for a judgment by the Commission after a full hearing.

21. In addition, BellSouth disputes the fact that residential customer will not benefit. If BellSouth's petition is granted, additional competition will be brought to the residential customer. Customers benefit from competition. This is what the statute says when it speaks of "benefit". In addition, residential customers will benefit financially (which is not required by the statute) by the termination of the "in-state connection fee."

22. This case involves important financial and policy issues. The Attorney General has misread the statute and not met the standard for summary order.

WHEREFORE, BellSouth requests that the Commission deny the Motion for Summary Order filed by the Attorney General.

Respectfully submitted this 1st day of December, 2003.

BELLSOUTH TELECOMMUNICATIONS, INC.

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1
2 An act relating to switched network access
3 rates; amending s. 364.10, F.S.; revising
4 provisions for Lifeline Assistance Plan
5 service; providing for certification and
6 maintenance of claims by Office of Public
7 Counsel; requiring certain local exchange
8 telecommunications companies to provide
9 specified materials relating to the plan;
10 requiring state agencies to provide such
11 material to affected applicants; exempting plan
12 beneficiaries from certain rate increases under
13 certain circumstances; providing for
14 notification; amending s. 364.163, F.S.;
15 revising provisions relating to caps on rates;
16 deleting provisions relating to recovery of
17 costs of government programs; revising
18 provisions relating to rate changes; providing
19 for adjustments in long distance revenues and
20 pass-through to customers; maintaining
21 continuing oversight by the commission;
22 creating s.364.164, F.S.; providing findings;
23 providing for petition to the commission for
24 reduction of access rates; providing for final
25 order; providing for criteria; providing for
26 establishment of revenue category mechanisms;
27 providing for notification; providing for
28 revenue neutrality; providing for notice;
29 providing limitations on adjustments; providing
30 for pricing units; maintaining exemptions;
31

1 providing definitions; providing an effective
2 date.

3
4 Be It Enacted by the Legislature of the State of Florida:

5
6 Section 1. Subsection (3) is added to section 364.10,
7 Florida Statutes, to read:

8 364.10 Undue advantage to person or locality
9 prohibited; exception.--

10 (3) (a) Any local exchange telecommunications company
11 authorized by the commission to reduce its switched network
12 access rate pursuant to s. 364.164, shall, effective March 31,
13 2003, have tariffed and shall provide Lifeline Assistance Plan
14 service to any otherwise eligible customer or potential
15 customer who meets an income eligibility test at 125 percent
16 or less of the federal poverty income guidelines for Lifeline
17 Assistance Plan customers. Such test for eligibility shall
18 augment, rather than replace, the eligibility standards
19 established by federal law and based on participation in
20 certain low-income assistance programs. Each interexchange
21 telecommunications carrier shall, effective March 31, 2003,
22 file a tariff providing, at a minimum, the interexchange
23 telecommunications carrier's current Lifeline Assistance Plan
24 benefits and exemptions to Lifeline Assistance Plan customers
25 who meet the income eligibility test set forth in this
26 subsection. The Office of Public Counsel shall serve as the
27 state agency which certifies and maintains claims submitted by
28 a customer for eligibility under the income test authorized by
29 this subsection.

30 (b) Each local exchange telecommunications company
31 subject to this subsection shall provide each state and

1 federal agency that provides benefits to persons that are
2 eligible for the Lifeline Assistance Plan service with
3 applications, brochures, pamphlets, or other materials which
4 inform such persons of their eligibility for the Lifeline
5 Assistance Plan service, and each state agency providing such
6 benefits shall furnish such materials to affected persons at
7 the time such persons apply for benefits.

8 (c) Any local exchange telecommunications company
9 customer receiving Lifeline Assistance Plan benefits shall not
10 be subject to any residential basic local telecommunications
11 service rate increases authorized by s. 364.164 until such
12 time as the local exchange telecommunications company reaches
13 parity as defined in s. 364.164(6) or until the customer no
14 longer qualifies for the Lifeline Assistance Plan benefits
15 established by this section or s. 364.105, or unless otherwise
16 determined by the commission upon petition by a local exchange
17 telecommunications company.

18 (d) Each agency that provides benefits to persons that
19 are eligible for the Lifeline Assistance Plan service shall,
20 by December 31, 2002, notify each such person by postcard of
21 his or her eligibility for the Lifeline Assistance Plan
22 service, together with the name of the local exchange
23 telecommunications company. The direct cost of this postcard
24 production and mailing shall be paid by the local exchange
25 telecommunications companies with more than one million access
26 lines in service. The commission shall report to the
27 Governor, the Speaker of the House of Representatives and the
28 President of the Senate by December 31st of each year on the
29 number of customers who are subscribing to Lifeline Assistance
30 Plan service.

31

1 Section 2. Section 364.163, Florida Statutes, is
2 amended to read:
3 364.163 Network access services.--For purposes of this
4 section, "network access service" is defined as any service
5 provided by a local exchange telecommunications company to a
6 telecommunications company certificated under this chapter or
7 licensed by the Federal Communications Commission to access
8 the local exchange telecommunications network, excluding the
9 local interconnection arrangements in s. 364.16 and the resale
10 arrangements in s. 364.161. Each local exchange
11 telecommunications company subject to s. 364.051 shall
12 maintain tariffs with the commission containing the terms,
13 conditions, and rates for each of its network access services.
14 ~~(1) Effective January 1, 1999, the rates for switched~~
15 ~~network access services of each company subject to this~~
16 ~~section shall be capped at the rates in effect on January 1,~~
17 ~~1999, and shall remain capped until January 1, 2001. Upon the~~
18 ~~date of filing its election with the commission, the network~~
19 ~~access service rates of a company that elects to become~~
20 ~~subject to this section shall be capped at the rates in effect~~
21 ~~on that date and shall remain capped for 5 years.~~
22 (1)(2) After the termination of the caps imposed on
23 rates by subsection (1) and after a local exchange
24 telecommunications company's intrastate switched network
25 access rates are reduced to or below reach parity, as defined
26 in s. 364.164(6), the company's intrastate switched network
27 access rates shall be capped and shall remain capped for 3
28 years thereafter with its interstate switched access rates, a
29 company subject to this section may, on 30 days' notice,
30 annually adjust any specific network access service rate in an
31 amount not to exceed the cumulative change in inflation

1 ~~experienced after the date of the last adjustment, provided,~~
2 ~~however, that no such adjustment shall ever exceed 3 percent~~
3 ~~annually of the then-current prices. Inflation shall be~~
4 ~~measured by the changes in Gross Domestic Product Fixed 1987~~
5 ~~Weights Price Index, or successor fixed weight price index,~~
6 ~~published in the Survey of Current Business, or successor~~
7 ~~publication, by the United States Department of Commerce.~~

8 ~~(3) After the termination of the caps imposed on rates~~
9 ~~by subsection (1), a company subject to this section may, at~~
10 ~~any time, petition the commission for a network access service~~
11 ~~rate change to recover the cost of governmentally mandated~~
12 ~~projects or programs or an increase in federal or state income~~
13 ~~tax incurred after that date. The costs and expenses of the~~
14 ~~government program or project required in part II of this~~
15 ~~chapter shall not be recovered under this subsection unless~~
16 ~~such costs and expenses are incurred in the absence of a bid~~
17 ~~and subject to carrier of last resort obligations as provided~~
18 ~~for in part II of this chapter. With respect to~~
19 ~~governmentally mandated projects and programs, such petition~~
20 ~~shall be acted upon no later than 90 days after the date of~~
21 ~~filing. A company subject to this section shall show the~~
22 ~~commission that the cost of a project or program is not~~
23 ~~recoverable either from the government mandating the project~~
24 ~~or program or from the beneficiaries of the project or program~~
25 ~~through user fees or other new revenue sources from the~~
26 ~~project or program, and to the extent that cost decreases~~
27 ~~resulting from the project or program are reflected as an~~
28 ~~offset to cost increases. A company subject to this section~~
29 ~~shall decrease its network access rates by amounts that~~
30 ~~reflect any federal or state income tax reduction. Nothing~~
31 ~~contained in this section shall allow any revisions in the~~

1 ~~rates, terms, and conditions for commercial mobile radio~~
2 ~~service access, which revisions are inconsistent with the~~
3 ~~requirements or methodologies of the Federal Communications~~
4 ~~Commission.~~

5 ~~(4) A company subject to this section may choose to~~
6 ~~implement all or a portion of a rate increase allowed for~~
7 ~~network access service by subsections (1), (2), and (3).~~
8 ~~Notwithstanding subsections (1), (2), and (3), a company~~
9 ~~subject to this section may choose to decrease network service~~
10 ~~rates at any time, and decreased rates shall become effective~~
11 ~~upon 7 days' notice.~~

12 ~~(5) company-proposed changes to the terms and~~
13 ~~conditions for existing network access services in accordance~~
14 ~~with subsections (1), (2), (3), and (4) shall be presumed~~
15 ~~valid and become effective upon 15 days' notice.~~
16 ~~company-proposed rate reductions shall become effective upon 7~~
17 ~~days' notice. Rate increases made by the local exchange~~
18 ~~telecommunications company shall be presumed valid and become~~
19 ~~effective on the date specified in the tariff, but in no event~~
20 ~~earlier than 30 days after the filing of such tariff. The~~
21 ~~commission shall have continuing regulatory oversight of local~~
22 ~~exchange telecommunications company-provided network access~~
23 ~~services for purposes of determining the correctness of any~~
24 ~~price increase resulting from the application of the inflation~~
25 ~~index and making any necessary adjustments, establishing~~
26 ~~reasonable service quality criteria, and assuring resolution~~
27 ~~of service complaints. No later than 30 days after the filing~~
28 ~~of such tariff, the commission may, with respect to~~
29 ~~determining the correctness of any price increase, vote,~~
30 ~~without hearing, the local exchange telecommunications company~~
31 ~~to hold subject to refund all revenues collected under the~~

1 ~~rate increase. Within 60 days after such order, the commission~~
2 ~~must make a determination either compelling a refund of all or~~
3 ~~part of such revenues or releasing them from such requirement.~~
4 ~~(2)(6) Any local exchange telecommunications company~~
5 ~~with more than 100,000, but fewer than 3 million, basic local~~
6 ~~telecommunications service access lines in service on July 1,~~
7 ~~1995, shall reduce its intrastate switched access rates by 5~~
8 ~~percent on July 1, 1998, and by 10 percent on October 1, 1998.~~
9 Any interexchange telecommunications carrier company whose
10 intrastate switched network access rate is reduced as a result
11 of the rate adjustments decreases made by a local exchange
12 telecommunications company in accordance with s. 364.164 this
13 subsection shall decrease its intrastate long distance
14 revenues rates by the amount necessary to return the benefits
15 of such reduction to both its residential and business
16 customers but shall not reduce per minute intra-LATA toll
17 rates by a percentage greater than the per minute intrastate
18 switched access rate reductions required by this act. The
19 interexchange telecommunications carrier may determine the
20 specific intrastate rates to be decreased, provided that
21 residential and business customers benefit proportionally from
22 the rate decreases. Subject to the foregoing, any
23 interexchange telecommunications carrier that charges an
24 in-state connection fee shall use any decrease in the
25 intrastate switched network access rate reductions required by
26 s. 364.164 to first eliminate that fee before it reduces its
27 long distance toll rates. In any event, any in-state
28 connection fee shall be eliminated by March 1, 2004, provided
29 that the timetable approved pursuant to s. 364.164(2) reduces
30 intrastate switched network access rates in an amount that
31 results in the elimination of the access recovery charge in a

1 revenue-neutral manner. The tariff changes, if any, made by
2 the interexchange telecommunications carrier to carry out the
3 requirements of this subsection shall be presumed valid and
4 become effective on 1 day's notice.

5 ~~(7) Telecommunications company intrastate switched~~
6 ~~access and customer long distance rate reductions shall become~~
7 ~~effective on October 1 of each relevant year. Rate decreases~~
8 ~~proposed in tariff revisions filed by the telecommunications~~
9 ~~companies with the commission shall be presumed valid and~~
10 ~~become effective on October 1 of each relevant year.~~

11 ~~(8) No later than 30 days after the filing of such~~
12 ~~tariff, the commission may, with respect to determining the~~
13 ~~correctness of any rate decrease, vote, without hearing, the~~
14 ~~telecommunications company to hold subject to refund all~~
15 ~~intrastate switched access or customer long distance rate~~
16 ~~revenues collected after the rate decrease. Within 60 days~~
17 ~~after such order, the commission must make a determination~~
18 ~~either compelling a refund of the appropriate part of such~~
19 ~~revenues or releasing all such revenues from such requirement.~~

20 (3)(9) The commission shall have continuing regulatory
21 oversight of intrastate switched network access and customer
22 long distance rates for purposes of determining the
23 correctness of any rate decrease by a telecommunications
24 company resulting from the application of this section and s.
25 364.164, and making any necessary adjustments to those rates,
26 establishing reasonable service quality criteria, and assuring
27 resolution of service complaints. Nothing in this subsection
28 shall be construed to mean that the commission does not have
29 continuing regulatory oversight of service quality criteria or
30 the authority to resolve service complaints for all
31 telecommunications companies subject to this section.

1 Section 3. Section 364.164, Florida Statutes, is
2 created to read:
3 364.164 Switched network access rate reduction.--
4 (1) The Legislature finds the following:
5 (a) Residential local exchange competition is in the
6 best interest of Florida and its telecommunications consumers;
7 (b) Residential basic local telecommunications service
8 prices are, on average, below cost, being subsidized with
9 revenues from other services including switched network access
10 charges;
11 (c) The intrastate switched network access charges
12 paid by interexchange telecommunications companies in Florida
13 are above cost and are higher than the interstate switched
14 network access charges which such companies pay to the same
15 local exchange telecommunications companies in Florida;
16 (d) The subsidization of residential basic local
17 telecommunications service prices with revenues from
18 intrastate switched network access charges is inhibiting the
19 development of residential basic local exchange service
20 competition;
21 (e) Restructuring the prices for residential basic
22 local telecommunications service and intrastate switched
23 network access closer to the cost of providing these services
24 should promote local and long distance competition; and
25 (f) The Florida Public Service Commission is the
26 appropriate body to determine whether intrastate switched
27 network access charges and basic local telecommunications
28 service prices will be adjusted in a manner which is revenue
29 neutral to the local exchange telecommunications company and
30 beneficial to residential consumers.
31

1 (2) Each local exchange telecommunications company
2 with more than 1 million access lines in service may, after
3 December 1, 2002, petition the commission to reduce its
4 intrastate switched network access rates in a revenue neutral
5 manner. Any local exchange telecommunications company with 1
6 million or less access lines in service may, after December 1,
7 2003, petition the commission to reduce its intrastate
8 switched network access rates in a revenue neutral manner.
9 The commission shall issue its final order granting or denying
10 any petition filed pursuant to this section within 90 days.
11 The commission shall grant the petition if it finds that
12 granting the petition:
13 (a) Will result in switched network access rate
14 reductions that will be implemented during a period to be
15 determined by the commission, but such period shall not be
16 less than 2 years or more than 5 years;
17 (b) Will benefit residential consumers by reducing or
18 eliminating the subsidy to residential basic local
19 telecommunications service rates provided by intrastate
20 switched network access rates;
21 (c) Will move intrastate switched network access rates
22 to parity;
23 (d) Will create a more favorable competitive
24 environment;
25 (e) Will be revenue neutral to the local exchange
26 telecommunications company as set forth in subsection (3); and
27 (f) Will result in benefits to toll customers.
28 (3) In the event the commission grants the local
29 exchange telecommunications company's petition, the local
30 exchange telecommunications company is authorized, the
31 requirements of s. 364.051(3) notwithstanding, to immediately

1 implement a revenue category mechanism consisting of basic
2 local telecommunications service revenues and intrastate
3 switched network access revenues, to achieve revenue
4 neutrality. The local exchange telecommunications company
5 shall thereafter, on 45 days' notice, adjust the various
6 prices and rates of the services within its revenue category
7 authorized by this section once in any 12-month period in a
8 revenue neutral manner. In no event shall any adjustment in
9 rates be offset entirely by the monthly recurring rate for
10 basic local telecommunications service. All annual rate
11 adjustments within the revenue category established pursuant
12 to this section shall be implemented simultaneously and shall
13 be revenue neutral. The commission shall, within 45 days
14 after the rate adjustment filing, issue a final order
15 confirming compliance with this section, and such order shall
16 be final for all purposes.

17 (4) Any filing under this section shall be based on
18 the company's most recent 12 months' pricing units in
19 accordance with subsection (8) for any service included in the
20 revenue category established under this section. The
21 commission shall have the authority only to verify the pricing
22 units for the purpose of ensuring that the company's specific
23 adjustments, as authorized by this section, make the revenue
24 category revenue neutral for each filing. Any discovery or
25 information requests under this section shall be limited to a
26 verification of historical pricing units necessary to fulfill
27 the commission's specific responsibilities under this section
28 of ensuring that the company's rate adjustments make the
29 revenue category revenue neutral for each annual filing.

30 (5) Nothing in this section shall affect the local
31 exchange telecommunications company's exemptions pursuant to

1 s. 364.051(1)(c) or authorize any local exchange
2 telecommunications company to increase the cost of local
3 exchange services to any person providing services under s.
4 364.3375.

5 (6) For purposes of this section, "parity" means that
6 the local exchange telecommunications company's intrastate
7 switched network access rate is equal to its interstate
8 switched network access rate in effect on January 1, 2002, if
9 the company has more than 4 million access lines in service.
10 If the company has 4 million or less and more than 1 million
11 access lines in service, "parity" means that the company's
12 intrastate switched network access rate is equal to 2 cents
13 per minute. If the company has 1 million or less access lines
14 in service, "parity" means that the company's intrastate
15 switched network access rate is equal to 8 cents per minute.
16 Nothing in this section shall prevent the company from making
17 further reductions in its intrastate switched network access
18 rate, within the revenue category established in this section,
19 below parity on a revenue-neutral basis, or from making other
20 revenue neutral rate adjustments within this category.

21 (7) For purposes of this section, "intrastate switched
22 network access rate" means the composite of the originating
23 and terminating network access rate for carrier common line,
24 local channel/entrance facility, switched common transport,
25 access tandem switching, interconnection charge, information
26 surcharge, and local switching.

27 (8) For purposes of this section, "revenue neutral"
28 means that the total revenue within the revenue category
29 established pursuant to this section remains the same before
30 and after the local exchange telecommunications company
31 implements any rate adjustments under this section.

1 Calculation of revenue received from each service prior to
2 implementation of any rate adjustment shall be made by
3 multiplying the then-current rate for each service by the most
4 recent 12 months' actual pricing units for each service within
5 the category, without any adjustments to the number of pricing
6 units. Calculation of revenue for each service to be received
7 after implementation of rate adjustments shall be made by
8 multiplying the rate to be applicable for each service by the
9 most recent 12 months' actual pricing units for each service
10 within the category, without any adjustments to the number of
11 pricing units. Billing units associated with Lifeline
12 Assistance Plan service shall not be included in any
13 calculation under this subsection.

14 Section 4. This act shall take effect upon becoming a
15 law.

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