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December 8, 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**

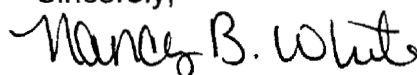
**Docket No. 030868-TP: Petition by Sprint-Florida, Incorporated to reduce intrastate switched network access rates to interstate parity in revenue-neutral manner pursuant to Section 364.164(1), Florida Statutes**

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

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of Joint Response of Verizon Florida, Inc., Sprint-Florida, Inc., and BellSouth Telecommunications, Inc., in Opposition to AARP'S Request for Official Notice, 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 (KA)

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

DOCUMENT NUMBER DATE

12635 DEC-8 8

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 8<sup>th</sup> day of December, 2003 to the following:

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*Nancy B. White*  
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**(+) Protective Agreement**  
**(\*) Hand Delivered**

**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

In re: Flow-through of LEC switched )  
access reductions by IXCs, pursuant to )  
Section 364.163(2), Florida Statutes. )

Docket No. 030961-TI

FILED: December 8, 2003

**JOINT RESPONSE OF VERIZON FLORIDA, INC.; SPRINT-FLORIDA, INC.; AND  
BELLSOUTH TELECOMMUNICATIONS, INC.; IN OPPOSITION TO  
AARP'S REQUEST FOR OFFICIAL NOTICE**

Verizon Florida, Inc., Sprint-Florida, Inc., and BellSouth Telecommunications, Inc. ("Joint Petitioners"), pursuant to Rule 28-106.204(1), Florida Administrative Code, file this Response in Opposition to AARP's Request for Official Notice and state:

1. Joint Petitioners filed their petitions and direct testimony to implement section 364.164<sup>1</sup> by rebalancing rates in a revenue-neutral manner through decreases in intrastate

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<sup>1</sup> All references to "section" or "sections" are to the 2003 version of the *Florida Statutes*.

switched access charges with offsetting rate adjustments for basic local services. A hearing is scheduled for December 10 - 12, 2003.

2. On December 3, 2003, AARP filed a Request for Official Notice requesting the Commission to take official notice of transcripts attributed to floor debates in the Florida House and Senate. AARP offered the transcripts in an effort to show the legislative intent behind section 364.164(1)(a) and (b), Florida Statutes. AARP Request at 2.

3. The Commission should deny AARP's Request for Official Notice because there is no need for resort to extrinsic aids to prove what the legislation means. In addition, the transcripts offered by AARP are not authenticated reliable evidence of what was said in legislative floor debates.

4. AARP's request is premised on its assertion that subsections (1)(a) and (b) of section 364.164 "are sufficiently unclear in their meaning" that it is not possible to ascertain the legislative intent without resort to legislative history.<sup>2</sup> AARP Request at 2. The premise of AARP's request is incorrect: the legislative directive is clear and unambiguous.

5. Section 364.164(1) provides that in determining whether to grant or deny a petition, the Commission is required to

"... 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).

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<sup>2</sup> AARP's own witness, Dr. Mark N. Cooper, has acknowledged that paragraphs (c) and (d) are clear: "Sections (c) and (d) are seemingly straightforward enough ... [and subsection (b) is] seemingly more clear." Direct Testimony of Witness Cooper at 4-5.

6. The Florida Supreme Court has instructed that it is improper to turn to legislative history unless and until the threshold question of whether the statutory language at issue is not clear on its face is addressed; when the legislation is clear, the inquiry into legislative intent starts and stops with the plain meaning of the words chosen by the legislature. *Florida Convalescent Centers v. Somberg*, 840 So. 2d 998 (Fla. 2003). In *Somberg*, the court explained the governing principles as follows:

It is well settled that legislative intent is the polestar that guides a court's statutory construction analysis. When the Court construes a statute, we look first to the statute's plain meaning. Furthermore, when the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning.

\* \* \*

[W]e find the plain language of section 400.023(1) to explicitly and clearly create a cause of action separate and independent from the Wrongful Death Act with its own damages. Therefore, there is no need to resort to an examination of legislative history or other rules of statutory interpretation and construction to determine that section 400.023(1) damages are not controlled by the Wrongful Death Act.

840 So. 2d at 1000-1001 (citations and quotes omitted).

7. Notably, the court in *Somberg* resolved conflicting decisions by two district courts of appeal, in which the courts reached diametrically opposite conclusions on how the legislature intended the statutory language to be interpreted. The district courts had resorted to legislative history and considered various aspects of committee reports and floor debates. This example is a vivid demonstration of why the Commission should resist the invitation to resort to a review of legislative history,<sup>3</sup> whether it be the portion of legislative history offered by the

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<sup>3</sup> Just as in *Somberg*, consideration of the floor debates themselves would confirm that the statutory language is clear and unambiguous; but as the court in that case held, it is unnecessary

AARP or the reams of other material that comprise the legislative history. Ambiguities can be manufactured, interpretations can be suggested that are contrary to those clear from the actual language in the statutes, and the end result could be a misinterpretation of the law as actually enacted.

8. A review of the testimony of Witness Cooper on behalf of AARP shows that the intent of AARP in requesting official notice of the floor debates is not to clarify an ambiguity in the statute, but rather to manufacture an ambiguity and to suggest an interpretation that is contrary to the actual language of the statute. For example, at page 5 of Witness Cooper's Direct Testimony regarding the requirement that the Commission "consider whether granting the petition will ... (b) Induce enhanced market entry," Witness Cooper states as follows:

While this subsection is seemingly more clear, the legislative debate and statements by the legislation's supporters appear to state that the Florida Legislature intended that 'competition would have to be proven to result' as opposed to merely being more likely to result from residential and single-line business rates being increased at the levels requested.

Witness Cooper, thus, acknowledges the clarity of the statutory language, but nonetheless attempts to fabricate an ambiguity through his reference to selected statements in the floor debate.

9. Witness Cooper makes a similar attempt to fabricate ambiguity with regard to paragraph 364.164(1)(a) in arguing that the Legislature intended that paragraph to require a demonstration that "residential customers be shown to receive actual net financial benefits in the form of lower overall monthly bills through offsetting reductions in intrastate toll rates." Cooper

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(and therefore inappropriate) to take the step of considering legislative history simply to support the determination that the statute is clear.



Direct Testimony at 14. That simply is not what the law states, and again, the purpose sought in citing to selected portions of the floor debate is to create ambiguity where none exists.

10. The First District Court of Appeal emphasized the dangers of resorting to legislative history, and in particular, the unreliability of comments made by legislators during floor debate, in *Smith v. Crawford*, 645 So. 2d 513, 525 fn 8 (Fla. 1<sup>st</sup> DCA 1994), as follows:

It appears as though the trial court's misreading of the Act grew out of its misplaced reliance on comments made during legislative floor debate. This result shows the inherent difficulties in using such evidence to illuminate legislative intent. Commentators have frequently discussed the unreliability of comments made during floor debate: Courts have generally refused to consider statements made during floor debate as evidence of legislative intent. Various reasons have been advanced for this rule. Some legislators may not have been present during floor debate. Often what is said in debate is for the benefit of constituents only and may be regarded by courts as self serving. Furthermore, supporters of a controversial measure may fear that too much explanation and discussion will cause its defeat, and thus they attempt to minimize debate. ... [L]egislative history ... has the potential to mute (or indeed override) the voice of the statute itself, .... and even encourage the court to engage in high fiction in interpreting statutes. ... In fact, ... it sometimes seems that citing legislative history is still ... akin to looking over a crowd and picking out your friends.

*Id.* (citations and quotes omitted). These comments are particularly apt in this case.

11. AARP, through the Direct Testimony of Witness Cooper, is asking the Commission to expand the scope of section 364.164(1) to require the Commission to consider as a criteria in determining whether to grant or deny the rebalancing petitions to what levels the interexchange carriers will reduce specific toll rates. Nowhere in that subsection is that enumerated as a criteria for determining whether to grant or deny the rebalancing petitions.

12. The Commission should determine that the statutes at issue in this proceeding are not unclear or ambiguous, and that there is no need to take official recognition or to resort to select legislative history in the form offered by AARP.

13. Further, the Commission should deny AARP's Request for Official Notice because the transcripts AARP offers are not authenticated as reliable.

14. AARP filed its request for official notice pursuant to section 90.204, part of the Florida Evidence Code, which provides the procedure for requesting judicial notice of matters contained in sections 90.201 and 90.202. AARP does not identify any provisions in these two sections that require or allow judicial notice of the proffered transcripts. There are no categories in section 90.201 (listing the matters of which courts must take judicial notice) that could arguably apply. The only category in section 90.202 (listing the matters of which courts may take judicial notice) that appears broad enough to even arguably apply is subsection (12): “[f]acts that are not subject to dispute because they are capable of accurate and ready determination by resort to sources whose accuracy cannot be questioned.”

15. Here, AARP's Request for Official Notice is of transcripts prepared in October by a Court Reporter certified to be from “an audiotape.” Such a transcript prepared by court reporter not actually present at the proceedings is hearsay. *See, e.g., Manuel v. State*, 737 So. 2d 580 (Fla. 1st DCA 1999); *Duggan v. State*, 189 So. 2d 890 (Fla.App. 1966). The legislative transcripts at issue are not “sources whose accuracy cannot be questioned,” and the Commission should deny AARP's Request for Official Notice of such transcripts.

For the reasons expressed, Joint Petitioners respectfully request that AARP's Request for Official Notice be DENIED.

Respectfully submitted this 8<sup>th</sup> day of December, 2003.

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