**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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| In re: Petition of Verizon Florida Inc. to Reform Its Intrastate Network Access and Basic Local Telecommunications rates in Accordance with Florida Statutes, Section 364.164 | Docket No. 030867TL |
| In re: Petition of 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 by BellSouth Telecommunications, Inc., To Reduce Its Network Access Charges Applicable To Intrastate Long Distance In A Revenue-Neutral Manner | 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-TO<br>Filed January 8, 2003 |

**AARP MOTION FOR RECONSIDERATION OF COMMISSION ORDER NO. PSC-03-1469-FOF-TL**

AARP, through its undersigned counsel, pursuant to Rules 25-22.0376, 25-22.060 and 28-106.204, Florida Administrative Code, hereby files its motion for reconsideration of Florida Public Service Commission ("Commission") Order No. PSC-03-1469-FOF-TL. In support of this motion, AARP states:

1. Commission Order No. PSC-03-1469-FOF-TL, was issued Christmas Eve, December 24, 2003, granting BellSouth, Sprint and Verizon a total of $344.3 million in annual rate increases. At Page 59 of this Order, which provides "notice of further proceedings or judicial review" appears the following statement:

> Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code.

This motion for reconsideration was filed on January 8, 2004, the 15th day after the issuance of the instant order.

2. As more fully described below, AARP believes this Commission overlooked or failed to consider a series of points of fact or law, which points of fact and law should be reconsidered by this Commission with the result that the Commission should modify its final order so that no rate increases are granted to BellSouth, Sprint and Verizon (the "ILECs").

**Mistakes or Points of Law Overlooked**

3. Page 58 of the instant order includes the following ordering paragraph:

> ORDERED that Commission staff is hereby authorized to administratively review and approve the tariffs implementing these decisions. It is further
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> * * *

The above provision is directly inconsistent with the statutory dictate requiring the Commission to issue a subsequent final order on the rate increases before they can be charged. Specifically, Section 364.164(2), F.S. states:

> (2) If the commission grants the local exchange telecommunications company's petition, the local exchange telecommunications company is authorized, the requirements of s. 364.051(3) notwithstanding, to immediately implement a revenue category mechanism consisting of basic local telecommunications service revenues and intrastate switched network access revenues to achieve revenue neutrality. The local exchange telecommunications company shall thereafter, on 45 days'

> notice, adjust the various prices and rates of the services within its revenue category authorized by this section once in any 12-month period in a revenue-neutral manner. An adjustment in rates may not be offset entirely by the company's basic monthly recurring rate. All annual rate adjustments within the revenue category established pursuant to this section must be implemented simultaneously and must be revenue neutral. The commission shall, within 45 days after the rate adjustment filing, issue a final order confirming compliance with this section, and such an order shall be final for all purposes.

(Emphasis supplied.) The Commission should modify its order to reflect that its staff shall not be authorized to administratively review and approve the tariffs implementing the rate increases approved. Rather, the Commission should state that no rate increases shall be implemented until after the Commission issues its order consistent with the above-cited law.

4. The Commission in the instant final order either directed changes or accepted ILEC "concessions" that modified the amended petitions filed by the ILECs. Such modifications, several of which occurred during closing arguments and which were therefore beyond the ability of AARP and other customer parties' ability to examine through discovery or cross-examination, appear to be in direct conflict with the statute under which these rate increases were sought. Specifically, Section 364l164(1), F.S. states 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.

(Emphasis supplied.) Unlike other regulatory statutes that allow the Commission to modify rate increase petitions, it appears clear that the relevant statute, which was written by the industry, intends that the Commission vote up or down the

petitions as filed and not amend the same. Accordingly, it appears that the Commission, had it been desirous of granting the petitions, but in an amended fashion, should have denied the petitions, but with clear instructions that properly amended petitions would be considered on an accelerated basis.

**Mistakes of Fact or Facts Overlooked**

5. The Commission has made factual mistakes in reaching the following conclusion:

> 1. Intrastate access rates currently provide support for basic local telecommunications services that would be reduced by bringing such rates to parity with interstate access rates.

This finding is the most critical of the entire case because in the absence of access support for basic rates, such support cannot possibly be removed and cannot prevent the creation of a more attractive competitive local exchange market for the presumed benefit of residential consumers. The four factors prescribed by Section 364.164(1), F.S. are clearly cumulative. Without satisfying each factor, the petitions in their entirety must fail. The Commission clearly erred in finding that such support existed because it ignored the obvious reality that the ILECs earn hundreds of millions of dollars a year in vertical services, access fees and other ancillary services, which services could not be sold absent the existence and utilization of the residential local loop. This Commission mistakenly assigned the entire cost of the local loop only to basic local service.

6. Beginning at Page 21 of the instant order the Commission made the following finding and decision:

> We find that the ILECs' access charge rates provide support to local exchange service. In making this determination, we accept the

> economic testimony of the ILECs' and IXCs' witnesses, which treat the cost of the local loop as a cost of basic local service. In particular, the testimony shows there is no economic principle requiring that the cost of that loop be allocated across other ancillary services that are provided over the loop.
>
> We are not persuaded by the testimony of AARP and OPC's witnesses that all or some of the cost of the local loop should be shared, such that any costs shared by more than one service would be excluded from the ILECs' Total Service Long Run Incremental Cost (TSLRIC) calculations. This would be inconsistent with our past decisions, perhaps most notably in our 1998 Report on Fair and Reasonable Rates to the Legislature, that the costs associated with the local loop should not be allocated. The arguments raised by OPC and AARP have been considered and rejected in the past, and we find no new persuasive basis upon which to deviate from our consistent policy on this issue.

It appears that the Commission's only past decision on this point, which decision arose from a workshop hearing, was the above-cited 1998 Report on Fair and Reasonable Rates. AARP would submit that the conclusions of this report: (1) are not legally binding; (2) are not economically and logically sound; and (3) fly in the face of the financial facts governing the operation of the ILECs. Specifically, it was the testimony of all the witnesses addressing the issue, including the ILECs' witnesses, that services other than basic local service, such as high-value, high rate services like vertical services, long distance access, and directory assistance could not be sold on a wire line basis without the existence of the local loop as represented by the "dumbbell" exhibit prepared by AARP. Thus, this Commission's decision in this case is that the totality of the local loop's often substantial costs must be borne solely by just one service utilizing it, namely basic local service, while all of the other services that require its existence get a "free ride." While it may be true that there is "no economic

principle requiring that the cost of that loop be allocated across other ancillary services that are provided over the loop," AARP believes that fundamental fairness and basic common sense require that all services dependent upon the local loop bear a fair share in supporting its costs. As recognized by most, if not all, of the ILEC witnesses, this Commission could very easily make such a fair apportionment of the costs of the local loop to those services requiring its existence by comparing the ratio of revenues earned by each service using the loop to the total cost of the local loop. There is no legal prohibition against such a common sense analysis and AARP believes that such an analysis would reveal that there is, in fact, no support, from any source, of the local loop to be diminished by the very large rate increases sought here. Accordingly, AARP would urge the Commission to reconsider its decision on the allocation of the costs of the local loop, share those costs proportionately among the services using the loop and conclude that there is no support to be removed by higher local rates.

7. If there is no support of basic local service rates to be reduced or eliminated, then it stands to reason that the Commission's next two summary findings, found beginning at Page 17, must fail too. They are:

> 2. The existence of such support prevents the creation of a more attractive competitive local exchange market by keeping local rates at artificially low levels, thereby raising an artificial barrier to entry into the market by efficient competitors.
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> 3. The elimination of such support will induce enhanced market entry into the local exchange market.

Again, if there is no support for basic local rates as maintained by AARP, then these two points are moot.

8. Even if there were a measure of support for basic local service flowing from access fees, the totality of the record does not support a finding that their existence raises an artificial barrier to entry by efficient competitors. Rather, the record shows that there had been ever increasing competition for residential customers over the years even without the necessity of higher CLEC profit margins from increased basic local service rates. The fact that there is currently substantially more competition for business customers is explained by the simple fact that those customers are "where the money is." That fact isn't necessarily problematic or an excuse for unnecessarily raising residential rates.

9. As to the notion of increasing basic local residential rates to induce "enhanced market entry into the local exchange market," the record simply doesn't demonstrate that is the case. The oft-repeated example of Knology demonstrates that this company came to North Florida long before there was an expectation of legislation to increase basic local service rates. The reality is that Knology is a cable TV operation that sells telephone service as an ancillary operation. The record shows that Knology agreed to buy Verizon's Tampa Bay area cable operations prior to this Commission's approval of any increased local rates and there is no record evidence to support a finding that they would back out of the purchase if local residential rates were not increased. The same is essentially true of AT&T's decision to announce local service

operations in the Miami area, which decision was announced prior to this Commission's vote in this case and which decision could just as easily be attributed to the Commission's recent UNE-P order. In summary, there is no competent, substantial record evidence demonstrating that local service competition will result from either increasing local service rates as substantially as this Commission has ordered or accepting the "actual" competition arguments made by the access legislation's sponsors and others who spoke in the House and Senate floor debates made a part of the record in this case.

10. The benefits to residential customers envisioned by this Commission in its order are not borne out by the record in this case. For example, there is no demonstration that there will be a single, actual new provider of local service in this state as a result of the rates being increased as now ordered. Likewise, there was no testimony speaking to any identifiable "new and innovative service offerings" separate and apart from the "bundles of services" that are already being offered by all the ILECs, which bundles, by and large are being excluded from any rate increases compelled by this order. The exclusion of these service bundles necessarily will cause customers to migrate to the bundles to avoid apparent increases. Such a migration will significantly harm low-income customers because they will be unable to afford the higher bundle prices merely to avoid the basic local service increases.

11. There was also no testimony to support identifiable "technological advances" that might result from the rate increases being imposed, which advances would not appear otherwise. Furthermore, the finding at Page 17 that "increased quality of service" will result simply flies in the face of the fact that these increases will trigger another provision of the new statute allowing the ILECs to attempt to eliminate the Commission's quality of service jurisdiction entirely once statutory parity is reached. Such an eventuality would be impossible absent these increases being ordered. Lastly, on the customer benefits summarized on Page 17, there is not a shred of evidence in this record that "over the long run, [there will be] reductions in prices for local service." To the clear contrary, the Commission's ordering of these increases "triggers" yet another statutory provision that will allow the ILECs to increase their basic local service rates by as much as 20 percent per year without even seeking Commission approval. This level of increases stands in stark contrast to the statutory status quo that would obtain absent the ordered rate increases, which is a scheme allowing local rates to increase annually by no more than the rate of inflation minus one percent.

12. This Commission has erred as a matter of fact and law in concluding that the residential customers will benefit as a result of these very large rate increases, especially when considering the Commission's discussion of the potential flow-back of access fee reductions through the IXC's reduced instate toll rates. It is clear from the floor debate of Representative Ritter, a

House sponsor of the industry legislation, that she envisioned this Commission's actions resulting in revenue neutral results for residential customers, at least as a whole, when she spoke of the ability she foresaw of her parents being able to breakeven on the local service rate increases as a result of making more toll calls at reduced rates. The reality is, as this Commission knows, and the courts and public will eventually know, that residential customers cannot expect to even potentially see a minimal return in lowered instate tolls as compared to the large increases they will pay in local service rates. This is because the large and very large business customers of the IXCs, who pay no local service rate increases through these petitions, will, by this Order, receive substantially more than one-half of the instate toll reductions. On the other hand, residential customers, who will pay fully 90 percent of the local rate increases (single-line business customers pay the balance), will potentially benefit only from the remainder, which necessarily is substantially less than one-half. The fact is that residential consumers, assuming they make instate calls, or make them in any appreciable number without the use of calling cards or dial around services as supported by the public hearing record, cannot begin to benefit by this order to the extent they will suffer clear detriments as a result. The Commission's order does not do justice to the examination of the benefits and costs borne by the residential customers. Thus, AARP strongly urges the Commission to undertake such an examination on reconsideration.

13. At Page 30 of the Order the following finding highlighted finding is demonstrably and mathematically incorrect:

> While Section 364.164 does not mandate that we consider the degree of benefit to residential customers from long distance rate reductions, our review of the legislative history convinces us that it is within our discretion to do so. Thus, we have considered witness Ostrander's argument that the Petitioners have been unable to quantify the impact of competition, and therefore have been unable to show the benefit to customers. We reject that argument, and find that the preponderance of the evidence in the proceeding shows that the benefits to residential customers as a whole generated by the resulting decreases in long distance rates and elimination of the in-state connection fee will outweigh the increases in local rates. This benefit should be a continuing one, since the IXCs have indicated that they will flow through the reductions on a pro-rata basis according to minutes of access, and the record indicates that market forces should exert enough pressure to ensure that rates are kept low. Furthermore, as in the wireless industry, whose ability to offer bundled packages has been facilitated by the fact that they do not pay the high level of access fees that the wireline carriers do, we anticipate that the reduction in access fees will result in an increase in bundled offerings by wireline carriers and a decrease in the distinction between wireline local and long distance service.

(Emphasis supplied.) The above statement is simply false and should be corrected on reconsideration. The evidence of record shows that roughly 90 percent of the total annual rate increases of $344.3 ordered, or about $310 million, will be borne by the ILEC's residential customers, while the balance is carried by their single-line business customers, who receive both lower dollar per month increases and percentage increases than the residential customers. On the other hand, the IXCs have publicly admitted, and this Commission has approved, that they plan to flow-back the $344.3 million of access fee reductions, although for a clearly limited time, to all their customers, including their multi-line business customers, who, again, receive no rate increases per this Order. The IXCs approved plan is to flow-back the dollar reductions in the same proportion that the various customer classes utilize instate access minutes. Although filed as confidential data on grounds not warranting such protection in AARP's view,

the IXC's have revealed that substantially more than half of the access reductions will flow to their respective large and very large customer classes. The remaining amount, which is substantially less than half on average, will go to the residential customers to reduce instate connection fees, which is only applicable to those limited number of residential customers paying such an unwarranted fee, and remainder through reduced instate toll rates in residential plans, for those making such calls and through means that will reflect the reductions. The bottom line is that it is mathematically impossible for the substantially less than half of $344.3 million to equal, let alone "outweigh" the $310 million a year that the residential customers alone will be forced to bear in local service rate increases by operation of this Order. Such a finding on dollars is simply impossible and the Commission should appropriately revise its finding on the point.

WHEREFORE, AARP would respectfully request that the Florida Public Service Commission reconsider Order No. PSC-03-1469-FOF-TL and modify as requested in this pleading.

Respectfully submitted,

/s/ Michael B. Twomey
Michael B. Twomey
Post Office Box 5256
Tallahassee, FL 32314-5256
(850) 421-9530

Attorney for AARP

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

I HEREBY CERTIFY that a copy of the foregoing document has been furnished by U.S. Mail, and/or email to the following parties on this 8th day of January, 2004.

Nancy B. White, Esquire
James Meza, III, Esquire
c/o Nancy Sims
150 South Monroe Street, Suite 400
Tallahassee, Florida 32301

Richard Chapkis, Esquire
Vice President & General Counsel
FLTC0717
201 North Franklin Street
Tampa, Florida 33602

Beth Keating, Esquire
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Charlie Beck, Esquire
Office of the Public Counsel
c/o The Florida Legislature
111 West Madison Street
Tallahassee, Florida 32399-1400

John P. Fons, Esquire
Ausley & McMullen
Post Office Box 391
Tallahassee, Florida 32302

Tracy Hatch, Esquire
AT&T
101 North Monroe, Suite 700
Tallahassee, FL 32301

Donna McNulty, Esquire
MCI WorldCom, Inc.
1203 Governors Square Blvd.
Suite 201
Tallahassee, FL 32301-2960

Susan Masterton, Esquire
Sprint-Florida, Incorporated
P.O. Box 2214
Tallahassee, FL 32316

Charles Rehwinkel, Esquire
Sprint-Florida, Incorporated
1313 Blair Stone Road
FLTH00107
Tallahassee, FL 32301

Floyd Self, Esquire
Messer, Caparello & Self
Post Office Box 1876
Tallahassee, FL 32302-1876

George Meros, Esquire
Gray Robinson
Post Office Box 11189
Tallahassee, Florida 32302-3189

Harris R. Anthony, Esquire
BellSouth Long Distance, Inc.
400 Perimeter Center Terrace
Suite 350
Atlanta, Georgia 30346

Jack Shreve, Esquire
Office of the Attorney General
PL-01 The Capitol
Tallahassee, Florida 32399-1050

/s/ Michael B. Twomey
Attorney