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March 15, 2004

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 BellSouth Telecommunications, Inc.'s and BellSouth Long Distance Inc.'s Response to AARP's Motion for Reconsideration and Motion for Oral Argument, 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
Nancy B. White (RH)

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

DOCUMENT NUMBER-DATE

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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 First Class U. S. Mail this 15th day of March, 2004 to the following:

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(+) Protective Agreement
(*) Hand Delivered

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Verizon) DOCKET NO. 030867-TL
Florida Inc. to reform)
intrastate network access and)
basic local telecommunications)
rates in accordance with Section)
364.164, Florida Statutes.)

In re: Petition by Sprint-) DOCKET NO. 030868-TL
Florida, Incorporated to reduce)
intrastate switched network)
access rates to interstate)
parity in revenue-neutral manner)
pursuant to Section 364.164(1),)
Florida Statutes.)

In re: Petition for implementation) DOCKET NO. 030869-TL
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.)

In re: Flow-through of LEC) DOCKET NO. 030961-TI
switched access reductions by IXC's,)
pursuant to Section 364.163(2),)
Florida Statutes.)
_____)

**RESPONSE OF BELLSOUTH AND BELLSOUTH LONG DISTANCE
TO AARP'S MOTION FOR RECONSIDERATION AND
REQUEST FOR ORAL ARGUMENT**

Pursuant to rule 25-22.060, Florida Administrative Code, BellSouth Telecommunications, Inc. ("BellSouth") and BellSouth Long Distance, Inc. ("BellSouth Long Distance") file this Response to (1) AARP Motion for Reconsideration of Commission Order No. PSC-03-1469-FOF-TL ("Motion for Reconsideration") and to (2) AARP Request for Oral

Argument on Reconsideration of Commission Order No. PSC-03-1469-FOF-TL (“Motion for Oral Argument”) and states:

1. Both of AARP’s motions should be denied. The Motion for Reconsideration on its face does not meet the standard of review for such a motion. *See, e.g., Diamond Cab Co. v. King*, 146 So. 2d 889, 891 (Fla. 1962); *Pingree v. Quaintance*, 394 So. 2d 162, 162 (Fla. 1st DCA 1981.) The Court in *Diamond Cab* articulated the standard of review for a motion for rehearing or reconsideration as follows:

The purpose of a petition for rehearing is merely to bring to the attention of the trial court or, in this instance, the administrative agency, some point which it overlooked or failed to consider when it rendered its order in the first instance. It is not intended as a procedure for re-arguing the whole case merely because the losing party disagrees with the judgment or the order.

146 So. 2d at 891 (internal citations omitted) (emphasis supplied). This Commission has acknowledged and applied the *Diamond Cab* standard. *See, e.g., In re Petition on behalf of Citizens of the State of Florida to initiate investigation into integrity of Southern Bell Telephone and Telephone Company’s repair service activities and reports*, Docket No. 910163-TL, Order No. 25483 (December 17, 1991) (“*Southern Bell*”) (*Diamond Cab* requires movant to establish that the decision-maker made an error in fact or law that requires reconsideration). *See also Stewart Bonded Warehouse, Inc. v. Bevis*, 249 So. 2d 315, 317 (Fla. 1974) (reweighing of evidence is not a sufficient basis for granting a motion for reconsideration).

2. The vast majority of AARP’s Motion for Reconsideration is simply re-argument of issues that were fully presented to the Commission during consideration of the above-styled dockets and thoroughly addressed in the Order of December 24, 2003, concerning those dockets (“Commission’s Order”). The remaining points made by AARP do not constitute an error of fact

or law that would justify granting the Motion. *See Southern Bell*. AARP's arguments will be addressed in the order they were raised in the Motion for Reconsideration.

3. AARP contends on page 2 of its Motion that language relating to administrative review and approval of tariffs is contrary to section 364.164(2), Florida Statutes. The language identified by AARP on page 58 of the Commission's Order provides as follows: "ORDERED that Commission staff is hereby authorized to administratively review and approve the tariffs implementing these decisions. . . ." AARP contends that this language conflicts with the following statement in section 364.164(2): "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."

4. BellSouth and BellSouth Long Distance interpret the Commission's Order as stating that staff is directed to administratively review the tariffs and prepare an order for the Commission's consideration. Consistent with the requirement of section 364.164(2), the Commission itself would issue the final order confirming compliance with the statute. This interpretation is consistent with the language on page 58 of the Commission's Order. Nonetheless, to avoid any possible confusion, the Commission could issue a Clarifying Order stating that the Commission itself will issue the order as required by section 364.164(2), Florida Statutes.

5. AARP argues on page 3 of its Motion that the Commission's acceptance of "concessions" made by BellSouth and other incumbent local exchange companies (ILECs) at hearing violates section 364.164(1) because the Commission must "vote up or down" an ILEC petition as originally submitted. *See AARP Motion at 3*. AARP cites no legal support for this position, arguing only that section 364.164(1)'s requirement that the Commission issue a final

order “granting or denying” the petition “appears” to mean that a petition cannot be changed once it is originally submitted. *Id.* at 3-4. Neither AARP nor any other party objected to any so-called concession at any point.

6. The alleged “concessions” referred to by AARP are listed in the Commission’s Order at 56.¹ They are described by the Commission as “additional proposals offered by the companies.” *Id.* All of these so-called concessions benefit the members of AARP, as well as other Florida customers. Thus, it is curious why AARP chooses to take issue with them now and suggest that it had no opportunity to examine some of them through discovery or cross-examination. AARP Motion for Reconsideration at 3.²

¹ One “concession” made by BellSouth – that Lifeline rates would not be increased for four years – is not listed on page 56 of the Commission’s Order because it actually was made in BellSouth’s Original Petition, filed with the Commission on August 27, 2003. *See* BellSouth Petition at p. 4, ¶ 8.; *see also* BellSouth Revised Petition, filed on September 30, 2003, at p. 4, ¶ 8. This proposal also was outlined by BellSouth witness John A. Ruscilli in his revised direct testimony. *See* Transcript (“Tr.”) at p. 275, lines 18-22 (“As an added element of security for current Lifeline rates, BellSouth voluntarily agrees that customers receiving Lifeline service will not be subject to any residential basic local service rate increases for a period of four years effective September 1, 2003, which is the effective date established for Section 364.10.”). Thus, contrary to AARP’s assertion, any party had ample time to explore that BellSouth concession in discovery and through cross-examination. Sprint and Verizon subsequently agreed not to increase Lifeline rates for four years. *See* Commission’s Order at 56. BellSouth also agreed to increase its non-recurring charge so that the recurring single line residential rate increase would be lowered by approximately \$0.36. Commission’s Order at 45 n.7, 56. Additionally, as did the other ILECs, BellSouth agreed to increase Lifeline eligibility to 135% of the federal poverty level. Commission’s Order at 19, 56.

² To the extent AARP is arguing that it was denied procedural due process by its inability to examine the “concessions” through discovery or cross-examination, such an argument must fail. An agency’s action will be affirmed even when the agency has committed a procedural error unless the error renders the agency’s proceedings unfair or its action incorrect. *See Carter v. Dep’t of Professional Regulation, Board of Optometry*, 633 So. 2d 3, 5 (Fla. 1994) (finding that the Board’s failure to comply with the time limits set out in section 455.225, Florida Statutes, was harmless error); *Dep’t of Business Regulation v. Hyman*, 417 So. 2d 671, 673 (Fla. 1982) (untimely rendition of final order did not result in the impairment of either the fairness of the proceedings or the correctness of the action). Given that all of the additional proposals offered by the ILECs at hearing benefit AARP members and other Florida customers, it is difficult to understand how the inability to have discovery or cross-examination on those

7. The most prominent of the ILEC proposals accepted by the Commission is the agreement of the ILECs to increase the eligibility criteria for Lifeline assistance from 125% to 135% of the federal poverty level. The Commission's Order repeatedly makes clear that this agreement was not a factor in deciding whether or not to grant ILEC petitions. *See* Commission's Order at 19, 31-32.³ Thus, any argument by AARP that the companies' agreement to expand the Lifeline program somehow "amends" the petitions in a manner that affected the Commission's decision is incorrect.

8. Nothing in section 364.164(1) suggests that during the course of a hearing an ILEC may not voluntarily vary the details of its petition. The only requirement is that the Commission issue a final order "granting or denying" any petition filed pursuant to section 364.164 within 90 days. That requirement was met. As contemplated by the statute, BellSouth filed a petition to rebalance rates in a revenue-neutral manner through decreases in intrastate switched access charges with corresponding rate increases for basic services. The Commission ultimately granted that petition. Those acts were in compliance with the statute.

proposals constitutes error. Even if such error occurred, it is undoubtedly harmless in that it did not render the proceedings unfair or the Commission action incorrect.

³ The Order states:

Although we find it is not a benefit that we should weigh in the balance in considering whether or not to grant the Petitions, the amended Lifeline provisions in Section 364.10 will help to protect economically disadvantaged consumers from the effect of local rate increases. The protection is enhanced by the ILECs' agreement to further increase the eligibility criteria for Lifeline assistance from 125% to 135% of the federal poverty level, increasing the number of customers eligible for the program by approximately 119,000, and to protect Lifeline recipients against basic local service rate increases for four years.

Commission's Order at 19 (emphasis supplied); *see* similar language at pages 31-32.

9. The remainder of the AARP Motion for Reconsideration is pure re-argument.

Beginning on page 4 and continuing through page 12 of its Motion, AARP attacks the Commission's conclusions that:

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.
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.
3. The elimination of such support will induce enhanced market entry into the local exchange market.
4. Enhanced market entry will result in the creation of a more competitive local exchange market that will benefit residential consumers through:
 - a. increased choice of service providers;
 - b. new and innovative service offerings, including bundles of local and long distance service, and bundles that may include cable TV service and high speed internet access service;
 - c. technological advances;
 - d. increased quality of service; and
 - e. over the long run, reductions in prices for local service.

Commission's Order at 17.

10. In reaching its conclusions, the Commission thoroughly and carefully evaluated the ILECs' petitions pursuant to the criteria listed in section 364.164(1), Florida Statutes. *See* Commission's Order at 19-47. The statutory criteria are 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).

§ 364.164(1), Fla. Stat.

11. The parties, including AARP, presented evidence and argument on each of these criteria. *See* Commission's Order at 9 (noting the Commission received the testimony of 26 witnesses on behalf of all parties; heard testimony from customers at 14 customer service hearings conducted throughout the state; accepted written testimony from customers; and received 86 exhibits into evidence).⁴ The Commission's Order makes clear in numerous places that it considered but rejected arguments put forth by AARP concerning the findings that AARP now attacks.

12. **Costs of the Local Loop.** AARP addresses this issue as part of its attack on the Commission's finding that 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. Motion for Reconsideration at 4. The Commission clearly considered but rejected AARP's arguments on this point:

AARP, Common Cause, and Sugarmill Woods agree to a large extent [with OPC, that residential basic local telephone service is not subsidized by access service or any service], although they further argue that there is no support, because the loop itself is a common cost that should be fully allocated among all services that use 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. . . . 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."

Commission's Order at 21-22.

13. The record supports the Commission's finding that the cost of the local loop should not be treated as a common cost. *See* Direct Testimony of BellSouth witness D. Daonne

⁴ The record reflects that BellSouth's proposal is designed to be consistent with the four criteria outlined in the statute. *See* Revised Direct Testimony of BellSouth witness John A. Ruscilli, Tr. p. 279, lines 7-24.

Caldwell, Tr. 371, at lines 11-25;⁵ *see also* “Florida Public Service Commission Report on the Relationship of the Costs and Charges of Various Services Provided by Local Exchange Companies and Conclusions as to the Fair and Reasonable Florida Residential Basic Local Telecommunications Service Rate, February 1999, Vol. 1, p. 52-53 (concluding that the cost of the local loop facilities are properly attributable to the provision of basic local telecommunications service). Tr., p. 263, lines 11-25; p. 264, lines 1-8; Rebuttal Testimony of BellSouth witness Aniruddha (Andy) Banerjee, Tr. p. 496, lines 13-20.

14. Support for Basic Local Service/More Competitive Local Exchange Market for the Benefit of Residential Customers. The AARP argues that if there is no support of basic local service rates to be reduced or eliminated, then the Commission’s findings relating to an artificial barrier to entry into the market by efficient competitors and enhanced market entry must fail. Motion for Reconsideration at 6. Again, the Commission thoroughly addressed this argument:

Although their analysis differs somewhat, OPC, AARP, Common Cause Florida, and Sugarmill Woods each contend there is no support for basic local service; therefore, raising current prices will not create a more attractive competitive local exchange market for the benefit of residential customers. They contend that the existing levels of basic local telecommunications service rates have minimal, if any, impact on making the local exchange market more attractive to competitors. Drs. Gabel and Cooper also provided testimony in this regard on behalf of OPC and AARP, respectively.

....
Upon consideration, we agree with witness Gordon that the current level of support has allowed residential rates to remain lower than they would be in an undistorted competitive market [A]pproving the ILECs’ petitions to reduce intrastate access charges in a revenue neutral manner will, in fact, remove some of the support for local service, which will in turn make local service market entry more attractive for prospective entrants. This testimony was very compelling.

Commission’s Order at 24-25.

⁵ Daonne Caldwell’s prefiled direct testimony was adopted by BellSouth witness W. Bernard Shell, Tr. p. 360, lines 23-25.

15. The record supports the Commission's findings that intrastate access rates currently provide support for basic local telecommunications services and that the existence of such support prevents the creation of a more attractive local exchange market by keeping local rates at artificially low levels, thereby raising an artificial barrier to entry into the market by efficient competitors. *See* Amended Direct Testimony of Dr. Kenneth Gordon, witness for BellSouth, Verizon-Florida Inc., and Sprint-Florida-Inc., Tr. at 128, lines 4-11, who stated that theoretical and empirical research have shown that rebalancing rates and moving them toward levels more commensurate with their underlying costs results in significant benefits to telecommunications customers and benefits the economy. He also testified that rebalancing rates has been demonstrated to have a positive effect on competitive entry into the local exchange market and that the ILECs proposed plans significantly decrease current support for local telecommunications service. *Id.* at Tr. 140, lines 9-13. Dr. Gordon's testimony included the statement that "[b]ecause intrastate access services are priced significantly above their forward-looking direct costs, this means that intrastate switched network access services are supporting basic local service." *Id.* at Tr. 143, lines 3-5. He stated that competitors will not rationally try to compete against heavily subsidized prices and that the ILEC proposals would make for a more attractive market to competitors. *Id.* at Tr. 145, lines 12-19.

16. **Benefit to Residential Consumers.** AARP argues that the benefits to residential customers are not supported by the record. Motion for Reconsideration at 8. Again, this is simply re-argument of positions strenuously put forth by AARP during the prior proceeding. Those arguments were rejected by the Commission:

OPC, AARP, Common Cause Florida, and Sugarmill Woods contend that the ILECs' rebalancing petitions will not benefit residential consumers as contemplated by Section 364.164, Florida Statutes.

....

Upon consideration of the evidence presented as well as the Legislature's clear policy to enhance competition in Florida's telecommunications market, we find that the ILECs' proposals will ultimately benefit residential consumers as contemplated by Section 364.164, Florida Statutes.

Commission's Order at 28.

17. The record supports the Commission's finding that the ILEC proposals will benefit residential customers through increased competition. *See* testimony of Dr. John Mayo, witness for AT&T and MCI, Tr., p. 1218, lines 24-25; p. 1219, lines 1-6 (petitions are in the public interest, are consistent with the statute, and will contribute to the emergency of competition in telephony); *see also* Rebuttal Testimony of BellSouth witness Aniruddha (Andy) Banerjee, Ph.D., Tr. p. 497, lines 6-17, who stated:

Raising basic rates will clearly expand the scope of entry to serve residential customers – especially “low-revenue customers” – who subscribe the BLTS but purchase little, if any, of the other services. Competitors estimate likely total revenues and total costs to make *overall entry* decisions; however, they determine which *types of customers* to compete for by comparing likely revenues with costs for every customer category. Thus, allowing ILECs to raise RBLTS rates should stimulate competition for a wider spectrum of residential customers and, in particular, the low-revenue customers.

18. The witness for Knology stated that his company began operating in Panama City, Florida in 1997, based on an expectation that rate rebalancing would occur, which would make Knology's rates more competitive. *See* testimony of Felix L. Boccucci, witness for Knology, Inc., Tr., p. 773-779. Specifically, he stated at p. 779, lines 16-24:

But what rate rebalancing would enable us to do is to continue to extend our networks in the – we would look at the possibility of extending our networks through the, through the panhandle of Florida. Specifically some of the territory that Sprint currently serves, with rate rebalancing, it makes the competition for the capital in that particular market arena compete with other markets that we have or other opportunities we have for, for capital since we already have the infrastructure in Panama City that we could leverage off of.

19. The witnesses for the Office of Public Counsel and AARP also acknowledged that consumers are better off if they have competitive alternatives and that competition tends to drive prices toward cost. *See* Deposition of Bion C. Ostrander, witness for OPC, **Exhibit 36** to these dockets, at p. 18, lines 9-15; p. 19, lines, 1-8; Deposition of Dr. Mark N. Cooper, witness for AARP, **Exhibit 37** to these dockets, at p. 26, lines 5-13; Deposition of David J. Gabel, witness for OPC, **Exhibit 35** to these dockets, at p. 57, lines 14-20. *See also* testimony of OPC witness Gabel, who acknowledged that rate rebalancing is desirable for competition. Tr., p. 1653, lines 21-24 (“Well, in the end of my direct testimony I point out I think there should be rebalancing. I do. I’m struck by the access rates here. I do think there should be rebalancing.”).

20. **Benefit to Residential Consumers/Long Distance Rate Reduction.** AARP attacks the finding in the Commission’s Order that residential customers, as a whole, will benefit from decreases in long-distance rates. Motion for Reconsideration at 11. The Commission acknowledged the AARP’s arguments on this issue in its Order, but again found that the record supports a different conclusion:

We acknowledge, as OPC, the Attorney General and AARP have argued, that not every residential customer will get a long distance rate reduction, and those who do receive reductions will not necessarily receive reductions that totally offset the increase in their rate for local service. Such ‘bill neutrality’ is not required by the statute and, in fact, would be inconsistent with its plain language.

....
[W]hen considered with the economic testimony received through our technical hearing, we find that customers as a whole will benefit as contemplated by the statute.

Commission’s Order at 30-31.

21. The record supports the Commission’s findings that customers as a whole will benefit by reductions in long-distance rates. *See* Amended Direct Testimony of Dr. Kenneth Gordon, witness for BellSouth, Sprint-Florida, Inc., and Verizon Florida, Inc., Tr., p. 126, lines

19-22 (“Importantly, the companies’ revised rebalancing plans will lead to lower intrastate toll prices for all consumers. At the end of the day, the mix of services that consumers purchase as a result of the companies’ revised plans will make consumers better off overall.”); Revised Direct Testimony of BellSouth witness John A. Ruscilli, Tr. p. 274, lines 12-21 (concluding that to the extent that customers are using long distance services provided by telecommunications companies that pay BellSouth switched access charges, BellSouth’s proposal will result in lower long distance rates for these customers); Testimony of Dr. John Mayo, witness for AT&T & MCI, Tr. p. 1226, lines 18-21 (“There is a simple gain from reducing long distance prices which have a large elasticity to them that outweigh the losses that would be inflicted by raising prices to local service.”).

22. AARP’s arguments on all of these issues were thoroughly considered, but rejected, by the Commission. A motion for reconsideration should not be a mechanism “for re-arguing the whole case merely because the losing party disagrees with the judgment or the order.” *Diamond Cab Co.*, 146 So. 2d at 891.

23. AARP’s Motion for Oral Argument should also be denied. As previously noted, AARP’s Motion largely rehashes issues that were fully litigated before this Commission and thoroughly addressed in a three-day hearing on December 10-12, 2003. *See* Commission’s Order at 9. This Commission has considered the evidence in its entirety and has heard arguments of all counsel at the hearing in December. *Id.* Nothing in AARP’s Motion identifies an error in fact or law that requires this Commission to reconsider its decision. Thus, oral argument simply is unnecessary.

For the reasons expressed, BellSouth and BellSouth Long Distance request that AARP’s Motions for Reconsideration and for Oral Argument be denied.

Respectfully submitted this ____ day of March, 2004.

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