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 ORDER NO. PSC-03-1469-FOF-TL ISSUED: December 24, 2003

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

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ORDER ON ACCESS CHARGE REDUCTION PETITIONS

I. INTRODUCTION AND HISTORY

The telecommunications industry is in transition from an industry characterized by regional monopolies to one characterized by national competition. For most of its history, telephone service was furnished on a monopoly basis by a single provider. In exchange for a statutory monopoly, the telephone company was subject to economic regulation that gave it the opportunity to earn a fair rate of return on its investment. In this monopoly regime, prices for long distance and other premium services were set substantially above cost based on value of service principles. At

the same time, local telephone service was priced residually to advance the social policy goal of providing universal service.

Effective January 1, 1984, this monopoly regime was radically changed nationwide by the entry of the "modified final judgment"[1] which reorganized AT&T and divested it of its local telephone companies, restricted the operating areas of the local telephone companies, and provided for competitive interstate long distance service. See, Microtel, Inc. v. Florida Public Service Commission, 483 So.2d 415, 416 (Fla. 1986)(Microtel II). In apparent anticipation of the forthcoming consent judgment in the AT&T case, and motivated by a desire to promote competitive long distance telephone service within Florida, the Legislature in 1982 amended Florida law to allow the Commission to issue certificates for competitive intrastate long distance service. Id. at 417-418. As the Florida Supreme Court recognized in Microtel Inc. v. Florida Public Service Commission, 464 So.2d 1189, 1191 (Fla. 1985)(Microtel I), the 1982 Legislature made the "'fundamental and primary policy decision' that there be competition in long distance telephone services" in Florida.

As long distance competitors entered the market, state and federal regulators instituted a system of intercarrier compensation under which long distance companies paid "access charges" to the local exchange telephone companies for the use of the local networks to originate and terminate long distance calls. As the record reflects, these access charges were initially set to take the place of the revenue that had been provided by long distance service under the monopoly regime.

A decade after the introduction of long distance competition, the landscape in the telecommunications industry changed again with the elimination, first in Florida and then nationwide, of the statutory monopoly for local exchange service. In 1995, the Florida Legislature amended Chapter 364, Florida Statutes, to allow

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[1] United States v. American Telephone and Telegraph Co., 552 F. Supp 131 (D.D.C. 1982) aff'd sub nom, Maryland v. United States, 460 U.S. 1001 (1983), as subsequently modified by United States v. Western Electric Co., 569 F. Supp. 990 (D.D.C. 1983) and United States v. Western Electric Co., 569 F. Supp. 1057 (D.D.C.), aff'd sub nom, California v. United States, 464 U.S. 1013 (1983).

for competition in the provision of local service. The Legislature found that "the competitive provision of telecommunications services, including local exchange service, is in the public interest and will provide customers with freedom of choice, encourage the introduction of new telecommunications service, encourage technological innovation, and encourage investment in telecommunications infrastructure." Section 364.01(3), Florida Statutes. In conjunction with the opening of the local exchange market to competition, the incumbent local exchange companies (ILECs) were permitted to elect to substitute price regulation for the former rate base, rate of return regulation. Section 364.051, Florida Statutes.

The opening of the Florida local market to competition was followed the next year by the enactment of the federal Telecommunications Act of 1996 (1996 Act). Pub. L. No. 104-104, 104th Congress 1996, 110 Stat. 56, 47 U.S.C. §§ *et. seq.* This act established a national framework to enable competitive local exchange carriers (CLECs) to enter the local telecommunications market and to allow the former Bell Operating Companies to reenter the interLATA long distance market. The purpose of the 1996 Act was to bring the benefits of competition to all telecommunications markets by creating a pro-competitive, de-regulatory national policy framework. Senate Rpt. 104-023, entitled "Telecommunications Competition" (March 30, 1995).

Over the 19 years since the introduction of long distance competition, both interstate access charges and intrastate access charges have been reduced. Despite these reductions, the record shows that intrastate access charge rates in Florida are among the highest in the nation and are substantially above interstate access charge rates. The record also shows, as further analyzed in Section VI(B) of this Order, that intrastate long distance rates in Florida (through which an IXC must recover, among other things, its intrastate access charge costs) are likewise among the highest in the nation, and are substantially above interstate long distance rates. Local service rates in Florida, however, are the lowest in the Southeast.

While the long distance market is now vigorously competitive, local wireline competition has progressed more slowly, particularly in the residential market. At the same time, wireline companies

are facing increased competition from providers using alternative technologies such as wireless, cable, and voice over internet protocol (VoIP). See FPSC Annual Report on Competition (June 30, 2003).

Against this backdrop, the Florida Legislature, during the 2003 Regular Session, enacted the Tele-Competition Innovation and Infrastructure Enhancement Act (2003 Act), which became effective on May 23, 2003. In broad terms, the 2003 Act allows the Commission to consider whether allowing the ILECs to reduce their intrastate access charges to interstate levels, and to make offsetting increases in local service rates, will further the Legislature's goal of increasing competition in the local telephone market. By returning some regulation of intrastate access charges to the Commission, the Legislature has given us the tools to address the question of whether access charges in fact support artificially low local service rates that may be impairing the implementation of competition in the local telephone market.

A key provision in the 2003 Act, Section 364.164, Florida Statutes, provides a process by which ILECs may petition this Commission to reduce their intrastate switched network access rates in a revenue-neutral manner. We are required by law to issue our final order granting or denying any such petition within 90 days of the filing. In reaching our decision, Section 364.164(1), Florida Statutes, sets forth four mandatory criteria we must consider. Those criteria are:

> [W]hether 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).

In laymen's terms, subsection (1)(d) means that any ILEC that is permitted to reduce its intrastate switched network access rates may offset those reductions through simultaneous increases in the local rates charged to its flat-rate residential and single-line business customers.

In addition, Section 364.163(2), Florida Statutes, provides a mechanism to ensure that any IXC that receives the benefits of access charge rate reductions will flow those benefits through to both residential and business customers in the form of lower intrastate long distance rates:

> Any intrastate interexchange telecommunications company whose intrastate switched access rate is reduced as a result of the rate adjustments made by a local exchange telecommunications company in accordance with s. 364.164 shall 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 intrastate interexchange telecommunications company may determine the specific intrastate rates to be decreased, provided that residential and business customers benefit from the rate decreases. Any in-state connection fee or similarly named fee shall be eliminated by July 1, 2006, provided that the timetable determined pursuant to s. 364.164(1) reduces intrastate switched network access rates in an amount that results in the elimination of such fee in a revenue-neutral manner. The tariff changes, if any, made by the intrastate interexchange telecommunications company to carry out the requirements of this subsection shall be presumed valid and shall become effective on 1 day's notice.

Section 364.163(3) gives this Commission continuing regulatory oversight regarding the access charge reduction flow-throughs described in subsection (2).

Finally, the 2003 Act amended Section 364.10 to provide increased protection to economically disadvantaged customers. This section requires any ILEC that reduces its access charges (and increases its local rates) pursuant to Section 364.164 to make its Lifeline Assistance Plan available to customers with incomes at or below 125% of the federal poverty level, up from 100% or less under the prior law.

Our jurisdiction in this matter arises from the above statutory provisions.

II. CASE BACKGROUND

On August 27, 2003, Verizon Florida Inc. (Verizon), Sprint-Florida, Incorporated (Sprint), and BellSouth Telecommunications, Inc. (BellSouth), each filed petitions pursuant to Section 364.164, Florida Statutes. Dockets Nos. 030867-TL (Verizon), 030868-TL (Sprint), and 030869-TL (BellSouth) were opened to address these petitions in the time frame provided by Section 364.164, Florida Statutes. On September 4, 2003, the Order Establishing Procedure and Consolidating Dockets for Hearing, Order No. PSC-03-0994-PCO-TL, was issued. At the September 15, 2003, Agenda Conference, the Commission decided to hold public hearings in the above referenced dockets.

On September 3, 2003, the Office of Public Counsel (OPC) filed Motions to Dismiss the Petitions in each of these dockets on the grounds that the Petitions proposed to make rate changes over one year, rather than the two year minimum required by Section 364.164(1)(c). On September 10, 2003, Verizon filed its Response to OPC's Motion to Dismiss. Also on September 10, 2003, Sprint and BellSouth filed their Joint Response to OPC's Motion to Dismiss. At the September 30, 2003, Agenda Conference, we voted to dismiss Verizon, Sprint, and BellSouth's Petitions with leave to amend within 48 hours to address the Commission's determination regarding the application of the two-year time frame in Section 364.164(1)(c), Florida Statutes. On September 30, October 1, and October 2, 2003, respectively, BellSouth, Sprint, and Verizon filed their amended petitions.

By Order No. PSC-03-1240-PCO-TL, we consolidated Docket No. 030961-TI, which was opened to address questions regarding the

IXCs' flow-through to customers of any access charge reductions, into this proceeding for hearing. By Order No. PSC-03-1269-PCO-TL, the procedure in these consolidated Dockets was amended to include additional testimony filing dates and issues to reflect the consolidation of Docket No. 030961-TI. A hearing on this matter was held on December 10-12, 2003.

In this matter, we received the testimony of 26 witnesses on behalf of the ILECs, intervenors, the consumer advocates, and our own Commission staff. We also received testimony from customers at 14 customer service hearings conducted throughout the state, as well as written comments from customers submitted to the docket files associated with this case. In addition, we received into evidence 86 exhibits. We have carefully considered the evidence received in its entirety, as well as the arguments of counsel. Based thereon, we hereby render our decision on the issues presented.

III. MOTIONS

Three motions remained outstanding at the start of our hearing in this matter -- two motions for reconsideration of prior orders and one motion for entry of a summary final order. As a preliminary matter, we addressed the motions as follows:

A. Joint Petitioners Motion for Reconsideration of Order No. PSC-03-1269-PCO-TL, issued Nov. 10, 2003 - Second Order Modifying Procedure for Consolidated Dockets to Reflect Additional Docket, Associated Issues, and Filing Dates

This motion asked that the Commission reconsider the inclusion of Issues 6-10 in the Second Order Modifying Procedure. The motion argued that the inclusion of those issues, which relate to the IXCs' flow-through of any access charge reductions they receive, inappropriately imposed additional criteria on the Joint Petitioners' Petitions for switched network access rate reductions that go beyond the four mandatory criteria enumerated in Section 364.164(1). The Office of Public Counsel filed a response to this Motion on behalf of the Citizens. Upon consideration, we granted the Petitioners' request for oral argument on this Motion at the outset of the hearing.

The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its Order. See, Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974);Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 162 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959); citing State ex.rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315, 317 (Fla. 1974). This standard is equally applicable to reconsideration by the Commission of a Prehearing Officer's order. See, Order No. PSC-96-0133-FOF-EI, issued January 29, 1996, in Docket No. 950110-EI.

Throughout this proceeding, one hotly contested issue has been whether, in making its determination to grant or deny the Petitions, the Commission can consider only the four mandatory criteria enumerated in Section 364.164(1) or whether it is also required or permitted to consider the extent to which residential customers whose local rates would be increased if the Petitions are granted are likely to benefit from offsetting long distance rate decreases. This is ultimately an issue of statutory construction which we indicated on several occasions would be considered at the conclusion of the evidentiary hearing.

The thrust of the Petitioners' motion for reconsideration is that the inclusion of Issues 6 through 10 in the Second Order Modifying Procedure improperly introduced consideration of this long distance rate impact into the proceedings on their Petitions. OPC, on the other hand, argues that these Issues were properly included, since the Commission must consider the combined impact on residential customers of any local rate increases and any long distance rate decreases.

Upon consideration, we conclude that the Motion for Reconsideration does not identify a mistake of fact or law made by the Prehearing Officer in rendering his decision. The determination

about which the Joint Petitioners express concern is not one made by the Prehearing Officer in his Order. The Prehearing Officer did not impose additional requirements on the ILECs' Petitions to reduce access charges; instead, he included additional issues for consideration in this proceeding based upon our decision to consolidate Docket No. 030961-TI with Dockets Nos. 030867-TL, 030868-TL, and 030869-TL for hearing. His Order clearly set forth that this is the basis upon which he modified the schedule and the issues list for the proceeding. As such, his decision is not only correct, but needs no clarification. The decision to consolidate Docket No. 030961-TI was made by this Commission in Order No. PSC-03-1240-PCO-TP, issued November 4, 2003. Reconsideration of that decision was not requested. The Prehearing Officer's Order merely implements that decision by amending the schedule and including issues to reflect the consolidation. As for the legal issue raised by the Joint Petitioners, that being whether we should consider impacts on the toll market in making our decision on the ILECs' Petitions, that issue was not addressed by the Prehearing Officer and remains for decision by this Commission at the conclusion of the hearing. For these reasons, the Joint Motion For Reconsideration is denied.

B. OPC's Motion for Reconsideration of Order No. PSC-03-1331-FOF-TL (filed Dec. 5, 2003) / AARP's Motion for Reconsideration of Same Order (filed Dec. 8, 2003)(The Attorney General Joined in the Motions on December 9)

These motions asked that we reconsider certain language in our Order denying AARP's Motion to Dismiss these cases for failure to join the IXCs as indispensable parties. OPC and AARP argue that the language contained in the order did not accurately capture the rationale for the Commission's decision as expressed during the Commission's deliberations on that motion. A response in opposition was filed by the Joint Petitioners on December 9, 2003. We received additional argument on this Motion at the outset of the hearing.

While we do not believe that reconsideration is appropriate in this instance, upon consideration of the arguments and review of the Order itself, we do believe that some clarification is in order. It is clear that certain language included in the Order could be misconstrued. Therefore, Order No. PSC-03-1331-FOF-TL, at

pages 11 and 12, is amended and clarified as reflected in the following type and strike version:

> In reaching this conclusion, we refer to the language of Section 364.164, Florida Statutes. Contrary to AARP's assertions, none of the four mandatory criteria set forth for our consideration in addressing the petitions mandates ~~necessitates~~ participation by the IXCs. ~~As plainly stated by the Legislature,~~ ~~t~~The first factor set forth in Section 364.164(1), Florida Statutes, for our consideration does not mandate that ~~direct~~ the Commission ~~to~~ consider how the ILECs' proposals will affect the ***toll market*** "for the benefit of residential consumers." Instead, the plain language states that consideration should be given to whether granting the petitions will:
>
> > (a) Remove current support for basic local telecommunications services that prevents the creation of **a more attractive local exchange market** for the benefit of residential consumers. [Emphasis added].
>
> ~~As such, the relevant market for use in making the final determination on the Petitions is the local exchange market.~~ Thus, we find that, for purposes of Section 364.164, Florida Statutes, consideration of the impact on the toll market (and resulting impact on toll customers) is not *required* for the Commission's ~~full and complete~~ determination of the Petitions.[3] In reaching this conclusion, we do not find that we are precluded from such consideration, rather we conclude only that we are not required to do so.

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[3]~~In reaching this conclusion, we do not find that we are precluded from such consideration, rather we conclude only that we are not required to do so.~~

~~The language of Section 364.164, Florida Statutes, appears clear; thus, under principles of statutory interpretation, this Commission need not look further to divine the Legislature's intent. Southeastern Utilities Service Co. v. Redding, 131 So.2d 1 (Fla. 1950).~~ That said, we nevertheless acknowledge AARP's contention that the Legislature considered the impacts on customers' toll bills in passing the new legislation.[4] We emphasize, though, that the Legislature did address the impact on the toll market if the Petitions are granted, but it did so through a separate section of the statutes, Section 364.163, wherein intrastate toll providers are required to pass the benefits of the access charge reductions on to their residential and business customers. This Commission is charged under that section with ensuring that reductions are, in fact, flowed through.

Based on the foregoing, Order No. PSC-03-1331-FOF-TP is clarified as set forth above.

C. Attorney General's Motion for Summary Final Order, filed Nov. 17 (AARP and OPC Joined in the Motion)

The Attorney General moved for a summary final order on the grounds that the record raises no genuine issue of fact regarding whether granting the Petitions will benefit residential consumers. Verizon, AT&T/MCI, BellSouth, and Sprint timely filed responses to the Motion. We received argument on this Motion at the hearing.

As became clear from the oral argument on this motion, the underlying contention by the Attorney General, OPC, and AARP is that Section 364.164 requires the Petitioners to demonstrate that residential consumers will benefit from long distance rate

[4]At footnote 1 of the Motion, AARP states that it is in the process of having the relevant industry and legislator comments recorded and transcribed for filing at a later date. This material was officially recognized during the final hearings in these proceedings.

reductions, and that the prefiled testimony and exhibits showed that such benefits are not sufficient to offset the impact of the proposed local rate increases. The opponents of the motion contended that no such showing is required, and that the prefiled testimony establishes that residential customers will benefit from increased competition if the Petitions are granted.

Rule 28-106.204(4), Florida Administrative Code, provides:

> Any party may move for summary final order whenever there is no genuine issue as to any material fact. The motion may be accompanied by supporting affidavits. All other parties may, within seven days of service, file a response in opposition, with or without supporting affidavits. A party moving for summary final order later than twelve days before the final hearing waives any objection to the continuance of the final hearing.

The standard for granting a summary final order is very high. The purpose of summary judgment, or in this instance summary final order, is to avoid the expense and delay of trial when no dispute exists concerning the material facts. The record is reviewed in the light most favorable to the party against whom the summary judgment is to be entered. When the movant presents a showing that no material fact on any issue is disputed, the burden shifts to his opponent to demonstrate the falsity of the showing. If the opponent does not do so, summary judgment is proper and should be affirmed. The question for determination on a motion for summary judgment is the existence or nonexistence of a material factual issue. There are two requisites for granting summary judgment: first, there must be no genuine issue of material fact, and second, one of the parties must be entitled to judgment as a matter of law on the undisputed facts. See, Trawick's Florida Practice and Procedure, §25-5, Summary Judgment Generally, Henry P. Trawick, Jr. (1999).

In summary, under Florida law, "the party moving for summary judgment is required to conclusively demonstrate the nonexistence of an issue of material fact, and . . . every possible inference must be drawn in favor of the party against whom a summary judgment

is sought." Green v. CSX Transportation, Inc., 626 So. 2d 974 (Fla. 1st DCA 1993)(citing Wills v. Sears, Roebuck & Co., 351 So. 2d 29 (Fla. 1977)). Furthermore, "A summary judgment should not be granted unless the facts are so crystallized that nothing remains but questions of law." Moore v. Morris, 475 So. 2d 666 (Fla. 1985); City of Clermont, Florida v. Lake City Utility Services, Inc., 760 So. 1123 (5th DCA 2000).

The parties disagree on the proper interpretation of Section 364.164, Florida Statutes. We find, based on the pleadings, the arguments, and the prefiled testimony, there are genuine issues of material fact in dispute, regardless of whose statutory interpretation is ultimately determined to be correct. Since the motion must be viewed in the light most favorable to the parties against whom the motion is sought, the Motion must be denied in this case. In reaching this conclusion, we make no determination on the legal or factual issues to be addressed through the hearing. Rather, we conclude only that the high standard for granting a summary final order has not been met.

IV. STATUTORY INTERPRETATION

The question of the proper interpretation of Section 364.164 is one that has been raised time and again in this case in various motions, testimony, and in this Commission's own comments. We carefully withheld ruling on the question of whether Section 364.164, Florida Statutes, is ambiguous until after conclusion of the evidentiary hearing and the closing arguments of counsel. It is important to address this question before reaching the other issues in the case, because our decision will determine whether we can consider arguments and evidence presented in the case regarding the Legislative history and intent of the statute.

The law on this aspect of statutory interpretation is clear. When interpreting statutory provisions, one first should look to the provision at issue to determine whether the "language is clear and unambiguous and conveys a clear and definite meaning. . . ." Holly v. Auld, 450 So. 2d 217 (Fla. 1984), citing A.R. Douglass Inc. v. McRainey, 102 Fla. 1141 (1931). If the meaning is clear, there is no need to resort to statutory interpretation. Furthermore, an unambiguous statutory provision cannot be construed to extend, modify, or limit its express terms or its reasonable and

obvious implications. Holly, at 219. However, a statute should not be given its literal reading if such reading would lead to an unreasonable conclusion. Id.

Section 364.164 sets forth the criteria we must consider in determining whether to grant the ILECs' petitions. Those criteria are as follows:

> [W]hether 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).

The ILECs argue that this language clearly expresses the Legislature's intent and, thus, is not subject to interpretation. The OPC, the Attorney General, and AARP present a vastly differing interpretation of the statute, and have offered into evidence and in their arguments the Legislative history of the bill. Each side offers tenable arguments regarding how the statute could be interpreted. We note that the lack of clarifying language or punctuation in the provisions at issue contributes to the differing interpretations. As such, having considered the arguments and the language of the statute itself, we find that the language of Section 364.164, Florida Statutes, is not clear on its face and, thus, is subject to statutory interpretation. Having reached this conclusion, our decisions as set forth below reflect our interpretation of the Legislature's intent as gleaned from the Legislative history, including consideration of the potential impacts of granting the Petitions on the toll rates paid by residential customers.

V. SUMMARY OF DECISION

As discussed in more detail later in this order, we find and conclude, based on the record, 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.

5. The ILECs' proposals will reduce intrastate switched network access rates to parity over a period of not less than two years or more than four years.

6. The ILECs' proposals will be revenue neutral within the meaning of the statute, which permits access charge reductions to be offset, dollar for dollar, by increases

in basic local service rates for flat-rate residential and single-line business customers.

7. Because of the mandatory flow-through provisions of Section 364.163, approval of the plans will be financially neutral to the IXCs, who are required to reduce their intrastate toll rates and charges to consumers to offset the benefit of any access charge reductions the IXCs receive.

8. Contrary to the position taken by the Attorney General in these proceedings, the statute does not require that implementation of the proposals be "bill neutral" to any particular customer or class of customers.

9. We are not mandated by Section 364.164 to consider the impact of the proposals on toll rates paid by residential consumers. However, consistent with the legislative history of the 2003 Act, we conclude that we are permitted to do so. In this regard, we find that many residential customers will benefit directly from the elimination of in-state connection fees and reductions in per-minute intrastate toll rates. We also find that residential customers as a whole will enjoy prices for toll services that are closer to economic costs and, therefore, will have less of a repressive effect on long distance usage. We also find that under the long distance rate reduction plans offered by the IXCs, residential customers as a whole will get a proportionate share of any toll rate reductions based on their share of total access minutes of use.

10. Experience from other states that have rebalanced local and toll rates shows that approval of the ILECs' proposals will have little, if any, negative impact on the availability of universal service. While no customer likes to see a rate increase, the record shows that basic local service will continue to remain affordable for the vast majority of residential customers.

> 11. Although we find that 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. This 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. Although we cannot predict the future with certainty, economic theory suggests, and we are encouraged to believe, that the establishment of a more competitive local market will put downward pressure on local exchange prices that will eventually reduce the need for targeted assistance programs such as Lifeline.

The following sections set forth a detailed analysis of our decisions on the points outlined above.

VI. REMOVAL OF CURRENT SUPPORT

In this section, we address whether the ILECs' proposals meet the requirements of Section 364.164(1)(a), Florida Statutes. For clarity of analysis, we have considered these requirements in three parts: (A) what is a reasonable estimate of the level of support for basic service provided by access charges; (B) does that support prevent the creation of a more attractive local exchange market; and (C) would the creation of a more attractive local exchange market benefit residential consumers.

A. REASONABLE ESTIMATE OF SUPPORT

1. Arguments

Verizon contends that its basic local services receive support from its network access charges, and that its plan removes this support by bringing the prices of those services more in line with costs. Verizon asserts that removing support for basic local services will promote local exchange competition for the benefit of

residential customers. Verizon contends that it will make residential customers more attractive to competitors and thus induce enhanced market entry, encourage innovation, and promote increased freedom of choice. Verizon asserts that the plan will also reduce intrastate access rates, thereby allowing residential customers to make more long distance calls at lower prices. Verizon, along with BellSouth and Sprint, sponsored the testimony of Dr. Kenneth Gordon addressing this issue. Verizon's witnesses Fulp and Danner also offered testimony in this regard.

Verizon states that for purposes of this proceeding, it seeks to remove $76.2 million of support from basic local telecommunication services. Verizon contends that this amount is necessary to bring its intrastate switched network access rate to parity with its interstate switched network access rate.

Likewise, Sprint argues that the level of support provided for basic local services by intrastate switched network access rates in excess of parity in Sprint's service areas is $142,073,492 per year, based upon current access minutes of use. Sprint offered the testimony of witnesses Dickerson, Felz, and Staihr on this issue.

BellSouth emphasizes that this Commission has already found that BellSouth's residential rates receive support from access charges, which is further buttressed by the detailed testimony of BellSouth's witness Bernard Shell, particularly the information in witness Shell's exhibit WBS-1 (Hearing Exhibit 53). This support from above-parity intrastate access charges ranges from $125.2 million to $136.4 million per year, depending on the method used to perform the calculation. BellSouth maintains that its proposal will remove current support for basic local telecommunications services, and will bring the rates for basic local exchange service to a level that encourages competitive entry in the local exchange market. BellSouth argues that this is evidenced, in part, by the testimony of AT&T and Knology in this proceeding. BellSouth adds that residential customers will benefit from having new choices of providers and services that additional competition will bring and will also benefit from the pass-through of access charge reductions in the form of reduced toll rates. To address this aspect of its petition, BellSouth submitted the testimony of its witnesses Shell and Banerjee.

Knology asserts that granting these petitions will materially diminish the current support for basic local telecommunications services. Knology contends that this support prevents creation of a more competitive market. Knology asserts that diminution of the support will spur additional competition. Knology states that its experience in its existing markets provides examples of how the entry of a facilities-based competitor for telephone service expands the products available to consumers, increases the customer service levels, and promotes product and pricing competition.

AT&T and MCI agree that the ILEC proposals will remove current support for basic local telecommunications services by simultaneously reducing intrastate switched access rates that have been established at economically inefficient levels through the residential rate setting process and adjusting local exchange rates upward on a revenue neutral basis. They assert that through the process of residual ratemaking, intrastate switched access charges have been historically elevated well above their relevant economic cost and the surplus has served as residual support for basic local telecommunications services. Dr. John Mayo testified on AT&T and MCI's behalf on this point.

OPC asserts that residential basic local telephone service is not subsidized by access service or any other service. OPC contends that the ILECs' petitions, therefore, do not remove current support, because there is none. OPC further asserts that Basic Local Telecommunication Services (BLTS) are not supported by the rates for intrastate access, because the existing BLTS rates exceed their incremental costs. AARP, Common Cause, and Sugarmill Woods agree to a large extent, 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. Dr. David Gabel provided testimony on behalf of OPC addressing this issue, while Dr. Mark Cooper testified on behalf of AARP.

2. Findings 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.

We note that the record raises some concern about the cost information provided in the proceeding by the ILECs. For instance, BellSouth's use of model inputs is inconsistent with past Commission decisions in the Docket No. 990649-TP, in which we established rates for unbundled network elements (UNEs). Also, we find that Verizon's use of interstate minutes to calculate switching and transport costs is problematic, and that Sprint and BellSouth's use of retail costs appears to be excessive, particularly since they do not differentiate between costs that apply to basic local service and costs that apply to all other services. Nevertheless, after weighing all the evidence, we find that the correction of these deficiencies would not alter our conclusion that local exchange rates are supported by intrastate access charge rates; that the ILECs have, in fact, provided a reasonable estimate of the level of support for basic local telecommunications service; and that their proposals appropriately remove that support as required by the statute. In reaching this decision, we do not in any way indicate agreement with the ILECs' costs, inputs, or methodologies considered herein for any purpose beyond this proceeding.

In addition, we note that AT&T/MCI witness Mayo emphasized that the statute does not require removal of a pure economic subsidy, but rather "support" for basic local service. Thus, he disputes witnesses Gabel and Cooper's arguments that there is no subsidy to be removed. We also find this argument persuasive in view of the plain language of the statute.

B. SUPPORT PREVENTS THE CREATION OF A MORE ATTRACTIVE COMPETITIVE LOCAL EXCHANGE MARKET

1. Arguments

Verizon contends that its current residential basic monthly rates are well below incremental cost, and therefore impair competition for residential customers. Verizon asserts that the availability of local service at supported prices limits the prices that competitive local providers can charge. Verizon contends that to the extent that competitive providers' costs are similar to Verizon's, the existing supported prices make it economically infeasible for those providers to compete. Dr. Gordon spoke to this issue on behalf of the three ILECs. In addition, Verizon offered the testimony of witness Danner in this regard.

Sprint contends that the presence of heavily supported residential basic local service acts as an obstacle to the creation of widespread residential local competition. The removal of this obstacle, according to Sprint, is the goal of the 2003 Act. Sprint's witness Staihr spoke to this issue.

BellSouth again contends that we have already determined that its residential rates are supported. BellSouth emphasizes that the testimony of its witness Shell lends further support to the argument that removal of the support for basic local service will bring rates to a level that encourages competition, leading to new choices for consumers, as well as reduced toll rates. BellSouth's witnesses Ruscilli and Banerjee offered additional testimony on this point.

Knology maintains that granting these petitions will materially diminish the current support for basic local telecommunications services. Knology asserts that this support prevents creation of a more competitive market and that diminution of the support will spur additional competition.

AT&T and MCI assert that the currently excessive intrastate switched access charge rate levels make it difficult for a telecommunications company to enter the local exchange market and compete against incumbent providers whose local rates are supported by access charges; the support allows incumbent providers to

subject their competitors to an anticompetitive price squeeze. AT&T and MCI contend that excessive access charges further depress competition by limiting competitors' ability to compete across the full range of service categories. Dr. Mayo addressed this aspect of the ILEC Petitions on behalf of AT&T and MCI.

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 consumers. 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.

The Commission staff offered the testimony of witness Ollila for purposes of providing additional perspective on this issue by way of the Commission's 2002 Report on Competition in Telecommunications Markets in Florida. In addition, the 2003 Report was received into the record as a stipulated exhibit.

2. Findings and Decision

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, and that they are, in fact, lower than in other states in our region. We can find no basis in economics for the underpricing of basic service which is demand-inelastic relative to usage. Except for a limited range of residential customers, it is not economically feasible for a CLEC to price complementary products and packages in a manner that would allow it to make up for lack of profitability in the provision of basic service. As a result, there is little opportunity or ability to bundle products and services for consumers, and a very limited range of customers can truly be served on a profitable basis.

As recognized by both witness Mayo and witness Gordon, the state law, as well as the federal Telecommunications Act of 1996, shifts the utility commission's role away from historically protecting monopolists from competitors' entry and protecting

consumers from the monopolist, to a role of encouraging competition. Under the old regime, utility commissions set rates for non-basic services, such as long distance, carrier switched access, and vertical features, above cost in order to hold down the price for basic local exchange service. This was in furtherance of universal service.

As witness Mayo emphasized, even as we moved toward price cap regulation, the pricing structure did not really change; thus, the prices for non-basic services continued to support basic service. Specifically, access charges were created after divestiture of AT&T to provide a source of revenue that would enable the local exchange companies to continue to keep prices low. Witness Mayo added that at the federal level, access charges have been reduced dramatically over the past 19 years, and this process has taken place for intrastate access charges in other states as well. Nevertheless, the witness emphasized that intrastate access rate levels in Florida are still in excess of their incremental cost, serving as continued support for low local service rates. As such, according to witnesses Mayo and Gordon, approving 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.

Witness Gordon further testified that the effect of having rates that are below cost is to discourage entry, as well as investment, by both new entrants and incumbents. Thus, not only is there less likelihood of competition, but of innovation as well. He emphasized that there is empirical evidence on this point, as referenced in the Ros-McDermott study he mentions in his pre-filed testimony. He also testified that in states that have implemented rebalancing, namely California, Illinois, Ohio, Massachusetts, and Maine, there was little noticeable impact on subscribership levels in spite of residential local service rate increases comparable to the increases proposed in the ILECs' petitions. In addition, he noted that, in the states that have implemented rebalancing, toll rates were lowered.

Our 2003 Competition Report shows that CLEC residential market share is only 9% in Florida, while CLEC's serve 29% of the business market. Similarly, Verizon's competition study for its territory

shows that there is a 100 to 1 ratio of business versus residential customers being served by facilities-based CLECs. This drops to 10 to 1 if UNE-P and resale are taken into account. Together, these studies persuade us that competition for residential customers is currently suffering as a result of barriers to entry.

In addition, Knology's witness Boccucci specifically stated that, ". . .under current rates for local services in Florida, Knology has not been able to generate rates of return sufficient to attract the capital necessary to expand in adjacent areas to Panama City or elsewhere in Florida. If rate rebalancing is implemented, Knology has every intention to expand and compete further in Florida." He emphasized that because of Florida's low local rates, that ". . . from our investors' perspective, in the competition for the valuable CAPX or the capital expenditures, it was tough to make a business case to expand into the panhandle when we could expand into Georgia, Tennessee, Alabama and North Carolina [where local rates are higher] and be more assured that we could meet the returns that our investors expected in the marketplace."

Based on the foregoing, we find that current support provided by access charges does, in fact, impede competition in the residential local exchange markets.

C. BENEFIT TO RESIDENTIAL CONSUMERS AS CONTEMPLATED BY SECTION 364.164, FLORIDA STATUTES

1. Arguments

Verizon asserts that by moving basic local residential rates toward cost, its rate rebalancing plan will promote competition for the benefit of residential customers, which is the benefit contemplated by Section 364.164, Florida Statutes. Verizon contends that implementation of its rebalancing proposal will make these residential customers more attractive to competitors and thus induce enhanced market entry, encourage innovation, and promote increased freedom of choice. Verizon asserts that, in addition, its rebalancing plan will lower intrastate access rates and, ultimately, allow residential customers to make more long distance calls at lower prices. Again, Dr. Gordon provided testimonial support for the three ILECs on this point. In addition, Verizon's witnesses Danner and Fulp addressed this issue.

Similarly, Sprint contends that the creation of a more attractive competitive local exchange market will benefit residential consumers by giving them choices in providers, services, technologies, and pricing options. Sprint maintains that this is what consumers are demanding, and that this range of choice will only be made available through a competitive market. Sprint offered the testimonies of witnesses Staihr and Felz on this point.

BellSouth again argues that its residential rates are supported. BellSouth emphasizes that the testimony of its witness Shell lends further support to the argument that removal of the support for basic local service will bring rates to a level that encourages competition, leading to new choices for consumers, which is the benefit contemplated by the 2003 Act, as well as reduced toll rates. BellSouth's witnesses Banerjee and Ruscilli provided testimony on this issue.

Knology states that its experience in its existing markets provides examples of how the entry of a facilities-based competitor for telephone service expands the products available to consumers, increases the customer service levels, and promotes product and pricing competition. Knology's witness Boccucci emphasizes that telecommunications services are converging, such that a wireless consumer does not really think of his or her service in terms of local versus long distance service. He envisions that with increased competition in the wireline market, the same will hold true for wireline customers. Likewise, he argues that the value for consumers in a competitive market is a converged bill with multiple telecommunications services, upgraded service quality, as well as price competition. He also added that a higher local rate will enable Knology to provide bundled packages at prices economical to seniors on fixed incomes, so that they can receive more economic and better quality service than they do today.

AT&T and MCI agree that the ILECs' proposals will benefit residential consumers as contemplated by Section 364.164, Florida Statutes. They contend that the ILECs' proposals will reduce current deterrents to local market entry and create a more level playing field, which will ultimately induce increased market entry. The result will be to provide consumers, residential and business alike, with a wider choice of providers' offerings and prices. They contend that residential consumers will further benefit from

toll rate reductions and the elimination of any in-state connection fee. Dr. Mayo provided testimony addressing this point on behalf of AT&T and MCI, while witness Fonteix provided additional information on behalf of AT&T.

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. They assert that the ILECs have not made a showing that the proposed rebalancing of basic local telecommunications service rates would create a more attractive competitive local exchange market for the benefit of residential customers, nor that market entry will be enhanced, because the ILECs' analyses are based on a model that no entrant would ever use. They argue that, moreover, any claims of benefits to consumers based on the removal or reduction of support for residential basic local telecommunications service are moot, since no such support exists. Again, Drs. Gabel and Cooper provided testimony on this point for OPC and AARP, respectively.

Commission staff's witness Shafer testified that the ILECs' proposals will likely result in benefits for residential customers, such as increased value and choice in products.

2. Findings and Decision

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. As evidenced by the results in other states that have engaged in rate rebalancing, the ILECs' proposals will make the residential market more economically attractive for CLECs, which should lead to an increase in choice of providers. This will be accomplished by increasing in the short term the rate at which residential service can be offered by competitors, leading to increased profit margins for CLECs serving residential customers. Witness Fonteix specifically stated that AT&T's decision to enter BellSouth's territory was ". . . predicated upon an assumption after the passage of the Act that it would be implemented." Furthermore, the witness testified that in AT&T's experience in Michigan and Georgia, where rates have already been

rebalanced, although basic local service rates initially went up, in the long run, competition drove the price back down.

Companies providing bundled offerings that include both local and long distance service will benefit not only from the increased rate at which residential service can be offered on a competitive basis, but also from the decreased terminating access rate. These changes will make providing bundled packages to residential customers more economically attractive, because companies will increase their profit margin.

Again, as argued by AT&T's witness Fonteix, because the Bell incumbents are now able to enter the long distance market, it is better to proceed with access charge reform, which has been underway at the federal level for some time now. The witness emphasized that waiting will only further harm the long distance market. This testimony was consistent with that of witness Gordon, who maintained that long distance service is overpriced, because of the support provided by access charges to local service. He asserted that as prices come down for long distance service, people will respond by making more long distance calls, which he contends is a benefit to society. He concluded that:

> If the toll prices are overpriced, then there will be less calling and that constitutes a loss to society. And there's no reason to have it. It's a very expensive way to achieve the goal in Crandall's and Waverman's point. If you really want to have universal service and you think it's a problem, you know, a policy problem that should be addressed, better that the payments should be made directly in some fashion than by distorting the entire price structure, which is the mechanism we've used to date.

While it is uncontested that some customers will not receive a direct benefit as a result of the implementation of the ILECs' proposals, we find that Florida consumers as a whole will reap the benefits of increased competition and, ultimately, competition will serve to regulate the level of prices consumers will pay. Increased competition will lead not only to a wider choice of

providers, but also to technological innovation, new service offerings, and increased quality of service to the customer. The evidence in this case shows that Knology will continue its plans to enter Florida markets if the Petitions are granted, and will consider broadening the number of Florida markets it enters, as demonstrated through the testimony of witness Boccucci. AT&T witness Fonteix has also indicated that AT&T's entry into BellSouth's territory has been largely influenced by the 2003 Legislation and the hope that with the granting of these Petitions, the raising of local rates will make Florida markets more profitable for competitors. Furthermore, witness Gordon explained that less regulation in the wireless market has not only produced lower prices, but also a beneficial impact on consumer welfare, because the use of the technology has become so prevalent.

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.

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. First, there could never be "bill neutrality" unless every residential customer made exactly the same number of long distance calls and could therefore share per capita in any long distance rate decreases. Second, Section 364.164 achieves revenue neutrality to the ILEC by permitting it to increase rates for flat-rate residential and single-line business service. Section 364.163, Florida Statutes, in contrast, gives the IXCs discretion in where to flow through their long distance rate decreases so long as some portion of the benefit goes to residential and business customers. As discussed in Section X(D), we find that the IXCs' proposals to flow through these reductions between business and residential customers in proportion to their access minutes of use complies with both the language and spirit of the statute.

Also on this issue, we acknowledge that the testimony from the public hearings was mixed. Many customers did not believe that the ILEC proposals would benefit them, but others were hopeful that they would see competition in their area. Generally, the written comments we received tended to be unfavorable. However, when considered with the economic testimony received through our technical hearing, we find that customers as a whole will benefit as contemplated by the statute. As noted by witness Boccucci, customers will get better quality service for the products they choose, as well as a wider variety of products and providers. The evidence also shows that even those customers that use calling cards or dial-around service will receive benefits from increased competition, as will older citizens that use 1+ calling.

We also acknowledge the customer testimony critical of extended calling service (ECS) rates. In recognition of the concerns raised, we direct our staff to organize a Commission workshop to discuss the history of ECS, the current state of the law on ECS, and what role, if any, ECS has in today's market. The Petitioners have all agreed to participate fully in this workshop. In addition, it is notable that Sprint's petition includes a five-free-call allowance for ECS.

Although we find that it is not a benefit that we should weigh in the balance in considering whether or not to grant the

Petitions, we observe that the amended Lifeline provisions in Section 364.10 will help to protect economically disadvantaged consumers from the effect of local rate increases. The use of targeted assistance, rather than implicit rate subsidies, to address this social issue will result in more efficient pricing, which will benefit the competitive market, spur innovations and new product offerings. This is the benefit contemplated by the Legislature when it enacted this legislation and is further supported by the testimony of AT&T/MCI's witness Mayo. As noted by the witness, the ability to target assistance is far more effective at promoting universal service objectives. The witness also testified that targeted assistance is more economically efficient than continuation of implicit support from access charge prices. We agree, and expect that, over time, competition should take care of those protected by Lifeline, in spite of the current limited duration that these customers are protected from the local increases at issue here. The evidence shows that even with the proposed local rate increases, there will not be a significant number of customers that drop off the network. While the need for continued targeted assistance for some customers may foster its own social welfare concerns, those concerns must be balanced with the Legislature's clear intent to move Florida's telecommunications markets towards increased competition.

Furthermore, Dr. Cooper acknowledged that Exhibit 85 indicates that many seniors on fixed incomes take a number of additional services, such as cellular service, cable service, and Internet service. This indicates not only a likelihood that the increases proposed are within the zone of affordability for this segment of consumers, but also, as indicated by witness Boccucci, demonstrates that this segment in particular may see increased benefits as a result of bundled competitive offerings. Similarly, the evidence shows that 53% to 72% of Lifeline customers served by the Petitioners purchase one or more ancillary services.

As argued by witness Mayo, in approaching this task we must balance "hard-headed" economic principles with "soft-hearted" social welfare goals. It is the application of sound economic principles that will bring efficiencies, and as a result, competition to the telecommunications market, while the statute itself provides for targeted assistance that will assist those

unable to afford the proposed increases.[5] At the end of the day, capitalism and the free market will maximize benefits to consumers in a way that regulation cannot. That is not, however, to say that the companies should not be encouraged to consider their social welfare obligations in targeting assistance to customers and coming up with new ideas to address the needs of the economically disadvantaged.

In the end, we find that the ILECs' proposals meet the statutory requirement set forth in Section 364.164(1)(a), Florida Statutes, providing required benefit of a more attractive competitive telecommunications market for Florida consumers.

VII. INDUCE ENHANCED MARKET ENTRY

In this section, we address whether the ILECs' proposals will induce enhanced market entry as required by Section 364.164(1)(b), Florida Statutes.

A. Arguments

BellSouth states that by removing implicit support from basic local exchange rates, competitors will have increased business opportunities to attract new customers and offer new products, services, and bundles. BellSouth contends that competitors base their entry decisions on whether or not they can at least match the rates charged by ILECs. BellSouth argues that if these rates are lowered artificially by subsidies, but the incremental costs do not change, then competitors are likely to be deterred from entering the market. BellSouth concludes that this situation limits competition. BellSouth witness Banerjee offered testimony in this regard.

BellSouth further explains that there will never be competitive alternatives for customers who are receiving service at a price below the relevant cost of providing that service. As the

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5 It is noteworthy that the ILECs have also agreed to the increase the number of customers to whom Lifeline is available to those whose income is 135% or less of the federal poverty level. This increases the pool of Lifeline eligible customers by approximately 119,000 when compared to the 125% standard required by Section 364.10.

price of service is raised to, and above, its relevant costs, such customers become more attractive to competitors, according to BellSouth witness Ruscilli.

Witness Gordon contends that when the price of services increases, a cash flow analysis would show that the investment project becomes more profitable (or less of a loss) and, thus, more attractive for new market entrants. Dr. Gordon adds that technology is changing so rapidly that competitive markets will do a much better job than a monopoly would of discovering which technologies can or cannot succeed in the long run. Dr. Gordon further opines that in order for the lowest cost mix of technologies to remain in the market, price and the signals it sends must not be distorted and must reflect the underlying cost of providing service.

BellSouth emphasizes that lowering intrastate access rates to parity with interstate rates eliminates an artificial discrepancy between two nearly identical services. Lower intrastate access rates make long distance calling more attractive for customers and competitors who wish to bundle long distance service with local service. BellSouth witness Banerjee testifies that the unevenness of the business market versus the residential market entry is attributable in large part to the relationship between end-user rates for basic local telephone service and UNE/UNE-P rates. Dr. Banerjee explains that generally the margins are far more substantial for business service. Unconstrained by public policy or regulation, the CLECs have gravitated naturally to business markets. As indicated by Dr. Gordon, the problem of an unattractive residential market may be worse in Florida than in other states because these other states have higher residential rates, indicating a greater need to rebalance the rates in Florida.

Verizon states that its rate rebalancing plan will bring the prices of its basic local services more in line with costs. Verizon asserts that prices that more closely reflect underlying costs, such as those proposed in its rate rebalancing plan, will increase the likelihood that competitive providers can offer services at a price equal to or lower than that offered by Verizon, and still remain profitable. Verizon contends that as a result, the reformed prices proposed in Verizon's rate rebalancing plan

will make the local exchange market more attractive to competitors and induce enhanced market entry.

Verizon further contends that by removing implicit support from basic local exchange rates, competitors will be enticed into the market. Verizon contends that Knology's testimony that it decided to enter the Florida market following the passage of the access reduction legislation demonstrates that Verizon's rebalancing proposal will encourage competitive entry. Also, Verizon cites to Dr. Gordon's testimony, which includes statistical studies demonstrating that rebalancing will have a positive effect on competitive entry.

Sprint concurs with BellSouth and Verizon, stating that CLECs will benefit from the higher residential basic prices, without being required to reduce their own intrastate access prices. Sprint contends that rebalancing reduces risk for CLECs, improving the cash flow equation for serving residential customers. Sprint witness Staihr testifies that rebalancing rates for basic local service will create a situation where competitors will find that, on average, a larger percentage of the residential market will be financially attractive to serve. Witness Staihr states further that the current artificially low prices are unsustainable in the face of competition, and they come at a cost: (1) fewer options among services; (2) less innovation; and (3) in large portions of Sprint's territory, no competitive choices. Sprint concludes that rebalancing will induce enhanced market entry, thereby providing customers with the benefits of more choices, enhanced service offerings and greater innovation.

Knology states that the ILEC petitions should be granted because that decision will help to implement the policy underlying Section 364.164, Florida Statutes, and it will enhance the competitive choice available to Florida citizens. Knology identifies itself as a prime example of how granting the ILECs' Petitions will induce enhanced competition. As stated previously, Knology is a facilities-based intermodal competitor offering voice, video and data services over hybrid fiber coax (HFC) and fiber to the curb (FTTC) network in Panama City, with plans to expand in Pinellas County, Florida. Knology has been providing telecommunications services in Florida since 1997 and is currently providing its services to over 275,000 residential and business

customers in Florida. Knology's witness Boccucci testified, however, that Knology's decisions on whether to further expand service in other Florida markets will be greatly influenced by whether or not the ILECs' Petitions are granted.

Knology witness Boccucci testified that the 2003 Act creates the regulatory environment necessary to attract capital investment to expand telephone competition in Florida. Knology contends that granting the ILEC petitions will allow it to attract and deploy new capital investment in Florida, thereby offering consumers a choice in facilities-based providers for new and advanced high-tech services. Knology asserts, however, that if the petitions are not granted, it will be forced to deploy capital in states with more favorable market conditions as it has done in the past.

AT&T and MCI state that economic theory demonstrates that a decrease in overpriced access charges together with an increase in the retail price of residential service will encourage market entry. AT&T and MCI contend that prices are a key signal to prospective entrants regarding the desirability of a particular market. Higher prices relative to cost provide greater inducements for entry. AT&T and MCI contend further that bundled offerings are undermined by excessive access charges, because the lower bound to which competitors can drive prices is defined by the artificially high level of access charges. The presence of excessive access charges will limit the ability of competitors to enter the market. AT&T/MCI witness Mayo offered testimony in this regard. Dr. Mayo opines that the reduction of existing access support will also make the market more attractive for traditional long distance companies to enter the telecommunications market.

Witnesses Mayo and Fonteix testified that the reduction and eventual elimination of the access support is critical to sustainable competition as it will allow CLECs to compete on a more equal footing. Witness Mayo explains that the anemic CLEC market share for residential customers provides prima facie evidence that low residential prices are inhibiting competitive entry.

AT&T states further that reducing intrastate access charges to parity will significantly reduce the ILECs' advantage of receiving large access charge subsidies, thereby moving ILECs and competitors closer to an equal footing and enhancing competition.

OPC responds that competition will not be enhanced to the residential consumer's benefit, although the ILECs' revenue from inelastic basic local service will be enhanced and the respective ILEC's market share will increase using revenues as a basis of measurement, according to OPC witness Ostrander. Witness Ostrander further contends that there will be no new or unique service introductions and no uniquely associated benefits of capital investment. OPC witness Gabel states that entry decisions are made on the basis of the expected total revenues and costs of all services an entrant can offer, not just one service. If total revenues cover total costs, it is completely irrelevant to a firm's decision to enter a market if one of the components of the offering (e.g. basic local service) may produce a loss according to some measure. Therefore, OPC surmises that a rise in total revenue from current levels may not be sufficient to allow entrants to overcome existing competitive barriers.

AARP concurs with OPC in its basic position that granting the ILECs' petitions will not induce enhanced market entry or increase competition. AARP witness Cooper argues that the Legislature intended that the ILECs be required to demonstrate that competition would, in fact, occur, as opposed to simply being more likely to occur, if the Petitions are approved. Witness Cooper further argues that none of the companies have provided such proof for any of their geographic areas. AARP contends that competition for bundled service is where the focus is in telecommunications. Therefore, AARP concludes that the shifting of costs from intraLATA long distance to basic service will have little, if any, impact on this competition since both are in the bundle.

However, Commission Staff witness Shafer testified that the likelihood of increased market entry is improved by granting the rebalancing petitions, particularly in those markets where profitability is marginal. Witness Shafer states that there appears to be a relationship between the subsidy and market entry, indicating that the removal of the subsidy will also increase market entry. Witness Shafer concludes that one can reasonably expect the ILECs' petitions will create additional market entry, particularly in markets that, to date, have been only marginally profitable or slightly unprofitable.

B. Findings and Decision

Upon consideration, we are persuaded that granting the ILEC petitions will induce enhanced market entry.

There are two types of evidence that the parties have presented in this case: empirical, which is based on real-life scenarios, and economic theory. We believe that the ILECs have offered strong theoretical and empirical evidence that the proposed changes to intrastate access charges and basic local service rates will improve the level of competition in many markets. The ILECs' witness Gordon testified that when the price of services increases, a cash flow analysis would show that investment in the market becomes more profitable and, thus, more attractive for market entry. BellSouth explains that if these rates are lowered artificially by subsidies but the incremental costs do not change, then competitors ineligible to receive the subsidy are likely to be deterred from entering the market. In addition, AT&T and MCI indicate that the reduction and eventual elimination of the access support is critical to sustainable competition as it will allow CLECs to compete on equal footing with the ILECs. We find that these arguments compelling. We conclude from the evidence presented that entry into the local telephone market is deterred if the ILECs' local service prices are below cost and that rate rebalancing is critical to actually promoting competition.

While OPC and AARP have expressed doubt about the effect that a reduction in access charges will have on competition, they have failed to convince us that these rate reductions will not induce enhanced market entry. To the contrary, Knology presents a model case on the impact that these reductions have had and will have on market entry by CLECs. Witness Boccucci testified that the granting of the ILEC petitions will allow Knology to attract and deploy new capital in Florida, thereby offering consumers a choice in facilities-based providers for new and advanced high-tech services. In addition, AT&T indicated that it has entered the BellSouth territory as a result of the 2003 Act.

We are persuaded that companies like Knology and AT&T provide the empirical evidence of how the ILECs' proposals will increase competition. We note that poor profitability, or limited profitability, is the main deterrent to market entry. We conclude

that the evidence presented by the ILECs demonstrates that granting the petitions will induce enhanced market entry, thereby promoting competition, as required by Section 364.164(1)(b), Florida Statutes.

For almost 20 years, the telecommunications industry has been in transition from a monopolistic regime to a competitive one. While changes to Florida law and enactment of the Telecommunications Act of 1996 have made great strides in promoting competition, there is still a lack of widespread competition in the residential local exchange market. Implementation of the access reductions and offsetting rate increases permitted by the 2003 Act should serve to enhance competition in this important market.

Based on the foregoing, we find that the existing rate structure impairs competition for residential customers. Granting the ILECs' petitions will result in more attractive pricing for basic local telephone service, providing market entry opportunities for competitors that have been constrained by inefficient pricing in the past. Thus, we find that the petitions filed by BellSouth, Verizon and Sprint to reduce intrastate switched network access charges will induce enhanced market entry.

VIII. PARITY

In this section, we address the requirement of Section 364.164(1)(c) that any plan provide for intrastate access rates to be reduced to parity with interstate rates over a period of not less than two years or more than four years.

A. Arguments

Verizon contends that its proposal will reduce intrastate switched network access rates to interstate parity over a period of not less than two years or more than four years. Specifically, Verizon proposes to reduce its composite intrastate access total average revenue per minute (ARPM) from $.0485441 to $.0117043 in three increments over two years. The total Verizon reduction would be $76.2 million.

There was conflicting testimony in the record regarding whether Verizon's inclusion of its non-traffic sensitive interstate

presubscribed interexchange carrier charge (PICC) in the calculation of its switched access charge reduction was appropriate. Verizon's witness Fulp testified that the PICC was included because its interstate access rates include both traffic sensitive and non-traffic sensitive charges. Witness Fulp asserts that the 2003 Act permits the inclusion of the PICC, since the 2003 Act defines the term "intrastate switched access rate" to include the carrier common line charge and the PICC is a federal common line charge. He asserts that because the Act includes common line charges in Verizon's intrastate access rates, the analogous PICC federal common line charge must be included in Verizon's calculation of the interstate ARPM for a consistent comparison.

Verizon's witness Fulp asserts that if the PICC is excluded from its calculation, Verizon would have to reduce its composite intrastate access rate by a greater amount than originally proposed. As such, to preserve revenue neutrality, Verizon's basic local rates would have to increase more than its original proposal. Specifically, the witness explained that if Verizon were to exclude the PICC from the parity calculation, Verizon would have to reduce its access revenues by $12,679,052 more than originally proposed, and, consequently, Verizon would have to increase its basic local revenues by a corresponding amount. The result would be an increase to Verizon's basic local rates of $0.86 more than Verizon originally proposed.

AT&T and MCI assert that Verizon's proposal does not correctly reduce its intrastate switched access rates to interstate parity. AT&T witness Fonteix contends that Verizon's inclusion of the PICC is inappropriate for two reasons. He contends that the PICC is not part of the intrastate rate elements. Witness Fonteix asserts that even if the PICC was appropriate for inclusion in the calculation, Verizon should have used the interstate minutes of use in calculating the ARPM rather than the intrastate minutes of use. Finally, Witness Fonteix argues that the PICC should have been excluded because the PICC charge applies to multiline business customers and the access charge reductions allow Verizon to collect business line revenue from all Florida residents.

AARP, Common Cause Florida, and Sugarmill Woods also contend that Verizon's inclusion of the interstate PICC end-user charge in its calculation of intrastate access charges for the purpose of

rebalancing means that Verizon has failed to comply with the provisions of the Act requiring parity and revenue neutrality. They assert that Verizon's petition should be denied on these grounds.

Sprint asserts that its proposal will reduce intrastate switched network access rates to interstate parity over a period of not less than two years or more than four. Sprint contends that its petition, testimony, and exhibits demonstrate that rebalancing prices over a two-year period (three annual increments) will provide the marketplace with the appropriate competitive signals and will not result in consumer rate shock. Sprint's initial proposal was to reduce its access rate by $62,319,890 the first year, $56,211,862 the second year, and $23,541,711 the third year. Sprint's total proposed reduction is $125.2 million. However, during closing arguments Sprint agreed to spread its reduction and corresponding increase in four steps over a period of three years, consistent with the position advocated by Commission staff witness Shafer. Under Sprint's revised proposal, the basic local telecommunications services increases will be $2.25 the first year, $2.25 the second year, $1.50 the third year, and $0.86 the fourth year.

BellSouth contends that its proposal will reduce intrastate switched network access rates to interstate parity over a period of not less than two years or more than four. BellSouth asserts that its proposed increases will occur over three installments, 1st quarter 2004, 1st quarter 2005, and 1st quarter 2006. BellSouth presents two alternative methodologies by which parity can be achieved: "mirroring" and the "typical network." Witness Ruscilli testified that BellSouth's proposed reductions under either methodology will be 40% in the 1st quarter of 2004, 35% in the 1st quarter of 2005, and 25% in the 1st quarter of 2006. Witness Ruscilli further testified that BellSouth's proposal reaches parity in 24 months, consistent with the requirement in Section 364.164(1)(c), Florida Statutes, that parity be reached in not less than 2 years and not more than 4 years.

AT&T and MCI assert that BellSouth's "mirroring" proposal appears to correctly reduce its switched access rates to interstate parity, but they contend that BellSouth's "typical network" proposal does not. Witness Fonteix explains that BellSouth's

"mirroring" methodology appropriately quantifies the revenue impact of the intrastate rate reductions necessary to achieve parity by multiplying the demand times the difference between its intrastate and interstate tariffed rates. However, witness Fonteix asserts that BellSouth's "typical network" methodology is inappropriate because it targets only a select set of rate elements to equal interstate rate levels, and thus fails to address all of the rate elements in the statutory definition of intrastate switched network access rate.

Witness Shafer contends that Sprint should extend its implementation of access reductions and increases to basic local service rates by 12 months in order to mitigate rate shock to consumers. Witness Shafer testified that while the statute did not directly address or define rate shock, the statute does provide for a transition period for the access charge and basic local service rate adjustments of not less than 2 years and not more than 4 years. He asserts that due to this range it is reasonable to infer that the Legislature recognized the concept of rate shock or rate reasonableness. Witness Shafer asserts that it would be appropriate for Sprint to implement an additional incremental rate adjustment 36 months after the initial adjustment in order to complete its transition to parity. He argues that this would put Sprint's residential customers more on par with those of BellSouth and Verizon in terms of the amount of the increase they receive at any one time.

B. Findings and Decision

Section 364.164(1)(c), Florida Statutes, requires that we consider whether the Petitions will require intrastate switched network access rate reductions to parity over a period of not less than 2 years or more than 4 years. We find that each of the three amended Petitions meets the requirement of 364.164(1)(c), Florida Statutes.

As noted above, there was testimony regarding whether it was appropriate for Verizon to include the PICC in its access charge reduction calculation. Section 364.164(6), Florida Statutes,

defines the term "intrastate switched network access rate" as:

> . . . the composite of the originating and terminating network access rate for carrier common line, local channel/entrance facility, switched common transport, access tandem switching, interconnection charge, signaling, information surcharge, and local switching. (Emphasis added.)

Based on the definition in the statute, as well as the testimony of witness Fulp, we are persuaded that the PICC can be included in the calculation of the interstate rate target, since it was developed to recover nontraffic sensitive charges that were originally in the traffic sensitive carrier common line charge. In construing the statute in this manner, we are mindful that the interpretation advocated by other parties would result in a higher overall charge to the consumer. Thus, we conclude that Verizon's explanation for inclusion of the PICC is not inconsistent with the statute and find that Verizon's methodology for calculating its switched access charge reduction complies with Section 364.164(1)(c), Florida Statutes.

We note that witness Shafer testified that it would be appropriate for Sprint to implement an additional incremental rate adjustment 36 months after the initial adjustment in order to complete its transition to parity. However, we find that Sprint's original proposal met the criteria set forth in Section 364.164(1)(c), Florida Statutes. We also note that Sprint subsequently agreed to spread its reduction and corresponding increase over a period of three years and that this revised proposal also meets the statutory criteria.

Finally, we address which of BellSouth's methodologies, "mirroring" or "typical network," is the appropriate method to be applied in the next section. However, we find that either method meets the "parity" criteria set forth in Section 364.164(1)(c), Florida Statutes.

IX. REVENUE NEUTRALITY

In this section, we address whether the ILECs' proposals will achieve revenue neutrality as required by Section 364.164(1)(d), Florida Statutes.

A. Arguments

Verizon contends that its rate rebalancing plan is revenue neutral, as defined in the statute. Verizon asserts the plan will reduce Verizon's intrastate switched network access rates by $76.2 million and offset that reduction with a corresponding increase in basic local rates. Verizon proposes incremental residential local service rate increases of $1.58 in its first increment, $1.58 in its second increment, and $1.57 in its third increment.[6] Verizon asserts that single-line business recurring rates will be raised to $32.00 per month. Verizon proposes to raise its network establishment charge and central office connection charges by $5.00 over three increments. Verizon proposes to raise its non-recurring single line business network establishment charges by $0.10.

Sprint asserts that, as demonstrated by the testimony and exhibits it filed, rebalancing will be accomplished in a revenue neutral manner. Sprint testified that it will be reducing its switched network access charges by a total of $142.1 million. Sprint initially proposed basic residential rate increases of $2.95 for increment one, $2.75 for increment two, and $1.16 for increment three for a total of $6.86. However, as noted previously, Sprint agreed in its closing argument to four incremental increases of $2.25 in 2004, $2.25 in 2005, $1.36 in 2006, and $1.00 in 2007. Sprint also proposes to increase its single-line business rates by $2.70 in the first increment, $2.40 in the second increment, and $0.90 in the third increment.

BellSouth argues that its proposal, using either methodology, reflects a reduction in intrastate access that will be rebalanced through increases in basic local exchange rates. Witness Hendrix

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[6] We note that Verizon in its closing argument agreed to increase the amount it recoups through non-recurring revenues from $1.2 million to $2.4 million, so that basic local rates will be raised by $1.2 million less than originally requested.

explains that the "mirroring" methodology actually mirrors the recurring rate elements listed in Section 364.164(6), namely the carrier common line, local channel/entrance facility, switched common transport, access tandem switching, interconnection charge, signaling, information surcharge, and local switching. He testified that the revenue impact of reducing these elements to interstate parity is $136.4 million. Under the "mirroring" methodology, BellSouth would raise residential recurring rates a $1.39 in the first increase, $1.38 in the second increase, and $1.09 in the third increase, for a total of $3.86 per month. BellSouth proposes to raise single line business to $25 (rate groups 1-3), $28 (rate groups 4-6), and $30.20 (rate groups 7-11, X2, X4) in two equal installments. BellSouth also proposes to raise its non-recurring charges in three installments.

Witness Hendrix also explained that BellSouth's "typical network" methodology achieves parity by comparison of the "typical network" composite rate for interstate switched access with the composite rate for intrastate switched network access utilizing the rate elements in BellSouth's annual filing with this Commission, the Florida Access and Toll Report, Tables 1 and 2. He further testified that the revenue reduction resulting from the achievement of parity using the "typical network" methodology is $125.2 million. Under the "typical network" methodology, BellSouth would raise residential recurring rates a total of $3.50; $1.25 for the first increase, $1.25 for the second increase; and $1.00 for the third increase.[7] BellSouth's proposal to raise single line business rates remains the same as set forth under the "mirroring" methodology, as does its proposed increase in non-recurring charges.

Witness Hendrix asserts that the difference in the revenue impact between these two methodologies stems from the number of rate elements utilized in each methodology. He contends that both methodologies use the most recent 12-months' demand to determine the intrastate switched network access revenue reduction. He asserts that the "mirroring" methodology uses all of the recurring switched network access rate elements, whereas the "typical network" methodology uses the limited, specific rate elements that

[7]BellSouth agreed to increase its non-recurring charge so that the single line residential rates would be lowered by approximately $0.36.

are considered to be representative of averages for BellSouth's network. Witness Hendrix testified that use of composites from a typical network is consistent with the Commission's past practice for determination of switched access revenue reductions.

AT&T and MCI contend that the ILECs' rebalancing proposals appear to be revenue neutral notwithstanding any failures to correctly reach interstate parity. Under the parity section, AT&T and MCI argued that BellSouth's "mirroring" methodology, but not the "typical network" methodology, meets the criteria for parity. As noted previously, witness Fonteix claims that BellSouth's "typical network" methodology targets only a select set of rate elements to equal interstate rate levels, and thus fails to address all of the rate elements in the statutory definition of intrastate switched network access rate.

AARP, Common Cause Florida, and Sugarmill Woods assert that the ILECs have not substantiated that their respective intrastate long distance rate reductions for residential customers will equal their corresponding basic long distance telecommunications service increases. They further assert that Verizon's inclusion of the interstate PICC end-user charge in its calculation of intrastate access charges for the purpose of rebalancing results in Verizon's failure to comply with the provisions of the Act requiring both parity and revenue neutrality. They conclude that Verizon's petition should be denied on these grounds.

The Attorney General argues that the ILECs have not substantiated that their respective intrastate long distance rate reductions for residential customers will equal their corresponding basic local telecommunications services increase. He argues that the ILECs have failed to demonstrate that the increase is revenue neutral.

B. Findings and Decision

AARP, Common Cause Florida, and Sugarmill Woods, articulate their specific position that because the PICC should not have been included in Verizon's switched network access charge reduction, Verizon's petition is not revenue neutral. For the reasons noted in the previous section, we find that it is appropriate for Verizon to include the PICC in its switched network access charge reduction

calculation. Given that the PICC is appropriately included, we find that Verizon's proposed revenue reduction and basic rate increases are revenue neutral. Thus, we find that Verizon's proposal meets the criteria set forth in Section 364.164(1)(d), Florida Statutes. We also find that Sprint's proposed revenue reduction and basic rate increases are revenue neutral.

BellSouth has proposed two methodologies, "mirroring" and "typical network," which could be used to achieve revenue neutrality. We find that both the "mirroring" and "typical network" methodologies meet the statutory requirements for revenue neutrality. We note that the "typical network" methodology provides for less of an increase in basic local residential rates. Thus, we find it appropriate to approve the "typical network" methodology as the methodology which has a lesser impact on the local rates. In addition, we find that BellSouth's proposal meets the criteria set forth in Section 364.164 (1)(d), Florida Statutes.

Section 364.164(1)(d), Florida Statutes, requires that we consider whether approving the ILECs' proposals will be revenue neutral as defined in subsection (7) within the revenue category defined in subsection (2). Subsection (7) states that "revenue neutrality" means that the total revenue within the revenue category established by the statute remains the same before and after the local exchange telecommunications company implements any rate adjustments under this section. Subsection (2) states that once the ILEC petitions are granted, the local exchange telecommunications company is authorized to immediately implement a revenue category mechanism consisting of basic local telecommunications service revenues and intrastate switched network access revenues to achieve revenue neutrality. We find that each of the three amended Petitions meet the revenue neutrality requirement of 364.164(1)(d), Florida Statutes.

Furthermore, contrary to the position taken by the Attorney General in these proceedings as further elucidated in Section VI(C) of this Order, we find the statute does not require that implementation of the proposals be "bill neutral" to any particular customer or class of customers.

X. FLOW-THROUGH CONSIDERATIONS

In this section, we consider the proper application of Section 364.163, Florida Statutes. We note that for each of the flow-through issues, Common Cause Florida and Sugarmill Woods adopted the position of AARP.

A. Applicability and Content of Flow-Through Tariffs.

This section addresses which IXCs should be required to file flow-through tariffs and what information should accompany those filings.

1. Argument

AT&T and MCI argue that all IXCs should be required to flow through the switched access reductions they receive in order to keep long distance carriers on a level playing field. For competitive neutrality, any flow-through conditions imposed must be applied to all IXCs. However, AT&T and MCI would not be opposed to a de minimus threshold established by this Commission for those IXCs for which the flow-through would have no meaningful impact. Such threshold, however, should be set sufficiently low to allow only those IXCs with very low volume of access use to qualify.

BellSouth Long Distance notes that Section 364.163, Florida Statutes, requires that all IXCs who benefit from the access reductions must flow through the benefits. Also, a company's tariff filings should specify the rates to be reduced and contain a statement of the particular company's corresponding anticipated revenue reduction.

Sprint Communications Company's conditional position is that any IXC paying more than $1 million in access charges should be required to demonstrate that the required flow-through has occurred. It is not clear that the demonstration of flow-through should occur in the tariff filings. The demonstration of compliance with the statutory requirements should be up to each company and should insure that confidentiality is maintained where needed. Tariffs should reflect rates and charges that flow through benefits of reduced access charge prices.

Verizon Long Distance argues that any IXC that receives the benefit of intrastate switched access rate reductions must file intrastate tariffs (if tariff filings are required) flowing through such reductions. An IXC reseller should not be required to reduce prices to its customers unless it receives a reduction in the prices it is charged by its facilities-based supplier. IXCs should have the discretion to determine how to flow through the access charge reductions by lowering the in-state per minute rates, or monthly recurring plan charges, or both. If this Commission should decide to deregulate long distance services and eliminate long distance tariffing obligations, Verizon contends the reductions should be passed through to end users under end user service agreements.

OPC and AARP urge that all IXCs in Florida should be required to file tariffs and flow through the impacts of access rate reductions, except for those IXCs whose intrastate access expense reduction is $100 or less, per month. Those IXCs which are not required to flow through the reductions should attest to such, via a letter filed with this Commission. These flow-through reductions should be directed to residential customers in the same proportion as the basic local telephone service revenue increases proposed by the ILECs. Included in these tariff filings should be the information delineated in the testimony of witness Ostrander.

The Attorney General argues that all IXCs in Florida should be required to file tariffs and flow through the impacts of access rate reductions, except for those IXCs whose intrastate access expense reduction is $100 or less, per month. Those IXCs which are not required to flow through the reductions should attest to such, via a letter filed with this Commission.

2. Findings and Decision

There appears to be little disagreement among the parties as to the fact that the savings must be flowed through. There is disagreement, however, as to the type of documentation that should be required to demonstrate that this requirement has been met.

Upon consideration, all IXCs that paid $1 million or more in intrastate switched access charges within the most recent 12 month period shall include in their tariff filings: (1) a calculation of

the dollar benefit associated with the LEC's intrastate access rate reductions; (2) separate demonstrations that residential and business long distance rates have been reduced and the estimated annualized revenue effect, residential and business, including how those estimates were made; and (3) a demonstration that all rate reductions have been flowed through.

Further, IXCs that paid less than $1 million in intrastate switched access charges within the most recent 12-month period shall include in their tariff filings a letter certifying that they paid less than $1 million in intrastate switched access charges within the most recent 12 month period, and that they have complied with each of the flow-through requirements as specified in Section 364.163(2), Florida Statutes. Any IXC whose intrastate switched access expense reduction is $100 or less per month shall not be obligated to flow through its reduction, but must attest to such through a letter filed with this Commission.

Finally, we direct our staff to work with the parties on an appropriate reporting format with consideration given to the formats used to demonstrate the 1998 access charge reduction flow throughs. In addition, our staff shall be diligent in assuring compliance with the requirements of this Order.

B. Timing

This section of our Order addresses the appropriate timing for filing of the IXC flow-through tariffs required by this Order.

1. Argument

AT&T and MCI state that it is unnecessary to set the exact same filing dates for both the ILECs and IXCs. They maintain the statute clearly requires the IXC's revenues to be reduced by the amount of access reductions it receives, but does not specify a time frame for making the reduction. They believe IXCs need a sufficient amount of time to both calculate the savings they will receive and to prepare tariffs for filing. As such, they argue that IXCs should be allowed 60 days from the date the ILEC files its access tariff revisions to file any IXC tariff revisions for flow-through. If this Commission chooses to mandate the ILEC and IXC tariffs be effective simultaneously, the ILEC access tariff

revisions should be filed 60 days in advance of the effective date so that IXCs have the time necessary to conduct their analysis and file their tariffs, according to AT&T and MCI.

BellSouth Long Distance notes that affected IXCs should file their tariffs to flow through the access reductions within 15 days of the effective date of the last of the three LECs' filings. This would allow the carriers to avoid unnecessary multiple filings.

Sprint Communications Company's position is that IXCs should be allowed to have up to 60 days from the time that ILECs access reductions are effective in order to implement the tariff, billing and other administrative changes necessary to flow through the price adjustments.

Verizon Long Distance argues that facilities-based IXCs that benefit from reductions in the price of access should be required to pass through rate reductions via their intrastate tariffs (if tariffs are required), as soon as possible after the approved ILEC access rate reductions. Non-facilities-based IXCs should be required to flow through access charge reductions when they are received from the underlying facilities-based carrier. Since the flow-through of the access charges will require facilities-based carriers as well as IXC resellers, to make modifications to, for example, billing systems, rate tables, marketing and fulfillment materials, carriers should by given a reasonable amount of time to implement necessary plan and system changes before they are required to pass through access rate reductions.

On cross-examination, most of the IXC witnesses conceded that tariffs could be filed within 44 days after an ILEC's access charge tariff filing.

OPC, AARP and the AG all simply state that IXCs should be required to flow through the benefits of any rate reductions, via the tariffs, simultaneously with the approved ILEC access rate reductions.

2. Findings and Decision

Based on past experience with the 1998 access charge reduction flow-through, IXCs have not had difficulty complying with filing requirements as short as 21 and 30 days. We have heard no compelling testimony as to why, for the present dockets, 44 days from the filing of the LEC tariffs is not a reasonable time frame for filing of the IXC tariffs. The ILECs are required by Section 364.164(2), Florida Statutes, to give 45 days notice before tariffs go into effect, but IXCs need give only one day's notice. The goal of this requirement would be to have the ILEC and IXC tariffs become effective simultaneously. Accordingly, the IXC tariffs shall be required within 44 days after the filing of the ILECs tariffs, and the ILEC and IXC tariffs shall become effective simultaneously.

C. Duration of Revenue Reductions

Here, we address the appropriate duration of the IXC revenue reductions necessary to fully flow through the benefits of the access charge reductions to customers.

1. Argument

AT&T and MCI state that the highly competitive long distance market should and will decide this issue. They urge that specific restrictions have been unnecessary in the past, and could have negative consequences. In a highly competitive market, imposing any restrictions on the length of time a revenue reduction is in place could place the IXCs at a disadvantage in that it could prevent an IXC from implementing a pricing strategy that maximizes its competitive position. AT&T and MCI state that, should this Commission mandate the time period over which the reductions should be maintained, it would be the first time such a mandate has been imposed. In the earlier flow-throughs identified in these proceedings, this Commission did not impose a period of time that the rate reductions must be in place.

BellSouth Long Distance argues that, given the completely and irrevocably competitive nature of the intrastate interexchange long distance market in Florida, market forces will ensure that any long distance revenue reductions resulting from the flow-through of

access charges will remain in place. There is significant and considerable competition among traditional long distance carriers as well as competition from other providers, such as voice over internet protocol providers and wireless carriers. According to BellSouth Long Distance, this competition will cause carriers to move their prices toward cost and prevent them from raising rates. Intrastate interexchange carriers should have the flexibility to change rates to meet market conditions, as long as they reduce their revenues in an amount equal to their access charge reductions.

Sprint Communications Company's conditional position is that market forces will insure that the revenue benefits of access reductions will be effective in maintaining the revenue benefits of the access reductions. Nevertheless, each provider required to make a flow-through filing should reduce average prices by an amount at least equivalent to the access reduction on a per minute basis and should maintain those average price reductions for all three years of the access reductions plus at least one additional year.

Verizon Long Distance urges that the long distance market is highly competitive in that the traditional wireline long distance carriers compete against each other as well as with wireless carriers, cable companies and IP telephony providers. Competition will ensure that IXCs flow through access reductions without any need for Commission intervention. Nevertheless, to remove any doubt about whether customers will actually receive the benefit of the access reductions, Verizon Long Distance (and its affiliates) agree to flow through the reductions for three years. After that time, Verizon Long Distance argue IXCs should be free to change their long distance rates in accordance with the demands of the marketplace.

OPC, AARP and the AG argue that the IXCs should be required to cap and maintain their long distance rate reductions for a period of three years after parity is achieved, as required by Section 364.163, Florida Statutes, and as further described by witness Ostrander.

2. Findings and Decision

We find that, in order to implement the intent of the statutory requirements, there needs be a period of rate certainty after parity is achieved. We are not, however, persuaded by the arguments that we should mandate that the reductions remain in effect for a period of three years after parity is achieved. This is contrary to the fact that the long distance market is highly competitive, and as noted by witness Kapka, market forces will likely prove effective in keeping long distance rates low over the long term. Accordingly, we find that rate reductions shall remain in effect for no less than one year subsequent to parity being accomplished.

D. Allocation of the Flow-Through Benefits between Residential and Business Customers.

Here, we address the proper method for allocating the flow-through benefits between residential and business customers.

1. Argument

AT&T and MCI argue that the 2003 Act simply requires the IXCs to return the benefits of access reductions to both residential and business customers. However, it does not micro-manage the IXC market by mandating a methodology or specific allocation between the customer classes. In doing so, the Act recognizes the competitive market will determine the specifics of the access flow-through. They argue the 2003 Act specifically has given IXCs the maximum flexibility to determine how best to make reductions that meet the needs of the market place. As long as both residential and business customers benefit, each IXC should be left to accomplish its flow-through consistent with its market needs, according to the companies. In addition, each IXC must eliminate any in-state connection fee by July 1, 2006.

BellSouth Long Distance urges that both residential and business customers must receive benefits from the reduction in access charges, but emphasizes that Section 364.163, Florida Statutes, does not require any specific allocation. Nonetheless, under current market conditions, and so long as the other carriers agree to do so, BellSouth Long Distance will allocate the revenue

reductions in an approximately pro rata manner between residential and business customers based upon access minutes of use.

Sprint Communications Company states that the methodology contained in witness Kapka's direct testimony should be a guide for flow-through. In his testimony, witness Kapka explained his methodology as follows:

> For services which are substantially used by residential subscribed customers, Sprint would determine the average revenue per minute for these services in the aggregate. With each reduction in access charges, Sprint would adjust the average revenue per minute for this base of customers such that the average revenue per minute would be reduced by an amount at least equal to the reduction in access charges per minute. . . . This general approach will ensure that the residential subscriber base will experience a reduction in long distance prices at a level at least as much as the reduction in access costs associated with long distance minutes that customer segment consumes.

Verizon Long Distance (and the Verizon affiliates) plan to flow through the benefits realized from access reductions to both residential and business customers based on the relative proportion of access minutes associated with those classes of customers. The amount of intrastate switched access that Verizon Select Services uses is significantly less than the amount that Verizon Long Distance uses.

The position of OPC, AARP and the AG is that the IXCs should allocate rate reductions between residential and business customers in the same proportion as the respective percent revenue increases for those two classes of customers that have been proposed by the ILECs.

2. Findings and Decision

Each of the IXCs has agreed that the allocation of rate reductions between the residential and business customer classes should be in proportion to the respective access minutes of use. While we have considered the argument that the reductions should be

allocated in accordance with the increases on the local exchange side, we are not persuaded that this is feasible, economically appropriate, or even contemplated by the statute. Accordingly, we acknowledge the reasonableness of the IXC proposals that the allocation of the rate reductions being flowed through to residential and business customers on a pro-rata basis according to access minutes of use is reasonable.

XI. CONCLUSION

Based on the foregoing, we hereby grant the Petitions of Verizon, Sprint, and BellSouth as filed in Dockets Nos. 030867-TL, 030868-TL, and 030869-TL, as amended by commitments made on the record at the final hearing. In doing so, we find that these Petitions meet the statutory criteria set forth in Section 364.164, Florida Statutes, and that granting the Petitions furthers the Legislature's stated policy of furthering competition in the local exchange market and promoting new offerings and innovations in the telecommunications market for Florida consumers.

We hereby accept and approve the additional proposals offered by the companies as listed below:

BELLSOUTH	**SPRINT**	**VERIZON**
Increase non-recurring charges so that the single line residential rates would be lowered by approximately 36 cents.	Increases to basic residential recurring and non-recurring rates would be in four steps spread over three years.	Increase non-recurring revenues from $1.2 million to $2.4 million so that basic local rates can be raised by $1.2 million less than requested.
Increase Lifeline eligibility to 135% of the federal poverty level.	Increase Lifeline eligibility to 135% of the federal poverty level.	Increase Lifeline eligibility to 135% of the federal poverty level.
	Lifeline rates would not be increased for four years.	Lifeline rates would not be increased for four years.

BELLSOUTH	SPRINT	VERIZON
Will work with PSC to review ECS in a Commission workshop.	Will work with PSC to review ECS in a Commission workshop.	Will work with PSC to review ECS in a Commission workshop.

The tariffs reflecting the ILECs' agreement to increase Lifeline eligibility to 135% of the federal poverty level shall be effective concurrently with the ILECs' 45-day tariff filings.

In addition, the IXCs shall flow through the benefits resulting from the granting of the ILECs' Petitions in accordance with the specific requirements set forth in Section X of this Order.

Finally, Commission staff is hereby authorized to administratively review and approve the tariff filings received implementing these proposals.

It is therefore

ORDERED by the Florida Public Service Commission that the Petitions filed by Verizon Florida, Inc., Sprint-Florida, Incorporated, and BellSouth Telecommunications, Inc., in respective Dockets Nos. 030867-TL, 030868-TL, and 030869-TL are hereby approved as set forth in the body of this Order. It is further

ORDERED that the modifications proposed by these companies are also accepted and approved as set forth herein. It is further

ORDERED that the tariffs implementing the increased Lifeline eligibility criteria shall be effective concurrently with the Petitioners' 45-day tariff filings. It is further

ORDERED that the flow through of the access charge reductions by the interexchange carriers shall proceed in accordance with the provisions set forth herein and within the timeframes specified. It is further

ORDERED that a Commission workshop shall be conducted to investigate Extended Calling Service, as prescribed herein. It is further

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

ORDERED that these Dockets shall be closed after the time for filing an appeal has run.

By ORDER of the Florida Public Service Commission this 24th day of December, 2003.

Blanca S. Bayó

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

RDM/BK/FRB/PAC/CLF

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

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; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.