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September 10, 2003

BY HAND DELIVERY

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

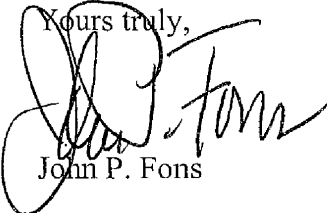
Re: Docket Nos. 030868-TL and 030869-TL

Dear Ms. Bayo:

Enclosed for filing in the above matter are the original and fifteen (15) copies of BellSuth Telecommunications, Inc. and Sprint-Florida, Inc.'s Joint Response to Citizens' Motion to Dismiss Petitions.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning the same to this writer.

Thank you for your assistance in this matter.

Yours truly,

John P. Fons

Enclosures

cc: Certificate of Service List

DOCUMENT NUMBER DATE

08565 SEP 10 8

FPSC-COMM DESIGN CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: SPRINT-FLORIDA, INCORPORATED'S
PETITION TO REDUCE INTRASTATE
SWITCHED NETWORK ACCESS RATES TO
INTERSTATE PARITY IN A REVENUE
NEUTRAL MANNER PURSUANT TO
SECTION 364.164(1), FLORIDA STATUTES

DOCKET NO. 030868-TL

IN RE: PETITION BY BELLSOUTH
TELECOMMUNICATIONS,
INC., TO REDUCE ITS NETWORK ACCESS
CHARGES APPLICABLE TO
INTRASTATE LONG DISTANCE IN A
REVENUE-NEUTRAL MANNER

DOCKET NO. 030869-TL

FILED: September 10, 2003

**BELLSOUTH TELECOMMUNICATIONS, INC. AND
SPRINT-FLORIDA, INCORPORATED'S JOINT RESPONSE
TO CITIZENS' MOTION TO DISMISS PETITIONS**

Sprint-Florida, Incorporated and BellSouth Telecommunications, Inc. (hereinafter "Sprint," "BellSouth" or jointly "Petitioners"), pursuant to Rule 28-106.204, Florida Administrative Code, hereby respond to Citizens of Florida's ("Citizens") Motions to Dismiss the petitions of Sprint and BellSouth ("Motions"), stating as follows:

1. On August 28, 2003, Citizens, in response to Sprint and BellSouth's Petitions to reduce intrastate switched network access rates to interstate parity in a revenue neutral manner pursuant to Section 364.164(1), Florida Statutes, ("Petitions"), filed the instant Motion. In the Motion, Citizens allege that the Petitions and the supporting testimony indicate that Petitioners' rate changes will take place over a "one-year period, or twelve months" in contravention of Section 364.164(1)(c) which requires that "in reaching its decision, the commission shall consider whether granting the petition will ... [r]equire intrastate switched network access rate reductions over a period of not less than 2 years or more than 4 years."

2. A motion to dismiss raises as a question of law whether the petition alleges sufficient facts to state a cause of action. Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla. 1st DCA 1993). In disposing of a motion to dismiss, the Commission must assume all of the allegations of the petition to be true and determine whether the petition states a cause of action upon which relief may be granted. Heekin v. Florida Power & Light Co., Order No. PSC-99-10544-FOF-EI, 1999 WL 521480 *2 (citing to Varnes, 624 So. 2d at 350). All reasonable inferences drawn from the petition must be made in favor of the petitioner. Id. Further, in order to determine whether the petition states a cause of action upon which relief may be granted, it is necessary to examine the elements required to be alleged under the substantive law on the matter. Id. Applying this standard to the case at hand, it is clear that Citizens' Motions must be denied.

3. Petitioners concur that their filings contain two access and basic local rate adjustments which, if the Petitions are granted, will occur on each of the first days of two separate annual periods or years. These are rate adjustments occurring in a period of not less than two years as contemplated in Section 364.164(1)(c).

4. The resolution of this issue turns not on the Citizens' cited excerpts of statutory language coupled with a quote from a dictionary, but by reference to the contextual entirety of the statute. The full context of this issue is contained in subsections 364.164(1)-(3), reproduced in full below. Petitioners have highlighted each of the relevant words or phrases which demonstrate that the Petitions should not be dismissed:

364.164 Competitive market enhancement.--

(1) Each local exchange telecommunications company may, after July 1, 2003, petition the commission to reduce its intrastate switched network access rate in a revenue-neutral manner. The commission shall issue its final order granting or denying any petition filed pursuant to this section within 90 days. In reaching its decision, the commission shall consider whether granting the petition will:

(a) Remove current support for basic local telecommunications services that prevents the creation of a more attractive competitive local exchange market for the benefit of residential consumers.

(b) Induce enhanced market entry.

(c) *Require intrastate switched network access rate reductions to parity over a period of not less than 2 years or more than 4 years.*

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

(2) If the commission grants the local exchange telecommunications company's petition, the local exchange telecommunications company is authorized, the requirements of s. 364.051(3) notwithstanding, to immediately implement a revenue category mechanism consisting of basic local telecommunications service revenues and intrastate switched network access revenues to achieve revenue neutrality. The local exchange telecommunications company shall thereafter, on 45 days' notice, adjust the various prices and rates of the services within its revenue category authorized by this section *once in any 12-month period* in a revenue-neutral manner. An adjustment in rates may not be offset entirely by the company's basic monthly recurring rate. *All annual rate adjustments* within the revenue category established pursuant to this section must be implemented simultaneously and must be revenue neutral. The commission shall, within 45 days after the rate adjustment filing, issue a final order confirming compliance with this section, and such an order shall be final for all purposes.

(3) Any filing under this section must be based on the company's most recent 12 months' pricing units in accordance with subsection (7) for any service included in the revenue category established under this section. The commission shall have the authority only to verify the pricing units for the purpose of ensuring that the company's specific adjustments, as authorized by this section, make the revenue category revenue neutral for each filing. Any discovery or information requests under this section must be limited to a verification of historical pricing units necessary to fulfill the commission's specific responsibilities under this section of ensuring that the company's rate adjustments make the revenue category revenue neutral *for each annual filing.*

[Emphasis supplied].

5. When viewed together with the entire relevant statutory provisions, the language cited in the Citizens' Motion is entirely consistent with the cases the Petitioners have filed. The terminology used in subsections 364.164(1) – (3) provides the necessary clarification of what is

meant by "not less than 2 years." Most importantly subsection (2) provides that upon the granting of its petition:

The local exchange company . . . shall . . . adjust the various prices and rates . . . once in any 12-month period.

[Emphasis supplied].

6. The obvious reading of this clarifying language means that the Petitioners can reduce their access rates on day one of the first 12-month period (e.g., 1/1/04) and then again on day one of the second 12-month period (e.g., 1/1/05). In this example, the two access rate reductions are made over a two year period. Viewed another way, "not less than 2 years" means that the access rate reductions cannot be made in just one installment, in just one "12-month period," or in just one year. In other words, over a period of "not less than 2 years" actually means "in not less than 2 annual installments." In the same example, each rate adjustment will be "annual" as contemplated in the very next sentence of subsection 364.164(2). The Legislature clearly intended that each access rate reduction be made in separate years and that each would be deemed an "annual" filing, and each "annual" filing would constitute one year. This concept is reinforced again in subsection (3). Any contrary reading does not make sense.

7. Furthermore, adoption of Citizens' erroneous interpretation that "a period of not less than 2 years" means a "period of more than 2 years," would mean that -- having made the initial (simultaneous) access and basic local rate changes within 45-90 days after the granting of the petition as contemplated in Section 364.164(2) -- Petitioners could not then make the next "annual" adjustment until the second year had elapsed -- or the first day of the third 12-month period. This is not the result contemplated by the Act since subsections 364.164(2) and (3) clearly contemplate that annual filings on anniversary dates in two different 12-month periods constitutes in "not less than 2 years."

8. By focusing solely on a narrow portion of the statute in a vacuum, Citizens have ignored the overall legislative scheme. The rate changes that are the subject of these Petitions cannot be made unless they are revenue neutral. See ss.364.164 (1) (d) and ss.364.164 (2). The statutory definition of revenue neutrality is a twelve-month minimum time period concept. See ss.364.164 (7).¹ In the first instance, the test for revenue neutrality is based on the most recent twelve months' revenues and billing units. *Id.* This recognizes that a true measure of revenue neutrality depends on a full year of activity. The achievement of parity in a vacuum on the given day rates change cannot be separated from the fact that revenue neutrality is achieved only when a full year of reduced access revenues are matched against a full year of increased basic local rate revenues. This leads to the second aspect of achieving parity in a revenue neutral manner. In the example in paragraph 6, above, each rate change (based on a historical twelve month period) occurs on the first day of each prospective twelve month period. The corollary, and required, revenue neutrality can only be achieved over the ensuing twelve-months. Since parity cannot be achieved without revenue neutrality being achieved, the true measure of consistency with ss.364.164(1)(c) is whether the rate change(s) yielding parity have been implemented annually in a revenue-neutral manner over a period of at least two years. This can be done in a two-step process as the Petitioners have proposed.

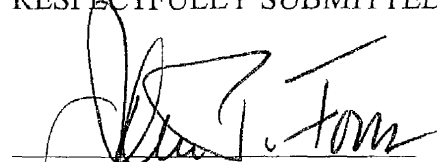
9. Finally, even if the Commission were to harbor some doubt – despite the clear language of the statute – dismissal is not called for. Subsection 364.164(1)(c) directs the Commission to consider whether granting the "petition" will "[r]equire intrastate switched

¹ (7) As used in this section, the term "revenue neutral" means that the total revenue within the revenue category established pursuant to this section remains the same before and after the local exchange telecommunications company implements any rate adjustments under this section. Calculation of revenue received from each service before the implementation of any rate adjustment must be made by multiplying the then-current rate for each service by the most recent 12 months' actual pricing units for each service within the category, without any adjustments to the number of pricing units. Calculation of revenue for each service to be received after implementation of rate adjustments must be made by multiplying the rate to be applicable for each service by the most recent 12 months' actual pricing units for each service within the category, without any adjustments to the number of pricing units. Billing units associated with pay telephone access lines and Lifeline service may not be included in any calculation under this subsection.

network access rate reductions to parity over a period of not less than 2 years or more than 4 years." Thus, this factor is just one factor to be considered by the Commission. By granting Citizens' Motions, the Commission would be prejudging consideration of this factor even before it has heard Petitioners cases addressing this factor or before the Commission has fully examined all of the other factors. The Commission should err on the side of considering – at hearing – the factor and Petitioners' proposed method(s) of addressing it.

WHEREFORE, BellSouth and Sprint request that the Commission deny Citizens Motions to Dismiss their Petitions.

RESPECTFULLY SUBMITTED,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail, e-mail or hand delivery (*) this ~~11~~ day of September, 2003, to the following:

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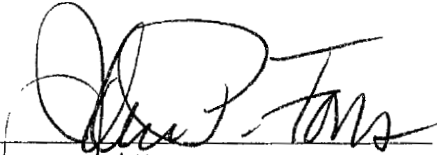
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