

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

FILED: October 20, 2003

**AARP MOTION TO DISMISS PETITIONS OF BELLSOUTH,
VERIZON AND SPRINT FOR FAILURE TO JOIN INDISPENSABLE PARTIES**

Pursuant to Rule 28-106.204, Florida Administrative Code and Rule 1.140(b), Fla.R.Civ.P., the AARP, through its undersigned attorney, files its Motion to Dismiss the Petitions of BellSouth, Verizon and Sprint for their Failure to Join the Inter-Exchange Telecommunications Carriers Serving the State of Florida as Indispensable Parties, and in support thereof, states as follows:

1. On September 30, 2003 BellSouth filed its revised petition to decrease its intrastate access fees by \$136.4 Million and to raise its basic local residential and single-line services rates by the same amount. Thereafter on October 1 and October 2, 2003, respectively, Sprint and Verizon filed their amended petitions by which they sought to "rebalance" their

DOCUMENT NUMBER-DATE

10253 OCT 20 03

FPSC-COMMISSION CLERK

intrastate access fees and local residential and single-line business rates by seeking to raise their local rates, \$142.1 Million for Sprint and \$76.8 Million for Verizon.

2. Rule 1.140(b), Fla.R.Civ.P., provides, in pertinent part:

(b) How Presented. Every defense in law or fact to a claim for relief in a pleading shall be asserted in the responsive pleading, if one is required, but the following defenses may be made by motion at the option of the pleader: . . . (7) failure to join indispensable parties.

3. A central proof to each of the large local exchange companies having their petitions granted is meeting the requirements of Section 364.164(1), which states:

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:

(2) 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.

(Emphasis supplied.)

4. A consistent and recurring theme advanced by the industry when lobbying this legislation during both the 2002 and 2003 sessions and repeated by the legislation's House and Senate supporters was the possibility that residential customers might have the opportunity of "breaking even" or even "coming out ahead" on their total monthly phone bills as a result of their savings from making intrastate toll calls, at the lower rates flowed through as a result of the

legislation, exceeding the level of increased local rates.¹ AARP would submit that this particular “residential benefit” was critical to the passage of the legislation enabling the instant petitions.

5. The requirement of “residential consumer benefit” is not only at the forefront of the statute’s requirements and a comfortable “hook” used by the industry to garner legislative support, it is also a central theme offered to this Commission as a basis for approving the huge local rate increases being sought.

6. Sprint’s petition, at Page 11, states the following:

19. Making the residential local market more attractive to competitors is not the only benefit the Sprint’s residential local service users will experience from granting Sprint’s Petition. Sprint’s residential local service customers who subscribe to a major interexchange carrier (IXC) for their toll services will see a significant benefit from granting Sprint’s Petition. Felz Direct Testimony at 24-25; Staihr Direct Testimony at 14. As required by the 2003 Act, each IXC that experiences expense savings from the reduction of intrastate switched network access rates must pass all of those savings on to their customers in the form of: a.) eliminating any “instate connection fee” by January [sic] 1, 2006; and b.) reducing intrastate toll rates. Section 364.164(2), Florida Statutes.

20. The “instate connection fee,” which amounts to about \$1.90 per month, is collected by several, major IXCs from many of their toll customers, regardless of the customers’ level of toll usage. Thus, every residential toll customer paying the “instate connection fee” will see a reduction and eventual elimination of that \$1.90 fee, regardless of how many or how few toll calls the residential consumer makes each month. Felz Direct Testimony at 24-25; Staihr Direct Testimony at 14. Thereafter, the IXCs’ per minute toll rates must be reduced to flow-through any residual intrastate switched network access rate reduction amounts.

(Emphasis supplied.)

¹ AARP is now in the process of having relevant industry and legislator comments to this effect recorded during committee and floor debate transcribed and will file the transcripts when available.

7. As indicated in its petition, Sprint witness Brian Staihr, at page 14, line 9 of his prefiled direct testimony said the following:

Q. But doesn't that mean that residential local service rates would possibly increase more in Sprint's territory than in other regions?

A. Yes, but there are counter-balancing factors that must be considered. First, it is important to keep in mind that inter-exchange carriers (IXCs) are required to flow through the access charge reductions that accompany the rate rebalancing. This includes elimination of the "in state connection fee." As a result, toll customers currently paying such a fee to an IXC - regardless of their level of usage - will benefit as this charge is eliminated. Also, because per-minute access charges will be reduced, many customers' total bills (for all telecom services) will, on average, decline as well. So although basic rates will rise, toll rates will fall and in many cases the effects will offset each other.

(Emphasis supplied.)

8. Similarly, Sprint witness John Felz, at page 24-25, beginning at line 24 of his prefiled direct testimony said the following:

Q. Are there other consumer benefits provided by legislation?

A. Yes. The interexchange carriers ("IXCs") are required to return to their residential and business customers the benefits of access reductions they realize from the ILEC rate reductions. The reductions that customers experience in the rates for long distance calling will serve to offset the increases they will experience for basic local services. This offset will consist of eliminating, by January 1, 2006, any "instate connection fee" which for the "big three" IXCs is currently approximately \$1.90 per month, and flowing-through any residual switched network access charge reduction amount in the form of lower toll rates. Thus IXC's residential customers currently being charged an instate connection fee will see a direct reduction in their monthly toll bill of about \$1.90, regardless of the amount of their toll calling volume. Thereafter, long distance users will receive the benefits of additional IXC flow-through toll price reductions.

(Emphasis supplied.)

9. Verizon's witness Carl Danner promoted the same vision of residential customers being able to offset the large local rate increases through utilizing reduced instate toll rates. At

page 10, line 5 of his prefiled direct testimony he said the following:

Q. Will Verizon's Pricing Reform Plan encourage increases in toll and long distance usage, and therefore, make residential customers more attractive to competition?

A. Yes, because the newly enacted legislation requires long distance providers to flow through access reductions, toll and long distance prices will fall, which in turn would stimulate toll and long distance usage.

This reaction will increase the size of the market opportunity for competitors, and therefore also promote competition for residential customers.

(Emphasis supplied.)

10. Verizon's witness Danner, also at page 10, said the following:

Q. Are there any other benefits associated with Verizon's pricing reform plan?

A. Yes. Competitive pressures will likely force Verizon to reduce its toll process. Such reductions will not be offset with increases under § 364.164 and will therefore serve as an additional customer benefit.

Q. Is there a particular class of residential customer that benefits the most from Verizon's plan?

A. Yes. Verizon's plan will benefit existing Lifeline customers and additional customers who will qualify for Lifeline under the expanded provisions of F.S.364.164. Lifeline subscribers will see the price they pay for basic local service preserved at its current level, while at the same time enjoying the benefits of reduced prices for long distance calling created by the pass through of access charge reductions.

(Emphasis supplied.)

11. BellSouth's witness John Ruscilli's testimony similarly touted the ability of residential customers to save or "benefit" through reductions in in-state toll rates. At page 10, beginning at line 1 of his prefiled testimony, he said the following:

Q. Although BellSouth proposes increasing certain local exchange rates, should customers benefit in the way of reduced long distance rates?

A. Yes. Although BellSouth's proposal includes increases in certain local exchange services rates, Section 364.163(2) provides that these same customers can be recipients of lower long distance rates. Section 364.163(2) requires that telecommunication companies whose rates are reduced due to adjustments in intrastate switched access must decrease their long distance revenues by passing along such reductions to both residential and business customers. Therefore, to the extent that customers are using long distance service provided by telecommunications companies that pay Bellsouth switched access charges, Bellsouth's proposal will result in lower long distance rates for these customers.

(Emphasis supplied.)

12. The "cleanup" witness sponsored jointly by BellSouth, Verizon and Sprint, Kenneth Gordon, said the following at page 16 of his prefiled direct testimony:

Q. Please explain why you believe that the companies' plans will not result in rate shock.

A. The companies' plans will result in relatively minor increases in a customer's basic local price. In addition, as I stated earlier, these price increases will not even apply to current Lifeline consumers and new Lifeline consumers who have become eligible as a result of the Tele-Competition Act raising the income threshold to 125% of the poverty level.

In addition, with the reduction and elimination of the in-state connection fees, many customers might not even experience a significant change in their total bill. If there is an increase in the customer's bill, it will likely result in large part from increased stimulation from lower long distance charges that represent real gains to consumers because they are now able to make more calls at the new lower prices.

(Emphasis supplied.)

13. Despite the above-cited, repeated assurances that residential customers will be able to benefit from the flow-through of access reductions to reduced instate toll rates, there is not a single word in the testimony of the three companies' witnesses, or in their exhibits, or

petitions, stating how, or to what levels, the IXC's will reduce their instate toll rates in programs available to residential customers.

14. Section 364.163(2), Florida Statutes, which requires that the IXC's reduce their instate toll rates dollar for dollar in sync with the levels the petitioners will raise the basic local rates of their residential and single-line business customers states as follows:

Any intrastate interexchange telecommunications company whose intrastate switched network 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.

(Emphasis supplied.)

15. There is a maximum total of \$355.3 Million in annual rate increases being sought to be recovered by the petitioners solely through the rates paid by residential and single-line business customers, while multi-line business customers are exempted entirely from any increases pursuant to these petitions. Section 364.163(2), Florida Statutes, clearly leaves the decision on how to apportion these reductions among business and residential calling plans or programs in the sole discretion of the IXC's, so long as each class gets some of the reductions. Thus, under a worse-case scenario, from the residential customers' perspective, the IXC's could

allocate up to 99 percent, or \$351.75 Million, of the reductions to their multi-line business customers, who presumably make the majority of instate toll minutes of calls, while giving to the residential customers only 1 percent, or the remaining \$3.55 Million. Such an allocation would be entirely in compliance with the terms of the statute and there would be presumably nothing this Commission could do to alter it since the changes are presumed valid and become effective on one day's notice.

16. The worse-case scenario described above would clearly leave no opportunity whatsoever for residential customers to "benefit" financially, as described by the companies' many witnesses, by breaking even or coming out ahead on their total monthly bills as a result of making instate toll calls at rates reduced in connection with their local rates being increased by as much as 35 to 90 percent.

17. Clearly, it is impossible for this Commission, or any party, including AARP, to be able to ascertain whether a given residential customer, or any residential customers for that matter, may "benefit" by offsetting savings resulting from reduced instate toll rates without first knowing what those rates will be. The petitioners wrote the legislation leading to the new law in league with the IXCs and should have joined them in these proceedings so that this Commission, and their residential customers, could have the "rest of the story," or the missing part of the equation from which to determine whether their assertions as to "residential benefits" from reduced toll rates are believable or not.

18. This Commission should determine whether it has the statutory authority to join the IXCs which will receive the access fee reductions compelled if the petitioners' petitions are granted and join them as necessary parties if it does. If the Commission concludes that it

lacks the authority to join the IXCs, then it should find that determining whether the rate increases will be “for the benefit of residential consumers” is impossible and dismiss each of the petitions with leave to amend at such time as the petitioners convince the IXCs to show their instate toll reductions.

19. These rate increases were repeatedly said by the legislature and the governor to not be “mandated” and, further, that this Commission had “sweeping discretion” to determine whether allowing them would not only be in the public interest, but in the interest of residential customers. The petitioners have failed to supply this Commission with an essential and indispensable part of the financial picture necessary to determine both the public and residential customer benefit. Accordingly, the petitions should be dismissed, with leave to be refiled with the essential, but missing information.

WHEREFORE, AARP requests that this Commission Dismiss the Petitions of BellSouth, Verizon and Sprint for Failure to Join the Inter-Exchange Telecommunications Carriers Serving the State of Florida as Indispensable Parties.

Respectfully submitted,

/s/ Michael B. Twomey
Michael B. Twomey
Attorney for
AARP
Post Office Box 5256
Tallahassee, Florida 32314-5256
Telephone: 850-421-9530
Email: miketwomey@talstar.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this petition has been served by either hand delivery or overnight mail and by either facsimile transmission or electronic mail messaging this 20th day of October, 2003 on the following:

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

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

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

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

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

/s/ Michael B. Twomey
Attorney