



# Public Service Commission

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**DATE:** OCTOBER 22, 2003

**TO:** DIRECTOR, DIVISION OF THE COMMISSION ADMINISTRATIVE SERVICES (BAYÓ)

**FROM:** OFFICE OF THE GENERAL COUNSEL (FORDHAM, BANKS) *C. F. FRB*  
 DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (WRIGHT, *Ruby*  
 SIMMONS, BULECZA-BANKS) *(LRC)*  
 OFFICE OF MARKET MONITORING & STRATEGIC ANALYSIS (BETHEA) *Red*

**RE:** DOCKET NO. 030961-TI - FLOW-THROUGH OF LEC SWITCHED ACCESS REDUCTIONS BY IXCS, PURSUANT TO SECTION 364.163(2), FLORIDA STATUTES.

**AGENDA:** 11/03/03 - REGULAR AGENDA - PROPOSED AGENCY ACTION-INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\CMP\WP\030961.RCM

### CASE BACKGROUND

During the 2003 Regular Session, the Florida Legislature enacted the Tele-Competition Innovation and Infrastructure Enhancement Act (Tele-Competition Act or Act). The Act became effective on May 23, 2003, creating a process for intrastate switched network access rate reductions. Section 364.163(2), Florida Statutes, states:

Any intrastate interexchange telecommunications company (IXC) 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 Section 364.164, Florida Statutes, shall decrease its intrastate long distance revenues by the amount necessary to return the benefits of such reduction to

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both its residential and business customers. The intrastate IXC 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 Section 364.164(1), Florida Statutes, 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 IXC to carry out the requirements of this subsection shall be presumed valid and shall become effective on one day's notice.

Section 364.163(3), Florida Statutes, states:

The Commission shall have continuing regulatory oversight of intrastate switched network access and customer long distance rates for purposes of determining the correctness of any rate decrease by a telecommunications company resulting from the application of Section 364.164, Florida Statutes, and making any necessary adjustments to those rates.

As a historical comparison, staff notes that the 1995 changes to Chapter 364, Florida Statutes, required certain local exchange companies (LECs) to reduce their intrastate switched access rates effective October 1, 1996. Concurrent with these intrastate switched access rate reductions, telecommunications companies were to reduce their "customer long distance rates" to flow through the benefits of the access reductions. By Order No. PSC-96-1265-FOF-TP, issued October 8, 1996, and Order No. PSC-97-0604-FOF-TP, issued May 27, 1997, the Commission ordered IXCs to provide substantial documentation to verify their compliance with the flow-through requirements. Changes in 1998 to Chapter 364, Florida Statutes, required certain LECs (Sprint and Verizon) to reduce their access charges by 5 percent on July 1, 1998, and by 10 percent on October 1, 1998, and required IXCs to return the benefits of the reductions to their customers. Order No. PSC-98-0795-FOF-TP, issued June 8, 1998, specified filing requirements for the IXCs. Further, the order modified the filing requirements for smaller IXCs, in order to reduce their regulatory burden.

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This recommendation addresses the IXC decreases in long distance revenues required by Section 364.163(2), Florida Statutes, resulting from possible switched access rate reductions proposed by Verizon, Sprint-Florida, and BellSouth in Dockets 030867-TL, 030868-TL, and 030869-TL, which are the separate petitions, subject to approval, to reduce intrastate switched access charges in a revenue-neutral manner, in accordance with Section 364.164, Florida Statutes. The Commission is vested with jurisdiction in this matter pursuant to Section 364.163, Florida Statutes.

#### **DISCUSSION OF ISSUES**

**ISSUE 1:** Which IXCs should be required to file tariffs to flow through BellSouth's, Verizon's and Sprint-Florida's switched access reductions, if approved, and what should be included in these tariff filings?

**RECOMMENDATION:** IXCs that paid \$1 million or more in intrastate switched access charges in 2002 should include in their tariff filing: 1) a calculation of the dollar benefit associated with the LEC's intrastate switched 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 a description of how those estimates were made; and 3) a demonstration that all reductions have been flowed through.

IXCs that paid less than \$1 million in intrastate switched access charges in 2002, should include with their tariff filing, a letter certifying that they paid less than \$1 million in intrastate switched access charges in 2002, 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 is not obligated to flow through its reduction, but should attest to such, through a letter filed with the Commission.

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The revenue reductions should be implemented and remain in effect as described in the body of this recommendation. **(WRIGHT, BANKS)**

**STAFF ANALYSIS:** Section 364.163(2), Florida Statutes, provides that:

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 Section 364.164 shall decrease its intrastate long distance revenues by the amount necessary to return the benefits of such reductions to both its residential and business customers.

IXCs that purchase switched access should be required to flow through any reductions in switched access to their own customers. Though the switched access rate reductions being addressed in Docket Nos. 030867-TL, 030868-TL, and 030869-TL, may or may not be approved, staff believes it prudent for the Commission to put the IXCs on notice as to their filing requirements if switched access reductions are approved.

Section 364.163(2), Florida Statutes, also states:

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 Section 364.164(1) reduces intrastate switched network access rates in an amount that results in the elimination of such fees in a revenue-neutral manner. The tariff changes, if any, made by the intrastate IXC to carry out the requirements of this subsection shall be presumed valid and shall become effective on one day's notice.

Again, as a historical reference point, in Docket No. 980459-TP, Flow-Through of 1998 LEC Switched Access Reductions by IXCs, Order No. PSC-98-0795-FOF-TP modified the filing requirements for smaller IXCs, in order to reduce their regulatory burden. The

order stated that it is important in a pro-competitive environment not to burden smaller IXCs unnecessarily with reporting requirements. Staff believes that the demarcation line established in Order No. PSC-98-0795-FOF-TP for filing requirements relief, should be revised for this docket from less than \$20 million in switched access charges paid in 1997 to less than \$1 million in total Florida intrastate switched access charges paid in 2002. In Order No. PSC-98-0795-FOF-TP, the Commission also concluded that permitting smaller IXCs to certify that they paid less than \$20 million in total Florida intrastate switched access and that they have met the flow-through requirements, satisfies both the letter and the spirit of Chapter 364, Florida Statutes. Staff recommends that the Commission adjust the filing requirements and allow any IXC that paid less than \$1 million in total Florida intrastate switched access charges in 2002, to certify to such, by letter, accompanying their tariff reduction filing, that they have met the statutory requirements.

Staff believes that the threshold for relief from IXC filing requirements should be lowered for IXCs from less than \$20 million, to less than \$1 million because of the potential magnitude of the reductions in switched access rates and the resulting intrastate long distance revenue reductions for the IXCs. By doing so, the Commission can assure itself that the benefits of such reductions have been returned to both residential and business customers. Section 364.163(3), Florida Statutes, states that the Commission shall have continuing regulatory oversight of intrastate switched network access and customer long distance rates for purposes of determining the correctness of any rate decrease by a telecommunications company resulting from the application of Section 364.164, Florida Statutes. Staff believes that changing the documentation requirement to apply to companies whose intrastate switched access charge expense is greater than \$1 million is not overly burdensome.

Consistent with Order No. PSC-98-0795-TP, staff recommends that the tariff filings for all IXCs that paid \$1 million or more in total Florida intrastate switched access charges in 2002, include: (1) a calculation of the dollar benefit associated with the LECs' intrastate switched access rate reductions; (2) separate demonstrations that residential and business long distance rates have been reduced and the estimated annualized revenue effect, residential versus business, including a description of how those estimates were made; and (3) a demonstration that all reductions

have been flowed through for each year reductions are implemented. Staff audits may be performed on the documentation filed by the IXC's so the Commission can verify that the switched access reductions are being flowed through in a manner that returns the benefits of such reductions to residential and business customers.

Order No. PSC-98-0795-FOF-TP specified that any IXC which had an intrastate switched access expense reduction of \$100 or less was not required to flow through its reduction; however, any such IXC was required to file a letter certifying that its access expense reduction was \$100 or less per month. Staff recommends that this exception should also be made for this access expense reduction.

Section 364.163, Florida Statutes, is silent as to any time requirements the IXC's are subject to in regards to maintaining their rate reductions once implemented. If the IXC's raise the same rates that were lowered to satisfy Section 364.163(2), Florida Statutes, within a short period of time, benefits received by the IXC's residential and business customers may be compromised and may appear as though the benefits were not fully passed through to the customers. Also, while the IXC's that impose an in-state connection fee (approximately \$1.90 per month) must eliminate those fees by July 1, 2006, they may choose to wait until that deadline to eliminate such fees, further delaying receipt of those benefits by IXC customers. Further, there is nothing in the statute that prevents the IXC from increasing the revenues it derives from other rates that are not decreased pursuant to the flow-through requirement, provided its revenues are reduced by the amount necessary to return the benefits derived from the intrastate switched access rate reductions, to both its residential and business customers.

Because Section 364.163, Florida Statutes, does not specify any time requirements on the IXC rate reductions, staff believes the Commission should consider whether to require the IXC revenue reductions to remain in place for a specified period of time.

One option, would be for the Commission to require the IXC's to maintain the revenue reductions for a twelve-month period following the time when the LEC's access charges reach parity. As defined in Section 364.163(5), parity is when a LEC's intrastate switched network access rates equal its interstate switched network access rate in effect on January 1, 2003. Under this option, once the LEC reaches parity, the consumer would experience the benefit of the

access rate reduction for the twelve-month period following the obtainment of parity. If a twelve-month mandate is not imposed, the IXC could receive an access rate reduction on January 1 that brings the interstate and intrastate rates to parity, yet implement increases on January 2<sup>nd</sup>. The IXC would receive the benefit of the access rate reductions, but would not have flowed through the benefits of that reduction to the consumer.

One other option would be to require the IXCs to maintain their revenue reductions for a period of time that coincides with the requirements in Section 364.163(1), that mandates the LECs cap their intrastate switched network access rates for three years after parity is reached. By requiring the IXCs to maintain their revenue reductions to coincide with the LECs' access rate reductions, the customers may experience a greater benefit.

The Commission could also choose to allow the IXCs to implement the revenue reduction over a time period that they believe appropriate. As the long distance market is highly competitive, imposing any restriction on the length of time a revenue reduction is in place could place the IXCs at a disadvantage. Imposing a time mandate could prevent an IXC from implementing a pricing strategy that maximizes its competitive position.

Should the Commission mandate a period of time over which the IXC reductions are to be maintained, this would be the first time such a mandate has been imposed. In prior IXC access reduction flow throughs identified earlier in this recommendation, the Commission did not impose a period of time that the rate reductions must be in place.

Staff believes the Commission has authority to implement any of these requirements. On its face, Section 364.163(3), Florida Statutes, appears to be clear and unambiguous that the Commission shall have continuing regulatory oversight of intrastate switched network access and customer long distance rates. Staff believes that this Section authorizes the Commission to oversee the benefits of the flow-through to residential and business customers by the IXCs. If we look at the plain meaning of the language in Section 364.163(3), Florida Statutes, it is evident that Florida Legislature intended to grant the regulatory oversight of the process for switched network access reductions to the Commission.

Since the terms and provisions of the statute are plain, there is no need for administrative interpretation. Southeastern Utilities Service Co. v. Redding, 131 So. 2d 1 (Fla. 1950). Thus, it is not necessary to look at the legislative intent because Section 364.163(3), Florida Statutes, is unambiguous. Nonetheless, staff has reviewed the legislative history behind this Section, and found that it does not specifically outline the extent of the Commission's regulatory oversight. However, according to the language of Section 364.163(3), Florida Statutes, the Legislature's expressed intent is that the Commission's regulatory oversight is for the purpose of determining the correctness of any rate decrease by an IXC resulting from the application of Section 364.164, Florida Statutes, and making any necessary adjustments to those rates. In accordance with the expressed intent of the Legislature regarding Section 364.164(3), Florida Statutes, staff believes that the Commission can prescribe what the IXCs should include in their tariff filings for purposes of discerning the correctness of their rate decreases.

Therefore, staff believes in order to satisfy the spirit of Section 364.163(3), Florida Statutes, the Commission should require the IXCs to maintain the revenue reductions for a twelve-month period following the time when the LECs' access charges reach parity. By mandating the IXC maintain the revenue reductions, this will ensure return of the benefits to both residential and business customers. Staff recognizes that the Commission can consider other time requirements, however, requiring the IXCs to keep their reductions in place for a twelve-month period following the time when the LECs' access charges reach parity, is the most reasonable course of action.

Section 364.163(2), Florida Statutes, directs the IXCs to return the benefits of the switched access reductions to both residential and business customers, but does not specify as to what proportion of the benefits the residential and business customers are to receive. The benefits identified in this section address the benefits received by the IXCs through intrastate switched access reductions, in other words, this section does not address how the IXCs' benefits should be allocated among consumers.

In summary, staff recommends that all IXCs registered by the Commission which purchase intrastate switched access from BellSouth, Verizon, and Sprint-Florida are required to file tariffs that reflect the flow through of the LECs' switched access



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reductions. IXCs that paid more than \$1 million in switched access charges are required to provide certain documentation as described heretofore. IXCs that paid less than \$1 million in intrastate switched access charges in 2002 should include a letter certifying as such and that they have complied with the flow-through requirements as required by Section 364.163(2). Any IXC whose intrastate switched access expense reduction is \$100 or less per month is not obligated to flow through its reduction, but should so certify in a letter to the Commission. Staff is also recommending that the IXCs be required to maintain the revenue reductions implemented according to Section 364.163(2), for a twelve-month period following the time when the LECs' access charges reach parity.

**ISSUE 2:** When should the IXCs tariffs be filed?

**RECOMMENDATION:** The IXCs should be required to file their tariffs in order for them to become effective concurrently with the LECs' tariff filings. **(WRIGHT, SIMMONS)**

**STAFF ANALYSIS:** If the petitions filed by Verizon, BellSouth, and Sprint-Florida in Dockets 030867-TL, 030868-TL, and 030869-TL, Petitions to Reform Intrastate Access Tariffs and Basic Local Telecommunications Rates in Accordance With Section 364.164, Florida Statutes, are approved, then the LECs are authorized to immediately implement a revenue category mechanism consisting of basic local telecommunications service revenues and intrastate switched network access revenue to achieve revenue neutrality. The LECs, shall thereafter, on 45 days' notice, adjust the various prices and rates of the services within its revenue category authorized by Section 364.164, Florida Statutes, once in any twelve month period in a revenue-neutral manner. Since the LECs listed in the aforementioned dockets have filed direct testimony with schedules detailing the switched access elements that they plan to adjust and must give 45 days' notice before adjusting rates, staff believes that the IXCs have sufficient time to review the LECs' filings and file their tariffs one day before the LECs' rate adjustments go into effect or day 44. Therefore, in accordance with the one-day notice period, the IXCs' tariffs will become effective concurrently with the LECs' tariffs.

Staff believes it is important that the IXCs' tariffs become effective on the same date as the LECs' tariffs to ensure that the IXC residential and business customers receive the full benefit of the revenue reductions. Although staff will require time to verify that the IXCs that paid \$1 million or more in intrastate switched access charges in 2002 have flowed through the full effect of the switched access reduction, this can occur after the effective date. Section 364.163(2), Florida Statutes, states that the Commission shall have continuing regulatory oversight of intrastate switched network access and customer long rates for purposes of any rate decrease by a telecommunications company resulting from the application of Section 364.164, Florida Statutes. Staff reiterates that audits may be performed on the documentation filed by the IXCs showing that the benefits of the intrastate switched access reductions have been returned to the IXCs' residential and business customers. Audits may be performed for each year that the IXCs are required to return benefits to their customers. When staff's

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review is complete, it may be necessary for IXCs to refile tariffs, or refund revenues, if errors are detected.

**ISSUE 3:** Should this docket be closed?

**RECOMMENDATION:** No. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should remain open to address any IXC tariff filings necessary to ensure compliance with Section 364.163(2), Florida Statutes. **(FORDHAM, BANKS)**

**STAFF ANALYSIS:** The Proposed Action Agency Order resulting from this recommendation should become final upon issuance of a consummating order if no person whose substantial interests are affected files a timely protest within 21 days of the issuance of this Order. Even if the Order becomes final, this docket should remain open to address any IXC tariff filings necessary to ensure compliance with Section 364.163(2), Florida Statutes.