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-03-1325-PCO-TL ISSUED: November 19, 2003

ORDER GRANTING INTERVENTION

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, and respective Dockets Nos. 030867-TL, 030868-TL, and 030869-TL have been opened to address these petitions in the time frame provided by Section 364.164, Florida Statutes. During the 2003 Regular Session, the Florida Legislature enacted the Tele-Competition Innovation and Infrastructure Enhancement Act (Tele-

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Competition Act or Act). The Act became effective on May 23, 2003. Part of the new Tele-Competition Act is the new Section 364.164, Florida Statutes, whereby the Legislature established a process by which each incumbent local exchange telecommunications carrier (ILEC) may petition the Commission to reduce its intrastate switched network access rate in a revenue-neutral manner. This matter has been set for hearing on December 10-12, 2003.

On October 27, 2003, MCI WorldCom Communications, Inc. (MCI) and AT&T Communications of the Southern States, LLC (AT&T) both filed Petitions to Intervene in these proceedings. Thereafter, Knology of Florida, Inc. (Knology) filed a Petition to Intervene on October 31, 2003. On November 10, 2003, AARP filed its Response and Opposition to the Interventions of Knology, AT&T and MCI.

Both AT&T and MCI contend that they are certificated (registered) IXCs in Florida. They assert that the ultimate resolution of these Dockets will have direct and immediate effects on both the access charges paid by IXCs, as well as the intrastate toll rates that can be charged by IXCs if the ILECs' Petitions are approved. Thus, they argue that their substantial interests will be affected.

Knology contends that it is a certificated CLEC in Florida that provides local and long distance services, digital and analog cable services, and high speed data services to Florida consumers. As with AT&T and MCI, Knology contends that the ultimate resolution of these Dockets will have a direct and immediate impact on its ability to provide competitive alternatives to Florida citizens, as well as its decisions as to whether expand its service offerings in Florida, which are issues that Knology contends were the subject of the Tele-Competition Act. As such, Knology requests intervention to protect its substantial interests.

AARP argues, however, that all three Petitions to Intervene fail to meet the standards for intervention set forth in Rule 25-22.039, Florida Administrative Code, which states that Petitions to Intervene must:

> . . . include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of

> constitutional or statutory right or pursuant to Commission rule, or that the substantial interests of the intervenor are subject to determination or will be affected through the proceeding.

AARP contends that none of the petitioners have standing under the Agrico test, which requires that one demonstrate: 1) the he will suffer injury in fact which is of sufficient immediacy to entitle him to a [section] 120.57 hearing and 2) that his substantial injury is of a type or nature which the proceeding is designed to protect.[1] AARP maintains that, at best, the petitioners only raise allegations that their competitive interests may be affected by the outcome of these proceedings, which AARP argues is not a substantial interest contemplated by the Agrico standard. AARP further argues that the interests asserted by the petitioners are not within the zone of interest contemplated by the statutory provisions at issue.

AARP adds, however, that it does believe that AT&T and MCI are indispensable parties to the extent that only they have information about how the benefits of the access charge reductions at issue will be passed on to residential consumers. Thus, AARP states that it would not object to the intervention of AT&T and MCI if they are required to submit the tariffs they will file with the Commission if the ILECs' access charge reduction petitions are approved.

Upon consideration, I agree with AARP that the appropriate standard to assess standing is set forth in Agrico. However, I disagree with AARP that the petitioners have not met the standard set forth therein. AARP is correct that, typically, some anticipated effect on an entities' competitive status or economic interests is not considered sufficient to meet the first prong of the Agrico test. See International Jai-Alai Players Ass'n v. Florida Pari-Mutuel Comm'n, 561 So. 2d 1224, 1225-26 (Fla. 3d DCA 1990) (fact that change in playing dates might affect labor dispute, resulting in economic detriment to players, was too remote to establish standing); Florida Soc'y of Opthamology v. State Board

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[1]*Citing* Agrico Chem. v. Dept. of Environmental Reg., 406 So. 2d 478, 482 (Fla. 2nd DCA 1981).

of Optometry, 532 So. 2d 1279, 1285 (Fla. 1st DCA 1988)(some degree of loss due to economic competition is not of sufficient "immediacy" to establish standing); Village Park Mobile Home Ass'n, Inc. v. State Dep't of Bus. Regulation, 506 So. 2d 426, 434 (Fla. 1st DCA 1987) (speculations on the possible occurrence of injurious events are too remote to warrant inclusion in the administrative review process). AARP, however, fails to consider three things: (1) AT&T's and MCI's petitions include allegations beyond assertions of competitive interest; (2) Docket No. 030961-TI has been consolidated in this proceeding; and (3) the statute pursuant to which the ILECs' petitions were filed includes competitive considerations such as those set forth in Knology's petition within the stated zone of interest.

First, it should be noted that AT&T and MCI both argue that the result of these proceedings will have an impact on the access charges that they pay, as well as how they pass the benefits of such reductions on to consumers. AARP seems to contend that because Sections 364.163 and 364.164, Florida Statutes, contemplate that the access charge reductions will be revenue neutral, then the IXCs do not have an economic interest, nor a substantial interest. I disagree. To the extent that the results of these proceedings will directly affect amounts paid by the IXCs and how they structure their tariff offerings to pass the benefits on to consumers, I believe that AT&T and MCI have standing to intervene. The fact that the statutes contemplate the access charge reductions will be revenue neutral is not the sole determining factor for standing; nor does Agrico limit consideration of "injury in fact" under to considerations of pure economic impact.

Second, Docket No. 030961-TI has been consolidated in this proceeding so that we can have the benefit of information regarding the implementation of both Sections 364.163 and 364.164, Florida Statutes, for our final consideration in these proceedings. To the extent that Docket No. 030961-TI specifically addresses implementation of Section 364.163, Florida Statutes, for IXCs, I believe AT&T and MCI have met the second prong of the Agrico test and, thus, have standing in this consolidated proceeding. Arguably, they need not even meet the Agrico test at all for purposes of intervention in this consolidated proceeding, since they are specifically named entities whose substantial interests will be determined pursuant to Section 364.163, Florida Statutes.

See Maverick Media Group v. Florida DOT, 791 So. 2d 491 (Fla. 1st DCA 2001)(stating that Agrico sets forth the test for third-party intervenors and it is not applicable to specifically named, directly affected individuals or entities).

Finally, AARP has argued that competitive interests are not sufficient to establish standing. That is not, however, the case when the proceeding in question is being conducted pursuant to statutory provisions that are designed to facilitate competition, and require the Commission to consider competitive impacts.

Specifically, Section 364.164, Florida Statutes, is titled "Competitive market enhancement" and requires the Commission to consider not only whether granting the petitions filed pursuant to this section will result in the removal of "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," but also whether granting the petitions will "induce enhanced market entry." Thus, to the extent that Knology is a competitor, or potential competitor, in the Florida local telecommunications markets, its substantial interests, as contemplated by this provision, may be affected by the Commission's decision and in a manner contemplated to be considered by the statute. As such, I find that Knology also has standing to intervene.

For the above reasons, the Petitions shall be granted.[2] Pursuant to Rule 25-22.039, Florida Administrative Code, the companies take the case as they find it.

[2]I note that a finding that these petitioners have standing does not conflict with our decision on November 3, 2003, wherein we concluded that the IXCs are not indispensable parties, since the standards for establishing standing and for defining an indispensable party are substantially different. See Order No. 16391, issued in Dockets Nos. 820467-TP, 830064-TP, 830365-TP, on July 21, 1986 (one must not only have an interest in the proceeding, but an interest that renders it impossible to make a final determination in good conscience without).

Based on the foregoing, it is

ORDERED by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, that the Petition for Leave to Intervene filed by AT&T Communications of the Southern States, Inc., is hereby granted. It is further

ORDERED that all parties to this proceeding shall furnish copies of all testimony, exhibits, pleadings and other documents which may hereinafter be filed in this proceeding, to:

Floyd Self, Esquire
Messer Caparello & Self
P.O. Box 1876
Tallahassee, FL 32302-1876
fself@lawfla.com
Phone: (850) 222-0720
Fax: (850) 224-4359

Tracy W. Hatch
AT&T Communications of the Southern States, LLC
101 North Monroe Street, Suite 700
Tallahassee, FL 32301
thatch@att.com

It is further

ORDERED that the Petition for Leave to Intervene filed by MCI WorldCom Communications, Inc., is hereby granted. It is further

ORDERED that all parties to this proceeding shall furnish copies of all testimony, exhibits, pleadings and other documents which may hereinafter be filed in this proceeding, to:

De O'Roark, Esquire
MCI WorldCom Communications, Inc.
6 Concourse Parkway, Suite 3200
Atlanta, GA 30328
de.oroark@mci.com

Donna McNulty, Esquire
MCI WorldCom Communications, Inc.
1203 Governors Square Blvd.
Suite 201
Tallahassee, FL 32301-2906
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Floyd Self, Esquire
Messer Caparello & Self
P.O. Box 1876
Tallahassee, FL 32302-1876
fself@lawfla.com
Phone: (850) 222-0720
Fax: (850) 224-4359

It is further

ORDERED that the Petition for Leave to Intervene filed by Knology of Florida, Inc., is hereby granted. It is further

ORDERED that all parties to this proceeding shall furnish copies of all testimony, exhibits, pleadings and other documents which may hereinafter be filed in this proceeding, to:

George Meros
Grey, Harris & Robinson, P.A.
301 S. Bronough Street
Suite 600
Tallahassee, FL 32301
Mail: P.O. Box 11189
Tallahassee, FL 32302-3189
Telephone: (850) 577-9090
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John Feehan
Knology, Inc.
1241 O.G. Skinner Drive
West Point, GA 31833
Telephone: (706) 634-2828
Facsimile: (706) 645-0148
Email: john.feehan@knology.com

By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this 19th Day of November, 2003.

RUDOLPH "RUDY" BRADLEY
Commissioner and Prehearing Officer

(S E A L)

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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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, 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 or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and

Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.