

Nancy B. White
General Counsel - Florida

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(305) 347-5558

November 20, 2003

Mrs. Blanca S. Bayó
Director, Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 030869-TP: Petition by BellSouth Telecommunications, Inc. to Reduce its Network Access Charges Applicable to Intrastate Long Distance in a Revenue-Neutral manner

Docket No. 030867-TP: 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. 030868-TP: 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

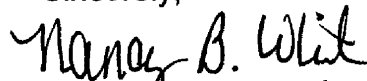
Docket No. 030961-TP: Flow-through of LEC Switched Access Reductions by IXCs, Pursuant to Section 364.163(2), Florida Statutes

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications Inc., Verizon – Florida, Inc. and Sprint – Florida, Inc.'s Joint Motion for Reconsideration or Clarification of the Prehearing Officer's Second Order Modifying Procedure for Consolidated Dockets to Reflect Additional Docket, Associated Issues, and Filing Dates, in the captioned dockets.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,


Nancy B. White (KA)

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey

DOCUMENT NUMBER-DATE

11786 NOV 20 8

FPSC-COMMISSION CLERK

CERTIFICATE OF SERVICE
Docket Nos. 030867-TP, 030868, 030869-TL and 030961-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

Electronic Mail and Federal Express this 20th day of November, 2003 to the following:

Beth Keating, Staff Counsel
Felicia Banks, Staff Counsel
Patricia Christensen, Staff Counsel
Lee Fordham, Staff Counsel
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Phone: (850) 413-6212
Fax: (850) 413-6250
bkeating@psc.state.fl.us
fbanks@psc.state.fl.us
pchrste@psc.state.fl.us
cfordham@psc.state.fl.us

Charlie Beck
Deputy Public Counsel
Office of Public Counsel
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400
Phone: (850) 488-9330
Fax No. (850) 488-4491
Beck.Charles@leg.state.fl.us

Michael A. Gross
VP Reg. Affairs & Reg. Counsel
Florida Cable Telecomm. Assoc.
246 East 6th Avenue
Tallahassee, FL 32303
Tel. No. (850) 681-1990
Fax. No. (850) 681-9676
mgross@fcta.com

Richard A. Chapkis (+)
Verizon Florida, Inc.
One Tampa City Center
201 North Franklin Street (33602)
Post Office Box 110, FLTC0007
Tampa, Florida 33601-0110
Tel. No. (813) 483-2606
Fax. No. (813) 204-8870
Richard.chapkis@verizon.com

Verizon Florida, Inc.
Ms. Michelle A. Robinson
106 East College Avenue, Suite 810
Tallahassee, FL 32301-7704
Tel. No. (813) 483-2526
Fax. No. (813) 223-4888
Michelle.Robinson@verizon.com

Susan S. Masterton
Charles J. Rehwinkel
Sprint Comm. Co. LLP
1313 Blair Stone Road (32301)
P.O. Box 2214
MC: FLTLHO0107
Tallahassee, FL 32316-2214
Tel. No. (850) 847-0244
Fax. No. (850) 878-0777
Attys. for Sprint LP
Susan.masterton@mail.sprint.com
charles.j.rehwinkel@mail.sprint.com

John P. Fons (+)
Ausley & McMullen
227 South Calhoun Street
Tallahassee, FL 32301
Tel. No. (850) 224-9115
Fax. No. (850) 222-7560
jfons@ausley.com

Michael B. Twomey (+)
8903 Crawfordville Road
Tallahassee, FL 32305
Tel. No. (850) 421-9530
Fax No. (850) 421-8543
Email: miketwomey@talstar.com
Represents AARP

Mark Cooper (+)
504 Highgate Terrace
Silver Spring, MD 20904
Tel. No. (301) 384-2204
Fax. No. (301) 236-0519
markcooper@aol.com
AARP Witness

Floyd Self, Esq.
Messer, Caparello & Self, P.A.
215 South Monroe Street, Suite 701
Tallahassee, FL 32301
Tel. No. (850) 222-0720
Atty. for AT&T
Atty. for MCI
fself@lawfla.com

Tracy W. Hatch (+)
AT&T Communications
101 North Monroe Street
Suite 700
Tallahassee, FL 32301
thatch@att.com

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

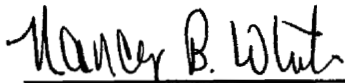
Donna McNulty, Esq.
MCI WorldCom Comm., Inc.
1203 Governors Square Blvd.
Suite 201
Tallahassee, FL 32301-2960
donna.mcnulty@mci.com

George Meros
Gray, Harris & Robinson, P.A.
301 S. Bronough St., Suite 600
Tallahassee, FL 32301
Mail: P.O. Box 11189
Tallahassee, FL 32302-3189
Tel. No. (850) 577-9090
Fax. No. (850) 577-3311
GMeros@grayharris.com

John Feehan
Knology, Inc.
1241 O.G. Skinner Drive
West Point, Georgia 31833
Tel. No. (706) 634-2828
Fax. No. (706) 645-0148
john.feehan@knology.com

Charles J. Christ, Jr.
Jack Shreve
Office of the Attorney General
PL-01 The Capitol
Tallahassee, Florida 32399-1050
Tel. No. (850) 414-3300
Fax. No. (850) 410-2672
ag@oag.state.fl.us

Harris R. Anthony
BellSouth Long Distance, Inc.
400 Perimeter Center Terrace
Suite 350
Atlanta, GA 30346
Tel. No. (770) 352-3116
harris.anthony@bellsouth.com



Nancy B. White (RA)

(+) Protective Agreement
(*) Hand Delivered

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Flow-through of LEC switched access reductions by IXC's, pursuant to Section 364.163(2), Florida Statutes.

DOCKET NO. 030961-TI

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: November 20, 2003

JOINT MOTION OF VERIZON FLORIDA, INC.; SPRINT-FLORIDA, INC.; AND BELL SOUTH TELECOMMUNICATIONS, INC.; FOR RECONSIDERATION OR CLARIFICATION OF THE PREHEARING OFFICER'S SECOND ORDER MODIFYING PROCEDURE FOR CONSOLIDATED DOCKETS TO REFLECT ADDITIONAL DOCKET, ASSOCIATED ISSUES, AND FILING DATES

Verizon Florida, Inc., Sprint-Florida, Inc., and BellSouth Telecommunications, Inc. ("Joint Petitioners"), pursuant to rule 25-22.0376, Florida Administrative Code, file this Motion for Reconsideration or Clarification of Order No. 03-1269, and state:

1. On November, 10, 2003, the Prehearing Officer for the above-styled dockets entered a Second Order Modifying Procedure for Consolidated Dockets to Reflect Additional Docket, Associated Issues, and Filing Dates. *See* Order No. PSC-03-1269-PCO-TL, Docket Nos. 030961-TI, 030867-TL, 030868-TL, 030869-TL (issued Nov. 10, 2003) ("Second Procedural Order"). The Second Procedural Order, which was entered *sua sponte*, included a "revised

tentative issues list for this proceeding” that included five new issues. *Id.* at 2-3, Attachment A. A copy of the Second Procedural Order is attached as Exhibit A.

2. The new issues added to the list by the Second Procedural Order are beyond the scope of these dockets, which are governed by section 364.164, Florida Statutes (2003), because they are not within the items the Commission is to consider in making a decision and thus, lack a statutory foundation. Joint Petitioners respectfully suggest that the Prehearing Officer overlooked or failed to consider this point of law in rendering his order. Therefore, Joint Petitioners request that this Commission reconsider the Second Procedural Order and remove the five new issues from the “Tentative Issues List” in these dockets. Alternatively, Joint Petitioners request that the Prehearing Officer or Commission clarify that the new issues added are applicable, if at all, only to the Commission-initiated Docket No. 030961-TI and are not applicable to Docket Nos. 030867-TL, 030868-TL, 030869-TL, the incumbent local exchange companies’ (“ILECs”) petitions for rate rebalancing.

3. Joint Petitioners, as parties in the above-styled dockets, are “adversely affected” by the Second Procedural Order. *See* r. 25-22.0376(1), Fla. Admin. Code Ann. The Second Procedural Order vastly expands the scope of these dockets, which were initiated by Joint Petitioners pursuant to section 364.164, Florida Statutes.¹ The Second Procedural Order expands section 364.164(1) to impose additional criteria on Joint Petitioners before their requests to reduce intrastate switched network access rates in a revenue-neutral manner may be granted. Such an expansion of a section 364.164 proceeding is beyond the Commission’s delegated

¹ Section 364.164, Florida Statutes, was enacted by the Legislature in 2003. It authorizes local exchange telecommunications companies to petition the Commission to reduce the companies’ intrastate switched network access rates in a revenue neutral manner.

legislative authority. *See, e.g., Gator Freightways, Inc. v. Mayo*, 328 So. 2d 444, 446 (Fla. 1976) (“procedure within administrative agencies is subject to statutory regulation”).

4. The standard of review for a motion for reconsideration is “whether the motion identifies a point of fact or law that was overlooked or that this Commission failed to consider in rendering its Order.” *See, e.g., In re: Initiation of show cause proceedings against Aloha Utilities, Inc., etc.*, Order No. PSC-03-0259-PCO-SU, Docket No. 020413-SU (issued Feb. 24, 2003). It is inappropriate to reargue matters in a motion for reconsideration that have already been considered, and 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.” *Id., quoting Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So. 2d 315, 317 (Fla. 1974). This standard of review is applicable both to reconsideration of final Commission Orders and of a Second Procedural Order. *See, e.g., Re Investigation into Pricing of Unbundled Network Elements (Sprint/Verizon Track)*, Order No. PSC-03-0918-FOF-TP, Docket No. 990649B-TP (issued Aug. 8, 2003).

5. The Second Procedural Order appears to have been prompted by the Commission’s decision at the November 3, 2003, Agenda Conference to consolidate for hearing the individual ILEC petition dockets with Docket No. 030961-TI. *See* Second Procedural Order at 2.² Because the Second Procedural Order was issued *sua sponte* with no notice to any party, Joint Petitioners have not had adequate opportunity to comment on the proposed new issues

² Docket No. 030961-TI (*In re: Flow-Through of LEC Switched Access Reductions by IXCs, Pursuant to Section 364.163(2), Florida Statutes*) was opened by the Commission, which is granted regulatory oversight of interexchange telecommunications carriers’ implementation of long distance rate decreases in section 364.163(3), Florida Statutes.

being inserted into the ILECs' dockets or provide argument as to why their inclusion in these dockets is inappropriate.³ The new issues added by the Second Procedural Order are as follows:

Issue 6: 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 these tariff filings?

Issue 7: If the ILEC access rate reductions are approved, should the IXCs be required to flow through the benefits of such reductions, via the tariffs, simultaneously with the approved ILEC access rate reductions?

Issue 8: For each access rate reduction that an IXC receives, how long should the associated revenue reduction last?

Issue 9: How should the IXC flow-through of the benefits from the ILEC access rate reductions be allocated between residential and business customers?

Issue 10: Will all residential and business customers experience a reduction in their long distance bills? If not, which residential and business customers will and will not experience a reduction in their long distance bills?

Order at 6-7 (Attachment A).

6. The proceedings in the dockets on the ILECs' petitions are governed by section 364.164, Florida Statutes, which creates a mechanism for rebalancing intrastate switched network access rates and rates for basic service of the ILECs. This section defines and limits the scope of issues to be considered in granting a petition to rebalance the rates of ILECs, providing in relevant part:

(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:

³ Thus, the requirement that a motion for reconsideration not reargue matters that already have been considered is easily met, as no matters have been argued and no hearing was held before the Second Procedural Order was issued. See, e.g., *Sherwood v. State*, 111 So. 2d 96 (Fla. 3d DCA 1959) (interpreting appellate rule relating to petition for rehearing).

- (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).

(Emphasis supplied).

7. Docket No. 030961-TI is governed by section 364.163(2), which provides how, and to what levels, interexchange telecommunications carriers (“IXCs”) will reduce their intrastate toll rates. The statute requires the interexchange carriers to reduce their long distance revenues by the amount their switched access charges are reduced pursuant to section 364.164(1); to reduce intrastate rates in a manner benefiting both residential and business customers; and to eliminate any in-state connection fee by July 1, 2006.

8. Thus, to the extent IXCs’ switched access rates are reduced as a result of petitions approved pursuant to section 364.164(1), those carriers’ long distance revenue decreases are governed by section 364.163, Florida Statutes. Nothing in section 364.164(1) provides that the manner or level of long distance revenue reductions is to be considered in granting an ILEC’s petition.

9. If, by this Order, the Prehearing Officer intended that Issues 6 through 10 be considered in a decision to grant or deny the ILECs’ petitions, the Prehearing Officer has overlooked or failed to consider the plain language of section 364.164(1) and ignored a clear legislative directive on the issues to be considered.⁴

⁴ It is important to note that the plain language of the statute is all that this Commission should consider. Suggestions that statements made during the legislative process when section 364.164 was enacted are somehow relevant is incorrect. *See, e.g., Verizon Florida, Inc. v. Jacobs*, 810 So. 2d 906, 908 (Fla. 2002) (“There is no need to resort to other rules of statutory

10. Nowhere in the plain language of section 364.164(1) is there authorization for the Commission to: consider the method for IXC's to effectuate required reductions in long distance charges (Issue 6); consider the timing of long distance charge reductions (Issue 7); consider how long reductions in long distance rates will last (Issue 8); how the benefits from reductions in long distance rates should be allocated between residential and business customers (Issue 9); or whether all residential and business will experience a reduction in long distance charges (Issue 10).

11. The Commission's statutory responsibility with respect to the ILEC's petitions is much more limited. It is focused on assuring that the revenue support currently provided to local rates by intrastate access charges is eliminated in a revenue-neutral manner. The only consideration by the Commission beyond the elimination of support of basic service rates in a revenue-neutral manner is consideration of whether reduction of the access rates will "induce enhanced market entry." There is no authority for the Commission to look beyond these matters and make its decision contingent on consideration of issues that may have applicability, if at all, in the implementation of rate reductions by IXC's who will benefit from the reduction in access charges.

12. The clarity of the Legislature's directive regarding the issues to be considered in deciding to grant the ILEC's petitions is further illustrated by a comparison of the language in section 364.164(1) and Committee Substitute for House Bill (CS/HB) 1683, last year's legislation revising Chapter 364, which passed the Legislature but was vetoed by the Governor. (A copy of CS/HB 1683 is attached as Exhibit B). Section 3 of CS/HB 1683 created section 364.164(2), which outlined the findings the Commission was required to make in deciding to

construction when the language of the statute is unambiguous and conveys a clear and ordinary meaning.").

grant a petition for rate rebalancing. Among the “findings” the Commission was required to make was whether elimination of the access charge subsidy of basic rates would benefit residential customers, would create a more favorable competitive market, and would result in benefits to toll customers. § 3, CS/HB 1683 (proposed § 364.164(2), Fla. Stat.).⁵

13. The 2003 legislation does not contain a similar grant of authority. Rather, the Commission is asked to consider whether eliminating the support creates a more competitive market for the benefit of residential customers.

14. Likewise, the 2003 legislation eliminates the requirement for a Commission finding on the benefits to toll customers. Customers will benefit because IXCs are required to reduce their intrastate long distance revenues by the “amount necessary to return the benefits of such reduction to both its residential and business customers.” § 364.164(2), Fla. Stat.⁶

⁵ The commission shall grant the petition if it finds that granting the petition:

(a) Will result in switched network access rate reductions that will be implemented during a period to be determined by the commission, but such period shall not be less than 2 years or more than 5 years;

(b) Will benefit residential consumers by reducing or eliminating the subsidy to residential basic local telecommunications service rates provided by intrastate switched network access rates;

(c) Will more intrastate switched network access rates to parity;

(d) Will create a more favorable competitive environment;

(e) Will be revenue neutral to the local exchange telecommunications company as set forth in subsection (3); and

(f) Will result in benefits to toll customers.

§ 3, CS/HB 1683 (proposed § 364.164(2), Fla. Stat.) (vetoed by Gov.)

⁶ The 2002 legislation required the IXCs to ensure that “residential and business customers benefit proportionally from the rate decreases.” (Emphasis supplied). *Id.* However, as noted, section 364.163(2) only requires an IXC to 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 Commission cannot use the proceedings on the ILECs’ proceedings to do what it cannot do directly in the IXCs’ proceedings, i.e., dictate how reductions will benefit certain customers. In the 2003 legislation, that has been left up to the IXCs.

15. By adding issues relating to the mechanics and distribution of access charge reductions to customers in its consideration of the ILECs' rebalancing petitions, the Commission is exceeding its legislative authority. The powers of all administrative agencies are measured and limited by the statutes or acts expressly granting the agencies their powers or by those powers implicitly conferred. *See Department of Professional Regulation v. Marrerro*, 536 So. 2d 1094, 1096 (Fla. 1st DCA 1998); *Florida Dep't of Corrections v. Provin*, 515 So. 2d 302 (Fla. 1st DCA 1987); *Hall v. Career Serv. Comm'n*, 478 So. 2d 1111 (Fla. 1st DCA 1985). Section 364.164(1) establishes the criteria the Commission may apply in evaluating a petition filed pursuant to that section, and the Commission may not add to that criteria without exceeding its statutory authority.

16. To deny the ILECs' petitions based upon the decisions of the IXCs in carrying out their responsibilities to return the benefits of access charge reductions to their customers would be an ultra vires act on the Commission's part and amount to second guessing the findings of the Legislature with respect to the benefits to the customers that will be achieved by rate rebalancing.

17. Moreover, the Commission's decision to consider concurrently the petitions of the ILECs for rate rebalancing with the Commission-initiated docket titled *In re: Flow-through of LEC Switched Access Reductions by IXCs, Pursuant to Section 364.163(2), Florida Statutes* ("Flow-through Docket") does not provide the basis for expanding the issues to be considered in a decision on the ILECs' petitions. Order No. PSC-03-1240-PCO-TL (the "Consolidation Order") addresses consolidating the dockets for hearing, so the matters that are the subject of the petitions and the matters that are the subject of the Commission-initiated docket can be "considered concurrently." *See* Order No. PSC-03-1240-PCO-TL, Docket Nos. 030961-TL,

030867-TL, 030868-TL, 030869-TL (issued Nov. 4, 2003), *see also* Order No. PSC-03-1269-PCO-TL (issued Nov. 10, 2003) (stating at page 2 that “it was determined that the matters which are the subject of Docket No. 030961-TI should be considered concurrently with the petitions in Dockets Nos. 030867-TL, and 030869-TL”). The Consolidation Order makes no mention of importing issues that may be relevant to the Flow-Through Docket into the dockets considering the ILECs’ petitions.

18. The Second Procedural Order has gone beyond the plain language and intent of the Consolidation Order, which simply was to hear the matters concurrently.

19. Further, to interpret the Consolidation Order as providing the bases for expanding the issues to be considered in granting the ILECs’ petitions is improper because the added issues are not among the matters the Commission is authorized to consider. As stated above, section 364.164(1) enumerates the sole items to be considered by the Commission regarding rate rebalancing petitions. Considerations regarding the flow-through of access charge reductions under section 364.163(2) are simply inapplicable to the ILECs’ petitions.

20. Petitioners respectfully suggest that the Prehearing Officer overlooked or failed to consider the specific criteria outlined by the Legislature in section 364.164(1) when the Second Procedural Order was entered. *See, e.g., Diamond Cab Co. v. King*, 146 So. 2d 889 (Fla. 1962); *Pingree v. Quaintance*, 394 So. 2d 161 (Fla. 1st DCA 1981). The specific facts illustrating this oversight can be found on pages 6-7 of the Order, where the Prehearing Officer lists Issues 6-10, which expand the statutory criteria. Thus, Petitioners’ Motion for Reconsideration is not “based upon an arbitrary feeling that a mistake may have been made” but on “specific factual matters set forth in the record and susceptible to review.” *Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So. 2d at 317.

For the reasons expressed, Joint Petitioners respectfully request that the Commission reconsider or clarify the Second Procedural Order by removing Issues 6 to 10 that were added to the "Tentative Issues List." Alternatively, Joint Petitioners request that the Prehearing Officer or Commission clarify that the new issues added are applicable, if at all, only to the Commission-initiated Docket No. 030961-TI and are not applicable to Docket Nos. 030867-TL, 030868-TL, 030869-TL, the ILECs' petitions for rate rebalancing.

Respectfully submitted this 20th day of November, 2003.

VERIZON FLORIDA, INC.

Richard A. Chapkis
Richard A. Chapkis (CA)
Verizon Legal Department
201 N. Franklin St.
Tampa, FL 33601
(813) 483-1256

BELLSOUTH TELECOMMUNICATIONS, INC.

Nancy B. White
Nancy B. White (CA)
James Meza, III
c/o Nancy Sims
150 South Monroe Street
Suite 400
Tallahassee, FL 32301
(305) 347-5558

SPRINT-FLORIDA, INCORPORATED

John P. Fons
John P. Fons (CA)
Fla. Bar No. 0280836
Ausley & McMullen
227 South Calhoun Street
Tallahassee, FL 32301
850-425-5431

Susan S. Masterton
Fla. Bar No. 0494224
1313 Blair Stone Road (32301)
P.O. Box 2214
MC: FLTLHO0107
Tallahassee, FL 32316-2214
(850) 847-0244

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Flow-through of LEC switched access reductions by IXCs, pursuant to Section 364.163(2), Florida Statutes.

DOCKET NO. 030961-TI

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
ORDER NO. PSC-03-1269-PCO-TL
ISSUED: November 10, 2003

SECOND ORDER MODIFYING PROCEDURE FOR CONSOLIDATED DOCKETS
TO REFLECT ADDITIONAL DOCKET, ASSOCIATED ISSUES,
AND FILING DATES

The Florida Legislature enacted the Tele-Competition Innovation and Infrastructure Enhancement Act (Tele-Competition Act or Act) which became effective on May 23, 2003. 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.

DOCUMENT NUMBER-DATE

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EXHIBIT A

FPSC-COMMISSION CLERK

ORDER NO. PSC-03-1269-PCO-TL
DOCKETS NOS. 030961-TI, 030867-TL, 030868-TL, 030869-TL
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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, OPC filed Motions to Dismiss the Petitions in each of these dockets. 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, the Commission voted to dismiss Verizon, Sprint, and BellSouth's Petitions with leave to amend their Petition within 48 hours to address the Commission's determination regarding the two-year time frame in Section 364.164(1)(c), Florida Statutes. On September 30, October 1, and October 2, 2003, the companies filed their amended petitions. This matter is set for hearing on December 10-12, 2003.

On October 2, 2003, Docket No. 030961-TI was opened for the purpose of providing guidelines for the IXCs in flowing through the LEC switched access reductions to the respective IXC customers, should those access reduction petitions be approved. This matter was brought before this Commission on our November 3, 2003 Agenda Conference. Following extensive discussion, it was determined that the matters which are the subject of Docket No. 030961-TI should be considered concurrently with the petitions in Dockets Nos. 030867-TL, 030868-TL, and 030869-TL. It also became obvious that we were lacking sufficient information at that Agenda Conference upon which to base a decision in any of the Dockets. Accordingly, we found that Docket No. 030961-TI should be consolidated for hearing with Dockets Nos. 030867-TL, 030868-TL, and 030869-TL.

Because of the expedited nature of this proceeding, the modifications to the schedule set forth herein recognize and apply this Commission's decisions made at the November 3, 2003, Agenda Conference in Docket No. 030961-TI.

Except as otherwise modified herein, Order No. PSC-03-0994-PCO-TL, as modified by PSC-03-1118-PCO-TL remains applicable to this consolidated proceeding. A revised tentative issues list for

ORDER NO. PSC-03-1269-PCO-TL
DOCKETS NOS. 030961-TI, 030867-TL, 030868-TL, 030869-TL
PAGE 3

this proceeding is attached to this Order as "Attachment A," reflecting the addition of Issues 6- 10.

As a result of the brief time remaining before the hearing in this matter, the following dates will be added to the schedule to receive testimony on the additional issues, Issues 6 - 10:

Direct Testimony and Exhibits (Issues 6- November 19, 2003
10) - All

Rebuttal Testimony and Exhibits (Issues November 26, 2003
6-10) - All

Due to the expedited nature of this proceeding, the following shall apply to all discovery beginning on November 19, 2003:

Discovery responses shall be served within 10 calendar days of receipt of the discovery request by either e-mail or fax, as well as by overnight delivery.

In addition, unless authorized by the Prehearing Officer for good cause shown, all discovery shall be completed by December 5, 2003.

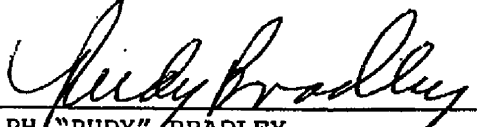
Based upon the foregoing, it is

ORDERED by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, that Order No. PSC-03-0994-PCO-TL, as modified by PSC-03-1118-PCO-TL, is further modified as set forth herein. It is further

ORDERED that Order No. PSC-03-0994-PCO-TL, as modified by PSC-03-1118-PCO-TL, is otherwise reaffirmed in all respects.

ORDER NO. PSC-03-1269-PCO-TL
DOCKETS NOS. 030961-TI, 030867-TL, 030868-TL, 030869-TL
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By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this 10th day of November, 2003.



RUDOLPH "RUDY" BRADLEY
Commissioner and Prehearing Officer

(S E A L)

CLF/BK

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

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review may be requested from the appropriate court, as described
above, pursuant to Rule 9.100, Florida Rules of Appellate
Procedure.

Attachment A

TENTATIVE ISSUES LIST

ISSUE 1: Will the ILECs' rebalancing proposals remove the current support for basic local telecommunications services that prevents the creation of a more attractive competitive market for the benefit of residential consumers?

A. What is a reasonable estimate of the level of support provided for basic local telecommunications services?

B. Does the current level of support prevent the creation of a more attractive competitive local exchange market for the benefit of residential consumers?

C. Will the ILECs' rebalancing proposals benefit residential consumers as contemplated by Section 364.164, Florida Statutes? If so, how?

ISSUE 2: Will the effects of the ILECs' rebalancing proposals induce enhanced market entry? If so, how?

ISSUE 3: Will the ILECs' rebalancing proposals reduce intrastate switched network access rates to interstate parity over a period of not less than two years or more than four years?

ISSUE 4: Are the ILECs' rebalancing proposals revenue neutral, as defined in Section 364.164(2), Florida Statutes?

ISSUE 5: Should the ILECs' rebalancing proposals be granted or denied?

ISSUE 6: 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?

ISSUE 7: If the ILEC access rate reductions are approved, should the IXCs be required to flow through the benefits of such reductions, via the tariffs, simultaneously with the approved ILEC access rate reductions?

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ISSUE 8: For each access rate reduction that an IXC receives, how long should the associated revenue reduction last?

ISSUE 9: How should the IXC flow-through of the benefits from the ILEC access rate reductions be allocated between residential and business customers?

ISSUE 10: Will all residential and business customers experience a reduction in their long distance bills? If not, which residential and business customers will and will not experience a reduction in their long distance bills?

ISSUE 11: Should these Dockets be closed?

1
2 An act relating to switched network access
3 rates; amending s. 364.10, F.S.; revising
4 provisions for Lifeline Assistance Plan
5 service; providing for certification and
6 maintenance of claims by Office of Public
7 Counsel; requiring certain local exchange
8 telecommunications companies to provide
9 specified materials relating to the plan;
10 requiring state agencies to provide such
11 material to affected applicants; exempting plan
12 beneficiaries from certain rate increases under
13 certain circumstances; providing for
14 notification; amending s. 364.163, F.S.;
15 revising provisions relating to caps on rates;
16 deleting provisions relating to recovery of
17 costs of government programs; revising
18 provisions relating to rate changes; providing
19 for adjustments in long distance revenues and
20 pass-through to customers; maintaining
21 continuing oversight by the commission;
22 creating s.364.164, F.S.; providing findings;
23 providing for petition to the commission for
24 reduction of access rates; providing for final
25 order; providing for criteria; providing for
26 establishment of revenue category mechanisms;
27 providing for notification; providing for
28 revenue neutrality; providing for notice;
29 providing limitations on adjustments; providing
30 for pricing units; maintaining exemptions;
31

1 providing definitions; providing an effective
2 date.

3
4 Be It Enacted by the Legislature of the State of Florida:

5
6 Section 1. Subsection (3) is added to section 364.10,
7 Florida Statutes, to read:

8 364.10 Undue advantage to person or locality
9 prohibited; exception.--

10 (3) (a) Any local exchange telecommunications company
11 authorized by the commission to reduce its switched network
12 access rate pursuant to s. 364.164, shall, effective March 31,
13 2003, have tariffed and shall provide Lifeline Assistance Plan
14 service to any otherwise eligible customer or potential
15 customer who meets an income eligibility test at 125 percent
16 or less of the federal poverty income guidelines for Lifeline
17 Assistance Plan customers. Such test for eligibility shall
18 augment, rather than replace, the eligibility standards
19 established by federal law and based on participation in
20 certain low-income assistance programs. Each interexchange
21 telecommunications carrier shall, effective March 31, 2003,
22 file a tariff providing, at a minimum, the interexchange
23 telecommunications carrier's current Lifeline Assistance Plan
24 benefits and exemptions to Lifeline Assistance Plan customers
25 who meet the income eligibility test set forth in this
26 subsection. The Office of Public Counsel shall serve as the
27 state agency which certifies and maintains claims submitted by
28 a customer for eligibility under the income test authorized by
29 this subsection.

30 (b) Each local exchange telecommunications company
31 subject to this subsection shall provide each state and

1 federal agency that provides benefits to persons that are
2 eligible for the Lifeline Assistance Plan service with
3 applications, brochures, pamphlets, or other materials which
4 inform such persons of their eligibility for the Lifeline
5 Assistance Plan service, and each state agency providing such
6 benefits shall furnish such materials to affected persons at
7 the time such persons apply for benefits.

8 (c) Any local exchange telecommunications company
9 customer receiving Lifeline Assistance Plan benefits shall not
10 be subject to any residential basic local telecommunications
11 service rate increases authorized by s. 364.164 until such
12 time as the local exchange telecommunications company reaches
13 parity as defined in s. 364.164(6) or until the customer no
14 longer qualifies for the Lifeline Assistance Plan benefits
15 established by this section or s. 364.105, or unless otherwise
16 determined by the commission upon petition by a local exchange
17 telecommunications company.

18 (d) Each agency that provides benefits to persons that
19 are eligible for the Lifeline Assistance Plan service shall,
20 by December 31, 2002, notify each such person by postcard of
21 his or her eligibility for the Lifeline Assistance Plan
22 service, together with the name of the local exchange
23 telecommunications company. The direct cost of this postcard
24 production and mailing shall be paid by the local exchange
25 telecommunications companies with more than one million access
26 lines in service. The commission shall report to the
27 Governor, the Speaker of the House of Representatives and the
28 President of the Senate by December 31st of each year on the
29 number of customers who are subscribing to Lifeline Assistance
30 Plan service.

31

1 Section 2. Section 364.163, Florida Statutes, is
2 amended to read:

3 364.163 Network access services.--For purposes of this
4 section, "network access service" is defined as any service
5 provided by a local exchange telecommunications company to a
6 telecommunications company certificated under this chapter or
7 licensed by the Federal Communications Commission to access
8 the local exchange telecommunications network, excluding the
9 local interconnection arrangements in s. 364.16 and the resale
10 arrangements in s. 364.161. Each local exchange
11 telecommunications company subject to s. 364.051 shall
12 maintain tariffs with the commission containing the terms,
13 conditions, and rates for each of its network access services.

14 ~~(1) Effective January 1, 1999, the rates for switched~~
15 ~~network access services of each company subject to this~~
16 ~~section shall be capped at the rates in effect on January 1,~~
17 ~~1999, and shall remain capped until January 1, 2001. Upon the~~
18 ~~date of filing its election with the commission, the network~~
19 ~~access service rates of a company that elects to become~~
20 ~~subject to this section shall be capped at the rates in effect~~
21 ~~on that date and shall remain capped for 5 years.~~

22 ~~(1)(2) After the termination of the caps imposed on~~
23 ~~rates by subsection (1) and after a local exchange~~
24 ~~telecommunications company's intrastate switched network~~
25 ~~access rates are reduced to or below reach parity, as defined~~
26 ~~in s. 364.164(6), the company's intrastate switched network~~
27 ~~access rates shall be capped and shall remain capped for 3~~
28 ~~years thereafter, with its interstate switched access rates, a~~
29 ~~company subject to this section may, on 30 days' notice,~~
30 ~~annually adjust any specific network access service rate in an~~
31 ~~amount not to exceed the cumulative change in inflation~~

1 ~~experienced after the date of the last adjustment, provided,~~
2 ~~however, that no such adjustment shall ever exceed 3 percent~~
3 ~~annually of the then-current prices. Inflation shall be~~
4 ~~measured by the changes in Gross Domestic Product Fixed 1987~~
5 ~~Weights Price Index, or successor fixed weight price index,~~
6 ~~published in the Survey of Current Business, or successor~~
7 ~~publication, by the United States Department of Commerce.~~
8 ~~(3) After the termination of the caps imposed on rates~~
9 ~~by subsection (1), a company subject to this section may, at~~
10 ~~any time, petition the commission for a network access service~~
11 ~~rate change to recover the cost of governmentally mandated~~
12 ~~projects or programs or an increase in federal or state income~~
13 ~~tax incurred after that date. The costs and expenses of the~~
14 ~~government program or project required in part II of this~~
15 ~~chapter shall not be recovered under this subsection unless~~
16 ~~such costs and expenses are incurred in the absence of a bid~~
17 ~~and subject to carrier of last resort obligations as provided~~
18 ~~for in part II of this chapter. With respect to~~
19 ~~governmentally mandated projects and programs, such petition~~
20 ~~shall be acted upon no later than 90 days after the date of~~
21 ~~filing. A company subject to this section shall show the~~
22 ~~commission that the cost of a project or program is not~~
23 ~~recoverable either from the government mandating the project~~
24 ~~or program or from the beneficiaries of the project or program~~
25 ~~through user fees or other new revenue sources from the~~
26 ~~project or program, and to the extent that cost decreases~~
27 ~~resulting from the project or program are reflected as an~~
28 ~~offset to cost increases. A company subject to this section~~
29 ~~shall decrease its network access rates by amounts that~~
30 ~~reflect any federal or state income tax reduction. Nothing~~
31 ~~contained in this section shall allow any revisions in the~~

1 ~~rates, terms, and conditions for commercial mobile radio~~
2 ~~service access, which revisions are inconsistent with the~~
3 ~~requirements or methodologies of the Federal Communications~~
4 ~~Commission.~~
5 ~~(4) A company subject to this section may choose to~~
6 ~~implement all or a portion of a rate increase allowed for~~
7 ~~network access service by subsections (1), (2), and (3).~~
8 ~~Notwithstanding subsections (1), (2), and (3), a company~~
9 ~~subject to this section may choose to decrease network service~~
10 ~~rates at any time, and decreased rates shall become effective~~
11 ~~upon 7 days' notice.~~
12 ~~(5) company-proposed changes to the terms and~~
13 ~~conditions for existing network access services in accordance~~
14 ~~with subsections (1), (2), (3), and (4) shall be presumed~~
15 ~~valid and become effective upon 15 days' notice.~~
16 ~~company-proposed rate reductions shall become effective upon 7~~
17 ~~days' notice. Rate increases made by the local exchange~~
18 ~~telecommunications company shall be presumed valid and become~~
19 ~~effective on the date specified in the tariff, but in no event~~
20 ~~earlier than 30 days after the filing of such tariff. The~~
21 ~~commission shall have continuing regulatory oversight of local~~
22 ~~exchange telecommunications company-provided network access~~
23 ~~services for purposes of determining the correctness of any~~
24 ~~price increase resulting from the application of the inflation~~
25 ~~index and making any necessary adjustments, establishing~~
26 ~~reasonable service quality criteria, and assuring resolution~~
27 ~~of service complaints. No later than 30 days after the filing~~
28 ~~of such tariff, the commission may, with respect to~~
29 ~~determining the correctness of any price increase, vote,~~
30 ~~without hearing, the local exchange telecommunications company~~
31 ~~to hold subject to refund all revenues collected under the~~

1 ~~rate increase. Within 60 days after such order, the commission~~
2 ~~must make a determination either compelling a refund of all or~~
3 ~~part of such revenues or releasing them from such requirement.~~
4 (2)(6) Any local exchange telecommunications company
5 with more than 100,000, but fewer than 3 million, basic local
6 telecommunications service access lines in service on July 1,
7 1995, shall reduce its intrastate switched access rates by 5
8 percent on July 1, 1998, and by 10 percent on October 1, 1998.
9 Any interexchange telecommunications carrier company whose
10 intrastate switched network access rate is reduced as a result
11 of the rate adjustments decreases made by a local exchange
12 telecommunications company in accordance with s. 364.164 this
13 subsection shall decrease its intrastate long distance
14 revenues rates by the amount necessary to return the benefits
15 of such reduction to both its residential and business
16 customers but shall not reduce per minute intra-LATA toll
17 rates by a percentage greater than the per minute intrastate
18 switched access rate reductions required by this act. The
19 interexchange telecommunications carrier may determine the
20 specific intrastate rates to be decreased, provided that
21 residential and business customers benefit proportionally from
22 the rate decreases. Subject to the foregoing, any
23 interexchange telecommunications carrier that charges an
24 in-state connection fee shall use any decrease in the
25 intrastate switched network access rate reductions required by
26 s. 364.164 to first eliminate that fee before it reduces its
27 long distance toll rates. In any event, any in-state
28 connection fee shall be eliminated by March 1, 2004, provided
29 that the timetable approved pursuant to s. 364.164(2) reduces
30 intrastate switched network access rates in an amount that
31 results in the elimination of the access recovery charge in a

1 revenue-neutral manner. The tariff changes, if any, made by
2 the interexchange telecommunications carrier to carry out the
3 requirements of this subsection shall be presumed valid and
4 become effective on 1 day's notice.

5 ~~(7) Telecommunications company intrastate switched~~
6 ~~access and customer long distance rate reductions shall become~~
7 ~~effective on October 1 of each relevant year. Rate decreases~~
8 ~~proposed in tariff revisions filed by the telecommunications~~
9 ~~companies with the commission shall be presumed valid and~~
10 ~~become effective on October 1 of each relevant year.~~

11 ~~(8) No later than 30 days after the filing of such~~
12 ~~tariff, the commission may, with respect to determining the~~
13 ~~correctness of any rate decrease, vote, without hearing, the~~
14 ~~telecommunications company to hold subject to refund all~~
15 ~~intrastate switched access or customer long distance rate~~
16 ~~revenues collected after the rate decrease. Within 60 days~~
17 ~~after such order, the commission must make a determination~~
18 ~~either compelling a refund of the appropriate part of such~~
19 ~~revenues or releasing all such revenues from such requirement.~~

20 (3)(9) The commission shall have continuing regulatory
21 oversight of intrastate switched network access and customer
22 long distance rates for purposes of determining the
23 correctness of any rate decrease by a telecommunications
24 company resulting from the application of this section and s.
25 364.164, and making any necessary adjustments to those rates,
26 establishing reasonable service quality criteria, and assuring
27 resolution of service complaints. Nothing in this subsection
28 shall be construed to mean that the commission does not have
29 continuing regulatory oversight of service quality criteria or
30 the authority to resolve service complaints for all
31 telecommunications companies subject to this section.

1 Section 3. Section 364.164, Florida Statutes, is
2 created to read:
3 364.164 Switched network access rate reduction.--
4 (1) The Legislature finds the following:
5 (a) Residential local exchange competition is in the
6 best interest of Florida and its telecommunications consumers;
7 (b) Residential basic local telecommunications service
8 prices are, on average, below cost, being subsidized with
9 revenues from other services including switched network access
10 charges;
11 (c) The intrastate switched network access charges
12 paid by interexchange telecommunications companies in Florida
13 are above cost and are higher than the interstate switched
14 network access charges which such companies pay to the same
15 local exchange telecommunications companies in Florida;
16 (d) The subsidization of residential basic local
17 telecommunications service prices with revenues from
18 intrastate switched network access charges is inhibiting the
19 development of residential basic local exchange service
20 competition;
21 (e) Restructuring the prices for residential basic
22 local telecommunications service and intrastate switched
23 network access closer to the cost of providing these services
24 should promote local and long distance competition; and
25 (f) The Florida Public Service Commission is the
26 appropriate body to determine whether intrastate switched
27 network access charges and basic local telecommunications
28 service prices will be adjusted in a manner which is revenue
29 neutral to the local exchange telecommunications company and
30 beneficial to residential consumers.
31

1 (2) Each local exchange telecommunications company
2 with more than 1 million access lines in service may, after
3 December 1, 2002, petition the commission to reduce its
4 intrastate switched network access rates in a revenue neutral
5 manner. Any local exchange telecommunications company with 1
6 million or less access lines in service may, after December 1,
7 2003, petition the commission to reduce its intrastate
8 switched network access rates in a revenue neutral manner.
9 The commission shall issue its final order granting or denying
10 any petition filed pursuant to this section within 90 days.
11 The commission shall grant the petition if it finds that
12 granting the petition:
13 (a) Will result in switched network access rate
14 reductions that will be implemented during a period to be
15 determined by the commission, but such period shall not be
16 less than 2 years or more than 5 years;
17 (b) Will benefit residential consumers by reducing or
18 eliminating the subsidy to residential basic local
19 telecommunications service rates provided by intrastate
20 switched network access rates;
21 (c) Will move intrastate switched network access rates
22 to parity;
23 (d) Will create a more favorable competitive
24 environment;
25 (e) Will be revenue neutral to the local exchange
26 telecommunications company as set forth in subsection (3); and
27 (f) Will result in benefits to toll customers.
28 (3) In the event the commission grants the local
29 exchange telecommunications company's petition, the local
30 exchange telecommunications company is authorized, the
31 requirements of s. 364.051(3) notwithstanding, to immediately

1 implement a revenue category mechanism consisting of basic
2 local telecommunications service revenues and intrastate
3 switched network access revenues, to achieve revenue
4 neutrality. The local exchange telecommunications company
5 shall thereafter, on 45 days' notice, adjust the various
6 prices and rates of the services within its revenue category
7 authorized by this section once in any 12-month period in a
8 revenue neutral manner. In no event shall any adjustment in
9 rates be offset entirely by the monthly recurring rate for
10 basic local telecommunications service. All annual rate
11 adjustments within the revenue category established pursuant
12 to this section shall be implemented simultaneously and shall
13 be revenue neutral. The commission shall, within 45 days
14 after the rate adjustment filing, issue a final order
15 confirming compliance with this section, and such order shall
16 be final for all purposes.

17 (4) Any filing under this section shall be based on
18 the company's most recent 12 months' pricing units in
19 accordance with subsection (8) for any service included in the
20 revenue category established under this section. The
21 commission shall have the authority only to verify the pricing
22 units for the purpose of ensuring that the company's specific
23 adjustments, as authorized by this section, make the revenue
24 category revenue neutral for each filing. Any discovery or
25 information requests under this section shall be limited to a
26 verification of historical pricing units necessary to fulfill
27 the commission's specific responsibilities under this section
28 of ensuring that the company's rate adjustments make the
29 revenue category revenue neutral for each annual filing.

30 (5) Nothing in this section shall affect the local
31 exchange telecommunications company's exemptions pursuant to

1 s. 364.051(1)(c) or authorize any local exchange
2 telecommunications company to increase the cost of local
3 exchange services to any person providing services under s.
4 364.3375.

5 (6) For purposes of this section, "parity" means that
6 the local exchange telecommunications company's intrastate
7 switched network access rate is equal to its interstate
8 switched network access rate in effect on January 1, 2002, if
9 the company has more than 4 million access lines in service.
10 If the company has 4 million or less and more than 1 million
11 access lines in service, "parity" means that the company's
12 intrastate switched network access rate is equal to 2 cents
13 per minute. If the company has 1 million or less access lines
14 in service, "parity" means that the company's intrastate
15 switched network access rate is equal to 8 cents per minute.
16 Nothing in this section shall prevent the company from making
17 further reductions in its intrastate switched network access
18 rate, within the revenue category established in this section,
19 below parity on a revenue-neutral basis, or from making other
20 revenue neutral rate adjustments within this category.

21 (7) For purposes of this section, "intrastate switched
22 network access rate" means the composite of the originating
23 and terminating network access rate for carrier common line,
24 local channel/entrance facility, switched common transport,
25 access tandem switching, interconnection charge, information
26 surcharge, and local switching.

27 (8) For purposes of this section, "revenue neutral"
28 means that the total revenue within the revenue category
29 established pursuant to this section remains the same before
30 and after the local exchange telecommunications company
31 implements any rate adjustments under this section.

1 Calculation of revenue received from each service prior to
2 implementation of any rate adjustment shall be made by
3 multiplying the then-current rate for each service by the most
4 recent 12 months' actual pricing units for each service within
5 the category, without any adjustments to the number of pricing
6 units. Calculation of revenue for each service to be received
7 after implementation of rate adjustments shall be made by
8 multiplying the rate to be applicable for each service by the
9 most recent 12 months' actual pricing units for each service
10 within the category, without any adjustments to the number of
11 pricing units. Billing units associated with Lifeline
12 Assistance Plan service shall not be included in any
13 calculation under this subsection.

14 Section 4. This act shall take effect upon becoming a
15 law.

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