

Nancy B. White  
General Counsel - Florida

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

December 8, 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**

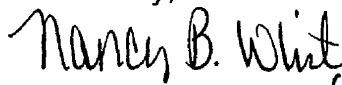
**Docket No. 030961-TP: Flow-through of LEC Switched Access Reductions by IXCs, Pursuant to Section 364.163(2), Florida Statutes**

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of Joint Motion of Verizon Florida, Inc., Sprint-Florida, INC., and BellSouth Telecommunications, Inc.'s to Strike Portions of Witness Cooper's Direct Testimony, which we ask that you file 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-CAT7

12636 DEC-8 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 FedEx this 8<sup>th</sup> day of December, 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](mailto:bkeating@psc.state.fl.us)  
[fbanks@psc.state.fl.us](mailto:fbanks@psc.state.fl.us)  
[pchriste@psc.state.fl.us](mailto:pchriste@psc.state.fl.us)  
[cfordham@psc.state.fl.us](mailto: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](mailto: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](mailto: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](mailto: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](mailto: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](mailto:Susan.masterton@mail.sprint.com)  
[charles.j.rehwinkel@mail.sprint.com](mailto: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](mailto: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](mailto:miketwomey@talstar.com)  
Represents AARP  
Represents Common Cause  
Represents Sugarmill Woods

Mark Cooper (+)  
504 Highgate Terrace  
Silver Spring, MD 20904  
Tel. No. (301) 384-2204  
Fax. No. (301) 236-0519  
[markcooper@aol.com](mailto: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](mailto:fself@lawfla.com)

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

Donna McNulty, Esq.  
MCI WorldCom Comm., Inc.  
1203 Governors Square Blvd.  
Suite 201  
Tallahassee, FL 32301-2960  
[donna.mculty@mci.com](mailto:donna.mculty@mci.com)


George Meros  
Gray 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@gray-robinson.com](mailto:GMeros@gray-robinson.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](mailto: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](mailto: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](mailto:harris.anthony@bellsouth.com)

Ben Wilcox  
Executive Director  
Common Cause Florida  
704 West Madison Street  
Tallahassee, FL 32304  
Tel. No. (850) 222-3883  
Fax. No. (850) 222-3906  
[cmncause@infionline.net](mailto:cmncause@infionline.net)

  
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Nancy B. White (KA)

**(+) Protective Agreement**  
**(\* Hand Delivered**

**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

FILED: December 8, 2003

**JOINT MOTION OF VERIZON FLORIDA, INC.; SPRINT-FLORIDA, INC.; AND  
BELLSOUTH TELECOMMUNICATIONS, INC.; TO STRIKE PORTIONS OF  
WITNESS COOPER'S DIRECT TESTIMONY**

Verizon Florida, Inc., Sprint-Florida, Inc., and BellSouth Telecommunications, Inc.  
("Joint Petitioners"), pursuant to Rule 28-106.204(1), Florida Administrative Code, file this  
Motion to Strike Portions of Witness Cooper's Direct Testimony and state:

1. Joint Petitioners request that the Commission strike those portions of the Direct  
Testimony of Dr. Mark N. Cooper that refer to or rely on the transcripts of legislative floor  
debates that are the subject of AARP's Request for Official Notice. Cooper Direct Testimony at  
4-15. In addition, BellSouth moves to strike those portions of Witness Cooper's Direct

Testimony that offer his opinion regarding how the statutes at issue in this proceeding should be interpreted. Cooper Direct Testimony at 4-15, 20-24.

2. Simultaneously with this Motion to Strike, Joint Petitioners file their Response in Opposition to AARP's Request for Official Notice of transcripts attributed to legislative floor debates. Joint Petitioners incorporate by reference into this Motion to Strike their Response in Opposition to AARP's Request for Official Notice.

3. For the reasons stated in Joint Petitioners' Response in Opposition to AARP's Request for Official Notice, it is inappropriate for the Commission to consider any legislative history in this proceeding, whether the selective portion offered by AARP or any of the other reams of legislative history material, because the legislation at issue in the above-referenced dockets is clear and unambiguous. Witness Cooper's Direct Testimony refers to or relies on that legislative history material throughout pages 4 through 15. Those portions of his testimony should be stricken.

4. Beyond just the references to legislative history, Witness Cooper's Direct Testimony should be stricken because it offers opinions regarding how the statutes should be interpreted (throughout pages 4-15, 20-24). It is improper for a witness to offer legal argument instead of proper fact or opinion testimony. The issue of statutory interpretation is one of law, for the Commission to determine, and is not the proper subject for expert testimony. As the court held in *Lee County v. Barnett Banks*, 711 So. 2d 34 (Fla. 2d DCA 1997):

Expert testimony is not admissible concerning a question of law. Statutory construction is a legal determination to be made by the trial judge, with the assistance of counsels' legal arguments, not by way of "expert opinion."

*See also Dixon v. City of Jacksonville*, 774 So. 2d 763, 765 (Fla. 1st DCA 2000) ("It is well established that the construction of statutes ... is a question of law ... unless their meaning is

ambiguous. ... [E]ven if the meaning of a statute or writing is complicated, that does not necessarily render it “ambiguous.”).

5. It is particularly inappropriate for the Commission to consider purported expert testimony that is based on selective, unreliable legislative history in an attempt to inject ambiguities into statutory language that is clear on its face. Witness Cooper repeatedly characterizes the actual statutory language as “seemingly clear,” but he suggests that the “intent” behind the language is not so clear by reference to selective statements culled from transcripts attributed to legislative floor debates. (*See, e.g.*, Cooper Direct Testimony at 5: subsection (b) is seemingly clear, but the legislative debate appears to show a different intent). The Florida Supreme Court addressed this precise point in *Florida Department of Revenue v. Florida Municipal Power Agency*, 789 So. 2d 320 (Fla. 2001), as follows:

The Department does not point to any ambiguity in the language used in the statute itself that would make it subject to two reasonable interpretations, but relies primarily upon legislative history. Legislative history cannot be used to change the plain and clear language of the statute. ... A court’s function is to interpret statutes as they are written and give effect to each word in the statute.

*Id.* at 324.

6. The Commission should strike those improper portions of AARP’s Direct Testimony of Witness Cooper in which Witness Cooper offers opinions regarding statutory interpretation and interprets the comments of legislators, and in which he refers to select legislative history to create ambiguities where there are none on the face of the statutes.

For the reasons expressed above, Joint Petitioners respectfully request that their Motion to Strike Portions of Witness Cooper’s Direct Testimony be GRANTED.

Respectfully submitted this 8<sup>th</sup> day of December, 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

R. Douglas Lackey  
Meredith E. Mays  
675 W. Peachtree Street  
Suite 4300  
Atlanta, GA 30375  
(404) 335-0750

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