

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of

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

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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

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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 BELL SOUTH  
TELECOMMUNICATIONS, INC.

DOCKET NO. 030869-TL

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FLOW-THROUGH OF LEC SWITCHED  
ACCESS REDUCTIONS BY IXCs,  
PURSUANT TO SECTION 364.163(2),  
FLORIDA STATUTES.

DOCKET NO. 030961-TI

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VOLUME 1  
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PROCEEDINGS: HEARING



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BEFORE: CHAIRMAN LILA A. JABER  
COMMISSIONER J. TERRY DEASON  
COMMISSIONER BRAULIO L. BAEZ  
COMMISSIONER RUDOLPH "RUDY" BRADLEY  
COMMISSIONER CHARLES M. DAVIDSON

DATE: Wednesday, December 10, 2003

TIME: Commenced at 11:29 a.m.

PLACE: Betty Easley Conference Center  
4075 Esplanade Way, Room 148  
Tallahassee, Florida

REPORTED BY: MARY ALLEN NEEL, RPR

## 1 APPEARANCES:

2 HAROLD MCLEAN, ESQUIRE, CHARLES BECK, ESQUIRE  
3 and H.F. MANN, ESQUIRE, Office of Public Counsel, c/o  
4 The Florida Legislature, 111 West Madison Street, Room  
5 812, Tallahassee, Florida 32399-1400, appearing on  
6 behalf of the Office of Public Counsel.

7 RICHARD CHAPKIS, ESQUIRE, Verizon Florida Inc.,  
8 201 N. Franklin Street, FLTC0007, Tampa, Florida  
9 33602, appearing on behalf of Verizon Florida Inc.

10 JOHN FONS, ESQUIRE, and MAJOR HARDING, ESQUIRE,  
11 Ausley Law Firm, P.O. Box 391, Tallahassee, Florida  
12 32302, and SUSAN MASTERTON, ESQUIRE, Sprint-Florida,  
13 Incorporated, (MCFLTLH00107), P.O. Box 2214,  
14 Tallahassee, Florida 32316-2214, appearing on behalf  
15 of Sprint-Florida, Incorporated.

16 CHARLES REHWINKEL, ESQUIRE, Sprint-Florida,  
17 Incorporated, P.O. Box 2214, Tallahassee, Florida  
18 32316-2214, appearing on behalf of Sprint  
19 Communications Company Limited Partnership.

20 NANCY WHITE, ESQUIRE, R. DOUGLAS LACKEY, and  
21 MEREDITH E. MAYS, BellSouth Telecommunications, Inc.,  
22 c/o Ms. Nancy H. Sims, 150 South Monroe Street, Suite  
23 400, Tallahassee, Florida 32301-1556, appearing on  
24 behalf of BellSouth Telecommunications, Inc.

25

1 APPEARANCES CONTINUED:

2 CHARLIE CRIST, ESQUIRE, and JACK SHREVE,  
3 ESQUIRE, Office of the Attorney General, PL-01, The  
4 Capitol, Tallahassee, Florida 32399-1050, appearing  
5 on behalf of the office of the Attorney General.

6 HARRIS ANTHONY, BellSouth Long Distance, Inc.,  
7 400 Perimeter Center Terrace, #350, Atlanta, Georgia  
8 30346-1231, appearing on behalf of BellSouth Long  
9 Distance, Inc.

10 GEORGE MEROS, ESQUIRE, Gray, Harris & Robinson,  
11 P.O.Box 11189, Tallahassee, Florida 32302, appearing  
12 on behalf of Knology of Florida, Inc.

13 TRACY HATCH, ESQUIRE, Messer Law Firm, 101 North  
14 Monroe Street, Suite 700, Tallahassee, Florida  
15 32301-1549, appearing on behalf of AT&T Communications  
16 of the Southern States.

17 DONNA C. McNULTY, ESQUIRE, Messer Law Firm, 1203  
18 Governors Square Blvd., Suite 201, Tallahassee,  
19 Florida 32301-2960, appearing on behalf of MCI  
20 WorldCom Communications, Inc.

21 FLOYD SELF, ESQUIRE, and GARY EARLY, ESQUIRE,  
22 Messer Law Firm, P.O. Box 1876, Tallahassee, Florida  
23 32302-1876, appearing on behalf of AT&T  
24 Communications/MCI WorldCom.

25

1 APPEARANCES CONTINUED:

2 MICHAEL B. TWOMEY, ESQUIRE, P.O. Box 5256,  
3 Tallahassee, Florida 32314-5256, appearing on behalf  
4 of AARP/Common Cause Florida/Sugarmill Woods Civic  
5 Association.

6 PATRICIA CHRISTENSEN, ESQUIRE, BETH KEATING,  
7 ESQUIRE, LEE FORDHAM, ESQUIRE and FELECIA BANKS,  
8 ESQUIRE, FPSC General Counsel's Office, 2540 Shumard  
9 Oak Boulevard, Tallahassee, Florida 32399-0850,  
10 appearing on behalf of the Commission staff.

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## P R O C E E D I N G S

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2 CHAIRMAN JABER: All right. We're going to  
3 go ahead and get started with the evidentiary portion  
4 of the hearing. Staff counsel, please read the  
5 notice.

6 MS. KEATING: By notice issued November 17,  
7 2003, this time and place have been set for a hearing  
8 in Docket Nos. 030867, 030868, and 030869, and 030961.  
9 The purpose is as set forth in the notice.

10 CHAIRMAN JABER: Thank you.

11 If there are any conversations in the back  
12 of the room, I respectfully request that you all take  
13 them outside. We are about to start the evidentiary  
14 portion of the hearing.

15 And with that, let's take appearances.

16 MS. WHITE: Nancy White on behalf of  
17 BellSouth Telecommunications. Also appearing on  
18 behalf of BellSouth is Doug Lackey and Meredith Mays.

19 MR. CHAPKIS: Richard Chapkis on behalf of  
20 Verizon.

21 CHAIRMAN JABER: I'm sorry. Let back up.  
22 Nancy White, Doug Lackey.

23 MS. WHITE: And Meredith Mays, M-a-y-s.

24 CHAIRMAN JABER: Go ahead.

25 MR. CHAPKIS: Richard Chapkis on behalf of

1 Verizon.

2 CHAIRMAN JABER: Thank you.

3 MR. FONS: John P. Fons of the Ausley law  
4 firm on behalf of Sprint-Florida. Also appearing with  
5 me is Susan Masterton of Sprint, and also appearing  
6 with me today is former Chief Justice Major Harding  
7 with the Ausley law firm.

8 CHAIRMAN JABER: Thank you.

9 MR. BECK: Harold McLean, Rick Mann, and  
10 Charlie Beck, Office of the Public Counsel, appearing  
11 on behalf of Florida's citizens.

12 ATTORNEY GENERAL CRIST: Charlie Crist,  
13 Attorney General, appearing on behalf of the people of  
14 Florida.

15 MR. TWOMEY: Madam Chairman and  
16 Commissioners, Mike Twomey appearing on behalf of  
17 AARP, Common Cause Florida, and Sugarmill Woods Civic  
18 Association, Inc.

19 MR. MEROS: Commissioners, George Meros on  
20 behalf of Knology of Florida, Inc.

21 MR. EARLY: Gary Early of the law firm of  
22 Messer, Caparello & Self, appearing on behalf of AT&T  
23 of the Southern States and MCI. I would also like to  
24 enter an appearance for Floyd Self, also with the firm  
25 of Messer, Caparello & Self, also appearing on behalf

1 of AT&T and MCI.

2 MS. MCNULTY: Donna McNulty appearing on  
3 behalf of MCI WorldCom Communications, Inc.

4 MR. HATCH: Tracy Hatch appearing on behalf  
5 of AT&T Communications of the Southern States, LLC.

6 MR. REHWINKEL: Madam Chairman, I've  
7 already entered an appearance, but Charles Rehwinkel  
8 on behalf -- appearing in this phase on behalf of  
9 Sprint Communications Company Limited Partnership.

10 MR. ANTHONY: And Harris Anthony on behalf  
11 of BellSouth Long Distance.

12 CHAIRMAN JABER: Give me your first name  
13 one more time.

14 MR. ANTHONY: It's Harris, H-a-r-r-i-s.

15 MS. KEATING: Beth Keating, Patricia  
16 Christensen, Felecia Banks, and Lee Fordham, appearing  
17 on behalf of the Commission.

18 CHAIRMAN JABER: Thank you. Are there  
19 other appearances that need to be made?

20 Ms. Keating, it's my understanding that  
21 there are several preliminary matters that this  
22 Commission should entertain this morning, and let me  
23 make sure that we have all of them before we get  
24 started. I've got as the first preliminary matter the  
25 joint motion of Verizon, Sprint, and BellSouth seeking



1 reconsideration or clarification of the Prehearing  
2 Officer's Second Order Modifying Procedure.

3 MS. KEATING: That's correct.

4 CHAIRMAN JABER: And it looks like we have  
5 responses to that filed by Public Counsel.

6 MS. KEATING: Yes, Madam Chairman, that is  
7 the only response.

8 CHAIRMAN JABER: And we have a request for  
9 oral argument related to that same motion.

10 MS. KEATING: That's correct.

11 CHAIRMAN JABER: Okay. And, parties, if  
12 you think you filed something and I haven't stated it,  
13 you need to go ahead and interrupt me and let me  
14 know.

15 We have AARP's motion for reconsideration  
16 of order 03-1331, with Citizens' similar motion for  
17 reconsideration of that order.

18 MS. KEATING: That's correct.

19 CHAIRMAN JABER: We have responses from  
20 Verizon, Sprint, and Bellsouth in opposition to those  
21 motions.

22 We have notice of General Crist joining in  
23 the Citizens' motion for reconsideration.

24 MS. KEATING: That's correct.

25 CHAIRMAN JABER: We've got the Attorney

1 General's Motion for Summary Final Order, with a  
2 joinder filed by AARP, Citizens' joinder. I have  
3 BellSouth's response to the Attorney General's motion,  
4 Verizon's response to that motion, AT&T MCI's response  
5 to that motion, Sprint's response to that motion.

6 MS. KEATING: That is correct.

7 CHAIRMAN JABER: We have a Request for  
8 Official Notice filed by AARP. I thought I had a  
9 response to that. I do. I have a response filed by  
10 Verizon, Sprint, and BellSouth in opposition to that.

11 MS. KEATING: That's correct.

12 CHAIRMAN JABER: And I have a joint motion  
13 by Verizon, Sprint, and BellSouth to strike portions  
14 of witness Cooper's direct testimony.

15 And, Mr. Twomey, I don't have a response to  
16 that motion from you. He's your witness; right?

17 MR. TWOMEY: Yes, ma'am, that's correct.  
18 We oppose it, of course.

19 CHAIRMAN JABER: But you don't have a  
20 written response; right?

21 MR. TWOMEY: No. I think the -- I don't.  
22 I'm trying to think. I think that came in just -- if  
23 this is Wednesday, it may have come in Monday or  
24 yesterday. I'm not sure.

25 CHAIRMAN JABER: It did. I just wanted to

1 make sure if there was a written response.

2 MR. TWOMEY: No, ma'am, there's not, but we  
3 oppose it and would like to speak against it, of  
4 course.

5 CHAIRMAN JABER: Commissioners, with your  
6 indulgence, what I would like to do is take up the  
7 Request for Official Notice first, because we have the  
8 request. I've read that, and the response. Frankly,  
9 I'm ready to rule on that.

10 I would like to start there and get that  
11 procedural motion out of the way and then take up next  
12 the motion to strike testimony, because, frankly, I'm  
13 ready to rule on that as well. And my ruling as it  
14 relates to the request for official recognition, after  
15 reading both the motion and the response, is to grant  
16 the request for official recognition. To be very  
17 clear, it's transcripts of the floor debates of the  
18 Florida Senate and Florida House surrounding their  
19 respective passage of Senate Bill 654 and House Bill  
20 1903.

21 COMMISSIONER DAVIDSON: Madam Chair, I  
22 would like to comment also. I think that ruling is  
23 very well supported by Rule 90.803(8) relating to  
24 public records and reports, which rule provides that  
25 records, reports, and statements reduced to writing of

1 public offices setting forth the activities of the  
2 office are admissible. And I think that that provides  
3 additional good guidance for your ruling on that.  
4 what's sought here is clearly, at a minimum,  
5 statements reduced to writing of a public office,  
6 namely, the Florida Legislature, and I think we will  
7 be well advised to take official notice of those.

8 CHAIRMAN JABER: Thank you, Commissioner  
9 Davidson.

10 Mr. Twomey, I heard you say you opposed the  
11 motion to strike portions of Mr. Cooper's direct  
12 testimony. I consider that your response to the  
13 motion. And having considered your response and the  
14 original motion, my ruling is to deny the joint motion  
15 by Verizon, Sprint, and BellSouth to strike the  
16 witness's testimony.

17 MR. TWOMEY: Thank you, Madam Chair.

18 MS. WHITE: Madam Chair --

19 CHAIRMAN JABER: I don't need oral  
20 argument, Ms. White.

21 That takes us, Commissioners, to the  
22 motions for reconsideration. And I would note,  
23 Commissioners, that there is a request for oral  
24 argument, and frankly, this one I want to open up for  
25 full Commission discussion. I think that that's

1 appropriate, the motions for reconsideration and the  
2 motion for summary order.

3 Staff has suggested to me, and I agree,  
4 that the first motion for reconsideration should be  
5 the one that seeks reconsideration or clarification of  
6 the Prehearing Officer's Second Order Modifying  
7 Procedure. I've asked staff to make sure that you  
8 have copies of those motions and those responses. I  
9 hope by now that you do and that we are ready to  
10 entertain oral argument.

11 And in that regard, companies, without  
12 having to put a time limit on you or the respondents  
13 to the motion, I would just ask simply that you stay  
14 to the point, make your arguments, try not to repeat  
15 yourself, and we'll get started with that.

16 Sprint, are you going to make the argument  
17 first?

18 MR. FONS: Major Harding will make the  
19 argument for Sprint, Verizon, and BellSouth.

20 MR. HARDING: Madam Chairman and members of  
21 the Commission, thank you for the opportunity to be  
22 here.

23 I speak first to this motion of the  
24 petitioners for reconsideration or clarification of  
25 that order reflecting additional docket issues. And I

1 think in speaking to that motion, I also speak to all  
2 of the pleadings, including the motions of the  
3 Attorney General for summary final order.

4 The Legislature has set forth --

5 CHAIRMAN JABER: I'm sorry. Let me make  
6 sure I understand. You want to go ahead and address  
7 both motions?

8 MR. HARDING: In effect, the first three  
9 motions fall within the scope of the same argument,  
10 and so if you permit, I will just speak to all three  
11 of them at the same time.

12 CHAIRMAN JABER: You know, I'll leave that  
13 choice up to you all, but I will tell you that we will  
14 entertain each motion in terms --

15 MR. HARDING: Certainly.

16 CHAIRMAN JABER: -- of the vote separately.

17 MR. HARDING: That will be --

18 CHAIRMAN JABER: And if the parties choose  
19 not to take the approach, if you do all choose to  
20 address each motion separately, I'll allow that as  
21 well.

22 MR. HARDING: Thank you very much.

23 CHAIRMAN JABER: Mr. Chapkis, you had  
24 something to say?

25 MR. CHAPKIS: Yes. I just wanted to make

1 clear that Justice Harding is speaking on Verizon's  
2 behalf with respect to this motion, but with respect  
3 to the Attorney General's summary judgment motion,  
4 Verizon would like to be heard separately.

5 CHAIRMAN JABER: Okay.

6 MR. HARDING: Thank you. I had the  
7 privilege of being here earlier and hearing some of  
8 the testimony offered to you today concerning the rate  
9 increases for local service and that these increases  
10 may be offensive to many. It may be appealing to  
11 consider these concerns, and that they express the  
12 will of the people, and that they should govern your  
13 decision-making. It may also be appealing to consider  
14 that my friend, the Attorney General, has come here on  
15 behalf of the individual consumers, and thus that he  
16 expresses the will of the people.

17 Determining the will of the people has been  
18 a troublesome issue since the beginning of our  
19 country. Our founders struggled with it in developing  
20 our form of government, and they determined that the  
21 Legislature would be the best way to express the will  
22 of the people. They had lived under the domination of  
23 a monarch who did not give them the opportunity to  
24 effectively express their will otherwise.

25 These legislative bodies are elected by the

1 people, and they have traditionally provided the  
2 opportunity for concerns of the people to be expressed  
3 for and against ideas under consideration.

4           However, when all is said and done, the  
5 Legislature expresses the will of the people, and it  
6 does so in the form of statutes. And unless those  
7 statutes violate some constitutional provision, the  
8 legislation stands. And we've lived together in this  
9 great land and in this great state for many years in  
10 freedom and liberty because decision-making bodies  
11 such as this Commission have followed the rules of law  
12 as expressed by the Legislature which has been elected  
13 by the people. The rule of law governs us. We do not  
14 settle our disputes with tanks in the streets or  
15 determining who has the biggest Army, nor do we heed  
16 the clamor that is oftentimes governed or contributed  
17 to these decision-making processes.

18           A bill was pending before the Florida  
19 Legislature. There were committee hearings. There  
20 were debates on the floor of the chambers considering  
21 a bill, and a bill was passed and signed by the  
22 Governor, and it became law. Like it or not, the  
23 Legislature governing your consideration does not  
24 indicate that your decision should be made only  
25 because individual customers will bear an increased



1 cost in local service. The legislation is clear, and  
2 you have set out previously in your orders that you  
3 understand this, what you are to consider.

4 The Legislature has said you must determine  
5 whether the reduction in rate -- access rates will,  
6 (a) remove current support for basic local services  
7 that prevents the creation of more competitive local  
8 exchange market for the benefit of residential  
9 customers; secondly, will it enhance -- induce  
10 enhanced market entry, and on and on.

11 The statute is clear. It is unambiguous.  
12 It does not lend itself to any other interpretation.  
13 And the testimony before committees and the debate on  
14 the floor of the legislative bodies cannot be used to  
15 create ambiguity or uncertainty.

16 And we suggest that it is for that reason  
17 that you should reconsider the order adding issues to  
18 the docket and delete those items. They do not relate  
19 to the statutory considerations that you are required  
20 to make in this determination. And for the same  
21 reason, we think you should also deny Public Counsel's  
22 and AARP's motion to reconsider your order denying  
23 their motion to dismiss.

24 In your order, you acknowledged that the  
25 language of the statute is clear and that under

1 principles of statutory interpretation, the Commission  
2 does not look further, need to look further to divine  
3 the Legislature's intent. You've correctly determined  
4 that motion to dismiss should fail for that reason,  
5 and therefore, we suggest that the motion of Public  
6 Counsel and AARP to reconsider that order should be  
7 denied.

8 In a like manner, the Attorney General's  
9 Motion for Summary Final Order indicates that the  
10 Commission should summarily rule against the  
11 petitioners because the petitions and records indicate  
12 residential consumers will be forced to shoulder  
13 additional cost for local telecommunications services  
14 without receiving any corresponding benefit. This is  
15 not a determination that should be made according to  
16 the statute. The determination is whether there will  
17 be more competitive local exchange market for the  
18 benefit of residential consumers and whether the  
19 change will induce enhanced market entry.

20 Not only is the motion based on an  
21 incorrect premise, but the record reflects that there  
22 is abundant evidence from the testimony,  
23 interrogatories, and the depositions that have been  
24 filed which point out that there is benefit to the  
25 customers consistent with the statutory requirement.

1 There is also evidence in the record to address all of  
2 these concerns, and therefore, a summary final order  
3 would not be appropriate, and the motion should be  
4 denied.

5 I think it should also be pointed out that  
6 not only is there a great deal of evidence from the  
7 Commission -- for the Commission to consider, but that  
8 the motion of the Attorney General is legally  
9 insufficient. Your own decisions have pointed out  
10 that there must be two prerequisites for summary  
11 judgment. First, there must be no genuine issue of  
12 material fact, and second, one of the parties must be  
13 entitled to a judgment as a matter of law on the  
14 undisputed facts.

15 Our response to the Attorney General's  
16 motion contains numerous citations that set forth the  
17 requirement of a motion for summary judgment, and we  
18 feel like the motion does not live up to those  
19 requirements and thus should be denied.

20 The Attorney General, bottom line,  
21 disagrees with the statute and would like for you to  
22 rewrite the statute, and I respectfully submit that  
23 you do not have that privilege. I also respectfully  
24 suggest that the Motion for Summary Final Order should  
25 be denied and that this matter should proceed to be

1 resolved on the merits with the evidence presented.

2 Thank you very much.

3 CHAIRMAN JABER: Thank you, Justice  
4 Harding.

5 Ms. White, Verizon said that the Justice  
6 spoke on their behalf. Do you have a separate  
7 presentation, or was he speaking on your behalf?

8 MS. WHITE: No, Justice Harding spoke on  
9 BellSouth's behalf on all three motions.

10 CHAIRMAN JABER: Thank you. And let's see.  
11 Who has filed a response? Citizens' response.  
12 Mr. Mann.

13 MR. MANN: Thank you, Chairman Jaber.  
14 This is Rick Mann for the Public Counsel's Office. I  
15 am going to address solely the joint motion at this  
16 time.

17 I think one comment to make on counsel's  
18 argument about the clarity of the language of this  
19 statute I will get into in a little more detail, but I  
20 would have to say up front that flat out the lack of  
21 clarity of the wording, particularly of subsection  
22 (1), subsection (a), stands out I think very clearly.

23 At the Commission's November 3 agenda  
24 conference, the Commission determined that the subject  
25 matter of Docket 030961 should be concurrently

1 considered with the ILECs' petitions in their  
2 consolidated dockets. The Commission also determined  
3 at that agenda conference that it lacked sufficient  
4 information upon which to base a decision in any of  
5 the respective dockets in front of it, and  
6 consequently, all four dockets were consolidated.

7 The companies are arguing in their joint  
8 motion that the issues that the Prehearing Officer has  
9 brought into the consolidated docket for the ILECs,  
10 Issues No. 6 through 10, are beyond the scope of these  
11 dockets, that the Commission lacks a statutory  
12 foundation to consider these issues, that the  
13 Prehearing Officer overlooked or failed to consider a  
14 point of law in rendering his order, and that the  
15 Prehearing Officer's order imposes additional criteria  
16 for the ILECs to prove up pursuant to the statute,  
17 which expands the Commission's delegated legislative  
18 authority.

19 The Citizens believe that the Commission  
20 should reject in its entirety the companies' motion.  
21 The Prehearing Officer followed the directive of the  
22 Legislature. He was provided a clear statutory  
23 foundation for this Commission to consider Issues No.  
24 1 through 11. The five issues complained about by the  
25 companies impose no additional criteria onto those

1 listed in section 364.164(1). And the inclusion of  
2 these issues will not cause the Commission to act  
3 beyond its delegated legislative authority. The  
4 Prehearing Officer has not overlooked or failed to  
5 consider any point of law in issuing the second  
6 procedural order, which follows the guidance of these  
7 Commissioners during the agenda of November 3, as well  
8 as its Order No. 1240, which consolidated the dockets.

9           Notwithstanding counsel's argument, the  
10 companies in their motion have boldly asserted that  
11 the only consideration that the Commission -- I'm  
12 sorry. The only consideration by the Commission  
13 beyond the elimination of support of basic service  
14 rates in a revenue-neutral manner is consideration of  
15 whether reduction of the access rates will induce  
16 enhanced market entry. That's it. The only  
17 consideration is elimination of support of basic  
18 service rates in a revenue-neutral manner and whether  
19 reduction of the access rates will induce enhanced  
20 market entry, nothing about benefits whatsoever.  
21 Benefit to the companies is a given.

22           The Citizens contend that this assertion is  
23 flat wrong. What the companies seek is to impose  
24 constraints upon this Commission and the regulatory  
25 process that would shield from public view the

1 relevant and critical issues that must be investigated  
2 by this Commission. The statute clearly provides that  
3 the Commission shall consider whether granting the  
4 petition will benefit the residential customers.

5 At the November 3 agenda, the Commission  
6 made clear the importance of the Legislature's  
7 requirement that the ILEC petitions must result in a  
8 benefit to residential customers, as well as the  
9 necessity that the Commission receive sufficient  
10 evidence that that requirement will be met before the  
11 Commission may, if the other requirements of the  
12 petition are met, grant any of those petitions. The  
13 Commission highlighted the critical nature of  
14 establishing the ILECs' petitions will either or not  
15 create a benefit for residential customers, and also  
16 highlighted the close association of access charge  
17 reductions with the creation of this benefit.

18 The Citizens acknowledge that Chapter  
19 364.163 limits the Commission's authority to influence  
20 the decisions of the IXCs, and the Prehearing Officer  
21 has acknowledged this limit by providing Issues, not  
22 criteria, No. 6 through 10, as guidelines for the  
23 IXCs, not directives.

24 Concomitantly, these issues are designed to  
25 gather information in this consolidated docket, to

1 gather evidence of and enlighten the Commission about  
2 the intentions of the IXCs in flowing through the  
3 access charge reductions. A determination as to  
4 whether residential customers will actually derive the  
5 benefit of toll reductions as a result of the access  
6 reductions that are bestowed upon the IXCs is crucial  
7 to the Commission's decision to grant an ILEC's  
8 petition.

9           The Commission's authority to consider  
10 Issues No. 6 through 10 is inherent in Chapter  
11 364.164(1), in light of the key importance expressed  
12 by the Legislature in that statute, finding there to  
13 be in the ILECs' rebalancing plans a resultant benefit  
14 to residential customers. Contrary to the ILECs'  
15 assertion, Nos. 6 through 10 are essential to the  
16 Commission's ability to make its obligatory finding in  
17 Section 364.164(1)(a), to find out what benefits may  
18 come to residential customers from the access charge  
19 reductions.

20           The Prehearing Officer has not ignored a  
21 legislative directive on what issues must be  
22 considered. In fact, the Prehearing Officer has  
23 carefully followed both the directive of the statute,  
24 as well as the resolution of the full Commission and  
25 the ensuing Order 1240 that memorialized that



1 resolution of this Commission.

2 The companies assert that the clarity of  
3 the legislative directive is further illustrated by  
4 comparing the language of last year's bill, themselves  
5 looking at legislative history. Last year's bill,  
6 Committee Substitute for House Bill 1683, outlined the  
7 findings the Commission was required to make in  
8 deciding to grant a petition for rate rebalancing.  
9 The companies argue that in that 2002 bill, the  
10 Legislature granted authority to the Commission to  
11 determine whether an ILEC plan would result in  
12 benefits to toll customers. They argue that this  
13 grant of authority has been eliminated in the new  
14 statute. But the removal of that criterion (f) from  
15 the 2002 bill regarding toll customers does not remove  
16 the grant of authority for the Commission to  
17 investigate the full parameters of what, if any,  
18 assurances of benefit to residential customers the  
19 ILECs' plans contain.

20 what the Legislature actually did in its  
21 clarification of that 2002 bill was to remove a  
22 secondary item of focus, toll customers, many of whom  
23 would not be paying for the reduction in access  
24 charges through any increase in their basic local  
25 rates. For example, many of them may be multi-line

1 big business customers who will not be saddled with  
2 any increase in basic rates.

3 The new statute pointedly refocuses the  
4 attention of this Commission on residential rates  
5 specifically. It also enhances that criterion itself  
6 through its new word edition and arrangement providing  
7 for the removal of any subsidy that would itself  
8 prevent the creation of a more attractive competitive  
9 local exchange market for the benefit of residential  
10 customers. This -- it seems obvious the Legislature's  
11 desire is for the Commission to grant a rebalancing  
12 plan only if it is demonstrated by evidence that there  
13 is a current subsidy for the residential basic local  
14 service, and only if that subsidy then is demonstrated  
15 to prevent a more competitive local exchange market,  
16 and then, if so, that that plan benefits residential  
17 customers.

18 Notwithstanding the companies' arguments to  
19 the contrary, they themselves have indicated that they  
20 recognize the importance of demonstrating that their  
21 residential customers will benefit from their  
22 rebalancing plan. Attached to my response to the  
23 joint motion is an executive summary issued by  
24 BellSouth that is directed to the new act. This  
25 document that was obtained by the Citizens through

1 discovery addresses the proposed ILEC petition.  
2 BellSouth itemizes six, not the four, but six  
3 individual criteria that the Commission must find that  
4 the petitions will achieve before the Commission may  
5 grant the petitions. Indeed, BellSouth understands  
6 and makes very clear that, quote, this bill clearly  
7 gives the PSC the authority to deny petitions if any  
8 of the above criteria are not met.

9 Item B of those six criteria, the second  
10 one which the Commission must find, asserts that a  
11 petition must benefit residential customers. That  
12 criterion stands alone. It has no connection to any  
13 specific market, local or long distance. In other  
14 words, the clarity that was achieved in the new  
15 statute from the old bill is that the Commission is  
16 charged with ensuring that residential customers are  
17 not just penalized with higher basic local rates by  
18 the ILECs' rebalancing plans, but rather that they are  
19 also benefited by those plans.

20 It is insufficient for the ILECs to posit  
21 with an assumed air of authority that customers will  
22 benefit because IXCs are required to reduce their  
23 intrastate long distance revenues by the amount  
24 necessary to return the benefits of such reduction to  
25 both its residential and business customers. That

1 statement alone does not comprise the evidence that  
2 this Commission must have before granting the  
3 Commission's (sic) petition. The ILECs have presented  
4 no evidence of any benefits that will flow to  
5 residential customers due to the increase in their  
6 respective residential basic local rates.

7 For the Commission to fulfill its statutory  
8 obligation to the residential customers, the  
9 Commission must track the path of the ostensible  
10 flow-through of the access charge reductions to the  
11 residential recipients of those flow-through  
12 reductions. At that November 3 agenda, the Commission  
13 made clear the urgency and the necessity of doing so.

14 Contrary to the companies' assertion, the  
15 Prehearing Officer has not modified this proceeding to  
16 dictate how reductions will benefit certain customers.  
17 Rather, with the issues identified in his second  
18 procedural order, he has appropriately provided the  
19 mechanism by which the Commission may use its  
20 available delegated legislative authority to gather  
21 sufficient evidence to determine whether the ILECs'  
22 plans will in fact benefit residential customers.

23 The companies' arguments that the  
24 Prehearing Officer has positioned the Commission to  
25 exercise an ultra vires act by exceeding its

1 legislative authority are unfounded. The Prehearing  
2 Officer has not added to the criteria listed in  
3 364.164(1) to be considered by the Commission. The  
4 Commission will not be second-guessing the findings of  
5 the Legislature. They will instead be diligently  
6 following the directive of the Legislature to actually  
7 determine what granting the petitions would provide in  
8 the way of benefits to residential customers.

9 For those reasons, the Commission should  
10 deny in its entirety the companies' joint motion for  
11 reconsideration.

12 Thank you, Commissioners.

13 CHAIRMAN JABER: Thank you, Mr. Mann.

14 Commissioners, do you have any questions of  
15 the parties or of staff, or a motion?

16 Again, this is on the joint motion of the  
17 companies to seek reconsideration or clarification of  
18 the Prehearing Officer's Second Order Modifying  
19 Procedure.

20 COMMISSIONER DAVIDSON: Madam Chair, a  
21 motion to deny the joint motion for reconsideration.

22 CHAIRMAN JABER: There's a motion to deny.

23 COMMISSIONER DEASON: Second.

24 CHAIRMAN JABER: And a second. All those  
25 in favor say aye.

1 (Simultaneous affirmative responses.)

2 CHAIRMAN JABER: The motion carries  
3 unanimously. Thank you, Commissioner.

4 The next motion I have is the AARP motion  
5 for reconsideration of Order No. PSC-03-1331.

6 Mr. Twomey, the same request of you all. I  
7 won't establish a time certain for oral argument. I  
8 would ask that you not repeat anyone and be concise in  
9 your delivery.

10 MR. TWOMEY: Thank you, Madam Chairman.  
11 I'll be extremely brief. Actually, I would probably  
12 be briefer if I followed Mr. Beck on his motion.

13 The problem with the order -- and perhaps  
14 we haven't got the title correct in the motion,  
15 whether it's a motion for reconsideration, or a motion  
16 to have the order reflect the actual Commission vote,  
17 or I think as suggested by some of the companies, a  
18 motion to clarify the order.

19 The problem is, and what we would seek to  
20 have you address is the fact that there are  
21 conclusions reached in the order that the consuming  
22 parties believe weren't warranted by the discussion at  
23 the agenda conference and the discussion leading up to  
24 the vote.

25 The first is the conclusion that the

1 statute is sufficiently clear so as to not warrant  
2 reference or reliance to the legislative history. I  
3 think as Mr. Mann said, the fact that that language is  
4 unclear should be obvious by the very reading it,  
5 which is "remove current support for basic local  
6 telecommunications services that prevents the creation  
7 of a more attractive local exchange market for the  
8 benefit of residential consumers." I'm not an English  
9 major. I'm not sure what modifies what in that.

10 Irrespective of what I think, the position  
11 of the AARP is that the language is ambiguous at  
12 best. And if it's ambiguous, then the Commission has  
13 the right, and indeed the obligation, to consider  
14 evidence from the Legislature that would evidence  
15 their intent of what's intended by the statute.

16 Now, you've already ruled that the three  
17 transcripts of the three floor debates can be  
18 recognized, and we appreciate that and think that's  
19 the correct ruling.

20 But more importantly, we didn't hear any  
21 discussion amongst the Commissioners in the agenda  
22 conference in the debate that led to this order that  
23 discussed clarity of the statute. In fact, in  
24 conjunction with the second finding in the order that  
25 the impact on the residential consumers as a result of

1 in-state toll reductions weren't connected, the  
2 passages I've in my motion quoted from Commissioner  
3 Deason, and then seconded apparently by Commissioner  
4 Baez, seem to reflect just the opposite, which is to  
5 say that they considered, and I believe Commissioner  
6 Davidson considered, and I believe Chairman Jaber  
7 considered it as well, even though she was on the  
8 losing end of the vote, that you all considered, those  
9 of you that spoke to it, that whether or not there  
10 would be benefits to the residential consumers flowing  
11 from the reductions that the IXCs had to make was a  
12 viable issue, not one that many of you thought was a  
13 sufficient basis on which to dismiss the companies'  
14 cases, but that, as Commissioner Deason said  
15 repeatedly, and I think all of you did, that it was a  
16 matter of burden of proof.

17           And if you found it was a matter of burden  
18 of proof that should be addressed at hearing, then you  
19 necessarily, in my view, didn't decide that it was not  
20 an issue. And if you intended it be an issue at this  
21 hearing, then the conclusions that are reached in the  
22 order are, in my opinion, contrary to your vote.

23           And the last point again, or the first  
24 point, you didn't discuss in any place at the agenda  
25 conference that you thought that the issue on the



1 clarity of the statute was such that it was clear that  
2 it didn't require reference to the legislative floor  
3 debates or any other indication of legislative  
4 history.

5           So I would ask you to find that the order  
6 needs to be corrected to reflect your true vote. You  
7 all know what you intended, but what you intended as  
8 seen by the transcript seems to be contrary to what  
9 was reflected on those two points in the order.

10           Thank you.

11           CHAIRMAN JABER: Thank you, Mr. Twomey.

12           Mr. Beck, you filed a motion for  
13 reconsideration a few days before Mr. Twomey, so if  
14 you have oral argument you would like to make in that  
15 regard, let's go ahead and take that up, and then I'll  
16 come back to the Attorney General's Office and then  
17 allow the companies to rebut.

18           MR. BECK: Thank you, Madam Chairman.

19           Mr. Mann will be addressing that motion.

20           CHAIRMAN JABER: Go ahead, Mr. Mann.

21           MR. MANN: Thank you, Chairman Jaber.

22           I second the comments made by Mr. Twomey  
23 and emphasize that indeed our rights have been  
24 affected by the order as it is written.

25           And let me read the pertinent part of that

1 order which concerns us and why we filed the move --  
2 the motion, rather, for reconsideration. And it's not  
3 a clarification. It's -- we believe the order flatly  
4 states something that this Commission did not decide  
5 at that agenda. The pertinent language in that is  
6 found at page 11 of the order, and the Commission  
7 addresses that for our consideration, we do not -- the  
8 statute does not direct the Commission, the statute  
9 being 164(1), to consider how the ILECs' proposals  
10 will affect the toll market for the benefit of  
11 residential consumers. Instead, the plain language  
12 states that consideration should be given to whether  
13 granting the petitions will. And then subsection (a)  
14 is cited there, with an emphasis added to "that  
15 prevents the creation of a more attractive local  
16 exchange market for the benefit of residential  
17 consumers."

18 The order goes on to state that as such,  
19 the relevant market for use in making the final  
20 determination on these petitions is the local exchange  
21 market. Thus, we find that for purposes of 364.164,  
22 consideration of the impact on the toll market and  
23 resulting impact on toll customers is not required for  
24 the Commission's full and complete determination of  
25 the petitions.

1           Now, we recognize there's a footnote  
2 there, number 3 at the bottom. "In reaching this  
3 conclusion, we do not find that we are precluded from  
4 such consideration. Rather, we conclude only that we  
5 are not required to do so."

6           Well, looking at the transcript, and  
7 having been here in person to begin with and listening  
8 to the discussions going on at the agenda conference  
9 on November 3rd of 2003, I have affixed to the motion  
10 for reconsideration what I believe is the pertinent  
11 portion, and that is pages 54 to 66, Item 4A.

12           The final keynote section of that regards  
13 page 64, and a question very pointedly asked by  
14 Commission Deason after very much deliberation had  
15 taken place over the issue. Commissioner Deason says,  
16 "Staff, you're not making any interpretation as to the  
17 amount of discretion" -- "on," I believe -- "on the  
18 reading of the terminology benefit of residential  
19 consumers as it relates to whether this should or  
20 should not be dismissed. That's a matter which we are  
21 going to ultimately address, but you are not making  
22 any recommendation on that at this point. So if I  
23 vote to approve staff's recommendation, that issue  
24 remains open."

25           And staff counsel replies, "That's correct,

1 Commissioner. We have tried very hard to make sure  
2 that we are not prejudging any issues."

3 Now, pages 54 through 64 do reflect  
4 comments by Commissioner Deason, as well as comments  
5 by, of course, the Chair, Commissioner Jaber, who, as  
6 Mr. Twomey points out, was the only nay vote in this  
7 vote. But Commissioner Baez and Commissioner Davidson  
8 also voiced respectively their agreement with  
9 Commissioner Deason's concern.

10 Let me pull to page 57 of that transcript,  
11 the attachment to your motion. Chairman Jaber on line  
12 6 says, "well, it seems to me the general discretion  
13 is how it gets allocated in terms of percentages  
14 between residential and consumers, and perhaps the  
15 discretion the IXCs have relates to where the specific  
16 rates in the residential bill and in the consumer bill  
17 will be reduced."

18 Commissioner Davidson says on line 14, "I  
19 mean, you're reading my mind on this, and this does  
20 get into number 5 a bit, but a follow-up on one of  
21 your answers to the Chairman's question. If we have  
22 the discretion to make sure that the flow-through is  
23 in an amount necessary to return the benefits of such  
24 reduction to both its residential and business  
25 customers, and you say we have that discretion, if we

1 have that discretion, then don't we also have a  
2 fiduciary obligation to, to the extent possible,  
3 reflect the intent of the legislation in exercising  
4 that discretion?"

5 Now, Mrs. Keating says, "Commissioner,  
6 again, I think that's an argument that you can  
7 certainly make. I just feel obligated, though, to  
8 point out that that language as stated actually says  
9 that the IXCs may determine the specific rate. But  
10 again, that's not to say that the argument that you  
11 make isn't a viable one."

12 Commissioner Davidson on page 58, line 4,  
13 says, "No, I understand that. As I sit here, I have  
14 to tell you I don't think there was one member who  
15 voted for this bill who thought that 90 percent of the  
16 benefit would go to large business customers and 90  
17 percent of the burden would go to individual  
18 customers. They just didn't think that when they were  
19 talking about their parents not having bill increases,  
20 and they were talking about the customers. So I was  
21 comforted by your general statement that we do have  
22 the discretion to address at some broad level that  
23 allocation, and then what perhaps is the best way of  
24 doing that we'll have to take up."

25 On page 62, actually, at the bottom of 61,

1 Commissioner Baez -- I'm sorry. Let me start at page  
2 61, Commissioner Deason, line 1, saying, "Let me say  
3 where I am. I agree with much of what you said, Madam  
4 Chair," in lines preceding, "but I cannot reach the  
5 conclusion that we need to dismiss the petitions that  
6 are in front of us. And the reason for that, to me,  
7 is one of burden of proof. Now, we all know that  
8 there are criteria set out in 164(1)(a) through (d).

9 "In (a), there is language which refers to  
10 benefit of residential customers. I'm a little bit  
11 concerned with the very narrow interpretation the  
12 incumbent LECs are taking of that particular  
13 provision. I would point out to them that they have a  
14 burden to meet, and it may behoove them to look at  
15 that a little bit more broadly to make sure they meet  
16 their burden. And they may have to get that  
17 information, provide it to this Commission that we  
18 need from the IXCs, who also want to see these  
19 petitions granted.

20 "But, Madam Chair, while I share in your  
21 frustration and share with you that the information is  
22 needed for us to make -- to exercise whatever  
23 discretion we have, and we have not determined how  
24 much we have, how much discretion we have as of yet,  
25 but it falls down to the burden. I don't think we can

1 dismiss the petitions at this point. We may very well  
2 deny them after the hearing because the burden's not  
3 been met, but that's their burden."

4 Commissioner Baez then, back to what I  
5 originally started with, responds to that on line 24,  
6 "Commissioner Deason, I guess I'm hung up on the same  
7 thing you are in part. Something I said earlier is  
8 that this motion to dismiss, at least in my mind, has  
9 placed one of those ultimate questions squarely before  
10 us as to what we consider to be benefits. And to  
11 decide one way -- certainly to decide in favor of the  
12 motion to dismiss, in my mind, would answer that  
13 question, which I believe is better left as part of  
14 the entire case."

15 The expressed will of the Commissioners on  
16 the record was that their votes not be interpreted as  
17 to the reading of the terminology "residential  
18 consumers" as it relates to whether they should or  
19 should not be dismissed. Ms. Keating explicitly  
20 answered to Commissioner Deason on the record, "That's  
21 correct, Commissioner. We have tried very hard to  
22 make sure that we are not prejudging any issues."  
23 Nevertheless, the language that I cited earlier is  
24 contained in that order.

25 The Citizens contend that a point of fact

1 and possibly of law was overlooked in the issuance of  
2 Order 1331, as demonstrated by the transcript portion  
3 attached to this motion. In fact, an issue does  
4 appear to have been prejudged, that is, the benefit to  
5 residential consumers.

6 The citizens have been adversely affected  
7 by this order, as evidenced by now all three of the  
8 petitioners' responses to the AG's Motion for Summary  
9 Final Order, which suggests that Commission Order 1331  
10 has been interpreted to have already determined and  
11 circumscribed prior to hearing, contrary to the will  
12 and the votes of the Commissioners at agenda, the  
13 meaning of "for the benefit of residential consumers."

14 And I'll also point out that the response  
15 that I received late last night to our motion for  
16 reconsideration from the three ILECs once again has  
17 said in paragraph 8, "The Legislature has already  
18 determined that removing the revenue support of local  
19 rates provided by access charges prevents the creation  
20 of a more attractive competitive local exchange market  
21 for the benefit of consumers. The Commission's task  
22 is to determine whether the requested rebalance is  
23 likely to create a more attractive local exchange  
24 market."

25 The benefit to residential consumers once



1 again is left out. It's a given. It has already been  
2 defined, as far as the ILECs are concerned, by Order  
3 1331 as a given, not an issue.

4 The Citizens respectfully request that this  
5 Commission grant reconsideration of Order 1331, revise  
6 it to the extent necessary to eliminate the  
7 prejudgment of the definition of "benefit of  
8 consumers."

9 Thank you very much, Commissioners.

10 CHAIRMAN JABER: Thank you, Mr. Mann.

11 Mr. Shreve.

12 MR. SHREVE: Thank you, Madam Chairman.

13 The Attorney General has joined in support  
14 of the motions for reconsideration. I'll be very  
15 brief and adopt everything that Mr. Mann said and  
16 Mr. Twomey said. I think they did an excellent job in  
17 pointing that out.

18 I would like to point out that our decision  
19 to intervene was made after this hearing, when we  
20 heard the expressions of the Commissioners, and after  
21 hearing all of the public hearings. I attended this  
22 hearing and have reviewed the transcript in depth, and  
23 there is no indication from any Commissioner that  
24 would go the other way and support the order. All of  
25 the indications from the Commissioners were to keep

1 this item, this issue open, and I was very surprised  
2 to see the order on that point. I almost slipped by  
3 it, because after hearing the Commission's  
4 deliberations, you really would not expect that order,  
5 and it's supposed to be representative of this  
6 Commission's deliberations.

7 CHAIRMAN JABER: Thank you, Mr. Shreve.  
8 okay. I have a joint response by Verizon,  
9 Sprint, and Bell on both motions for reconsideration.  
10 Have you selected someone to make your presentation?

11 Justice Harding.

12 MR. HARDING: Thank you. Madam Chairman  
13 and members of the Commission, we would respond by  
14 saying that the order is legally correct, it is  
15 appropriate, and that it follows the statute and sets  
16 forth the requirements for a determination in this  
17 issue. I think it is up for you to determine whether  
18 or not it appropriately reflects your decision. I  
19 can't make that judgment for you, except that it came  
20 out as an order from the Commission, and we certainly  
21 think that it was legally correct. It was well  
22 founded and appropriately states the law that applies  
23 to this issue.

24 Anything else my counsel --

25 CHAIRMAN JABER: Thank you.

1                   Mr. Chapkis, you had an additional  
2 statement? And then, Commissioners, we'll entertain  
3 questions from you all.

4                   MR. CHAPKIS: I'll try to be very brief.

5                   I would just say that the Commission should  
6 deny petitioner's motion for reconsideration because  
7 it fails to identify any new fact or any new law  
8 overlooked by the Commission, and it correctly  
9 reflects the Commission's vote. That is, it says that  
10 the Commission is not required to consider the IXC  
11 flow-through issue in reaching its decision, but it's  
12 not precluded from doing so either. And I would refer  
13 you to Footnote 3 of your order.

14                   And that's all I have to add.

15                   CHAIRMAN JABER: Thank you, Mr. Chapkis.

16                   Commissioner Deason, you had a question?

17                   COMMISSIONER DEASON: I have a question  
18 for Mr. Mann.

19                   Mr. Mann, you're seeking either  
20 reconsideration or clarification. How would you  
21 propose we clarify the order if we were so inclined?  
22 I know that there's a certain passage that you have  
23 included in your motion. Would it just simply be the  
24 deletion of that particular language, or should that  
25 language be changed in some way?

1                   MR. MANN: Commissioner, the most glaring  
2 concern, at least to me, and I'll certainly ask for  
3 any difference of opinion by Mr. Beck, is the  
4 paragraph on page 11 under the subsection where it  
5 cites to subsection (a). "As such, the relevant  
6 market for use in making the final determination is  
7 the local exchange market. We find that consideration  
8 of the impact on the toll market is not required for  
9 the Commission's full and complete determination of  
10 the petitions."

11                   I believe that that particular paragraph  
12 prejudices the definition of the residential -- benefit  
13 for residential customers. It defines the local  
14 market that this Commission should be looking at, and  
15 that is simply and exclusively the local market,  
16 because it comes at the end of subsection (a).

17                   But as I've said earlier, the most  
18 important part of subsection (a) is that if there is  
19 current support found, and if that current support is  
20 then found to prevent the creation of a more  
21 attractive local exchange market, then benefit of  
22 residential customers is the importance of that  
23 subsection (a). And I think that paragraph below that  
24 circumscribes this Commission's delving into what  
25 exactly the benefits -- what the benefits are that

1 should be looked at in order to determine whether  
2 benefits to residential customers is provided by the  
3 ILECs' plans.

4 And again, if Mr. Beck has any difference  
5 of opinion or addition to that, I would certainly  
6 welcome it.

7 CHAIRMAN JABER: I think Mr. Beck is tired  
8 of people referring to him.

9 MR. BECK: I'll make a proposal,  
10 Commissioner Deason. In the decision section of the  
11 order, there's a first paragraph, and what I would  
12 recommend is simply deleting everything after that  
13 until you get to the "Therefore, the motion is  
14 denied." so it would be deleting the last paragraph  
15 on page 11 of the order, as well as page 12 and the  
16 top of 13.

17 CHAIRMAN JABER: Were you done with your  
18 questions, Deason Commissioner?

19 MR. MANN: Let me -- I'm sorry.

20 CHAIRMAN JABER: Were you done with your  
21 questions?

22 COMMISSIONER DEASON: Yes.

23 CHAIRMAN JABER: Okay. Commissioner  
24 Davidson, I see your hand go up. Let me let Mr. Mann  
25 finish his thought, and I'll come back to you.

1                   Go ahead.

2                   MR. MANN: I'm sorry. And I don't know  
3                   that Mr. Beck has cited that specifically, but it has  
4                   been brought to my attention that just beneath the  
5                   paragraph that I referred to that comes underneath  
6                   subsection (a) there, "As such, the relevant market,"  
7                   the next paragraph begins, "The language of section  
8                   364.164, Florida Statutes, appears clear. Thus, under  
9                   principles of statutory interpretation, this  
10                  Commission need not look further to divine the  
11                  Legislature's intent."

12                  CHAIRMAN JABER: So let me see if I can  
13                  make this a shortcut. Is it your position that you  
14                  agree with Mr. Twomey's suggested deletion? If you  
15                  look at his motion on page 11, he's suggesting  
16                  deleting everything found on his motion on page 11.  
17                  Tell me -- it may be easier for you to tell us where  
18                  you disagree, because you've absolutely lost me on  
19                  what you want deleted and what you don't.

20                  MR. MANN: I'm sorry. When you say page  
21                  11, Chairman, are you speaking of his motion or the  
22                  --

23                  CHAIRMAN JABER: Uh-huh. Commissioners,  
24                  just so we're all on the same page, in AARP's motion  
25                  for reconsideration, on page 11, Mr. Twomey makes a

1 suggestion on what language should be deleted.

2 MR. MANN: I see.

3 CHAIRMAN JABER: If you want to take a look  
4 at that and think about it, I can go to Commissioner  
5 Davidson's question.

6 MR. MANN: If you would, please. Thank  
7 you.

8 (TRANSCRIPT CONTINUES IN SEQUENCE WITH  
9 VOLUME 2.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)  
COUNTY OF LEON )

I, MARY ALLEN NEEL, do hereby certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter transcribed under my supervision; and that the foregoing pages numbered 1 through 47 are a true and correct transcription of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, or relative or employee of such attorney or counsel, or financially interested in the action.

DATED THIS 10TH day of December, 2003.

  
\_\_\_\_\_  
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