

**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

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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

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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

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

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Docket No. 030961-TI

**MOTION OF CHARLES J. CRIST, JR.,  
ATTORNEY GENERAL, STATE OF  
FLORIDA, FOR RECONSIDERATION**

Attorney General Charles J. Crist, Jr., respectfully submits that the Public Service Commission has misapprehended the following issues resulting in an unfair and improper decision to the Citizens of Florida. The historic rate increase requested by the phone companies, and approved by the Public Service Commission is not in the best interest of the people of Florida, and not revenue neutral as required by Section 364.01(4) , Florida Statutes.

Accordingly, the Attorney General respectfully requests that the Public Service Commission reconsider its decision, as set forth below:

DOCUMENT NUMBER 00363

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FPSC-COMMISSION CLERK

1. The Commission has misapprehended the elements of statutory construction which requires that all portions of the statute be read together so as to prohibit any inconsistent or useless interpretations. In considering these rate increases, the Commission has forgotten that their primary legislative mandate, pursuant to Section 364.01(4) , Florida Statutes, is to (a) Protect the public health, safety, and welfare by enduring that basic local telecommunications services are available to all consumers in the state at reasonable and affordable prices. A rate which the companies have admitted will have more than 5 times the negative impact on seniors as it does on younger citizens cannot be argued to be reasonable and affordable to all citizens.

Further, any statute enacted for the public benefit as the phone companies have claimed, must be liberally construed in favor of the public. Not only will these rate increases have a much greater negative impact on our senior citizens, but admittedly it will not provide any benefit to many Florida citizens who are on fixed incomes and do not qualify for the Lifeline discounts. These citizens will not be able to afford this dramatic increase in basic rates and will enjoy no benefit.

2. The rate increase proposed by BellSouth is anti-competitive. BellSouth proposes an increase to basic rates only where purchased alone and exempts the bundled services. As Chairman Jaber noted, this encourages customers to purchase bundled services in order to obtain some benefit - exemption from this rate increase. This “encouragement” is anti-competitive to the Competitive Local Exchange Carriers (CLECs). This will also have a greater impact on the lower income customers who cannot afford to purchase anything more than basic services and will bear the brunt of this drastic increase.

3. If these rate increases are implemented, many Florida citizens will be irrevocably

injured. Citizens appearing at the hearing testified under oath that they were on fixed incomes and if these rates were increased, they could not afford to pay the increase and would have to choose between paying for phone service or buying groceries. See testimony of Arthur Douglas Maruna. The record excerpt of Mr. Maruna's testimony is attached as Exhibit A.

Without phone service, a person cannot summon medical help if they become injured, summon assistance from the fire department if their home catches on fire or summon police assistance if threatened in their home. For many disabled or bedridden persons, the phone is their only link to the outside world. The proposed increases are the largest increases in recent Florida history and many Florida Citizens who are on fixed incomes but do not qualify for assistance, will not be able to afford these increases. For any of these persons to lose their phone service would result in irrevocable injury.

One of Verizon's witnesses admitted that the increase in basic rates would be more than 5 times greater for seniors age 76 and older than it would be for those 25-36 years of age. Attached as Exhibit B is the record excerpt for Carl R. Danner. To have our seniors and lower income citizens bear the brunt of such drastic increases for basic phone rates is neither reasonable nor affordable for all. However, the legislative mandate to the PSC is for the Commission to protect the health, safety and welfare of all consumers by ensuring that they have reasonable and affordable basic rates. Section 364.01, Florida Statutes. The Attorney General feels the Commission has overlooked its legislative mandate when evaluating the effect that this drastic increase will have on seniors and lower income citizens and would like to give the Commission an opportunity to correct this omission.

While there were many errors in the hearing of this matter, the Commission's misapprehension of these crucial issues which they are statutorily mandated to consider demonstrates their error in granting these petitions. Accordingly, Attorney General Charles J. Crist, Jr. respectfully urges this tribunal to reconsider their decision and deny these petitions as being anti-competitive and disadvantaging so many of the citizens for which they are charged with providing reasonable and affordable rates.

The Attorney General has asked the Supreme Court to relinquish jurisdiction in order that this Commission may have an opportunity to address these issues which they have overlooked. A copy of this motion is attached as Exhibit C.

#### **MEMORANDUM OF LAW**

This Commission has overlooked the rules of statutory construction which require that all portions of a statute be read together in order to achieve a consistent whole and where possible, give effect to all statutory provisions and construe related statutory provisions in harmony with one another. See *T.R. v. State*, 677 So.2d 270, 271 (Fla. 1996) and *Villery v. Florida Parole & Probation Comm'n*, 396 So.2d 1107, 1111 (Fla. 1980). This Commission has overlooked its legislative mandate to protect the health safety and welfare of **all** consumers by ensuring that they have **reasonable and affordable basic rates** as required by Section 364.01, F.S. It is disturbing that this Commission found those employed or paid by the Petitioners to be so credible and gave so little regard to those citizens who testified under oath; disregarding their testimony as "not representative." Transcript page 1985, lines 10-12. However, the Commission did admit that it was "uncontested that some customers will not receive a direct benefit as a result of the implementation of the ILECs' proposals." Order page 27. Verizon's witness, Dr. Danner,

testified that the increase in basic rates would be greatest for our seniors, with the increase for seniors aged 76 and over being more than 5 times greater than the increase for consumers 26 to 35 years of age. See transcript of hearing pages 913 and 918-919. While oblivious to the reality of those persons on fixed incomes, Dr. Danner also admitted that those who could not afford the increase in basic rates would not enjoy any of the alleged benefits arising from the theoretical competition that might be seen in the future. See transcript of hearing pages 922-923. It must be presumed that this Commission overlooked the requirement to ensure reasonable and affordable basic rates for all consumers. It would be unconscionable to hold that rates which some citizens will not be able to afford, which provide for an increase which will be more than five times greater for those 76 and older than for those age 26-35, and which will be borne more by those who can least afford it, are reasonable and affordable for all consumers as is required by statute.

In addition, BellSouth's petition is facially anti-competitive. The following discussion took place during this Commission's consideration of BellSouth's petition:

17 CHAIRMAN JABER: Staff, something you said,  
18 Ms. Simmons, reminded me that I wanted something clarified as  
19 it related to which residential customers get an increase if at  
20 the end of the day we grant the ILECs' proposals. I went back  
21 to the stipulated exhibits that staff propounded to the  
22 parties, and I think Public Counsel also sent some  
23 interrogatories. And I want to make sure this is still the  
24 case  
25 You asked BellSouth if residential customers who

1 purchase services in bundled packages receive increases. Their  
2 response -- this is Interrogatory Number 83, it looks like, to  
3 staff's fourth set of interrogatories, for purposes of the  
4 record. Their response is, "No. Customers who subscribe to  
5 BellSouth's basic residential service will receive an  
6 increase." So if there are residential local customers who are  
7 also part of BellSouth's bundled packaging and receive other  
8 services, they do not get an increase; is that correct?

9 MS. SIMMONS: That's correct. So they would only  
10 gain from this because they would not be subject to the  
11 increase portion.

12 CHAIRMAN JABER: Okay. Well, I want to make sure  
13 that nothing we heard in the hearing contradicts this. I found  
14 that answer for BellSouth. For Sprint, they say -- the same  
15 question. Will Sprint's proposed residential rate increase be  
16 applied to Sprint's bundled local service plans? Sprint says,  
17 "Yes. Sprint will increase the local service component of its  
18 residential bundled local service plans." And I know I found  
19 an interrogatory where you asked Verizon, but I can't seem to  
20 get my hands on it now. Can you tell us what Verizon's  
21 response was?

22 MS. SIMMONS: Verizon's answer was the same as  
23 BellSouth.

24 CHAIRMAN JABER: Okay. So as it relates to BellSouth  
25 and Verizon, they're on record saying they wouldn't increase  
1983

1 bundled local service residential customers but Sprint will.

2 MS. SIMMONS: That's correct.

3 CHAIRMAN JABER: Now, when you make the statement in

4 your presentation -- I'm on the second page of your

5 presentation on 1C, the very top -- "Argument that certain

6 categories of residential customers will not benefit is not

7 indicative of the effect of the overall consumer welfare," what

8 did you mean by will not benefit?

9 MS. SIMMONS: I guess I'm pausing a moment here.

10 Benefit, I guess benefit to me -- it's not -- I mean, it is

11 related to dollars and cents, but it's not strictly that. When

12 you take into consideration what a consumer is willing to pay,

13 perhaps willing isn't the right word, what their propensity to

14 pay for basic local service would be compared to their

15 propensity to pay for usage, what I'm saying is when you

16 consider those two factors, a situation where you have a basic

17 rate increase together with lower long distance prices when

18 netted together should result in more economic benefit to the

19 customer.

20 CHAIRMAN JABER: Okay. And the reason I asked that

21 question in light of what I asked you as it relates to the  
22 interrogatory responses is, comes with that understanding of  
23 benefit might be an encouragement or an incentive for  
24 residential customers to look at bundled offerings as a -- and  
25 determine whether that's the right package for them or not.

This discussion illustrates that BellSouth's petition will be anti-competitive because it encourages customers to purchase all services from this company in order to enjoy the benefit of not suffering a rate increase on basic rates. Page 1382, lines 9-11. BellSouth has 86% of the residential customers in its Florida territory.<sup>1</sup> With this market power and encouragement to purchase all of their services from BellSouth, the small CLECs will not be able to compete with their bundled services.

Section 364.164, F.S. is entitled "Competitive market enhancement" and this Commission must consider whether a petition will (b) Induce enhanced market entry. Clearly, a rate increase which will encourage use of bundled services by a company with such market power, does not induce enhanced market entry. To the contrary, it discourages competition and violates the clear purpose of this statute.

BellSouth's exemption for bundled services also means that persons with lower incomes, who cannot afford more than basic services, will suffer the brunt of this increase. Only the more wealthy customers will be able to enjoy this "benefit" of not having to pay more for their basic services. Shifting the burden of this increase to those who can least afford it, cannot be said to be

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<sup>1</sup> See page 25 of the 2003 Competition Report referenced at page 25 of your Order of December 24, 2003.

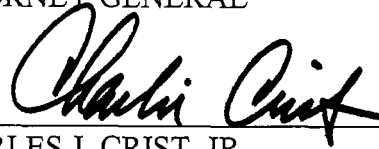


reasonable to all consumers as is required pursuant to Section 364.01, F.S. Accordingly, BellSouth's petition must be denied.

Accordingly, for the reasons set forth above, the Public Service Commission should reconsider its decision and deny the petitions.

DATED this 8 day of January, 2004.

Respectfully submitted,  
CHARLES J. CRIST, JR.  
ATTORNEY GENERAL



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## CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing has been furnished by United States mail to the following on this 8<sup>th</sup> day of January, 2004.

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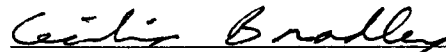
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BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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

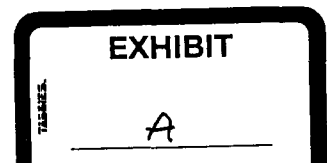
PETITION BY SPRINT-FLORIDA, INCORPORATED TO REDUCE INTRASTATE SWITCHED NETWORK ACCESS RATES TO INTERSTATE PARITY IN REVENUE-NEUTRAL MANNER PURSUANT TO SECTION 364.164(1), FLORIDA STATUTES. DOCKET NO. 030868-TL

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

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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PROCEEDINGS: TALLAHASSEE SERVICE 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 9:41 a.m.  
Concluded at 11:10 a.m.

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

REPORTED BY: MARY ALLEN NEEL, RPR

1 Thereupon,

2 ARTHUR MARUNA

3 was called as a witness on behalf of the Citizens of  
4 the State of Florida and, having been duly sworn,  
5 testified as follows:

6 DIRECT STATEMENT

7 MR. MARUNA: Thank you, Madam Chairman and  
8 Commissioners. I'm Arthur Douglas Maruna, 7690  
9 Northwest 55th Avenue, Chiefland, which is in Levy  
10 County. Levy County is a very small county. We have  
11 a population of about 39,000 people.

12 And we could all go home early if we could  
13 just rely on you taking the advice of the Attorney  
14 General that basically stated everything that needed  
15 to be said.

16 We in the rural area do have low income  
17 people. I have the privilege, since I'm retired, to  
18 work with a couple of organizations that puts me in  
19 touch with people of all walks, and many of them are  
20 low income. In our county, I'm aware of numbers  
21 between 600 and 800 families that do not have  
22 telephones because they can't afford telephones. They  
23 can't afford to call 911. They can't afford medivac.  
24 They can't afford to call a doctor. They can't afford  
25 to call you to complain about this rate increase.

1           Let's face it, we all know that there's one  
2 reason and one reason only that this is being asked  
3 for on the backs of the long distance callers. That's  
4 because they've lost the business to the 10-10-800  
5 companies and the cell phone companies. People are  
6 using those to make their calls.

7           I have family in Orlando, Largo-Clearwater  
8 area. I also make interstate calls to Chicago and  
9 California. I get requests regularly from companies  
10 like AT&T wanting me to take their long distance  
11 service. And why would I want long distance service  
12 when I have these other services that are much more  
13 reasonable? They give me everything I need, and I  
14 don't have to sign up for anything.

15           Therefore, if a rate increase like this  
16 went through, it would be money out of my pocket. I'm  
17 on a fixed income. I can't afford the increases.  
18 Social Security is offering something like a 2.6%  
19 increase. Our Part B of our Medicare is going up from  
20 58.70 to 66.60, about \$8. And then they want to give  
21 us a phone increase. Well, there goes all of our  
22 increase off our Social Security. What are we  
23 supposed to do for buying eggs, bread, butter, which  
24 have all gone up? There just isn't going to be enough  
25 money for the low income people to survive on.





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

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

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

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

DOCKET NO. 030961-TL

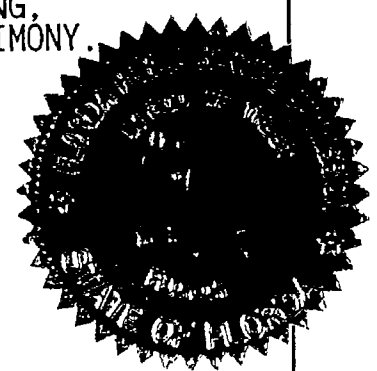
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VOLUME 8

PAGES 740 THROUGH 932

PROCEEDINGS: HEARING

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1 CHAIRMAN JABER: Okay. Verizon, was Mr. Danner  
2 sworn?

3 MR. CHAPKIS: Yes. Dr. Danner has been sworn  
4 yesterday.

5 CHAIRMAN JABER: Okay.

6 CARL R. DANNER  
7 was called as a witness on behalf of Verizon Florida Inc. and,  
8 having been duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. CHAPKIS:

11 Q Dr. Danner, could you please state your name and  
12 address for the record.

13 A Yes. My name is Carl R. Danner. I'm a director with  
14 Wilk & Associates/LECG. My business address is 201 Mission  
15 Street, Suite 700, San Francisco, California 94105.

16 Q By whom are you employed and in what capacity?

17 A I'm a director with Wilk & Associates/LECG LLC.

18 Q And have you caused to be filed amended direct  
19 testimony consisting of 28 pages in this docket?

20 A Yes, I have.

21 Q And do you have any changes to that testimony?

22 A Yes. There's one missing word on Page 13, Line 12.  
23 The last word on the line should be options. So it would say,  
24 "more options." I apologize. That was left out somehow.

25 Q And if I were to ask you the questions contained in

1 Lifeline benefit and prorated that benefit across all  
2 residential customers since that'll be part of the impact on  
3 the total residential bill.

4 Q Okay. And what was the increase in Lifeline  
5 customers that you used in that assumption?

6 A 20,000.

7 Q Okay. And how many Lifeline customers does Verizon  
8 have currently?

9 A Just over 21,000. The estimate is that that  
10 population will double due to the expanded eligibility  
11 criteria.

12 Q Okay. As part of the analysis you did that's  
13 reflected in the exhibit, you also broke down the impact on  
14 customers in different age groups; is that right?

15 A Yes.

16 Q Okay. And you've -- you had various strata. And  
17 this is on Bate stamp Page 9 of the analysis?

18 A Yes. And a similar analysis also appears in my  
19 testimony, as you know, with the full population.

20 Q Well, let's go through this, and then we'll also go  
21 through your rebuttal on, on that.

22 Now the strata themselves are not confidential, is  
23 it; it's just the impact that the company is claiming is  
24 confidential?

25 A That's my understanding, yes. That's correct.

1 Q Okay. Okay. Which age strata has the highest  
2 increase in their total bill?

3 A Let's see. It would be 76 plus years is slightly  
4 higher, I think, than the next one, next highest one.

5 Q Okay. I'm sorry. The 76 plus years is slightly  
6 higher than the 66 to 75 year group?

7 A Yes.

8 Q Okay.

9 A Well, actually -- I beg your pardon. Let me just  
10 check.

11 No. Pardon me. I just did a little incorrect math  
12 in my head. Yes. I think you're right.

13 Q So the impact in this analysis on the age group  
14 76 years old and older would be the sum of the amounts shown in  
15 the column for net change in year one rates and the net change  
16 for year two rates; is that right?

17 A Yes. Again, under the assumptions we've discussed.

18 Q Okay. Which would be the -- which age group would  
19 have the lowest impact on it?

20 A You know, I think it might be the 26 to 35 years.  
21 Does that agree with your eye?

22 Q I'm just asking.

23 A I believe it's the 26 to 35 years. I should make one  
24 other note just for reference, that this average bill price  
25 plan rates is incomplete over here because it doesn't include

1 long distance bill, just so there's no misunderstanding. But  
2 that doesn't include the retail long distance charges. But I  
3 believe it's, it would be 26 to 35 years.

4 Q Okay. You did take into account the long distance  
5 reductions in determining the total impact that's shown in the  
6 columns, did you not?

7 A In the manner we describe.

8 Q Right.

9 A Yes.

10 Q It's just that the total bill doesn't have those  
11 charges, doesn't have which charges in it?

12 A The total bill reflects only Verizon charges.

13 Q Okay.

14 A A substantial portion of what customers pay are bills  
15 to long distance carriers. So these numbers are considerably  
16 low in terms of average customer bill levels. But, again, it's  
17 just to avoid confusion I wanted to make that clear because the  
18 column is somewhat misleading the way it's titled.

19 Q Okay. Now you've testified, if I take it correctly,  
20 that the largest increase would be on the age group 76 plus and  
21 the lowest increase would be in the age group 26 to 35 years in  
22 your analysis?

23 A Based on these assumptions, yes.

24 Q Okay. And you've added up the two-year, or the total  
25 impact on both of those age groups?

1 A I can do it now.

2 Q Okay.

3 A Yes.

4 Q Okay. And you've claimed that those actual numbers  
5 are confidential, or the company has claimed that, has it not?

6 A Yes.

7 Q Okay. Could you tell me what the multiple is of the  
8 impact on 76-year-olds as compared to the impact on 26- and  
9 35-year-olds?

10 A The multiple? Huh.

11 Q For example, what would you have to multiply that  
12 impact on the age group 26/35 years to come up with the answer  
13 or come up with the amount that applies to 76-year-olds?

14 A Well, you're starting with a pretty small base, but I  
15 guess you'd have to multiply it by a little more than three in  
16 this analysis.

17 Q Okay. So the impact on the age group 76 years old is  
18 three times the impact on the age group 26 to 35; is that  
19 right?

20 A In that way of calculating, yes.

21 Q Would you turn to your rebuttal testimony, please.

22 And this is --

23 COMMISSIONER DEASON: I'm sorry, Mr. Beck. Before  
24 you leave this, can I ask a question?

25 MR. BECK: Sure.

1           COMMISSIONER DEASON: The, the last column, "Average  
2 Bill Price Plan Rates," and I know you qualified what that  
3 number represents, but is there any explanation for the amount  
4 of that for 76 plus years in comparison to the amount for 26 to  
5 35 years?

6           THE WITNESS: You know, Commissioner, I'd have to  
7 speculate a little bit, but I suspect the younger customers buy  
8 more features since this is principally, as I said, this is  
9 just what's paid to Verizon. This does not include what's paid  
10 to AT&T or other long distance carriers. So I would suspect  
11 that the difference has something to do with features and a  
12 little bit of different usage level.

13           COMMISSIONER DEASON: Okay.

14 BY MR. BECK:

15           Q     Dr. Danner, in your rebuttal testimony at Pages  
16 42 and 43.

17           A     Yes.

18           Q     If you'd turn to those, please. And Verizon has  
19 claimed that this data is also confidential in the charts that  
20 you have on Pages 42 and 43 of your testimony, does it not?

21           A     Yes.

22           Q     This shows the result on age groups that, using the  
23 assumptions that differ from the ones in the exhibit that we've  
24 discussed; is that correct?

25           A     Yes.

1 Q Okay. In other words, this data in your rebuttal  
2 testimony reflects the assumptions that you discussed in your  
3 summary of testimony.

4 A Yes. It's more accurate.

5 Q Okay. But you have the same age strata, is that  
6 right, that you have in your initial analysis?

7 A Yes.

8 Q Okay. And, again, in this analysis the impact on the  
9 76-plus-year-old age group, how does that compare to the  
10 others?

11 A Well, it's slightly smaller than the unknown group or  
12 people who wouldn't respond and give their ages. It's slightly  
13 more than the average. It is the highest of the numbers.

14 Q Okay. You state in your testimony, in the public  
15 testimony that the average is about \$1 using those assumptions;  
16 is that right?

17 A Yes.

18 Q And you state that the impact of the confidential  
19 number or the impact shown in your confidential numbers for  
20 76-years-old is slightly more than the average?

21 A Yes. Yes. Slightly more.

22 Q And could you give us a multiple to give us an idea  
23 of what you mean by slightly? How much more -- what's the  
24 multiple of the average that you, that is reflected in this  
25 data for the 76-years-olds?



1           A     My opinion is not based on a multiple. It's based on  
2 a value of dollars and cents. If you -- you know, I believe  
3 that the difference between the average and that number there  
4 is only slightly more. That's my characterization of it. And  
5 I don't think it's susceptible to a multiple when you're  
6 dealing with small numbers like this.

7           Q     Do you recall when I asked you about the exhibit, I'd  
8 asked you what multiple the impact on 76-years-olds was  
9 compared to the age group 26 to 35?

10          A     Yes.

11          Q     And you mentioned about three.

12          A     Yes.

13          Q     Could you give us the same multiple that, that would  
14 be reflected in your rebuttal testimony?

15          A     Yes. I think the multiple is slightly smaller, but  
16 it would still be about a three. Again, in numbers that I  
17 generally consider to be not, not very large.

18          Q     Dr. Danner, the impact -- do you have the number on  
19 Line 24 of your rebuttal testimony, Page 42 that shows the  
20 impact on 26-to-35-year-olds?

21          A     Yes.

22          Q     And have you compared that to the number that's shown  
23 on Line 4 of Page 43 showing the impact on 26-year-olds? I'm  
24 sorry. On 76-year-olds.

25          A     Yes.

1 Q And you're telling me that the number on Line 24 of  
2 Page 42 is less than three of the numbers shown on Line 4 of  
3 Page 43?

4 A Oh, you know, I'm sorry. I misspoke. I was looking  
5 at Line 23.

6 If you looked at Line 24, no, it would be, if you  
7 insist on a multiple, 5-and-a-half times maybe. But, again,  
8 with relatively small actual dollar differences.

9 MR. BECK: Dr. Danner, thank you. That's all I have.

10 CHAIRMAN JABER: Go ahead, Ms. Bradley.

11 CROSS EXAMINATION

12 BY MS. BRADLEY:

13 Q Dr. Danner, I just have a few questions.

14 When you were talking about the benefits to  
15 consumers, you mentioned that they would have a greater choice  
16 of companies and that they would have available more services  
17 that would be available to them; correct?

18 A Yes. That's correct.

19 Q Are you familiar with the report that the Public  
20 Service Commission did in February of '99, the Fair and  
21 Reasonable Rates Report?

22 A Yes, I have read that.

23 Q That report talks about the fact that if they raise  
24 rates \$2, that approximately 7.1 percent said they would  
25 discontinue service. And if they raised it by \$5,

IN THE SUPREME COURT  
STATE OF FLORIDA

ATTORNEY GENERAL CHARLES  
J. CRIST JR. AND PUBLIC COUNSEL  
HAROLD MCLEAN,  
on behalf of the citizens of Florida,

Intervenors/Appellants,

v.

CASE NO. SC  
PSC DOCKET NOS. 030867-TL, 030868-  
TL,030869-TL,030961-TI

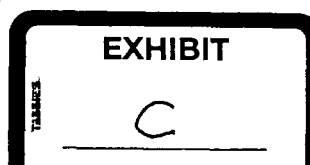
BRAULIO L. BAEZ, Chairman,  
and J. TERRY DEASON, LILA A. JABER,  
RUDOLPH "RUDY" BRADLEY,  
and CHARLES DAVIDSON,  
Commissioners, as and constituting  
the FLORIDA PUBLIC SERVICE  
COMMISSION, an agency of the  
STATE OF FLORIDA, et al.,

Appellees.

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**MOTION OF ATTORNEY GENERAL CHARLES J.  
CRIST, JR. TO RELINQUISH JURISDICTION BUT MAINTAIN STAY**

Attorney General Charles J. Crist, Jr., respectfully requests that this Court relinquish jurisdiction to the Public Service Commission to allow them an opportunity to reconsider the order which was rendered by the Commission on December 24, 2003, but maintain the automatic stay triggered by this appeal and as grounds therefore would state:



1. The Attorney General and the Public Counsel filed notices of appeal to this Court in order that the automatic stay provision would be triggered and the Order rendered by the Public Service Commission on December 24, 2003, would be stayed before the telephone companies involved could implement rate increases for Florida citizens.

2. Unlike the rules of civil procedure which do not give effect to an order when a motion for rehearing has been timely filed, and the general rules of administrative procedure which do not provide for rehearing, Rule 25-22-060(1)(c), Florida Administrative Code, which was adopted by the Public Service Commission, provides that:

(c) A final order shall not be deemed rendered for the purpose of judicial review until the Commission disposes of any motion and cross motion for reconsideration of that order, but this provision **does not serve automatically to stay the effectiveness** of any such final order. The time period for filing a motion for reconsideration is not tolled by the filing of any other motion for reconsideration.

(Emphasis added). While the Attorney General could have filed a motion for reconsideration, the order would remain in effect and there was great concern that the phone companies would be able to implement their rate increases before the Attorney General could obtain a stay. A copy of the Attorney General's motion for

reconsideration is attached as Exhibit A.

3. If these rate increases are implemented, many Florida citizens will be irrevocably injured. Citizens appearing at the hearing testified under oath that they were on fixed incomes and if these rates were increased, they could not afford to pay the increase and would have to choose between paying for phone service or buying groceries. See testimony of Arthur Douglas Maruna. The record excerpt of Mr. Maruna's testimony is attached as Exhibit B.

4. Without phone service, a person cannot summon medical help if they become injured, summon assistance from the fire department if their home catches on fire or summon police assistance if threatened in their home. For many disabled or bedridden persons, the phone is their only link to the outside world. The proposed increases are the largest increases in recent Florida history and many Florida Citizens who are on fixed incomes but do not qualify for assistance, will not be able to afford these increases. For any of these persons to lose their phone service would result in irrevocable injury. An automatic stay is therefore essential to protect the health, safety and welfare of all Florida citizens.

5. One of Verizon's witnesses admitted that the increase in basic rates would be more than 5 times greater for seniors age 76 and older than it would be for those 25-36 years of age. Attached as Exhibit C is the record excerpt for Carl

R. Danner. To have our seniors and lower income citizens bear the brunt of such drastic increases for basic phone rates is neither reasonable nor affordable for all. However, the legislative mandate to the PSC is for the Commission to protect the health, safety and welfare of all consumers by ensuring that they have reasonable and affordable basic rates. Section 364.01, Florida Statutes. The Attorney General feels the PSC has overlooked their legislative mandate when evaluating the effect that this drastic increase will have on seniors and lower income citizens and would like to give them an opportunity to correct their omission.

6. The Attorney General also feels that the PSC has overlooked the anti-competitive nature of BellSouth's petition. BellSouth's rate petition would exempt bundled services from the proposed increase. The Commission discussed the fact that this would encourage BellSouth customers to purchase bundled services from BellSouth in order to receive the benefit of not suffering a rate increase in their basic rates. The stated purpose of these rate adjustments under Section 364.164, Florida Statutes, is to "induce enhanced market entry" but the effect of BellSouth's petition would be to encourage customers to purchase more bundled services from BellSouth. This exemption for bundled services would also mean that lower income customers who cannot afford bundled services would bear the brunt of this increase. Obviously the Commission has overlooked the anti-

competitive nature of encouraging customers to purchase more services from one company in order to have the “benefit” of suffering the increase in basic rates and the impact this petition will have on its lower income customers. The Attorney General would like to give the Commission an opportunity to address these issues which they have overlooked.

Wherefore, Attorney General Charles J. Crist, Jr., on behalf of the citizens of Florida, would respectfully request that this Court relinquish jurisdiction to the Florida Public Service Commission to allow them to address these important issues which they have overlooked but would ask that the stay of the Order of December 24, 2003, be stayed during their consideration.

#### **MEMORANDUM OF LAW**

Although jurisdiction of this case rests in this Court upon the filing of their notices of appeal by the Attorney General and the Public Counsel, this Court has held that it has the “discretion, in the interest of justice, to *temporarily* relinquish jurisdiction for certain specified purposes.” *Lelekis v. Liles*, 240 So. 2d 478, 479 (Fla. 1970)(Approved District Court of Appeal’s remand of case to trial court for review of its decision in light of the clarifying amendments to the zoning ordinance). *See also D’Agostino v. Peoples Water and Gas Company*, 78 So.2d 739 (Fla.1955)(State Supreme Court remanded case to circuit court to determine

fees owed to attorney of record and to substitute counsel before returning case to Supreme Court for consideration of issue on appeal); and *Northeast Polk County Hospital Dist. v. Snively*, 162 So. 2d 657 (Fla. , 1964)(The Court remanded the case to the lower court for reconsideration and re-determination of the issues decided in light of subsequent remedial legislation.).

In this case, the Attorney General feels it is important to give the PSC an opportunity to address these issues that they have overlooked. However, this appeal had to be filed at this time in order that the automatic stay provision would be triggered to protect the citizens of Florida who would suffer irrevocable harm without the stay. The Attorney General would submit that it is within this Court's discretion and in the interests of justice to allow this temporary relinquishment of jurisdiction to allow the Public Service Commission to reconsider these important issues which it has overlooked. However, it is critical to the citizens of Florida that the stay of the Order of December 24, 2003, be maintained.

Wherefore, Attorney General Charles J. Crist, Jr., respectfully requests that this motion be granted.

DATED this 8<sup>th</sup> day of January, 2004.

Respectfully submitted,  
CHARLES J. CRIST, JR.  
ATTORNEY GENERAL





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## CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing has been furnished by United States mail to the following on this 8<sup>th</sup> day of January, 2004.

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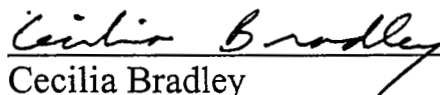
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