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March 15, 2004

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

Re: Docket Nos. 030867-TL, 030868-TL, 030869-TL, 030691-TI

Dear Ms. Bayo:

Please find enclosed for filing an original and fifteen copies of Verizon Florida Inc.'s Response In Opposition to AARP's Motion for Reconsideration in the above matters. Also enclosed are an original and fifteen copies of Verizon Florida Inc.'s Response in Opposition to Attorney General's Motion for Reconsideration. Service has been made as indicated on the Certificate of Service. If there are any questions regarding this filing, please contact me at 813-483-1256.

Sincerely,

Richard A. Chapkis

Richard A. Chapkis

RAC:tas
Enclosures

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of Verizon Florida Inc.'s Response in Opposition to AARP's Motion for Reconsideration and Response in Opposition to Attorney General's Motion for Reconsideration in Docket Nos. 030867-TL, 030868-TL, 030869-TL and 030691-TI were sent via electronic mail on March 15, 2004 and U. S. mail on March 16, 2004 to:

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Verizon Florida Inc. To Reform Its Intrastate Network Access and Basic Local Telecommunications Rates in Accordance with Florida Statutes, Section 364.164	Docket No. 030867-TL
In re: Petition of Sprint-Florida, Incorporated, To Reduce Intrastate Switched Network Access Rates to Interstate Parity in Revenue Neutral Manner Pursuant to Section 364.164(1), Florida Statutes	Docket No. 030868-TL
In re: Petition by BellSouth Telecommunications, Inc. To Reduce Its Network Access Charges Applicable To Intrastate Long Distance In A Revenue Neutral Manner	Docket No. 030869-TL
In re: Flow-Through of LEC Switched Access Reductions by IXC's, Pursuant to Section 364.163(2)	Docket No. 030961-TI Filed: March 15, 2004

VERIZON FLORIDA INC.'S RESPONSE IN OPPOSITION TO AARP'S MOTION FOR RECONSIDERATION

Pursuant to Rules 25-22.0376(2) and 28-106.204(1), Florida Administrative Code, Verizon Florida Inc. (Verizon) submits this Response in Opposition to AARP's Motion for Reconsideration.

I. INTRODUCTION

1. The Florida Public Service Commission (Commission) should deny AARP's Motion for Reconsideration. AARP contends that Order No. 030961-TI, issued in the above-referenced matters on December 24, 2003 (December 24 Order), is premised on two mistakes of law. AARP's contentions are wrong.

2. First, AARP argues that the provision in the December 24 Order authorizing Staff to administratively review and approve the implementing tariffs is inconsistent with the rate rebalancing legislation. That argument is erroneous. The December 24 Order is fully consistent with the legislation.

3. Second, AARP argues that the Commission should not have accepted and approved the pro-consumer proposals offered by the ILECs during the hearings. Not only is that argument directly contrary to the interests of AARP's members, it is flatly incorrect. The legislation does not prohibit the Commission from taking such action; indeed, a ruling to the contrary would be inconsistent with the Commission's role as protector of the public interest. Moreover, the Commission's decision was not dependent on the ILECs' proposals.

4. AARP also asserts that there are several points of fact that the Commission overlooked in rendering its order. In reality, AARP is merely rearguing points that have already been considered and rejected by the Commission – for good reason.

5. In light of the foregoing, AARP's Motion for Reconsideration should be denied in its entirety.

II. DISCUSSION

A. Standard of Review

6. The standard of review governing a motion for reconsideration is whether the motion identifies a point of fact or law that was overlooked or that the Commission failed to consider in rendering its Order.[1] In a motion for reconsideration, it is not appropriate to

[1] Stewart Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So.2d 889 (Fla. 1962); Pinegree v. Quaintance, 394 So.2d 162 (Fla. 1st DCA 1981).

reargue matters that have already been considered.[2] Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review."[3]

7. As demonstrated below, the majority of the arguments set forth in AARP's Motion for Reconsideration have been considered and rejected by this Commission, and thus are not appropriately raised here. The two remaining arguments, addressed immediately below, should be rejected on their merits.

B. The December 24 Order Is Consistent With The Rate Rebalancing Legislation

8. The penultimate ordering paragraph of the December 24 Order authorizes Staff to administratively review and approve the tariffs implementing the Commission's decision.[4] AARP argues that this ordering paragraph is inconsistent with the statutory requirement in Section 364.164(2) that the Commission issue a final order.[5]

9. Contrary to AARP's argument, the penultimate ordering paragraph and Section 364.164(2) are consistent. The ordering paragraph merely means that Staff shall administratively review the tariffs to make sure that they are compliant with the December 24 Order, and thereafter shall recommend approval or disapproval of the tariffs

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[2] Sherwood v. State, 111 So.2d 96 (Fla. 3rd DCA 1959), citing State ex. rel. Jaytex Realty Co. v. Green, 105 So.2d 817 (Fla. 1st DCA 1958).

[3] Stewart Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315, 317 (Fla. 1974).

[4] December 24 Order at 64.

[5] Section 364.164(2) provides that "[t]he commission shall, within 45 days after the rate adjustment filing, issue a final order confirming compliance with this section, and such an order shall be final for all purposes.")

to the Commission, which in turn shall consider Staff's recommendation and issue a final order "confirming compliance with this section," as the law requires.

10. In any event, to the extent there is any merit in this issue, it is readily addressed by the Commission. To the extent that the Commission deems it necessary to clarify any potential ambiguity, the Commission can make clear in its order on AARP's Motion for Reconsideration that Staff shall issue a recommendation approving or disapproving of the tariffs, and the Commission shall in fact consider Staff's recommendation and issue a final order.

C. It Was Appropriate For The Commission To Accept And Approve The Voluntary, Pro-Consumer Commitments Proposed By The ILECs

11. Verizon made four voluntary, pro-consumer commitments to the Commission.[6] Specifically, Verizon proposed to:

- increase Lifeline eligibility to 135% of the federal poverty level;
- refrain from increasing lifeline rates for at least four years;
- enlarge the increase in non-recurring revenues from $1.2 million to $2.4 million, so that basic local rates will be raised by $1.2 million less than originally requested; and
- work with the PSC to review ECS in a Commission workshop.[7]

No party, including AARP, objected to these commitments at the hearings, and the Commission ultimately accepted and approved them.[8]

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[6] BellSouth and Sprint made their own voluntary, pro-consumer commitments. These commitments are set forth on pages 62 and 63 of the December 24 Order.

[7] December 24 Order at 62–63.

[8] Id.

12. Notwithstanding that these commitments benefit AARP's own members, AARP now claims that it was a mistake of law for the Commission to accept and approve them. AARP argues that Section 364.164(1) prohibits the Commission from accepting and approving them, because that section provides that "[t]he commission shall issue its final order granting or denying any petition filed pursuant to this section within 90 days."

13. AARP's contention is incorrect. The plain language of the statute does not even suggest – let alone plainly state – that the Legislature intended to prohibit the Commission from accepting and approving voluntary, pro-consumer commitments. To the contrary, the Legislature entrusted the Commission with protecting consumer welfare,[9] and interpreting the statute in the manner AARP suggests would improperly impede the Commission in its role as a protector of the public interest.

14. Moreover, AARP's position lacks merit because the Commission's decision is not dependent on Verizon's commitments. Section 364.164(1) provides that the Commission shall consider whether granting Verizon's Petition will:

> a) remove current support for basic local telecommunications services that prevents the creation of a more attractive competitive local exchange market for the benefit of residential consumers;
>
> b) induce enhanced market entry;
>
> c) require intrastate switched network access rate reductions to parity over a period of not less than two years or more than four years; and

[9] See, e.g., Section 364.01(4), Florida Statutes (stating that the Commission shall exercise its jurisdiction to: (a) protect the public health, safety and welfare by ensuring that basic local telecommunications services are available to all consumers in the state at reasonable and affordable prices; and (b) encourage competition through flexible regulatory treatment among providers of telecommunications services in order to ensure the availability of the widest possible range of consumer choice in the provision of all telecommunications services).

d) be revenue neutral.

Verizon's commitments are not relevant to any of the foregoing criteria, and therefore they could not have formed the basis for the Commission's decision.

15. The plain language of the December 24 Order makes clear that the Commission's decision is not dependent on Verizon's commitments. The Order expressly states that increased Lifeline protections should not be considered in the decision-making process:

> Although it is not a benefit that we should weigh in the balance in considering whether or not to grant the Petitions, we observe that the amended Lifeline provisions in section 364.10 will help to protect economically disadvantaged consumers from the effect of rate increases.[10]

16. The structure of the December 24 Order also shows that the decision is not dependent on the commitments. In the Conclusion section of the Order, the Commission first found that the ILECs' Petitions meet the statutory criteria, and then separately accepted and approved the additional proposals.[11] Similarly, in the Ordering Paragraphs, the Commission first approved the ILECs' petitions, and then separately approved the ILECs' commitments.[12]

17. Accordingly, the Commission's acceptance and approval of Verizon's commitments in no way warrants reconsideration of the December 24 Order.

D. The Finding That The ILECs' Basic Local Service Rates Receive Support Is Correct

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[10] December 24 Order at 31–32.

[11] Id. at 62–63.

[12] Id. at 63.

18. In the December 24 Order, the Commission concludes that the ILECs' basic local rates receive support. In reaching this conclusion, the Commission relies on sound economic testimony explaining that the cost of the local loop is a cost of basic service:

> [W]e accept the economic testimony of the ILECs' and IXCs' witnesses, which treat the cost of the local loop as a cost of basic local service.[13]

19. The Commission also rejects the previously discredited loop allocation theory advanced here by AARP:

> We are not persuaded by the testimony of AARP and OPC's witnesses that all or some of the cost of the local loop should be shared, such that any costs shared by more than one service would be excluded from the ILECs' Total Service Long Run Incremental Cost (TSLRIC) calculations. This would be inconsistent with our past decisions, perhaps most notably in the 1998 Report on Fair and Reasonable Rates to the Legislature, that the cost associated with the local loop should not be allocated. The arguments raised by OPC and AARP have been considered and rejected in the past, and we find no new persuasive basis upon which to deviate from our consistent policy on this issue.[14]

20. In its Motion for Reconsideration, AARP recycles three basic arguments in an improper attempt to convince the Commission to reverse its decision rejecting the loop allocation theory. As discussed below, each of these arguments lacks merit.

21. First, AARP contends that the Commission should reverse this finding because the 1998 Report on Fair and Reasonable Rates (Fair and Reasonable Report) – a report that the Commission cites in support of its decision – is not legally binding, is not

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[13] Id. at 20.

[14] Id. at 20.

economically or logically sound, and is inconsistent with the financial facts governing the operation of the ILECs.

22. AARP's attack on the Commission's reliance on the Fair and Reasonable Report fails to meet the legal standard for reconsideration, is legally incorrect, and is factually incorrect. It fails to meet the requisite legal standard because AARP is simply rearguing a position that has been considered and rejected by this Commission on more than one occasion.[15] It is legally incorrect because it is not a mistake of law for the Commission to rely on persuasive, non-binding authority. Quite the opposite, it is common practice for this Commission to rely on well-reasoned opinions, such as the Fair and Reasonable Report, that address the same or similar issues as the case at hand. It is factually incorrect because the Fair and Reasonable Report is well reasoned, economically sound, and consistent with the financial realities of operating a real-world ILEC network. As Verizon witness Danner explained, "the cost of the loop is incurred – in its entirety – by providing basic service to a customer. The decision to have basic service is what causes the cost to be incurred."[16] Moreover, as Sprint witness Dickerson explained, it is not the ILECs, but rather the proponents of the loop allocation theory, that rely on assumptions which are inconsistent with a real world telephone network.[17]

23. Second, AARP claims that the Commission should reverse its rejection of the loop allocation theory because services other than basic service (e.g., vertical services,

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[15] Tr., Vol. 14, 1832:1 – 1841:5; 1853:3 - 24; 1855:10 – 1856:3.

[16] Tr., Vol. 8, 867:1-3; see also Tr., Vol. 8, 841:22 – 843:20; 858:21 – 871:11; Vol. 10, 1180:1 – 1184:16; 1191:12 – 1192;11; 1207:24 – 1208:11; Vol. 2, 140:15 – 144:21; 156:1 – 158:3; 170:10 – 171:9; 172:6 – 178:2; 1009:21 – 1019:11; Vol. 5, 496:13-20; 512:18 – 515:23; 561:14 – 562:18.

[17] Tr., Vol. 9, 1021:24 – 1022:16.

long distance access and directory assistance) are dependent on the local loop. This claim is untenable because it is nothing more than a restatement of the loop allocation theory itself – a theory that was considered at length and soundly rejected by this Commission.[18]

24. Third, AARP erroneously claims without citation that "most, if not all, ILEC witnesses" recognized that the Commission could "easily and fairly" apportion the costs of the local loop among all services that make use of the local loop. The record flatly contradicts this claim. As this Commission is aware, the ILEC witnesses went to great lengths to explain that local loop costs cannot be fairly apportioned to services other than basic service.[19]

25. In sum, the Commission should not reverse its finding that basic local rates receive support because AARP cannot show that this finding is not premised on any mistake of fact or law.

E. The Finding That Supported Rates Distort Competition Is Correct

26. In the December 24 Order, the Commission concluded that the existing supported residential rate structure impedes competition for residential customers:

> The existence of such support prevents the creation of a more attractive competitive local exchange market by keeping local rates at artificially low levels, thereby raising an artificial barrier to entry into the market by efficient competitors.[20]

27. The Commission also concluded that reforming rates will make market entry more attractive for prospective entrants:

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[18] Tr., Vol. 14, 1832:1 – 1841:5; 1853:3 - 24; 1855:10 – 1856:3.

[19] Tr., Vol. 8, 928:12 – 929:8.

[20] December 24 Order at 16.

> The elimination of such support will induce enhanced market entry into the local exchange market.[21]

28. In its Motion for Reconsideration, AARP repackages the same arguments that it advanced in testimony and at the hearings in an improper attempt to convince the Commission that supported residential rates are not barriers to competition. As discussed below, these arguments are erroneous.

29. First, AARP claims without support that "the totality of the record" does not support a finding that the existing rate structure impedes competition, and that the record shows that there has been ever increasing competition for residential customers over the years.

30. These claims have already been considered and rejected by the Commission, and thus are not the proper basis for a motion for reconsideration.[22]

31. Furthermore, these claims are flatly wrong. The record is replete with evidence confirming the common sense notion that supported, below-cost prices impair entry from competitors that must recover their costs. As the December 24 Order makes clear:

i. The Commission's 2003 Competition Report shows that CLECs serve only 9% of the residential market, while they serve 29% of the business market.

ii. Verizon's competition study shows that, in Verizon's Florida territory, there are 100 business customers served by competitive facilities for

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[21] Id. at 16.

[22] Tr., Vol. 14, 1827:30 – 1828:4; 1841:9 – 1845:11.

every one residential customer. And this ratio only drops to 10 to 1 if UNE-P and resale are taken into account.

iii. Knology's testimony shows that current rates prevent it from generating rates of return sufficient to expand and compete for residential customers.[23]

Accordingly, the record clearly disproves AARP's unsupported contention that supported rates do not impair competition.

32. Second, AARP claims that there is no competent, substantial record evidence supporting the finding that reforming local rates will induce enhanced market entry. In support of this claim, AARP invites the Commission to ignore the testimony of AT&T and Knology because these companies announced their intentions to enter the Florida market before the Commission approved the ILECs' rate rebalancing petitions. However, this testimony is not so easily dismissed. These companies testified that they entered the Florida residential market in anticipation of rate reform, and testified that their future investment in Florida is dependent on rate rebalancing.[24] Moreover, this testimony is supported by strong economic testimony demonstrating that removing support for basic local rates makes the local market more attractive to competitive providers.[25]

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[23] December 24 Order at 24.

[24] Tr., Vol. 8, 748:14 – 749:18; 754:21 – 755:2; 755:15 – 19; 757:1 – 11; 758:7 – 760:6; 760:15 – 24; 761:16 – 762:2; 775:17 – 776:8; 779:11 – 24; 782:23 – 783:13; 799:14 – 21; Vol. 10, 1256:2 – 16; 1261:10 – 22; 1266:12 – 18; Vol. 11, 1294:14 – 19.

[25] Tr., Vol. 2, 144:23 – 146:19; 149:12 – 151:6; Vol. 8, 812:13 – 818:24; 820:12 – 833:23; 841:22 – 844:2; 846:2 – 854:22; 855:11 – 856:17; 871:13 – 876:2; 889:5 – 890:8; 899:11 – 16; Vol. 9, 939:9 – 942:14; 945:5 – 8; 956:8 – 958:13; Vol. 10, 1168:19 – 1172:14; 1175:1 – 8; 1185:1 – 1189:6; 1192:19 – 1193:2.

33. In light of the foregoing, the Commission must reject AARP's Motion for Reconsideration because it fails to meet the legal standard for reconsideration, and is contradicted by competent, substantial evidence.

F. The Finding That Rate Reformation Will Benefit Residential Customers Is Correct

34. In the December 24 Order, the Commission concluded that reforming basic local rates will benefit residential customers:

> Enhanced market entry will result in the creation of a more competitive local exchange market that will benefit residential consumers through:
>
> a. increased choice of service providers;
>
> b. new and innovative service offerings, including bundles of local and long distance service, and bundles that may include cable TV service and high speed Internet access service;
>
> c. technological advances;
>
> d. increased quality of service; and
>
> e. over the long run, reductions in prices for local service.[26]

35. In an attempt to convince the Commission to reverse these findings, AARP reargues positions that it previously put forward in testimony and in the hearing room and were rejected. As discussed below, AARP's arguments are improper and unconvincing.

36. First, AARP argues that that there is no evidence in the record to suggest that rate rebalancing will:

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[26] December 24 Order at 16.

- bring new service providers to the state.[27]
- lead to the introduction of any identifiable new and innovative service offerings.[28]
- cause basic local prices to decline over the long run.[29]

37. This argument has already been considered and rejected by the Commission, and therefore does not meet the legal standard for reconsideration.[30] Moreover, this argument is contradicted by strong empirical and theoretical evidence. The record leaves no doubt that rate rebalancing will bring new competitive providers to the state. As discussed above, Knology and AT&T have offered empirical evidence demonstrating that rate reductions will attract new capital to Florida.[31] Moreover, ILEC and IXC economists have shown that when the price of services increases, investment in the market becomes more profitable and, thus, more attractive for market entry.[32]

38. Similarly, the record makes clear that increased competition will yield new and innovative service offerings. ILEC and IXC economists have testified to the common sense notion that new competitors entering the market will try to distinguish themselves and attract market share by offering new and better services.[33] Of course, it is axiomatic

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[27] AARP Motion for Reconsideration at 8.

[28] Id.

[29] Id. at 9.

[30] December 24 Order at 16.

[31] See footnote 24.

[32] See footnote 25.

[33] Tr., Vol. 2, 192:12 – 21; Vol. 8, 889:19 – 890:3; Vol. 10, 1175:6 – 8; 1255:9 – 1256:9; 1269:9 – 1270:17.

that no party has specifically identified any services that have been introduced because rate reform has yet to occur.

39. The record also supports the finding that rate reform will lead to lower rates over the long run. The record shows that increased competition tends to drive rates toward cost, as it has done in the wireless market.[34]

40. Second, AARP argues that Section 364.051(6), which allows ILECs whose rates are at parity to potentially gain freedom from service quality requirements, is inconsistent with the finding that rate reform will increase service quality. This argument is illogical. A statute that allows the free market, instead of regulation, to govern market behavior – as long as the Commission decides that competition is sufficient to protect consumer interests – in no way suggests that service quality will decline after rates are reformed.

41. Third, AARP argues that rate rebalancing will not benefit residential customers because, in AARP's opinion, IXCs will not flow through a sufficient percentage of the access reductions to residential customers. Not only is this claim a mere restatement of AARP's prior position, and therefore improper, it is fatally flawed in other respects. The IXC flow-through issue is irrelevant to the Commission's decision because the rate rebalancing legislation does not permit the Commission to consider how, and to

[34] Tr., Vol. 8, 889:16 – 17; Vol. 10, 1270:18 – 1271:7.

what levels, IXCs may flow through access reductions.[35] Moreover, the argument that IXCs will not flow through a sufficient percentage of the access reductions is factually incorrect, as demonstrated by Verizon's territory. The record shows that Verizon Long Distance – a company that now has 50% of the residential lines in Verizon's Florida territory – has testified that it will flow through the access reductions to both residential and business customers based on the relative proportion of access minutes associated with these classes of customers.[36] This means that a substantial majority of the access reductions will accrue to Verizon Long Distance's residential customers.

42. Fourth, AARP argues that rate rebalancing will not benefit customers because rate rebalancing is not revenue neutral to residential customers. In support of this contention, AARP claims without citation to the record that it is clear from the floor debate of Representative Ritter that she envisioned that this bill would be revenue neutral to residential customers.

43. Like the majority of AARP's other arguments, this argument has been considered and rejected, and thus is not the proper basis for a motion for reconsideration.[37] Moreover, this argument is based on a false premise. The plain language of Sections 364.164(1)(d), 364.164(2) and 364.164(7) make clear that the rate rebalancing process must be revenue neutral to the ILEC. Nowhere does Section 364.164 suggest – let alone state – that rate rebalancing must be revenue neutral to the customer.

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[35] Section 364.164(1) directs the Commission to focus on assuring that the revenue support currently provided to local rates is eliminated to promote local competition for the benefit of residential consumers. Therefore, if the Commission were to consider IXC flow through issues in its decision, it would be exceeding the authority delegated to it by the Legislature.

[36] Tr., Vol. 12, 1476:12 – 20, 1486:9 – 16.

[37] Tr., Vol. 14, 1820:29 – 1821:12.

44. AARP's attempt to rewrite Section 364.164, based on its interpretation of comments purportedly made by Representative Ritter during the floor debate, is improper. Florida law provides that the Commission may not resort to secondary sources to interpret a statute when the language of that statute is unambiguous.[38]

45. Moreover, it is irrational for AARP to suggest – based solely on an average bill analysis – that rate rebalancing will not benefit residential customers. That is because rate reform will bring a host of additional economic benefits to consumers. The record shows that enhanced market entry will benefit consumers by encouraging competitors to offer the best prices and the newest and most innovative products.[39] It makes clear that enhanced market entry will place increased pressure on Verizon to cut costs and be efficient.[40] It demonstrates that reducing intrastate access rates will increase consumer welfare by allowing consumers to make more long distance calls at lower prices.[41] And it proves that pricing reform will promote demand for broadband Internet connections in Florida.[42] Contrary to what AARP suggests, these are very real benefits that cannot be ignored.

46. Thus, the Commission's finding that rate rebalancing will benefit residential customers is well supported and should not be reversed.

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[38] See, e.g., Verizon Florida, Inc. v. Jacobs, 810 So.2d 906, 908 (Fla. 2002) ("There is no need to resort to other rules of statutory construction when the language of the statute is unambiguous and conveys a clear and ordinary meaning").

[39] See footnotes 33 and 34.

[40] Tr., Vol. 8, 890:9 – 11.

[41] Tr., Vol. 8, 814:11 – 14; 889:16 – 18.

[42] Tr., Vol. 8, 890:11 – 13; Vol. 9, 948:5 – 19.

G. AARP's Request For Oral Argument Should Be Denied

47. Oral argument is not automatic on a motion for reconsideration. It is granted solely at the discretion of the Commission.[43] That is why a party requesting oral argument must explain why oral argument will aid the Commission in "comprehending and evaluating" the motion.[44] AARP's request for oral argument should be denied for two reasons. First, AARP has failed to explain why oral argument is necessary. AARP merely contends that the Commission should hear oral argument on the Motion for Reconsideration to aid it in reaching its final determination. Second, oral argument is not necessary because AARP has not presented any new issues that require further explanation; it is clear from the papers that AARP's Motion should be denied.

III. CONCLUSION

48. For the foregoing reasons, the Commission should deny AARP's Motion for Reconsideration.

Respectfully submitted on March 15, 2004.

By: 

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[43] Rule 25-22.057(1)(f), Florida Administrative Code.

[44] Rule 25-22.058(1), Florida Administrative Code.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Verizon Florida Inc. To Reform Its Intrastate Network Access and Basic Local Telecommunications Rates in Accordance with Florida Statutes, Section 364.164	Docket No. 030867-TL
In re: Petition of Sprint-Florida, Incorporated, To Reduce Intrastate Switched Network Access Rates to Interstate Parity in Revenue Neutral Manner Pursuant to Section 364.164(1), Florida Statutes	Docket No. 030868-TL
In re: Petition by BellSouth Telecommunications, Inc. To Reduce Its Network Access Charges Applicable To Intrastate Long Distance In A Revenue Neutral Manner	Docket No. 030869-TL
In re: Flow-Through of LEC Switched Access Reductions by IXC's, Pursuant to Section 364.163(2)	Docket No. 030961-TI Filed: March 15, 2004

VERIZON FLORIDA INC.'S RESPONSE IN OPPOSITION TO ATTORNEY GENERAL'S MOTION FOR RECONSIDERATION

Pursuant to Rules 25-22.0376(2) and 28-106.204(1), Florida Administrative Code, Verizon Florida Inc. (Verizon) submits this Response in Opposition to the Attorney General's Motion for Reconsideration.

I. INTRODUCTION

1. In the 2003 Act, the Legislature found that the competitive provision of telecommunications services is "in the public interest."[1] The Legislature also found that competition will "provide customers with freedom of choice, encourage the introduction of

[1] Section 364.01(3), Florida Statutes.

new telecommunications services, encourage technological innovation, and encourage investment in telecommunications infrastructure."[2]

2. The extensive record in this case demonstrates that rebalancing rates will promote competition and provide benefits to residential customers as envisioned by the Legislature. After carefully considering all of the evidence, the Commission reached that very conclusion:

> [W]e find that these Petitions meet the statutory criteria set forth in Section 364.154, Florida Statutes, and that granting the Petitions furthers the Legislature's stated policy of further competition in the local exchange market and promoting new offerings and innovations in the telecommunications market for Florida consumers.[3]

3. In his Motion for Reconsideration, the Attorney General attempts to reargue several positions that were previously considered and rejected in the Commission's carefully considered Order. The Commission should deny the Attorney General's Motion for Reconsideration because it is not proper to recycle old arguments in a motion for reconsideration, and the arguments themselves are erroneous.

II. DISCUSSION

A. Standard of Review

4. The standard of review governing a motion for reconsideration is whether the motion identifies a point of fact or law that was overlooked or that the Commission failed to

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[2] Id.

[3] Order No. PSC-03-1469-FOF-TL, issued in the above-captioned dockets on December 24, 2003 (December 24 Order).

consider in rendering its Order.[4] In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered.[5] Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review."[6]

5. As demonstrated below, the arguments set forth in the Attorney General's Motion for Reconsideration have been previously considered and rejected by this Commission, and thus are not the proper basis for a motion for reconsideration. Accordingly, the Attorney General's Motion for Reconsideration must be denied.

B. The Commission Fully Complied With Its Mandate To Ensure That Basic Services Are Available To Customers At Reasonable Prices

6. The Attorney General seeks reconsideration of the December 24 Order on the grounds that the Commission overlooked Section 364.01(4)(a), which provides that the Commission shall use its jurisdiction to ensure that "basic local telecommunications services are available to all consumers in the state at reasonable and affordable prices."[7] The Attorney General's argument does not meet the legal standard for a motion for reconsideration because the Commission has previously considered this argument on more than one occasion. The Attorney General advanced this argument in his Motion for

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[4] Stewart Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So.2d 889 (Fla. 1962); Pinegree v. Quaintance, 394 So.2d 162 (Fla. 1st DCA 1981).

[5] Sherwood v. State, 111 So.2d 96 (Fla. 3rd DCA 1959), citing State ex. rel. Jaytex Realty Co. v. Green, 105 So.2d 817 (Fla. 1st DCA 1958).

[6] Stewart Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315, 317 (Fla. 1974).

[7] Attorney General's Motion for Reconsideration at 1–5.

Final Summary Order, dated November 17, 2003,[8] in his Prehearing Statement,[9] in his Joinder to Citizens' Motion for Reconsideration of Commission Order No. PSC-03-1331-FOF-TL,[10] and in the hearing room.[11] Obviously, the Attorney General is improperly rearguing matters that have already been considered and rejected. Such reargument contravenes the legal standard for a motion for reconsideration, and thus the Attorney General's Motion must be denied.

1. Rate Rebalancing Will Benefit Customers

7. The Attorney General relies on Section 364.01(4)(a) to recycle an erroneous argument that he has made repeatedly throughout the proceeding – namely, that rate rebalancing will not benefit ratepayers, and will cause low income customers to drop off the network.[12]

8. This argument must be rejected for two independent reasons.

9. First, it too has been previously considered and rejected by the Commission, and thus does not meet the requisite legal standard.[13]

10. Second, it is utterly erroneous. Substantial, competent evidenced demonstrates that, by moving basic local residential rates toward cost, rate rebalancing will promote competition and benefit residential customers. Specifically, the record shows that

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[8] Attorney General's Motion for Final Summary Order at 2.

[9] Attorney General's Prehearing Statement at 2.

[10] Attorney General's Notice of Joining Citizens' Motion for Reconsideration of Commission Order No. PSC-03-1331-FOF-TL at 1–2 (emphasis omitted).

[11] Tr., Vol. 8, 919:14 – 923:7.

[12] Attorney General's Motion for Reconsideration at 1–5.

[13] Tr., Vol. 15, 1923:13 – 1924:15.

rate rebalancing will make residential customers more attractive to competitors and thus induce enhanced market entry, encourage innovation, and promote increased freedom of choice.[14] In addition, the record shows that rate rebalancing will lower intrastate access rates and allow residential customers to make more long distance calls at lower prices.[15]

11. The record also makes clear that rate rebalancing will not negatively affect universal service. Indeed, several lines of testimony prove this point.

12. First, ILEC expert witnesses, who were involved in pricing reform in significant policy setting jurisdictions like Florida, showed that pricing reform in other states did not negatively affect telephone penetration rates.[16] The opponents of rate rebalancing, including the Attorney General, presented no evidence to the contrary.

13. Second, ILEC expert witnesses demonstrated that existing basic local rates are quite low in Florida relative to rates in other states.[17] These witnesses also showed that rebalanced basic local rates in other states are higher than the approved rebalanced rates in Florida, and demonstrated that the other states' rebalanced rates are still affordable to consumers.[18]

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[14] Tr., Vol. 2, 144:23 – 146:19; 149:12 – 151:6; Vol. 8, 812:13 – 818:24; 820:12 – 833:23; 841:22 – 844:2; 846:2 – 854:22; 855:11 – 856:17; 871:13 – 876:2; 889:5 – 890:8; 899:11 – 16; Vol. 9, 939:9 – 942:14; 945:5 – 8; 956:8 – 958:13; Vol. 10, 1168:19 – 1172:14; 1175:1 – 8; 1185:1 – 1189:6; 1192:19 – 1193:2. Tr., Vol. 2, 192:12 – 21; Vol. 8, 889:19 – 890:3; Vol. 10, 1175:6 – 8; 1255:9 – 1256:9; 1269:9 – 1270:17.

[15] Tr., Vol. 2, 134:19 – 135:2; 138:15 – 20, 192:18 – 21, 201:7 – 24; Vol. 8, 814:11 – 14; 820:3 – 10.

[16] Tr., Vol. 2, 160:22 – 165:8; Vol. 8, 834:3 – 835:15.

[17] Tr., Vol. 2, 131:23 – 135:12.

[18] Tr., Vol. 2, 160:22 – 165:8.

14. Third, ILEC expert witnesses correctly explained that low income customers will be the biggest beneficiaries of pricing reform because they will receive the benefits of reduced access rates, but will not be subject to the basic rate increases.[19]

15. The ILECs' commitments to ensure affordable service are further evidence that rate rebalancing will not harm universal service. As the Commission is aware, all of the ILECs committed to increase Lifeline eligibility to 135% of the federal poverty level, and Sprint and Verizon committed not to increase Lifeline rates for at least four years.[20]

16. The foregoing makes clear that the Attorney General is ignoring the benefits of universal service and manufacturing unsupported, erroneous allegations about the effect of rate reform on universal service. The Attorney General's Motion for Reconsideration should therefore be denied.

C. Rate Rebalancing Will Benefit All Customer Classes, Including Elderly Customers

17. The Attorney General also relies on Section 364.01(4)(a) to recycle another erroneous argument that he has made repeatedly throughout the proceeding – namely, that elderly customers will be harmed if prices are brought more into line with costs.[21]

18. This argument must be rejected for the same two reasons as the previous argument.

19. First, it fails to meet the legal standard for a motion for reconsideration. Verizon witness Danner explained in detail exactly how rate rebalancing will affect the

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[19] Section 364.19(3)(c).

[20] December 24 Order at 62–63.

[21] Attorney General's Motion for Reconsideration at 1–5.

average customer's bill, including the average bill of elderly customers. He demonstrated that, with respect to the population of residential customers Verizon now serves, Verizon's plan will increase the average telephone bill by only 50 cents per month per year for two years (for a total increase of $1 per month).[22] He also demonstrated that elderly customers will pay only slightly more than the average customer. In addition, he explained that the changes in the bills of older customers is not a concern because (1) the absolute amounts of the bill increases are not large in light of the extent of reform that Verizon's rate rebalancing plan will produce, and (2) the newly expanded Lifeline program will protect the low-income elderly.[23]

20. In his Motion for Final Summary Order, dated November 17, 2003, the Attorney General challenged Dr. Danner's testimony without success. During the oral argument on the Attorney General's Motion for Summary Final Order, the Attorney General repeated at length the erroneous argument that rate reform will harm the elderly,[24] and AARP repeated this very same erroneous claim.[25] Both the Attorney General and AARP then recycled this same untenable allegation in the hearing room.[26]

21. The foregoing makes clear that the Attorney General's argument was not overlooked by the Commission. To the contrary, it was considered and rejected, and thus should not be reconsidered here.

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[22] Tr., Vol. 8, 878:25 – 881:23; 893:13 – 897:22.

[23] Tr., Vol. 8, 879:12 – 880:18; 891:16 – 892:22.

[24] Tr., Vol. 2, 82:10 – 87:23.

[25] Tr., Vol. 2, 89:23 – 90:20.

[26] Tr., Vol. 8, 919:14 – 923:7; Vol. 14, 1852:25 – 1853:2; 1856:14 – 1857:8.

22. In any event, the contention that rate rebalancing will harm elderly ratepayers should be rejected because it is plainly incorrect. As discussed above, the record reflects that rate rebalancing will provide significant benefits to the elderly.[27] The record also reflects that the bill changes experienced by elderly customers will be prudent.[28] Finally, the record reflects that the elderly will be able to afford the new rates. Indeed, these very points were brought to light in the Commission's December 24 Order:

> Dr. Cooper acknowledged that Exhibit 85 indicates that many seniors on fixed incomes take a number of additional services, such as cellular service, cable service, and Internet service. This indicates not only a likelihood that the increases proposed are within the zone of affordability for this segment of consumers, but also, as indicated by witness Boccucci, demonstrates that this segment in particular may see increased benefits as a result of bundled competitive offerings.[29]

Accordingly, the Attorney General's oft-rejected claims regarding the elderly are unfounded, and should be rejected here again.

D. BellSouth Properly Rebalanced Stand-Alone Basic Local Rates, As Opposed To Non-Basic Bundles

23. The Attorney General argues that BellSouth's Petition is "anti-competitive" because BellSouth proposes to rebalance only stand-alone basic local service rates.[30] According to the Attorney General, this will drive ratepayers to BellSouth's bundled offerings, so that CLECs will not be able to compete with BellSouth. The Attorney General also claims that BellSouth's proposal will harm low-income consumers because it will

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[27] See footnote 23.

[28] See footnote 23.

[29] December 24 Order at 32 (emphasis added).

[30] Attorney General's Motion for Reconsideration at 5-9.

encourage high income ratepayers to purchase bundles, and will leave low income ratepayers to bear the brunt of the basic local rate increase.[31]

24. These arguments, like all of the Attorney General's arguments, are not the proper basis for a motion for reconsideration. It is evident from the face of the Attorney General's Motion for Reconsideration that the Commission has already considered whether it is appropriate to rebalance only stand-alone basic local service rates. In fact, approximately one-third of the Attorney General's Motion is an excerpt from an Agenda Conference in which the Commission questioned Staff about this very issue. Therefore, the Attorney General's claims should be rejected as improper under the legal standard governing motions for reconsideration.

25. Moreover, the Attorney General's claim makes no sense given that Section 364.164(2) provides that the ILECs shall rebalance "basic local telecommunications service revenues." (Emphasis added). Bundled local service plans are non-basic services, and therefore are appropriately excluded from the revenue category mechanism to be rebalanced.

26. In addition, the Attorney General's claim that CLECs will not be able to compete with BellSouth's bundles is directly contradicted by the record. In fact, the December 24 Order makes clear that rate rebalancing will be of particular benefit to CLECs offering bundled offerings:

> Companies providing bundled offerings that include both local and long distance service will benefit not only from the increased rate at which residential service can be offered on a competitive basis, but also from the decreased terminating access rate. These changes will make providing bundled

[31] Id.

> packages to residential customers more economically attractive, because companies will increase their profit margin.[32]

27. Finally, the Attorney General's claim that BellSouth's proposal will leave low income customers to bear the brunt of the rate increases is not supported by the record. The Attorney General offers no any evidence to suggest that any particular group will choose not to purchase bundled packages. Moreover, as stated above, low income customers are protected because Lifeline customers are not subject to the basic local rate increases.

28. Accordingly, the Attorney General's arguments regarding bundling should be rejected because they are both improper and wrong.

E. The Attorney General's Request For Oral Argument Should Be Denied

29. Oral argument is not automatic on a motion for reconsideration. It is granted solely at the discretion of the Commission.[33] That is why a party requesting oral argument must explain why oral argument will aid the Commission in "comprehending and evaluating" the issues.[34] The Attorney General's request for oral argument should be denied for two reasons. First, the Attorney General fails to explain why oral argument is necessary. The Attorney General merely contends that "a full discussion" of the issues would aid the Commission in reaching its final determination. Second, oral argument is not necessary because Attorney General's Motion merely repeats arguments that have previously been considered and decided by the Commission on multiple occasions.

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[32] December 24 Order at 27.

[33] Rule 25-22.057(1)(f), Florida Administrative Code.

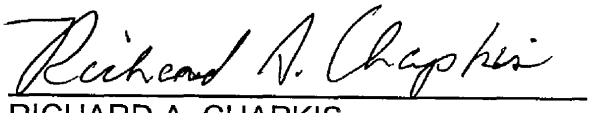
[34] Rule 25-22.058(1), Florida Administrative Code.

Because there are no new issues presented in the Attorney General's Motion, it is evident from the papers that the Motion should be denied.

III. CONCLUSION

30. For the foregoing reasons, the Commission should deny the Attorney General's Motion for Reconsideration.

Respectfully submitted on March 15, 2004.

By: 

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