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March 15, 2004

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

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

Docket No. 030867-TP: Petition by Verizon Florida, Inc. to reform intrastate network access and basic local telecommunications rates in accordance with Section 364.164, Florida Statutes

Docket No. 030868-TP: Petition by Sprint-Florida, Incorporated to reduce intrastate switched network access rates to interstate parity in revenue-neutral manner pursuant to Section 364.164(1), Florida Statutes

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

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s and BellSouth Long Distance Inc.'s Response to Attorney General's Motion for Reconsideration and Motion for Oral Argument, which we ask that you file in the captioned dockets.

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

Sincerely,

Nancy B White
Nancy B. White (RHT)

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

DOCUMENT NUMBER-DATE

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

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

Electronic Mail and First Class U. S. Mail this 15th day of March, 2004 to the following:

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(+) Protective Agreement
(*) Hand Delivered

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Verizon)
Florida Inc. to reform) DOCKET NO. 030867-TL
intrastate network access and)
basic local telecommunications)
rates in accordance with Section)
364.164, Florida Statutes.)

In re: Petition by Sprint-)
Florida, Incorporated to reduce) DOCKET NO. 030868-TL
intrastate switched network)
access rates to interstate)
parity in revenue-neutral manner)
pursuant to Section 364.164(1),)
Florida Statutes.)

In re: Petition for implementation)
of Section 364.164, Florida Statutes,) DOCKET NO. 030869-TL
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.)

In re: Flow-through of LEC)
switched access reductions by IXCs,) DOCKET NO. 030961-TI
pursuant to Section 364.163(2),)
Florida Statutes.)

Filed: March 15, 2004

**RESPONSE OF BELLSOUTH AND BELLSOUTH LONG DISTANCE TO ATTORNEY
GENERAL'S MOTION FOR RECONSIDERATION
AND MOTION FOR ORAL ARGUMENT**

Pursuant to rule 25-22.060, Florida Administrative Code, BellSouth Telecommunications, Inc. ("BellSouth") and BellSouth Long Distance, Inc. ("BellSouth Long Distance") file this Response to (1) Motion of Charles J. Crist, Jr., Attorney General, State of Florida, for Reconsideration ("Motion for Reconsideration") and to (2) Motion of Charles J.

Crist, Jr., Attorney General, State of Florida, for Oral Argument on his Motion for Reconsideration (“Motion for Oral Argument”), and state:

1. Both of the Attorney General’s motions should be denied. The Motion for Reconsideration on its face does not meet the standard of review for such a motion. *See, e.g., Diamond Cab Co. v. King*, 146 So. 2d 889, 891 (Fla. 1962); *Pingree v. Quaintance*, 394 So. 2d 162, 162 (Fla. 1st DCA 1981.) The Court in *Diamond Cab* articulated the standard of review for a motion for rehearing or reconsideration as follows:

The purpose of a petition for rehearing is merely to bring to the attention of the trial court or, in this instance, the administrative agency, some point which it overlooked or failed to consider when it rendered its order in the first instance. It is not intended as a procedure for re-arguing the whole case merely because the losing party disagrees with the judgment or the order.

146 So. 2d at 891 (internal citations omitted) (emphasis supplied). This Commission has acknowledged and applied the *Diamond Cab* standard. *See, e.g., In re Petition on behalf of Citizens of the State of Florida to initiate investigation into integrity of Southern Bell Telephone and Telephone Company’s repair service activities and reports*, Docket No. 910163-TL, Order No. 25483 (December 17, 1991) (“*Southern Bell*”) (*Diamond Cab* requires movant to establish that the decision-maker made an error in fact or law that requires reconsideration). *See also Stewart Bonded Warehouse, Inc. v. Bevis*, 249 So. 2d 315, 317 (Fla. 1974) (reweighing of evidence is not a sufficient basis for granting a motion for reconsideration).

2. The Attorney General’s Motion for Reconsideration is simply re-argument of issues that were fully presented to the Commission during consideration of the above-styled dockets and thoroughly addressed in the Order of December 24, 2003, concerning those dockets (“Commission’s Order”). He also attempts to raise a new issue, which is improper in a motion

for reconsideration. No point identified by the Attorney General constitutes an error of fact or law that would justify granting the Motion. *See Southern Bell*.

3. The Attorney General argues that the Commission has “forgotten” section 364.01(4)(a), Florida Statutes, which requires the Commission to exercise its jurisdiction to “[p]rotect 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.” Motion for Reconsideration at 2. The Commission’s 58-page Order flatly contradicts that assertion, as it is replete with analysis of evidence concerning how the petitions of the incumbent local exchange companies (ILECs) will affect the residential telecommunications consumers in Florida, including those who desire only basic local service. For example, the Commission’s Order states:

- 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.

Commission’s Order at 17;

- We find that many residential customers will benefit directly from the elimination of in-state connection fees and reductions in per-minute intrastate toll rates. We also find that residential customers as a whole will enjoy prices for toll services that are closer to economic costs and, therefore, will have less of a repressive effect on long distance usage.

Commission’s Order at 18;

- Experience from other states that have rebalanced local and toll rates shows that approval of the ILECs’ proposals will have little, if any, negative impact on the availability of universal service. While no customer likes to see a rate increase,

the record shows that basic local service will continue to remain affordable for the vast majority of residential customers.

Commission's Order at 18;

- Although we find it is not a benefit that we should weigh in the balance in considering whether or not to grant the Petitions, the amended Lifeline provisions in Section 364.10 will help to protect economically disadvantaged consumers from the effect of local rate increases. The protection is enhanced by the ILECs' agreement to further increase the eligibility criteria for Lifeline assistance from 125% to 135% of the federal poverty level, increasing the number of customers eligible for the program by approximately 119,000, and to protect Lifeline recipients against basic local service rate increases for four years.

Commission's Order at 19;

- Upon consideration of the evidence presented, as well as the Legislature's clear policy to enhance competition in Florida's telecommunications market, we find that the ILECs' proposals will ultimately benefit residential consumers as contemplated by Section 364.164, Florida Statutes.

Commission's Order at 28;

- While it is uncontested that some customers will not receive a direct benefit as a result of the implementation of the ILECs' proposals, we find that Florida consumers as a whole will reap the benefits of increased competition and, ultimately, competition will serve to regulate the level of prices consumers will pay. Increased competition will lead not only to a wider choice of providers, but also to technological innovation, new service offerings, and increased quality of service to the customer.

Commission's Order at 29-30.

4. The record in these dockets supports of all these Commission findings. For example, the Commission's finding that the ILEC proposals will benefit residential customers through increased competition is supported by the testimony of Dr. John W. Mayo, witness for AT&T and MCI. *See* Tr., p. 1218, lines 24-25; p. 1219, lines 1-6. Dr. Mayo stated that the ILEC proposals are in the public interest, consistent with the statute, and consistent with good economics. Moreover, he said they are likely to lead to "the emergence of competition in telephony," which will be "a good thing for everybody." *Id.* See also the rebuttal testimony of

BellSouth witness Aniruddha (Andy) Banerjee, who stated that raising basic rates will clearly expand the scope of entry to serve residential customers – especially “low-revenue customers” – who subscribe to the basic service but purchase few, if any, of the other services. Tr. p. 497, lines 6-17. Allowing the ILECs to raise basic rates should stimulate competition for a wider spectrum of customers, he stated. *Id.*

5. The witness for Knology stated that his company began operating in Panama City, Florida in 1997, based on an expectation that rate rebalancing would occur, which would make Knology’s rates more competitive. *See* testimony of Felix L. Boccucci, witness for Knology, Inc., Tr., p. 773-779. Specifically, he stated at p. 779, lines 16-24:

But what rate rebalancing would enable us to do is to continue to extend our networks in the – we would look at the possibility of extending our networks through the, through the panhandle of Florida. Specifically some of the territory that Sprint currently serves, with rate rebalancing, it makes the competition for the capital in that particular market arena compete with other markets that we have or other opportunities we have for, for capital since we already have the infrastructure in Panama City that we could leverage off of.

6. The witnesses for the Office of Public Counsel and AARP also acknowledged that consumers are better off if they have competitive alternatives and that competition tends to drive prices toward cost. *See* Deposition of Bion C. Ostrander, witness for OPC, **Exhibit 36** to these dockets, at p. 18, lines 9-15; p. 19, lines, 1-8; Deposition of Dr. Mark N. Cooper, witness for AARP, **Exhibit 37** to these dockets, at p. 26, lines 5-13; Deposition of David J. Gabel, witness for OPC, **Exhibit 35** to these dockets, at p. 57, lines 14-20. *See also* testimony of OPC witness Gabel, who acknowledged that rate rebalancing is desirable for competition. Tr., p. 1653, lines 21-24 (“Well, in the end of my direct testimony I point out I think there should be rebalancing. I do. I’m struck by the access rates here. I do think there should be rebalancing.”).

7. In approving the petitions of the ILECs, the Commission applied section 364.164, Florida Statutes, which was enacted by the Legislature in 2003. Commission's Order at 6-7, 15-58. Section 364.164 is the latest expression of legislative intent concerning basic local telecommunications services and the impact of rates on Florida consumers. As such, it is a specific statutory provision that takes precedence over a prior, general expression of legislative intent, such as that referenced by the Attorney General. *See, e.g., McKendry v. State*, 641 So. 2d 45, 46 (Fla. 1994) ("a specific statute covering a particular subject area always controls over a statute covering the same and other subjects in more general terms"); *Tribune Co. v. Sch. Bd. of Hillsborough County*, 367 So. 2d 627, 629 (Fla. 1979) ("the later special act, as a more specific expression of the legislative will, will be given effect"); *Barnett Banks, Inc. v. Dept. of Revenue*, 738 So. 2d 502, 505 (Fla. 1st DCA 1999), quoting *McKendry*.

8. The Commission thoroughly and carefully evaluated the ILECs' petitions pursuant to the criteria listed in section 364.164(1), Florida Statutes. *See* Commission's Order at 19-47. The statutory criteria are whether granting the 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 2 years or more than 4 years.
- (d) Be revenue neutral as defined in subsection (7) within the revenue category defined in subsection (2).

§ 364.164(1), Fla. Stat. (emphasis supplied).

9. The parties, including the Attorney General, presented evidence and argument on each of these criteria. *See* Commission's Order at 9 (noting the Commission received the testimony of 26 witnesses on behalf of all parties; heard testimony from customers at 14 customer service hearings conducted throughout the state; accepted written testimony from

customers; and received 86 exhibits into evidence). The Commission's Order makes clear in numerous places that it considered but rejected arguments put forth by the Attorney General concerning the impact of the petitions on Florida consumers. See ¶ 3, *supra*. A motion for reconsideration should not be a mechanism "for re-arguing the whole case merely because the losing party disagrees with the judgment or the order." *Diamond Cab Co.*, 146 So. 2d at 891.

10. Moreover, the record provides ample support for the Commission's findings that the ILECs satisfied the statutory criteria. For example, BellSouth witness John A. Ruscilli states in his Revised Direct Testimony as follows:

BellSouth's proposal is designed to be consistent with the four considerations outlined in Section 364.164. BellSouth's proposal makes a major stride toward "remov[ing] 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." As evidenced in the testimony and exhibits sponsored by Ms. Caldwell, BellSouth's proposed rate adjustments will more closely align these rates with their underlying costs. As Dr. Taylor and Dr. Gordon describe, more closely aligning residential rates with their relevant costs should "induce enhanced market entry." Further, BellSouth's proposal to reduce its intrastate switched access rates to parity with interstate switched access rates in three increments in not less than twenty-four (24) months is consistent with Section 364.164's requirement that parity be reached "over a period of not less than 2 years or more than 4 years." Finally, BellSouth's proposal is designed to be "revenue neutral within the defined revenue category." Decreases in intrastate switched access rates will be offset by rate adjustments in basic local exchange rates. Clearly, BellSouth's proposal is consistent with the considerations outlined in Section 364.164.

Tr. p. 279, lines 7-24; *see also* Amended Direct Testimony of Dr. Kenneth Gordon, witness for BellSouth, Sprint-Florida, Inc., and Verizon Florida, Inc., Tr., p. 124, lines 11-23; p. 125, lines 1-7 (concluding that the revised plans submitted by the companies meet the criteria contained in the legislation.)

11. The Attorney General also argues that the Commission gave little regard to citizens who testified at the hearing. Motion for Reconsideration at 4. The Commission's Order

at pages 26-33 contradicts this assertion, and makes clear that the Commission thoroughly considered the citizen testimony. *See, e.g.*, Commission's Order at 31, which concludes that "customers as a whole will benefit as contemplated by the statute."

12. Moreover, the summary of the citizen testimony at the Commission's public hearings in these dockets shows that there were 45 references to the proposition that the ILECs' proposals promote competition and free enterprise, eight references to the concept that market-based pricing is beneficial, and 11 references to the idea that the proposals bring new technology and innovation. *See* Tr., p. 1985, lines 14 and 15 (summary distributed at hearing); *E.g.* Transcript of the Jacksonville Service Hearing, October 1, 2003, p. 9, lines 19-24.

13. The Attorney General again argues that citizens on fixed incomes and senior citizens will be hardest hit by rate rebalancing. Motion for Reconsideration at 5. The Commission's Order makes clear not only that these arguments were considered and rejected, but that the ILECs have taken steps to minimize the impact on low-income citizens by expanding the Lifeline program to make those within 135% of the federal poverty level eligible for Lifeline assistance and by protecting program participants from basic service increases for four years. *See* Commission's Order at 19, which states:

Although we find it is not a benefit that we should weigh in the balance in considering whether or not to grant the Petitions, the amended Lifeline provisions in Section 364.10 will help to protect economically disadvantaged consumers from the effect of local rate increases. This protection is enhanced by the ILECs' agreement to further increase the eligibility criteria for Lifeline assistance from 125% to 135% of the federal poverty level, increasing the number of customers eligible for the program by approximately 119,000, and to protect Lifeline recipients against basic local service rate increases for four years.

See Commission's Order at 31-32 for similar language and analysis of the Lifeline program. The Commission also addressed the impact of the proposals on senior citizens on fixed incomes. *See* Commission Order at 32 (finding that many seniors on fixed incomes take a number of

additional services, such as cellular service, cable service, and Internet service). To the Commission, this evidence indicated that the proposed increases are “within the zone of affordability for this segment of consumers.” *Id.* The Commission also noted that the evidence shows that 53% to 72% of Lifeline customers served by the ILECs buy one or more ancillary services. *Id.*

14. The record supports the Commission’s findings that the increases will not unfairly impact senior citizens or low-income citizens. *See Revised Direct Testimony of BellSouth witness John A. Ruscilli, Tr. p. 300, lines 22-25; p. 301, lines 1-5:*

The data is clear; Florida’s older citizens not only pay less for residence telephone service than their age group in other states, but they are also more financially capable of paying those rates than their counterparts in other states. Even with the \$3.89 monthly increases proposed in three annual increments under BellSouth’s mirroring methodology, Florida’s local residence service rates will be \$11.46 in the lowest rate group and \$14.93 in the highest rate group. Florida’s rates will still be the 4th lowest in the region, and this assumes no increases in rates in the other states.

See also Florida Public Service Commission Report on the Relationship of the Costs and Charges of Various Services Provided by Local Exchange Companies and Conclusions as to the Fair and Reasonable Florida Residential Basic Local Telecommunications Service Rate, February 1999, Vol. II, at 40-41, 47-48 (stating that the percentage of households that would discontinue service or reduce spending based on hypothetical prices increases did not vary significantly between seniors and non-seniors and noting that senior citizens subscribe to many optional services);¹ Tr., p. 263, lines 11-25; p. 264, lines 1-8; Amended Direct Testimony of Dr. Kenneth Gordon, witness for BellSouth, Sprint-Florida, Inc., and Verizon Florida, Inc., Tr., p. 126, lines 11-22 (concluding that companies’ revised plans will not jeopardize universal service in Florida).

¹ The report’s findings were acknowledged and accepted during hearing by Dr. Mark Cooper, witness for AARP. Tr, p. 1856, line 22.

15. Finally, the Attorney General argues that BellSouth's petition is facially anti-competitive because BellSouth proposes "an increase to basic rates only where purchased alone and exempts the bundled services." Motion for Reconsideration at 2. Such an argument is misplaced given that section 364.164(2) provides that the ILECs shall rebalance "basic local telecommunications service revenues." (Emphasis supplied). Bundled local service plans are not basic services; therefore, they are not part of the services to be rebalanced. Moreover, the Attorney General has never before made this argument, even though BellSouth's proposal to exempt bundled services from the basic rate increase was part of its petition and prefiled testimony. As previously stated, the purpose of a motion for reconsideration is to bring to the attention of the Commission some point of fact or law it failed to consider in rendering its decision. A motion for reconsideration cannot raise a new issue, particularly an issue that could have and should have been raised in hearing itself. *In re: Petition for review of proposed numbering plan relief for the 407/321 area codes by Neustar, Inc., as North American Numbering Plan Administrator (NANPA), on behalf of Florida telecommunications industry*, Docket No. 010743-TL; Order No. PSC-02-0956-FOF-TL, July 15, 2002; *In re: Application for acknowledgement of transfer of Nassau County land and facilities to Nassau County and for cancellation of Certificate Nos. 171-W and 122-S, by Florida Water Services Corporation*; *In re: Application by Florida Water Services Corporation for amendment of Certificate Nos. 171-W and 122-S to add territory in Nassau County*, Docket Nos. 030542-WS, 990817-WS; Order No. PSC-03-1417-FOF-WS, December 16, 2003 ("[L]ast minute proffer of new legal theories provide no basis for reconsideration.")

16. The fact that BellSouth proposed to increase rates for basic services and not for bundled services was known to the Attorney General before the hearing, yet he failed to raise it

as an issue in his prehearing statement or to develop evidence or testimony at the hearing. *See* BellSouth Petition at p. 3, ¶ 7; BellSouth Amended Petition, at p. 4, ¶ 7; Revised Direct Testimony of John A. Ruscilli, Tr., p.273, lines 4-24. The proposal was reinforced in discovery, as illustrated by the portion of the transcript included in the Attorney General's Motion, which referenced Interrogatory Number 83. Motion for Reconsideration at 8. At the hearing it was again pointed out that BellSouth did not proposed any rate increases for bundled services. *See* Cross Examination of BellSouth witness W. Bernard Shell, Tr., p. 402, lines 20-25. The Attorney General clearly had numerous opportunities to raise this issue; having failed to do so he cannot now raise it on reconsideration.

17. The Attorney General concludes that BellSouth's proposal to exclude bundled services from the rate increase is anti-competitive because "it encourages customers to purchase all services from" BellSouth and "the small CLECs will not be able to compete with their bundled services." Motion for Reconsideration at 8. There is no record support for this conclusion. Moreover, no CLEC companies that would be the target of this anti-competitive activity took issue with not increasing rates for bundled service. The Attorney General's supposition that not including a rate increase for bundled services will not induce market entry and will discourage competition is not borne out by the record. To the contrary, the record shows market entry will be enhanced by removing the access charge support for local services because CLECs will be able to compete in providing basic local service alone, which will encourage them to enter markets and provide both basic and bundled services. *See* testimony of Felix L. Boccucci, witness for Knology, Inc., Tr. p. 783, lines 11-13; p. 784, lines 16-25; p. 791, lines 13-21; p. 792, lines 8-15. CLECs already provide bundled services, and there is no record support for the conclusion they would not be able to compete with BellSouth in the provision of


such bundled services. *See* testimony of BellSouth witness John A. Ruscilli, Tr., p. 324, lines 20-22.

18. The Attorney General's request for oral argument on his Motion for Reconsideration should also be denied. As previously noted, the Motion rehashes issues that were fully litigated before this Commission and thoroughly addressed in a three-day hearing on December 10-12, 2003. *See* Commission Order at 9. This Commission has considered the evidence in its entirety and has heard arguments of all counsel at the hearing in December. *See id.* Nothing in the Attorney General's Motion identifies an error in fact or law that requires this Commission to reconsider its decision. Thus, oral argument simply is unnecessary.


For the reasons expressed, BellSouth and BellSouth Long Distance request that the Attorney General's Motions for Reconsideration and for Oral Argument be denied.

Respectfully submitted this 15th day of March, 2004.

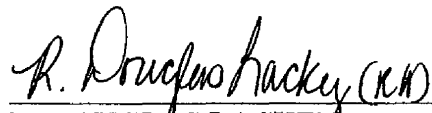
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