

LAW OFFICES
Messer, Caparello & Self
A Professional Association

Post Office Box 1876
Tallahassee, Florida 32302-1876
Internet: www.lawfla.com

March 29, 2004

BY HAND DELIVERY

Ms. Blanca Bayó, Director
Commission Clerk and Administrative Services
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket Nos. 030867-TL, 030868-TL, 030869-TL and 030961-TI

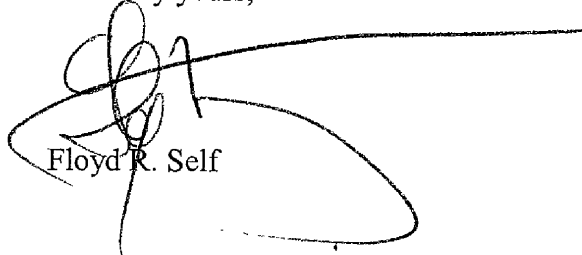
Dear Ms. Bayó:

Enclosed for filing on behalf of AT&T Communications of the Southern States, LLC and MCI WorldCom Communications, Inc. are an original and fifteen copies of the Joint Response of AT&T Communications of the Southern States, LLC and MCI WorldCom Communications, Inc. to the Attorney General's Amended Request for Oral Argument in the above referenced dockets.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely yours,



Floyd R. Self

FRS/amb
Enclosures
cc: Parties of Record

DOCUMENT NUMBER-DATE

04018 MAR 29 3
DOWNTOWN OFFICE, 215 South Monroe Street, Suite 701 • Tallahassee, FL 32301 • Phone (850) 222-0720 • Fax (850) 222-4850
NORTHEAST OFFICE, 3116 Capital Circle, NE, Suite 5 • Tallahassee, FL 32308 • Phone (850) 668-5246 • Fax (850) 668-5613

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Flow-through of LEC Switched Access Reductions by IXCs, Pursuant to Section 364.163(2), Florida Statutes.	DOCKET NO. 030961-TI
In re: Petition by Verizon Florida Inc. to reform intrastate network access and basic local telecommunications rates in accordance with Section 364.164, Florida Statutes.	DOCKET NO. 030867-TL
In re: Petition by Sprint-Florida, Incorporated to reduce intrastate switched network access rates to interstate parity in revenue-neutral manner pursuant to Section 364.164(1), Florida Statutes.	DOCKET NO. 030868-TL
In re: Petition for implementation of Section 364.164, Florida Statutes, by rebalancing rates in a revenue-neutral manner through decreases in intrastate switched access charges with offsetting rate adjustments for basic services, by BellSouth Telecommunications, Inc.	DOCKET NO. 030869-TL FILED: March 29, 2004

**JOINT RESPONSE OF
AT&T COMMUNICATIONS OF THE SOUTHERN STATES, LLC AND
MCI WORLDCOM COMMUNICATIONS, INC. TO THE
ATTORNEY GENERAL'S AMENDED REQUEST FOR ORAL ARGUMENT**

AT&T Communications of the Southern States, LLC (hereinafter "AT&T") and MCI WorldCom Communications, Inc. (hereinafter "MCI"), pursuant to Florida Administrative Code Rules 25-22.058, 25-22.060, 28-106.103, and 28-106.204, hereby jointly respond in opposition to the Attorney General's Amended Request for Oral Argument ("Amended Request"), filed on March 17, 2004, and in support of denying this Amended Request, AT&T and MCI state as follows:

I. Background and Introduction

1. On January 8, 2004, the Attorney General filed a motion for reconsideration of Order No. PSC-03-1469-FOF-TL, Order on Access Charge Reduction Petitions (hereinafter the "Access Reduction Order"), issued by the Florida Public Service Commission ("FPSC" or "Commission") on December 24, 2003. The Attorney General filed a Request for Oral Argument regarding its Motion for Reconsideration on January 12, 2004. This request for oral argument was not originally filed with the pleading upon which argument is requested, as is required by Rule 25-22.058, Florida Administrative Code. The AARP also filed a motion for reconsideration and request for oral argument, but these pleadings are not at issue in connection with the instant issue.

2. Because of the notice of appeal filed on January 7, 2004, by the Attorney General, the Commission issued Order No. PSC-04-0037-PCO-TL ("Reconsideration Response Order"), which stayed any responses to all the motions for reconsideration until such time as the Supreme Court relinquished jurisdiction back to the Commission for any further proceedings.

3. On March 3, 2004, the Florida Supreme Court issued its order in *Crist v. Jaber*, Case No.: SC04-9, relinquishing jurisdiction back to the FPSC for the limited purpose of ruling on the pending motions for reconsideration on or before May 3, 2004. Pursuant to the Reconsideration Response Order, on March 15, 2004, AT&T, MCI, BellSouth, Sprint, and Verizon all timely filed responses in opposition to the Attorney General and AARP motions for reconsideration as well as responses in opposition to the requests for oral argument.

4. The failure of the Attorney General to file its initial Motion for Oral Argument accompanying its Motion for Reconsideration at the same time is a violation of Rule 25.22.058, and thus the request for oral argument should be denied. Similarly, since the Attorney General's

Amended Motion for Oral Argument was not timely filed, it too should be denied as it was not filed at the same time as the motion for reconsideration and if an amended request is permitted the pleading it is amending was not timely filed.

5. While the issue of reconsideration and any oral argument should now be in the hands of the Commission, on March 17, 2004, the Attorney General has taken the extraordinary step of filing an Amended Request for Oral Argument. This document was filed without any motion to accept it, and on that basis alone it should be denied. Moreover, this Amended Request raises, for the first time, substantive matters regarding the confidentiality of sensitive, proprietary business information that have absolutely nothing to do with the Attorney General's pending motion for reconsideration. Moreover, the confidential documents question raised in this amended pleading have nothing to do with stating the particular grounds upon which the Commission should have oral argument on the pending motion for reconsideration. Accordingly, this Commission should proceed to address the limited issue that has been relinquished by the Florida Supreme Court, and deny any oral argument in this matter and deny the motions for reconsideration on the basis of the prior pleadings. In the event the Commission does decide to permit oral argument on the motions for reconsideration, the Commission should be very specific and limit such oral argument solely and exclusively to the particular grounds raised by the motions for reconsideration, and specifically instruct the parties to not discuss the appropriateness of whether any of the information is confidential or whether the parties should voluntarily give up such proprietary business information.

II. Response to the Amended Request for Oral Argument

6. As an initial matter, the general pleading rules require that when a party is going to amend an existing document that the amended pleading include a separate motion stating the

grounds upon which the party requests the opportunity to amend the previously filed pleading. See Rule 1.190, Florida Rules of Civil Procedure. In the administrative law context, Rule 25-106.204(a), Florida Administrative Code, requires that motions shall “fully state the action requested and the grounds relied upon.” Moreover, Rule 25-106.204(c), Florida Administrative Code, requires that a moving party confer with the other parties and state any such objections. The Attorney General did not file a motion to accept this amended pleading, nor did the Attorney General state any grounds for filing his amended request for oral argument, nor was any effort made to consult with the other parties. Accordingly, the Amended Request should be denied as procedurally insufficient.

7. The Commission has no jurisdiction to consider the confidentiality of documents as raised by the Attorney General in the Amended Request. The order on relinquishment issued by the Florida Supreme Court is a very limited grant of authority to the Florida Public Service Commission for the sole purpose of addressing the matters raised in the separate motions for reconsideration. *See* Florida Rule of Appellate Procedure, Rule 9.600(b). Pursuant to such a grant of jurisdiction, the Commission is limited to considering only the specific matters plead in the individual motions for reconsideration. *See Gonzales v. State*, 766 So. 2d 452 (Fla. 3rd DCA 2000); *Dep’t of Health and Rehabilitative Services v. Davenport*, 609 So. 2d 737 (Fla. 4th DCA 1992); *Palm Beach County v. Boca Development Associates, LTD.*, 485 So. 2d 449 (Fla 4th DCA 1986); *Palma Sola Harbour Condominium, Inc. v. Huber*, 374 So. 2d 1135, 1138 (Fla. 2nd DCA 1979). The Attorney General’s motion for reconsideration does not, as it should not, address the confidentiality of telephone company data submitted in the record because the Access Reduction Order does not make any findings or conclusions regarding the appropriateness of the

confidential information submitted by the parties in the docket. Accordingly, the Commission lacks the jurisdiction to consider, let alone to reconsider, any questions regarding appropriateness of the confidentiality of document submitted in this matter. *See Id.*

8. The Attorney General's Amended Request for Oral Argument amounts to a *de novo* request for hearing on the Commission's prior orders granting confidentiality which is not permitted under the Commission's rules. *In Re: Petition on behalf of Citizens of the State of Florida to initiate investigation into integrity of Southern Bell Telephone Company's repair service activities and reports*, 91 FPSC 12:286 (1991). Rule 25-22.006, Florida Administrative Code, sets forth a very specific procedure regarding the submission, evaluation, and determination of whether materials that a party submits in a matter are in fact confidential under Section 364.183, Florida Statutes, and whether such information should be exempt from the public record. This is a very specific, fact-intensive process. The parties submitting confidential information in this matter have filed the appropriate requests and the Commission has made its rulings with respect to such requests. In the aggregate, the volume of confidential information in this matter constitutes a very small amount of the total record. In the case of AT&T and MCI, it amounts to a couple of numbers in each company's testimony and one exhibit. This is certainly not the basis for a *de novo* hearing on confidentiality.

9. If the Attorney General believes that any of the telephone company requests for confidential treatment are not in compliance with the law, the Attorney General has failed to utilize the available procedural processes. There is no extra-judicial process by which the Attorney General can now seek a separate and independent review of such determinations

through a request for oral argument. Accordingly, the *de novo* hearing that the Attorney General is now seeking simply does not exist, and the Amended Request should be denied.

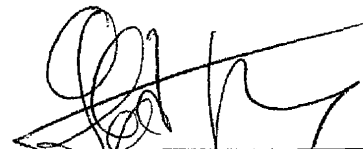
10. It must be stated clearly and unambiguously – the Florida Public Service Commission in addressing the petitions in these consolidated dockets did not make any decisions in secret or without all of the relevant facts. The fact that some parties relied upon and utilized confidential and proprietary business information to support their cases does not mean that the Commission or any of the parties did not have full access to information or were unable or somehow limited in their abilities to make their cases. The Attorney General had copies of the very limited amount of AT&T and MCI confidential information submitted in this case, as did the Public Counsel, the Commissioners, the Commission Staff, and the other parties of record. The fact of the matter is that the public did have access to this confidential information through its legally authorized representatives. Florida law is very clear that confidential and proprietary business information is entitled to be exempt from the public record because the dissemination of such information would not be in the public's best interests. Sections 364.183 and 815.045 and Chapter 688, Florida Statutes. There has been no demonstration that any law has been violated by the process utilized in this case to protect legitimate, proprietary business information. Again, the amended request for oral argument should be denied.

III. Conclusion

WHEREFORE, for the reasons set forth herein, AT&T Communications of the Southern States, LLC and MCI WorldCom Communications, Inc. respectfully request that the Commission deny the Attorney General's Amended Request for Oral Argument, that oral argument not be conducted on the motions for reconsideration, and that the motions for reconsideration be denied.

IN the event the Commission does decide in its discretion to permit oral argument, then AT&T and MCI respectfully request that such oral argument be strictly limited to the matters raised by the motions for reconsideration and that any discussion of the appropriateness of the granting of confidential treatment to information or of the parties giving up their lawful rights to protect sensitive, proprietary business information not be allowed.

RESPECTFULLY SUBMITTED this 29th day of March, 2004.



Floyd R. Self, Esq.
MESSER, CAPARELLO & SELF, P.A.
215 S. Monroe Street, Suite 701
Tallahassee, FL 32302
(850) 222-0720

Attorney for AT&T Communications of
the Southern States, LLC and
Attorney for MCI WorldCom Communications, Inc.

Tracy W. Hatch, Esq.
AT&T
101 N. Monroe Street
Suite 700
Tallahassee, FL 32302-1876
(850) 425-6360

Attorney for AT&T Communications of
the Southern States, LLC

Donna Canzano McNulty, Esq.
MCI
1203 Governors Square Blvd., Suite 201
Tallahassee, FL 32301
(850) 219-1008

Attorney for MCI WorldCom Communications, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by Hand Delivery and/or U. S. Mail this 29th day of March, 2004.

Felicia Banks, Esq.*
Office of General Counsel, Room 370
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Patricia Christensen, Esq.*
Office of General Counsel, Room 370
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Lee Fordham, Esq.*
Office of General Counsel, Room 370
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Nancy B. White
c/o Nancy H. Sims
BellSouth Telecommunications, Inc.
150 South Monroe Street, Suite 400
Tallahassee, FL 32301

Richard A. Chapkis, Esq.
Verizon Florida, Inc.
P.O. Box 110, FLTC 0007
Tampa, FL 33601-0110

John Fons, Esq.
Ausley Law Firm
P.O. Box 391
Tallahassee, FL 32302

Susan S. Masterton, Esq.
Sprint-Florida, Incorporated
Sprint Communications Company limited Partnership
P.O. Box 2214
Tallahassee, FL 32316-2214

Michael A. Gross
Vice President, Regulatory Affairs
& Regulatory Counsel
Florida Cable Telecommunications Assoc., Inc.
246 E. 6th Avenue
Tallahassee, FL 32301

Tracy W. Hatch, Esq.
AT&T Communications of the Southern States, LLC
101 N. Monroe Street, Suite 701
Tallahassee, FL 32301

Lisa Sapper
AT&T
1200 Peachtree Street, NE, Suite 8100
Atlanta, GA 30309

Donna McNulty, Esq.
WorldCom
1203 Governors Square Blvd, Suite 201
Tallahassee, FL 32301-2960

De O'Roark, Esq.
MCI WorldCom Communications, Inc.
6 Concourse Parkway, Suite 3200
Atlanta, GA 30328

Mr. Mark Cooper
AARP
504 Highgate Terrace
Silver Spring, MD 20904

Ms. Karen Jusevitch
Mr. Carlos Muniz
Gray, Harris & Robinson
P.O. Box 11189
Tallahassee, FL 3230203189

Mr. John Feehan
Knology of Florida, Inc.
1241 O. G. Skinner Drive
West Point, GA 31833-1789

Michael B. Twomey, Esq.
P.O. Box 5256
Tallahassee, FL 32314-5256

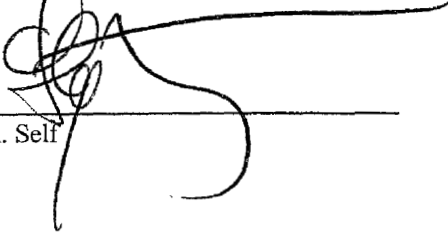
Charles Beck, Esq.
Office of Public Counsel
111 W. Madison Street, #812
Tallahassee, FL 32399-1400

Jack Shreve
Senior Special Counsel for Consumer Affairs
Office of the Attorney General
PL-01 The Capitol
Tallahassee, FL 32399

Harris Anthony
BellSouth Long Distance, Inc.
400 Perimeter Center Terrace, #350
Atlanta, GA 30346-1231

Micki Chen, General Counsel
Verizon Long Distance
1515 N. Courthouse Road, 5th Floor
Arlington, VA 22201

Anthony Gillman, General Counsel
Verizon Select Services, Inc.
201 N. Franklin Street, 37th Floor
MC FLTC0007
Tampa, FL 33602-5167



Floyd R. Self