LAW OFFICES
Messer, Caparello & Self
A Professional Association

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

March 15, 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 and MCI WorldCom Communications, Inc. are an original and fifteen copies of AT&T Communications of the Southern States, LLC and MCI WorldCom Communications, Inc's Joint Response to the AARP and Attorney General Motions for Reconsideration 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

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 15, 2004

JOINT RESPONSE OF
AT&T COMMUNICATIONS OF THE SOUTHERN STATES, LLC AND
MCI WORLDCOM COMMUNICATIONS, INC. TO THE
AARP AND ATTORNEY GENERAL MOTIONS FOR RECONSIDERATION

AT&T Communications of the Southern States, LLC (hereinafter "AT&T") and MCI WorldCom Communications, Inc. (hereinafter "MCI"), pursuant to Florida Public Service Commission Order No. PSC-04-0037-PCO-TL, issued January 13, 2004, and Order No. PSC-03-1469-FOF-TL, issued December 24, 2003, and the corrected order of March 3, 2004, issued by the Florida Supreme Court in *Crist v. Jaber*, Case No.: SC04-9, hereby jointly respond to the motions for reconsideration of the filed by Charles J. Crist, Jr., Attorney General, State of Florida ("Attorney

General" or "AG"), on January 8, 2004, and AARP, filed on January 9, 2004, and in opposition to these motions for reconsideration AT&T and MCI state as follows:

I. Background and Introduction

1. On December 24, 2003, the Florida Public Service Commission ("FPSC" or "Commission") issued Order No. PSC-03-1469-FOF-TL, on Access Charge Reduction Petitions (hereinafter the "Access Reduction Order"). This order concluded a three-day evidentiary hearing that included the testimony and cross-examination of 26 witnesses, 14 customer service hearings, numerous written consumer comments, and 86 hearing exhibits. The proceedings were conducted pursuant to Florida Statutes sections 364.163 and 364.164, and based upon the petitions of BellSouth Telecommunications, Inc. ("BellSouth"), Sprint-Florida, Inc. ("Sprint"), and Verizon Florida, Inc. ("Verizon") to reduce access charges.

2. On January 7, 2004, a notice of appeal of the Access Reduction Order was filed by the Attorney General with the Commission and Florida Supreme Court. The following day, on January 8th, the Attorney General filed a motion for reconsideration with the FPSC. On January 9th, the AARP timely filed its motion for reconsideration.

3. On January 13, 2004, the Commission issued Order No. PSC-04-0037-PCO-TL. This order stayed any responses to the motions for reconsideration on the basis of the well settled law that a notice of appeal divests the Commission of jurisdiction unless the appellate court otherwise relinquishes jurisdiction back to the lower tribunal. This order provides, in part: "If the Court decides to relinquish jurisdiction to allow the Commission to address the pending Motions, parties' responses to the pending

Motions for Reconsideration shall be due 12 days from the date of the Court's decision." Order No. PSC-04-0037-PCO-TL, at 2.

4. 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. It is pursuant to this limited grant of relinquishment that the Commission now must embark upon consideration of the motions for reconsideration. While the Court relinquished this matter to the Commission to address the motions for reconsideration, the procedures and standards governing such review remain firmly and well established in Florida law. Based upon a careful examination of this law, and the questions raised by the Attorney General and AARP, there is no basis for reconsidering the findings of fact, conclusions of law, or the ultimate decisions rendered in the Access Reduction Order, and the Order No. PSC-03-1469-FOF-TL should be affirmed in every respect.

II. Standard of Review

5. Rule 25-22.060, Florida Administrative Code, establishes the procedures for requesting reconsideration of a final Commission order. It is well recognized that:

> [t]he 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. (citations omitted)

Diamond Cab Co. of Miami v. King, 146 So.2d 889, 891 (Fla. 1962). In that regard, the standard for a motion for reconsideration is the same as that for a motion for rehearing. See *Department of Revenue v. Leadership Housing, Inc.*, 322 So.2d 7, 8-9 (Fla. 1975), which holds:

> Under the rules and precedents of this Court, the form of appellees' motion ordinarily would be considered improper. In practical effect, it challenges . . . the correctness of his conclusions on the matters considered and passed upon in his order. This is not appropriate in a motion for reconsideration or for rehearing.
>
> . . .
>
> The proper function of a petition for rehearing is to present to the court in clear concise terms some point that it overlooked or failed to consider; only this and nothing more. (citations) Upon an application for rehearing of a cause decided by this court, it is irregular, and an infraction of the rule, to accompany the petition with a written argument and citation of authorities. (citations)
>
> An application for rehearing that is practically a joinder of issue with the court as to the correctness of its conclusions upon points involved in its decision that were expressly considered and passed upon, and that reargues the cause in advance of a permit from the court for such reargument, is a flagrant violation of the rule, and such an application will not be considered. (citations)

Id., citing *Texas Co. v. Davidson*, 76 Fla. 475, 80 So. 558 (1919).

6 A review of the motions for reconsideration filed in this case by the Attorney General and AARP reveals that each of them do no more than reargue issues that were specifically addressed by the Commission in the Access Reduction Order. In addition, both motions rehash the same parade of horribles claimed by some during the service hearings. But as the Access Reduction Order reflects, these claims were carefully considered by the Commission which made the decision that approval of the ILEC petitions was in the best interest of all consumers. On the basis of these two

motions, there is no matter overlooked or not considered by the Commission, and these motions should be denied.

III. Attorney General's Motion for Reconsideration

The three grounds stated by the Attorney General's Motion for Reconsideration do not meet the standard for a motion for reconsideration and do not otherwise merit any further consideration by the Commission. Essentially, the Attorney General's Motion reargues evidence already considered or reasserts the testimony of a few witnesses that they will not benefit from the implementation of the Access Reduction Order. On the basis of the arguments and analysis below, the Attorney General's Motion should be denied.

A. Section 364.01(4) Has Been Met

The Attorney General asserts that the Commission failed to consider Section 364.01(4), Florida Statutes, and claims that the Access Reduction Order fails to ensure, pursuant to Section 364.01(4), that all consumers have reasonable and affordable rates. This argument is predicated on the testimony that some customers will not receive a direct benefit from the implementation of the Access Reduction Order. AG Motion, at 4. While the Access Reduction Order does not specifically cite section 364.01(4), the Commission fulfilled the legislative purpose embodied in Section 364.01(4) and acted in the best interests of all Florida consumers to ensure the long term availability of reasonable and affordable rates.

The consideration of the legislative intent of Section 364.01(4) is thoroughly and consistently discussed and evaluated throughout the Access Reduction Order. To make his legislative intent argument, the Attorney General quotes a fragment of one sentence from page 29 of the Access

Reduction Order at page 4 of his Motion to claim that even the Commission acknowledged that not all customers would benefit from this decision. However, by reading the entire sentence, as well as the entire paragraph, it is clear that the Commission did in fact consider section 364.01(4) and acted consistently in the best interests of all consumers:

> 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. The evidence in this case shows that Knology will continue its plans to enter Florida markets if the Petitions are granted, and will consider broadening the number of Florida markets it enters, as demonstrated through the testimony of witness Boccucci. AT&T witness Fonteix has also indicated that AT&T's entry into BellSouth's territory has been largely influenced by the 2003 Legislation and the hope that with the granting of these Petitions, the raising of local rates will make Florida markets more profitable for competitors. Furthermore, witness Gordon explained that less regulation in the wireless market has not only produced lower prices, but also a beneficial impact on consumer welfare, because the use of the technology has become so prevalent.

Access Reduction Order, at 29-30. But the Commission does not stop there. The Access Reduction Order specifically addressed the testimony of the Public Counsel witness, whose testimony keyed off of the consumer testimony, and the Commission specifically discusses how consumers will further receive the benefits of lower rates through long distance charge reductions:

> Thus, we have considered witness Ostrander's argument that the Petitioners have been unable to quantify the impact of competition, and therefore have been unable to show the benefit to customers. We reject that argument, and find that the preponderance of the evidence in the proceeding shows that the benefits to residential customers as a whole generated by the resulting decreases in long distance rates

> and elimination of the in-state connection fee will outweigh the increases in local rates. This benefit should be a continuing one, since the IXCs have indicated that they will flow through the reductions on a pro-rata basis according to minutes of access, and the record indicates that market forces should exert enough pressure to ensure that rates are kept low.

Access Reduction Order, at 30. The Commission also evaluated the uncontested evidence that similar rate rebalancing proposals in Michigan and Georgia may have initially led to an increase in rates, but "in the long run, competition drove the prices back down." Access Reduction Order, at 29; Tr. 1261-1262, 1294-1296.

The real position underlying the Attorney General's argument here is that each and every customer must each and every day not be any worse off than before. As the Access Reduction Order well addresses, this is not a requirement in the statute, and such a condition is entirely inconsistent with the plain language of Section 364.161. Access Reduction Order, at 30-31. If "all" is to be read as "each and every customer at each and any moment in time" then the legislature would have set up a condition that is impossible of fulfillment – customers control their usage of telephone service, and as was uncontested on the record, the more telephone calls and the more telephone services consumers use, the greater their benefits from the implementation of the ILEC petitions and the corresponding long distance charges reductions. Tr. 1331-1332, 1362, 1369-1370. Moreover, as is more completely discussed below, in the short term there may be customers who pay more, but over the long term, as real competitive choice becomes available, the opportunity for customers to receive increased services and more competitive prices will certainly increase as it has in the wireless and long distance markets. Tr. 1301-1303, 1419-1420.

The long term best interests of Florida local telephone service consumers can best be met only through a fully competitive local exchange market. This is the mandate of Section 364.164, and this mandate is fully and completely in agreement with the legislative intent expressed throughout Chapter 364, but most clearly in Section 364.01(3):

> The Legislature finds that the competitive provision of telecommunications services, including local exchange telecommunications service, is in the public interest and will provide customers with freedom of choice, encourage the introduction of new telecommunications service, encourage technological innovation, and encourage investment in telecommunications infrastructure.

If the Attorney General wants the Commission to evaluate the ILEC petitions under Section 364.164 consistently with the legislative intent of section 364.01(4), then the Commission has already done so. But a thorough review of the Access Reduction Order reveals that the Commission has gone further, and in fact considered the complete statement of legislative intent in Section 364.01. In approving the ILEC petitions, the Commission has found that granting these ILEC petitions is a necessary component to achieving what Florida consumers really want and need – a more competitive marketplace for local exchange services. The legislative intent of Section 364.01 has been met, and there is no basis for reconsideration by the Commission on this point.

B. The BellSouth Proposal is Not Anticompetitive

The Attorney General's second point is that the BellSouth proposal is anticompetitive because it encourages customers to purchase bundled services from BellSouth in order to not have a local rate increase, and given BellSouth's market share no CLEC will seek to enter the BellSouth market. The Attorney General makes this claim by quoting from an exchange between the

Commissioners and Staff at the Special Agenda Conference. This argument misunderstands the evidentiary record and how competitive telecommunications markets operate.

The Attorney General has not cited to any statute, legal precedent, or record evidence to support this claim that mere preexisting market share and the ability to bundle services constitute anticompetitive conduct. In direct contradiction to this claim, the evidence of record well establishes that the best opportunities to compete in telecommunications exist through a carrier's ability to bundle services. As the Commission found:

> Knology states that its experience in its existing markets provides examples of how the entry of a facilities-based competitor for telephone service expands the products available to consumers, increases the customer service levels, and promotes product and pricing competition. Knology's witness Boccucci emphasizes that telecommunications services are converging, such that a wireless consumer does not really think of his or her service in terms of local versus long distance service. He envisions that with increased competition in the wireline market, the same will hold true for wireline customers. Likewise, he argues that the value for consumers in a competitive market is a converged bill with multiple telecommunications services, upgraded service quality, as well as price competition. He also added that a higher local rate will enable Knology to provide bundled packages at prices economical to seniors on fixed incomes, so that they can receive more economic and better quality service than they do today.

Access Reduction Order, at 27; Tr. 751, 753-755, 761-764.. This undisputed testimony was further corroborated by the testimony and experience of the AT&T and MCI witnesses. Access Reduction Order, at 27-28; Tr. 1169-1171, 1211-1212, 1216, 1417.

Similarly, the Attorney General's claim that only the wealthy will benefit from bundled services, or be able to avoid a rate increase through bundled services, is without any evidentiary

foundation. Again, the Attorney General does not cite to any evidentiary or legal authority for the proposition, and the passages repeated above from the Access Reduction Order and the underlying record support are completely contrary to the Attorney General's claim. On the basis of this evidence, the Commission had no other basis but to conclude:

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

Access Reduction Order, at 29. Bundled services are not anticompetitive – they are the heart and soul of a telecommunications market where all providers can more fairly compete as the retail prices consumers pay for local and long distance services more closely reflect their costs, and the wholesale prices IXCs pay for access charges and CLECs pay for UNEs also more closely reflect of their costs. Tr. 1171-1172, 1205-1207, 1210-1211. There is no *per se* anticompetitive conduct in BellSouth bundling services, and this reconsideration point should be denied.

C. Seniors and Lower Income Consumers Have Not Been Overlooked

It is not clear from the Attorney General's Motion whether as a third ground the Attorney General seeks reconsideration of the Access Reduction Order due to the "feeling" that the Commission has overlooked the impact of this decision on seniors and lower income citizens. As is already reflected in the discussion of the prior two points, the Florida Public Service Commission very carefully considered the effects of this decision on all Floridians, including seniors, and lower income individuals and families. As Dr. Mayo so eloquently testified, the Commission, in

considering how the implementation of the ILEC petitions would affect Floridians, needed to be both "soft hearted and hard headed." Tr. 1220-1222, 1230-1232. There are no guarantees in life, and certainly not in regulation. But in trying to address the transformation of the local services marketplace to a competitive market after nearly 100 years of regulated monopoly service, the Commission has, indeed, struck the rare soft hearted and hard headed balance. The ILEC petitions as approved contain sufficient safeguards and safety net provisions to lessen short term problems for those who may be able to least afford them. These ILEC petitions as approved may not instantly bring all the benefits or the same benefits to each consumer, but the Commission did fulfill its statutory obligation to remove a significant regulatory barrier that has held back the benefits of a competitive telecommunication market for residential customers.

It is also important to remember that the bundled service offerings are specifically a benefit to seniors. As Mr. Boccucci testified, "what the local rate does is it enable us to provide bundled packages and to provide really economical prices to seniors to get actually more and better services than they currently have today." Tr. 768. Thus, this decision provides not only safeguards but benefits that may make such safeguards unnecessary for some.

In the final analysis, the Motion for Reconsideration filed by the Attorney General reflects a lack of understanding of how telecommunications markets operate and overlooks that the implementation of the ILEC petitions as approved are a crucial requirement in the transition to a more competitive local exchange market. The Attorney General has not raised any factual or legal matter that has been overlooked; indeed, the dissatisfaction inherent with the approval of the ILEC petitions has been considered, addressed, and resolved multiple times through the disposition of the Attorney General's Motion for Summary Final Order, the hearing process, and now in the motion

for reconsideration. Accordingly, the Attorney General's motion for reconsideration on this point, as all of his points, should be denied.

IV. AARP's Motion for Reconsideration

The AARP motion claims three basic problems with the Access Reduction Order, but none of these arguments meet the standard for a motion for reconsideration nor otherwise merit reconsideration by the Commission. As is further demonstrated below, the AARP's Motion should be denied.

A. Commission's Delegation of Administrative Tariff Approval to Staff was Proper

The first issue raised by AARP is that the Commission erred by allowing the Staff to administratively approve the implementation of tariffs. Such a delegation is consistent with prior case law and not a basis for reconsideration. However, if the Commission has any concerns about the process, it certainly would be appropriate for the Commission to direct the Staff to return the implementation tariffs to the Commission for its explicit approval.

The Florida Public Service Commission's "'interpretation of a statute it is charged with enforcing is entitled to great deference. . . .'" *BellSouth Telecommunications, Inc. v. Jacobs*, 834 So. 2d 855, 857 (Fla. 2002) (quoting *Florida Interexchange Carriers Ass'n v. Clark*, 678 So. 2d 1267 (Fla. 1996)). Therefore, the Commission's "determinations are accorded substantial deference by [the Florida Supreme Court]." Id. (citing *GTC, Inc. v. Garcia*, 791 So. 2d 452, 457 (Fla. 2000)). The Commission acted well within its authority, granted to it by the legislature in Florida Statutes Sections 364.163 and 364.164 when the Commission delegated to the staff the authority to administratively review and approve the tariffs.

In *Citizens of the State of Florida v. Wilson*, 567 So. 2d 889, 892 (Fla. 1990), the Florida Supreme Court held that the Commission had the authority to delegate to its staff the function of approving electric utility rate increases. The Commission in *Wilson* specified the conditions the rate increases must meet in order for the implementation tariff to be approved. The staff "merely carried out the ministerial task of seeing whether these conditions were met." Id. Similarly to the process used in *Wilson*, the Commission in the Access Reduction Order specified the conditions the ILEC implementation tariffs had to meet and delegated the administrative task of determining whether these conditions were met to the Staff.

The Access Reduction Order approves the ILEC petitions and specifically sets forth requirements which the respective implementation tariffs must comply with in order to be approved. The Commission's delegation of review and approval of these tariffs to its staff clearly falls within the Supreme Court's approval of the delegation in *Wilson*. The Commission's staff is competent to determine whether the tariffs comply with the requirements of the Access Reduction Order, and prior experience well demonstrates that when a tariff is not conforming to the Commission's order the staff will bring the tariff to the Commission. *U. S. Sprint v. Nichols*, 534 So.2d 698 (Fla.1988). Therefore, the Commission should deny AARP's request that the Final Order be modified to disallow staff to review and approve the tariffs. However, if necessary or appropriate, the Commission may assuage any concerns by simply directing that the Staff bring the tariffs back to it for final review approval.

B. Acceptance of the ILEC Concessions is Lawful

The second issue raised by AARP is interesting because it actually cuts against the interests of the AARP members – AARP contends that it was improper for the Commission to accept the "concessions" made by the ILECs during the proceedings. However, in general the various commitments that the ILECs made, such as expanding the availability of Lifeline, did not go to ILECs' specific requests to reduce access charges in a revenue neutral manner. Even Sprint's commitment to spread out its plan an additional year does not impact the Sprint petition's request to reduce access charges in a revenue neutral manner. Thus, even reading the statute the way AARP would like it read, which is not correct, does not produce any violation of Section 364.164(1).

Of course, the whole basis for this point by AARP is grounded on the premise that the Commission's authority is entirely limited to the "granting or denying" of an ILEC petition exactly as filed. Assuming that the commitments the ILECs made during the hearing somehow constituted an attempt to modify the petitions, the statute simply does not constrain the Commission from approving or denying the petitions only as exactly as filed. The absence of such a limitation is understandable given the dynamics of any litigated proceeding and the reality that the evidence adduced at trial may not always match up exactly with what was sought by the original petition. The Florida Rules of Civil Procedure recognize this reality in Rule 1.190(b) (2004), which reflects the idea that amendments to conform to the evidence may be made at any time, and should be granted liberally if it will assist in the case. This rule provides:

> When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the

> evidence and to raise these issues may be made upon motion of any party at any time, even after judgment, but failure so to amend shall not affect the result of the trial of these issues. If the evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended to conform with the evidence and shall do so freely when the merits of the cause are more effectually presented thereby and the objecting party fails to satisfy the court that the admission of such evidence will prejudice the objecting party in maintaining an action or defense upon the merits.

Fla.R.Civ.P. 1.190(b) (2004). The Second District Court of Appeal agrees that: "[A]mendments to the pleadings should be freely granted." *Haight v. Haight*, 350 So.2d 1155, 1157 (2d DCA 1977). See also *Turna v. Advanced Med-Services*, 842 So.2d 1075, 1076 (2d DCA 2003) (trial court has discretion to allow amendments to conform to the evidence).

All five district courts of appeal agree that amendments to conform to the evidence when issues are tried by implied consent are permitted; in other words, if an issue is raised during trial that was not explicitly proffered in the pleading, and the other party acquiesces or fails to object, the new issue is treated as if it had been included in the pleading. See *Dey v. Dey*, 838 So.2d 626, 627 (1st DCA 2003); *Buday v. Ayer*, 754 So.2d 771 (2d DCA 2000); *Department of Revenue v. Vanjaria* Enterprises, Inc., 675 So.2d 252 (5th DCA 1996); *Equitable Life Assurance Society of the U.S. v. Digital Products Corp.*, 528 So.2d 1375 (4th DCA 1988); and *Twenty-Four Collection, Inc. v. M. Weinbaum Construction, Inc.*, 427 So.2d 1110 (3d DCA 1983). Courts accept the implied consent idea even where the evidence is produced during closing arguments. See *Department of Revenue*, 675 So.2d at 255, and *Twenty-Four Collection, Inc.*, 427 So.2d at 1112.

The test to determine the existence of implied consent, considers two factors: "'[W]hether the opposing party had a fair opportunity to defend against the unpleaded issue and whether the party

could have offered additional evidence on that issue if it had been pled." See *Dey*, 838 So.2d at 627; *Buday*, 754 So.2d at 772; and *Schopler v. Smilovits*, 689 So.2d 1189, 1190 (4th DCA 1997) (if the unpleaded claim relates to a properly pled claim, the complaint may not be amended to conform to the evidence on an implied consent basis as no opportunity to object was available). Timing of the amendment may be made at any time both under the rule and applicable case law. See *Carnival Cruise Lines, Inc. v. Nunez*, 646 So.2d 831, 833 (3d DCA 1994) (after trial began); *Quackenbush v. Performance Marine, Inc.*, 441 So.2d 679, 680 (3d DCA 1983) (at conclusion of trial); and *Dixie Farms, Inc. v. Timmons*, 323 So.2d 637 (3d DCA 1975) (at conclusion of plaintiff's evidence). Once a trial court has determined whether to permit an amendment to conform to the evidence, this may only be overturned on appeal upon a showing of abuse of discretion. See *Carnival Cruise Lines*, 646 So.2d at 833, and *Haight*, 350 So.2d at 1157.

As has already been discussed above, none of the "concessions" actually go to the merits of the actual requests to reduce access charges. But even if the commitments do substantively relate to the petitions themselves, they were extensively discussed throughout the hearing, there was sufficient time to address them by cross-examination and in closing arguments, they were never objected to, and they actually help to minimize any potential adverse impact on the customers most in need of telephone service. In the present situation, it clearly was not an abuse of discretion to accept the ILEC commitments, especially given the fact that they benefitted not the ILECs but the customers. Accordingly, reconsideration on this point should be denied.

C. The Four Factors in Section 364.164

AARP's third basis for reconsideration is that the Commission made "factual mistakes" in reaching the conclusion that "Intrastate access rates current provide support for basic local telecommunications services that would be reduced by bringing such rates to parity with interstate access rates." AARP Motion, at 4. To advance this argument, AARP disputes the conclusions the Commission drew from a consideration of all of the evidence. The basis for the AARP's position is that "fundamental fairness and basic common sense" require the Commission to share some of the loop's costs with other services, although there is no such legal standard or requirement and certainly no legal basis for the AARP assertion and none was cited.

AARP further argues that since there is no support from local service rates, then the findings that there will be a more attractive competitive local exchange market and that the elimination of such support will induce enhanced market entry must also fail. However, AARP argues that even if there is support, reliance on the Knology and AT&T evidence should not be counted. Again, this is nothing more than an expression of unhappiness with weight the Commission gave to the witnesses' testimony and the conclusions the Commission drew from the entire record. There is nothing in the AARP action that any of the evidence was factually wrong or otherwise overlooked.

AARP's final point of factual mistake is equally argumentative about the conclusions drawn from the evidence and not a complaint about the evidence itself. Given the failure of the AARP to demonstrate that the Access Reduction Order failed to overlook or consider any facts or law with respect to the four statutory standards, the AARP motion on this point should be denied.

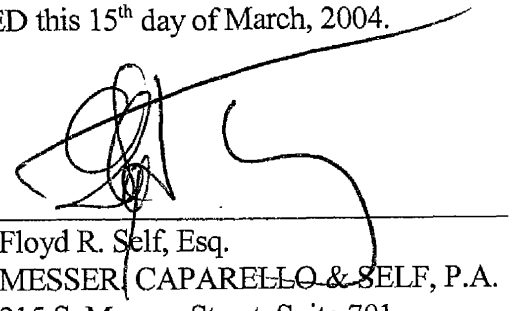
V. Requests for Oral Argument

In filing for reconsideration, the Attorney General and AARP filed requests to present oral argument. Their requests for oral argument essentially recite the language in the oral argument rule, Rule 25-22.060, Florida Administrative Code, and state, without any explanation, that oral argument will aid the Commissioners' consideration of the motions. As has been demonstrated above, there is nothing novel, unusual, challenging, or otherwise difficult raised by the motions for reconsideration that would merit oral argument. Both requests rehash the same issues and evidence that were extensively and exhaustively considered by the Commission and which are thoroughly addressed in the Access Reduction Order. Accordingly, having failed the demonstrate with particularity why oral argument is necessary or otherwise appropriate, the requests should be denied.

VI. 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 and AARP requests for oral argument and address the motions for reconsideration by acknowledging that it has considered each of the issues raised in the motions for reconsideration, that it has not overlooked or failed to consider any of those issues in its deliberations leading to the issuance of Order No. PSC-03-1469-FOF-TL, and that it deny the Attorney General and AARP motions for reconsideration.

RESPECTFULLY SUBMITTED this 15th 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 15th 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

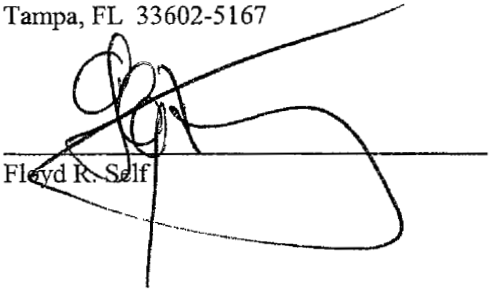
Charles Beck, Esq.
Office of Public Counsel
111 W. Madison Street, #812
Tallahassee, FL 32399-1400

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