BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition by Verizon Florida Inc. to reform intrastate network access and basic local telecommunications rates in accordance with Section 364.164, Florida Statutes.	DOCKET NO. 030867-TL
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
In re: Flow-through of LEC switched access reductions by IXCs, pursuant to Section 364.163(2), Florida Statutes.	DOCKET NO. 030961-TI ORDER NO. PSC-04-0456-FOF-TL ISSUED: May 4, 2004

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
LILA A. JABER
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

ORDER ON MOTIONS FOR RECONSIDERATION

BY THE COMMISSION:

I. CASE BACKGROUND

On August 27, 2003, Verizon Florida Inc. (Verizon), Sprint-Florida, Incorporated (Sprint), and BellSouth Telecommunications, Inc. (BellSouth), each filed petitions pursuant to Section 364.164, Florida Statutes. Dockets Nos. 030867-TL (Verizon), 030868-TL (Sprint), and

030869-TL (BellSouth) were opened to address these petitions in the time frame provided by Section 364.164, Florida Statutes. On September 10, 2003, this Commission dismissed the initial petitions, because they each failed to make the proposed rate changes over at least the required two-year minimum set forth in Section 364.164(1)(c), Florida Statutes. The companies were allowed to refile, and did so on September 30 (BellSouth), October 1 (Sprint) and October 2 (Verizon).

By Order No. PSC-03-1240-PCO-TL, this Commission consolidated Docket No. 030961-TI, which was opened to address questions regarding the IXCs' flow-through to customers of any access charge reductions, into this proceeding for hearing. A hearing on this matter was held on December 10-12, 2003. Our final order, Order No. PSC-03-1469-FOF-TL, was issued on December 24, 2003.

On January 7, 2004, Charles J. Crist, Jr., Attorney General, State of Florida (AG) filed his Notice of Appeal. On the same day, the Office of Public Counsel (OPC) filed its Notice of Appeal.

On January 8, 2004, the AG filed his Motion for Reconsideration of the final order. In his Motion for Reconsideration, the AG asserts that we should reconsider our decision because: (1) we did not properly consider the impacts on the public health, safety, and welfare, as required by Section 364.01, Florida Statutes; (2) the rate increase proposed by BellSouth is anticompetitive because there will be no rate increase for bundled service packages; and (3) we failed to consider the impact of the rate increases on senior and low-income consumers. On January 12, 2004, the AG filed a Request for Oral Argument, and on March 17, 2004, he filed an Amended Request for Oral Argument.

On January 8, 2004, AARP filed its Motion for Reconsideration of the final order, as well as a Request for Oral Argument. AARP seeks reconsideration of our decision on five points in the Order: (1) our delegation to staff of the authority to review and approve the 45-day tariffs that would be filed as a result of approval of the ILECs' petitions; (2) our approval of the ILECs' additional concessions; (3) our decision that the costs of the local loop are properly borne by basic local service; (4) our decisions that basic local service is artificially supported and that removal of support will induce enhanced market entry; and (5) our decision that residential customers will benefit from approval and implementation of the ILECs' petitions as contemplated by the statute.

On March 3, 2004, the Florida Supreme Court relinquished jurisdiction to this Commission for the limited purpose of ruling on the AG and AARP motions for reconsideration. The Court set a deadline of May 3, 2004 for us to make our ruling.

On March 15, 2004, Verizon, Sprint, BellSouth/BellSouth Long Distance (BellSouth), and AT&T/MCI ("respondents") filed their Responses to the AG's Motion for Reconsideration

and to AARP's Motion for Reconsideration and to the initial Requests for Oral Argument.[1] Thereafter, on March 29, 2004, Verizon, BellSouth/BellSouth Long Distance, AT&T/MCI, and Sprint filed responses to the AG's Amended Motion for Oral Argument. On April 20, 2004, the AG filed a Notice of Supplemental Authority, referring us to the decision in United States Telecom Ass'n v. Federal Communications Commission, 359 F.3d 554 (D.C. Cir. 2004), decided March 2, 2004.

This Order addresses the Motions for Reconsideration, Responses, and Requests for Oral Argument. By this decision, we comply with the Supreme Court's direction in its March 3 Order.

II. ORAL ARGUMENT/REQUEST FOR RELEASE OF CONFIDENTIAL MATERIAL

We received oral argument on the motions addressed in this Order, as requested by AARP and the Attorney General. However, the Attorney General's request for oral argument also contained a request that we release confidential material. We find that that request cannot be granted, as it is untimely and not proper within the context of a Motion for Oral Argument. We are concerned by the fact that the Attorney General has not specified what material he would like released. Moreover, the prehearing officer has already issued Orders addressing all pending Requests for Confidential Classification. Thus, to the extent that material is currently being treated as confidential, it has been accorded that treatment by an Order issued in this proceeding.

The most recent Orders addressing Requests for Confidentiality were issued on March 8, 2004. The time for seeking reconsideration of those Orders ran on March 18, 2004. No party responded in opposition to any of the requests for confidential classification, and no party sought reconsideration of any of the Orders granting confidentiality. Florida case law is clear that we are without authority to extend the time for seeking reconsideration of an Order, even if it were otherwise inclined to do so. See City of Hollywood v. Public Employee Relations Commission, 432 So. 2d 79 (Fla. 4th DCA 1983).

III. MOTIONS FOR RECONSIDERATION

A. Standard of Review

The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which this Commission failed to consider in rendering its Order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d

[1] By Order No. PSC-04-0037-PCO-TL, issued January 13, 2004, the prehearing officer extended the time for filing responses until such time as the Supreme Court relinquished jurisdiction to allow us to consider the outstanding motions.

162 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. 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). 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." Stewart Bonded Warehouse, Inc., 294 So. 2d at 317.

B. Attorney General's Motion

1. Consideration of Section 364.01(4)

a. Arguments

The Attorney General contends that we erred by failing to consider our legislative mandate, as set forth in Section 364.01(4)(a), Florida Statutes, to protect the health, safety and welfare of all consumers by ensuring they have access to basic local service at reasonable and affordable rates. Referring to the testimony of Verizon witness Danner, the Attorney General argues that the proposed increase in basic rates will be five times greater for seniors aged 76 and over, compared to the increase for consumers aged 26 to 35 years of age. The Attorney General adds that those who can least afford the increase in the basic rates will not enjoy any of the alleged benefits arising from the theoretical competition that might be seen in the future. Consequently, the Attorney General contends that we must have ". . . overlooked the requirement to ensure reasonable and affordable basic rates for all consumers." Motion at p. 5.

The respondents universally reject the Attorney General's contention on this point. Specifically, BellSouth contends that the Order contradicts this assertion, as it is replete with analysis of evidence concerning how granting the petitions of the incumbent local exchange companies (ILECs) will benefit the residential telecommunications consumers in Florida, including those who desire only basic local service.

The respondents also contend that we did not err in our application of the appropriate statutory considerations. Of note, BellSouth argues that Section 364.164 is the latest expression of legislative intent concerning basic local telecommunications services and the impact of rates on Florida consumers, and that this specific statutory provision takes precedence over a prior, general expression of legislative intent.[2] BellSouth argues, therefore, that this Commission properly considered the benefit to residential customers as contemplated by Section 364.164(1), Florida Statutes.

Similarly, Sprint states that it is a well-settled rule of statutory construction that a special statute covering a particular subject matter is controlling over a more general statutory provision covering the same and other subjects. The more specific statute is considered to be an exception

[2] *Citing* McKendry v. State, 641 So. 2d 45, 46 (Fla. 1994).

to the general terms of the more comprehensive statute. Under this rule, Sprint asserts, the specific provisions of Section 364.164 (1) prevail over Section 364.01(4)(a), which provides the general manner in which the Commission should exercise its authority to protect the public health, safety, and welfare. To arrive at another conclusion, Sprint states, would render the specific language of Section 364.164(1) meaningless.[3]

AT&T and MCI join Verizon in arguing that we did consider Section 364.01. AT&T and MCI state that although the Commission's Order does not specifically cite to Section 364.01(4), the Commission fulfilled the legislative purpose embodied in Section 364.01(4) by implementing Section 364.164. They emphasize that the legislative intent of Section 364.01(4) is addressed throughout the Order.

b. Decision

Upon consideration, we find that the Attorney General has not demonstrated that in acting on the petitions we overlooked or failed to consider our obligations under Section 364.01(4)(a). A primary rule of statutory interpretation is to harmonize related statutes so that each is given effect. Butler v. State, 838 So. 2d 554, 555 (Fla. 2003). It is also a well-established rule of statutory construction that a special statute covering a particular subject matter is controlling over a general statutory provision covering the same and other subjects. McKendry v. State, 641 So. 2d 45, 46. Furthermore, statutes should be read together to give each provision the maximum force and effect, but when there is unavoidable conflict, the more recent, specific expression of the Legislature's intent is the controlling provision. Id., *citing* Sharer v. Hotel Corp. of America, 144 So. 2d 813 (Fla. 1962). Thus, while Sections 364.01(4) and 364.164 must be read together, Section 364.164 is the controlling provision to the extent there is any conflict between the two. To arrive at any other conclusion would render the specific language of Section 364.164(1) without meaning. See Saunders vs. Saunders, 796 So. 2d 1253 (Fla. 1st DCA 2001).

In this case, however, there is no conflict between Sections 364.164 and 364.01(4)(a). The former section required us to consider, among other things, the impact of proposed rate changes on the creation of a more attractive competitive local exchange market for the benefit of residential consumers. The Order is replete with discussion of our findings and conclusions on this issue. The latter section required us to consider whether our actions ensure that basic local telecommunications services are available to all consumers in the state at reasonable and affordable prices. Although the Order did not make specific reference to Section 364.01(4)(a), the Order demonstrates that we did consider the impact of its action on reasonable and affordable prices for basic telecommunications services. For example, we found that:

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[3] *Citing* McKendry v. State, 641 So. 2d 45, 46 (Fla. 1994); Floyd v. Bentley, 496 So. 2d 862, 864 (Fla. 2d DCA 1986); and Saunders v. Saunders, 796 So. 2d 1253 (Fla. 1st DCA 2001).

- Experience from other states shows that approval of the ILECs' proposals will have little, if any, negative impact on the availability of universal service. (Order at 18.)

- [T]he record shows that basic local service will continue to remain affordable for the vast majority of residential customers. (Order at 18.)

- [T]he amended Lifeline provisions in Section 364.10 will help to protect economically disadvantaged customers from the effect of local rate increases. (Order at 19.)

In making these findings, we afforded the testimony of Verizon witness Danner the proper weight. That testimony addressed the difference in net impact on consumers in various age groups and indicated that consumers in all age groups will receive benefits from long distance rate reductions that will offset, to varying degrees, the impact of the increase in basic local service rates. When combined with other evidence, we conclude that the net impact of granting the petitions is consistent with the requirement to ensure that basic local service is available at reasonable and affordable prices. Thus, we reject the Attorney General's Motion on this point.

To avoid any misinterpretation, we shall, nevertheless, clarify the Order by adding a sentence at the end of the first paragraph under the heading "Conclusion" on page 56 to state that:

> In granting the Petitions, we have also considered the provisions of Section 364.01(4)(a) and concluded that our action will preserve reasonable and affordable prices for basic local service.

2. BellSouth's Increases Do Not Apply to Bundled Packages

a. Arguments

The premise of the Attorney General's second argument for reconsideration is that BellSouth's proposed rate increase is anticompetitive. The Attorney General contends that BellSouth's proposed increases to basic rates exempt bundled services from increases; thus, the approval of BellSouth's petition encourages customers to purchase bundled services in order to obtain some benefit or exemption from the rate increase. The Attorney General maintains that this emphasis on bundled services has an anticompetitive impact on consumers. The Attorney General states that under Section 364.164, we are required to consider whether a petition will induce enhanced market entry. The Attorney General believes that BellSouth's rate increase will encourage use of bundled services and will not induce enhanced market entry, but instead discourage competition.

In response, BellSouth cites to testimony of AT&T and MCI witness Mayo where he maintains that the ILEC proposals are consistent with Section 364.164. He asserts that the proposals are anticipated to spur competition in telephony and result in more competitive markets. BellSouth also argues that it has applied the basic rate increases in accordance with Section 364.164(2). Further, BellSouth argues that the Attorney General attempts to raise a new argument, which is inappropriate in a motion for reconsideration. BellSouth also contends that the record shows that market entry will be enhanced by removing the access charge support for local services because the CLECs will be able to compete in providing basic and bundled services.

The other respondents offer similar arguments. AT&T and MCI further indicate that the Attorney General fails to cite to any record evidence to support his claim that mere preexisting market share and the ability to bundle services constitute anticompetitive conduct. AT&T and MCI argue to the contrary that, as explained by Knology's witness Boccucci, any carrier's best opportunity to compete is through providing bundled services at competitive prices.

b. Decision

Upon consideration, we conclude that the Attorney General's claim that BellSouth's proposal is anti-competitive must fail. The evidence clearly demonstrates that each of the ILECs' proposals will result in a more competitive market. We find the evidence establishes that the best opportunities to compete in telecommunications exist through a carrier's ability to bundle services. Order at pp. 27 and 38. Furthermore, we have already considered this issue as demonstrated by the discussion set forth at pages 5 and 6 of the Attorney General's Motion. Thus, the Attorney General has not identified a mistake of fact or law in our decision. As such, the Motion on this point is denied.

3. Benefit to Residential Customers

a. Arguments

The Attorney General asserts that Florida citizens will be irrevocably injured by granting the ILECs' petitions, because the drastic increases in the basic phone rates are neither reasonable or affordable for senior and low-income consumers. Thus, the Attorney General contends that we must have failed to properly consider the testimony of the detriment to customers that will result if the ILECs' proposals are implemented.

The respondents generally reject this notion as well. They argue that we considered customer impacts, but found competing testimony regarding ultimate benefits to customers more persuasive. Thus, they believe that the Attorney General's arguments on this point are a rehash of arguments this Commission has already considered and rejected. Further, BellSouth states that this Commission thoroughly considered the impact on seniors by finding that many seniors

on fixed incomes take a number of additional services such as cellular service, cable service and internet services. On that basis, BellSouth concludes that the rate increases are "within the zone of affordability" for this segment of consumers. BellSouth notes that we determined in our Order that 53% to 72% of even Lifeline customers served by the ILECs buy one or more ancillary services. Order at p. 32. AT&T and MCI also note that Knology witness Boccucci asserted that the ability to provide bundled services allows Knology to provide more economical prices to seniors.

b. Decision

Regarding the Attorney General's third point, we find that this issue was thoroughly considered and addressed. See Order at pp. 26 – 33. We concluded that ". . . Florida consumers as a whole will reap the benefits of competition, and, ultimately, competition will serve to regulate the level of prices consumers will pay." Order at p. 29. We also found that ". . . even those customers that use calling cards or dial-around service will receive benefits from increased competition, as will older citizens that use 1+ calling." Order at p. 31. Furthermore, we noted that, while outside the scope of our consideration of the Petitions, the ILECs' concessions regarding Lifeline will provide additional protection for the economically disadvantaged, while the statute itself provides targeted assistance for those unable to afford the increases. Order at p. 32. We found that

> The evidence shows that even with the proposed local rate increases, there will not be a significant number of customers that drop off the network. While the need for continued targeted assistance for some customers may foster its own social welfare concerns, those concerns must be balanced with the Legislature's clear intent to move Florida's telecommunications markets towards increased competition.

Order at p. 32. The Attorney General has not identified an error in this conclusion. Rather, he re-argues matters we have already addressed.

As for the Supplemental Authority offered by the Attorney General, we conclude that the D.C. Circuit's decision in *United States Telecom Ass'n v. Federal Communications Commission* does not rise to the level that would necessitate that we reconsider our decision. While the decision does muddy the waters as to the future of certain UNEs, it does not, by itself, automatically remove any UNEs from the national list. Furthermore, the D.C. Circuit's decision is currently stayed, and further appeals are possible. While we are concerned about the uncertain state of the FCC's unbundling rules, even if the D.C. Circuit's decision remains in place, and UNEs are removed from the list as a result, that process will likely take place over an extended period of time. Furthermore, even if the D.C. Circuit's decision remains in place, carriers that compete using their own facilities would not be directly affected. For all these reasons, we

conclude that the D.C. Circuit's decision does not require a change to our conclusions in this case.

For all the foregoing reasons, we hereby deny the Attorney General's Motion on this point as well.

C. AARP'S Motion

1. Approval of 45-day Rate Adjustment Filings

a. Arguments

AARP argues that, in our Order, we have improperly allowed our staff to administratively review and approve the tariffs filed implementing this Commission's decision approving the ILECs' Petitions. AARP contends that this is directly contrary to the language of the statute, which requires:

> . . . The 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.

Section 364.164(2), Florida Statutes. AARP contends that we should modify our Order to reflect that the Commission staff is not authorized to administratively review and approve the tariffs, and that the rate increases contained in such tariff filings will only become effective after we have issued an order approving them.

Generally, those parties responding to AARP's motion believe that AARP has not identified an error on this point, but note that should we see fit, clarification may be in order.

AT&T and MCI note that the authority delegated to our staff to conduct the essentially ministerial task of reviewing and approving the tariffs implementing the ILECs' Petitions is not unlike that delegation of authority to review a tariff which was upheld by the Court in Citizens of the State of Florida v. Wilson, 567 So. 2d 889, 892 (Fla. 1990). In that case, the Court upheld our delegation to staff of authority to review a supplemental tariff rider to ensure that it met certain conditions, and if it did, to then approve the tariff. AT&T and MCI argue that the situation here is very similar in that this Commission has already approved the ILECs' Petitions, which specify the conditions the tariffs must meet, and has only delegated to staff the administrative and ministerial task of ensuring that the tariffs meet the conditions of the approved Petitions. AT&T and MCI also add that it is clear that if the tariffs filed in this case do not conform to our Order, our staff will bring the non-compliant tariffs before us for our consideration.[4]

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[4] *Citing* U.S. Sprint v. Nichols, 534 So. 2d 698 (Fla. 1998).

b. Decision

Upon consideration, we conclude that AARP has identified a point that requires clarification due to a scrivener's error. We find error in our Order to the extent that the Order, as issued, does not fully and accurately reflect our actual vote, which was to provide administrative authority to our staff to review the 45-day rate adjustment filings and **issue an administrative final order** based upon that review. The Order does not reflect the issuance of an administrative final order. Therefore, the next to last ordering paragraph is amended to read:

> ORDERED that Commission staff is hereby authorized to administratively review ~~and approve~~ the tariffs implementing these decisions and to issue administrative final orders approving tariffs that conform to these decisions. It is further

With this correction, the Order accurately reflects our decision. Furthermore, we find that, as corrected, our Order complies with the statute. We find that our delegation of authority to Commission staff is allowable, and is, in fact, not uncommon for the review of similar filings. See Citizens of the State of Florida v. Wilson, supra, (finding delegation to staff to review and approve tariff not improper when conditions for approval clearly set forth by Commission). In this case, review of the tariffs will be limited to ensuring that they conform to the conditions in the approved Petitions. If any tariff does not conform, it will be brought before us as quickly as possible. We further note that the 45-day requirement in the statute is generally not conducive to bringing a recommendation for our consideration at an Agenda Conference, further supporting, as a practical matter, our decision to delegate authority to our staff to approve conforming tariffs. (Transcript, Vol. 16, p. 2060).

2. Approval of ILEC Commitments

a. Arguments

AARP asserts that we erred when we approved the ILEC's additional concessions as set forth in the following chart:

[illegible]	[illegible]	[illegible]
Increase non-recurring charges so that the single line residential rates would be lowered by approximately 36 cents.	Increases to basic residential recurring and non-recurring rates would be in four steps spread over three years.	Increase non-recurring revenues from $1.2 million to $2.4 million so that basic local rates can be raised by $1.2 million less than requested.

[illegible]	SPRINT	VERIZON
Increase Lifeline eligibility to 135% of the federal poverty level.	Increase Lifeline eligibility to 135% of the federal poverty level.	Increase Lifeline eligibility to 135% of the federal poverty level.
	Lifeline rates would not be increased for four years.	Lifeline rates would not be increased for four years.
Will work with PSC to review ECS in a Commission workshop.	Will work with PSC to review ECS in a Commission workshop.	Will work with PSC to review ECS in a Commission workshop.

AARP contends that these proposals effectively modified the ILECs' petitions, and that approval of the modified petitions appears contrary to Section 364.164(1), Florida Statutes, which specifically provides that this Commission shall issue an order "granting or denying" any petition. AARP contends that we were authorized only to approve or deny the petitions, not to modify them. AARP adds that the only proper way for this Commission to grant the petitions with the offered amendments would have been to deny the petitions, but with specific directions that amended petitions incorporating the above concessions would be considered on an expedited basis. AARP also notes that these proposals were offered late in the proceeding, and that, consequently, AARP and the other consumer representatives had no opportunity to conduct discovery or cross-examination regarding the proposals.

The respondents maintain that AARP has not identified a mistake of fact or law on this point. They argue not only that the statute should not be read to preclude amendments to the petitions, but also that even if the statute is read as suggested by AARP, we considered and approved the proposals as a matter separate and apart from our consideration of the petitions. Thus, no violation occurred even under AARP's reading of the statute.

In addition, AT&T and MCI emphasize that the ILECs' additional proposals are beyond the scope of their specific requests to reduce access charges in a revenue neutral manner; thus, their approval does not result in any violation of Section 364.164(1), Florida Statutes. Sprint adds that its proposal to spread the proposed increases in four steps over three years was made in response to the testimony of Commission staff witness Shafer, and that all parties had the opportunity to cross-examine Mr. Shafer. Furthermore, Sprint notes that AARP did cross-examine Sprint's witnesses regarding Mr. Shafer's proposal.

b. Decision

The Hearing Transcript clearly reflects that the additional commitments of the ILECs were addressed and approved after the ILECs' petitions had been approved, which demonstrates that the Commission did not consider the additional commitments to constitute amendments to

the petitions. See Transcript Vol. 16 at pp. 2057-2060. Thus, to the extent the Order at p. 56 gives the impression that we considered the additional proposals to constitute amendments to the petitions, the Order is in error. Because we accepted and approved the additional ILEC commitments as a matter separate and apart from our approval of the ILEC Petitions under the criteria outlined in Section 364.164, Florida Statutes, we hereby amend our Order such that the first sentence under the heading "Conclusion" on page 56 of the Order shall now read:

> Based on the foregoing, we hereby grant the Petitions of Verizon, Sprint, and BellSouth as filed in Dockets Nos. 030867-TL, 030868-TL, and 030869-TL~~, as amended by commitments made on the record at the final hearing~~.

Otherwise, AARP's motion on this point is denied, because we are not persuaded that our approval of the additional commitments constituted modification of the Petitions or approval of modifications to the Petitions.[5]

3. Assignment of the Cost of the Local Loop

a. Arguments

AARP argues that we erred by assigning the entire cost of the local loop to basic local service. Had we done otherwise, AARP contends that this Commission could not have concluded that intrastate access charges provide support for basic local telecommunications rates. AARP emphasizes that our only past decision on this point was the 1998 Report on Fair and Reasonable Rates to the Legislature, which AARP maintains: (1) is not legally binding; (2) is not economically and logically sound; and (3) "fl[ies] in the face of the financial facts governing the operation of the ILECs." AARP contends that the testimony in the case reflects that there are other services that could not exist without the local loop; therefore, if only basic local service bears the cost of the loop, other services get a "free ride." While AARP seems to acknowledge that there is no economic principle requiring that the costs of the local loop be spread across other ancillary services, AARP contends that "fundamental fairness and basic common sense" require that the costs be spread.

The respondents maintain, as a general matter, that AARP's assertions on this point are pure reargument and that the Commission has already addressed and rejected these contentions. They further argue that the record supports this Commission's conclusion, referencing in particular the testimony of witnesses Caldwell (as adopted by witness Shell), Banerjee, and Dickerson. Citing the Hearing Transcript Vol. 8 at pages 928 through 929, Verizon, in

[5] In reaching this conclusion, we do not determine whether AARP's interpretation of the statute on this point is correct. Rather, we simply do not reach that point, because we considered the Petitions and additional commitments separately.

particular, emphasizes that ". . . the ILEC witnesses went to great lengths to explain that local loop costs cannot be fairly apportioned to services other than basic service."

b. Decision

AARP has not identified any mistake in our conclusion regarding the assignment of the loop costs, but merely argues against the weight we gave to the evidence presented, which does not identify a mistake of fact or law in our decision. Furthermore, we did not rely solely upon the Fair and Reasonable Rate Report as the basis for our conclusion that the costs of the local loop should not be allocated beyond basic local service. In fact, the second sentence of the section of the Order containing our findings on this point states that, "In making this finding, we 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." Order at p. 21. While we did place some weight on the fact that this issue had been considered previously in the context of the Fair and Reasonable Rates Report, the Order clearly reflects that this Commission did not find our earlier decision to be binding precedent. Instead, we simply found that neither AARP nor OPC had provided any "new persuasive basis" to deviate from that earlier conclusion, which was supported on the current record by testimony of the ILEC and IXC witnesses. Order at p. 22. AARP's motion on this point is, therefore, denied.

4. Support Is Barrier to Competition/Removal Will Induce Enhanced Market Entry

a. Arguments

Based upon its assertion that our conclusion that the costs of the loop should not be allocated is erroneous, AARP next argues that we erred by concluding that the existence of support serves as a barrier to competitive entry and that removal of that barrier will induce enhanced market entry. AARP further contends that even if there is some amount of support for local service derived from access fees, the record does not show that the existence of such support serves as a barrier to entry by efficient competitors. Instead, AARP argues, the record shows that competition for the residential customer has increased in recent years without increases in the rates charged by the ILECs for local service.

AARP also contends that the record does not show that increasing local rates will induce enhanced market entry, specifically disputing the testimony offered by Knology and AT&T. AARP maintains that the testimony offered by these companies regarding their entry into Florida markets is just as easily attributed to other factors unrelated to the ILECs' Petitions in this case. Thus, AARP argues that our decision on this point is not based upon competent, substantial evidence and should be reconsidered.

The responding parties argue that the record does, in fact, support this Commission's conclusions that support for basic local service provided by access charges does impede competition and that removal of that support will induce enhanced market entry. They maintain that AARP is improperly re-arguing its case and only disputes the weight that we gave to the evidence in the record. Therefore, they argue that the Motion on this point should be denied.

b. Decision

As demonstrated by the discussion at pages 24 - 26 and 38 - 39 of our Order, we gave careful, thoughtful consideration to the record on these points. We considered testimony from experts on economic theory, as well as empirical evidence. Based on that evidence, we reached the well-reasoned conclusions that: (1) the current level of support for basic local service rates provided by access charges makes it economically infeasible for CLECs " . . . to price complementary products and packages in a manner that would allow [the CLEC] to make up for lack of profitability in the provision of basic service"; (2) CLECs, as a result, are unable to effectively bundle products and services for consumers, limiting their ability to serve customers, and particularly residential customers, on a profitable basis; (3) poor profitability, or limited profitability, is the main deterrent to entry; and (4) granting the petitions will remove an obstacle to market entry, providing opportunities for competitors to not only enter new markets, but also to offer new products and services beyond those that they would otherwise be able to offer were the market to remain constrained by the pricing vestiges of the former regulatory regime. Order at pp. 24, 38, 39. We found the testimony of witnesses Gordon, Mayo, and Boccucci particularly persuasive on these points, as well as evidence from our own Competition Report.

Furthermore, we specifically addressed and rejected AARP's and OPC's concerns about the effect access charge reductions would have on competition in view of testimony from Knology's witness Boccucci that granting the ILEC petitions would allow his company to attract and deploy new capital in Florida, thereby offering Florida consumers a choice of providers in the residential and business local exchange markets, as well as a choice of new services. Order at pp. 26, 28, and 38. AARP's attempt to dismiss the example provided by Knology as ". . . a cable TV operation that sells telephone service as an ancillary operation" is not well-taken, because we recognized that Knology, regardless of how characterized, offers consumers a competitive choice in telecommunications providers and services. AARP Motion at p. 7; Order at pp. 29-30.

In sum, AARP has not identified any error in our decision on these points, nor anything we overlooked. AARP simply re-argues its case and disputes the weight given by this Commission to certain witnesses' testimony. As such, AARP's Motion on this aspect of the Order is denied.

5. Benefit to Residential Consumers

a. Arguments

AARP argues that we erred by concluding that residential customers will benefit as a result of granting the ILECs' petitions. AARP notes, in particular, that it believes we erred in our consideration of the impact of the flow-through of the access charge reductions by the IXCs. Specifically, AARP contends that in rejecting arguments made by OPC's witness Ostrander that the Petitioners were unable to quantify the benefits to customers, we erroneously stated that:

> 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.

Order at p. 30. AARP contends this statement is false. AARP argues that the evidence reflects that 90% of the increases will be borne by residential customers, while the IXCs intend to flow through the access charge reductions to all of their customers, including their multi-line business customers. AARP adds that the record shows that more than half of the access charge reductions will be flowed through to IXCs' large customers.

AARP also contends that there was no demonstration that technological advances would occur, or that there would be any increased quality of service. AARP adds that comments in our Order regarding long term reductions in local service rates are similarly unsubstantiated.

In response, AT&T and MCI simply contend that, "AARP's final point of factual mistake is . . . argumentative about the conclusions drawn from the evidence and not a complaint about the evidence itself." Response at p. 17. By and large, the other responses on this point are similar. The respondents further maintain that AARP raises arguments that are not relevant to the inquiry regarding the ILECs' Petitions, because this Commission was not required to consider the degree of benefit that residential customers would receive from the long distance rate reductions. Regardless, each cites to numerous portions of the record that they believe support our conclusions.

b. Decision

Upon consideration, we find that we carefully weighed the evidence presented on this issue, and even considered evidence on benefits derived from long distance rate reductions that

we concluded we were not required to consider.[6] We received and considered testimony that residential customers will benefit as a result of increased competition from having choices regarding providers, services, technologies and pricing. We also heard testimony that customers would benefit from upgraded quality and increased calling volumes as a result of competition and reduced long distance rates. Order at pp. 26-28. In addition, we considered the arguments offered by OPC, AARP, Common Cause, and Sugarmill Woods that no benefit had been shown and that the market would not be enhanced as claimed by the ILECs, because the ILECs' testimony was based on a flawed model. Id. In the end, we weighed the evidence presented and concluded that residential consumers would ultimately experience an overall benefit from the increased competition that will result from the implementation of the ILECs' petitions. AARP has not identified an error in this conclusion, but, again, simply re-argues its case and asks us to re-weigh the evidence. As such, we find it appropriate to reject this aspect of AARP's Motion as well.

We acknowledge, nevertheless, that clarification to a limited degree may be warranted with regard to the sentence in our Order describing our finding 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." The referenced sentence was not intended to indicate that we found that the long distance rate reductions would result in a "dollar for dollar" offset of the local rate increases for residential customers. Rather, as the rest of the Order more clearly explains, we found that many customers would receive the benefit of reduced long distance rates, as well as the elimination of the in-state connection fee, and that even those who did not receive a rate reduction would receive a qualitative benefit from increased availability of bundled offerings, more competitive options for service, and stimulated long distance usage. Ultimately, the sentence criticized by AARP was intended to reflect that the cumulative benefits resulting from granting the ILECs' petitions, including long distance rate reductions, would offset the impact of the local rate increases. Thus, the specific sentence on page 30 of the Order that AARP has referenced is hereby clarified to read as follows:

> We reject that argument, and find that the preponderance of evidence in the proceeding shows that the qualitative and quantitative benefits to residential customers as a whole generated by the resulting decreases in long distance rates, ~~and~~ elimination of the in-state connection fee, increased availability of bundled offerings, more competitive options for service, and stimulated long distance usage will outweigh the increase in local rates.

[6] "While Section 364.164 does not mandate that we consider the degree of benefit to residential customers from long distance rate reductions, our review of the legislative history convinces us that it is within our discretion to do so." Order at p. 30.

IV. CONCLUSION

For all of the foregoing reasons, the Motions for Reconsideration are denied. Neither motion identifies a mistake of fact or law in this Commission's decision. However, we hereby clarify or amend our Order in certain respects, as set forth more specifically in the Section III of this Order. In brief, we clarify or amend our Order by: (1) adding language to confirm that we considered the impact of Section 364.01(4)(a) in reaching our decision; (2) amending the Order to clarify that we delegated to our staff the authority to review the required tariff filings and to issue administrative final orders approving those tariffs; (3) amending the Order to clarify that our approval of certain ILEC commitments was not a precondition to the approval of the ILECs' petitions; and (4) clarifying that in analyzing the benefits to residential consumers of long distance rate reductions, we considered qualitative as well as quantitative benefits. With these amendments and clarifications, we find that we have fully performed our duty and rendered our decision in this consolidated proceeding in accordance with the applicable provisions of Chapter 364, Florida Statutes.

It is therefore

ORDERED by the Florida Public Service Commission that the Motions for Reconsideration filed by the AARP and the Attorney General of the State of Florida are hereby denied. It is further

ORDERED that Order No. PSC-03-1469-FOF-TL, issued December 24, 2003, is hereby amended and clarified as set forth in the body of this Order. It is further

ORDERED that Order No. PSC-03-1469-FOF-TL is otherwise reaffirmed in all other respects. It is further

ORDERED that these Dockets shall remain open pending conclusion of the appellate process.

By ORDER of the Florida Public Service Commission this 4th day of May, 2004.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(SEAL)

BK

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.