

**Matilda Sanders**

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**Sent:** Wednesday, November 24, 2004 12:04 PM  
**To:** Filings@psc.state.fl.us  
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**Subject:** Docket 040604-TL - Verizon Florida Inc.'s Response to AARP's Motion for Reconsideration



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Vz Fl. Inc.'s l

The attached filing is submitted in Docket 040604-TL on behalf of Verizon Florida Inc. by

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(See attached file: 040604 clerk-Vz Fl. Inc.'s Resp. to AARP's Mtn.pdf)

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November 24, 2004 – VIA ELECTRONIC MAIL

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

Re: Docket No. 040604-TL  
Adoption of the National School Lunch Program and an income-based criterion at  
or below 135% of the Federal Poverty Guidelines as eligibility criteria for the  
Lifeline and Link-up programs

Dear Ms. Bayó:

Enclosed is Verizon Florida Inc.'s Response in Opposition to AARP's Motion for  
Reconsideration/Rescheduling and Removal of Funding Mechanism Issue for filing in  
the above matter. Service has been made as indicated on the Certificate of Service. If  
there are any questions regarding this filing, please contact me at 813-483-1256.

Sincerely,

/s Richard A. Chapkis

Richard A. Chapkis

RAC:tas  
Enclosures

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## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that copies of Verizon Florida Inc.'s Response in Opposition to AARP's Motion for Reconsideration/Rescheduling and Removal of Funding Mechanism Issue in Docket No. 040604-TL were sent via U.S. mail on November 24, 2004 to the parties on the attached list.

/s Richard A. Chapkis

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## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Adoption of the National School Lunch Program and an income-based criterion at or below 135% of the Federal Poverty Guidelines as eligibility criteria for the Lifeline and Link-up programs.

Docket No. 040604-TP

**VERIZON FLORIDA INC.'S RESPONSE IN OPPOSITION TO  
AARP'S MOTION FOR RECONSIDERATION/RESCHEDULING AND  
REMOVAL OF FUNDING MECHANISM ISSUE**

Pursuant to Rules 25-22.0376(2) and 28-106.204(1), Florida Administrative Code, Verizon Florida Inc. ("Verizon") submits this Response in Opposition to AARP's Motion for Reconsideration/Rescheduling/and Removal of Funding Mechanism Issue.

1. In its motion for reconsideration, AARP seeks an extension of time to file testimony and a modification of the issues to be considered in this docket. AARP's motion should be denied for several independent reasons.

2. First, AARP's motion for reconsideration is untimely. Parties have ten days to seek reconsideration of a non-final order. Rule 25-22.0376(1), Florida Administrative Code. The Commission issued the Order Establishing Procedure on November 1, 2004, and AARP did not seek reconsideration until 11 days later (*i.e.*, on November 12, 2004). Thus, AARP's motion for reconsideration is late-filed and must be denied.

3. In an attempt to circumvent this filing deadline, AARP purports to seek reconsideration not only of the Order Establishing Procedure, but also of the Order Modifying Procedure, which was issued four days after the Order Establishing Procedure. AARP's reliance on the Order Modifying Procedure is misplaced, however,

because AARP is not seeking reconsideration of any issue addressed in that order. Indeed, that order addresses a single issue – the date of the prehearing conference – and that issue is not the subject of AARP's motion. The issues addressed in AARP's motion – the funding mechanism and the due date of opening testimony – are addressed only in the Order Establishing Procedure. Therefore, the time for AARP to file a motion for reconsideration commenced with the issuance of the Order Establishing Procedure on November 1, 2004 and expired ten days later on November 11, 2004 – one day before AARP filed the motion at issue. Accordingly, AARP's motion for reconsideration should be denied as untimely.

4. Second, AARP's motion for reconsideration fails to meet the standard of review. The standard of review governing a motion for reconsideration is whether the motion identifies a point of fact or law that was overlooked or that the Commission failed to consider in rendering its Order. *Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So.2d 315 (Fla. 1974); *Diamond Cab Co. v. King*, 146 So.2d 889 (Fla. 1962); *Pinegree v. Quaintance*, 394 So.2d 162 (Fla. 1<sup>st</sup> DCA 1981). 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. v. Bevis*, 294 So.2d 315, 317 (Fla. 1974). Here, AARP does not even allege – much less conclusively demonstrate – that the Commission overlooked material issues of fact or law. To the contrary, AARP itself concedes that "reconsideration and its standard of review are arguably inappropriate for addressing changes to this type of procedural decision." AARP Reconsideration Motion

at 2. Accordingly, AARP's motion must be denied because the issues raised therein are not the proper subjects of a motion for reconsideration.

5. Third, AARP's motion for reconsideration violates the rules governing intervention in Commission proceedings. Those rules provide that "[i]ntervenors take the case as they find it." Rule 25-22.039, Florida Administrative Code. In contravention of those rules, AARP attempts to modify aspects of the case – the scope of issues and the due date of opening testimony – that were well established before AARP filed to intervene and sought reconsideration on November 12, 2004. A brief overview of this docket's history makes this clear. On August 31, 2004, several parties protested the Commission's Proposed Agency Action ("PAA") Order. In their protests, two of the parties ("Verizon and the Small LECs"<sup>1</sup>) requested a hearing to determine whether Lifeline providers should be allowed to recover the increased costs associated with expanding the Lifeline eligibility criteria. No party objected to the inclusion of that issue in the docket. On October 14, 2004, several parties filed proposed issues lists with the Commission. Verizon and the Small LECs included the cost recovery issue on their lists. On October 20, 2004, Staff held an issue identification conference, at which: (1) the parties discussed the cost recovery issue, and agreed that it should be included in docket, and (2) Staff announced the due dates for direct and rebuttal testimony. Significantly, counsel for AARP was present and spoke at that conference, but did not object to the proposed issues list or the due date for direct testimony. In the Order Establishing Procedure, issued on November 1, 2004, the Commission adopted the agreed upon issues list and the previously announced due dates for direct and rebuttal

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<sup>1</sup> TDS Telecom d/b/a TDS Telecom/Quincy Telephone, Alltel Florida, Inc., Northeast Florida Telephone Company d/b/a NEFCOM, and GTC, Inc. d/b/a GT Com are referred to herein, collectively, as the Small LECs.

testimony. Given that the issues list and the testimony due dates were established before AARP even sought to intervene in this case on November 12, 2004 – and AARP has given absolutely no explanation regarding why it did not raise objections to the proposed issues list at the issue identification conference and why it is unable to meet the due dates imposed on every other party – AARP cannot now be heard to complain that it should not have to take the case as it finds it.

6. Surprisingly, AARP contends that there has been no “formal opportunity” to protest the scope of issues to be considered or the testimony due dates. AARP Reconsideration Motion at 2. This contention is flatly wrong. As demonstrated above, the parties were afforded several opportunities to be heard on these issues, but AARP – for reasons that remain unexplained – opted not to avail itself of those opportunities. In other words, it was AARP’s decision not to intervene until less than one week before direct testimony was due – not a lack of formal opportunity – that is at the root of AARP’s motion for reconsideration, and thus there is no good reason to modify the Order Establishing Procedure.

7. Fourth, AARP’s motion for reconsideration seeks a ruling that would be unfair and inefficient. It would be unfair to extend the direct testimony due date, as AARP requests, because all of the other parties filed their direct testimony on November 17, 2004. Allowing AARP to file direct testimony after AARP has had the opportunity to review and analyze the other parties’ direct testimony would give AARP an unfair and undeserved advantage. It would be inefficient to modify the scope of issues, as AARP requests, because the Commission has already gone through the process of determining that the cost recovery issue should be considered in this case,

and Verizon and the other parties have already developed testimony on this issue. It would be a waste of the Commission's and the parties' finite resources to require the parties to file a new petition in a separate docket when that issue has been placed squarely before the Commission here.

8. For the foregoing reasons, AARP's motion for reconsideration should be denied.

Respectfully submitted,

s/ Richard A. Chapkis

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November 24, 2004