

MEMORANDUM

November 23, 1998

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TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (McKINNEY) *JCM mcs*

RE: DOCKET NO. 981041-TI - Request for waiver of Rule 25-24.490(2), F.A.C., Bond Requirement, by Time Warner AxS of Florida, L.P., d/b/a Time Warner Communications.

98-1568-FOF

Attached is a **Notice of Proposed Agency Action Order Granting Petition for Waiver of Rule 25-24.490(2), Florida Administrative Code**, to be issued in the above-referenced docket. (Number of pages in order - 4)

JCM/slh
Attachment
cc: Division of Communications
I:981041.jcm

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See 1

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for waiver of
Rule 25-24.490(2), F.A.C., Bond
Requirement, by Time Warner AxS
of Florida, L.P., d/b/a Time
Warner Communications.

DOCKET NO. 981041-TI
ORDER NO. PSC-98-1568-FOF-TI
ISSUED: November 23, 1998

The following Commissioners participated in the disposition of
this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING PETITION FOR WAIVER OF RULE 25-24.490(2),
FLORIDA ADMINISTRATIVE CODE

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service
Commission that the action discussed herein is preliminary in
nature and will become final unless a person whose interests are
substantially affected files a petition for a formal proceeding,
pursuant to Rule 25-22.029, Florida Administrative Code.

On August 18, 1998, Time Warner AxS of Florida, L.P., d/b/a
Time Warner Communications (Time Warner) filed a petition to waive
Rule 25-24.490(2), Florida Administrative Code.

Time Warner's Petition for Waiver of Bond Requirement was
filed on August 18, 1998. The Notice of Petition of Waiver of Bond
Requirement was submitted to the Secretary of State for publication
in the Florida Administrative Weekly on September 9, 1998. The
comment period ended on October 2, 1998, and no comments were
submitted.

Rule 25-24.490(2), Florida Administrative Code, Customer
Relations; Rules Incorporated, states:

DOCUMENT NUMBER DATE

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FILED RECORDS REPORTING

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An interexchange company may require a deposit as a condition of service and may collect advance payments for more than one month of service if it maintains on file with the Commission a bond covering its current balance of deposits and advance payments (for more than one month's service). A company may apply to the Commission for a waiver of the bond requirement by demonstrating that it possesses the financial resources and income to provide assurance of continued operation under its certificate over the long term.

Accordingly, we find that Time Warner has demonstrated adequate financial resources and income to assure the longevity of its operations under its certificate.

Additionally, Time Warner has to satisfy the requirements for a waiver under 120.542, Florida Statutes. This statute requires an applicant requesting a petition to demonstrate that the purpose of the underlying statute will be or has been achieved by other means. Further, the applicant must show that the application of the rule would create a substantial hardship or would violate principles of fairness.

We find that Time Warner has met the requirements of Chapter 120.542, Florida Statutes. Time Warner has demonstrated a bond is not necessary to protect consumers' interests in this situation because of its substantial financial resources and overall stability. We also believe our enforcement of the bond requirement would result in substantial economic hardship for the company. Hardship is measured on a case-by-case basis. In this particular case, enforcement of the bond requirement would force Time Warner to invest a great amount of money in a bond and its associated expenses. Therefore, we find that Time Warner's financial stability and size does not make it necessary to post a bond in order to protect the public interest.

Based on the foregoing, it is

ORDERED that Time Warner AxS of Florida, L.P., d/b/a Time Warner Communications' Petition for Waiver of Rule 25-24.490(2), Florida Administrative Code, is hereby granted. It is further

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ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 23rd day of November, 1998.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: _____

Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

JCM

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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on December 14, 1998.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting 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 of the effective date 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.