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January 25, 1996

Ms. Blanca Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

via Hand Delivery

Re: Resolution of Petition(s) to establish 1995 rates, terms, and conditions for interconnection involving local exchange companies and alternative local exchange companies pursuant to Section 364.162, Florida Statutes; Docket No. 950985-TP

Dear Ms. Bayo:

Enclosed for filing please find an original and fifteen copies of Time Warner AxS of Florida, L.P.'s and Digital Media Partners' Posthearing Brief. You will also find a copy of this letter and a diskette in Word Perfect 5.1 format enclosed. Please date-stamp the copy of this letter to indicate that the original was filed and return to me.

If you have any questions regarding this matter, please feel free to contact me.

Respectfully,

Sue E. Weiske for

Sue E. Weiske

- ACK
- APA _____
- ATP _____
- CAP _____
- SEW/tmz
- Enclosures

cc: All Parties of Record (w/ enclosure)

- CTR _____
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Resolution of Petition(s)) Docket No. 950985-TP
to establish nondiscriminatory) Filed: January 25, 1996
rates, terms, and conditions for)
interconnection involving local)
exchange companies and alternative)
local exchange companies pursuant)
to Section 364.162, Florida Statutes)
)

POSTHEARING BRIEF OF TIME WARNER AXS OF FLORIDA, L.P.
AND DIGITAL MEDIA PARTNERS

Time Warner AxS of Florida, L.P., and Digital Media Partners (collectively, "Time Warner"), pursuant to Florida Administrative Code Rule 25-22.056, respectfully submits the following Posthearing Brief in the above-captioned docket to the Florida Public Service Commission ("FPSC" or "Commission").

I. TIME WARNER'S BASIC POSITION

Through the 1995 rewrite of Chapter 364, the Florida Legislature has positioned Florida to lead the nation in the development of a competitive telecommunications market. Pursuant to the statutory rewrite, the Commission has an affirmative duty to promote competition by encouraging new entrants into telecommunications markets in Florida.¹ Further, the Legislature has long recognized that the public is best served by having interconnected networks.²

To ensure that this continues after there are multiple providers of local exchange service, the Legislature has mandated

¹ Section 364.01(4)(d), Florida Statutes (1995).

² Section 364.16(1), Florida Statutes.

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that incumbent local exchange companies must provide access to, and interconnection with, their telecommunications facilities to any other provider of local exchange telecommunications services requesting such access and interconnection at nondiscriminatory prices, rates, terms, and conditions.³ The Florida Legislature encouraged parties to negotiate an agreement for interconnection, by laying out a time period in which the new ALEC is to negotiate mutually acceptable prices, terms, and conditions of interconnection (and for the resale of services and facilities).⁴ If after this time period a negotiated price is not established, the Legislature has set up a procedure by which either party could file a petition with the Commission to establish nondiscriminatory rates, terms, and conditions of interconnection (and for the resale of services and facilities), which would be resolved by the Commission within 120 days of the filing.⁵

Time Warner AxS, L.P. and Digital Media Partners hold certificate nos. 3167 and 3135, respectively. On August 1, 1995, each notified the Commission of its intent to provide alternative local exchange service, and each is authorized to provide local exchange service effective January 1, 1995. Time Warner began interconnection negotiations with BellSouth Telecommunications, Inc. (BellSouth) on August 9, 1995, and after not reaching a mutually acceptable agreement on the rates, terms, and prices for

³ Section 364.16((3), Florida Statutes (1995).

⁴ Section 364.162(1) and (6), Florida Statutes (1995); Devine TR 52.

⁵ Section 364.162(3), Florida Statutes (1995).

local interconnection, on November 20, 1995 Time Warner filed with the Commission a Petition to Establish Nondiscriminatory Rates, Terms and Conditions for Interconnection between Time Warner and BellSouth.

After the November 20, 1995 Petition was filed, Time Warner continued discussions with BellSouth, both individually and through the Florida Cable Telecommunications Association (FCTA). Time Warner agreed to a deal in total, which included rates, terms, and conditions for interconnection, that would enable it to get into business. On December 8, 1995 BellSouth, the FCTA, Continental Cablevision, Inc. and Time Warner filed a Joint Motion for Acceptance of Stipulation and Agreement and For Partial Stay of Proceedings requesting that the Commission approve a proposed Stipulation and Agreement ("Agreement"). One of the provisions in the Agreement is that if administrative costs associated with the exchange of local traffic are greater than the net monies exchanged, the parties will exchange local traffic on an in-kind basis. The Commission approved this Agreement, agreeing that it was in the public interest, as memorialized in Order No. PSC-96-0082-AS-TP ("Order").

Interconnection with the LEC is an essential element for an ALEC to provide service.⁶ This is true for all ALECs. Even if the networks of various ALECs are different, the need for interconnection is identical. The staff asked the witnesses representing MFS and MCI Metro in this docket how their networks

⁶ Devine TR 50, 51; Bannerjee TR 671.

were similar to or different from those of cable companies.⁷ If this was to lay the groundwork for differing treatment between various ALECs, Time Warner submits that the varying network design of new players has no bearing on the need for interconnection with the LEC or on the rates, terms, and conditions of that interconnection. The service in question is local call termination by BellSouth. In this sense, all ALECs are alike.

However, Time Warner's ability to serve its potential customers is predicated on having reasonable interconnection with the incumbent LECs. Time Warner settled with BellSouth because, although not perfect, overall Time Warner believed it was a deal which would allow Time Warner to get into business in BellSouth's territory. There has been no showing that the cost of interconnection between BellSouth and any other ALECs is different, nor that the need for interconnection is different. Thus, there should be no difference in the treatment for all ALECs, since Time Warner is similarly situated to an MFS or MCI Metro in regard to its need for interconnection. Time Warner is concerned that a rate, term, or condition for interconnection with BellSouth established in this proceeding might inadvertently be discriminatory or anticompetitive for Time Warner.

⁷ Devine TR 262, Price TR 354.

II. TIME WARNER'S SPECIFIC POSITIONS

1. WHAT ARE THE APPROPRIATE RATE STRUCTURES, INTERCONNECTION RATES, OR OTHER COMPENSATION ARRANGEMENTS FOR THE EXCHANGE OF LOCAL AND TOLL TRAFFIC BETWEEN THE RESPECTIVE ALECS AND SOUTHERN BELL?

** The Commission has approved a settlement of local interconnection issues between BellSouth and various other ALECs. The Commission should establish no rate, term or condition for interconnection with BellSouth that is anticompetitive or discriminatory and should require BellSouth to impute the price of essential elements into its local service rates. **

In any local interconnection compensation arrangement, the Commission should ensure that new ALECs are not caught in a price squeeze. A price squeeze occurs where a firm with a monopoly over an essential input needed by other firms to compete with the first firm in providing services to end users sells the input to its competitor at a price that prevents the end user competitor from meeting the end user price of the first firm, despite the fact that the competitor is just as efficient as the first firm. A price squeeze is anticompetitive and deters entry into the market because by raising entrants' costs, it forces an entrant who wishes to match the incumbent's prices to absorb losses as a price of entry.⁸ The Commission should insure no price squeeze will occur by requiring the incumbent LEC to impute to itself the prices it

⁸ Devine TR 81,83, Cornell TR 382.

charges ALECs for essential monopoly inputs.⁹ Southern Bell's witness Bannerjee proposed that only the contribution be imputed.¹⁰ However, this would allow the incumbent LEC to provide its bottleneck monopoly inefficiently and would enable the incumbent to charge a lower price not by its own greater efficiency, but due to the ability of the incumbent to force inefficiency on the entrant, according to MCI Metro's witness Cornell.¹¹ BellSouth should be required to impute the full price of all essential elements into its retail prices.

2. IF THE COMMISSION SETS RATES, TERMS, AND CONDITIONS FOR INTERCONNECTION BETWEEN THE RESPECTIVE ALECS AND SOUTHERN BELL, SHOULD SOUTHERN BELL TARIFF THE INTERCONNECTION RATE(S) OR OTHER ARRANGEMENTS?

****** The Commission has approved a settlement of local interconnection issues between BellSouth and various other ALECs. Because local interconnection is an essential service, the Commission should establish no rate, term or condition for interconnection with BellSouth in this proceeding that is anticompetitive or discriminatory. ******

⁹ Devine TR 83, Bannerjee TR 671.

¹⁰ Bannerjee TR 668.

¹¹ Cornell TR 725.

3. WHAT ARE THE APPROPRIATE TECHNICAL AND FINANCIAL ARRANGEMENTS WHICH SHOULD GOVERN INTERCONNECTION BETWEEN THE RESPECTIVE ALECS AND SOUTHERN BELL FOR THE DELIVERY OF CALLS ORIGINATED AND/OR TERMINATED FROM CARRIERS NOT DIRECTLY CONNECTED TO THE RESPECTIVE ALEC'S NETWORK?

** The Commission has approved a settlement of local interconnection issues between BellSouth and various other ALECs. Because local interconnection is an essential service, the Commission should establish no rate, term or condition for interconnection with BellSouth in this proceeding that is anticompetitive or discriminatory. **

4. WHAT ARE THE APPROPRIATE TECHNICAL AND FINANCIAL REQUIREMENTS FOR THE EXCHANGE OF INTRALATA 800 TRAFFIC WHICH ORIGINATES FROM THE RESPECTIVE ALECS' CUSTOMER AND TERMINATES TO AN 800 NUMBER SERVED BY OR THROUGH SOUTHERN BELL?

** The Commission has approved a settlement of local interconnection issues between BellSouth and various other ALECs. Because local interconnection is an essential service, the Commission should establish no rate, term or condition for interconnection with BellSouth in this proceeding that is anticompetitive or discriminatory. **

5a). WHAT ARE THE APPROPRIATE TECHNICAL ARRANGEMENTS FOR THE INTERCONNECTION OF THE RESPECTIVE ALECS' NETWORK TO SOUTHERN BELL'S 911 PROVISIONING NETWORK SUCH THAT THE RESPECTIVE ALECS' CUSTOMERS ARE ENSURED THE SAME LEVEL OF 911 SERVICE AS THEY WOULD RECEIVE AS A CUSTOMER OF SOUTHERN BELL?

**** The Commission has approved a settlement of local interconnection issues between BellSouth and various other ALECs. Because local interconnection is an essential service, the Commission should establish no rate, term or condition for interconnection with BellSouth in this proceeding that is anticompetitive or discriminatory. ****

5a). WHAT PROCEDURES SHOULD BE IN PLACE FOR THE TIMELY EXCHANGE AND UPDATING OF THE RESPECTIVE ALECS CUSTOMER INFORMATION FOR INCLUSION IN APPROPRIATE E911 DATABASES?

**** The Commission has approved a settlement of local interconnection issues between BellSouth and various other ALECs. Because local interconnection is an essential service, the Commission should establish no rate, term or condition for interconnection with BellSouth in this proceeding that is anticompetitive or discriminatory. ****

6. WHAT ARE THE APPROPRIATE TECHNICAL AND FINANCIAL REQUIREMENTS FOR OPERATOR HANDLED TRAFFIC FLOWING BETWEEN THE RESPECTIVE ALECS AND SOUTHERN BELL INCLUDING BUSY LINE VERIFICATION AND EMERGENCY INTERRUPT SERVICES?

** The Commission has approved a settlement of local interconnection issues between BellSouth and various other ALECs. Because local interconnection is an essential service, the Commission should establish no rate, term or condition for interconnection with BellSouth in this proceeding that is anticompetitive or discriminatory. **

7. WHAT ARE THE APPROPRIATE ARRANGEMENTS FOR THE PROVISION OF DIRECTORY ASSISTANCE SERVICES AND DATA BETWEEN THE RESPECTIVE ALECS AND SOUTHERN BELL?

** The Commission has approved a settlement of local interconnection issues between BellSouth and various other ALECs. Because local interconnection is an essential service, the Commission should establish no rate, term or condition for interconnection with BellSouth in this proceeding that is anticompetitive or discriminatory. **

8. UNDER WHAT TERMS AND CONDITIONS SHOULD SOUTHERN BELL BE REQUIRED TO LIST THE RESPECTIVE ALECS' CUSTOMERS IN ITS WHITE AND YELLOW PAGES DIRECTORIES AND TO PUBLISH AND DISTRIBUTE THESE DIRECTORIES TO THE RESPECTIVE ALECS' CUSTOMERS?

** The Commission has approved a settlement of local interconnection issues between BellSouth and various other ALECs. Because local interconnection is an essential service, the Commission should establish no rate, term or condition for interconnection with BellSouth in this proceeding that is anticompetitive or discriminatory. **

9. WHAT ARE THE APPROPRIATE ARRANGEMENTS FOR THE PROVISION OF BILLING AND COLLECTION SERVICES BETWEEN THE RESPECTIVE ALECS AND SOUTHERN BELL, INCLUDING BILLING AND CLEARING CREDIT CARD, COLLECT, THIRD PARTY AND AUDIOTEXT CALLS?

** The Commission has approved a settlement of local interconnection issues between BellSouth and various other ALECs. Because local interconnection is an essential service, the Commission should establish no rate, term or condition for interconnection with BellSouth in this proceeding that is anticompetitive or discriminatory. **

10. WHAT ARRANGEMENTS ARE NECESSARY TO ENSURE THE PROVISION OF CLASS/LASS SERVICES BETWEEN THE RESPECTIVE ALECS AND SOUTHERN BELL'S NETWORKS?

** The Commission has approved a settlement of local interconnection issues between BellSouth and various other ALECs. Because local interconnection is an essential service, the Commission should establish no rate, term or condition for interconnection with BellSouth in this proceeding that is anticompetitive or discriminatory. **

11. WHAT ARE THE APPROPRIATE ARRANGEMENTS FOR PHYSICAL INTERCONNECTION BETWEEN THE RESPECTIVE ALECS AND SOUTHERN BELL, INCLUDING TRUNKING AND SIGNALING ARRANGEMENTS?

** The Commission has approved a settlement of local interconnection issues between BellSouth and various other ALECs. Because local interconnection is an essential service, the Commission should establish no rate, term or condition for interconnection with BellSouth in this proceeding that is anticompetitive or discriminatory. **

12. TO THE EXTENT NOT ADDRESSED IN THE NUMBER PORTABILITY DOCKET, DOCKET NO. 950737-TP, WHAT ARE THE APPROPRIATE FINANCIAL AND OPERATIONAL ARRANGEMENTS FOR INTEREXCHANGE CALLS TERMINATED TO A NUMBER THAT HAS BEEN "PORTED" TO THE RESPECTIVE ALECS?

** The Commission has approved a settlement of local interconnection issues between BellSouth and various other ALECs.

Because local interconnection is an essential service, the Commission should establish no rate, term or condition for interconnection with BellSouth in this proceeding that is anticompetitive or discriminatory. **

13. WHAT ARRANGEMENTS, IF ANY, ARE NECESSARY TO ADDRESS OTHER OPERATIONAL ISSUES?

** The Commission has approved a settlement of local interconnection issues between BellSouth and various other ALECs. Because local interconnection is an essential service, the Commission should establish no rate, term or condition for interconnection with BellSouth in this proceeding that is anticompetitive or discriminatory. **

14. WHAT ARRANGEMENTS, IF ANY ARE APPROPRIATE FOR THE ASSIGNMENT OF NXX CODES TO THE RESPECTIVE ALECS?

** The Commission has approved a settlement of local interconnection issues between BellSouth and various other ALECs. Because local interconnection is an essential service, the Commission should establish no rate, term or condition for interconnection with BellSouth in this proceeding that is anticompetitive or discriminatory. **

**IV. APPLICATION OF NEW LEGISLATION TO SIMILARLY
SITUATED NEW PROVIDERS**

The prohibition of interconnection discrimination exists in several places in the recently enacted legislation on telecommunications.¹² A clear reading of the new legislation regarding interconnection does not permit the Commission to approve one set of interconnection rates, terms and conditions for stipulating ALECs and another set of interconnection rates, terms and conditions for non-stipulating ALECs. There is no evidence in this proceeding that interconnection with BellSouth's facilities differs among ALECs. In fact, the only evidence in the record indicates that all the new entrants who are parties to this case are similarly situated in requiring interconnection.

Time Warner's concern is largely in response to the recent Order issued by this Commission approving the Agreement.¹³ There is confusing dicta in the Order that implies a two-tiered rate structure for interconnection is permissible and legal. A Commission decision to treat various ALECs differently regarding interconnection rates discourages negotiation and encourages litigation. Time Warner signed the Agreement with BellSouth because the Agreement, while unsatisfactory in some specific areas, overall allowed it to begin business in BellSouth's area. The record in this case does not indicate that MFS and MCI Metro could not also do business under the terms of the Agreement. Certainly

¹² See Sections 364.16(2) and (3), and Sections 364.162(2) and (3).

¹³ See Order No. PSC-96-0082-AS-TP.

the new legislation encourages negotiated settlements between parties regarding local interconnection.

The Commission's recent Order approving the Agreement permits a negotiated number portability rate higher than the ordered rate that it considers a benchmark. The Commission's explanation that this rate must be viewed as part of a larger package begs the attempt of this Commission to rationalize discrimination among new entrants.

Additionally, Time Warner is concerned about language in the Order about the effect of the agreement's approval on the resolution of issues in this docket. Pages 4 and 5 of the Order state:

Approving the settlement as to those parties that signed recreates the possibility that there may be two different regimes for local exchange competitors competing with BellSouth. Those entities that signed the agreement would have one set of rates, terms and conditions for Universal Service/Carrier of Last Resort, Number Portability, Interconnection, and Unbundling and Resale, while those that did not sign the agreement would receive the rates, terms and conditions set by the Commission after hearing.


Adopting a two tiered approach on interconnection clearly leads to discriminatory treatment. Time Warner strongly disagrees with the Commission's attempt to sanction discriminatory treatment for differing rates between new entrants unless such rates are from the Commission's perspective "clearly unreasonably discriminatory." Certainly the Commission does not intend to carry out the mandate of the new legislation in any manner that encourages discrimination.

Time Warner cannot agree that the appropriate standard to determine discriminatory treatment is whether differences are "clearly unreasonably discriminatory". The legislation requires nondiscriminatory rates, terms conditions for interconnection. Such a clear requirement is inconsistent with the concept of "clearly unreasonably discriminatory."

Because interconnection is an essential bottleneck monopoly input, it is crucial to every ALEC's ability to compete. Any discriminatory treatment regarding interconnection raises the specter of anticompetitive barriers in interconnection arrangements.

Finally, the Commission's Order enabling an affected party to file a complaint appears to ignore clear statutory language prohibiting discrimination regarding rates, terms and conditions. Competition will not be promoted, nor consumers benefitted by any type of two-tiered approach to local interconnection.

RESPECTFULLY SUBMITTED this 25th day of January, 1996.



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CERTIFICATE OF SERVICE
DOCKET NO. 950985-TP

I HEREBY CERTIFY that a true and correct copy of the Posthearing Brief of Time Warner AxS of Florida, L.P. and Digital Media Partners has been served by either *Federal Express or Hand Delivery on this 25th day of January, 1996, to the following parties of record:

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