

930  
21

# PENNINGTON, CULPEPPER, MOORE, WILKINSON, DUNBAR & DUNLAP, P.A.

## ATTORNEYS AT LAW

BARBARA D. AUGER  
WILLIAM W. BLUE  
D. ANDREW BYRNE †  
BRAM D. E. CANTER  
ROBERT CINTRON, JR.  
ROBERT S. COHEN  
CHARLES L. COOPER, JR.  
BRUCE CULPEPPER  
PETER M. DUNBAR  
DAVISSON F. DUNLAP, JR.  
MARTHA J. EDENFIELD  
SHARON N. JACOBS  
EDGAR M. MOORE

E. MURRAY MOORE, JR.  
JOHN G. PELHAM  
CARL R. PENNINGTON, JR., P.A.  
C. EDWIN RUDE, JR.  
DARREN A. SCHWARTZ  
CYNTHIA S. TUNNICLIFF  
WILLIAM E. WHITNEY  
BEN H. WILKINSON  
CATHI C. WILKINSON  
† Also Admitted in Tennessee

OF COUNSEL  
R. STUART HUFF, P.A.  
Coral Gables, Florida  
CHRISTOPHER W. KANAGA  
(Admitted in Massachusetts & Colorado Only)  
SCOTT MADDOX  
WILLIAM VANDERCREEK  
(Admitted in Texas & Iowa Only)  
SPECIAL CONSULTANTS  
JOHN F. BLACK, III\*  
RANDY MILLER\*  
DAVID L. SWAFFORD\*  
\*Not A Member Of The Florida Bar

215 SOUTH MONROE STREET  
2ND FLOOR  
TALLAHASSEE, FLORIDA 32301

(904) 222-3533  
FAX (904) 222-2126  
E-Mail Phlaw@Supernet.net

1002 WEST 23RD STREET, SUITE 350  
PANAMA CITY, FLORIDA 32405  
(904) 769-7864

REPLY TO:  
P.O. BOX 10095  
TALLAHASSEE, FL 32302-2095

April 5, 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

**ORIGINAL  
FILE COPY**

Re: Resolution of Petition(s) to Establish  
Nondiscriminatory Rates, Terms, and Conditions for  
Resale Involving Local Exchange Companies and  
Alternative Local Exchange Companies Pursuant to  
Section 364.161, Florida Statutes; Docket No.  
950984-TP

Dear Ms. Bayo:

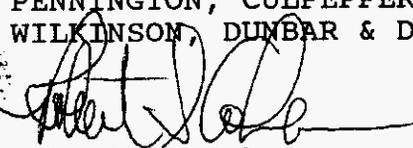
Enclosed for filing please find an original and fifteen copies  
of Time Warner AxS of Florida, L.P.'s and Digital Media Partners'  
Posthearing Brief for the above-referenced docket. You will also  
find a copy of this letter and a diskette in Word Perfect 5.1  
format enclosed. Please date-stamp the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

- ACK
- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU base
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG 1
- LIN 5 RSC/tmz  
Enclosures
- OPC \_\_\_\_\_
- RCH \_\_\_\_\_
- SEC 1
- WAS \_\_\_\_\_
- OTH \_\_\_\_\_

Respectfully,

PENNINGTON, CULPEPPER, MOORE,  
WILKINSON, DUNBAR & DUNLAP, P.A.

  
Robert S. Cohen

RECEIVED & FILED

EPSC-BUREAU OF RECORDS

cc: All Parties of Record (w/ enclosure)

DOCUMENT NUMBER-DATE

04011 APR-5 96

EPSC-RECORDS/REPORTING

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Resolution of petition(s) ) Docket No. 950984-TP  
to establish nondiscriminatory rates, ) Filed: April 5, 1996  
terms, and conditions for )  
resale involving local )  
exchange companies and alternative )  
local exchange companies pursuant to )  
Section 364.161, Florida Statutes. )  
\_\_\_\_\_ )

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

COMES NOW, Time Warner AxS of Florida, L.P. and Digital Media Partners (collectively "Time Warner"), and pursuant to Rule 25-22.038, Florida Administrative Code, and the Order Establishing Procedure, respectfully submits its Posthearing Statement in the above-captioned docket to the Florida Public Service Commission ("Commission" or "FPSC").

**I. TIME WARNER'S BASIC POSITION**

Time Warner believes that for local competition to develop and be sustained, there must be facilities-based alternatives to the incumbent local exchange companies. Chapter 364.161, Florida Statutes, requires local exchange companies, upon request, to unbundle all of their network features, functions, and capabilities, including access to signaling data bases, systems and routing processes, and offer these features to any other telecommunications provider requesting them for resale. Thus, Time Warner supports links, ports, loop transport and loop concentration being unbundled and tariffed. Other elements that need to be unbundled should be done by request.

DOCUMENT NUMBER-DATE  
04011 APR-5 1996  
FPSC-RECORDS/REPORTING

1783

However, Time Warner believes that in order for local competition to develop and be sustained, the Commission should act to encourage facilities-based competition. A local competitive market based only on resale of LEC facilities will not provide consumers with all of the benefits of a competitive market. To the extent that a new entrant can provide local service by purchasing heavily discounted network elements, without taking the risk of making an investment in the network, other new facilities-based providers are disadvantaged. Thus, facilities-based providers should not be required to price their unbundled services at a discount. Therefore, Time Warner opposes the recommendation of MCImetro Access Transmission Services, Inc. ("MCImetro"), Metropolitan Fiber Systems of Florida, Inc. ("MFS") and AT&T Communications of the Southern States, Inc. ("AT&T") to price the unbundled loop at Total Service Long Run Incremental Cost ("TSLRIC"). Further, until universal service reform is implemented, removing the contribution from existing services could have the effect of increasing the likelihood of LEC requests for universal service support.

Time Warner does believe, however, that LECs should be required to impute the price of their unbundled service elements into their basic service rates. Time Warner disagrees with the imputation methodology recommended by Sprint United/Centel and GTE, and supports MCImetro's approach regarding imputation. Time Warner believes that MCImetro's approach is the only appropriate way to avoid a price squeeze for new entrants, which would serve as a competitive advantage to the incumbent LEC. Time Warner supports MCImetro witness Cornell's recommendation that all essential inputs be imputed into Sprint United/Centel and

GTE local exchange rates at the tariffed rates, plus other non-essential functions should be added in at cost or TSLRIC. In the alternative, (given that local exchange rates are capped), Time Warner supports a reduction in the tariffed rates of essential inputs to avoid a price squeeze. Such an imputation test, however, does not require that unbundled loops, for example, be priced at cost or TSLRIC.

Time Warner also supports the testimony of both MCImetro, AT&T and MFS that Sprint United/Centel and GTE should provide ordering, repair and testing and any other administrative systems needed on an automated basis, where possible, to ascertain and further the goals of competition with maximum effects to consumers. Furthermore, the foregoing requirements imposed on Sprint United/Centel and GTE should not result in additional costs to any ALEC.

## **II. TIME WARNER'S SPECIFIC POSITIONS**

**ISSUE 1: WHAT ELEMENTS SHOULD BE MADE AVAILABLE BY SPRINT UNITED/CENTEL AND GTE TO MFS-FL ON AN UNBUNDLED BASIS (E.G., LINK ELEMENTS, PORT ELEMENTS, LOOP CONCENTRATION, LOOP TRANSPORT)?**

**\*\*Unbundled loops, ports, loop concentration and loop transport should be offered. In addition, other elements requested by ALECs and determined to be technically and economically feasible should be made available.\*\***

Time Warner is aware that some new entrants like MCImetro and MFS desire unbundled loops, ports, loop concentration and loop transport. Time Warner does not oppose these elements being unbundled in this proceeding since the Commission,

by its previous decision in this docket, believes these features and functions are essential to the provision of local exchange service and will further the goal of competition without additional costs. This level of unbundling will provide consumers with alternatives that will result in innovative technology and lower prices, thus promoting competition and benefiting consumers.

**ISSUE 2: WHAT ARE THE APPROPRIATE TECHNICAL AGREEMENTS FOR THE PROVISION OF SUCH UNBUNDLED ELEMENTS?**

**\*\*All unbundled elements of the existing loop ordered for resale should be made available at interconnection points between the Sprint United/Centel and ALEC network and the GTE and ALEC network, according to industry standards.\*\***

This availability of unbundled functions will promote competition and benefit consumers.

**ISSUE 3: WHAT ARE THE APPROPRIATE FINANCIAL ARRANGEMENTS FOR EACH SUCH UNBUNDLED ELEMENT?**

**\*\*The price for the elements should cover the incumbent's incremental costs, plus provide sufficient markup to encourage other facilities-based entrants to make network investments. In addition, the LECs' retail basic services should pass an imputation test.\*\***

Time Warner agrees with witness Poag testifying on behalf of Sprint United/Centel that it would be inappropriate and discriminatory to offer unbundled elements to ALECs at prices that are different from the prices other providers (IXCs,

AAVs, cellular carriers, etc.) pay for these same elements or services. (TR 517) As he explained, it is not possible to lower the prices paid for these services by other providers because these prices provide a cross subsidy that permits local exchange rates to be artificially lower than would otherwise be the case. (TR 518)

In addition, as Time Warner stated in its summary of its basic position, the pricing of unbundled loops at TSLRIC provides no incentive to promote competition for facilities based providers. (Poag TR at 536) To require the incumbent LECs, in this case Sprint United/Centel and GTE, to offer unbundled loops at cost or TSLRIC discourages facilities-based alternatives to the LECs. An aggressive resale policy to promote simple resale or rebranding of local exchange service elements will operate to deter the development of facilities-based competition and discourage entry by ALECs like Time Warner.

Time Warner also agrees with the statement of GTE witness Trimble that the level of prices set for the unbundled loop will be a crucial factor to decisions to enter the market as an ALEC in an attempt to attract customers. Time Warner, as a facilities-based new entrant, has no incentive to invest in facilities to serve end user customers if it would be more rational to resell unbundled loops provided by the LECs at cost.

Witness Trimble also disagreed with MCImetro witness Dr. Cornell as to the timing of deaveraging unbundled loops. He pointed out that unbundled loops should not be deaveraged without deaveraging retail rates. Without these steps occurring concurrently, there is enormous pressure put on the incumbent LECs and their current rate design. (TR at 432-433) Time Warner concurs with and supports the

recommendation of witness Trimble that deaveraging should be done in conjunction with universal service reform. (TR at 433) Any proposals for deaveraging are time consuming and complicated to implement. To deaverage loops at this time is premature and will be a disservice to competition, especially to facilities-based competition.

If a reseller can offer for sale unbundled loops at a slight percentage above cost, there is little incentive for facilities-based new entrants to build out their network. In fact, it likely will also call into question the return on such an investment, and make such capital development more difficult for such a new entrant.

Time Warner supports the recommendation of witness Cornell on behalf of MCImetro that the proper imputation standard is to require the incumbent local exchange carriers to recover from its retail service the price it charges entrants for bottleneck monopoly inputs plus all the remaining costs of providing the retail service. (TR at 235) One way to avoid a price squeeze for new entrants is to require that all essential inputs be imputed into Sprint United/Centel's and GTE's local exchange rates at the tariffed rates, plus other non-essential functions should be added in at cost or TSLRIC.

An alternative for those situations in which local exchange rates are capped, is to reduce the tariffed rates of essential inputs to avoid a price squeeze. However, Time Warner disagrees with Dr. Cornell's recommendation that unbundled loops should be priced at cost or TSLRIC and does not believe that such pricing is required to meet an imputation standard. In addition, another approach as to the situation in which local exchange rates are frozen would be to rely upon a universal

service fund to make up the difference rather than increasing the LEC's rate for basic local service, which may have a negative result as to costs imposed to the retail customer. Dr. Cornell recommends that a competitively neutral universal service fund could be applied to the resultant gap for the average TSLRIC for the unbundled loop. (TR at 255)

Thus, it is consistent with public policy to require Sprint United/Centel and GTE to avoid price squeezes by applying Dr. Cornell's approach to an imputation test. This requires essential inputs at retail tariffed rates and other components of the loop added at cost into the price floor of Sprint United/Centel's or GTE's local exchange rates. In the alternative, the Commission should reduce the rates charged for the unbundled components. However, such an avoidance of price squeeze does not require that these elements be priced at TSLRIC, nor, in a situation where retail prices may be frozen at a level less than TSLRIC, does it insure that no price squeeze will occur. Otherwise, a competitively neutral universal service fund could cover the gap between cost and price of the unbundled loop.

Time Warner concurs with statements by GTE witness Duncan that the rates proposed by GTE provide no incentive to enter local exchange markets by providers installing their own facilities. Although such entry encourages some level of duplication (as noted by Commissioner Deason) if such duplication is meeting new demand, witness Duncan indicated such behavior would benefit society as a whole. (TR at 461) As Witness Guedel for AT&T states, it must be recognized that the general availability of facility-based competition predicated upon the unbundling of the loops may not develop in the near future. (TR at 312) If pricing proposals of

MCImetro, MFS and AT&T requiring the unbundled loop be offered at TSLRIC are adopted, then certainly this Commission will guarantee the absence of facilities-based competition, and the end goal of servicing the retail consumer.

**ISSUE 4: WHAT ARRANGEMENTS, IF ANY, ARE NECESSARY TO ADDRESS OTHER OPERATIONAL ISSUES?**

**\*\*Sprint United/Centel and GTE should provide ordering, repair, and testing and only other administrative systems needed on an automated basis, where possible, without extraneous costs or contribution to the ALEC or from its customers.\*\***

The implementation of systems to enable competition is part of doing business in the competitive environment. The LECs should not be permitted to shift the implementation costs of doing business to the ALECs. (Devine at TR 63)

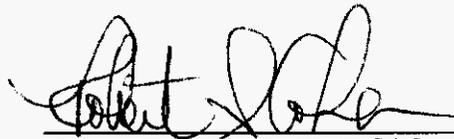
**CONCLUSION**

Time Warner believes that for local competition to develop and be sustained, there must be facilities-based alternatives to the incumbent local exchange companies. However, Time Warner believes that facilities-based providers should not be required to price their retail services at a discount for use by resellers. An aggressive resale policy to promote simple resale of local exchange service elements will operate to deter the development of facilities-based competition.

Time Warner further recognizes that existing LEC services such as special access provide a contribution toward the preservation of universal services and carrier of last resort obligations, and that until the conclusion of rate and universal

service reform, it may not be appropriate for the LECs to lose this contribution. However, the price for unbundled elements provided by the LECs must pass an imputation test, as recommended by MCImetro witness Cornell, to ensure that new entrants are not caught in a price squeeze.

**RESPECTFULLY SUBMITTED** this 5th day of April, 1996.



**PETER M. DUNBAR, ESQ.**

Florida Bar No. 146594

**ROBERT S. COHEN, ESQ.**

Florida Bar No. 347353

**PENNINGTON, CULPEPPER, MOORE,  
WILKINSON, DUNBAR & DUNLAP, P.A.**

Post Office Box 10095 (32302)

215 S. Monroe Street, 2nd Floor

Tallahassee, Florida 32301

(904) 222-3533

(904) 222-2126 (facsimile)

Attorneys for Time Warner AxS of  
Florida, L.P. and Digital Media Partners

**CERTIFICATE OF SERVICE**  
**DOCKET NO. 950984-TP**

I **HEREBY CERTIFY** that a true and correct copy of Posthearing Brief of Time Warner AxS of Florida, L.P. and Digital Media Partners has been served by U.S. Mail, Hand Delivery or Federal Express this 5th day of April, 1996, to the following parties of record:

Ms. Jill Butler  
Florida Regulatory Director  
Time Warner Communications  
2773 Red Maple Ridge  
Tallahassee, FL 32301  
(Hand Delivery)

Donna Canzano, Staff Counsel  
Florida Public Service Comm.  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850  
(Hand Delivery)

Sue E. Weiske, Senior Counsel  
Law Department  
Time Warner Communications  
160 Inverness Drive West  
Englewood, Colorado 80112  
(Digital Media)  
(Federal Express)

Richard Gerstemeier  
2251 Lucien Way, Suite 320  
Maitland, FL 32751-7023  
(Time Warner)  
(Federal Express)

Randolph Fowler  
c/o Hyperion  
Telecommunications, Inc.  
2570 Boyce Plaza Road  
Pittsburgh, PA 15241  
(AlterNet)  
(Federal Express)

City of Lakeland  
501 East Lemon Street  
Lakeland, Florida 33801-5079  
(Federal Express)

Michael J. Henry  
MCI Telecommunications Corp.  
780 Johnson Ferry Rd., Suite 700  
Atlanta, GA 30342  
(MCI Metro Access)  
(Federal Express)

Metropolitan Fiber Systems  
of Florida, Inc.  
One Tower Lane, Suite 1600  
Oakbrook Terrace, IL 60181-4630  
(Federal Express)

Graham A. Taylor  
1001 W. Cypress Creek Road  
Suite 209  
Ft. Lauderdale, FL 33309-1949  
(TCG South Florida)  
(Federal Express)

WinStar Wireless of  
Florida, Inc.  
7799 Leesburg Park, Suite 401 S.  
Tyson's Corner, VA 22043  
(Federal Express)

Richard Melson  
Hopping, Green, Sams & Smith  
123 S. Calhoun Street  
Post Office Box 6526  
Tallahassee, FL 32301  
(MCI Metro)  
(Hand Delivery)

Richard H. Brashear  
Post Office Box 550  
Live Oak, FL 32060-0550  
(AllTel Florida, Inc.)  
(U.S. Mail)

P.J. Merkle  
Sprint/United-Florida  
Post Office Box 165000  
Mail Code #5326  
Altamonte Springs, FL 32716-5000  
(Central & United Telephone)  
(U.S. Mail)

Laurie A. Maffett  
Mgr/Reg. Matters  
Frontier Telephone Group  
180 South Clinton Avenue  
Rochester, NY 14646-0400  
(Frontier Communications)  
(U.S. Mail)

Ms. Beverly Y. Menard  
c/o Mr. Richard M. Fletcher  
106 East College Avenue  
Suite 1440  
Tallahassee, FL 32301-7704  
(GTE Florida, Inc.)  
(Hand Delivery)

Mr. A.D. Lanier, General Manager  
Post Office Box 1120  
Perry, FL 32347-1120  
(Gulf Telephone)  
(U.S. Mail)

Robert M. Post, Jr.  
Post Office Box 277  
Indiantown, FL 34956-0277  
(Indiantown)  
(U.S. Mail)

Ms. Lynne G. Brewer  
Post Office Box 485  
Macclenny, FL 32063-0485  
(Northeast Florida Telephone)  
(U.S. Mail)

Mr. Daniel V. Gregory  
Post Office Box 189  
Quincy, FL 32353-0189  
(Quincy Telephone)  
(U.S. Mail)

Ms. Nancy H. Sims  
150 S. Monroe Street, Suite 400  
Tallahassee, FL 32301-1556  
(Southern Bell)  
(Hand Delivery)

Mr. John H. Vaughan  
Post Office Box 220  
Port St. Joe, FL 32456-0220  
(St. Joseph Telephone)  
(U.S. Mail)

Mr. Ferrin Seay  
Post Office Box 186  
Floral, AL 36442-0186  
(Floral Telephone)  
(U.S. Mail)

Timothy Devine  
Senior Director, External  
& Regulatory Affairs  
Southern Region  
MFS Communications Company, Inc.  
Six Concourse Parkway, Suite 2100  
Atlanta, GA 30328  
(770) 399-8378  
(770) 399-8398 (fax)  
(Federal Express)

Richard M. Rindler  
James C. Falvey  
Swidler & Berlin, Chartered  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007  
(MFS Communications)  
(Federal Express)

Patrick K. Wiggins  
Wiggins & Villacorta, P.A.  
501 E. Tennessee Street  
Suite B  
Post Office Box 1657  
Tallahassee, FL 32302  
(Intermedia)  
(904) 222-1534  
(Hand Delivery)

Patricia Kurlin  
Corporate Counsel  
Intermedia Communications  
of Florida, Inc.  
3625 Queen Palm Drive  
Tampa, Florida 33619  
(813) 621-0011  
(Federal Express)

Michael W. Tye, Esq.  
AT&T  
101 North Monroe Street  
Suite 700  
Tallahassee, FL 32301  
(904) 425-6360  
(Hand Delivery)

Robin D. Dunson, Esq.  
AT&T  
1200 Peachtree St., N.E.  
Promenade I, Room 4038  
Atlanta, Georgia 30309  
(404) 810-8689  
(Federal Express)

Leslie Carter  
1 Prestige Place, Suite 255  
2600 McCormack Drive  
Clearwater, FL 34619-1098  
(Digital Media Partners)  
(Federal Express)

Ms. Lynn B. Hall  
Contract & Reg. Adm.  
Post Office Box 10180  
Lake Buena Vista, FL 32830-0180  
(Vista-United)  
(U.S. Mail)

C. Everett Boyd, Jr.  
Ervin, Varn, Jacobs,  
Odom & Ervin  
305 S. Gadsden Street  
Post Office Drawer 1170  
Tallahassee, FL 32301  
(Sprint Communications)  
(Hand Delivery)

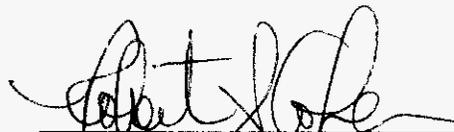
Benjamin Fincher, Esquire  
Sprint Communications Company  
Limited Partnership  
3065 Cumberland Circle  
Atlanta, GA 30339  
(Federal Express)

Laura L. Wilson  
Vice President, Regulatory  
Affairs & Regulatory Counsel  
Florida Cable Telecommunications  
Association, Inc.  
310 North Monroe Street  
Tallahassee, FL 32301  
(904) 681-1990  
(Hand Delivery)

Mr. Brian Sulmonetti  
LDDS WorldCom Communications  
Suite 400  
1515 S. Federal Highway  
Boca Raton, FL 33432  
(Federal Express)

Floyd R. Self, Esq.  
Messer, Caparello, Madsen,  
Goldman & Metz, P.A.  
Post Office Box 1876  
Tallahassee, FL 32302  
(Hand Delivery)

Mark K. Logan, Esq.  
Bryant, Miller & Olive, P.A.  
201 S. Monroe St., Suite 500  
Tallahassee, FL 32301  
(AT&T Communications)  
(222-8611)  
(Hand Delivery)



---

ROBERT S. COHEN, ESQ.