

BEFORE THE FLORIDA PUBLIC SERVICE COM

Investigation into Fresh Look Policy)
for Local Telecommunications)
Competition)

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**FLORIDA CABLE TELECOMMUNICATIONS ASSOCIATION
PETITION FOR LEAVE TO INTERVENE**

The Florida Cable Telecommunications Association, Inc. undersigned counsel and pursuant to Rule 25-22.039, Florida Administrative Code, hereby files this Petition for Leave to Intervene as a full party to the above-captioned proceeding and in support thereof, FCTA states:

1. The FCTA is a trade association representing the industry in Florida. The FCTA's business address is 310 North Monroe Street, Tallahassee, Florida 32301.
2. The name of the person authorized to receive notices and communications in this docket is:

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3. This proceeding is a generic one initiated by the Commission ("Commission") on August 19, 1996 to address a lack of competition. The FCTA has been granted intervention in similar proceedings involving issues pertinent to the development of a competitive local exchange market, i.e. Docket No. 960100-TP Investigation into Permanent Numbering and Docket No. 950737-TP, Investigation into Temporary Local Telephone Numbering.

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Implement Competition in Local Exchange Telephone Markets; and Docket No. 950696-TP, Determination of Funding for Universal Service and Carrier of Last Resort Responsibilities.

4. The membership of FCTA includes cable telecommunications companies such as Time Warner, Continental, Cox, Comcast, Tele-Communications, Inc. (TCI), Adelphia and Jones Intercable. FCTA's members are and wish to be facilities-based LEC competitors. Cable systems pass over 95% of homes with coaxial cable having capacity to carry up to 900 times as much information as the LECs' twisted pair. The cable industry's high capacity systems will deliver virtually every type of communications conceivable, offering facilities-based consumer choices for voice services, including advanced telecommunications services to schools, libraries and teaching hospitals. To this end, FCTA members also have certificated ALEC and AAV business interests that compete with incumbent LECs in Florida including: Time Warner AxS of Florida, L.P., Digital Media Partners, Hyperion Telecommunications of Florida, Inc., Teleport Communications Group, Jones Lightwave of Tampa, Inc., Telecommunications Services of Florida, Inc., Continental Florida Telecommunications, Inc., Continental Fiber Technologies and Cox Communications Partnership.

5. One of the primary goals of FCTA is the establishment of fair terms of telecommunications competition. That is why FCTA supported the passage of the revised Chapter 364, Florida Statutes (1995), and has participated as a full party of record in the Commission's proceedings implementing universal service (950696-TP), number portability (950737-TP, 960100-TP), interconnection (950985-TP), unbundling (950984-TP) and STS service (950155-TP) provisions of the revised statute. FCTA is also named by statute to the Florida Distance Learning Network Board of Directors and has been actively involved in establishing a fair competitive bid process under Part II, Chapter 364 concerning the provision of advanced telecommunications services to eligible schools, libraries and hospitals.

6. FCTA's interest in this proceeding flows from Section 364.051(6)(a), Florida Statute, which provides:

Nothing contained in this section shall prevent the local exchange telecommunications company from meeting offerings by any competitive provider of the same, but functionally equivalent, non-basic services in a specific geographic market or to a specific customer by deaveraging the price of any non-basic service, packaging non-basic services together with basic services, using volume discounts and term discounts and offering individual contracts. However, the local exchange telecommunications company shall not engage in any anti-competitive act or practice, nor unreasonably discriminate among similarly situated customers. (emphasis added).

This new statutory provision contemplates a narrow standard for the LECs' use of individual contracts. There must actually be a competitor who is offering the same or functionally equivalent non-basic service in the geographic market before a LEC may enter into an individual contract.

7. The interests of FCTA's members are vitally and substantially affected by this proceeding to address whether a fresh look policy should be implemented. BellSouth, GTEFL and Sprint-United/Centel have all filed tariffs extending their authority to enter into individual contracts in the face of virtually no competition to date. There currently is no prohibition on a LEC entering into long term contracts and thereby locking out competition during this time period when competition is being introduced but the details of interconnection are neither fully resolved nor fully implemented. Steep penalty provisions in such contracts discourage customers from exercising their ability to choose another provider when the choice becomes available. A fresh look policy will create a fair result and allow all consumers to benefit from competitive alternatives as they emerge.

8. FCTA's participation in this proceeding is consistent with its goal of achieving full and fair competition for telecommunications services. The new statutory standard for LEC use of individual contracts must be construed in harmony with the express legislative finding that competition is in the public interest and intent to foster competition. The LEC's use of individual

contracts (which are usually 3-5 years in duration with steep penalties for early termination) in instances where there are no actual competitors, enables the LEC to lock down contracts in advance of competitive ALEC or AAV entry into a particular geographic market. The Legislature intended to give the LEC flexibility to respond to a competitor's offering. It did not intend to allow the LEC to depart from its tariff to preempt a competitor by use of a long term contract. A fresh look policy will ameliorate the negative effects of preemptive strikes on local exchange competition by enabling consumers to take a "fresh look" at their contract once as competitors emerge into geographic markets.

9. FCTA's interest in this proceeding also flows from Part II, Chapter 364, Florida Statutes. FCTA was named to the Florida Distance Learning Network ("FDLN") Board of Directors pursuant to Section 364.509. The FDLN Board is currently conducting an assessment of the advanced telecommunications service needs of eligible schools, libraries and hospitals. Under Part II, eligible facilities are to have the benefit of a competitive bid process for advanced telecommunications services. Section 364.515, Fla. Stat.

10. Any "entity" may respond to an invitation to bid or request for proposal issued under Part II. That includes cable companies as well as certificated telecommunications companies. There will be little to compete for next July 1, 1997 if the LECs continue to enter into long term individual contracts now, in the absence of a competitor, and without a "fresh-look" policy allowing eligible facilities to re-evaluate contracts in light of the FDLN competitive bid process. Moreover, eligible facilities under LEC contract desirous of taking part in the bid process which the Legislature intended for them to have will be discouraged from doing so if there is not a fresh look policy to counteract steep or unfair penalty provisions imposed by monopolists under monopoly conditions. Eligible schools, libraries and hospitals are entitled to avail themselves of the full benefits of price,

quality and service competition that the FDLN competitive bid process will afford. A "fresh look" policy will facilitate the legislative intent.

11. FCTA's participation will aid the Commission's understanding of the issues presented in this docket and will efficiently present the industry members' positions.

WHEREFORE, for the foregoing reasons, FCTA requests the Commission grant its Petition for Intervention and afford FCTA status as a party of record in this proceeding.

RESPECTFULLY SUBMITTED this 30th day of August, 1996.



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CERTIFICATE OF SERVICE
DOCKET NO. 960932-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Hand Delivery(**) and/or U.S. Mail on this 30th day of August, 1996 to the following parties of record:

Division of Legal Services*
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Division of Communications*
Florida Public Service Commission
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By: *Arund Wilson*