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HAND DELIVERED

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

Re: Docket No. ~~960719~~ TP, In re: Approval of the Interconnection Agreement Negotiated by BellSouth Telecommunications, Inc. ("BellSouth") and Time Warner AxS of Florida, L.P. d/b/a Time Warner Communications & Digital Media Partners ("Time Warner") pursuant to Sections 251 and 252 of the Telecommunications Act of 1996

Dear Ms. Bayo:

Enclosed for filing and distribution are the original and fifteen copies of the Florida Interexchange Carriers Association's Motion for Reconsideration of Order No. PSC-96-1092-PCO-TP in the above docket.

Please acknowledge receipt of the above on the extra copy enclosed herein and return it to me. Thank you for your assistance.

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- APP _____
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- LEG 1 Encls.
- LIN 5 cc: Commissioner Julia L. Johnson (w/encls.)
Curtis J. Williams (w/encls.)
- OPC _____
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Sincerely,

Vicki Gordon Kaufman
Vicki Gordon Kaufman

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Approval of the Interconnection)	
Agreement Negotiated by BellSouth)	Docket No. 960719-TP
Telecommunications, Inc. ("BellSouth"))	
and Time Warner AxS of Florida, L.P.)	
d/b/a Time Warner Communications &)	Filed: August 30, 1996
Digital Media Partners ("Time Warner"))	
pursuant to Sections 251 and 252 of)	
the Telecommunications Act of 1996.)	
)	

**The Florida Interexchange Carriers Association's Motion
for Reconsideration of Order No. PSC-96-1092-PCO-TP**

The Florida Interexchange Carriers Association (FIXCA), pursuant to rule 25-22.0376, Florida Administrative Code, files its motion for reconsideration of the Prehearing Officer's Order No. PSC-96-1092-PCO-TP failing to rule on FIXCA's Motion to Modify the BellSouth Access Tariff and denying FIXCA's Petition to Intervene in this docket. As grounds for reconsideration, FIXCA states:

Introduction.

1. On July 7, 1996, BellSouth Telecommunications, Inc. (BellSouth) and Time Warner AxS of Florida, L.P. d/b/a Time Warner Communications & Digital Media Partners (Time Warner) filed a Master Interconnection Agreement (Agreement) with this Commission. BellSouth and Time Warner seek this Commission's approval of the Agreement under § 252(e) of the Federal Telecommunications Act of 1996 (Act).

2. The Agreement sets out the rates and terms and conditions governing interconnection between BellSouth and Time Warner. Of particular concern to FIXCA is that provision of the Agreement utilizing a 5-mile average for the rating of tandem-switched transport (Agreement, §5.02(e)). This provision differs from BellSouth's current access tariff from which FIXCA members purchase the same access which

BellSouth will provide to Time Warner pursuant to the Agreement.

3. On July 10, 1996, FIXCA filed two separate pleadings:

- 1) Petition to Intervene;
- 2) Motion to Approve the BellSouth/Time Warner Agreement and Simultaneously Modify the BellSouth Access Tariff.¹

4. On August 23, 1996, the Prehearing Officer issued Order No. PSC-96-1092-PCO-TP (Order). In this Order, the Prehearing Officer made two separate rulings. First, she did not rule on FIXCA's Motion to Modify BellSouth's Access Tariff. Second, she denied FIXCA's Petition to Intervene. FIXCA seeks reconsideration of these two rulings.

I. The Time Warner Access Provision Should Be Made Available Through BellSouth's Access Tariff.

5. FIXCA filed a separate Motion to Approve the BellSouth/Time Warner Agreement and to Simultaneously Modify BellSouth Access Tariff in this docket. The Order finds it unnecessary to rule on this motion and states that FIXCA may file a petition to modify BellSouth's access tariff.

6. FIXCA agrees with that portion of the Order which states that § 252(i) "requires a local exchange carrier to make available any interconnection service or network element in an approved agreement available to any other requesting carrier under the same terms and conditions." And perhaps most importantly, the Federal Communications Commission (FCC) has confirmed in its First Report and Order (1st

¹It should be noted that FIXCA does not object to Commission approval of the agreement subject to the concerns raised herein.

R&O) that such services or elements must be made available:

Section 252(i) of the 1996 Act requires that incumbent LECs make available to any requesting telecommunications carrier any individual interconnection, service, or network element on the same terms and conditions as contained in any agreement approved under Section 252 to which they are a party. . . . Carriers may obtain any individual interconnection, service, or network element under the same terms and conditions as contained in any publicly filed interconnection agreement without having to agree to the entire agreement.

1st R&O, paragraph 40 at 21.

7. The issue raised by FIXCA in its Motion to Modify BellSouth's Access Tariff is how the access provision must be made available. The FCC has provided clear guidance on this point in its 1st R&O, which was released on August 8 after FIXCA's filings in this case. Thus, the 1st R&O was not brought to the Prehearing Officer's attention in prior written filings.

8. The 1st R&O finds that services or elements contained in an approved interconnection must be made available on an expedited basis to carriers who are not parties to the agreement:

We further conclude that a carrier seeking interconnection, network elements, or services pursuant to section 252(i) need not make such requests pursuant to the procedures for initial section 251 requests, but shall be permitted to obtain its statutory rights on an expedited basis. We find this interpretation furthers Congress's stated goals of opening up local markets to competition and permitting interconnection on just, reasonable, and nondiscriminatory terms, and that we should adopt measures that ensure competition occurs as quickly and efficiently as possible. We conclude that the nondiscriminatory, pro-competition purpose of section 252(i) would be defeated were requesting carriers required to undergo a lengthy

negotiation and approval process pursuant to section 251 before being able to utilize the terms of a previously approved agreement.

1st R&O, paragraph 1321 at 628 (emphasis supplied).

9. Thus, it is the FCC's intent that the terms of approved interconnection agreements be made available as expeditiously as possible and without the necessity of additional lengthy proceedings. The most expeditious way to do this is exactly what FIXCA has requested -- inclusion of the access provision in the BellSouth/Time Warner Agreement in BellSouth's access tariff so this option is readily available to all providers. This will ensure that all providers can utilize that provision without having to engage in an additional lengthy proceeding. The option of another administrative proceeding to gain access to an approved term, as suggested in the Order, is contrary to the FCC's 1st R&O.

10. The most efficient way to make the Time Warner access provision available to all carriers is to put it in BellSouth's access tariff. If this is not done, confusion will result because there will be more access options available than are reflected in the BellSouth access tariff--the logical place for carriers to look when they want to know the access rate. Failure to put the Time Warner access rate in BellSouth's access tariff would require carriers to somehow have independent knowledge of the BellSouth/Time Warner agreement, to know that it contains an access provision, and to gain access to the agreement to decide if that is a provision they want to utilize. In order for a tariff to have meaning, it must include all options for a particular tariffed item.

11. The final comment in the Order regarding modification of the BellSouth access tariff is puzzling--the Order states that FIXCA may file a petition to modify BellSouth's access tariff. That is exactly what FIXCA did. But the Order finds that ruling on this request is unnecessary. However, as discussed above, the Commission must make the terms of the BellSouth/Time Warner Agreement available quickly to others. The Commission should reconsider that portion of the Order which refuses to rule on this issue and require BellSouth to include the Time Warner access provision in its access tariff.

II. FIXCA's Substantial Interests are Affected by this Proceeding.

12. The Prehearing Officer denied FIXCA's Petition to Intervene because she found that FIXCA did not show that its substantial interests would be affected by this docket. The Order provides three reasons for this conclusion. Each is erroneous.

A. The Act and § 120.57 Support Intervention.

13. First, the Order states that the Act does not *specifically* provide for intervention in a § 252(e) proceeding. If by this statement the Prehearing Officer means that the Act does not *affirmatively* state that intervention shall be permitted in a § 252(e) proceeding, she is correct. However, this is not the standard which governs requests for intervention. The Order ignores the specific language of § 252(e) itself as well as the well-known standards for intervention in administrative proceedings in Florida.

14. Section 252(e) of the Act governs this Commission's approval or rejection of interconnection agreements. The section contains two standards which

the Commission must apply in its deliberations. Section 252(e)(2) states that the Commission may reject an agreement if it finds that:

(i) the agreement . . . discriminates against a telecommunications carrier not a party to the agreement; or

(ii) the implementation of such agreement . . . is not consistent with the public interest, convenience, and necessity

(Emphasis supplied). The first standard quoted above requires the Commission to consider whether the agreement discriminates against telecommunications carriers² who are not parties to the agreement, such as FIXCA members. Clearly, such carriers, whom § (i) is specifically designed to protect, are directly and substantially affected by the Commission's approval or disapproval of an interconnection agreement. Further, their input into the proceeding will provide the Commission with valuable information and help it to make an informed decision about the terms of the interconnection agreement.

15. Additionally, section 120.57, Florida Statutes, governs this proceeding and provides that "[t]he provisions of this section apply in all proceedings in which the substantial interests of a party are determined by an agency" This substantial interest standard has been discussed frequently in Florida case law but the definition found in Agrico Chemical Co. v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2d DCA 1981), remains the standard. To show substantial interest, a party

² Section (3)(a)(49) of the Act defines telecommunications carriers as providers of telecommunications services. Telecommunications services are defined as the offering of telecommunications for a fee directly to the public. § 3(a)(51). FIXCA members are clearly telecommunications carriers within the definition of the Act.

must demonstrate that it will suffer injury in fact which is of sufficient immediacy to entitle it to a hearing and that the injury is of the type the proceeding is designed to protect. Id. at 482. FIXCA meets both prongs of this test.

16. If BellSouth is permitted to give Time Warner a different (and better) access rate than it gives to FIXCA members who must purchase the same access from BellSouth as Time Warner does, injury in fact will occur. Further, this type of injury is clearly the kind the Act was intended to protect because the standards in the Act governing interconnection agreements specifically require the Commission to consider whether the agreement at issue discriminates against carriers who are not parties to the agreement.

B. The Arbitration Orders Do Not Control.

17. The Order's second basis for denying intervention to FIXCA is that to allow intervention would be inconsistent with the orders in the MFS arbitration proceeding. Order Nos. PSC-96-0918-PCO-TP; PSC-96-0964-PCO-TP, Docket No. 960757-TP. Those orders do not control here.

18. The arbitration process, which is the subject of the MFS docket, is set out in § 252. The arbitration process contemplates two separate proceedings--a process for the actual arbitration of the agreement and a process for review of the agreement resulting from the arbitration. The first process permits a LEC or other party to the negotiation to petition the Commission for arbitration between the 135th and 160th day during which a LEC receives a request for negotiation. § 252(b)(1). The second process deals with approval of the agreement which results from the first

process of arbitration. After arbitration is concluded, the agreement must be brought before the Commission for approval or rejection based on the standards in § 252(e)(2). The MFS orders on which the Order at issue here relies are procedural orders addressing only the first phase of the two-phase arbitration process.

19. In the MFS orders, only the arbitration phase (in contrast to the approval phase) is at issue. During this phase, the Commission concluded in the MFS docket, that intervention by others is not appropriate and FIXCA does not disagree. It is important to note that the MFS orders limit their reliance to those portions of § 252 governing the arbitration proceeding as opposed to the approval process for the resulting agreement.

20. However, the approval phase of the arbitration process and the approval process for negotiated agreements, such as the one at issue here, are the point at which affected parties are to have input to the process.

C. FIXCA's Allegation of Discrimination is Not Speculative.

21. Finally, the Order finds that FIXCA's claim of discrimination is speculative and that FIXCA can achieve the relief it seeks by other means. As discussed in Section I above, the FCC's 1st R&O confirms FIXCA's immediate entitlement to the individual terms of the BellSouth/Time Warner Agreement without the necessity for further proceedings. If the terms of the Agreement are not made immediately available because FIXCA must go through an additional administrative proceeding, FIXCA will suffer real discrimination.

WHEREFORE, FIXCA requests that the Commission reconsider Order No. PSC-

96-1092-PCO-TP and 1) direct BellSouth to make the Time Warner access option available in its general access tariff, and 2) grant FIXCA's Petition to Intervene.

Vicki Gordon Kaufman

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Attorneys for The Florida Interexchange
Carriers Association

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of FIXCA's Motion for Reconsideration of Order No. PSC-96-1092-PCO-TP was provided by hand delivery* or by U.S. Mail this 30th day of August, 1996 to the following parties:

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