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REPLY TO:
P.O. BOX 10095
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October 7, 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: Investigation into Temporary Local Telephone Number
Portability Solution to Implement Competition in Local
Exchange Telephone Markets; Docket No. 950737-TP

Dear Ms. Bayo:

Enclosed for filing please find an original and fifteen copies
of the Rebuttal Testimony of Paul R. McDaniel on behalf of Time
Warner AxS of Florida, L.P. d/b/a Time Warner Communications and
Digital Media Partners for the above-referenced docket.

You will also find a copy of this letter enclosed. Please
date-stamp the copy of the 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. Thank you for your assistance in processing
this filing.

Respectfully,

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

Peter M. Dunbar
Peter M. Dunbar

- ACK
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cc: All Parties of Record

10716-96

CERTIFICATE OF SERVICE
DOCKET NO. 950737-TP

I HEREBY CERTIFY that a true and correct copy of Time Warner AxS of Florida, L.P.'s d/b/a Time Warner Communications and Digital Media Partners Rebuttal Testimony of Paul R. McDaniel has been served by U.S. Mail on this 7th day of October, 1996, to the following parties of record:

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ORIGINAL
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1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**
2 **DOCKET NO. 950737-TP**
3 **REBUTTAL TESTIMONY OF**
4 **PAUL R. McDANIEL**
5 **ON BEHALF OF TIME WARNER AxS OF FLORIDA, L.P. d/b/a**
6 **TIME WARNER COMMUNICATIONS AND DIGITAL MEDIA PARTNERS**

7
8 **Q: PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

9 A: My name is Paul R. McDaniel. My business address
10 is 160 Inverness Drive West, Englewood, Colorado,
11 80112

12
13 **Q: BY WHOM ARE YOU EMPLOYED?**

14 A: I am employed by Time Warner Communications as
15 Director of Regulatory Accounting.

16
17 **Q: ARE YOU THE SAME PAUL R. McDANIEL WHO FILED DIRECT**
18 **TESTIMONY IN THIS HEARING?**

19 A: Yes. I filed direct testimony on behalf of Time
20 Warner AxS of Florida, L.P. d/b/a Time Warner
21 Communications and Digital Media Partners
22 (collectively known as "Time Warner").

- CK _____
- FA _____
- PP _____
- AF _____
- BMJ _____
- TR _____
- LAG _____
- ET _____
- LD _____
- WAS _____
- OTH _____

DOCUMENT NUMBER-DATE
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FPSC-RECORDS/REPORTING

1 Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?

2 A: The purpose of my testimony is to comment on the
3 testimony filed by GTE Florida Incorporated ("GTE")
4 witness Beverly Y. Menard, and BellSouth
5 Telecommunications, Inc. ("BellSouth") witness
6 Alphonso J. Varner, as well as to comment on the
7 testimony of Florida Cable Telecommunications
8 Association ("FCTA") witness Joseph P. Cresse, MCI
9 Telecommunications Corporation/MCImetro Access
10 Transmission Services, Inc. ("MCI") witness
11 Elizabeth G. Kistner, AT&T Wireless Services of
12 Florida ("AT&T Wireless") witness John Gianella,
13 and AT&T Communications of the Southern States,
14 Inc. ("AT&T") witness Mike Guedel.

15
16 Both Ms. Menard and Mr. Varner take issue with the
17 FCC's interpretation of the Federal
18 Telecommunications Act of 1996 ("Act") and the cost
19 recovery guidance it provides in its July 2, 1996
20 First Report and Order and Further Notice of
21 Proposed Rulemaking in CC Docket No. 95-116
22 ("Order"). Witnesses for MCI, AT&T Wireless, AT&T,
23 and FCTA address an appropriate cost recovery
24 mechanism for interim number portability ("INP")
25 which Time Warner can support.

1 Q: DO YOU HAVE ANY COMMENTS ABOUT GTE WITNESS MENARD'S
2 TESTIMONY?

3 A: Yes. At page 3 of her testimony, Ms. Menard cites
4 two sentences from paragraph 127 of the FCC's
5 Order. Based on these two sentences Ms. Menard
6 proposes that the Florida Commission's previous
7 action in this docket setting a price for interim
8 number portability ("INP"), is sufficient and that
9 no further action is required.

10

11 What witness Menard ignores, however, is the rest
12 of that same paragraph, which explains what the FCC
13 is saying. The Order states, "We seek to
14 articulate general criteria that conform to
15 statutory requirements, but give the states some
16 flexibility during this interim period to continue
17 using a variety of approaches that are consistent
18 with the statutory mandate." (emphasis added). The
19 Order then discusses what the statutory mandate
20 means. Ms. Menard takes issue with the FCC's
21 interpretation of the Act. She states, "the Act
22 itself does not distinguish long term number
23 portability from INP," and uses this rationale as
24 the basis for disagreeing with the FCC's
25 interpretation of the Act.

1 I disagree with Ms. Menard, and I believe the Act's
2 lack of distinction between interim and permanent
3 number portability indicates that Congress did not
4 intend to make such a distinction. Congress
5 apparently understood, as does the FCC, how
6 necessary number portability is for the development
7 of local competition. The fact that temporarily
8 number portability must be provided in a
9 technologically deficient manner does not change
10 the appropriate cost recovery method.

11

12 **Q: DO YOU AGREE THAT APPORTIONING THE COSTS OF INP**
13 **AMONG ALL CARRIERS REPRESENTS A CONSTITUTIONAL**
14 **TAKING?**

15 A: This is a legal point and will be addressed in Time
16 Warner's brief.

17

18 **Q: DO YOU AGREE THAT AN INCUMBENT LOCAL EXCHANGE**
19 **COMPANY (ILEC) WILL BE AT A COMPETITIVE**
20 **DISADVANTAGE IF IT SHARES IN THE COST OF INP, AS**
21 **GTE WITNESS MENARD ARGUES?**

22 A: No. Ms. Menard seems to ignore the fundamental
23 fact that society, through its elected officials,
24 has determined to change the paradigm for delivery
25 of local telecommunications services from a

1 monopoly to competitive model. A fundamental
2 aspect of this paradigm change is that ILECs no
3 longer retain ownership of the local telephone
4 number. The customer now has the choice to keep
5 his/her telephone number regardless of the local
6 exchange provider. Number portability, whether
7 permanent or temporary, is necessary to achieve the
8 goal of local competition. The ability to port
9 numbers imposes an industry cost and should be
10 borne by all providers and their customers in a
11 competitively neutral fashion. Without cost
12 sharing, new entrants will be placed at a
13 competitive disadvantage relative to the incumbent
14 LECs since these costs will be almost exclusively
15 borne by the new entrants.

16

17 Ms. Menard also ignores that GTE (and others) are
18 no longer operating under rate of return
19 regulation. As a price cap ILEC, GTE should no
20 longer expect guarantees that every cost (or
21 revenue loss) it incurs will be recovered through
22 any entity other than its shareholders. As I
23 stated in my direct testimony, the ILECs should
24 treat the provision of interim number portability
25 as a network routing cost.

1 Q: DO YOU SUPPORT GTE WITNESS MENARD'S PROPOSAL TO
2 ASSESS A MANDATORY END USER CHARGE TO ALL LOCAL
3 SERVICE CUSTOMERS, WITH A POOL FOR DISTRIBUTION?
4 A: No, I do not support such a proposal. I think such
5 an approach will be prejudicial to new entrants.
6 Although Ms. Menard lays this proposal out as
7 competitively neutral, the Commission should be
8 sensitive to the response of customers who receive
9 a line-item on their bill that is attributable to
10 the new entrants. Such a proposal will have a
11 chilling effect on the willingness of customers to
12 use new entrants and will be contrary to the goal
13 of local competition.
14
15 Q: BELLSOUTH WITNESS VARNER SEEMS TO HAVE AN OPINION
16 SIMILAR TO THAT OF WITNESS MENARD AS TO THE
17 APPROPRIATENESS OF THE FCC'S ACTION REGARDING INP.
18 WHAT DO YOU THINK ABOUT THIS INTERPRETATION?
19 A: Mr. Varner, in agreement with Ms. Menard, believes
20 that the FCC erred in adopting the same cost
21 recovery principles for interim number portability
22 as for permanent number portability. I disagree.
23 The fact that the word "interim" for number
24 portability is not mentioned until Section
25 271(c)(B)(xi) is merely a concession that a long

1 term solution is not in place yet. This does not
2 alter the general cost recovery approach which
3 should be used.

4
5 Mr. Varner also ignored that the rate of return
6 mode of operation has been eliminated, and
7 BellSouth is no longer entitled to recover every
8 dollar it costs to provide INP from either new
9 entrants, other providers, or ratepayers.
10 BellSouth obtained price cap authorization in
11 Florida's 1995 statutory revision which also
12 authorized local competition. This was the new
13 regulatory bargain BellSouth struck--an ability to
14 be free to earn more money in exchange for
15 competition in a traditionally monopoly market.
16 BellSouth cannot now have both a guaranteed bottom
17 line and also the ability to earn as much as it
18 wants.

19
20 Mr. Varner also takes issue with the FCC's ignoring
21 the fundamental principle of "cost causer pays" in
22 establishing the guidelines for INP cost recovery.
23 According to Mr. Varner, the current pricing
24 structure in Florida is preferred as it is "based
25 on the premise that the cost of interim number

1 portability should be recovered from the companies
2 who make use of these arrangements." New entrants
3 certainly would not port telephone numbers were it
4 not for the fact that lack of number portability is
5 a barrier to entry. As discussed previously,
6 number portability costs are the direct result of a
7 changing telecommunications paradigm and the
8 necessity to promote local competition. Such costs
9 incurred in changing the market structure for the
10 delivery of telecommunications services should be
11 borne by all telecommunications providers. All
12 telecommunications providers must recognize and
13 accommodate the changes required for the transition
14 of the local exchange market from a monopoly to a
15 competitive environment.

16
17 The general tenor of Mr. Varner's testimony is to
18 emphasize how the FCC, by its Order is trampling
19 the rights and responsibilities of the states,
20 contrary to the Act. The FCC Order offers a number
21 of options which comply with the Act, and provides
22 the states guidance in interpreting and
23 implementing the Act.

1 Q: WHAT IS YOUR OPINION OF THE PROPOSALS OF FCTA
2 WITNESS CRESSE, MCI WITNESS KISTNER, AT&T WIRELESS
3 WITNESS GIANELLA, AND AT&T WITNESS GUEDEL?

4 A: I believe that the proposals offered by those
5 witnesses are consistent with the guidelines laid
6 out by the FCC Order and the intent of the Act.
7 They take into account the costs of providing INP
8 on a competitively neutral basis. The proposals
9 recommend that each local exchange carrier pay its
10 own routing costs, or, in the alternative, the
11 proposals recommend that INP costs are recovered
12 based on the number of working telephone numbers.

13

14 Q: VARIOUS PARTIES HAVE PROPOSED DIFFERENT EFFECTIVE
15 DATES FOR ANY ACTION TAKEN IN THIS PROCEEDING. DO
16 YOU HAVE AN OPINION ON WHAT IS THE APPROPRIATE
17 EFFECTIVE DATE?

18 A: Yes. This Commission is taking action in this case
19 as a result of the FCC's Order, which was issued on
20 July 2, 1996. To be consistent with that Order,
21 the effective date of this action should also go
22 back to that time. However, if the Commission is
23 concerned about retroactive ratemaking, the date of
24 the final order issued after this hearing is a
25 reasonable effective date.

1 Q: PLEASE SUMMARIZE YOUR REBUTTAL TESTIMONY.
2 A: The proposals by GTE and BellSouth should be
3 rejected. The FCC has specified guidelines which
4 embody the principle of competitive neutrality and
5 cost sharing. This principle recognizes that
6 number portability, whether temporary or permanent,
7 is essential to fostering local competition. Time
8 Warner, FCTA, AT&T, AT&T Wireless, and MCI have put
9 forth proposals which embody this principle and
10 should be used by this Commission in establishing a
11 cost recovery mechanism for temporary number
12 portability.