

PENNINGTON, MOORE, WILKINSON & DUNBAR, P.A.
ATTORNEYS AT LAW

BARBARA D. AUGER
ROBERT CINTRON, JR.
ROBERT S. COHEN
PETER M. DUNBAR
MARTHA J. EDENFIELD
JOHN T. LEADBEATER
DAVID K. MINACCI
(also admitted in Georgia)
EDGAR M. MOORE

E. MURRAY MOORE, JR.
JOHN C. PELHAM
CARL R. PENNINGTON, JR., P.A.
C. EDWIN RUDE, JR.
GARY A. SHIPMAN
CYNTHIA S. TURNICLIFF
WILLIAM E. WHITNEY
BEN H. WILKINSON
CATHI C. WILKINSON

OF COUNSEL
HERBERT F. CLARK
(Admitted in New Jersey, New York & Wisconsin Only)
R. STUART HUFF, P.A.
Oral Grades, Florida
CHRISTOPHER W. KANAGA
(Admitted in Massachusetts & Colorado Only)
SCOTT MADDOX
WILLIAM VANDERCREEK
(Admitted in Texas & Iowa Only)

SPECIAL CONSULTANTS
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 Pblaw@Supernet.net

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

May 29, 1997

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

via Hand Delivery

970646-TC

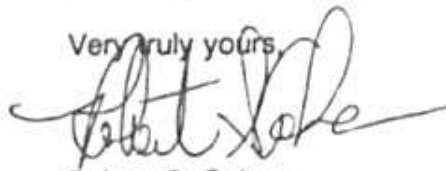
Re: In Re: Petition for Partial Waiver of
Rule 25-4.113(4), Florida Administrative Code on
Behalf of Time Warner Connect

Dear Ms. Bayo:

Enclosed for filing please find an original and fifteen copies of Time Warner Connect's Petition for Partial Waiver of Rule 25-4.113(4), Florida Administrative Code. You will also find a copy of this letter 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

Very truly yours,



Robert S. Cohen

RSC:dat

enclosures

DOCUMENT NUMBER-DATE
05428 MAY 29 97
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Partial Waiver of
Rule 25-4.113(4), Florida Administrative Code.

Docket No.
Filed: May 29, 1997

TIME WARNER CONNECT'S
PETITION FOR PARTIAL WAIVER OF RULE 25-4.113(4),
FLORIDA ADMINISTRATIVE CODE

Time Warner Connect hereby petitions the Florida Public Service Commission ("Commission"), pursuant to Rule 25-22.036, Florida Administrative Code, and Section 364.01(4)(b), (e) and (f), Florida Statutes (1995), for a partial waiver of Rule 25-4.113(4), Florida Administrative Code. In support of this Petition, Time Warner Connect states as follows:

1. Time Warner Connect provides direct billing to many of its customers. These customers receive a monthly billing statement for local telephone service from Time Warner Connect or from their local exchange provider and another, separate statement from Time Warner Connect for their long distance service. If such customers have paging, voice mail, cable services or any of the other services provided in the market area by Time Warner Connect, they also receive a third separate statement.

2. As a competitive offering, Time Warner Connect wishes to provide a simplified billing option for its telephone customers who also subscribe to other services from Time Warner Connect. In order to provide this option, Time Warner Connect would bill and collect service charges for these other non-regulated services. Customers who elect the combined billing option would receive one monthly statement which would include separately itemized charges for the various services provided, both the regulated telephone services, as well as unregulated other services. The subtotals would be

combined into a single balance, which customers would pay with a single check, thereby eliminating the necessity of paying by two or more separate bills. Combined billing would be provided for the convenience of customers, at no extra charge. Customers who elect combined billing would be able to return to separate billing if they so desire.

3. Customer payments would be applied to the total balance of the combined statement. As with separate billing, failure to pay could result in disconnection of any of the separate services for which payment was not received. Partial payment, however, also could result in disconnection of multiple services, even if the amount of the partial payment otherwise would be sufficient to cover either the charges for regulated or unregulated services. In other words, once combined at the customer's request, charges for both the regulated and unregulated services would be treated as a single balance that must be paid in full or the account would be considered delinquent by both providers of the separate services.

4. Rule 25-4.113, Florida Administrative Code, specifies conditions under which local exchange companies may and may not discontinue service to their customers. Because this rule is applied to interexchange companies by Rule 25-24.490, Florida Administrative Code, which expressly incorporates Rule 25-4.113, it arguably controls an IXC's ability to discontinue service to its customers. Rule 25-4.113(4)(e) provides as follows:

(4) The following shall not constitute sufficient cause for refusal or discontinuance of service to an applicant or customer:

(e) Failure to pay for a service rendered by the company which is not regulated by the Commission.

To the extent necessary, Time Warner Connect seeks a waiver of Section 25-4.113(4)(e), Florida Administrative Code, to allow disconnection for failure to pay the combined regulated and unregulated services balance.

5. Rule 25-4.113, Florida Administrative Code, Refusal or Discontinuance of Service by Company, controls the circumstances under which LECs may refuse or discontinue service to their customers. Rule 25-24.490, Florida Administrative Code, incorporates this rule and thereby applies it to IXC's. The statutory authority for Rule 25-4.113 is as follows:

- | | |
|-----------------|--|
| Section 364.03 | Rates to be reasonable; performance of service; maintenance of telecommunications facilities |
| Section 364.19 | Telecommunications service contracts; regulation by commission |
| Section 427.704 | Powers and duties of the commission (relates to implementation and oversight of telecommunications relay system) |

Section 364.19 relates to the Commission's authority over service contracts such as Contract Service Arrangements, while Section 407.704 provides authority for the Commission's regulation of the Telecommunications Relay System. Therefore, the rule must rely upon the authority granted to the Commission in Section 364.03 as the source of general service regulatory authority for Rule 25-4.113. This statute, however, no longer applies to ALECs, IXC's or price-regulated LEC's.

6. According to Section 364.337(2) and (4), Section 364.03 does not apply to ALECs or IXC's. Similarly, under Section 364.051(5)(c), Section 364.03 no longer applies to price-regulated LEC's. Since Rule 25-4.113 relies on the authority of Section 364.03, the application of this rule to ALECs, IXC's or price-regulated LEC's would constitute an

invalid exercise of delegated legislative authority under Section 120.52(8), Florida Statutes. The Commission recently recognized this problem and accordingly, voted to withdraw an amendment to Rule 25-4.113 that had been promulgated based on this authority. See Docket No. 951123-TP (Proposed amendment of Rule 25-4.113, F.A.C., Refusal or Discontinuance of Service by Company.)

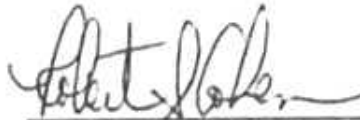
7. Given the lack of statutory authority for enforcement of Rule 25-4.113, Florida Administrative Code, as to ALECs, IXCs and price-regulated LECs, a waiver of the rule is not strictly necessary. In an abundance of caution, however, Time Warner Connect prefers to seek an explicit waiver of the requirement. Section 120.542, Florida Statutes (1996), requires the Commission to grant a waiver whenever the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means and when application of a rule would create a substantial hardship or would violate principles of fairness. These requirements are met in the present context: the underlying statute no longer applies to Time Warner Connect and it would violate principles of fairness to require continued adherence to a rule that is beyond the Commission's authority.

8. Further, granting the waiver is consistent with both the letter and spirit of Florida's competitively-oriented telecommunications statutes. For example, Section 364.01(1)(b), Florida Statutes (1995), directs the Commission to encourage telecommunications competition through flexible regulatory treatment to ensure a wide range of customer choice, while Sections 364.01(1)(e) and (f) instruct the Commission to encourage new telecommunications services while eliminating rules that are either

unnecessary or will impair the transition to competition. Granting the waiver is in the public interest because it will allow Time Warner Connect to compete more effectively in Florida's highly competitive long distance market by allowing it to offer service bundles at customer request, thus increasing customer convenience.

WHEREFORE, Time Warner Connect respectfully requests that the Commission grant it a waiver of Rule 25-4.113(4), Florida Administrative Code, in order to allow it to offer combined billing service to its customers upon request.

RESPECTFULLY SUBMITTED this 29th day of May, 1997.



PETER M. DUNBAR

Florida Bar No. 146594

ROBERT S. COHEN

Fla. Bar No. 347353

Pennington, Moore, Wilkinson
& Dunbar, P.A.

Post Office Box 10095

Tallahassee, Florida 32302

(904)222-3533

Attorneys for Time Warner Connect