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M E M O R A N D U M

August 6, 1997

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF COMMUNICATIONS (WIGGINS)
DIVISION OF LEGAL SERVICES (PELLEGRINI)

RE: DOCKET NO. 970646-TP - PETITION FOR PARTIAL WAIVER OF RULE 25-4.113(4)(e), F.A.C., BY TIME WARNER CONNECT.

AGENDA: AUGUST 18, 1997 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: AUGUST 29, 1997 - STATUTORY DEADLINE FOR COMMISSION DECISION

SPECIAL INSTRUCTIONS: S:\PSC\CMU\WP\970646TP.RCM

CASE BACKGROUND

On May 29, 1997, Time Warner Connect (Time Warner or the Company), a certificated interexchange company (IXC), filed a petition for partial waiver of Rule 25-4.113(4)(e), Florida Administrative Code, Refusal or Discontinuance of Service by Company. Time Warner is seeking a partial waiver of this rule in order to allow it to offer a combined billing option for its long distance customers who also subscribe to non-regulated services, such as voice mail, paging, and cable services. The Notice of Petition for Waiver was submitted to the Secretary of State for publication in the Florida Administrative Weekly on June 11, 1997. No comments were submitted during the comment period, which ended July 3, 1997. The statutory deadline for the Commission's decision regarding this petition is August 29, 1997.

DOCUMENT NUMBER-DATE
07948 AUG-6 97
FPSC-RECORDS/REPORTING

DOCKET NO. 970646-TP
DATE: August 6, 1997

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Time Warner's petition for a waiver from the provisions of Rule 25-4.113(4)(e), Florida Administrative Code, which prohibits telephone companies from discontinuing service to a customer failing to pay for a company service which is not regulated by the Commission?

STAFF RECOMMENDATION: Yes. Staff recommends that Time Warner's request for a waiver of Rule 25-4.113(4)(e) should be granted, thus allowing Time Warner to disconnect long distance services to customers who fail to pay the combined balance on a bill containing charges for both regulated and non-regulated services. Further, staff recommends that Time Warner be ordered to notify customers prior to their election of combined billing that it is purely an option to separate billing. Time Warner should be required to state that a customer may return to separate billing at no additional charge. **(WIGGINS)**

STAFF ANALYSIS: Time Warner is seeking a waiver of Rule 25-4.113(4)(e), Florida Administrative Code, to allow the Company to disconnect land-line long distance, paging, voice mail, cable services or any other services provided by Time Warner to individuals who elect combined billing and fail to pay the entire combined single balance[1].

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

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[1] Staff notes that in its rule waiver request, Time Warner, the alternative local exchange company (ALEC), is also petitioning the Commission for authority to disconnect local exchange service for failure to pay the balance due, when combined billed with the services discussed above. As an Alternative Local Exchange Company, Time Warner is not subject to Rule 25-4.113(4)(e), Florida Administrative Code, for the purpose of local exchange service. It appears to staff that any decision to disconnect local exchange service would rest within the discretion of Time Warner, not the Commission.

> (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.

As a competitive offering, Time Warner would like to provide a simplified billing option to its local exchange and long distance customers who also subscribe to other non-regulated services from the Company. Customers who select the combined billing option would receive one monthly statement which would include separately itemized charges for the various services provided, both regulated and non-regulated. This would eliminate the necessity of paying two or more separate bills. The combined billing option would be provided for the convenience of the customers, at no extra charge. In order to provide this option, Time Warner would bill and collect for the other non-regulated services pr vided by the Company.

Customer payments received under the combined billing option would be applied to the total balance of the combined statement. Failure to pay all the bill would result in disconnection of all combined-billed services, even if the amount of the partial payment otherwise would be sufficient to cover either the charges for regulated or non-regulated services. In other words, once combined at the customer's request, charges for both regulated and non-regulated services would be treated as a single balance that must be paid in full, or the account would be considered delinquent by the providers of the separate services and service would be discontinued. Time Warner has stated that if a customer wants to return to separate billing, he or she would be able to do so at no additional charge.

Staff notes that customers who subscribe to multiple services from Time Warner, regulated and non-regulated, should benefit from the simplicity of one bill for all services rendered by the Company. Further, staff believes that combined billing should reduce the Company's operating costs with the elimination of the extra bill, and aid in the reduction of account delinquency. Staff also believes that the option to return customers to separate billing is reasonable because it allows customers dissatisfied with combined billing to revert back to separate billing without charge.

Time Warner questions whether adequate statutory authority exists to apply Rule 25-4.113, Florida Administrative Code, to ALECs, IXCs or price-regulated LECs. Time Warner argues that application of Rule 25-4.113 to ALECs, IXCs, or price-regulated LECs would constitute an invalid exercise of delegated legislative authority under Section 120.052(8), Florida Statutes, and states:

> Given the lack of statutory authority for enforcement of Rule 25-4.113, F.A.C., 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 prefers to seek an explicit waiver of the requirement.

Staff disagrees with Time Warner's legal assessment. The Commission has authority to enforce Rule 25-4.113, Florida Administrative Code, pursuant to Section 364.01, and Section 364.19, Florida Statutes; and since Time Warner states that it prefers to seek an explicit waiver of the rule in question from the Commission, it is not necessary for the Commission to specifically address the issue further.

Staff does agree with Time Warner on the substantive issue at hand; granting the waiver encourages telecommunications competition, consumer choice, and convenience. Staff notes that the Commission granted a similar waiver to AT&T in Docket No. 970075-TI, Order No. PSC-97-0477-FOF-TI, issued April 25, 1997. Therefore, staff recommends that the Commission grant Time Warner Connect's request for the waiver of Rule 25-4.113(4)(e), thus allowing the Company to disconnect long distance services to customers who fail to pay the combined balance on a bill containing charges for both regulated and non-regulated services. Further, staff recommends that Time Warner be ordered to notify customers prior to their election of combined billing that it is purely an option to separate billing. Time Warner should be required to state that a customer may return to separate billing at no additional charge.

ISSUE 2: Should this docket be closed?

STAFF RECOMMENDATION: Yes. If no person whose substantial interests are affected, files a protest within 21 days of the issuance of the Order resulting from this recommendation, this docket should be closed. **(PELLEGRINI)**

STAFF ANALYSIS: Yes. If no person whose substantial interests are affected, files a protest within 21 days of the issuance of the Order resulting from this recommendation, this docket should be closed.