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May 15, 1998

VIA HAND DELIVERY

Blanca S. Bayo, Director
Florida Public Service Commission
Division of Records and Reporting
2540 Shumard Oak Drive
Gerald L. Gunter Building
Tallahassee, Florida 32399-0850

Re: Docket No. 980253-TX

Dear Ms. Bayo:

Enclosed for filing and distribution are the original and fifteen copies of the Comments of the Florida Competitive Carriers Association 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.

ACK _____ Sincerely,

APP *Vicki Gordon Kaufman*

CAF _____
CMU 2 Vicki Gordon Kaufman

CTR _____ VGK/pw

EAG _____ Enclosures

LEG _____

LIN _____

OPC _____

RCH _____

SEC 1

WAS _____

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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to initiate rulemaking,)
pursuant to Section 120.54(7), F.S., to)
incorporate "Fresh Look" requirements)
in all incumbent local exchange company)
contracts, by Time Warner AxS of Florida,)
L.P. d/b/a Time Warner Communications.)

Docket No. 980253-TX

Filed: May 15, 1998

COMMENTS OF THE FLORIDA COMPETITIVE CARRIERS ASSOCIATION

Pursuant to Staff's directions at the workshop held in this docket on April 22, 1998, the Florida Competitive Carriers Association (FCCA) files the following comments in regard to the Commission's promulgation of a Fresh Look rule.

Purpose of Fresh Look Rule

1. The purpose of a Fresh Look rule is to allow customers the *real* opportunity¹ to opt out of contracts entered into during a time when the incumbent was the only option. Such a policy will foster competition in the state by removing current barriers to competition. Such a rule should be carrier neutral and easy to administer, so that competitive alternatives, not lengthy administrative proceedings, are the focus of the Fresh Look policy.

FCCA's Proposed Rule

2. Prior to the April 22 workshop, FCCA provided a draft rule designed to implement a Fresh Look policy.² FCCA's proposed rule provides for:

¹ For a *real* opportunity to exist for a customer to choose an alternative carrier, the customer must be able to do so without termination penalties payable to the ILEC.

² A copy of FCCA's proposed rule is attached.

- ◆ the Fresh Look period to begin 60 days after the effective date of the rule;
- ◆ the Fresh Look period to end 4 years after it begins;
- ◆ customers may terminate contracts of 180 days or more with ILECs for local services in writing without penalties during the Fresh Look period;
- ◆ the Commission to resolve any disputes arising under the rule within 90 days of a complaint being filed.

3. FCCA's proposed rule accomplishes the purpose of a Fresh Look policy and is simple, carrier neutral and self-executing. It does not require lengthy administrative proceedings but has a definite beginning and ending point. The proposed rule's Fresh Look period accounts for the fact that competition will reach different areas of the state at different times. Rather than trying to determine when any particular area is competitive for purposes of a Fresh Look window, the proposed rule allows for a liberal period during which consumers may opt out of contracts entered into during the monopoly era.

Issues Raised at the Staff Workshop

4. Several issues were raised at the Staff workshop. FCCA will address them in this section.

a. What type of contracts should be covered by the Fresh Look rule? Should such contracts be identified by date of execution?

All contracts for a period of 180 days or longer for local telecommunications services should be subject to the Fresh Look rule. The rule should not attempt to limit

those contracts subject to Fresh Look to contracts executed before or after any certain date. Though some of the contracts subject to Fresh Look may have been executed after revisions to Chapter 364 or after the enactment of the Telecommunications Act of 1996, that does not mean that they were executed during a time when competitive alternatives were actually available to consumers. Just because certain legislation may have afforded the *opportunity* for competition which was not previously available, that does not mean that competition actually existed or even that it exists today in the marketplace.

b. Are CSAs subject to the Fresh Look rule?

Yes. As noted above, all contracts for a duration of 180 days or more for local telecommunications services should be subject to the Fresh Look rule. CSAs are one type of contract arrangement entered into in a monopoly environment. As such, they should be subject to Fresh Look as FCCA's rule contemplates.

c. Will a Fresh Look rule result in below cost pricing?

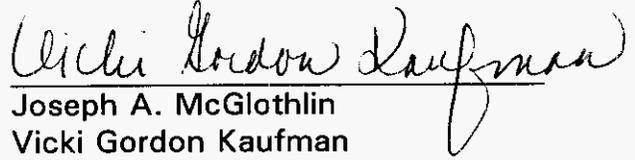
No. The rule's sole impact is to make competition available to customers who committed to long-term contracts during a monopoly environment. There is no basis for the speculative assumption that the termination of any contracts during the Fresh Look window would result in the provision of services below cost.

d. Can customer account information be released?

FCCA's *proposed rule does not contemplate that the ILECs will provide copies of contracts to the ALECs, so disclosure of customer account information is not an issue.*

Conclusion

The rule proposed by FCCA is balanced and reasonable. It should be proposed and adopted by the Commission.



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Attorneys for the Florida Competitive
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**FLORIDA COMPETITIVE CARRIERS ASSOCIATION'S
PROPOSED FRESH LOOK RULE**

PART XII FRESH LOOK

25-4.300 Definitions.

(1) **Incumbent Local Exchange Company (ILEC):** Any telecommunications company as defined in § 364.02(12) certificated to provide local exchange telecommunications service in Florida on or before June 30, 1995. This definition does not include ILECs with fewer than 100,000 access lines.

(2) **Alternative Local Exchange Company (ALEC):** Any telecommunications company as defined in § 364.02(12) certified by the Commission to provide local exchange telecommunications services in Florida after July 1, 1995.

(3) **Eligible Contracts:** All contracts for local telecommunications services between ILECs and customers for a term of 180 days or more. Eligible Contracts include all CSAs and ILEC tariffs with terms, conditions, or provisions which require a customer to subscribe for 180 days or more to avoid termination liability or requirements.

(4) **Fresh Look Period:** Period of time during which ILEC customers may terminate Eligible Contracts without incurring termination liability or requirements.

25-4.301 Applicability of Fresh Look.

(1) The Fresh Look Period shall apply to all Eligible Contracts.

(2) The Fresh Look Period shall begin sixty (60) days from the effective date of this rule.

(3) The Fresh Look Period shall remain open for four (4) years from the

starting date of the Fresh Look Period.

25-4.302 Public Notice of Fresh Look.

(1) Thirty (30) days after the effective date of this rule, the Commission shall disseminate information through its Consumer Affairs Office (in the form of a neutrally worded Fresh Look Notice), via press release, and on its website informing consumers about the purpose of this rule and the Fresh Look process.

(2) Each ILEC shall designate one point of contact within its company to which all Fresh Look inquiries and requests should be directed.

25-4.303 Termination of ILEC Contracts.

(1) Any customer may terminate an Eligible Contract during the Fresh Look Period by notifying the ILEC in writing of the customer's decision to terminate.

(2) A customer who terminates an ILEC contract during the Fresh Look Period shall incur no liability to the ILEC or be subject to any other termination requirements.

25-4.304 Disputes.

(1) All disputes arising under this rule shall be resolved by the Commission pursuant to its complaint procedure.

(2) The Commission will resolve disputes arising under this rule within ninety (90) days from the filing of a complaint.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing **Comments of the Florida Competitive Carriers Association** has been furnished by U.S. Mail or Hand Delivery(*) this **15th day of May, 1998**, to the following:

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