

ORIGINAL

MCWHIRTER REEVES

ATTORNEYS AT LAW

TAMPA OFFICE:
400 NORTH TAMPA STREET, SUITE 2450
TAMPA, FLORIDA 33602
P. O. BOX 3350 TAMPA, FL 33601-3350
(813) 224-0866 (813) 221-1854 FAX

PLEASE REPLY TO:

TALLAHASSEE

TALLAHASSEE OFFICE:
117 SOUTH GADSDEN
TALLAHASSEE, FLORIDA 32301
(850) 222-2525
(850) 222-5606 FAX

April 23, 1999

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 seven 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.

Sincerely,

Vicki Gordon Kaufman
Vicki Gordon Kaufman

VGK/pr
Enclosures

AFA	_____
APP	_____
CAF	_____
CMU	_____
CTR	_____
EAG	_____
LEG	_____
MAS	_____
OPC	_____
RRR	_____
SEC	_____
WAW	_____
OTH	_____

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

MCWHIRTER, REEVES, MCGLOTHLIN, DAVIDSON, DECKER, KAUFMAN, ARNOLD & STEIN, P.A.

05264-99

05264 APR 23 1999

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)	Docket No. 980253-TX
in all incumbent local exchange company)	
contracts, by Time Warner AxS of Florida,)	Filed: April 23, 1999
L.P. d/b/a Time Warner Communications.)	
<hr/>		

**THE FLORIDA COMPETITIVE CARRIERS ASSOCIATION'S
COMMENTS ON PROPOSED FRESH LOOK RULE**

Pursuant to Order No. PSC-99-0547-PCO-TX, the Florida Competitive Carriers Association (FCCA)¹ files the following comments in regard to the Commission's proposed Fresh Look rule.

Purpose of Fresh Look Rule

1. The purpose of a Fresh Look rule is to allow captive customers a meaningful opportunity to opt out of contracts entered into during a time when there was no competition and the incumbent was the only option for customers. Such a policy will foster competition in the state by helping to remove 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 Commission's Fresh Look rule.

2. The FCCA commends the Commission for proposing a Fresh Look rule and recognizing that it is important to give captive customers who are locked into contracts entered into in a monopoly environment a competitive choice.

¹ The FCCA includes numerous individual competitive carriers as well as the Telecommunications Resellers Association.

The Commission's Proposed Rule

3. On March 24, 1999, the Commission proposed a Fresh Look rule. The rule provides:

- ◆ the Fresh Look period to begin 60 days after the effective date of the rule;
- ◆ the Fresh Look period to end 2 years after it begins;
- ◆ customers may terminate contracts of six months or more by notifying the LEC in writing during the Fresh Look period;
- ◆ the LEC may assess a termination penalty limited to any unrecovered, contract specific nonrecurring costs, in an amount which does not exceed the termination liability.

4. For the most part, the FCCA supports the rule as proposed, with two exceptions. First, because competition will come to different parts of the state at different times, a longer Fresh Look window (such as the 4 years suggested by FCCA) is more appropriate. This longer window will help ensure that all (or most) areas of the state benefit from competition.

5. Second, the proposed rule (25-4.302(3)) includes a provision for the assessment of termination liability by the LEC. This provision is problematic for numerous reasons. First, the provision may well lend itself to disputes between the LEC and the customer attempting to change carriers. Such disputes may dampen the consumer's willingness to change, thus stifling the very competition the rule is designed to promote. Further, to the extent the termination charge is high, it will again stifle competition which the rule is supposed to engender. Therefore, FCCA recommends there be no imposition of termination liability on a customer wishing to switch carriers due to the advent of a competitive choice.

FCCA's Proposed Rule

6. Alternatively, the FCCA submitted a proposed Fresh Look rule. It is attached to

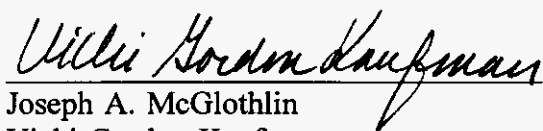
these comments as Attachment A. FCCA's proposed rule provides:

- ◆ 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 LECs for local services in writing during the Fresh Look period;
- ◆ there will be no termination penalties during the Fresh Look period;
- ◆ the Commission will resolve any disputes arising under the rule within 90 days of a complaint being filed.

7. The FCCA submits that its proposed rule is balanced and reasonable and will accomplish the Commission's goals.

Conclusion

8. The Commission should move forward now to enact a Fresh Look rule which will give consumers the benefit of choice and allow them to opt out of contracts entered into in a monopoly environment. The Commission should either enact the proposed Commission rules, with the FCCA's suggested changes, or the rule proposed by the FCCA.



Joseph A. McGlothlin
Vicki Gordon Kaufman
McWhirter, Reeves, McGlothlin, Davidson,
Decker, Kaufman, Arnold & Steen, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301
Telephone: (850) 222-2525

Attorneys for the Florida Competitive
Carriers Association

**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.

ATTACHMENT A

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 **23rd** day of **April, 1999**, to the following:

Diana W. Caldwell*
Florida Public Service Commission
Division of Appeals
2540 Shumard Oak Boulevard
Gunter Building, Room 301D
Tallahassee, Florida 32399-085

Barbara D. Auger
Pennington, Moore, Wilkinson
& Dunbar, P.A.
Post Office Box 10095
Tallahassee, Florida 32302-2095

Laura L. Gallagher
204 South Monroe Street, Suite 201
Tallahassee, Florida 32301

Kimberly Caswell
GTE Florida Incorporated
Post Office Box 110, FLTC0007
Tampa, Florida 33601-0110

Nancy B. White
c/o Nancy Sims
BellSouth Telecommunications, Inc.
150 South Monroe Street, Suite 400
Tallahassee, Florida 32301-1556

Monica Barone
Sprint Communications Company, L.P.
3100 Cumberland Circle
Atlanta, Georgia 30339

Marsha E. Rule
AT&T Communications
101 North Monroe Street, Suite 700
Tallahassee, Florida 32301

R. Scheffel Wright
Landers & Parsons
Post Office Box 271
Tallahassee, Florida 32308

Kenneth A. Hoffman
Rutledge, Ecenia, Underwood,
Purnell & Hoffman, P.A.
Post Office Box 551
Tallahassee, Florida 32302-0551

Richard D. Melson
Hopping Green Sams & Smith
123 South Calhoun Street
Post Office Box 6526
Tallahassee, Florida 32314

Lynn B. Hall
Vista-United Telephone Company
3100 Bonnet Creek Road
Lake Buena Vista, Florida 32830

Tom McCabe
Quincy Telephone Company
107 West Franklin Street
Quincy, Florida 32351

Bill Thomas
Gulf Telephone Company
115 West Drew Street
Perry, Florida 32347

Robert M. Post, Jr.
Indiantown Telephone Systems, Inc.
15925 S.W. Warfield Boulevard
Indiantown, Florida 34956


John M. Vaughn
St. Joseph Telephone and
Telegraph Company
502 Fifth Street
Port St. Joe, Florida 32456

Jeffrey J. Wahlen
Ausley & McMullen
227 South Calhoun Street (32301)
Post Office Box 391
Tallahassee, Florida 32302

Richard M. Rindler
Swidler & Berlin
3000 K Street, N.W., #300
Washington, D.C. 20007

Michael McRae
TCG - Washington
2 Lafayette Centre
1133 Twenty-First Street, N.W., Suite 400
Washington, D.C. 20036

Norman H. Horton, Jr.
Messer, Caparello & Self
215 South Monroe Street, Suite 701
Post Office Box 1876
Tallahassee, Florida 32302-1876


Vicki Gordon Kaufman