Marceil Morrell**
Area Vice President & Associate General Counsel-
Regional Operations (East)

Anthony P. Gillman**
Assistant General Counsel

Attorneys*
Kimberly Caswell
M. Eric Edgington
Ernesto Mayor, Jr.

* Licensed in Florida
** Certified in Florida as Authorized House Counsel

GTE SERVICE CORPORATION

One Tampa City Center
201 North Franklin Street (33602)
Post Office Box 110, FLTC0007
Tampa, Florida 33601-0110
813-483-2606
813-204-8870 (Facsimile)

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

May 6, 1999

Re: Docket No. 980253-TX
Petition to Initiate Rulemaking Pursuant to Section 120.54(7), F.S., to Incorporate "Fresh Look" Requirements to all Incumbent Local Exchange Company Contracts by Time Warner AxS of Florida, Inc.

Dear Ms. Bayo:

Please find enclosed an original and fifteen copies of the Rebuttal Testimony of David E. Robinson on behalf of GTE Florida Incorporated for filing in the above matter. Service has been made as indicated on the Certificate of Service. If there are any questions regarding this filing, please contact me at (813) 483-2617.

Sincerely,

Kimberly Caswell /kc

Kimberly Caswell

KC:tas
Enclosures

AFA
APP 1
CAF
CMU 1
CTR
EAG
LEG
MAS Storage
OPC
RRR 1
SEC 1
WAW
OTH

A part of GTE Corporation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the Rebuttal Testimony of David E. Robinson on behalf of GTE Florida Incorporated in Docket No. 980253-TX were sent via U. S. mail on May 6, 1999 to the parties on the attached list.

Kimberly Caswell

Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Nancy Sims
BellSouth Telecomm. Inc.
150 S. Monroe St., Room 400
Tallahassee, FL 32301-1556

Lynn B. Hall
Vista-United Tel. Co.
3100 Bonnet Creek Road
Lake Buena Vista, FL 32830

Vicki Kaufman
McWhirter Law Firm
117 S. Gadsden Street
Tallahassee, FL 32301

Harriet Eudy
ALLTEL Florida, Inc.
206 White Avenue, S.E.
Live Oak, FL 32060

Laurie A. Maffett
Frontier Comm. of the South
180 S. Clinton Avenue
Rochester, NY 14646-0400

Richard D. Melson
Hopping Green Sams & Smith
123 S. Calhoun Street
Tallahassee, FL 32314

John H. Vaughan
St. Joseph Tel. & Tel.Co.
502 Fifth Street
Port St. Joe, FL 32456

Tom McCabe
Quincy Telephone Co.
107 W. Franklin Street
Quincy, FL 32351

Lynn Brewer
Northeast Fla.Tel.Co.Inc.
130 N. Fourth Street
Macclenny, FL 32063

Robert M. Post, Jr.
Indiantown Tel. Sys. Inc.
15925 S.W. Warfield Blvd.
Indiantown, FL 34956

Bill Thomas
Gulf Tel. Co.
115 W. Drew Street
Perry, FL 32347

Ferrin Seay
Florala Tel. Co. Inc.
522 North 5th Street
Florala, AL 36442

Charles J. Rehwinkel
Sprint-Florida, Inc.
1313 Blair Stone Road, MC 2565
Tallahassee, FL 32302

Landers Law Firm
Scheffel Wright
P. O. Box 271
Tallahassee, FL 32302

Marsha Rule
AT&T Communications
101 N. Monroe Street
Suite 700
Tallahassee, FL 32301-1549

Floyd Self
Messer Law Firm
P. O. Box 1876
Tallahassee, FL 32302

Barbara Auger
Pennington Law Firm
P. O. Box 10095
Tallahassee, FL 32302-2095

Kenneth Hoffman
Rutledge Law Firm
P. O. Box 551
Tallahassee, FL 32302-0551

Office of Public Counsel
111 W. Madison Street, Suite 812
Tallahassee, FL 32399-1400

Norman H. Horton Jr.
Messer Caparello & Self
215 S. Monroe Street
Suite 1876
Tallahassee, FL 32302

James C. Falvey
ACSI
133 National Business Parkway
Suite 200
Annapolis Junction, MD 20701

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed Rules 25-4.300, F.A.C., Scope and Definitions; 25-4.301, F.A.C., Applicability of Fresh Look; and 25-4.302, F.A.C., Termination of LEC Contracts	)	DOCKET NO. 980253-TX

REBUTTAL TESTIMONY

OF

DAVID E. ROBINSON

ON BEHALF OF

GTE FLORIDA INCORPORATED

MAY 6, 1999

GTE FLORIDA INCORPORATED

REBUTTAL TESTIMONY OF DAVID E. ROBINSON

DOCKET NO. 980253-TX

Q. PLEASE STATE YOUR NAME AND EMPLOYER.

A. My name is David E. Robinson and I work for GTE Service Corporation.

Q. ARE YOU THE SAME DAVID E. ROBINSON WHO FILED DIRECT TESTIMONY IN THIS PROCEEDING?

A. Yes.

Q. WHAT IS THE PURPOSE OF THIS REBUTTAL TESTIMONY?

A. I will respond to other parties' previously filed Comments and testimony, including those of the Florida Competitive Carriers Association (FCCA), Supra Telecom & Information Systems, Inc. (Supra), e.spire Communications, Inc. (e.spire), Time Warner Telcom of Florida, L.P. (Time Warner), KMC Telecom II, Inc. (KMC), AT&T Communications of the Southern States, Inc. (AT&T), and Sprint Corporation (Sprint).

Q. THE CLEC INTERESTS IN THIS PROCEEDING ARGUE THAT A FRESH LOOK RULE IS NECESSARY BECAUSE OF THE PERSISTENT "MONOPOLY ENVIRONMENT." WHAT'S WRONG

WITH THIS RATIONALE?

A. At least two things. First, the key question in considering a fresh look rule is not how much competition there may have been in particular areas at various points in time, but rather whether large contract customers should reasonably have known about the advent of competition. Second, I disagree, in any event, with the CLECs' premise that there has not been meaningful competition for the services at issue in this docket.

Q. WOULD YOU EXPLAIN YOUR FIRST POINT IN MORE DETAIL?

A. Yes. CLECs argue that, even after the passage of the Telecommunications Act of 1996 (Act), customers did not have competitive alternatives to the ILECs. They therefore contend that a fresh look rule is necessary to release "captive customers" from contracts and tariffed term plans with the ILECs, so that these consumers can consider alternative offerings. (See, for example, KMC II Comments at 3; e.spire Comments at 1; Supra Comments at 3; FCCA Comments at 1.)

I agree that markets did not necessarily become fully competitive immediately after they were opened by statute. But I disagree that this factor compels the conclusion that a fresh look rule is necessary.

The more relevant point for purposes of this proceeding is that, whether or not there was significant competition for local service in

particular markets in 1995 or 1996 or later, customers knew or should reasonably have known that competitive alternatives were coming. Because they entered contracts with such knowledge, there is no reason to permit them to terminate valid and lawful agreements.

The Commission's own Staff explained this point best:

> "LECs typically offer CSAs to large business and government customers, and these customers usually have knowledgeable telecommunications managers who are involved in the contract negotiations. For contracts entered into after the 1995 rewrite of Chapter 364, Florida Statutes, Staff believes that it is reasonable to expect that these telecommunications managers would have considered the possibility of future alternatives for local switched services and would have considered this factor when agreeing to the term of the contract. Consequently, staff questions the basic premise that CSAs are a barrier to competition."
>
> (Staff's Feb. 26, 1998, Recommendation in this Docket, at 3.)

Likewise, Mr. D'Haeseleer, the Commission's Communications Division Director emphasized, "these are big commercial users, these are sophisticated users, these are not mom and pop operations." (March 10, 1998, Agenda Tr., Item 11, at 23.)

Q. DID STAFF CHANGE ITS VIEW AFTER IT WAS ASKED TO PROPOSE A FRESH LOOK RULE?

A. No. At the agenda session where Staff's rule was proposed, Staff made clear that the level of competition in the market should not be the focus of the Commission's fresh look inquiry. Staff member Simmons stated:

> "Let me just mention that competitiveness of the market really isn't the key issue in my mind. It is we are dealing with end users that tend to be large and knowledgeable, and the question in my mind is when would those types of customers become–when would they reasonably have become knowledgeable of the prospects, perhaps not the actuality, but the prospect of options being available. And that is the key factor in my mind."

(March 16, 1999, Agenda Conf. Tr., Item 4, at 10.)

As I pointed out in my Direct Testimony, the customers at issue "would reasonably have become knowledgeable" about the prospect of greater local exchange competition a number of years ago. The Florida Legislature's 1995 revisions were well covered in both the popular and trade media. In addition, the Legislature directed the Commission to ensure that all customers were aware of the newly competitive environment. By January 1, 1996 (the date the local exchange was opened to competition in Florida), the Commission was

required to implement a customer information program to tell subscribers about the possibility under the law of competitive providers of local exchange services. Under this program, GTE sent two different, successive inserts to all customers in the late 1995-early 1996 time frame telling them about the industry changes.

Even if large companies' telecommunications managers somehow missed the media coverage and bill inserts about the competitive changes at the State level, they certainly could not have remained ignorant of the 1996 federal Act. The Act was the focus of countless media stories in local and national newspapers and broadcasts, popular business magazines, and telecommunications trade journal articles, well before and then after the law was passed.

Given all of this information, no reasonably aware person–let alone an individual with a telecommunications-related job–could have failed to recognize that greater competition was coming to local markets. Telecommunications managers could and presumably did consider these future market changes in their contract negotiations, just as they could be expected to factor in a number of other possibilities, like future technological changes. Managers make these kinds of judgments every day during contract negotiations. They will choose a contract term that accommodates their degree of concern about these and other potential changes.

Q. TURNING TO YOUR SECOND POINT, CAN YOU RESPOND TO THE CLECS' ALLEGATIONS ABOUT THE LACK OF COMPETITION IN THE MARKET AT ISSUE?

A. Yes. The CLECs paint a picture of a monopoly local exchange market that is just now experiencing competitive entry. Indeed, they would like the Commission to believe that the market at issue is so embryonic that we need a fresh look window four years long. That scenario does not comport with the reality of the market at issue in this docket.

This docket concerns only the large business market segment--not the local exchange market in general. In Florida, as in all other states, this is the portion of the market that has experienced the most competition. CLECs will typically enter the market to serve business customers because that is where the money is. In this regard, they have been–and continue to be–quite successful.

The Commission's latest report on local competition, for instance, shows that, in certain metropolitan areas, CLECs have captured a substantial portion of total of business access lines–for example, 10-13.99% in Orlando and 14-17.99% in nearby West Kissimmee; 10-13.99% in Melbourne; 5-6.99% in Miami and Jacksonville; and 7-9.99% in Ft. Lauderdale. Even in Reedy Creek, a population center that is much smaller but relatively near Disneyworld, CLECs have obtained between 5 and 6.99% of business lines.

These numbers are significant, especially when one considers the raw line counts involved in the largest areas like Miami. Furthermore, these statistics don't tell us anything about revenues. In GTE's experience, a small portion of business customers accounts for a disproportionately large share of the Company's revenues. Because the CLECs are capturing many of these most lucrative customers, looking at line counts alone doesn't tell the whole story of relative success in the market.

It is also useful to consider the growth in CLEC business lines from the comparative perspective of the interLATA market after divestiture. Salomon Smith Barney reports that, in 1998, the CLECs had "more net business line additions than the Bells as a group." It observed that the combination of low cost capital and the public policy initiative to open local markets "has allowed the CLECs as a group to achieve in less than 2 years after the Telecom Act, what it took MCI and other alternative long distance carriers over 10 years to achieve during the 1970s and 1980s. If one takes the obvious logical extension of this, this means that the 50% loss of market share that AT&T saw from 1986 through 1996 could be replicated in the local market in a much quicker time period." (Salomon Smith Barney, "CLECs Surpass Bells in Net Business Line Additions for First Time," May 6, 1998.)

Earlier this year, the Council of Economic Advisors reported that, at the rate CLECs are gaining customer lines, they will capture half of

the business lines now in service within 10 years. By contrast, it took more than a dozen years after divestiture for long distance competitors to gain a 50% share of market revenues, and they still do not have that share of pre-subscribed lines or long distance minutes. (Progress Report: Growth and Competition in U.S. Telecommunications 1993-1998, The Council of Economic Advisers (Feb. 8, 1999).)

The trend of growth in CLEC business lines will likely continue with particular strength in Florida, which has a large and ever-expanding business base in numerous metropolitan markets–and over 260 certificated CLECs.

In short, examination of the data showing the CLECs' relatively rapid gains in business lines contravenes the CLECs' account of a market where regulatory intervention is necessary for competitors to succeed. The CLECs have achieved these advances without any fresh look rule, and will continue to do so in the absence of such a rule.

Q. BUT AREN'T THERE FLORIDA EXCHANGES WHERE THERE ARE NO CLECS SERVING BUSINESS CUSTOMERS?

A. Yes. Obviously, CLECs wishing to serve business customers can be expected to go where most of the business customers are. Big business customers likely to take contract services aren't usually located in rural and less populous exchanges. So it stands to reason

that there probably won't be significant business competition in such areas anytime soon–regardless of whether the Commission adopts a fresh look requirement.

Q. IF THE COMMISSION DECLINES TO ADOPT A FRESH LOOK RULE IN THIS PROCEEDING, WILL THE CLECS CONTINUE TO ENJOY REGULATORY ADVANTAGES, IN ANY EVENT?

A. Yes. Even without a fresh look rule, the CLECs already have a number of artificial advantages. For purposes of this docket, the most extraordinary is the contract resale requirement. This requirement, which I discussed in my Direct Testimony, compels GTE to sell its contracts at a 13.04% discount to its competitors. So the competitor can already take GTE's contract (and the associated customer) today, without any termination liability. This is, in effect, a fresh look requirement; resellers will get no additional benefit from another such rule in this proceeding.

Q. BUT ISN'T A FRESH LOOK RULE STILL NECESSARY TO HELP FACILITIES- BASED PROVIDERS COMPETE?

A. No. As I discussed here and in my Direct Testimony, there is no need for any fresh look requirement. Large business customers should reasonably have been aware of the advent of competition, allowing them to negotiate appropriate contract terms. These entities are quite capable of looking out for their own interests.

Although the Commission may have felt legally compelled to adopt the contract resale requirement, it should feel no such compulsion, on either law or policy grounds, to expand fresh look opportunities to facilities-based providers. Like the large customers they target, these CLECs are very capable of obtaining customers without Commission intercession.

Like BellSouth (Johnston Direct Testimony at 4-6), GTE has been competing against facilities-based CLECs since they were first certificated in Florida in 1995. In fact, the nation's largest, independent facilities-based CLEC, Intermedia Communications Inc. (ICI), is headquartered in the Tampa Bay area. ICI began as an alternative access vendor (AAV), in competition with GTE. In fact, a case involving ICI was the impetus for the Commission to find that certification of AAVs was in the public interest. ICI's AAV certification was expanded to CLEC certification just two months after the 1995 legislative revisions, so that it was ready to begin operation as a CLEC as soon as the local exchange was opened in January of 1996.

Because of its pioneering AAV activities, ICI has been the subject of intense publicity for years, both in Florida and at the national level; certainly, the large business community that is the target for contract services is very familiar with ICI. It is plainly unreasonable to give very capable and well established competitors like ICI the windfall of a fresh look rule after all this time.

Q. TURNING TO THE SPECIFICS OF THE PROPOSED FRESH LOOK RULE, SEVERAL OF THE CLECS HAVE PROPOSED A FRESH LOOK WINDOW OF FOUR YEARS. PLEASE COMMENT ON THIS PROPOSAL.

A. FCCA, Supra, and e.spire recommend that the fresh look window should remain open four years after the rule's effective date. (FCCA Comments at 2; Smith DT at 4; e.spire Comments at 2.) This would extend by two years the fresh look window Staff has proposed.

As I stated in my Direct Testimony, there is no legitimate reason for even a 2-year long fresh look window, let alone a window twice that long. (Robinson DT at 12.) Assuming a rule effective date of 2000, this would mean fresh look would apply to contracts executed up until the year 2004. Again, the principal problem with an unduly long fresh look window–including the Staff's proposed 2-year period–is that it assumes that large business customers have been unable to factor competitive changes into their negotiations. The CLECs would maintain this fiction for contracts entered even after the year 2000 effective date of the rule.

Even if we assume, like the CLECs do, that the state of competition in a given area, rather than customers' awareness of competitive possibilities, is the key to determining need for a fresh look rule, their logic still doesn't hold up. The only justification FCCA and e.spire can offer for their extreme proposal is that it "will help ensure that all (or

most) areas of the state benefit from competition" (FCCA Comments at 2; e.spire Comments at 2).

The fact is that various areas of the state will see greater competition if and when a business case can be made for entry or expansion there. If there is money to be made from business customers in a particular area, the Commission can be assured that CLECs will enter there, as they have since 1995. A fresh look requirement is not likely to prompt any CLEC to enter a geographic market that it would not otherwise serve. Indeed, if the opportunity to serve the ILECs' customers in these new areas is such a powerful incentive, one would expect CLECs to take advantage of the contract resale opportunity available to them right now. The chief beneficiaries of any fresh look window, whether it's 4 months or 4 years, will likely remain the same–that is, sophisticated business customers in metropolitan areas, as well as the CLECs serving those customers. In other words, the fresh look rule will benefit the most sought-after customers in the most-served areas. Extending the window will only exacerbate fresh look's unwarranted windfall for these customers.

Supra seems to view a 4-year fresh look window as a kind of remedial measure. Its witness Smith alleges that: "Because of various problems ALECs are currently experiencing in the provision of local service, the longer window will provide even greater opportunities for consumers." (Smith DT at 4.) This reasoning deserves no serious

consideration. This is not a complaint proceeding; in any event, Supra does not even have an interconnection contract with GTE, so it has no basis for making allegations about "various problems" in local service provision.

In short, a 4-year fresh look window is extreme, unjustified, and unprecedented. I am not aware of any fresh look rule anywhere that approaches what the CLECs, or, for that matter, Staff, have proposed. Of the few fresh look rules at the FCC and state level, I haven't seen any with a fresh look window longer than 6 months.

Q. HAVE ANY CLECS PROPOSED A FRESH LOOK WINDOW SHORTER THAN THE STAFF HAS?

A. Yes. Mr. Poag, witness for Sprint (presumably, both its CLEC and ILEC arms), favors a fresh look period of one year. He notes that: "From a competitive entrant standpoint, we recognize that six months is adequate time for customers who want to change carriers or respond to competitive solicitations and take action to cancel contracts pursuant to the rule....Most likely candidates for Fresh Look would be targeted within the first few months of the window opening. Closing the window after a reasonable period of one year would introduce certainty into the ILECs' business operations and would allow them to focus on competing for customers instead of processing requests for termination liability calculation and undertaking the time and cost of terminating services." (Poag Comments at 4.)

While I disagree with Mr. Poag's assessment about the need for any fresh look rule, I do agree that most likely fresh look candidates will be targeted within the first few months after the window opens, and that fresh look will introduce uncertainty and inefficiency into the ILECs' operations. Mr. Poag's observations, in my view, lead to the conclusion that a fresh look window, if a rule is adopted, should last no longer than a few months (six months at the outside). There is no justification for even a year-long period, given the administrative and other burdens on the ILEC, when fresh look benefits, if any, will be largely realized in the first few months after the rule's adoption.

Q. BELLSOUTH WITNESS RECOMMENDS THAT, IF A FRESH LOOK WINDOW WERE TO BE ESTABLISHED, IT SHOULD BE JULY 1, 1995. (JOHNSTON DIRECT TESTIMONY AT 4.) IS THIS RECOMMENDATION APPROPRIATE?

A. Yes. As Mr. Johnston notes, July 1, 1995, is the date that the current forms of telecommunications competition were authorized by statute in Florida. I had recommended that the cut-off date for eligibility for fresh look should be no later than February 1, 1996, when the federal Act was adopted. So BellSouth's recommendation is entirely consistent with my own. (Robinson DT at 11-12.)

Q. PLEASE COMMENT ON SOME CLECS' PROPOSALS TO ELIMINATE ALL TERMINATION LIABILITY FROM ILEC CONTRACTS TO WHICH FRESH LOOK IS APPLIED.

A. KMC, Time Warner, FCCA, and e.spire have all proposed to go even beyond the Staff's proposed rule and eliminate all termination liability for customers switching carriers under a fresh look rule. This would mean that the ILECs would be denied even their nonrecurring charges associated with the contract. Thus, the ILEC would lose not only the customer, but will be denied recovery of its costs incurred in serving that customer. This is a clearly punitive effect with absolutely no justification other than CLECs' motivation to gain an unfair competitive advantage. Once again, this proposal is unprecedented and, to my knowledge, has not been adopted anywhere.

As I explained in my Direct Testimony, if the Commission adopts a fresh look rule, the objective in calculating termination liability should be to put the ILEC back in the position it would have held if the customer had taken a shorter contract term. Under the FCC formula (also used in other states), termination charges would be limited to (1) the difference between the amount the customer had already paid and (2) any additional charges the customer would have paid for service if the customer had originally taken a shorter term arrangement corresponding to the term actually used. The FCC also directed that interest be added to the resulting amount. (Robinson DT at 12-13, citing Expanded Interconnection with Local Tel. Co. Facilities, Second Memo. Op. & Order on Recon., 8 FCC Rcd 7341 (1993). As the FCC found there, repricing is necessary to ensure that the ILECs will "obtain the compensation appropriate for the term

actually taken by the customer." (Id. at para. 41.)

Q. DO ANY OF THE OTHER CLECS SUPPORT THIS MEASURE OF TERMINATION LIABILITY?

A. It seems that Time Warner does. Although Time Warner's witness Marek does not directly discuss contract repricing, she does allude approvingly to the Wisconsin PSC's conclusions about fresh look. Specifically, Ms. Marek notes that the Staff's proposed fresh look "rule is very consumer oriented, and, as the PSC of Wisconsin concluded, with the abolition of termination penalties, serves the public interest by promoting competition." (Marek DT at 4.) The Wisconsin Commission found that, if a fresh look rule was to be adopted, it would follow the FCC's approach of contract repricing. Investigation into the Appropriate Standards to Promote Effective Competition in the Local Exchange Telecommunications Market in Wisconsin, Supplemental Findings of Fact, Conclusions of Law and Second Final Order, Case 05-TI-138 (Mar. 27, 1997). The Commission there noted that none of the commenters in its proceeding (including Time Warner, MFS, TCG and MCI, among others) had suggested anything other than the fresh-look procedure used by the FCC. (Id. at 3.)

Q. CAN YOU TELL US MORE ABOUT THE STATUS OF FRESH LOOK IN WISCONSIN?

A. While I have not been personally involved in the Wisconsin fresh look proceedings, I have read the above-cited Order and did recently

check on the status of the proceeding there. It is interesting that Ms. Marek (as well as FCCA (Responsive Comments at 4) and KMC (Responsive Comments at 14)) should cite it, because, to my knowledge, the Wisconsin Commission has not, in fact, adopted any fresh look rule. In its 1997 Order, it made a preliminary finding that the "FCC-style of fresh-look procedure" should be used, but it never completed the rulemaking necessary to implement its findings.

In any event, the Wisconsin Commission's comments about contract repricing confirm my own observations in my Direct Testimony. That Commission's investigation revealed that the "'FCC-style' of fresh-look entails a re-pricing of a long-term contract to the term of performance that a terminating customer would actually receive. With a shorter-term contract, a customer will most likely be obliged to pay a higher price. The terminating customer would pay the ILEC the price difference, with interest. The intent is to prevent a windfall to the customer and assure that the ILEC is kept whole as to the basic economic bargain, thereby avoiding a 'taking.'" (Wisconsin Order at 3.)

Q. DO THE CLECS CITE OTHER STATES IN WHICH FRESH LOOK HAS BEEN ADOPTED?

A. Although they attempt to support their position here with references to other state proceedings, the Commission should read their Comments–and the cited orders--very carefully. KMC's Responsive

Comments contain the most extensive discussion of other state rulings. However, two of the fresh look examples (California and New Jersey) KMC cites were not Commission-imposed rules, but terms of voluntarily negotiated settlements regarding specific services of specific carriers. The California Commission emphasized that the settlement was an interim measure only and "not a precedent to be used in any current or future proceeding." The parties to the settlement agreed that it was "not to be construed as a precedent or policy statement for or against any of the parties on any issues addressed herein in any current or future proceeding before this or any commission or court." (In re: Application of Pacific Bell for Limited Authority to Provide MTS/WATS/800 Contracts, 49 CPUC 2d 486, 1993 Cal. PUC Lexis 472, at App. A.) The New Jersey settlement contained similar language. (Re: Sprint Comm. Co., Docket Nos. TX90050349, etc., slip op. (July 6, 1994).

In any event, the fresh look opportunities stipulated in those cases were much narrower than any of the proposals here, and neither involved local exchange services. In both cases, fresh look provisions were voluntarily incorporated into the contracts themselves, thereby avoiding any contract abrogation issue. And the fresh look periods granted were 120 days for Pacific Bell's MTS/WATS/800 contract services in the California settlement; and 60 days for the Bell Atlantic intraLATA services in the New Jersey settlement.

Other states KMC talks about (Indiana, Wisconsin, Alabama, and Maine) have not, to my knowledge, adopted fresh look requirements. So, in reviewing the CLECs' comments, that seems to leave just Ohio and New Hampshire as the only cited states that may have adopted fresh look rules. I was not able to find the New Hampshire decision before this testimony was filed. However, the characterization of that decision in KMC's Comments leads me to believe that it was not a broad fresh look rule, but some kind of Commission-mandated language to be added to the contracts' termination provisions. (KMC Responsive Comments at 15.) With regard to Ohio, a fresh look requirement for local exchange services was imposed about three years ago. The fresh look window, however, was only 180 days long, and applied only to contracts with more than two years of the term remaining. The Ohio Commission used the same measure of termination liability as GTE has suggested here: "the difference between the amount the customer has already paid versus the amount the customer would have paid had the customer taken the contract for the shorter term actually used." (In re: Commission Approval of Fresh Look Notification, Case Nos. 97-717-TP-UNC et al., 1997 Ohio PUC Lexis 537, at 18-19 (July 17, 1997).

In short, neither the FCC (which I discussed in my Direct Testimony and which BellSouth discussed in its Comments) nor other states support the CLECs' extreme positions (or even the Staff's Rule) here. Fresh look provisions for local exchange services are not popular

among the states. Where they do exist, they are very narrowly tailored, with fresh look windows measured in days, not years, and more reasonable termination liability provisions than any suggested here.

Q. IS THERE ANYTHING MORE ABOUT THE CALIFORNIA COMMISSION'S THINKING ON FRESH LOOK THAT THIS COMMISSION SHOULD KNOW?

A. Yes. In its generic alternative regulatory framework (ARF) proceeding sometime after the Commission had approved the above-discussed settlement in Pacific Bell's MTS/WATS/800 proceeding, the Commission refused to implement a broader fresh look policy to allow customers to benefit from the rate changes resulting from the ARF decision. It stated that, although it had allowed "fresh look contracts" in the MTS/WATS/800 settlement:

> "[W]e find no compelling reason to excuse other customers who negotiated contracts from abiding by the terms of their contracts. These contracts were freely negotiated by commercially sophisticated parties, usually for the sole purpose of obtaining service at less than the tariff rate that would otherwise apply. These parties could have reduced the risk that tariff rates would later be lower than the contract rate by negotiating a short contract term or by including explicit renegotiation or termination provisions. They entered into

these contracts on the basis of their business judgment that they would receive lower rates overall under the contract. The fact that the judgment may turn out to be wrong is an ordinary risk inherent to business or any other human endeavor."

(In re: Alternative Regulatory Frameworks for Local Exchange Carriers and Related Matters, 56 CPUC 2d 117 (Sept. 15, 1994).

The California Comission's logic applies here, as well. As I have said before, large customers who knew competition was coming were well able to protect themselves by negotiating appropriate contract terms. This Commission has no obligation to ensure that they get the best possible deal.

Q. E.SPIRE RECOMMENDS THAT THE COMMISSION EXPAND THE PROPOSED RULE TO INCLUDE ANY AND ALL ADVANCED TELECOMMMUNICATIONS SERVICES, INCLUDING WIRELINE BROADBAND SERVICES, THAT RELY ON DIGITAL SUBSCRIBER LINE TECHNOLOGY (xDSL) AND PACKET SWITCHED TECHNOLOGY LIKE THAT USED FOR DATA TRAFFIC. (E.SPIRE COMMENTS AT 2.) IS SUCH A RECOMMENDATION APPROPRIATE?

A. Emphatically no. The end users that have or would purchase such advanced services are generally large businesses with keen knowledge of competitive service provider options available to them.

Firms that are potential buyers of advanced service products, especially those with large data transmission requirements, have been primary targets of competitive service providers over the last several years in Florida and the rest of the nation, because of the shear volume of products and services they require. As such, these large users have certainly had to review and decide on several alternative providers and competitive bids for their particular needs. Again, as I have stated before, fresh look is not required for the breadth of telecommunications services that the Commission indicated in the proposed rule and further, the suggestion made by e.spire to further expand the subjected services is just a typical CLEC attempt at gaming the reasonable bounds of the competitive arena in their favor simply to have a second attempt to gain a customer that has already made a competitive alternative based decision.

Q. MS. MAREK MAKES THE COMMENT THAT THE PURPOSE OF A FRESH LOOK RULE IS TO ENABLE CUSTOMERS TO CANCEL EXISTING ILEC CONTRACTS AND AVOID "EXORBITANT" TERMINATION LIABILITIES. (MAREK DT AT 3.) HAS THERE BEEN ANY FINDING THAT THE TERMINATION LIABILITIES IN THE CONTRACTS AT ISSUE ARE EXORBITANT?

A. No. But to the extent that Ms. Marek's comments suggest that termination liabilities must be deemed exorbitant before a fresh look rule is triggered, then I agree. I have not reviewed all of GTE's

contract and term tariff arrangements. In my experience, though, the termination liabilities in these arrangements are reasonable and in line with acceptable industry and commercial practice. The termination liability provisions, or, for that matter, other contract provisions, have not been challenged as unconscionable or unlawful. These contracts are lawful and validly executed. It would thus seem that there would have to be some finding, on a contract-specific basis, that a termination liability provision is, indeed, exorbitant and unreasonable before the contract can be nullified. This is just a layman's perspective; I expect that GTE's lawyers will discuss this point in the posthearing comments.

Q. SOME OF THE CLECS HAVE SUBMITTED LEGAL ANALYSES GOING TO THE COMMISSION'S AUTHORITY TO ADOPT A FRESH LOOK REQUIREMENT. DOES GTE BELIEVE THE COMMISSION HAS SUCH AUTHORITY?

A. As I stated in my Direct Testimony, GTE believes there are numerous legal barriers– both statutory and consitutional–to the Commission's adoption of a fresh look requirement. I am not qualified to discuss those; the legal reasons prohibiting a fresh look rule in Florida will be treated in detail in the Company's posthearing comments.

Q. WOULD YOU PLEASE SUMMARIZE YOUR REBUTTAL TESTIMONY?

A. Yes. There is no need for a fresh look rule. Big business customers

do not need the Commission to help them protect their financial interests. Likewise, the Commission should be assured that the CLECs have been and will continue to make substantial strides in obtaining business customers, especially since they enjoy the regulatory advantage of a contract resale requirement.

If the Commission adopts any fresh look rule, the contract eligibility cut-off date should be no later than February of 1996, and the fresh look window should remain open for no more than six months. The CLECs' extreme proposals to leave the fresh look window open until 2004, and to completely eliminate any termination liability are patently unreasonable and unprecedented.

Q. DOES THAT CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes.