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SERVICE COMMISSION

BEFORE THE FLORIDA DIVISION OF ADMINISTRATIVE HEARINGS

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GTE FLORIDA, INCORPORATED,

Petitioner,

vs.

FLORIDA PUBLIC SERVICE
COMMISSION,

Respondent.

Case No. 99-5368RP

BELLSOUTH TELECOMMUNICATIONS,
INC.,

Petitioner,

vs.

FLORIDA PUBLIC SERVICE
COMMISSION,

Respondent.

Case No. 99-5369RP

**TIME WARNER TELECOM OF FLORIDA, L.P.'S
PETITION FOR LEAVE TO INTERVENE**

Time Warner Telecom of Florida, L.P. ("Time Warner"), pursuant to Fla. Admin. Code R.

28-106.205, hereby petitions for leave to intervene in this proceeding. In support thereof, Time

Warner states:

PARTIES

- The Florida Public Service Commission ("Commission") administers Chapter 364, Florida Statutes, and is the affected agency in this proceeding. The Commission is located at 2540

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FPSC-RECORDS/REPORTING

Shumard Oak Boulevard, Tallahassee, Florida 32399-0850. The rulemaking proceedings before the Commission were conducted in Docket No. 980253-TX.

2. The address and telephone number of Time Warner is as follows:

Time Warner Telecom of Florida, L.P.
c/o Carolyn Marek
233 Bramerton Court
Franklin, Tennessee 37069
(615)376-6404
(615)376-6405 (facsimile)

3. Time Warner is represented in this proceeding by the following counsel:

PETER M. DUNBAR, ESQ.
Florida Bar No. 146594
KAREN M. CAMECHIS, ESQ.
Florida Bar No. 0898104
PENNINGTON, MOORE, WILKINSON,
BELL & DUNBAR, P.A.
Post Office Box 10095 (32302)
215 S. Monroe Street, 2nd Floor
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(850) 222-3533
(850) 222-2126 (facsimile)

4. The Commission granted Time Warner a certificate of authority in Docket No. 95-0906 to provide services as an Alternative Local Exchange Company ("ALEC") in Florida. Time Warner is a facilities-based carrier presently providing exchange access and local exchange telecommunications services in Florida.

PROPOSED RULES AT ISSUE

5. Proposed Rules 25-4.300, 25.4.301, and 25-4.302 ("Fresh Look" rules) are the subject of this administrative rule challenge. The "Fresh Look" rules provide certain existing customers of incumbent local exchange companies ("ILECs") a one-time opportunity to avail

themselves of competitive alternatives offered by ALECs by allowing those customers to opt out of extended contracts entered into while a monopolistic environment existed.

PROCEDURAL HISTORY

6. On February 17, 1998, Time Warner filed a Petition to Initiate Rulemaking Pursuant to 120.54(5), F.S., by Time Warner AxS of Florida, Inc. In the petition, Time Warner requested that the Commission adopt rules providing for “fresh look” procedures. *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 (1998).*

7. The Commission held a workshop and hearing on the proposed rules thereby providing interested persons an opportunity to submit comments and testimony. As a result, the Commission issued several revisions of the proposed “Fresh Look” rules.

8. The Commission last addressed the “Fresh Look” rules during its November 16, 1999, Agenda Conference and voted to revise the rules once again. Representatives of Time Warner were present at the Agenda Conference and participated in the discussion of the revisions. The revised proposed rules were published in the *Florida Administrative Weekly* on December 3, 1999, pursuant to §120.54(3)(d), F.S.

9. On December 23, 1999, BellSouth Telecommunications, Inc. (“BellSouth”) filed a Petition for Administrative Determination of the Invalidity of Proposed “Fresh Look” Rules with the Florida Division of Administrative Hearings. BellSouth Telecommunications, Inc. v. Florida Public Service Commission, Case No. 99-5369RP.

10. On December 23, 1999, GTE Florida Incorporated (“GTE”) also filed a Petition for Administrative Determination of the Invalidity of Proposed “Fresh Look” Rules with the Florida Division of Administrative Hearings. GTE Florida, Incorporated v. Florida Public Service Commission, Case No. 99-5368RP.

11. On January 24, 2000, the Administrative Law Judge ordered the consolidation of BellSouth’s and GTE’s administrative challenges of the proposed “Fresh Look” rules for purposes of hearing only and will proceed under Case No. 99-5368RP.

STANDING OF TIME WARNER

12. Persons other than the original parties to a pending proceeding whose substantial interest may be determined in the proceeding and who desire to become parties may petition the presiding officer for leave to intervene. Fla. Admin. Code R. 28-106.205. Except for good cause shown, petitions for leave to intervene must be filed at least 20 days before the final hearing. *Id.* The hearing in this matter is scheduled to begin on April 25, 2000. Accordingly, this Petition for Leave to Intervene is timely filed.

TIME WARNER’S SUBSTANTIAL INTERESTS WILL BE DETERMINED IN THIS PROCEEDING

13. Commission staff summarized the purpose of the proposed “Fresh Look” rules as follows:

The purpose of the proposed fresh look rules is to allow customers to take advantage of competitive offers for service that were not available when they entered into their current contracts with the LECs. It would also encourage competition by enabling ALECs to compete for existing LEC customer contracts covering local telecommunications services offered over the public switched network.

Memorandum, F.P.S.C. Docket No. 98-0253TX, January 11, 2000.

Inasmuch as the outcome of this proceeding will substantially affect Time Warner's ability to compete for certain existing customers of ILECs, Time Warner's substantial interests will be determined in this proceeding.

14. The fact that a person's conduct will be regulated by proposed rules is sufficient to establish that their substantial interests will be affected and there is no need for further factual elaboration of how that person will be personally affected. Coalition of Mental Health Professions v. Dep't of Bus. & Prof. Reg., 546 So.2d 27, 28 (1st DCA 1989). If the proposed rules are upheld, Time Warner, as well as other certificated ALECs, will have an opportunity to compete for existing customers of ILECs, subject to the requirements and limitations of the "Fresh Look" rules. An opportunity to compete for existing ILEC customers in a non-monopolistic environment may result in an increase in Time Warner's share of the market and as well as substantially increasing revenues of Time Warner.

15. In its Petition for Administrative Determination of the Invalidity of Proposed "Fresh Look" Rules, BellSouth Telecommunications, Inc. ("BellSouth") argues that its substantial interests will be affected by the proposed "Fresh Look" rules for the following reason:

The proposed "Fresh Look" rules would give certain BellSouth customers the right to abrogate agreements they entered into with BellSouth without paying the full termination liability to which they freely agreed. BellSouth likely has more than 1,000 agreements with customers that would be subject to unilateral abrogation under the proposed rules. As a result, BellSouth risks millions of dollars of revenues it bargained for and won in the competitive arena.

BellSouth acknowledges that more than 1,000 of its customers will be entitled to abrogate contracts with BellSouth if the proposed "Fresh Look" rules are upheld. It follows, then, that Time

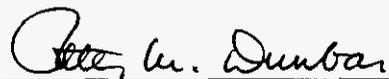
Warner will have an opportunity to compete for those customers of BellSouth who are within Time Warner's service area if the proposed rules are upheld. Conversely, Time Warner will be denied the opportunity to compete for those customers if the proposed rules are found to be invalid. Accordingly, Time Warner's substantial interest will be determined in this proceeding.

16. In its Petition for Administrative Determination of the Invalidity of Proposed "Fresh Look" Rules, GTE asserts that the rule "allows GTE's customers to terminate their contracts and tariffed term plans" and "will cause GTE potentially substantial revenue and consumer losses." If upheld, the proposed rule will allow certain customers of GTE to terminate long-term contracts with GTE while providing Time Warner and other ALECs, as well as GTE, the opportunity to compete for those customers in a competitive environment. Accordingly, Time Warner's substantial interests are affected by this proceeding.

WHEREFORE, for the reasons stated above, Time Warner requests leave to intervene in this proceeding.

Respectfully submitted this 27th day of January, 2000.

TIME WARNER TELECOM OF FLORIDA, L.P.



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CERTIFICATE OF SERVICE
DOAH CASE NO. 99-5368RP
DOAH CASE NO. 99-5369RP

I **HEREBY CERTIFY** that a true and correct copy of Time Warner Telecom of Florida, L.P.'s Petition for Leave to Intervene has been served by U.S. Mail this 27th day of January, 2000, to the following parties of record:

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& Reporting
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