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Kimberly Caswell
Counsel

February 8, 2000

Ms. Ann Cole, Clerk
State of Florida
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-3060

980253-TX

Re: GTE Florida Incorporated v. Florida Public Service Commission -
Case No. 99-5368RP; BellSouth Telecommunications Inc. v. Florida Public
Service Commission - Case No. 99-5369RP

Dear Ms. Cole:

Please find enclosed for filing an original and one copy of GTE Florida Incorporated's Answer Opposing Time Warner Telecom of Florida, L.P.'s Petition for Leave to Intervene in the above matters. Service has been made as indicated on the Certificate of Service. If there are any questions regarding this matter, please contact me at (813) 483-2617.

Sincerely,

Kimberly Caswell

- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
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FPSC-RECORDS/REPORTING

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

GTE FLORIDA INCORPORATED, Petitioner,)	Case No. 99-5368-RP
)	
vs.)	
)	
FLORIDA PUBLIC SERVICE COMMISSION,)	
)	
Respondent.)	
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BELLSOUTH TELECOMMUNICATIONS,)	Case No. 99-5369-RP
)	Filed: February 8, 2000
Petitioner,)	
)	
vs.)	
)	
FLORIDA PUBLIC SERVICE COMMISSION,)	
)	
Respondent.)	
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**GTE FLORIDA INCORPORATED'S ANSWER OPPOSING
TIME WARNER TELECOM OF FLORIDA, L.P.'S
PETITION FOR LEAVE TO INTERVENE**

GTE Florida Incorporated (GTE) asks the Judge to deny the Petition for Leave to Intervene filed by Time Warner Telecom of Florida., L.P. (Time Warner) in these consolidated cases. Time Warner has not made the requisite showing that its substantial interests will be affected through this proceeding. In addition, Time Warner's Petition does not comply with the applicable procedural rules for petitions to intervene.

Even Time Warner recognizes that it cannot make any showing of how its own, particular interests will be affected by the decision in this proceeding. Instead, it contends

that “[t]he 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.” (Time Warner Petition at 5.) Assuming, arguendo, that the legal standard Time Warner’s presents is correct, it still does not provide a basis for Time Warner’s intervention.

The proposed fresh look rule is not intended to and will not “regulate” Time Warner’s conduct in any way. The rule will require the incumbent local exchange carriers (ILECs) to release customers from valid and lawful contracts. In contrast to this direct and tangible effect on the ILECs, the rule will not require Time Warner to do anything differently than it does today. Adoption of the rule would not change at all the nature or degree of the Commission’s existing oversight or regulation of alternative local exchange carriers (ALECs) like Time Warner.

Indeed, we are left to guess at how Time Warner believes the rule would “regulate” its conduct, because Time Warner itself offers no explanation in this regard. Instead, it points to the rule’s abrogation of ILEC contracts and concludes that “Time Warner will have an opportunity to compete for those customers...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.” (Time Warner Petition at 5-6.)

Aside from being irrelevant to the regulation of conduct standard Time Warner presents, this statement is plainly incorrect. The adoption of a fresh look rule will not afford Time Warner any opportunity it has not already had for years. There was no regulatory, statutory, or other barrier precluding Time Warner from competing for the large

customers who signed the GTE and BellSouth contracts at issue. Time Warner has marketed its services to these customers since it entered the Florida market years ago. Indeed, as Time Warner's own witness has admitted, ALECs solicited business customers even before they became operational. (Marek, Commission Hearing Tr. at 19, cited in GTE's Posthearing Comments (Ex. C. to GTE's Petition for Administrative Determination of the Invalidity of Proposed Rules) at 40.)

In addition to its failure to prove standing, Time Warner's Petition fails to comply with the procedural rules governing petitions to intervene. Rule 28-106.205 ("Intervention") states that petitions to intervene "shall conform to Rule 28-106.201(2)." Rule 28-106.201(2) lists the items that all petitions must contain. They include, among others, a statement of all disputed issues of material fact (subpart (d)); a statement of the ultimate facts alleged (subpart (e)); and a statement of the relief sought by the petitioner, "stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action" (subpart (g)).

Time Warner left all of these items (and arguably others) out of its Petition. The statement of relief sought is particularly important in this case because Time Warner itself asked the Commission to withdraw the rule at issue and told the Commission that "any effort or resources expended by the Commission or Time Warner in opposition to the Petition [for Administrative Determination of the Invalidity of Proposed "Fresh Look" Rules] would be futile." (Time Warner's Petition to Initiate Rulemaking and Request for Withdrawal of Proposed Rules, filed with the FPSC on January 5, 2000.)

Rule 28-106.201(4) states that "[a] petition shall be dismissed if it is not in

substantial compliance with subsection (2) of this rule.” Because Time Warner’s petition for intervention does not substantially comply with the rules for such petitions, it must be dismissed.

Time Warner has not made a sufficient showing that its substantial interests will be affected by the decision in this proceeding and its Petition does not comply with the applicable procedural rules. For these reasons, GTE asks the Judge to dismiss Time Warner’s Petition with prejudice.

Respectfully submitted on February 8, 2000.



By _____
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of GTE Florida Incorporated's Answer Opposing Time Warner Telecom of Florida, L.P.'s Petition for Leave to Intervene in Case Nos. 99-5368-RP and 99-5369-RP was sent via U.S. mail on February 8, 2000 to:

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