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General Attorney

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MAIL ROOM

BellSouth Telecommunications, Inc.
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Room 400
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February 8, 2000

Via Hand Delivery

Sharyn L. Smith, Chief Judge
State of Florida
Division of Administrative Hearings
DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-3060

980253-TX

Re: Consolidated Case No. 99-5368RP (BST/GTE Fresh Look Appeal)

Dear Ms. Smith:

Enclosed is an original and one copy of BellSouth Telecommunications, Inc.'s Response to Time Warner's Petition to Intervene, which we ask that you file in the captioned case.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

Michael P. Goggin/V.F.
Michael P. Goggin

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

cc: Judge E. J. Davis
All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

CERTIFICATE OF SERVICE
Consolidated Case No. 99-5368RP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
U.S. Mail this 8th day of February, 2000 to the following:

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

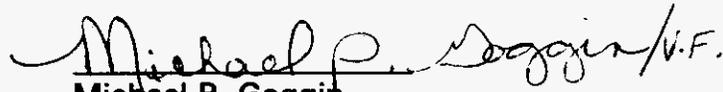
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Michael P. Goggin

BEFORE THE FLORIDA DIVISION OF ADMINISTRATIVE HEARINGS

BELLSOUTH TELECOMMUNICATIONS, INC.)

Petitioner,)

vs.)

FLORIDA PUBLIC SERVICE COMMISSION)

Respondent.)

_____)

GTE FLORIDA INCORPORATED,)

Petitioner)

vs.)

FLORIDA PUBLIC SERVICE COMMISSION)

Respondent.)

Consolidated
Case No. 99-5368-RP

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

BellSouth Telecommunications, Inc. ("BellSouth") hereby requests that Time Warner Telecom of Florida, L.P.'s ("Time Warner's") Petition for Leave to Intervene in this consolidated case be denied. Time Warner has failed to demonstrate that its substantial interests will be affected by this proceeding. As Time Warner notes, "[t]he fact that a person's conduct will be regulated by the proposed rules is sufficient to establish that their substantial interests will be affected." Petition for Leave to Intervene at 5. Time Warner does not contend, nor could it, that it would be "regulated" by the proposed rules at issue in this case. The proposed rules would only permit the abrogation of certain contracts between ILECs and their customers. Time Warner is

not an ILEC, and does not assert that it is a party to any contract that would be eligible for abrogation under the proposed rules. Accordingly, Time Warner cannot assert that it would be regulated by the proposed rules.

Instead, Time Warner asserts that if the proposed rules were proved valid, it "will have an opportunity to compete for those customers of BellSouth [with contracts eligible for abrogation] who are within Time Warner's service area. Conversely, Time Warner will be denied the opportunity to compete for those customers if the proposed rules are found to be invalid." Petition for Leave to Intervene at 6. This is the only claim made by Time Warner that the proposed rules, if proved valid, would affect its substantial interests. If the assertion were accurate, it likely would not rise to the level of demonstrating that Time Warner's substantial interests would be affected. Time Warner apparently concedes that it would not be regulated by the proposed rules.

Time Warner's assertion, however, is not accurate. Its claim that it would be denied the opportunity to compete for BellSouth's customers if the rules were not proved valid is, to put it mildly, an exaggeration. Time Warner does not contend that it is not free to compete for the vast majority of BellSouth customers (who do not have contracts that would be affected by the proposed rules). Moreover, Time Warner does not contend, nor could it, that it had no opportunity to compete for the affected BellSouth customers at the time that the subject contracts were formed.

In addition, to the extent that Time Warner claims that it presently is denied the opportunity to compete for the business of the affected customers is also obviously incorrect. Time Warner is free to compete for these customers now. Each of these affected customers is free to choose Time Warner's service at the termination of its

agreement or to terminate its current agreement and switch to Time Warner. The proposed rules would permit the affected customers to abrogate their agreements, however, without paying the full termination obligations to which they freely agreed. Accordingly, while the proposed rules, if valid, might marginally affect the sort of terms Time Warner might have to offer to induce a certain subset of BellSouth customers to terminate their agreements, their invalidity in no way "denies" Time Warner the opportunity to compete for *any* BellSouth customer at *any* time.

Time Warner's inability to demonstrate any direct or substantial effect on any substantial interest demonstrates the lack of any justification for permitting its intervention in this matter. For this reason, its Petition for Leave to Intervene should be denied.

Respectfully submitted this 8th day of February, 2000.

BELLSOUTH TELECOMMUNICATIONS, INC.

/V.F.

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