

Incumbent Local Exchange Company Contracts, by Time Warner AxS of Florida, L.P. d/b/a/ Time Warner Communications, Docket No. 980253-TX (1998).

2. 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.

3. 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.

4. 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.

5. On January 24, 2000, the Administrative Law Judge ordered 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.

6. On January 27, 2000, Time Warner submitted a Petition for Leave to Intervene ("Petition") asserting that its substantial interests will be affected by the outcome of this proceeding. Except for good cause shown, petitions for leave to intervene must be filed at least 20 days before the final hearing. Fla. Admin. Code R. 28-106.205. The hearing in this matter is scheduled to commence on April 25, 2000. Accordingly, Time Warner's Petition for Leave to Intervene was timely filed. In its Petition, Time Warner asserts that it will have an opportunity to compete for those

customers of ILECs, including BellSouth and GTE, who are within Time Warner's service area if the proposed rules are upheld. Conversely, if the proposed rules are found to be invalid, Time Warner asserts that it will be denied the opportunity to compete for those same customers thereby foregoing potential increases in revenues and marketshare. Accordingly, Time Warner's substantial interests are affected by this proceeding.

7. On February 8, 2000, GTE filed an Answer Opposing Time Warner Telecom of Florida, L.P.'s Petition for Leave to Intervene ("GTE Answer"), and served Time Warner via U.S. Mail. In GTE's Answer, GTE requests denial of Time Warner's Petition *with prejudice*. (GTE Answer at page 4)

8. Also on February 8, 2000, BellSouth filed a Response to Time Warner Telecom of Florida, L.P.'s Petition for Leave to Intervene ("BellSouth Answer"), and served Time Warner via U.S. Mail. In BellSouth's Answer, BellSouth requests denial of Time Warner's Petition. (BellSouth's Answer at page 3)

9. On February 18, 2000, the Administrative Law Judge issued an Order denying Time Warner's Petition for Leave to Intervene.

10. The *Florida Administrative Code*, Rule 28-106.201(4), states as follows:

A petition shall be dismissed if it is not in substantial compliance with subsection (2) of this rule or it has been untimely filed. Dismissal of a petition shall, at least once, be without prejudice to petitioner's filing a timely amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured.

11. *Florida Administrative Code*, Rule 28-106.202, states as follows:

The petitioner may amend the petition prior to the designation of the presiding officer by filing and serving an amended petition in the manner prescribed

for filing and serving an original petition. The petitioner may amend the petition after designation of the presiding officer only upon order of the presiding officer.

12. Neither the Code nor the *Florida Rules of Civil Procedure* appear to require a Petitioner to reply to an answer within a specified period of time, and the ALJ has not issued an Order imposing a time period within which Time Warner is required to reply to GTE's and BellSouth's Answers. Under Fla. Admin. Code R. 28-106.201(4), a petition must be dismissed if it is in substantial noncompliance with Fla. Admin. Code R. 28-106.201(2), or was untimely filed. However, dismissal must, at least once, be without prejudice to petitioner's filing of an amended petition. By Order dated February 18, 2000, the ALJ dismissed Time Warner's petition but did not indicate the basis of the dismissal or whether the dismissal was with or without leave to file an amended petition to intervene.

13. Time Warner filed its Petition to Intervene on January 27, 2000. On February 8, 2000, GTE and BellSouth filed Answers requesting denial of Time Warner's request to intervene on procedural and substantive grounds. Both Answers were mailed to Time Warner via U.S. Mail. The filing of a reply to an answer is not addressed in the *Florida Administrative Code*, therefore, any reply must be considered discretionary. Similarly, a response is not required if the ALJ considers GTE's and BellSouth's Answers procedurally akin to motions to dismiss. Fla. Admin. Code R. 28-106.204. It is unclear whether the Answers were considered to be motions for dismissal or pleadings for purposes of calculating the appropriate time within which Time Warner was required to respond. If considered analogous to motions to dismiss, Time Warner calculates that the Code permits, as time allows, twelve (12) days within which to respond to a motion, including seven (7) days plus five (5)

days for mailing,. Fla. Admin. Code R. 28-106.103 and 28-106.204 (1999). Time Warner was not required to file a response until February 21, 2000. However, on February 18, 2000, the tenth (10) day after the Answers were filed, an Order was issued denying Time Warner's Petition. Time Warner asserts that there was sufficient time at this point in the proceeding to allow Time Warner twelve days to respond.

WHEREFORE, for the reasons stated above, Time Warner requests the following relief:

1. Entry of an Order setting aside the Order dated February 18, 2000;
2. Such other relief as the ALJ deems appropriate.

RESPECTFULLY SUBMITTED this 22nd of February, 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 Motion for Reconsideration has been served by U.S. Mail this 22nd day of February, 2000, to the following parties of record:

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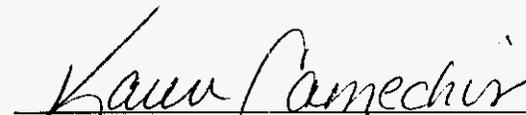
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