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March 6, 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 *Amended* 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

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

- AFA _____
- APP _____
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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 6th day of March, 2000 to the following:

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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 TELECOMMUNICATION INC.'S RESPONSE TO
TIME WARNER TELECOM OF FLORIDA, L.P.'S
MOTION FOR LEAVE TO FILE
AMENDED PETITION FOR LEAVE TO INTERVENE**

BellSouth Telecommunications, Inc. ("BellSouth") hereby requests that Time Warner Telecom of Florida, L.P.'s ("Time Warner's") Motion for Leave to File *Amended* Petition for Leave to Intervene in this consolidated case be denied. Although, as Time Warner notes, a petitioner may be granted leave to file an amended complaint, such leave should not be granted here, when the amended petition Time Warner seeks to file suffers from the same incurable defects as Time Warner's original petition to intervene. Try as it might, Time Warner cannot demonstrate that it has any substantial interests that would be affected by the outcome of this proceeding.

In its Amended Petition, Time Warner again fails 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.” Amended Petition for Leave to Intervene at 7. Time Warner would not, however, 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’s *new* assertion that its conduct *would* be regulated by the proposed rules is just not credible.

The problem underlying all of Time Warner’s assertions that its substantial interests would be affected by this rule lies in faulty reasoning. Time Warner notes that the Commission staff stated that the purpose of the proposed rules was to “enable ALECs [like Time Warner] to compete for existing LEC customer contracts.” Amended Petition to Intervene at 6. From this statement, Time Warner jumps to the conclusion that, if the proposed rules were determined to be invalid, “Time Warner will be denied the opportunity to compete for certain existing customers of ILECs” whose contracts would be made eligible for abrogation by the rules. Amended Petition for Leave to Intervene at 6-7. As BellSouth noted in its response to Time Warner’s first petition to intervene, Time Warner’s 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 continued 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 Motion for Leave to File Amended Petition for Leave to Intervene should be denied.

Respectfully submitted this 6th day of March, 2000.

BELLSOUTH TELECOMMUNICATIONS, INC.

Handwritten signature of Nancy B. White in cursive, followed by a horizontal line and the initials "V.F." to the right.

NANCY B. WHITE
MICHAEL P. GOGGIN
c/o Nancy H. Sims
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(305) 347-5558

Handwritten signature of R. Douglas Lackey in cursive, followed by a horizontal line and the initials "V.F." to the right.

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