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January 8, 2004

Ms. Blanca S. Bayo, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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COMMISSION
CLERK

RE: Docket Nos. 030851-TP and 030852-TP

Dear Ms. Bayo:

Enclosed please find an original and fifteen copies of Time Warner Telecom of Florida, L.P.'s ("Time Warner") Motion to Dismiss Verizon Florida Inc.'s Motion to Compel Time Warner Telecom of Florida to Provide Confidential Information in Accordance with Terms of Non-disclosure Agreement in the above referenced dockets

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

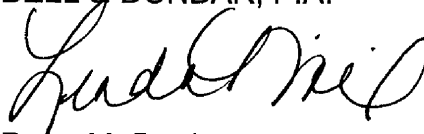
If you have any questions with regard to the foregoing, please do not hesitate to contact me.

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Respectfully,

PENNINGTON, MOORE, WILKINSON,
BELL & DUNBAR, P.A.



Peter M. Dunbar
Linda Noel
Counsel for Time Warner Telecom of Florida, L.P.

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Enclosures
Cc: Carolyn Marek
Parties of Record

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DOCUMENT NUMBER-DATE

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Implementation of requirements arising)
from Federal Communications Commission's)
Triennial UNE Review: Local Circuit Switching)
for Mass Market Customers)
_____)

Docket No.: 030851-TP
Filed: January 8, 2004

In re: Implementation of requirements arising)
from Federal Communications Commission's)
triennial UNE Review: Location-Specific)
Review for DS1, DS3, and Dark Fiber Loops)
and Route-Specific Review for DS1, DS3 and)
Dark Fiber Transport)
_____)

Docket No. 030852-TP

**TIME WARNER TELECOM OF FLORIDA, L.P.'S
MOTION TO DISMISS VERIZON FLORIDA INC.'S MOTION
TO COMPEL TIME WARNER TELECOM OF FLORIDA TO PROVIDE
CONFIDENTIAL INFORMATION IN ACCORDANCE WITH THE TERMS OF
NON-DISCLOSURE AGREEMENT**

Time Warner Telecom of Florida, L.P. ("Time Warner"), by and through its undersigned attorneys moves to dismiss Verizon Florida Inc.'s ("Verizon") Motion to Compel filed herein, and in support of this motion says:

1. On November 14, 2003, November 16, 2003 and December 12, 2003, Time Warner filed responses and amendments to the Triennial Review Data Request ("Data Request"). The documents filed included tables titled General Questions, Switching Questions, Remote Questions, and Revised Switching Questions. On December 1, 2003, Time Warner submitted additional responses to the data request. The documents filed included tables titled Loop Questions and Transport Questions. Confidential classification was requested for the tables titled Switching Questions, Revised Switching Questions, Loop Questions and Transport Questions.

2. The tables were filed pursuant to a cooperative agreement between BellSouth

DOCUMENT NUMBER-DATE

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Telecommunications, Inc. and Time Warner. Time Warner is not and has never been a party to the above referenced dockets.

3. On December 15, 2003, Verizon, along with several other parties, requested a copy of Time Warner's confidential responses and agreed to sign a non-disclosure agreement. Subsequent to Verizon signing the non-disclosure agreement, Verizon propounded, filed, and served on several parties, its First Request for Admissions (Nos. 1-21), First Set of Interrogatories (Nos. 1-24) and First Request for Production of Documents (Nos. 1-11) (collectively "Discovery Request"). The Discovery Request included a request to produce Time Warner's responses to the Data Request.

4. Although Verizon states that the Discovery Request was served on Time Warner's counsel via e-mail on December 22, 2003, Time Warner did not receive the Discovery Request until December 29, 2003. However, Time Warner did learn of the discovery request from Michael Gross of Florida Cable Telecommunications Association and at that time requested that Verizon withdraw the Discovery Request. Time Warner further offered to provide Verizon with the same information that it has provided to all other entities that have signed its confidentiality agreement. Instead, on Christmas Eve, Verizon demanded Time Warner immediately produce its responses to the Data Request and the Discovery Request.

5. On December 31, 2003, Verizon filed a motion to compel production of Time Warner's responses to the Data Request.

6. The Commission should dismiss Verizon's motion to compel because Time Warner is not a party to the above-referenced dockets and was not required to provide Verizon the information contained in the Data Request.

7. Furthermore, Florida Administrative Code provides for discovery in accordance with Rules 1.280 and 1.340, Florida Rules of Civil Procedure. Under the Florida Rules of Civil Procedure, discovery requests can only be served on parties, not non-parties. Interrogatories, in particular, cannot be served on non-parties or on parties to be answered about or for non-parties.¹ See *Broward County v. Kerr*, 454 So. 2d 1068 (Fla. 4th DCA 1984); Henry P. Trawick, Jr., *Trawick's Florida Practice and Procedure* § 16-9 (2001 ed.). Nonetheless, Time Warner has filed a response to Verizon's Discovery Request which includes a copy of the responses to the Data Request.²

WHEREFORE, Time Warner requests that the Commission dismiss Verizon Florida Inc.'s Motion to Compel Time Warner Telecom of Florida, L.P. to Provide Confidential Information in Accordance with Terms of Non-disclosure Agreement.

Respectfully submitted this 8th day of January 2004.



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¹ The Discovery Request is addressed in this motion because it contains a document request for Time Warner's confidential filing.

² Time Warner's response to Verizon's discovery request was filed on January 7, 2004.