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April 13, 2004

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

RE: **Docket No. 040156-TP**

Dear Ms. Bayo:

Enclosed for filing on behalf of Time Warner Telecom of Florida, L.P. are the original and 15 copies of Time Warner's Motion to Dismiss Verizon Florida Inc.'s Petition for Arbitration.

Copies have been served to all other parties in this docket pursuant to the attached certificate of service.

Please acknowledge receipt of this filing by stamping a copy of this letter and returning the same to me. If you have any questions with regard to the foregoing, please do not hesitate to contact me.

Respectfully,

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



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

Cc: Carolyn Marek, Time Warner Telecom of Florida, L.P.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Verizon Florida Inc. for) Docket No.: 040156-TP
Arbitration of an Amendment to Interconnection) Filed: April 13, 2004
Agreement with Competitive Local Exchange)
Carriers and Commercial Mobile Radio Service)
Providers in Florida Pursuant to Section 252 of)
the Telecommunications Act of 1934, as)
Amended, and the Triennial Review Order)
_____)

**TIME WARNER TELECOM OF FLORIDA L.P.'S
MOTION TO DISMISS VERIZON FLORIDA INC.'S PETITION FOR ARBITRATION**

Time Warner Telecom of Florida, L.P. ("Time Warner"), pursuant to Rule 28-106.204, Florida Administrative Code, hereby files this Motion to Dismiss Verizon Florida Inc.'s Petition for Arbitration and as grounds therefor states as follows:

I.

On March 10, 2004, Verizon Florida Inc. ("Verizon") filed its Petition for Arbitration against numerous Competitive Local Exchange Carriers ("CLECs") and Commercial Mobile Radio Service Providers ("CMRS") to initiate what it characterizes as a "consolidated arbitration" that seeks to implement the FCC's decisions in its Triennial Review Order ("TRO") as a change of law.¹ Time Warner is among the CLECs named in the Petition. Verizon's Petition with respect to Time Warner is improper and premature because the parties have been and are in active negotiations to reach an interconnection agreement that would provide terms and conditions applicable to all of the Time Warner affiliated local service providers in all Verizon territory.

¹ Verizon then filed an "update" to its Petition on March 19, 2004, attempting to incorporate the District of Columbia Court of Appeal's decision in USTA II, although that decision is stayed and no change of law has occurred.

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As a review of Verizon's Petition makes clear, Verizon made no attempt to ascertain or describe the status of the interconnection agreements with the CLECs named in its Petition. Nor did it describe the status of negotiations that it had conducted with individual CLECs prior to and as of the date of which the Petition was filed. Instead, Verizon's Petition on its face would lead the Commission to believe that Verizon presently has interconnection agreements in effect with every named CLEC and that active negotiations reached an impasse thus requiring Verizon to file for arbitration. With respect to Time Warner neither implication is correct.

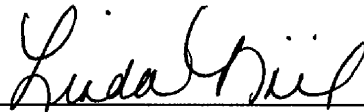
Through its parent company (Time Warner Telecom Holdings) Time Warner is in the process of negotiating an interconnection agreement with Verizon. The agreement now being negotiated would govern the business relationship between Verizon and all of the Time Warner local service provider entities in twelve states. Those negotiations include the TRO Amendment Verizon proposes to be arbitrated here. Because the parties' negotiations are continuing and the parties by their conduct and agreement have extended the window for negotiation, Verizon's initiation of arbitration at this time and on its proposed TRO amendment was improper. Time Warner believes the parties negotiations have been fruitful, and that no impasse has been reached such that arbitration is required. Time Warner's understanding and its expectation is that the ongoing negotiations will result in a new interconnection agreement that addresses the services to be made available to Time Warner, including UNEs, in a manner consistent with currently effective law as of the date on which final agreement is reached. Time Warner has received no notice from Verizon to the contrary.

III.

Time Warner's motion for dismissal of Verizon's Petition as to Time Warner is directed solely to the issues raised in Verizon's Petition. Time Warner does not waive its right to arbitrate any other issues on which the parties may in the future disagree and for which either party may seek arbitration on a timely basis at the conclusion of their good faith negotiations.

WHEREFORE, Time Warner respectfully requests that Verizon's Petition for Arbitration be dismissed as to Time Warner and for such other and further relief as to which it may show itself entitled.

Respectfully submitted this 13th day of April, 2004.



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Counsel for Time Warner Telecom of Florida, L.P.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing were sent via U.S. Mail on April 13,

2004 to:

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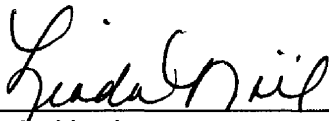
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