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September 8, 2006

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

RE: Docket No. 060512-EU; **Rule Comments and Testimony of Time Warner
Telecom**

Dear Ms. Bayo:

Please find enclosed an original and three copies of the Rule Comments and Testimony by Time Warner Telecom of Florida, L. P. The document is filed in original and in a redacted form. Time Warner is requesting that certain information be maintained as confidential pursuant to Florida Statutes and Florida Administrative Code provisions. We also enclose with this a CD Rom containing the original and redacted versions as well for use by the Commission.

The following information is redacted and requested to be treated as confidential pursuant to Section 364.183, Florida Statutes and for the reasons given:

- 1. Confidential Attachment to Comments of Time Warner Telecom:


This information is proprietary, confidential business information and information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

If you have any questions or comments, please do not hesitate to contact me.

Sincerely,


Howard E. Adams

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed Adoption of New Rule)
25-6.0343, F.A.C., Standards of)
Construction - Municipal Electric Utilities)
And Rural Electric Cooperatives.)

DOCKET NO. 060512-EU
FILED: September 8, 2006

RULE COMMENTS AND TESTIMONY

COMES NOW Time Warner Telecom of Florida, L.P., as an affected party and files this its comments and testimony in the above styled docket:

GENERAL COMMENTS

1. Time Warner Telecom of Florida, L.P. is a competitive local exchange carrier providing telecommunications service in the State of Florida.
2. The name, address and telephone number of Time Warner Telecom of Florida, L.P., and the provider of these comments and testimony is:

Carolyn Marek
Vice President of Governmental Affairs
Time Warner Telecom of Florida, L.P.
233 Bramerton Court
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3. Time Warner Telecom has previously furnished written and oral comments regarding proposed rules on pole attachments at the staff workshops held on April 17, May 19, and July 13, 2006. Subsequent to these workshops, the P.S.C. has issued its order bifurcating these issues to allow the Municipal Utilities and Rural Electric Cooperatives to proceed with separate rulemaking regarding pole attachment and National Electric Safety Code standards.
4. Time Warner Telecom asserts that the Public Service Commission currently does not have jurisdiction over pole attachments, pole attachment rates or charges for pole attachments by third party pole attachers. While Time Warner Telecom does not object to the

Florida Public Service Commission exercising jurisdiction over pole attachments, the Florida Public Service Commission has currently chosen not to exercise its jurisdiction as may be delegated to the State through the Federal Communications Commission. Other parties' comments also assert the Public Service Commission may lack legislative authority to exercise pole attachment jurisdiction. Time Warner Telecom asserts that the proposed rules, to the extent they may allow additional charges or costs to be assessed to third-party pole attachers, are in violation of Federal Communications Commission rules and regulations which set pole attachment rates in the absence of State jurisdiction over these issues.

5. Time Warner Telecom suggests additional language be inserted in the rule as is shown in the annotated rule attached hereto as Exhibit 1, which provides that utilities and its customers shall bear any increased costs in the relocation, expansion, rebuilding or relocation of electric distribution facilities.

6. Time Warner Telecom is concerned with the proposed rule with regard to suggestions that the commission delegate to the electric companies the ability to establish written safety, reliability, capacity and engineering standards along with procedures for attachments to utility electric distribution poles. These procedures as suggested would provide that third party facilities could not be attached to the electric distribution poles if the facilities "impair electric system safety or reliability, do not exceed pole capacity, and are constructed, installed, maintained, and operated in accordance with generally accepted engineering practices for the utility service territory." Time Warner Telecom is concerned that such a broad grant of authority to the utility could result in discriminatory practices to third party attachers.

7. Granting to the electric utilities a broad implementation authority to determine safety and reliability standards, as well as capacity standards, could result in a systematic effort to discourage or prohibit third party pole attachers from utilizing electric distribution poles. Such a practice could fail to comport with recognized federal law granting usage of utility poles.

8. The proposed rule also provides that no attachments could be made to any electric utility distribution poles except in compliance with the attachment standards and procedures. Mandated compliance could allow a utility to systematically deny pole attachment rights under the guise of safety standards and again systematically exclude third parties from attachment. The standards developed by the electric utility may be calculated to provide a competitive disadvantage to Time Warner Telecom where such poles are owned by another competitive incumbent telecommunications company or utility seeking a competitive advantage.

9. Time Warner Telecom states that should the Commission adopt standards suggested by the utilities regarding pole attachments, then these standards should be consistent with federal law. Attachments should be allowed consistent with federal law, which laws should be reviewed by the commission as a part of these proceedings with regard to the issues of capacity and fees consistent with FCC rulings on this subject.

10. Time Warner Telecom also states that the Florida Public Service Commission is in essence delegating what the rules and regulations regarding third-party attachment and safety standards shall be to the rural electric utility companies and municipal electric utilities. Such a delegation is impermissible under Florida administrative law but also has the potential to threaten third-party attachers with engineering or safety standards which in essence will

“regulate off the poles” any third-party attachments. Time Warner Telecom suggests language in the portions of the rules which would provide that the adoption of the National Electric Safety Code safety standards shall become the standard for compliance. The Florida Public Service Commission shall then review each plan of each utility for consistency with that standard. By not allowing each utility to develop its own standards which exceed the standard or develop differing implementation methods regarding these standards, the Florida Public Service Commission can maintain a uniform standard to be applied to all third-party attachers. This uniform standard would ensure that each utility in its implementation would not exceed the minimum requirements to such an extent that local implementation standards, engineering practices or local safety standards would prevent an attacher from being allowed to attach to the pole. The uniform standard would also prevent the utility from allowing discriminating practices or impose additional costs to the attachers. Time Warner Telecom would be at a distinct disadvantage if the utilities utilized these standards to either transfer costs or used these standards to “regulate” attachers on the poles so that no further attachments would be allowed because of wind loading concerns. Time Warner Telecom as a competitive carrier would be economically and competitively unable to compete if these costs were imposed on Time Warner Telecom.

11. Time Warner Telecom has significant numbers of pole attachments both in the Tampa Bay region and in the Orlando service regions. For competitive reasons, Time Warner Telecom has filed a separate confidential attachment listing the exact numbers of pole attachments and approximate mileage of fiber optic cable which it currently uses to service its customers. However, for proprietary reasons, Time Warner Telecom has asked that such disclosure be kept confidential. Should the Commission or the Legislature mandate an

undergrounding of all service, Time Warner Telecom would emphatically note that such mandate would pose a significant economic burden on Time Warner Telecom and any other competitive communications carrier that attaches to the poles of the electric utilities. The current estimated price for undergrounding each mile of fiber optic cable is \$65,000 per mile. Since competitive carriers have no rate base nor ability to apply for storm surcharge reconstruction costs, such a huge impact of capital construction costs could place a competitive carrier at a severe disadvantage by virtue of such a capital outlay, literally an outlay costing tens if not hundreds of millions of dollars.

12. With the entry of power companies into broadband competition or a concentrated effort by a competing telephone company which maintains poles, an anti-competitive effort could directly result from a utility suddenly deciding to bury large amounts of its distribution network or convert large amounts of its overhead to underground distribution. Such a move could put competitive carriers at a significant competitive disadvantage by forcing the current pole attachers to move underground and spend mass amounts of capital without the ability to recover these capital costs unless the Commission specifically states the cost of undergrounding these attached utilities are to be borne by the pole owners or their customers.

13. In addition to these capital costs, Time Warner estimates that there will be an additional burden of an increase in the number of responses to One Call inquiries which will need to be answered. This will result in either company employees or contracted service employees responding to public requests for location markings of underground utility facilities. While anecdotal evidence suggests that underground utility maintenance may be less, Time Warner Telecom believes through its past experiences that maintenance costs are approximately the same for underground as they are for overhead cable services.

14. Time Warner Telecom is also concerned that there may be additional costs for right of way fees for the use of undergrounding of utilities, other costs for right of way crossings such as now currently charged by railroads or other costs for use of rights of way. These ROW fees, however, could be offset by a reduction in pole attachment fees paid to other utilities.

15. Time Warner Telecom acknowledges that placing utilities underground should provide for a more secure and more stable environment for cable and other utilities. However, the capital costs to convert and move underground potentially have significant anti-competitive effects upon competitive carriers such as Time Warner Telecom.

16. Rule 25-6.0343 for instance, requires that each utility will begin using rights of way along public streets, roads and highways including any rebuild or relocation of facilities whether underground or overhead. This could result immediately in a large construction expense for competitive carriers who are currently attached to facilities which run along the back edge or alleyway of lots. The only requirement is that the utilities seek input from third party attachers and coordinate the construction of these facilities with the third party attachers. Any cost implications are potentially left for the third party attacher to absorb. It is critical that this rule specifically state that the electric utilities or the pole owners, and not the attachers to the poles, must absorb the costs of converting to underground or moving existing facilities.

17. Rule 25-6.0343 as proposed provides that the utility is to establish and maintain safety, reliability, pole loading capacity and engineering standards for third-party attachers. These attachment procedures are "to meet or exceed the applicable edition of the National Electric Safety Code." Time Warner Telecom's concern as previously stated is that this

delegates to each utility an opportunity to set “over engineering” standards and procedures which “exceed” the National Electric Safety Code. The utilities then have the ability under the guise of safety to regulate through costly required engineering standards the competitiveness of carriers such as Time Warner Telecom. While the rule attempts to state that the utility shall seek input from other entities, it does not provide that such input shall be adhered to nor utilized in establishing these standards. While the Commission has retained jurisdiction to resolve any disputes arising from the implementation of the rule, such development of standards on a case by case and utility by utility basis could take years. The untimely resolution of disputes could favor a variety of utilities including co-ops, municipalities and investor-owned each having its own standards which are set according to rule. Time Warner Telecom submits that in each place where the words “or exceed” are used, that they should be deleted from the rule to provide that the attachment’s standards and procedures shall “meet” the applicable edition of the National Electric Safety Code and the Commission should be required to review each plan for conformity with this known standard. To allow each utility to exceed the National Electric Safety Code under its own terms could result in an “over-engineering” standard being imposed upon third-party attachers which could effectively regulate third-party attachers off the poles.

18. Time Warner Telecom also asserts that the benefits to accrue from the proposed rule are potentially the reduction of restoration costs during and after storm and wind-related events. However, many of Time Warner Telecom’s outages have occurred when as an attacher, downed poles and wires are cleared from an area for reconstruction during a storm-related repair and cables which had not been severed and were continuing to provide service are severed as a part of the reconstruction event. Customers must then wait for restoration of

their telecommunications services while their electricity has already been restored. Time Warner Telecom had approximately \$400,000 total in storm-related costs for the past 3 years. These costs were absorbed by Time Warner Telecom. Time Warner Telecom, believes the public and the Commission think it will benefit from placing utilities underground; however, Time Warner Telecom's experience would demonstrate that troubleshooting underground utilities can be problematic from time to time; flooding during storms can cause outages and that overall restoration times may in fact be similar whether utilities are underground or overhead.

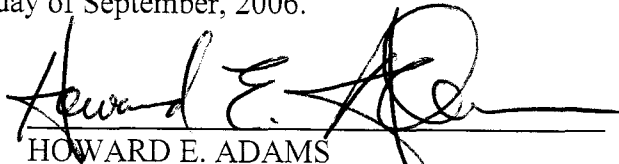
COMMENTS ON PROPOSED RULES

19. Rule 25-6.0343 – The following changes are suggested: A new sentence is added to paragraph (1)(b) to provide: “The construction standards provided in this rule shall not act to impair, restrict, impede, or discriminate against third-party attachers from attaching to poles where such attachments do not violate the safety standards of the applicable National Electric Safety Code.” In Paragraph (1)(d) the words “at a minimum” shall be stricken. Paragraph (3) shall be amended to strike the words “or exceed”. Paragraph (4) shall be amended to provide: “The Commission shall review for consistency the construction standards and attachment standards and procedures developed by the utility pursuant to this rule. These standards shall be consistent with the National Electric Safety Code as adopted pursuant to this rule.” Paragraph (4) is further amended to provide: “Any additional costs for expansion, rebuilding or relocation of the electric distribution facility shall be born by the utility or the customer as provided by the contribution in aid of construction rules and may be recovered as provided by other appropriate rules of the Commission to recover these costs.”

CONCLUSION

Time Warner Telecom respectfully requests that the Florida Public Service Commission make the amendments to the rule as proposed in these pleadings and as provided in the attached copy of the rule showing the changes to be made and with additions noted. Time Warner Telecom asks that it be allowed to present these comments and testimony and that it be allowed to participate fully in the hearing as an affected party and to present further argument and oral statements on the proposed rules as may be necessary.

Respectfully submitted this 8th day of September, 2006.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail this 8th day of September 2006 to the following:

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EXHIBIT "A" TO TIME WARNER TELECOM'S RULE COMMENTS AND TESTIMONY WITH CHANGES AND DELETIONS SHOWN TO PROPOSED RULE

25-6.0343 Municipal Electric Utilities and Rural Electric Cooperatives.

(1) Standards of Construction.

(a) Application and Scope. This rule is intended to define construction standards for all overhead and underground electrical transmission and distribution facilities to ensure the provision of adequate and reliable electric service for operational as well as emergency purposes. This rule applies to all municipal electric utilities and rural electric cooperatives.

(b) Each utility shall establish, no later than 180 days after the effective date of this rule, construction standards for overhead and underground electrical transmission and distribution facilities that conform to the provisions of this rule. Each utility shall maintain a copy of its construction standards at its main corporate headquarters and at each district office. Subsequent updates, changes, and modifications to the utility's construction standards shall be labeled to indicate the effective date of the new version and all revisions from the prior version shall be identified. Upon request, the utility shall provide access, within 2 working days, to a copy of its construction standards for review by Commission staff in Tallahassee. The construction standards provided in this rule shall not act nor be utilized to impair, restrict, impede, or discriminate against third-party attachments or in any way prevent legitimate attachments to any pole where such attachments meet the standards of the applicable National Electrical Safety Code.¹

(c) The facilities of each utility shall be constructed, installed, maintained and operated in accordance with generally accepted engineering practices to assure, as far as is reasonably possible, continuity of service and uniformity in the quality of service furnished.

(d) Each utility shall² comply with the applicable edition of the National Electrical Safety

Deleted:
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¹ See Comments/Testimony ¶ 6, 7, 8, 9, 10, 19 regarding delegation of standards.

² The text "at a minimum" was deleted. Set standard would not allow utility to exceed standard. See Comments/Testimony ¶ 6, 7, 8, 9, 10, 19.

Code (ANSI C-2) [NESC].

1. The Commission adopts and incorporates by reference the 2002 edition of the NESC, published August 1, 2001. A copy of the 2002 NESC, ISBN number 0-7381-2778-7, may be obtained from the Institute of Electric and Electronic Engineers, Inc. (IEEE).

2. Electrical facilities constructed prior to the effective date of the 2002 edition of the NESC shall be governed by the applicable edition of the NESC in effect at the time of the initial construction.

(e) For the construction of distribution facilities, each utility shall, to the extent reasonably practical, feasible, and cost-effective, be guided by the extreme wind loading standards specified by Figure 250-2(d) of the 2002 edition of the NESC. As part of its construction standards, each utility shall establish guidelines and procedures governing the applicability and use of the extreme wind loading standards to enhance reliability and reduce restoration costs and outage times for each of the following types of construction:

1. new construction;

2. major planned work, including expansion, rebuild, or relocation of existing facilities, assigned on or after the effective date of this rule; and

3. targeted critical infrastructure facilities and major thoroughfares taking into account political and geographical boundaries and other applicable operational considerations.

(f) For the construction of underground distribution facilities and their supporting overhead facilities, each utility shall, to the extent reasonably practical, feasible, and cost-effective, establish guidelines and procedures to deter damage resulting from flooding and storm surges.

(2) Location of the Utility's Electric Distribution Facilities. In order to facilitate safe and efficient access for installation and maintenance, to the extent practical, feasible, and cost-

effective, electric distribution facilities shall be placed adjacent to a public road, normally in front of the customer's premises.

(a) For initial installation, expansion, rebuild, or relocation of overhead facilities, utilities shall use easements, public streets, roads and highways along which the utility has the legal right to occupy, and public lands and private property across which rights-of-way and easements have been provided by the applicant for service.

(b) For initial installation, expansion, rebuild, or relocation of underground facilities, the utility shall require the applicant for service to provide easements along the front edge of the property, unless the utility determines there is an operational, economic, or reliability benefit to use another location.

(c) For conversions of existing overhead facilities to underground facilities, the utility shall, if the applicant for service is a local government that provides all necessary permits and meets the utility's legal, financial, and operational requirements, place facilities in road rights-of-way in lieu of requiring easements.

(3) Third-Party Attachment Standards and Procedures.

(a) As part of its construction standards adopted pursuant to subsection (1), each utility shall establish and maintain written safety, reliability, pole loading capacity, and engineering standards and procedures for attachments by others to the utility's electric transmission and distribution poles (Attachment Standards and Procedures). The Attachment Standards and Procedures shall meet ³the applicable edition of the National Electrical Safety Code (ANSI C-2) pursuant to subsection (1)(d) of this rule and other applicable standards imposed by state and federal law so as to assure, as far as is reasonably possible, that third-party facilities attached to electric transmission and distribution poles do not impair electric safety, adequacy, or reliability;

Deleted: or exceed

³ The text "or exceed" has been deleted. Set standard would not allow utility to exceed standard. See Comments/Testimony ¶ 6, 7, 8, 9, 10, 12, 17, 19.

do not exceed pole loading capacity; and are constructed, installed, maintained, and operated in accordance with generally accepted engineering practices for the utility's service territory.

(b) No attachment to a utility's electric transmission or distribution poles shall be made except in compliance with such utility's Attachment Standards and Procedures.

(4) In establishing the construction standards and the attachment standards and procedures, the utility shall seek input from other entities with existing agreements to share the use of its electric facilities. Any dispute or challenge to a utility's construction standards by a customer, applicant for service, or attaching entity shall be resolved by the Commission. Where the expansion, rebuild, or relocation of electric distribution facilities affects existing third-party attachments, the electric utility shall seek input from and, to the extent practical, coordinate the construction of its facilities with the third-party attacher. The Commission shall review for consistency the construction standards and attachment standards and procedures developed by the utility pursuant to this rule. These standards shall be consistent with the National Electric Safety Code as adopted pursuant to this rule. Any additional costs for expansion, rebuilding or relocation of the electric distribution facility shall be born by the utility or the customer as provided by the contribution in aid of construction rules and may be recovered by the utility as provided by other appropriate rules of the Commission.⁴

(5) If the Commission finds that a municipal electric utility or rural electric cooperative utility has demonstrated that its standards of construction will not result in service to the utility's general body of ratepayers that is less reliable, the Commission shall exempt the utility from compliance with the rule.

Specific Authority: 350.127, 366.05(1) F.S.

Law Implemented: 366.04(2)(c)(f), (5), (6), 366.05(8) F.S.

⁴ Set standard would not allow utility to exceed standard. See Comments/Testimony ¶ 5, 6, 11, 12, 13, 14, 15, 16, 17, 18, 19.