

30
pm

PENNINGTON & HABEN
A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

**ORIGINAL
FILE COPY**

BARBARA D. AUGER
WILLIAM W. BLUE
D. ANDREW BYRNE †
BRAM D. E. CANTER
ROBERT CINTRON, JR.
ROBERT S. COHEN
CHARLES L. COOPER, JR.
BRUCE CULPEPPER
SONYA KROUSKOP DAWS
PETER M. DUNBAR
DAVISSON F. DUNLAP, JR.
JOHN FRENCH
RALPH H. HABEN, JR.
DAYTEN P. HANSON†
MICHAEL A. KLINER

R. BRUCE MCKIBBEN, JR.
JOHN C. PELHAM
CARL R. PENNINGTON, JR., P.A.
RONALD R. RICHMOND
C. EDWIN RUDE, JR.
DARREN A. SCHWARTZ
JOHN T. STEMBERGER
NANCY BLACK STEWART
DAVID B. SWITALSKI
CYNTHIA S. TUNNICLIFF
WILLIAM E. WHITNEY
BEN H. WILKINSON
CATHI C. WILKINSON
†Also Admitted in Tennessee
‡Also Admitted in Wisconsin

OF COUNSEL
CHRISTOPHER W. KANAGA
(Admitted in Massachusetts & Colorado Only)
WILLIAM VANDERCREEK
(Admitted in Texas & Iowa Only)
SPECIAL CONSULTANTS
KARL R. ADAMS*
RANDY MILLER*
DAVID L. SWAFFORD*
*Not A Member Of The Florida Bar

215 SOUTH MONROE STREET
2ND FLOOR
TALLAHASSEE, FLORIDA 32301
(904) 222-3533
FAX (904) 222-2126

1002 WEST 23RD STREET, SUITE 350
PANAMA CITY, FLORIDA 32405
(904) 769-7864

REPLY TO:
P.O. BOX 10095
TALLAHASSEE, FL 32302-2095

July 27, 1994

Ms. Blanca Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32399-0850

via Hand Delivery

Re: Expanded Interconnection Phase II and Local
Transport Restructure; Docket No. 921074-TP

Dear Ms. Bayo:

- ACK _____
- AFA _____
- APP _____
- CAF _____
- CMU Smith
- CTR _____
- EAG _____
- LEG Canzon
- LIN 4
- OPC _____
- RCH _____
- SEC 1
- WAS _____
- OTH _____

Enclosed for filing please find an original and fifteen copies of Time Warner AxS of Florida, L.P.'s Prehearing Statement for the above-referenced docket. You will also find a copy of this letter enclosed. Please date-stamp the copy of the letter to indicate that the original was filed and return a copy to me.

If you have any questions regarding this matter, please feel free to contact me. Thank you for your assistance in processing this filing.

RECEIVED & FILED
mas
FPSC-BUREAU OF RECORDS

Respectfully,
PENNINGTON & HABEN, P.A.

Peter M. Dunbar
Peter M. Dunbar

PMD/tmz
Enclosures

cc: All Parties of Record (w/ enclosure)

DOCUMENT NUMBER-DATE

07653 JUL 27 94

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Expanded Interconnection)
Phase II and Local Transport)
Restructure)

Docket No. 921074-TP
Docket No. 930955-TL
Docket No. 940014-TL
Docket No. 940020-TL
Docket No. 931196-TL
Docket No. 940190-TL
Filed: July 27, 1994

PREHEARING STATEMENT BY TIME WARNER AXS OF FLORIDA, L.P.

COMES NOW, Time Warner AxS of Florida, L.P., ("Time Warner"), pursuant to Rule 25-22.038, Florida Administrative Code, the Order Establishing Procedure (Order No. PSC-94-0076-PCO-TL), and the Order Establishing Preliminary Issues (Order No. PSC-94-0277-PCO-TL) and respectfully submits its Prehearing Statement in the above-captioned docket to the Florida Public Service Commission ("Commission" or "FPSC").

I. SUMMARY STATEMENT OF BASIC POSITION

Expanded interconnection of intrastate switched access is in the public interest and is consistent with the FCC's treatment of interstate switched access. Expanded interconnection of switched access will facilitate the growth of competitive telecommunications networks in Florida and provide Florida's consumers with "state of the art" telecommunications service.

It is essential to the development of competition that interconnection with the LEC networks is priced fairly and is not cumbersome technologically. Collocation should be provided in a manner which is technically, economically and operationally equivalent to a physical collocation standard. A standard of reasonableness is also necessary to prevent incumbent LECs from building inefficiencies into collocation arrangements which will impede competition.

DOCUMENT NUMBER-DATE

07653 JUL 27 1994

FPSC-RECORDS/REPORTING

In Phase I of this proceeding, the Commission determined that the intrastate collocation policy for special access generally should mirror the Federal Communications Commission's ("FCC") interstate collocation mandate. Tariffs have been filed in Phase II of the proceeding in response to the Phase I decision. Because of the relationship of interstate collocation to both Phase I and Phase II, the District of Columbia Circuit Court's remand of the FCC's collocation decision (*Bell Atlantic Telephone Companies v. FCC*, 1994 WL 247134 (D.C. Cir.)) creates uncertainty regarding some of the issues which are before the FPSC.

There is a strong indication that it is more efficient for the intrastate collocation arrangements for switched access and special access to be compatible with the interstate collocation arrangements for those services. However, while the FCC has voted to mandate virtual collocation, an order establishing standards for virtual collocation has not been issued. Thus, standards adopted by the FPSC must be flexible enough to assure compatibility between interstate and intrastate collocation standards.

Incumbent local exchange companies ("LEC") should not be granted pricing flexibility beyond that provided for by the FCC. Specifically, Contract Service Arrangements (CSAs) should not be allowed for these services.

Restructure of local transport should not proceed prior to the implementation of expanded interconnection.

II. WITNESSES, TESTIMONY AND EXHIBITS

Time Warner does not intend to call any witnesses, present testimony or present exhibits in this docket.

III. ISSUES OF LAW AND POLICY

Time Warner recognizes and acknowledges that twenty-five (25) issues of law and policy have been identified and will be addressed by the Commission in this docket. Each is incorporated in this Prehearing Statement by reference, and is believed by Time Warner to be at issue.

ISSUE 1:

How is switched access provisioned and priced today?

TIME WARNER'S POSITION:

No position. Time Warner does not provide these services.

ISSUE 2:

How is local transport structured and priced today?

TIME WARNER'S POSITION:

No position. Time Warner does not provide these services.

ISSUE 3:

Under what circumstances should the Commission impose the same or different forms and conditions of expanded interconnection than the F.C.C.?

TIME WARNER'S POSITION:

Generally, the Phase I modifications to the FCC decision should apply in Phase II. However, at present, the FCC has not issued an order which establishes standards for virtual collocation. The FPSC should implement standards for interconnection for intrastate services which assure that interconnection is reasonably priced and is not technologically, administratively or economically limiting for interconnectors. There should be no incumbent LEC pricing flexibility beyond that allowed by the FCC.

ISSUE 4:

Is expanded interconnection for switched access in the public interest? (The following should be discussed within this issue: Potential separations impact; Potential revenue impact on LECs, their ratepayers, and potential competitors; Potential ratepayer impact.)

TIME WARNER'S POSITION:

Yes. Expanded interconnection for switched access is in the public interest.

ISSUE 5:

Is the offering of dedicated and switched services between non-affiliated entities by non-LECs in the public interest?

TIME WARNER'S POSITION:

Yes. Non-LEC offering of dedicated and switched services between non-affiliated entities is in the public interest. Such a regulatory approach will provide Florida's consumers with the benefits of a competitive telecommunications market.

ISSUE 6:

Does Chapter 364, Florida Statutes, allow the Commission to require expanded interconnection for switched access?

TIME WARNER'S POSITION:

Yes. However, Chapter 364, Florida Statutes, limits the purposes for which expanded interconnection of switched access can be used by competitors.

ISSUE 7:

Does a physical collocation mandate raise federal or state constitutional questions about the taking or confiscation of LEC property?

TIME WARNER'S POSITION:

No. However, Time Warner acknowledges that "substantial constitutional questions" regarding the taking question were noted in the federal court's remand of the FCC's orders.

ISSUE 8:

Should the Commission require physical and/or virtual collocation for switched access expanded interconnection?

TIME WARNER'S POSITION:

The FPSC should adopt physical collocation as a standard against which virtual collocation arrangements are measured. Virtual collocation should be provided in a manner which is technically, economically, administratively and operationally equivalent to physical collocation. A standard of reasonableness is also necessary to prevent incumbent LECs from building inefficiencies into collocation arrangements which will impede competition. The Commission should allow negotiated physical collocation arrangements as an alternative to virtual collocation.

ISSUE 9:

Which LECs should provide switched access expanded interconnection?

TIME WARNER'S POSITION:

For consistency, the FPSC should mirror its Phase I determinations regarding special access.

ISSUE 10:

From what LEC facilities should expanded interconnection for switched access be offered? Should expanded interconnection for switched access be required from all such facilities?

TIME WARNER'S POSITION:

For consistency, the Commission should mirror the FCC's decisions as refined by the Commission's decisions regarding special access interconnection in Phase I of this proceeding.

ISSUE 11:

Which entities should be allowed expanded interconnection for switched access?

TIME WARNER'S POSITION:

For consistency, the Commission should mirror the FCC's decisions as refined by the Commission's decisions regarding special access in Phase I of this proceeding.

ISSUE 12:

Should collocators be required to allow LECs and other parties to interconnect with their network?

TIME WARNER'S POSITION:

No. However, the public interest in ubiquitous service assumes interconnection of competing networks. As such, facilities based carriers should facilitate interconnection of competing networks for purposes of the completion of common carrier telecommunications traffic. Such a policy must be addressed in the context of market power.

ISSUE 13:

Should the Commission allow switched access expanded interconnection for non-fiber optic technology?

TIME WARNER'S POSITION:

Yes. The Commission should allow switched access interconnection for non-fiber optic technology.

ISSUE 14:

Should all switched access transport providers be required to file tariffs?

TIME WARNER'S POSITION:

No. Only incumbent LECs should be required to file tariffs.

ISSUE 15:

Should the proposed LEC flexible pricing plans for private line and special access services be approved?

TIME WARNER'S POSITION:

No. The Commission should approve no pricing flexibility for intrastate private line and special access services beyond that allowed by the FCC for interstate services. Price flexibility should be allowed only after implementation of expanded interconnection.

ISSUE 16:

Should the LECs proposed intrastate private line and special access expanded interconnection tariffs be approved?

TIME WARNER'S POSITION:

No. Tariffs should only be approved consistent with other decisions reached in this in this docket.

ISSUE 17:

Should the LECs proposed intrastate switched access interconnection tariffs be approved?

TIME WARNER'S POSITION:

No. Tariffs should only be approved consistent with other decisions reached in this docket.

ISSUE 18:

Should the LECs be granted additional pricing flexibility? If so, what should it be?

TIME WARNER'S POSITION:

No. The incumbent LECs should be granted no more pricing flexibility for intrastate services than was allowed for interstate services. Price flexibility should be allowed only after the implementation of expanded interconnection.

ISSUE 19:

Should the Commission modify its pricing and rate structure regarding switched transport service?

a) With the implementation of switched expanded interconnection.

b) Without the implementation of switched expanded interconnection.

TIME WARNER'S POSITION:

The Commission should modify its pricing and rate structure regarding switched transport only after implementation of switched expanded interconnection.

ISSUE 20:

If the Commission changes its policy on the pricing and rate structure of switched transport service, which of the following should the new policy be based on:

a) The intrastate pricing and rate structure of local transport should mirror each LEC's interstate filing, respectively.

b) The intrastate pricing and rate structure of local transport should be determined by competitive conditions in the transport market.

c) The intrastate pricing and rate structure of local transport should reflect the underlying cost based structure.

d) The intrastate pricing and rate structure of local transport should reflect other methods.

TIME WARNER'S POSITION:

If the Commission changes its policy on the pricing and rate structure of switched transport service, the new policy should be based on statements "a," "b" and "c" above.

ISSUE 21:

Should the LECs proposed local transport restructure tariffs be approved? If not, what changes should be made to the tariffs?

TIME WARNER'S POSITION:

No. Tariffs should only be approved consistent with other decisions reached in this docket.

ISSUE 22:

Should the Modified Access Based Compensation (MABC) agreement be modified to incorporate a revised transport structure (if local transport restructure is adopted) for intraLATA toll traffic between LECs?

TIME WARNER'S POSITION:

No position at this time.

ISSUE 23:

How should the Commission's imputation guidelines be modified to reflect a revised transport structure (if local transport restructure is adopted)?

TIME WARNER'S POSITION:

No position at this time.

ISSUE 23(a):

Should the Commission modify the Phase I order in light of the decision by the United States Court of Appeals for the District of Columbia Circuit?

TIME WARNER'S POSITION:

Yes. The Court of Appeals remand and subsequent FCC vote impact both the Phase I Order and the tariffs filed in Phase II of this proceeding.

ISSUE 24:

Should these dockets be closed?

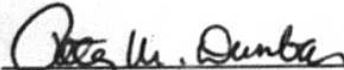
TIME WARNER'S POSITION:

Depending on the decisions reached in this proceeding, additional Commission review may be necessary.

IV. PENDING MATTERS

Time Warner has filed a Motion to Strike portions of Mr. John Carroll's testimony on behalf of Northeast Florida Telephone Company and Quincy Telephone Company.

RESPECTFULLY SUBMITTED this 27th day of July, 1994.



PETER M. DUNBAR
PENNINGTON & HABEN, P.A.
Post Office Box 10095
Tallahassee, Florida 32302
(904) 222-3533

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

CERTIFICATE OF SERVICE
DOCKET NO. 921074-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by U.S. Mail on this 27th day of July, 1994, to the following parties of record:

Tracy Hatch, Staff Counsel
Division of Legal Services
Florida Public Service Comm.
101 East Gaines Street
Tallahassee, FL 32399

Beverly Menard
c/o Richard Fletcher
GTE Florida, Inc.
106 E. College Ave., Suite 1440
Tallahassee, FL 32301

Marshall M. Criser, III
Southern Bell Telephone Co.
150 S. Monroe St., Suite 400
Tallahassee, FL 32301

Lee L. Willis/John P. Fons
Ausley, McMullen, McGehee,
Carothers & Proctor
Post Office Box 391
Tallahassee, FL 32302

Intermedia Communications
9280 Bay Plaza Boulevard
Suite 720
Tampa, Florida 33619-4453

Patrick K. Wiggins
Wiggins & Villacorta, P.A.
Post Office Drawer 1657
Tallahassee, FL 32302

Jack Shreve, Public Counsel
Office of the Public Counsel
111 W. Madison Street, Room 812
Claude Pepper Building
Tallahassee, FL 32399-1400

Chanthina R. Bryant
Sprint
3065 Cumberland Circle
Atlanta, GA 30339

Vicki Gordon Kaufman
McWhirter, Reeves, McGlothlin,
Davidson & Bakas
315 S. Calhoun Street
Suite 216
Tallahassee, FL 32301

Joseph P. Gillan
J. P. Gillan & Associates
Post Office Box 541038
Orlando, FL 32854-1038

Brad E. Mutschelknaus
Rachel J. Rothstein
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, DC 20006

C. Everett Boyd, Jr.
Ervin, Varn, Jacobs, Odom
& Ervin
305 South Gasdsen Street
Tallahassee, FL 32301

Harriet Eudy
ALLTEL Florida, Inc.
Post Office Box 550
Live Oak, FL 32060

David B. Erwin
Young, van Assenderp, Varnadoe
& Benton, P.A.
225 South Adams St., Suite 200
Tallahassee, FL 32302

Charles Dennis
Indiantown Telephone
System, Inc.
Post Office Box 277
Indiantown, FL 34956

John A. Carroll, Jr.
Northeast Telephone Company
Post Office Box 485
Macclenny, FL 32063-0485

Daniel V. Gregory
Quincy Telephone Company
Post Office Box 189
Quincy, FL 32351

Jeff McGehee
Southland Telephone Company
210 Brookwood Road
Atmore, Alabama 36504

Jodie L. Donovan
Regulatory Counsel
Teleport Communications
Group, Inc.
One Teleport Drive
Staten Island, NY 10311

F. Ben Poag
United Telephone Company
of Florida
Post Office Box 165000
Altamonte Springs, FL 32716

Michael Henry
MCI Telecommunications Corp.
780 Johnson Ferry Road
Suite 700
Atlanta, GA 30342

Richard D. Melson
Hopping, Boyd, Green & Sams
Post Office Box 6526
Tallahassee, FL 32314

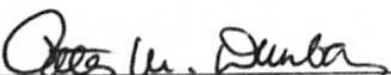
Ms. Janis Stahlhut
Vice President of
Regulatory Affairs
Time Warner Communications
Corporate Headquarters
300 First Stamford Place
Stamford, CT 06902-6732

Michael W. Tye
106 East College Avenue
Suite 1410
Tallahassee, FL 32301

Kenneth A. Hoffman, Esq.
Floyd R. Self, Esq.
Rutledge, Ecenia, Underwood,
Purnell & Hoffman, P.A.
Post Office Box 551
Tallahassee, FL 32302-0551

Laura L. Wilson, Esq.
c/o Florida Cable Television
Association, Inc.
Post Office Box 10383
Tallahassee, FL 32302

Angela B. Green, General Counsel
Florida Public
Telecommunications Association
315 South Calhoun Street
Suite 710
Tallahassee, Florida 32301

By: 
PETER M. DUNBAR