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ORIGINAL

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REPLY TO:  
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May 14, 1998

Ms. Blanco Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
Betty Easley Conference Center  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

via Hand Delivery

Re: Petition to Initiate Rulemaking  
Pursuant to Section 120.54(5),  
Florida Statutes to Incorporate  
"Fresh Look" Requirements to all  
Incumbent Local Exchange Company  
(ILEC) Contracts  
Docket No. 980253

Dear Ms. Bayo:

Enclosed for filing please find an original and fifteen copies of the Notice of Filing Time Warner's Comments Regarding the Proposed Fresh Look Rule and Time Warner's Comments Regarding the Proposed Fresh Look Rule. You will also find a copy of this letter enclosed. Please date-stamp this copy to indicate that the original was filed and return a copy to me.

ACK

AFA

APP

CAF

CMU

CTR

EAG

LEG

LIN

OPC

RCH

SEC

WAS

OTH

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

Respectfully,

*Barbara D. Auger*  
Barbara D. Auger

Enclosures: As noted

cc: Counsel of record w/enclosures

RECEIVED & FILED

*[Signature]*  
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

05390 MAY 14 98

FPSC-RECORDS/REPORTING

ORIGINAL

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

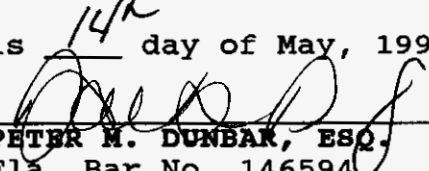
In Re: Petition to Initiate Rulemaking  
Pursuant to Section 120.54(5), Florida  
Statutes to Incorporate "Fresh Look"  
Requirements to all Incumbent Local  
Exchange Company (ILEC) Contracts

Docket No. 980253-TX  
Filed: May 14, 1998

NOTICE OF FILING COMMENTS REGARDING THE PROPOSED  
FRESH LOOK RULE BY TIME WARNER AXS OF FLORIDA, INC.

YOU ARE HEREBY NOTIFIED that the undersigned counsel for Time Warner AxS of Florida, Inc. has filed with the Florida Public Service Commission Time Warner's Comments Regarding the Proposed Fresh Look Rule, a copy of which is attached to this notice.

RESPECTFULLY submitted this <sup>14<sup>th</sup></sup> day of May, 1998.

  
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Warner Communications

DOCUMENT NUMBER-DATE

05390 MAY 14 88

FPSC-RECORDS/REPORTING

**CERTIFICATE OF SERVICE**  
**DOCKET NO. 980253**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by U.S. Mail on this 14 day of May, 1998 to the following parties of record:

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Tallahassee, Florida 32301

  
BARBARA D. AUGER, ESQ.

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Petition to Initiate Rulemaking  
Pursuant to Section 120.54(5), Florida  
Statutes to Incorporate "Fresh Look"  
Requirements to all Incumbent Local  
Exchange Company (ILEC) Contracts

Docket No. 980253-TX  
Filed: May 14, 1998

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**TIME WARNER AXS OF FLORIDA, INC.'S COMMENTS REGARDING  
THE PROPOSED FRESH LOOK RULE**

Time Warner AXS of Florida, L.P. ("Time Warner"), by and through undersigned counsel, hereby submits its comments as requested by the Florida Public Service Commission (the "Commission") regarding the Proposed Fresh Look Rule and states the following:

1. Time Warner fully supports the rule offered by the FCCA. The FCCA proposed rule will be the easiest for the Commission to administer and for the public to understand.

2. As an Alternative to the FCCA rule, Time Warner does offer certain revisions to the version of the proposed fresh look rule filed by Time Warner on March 16, 1998. This rule has been supported by ALECs in other states (i.e., North Carolina, Alabama and Tennessee). A copy of the revised rule is attached hereto as Exhibit "A".

3. Time Warner disagrees with the LECs position that Chapter 364, Florida Statutes, would prohibit the disclosure of contract customer names and addresses. Fresh Look would only require LECs to provide ALECs with customer names, phone numbers and the type of service the LECs are providing. It would not require the

disclosure of any customer billing or payment history, therefore no violation of Chapter 364, Florida Statutes, will exist.

4. Fresh Look will stimulate competition and is, therefore, in the best interest of the public and consistent with the public policy of the State.



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Counsel for: Time Warner AXS of  
Florida, L.P., d/b/a Time  
Warner Communications

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Florida Competitive Carriers  
Association  
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**BARBARA D. AUGER, ESQ.**

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Petition to Initiate Rulemaking  
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PROPOSED FRESH LOOK RULE BY TIME WARNER AXS OF FLORIDA, INC.

Proposed Fresh Look Rule

- (1) Purpose: The purpose of the Fresh Look Rule is to promote the public interest in fostering the development of an efficient, technologically advanced, statewide system of telecommunications services by permitting competition in all telecommunications service markets in the state. These rules will aid in the removal of barriers to such competition that currently exist in Florida by providing for the elimination and/or limitation of customer liability related to the early termination of contracts with incumbent local exchange carriers in order to allow such customers a "fresh look" to avail themselves of competitive service alternatives offered by competing local exchange carriers until the Florida Public Service Commission ("FPSC") determines that effective competition exists in the market in question.
- (2) Definitions:
  - (a) Local Exchange Telecommunications Company ("LEC") - a public utility offering and providing basic local exchange service pursuant to tariffs approved by the Florida Public Service Commission, prior to June 30, 1995. Provided, however, this Rule shall not apply to an LEC with fewer than 100,000 total access lines in Florida unless such LEC voluntarily enters into an interconnection agreement with an ALEC or unless such LEC applies for a certificate to provide telecommunications services in an area outside its service area existing on June 30, 1998.
  - (b) Alternative Local Exchange Telecommunications Company ("ALEC") - a competing telecommunications service provider certified by the Florida Public Service Commission, authorized to provide local exchange telecommunications service in Florida on or after July 1, 1995.

- (c) LEC Market - the local exchange area defined by exchange in which an ALEC is authorized to originate telecommunications services in competition with such LEC.
  - (d) PSC Fresh Look Notice - a neutral, educational public notice issued by the Florida Public Service Commission describing the purpose of this rule and the Fresh Look process.
  - (e) Fresh Look Window - the period of time in which LEC customers may terminate Eligible Contracts without termination liability consistent with this Rule, commencing on the date set by the PSC in its Fresh Look Certification Order as defined in Section (4) of this Rule and ending on the date set by the PSC in an order declaring that effective competition exists in the LEC Market in question.
  - (f) Eligible Contracts - contracts or tariffs as defined in Section (3) of this Rule.
- (3) Applicability - Eligible Contracts; Requirements for Schools and Libraries Receiving Discounts Funded by Universal Support.
- (a) Only Eligible Contracts will be subject to the early termination provisions of this Fresh Look Rule. Eligible Contracts shall include those contracts between LECs and customers for a term of one hundred-eighty (180) days or longer. In addition, Eligible Contracts shall include LEC tariffs which contain terms, conditions or other provisions that require the customer to subscribe for 180 days or longer in order to avoid termination liability.
    - 1. Options to renew and automatic renewals are not included in the determination of the contract term unless penalties under such contract are to be applied if the customer elects to not exercise such options.
  - (b) Only those portions of Eligible Contracts that involve the provision of local exchange services will be subject to the Rule, unless local termination liability is not severable from non-local services. In such case, the entire contract shall be subject to the provisions of this Rule.
  - (c) Contract service arrangements which have been resold are also eligible contracts if the contracts meet the above requirements.
  - (d) During the fresh look window, upon written request of an ALEC who has entered into an interconnection agreement in a LEC Market, such LEC shall provide the requesting ALEC with a list of Eligible Contracts in the relevant LEC



Market within 10 business days of receipt of such request.

(4) Certification of the Commencement of the Fresh Look Window.

(a) The Fresh Look Window in each LEC Market shall begin on the date that the PSC certifies by PSC Order (the "Fresh Look Certification Order") completion of the following (or such other date established by the PSC in the Fresh Look Certification Order):

1. an ALEC has filed notice with the PSC of the first operational interconnection agreement in a LEC Market or Markets;
2. the PSC has verified that such interconnection agreement is operational in accordance with Section (4)(b) of this Rule;
3. The ALEC in question has requested in writing a list of Eligible Contracts from the affected LEC in accordance with Section (3)(d) of this Rule; and
4. the affected LEC has timely provided the ALEC with a list of Eligible Contracts in the relevant LEC Market in accordance with Section (3)(d) of this Rule.

(b) An ALEC must meet the following criteria in order for its interconnection agreement to be considered operational by the PSC:

1. certification of the ALEC by the PSC;
2. filing by the ALEC of a tariff pursuant to Rule 25-4.034, F.A.C.
3. filing by the ALEC with the PSC of an executed approved interconnection agreement or the ability to purchase from a Statement of Generally Available Terms approved by the PSC as provided under 47 U.S.C. §252(f); and
4. completion of the ALEC of its first commercial call within a LEC Market.

(5) Public Notice.

(a) As soon as practicable after the effective date of this Rule, the PSC shall issue the PSC Fresh Look Notice.

1. LECs shall provide the PSC Fresh Look Notice to any customer inquiring about the provisions of the Rule or the consequences of early

termination of eligible contracts by U.S. mail within ten (10) business days of the inquiry.

2. Each LEC shall establish a point of contact within such carrier for all Fresh Look inquiries.

(b) The PSC shall issue public notice (the "Certification Notice") as soon as practicable upon issuance of each Fresh Look Certification Order. This Certification Notice shall identify the LEC involved, the LEC Market involved, the ALEC filing the operational interconnection agreement, and the procedure for determining a customer's liability, if any, resulting from the early termination of Eligible Contracts with the LEC as described in Section (8) of this Rule. In addition, the Certification Notice shall state the date of commencement of the Fresh Look Window, and explain the circumstances that will cause the PSC to end the Fresh Look Window pursuant to Section (6)(a) of this Rule.

(c) Each LEC shall provide a one-time public notice (the "LEC Fresh Look Notice") to all of its customers in Florida within 45 days of issuance of the first Fresh Look Certification Order by the PSC with respect to any such LEC Market. The LEC Fresh Look Notice shall be in the form of a bill insert, approved in advance by the PSC.

(6) Fresh Look Window.

(a) The Fresh Look Window shall remain open for the twelve (12) months after certification by the PSC in accordance with subsection (4) above.

(b) Only customers seeking early termination of Eligible Contracts with LECs in order to acquire tariffed services from or enter into a new contract with a ALEC or LEC within the Fresh Look Window will be eligible for the limited liability provisions set forth in Section (8) of this Rule.

(c) Upon receipt of a complaint by the Commission concerning the eligibility of a contract for Fresh Look, the 12-month period should be automatically tolled. The Fresh Look period should begin again only upon Commission order after withdrawal or Commission resolution of the complaint.

(7) Procedure for Early Termination of Eligible contracts within the Fresh Look Window.

- (a) Customers may terminate an Eligible Contract with a LEC prior to the expiration of the contract term either in writing or orally during the Fresh Look Window.
- (b) The LEC must provide in writing, within three (3) business days after receiving notice of termination from the customer, a statement detailing such customer's liability, if any, for early termination of the contract.

(8) Determination of Liability.

- (a) The LEC shall determine the liability, if any, of the customer seeking early termination of an Eligible Contract during the Fresh Look Window. The LEC shall not impose any liability on such customer seeking early termination of an Eligible Contract who acquires tariffed service from or enters into a new contract with a ALEC or the LEC within 5 business days from the date of termination of the Eligible Contract, unless unrecovered and non-recurring costs are actually incurred by the LEC as a direct result of the early termination of the contract. If the LEC actually has incurred and not recovered such non-recurring costs, then the customer's liability shall be limited to payment of such actual unrecovered non-recurring costs, in an amount not to exceed the amount recoverable under the terms of the contract.
- (b) The LEC shall bear the burden of proving the actual costs incurred and its inability to recover such costs in any dispute with the customer.
- (c) For LEC contracts or tariffs which become effective after the effective date of the Rule and prior to termination of the Fresh Look Window, if any, in the LEC Market, termination liability shall be limited to: (a) unrecovered non-recurring costs that are actually incurred by the LEC as a direct result of early termination of the contract, or (b) reduction or elimination of discounts due to failure to subscribe to service for the length of time necessary to qualify for such discount, whichever amount is less.

(9) Dispute Resolution.

- (a) All disputes concerning Eligible Contracts, termination liability, or other matters within the scope of this Rule, shall be resolved by the PSC through its complaint process pursuant to Rule 25-22.036, F.A.C.