State of Florida

Public Service Commission

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-M-E-M-O-R-A-N-D-U-M-

DATE: NOVEMBER 19, 1998

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF APPEALS (CALDWELL) DWC DES
DIVISION OF COMMUNICATIONS (SIMMONS) SAS
DIVISION OF RESEARCH AND REGULATORY REVIEW (LEWIS) KML

RE: DOCKET NO. 980253-TX - PETITION TO INITIATE RULEMAKING, PURSUANT TO SECTION 120.54(7), F.S., TO INCORPORATE "FRESH LOOK" REQUIREMENTS IN ALL INCUMBENT LOCAL EXCHANGE COMPANY CONTRACTS, BY TIME WARNER AXS OF FLORIDA, L.P. D/B/A TIME WARNER COMMUNICATIONS

DOCKET NO. 960932-TP - INVESTIGATION INTO FRESH LOOK POLICY FOR LOCAL TELECOMMUNICATIONS COMPETITION

AGENDA: DECEMBER 1, 1998 - REGULAR AGENDA - RULE PROPOSAL - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\APP\WP\980253#2.RCM

CASE BACKGROUND

On February 17, 1998, Time Warner AxS of Florida, L.P. (Time Warner), filed a Petition to Initiate Rulemaking. Time Warner petitioned the Commission to include "fresh look" requirements in its rules. "Fresh look" provides customers of incumbent local exchange companies (LECs) a one-time opportunity to opt out of existing contracts with LECs so as to avail themselves of competitive alternatives now offered or to be offered in the future by alternative local exchange companies (ALECs). The Commission currently does not have any rules or established policy related to "fresh look."

The Commission granted the petition to initiate rulemaking. Notice of Rule Development was published in the April 10, 1998, FAW and a workshop was held April 22, 1998. Interested persons filed comments after the workshop, and a draft rule and request for rulemaking was prepared by staff. The Statement of Estimated Regulatory Cost (SERC) was requested and due to the Division of Appeals on September 30, 1998. Based upon information received in the data request sent to the companies by the Division of Research and Regulatory Review staff, the rule was revised and a new SERC was written.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission propose new Rules 25-4.300, F.A.C., Scope and Definitions; 25-4.301, F.A.C., Applicability of Fresh Look; and 25-4.302, F.A.C., Termination of LEC Contracts?

RECOMMENDATION: Yes, the Commission should propose the new rules.

STAFF ANALYSIS: Section 364.19, Florida Statutes, states that the Commission may regulate, by reasonable rules, the terms of telecommunications service contracts between telecommunications companies and their patrons. Prior to ALEC competition, LECs entered into customer contracts covering local telecommunications services offered over the public switched network due to the presence of PBX-based competition. In addition, the LECs entered into customer contracts covering dedicated services and long distance services due to competition from AAVs and IXCs, respectively. The regulatory environment has changed due to the 1995 rewrite to Chapter 364, Florida Statutes, and the Telecommunications Act of 1996. ALECs are now offering switched-based substitutes for local service, either through use of their own facilities, unbundled network elements, or resale, where PBXs had previously been the only alternative. For multi-line users not interested in purchasing a PBX (due to financing, maintenance needs, constraints on upgrades, air conditioning, space limitations, or whatever reason), the LEC was heretofore the only option. Consequently, it is reasonable in this circumstance to give ALECs the opportunity to compete for this business without having to overcome the significant termination liability inherent in many LEC contracts.

The purpose of the "fresh look" rule is to enable ALECs to compete for existing LEC customer contracts covering local telecommunications services offered over the public switched network, which were entered into prior to switched-based substitutes for local exchange telecommunications services.

The rules describe those limited circumstances under which a customer may terminate a LEC contract service arrangement or tariffed term plan (collectively, contracts) subject to a termination liability less than that specified in the contract. Those limited circumstances are for customer contracts covering local telecommunications services offered over the public switched network, which were entered into prior to January 1, 1997, and that are still in effect and will remain in effect for at least six months after the effective date of this rule. In these limited circumstances, a customer may terminate the contract, during the "fresh look window," by paying only any unrecovered non-recurring cost which the LEC has incurred. The "fresh look window" will begin 60 days following the effective date of this rule and end two years later.

The following is a rule-by-rule summary and analysis of the proposed rules:

25-4.300 Scope and Definitions: The Scope explains what contracts are eligible for a "fresh look" and to which LECs the rules apply. The following terms are defined: "Fresh Look Window;" "Notice of Intent to Terminate;" "Notice of Termination;" and Statement of Termination Liability."

25-4.301 Applicability of Fresh Look: This rule provides that the fresh look applies to all eligible contracts and specifies that the window of opportunity to exit an eligible contract will begin 60 days after the effective date of the rule and remain open for two years. This rule contemplates an end user and LEC going through this process only once during the fresh look window, for each eligible contract.

25-4.302 Termination of LEC Contracts: This rule provides for the process under which eligible contracts may be terminated. The LEC must designate a contact to whom inquiries must be addressed. The rule provides for notice and procedure. The end user sends the LEC contact a Notice of Intent to Terminate. The LEC has ten business days to provide the end user with a written Statement of Termination Liability. The rule specifies the Termination Liability is limited to any unrecovered, contract specific nonrecurring costs and may not exceed the termination liability specified by the terms of the contract. The contract itself or the working papers used to support the contract may be used for the calculation.

Once the end user receives the Statement of Termination Liability, he has 30 days to provide a Notice of Termination to the LEC. If no notice is sent, the contract remains in effect. If notice is sent, the end user may pay the termination liability by a one-time, lump-sum payment or monthly payments over the remaining term of the contract.

Finally, the LEC has 60 days to terminate the service from the date it receives the Notice of Termination.

Statement of Estimated Regulatory Cost: Collectively, there are 7,199 contract service arrangements and tariffed term plans ILECs estimate would be eligible for early termination under the provisions of the proposed Fresh Look rules. With no Fresh Look rule in place, a LEC is entitled to collect the contract termination charges reflected in the contract or tariff when a customer chooses early termination. If the proposed Fresh Look rule becomes effective, a LEC will lose the revenues it would have earned from a customer who terminates early, except for the portion of those revenues associated with nonrecurring costs. A LEC would only experience a financial loss if its unrecovered, contract specific nonrecurring costs exceeded the termination liability specified in the controlling contract or tariff. LECs were generally unable to estimate the amount of costs, if any, they would not be able to recover since it is unknown which contracts might be terminated.

LECs would incur relatively minor administrative and labor costs to provide the Statement of Termination Liability to customers. Transactional costs for ALECs should be limited to the administrative cost of setting up new customer accounts. End-user customers should benefit from the proposed rules by having the opportunity to obtain services at lower rates with limited liability for contract termination charges.

ISSUE 2: Should the Commission close Docket No. 960932-TP, Investigation into Fresh Look Policy for Local Telecommunications Competition?

RECOMMENDATION: Yes, the docket should be closed.

STAFF ANALYSIS: Upon the Commission's proposal of staff's proposed rules, further investigation into Fresh Look Policy is unnecessary at this time. Therefore, Docket No. 960932-TP should be closed.

ISSUE 3: Should Docket NO. 980253-TX be closed?

RECOMMENDATION: Yes, if no requests for hearing or comments are filed, the rule amendments as proposed should be filed for adoption with the Secretary of State and the docket be closed.

STAFF ANALYSIS: Unless comments or requests for hearing are filed, the rules as proposed may be filed with the Secretary of State without further Commission action. The docket may then be closed.

PART XII - FRESH LOOK

25-4.300 Scope and Definitions

25-4.301 Applicability of Fresh Look

25-4.302 Termination of LEC Contracts

25-4.300 Scope and Definitions.

(1) Scope. For the purposes of this Part, all contracts that include local telecommunications services offered over the public switched network, between LECs and end users, which were entered into prior to January 1, 1997, that are in effect as of the effective date of this rule and are scheduled to remain in effect for at least six months after the effective date of this rule will be contracts eligible for Fresh Look. Local telecommunications services offered over the public switched network are defined as those services which include provision of dial tone and flat-rated or message-rated usage. If an end user exercises an option to renew or provision for automatic renewal, this constitutes a new contract for purposes of this Part, unless penalties apply if the end user elects not to exercise such option or provision. This Part does not apply to LECs which had fewer than 100,000 access lines as of July 1, 1995. Eligible contracts include Contract Service Arrangements (CSAs) and tariffed term plans in which the rate varies according to the end user's term commitment.

(2) For the purposes of this Part, the definitions to the following terms apply:

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(a) "Fresh Look Window"- The period of time during which LEC end users may terminate eligible contracts under the limited liability provision specified in Rule 25-4.302(3).

(b) "Notice of Intent to Terminate"- The written notice by an end user of the end user's intent to terminate an eligible contract pursuant to this rule.

(c) "Notice of Termination"- The written notice by an end user to terminate an eligible contract pursuant to this rule.

(d) "Statement of Termination Liability"- The written statement by a LEC detailing the liability pursuant to 25-4.302(3), if any, for an end user to terminate an eligible contract.

Specific Authority: 350.127(2), FS.

Law Implemented: 364.19, FS.

History: New XX-XX-XX.

25-4.301 Applicability of Fresh Look.

(1) The Fresh Look Window shall apply to all eligible contracts.

(2) The Fresh Look Window shall begin 60 days after the effective date of this rule.

(3) The Fresh Look Window shall remain open for two years from the starting date of the Fresh Look Window.

(4) An end user will be entitled to one Fresh Look inquiry during the Fresh Look Window for each eligible contract.

Specific Authority: 350.127(2), FS.

CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from existing law.

Law Implemented: 364.19, FS.

History: New XX-XX-XX.

25-4.302 Termination of LEC Contracts.

(1) Each LEC shall respond to all Fresh Look inquiries and shall designate a contact within its company to which all Fresh Look inquiries and requests should be directed.

(2) An end user may provide a written Notice of Intent to Terminate an eligible contract to the LEC during the Fresh Look Window.

(3) Within ten business days of receiving the Notice of Intent to Terminate, the LEC shall provide a written Statement of Termination Liability. The termination liability shall be limited to any unrecovered, contract specific nonrecurring costs, in an amount not to exceed the termination liability specified in the terms of the contract. The termination liability shall be calculated from the information contained in the contract or the workpapers supporting the contract. If a discrepency arises between the contract and the workpapers, the contract shall be controlling. In the Statement of Termination Liability, the LEC shall specify if and how the termination liability will vary depending on the date services are disconnected pursuant to subsections (4) and (6) and on the payment method selected in subsection (5).

(4) From the date the end user receives the Statement of

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Termination Liability from the LEC, the end user shall have 30 days to provide a Notice of Termination. If the end user does not provide a Notice of Termination within 30 days, the eligible contract shall remain in effect.

(5) If the end user provides the Notice of Termination, the end user will choose and pay any termination liability according to one of the following payment options:

(a) One-time payment of the unrecovered nonrecurring cost, as calculated from the contract or the work papers supporting the contract, at the time of service termination; or

(b) Monthly payments, over the remainder of the term specified in the now terminated contract, equal to that portion of the recurring rate which recovers the nonrecurring cost, as calculated from the contract or the work papers supporting the contract.

(6) The LEC shall have 60 days to terminate the subject services from the date the LEC receives the Notice of Termination.

Specific Authority: 350.127(2), FS.

Law Implemented: 364.19, FS.

History: New XX-XX-XX.

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