



# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

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

RECEIVED-FPSC  
00 JAN 11 PM 1:43  
RECORDS AND REPORTING

**DATE:** JANUARY 11, 2000

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

**FROM:** DIVISION OF APPEALS (BROWN) *MCB*  
DIVISION OF COMMUNICATIONS (MARSH) *Pen* *MD*

**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

**AGENDA:** 01/18/00 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** FEBRUARY 4, 2000 - 30 DAY STATUTORY TIME TO RESPOND TO PETITION

**SPECIAL INSTRUCTIONS:** SHOULD NOT BE DEFERRED

**FILE NAME AND LOCATION:** S:\PSC\APP\WP\980253#4.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 would provide customers of incumbent local exchange companies (LECs or ILECs) 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

DOCUMENT NUMBER-DATE

00457 JAN 11 8

FPSC-RECORDS/REPORTING

Commission did not have any rules related to fresh look prior to this proceeding.

The Commission granted the petition to initiate rulemaking. A Notice of Rule Development was published in the April 10, 1998, Florida Administrative Weekly (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. Staff filed a recommendation on November 19, 1998. However, that recommendation was deferred from the December 1, 1998, Agenda Conference. A new recommendation was considered at the March 3, 1999, Agenda Conference. The Commission voted to set the matter for hearing.

A Notice of Rulemaking was published in the FAW on April 2, and April 23, 1999. Supra, GTEFL, BellSouth, and Time Warner filed direct and rebuttal testimony. FCCA, BellSouth, e.spire, Sprint and KMC filed comments. FCCA, KMC, AT&T, Time Warner, and BellSouth filed responsive comments. The Commission conducted a rulemaking hearing on May 12, 1999. On June 16, 1999, GTEFL, KMC, Supra, Sprint, and e.spire filed posthearing comments. FCCA and AT&T, Time Warner, and BellSouth filed posthearing briefs.

As noticed orally at the hearing, a revised SERC was issued September 13, 1999, based upon the evidence of the hearing. A Notice of Rule Hearing at the November 16, 1999, Agenda Conference was published in the September 24, 1999, Florida Administrative Weekly.

At the November 16, 1999, Agenda Conference, the Commission approved the Fresh Look rule as proposed by staff, with one modification. This date has further significance with regard to a rule challenge, as discussed below.

On December 23, 1999, GTEFL and BellSouth each filed a Petition for Administrative Determination of the Invalidity of Proposed Rules. They allege that "the proposed rule enlarges, modifies, or contravenes the specific provisions of law implemented; it is unconstitutional; it is not supported by competent and substantial evidence; it is arbitrary and capricious; and the FPSC failed to follow applicable rulemaking procedures or requirements of the Administrative Procedure Act (APA)." (GTEFL Petition, p. 3).

As a result of the challenge, on January 5, 2000, Time Warner filed a Petition to Initiate Rulemaking and Request for Withdrawal of Proposed Rules. A copy of Time Warner's petition is included as Attachment A, and a copy of the rules is included as Attachment B. This recommendation addresses issues raised by the pending rule challenge and Time Warner's new petition to initiate rulemaking.

### **DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission withdraw the proposed Fresh Look rules?

**RECOMMENDATION:** Yes. 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 should be withdrawn. (MARSH, BROWN)

### **STAFF ANALYSIS:**

#### **The Proposed Fresh Look Rules**

Prior to ALEC competition, LECs entered into customer contracts covering local telecommunications services offered over the public switched network (typically in response to PBX-based competition). In addition, the LECs entered into customer contracts covering dedicated services and long distance services due to competition from AAVs and IXC's, respectively. However, the regulatory environment has changed due to the 1995 rewrite of 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.

The purpose of the proposed fresh look rules is to allow customers to take advantage of competitive offers for service that were not available when they entered into their current contracts with the LECs. It would also encourage competition by enabling ALECs to compete for existing LEC customer contracts

covering local telecommunications services offered over the public switched network. 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 that were entered into prior to June 30, 1999, and that are still in effect and will remain in effect for at least one year after the effective date of the rule. A customer may terminate the contract during the fresh look window by paying a certain amount to terminate the contract as outlined in the rule. The fresh look window would begin 60 days following the effective date of the rules and end one year later. The 60 days will allow the LECs time to set up procedures to implement the rules.

The rules as proposed by staff would have applied to all contracts that were entered into by the effective date of the rule. At the November 16, 1999, Agenda Conference, the Commission modified that portion of the rule and applied fresh look only to contracts entered into before June 30, 1999.

The purpose of the modification was to establish a date after which competition was deemed sufficient to provide customers with adequate telecommunications choices without a fresh look. Information was included in the record showing the number and duration of potentially eligible contracts that the LECs had entered into through the second quarter 1999.

#### The Rule Challenge

Pursuant to Section 120.56, Florida Statutes, GTEFL and BellSouth have challenged the fresh look rules before the Division of Administrative Hearings (DOAH) as an invalid exercise of delegated legislative authority. Their main arguments are similar to those raised before the Commission in the rule proceeding. They claim that the rules unconstitutionally interfere with their existing contracts and take their property without just compensation. They allege that the rules are arbitrary and capricious and lack specific statutory authority. Staff does not agree with the arguments raised, and believes that the rules are a valid exercise of delegated legislative authority. Staff does, however, recognize the fact that by the time the proceeding was concluded, the passage of time would significantly limit the applicability of the rules.

#### Time Warner's new petition

In its new petition, Time Warner alleges that as a result of the change to the proposed rules, customers of the LECs will be unable to avail themselves of the competitive advantages provided by a fresh look even if the Commission prevails in the rule challenge proceeding. Time Warner notes that "the changes adopted by the Commission specifying that only contracts entered into prior to June 30, 1999, would be eligible for a 'fresh look' essentially ensured that no contracts would be eligible if the proposed rule, as amended, was administratively challenged." (Time Warner petition, p. 2)

It is clear that the passage of time and further delay in implementation of the rules through the rule challenge and a possible appeal have diminished the number of contracts that will be available for fresh look when the rules are finally effective. Although there is certainly a deleterious effect on the number of contracts that would be available for fresh look, Time Warner is incorrect in its statement that no contracts would be eligible.

The table below shows the number of contracts entered into by the second quarter 1999 by year of expiration. As currently framed, the rule would require at least one year to be remaining for a contract to be eligible. Thus, if the rule would have become effective on January 1, 2000, all contracts in the columns from 2001 through Post-2004 would be eligible, for a total of 3945 contracts. If the effective date of the rule is delayed for one year, until January 6, 2001, only 1324 contracts will remain that are eligible for fresh look. The reduction in eligible contracts, although dramatic, still leaves many more than "no" contracts available for a fresh look, as alleged by Time Warner. By January 6, 2002, that number drops to 982 contracts. Assuming it takes one year to complete the full appeals process, the rule could be effective by early 2001. With each passing year, the number of contracts entered into by June 30, 1999 that would be eligible for fresh look drops by a considerable amount.

Table 1  
Contracts by Year

Year	2000	2001	2002	2003	2004	Post 2004**
GTEFL Tariffed Term Plans	3834	1868	280	21	7	4
GTEFL CSAs	28	12	4	0.00	0.00	0.00

BellSouth Tariffed Term Plans	1636	715	527	289	85	53
BellSouth CSAs	64	26	20	32	2	0.00
Total	5562	2621	831	342	94	57
Percent Expiring	58.5%	27.6%	8.7%	3.6%	1.0%	0.6%
Contracts Eligible for Fresh Look	3945	1324	493	151	57	0

\*Contracts executed through second quarter, 1999  
 \*\*Assumes less than one year remaining per contract

Time Warner argues in its petition that "the 'fresh look' rules are meaningless as currently drafted and any effort or resources expended by the Commission or Time Warner in opposition to the [rule challenge] Petition would be futile." (Time Warner petition, p. 2) It was Time Warner that brought the original petition to this Commission to initiate rulemaking. If Time Warner now believes pursuing the rule further is "futile," staff sees no reason to pursue the matter through the laborious rule challenge and appeals process.

Conclusion

For the reasons discussed, staff agrees with Time Warner that the passage of time will erode the effectiveness of the rule as it is currently framed. Although some customers could still receive a benefit from fresh look if the rule survives the appeal, that number will be undoubtedly small unless the contract date is changed.

Therefore, staff recommends that 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 should be withdrawn.

**ISSUE 2:** Should the Commission grant Time Warner's Petition to Initiate Rulemaking to propose new fresh look rules?

**RECOMMENDATION:** No. The Commission should deny Time Warner's Petition to Initiate Rulemaking. (BROWN, MARSH)

**STAFF ANALYSIS:** As discussed in Issue 1, Time Warner has expressed an unwillingness to participate in the rule challenge and appeal process for the fresh look rule, due to the limited number of contracts that would remain at the end of the process that would be eligible for a fresh look. Although staff disagrees with Time Warner that no customers will benefit from fresh look as currently drafted, nevertheless, the passage of time will erode the effectiveness of the fresh look rule. In its petition, Time Warner asked to "develop and adopt a new rule to include the 'fresh look' requirements set forth in the Commission Staff's Recommendation . . . which stated that contracts entered into prior to the effective date of the rule would be eligible for a 'fresh look.'" (Time Warner petition, p. 3) If the rule is withdrawn, the question remains whether there is sufficient benefit to beginning the process again.

If the rule was applicable for contracts entered into by the effective date of the rule, as Time Warner suggests, the diminishing effect on the number of eligible contracts would be eliminated. It is fair to assume that new contracts are being entered into all the time, and that potentially eligible contracts will take the place of those that expire. However, if that is the case, it appears that the ALECs could compete for new contracts as old contracts expire just as effectively as if the contracts were eligible for fresh look under a new rule.

It is important to remember, as shown in Table 1, that 58.5% of contracts that were entered into prior to June 30, 1999, will expire during 2000, and that another 27.6% will expire in 2001. This means that of all the contracts that were considered in this proceeding, 86.1% will be available for competitors to compete for within two years. Under the current rule, due to the challenge, those same contracts would not be eligible for fresh look due to the passage of time. Staff believes there is little to be gained by beginning the rule process again.

The primary benefits, as in the case of the rule as currently proposed, are for the customer. One benefit would be to allow those customers who are truly involved in long term contracts an opportunity to opt out in favor of a competitor. Without a fresh look rule, this small percentage of customers will not have that opportunity without incurring costly termination charges.

An additional concern that arose outside the record in this proceeding is that customers, such as Internet Service Providers (ISPs) who have hunt groups may have contracts for access lines that are part of that hunt group expiring at different times. Unless the customer incurs termination charges for the lines that are not subject to fresh look, he is caught in a vicious circle. Because of the hunt group, it is important to keep all of the access lines that have been contracted for. Staff has spoken with one customer who has this situation, but because no customers participated in the fresh look proceeding, it is unknown just how prevalent this situation is.

In each of the two cases described above, the customers with long-term contracts, and the customers with hunt groups, a benefit could be derived from initiating a new rulemaking. Since the Commission has already gone to hearing on all of the issues, if it decided there was a benefit to pursuing the rule further, it would be desirable to limit the issues to those involving the entry date of eligible contracts.

### Conclusion

While there may be some benefit to further pursuing a fresh look rule, it is not apparent that the benefit would justify the additional cost to be incurred. Additionally, there is nothing to preclude parties from yet again challenging the rule, placing the Commission in the same position it is in today. The revision contemplated by Time Warner will do nothing to alleviate the concerns of BellSouth and GTEFL. The Commission will likely go through the process only to find itself back in the same place. Further, the passage of more time will simply exacerbate the effect of diminishing returns.

For these reasons, staff recommends that the Commission should deny Time Warner's Petition to Initiate Rulemaking.



DOCKET NO. 980253-TX  
DATE: January 11, 2000

**ISSUE 3:** Should this docket be closed?

**RECOMMENDATION:** Yes. (BROWN, MARSH)

**STAFF ANALYSIS:** If the Commission approves staff's recommendations in Issues 1 and 2, a Notice of Withdrawal of the rules will be published in the Florida Administrative Weekly, and this docket should be closed.

MCB

DOCKET NO. 980253-TX  
DATE: January 11, 2000

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 June 30, 1999 ~~the effective date of this rule~~, that are in effect as of the effective date of this rule, and are scheduled to remain in effect for at least one year ~~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 a 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, and have not elected price-cap regulation. Eligible contracts include, but are not limited to, Contract Service Arrangements (CSAs) and tariffed term plans in which the rate varies according to the end user's term commitment. The end user

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

1  
2 may exercise this provision solely for the purpose of obtaining a  
3 new contract.

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

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

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

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

14 (d) "Statement of Termination Liability"- The written  
15 statement by a LEC detailing the liability pursuant to 25-  
16 4.302(3), if any, for an end user to terminate an eligible  
17 contract.

18 Specific Authority: 350.127(2), FS; 364.19,FS.

19 Law Implemented: 364.19, FS, 364.01,FS.

20 History: New XX-XX-XX.

21 **25-4.301 Applicability of Fresh Look.**

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

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

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

1  
2 (3) The Fresh Look Window shall remain open for ~~two years~~  
3 one year from the starting date of the Fresh Look Window.

4 (4) An end user may only issue one Notice of Intent to  
5 Terminate during the Fresh Look Window for each eligible  
6 contract.

7 Specific Authority: 350.127(2), FS; 364.19,FS.

8 Law Implemented: 364.19, FS; 364.01,FS.

9 History: New XX-XX-XX.

10 25-4.302 Termination of LEC Contracts.

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

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

17 (3) Within ten business days of receiving the Notice of  
18 Intent to Terminate, the LEC shall provide a written Statement of  
19 Termination Liability. The termination liability shall be limited  
20 to any unrecovered, contract specific nonrecurring costs, in an  
21 amount not to exceed the termination liability specified in the  
22 terms of the contract. The termination liability shall be  
23 calculated as follows:

24 (a) For tariffed term plans, the payments shall be  
25 recalculated based on the amount that would have been paid under

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

1  
2 a tariffed term plan that corresponds to the actual time the  
3 service has been subscribed to.

4 (b) For CSAs, the termination liability shall be limited to  
5 any unrecovered, contract specific nonrecurring costs, in an  
6 amount not to exceed the termination liability specified in the  
7 terms of the contract. The termination liability shall be  
8 calculated from the information contained in the contract or the  
9 workpapers supporting the contract. If a discrepancy arises  
10 between the contract and the workpapers, the contract shall be  
11 controlling. In the Statement of Termination Liability, the LEC  
12 shall specify if and how the termination liability will vary  
13 depending on the date services are disconnected pursuant to  
14 subsections (4) and (6) and on the payment method selected in  
15 subsection (5).

16 (4) From the date the end user receives the Statement of  
17 Termination Liability from the LEC, the end user shall have 30  
18 days to provide a Notice of Termination. If the end user does not  
19 provide a Notice of Termination within 30 days, the eligible  
20 contract shall remain in effect.

21 (5) If the end user provides the Notice of Termination, the  
22 end user will choose and pay any termination liability in a one-  
23 time payment. according to one of the following payment options:  
24  
25

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

~~(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 30 days to terminate the subject services from the date the LEC receives the Notice of Termination.

Specific Authority: 350.127(2), FS; 364.19, FS.

Law Implemented: 364.19, FS; 364.01, FS.

History: New XX-XX-XX.

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

**ORIGINAL**

**PENNINGTON, MOORE, WILKINSON, BELL & DUNBAR, P.A.**  
**ATTORNEYS AT LAW**

SAMUEL P. BELL, III  
 DOUGLAS S. BELL  
 KAREN M. CAMECHIS  
 KEVIN X. CROWLEY  
 MARK K. DELEGAL  
 MARC W. DUNBAR  
 PETER M. DUNBAR  
 MARTHA J. EDENFIELD  
 ROGELIO J. FONTELA  
 WILLIAM H. HUGHES, III  
 A. KENNETH LEVINE

JOHN J. MATTHEWS  
 EDGAR M. MOORE  
 E. MURRAY MOORE, JR.  
 BRIAN A. NEWMAN  
 JULIUS F. PARKER III  
 JOHN C. PELHAM  
 CARL R. PENNINGTON, JR., P.A.  
 C. EDWIN RUDE, JR.  
 GARY A. SHIPMAN  
 CYNTHIA S. TUNNICLIFF

WILLIAM E. WHITNEY  
 BEN H. WILKINSON  
 CATHI C. WILKINSON

OF COUNSEL  
 ROBERT CINTRON, JR.  
 R. STUART HUFF, P.A.  
 Coral Gables, Florida  
 CHRISTOPHER W. KANAGA  
 (Admitted in Massachusetts & Colorado Only)  
 BARBARA J. STAROS

215 SOUTH MONROE STREET  
 SECOND FLOOR  
 TALLAHASSEE, FLORIDA 32301

(850) 222-3533  
 FAX (850) 222-2126  
 E-Mail: karen@penningtonlawfirm.com

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

January 5, 2000

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

RECORDS AND REPORTING

00 JAN - 5 PM 3: 37

RECEIVED-FPSC

980253-TX

Re: Petition to Initiate Rulemaking Pursuant to Section 120.54(7), Florida Statutes to Incorporate "Fresh Look" Requirements to all Incumbent Local Exchange Company Contracts

Dear Ms. Bayo:

Enclosed for filing please find an original and fifteen copies of Time Warner Telecom of Florida, L.P.'s Petition to Initiate Rulemaking and Request for Withdrawal of Proposed Rules. Please assign this Petition a docket number. 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.

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

Respectfully,

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

*Peter M. Dunbar*  
 Peter M. Dunbar

LEA  
 APP Brown  
 CAF  
 CMU 3  
 OTR  
 EAG  
 LEG  
 MAS 5  
 OFC  
 RRR  
 SEC 1 PMD/tmz  
 WAW Enclosures  
 OTH

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

15

DOCUMENT NUMBER-DATE

00157 JAN-58

FPSC-RECORDS/REPORTING

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Petition to Initiate Rulemaking )  
Pursuant to Section 120.54(7), Florida )  
Statutes to Incorporate "Fresh Look" )  
Requirements to all Incumbent )  
Local Exchange Company Contracts )  
\_\_\_\_\_ )

Docket No.:  
Filed: January 5, 2000

**PETITION TO INITIATE RULEMAKING AND  
REQUEST FOR WITHDRAWAL OF PROPOSED RULES**

Time Warner Telecom of Florida, L.P. ("Time Warner"), pursuant to §120.54(7), Florida Statutes, by and through its undersigned counsel, does hereby file its Petition to Initiate Rulemaking, and pursuant to §120.54(3)(d)2, Florida Statutes, does hereby file its Request for Withdrawal of Proposed Rules 25-4.300, 301, and 302, Florida Administrative Code. In support thereof, Time Warner states as follows:

1. Time Warner was granted a certificate to provide services as an ALEC in Docket 950906. Time Warner is presently providing exchange access and local exchange telecommunications services in Florida. Time Warner's address is as follows: 233 Bramerton Court, Franklin, Tennessee 37069.

2. The names and addresses of the persons to whom copies of all correspondence, notices, orders and other documents in this proceeding should be sent are as follows:

Peter M. Dunbar, Esq.  
Karen M. Camechis, Esq.  
Pennington, Moore, Wilkinson, Bell  
& Dunbar, P.A.  
Post Office Box 10095  
Tallahassee, Florida 32302  
(850) 222-3533  
(850) 222-2126 (facsimile)

Carolyn Marek  
Vice President of Regulatory Affairs  
Southeast Region  
Time Warner Telecom of Florida, L.P.  
233 Bramerton Court  
Franklin, Tennessee 37069  
(615) 376-6404  
(615) 376-6405 (facsimile)

DOCUMENT NUMBER-DATE

~~00157 JAN-58~~

~~FD-30-RECORDS/REPORTING~~



3. On November 16, 1999, the Florida Public Service Commission ("Commission") held a hearing to consider the following proposed rules concerning "fresh look" requirements: Rule 25-4.300, F.A.C., Scope and Definitions; Rule 25-4.301, F.A.C.; Applicability of Fresh Look; and Rule 25-4.302, F.A.C., Termination of LEC Contracts. After approving substantial changes to the proposed rules, the Commission adopted the "fresh look" rules as amended. However, the changes adopted by the Commission specifying that only contracts entered into prior to June 30, 1999, would be eligible for a "fresh look" essentially ensured that *no* contracts would be eligible if the proposed rule, as amended, was administratively challenged.

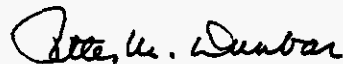
4. On December 23, 1999, BellSouth Telecommunications, Inc. ("BellSouth") timely filed a Petition for Administrative Determination of the Invalidity of Proposed "Fresh Look" Rules ("Petition") with the Division of Administrative Hearings in Case No. 99-5369-RP.

5. As a result of the changes to the proposed rules adopted by the Commission, and the subsequent administrative challenge filed by BellSouth, customers of Incumbent Local Exchange Companies ("ILECs") will be unable to avail themselves of competitive advantages provided by the "fresh look" rules even if the Commission *prevails* in the administrative proceeding. Thus, the "fresh look" rules are meaningless as currently drafted and any effort or resources expended by the Commission or Time Warner in opposition to the Petition would be futile.

**WHEREFORE**, Time Warner respectfully requests the Commission to:

1. Withdraw the following proposed rules pursuant to §120.54(3)(d)2, F.S.:
  - a. Rule 25-4.300, F.A.C., Scope and Definitions;
  - b. Rule 25-4.301, F.A.C.; Applicability of Fresh Look;
  - c. Rule 25-4.302, F.A.C., Termination of LEC Contracts;
2. Develop and adopt a new rule to include the "fresh look" requirements set forth in the Commission Staff's Recommendation dated November 8, 1999 and issued in Docket 980253-TP, which stated that contracts entered into prior to the effective date of the rule would be eligible for a "fresh look";
3. Hold an evidentiary hearing if the Commission deems a hearing appropriate and necessary to reconsider the "fresh look" rules; and
4. Grant other such relief as the Commission deems just and proper.

**RESPECTFULLY SUBMITTED** this 5<sup>th</sup> day of January, 2000.



---

**PETER M. DUNBAR, ESQ.**

Fla. Bar No. 146594

**KAREN M. CAMECHIS, ESQ.**

Fla. Bar No. 0898104

Pennington, Moore, Wilkinson,  
Bell & Dunbar, P.A.

Post Office Box 10095 (32302)

215 South Monroe Street, 2<sup>nd</sup> Floor

Tallahassee, Florida 32301

(850) 222-3533

(850) 222-2126 (fax)

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

G:\USERS\Karen\timewarner\fresh look\pettoinirule.wpd