

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed 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.

DOCKET NO. 980253-TX
ORDER NO. PSC-00-0253-PCO-TX
ISSUED: February 7, 2000

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
E. LEON JACOBS, JR.

BY THE COMMISSION:

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

BACKGROUND

On February 17, 1998, Time Warner AxS of Florida, L.P. (Time Warner), filed a Petition to Initiate Rulemaking to include "fresh look" requirements in the Commission's telecommunications rules. Fresh look would provide customers of incumbent local exchange companies (ILECs) a one-time opportunity to opt out of existing contracts with ILECs to avail themselves of competitive alternatives now offered or to be offered in the future by alternative local exchange companies (ALECs).

We conducted a rulemaking hearing on Time Warner's petition 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

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November 16, 1999, Agenda Conference was published in the September 24, 1999, Florida Administrative Weekly. At the November 16, 1999, Agenda Conference, we approved the Fresh Look rule as our staff proposed, with one modification. We changed the date for contracts that would be eligible for a fresh look from all contracts executed before the effective date of the rules to all contracts executed before June 30, 1999.

Shortly after we published a notice of changes to the proposed rules, GTEFL and BellSouth each filed a Petition for Administrative Determination of the Invalidity of Proposed Rules with the Division of Administrative Hearings. The rule challenge is scheduled for a hearing April 25-28, 2000.

As a result of the challenge, on January 5, 2000, Time Warner filed another Petition to Initiate Rulemaking and Request for Withdrawal of Proposed Rules. We considered Time Warner's petition at our January 18, 2000, Agenda Conference. We decided to deny Time Warner's petition and continue our defense of the proposed rules against the pending rule challenge. Our reasons for that decision are set forth below.

DECISION

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. The regulatory environment has since 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.

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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. The rules 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 executed prior to June 30, 1999 that are still in effect and will remain in effect for at least one year after the effective date of the rule. We modified the eligibility date of the rules to establish a time after which we deemed competition sufficient to provide customers with adequate telecommunications choices without a fresh look. Information was included in the hearing record showing the number and duration of potentially eligible contracts that the LECs had entered into through the second quarter 1999. 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.

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."

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, some customers will still be locked into long term contracts with the LECs, and

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unable to take advantage of the development of competition without a fresh look. 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.

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

Since the rules are primarily intended to benefit the customers, we believe we should proceed, even though ALECs do not perceive as much benefit for themselves because of the delay. The reduction in eligible contracts, although significant, still leaves many contracts available for a fresh look. Assuming it takes one year to complete the full appeals process, the rules could be effective by early 2001, and many customers would be able to take advantage of fresh look at that time.

It is therefore,

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ORDERED that the Petition to Initiate Rulemaking and Request for Withdrawal of Proposed Rules filed by Time Warner is denied. It is further

ORDERED that this docket shall remain open pending the rule challenge proceedings before the Division of Administrative Hearings.

By ORDER of the Florida Public Service Commission this 7th day of February, 2000.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

MCB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

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Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.