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Ms. Blanca S. Bayo, Director
Division of Records & Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

April 23, 1999

Re: Docket No. 980253-TX
Petition to Initiate Rulemaking Pursuant to Section 120.54(7), F.S., to Incorporate "Fresh Look" Requirements to all Incumbent Local Exchange Company Contracts by Time Warner AxS of Florida, Inc.

Dear Ms. Bayo:

Please find enclosed an original and fifteen copies of the Direct Testimony of David E. Robinson on behalf of GTE Florida Incorporated for filing in the above matter. Service has been made as indicated on the Certificate of Service. If there are any questions regarding this filing, please contact me at (813) 483-2617.

Sincerely,

Kimberly Caswell

KC:tas
Enclosures

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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

DIRECT TESTIMONY

OF

DAVID E. ROBINSON

ON BEHALF OF

GTE FLORIDA INCORPORATED

APRIL 23, 1999

GTE FLORIDA INCORPORATED

DIRECT TESTIMONY OF DAVID E. ROBINSON

DOCKET NO. 980253-TX

Q. WHAT IS YOUR NAME AND BUSINESS ADDRESS?

A. My name is David E. Robinson. My business address is GTE Telephone Operations, 600 Hidden Ridge, Irving, Texas 75038.

Q. WHAT IS YOUR POSITION WITH GTE?

A. I am Manager-Regulatory Planning and Policy for GTE Service Corporation. I am responsible for policymaking on regulatory issues dealing with local competitive entry. The regulatory policy function is centralized in Irving, Texas for all of the GTE Telephone Operating Companies, including GTE Florida Incorporated (GTEFL), which is one of the companies within my area of responsibility.

Q. PLEASE SUMMARIZE YOUR EDUCATION AND PROFESSIONAL EXPERIENCE.

A. I hold a Bachelor of Science degree in Business Administration-Finance from California State University and a Master of Business Administration degree from St. Mary's College of California.

My telephony experience began with CONTEL Corporation in their California offices in 1973. I held various positions with CONTEL in the areas of Operations, Rates, Tariffs, Regulatory, and Industry

Affairs. In 1979, I left CONTEL and worked, successively, as a personal financial consultant, a financial manager for an oil services firm, and Director of Business Development for a telecommunications consulting firm. I rejoined CONTEL in 1985, and was assigned to represent CONTEL as on "on loan" employee to the National Exchange Carrier Association, Inc. (NECA), Pacific Region, as Manager of Operations and Industry Relations. After the GTE/CONTEL merger in 1991, GTE called me back from my NECA assignment and I assumed the position of Product Manager. I joined the GTE Federal Regulatory Group in November of 1997 and assumed my present responsibilities in November, 1998.

Q. HAVE YOU EVER TESTIFIED BEFORE ANY PUBLIC UTILITIES COMMISSIONS?

A. Yes, I have testified before this Commission in the areas of rates, tariffs, and product design and delivery. I have also appeared as an expert witness for CONTEL and GTE telephone companies before state utilities commissions in Maine, New Hampshire, New Mexico, Pennsylvania, South Carolina, Vermont, Virginia, and West Virginia, in the areas of service cost, rate and tariff design, and product and service management.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. I will explain why a fresh look rule is not needed in Florida, and I will describe the problems with Staff's proposed rule.

Q. HOW DID THIS PROCEEDING BEGIN?

A. In February of last year, Time Warner AxS of Florida, L.P. (Time Warner) filed a petition for rulemaking asking the Commission to implement a fresh look rule that would permit customers of incumbent local exchange carriers (ILECs) to terminate their contracts with ILECs without having to pay the termination liabilities prescribed by those contracts.

Q. WHAT ACTION DID STAFF RECOMMEND ON TIME WARNER'S PETITION?

A. Staff recommended that the Commission deny Time Warner's petition. It concluded that there was no "compelling need" for a fresh look policy. In support of this conclusion, Staff recognized that "LECs typically offer contract service arrangements (CSAs) to large business and government customers, and these customers usually have knowledgeable telecommunications managers who are involved in the contract negotiations. For contracts entered into after the 1995 rewrite of Chapter 364, Florida Statutes, staff believes that it is reasonable to expect that these telecommunications managers would have considered the possibility of future alternatives for local switched services and would have considered this factor when agreeing to the term of the contract." Staff further pointed out that the Commission had, through arbitration decisions under the Telecommunications Act of 1996 (Act), ordered ILECs to resell their CSAs: "This affords ALECs another entry strategy, which staff believes further mitigates

the need for 'fresh look.'" (Staff Recommendation in this Docket, Feb. 26, 1998.)

Q. HAS A COMPELLING NEED FOR A FRESH LOOK POLICY DEVELOPED SINCE THIS STAFF RECOMMENDATION?

A. No. The need for a fresh look rule has, if anything, become even less compelling. Fresh look applies, in practice, to big contracts for large telecommunications users. Staff concluded over a year ago that it was reasonable to expect that those sophisticated users "would have considered the possibility of future alternatives for local switched services" before they entered contracts with ILECs. It is, likewise, reasonable to expect that these large customers have become even more aware of their alternatives in the year that has passed since the Recommendation. The ILECs' competitors, moreover, have had another year to take advantage of the contract resale opportunity the Commission granted them in the arbitrations.

Q. IF STAFF FOUND NO NEED FOR A FRESH LOOK RULE, WHY HAS SUCH A RULE BEEN PROPOSED?

A. It's my understanding that the Commission felt it should give the proponents of fresh look an opportunity to be heard. Since that opportunity comes within the context of a rulemaking, Staff needed to propose a rule, along with supporting rationale. This does not mean, however, that the Commission has determined that any rule is

needed. That determination will be made as a result of this proceeding.

Q. PLEASE EXPLAIN THE CONTRACT RESALE REQUIREMENT YOU MENTIONED EARLIER.

A. In arbitrations under the Act, the Commission decided the ILECs would be required to resell their CSAs to their competitors at the avoided cost discount. (See, e.g., Petition by AT&T Comm. of the Southern States, Inc., MCI Telecomm. Corp. and MCI Metro Access Transmission Services, Inc. for Arbitration, Order No. PSC-97-0064-FOF-TP, at 47-48 (Jan. 17, 1997). For GTEFL, this wholesale discount is 13.04%. (Id. at 77.) The resale requirement thus means that a competitor can take GTEFL's CSA, and its CSA customer, and offer the same contract to the same customer at a 13.04% discount off GTEFL's price to the customer. The competitor's ability to win the customer from GTEFL is not due to its greater efficiency or marketplace skill, but solely to the regulatory requirement that CSAs must be resold at the avoided cost discount.

Q. DOESN'T THE RESALE REQUIREMENT ELIMINATE ANY THEORETICAL NEED FOR FRESH LOOK?

A. Yes, from the perspective that it already gives the end user the opportunity to switch to a CLEC without regard to the fact that it has an existing contract with the ILEC. Fresh look would give customers the same kind of opportunity. There is no justification for yet another

rule forcing the ILECs to hand over their customers to their competitors.

Q. HAS THE CONTRACT RESALE REQUIREMENT HARMED GTEFL'S ABILITY TO OFFER CONTRACT SERVICES TO ITS CUSTOMERS?

A. Yes. GTEFL has little motivation to expend the resources necessary to negotiate and execute CSAs if it knows its competitors can just take the CSA and the customer away later. The resale requirement's chilling effect on contracts is apparent in GTEFL's CSA statistics. The requirement was adopted for GTEFL in January 1997. As Staff calculated for GTEFL, "the number of new CSAs provided annually increased from 1994 to 1995, but by 1997 showed a 77% decrease from 1994 levels." (March 4, 1999, Staff Rec. in this Docket, at 15.) A fresh look requirement, in addition to the existing resale requirement, would further suppress GTEFL's use of CSAs, thus eliminating an attractive choice GTEFL's customers would otherwise have had. This effect is plainly anti-competitive and anti-consumer.

Q. ARE THERE OTHER PUBLIC POLICY HARMS ASSOCIATED WITH A FRESH LOOK RULE?

A. Yes. Fresh look is really only directed at large business customer contracts. These accounts are some of the most lucrative–which is why the CLECs want to take them. These relatively higher margin arrangements contribute significantly to maintaining residential rates

that are, on average, well below their relevant costs. As competitors have entered more and more of the ILECs' market segments, sources of contribution to local rates have substantially declined. For instance, intraLATA toll has historically been a principal source of contribution to local rates. Since intraLATA equal access was implemented, GTE has lost most of its intraLATA market share. While there may have been legitimate public policy reasons to permit competition for intraLATA toll and other services, there is no public interest justification for a rule that will allow sophisticated business customers to escape contracts that are legally valid, otherwise enforceable, and in the public interest. GTE believes the Commission should require a very high showing of need for a fresh look rule before it considers sanctioning the erosion of yet another source of contribution to universal service. This effect is particularly troublesome because CLECs taking the ILECs' contract customers do not currently contribute anything to maintenance of universal service in Florida.

Q. HAVE OTHER STATE COMMISSIONS FOUND THAT A FRESH LOOK RULE WAS NOT APPROPRIATE?

A. Yes. A number of Commissions have rejected fresh look, citing both legal and policy grounds. With regard to policy, for example, the Michigan Public Service Commission held that allowing abrogation of long-term contracts would "constitute poor public policy." The Commission noted that, "given the rapid developments in the

telecommunications industry, customers should be aware of the increasing competition in the marketplace" and the "risk involved in entering into long-term contracts in such an environment." (In re: Application of City Signal, Inc., for an order establishing and approving interconnection Arrangements with Ameritech Michigan, Case No. U-10647, Opinion and Order, at 79-80 (Feb. 23, 1995).) Notably, the Michigan decision was rendered in early 1995, so this rationale has even more force today.

The Vermont Public Service Board likewise concluded that "NYNEX should not be required to give its customers a 'fresh look' because there was 'no reason to free these customers from the obligations they knowingly took on." (In re: New England Tel. & Tel. Co., Docket 5713 (Vt. Pub. Serv. Bd., Aug. 20, 1997).)

These and other states' decisions rejecting fresh look have also emphasized legal prohibitions against a fresh look policy.

Q. DOES GTE BELIEVE THERE ARE LEGAL, AS WELL AS POLICY, REASONS WHY THE COMMISSION SHOULD NOT ADOPT ANY FRESH LOOK RULE?

A. Absolutely. GTE's lawyers will, in other filings in this proceeding, fully explain the legal prohibitions against any fresh look requirement. I am not qualified to perform a legal analysis. However, in talking with the Company's lawyers, I understand that this Commission has no

statutory authority to adopt a fresh look rule, and that such a rule would violate the Constitutional proscription against abrogation of contracts and would constitute an impermissible taking of the ILEC's property.

Q. HAS THERE BEEN ANY FINDING OR ALLEGATION THAT THE TERMINATION CHARGES IN ILEC CONTRACTS ARE EXCESSIVE OR OTHERWISE CONTRARY TO THE PUBLIC INTEREST?

A. No. There has been no allegation that the termination liability provisions of the contracts or tariffs are excessive or otherwise contrary to public policy.

Q. WHAT ARE THE KEY FEATURES OF STAFF'S PROPOSED FRESH LOOK RULE IN THIS CASE?

A. The fresh look opportunity to avoid prescribed termination charges would apply to contracts and tariffed term plans including local telecommunications services (that is, services including dial tone and flat-rated or message-rated usage) executed prior to the rule's effective date and remaining in effect for at least six months after that date. In data requests, Staff has assumed a January 1, 2000 effective date. The fresh look window would open 60 days after the effective date and close two years later. The ILEC would have to establish a company contact to address fresh look inquiries and requests. To initiate the fresh look process, an end user would provide a written Notice of Intent to Terminate an eligible contract.

The ILEC would respond with a Notice of Termination Liability within 10 days. Such termination liability would 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." When the end user receives the Statement of Termination Liability from the ILEC, he will have 30 days to provide a Notice of Termination or the contract will remain in effect. The end user would have the option of paying any termination liability in a lump sum or in monthly payments over the remainder of the term specified in the terminated contract.

Q. WHAT ARE YOUR SPECIFIC CRITICISMS OF THE PROPOSED RULE?

A. As I said, GTE's position is that no rule at all is necessary. But this specific rule is especially extreme. Among the more unreasonable aspects are the fresh look eligibility date of 2000, the extraordinarily long fresh look window, and the failure to reprice the contract to recognize the shorter term once fresh look is exercised. Also troubling are the increased, uncompensated administrative burdens on the ILEC associated with responding to fresh look inquiries, calculating termination, and maintaining an account for an entity that is no longer the ILEC's customer.

Q. WHY IS A FRESH LOOK CONTRACT ELIGIBILITY DATE OF JANUARY 2000 OR BEFORE UNREASONABLE?

A. It assumes that large end user customers have been ignorant of the possibility of competitive alternatives all this time. The Florida Legislature opened the local market in 1995. The U.S. Congress followed suit the next year with the Telecommunications Act of 1996. That Act dramatically altered the telecommunications landscape, imposing extensive interconnection, resale, and network unbundling obligations upon the ILECs. The Act has been heavily publicized ever since it was first proposed in Congress. It is still the subject of intense media coverage. There is little possibility that a reasonably aware person (let alone a person with a telecommunications-oriented job) could have avoided knowledge of the Act and its ramifications. Yet the proposed rule, if adopted, will allow fresh look for contracts executed up to the effective date of the rule, which will likely be sometime in 2000. The rule would thus assume that telecommunications managers for large end users did not know about the advent of competition and that they could not have factored this development into their decisions about contract duration. This assumption is wholly unreasonable and certainly not a sound foundation for a major public policy decision. If, contrary to well-reasoned advice, the Commission insists on adopting any fresh look rule, the fresh look eligibility cut-off date should be no later than February 1, 1996 (that is, only contracts executed up until that date should be eligible for fresh look). By that time, the sophisticated customer group to which fresh look will apply would certainly have known about the Florida and federal legislation opening local

telecommunications markets–if not the competitive alternatives themselves. In this regard, Florida is one of the most active states in terms of CLEC certification. The Commission has granted over 250 CLEC certificates statewide; the avalanche of CLEC applications began soon after the Florida Legislature adopted the 1995 revisions opening the local exchange.

Q. WHY IS A TWO-YEAR FRESH LOOK WINDOW TOO LONG?

A. For the same reasons I discussed above. It is unreasonable enough to assume that large end users did not know about impending competitive alternatives until 2000. An additional two years for these customers to exercise a fresh look opportunity is just that much more irrational. Even if we assume these customers could not have known about competitive alternatives until 2000, they do not need a period as long as two years to educate themselves and to initiate the contract termination process if they wish to do so.

Q. WHY SHOULD CONTRACT REPRICING BE NECESSARY IF THE COMMISSION ADOPTS A FRESH LOOK RULE?

A. A fresh look rule can never be neutral in effect, since it takes rights and benefits from the ILEC without any corresponding benefits. But neither should it be punitive. The objective should be to at least put the ILEC back in the position it would have been if the customer had taken a shorter contract. The proposed rule does not do that because it does not permit contract repricing.

Contract repricing recognizes that a shorter contract will usually be priced higher than a longer contract, and that the customer has already received benefits under the contract up until the point he decides to terminate it. Contract repricing is not a novel concept. The FCC employed it, for example, in its Expanded Interconnection Order issued in 1992. There, the FCC allowed a limited fresh look option for long-term special access arrangements for six months following the availability of the expanded interconnection arrangements it ordered. (Expanded Interconnection with Local Tel. Co. Facilities, Second Memorandum Opinion and Order on Reconsideration, 8 FCC Rcd 7341 (1993) (Recon. Order) (the original Order was issued in 1992).) The FCC did not require the ILECs to eliminate all termination liabilities. Rather, it limited termination charges to (1) the difference between the amount the customer had already paid and (2) any additional charges the customer would have paid for service if the customer had originally taken a shorter term arrangement corresponding to the term actually used. The FCC also directed that interest be added to the resulting amount. (Recon. Order at para. 40.) This scheme was intended to ensure that the LECs "will obtain the compensation appropriate for the term actually taken by the customer." (Id. at para. 41.)

Q. WON'T THE PROPOSED RULE'S ALLOWANCE FOR UNRECOVERED NON-RECURRING CHARGES PUT THE ILEC IN

THE SAME POSITION IT WOULD HAVE BEEN IN IF THE CUSTOMER HAD TAKEN A SHORTER CONTRACT TERM?

A. Not necessarily. GTE often spreads nonrecurring charges over the life of the contract, in part to avoid requiring the customer to make an unduly large up-front payment. As GTE interprets the proposed rule, these charges would be recoverable and would go at least part of the way toward assuring the ILEC receives recovery appropriate to the shorter contract term. But the proposed rule does not account for other pricing variables that depend on a contract's term. For instance, the company will often give deeper discounts for a longer contract term because it is assured a specific amount of revenues over that term. When that term is prematurely curtailed, the customer gets an unjustified windfall. Moreover, applying a long-term contract discount to the shorter-term contract resulting from exercise of fresh look could mean that the contract is impermissibly priced below cost.

Q. WHAT ADMINISTRATIVE COSTS WOULD THE PROPOSED FRESH LOOK RULE IMPOSE ON THE ILECS?

A. The rule will raise GTEFL's costs in several ways. It directs GTEFL to designate a contact for fresh look inquiries. GTEFL will have to either hire an individual to perform this function or an existing employee will have to take on fresh look responsibilities, thus taking away time from serving GTEFL's own customers. The same is true for the person(s) given the job of calculating termination liabilities. This task can be expected to take up considerable time, as there will

inevitably be disputes about the proper amount of termination liability in particular cases. In addition, the requirement to offer a monthly payment plan for nonrecurring charges would force GTEFL to maintain accounts and issue bills for entities that are no longer its customers. Because the rule does not contemplate recovery of any of these costs, they will have to be passed on to GTEFL's ratepayers, even though these customers get no benefit at all from a fresh look rule. So GTEFL's competitors will benefit not only through the opportunity to take GTEFL's customer, but because the increased costs and inefficiency imposed by fresh look will make it harder for GTEFL to successfully compete.

Q. PLEASE SUMMARIZE YOUR TESTIMONY.

A. There is no need for a fresh look rule, especially when CLECs already have the opportunity to take away ILEC customers through the contract resale requirement. Fresh look will benefit only large business customers (and CLECs), at the expense of the average ratepayer. The proposed fresh look rule is especially onerous. It unreasonably assumes that sophisticated customers were not aware of the advent of local competition and could not factor this development in their contract negotiations. The rule, moreover, does not recognize that contracts must be repriced in order to place the ILEC in the same position it would have been in had the end user originally taken a shorter-term arrangement.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.