

PENNINGTON, CULPEPPER, MOORE, WILKINSON, DUNBAR & DUNLAP, P.A.
ATTORNEYS AT LAW

BARBARA D. AUGER
WILLIAM W. BLUE
D. ANDREW BYRNE †
BRAM D. E. CANTER
ROBERT CINTRON, JR.
ROBERT S. COHEN
CHARLES L. COOPER, JR.
BRUCE CULPEPPER
PETER M. DUNBAR
DAVISSON F. DUNLAP, JR.
MARTHA J. EDENFIELD
SHARON N. JACOBS
EDGAR M. MOORE

E. MURRAY MOORE, JR.
JOHN C. PELHAM
CARL R. PENNINGTON, JR., P.A.
C. EDWIN RUDE, JR.
DARREN A. SCHWARTZ
CYNTHIA S. TUNNICLIFF
WILLIAM E. WHITNEY
BEN H. WILKINSON
CATHI C. WILKINSON
† Also Admitted in Tennessee

OF COUNSEL
R. STUART HUFF, P.A.
Coral Gables, Florida
CHRISTOPHER W. KANAGA
(Admitted in Massachusetts & Colorado Only)
SCOTT MADDOX
WILLIAM VANDERCREEK
(Admitted in Texas & Iowa Only)
SPECIAL CONSULTANTS
JOHN F. BLACK, III*
RANDY MILLER*
DAVID L. SWAFFORD*
*Not A Member Of The Florida Bar

215 SOUTH MONROE STREET
2ND FLOOR
TALLAHASSEE, FLORIDA 32301

(904) 222-3533
FAX (904) 222-2126
E-Mail Phlaw@Supernet.net

1002 WEST 23RD STREET, SUITE 350
PANAMA CITY, FLORIDA 32405
(904) 769-7864

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

April 15, 1996

ORIGINAL
FILE COPY

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

via Hand Delivery

Re: Resolution of Petition(s) to establish 1995 rates, terms, and conditions for interconnection involving local exchange companies and alternative local exchange companies pursuant to Section 364.162, Florida Statutes; Docket No. 950985-TP

Dear Ms. Bayo:

ACK ✓ Enclosed for filing please find an original and fifteen copies
AFA of Time Warner AxS of Florida, L.P.'s and Digital Media Partners'
APP Request for Reconsideration for the above-referenced docket. You
CAF will also find a copy of this letter and a diskette in Word Perfect
5.1 format enclosed. Please date-stamp this copy to indicate that
the original was filed and return to me.

CMU If you have any questions regarding this matter, please feel
CTR free to contact me.

EAG _____
LEG 1 _____
LIN 5 _____
OPC _____
RCH _____
SEC 1 _____
WAS _____
OTH Enclosure

RECEIVED & FILED
BUREAU OF RECORDS

Respectfully,

PENNINGTON, CULPEPPER, MOORE,
WILKINSON, DUNBAR & DUNLAP, P.A.

Robert S. Cohen
Robert S. Cohen

cc: All Parties of Record (w/ enclosure)

DOCUMENT NUMBER-DATE
04328 APR 15 96
FPSC-RECORDS/REPORTING

013

CERTIFICATE OF SERVICE
DOCKET NO. 950985-TP

I HEREBY CERTIFY that a true and correct copy of the Request for Reconsideration on behalf of Time Warner AxS of Florida, L.P. and Digital Media Partners' has been served by U.S. Mail on this 15th day of April, 1996, to the following parties of record:

Ms. Jill Butler
Florida Regulatory Director
Time Warner Communications
2773 Red Maple Ridge
Tallahassee, FL 32301

*Jodie Donovan-May, Esq.
Eastern Region Counsel
Teleport Communications
Group, Inc.
2 Lafayette Center
1133 21st Street, N.W.
Suite 400
Washington, D.C. 20036

Kenneth A. Hoffman, Esq.
Rutledge, Ecenia, Underwood,
Purnell & Hoffman
215 South Monroe Street
Suite 420
Tallahassee, FL 32301-1841

J. Phillip Carver, Esq.
c/o Nancy H. Sims
Southern Bell Telephone
& Telegraph Company
150 S. Monroe Street, Suite 400
Tallahassee, FL 32301

Bob Elias, Staff Counsel
Florida Public Service Comm.
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Anthony P. Gillman
Kimberly Caswell
GTE Florida Incorporated
c/o Richard M. Fletcher
106 East College Avenue
Suite 1440
Tallahassee, FL 32301

Michael W. Tye, Esq.
AT&T
101 North Monroe Street
Suite 700
Tallahassee, FL 32301

C. Everett Boyd, Jr.
Ervin, Varn, Jacobs,
Odom & Ervin
305 S. Gadsden Street
Tallahassee, FL 32301
(Sprint Communications)

Laura L. Wilson, Esq.
Charles F. Dudley, Esq.
Florida Cable Telecommunications
Association, Inc.
310 N. Monroe Street
Tallahassee, FL 32301

Richard Melson
Hopping, Green, Sams & Smith
123 S. Calhoun Street
Post Office Box 6526
Tallahassee, FL 32301

Angela B. Green, Esq.
Florida Public Telecommunications
Association, Inc.
125 S. Gasden Street
Suite 200
Tallahassee, FL 32301

*Martha McMillin
MCI Telecommunications Corp.
780 Johnson Ferry Rd., Suite 700
Atlanta, GA 30346

Floyd R. Self, Esq.
Messer, Vickers, Caparello,
Madsen, Goldman & Metz, P.A.
Post Office Box 1876
215 South Monroe Street
Suite 701
Tallahassee, FL 33401

*Timothy Devine
Senior Director, External &
Regulatory Affairs
Southern Region
MFS Communications Company, Inc.
Six Concourse Parkway
Suite 2100
Atlanta, GA 30328

*Richard M. Rindler
James C. Falvey
Swidler & Berlin, Chartered
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
(Metropolitan Fiber Systems)

*William H. Higgins, Esq.
AT&T Wireless Services
Suite 900
250 S. Australian Avenue
West Palm Beach, FL 33401

Patrick K. Wiggins
Marsha E. Rule
Wiggins & Villacorta, P.A.
501 E. Tennessee Street
Suite B
Post Office Box 1657
Tallahassee, FL 32302

*Robin D. Dunson, Esq.
1200 Peachtree St., NE
Promenade I, Room 4038
Atlanta, GA 30309

*Donald L. Crosby
Regulatory Counsel
Continental Cablevision, Inc.
Southeastern Region
7800 Belfort Parkway, Suite 270
Jacksonville, FL 32256-6925
(904) 731-8810
(904) 281-0342 (fax)

*A.R. "Dick" Schleiden
Regional Telecomm. Manager
Continental Communications
7800 Belfort Parkway, Ste. 270
Jacksonville, FL 32256-6925
(904) 448-3390
(904) 731-8699 (fax)

*Bill Wiginton
Hyperion Telecommunications, Inc.
Boyce Plaza III
2570 Boyce Plaza Road
Pittsburgh, Pennsylvania 15241
(412) 221-1888
(412) 221-6642 (fax)

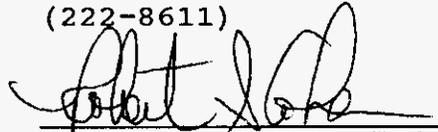
*Sue E. Weiske, Senior Counsel
Law Department
Time Warner Communications
160 Inverness Drive West
Englewood, Colorado 80112
(303) 799-5513 (voice mail)
(303) 799-5591 (facsimile)
(Digital Media Partners)

*Benjamin Fincher, Esq.
Sprint Communications Company
Limited Partnership
3065 Cumberland Circle
Atlanta, GA 30339

Patricia Kurlin
Corporate Counsel
Intermedia Communications of
Florida, Inc.
3625 Queen Palm Drive
Tampa, Florida 33619

Lee L. Willis
J. Jeffry Wahlen
Macfarlane, Ausley, Ferguson
and McMullen
227 South Calhoun Street
Tallahassee, FL 32301

Mark K. Logan, Esq.
Bryant, Miller & Olive, P.A.
201 S. Monroe St., Suite 500
Tallahassee, FL 32301
(AT&T Communications)
(222-8611)



ROBERT S. COHEN, ESQ.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Resolution of Petition(s)) Docket No. 950985-TP
to establish nondiscriminatory) Filed: April 15, 1996
rates, terms, and conditions for)
interconnection involving local)
exchange companies and alternative)
local exchange companies pursuant)
to Section 364.162, Florida Statutes)



TIME WARNER AXS OF FLORIDA, L.P.'S
AND
DIGITAL MEDIA PARTNERS'
REQUEST FOR RECONSIDERATION

Time Warner AxS of Florida, L.P. and Digital Media Partners ("Time Warner"), by and through its undersigned attorneys, respectfully submits to the Florida Public Service Commission ("Commission") this Request for Reconsideration of Order No. PSC-96-0445-FOF-TP issued March 29, 1996 in the above-captioned proceeding as prescribed by Rule 25-22.060, Florida Administrative Code. As grounds therefor, Time Warner states as follows:

1. This proceeding involves the setting of non-discriminatory rates, terms and conditions of local interconnection pursuant to Section 364.162, Florida Statutes (1995). Under that section, if a negotiated price is not established, a party may petition and the Commission must then establish non-discriminatory rates, terms and conditions of local interconnection . Petitions have been filed by Teleport Communications Group, Inc. (TCG), Continental Cablevision, Inc. (Continental), Metropolitan Fiber Systems of Florida, Inc. (MFS), MCImetro Access Transmission Services, Inc. (MCImetro), and Time Warner AxS of Florida, L.P. /Digital Media Partners (Time Warner). All of these petitions were to be addressed at the January 10-11, 1996 hearing. However, on December 8, 1995, BellSouth, Continental and Time Warner reached Stipulation and Agreement (Stipulation) that was also later signed by Intermedia (ICI), TCG, and Sprint Metropolitan Network, Inc.

2. The Commission approved the rates, terms, and conditions of the Stipulation at the December 19, 1995 Agenda Conference. Order No. PSC-96-0082-AS-TP issued January 17, 1996.

DOCUMENT NUMBER-DATE
04328 APR 15 96
FPSC-RECORDS/REPORTING

3. Time Warner requests reconsideration of Order No. PSC-96-0445-FOF-TP ("Order") establishing local interconnection rates, terms and conditions between BellSouth and MFS and MCImetro. Time Warner submits that the Order departs from essential requirements of law by ignoring or overlooking the Commission's duty to establish non-discriminatory rates, terms, and conditions and promote competition among the largest possible array of companies. Time Warner Communications does not challenge the Commission's general statutory authority to authorize bill and keep arrangements. Time Warner instead challenges the original approval of one interconnection rate structure for a large group of ALEC's on Order No. PSC-96-0082-AS-TP and subsequent approval of different rates, terms and conditions for MCImetro and MFS without any supporting rationale for the disparate treatment . The result is that the signatories to the Stipulation have been denied due process, are placed at a competitive disadvantage vis-a-vis other ALECs in BellSouth's territory, and are discouraged from entering negotiated settlements in the future. These results are contrary to the requirements of the revised Chapter 364, Florida Statutes (1995).

4. The interconnection rate provisions of Sections 364.14 and 364.162, Florida Statutes, grant the Commission jurisdiction to set the rates, terms and conditions of local interconnection between LECs and ALECs upon petition. Commission-approved rates, terms and conditions must be "non-discriminatory ." Sections 364.08, and 364.10 have, in the past , been interpreted to prohibit undue or unreasonable discrimination. "Unreasonable discrimination " arises when similarly situated customers who use the same service and cause substantially the same costs to be incurred pay different prices for the service. See e.g., In re: Petition for Declaratory Statement Concerning Potential Services to Dog Island by St. Joseph Telephone and Telegraph Company, 95 FPSC 3:466,468; In re: Intrastate Telephone Access Charges for Toll Use for Local Exchange Services, 85 FPSC 2:160; In re: Application of Telecom Express, Inc. for Authority to Provide Interexchange Telecommunications Service, 88 FPSC 10:470; In re: Investigation into NTS Cost Recovery Phase II, 88 FPSC 7:44.

5. The Order fails to consider or address the obligation that the Commission has to establish non-discriminatory rates, terms and conditions of local interconnection. By Order No. PSC-96-0082s-AS-TP (the "First Order") the Commission found one set of rates, terms and conditions to be in the public interest for certain ALECs. The Commission subsequently approved different rates, terms and conditions for MCImetro and MFS. The Commission has taken this action despite the complete lack of record evidence to show that different treatment for MCImetro and MFS is justified. The Order cites no specific findings of fact or policy reasons supporting the disparate treatment between ALECs.

6. To the contrary, what the record demonstrates is that ALECs are similarly situated with respect to BellSouth. The service at issue in this proceeding is the essential service of local call termination on BellSouth's network. See e.g. Tr. 50, 366-368, 671. All ALECs are similarly situated.

7. It is unreasonable to discriminate between ALECs and there is no record basis to do so. The statute clearly and plainly obligates the Commission to ensure a non-discriminatory rate. The Order completely fails to do so. The Order does not deal specifically with this statutory requirement. There is likewise no commentary in the Order specifically addressing this argument which FCTA raised in its Posthearing Brief.

8. For these reasons, the Order departs from the essential requirements of law. Time Warner Communications request for reconsideration should be granted.

9. The revised Chapter 364 places the obligation on the Commission to promote competition among the "widest possible array of providers" and eliminating rules and regulations that delay or impede competition." Section 364.01(4), Fla. Stat. (1995). By approving one rate for signatories to the Stipulation and another rate for MCImetro and MFS, the Commission is hand-picking the winners and losers in the marketplace.

10. In the First Order, the Commission approved a usage sensitive rate and structure for certain ALECs with a 105% cap on traffic imbalance. In the Order, the Commission

approved a rate based upon mutual exchange in which no money is exchanged for a period of time. During that time period, MFS and MCImetro are assured a lower price for local call termination in BellSouth territory. This will also ensure lower costs for MFS and MCImetro vis-a-vis their competitors. Again, this treatment is unjustified and wholly unsupported in the record.

11. The Commission has recognized obligation to promote competition. There is no discussion in the Order of how such disparate treatment among ALECs in BellSouth territory is consistent with the goal of promoting competition among the widest possible range of providers.

12. The effects of these decisions are anti-competitive. In order to promote competition, the Commission should ensure that the BellSouth rates for local termination are fair and reasonable as applied to each ALEC in a competitive environment . As discussed above, a Commission-approved interconnection rate is not fair if it unreasonably discriminates among similarly situated ALEC providers for like service. It is not fair if it picks the winners and losers in the marketplace. The Commission has approved a rate for BellSouth call termination. If the Commission now approves more or less favorable rates for the same services when provided to MCImetro and MFS, the Commission is "hand-picking" the winners and losers in the marketplace. All the ALECs that are parties to this proceeding are going to be competing against each other. The Commission must avoid setting "unfair " rates, terms and conditions that make it more or less likely that MFS will compete more effectively than Teleport. Rather, all ALECs should be placed on equal competitive footing. Because the Order ignores or overlooks the statutory duty to promote competition, the Commission should grant this request for reconsideration.

13. Under an undue discrimination argument, similarly situated providers must have access to interconnection rates, terms and conditions that are identical. The Commission's order approving the stipulation between BellSouth and Time Warner and others and its recent regulatory decision ordering bill and keep between BellSouth and MFS and MCImetro appears to

treat similarly situated new entrants differently. Such discrimination is neither legal nor good public policy and the Commission must resolve this inconsistency between the two actions.

WHEREFORE, for the reasons set forth and based upon the authority cited above, Time Warner respectfully requests the Commission to enter an Order reconsidering its position in Order No. PSC-96-0445-FOF-TP, consistent with the arguments cited herein.

RESPECTFULLY SUBMITTED this 15th day of April, 1996.



PETER M. DUNBAR, ESQ.

Fla. Bar No. 146594

ROBERT S. COHEN, ESQ.

Fla. Bar No. 347353

Pennington, Culpepper, Moore,
Wilkinson, Dunbar & Dunlap, P.A.
Post Office Box 10095 (32302-2095)
215 S. Monroe Street, 2nd Floor
Tallahassee, Florida 32301
(904) 222-3533
(904) 222-2126 (facsimile)

Counsel for: Time Warner AxS of
Florida, L.P. and
Digital Media Partners