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October 12, 1994

Ms. Blanca Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
101 East Gaines Street  
Tallahassee, Florida 32399-0850

via Hand Delivery

Re: Expanded Interconnection Phase II and Local  
Transport Restructure; Docket No. 921074-TP

Dear Ms. Bayo:

Enclosed for filing please find an original and fifteen copies of Time Warner AxS of Florida, L.P.'s Posthearing Brief for the above-referenced docket. You will also find a copy of this letter enclosed. Please date-stamp this copy to indicate that the original was filed and return to me.

You will also find a diskette in word perfect 5.1 format enclosed which contains the Posthearing Brief for your records.

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 & HABEN, P.A.

*Peter M. Dunbar*  
Peter M. Dunbar

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FPC-BUREAU OF RECORDS

PMD/tmz  
Enclosures

cc: All parties of record (w/ enclosures)

DOCUMENT NUMBER-DATE

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Expanded Interconnection )  
Phase II and Local Transport )  
Restructure )

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Docket No. 921074-TP  
Docket No. 930955-TL  
Docket No. 940014-TL  
Docket No. 940020-TL  
Docket No. 931196-TL  
Docket No. 940190-TL  
Filed: October 12, 1994

POSTHEARING BRIEF OF TIME WARNER AXS OF FLORIDA, L.P.

Time Warner AxS of Florida, L.P. ("Time Warner"), pursuant to Florida Administrative Code Rule 25-22.056, respectfully submits the following Posthearing Brief in the above-captioned docket to the Florida Public Service Commission ("FPSC" or "Commission").

I. SUMMARY

Expanded interconnection for intrastate switched access is in the public interest because it will foster the development of competition for telecommunications services and provide additional options for end users. The Commission has the authority to require expanded interconnection for intrastate services pursuant to Chapter 364, Florida Statutes.

As a regulatory agency, the Commission should guard against attempts by incumbent local exchange companies ("LEC") to build inequities and inefficiencies into collocation arrangements to the detriment of competition. For competition to develop, interconnection with incumbent LEC networks must be priced fairly and not be cumbersome administratively or technologically. Virtual collocation should be provided in a manner which is technically, economically and operationally equivalent to physical collocation.

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FPSC-RECORDS/REPORTING

Excessive pricing flexibility by the incumbent LECs is unwarranted and will thwart the development of competition in intrastate telecommunications markets.

## II. ISSUES

Time Warner recognizes and acknowledges that twenty-four (24) specific issues of law and policy, some with subparts, have been identified and will be addressed by the Commission in this Docket. Each is incorporated in this Posthearing Brief by reference, and is believed by Time Warner to be relevant to the Commission's final decision in this Docket.

### ISSUE 1:

**How is switched access provisioned and priced today?**

#### \* POSITION SUMMARY:

Switched access service uses a local exchange company's switching facilities to provide a communications pathway between an interexchange company's terminal location and an end user's premises. Switched access is provisioned under a feature group arrangement. There are four feature groups: FGA, FGB, FGC, and FGD. These categories are distinguished by their technical characteristics, e.g. the connection to the central office is line side or trunk side. Rate elements differ by name according to the respective local exchange company. Rate elements typically include local switching, carrier common line, local transport, and carrier access capacity. Rate elements are currently priced under the equal charge rule. This means that each unit is priced the same as

the next unit for a given rate element. Rates and charges include recurring, nonrecurring, and usage.

**ANALYSIS AND ARGUMENT:**

Stipulated.

**ISSUE 2:**

How is local transport structured and priced today?

**\* POSITION SUMMARY:**

Local transport, as mentioned in Issue 1, is one of the switched access rate elements. Local transport is currently priced on a usage sensitive basis. The rate is applied on a per minute of use basis. Regardless of distance all transport minutes of use are assessed the same rate per minute of use.

**ANALYSIS AND ARGUMENT:**

Stipulated.

**ISSUE 3:**

Under what circumstances should the Commission impose the same or different forms and conditions of expanded interconnection than the F.C.C.?

**\* POSITION SUMMARY:**

Except for decisions reached in other issues in this hearing, the Commission should mirror the forms and conditions of expanded interconnection established by the FCC. Incumbent LECs should be granted no pricing flexibility beyond that provided by the FCC.

**ANALYSIS AND ARGUMENT:**

Substantial departure by the FPSC from the FCC's approach to interconnection services could create additional expenses and

administrative problems which would make the provisioning and purchase of interconnection services more difficult. (Denton Tr. 360; Beauvais Tr. 225). However, within the FCC's general framework, there remain issues for the Florida Commission to resolve. How these issues are resolved will appropriately shape Florida's interconnection mandate.

Although the LECs would like to have the option of offering either virtual or physical collocation on a negotiated basis (E.g., Denton 360-61), such an approach inappropriately leaves all of the options with the LEC. (Smith Tr. 568). The appropriate regulatory policy is a virtual collocation mandate (including appropriate standards) with an option to negotiate mutually agreeable physical collocation arrangements. (Andreassi Tr. 727-731).

Physical collocation should be established as a standard against which virtual collocation arrangements are measured in order to assure that interconnection is provided under reasonable terms and conditions. (Smith Tr. 569; Andreassi Tr. 727-31). Failure to provide such a standard will seriously impede the development of competitive services, and ignores the unequal bargaining positions of the competitors and the LECs. (See Smith 568-70; Andreassi 728-729).

The incumbent LECs have argued for additional pricing flexibility in response to a perceived competitive threat. However, given the statutory constraints within which competitors must operate, the financial threat posed by the competitors is limited. (See Andreassi Tr. 712-14). LEC pricing flexibility in

addition to that permitted by the FCC is simply not warranted at this time. (Andreassi Tr. 723).

**ISSUE 4:**

Is expanded interconnection for switched access in the public interest? (The following should be discussed within this issue: Potential separations impact; Potential revenue impact on LECs, their ratepayers, and potential competitors; Potential ratepayer impact.)

**\* POSITION SUMMARY:**

Yes, expanded interconnection for switched access is in the public interest.

**ANALYSIS AND ARGUMENT:**

Intrastate expanded interconnection for switched access will increase access competition, provide consistent regulatory frameworks between the interstate and intrastate jurisdictions, and provide large end-users with meaningful alternatives for their telecommunications needs. (Metcalf Tr. 51-4). Competition driven evolutions in technology will benefit all end users. (Metcalf 55).

Intrastate expanded interconnection of switched access will not cause serious financial harm to the LECs. (Andreassi Tr. 712-14; Rock Tr. 651).

**ISSUE 5:**

Is the offering of dedicated and switched services between non-affiliated entities by non-LECs in the public interest?

**\* POSITION SUMMARY:**

Yes. Non-LEC offering of dedicated and switched services between non-affiliated entities is in the public interest. Such a regulatory approach will provide Florida's consumers with the benefits of a telecommunications market.

**ANALYSIS AND ARGUMENT:**

Although the parties disagree as to the appropriate terms and conditions, they generally acknowledge that allowing Non-LECs to offer dedicated and switched services between non-affiliated entities will benefit the public. Such benefits may take the form of lower prices, increased customer choice, development of new services, route diversity and keeping large end-users from resorting to private networks for their communications needs. (E.g., Denton Tr. 363-64; Rock Tr. 650; Metcalf Tr. 50-1; Andreassi Tr. 716-17).

**ISSUE 6:**

Does Chapter 364, Florida Statutes, allow the Commission to require expanded interconnection for switched access?

**\* POSITION SUMMARY:**

Yes. Nothing in Chapter 364, Florida Statutes, prohibits the Commission from requiring expanded interconnection for switched access.

### ANALYSIS AND ARGUMENT:

In additional to the general regulatory powers of the Commission over intrastate telecommunications, the FPSC is charged with regulating interconnection of telecommunications facilities, (Section 364.16, Florida Statutes) and encouraging the development of competition in the provision of telecommunications services. (Section 364.01(3)(c-d), Florida Statutes).

The parties generally agree that the FPSC has the authority to require expanded interconnection for switched access pursuant to Chapter 364, Florida Statutes. (See e.g., Denton Tr. 364-65; Andreassi Tr. 720).

However, switched access interconnection authority will not supersede other statutory constraints on competition; interconnectors will not be allowed to provide services that are otherwise prohibited by law. (See e.g., Denton Tr. 364).

### ISSUE 7

Does a physical collocation mandate raise federal or state constitutional questions about the taking or confiscation of LEC property?

### \* POSITION SUMMARY:

Although the takings analysis set forth in the Final Order issued in Phase I of this proceeding correctly addressed this issue, "substantial constitutional questions" were found to exist with the FCC's physical collocation mandate. Policy considerations argue against incompatible interstate and intrastate collocation arrangements.



**ANALYSIS AND ARGUMENT:**

In Phase I of this proceeding, the FPSC found that requiring incumbent LEC's to tariff used and useful property for the purpose of physical interconnection does not constitute a taking. (Order No. PSC-94-0285-FOF-TP issued on March 10, 1994, in Docket No. 921074-TP). However, given the remand of the FCC's interconnection order, (Bell Atlantic Telephone Companies, et al. v. Federal Communications Commission, D.C. Ct. App. (Case Nos 92-1619, 92-1620, 931028 and 931053 (decided June 10, 1994)) and the FCC's subsequent adoption of a virtual collocation mandate, (Memorandum Opinion and Order adopted July 14, 1994, released July 25, 1994, in CC Docket No. 91-141) the best regulatory approach for Florida is to develop an intrastate interconnection policy that is compatible with the FCC's interconnection policy. (Andreassi Tr. 726-730).

**ISSUE 8:**

Should the Commission require physical and/or virtual collocation for switched access expanded interconnection?

**\* POSITION SUMMARY:**

The FPSC should mandate virtual collocation that is technically, economically, administratively and operationally equivalent to physical collocation. A standard of reasonableness is also necessary to prevent incumbent LECs from building inefficiencies into collocation arrangements that will impede competition. Physical collocation arrangements should be permitted on a negotiated basis.

### ANALYSIS AND ARGUMENT:

In order to avoid inefficiencies resulting from divergent collocation policies, a virtual collocation mandate with an option to negotiate a mutually agreeable physical collocation arrangement is the best intrastate collocation policy. (Andreassi Tr. 731). Within this context, a standard for virtual collocation must be established. (Andreassi Tr. 727-31). The appropriate standard is that virtual collocation must be technically, economically, administratively and operationally equivalent to physical collocation. (Id.). There must also be a standard of reasonableness to prevent incumbent LECs from building inefficiencies into collocation arrangements that will impede competition. (See Smith Tr. 570). Implementation of such standards will assure that reasonable collocation and interconnection can be obtained despite the unequal bargaining positions of the competitors and the LECs. (Andreassi Tr. 727-31).

### ISSUE 9:

Which LECs should provide switched access expanded interconnection?

#### \* POSITION SUMMARY:

Only Tier 1 LECs (Southern Bell, GTEFL, United, and Centel) shall be required to offer switched access expanded interconnection.

If a non-Tier 1 LEC receives a bona fide request for expanded interconnection but the terms and conditions cannot be negotiated by the parties, the Commission shall review such a request on a

case-by-case basis. If the parties agree on expanded interconnection, the terms and conditions shall be set by individual negotiation.

**ANALYSIS AND ARGUMENT:**

Stipulated.

**ISSUE 10:**

From what LEC facilities should expanded interconnection for switched access be offered? Should expanded interconnection for switched access be required from all such facilities?

**\* POSITION SUMMARY:**

Expanded interconnection shall be offered out of all LEC offices, which include central offices, end offices, tandems, and remotes, that are used as rating points for switched access services and have the necessary space and technical capabilities. Initially, expanded interconnection shall be offered out of those central offices that are identified in the proposed tariffs in the interstate jurisdiction. Additional offices shall be added within 90 days of a written request to the LEC by an interconnector.

**ANALYSIS AND ARGUMENT:**

Stipulated.

**ISSUE 11:**

Which entities should be allowed expanded interconnection for switched access?

**\* POSITION SUMMARY:**

Any entity shall be allowed to interconnect on an intrastate basis its own basic transmission facilities associated with

terminating equipment and multiplexers except entities restricted pursuant to Commission rules, orders and statutes.

**ANALYSIS AND ARGUMENT:**

Stipulated.

**ISSUE 12:**

Should collocators be required to allow LECs and other parties to interconnect with their network?

**\* POSITION SUMMARY:**

No. At this juncture, such a mandate would be premature and would serve no purpose.

**ANALYSIS AND ARGUMENT:**

Because AAVs currently are prohibited from providing switched local services, there is no reason for a LEC to collocate with an AAV within the context of this docket. Such a collocation requirement would burden the AAVs while providing no benefit to the LECs. (Andreassi 746-48).

**ISSUE 13:**

Should the Commission allow switched access expanded interconnection for non-fiber optic technology?

**\* POSITION SUMMARY:**

Yes. The Commission shall allow expanded interconnection of non-fiber optic technology on a central office basis where facilities permit. The actual location of microwave technology shall be negotiated between the LEC and the interconnector.

**ANALYSIS AND ARGUMENT:**

Stipulated.

**ISSUE 14:**

Should all switched access transport providers be required to file tariffs?

**\* POSITION SUMMARY:**

No. Only incumbent LECs should be required to file tariffs.

**ANALYSIS AND ARGUMENT:**

Tariffs are not necessary for AAVs because competitive pressures generally will prevent competitors from pricing services higher than the LEC. It is anticipated that LEC tariffs will establish a price "ceiling" much the way that AT&T has established the price ceiling for long distance services. (Metcalf Tr. 83).

**ISSUE 15:**

Should the proposed LEC flexible pricing plans for private line and special access services be approved?

**\* POSITION SUMMARY:**

No. The Commission should approve no pricing flexibility for intrastate private line and special access services beyond that allowed by the FCC for interstate services. Moreover, pricing flexibility should be allowed only after implementation of expanded interconnection.

**ANALYSIS AND ARGUMENT:**

The FCC's approved pricing flexibility is an adequate response to competitive pressures on the LECs. (Andreassi Tr. 723). However, the LECs already have liberal intrastate pricing flexibility in the form of CSAs and ICBs. (Metcalf Tr. 62). Intrastate approval of FCC flexibility standards is not justified

in addition to existing intrastate pricing flexibility. Excessive pricing flexibility increases the risk of pricing abuses to the detriment of the development of competitive markets. (Andreassi Tr. 723).

**ISSUE 16:**

Should the LECs proposed intrastate private line and special access expanded interconnection tariffs be approved?

**\* POSITION SUMMARY:**

Tariffs should only be approved to the extent that they mirror the LECs' interstate tariffs and comply with the requirements of Phase I of this proceeding.

**ANALYSIS AND ARGUMENT:**

Tariffs should only be approved to the extent that they mirror the LECs' interstate tariffs and comply with the requirements of Phase I of this proceeding. (Andreassi Tr. 721). Such approval should be subject to any changes made by the FCC (*Id.*) and decisions made on reconsideration of Phase I of this proceeding. (Denton Tr. 371).

**ISSUE 17:**

Should the LECs proposed intrastate switched access interconnection tariffs be approved?

**\* POSITION SUMMARY:**

No. Tariffs should only be approved to the extent that they mirror the LECs' interstate tariffs and incorporate the decisions reached in this docket.

**ANALYSIS AND ARGUMENT:**

LEC tariffs should only be approved to the extent that they mirror interstate tariffs, (Andreassi Tr. 723) and incorporate the decisions reached in this docket, (Hendrix Tr. 419).

**ISSUE 18:**

Should the LECs be granted additional pricing flexibility? If so, what should it be?

**\* POSITION SUMMARY:**

No. The incumbent LECs should be granted no more pricing flexibility for intrastate services than was allowed for interstate services. Pricing flexibility should be allowed only after the implementation of expanded interconnection.

**ANALYSIS AND ARGUMENT:**

The pricing flexibility afforded the LECs at the interstate level is adequate. (Andreassi Tr. 723). However, in Florida the LECs enjoy the benefits of pricing flexibility in the form of CSAs and ICBs. (Metcalf Tr. 62). Rather than needing additional pricing flexibility, the concern is whether there will be too much pricing flexibility at the intrastate level. (Andreassi Tr. 723). Long term, too much pricing flexibility could thwart the development of competition which could result in less choices for end users. (Metcalf Tr. 63).

**ISSUE 19:**

Should the Commission modify its pricing and rate structure regarding switched transport service?

a) With the implementation of switched expanded interconnection.

b) Without the implementation of switched expanded interconnection.

**\* POSITION SUMMARY:**

The Commission should modify its pricing and rate structure for switched transport only after implementation of switched expanded interconnection.

**ANALYSIS AND ARGUMENT:**

Absent switched interconnection, LECs will not face effective competition for their switched transport services. Thus, there is no need to modify pricing and rate structures absent implementation of switched access interconnection. (Rock Tr. 653).

**ISSUE 20:**

If the Commission changes its policy on the pricing and rate structure of switched transport service, which of the following should the new policy be based on:

a) The intrastate pricing and rate structure of local transport should mirror each LEC's interstate filing, respectively.

b) The intrastate pricing and rate structure of local transport should be determined by competitive conditions in the transport market.



c) The intrastate pricing and rate structure of local transport should reflect the underlying cost based structure.

d) The intrastate pricing and rate structure of local transport should reflect other methods.

**\* POSITION SUMMARY:**

If the Commission changes its policy on the pricing and rate structure of switched transport service, the new policy should be based on statements "a," "b," and "c" above.

**ANALYSIS AND ARGUMENT:**

The intrastate rate structure of switched transport service should be compatible with each LEC's interstate filing. (Rock Tr. 654). To avoid discrimination, rate levels should be cost based. (Rock Tr. 654; Gillan Tr. 963). However, absent effective competition there is simply no need for price restructure. (Rock Tr. 653).

**ISSUE 21:**

Should the LECs proposed local transport restructure tariffs be approved? If not, what changes should be made to the tariffs?

**\* POSITION SUMMARY:**

No. Tariffs should only be approved consistent with other decisions reached in this docket and upon a finding that there is effective competition for switched transport services.

**ANALYSIS AND ARGUMENT:**

The Commission has before it several local transport restructure issues. Tariffs for these services should conform to the Commission's other determinations regarding local transport

restructure. Additionally, implementation of local transport restructure should be contingent on a Commission finding that there is effective competition for switched transport services. (Rock Tr. 653).

**ISSUE 22:**

Should the Modified Access Based Compensation (MABC) agreement be modified to incorporate a revised transport structure (if local transport restructure is adopted) for intraLATA toll traffic between LECs?

**\* POSITION SUMMARY:**

No position.

**ISSUE 23:**

How should the Commission's imputation guidelines be modified to reflect a revised transport structure (if local transport restructure is adopted)?

**\* POSITION SUMMARY:**

Effective imputation guidelines would require that switched access charges, not actual costs, be covered by LEC toll rates. The Commission should address the subject of imputation in a broader context after this proceeding is concluded.

**ANALYSIS AND ARGUMENT:**

The Commission should investigate imputation in a broader context in another docket. However, for the purposes of this proceeding, LECs should be required to impute to their end-to-end service the costs that they impose on interconnectors to collocate in their facilities. (Andreassi Tr. 725).

**ISSUE 23A:**

Should the Commission modify the Phase I Order in light of the decision by the United States Court of Appeals for the District of Columbia Circuit?

**\* POSITION SUMMARY:**

Yes. The Court of Appeals remand and subsequent FCC vote impact both the Phase I Order and the tariffs filed in Phase II of this proceeding.

**ANALYSIS AND ARGUMENT:**

There should be some degree of consistency between the interstate and intrastate jurisdictions regarding expanded interconnection. (E.g., Denton Tr. 375-76). Provided appropriate virtual collocation standards are implemented, (Smith Tr. 569) the FPSC should modify its Phase I Order to accommodate the changes in the FCC's approach to interconnection. (Denton Tr. 376).

**ISSUE 24:**

Should these dockets be closed?

**\* POSITION SUMMARY:**

Depending on the decisions reached in this proceeding, additional Commission review may be necessary.

**ANALYSIS AND ARGUMENT:**

Depending on the decisions reached in this proceeding, additional Commission review may be necessary.

**III. CONCLUSION**

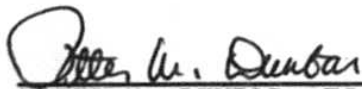
Expanded interconnection of switched access services and the provision of dedicated and switched services between non-affiliated

entities by non-LECs are in the public interest. Both policies will encourage the further opening to local telecommunications markets to competition to the benefit of business and residential customers alike.

For competition to develop, interconnection must be available on reasonable terms and conditions. Thus, the FPSC should adopt physical collocation as a standard against which mandated virtual collocation arrangements are measured.

The LECs argue that pricing flexibility is necessary in order to respond to an evolving competitive threat. However, excessive LEC pricing flexibility in the absence of meaningful competition will thwart the development of such competition.

**RESPECTFULLY SUBMITTED** this 12th day of October, 1994.



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**CERTIFICATE OF SERVICE  
DOCKET NO. 921074-TP**

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