

# MCWHIRTER REEVES

ATTORNEYS AT LAW

TAMPA OFFICE:  
400 NORTH TAMPA STREET, SUITE 2450  
TAMPA, FLORIDA 33602  
P. O. BOX 3350 TAMPA, FL 33601-3350  
(813) 224-0866 (813) 221-1854 FAX

PLEASE REPLY TO:  
  
TALLAHASSEE

TALLAHASSEE OFFICE:  
117 SOUTH GADSDEN  
TALLAHASSEE, FLORIDA 32301  
(850) 222-2525  
(850) 222-5606 FAX

June 16, 1999

## VIA HAND DELIVERY

Blanca S. Bayo, Director  
Florida Public Service Commission  
Division of Records & Reporting  
Betty Easley Conference Center  
4075 Esplanade Way  
Tallahassee, Florida 32399-0850

Re: Docket No. 980253-TX

Dear Ms. Bayo:

Enclosed for filing and distribution are the original and seven copies of the Florida Competitive Carriers Association's and AT&T Communications of the Southern States, Inc.'s Post-Hearing Brief in the above docket.

Please acknowledge receipt of the above on the extra copy enclosed herein and return it to me. Thank you for your assistance.

Sincerely,

*Vicki Gordon Kaufman*

Vicki Gordon Kaufman

VGK/bb  
Enclosures

RECEIVED-FPSC  
99 JUN 16 PM 1:34  
RECORDS AND REPORTING

RECEIVED & FILED  
*VGK*  
FPSC-BUREAU OF RECORDS

AFA  
APP Brown  
CAF  
CMU 1  
CTR  
EAG  
LEG  
MAS 5  
OPC  
RRR 1  
SEC 1  
WAV  
DTH

MCWHIRTER, REEVES, MCGLOTHLIN, DAVIDSON, DECKER, KAUFMAN, ARNOLD & STEEN, P.A.

DOCUMENT NUMBER-DATE

07307 JUN 16 99

FPSC-RECORDS/REPORTING

**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

Filed: June 16, 1999

**THE FLORIDA COMPETITIVE CARRIERS ASSOCIATION'S AND  
AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC.'S  
POST-HEARING BRIEF**

The Florida Competitive Carriers Association (FCCA) and AT&T Communications of the Southern States, Inc. (AT&T) file this Post-Hearing Brief in support of the Commission's adoption of a Fresh Look Rule.<sup>1</sup>

**Purpose of Fresh Look Rule**

1. The purpose of a Fresh Look rule is to allow customers a meaningful opportunity to opt out of contracts entered into during a time when there was no competition and the incumbent was the only option for customers. Such a policy will foster competition in the state by helping to remove current barriers to competition. Such a rule should be carrier neutral and easy to administer, so that competitive alternatives, not lengthy administrative proceedings, are the focus of the Commission's Fresh Look rule.

2. The FCCA and AT&T commend the Commission for proposing a Fresh Look rule and recognizing that it is important to give captive customers who are

---

<sup>1</sup> FCCA and AT&T incorporate by reference the FCCA's comments filed on May 15, 1998, April 23, 1999, April 29, 1999 and May 6, 1999.

DOCUMENT NUMBER-DATE

07301 JUN 16 99

FPSC-RECORDS/REPORTING

locked into contracts entered into in a monopoly environment a competitive choice. The Commission should move forward now to further the goal of local competition.

### **The Proposed Rule**

3. The FCCA and AT&T support the Commission's proposed rule with two modifications. First, the FCCA and AT&T suggest that the provision in the Commission's rule providing for termination liability (25-4.302(3)) be eliminated in order to make a customer's ability to change carriers as noncontentious as possible.

4. Second, the FCCA and AT&T suggest that the Fresh Look window be four years long to account for the fact that competition will come to various areas of the state at different times.

5. The FCCA has previously submitted a proposed rule incorporating these provisions.<sup>2</sup>

### **The LECs' Objections**

6. The LECs have two primary objections to a Fresh Look rule, both of which should be dismissed. First, the LECs argue that local competition is flourishing and thus the proposed rule is unnecessary. Second, the LECs allege that the proposed rule is beyond the Commission's authority to implement and further is unconstitutional. Each of these arguments is addressed below.

---

<sup>2</sup> A copy of the FCCA's proposed rule is attached to its May 15, 1998 comments.

7. As this Commission well knows, local competition is in a nascent stage and is far from robust. With the LECs controlling 98.2% of the local market<sup>3</sup>, it is readily apparent that competitive alternatives (even today) are limited, at best.

8. At hearing BellSouth tried to impress the Commission with the fact that the number of access lines competitors control has increased 300% annually. (Tr. 55).<sup>4</sup> When pressed, BellSouth's attorney admitted that this translated to BellSouth controlling 95% of the business market, while all its competitors have a mere 5% of the business market. (Tr. 57). Clearly, even by BellSouth's own admission, Florida is far away from a competitive local telecommunications market, with BellSouth continuing to control the lion's share of the market. Further, BellSouth's witness admitted that there has been a dramatic increase in CSAs and tariff term plans since 1997 (Tr. 77), additional evidence of BellSouth's attempt to lock customers into long term contracts. While BellSouth touted the number of certificates as evidence of competition, as the Commission is well aware, the number of certificates is not an indication of the number of companies actually providing service.

9. The LECs' claims as to any alleged legal infirmities of the proposed rule are flawed as well. The Commission clearly has the authority, pursuant to section 364.19, Florida Statutes, to adopt the proposed rule. The LECs' allegations that the proposed rule violates the prohibition against impairment of contracts or the takings

---

<sup>3</sup> Florida Public Service Commission's December 1998 report on Competition in Telecommunications Markets in Florida, p. 46.

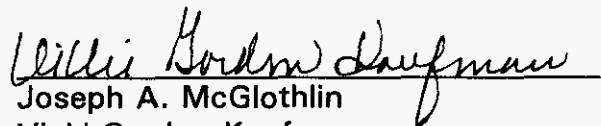
<sup>4</sup> Chairman Garcia correctly noted that if you start with a very small portion of the market, percentage increases become meaningless. (Tr. 57).

clause are similarly without merit.<sup>5</sup> The proposed rule is in the public interest because it furthers both the state and federal goal of opening local telecommunications markets to competition.

### Conclusion

10. The proposed rule furthers important public policy goals and, with the changes suggested by FCCA and AT&T, should be adopted.

**WHEREFORE**, the Commission should either enact the proposed Commission rules with the changes suggested by the FCCA in its April 23 filing, or it should enact the rule proposed by the FCCA.



Joseph A. McGlothlin  
Vicki Gordon Kaufman  
McWhirter, Reeves, McGlothlin,  
Davidson, Decker, Kaufman,  
Arnold & Steen, P.A.  
117 South Gadsden Street  
Tallahassee, Florida 32301  
Telephone: (850) 222-2525

Attorneys for the Florida Competitive  
Carriers Association

---

<sup>5</sup>These constitutional claims are addressed in detail in the FCCA's comments filed on April 29, 1999.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the **Florida Competitive Carriers Association's and AT&T Communications of the Southern States, Inc.'s** foregoing **Post-Hearing Brief** has been furnished by U.S. Mail or Hand Delivery(\*) this **16th day of June, 1999**, to the following:

Martha Carter Brown \*  
Florida Public Service Commission  
Division of Appeals  
2540 Shumard Oak Boulevard  
Gunter Building, Room 390M  
Tallahassee, Florida 32399-085

Peter Dunbar  
Pennington, Moore, Wilkinson  
& Dunbar, P.A.  
Post Office Box 10095  
Tallahassee, Florida 32302-2095

Laura L. Gallagher  
204 South Monroe Street, Suite 201  
Tallahassee, Florida 32301

Kimberly Caswell  
GTE Florida Incorporated  
Post Office Box 110, FLTC0007  
Tampa, Florida 33601-0110

Nancy B. White  
c/o Nancy Sims  
BellSouth Telecommunications, Inc.  
150 South Monroe Street, Suite 400  
Tallahassee, Florida 32301-1556

Monica Barone  
Sprint Communications Company, L.P.  
3100 Cumberland Circle  
Atlanta, Georgia 30339

R. Scheffel Wright  
Landers & Parsons  
Post Office Box 271  
Tallahassee, Florida 32308

Kenneth A. Hoffman  
Rutledge, Ecenia, Underwood,  
Purnell & Hoffman, P.A.  
Post Office Box 551  
Tallahassee, Florida 32302-0551

Richard D. Melson  
Hopping Green Sams & Smith  
123 South Calhoun Street  
Post Office Box 6526  
Tallahassee, Florida 32314

Lynn B. Hall  
Vista-United Telephone Company  
3100 Bonnet Creek Road  
Lake Buena Vista, Florida 32830

Tom McCabe  
Quincy Telephone Company  
107 West Franklin Street  
Quincy, Florida 32351

Bill Thomas  
Gulf Telephone Company  
115 West Drew Street  
Perry, Florida 32347

Robert M. Post, Jr.  
Indiantown Telephone Systems, Inc.  
15925 S.W. Warfield Boulevard  
Indiantown, Florida 34956

John M. Vaughn  
St. Joseph Telephone and  
Telegraph Company  
502 Fifth Street  
Port St. Joe, Florida 32456

Jeffry J. Wahlen  
Ausley & McMullen  
227 South Calhoun Street (32301)  
Post Office Box 391  
Tallahassee, Florida 32302

Richard M. Rindler  
Swidler & Berlin  
3000 K Street, N.W., #300  
Washington, D.C. 20007


Michael A. Gross  
Florida Cable Telecommunications  
Association, Inc.  
310 North Monroe Street  
Tallahassee, Florida 32301

Michael McRae  
TCG - Washington  
2 Lafayette Centre  
1133 Twenty-First Street, N.W., Suite  
400  
Washington, D.C. 20036

Norman H. Horton, Jr.  
Messer, Capareello & Self  
215 South Monroe Street, Suite 701  
Post Office Box 1876  
Tallahassee, Florida 32302-1876

Jill Butler, Director  
Regulatory Affairs, Eastern Division  
Cox Communication  
4585 Village Avenue  
Norfolk, Virginia 23502

Donna McNulty  
MCI WorldCom  
325 John Knox Road  
The Atrium, Suite 105  
Tallahassee, Florida 32303

  
Vicki Gordon Kaufman