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BEFORE THE FLORIDA DIVISION OF ADMINISTRATIVE HEARINGS

GTE FLORIDA, INCORPORATED,)
)
Petitioner,)
)
)
vs.)
)
FLORIDA PUBLIC SERVICE)
COMMISSION,)
)
Respondent.)
_____)

980253-IX

Case No. 99-5368RP

BELLSOUTH TELECOMMUNICATIONS,)
INC.,)
)
Petitioner,)
)
vs.)
)
FLORIDA PUBLIC SERVICE)
COMMISSION,)
)
Respondent.)
_____)

Case No. 99-5369RP

TIME WARNER TELECOM OF FLORIDA, L.P.'S
MOTION FOR LEAVE TO FILE AMENDED
PETITION FOR LEAVE TO INTERVENE

Time Warner Telecom of Florida, L.P. ("Time Warner") Fla. Admin. Code R. 28-106.204 (1999), hereby submits this Motion for Leave to File Amended Petition for Leave to Intervene. In support thereof, Time Warner states:

AFA _____
APP _____
CAF _____
CMU _____
CTR _____
EAG _____
LEG _____
MAS _____
OPC _____
RRR _____
SEC 1 _____
VAW _____
OTH _____

1. On February 17, 1998, Time Warner filed a Petition to Initiate Rulemaking Pursuant to 120.54(5), F.S., by Time Warner AxS of Florida, Inc. In the petition, Time Warner requested that the Commission adopt rules providing for "fresh look" procedures. *In re:* Petition to Initiate Rulemaking, Pursuant to Section 120.54(7), F.S., to Incorporate "Fresh Look" Requirements in All

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Incumbent Local Exchange Company Contracts, by Time Warner AxS of Florida, L.P. d/b/a/ Time Warner Communications, Docket No. 980253-TX (1998).

2. The Commission last addressed the "Fresh Look" rules during its November 16, 1999, Agenda Conference and voted to revise the rules once again. Representatives of Time Warner were present at the Agenda Conference and participated in the discussion of the revisions. The revised proposed rules were published in the *Florida Administrative Weekly* on December 3, 1999, pursuant to §120.54(3)(d), F.S.

3. On December 23, 1999, BellSouth Telecommunications, Inc. ("BellSouth") filed a Petition for Administrative Determination of the Invalidity of Proposed "Fresh Look" Rules with the Florida Division of Administrative Hearings. BellSouth Telecommunications, Inc. v. Florida Public Service Commission, Case No. 99-5369RP.

4. On December 23, 1999, GTE Florida Incorporated ("GTE") also filed a Petition for Administrative Determination of the Invalidity of Proposed "Fresh Look" Rules with the Florida Division of Administrative Hearings. GTE Florida, Incorporated v. Florida Public Service Commission, Case No. 99-5368RP.

5. On January 24, 2000, the Administrative Law Judge ordered consolidation of BellSouth's and GTE's administrative challenges of the proposed "Fresh Look" rules for purposes of hearing only and will proceed under Case No. 99-5368RP.

6. On January 27, 2000, Time Warner submitted a Petition for Leave to Intervene ("Petition") asserting that its substantial interests will be affected by the outcome of this proceeding. Except for good cause shown, petitions for leave to intervene must be filed at least 20 days before the final hearing. Fla. Admin. Code R. 28-106.205. The hearing in this matter is scheduled to commence on April 25, 2000. Accordingly, Time Warner's Petition for Leave to Intervene was timely filed. In its Petition, Time Warner asserts that it will have an opportunity to compete for

those customers of BellSouth and GTE who are within Time Warner's service area if the proposed rules are upheld. Conversely, if the proposed rules are found to be invalid, Time Warner will be denied the opportunity to compete for those same customers thereby foregoing potential increases in revenues and marketshare. Accordingly, Time Warner's substantial interests are affected by this proceeding.

7. On February 8, 2000, GTE filed an Answer Opposing Time Warner Telecom of Florida, L.P.'s Petition for Leave to Intervene ("GTE Answer"), and served Time Warner via U.S. Mail. In GTE's Answer, GTE requests denial of Time Warner's Petition *with prejudice*. (GTE Answer at page 4)

8. Also on February 8, 2000, BellSouth filed a Response to Time Warner Telecom of Florida, L.P.'s Petition for Leave to Intervene ("BellSouth Answer"), and served Time Warner via U.S. Mail. In BellSouth's Answer, BellSouth requests denial of Time Warner's Petition. (BellSouth's Answer at page 3)

9. By Order dated February 18, 2000, the ALJ dismissed Time Warner's petition but did not indicate the basis of the dismissal or whether the dismissal was with or without leave to file an amended petition to intervene. Under Fla. Admin. Code R. 28-106.201(4), a petition must be dismissed if it is in substantial noncompliance with Fla. Admin. Code R. 28-106.201(2), or was untimely filed; however, dismissal must, at least once, be without prejudice to petitioner's filing of an amended petition.

10. The *Florida Administrative Code*, Rule 28-106.201(4), states as follows:

A petition shall be dismissed if it is not in substantial compliance with subsection (2) of this rule or it has been untimely filed. Dismissal of a petition shall, at least once, be without prejudice to petitioner's filing a timely amended petition curing the defect, unless it

conclusively appears from the face of the petition that the defect cannot be cured.

11. *Florida Administrative Code*, Rule 28-106.202, states as follows:

The petitioner may amend the petition prior to the designation of the presiding officer by filing and serving an amended petition in the manner prescribed for filing and serving an original petition. The petitioner may amend the petition after designation of the presiding officer only upon order of the presiding officer.

12. Neither the Code nor the *Florida Rules of Civil Procedure* appear to require a Petitioner to reply to an answer within a specified period of time, and the ALJ has not issued an Order imposing a time period within which Time Warner is required to reply to GTE's and BellSouth's Answers. Under Fla. Admin. Code R. 28-106.201(4), a petition must be dismissed if it is in substantial noncompliance with Fla. Admin. Code R. 28-106.201(2), or was untimely filed. However, dismissal must, at least once, be without prejudice to petitioner's filing of an amended petition. By Order dated February 18, 2000, the ALJ dismissed Time Warner's petition but did not indicate the basis of the dismissal or whether the dismissal was with or without leave to file an amended petition to intervene.

WHEREFORE, for the reasons stated above, Time Warner requests the following relief:

1. Leave to file an Amended Petition for Leave to Intervene; and
2. Such other relief as the ALJ deems appropriate.

RESPECTFULLY SUBMITTED this 22nd of February, 2000.

TIME WARNER TELECOM OF FLORIDA, L.P.



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CERTIFICATE OF SERVICE
DOAH CASE NO. 99-5368RP
DOAH CASE NO. 99-5369RP

I HEREBY CERTIFY that a true and correct copy of Time Warner Telecom of Florida,
L.P.'s Motion for Leave to File Amended Petition for Leave to Intervene has been served by
U.S. Mail this 22nd day of February, 2000, to the following parties of record:

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