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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
NEXTLINK Ohio, L.L.C. for Certificate of)
Public Convenience and Necessity to Provide) Case No. 96-1036-TP-ACE
Telecommunication Services in Ohio.)

In the Matter of the Application of Brooks)
Fiber Communications of Ohio, Inc. for a)
Certificate of Public Convenience and) Case No. 96-349-TP-ACE
Necessity to Provide Local Telecommunication)
Services in Certain Specified Areas in Ohio.)

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**TIME WARNER COMMUNICATIONS OF OHIO, L. P.'s
COMMENTS**

On September 21, 1995, after a detailed informal workshop process, the Public Utilities Commission ("Commission") formally initiated a docket, *In the Matter of the Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues*, Case No. 95-845-TP-COI, to establish a framework to provide for establishment of competition in the local exchange market. On June 12, 1996, the Commission adopted guidelines establishing local exchange competition in Ohio. See, Appendix A, Guideline VI.I. Among the provisions included in the June 12, 1996 Local Service Guidelines as the "fresh look" provision. On November 7, 1996, the Commission issued an Entry on Rehearing in which it addressed substantive arguments raised on rehearing, including the issue of fresh look." Applications for rehearing were again filed, and by Entry on Rehearing issued February 20, 1997 the Commission provided additional clarification on the "fresh look" issue.¹

This is to certify that the drafts appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business. Technician *Ann M. Ni* Date Processed *May 23, 1997*

¹ Notices of Appeal were filed by Cincinnati Bell Telephone Company (Ohio Supreme Court Case No. 97-779); ALLTEL (Ohio Supreme Court Case No. 97-791); and GTE North Incorporated (Ohio Supreme Court Case No. 97-795). The "fresh look" provisions are among the issues on appeal.

On May 1, 1997, NextLink Ohio, L.L.C. ("NextLink") filed a letter stating that its interconnection agreement with Ameritech Ohio was operational in the Cleveland and Columbus markets. Included with the letter were a number of questions about various fresh look issues. Below is Time Warner Communications of Ohio L. P.'s ("TWC") Comments in response to the questions presented by NextLink and addressing the Commission's desire for implementation.

- 1) **Does the 180 day fresh look "window" extend to the time within which customers sign contracts for service or the time when service is actually installed? In other words, does service have to be installed during the 180 day period in order to comply with the fresh look opportunity, or does a contract with a new provider merely have to be signed within the 180 day window?**

The 180 days should include the date of installation if it occurs within 3 months of the signature on the contract. In other words, installation may not be able to be achieved if the customer elects to change carriers close to the end of the 180 day window. Installation should occur within a reasonable period of time of signature, i.e., a suggested 3 months.

2. **Does the fresh look window apply to only incumbent provider contracts and not long-term contracts signed by customers with new entrant carriers ("NECs")?**

The first round of fresh look for a market should be available only to customer contracts with an ILEC. The purpose of fresh look is to open a monopoly market to new entrants so that customers can choose a new entrant. Once a competitive market is established or in the event a NEC is reclassified as an ILEC under procedures contemplated by the

Telecommunications Act of 1996, the PUCO could consider declaration of later fresh look windows allowing customers to revisit contracts with NECs and ILECs.

3. **If a long-term contract has an automatic renewal feature for one or more of the services contained in the long-term contract, is the two-year period (remaining on the contract) measured for only the initial portion of the contract, or for any of the renewal period(s) as well? As an example, some long-term contracts for Centrex services contain an automatic renewal option for the Centrex portion of the contract. Thus, if a customer does not notify the incumbent local exchange company ("ILEC") that Centrex is no longer a desired feature of the provided service, the Centrex service is automatically renewed for a period of time. Does the fresh-look window apply to only the time frame set forth in the initial contract or to the portion of the contract which may have been renewed automatically as well?**

Automatic renewal provisions should be included in the determination of the period of time remaining on a contract with an incumbent. Crafting the contract to include an automatic renewal option could be used to attempt to avoid the application of fresh look, especially in recently established contractual relationships, while potentially locking the customer into a much longer-term contract. The PUCO guidelines, including the fresh look provision, have been under discussion for two years and such contracts could have been written to avoid a consequence of fresh look.

4. **Will the termination liability be determined on a case-by-case basis? How is termination liability determined and by whom?**

The termination liability needs to be determined not by the ILEC or the NEC but a neutral third party such as an assigned staff member for each major incumbent. The first such determinations will be the most time consuming but should enable parties to estimate the financial impact of exit penalties once a pattern has been set by the staff.

This process would proceed much as the arbitration awards have set patterns in the course of PUCO determinations. Provisions for mutually agreed upon termination liability should be included to streamline the process in those cases where parties can reach agreement. Additionally, ILEC's should be required to engage in good faith negotiations and prevented from seeking any termination liability where they refuse to do so. Imposing the risk of bad faith behavior on the ILEC should help to motivate parties to reach an agreement on any termination liability.

5. **Since some ILECs are subject to alternative regulation, services for which long-term contracts have been signed and combined with basic local exchange services are not tariffed and are frequently filed on a proprietary basis. Thus, it is difficult to determine the additional charges that the customer would have paid for service if the customer had taken a shorter term offering that would have been available for the term actually used (Section VI.J.3). How will NECs be able to project termination liability in those instances?**

In implementing fresh look, the PUCO should require an ILEC (upon request by the contract customer) to "unbundle" the services covered in a long term contract. The burden of demonstrating termination liability and proving reasonable mitigation efforts have been undertaken must be placed on the ILEC. At a minimum all basic local service charges should be required to be separately priced from enhanced services, installations, and facilities, so that the customer can determine whether a specific service should be subject to fresh look. The PUCO should require the response to the customer inquiry to occur no less than three business days from the receipt of the inquiry regarding unbundling of the contract. Contracts in which basic local service is a component should identify any linkages with other services (e.g. Valuelink and basic local) and any specific exit penalties related to a change in supplier.

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6. **How will the Commission determine which contracts are legitimately subject to the fresh look window in order to assure that customers are not affected by any disagreements between a NEC and an ILEC regarding whether a particular contract is subject to the fresh look window?**

Since all contracts which may be subject to fresh look should be on file with the PUCO, the ILEC should prepare a list of those contracts for review by the staff (the individual staff member responsible for the ILEC under item 4 above). A recommended criterion would be all contracts producing gross revenue to the ILEC of \$25,000 or more/per month and/or contracts with customers which are Fortune 500 companies and/or customers of Centrex.

7. **How will the public be informed about the fresh look window opportunity in an unbiased and neutral fashion?**

Notice to the public of the availability of fresh look should include a variety of means: PUCO website posting, advertising funded by a pool of dollars by ILECs and NECs, notices to all chambers of commerce, ILEC bill inserts to customers, and ILEC notices specifically to contract customers.

8. **How does NEXTLINK proceed with an ILEC in terminating the contract once we have a customer who has decided to switch to NEXTLINK?**

Each ILEC must be required to identify a single point of contact for purposes of determining the exit penalty, notifying to the ILEC of a customer election of a change in providers and contact with the staff person (identified in items 4 and 6) who has responsibility for each ILEC in fresh look matters. A standard notice for customers to use

as LOAs should be developed by the PUCO so that disputes about adequacy of notice for customer switch do not delay fresh look opportunities.

9. Does the Fresh Look provision apply to contracts for intra-LATA toll traffic?

The PUCO should define, by market, which services are competitive and post notice of those services in a fashion similar to which the log of applications, interconnections, and tariffs is compiled by the PUCO staff. While it will probably be argued by ILECs that the development of competition should remove the PUCO from an active role, the management of the transition to such a competitive market is a critical role for the PUCO. It is precisely in the balanced, neutral provision of information and application of judgment that the expertise of the PUCO is efficiently engaged.

10. Are there guidelines with respect to response times and protocols for the ILEC to follow in working with a NEC like NEXTLINK to prevent the possibility of stalling the termination of the old contract and inception of the new contract beyond the 180 day window?

Termination of a contract by a customer exercising the LOA described in item 8 must be completed within 3 business days of receipt by the ILEC's single point of contact. Carrier to carrier complaints are still viable option to address patterns of resistance and procedures have been suggested in prior answers to reduce the potential for inappropriate behavior. Any carrier-to-carrier complaint cases will need to be processed on an expedited basis in recognition of the window.

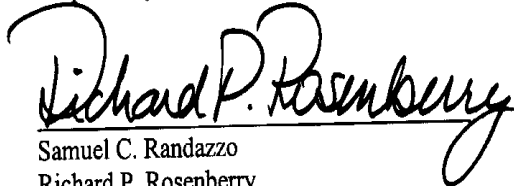
11. It is NEXTLINK's desire that the 180 window not begin until the PUCO has addressed these outstanding issues. Is this possible?

TWC concurs with the view that the 180 day window not be in effect until the PUCO addresses the details of implementation which are the subject of this set of comments.

12. **Which companies are eligible to offer fresh look? Are resellers also permitted to utilize the fresh look window? This only seems to accomplish a different term for the same service since resellers are reprovisioning the ILEC service.**

While TWC believes that true competition will not exist until there is a facilities-based competitive market, the line between facilities-based and reseller may not be absolutely clear. TWC envisions two rounds of fresh look: one when a market opens and then another once the market is truly competitive. The latter round would subject both NEC and ILEC contracts to fresh look.

Respectfully submitted,



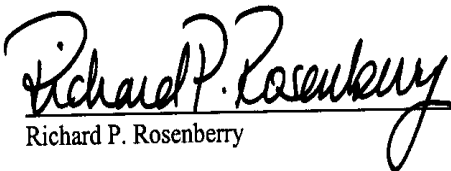
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I, Richard P. Rosenberry, hereby certify that a copy of the foregoing was served upon the following parties of record this 22nd day of May, 1997, via electronic transmission, hand-delivery or ordinary U.S. mail, postage prepaid.


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