

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

DOCKETING STATEMENT

Administrative Agency Review Proceedings
(To be completed by appellant/petitioner)

94-1299

1. CASE NO. _____ 2. DATE DOCKETED April 4, 1994
3. CASE NAME
(lead parties only) Time Warner Telecommunications, v. Federal Communications Commission and Inc. United States of America
4. TYPE OF CASE: Review Appeal Enforcement Complaint
5. IS THIS CASE REQUIRED BY STATUTE TO BE EXPEDITED? YES ___ NO X
IF YES, cite statute: _____

6. CASE INFORMATION:

- a. Identify agency whose order is to be reviewed: Federal Communications Commission
- b. Give agency docket or order number(s): Gen. Docket 90-314, FCC 93-550
- c. Give date(s) of order(s): released Feb. 3, 1994; published in Federal Register Feb. 28, 1994
- d. Is a request for rehearing or reconsideration pending at the agency? YES X NO ___
(but none filed by Time Warner Telecommunications, Inc.)
- e. Are any other cases involving the same underlying agency order pending in this Court or in any other court? YES X NO ___ If YES, identify name(s), docket number(s), and court(s):
Pacific Bell, et al. v. FCC, 94-1148 and consolidated cases (D.C. Cir.)
- f. Are any other cases, to counsel's knowledge, pending before the agency, this Court or the Supreme Court which involve *substantially the same issues* as the instant case presents? YES ___ NO X
If YES, give name(s) and number(s) of these cases and identify court/agency: _____

Signature Stuart F. Feldstein Date 5-11-94

Name of Counsel or Pro Se Litigant (Print) Stuart Feldstein

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Counsel for Appellant/Petitioner (Name of Party) Time Warner Telecommunications, Inc.

ATTACH A CERTIFICATE OF SERVICE

Note: If counsel for any other party believes that the information submitted is inaccurate or incomplete, counsel may so advise the Clerk within 10 days by letter, with copies to all other parties, specifically referring to the challenged statement. An original and three copies of such letter should be submitted.

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

| | | |
|--|---|------------------|
| Time Warner Telecommunications, Inc., |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | Case No. 94-1299 |
| |) | |
| Federal Communications Commission and the United States of America, |) | |
| |) | |
| Respondents. |) | |

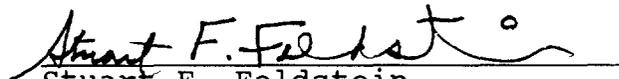
PETITIONER'S STATEMENT OF ISSUES TO BE RAISED

This case involves review of an order of the Federal Communications Commission ("FCC") pertaining to the implementation of rules establishing broadband personal communications services ("PCS") and the award of three pioneer's preferences for the provision of such services. Specifically, Petitioner Time Warner Telecommunications, Inc. ("Time Warner") seeks review of the Third Report and Order, In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services in Gen. Docket 90-314, FCC 93-550, RM-7140, RM-7175, RM-7618, PP-6 through PP-10, PP-12, PP-13, PP-15 through PP-20, PP-26, PP-27, PP-41 through PP-52, PP-54 through PP-68, PP-70, PP-72 through PP-78, 9 FCC Rcd 1337 (rel. February 3, 1994) ("Third Report and Order") because certain parts of that order are arbitrary, capricious, contrary to law, and an abuse of agency discretion.

Time Warner contends that the Third Report and Order is arbitrary and capricious because it improperly denied Time Warner's request for a pioneer's preference, while granting requests of three other parties. In denying Time Warner's request, the FCC did not offer adequate reasons for distinguishing between the requests that were granted and Time Warner's request. Time Warner contends that, based on the criteria the FCC considered in awarding pioneer's preferences, the FCC should have granted Time Warner's request along with the three requests that it did grant. The FCC's denial of Time Warner's request was arbitrary, capricious, contrary to the FCC's own criteria, and an abuse of the FCC's discretion.

Time Warner intends to address the above-stated issues in full in briefs submitted in this action.

Respectfully submitted,



Stuart F. Feldstein
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Jill Kleppe McClelland

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Attorneys for Petitioner
Time Warner
Telecommunications, Inc.

Dated: May 11, 1994

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IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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| Time Warner Telecommunications, |) | |
| Inc., |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | Case No. 94-1299 |
| |) | |
| Federal Communications Commission |) | |
| and the United States of America, |) | |
| |) | |
| Respondents. |) | |

CERTIFICATE AS TO PARTIES, RULINGS AND RELATED CASES

Pursuant to this Court's Order of April 8, 1994 and Rule 28(a)(1) of the Rules of this Court, Petitioner Time Warner Telecommunications, Inc. ("Time Warner") hereby submits this Certificate as to Parties, Rulings and Related Cases in the above-styled action.

(A) Parties and Amici

Since this action is a direct review of an Order by the Federal Communications Commission ("FCC") in a rulemaking proceeding, the parties who participated in the proceeding at the FCC need not be listed here. See Rule 28(a)(1)(A) of the Rules of this Court.

The parties before the Court in this case are:

Time Warner Telecommunications, Inc., Petitioner
Federal Communications Commission, Respondent
United States of America, Respondent
Cox Enterprises, Inc., Intervenor

(B) Rulings Under Review

Third Report and Order, In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services in Gen. Docket 90-314, FCC 93-550, RM-7140, RM-7175, RM-7618, PP-6 through PP-10, PP-12, PP-13, PP-15 through PP-20, PP-26, PP-27, PP-41 through PP-52, PP-54 through PP-68, PP-70, PP-72 through PP-78, 9 FCC Rcd 1337 (rel. February 3, 1994).

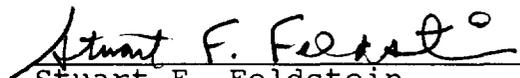
(C) Related Cases

The FCC Order on review here is also currently before this Court in Pacific Bell, et al. v. Federal Communications Commission, Case No. 94-1148 and consolidated cases (consolidation order filed April 6, 1994). A related FCC order, First Report and Order, Review of the Pioneer's Preference Rules in ET Docket 93-266, FCC 93-551 (rel. January 28, 1994) ("First Report and Order"), is also on review before this Court in Case No. 94-1148 and consolidated cases. Time Warner, however, has not sought review of the First Report and Order in this action.

Time Warner's April 19, 1994 Motion to Consolidate this action with Case No. 94-1148 and consolidated cases is still pending before this Court.

Counsel is not aware of any other related case that is pending before this or any other court.

Respectfully submitted,


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Dated: May 11, 1994

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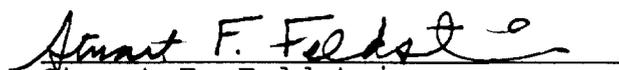
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| Federal Communications Commission and the United States of America, |) | |
| |) | |
| Respondents. |) | |

STATEMENT REGARDING PREPARATION OF APPENDIX

The undersigned, counsel of record for Petitioner Time Warner Telecommunications, Inc. ("Time Warner"), hereby notifies the Court that Time Warner intends to utilize a deferred appendix pursuant to Rule 30(c) of the Federal Rules of Appellate Procedure.

Respectfully submitted,


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Attorneys for Petitioner
Time Warner
Telecommunications, Inc.

Dated: May 11, 1994

CERTIFICATE OF SERVICE

I, Jill Kleppe McClelland, hereby certify that true and correct copies of the foregoing Docketing Statement; Statement of Issues to be Raised; Certificate as to Parties, Rulings and Related Cases; and Statement Regarding Preparation of Appendix were sent this 11th day of May, 1994, via United States first class mail, postage prepaid, to the following:

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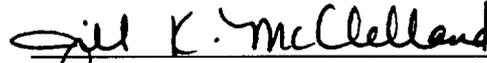
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