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Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: CC Docket Nos. 01-338, 96-98, 98-147 – Reply Comments of Cablevision
Lightpath, Inc.**

Dear Secretary Dortch:

Cablevision Lightpath, Inc. (“Lightpath”), through its attorneys, hereby files this letter in response to the comments submitted to the Commission’s Further Notice of Proposed Rulemaking, which is reviewing whether the Commission should modify its current interpretation that Section 252(i) permits competitive carriers to “pick-and-choose” portions of approved interconnection agreements.^{1/} Lightpath is a competitive, facilities-based provider of telecommunications and data services in New York, Connecticut, and New Jersey. A critical component of providing such services as a facilities-based carrier is a mutually beneficial interconnection agreement with the incumbent local exchange carrier (“ILEC”).^{2/} The interconnection agreement is the underpinning of the business relationship between Lightpath and the ILEC, and it is necessary to ensure that customers receive seamless service of the highest quality.

Lightpath has relied upon its right under Section 252(i) and, in particular, the Commission’s pick-and-choose rule, to streamline the negotiation process by adopting provisions from other approved interconnection agreements. Specifically, Lightpath has exercised this right in negotiations with Verizon in New York and SBC-SNET in Connecticut.^{3/}

^{1/} *Review of the Section 251 Unbundling Obligations for Incumbent Local Exchange Carriers*, Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, ¶ 713 (2003) (“*Further Notice*”).

^{2/} Lightpath has been interconnected with Verizon in New York and Connecticut since 1994, with SBC-SNET in Connecticut since 1994, and with Verizon in New Jersey since 1998.

^{3/} In Connecticut, however, Lightpath was forced to seek arbitration against SBC-SNET in July 2002 (after negotiating for more than 15 months) in order to secure its rights to adopt portions of an approved interconnection agreement under Section 252(i) and the pick-and-choose rule. This arbitration proceeding is still pending before the Connecticut Department of Public Utility Control and the Connecticut federal district courts.

The right to pick-and-choose portions of other carriers' interconnection agreements has proven to be a useful competitive tool because it allows carriers to reduce the overwhelmingly uneven bargaining power held by the ILECs. For example, each time one of Lightpath's interconnection agreements nears its termination date, the ILEC has sought to start negotiations from scratch – often offering its generic, multi-state template agreement – rather than building on the Parties' previously negotiated/arbitrated existing agreement, which more accurately reflects the Parties' existing business relationship. These tactics dramatically increase the resources Lightpath must expend to secure reasonable and mutually beneficial interconnection terms in a timely manner.

For these reasons, Lightpath supports the majority of commenters who oppose modifications to the current pick-and-choose rule.^{4/} As the Commission determined in the *Local Competition Order* when it first adopted the pick-and-choose rule, Congress adopted Section 252(i) as the primary tool for preventing discrimination against carriers seeking to obtain interconnection and other services from ILECs.^{5/} The pick-and-choose rule ensures that all competitors are treated similarly vis-à-vis their relationship with the ILEC. In addition, the pick-and-choose rule allows carriers to craft customized agreements consistent with their specific business plans and individualized operational requirements, and eliminates the need to re-litigate previously decided issues.^{6/} Contrary to the claims of the ILECs,^{7/} complete elimination of the pick-and-choose rule will not encourage the “give-and-take” negotiations envisioned by the Commission.^{8/} Rather, competitors will be hindered without the pick-and-choose rule because the ILECs have no incentive to enter into a mutually beneficial agreement in the absence of a regulatory or statutory requirement that provides incentives for them to do so.^{9/} Accordingly, it is important to maintain the current rule, which both promotes and protects competition.

In addition, Lightpath opposes reliance solely on whether an ILEC has filed a Statement of Generally Available Terms (“SGAT”) to eliminate a competitor's pick-and-choose right. Rather, competitors should be entitled to pick-and-choose unless the ILEC offers *both*: 1) a SGAT that has been approved by the state commission with competitor participation, contains fair and reasonable terms, and reflects current legal requirements; and 2) the right to renew existing interconnection agreements (with updates to reflect only changes in law). Many of the SGATs currently on file were unilaterally proposed by the ILECs and adopted with little or no

^{4/} See, e.g. ALTS at 1; California PUC at 3-4, NASUCA at 9-10; CLEC Coalition at 11-12, Cox Communications at 1; Mpower at 2; Sprint at 2; Z-Tel at 2.

^{5/} *Implementation of the Local Competition Provisions in the Telecommunications Act 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499, ¶¶ 1296, 1315 (1996) (intervening history omitted), *aff'd* by *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999); S. REP. NO. 104-23 at 21-22 (1995) (intending Section 252(i) “to help prevent discrimination among carriers”); see also ALTS at 4; CLEC Coalition at 11-12; MCI at 13; US LEC at 7.

^{6/} MCI at 11.

^{7/} See, e.g., Verizon at 2-3; SBC at 1; BellSouth at 3-5; USTA at 3.

^{8/} *Further Notice* ¶ 722.

^{9/} See, e.g., NASUCA at 8; CLEC Coalition at 11; Mpower at 7; PACE and CompTel at 5.

input from the state commission or competitors.^{10/} Further, many of these SGATs have not been updated to reflect the numerous changes in technology and law that have occurred in the past seven years.^{11/} Thus, prior to any reliance on existing or future SGATs, individual SGATs should be subject to state notice and comment procedures. This will ensure that the SGATs are viable substitutes for approved interconnection agreements, contain all necessary terms and conditions for interconnection, and comply with current legal requirements. In addition, competitors should be given the right to renew their existing interconnection agreement, taking into account only those modifications necessary to reflect changes in law. Renewal eliminates the need to engage in protracted negotiations – and often arbitration – over terms and conditions that previously have been negotiated and/or arbitrated and fully implemented by the parties. Accordingly, only when an ILEC offers both an updated and approved SGAT that complies with current law and the right to renew existing agreements should the pick-and-choose rule be eliminated.

A copy of this letter is being filed electronically with the Office of the Secretary. Any questions concerning this submission should be addressed to the undersigned.

Respectfully submitted,



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cc: Michael E. Olsen
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^{10/} See, e.g., US LEC at 8-9; Sprint at 5-6; Mpower at 8; Joint Commenters at 10; CLEC Coalition at 17.

^{11/} See, e.g., RICA at 6; Mpower at 8; MCI at 17; Cox at 9.