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July 1, 2005

Via ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: CC Docket No. 92-237 – In the Matter of Administration of the North American Numbering Plan Carrier Identification Codes

Dear Secretary Dortch:

Time Warner Cable Inc. ("TWC"), by its attorneys and pursuant to the Commission's Public Notice in the above-referenced proceeding, hereby submits these comments on carrier identification code ("CIC") conservation and the definition of "entity" as found in Section 1.3 of the CIC Assignment Guidelines ("Guidelines"). 1/ TWC commends the Commission for seeking comment on this issue and appreciates this opportunity to provide its view for the Commission's consideration.

While it is true that "CICs represent a finite resource and should, therefore, be used efficiently and conserved to the extent possible," 2/ the Commission nevertheless must ensure that CICs are provided to all carriers in a fair, efficient and predictable manner that facilitates quick and efficient competitive entry into the telecommunications marketplace.

The Guidelines specify that up to five Feature Group B CICs and six Feature Group D CICs may be assigned per entity. 3/ The Guidelines define "entity" as "a firm or group of firms under common ownership or control." 4/ The Guidelines, however, neither specify what circumstances constitute such common ownership or control, nor do they provide useful

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1/ FCC Public Notice, "Comment Sought to Refresh Record on Carrier Identification Code Conservation and Definition of 'Entity' for Purposes of CIC Assignments," DA 05-1154 (rel. Apr. 26, 2005). *See also* 70 Fed. Reg. 31405-06 (June 1, 2005).

2/ Carrier Identification Code Assignment Guidelines, INC-95-0127-006, Nov. 26, 2004, at Section 1.1.

3/ *Id.* at Section 3.1.

4/ *Id.* at Section 1.3.

guidance with respect to the assignment of CICs to companies and corporations that have complex financial ties and arrangements with other entities that may already hold CICs. As a result, rather than ensure that no single provider or company obtains control of more than its fair share of CICs, the Guidelines can be a source of inefficiency and uncertainty because they can be (and have been) interpreted to unfairly restrict the distribution of CICs to certain companies.

For instance, the current Guidelines do not recognize important factors such as whether two entities "under common ownership" actually compete with each other, serve the same markets, have independent boards of directors, issue unaffiliated public stock or hold other unique characteristics. Therefore, under the current Guidelines, the CIC application of one carrier, Carrier A, could be denied if its corporate parent holds an investment interest in a different carrier, Carrier B, and Carrier B had previously acquired its maximum share of CICs, regardless of whether Carrier A's parent owns an interest in but does not actually control Carrier B and wants to compete with Carrier B.

As far back as 1997, the Commission expressly recognized the limitations created by the ambiguous use of the term "entity" in this context. 5/ At that time, the Commission proposed to eliminate the "control" element from the definition of "entity" so that firms sharing direct or indirect common ownership would be deemed the same "entity" under the Guidelines. 6/ While that approach might appear to alleviate the need to assess when one company indeed is controlled by another, it would completely fail to avoid the inequity inherent in the situation described above. 7/ Perhaps in recognition of this fundamental problem, the Commission also at the time proposed to create an exception to the ownership test for certain commonly-owned carriers. 8/

TWC respectfully submits that the Commission should expressly recognize that mere commonality of investment or ownership interests does not, without more, constitute "common ownership or control" in the context of the Guidelines. Specifically, the Commission

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5/ *See, e.g., In the Matter of Administration of the North American Numbering Plan Carrier Identification Codes,* 13 FCC Rcd 3201, 3213-15 (1997).

6/ *See id.*, 13 FCC Rcd at 3213.

7/ For example, under the current definition of "entity," a person who owns stock in a large telephone company that holds multiple CICs could be precluded from obtaining a CIC for the purpose of establishing a new telecommunications company in which he or she may hold an equity interest.

8/ *See id.*, 13 FCC Rcd at 3214-15. The Commission ultimately did not act in furtherance of these and its other 1997 proposals, but can – and should – do so here.

should refine the common control or ownership test so that independent entities that share common investors, whether through minority or majority ownership interests, are not, absent actual control, deemed the same "entity" under the Guidelines. The Commission can accomplish this by specifying that, if a company holds a direct or indirect economic ownership interest in a carrier but does not control a majority of seats on that carrier's (or its parent's) board of directors or exercise day-to-day responsibility over that carrier's (or its parent's) affairs, then the company holding the economic ownership interest and its subsidiaries cannot be deemed to be the same "entity" as the carrier (or its parent) under the Guidelines. Adopting this approach would facilitate competition 9/ and be consistent with CIC conservation efforts because situations in which companies are commonly owned but not commonly controlled are rare.

TWC appreciates the opportunity to submit this letter and supports the Commission's CIC conservation efforts. Any questions concerning this submission should be addressed to the undersigned.

Respectfully submitted,

Yaron Dori

cc: Marilyn Jones, FCC (via e-mail)
Vincent M. Paladini, TWC

9/ The Commission has already recognized, for example, that the wireless affiliate of a local exchange carrier ("LEC") might, absent this approach, be prevented from obtaining its own CIC if its LEC affiliate already holds the maximum number of CICs – even though the wireless affiliate and the LEC may compete in the provision of certain services. *See id.*, 13 FCC Rcd at 3215.