

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matters of)	
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Petition of Time Warner Cable for Declaratory Ruling That Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers)	WC Docket No. 06-55
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Petition of Time Warner Cable for Preemption Pursuant to Section 253 of the Communications Act, as Amended)	WC Docket No. 06-54
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**COMMENTS OF
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

On March 1, 2006, Time Warner Cable (TWC) filed Petitions for Declaratory Ruling and for Preemption with the Federal Communications Commission (“Commission”) seeking to ensure that state commissions do not thwart the development of voice competition by imposing restraints on the rights of wholesale telecommunications carriers.¹ The National Cable & Telecommunications Association (“NCTA”) hereby submits its comments in support of those petitions. NCTA is the principal trade association for the U.S. cable industry, representing

¹ Petition of Time Warner Cable for Declaratory Ruling That Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers, WC Docket No. 06-55 (filed Mar. 1, 2006) (“TWC Decl. R. Petition”); Petition For Preemption Pursuant to Section 253(a) of the Communications Act, as Amended, WC Docket No. 06-54 (filed March 1, 2006) (“TWC Preemption Petition”).

cable operators serving more than 90 percent of the nation's cable television households and more than 200 cable program networks. The cable industry is the nation's largest broadband provider of high speed Internet access after investing \$100 billion over ten years to build a two-way interactive network with fiber optic technology. Cable companies also provide circuit-switched and Internet Protocol-enabled telephone service to millions of American consumers.

The cable industry constitutes the best hope for fulfilling the goals of the 1996 Telecommunications Act by providing facilities-based voice competition for the American consumer. Indeed, millions of consumers now have a facilities-based and intermodal choice for voice services. Over five million consumers have exercised that choice and subscribe to circuit-switched or interconnected voice over IP (“VoIP”) services² offered by cable companies.³ However, some consumers have been denied the option of cable-provided interconnected VoIP service by state commissions that have erroneously interpreted or ignored federal interconnection statutes and this Commission's previous decisions. The Commission should promptly remove these roadblocks to the widespread deployment of interconnected VoIP services by granting Time Warner Cable's Petitions.

² See FCC Consumer Advisory on VoIP and E911 at <http://ftp.fcc.gov/cgb/consumerfacts/voip911.html> explaining that “interconnected VoIP service allows you to make and receive calls to and from traditional phone numbers using a high-speed (broadband) Internet connection (*i.e.*, DSL, cable modem or broadband wireless technology).”

³ Kagan Research, L.L.C., *Cable TV Investor: Deals & Finance*, Feb. 28, 2006 at 4.

I. THE CABLE INDUSTRY IS THE BEST HOPE FOR FULFILLING THE GOALS OF THE 1996 TELECOMMUNICATIONS ACT BY PROVIDING FACILITIES-BASED VOICE COMPETITION

A central objective of the 1996 Telecommunications Act was the introduction of facilities-based competition into the voice market.⁴ Ten years after the passage of the Act, that objective has become a reality, largely through the introduction by cable companies of facilities-based voice service, first circuit-switched, and, more recently, interconnected VoIP service. Other providers' business models predicated on resale of incumbent local exchange carrier ("ILEC") facilities or the unbundled network elements platform ("UNE-P") have faded away.

Facilities-based circuit-switched competition, pioneered by cable providers such as Cox, Cablevision and Comcast, continues to serve well over two million consumers. In addition, cable companies have introduced IP-enabled voice services in a number of states and additional rollouts are underway. Over two million consumers nationwide are taking advantage of the benefits of this new, high-quality service in the form of lower prices and innovative features.⁵ As a result, the cable

⁴ The FCC has explicitly found that "facilities-based competition serves the Act's overall goals." *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, 17025 ¶ 70 (2003). Specifically, it concluded that "[f]acilities-based competition better serves the goal of deregulation because it permits new entrants to rely less on incumbent LECs' facilities and on regulated terms for access and price. And it serves the goal of innovation because new facilities are more likely to have additional capabilities to provide new services to consumers and competitors' deployment of new facilities is likely to encourage incumbents to invest in their own networks. Facilities-based competition also increases the likelihood that new entrants will find and implement more efficient technologies, thus benefiting consumers. . . . Finally, facilities-based competition creates network redundancy, which increases reliability and enhances national security." *Id.* at n.233 (internal citations omitted).

⁵ See *Cable Industry Counts 3 Million IP Phone Subscribers* at www.cabledigitalnews.com, March 2006 issue, reporting 3 million subscribers for North American cable operators.

industry is the leader in providing facilities-based and intermodal residential voice competition. Moreover, cable's successful entry into the voice market appears to be driving some telecommunications companies to make further investments to deploy video services to compete with cable.⁶ This robust intermodal competition is a welcome result of the nation's communications competition policy.

In the midst of this success, however, some cable companies have been frustrated in their ability to deploy interconnected VoIP service because of state public service commission decisions that are at odds with the plain text of the 1996 Act and settled FCC precedent. These errant decisions deny the cable companies interconnection, the thing without which competition is not possible. In particular, these state efforts deny cable voice competitors the ability to transmit traffic to and from the Public Switched Telephone Network ("PSTN") by prohibiting wholesale telecommunications carriers the right to interconnect with ILECs.

II. INTERCONNECTION IS A NECESSARY PREDICATE FOR VOICE COMPETITION

In 1996, Congress recognized that interconnection rights are essential for voice competition to develop and therefore mandated such requirements in Section 251 of the Act. For sustainable voice competition, each competitor, whether it uses IP, circuit-switched or some other technology, must be able to provide customers with the ability to exchange calls with customers of other carriers, have numbers listed in directory publications and directory assistance databases, port numbers,

⁶ See, e.g., *The Couch Potato Wars: Assessing the Impact of Bell Entry Into The Consumer Multichannel Video Market*, Bernstein Research, May 2005 at 14 (describing Bell company

provide E911 functionality and the like. If state regulators are allowed to impose needless restraints on these requirements, voice competition will wither away – or not develop at all.

By mandating interconnection under both Section 251(a) and Section 251(c), Congress understood that voice competitors must be assured of this particular right if local telephone competition is to survive and thrive. These rights are critical even to competitors who own their own networks, such as cable and cellular companies: Even facilities-based competitors must be able to exchange traffic with incumbents on an economic basis and without impediments or delays. Consumers simply cannot and will not consider switching to a competitive provider if they cannot easily call customers served by incumbents.

III. INTERCONNECTED VOIP PROVIDERS HAVE CHOSEN VARIOUS LEGAL MEANS OF CONNECTING TO THE PSTN

Carriers effectuate interconnection by connecting to the PSTN both directly and indirectly. Even before the advent of interconnected VoIP services, Congress, the Commission and the courts recognized that there are multiple valid means of interconnecting. The Act itself could not be clearer: Section 251(a) states that all carriers must “interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.”⁷

investments in video facilities and technology as a result of “increasing pressure from cable telephony in their core voice business.”).

⁷ 47 U.S.C. § 251(a).

As cable companies deploy interconnected VoIP services, they have, just as have other service providers before them, chosen various business models and various means of interconnection with the PSTN. Some companies have sought certification at the state level as telecommunications carriers and negotiated with incumbents for direct interconnection. Some companies connect to the PSTN through affiliated certified telecommunications carriers that do not themselves provide end-user retail VoIP services. Yet others connect to the PSTN through wholesale arrangements with unaffiliated or third-party telecommunications carriers. According to TWC, some service providers choose this third path because “it allows them to obtain access to the PSTN and achieve market entry quickly and efficiently.”⁸ While it is this third path that is at issue here, the Commission should diligently enforce interconnection duties via any of these paths.

The TWC petition describes several state commission rulings that have denied wholesale carriers the ability to interconnect to the PSTN.⁹ These decisions maintain that only a telecommunications carrier that transmits traffic to or from its

⁸ TWC Decl. R. Petition at 21.

⁹ *Id.* at 1 et seq. (describing decisions of South Carolina and Nebraska Public Service Commissions). The Iowa Utilities Board similarly denied a carrier wholesale interconnection but later reversed itself. *See Arbitration of Sprint Communications Co. v. Ace Communications Group, et al.*, Order on Rehearing, Docket No. ARB-05-02 at 14 (Iowa Utils. Bd. Nov 28, 2005) (“Iowa Order”).

own retail end-user customers qualifies to interconnect under the Act. As TWC demonstrates, this is wrong as a matter of both law and policy.¹⁰

Under Section 251(a), all telecommunications carriers have an obligation to interconnect directly or indirectly with requesting carriers. And under Section 251(c)(2), ILECs must interconnect directly with “any requesting telecommunications carrier.”¹¹ The Act defines a “telecommunications carrier” as “any provider of telecommunication services.”¹² As the Commission has made clear, wholesale services provided to other service providers are “telecommunications services.”¹³ The only correct conclusion is that providers of the wholesale services described herein are providing “telecommunications services” making them “telecommunications carriers” that are entitled to interconnect under Section 251.

Several other state commissions have correctly found that the interconnection approach at issue in the TWC petition is lawful, although one of those decisions has been appealed.¹⁴ It is this disparity of decisions by state commissions that requires a firm and speedy pro-competitive FCC response. So long as the plain language of the federal statute and the FCC’s interpretations are

¹⁰ TWC Decl. R. Petition at 12.

¹¹ 47 U.S.C. § 251(c).

¹² *Id.*, § 153(44).

¹³ *See Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934 as Amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Red 21905, 22033 ¶ 263 (1996) (describing its analysis, based on Section 251(c)(4), that telecommunications services, including wholesale services to other carriers, are common carrier services).

¹⁴ *See* TWC Decl. R. Petition at 8 (describing decisions in Illinois, Iowa, New York and Ohio, and noting that the New York decision is currently under review in the United States District Court for the Western District of New York).

ignored, some consumers are being denied a competitive choice. In South Carolina and Nebraska at least, citizens have been denied the benefits of competition and choice.

The Commission should understand that the types of interconnection problems described in the TWC petitions are not unique to TWC. In Iowa, Sprint, on behalf of Mediacom, was denied the right to interconnect, before the Iowa Utilities Board reversed itself.¹⁵ Until that reversal, however, Iowa consumers were denied the competitive choice of service from Mediacom. As other cable operators deploy their facilities-based interconnected VoIP service more widely, there is no guarantee that other states will not reach similar erroneous, anti-competitive conclusions.

Both law and policy favor carriers seeking to interconnect and deploy competitive facilities. However, the patchwork of state determinations on this question, combined with the real harm to consumers caused by delay, requires that the Commission act now.

CONCLUSION

The Commission has made substantial efforts to encourage the deployment of facilities-based voice services¹⁶ and should continue to do so. State commission

¹⁵ See Iowa Order.

¹⁶ See *Unbundled Access to Network Elements and Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 16 FCC Record 2533, 2535 ¶ 2 (2005) (explaining that by issuing the Order the “Commission takes additional steps to encourage the innovation and investment that come from facilities-based competition.”) See also *id.* at 2540 ¶ 11 (expressing the Commission’s concern that “unbundling requirements might undermine the incentives of both incumbent LECs and new entrants to invest in new facilities and deploy new technology.”). See also *id.* at 2555 ¶ 36 (expressing the Commission’s concern

decisions denying interconnection to wholesale telecommunications carriers because they are not providing end-user retail services serve only to deny consumers the choice to which they are entitled. The Commission should promptly grant the TWC Petitions.

Respectfully submitted,

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April 10, 2006

that unbundling requirements can “create disincentives for incumbent LECs and competitive LECs to deploy innovative services and facilities.”).