

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of

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

Petition of Time Warner Cable for Preemption Pursuant to Section 253 of the Communications Act, as Amended

WC Docket No. 06-54

**COMMENTS OF VERIZON**

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April 10, 2006

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**INTRODUCTION AND SUMMARY**

Time Warner Cable's petitions seek to bring the benefits of Voice over Internet Protocol ("VoIP") telephony to consumers in areas served by independent local exchange carriers ("LECs"). The introduction of VoIP into these areas would advance the 1996 Act's and the Commission's goals of promoting both local telephone competition and the deployment and use of broadband services.

Recent decisions of state commissions in South Carolina and Nebraska, however, threaten to prevent consumers in areas served by independent LECs from sharing in the benefits enjoyed by the millions of consumers who are already using VoIP telephony. The South

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<sup>1</sup> The Verizon companies participating in this filing ("Verizon") are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

Carolina decisions<sup>2</sup> are of particular interest to Verizon, which operates in areas of that state as, among other things, a competitive LEC serving enterprise and government customers, an incumbent LEC, and a provider of VoIP services. As a competitive LEC, Verizon provides a wholesale service that it offers to facilities-based VoIP providers, including Time Warner Cable.<sup>3</sup> This wholesale service includes the transport necessary for the delivery of local and long-distance calls between the VoIP network and the public switched telephone network (“PSTN”); E911-related connectivity; administration, payment, and collection of intercarrier compensation; local number portability; and the provision of operator services and directory assistance services. As an incumbent LEC, Verizon faces competition from VoIP providers that connect with the PSTN through competitive LECs that have interconnected with Verizon. As a VoIP provider, Verizon’s affiliate provides service to end-user customers in South Carolina under the tradename VoiceWing in reliance in part on competitive LECs that provide connectivity to the PSTN, local number portability, E911, and other services.

It was Verizon’s attempt to obtain interconnection agreements with five independent LECs in South Carolina — so that it could sell its wholesale service to Time Warner Cable in those LECs’ territories, as it already does in other parts of South Carolina and other states — that

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<sup>2</sup> See Order Ruling on Arbitration, *Petition of MCI Metro Access Transmission Services, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Farmers Telephone Cooperative, Inc., et al.*, Docket No. 2005-67-C, Order No. 2005-544 (S.C. PSC Oct. 7, 2005) (“South Carolina Farmers Arbitration Order”) (Time Warner Cable Declaratory Ruling Pet. Tab 8), *reh’g denied*, Order No. 2005-678 (S.C. PSC Mar. 3, 2006); Order Ruling on Arbitration, *Petition of MCI Metro Access Transmission Services, LLC for Arbitration of Certain Terms and Conditions for Proposed Agreement with Horry Telephone Cooperative, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996*, Docket No. 2005-188-C, Order No. 2006-2 (S.C. PSC Jan. 11, 2006) (“South Carolina Horry Arbitration Order”) (Time Warner Cable Declaratory Ruling Pet. Tab 11), *reh’g denied*, Order No. 2006-111 (S.C. PSC Mar. 3, 2006).

<sup>3</sup> These services were provided by MCI Network Services, Inc. prior to the merger of MCI into Verizon on January 6, 2006. In these comments, we refer to the provider as Verizon.

led to two of the orders that form the basis of Time Warner Cable's petitions. In a misguided attempt to protect independent LECs from competition, the South Carolina Public Service Commission ("PSC") held that Verizon has no right to interconnect with the independent LECs in order to provide its wholesale service to Time Warner Cable. The Commission should declare that those decisions conflict with the Communications Act, as amended, because they conflict with basic federal policies regarding local competition and broadband deployment and deny Verizon its rights under the Act.

In doing so, the Commission need not resolve the regulatory classification of *either* Time Warner Cable's VoIP service *or* Verizon's wholesale service. First, as the petitions explain, whether *Time Warner Cable's* service is telecommunications, a telecommunications service, or an information service has no bearing on *Verizon's* rights or on the obligations of the independent LECs with which *Verizon* seeks to interconnect and exchange traffic. Second, and as explained below, the Commission need not determine whether Verizon's wholesale service is telecommunications, a telecommunications service, or an information service in order to hold that decisions such as those of the South Carolina PSC conflict with federal law and are preempted. Regardless of how Verizon's wholesale service is ultimately classified, independent LECs are required to interconnect and exchange traffic with, and port local telephone numbers to, Verizon in connection with the provision of that wholesale service, whether under 47 U.S.C. §§ 251 and 253, or 47 U.S.C. § 201.

## **DISCUSSION**

The Commission has preempted state action that "conflicts with [its] pro-competitive deregulatory rules and policies" "[r]egardless of the definitional classification" of VoIP and

related services. *Vonage Order*<sup>4</sup> ¶ 20. As noted above, the Commission has not determined the classification of VoIP services provided to retail consumers; nor has it ruled on the classification of wholesale services that competitive LECs offer to VoIP providers, which provide indirect interconnection to the PSTN and other necessary services.<sup>5</sup> As explained below, however, because the state commission decisions that Time Warner Cable challenges conflict with federal law and policies irrespective of the classification of either Time Warner Cable's retail VoIP service or Verizon's wholesale service, the Commission can and should find that those decisions are preempted, without the need to resolve the classification question.

**I. THE SOUTH CAROLINA PSC'S DECISIONS CONFLICT WITH, AND THEREFORE ARE PREEMPTED BY, THE 1996 ACT'S AND THE COMMISSION'S POLICIES OF PROMOTING LOCAL COMPETITION AND THE DEPLOYMENT AND USE OF BROADBAND SERVICES**

As Time Warner Cable explains, state commission decisions that prevent VoIP providers from obtaining the access to the PSTN necessary to provide their local telephone service conflict with the basic policy in the 1996 Act to promote local telephone competition.<sup>6</sup> Congress itself explained that it enacted the 1996 Act “[t]o promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.” Pub. L. No. 104-104, 110 Stat. 56, 56 (1996). The Supreme Court and the courts of appeals have likewise recognized that the 1996 Act was intended to “foster competition in local telephone markets.”

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<sup>4</sup> Memorandum Opinion and Order, *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, 19 FCC Rcd 22404 (2004) (“*Vonage Order*”).

<sup>5</sup> See, e.g., First Report and Order and Notice of Proposed Rulemaking, *IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, 20 FCC Rcd 10245, ¶ 22 (2005) (“*Interconnected VoIP E911 Order*”); *Vonage Order* ¶ 14.

<sup>6</sup> See Time Warner Cable Declaratory Ruling Pet. at 20-23.

*Verizon Maryland Inc. v. Public Serv. Comm'n*, 535 U.S. 635, 638 (2002); *see also Qwest Corp. v. Minnesota Pub. Utils. Comm'n*, 427 F.3d 1061, 1063 (8th Cir. 2005) (“[t]he Act was intended to create competition between carriers in local telecommunication service markets”); *United States Telecom Ass’n v. FCC*, 359 F.3d 554, 576 (D.C. Cir.) (“[T]he purpose of the Act . . . is to stimulate competition — preferably genuine, facilities-based competition.”), *cert. denied*, 543 U.S. 925 (2004).

Customers benefit from the increased competition resulting from the introduction of VoIP, which can occur “quickly and efficiently” through a competitive LEC’s wholesale offerings that utilize its existing systems and equipment.<sup>7</sup> Yet, there can be no serious dispute that the independent LECs in South Carolina that opposed Verizon’s attempt to offer its wholesale service did so because they sought to prevent the introduction of VoIP competition into their service territories, even as affiliates of some of those independent LECs offer competitive VoIP service in other LECs’ territories. Nothing in the 1996 Act justifies such anticompetitive protection of independent LECs at the expense of their end-user customers. On the contrary, Congress clearly delineated those obligations that should apply only to certain classes of incumbent LECs,<sup>8</sup> and enacted no provision that would authorize a state commission to protect independent LECs from competition by preventing a company such as Verizon from providing a wholesale service to facilities-based VoIP providers that seek to compete with those independent LECs.

In addition, decisions such as those of the South Carolina PSC are contrary to the 1996 Act’s and the Commission’s national policy of “encourag[ing] the deployment on a reasonable

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<sup>7</sup> *See* Time Warner Cable Declaratory Ruling Pet. at 21.

<sup>8</sup> *See, e.g.*, 47 U.S.C. §§ 251(f), 271.

and timely basis of advanced telecommunications capability.” 1996 Act § 706(a), 110 Stat. 153 (codified at 47 U.S.C. § 157 note).<sup>9</sup> The Commission has held repeatedly that “broadband deployment is a critical policy objective that is necessary to ensure that consumers are able to fully reap the benefits of the information age”<sup>10</sup> and that “widespread deployment of broadband infrastructure has become the central communications policy objective of the day.”<sup>11</sup> In addition, the Commission has recognized that VoIP is “commonly accessed via broadband facilities” and that there is a clear “nexus between [the availability of] VoIP services and accomplishing the goals of section 706.”<sup>12</sup> Indeed, VoIP is among the “increasingly popular uses of broadband . . . which are spurring demand today.”<sup>13</sup> Simply put, just as the availability of VoIP drives both providers to deploy and end-user customers to purchase broadband services, state commission decisions that effectively prevent consumers from using their broadband connections for VoIP telephony discourage the deployment and use of broadband.

For these reasons, there can be no serious dispute that decisions such as those of the South Carolina PSC “conflict[] with [the Commission’s] pro-competitive deregulatory rules and

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<sup>9</sup> See Report and Order and Notice of Proposed Rulemaking, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, 20 FCC Rcd 14853, ¶ 8 (2005) (recognizing that the 1996 Act “provide[s] the Commission express directives with respect to encouraging broadband deployment”), *petitions for review pending, Time Warner Telecom, Inc., et al. v. FCC*, Nos. 05-4769 *et al.* (3d Cir.).

<sup>10</sup> Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978, ¶ 241 (2003), *vacated in part and remanded, United States Telecom Ass’n v. FCC*, 359 F.3d 554 (D.C. Cir.), *cert. denied*, 543 U.S. 925 (2004).

<sup>11</sup> Notice of Proposed Rulemaking, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers*, 17 FCC Rcd 3019, ¶ 1 (2002) (footnote omitted).

<sup>12</sup> *Interconnected VoIP E911 Order* ¶ 31.

<sup>13</sup> Fourth Report to Congress, *Availability of Advanced Telecommunications Capability in the United States*, 19 FCC Rcd 20540, 20551 (2004).

policies.” *Vonage Order* ¶ 20. Such decisions, therefore, are preempted because they “stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *California Fed. Sav. & Loan Ass’n v. Guerra*, 479 U.S. 272, 281 (1987) (internal quotation marks omitted); *see also Geier v. American Honda Motor Co.*, 529 U.S. 861, 881 (2000) (preempting state law that “would have stood as an obstacle to the accomplishment and execution of the important means-related federal objectives” reflected in federal regulations) (internal quotation marks omitted). That is because the “Supremacy Clause of Article VI of the United States Constitution prevents the states from impinging on federal law and policy.” *KKW Enters., Inc. v. Gloria Jean’s Gourmet Coffees Franchising Corp.*, 184 F.3d 42, 49 (1st Cir. 1999); *see Armstrong v. Accrediting Council for Continuing Educ. & Training, Inc.*, 168 F.3d 1362, 1369 (D.C. Cir. 1999) (finding that “federal student loan policy preempts” state-law contract claims).

The Commission, therefore, should declare that decisions, such as those issued by the South Carolina PSC, that have the effect of preventing the introduction of VoIP competition into an independent LEC’s service territory violate federal law.

## **II. THE SOUTH CAROLINA PSC’S DECISIONS VIOLATE EITHER §§ 251 AND 253 OR § 201**

Although the Commission has noted with approval that VoIP providers are obtaining access to the PSTN by “interconnecting indirectly through a third party such as a competitive LEC,”<sup>14</sup> the Commission has not determined whether a competitive LEC that provides such a

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<sup>14</sup> *Interconnected VoIP E911 Order* ¶ 38; *see also* Notice of Proposed Rulemaking, *IP-Enabled Services*, 19 FCC Rcd 4863, ¶ 12 (2004) (noting that “Time Warner [Cable] recently entered into an agreement with MCI [now known as Verizon] . . . to use [that] compan[y]’s network[] to provide [Vo]IP telephony to its cable subscribers and to interconnect their calls with the PSTN”).

wholesale service to a facilities-based VoIP provider is, itself, providing telecommunications, a telecommunications service, or an information service. The Commission need not resolve that question here, and should instead find that, regardless of how such a wholesale service is classified, a competitive LEC has a right to provide that service under either §§ 251 and 253 or § 201.

**A.** If a wholesale service, such as Verizon’s, that offers interconnection, E911, number portability, and other services to a facilities-based VoIP provider and its end-user customers is a “telecommunications service” under 47 U.S.C. § 153(46), the conclusion that decisions such as the South Carolina PSC’s violate §§ 251 and 253 is straightforward.

**1.** In § 253, Congress preempted state “statute[s],” “regulation[s],” and other “legal requirement[s]” that “prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.” 47 U.S.C. § 253(a). As the Commission has recognized, Congress enacted this provision “to ensure that no state or local authority could erect legal barriers to entry that would potentially frustrate the 1996 Act’s explicit goal of opening local markets to competition.”<sup>15</sup> Because there can be no serious dispute that decisions such as the South Carolina PSC’s have the effect of prohibiting Verizon from offering its wholesale service to facilities-based VoIP providers, if Verizon’s wholesale service is a “telecommunications service,” such state decisions would plainly violate § 253(a).

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<sup>15</sup> Memorandum Opinion and Order, *Public Utility Commission of Texas*, 13 FCC Rcd 3460, ¶ 41 (1997), *aff’d*, *City of Abilene v. FCC*, 164 F.3d 49 (D.C. Cir. 1999).

Although § 253(b) provides a “safe harbor[]” for state regulations that violate § 253(a),<sup>16</sup> nothing in § 253(b) could save decisions such as the South Carolina PSC’s. That section preserves a state’s ability to impose “requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.” 47 U.S.C. § 253(b). None of those categories of permitted rules even arguably applies to decisions such as the South Carolina PSC’s.

2. In § 251(a), Congress imposed on all telecommunications carriers the duty “to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.” 47 U.S.C. § 251(a)(1). Under the 1996 Act, a “telecommunications carrier” is “any provider of telecommunications services.” 47 U.S.C. § 153(44). Therefore, if Verizon’s wholesale service is a telecommunications service, Verizon would be a telecommunications carrier when it provides this wholesale service and, therefore, would be entitled to interconnect directly with independent LECs under § 251(a)(1). Decisions to the contrary, such as those by the South Carolina PSC, that deny a competitive LEC the right to interconnection when providing such a service would violate § 251(a)(1).

Similarly, if Verizon is a telecommunications carrier when it provides a wholesale service to a facilities-based VoIP provider, it would also have the right to exchange the VoIP provider’s traffic with the independent LEC and to port local telephone numbers from the

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<sup>16</sup> *E.g., Cablevision of Boston, Inc. v. Public Improvement Comm’n*, 184 F.3d 88, 97-98 (1st Cir. 1999) (explaining that § 253(b) “take[s] the form of [a] savings clause[], preserving certain state or local laws that might otherwise be preempted under § 253(a)”).

independent LEC on behalf of the VoIP provider.<sup>17</sup> Assuming such a wholesale service is a telecommunications service, a state commission order that permitted a carrier providing that service to interconnect, but that denied it the right to exchange traffic or port numbers, would still effectively prohibit the provision of that service in violation of § 253(a). Exchanging traffic generated by a customer of a telecommunications service is plainly necessary for the provision of that service. And the Commission has long recognized that “[n]umber portability is essential to meaningful facilities-based competition.”<sup>18</sup> In addition, such a state commission decision would render the § 251(a)(1) right to interconnection an empty promise and would be preempted as contrary to the federal policy of promoting competition.

**B.** If, on the other hand, a wholesale service, such as Verizon’s, that is provided to facilities-based VoIP providers and their end-user customers is “telecommunications” or an “information service” under 47 U.S.C. § 153(20) or (43),<sup>19</sup> the Commission should find that decisions such as the South Carolina PSC’s are contrary to the duties of independent LECs under § 201.

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<sup>17</sup> In an alternative holding, the South Carolina PSC held that, even if Verizon were permitted to interconnect with independent LECs under § 251(a) to provide its wholesale service, it would not be permitted to exchange traffic originated by (or bound for) Time Warner Cable’s customers — or to port local telephone numbers on behalf of those customers. *See* South Carolina Farmers Arbitration Order at 9-10, 15-17; South Carolina Horry Arbitration Order at 9, 16-18.

<sup>18</sup> Second Report and Order, *Telephone Number Portability*, 12 FCC Rcd 12281, ¶ 4 (1997).

<sup>19</sup> In many instances, when Verizon receives local traffic from its VoIP customer, the traffic is still in the IP-format in which it was carried over the VoIP provider’s network. Verizon then converts that local traffic to TDM-format before handing it off to the LEC that serves the end-user customer who is to receive the call. In those instances, Verizon similarly converts traffic that it receives from a LEC in TDM-format into IP-format before handing it off to its VoIP customer. In other instances, Verizon’s VoIP customer performs the protocol conversion, and hands off traffic to (and receives it from) Verizon in TDM-format.

Section 201(a) provides the Commission with the authority, “after opportunity for [a] hearing,” to require carriers such as the independent LECs that were parties to the South Carolina proceedings “to establish physical connections with other carriers[] [and] to establish through routes,” upon a finding that “such action [is] necessary or desirable in the public interest.” 47 U.S.C. § 201(a); *see AT&T Corp. v. FCC*, 292 F.3d 808, 812 (D.C. Cir. 2002). If a wholesale service such as Verizon’s is classified as telecommunications or as an information service, the Commission should find that the public interest requires independent LECs to establish physical connections between their circuit-switched networks and the networks of the competitive LECs that provide that telecommunications or that information service, and also to establish through routes (*i.e.*, to exchange traffic) with those competitive LECs. Indeed, in light of Congress’s and the Commission’s determinations, discussed above, that the promotion of local competition and of the deployment and use of broadband facilities and services are in the public interest, an independent LEC’s refusal to provide such physical connections and through routes to a competitive LEC that offers wholesale service to VoIP providers is contrary to the public interest.

The other requirements for imposing such requirements under § 201(a) are also satisfied here. Even if Verizon’s wholesale service is classified as telecommunications or as an information service, Verizon falls within the group of “other carriers” with which the Commission can require “common carrier[s]” such as the independent LECs to establish physical connections and through routes. 47 U.S.C. § 201(a).<sup>20</sup> In addition, the “hearing” requirement in § 201(a) is satisfied by a proceeding such as this one.<sup>21</sup>

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<sup>20</sup> *See also* Further Notice of Proposed Rulemaking, *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, 84 F.C.C.2d

## CONCLUSION

For the foregoing reasons, the Commission should grant Time Warner Cable's petitions.

Respectfully submitted,

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445, ¶ 204 (1981) (noting that the Commission, under § 201(a), has required common carriers to interconnect with “companies no longer classified as common carriers”).

<sup>21</sup> See Eighth Report and Order and Fifth Order on Reconsideration, *Access Charge Reform*, 19 FCC Rcd 9108, ¶ 61 n.216 (2004); see also *United States Telecom Ass'n v. FCC*, 400 F.3d 29, 41 (D.C. Cir. 2005) (finding that a public notice that, as here, sought comment on a “petition for a declaratory ruling” satisfied any requirement to seek public comment under notice-and-comment procedures). As further assurance and to preclude any possible claims on appeal, the Commission might issue a further public notice seeking comment on whether the criteria in § 201(a) are satisfied before relying on its authority under that section.

## CERTIFICATE OF SERVICE

I hereby certify that, on this 10th day of April 2006, I caused copies of the foregoing Comments of Verizon to be served upon the parties listed below by First-Class US Mail.

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