Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 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
In the Matter of Petition of Time Warner Cable for Preemption Pursuant to Section 253 of the Communications Act, as Amended.	WC Docket No. 06-54

COMMENTS
OF
THE SOUTH CAROLINA CABLE TELEVISION ASSOCIATION

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The South Carolina Cable Television Association ("SCCTA") respectfully submits these comments in response to the Commission's March 6, 2006 Public Notices soliciting comments in the above captioned Petitions for a Declaratory Ruling[1] and Preemption[2] filed by Time Warner Cable ("Time Warner").

The SCCTA is the trade association representing members of South Carolina's cable television industry. SCCTA's members include twenty-five cable operators providing cable television and other communications services to more than 1.1 million subscribers over 150

[1] Time Warner Petition for Declaratory Ruling, WC Docket 06-55 (filed Mar. 1, 2006) (hereinafter "Time Warner Declaratory Ruling Petition").

[2] Time Warner Petition for Preemption, WC Docket 06-54 (filed Mar. 1, 2006) (hereinafter "Time Warner Preemption Petition").

cable systems in South Carolina. A list of the SCCTA's cable operator members is included as Attachment 1 hereto.

The SCCTA has participated in regulatory proceedings before this Commission and the South Carolina Public Service Commission ("PSC") on telecommunications and related issues. Because the SCCTA's membership is potentially affected by the South Carolina PSC's decisions concerning the interconnection and certification issues raised by Time Warner's Petition for a Declaratory Ruling and Petition for Preemption the SCCTA has a substantial interest in this Commission's decisions in these two proceedings.

I. INTRODUCTION AND SUMMARY

Grant of Time Warner's Petition for a Declaratory Ruling is necessary to reverse a flawed decision by the South Carolina Public Service Commission ("PSC") to deny interconnection rights to wholesale competitive local exchange carriers ("CLECs") upon which SCCTA's members rely to deliver their IP-enabled voice services.[3] The basic legal premise underlying the PSC's order –that interconnection is only available for telecommunications carriers to serve "end user" but not "wholesale" customers– is squarely foreclosed by more than 30 years of Commission and judicial precedent interpreting the Communications Act. That precedent establishes that it is "unlawful" for carriers to "discriminate[] against a communications customer ... *based only upon the fact that the customer is not the ultimate user of the service.*"[4]

Moreover, the PSC's order conflicts with the Commission's policy of promoting intermodal competition in general, and IP-enabled services like VoIP in particular. Indeed, the

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[3] *Petition of MCImetro Access Transmission Services, LLC for Arbitration with Farmers Telephone Cooperative, Inc., Home Telephone Co., PBT Telecom, Inc., and Hargray Telephone Company Concerning Interconnection and Resale under the Telecommunications Act of 1996*, Order Ruling on Arbitration, Docket No. 2005-67-C (South Carolina PSC Oct. 7, 2005) ("*Arbitration Order*").

[4] *Resale and Shared Use Decision*, 60 FCC2d 261, ¶ 45 (1976) (emphasis added).

Commission has recognized that interconnected VoIP providers "us[e] the services of telecommunications carriers interconnected to the PSTN"[5] in order to provide their services. Thus, the Commission has already implicitly, if not explicitly, sanctioned the business model that the PSC would shut down.

In fact, the PSC's *Arbitration Order* appears to be a back-door attempt to subvert this Commission's *Vonage Order*, which prohibits state commissions from imposing certification or other common carrier requirements on providers of VoIP services that perform net protocol conversions. By ruling that telecommunications carriers may *not* obtain Section 251 interconnection to serve as "intermediaries" to other providers, the *Arbitration Order* effectively requires even facilities-based VoIP providers, like Time Warner and other cable VoIP providers, to obtain state certification. Whether this is the PSC's intent or not, the PSC's action defeats the Commission's objective in the *Vonage Order* and therefore must be preempted.

For these reasons the Commission must grant Time Warner's Petition for a Declaratory Ruling and declare that telecommunications carriers may serve all customers indiscriminately, including by providing "wholesale" carriage to VoIP providers, who, in turn serve "end user customers."

In addition, the PSC's decision to deny Time Warner's request for certification in the service areas of South Carolina's rural LECs is the result of the PSC's misapplication of the exemption for rural LECs under Section 251(f). That exemption extends to certain interconnection, resale, unbundling and collocation obligations, but it does ***not*** represent a complete exemption from competition in the rural LECs' service areas.

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[5] *See In the matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion And Order, 19 FCC Rcd 6429 at ¶ 9 (2004) ("*Vonage Order* ").

But that is the basis for the PSC's decision to deny Time Warner's application to provide service in the exchanges of rural LECs. As a result, the PSC's decisions create a barrier to entry because they require applicants to demonstrate that a rural LEC's exemption has been revoked or waived despite the fact that such a test has no basis in the law. For that reason the Commission must also grant Time Warner's Petition for Preemption and rule that the PSC may not condition certification in to a rural area on the waiver or revocation of the rural LEC's exemption under Section 251(f).

II. CLECS MAY OBTAIN INTERCONNECTION TO PROVIDE WHOLESALE TELECOMMUNICATIONS SERVICES

Time Warner characterizes the PSC's *Arbitration Order* as relying on two alternative legal grounds – (1) that interconnection is only available for CLECs to serve "end user customers" but not for the provision of wholesale service, and (2) that § 251 interconnection is unavailable when a "CLEC intends to act as an intermediary for a facilities-based VoIP service provider."[6] Time Warner's Petition correctly explains why these findings are both plain errors of law.

The PSC's *Arbitration Order* suffers in other respects, as well. For example, the order confuses VoIP's regulatory status. Although at present it is unclear whether VoIP is a telecommunications service or an information service, it cannot be both. Thus, if the VoIP provider has structured its operations as an information service (by seeking interconnection through a CLEC "intermediary"), then it is plainly inappropriate to characterize the VoIP provider as a "carrier" seeking "interconnection." Rather, as a provider of information services, the VoIP provider is an end-user customer of the telecommunications carrier (in this case, MCI) seeking interconnection. It would likewise, therefore, be inappropriate to characterize MCI as

[6] *PSC Arbitration Order* at 9.

providing "wholesale" service; rather, MCI is providing "retail" service to its VoIP customer, Time Warner.

A. Telecommunications Carriers Are Entitled to Interconnection to Serve Other Telecommunications Carriers

Since its first orders implementing the 1996 amendments to the Communications Act ("Act"), the Commission has recognized that the statutory definition of "telecommunications service" in general,[7] and carriers' obligations under §§ 251(a)-(c) in particular, encompass wholesale services, and that telecommunications carriers may provide telecommunications services to other carriers.[8] We review the relevant legal principles briefly here.

Section 251(a)(1) provides that, "*each* telecommunications carrier has the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." 47 U.S.C. § 251(a)(1) (emphasis added). And even more specifically, § 251(c) imposes specific obligations on ILECs, including the duty to provide interconnection to requesting carriers on "rates, terms, and conditions that are just, reasonable, and nondiscriminatory..." 47 U.S.C. § 251(c)(2)(D). Interconnection is available to any "telecommunications carrier," which the Act defines as "any provider of telecommunications services." 47 U.S.C. § 153(44). A "telecommunications service" is "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available to the public ..." 47 U.S.C. § 153(46).

Under this framework the PSC clearly erred when it found that MCI did not qualify as a common carrier because it offered "wholesale" service to Time Warner, which in turn served

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[7] The definition of telecommunications service is codified at 47 U.S.C. § 153(46).

[8] *See Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act*, 11 FCC Rcd 21905, ¶¶ 263-65 (1996) ("*Non-Accounting Safeguards Order*"); *and Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501 (1998) ("*Universal Service Report*").

end-users. To the contrary, the FCC (and the courts) have made it clear that the meaning of "the public," in the definition of "telecommunications carrier" includes carriers that offer services that appeal only to a discrete segment of the public. "Common carrier services may be offered on a retail or wholesale basis because common carrier status turns not on *who* the carrier serves, but on *how* the carrier serves customers, *i.e.,* indifferently and to all potential users."[9]

The Commission's unbundling rules make this clear. The Commission's rules provide that "an incumbent LEC shall not impose limitations, restrictions, or requirements on requests for, or the use of, unbundled network elements for the service a requesting telecommunications

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[9] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 at ¶ 153 (2003) ("*TRO*"). The genesis for this policy can be traced to the common carrier and non-discrimination provisions of §§ 201-202, both of which were incorporated into § 251(c)(2)(D). (Indeed, the nondiscrimination obligation regarding interconnection under § 251(c)(2) is actually ***more*** stringent than the general nondiscrimination obligation in § 202. *See In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499 (1996) ("*Local Competition Order*") at ¶ 217.) The Commission's early resale orders make this linkage clear. In those proceedings, in which the Commission required AT&T to sell tariffed services to MCI so that MCI could resell them to its own customers, the Commission paved the way for the modern competitive telecommunications markets that consumers enjoy today. As the Commission explained:

> We find that discrimination against a communications customer – in this case, by the carrier's refusal to provide service to a reseller – is unlawful if it is based only upon the fact that the customer is not the ultimate user of the service. Likewise, the carrier may not lawfully discriminate by refusing to provide Telpak service to a customer which is a potential competitor. The reseller has a bulk requirement for Telpak service just as does any other customer willing to pay for Telpak. Accordingly, there is no justification for AT&T's refusal to provide Telpak to a reseller, while making it available to a customer which purports to use all the service for its own needs.

Resale & Shared Use Order, supra n. 4, at ¶ 45. This reasoning from 30 years ago applies with equal force today. Just as AT&T could not refuse to provide wholesale service to requesting carriers, ILECs today cannot refuse to interconnect with CLECs simply because they are wholesalers themselves.

carrier seeks to offer."[10] The only exception is that contained in subsection 309(b), which prohibits a "requesting telecommunications carrier [from] ... access[ing] an unbundled network element for the exclusive provision of mobile wireless services or interexchange services."[11] It necessarily follows that a CLEC's right to purchase UNEs includes the right to exchange traffic over those UNEs, and there is no prohibition against the use of UNEs to provide wholesale services. Thus, § 309 categorically prohibits the kind of use restrictions that the PSC claims prevents MCI from interconnecting.[12]

B. Interconnection Cannot Be Denied to Carriers Who Plan to Serve Information Service Providers

The foregoing demonstrates that a CLEC offering wholesale telecommunications service to another telecommunications carrier has the same interconnection rights as a carrier that provides telecommunications services to its own end-user customers. Those interconnection rights are undiminished if the CLEC, instead, provides telecommunications service to an "information service" provider offering VoIP services to end-users.

An "information service" is provided via "telecommunications," and utilizes the "telecommunications services" offered by "telecommunications carriers."[13] "[W]hen an entity offers transmission incorporating the 'capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information,' it does not offer

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[10] 47 C.F.R. § 51.309(a).

[11] 47 C.F.R. § 51.309(b).

[12] MCI would further be entitled to interconnection because it is clearly providing some "exchange access" services as required by § 251(c)(2). "Exchange access" is defined as offering access to "telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services." 47 U.S.C. § 153(16). This is exactly the function a CLEC performs when it gets an incoming toll call and then switches it out to the cable operator for delivery to the end user, which will no doubt occur with some frequency. In that case, it is using its "telephone exchange facilities" – its switch – to help terminate a toll call.

[13] 47 U.S.C. § 153(20).

telecommunications. Rather it offers an 'information service' even though it uses telecommunications to do so."[14] Telecommunications are an essential input to the offering of information services. Thus, even if VoIP offerings like Time Warner's are deemed information services, that does not diminish MCI's right to provide the telecommunications input to Time Warner's "finished" information service offering. When MCI sells that telecommunications functionality to Time Warner, MCI is indeed acting as a "telecommunications carrier."[15]

The PSC thus committed a significant error of law *and* fact when it justified refusing MCI the interconnection necessary so that it could serve as an "intermediary" – i.e., provide the essential telecommunications service "input" to Time Warner's finished information service offering – on the ground that "VoIP providers do not have rights or obligations under Section 251."[16] Even if information service providers do not have interconnection or other rights under Section 251 that does not mean that a telecommunications carrier cannot provide telecommunications services to a VoIP provider.

It was MCI, and not Time Warner, that sought interconnection. The PSC's theory that MCI lost its interconnection rights because it would use them to provide service to Time Warner is akin to a theory that MCI cannot provide ordinary telephone service to the local pizza parlor because the pizza parlor does not have a CPCN. MCI is entitled to interconnection in order to serve end-user customers, whether those customers are pizza parlors or information service providers.

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[14] *Universal Service Report* at ¶ 39.

[15] Under 47 U.S.C. § 153(46), "telecommunications service" means (essentially) selling telecommunications, and under 47 U.S.C. § 153(44) a "telecommunications carrier" is any provider of telecommunications service.

[16] *PSC Arbitration Order* at 9.

C. The South Carolina PSC's *Arbitration Order* Would Frustrate the *Vonage Order*

In addition to the foregoing, the Commission should grant Time Warner's request for a declaratory ruling because allowing the PSC's order to stand without challenge or correction would undermine this Commission's *Vonage Order*. That order precluded state common carrier regulation of VoIP offerings like Time Warner's. In the *Vonage Order,* the Commission recognized that interconnected VoIP providers "us[e] the services of telecommunications carriers interconnected to the PSTN,"[17] in order to provide their services. The *Vonage Order* expressly included cable-delivered VoIP, such as that provided by Time Warner, within its scope.[18] Following on the heels of the *Vonage Order*, the Commission, in the *911 VoIP Order*,[19] classified VoIP providers that facilitate Internet-PSTN communications as "interconnected VoIP," and has recognized the growing importance of interconnected VoIP in several subsequent orders. Interconnected VoIP is now a fixture on the communications landscape.

The *Arbitration Order,* however, would make the continued existence of these businesses, as currently structured, impossible. That order cuts off interconnected VoIP providers from the ability of CLECs to provide connectivity to the PSTN, thereby forcing interconnected VoIP providers to submit to precisely the state regulation from which the *Vonage Order* was designed to shield them.

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[17] *Vonage Order* at ¶ 8 (observing that calls to VoIP end users (in this case those of Vonage's Digital Voice service) are "connected, using the services of telecommunications carriers interconnected to the PSTN...").

[18] *Id.* at ¶¶ 25, 32.

[19] *See generally IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, ¶ 24 (2005). The Commission defined interconnected VoIP as bearing the following characteristics: (1) the service enables real-time, two-way voice communications; (2) the service requires a broadband connection from the user's location; (3) the service requires IP-compatible CPE; (4) the service offering permits users generally to receive calls that originate on the PSTN and to terminate calls to the PSTN. *Id.*

III. THE SOUTH CAROLINA PSC'S DENIAL OF TIME WARNER'S CERTIFICATION REQUEST CONSTITUTES AN IMPERMISSIBLE BARRIER TO ENTRY UNDER SECTION 253

The SCCTA also supports Time Warner's petition to preempt the PSC's decision to deny Time Warner certification in the service areas of certain rural LECs ("RLECs"). Although the PSC's basis for doing so is ambiguous, it appears to rest upon the mistaken conclusion that Time Warner could not be certified in RLEC service areas as long as the RLECs continued to hold an exemption under Section 251(f).[20] The PSC's decision is unlawful because it establishes an effective barrier to entry by conditioning the grant of a certificate to serve rural areas on the revocation or waiver of an RLEC's rural exemption under Section 251(f).

Conditioning Time Warner's certification in that way has no basis in the law. Section 251(f), on its face, speaks only to the specific obligations of Section 251(c) of the Act[21] – it does not create an explicit (or implicit) exemption from competition. The statutory exemption granted under that section should not affect the considerations made by state commissions in determining whether to grant a CPCN to provide service within the state. Section 251(f) only applies if an RLEC chooses to invoke it in response to a request for interconnection under Sections 251-252. In that case the state commission is called upon to determine whether and to what extent a modification of or exemption from normal ILEC interconnection obligations is appropriate under the requirements of Section 251(f). It has nothing to do with the certification of any entity that might want to compete with an RLEC.

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[20] *See Application of Time Warner Cable Information Services (South Carolina) LLC, d/b/a time Warner Cable to Amend its Certificate of Public Convenience and Necessity to Provide Interexchange and Local Voice Service in Areas of Certain Incumbent Carriers Who Currently Have a Rural Exemption,* Order Ruling on Expansion of Certificate, Docket No. 2004-280-C, at 5 (South Carolina PSC Aug. 1, 2005) ("*RLEC Certification Order*").

[21] 47 U.S.C. § 251(f)(1).

The scope, and application, of Section 251(f) is clearly set forth in the statute itself. Section 251(f)(1)(A) provides that rural telephone companies are conditionally exempt from the obligations contained in Section 251(c), which obliges incumbent LECs to interconnect, unbundle certain network elements, offers its service for discounted resale, and allow CLECs to collocate.[22] Under Section 251(f), these full obligations do not apply until (1) the RLEC receives a bona fide request for interconnection, services or network elements and (2) the state commission determines that the request is not unduly economically burdensome, technically infeasible, nor inconsistent with Section 254 of the Act. In this way Section 251(f) protects RLECs from some of the burdens associated with interconnection, unbundling, resale and collocation.

Although the scope of Section 251(f) is clear on its face, the South Carolina PSC has apparently impermissibly extended its application. The PSC's exact reasons for doing so, however, are not clear. In an initial ruling considering Time Warner's request for a certificate of public convenience and necessity ("CPCN") the PSC granted Time Warner the authority to provide service only in areas where the incumbent LEC is not entitled to the rural exemption set forth in 47 U.S.C. § 251(f)(1).[23] In a later proceeding concerning authorization to provide service in the service areas of South Carolina's RLECs the PSC ruled that because Time Warner did not seek "a waiver of the rural exemptions of the RLECs subject to the Telecommunications Act of 1996... this last position leaves us with very little choice as to how to rule in this

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[22] *Id.* at § 251(c)(2), (3), (4) and (6).

[23] *Application of Time Warner Cable Information Services (South Carolina), LLC, for a Certificate of Public Convenience and Necessity to Provide Interexchange Services and Local Voice Services and for Alternative Regulation Pursuant to S.C. Code 58-9-575 and 58-9-585, Order Granting Certificate of Public Convenience and Necessity to Provide Interexchange and Local Voice Services and for Alternative Regulation and Modified Flexible Regulation*, Docket No. 2003-362-C, Order No. 2004-213 (South Carolina PSC, May 24, 2004) ("*Initial CPCN Order*").

matter."[24] Upon this finding the PSC concluded that because rural exemptions were not at issue in the case the exemptions could not be waived and Time Warner's application to serve the RLECs' service areas could not be granted.[25] The only conclusion to draw from this ruling is that the PSC will not authorize any entity to provide service in RLEC service areas unless and until the RLEC's rural exemption is revoked (or waived).

Despite the clarity and simplicity of Section 251(f) the South Carolina PSC has seemingly confused its scope and application. The PSC's decisions indicate that it construes Section 251(f) to extend beyond the duties listed under Section 251(c) to include a general exemption from competitive entry into the RLEC service area.[26] By declining to authorize Time Warner to provide service in the RLEC service areas the PSC improperly extends the scope of the exemption under 251(f) to a broad protection from competitive entry. If the PSC's ruling is left unchecked it will create a *de facto* monopoly for South Carolina's RLECs in their service areas. This, in turn, creates an unlawful entry to barrier which violates the express terms of Section 253 of the Act.

Under this Commission's well established precedent these actions constitute a barrier to entry under Section 253 of the Act. As the Commission has previously explained, Section 253 represents Congress' directive to "sweep away" state or local requirements that have the

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[24] *See, supra* n. 20, *RLEC Certification Order* at *6.

[25] *Id.* at * 7. Inexplicably, the PSC's Order then states that "this Order should not be construed as a ruling on the waiver of the rural exemptions in this case ..." *Id.*

[26] If this is not the PSC's intent with respect to this question, it should so state in its comments in this proceeding. If, however, the PSC declines to clarify its ruling the FCC should preempt the PSC's decision under Section 253 and affirm that the proper application of Section 251(f) has nothing to do with whether an entity can be authorized serve customers in the service area of an RLEC.

practical effect of prohibiting an entity from providing service.[27] As Time Warner demonstrated in its Petition for Preemption, the South Carolina PSC's actions constitute a clear violation of Section 253(a), and at the same time, fail to meet the safe harbor requirements of Section 253(b).[28] The FCC should therefore take affirmative action to preempt the South Carolina PSC's decisions and affirm that the scope and application of the rural exemption provisions of Section 251(f) do not preclude entities from seeking and receiving certification to provide compete in the service areas of rural LECs.

IV. GRANTING TIME WARNER'S PETITIONS WILL FURTHER FEDERAL COMPETITION POLICY

The South Carolina PSC's decisions,[29] taken together, show an intent to circumvent this Commission's determination to eliminate the burden of state regulation upon providers of interconnected VoIP services. In the *Vonage Order* the Commission clearly recognized Congress' decision to establish a single national policy "to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services."[30] Pointing to Sections 230 and 706 of the Act, the Commission concluded in the *Vonage Order* that it has a statutory mandate to establish a national policy that supports a competitive free market for these types of IP-enabled services.[31]

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[27] *Public Utility Commission of Texas*, Memorandum Opinion and Order, 13 FCC Rcd 3460, 3470 at ¶ 22 (1997).

[28] *See* Time Warner Preemption Petition at 13-21.

[29] The SCCTA makes no specific comments as to the Nebraska PSC's actions. However, to the extent that its actions have the same effect of the South Carolina PSC's rulings, creating barriers to entry into a market that has yet to benefit from the effects of full competitive entry, the Nebraska PSC's rulings should also be preempted.

[30] *Vonage Order* at ¶ 34 (citing 47 U.S.C. § 230(b)(2)).

[31] *Id.* at ¶¶ 33-37.

The PSC's actions clearly undermine this policy by eliminating the right of competitive LECs to interconnect with incumbents and provide connectivity to VoIP service providers in South Carolina. The denial of this basic statutory right directly undermines Congress' directive under Section 706 to "promote competition in the local telecommunications market"[32] Without the ability to interconnect and provide services to VoIP service providers competitive entities like Sprint and other CLECs will not be able to compete in the local telecommunications market – one long dominated by incumbent LECs. Moreover, the South Carolina PSC's decision to deny Time Warner's request for authorization to provide service in the exchanges served by South Carolina's RLECs represents a blatant disregard for the same policies.

Indeed, the PSC's latest actions are but one in a series of rulings over the past decade which have the net effect of impairing competitive entry in to the voice communications market. In response to such actions the SCCTA and other competitive interests in South Carolina have been forced to seek redress from such rulings through the courts. For example, in *South Carolina Cable Television Ass'n v. PSC of South Carolina*, the South Carolina Supreme Court overturned the PSC's decision to adopt an alternative rate-setting formula that violated the legislature's statutory mandate and rate plan in a manner that unduly favored incumbent LECs.[33] Similarly, in *Porter v. South Carolina PSC*, the South Carolina Supreme Court reversed the PSC's consumer price protection plan as an alternative means of rate regulation after finding that the PSC failed to comply with the statutory mandate by making the requisite findings regarding competitive and noncompetitive services, in turn giving incumbent LECs an opportunity to subsidize competitive services and thereby thwart competitive entry.[34] Most recently

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[32] *Id.* at ¶ 36 (citing 47 U.S.C. § 706).

[33] 437 S.E.2d 38 (S.C. 1993).

[34] 515 S.E.2d 923 (S.C. 1999).

competitive interests in South Carolina were forced to turn, again, to the courts to reverse the PSC's regulations establishing an inequitable state Universal Service Fund ("USF") funding mechanism.[35]

The PSC's repeated attempts to thwart competitive entry in favor of the incumbent telephone companies in South Carolina constitute a clear disregard for established federal law and competition policy. The PSC's actions in the Time Warner cases at issue in these proceedings represent a continuance of that trend which the FCC must stop by granting Time Warner's requests for a declaratory ruling and preemption of the PSC's rulings.

V. CONCLUSION

For all the foregoing reasons, the Commission should grant Time Warner's Petition for a Declaratory Ruling and Petition for Preemption, and rule that the South Carolina PSC's actions below are unlawful and contrary to established federal law and policy.

[35] *See Porter v. South Carolina Public Service Comm'n*, Case Nos. 01-CP-40-4080 (SCCTA's challenge to the PSC's universal service contribution mechanism regulations pending before the South Carolina Supreme Court).

Respectfully submitted,

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April 10, 2006

Attachment 1

Cable Operator Members of the South Carolina Cable Television Association

Adelphia Communications Corp.

Berkeley Cable TV

Charter Communications

Comcast Cablevision

Comcast Cable of Carolina, Inc.

Comcast Corp.

Comporium Communications

Davidson Cable TV

Gamecock Cablevision

G-FORCE

Northland Cable

PCI of Anderson Co.

PBT Cable Services, Inc.

Savannah Valley Cablevision

Southern Cable Communications

Time Warner Cable

US Cable Coastal Properties

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April 10, 2006

VIA ELECTRONIC FILING
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445 12th Street, S.W.
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Re: Comments of the South Carolina Cable Television Association; WC Docket Nos. 06-55, 06-54

Dear Ms. Dortch:

Enclosed for filing in the above referenced proceedings please find an original electronic copy of the Comments of the South Carolina Cable Television Association ("SCCTA") on behalf of its cable operator members. Pursuant to the Commission's Public Notices in these proceedings (DA 06-534 & 06-535) the SCCTA's comments are directed to both dockets and will, therefore, be filed separately in each docket.

Please contact the undersigned counsel for SCCTA at the telephone number listed above if you have any questions regarding this filing. Thank you for your assistance.

Sincerely,

John D. Seiver
K.C. Halm

Enclosures

cc: Janice Myles, Wireline Competition Bureau
Best Copy and Printing, Inc. Portals II
Nancy Horne, SCCTA

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