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

REPLY COMMENTS
OF
THE SOUTH CAROLINA CABLE TELEVISION ASSOCIATION

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TABLE OF CONTENTS

Page No.

I. Introduction and Summary 2

II. Section 251 of the Act Mandates That the Rural LECs Provide MCI With Interconnection So That MCI May Serve Its Interconnected VoIP Customers 3

III. The South Carolina PSC's Actions Meet the Preemption Standards Under Sections 253(a) and (d) of the Act 7

IV. Conclusion 14

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The South Carolina Cable Television Association ("SCCTA") respectfully submits these reply comments[1] in response to the comments filed by the South Carolina Telephone Coalition,[2] the South Carolina Office of Regulatory Staff[3] (on behalf of the South Carolina PSC) and other entities opposing (collectively the "Opposing Commenters") the Petitions for a Declaratory

[1] In its initial Comments in this proceeding the SCCTA inadvertently identified Comporium Communications ("Comporium") as a member of the association supporting the Comments. However, Comporium has since notified the SCCTA that it does not wish to be identified as a member in support of the association's Comments. The record should therefore reflect that Comporium does not join with the other members of the association to support the Comments, or these Reply Comments, filed by the SCCTA in WC Dockets 06-54 and 06-55.

[2] Comments of the South Carolina Telephone Coalition, WC Docket No. 06-54 (filed Apr. 10, 2006) (hereinafter the "Telephone Coalition Comments").

[3] Response and Opposition of the Office of the Regulatory Staff to Time Warner's Petition for Preemption, WC Docket No. 06-54 (filed Apr. 10, 2006) (hereinafter the "ORS Comments").

Ruling and Preemption filed by Time Warner Cable ("Time Warner")[4] in the above referenced proceedings.

I. INTRODUCTION AND SUMMARY

The Opposing Commenters in these two dockets argue that Time Warner's request should be denied because the South Carolina PSC's actions below are consistent with applicable law and because Time Warner failed to clearly request the form of relief it sought from the PSC. Without making any comment on the latter, the SCCTA in these Reply Comments will demonstrate that the Opposing Commenters' arguments regarding the lawfulness of the PSC's actions are flawed.

As demonstrated below, the Opposing Commenters' contention that MCI's provision of interconnection and other services on a wholesale basis is not a telecommunications service is inconsistent with this Commission's long standing precedent. In addition, the Opposing Commenters' strained reading of the interplay between Sections 251(a), 251(b)(5) and 251(c) fails to establish that local exchange carriers ("LECs") have no duty to transport and terminate the traffic of other carriers (including traffic which originates or terminates to a VoIP service provider). Finally, the Opposing Commenters' arguments that preemption is not appropriate here fail to account for the fact that Section 253(d) is an express statutory mandate to preempt any state or local action that has the effect of prohibiting a provider from offering service in a particular area. The Commission must, therefore, find that such actions violate the terms of Section 253(a) and preempt the PSC pursuant to the authority granted by Section 253(d).

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[4] Time Warner Petition for Preemption, WC Docket 06-54 (filed Mar. 1, 2006) (hereinafter "Time Warner Preemption Petition"); *and* Time Warner Petition for Declaratory Ruling, WC Docket 06-55 (filed Mar. 1, 2006) (hereinafter "Time Warner Declaratory Ruling Petition").

II. SECTION 251 OF THE ACT MANDATES THAT THE RURAL LECS PROVIDE MCI WITH INTERCONNECTION SO THAT MCI MAY SERVE ITS INTERCONNECTED VOIP CUSTOMERS

The Opposing Commenters rely on two main arguments in defending the South Carolina PSC's decision denying MCI Section 251 interconnection rights: (1) that MCI does not provide "telecommunications services" when it provides interconnection and other services on a "wholesale basis" to its cable VoIP customers, and (2) that the "reciprocal compensation" provisions of 47 U.S.C. § 251(b)(5) mean that incumbent local exchange carriers ("ILECs") do not have to "transport and terminate" telecommunications traffic originated by interconnected VoIP providers. Neither claim has any support under the Communications Act or the Commission's orders.

With respect to wholesale services, SCCTA is confident that its and the other parties' initial comments are sufficient to defeat this absurd theory. Simply put, the definition of "telecommunications service" under the Act, 47 U.S.C. § 153(46), is not limited to the retail services a carrier provides to its own end-user customers. That the definition encompasses wholesale carriage has been a principal feature of the Commission's expansive view of the nature of common carriage. Indeed, that view has played an instrumental role in the development of competition in this industry. As the Commission explained in its first *Resale & Shared Use Order,* "[w]e find that discrimination against a communications customer ... is unlawful if it is based only upon the fact that the customer is not the ultimate user of the service."[5] Thus, just as thirty years ago the Commission found that 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.

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

The opposing commenters, led by the South Carolina Telephone Coalition (the "Telephone Coalition"), also place great reliance on the statutory distinction the Act draws between carriers' interconnection obligations – required by 47 U.S.C. §§ 201(a), 251(a)(1) and 251(c)(2) – and "the duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications" imposed on all LECs by § 251(b)(5). Based on this supposed distinction, and on a misreading of the Commission's reciprocal compensation regulations and orders, the Telephone Coalition argues that, "[n]othing in the Act supports Time Warner's contention that it is entitled to exchange VoIP traffic indirectly with the RLECs through MCI."[6]

Nothing could be further from the truth. The fact that the traffic "transport and termination" obligations of § 251(b)(5) are distinct from the Act's interconnection obligations does not mean that a LEC can satisfy the latter and dispense with the former. To the contrary, § 251(b)(5) imposes a duty on interconnected LECs to transport and terminate one another's traffic. The only consequence of the statutory distinction between LECs' interconnection and traffic exchange obligations relevant here is that carriers are required to negotiate and price these services separately.[7]

Nor do the regulations' references to the role reciprocal compensation plays in assuring that compensation is provided to the carrier that serves the "called party" provide grounds for interconnecting ILECs to refuse to transport and terminate the traffic of competitive LECs seeking to serve VoIP customers.[8] As the SCCTA explained in its initial comments, MCI's

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[6] Telephone Coalition Comments at 8.

[7] *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, ¶ 176 (1996) ("*Local Competition Order*").

[8] *See* Telephone Coalition Comments at 7-8 (quoting 47 C.F.R. §§ 51.701(c)-(e)).

VoIP customers (*i.e.,* Time Warner) ***are*** the end-user customers whose traffic MCI seeks to exchange and have terminated through its ILEC interconnection arrangements. Thus, as a matter of pure textual construction, the Commission's definition of a "reciprocal compensation arrangement" as being "between two carriers" and involving payment for "telecommunications traffic that originates on the network facilities of the other carrier,"[9] is in accord with the interconnection arrangements that MCI is seeking to obtain in South Carolina and elsewhere. Time Warner is MCI's end-user customer and MCI is seeking to exchange Time Warner's telecommunications traffic, which originates as telecommunications on the MCI network.[10]

Not only does nothing in the Commission's regulations prevent this arrangement, it is expressly sanctioned by the text of the 1996 Act. The key provision is 47 U.S.C. § 251(c)(2). It imposes a specific duty on ILECs to "provide ... any requesting telecommunications carrier, interconnection ... for the transmission and routing of telephone exchange service and exchange access." Under the statute, "[t]he term 'telecommunications carrier' means any provider of telecommunications services ...." 47 U.S.C. § 153(44).

In its initial comments, SCCTA explained that the statutory definition of "telecommunications service" encompassed wholesale carriage arrangements as a general matter. It also clearly encompasses the kind of arrangements necessary for carriers to serve interconnected VoIP providers in particular. The term is defined as offering telecommunications for a fee either "directly to the public" or "to such classes of users as to be effectively directly available to the public, regardless of the facilities used." 47 U.S.C. § 153(46). "Effectively," in

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[9] 47 C.F.R. § 51.701(e).

[10] The fact that the same traffic might also be attributable to individual customers of a VoIP provider (*i.e.,* the Time Warner VoIP subscribers) is of no more significance than the fact that traffic to and from a large business with direct-inward-dial PBX trunks can be traced to or from individual cubicle-dwellers at the business.

this context means, "for all practical purposes" but not the exactly same.[11] When a CLEC provides telecommunications transport and interconnection services to a cable operator in order to facilitate the cable operator's VoIP customers' placing calls to end-users on the PSTN, that is "effectively" making the CLEC's services "directly available to the public." The fact that the public is reached through a VoIP-enabled cable system instead of a traditional local loop certainly means that this arrangement is not exactly like traditional service, but that clearly doesn't matter, both because the definition only requires "effective" availability to the public, and also because it applies "regardless of the facilities used."

Second, the CLEC in this situation is clearly offering "telephone exchange service," which the Act defines as:

> (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.

47 U.S.C. § 153(47). In plain terms, "telephone exchange service" is the ability to make and receive local calls. This is exactly what CLECs are providing when they make their services available to interconnected VoIP providers. Moreover, subsection (B), which was added by the 1996 Act, could easily be construed to encompass MCI's service. It is comparable to plain old telephone service, MCI offer its services to "subscribers," a term that is undefined by the Act, and could reasonably be construed as encompassing MCI's VoIP customer (Time Warner) or

[11] The American Heritage College Dictionary (3rd Ed.) at 437.

Time Warner's end-user customers, who are clearly accessing, albeit indirectly, MCI's telecommunications services.[12]

Moreover, CLECs providing PSTN connectivity to cable operators are clearly providing "exchange access" as well. "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 receives an incoming toll call and then switches it to the cable operator for delivery to the end user. In that case, it is using its "telephone exchange facilities" – its switch – to help terminate a toll call.

This analysis demonstrates that there is ample statutory authority for the Commission to find that CLECs serving cable operators have full interconnection rights with respect to that service. Section 251(c)(2) obliges ILECs to provide interconnection "for the transmission and routing of telephone exchange service and exchange access." Since that is precisely what the CLECs are providing, there is no sound basis for any ILEC to be relieved of its full interconnection obligations with respect to those CLECs or this type of traffic.

III. THE SOUTH CAROLINA PSC'S ACTIONS MEET THE PREEMPTION STANDARDS UNDER SECTIONS 253(a) AND (d) OF THE ACT

The Telephone Coalition and the South Carolina Office of Regulatory Staff ("ORS") also argue that this Commission can not preempt the South Carolina PSC because preemption is only permissible under Article VI of the Constitution in very limited circumstances. Specifically, the Telephone Coalition and ORS argue that preemption of the South Carolina PSC's decisions is not warranted because there is no conflict between state and federal law.[13]

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[12] *Cf. Local Competition Order* at ¶¶ 1012-15 (determining that wireless carriers offer service that is "comparable" to traditional telephone exchange service).

[13] Telephone Coalition Comments at 4-5; ORS Comments at 5-8.

Further, the Telephone Coalition states that "the Commission should preempt a state statute, regulation or legal requirement only when an actual conflict exists, and only to the extent necessary to advance the goals of the federal statute."[14] In support of this argument the Telephone Coalition asserts that South Carolina's certification statute is competitively neutral on its face and therefore does not conflict with any federal statute.[15]

These arguments, however, ignore the simple fact that Time Warner asks the Commission to act pursuant to the statutory command of Section 253, rather than pursuant to the preemption authority under federal common law. Congress expressed its intent very clearly, through Section 253, to preempt any "State or local statute or regulation, or *other State or local legal requirement*," that prohibits or has "the effect of prohibiting the ability of any entity to provide" any service.[16] Further Section 253(d) provides the appropriate analytical framework for the Commission's task here. The statute establishes that the Commission "shall preempt" any State legal requirement if, after notice and an opportunity for public comment, the Commission determines that a State or local government "has imposed any legal requirement that violates section 253(a)."[17]

Thus, the standard for preemption is not whether an actual conflict exists between a federal statute and South Carolina's certification statute. Instead, the question is whether South Carolina's decision to deny Time Warner a certificate to operate in the service areas of rural

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[14] *Id.* at 5.

[15] *Id.*

[16] 47 U.S.C. § 253(a) (emphasis added).

[17] *Id.* at § 253(d).

LECs ("RLECs") prohibits or has the effect of prohibiting Time Warner's ability to provide service in those areas.[18]

There can be no question that the South Carolina PSC's decision to deny Time Warner a certificate to operate in the RLECs' service area prohibits Time Warner from providing service in those areas. Without a certificate Time Warner does not have the authority to offer competing services within the RLECs' exchange areas and is effectively prohibited from obtaining its own interconnection arrangements from the RLECs. By denying Time Warner the certificate, then, the PSC's decision prohibits Time Warner from providing service in these areas. Indeed, the PSC's actions have effectively created a *de facto* state sanctioned monopoly for the RLECs within their service areas.

The Telephone Coalition and the ORS both elide over this fact by making two arguments that do not address the effect of the PSC's prohibitive decision. First, they argue that Time Warner does not need a certificate to gain interconnection with the RLECs.[19] Although technically correct, this point does not account for the fact that many RLECs refuse to initiate interconnection negotiations with an entity until that entity provides proof of its certification from the state PSC. This behavior occurs despite the fact that the FCC expressly prohibits such action.[20]

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[18] Some have argued that Section 253(a) does not apply to Time Warner's services because the statute only addresses the effect of state or local actions prohibiting the provision of telecommunications services. These commenters suggest that because Time Warner's service is not a telecommunications service the statute does not apply. This argument, however, ignores the fact that Time Warner made it very clear that in South Carolina they sought certification as a competitive local exchange carrier. Accordingly, the services that they provided under such certifications could well be deemed as telecommunications services, at least for purposes of the Commission's analysis here.

[19] Telephone Coalition Comments at 9-10, 12.

[20] *See* 47 C.F.R. § 51.301(c)(4).

Second, the Telephone Coalition and the ORS also argue that the PSC's decision does not create a barrier to entry because at this time "calls are being completed between [Telephone Coalition] company customers and [Time Warner] customers."[21] But what the Telephone Coalition fails to acknowledge is that the calls at issue here are only calls between Telephone Coalition customers and Time Warner customers where Time Warner is operating in a ***neighboring*** exchange. As such, the only traffic that Time Warner can exchange with the RLECs is that which occurs where Time Warner and the RLEC serve two contiguous exchanges, each with local or extended local calling to the other. The exchange of this so-called "non-competing" traffic in neighboring exchanges does not resolve the inherent unlawfulness of the PSC's decision to prohibit Time Warner from providing service in the RLECs' service areas.

The Telephone Coalition and the ORS also argue that Time Warner has other remedies for the PSC's actions and that the Commission need not act here.[22] Although Time Warner has pursued relief from some aspects of the PSC's decisions in other forums, there can be no doubt that the FCC, pursuant to Section 253, is the legal entity with the express authority and responsibility to consider whether the PSC's actions constitute a prohibition to entry.

It is well established that the 1996 Act "fundamentally restructures local telephone markets. States may no longer enforce laws that impede competition. . ."[23] With the 1996 Act, Congress sought to establish "a pro-competitive, deregulatory national policy framework" for the telecommunications industry, and "to accelerate deployment of advanced telecommunications services to all Americans by opening all telecommunications markets to competition."[24] Section

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[21] *Id.* at 12.

[22] ORS Comments at 8; Telephone Coalition Comments at 13.

[23] *AT&T Corp. v. Iowa Utils.*, 525 U.S. 366, 371 (1999) (noting that Congress "has ended the longstanding regime of state-sanctioned monopolies").

[24] S. Conf. Rep. No. 104-230 at 1 (1996).

253 is a key tool in the Commission's arsenal to ensure that markets are opened in a manner consistent with Congress' mandate. The Commission has in the past used its preemption power under Section 253 to preempt State actions that granted an effective monopoly to a single provider. For example, in 1999 the FCC held that the state of Minnesota's agreement granting a single provider the exclusive right to construct fiber optic facilities in the state freeway rights-of-way was a barrier to entry in violation of Section 253(a).[25] There the Commission made clear that an unlawful state action need not be an express prohibition on entry, but instead any action that has the effect of prohibiting entry into a market was deemed unlawful. The Commission emphasized that Section 253(a) bars any state or local action that makes any of the possible market entry methods (*e.g.*, facilities-based, resale, etc.) unavailable to competitors.[26]

As explained above, Section 253(d) directs the Commission to consider, after appropriate notice and comment, whether the PSC's actions prohibit Time Warner from providing a service in the RLEC's exchange areas. To this point both precedent and the express language of the statute support the conclusion that the PSC's decision to deny Time Warner a certificate, thereby granting a *de facto* monopoly to the RLECs, does in fact prohibit Time Warner from providing service in the RLECs' service areas. Though it may be true that South Carolina's certification statute is neutral on its face, the PSC applied the statute (along with its erroneous interpretation of the scope of Section 251(f)) in a manner that effectively prohibits Time Warner from providing service in these areas. The Commission must, therefore, find that such decisions are impermissible under Sections 253(a) and preempt such decisions pursuant to the Commission's authority under Section 253(d).

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[25] *State of Minnesota*, Memorandum Opinion and Order, FCC 99-402 (rel. Dec. 23, 1999).

[26] *Id.* at ¶ 38.

The Telephone Coalition also argues that preemption in this case would be contrary to established policy, claiming that "Congress clearly contemplated that it was not always in the public interest to have multiple competitive service providers in areas served by rural telephone companies."[27] In support of this extraordinary statement –in effect that Congress intended to preserve RLEC monopolies— the Telephone Coalition cites Section 251(f) of the Act. The Telephone Coalition then cites the historic authority of State PSCs to make determinations in the public interest and to place conditions on competitive service providers prior to providing service in the service area of an RLEC.[28] The Telephone Coalition would have this Commission believe that Congress intended to continue the RLECs' monopolies such that the denial of rights to competitive service providers is an acceptable practice within the framework of the 1996 Act.

This argument is emblematic of the problem that exists in many state PSCs, and was at the forefront of the South Carolina PSC's erroneous and unlawful decisions. The problem is that the RLECs argue that Section 251(f) constitutes an exemption from competition in the RLEC service areas, although the statute only exempts the RLECs from certain specific interconnection, collocation, unbundling, and resale duties under Section 251(c).[29] Unfortunately, state PSCs (like South Carolina) have seemingly accepted the argument that Section 251(f) protects RLECs from competition. Indeed, the South Carolina PSC expressly relied on the existence of the so-called "rural exemption" under Section 251(f) to deny Time Warner's certificate. As explained in the SCCTA's initial comments the exemption provided under Section 251(f) is limited to an exemption from the duties of Section 251(c), but is *not a wholesale exemption* from competition.

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[27] Telephone Coalition Comments at 14.

[28] *Id.*

[29] The exemption from interconnection obligations under Section 251(c) does not, however, exempt the RLECs from the duty to interconnect under Section 251(a).

Indeed, to read Section 251(f) as granting a wholesale exemption *from competition* would render much of the 1996 Act meaningless.[30]

The Telephone Coalition's arguments are ironic given the efforts of some of its members to seek regulatory relief, in the form of alternative regulation, from the PSC on the basis of the existence of competition in South Carolina. On at least two occasions the Telephone Coalition's members have petitioned the South Carolina PSC asking the PSC to relieve them from traditional rate regulation based upon the alleged existence of competition in such areas. Under this lesser form of regulation the RLECs are no longer subject to any rate of return regulation and do not report their earnings. Their basic local service rates - residential and single-line business - are subject to caps but all other rates can be priced on a market basis subject to a complaint process for abuse of market power.[31]

In support of these claims the RLECs often cite as evidence the existence of interconnection agreements between themselves and MCI, suggesting that such agreements evidence the ability of MCI and other competitors to provide competing service in the RLECs' service areas. What the RLECs fail to mention, however, is that those agreements expressly preclude MCI from providing interconnection or other wholesale telecommunications services to Time Warner or other similarly situated entities. Specifically, Home Telephone, Inc. and PBT, both small telephone companies with service areas in rural parts of South Carolina have both asked the PSC to treat them under a lesser form of regulation on the basis of their interconnection agreements with MCI.[32]

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[30] *See, e.g., AT&T Corp. v. Iowa Utils.*, 525 U.S. at 371 (Congress "has ended the longstanding regime of state-sanctioned monopolies").

[31] *See* S.C. Code Ann. 58-9-576 (2005).

[32] The requests of both Home Telephone and PBT are attached hereto as Attachment 1.

Thus, at the same time that the RLECs are working to continue to keep Time Warner out of their service areas they have asked the PSC to be deregulated based upon the alleged existence of competition in these areas. And the proof of such competition is the existence of an interconnection agreement that expressly prohibits MCI from providing service to Time Warner. The irony of this situation can not be lost on this Commission. The RLECs are engaged in a calculated attempt to extend their monopoly over these markets, and at the same time avoid traditional rate of return regulation for the provision of service in these non-competitive markets. This Commission must not stand idly by and allow the PSC's actions to go unanswered. Preemption is the proper course to ensure that Congress' mandate to open all markets to true competition does in fact come to fruition.

IV. CONCLUSION

For all the foregoing reasons, the Commission should reject the arguments raised by the ORS, the South Carolina Telephone Coalition, and others in opposition to Time Warner's Petition for a Declaratory Ruling and Petition for Preemption. The Commission should, instead, find that the PSC's actions prohibit Time Warner's ability to provide service in the RLECs' service areas and as such the PSC's actions below are unlawful and contrary to established federal law and policy.

Respectfully submitted,

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CABLE TELEVISION ASSOCIATION

April 25, 2006

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.

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

ATTACHMENT 1

178373

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2006-76-C

March 8, 2006

Mr. Charles L. A. Terreni
Chief Clerk/Administrator
South Carolina Public Service Commission
Synergy Business Park, The Saluda Building
101 Executive Center Drive
Columbia, South Carolina 29210

Re: Home Telephone Company, Inc.
Alternative Regulation Plan Pursuant to S.C. Code Ann. § 58-9-576

Dear Mr. Terreni:

Enclosed for filing on behalf of Home Telephone Company, Inc. ("Home"), please find an original and ten (10) copies of an Alternative Regulation Plan.

On January 18, 2006, the Commission approved a local interconnection agreement between Home and MCImetro Access Transmission Services, LLC ("MCI"). Pursuant to S.C. Code Ann. § 58-9-576(A), any LEC may elect the alternative regulation plan described in S.C. Code Ann. § 58-9-576(B) if the Commission has approved a local interconnection agreement in which the LEC is a participant with an entity determined by the Commission not to be affiliated with the LEC. An Affidavit of William S. Helmly is being filed with this Plan to certify that Home is not affiliated with MCI.

Therefore, having met the statutory requirement for election of alternative regulation, Home hereby elects to have its rates, terms and conditions determined pursuant to the plan described in S. C. Code Ann. § 58-9-576(B), as set forth in the attached Alternative Regulation Plan, effective April 7, 2006.

In addition to the Alternative Regulation Plan and Affidavit of William S. Helmly, we are also enclosing a proposed Notice of Filing for the Commission's convenience.

Please clock in a copy of this filing and return it with our courier.

Thank you for your assistance.

Very truly yours,

Margaret M. Fox

Margaret M. Fox

Enclosures

cc: C. Dukes Scott, Esquire
H. Keith Oliver

HOME TELEPHONE COMPANY, INC.
ALTERNATIVE REGULATION PLAN
PURSUANT TO S.C. CODE ANN. § 58-9-576

Filed March 8, 2006
Effective April 7, 2006

1. Introduction

Pursuant to S.C. Code Ann. § 58-9-576(A), any local exchange carrier ("LEC") may elect to have the rates, terms, and conditions of its services determined pursuant to the alternative regulation plan described in S.C. Code Ann. § 58-9-576(B), provided the Public Service Commission of South Carolina ("Commission") has approved a local interconnection agreement in which the LEC is a participant with an entity determined by the Commission not to be affiliated with the LEC. The Commission has approved such an agreement for Home Telephone Company, Inc. ("Home"), and Home hereby elects to have the rates, terms, and conditions of its services determined pursuant to the alternative regulation plan described herein (the "Plan"), which conforms with the plan described in S.C. Code Ann. § 58-9-576(B).

In its regular agenda session on January 18, 2006, the Commission approved an interconnection agreement between Home and MCImetro Access Transmission Services, LLC ("MCI"). An Affidavit of William S. Helmly is being filed with this Plan to certify that Home is not affiliated with MCI.

The Plan described herein is in lieu of other forms of regulation including, but not limited to, rate of return or rate base monitoring or regulation.

2. Effective Date

The effective date of the Plan is April 7, 2006, which is not sooner than thirty days after filing with the Commission notice of election of the Plan. The Plan will apply to all local services offered by Home that are regulated by the Commission.

3. The Plan

a. As of March 8, 2006, the date of notice of election of the Plan, existing rates, terms, and conditions for the services provided by Home contained in Home's then-existing tariffs and contracts are considered just and reasonable.

b. Home is a "small LEC" for purposes of S.C. Code Ann. § 58-9-576(B)(3). S.C. Code Ann. § 58-9-10(14) defines "small LEC" to mean a "rural telephone company" as defined in the federal Telecommunications Act of 1996.

c. Although Home is a "small LEC" for purposes of S.C. Code Ann. § 58-9-576(B)(3), Home's flat-rated local exchange services for residential and single-line business customers are currently priced at the statewide average local service rates for those services, weighted by number of access lines, as shown in Home's local service tariff on file with the Commission. Therefore, the requirements of S.C. Code Ann. § 58-9-576(B)(3) and (4) are not waived for Home, and Home's residential and single-line business rates shall be frozen for a period of two years from the date of election of this Alternative Regulation Plan and, after the expiration of the two-year period, may be adjusted on an annual basis pursuant to an inflation-based index.

d. Home will set rates for all other services on a basis that does not unreasonably discriminate between similarly situated customers. All such rates are subject to a complaint process for abuse of market position in accordance with Commission rules and procedures.

e. Except when exempted by law, Home will file tariffs for price changes or new services with respect to its local exchange services (including residential and single-line business services) that set out the terms and conditions of the services and the rates for such services. Tariffs will be presumed valid and become effective seven days after filing for price decreases and fourteen days after filing for price increases and new services.

f. As provided for in S.C. Code Ann. § 58-9-576(B), the Plan applies in lieu of rate of return or rate base regulation. Thus, the procedures set forth above for changes in rates are to be used in lieu of traditional rate-of-return procedures for determining rates, terms, and conditions for service, as found in S.C. Code Ann. §§ 58-9-510 through –570 and in 26 Code Ann. Regs. 103-834(A)(3).

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

Docket No. 2006-_____-C

IN RE: Home Telephone Company, Inc. Alternative Regulation Plan Filed Pursuant to S.C. Code Ann. § 58-9-576	))))	**AFFIDAVIT OF WILLIAM S. HELMLY**

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

PERSONALLY APPEARED BEFORE ME the undersigned WHO, BEING DULY SWORN, deposed and said:

1. My name is William S. Helmly. I am employed by Home Telephone Company, Inc. (the "Company") as its President and Chief Operating Officer. I am an officer of the Company and am authorized to give this affidavit on behalf of the Company.

2. Home Telephone Company, Inc., hereby certifies that it is not affiliated with MCImetro Access Transmission Services, LLC.

FURTHER AFFIANT SAYETH NOT.

William S. Helmly
President and Chief Operating Officer

Subscribed to and sworn before me this 7th day of March, 2006.

Debra D. McGriff
NOTARY PUBLIC FOR SOUTH CAROLINA

Debra D. McGriff
(Print Name of Notary)
My Commission Expires: September 28, 2009

COLUMBIA 850974v1

{HOME TELEPHONE COMPANY PROPOSED NOTICE OF FILING}

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

DOCKETING DEPARTMENT

NOTICE OF FILING

DOCKET NO. 2006-___-C

Home Telephone Company, Inc. ("Home Telephone") has filed with the Public Service Commission of South Carolina ("Commission") a request to have its rates, terms and conditions determined pursuant to the plan described in S.C. Code Ann. § 58-9-576(B). Pursuant to S.C. Code Ann. § 58-9-576(A), any local exchange carrier ("LEC") may elect to have the rates, terms and conditions of its services determined pursuant to the alternative regulation plan described in S.C. Code Ann. § 58-9-576(B), provided the Commission has approved a local interconnection agreement in which the LEC is a participant with an entity determined by the Commission not to be affiliated with the LEC. The Commission has approved such an agreement on January 18, 2006 between Home Telephone and MCImetro Access Transmission Services, LLC ("MCI"). Home Telephone elects to have its rates, terms, and conditions determined pursuant to the Plan described in S.C. Code Ann. § 58-9-576(B) as set forth in its Alternative Regulation Plan, effective date April 7, 2006.

A copy of the Application is on file in the offices of the Commission, 101 Executive Center Drive, Columbia, South Carolina 29210, the Commission's web site at www.psc.sc.gov, and is available from Margaret M. Fox, Esquire, Post Office Box 11390, Columbia, South Carolina 29211. Interested persons may contact the Commission or counsel for PBT for additional information concerning the Plan. ***Please refer to Docket No.* 2006-___-C.**

Persons seeking information about the Commission's Procedures should contact the Commission at (803) 896-5100.

Public Service Commission of South Carolina
Attn: Docketing Department
Post Office Drawer 11649
Columbia, South Carolina 29211

MAR-__-06

177519

MCNAIR LAW FIRM, P.A.

ATTORNEYS AND COUNSELORS AT LAW

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January 19, 2006

2006-34-C

Mr. Charles L. A. Terreni
Chief Clerk/Administrator
South Carolina Public Service Commission
Synergy Business Park, The Saluda Building
101 Executive Center Drive
Columbia, South Carolina 29210

Re: PBT Telecom, Inc. Alternative Regulation Plan Pursuant to S.C. Code Ann. § 58-9-576

Dear Mr. Terreni:

Enclosed for filing on behalf of PBT Telecom, Inc. ("PBT"), please find an original and ten (10) copies of an Alternative Regulation Plan.

On January 18, 2006, the Commission approved a local interconnection agreement between PBT and MCImetro Access Transmission Services, LLC ("MCI"). Pursuant to S.C. Code Ann. § 58-9-576(A), any LEC may elect the alternative regulation plan described in S.C. Code Ann. § 58-9-576(B) if the Commission has approved a local interconnection agreement in which the LEC is a participant with an entity determined by the Commission not to be affiliated with the LEC. As the Commission is aware, MCI and PBT are not affiliated.

Therefore, having met the statutory requirement for election of alternative regulation, PBT hereby elects to have its rates, terms and conditions determined pursuant to the plan described in S.C. Code Ann. § 58-9-576(B), as set forth in the attached Alternative Regulation Plan, effective February 18, 2006.

Please clock in a copy of this filing and return it with our courier.

Thank you for your assistance.

Very truly yours,

Margaret M. Fox

Margaret M. Fox

Enclosures

cc: C. Dukes Scott, Esquire
L. B. Spearman

FILE COPY

PBT TELECOM, INC.
ALTERNATIVE REGULATION PLAN
PURSUANT TO S.C. CODE ANN. § 58-9-576

Filed January 19, 2006
Effective February 18, 2006

1. Introduction

Pursuant to S.C. Code Ann. § 58-9-576(A), any local exchange carrier ("LEC") may elect to have the rates, terms, and conditions of its services determined pursuant to the alternative regulation plan described in S.C. Code Ann. § 58-9-576(B), provided the Public Service Commission of South Carolina ("Commission") has approved a local interconnection agreement in which the LEC is a participant with an entity determined by the Commission not to be affiliated with the LEC. The Commission has approved such an agreement for PBT Telecom, Inc. ("PBT"), and PBT hereby elects to have the rates, terms, and conditions of its services determined pursuant to the alternative regulation plan described herein (the "Plan"), which conforms with the plan described in S.C. Code Ann. § 58-9-576(B).

In its regular agenda session on January 18, 2006, the Commission approved an interconnection agreement between PBT and MCImetro Access Transmission Services, LLC ("MCI"). MCI is not affiliated with PBT.

The Plan described herein is in lieu of other forms of regulation including, but not limited to, rate of return or rate base monitoring or regulation.

2. Effective Date

The effective date of the Plan is February 18, 2006, which is not sooner than thirty days after filing with the Commission notice of election of the Plan. The Plan will apply to all local services offered by PBT that are regulated by the Commission.

3. The Plan

a. As of January 19, 2006, the date of notice of election of the Plan, existing rates, terms, and conditions for the services provided by PBT contained in PBT's then-existing tariffs and contracts are considered just and reasonable.

b. PBT is a "small LEC" for purposes of S.C. Code Ann. § 58-9-576(B)(3). S.C. Code Ann. § 58-9-10(14) defines "small LEC" to mean a "rural telephone company" as defined in the federal Telecommunications Act of 1996.

c. Although PBT is a "small LEC" for purposes of S.C. Code Ann. § 58-9-576(B)(3), PBT's flat-rated local exchange services for residential and single-line business customers are currently priced at the statewide average local service rates for those services, weighted

by number of access lines, as shown in PBT's local service tariff on file with the Commission. Therefore, the requirements of S.C. Code Ann. § 58-9-576(B)(3) and (4) are not waived for PBT, and PBT's residential and single-line business rates shall be frozen for a period of two years from the date of election of this Alternative Regulation Plan and, after the expiration of the two-year period, may be adjusted on an annual basis pursuant to an inflation-based index.

d. PBT will set rates for all other services on a basis that does not unreasonably discriminate between similarly situated customers. All such rates are subject to a complaint process for abuse of market position in accordance with Commission rules and procedures.

e. Except when exempted by law, PBT will file tariffs for price changes or new services with respect to its local exchange services (including residential and single-line business services) that set out the terms and conditions of the services and the rates for such services. Tariffs will be presumed valid and become effective seven days after filing for price decreases and fourteen days after filing for price increases and new services.

f. As provided for in S.C. Code Ann. § 58-9-576(B), the Plan applies in lieu of rate of return or rate base regulation. Thus, the procedures set forth above for changes in rates are to be used in lieu of traditional rate-of-return procedures for determining rates, terms, and conditions for service, as found in S.C. Code Ann. §§ 58-9-510 through –570 and in 26 Code Ann. Regs. 103-834(A)(3).

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2006-34-C - ORDER NO. 2006-166

MARCH 16, 2006

IN RE: Request for Approval of PBT Telecom, Incorporated's Alternative Regulation Plan Pursuant to S.C. Code Ann. Section 58-9-576	)	ORDER FINDING NON-AFFILIATION

This matter comes before the Public Service Commission of South Carolina (the Commission) on the election of PBT Telecom, Inc. (PBT or the Company) of alternative regulation under S.C. Code Ann. Section 58-9-576 (Supp. 2005). PBT has filed a request to have its rates, terms, and conditions determined pursuant to the plan described in S.C. Code Ann. Section 58-9-576 (B) (Supp. 2005). Pursuant to S.C. Code Ann. Section 58-9-576 (A), any local exchange carrier (LEC) may elect to have the rates, terms and conditions of its services determined pursuant to the alternative regulation plan described in S.C. Code Ann. Section 58-9-576 (B), provided the Commission has approved a local interconnection agreement in which the LEC is a participant with an entity determined by the Commission not to be affiliated with the LEC. This Commission has approved an interconnection agreement on January 18, 2006, between PBT and MCImetro Access Transmission Services, LLC (MCI). PBT has filed an affidavit of non-affiliation, stating that PBT and MCI have no corporate affiliation. PBT has elected to have its rates, terms, and conditions determined pursuant to the Plan described in S.C. Code Ann. Section 58-9-576 (B) as set forth in its Alternative Regulation Plan, effective February 18, 2006.

After reviewing the affidavit of non-affiliation, we find that PBT and MCI are not affiliated entities. For this reason, we find that the interconnection agreement approved on January 18, 2006, between PBT and MCI is between non-affiliated entities. Accordingly, we hold that PBT meets the requirements for election of alternative regulation, and that PBT's February 18, 2006 election date for alternative regulation is appropriate *nunc pro tunc.*

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Randy Mitchell, Chairman

ATTEST:

G. O'Neal Hamilton, Vice-Chairman

(SEAL)