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May 31, 2006

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

**Re: Notification of *Ex Parte* Presentation of Time Warner Cable
WC Docket Nos. 06-54, 06-55**

Dear Ms. Dortch:

On May 30, 2006, Steven Teplitz of Time Warner Inc., Julie Patterson of Time Warner Cable, and the undersigned met with the following persons in support of the petitions filed in the above-captioned dockets: Michelle Carey, Senior Legal Advisor to Chairman Kevin Martin; Scott Bergmann, Legal Advisor to Commissioner Jonathan Adelstein; and Jeremy Miller and Jennifer Schneider of the Wireline Competition Bureau, Competition Policy Division

With respect to Time Warner Cable's Declaratory Ruling Petition (WC Docket No. 06-55), we elaborated on the points made in Time Warner Cable's pleadings, focusing on the need to reaffirm the well-settled right of competitive carriers to interconnect and exchange traffic with incumbent LECs for the purpose of providing wholesale telecommunications services to VoIP providers.

As an initial matter, we reiterated that where a wholesale carrier holds itself out as willing to serve a potential class of customers on nondiscriminatory terms and conditions — as Time Warner Cable's wholesale suppliers have verified that they do in the state proceedings at issue — it indisputably qualifies as a "telecommunications carrier" under the Communications Act. An incumbent LEC that takes issue with such a "holding out" bears the burden of disproving its validity; a wholesale carrier need not adduce "evidence" apart from its sworn testimony confirming its willingness to provide service on a common-carrier basis.

We next explained that the Act requires all local exchange carriers (1) to interconnect with the networks of other telecommunications carriers pursuant to section 251(a),¹ and (2) to exchange traffic with such interconnected carriers pursuant to section 251(b)(5). In addition, incumbent LECs that are not covered by the “rural exemption” under section 251(f) (or for whom the exemption has been terminated) must interconnect pursuant to section 251(c)(2), and accordingly must comply with the pricing provisions set forth in section 252(d)(1).

We further explained that nothing in section 251 remotely limits an incumbent LEC’s duty to exchange traffic to calls that originate from or terminate to the interconnecting carrier’s own end-user customers. Rather, as the Commission has repeatedly made clear — and as most commenters have recognized — the Act also compels incumbent LECs to interconnect and exchange traffic with carriers that choose to provide only wholesale services to other service providers. In such circumstances, the wholesale carrier plainly “transports” and “terminates” traffic within the meaning of section 251(b)(5) of the Act and of section 51.701 of the Commission’s rules.

Moreover, any disputes regarding an incumbent LEC’s compliance with its obligations to interconnect (under either section 251(a) or section 251(c)) and to exchange traffic under section 251(b)(5) are eligible for arbitration under section 252, since that provision applies to all “requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251.” 47 U.S.C. § 252(c)(1). Indeed, the Act specifically authorizes states to address “compliance by an incumbent local exchange carrier with section 251(b)(5).” *Id.* § 252(d)(2)(A).

With respect to Time Warner Cable’s Petition for Preemption (WC Docket No. 06-54), we explained that the South Carolina Public Service Commission’s refusal to grant a certificate of public convenience and necessity is a prohibition of entry that violates section 253 of the Communications Act. The state PSC did not even attempt to justify its barring of Time Warner Cable from these markets on public-interest grounds; to the contrary, the PSC found that Time Warner Cable was fully qualified to enter adjacent markets and that its entry would promote, rather than harm, the public interest. The only distinguishing fact applicable to the rural telephone company markets at issue was the opposition of the incumbent carriers to Time Warner Cable’s application. Section 253 does not allow state commissions to give rural LECs veto power over competitors’ entry.

We further emphasized that neither petition is intended to lessen Time Warner Cable’s regulatory responsibilities, nor would either have such an effect. Far from seeking to shirk any obligations, Time Warner Cable itself has undertaken the duties of competitive LECs — including the payment of access charges and universal service contributions — but has nevertheless been barred from entering most rural markets in South Carolina and Nebraska.

¹ While section 251(a) also applies to carriers other than LECs, Time Warner Cable has not sought a declaratory ruling regarding the interconnection obligations of any other class of carriers.

Finally, we urged the Commission to take action as promptly as possible to bring competition and choice to rural consumers. We explained that the urgent need for resolution of these proceedings is heightened by recent events, including a federal district court's stay, pending Commission action in WC Docket No. 06-55, of Sprint's appeal of the Nebraska Public Service Commission's order at issue, as well as the efforts of several South Carolina rural LECs to obtain a stay of complaint proceedings pending before the state PSC.

Please contact the undersigned if you have any questions regarding this notice.

Sincerely,

/s/ Matthew A. Brill

Matthew A. Brill