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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
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 Services in Service Areas of Certain Incumbent Carriers who Currently have a Rural Exemption.	)	WC Docket No. 06-54
	)	
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

NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION REPLY COMMENTS

NATIONAL TELECOMMUNICATIONS
COOPERATIVE ASSOCIATION

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REPLY COMMENTS
OF THE
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION

The National Telecommunications Cooperative Association (NTCA)[1] submits these reply comments[2] in response to the initial comments filed on April 10, 2006, as part of the Federal Communications Commission's (Commission or FCC) Public Notice

[1] NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents more than 560 rural rate-of-return regulated telecommunications providers. All of NTCA's members are full service incumbent local exchange carriers (ILECs) and many of its members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended (Act). NTCA's members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

[2] NTCA silence on any positions raised by parties in this proceeding connotes neither agreement nor disagreement with their positions or proposals. Unless specifically stated below, NTCA reasserts its positions described in its April 10, 2006 initial comments filed in this docket.

seeking comment on Time Warner Cable's (Time Warner) Petition to preempt the South Carolina Public Service Commission's (SCPSC) order denying TWC a certificate of public convenience and necessity (CPCN)[3] and Time Warner's Petition for a declaratory ruling that competitive local exchange carriers (CLECs) are entitled to interconnect with incumbent local exchange carriers (ILECs) pursuant to Section 251 of the Communications Act of 1934, as amended (the Act), to exchange traffic on behalf of third-party Voice over Internet Protocol (VoIP)-based providers.[4]

Time Warner's thirst for an unfair competitive advantage should not prevail over the Act's statutory requirements of fair play. Time Warner's supporters who accused ILECs of "keeping those pro-competitive benefits from consumers in their territories by gaming the state regulatory processes," have confused the ILECs' advocacy for fair play as gamesmanship and have attempted to reconfigure the Act's regulatory burdens of being a telecommunications provider.[5] The Commission should either deny the Time Warner petitions as premature or delay ruling on the petitions until the Commission

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[3] 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 Services in Service Areas of Certain Incumbent Carriers who Currently have a Rural Exemption, WC Docket No. 06-54 (March 1, 2006). Joining Time Warner in seeking preemption is its South Carolina telecommunications affiliate, Time Warner Cable Information Services (South Carolina), LLC.

[4] 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 (March 1, 2006). Based on the Petitions, it appears that the CLEC and VoIP providers would refuse to pay access charges or reciprocal compensation for VoIP calls terminating on rural ILEC networks.

[5] Level 3 Comment, p. 1. Time Warner, not the ILECs, is tilting the game table. The WTA succinctly portrayed Time Warner's approach as attempting "to "game" the telecommunications regulatory system by claiming the benefits but not the obligations presented under Section 251 and 252." WTA Comment, pp. 1-3, 8.

resolves the underlying classification issues presented in its existing IP-Enabled Services docket, Intercarrier Compensation docket, and Universal Service dockets.[6]

In the IP-Enabled Services docket, the Commission should classify Time Warner's VoIP service as "telecommunications services" and subject to Title II jurisdiction because this voice service is offered to the public for a fee, competes with traditional voice service providers, and uses the public switched telephone network (PSTN) to terminate calls. Time Warner should be required to pay access charges, contribute to the Universal Service Fund mechanisms, and otherwise be treated on the same basis as traditional voice providers.[7] Several commenters agreed with NTCA's approach.[8]

I. ARGUMENT

Several commenters in this proceeding have urged the Commission to reject Time Warner's petitions because they are premature.[9] NTCA agrees with this assertion, noting that the record presented is insufficient in details regarding Time Warner's service offerings and contractual arrangements with its CLEC transit providers, Sprint and MCI. Other commenters challenged the propriety of Time Warner suggesting that the Commission should preempt the states' authority.[10] NTCA agrees that it is improper to challenge the South Carolina and Nebraska state public utility commission (PUC)

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[6] Comments of Independent Telephone and Telecommunications Alliance, National Exchange Carrier Association, National Telecommunications Cooperative Association, and the Organization for the Promotion and Advancement of Small Telecommunications Companies, (Associations), p. ii, 2-3; *in accord*, Pennsylvania Public Utilities Commission Comment, p. 5; South Dakota Telecommunications Association Comment, pp. i, 1; Qwest Comment, pp. 7-8.
[7] Associations Comment, p. 3.
[8] Western Telecommunications Alliance (WTA) Comment, p. 4; TCA Comment, pp. 5, 6.
[9] WTA Comment, p. 3; South Dakota Telecommunications Association Comment, p. ii.
[10] WTA Comment, p. 1, 3-4; Pennsylvania Public Utilities Commission Comment, pp. 2-3; South Carolina Telephone Coalition Comment, p. ii.

decisions through a declaratory petition to the Commission, especially since one or more of the parties in the PUC decisions have appealed the state rulings to a higher court, and a petition to the Commission may pre-judge those rulings.[11]

Time Warner, the VoIP providers, and the CLEC and cable supporters inaccurately claim that the South Carolina and Nebraska decisions are "erroneous," and a "narrow" "misguided attempt" that will have "destructive effects" on IP-enabled services, that the decisions would "seriously undermine intermodal competition" and the "availability of VoIP services," create "barriers to entry" and "baseless litigation" or are "unlawfully restricting the resale of telecommunication services."[12] TCA, however, correctly characterized Time Warner's petitions as "business plans" that encourage a "piecemeal approach to regulatory policy" which the Commission should avoid.[13]

Time Warner and its supporters assert that the Commission need not classify VoIP at this time; this assertion is without merit and should be disregarded.[14] Classification is the key to resolving the Time Warner petitions and, as the Pennsylvania Public Utilities Commission stated, "would prove useful to states or commonwealths, like

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[11] WTA Comment, p. 4; Iowa RLEC Group Comment, p. 2; Southeast Nebraska and Independent Telephone Companies Comment, pp. iv, v.

[12] Alpheus, PAETEC, U.S. Telepacific Corp. d/b/a Telepacific Communications (PAETEC) Comment, p. iv; Broadwing, Integra Telecom, Fibertech Networks, Lightyear Communications, McLeod Telecommunications Services, Mpower Communications, Norlight Telecommunications, and Pac-West Telecomm (Broadwing) Comment, p. iii; South Carolina Cable Television Association Comment, p. 14; Comcast Comment, p. 5; South Carolina Cable Television Association Comment, p. 4; Neutral Tandem, Inc., Comment, p. 9; Verizon Comment, p. 2, 3 (Verizon, an ILEC in some states, filed comments from the perspective of a CLEC providing wholesale transport for Time Warner's VoIP service in South Carolina through its merged subsidiary, MCI); Sprint Nextel Comment, p. 5; VON Coalition Comment, p. 3; Advance-Newhouse Communications Comment, p. 3; National Cable Television Association Comment, p. 2; AT&T Inc., Comment, pp. 3, 4 (AT&T, also an ILEC in some states, filed comments as a transit service provider).

[13] TCA Comment, pp. 2, 5, 7.

[14] Global Crossing North America, Inc. Comment, p. 4; Verizon Comment, p. 3; BridgeCom International Comment, p. 11

Pennsylvania, currently examining these issues."[15] NTCA and other have repeatedly encouraged the Commission to avoid piecemeal regulations when it comes to VoIP classification. Classifying VoIP as an "information services" versus a "telecommunications service" has profound financial impacts on the carriers who originate and terminate the VoIP traffic.[16] Therefore, the Commission should resolve the classification question in the context of existing IP-Enabled Services, Intercarrier Compensation, and Universal Service dockets.[17]

Pine Tree Networks artfully phrased the core financial concern of ILECs who carry VoIP traffic: "Whenever traffic is being carried on an incumbent carrier's network, the cost of carrying such traffic must be borne by someone." [18] Pine Tree, whose CLEC subsidiaries transit Time Warner's VoIP services in Maine, incorrectly claimed that determining who pays to carry VoIP traffic is irrelevant in resolving the Time Warner issues.[19] The Commission needs to, and should resolve the underlying issues of who pays for carrying VoIP traffic.[20] JSI accurately portrayed Time Warner as "attempting to shirk [its] responsibilities while at the same time is seeking telecommunications carrier benefits under the Act."[21] The ultimate resolution – classification of VoIP traffic --

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[15] Pennsylvania Public Utility Commission Comment, p. 2.
[16] Association Comment, p. ii; *See* also *SBC/VarTec*, WC 05-276, NTCA/NECA/ITTA/OPASTCO/WTA USTA Joint Comments, filed Nov. 10, 2005, p. 9, and Reply Comments filed Dec. 12, 2005, p. 3; *Frontier*, WC 05-276, NTCA/NECA/ITTA/OPASTCO/WTA/USTA Joint Comments filed Jan. 9, 2006, pp. 2-3, and Reply Comments filed Jan. 24, 2006, pp. 1, 4; *Grande Communications*, WC 05-283, NTCA/NECA/ ITTA/WTA/OPASTCO/USTA Joint Comments filed Dec. 12, 2005, pp. 2, 4, and Reply Comments filed Jan. 11, 2006, pp. 1, 2; South Carolina Telephone Coalition Comment, p. iii.
[17] *See* Association Comment, pp. 2-3, notes 5-7 for docket citations.
[18] Pine Tree Networks Comment, p. 3.
[19] *Ibid.*
[20] Qwest Comment, p. 2.
[21] John Staurulakis, Inc., (JSI) Comment, p. iii, 7.

should occur in the context of the IP-Enabled Services docket, the Intercarrier Compensation docket, and the Universal Service dockets.

II. CONCLUSION

For all the reasons set forth in NTCA's initial comments, the Commission should either deny or delay ruling on the Time Warner petitions until the Commission addresses the fundamental issues as presented in the IP-Enabled Services, Intercarrier Compensation, and Universal Service dockets.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Gail Malloy, certify that a copy of the foregoing Reply Comments of the National Telecommunications Cooperative Association in WC Docket No. 06-54, DA 06-535, WC Docket No. 06-55, DA 06-534 was served on this 25th day of April 2006 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons.

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