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Federal Communications Commission  
Office of Secretary

Marlene H. Dortch  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

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**Re:** *Ex Parte Submission - WC Docket No. 06-54 - Petition of Time Warner Cable for Preemption Pursuant to Section 253 of the Communications Act, as Amended*

*Ex Parte Submission - WC Docket No. 06-55 - 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*

Dear Secretary Dortch:

IDT Telecom, Inc. ("IDT"), by its attorneys, hereby files this letter in support of the Petition for Preemption and the Petition for Declaratory Ruling filed by Time Warner Cable in the above-referenced matters.<sup>1/</sup> The Petitions filed by Time Warner Cable ask the Federal Communications Commission ("Commission") to (1) preempt a state commission ruling denying Time Warner Cable's affiliate state authority to offer services in areas of South Carolina served by rural incumbent local exchange carriers ("RLECs") and (2) declare that competitive local exchange carriers ("CLECs") may obtain interconnection from RLECs to provide telecommunications services to voice over Internet protocol ("VoIP") service providers.

IDT is a competitive carrier offering local, domestic interexchange, and international telecommunications services to customers located throughout the United States. IDT also provides access services and other telecommunications services to other carriers and VoIP service providers. Despite the Commission's prior findings regarding the intent of the Communications Act of 1934, as amended ("Act"), and the Commission's well-established rules and regulations, IDT is experiencing problems similar to those described by Time Warner Cable and by other commenters in these proceedings. For the reasons set forth below, IDT strongly urges the Commission to grant the Petitions filed by Time Warner Cable and enforce its rules against those carriers that are choosing to ignore them at the expense of American consumers.

<sup>1/</sup> *Petition of Time Warner Cable for Preemption Pursuant to Section 253 of the Communications Act, as Amended*, WC Docket No. 06-54, *Petition for Preemption* (filed Mar. 1, 2006) ("Time Warner Petition for Preemption"); *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 Provider*, WC Docket No. 06-55, *Petition for Declaratory Ruling* (filed Mar. 1, 2006) ("Time Warner Petition for Declaratory Ruling").

**Consumers in Rural Areas Deserve Competitive Alternatives**

Many competitive voice providers do not target rural areas and instead focus on more lucrative urban and suburban areas. VoIP service providers like Time Warner Cable and those served by IDT, however, are poised to bring competitive alternatives to consumers living in rural areas. Unfortunately, these VoIP service providers frequently are faced with insurmountable barriers to entry in their attempts to bring competition to these neglected regions of the country. As detailed by Time Warner Cable and other commenters in these proceedings, RLECs are refusing to exchange traffic with telecommunications carriers that serve VoIP service providers or provide the necessary facilities for interconnection, in direct violation of the law and Commission precedent.<sup>2/</sup> Moreover, rather than reject the RLECs' efforts to block competition, some state commissions instead have endorsed the RLECs' protectionist behavior.<sup>3/</sup> Competition is about providing consumers a choice in the marketplace. RLECs cannot be permitted to rob consumers of their right to choose by limiting who may lawfully exchange traffic with the RLEC. Consumers living in rural areas should not be denied their right to choose a competitive service provider because of RLEC actions that are based on unfounded and inaccurate interpretations of law.

The Act requires telephone companies to open their networks to competition,<sup>4/</sup> and requires state commissions to implement the Act's pro-competitive mandates.<sup>5/</sup> Yet, the RLECs' anticompetitive actions, in conjunction with erroneous state commission interpretations of the law, are dealing a substantial blow to competition in rural America. The purpose of the Act and the Commission's rules is to protect consumers from this kind of anticompetitive interference by carriers in the selection of service providers. It is precisely the types of obstacles outlined by Time Warner Cable and others that Congress intended to eliminate by mandating that the Commission promote the deployment of advanced services<sup>6/</sup> and remove any regulatory, economic, and operational impediments to competition.<sup>7/</sup> The rural voice market is one of the last frontiers of competition - if RLECs and state regulators are permitted to impose unlawful

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<sup>2/</sup> See, e.g., Reply Comments of Time Warner Cable in Support of Its Petition for Declaratory Ruling, WC Docket No. 06-55, at 13 (filed Apr. 25, 2006); Comments of Level 3 Communications, LLC in Support of Petition for Declaratory Ruling, WC Docket No. 06-55, at 2-3 (filed Apr. 10, 2006); Comments of Comcast Corporation, WC Docket No. 06-55, at 6 (filed Apr. 10, 2006).

<sup>3/</sup> See, e.g., Reply Comments of Time Warner Cable, WC Docket No. 06-54, at 1 (filed Apr. 25, 2006); Comments of Comcast Corporation, WC Docket No. 06-55, at 6 (filed Apr. 10, 2006).

<sup>4/</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499, ¶ 1 (1996) ("*Local Competition Order*") (intervening history omitted); *aff'd by AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

<sup>5/</sup> *Local Competition Order* ¶ 101 (determining that state commissions are bound by the regulations the Commission establishes under Section 251).

<sup>6/</sup> 47 U.S.C. § 157nt. The Commission has interpreted Section 706 as a directive to the Commission to further Congress's objective of opening all telecommunications markets to competition, including the market for advanced services. See *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 13 FCC Rcd 24011, ¶¶ 69-77 (1998).

<sup>7/</sup> *Local Competition Order* ¶ 3.

restraints on competitors, voice competition will never develop in these rural areas.<sup>8/</sup> Indeed, the problems Time Warner Cable and other VoIP service providers face effectively create a “digital divide” between those who can enjoy the benefits of VoIP service and those who cannot.<sup>9/</sup> Prompt Commission action is therefore needed to ensure that consumers in all areas of the United States receive the benefits of new and innovative product offerings as envisioned by Congress and the Commission.

### **The Law Supports Time Warner Cable’s Requests**

As Time Warner Cable points out, the actions of some state commissions have limited VoIP service providers’ ability to offer consumers a competitive alternative for voice services.<sup>10/</sup> Even more egregious, many RLECs are using these erroneous state commission decisions and a claimed “uncertainty” in the law resulting from the Petitions filed by Time Warner Cable to deny consumers in rural areas the benefits of a new competitive service offering. The RLECs are wrong. The retail/wholesale distinction created by the RLECs is a fiction designed to undermine the goals of the Act and deny the benefits of local competition and broadband deployment to consumers in order to maintain the RLECs’ monopolist status. The RLECs’ arguments ignore established federal law and misconstrue the plain language of the Act.

As the Commission has recognized, VoIP service providers must purchase telecommunications services from regulated telecommunications carriers like IDT in order to originate and terminate calls on the public switched network, access 911 services, obtain numbering resources, and port telephone numbers.<sup>11/</sup> By utilizing these types of arrangements, VoIP service providers have been able to enter the market quickly, without the need to enter into drawn-out negotiations with numerous RLECs and without the need to duplicate already existing interconnection facilities.<sup>12/</sup> The Section 251 services purchased by VoIP service providers are critical to the widespread availability of VoIP, other IP-enabled services, and information services.<sup>13/</sup>

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<sup>8/</sup> Comments of National Cable & Telecommunications Association, WC Docket Nos. 06-54, 06-55, at 5 (filed Apr. 10, 2006).

<sup>9/</sup> Initial Comments of the VON Coalition, WC Docket No. 06-55, at 3 (filed Apr. 10, 2006).

<sup>10/</sup> Time Warner Cable Petition for Declaratory Ruling at 2.

<sup>11/</sup> See, e.g., *IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, 20 FCC Rcd 10245, ¶ 38 (2005) (noting that VoIP service providers obtain 911 services from competitive local exchange carriers) (“*VoIP 911 Order*”); *Administration of the North American Numbering Plan*, 20 FCC Rcd 2957, ¶ 4 (2005) (discussing that VoIP service providers must partner with a local exchange carrier to obtain numbering resources); *IP-Enabled Services*, 19 FCC Rcd 4863, ¶ 12 (2004) (recognizing that VoIP service providers obtain telecommunications services from telecommunications carriers in order to provide services to the VoIP service provider’s customers); see also *VoIP 911 Order* ¶ 40 (stating that the FCC expects incumbent local exchange carriers to interconnect for the purposes of providing 911 services to VoIP service providers).

<sup>12/</sup> Time Warner Petition for Declaratory Ruling at 4.

<sup>13/</sup> Comments of Global Crossing North America, Inc., WC Docket No. 06-55, at 5 (filed Apr. 10, 2006).

The RLECs, however, claim that they are only required to exchange traffic or port telephone numbers to other carriers if such traffic or port requests originate from the carrier's retail end users.<sup>14/</sup> The RLECs fail to understand the legal definition of "end users." The provision of telecommunications service to a VoIP service provider is the provision of service to an end user. The FCC has explicitly stated that the provision of wholesale telecommunications services to entities like Time Warner Cable is considered the provision of telecommunications services to an end user by a telecommunications carrier.<sup>15/</sup> A VoIP service provider is a business end user when it purchases services from telecommunications carriers. In other words, when a telecommunications carrier like IDT carries a VoIP service provider's traffic and exchanges that traffic with RLECs, that traffic is to be treated like any other traffic carried by IDT, and IDT may properly use the interconnection arrangements it has established with other carriers in connection with that traffic. It is an entity's status as a "telecommunications carrier" and its provision of local exchange services that determines its entitlement to interconnection and services under Section 251, not the businesses of its end users.<sup>16/</sup>

There is nothing in Section 251 that relieves a RLEC of its obligation to interconnect and provide services to other telecommunications carriers simply because that telecommunications carrier is providing service to a customer that uses those services to offer other services to subscribers.<sup>17/</sup> Members of the alarm industry, mass calling service providers, enhanced service providers, and information service providers have been purchasing similar services for years for these same purposes pursuant to well-established Commission policies.<sup>18/</sup> RLECs, however, rarely refuse to provide services to these types of providers because these entities are not perceived as a threat to the RLECs' monopoly over voice communications, which further demonstrates how anticompetitive the RLECs' actions are in this regard. The Commission determined it was essential for alarm service providers and others to purchase components of ILEC networks to be able to "design offerings that utilize network services in a flexible and economical manner."<sup>19/</sup> The same reasoning equally applies to VoIP service providers who need

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<sup>14/</sup> See, e.g., Comments of the South Carolina Telephone Coalition, WC Docket No. 06-55, at 8-9 (filed Apr. 10, 2006).

<sup>15/</sup> *Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended*, 11 FCC Rcd 21905, ¶ 263 (1996) ("the definition of telecommunications services is intended to clarify that telecommunications services are common carrier services, which include wholesale services to other carriers").

<sup>16/</sup> *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, ¶ 785 (1997) (finding telecommunications services "include services offered to other carriers, such as exchange access service, which is offered on a common carrier basis, but is offered primarily to other carriers").

<sup>17/</sup> AT&T's Comments, WC Docket No. 06-55, at 2 (filed Apr. 10, 2006).

<sup>18/</sup> See, e.g., *Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer III)*, 104 FCC 2d 958, ¶ 214 (1986) (adopting open network architecture plans, which required incumbent carriers to separate key elements of their basic services into components and make those components available to enhanced service providers who could then use those components to build new services) (prior and subsequent history omitted).

<sup>19/</sup> *Id.*

to purchase network components from telecommunications carriers in order to design and offer their services.<sup>20/</sup>

### **IDT's Experience Demonstrates the Need for Commission Action**

IDT's experience supports the need for prompt Commission action. IDT provides underlying telecommunications services to a provider of VoIP services in Montana, including number portability capabilities. IDT has submitted several requests to port the telephone numbers of consumers that have elected to switch from a RLEC in Montana to the competitive VoIP offering. Although properly documented and made consistent with the requirements of the interconnection agreement between IDT and the RLEC, all of IDT's number portability requests were rejected by the RLEC. After numerous inquiries as to why the port requests were not being completed as required under the Commission's rules, the RLEC informed IDT that it had rejected IDT's requests on the sole ground that the RLEC believed that the port requests were not related to IDT's end users. As a result of the RLEC's refusal to honor IDT's number porting requests, Montana consumers living in the RLEC's area are unable to change service providers and port their telephone number from the RLEC to the provider and service of their choice. IDT has had similar issues with the same RLEC in Colorado.

Although IDT has filed a complaint against the rural ILEC with the Montana Public Service Commission and is considering filing a complaint in Colorado,<sup>21/</sup> action by the Commission is necessary to eliminate the need to engage in protracted litigation on a state-by-state basis to enforce rights that are well-established under the law.<sup>22/</sup> The RLEC is denying Montana and Colorado consumers the ability to exercise the right to port their numbers to the provider of their choice by engaging in the precise anticompetitive behavior the Commission's rules were designed to prevent. The Commission consistently has stated that number portability is a critical component of competition because consumers will be unlikely to switch providers if they cannot take their telephone number with them.<sup>23/</sup> A carrier's obligations to honor number

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<sup>20/</sup> While the Commission recently eliminated *Computer III* requirements for some services, the Commission stressed that its action was limited to wireline broadband Internet access service and its underlying broadband transmission component, which are not the types of services currently being purchased by VoIP service providers. See *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, et al.*, 20 FCC Rcd 10200, n.15 (2005).

<sup>21/</sup> IDT has attached copies of several pleadings filed in the ongoing Montana proceeding, as well as a complete index of the filings made to date. IDT is happy to provide copies of additional filings upon request.

<sup>22/</sup> See, e.g., *Local Competition Order* ¶ 56 ("Further, national rules will reduce the need for competitors to revisit the same issue in 51 different jurisdictions, thereby reducing administrative burdens and litigation for new entrants and incumbents."); *Petition for Declaratory Ruling that pulver.com's Free World Dialup Is Neither Telecommunications Nor a Telecommunications Service*, 19 FCC Rcd 3307, ¶ 25 (2004) (finding that "requiring Pulver to submit to more than 50 different regulatory regimes as soon as it did so would eliminate this fundamental advantage of IP-based communication"); *Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, 19 FCC Rcd 22404, ¶ 35 (2004) ("in interpreting section 230's phrase 'unfettered by Federal or State regulation,' we cannot permit more than 50 different jurisdictions to impose traditional common carrier economic regulations such as Minnesota's on DigitalVoice and still meet our responsibility to realize Congress's objective").

<sup>23/</sup> See, e.g., *Telephone Number Portability*, 12 FCC Rcd 12281, ¶ 4 (1997).

portability requests do not depend on whether the carrier requesting the port offers wholesale or retail services. There is no question that all local exchange carriers, including RLECs, are required to interconnect and exchange traffic with, and port telephone numbers to, other carriers.<sup>24/</sup> Competitive providers like IDT should not be required to resort to litigation simply to obtain the rights they are entitled to under the law.<sup>25/</sup> The RLEC's refusal to implement IDT's port requests is a direct violation of state and federal local number portability regulations designed to protect consumers and in contravention of state and federal pro-competitive policies.<sup>26/</sup>

### **Ongoing Proceedings Confirm the Need for Prompt Commission Action**

Several states, including New York, Illinois, Iowa, and Ohio, have correctly ruled that an authorized carrier providing services to a VoIP service provider is deemed to be a telecommunications carrier with rights under Sections 251.<sup>27/</sup> These state commission rulings are consistent with the Commission's long-standing regulatory treatment of carriers<sup>28/</sup> and are

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<sup>24/</sup> Comments of Verizon, WC Docket Nos. 06-54, 06-55, at 3 (filed Apr. 10, 2006).

<sup>25/</sup> Joint Comments of BridgeCom International, Inc., Broadview Networks, Inc. CTC Communications Corp., NuVox Communications, Xspedius Communications LLC, and COMPTel, WC Docket No. 06-55, at 2 (filed Apr 10, 2006).

<sup>26/</sup> See, e.g., *Telephone Number Portability - Carrier Requests for Clarification of Wireless-Wireless Porting Issues*, 18 FCC Rcd 20971, ¶ 11 (2003) (finding that consumers must be able to change carriers while keeping their telephone number as easily as they may change carriers without taking their telephone number with them).

<sup>27/</sup> Case 05-C-0170, *Petition of Sprint Communications Company L. P., Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Intercarrier Agreement with Independent Companies*, Order Resolving Arbitration Issues (N.Y.P.S.C. May 24, 2005) ("New York Order"), on appeal *Berkshire Telephone Corp. v. Sprint Communications Co. L.P.*, Civ Action No. 05-CV-6502 (CJS) (MWP) (W.D.N.Y. filed Sept. 26, 2005); Case Nos. 050259, et al., *Cambridge Telephone Company, et al. Petitions for Declaratory Relief and/or Suspensions for Modification Relating to Certain Duties under §§ 251(b) and (c) of the Federal Telecommunications Act*, Order (I.C.C. July 13, 2005), appeal pending Case No. 3:06-CV-00073, GPM-DGW, *Harrisonville Telephone Company, et al. v. Illinois Commerce Commission, et al.*, Complaint for Declaratory and Other Relief (S.D. Ill. filed Jan. 26, 2006), Motion for Preliminary Injunction and Expedited Discovery (S.D. Ill. filed Aug. 16, 2006); Docket No. ARB-05-02, *Arbitration of Sprint Communications Co. v. Ace Communications Group, et al.*, Order on Rehearing (I.U.B. Nov. 28, 2005); Case Nos. 04-1494-TP-UNC, et al., *Application and Petition in Accordance with Section II.A.2.b of the Local Service Guidelines Filed by: The Champaign Telephone Co., Telephone Services Co., the Germantown Independent Telephone Co., and Doylestown Telephone Co.*, Finding and Order (P.U.C.O. Jan. 26, 2005) ("Ohio Order"), reh'g denied in pertinent part, Order on Rehearing (P.U.C.O. Apr. 13, 2005).

<sup>28/</sup> See, e.g., *Regulatory and Policy Problems Presented by the Interdependence of Computer and Communication Services and Facilities*, 28 FCC 2d 267 (1971) (*Computer I Final Decision*), aff'd in part sub nom. *GTE Service Corp. v. FCC*, 474 F.2d 724 (2d Cir. 1973), decision on remand, 40 FCC 2d 293 (1973) (collectively referred to as *Computer I*); *Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer II)*, 77 FCC 2d 384 (1980) (*Computer II Final Decision*), recon., 84 FCC 2d 50 (1980) (*Computer II Reconsideration Order*), further recon., 88 FCC 2d 512 (1981) (*Computer II Further Reconsideration Order*), aff'd sub nom. *Computer and Communications Industry Ass'n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982) (*CCIA v. FCC*), cert. denied, 461 U.S. 938 (1983) (collectively referred to as *Computer II*); *Amendment of Section 64.702 of the Commission's Rules and Regulations*, 104 FCC 2d 958 (1986) (*Computer III Phase I Order*), recon., 2 FCC Rcd 3035 (1987) (*Computer III Phase I Reconsideration Order*), further recon., 3 FCC Rcd 1135 (1988) (*Computer III Phase I Further Reconsideration Order*), second further recon., 4 FCC Rcd 5927 (1989) (*Computer III Phase I Second Further*

squarely at odds with the South Carolina and Nebraska rulings discussed by Time Warner Cable in its Petitions. In contrast to South Carolina and Nebraska, the Commission and these state commissions have found that the telecommunications services provided to VoIP service providers and other providers of services requiring telecommunications services as an input to offering those services are well within the scope of what telecommunications carriers commonly do and are “no different than [the services] performed by other competitive local exchange carriers.”<sup>29/</sup> As a result, these state commissions have determined that telecommunications carriers offering services to VoIP service providers were entitled to interconnection, number portability, and other rights under Sections 251 because those telecommunications carriers were “acting in a role no different than other telecommunications carriers whose network could interconnect with [ILECs] so that traffic is terminated to and from each network and across networks.”<sup>30/</sup>

A ruling from the Commission affirming the well-established law on these issues would ensure a consistent national application of federal law.<sup>31/</sup> Such a ruling is even more critical in light of the numerous recently decided and pending proceedings that are threatening the promotion of local competition and the deployment of a national broadband policy.<sup>32/</sup> For example, Sprint recently filed a complaint against Iowa Telecom alleging that Iowa Telecom refused to interconnect with Sprint because Sprint was providing underlying telecommunications services to MCC Telephony, a VoIP service provider in Iowa.<sup>33/</sup> Likewise, Sprint has a case pending in Texas with another RLEC that has refused to negotiate the interconnection agreement

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*Reconsideration Order*); *Phase I Order and Phase I Recon. Order vacated sub nom. California v. FCC*, 905 F.2d 1217 (9th Cir. 1990) (*California I*); 2 FCC Rcd 3072 (1987) (*Computer III Phase II Order*), *recon.*, 3 FCC Rcd 1150 (1988) (*Computer III Phase II Reconsideration Order*), *further recon.*, 4 FCC Rcd 5927 (1989) (*Phase II Further Reconsideration Order*); *Phase II Order vacated, California I*, 905 F.2d 1217 (9th Cir. 1990); *Computer III Remand Proceeding*, CC Docket No. 90-368, 5 FCC Rcd 7719 (1990) (*ONA Remand Order*), *recon.*, 7 FCC Rcd 909 (1992), *pets. for review denied sub nom. California v. FCC*, 4 F.3d 1505 (9th Cir. 1993) (*California II*); *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards*, 6 FCC Rcd 7571 (1991) (*BOC Safeguards Order*), *BOC Safeguards Order vacated in part and remanded sub nom. California v. FCC*, 39 F.3d 919 (9th Cir. 1994) (*California III*), *cert. denied*, 514 U.S. 1050 (1995); *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services*, 10 FCC Rcd 8360 (1995) (*Computer III Further Remand Notice*), *Further Notice of Proposed Rulemaking*, 13 FCC Rcd 6040 (1998) (*Computer III Further Remand Further Notice*); 14 FCC Rcd 4289 (1999) (*Computer III Further Remand Order*), *recon.*, 14 FCC Rcd 21628 (1999) (*Computer III Further Remand Reconsideration Order*); *see also Further Comment Requested to Update and Refresh Record on Computer III Requirements*, 16 FCC Rcd 5363 (2001) (collectively referred to as *Computer III*). Together with *Computer I*, *Computer II* and *Computer III* are referred to as the “*Computer Inquiries*.”

<sup>29/</sup> *New York Order* at 5; *see also supra* nn.15-16, 27.

<sup>30/</sup> *Ohio Order* at 4-5, ¶ 7; *see also supra* n.27.

<sup>31/</sup> Time Warner Cable Petition for Declaratory Ruling at 2.

<sup>32/</sup> *See supra* n.27; *see also* Appendix (providing an overview of pending state and court proceedings of relevance to the issues raised by Time Warner Cable before the Commission).

<sup>33/</sup> Docket No. FCU-06-49 (ARB-05-2), *Sprint Communications Company L.P. and MCC Telephony of Iowa LLC, Complainant, vs. Iowa Telecommunications Services d/b/a Iowa Telecom, Respondent*, Motion to Enforce Arbitration Agreement (Expedited Relief Requested) or in the Alternative Complaint (Expedited Proceeding Required) (I.U.B. filed July 24, 2006).

with Sprint that Sprint needs to provide telecommunications services to Time Warner Cable.<sup>34/</sup> In addition, the appeal of the New York commission decision discussed above is pending in federal district court in New York.<sup>35/</sup> The risk of additional decisions upholding RLECs' refusals to interconnect and provide other services to wholesale telecommunications providers threatens to significantly delay the development of competition in rural areas. The conflicting interpretations of federal law by state commissions therefore warrant prompt Commission action on Time Warner Cable's Petitions.<sup>36/</sup>

For the foregoing reasons, IDT respectfully requests that the Commission grant Time Warner Cable's Petitions on an expedited basis to ensure that VoIP service providers can obtain the telecommunications inputs they require to offer service and that consumers in rural areas have unfettered access to the competitive service offering of their choice.

Respectfully submitted,



Chérie R. Kiser  
Angela F. Collins

Counsel for IDT Telecom, Inc.

Attachments

cc: Michelle Carey (via email and hand delivery)  
Scott Deutchman (via email and hand delivery)  
Scott Bergmann (via email and hand delivery)  
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Marcus Maher (via email and hand delivery)  
Jeremy Miller (via email and hand delivery)  
Jennifer Schneider (via email and hand delivery)

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<sup>34/</sup> See generally PUC Docket No. 31577, *Petition of Sprint Communications Company, L.P. for Compulsory Arbitration under the FTA to Establish Terms and Conditions for Interconnection Terms with Consolidated Communications of Fort Bend Company* (Tx. P.U.C.).

<sup>35/</sup> *Berkshire Telephone Corp. v. Sprint Communications Co. L.P.*, Civ Action No. 05-CV-6502 (CJS) (MWP) (W.D.N.Y. filed Sept. 26, 2005).

<sup>36/</sup> Comments of National Cable & Telecommunications Association, WC Docket Nos. 06-54, 06-55, at 7 (filed Apr. 10, 2006).

## APPENDIX

### **Overview of Pending State and Court Proceedings of Relevance to Issues Raised by Time Warner Cable before the FCC**

In 2004, the President of the United States issued a directive that the mandates of the Communications Act of 1934, as amended (“Act”), requiring “the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans”<sup>1/</sup> be fully implemented by 2007, with “broadband technology to every corner of our country by the year 2007.”<sup>2/</sup> As we approach 2007, state actions are undermining the realization of the President’s goal.

The following is a list of several pending state and court proceedings addressing many of the same issues Time Warner Cable has raised before the Federal Communications Commission (“FCC”), including the refusal by rural incumbent local exchange carriers (“RLECs”) to interconnect with telecommunications carriers providing services to voice over Internet protocol (“VoIP”) service providers and claims by RLECs that when telecommunications providers offer such services they are no longer “telecommunications carriers” entitled to exercise their rights under Sections 251 and 252 of the Act.

#### Illinois

In July 2005, the Illinois Commerce Commission (“ICC”) rejected arguments by several RLECs that Sprint was not a “telecommunications carrier” under the Act because Sprint was not serving end user customers (Sprint was supporting the VoIP services to be provided by MCC Telephony, which is the Mediacom entity providing VoIP services).<sup>3/</sup> The ICC found that Sprint was a telecommunications carrier and was entitled to interconnect with the RLECs pursuant to Sections 251(a) and 251(b) of the Act.

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<sup>1/</sup> 47 U.S.C. § 157nt.

<sup>2/</sup> *A New Generation of American Innovation*, at 11 (April 2004), available at [http://www.whitehouse.gov/infocus/technology/economic\\_policy200404/innovation.pdf](http://www.whitehouse.gov/infocus/technology/economic_policy200404/innovation.pdf) (“This country needs a national goal for...the spread of broadband technology. We ought to have...universal, affordable access for broadband technology by the year 2007, and then we ought to make sure as soon as possible thereafter, consumers have got plenty of choices when it comes to [their] broadband carrier.”); see also President George W. Bush, Remarks to American Association of Community Colleges Annual Convention (Apr. 26, 2004), available at <http://www.whitehouse.gov/news/releases/2004/04/20040426-6.html> (stating that “[b]roadband is going to spread because it’s going to make sense for private sector companies to spread it so long as the regulatory burden is reduced — in other words, so long as policy at the government level encourages people to invest, not discourages investment”).

<sup>3/</sup> Case Nos. 05-0259, *et al.*, *Cambridge Telephone Company, et al. Petitions for Declaratory Relief and/or Suspensions for Modification Relating to Certain Duties under §§ 251(b) and (c) of the Federal Telecommunications Act*, Order (I.C.C. July 13, 2005).

**Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.**

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Subsequently, Sprint filed a petition for arbitration against the RLECs. One group of RLECs filed a motion to dismiss arguing that the ICC did not have jurisdiction over the services because they were VoIP services (another group of RLECs filed a motion to dismiss arguing that Sprint was not a telecommunications carrier, and thus, did not have rights under Sections 251 and 252, but those RLECs later reached an interconnection agreement with Sprint). The ICC ruled that the issues raised by the RLECs had been resolved in its July 2005 decision, and determined that the RLECs were required to interconnect with Sprint.<sup>4/</sup>

The RLECs appealed both ICC decisions to federal district court in January 2006, and more recently asked for the issuance of a preliminary injunction.<sup>5/</sup> The RLECs contend that Sprint is not acting as a telecommunications carrier in connection with its provision of services to MCC Telephony. There is a hearing on the appeal scheduled in October 2006. Presumably, the consumers located in the service territory covered by these RLECs continue to be denied the benefits of local competition and access to broadband services as intended by the Act.

### Iowa

In late 2004, Sprint requested interconnection from Iowa Telecom and later filed a petition for arbitration with the Iowa Utilities Board ("Board"). Iowa Telecom filed a motion to dismiss alleging that Sprint was not a telecommunications carrier because Sprint was only providing service to MCC Telephony (which is the Mediacom entity providing VoIP services). The Board granted Iowa Telecom's motion to dismiss,<sup>6/</sup> and Sprint appealed the Board ruling to federal district court.<sup>7/</sup> While the appeal was pending, the Board reconsidered its previous ruling and found that Sprint is a telecommunication carrier and is entitled to interconnection, and reopened the prior arbitration proceedings. The Board issued its arbitration order and directed the parties to file an agreement within a short time.<sup>8/</sup>

On the day the interconnection agreement between Sprint and Iowa Telecom was deemed approved under the Board's rules, Iowa Telecom sent a letter to Sprint to terminate the interconnection agreement. Although the Sprint-Iowa Telecom interconnection agreement was effective, Iowa Telecom refused to process Sprint's orders for interconnection facilities or to

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<sup>4/</sup> Case 05-0402, *Sprint Communications L.P. d/b/a Sprint Communications Company L.P. Petition for Consolidated Arbitration with Certain Illinois Incumbent Local Exchange Carriers pursuant to Section 252 of the Telecommunications Act of 1996*, Arbitration Decision (I.C.C. Nov. 8, 2005).

<sup>5/</sup> Case No. 3:06-CV-00073-GPM-DGW, *Harrisonville Telephone Company, et al. v. Illinois Commerce Commission, et al.*, Complaint for Declaratory and Other Relief (S.D. Ill. filed Jan. 26, 2006); Motion for Preliminary Injunction and Expedited Discovery (S.D. Ill. filed Aug. 16, 2006).

<sup>6/</sup> Docket No. ARB-05-2, *Sprint Communications Company L.P. v. Ace Communications Group, et al.*, Order Granting Motions to Dismiss (I.U.B. May 26, 2005).

<sup>7/</sup> Case No. 4:05-CV-00354, *Sprint Communications Company L.P. v. Iowa Utilities Board*, Complaint (S.D. Iowa filed June 23, 2005).

<sup>8/</sup> Docket No. ARB-05-2, *Sprint Communications Company L.P. v. Ace Communications Group, et al.*, Order on Rehearing (I.U.B. Nov. 28, 2005).

exchange traffic with Sprint. As a result, MCC Telephony could not market its services in Iowa Telecom territory.

In July 2006, Sprint and MCC Telephony filed a complaint with the Board alleging that Iowa Telecom refused to interconnect with Sprint, which prevented MCC Telephony from providing VoIP services.<sup>9/</sup> Sprint and MCC Telephony claim that Iowa Telecom is violating the Board approved interconnection agreement, the order approving the agreement, and Iowa interconnection and discrimination regulations, and have requested a preliminary injunction and emergency relief. On September 6, the Board rejected Sprint's request for a preliminary injunction and emergency relief, and instead determined it would render its decision on the merits by October 20, 2006.<sup>10/</sup> The Board found that granting the preliminary injunction would give Sprint the relief it was requesting without trying the case. The Board conducted hearings on the complaint and briefs were filed on September 22. Due to Iowa Telecom's failure to abide by its obligations under the law, consumers in Iowa Telecom's territory have been denied the benefits of local competition and access to broadband services since late 2004.

### New York

In February 2005, Sprint filed a petition for arbitration against twelve RLECs. In response, the RLECs claimed that Sprint was not a telecommunications carrier because it was not an ultimate provider of end user services, and thus the RLECs' Section 251(a) and Section 251(b) duties were not triggered. The New York Public Service Commission ("PSC") disagreed, and found that Sprint meets the definition of telecommunications carrier and is entitled to interconnect with the RLECs.<sup>11/</sup> Most of the RLECs appealed the New York PSC's decision to federal district court.<sup>12/</sup> Oral arguments on summary judgment motions were held in mid-September and the case is pending. Hopefully, for the sake of consumers, the benefits of local competition and access to broadband services are not being denied pending this appeal.

### North Carolina

In March 2006, Time Warner Cable Information Services (North Carolina), LLC ("Time Warner") filed a petition for arbitration with the North Carolina Rural Electrification Authority ("REA") against three RLECs. In addition to the petitions for arbitration, Time Warner filed petitions to terminate the RLECs' rural exemptions to the extent the REA determined that Time

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<sup>9/</sup> Docket No. FCU-06-49 (ARB-05-2), *Sprint Communications Company L. P. and MCC Telephony of Iowa, LLC v. Iowa Telecommunications Services d/b/a Iowa Telecom*, Motion to Enforce Arbitration Agreement or in the Alternative Complaint (I.U.B. filed July 24, 2006).

<sup>10/</sup> Docket No. FCU-06-49 (ARB-05-2), *Sprint Communications Company L. P. and MCC Telephony of Iowa, LLC v. Iowa Telecommunications Services d/b/a Iowa Telecom*, Order Denying Preliminary Injunction (I.U.B. Sept. 5, 2006).

<sup>11/</sup> Cases 05-C-0170, 05-C-0183, *Petition of Sprint Communications Company L.P., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Independent Companies, et al.*, Order Resolving Arbitration Issues (N.Y.P.S.C. May 24, 2005), Order Denying Rehearing (N.Y.P.S.C. Aug. 24, 2005).

<sup>12/</sup> Case 05-CV-6502, *Berkshire Telephone Corp., et al. v. Sprint Communications Company L.P.*, Complaint (W.D.N.Y. filed Sept. 26, 2005).

Warner's interconnection request implicated the exemption. The RLECs filed motions to dismiss the arbitration and termination petitions arguing that Time Warner was not a telecommunications carrier and thus did not have a right to request interconnection, file for arbitration, or petition to have the rural exemption terminated. In July 2006, the REA issued an order granting the motions to dismiss. The REA found that Time Warner was not a telecommunications carrier and did not have rights to seek interconnection under Section 251 or pursue arbitration under Section 252.<sup>13/</sup> Given that ruling, the REA determined it was not required to reach the issue of termination of the rural exemption. Thus, consumers living in the areas of North Carolina served by these RLECs have been denied the benefits of local competition and access to broadband services despite the mandates of the Act.

### Texas

In September 2005, Sprint filed petitions for arbitration against several Consolidated Communications entities. In light of the decision issued by the Texas Public Utilities Commission ("PUC") in the *Brazos* proceeding finding that Brazos' rural exemption must be terminated prior to the filing of an arbitration petition<sup>14/</sup> and the federal court's ruling upholding that decision,<sup>15/</sup> in March 2006, Sprint filed a petition seeking to terminate Consolidated Communications' rural exemption. In reply, Consolidated argued that Sprint had no standing to request termination of the exemption because Sprint did not serve end user, retail customers and because the FCC had preempted the Texas PUC's jurisdiction over VoIP traffic. The Texas PUC granted Sprint's request, and ordered Consolidated to enter into arbitration with Sprint to reach an interconnection agreement.<sup>16/</sup> Sprint then filed an amended petition for arbitration on September 11, 2006, and the arbitration is pending before the Texas PUC. Presumably, the consumers located in the service territory covered by these RLECs continue to be denied the benefits of local competition and access to broadband services as intended by the Act.

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<sup>13/</sup> Docket Nos. TMC-1, Sub 1, TMC-3, Sub 1, TMC-5, Sub 1, *Petition of Time Warner Cable Information Services (North Carolina), LLC for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended, to Establish Interconnection Agreements with Atlantic, Randolph, and Star Telephone Membership Corporations, et al.*, Order Consolidating and Dismissing Proceedings (N.C.R.E.A. July 19, 2006).

<sup>14/</sup> PUC Docket No. 31038, *Petition of Sprint Communications Company L.P. for Compulsory Arbitration under the FTA to Establish Terms and Conditions for Interconnection Terms with Brazos Telecommunications Inc.*, Order No. 1 Granting Motion to Dismiss (Tx. P.U.C. June 14, 2005); Order Denying Sprint's Appeal of Order No. 1 (Tx. P.U.C. Dec. 2, 2005).

<sup>15/</sup> Case No. A-05-CA-065-SS, *Sprint Communications Company L.P. vs. The Public Utility Commission of Texas, et al.*, Order (W.D. Tx. Aug. 14, 2006), *appeal filed*, Notice of Appeal (W.D. Tx. filed Sept. 11, 2006).

<sup>16/</sup> PUC Docket No. 32582, *Petition of Sprint Communications Company L.P. to Terminate Rural Exemption as to Consolidated Communications of Fort Bend Company and Consolidated Communications of Texas Company*, Order (Tx. P.U.C. Aug. 14, 2006).

**Index of Filings  
 IDT-CenturyTel Complaint Proceeding in Montana  
 Docket No. D2006.8.121**

<b>FILINGS ATTACHED</b>	
1.	IDT Amended Complaint and Petition for Expedited Complaint Proceeding (August 21, 2006)
2.	CenturyTel Response to Amended Complaint and Petition for Expedited Complaint Proceeding (September 18, 2006)
3.	IDT Petition Seeking Interim Order (August 31, 2006)
4.	CenturyTel Response and Opposition to Petition Seeking Interim Order (September 8, 2006)
5.	IDT Reply to CenturyTel Opposition to IDT Petition Seeking an Interim Order (September 12, 2006)
<b>OTHER FILINGS MADE IN DOCKET</b>	
	IDT Complaint and Petition for Expedited Complaint Proceeding on behalf of IDT America, Corp. (August 16, 2006)
	Montana Consumer Counsel Petition for Intervention (September 5, 2006)
	Montana Consumer Counsel Comments in Support of IDT Petition for Interim Relief (September 8, 2006)
	CenturyTel Response to the Montana Consumer Counsel on the Issue of IDT Petition Seeking Interim Order (September 12, 2006)
	CenturyTel Statement of Facts (September 18, 2006)
	IDT Statement of Facts (September 18, 2006)
	CenturyTel Errata Correction to CenturyTel Response to Amended Complaint (September 19, 2006)
	IDT Reply to CenturyTel Response to Amended Complaint and Petition for Expedited Complaint Proceeding (September 21, 2006)
	CenturyTel Motion to Dismiss Petition for Expedited Complaint Proceeding (September 21, 2006)
	IDT Data Requests to CenturyTel (September 25, 2006)
	Montana Consumer Counsel Data Requests to CenturyTel (September 25, 2006)
	CenturyTel Data Requests to IDT (September 25, 2006)
	Staff Data Requests to IDT and CenturyTel (September 25, 2006)



August 21, 2006

Kate Whitney  
Public Service Commission  
1701 Prospect Avenue  
P. O. Box 202601  
Helena, MT 59620-2601

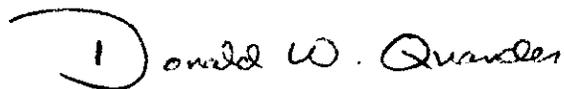
Re: Amended Complaint And Petition For Expedited Complaint Proceeding  
on behalf of IDT America, Corp.

Dear Ms. Whitney:

Please find enclosed for filing with the Commission the Amended Complaint and Petition for Expedited Complaint Proceeding of IDT America, Corp. against CenturyTel of Montana, Inc.

This Amended Complaint and Petition is being mailed to the parties identified on the Certificate of Service enclosed. If you have any questions, please contact me at (406) 252-2166.

Very truly yours,



Donald W. Quander  
of Holland & Hart LLP

DWQ:asf  
Enclosures  
cc: Service List

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Holland & Hart LLP

Phone [406] 252-2166 Fax [406] 252-1669 [www.hollandhart.com](http://www.hollandhart.com)

401 North 31st Street Suite 1500 Billings, MT 59101 Mailing Address P.O. Box 639 Billings, MT 59103-0639

Aspen Billings Boise Boulder Cheyenne Colorado Springs Denver Denver Tech Center Jackson Hole Salt Lake City Santa Fe Washington, D.C. 

**DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA**

IN THE MATTER OF CENTURYTEL OF ) UTILITY DIVISION  
MONTANA, INC., Complaint by IDT America, )  
Corp. Pertaining to CenturyTel's Violation of )  
State and Federal Regulations and Breach of ) Docket No. \_\_\_\_\_  
Interconnection Agreement )

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**CERTIFICATE OF SERVICE**

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I hereby certify that I have caused copies of the Amended Complaint And  
Petition For Expedited Complaint Proceeding on behalf of IDT America, Corp. to be  
served by first class mail, postage prepaid, on this date to the parties as shown below:

**VIA OVERNIGHT MAIL**

Kate Whitney (original plus 10)  
Public Service Commission  
1701 Prospect Avenue  
P. O. Box 202601  
Helena, MT 59620-2601

**VIA OVERNIGHT MAIL**

CenturyTel, Inc.  
Attn: Carrier Relations  
100 CenturyTel Drive  
Monroe, LA 71203

**VIA OVERNIGHT MAIL**

Carrier Relations  
CenturyTel  
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Vancouver, WA 98660

**VIA OVERNIGHT MAIL**

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Thor A. Nelson  
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8390 E. Crescent Parkway  
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Respectfully submitted this 21st day of August, 2006.

**IDT America, Corp.**

By: Donald W. Quander  
Donald W. Quander  
Holland & Hart LLP  
401 North 31st Street  
Suite 1500  
P. O. Box 639  
Billings, Montana 59103-0639  
(406) 252-2166

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DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

\*\*\*\*\*

IN THE MATTER OF CENTURYTEL OF	)	UTILITY DIVISION
MONTANA, INC., Complaint by IDT America,	)	
Corp. Pertaining to CenturyTel's Violation of	)	Docket No. _____
State and Federal Regulations and Breach of	)	
Interconnection Agreement	)	

AMENDED COMPLAINT AND PETITION FOR EXPEDITED COMPLAINT PROCEEDING

1. IDT America, Corp. ("IDT") files this Amended Complaint<sup>1/</sup> and Petition for Expedited Complaint Proceeding with the Public Service Commission of the state of Montana ("Commission") against CenturyTel of Montana, Inc. ("CenturyTel") based on CenturyTel's continuing and willful violations of state and federal laws pertaining to local number portability ("LNP") and breach of its Interconnection Agreement dated March 31, 2006 ("Agreement") with IDT in Montana. This Complaint and Petition for Expedited Complaint Proceeding is being filed pursuant to Mont. Code Ann. § 69-3-830. Attached as Exhibit A is IDT 's Expedited Complaint Statement setting forth the issues presented for the Commission's review.

PARTIES

2. IDT is a registered telecommunications provider in Montana authorized to provide facilities-based and resale local exchange services, resale long distance service, and commercial mobile radio service in Montana.

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<sup>1/</sup> Mont. Admin. Register § 38-5-4074.

3. CenturyTel is a registered telecommunications provider in Montana and a “rural telephone company,” as that term is defined in the Telecommunications Act of 1996 (“Act”).<sup>21</sup> CenturyTel provides facilities-based local exchange services in the Flathead Valley of Montana, including Kalispell, Montana.

#### BACKGROUND OF COMPLAINT

4. CenturyTel and IDT entered into the Agreement on March 31, 2006 (Exhibit B). The Commission approved the Agreement by order dated July 11, 2006 (“*Commission Order*”) (Exhibit C). On or about July 11th and 12th, IDT submitted several requests to port the local telephone numbers of consumers that have elected to switch from CenturyTel to Bresnan Digital Services, LLC’s (“Bresnan”) VoIP offering. IDT serves as Bresnan’s LEC for purposes of, among other things, porting numbers and providing access to the public switch telephone network (“PSTN”). These services are similar to those purchased by other end user business customers such as AOL. All of IDT’s LNP requests related to the services provided by IDT to Bresnan are being rejected by CenturyTel. After several unsuccessful attempts by IDT to resolve the matter, on July 17, 2006, IDT received a letter from CenturyTel stating that CenturyTel would not honor IDT’s LNP requests because CenturyTel had “reason to believe” that the LNP requests “were not related to IDT’s end users” (“CenturyTel Letter”) (Exhibit D).

5. By letter dated July 19, 2006 (“IDT Notice”) (Exhibit E), IDT informed CenturyTel of its legal obligation to port the requested numbers and provided notice that if CenturyTel continued to refuse to port numbers, IDT would pursue all legal remedies available to it. Those remedies include the filing of this Complaint and Petition for Expedited Complaint

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<sup>21</sup> 47 U.S.C. § 153.

Proceeding. On July 20, 2006, in a final attempt to resolve this matter without involving the Commission, IDT called CenturyTel's counsel to discuss the issue and reiterate that IDT would initiate regulatory proceedings if CenturyTel continued to violate its duty to port. To date, CenturyTel has refused to execute the requested ports for its Montana customers. As a result of CenturyTel's refusal to honor IDT's LNP requests, CenturyTel's customers are not able to port numbers from CenturyTel to the provider of their choice. CenturyTel is in violation of its statutory duty to port numbers and has breached its Agreement with IDT to provide local number portability in response to a porting request.

6. Although IDT has, in good faith provided CenturyTel with ample opportunity to cure its continued and willful violation of applicable laws and breach of its interconnection agreement, CenturyTel has failed to do so. As a result, by letter dated August 11, 2006, IDT provided a second notice ("IDT Second Notice") to CenturyTel stating that IDT is, in fact, pursuing a petition to initiate an expedited complaint proceeding against CenturyTel with the Public Service Commission of the State of Montana in accordance with Mont. Code Ann. § 69-3-830 (Exhibit F).

#### **COMMISSION'S JURISDICTION OVER COMPLAINT**

7. The Commission has jurisdiction over interconnection and exchange access disputes pursuant to Mont. Code Ann. §§ 69-3-831 *et seq.* In addition, the Commission has authority to supervise, regulate and control public utilities.<sup>3/</sup> CenturyTel is a public utility offering regulated telecommunications services in the State of Montana.<sup>4/</sup> The Commission has authority to do all things necessary and convenient in the exercise of the powers granted to it by

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<sup>3/</sup> Mont. Code Ann. § 69-3-102.

<sup>4/</sup> Mont. Code Ann. § 69-3-101.

the Montana Legislature and to regulate the mode and manner of all investigations and hearings *of public utilities and other parties before it.*<sup>5/</sup>

## ARGUMENT

### **I. CENTURYTEL IS DENYING CONSUMERS THEIR RIGHT TO PORT THEIR LOCAL TELEPHONE NUMBERS IN VIOLATION OF STATE AND FEDERAL LAW.**

#### **A. CenturyTel's Refusal to Port is Contrary to State and Federal Policies Promoting Competition and Advancement of New Technologies.**

8. The Telecommunications Act of 1996 ("Act") provides "for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."<sup>6/</sup> In particular, § 251(b) of the Act imposes specific obligations on all local exchange carriers ("LECs") to open their networks to competitors.<sup>7/</sup> A critical component of that goal is the ability of *consumers* to keep their telephone numbers when switching to a new service provider.<sup>8/</sup> Congress determined that "the ability to change service providers is only meaningful if a customer can retain his or her local telephone number."<sup>9/</sup>

9. Section 251(b)(2) of the Act thus requires that all local exchange carriers provide number portability, to the extent technically feasible, in accordance with the requirements

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<sup>5/</sup> Mont. Code Ann. § 69-3-103.

<sup>6/</sup> S. CONF. REP. NO. 104-230, at 1 (1996).

<sup>7/</sup> 47 U.S.C. § 251(b).

<sup>8/</sup> *In re Telephone Number Portability*, First Report and Order & Further Notice of Proposed Rulemaking, 11 FCC Rcd. 8352 ¶ 2 (1996) ("*First Report and Order*") ("Number portability is one of the obligations that Congress imposed on all local exchange carriers, both incumbents and new entrants, in order to promote the pro-competitive, deregulatory markets it envisioned. Congress has recognized that number portability will lower barriers to entry and promote competition in the local exchange marketplace").

<sup>9/</sup> *Id.* (citing House of Rep. Comm. on Commerce Report on H.R. 1555 at 72 (July 24, 1995) ("*House Report*").

prescribed by the Federal Communications Commission ("FCC"). LNP is defined as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."<sup>10/</sup> As the FCC stated:

"The ability of end users to retain their telephone numbers when changing service providers gives customers flexibility in the quality, price, and variety of telecommunications services they can choose to purchase. Number portability promotes competition between telecommunications service providers by, among other things, allowing customers to respond to price and service changes without changing their telephone numbers. The resulting competition will benefit all users of telecommunications services. Indeed, competition should foster lower local telephone prices and, consequently, stimulate demand for telecommunications services and increase economic growth."<sup>11/</sup>

Pursuant to FCC rules, "any wireline carrier that is certified (or has applied for certification) to provide local exchange service in any state ... *must* be permitted to make a request for deployment of number portability."<sup>12/</sup> (Emphasis added).

10. The Montana Telecommunications Act ("Montana Act")<sup>13/</sup> shares Congress' pro-competitive policy. In an effort to promote competition and advance new technologies pursuant to the Montana Act, the Commission requires that "[a]ll facilities-based LECs shall provide number portability so that end users may retain the same telephone number as they change from one service provider to another as long as they remain at the same location or if moving, retain the same NXX code."<sup>14/</sup> Adopting the 1996 Act's definition of number portability, the Montana

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<sup>10/</sup> 47 U.S.C. § 153(30); 47 C.F.R. § 52.21(k). Notably, the definition of LNP contained in Appendix C § 1.58 of the Agreement is identical to the definitions of LNP in the Act and FCC rules.

<sup>11/</sup> *First Report and Order* ¶ 31 (citing evidence that business and residential customers are reluctant to switch carriers if they must change telephone numbers, and stating that "[t]o the extent that customers are reluctant to change service providers due to the absence of number portability, demand for services provided by new entrants will be depressed. This could well discourage entry by new service providers and thereby frustrate the pro-competitive goals of the 1996 Act.").

<sup>12/</sup> 47 C.F.R. § 52.23(b)(2)(i).

<sup>13/</sup> Montana Telecommunications Act, Mont. Code Ann. §§ 69-3-801 to 870 (2005).

<sup>14/</sup> Mont. Admin. Register § 38-5-4074.

Administrative Code defines “number portability” as “the ability of users of telecommunication services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability or convenience when switching from one telecommunications carrier to another.”<sup>15/</sup> Under this definition, when CenturyTel receives a port request from IDT, CenturyTel must port the number expeditiously “without impairment of quality, reliability, or convenience.” The FCC has interpreted this language to mean that consumers must be able to change carriers while keeping their telephone number as easily as they may change carriers without taking their telephone number with them.<sup>16/</sup> Carriers may not impose non-porting related restrictions on the porting out process.<sup>17/</sup>

11. Thus, when one of CenturyTel’s customers chooses to switch his telephone service from CenturyTel to IDT and wants to keep his telephone number, CenturyTel is required to port the number so long as IDT has a presence in the rate center. CenturyTel’s refusal to implement IDT’s port request is a direct violation of state and federal local number portability regulations designed to protect consumers and in contravention of state and federal pro-competitive policies. The Commission should direct CenturyTel to comply with its duty to consumers and initiate the requested ports immediately.

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<sup>15/</sup> Mont. Admin. Register § 38-5-4002(16).

<sup>16/</sup> *In the Matter of Telephone Number Portability -Carrier Requests for Clarification of Wireless-Wireless Porting Issues*, CC Docket No. 95-116, 18 FCC Rcd. 20971 ¶ 11 (rel. Oct. 7, 2003) (“2003 Wireless-Wireless Porting Order”).

<sup>17/</sup> *Id.*

**B. CenturyTel's Refusal to Port Is Improper Re-verification.**

12. CenturyTel is engaging in improper re-verification by questioning the identity of IDT's customers. Under the both the Commission's and the FCC's rules, the role of the executing carrier is clearly defined:

"An executing carrier [here CenturyTel] shall not verify the submission of a change in a subscriber's selection of a provider of telecommunications service received from a submitting carrier [IDT]. For an executing carrier, compliance with the procedures described in this part shall be defined as prompt execution, without any unreasonable delay, of changes that have been verified by a submitting carrier."<sup>18/</sup>

The FCC has confirmed that executing carriers cannot delay provider change requests even if the customer's name on the port request does not match the name in the executing LEC's database.<sup>19/</sup>

The FCC has found that "executing carriers...have both the incentive and ability to delay or deny carrier changes."<sup>20/</sup> The FCC expressed concern that executing carriers could use the verification process as a means of delaying or denying carrier change requests in order to benefit themselves or their affiliates.<sup>21/</sup> While the FCC agreed that allowing executing carriers to re-verify carrier change requests could help to deter slamming, it ultimately concluded that the anti-competitive

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<sup>18/</sup> 47 C.F.R. § 64.1120(a)(2). The Montana Administrative Code mirrors the FCC's regulations with regard to prohibiting re-verification of provider change orders. *See*, Mont. Admin. Register § 38-5-3801(3) ("An executing carrier shall not verify the submission of a change in a subscriber's selection of a provider of telecommunications service received from a submitting carrier. For an executing carrier, compliance with the procedures prescribed in this rule shall be defined as prompt execution, without any unreasonable delay, of changes that have been verified by a submitting carrier").

<sup>19/</sup> *In the Matter of Implementation of Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, LEC Coalition Request for Declaratory Ruling Regarding Carrier Change Verification*, CC Docket No. 94-129, DA 05-1618 (2005); *see also*, *Public Notice Consumer & Governmental Affairs Bureau Seeks Comment on an Application for Review Filed by the Rural Local Exchange Carriers*, CC Docket 94-129, DA 05-3131 (2005).

<sup>20/</sup> 47 C.F.R. § 64.1100(a); *see also* *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd. 1508 ¶¶ 92,99 (1998) ("Second Report and Order").

<sup>21/</sup> *Id.* ¶ 99.

effects of re-verification outweighed the potential benefits.<sup>22/</sup> In direct defiance of the Commission's and the FCC's rules, CenturyTel is denying Montana consumers the ability to exercise the right to port their numbers to the provider of their choice by engaging in the precise anti-competitive behavior the Commission's and the FCC's rules were designed to prevent.

13. In prohibiting carrier re-verification of port requests, the FCC was also concerned that re-verification by executing carriers could function as a *de facto* preferred carrier "freeze," in situations where a subscriber has not requested such a freeze.<sup>23/</sup> The FCC concluded that actions, such as CenturyTel's actions here, create a *de facto* freeze and are anti-competitive because they "serve to restrict consumer control by eliminating the consumer's ability to designate someone as authorized to change telecommunications service without first contacting the local carrier."<sup>24/</sup> CenturyTel's actions also violate the consumer protections under Montana statutes that "[n]o local exchange carrier shall implement a preferred carrier freeze unless the subscriber's request to impose a freeze has first been confirmed" in accordance with applicable procedures.<sup>25/</sup>

14. Accordingly, when CenturyTel receives IDT's LNP request in the form of a local service request ("LSR"), it may verify the customer's account information to ensure the name, address, telephone number, etc. are correct. It may also confirm that the number is eligible for

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<sup>22/</sup> *Id.*

<sup>23/</sup> *Id.* ¶ 100. A preferred carrier freeze prevents a change in a subscriber's preferred carrier selection unless the subscriber gives the carrier from whom the freeze was requested his or her express written or oral consent. *See also*, 47 C.F.R. § 64.1190 (d) (2) ("No local exchange carrier shall implement a preferred carrier freeze unless the subscriber's request to impose a freeze has first been confirmed in accordance with [FCC] procedures...").

<sup>24/</sup> *See, In the Matter of Implementation of Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, LEC Coalition Request for Declaratory Ruling Regarding Carrier Change Verification*, CC Docket No. 94-129, DA 05-1618 (Rel. June 9, 2005); *see also, Public Notice Consumer & Governmental Affairs Bureau Seeks Comment on an Application for Review Filed by the Rural Local Exchange Carriers (LECs)*, CC Docket 94-129, DA 05-3131 (rel. December 2, 2005).

<sup>25/</sup> Mont. Admin. Register § 38-5-3817(2).