TimeWarner

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February 5, 2007

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

Re: *Ex Parte* Presentation, WC Dockets No. 06-54 and 06-55

Dear Ms. Dortch:

This letter responds to the recent *ex parte* submission of the South Carolina Telephone Coalition ("SCTC") in the above-referenced proceedings.[1] The SCTC contends that the Commission may not "apply its ruling in the Vonage Order to the petitions filed by Time Warner Cable."[2] The SCTC's argument is a lengthy non-sequitur, however, because the *Vonage Order* has no relevance to the relief requested by Time Warner Cable in either proceeding.

Time Warner Cable's Petition for Declaratory Ruling (WC Docket No. 06-55) seeks to reaffirm the rights of wholesale carriers that provide interconnection-related services to entities such as Time Warner Cable. Nowhere in that petition did Time Warner Cable ask the Commission to address the regulatory status of retail voice-over-IP ("VoIP") services or the extent to which state commissions may regulate such services. To the contrary, Time Warner Cable made clear that the regulatory treatment of VoIP "has no bearing whatsoever on a wholesale carrier's entitlement to obtain interconnection."[3] Moreover, as Time Warner Cable reaffirmed in its Reply Comments:

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[1] Letter of Keith Oliver, Home Telephone Company, to Marlene H. Dortch, Secretary, FCC, WC Dockets No. 06-54 and 06-55 (Feb. 1, 2007) ("*SCTC Ex Parte Letter*").

[2] *Id.* at 1 (citing *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesotal Public Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion and Order, 19 FCC Rcd 22404 (2004), pet. for review pending, *Nat'l Ass'n of State Util. Consumer Advocates v. FCC*, No. 05-1122 (8th Cir.)).

[3] 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

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> Far from asking the Commission to classify VoIP services or to establish the rights of VoIP providers, the Petition focuses solely on the rights of *telecommunications carriers* that serve VoIP providers. Indeed, the present uncertainty regarding the rights of VoIP providers and the status of their services is one reason why Time Warner Cable needs to be able to obtain interconnection services from competitive LECs.[4]

Thus, while the SCTC seeks to limit the application of the *Vonage Order*, it overlooks the fact that the *Vonage Order* simply is not implicated by Time Warner Cable's request for a declaratory ruling.

Nor does Time Warner Cable's Petition for Preemption (WC Docket No. 06-54) seek to "apply" the *Vonage Order*, as the SCTC appears to believe. While the *Vonage Order* left the regulatory status of Time Warner Cable's retail VoIP-based telephone service unsettled, Time Warner Cable ultimately made clear to the South Carolina PSC that it would comply with all regulations applicable to certificated carriers. Contrary to the SCTC's suggestion that authorizing Time Warner Cable to compete will somehow result in a lack of regulatory oversight, the record demonstrates Time Warner Cable's "willingness to operate as a 'telecommunications carrier,' and indeed [that] it has complied with all applicable carrier regulations since commencing business in the state."[5] Nevertheless, despite authorizing Time Warner Cable to serve all other parts of South Carolina, the PSC has blocked Time Warner Cable from entering the areas served by several rural LECs based solely on those carriers' objections.[6]

Time Warner Cable reiterates its plea for prompt action in the above-referenced proceedings to eliminate roadblocks to telephone competition in rural areas. Because Time Warner Cable has not asked the Commission to rule that its Digital Phone service warrants preemption under the *Vonage Order*, and the record in the these proceedings has no bearing on that question, the Commission should refrain from addressing it at this time.

Amended, to Provide Wholesale Telecommunications Services to VoIP Providers, WC Docket No. 06-55, at 20 (filed Mar. 1, 2006).

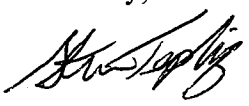
[4] Reply Comments of Time Warner Cable in Support of Its Petition for Declaratory Ruling, WC Docket No. 06-55, at 8 (filed Apr. 25, 2006) (emphasis in original).

[5] Letter of Julie Y. Patterson, Vice President and Chief Counsel, Telephony, Time Warner Cable to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-54, at 3 (Sept. 6, 2006).

[6] *See generally* Petition of Time Warner Cable for Preemption Pursuant to Section 253 of the Communications Act, as Amended, WC Docket No. 06-54 (filed Mar. 1, 2006).

Please contact me if you have any questions regarding this matter.

Sincerely,



Steven N. Teplitz

cc: Chairman Kevin J. Martin
Daniel Gonzalez
Michelle Carey
Thomas Navin
Renee Crittendon