February 6, 2007

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EX PARTE – VIA ELECTRONIC FILING

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

Re: *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

Dear Ms. Dortch:

On February 6, 2007, Tina Pidgeon and Maureen Flood of General Communication, Inc. ("GCI") and John Nakahata of Harris, Wiltshire & Grannis, LLP met with Thomas Navin, Chief of the Wireline Competition Bureau ("WCB"), and Donald Stockdale, Associate Chief of WCB, to discuss the above-referenced docket. Consistent with GCI's February 5, 2007 letter in this docket, GCI's representatives urged the Federal Communications Commission to expeditiously grant Time Warner Cable's Petition for Declaratory Ruling, and in so doing, affirm that the "rural exemption" in Section 251(f)(1) of the Communications Act of 1934, as amended, does not relieve rural incumbent local exchange carriers of their obligation to comply with Section 252 in connection with requests for interconnection and exchange of traffic pursuant to Section 251(a) and any other requests pursuant to Section 251(b). A copy of this letter is attached.

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

Respectfully submitted,

Maureen Flood
Federal Regulatory Attorney

CC: Thomas Navin
Donald Stockdale

February 5, 2007

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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
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Re: *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

Dear Ms. Dortch:

General Communication, Inc. ("GCI") urges the Commission to grant Time Warner Cable's ("TWC") above-captioned Petition for Declaratory Ruling. The Commission should also take this opportunity to underscore that the Section 251(f) rural exemption does not relieve incumbent rural local exchange carriers of their obligation to comply with Section 252 in connection with requests for interconnection and exchange of traffic pursuant to Section 251(a) and any other requests pursuant to Section 251(b). Without this affirmation, any ruling on the Petition will be ineffective, as rural carriers will evade interconnection negotiations by asserting that their rural exemption frees them of any obligation even to negotiate interconnection under Section 251(a) or (b) or submit to arbitration pursuant to Section 252 if negotiations fail. To avoid this result, the Commission should confirm that Section 252 governs any request for negotiation made to a rural LEC under Sections 251(a) or (b).

Section 251(a) imposes a duty on *all* telecommunications carriers to interconnect with other carriers,[1] and subsection (b) imposes certain duties on all local exchange carriers ("LECs"), including number porting and reciprocal compensation.[2] Subsection (c) of Section 251 imposes additional obligations still on incumbent LECs, but these additional obligations do not displace the general duty to interconnect established by Section 251(a). Section 252 provides a

[1] "Each telecommunications carrier has the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." 47 U.S.C. § 251(a)(1).
[2] *See* 47 U.S.C § 251(b).

mechanism for negotiation, mediation, and arbitration of requests to negotiate made "pursuant to Section 251" – without any limitation to specific subsections of Section 251.[3]

Despite these clear requirements, some incumbent rural LECs have asserted that their Section 251(f)(1) rural exemption from Section *251(c)* excuses them from the negotiation and arbitration procedures of Section 252 with respect to any request for negotiation pursuant to Section *251(a)* or *(b)*.[4] One rural LEC has gone so far as to seek a declaratory ruling from the Commission establishing that an exempt rural carrier's duties under Section 251(a) are not subject to the negotiation and arbitration procedures specified in Section 252.[5]

These arguments are misplaced. The Section 251(f)(1) rural exemption touches only on the issue of *which obligations* apply to an incumbent rural LEC.[6] It says nothing of the authority of a state commission to arbitrate an interconnection dispute pursuant to Section 251 and 252 involving an incumbent rural LEC. Moreover, a valid Section 251(f)(1) "rural exemption" in no way exempts an incumbent rural LEC from other interconnection obligations, particularly under Section 251(a) (or, for that matter, any obligations in Section 251(b)). As the FCC noted in clarifying the number portability obligations of rural LECs, "Section 251(f)(1) applies only to rural LECs, and offers an exemption only from the requirements of Section 251(c)."[7] This was the only conclusion the Commission could reach based on the plain language of Section 251(f)(1).

Moreover, accepting rural LECs' overbroad reading of Section 251(f)(1) would have perverse and anticompetitive results. Without the possibility of Section 252 arbitration, rural LECs would be free to simply refuse attempts to negotiate to satisfy their obligations under Sections 251(a) and (b).[8] By contrast, if resort to Section 252 arbitration is available, both rural LECs and competitive carriers will have an incentive to engage in meaningful negotiations with respect to duties under Sections 251(a) and (b). All parties benefit when interconnection can be accomplished through commercial agreement rather than regulatory fiat.

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[3] 47 U.S.C. § 252.

[4] *See, e.g., Petition for Arbitration of an Interconnection Agreement Between Level 3 Communications, LLC and CenturyTel of Washington , Inc., Pursuant to 47 U.S.C. § 252*, Third Supplemental Order Confirming Jurisdiction, at 2, Docket No. UT-023043 (WUTC Oct. 25, 2002) ("WUTC Order") (detailing CenturyTel argument that Level 3 cannot make a valid request to negotiate with CenturyTel because CenturyTel is exempt from Section 251(c)).

[5] *Oklahoma Western Telephone Company Petition for Clarification of Declaratory Ruling and Report and Order*, CC Docket 01-92 (filed Nov. 27, 2006) ("OWTC Petition").

[6] *See* 47 U.S.C. § 251(f)(1).

[7] *Telephone Number Portability*, First Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 7236, 7303 (1997).

[8] *See, e.g.*, OWTC Petition, Exh C (letter from OWTC to requesting carrier asserting that "[a]s a rural telephone company, OWTC is exempt from the requirement that local exchange carriers enter into interconnection negotiations" and "declin[ing]" to negotiate with requesting carrier); *id.* Exh. E at 2 (letter from OWTC to requesting carrier asserting OWTC "is exempt from any negotiation obligation under the Section 251(f) rural carrier exemption").

The plain language and statutory construction of Section 251 and 252 do not restrict the arbitration authority of state commissions to matters arising under Section 251(c). Section 252's jurisdictional and procedural provisions refer generally to *all* interconnection disputes arising under Section 251:

- Section 252(b)—the jurisdictional grant to the state commissions—refers to the date on which "an incumbent local exchange carrier receives a request for negotiation under this section [*i.e.*, § 252]."[9]

- Section 252(c)—which establishes general standards for state-commission arbitration—refers to "arbitration under subsection b [of § 252]" and "the requirements of § 251."[10]

- Section 252(e)—which grants the state commissions authority to approve or reject any interconnection agreement—allows a state commission to reject an agreement adopted by arbitration under § 252(b) "if it finds that the agreement does not meet the requirements of section 251."[11]

By contrast, the Section 252 subsections that impose specific substantive standards for discrete subsections of Section 251 refer specifically to those subsections of Section 251:

- Section 252(d)(1) refers to interconnection and network element charges "for purposes of subsection (c)(2) of section 251."[12]

- Section 252(d)(2)(A) refers to charges for transport and termination of traffic "for purposes of compliance by an incumbent local exchange carrier with section 251(b)(5)."[13]

- Section 252(d)(3) refers to wholesale prices for telecommunications services "for purposes of section 251(c)(4)."[14]

In other words, Congress could have limited the scope of the jurisdictional and procedural provisions of Section 252 to matters of Section 251(c) interconnection, but did not.[15] Because it did not, those provisions of Sections 252 must be read to apply to requests made under Sections 251(a) and (b).

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[9] 47 U.S.C. § 252(b)(1).
[10] 47 U.S.C. § 252(c).
[11] 47 U.S.C. § 252(e)(2)(B).
[12] 47 U.S.C. § 252(d)(1).
[13] 47 U.S.C. § 252(d)(2)(A).
[14] 47 U.S.C. § 252(d)(3).
[15] *See, e.g.*, *United States v. Nunez*, 573 F.2d 769, 771 (2d Cir. 1978) (stating that "[i]t is a settled principle of statutory construction that '[when] the same word or phrase is used in the same section of an act more than once, and the meaning is clear as used in one place, it will be construed to have the same meaning in the next place.'" (citations omitted)).

While many state commissions have correctly rejected rural LEC attempts to avoid their obligation to arbitrate interconnection,[16] others have not.[17] Addressing this issue as part of its declaratory ruling on the TWC Petition is therefore necessary both to prevent future misapplications of federal law and to minimize the delays caused by rural LECs' spurious arguments against arbitration and interconnection, which, in turn, deny to rural consumers the benefits of competition that are available elsewhere. This outcome is not only contrary to the local competition provisions of the Communications Act, but also violates the universal service principle that rural consumers should have access to services and rates reasonably comparable to those available in urban areas.

Moreover, this clarification is particularly appropriate in light of the recent proposal by supporters of the Missoula Plan that the Commission extend the provisions of its *T-Mobile Order* to interconnection arrangements between incumbent LECs and other wireline carriers.[18] The effect of this proposal would be to ensure that incumbent LECs, including incumbent rural LECs subject to the rural exemption, can request interconnection and invoke the arbitration provisions of Section 252. Such a request can only be explained by the fact that incumbent rural LECs are to be held to their existing obligations under this Section. It would be absurd to seek to extend Section 252 obligations—obligations that apply by their terms to "incumbent local exchange carriers"—to non-incumbents without the predicate holding true; that is, these critical obligations already apply to incumbent rural LECs.

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[16] *See, e.g.,* WUTC Order (concluding the WUTC has jurisdiction to conduct an arbitration of Level 3's request to interconnect pursuant to Section 251(a)); *see also Level 3 Communications, LLC Petition for Arbitration Pursuant to 47 U.S.C. Section 252 of Interconnection Rates, Terms and Conditions With CenturyTel of Wisconsin LLC,* Arbitration Award, Wisconsin Public Service Commission, Docket No. 05-MA-130, at 8-13 (Dec. 2, 2002) (concluding arbitration panel has jurisdiction to consider the merits of Level 3's interconnection proposal) *accepted by Wisc. PSC (Feb. 17, 2003)*; *Cambridge Telephone Co. et al. Petitions for Declaratory Relief and/or Suspension or Modification Relating to Certain Duties under Sections 251(b) and (c) of the Federal Telecommunications Act, pursuant to Section 251(f)(2) of that Act; and for any other necessary or appropriate relief,* Order, Docket No. 05-0259 (Ill. Commerce Comm'n July 13, 2005) (concluding rural LECs exempt from Section 251(c) are nonetheless obligated to negotiate terms and conditions for interconnection with requesting telecommunications carrier).

[17] *See, e.g., Sprint Communications Co. L.P. v. Public Utility Comm'n of Texas,* Case No. A-06-CA-65-SS, Slip Op. 9-10 (W.D. Tex. Aug. 14, 2006) (holding rural exemption allows RLEC to refuse negotiation and arbitration); *Petition of Level 3 Communications, LLC for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 with CenturyTel of Eagle, Inc. Regarding Rates, Terms, and Conditions for Interconnection,* Decision Denying Exceptions, Docket No. 02B-408T, C03-0117, at ¶ 34 (Col. Public Utilities Comm'n Jan. 17, 2003) (concluding state commission has no arbitration authority over requests to negotiate under Section 251(a)); *see also Sprint Nextel January 30, 2007 Notice of Ex Parte Communication,* WC Docket 06-55, at 2 & n.4 (detailing RLEC refusals of requests for interconnection under Section 251(a) and for arbitration under Section 252).

[18] *Industry Standards for the Creation and Exchange of Call Information* at 2, attached to Ex Parte Letter from the Supporters of the Missoula Plan to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (filed Nov. 6, 2006) (citing *Developing a Unified Intercarrier Compensation Regime, T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs,* Declaratory Ruling and Report and Order, 20 FCC Rcd 4855 (2005)).

For the foregoing reasons, in any Order addressing the TWC Petition, the Commission should affirm that Section 252 governs any request made to an incumbent rural LEC for negotiation under Sections 251(a) or (b).

Sincerely,

/s/

Tina Pidgeon
Vice President, Federal Regulatory Affairs

cc *(via electronic mail)*: Scott Bergmann
Michelle Carey
Scott Deutchman
Ian Dillner
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Victoria A. Goldberg
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Jennifer McKee
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