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Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Room TWB-204  
Washington, DC 20554

**Re: Notice of Ex Parte Communication**

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:

South Dakota Telecommunications Association (SDTA), by its attorneys, hereby submits this ex parte letter for inclusion in the record in the above-captioned proceeding in response to recent ex parte communications filed by Sprint/Nextel (Sprint), Comptel and General Communications, Inc. (GCI). In their recent ex partes, Sprint, Comptel, and GCI urge the Commission to grant the Time Warner petition and argue that rural ILECs are inappropriately refusing the negotiate and arbitrate section 251 provisions of the Act.

With respect to the legal argument concerning the proper interpretation of Section 251(a) and 252, SDTA believes that Sprint, Comptel and GCI are wrong. The duty to negotiate is found in Section 251(c) of the Act, which states that incumbent local exchange carriers (ILECs) have "[t]he duty to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) and this subsection." The Act

specifically does not require ILECs to negotiate the particular terms and conditions of agreements to fulfill the duties in subsection 251(a). In addition, the FCC has found that the general interconnection obligation of section 251(a) "is not implemented through the negotiation and arbitration scheme of section 252." *CoreComm Communications, Inc. and Z-Tel Communications, Inc. v. SBC Communications Inc., et al., Order on Reconsideration*, 19 FCC Rcd 8447,8454-8455 (2004).

GCI argues that pursuant to section 252, all section 251(a) interconnection requests to an ILEC are subject to arbitration. However, section 251(a) is a general interconnection requirement on all telecommunications carriers. Under GCI's interpretation, an interconnection request from an IXC to an ILEC would be subject to arbitration by a state commission. This result makes no sense.

Moreover, it appears that Sprint is requesting interconnection pursuant to Section 251(a), in at least one case of which SDTA is aware, so as to deny the rural carrier of its rights under the Act. Specifically, Sprint has requested interconnection pursuant to Section 251(a) from a rural carrier exempt from the requirements of section 251(c), and then has proceeded to demand Section 251(c)-type interconnection provisions.

The rural ILEC in question has offered to interconnect with Sprint. It has refused to give up its rights as an exempt carrier and negotiate Section 251(c)-type interconnection. SDTA also reminds the Commission that rural carriers have the right to request a suspension or modification of any Section 251(c) requirement. It appears that Sprint is trying to deny rural carriers of this right, as well, by fashioning its interconnection request as a 251(a) request.

With respect to Sprint's arguments concerning Section 251(b), SDTA believes that the real issue here is whether Sprint is entitled to reciprocal compensation when it provides service to a CLEC. SDTA urges the Commission not to issue a declaratory ruling on this issue as it is dependent on the factual circumstances of each case. Sprint has stated that its relationship with any particular cable company may be different and that the services it provides may be different. It also is clear that some of the cable companies with whom Sprint has entered an arrangement are CLECs. Without an examination of the facts, it is not known whether Sprint or the cable company CLEC "transports and terminates" local traffic and, therefore, is entitled to reciprocal compensation. In light of Sprint's admission that the services it provides to, and its contractual arrangement with, any particular entity may be different, the declaratory ruling requested by Sprint is not appropriate.

Pursuant to Section 1.1206 of the Commission's rules, this letter is being electronically filed with your office. Please associate this letter with the file in the above-referenced proceeding. If you have any questions concerning this matter, please contact me.

Sincerely,

/s/ Mary J. Sisak  
Benjamin H. Dickens, Jr.  
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