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May 19, 2008

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

**Re: WC Docket No. 06-54 & WC Docket No. 08-56  
Notice of *Ex Parte* Presentation**

Dear Ms. Dortch:

On May 16, 2008, Keith Oliver of Home Telephone Company (“Home”), Ben Spearman of PBT, Inc. (“PBT”) and John Kuykendall of John Staurulakis, Inc. (“JSI”) met with Scott Bergmann in the Office of Commissioner Jonathan S. Adelstein on behalf of the South Carolina Telephone Coalition (“SCTC”) to discuss the petition and related *ex parte* presentations filed by Time Warner Cable (“TWC”) requesting the FCC to preempt the decision by the South Carolina Public Service Commission (“SCPSC”) to deny the application of its VoIP affiliate, TWC Information Services to expand its certificate of public convenience and necessity to include rural areas served by five of the SCTC’s members (WC Docket No. 06-54). Home and PBT are among the twenty-one members of the SCTC. A copy of the presentation which was discussed at the meeting is attached.<sup>1</sup>

In the meeting, the SCTC representatives explained that the SCPSC acted appropriately and within its authority in issuing its decision and that the recent South Carolina Supreme Court opinion affirms the SCPSC’s actions as reasonable and appropriate. The representatives also demonstrated that TWC misrepresented the state proceedings and made misleading statements in its recent *ex parte* presentations. The representatives urged the Commission to leave no doubt surrounding the federal-state partnership necessary to maintain the integrity of the public switched telephone network by rejecting the TWC petition.

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<sup>1</sup> The SCTC representatives also discussed that the issues raised in TWC’s preemption petition are similar to some of the issues raised in the petition filed by Vermont Telephone Company (“VTEL”) on which the Commission is currently seeking comment in which VTEL seeks clarification regarding whether VoIP providers are entitled to interconnection rights of telecommunications carriers (WC Docket No. 08-56) .

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Please contact the undersigned with any questions.

Respectfully submitted,

/s/ John Kuykendall

John Kuykendall  
Director – Regulatory Affairs  
on behalf of  
The South Carolina Telephone Coalition

cc: Scott Bergmann

Attachment

# **Time Warner Cable's Petition For Preemption WC Docket No. 06-54**

The South Carolina  
Telephone Coalition  
FCC *ex parte*  
May 2008

# The South Carolina Telephone Coalition

- Organization comprised of twenty-one Rural Telephone Companies that serve portions of South Carolina
- The Coalition intervened in the South Carolina Public Service Commission (SCPSC) proceeding which is the subject of the Time Warner Cable's (TWC's) Preemption Petition
- Several members of the Coalition were directly involved in the SCPSC proceeding and have a firsthand perspective on TWC's petition

# TWC's Preemption Petition

- Oct 2004 - TWC's VoIP affiliate, TWC Information Services (TWCIS), filed an application with the SCPSC seeking to expand its certificate of public convenience and necessity (CPCN) to include rural areas served by five of the Coalition's members
- Pursuant to state law, the SCPSC conducted a public hearing and, on the basis of their findings issued orders denying the application because of TWCIS' failure of proof with respect to its request
- Mar 2006 - TWC and TWCIS filed the Preemption Petition with the FCC

## South Carolina Supreme Court Ruling

- TWCIS also appealed the SCPSC decision to the South Carolina Supreme Court (SC Supreme Court)
- Mar 2008 – the SC Supreme Court affirmed that the SCPSC acted appropriately and within its authority
- Apr 2008 – TWC makes *ex parte* presentations at FCC urging the Commission to grant its preemption petition

South Carolina  
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# Preemption is Inappropriate

- 1) The SCPSC acted appropriately and within its authority
- 2) The recent SC Supreme Court opinion affirms the SCPSC's actions as reasonable and appropriate
- 3) TWC's *Ex Parte* misrepresents the state proceedings and contains misleading statements

## 1) The SCPCS Acted Appropriately and Within its Authority

- Harmonious with federal provisions, under state law, the SCPSC is obligated to consider public interest issues before certifying a telecommunications provider within rural areas of the state
- SCPSC properly found it was not clear what services TWCIS sought to provide as a regulated telecommunications provider

## 2) The SC Supreme Court Affirmed that SCPSC's Actions are Reasonable and Appropriate

- TWC argues that the SCPSC's Order and the SC Supreme Court opinion violate Section 253 of the Act, warranting federal preemption
- Section 253 prohibits states from imposing requirements that prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service
- Section 253 is not even applicable here, because TWC has expressly reserved all rights to argue that its Digital Phone service is NOT a "telecommunications service"

South Carolina  
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## 2) The SC Supreme Court Affirmed that SCPSC's Actions are Reasonable and Appropriate (Cont'd)

- Arguably, even if Section 253 applied, the state's actions do not have the effect of prohibiting TWC from providing service
  - TWC is already providing service in South Carolina, including in these rural areas, through its PSTN partner, as permitted by the FCC's Declaratory Ruling
- Arguably, even if Section 253 applied, and even if the state's actions could be construed as prohibiting TWC from providing its "telecom" service, the SCPSC's actions would still fall within the "safe harbor" provision of Section 253(b)
  - The SCPSC's Order, as affirmed by the SC Supreme Court, applied the state's own competitively neutral certification statute (S.C. Code Ann. § 58-9-280) in a manner necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers

### 3) TWC's *Ex Parte* Misrepresents the State Proceedings and Contains Misleading Statements

- a) TWC is not “barred” from providing its Digital Phone Service within the rural ILEC areas that are cited in its petition - it is in fact providing Digital Phone service in some of the areas where TWC claims to be barred
- b) TWC's claim that it would give consumers a choice of facilities-based local voice service for the first time fails to recognize that customers in these rural areas can choose among a variety of VoIP and wireless service providers

### 3) TWC's *Ex Parte* Misrepresents the State Proceedings and Contains Misleading Statements (Cont'd)

- c) TWC has indicated that it has committed to complying fully with the requirements governing competitive local exchange carriers, yet in public testimony it stated:
- “The Vonage order preempts the state from imposing certification and tariffing requirements. TWCIS intends to withdraw the retail service offering in its current tariff once a new non-regulated entity is created to provide the retail voice services currently being offered by TWCIS.” (Hearing Transcript @ page 16)

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Telephone Coalition**

### **3) TWC's *Ex Parte* Misrepresents the State Proceedings and Contains Misleading Statements (Cont'd)**

- d) TWC claims that the lack of CPCN has made it impossible to offer telecommunication services to any customers when in fact, TWC is utilizing Sprint as a PSTN partner to offer service to customers within the areas in question

## Observations the Commission Should Consider

- TWC's denial of a CPCN was based on its failure to properly make its case before the SCPSC by clearly describing the services for which it sought certification
- TWC seeks to do an "end run" around the SC Supreme Court by appealing to a higher source, a tactic that has failed at both the appellate court level and the state Supreme Court level
- TWC clearly seeks all the benefits accorded to the status of a certified telecommunication provider without any of the obligations

## Observations the Commission Should Consider (Cont'd)

- TWC has had a free and open hearing which was documented in hundreds of pages of pre-filed direct testimony and hearing transcripts
- Justification for preemption does not exist because the facts show that there is no conflict between state and federal law
- The federal Act clearly did not intend to allow all “comers” entry into the local market and the fact that some, such as TWC fail to meet the public interest test does not mean all would fail
  - In fact, several providers have been granted CPCN within the rural areas in question and have interconnection agreements with the rural carriers in question

# Conclusion

- TWC's efforts before the Commission are an attempt to circumvent appropriate state regulatory authority which has exercised its right to "protect the public safety and welfare, and safeguard the rights of consumers"
- The Commission should reject the TWC petition so as to leave no doubt surrounding the federal-state partnership necessary to maintain the integrity of the public switched telephone network in this country

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# Contacts

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