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March 1, 2012

## VIA ECFS

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

**Re: Ex Parte Presentation – WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45; WT Docket No. 10-208**

Dear Ms. Dortch:

By this letter, Time Warner Cable Inc. (“TWC”) responds to the ex parte letters recently filed by Frontier Communications Corporation (“Frontier”) and Windstream Communications, Inc. (“Windstream”) in support of their petition for reconsideration in the above-captioned proceedings.<sup>1</sup> Among other things, Frontier and Windstream ask the Commission for permission to impose higher originating access charges for calls that originate in time division multiplexing (“TDM”) format and terminate in Internet Protocol (“IP”) format, contrary to the “symmetrical approach” the Commission has adopted for traffic that originates or terminates in IP format.<sup>2</sup> In its ex parte, Frontier argues that such relief is appropriate to spare incumbent LECs from the revenue effects of a “flash cut” from intrastate to interstate originating rates for jurisdictionally intrastate toll traffic terminating in IP format.

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<sup>1</sup> See Letter from Michael D. Saperstein, Jr., Director of Federal Regulatory Affairs, Frontier Communications Corporation, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 *et al.* (filed Feb. 23, 2012); Letter from Eric N. Einhorn, Vice President, Federal Government Affairs, Windstream Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 *et al.* (filed Feb. 27, 2012).

<sup>2</sup> *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90 *et al.*, at ¶ 970 (rel. Nov. 18, 2011) (“Report & Order”).

First, contrary to Frontier’s suggestion, ILECs are not uniquely burdened by the reduction in originating access rates to interstate levels, as cable operators that assess originating access charges experience the same reduction. For instance, TWC has assessed intrastate or interstate originating access charges, as appropriate, for 8YY and 10-10 dial-around traffic.<sup>3</sup> Moreover, TWC’s decision to implement its current business model under which its retail VoIP affiliate obtains wholesale telecommunications services from an affiliated CLEC rather than from unaffiliated providers—a model that TWC has been implementing on a market-by-market basis since November 2010—was premised in part on the expectation that it would assess and collect intrastate originating access on jurisdictionally intrastate calls originating from its retail VoIP subscribers through its affiliated CLEC to intrastate long-distance providers. In the interest of advancing the Commission’s overall reform efforts, TWC and other cable operators were willing to support a compromise approach whereby they would be limited to charging reduced interstate rates for those calls, subjecting cable operators to the very sort of “flash cut” from which Frontier and Windstream now seek relief. Thus, to the extent the ILECs’ proposal is premised on the notion that they alone will experience a revenue loss as a result of the Commission’s reforms, they are incorrect.

More broadly, as a matter of policy, the ILECs’ proposal to establish preferential access rates for their originating access services is plainly unjustified. The central objective driving the Commission’s efforts to reform the intercarrier compensation regime is the need to replace the complex web of disparate rates with a unified and predictable framework that applies regardless of technology or other artificial distinctions. In furtherance of that goal, TWC has consistently opposed special rules for IP-originated or IP-terminated traffic, arguing that all telecommunications traffic that traverses the PSTN should be subject to the same rules regardless of the format in which a call originates or terminates. Yet the ABC Plan proponents—including Frontier and Windstream—insisted that IP-originated and IP-terminated toll traffic (including jurisdictionally intrastate toll traffic) should be treated differently from other types of traffic and immediately subject to interstate access rates. Having successfully advocated for that approach, Frontier and Windstream should not be permitted to opt out of it after the fact in pursuit of a competitive advantage. But that is exactly the relief they seek. Indeed, under their new theory, Frontier and Windstream would be entitled to charge higher, intrastate access rates for traffic originating on their networks and terminating in IP format, while TWC and others would be limited to charging lower, interstate rates for any traffic they originate or terminate. As NCTA and others have observed, such an outcome would create the very sort of disparity—with the resulting marketplace distortions—that the Commission has sought to eliminate.<sup>4</sup> Rather than introducing new forms of disparate treatment and competitive distortions after taking pains to

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<sup>3</sup> See, e.g., New York Intrastate Access Services Tariff of Time Warner ResCom of New York, LLC d/b/a Time Warner Cable, § 3.2 (Oct. 1, 2010) (specifying terms for originating access service).

<sup>4</sup> See, e.g., Comments of the National Cable & Telecommunications Ass’n at 14-15 (filed Feb. 9, 2012); Comments of Comcast Corp. at 8-9 (filed Feb. 9, 2012); see also Report & Order ¶ 948 (“[O]ur prospective regime for VoIP-PSTN intercarrier compensation is symmetrical, and thus avoids the marketplace distortions that could arise from an asymmetrical approach to compensation.”).

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eliminate them, the Commission should retain the symmetrical rules it adopted for IP-originated and IP-terminated toll traffic.

Sincerely,

*/s/ Matthew A. Brill*

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