

April 27, 2012

**EX PARTE**

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

**RE: WC Docket No. 11-118, NCTA PETITIONS REGARDING  
SECTION 652 OF THE COMMUNICATIONS ACT**

Dear Ms. Dortch:

Attached is an affidavit executed by Leo Cloutier, Sr. Vice President, Strategy, Bright House Networks (BHN) addressing issues that were raised in a March 28, 2012 meeting with representatives of BHN and with FCC officials listed below. In those meetings BHN argued in support of the Petitions filed by National Cable & Telecommunications Association for the FCC to forbear from enforcing Section 652(b) as to cable operator acquisition of in-region competitive local exchange carriers (CLECs) or modify its approach to the current waiver process under Section 652(d)(6).<sup>1</sup>

In the affidavit Mr. Cloutier describes BHN's experiences as a competitive voice service provider, beginning in 2004, including the fact that BHN has not acquired a single in-region CLEC during this period, even though, in his professional judgment CLEC acquisitions are and should naturally be a part of the review of business opportunities for BHN. He concludes that a key factor in this paucity of CLEC acquisitions – a record shared across the cable industry – is the uncertainty of gaining waivers from the FCC and local franchising authorities to the restrictions in Section 652(b) to acquire in-region CLECs; as well as the delay in the process of obtaining approvals.

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<sup>1</sup> NCTA, Petition for Declaratory Ruling to Clarify 47 U.S.C. § 572 in the Context of Transactions between Competitive Local Exchange Carriers and Cable Operators (filed June 21, 2011).

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In accordance with FCC rules, this letter is being filed in the above captioned docket. Please contact the undersigned regarding any questions.

Sincerely,

*/s/ Daniel Brenner*

Daniel Brenner

cc: Michael Steffen  
Lisa Gelb  
Travis Litman  
Bill Dever  
Gregory Kwan  
Tim Stelzig

## AFFIDAVIT OF LEO CLOUTIER

1. My name is Leo Cloutier. I am Senior Vice President Strategy & Business Development, Bright House Networks ("BHN"). I have a MS, Electrical Engineering, John Hopkins University, and a BS, Electrical Engineering University of Massachusetts.
2. BHN, a privately-held enterprise, is the sixth largest cable multiple system operator in the U.S. with service areas in Florida, Alabama, California, Indiana, and Michigan. BHN serves more than 2.5 million customers who subscribe to one or more of its video, high-speed data and voice services. The company also offers a full suite of commercial services such as phone, broadband, advanced video, and dedicated fiber services to businesses of all sizes.
3. BHN has been an innovator in every one of its business segments. It has consistently been ranked as among the highest in customer satisfaction for its cable modem and voice service by J.D. Power & Associates. Its residential voice service has received rapid, widespread consumer acceptance.
4. I have worked with BHN since 2003. My job is to evaluate and recommend business opportunities for the company, with an emphasis on entry into new markets. I was responsible for the business planning of BHN's entry into the voice business and for the launch of BHN's affiliated competitive local exchange carrier.
5. In carrying out my responsibilities I am briefed on the federal and state regulatory aspects of the services BHN offers. In particular, I was made aware of the limitations in Section 652 of the Communications Act regarding the restriction on cable operators acquiring local exchange carriers (LECs) in region. I was informed that this prohibition covers acquisitions of both incumbent and competitive LECs, and that the provision can be waived only upon a showing satisfactory to both the FCC and the relevant local franchising authorities (LFAs).
6. Because my responsibilities include evaluating new business opportunities, I am expected to recommend to BHN management "make or buy" decisions to expand the company's multiple services. This process leads to a review flow of potential opportunities across BHN's platform of services. When considering voice services, I must limit my recommendations regarding possible competitive LEC (CLEC) acquisitions because of the uncertainty posed by the waiver standards of Section 652. This limitation is unique among the business opportunities I review and is a challenge for BHN. CLEC acquisitions are, and should naturally be, part of the review of opportunities for BHN in meeting the needs of current and potential voice customers. From 2004 to 2012, I have been involved in investments and acquisitions involving several hundred million dollars on behalf of BHN in communications companies. None resulted in the acquisition of a CLEC.
7. BHN entered the residential voice business in 2004. During the period beginning in 2004, I believe BHN could have developed and innovated voice services and features faster in order to fully compete with the incumbent local exchange carriers (ILECs) had BHN been able to accompany its entry with consideration of purchasing a CLEC. One of the reasons BHN did not go forward with a CLEC acquisition during this timeframe was due to the uncertainty of the FCC and LFA approvals process accompanying a waiver under Section 652. The uncertainty was due to the inability to gauge the standard by which a waiver would be granted, the length of time

to complete the waiver process, and the possibility that an LFA would use the waiver process to seek concessions totally unrelated to the CLEC acquisition.

8. I have been personally involved in discussions to acquire an in-region CLEC in the Southeast to help grow our commercial business, but to no avail. Several factors, of course, have contributed to BHN not executing a purchase agreement to acquire an in-region CLEC. However, in my opinion, a key factor has been the uncertainty of obtaining a waiver of Section 652, as well as the potential delays in obtaining a waiver, and how that might have affected the purchase price and material deal terms.
9. In 2006, BHN developed its own CLEC infrastructure. Acquisition of an in-region CLEC to facilitate this process might have provided benefits in this development. But uncertainty and delay in approval under the Section 652 waiver process made CLEC acquisition a nonviable option.
10. BHN made a more concerted effort to enter the commercial services market with the introduction of business voice services in 2008. These commercial offerings lagged BHN's residential voice deployment by four years. Because CLECs were and are primarily focused on business services, a CLEC acquisition could have sped BHN's entry into commercial services market. And because CLECs were and are not generally committed to residential build-outs, the combination of BHN and CLEC infrastructure and expertise could have resulted in a pro-competitive benefit to commercial and residential customers.
11. Going forward, regulatory uncertainty regarding the ability to complete a CLEC acquisition may hamper BHN's competitive options in growing areas of commercial services where a CLEC acquisition could be part of a proposed expansion. For example, CLEC acquisitions could support BHN innovation in areas such as: next generation voice services, including hosted PBX or Centrex-like products; managed services with an integrated voice component; and out-of-region expansion including national backbone, regional fiber, or regional managed services where an in-region CLEC is part of a proposed expansion. In these areas, the ILEC is a dominant player, especially in the mid-sized and larger enterprise segments. Neither an in-region CLEC (which might be an acquisition candidate) nor BHN has the resources alone of a large in-region ILEC.
12. The additional regulatory burden under 652 therefore creates a challenge for expanding BHN's commercial voice services through CLEC acquisition, and these challenges could result in delayed competition in the commercial market. This also appears to be an industry-wide phenomenon. As part of business planning I have analyzed various CLEC acquisitions in the United States to determine if BHN's internal analysis of the uncertainty regarding obtaining a necessary Section 652 waiver is common throughout the cable industry. Based on my review of third-party market reports on the CLEC acquisition market<sup>1</sup>, cable acquisitions of CLECS have been very rare.

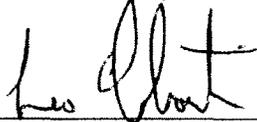
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<sup>1</sup> See, e.g. <http://www.telecomramblings.com/2010/12/ma-journal-putting-them-all-together/>;  
<http://www.telecomramblings.com/2011/12/reviewing-us-fiber-ma-in-2011/>.

13. And the one acquisition of a CLEC by a cable operator that is best known in the regulatory context, Comcast's 2009-2010 attempt acquire Cimco Communications Inc., highlighted the problems surrounding the Section 652 waiver process when considering a CLEC acquisition. In the *Cimco* case, it took over five months to process the request to the FCC for a waiver; and in the end, the FCC declined to grant a full waiver of Section 652. Even though the FCC unanimously rejected an LFA's claim that the acquisition would harm the public interest, it nonetheless declined to grant a waiver in that LFA's franchise area because of the LFA's objection.
14. Finally, I believe this situation is further exacerbated by the striking anomaly that an ILEC is not faced with the same regulatory limitations when acquiring an in-region CLEC.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 27, 2012.



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Leo Cloutier