INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE

April 30, 2012

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

Re: ***National Cable & Telecommunications Association Petition for Declaratory Ruling and Conditional Petition for Forbearance,*** **WC Docket No. 11-118:** ***Ex Parte*** **Communication**

Dear Ms. Dortch:

The Independent Telephone & Telecommunications Alliance ("ITTA")[1] hereby responds to the joint letter filed by the American Cable Association ("ACA"), the National Cable & Telecommunications Association ("NCTA"), and COMPTEL (hereinafter referred to jointly as "ACA, *et al*.")[2] expressing support for NCTA's pending petitions seeking relief from the buyout restrictions contained in Section 652 of the Communications Act of 1934, as amended.[3]

ACA, *et al*. contend that the Commission should provide blanket relief from Section 652(b) because the local franchise authority ("LFA") approval element of the Section 652(d)(6) waiver process impedes cable-CLEC transactions that would "strengthen competition vis-à-vis the dominant incumbent LEC."[4] Unfortunately, the basis for ACA, *et al.*'s request – *i.e.*, that regulatory relief is necessary to allow cable companies to compete with "much larger"

[1] ITTA's membership includes CenturyLink, Cincinnati Bell, Comporium Communications, Consolidated Communications, FairPoint Communications, Hargray Communications, HickoryTech Communications, SureWest Communications, and TDS Telecom.

[2] Letter from Rick Chessen, National Cable & Telecommunications Association, Ross J. Lieberman, American Cable Association, and Mary C. Albert, COMPTEL, to Marlene H. Dortch, FCC, WC Docket No. 11-118 (filed Mar. 20, 2012) ("ACA, *et al*. Letter").

[3] 47 U.S.C. § 572.

[4] ACA, *et al.* Letter at 2. Under Section 652, cable operators are prohibited "from acquiring more than a 10 percent financial interest, or any management interest, in any local exchange carrier providing telephone exchange service within such cable operator's franchise area." 47 U.S.C. § 572(b). However, the statute explicitly provides authority for the Commission, with the concurrence of the relevant LFA, to waive the buyout restriction for transactions whose anticompetitive effects are outweighed by public interest considerations. 47 U.S.C. § 572(d)(6).

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incumbent wireline carriers – represents a gross mischaracterization of the current domestic telecommunications environment.[5]

Today, incumbent local exchange carriers ("ILECs") are hardly the "dominant" providers of local exchange service. Interconnected VoIP service subscribership continues to rise. In 2010 alone, interconnected VoIP subscriptions increased by 22% (from 26 million to 32 million).[6] As of December 2010, more than 28% of local wireline residential telephone service connections were provided by non-ILEC interconnected VoIP service providers and an additional 5% of such connections were provided by non-ILEC switched access service providers.[7] With respect to local wireline business service connections, as of December 2010, more than 29% were provided by non-ILEC switched access service providers and nearly 7% were provided by non-ILEC interconnected VoIP service providers.[8]

During the same time period, retail switched access lines decreased by 8% (from 127 million to 117 million) as more consumers "cut-the-cord" and subscribed exclusively to mobile wireless services.[9] This trend has continued. According to a report issued by media and technology research firm Convergence, traditional wireline voice providers lost nearly 9.7% of their residential access lines in 2011.[10]

At the same time, cable operators' share of the wireline telephone service market has mushroomed. Cable's share of the market now exceeds 30%, and this figure will continue to rise in 2012.[11] The Convergence report states that cable operators are expected to increase their share of the wireline voice service market to 33.6% by the end of the year.[12] Recent financial results for individual cable companies provide telling evidence of this growth. At the close of 2011,

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[5] *Id*. at 3.

[6] *See Local Telephone Competition: Status as of December 31, 2010*, Federal Communications Commission, Industry Analysis and Technology Division, Wireline Competition Bureau (October 2011) ("October 2011 Local Competition Report"), at 2.

[7] *Id*. at 5.

[8] *Id*.

[9] *Id.* at 2. The net effect when combined with the annual increase in interconnected VoIP subscribership was a decrease of 3% in wireline retail local telephone service connections. *Id*. at 3.

[10] *See* Mike Farrell, "Hello? Cable Will Grow Wireline in '12: MSO Market Share Will Swell to Near 34%: Report," *Multichannel News*, Apr. 9, 2012, p. 26.

[11] *Id.*

[12] *Id*.

Comcast posted its best quarter in 5 years,[13] raking in $15 billion in revenue (not including NBCUniversal revenues) due in part to the addition of 146,000 voice subscribers.[14] Cablevision earned nearly $1.7 billion in the fourth quarter and, even in the face of head-to-head competition with Verizon, reported a voice penetration rate of more than 42% at year-end.[15] Charter, which passes 12 million homes and earned more than $1.8 billion in the fourth quarter, has achieved 16.5% penetration with its voice service offering.[16] Time Warner Cable, which earned $5 billion in the fourth quarter, reported a gain of 27,000 voice subscribers in that time period.[17]

The combined effect of cable's increasing market share, the robust growth in interconnected VoIP service subscribership, and the overall shrinking of the wireline voice service market has had a dramatic impact on ILECs that ACA, *et al*. completely ignore. Moreover, ACA, *et al*. fail to acknowledge the simple truth that today's incumbent cable operators are powerful, financially robust companies that constitute formidable competitors to incumbent local telephone carriers. The Commission's own subscribership data provides irrefutable proof that incumbent cable operators need no special treatment from regulators in order to compete effectively against ILECs.

Thus, it takes enormous audacity for ACA, *et al*. to argue that cable companies should be given a regulatory hand-out that would permit them to enter into cable-CLEC transactions without having to satisfy the statute's public interest requirements as a means to "rekindle" competition for local exchange service.[18] Rather than conferring additional competitive advantages on incumbent cable operators at the expense of ILECs (who would continue to be constrained by the buyout restrictions in Section 652), the Commission should continue to review all cable/local exchange carrier transactions in the manner provided for by Congress.[19]

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[13] "Comcast Surges on Reduced Subscriber Losses; Posts Best Quarter in 5 Years," *FierceCable*, *available at*: http://www.fiercecable.com/print/node/6334.

[14] "Q4 2011 Wrap: Cable MSOs, Video Providers Scrambled for Subscribers," *FierceCable*, *available at*: http://www.fiercecable.com/print/node/6700.

[15] "Cablevision Loses 14K Video Subscriber in Q4 But Gains Phone, Internet Customers," *FierceCable*, *available at*: http://www.fiercecable.com/print/node/6461.

[16] "Rutledge: Charter to Go on Offensive with 'Pricing, Packaging and Technology Innovation,'" *FierceCable*, *available at*: http://www.fiercecable.com/print/node/6454.

[17] "Sizing Up the Cable Industry in Q4 2011," *FierceCable*, *available at*: http://www.fiercecable.com/print/node/6125.

[18] ACA, *et al*. Letter at 5.

[19] As CenturyLink pointed out in its reply comments, the inequity of providing the relief requested by NCTA would be compounded by "the fact that a cable operator securing an interest in a CLEC in its cable service area would also have the ability to secure interconnection,

The safeguards of Section 652, including the role of the LFA in considering waivers of this provision, serve a valid purpose in ensuring that regulators evaluate the market for both cable and telecommunications services in determining whether the relief requested will serve the public interest and promote competition. Given that the purpose of the statute is to guard against situations where "consumers have even less choice rather than more,"[20] the Commission should refrain from taking action that would essentially provide wholesale approval of transactions that would eliminate a competitor from the market and create further disparities in regulatory treatment among service providers.[21] Neither result is consistent with the Commission's obligation to ensure that waivers of the cross-ownership restrictions in Section 652 meet "the convenience and needs of the community to be served."[22]

Sincerely,

Genevieve Morelli
President

Micah M. Caldwell
Vice President, Regulatory Affairs

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unbundled access, resale and collocation from the ILEC in that service area pursuant to Section 251(c)," thus "exacerbating the regulatory imbalance that already exists in favor of incumbent cable operators that compete with ILECs." Reply Comments of CenturyLink, Inc., WC Docket No. 11-118 (filed Sept. 21, 2011), at 6, 8.

[20] 142 Cong. Rec. S693 (1996) (statement of Senator Leahy).

[21] Indeed, should the Commission consider granting cable the relief requested in the NCTA petitions, the only equitable course would be to continue to ensure regulatory parity between cable operators and incumbent telephone companies by affording the same treatment to ILECs.

[22] 47 U.S.C. § 572(d)(6)(A)(iii).