

LATHAM & WATKINS LLP

January 23, 2013

EX PARTE – VIA ECFS

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

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Re: *Telecommunications Carriers Eligible to Receive Universal Service Support*;
Time Warner Cable Petition for Forbearance, WC Docket No. 09-197

Dear Ms. Dortch,

Time Warner Cable Inc. (“TWC”) writes briefly to respond to the reply comments filed by the South Carolina Telephone Coalition (“SCTC”), the National Telecommunications Cooperative Association (“NCTA”), and the Telecommunications Association of Maine (“TAM”).¹ These “replies” are merely late-filed oppositions that repeat the arguments set forth in the oppositions of the New York State Telecommunications Association (“NYSTA”) and TAM. Although TWC already refuted those arguments in its reply comments,² it bears emphasis that these incumbent local exchange carrier (“ILEC”) associations fundamentally misunderstand and misrepresent the nature of the forbearance relief that TWC seeks.

As with NYSTA’s and TAM’s oppositions, SCTC’s reply comments confuse TWC’s request for forbearance—which is limited to seeking relief from the boundary-modification provisions in Section 214(e)(5) of the Act and Section 54.207 of the Commission’s rules—with a request for designation as an eligible telecommunications carrier (“ETC”). SCTC complains that “it cannot be determined” whether TWC’s Petition “would impact companies in South

¹ Reply Comments of the South Carolina Telephone Coalition, WC Docket No. 09-197 (filed Jan. 14, 2013) (“SCTC Reply”); Reply Comments of the National Telecommunications Cooperative Association, WC Docket No. 09-197 (filed Jan. 14, 2013) (“NTCA Reply”); Reply Comments of the Telecommunications Association of Maine, WC Docket No. 09-197 (filed Jan. 14, 2013) (“TAM Reply”).

² Reply of Time Warner Cable, *Telecommunications Carriers Eligible to Receive Universal Service Support*, Time Warner Cable Petition for Forbearance, WC Docket No. 09-197 (filed January 14, 2013) (“TWC Reply”).

Carolina,”³ missing the point that forbearing from boundary-modification requirements would have no effect unless and until TWC sought and obtained a Lifeline-only ETC designation in South Carolina. And if TWC does seek such a designation from the South Carolina Public Service Commission (“PSC”), the PSC (not this Commission) will evaluate the merits of TWC’s application and SCTC will have every opportunity to participate in that proceeding. TWC’s Petition seeks only to avoid the entirely independent—and, in the Lifeline context, needlessly burdensome—requirement of obtaining state and federal approval for modified service-area boundaries where TWC’s franchise areas do not overlap completely with a rural ILEC’s study area. The Commission has squarely held that the boundary-modification process serves no valid purpose (and indeed is affirmatively harmful to the public interest) as applied to Lifeline-only ETCs, and that holding is binding here.⁴

SCTC also echoes NYSTA’s claim that TWC’s Petition is distinguishable from those underlying the *NTCH/Cricket Forbearance Order*, because the carriers in that proceeding were wireless providers and “wireline and wireless service areas are fundamentally different.”⁵ But as TWC demonstrated in its reply comments, cable franchise areas and wireless license areas are not different in any relevant respect, and nothing in the *NTCH/Cricket Forbearance Order* remotely suggests any intention to limit the rationale for forbearance from boundary modification to wireless ETCs. To the contrary, both types of service areas often differ from a rural ILEC’s study area, and the boundary-modification requirements are equally unnecessary in both contexts because the relevant consideration is that a Lifeline-only provider, regardless of network technology, has no incentive or ability to engage in cream-skimming.⁶

Each of the reply commenters also raises specious concerns about whether the relevant TWC subsidiaries to which forbearance would apply are “telecommunications carriers.”⁷ As TWC has explained, those purported concerns have no merit. As a legal matter, the D.C. Circuit has made clear that any contingency affecting the future application of forbearance cannot justify denying relief under Section 10.⁸ In any event, the only TWC entity to date to seek Lifeline support has *already* been designated as an ETC, and no party has identified any basis for questioning the New York PSC’s determination that TWCIS (NY) qualifies as a telecommunications carrier.⁹ Nor is that determination subject to debate, as TWCIS (NY) holds a certificate of public convenience and necessity to operate as a competitive local exchange carrier and otherwise complies fully with state and federal regulations applicable to

³ SCTC Reply at 2.

⁴ *NTCH, Inc. and Cricket Communications, Inc.*, Order, 26 FCC Rcd 13723 (2011) (“*NTCH/Cricket Forbearance Order*”).

⁵ SCTC Reply at 4.

⁶ *NTCH/Cricket Forbearance Order* ¶ 13.

⁷ SCTC Reply at 3; NTCA Reply at 2-3; TAM Reply at 1-2.

⁸ *AT&T, Inc. v. FCC*, 452 F.3d 830, 835 (D.C. Cir. 2006).

⁹ TWC Reply at 8-9.

telecommunications carriers.¹⁰ By the same token, any other TWC entity that applies for a Lifeline-only ETC designation will demonstrate before the relevant state commission that it possesses the requisite qualifications to operate as a telecommunications carrier (and, more specifically, as an ETC). Any challenge to such entities' carrier status must be made before the appropriate state commissions, not in this proceeding concerning TWC's request to forbear from the separate boundary-modification requirements.

Finally, in an apparent effort to dress up its anticompetitive objections as emanating from a concern for consumers, NTCA complains that "TWC offers no information with respect to its practices and no detail regarding its Lifeline service rates and how they will be just, reasonable, and non-discriminatory."¹¹ Again, that line of argument is both irrelevant and groundless. The merits of TWC's Lifeline service plans are for the appropriate state commissions to evaluate in considering ETC designation/modification petitions; this Commission already has concluded that the only provisions at issue *here*—the boundary modification provisions designed to prevent cream-skimming in the high-cost context—have no bearing whatsoever on the rates, terms, and conditions available to Lifeline customers.¹² In any event, TWC attached an exhibit to its New York ETC modification petition describing the available discounts and other details of its proposed Lifeline service plans, and those terms leave no doubt that TWC's Lifeline plans will offer substantial public interest benefits to low-income consumers in New York.¹³

¹⁰ While the Commission has held that states may not *compel* VoIP providers to submit to certain requirements applicable to telecommunications carriers, the Commission also has recognized that such providers may elect to offer service as telecommunications carriers where they obtain a certificate and comply with other applicable requirements. *See, e.g., IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 ¶ 38 n.128 (2005) (affirming that "if a provider of interconnected VoIP holds itself out as a telecommunications carrier and complies with appropriate federal and state requirements," it is entitled to invoke Section 251's interconnection provisions); *Telephone Number Requirements for IP-Enabled Services Providers*, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19531 ¶ 20 n.62 (2007) (explaining that "[t]o the extent that an interconnected VoIP provider is licensed or certificated as a carrier, that carrier is eligible to obtain numbering resources directly from NANPA, subject to all relevant rules and procedures applicable to carriers").

¹¹ NTCA Reply at 3.

¹² *NTCH/Cricket Forbearance Order* ¶ 13.

¹³ For the record, TWC attaches those Lifeline plan descriptions to this ex parte letter as an exhibit.

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For these reasons, and for the reasons stated by TWC in its Petition and reply, the Commission should promptly grant forbearance from the enforcement of Sections 214(e)(5) and 54.207 in connection with TWC's pending and future applications for Lifeline-only designation as an ETC.

Sincerely,

/s/

Matthew A. Brill
LATHAM & WATKINS LLP

Counsel to Time Warner Cable

EXHIBIT

Attached is Exhibit C to TWCIS(NY)'s petition for ETC modification, filed with the New York Public Service Commission.

Exhibit [C]: Summary of TWCIS(NY) Lifeline Service Offerings

TWCIS(NY) will offer the Lifeline discount to eligible low-income consumers in connection with a variety of service plans. Notably:

- TWC will offer the Lifeline discount in connection with separate plans offering local-only, unlimited in-state, and unlimited nationwide calling.
- TWC will offer the Lifeline discount in conjunction with “double play” and “triple play” bundles, which will facilitate consumer access to voice services, as well as high-speed data and video services (TWC would apply the Lifeline discount only to the voice component of the bundle).

In this manner, TWC will best meet the particularized needs of any given Lifeline customer.

The following table summarizes the discounted pricing that TWC plans to provide for the *voice* component of these various plans, which reflects anticipated subsidies from the Federal Universal Service Fund and the New York State Targeted Assistance Fund. Where the consumer purchases a “double play” or “triple play” bundle, his or her actual monthly rate will be higher, based on the additional cost of video and/or high-speed data service.

	Single Play (Phone Only)	Double Play		Triple Play
		Phone + Video	Phone + High-Speed Data	
“Local-Only” Calling	\$7.74	\$5.25	\$5.25	\$2.75
Unlimited In-State Calling	\$10.25	\$7.75	\$7.75	\$5.25
Unlimited National Calling	\$12.74	\$10.25	\$10.25	\$7.75