Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Time Warner Cable's Petition for	)	WC Docket No. 06-55
Declaratory Ruling that Competitive	)	
Local Exchange Carriers May	)	
Obtain Interconnection to Provide	)	
Wholesale Telecommunications Services	)	
to VoIP Providers	)	

REPLY COMMENTS OF JOHN STAURULAKIS, INC.

John Staurulakis, Inc. ("JSI") hereby replies to comments filed in response to the Public Notice released by the Federal Communications Commission ("FCC" or "Commission") regarding a petition for declaratory ruling ("Petition") filed by Time Warner Cable ("Time Warner").[1] JSI along with many other commenting parties demonstrated that Time Warner's Petition must be denied because the relief sought is contrary to FCC interconnection rules and policies and thus would be harmful to the public interest. Some other parties, however, ignored the clear statutory directives set forth in Section 251 of the Communications Act of 1934, as amended (the "Act"), and supported grant of the Petition. These reply comments reveal the fallacies in these parties' arguments and further demonstrate that the Commission must address the issues raised by the Petition in the context of its comprehensive rulemaking proceeding regarding IP-Enhanced services and not in a request for a declaratory ruling.

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[1] *See Pleading Cycle Established for Comments on Time Warner Cable's Petition for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection to Provide Wholesale Telecommunications Services to VoIP Providers*, Docket No. 06-55, DA 06-534 (rel. Mar. 6, 2006).

I. Commenting Parties Supportive of Time Warner's Petition Fail to Acknowledge the Clear Distinction Between the Duty to Interconnect and the Obligation to Exchange Traffic

As JSI demonstrated in its comments, Time Warner's assertion that Section 251(a) of the Act requires rural local exchange carriers ("LECs") to transport and terminate third party traffic is erroneous. JSI observes that Time Warner bases its assertion on the misapplication of Sections 251(a), 251(b) and 251(c).[2] Unfortunately, some parties seeking to support Time Warner's Petition follow the same path and draw erroneous conclusions regarding the obligations of rural LECs under federal interconnection rules.[3]

A. The RLECs are in Compliance with Section 251(a) Obligations

The Commission has determined that the term "interconnection" in Section 251(a) refers to a "physical linking of two networks, and *not* to the exchange of traffic between networks."[4] This interpretation of the statute was upheld by the U.S. Circuit Court of Appeals for the District of Columbia in *AT&T Corp. v. FCC* when the court stated:

> Section 251(a)(1) provides in part that '[e]ach telecommunications carrier has the duty ... to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.' In the Order, the Commission interpreted this duty to 'interconnect' as referring 'solely to the physical linking of two networks, and not to the exchange of traffic between networks.' 16 FCC RCD 5726 at p 23 (emphasis in original). . . .
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> As the Commission points out, both the text of §251(a)(1) and the structure of §252 strongly indicate that to 'interconnect' and to exchange traffic have distinct meanings. The former section refers only to 'facilities and equipment,' not to the provision of any service. See also Competitive Telecommunications Ass'n v. FCC, 117 F.3d 1068, 1072 (8th Cir. 1997) (stating of §251(c)(2), 'By its own terms, this reference is to a physical

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2 *See* Comments of JSI at 8 & 9.

3 *See e.g.,* Comments of AT&T at 2; Comments of Neutral Tandem, Inc. at 9.

4 *Total Telecommunications Services, Inc., and Atlas Telephone Company, Inc., v. AT&T Corporation,* Memorandum Opinion and Order, 16 FCC Rcd 5726 (2001) at para. 23 (emphasis in original).

> link, between the equipment of the carrier seeking interconnection and the LEC's network'). The latter section, which establishes pricing standards for agreements between carriers, provides separately for 'interconnection and network element charges' (s 252(d)(1)) and for 'charges for transport and termination of traffic' (s 252(d)(2)). Section 252 thus contemplates the very distinction between physical linkage and exchange of traffic the Commission applied in the Order.[5]

The court even addressed the concept of "indirect" interconnection in the context of the carriers who were before the court in this case when it stated:

> Atlas/Total argues that the Commission's definition of 'interconnect" ignores the phrase 'or indirectly': 'If AT&T were not required to exchange traffic with Atlas or Total, and is not required to establish a physical connection to their facilities, then section 251(a)(1) would not require AT&T to do anything at all.' But Atlas/Total has no basis for saying AT&T is not required to establish a physical connection with them; the Commission has never said that, and in fact AT&T does connect indirectly with Atlas through a meet point established by Southwestern Bell. Nothing in the Commission's approach, therefore, deprives the term 'indirectly' of a role in the statute. Because 'we do not resort to legislative history to cloud a statutory text that is clear,' Ratzlaf v. United States, 510 U.S. 135, 147-48 (1994), we do not consider Atlas/Total's argument that the background of the interconnection requirement and the legislative history of §251 require a different interpretation of 'interconnect.' The Commission's definition of 'interconnect' in the Order faithfully follows the meaning of that term in §251(a)(1).

As Time Warner even admits and as demonstrated by JSI and other parties that were involved in the South Carolina arbitration proceedings, physical interconnections between the networks already exist.[6] For example, as noted by the South Carolina Telephone Coalition ("SCTC"), "[t]raffic is being completed between SCTC company customers and TWCIS customers."[7] Two other South Carolina rural LECs, also make a similar observation when they state,

> Calls from Time Warner customers are routinely terminated to RLECs without blocking. In addition, as a VoIP provider, Time Warner may well be originating

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5 *AT&T Corp. v. FCC*, 317 F3d 227 (DC Cir. 2003) at II(A)(3).

6 *See e.g,* Comments of JSI at 3.

7 Comments of the SCTC at 12.

> VoIP calls from subscribers within RLEC service areas. If so, these calls may terminate on the public switched telephone network (PSTN).[8]

Accordingly, the rural LECs are in compliance with their Section 251(a) obligations to interconnect with carriers.

B. The LECs are Not Obligated to Exchange Traffic with a Third Party Under Section 251(b)

Section 251(b), on the other hand, pertains to the exchange of traffic. Specifically, this section describes duties for each "local exchange carrier" with respect to other "telecommunications carriers" in the context of reciprocal compensation obligations.[9] These obligations apply only to telecommunications traffic that originates and terminates within a local area. Reciprocal compensation for transport and termination of calls is intended for "a situation in which two carriers collaborate to complete a local call."[10]

This exchange of traffic is clearly different from physical interconnection potentially enabling an exchange of traffic which is required by Section 251(a). The duty to exchange traffic flows from Section 251(b)(5) which requires the payment for transport and terminations of telecommunications to be reciprocal. In the present matter, there is no telecommunications traffic exchanged between a VoIP provider and the rural LECs. Thus, Section 251(b)(5) duties do not apply. The Commission's rules for reciprocal compensation clearly address that traffic exchanged must be between two networks, and the terms and conditions governing the exchange

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8 Comments of Home Telephone Company, Inc. and PBT, Inc. at 2.

9 47 U.S.C. § 251(b).

10 *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499 (1996) ("Local Competition Order") at para. 1034, aff'd in relevant part, Competitive Telecommunications Ass'n v. FCC, 117 F.3d 1068 (8th Cir. 1997); aff'd in part, vacated in part, Iowa Utilities Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997); cert. granted, AT&T Corp. v. Iowa Utilities Bd., 522 U.S. 1089 (1998); aff'd in part, reversed in part, AT&T Corp. v. Iowa Utilities Bd., 525 U.S. 366 (1999), opinion after remand, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Order, 14 FCC Rcd 5263 (1999) (subsequent history omitted).

of traffic is an agreement between the originating and terminating network owners,[11] not an intermediary who has neither control nor ownership of the traffic exchanged.

C. The More Burdensome Interconnection Obligations of Section 251(c) Do Not Apply in the Context of this Declaratory Ruling

As JSI observed in its comments, Time Warner wrongly attempts to combine the duties required of incumbent LECs in Section 251(c) with the requirement to physically link networks in Section 251(a).[12] Other parties follow Time Warner's lead.[13] Such an interpretation of Section 251, however, is antithetical to the Commission's determination of the hierarchical nature of Section 251. The Commission repeatedly has stated:

> Section 251(a) imposes relatively limited obligations on all telecommunications carriers; section 251(b) imposes moderate duties on local exchange carriers; and section 251(c) imposes more stringent obligations on incumbent LECs. Thus, section 251 of the Act 'create[s] a three-tiered hierarchy of escalating obligations based on the type of carrier involved.'[14]

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[11] *See* 47 CFR § 51.701(d) ("Termination. For purposes of this subpart, termination is the switching of telecommunications traffic at the terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party's premises"). MCI delivers calls to Time Warner and never terminates a call to the called party's premises.

[12] *See* JSI Comments at 9. In the South Carolina arbitration proceedings, MCI did not seek the application of the more burdensome Section 251(c) interconnection requirements on the rural LECs. As noted in the SCTC comments, most of the rural LECs in South Carolina are exempt from this provision under the rural exemption. *See* Comments of SCTC at 3, n.5.

[13] *See e.g.*, Comments of Level 3 at 4; Comments of Broadwing Communications, et. al at 2.

[14] *In the Matter of Total Telecommunications Services, Inc. and Atlas Telephone Company, Inc, Complainants, v. AT&T Corporation: Memorandum Opinion and Order*, File No. E-97-003 at para. 25 (rel. Mar. 13, 2001) *citing Guam Public Utilities Commission Petition for Declaratory Ruling concerning Sections 3(37) and 251(h) of the Communications Act: Declaratory Ruling and Notice of Proposed Rulemaking*, 12 FCC Rcd 6925, 6937-38 (1997). The Deputy General Counsel of the FCC also declared that section 251 has a three-tiered hierarchy of escalating obligations. *See Worldcom, Inc. v. FCC*, Case No. 00-1002, transcript of oral argument at 22 (DC Cir. Feb 21, 2001) ("Section 251 sets forth a hierarchy of responsibilities that various carriers have and it's sort of an increasing obligation that depends on the status, the marketplace status of the various carriers").

Accordingly, the provisions of Section 251(a) and 251(c) are clearly distinct and cannot be combined, especially when applied in the context of rural LECs many of which are still exempt from Section 251(c) requirements.[15]

II. The Public Interest Would be Harmed if VoIP Providers Were Allowed to Enjoy the Benefits of Being Telecom Carriers Without Attendant Obligations

Parties asserting that VoIP providers should have the same rights as telecom providers regarding interconnection and exchange of traffic are remiss in failing to address the obligations that are concomitant with these rights.[16] In the Commission's *IP-Enabled NPRM*, the Commission rejected such a one-sided approach when it sought comment on "broad questions covering a wide range of services and applications, and a wide assortment of regulatory requirements and benefits."[17] The Commission emphasized that such a broad inquiry is necessary to develop "a full and complete record" in order to arrive at "sound legal and policy conclusions regarding whether and how to differentiate between IP-enabled services and traditional voice legacy services, and how to differentiate among IP-enabled services themselves."[18]

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[15] *See* Local Competition Order at para. 997 ("Regarding the issue of interconnecting 'directly or indirectly' with the facilities of other telecommunications carriers, we conclude that telecommunications carriers should be permitted to provide interconnection pursuant to section 251(a) either directly or indirectly, based upon their most efficient technical and economic choices. The interconnection obligations under section 251(a) differ from the obligations under section 251(c)"). This paragraph states that 251(a) interconnection is based on each carriers' technical and economic choices. Thus, a requesting carrier may not dictate to a rural LEC how 251(a) interconnection occurs. It also shows that 251(a) duties differ from 251(c) duties – this predates and is consistent with the subsequent FCC determinations.

[16] *See, e.g.*, Comments of Von Coalition at 1-2; Comments of Advance – Newhouse Communications at 4.

[17] *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking (rel. Mar. 10, 2004) ("*IP-Enabled* NPRM") at para. 5 (emphasis supplied).

[18] *Id.*

Accordingly, any decision regarding the Title II requirements of interconnection and exchange of traffic without considering all of the Title II rights and obligations which apply to telecommunications carriers would result in a decision that could be successfully challenged from a legal perspective and likely result in policies that are detrimental to the public interest. This would certainly be the case in the context of this very narrow declaratory ruling petition in which parties supporting Time Warner's Petition have shown only a cursory understanding of the facts and where the parties supporting the petition have strong economic incentives to pressure the Commission to circumvent the necessary deliberative process that it must undertake in its *IP-Enabled NPRM* proceeding.

III. There is no Support for the Assertion that LECs Must Port Numbers When VoIP Service is Provided to End Users

Time Warner's Petition infers that the FCC has determined that LECs must port to competitive LECs ("CLECs") in cases where the end user receives VoIP service from a different carrier and there is no telecommunications service at the completion of the port.[19] In its comments, JSI demonstrated that under current rules, no such requirement exists.[20] Some parties, however, have added a new element to Time Warner's argument by asserting that LECs are required to port numbers to VoIP providers under Section 251(b) of the Act.[21]

This argument is seriously flawed. Local number portability under Section 251(b) pertains to obligations between LECs and other telecommunications carriers that serve the end user. In this case, Time Warner is seeking to port through an intermediary, MCI, which JSI

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19 *See* Petition at 22 & n. 58.

20 *See* Comments of JSI at 12-14.

21 *See e.g.,* Comments of Global Crossing at 5; Comments of Level 3 Communications LLC at 4.

contends is not a telecommunications wholesale carrier.[22] Assuming *argueno*, that MCI or another intermediary CLEC is considered a telecommunications wholesale carrier, Section 251(b) still would not apply because the wholesale carrier is not serving the end user. The wholesale carrier has no direct relationship to the end user who seeks to port his/her number but instead has only a carrier-to-carrier relationship with the VoIP provider.

The requirement for the two carriers involved in the port to have a direct relationship and the requirement that the end user must be receiving telecommunications service before and after the port are very clear in FCC number portability rules.[23] Accordingly, either a decision must be that VoIP service is a telecommunications service thereby qualifying for porting or the rules must be changed to require telecommunications carriers to port to VoIP providers as well as require VoIP providers to port between themselves. In either case, the decision must be made in the context of the *IP-Enabled NPRM* and not in the context of a declaratory ruling.[24]

IV. Conclusion

In the Telecommunications Act of 1996, Congress established a framework to allow competition to flourish in the local telecommunications market. This framework ensures not only that telecommunications carriers are able to interconnect and exchange traffic with one

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[22] As described in Time Warner's Petition, MCI's sole purpose is to act as an intermediary for Time Warner's VoIP service. Because no telecommunications traffic is being exchanged, MCI cannot be categorized as providing wholesale telecommunications service to Time Warner.

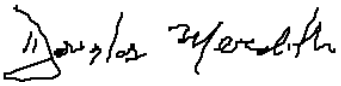
[23] *See, e.g.*, Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, WT Docket No. 05-71, Tenth Report, 20 FCC Rcd 15908 (2005) at para. 150 citing 47 CFR §52.21(l) ("Local number portability (LNP) refers to the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers when switching from one telecommunications carrier to another. Thus, subscribers can port numbers between two CMRS carriers (intramodal porting) or between a CMRS and wireline carrier (intermodal porting)").

[24] JSI notes that none of the commenters that support Time Warner's Petition have committed to comply with existing porting rules. This is yet another example of VoIP providers seeking rights given to telecommunications carriers without being subject to the attendant obligations.

another but also that the public is able to continue to receive the quality telecommunications services that they have been accustomed to receiving. As the Commission has acknowledged in its *IP-Enabled NPRM*, due to the nature of VoIP services, it is not clear whether the same regulatory benefits and obligations that apply to telecommunications carriers under this framework should apply to providers of these new services. JSI urges the Commission to continue its deliberative process of making this determination and not become side-tracked with attempts by VoIP providers to act in a piecemeal fashion regarding interconnection, number portability or any other matters that might come before the Commission in declaratory ruling petitions.

Respectfully submitted,

John Staurulakis, Inc.

By: 

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