STATE OF SOUTH CAROLINA)
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(Caption of Case)

Petition for Arbitration of Interconnection Agreement between Time Warner Cable Information Services (South Carolina), LLC d/b/a Time Warner Cable and PBT Telecom, Incorporated)

BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

COVER SHEET

DOCKET NUMBER: 2011 - 246 - C

(Please type or print)

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DOCKETING INFORMATION (Check all that apply)

☐ **Emergency Relief demanded in petition**

☐ **Request for item to be placed on Commission's Agenda expeditiously**

☐ **Other:**

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)		
☐ Electric	☐ Affidavit	☐ Letter	☐ Request
☐ Electric/Gas	☐ Agreement	☐ Memorandum	☐ Request for Certification
☐ Electric/Telecommunications	☐ Answer	☐ Motion	☐ Request for Investigation
☐ Electric/Water	☐ Appellate Review	☐ Objection	☐ Resale Agreement
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☐ Railroad	☐ Comments	☐ Petition for Rule to Show Cause	☐ Response to Discovery
☐ Sewer	☐ Complaint	☐ Petition to Intervene	☐ Return to Petition
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☐ Water/Sewer	☐ Expedited Consideration	☐ Proposed Order	☐ Other:
☐ Administrative Matter	☐ Interconnection Agreement	☐ Protest	
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BEFORE THE

PUBLIC SERVICE COMMISSION of

SOUTH CAROLINA

DOCKET NO. 2011-246-C

In the Matter of

Petition for Arbitration of Interconnection Agreement between Time Warner Cable Information Services (South Carolina), LLC, doing business as Time Warner Cable and PBT Telecom, Inc.	))))))

RESPONSE TO PETITION FOR ARBITRATION

PBT Telecom, Inc. ("RLEC") respectfully submits this Response to the Petition for Arbitration filed by Time Warner Cable Information Services, LLC, doing business as Time Warner Cable ("Time Warner"), filed with the Public Service Commission of South Carolina ("Commission") on June 14, 2011.

Pursuant to 47 U.S.C. § 252(b)(3), RLEC may respond to Time Warner's petition "and provide such additional information as it wishes within 25 days after the State commission receives the petition." This response, therefore, is expressly permitted by statute and is timely.

CONTACT INFORMATION

Copies of all pleadings in this matter should be provided to the following:

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STATEMENT OF THE ISSUE

The only issue for decision here is whether Time Warner is entitled to adopt the Interconnection Agreement dated June 1, 2008 between Sprint Communications Company, LP ("Sprint") and RLEC ("the Sprint-RLEC ICA"). This question turns on the issue of whether or not Time Warner is entitled to request interconnection directly with RLEC, an issue which the Commission previously expressly declined to address in Docket Nos. 2008-325-C through 2008-329-C. See Order No. 2009-356(A) at 18-19 ("Time Warner has represented to this Commission that it has no current plans to interconnect with the RLECs other than through its current wholesale arrangement. Accordingly, in this Order, we address only Time Warner's interconnection through a wholesaler of its choosing.") The question of whether Time Warner is entitled to direct interconnection, in turn, depends on whether or not Time Warner is considered a "telecommunications carrier"[1] providing "telecommunications service"[2] under federal

[1] The term ''telecommunications carrier'' means any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226 of this title). A telecommunications carrier shall be treated as a common carrier under this chapter only to the extent that it is engaged in providing telecommunications services, except that the Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage. 47 U.S.C. § 153(44).

law, for purposes of triggering RLEC's obligation to provide interconnection under Section 251 of the Telecommunications Act[3].

Once again, Time Warner is attempting to pull a "bait and switch." See Order No. 2005-484 in Docket No. 2004-280-C (in which the Commission referenced the changing positions of Time Warner; stated that it was still not clear exactly what services Time Warner sought to provide; and noted that it appeared Time Warner was really seeking authority to negotiate for interconnection with the RLECs). In the most recent iteration cited above,[4] Time Warner represented to the Commission that it would continue using Sprint for the foreseeable future, but stated that it did not want to be prohibited from using "other" wholesale carriers if circumstances changed in the future. In fact, Time Warner's clear intention all along was to find a way to cut out the wholesale telecommunications carrier in the middle and to obtain direct interconnection with RLEC.

It is true, as Time Warner states in its Petition at ¶ 5, that the Commission held in Order No. 2009-356(A) that Time Warner's Digital Phone Service is a telecommunications service as defined by S.C. Code Section 58-9-10. However, it remains true that the Federal Communications Commission ("FCC") has not classified Voice over Internet Protocol ("VoIP") service as a telecommunications service. Thus, RLEC maintains that the provision of VoIP service by Time Warner does not constitute the provision of telecommunications service under federal law for purposes of triggering the obligation to allow interconnection by Time Warner under Section 251 of the Act.

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[2] The term "telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. 47 U.S.C. § 153(46).

[3] Section 251(a) 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*." (Emphasis added.)

[4] See Order No. 2009-356(A) in Docket Nos. 2008-325-C through 2008-329-C.

Nor does the provision of other services entitle Time Warner to interconnection. For example, Time Warner claims that it will provide "wholesale telecommunications services" to itself and possibly to other carriers. See Petition at ¶¶ 8, 18. Time Warner does not in its Petition specify what those "services" might be, but apparently they intend to obtain interconnection from RLECs and then "provide" that interconnection to themselves and others. While that would certainly be a creative interpretation of the law, the Commission should not allow Time Warner to equate obtaining interconnection from RLECs to the provision of services of any kind by Time Warner.

Time Warner also claims to provide "point-to-point transmission services," which by definition would flow from one point to another and not through the interconnection with RLEC. Thus, even if these services could be considered telecommunications services under federal law (a point with which we disagree), they would not be offered through the interconnection arrangement, and thus cannot serve as the basis for a valid interconnection request. FCC Regulations provide:

> A telecommunications carrier that has interconnected or gained access under Sections 251(a)(1), 251(c)(2), or 251(c)(3) of the Act, may offer information services through the same arrangement, so long as it is offering telecommunications services through the same arrangement as well."

47 C.F.R. Section 51.100(b).

RLEC's position regarding the interpretation of FCC Regulation 51.100(b) is completely consistent with the FCC's Time Warner Declaratory Ruling Order. The Commission also cited the FCC's holding in Order No. 2009-356(A) by stating:

> We intend this Order to be fully consistent with the FCC's Time Warner Declaratory Ruling . . . . In that decision, the FCC held that CLECs providing wholesale telecommunications services to other service providers are entitled to interconnection under Section 251 of the

> Telecommunications Act of 1934, as amended. However, the FCC expressly limited its ruling to 'telecommunications carriers that provide wholesale telecommunications service and that seek interconnection *in their own right* for the purpose of transmitting traffic to or from another service provider.'

Order No. 2009-356(A) at p. 19 (underlining emphasis added; italics in original).

Time Warner's assertion, at ¶ 8 of its Petition, that the FCC "recently reaffirmed the unequivocal right of competitive carriers such as Time Warner Cable to interconnect with rural ILECs such as Home" is a mischaracterization of the FCC's recent Order In the Matter of CRC Communications of Maine, Inc. and Time Warner Cable for Preemption Pursuant to Section 253 of the Communications Act, as Amended, et al., Declaratory Ruling, FCC 11-83, WC Docket No. 10-143, GN Docket No. 09-51, CC Docket No. 01-91 (rel. May 26, 2011) ("CRC Declaratory Ruling"). In fact, the CRC Declaratory Ruling involved a situation exactly like that in the Time Warner Declaratory Ruling Order – i.e., Time Warner, as a VoIP provider, interconnecting with an ILEC through a true telecommunications wholesale provider in the middle. The issue in that case was not, as Time Warner suggests, whether a VoIP provider is entitled to interconnection. The primary issue in the case was whether incumbent rural telephone companies that held rural exemptions under Section 251(c) were obligated to negotiate with true telecommunications service providers for interconnection services under Sections 251(a) and (b). The FCC held that they are.

In the present case, RLEC is not arguing and has not argued that it is not obligated to interconnect with true telecommunications carriers. In fact, RLEC has interconnected with Sprint, Time Warner's current wholesale telecommunications service provider.

RLEC has argued only that it is not obligated to interconnect with carriers that do not meet the statutory and regulatory requirements to qualify for interconnection.

RLEC is in full compliance with existing Commission and FCC orders and regulations regarding its interconnection obligations. RLEC has interconnected with Sprint and has allowed Sprint to exchange information service traffic through that interconnection arrangement. This has allowed Time Warner to provide its Digital Phone Service in RLEC's service area. If Time Warner chooses to use a true telecommunications service wholesale provider other than Sprint to obtain interconnection with RLEC, that would be permitted by law. However, RLEC does not believe it is appropriate or consistent with current law and regulations to permit Time Warner to obtain direct interconnection with RLEC. If this were allowed, it would potentially open RLEC up to obligations to non-telecommunications carriers that go well beyond the requirements of existing law.

For the reasons stated herein, we respectfully request that the Commission find that Time Warner's request for interconnection with RLEC is not a *bona fide* request under Section 251 of the Telecommunications Act of 1996 and that, therefore, RLEC has no obligation to allow Time Warner to adopt the Sprint/RLEC ICA, and the provisions of Sections 251 and 252 of the Act (including the statutory time frames included therein) do not apply to Time Warner's request; and that the Commission dismiss Time Warner's Petition for Arbitration in this matter.

Respectfully submitted,

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ATTORNEYS FOR PBT TELECOM, INC.

Columbia, South Carolina

July 8, 2011

BEFORE
THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA

Docket No. 2011-246-C

IN RE: Petition for Arbitration of Interconnection Agreement between Time Warner Cable Information Services (South Carolina), LLC d/b/a Time Warner Cable and PBT Telecom, Incorporated	)	**CERTIFICATE OF SERVICE**

I, Rebecca W. Martin, do hereby certify that I have this date served one (1) copy of the attached Response To Petition For Arbitration to the following parties causing said copies to be deposited with the United States Postal Service, first class postage prepaid and properly affixed thereto, and addressed as follows:

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July 8, 2011

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