STATE OF SOUTH CAROLINA

(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 Fort Mill Telephone Company, d/b/a Comporium Communications

BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

COVER SHEET

DOCKET NUMBER: 2011 - 244 - 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
☐ Electric/Water/Telecom.	☐ Application	☐ Petition	☐ Resale Amendment
☐ Electric/Water/Sewer	☐ Brief	☐ Petition for Reconsideration	☐ Reservation Letter
☐ Gas	☐ Certificate	☐ Petition for Rulemaking	☐ Response
☐ Railroad	☐ Comments	☐ Petition for Rule to Show Cause	☐ Response to Discovery
☐ Sewer	☐ Complaint	☐ Petition to Intervene	☐ Return to Petition
☒ Telecommunications	☐ Consent Order	☐ Petition to Intervene Out of Time	☐ Stipulation
☐ Transportation	☐ Discovery	☒ Prefiled Testimony	☐ Subpoena
☐ Water	☐ Exhibit	☐ Promotion	☐ Tariff
☐ Water/Sewer	☐ Expedited Consideration	☐ Proposed Order	☐ Other:
☐ Administrative Matter	☐ Interconnection Agreement	☐ Protest	
☐ Other:	☐ Interconnection Amendment	☐ Publisher's Affidavit	
	☐ Late-Filed Exhibit	☐ Report	

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BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

IN RE: DOCKET NUMBER 2011-243-C - Petition for Arbitration of Interconnection Agreement between Time Warner Cable Information Services (South Carolina), LLC d/b/a Time Warner Cable and Farmers Telephone Cooperative, Inc.

DOCKET NUMBER 2011-244-C - Petition for Arbitration of Interconnection Agreement between Time Warner Cable Information Services (South Carolina), LLC d/b/a Time Warner Cable and Fort Mill Telephone Company d/b/a Comporium Communications

DOCKET NUMBER 2011-245-C - Petition for Arbitration of Interconnection Agreement between Time Warner Cable Information Services (South Carolina), LLC d/b/a Time Warner Cable and Home Telephone Company, Inc.

DOCKET NUMBER 2011-246-C - Petition for Arbitration of Interconnection Agreement between Time Warner Cable Information Services (South Carolina), LLC d/b/a Time Warner Cable and PBT Telecom, Inc.

DIRECT TESTIMONY OF

DOUGLAS DUNCAN MEREDITH

ON BEHALF OF

FARMERS TELEPHONE COOPERATIVE, INC.

FORT MILL TELEPHONE COMPANY

HOME TELEPHONE CO., INC.

PBT TELECOM, INC

I. Introduction

Q: PLEASE STATE YOUR FULL NAME, PLACE OF EMPLOYMENT AND POSITION.

A: My full name is Douglas Duncan Meredith. I am employed by John Staurulakis, Inc. ("JSI") as Director – Economics and Policy. JSI is a telecommunications consulting firm. My office is located at 547 Oakview Lane, Bountiful, Utah 84010. JSI has provided telecommunications consulting services to rural local exchange carriers since 1963.

Q: PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE AND EDUCATIONAL BACKGROUND.

A: As the Director of Economics and Policy at JSI, I assist clients with the development of policy pertaining to economics, pricing and regulatory affairs. I have been employed by JSI since 1995. Prior to my work at JSI, I was an independent research economist in the District of Columbia and a graduate student at the University of Maryland – College Park.

In my employment at JSI, I have participated in numerous proceedings for rural and non-rural telephone companies. These activities include, but are not limited to, the creation of forward-looking economic cost studies, the development of policy related to the application of the rural safeguards for qualified local exchange carriers, the determination of Eligible Telecommunications Carriers, and the sustainability and application of universal service policy for telecommunications carriers.

In addition to assisting telecommunications carrier clients, I have served as the economic advisor for the Telecommunications Regulatory Board of Puerto Rico since 1997. In this capacity, I provide economic and policy advice to the Board Commissioners on all telecommunications issues that

have either a financial or economic impact. I have participated in a number of Arbitration panels established by the Board to arbitrate interconnection issues under Section 252 of the Telecommunications Act of 1996 (the "Act").

I am participating or have participated in numerous national incumbent local exchange carrier and telecommunications groups, including those headed by NTCA, OPASTCO, USTA, and the Rural Policy Research Institute. My participation in these groups focuses on the development of policy recommendations for advancing universal service and telecommunications capabilities in rural communities and other policy matters.

I have testified or filed pre-filed regulatory testimony in various states including South Carolina, New Hampshire, New York, Michigan, Wisconsin, North Dakota, South Dakota, Vermont, Texas, Kentucky, Utah, Maine and Tennessee. I have also participated in regulatory proceedings in many other states that did not require formal testimony, including Florida, Louisiana, Mississippi, North Carolina, Puerto Rico and Virginia. In addition to participation in state regulatory proceedings, I have participated in federal regulatory proceedings through filing of formal comments in various proceedings and submission of economic reports in an enforcement proceeding.

I have a Bachelor of Arts degree in economics from the University of Utah, and a Masters degree in economics from the University of Maryland – College Park. While attending the University of Maryland – College Park, I was also a Ph.D. candidate in Economics. This means that I completed all coursework, comprehensive and field examinations for a Doctorate of Economics without completing my dissertation.

Q: ON WHOSE BEHALF ARE YOU TESTIFYING?

A: I am testifying in this consolidated docket on behalf of the rural local exchange carriers captioned in this proceeding: Farmers Telephone Cooperative, Inc., Fort Mill Telephone Company, Home Telephone Co., Inc., and PBT Telecom, Inc. (collectively "RLECs")

Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A: My purpose in providing this testimony to the Public Service Commission of South Carolina ("Commission" or "PSC") is to show how the position taken by Time Warner Cable Information Services ("Time Warner Cable") to adopt the existing Sprint interconnection agreement for its Digital Voice Service with each RLEC is inconsistent with determinations made by this Commission and the Federal Communications Commission ("FCC"). Time Warner Cable is seeking to abandon the parameters established by the FCC in the *Time Warner Declaratory Ruling*[1] by requesting direct interconnection with the RLECs. It is also ignoring conditions adopted by this Commission in its Amended Order Granting Amendments to Certificates of Public Convenience and Necessity ("CPCN").[2] In addition, Time Warner Cable is seeking to opt into agreements whose initial terms have expired, which is not reasonable and should not be permitted.

I recommend the Commission reject Time Warner Cable's arbitration request to opt into Sprint's ICAs with the RLECs.

[1] *See generally Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum Opinion and Order, WC Docket N. 06-55 (March 1, 2007) ("Time Warner Declaratory Ruling").

[2] Application of Time Warner Cable Information Services (South Carolina), LLC d/b/a Time Warner Cable to Amend Its Certificate of Public Convenience and Necessity to Provide Telephone Services in the Service Area of Farmers Telephone Cooperative, Incorporated, et al., June 11, 2009, No. 2009-356(A) (CPCN Order).

Q: PLEASE DESCRIBE TIME WARNER CABLE'S REQUEST.

A: In this arbitration, Time Warner Cable is asking the Commission to permit it to opt into the interconnection agreement ("ICA") each of the respective RLECs has with Sprint Communications Co., LP ("Sprint"). This request may appear innocuous at first glance, but upon close inspection there are numerous public policy, regulatory, and legal issues that compel the RLECs to reject Time Warner Cable's request.

II. Time Warner Cable's Request is in Violation of its Certificate of Public Convenience and Necessity in the RLEC Service Areas

Q: PLEASE DESCRIBE THE RLECS' CONCERNS WITH TIME WARNER CABLE'S REQUEST.

A: The first concern is that Time Warner Cable's request violates the conditions of its CPCN in the RLEC service areas.

Q: HOW DOES TIME WARNER'S REQUEST VIOLATE ITS CERTIFICATE OF PUBLIC CONVENIENCE IN THE RLEC SERVICE AREAS?

A: Time Warner Cable previously applied to amend its Certificate of Public Convenience and Necessity ("CPCN") before this Commission. In 2009 the Commission amended Time Warner's CPCN to include the RLECs' service areas. The Commission intended that its order "be fully consistent with the FCC's Time Warner Declaratory Ruling."[3] The Commission expressed its understanding of the FCC's declaratory ruling and stated that the ruling provides that "CLECs providing wholesale telecommunications services to other service providers [such as Time Warner Cable] are entitled to interconnection under Section 251 of the Telecommunications Act of 1934, as amended." However, the Commission also noted that the FCC expressly

[3] CPCN Order at 19.

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."[4] In addition to this express limitation, the FCC emphasized "that the rights of telecommunications carriers to Section 251 interconnection are limited to those carriers that, at a minimum, do in fact provide telecommunications services to their customers, either on a wholesale or retail basis."[5] The Commission conditioned Time Warner Cable's CPCN with these requirements.

Q: DOES TIME WARNER CABLE RECOGNIZE THERE WAS A CONDITION IMPOSED BY THE COMISSION ON ITS CPCN?

A: Yes, however Time Warner Cable's witness misstates the condition. Compare the statement of Time Warner Cable with the CPCN condition.

Time Warner Cable:
"the only condition is that the interconnecting carrier must be certificated and regulated by the Commission."[6]

Commission's CPCN Condition:
"[Time Warner Cable] shall only use underlying carriers that are authorized to do business in the State of South Carolina, that hold valid [CPCNs] issued by this Commission, and that have interconnection agreements with the RLECs."[7]

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[4] Id.

[5] Time Warner Declaratory Ruling at 14. In making this emphasis, the FCC observed that 47 CFR 51.100(b) remains in full force.

[6] Laine Direct at 8.

[7] CPCN Order at 22, order number 4.

Time Warner Cable misstates the Commission's own words in its attempt to seek direct interconnection in this arbitration. To be clear, the condition requires that there be an underlying carrier and "that the underlying carrier have interconnection agreements with the RLECs."[8] Time Warner Cable does not satisfy this condition and tries to have the Commission ignore the condition by not quoting it.

III. The Commission Should Determine that the Sprint ICA isn't Available for Opt-In

Q: WHAT OTHER CONCERNS DO THE RLECS HAVE REGARDING TIME WARNER CABLE'S OPT-IN REQUEST?

A: A second concern is the time period for opting into an agreement. According to FCC rules, the available time to opt into an existing agreement is not boundless.

Q: PLEASE DECRIBE THE SPRINT ICA AT ISSUE IN THIS PROCEEDING.

A: The Sprint ICAs with the respective RLECs are interconnection agreements whose initial terms have expired. The agreements each had an initial two-year term. The Sprint ICAs began in 2007 and 2008, expiring in 2009 and 2010 respectively according to the following table:

Farmers	Start Date:	09/01/07
Fort Mill	Start Date:	11/15/07
Home	Start Date:	01/01/08
PBT	Start Date:	06/01/08

Q: WHAT IS THE REQUIREMENT OF SECTION 252(I) OF THE ACT?

A: Section 252(i) states:

[8] CPCN Order at 22, condition no. 4.

> A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.[9]

Q: HAS THE FCC INTERPRETED THIS REQUIREMENT IN A FEDERAL RULE?

A: Yes. The FCC in its Local Competition Order, which embodies the FCC's initial interpretative rulemaking implementing the Telecommunications Act after its passage in 1996 promulgated the following rule:

> 47 C.F.R. § 51.809(c). Individual agreements shall remain available for use by telecommunications carriers pursuant to this section **for a reasonable period of time after the approved agreement is available** for public inspection under section 252(h) of the Act. (Emphasis supplied.)

The FCC rule implementing this provision of the Act allows for opting into an agreement for "a reasonable period of time" after the approval. The FCC's understanding of this statute was that it was primarily intended to prevent discrimination.[10] The FCC concluded that a reasonable period of time to opt in was appropriate to address the discrimination issue. The FCC stated:

> We agree with those commenters who suggest that agreements remain available for use by requesting carriers for a reasonable amount of time. Such a rule addresses incumbent LEC concerns over technical incompatibility, while at the same time providing requesting carriers with a reasonable time during which they may benefit from previously negotiated agreements. In addition, this approach makes economic sense, since the pricing and network configuration choices are likely to change over time, as several commenters have observed. Given this reality, it would not make sense to permit a subsequent carrier to impose an agreement or

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[9] 47 U.S.C. § 252(i).

[10] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd 15499 (1996) (Local Competition Order), at ¶ 1296.

term upon an incumbent LEC if the technical requirements of implementing that agreement or term have changed.[11]

Q: WHO DECIDES WHAT IS A REASONABLE PERIOD OF TIME?

A: The Commission makes this determination. In a case addressing another aspect of the opt-in procedures, the U.S. Court of Appeals, First Circuit stated that the lack of specific guidance from the FCC shouldn't be surprising because it is a matter left to the states.[12] Such is the case here. The Commission has the responsibility to determine what a reasonable period of time is for opt-in

Q: WHAT GUIDANCE WOULD YOU GIVE THE COMMISSION REGARDING A REASONABLE PERIOD OF TIME?

A: I recommend the Commission determine that for purposes of opting into an agreement, the initial term of the agreement must not have lapsed.

Q: WHAT IS THE REASON FOR YOUR RECOMMENATION?

A: To faithfully follow the FCC regulation, it is clear there must be a certain time when the agreement is not available for opt in. The agreements each had an initial two-year term with an "evergreen" provision allowing for automatic renewal for one-year periods. It is understandable that for a two-year initial term, the opt-in window should be less than two years; however, to provide conservative guidance to the Commission, I suggest that the reasonable period of time to opt in cannot extend beyond the initial term.[13]

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[11] Local Competition Order at ¶ 1319. (Note that the pick and choose opt-in procedures have changed and are not at issue in this proceeding.)

[12] Global NAPs, Inc. v. Verizon New England, Inc., 34 CR 1390 (1st Cir. 2005) , ("The FCC has not interpreted the statute on the precise question before us. That is not surprising, since the issue is one of the power of a state commission.")

[13] For example, the Maryland Commission determined that opting into a three year ICA after two and a half years have elapsed was not reasonable. *In re Petition of Global NAPs South, Inc. for Arbitration of Interconnection Rates, Terms and Conditions and Related Relief*, Case No. 8731, (Md. PSC July 15, 1999) at 3 and 5.

This amount of time would allow all interested parties to opt into the terms and conditions of the newly minted interconnection agreement—precisely the primary intent expressed by the FCC in promulgating this rule.

Furthermore, the Commission must adopt a standard for the opt-in window that comports with the FCC's regulation. By stating simply that the opt-in window is less than the initial term of an agreement, the Commission may satisfy the regulation.

IV. The Classification of Time Warner Cable Traffic

Q: IS THERE A DISPUTE BETWEEN THE RLECS AND TIME WARNER CABLE REGARDING THE CLASSIFICATION OF DIGITAL PHONE SERVICE?

A: Yes. Digital Phone Service is a telecommunications service for state purposes, and is classified as an interconnected VoIP service for federal purposes. The disagreement is the effect that these classifications have on Section 251 interconnection rights and obligations.

Q: WAS THE COMMISSION AWARE OF TIME WARNER CABLE'S DIGITAL PHONE SERVICE WHEN IT IMPOSED ITS CONDITION IN THE CPCN?

A: Yes. The Commission was aware of the services offered by Time Warner Cable. In the CPCN Order, the Commission found that Time Warner Cable's Digital Phone Service is a regulated telecommunications service as defined by S.C. Code Ann. Section 58-9-10 and found that it was an interconnected VoIP service as defined in the FCC Code. The Commission did not find that Digital Phone Service was a "telecommunications service" for federal purposes and more specifically it did not find that it was a telecommunications service for Section 251 interconnection purposes.

The applicable Findings of Fact in the CPCN Order state: "(4) Digital Phone Service is a regulated telecommunications service as defined by S.C. Code Ann. Section 58-9-10; (5) Digital Phone service is a fixed interconnected VoIP service as defined by 47 C.F.R. [§] 9.3; (6) Neither the FCC nor the federal courts **have expressly preempted state regulation** of telecommunications services provided via fixed interconnected VoIP; (7) No party argued that this Commission lacked jurisdiction to issue an amended certificate or that this Commission lacked the authority to **impose conditions on the granting of any amended certificate**."[14]

These findings show that the Commission declared Digital Phone Service as telecommunications service for state purposes, as an interconnected VoIP service for federal purposes, and that the federal authorities have not preempted the state from imposing state regulations on Digital Phone Service. The Commission acted in accord with these findings by imposing conditions on Time Warner's amended CPCN.

Q: HOW HAS THE FCC DEFINED 'INTERCONNECTED VOIP SERVICES'?

A. The FCC defines 'Interconnected VoIP' as "a service that (1) [e]nables real-time, two-way communications; (2) [r]equires a broadband connection from the user's location; (3) [r]equires Internet protocol-compatible customer premises equipment (CPE); and (4) [p]ermits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network."[15]

The Commission has identified Digital Phone service as interconnected VoIP service for federal purposes. Specifically, the Commission has found that

[14] CPCN Order at 20 (Emphasis supplied).

[15] 47 C.F.R. § 9.3.

"Digital Phone service is a fixed interconnected VoIP service as defined by 47 C.F.R. [§]9.3."[16]

Time Warner Cable alleges that when the Commission declared that Digital Phone Service is telecommunications service under the S.C. Code that the Commission also declared that Digital Phone Service is a "telecommunications service" as defined under U.S. Code for federal interconnection purposes.[17] Because the Commission specifically defined the service separately for state and federal purposes, Time Warner Cable's attempt to combine the state and federal classification of Digital Phone service is inconsistent with the historical record.

Q: IS THERE A MATERIAL DIFFERENCE BETWEEN THE DEFINITIONS OF "TELECOMMUNICATIONS SERVICE" FOR STATE PURPOSES AND "TELECOMMUNICATIONS SERVICE" AND "INTERCONNECTED VOIP SERVICE" FOR FEDERAL PURPOSES?

A: Yes. This difference illustrates, for example, why there is a Time Warner Cable Declaratory Ruling. A service needs to be classified as a telecommunications service for federal purposes before the carrier can seek interconnection under Section 251 of the Act. A comparison of the definitions is useful to show the differences.

The South Carolina definition of "telecommunications service" is: "The term "telecommunications services" means the services for the transmission of

[16] CPCN Order at 20.

[17] The Commission's order is very specific: its states "there is currently no contested issue as to whether Digital Phone service is a telecommunications service as that term is defined by Section 58-9-10 [of the S.C. Code]" CPCN Order at 7.

voice and data communications to the public for hire, including those nonwireline services provided in competition to landline services."[18]

The federal definition is: "The term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."[19]

And the federal definition in the Act for interconnected VoIP service is: "The term "interconnected VoIP service" has the meaning given such term under section 9.3 of title 47, Code of Federal Regulations, as such section may be amended from time to time."[20]

The federal definition clearly shows that interconnected VoIP service is not a telecommunications service.

The South Carolina definition makes no distinction between interconnected VoIP service and telecommunication service whereas the federal definition makes a bright line between the two because of the rights and obligations assigned to the different classes of service. Thus, there is a material difference between the classification for state purposes and federal purposes.

V. Time Warner Cable's Allegation that it is Eligible for Section 251 Direct Interconnection is Incorrect

[18] S.C. Code Ann. § 58-9-10(15).

[19] 47 U.S.C. §153(50).

[20] 47 U.S.C. § 153(25). This definition was added in 2010 to the Communications Act of 1934, as amended by Pub. L. 111-260, title I, Sec. 101, Oct. 8, 2010, 124 Stat. 2752.

Q: TIME WARNER CABLE STATES THAT THE FACT THAT IT IS OFFERING INTERCONNECTED VOIP SERVICE "HAS NO EFFECT ON TIME WARNER CABLE'S RIGHT TO INTERCONNECT DIRECTLY WITH THE ILECS IN SOUTH CAROLINA." DO YOU AGREE?

A: No. Time Warner Cable uses results from several FCC and Court decisions to make this claim. I will respond to each case and demonstrate that Time Warner Cable's claim is unpersuasive and should be rejected.

IP-Enabled Services First Report and Order (2005)[21]

Time Warner Cable argues that a 2005 case addressing E911 states that when Time Warner Cable elects to operate as a telecommunications carrier, it is entitled to direct interconnection for the purpose of offering its interconnected VoIP service to customers.[22]

First, Time Warner Cable cites the IP-Enabled Services First Report and Order released in 2005. In this order the FCC required that interconnected VoIP service providers provide emergency services. (This order is where the federal definition of interconnected VoIP service was first promulgated.) This order does not reach as far as Time Warner Cable suggests. First, the FCC states that interconnected VoIP service providers may satisfy their E911 requirement by interconnecting indirectly or directly to the Wireline E911 Network.[23] This would be the same Wireline E911 Network that the RLECs interconnect to for E911 services. The requirement to supply E911 in no way authorizes interconnected VoIP service providers to interconnect directly for the purpose of exchanging VoIP traffic. The order itself states:

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[21] IP-Enabled Services, WC Docket No. 04-36, E911 Requirements for IP-Enabled Service Providers, WC Docket No. 05-196, First Report and Order and Notice of Proposed Rulemaking, FCC 05-116, 20 FCC Rcd 10245, 36 CR 1 (rel. June 3, 2005) (IP-Enabled Services E911 Order).

[22] Laine Direct at 10.

[23] IP-Enabled Services E911 Order at ¶¶ 1 and 38.

> The Wireline E911 Network is "interconnected with but largely separate from the PSTN."[24]
>
> The FCC's stated authority to act is under Title I and its plenary numbering authority under section 251(e). It did not apply additional authority under Title II.[25]
>
> The requirement interconnected VoIP providers have is to transmit all 911 calls to the PSAP.[26]

Time Warner Cable cites the last part of a very long footnote (footnote 128) that discusses how interconnected VoIP service providers can interconnect to the Wireline E911 Network. Time Warner Cable concludes that the FCC's observation opens rights to Section 251 interconnection with the RLECs. Compare the actual quote with contextual comments with the Time Warner Cable quote.

Time Warner Cable:

> ... the FCC stated 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 the rights conferred under Section 251.

Footnote 128 (emphasis supplied):

> *See* 47 USC §251(a)(1) (requiring all telecommunications carriers "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers"); 47 USC §251(c) (requiring incumbent LECs, other than those exempted by section 251(f), to make available unbundled network elements to requesting telecommunications carriers); [47 CFR §51.319(f)] 47 CFR §51.319(f) ("An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to 911 and E911 databases on an unbundled basis, in accordance with section 251(c)(3) of the Act...."); Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers;

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[24] Id at 14.

[25] Id at 26.

[26] Id at 37.

> Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, 17332, para. 557 (2003) ("[B]ecause of the unique nature of 911 and E911 services and the public safety issues inherent in ensuring nondiscriminatory access to such databases, we conclude that ... competitive carriers must continue to obtain unbundled access to those databases to ensure that their customers have access to emergency services."); 47 USC §271(c)(2)(B)(vii)(1) (requiring BOCs to provide nondiscriminatory access to 911 and E911 services to other telecommunications carriers); Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137, Memorandum Opinion and Order, 12 FCC Rcd 20543, 20679, para. 256 (1997) (**"[S]ection 271 requires a BOC to provide competitors access to its 911 and E911 services in the same manner that a BOC obtains such access, i.e., at parity."); id. ("For facilities-based carriers, nondiscriminatory access to 911 and E911 service also includes the provision of unbundled access to [a BOC's] 911 database and 911 interconnection, including the provision of dedicated trunks from the requesting carrier's switching facilities to the 911 control office...."). Of course, if we find interconnected VoIP to be a telecommunications service, or if a provider of interconnected VoIP holds itself out as a telecommunications carrier and complies with appropriate federal and state requirements, access under these provisions would be available to those providers as well.**

The access discussed in this context is access to the Wireline E911 Network and not Section 251 access to RLEC networks. The footnote does not support Time Warner Cable's conclusion.

<u>Fiber Technologies Networks, L.L.C. v. North Pittsburgh Telephone Company</u>[27]

Another case referenced by Time Warner Cable is a 2007 case involving pole attachments. The Enforcement Bureau held that if a telecommunications

[27] *Fiber Technologies Network, L.L.C. v. North Pittsburgh Tel. Co.*, Memorandum Opinion and Order, 22 FCC Rcd 3392, 40 CR 598 (2007).

carrier is indiscriminately offering or planning to offer telecommunications service, then it has the right to access poles for the placement of its attachments. In this case the Enforcement Bureau relied on the intent and tariffs for telecommunications services that would be offered.

Time Warner Cable has made no statements that it is offering or is intending to offer federally defined telecommunications services in the RLEC service areas and seeks a Section 251 interconnection arrangement with the RLECs for this purpose.[28] The Commission has not found Digital Phone service to be a federal telecommunications service.

Bright House Networks, LLC v. Verizon California, Inc. and Verizon California, Inc.v. FCC[29]

This 2008-2009 case addresses the use of CPNI for use in win-back strategies. In this case the Court found that the FCC's three pronged approach to address the rights of an interconnected VoIP service provider was reasonable. Specifically,

> the FCC found that three pieces of evidence, taken together, amounted to a prima facie case that the affiliates had held themselves out as common carriers. First, they self-certified that they do and will continue to operate as common carriers, serving all similarly situated customers equally. Second, the carriers entered into publicly available interconnection agreements with Verizon, something that Verizon was obligated to do only if the other entities were in fact telecommunications carriers. Verizon's behavior is telling. Interconnection obligations curtail potential anticompetitive advantages that network effects might afford a local exchange carrier, advantages Verizon would presumably be loath to give up. Finally, each carrier obtained a state certificate of public convenience and necessity, thereby giving public notice of its intent to act as a common carrier. While none of the three facts

[28] I have shown previously that the definition of telecommunications in South Carolina is materially different from the federal definition.

[29] *Bright House Networks, LLC v. Verizon California, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 10704, 45 CR 517(2008) and *Verizon California, Inc. v. FCC*, 555 F.3d 270, 47 CR 256 (D.C. Cir. 2009).

> by itself seems compelling, in the aggregate they appear enough to render the Commission's conclusion reasonable.

The three FCC prongs described by the Court are not met by Time Warner Cable in this proceeding. Time Warner Cable claims that it is or will be a common carrier for Digital Voice service (prong one) and greatly emphasizes the grant of a CPCN (prong three). However, as discussed earlier, its CPCN is conditioned by requiring Time Warner Cable to use underlying carriers that have an interconnection agreement with the RLECs (having an ICA is prong two). Thus, prong three, and of course prong two, of the FCC's test fail and Time Warner Cable's claim fails. Furthermore, the Court observed that the FCC refrained from extending its decision into other statutory contexts.[30] The matter addressed by the Court was Section 222(b) and not Section 251. The Court found it reasonable that the FCC limited its discussion of carrier status to Section 222(b) and did not extend it to other sections.[31]

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[30] "In sum, based on the particular facts in this record regarding the telecommunications provided to Comcast and Bright House by their affiliated Competitive Carriers, we conclude that Comcast and Bright House have shown, by a preponderance of the evidence, that the Competitive Carriers are telecommunications carriers for purposes of section 222(b) of the Act and provide "telecommunications services" to Comcast and Bright House within the meaning of section 222(b) of the Act. **We stress, however, that our holding is limited to the particular facts and the particular statutory provision at issue in this case.** The U.S. Court of Appeals for the D.C. Circuit has made clear that an agency may interpret an ambiguous term "differently in two separate sections of a statute which have different purposes."100 Here, section 222(b) has a different purpose - privacy protection - than many other provisions of the Communications Act, and we believe that this purpose argues for a broad reading of the provision. As a result, our decision holding the Competitive Carriers to be "telecommunications carriers" for purposes of section 222(b) does not mean that they are necessarily "telecommunications carriers" for purposes of all other provisions of the Act. We leave those determinations for another day. While the Act does provide a definition of the term "telecommunications carrier," "the presence of a definition does not necessarily make the meaning clear. A definition only pushes the problem back to the meaning of the defining terms."101 Therefore, we believe that it may be permissible to interpret an ambiguous but defined term differently in different statutory provisions that serve distinct purposes." Bright House at 41. (emphasis supplied)

[31] This is the courts entire statement on this matter: "In our court, Verizon makes much of the fact that the Commission, having concluded that the two carriers were telecommunications carriers for purposes of §222(b), left open a possibility that they might not be telecommunications carriers for purposes of other provisions of the Act. See id. ¶41. That, says Verizon, is the very definition of arbitrary and capricious decision making. But the Commission simply refrained from reaching any decision as to the classification of the affiliates in other statutory contexts. It said, "We leave those determinations for another day." Id. Although a phrase in a statute is typically assumed to have the same meaning throughout, "it is not impermissible under Chevron for an agency to interpret an imprecise term differently in two separate sections of a statute which have different purposes." Abbott Labs. v. Young, [920 F2d 984] 920 F2d 984,

Thus, to conclude a very long response, Time Warner Cable has provided no support for the proposition that for purposes of Section 251 it is entitled, as an interconnected VoIP service provider, to seek an interconnection agreement with the RLECs. Time Warner Cable argues "possession of a CPCN and its publication of tariffs constitute sufficient evidence of its status as a telecommunications carrier under federal law."[32] I have shown that the various cases are distinguishable from the present case and that Time Warner Cable fails even the FCC's three prong approach.

Q: DOES THE FCC'S RECENT *CRC DECLARATORY RULING*[33] SUPPORT TIME WARNER CABLE'S CLAIM THAT INTERCONNECTED VOIP PROVIDERS MAY DIRECTLY INTERCONNECT WITH THE RLECS?

A: No Contrary to Time Warner Cable's argument, the CRC Declaratory Ruling does not allow Time Warner Cable to seek direct interconnection for its interconnected VoIP service.[34]

An examination of the discussion cited by Time Warner Cable shows that its claim is unsupported. First, the FCC's discussion of this matter occurs

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987 (DC Cir 1990), quoted in Order, 23 FCC Rcd at 10719-20 ¶41 n.100. "Identical words may have different meanings where [among other things] the conditions are different." Weaver v. U.S. Info. Agency, [87 F3d 1429] 87 F3d 1429, 1437 (DC Cir 1996) (quoting Atlantic Cleaners & Dyers, Inc. v. United States, [286 US 427] 286 US 427, 433 (1932)). Because of that possibility--different contexts dictating different interpretations--courts addressing the meaning of a term in one context commonly refrain from any declaration as to its meaning elsewhere in the same statute. We cannot see that the Commission's non-resolution of these other issues rendered its reasoning any more questionable than would a court's similar exercise of caution."

[32] Laine Direct at 11.

[33] *Petition of CRC Communications of Maine, Inc. and Time Warner Cable, Inc. for Preemption Pursuant to Section 253 of the Communications Act, as Amended*, Declaratory Ruling, FCC 11-83, (rel. May 26, 2011) (CRC Order). The CRC Order involves a ruling by the FCC regarding CRC, a carrier in the state of Maine.

[34] *See* Laine Direct at 12 (citing the CRC Declaratory Ruling for the proposition that the VoIP question has "no bearing on a competitive carriers' right to interconnect with ILECs, including where the competitive carrier exchanges only VoIP traffic."

within the context of wholesale carriers, like Sprint, in exchanging VoIP traffic. CRC is a well-established long distance provider in Maine and exchanges telecommunications traffic with many incumbent local exchange carriers. In this discussion, the FCC states:

> We reaffirm the Bureau's finding that wholesale telecommunications carriers are entitled to interconnect and exchange traffic with incumbent LECs pursuant to sections 251(a) and (b) when providing telecommunications services to other service providers, including for the specific purpose of providing wholesale services to interconnected VoIP providers.[35]

This discussion plows no new ground as the Time Warner Declaratory Ruling says as much but with the appropriate conditions and limitations. The CRC ruling does not extend the decision to allow Time Warner Cable to seek direct interconnection for its interconnected VoIP service, as Time Warner Cable suggests. The matter in this arbitration is about direct interconnection by an interconnected VoIP service provider, not the ability of a wholesale provider, like Sprint or CRC, to seek interconnection.

Time Warner Cable states "it makes no difference whether a telecommunications carrier is interconnecting for the purpose of providing services to a third party, an affiliate, or as is the case here, to enable its own provision of interconnected VoIP service." In making this claim, Time Warner Cable cites *Verizon California*, which has been addressed herein and is distinguishable from this case.

A bedrock issue before the Commission is this: Does it make a difference if there is a wholesale provider or not? The FCC requires a wholesale provider. And more importantly, this Commission requires Time Warner Cable to use an underlying carrier that has an ICA with the RLECs in order to operate in the RLEC service area with its amended CPCN. A necessary condition for the RLECs to provide interconnection to an interconnected VoIP service

[35] CRC at 26.

provider is to have a wholesale carrier seeking interconnection in its own right for the exchange of telecommunications traffic. This condition is met with Sprint or another carrier that has an ICA with the RLECs, but it isn't met with Time Warner Cable seeking direct interconnection for the exclusive exchange of VoIP service.

VI. Time Warner Cable's Allegation that Digital Phone Service is Eligible for Section 251 Interconnection is Incorrect

Q: IS DIGITAL PHONE SERVICE A TELECOMMUNICATIONS SERVICE FOR FEDERAL INTERCONNECTION PURPOSES?

A: No. As discussed above, the designation of Digital Phone service as a telecommunications service is limited to the S.C. Code and does not translate to a federal definition.

Q: WHAT IS FCC RULE 47 C.F.R. § 51.100?

A: FCC rule 47 C.F.R. § 51.100 establishes a telecommunications carrier's general duty pursuant to Section 251 of the Act. Section 51.100(b) prescribes the type of interconnection access granted by one telecommunications carrier to another telecommunications carrier that has obtained interconnection pursuant to Section 251. The Section provides:

> (b) A telecommunication 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.[36]

[36] 47 C.F.R. § 51.00(b).

Q: DOES 47 C.F.R. § 51.100 PROVIDE GUIDANCE IN THIS PROCEEDING?

A: Yes. This rule states that a carrier seeking to interconnect must exchange telecommunications traffic before it may use the same interconnection arrangement for information services. Thus, the guidance from this rule is that before an RLEC is forced to establish an interconnection arrangement, telecommunications traffic must be involved. In this proceeding we have VoIP traffic that has not been designated as telecommunications traffic by the FCC and that has not been designated by this Commission to be telecommunications traffic for federal purposes. Quite the contrary, the conditions imposed on Time Warner Cable in its amended CPCN, as well as the Commission's discussion in the CPCN Order, show that the Commission wanted to make sure federally defined telecommunications traffic was exchanged before VoIP traffic was exchanged with the RLECs through an interconnection arrangement.

VII. Prior Testimony on Bait and Switch

Q: IN THE CPCN HEARING DID YOU DISCUSS THE TACTIC WHERE TIME WARNER CABLE SEEKS TO INCREMENTALLY CHANGE ITS POSITION?

A: Yes. I see the same tactic in this proceeding. I quote from my earlier testimony:

> Q: What is a "bait and switch?"
>
> A: A bait and switch is when TWCIS obtains a certificate under one set of facts and then seeks to change the underlying facts and still retain the certificate. A bait and switch has occurred in other jurisdictions where TWCIS obtains a certificate to provide local exchange service in a particular service area and through filings or actions has indicated that it may either rely on an unaffiliated telecommunications carrier for interconnection or its own affiliated carrier.[37] In Maine, Time Warner Cable filed a letter with the Maine PUC conceding this possibility and stating further

[37] *See, e.g.*, Letter to Amy Mulholland Spelke, Maine Public Utility Commission, from Julie Laine, Time Warner Cable (May 29, 2008).

> that "TWC Digital Phone currently relies on the first model [unaffiliated CLEC], although it may choose to transition to the second approach [affiliated carrier] at some point in the future."[38] In Maine, at that time, TWCIS had obtained a certification to provide local exchange services in the rural ILEC areas. However, CRC, a certificated unaffiliated CLEC was the carrier requesting interconnection with the rural ILECs. Time Warner indicated that it did not intend to provide any local exchange services and that it was committed to working with CRC to obtain access to the PSTN to provide its VoIP service. Understandably, the rural ILECs were quite concerned with which entity would ultimately interconnect with the ILECs, especially in light of Time Warner Cable's letter to the Maine PUC.

I understand that at certain points in a business model, there needs to be a change in operations; however, in this proceeding Time Warner Cable has misstated the record in an attempt to seek a direct interconnection with the RLECs. The Commission should base its findings on a complete review of the evidence and judge what is allowed under the law and its regulations and what is in the public interest.

I also concluded my discussion on bait and switch in my earlier testimony stating:

> Based on the foregoing information, the rural ILECs question whether an amendment to TWCIS' CPCN will result in TWCIS ultimately being the entity providing the wholesale interconnection services in their service territories. Such action would be contrary to the *Time Warner Declaratory Order* requiring that interconnected VoIP providers work through CLECs to interconnect with incumbent local exchange carriers.

This is exactly what we are now faced with—an incremental change to favor Time Warner Cable. Since the Commission prevented this by conditioning the CPCN amendment, the Commission should reject Time Warner Cable's request for direct interconnection with the RLECs.

[38] *Id.*, p. 1

VIII. Harm In Allowing Time Warner Cable to Avoid the Rules

Q: WHAT HARM WOULD THE RLECS REALIZE IF TIME WARNER CABLE WERE ALLOWED TO IGNORE THE CONDITION IN ITS CPCN AND DIRECTLY INTERCONNECT WITH THE RLECS?

A: Well, many state Commissions have recognized that it is contrary to public interest to allow carriers to "game the system."[39] I believe allowing Time Warner Cable to directly interconnect would be "gaming the system." The Commission should not countenance actions like this because it harms all carriers regulated by the Commission.

The harm extends beyond just ignoring the CPCN because there are other concerns with Time Warner Cable's request. For example, if Time Warner Cable is allowed to directly interconnect in providing interconnected VoIP services, there may be other providers who will want direct interconnection. If Section 251 interconnection is open to non-telecommunications traffic, a host of issues, including the RLECs' ability to manage their networks, could arise.

The clear harm is that uncertainty in the process will cause the regulatory process in South Carolina to deteriorate, which is not in the public interest.

Q: ARE THERE OTHER WAYS FOR TIME WARNER CABLE TO ACHIEVE ITS GOAL OF DIRECT INTERCONNECTION?

A: Given the argument provided in my testimony, I cannot see how Time Warner Cable could obtain Section 251 interconnection with the RLECs. This doesn't mean there aren't commercial terms that the RLECs might agree

[39] See *e.g.*, Global NAPs, Inc. v. Verizon New England, Inc., 34 CR 1390 (1st Cir. 2005)

to; however, such discussions are outside the scope of a Section 252 arbitration.

Q: WHAT IS YOUR RECOMMENDATION TO THE COMMISSION?

A: My recommendation is that the Commission deny Time Warner Cable's request to opt into the Sprint ICA and reaffirm that Time Warner Cable must use an underlying carrier as described in its CPCN in the areas served by the RLECS.

Q: DOES THIS CONCLUDE YOUR PRE-FILED DIRECT TESTIMONY?

A: Yes.

BEFORE
THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA

Docket No. 2011-244-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 Fort Mill Telephone Company d/b/a Comporium Communications	)	**CERTIFICATE OF SERVICE**

I, Rebecca W. Martin, do hereby certify that I have this date served one (1) copy of the attached Direct Testimony of Douglas Duncan Meredith 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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August 8, 2011

Columbia, South Carolina