



October 21, 2005

Mr. Thomas Navin
Bureau Chief, Wireline Communications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: WC Docket 05-196

Dear Mr. Navin:

I am writing to express concern that certain incumbent local telephone companies (ILECs) are using the Commission's recent *E911 Order*¹ in advertising to malign cable's digital voice offerings. Specifically, some ILECs are running ads and sending letters claiming that because some cable voice offerings may be subject to "FCC-mandated safety warning notifications" they are inferior to traditional incumbent voice services².

We believe this is a highly inappropriate characterization and distortion of the *E911 Order* and misleading invocation of the Commission's authority.

The Commission issued the *E911 Order* with the laudable goal that customers of interconnected VoIP providers be fully informed about potential limitations of their service with regard to E911. Cable providers are arguably subject to the *E911 Order* even though, as we explained in our *Comments*, "the cable industry's provision of E911 has more in common with the E911 service provided by traditional circuit-switched wireline carriers than it does with over-the-top providers of interconnected VoIP services."³ The Commission has recognized that "most fixed VoIP service providers already have deployed, or are in the process of deploying, E911 services very much like those provided to wireline telephone customers."⁴

¹ *In the Matter of E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 (2005), ("*E911 Order*")

² See Attachment A (materials from SBC and Frontier.)

³ See NCTA Comments at 3

⁴ IP-Enabled Services, E-911 Requirements for IP-Enabled Service Providers, First Report and Order and Notice of Proposed Rulemaking, FCC 05-116, rel. Jun. 3, 2005, at § 25, n.80 (citing service descriptions of Comcast, Cablevision and Cox, and NCTA comments listing various cable operators that already provide E911).

No public switched-interconnected service, traditional wireline, wireless or interconnected VoIP service, is 100 percent reliable. We noted that the Commission itself had demonstrated in prior proceedings that E911 service may be limited or unavailable to customers of traditional wireless and wireline service as well as interconnected VoIP service offered by cable.⁵ We therefore suggested that interconnected VoIP services should not be singled out with regard to customer notification. Nonetheless, cable operators have fully complied with the FCC's orders on E911 notification, expending thousands of man hours and significant expense to notify and obtain the required authorizations from customers.

Despite this serious commitment, and the FCC's own efforts to assist customers and not to create marketing gimmicks, that some incumbent local telephone companies (ILECs) are using the *E911 Order* as a competitive weapon. This was not the Commission's intent. But unfortunately, as Attachment A shows, the fact is that ILECs are using the *E911 Order* to that effect.

Cable companies are the leading residential facilities-based competitors to the ILECs. For example, Cox, the nation's 12th largest telco, has the highest rating from J.D. Powell for telephone service in the San Diego market. Cable company-ILEC competition is intensifying as telcos seek franchises to offer video and cable companies increase their telephony offerings. Such facilities competition is a welcome public policy outcome that benefits consumers. Inappropriately twisting the intent of a Commission order to mislead voice consumers as part of vigorous competition does not square with that outcome.

While companies are pursuing these deceptive and disparaging advertisements with the ILECs directly,⁶ we respectfully suggest, as we did in our Comments, that the Commission: broaden its inquiry to include the numerous circumstances in which any voice customer, regardless of technology used, may not be able to rely upon a provider's E911 service; and harmonize across all technologies how customers are to be advised of E911 limitations. This would best serve customers and competition. And the FCC should admonish incumbent ILECs not to invoke the FCC in unfair and deceptive statements regarding interconnected VoIP offerings.

Respectfully submitted,

/s/ Daniel L. Brenner

Daniel L. Brenner

⁵ See NCTA Comments at 2

⁶ See Attachment B of Oct. 12, 2005, letter from Shari L. Rosenblum, Counsel, Product Management Marketing, Cablevision, to Marc Lipton, General Attorney and Assistant G.C., SBC Operations.

ATTACHMENT A

Radio Commercial

Hey, you know Time Warner doesn't have 'round the clock back-up batteries for their phones?

Really? So if the power goes out, you might now be able to call 911? Oh, my gosh.

Yeah, but you've got SBC local service and a corded phone, right?

Well, yeah Time Warner couldn't touch the deal I got. I got high speed internet and satellite TV, too. Its all under \$70 a month.

Well, don't worry, alright.

Yeah, so you're saying that if somebody has Time Warner's phone service and they're all alone at midnight in their big empty house and the power goes out and they don't have any candles or flashlights, let alone garlic to keep the vampires away, they're going to be in the dark without 911 phone service when zombies start scratching at their windows? Man, you're scaring me.

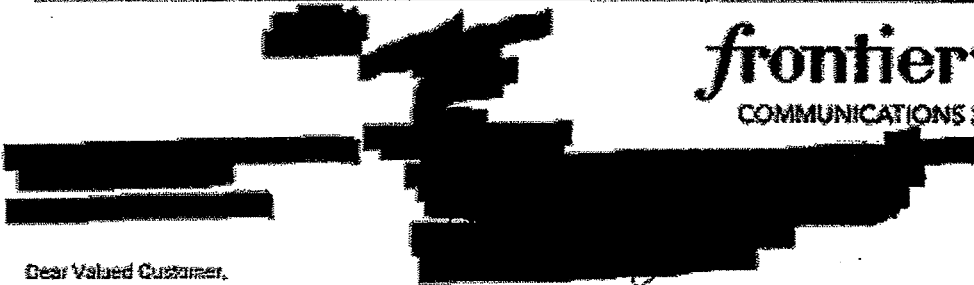
I'm scaring you?

SBC local service, high speed internet and satellite TV all for under \$70 a month. Can Time Warner give you that? And when it comes to reliable 'round the clock 911 calling they can't hold a candle to the company you can always count on when you need it. SBC, going beyond the call. Taxes, other charges and the federal universal service cost recovery fee extra. For details of additional charges, restrictions and requirements call 18662700397 toll free or visit sbc.com/details. For new customers only.

Television Commercial

Just because they offer phone service doesn't make them a reliable phone company. Count on SBC voice services at home for proven reliability including around the clock 911 service, even when the power goes out. Can a cable company say that?

ALERT: Some digital phone providers may not be compliant with E911. Don't be stuck in an emergency! Switch back to the reliable choice: FRONTIER



frontier
COMMUNICATIONS SOLUTIONS

Dear Valued Customer,

We want to bring to your attention that many issues of safety surround digital phone service as it relates to reliability during emergencies. So many issues in fact that the Federal Communications Commission (FCC) has asked voice-over internet protocol service providers to shut down their lines if they fail to meet E911 requirements.

But Frontier Customers don't need to worry about this safety issue. Although no phone service is 100% reliable, you know from experience that your Frontier phone service was dependable in all types of weather (ice, wind, rain and snow, we've kept you connected!

But the lack of connection during emergencies is just one concern regarding digital phones. These are the sorts of complaints we hear from former cable digital phone customers:

- "There was constant echang with my cable phone."
- "The voices didn't sound real."
- "It took forever to reach a repair technician when I had a problem"
- "When the power goes off there is no digital phone service, and that's when I really want to stay connected. I'm concerned about having phone service in a storm or emergency."
- And of course "The service was so much better with Frontier."

if cable digital phone isn't as good as you thought it would be, it's easy to come back to Frontier. Just give us a call at (877) 427-9159. Even better—we will waive any service activation fees if you reply within thirty days.

That's right! Just sign back up with Frontier and it will be like you never left.

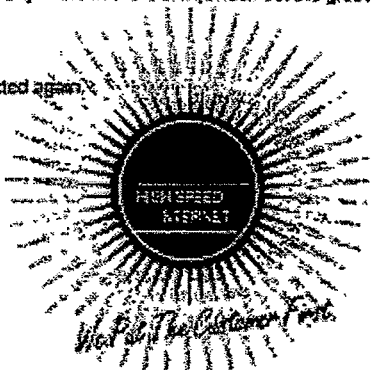
And when you call you might want to discuss some of the other great products Frontier has to offer in addition to HIGH QUALITY reliable local service:

- Frontier Connections, our satellite TV packages with up to 200 stations (including local) at a great value.
- Frontier High-Speed Internet with all the speed you need to shop, e-mail and have fun online.
- Truly Unlimited Long Distance on voice phone calls—call anyone, anytime, anywhere in the USA. (Check out the great offer on the enclosed insert.)
- All your favorite calling features like Voice Mail and Caller ID.

So come home! Just call (877) 427-9159. There will be no charges to get you connected again. And you get to the quality phone service that you know you can expect from Frontier.

Sincerely,

Kenneth Arnold
Regional VP, Sales and Marketing



Call (877) 427-9159 to get connected again!

Best Frontier Communications Corporation. Service subject to availability. Federal law governs. All services subject to applicable laws. Service provided by Frontier Communications Corporation. All services subject to applicable laws. ©2005 Frontier Communications Corporation.

October 12, 2005

VIA FACSIMILE AND VIA FEDERAL EXPRESS

Marc I. Lipton, Esq.
General Attorney and Assistant General Counsel
SBC Operations, Inc.
175 E. Houston Street, 2nd Floor
San Antonio, Texas 78205

Re: SBC Advertising

Dear Mr. Lipton:

I am writing with respect to a certain radio spot and other like advertising currently being run by SBC in the New York Metropolitan area regarding Cablevision's Optimum Voice® service (the "Advertising") (see enclosed). The Advertising is both deceptive and disparaging, and we insist that it be removed immediately from circulation.

First, the Advertising makes the claim that Optimum Voice service does not offer "round the clock" backup batteries to cover customers' needs in the event of a power outage. This is patently false. The battery backup offered by Optimum Voice will automatically activate at any time day or night in the event power is lost. Moreover, the Advertising implicitly suggests that customers with SBC service are guaranteed access to their phone service in such an event, which is equally false. Corded phones as well as cordless phones may be susceptible to outages.

The Advertising further compounds the offenses by using these identified falsehoods to foster a sense of unease and fear in customers regarding access to E911 with the Optimum Voice service. This creates an undue distrust in the marketplace and reinforces the deceptions with willful disparagement. It is a blatant violation of fair advertising standards.

Finally, the Advertising forges customer confusion with inapt price comparisons between bundled services from Cablevision and bundled services from SBC. The misrepresentations in such comparisons include positing local service against Optimum Voice, which provides unlimited calling to the U.S., Canada, and Puerto Rico, and DSL against Optimum Online, which is more than six times faster. This is misleading to consumers and therefore constitutes deceptive advertising.

Given the incorrectness and unfairness of the Advertising set forth here, it is imperative that SBC cease use of any and all broadcast, print or other distribution of

SBC Operations, Inc.

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the Advertising by no later than October 14, 2005. This letter does not purport to be a full statement of Cablevision's position with respect to this matter, and is written without prejudice to any of the rights or remedies we may have, all of which are hereby expressly reserved.

Very truly yours,

Shari L. Rosenblum
Counsel, Product Management and Marketing

Encs.