

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of

Petition of Time Warner Cable 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

WC Docket No. 06-55

REPLY COMMENTS OF LEVEL 3 COMMUNICATIONS, LLC

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The comments filed in response to the Petition for Declaratory Ruling ("Petition") of Time Warner Cable ("TWC") predictably split between rural incumbent local exchange companies ("RLECs") seeking to prevent competition and therefore opposing the Petition and other local exchange companies ("LECs") and VoIP providers seeking the opportunity to compete and therefore supporting the petition. Eight RLECs or RLEC associations opposed the Petition, asking the Federal Communications Commission ("FCC" or "Commission") to allow RLECs to evade, delay and ultimately escape competition by denying to telecommunications carriers the interconnection rights to which they are entitled by law. The Commission must put an end to these games by preventing RLECs from conjuring up new restrictions on statutory interconnection rights, granting TWC's Petition and reaffirming that telecommunications carriers are entitled to interconnection even when they provide wholesale services to other companies regardless of their customer.

I. INTRODUCTION AND SUMMARY

Even though the Communications Act of 1934, as amended (the "Telecom Act") grants CLECs broad rights to interconnect, exchange traffic, and compete with incumbent LECs ("ILECs") and provides a specific process for RLECs to obtain exemptions, RLECs are convincing state public utility commissions ("PUCs") to create additional exemptions that undermine the statutory regime applicable to RLECs and effectively prevent competition in rural areas. The Telecom Act recognizes that certain rural areas may not support application of the competitive protections contained Section 251(b) and 251(c) to RLECs in those areas and therefore required state PUCs to determine whether to exempt certain RLECs from or modify or suspend some or all of these protections after going through a statutorily-defined process. RLECs now seek to circumvent this process by stripping CLECs of the interconnection and other rights they have under the Telecom Act. Unless the Commission puts a stop to these games, competition will not survive (much less spread) and consumers will suffer.

While RLECs seek to find ways to delay and ultimately prevent competition in their service territories, their attempts fail. Their goal is to deny VoIP providers the ability to compete, even though the Commission has already determined that they may and has relied again and again on the competition they bring to consumers to justify deregulation of ILECs. To achieve this goal, RLECs attack the interconnection and other rights held by CLEC with absurd arguments and strained statutory and regulatory interpretations. Notwithstanding their efforts, the RLECs are simply wrong that the Telecom Act or the Commission's rules allow them to deny interconnection and other rights to CLECs because they provide services on a wholesale basis. Nor can RLECs

deny interconnection to a CLEC because it provides services to VoIP providers. Finally, RLECs force requesting CLECs to prove a negative (i.e., that they will not provide private carrier services in the future) and go through a bewildering set of regulatory proceedings designed only to delay and prevent competition. To end this "shell game" and promote the competitive goals of the Telecom Act, the Commission must act now to confirm the rights held by wholesale CLECs under Section 251 of the Telecom Act.

II. FCC SHOULD REJECT RLECS' ATTEMPT TO CREATE EXTRA-STATUTORY EXEMPTIONS TO INTERCONNECTION REQUIREMENTS

The Commission must stop RLECs from blocking competition by creating non-statutory exemptions to interconnection and other CLEC rights. Although they deny interconnection with CLECs based on alleged statutory concerns, Parties opposing the Petition actually seek to prevent competition with their ISP and ILEC services by preventing certificated CLECs from providing local services that allow ISP and VoIP providers to exchange traffic with the PSTN in competition with the ILEC and its subsidiaries or affiliates. The Commission should see through this charade and force RLECs to comply with their obligations under the Telecom Act.

A. RLECs Seek to Limit Competition in their Service Territory

While the RLECs couch their arguments in statutory terms, their goal is to maintain their monopoly by excluding competition in their service territory. For example, ITAA states that rural ILECs "should not be required to provide [interconnection] indirectly (i.e., via CLECs such as MCI) to [VoIP providers]".¹ SCTC claims that TWC "may seek its own arrangements to exchange traffic with the RLECS, if

¹ ITAA Comments at 6.

it is entitled to do so. If it is not entitled to exchange traffic directly with the RLECs, it should not be permitted to do indirectly what it would not be entitled to do directly."² Of course, the result of this regulatory shell game is that a VoIP provider seeking to provide a competitive alternative cannot obtain interconnection because the statute does not require the RLEC to provide it but the RLECs also then deny interconnection to the CLEC (who otherwise is guaranteed interconnection) because the VoIP provider is the customer. The RLECs have mastered this game to the detriment of VoIP providers, the CLECs seeking to enable competitive offerings and the end users that benefit from the entrepreneurial and innovative communications applications that threaten the RLEC monopoly.

These RLECs seek to prevent CLECs from interconnecting and exchanging traffic in their territory even though ILECs throughout the country and in many of these same rural areas provide services that allow ISPs and VoIP providers (including themselves) to exchange traffic with the PSTN.³ Most ILECs provide not only the underlying telecommunications transmission service to ISPs but also are the ISPs themselves. In either role, ILECs allow ISPs and their customers to exchange traffic with the PSTN. By preventing VoIP providers from using CLECs (rather than ILECs) as underlying service providers, RLECs are violating the Communications Act of 1934, as amended (the

² Id. at 12.

³ For example, AT&T and Qwest offer both VoIP services to end users and underlying telephone services to VoIP providers. See

http://www.business.att.com/service_portfolio.jsp?reporid=ProductCategory&reporitem=eb_voip&serv_por t=eb_voip&segment=ent_biz; <https://www.sbcprimeaccess.com/shell.cfm?section=1602>;

<https://cvoip.qwest.com/oneflex/portal/residential/products/voip/>;

<http://www.qwest.com/wholesale/promotions.html#promo>. Iowa Telecom and Citizens (members of ITTA) offer their customers dial-up Internet services and also provide the underlying telecommunications services, as does Home Telephone. See

<http://www.iowatelecom.com/residentialservices/article.asp?id=210&PID=108&GPID=0>;

<http://www.frontieronline.com/Products/ProductCategory28.aspx>;

http://www.hometel.com/albers_dialup_internet.htm.

"Telecom Act"). In particular, without competitive telecom carriers, ISPs and VoIP providers will have to rely on the ILEC that is providing an ISP or VoIP service in competition with it. This situation would jeopardize the competitive provision of ISP and VoIP service, leaving consumers with no competitive choices and higher rates.

The vast majority of state PUCs recognize the right of a certificated CLEC to offer wholesale services. As TWC points out in its Petition, four other states have found that interconnected CLECs may offer wholesale services to VoIP providers. Most other states and the FCC have allowed CLECs to obtain interconnection for the provision of services to ISPs.⁴ While it is already well-established that certificated CLECs can provide wholesale services, this Commission must take this opportunity to quash the continuing obstructionist efforts of ILECs around the country to convince state PUCs to the contrary.

B. Section 251(a) Guarantees CLECs Interconnection, but Rural Carriers Can Seek Relief Under Section 251(f)

Notwithstanding the clear requirements of the Telecom Act and the policies of most state PUCs, certain RLECs now seek to block competition from VoIP providers by manufacturing a false limitation on interconnection obligations in a few states. These RLECs (and the state PUCs that have agreed with them), however, fail to understand the fundamental structure and meaning of the Telecom Act. As an initial matter, all Telecom Carriers (including rural ILECs) have the obligation to interconnect under Section 251(a), regardless of whether they are exempt from 251(b) or 251(c) requirements.⁵ Moreover, all LECs (including rural ILECs except as set forth in Section 251(f)) must comply with

⁴ Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68, Order on Remand and Report and Order, FCC 01-131 (released April 27, 2001), ¶ 78 note 149.

⁵ 47 U.S.C. § 251(a).

the obligations in Section 251(b) – including but not limited to reciprocal compensation, resale, number portability and dialing parity.⁶ Finally, all ILECs (again, including rural ILECs except as set forth in Section 251(f)) must comply with the obligations set forth in Section 251(c) – including but not limited to the duty to negotiate and undergo arbitration, interconnect at cost-based rates, provide unbundled network elements and collocate with CLECs.⁷ Except as set forth in Section 251(f), even rural ILECs must comply with these obligations.⁸ Yet, they continue to blatantly violate these pro-competitive provisions of the Telecom Act without going through the Section 251(f) process.

Rather than imposing an extra-statutory limitation on interconnection, RLECs that are concerned about providing certificated CLECs with Section 251(b) and 251(c) rights can rely on the Section 251(f) exemptions simply by following the process set forth in that section. A rural ILEC must interconnect with a CLEC under Section 251(a) but is not required to offer the statutory components set forth under Section 251(c) unless it receives a "bona fide request for interconnection services ... and ...the State Commission determines that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254...".⁹ Nor is the rural ILEC required to comply with Section 251(b) if it has "fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide" and, upon the ILEC's petition, the state PUC determines that suspending or modifying the requirements:

⁶ 47 U.S.C. § 251(b).

⁷ 47 U.S.C. § 251(c), 252(d).

⁸ 47 U.S.C. § 251(f).

⁹ 47 U.S.C. § 251(f)(1)(A).

- (A) is necessary –
 - (i) to avoid a significant adverse economic impact on users of telecommunications services generally;
 - (ii) to avoid imposing a requirement that is unduly economically burdensome; and
 - (iii) to avoid imposing a requirement that is technically infeasible; and
- (B) is consistent with the public interest, convenience, and necessity.¹⁰

The framers of the Telecom Act established a **comprehensive** process allowing RLECs to obtain, if justified, an exemption to the most **burdensome** requirements imposed on ILECs under Section 251. The Telecom Act **specifically does** not impose such a restriction on the interconnection obligation set forth in Section 251(a), and therefore does not provide RLECs with ad hoc "shell game" relief outside the explicit protections established by Section 251(f).

C. RLECs Seek to Block Interconnection Rather than Meet the Burden Imposed by Section 251(f)

Unlawfully creating new ad hoc protections against competition is what the ILECs are seeking to do in South Carolina and Nebraska and other states where CLECs face restrictions on serving VoIP providers. For example, Home Telephone seeks to bootstrap a limitation on § 251(a) interconnection onto a mythical aura of protection for rural carriers, arguing that "actions of the PSC were consistent with authority specifically delegated to the states by the [Telecom Act]." In support of that statement, Home Telephone claims that "[i]n several sections of the Act, areas served by rural carriers are treated differently ... to ensure the public interest is met when introducing competition in these areas."¹¹ Nowhere, however, does Home Telephone or any other RLECs show that they followed the specific processes set forth in the Telecom Act in challenging MCI's or

¹⁰ 47 U.S.C. § 251(f)(2).

¹¹ Home Telephone Comments at 3. See also SCTC Comments at 15 note 44.

Sprint's right to interconnect. Instead, RLECs opt to use the supra-statutory mechanism of trying to deny interconnection under Section 251(a).

By denying CLECs interconnection based on the specious argument that wholesale CLECs do not qualify for interconnection, rural LECs are simply trying to escape the specifically defined process set forth in Section 251(f). If a rural ILEC wants to deny any of the basic CLEC protections set forth in Sections 251(b) or 251(c), it must establish through objectively-verifiable evidence that it meets the criteria for exemption, suspension or modification. Moreover, state PUCs must conclude such proceedings within 120 days for exemptions and 180 days for suspensions or modifications. Rather than risk having to prove that it meets the applicable criteria and potentially face an adverse state PUC decision within 6 months, the ILECs appear to have found a way to delay competition indefinitely without having to make any statutory showings. They have demonstrated that they can simply convince state PUCs to play "hide the ball" by, in succession, denying CLECs certification, tariff approval, interconnection and numbering resources and never having to face competition or the obligation to make the showings required by Section 251(f).¹²

¹² Appeals of Sprint Communications Company L.P. and Level 3 Communications, LLC, Iowa Utilities Board Docket Nos. SPU-02-11 and SPU-02-13 (denying Level 3 access to numbering resources (after denying Level 3 a CPCN) to provide services to VoIP providers); Comments of Iowa Utilities Board, Attachment, Iowa Utilities Board, Docket No. TF-05-31 (TCU-99-T), Order in Lieu of Certificate, issued June 20, 2005 (granting Level 3 authority to provide services to VoIP providers after 4 years); In the Matter of Level 3 Communications, LLC's Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, and the Applicable State Laws for Rates, Terms and Conditions for Interconnection with Qwest Corporation, Arbitration Order, Docket No. Arb. 05-4, p. 33 (Iowa Util. Bd., December 16, 2005). (denying Level 3's interconnection agreement request to provide for reciprocal compensation for locally dialed VoIP calls).

III. **WHOLESALE PROVIDERS ARE ELIGIBLE FOR INTERCONNECTION AND OTHER COMPETITIVE SAFEGUARDS**

The Commission should reject the limitations on interconnection conjured up by the RLECs. To block competition, RLECs argue that interconnection is only required for the exchange of traffic between the interconnecting parties' end users. They argue that the requesting carrier must prove it will provide a telecommunications service over the interconnection facility before obtaining interconnection. Finally, they contend that CLECs may not use interconnection to serve VoIP providers. All of these arguments are designed to limit competitive entry into RLEC service areas and have no basis in law or policy. Accordingly, the Commission should grant TWC's Petition and allow CLECs to get on with the business of facilitating competition.

A. Commission should Reject RLEC Claims that Section 251(a) Interconnection is Limited to Retail Providers

RLECs provide no persuasive support for their attempt to deny interconnection to wholesale CLECs. The South Carolina Telephone Coalition ("SCTC") argues that Section 251 only requires interconnection for the exchange of end user traffic. Although SCTC acknowledges that Section 251(a) requires interconnection, it nevertheless supports the South Carolina PSC's decision to deny it to MCI. However, neither the Telecom Act nor the Commission's rules limit interconnection to the exchange of direct end user traffic. Section 251(a) simply requires all LECs to interconnect.¹³ On that basis alone, the state PUC must grant interconnection to a CLEC regardless of whose end user traffic is being exchanged.

¹³ 47 U.S.C. § 251(a); AT&T Corporation v. Federal Communications Commission, 317 F.3d 227, 234-235 (2003).

Moreover, nothing in the Telecom Act or the Commission's rules or decisions cited by SCTC limits 251(b) interconnection to retail service providers. SCTC claims that reciprocal compensation only applies where "two carriers collaborate to complete a local call", where the terminating carriers end office switch "directly serves the called party", where terminating traffic is delivered "to the called party's premise" or where compensation is provided "for the transport and termination on each carrier's network facilities of telecommunications traffic that originates on the network facilities of the other carrier". While this language provides useful detail to distinguish between ILEC end offices, between end offices and tandems, and between local and access traffic, and to determine who receives compensation,¹⁴ none of this language prevents CLECs serving a third party provider from obtaining a reciprocal compensation arrangement under Section 251(b). If the Telecom Act or the Commission wanted to restrict wholesale carriers from competing, it would have done so explicitly.

B. State PUCs Must Require RLECs to Interconnect with State-Certified CLECs.

The Commission also should reject claims that CLECs serving VoIP providers are not acting as telecommunications carriers or are merely a "front" for VoIP service providers and, therefore are not eligible for interconnection. Some RLECs dispute CLECs' status as Telecom Carriers. The Nebraska PUC, for example, contends that it blocked Sprint's interconnection with Southeast Nebraska Telephone Company not because Sprint was providing a wholesale service to a VoIP provider but, rather, because

¹⁴ See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996), aff'd in part and vacated in part sub nom. Competitive Telecommunications Ass'n v. FCC, 117 F.3rd 1068 (8th Cir. 1997) and Iowa Utils. Bd. V. FCC, 120 F.3rd 753 (8th Cir. 1997), aff'd in part and remanded, AT&T Corp. v. Iowa Utils. Bd., 525 U.S. 366 (1999); Order on Reconsideration, 11 FCC Rcd 13042 (1996), Second Order on Reconsideration, 11 FCC Rcd 19738 (1996), Third Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 97-295 (rel. Aug. 18, 1997), at ¶ 1034, 1039.

Sprint was not acting as a **telecommunications** carrier in providing the services for which it was seeking **interconnection**. This rationale is a smoke screen designed to mask the RLECs' goal of denying interconnection to carriers serving VoIP providers in competition with the ILEC. Indeed, Nebraska's unusual decision to investigate whether Sprint was acting as a Telecom Carrier flows from Sprint's status as the underlying service provider to a VoIP provider.¹⁵ The Commission should see the RLECs' actions for what they are – a blatant attempt to prevent competition from VoIP providers.

To lay this smoke screen, RLECs misrepresent the Telecom Act as limiting interconnection to companies that prove that they will only provide telecommunications services over interconnection trunks. As an initial matter, there is no authority requiring that a telecommunications carrier seeking interconnection may only use the interconnection to provide telecommunications services or indeed must be providing telecommunications services at all over the **interconnection link**. Qwest contends that "[a] CLEC cannot use its **Section 251 interconnection facilities to transmit an information service unless it offers the transport ... to other providers of information services on a common carrier basis.**"¹⁶ Qwest, however, misstates the rule, which merely allows the CLEC itself to offer an **information service over the interconnect** facility if it is also offering a common carrier service over the facility. A CLEC offering a local service over a **Section 251(a) interconnection agreement to an information services provider** does not

¹⁵ The status of MCI as a telecommunications carrier was not an issue in the Nebraska PSC's arbitration; rather, the issue was whether "the definition of 'End User or End User Customer' include end users of a service provider for whom Sprint provides interconnection and other telecommunications services" – a clear reference to the VoIP issue. Nebraska Public Service Commission, In the Matter of Sprint Communications Company L.P., Overland Park, Kansas, Petition for arbitration under the Telecommunications Act, of certain issues associated with the proposed interconnection agreement between Sprint and Southeast Nebraska Telephone Company, Falls City, Application No. C-3429 (Entered: September 13, 2005) at ¶ 8.

¹⁶ Qwest Comments at 4-5.

have to be offering a common carrier service to that information services provider but, rather, need only be certificated and operating pursuant to the state PUC rules and otherwise offering service on a common carrier basis within the state. Indeed, interpreting the Telecom Act as Qwest suggests would subject CLECs to discrimination by allowing ILECs to offer underlying telecom on a private carrier basis to information services providers but requiring CLECs to offer it as common carrier services.¹⁷

Requiring proof that the interconnection will not support information services as a prerequisite to interconnection would be impossible to meet without undermining CLEC rights under federal law. Such a mandate would require states and parties to undergo a lengthy, intensive investigation as to whether a requestor is offering or is likely to offer telecommunications services over every interconnection link it is seeking. A carrier that does not yet have interconnection trunks is unlikely to be able to prove anything with respect to the nature of the services that may or may not ride over the facilities in the future. Although it could file a tariff, a CLEC is not required under federal law to do so in order to be considered a common carrier for interstate access services.¹⁸ Asking a requesting carrier to prove it is a common carrier is like requiring it to prove a negative. For this reason, rather than undertake this impossible task, most states have relied on a requestor's CPCN and compliance with CLEC or CAP regulations as definitive evidence that it is a telecommunications carrier offering (or going to offer) telecommunications services.

¹⁷ Appropriate Framework for Broadband Access to the Internet over Wireline Facilities CC Docket No. 02-33, Report and Order, FCC 05-150 (released September 23, 2005) at ¶¶ 102-106.

¹⁸ Southeast Nebraska Telephone Company ("SENTCO") claims that "[t]he only tariff filed by Sprint with the Nebraska PSC ... was Sprint's Access Tariff P.S.C. No. 2." SENTCO Comments at 5. SENTCO admits, however, that Sprint had another tariff on file previously. *Id.* at 5 note 14. Of course, if Sprint were only providing exchange access services in rural areas, it would not have had any obligation to file another state tariff. If Sprint started providing a service other than what was tariffed, the PUC could open an investigation to determine whether Sprint was complying with its rules.

To implement the Telecom Act's pro-competitive goals, the Commission must make it clear that states may not allow ILECs to use their own claim that a requesting carrier should not have been granted a CPCN as a tactic to prevent competitive carriers from competing in ILEC markets. The public policy benefits of limiting interconnection to certificated common carriers relate not to protecting ILECs from competition but, rather, to the requesting provider's obligation to provide its services on reasonable and nondiscriminatory terms in furtherance of the public interest.¹⁹

C. CLECs Properly Use Interconnection to Serve VoIP Providers.

The proceedings that necessitated these proceedings are, at worst, an attempt to protect ILECs from competition²⁰ and, at best, an attempt to leverage VoIP providers' sincere efforts to compete to create the public policy results – i.e. full regulation of VoIP providers – that RLECs seek. Many RLECs focus on TWC, who is not seeking interconnection, rather than on the CLECs. ITAA, for example, spends six pages in its Comments arguing that "the services TWC seeks to offer provide the same basic functionalities as traditional local and long distance telecommunications services"²¹ and asking the Commission to "clarif[y] that entities such as TWC ... are either telecommunications carriers or are subject ... to the same ... obligations as traditional local and long distance carriers."²² Home Telephone argues that "Time Warner seeks to receive the benefits associated with classification as a telecommunications provider

¹⁹ Any question about a requesting entity's status as a Telecom Carrier should be resolved upon a proper complaint to the FCC or relevant state PUC alleging that the company is not meeting its obligations as a common carrier.

²⁰ Verizon Comments at 5 ("there can be no serious dispute that the independent LECs in South Carolina that opposed Verizon's attempt to offer its wholesale service did so because they sought to prevent the introduction of VoIP competition into their service territories").

²¹ Comments of the Independent Telephone and Telecommunications Alliance, National Exchange Carrier Association, Inc., National Telecommunications Cooperative Association, and the Organization for the Promotion and Advancement of Small Telecommunications Companies ("ITAA Comments") at 8.

²² Id. at 12.

without incurring any of the obligations or constraints required of telecommunications companies."²³ While Level 3 agrees that the Commission should clarify its rules, that necessity does not justify impeding competition that is clearly allowed under the existing rules and the *Vonage* order in particular.²⁴ RLECs may not like the Commission's *Vonage* decision, but they must not be allowed to violate it by denying VoIP providers the right to use underlying carriers that are carrying out their duty to serve customers that request competitive services from them.

Notwithstanding attempts by state PUCs and RLECs to block VoIP providers by denying interconnection to their underlying service provider, there is no question that VoIP providers are allowed to obtain services from CLECs and provide VoIP services free of State PUC regulations. In the *Vonage* order, the Commission held that VoIP providers are subject to exclusive federal jurisdiction regardless of whether VoIP was considered an Information Service or a telecommunications service. Moreover, VoIP providers have an unambiguous right to purchase underlying services from CLECs in order to provide their services. If VoIP is an Information Service, then existing law says that they can buy services from a CLEC as an end user.²⁵ If VoIP is a telecommunications service, then they can otherwise buy services from a CLEC. In each case, CLECs may actually be required by law to serve the VoIP provider on a non-

²³ Home Telephone Comments at 2.

²⁴ *Vonage Holdings Corporation*, WC Docket No. 03-211, Memorandum Opinion and Order, FCC 04-267 (released November 12, 2004) ("*Vonage*") at ¶ 2.

²⁵ Qwest Comments at 3. Level 3 agrees with Qwest that the Commission might avoid the outcomes of which TWC complains by finally determining the classification of VoIP and that there are many other disputes that such a decision could resolve. This point begs the question, however, of whether it is proper for states to even consider the regulatory status of VoIP services in arbitrating a CLEC's interconnection agreement. As described above, states are not permitted to do so. Therefore, Level 3 disagrees with Qwest that there is a "fundamental gap in the federal regulatory matrix" that justifies lengthy fact-finding journeys that delay the onset of competition. Qwest Comments at 5. Rather, the most direct way to address the issue is to grant TWC's Petition.

discriminatory basis. Either way, there is no justification for denying a VoIP provider the right to use an underlying CLEC to facilitate its provision of service.

IV. COMMISSION SHOULD REJECT PROCEDURAL ARGUMENTS TO REJECT TWC PETITION

Apart from these thinly-disguised attempts to block VoIP providers from competing with them, RLECs raise procedural arguments that belittle the serious public policy consequences at stake in the Petition. Some argue that TWC cannot seek a declaratory ruling because it is challenging the state PUC's "finding of fact" that its underlying carriers are not Telecom Carriers,²⁶ because Sprint and MCI (and not TWC) are the real parties in interest, or because it would be proper to await court appeals on the issue. All of these arguments, however, ignore the fundamental controlling fact that Commission action is necessary to prevent state PUCs from engaging in the unnecessary, lengthy "fact-finding" journeys that delay competition indefinitely and therefore undermine the pro-competitive purposes of the Telecom Act.

These tactics are being used not only to deny interconnection but to deprive carriers of access to numbering resources, which are also a necessary prerequisite to offering competitive VoIP services. Several parties point out that the South Carolina PSC also refused to require ILECs to port telephone numbers to MCI for use by TWC's VoIP customers.²⁷ Similarly, Level 3 has experienced a number of instances in which ILECs have refused to port telephone numbers to Level 3 based solely on the fact that its customers are VoIP providers. Level 3 has also been denied numbering resources from

²⁶ ITAA states that "factual questions must be clarified before the Commission and interested parties can analyze more precisely the specific interconnection and compensation questions raised by TWC's petitions." (page 8 n. 29)

²⁷ ITAA Comments at 6.

state PUCs because it acts as an underlying carrier for VoIP customers. The Commission delegated authority to state PUCs to administer telephone numbers in an equitable manner. In at least three states, the PUCs have used this authority to withhold numbering resources based on the inequitable consideration that they will be used for VoIP services. As Level 3 stated in its Comments, the Telecom Act represents a comprehensive set of measures deemed necessary for competition to occur in the local communications market. Absent this key protection, competition has no chance. Commission action on TWC's petition is crucial to make sure that state PUCs cannot deny any of the Telecom Act protections on the basis that the customer is a VoIP provider.

V. PUBLIC INTEREST REQUIRES INTERCONNECTION AND ACCESS TO NUMBERS BY WHOLESALE PROVIDERS

A number of parties agree with Level 3 that Commission action is required to permit the continued growth of competition in the local telecommunications market. Over and over again, the Commission has cited VoIP as a driving force in establishing local competition and expanding broadband penetration. As Verizon states, "just as the availability of VoIP drives both providers to deploy and end-user customers to purchase broadband services, state commission decisions that effectively prevent consumers from using their broadband connections for VoIP telephony discourage the deployment and use of broadband."²⁸ Allowing states to block competition from VoIP providers by denying Section 251(c) rights would undermine the Telecom Act's goal of replacing regulation with competition and prevent consumers from receiving the benefits of choice, lower rates and new service offerings.

²⁸ Verizon Comments at 6.

VI. CONCLUSION

The Commission should clearly state that CLECs are authorized by the Telecom Act to obtain Section 251 interconnection to provide wholesale telecommunications services to VoIP providers. Both the Telecom Act and FCC regulations recognize wholesale service providers as vital components of the pro-competitive telecommunications regime established in 1996 to inject competition into the marketplace and provide consumers with choice, lower rates and greater innovation. Potential competitors – wholesale or otherwise – must have efficient access to local interconnection, numbering resources and other benefits of Section 251 for the Act's regime to succeed. Further, state PUCs must avoid lengthy and irrelevant factual proceedings (outside the established certification processes) aimed at determining whether a potential competitor is actually providing telecommunications services before it is allowed to negotiate fair and non-discriminatory interconnection terms with the ILEC. To prevent ILECs from keeping the Telecom Act's pro-competitive benefits from consumers in their territories by gaming the state regulatory processes, the Commission must grant TWC's petition immediately.

Respectfully submitted,

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