

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

In the Matter of	)	
	)	
Vermont Telephone Company Petition for	)	WC Docket No. 08-56
Declaratory Ruling Whether Voice over	)	DA 08-916
Internet Protocol Services are Entitled to the	)	
Interconnection Rights of	)	
Telecommunications Carriers.	)	

**NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION  
INITIAL COMMENTS**

The National Telecommunications Cooperative Association (NTCA)<sup>1</sup> files these initial comments in response to the Federal Communications Commission's (Commission's or FCC's) April 18, 2008 Public Notice<sup>2</sup> seeking comment on the April 11, 2008 Petition for Declaratory Ruling (Petition) filed by Vermont Telephone Company (VTel).<sup>3</sup> VTel correctly questions whether the Commission should allow Comcast, who seeks to offer VoIP services directly and not through a third-party competitive local exchange carrier (CLEC), to have the interconnection benefits of a telecommunications carrier. The Commission should classify Comcast as a telecommunications carrier if Comcast wants interconnection rights. If the Commission does not

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<sup>1</sup> NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents over 580 rural rate-of-return regulated telecommunications providers. All NTCA members are full service rural local exchange carriers (RLECs), and many of its members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended (Act). NTCA members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

<sup>2</sup> *Public Notice of Pleading Cycle Established for Comments on Vermont Telephone Company's Petition for Declaratory Ruling Regarding Interconnection Rights*, WC Docket No. 08-56, Public Notice (rel. Apr. 18, 2008) (Notice).

<sup>3</sup> *Petition of Vermont Telephone Company for Declaratory Ruling Whether Voice over Internet Protocol Services Are Entitled to the Interconnection Rights of Telecommunications Carriers*, Vermont Telephone Company (filed Apr. 11, 2008) (Petition).

classify Comcast as a “telecommunications carrier” for purposes of transmitting VoIP services directly, then the Commission should find that VTel is not required to enter into an interconnection agreement with Comcast. Furthermore, the VTel Petition is distinguishable from the issues raised in the Commission’s 2007 *Time Warner Cable Order*<sup>4</sup> because the Commission is now asked to decide whether Section 251 and 252 interconnection rights and obligations should flow to an “integrated” VoIP provider, *i.e.*, one not using a third-party CLEC to provide IP-based services. The Commission’s ruling on this Petition will have a significant impact on VTel as well as on all small rural ILECs who are struggling to provide top-quality affordable voice, video and data services to rural areas at prices comparable to urban areas.

## **I. Background**

VTel, a rural ILEC serving southern Vermont, seeks a policy clarification by declaratory ruling or any other appropriate means on: (1) whether only telecommunications carriers are entitled to interconnection with local exchange carriers (LECs) under sections 251 and 252 of the Communications Act of 1934, as amended; (2) whether a voice over Internet protocol (VoIP) provider is entitled to interconnection under sections 251 and 252 of the Act when elsewhere that provider has asserted that it is not a telecommunications carrier; and (3) whether Comcast Phone of Vermont, LLC, as a VoIP provider, is a telecommunications carrier and therefore entitled to interconnection pursuant to sections 251 and 252.<sup>5</sup>

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<sup>4</sup> *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*, WC Docket No. 06-55, Memorandum Opinion and Order (rel. Mar. 1, 2007) (Time Warner Cable Order).

<sup>5</sup> Petition, p. 1.

VTel questions whether it should be required to provide interconnection with Comcast as Comcast requested in its January 10, 2008 letter requesting interconnection under Section 251.<sup>6</sup> VTel asserts that Comcast seeks interconnection to provide a VoIP service, “Digital Voice,” and contends that Comcast is phasing out all its circuit-switched voice services in favor of IP-based voice services.<sup>7</sup> VTel notes that Comcast has a CLEC certification from the Vermont Public Service Board to offer facilities-based services but, as VTel notes in a recent ex parte filing with the Commission that Comcast is phasing out its CLEC operations in at least 17 states.<sup>8</sup> VTel includes evidence that Comcast denied being a telephone company in the context of a pole attachment proceeding.<sup>9</sup> VTel, in its May 13 Ex Parte filing, shows that Comcast will gain a marked competitive advantage in offering video services and telephone services over VTel and other new video market entrants if Comcast escapes the burdens of interconnection.<sup>10</sup>

Comcast, in its 2007 Annual Report released in April 2008, noted that the Vermont Public Service Board has opened a state regulatory proceeding to review VoIP services in Vermont.<sup>11</sup> Comcast also stated that Comcast is phasing out its circuit-switched voice services by 2008. Comcast acknowledged that it arranges for interconnection with ILECs’ phone networks using either its own CLECs or through third party CLECs and asserts that a CLEC’s

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<sup>6</sup> Petition, p. 8.

<sup>7</sup> Petition, p. 5.

<sup>8</sup> *Id.* at 6; VTel Ex Parte (filed May 13, 2008), p. 4.

<sup>9</sup> *Id.* at 5.

<sup>10</sup> *Ibid.*

<sup>11</sup> 2007 Annual Report, Comcast Corporation, SEC Form 10-K (Comcast 2007 Annual Report), pp. 4, 12 (“We plan to phase out our circuit-switched phone service in 2008, in accordance with applicable federal and state regulatory rules”). Comcast’s 2007 Annual Report is available online at: <http://www.comcast.com/2007annualreview/includes/pdfs/10k2007.pdf>.

right to interconnect with ILECs is clear.<sup>12</sup> Comcast admitted, though, that “since the FCC has not determined the appropriate classification of interconnected VoIP service, the precise scope of ILEC interconnection rules applicable to interconnected VoIP providers is not entirely clear.”<sup>13</sup>

## **II. Interconnection Benefits Should Flow With Interconnection Burdens.**

Comcast admits that the precise scope of ILEC interconnection rules regarding interconnected VoIP providers is not entirely clear.<sup>14</sup> This acknowledgement exposes a weakness in Comcast’s arguments that it is entitled to interconnection rights with VTel, but need not be burdened with “telecommunications carrier” status. VTel’s request for clarification regarding Comcast’s interconnection rights as a VoIP provider clearly demonstrates the unfairness and regulatory disparity that would result if VTel must interconnect with Comcast to transmit VoIP services.

VTel correctly asserts that the Commission should not allow Comcast to have the benefits of interconnection as a telecommunications carrier without bearing the concomitant burdens. As listed in VTel’s May 13 ex parte filing, Comcast seeks interconnection benefits -- direct network connections, number portability, reciprocal compensation, access to directory listings and directory assistance, and rate center switch upgrades --- but does not want to comply with the obligations of interconnection that a telecommunications carrier faces -- content neutrality, non-discrimination, no slamming, payment of telecommunications taxes and pole attachment fees, continuous emergency access, and number portability.<sup>15</sup>

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<sup>12</sup> Comcast 2007 Annual Report, p. 12.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

<sup>15</sup> VTel May 13 Ex Parte Filing, p. 2.

One clear solution is for the Commission to classify Comcast, an “integrated” VoIP services provider, as a telecommunications carrier when it transmits VoIP services directly. Interconnection rights will accompany that classification under Section 251, and so should the interconnection obligations. If the Commission does not classify Comcast as a “telecommunications carrier” for purposes of transmitting VoIP services directly, then the Commission should find that VTel is not required to enter into an interconnection agreement with Comcast. Benefits of interconnection should match the burdens. Otherwise, the regulatory playing field is skewed. Consequently, the Commission should classify Comcast as a telecommunications carrier if Comcast wants interconnection rights.

### **III. VTel’s Petition Presents A New, Significant Issue Regarding Interconnection.**

The VTel Petition is distinguishable from previous VoIP interconnection rulings that Comcast may raise in its defense because, for the first time, the Commission is asked to decide whether interconnection rights should flow to an “integrated” (*i.e.*, using its own CLEC services rather than those of a third-party CLEC) VoIP provider that is providing IP-based services. For example, the VTel Petition is different from the Commission’s 2007 *Time Warner Cable Order* that preempted state interconnection decisions in South Carolina and Nebraska. The Commission examined whether ILECs are obligated to enter into interconnection agreements with Time Warner to carry Time Warner’s VoIP services which are offered through two CLECs, Sprint and MCI.<sup>16</sup>

Time Warner purchased wholesale services from Sprint and MCI in South Carolina and Nebraska. Time Warner contended that the South Carolina and Nebraska public service commission wrongfully determined that rural ILECs need not interconnect with MCI and Sprint

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<sup>16</sup> Time Warner Cable Order, ¶ 2.

to carry Time Warner's VoIP traffic. The Commission concluded that the state commissions' decisions were inconsistent with the Act and would "frustrate the development of competition and broadband deployment."<sup>17</sup> The Commission determined in *Time Warner* that Sprint and MCI, as CLEC wholesale providers of telecommunications services, are telecommunications carriers for the purpose of Section 251 of the Act and are thus entitled to interconnect with ILECs to carry VoIP traffic.<sup>18</sup>

The Commission, though, specifically declined to address the statutory classification of VoIP services and did not clarify whether VoIP providers have the direct right to interconnect with ILECs.<sup>19</sup> The Commission 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."<sup>20</sup> VTel notes in its May 13 Ex Parte filing that Comcast "has disclaimed any intention of providing 'telecommunications services' in both FCC and Vermont proceedings."<sup>21</sup>

Another distinguishable example is last year's Texas federal court decision, *Consolidated Communications v. Texas PUC*.<sup>22</sup> In *Consolidated*, the federal district court ruled on July 24, 2007, that the Texas Public Utility Commission correctly terminated the rural exemption of a

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<sup>17</sup> *Id.* at ¶ 1.

<sup>18</sup> *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*, WC Docket No. 06-55, Memorandum Opinion and Order (rel. Mar. 1, 2007) (Time Warner Cable Order), ¶ 1.

<sup>19</sup> *Id.* at ¶ 8, n. 18; ¶ 14.

<sup>20</sup> Time Warner Cable Order, ¶ 14.

<sup>21</sup> VTel May 13, 2008 Ex Parte Filing, p. 2.

<sup>22</sup> *Consolidated Communications of Fort Bend Company v. Public Utility Commission of Texas et al.*, U.S. D.C.T. (West. Dist. Austin, Texas), Memorandum Opinion and Order, Cause No. A-06-CA-825-LY (rel. July 24, 2007), p. 2.

rural ILEC (Consolidated) and required the rural ILEC to resume interconnection negotiations with Sprint, which operated as a CLEC providing wholesale VoIP service for a cable company in the ILEC's service territory. Again, although this dispute involved interconnection rights and VoIP traffic, the court was not required to examine whether a VoIP provider has a right to interconnect directly with an ILEC where no unaffiliated CLEC connection was involved. Thus, the Texas case of *Consolidated Communications v. Texas PUC* is not controlling.

Still another inapplicable example arises from this year's Iowa decision, *Iowa Telecommunications Services v. Iowa Utilities Board*.<sup>23</sup> On April 15, 2008, a federal district court in the Southern District of Iowa affirmed a 2005 decision by the Iowa Utilities Board that required rural ILECs and Iowa Telecommunications Services to negotiate interconnection agreement with Sprint so that Sprint could offer VoIP services to Iowa customers.<sup>24</sup> Sprint sought interconnection rights with the RLECs to carry VoIP traffic from MCC, a unit of the cable company Mediacom.<sup>25</sup> Again, this federal case did not address the question of whether VoIP providers have a direct right to interconnect with ILECs.

The VTel Petition is yet another consequence of the Commission's reluctance to address the statutory classification of VoIP providers as telecommunications carriers. On April 30, 2008, the Ninth Circuit Court of Appeals referred to the FCC a slamming allegation against Time Warner Cable, which disconnected a California consumer's circuit-switched service and installed a VoIP service without the consumer's consent.<sup>26</sup> The Ninth Circuit said that the FCC retains

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<sup>23</sup> *Iowa Telecommunications Services v. Iowa Utilities Board et al.*, U.S.D.C. (Southern District Iowa), No. 4:06cv0291 JAJ, Order (filed April 15, 2008) (Iowa Telecom Order).

<sup>24</sup> Iowa Telecom Order.

<sup>25</sup> Iowa Telecom Order, p. 6.

<sup>26</sup> *K. Clark v. Time Warner Cable*, USCA (9<sup>th</sup> Cir.), No. 07-55794, Opinion (filed Apr. 30, 2008) (Slamming Order), pp. 4696-7.

primary jurisdiction for determining if Section 258's prohibition against slamming (unauthorized switching of service providers by a telecommunications provider) applies to VoIP providers.<sup>27</sup>

#### **IV. Interconnected VoIP Providers Should Pay Access Charges and Contribute to USF.**

Another attribute of telecommunications carrier status is payment of access charges for use of the public network and contribution to the Universal Service Fund. The Commission should determine that VoIP providers who want interconnection rights must pay applicable rural ILEC access charges for network use and contribute to the USF to maintain the public networks. Numerous respondents to the NTCA 2007 Broadband Survey emphasized the importance of requiring VoIP service providers to pay for their fair share of use of the network.<sup>28</sup> As VoIP grows in popularity, this issue will become increasingly important. NTCA members have invested dearly in the construction and maintenance of their networks; it is only just that carriers who seek to benefit themselves from the use of these networks should pay their fair share of the cost. Contribution to the USF will help maintain those networks upon which the VoIP providers depend.

#### **V. Conclusion.**

For these reasons, the Commission should classify Comcast as a telecommunications carrier if Comcast wants interconnection rights. If Comcast does not want to be a "telecommunications carrier" for purposes of transmitting VoIP services directly, then the Commission should find that VTel is not required to enter into an interconnection agreement with Comcast. VoIP providers who seek the benefits of telecommunications carrier status (including the right to interconnection) must comply with the obligations of telecommunications

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<sup>27</sup> Slamming Order, p. 4702.

<sup>28</sup> NTCA 2007 Broadband/Internet Availability Survey (released September 2007), p. 13, available at: <http://www.ntca.org/images/stories/Documents/Advocacy/SurveyReports/2007ntcabroadbandsurveyreport.pdf>.

carrier status. This status includes the payment of applicable rural ILEC access charges and appropriate contributions to the universal service mechanisms.

Respectfully submitted,

**NATIONAL TELECOMMUNICATIONS  
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May 19, 2008

## CERTIFICATE OF SERVICE

I, Adrienne L. Rolls, certify that a copy of the foregoing Initial Comments of the National Telecommunications Cooperative Association in WC 08-56, DA 08-916, was served on this 19<sup>th</sup> day of May 2008 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons:

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