

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

In the Matter of)
)
Vermont Telephone Company) **WC Docket No. 08-56**
Petition For Declaratory Ruling Regarding)
Interconnection Rights)

COMPTEL Reply Comments

COMPTEL hereby submits these reply comments on Vermont Telephone Company’s (“VTel”) Petition for Declaratory Ruling filed in the above-captioned proceeding. In what appears to be another attempt¹ by a rural incumbent LEC to block or forestall entry by a competitor into its local exchange market, VTel has expressed “confusion” about its interconnection obligations under the Communications Act and declined to enter into interconnection negotiations with a wholesale telecommunications carrier that provides transmission and other services to a VoIP provider.² To eliminate its confusion, VTel has asked the Commission to clarify (1) “whether or not only ‘telecommunications carriers’ are entitled to interconnection with local exchange carrier (“LEC”) facilities by the express terms of Sections 251 and 252 of the Communications Act of 1934. . . ; (2) whether or not Voice over Internet Protocol (‘VoIP’) providers are

¹ See *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, DA 07-709 (WCB, rel. Mar. 1, 2007) (“*Time Warner Declaratory Ruling*”) (a carrier is entitled to interconnect with another carrier pursuant to sections 251(a) and (b) in order to provide wholesale telecommunications service for the purpose of transmitting traffic to or from another service provider).

² VTel Petition at 2. See also, Comcast Comments at 3; Comments of the Vermont Department of Public Service at 7.

entitled to interconnection pursuant to those sections of the Act when they assert they are not ‘telecommunications carriers’; and (3) whether or not Comcast Phone of Vermont, LLC (‘Comcast’), as a VoIP provider, is a telecommunications carrier and, therefore, is entitled to interconnection pursuant to those statutory provisions.”³ The Commission should deny VTel’s Petition because VTel has failed to demonstrate that a declaratory ruling is necessary to terminate a controversy or remove uncertainty.

VTel, a rural local exchange carrier operating in Vermont, filed its Petition allegedly to resolve whether it is obligated to comply with a January 10, 2008 request by Comcast Phone to negotiate an interconnection agreement.⁴ According to VTel, Comcast Phone “does not provide any ‘telecommunications service’” and seeks interconnection for a VoIP service.⁵ As the Vermont Department of Public Service confirmed in its comments, however, Comcast Phone has been certificated as a local exchange telecommunications carrier by the Vermont Public Service Board. The VoIP service is provided by Comcast IP Phone II, LLC, an affiliate of the certificated local exchange carrier.⁶ VTel has attempted to create an issue by not acknowledging the distinction between the two Comcast affiliates and the services they provide.⁷

³ VTel Petition for Declaratory Ruling at 1.

⁴ VTel Petition at 2.

⁵ *Id.*

⁶ Comments of the Vermont Department of Public Service at 4-5; *See also*, Comments of Comcast Corporation, at 2-3 and Exhibit 1.

⁷ Comments of the Vermont Department of Public Service at 5.

I. VTel Has Failed To Demonstrate The Existence of A Controversy Or An Uncertainty Necessitating A Declaratory Ruling

Section 1.2 of the Commission’s rules, 47 C.F.R. §1.2, provides that the Commission may issue a “declaratory ruling terminating a controversy or removing uncertainty.” With respect to VTel’s first request for clarification – whether or not only telecommunications carriers are entitled to interconnection pursuant to Sections 251 and 252 of the Communications Act – there is no controversy or uncertainty.⁸ Section 251(a) clearly states that each telecommunications carrier has the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers. Section 252 sets forth the procedures for negotiation, arbitration and approval of interconnection agreements between telecommunications carriers. Because Comcast Phone is a telecommunications carrier, VTel is federally mandated to comply with its request for direct and indirect network interconnection.

Similarly, there is no controversy or uncertainty with respect to VTel’s second request for clarification – whether VoIP providers that are not telecommunications carriers are entitled to interconnection pursuant to Sections 251 and 252. Because Sections 251 and 252 confer rights and obligations only on telecommunications carriers, non-telecommunications carriers are not entitled to interconnection pursuant to those provisions of the statute.

Finally, there is no controversy or uncertainty with respect to VTel’s third request for clarification – whether Comcast Phone, “as a VoIP provider,” is entitled to

⁸ None of the parties filing Comments disagree that only telecommunications carriers are entitled to Section 251 and 252 interconnection rights. *See e.g.*, Comments of AT&T, Inc. at 1-2; Comments of Verizon at 2-3; Comments of the Independent Telephone & Telecommunications Alliance, at 1-2; Comments of Embarq at 3-4; Comments of Qwest Corporation and Qwest Communications Corporation at 1-2.

interconnection. Comcast Phone, the entity requesting interconnection with VTel, is not a VoIP provider. Rather, it is a telecommunications carrier that “furnishes wholesale telecommunications services, including underlying transport, interconnection with the public switched telephone network (“PSTN”), access to emergency services, exchange access and numbering resources” to its affiliated VoIP provider, Comcast IP Phone II.⁹ The Wireline Competition Bureau has previously ruled that the rights of telecommunications carriers, such as Comcast Phone, to interconnection under Sections 251(a) and (b) apply regardless of whether the telecommunications services provided are offered on a retail or wholesale basis.¹⁰ Comcast Phone’s status as a wholesale carrier in no way nullifies its statutory rights to interconnect with VTel.

In the absence of a controversy or uncertainty, the Commission need not issue a declaratory ruling to clarify rights and responsibilities. As a result, the Commission should deny VTel’s Petition.

II. The Commission Should Affirm The *Time Warner Declaratory Ruling*

Although VTel asserts that it “welcomes competition” and that it “supports policies that enhance such competition,”¹¹ its actions in response to Comcast Phone’s request for interconnection speak considerably louder than its words and paint a different picture. According to the Vermont Department of Public Service, there are no residential

⁹ Comcast Comments at 2; Comments of the Vermont Department of Public Service at 4-5.

¹⁰ *Time Warner Declaratory Ruling* at ¶ 14.

¹¹ VTel Petition at 2.

wireline competitors operating in VTel's ILEC service territory.¹² In an apparent attempt to maintain the *status quo* and bar and/or delay the availability of competitive choice to consumers, VTel has informed the Department of Public Service that it has "declined to enter into any discussions with Comcast about an agreement under Section 251."¹³

VTel alleges that it is confused with regard to its statutory obligations to interconnect with Comcast Phone due to the Commission's failure to date to specify whether VoIP is a telecommunications or an information service.¹⁴ There is no basis for VTel's confusion. In the *Time Warner Declaratory Ruling*, the Wireline Competition Bureau addressed a similar situation where rural ILECs declined to interconnect with wholesale telecommunications carriers seeking to provide service to VoIP providers. The Bureau confirmed that wholesale telecommunications carriers that seek interconnection in their own right for the purpose of transmitting traffic to or from another service provider are entitled to interconnection under Sections 251(a) and (b) of the Act and flatly rejected the argument that a wholesaler's interconnection rights are dependent upon the regulatory classification of a third party's retail VoIP service.¹⁵

VTel's efforts to delay the introduction of competitive VoIP service to consumers in its service area by refusing to negotiate an interconnection agreement with a wholesale carrier are antithetical to the Commission's goal of encouraging the delivery of advanced

¹² Comments of Vermont Department of Public Service at 2; *see also*, Comments of Comcast at 3.

¹³ *Id.* at 7.

¹⁴ VTel Petition at 2-5.

¹⁵ *Time Warner Declaratory Ruling* at ¶ 15.

telecommunications technology to consumers in rural areas. The Wireline Competition Bureau has correctly determined that

affirming the rights of wholesale carriers to interconnect for the purpose of exchanging traffic with VoIP providers will spur the development of broadband infrastructure. We further conclude that such wholesale competition and its facilitation of the introduction of new technology holds particular promise for consumers in rural areas.¹⁶

While there is no question that resolution of the issues raised in the *IP-Enabled Services* proceeding¹⁷ is long overdue, the Commission need not resolve those issues here. The Commission should deny VTel's Petition For Declaratory Ruling for failing to demonstrate the existence of a controversy or uncertainty and should again confirm the right of wholesale carriers to interconnect with ILECs pursuant to Sections 251 and 252. To discourage the filing of similar Petitions in the future, the Commission should also reiterate the critical role that wholesale carriers can play in promoting the deployment of broadband technology and infrastructure.

Conclusion

For the foregoing reasons, the Commission should deny VTel's Petition for Declaratory Ruling.

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Respectfully submitted,

Mary C. Albert
COMPTel
900 17th Street N.W., Suite 400
Washington, D.C. 20006
(202) 296-6650

¹⁶ *Id.* at 13.

¹⁷ *In the Matter of IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, FCC 04-28 (rel. Mar. 10, 2004).

