

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

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

REPLY COMMENTS OF COMCAST CORPORATION

A. Richard Metzger, Jr.
Ruth M. Milkman
Richard D. Mallen
LAWLER, METZGER, MILKMAN & KEENEY, LLC
2001 K Street, NW
Suite 802
Washington, D.C. 20006

Attorneys for Comcast Corporation

Kathryn A. Zachem
Mary P. McManus
COMCAST CORPORATION
2001 Pennsylvania Avenue, NW
Suite 500
Washington, D.C. 20006
(202) 379-7134
(202) 379-7141

Brian A. Rankin
Andrew D. Fisher
COMCAST CABLE COMMUNICATIONS, LLC
One Comcast Center, 50th Floor
Philadelphia, PA 19103

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I. INTRODUCTION AND SUMMARY

The record in this proceeding demonstrates that Comcast Phone of Vermont, LLC (“Comcast Phone”) is a wholesale telecommunications carrier that is entitled to interconnect with incumbent local exchange carriers (“LECs”), including Vermont Telephone Company (“VTel”), under the Communications Act of 1934, as amended (“Act”). The record also shows that VTel’s Petition for Declaratory Ruling (“Petition”) is replete with inaccuracies, and that once those misstatements are corrected, the Petition is devoid of any uncertainty or controversy that might justify the declaratory relief sought by VTel.

Once VTel’s misstatements have been corrected, moreover, VTel’s Petition can be seen for what it is: an attempt to prevent or delay facilities-based competitors, like Comcast Phone, from entering VTel’s territory. As the Vermont Department of Public Service (“DPS”) stated in its comments, VTel’s efforts to preserve its local service monopoly appear not only to violate section 251 of the Act, but also to delay the benefits of competition for telecommunications

offerings for Vermont residents.¹ The Commission should not allow its processes to be manipulated in a manner that plainly disserves the interests of Vermont consumers. Instead, it should summarily deny and dismiss VTel's Petition.

II. THE KEY FACTS IN THIS PROCEEDING ARE NOT IN DISPUTE

The relevant facts in this proceeding have been established by Comcast and the Vermont DPS, the two commenters with first-hand knowledge of those facts. Comcast, the Vermont DPS, and others also have corrected a number of erroneous and unsubstantiated statements made by VTel.² As a result, the record now clearly demonstrates the following facts:

- Comcast Phone holds a Certificate of Public Good ("CPG"), issued by the Vermont Public Service Board ("PSB"), authorizing Comcast Phone to provide "telecommunications services" within the state.³

¹ Comments of the Vermont Department of Public Service at 1-2 ("Vermont DPS Comments"). (Unless otherwise indicated, all Comments cited herein were filed in WC Docket No. 08-56 on May 19, 2008.)

² See Comments of Comcast Corporation at 10-13 ("Comcast Comments") (correcting various errors in VTel's Petition); Vermont DPS Comments at 1, 4-5 (VTel's Petition is based on the "false assumption" that Comcast Phone is a VoIP provider); Comments of AT&T Inc. at 1 n.1 ("AT&T Comments") ("Although VTel claims that Comcast Phone of Vermont is a VoIP provider, Comcast states otherwise in proceedings before the Vermont Public Service Board."); Comments of Bright House Networks at 1, 2, 4-5 (contrary to VTel's "severely muddled" description of the facts, Comcast Phone is a carrier, has not denied its carrier status, and does not provide VoIP services); Comments of the National Cable & Telecommunications Association at 2 (May 16, 2008) ("Contrary to the 'facts' presented in the [VTel] petition, there are two Comcast entities that operate in Vermont – a certificated competitive local exchange carrier (CLEC) and an uncertificated VoIP provider."); Comments of Time Warner Cable Inc. at 4 ("the specific interconnection request at issue in VTel's petition was made by Comcast's carrier entity – rather than its retail VoIP affiliate").

³ *Petition of Comcast Phone of Vermont, LLC for a certificate of public good to operate as a provider of telecommunications services in Vermont*, CPG No. 834-CR, Certificate of Public Good Issued Pursuant to 30 V.S.A. Section 231, at 1 (Aug. 24, 2006) ("Comcast Vermont CPG") (certifying Comcast Phone for "the provision of telecommunications services, including service to the local exchange" and subjecting Comcast Phone to "the obligations of telecommunications carriers in Vermont"); *Petition of Comcast Phone of Vermont, LLC for a certificate of public good to operate as a provider of telecommunications services in Vermont, including service to the local exchange*, CPG No. 834-CR, Order, at 1 (Aug. 24, 2006) (issuing Certificate of Public Good for Comcast Phone to operate "as a telecommunications carrier within the state")

- Pursuant to its CPG, Comcast Phone furnishes wholesale telecommunications services to its affiliate, Comcast IP Phone II, LLC, which in turn offers retail interconnected VoIP services to end-user customers in Vermont.⁴
- Comcast Phone holds itself out to serve indifferently any entity in Vermont that wishes to purchase Comcast Phone's wholesale telecommunications service offering. For example, Comcast Phone has posted the terms of its wholesale offering on its website,⁵ has publicly stated its willingness to serve qualified clientele,⁶ and is obligated to satisfy its common carrier obligations as part of its state certification.⁷
- By letter dated January 10, 2008, Comcast Phone requested that VTel, an independent incumbent LEC, negotiate an interconnection agreement with Comcast Phone, pursuant to sections 251(a) and (b) of the Act.⁸

(collectively attached to the Comcast Comments as Exhibit 1); *see also* Vermont DPS Comments at 5.

⁴ *See* Comcast Comments at 10; Vermont DPS Comments at 4-5; *see also Investigation into regulation of Voice over Internet Protocol ("VoIP") services*, Vt. PSB Docket No. 7316, Prefiled Direct Testimony of David Kowolenko on behalf of Comcast Phone of Vermont, LLC, at 6-7 (April 7, 2008) (relevant pages attached to Comcast Comments as Exhibit 4). There is no merit to the suggestion by some that Comcast Phone may not be offering wholesale telecommunications service in Vermont pursuant to its CPG. *See* Comments of Embarq at 9 ("Embarq Comments"); *May 12, 2008 Meeting Handout*, Attached to Letter from James U. Troup, Venable, Counsel to VTel, to Marlene H. Dortch, FCC Secretary, WC Docket No. 08-56, at 4 (May 13, 2008) ("VTel May 13 *ex parte*"); Comments of the California Public Utilities Commission and the People of the State of California at 2. As the Vermont DPS makes clear, and as Comcast's website guide confirms, Comcast Phone currently offers wholesale telecommunications services pursuant to its CPG. *See* Vermont DPS Comments at 5.

⁵ Comcast Comments at 2-3 & n.4 and 9 & n.27.

⁶ *See, e.g.*, Comcast Comments at 8 n.23 ("Comcast Phone offers wholesale service to any entity in Vermont to which that service may be of use.").

⁷ Comcast Vermont CPG ¶¶ 2-3 ("Comcast shall terminate all telecommunications traffic routed to its customers by any telecommunications carrier with which Comcast interconnects. . . . Comcast shall be bound to comply with any lawful requirement imposed by the Board governing the obligations of telecommunications carriers in Vermont.").

⁸ Letter to Michelle Page, Vermont Telephone Company, Inc. from Beth Choroser, Comcast Corporation (Jan. 10, 2008) ("*Comcast Phone Interconnection Request*") (attached to Comcast Comments as Exhibit 3); Vermont DPS Comments at 7.

- The January 10 letter expressly stated that Comcast Phone is certificated to offer competitive local exchange service in Vermont.⁹ The letter did not specify the services for which Comcast Phone sought interconnection.¹⁰
- Despite repeated oral and written status inquiries by Comcast Phone, VTel provided no substantive response to the interconnection request over the next three months, but instead filed its Petition with the Commission on April 11, 2008.¹¹

Not only does the record firmly establish the foregoing facts, but it is devoid of any evidentiary support for the alternate account concocted by VTel. For example, no party has introduced evidence supporting VTel's suggestions that Comcast Phone offers VoIP service in Vermont; that Comcast Phone ever has denied its status as a telecommunications carrier; or that Comcast Phone's affiliates have requested authority to discontinue operations as competitive LECs in any state.¹² Moreover, Comcast Phone has never provided a circuit-switched offering in Vermont or applied for discontinuance of any offering in Vermont, and therefore the discontinuance applications filed in other states and cited by VTel would have no relevance to the instant proceeding even if VTel's description of those applications were accurate.¹³

Because there is no record support for any of VTel's various factually inaccurate allegations regarding the actions of Comcast Phone in Vermont, no pertinent questions of fact are in dispute or need to be investigated by the Commission. Nor is there is any need for the

⁹ *Comcast Phone Interconnection Request* at 2.

¹⁰ VTel erroneously claimed that the Comcast Phone requested interconnection for Comcast's "Digital Voice" service. VTel Petition at 2; VTel May 13 *ex parte* at 2. In fact, neither this service nor any other is mentioned in the *Comcast Phone Interconnection Request*. See Comcast Comments at 11 and Exhibit 3.

¹¹ Comcast Comments at 3-4; *see also* Vermont DPS Comments at 7.

¹² Each of these claims is erroneous, as Comcast explained in its comments. See Comcast Comments at 11-12.

¹³ VTel's Petition cited more than two dozen applications in which Comcast's affiliates allegedly "requested authority to discontinue operations as CLECs." VTel Petition at 6-7. In reality, however, the cited applications seek only to discontinue particular services. The applications do not seek to abandon the respective state-issued CLEC certifications.

Vermont Public Service Board to conduct an “evidentiary assessment” regarding the carrier status of Comcast Phone, as suggested by AT&T.¹⁴ AT&T made this suggestion before it had an opportunity to review the comments of Comcast and the Vermont DPS, which have put on the record all facts conceivably relevant to the claims in the Petition. As the Vermont DPS has made clear, the evidence shows conclusively that Comcast Phone is a certificated telecommunications carrier that currently offers telecommunications services in Vermont.¹⁵ No purpose would be served by soliciting additional evidence on this issue, particularly since Comcast has already disclosed the particular information identified by AT&T¹⁶ – namely, the types of telecommunications services provided by Comcast Phone,¹⁷ and the manner in which Comcast Phone holds itself out as a provider of telecommunications services to the public.¹⁸ On these and other factual issues, the record is already clear, well-developed, and known to all relevant entities, including the Commission, the Vermont PSB, and VTel itself.

III. THE APPLICABLE LAW IN THIS PROCEEDING IS CLEAR

After correcting the factual inaccuracies that form the foundation of VTel’s Petition, it is apparent that the Petition does not raise any unresolved legal issues that would warrant a

¹⁴ AT&T Comments at 2; *see also id.* at 5-6.

¹⁵ *See* Vermont DPS Comments at 4-5.

¹⁶ AT&T Comments at 5.

¹⁷ *See* Comcast Comments at 2 (stating that Comcast Phone “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 Comcast IP Phone II, LLC”); *see also* Vermont DPS Comments at 5 (listing the types of telecommunications services offered by Comcast Phone).

¹⁸ *See supra*, p. 3; *see also* Comcast Comments at 2-3 (stating that under Vermont’s regulatory requirements, Comcast is obligated to offer wholesale telecommunications services to entities other than its VoIP affiliate in the state); *id.* at 9 n.27 (“Comcast Phone is not permitted to tariff its wholesale offerings in Vermont, but it has published those offerings on its website”); Comcast Vermont CPG ¶¶ 2-3. These examples also respond to Embarq’s suggestion that Comcast show that it is offering service to the public. *See* Embarq Comments at 10.

declaratory ruling from the Commission. VTel and its few supporters seek to apply erroneous legal standards in conjunction with their flawed factual assertions. In denying and dismissing VTel's Petition, the Commission should reject the erroneous legal arguments advanced by VTel and its supporters.

A. State Regulatory Commissions Determine Telecommunications Carrier Status in the First Instance

Under the Act, the Vermont PSB has the authority to determine, in the first instance, whether Comcast Phone is entitled to interconnection with VTel pursuant to sections 251 and 252, as many comments recognize.¹⁹ Indeed, in other proceedings before the Commission, the existence of state certification to provide telecommunications services has been deemed *prima facie* evidence of a company's telecommunications carrier status.²⁰ VTel's assertion that Comcast Phone is not a telecommunications carrier amounts to an indirect challenge to the decision of the Vermont PSB issuing a Certificate of Public Good to Comcast Phone.²¹ VTel

¹⁹ See, e.g., Vermont DPS Comments at 6-7; AT&T Comments at 5.

²⁰ See, e.g., *Salsgiver Telecom, Inc. v. North Pittsburgh Tel. Co.*, Memorandum Opinion and Order, 22 FCC Rcd 9285, ¶¶ 9-10 (EB 2007) (entity established *prima facie* case that it was a "telecommunications carrier" by showing that it possessed a valid state authorization to provide telecommunications services and by filing a state tariff offering such services). The option of filing a state tariff offering telecommunications services is not available to Comcast Phone in Vermont because the state does not permit non-dominant carriers to file state tariffs. CVR 30-000-052, § 7.506(E). As explained in its comments, Comcast Phone has published its wholesale telecommunications service offerings on its website. Comcast Comments at 3 and 9 n.27.

²¹ VTel and NTCA complain that Comcast Phone seeks the rights of a telecommunications carrier without the corresponding obligations. See VTel May 13 *ex parte* at 2; National Telecommunications Cooperative Association Initial Comments at 4 ("NTCA Comments"). To the contrary, Comcast Phone meets all of its federal and state obligations as a telecommunications carrier. Moreover, in the interconnection agreements that Comcast Phone has executed with TDS and Fairpoint, Comcast Phone has agreed to comply with the following provisions of the Act, the FCC's rules, or telecommunications carrier-specific guidelines in one or both agreements: (i) use of proprietary information under section 222(b) of the Act; (ii) number portability under section 251(b)(2) of the Act, as well as use of telephone numbers in compliance with the North American Numbering Council guidelines; (iii) reciprocal

had an opportunity to protest Comcast Phone's petition for certification in Vermont during the pendency of that proceeding and did not do so. In fact, neither VTel nor any other party has submitted evidence that might controvert the clear record evidence showing that Comcast Phone is and has been certificated as a telecommunications carrier. If, in spite of this unchallenged record, VTel maintains that Comcast Phone is not a telecommunications carrier and is thereby not entitled to interconnection pursuant to sections 251 and 252, the Act requires VTel to raise that objection *with the state regulatory commission*.²²

B. A Customer's Affiliation Is Not Relevant to a Determination of Telecommunications Carrier Status

In its initial state certification proceeding, in its interconnection request to VTel, and on the record in response to VTel's Petition, Comcast Phone has shown beyond serious challenge that it qualifies as a telecommunications carrier for purposes of section 251 interconnection. Embarq claims, without reference to any legal authority, that "[o]ffering telecommunications services only to a VoIP affiliate, rather than offering service to the public, is insufficient to qualify as a telecommunications carrier."²³ As a factual matter, Comcast Phone does not restrict its wholesale telecommunications service offering to its VoIP affiliate. Rather, it *offers* its telecommunications services to the public.

The fact that currently the only subscriber to Comcast Phone's wholesale telecommunications service offering is an affiliate is irrelevant to Comcast Phone's regulatory

compensation under section 251(b)(5) of the Act; (iv) dialing parity under section 251(b)(3) of the Act; (v) interconnection trunking pursuant to section 251(a) of the Act; (vi) negotiation and arbitration under section 252 of the Act; (vii) notice of network changes under sections 51.325 – 51.335 of the FCC's rules; and (viii) payment of access charges, in addition to meet-point billing arrangements in conformance with the Ordering and Billing Forum's MECAB and MECOD guidelines.

²² 47 U.S.C. § 252(b).

²³ Embarq Comments at 10; *see also* NTCA Comments at 5.

status. Some incumbent LEC telecommunications service offerings are similarly used only by the incumbent LEC affiliates. For example, AT&T recently characterized its True IP to PSTN (“TIPTop”) Service as “a *telecommunications service* offered by the AT&T incumbent LECs that provides Internet Protocol Voice Information Service Providers (IP-VIS Providers) with connectivity between the IP-VIS provider’s (TIPTop customer’s) network and the AT&T network.”²⁴ AT&T acknowledges that it “has only one customer for the [TIPTop] service which is an affiliate.”²⁵ Such offerings are not uncommon and, because they are available to the public, they are properly classified as telecommunications services.²⁶

Neither the FCC nor any federal court has held that the determination of whether a service is a “telecommunications service” or a carrier is a “telecommunications carrier” depends upon the affiliated or unaffiliated status of the provider’s customer base. The absence of such precedent is not surprising. Common carrier classification decisions traditionally do not consider the identity of the customers but focus instead on the carrier or, more specifically, whether the carrier intends to hold itself out to the public indiscriminately (the hallmark of a common carrier).²⁷ The Court of Appeals for the D.C. Circuit has explained that:

²⁴ *AT&T Inc. Petition for Waiver of Section 61.42(g) of the Commission’s Rules*, WCB/Pricing File No. 08-11, AT&T Petition for Waiver, at 1 (March 18, 2008) (emphasis supplied).

²⁵ *Id.* at 3; *see also AT&T Inc. Petition for Waiver of Section 61.42(g) of the Commission’s Rules*, WCB/Pricing File No. 08-11, Order, DA 08-1210, ¶ 4 n.12 (WCB rel. May 27, 2008) (“*TIPTop Order*”) (“AT&T explains that this service is not currently purchased by any unaffiliated customers.”).

²⁶ *See TIPTop Order* ¶ 5 (applying certain common carrier requirements in Part 61 of the FCC’s rules to AT&T’s TIPTop service).

²⁷ The Court of Appeals for the D.C. Circuit explains why the focus of a common carrier determination is on the carrier rather than the customer: “The original rationale for imposing a stricter duty of care on common carriers was that they had implicitly accepted a sort of public trust by availing themselves of the business of the public at large. The common carrier concept appears to have been developed as a sort of *quid pro quo* whereby a carrier was made to bear a

[because] private and common carriers may . . . be indistinguishable in terms of the clientele actually served, it is difficult to envision a sensible line between them which does not turn on the manner and terms by which they approach and deal with their customers. The common law requirement of holding oneself out to serve the public indiscriminately draws such a logical and sensible line between the two types of carriers.²⁸

Neither the number of customers for Comcast Phone's telecommunications service offerings nor the identity of any customer has any bearing on Comcast Phone's telecommunications carrier status.

IV. VTEL'S PETITION SHOULD BE DISMISSED AS A GROUNDLESS ATTEMPT TO THWART COMPETITION

As the Commission has repeatedly acknowledged, a paramount goal of the Telecommunications Act of 1996 is to promote facilities-based competition for telecommunications services.²⁹ This goal is particularly important for states like Vermont where robust competition has not yet materialized in many areas within the state. As the Vermont DPS observed, "there are effectively no residential wireline competitors operating in VTel's ILEC

special burden of care, in exchange for the privilege of soliciting the public's business." *National Ass'n of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630, 641-42 (D.C. Cir. 1976).

²⁸ *Id.* at 642.

²⁹ *See, e.g., Promotion of Competitive Networks in Local Telecommunications Markets*, Report and Order, 23 FCC Rcd 5385, ¶ 2 (2008) (noting that 1996 Telecommunications Act was designed to eliminate barriers to facilities-based competition); *Unbundled Access to Network Elements*, Order on Remand, 20 FCC Rcd 2533, ¶ 3 (2005) (subsequent history omitted) (adopting rules intended to "spread the benefits of facilities-based competition to all consumers"); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, ¶ 70 (2003) (subsequent history omitted) (noting that facilities-based competition serves the Act's overall goals); *Performance Measurements and Standards for Unbundled Network Elements and Interconnection*, Notice of Proposed Rulemaking, 16 FCC Rcd 20641, ¶ 5 (2001) (subsequent history omitted) (stating that "facilities-based competition, of the three methods of entry mandated by the Act, is most likely to bring consumers the benefits of competition in the long run").

service territory” today.³⁰ At the same time, VTel has been relieved of significant state regulatory burdens in recent years based on the expectation that it would face voice competition from less-regulated providers.³¹ Thus, the Vermont DPS, understandably, is eager to encourage competitors to enter VTel’s territory. The prospect of facilities-based entry by Comcast is especially appealing:

Comcast is the major cable operator in Vermont [and] . . . only recently introduced cable-based phone services to Vermont, an option that has existed for consumers in many places throughout the country for years. Comcast Phone of Vermont, LLC is already interconnected with FairPoint in Vermont and Comcast IP Phone . . . is a significant competitor in those parts of the FairPoint footprint in Vermont where Comcast operates. The Department takes seriously its Section 253(b) obligation [regarding removal of barriers to entry] to protect the rights of Vermont consumers, and, as such, comments here.³²

The gravamen of the Vermont DPS’s comments is that VTel appears to be using its Petition “to excuse itself of its Section 251 obligations,” thereby “creat[ing] a barrier to competition” in its local service area.³³ Vermont’s consumers will certainly be the first to suffer if this ploy is allowed to succeed.³⁴ But, the harm will not end there, as most commenters appear

³⁰ Vermont DPS Comments at 2.

³¹ *Id.* at 3-4.

³² *Id.* at 2-3. *See* 47 U.S.C. § 253.

³³ Vermont DPS Comments at 1, 2; *see also id.* at 4 (“To the extent that this proceeding delays Comcast’s interconnection with VTel and Comcast customer ability to port numbers in VTel territory, this proceeding is effectively reducing competitive options for local telephone service in the State of Vermont.”).

³⁴ *See* Vermont DPS Comments at 2 (“Presently . . . there are effectively no residential wireline competitors operating in VTel’s ILEC service territory.”); Comments of David Benson at 1 (May 21, 2008) (explaining that he is “being literally held hostage” by VTel’s Petition because he cannot have his VTel phone number ported to Comcast).

to realize.³⁵ Monopoly LECs in other states would be emboldened to ignore legitimate interconnection requests and delay the benefits of facilities-based competition for millions of Americans. The Commission can and should foreclose such tactics now.

V. CONCLUSION

For the foregoing reasons, the Commission summarily should deny and dismiss the VTel Petition in its entirety. Alternatively, the Commission should conclude that Comcast Phone, as a wholesale provider of telecommunications service, is entitled to interconnection under sections 251 and 252 of the Act.

Respectfully submitted,

/s/ Kathryn A. Zachem

A. Richard Metzger, Jr.
Ruth M. Milkman
Richard D. Mallen
LAWLER, METZGER, MILKMAN & KEENEY, LLC
2001 K Street, NW
Suite 802
Washington, D.C. 20006

Attorneys for Comcast Corporation

Kathryn A. Zachem
Mary P. McManus
COMCAST CORPORATION
2001 Pennsylvania Avenue, NW
Suite 500
Washington, D.C. 20006
(202) 379-7134
(202) 379-7141

Brian A. Rankin
Andrew D. Fisher
COMCAST CABLE COMMUNICATIONS, LLC
One Comcast Center, 50th Floor
Philadelphia, PA 19103

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³⁵ The only commenters that found significant merit in VTel's Petition either (i) accepted as true VTel's erroneous version of the facts – e.g., the claim that Comcast Phone is a VoIP provider; or (ii) represent the interests of rural LECs such as VTel.

Certificate of Service

I, Ruth E. Holder, hereby certify that on this 9th day of June, 2008, I caused a true and correct copy of the foregoing Reply Comments of Comcast Corporation to be mailed by first class U.S. mail, postage prepaid, to:

James U. Troup
VENABLE LLP
575 7th Street NW
Washington, DC 20004

Counsel for Vermont Telephone Company

Additionally, I caused a true and correct copy of the foregoing Comments of Comcast Corporation to be mailed by electronic mail to:

Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street SW
Washington, DC 20554
CPDcopies@fcc.gov

and

Best Copy and Printing, Inc.
445 12th Street SW, Room CY-B402
Washington, DC 20554
fcc@bcpiweb.com

/s/ Ruth E. Holder
Ruth E. Holder