September 29, 2008

Chairman Kevin J. Martin
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

RE: Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92; IP-Enabled Services, WC Docket No. 04-36

Dear Chairman Martin:

The undersigned companies and associations, representing the leading competitive telecommunications providers in the United States, come together for one purpose: to oppose the network interconnection provisions contained in Verizon's September 12 proposal for intercarrier compensation reform.[1] Verizon's proposal includes provisions that are fundamentally inconsistent with the interconnection regime established by Congress in Sections 251 and 252 of the Communications Act. Even worse, Verizon suggests that interconnection arrangements outside of the default regime would be completely removed from these statutory requirements.[2] Adoption of Verizon's proposal would erode substantially the statutory and contractual rights and obligation upon which facilities-based competition depends. Reform of the intercarrier *compensation* regime need not, and should not, result in elimination of any *interconnection* obligations applicable to incumbent local exchange carriers (ILECs) or any rights granted to competitive local exchange carriers (CLECs) by Congress.

I. CONGRESS INTENDED FOR REQUESTING CARRIERS TO BE ABLE TO NEGOTIATE INTERCONNECTION BASED ON THEIR BUSINESS AND TECHNOLOGY NEEDS

One of the fundamental goals of the 1996 Act was to facilitate competition in the face of the monopoly held by ILECs. To achieve this goal, Congress adopted Section 251(c)(2), which provides CLECs with a right to physically interconnect with the network of an ILEC.[3] The Commission adopted rules implementing this provision in its 1996 *Local Competition Order*,

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[1] Verizon Proposal for Intercarrier Compensation Reform, attached to Letter from Susanne Guyer, Senior Vice President, Verizon, to Kevin Martin, Chairman, Federal Communications Commission, CC Docket No. 01-92 (filed Sept. 12, 2008) (Verizon Proposal). We are filing this joint letter because of the strong consensus among facilities-based competitors regarding the potential harms of Verizon's proposed interconnection rules. Individual companies and associations have additional concerns regarding intercarrier compensation reform generally, and the Verizon Proposal in particular, which they will address separately.

[2] *See* Commission Has Legal Authority To Adopt A Single Default Rate For All Traffic Routed On The PSTN, attached to Letter from Donna Epps, Vice President, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 01-92, et al. (filed Sept. 19, 2008) (Verizon White Paper) at 29.

[3] 47 U.S.C. § 251(c)(2).

explaining that, "national rules regarding interconnection pursuant to section 251(c)(2) are necessary to further Congress's goal of creating conditions that will facilitate the development of competition in the telephone exchange market."[4]

Significantly, Section 251(c)(2) does not establish an interconnection regime in which ILECs alone set the terms.[5] To the contrary, it gives CLECs the ability to design their own networks, based on their own business and technological plans, and to negotiate arrangements with ILECs pursuant to the substantive and procedural protections of Sections 251 and 252. In particular, under Section 251 and the Commission's rules implementing that section, CLECs may choose: (1) the point at which interconnection will take place;[6] (2) the technology used for interconnection;[7] and (3) whether interconnection will be direct or indirect.[8]

Congress not only gave CLECs substantial control over the details of the interconnection process, it also ensured that they would be able to exercise those rights in a timely manner. The Act provides for negotiated agreements between CLECs and ILECs, but it also permits CLECs to request arbitration by State Commissions when necessary to enforce their interconnection rights.[9] In particular, states must ensure that ILECs provide interconnection in a manner that is consistent with the substantive requirements of Section 251 and the Commission's rules and that this interconnection is provided at cost-based rates as required under Section 252(d)(1).[10]

Facilities-based competitors are beginning to have an impact in the marketplace. But this success is a result of, and entirely dependent on, the interconnection regime established by Congress and the Commission. As the Commission has recognized in numerous forbearance decisions, ILECs continue to hold a dominant position in the marketplace that requires the

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[4] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 15591-92, ¶ 179 (1996) (*Local Competition Order*) (subsequent history omitted).

[5] In that sense, the interconnection regime under Section 251 is very different than the regime that governs termination of access traffic, which is based on LEC tariffs that unilaterally set forth the rates, terms, and conditions for termination. One of the central challenges of reforming the intercarrier compensation regime is unifying these two disparate mechanisms – interconnection agreements and access tariffs – for establishing the terms of traffic exchange. Unfortunately, as we explain below, the Verizon Proposal is silent on the mechanism through which its proposed regime would be implemented.

[6] *Local Competition Order*, 11 FCC Rcd at 15608, ¶ 209; *MCI Telecommunications Corp. v. Bell Atlantic-Pennsylvania*, 271 F.3d 491, 518 (3d Cir. 2001) ("the CLEC cannot be required to interconnect at points where it has not requested to do so.").

[7] *Local Competition Order*, 11 FCC Rcd at 15606, ¶ 206 ("[T]he Act does not permit incumbent LECs to deny interconnection or access to unbundled elements for any reason other than a showing that it is not technically feasible.")

[8] *Id.* at 15991, ¶ 997 ("Section 251(c) specifically imposes obligations upon incumbent LECs to interconnect, upon request, at all technically feasible points. This direct interconnection, however, is not required under section 251(a) of all telecommunications carriers.")

[9] 47 U.S.C. § 252(b).

[10] 47 U.S.C. § 252(c).

preservation of interconnection obligations.[11] No competitive provider can match the size and geographic scope of companies like AT&T and Verizon, which together serve more than 97 million wireline customers and 141 million wireless customers.[12] Absent mandatory interconnection requirements, and a mechanism to enforce those requirements, these companies would have no incentive whatsoever to offer competitors reasonable rates, terms, and conditions for interconnection.

II. THE VERIZON INTERCONNECTION PROPOSAL SUBSTANTIALLY CONFLICTS WITH THE REGIME CREATED BY CONGRESS

Verizon proposes a set of default compensation and interconnection rules, but its proposal includes no clear explanation as to how those rules would be implemented between any two companies that exchange traffic,. Nor does Verizon explain how carriers may obtain arrangements that differ from the default regime. Not only does Verizon ignore these practical considerations, it seems to suggest that all intercarrier arrangements could simply be deregulated,[13] a prospect that would be absolutely devastating to competition. In making changes to the compensation regime, the Commission must not give ILECs control over key decisions affecting CLEC networks or enable ILECs to avoid obligations under existing agreements or state arbitration of future disputes. While Verizon has submitted a lengthy legal analysis that it claims supports the unified rate portions of its proposal, it has provided no analysis – legal or otherwise – that would justify the dramatic changes that its proposal might cause with respect to the rights and obligations of interconnecting carriers.

A. The Verizon proposal would allow ILECs to select the technology used by competitors.

Under Verizon's proposal, "[e]ach terminating carrier must establish at least one POI per LATA."[14] That proposal, to the extent it limits the potential interconnection options available to CLECs, is fundamentally inconsistent with the statutory scheme established by Congress and represents a radical change in the interconnection regime that has governed the U.S. telecommunications industry for the last 12 years. Under the statute, all ILECs have a duty to provide requesting carriers with interconnection at "any technically feasible point" on the ILEC network.[15] As NCTA has explained previously, that requirement is technology neutral – it

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[11] *Petition of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, WC Docket No. 04-223, Memorandum Opinion and Order, 20 FCC Rcd 19415, 19457-59, ¶ 86-87 (2005) (*Omaha Forbearance Order*).

[12] *See* AT&T Investor Briefing, 2d Quarter 2008 (July 23, 2008); Verizon Investor Quarterly, 2d Quarter 2008 (July 28, 2008).

[13] *See* Verizon White Paper at 29.

[14] Verizon Proposal, §(1)(c)(i).

[15] 47 U.S.C. § 251(c)(2)(B).

applies equally to circuit-switched equipment and IP-based equipment.[16] *As long as the interconnection requested is technically feasible, the ILEC must allow it*.[17]

By allowing an ILEC to control where on its network CLECs may interconnect, the Verizon proposal violates the Act and potentially has dramatic consequences on the technology choices made by CLECs. An ILEC could, for example, choose only circuit-switched facilities as POIs. The effect of such a choice would be to require all carriers operating IP packet-based networks to convert their traffic to circuit-switched format, essentially imposing a backward-looking technology requirement on the entire industry.

There is absolutely no basis for such an approach in the statute, nor does it make any sense as a policy matter. As Verizon correctly explains, *all* carriers, including ILECs, are transitioning to IP-based networks and this technological transition is a primary justification for the adoption of a unified compensation regime.[18] It would be beyond strange for the Commission, in adapting the compensation regime to this IP-based marketplace, to adopt new interconnection rules that take away the right of competitive providers to connect using IP technology and force them to continue investing in old circuit-switched technology for the sole purpose of exchanging traffic with ILECs. If the Commission decides to address interconnection issues, it must do so in a way that preserves the fundamental right of a CLEC to interconnect at any technically feasible point on an ILEC's network at cost-based rates.

B. The Verizon proposal would allow ILECs to select the POI for traffic delivered by competitors.

In addition to allowing ILECs to dictate the technology a CLEC uses, the Verizon Proposal also violates the statute by allowing a terminating ILEC to dictate the location to which a CLEC must deliver its traffic. As the United States Court of Appeals for the Third Circuit

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[16] *See* Letter from Daniel L. Brenner, National Cable & Telecommunications Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 04-440, et al. (filed Aug. 6, 2007) at 5 ("Under Section 251(c)(2), ILECs are required to permit interconnection where it is technically feasible. The statute contains no exception for IP/packet/broadband/optical technology and there is no reason for the Commission to create one, particularly considering the ongoing migration by ILECs and other providers to IP-based softswitch technology.").

[17] *Local Competition Order*, 11 FCC Rcd at 15606, ¶ 206 ("[T]he Act does not permit incumbent LECs to deny interconnection or access to unbundled elements for any reason other than a showing that it is not technically feasible."); *id*. at 15608, ¶ 209 ("Section 251(c)(2) gives competing carriers the right to deliver traffic terminating on an incumbent LEC's network at any technically feasible point on that network, rather than obligating such carriers to transport traffic to less convenient or efficient interconnection points."). Moreover, as NARUC confirmed in a recent resolution, disputes regarding the interconnection of IP-based voice networks should be subject to state arbitration pursuant to Section 252 of the Act. *See* Resolution Regarding the Interconnection of New Voice Telecommunications Services Networks (adopted July 23, 2008), available at http://www.naruc.org/Resolutions/TC%20Interconnection.pdf.

[18] Verizon White Paper at 8 ("All available evidence suggests that the trends in favor of wireless and IP-based services – and away from traditional wireline services – will continue and that these changes will continue to have significant and ever-increasing effects on the communications marketplace.").

explained, "the CLEC cannot be required to interconnect at points where it has not requested to do so."[19] Similarly, although the Commission currently allows CLECs to identify only a single POI per LATA, it also permits CLECs to choose multiple interconnection points if that is a more efficient approach for the CLEC.[20] The critical point is that CLECs have the right to decide where interconnection will take place, not ILECs.

We acknowledge that Verizon's proposal to require an ILEC to choose a tandem switch as its POI could prove beneficial in that it will prevent ILECs from attempting to require interconnection at an end office, which often is less efficient. But there is no reason that this proposal should in any way prevent CLECs from choosing a POI at a location other than the tandem switch, nor should CLECs lose the protection of Sections 251 and 252, including the right to cost-based rates and the right to seek State arbitration, in connection with such requests.

C. The Verizon proposal would allow ILECs to decide whether to use direct or indirect interconnection.

Under the Verizon proposal, CLECs are required to designate a POI within each LATA where they must allow other networks to interconnect.[21] There is no basis for that requirement in Section 251, which imposes the requirement to allow direct interconnection only on incumbent LECs.[22] The Commission addressed this very issue in the *Local Competition Order*, rejecting a request by Verizon's predecessor, Bell Atlantic, to impose reciprocal interconnection obligations on CLECs. The Commission's legal analysis at the time – "Section 251(c)(2) does not impose on non-incumbent LECs the duty to provide interconnection" – is no less true today.[23] This is not to suggest that CLECs will never choose to interconnect directly with other carriers. Rather, the key point is that Congress did not mandate that CLECs provide direct interconnection and instead left that decision to agreements between providers.

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[19] *MCI Telecommunications Corp. v. Bell Atlantic-Pennsylvania*, 271 F.3d 491, 518 (3d Cir. 2001). Although the Verizon Proposal is unclear on this point, we note that allowing an ILEC to charge extra when a CLEC chooses a POI (or multiple POIs) at locations not selected by the ILEC is just as harmful to competition as permitting the ILEC to require POIs not selected by the CLEC because both strategies impose unnecessary costs on competitors. *Id*. at 517 (requiring "additional connections at an unnecessary cost to the CLEC[] would be inconsistent with the policy behind the Act.").

[20] *See In the Matter of Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. D/B/A Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas*, 15 FCC Rcd. 18354, 18390 (2000) (*Texas 271 Order*).

[21] Verizon Proposal, § (1)(c)(i).

[22] *Local Competition Order*, 11 FCC Rcd at 15991, ¶ 997 ("Section 251(c) specifically imposes obligations upon incumbent LECs to interconnect, upon request, at all technically feasible points. This direct interconnection, however, is not required under section 251(a) of all telecommunications carriers.")

[23] *Id*. at 15613, ¶ 220.

D. The Verizon proposal would enable ILECs to avoid obligations under existing agreements, as well as state arbitration of future disputes.

The Verizon proposal not only would dramatically reduce the substantive interconnection rights of CLECs under the Commission's rules, it also would eliminate rights that CLECs possess under existing interconnection agreements. Under Verizon's proposal, it appears that carriers would operate under the new default rules unless an ILEC agrees to a different arrangement.[24] The practical consequence of this proposal is that ILECs will be able to avoid existing contractual obligations simply by refusing to agree to a contract amendment. Nowhere in its proposal does Verizon offer even a hint as to why it is necessary to grant ILECs such extraordinary rights in connection with reform of the intercarrier compensation regime.

Moreover, in the event of a dispute regarding the rights and obligations of the parties under the new rules, the proposal is silent as to whether CLECs may seek arbitration at the state level under Section 252 or file a complaint with the Commission under Section 208. That silence will almost certainly lead to protracted litigation between parties. Equally unclear under the Verizon Proposal is whether CLECs will continue to have recourse to state arbitration in connection with interconnection requests that do not fall under the new default rules, e.g., a request to connect at a technically feasible point other than an ILEC tandem. While the Act and the Commission's current rules are quite clear that CLECs may pursue Section 252 arbitration in connection with such requests, Verizon's silence on the issue suggests that it may view such requests as falling outside the procedures established under Section 252.

III. ADOPTION OF THE VERIZON INTERCONNECTION PROPOSAL WOULD JEOPARDIZE FACILITIES-BASED COMPETITION

The twelve years since Congress adopted the 1996 Act and the Commission issued the *Local Competition Order* have been characterized by near constant litigation, either in the courts, at the Commission, or before state commissions. Notwithstanding the ILECs' scorched earth tactics, however, facilities-based CLECs are finally gaining a foothold in the marketplace, as Congress intended.

For these pro-competitive trends to continue, facilities-based competitors must have some degree of certainty that the interconnection arrangements that they have fought for, and won, will remain in place and that state commissions will continue to serve as a forum for arbitration of interconnection disputes. The interconnection provisions of the Verizon Proposal would deprive CLECs of this certainty, eliminating substantive rights and procedural remedies that Congress put in place. Adoption of these proposals almost certainly would trigger a new round of state and federal litigation.

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[24] Verizon Proposal, § (1)(k).

It bears emphasis that these changes are *not* an essential component of intercarrier compensation reform. The Commission can, and should, unify termination rates for all types of traffic. If the Commission decides to address interconnection issues in the context of reforming the intercarrier compensation regime, however, it must do so without eliminating the rights granted to CLECs or the obligations imposed on ILECs.

IV. CONCLUSION

For all the reasons explained above, the undersigned companies and associations, representing the vast majority of facilities-based competitors in the United States, urge the Commission to reject the interconnection provisions contained in Verizon's intercarrier compensation reform proposal.

Respectfully submitted,

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Bright House Networks, LLC
BT Americas, Inc.
Cavalier Telephone
Cbeyond
Charter Communications, Inc.
Comcast Corporation
COMPTEL
Covad
Cox Communications, Inc.
Granite Telecommunications
National Cable & Telecommunications Association
NuVox
TC3 Telecom
Telnet Worldwide, Inc.
twtelecom, inc.
Time Warner Cable Inc.

cc: Commissioner Michael Copps
Commissioner Jonathan Adelstein
Commissioner Deborah Tate
Commissioner Robert McDowell
Dan Gonzalez
Amy Bender
Scott Deutchman

Scott Bergmann
Greg Orlando
Nick Alexander
Dana Shaffer
Don Stockdale
Marcus Maher
Randy Clarke
Al Lewis
Victoria Goldberg
Doug Slotten
Jay Atkinson
Bill Sharkey
Lynne Engledow