BINGHAM

October 28, 2008

VIA ECFS

Ms. Marlene H. Dortch
Secretary, Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: ***Ex Parte Presentation in 01-92, 99-68***

Dear Ms. Dortch:

This *ex parte* letter is submitted on behalf of PAETEC for all of its operating subsidiaries ("PAETEC") in response to the letter jointly submitted by AT&T and Verizon on October 14, 2008 in defense of their proposals to rework interconnection obligations under the auspices of intercarrier compensation reform.[1] Although AT&T and Verizon claim that their "default rules" would do nothing more than "simply define the functions governed by a uniform terminating rate,"[2] their proposals give rise to at least two significant concerns. First, as a substantive matter, the AT&T and Verizon proposals represent a significant departure from the Commission's long-standing rules regarding who can request interconnection and where they may request such interconnection under the Communications Act of 1934, as amended (the "Act"). Second, in light of the limited discussions on the record of proposals that were issued just last month, the Commission should follow proper notice-and-comment rulemaking procedures in lieu of racing through such significant departures to existing law.

Verizon first proposed last month that the Commission adopt new interconnection rules as part of its intercarrier compensation reform effort. Notwithstanding long-standing precedent that each incumbent local exchange carrier ("ILEC") is obligated to provide interconnection at any technically feasible point on its network to a requesting competitive local exchange carrier ("CLEC"),[3] Verizon proposed to turn this structure on its head by permitting the terminating carrier -- without reference to status as an ILEC or a CLEC -- to demand the establishment of "at least one [point of interconnection ("POI")] per LATA" and up to as many POIs as the terminating carrier may desire, so long as it does not exceed the number of ILEC tandems in that LATA.[4] In other words, under Verizon's proposal, the ILEC could demand that traffic management and interconnection architecture be tethered to its embedded network infrastructure, regardless of how inefficient that network topology might be.

---

[1] Letter from Hank Hulquist, AT&T, and Donna Epps, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, dated Oct. 14, 2008 ("RBOC October 14 Joint Letter").

[2] *Id*. at 1.

[3] 47 C.F.R. § 51.305.

[4] Letter from Susanne A. Guyer, Verizon, to Chairman Martin, *et al*., CC Dockets Nos. 01-92 and 96-45, dated Sept. 12, 2008 ("Verizon Plan"), at 1-2.

Boston
Hartford
Hong Kong
London
Los Angeles
New York
Orange County
San Francisco
Santa Monica
Silicon Valley
Tokyo
Walnut Creek
Washington

Bingham McCutchen LLP
2020 K Street NW
Washington, DC
20006-1806

T 202.373.6000
F 202.373.6001
bingham.com

AT&T and Verizon defend these proposals through a meaningless distinction between physical and financial network responsibility. For example, Verizon baldly claims that its proposal does not alter the ability of a CLEC to request interconnection at any technically feasible point, because the POIs for which Verizon calls reflect allocation of financial responsibility and not physical points of network linkage.[5] AT&T and Verizon parrot this assertion in their October 14 joint letter.[6] But it is clear from arbitration decisions over the years that state commissions charged with interpreting Sections 251 and 252 of the Act have not bought into such hair-splitting by the ILECs.[7] To the contrary, as the Chief of the Wireline Competition Bureau has summarized, a proposal to establish a single POI in each LATA "more closely conforms to the Commission's current rules" than a proposal to transfer financial responsibility through multiple virtual POIs throughout a LATA.[8] It is therefore clear that, regardless of how they are characterized, the AT&T and Verizon proposals present significant and potentially paradigm-shifting questions in terms of interconnection rights and responsibilities under the Act, and the Commission should not plow forward without careful consideration of the consequences of these proposals on the existing legal framework.

This in turn leads to the second reason that PAETEC has been compelled to submit this letter -- the lack of a proper record with respect to interconnection issues in this proceeding. Although AT&T and Verizon assert that their proposal does not run afoul of the Act or modify any of the Commission's existing rules, the grand total of six pages by AT&T and Verizon to make their legal "argument"[9] regarding interconnection

---

[5] *See Ex Parte Presentation* of Verizon, CC Docket No. 01-92, WC Docket No. 04-36, dated Oct. 3, 2008, at 1-2 ("Verizon October 3 *Ex Parte*").

[6] RBOC October 14 Joint Letter at 1.

[7] *See, e.g., Interactive Information Network, Inc.*, Case 01-C-1787, Order Resolving Arbitration Issues, 2002 WL 31993245 (N.Y.P.S.C.) at *7-8; *Sprint Comms. Co. v. Verizon Maryland, Inc.*, Case No. 8887, Order No. 77320, 2001 WL 1887209 (Md. P.S.C.) at *10.

[8] *Petition of Worldcom, Inc. Pursuant to Section 252(e)(5) of the Communciatons Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc. and for Expedited Arbitration*, CC Dockets Nos. 00-218, 00-249, and 00-251, Memorandum Opinion and Order, 17 FCC Rcd 27039, 27063-65 (Wireline Comp. Bureau 2002), at ¶¶ 51-53. The Commission also specifically declined to address in at least one other proceeding the question of whether so-called financial interconnection points could satisfy the requirements of the Act. *See Application by Verizon Virginia, Inc., Verizon Long Distance Virginia, Inc., Verizon Enterprise Solutions Virginia, Inc., Verizon Global Networks, Inc., and Verizon Select Services of Virginia, Inc. for Authorization to Provide In-Region, InterLATA Services in Virginia*, WC Docket No. 02-214, Memorandum Opinion and Order, 17 FCC Rcd 21880, 21977 (2002), at ¶ 173 (finding that Verizon had satisfied its interconnection obligations by entering into at least one interconnection agreement that *did not* mandate multiple points of interconnection for financial responsibility purposes).

[9] *See* Verizon October 3 *Ex Parte* and RBOC October 14 Joint Letter.

hardly provides a reasonable basis for the Commission to accept this reasoning and adopt the AT&T and Verizon proposals. Furthemore, carriers have depended upon the existing regime for years, and there is little, if any, evidence or discussion in the record of how the proposal put on the table just last month might affect carriers going forward. Finally, even if the Commission were to address all of the legal and evidentiary concerns associated with adopting Verizon's interconnection proposal, it is unclear how Verizon's interconnection proposal would apply or might need to be modified if *some other* intercarrier compensation mechanism/rate (*i.e.*, other than Verizon's $0.0007 for transport and termination of all traffic) were adopted.

It is critical that the Commission allow interested parties to understand precisely what interconnection proposals are under consideration and to take account of all of the legal, technical, and economic consequences of these proposals. Plowing forward with a proposal that could result in a substantial revision of the existing interconnection rules without proper consideration raises serious administrative procedure concerns, and could have a significant adverse impact on competitors who have depended upon the existing network interconnection rules for well over a decade.

Thus, even if the Commission is determined to press forward on comprehensive intercarrier compensation reform in the near-term, it should not rush to judgment with respect to a potential rewriting of interconnection rights and obligations based upon the limited record regarding Verizon's proposal. Rather, the Commission should issue a Notice of Proposed Rulemaking to consider the interconnection rules that are necessary and appropriate in light of the intercarrier compensation reform it seeks -- and to ensure that any revisions to the interconnection rules ultimately adopted, if any, remain consistent with the requirements of the Act.

Respectfully submitted,

/s/

Jonathan S. Frankel
Michael R. Romano

cc: (All Via E-Mail)
Amy Bender
Scott Deutchman
Scott Bergmann
Greg Orlando
Nicholas Alexander
Albert Lewis
Donald Stockdale
Matthew Berry