

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

In the Matter of

High-Cost Universal Service Support

WC Docket No. 05-337

Federal-State Joint Board on Universal Service

CC Docket No. 96-45

Lifeline and Link Up

WC Docket No. 03-109

Universal Service Contribution Methodology

WC Docket No. 06-122

Numbering Resource Optimization

CC Docket No. 99-200

Implementation of the Local Competition  
Provisions in the Telecommunications Act of 1996

CC Docket No. 96-98

Developing a Unified Intercarrier Compensation  
Regime

CC Docket No. 01-92

Intercarrier Compensation for ISP-Bound Traffic

CC Docket No. 99-68

IP-Enabled Services

WC Docket No. 04-36

**REPLY COMMENTS OF THE MASSACHUSETTS DEPARTMENT OF  
TELECOMMUNICATIONS AND CABLE**

Commonwealth of Massachusetts  
Department of Telecommunications and Cable

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## I. SUMMARY

The Massachusetts Department of Telecommunications and Cable (“MDTC”)<sup>1</sup> respectfully submits these reply comments pursuant to the schedule established in the Further Notice of Proposed Rulemaking (“FNPRM”) issued by the Federal Communications Commission (“Commission”) on November 5, 2008, published in the Federal Register on November 12, 2008 (“Nov. 5 FNPRM”),<sup>2</sup> and amended by the Commission in its December 2, 2008, Order.<sup>3</sup> In this reply, the MDTC responds to commenters who have argued that interconnected voice-over internet protocol (“VoIP”) services should be classified as information services.<sup>4</sup> For purposes of these reply comments, the MDTC focuses its comments in response

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<sup>1</sup> The MDTC is the exclusive state regulator of telecommunications and cable services within the Commonwealth of Massachusetts. Mass. Gen. Laws c. 25C §1.

<sup>2</sup> *In the Matter of High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link Up*, WC Docket No. 03-109, *Universal Service Contribution Methodology*, WC Docket No. 06-122, *Numbering Resource Optimization*, CC Docket No. 99-200, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, and *IP-Enabled Services*, WC Docket No. 04-36; Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, FCC 08-262 (rel. November 5, 2008).

<sup>3</sup> *In the Matter of High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link Up*, WC Docket No. 03-109, *Universal Service Contribution Methodology*, WC Docket No. 06-122, *Numbering Resource Optimization*, CC Docket No. 99-200, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, and *IP-Enabled Services*, WC Docket No. 04-36; Order, DA 08-2631 (rel. December 2, 2008).

<sup>4</sup> See e.g., *In the Matter of High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link Up*, WC Docket No. 03-109, *Universal Service Contribution Methodology*, WC Docket No. 06-122, *Numbering Resource Optimization*, CC Docket No. 99-200, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, and *IP-Enabled Services*, WC Docket No. 04-36, Comments of Comcast Corporation (filed Nov. 26, 2008), at iii and 18-19 (“Comcast Comments”); Comments of Verizon and Verizon Wireless (filed Nov. 26, 2008), at 3 and 21-28 (“Verizon Comments”); Comments of AT&T Inc. (filed Nov. 26, 2008), at 23-27 (“AT&T Comments”); Comments of Vonage Holdings Corporation (filed Nov. 26, 2008), at 1-2; Comments of Global Crossing North America, Inc. (filed Nov. 26, 2008), at 6-9; etc. For purposes of these reply comments, the MDTC focuses its comments in response to arguments made by Comcast, because those arguments

to arguments made by Comcast, because those arguments are most representative of the similar positions taken by other commenters on this issue. However, this approach should not be construed as singling out Comcast, and the MDTC's comments should be viewed as applying equally to other commenters with the same or similar positions on this issue. In fact, the MDTC agrees with Comcast on a number of issues raised in its comments, including Comcast's opposition to Commission adoption of the "default" interconnection and network edge rules and its opposition to "make-whole" revenue recovery dollar-for-dollar claims for a broad base of incumbent local exchange carriers.<sup>5</sup>

Comcast provides two related discussion points involving interconnected VoIP – (1) if the Commission is to make a final determination for the classification of all interconnected VoIP services, Comcast requests that the Commission follow three steps: (a) classify all interconnected VoIP services, both facilities-based (i.e., fixed) and nomadic, as information services (b) if the Commission adopts an intercarrier compensation reform plan, then to clearly specify that "existing compensation arrangements remain in effect and are subject to the reform plan" and that such charges will not exceed current amounts, and (c) preempt state oversight of all interconnected VoIP services;<sup>6</sup> and (2) separate from any final classification of interconnected VoIP services, Comcast requests that the Commission clearly specify that companies, "whether affiliated or unaffiliated, that furnish wholesale telecommunications service to VoIP service

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are most representative of the similar positions taken by other commenters on this issue. However, this approach should not be construed as singling out Comcast, and the MDTC's comments should be viewed as applying equally to other commenters with the same or similar positions on this issue. In fact, the MDTC agrees with Comcast on a number of issues raised in its comments, including Comcast's opposition to Commission adoption of the "default" interconnection and network edge rules and its opposition to "make-whole" revenue recovery dollar-for-dollar claims for a broad base of incumbent local exchange carriers (Comcast Comments, at ii, iv, 9-10, and 21-24.

<sup>5</sup> Comcast Comments, at ii, iv, 9-10, and 21-24.

<sup>6</sup> Comcast Comments, at iii and 17-21.

providers are “telecommunications carriers” under the Act and entitled to all of the rights, and subject to all of the responsibilities, conferred by, *inter alia*, sections 251 and 252 of the Act.”<sup>7</sup> Except for a discussion of existing compensation arrangements, the MDTC hereby addresses these positions.

## **II. DISCUSSION**

### **A. Despite Comcast’s arguments to the contrary, facilities-based interconnected VoIP is not an information service.**

#### **1. All voice services undergo some level of a net-protocol conversion.**

Comcast first specifies that *all* interconnected VoIP services should be classified as information services “under long-standing FCC and judicial precedent” that discuss the net-protocol conversion of information services.<sup>8</sup> This argument mischaracterizes the current state of federal law. First, as the industry is well aware, neither the Commission nor any federal courts have ever determined that facilities-based VoIP services are to be classified as information services – there is simply no precedent there. Of the cites listed that involve IP telephony, *pulver.com* and *Vonage Order*,<sup>9</sup> neither of the services at issues are facilities-based VoIP nor do they resemble “traditional telephony.”<sup>10</sup> Furthermore, Comcast’s own comments contradict its

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<sup>7</sup> Comcast Comments, at iii and 16.

<sup>8</sup> Comcast Comments, at 18-19 and fns 30, 32 and 33.

<sup>9</sup> Comcast Comments, at 18-19, fns 30 and 33.

<sup>10</sup> As the MDTC pointed out in its Nov. 26 Comments, Pulver’s subscribers “can only call one another; they cannot use the service to call ordinary telephone numbers of their own at which they can be reached by people calling from the PSTN.” Vonage’s subscribers, on the other hand, utilize “a special Vonage-provided adapter, which is associated with an IP address” that has been assigned a North American Numbering Plan Administrator Number. The Vonage subscriber, however, is not limited to the “geographical constraints usually associated with landline telephone numbers,” since the subscriber can plug in and use the adapter and phone wherever there is a broadband connection. MDTC Comments, at fn 42, citing *Digital Crossroads: American Telecommunications Policy in the Internet Age*, Jonathan E. Nuechterlein and Philip J. Weiser, The MIT Press – Cambridge, MA (2007 paperback

statement of “longstanding FCC and judicial precedent” by failing to provide any citation to such precedent, except the very proposal that it hopes the Commission will adopt in this proceeding.<sup>11</sup>

Second, Comcast fails to offer any explanation as to why all interconnected VoIP services qualify as information services due to a simple net-protocol conversion. Nor does Comcast explain in technical or engineering terms why its Digital Voice service constitutes an information service, except to state in the most general terms that phone customers can access voice mail via the Internet,<sup>12</sup> hardly a revolutionary technology . Instead, Comcast utilizes only very general citations to thrice repeat the same basic VoIP provider mantra, “net protocol conversion as information service,”<sup>13</sup> without offering any explanation as to why facilities-based VoIP services fall within that purview. For instance, out of all of the very general citations utilized by Comcast as references, none involve facilities-based VoIP services. In fact, in the same Commission *1998 Report to Congress* cited by Comcast as “support” for its position, and as discussed in the MDTC’s Nov. 26 Comments, the Commission tentatively concluded that

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ed.). Furthermore, the Commission only preempted state regulation of nomadic VoIP in the *Vonage Order*, because at the time, the voice traffic was inseverable for jurisdictional purposes - “the characteristics of [Vonage’s nomadic VoIP service] preclude any practical identification of, and separation into, interstate and intrastate communications for purposes of effectuating a dual federal/state regulatory scheme.” *In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission (“Vonage Order”)*, 19 FCCR 22404 ¶ 14 (November 12, 2004). On appeal, the Eighth Circuit upheld the *Vonage Order* and the FCC’s rationale for preempting state regulation of nomadic VoIP services. *Minn. Pub. Utils. Comm’n v. FCC*, 483 F.3d 570 (8th Cir. 2007).

<sup>11</sup> Comcast Comments, at 19 and fn 34.

<sup>12</sup> Comcast has informed the MDTC that this account management over the Internet is performed through its “Digital Voice Center” – “users manage their communications interactively, listening to voicemails and managing settings through any computer connected to the Internet.” See Comcast letter to MDTC dated May 12, 2008, at 1, available at [http://www.mass.gov/Eoca/docs/dtc/telecom/comcast\\_voip/comcast\\_response\\_20080512.pdf](http://www.mass.gov/Eoca/docs/dtc/telecom/comcast_voip/comcast_response_20080512.pdf) (“Comcast May 12 Letter”).

<sup>13</sup> An information service is nothing more than “the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications... but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.” (47 U.S.C. § 153(20)).

VoIP (“phone-to-phone IP”) telephony providers could be treated as telecommunications service providers.<sup>14</sup>

Third, notwithstanding Comcast’s overly liberal interpretation of Commission and court precedent, Comcast conveniently overlooks the fact that all voice communications undergo some form of net-protocol conversion – the form and content of those calls are unchanged no matter the protocol of the transmission.<sup>15</sup> For instance, at the most basic level, voice calls transmitted over the traditional public switched telephone network (“PSTN”) involve the conversion of sound waves into analog signals. Those analog voice signals are typically converted into digital signals for transmission over non-local portion of the network. Either way, there is no net change in form or content of a basic voice call. Adding internet protocol (“IP”) into the mix of modern telephony does not change this fact, and contrary to Comcast’s assertions, any facilities-based interconnected VoIP service is appropriately classified as a telecommunications service.<sup>16</sup> Furthermore, the Commission already held in its *AT&T Phone-to-Phone Order* that AT&T’s IP-in-the-middle service was a telecommunications service, despite any protocol conversions that occurred with the transmission of the call.<sup>17</sup>

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<sup>14</sup> MDTC Comments (filed Nov. 26, 2008), at 14-15.

<sup>15</sup> A telecommunications service transmits telecommunications, which is defined simply as “the transmission, between or among points specified by the user, of information of the user’s choosing, **without change in the form or content** of the information as sent and received” (47 U.S.C. § 153(43))(emphasis added).

<sup>16</sup> See e.g. in the above-referenced proceedings - Initial Comments of the National Association of Regulatory Utility Commissioners (“NARUC”) (filed Nov. 26, 2008), at 13-16; Comments Submitted on Behalf of the Public Utilities Commission of Ohio (filed Nov. 26, 2008), at 10-12; Comments of the Public Service Commission of Wisconsin (filed Nov. 26, 2008), at 8-10; Comments of the California Public Utilities Commission and the People of the State of California (filed Nov. 26, 2008), at 4-5.

<sup>17</sup> *In the Matter of Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, FCC 04-97, 19 FCC Rcd. 7457, Order, at ¶ 12 (rel. Apr. 21, 2004)(“AT&T Phone-to-Phone Order”).

2. *A severable telecommunications service is a telecommunications service irrespective of whether or not it is labeled “integrated” with other services.*

Comcast next attempts to qualify its position for interconnected VoIP as an information service by mentioning VoIP services’ “integrated” features.<sup>18</sup> For Comcast, these “integrated” features include consumers’ options under the service to listen to voice-mails, manage their accounts online, and forward voice mails as email attachments.<sup>19</sup> Another way of saying this is that VoIP telephony may have several features that end users have the option to use. This is no different from services linked to end users’ circuit-switched or wireless telephones. Currently, most consumers have numerous features associated with their phone services - they have the option to “go paperless” for their bills and sign up for online accounts through which they can track and manage their telephone service; they have the option to purchase and/or utilize voice mail services with their phones. Although these additional services may be included with a telephone service, this does not change the fact that the underlying service is a telecommunications service. All of these *features* are separate and severable from the underlying facilities-based telephone services, which *are* telecommunications services. Forwarding a voice mail via email is just another feature that an end user can choose to use, and the existence of such a newer feature still does not change the classification of the underlying telecommunications service.

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<sup>18</sup> Comcast Comments, at 19.

<sup>19</sup> Comcast Comments, at 19.

**B. Facilities-based interconnected VoIP is a telecommunications service.**

**1. Facilities-based interconnected VoIP is a telecommunications service subject to state jurisdiction.**

As noted in our initial comments and contrary to Comcast's statements, facilities-based VoIP (i.e., or fixed VoIP) has never been determined by the FCC to be a federally-regulated service, and therefore it is subject to state law. In Massachusetts, applying our common carrier statutes, the MDTC has concluded that fixed VoIP of the type provided through Comcast's Digital Voice service is a telecommunications common carrier service subject to state regulatory authority.<sup>20</sup> First, the MDTC reiterates its position set forth in its initial comments, that facilities-based VoIP is a telecommunications service as that term is defined under Section 153(46) – it is an “offering of telecommunications for a fee directly to the public...regardless of the facilities used.”<sup>21</sup> Second, as discussed above and in the MDTC's initial comments, the net-protocol conversion of a VoIP call is not determinative of whether all interconnected VoIP services are information services – from the end-users perspective nor from an engineering perspective there is no change in form or content when a call is made.<sup>22</sup> Finally, facilities-based VoIP calls are jurisdictionally severable, and those intrastate portions are subject to state jurisdiction. In Comcast IP Phone of Missouri, LLC v. Mo. Pub. Utils. Comm'n, the Missouri federal court held that “the FCC has not preempted the entire field of VoIP services” and, accordingly, a state regulatory authority was legally permitted to determine whether a fixed VoIP

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<sup>20</sup> See MDTC letter to Comcast dated Nov. 14, 2008, available at [http://www.mass.gov/Eoca/docs/dtc/telecom/comcast\\_voip/letter\\_20081114.pdf](http://www.mass.gov/Eoca/docs/dtc/telecom/comcast_voip/letter_20081114.pdf).

<sup>21</sup> 47 U.S.C. § 153(46) (emphasis added). See MDTC Comments, at 14.

<sup>22</sup> MDTC Comments, at 15-16.

service was subject to state regulation.<sup>23</sup> Furthermore, in *Minn. Pub. Utils. Comm'n v. FCC*, that Court stated, “when VoIP is offered as a fixed service rather than a nomadic service, the interstate and intrastate portions of the service can be more easily distinguished.”<sup>24</sup> In addition, as the Commission itself has pointed out, “VoIP provider[s] with a capability to track the jurisdictional confines of customer calls would no longer qualify for the preemptive effects of our *Vonage Order* and would be subject to state regulation. This is because the central rationale justifying preemption set forth in the *Vonage Order* [the inseparability of inter- and intrastate calls] would no longer be applicable....”<sup>25</sup>

## **2. State regulation of interconnected VoIP is in the public interest.**

State regulation of facilities-based VoIP service serves two fundamental public policy objectives: first, the preservation of important consumer protections, and second, the maintenance of a level playing field for telecommunications competition. The MDTC has already addressed its consumer protection concerns in its initial comments in this proceeding.<sup>26</sup>

As further explanation, and with respect to the first objective, consumers purchasing a fixed telephone service are typically not very interested in or aware of the technical differences between VoIP and traditional circuit switched services, and they rightfully expect that both services will provide them with equivalent consumer protections. Customers of telephone services regulated by the MDTC today rely on the MDTC to ensure that their phone service will be safe and reliable. With new competitors and technologies providing telephone service, now

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<sup>23</sup> *Comcast IP Phone of Missouri, LLC v. Mo. Pub. Utils. Comm'n*, 2007 WL 172359 (W.D. Mo. 2007).

<sup>24</sup> *Minn. Pub. Utils. Comm'n v. FCC*, 483 F.3d 570, 575 (8th Cir. 2007).

<sup>25</sup> *In the Matter of Universal Service Contribution Methodology*, 21 FCCR 7518 ¶ 56 (June 27, 2006) (emphasis added).

<sup>26</sup> MDTC Comments, at 9-13.

more than ever, consumers need state agencies such as the MDTC to protect them against unreasonable, unfair, deceptive, and anti-competitive practices, including (1) unjustified payments or disconnection over legitimate billing disputes; (2) extended service outages that can be life-threatening for sick and elderly citizens and can jeopardize the survival of small and medium-sized businesses that depend on telecommunications services to function; (3) longstanding service quality problems that result in unreasonable service and for residential and business customers are unable to get carriers to resolve; (4) disruption to or poor quality E911 service; (5) the loss of expected benefits, such as 10 free directory assistance phone calls (and more for the elderly); and (6) monopolistic practices in those areas of the state that may be served by a single provider using facilities-based VoIP technology. Consumers unequivocally need the ability to seek assistance from the MDTC in situations like these, where market forces alone will not protect them, and where, without MDTC intervention, these citizens will suffer irreparable harm. These and other protections are particularly important to the Commonwealth's most vulnerable citizens, including those who are disabled, poor, or elderly. The MDTC believes that the consumer protections it is charged with enforcing are critical components of fixed telephone service, and that all customers in Massachusetts should have equal rights to these protections, regardless of the technology used to provide service in their community.

With respect to the second objective, and as an example, the MDTC's long-standing regulatory framework for providers of telephone service applies based on traditional economic distinctions – how “dominant” the carrier is in the marketplace – not technological ones. Therefore, the application of existing common carrier regulations to facilities-based VoIP providers merely continues regulatory policies already in place, and does not impose any price regulation on carriers not currently subject to it for economic reasons. Furthermore, the fixed

telephone service market in Massachusetts currently features a mix of VoIP and circuit-switched technologies, not only across different providers but even within individual firms as they update their networks. If the MDTC was unable to regulate facilities-based VoIP, in the short term the competitive playing field would be unfairly tilted towards certain types of providers based on technology. In the long-term, protection of fixed telephone service for consumers would be abandoned altogether.<sup>27</sup> Neither of these outcomes would be consistent with state and federal agency statutory obligations to regulate telecommunications in the public interest.

**C. Comcast's wholesale carrier request exposes a lack of clarity over whether purely wholesale carriers qualify as common carriers.**

In Massachusetts, Comcast offers telephone services to consumers through its Comcast IP Phone II ("Comcast IP Phone") affiliated entity, which is currently not registered or tariffed

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<sup>27</sup> As the MDTC pointed out in its initial comments,

"over 11 million households use VoIP service (nomadic or fixed) nationwide. By 2011, over 23 million households are projected to have VoIP service. In Massachusetts, fixed VoIP telephone service is now offered by one or more cable companies in 288 communities, representing nearly 97% of the state's population. In addition, Verizon, the largest provider of telecommunications services in the Commonwealth, is actively rebuilding its network to replace copper wires with fiber-optic lines (under the trade name "FiOS"), and is widely expected to adopt fixed VoIP technology on its FiOS network, which already serves 85 [this number has since increased to 87] communities, in the near future. Moreover, there are over 40 rural communities in Massachusetts that have only one residential landline telecommunications provider. In addition, a...number of these rural communities lack broadband, and wireless coverage is often poor due to the mountainous and tree-lined topography and is not robust enough in such areas to support "cutting the cord. In areas such as these communities, which represent large regions of Massachusetts, a landline phone is the only option. Intermodal telecommunications competition, which would serve to limit the power of a monopoly provider, simply does not exist to the same extent as in the other areas of the state. Accordingly, if the FCC were to classify fixed VoIP as an "information service," these rural communities would be served by an unregulated monopoly provider that would face little competitive pressure." (MDTC Comments, at 11-12)(emphasis added).

In the near future, this situation regarding the rising prevalence of VoIP service offerings will be seen nationwide.

with the MDTC.<sup>28</sup> Comcast IP Phone provisions these services under its relationship with affiliated Comcast Phone of Massachusetts (“Comcast Phone”), its wholesale services provider, which is registered and tarified with the MDTC.<sup>29</sup> Comcast IP Phone is currently Comcast Phone’s sole customer.<sup>30</sup> Notwithstanding the fact that this type of business model calls into question whether or not wholesale carriers are truly “common carriers” – wholesale carrier affiliates being used by interconnected VoIP providers as a kind of smokescreen to ensure the same numbering, interconnection, and other rights provided to telecommunications carriers under Sections 251 and 252 of the Telecommunications Act<sup>31</sup> – this underscores the point made by the National Cable and Telecommunications Association (“NCTA”) that “no company can be an “interconnected VoIP” provider unless some entity involved in the provision of service is deemed to possess the rights and obligations of a telecommunications carrier” whether “the carrier entity is the VoIP provider itself, an affiliated wholesale provider, or an unaffiliated wholesale provider.”<sup>32</sup> The MDTC questions whether Comcast Phone is such a telecommunications common carrier when there is no evidence that its services are offered indiscriminately to all. At the very least, the Commission should investigate whether it truly possess the characteristics of a common carrier.

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<sup>28</sup> See Comcast letter to MDTC dated May 12, 2008, at 1, available at [http://www.mass.gov/Eoca/docs/dtc/telecom/comcast\\_voip/comcast\\_response\\_20080512.pdf](http://www.mass.gov/Eoca/docs/dtc/telecom/comcast_voip/comcast_response_20080512.pdf) (“Comcast May 12 Letter”).

<sup>29</sup> See Comcast May 12 Letter, at 1.

<sup>30</sup> See Comcast May 12 Letter, at 2.

<sup>31</sup> 47 U.S.C. §§ 251 and 252.

<sup>32</sup> NTCA Comments (filed Nov. 26, 2008), at 10.

Comcast, similar to other companies that have filed comments in this proceeding, does not object to the classification of interconnected VoIP as an “information service,” as long as it can circumvent mandatory state regulation and mandatory consumer protections of a telephone service but still retain, in some form, the numbering and connection rights and duties under Sections 251 and 252.<sup>33</sup> Comcast wants continued interconnection rights under Sections 251 and 252, but does not want the services it provides to fall under the same purview under the Communications Act, as amended, relating to state regulation. Essentially, Comcast and other similarly-situated companies want the rights of telecommunications carriers, but they do not want all of the obligations associated with being telecommunications carriers. This is the flaw in their rationale – companies are not eligible for the rights without complying with *all* of the associated statutory obligations, including state regulation.<sup>34</sup>

### III. CONCLUSION

In summary, any arguments that claim that facilities-based VoIP is an information service are wrong – no arguments can provide legitimate support. As specified above, all voice calls undergo some form of net protocol conversion, and any purported “integrated” information services (such as voice mail) are severable and separate from the underlying telecommunications

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<sup>33</sup> In fact, several companies, whether or not requesting that all interconnected VoIP services be classified as “information services,” have in the above-referenced dockets requested that the Commission ensure that the classification does not affect local exchange carrier rights under Sections 251 and 252. *See e.g. comments filed in the above-referenced proceedings*, Joint Comments of Citynet, LLC, Granite Telecommunications, Inc., Paetec Communications, Inc., RCN Telecom Services, Inc. and U.S. Telepacific Corp. (filed Nov. 26, 2008), at 15-18; Comments of Verizon and Verizon Wireless (filed Nov. 26, 2008), at 27; Comments of Time Warner Cable Inc. (filed Nov. 26, 2008), at 3-8; Comments of AT&T Inc. (filed Nov. 26, 2008), at 25.

<sup>34</sup> Furthermore, should the Commission incorrectly choose to classify all interconnected VoIP services as “information services,” not only will there be an upswing in arbitrage relating to interconnection rights and duties between companies, there will also be an unnecessary surge in both single-client wholesale providers and/or wholesale customers.

