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

In the Matter of Petition of UTEX Communications Corporation, Pursuant to Section 252(e)(5) of the Communications Act, for Preemption of the Jurisdiction of the Public Utility Commission of Texas Regarding Interconnection Disputes with AT&T Texas	WC Docket No. 09-134

REPLY COMMENTS OF VERIZON[1]

All commenters agree that UTEX's petition highlights the need for the Commission to complete its long-pending proceedings regarding Voice over Internet Protocol ("VoIP") and other IP-enabled services as well as intercarrier compensation. Because these issues are industry-wide — as all the commenters agree — they should be addressed on an industry-wide basis, on the extensive records already compiled in open proceedings considering IP-enabled services and intercarrier compensation, and not in the context of a discrete, two-party proceeding arising out of an interconnection agreement negotiation under 47 U.S.C. § 252.

The Commission should — first and foremost — reaffirm that *all* VoIP and IP-enabled services, regardless of the provider or technology employed, are inseverable and therefore jurisdictionally interstate services subject to the Commission's exclusive jurisdiction. The Commission should also adopt new rules governing intercarrier compensation, including for future exchanges of IP-to-PSTN traffic, thereby putting an end to the manifold, on-going intercarrier compensation disputes regarding this traffic.

[1] The Verizon companies participating in this filing ("Verizon") are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

There remains an urgent need for the Commission to get the rules right for the services of the future: broadband and IP-based services. Consumers and businesses are eagerly embracing innovative packages of data and any-distance voice services like VoIP. As the industry moves away from circuit-switched telephony and towards an infrastructure based on broadband, IP, and wireless, the Commission should make sure that the regulatory structure adapts to the marketplace by providing certainty for consumers, providers, and investors in these new technologies.

These issues go well beyond the narrow questions likely to be presented in an interconnection agreement arbitration premised on the discrete set of § 251(b) and (c) issues raised between a specific ILEC and CLEC during their negotiations under § 252. Rather, they are industry-wide issues that should be resolved in industry-wide proceedings, on a complete record reflecting the input of all parts of the industry. The Commission already has such records compiled in its long-pending, industry-wide proceedings regarding IP-enabled services and intercarrier compensation. The Commission should issue a ruling in those proceedings and on those records, rather than addressing them in a brand new, two-party proceeding, which is governed by Commission rules that allow for only limited third-party participation and that require the two parties to engage in "final offer" arbitration.[2] In particular, in ruling in those pending proceedings, the Commission should take at least the following two steps.

First, as Verizon has previously explained at length, the Commission should reaffirm — thus making clear once and for all — that all VoIP and IP-enabled services, regardless of provider or technology, are subject to the Commission's exclusive jurisdiction, and *not* to more

[2] *See* 47 C.F.R. § 51.807(d), (g).

than 50 different sets of economic regulation.[3] VoIP and IP-enabled services are multifaceted, any-distance services that cannot practicably be separated into intrastate and interstate parts. These services are being deployed nationally, using national systems and platforms. A single, federal regime will produce efficiencies that would be lost if these services were subjected to more than 50 different sets of rules. And competition between and among providers of these IP-enabled services will be enhanced once the Commission reiterates that *all* of them are subject to a single, federal regime.[4]

Second, the Commission should adopt prospective rules governing intercarrier compensation in general, and for IP-to-PSTN traffic in particular. Because of the impracticability of reliably identifying terminating VoIP and other IP-originated traffic and the uncertainties about which (if any) of the existing intercarrier compensation rules apply to such traffic, service providers have operated on divergent views of what the law requires. The uncertainties and arbitrage opportunities that the absence of clear Commission rules presents, therefore, distorts competition among IP providers and between IP providers and circuit-switched providers, leading to disincentives to investment in broadband services.

It is critical that the Commission take the two actions described above to provide certainty to the marketplace, end costly disputes about which regulatory regimes apply to IP-enabled services and to IP-to-PSTN traffic, promote new entry, facilitate competition and technological innovation, and encourage the deployment of broadband infrastructure. In the

[3] *See, e.g.*, Comments of Verizon and Verizon Wireless, *Developing a Unified Intercarrier Compensation Regime*; *Intercarrier Compensation for ISP-Bound Traffic*; *IP-Enabled Services*, et al., WC Docket Nos. 05-337, 03-109, 06-122, 04-36; CC Docket Nos. 96-45, 99-200, 96-98, 01-92, 99-68, at 5-21 (Nov. 26, 2008).

[4] The conclusion that all VoIP and IP-enabled services are inseverable and therefore interstate for jurisdictional purposes is independent of the classification of those services as information services, telecommunications services, or telecommunications. *See id.* at 5-6.

absence of such industry-wide Commission rulings, however, providers of IP-enabled services will continue to face an uncertain and multifarious regulatory landscape, as some state commissions assert varying degrees of authority over some (or all) IP-enabled services, while others — at least 14 state commissions, including the District of Columbia — are prevented by state law from regulating VoIP services.[5] In addition, disputes over intercarrier compensation for IP-to-PSTN traffic will continue to divert attention and resources from providing consumers and business with the advanced services they so clearly want.

In short, the Commission should act with all deliberate speed to complete its long-pending IP-enabled services and intercarrier compensation proceedings, and in doing so to reaffirm that all IP-enabled services are subject to exclusive federal jurisdiction and to adopt new prospective intercarrier compensation rules that specifically address IP-to-PSTN traffic. The Texas Public Utility Commission or this Commission can then apply those rulings in the § 252 arbitration between UTEX and AT&T Texas, but a § 252 proceeding is ill-suited to the initial consideration and resolution of these industry-wide issues.

Respectfully submitted,

Karen Zacharia
Katharine R. Saunders
Verizon
1320 North Courthouse Road – 9th Floor
Arlington, VA 22201
(703) 351-3097

Attorneys for Verizon

Michael E. Glover
Of Counsel

August 18, 2009

[5] *See id.* at 2-3.