

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matters of)	
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
International Comparison and)	GN Docket No. 09-47
Survey Requirements in the)	
Broadband Data Improvement Act)	
)	
Inquiry Concerning the Deployment of Advanced)	GN Docket No. 09-137
Telecommunications Capability to All Americans)	
in a Reasonable and Timely Fashion, and Possible)	
Steps to Accelerate Such Deployment Pursuant to)	
Section 706 of the Telecommunications Act of)	
1996, as Amended by the Broadband Data)	
Improvement Act)	

COMMENTS OF TIME WARNER CABLE INC. – NBP PUBLIC NOTICE #25

Time Warner Cable Inc. (“TWC”) hereby submits its comments in response to the Commission’s Public Notice in the above-captioned proceedings.¹ The Public Notice seeks comment on the regulatory issues raised by the ongoing transition of services from the public switched telephone network (“PSTN”) to Internet Protocol (“IP”)-based networks, in anticipation of a possible notice of inquiry on the same subject.² TWC recently provided detailed information on issues encompassed by the Public Notice,³ and it appreciates the Commission’s interest in exploring these matters further and more comprehensively. In these brief comments,

¹ Public Notice, *Comment Sought on Transition from Circuit-Switched Network to All-IP Network (NBP Public Notice #25)*, GN Docket Nos. 09-47, 09-51, 09-137 (rel. Dec. 1, 2009) (“Public Notice”).

² *See id.* at 1.

³ Letter from Matthew A. Brill, Counsel to Time Warner Cable Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51 (filed Nov. 12, 2009) (“TWC Interconnection Ex Parte”).

TWC addresses key policy questions presented by the ongoing transition to IP, and it looks forward to providing additional input in the future.

BACKGROUND

TWC, the nation's second-largest cable operator, serves approximately 14.7 million customers in 28 different states over its technologically advanced broadband networks passing nearly 27 million homes. In addition to offering basic and digital cable services, TWC is a leading provider of broadband Internet access and facilities-based interconnected VoIP services to customers across its footprint. TWC has long been an innovator in the broadband arena, establishing a remarkably successful track record in the provision of broadband-based services to residential and enterprise customers for over a decade.⁴

TWC is a key player in the IP transition addressed in the Public Notice. TWC uses its broadband networks to offer facilities-based interconnected VoIP services, Digital Phone and Business Class Phone, that allow it to compete head-to-head with incumbent local exchange carriers, thus giving millions of consumers a choice of facilities-based providers for the first time. TWC now serves more than 4 million voice customers across its footprint over its IP networks.

DISCUSSION

The Public Notice seeks to identify policy questions that are relevant to the transition from the PSTN to "an IP-based communications world."⁵ It asks, in particular, "which policies and regulatory structures may facilitate" this transition, and which may hinder it.⁶ TWC commends the Commission for its attention to this important subject and for renewing the

⁴ Comments of Time Warner Cable Inc., GN Docket No. 09-51, at 3-4 (filed June 8, 2009).

⁵ Public Notice at 2.

⁶ *Id.*

comprehensive examination of such issues that it first undertook nearly six years ago in the *IP-Enabled Services* rulemaking,⁷ this time linking that review to the Commission's obligations under the American Recovery and Reinvestment Act of 2009 to identify the best means of ensuring affordable broadband access.⁸

In terms of managing the IP transition, TWC has long advocated a regulatory approach for VoIP services that (1) retains certain protections that consumers have come to expect in relation to telephony, and (2) extends to VoIP providers the same rights as circuit-based competitive carriers in order to facilitate the deployment of VoIP services as a competitive alternative.⁹ The Commission already has done much to achieve the first part of that equation, defining a category of "interconnected VoIP services" and ruling that providers of such services must provide E911 functionality,¹⁰ comply with CALEA,¹¹ contribute to the federal universal service support mechanisms,¹² comply with regulations governing carrier proprietary network

⁷ *IP-Enabled Services*, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004).

⁸ Public Notice at 1 (citing American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115, §§ 6001(k)(2)).

⁹ *See, e.g.*, Comments of Time Warner Inc., WC Docket No. 04-36 (filed May 28, 2004).

¹⁰ *IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 ¶ 3 (2005) (extending E911 obligations to interconnected VoIP providers), *aff'd*, *Nuvio Corp. v. FCC*, 473 F.3d 302 (D.C. Cir. 2006).

¹¹ *Communications Assistance for Law Enforcement Act and Broadband Access Services*, Second Report and Order and Memorandum Opinion and Order, 21 FCC Rcd 5360 ¶ 1 (2006) (extending CALEA obligations to interconnected VoIP providers), *aff'd*, *American Council on Educ. v. FCC*, 451 F.3d 226 (D.C. Cir. 2006).

¹² *Universal Service Contribution Methodology*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 ¶¶ 38-49 (2006) (extending universal service contribution obligations to interconnected VoIP providers), *aff'd in relevant part*, *Vonage Holdings Corp., v. FCC*, 489 F.3d 1232 (D.C. Cir. 2007).

information,¹³ provide access to telecommunications relay services (“TRS”) and contribute to the TRS fund,¹⁴ fulfill local number portability requirements,¹⁵ and pay annual regulatory fees.¹⁶

Apart from these federal requirements, TWC and other interconnected VoIP providers voluntarily have undertaken other measures to safeguard consumer interests. For example, at the state level, TWC provides its voice services in a manner consistent with state regulations applicable to competitive local exchange carriers. In addition, TWC employs a variety of technologies and distribution channels to communicate information to current and prospective customers at all stages of the customer relationship regarding all of the services it offers, including its VoIP offerings.¹⁷ In light of these federally mandated and voluntary state-related efforts, consumers can make the leap from the PSTN to an IP world with key safeguards intact.¹⁸

The Commission also has taken some steps to ensure that VoIP providers are able to deploy these competitive services in the first place. In particular, the Wireline Competition

¹³ *Implementation of the Telecommunications Act of 1996; Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927 ¶ 54 (2007) (extending rules concerning customer proprietary network information to interconnected VoIP providers).

¹⁴ *IP-Enabled Services; Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996: Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities*, Report and Order, 22 FCC Rcd 11275 (2007).

¹⁵ *Telephone Number Requirements for IP-Enabled Services Providers; Local Number Portability Porting Interval and Validation Requirements; IP-Enabled Services; Telephone No. Portability*, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19531 (2007).

¹⁶ *Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15712 ¶ 2 (2007).

¹⁷ See Comments of Time Warner Cable Inc., CG Docket No. 09-158 *et al.* (filed Oct. 13, 2009).

¹⁸ See Public Notice at 1 (“While each [technological] transition is different, policy has played an important role in ensuring consumers were protected from loss of essential services and were informed of the choices presented by the transition.”).

Bureau, at TWC's request, issued a declaratory ruling confirming that competitive telecommunications carriers are entitled to interconnect with incumbent LECs for the specific purpose of providing wholesale telecommunications services to interconnected VoIP providers.¹⁹

Notwithstanding such efforts to clarify the applicable legal framework, significant obstacles to entry persist. In a recent *ex parte* submission, TWC explained that some incumbent LECs continue to impede competitive entry by cable entities that seek to offer IP-based voice services, primarily by refusing to honor applicable interconnection rights of their carrier partners or affiliates; and some state public utility commissions remain unwilling to enforce such obligations even following the *TWC Declaratory Ruling*.²⁰

Accordingly, the Commission's regulatory approach to the IP transition should include additional efforts to break down these remaining barriers. In its recent *ex parte* filing, TWC proposed three concrete steps the Commission should take in this regard. First, the Commission should clarify that a competitive carrier seeking to interconnect with a rural LEC pursuant to Section 251(a) need not pierce the rural exemption contained in Section 251(f).²¹ TWC has explained that such interconnection requests do not implicate Section 251(f), which by its terms grants a provisional exemption only with respect to the interconnection and other duties imposed

¹⁹ *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum Opinion and Order, 22 FCC Rcd 3513 (WCB 2007) ("*TWC Declaratory Ruling*").

²⁰ *See generally* TWC Interconnection Ex Parte. TWC incorporates that filing by reference in the additional dockets listed in the Public Notice. *See also* Letter from Matthew A. Brill, Counsel to Time Warner Cable Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51 (filed Oct. 21, 2009).

²¹ TWC Interconnection Ex Parte at 1-3.

by Section 251(c). While some state commissions have recognized this fact, others have not, threatening to delay competitive entry or block it altogether.

Second, the Commission should confirm that interconnection requests made pursuant to Section 251(a) are subject to Section 252's negotiation and arbitration procedures.²² Such a ruling would give meaning to this important option for obtaining interconnection.

Finally, the Commission should reaffirm the interconnection rights described in the *TWC Declaratory Ruling*, in order to finally put to rest any lingering doubt about wholesale carriers' entitlement to interconnection.²³ One means of doing so expeditiously would be to rule on the declaratory ruling petition filed last year by Vermont Telephone Company ("VTel"), which purported to seek a "policy clarification" regarding its interconnection obligations, among other issues.²⁴ In response to that petition, TWC and others explained that the *TWC Declaratory Ruling* conclusively resolved the issues on which VTel sought guidance.²⁵ TWC also has explained that the Commission can resolve the issue of wholesale carriers' interconnection rights without tackling the more complex issue of how VoIP should be classified for regulatory purposes.²⁶ The Commission thus has a record on which to rule, without a need to commence another proceeding or issue a further notice. Indeed, to the extent an NOI is even necessary to

²² *Id.* at 3-4.

²³ *Id.* at 4-5.

²⁴ See Vermont Telephone Company, *Petition for Declaratory Ruling Whether Voice over Internet Protocol Services Are Entitled to the Interconnection Rights of Telecommunications Carriers*, WC Docket No. 08-56 (filed Apr. 11, 2008); *Pleading Cycle Established for Comments on Vermont Telephone Company's Petition for Declaratory Ruling Regarding Interconnection Rights*, Public Notice, WC Docket No. 08-56 (rel. Apr. 18, 2008).

²⁵ See, e.g., Comments of Time Warner Cable Inc., WC Docket No. 08-56 (filed May 19, 2008).

²⁶ *Id.* at 3-4.

address issues not yet settled in the rules, the Commission should make clear in that NOI the three main points outlined by TWC above.

As IP networks continue to proliferate and more and more carriers convert to all-IP-based networks, an additional issue that is arising with greater frequency concerns interconnection between such networks. The Commission must be proactive in ensuring that current Section 251 and 252 interconnection rights do not erode as telephone companies transition to networks that transmit traffic in an IP format. Specifically, the Commission should confirm at the outset that a competitive carrier seeking interconnection between its IP network and the IP network of an incumbent carrier is entitled to such interconnection to the extent technically feasible, on just and reasonable terms, pursuant to Sections 51.305 and 51.321 of the Commission’s rules.²⁷ The Commission also should seek comment on whether there are additional actions it should take to eliminate or reduce barriers to entry in this regard.

By taking these steps, the Commission will go far toward establishing a sound framework for the transition to IP and providing the “glide path” that will enable “more efficient planning and adjustment” by the industry.²⁸ Critically, the benefits would not stop with the increased availability of competitive voice services, as the deployment of facilities-based VoIP has been recognized to boost broadband deployment more generally—thus furthering the goals of the national broadband plan proceeding.²⁹

This list of regulatory issues is by no means exhaustive. For example, the transition of services from the PSTN to IP networks also has implications for reform of intercarrier compensation and universal service, which the Commission already is examining both inside and

²⁷ 47 C.F.R. §§ 51.305, 51.321.

²⁸ Public Notice at 1.

²⁹ TWC Interconnection Ex Parte at 5-6 (citations omitted).

outside the context of the national broadband plan proceeding.³⁰ But the issues identified above will be critical to determining how quickly and effectively that transition occurs in the first place, and accordingly, they warrant the Commission's prompt attention.

CONCLUSION

As the Commission looks ahead to a more in-depth examination of regulatory questions raised by the transition to IP networks, TWC urges it to focus, first and foremost, on issues and problems that will affect the progress of that transition. TWC looks forward to continuing to work with the Commission to address and resolve these matters.

Respectfully submitted,

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³⁰ See, e.g., Public Notice, *Comment Sought on the Role of the Universal Service Fund and Intercarrier Compensation in the National Broadband Plan (NBP Public Notice #19)*, GN Docket Nos. 09-47, 09-51, 09-137 (rel. Nov. 13, 2009).