Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Inquiry Concerning the Deployment of Advanced 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	)	GN Docket No. 09-137
A National Broadband Plan For Our Future	)	GN Docket No. 09-51
International Comparison and Survey Requirements in the Broadband Data Improvement Act	)	GN Docket No. 09-47

COMMENTS OF THE
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION
ON NBP PUBLIC NOTICE #25

The National Cable & Telecommunications Association (NCTA)[1] hereby submits its comments in response to the Public Notice issued by the Commission in the above-captioned proceedings.[2]

In the *Notice*, the Commission seeks comment on "the appropriate policy framework to facilitate and respond to the market-led transition in technology and services, from the circuit

[1] NCTA is the principal trade association for the U.S. cable industry, representing cable operators serving more than 90 percent of the nation's cable television households and more than 200 cable program networks. The cable industry is the nation's largest provider of high-speed Internet service ("broadband") after investing over $145 billion since 1996 to build two-way interactive networks with fiber optic technology. Cable companies also provide state-of-the-art competitive voice service to over 20 million customers.

[2] Public Notice, *Comment Sought on Transition From Circuit-Switched Network to All-IP Network*, NBP Notice # 25, DA 09-2517 (rel. Dec. 1, 2009) (*Notice*).

switched PSTN system to an IP-based communications world."[3] The Commission has requested comment on these issues in the context of the National Broadband Plan, but it also is considering a related set of issues in the *IP-Enabled Services* rulemaking that was started in 2004.[4]

As a general matter, as the *Notice* suggests, the transition to IP-based networks is a "market-led" transition, not a transition mandated by regulation. Cable Voice over Internet Protocol (VoIP) services, which were in their infancy when the Commission started the *IP-Enabled Services* proceeding, are now available to the vast majority of U.S. households. Facilities-based CLECs as well as over-the-top services also have invested in IP technology and are using it to provide innovative new services to consumers and businesses. These developments have occurred without any government mandate, nor have they been supported with government subsidies.

While competitive providers are leading the transition to IP-based networks and services, incumbent local exchange carriers (ILECs) are transitioning their legacy services to IP as well. As a coalition led by Verizon and AT&T recently told congressional leaders, "an ever-increasing portion of voice traffic will originate or terminate in IP format and on IP networks."[5] AT&T and Verizon, which still dominate both the wireline and wireless marketplaces by wide margins, have been deploying IP equipment in their networks for years and consider themselves leaders in this space.[6] Smaller ILECs also have been deploying IP technology extensively in recent years.[7]

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[3] Notice at 1-2.

[4] *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004).

[5] Letter from AT&T, et al., to Rep. Henry Waxman, Chairman, Committee on Energy and Commerce, *et al*., available at: http://www.techamerica.org/Docs/fileManager.cfm?f=lettertohillonipenabledservicesnov2009.pdf.

[6] *See, e.g*., Petition of AT&T Inc. for Interim Declaratory Ruling and Limited Waivers, WC Docket No. 08-152 at 11 (filed July 17, 2008) ("AT&T is among the nation's leading IP-enabled service providers, with increasing amounts of traffic originating in IP, a firm expectation that this trend will continue, and a resulting need for certainty in the compensation structure that will apply to such traffic."); Press Release, *Verizon Wireless and FiOS Growth Fuels Continued Strong Cash Flow at Verizon in 3Q* (Oct. 26, 2009) (Verizon Chairman and CEO Ivan Seidenberg stated that "[t]he Verizon network is now an engine for next-generation communications

Within this market-based transition to IP networks, there is still an important role for continued targeted government involvement. In particular, federal and state regulators must ensure that the transition of legacy services to IP-based networks does not jeopardize the interconnection arrangements through which voice service providers are connected today. The availability of interconnection on reasonable, cost-based terms has been a cornerstone of facilities-based voice competition, which was a primary goal of the 1996 Act and has produced substantial consumer benefits.

For companies to continue investing in facilities to provide competitive voice services, interconnection with incumbent LEC networks must remain available on reasonable, cost-based terms. NCTA previously has explained that the best way to achieve this goal is for the Commission to make clear that Section 251 interconnection obligations continue to apply as carriers transition from circuit-switched networks to IP-based networks.[8] For example, in 2007, NCTA encouraged the Commission not to forbear from Section 251 interconnection requirements applicable to ILECs:

> [I]t should not be the case that an ILEC can avoid all Title II obligations, including interconnection obligations, merely by replacing a TDM switch with a packet switch. 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

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services that will create new short- and long-term opportunities for us."), available at: http://investor.verizon.com/news/view.aspx?NewsID=1019.

[7] *See, e.g.*, Trends 2009, National Exchange Carrier Association, at 8 (Dec. 2009)("IP routing using Ethernet transmission is becoming a strong technology alternative likely to replace much of the current legacy network over time. For 2009, 74 percent of pool members have deployed Ethernet technology in their networks."); NTCA 2009 Broadband/Internet Availability Survey Report, at 11 (November 2009)("Ten percent of survey respondents currently offer voice over Internet protocol (VoIP) service to their customers, up from 6% one year ago. Fifty-four percent of respondents have plans to offer VoIP service in the foreseeable future, up from 44%.").

[8] While NCTA supports continued regulation of *wholesale* arrangements for the interconnection of IP voice networks and exchange of IP voice traffic under Section 251, we believe a deregulatory approach is warranted with respect to all *retail* VoIP services. Deregulation of retail VoIP services will create an environment that encourages further investment in such services, while a more regulatory approach, particularly one in which providers are potentially subject to disparate regulation in 50 states, may discourage such investment.

> Commission to create one, particularly considering the ongoing migration by ILECs and other providers to IP-based softswitch technology.[9]

Similarly, in comments filed last year on the Commission's comprehensive proposals to reform its intercarrier compensation and universal service rules, NCTA stated that:

> [T]he Commission should confirm that an ILEC's use of IP technology would have no effect on its interconnection obligations under Section 251(c). Even if an ILEC provides interconnected VoIP services that are classified as information services, the Commission must make clear that at least one entity involved in the provision of that service will be subject to the interconnection obligations of Section 251(c), i.e., an ILEC cannot avoid those obligations simply by using IP-based equipment to provide voice service or partnering with an affiliated or unaffiliated wholesale carrier. Any Commission order that does not explicitly affirm the continued applicability of these rights and obligations would threaten the future of facilities-based competition.[10]

Applying the interconnection obligations of Section 251(c) as ILECs transition to IP voice networks not only is compelled by the statute, but it also makes sense as a policy matter. Unlike the marketplace for Internet services, which has never been dominated by a single incumbent provider,[11] the voice market has long been dominated by the ILECs. As the Commission observed more than a decade ago, an incumbent LEC "has the ability to act on its incentive to discourage entry and robust competition by not interconnecting its network with the new entrant's network or by insisting on supracompetitive prices or other unreasonable terms for terminating calls from the entrant's customers to the incumbent LEC's subscribers."[12]

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[9] Letter from Daniel L. Brenner, NCTA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 04-440 (Aug. 6, 2007). The Commission's rules are equally clear that ILECs must provide interconnection at any technically feasible point in the network. *See* 47 C.F.R. §§ 51.305(a)(2), 51.321.

[10] Comments of the National Cable & Telecommunications Association, CC Docket No. 01-92, at 15 (filed Nov. 26, 2008).

[11] *See, e.g.*, *AT&T Inc. and BellSouth Corporation, Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662, ¶ 3 (2007); *SBC Communications Inc. and AT&T Corp. Applications for* Approval *of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18290, ¶ 110 (2005); *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18433, ¶ 109 (2005).

[12] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, 11 FCC Rcd 15499, ¶ 10 (1996); *vacated in part, Iowa Utilities Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff'd in*

Eliminating the regulatory backstop of the Section 252 arbitration process would enable ILECs to deny potential competitors efficient interconnection arrangements and require them to invest in obsolete circuit-switched equipment, a result that runs totally counter to the Commission's goal of encouraging investment in modern, IP-based broadband networks. Indeed, as AT&T recently explained, the Commission should eliminate requirements that force providers to "continue investing capital to maintain their legacy, TDM networks – capital that could be used to deploy next generation broadband network facilities and services."[13] AT&T's comments addressed carrier of last resort requirements imposed by states, but requirements to use legacy equipment are equally harmful when imposed on competitive providers through the interconnection process. Allowing ILECs to impose such requirements is harmful to competition and harmful to all the consumers who benefit from competition.

NCTA is not alone in raising concerns about the continuing need for a regulatory backstop when interconnection negotiations with an ILEC break down. State regulators also share the view that IP interconnection issues are governed by Section 251, as evidenced by the resolution adopted by NARUC in July 2008.[14] Competitive LECs and wireless providers have

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part, rev'd in part sub nom. AT&T Corp. v. Iowa Utilities Bd., 525 U.S. 366 (1999). As NCTA has noted previously, many rural LECs have attempted to capitalize on this situation by simply refusing to interconnect with cable operators or the wholesale carriers that they partner with. The transition to IP networks does nothing to diminish the incentive of these LECs to engage in this anticompetitive behavior, nor does it mitigate the harmful consequences to consumers who are denied the benefits of a competitive option for voice service. The Commission should thus affirm that wholesale CLECs are entitled to interconnection to provide telecommunications services to providers of retail VoIP services, regardless of whether they transmit any other types of traffic. *See* Letter from Matthew A. Brill, Counsel for Time Warner Cable, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 09-51 (filed Nov. 12, 2009). The Commission also should confirm that, where a competitive telecommunications carrier seeks interconnection pursuant to Section 251(a), an incumbent LEC may not invoke the rural exemption of Section 251(f) or employ other means to circumvent this critical obligation. *Id.*

[13] Comments of AT&T Inc. – NBP Public Notice #19, at 20 (filed Dec. 7, 2009).

[14] *See* Resolution Regarding the Interconnection of New Voice Telecommunications Services Networks, adopted by the NARUC Board of Directors, July 23, 2008, available at: http://www.naruc.org/Resolutions/TC%20Interconnection.pdf.

raised similar concerns in this proceeding.[15] The ILECs apparently stand alone in arguing that the transition to IP networks somehow eliminates any need to regulate interconnection arrangements.[16]

If the Commission were writing on a blank slate, it might be able to give Verizon and other ILECs the benefit of the doubt on this issue and wait to see if voluntary agreements materialize between ILECs and their competitors. But the Commission has the benefit of almost 14 years of experience in which ILECs have shown a continuing willingness to deny or hinder the ability of competitors to interconnect on reasonable terms and conditions. Against that backdrop, it is critical that the Commission make clear that ILECs remain subject to the interconnection obligations of Section 251 even as they transition their legacy services to IP-based networks.

Respectfully submitted,

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[15] *See* Letter from William H. Weber, Cbeyond, et al., to Marlene H. Dortch, Secretary, Federal Communications Commission, GN Docket No. 09-51 (Sept. 22, 2009).

[16] *See, e.g.*, Verizon Florida LLC's1 Response to Bright House Networks Information Services (Florida) LLC's Petition for Arbitration of Interconnection Agreement, FPSC Docket No. 090501-TP (filed Dec. 7, 2009).