

Russell M. Blau  
Direct Phone: 202.373.6035  
Direct Fax: 202.373.6001  
russell.blau@bingham.com

April 4, 2011

**Via ECFS**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Room TW-A325  
Washington, D.C. 20554

**Re: Notice of Ex Parte Communication, CC Docket 01-92, GN Docket 09-51,  
WC Docket 10-90, WC Docket 07-135, WC Docket 05-337**

Dear Ms. Dortch:

On April 4, 2011, Joseph Kahl of RCN Telecom Services, LLC (“RCN”) and the undersigned, outside counsel to RCN, met with Albert Lewis, Pam Arluk, Lynne Engledow, Travis Litman, and Douglas Slotten of the Wireline Competition Bureau to discuss the above-referenced proceedings. Joseph Casey, Scott Gilbert, and Kristell Janusz of RCN also participated in the presentation by telephone.

In the meeting, RCN described the practical difficulties created by carrier self-help. RCN explained that Verizon has disputed certain RCN bills, both for switched access service and for reciprocal compensation charges pursuant to interconnection agreements, on the asserted ground that some of the traffic exchanged between the two carriers is “IP-originated or IP-terminated,” which Verizon asserts renders this an information service, and Verizon further asserts that neither RCN’s switched access tariff nor the parties’ interconnection agreements apply to information service traffic.

RCN pointed out that Verizon’s position is identical to that of Dial Info, rejected by the Commission in *Northwestern Bell Telephone Co. Petition for Declaratory Ruling*, Memorandum Opinion and Order, 2 FCC Rcd. 5986 (1987), *vacated as moot*, 7 FCC Rcd. 5644, ¶ 1 (1992). Although that case primarily involved the application of the “enhanced service provider exemption” from access charges to a company using local dial tone lines to provide its service, the FCC also addressed comments by Dial Info, which sought to avoid paying access charges on calls that reached its information service platform via IXC 800 services. The FCC squarely rejected Dial Info’s claim, stating that “End users that purchase interstate services from interexchange carriers do not thereby create an access charge exemption for those carriers.” *Id.* at 5988, ¶ 21. Thus, even if some IP-based telephone services are “information services” (an issue the Commission has not yet decided), the providers of those services might be able to purchase end user exchange services from local exchange carriers, but they could not thereby create an

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

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

T +1.202.373.6000  
F +1.202.373.6001  
bingham.com

Ms. Marlene H. Dortch  
April 4, 2011  
Page 2

access charge exemption (or, by similar reasoning, an exemption from reciprocal compensation charges) for the carriers from which they purchased services. Verizon has not sought to purchase local exchange service from RCN as an end user; rather, it has purchased switched access service as a carrier, and has entered into local interconnection agreements as a carrier. It therefore cannot claim the benefit of a policy that, even under its broadest interpretation, only applies to an information service provider that elects to obtain network access as an end user.

Regardless of how the Commission resolves the issue over the classification of VoIP providers and VoIP traffic, it should clarify that the rejection of Dial Info's argument in *Northwestern Bell* is still the law (and has been since 1987), and that this ruling continues to govern any IP-based services that the Commission determines qualify as information services.<sup>1</sup> RCN also referred the FCC to its written comments, which address this issue in greater detail. (See Comments of PAETEC Holding Corp., MPower Communications Corp. and U.S. TelePacific Corp., and RCN Telecom Services, LLC, filed April 1, 2011, in the above-referenced dockets.)

RCN further explained that this dispute with Verizon is creating an obstacle to resolution of other issues between the two companies, and urged the FCC to clarify the obligation of carriers to pay intercarrier compensation charges for services rendered as soon as possible.

Sincerely yours,

*/s/ electronically signed*

Russell M. Blau  
Counsel to RCN Telecom Services, LLC

Attachment

cc: (by email)  
Albert Lewis  
Pamela Arluk  
Lynne Engledow  
Travis Litman  
Douglas Slotten

<sup>1</sup> Although *Northwestern Bell* was vacated as moot, this was because factual allegations in the original petition for declaratory ruling, involving Teleconnect, were withdrawn by the petitioner. The vacatur had nothing to do with the separate issue raised by Dial Info in its comments; and, in any case, when the Commission vacated the ruling, it made clear that it was not repudiating the underlying reasoning. 7 FCC Rcd 5644.