

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Petition of Pac-West Telecomm, Inc.)	WC Docket No. 11-115
For Declaratory Ruling Regarding Access)	
Charges Assessed on VoIP Traffic)	
)	
Petition for Declaratory Ruling Regarding)	
Invalidity of Pac-West Telecomm, Inc. Tariff)	
Pursuant to Primary Jurisdiction Referral)	

**COMMENTS OF THE
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (NCTA)¹ hereby submits its comments in response to the petitions for declaratory ruling filed in the above-referenced proceeding.² The Commission should affirm that Verizon may not engage in unlawful self-help by refusing to pay access charges on traffic that originates with or terminates to a voice over Internet protocol (VoIP) customer.

The petitions filed by Pac-West Telecomm, Inc. (Pac-West) and Verizon arise from litigation brought by Pac-West against Verizon over Verizon's refusal to pay originating access charges on 8YY toll-free service calls originated from Pac-West's VoIP customers.³ The United States District Court for the Eastern District of California granted Pac-West's motion for a primary jurisdiction referral to the Commission, stating that the "case presents the question of

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 broadband service after investing over \$170 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 more than 23 million customers.

² Petition of Pac-West Telecomm, Inc. for Declaratory Ruling Regarding Access Charges Assessed on VoIP-Initiated Access Traffic, WC Docket No. 11-115 (filed June 28, 2011) (Pac-West Petition); Verizon Petition for Declaratory Ruling, WC Docket No. 11-115 (filed June 28, 2011) (Verizon Petition); *Pleading Cycle Established for Comments on Pac-West Telecomm, Inc. and Verizon Petitions for Declaratory Ruling*, WC Docket No. 11-115, Public Notice, DA 11-1171 (Wireline Comp. Bur., July 7, 2011).

³ Pac-West Petition at 2.

whether Plaintiff is entitled to charge tariffed rates for VoIP traffic.”⁴ Pac-West filed its petition, asking the Commission to declare that an interexchange carrier, such as Verizon, must pay a local exchange carrier’s (LEC’s) tariffed access charges “regardless of whether the call was initiated as [VoIP] or Time Division Multiplexing (‘TDM’) format.”⁵ According to Pac-West, “Verizon claims that it need not pay Pac-West’s tariffed access charges for its work in handling Verizon’s 8YY traffic because the calls began in VoIP format.”⁶

Like Pac-West, many cable operators currently are faced with Verizon’s unlawful, unilateral decision to stop paying tariffed access charges for VoIP calls. Beginning in mid-2010, Verizon began notifying providers that it would no longer pay switched access charges for calls that originate or terminate in VoIP format.⁷ Rather than paying the tariffed access charges that it was billed, Verizon unilaterally “re-rated” calls to what it characterized as a “generally accepted industry rate” of \$0.0007 per minute of use. Just as in Pac-West’s case, the traffic at issue in these disputes is exchanged in TDM format; the fact that it is converted to or from IP format at one end of the call is immaterial to the services being provided to Verizon.

Furthermore, because Verizon generally refuses to exchange traffic with competitors in IP format, VoIP providers are forced to incur the additional expense of converting VoIP calls into TDM format and vice versa. As Pac-West explains, “Because Verizon refuses to accept any calls in IP format, Pac-West is required to take additional steps to convert any IP call to TDM so that Verizon can continue profiting from its antiquated network.”⁸ Verizon’s refusal to exchange

⁴ *Pac-West Telecomm, Inc. v. MCI Commun. Serv., Inc. d/b/a Verizon Business Serv.*, 1:10-cv-01051 OWW GSA (E.D. Cal., Mar. 23, 2011).

⁵ Pac-West Petition at 2.

⁶ *Id.*

⁷ See Letter from Samuel L. Feder, Jenner & Block, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (filed Feb. 1, 2011) (discussing Verizon’s non-payment of access charges for TDM traffic that Verizon deems to be IP-originated or IP-terminated).

⁸ Pac-West Petition at 5.

traffic in IP format imposes unnecessary costs on its IP-based competitors, “impeding the transition to all-IP networks and distorting carriers’ incentives to invest in new, efficient IP equipment,” thwarting the Commission’s goal of encouraging the deployment of broadband networks.⁹ Requiring VoIP providers to incur the additional costs of converting their traffic to TDM format is bad enough; Verizon’s refusal to pay applicable access charges once the traffic has been converted adds insult to injury. But Verizon does not stop there. If Verizon suspects that a provider has any VoIP traffic at all, Verizon has refused to pay access charges on all of the provider’s traffic, *including non-VoIP traffic that originates and terminates as TDM*.¹⁰

The Commission should make clear that Verizon’s self-help efforts to avoid paying lawfully tariffed access charges for traffic exchanged in TDM format will not be tolerated.¹¹ Specifically, the Commission should reiterate that, as between telecommunications carriers, existing compensation rules continue to apply to traffic exchanged in TDM, regardless of the technology used to serve the end user.¹²

⁹ *Connect America Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554, 4570, ¶40 (2011) (*2011 USF/ICC Reform NPRM*).

¹⁰ Pac-West Petition at 13; *see also* Comments of Cox Communications, Inc., WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, at 3 (Apr. 1, 2011); Comments of PAETEC Holding Corp. *et al.*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, at 16-17 (Apr. 1, 2011).

¹¹ *See, Bell Atlantic Delaware v. Frontier Communications Services, Inc.*, File Nos. E-98-48, E-98-50, E-98-54 through E-98-60, Order on Review, 15 FCC Rcd 7475, 7480, ¶11 (2000) (Commission directed the Enforcement Bureau to investigate whether further enforcement action was warranted when an interexchange carrier engaged in self-help by refusing to pay payphone compensation); *see also Ameritech Illinois v. MCI Telecommunications Corp.*, File Nos. E-98-50, E-98-51, E-98-53 through E-98-60, Memorandum Opinion and Order, 14 FCC Rcd 18643, 18657, ¶27 (Comm. Carr. Bur. 1999) and *Bell Atlantic-Delaware v. Frontier Communications Services, Inc.*, File Nos. E-98-48 and E-98-49, Memorandum Opinion and Order, 14 FCC Rcd 16050, 16068, ¶28 (Comm. Carr. Bur. 1999) (in both cases the Bureau found that interexchange carriers had “undertaken the remedy of self-help by refusing to pay compensation mandated by [the Commission’s] rules” and “such self-help remedies are strongly disfavored by the Commission”).

¹² In a separate rulemaking proceeding the Commission is currently seeking comment on prospective reform of the overall intercarrier compensation system, and on whether to adopt new intercarrier compensation rules for VoIP traffic. *2011 USF/ICC Reform NPRM*, 26 FCC Rcd at 4701-02, 4748, ¶¶490-493, 614. The issue of prospective intercarrier compensation reform is distinct from the issue before the Commission in Pac-West’s petition, i.e., whether, under the current rules, Verizon can lawfully refuse to pay tariffed access charges for traffic that is exchanged in TDM format.

Verizon does not address any of these issues in its petition for declaratory ruling. Instead, Verizon asserts that the tariff provisions Pac-West relied upon in assessing Verizon access charges are unlawful, and Verizon asks the Commission to declare Pac-West's tariff void.¹³ Rather than limiting its analysis to Pac-West's tariff provisions as Verizon suggests, the Commission should address the broader question raised in Pac-West's petition regarding the impropriety of Verizon's self-help with respect to access charge payments for TDM traffic that is originated or terminated with a VoIP customer.

Respectfully submitted,

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¹³ Verizon Petition at 1, 13-22 (arguing that Pac-West's tariff did not include specific rates but cross-referenced the rates in other carriers' tariffs, and did not list all of the states in which it provides service).