

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

In the Matter of )  
 )  
tw telecom inc. Petition for Declaratory Ruling ) WC Docket No. 11-119  
Regarding Direct IP-to-IP Interconnection )  
Pursuant to Section 251(c)(2) of the )  
Communications Act )

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

The National Cable & Telecommunications Association (NCTA)<sup>1</sup> hereby submits its comments in response to the petition for declaratory ruling filed by tw telecom inc. (TWTC) in the above-referenced proceeding.<sup>2</sup> We agree with TWTC that the Commission should affirm that the interconnection provisions of section 251 of the Communications Act of 1934, as amended (the Act), afford telecommunications carriers the right to establish Internet Protocol (IP)-to-IP interconnection with an incumbent local exchange carrier (LEC) network, and do not require a telecommunications carrier to exchange traffic in time division multiplex (TDM) format.<sup>3</sup> The Commission need not classify facilities-based voice over IP (VoIP) service as a telecommunications service to reach this decision.<sup>4</sup>

---

<sup>1</sup> 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.

<sup>2</sup> Petition for Declaratory Ruling of tw telecom inc., WC Docket No. 11-119 (filed June 30, 2011) (TWTC Petition); *Comment Sought on tw telecom inc. Petition for Declaratory Ruling Regarding Direct IP-to-IP Interconnection Pursuant to Section 251(C)(2) of the Communications Act*, WC Docket No. 11-119, Public Notice, DA 11-1198 (Wireline Comp. Bur., July 15, 2011).

<sup>3</sup> 47 U.S.C. § 251.

<sup>4</sup> Facilities-based VoIP service providers, either directly or through affiliates, own and operate the broadband access communications infrastructure required to deliver VoIP services. Unlike "over-the-top" VoIP services, customers of facilities-based VoIP services do not need to separately subscribe to broadband Internet service. Facilities-based VoIP calls travel over managed packet networks rather than over the public Internet.

## INTRODUCTION

In its petition, TWTC asks the Commission to affirm that TWTC has the right under section 251(c)(2) of the Act to establish direct IP-to-IP interconnection with incumbent LECs for the transmission and routing of TWTC's facilities-based VoIP services.<sup>5</sup> Today, facilities-based VoIP providers must bear the additional cost of converting their IP-based traffic into TDM format to exchange with incumbent LECs. As TWTC states, "[c]onverting IP voice traffic to TDM format solely for the purpose of handing traffic off at an interconnection point imposes significant inefficiencies on TWTC and other providers that transmit voice in IP format because such providers must incur the equipment and labor costs associated with the conversion."<sup>6</sup> As networks continue to transition from supporting the TDM format of the past to the more efficient IP-based format of the future, the inefficiencies in the current approach increase.

Regulation of network interconnection among telecommunications carriers has been a critical foundation for the development of voice competition.<sup>7</sup> To ensure that this competition continues as voice traffic transitions from TDM to IP format, the Commission should clearly affirm that incumbent LECs have a duty to provide direct IP-to-IP interconnection to telecommunications carriers for the purpose of exchanging voice traffic. In reaching this decision, the Commission need not determine the classification of VoIP services before affirming these interconnection obligations. Whether retail VoIP service is a

---

<sup>5</sup> TWTC Petition at 1.

<sup>6</sup> TWTC Petition at 6. The Commission has recognized that "IP interconnection can be more efficient . . . [T]he transition to IP can result in cost savings, including reductions in circuit costs, switch costs, space needs, and utility costs, as well as the elimination of other signaling overhead." *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, 4710, ¶ 506 (2011) (*2011 USF/ICC Reform NPRM*).

<sup>7</sup> The Commission's definition of interconnected VoIP service makes clear that the Commission intends these services to interconnect with incumbent LECs and other carriers to allow consumers to make calls to and receive calls from the public switched telephone network. 47 C.F.R. § 9.3.

telecommunications service or an information service, a competitive LEC is entitled to interconnection with an incumbent LEC in any technically feasible manner, including direct IP-to-IP interconnection.

**I. TELECOMMUNICATIONS CARRIERS HAVE THE RIGHT TO DIRECT IP-TO-IP INTERCONNECTION UNDER SECTION 251(C)(2) OF THE ACT**

As the Commission previously has recognized, it is vitally important that facilities-based VoIP providers are assured of their continued ability to exchange voice traffic with incumbent LECs.<sup>8</sup> Interconnection among telecommunications carriers is a critical component in the delivery of voice communications, regardless of technology, and the Commission must continue to preserve certain key rights and obligations for competitors.

As TWTC requests, the Commission should affirm that carriers exchanging telecommunications traffic have the right to direct IP-to-IP interconnection with incumbent LECs under section 251(c)(2) of the Act for the transmission and routing of telephone exchange service and exchange access. Section 251(c)(2) of the Act requires incumbent LECs to permit such interconnection where it is technically feasible, and contains neither an exclusion for IP-based technology nor a mandate for the use of TDM-based technology.<sup>9</sup>

As TWTC explains in its petition, direct IP-to-IP interconnection between carriers for the provision of voice service is technically feasible and is routinely used by carriers other than incumbent LECs.<sup>10</sup> By requiring the conversion of VoIP traffic to TDM before traffic is exchanged, incumbent LECs are able to impose additional costs on their competitors and therefore have an incentive to refuse requests for direct IP-to-IP interconnection. The

---

<sup>8</sup> *Petition of CRC Communications of Maine, Inc. and Time Warner Cable Inc. for Preemption Pursuant to Section 253 of the Communications Act, as Amended*, WC Docket No. 10-143, GN Docket No. 09-51, CC Docket No. 01-92, Declaratory Ruling, 26 FCC Rcd 8259, 8273-74, ¶¶ 26-27 (2011).

<sup>9</sup> 47 U.S.C. § 251(c)(2).

<sup>10</sup> TWTC Petition at 20-21.

Commission should make clear that incumbent LECs are required to provide IP-to-IP interconnection pursuant to section 251 regardless of whether the requesting telecommunications carrier provides retail VoIP service as a certificated telecommunications carrier or wholesale services to affiliated or unaffiliated VoIP providers.

## **II. THE COMMISSION NEED NOT DECLARE FACILITIES-BASED VOIP TO BE A TELECOMMUNICATIONS SERVICE**

The Commission need not declare facilities-based VoIP service to be a telecommunications service for the interconnection obligations of section 251(c)(2) to apply. As discussed above, the interconnection obligations of section 251(c)(2) contain no mandate that a telecommunications carrier's traffic be exchanged in a particular format, nor is there an exception that precludes interconnecting with an incumbent LEC to exchange traffic in IP format. Therefore, as long as a carrier otherwise qualifies for interconnection under section 251(c)(2), the obligation of the incumbent LEC to provide interconnection exists without regard to the regulatory status of VoIP services.

In addition to being unnecessary under the statute, any classification of facilities-based VoIP as a telecommunications service could harm some providers of these services and their VoIP customers. Facilities-based VoIP providers have adopted different business models to deliver these competitive services to consumers. Some companies partner with an unaffiliated wholesale telecommunications carrier, some partner with an affiliated wholesale telecommunications carrier, and some, such as TWTC, operate more like traditional competitive carriers. If the Commission were to classify this service as a telecommunications service it would unnecessarily disrupt the operation and impose additional costs on providers that use a separate affiliated or unaffiliated telecommunications carrier in the provision of VoIP services (*e.g.*, by requiring the restructuring of corporate relationships and changes to regulatory certifications, interconnection agreements and tariffs). These disruptions and additional costs are

unnecessary because the Commission does not need to address the classification of facilities-based VoIP at this time.

Furthermore, the Commission has been able to ensure that important regulatory and statutory requirements apply to interconnected VoIP service without classifying the service. Specifically, interconnected VoIP service providers are subject to E911, Communications Assistance for Law Enforcement Act, local number portability, universal service contributions, customer proprietary network information, Telecommunications Relay Service contributions, disabilities access, local telephone competition and broadband reporting (FCC Form 477), and regulatory fee requirements.<sup>11</sup> The Commission can, and should, follow the same approach here and resolve the important interconnection issue presented by TWTC without addressing the classification of VoIP services.

---

<sup>11</sup> *IP-Enabled Services, E-911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36, 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 (2005); *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket No. 04-295, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 14989 (2005); *Local Number Portability Porting Interval and Validation Requirements, et al.*, WC Docket Nos. 07-244, *et al.*, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19531 (2007); *Universal Service Contribution Methodology*, WC Docket No. 06-122, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006); *Implementation of the Telecommunications Act of 1996; Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927 (2007); *IP-Enabled Services, Telecommunications Rely Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, WC Docket Nos. 04-36, 03-123, Report and Order, 22 FCC Rcd 11275 (2007); *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans*, WC Docket No. 07-38, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 9691 (2008); *Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, MD Docket No. 07-81, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15712 (2007).

## CONCLUSION

NCTA agrees with TWTC that the Commission should declare that telecommunications carriers are entitled to direct IP-to-IP interconnection pursuant to section 251(c)(2) of the Act. However, for the reasons explained above, the Commission need not and should not classify facilities-based VoIP service as telecommunications service at this time.

Respectfully submitted,

**/s/ Rick Chessen**

Rick Chessen  
Steven F. Morris  
Jennifer K. McKee  
National Cable & Telecommunications  
Association  
25 Massachusetts Avenue, NW – Suite 100  
Washington, DC 20001-1431

August 15, 2011