

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

In the Matter of)	
)	
tw telecom inc. Petition for Declaratory)	WC Docket No. 11-119
Ruling Regarding Direct IP-to-IP)	
Interconnection Pursuant To)	
Section 251(c)(3) of the Communications Act)	

REPLY COMMENTS OF COMPTTEL

COMPTTEL respectfully submits these comments in reply to certain arguments made in by ILECs in their comments on the tw telecom inc. (“TWTC”) Petition for Declaratory Ruling regarding IP-to-IP Interconnection pursuant to Section 251(c)(3) of the Communications Act, as amended (“Act”).

As we stated in the initial round of comments, it is imperative that the Commission confirm, as expeditiously as possible, that the interconnection and traffic exchange obligations of the Act continue to apply as networks transition from circuit-switched to packet-switched technology, and that those obligations specifically include direct IP-to-IP interconnection. Since the circuit-switched architecture of today's PSTN will ultimately be replaced with an IP architecture, it is vital that nondiscriminatory, cost-based IP interconnection agreements replace the circuit-switched interconnection agreements that underlie today's PSTN so that the transition to an IP-based PSTN will be seamless.

Even though the language of the Act is both unambiguous and technology neutral, and despite the Commission’s prior pronouncements that interconnection obligations of sections

251(a) and 251(c)(2) apply to incumbents' packet-switched telecommunications networks and the telecommunications services offered over them,¹ the RBOCs have been evading their interconnection obligations under the Act as they pertain to IP-to-IP interconnection. As evident from their comments (as well as their actions)², the RBOCs have no intent to fulfill these statutory obligations without further confirmation from the Commission that such interconnection is required by the Act. The ILEC arguments in opposition to such confirmation are, as explained below, without merit.

COMPTEL has already explained, in its initial comments, that VoIP services are telecommunication services and carriers are entitled to interconnection on an IP-to-IP basis for the transmission and routing of such services pursuant to section 251(c)(2). The ILECs, perhaps recognizing the fallacy of their arguments to the contrary, now argue that requiring ILECs to accept IP-to-IP interconnection somehow amounts to requiring access to an “as-yet unbuilt network.”³

¹ Memorandum Opinion and Order, and Notice of Proposed Rulemaking, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 98-147 *et al*, CCB/CPD No. 98- RM 9244, FCC 99-188, ¶¶48-49 (1998); Order on Remand, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 98-147 *et al*, FCC 99-413, ¶22 (1999).

² See TWTC Petition at 5-6; COMPTEL Comments, WC Docket Nos. 10-90 *et al*, at 7 (filed Apr. 18, 2011); Cablevision Comments in re NBP PN #25, GN Docket No. 09-47 *et al*, at 2 (filed Dec. 22, 2009)(“[E]ven as incumbent local exchange carriers (“ILECs”) upgrade their legacy networks to IP, they refuse to provide IP interconnection to their competitors on reasonable terms or at all. As a result, each IP voice call initiated on a competing carriers’ network must be reduced to TDM, transmitted over an electrical DS-0 or similar connection, and routed to an ILEC customer over the legacy hierarchical circuit-switched network, with all of its associated costs, inefficiencies, and limitations”).

³ Opposition of AT&T at 9-10 (“AT&T”); Comments of Verizon and Verizon Wireless at 8-12 (“Verizon”); Comments of the United States Telecom Association at 3-4 (“USTA”).

First, what is at issue in this proceeding is access to *existing* facilities. Namely, ILECs (and their affiliates) are legally required to provide IP-to-IP interconnection to requesting carriers - pursuant to Section 251(c) - to reach the ILEC's (or affiliate's) VoIP customers (which are clearly being served via an IP-based network), as well as their end-users served via circuit switches where the ILEC (or affiliate) has deployed IP technology for transport. Although competitive providers may be leading the transition to IP-based networks and services, AT&T and Verizon have, for years, touted the extent of their IP networks.⁴ Indeed, in a letter to Congressional leaders, AT&T and Verizon (among others) state that "an ever-increasing proportion of voice traffic will originate or terminate in IP format and on IP networks."⁵ Aside from the fact that it is remarkable that the ILECs' claim they lack an IP-network, the extent of their IP network poses a factual question (i.e., identifying how many wire centers are reachable by each of the ILEC IP transport network) and, if there is a dispute on such facts, the arbitration provisions of the Act establish an appropriate forum for resolution.

AT&T claims that it is the ILECs' affiliates, and not the ILECs themselves, offering IP-based services or deploying IP networks. Therefore, they argue, the ILEC is not required to

⁴ See, e.g., *Petition of AT&T, Inc. for Interim Declaratory Ruling and Limited Waivers*, WC Docket No. 08-152, at 11 (filed July 23, 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."); Press Release, *Verizon Wireless and FiOS Growth Fuels Continued Strong Cash Flow at Verizon in 3Q* (Oct. 26, 2009)(Verizon Chairman and then CEO Ivan Seidenberg stated that "[t]he Verizon network is now an engine for next-generation communications services that will create new short- and long-term opportunities for us."), available at <http://investor.verizon.com/news/view.aspx?NewsID=1019>

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=lettertohillonipenableservicesnov2009.pdf>.

provide IP-to-IP interconnection pursuant to section 251(c)(2).⁶ As COMPTTEL has explained in the intercarrier compensation/universal service fund reform proceeding,⁷ the D.C. Circuit vacated an order of the Commission that would have allowed an ILEC to avoid its Section 251(c) obligations by setting up a wholly owned affiliate to offer advanced services.⁸ The Court found that to allow an ILEC to evade its § 251(c)'s requirements through a wholly owned affiliate amounts to a "circumvention of the statutory scheme."⁹

Verizon claims that, while it admittedly has some packetized capability, it would have to upgrade its facilities to permit *third party* interconnection in IP format.¹⁰ The statutory requirement, however, unambiguously requires that the ILEC provide interconnection "that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection." 47 U.S.C. § 251(c)(2)(C). The Eighth Circuit found that, although the ILEC may not be required to alter their networks substantially "to provide *superior* quality interconnection" ILECs are required to make modifications to their facilities to the extent necessary to meet the obligations imposed by sections 251(c)(2) and 251(c)(3).¹¹

⁶ AT&T at 9-10.

⁷ COMPTTEL Comments, WC Docket No. 10-90 *et al*, at 7-8 (filed Apr. 18, 2011).

⁸ *Association of Communications Enterprises v. FCC*, 235 F.3d 662, 668 (D.C. Cir. 2001)("[T]he Commission may not permit an ILEC to avoid § 251(c) obligations as applied to advanced services by setting up a wholly owned affiliate to offer those services.")

⁹ *Id.* at 666

¹⁰ Verizon at 9.

¹¹ *Iowa Util. Bd. v. FCC*, 120 F.3d 753, 813, n. 33 (8th Cir. 1997).

In conclusion, the Commission should grant TWTC's petition and confirm that incumbent LECs are required to offer direct IP-to-IP interconnection, pursuant to section 251(c)(2) of the Act, with requesting providers of facilities-based VoIP services.

Respectfully Submitted,

/s/

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