

**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)

REPLY COMMENTS OF RCA – THE COMPETITIVE CARRIERS ASSOCIATION

RCA – The Competitive Carriers Association (“RCA”) hereby submits reply comments in connection with the petition for declaratory ruling filed by tw telecom inc. (“TWTC”). RCA is an association representing the interests of over 100 small, mid-sized, and rural wireless licensees that provide commercial service to subscribers throughout the United States. As rural and regional operators who work to provide nationwide service, RCA’s members rely on interconnection agreements with incumbent local exchange carriers (“ILECs”) for the transmission and routing of calls that originate or terminate on their networks. RCA supports the TWTC petition and recommends that the FCC clarify that the wholesale interconnection between a LEC and a competitive carrier that offers retail VoIP services constitutes a telecommunications service and is subject to Section 251(c)(2).

INTRODUCTION AND SUMMARY

As the nation’s telecommunications carriers transition to IP-based infrastructure, it will become increasingly important for the Commission to provide clarity regarding ILECs’ interconnection obligations under Section 251 of the Communications Act. The Commission long has recognized both that voice over Internet Protocol (“VoIP”) interconnection is critical to

broadband deployment, and that many ILECs have adopted an “anticompetitive interpretation of the Act” and “are resisting interconnection” in a manner that constitutes a barrier to broadband deployment.¹ The National Broadband Plan therefore urged the Commission to “remove any regulatory uncertainty” and confirm that all telecommunications carriers have a duty to interconnect their networks, including during the “transitions to IP-to-IP interconnection.”² As Google correctly notes, the transition to IP-based networks will decrease costs and improve network reliability, and the Commission therefore should remove any regulatory hurdles to that transition.³ Providing regulatory clarity also will reduce the ability of ILECs to arbitrarily increase the costs that competitive carriers face, and promote the pro-competitive transition to all-IP networks.

RCA agrees with TWTC that Section 251(c)(2) of the Communications Act allows carriers who offer VoIP services to establish direct IP-to-IP interconnection with ILECs. The Commission should clarify that the wholesale interconnection between a LEC and a competitive carrier that offers retail VoIP services constitutes a telecommunications service and is subject to Section 251(c)(2). That is so whether the connecting carrier is providing retail or wholesale service and regardless of the classification of the ultimate retail VoIP service. Thus the Commission does not need to take the further step and determine whether TWTC’s retail VoIP service also is a telecommunications service, and RCA accordingly takes no position on that portion of TWTC’s petition.

¹ Connecting America: The National Broadband Plan, at 49.

² *Id.*

³ See Comments of Google Inc., WC Docket No. 11-119 (filed Aug. 15, 2011), at 3-4.

I. CARRIERS HAVE THE RIGHT TO DIRECT IP-TO-IP INTERCONNECTION WITH ILECS

Section 251 of the Act requires all telecommunications carriers to “interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.”⁴ ILECs have the additional duty to provide interconnection when technically feasible “for the transmission and routing of telephone exchange service and exchange access.”⁵ Section 256 of the Act further provides that network interconnectivity should “promote nondiscriminatory accessibility by the broadest number of users” and should ensure that users and information providers “seamlessly and transparently transmit and receive information between and across telecommunications networks.”⁶

Nothing in these provisions ties interconnection obligations to particular technology platforms. The statute makes no distinction between TDM and IP-based technology, and, as the Commission has stated, “Congress made clear that the 1996 Act is technologically neutral.”⁷ Moreover, the Commission already has held that the term “telephone exchange service” as that term is used in Section 251(c)(2) includes packet-switched services, not merely circuit-switched services, and thus that the Section’s interconnection obligations apply to packet-switched services.⁸ Thus there is nothing in the statute or in applicable precedent that indicates a categorical exclusion of IP-based technology from interconnection obligations. ILECs that insist

⁴ 47 U.S.C. § 251(a).

⁵ *Id.* § 251(c)(2).

⁶ 47 U.S.C. § 256.

⁷ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Order on Remand, 15 FCC Rcd 385 ¶ 2 (1999).

⁸ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd 24011 ¶ 48 (1998); *see also id.*, Order on Remand, 15 FCC Rcd 385 ¶ 22 (1999).

that connecting carriers convert all of their VoIP traffic to TDM before it is exchanged do so purely to force connecting carriers to incur additional costs and burdens, and the ILECs thus are creating precisely the anticompetitive resistance to broadband deployment that the Commission identified in the National Broadband Plan.⁹

There also is no basis to believe that IP-to-IP interconnection is not technically feasible. There are numerous examples of carriers successfully reaching IP-to-IP interconnection. TWTC cites several examples in which it reached such interconnection arrangements,¹⁰ and there are numerous other examples in the record.¹¹ In any event, it is the incumbent LEC who must “accept the novel use of, and modification to, [its] network facilities” for purposes of interconnection,¹² and “the fact that an incumbent LEC must modify its facilities or equipment to respond to such request does not determine whether an interconnection request is technically feasible.”¹³

It should not be lost on the Commission that ILECs are refusing IP-to-IP interconnection principally for competitive rather than technological reasons. IP technology already is widely in use, including by ILECs. RCA agrees with Google that interconnection barriers can be a tool by which ILECs attempt to impose additional costs on competitors.¹⁴ For these reasons, RCA

⁹ National Broadband Plan at 49.

¹⁰ See TWTC Petition at 20-21

¹¹ See, e.g., Comments of Cablevision Systems Corporation and Charter Communications Inc., WC Docket No. 11-119 (filed Aug. 15, 2011) at 6; Comments of Megapath Inc., PaeTec Holding Corp., RCN Telecom Services, LLC, and TDS Metrocom, LLC, WC Docket No. 11-119 (filed Aug. 15, 2011), at 2.

¹² *Talk Am. Inc. v. Mich. Bell Tel. Co.*, No. 10-313, 546 U.S. ___, slip op. at 8-9 (U.S. June 9, 2011).

¹³ 47 C.F.R. § 51.5.

¹⁴ See Comments of Google Inc. at 5.

supports TWTC's call for the Commission to clarify that Section 251(c)(2) by its plain language applies to IP-to-IP interconnection.

II. THE COMMISSION NEED NOT DETERMINE WHETHER THE RETAIL PROVISION OF VOIP IS A TELECOMMUNICATIONS SERVICE

The Commission recently held that the applicability of Section 251's obligations does not turn on the classification of the ultimate service provided to end users.¹⁵ In the *CRC/TWC Declaratory Ruling*, the Commission determined that the provision of wholesale service by an interconnecting CLEC to a VoIP provider is a telecommunications service, regardless of the classification of retail VoIP. The Commission found that the definition of "telecommunications services" in the Act does not distinguish between retail and wholesale services.¹⁶ And, most notably, the Commission held that the "regulatory classification of the service provided to the ultimate end user has no bearing" on the wholesale provider's rights to interconnection.¹⁷ According to the Commission, "a contrary decision would impede the important development of wholesale telecommunications and facilities-based VoIP competition, as well as broadband investment and deployment..."¹⁸ Thus, it is not necessary to classify the retail service in order to determine whether the interconnection with the ILEC is a telecommunications service.

The conclusion that IP-to-IP interconnection is a telecommunications service irrespective of how retail VoIP is classified follows from the fact that the exchange of VoIP traffic at the point of interconnection with an ILEC is "the transmission and routing of telephone exchange

¹⁵ *Petition of CRC Communications of Maine, Inc. and Time Warner Cable Inc. for Preemption Pursuant to Section 253 of the Communications Act, as Amended, Declaratory Ruling*, WC Docket No 10-143 (May 26, 2011) ("*CRC/TWC Declaratory Ruling*").

¹⁶ *Id.* ¶ 26.

¹⁷ *Id.* ¶ 27, n.96.

¹⁸ *Id.*

service”¹⁹ regardless of how the retail VoIP service is characterized. The Act defines “telephone exchange service” as “service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge.”²⁰ The Commission repeatedly has recognized the similarities between VoIP service and local exchange service,²¹ and interconnected VoIP service constitutes an “intercommunicating service” within a service area that is effectively equivalent to a telephone exchange.

Thus, the Commission should conclude that the interconnection of a VoIP provider to an ILEC is the “transmission and routing of telephone exchange service,” and that a VoIP provider accordingly is entitled to interconnect and exchange traffic with an ILEC under Section 251 of the Act. This is so regardless of how the VoIP provider’s retail VoIP service is classified. RCA accordingly takes no position on the portion of TWTC’s petition regarding the classification of retail VoIP service.

Respectfully submitted,

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¹⁹ 47 U.S.C. § 251(c)(2)(A).

²⁰ 47 U.S.C. § 153(47)(A).

²¹ *See, e.g., E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, ¶ 23 (2005); *IP-Enabled Services*, Report and Order, 24 FCC Rcd 6039, ¶¶ 2, 8 (2009)