

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

In the Matter of)
)
)

Petition for Declaratory Ruling that tw telecom)
inc. has the Right to Direct IP-to-IP)
Interconnection Pursuant to section 251(c)(2) of)
the Communications Act, and Amended, and)
for Transmission and Routing of tw telecom’s)
Facilities-Based VoIP Services and IP-in-the-)
Middle Voice Services)
)
)

WC Docket No. 11-119

**REPLY COMMENTS OF CABLEVISION SYSTEMS CORPORATION
AND CHARTER COMMUNICATIONS, INC.**

Cablevision Systems Corporation (“Cablevision”) and Charter Communications, Inc. (“Charter”) (collectively, “Joint Commenters”) hereby reply to the comments filed in the above captioned proceeding. In their initial comments in this proceeding, the Joint Commenters demonstrated that section 251(c)(2) of the Communications Act imposes a duty on incumbent local exchange carriers (“ILECs”) to provide IP-to-IP interconnection to requesting carriers for use in exchanging Voice over Internet Protocol (“VoIP”) traffic, regardless of the regulatory classification ultimately assigned to VoIP service.^{1/} Affirming this duty will promote the Commission’s goal of encouraging carriers to migrate to more efficient IP-based networks and allow competitive local exchange carriers (“CLECs”) to avoid the unnecessary costs and inefficiencies associated with down-conversion to time division multiplex (“TDM”) format that currently results from the ILECs’ refusal to accept traffic in IP format from competitive carriers.

^{1/} See Comments of Cablevision Systems Corporation and Charter Communications, Inc., WC Docket No. 11-119 (filed Aug. 15, 2011) (“Joint Comments”).

Numerous commenters agree that the Commission should clarify that IP-to-IP interconnection is a duty under section 251(c)(2).^{2/} While the ILECs raise various objections to such a clarification,^{3/} their objections are based on a misreading of the statute and precedent. Other commenters who support IP-to-IP interconnection also incorrectly argue that VoIP service must be classified as a common carrier offering in order to obtain the benefits of section 251(c)(2).^{4/} Such a fundamental change in the regulatory treatment of VoIP is neither necessary nor desirable.

I. SECTION 251(c)(2) APPLIES TO THE EXCHANGE OF VOIP TRAFFIC

As numerous commenters have explained, section 251(c)(2) obligates ILECs to provide IP-to-IP interconnection upon request.^{5/} In opposition, the ILECs essentially offer four objections, none of which have merit.

^{2/} See, e.g., Comments of COMPTTEL, WC Docket No. 11-119, at 2-5 (filed Aug. 15, 2011) (“COMPTTEL Comments”); Comments of the National Cable & Telecommunications Association, WC Docket No. 11-119, at 3-4 (filed Aug. 15, 2011) (“NCTA Comments”); Comments of Ymax Communications Corp., WC Docket No. 11-119, at 2 (filed Aug. 15, 2011) (“Ymax Comments”).

^{3/} See, e.g., Comments of AT&T, Inc., WC Docket No. 11-119, at 9-11 (filed Aug. 15, 2011) (“AT&T Comments”); Comments of Verizon and Verizon Wireless, WC Docket No. 11-119, at 8-11 (filed Aug. 15, 2011) (“Verizon Comments”).

^{4/} See, e.g., COMPTTEL Comments at 5 (arguing that VoIP service providers are entitled to interconnection under section 251(c)(2) because they “are telecommunications carriers offering telephone exchange service and/or exchange access”); Comments of Megapath Inc., PaeTec Holding Corp., RCN Telecom Services, LLC, and TDS Metroco, WC Docket No. 11-119, at 3-4 (filed Aug. 15, 2011) (“CLEC Comments”); Comments of Public Knowledge, WC Docket No. 11-119, at 1 (filed Aug. 15, 2011) (“Public Knowledge Comments”) (“TWTC’s voice service—as well as similar services offered by other providers—is a Title II telecommunications service. Therefore, TWTC is entitled to technically feasible IP-based interconnection with incumbent local exchange carriers (LECs).”).

^{5/} See, e.g., COMPTTEL Comments at 2-5 (explaining that section 251(c) of the Communications Act is technology neutral and that the Commission has already found direct IP-to-IP interconnection to be subject to section 251); NCTA Comments at 3 (noting that section 251(c)(2) “contains neither an exclusion for IP-based technology nor a mandate for the use of TDM-based technology”); Ymax Comments at 2 (“Section 251(c)(2) by its terms is not limited to any particular form of interconnection, but requires interconnection in any ‘technically feasible’ manner.”).

First, AT&T, Verizon, and the United States Telecom Association (“US Telecom”) cite the 8th Circuit’s decision in *Iowa’s Utilities Board v. FCC* striking down the Commission’s 1996 rule that would have required incumbents to provide “superior” interconnection to requesting carriers.^{6/} The 8th Circuit’s decision, however, is wholly inapposite here. CLECs do not seek superior interconnection from incumbents; rather they seek only the same IP-to-IP interconnection that incumbents provide for their own VoIP services. AT&T and Verizon effectively admit that their ILEC entities provide IP-to-IP interconnection.^{7/}

Second, Verizon in particular argues that VoIP is not a telephone exchange service because it is not a common carrier offering, and therefore that interconnection requested for VoIP traffic does not fall within the scope of section 251(c)(2).^{8/} But this argument is also incorrect. Verizon focuses on the definition of telephone exchange service in section 3(47)(B) of the Act, which includes a reference to telecommunications services.^{9/} As the Joint Commenters noted in their initial filing, however, the definition in section 3(47)(A) does not include such a reference and there is clear precedent for applying the term to more than just traditional voice services or technologies.^{10/} Indeed, the Commission has explained on several occasions the similarity of interconnected VoIP service to local exchange service provided by traditional

^{6/} See AT&T Comments at 9-10; Verizon Comments at 8-12; Comments of the United States Telecom Association, WC Docket No. 11-119, at 3-4 (filed Aug. 15, 2011) (“USTA Comments”).

^{7/} See AT&T Comments at 9 (alleging that ILECs do not provide IP interconnection “in many (if not most) cases,” which even if true clearly means that they are doing so in some cases); Verizon Comments at 3 (reporting that interconnection for the exchange of voice traffic in IP format is already occurring in some cases).

^{8/} See Verizon Comments at 19-21.

^{9/} Moreover, as noted in the Joint Commenters’ initial comments, subparagraph (B) does *not* provide that telephone exchange service itself must be a telecommunications service. Rather, it is defined as service by which a subscriber “can *originate or terminate* a telecommunications service.” See Joint Comments at 9 n.23 (citing 47 U.S.C. § 3(47)(B) (emphasis added)).

^{10/} See Joint Comments at 9-10.

telephone companies.^{11/} Likewise, it is clear that “exchange access service” also includes VoIP.^{12/}

Third, AT&T, Verizon and US Telecom argue that VoIP is somehow outside the scope of section 251(c)(2) because it uses the same Internet protocol used for the transmission of Internet traffic^{13/} or because of the mistaken notion that all VoIP traffic is exchanged “on the Internet.”^{14/} But these arguments improperly seek to conflate facilities-based VoIP with Internet access service or “over-the-top” VoIP offerings. The fact that these services use the same protocol is wholly irrelevant to whether section 251(c)(2) applies to facilities-based VoIP. To the contrary, section 251(c) is technology agnostic. The evolution of voice services from an analog to digital

^{11/} See, e.g., *IP-Enabled Services*, Report and Order, 24 FCC Rcd 6039, ¶ 8 (2009); *Telephone Number Requirements for IP-Enabled Service Providers*, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19531, ¶ 18 (2007); *Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996: Access to Telecommunications Service, Telecommunications equipment and Customer Premises Equipment by Persons with Disabilities*, Report and Order, 22 FCC Rcd 11275, ¶ 17 (2007); *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927, ¶ 56 (2007); *E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, ¶ 23 (2005).

^{12/} See Joint Comments at 11.

^{13/} See, e.g., Verizon Comments at 6 (“Furthermore, the best known example of IP-to-IP interconnection — the Internet — relies voluntarily negotiated, arms-length agreements developed over time, in the absence of regulation mandating interconnection terms or even requiring interconnection in the first place . . . These agreements have ensured that the Internet is always fully interconnected — any end-user connected to the Internet can communicate with any other end-user — regardless of whether any particular pair of networks is directly interconnected.”); AT&T Comments at 10 (“Nor is there any legitimate policy basis for interpreting section 251(c)(2) to require IP-to-IP interconnection. The exchange of IP-based and other packet-switched communications on the Internet has, since its inception, been governed by market forces rather than prescriptive regulatory mandates. That regime has functioned well for the past two decades . . .”); USTA Comments at 5 (suggesting that the voluntary, non-regulated nature of IP-to-IP interconnections such as the Internet has allowed for the rapid development of IP-based technologies).

^{14/} AT&T Comments at 10.

format 50 years ago did not itself alter the regulatory framework; the evolution from digital to Internet protocol is of no greater significance.^{15/}

Finally, Verizon and AT&T argue that requiring incumbents to provide IP-to-IP interconnection under section 251(c)(2) would be unfair because it would shift the costs of IP-to-TDM conversion to incumbents.^{16/} But such an outcome in fact furthers the Commission's stated goals of promoting the deployment of advanced communications networks. Moreover, the fact that ILECs require more efficient carriers to bear the burden of TDM conversion penalizes efficiency and provides disincentives for ILECs to transition to all IP networks. Clarifying that ILECs must honor requests for IP-to-IP interconnection will provide strong incentives for the incumbents to accelerate and complete their already-commenced migration from TDM to IP.

II. THE COMMISSION NEED NOT AND SHOULD NOT CLASSIFY VOIP AS A TELECOMMUNICATIONS SERVICE

Various commenters, while agreeing that section 251(c)(2) obligates ILECs to provide IP-to-IP interconnection, nonetheless erroneously argue that such a result is only possible if VoIP services are classified as common carrier offerings.^{17/} For the reasons set out in the Joint Commenters' initial comments, the Commission need not and should not make that determination in this proceeding. As the Joint Commenters demonstrated, section 251(c)(2) applies to the exchange of VoIP traffic, regardless of the classification of VoIP.^{18/}

^{15/} As Verizon's own comments make clear, it is the nature of VoIP service, not the format of the transmissions, that makes VoIP an information service. *See* Verizon Comments at 16-19 (arguing why VoIP should be treated as an information service even where there is no net protocol conversion).

^{16/} *See* Verizon Comments at 11; AT&T Comments at 11.

^{17/} *See, e.g.,* COMPTTEL Comments at 8; CLEC Comments at 3-4; Public Knowledge Comments at 6.

^{18/} *See* Joint Comments at 7-11. Other commenters agree. *See, e.g.,* NCTA Comments at 1 (asserting that the "Commission need not classify facilities-based voice over IP (VoIP) service as a telecommunications service" to require IP-to-IP interconnection).

As the Joint Commenters and others have noted, the Commission has extended various other provisions of Title II to VoIP without addressing the regulatory classification question.^{19/} Classification of VoIP as a telecommunications service has potentially sweeping regulatory and jurisdictional implications.^{20/} Such a fundamental policy determination, aside from being unwise, is not necessary in order to confirm the availability of IP-to-IP interconnection for VoIP traffic.

CONCLUSION

For the reasons set forth above and in the Joint Commenters' initial filing, the Commission should affirm that section 251(c)(2) obligates incumbent local exchange carriers to provide IP-to-IP interconnection upon request for the exchange of VoIP traffic, regardless of the regulatory classification of VoIP.

^{19/} See Joint Comments at 10-12; NCTA Comments at 5.

^{20/} In this regard, it is noteworthy that several state regulators filed in support of TWTC's petition to declare VoIP a telecommunications service. See Comments of the Public Utilities Commission of Ohio, WC Docket No. 11-119, at 3 (filed Aug. 17, 2011); Comments of the New Jersey Division of Rate Counsel, WC Docket No. 11-119, at 4-8 (filed Aug. 12, 2011).

Respectfully submitted,

/s/ Howard J. Symons

Michael E. Olsen
Vice President,
Legal and Regulatory Affairs
Cablevision Systems Corp.
1111 Stewart Avenue
Bethpage, NY 11714
(516) 803-2300

Howard J. Symons
Ernest C. Cooper
Angela Y. Kung
MINTZ, LEVIN, COHN, FERRIS, GLOVSKY
AND POPEO, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
(202) 434-7300

Mark E. Brown
Senior Director and Senior Counsel
Charter Communications, Inc.
11720 Amber Park Drive, Suite 160
Alpharetta, GA 30009
(770) 754-5269

Samuel L. Feder
JENNER & BLOCK LLP
1099 New York Ave., NW
Suite 900
Washington, D.C. 20001
(202) 639-6000

Michael R. Moore
Director and Senior Counsel
Charter Communications, Inc.
12405 Powerscourt Drive
St. Louis, MO 63131
(314) 543-2414

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