

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| 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) of the Communications Act |) | |

**REPLY COMMENTS OF PAETEC HOLDING CORP.,
AND RCN TELECOM SERVICES, LLC**

Joseph Kahl
Senior Director of Regulatory Affairs
RCN TELECOM SERVICES, LLC
196 Van Buren Street, Suite 300
Reston, VA 20170

William A. Haas
Corporate Vice President of Public Policy
And Regulatory
PAETEC
1 Martha's Way
Hiawatha, IA 52233

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EXECUTIVE SUMMARY

Although the Commission’s “superior quality” rules were vacated, the Act and binding Commission rules require ILECs to modify their networks to facilitate interconnection with competitors. Section 251(c)(2) is technology neutral, and once a method of interconnection has been shown to be “technically feasible,” ILECs must make it available, regardless of economic considerations. Although an ILEC may recover the costs of a more expensive form of interconnection through just and reasonable rates, ILECs are unlikely to meet their burden of proving IP-IP interconnection is more expensive. The FCC and industry have recognized that the transition to IP should result in cost *savings*, not cost increases.

The only reason why ILECs could possibly characterize IP interconnection as “novel” today is because they refuse to offer it to CLECs through their ILEC operations. When viewed from the perspective of the industry as a whole, IP interconnection is decidedly not novel. Far from being “unbuilt,” non-existent, or a “superior” form of interconnection, CLECs, ILECs and/or ILEC affiliates have all deployed IP in their networks and carriers have interconnected their networks to exchange traffic in IP format, demonstrating that IP-to-IP interconnection is both possible and technically feasible. AT&T’s and Verizon’s arguments that TWTC requests interconnection with an “unbuilt” or superior network simply do not reflect reality.

There is no technical or economic reason why ILECs without the capability to convert VoIP calls to TDM or TDM calls to VoIP would not be able to achieve IP-to-IP interconnection. The equipment needed to enable IP interconnection is widely available and deployed within both CLEC and ILEC networks (and/or the ILECs’ affiliates networks). The Commission cannot permit the ILECs to avoid their section 251(c)(2) obligations by alleging that IP networks are

“unbuilt” where the ILECs’ wholesale SIP and IP interconnection interfaces are owned by their affiliates.

Regardless of the classification of VoIP as a telecommunications service or an information service, CLECs have the right to utilize interconnection for exchange of VoIP services so long as they also offer a telecommunications service through the same arrangement. PAETEC and RCN are each CLECs that offer telephone exchange and exchange access services. Thus, they are permitted to use their interconnections for the exchange of information services as well as telecommunications services. Requiring CLECs to provide VoIP services through separate and distinct interconnection arrangements would increase their transaction costs and require them to provide services inefficiently. The Commission has already determined such separate arrangements are inconsistent with the market-opening provisions of the Telecommunications Act of 1996. The Commission should affirm that providers of telecommunications services are entitled to request IP-to-IP interconnection under section 251(c)(2) of the Act and grant TWTC’s petition.

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**REPLY COMMENTS OF PAETEC HOLDING CORP.,
AND RCN TELECOM SERVICES, LLC**

PAETEC Holding Corp., (“PAETEC”) (on behalf of its operating subsidiaries PAETEC Communications, Inc., McLeodUSA Telecommunications Services, L.L.C., and the common carrier operating subsidiaries of US LEC L.L.C. and Cavalier Telephone) (“PAETEC”) and RCN Telecom Services, LLC (“RCN”) (jointly, the “CLECs”), submit the following Reply Comments in support of the Petition for Declaratory Ruling (“TWTC Petition” or “Petition”) filed with the Commission on June 30, 2011, by tw telecom inc. (“TWTC”).¹

I. The Commission Should Confirm that Section 251(c)(2) Is Technology Neutral and Requires IP-to-IP Interconnection To Facilitate the Transition to All IP Networks

Google, Sprint, Skype, TWTC, state agencies, consumer advocates, a host of CLECs, and others have all recognized that: “*Interconnection is the glue* that holds together the network, and the statutory obligation to offer *interconnection should not be obscured by this transition*” to IP networks.² The New Jersey Division of Rate Counsel, a consumer advocate, observes:

¹ *In the Matter of 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, Petition (June 30, 2011) (“TWTC Petition”).

² *See, e.g.*, Ex Parte of Google, Skype, Vonage, and Sprint, WC Docket No. 10-90 et al., at 9 (Aug. 18, 2011) (emphasis added) (“Ex Parte of Google, et al.”); TWTC Petition, at 2 (“The incumbent LECs’ interconnection duty is therefore central to the competition framework established by the 1996 Act”); Google Inc. Comments (“Google Comments”), at 2 (Aug. 15, 2011) (“Facilitating IP interconnection is a necessary part of this

Regulatory clarity is essential so that as consumers migrate away from “traditional” telecommunications services to those that rely on newer forms of technology, *these essential interconnection obligations are not eroded*. ILECs have been able to construct and maintain a public switched telephone network as a direct result of their historic monopoly and their historic access to a source of ratepayer-guaranteed revenues. Consumers have a unique and compelling interest in ensuring that the public switched telephone network — which they have helped to fund — is configured and operated in a manner that encourages efficient and *seamless interconnection, regardless of providers’ choice of technology*.³

The Commission has determined that “[f]or competition to thrive, the principle of interconnection - in which consumers of one service provider can communicate with customers of another - *needs to be maintained*”⁴ during the transition. Accordingly, the National Broadband Plan recommends that the Commission “clarify interconnection rights and obligations and encourages the shift to IP-to-IP interconnection,” in order to ensure a “smooth transition.”⁵

Nothing in Section 251(c)(2) indicates that the ILECs’ obligation to provide direct interconnection to requesting carriers at any technically feasible point was intended to be limited to any particular form of transmission technology (*e.g.*, circuit-switched traffic). This is not surprising as “[w]hen Congress enacted the [1996 Act], it was well aware that telecommunications technology had never been static.”⁶

In order to ensure continued competition and a smooth transition from mixed TDM and IP networks to all-IP networks, the CLECs concur with TWTC’s position, and strongly urge the

process [of moving to IP networks] . . . [t]o this end, Google believes it would be useful for the FCC to clarify and *affirm the statutory obligations of local telecommunications carriers to offer IP interconnection*.” (emphasis added).

³ The New Jersey Division of Rate Counsel Comments, at 3 (Aug. 15, 2011) (emphasis added) (“Regulatory uncertainty complicates new entrant’s ability to negotiate interconnection agreements and therefore could inhibit private investment and deprive consumers of the competitive choice that would otherwise exist.”) (“Rate Counsel Comments”).

⁴ Omnibus Broadband Initiative, Connecting America: The National Broadband Plan, GN Docket No. 09-51, at 49, 59 (2010) (emphasis added) (“the FCC should clarify interconnection rights and obligations and encourage the shift to IP-to-IP interconnection”) (the “National Broadband Plan”).

⁵ National Broadband Plan, at 49 (Recommendation 4.10), 59, 153.

⁶ Rate Counsel Comments, at 4.

Commission to confirm that under the plain statutory language of Section 251(c)(2) ILECs are obligated to offer any form of direct interconnection that is “technically feasible,” including IP-to-IP interconnection, in a manner “at least equal in quality” to that provided by the ILEC to itself or “to any subsidiary, affiliate, or any other party” on terms that are “just, reasonable, and nondiscriminatory.”⁷ It is crucial that the Commission confirm now that IP-to-IP interconnection is within the scope of the ILECs’ obligations under section 251(c)(2) because many interconnection existing interconnection agreements have either expired or do not address IP interconnection. CLECs must be able to enter into meaningful negotiations now for replacement agreements. Unless the Commission confirms the scope of ILEC obligations, the ILECs will stymie negotiations by continuing to deny that they have any obligation to interconnect on an IP-to-IP basis at all.⁸

II. Compliance With the Existing ILEC Obligation To Modify Their Networks to Facilitate IP Interconnection Under Section 251(c)(2) Is Not Tantamount To A Request For Interconnection With a “Superior” Or “Unbuilt” Network

Verizon and AT&T argue that ILECs cannot be compelled to permit interconnection to a superior, as-yet-unbuilt network.⁹ AT&T in particular relies on a decision by the Court of Appeals for the Eighth Circuit to argue that the “Act requires access ‘only to an incumbent

⁷ Section 251(c)(2) provides that incumbent LECs have: “The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network - - (A) for the transmission and routing of telephone exchange service and exchange access; (B) *at any technically feasible point* within the carrier's network; (C) 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; and (D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title.” 47 U.S.C. § 251(c)(2) (emphasis added); 47 C.F.R. § 51.305(a)(2).

⁸ The Commission’s observations in 1996 remain true today: “Negotiations between incumbent LECs and new entrants are not analogous to traditional commercial negotiations in which each party owns or controls something the other party desires . . . The inequality of bargaining power between incumbents and new entrants militates in favor of rules that have the effect of equalizing bargaining power in part because many new entrants seek to enter national or regional markets.” *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, at ¶ 55 (1996) (emphasis added) (“First Local Competition Order”).

⁹ Verizon and Verizon Wireless Comments, at 2, 8-11 (Aug. 15, 2011) (“Verizon Comments”).

LEC's *existing* network -- not to a yet unbuilt superior one.”¹⁰ In this quote regarding “a yet unbuilt” network, the Court refers only to the section 251(c)(3) unbundling obligation, and not to the section 251(c)(2) direct interconnection obligation as implied by AT&T.¹¹ Although the Court also vacated the FCC’s initial rule mandating access to “superior quality” interconnection,¹² it “endorse[d] the Commission’s statement that ‘the obligations imposed by sections 251(c)(2) *include modifications to incumbent LEC facilities to the extent necessary to accommodate interconnection or access to network elements.*’”¹³ The Court noted that the “petitioners [*i.e.*, ILECs] themselves appear to acknowledge that the Act requires some modification of their facilities” to accommodate interconnection with competitors.¹⁴

Further, the Commission’s current rules, which have been upheld, provide: “The fact that an incumbent LEC must modify its facilities or equipment to respond to such request does not determine whether satisfying such request is technically feasible.”¹⁵ The Commission determined that:

Congress intended to obligate the incumbent to accommodate the new entrant's network architecture by requiring the incumbent to provide interconnection “for the facilities and equipment” of the new entrant. Consistent with that intent, the *incumbent must accept the novel use of, and modification to, its network facilities to accommodate the interconnector* or to provide access to unbundled elements.¹⁶

¹⁰ Opposition of AT&T, at 9, *quoting Iowa Utilities Board, et al., v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997) (“AT&T Comments”).

¹¹ *Iowa Utilities Board*, 120 F.3d 813 (“Because the Commission's rule requires superior quality interconnection when requested, see 47 C.F.R. § 51.305(a)(4), the rule is not supported by the Act’s language. We also agree with the petitioners' view that *subsection 251(c)(3)* implicitly requires unbundled access only to an incumbent LEC's existing network—not to a *yet unbuilt superior one.*”) (emphasis added).

¹² See former FCC rule at 47 C.F.R. § 51.305(a)(4) (1996) (emphasis added).

¹³ *Iowa Utilities Board*, 120 F.3d 813, n.33.

¹⁴ *Id.*; Reply Brief for Petitioners Regional Bell Companies and GTE, No. 96-3321, at 40 (8th Cir. Jan. 6, 1997).

¹⁵ 47 C.F.R § 51.5; First Local Competition Order, at ¶¶ 198-202 (emphasis added).

¹⁶ First Local Competition Order, at ¶ 202.

Thus, notwithstanding vacation of the “superior quality” rules, the Commission and Eighth Circuit recognize that the Act requires ILECs to modify their networks to facilitate interconnection with competitors.

The Commission defined “technically feasible” as encompassing only “technical or operational concerns, rather than *economic*, space, or site considerations.”¹⁷ The fact that “economic” considerations are not relevant in the determination of “technical feasibility” underscores that ILECs are required to incur costs to modify their networks to accommodate interconnection, even a “novel” method of interconnection.¹⁸ The Eighth Circuit upheld the Commission’s exclusion of economic considerations, holding:

The petitioner fears that ignoring the economic costs of points of interconnection or unbundled access could result in incumbent LECs having to incur unwarranted expenses in order to meet the demands of competing carriers seeking access to their networks. *We, however, believe that the FCC's definition of “technically feasible” is reasonable and entitled to deference.* Although economic concerns are not to be considered in determining if a point of interconnection or unbundled access is technically feasible, *the costs of such interconnection or unbundled access will be taken into account when determining the just and reasonable rates, terms, and conditions for these services.* See 47 U.S.C.A. §§ 251(c)(2), (3). Under the Act, an incumbent LEC will recoup the costs involved in providing interconnection and unbundled access from the competing carriers making these requests. Consequently, we conclude that the FCC's definition of “technically feasible” *will not unduly burden the incumbent LECs*, and we uphold the Commission's definition.¹⁹

Verizon’s admonishment that the “Act does not require incumbent local exchange carrier to interconnect in IP format”²⁰ and RBOC concerns about costs are misplaced. Section 251(c)(2) is technology neutral, and once a method of interconnection has been shown to be “technically

¹⁷ First Local Competition Order, at ¶¶ 198, 202-203.

¹⁸ See, e.g., *Verizon Maryland, Inc. v. Core Communications, Corp.*, 2010 WL 5189455, at * 6-7 (4th Cir. 2010) (Holding that Verizon is required to provide interconnection under section 251(c)(2) through an OC-12 Loop Ring).

¹⁹ *Iowa Utilities Board*, 120 F.3d 813 (upholding 47 C.F.R § 51.5).

²⁰ Verizon Comments, at 9.

feasible,” ILECs must make it available. The structure of 251/252 provides ILECs the ability to recover costs of IP interconnection through rates charged to interconnecting carriers that may be negotiated by the parties or, if negotiations are unsuccessful, set by state commissions using the FCC’s pricing methodology, which has been reviewed and affirmed by the U.S. Supreme Court. Thus, Verizon’s admonishment that: “granting the TWTC Petition would simply serve to shift onto ILECs nearly 100 percent of the cost of converting traffic from IP to TDM, or vice versa,”²¹ misrepresents how sections 251/252 operate to protect the interests of both ILECs and competitive providers. Moreover, CLECs doubt that ILECs will ultimately prove that IP-IP interconnection is more expensive. To the contrary, the FCC has recognized that “the 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.”²²

The only reason why ILECs could possibly characterize IP Interconnection as “novel” today is because they refuse to offer it to CLECs. When viewed from the perspective of the industry as a whole, IP interconnection is decidedly not novel. Far from being “unbuilt,” non-existent, or a “superior” form of interconnection, CLECs, ILECs and/or ILEC affiliates²³ have widely deployed IP networks and IP interconnection has been achieved, demonstrating that IP interconnection is “technically feasible.” The Commission interpreted “feasible” as meaning “capable of being accomplished or brought about; *possible*.”²⁴ Further, the Commission determined that successful interconnection “at a particular point in a network, using particular

²¹ *Id.* at 11.

²² *See, e.g.*, NPRM, at ¶ 506; Google Comments, at 2, 4 (“IP networks decrease provisioning and circuit costs, switch costs, space needs, energy costs, signaling costs, and associated overhead while improving network reliability and survivability.”).

²³ AT&T Comments, at 9. (“it is the ILECs’ affiliates (such as their long distance affiliates) that have deployed IP networks and are offering IP-based services (including VoIP services), and that are converting IP traffic to TDM for transmission and routing on the PSTN where necessary.”).

²⁴ First Local Competition Order, at ¶ 202 (emphasis added).

facilities, is substantial evidence that interconnection or access is technically feasible at that point or at substantially similar points in networks employing substantially similar facilities.”²⁵ The Commission also determined that “previous successful interconnection at a particular point in a network at a particular level of quality constitutes substantial evidence that interconnection is technically feasible at that point, or substantially similar points, *at that level of quality*.”²⁶

If an ILEC uses SIP, ATM or any other IP-to-IP interconnection methods in its network or provides such interconnection to any other entity, including its own affiliates and subsidiaries or third parties, then such method is *de facto* technically feasible and becomes a mandatory method and form of interconnection under the section 251(c)(2) of the Act.²⁷ The Act mandates that an ILEC provide interconnection in a manner “at least equal in quality” to that provided by the ILEC to “itself or to any subsidiary, affiliate, or any other party.” The nondiscrimination obligation under 251(c)(2) prohibits an ILEC from discriminating against competitors by providing them less favorable terms and conditions of interconnection than it provides itself.²⁸ Any interconnection method implemented, even once, by an ILEC or its affiliates and subsidiaries becomes a “floor” that establishes the required level of quality, not a ceiling.²⁹ As the Eighth Circuit noted, the phrase “at least equal in quality,” “*establishes a floor* below which the quality of the interconnection may not go.”³⁰ Further, “[t]his obligation is not limited to a

²⁵ First Local Competition Order, at ¶ 204.

²⁶ First Local Competition Order, at ¶ 204 (emphasis added).

²⁷ See, also 47 C.F.R. § 51.305(c)-(d) (“Previous successful interconnection at a particular point in a network, using particular facilities, constitutes substantial evidence that interconnection is technically feasible at that point, or at substantially similar points, in networks employing substantially similar facilities. Adherence to the same interface or protocol standards shall constitute evidence of the substantial similarity of network facilities.”).

²⁸ First Local Competition Order, at ¶¶ 217-218 (the ILEC “has the incentive to discriminate against its competitors by providing them less favorable terms and conditions of interconnection than it provides itself. Permitting such circumstances is inconsistent with the procompetitive purpose of the Act.”).

²⁹ 47 U.S.C. § 251(c)(2); 47 C.F.R. § 51.305(a)(2).

³⁰ *Iowa Utilities Board*, 120 F.3d 813.

consideration of service quality as perceived by end users, and includes, but is not limited to, service quality as perceived by the requesting telecommunications carrier.”³¹ As the Fourth Circuit Court of Appeals recently stated: “These rules reflect a clear and unequivocal intention that the *requesting telecommunications carrier is to play a significant role in determining the type and quality of interconnection* it received from the ILEC.”³²

III. The Record Establishes That IP Networks Are Widely Deployed And IP Interconnection Is Technically Feasible

The RBOCs admit that they have deployed at least some IP technology in their ILEC networks and have more extensively deployed IP technology in the networks of their affiliates.³³ This deployment shows that IP interconnection is technically feasible and triggers their obligation to offer IP interconnection to CLECs.

The record clearly demonstrates that ILECs have already widely deployed IP in their or their affiliates’ networks demonstrating that IP interconnection is technically feasible and must be offered.³⁴ CompTel cited examples of each RBOC’s use of IP technology within its (or its affiliates) networks.³⁵ As CompTel argued, “[t]he three largest incumbent LEC enterprise –

³¹ 47 C.F.R. § 51.305(a)(3).

³² *Verizon Maryland*, 2010 WL 5189455, at * 6 (4th Cir. 2010) (emphasis added) (interconnection at high capacity loops is technically feasible).

³³ *See, e.g.*, AT&T Comments, at 9 (“it is the ILECs’ affiliates (such as their long distance affiliates) that have deployed IP networks and are offering IP-based services (including VoIP services), and that are converting IP traffic to TDM for transmission and routing on the PSTN where necessary.”); Verizon Comments, at 9 (“Verizon’s ILEC network — and the equipment it uses for its own interconnection — remains *primarily* TDM-based.”) (emphasis added); Larry Hettick & Steve Taylor, *Verizon offers VoIP service for FiOS customers*, Network World (June 4, 2010) (“FiOS Digital Voice has been launched in 11 states and the District of Columbia . . . Verizon plans to extend the service to FiOS business customers later this year.”).

³⁴ *See, e.g.*, TWTC Petition, at 5, 20, n.11; Sprint Nextel Corporation Comments, NBP Public Notice #25, GN Docket No. 09-51 *et al.*, at 8-9 (filed Dec. 22, 2009) (“increasingly, ILECs such as AT&T with its U-verse service and Verizon with its FiOS service, originate IP calling and handle it over their Managed Packet carrier networks. ILECs also offer IP voice calling to their Enterprise customers. Additionally, the core networks of AT&T, Verizon, and other carriers are rapidly being upgraded to IP technology, while at the same time, their MPLS services to Enterprise customers [are] IP-based.”).

³⁵ CompTel Comments, WC Docket No. 10-90, CC Docket No. 01-92 *et al.*, at 7 n.7 (April 18, 2011) (“CompTel April 18 Comments”); CompTel Ex Parte, at 2, n.7 and Attachment 1 (“AT&T will interconnect

AT&T, Verizon and CenturyLink/Qwest – all have extensive IP networks but have resisted allowing their competitors to interconnect on an IP-to-IP basis for the exchange of VoIP traffic pursuant to Section 251.”³⁶ Many ILECs already use IP technologies within their networks for switching and/or transmission of voice traffic.³⁷ For example, Verizon’s FIOS service and AT&T’s U-Verse service³⁸ are both widely reported to be based on IP technology. Also, Verizon offers SIP interfaces with its IP network³⁹ and industry reports indicate that “AT&T is

in IP-format for domestic can international long distance calling” using its AT&T Voice Over IP Connect Service (‘AVOICS’) available from AT&T Wholesale.”). CompTel Ex Parte, AT&T describes AVOICS as providing “long distance termination of ‘native’ IP traffic, defined as traffic that originates as IP and is transported as IP from its point of origin to AT&T.” CompTel Ex Parte, Attachment 1, Description of AVOICS.

³⁶ CompTel April 18 Comments, at 7-8. *See, e.g.*, Qwest’s description of its IP Voice 1+ Termination service at <http://www.easyt1.net/qwest-sip-termination> (“Qwest IP Voice 1+ Termination service provides an IP-based connection for voice traffic exchange with other service providers. Once connected to Qwest’s OC-192 multi-protocol label switching (MPLS) network, with over 1,700 access points and over 16,000 routes, you will benefit from soft switch technology that achieves quality comparable to the public switched telephone network (PSTN).”) (emphasis added); Verizon’s description of its SIP Gateway Service, available at <http://www22.verizon.com/wholesale/solutions/solution/sip%2Bgateway%2Bservice.html> (“SIP Gateway Service provides origination of local and long distance calls from the PSTN to Verizon’s extensive VoIP network.”).

³⁷ PAETEC et al. Comments, at 8-9, n.14 (Aug. 15, 2011); *See, e.g.*, CenturyLink’s description of its IP Voice 1+Termination product available at <http://www.centurylink.com/wholesale/pcat/natipvoiceterm.html> (“No longer will you need to purchase or manage the gateways necessary to make these conversions – CenturyLink does it all! First, your IP voice traffic traverses the CenturyLink IP transport to the Session Border Controller (SBC). The SBC provides the necessary firewall protection to give your traffic an additional level of protection on CenturyLink’s IP voice infrastructure. CenturyLink’s media gateways terminate your IP voice calls to the TDM circuit-switched network. Calls are terminated either domestically or internationally to the PSTN via TDM ... Connect to CenturyLink’s network using a DS-1 to OC-48 dedicated data circuit. Providers collocated in a CenturyLink point of presence (PoP) location may connect via an Ethernet cross-connect. Service providers may also connect via the public Internet[.]”).

³⁸ *See*, AT&T, Inc. 2010 Annual Report at 5-6 (“Our third major growth platform is AT&T U-verse, an integrated set of services – high quality TV with unique features and functionality, high speed Internet, and voice – all delivered over an advanced Internet Protocol network”).

³⁹ *See*, Verizon’s description of its SIP Gateway Service available at <http://www22.verizon.com/wholesale/solutions/solution/SIP%2BGateway%2BService> (“SIP signaling is exchanged between Customers’ network and Verizon via a secure IPsec tunnel connection. Media/RTP can be sent to Verizon VoIP gateways via the Public Internet (i.e. some other provider’s broadband access to the Internet), via a Verizon-provided Internet Dedicated Access connection or via a Verizon-provided SIP Internet Access connection.”) (“SIP Gateway Service provides origination of local and long distance calls from the PSTN to Verizon’s extensive VoIP network. Termination of both local and long distance calls . . .from the Verizon VoIP network to the PSTN also leverages Verizon’s expansive domestic and international TDM network.”).

gearing up a full-blown SIP transport architecture and plans to peer with a select number of Tier 1 providers.”⁴⁰

Even if an ILEC does not currently use IP interconnection in its network that does not mean that these methods are not technically feasible. The Commission’s rules provide that a type of interconnection may be “technically feasible” even if the ILEC is not currently using it, and even if the ILEC must incur additional costs. Further, the ILEC bears the burden to demonstrate a method of interconnection is not technically feasible and must provide competitors with information on its network.⁴¹ As CompTel notes, “[s]mall incumbent LECs have established IP traffic exchange arrangements among themselves to reduce cost and gain efficiency. VisionNet is a joint-venture owned by nine small local telephone companies in Montana that rely on a jointly-owned managed IP network to exchange and terminate traffic.”⁴² As Cablevision explains, IP interconnection for the exchange of voice traffic is currently available through the Voice Peering Fabric which offers VoIP providers single meet points to exchange traffic in IP format and that cable providers have been developing a model to exchange traffic among themselves.⁴³ Neutral Tandem explains that it offers IP interconnection for the

⁴⁰ Doug Mohney, *AT&T Discusses Its SIP Peering Architecture*, at 1 (Oct. 19, 2010) (“Unlike IP peering, AT&T doesn’t believe that SIP peering will be settlement-free. Instead, there will be a number of business models (i.e., rates) with SLAs included in the service.”).

⁴¹ 47 C.F.R. § 51.305(e) (“An incumbent LEC that denies a request for interconnection at a particular point must prove to the state commission that interconnection at that point is not technically feasible”); § 51.305(g) (“An incumbent LEC shall provide to a requesting telecommunications carrier technical information about the incumbent LEC’s network facilities sufficient to allow the requesting carrier to achieve interconnection consistent with the requirements of this section.”).

⁴² Ex Parte of CompTel, GN Docket No. 09-51, at 2 (Jan. 25, 2010) (“CompTel Ex Parte”); *See*, Presentation of Anthony Marcello, MetaSwitch, to OPASTCO 2009 Technical and Marketing Symposium, at 5-6. <http://www.opastco.org/doclibrary/1918/Marcello.pdf>. *See also*, <http://www.vision.net/about.php>.

⁴³ Cablevision Comments, WC Docket No. 10-90, CC Docket No. 01-92 *et al.*, at 9, n.24 (April 18, 2011).

exchange of voice traffic.⁴⁴ Further, soft-switch vendors have reported that their products are increasingly used by rural LECs, among other carriers.⁴⁵ Finally, as AT&T acknowledges, there are “a variety of market-based options for converting [VoIP] traffic into TDM format before handing it off to TDM-based carriers - including services offered by Neutral Tandem, HyperCube and others.”⁴⁶ These examples all show that IP-IP interconnection is technically feasible.

There is no technical or economic reason why ILECs without the present capability to convert VoIP calls to TDM or TDM calls to VoIP would not be able to achieve IP-to-IP interconnection.⁴⁷ The equipment needed to enable IP interconnection is now widely available and deployed within both CLEC and ILEC networks (and/or the ILECs’ affiliates networks)⁴⁸ so there is no doubt that such interconnection is technically feasible and therefore must be made available pursuant to section 251(c)(2). AT&T and Verizon’s arguments that TWTC requests interconnection with an “unbuilt” or superior network simply do not reflect reality.

The CLECs understand that certain ILECs may claim that they do not have IP facilities by virtue of a corporate shell game wherein IP network assets have been placed in corporate affiliates of the ILECs. CompTel has observed that: the “three largest incumbent LEC

⁴⁴ Neutral Tandem Comments, WC Docket No. 10-90, CC Docket No. 01-92 *et al.*, at 5 (April 18, 2011) (“Neutral Tandem currently offers carriers the ability to exchange traffic seamlessly on an IP-to-IP basis, as well as between TDM-based and IP-based networks. As a result, the amount of traffic Neutral Tandem receives in IP format has grown substantially.”).

⁴⁵ “GENBAND Scores Rural Telco Win With Eastex,” telecompetitor.com (Sept. 9, 2010) at <http://www.telecompetitor.com/genband-scores-rural-telco-win-with-eastex/> (“GENBAND, a leading developer of IP solutions and services, and Eastex Telephone Coop., Inc. (Eastex), one of the largest rural carriers in Texas, today announced the deployment of GENBAND’s industry-leading C15™ Compact Softswitch to deliver communication services to Eastex’ residential and business subscribers across rural East Texas.”)

⁴⁶ AT&T Comments, at 3.

⁴⁷ *See, e.g.*, TWTC Petition, at 4, 20-21, Attachment A, Affidavit of McNamara, at ¶ 10 (“Nor is there any doubt that establishing IP-IP interconnection is technically feasible since TWTC has already established such arrangements with two long distance carriers and a provider of E911 service.”).

⁴⁸ *See, e.g.*, Ex Parte of Google, *et al.*, at 2 (“much of the nation’s communications networks have already been upgraded and enjoy the benefits of IP.”).

enterprises – AT&T, Verizon and CenturyLink/Qwest – all have extensive [wholesale] IP networks” but “[i]n an apparent effort to shield their IP networks and SIP termination services from negotiated or arbitrated interconnection agreements with other carriers, AT&T, Verizon and CenturyLink/Qwest offer their Internet/IP services through various affiliates (AT&T Internet Services, Verizon Business, Qwest Long Distance) rather than through their regulated local exchange carrier operating companies.”⁴⁹ Despite this shell game, the issue of which ILEC affiliate owns what facilities and equipment is irrelevant to determining whether a particular form of interconnection is “technically feasible.” Further, the section 251(c)(2) obligation for direct interconnection requires an ILEC to provide interconnection that is “at least equal in quality” that provided “to itself or to *any subsidiary, affiliate, or any other party to which the carrier provides interconnection.*”⁵⁰

As CompTel notes, the D.C. Circuit vacated a Commission order that would have enabled an RBOC “to avoid its Section 251(c) obligations by setting up a wholly owned affiliate to offer advanced services.”⁵¹ In that case, the Court held that “to allow an ILEC to sideslip § 251(c)’s requirements by simply offering telecommunications services through a wholly owned affiliate seems to us a circumvention of the statutory scheme.”⁵² Likewise, the Commission should not permit the ILECs to avoid their section 251(c)(2) obligations by alleging that IP networks are “unbuilt” where the ILECs already use IP technology for interoffice transport and end user connections while asserting that their wholesale SIP and IP interconnection interfaces are owned by their affiliates and therefore unavailable.

⁴⁹ CompTel April 18 Comments, at 7-8.

⁵⁰ 47 U.S.C. § 251(c)(2) (emphasis added).

⁵¹ CompTel April 18 Comments, at 8; *Association of Communications Enterprises v. FCC*, 235 F.3d 662, 668 (D.C. Cir. 2001) (The FCC acted unreasonably in allowing statutory resale obligations under section 251(c)(4) to be avoided by providing certain advanced services through a subsidiary.).

⁵² *Association of Communications Enterprises*, 235 F.3d at 666.

IV. Once A CLEC Establishes Interconnection for Telecommunications Services, Existing Rules Permit the Use of Such Interconnection For Information Services

Regardless as to whether VoIP is telephone exchange service or exchange access,⁵³ or an information or telecommunications service, carriers that provide non-VoIP telephone exchange service or exchange access are entitled to section 251(c)(2) interconnection for any VoIP service traffic they happen also to be exchanging. While section 251(c)(2) requires an ILEC to provide interconnection “for the transmission and routing of telephone exchange service and exchange access,” the statute does not *limit* the use of such interconnection to only those services. Once a carrier is entitled to interconnection at all, it may also use that interconnection to support other services, including VoIP services or information services.

As the Commission has explained, “the fact that a telecommunications carrier is also providing a non-telecommunications service is not dispositive of its [interconnection] rights.”⁵⁴ Rather, section 51.100(b) of the Commission’s rules provides the right of “a telecommunication carrier that has interconnected or gained access under sections 251(a)(1), 251(c)(2), or 251(c)(3) of the Act, [to] offer information services through the same arrangement.”⁵⁵ Thus, regardless of the classification of VoIP as a telecommunications service or an information service, CLECs have the right to utilize interconnection for exchange of VoIP services so long as they also offer a telecommunications service “through the same arrangement.”⁵⁶ PAETEC and RCN are each CLECs that offer telephone exchange and exchange access services. Thus, PAETEC, RCN and

⁵³ As stated in their initial Comments, the CLECs maintain that assuming TWTC’s factual allegations are accurate, it would necessarily follow that TWTC’s services at issue are “telecommunications services.” PAETEC et al. Comments, at 2 .

⁵⁴ *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 if the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum Opinion and Order, 22 FCC Rcd 3513, at n.39 (2007) (“Time Warner Cable Order”) (“we make clear that the rights of telecommunications carriers under sections 251(a) and (b) apply regardless of whether the telecommunications services are wholesale or retail”).

⁵⁵ 47 C.F.R. § 51.100(b).

⁵⁶ *Id.*

similarly situated CLECs are permitted to use their interconnections for the exchange of information services as well as telecommunications services. Assuming, *arguendo*, that VoIP is an information service, current Commission rules require ILECs to exchange VoIP with CLECs such as PAETEC and RCN through the same interconnection arrangement established for telephone exchange service and exchange access.

As the Commission stated in the *Local Competition Order*: “Under a contrary conclusion, a competitor would be precluded from offering information services in competition with the incumbent LEC under the same arrangement, thus increasing the transaction cost for the competitor[;] [w]e find this to be contrary to the pro-competitive spirit of the 1996 Act.”⁵⁷ By rejecting this outcome, the Commission enabled CLECs to compete with ILECs “by offering a full range of services to end users without having to provide some services inefficiently through distinct facilities or agreements.”⁵⁸ As such, the regulatory classification of VoIP services is not relevant with respect to the ILEC’s obligations under Section 251(c)(2), so long as the interconnecting party is also offering telecommunications services.

The Commission can and should apply the same logic, recently affirmed in its CRC Order with respect to interconnection under section 251(a), to interconnection obtained under section 251(c)(2), and affirm that so long as a carrier is otherwise providing telephone exchange service or exchange access, it may obtain interconnection with an ILEC under section 251(c)(2) and utilize that interconnection for VoIP traffic regardless whether the specific VoIP service itself falls within these categories.⁵⁹ Indeed, many CLECs that carry VoIP traffic carry circuit-

⁵⁷ First Local Competition Order, at ¶ 995.

⁵⁸ *Id.*

⁵⁹ See generally, Time Warner Cable Order, at ¶¶ 11-12; *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*, 26 FCC Rcd 8629, 8273, at ¶ 26 (May 26, 2011) (“CRC Order”) (“We reaffirm the Bureau's

switched traffic as well, and interconnect with ILECs to exchange both.⁶⁰ As explained above, those rights the carrier obtains under section 251(c)(2) include a right to IP-to-IP interconnection.

V. Conclusion

For the foregoing reasons, the Commission should affirm that providers of telecommunications services are entitled to request IP-to-IP interconnection under section 251(c)(2) of the Communications Act.

Respectfully submitted,

/s/ William Haas

Joseph Kahl
Senior Director of Regulatory Affairs
RCN TELECOM SERVICES, LLC
196 Van Buren Street, Suite 300
Reston, VA 20170

William A. Haas
Corporate Vice President of Public Policy
And Regulatory
PAETEC
1 Martha's Way
Hiawatha, IA 52233

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finding that wholesale telecommunications carriers are entitled to interconnect and exchange traffic with incumbent LECs pursuant to sections 251(a) and (b) when providing telecommunications services to other service providers, *including for the specific purpose of providing wholesale services to interconnected VoIP providers*. As the Bureau stated, a contrary decision would impede the important development of wholesale telecommunications and facilities-based VoIP competition, as well as broadband investment and deployment, by limiting the ability of wholesale carriers to offer service” (“emphasis added”).

⁶⁰ National Broadband Plan, at 49 (“Without interconnection for voice service, a broadband provider, which may partner with a competitive telecommunications carrier to offer a voice-video-Internet bundle, is unable to capture voice revenues that may be necessary to make broadband entry economically viable.”).