

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

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208

COMMENTS OF TIME WARNER CABLE INC.

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February 24, 2012

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COMMENTS OF TIME WARNER CABLE INC.

Time Warner Cable Inc. (“TWC”) hereby submits these comments in response to the issues raised in Sections XVII.L-R of the Further Notice of Proposed Rulemaking in the above captioned proceedings.¹ In addition to requesting input on a number of additional steps the Commission can take to modernize the intercarrier compensation regime, these portions of the FNPRM highlight the Commission’s complementary goal of promoting network interconnection and the exchange of traffic, particularly as a way of furthering the transition to Internet Protocol

¹ *Connect America Fund*, WC Docket No. 10-90; *A National Broadband Plan for Our Future*, GN Docket No. 09-51; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link-Up*, WC Docket No. 03-109; *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (“Report & Order” and “FNPRM”).

("IP") technology. As a leading provider of competitive voice services, TWC has been actively involved in proceedings before the Commission and at the state level in connection with the exchange of voice traffic that originates or terminates in IP format on the public switched telephone network ("PSTN"). TWC has worked with the Commission to clarify the rights of telecommunications carriers to exchange telecommunications traffic that originates or terminates in an IP format,² and TWC also has urged the Commission to confirm that incumbent local exchange carriers ("ILECs") are required to exchange such traffic in IP format.³ TWC thus appreciates the Commission's interest in using the FNPRM to compile "a more complete record" on IP-to-IP interconnection issues and to develop additional means of ensuring seamless connectivity on the PSTN.⁴ Below, TWC describes a number of steps the Commission should take in that regard, while also recommending several further reforms the Commission should consider in connection with its intercarrier compensation rules.

INTRODUCTION AND SUMMARY

The Commission's emphasis on IP interconnection is timely. Indeed, the Commission already has established an "express goal of facilitating industry progression to all-IP networks," and has confirmed that "ensuring the transition to IP-to-IP interconnection is an important part of

² See *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 8259 (2011) ("CRC Declaratory Ruling"); *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum Opinion and Order, 22 FCC Rcd 3513 (WCB 2007) ("TWC Declaratory Ruling").

³ See Comments of Time Warner Cable Inc., *Connect America Fund, etc.*, WC Docket No. 10-90, at 5-9 (filed Apr. 1, 2011); Comments of Time Warner Cable Inc. – NBP Public Notice #25, *A National Broadband Plan for Our Future, etc.*, GN Docket No. 09-51, at 7-8 (filed Dec. 21, 2009).

⁴ FNPRM ¶ 1335.

achieving that goal.”⁵ However, as the Commission already is well aware, and as TWC has explained in prior comments, many ILECs today employ various anticompetitive tactics to impede the interconnection of IP-based voice networks and the exchange of telecommunications traffic in IP format. In particular, many small ILECs create artificial barriers to competition by refusing to interconnect and exchange voice traffic that originates or terminates in IP format with would-be competitors. Additionally, most ILECs, including those that have deployed their own IP networks, refuse to interconnect pursuant to Section 251 of the Communications Act of 1934, as amended (the “Act”) on an IP-to-IP basis and instead require carriers to convert their packet-based traffic into time division multiplexing (“TDM”) format for interconnection. Such conduct unnecessarily raises competitors’ costs and threatens their ability to offer service, thwarting the public interest in promoting facilities-based competition and undermining the Commission’s universal service goals.

The Commission should put a halt to such anticompetitive conduct by establishing clear duties to ensure that all ILECs interconnect and exchange telecommunications traffic with competitive LECs in whatever technically feasible format the competitor chooses. There is no sound basis in law or policy to treat requests to interconnect and exchange telecommunications traffic via IP facilities differently from requests to interconnect and exchange telecommunications traffic in TDM format. The FNPRM correctly observes that the interconnection provisions set forth in Section 251 of the Act are technology neutral. And the central rationale for interconnection mandates pursuant to Section 251 is that ILECs have ubiquitous telephone networks and market power that they can use to thwart competition—harms that are not altered by the particular technology that LECs employ to transport and exchange

⁵ FNPRM ¶ 1335.

voice traffic on their networks. Mandating IP-to-IP interconnection not only is compelled by Section 251 of the Act but will promote competition, improve service quality, and avoid inefficiencies that impose needless costs on competing carriers and, ultimately, on consumers. The Commission therefore was right to direct carriers to negotiate IP interconnection arrangements in good faith, and it should build on that preliminary requirement by reaffirming that ILECs' interconnection obligations do not vary based on the format used to transmit telephone exchange or exchange access traffic.

Regarding intercarrier compensation, TWC urges the Commission to align the regulatory treatment of originating access and terminating access charges. It made sense for the Commission initially to focus its reforms on terminating access, because it presented a more urgent problem. But now that the Commission has put in place a firm schedule for reducing terminating access charges and transitioning to bill and keep, it can and should promote uniformity by adopting a comparable approach for originating access charges. There is no legitimate reason to apply different intercarrier compensation rules to the two end points of a single telephone call. Moreover, the Commission already has established new default originating and terminating access rates for Voice over Internet Protocol ("VoIP")-PSTN traffic, and taking a similarly comprehensive approach for TDM traffic will promote consistency and uniformity.

In addition, the Commission should ensure reasonable rates for transit and other transport services. There is a significant risk that ILECs will seek to make up reduced per-minute access charges by artificially increasing transit and transport service rates associated with retail or wholesale local exchange traffic. The dearth of competition for such services requires continued regulatory oversight. In particular, including such rates in the revised intercarrier compensation

framework will prevent ILECs from circumventing the Commission’s pro-competitive intercarrier compensation reforms.

DISCUSSION

I. THE COMMISSION SHOULD ENSURE THAT INTERCONNECTION RIGHTS REMAIN INTACT DURING THE TRANSITION TO IP TECHNOLOGY

A. The Commission Should Enforce IP-to-IP Interconnection Rights Pursuant to Section 251 of the Act.

One of the core goals underlying this proceeding is the deployment of, and migration to, IP networks.⁶ The Commission already has recognized that “IP interconnection between providers ... is critical” toward that end, and it thus emphasized that telecommunications carriers “should begin planning for the transition to IP-to-IP interconnection” for the provision of telephone exchange service and exchange access.⁷ Accordingly, the Commission appropriately called on telecommunications carriers to negotiate in good faith to establish IP-to-IP interconnection arrangements during the pendency of this proceeding, stating its clear expectation that such negotiations will “result in interconnection arrangements between IP networks for the purpose of exchanging voice traffic.”⁸ To ensure that these important goals are met, the Commission should confirm that negotiating IP-to-IP interconnection agreements under Section 251 of the Act is not merely an aspiration, but rather is a fundamental statutory obligation of ILECs.

⁶ See, e.g., Report & Order ¶ 11 (identifying as one of four guiding principles for this proceeding the importance of modernizing and refocusing universal service and intercarrier compensation “to make affordable broadband available to all Americans” and thereby “accelerate the transition from circuit-switched to IP networks”); *id.* ¶ 802 (noting “overall goal of promoting a migration to modern IP networks”); *id.* ¶ 968 (“One of the goals of our reform is to promote investment and deployment of IP networks.”).

⁷ *Id.* ¶ 1010.

⁸ *Id.* ¶ 1011.

1. Section 251 of the Act Requires ILECs to Negotiate IP-to-IP Interconnection Agreements in Good Faith.

The FNPRM correctly observes that the interconnection provisions of Section 251 “are technology neutral—they do not vary based on whether one or both of the interconnecting providers is using TDM, IP, or another technology in their underlying networks.”⁹ Indeed, Sections 251(a), (b), and (c) all impose obligations that apply equally to TDM and IP traffic and networks.

Section 251(a), the broadest interconnection provision, imposes a general duty on all telecommunications carriers “to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.”¹⁰ Nothing in the plain language of Section 251(a) limits the basic interconnection duty to a particular technology, and certainly not to TDM technology.¹¹ Section 251(b)(5) further provides that LECs must establish arrangements for the “transport and termination of telecommunications,” which, again, establishes an obligation that applies irrespective of the underlying network technology.¹²

By the same token, Section 251(c)(2) requires ILECs “to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier’s network ... for the transmission and routing of telephone exchange service and exchange access.”¹³ That provision further requires ILECs to interconnect “at any

⁹ FNPRM ¶ 1342.

¹⁰ 47 U.S.C. § 251(a).

¹¹ FNPRM ¶ 1352 (recognizing that Section 251(a)’s requirements “are technology neutral on their face with respect to the transmission protocol used for purposes of interconnection”).

¹² 47 U.S.C. § 251(b)(5).

¹³ *Id.* § 251(c)(2).

technically feasible point within the carrier’s network,”¹⁴ and it does not impose any other technological limitations. In short, the requesting carrier’s entitlement to interconnection turns on the *functions* that qualify it as a LEC, not on the type of *technology* that the carrier employs in its network.

The absence of any technological limitations in these provisions should not be a particular revelation, as the industry has witnessed prior evolutions in technology that did not upend established legal obligations. For instance, the transition from analog switching equipment to digital circuit switches had no bearing on either competitive LECs’ interconnection rights or ILECs’ duties. The further migration from digital circuits to IP packets likewise is irrelevant to the rights and duties established by Section 251. Indeed, the Commission repeatedly has held that the internal use of IP within the telecommunications network does not impact service classification where the service at issue continues to entail a transparent transmission functionality.¹⁵

¹⁴ *Id.*

¹⁵ *See Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, Order, 19 FCC Rcd 7457 ¶ 12 (2004) (“*IP-in-the-Middle Order*”) (holding that AT&T’s service was a telecommunications service even though calls that originate and terminate in TDM format are transported in IP format at some intermediate point); *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 ¶ 9 (2005) (distinguishing broadband Internet access from broadband/IP services used “for basic transmission services,” such as “ATM service, frame relay, [and] gigabit Ethernet service,” and finding that the latter category remained subject to Title II of the Act); *Regulation of Prepaid Calling Card Services*, Declaratory Ruling and Report and Order, 21 FCC Rcd 7290 ¶ 20 (2006) (holding that the use of IP transport in providing prepaid calling card services does not convert service from telecommunications service to information service); *Request for Review of a Decision of the Universal Service Administrator by MeetingOne.com Corp.*, Order, WC Docket No. 06-122, ¶ 12 (WCB Nov. 3, 2011) (holding that the use of IP technology does not alter determination that audio conferencing service is telecommunications and subject to universal service reporting and contribution obligations); *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*,

Similarly, the Commission has made clear that a competitive LEC may obtain interconnection for the specific purpose of routing IP-originated and IP-terminated telephone exchange and exchange access traffic.¹⁶ A requesting carrier may provide telephone exchange service and/or exchange access on a *wholesale* basis to an interconnected VoIP provider, in which case the classification of the distinct retail VoIP service is irrelevant.¹⁷ Alternatively, an interconnected VoIP provider that holds a state-issued certificate of public convenience and necessity to operate as a *retail* telecommunications carrier, and that in fact operates as a common carrier, is entitled to interconnect in its own right.¹⁸ An obligation to negotiate IP-to-IP interconnection is consistent with, and is a logical extension of, these existing interconnection obligations. It makes little sense for carriers to have the right to interconnect to route IP voice traffic, but to be forced unnecessarily to convert that traffic to a different legacy format for interconnection purely at the unilateral demand of ILECs with incentives to impair the ability of other providers to compete.

Consistent with the plain text of Section 251 and extensive precedent, the Commission therefore should reaffirm that, as long as exchanging traffic in IP format is technically feasible, an ILEC is obligated to negotiate IP-to-IP interconnection arrangements for requests made under

First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21906 ¶ 106 (1996) (continuing to treat several categories of protocol processing services as basic services where there was no net protocol conversion from the end user's perspective).

¹⁶ See *CRC Declaratory Ruling* ¶ 26; *TWC Declaratory Ruling* ¶ 15.

¹⁷ *Id.*

¹⁸ See, e.g., *IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 ¶ 38 n.128 (2005).

Section 251(c)(2) as well as under Sections 251(a)(1) and 251(b)(5) combined.¹⁹ Just as the substantive interconnection duties under Section 251 are technology neutral, so too is the duty to negotiate in good faith: As the FNPRM correctly notes, the duty of good faith negotiation under Section 251 “does not depend upon the network technology underlying the interconnection, whether TDM, IP, or otherwise.”²⁰ By explicitly reaffirming this duty to negotiate, the Commission can then leave it to the negotiating parties to develop specific interconnection terms, rather than prescribing rigid rules that will govern IP-to-IP interconnection pursuant to Section 251.²¹ Consistent with the general preference for negotiation reflected in the Act,²² the Commission should not short-circuit the negotiation process for IP-to-IP interconnection by dictating particular network configurations or requiring negotiating parties to incorporate the specific interconnection obligations prescribed for TDM and circuit-switched network interconnection. If a requesting carrier cannot reach a voluntary agreement with the ILEC to exchange traffic in IP format, the competitor may then invoke its arbitration rights under Section 252, allowing interconnection to proceed in the IP context under the same procedures that have

¹⁹ The FNPRM also seeks comment on possible sources of legal authority for requiring IP-to-IP interconnection. *See, e.g.*, FNPRM ¶ 1369-71. Because the Commission has clear authority to require IP-to-IP interconnection pursuant to Section 251 for interconnection requests involving retail or wholesale local exchange or exchange access (which should be the Commission’s sole focus as it considers this issue), there is no need for it to invoke other sources of legal authority, such as Title I of the Act or Section 706 of the Telecommunications Act of 1996.

²⁰ FNPRM ¶ 1011.

²¹ *See* FNPRM ¶ 1368 (asking whether the Commission should set default rates, terms, and conditions for interconnection, from which providers would negotiate alternatives).

²² *See, e.g.*, 47 U.S.C. § 252(a).

governed the exchange of voice traffic on the PSTN since 1996,²³ while enabling the development of specific arrangements that reflect the unique structure of IP networks.²⁴

2. Critical Public Policy Goals Reinforce the Importance of Requiring IP-to-IP Interconnection Pursuant to Section 251.

In addition to being a clear obligation under Section 251 of the Act, IP-to-IP interconnection for the provision of telephone exchange service and exchange access is essential to the advancement of some of the Commission’s central policy goals. The National Broadband Plan recognized that “[b]asic interconnection regulations” have been “a central tenet of telecommunications regulatory policy for over a century,” and that “[f]or competition to thrive, the principle of interconnection ... needs to be maintained.”²⁵ Interconnection not only is necessary to enable facilities-based voice competition, but can be vital to establishing an economic case for broadband deployment in rural areas.²⁶

Mandating IP-to-IP interconnection is necessary not only to promote continued competition for voice services, but also to avoid inefficiencies that impose needless costs that

²³ See 47 U.S.C. § 252(c)(1) (providing that a state commission shall arbitrate any open issues and ensure that its resolution complies with the interconnection and other requirements of section 251 and the FCC’s implementing rules).

²⁴ For example, under the current Section 251 interconnection requirements, a single point of interconnection in each LATA is specified so that competitive LECs are not forced to interconnect at multiple places within the LATA. See *id.* § 252(c)(2)(B). With IP networks, there is no need even for that level of interconnection.

²⁵ *Connect America: The National Broadband Plan* at 49.

²⁶ *CRC Declaratory Ruling* ¶ 27 (“In reaffirming these interconnection rights, we promote facilities-based voice competition, and also bolster the case for deploying additional broadband facilities and upgrading existing broadband networks in rural areas.”); see also *id.* ¶ 12-13; *TWC Declaratory Ruling* ¶¶ 8, 13 (stating that enforcing interconnection rights promotes “wholesale telecommunications and facilities-based VoIP competition” as well as broadband deployment, an outcome that “holds particular promise for consumers in rural areas”); see also Comments of Time Warner Cable Inc., *Connect America Fund, etc.*, WC Docket No. 10-90, at 5-6 (filed Jan. 18, 2012) (“TWC CAF FNPRM Comments”).

hold back broadband deployment and adoption. Absent clarity regarding the status of IP interconnection, IP-based voice competitors will be forced to convert traffic to TDM format for no purpose other than to accommodate legacy interconnection facilities utilized by ILECs. ILECs should not be able to wield their market power to force competitors to employ complex and costly measures to exchange traffic, especially when the additional costs of those unnecessary actions are ultimately passed through to consumers.²⁷ Additionally, increasing the costs and complexity of interconnection by preventing IP-originated voice traffic from being exchanged in IP format can diminish service quality and impede innovation. IP-to-IP interconnection for the transmission and routing of telephone exchange traffic thus is a critical step in advancing the Commission's interest in transitioning to IP-based networks.

Some ILECs have argued that because "the Internet," broadly understood, has thrived despite minimal regulation, IP interconnection agreements should be governed solely by market forces.²⁸ But that is mere obfuscation. Although "Internet Protocol" has the word "Internet" in it, IP-to-IP interconnection under Section 251 does *not* involve "traffic exchanges on the Internet."²⁹ Rather, the only service at issue in this context is the facilities-based exchange of

²⁷ See, e.g., Petition for Declaratory Ruling of tw telecom inc., *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, as Amended, For the Transmission and Routing of tw telecom's Facilities-based VoIP Services and IP-in-the-Middle Voice Services*, WC Docket No. 11-119, at 5-7 (filed June 30, 2011); Comments of Cablevision Systems Corporation and Charter Communications, Inc. In Response to the Commission's Further Notice of Proposed Rulemaking, *Connect America Fund, etc.*, WC Docket No. 10-90, at 3 (filed Jan. 18, 2012).

²⁸ See, e.g., Comments of AT&T, *Connect America Fund, etc.*, WC Docket No. 10-90, at 16-30 (filed Apr. 18, 2011).

²⁹ *Id.* at 16. In fact, TWC's voice service does not rely on the public Internet at all; rather, TWC's voice traffic is carried on a dedicated, private IP network. In any event, even an "over-the-top" voice provider that uses the Internet for transport must rely on a regulated, competitive LEC in order to exchange traffic on the PSTN.

regulated PSTN traffic (either wholesale or retail, depending on the competitive LEC involved). Notably, a LEC's use of Session Initiation Protocol to exchange voice traffic relies on entirely different network facilities than an Internet service provider's exchange of Internet traffic. Voice call routing and transmission also involves a variety of complex procedures, such as queries to number portability, 911, and routing databases, that do not apply to Internet traffic. AT&T's references to the "Internet" thus cannot justify exempting it from the traditional interconnection duties that have long applied to ILECs irrespective of the network technology employed.³⁰

To the contrary, the public policy concerns underlying ILECs' interconnection obligations under Section 251—their control of ubiquitous telecommunications networks and ability to exercise market power—are not affected by the technology used to exchange voice traffic. The Commission has recognized that ongoing changes in the marketplace—including in particular the emergence of robust facilities-based competition between ILECs and cable telephony providers in some areas—do not obviate the need to maintain interconnection rights. For example, despite granting Qwest forbearance from unbundling obligations and dominant carrier regulation based on extensive facilities-based competition in Omaha, Nebraska, the Commission held that granting forbearance from interconnection requirements would be inappropriate because it would likely give the ILEC (the only carrier with a ubiquitous network) “the ability to exercise market power over interconnection.”³¹ While competitive LECs and interconnected VoIP providers continue to gain traction, their networks cannot come close to

³⁰ In contrast, as discussed below, where the Internet actually is the forum for interconnection disputes—such as in the peering or Internet backbone contexts—the Commission should exercise restraint rather than seek to export requirements intended to apply solely to common carriers. *See infra* Section I.B.

³¹ *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160 in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd 19415 ¶ 86 (2005) (“*Qwest Forbearance Order*”).

matching the ubiquity of ILEC networks (including those that have been upgraded to incorporate more advanced IP-based technology in the last mile), which benefitted from decades of monopoly status and were underwritten by captive ratepayers. Basic interconnection regulation therefore remains necessary in the telecommunications arena, including with respect to IP voice traffic.

Nor can ILECs hide behind corporate structure, claiming that their reliance on separate affiliates to provide IP-enabled voice services negates their Section 251 obligations relating to IP-to-IP interconnection. The D.C. Circuit expressly rejected a similar attempt to evade Section 251 obligations through separate affiliate structures, and that argument fares no better in this context. The court held that allowing an ILEC to “sideslip” Section 251(c) obligations by offering telecommunications services through an affiliate would be “a circumvention of the statutory scheme.”³² Because Congress “did not treat advanced services differently from other telecommunications services” and “did not limit the regulation of telecommunications services to those services that rely on the local loop,” an ILEC may not avoid Section 251 by setting up a wholly owned affiliate to offer such services.³³ The same is true here—Section 251 creates an obligation of ILECs to negotiate interconnection of voice networks in good faith, including IP-to-IP interconnection, and ILECs cannot evade that obligation through corporate artifices.

3. The Commission Should Establish Clear Duties Relating to IP Traffic Exchange to Prevent Further Gamesmanship by Rural LECs.

Even with respect to TDM-to-TDM interconnection, where ILECs’ legal obligations are well-settled, TWC’s experience demonstrates that many rural LECs will adopt tortured legal

³² *Association of Communs. Enters. v. FCC*, 235 F.3d 662, 666 (D.C. Cir. 2001).

³³ *Id.* at 668.

theories to avoid complying with Section 251. As TWC has documented,³⁴ rural LECs in various states have refused to interconnect and exchange TDM traffic pursuant to Section 251 based on trumped-up arguments that (1) ILECs supposedly have no obligation to interconnect when the requesting carrier seeks to exchange telecommunications traffic that originates or terminates in an IP format,³⁵ and (2) a small ILEC’s rural exemption under Section 251(f)(1)—which applies only to the duties set forth in Section 251(c)—should be construed to bar interconnection and the exchange of traffic under Sections 251(a) and (b).³⁶ Even after the Commission took pains on multiple occasions to reject those bogus claims,³⁷ rural ILECs have persisted in relying on them in a transparent attempt to delay interconnection as long as possible. In fact, one ILEC in Ohio—which has flatly refused to negotiate interconnection terms pending a ruling by the state commission on the applicability of its rural exemption—has even asserted that the Commission’s legal rulings on these issues are nothing more than non-binding “guidance” that state regulators are free to disregard.³⁸

Such intransigence by rural LECs with respect to traditional TDM interconnection arrangements for IP-originated or IP-terminated voice traffic warrants crystal clear legal requirements relating to IP-to-IP interconnection. Unfortunately, as some commenters have

³⁴ See, e.g., Comments of Time Warner Cable Inc., *Connect America Fund, etc.*, WC Docket No. 10-90, at 4-5 (filed Jan. 18, 2012) (“TWC CAF FNPRM Comments”).

³⁵ See *TWC Declaratory Ruling* ¶¶ 3-7; Time Warner Cable Notice of *Ex Parte* Presentation, *A National Broadband Plan for Our Future*, GN Docket No. 09-51 (filed Oct. 21, 2009).

³⁶ See *CRC Declaratory Ruling* ¶ 8.

³⁷ *Id.* ¶ 11; *TWC Declaratory Ruling* ¶¶ 8-12, 15-16; *Connect America: The National Broadband Plan* at 49.

³⁸ See Response of Minford Telephone Company to Time Warner Cable Information Services (Ohio), LLC’s Petition for Arbitration of Interconnection Agreement, No. 12-184-TP-ARB, at 12 (Ohio Pub. Utils. Comm’n filed Feb. 6, 2012) (“Minford Arbitration Response”); see also TWC CAF FNPRM Comments at 5.

noted, many rural LECs have refused to comply with their legal obligations based on assertions that a competitor's use of IP technology calls into question the applicability of Section 251.³⁹ The Commission should immediately put a halt to such anticompetitive conduct by establishing in the clearest possible terms that *all* ILECs (whether rural or non-rural) must interconnect and exchange telephone exchange and exchange access traffic with competitive LECs in whatever format the competitor chooses, subject only to the requirement of technical feasibility.

Moreover, the Commission should rule that rural LECs may not rely on Section 251(f)(2) as a basis to avoid the bedrock traffic-exchange requirement of Section 251(b)(5). The Commission has long held that blocking telecommunications service traffic violates Sections 201 and 202 of the Act, and it recently reaffirmed that important principle at the request of rural LECs.⁴⁰ But the obligation to maintain seamless connectivity is a two-way street: Just as rural LECs are entitled to insist that non-rural carriers deliver all calls to them regardless of the inflated access costs such termination entails, competing carriers should be entitled to terminate local voice traffic to rural LEC customers without interference from the rural LEC. Yet some rural LECs that are refusing to exchange local traffic pursuant to Section 251(b)(5) have asserted that they should be entitled to relief from that core duty pursuant to Section 251(f)(2).⁴¹ While the Commission can leave particular modification and suspension requests to state commissions

³⁹ See Comments of Cablevision Systems Corporation and Charter Communications, Inc. In Response to the Commission's Further Notice of Proposed Rulemaking, *Connect America Fund, etc.*, WC Docket No. 10-90, at 3 & n.8 (filed Jan. 18, 2012).

⁴⁰ See *Developing a Unified Intercarrier Compensation Regime; Establishing Just and Reasonable Rates for Local Exchange Carriers*, Declaratory Ruling, CC Docket No. 01-92, WC Docket No. 07-135, at ¶¶ 11-12 (WCB rel. Feb. 6, 2012).

⁴¹ See Minford Arbitration Response at 3. Although a group of rural ILECs in Maine likewise have sought a blanket suspension of their Section 251(b) obligations pursuant to Section 251(f)(2), see TWC CAF FNPRM Comments at 4, the hearing examiner has recommended that the Maine commission reject that request. Recommended Decision, Docket Nos. 2011-294 *et al.* (Maine Pub. Utils. Comm'n Feb. 10, 2012).

to resolve, it should provide guidance on the appropriate boundaries of relief granted under Section 251(f)(2).⁴² Specifically, the Commission should clarify that, in light of the longstanding federal policy favoring seamless connectivity pursuant to Sections 201, 202, and 251(a)/(b), a state could not authorize an ILEC to refuse to exchange local voice traffic with a competing carrier without contravening the public interest prong of Section 251(f)(2).

B. There Is No Legal or Policy Basis To Extend Interconnection Regulations Beyond the Exchange of Telecommunications Traffic Between Local Exchange Carriers.

Although the FNPRM seeks comment on a broad range of potential regulatory frameworks that could extend beyond telecommunications services, there is no legal basis for such regulation. As explained above, Section 251 by its terms requires *local exchange carriers* to interconnect and exchange telecommunications traffic, and the Commission has left no doubt that the interconnection provisions in Section 251 have no application to entities that are not telecommunications carriers.⁴³ Nor is there any other plausible statutory basis to extend interconnection regulations to private carriers or to providers of information services. The central premise of interconnection mandates is that ILECs have ubiquitous networks that were developed over the course of decades for the provision of voice services and possess market power that they will exercise to thwart competition for such services.⁴⁴ That rationale has no

⁴² See *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 378 n.6 (1999) (recognizing the Commission's authority under the Act to issue regulations that govern states' applications of federal law).

⁴³ See *TWC Declaratory Ruling* ¶ 14; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499 ¶ 33 (1996).

⁴⁴ See, e.g., *Qwest Forbearance Order* ¶ 86.

application in the Internet arena, as there are no current or former monopoly providers that obtained market power on the backs of captive ratepayers.⁴⁵

Moreover, the Commission already comprehensively regulates voice traffic, including the regulation of intercarrier compensation via a complex rate structure. Managing interconnection arrangements that facilitate the exchange of regulated voice traffic is a traditional component of the Commission's regulatory scheme. By contrast, the Commission does not similarly regulate (and lacks the authority to regulate) the transmission and routing of Internet and other information service traffic, and imposing new interconnection obligations in those contexts would be a radical departure from the Commission's historical deregulatory policies with respect to the Internet. Accordingly, the Commission should refrain from pursuing any proposals that would seek to engraft interconnection duties designed for telecommunications carriers and intended to promote competition for telephone exchange and exchange access services onto Internet backbone or peering relationships, or other non-telecommunications services regimes.⁴⁶

For similar reasons, it would make no sense to compel *non*-ILECs to enter into interconnection agreements under Section 251. The Commission has appropriately held that competitive LECs have no legal duty to enter into interconnection agreements at the request of other carriers.⁴⁷ Because competitive LECs lack the ubiquitous networks and market power that warrant the imposition of interconnection duties on incumbent carriers, there is no basis to subject them to such mandates. Competitive LECs have no reason to refuse reasonable requests

⁴⁵ See, e.g., *Applications filed by Global Crossing Limited and Level 3 Communications, Inc. for Consent to Transfer Control*, Memorandum Opinion and Order and Declaratory Ruling, IB Docket No. 11-78, DA 11-1643, at ¶¶ 28-29 (2011) (noting the emergence of new Tier 1 peers and the general diversification of the overall market for the exchange of Internet traffic).

⁴⁶ See FNPRM ¶ 1347.

⁴⁷ Report & Order ¶ 845.

to negotiate commercial arrangements with carriers such as CMRS carriers and other LECs, and accordingly there is no reason to subject them to additional regulatory requirements.

II. THE COMMISSION SHOULD FURTHER ADVANCE ITS REFORMS OF THE INTERCARRIER COMPENSATION REGIME

A. The Commission Should Transition Originating Access Rates to Bill and Keep Concurrently with Terminating Access Reform.

The Commission thus far has focused on reform of terminating access, while taking only interim steps to address originating access (such as by capping interstate originating access rates).⁴⁸ TWC agrees that it made sense to prioritize terminating access reform, because it presented a more urgent problem. But now that the Commission has put in a place a concrete schedule for reducing terminating access, it can and should adopt a comparable approach regarding originating access charges. Particularly now that the Commission has adopted a “symmetrical approach” for VoIP-PSTN traffic, under which the same default interstate rates apply to both originating and terminating traffic, the Commission should establish symmetrical treatment of originating and terminating access as applied to TDM traffic.⁴⁹ That step is necessary to promote uniformity and competitive neutrality during the transition to bill and keep.

The FNPRM suggests that originating access reform should proceed pursuant to an entirely separate timetable from terminating access, perhaps commencing only after the transition for terminating access is complete.⁵⁰ It also asks whether the states should be allowed a greater role in managing the transition for originating access.⁵¹ But there is no reason to adopt a substantially different approach for originating access, either in terms of the timing of rate

⁴⁸ See *id.* ¶ 805; FNPRM ¶ 1298.

⁴⁹ See Report & Order ¶¶ 942-45, 952.

⁵⁰ FNPRM ¶ 1299.

⁵¹ *Id.* ¶ 1302.

reductions or with respect to the role of the states. The costs and functions associated with terminating and originating access are the same, and the policy rationales for reducing terminating rates apply equally to originating rates.

Moreover, treating originating access differently from terminating access would needlessly undermine the Commission's interest in uniform rate structures. Indeed, having convincingly made the case for harmonized and coordinated intercarrier compensation rates under a federal framework,⁵² the Commission should now put originating access on a similar track as terminating access. A multi-year transition for originating access that mirrors the schedule for reductions in terminating rates will ensure that rates are reduced in a unified, predictable, and coordinated fashion, consistent with the overall goals of reform. By contrast, separate transition schedules would only add complexity and divergence at a time when the Commission is seeking to simplify intercarrier compensation.⁵³

In addition, TWC urges the Commission not to increase funding available through its newly established recovery mechanism in order to offset reductions in originating access rates. As TWC has consistently argued, the notion that every reduction in intercarrier compensation rates must be offset with some measure of explicit support goes against the core goals of reform by guaranteeing current revenue flows and dis-incentivizing efficient modifications in networks and operations. Further, as TWC and many others have explained, the recovery mechanism (combined with high-cost support) already over-compensates ILECs for intercarrier

⁵² See, e.g., *id.* ¶¶ 792-93.

⁵³ The Commission has correctly concluded that telecommunications services transmitted in IP format were subject to pre-1996 compensation obligations, and therefore are subject to the grandfathering provisions of Section 251(g). See Report & Order ¶ 957. The D.C. Circuit's opinion in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), is not to the contrary, because that decision rejected the Commission's invocation of Section 251(g) only when it was "uncontested ... that there had been *no* pre-Act obligation." 288 F.3d at 433. That is not the case with respect to originating access charges.

compensation reductions. The Commission should be looking for ways to reduce such support, rather than increase it.

Finally, TWC agrees that the Commission should distinguish between general reform of originating access and the more specific issue of originating 8YY traffic,⁵⁴ by treating the latter as terminating traffic for intercarrier compensation purposes. The Commission historically has treated 8YY minutes as terminating minutes,⁵⁵ and there is no sound reason why it should not continue to do so.

B. The Commission Should Prevent an End-Run Around Pro-Competitive Reforms by Exercising Oversight over Transit Service Rates and Other Transport Charges.

Finally, the Commission should prevent ILECs from undoing the benefits of intercarrier compensation reform by charging unreasonable rates for transit and other transport services for voice traffic. As many competitive carriers have urged, the Commission should confirm that ILECs' transit services fall within the Section 251 framework.⁵⁶ Competitive providers like TWC often need to purchase transit services for voice traffic from ILECs in order to facilitate interconnection of their voice networks, lacking other options for doing so. But as TWC and others have explained, and as the Commission notes,⁵⁷ there is a significant risk that ILECs will seek to make up reduced per-minute terminating access revenue by simply increasing transit service rates. As the FNPRM recognizes,⁵⁸ transit service involves the same functionality as tandem switching and transport, which are plainly subject to Section 251. Excluding transit

⁵⁴ FNPRM ¶ 1303.

⁵⁵ See 47 C.F.R. § 69.105(b)(1)(iii).

⁵⁶ See FNPRM ¶ 1312 (citing comments).

⁵⁷ *Id.*

⁵⁸ *Id.* ¶ 1313.

services from that regulatory framework would not make sense as a legal or policy matter, but rather would enable ILECs to thwart the Commission's reform efforts.

For similar reasons, the Commission should exercise oversight over other dedicated transport and flat-rated charges as well, as the FNPRM suggests.⁵⁹ Purchasers of access must pay significant, non-usage-sensitive charges for transport facilities.⁶⁰ But absent regulatory oversight, carriers will be able to increase these rates as well, which will hold back overall reform.

CONCLUSION

For the reasons discussed above, the Commission should require LECs to negotiate IP-to-IP interconnection agreements in good faith under Section 251 of the Act, and should clarify that rural LECs may not invoke Section 251(f)(2) to avoid the traffic exchange obligations of Section 251(b)(5). The Commission also should reform originating access charges in parallel with its reform of terminating access charges. Finally, the Commission should exercise oversight of transit and transport traffic to ensure that ILECs cannot evade the Commission's pro-competitive intercarrier compensation reforms.

⁵⁹ *Id.* ¶ 1314.

⁶⁰ *See, e.g.*, 47 C.F.R. § 69.110 (addressing flat-rated charges on interexchange carriers to recover the costs of entrance facilities); *id.* § 69.111 (setting forth a three-part rate structure for LEC recovery from IXCs of tandem-switched transport costs, which includes a flat-rated charge for dedicated facilities from the serving wire center to the tandem).

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February 24, 2012