

**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

**REPLY COMMENTS OF U.S. TELEPACIFIC CORP.
AND MPOWER COMMUNICATIONS CORP.**

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SUMMARY

U.S. TelePacific Corp. and Mpower Communications Corp. (together “TelePacific”) file these Reply Comments in response to the Further Notice of Proposed Rulemaking in this proceeding. In initial comments, TelePacific anticipated and rebutted the largest ILECs’ arguments that regulation of IP-to-IP interconnection is precluded by their overbroad interpretation of superior network rules, their attempt to shelter IP capabilities in affiliates, and objections to using Section 251(c) interconnection for the exchange of voice information services in addition to telecommunications services, and will not repeat those arguments here. In these replies, TelePacific focuses on the following issues:

- There is a need for an arbitration process to serve as a regulatory backstop to inter-carrier negotiations.
- A broad, well documented cross-section of industry stakeholders recognize that Sections 251 and 252 govern IP-to-IP interconnection.
- The Commission has determined that Section 251 is technologically neutral and that reliance on “good faith” commercial negotiations alone not only violates the Act but will not ensure efficient and reasonable terms and rates for IP-to-IP interconnection.
- Although Verizon and AT&T argue that there is no need for regulation of IP-to-IP interconnection, many commenters have demonstrated that large companies seek to impose unreasonable conditions on IP-to-IP interconnection or refuse to negotiate at all.
- The Commission and many industry participants have recognized that some of the largest ILECs are undermining progress toward all IP networks by refusing requests for IP interconnection and requiring that carriers convert VoIP calls to time division multiplexing (“TDM”), unnecessarily increasing inefficiencies and costs and reducing voice quality.
- The experience of smaller LECs, NECA, and Level 3 described herein, the fact that larger LECs continue to refuse requests for IP interconnection, and the fact that ILECs still control 65% of the nation’s access lines, demonstrate that the largest ILECs continue

to exploit their terminating access monopolies as the public switched network transitions to IP technology. Where such discrimination occurs with respect to managed voice services, Sections 251 and 252 of the Act ensure that incumbents cannot restrict access to their end users in order to increase their competitors' costs and discriminate against competing voice services.

- The Commission should reiterate again that ILECs have an existing technologically neutral obligation, under Section 251(c)(2), to negotiate IP-to-IP interconnection at any technologically feasible point for all voice traffic, including VoIP.
- Managed voice services are largely segregated from traffic over the public Internet and a regulatory backstop for IP-to-IP interconnections to exchange managed voice services would have no impact on IP peering, whether national or international.

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I. Introduction

U.S. TelePacific Corp. and Mpower Communications Corp. (together “TelePacific”) file these Reply Comments on the Federal Communication Commission’s (“FCC” or “Commission”) Further Notice of Proposed Rulemaking in the Intercarrier Compensation reform proceedings in response to the principal arguments raised by opponents of regulatory oversight of IP-to-IP interconnection for voice services.¹ Specifically, TelePacific comments on the need for an

¹ *In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing a Unified Intercarrier Compensation System, et al.*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Dockets No. 01-92, 96-45, Report and Order and Further

arbitration process to serve as a regulatory backstop to negotiations and other items.² TelePacific anticipated and rebutted the largest ILECs' arguments that regulation of IP-to-IP interconnection is precluded by their overbroad interpretation of superior network rules,³ their attempt to shelter IP capabilities in affiliates,⁴ and objections to using Section 251(c) interconnection for the exchange of voice information services in addition to telecommunications services,⁵ and will not repeat those arguments in these reply comments.

A broad cross section of industry stakeholders, including some small and medium-sized incumbent LECs, recognize that sections 251 and 252 of the Act govern IP-to-IP interconnection for the exchange of managed IP voice traffic and that a regulatory backstop is needed to constrain the market power of the largest providers. Except for the largest ILECs and a few others, a broad section of the industry including rural carrier associations,⁶ mid-sized ILECs,⁷

Notice of Proposed Rulemaking, FCC 11-161, at ¶¶ 1012-1403 (rel. Nov. 18, 2011) (“ICC Order” or “NPRM”).

² See NPRM, ¶ 1335 *et seq.*

³ Compare Comments of Verizon and Verizon Wireless, at 2, 8-11 (Aug. 15, 2011), Comments of Verizon, at 32-33 (Feb. 24, 2012), Comments of CenturyLink, at 47-48 (Feb. 24, 2012) and Comments of AT&T, at 9 (Aug. 15, 2011), with the Comments of TelePacific, at 19-22 (Feb. 24, 2012).

⁴ NPRM, at ¶ 1388 (The Commission has observed that “some incumbent LECs are offering IP services through affiliates,” and noted that it “would be concerned” if this were done simply to evade the application of ILEC specific legal obligations.”); Comments of TelePacific, at 14-15 (Feb. 24, 2012).

⁵ Compare Comment of Verizon, at 27-29 (Feb. 24, 2012), Reply Comments of Verizon, Connect America Fund, WC Docket No. 10-90 *et al.*, at 37-39 (May 23, 2011), Comments of AT&T, at 34-38, 47-48 (Feb. 24, 2012), and Comments of CenturyLink, at 49 (Feb. 24, 2012) with the Comments of TelePacific, at 19-22 (Feb. 24, 2012).

⁶ See *e.g.*, Comments of National Exchange Carrier Association (“NECA”), *et al.* at 38 (“The Commission should clarify that Sections 251 and 252 of the Act govern all interconnection arrangements, including IP-to-IP Interconnection for the purposes of exchanging traffic between carriers.”); Comments of the Alaska Rural Coalition, at 17; Comments of the Nebraska Rural Independent Companies, at 27 (The Commission should “apply the time-tested Sections 251/252 interconnection framework. This step will ensure that any migration from TDM to IP-based transmission technologies and then to IP-to-IP technologies is not hampered by those entities *with the ability to exercise market power* under a new, untried regulatory framework.”) (emphasis added).

end-users,⁸ CLECs,⁹ cable companies,¹⁰ wireless providers,¹¹ and content providers¹² recognize that the Commission has jurisdiction over IP-to-IP Interconnection for managed IP voice services, with most citing to the ILEC's existing obligations under sections 251 and 252 of the Act.

In the ICC Order, the Commission determined that Section 251 of the Act is technologically neutral and underscored that “the duty to negotiate in good faith under the Act

⁷ Comments of Windstream, at 15 (Feb. 24, 2012) (“Without a regulatory backstop to ensure that all carriers have a right to interconnect at just and reasonable rates, terms, and conditions, competitive providers will face unreasonably high costs for interconnection and be increasingly unable to compete with the largest carriers.”).

⁸ *In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing a Unified Intercarrier Compensation System, et al.*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Dockets No. 01-92, 96-45, Comments of the Ad Hoc Telecommunications Users Committee, at I (Feb. 24, 2012) (“Comments of Ad Hoc Users”).

⁹ See e.g., Comments of COMPTTEL, at 13-20; Comments of XO at 2, 10, 12-15 (Feb. 24, 2012) (“The framework and enforcement of Sections 251(a) and 251(c) already exists and should be relied upon to quickly compel widespread IP interconnection.”); Comments of Cbeyond, EarthLink, *et al.*, at 20-25; Comments of U.S. TelePacific, *et al.*, at 7-14.

¹⁰ See, e.g., Comments of the National Cable and Telecommunications Association, at 5 (“the Commission should affirm that the interconnection provisions of section 251 of the Act afford telecommunications carriers the right to establish IP-to-IP voice interconnection with an incumbent LEC network for the provision of telephone exchange service and exchange access.”); Comments of Time Warner Cable, at 5 (“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.”); Charter at 4 (An ILEC’s duty under Section 251(c)(2) clearly encompasses IP-to-IP interconnection arrangements.).

¹¹ Comments of Sprint, at 6-7 (“The FCC unquestionably possesses such authority under Title II of the Act if retail IP voice applications are deemed to be telecommunications services. But as Sprint has previously demonstrated, if IP voice applications are instead classified as information services, then the FCC still possesses the authority, under its Title I ancillary jurisdiction, to adopt and enforce interconnection rules for the exchange of IP voice traffic.”); Comments of Leap Wireless International, Inc., at 13 (relying on sections 251(a)(1) and 252); Comments of MetroPCS Communications, Inc., at 16 (Feb. 24, 2012) (“Sections 201, 251(a)(1), 251(c), 256 and 332 – provide the Commission with the requisite authority to regulate IP-to-IP interconnection.”).

¹² Comments of Google, at 4-5 (“At a minimum, FCC authority derives not only from Sections 251(a) and 256 of the Communications Act of 1934, as amended (“Act”), as Google has explained previously, but also from the broad authority afforded pursuant to Sections 201 and 332 of the Act.”).

does not depend upon the network technology underlying the interconnection, whether TDM, IP, or otherwise.”¹³ TelePacific applauds the Commission for affirming that the existing obligations to negotiate interconnection in good faith are technology neutral and apply to negotiations regarding IP-to-IP interconnection.¹⁴ Reliance on “good faith,” “commercial” negotiations alone not only violates the Act, but will not ensure efficient and reasonable terms and rates for IP-to-IP interconnection to exchange voice services. In light of the unequal bargaining power of large ILECs, a regulatory backstop to commercial negotiations is needed such as the section 252(b) arbitration process. As the Wisconsin Commission has observed, commercial arrangements standing alone “may not be the most efficient process, *perhaps even amounting in some cases to an effective barrier to entry.*”¹⁵

II. Reliance on Unregulated Private Contract Negotiations, Without a Regulatory Backstop, Is Unworkable For the Exchange of Managed Voice Traffic Because Large Incumbents Continue to Exercise Market Power Over Access to Their Massive Captive Bases of Managed Voice Service Customers

Verizon argues that “[i]n this innovative new world of IP networks, there are no incumbents” and “[e]veryone is a new entrant, and it makes no sense to regulate these new networks and technologies based on a regulatory model that developed around a very different set of circumstances.”¹⁶ Similarly, AT&T argues that “wireline ISPs associated with legacy

¹³ ICC Order, at ¶ 1348 (“In particular, even while our FNPRM is pending, we expect all carriers to negotiate in good faith in response to requests for IP-to-IP interconnection . . .”).

¹⁴ See, e.g., 47 U.S.C. §§ 251(a)(1), 252(c)(2).

¹⁵ *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, Comments of the Wisconsin Public Service Commission, at 4 (Aug. 11, 2011) (emphasis added).

¹⁶ *In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing a Unified Intercarrier Compensation System, et al.*, WC Docket Nos. 10-90, 07-135,

ILECs will hardly be ‘dominant’ in any relevant market.”¹⁷ Based upon these faulty premises, Verizon and AT&T conclude that there is no need for the Commission to establish any policies or rules to regulate IP-to-IP Interconnection and that such interconnection should be left to wholly unregulated private contract negotiations with no regulatory backstop should negotiations fail to result in a mutually equitable agreement.¹⁸

Notwithstanding the arguments of the largest ILECs and a few others, reliance on wholly unregulated private contract negotiations without a regulatory backstop is unworkable. Despite their self-serving protestations to the contrary, the largest ILECs exercise market power over access to their massive, captive base of customers for managed voice services. Incumbents still control 65% percent of the nations’ access lines.¹⁹ In addition, the Commission determined in the National Broadband Plan that monopolistic or duopolistic conditions for broadband service will prevail for 91% of the Country’s population.²⁰

05-337, 03-109, GN Docket No. 09-51, CC Dockets No. 01-92, 96-45, Verizon Comments, at 10, 25 (Feb. 24, 2012) (“Verizon Comments”).

¹⁷ AT&T Comments, at ¶¶ 4, 29, 32 (“the ‘terminating monopoly’ concern originates from and is peculiar to the PSTN.”).

¹⁸ See, e.g., *In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing a Unified Intercarrier Compensation System, et al.*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Dockets No. 01-92, 96-45, AT&T Comments, at 9 (Feb. 24, 2012) (“AT&T Comments”) (“interconnection issues in the all-IP world *itself* will not require intervention any more than Internet peering and transit does today.”); NPRM, at ¶ 1377 (Verizon contends that the Commission should rely “upon voluntarily negotiated commercial agreements”).

¹⁹ See, *Local Competition Report*, Figure 3.

²⁰ Comments of Ad Hoc Users, 4, (Feb. 24, 2012); *Connecting America: The National Broadband Plan*, at 37, Exhibit 4-A.

Contrary to the largest ILECs' assertions, the 'terminating monopoly' concern is not peculiar to the PSTN.²¹ As the Commission has observed, "smaller incumbent LECs cite concerns about a lack of negotiating leverage relative to other providers in the absence of IP-to-IP interconnection."²² Moreover, many commenters have underscored that large companies seek to impose unreasonable conditions on IP-to-IP Interconnection or refuse to negotiate all together.²³ For example, NECA, NTCA and others note that:

To date, larger carriers have shown minimal interest in negotiating IP interconnection agreements with RLECs or other smaller carriers. Essentially, the perceived attitude is "you need us much more than we need you" and critical matters such as interconnection points, middle mile capacity and middle mile prices are often provided *on take-it-or-leave-it terms*.²⁴

Likewise, Windstream observes that in its experience: "Larger carriers often are unwilling to come to reasonable terms with smaller carriers that lack comparable purchasing power, and they are even less interested in offering reasonable terms to a carrier that they perceive as a stronger competitor for larger business customers."²⁵

The Commission and many industry participants have also recognized that some of the largest ILECs are undermining progress to all-IP networks by refusing requests for IP interconnection and instead requiring that an interconnecting carrier convert VoIP calls to time-

²¹ AT&T Comments, at 4, 29, 32 ("the 'terminating monopoly' concern originates from and is peculiar to the PSTN.").

²² See, e.g., ICC Order, at ¶ 1339.

²³ Comments of XO, at 10 (The Commission cannot ignore "the current market failure in which competitive carriers seek to negotiate and obtain IP interconnection arrangements but are simply refused by terminating LECs.") Comments of Windstream, at 15 (Feb. 24, 2012) ("This massive "inequality of bargaining power" that underlay the interconnection framework established for the TDM world is equally problematic in the IP-to-IP interconnection context, and it renders unworkable a regime based entirely on commercial agreements and lacking a regulatory backstop.").

²⁴ Comments of NECA, *et al.*, at 41 (Feb. 24, 2012).

²⁵ Comments of Windstream, at 15 (Feb. 24, 2012).

division multiplexing (“TDM”).²⁶ This practice of forcing competitors to engage in unnecessary conversions from IP to TDM “increases inefficiencies and costs and reduces voice quality through unnecessary protocol conversion.”²⁷ For example, Verizon recently responded to a request by Bright House Networks for an interconnection agreement that would include the exchange of telecommunications traffic in IP format as an “‘outrageous’ demand.”²⁸ Similarly, the Nebraska Rural LECs have noted that the commercial agreement model proposed by the large ILECs will “simply amplify the market power and lop-sided bargaining positions of the largest carriers.”²⁹

Verizon argues that regulation of IP-to-IP interconnection is unnecessary in part because “[n]o longer are an incumbent’s facilities the only vehicle for communications to travel the last mile to the customer.”³⁰ However, as the Commission has held in the past and as the Ad Hoc Users underscore in this proceeding, “a duopoly is not much better at constraining market power

²⁶ See, e.g. 2011 NPRM, at ¶¶ 506, 527 (“Specifically, certain carriers may require an interconnecting carrier to convert IP traffic to [TDM] traffic even if IP-to-IP interconnection would be more efficient, to ensure the continued collection of intercarrier compensation.”); *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, Comments of CompTel, at 2-5 (Aug. 15, 2011) (“CompTel TWT Comments”).

²⁷ CompTel TWT Comments, at 3 (Aug. 15, 2011). See, Petition of TW Telecom, at 5; Comments of Google, at 5 (“IP interconnection barriers imposed by some local carriers can arbitrarily increase the operating costs of connecting network providers and degrade service quality, preventing them from realizing the full benefits of IP network upgrades.”); Comments of Cablevision Systems Corporation and Charter Communications, Inc., WC Docket No. 11-119, at 2, 4 (Aug. 15, 2011) (“ILECs’ refusal to honor their section 251(c) obligations forces competing CLECs to incur additional network costs and inhibits the Commission’s goal of encouraging carriers to migrate to more efficient IP-based networks.”).

²⁸ Comments of CBeyond, Comptel, Covad, Intrado, and TW Telecom, NBP Public Notice No. 25, at 4 (Sept. 22, 2009).

²⁹ Comments of the Nebraska Rural Independent Companies, at 29 (Feb. 24, 2012).

³⁰ Comments of Verizon, at 10.

than is a monopoly.”³¹ For example, even Level 3, an extremely large IP backbone provider, has found that large ILECs and cable companies can leverage their market power over access to their ISP customer base to impose unreasonable conditions and charges on IP-to-IP interconnection.³² Consistent with the experience of NECA members and NTCA, Level 3 reports that Comcast has imposed “take it or leave it demands” on Level 3 despite its status as a large IP backbone provider.³³ Comcast has insisted “that Level 3 purchase services from Comcast in order to obtain access to Comcast’s local distribution network (and thus obtain access to Comcast’s subscribers)” to delivery content *ordered by those Comcast subscribers*.³⁴ Level 3 asserts that it does not need these so-called “backbone services” to supplement its own vast IP backbone and that Comcast is effectively discriminating against “online content that competes with the ISPs’ own content” in violation of the Open Internet Order.³⁵ As Level 3 points out, “Verizon [and the other large ILECs] ha[ve] the same vested interest in being free to discriminate against

³¹ Comments of Ad Hoc Users, 6-7, 10 (Feb. 24, 2012); *Petition of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, Memorandum Opinion and Order, 25 FCC Rcd 8622, 8635-8636 (2010) (“Economists, courts, and the Commission itself have long recognized that duopolies may present significant risks of collusion and supracompetitive pricing, which can lead to significant decreases in consumer welfare.”).

³² *Ex Parte* Letter of Bob Yates, Level 3 Asst. Chief Legal Officer, GN Docket No. 09-191, at 1 (Dec. 10, 2010) (“Comcast has leveraged its dominant control over its local access network to force Level 3 to purchase from Comcast a service - backbone IP (Internet Protocol) service - that Level 3 does not need or want to purchase.”) (emphasis added).

³³ *Ex Parte* Letter of John M. Ryan, Chief Legal Officer, GN Docket No. 09-191, at 2 (Feb. 22, 2011).

³⁴ Letter of John M. Ryan, Chief Legal Officer to Julius Genachowski, Chairman FCC, GN Docket No. 09-191, at 2 (Feb. 17, 2011). This is not a “peering” dispute as Level 3 and Comcast do not have a peering agreement. *Id.*, at 1.

³⁵ *Id.*, at 3; Letter of John M. Ryan, Chief Legal Officer to Julius Genachowski, Chairman FCC, GN Docket No. 09-191, at 1 (Feb. 16, 2011) (By issuing the Open Internet Order, the Commission recognized that Internet service providers have the means, motive and opportunity to discriminate against online content which competes with their own offerings. In the Order, the Commission prohibited ISPs from charging content owners and their carriers for delivering content to the ISPs’ customers.”).

competing content as does Comcast.”³⁶ Contrary to AT&T’s assertions that “broadband ISPs typically have little bargaining leverage in negotiating the terms of interconnection with other IP networks,”³⁷ the experience of smaller LECs, NECA, and Level 3 described above, and the fact that larger LECs continue to refuse requests for IP interconnection, demonstrate that the largest ILECs continue to exploit their terminating access monopolies to increase their competitors’ costs and discriminate against competing content. Where the discrimination occurs with respect to Internet content, the Commission’s Open Internet Order applies. But where the discrimination occurs with respect to managed voice services, Sections 251 and 252 of the Act govern the incumbent’s and competitive carrier’s respective rights and obligations.

As the Commission concluded in the ICC Order “[i]nterconnection among communications networks is critical given the role of network effects.”³⁸ The National Broadband Plan also recognized that for “competition to thrive, the principle of interconnection - in which customers of one service provider can communicate with the customers of another - needs to be maintained.”³⁹ In light of this overarching principle and the demonstrated market power of the largest ILECs, the Commission must reiterate again that ILECs have an existing obligation under technology neutral section 251(c)(2) to negotiate IP-to-IP interconnection arrangements at technically feasible points and clearly state that this obligation applies to voice traffic, including managed IP voice services offered by requesting telecommunications carriers.

³⁶ *Ex Parte* Letter of John M. Ryan, Level 3’s Chief Legal Officer, GN Docket No. 09-191, at 1 (Jan. 14, 2011).

³⁷ AT&T Comments, at 32.

³⁸ *See, e.g.*, ICC Order, at ¶ 1336.

³⁹ The National Broadband Plan, at 49, Recommendation 4.10.

III. Regulation of IP-to-IP Interconnection For Managed IP Voice Services Does Not Implicate Internet Peering Arrangements

Despite the fact that large providers often refuse to negotiate IP-to-IP Interconnection in the first instance or seek to impose unreasonable terms, AT&T, Verizon, CenturyLink and others argue that “the Commission should not impede the ongoing market-based transition to IP networks by imposing new regulatory requirements for IP voice interconnection.”⁴⁰ In particular, CenturyLink states explicitly and AT&T and Verizon imply that adoption of rules for IP-to-IP Interconnection “could disrupt existing peering arrangements for IP data traffic,” and “distort the natural evolution of IP networks and interconnection of those networks.”⁴¹

Contrary to these arguments, establishing the reasonable ground rules for IP-to-IP interconnection and a regulatory backstop in the event negotiations fail will not disrupt Internet peering arrangements for exchange of IP data. In order to assure quality of service and reliability, managed voice services, such as U-verse, FiOS and other services are largely segmented from the exchange of traffic over the public Internet which is the focus of most peering arrangements. As AT&T concedes, “[d]ifferential packet handling is still uncommon for traffic exchanged between unaffiliated IP networks through ordinary peering and transit arrangements,” as opposed to “residential IP access networks like AT&T’s U-verse.”⁴² As XO notes, the “Commission need not be concerned about the impact of polices developed here on IP peering arrangements . . . [c]urrent IP interconnection arrangements for voice traffic typically

⁴⁰ AT&T Comments, at 2.

⁴¹ CenturyLink Comments, at 42, 44 (Feb. 24, 2012).

⁴² AT&T Comments, at 18.

have no connection or impact on IP peering arrangements and do not co-mingle voice traffic with Internet traffic currently exchanged via IP peering facilities.”⁴³

The fact is that the only path to access the managed voice subscribers of AT&T, Verizon and Comcast is through their private IP networks; these managed IP voice service subscribers are not reachable through existing settlement-free, Internet peering arrangements. Thus, the key question before the Commission is whether the exchange of such non-public-internet managed IP voice traffic over private networks will be continue to be subject to sections 251 and 252 of the Act such that these interconnection arrangements are nondiscriminatory, reasonable and reciprocal, not what regulations should apply to Internet peering arrangements over the public Internet.⁴⁴ The Commission can narrowly tailor its IP-to-IP interconnection regulations to focus on managed IP voice services such that these regulations will have no impact on existing IP peering arrangements for public Internet traffic.

IV. ILEC Arguments That *Any* Regulation of IP-to-IP Interconnection Will Prompt Foreign Nations To Modify the ITU Treaty Over U.S. Objections to Regulate Internet Peering Are a Red Herring

AT&T makes the self-serving argument that “*any U.S. regulation* of IP-to-IP interconnection would encourage foreign authorities, acting through the International Telecommunication Union (“ITU”), to begin regulating Internet peering and transit in opposition

⁴³ Comments of XO, at 2, 11 (“Carriers that currently have IP interconnection arrangements often have already established IP interconnection facilities independent of their IP peering arrangements.”); *see*, Comments of the Coalition for Rational Universal Service and intercarrier Reform, at 13 (Feb. 24, 2012) (“In practice, most PSTN IP-based voice interconnection uses dedicated facilities, not the public Internet. These facilities might be derived via MPLS paths, ATM paths, TDM channels, or any other suitable multiplexing protocol.”).

⁴⁴ NPRM, at ¶¶ 1345-46, 1377.

to U.S. interests.”⁴⁵ Verizon likewise argues that “many countries are actively advocating for international regulation of the Internet, and several countries among the ITU’s 193 member states want to renegotiate the ITU treaty to expand the ITU’s reach into regulating the Internet backbone and other matters related to the Internet.”⁴⁶ Verizon ominously warns that “imposing a regulatory mandate on IP interconnection for voice *would send precisely the wrong signals* to the ITU and to those countries pushing to regulate the Internet.”⁴⁷

AT&T’s and Verizon’s self-serving warnings are a scare tactic and a red herring. The narrowly tailored IP interconnection arrangements proposed by TelePacific and a host of other industry participants should have minimal impact on Internet peering agreements because as shown in Section III above, currently most facilities-based VoIP service providers do not comingle managed voice traffic with public Internet traffic exchanged via Internet peering agreements.⁴⁸ Moreover, the Commission’s IP-to-IP Interconnection polices need not adversely affect or reach current IP peering arrangements. As XO points out, carriers that currently have IP interconnection arrangements often have already established IP interconnection facilities independent of their IP peering arrangements and will continue to do so.”⁴⁹

⁴⁵ AT&T Comments, at 3, 26 (emphasis added).

⁴⁶ Verizon Comments, at 22.

⁴⁷ Verizon Comments, at 23 (emphasis added).

⁴⁸ See, e.g., *In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing a Unified Intercarrier Compensation System, et al.*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Dockets No. 01-92, 96-45, XO Comments, at 11 (Feb. 24, 2012) (“XO Comments”) (“Importantly, these IP interconnection arrangements have no connection or impact on current IP peering arrangements and do not co-mingle voice traffic with Internet traffic currently exchanged via IP peering facilities.”).

⁴⁹ *Id.*

Many of the member states, led by Russia, China, and others, that advocate renegotiation of the existing ITU treaty are not primarily focused on Internet peering. Rather, they argue for international regulation of cyber security, data privacy and other practices and aspects of the Internet as well and are motivated primarily to control the threat that the Internet poses to their measures to resist political reform. These nations will likely argue for enhanced regulation of the Internet regardless as to the Commission's position on the narrow issue of IP-to-IP Interconnection for managed voice traffic.⁵⁰ In addition, other concepts including market-based approaches are also part of the ITU dialogue such as encouraging developing countries to enhance their ability to exchange traffic locally at a national level or regional level so that they do not need to purchase international bandwidth for Internet connections.⁵¹ Finally, the ITU process is an ongoing dialogue among 193 nations that the U.S. and its western allies certainly have substantial power to influence and in any event could only result in a treaty whose provisions the U.S. would need to ratify before they became American law.

⁵⁰ Robert M. McDowell, *The U.N. Threat to Internet Freedom*, Wall St. J., Feb. 21, 2012 (“And let’s face it, strong-arm regimes are threatened by popular outcries for political freedom”).

⁵¹ ITU, *International Internet Connectivity -- The Issues* (2012) (discussing Mongolia’s successful establishment of a national Internet exchange point to reduce the costs of Internet connectivity.).

V. Conclusion

TelePacific urges the Commission to ignore ILEC calls for private negotiations of IP-to-IP interconnection without a regulatory backstop and instead reaffirm that providers of managed IP voice services are entitled to request IP-to-IP interconnection under section 251(c)(2) of the Act for the exchange of both TDM and IP-originated/terminated voice traffic.

Respectfully submitted,

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