

**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

REPLY COMMENTS OF TIME WARNER CABLE INC.

Steven N. Teplitz
Terri B. Natoli
TIME WARNER CABLE INC.
901 F Street, NW
Suite 800
Washington, DC 20004

Marc Lawrence-Apfelbaum
Julie P. Laine
TIME WARNER CABLE INC.
60 Columbus Circle
New York, NY 10023

Matthew A. Brill
Brian W. Murray
Alexander Maltas
LATHAM & WATKINS LLP
555 Eleventh Street, NW
Suite 1000
Washington, DC 20004

Attorneys for Time Warner Cable Inc.

March 30, 2012

TABLE OF CONTENTS

INTRODUCTION AND SUMMARY	2
DISCUSSION.....	4
I. THE COMMISSION SHOULD CONFIRM THAT ILECS HAVE A DUTY TO NEGOTIATE IP-TO-IP INTERCONNECTION AGREEMENTS IN GOOD FAITH PURSUANT TO SECTION 251 OF THE ACT	4
A. The Commission Has Legal Authority to Enforce IP-to-IP Interconnection Rights Under Section 251.	5
B. Section 251 Duties Provide an Essential Backstop to Private Negotiations.....	10
II. THE COMMISSION SHOULD ADOPT ADDITIONAL INTERCARRIER COMPENSATION REFORMS TO PROMOTE EFFICIENCY AND REDUCE BURDENS ON CARRIERS AND CONSUMERS	14
A. The Commission Should Permit Carriers to Continue to Rely on Tariffs to Implement New Intercarrier Rates.....	14
B. The Commission Should Take Specific Steps to Prevent Carriers from Offsetting Lost Intercarrier Revenues Through Increases in Other Rates.....	15
CONCLUSION.....	17

**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

REPLY COMMENTS OF TIME WARNER CABLE INC.

Time Warner Cable Inc. (“TWC”) hereby submits these reply comments in response to the opening comments addressing the issues raised in Sections XVII.L-R of the Further Notice of Proposed Rulemaking in the above-captioned proceedings.¹

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 a 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”).

INTRODUCTION AND SUMMARY

The opening comments reflect widespread support for the Commission to enforce interconnection rights as the industry continues its transition to Internet Protocol (“IP”) technology. The record establishes that incumbent local exchange carriers (“ILECs”) possess ubiquitous voice networks, developed over decades, that give them the incentive and ability to raise rivals’ costs, including by insisting on interconnection in time division multiplexing (“TDM”) format. Because this imbalance can prevent competitors from securing IP-to-IP interconnection arrangements, many commenters in addition to TWC urge the Commission to confirm that negotiating IP-to-IP interconnection for the exchange of telecommunications traffic between LECs is a fundamental statutory duty of ILECs pursuant to Section 251 of the Communications Act of 1934, as amended (“the Act”).

The primary opposition to this widely held view comes from AT&T and Verizon, who not coincidentally enjoy significant bargaining leverage with respect to network interconnection and the exchange of telecommunications traffic. AT&T and Verizon offer up a host of reasons for ignoring the plain meaning of the Act’s technology-neutral interconnection provisions, but as almost all other commenters recognize, those provisions require interconnection for the exchange of voice traffic regardless of protocol or format. AT&T and Verizon also resort to mischaracterizing the services and traffic at issue. As TWC already has explained and most commenters agree, the interconnection arrangements at issue here involve the facilities-based exchange of regulated telecommunications-service traffic on the public switched telephone network (“PSTN”) to which Section 251 clearly applies, and thus do not implicate the policies of minimal regulation that the Commission historically has applied in the context of the Internet and information services.

AT&T and Verizon rely on similar obfuscation in attempting to show that maintaining a regulatory backstop to interconnection negotiations is not only unnecessary but somehow harmful. Contrary to their rosy portrayal of the relevant marketplace dynamics, competitive carriers face recurring challenges in obtaining IP-to-IP interconnection for purposes of routing telephone exchange and exchange access traffic.² While TWC agrees that there is no statutory authority or policy basis to extend Section 251 beyond telecommunications services to arenas in which there are no historical monopoly providers with ubiquitous networks, there is every reason to apply that framework on a technology-neutral basis to the exchange of telecommunications traffic between local exchange carriers as Congress intended. Rather than countenance the ILECs' anticompetitive position, the Commission should continue its concerted efforts to promote the interconnection of voice networks by reaffirming that ILECs are obligated to interconnect and exchange telecommunications traffic in whatever technically feasible format the competitor chooses.

In addition, many commenters urge the Commission to continue its procompetitive reform path by issuing appropriate clarifications and adopting further changes to the intercarrier compensation regime to promote efficiency and reduce burdens on carriers and consumers. TWC agrees that competitive carriers should be permitted to implement new intercarrier rates for originating and terminating toll traffic through tariffs or equivalent mechanisms. Affording carriers the same flexibility that they have today will ensure that the Commission's reforms are carried out efficiently and without needless disruptions. A number of commenters also argue that the Commission should protect the reforms it has adopted already by taking steps to ensure

² Indeed, as TWC explained in its opening comments, many rural LECs continue to hinder TDM-to-TDM interconnection, even though ILECs' legal obligations in that context are well-settled. *See* TWC Comments at 13-14.

that ILECs do not charge unreasonably high transit rates for exchanging local telecommunications traffic between LECs, particularly in light of their motivation to recoup diminished access charge revenues. Such actions are necessary to fulfill the Commission's goals of bringing greater efficiency, uniformity, and predictability to the intercarrier compensation regime.

DISCUSSION

I. THE COMMISSION SHOULD CONFIRM THAT ILECS HAVE A DUTY TO NEGOTIATE IP-TO-IP INTERCONNECTION AGREEMENTS IN GOOD FAITH PURSUANT TO SECTION 251 OF THE ACT

There is broad agreement in the record with the Commission's finding that "IP interconnection between providers ... is critical" to support the migration to IP networks,³ and with the FNPRM's related observation that the interconnection provisions of Section 251 "are technology neutral" and therefore require ILECs to permit IP-to-IP interconnection.⁴ A diverse array of CLECs,⁵ wireless carriers,⁶ and trade associations⁷ agree that the Commission should enforce the obligation to negotiate IP-to-IP interconnection arrangements under Section 251 of the Act. Indeed, even Windstream, an ILEC, argues in favor of the Commission exercising close oversight over IP-to-IP interconnection "to minimize barriers to entry resulting from unequal access to customers and unequal bargaining power."⁸ In addition, several associations

³ Report & Order ¶ 1010.

⁴ FNPRM ¶ 1342.

⁵ See Charter Comments at 3-9; Cbeyond, Earthlink, Integra, and tw telecom Comments at 20-28; XO Communications Comments at 8-15; U.S. Telepacific and Mpower Communications Comments at 7-14.

⁶ See Sprint Nextel Comments at 1-16; Leap Wireless and Cricket Communications Comments at 12-14; MetroPCS Comments at 15-18.

⁷ NCTA Comments at 5-8; COMPTTEL Comments at 13-32; CTIA Comments at 6.

⁸ Windstream Comments at 14.

representing rural LECs, whose members are not normally staunch defenders of interconnection rights under Section 251, likewise concede that the statute is technology neutral and includes the duty to negotiate IP-to-IP interconnection.⁹

Unsurprisingly, it is the most dominant carriers, AT&T and Verizon, that are the most resistant to procompetitive interconnection obligations. Their comments labor to show that the Commission lacks the requisite statutory authority and in any event has no valid policy rationale to protect interconnection rights during the transition to IP technology. They are wrong on both counts.

A. The Commission Has Legal Authority to Enforce IP-to-IP Interconnection Rights Under Section 251.

As TWC explained in its opening comments, IP-to-IP interconnection fits squarely within the provisions of Section 251.¹⁰ Section 251(a) imposes a general duty on all telecommunications carriers to interconnect with other telecommunications carriers, and its language is not limited to any particular technology. Section 251(b)(5) further provides that LECs must establish arrangements for the “transport and termination of telecommunications,” which, again, is technology neutral. And Section 251(c) requires ILECs to provide interconnection “for the transmission and routing of telephone exchange service and exchange access,” without any technological limitations. The obligations of Section 251 thus relate to the functions that a carrier provides and not the technology that it uses, a fact that preserved these legal obligations during various technological evolutions in the past.¹¹

⁹ See National Exchange Carrier Association et al. Comments at 37-40.

¹⁰ TWC Comments at 6-10.

¹¹ See *id.* at 7 (noting that the transition from analog switching equipment to digital circuit switches, and the use of IP within a telecommunications network, did not impact interconnection rights or duties) (citations omitted).

AT&T and Verizon contend that these statutory provisions do not authorize the Commission to compel ILECs to interconnect and exchange traffic in IP format.¹² Employing a series of misnomers, they construct a false premise on which all of their arguments depend, claiming that IP-to-IP interconnection falls outside the Commission’s jurisdiction over telecommunications services because it supposedly involves the exchange of broadband communications over “the Internet” between providers of “information services”—specifically, VoIP providers on one hand and Internet service providers on the other.¹³

Such obfuscation is unconvincing. As TWC’s opening comments explained, the traffic at issue is not broadband Internet traffic but regulated PSTN traffic exchanged only by a local exchange carrier.¹⁴ The Commission already has made clear that when a CLEC is exchanging voice traffic with another carrier for the purpose of routing IP-originated or IP-terminated telephone exchange and exchange access traffic, it is entitled to interconnect under Section 251.¹⁵ And because Section 251 on its face is technology neutral, the obligation to negotiate IP-to-IP interconnection follows directly from these rulings. AT&T’s and Verizon’s emphasis on

¹² See AT&T Comments at 9-33; Verizon Comments at 9-39.

¹³ See, e.g., AT&T Comments at 9-16; Verizon Comments at 3, 9-14.

¹⁴ TWC Comments at 11-13. A competitive LEC may provide wholesale telecommunications services to one or more affiliated interconnected VoIP providers (as TWC’s CLEC affiliates do in most states), or a CLEC may operate both as the interconnecting carrier and as a retail VoIP provider (to the extent that provider offers VoIP as a certificated telephone exchange service).

¹⁵ See *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 ¶ 15 (2007) (“*TWC Declaratory Ruling*”) (holding that “the statutory classification of the end-user service, and the classification of VoIP specifically, is not dispositive of the wholesale carrier’s rights under Section 251”); see also *Petition of CRC Communications of Maine, Inc., Declaratory Ruling*, 26 FCC Rcd 8259 ¶ 26 (2011) (“*CRC Declaratory Ruling*”).

the regulatory classification of VoIP services rests in significant part on their failure to acknowledge the critical distinction between wholesale and retail services. The Commission has never ruled on the classification of retail VoIP service, and Verizon and AT&T argue at length that *retail* VoIP should be deemed an information service.¹⁶ But the debate over the retail classification of VoIP is irrelevant in this context, where the focus is solely on wholesale intercarrier arrangements, as the Commission has repeatedly recognized in addressing interconnection rights.¹⁷ Indeed, even assuming retail VoIP is an information service, that simply has “no bearing” on the interconnection rights of local exchange carriers that transmit and exchange such traffic.¹⁸

The wholesale/retail distinction also undermines the argument that Section 251(c) does not apply because interconnected VoIP service is neither “telephone exchange service” nor “exchange access.” The rights and responsibilities of “VoIP providers” are beside the point, as service providers are entitled to obtain interconnection under Section 251(a)/(b) *or* Section 251(c) only to the extent they qualify as local exchange carriers based on the provision of telephone exchange or exchange access service. As TWC has explained, and as the Commission has recognized, a carrier may offer such telecommunications services on a wholesale basis to one or more interconnected VoIP providers,¹⁹ or it may elect to provide retail VoIP service pursuant to a state-issued certificate of public convenience and necessity.²⁰ But in all events, only LECs

¹⁶ Verizon Comments at 27-29; AT&T Comments at 36-37.

¹⁷ See *TWC Declaratory Ruling* ¶ 9; *CRC Declaratory Ruling* ¶ 26.

¹⁸ *TWC Declaratory Ruling* ¶ 15.

¹⁹ *CRC Declaratory Ruling* ¶ 26; *TWC Declaratory Ruling* ¶ 15.

²⁰ 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).

are entitled to interconnect and exchange telecommunications traffic under Section 251. The lingering uncertainty as to the status and rights of VoIP providers that operate as non-carriers therefore is a red herring.

AT&T's misguided argument that it is not an ILEC for purposes of exchanging voice traffic in IP format is simply derivative of its broader error in mischaracterizing the traffic at issue.²¹ AT&T cannot simply invoke the phrase "Internet Protocol" to claim that it is operating as an Internet Service Provider when it exchanges voice traffic in IP format. A carrier's status as an ILEC turns on the *functions* provided by the carrier,²² and the functions competitive carriers are seeking from ILECs are interconnection and the exchange of traditional telephone exchange and exchange access traffic. AT&T does not cease to be an ILEC because it uses a particular technology to provide the same functions that it has provided in local exchange areas for decades. In fact, as TWC explained in its opening comments, the exchange of voice traffic in IP format does not use the same facilities as an Internet service provider's exchange of Internet traffic.²³ When TWC exchanges voice traffic using Session Initiation Protocol, it exchanges traffic using different facilities and different procedures than when it exchanges Internet traffic. Voice traffic routing and transmission also involves numerous complex procedures, such as queries to number portability, 911, and routing databases, that do not apply to Internet traffic. It simply is not accurate to describe the facilities-based exchange of regulated PSTN traffic in IP format as the same as Internet traffic.

The only way AT&T and Verizon would be exempt from the duty to allow IP-to-IP interconnection would be if it were not technically feasible, and neither carrier makes a serious

²¹ AT&T Comments at 39-40.

²² See 47 U.S.C. § 251(h).

²³ TWC Comments at 11-12.

effort to show that to be the case.²⁴ Verizon cautions the Commission against presuming that IP-to-IP interconnection is technically feasible, and suggests that some degree of technical consultation within the industry is warranted before the Commission takes any action in this area.²⁵ As an initial matter, the Commission should be skeptical of any claim that such interconnection is not possible as a technical matter. Verizon claims to have entered into IP interconnection arrangements on a voluntary basis,²⁶ suggesting that the agreed-upon framework plays a more significant role than technology in determining Verizon's views on feasibility. Moreover, the Commission in the past has recognized that ILECs have "incentives to resist competitive entry," and that ILECs facing such incentives "are likely to adopt different defensive strategies to forestall competitive entry," including claiming "that a particular form of interconnection is infeasible."²⁷ In any event, it would not be possible to make such a conclusion as a categorical matter, as the feasibility of any particular interconnection arrangement will depend on the particulars of that situation. And in that regard, the task of assessing the viability of a proposed IP-to-IP interconnection arrangement is best left to state commissions in the context of adjudicating specific disputes, consistent with their role under Section 252.

In short, the Commission can pursue its goal of promoting the deployment of modern, IP-based networks by using one of its more traditional tools: confirming that the established Section 251 framework applies to requests made by competitive carriers under Section 251(c)(2) as well as under Sections 251(a)(1) and (b)(5) combined for the negotiation of IP-to-IP

²⁴ 47 U.S.C. § 251(c)(2)(B).

²⁵ Verizon Comments at 33.

²⁶ Verizon Comments at 19.

²⁷ *Applications of Ameritech Corp. and SBC Communications Inc. for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines*, Memorandum Opinion and Order, 14 FCC Rcd 14712 ¶ 108 (1999).

interconnection arrangements for the purpose of routing telephone exchange and exchange access traffic.²⁸

B. Section 251 Duties Provide an Essential Backstop to Private Negotiations.

AT&T and Verizon also argue that there is no need for the Commission to enforce IP-to-IP interconnection obligations under Section 251 because market forces are successfully leading to efficient interconnection agreements without regulation.²⁹ The record does not support their arguments.

The primary rationale for Section 251 obligations is that ILECs possess ubiquitous networks constructed over decades during which they enjoyed legally protected monopolies.³⁰ That marketplace reality does not depend on the particular technology used by a CLEC to exchange voice traffic with the ILEC, and it is not lessened merely because an ILEC has upgraded its last-mile facilities to include IP-based technologies. ILECs' possession of ubiquitous networks and their retention of a dominant position in the wireline voice services marketplace gives them the ability and incentive to deny IP interconnection in order to raise rivals' costs.

²⁸ TWC has already explained that, just as the Commission should not extend statutory interconnection duties to Internet backbone or peering arrangements or to other non-telecommunications services regimes, it also should not compel non-ILECs to enter into interconnection agreements under Section 251, as such entities lack the ubiquitous networks and historical market power that necessitates such mandates. *See* TWC Comments at 17-18.

²⁹ *See, e.g.*, AT&T Comments at 20; Verizon Comments at 9-14.

³⁰ *See, e.g.*, *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*”).

Verizon and AT&T claim that they have strong incentives to enter into IP interconnection agreements,³¹ but the record belies their claims. In this proceeding, numerous parties have detailed the difficulties they have faced in reaching negotiated agreements.³² As the National Broadband Plan recognized, rural ILECs in particular have a demonstrated history of resisting even TDM interconnection with their competitors, let alone IP-to-IP interconnection.³³ The Commission in the past has found that ILECs “have no economic incentive ... to provide potential competitors with opportunities to interconnect with and make use of” their networks,³⁴ and that lack of incentive is not lessened because of the particular technology used to interconnect. The same “inequality of bargaining power” that motivated the enactment of the 1996 Act applies in the context of IP-to-IP interconnection for the exchange of traffic pursuant to Section 251.³⁵ ILECs’ self-serving recitations of their supposed incentives simply are not consistent with the physical reality that they control ubiquitous networks and the economic reality that they can wield those networks to hinder rivals.

Verizon claims that ILECs will have incentives to pursue IP interconnection arrangements because IP networks offer significant efficiencies over TDM network architecture.³⁶ If that were so, it is difficult to understand why Verizon so resists recognizing that IP interconnection arrangements fall within the established Section 251/252 framework. The efficiencies of IP networks may explain, in part, why carriers are upgrading their networks

³¹ Verizon Comments at 12; AT&T Comments at 20-21.

³² See, e.g., Sprint Nextel Comments at 13-15; T-Mobile Comments at 7-8; Windstream Comments at 15.

³³ National Broadband Plan at 49.

³⁴ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499 ¶ 55 (1996).

³⁵ *Id.*

³⁶ Verizon Comments at 14-17.

to IP technology, and why many competitive and incumbent LECs transport voice traffic in IP format even when the traffic originates or terminates in TDM format. But when it comes to interconnection, many ILECs retain the incentive and ability to force competitors to interconnect in TDM format so that the ILECs can collect higher intercarrier compensation rates and impose costs on competitors. Indeed, some ILECs do so even if they promptly convert the traffic back to IP format to transport it more efficiently across their own networks. If anything, this conduct by ILECs confirms that their demands for TDM-based interconnection are *not* about efficient interconnection and transmission of traffic but rather about exercising their market power to impair rivals.

AT&T and Verizon argue that there is no such thing as an incumbent with “terminating access” monopoly power when it comes to IP networks and thus that regulations aimed at mitigating the harms from the terminating access monopoly are unnecessary here.³⁷ In the context of interconnection for the exchange of voice traffic, that argument is wrong as a matter of fact and law. ILECs continue to have far more ubiquitous networks than CLECs, and do in fact control access to tens of millions of end users. AT&T in particular attempts to refocus the discussion on aspects of Internet traffic, also in IP format, that are competitive.³⁸ But ILECs have the ability and incentive to refuse IP-to-IP interconnection because forcing CLECs to convert their IP-based voice traffic to TDM format enables the ILECs to collect greater intercarrier compensation revenue and forces rivals to incur costs (such as the need to purchase TDM trunks and transit services) that the ILEC itself need not bear. That dynamic is a direct result of the market dominance that ILECs enjoy in controlling access to end users and is not comparable to AT&T’s examples.

³⁷ See Verizon Comments at 10-12, 25; AT&T Comments at 29-33.

³⁸ See AT&T Comments at 10-16.

In any event, ILECs including AT&T and Verizon plainly qualify as incumbent LECs under Section 251(h) irrespective of whether a competing carrier seeks to exchange traffic in TDM or IP format.³⁹ Just as Section 251 establishes interconnection obligations on a technology-neutral basis, so too does it define an “incumbent LEC” without regard to the technology used to exchange traffic. AT&T’s and Verizon’s description of the state of competition for unrelated Internet services does not relieve them of their duties with respect to local exchange traffic under Section 251.

Notwithstanding the foregoing concerns, TWC agrees that private commercial agreements should continue to provide the principal means of achieving IP-to-IP interconnection and the exchange of voice traffic. Indeed, Congress made private negotiated agreements the mainstay under Sections 251 and 252, again without regard to technology. The only question is whether the duties and dispute resolution procedures embodied in Sections 251 and 252 should provide a backstop to private negotiations when those negotiations break down. The record establishes that the concerns motivating Congress and the Commission to ensure interconnection are not diminished based on the choice of network technology, and the Commission therefore should confirm that the same interconnection obligations that apply to TDM-based interconnection also apply to IP-to-IP interconnection. Applying the same procedural rules for IP technology as for TDM technology will promote uniformity and avoid market distortions, and will promote the transition to all-IP networks. By explicitly confirming that ILECs have a duty to negotiate IP-to-IP interconnection, the Commission can leave it to the negotiating parties to develop the specific terms of interconnection, and thereby harness market forces to manage the technical and financial aspects of IP interconnection. But negotiations will be far more effective,

³⁹ 47 U.S.C. § 251(h).

and will be more likely to be successful, if competitive carriers know that they can invoke the statute's arbitration procedures to the extent necessary.

II. THE COMMISSION SHOULD ADOPT ADDITIONAL INTERCARRIER COMPENSATION REFORMS TO PROMOTE EFFICIENCY AND REDUCE BURDENS ON CARRIERS AND CONSUMERS

A. The Commission Should Permit Carriers to Continue to Rely on Tariffs to Implement New Intercarrier Rates.

Although the FNPRM recognizes a need to maintain “a role for tariffing as a part of the transition,” it conveys both an expectation and a preference that, going forward, carriers will rely “primarily” on interconnection agreements to set the terms on which traffic is exchanged.⁴⁰ Interconnection agreements clearly will be important in governing intercarrier compensation obligations in the future (as they have been important in governing the exchange of local traffic), but the Commission should avoid the needless disruptions that would result if carriers were required to rely on them exclusively. TWC thus agrees with those commenters arguing that the Commission should not act hastily to restrict competitive carriers’ ability to rely on tariffs to govern rates, terms, and conditions for originating and terminating toll traffic.⁴¹

TWC exchanges voice traffic with numerous carriers, and in many instances tariffs are the most efficient way, and indeed the only practically feasible way, to set the rates and terms of exchanging traffic. Requiring TWC to reach interconnection agreements with every carrier with which it indirectly interconnects would create substantial burdens without corresponding benefits. In fact, the negotiation burdens already are substantial, given the Commission’s emphasis that its reforms did not abrogate (or otherwise trigger an automatic “fresh look” at)

⁴⁰ FNPRM ¶ 1323; *see also id.* ¶ 1324 (referencing “the potential primary reliance on interconnection agreements”).

⁴¹ *See, e.g.*, Comcast Comments at 11-13; Comments of Cbeyond, Earthlink, Intregra Telecom, and tw telecom at 17-20.

existing agreements and that any changes to those arrangements would be left to applicable change-of-law provisions and negotiations between the parties.⁴² Negotiated arrangements should not be allowed to displace tariffs and similar mechanisms on which many carriers rely.

B. The Commission Should Take Specific Steps to Prevent Carriers from Offsetting Lost Intercarrier Revenues Through Increases in Other Rates.

TWC, like many other competitive carriers, often purchases tandem switched transit services offered by ILECs to achieve indirect interconnection with other LECs. TWC agrees with numerous other commenters that there is a legitimate concern that ILECs will charge unreasonably high transit rates as a means to recover intercarrier compensation rates that they will lose due to the Commission's reforms.⁴³ The Commission therefore should clarify that such transit services are governed by the cost-based pricing provisions in Section 251(c)(2)(D) and the dispute-resolution procedures under Section 252 to ensure the widespread availability of reasonably priced transit services.

The record reflects that the market for such transit services is not competitive.⁴⁴ The Commission should recognize that Section 251(c) requires ILECs to provide transit services at just and reasonable rates.⁴⁵ Section 251(c)'s language requires ILECs to interconnect "for the transmission and routing of telephone exchange service and exchange access," and nothing in the

⁴² Report & Order ¶ 815.

⁴³ See, e.g., Comcast Comments at 8 (citing numerous other comments); Sprint Nextel Comments at 68-71; see also FNPRM ¶ 1312 (citing comments).

⁴⁴ See Charter Communications Comments at 17-19; Sprint Nextel Comments at 68-72.

⁴⁵ See, e.g., Charter Comments at 19-21; Comcast Comments at 9-11; Sprint Nextel Comments at 59-62; see also *Qwest v. Cox*, 2008 U.S. Dist. LEXIS 102032 (D. Neb. Dec. 17, 2008) (interconnection duties of Section 251(c) include the provision of transit service); *SNET v. Perlermino*, 2011 U.S. Dist. LEXIS 48773 (D. Conn. May 6, 2011) (same).

language limits the obligation to traffic related to the ILECs' own customers.⁴⁶ Consistent with the 1996 Act's goals of promoting competition and opening markets, the Commission should confirm that Section 251(c) governs transit services. It would be both logical and consistent with its history of procompetitive regulations under the 1996 Act for the Commission to look to TELRIC principles to determine what constitutes reasonable costs for transit services.⁴⁷

The Commission has correctly recognized that, for non-access traffic, "transit is the functional equivalent of tandem switching and transport,"⁴⁸ which are plainly subject to Section 251. Although the Commission has not had a pressing need to address transit in the past, transit is an essential component of interconnection, and the Commission cannot achieve comprehensive reform without bringing transit services within its purview. Transit, no less than other areas of voice traffic exchange, represents a service in which ILECs have the ability and incentive to exploit their ubiquitous networks to harm rivals. And, particularly if the Commission were to leave transit out of its reforms, transit services would become an arena in which ILECs could seek to elude the Commission's otherwise pro-competitive reforms by charging exploitative transit rates to make up for other lost revenues.⁴⁹

⁴⁶ Charter Comments at 20.

⁴⁷ *See* Charter Comments at 21; Comcast Comments at 9-10; Sprint Nextel Comments at 63-65.

⁴⁸ FNPRM ¶ 1311.

⁴⁹ As TWC has explained, similar considerations counsel in favor of the Commission reforming originating access rates on the same schedule for reducing terminating access rates. TWC Comments at 18-19. The record reflects valid concerns from the competitive industry that the Commission not increase its newly established recovery mechanism in order to offset ILECs' lost revenues from originating access charges. *See, e.g.,* Leap Wireless Comments at 5; T-Mobile Comments at 18; Comcast Comments at 5. The Commission cannot achieve its goals of reform, and cannot incentivize ILECs to modernize their networks, if every reduction in intercarrier compensation rates is immediately offset by other guaranteed revenues.

CONCLUSION

TWC has been a consistent champion of local exchange carriers' rights to exchange telecommunications traffic that originates or terminates in IP format, and it has long been a proponent of responsible intercarrier compensation reform. The FNPRM establishes a foundation on which the Commission can take important steps in both areas, and TWC urges it to do so expeditiously in order to ensure the continued growth of voice competition and expansion of IP technology.

Respectfully submitted,

Steven N. Teplitz
Terri B. Natoli
TIME WARNER CABLE INC.
901 F Street, NW
Suite 800
Washington, DC 20004

Marc Lawrence-Apfelbaum
Julie P. Laine
TIME WARNER CABLE INC.
60 Columbus Circle
New York, NY 10023

/s/ Matthew A. Brill
Matthew A. Brill
Brian W. Murray
Alexander Maltas
LATHAM & WATKINS LLP
555 Eleventh Street, NW
Suite 1000
Washington, DC 20004

Attorneys for Time Warner Cable Inc.

March 30, 2012