

Exhibit D

**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 a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92

**REPLY COMMENTS
OF
CHARTER COMMUNICATIONS, INC.**

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**REPLY COMMENTS
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Charter Communications, Inc. (“Charter”), through counsel, hereby replies to selected comments of several parties commenting on issues raised in Section XVI (“Interconnection and Related Issues”) of the Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking (“NPRM”) issued by the Federal Communications Commission (“FCC” or “Commission”) in the above-captioned dockets.¹

INTRODUCTION

In order to reach the Commission’s goal of bringing a seamless advanced telecommunications network to all Americans, it is essential not only that intercarrier compensation rules encourage investment in advanced facilities, but also that important rules

¹ *In re Connect America Fund*, Notice of Proposed Rulemaking & Further Notice of Proposed Rulemaking, FCC 11-13, 26 FCC Rcd 4554 (rel. Feb. 9, 2011) (“*NPRM*”).

ensuring interconnection and related rights remain in place in an IP world. The Commission should make clear that existing law requires incumbent LECs to provide IP-to-IP interconnection at cost-based rates, and reject the incumbent LECs' arguments that such interconnection be subject to no Commission oversight whatsoever. That position not only conflicts with current law – it is bad policy, as it would stunt the growth of IP interconnection throughout the country. Similarly, the Commission should reject arguments that the market for tandem transit services is now “competitive” and should be free of any regulations under Sections 251 and 252. Absent concrete evidence demonstrating actual competition in specific markets, transit should remain an obligation of Incumbent LECs and be compensated at cost-based rates. Finally, the Commission should reject network edge proposals like that offered by CTIA, because such proposals conflict with governing law and undermine important extant rights to interconnection by competitors.

I. AFFIRMING THE APPLICATION OF CURRENT § 251 INTERCONNECTION PRINCIPLES TO IP INTERCONNECTION ARRANGEMENTS WILL CREATE MARKET CERTAINTY AND ENCOURAGE THE DEPLOYMENT OF “ALL IP” NETWORKS

The country's three largest incumbent LECs (“ILECs”) urge this Commission to abandon current network interconnection principles and rules, and instead leave interconnection arrangements for future “all IP” network connections unregulated and without federal and state Commission oversight. In particular, AT&T, Verizon, and CenturyLink, all assert that market forces, rather than established legal principles, should govern network interconnection and voice traffic exchange on all IP networks.

AT&T argues that current traffic exchange practices for Internet traffic should apply to the exchange of traffic for voice service providers, and that there will be no need for the Commission to apply existing rules to such arrangements because Internet traffic exchange

principles are sufficient.² Verizon and CenturyLink each assert that industry standards for interconnection for the exchange of voice traffic in IP format are still evolving, and that the Commission should not attempt to second-guess such methods by imposing specific rules or regulations.³ In effect, the incumbents ask this Commission to abandon the pro-competitive principles governing network interconnection and traffic exchange established by Congress under Sections 251 and 252 of the Act, as implemented by this Commission, and as largely affirmed by the courts.

The Commission should reject these requests to abandon the pro-competitive principles mandated by Sections 251 and 252, including the obligation to: interconnect at any technically feasible point, via any technically feasible method, pursuant to just and reasonable rates, terms and conditions as governed by Section 252.⁴ These principles have provided a foundation for the emergence of a competitive voice market across a variety of technology platforms (wireline, wireless, and cable), and will be crucial to continued growth of voice competition in an “all IP” network. For that reason, the Commission should affirm that current Sections 251 and 252 principles apply to IP interconnection arrangements. Doing so will also eliminate inefficiencies associated with the exchange of such traffic over existing IP-to-TDM connections.

A. The Commission Can Increase Market Certainty and Eliminate Current Network Inefficiencies by Applying Current 251 Principles to IP Interconnection Arrangements

The Commission recognizes that it must adopt policies which encourage the deployment of all IP networks, and that a lack of clear guidance going forward may hinder progress towards

² AT&T Comments at 17, 24-25.

³ Verizon and Verizon Wireless Comments at 16; *see also* CenturyLink Comments at 73-74.

⁴ *See* 47 U.S.C. §§ 251(c)(2)(D) and 252(d)(1).

that goal.⁵ Evidence in the record demonstrates that providers are migrating to all IP networks. Indeed, one estimate is that 90% of the interLATA PSTN has been replaced by IP technology, and 60% of the intraLATA PSTN has been replaced by IP technology.⁶ However, one significant hurdle to completing that transition is the lack of clear IP interconnection rules that apply to the interconnection of such networks for the exchange of voice traffic.

Paradoxically, although IP networks are now being deployed with more frequency, there is no evidence that ILECs are entering into IP-to-IP interconnection arrangements with competitors. Instead, as the Commission recognizes, just the opposite is true: ILECs continue to force competitors to exchange IP traffic in TDM format.⁷ As a result, although many competitors have transitioned to all IP networks, they are forced to retain legacy TDM network interconnection equipment to accommodate the exchange of voice traffic.⁸ And cable voice providers like Charter, who have deployed voice services over IP-based networks, are forced to establish separate TDM-based facilities solely for the purpose of interconnection with ILECs that continue to use such facilities.⁹ It is therefore clear that ILECs refusing to interconnect on IP-to-IP terms may be the most significant remaining barrier to ubiquitous deployment of all IP networks.

The inefficiencies associated with the conversion of IP traffic to TDM are well documented.¹⁰ Indeed, the Commission itself noted that a transition to all IP networks can result in reductions in circuit costs, switch costs, space needs, and utility costs, as well as the

⁵ NPRM at ¶ 506.

⁶ COMPTTEL, *et al.* Comments on NBP PN # 25, GN Docket No. 09-51, Attachment A at 1 (filed Dec. 21, 2009).

⁷ *See, e.g.*, XO Comments at 10, and EarthLink Comments at 3.

⁸ *See, e.g.*, Comments of Cablevision at 3-5.

⁹ Despite its investment in a state of the art IP network, Charter must convert calls to TDM and then purchase, lease or build circuit-switch compatible trunks to deliver calls to the ILEC's network).

¹⁰ *See, e.g.*, Comments of Cablevision at 3-5 (explaining that TDM-to-IP interconnection requires the IP service provider to convert calls to TDM and then purchase, lease or build circuit-switch compatible trunks to deliver the call to the ILEC).

elimination of other signaling overhead.¹¹

The Commission can ensure these costs are reduced simply by affirming that current network interconnection rules arising from Sections 251 and 252 apply to IP-to-IP interconnection arrangements at this time. The interconnection and traffic exchange duties arising under Sections 251 and 252 have served as the foundation for the emergence of a competitive voice market, across a variety of technology platforms (wireline, wireless, and cable). The basic right to interconnect, at any technically feasible point, on just and reasonable terms, is essential to competitive voice providers of all kinds CLECs, VoIP, and CMRS.¹² The application of these principles to IP networks would ensure operational certainty for next generation voice providers. As the Commission itself concluded in its National Broadband Plan “[f]or competition to thrive, the principle of interconnection – in which customers of one service provider can communicate with customers of another – needs to be maintained.”¹³

Affirming the application of these principles at this time will immediately provide needed certainty by applying well-accepted rules of network interconnection to an emerging network technology. This approach will also obviate the need for new rulemakings, proceedings or contested cases, concerning potential new rules of interconnection of IP networks, and will immediately provide clear signals and certainty to the industry. In addition, competitors will no longer be required to convert their traffic to TDM, and they will no longer have to bear the costs

¹¹ NPRM at ¶ 506.

¹² Recognizing the important role that interconnection plays in fostering competition, the FCC has established rules that permit competitors to obtain any “technically feasible method of interconnection” with ILECs, “at any particular point upon request.” *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, 11 FCC Rcd 15499, ¶ 553 (1996) (“*Local Competition Order*”).

¹³ National Broadband Plan at 49, Recommendation 4.10.

of converting IP traffic to TDM in order to exchange traffic with the ILECs.¹⁴ Finally, ILECs would no longer be permitted to refuse to interconnect with competitors on IP-to-IP terms.¹⁵

B. Leaving IP Interconnection Terms to “Market Forces” Will Not Ensure a Transition to All IP Networks, But Will Instead Permit ILECs to Continue Denying IP Interconnection Arrangements to Competitors

Verizon, and the other major ILECs, incorrectly assert that “market forces” will be sufficient to ensure that efficient and just IP interconnection arrangements develop in the future.¹⁶ However, the record reveals just the opposite. Today, the largest ILECs are refusing to enter into IP interconnection terms with competitors.¹⁷ Indeed, Verizon’s actions in a recent interconnection arbitration proceeding in Florida illustrates the lengths to which ILECs will deny IP interconnection arrangements with competitive providers.

When cable VoIP provider Bright House Networks sought to establish IP interconnection terms with Verizon in Florida, Verizon strongly objected to such terms and formally opposed such arrangements in a 2010 arbitration proceeding. In response to Bright House’s petition to arbitrate IP interconnection terms, Verizon stated: “Bright House has no right to, and no need

¹⁴ In conjunction with its decision to affirm the application of existing network interconnection principles to IP networks, the Commission should also establish that, after an implementation period, the costs of any continued IP to TDM conversion must be borne by the ILECs that choose to continue to utilize TDM-based technology. The benefits of any Commission decision to apply existing network interconnection principles to IP networks would be undermined if the ILECs were able to shift the costs of legacy interconnections back on to competitors. Similarly, the ILECs should not be permitted to shift their costs of any necessary network upgrades arising from this Commission decision upon competitive providers.

¹⁵ Further, affirming the application of existing interconnection principles to IP networks will also eliminate arbitrary distinctions that may provide opportunities for certain providers to game the system, or engage in arbitrage. That, of course, is consistent with the Commission’s current policy objectives. NPRM at ¶ 35 (proposing reforms to “reduce wasteful arbitrage and increase certainty.”).

¹⁶ See, e.g., Comments of Verizon at 17, Comments of CenturyLink at 73.

¹⁷ See Comments of COMPTTEL at 7; Comments of EarthLink at 3 (not aware of a single competitor that has established IP interconnection terms with an [ILEC] for the exchange of local voice traffic). See also, NPRM at ¶ 506, n. 729 (describing comments of competitors who have been unable to obtain IP interconnection terms with ILECs).

for, such IP interconnection ...”¹⁸ Verizon explained its rationale for refusing to provide IP interconnection in this way:

there is no requirement for Verizon to deploy a new network using new technology solely to suit an interconnecting carrier. Although Bright House has sought to raise in this arbitration the issue of whether it may obtain IP interconnection with Verizon, it cannot claim any legal entitlement to this new type of interconnection.¹⁹

Verizon’s opposition to IP interconnection with Bright House was so inflexible that the company refused to negotiate the terms of such arrangement with Bright House. As Verizon explained in a pleading filed with the Florida PSC: “Verizon did not agree to negotiate the issue of IP interconnection.”²⁰

Verizon’s unequivocal opposition to IP interconnection, when presented with a specific request to establish such an arrangement, speaks volumes about how Verizon would implement a regime of “market-based” interconnection in practice. When specifically asked to enter into IP interconnection terms with a competitive provider Verizon refused to discuss such terms, and vigorously litigated against the concept. Similarly, as recently as 2010 AT&T has opposed competitors’ attempts to establish IP interconnection arrangements via state commission arbitration proceedings in Texas.²¹

Although Verizon and AT&T have told this Commission that IP interconnection will

¹⁸ Verizon Florida LLC’s Response to the Petition for Arbitration of Bright House Network Information Services (Florida), LLC at 2, Florida PSC Docket No. 090501-TP (filed Dec. 7, 2009) (available at: <http://www.psc.state.fl.us/library/FILINGS/09/11794-09/11794-09.pdf>).

¹⁹ *Id.* at 5.

²⁰ *Id.*

²¹ See *AT&T Texas’ Response to Amicus Brief of TW Telecom, Sprint, CBeyond and McLeod USA d/b/a PAETEC*, Docket No. 26381 (filed Oct. 21, 2010) (available at: http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/26381_254_678811.PDF) (AT&T refused to provide IP interconnection arrangements with competitors, in part because it believed that “it is doubtful that incumbent LECs like AT&T Texas will be forced to provide interconnection via Session Initiation Protocol. (“SIP”) as part of their responsibilities under §§ 251 and 252 of the Federal Telecommunications Act (“FTA”).

develop as a result of “voluntarily negotiated commercial agreements,”²² their respective actions in two key markets tell a different story. Their opposition to IP interconnection arrangements with competitors in Florida and Texas leads to the undeniable conclusion that Verizon and AT&T will not enter into an IP interconnection arrangements of their own free will. Instead, these ILECs, and likely others, will engage in IP interconnection arrangements only if there is a clear regulatory mandate that requires these ILECs to negotiate in good faith the terms and conditions of IP interconnection.

Thus, without affirmative action by the Commission today, there is no reason to believe that ILECs will willingly enter into voluntarily negotiated commercial agreements for IP interconnection with competing providers of voice services.²³ Instead, the ILECs can simply refuse to discuss IP interconnection terms, or condition IP interconnection on unilateral and unreasonable rates, terms and conditions that strongly disfavor competitors. Permitting critical interconnection rights to be relegated to commercial agreements, as the ILECs’ suggest, will not work for the same reason that Congress enacted Sections 251 and 252 – because the rates, terms and conditions of such agreements will inherently favor those entities with market power (i.e. the incumbents) at the expense of competitors.

It is therefore clear that a failure to take any action on this issue will galvanize ILECs’ continued refusal to enter into IP interconnection arrangements with competitors, thus ensuring that the status quo continues for the foreseeable future. The transition to all-IP networks for every carrier will be stalled unless and until the Commission makes clear that Section 251 and 252 principles apply to IP interconnection just as they do to traffic exchanged in time division

²² Verizon Comments at 16.

²³ XO Communications Comments at 10.

multiplexing (“TDM”) format.²⁴

In addition, it would be a mistake to assume that (as the ILECs assert) “market forces” alone will guarantee adequate traffic exchange terms for voice traffic. AT&T argues that providers are able to exchange Internet traffic today without regulatory oversight.²⁵ However, the exchange of traffic on the Internet today is generally governed by “commercially reasonable” or “best efforts” standards, which does not ensure quality of service standards generally employed for voice traffic today. Put simply, there are no guaranteed quality of service standards for the exchange of voice packets on the Internet today, and reliance on current unregulated standards could lead to quality of service or probability of loss issues and the reputational harm for competitors that would surely follow.²⁶ Conversely, carrier-grade voice services provisioned over IP networks provide for quality of service levels necessary to meet consumer expectations in today’s market for voice services.

Notably, the application of Sections 251 and 252 to IP interconnection arrangements would not preclude two providers from entering into commercial agreements that depart from the principles of 251 and 252. The statute clearly permits two parties to agree upon terms that are mutually beneficial, but which may not conform to 251 principles. In this way, the application of Section 251 and 252 principles to IP interconnection will act as a regulatory “backstop” that would come into play only if the two parties were not able to develop mutually agreeable terms, just as they do today with the exchange of TDM traffic.

Competitive providers’ use of IP-based technology does not diminish or eliminate the basic need to obtain interconnection and traffic exchange arrangements with the ILEC on fair

²⁴ *Id.* at 29.

²⁵ AT&T Comments at 25.

²⁶ See *IP Interconnection for Managed VoIP, Interconnecting Next Generation Network Service Providers*; ETC Group, LLC, David J. Malfara, Sr. (May 12, 2011).

and reasonable terms. The ILEC's still serve the vast majority of wireline customers throughout the country – i.e., approximately 81% as of June 2010.²⁷ The statutory principles of interconnection and traffic exchange are the essential foundation to the continued development of a competitive voice market.²⁸ For these reasons, the Commission must take affirmative action to confirm that interconnection arrangements which rely upon IP technology will be subject to the same 251 and 252 rules and principles that currently apply to TDM-based interconnection at this time. Doing so will provide greater market certainty for all providers, and remove current barriers to the deployment of all IP networks.

II. BECAUSE THE MARKET FOR TRANSIT SERVICE IS NOT COMPETITIVE THE COMMISSION SHOULD AFFIRM THAT SUCH SERVICES ARE MANDATED BY SECTION 251 AND SUBJECT TO TELRIC PRICING PRINCIPLES

The record in this proceeding (and past proceedings) reveals that there is no independent, verifiable market data which establishes that the market for transit services is competitive. Until the market for such services is truly competitive, as demonstrated by independent verifiable data, the Commission must affirm that incumbent LECs must provide transit services pursuant to Section 251. That statute, section 251(a) and 251(c)(2) specifically, provides sufficient legal authority for the Commission to direct incumbent LECs to provide transit services under just and reasonable terms. Finally, the application of TELRIC-based rates to transit obligations is consistent with Commission precedent, and will ensure that unreasonably high transit rates do not undermine the Commission's attempts to unify and reduce intercarrier compensation rates.

²⁷ ***“In June 2010, there were 122 million end-user switched access lines in service and 29 million interconnected VoIP subscriptions in the United States, or 151 million wireline retail local telephone service connections in total.”

See Local Telephone Competition: Status as of June 30, 2010, Industry Analysis and Technology Division Wireline Competition Bureau, March 2011 pg 1*** (available at:

http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db0321/DOC-305297A1.pdf).

²⁸ Time Warner Cable, Inc. Comments at 12.

A. No Record Evidence Supports Neutral Tandem’s Assertion That Transit Services Are “Competitive”

Of the more than one hundred and seventy parties filing comments in this proceeding, only one commenting party, Neutral Tandem, Inc., asserts that the market for transit services is “competitive.”²⁹ But these claims of a competitive market are not supported by any record evidence or verifiable data. Indeed, although the company asserts that competition for transit services is “widespread,”³⁰ and that a number of other wholesale carriers currently provide local tandem transit service in competition with Neutral Tandem,³¹ it cites *no data or facts* to support this claim. The lack of supporting data in Neutral Tandem’s comments is not surprising, since the company itself has acknowledged that it does not have any “accurate market share information.”³²

Charter does not dispute that there are more entities offering transit services today than there may have been five or ten years ago. But that fact, alone, is not enough to conclude that the market for transit services is “competitive,” or that entities offering alternative transit services are suitable, i.e., that they offer reliable alternatives to incumbent tandem facilities. Further, as the FCC has concluded, ILEC tandem transit functionality provides essential connectivity between providers and competitors in many smaller markets. In fact, as noted in Charter’s opening comments, while some markets may have one or more competitive transit provider offering service, many smaller Tier 2 or Tier 3 rural markets do not have a second transit provider. So the question of whether, and where, competition may exist is one which

²⁹ Neutral Tandem Comments at 3-5.

³⁰ *Id.* at 3.

³¹ *Id.* at 4.

³² See Neutral Tandem, Inc. 2010 Form 10-K Annual Report at 8 (for period ending 12/31/10), (available at: <http://www.neutraltandem.com/investorRelations/index.htm>) (emphasis added). The company explained that such information does not exist, in part because no regulatory body or industry association requires carriers to identify the amounts of voice traffic delivered to other carrier types, or compiles market data regarding such arrangements.

should be addressed on a more granular basis, preferably on a market-by-market basis, over time.³³

Lacking any reliable market data to support its claims that transit services are competitive, Neutral Tandem asserts that its decision to reduce rates is evidence of competition in the market for transit services.³⁴ However, this data, alone, is not sufficient to establish that the market for transit services is now “competitive.” There may be other plausible reasons for these rate decreases. For example, the company may have decided to reduce rates to reflect lower operational or capital costs arising from the use of more efficient network technology. Indeed, Neutral Tandem’s Annual Report states that the rates it pays to third parties for capacity on their networks “has decreased significantly over the past several years.”³⁵

The lack of any independent verifiable data reflecting actual levels of competition in the market at this time supports the comments filed by those parties asserting that the Commission must affirm transit as a 251 obligation. Although a number of states, and now two federal courts (most recently the federal district court in Connecticut), have affirmed that incumbent LECs are obligated to provide transit pursuant to Section 251, the lack of a clear *national* mandate forces competitors to operate under a patchwork of rules that vary from state to state. Thus, although competitors like Charter can obtain transit services from AT&T in Arkansas and Texas (for example), it has no such rights in Oklahoma or Louisiana. The Commission can remedy this problem by affirming that incumbent LECs have transit obligations under 251 on a national

³³ That approach is consistent with the FCC’s approach for analyzing competitive issues surrounding unbundling obligations of incumbent LECs. See *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd 19415 at ¶ 57 (2005) (“*Omaha Forbearance Order*”).

³⁴ Neutral Tandem Comments at 5 (asserting that the company’s average local tandem transit rates decreased [REDACTED] from 2007 to 2010).

³⁵ See Neutral Tandem, Inc. 2010 Form 10-K Annual Report (for period ending 12/31/10), at page 6 (available at: <http://www.neutraltandem.com/investorRelations/index.htm>).

basis.

Finally, should the market for competitive transit services develop in the future, such that many of the individual markets are truly competitive, the Commission can use its forbearance authority to remove unnecessary regulations in those particular markets. The forbearance process provides a useful mechanism for the Commission (and interested providers) to review relevant data, on a market-by-market basis, to ensure that transit providers are not burdened with unnecessary regulations if the market for those services are one day competitive.³⁶

B. Federal Courts Have Affirmed That Section 251 Obligations Extend to Transit Services

Neutral Tandem also argues that the Commission lacks authority to impose a mandate to provide transit services pursuant to Section 251(c)(2).³⁷ Specifically, Neutral Tandem asserts that the obligations under 251(c)(2) are limited only to the physical interconnection of networks, and therefore cannot be read to support the obligation to transit traffic across an intermediary network. CenturyLink raises similar arguments – though without providing any underlying legal support or rationale.³⁸

The argument that transit is not governed by Section 251 has been rejected by two federal courts, and a significant number of state commissions.³⁹ Indeed, the federal district court of Connecticut recently rejected that argument in its decision affirming the Connecticut Department of Public Utility Control’s (“DPUC”) order requiring AT&T to provide transit services pursuant to Section 251(c)(2). In affirming the DPUC’s decision, and finding that all ILECs have the obligation to provide transit under Section 251(c)(2), the court reasoned that any other decision

³⁶ See, e.g., *Omaha Forbearance Order* at ¶ 13.

³⁷ Neutral Tandem Comments at 6-7.

³⁸ CenturyLink Comments at 76-77.

³⁹ See, e.g., Charter Initial Comments at 11-12 (citing Nebraska District Court decision, and state PSC cases affirming transit obligations).

would undermine the purpose and intent of the statute: to promote competition.⁴⁰ Further, as to the argument that the definition of interconnection in 47 C.F.R. § 51.5 does not include transit functions, the court rejected a narrow construction of the definition, ruling instead that the definition does not preclude the potential for transit functionality.⁴¹

The Connecticut federal court's decision also relies upon the fact that mandating transit obligations under Section 251 is good public policy. Indeed, this Commission has recognized that the availability of transit arrangements ensures efficient network deployment and traffic exchange arrangements will be utilized, and that competitors will not be forced to construct and deploy duplicative or redundant infrastructure in order to exchange traffic with third-party providers.⁴²

Further, as other commenting parties have explained, Section 251(c)(2) requires ILECs to interconnect with any requesting telecommunications carrier "for the transmission and routing of telephone exchange service and exchange access."⁴³ The traffic referenced in this statute is not limited to traffic related to the ILECs' own customers, and can clearly be read to include third-party provider's traffic that arises in a transit situation. As such, nothing in Section 251(c)(2) limits the scope of an ILEC's obligation, or precludes the reasonable conclusion that transit traffic is covered under this statute.

⁴⁰ *Southern New England Tel. Co. d/b/a AT&T Connecticut v. Anthony J. Perlermin, et. al.*, No. 3:09-cv-1787, 2011 U.S. Dist. LEXIS 48773 at * 8 (Dist. Ct. May 6, 2011) ("... the 1996 Act and its attendant regulations should be interpreted so as to promote competition.") (citing *Mich. Bell Telephone Co. v. Covad Communs. Co.*, 597 F.3d 370, 387 (6th Cir. 2010)).

⁴¹ *Id.* at * 11. The District Court of Connecticut also relied upon the reasoning and conclusions of the District Court of Nebraska, which has also ruled that transit obligations arise from Section 251, as a matter of law. *See, e.g., Qwest v. Cox Nebraska Telecom, LLC*, 2008 U.S. Dist. LEXIS 102032 (D. Neb. 2008).

⁴² *See In the Matter of Developing A Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, 20 FCC Rcd 4685 at ¶ 125 (2005) ("Without the continued availability of transit service, carriers that are indirectly interconnected may have no efficient means by which to route traffic between their respective networks.").

⁴³ *See* Level 3 Communications LLC Comments at 19-21.

C. TELRIC Pricing Principles Apply to Transit Services

Neutral Tandem also argues that transit service should not be subject to TELRIC pricing principles because doing so will undermine competitive forces.⁴⁴ In addition, CenturyLink also appears to argue against the application of TELRIC pricing principles (or any rate regulation) by asserting that “[t]ransit providers must be adequately compensated for the use of their networks.”⁴⁵

Because Section 251(c)(2) does extend to transit services, the Commission is duty bound to affirm that TELRIC pricing principles apply to such services. Interconnection obligations arising under Section 251(c)(2) are, of course, subject to the pricing standards of Section 252(d)(1)(A). The Supreme Court has affirmed this Commission’s determination that the appropriate pricing standard under this section of the statute is TELRIC, and that TELRIC-based rates permit ILECs reasonable cost recovery.⁴⁶ For that reason, application of TELRIC rates would ensure that ILECs like CenturyLink are “adequately compensated” for the use of their networks. Thus, because transit is covered by Section 251(c)(2), it is subject to the same pricing standard applicable to all other interconnection related services: TELRIC.

Although not clearly articulated, Neutral Tandem also appears to argue that if the ILEC’s rates are set at a low rate, it would be more challenging for Neutral Tandem to compete with the ILEC on rates.⁴⁷ However, there is no evidence to support Neutral Tandem’s claim that the application of TELRIC pricing will undermine competition.

More significantly, it would be a grave mistake for the Commission to ignore TELRIC pricing principles while attempting to unify and reduce other call transport and termination rates.

⁴⁴ Neutral Tandem Comments at 8-10.

⁴⁵ CenturyLink Comments at 76.

⁴⁶ *Verizon Commus., Inc. v. FCC*, 535 U.S. 467, 507 (2002).

⁴⁷ Neutral Tandem Comments at 10.

Should the Commission decide to move forward with its proposal to unify and reduce all call transport and termination rates, it will be taking a major step towards rationalizing today's intercarrier compensation system. However, in so doing the Commission cannot ignore the fact that transit rates are a significant component of many provider's total transport and termination costs.

Because many competitive providers of wireline, wireless and VoIP services utilize transit arrangements to exchange traffic with other providers, these providers must pay the tandem provider for providing the transit functionality. That functionality permits providers to deliver their originating traffic to terminating providers more cost effectively than being forced to establish a direct interconnection with hundreds, if not thousands of other ILECs, CLECs and wireless providers throughout the country, and in this way serves as an essential component of competitive voice communications. Thus, in addition to transport and termination fees, many competitive providers also incur transit costs as a component of their larger intercarrier compensation costs.

If the Commission leaves transit rates unregulated, the incumbent LECs which continue to dominate this market would have largely unrestrained power to price transit services at rates far exceeding TELRIC. As a result, even where the Commission's terminating rate reduction policies were implemented, competitive providers would still likely face higher transit costs that would vary across jurisdictions (depending upon which incumbent LEC serves that particular market). Rational policymaking requires the FCC to set these rates on a national basis at forward looking costs consistent with its nascent policy to unify and reduce per-minute charges. Reducing transport and termination rates, while leaving intermediate transit functions unregulated, would simply perpetuate the rate arbitrage opportunities the Commission seeks to

eliminate. In particular, leaving transit unregulated, while at the same time reducing termination rates, would simply create a bottleneck one step higher in the network (at the tandem), and empower transit providers to assess higher charges without restraint.

Also, the opportunity for further arbitrage would be exacerbated if the Commission adopted CenturyLink's proposal to require competitive providers to pay for the costs of transiting traffic that *originates on CenturyLink's* network. CenturyLink urges the Commission to adopt a rule that would require the competitive provider to compensate the transit provider for the traffic flowing to and from an ILEC whose end office subtends a different ILEC's tandem.⁴⁸ The Missouri Small Telephone Company Group appears to advocate a similar proposal, in that it asserts that its member companies should not be required to transport traffic outside of their exchange boundaries.⁴⁹

The problem with these proposals, of course, is that they ignore the long-standing principle of "calling party network pays" which has served as the foundation of the Commission's compensation rules.⁵⁰ Where CenturyLink has end offices that subtend another ILEC's tandem, its customers will be originating calls to other providers, and CenturyLink will properly be viewed as the "cost causer" for such calls. To the extent that such calls are transited across a third-party network that incurs some costs to transport those calls, CenturyLink will be the originating carrier, and should not be excused of the basic obligation to compensate the transit provider for the costs caused by CenturyLink. The same rationale applies to the Missouri Small Telephone Companies when they are the "cost causers" for calls originating on their network and transiting across another ILEC's network to a third-party provider.

⁴⁸ CenturyLink Comments at 73-74.

⁴⁹ Missouri Small Telephone Company Group Comments at 12-13.

⁵⁰ See, e.g., *TexCom Inc., v. Bell Atlantic Corp.*, Order on Reconsideration, 17 FCC Rcd 6275 at ¶ 4 (2002) (articulating calling party network pays principles in transit arrangements).

Finally, in affirming the application of Section 251(c)(2), and TELRIC pricing principles, the Commission should affirm that the statute does not preclude two parties from negotiating arrangements that may depart from those statutory standards in accordance with Section 252(a)(1).

III. WELL-ESTABLISHED INTERCONNECTION PRINCIPLES SHOULD NOT BE ABANDONED DURING THIS PERIOD OF TRANSITION TO A NEW COMPENSATION REGIME

CenturyLink asks the Commission to adopt certain rules during a transition period that would depart from current interconnection principles and move towards a new interconnection regime that eliminates Section 251 and 252 principles. Specifically, CenturyLink asks the Commission to: (1) require competitors to establish multiple POIs on CenturyLink's network;⁵¹ (2) force competitors to bear the entire cost of facilities used to facilitate direct interconnection;⁵² and, (3) limit competitive providers indirect interconnection rights under 251(a).⁵³ Each of these proposals is completely contrary to the pro-competitive interconnection policies, and inconsistent with established precedent governing network interconnection obligations of ILECs under the Act.

As an initial matter, Charter believes that the application of a transition period during which certain interconnection rules will, or will not, apply is unnecessary and ill-advised. As explained above, the Commission need not abandon current interconnection principles during the transition to all IP networks. To the contrary, the Commission should affirm that *current* interconnection rules already in place do apply to IP networks, and that there is no reason to adopt a transition away from current interconnection rules.

⁵¹ CenturyLink Comments at 75.

⁵² *Id.*

⁵³ *Id.*

CenturyLink's proposal to require competitors to establish multiple points of interconnection ("POIs") on the CenturyLink network,⁵⁴ is offered with little explanation or rationale for this proposal. What the company appears to argue is that those competitors with greater volumes of traffic should establish multiple POIs. Where those POIs would be established, and who would decide that question, is left unanswered. More troubling is the fact that CenturyLink ignores the fact that this Commission has ordered ILECs to permit competitors to interconnect via a *single* POI within a LATA on the ILEC's network at any technically feasible location.⁵⁵ The FCC has affirmed that competitors do not have to build networks that mirror the ILEC's network,⁵⁶ and that Section 251 permits competitors to interconnect via a single POI in a LATA.⁵⁷

The CenturyLink comments also fail to explain why traffic volume requires multiple POIs given that today's fiber and packet-based networks are more efficient and capable of handling greater capacity than networks reliant upon legacy TDM-based technology. Other commenting parties assert that current technology permits the aggregation of greater volumes of traffic onto existing networks, which in turn permits the exchange of such traffic through high volume interconnection points.⁵⁸ Indeed, because these networks are capable of aggregating and transporting traffic more efficiently, the industry should be moving towards *fewer*

⁵⁴ CenturyLink Comments at 75.

⁵⁵ *Local Competition Order* at ¶ 209 (1996).

⁵⁶ *Id.*

⁵⁷ *See, e.g., Local Competition Order* at ¶ 209 (competitors entitled to interconnect at any technically feasible point on the ILEC network); *Application by SBC Communs. Inc., Southwestern Bell Telephone Co., and Southwestern Bell Communs. Services, Inc. d/b/a Southwestern Bell Long Distance; Pursuant to Section 271 of the Telecommuns. Act of 1996 to Provide In-Region, InterLATA Services in Texas*; CC Docket No. 00-65; 15 FCC Rcd 18354, ¶ 78 (2000); *Petition of WorldCom, Inc., et al., Pursuant to § 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Comm'n*, Wireline Competition Bureau, Memorandum Opinion and Order, 17 FCC Rcd 27039, ¶ 52 (2002) (right to single POI per LATA). The Fourth Circuit has affirmed that the Wireline Competition Bureau's decision is entitled to the same deference that would normally be granted to a decision of the full Commission. *MCI Metro Access Transmission Servs. v. BellSouth Telecomm., Inc.* 352 F.3d 872, n. 8 (4th Cir. 2003).

⁵⁸ *See, e.g., Level 3 Comments* at 12.

interconnection points rather than more points, as CenturyLink proposes.

CenturyLink's proposal to require competitors to establish and maintain direct connection facilities⁵⁹ is also contrary to accepted principles of cost responsibility for such arrangements. Again, the proposal is offered largely without explanation or supporting rationale, but appears to suggest that the Commission require competitors to assume cost responsibility for all interconnection facilities established with CenturyLink. This proposal conflicts directly with well-accepted FCC precedent which requires two interconnected providers to share the costs of interconnection facilities. Specifically, FCC rules require providers to allocate the costs of the interconnection facility based upon each party's proportional share of originating traffic.⁶⁰ This rule ensures an equitable allocation of costs and is easily administered and applied. CenturyLink offers no good reason to abandon it now.

Similarly, CenturyLink fails to explain why the Commission should adopt its proposal to limit carriers' statutory right of indirect interconnection by ruling that such arrangements are only permitted when traffic volumes are below a defined threshold.⁶¹ The statutory right of all carriers to interconnect directly or indirectly under 251(a) is not limited or conditioned upon doing so for low traffic volumes. Further, because many carriers choose to negotiate certain thresholds for the establishment of direct connections (therefore limiting reliance on indirect interconnections), there is no basis for the Commission to arbitrarily impose such limits in this proceeding. CenturyLink offers no valid reason for the Commission to limit statutory rights in this way, and the proposal should therefore be rejected.

Finally, the Commission should also reject the CTIA's proposed "Mutually Efficient

⁵⁹ CenturyLink Comments at 75.

⁶⁰ See 47 C.F.R. § 51.709(b).

⁶¹ CenturyLink Comments at 75.

Traffic Exchange” (METE) proposal for the reasons articulated in Charter’s initial comments. As explained therein, the record in prior proceedings demonstrates that network edge principles, like the CTIA’s METE proposal, would be inequitable favoring the incumbent LECs, and likely discourage forward-looking efficient network interconnection arrangements.⁶² Further, the record reflects that such network edge proposals do not account for the complexity of existing network interconnection arrangements, including those which permit efficient traffic exchange between providers.⁶³ The METE proposal would also undermine competitors’ existing statutory rights to utilize a single POI per LATA, which the Commission has repeatedly affirmed.⁶⁴

IV. CONCLUSION

The Commission should ensure that current principles of network interconnection and efficiency arising from Sections 251 and 252 apply to the interconnection of all IP networks, without limitation or exception. Similarly, the Commission should affirm that ILECs have a duty to provide transit services pursuant to Section 251, and that such arrangements are offered pursuant to TELRIC-pricing principles. Finally, the Commission should reject arguments by CenturyLink, other ILECs, and the CTIA to abandon, or otherwise modify, current network interconnection principles that ensure competitive network interconnection and traffic exchange on just and reasonable terms.

⁶² Charter Comments at 6-7.

⁶³ *Id.* at 7, n. 14 (citing comments of Comcast Corporation).

⁶⁴ *Id.* at 7-8.

Respectfully Submitted,

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