

May 15, 2014

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EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Re: *AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition*, GN Docket, No. 12-353; *Petition for Declaratory Ruling that tw telecom inc. has the Right to Direct IP-to-IP Interconnection*, WC Docket No. 11-119; *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

Dear Ms. Dortch:

Cablevision Systems Corp. and Charter Communications, Inc. write to reply to a recent letter submitted by USTelecom¹ regarding Cablevision and Charter's March 27, 2014 *ex parte* letter concerning IP-to-IP interconnection for managed Voice over Internet Protocol ("VoIP") traffic.² USTelecom takes issue with Cablevision and Charter's observation that ILECs continue to use their dominant market position to dictate that their IP-based competitors engage in inefficient TDM interconnection.³ USTelecom argues that ILECs are no longer "dominant providers" within the relevant markets because (1) some customers use wireless service for their voice connections and do not subscribe to wireline voice service

¹ See *Ex parte* Letter from Glenn T. Reynolds, USTelecom, GN Docket 13-5 et al. (April 9, 2014) ("*USTelecom Letter*").

² See *Ex parte* Letter from Samuel L. Feder, Jenner & Block LLP, GN Docket No. 13-5 et al. (Mar. 27, 2014) ("*Cablevision/Charter Letter*").

³ See *Cablevision/Charter Letter* at 1 ("I further explained that ILECs are currently unwilling to provide IP interconnection on commercially reasonable terms (if at all), that ILECs remain the dominant providers of fixed voice services in all or virtually all markets in the country, and that regardless of an ILEC's market share in a particular area, we have been required to bear all costs of converting IP traffic to and from Time Division Multiplexing (TDM) format").

and (2) some cable providers have substantial market penetration within some of their service territories. *USTelecom Letter* at 2-3, 3-4, & 4-5. These criticisms each miss the mark. ILECs continue to enjoy dominant positions in the market for interconnection services that have allowed them to delay the IP transition because competitive IP-based carriers lack the leverage necessary to demand IP interconnection—a fact that has been repeatedly borne out in Cablevision's and Charter's experiences attempting to negotiate for such agreements absent legal guidance from the Commission on the applicability of Section 251(c) to IP-to-IP interconnection.

To begin with, affiliates of two of the largest ILECs control two-thirds of the wireless market in this country. Thus—were ILECs not constrained by Sections 251 and 252 of the Communications Act—Verizon- and AT&T-affiliated ILECs would use their control of wireless traffic to augment their interconnection leverage well beyond their position in the wireline market alone.⁴ It is therefore strange that USTelecom's primary argument is that many residential customers have migrated from wireline to wireless voice connections. *See USTelecom Letter* at 2-3. And in any event, the Commission has declined to find that wireless acts as a competitive constraint on the wireline market, expressly finding that the kind of market share data USTelecom relies upon “cannot alone establish whether mobile wireless services should be included in the same relevant product market as residential wireline voice service.”⁵

Cablevision and Charter have also previously explained that ILECs dominate interconnection negotiations because—despite competitive providers' gains in some local markets—interconnection agreements typically cover entire states or regions, and no competitive providers have market penetration comparable to ILECs over such large areas.⁶ Moreover, because competitive providers historically have interconnected through the ILEC rather than engage in the inefficient process of all attempting separately to interconnect with one another, ILECs typically control wholesale access to transit service, interconnection with other carriers, and access to PSAPs.⁷ USTelecom's speculation as to Cablevision's wireline market share within portions of its footprint, therefore, does not change the fact that ILECs still dominate the markets that actually matter for purposes of being able to dictate the terms of interconnection agreements.

⁴ *See In re Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services, Sixteenth Report*, FCC 13-34 (Mar. 21, 2013), at 54 (Verizon Wireless held 34.3% wireless market share and AT&T held 32.3% wireless market share during 2008-2012 timeframe).

⁵ *In re Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, 25 FCC Rcd 8622, 8654, ¶ 59 (2010), *aff'd*, *Qwest Corp. v. FCC*, 689 F.3d 1214 (10th Cir. 2012); *see generally id.* at 8651-57, ¶¶ 55-61.

⁶ *See* Comments of Cablevision Systems Corp., GN Docket No. 13-5 at 4 (July 8, 2013).

⁷ *See* Reply Comments of Charter Communications, Inc., GN Docket No. 12-353, at 8 (Feb. 25, 2013).

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Finally, USTelecom ignores the fact that the obligation of ILECs to interconnect with other carriers under Section 251(c) (without regard to the technology used) is a statutory requirement created by Congress. That requirement benefits all consumers by limiting the ability of providers to leverage their market power to harm competition—a tactic both Cablevision and Charter have encountered from ILECs standing in the way of the IP transition. To the extent USTelecom believes that this obligation should be changed because of increased competition in the retail voice market, its complaint should be addressed to Congress, not the Commission. Until then, the Commission should ensure that ILECs carry out their statutory duties under Section 251(c) and provide IP-to-IP interconnection on reasonable terms.

Sincerely,

/s/ Samuel L. Feder

Samuel L. Feder

cc: Jonathan Sallet
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