

Maggie McCready  
Vice President  
Federal Regulatory Affairs



May 27, 2014

1300 I Street, NW, Suite 400 West  
Washington, DC 20005

Phone 202 515-2543  
Fax 202 336-7922  
maggie.m.mccready@verizon.com

**EX PARTE**

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

**Re: Technology Transitions, GN Docket No. 13-5; Connect America Fund, WC Docket No. 10-90; Petition for Declaratory Ruling That tw telecom inc. Has the Right to Direct IP-to-IP Interconnection Pursuant to Section 251(c)(2) of the Communications Act, as Amended, for the Transmission and Routing of tw telecom’s Facilities-Based VoIP Services and IP-in-the-Middle Voice Services, WC Docket No. 11-119; Cbeyond, Inc. Petition for Expedited Rulemaking to Require Unbundling of Hybrid, FTTH, and FTTC Loops Pursuant to 47 U.S.C. § 251(c)(3) of the Act, WC Docket No. 09-223; Policies and Rules Governing Retirement Of Copper Loops by Incumbent Local Exchange Carriers, RM-11358; Special Access for Price Cap Local Exchange Carriers, WC Docket No. 05-25**

Dear Ms. Dortch:

Comptel in a recent series of meetings has asked the Commission to deviate from its established copper-retirement rules, stand in the way of the ongoing market-led progression to IP interconnection for voice traffic, and prejudice its special access proceeding. Comptel proposes a so-called “managerial framework” that would harm consumers and impede the transition to IP-based networks. The Commission should continue to follow its established procedures that preserve incentives for investment in IP-based broadband networks and not impede the transition to new technologies as Comptel would have it do.

*Copper Retirement:* Consistent with its longstanding policies designed to encourage investment in next-generation broadband networks, the Commission in its 2003 *Triennial Review Order*<sup>1</sup> adopted a process for incumbent local exchange carriers to follow when they replace copper loops with new fiber facilities. The rules implementing the *Triennial Review Order* – Section 51.333 – establish a timeline for public notice and copper retirement that allows providers to plan network upgrades and changes in an efficient and reasonable manner. The

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<sup>1</sup> *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003) (“*Triennial Review Order*”).

rules provide that objectors to copper retirement must describe how they will work with providers to accommodate network changes, rather than simply forestall copper retirement altogether. Relying upon those pro-investment policies, broadband providers nationwide have spent tens of billions of dollars deploying advanced broadband technologies to millions of U.S. homes.

Nevertheless, Comptel asks the Commission to take the radical step of suspending its copper retirement rules. There is no basis to grant Comptel's request, which would reverse the Commission's long-settled policies that have encouraged widespread, facilities-based broadband investment and competition. Comptel seeks to unfairly and unlawfully restrict one set of providers' ability to determine the technologies to use to serve their customers, in blanket contradiction to the Commission's already established rules and findings. Suspending the copper retirement rules would effectively require incumbent LECs – and only incumbent LECs – to continue to maintain redundant or outdated facilities that they do not need to serve their customers. Such a drastic change would impose unnecessary costs, discourage investment in broadband, and cause consumer harm as providers face diminished incentives to deploy and enhance their networks. The Commission has already concluded that fiber-to-the-premises is “the most efficient wireline technology being deployed today in new builds,” and it based the forward-looking cost model for universal service support under the *Connect America Fund Order* by estimating the costs of an all-fiber network.<sup>2</sup> Suspending the retirement rules would create a roadblock for companies that accept Connect America Fund support and plan to deploy fiber networks.

There is no basis for suspending the Commission's copper retirement rules and the Commission's settled findings that the Commission reached when it adopted them, findings that have fostered massive investment in and deployment of new broadband facilities. The Commission should continue to allow its pro-consumer copper-retirement processes to do what they were designed to do and should not impede or prevent providers from retiring copper that is no longer needed to serve customers.

*IP VoIP Interconnection:* Verizon is at the forefront of IP VoIP interconnection. Verizon's track record makes clear that Verizon is serious about IP VoIP interconnection and that we are willing to negotiate IP VoIP interconnection on commercially reasonable terms. The only thing standing in the way of other providers obtaining IP VoIP interconnection with Verizon is those providers' unwillingness to pursue those arrangements.

Actual experience bears this out.<sup>3</sup> Verizon recently completed commercial agreements with BrightLink Communications and with 365 Wireless for the exchange of voice traffic in IP format. To date, Verizon has successfully negotiated eight of these commercial agreements between other providers – Comcast, Vonage, Bandwidth.com, Millicorp, Intermetro, Broadvox,

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<sup>2</sup> *Connect America Fund High-Cost Universal Service Support*, Report and Order, 28 FCC Rcd 5301, ¶ 33 (2013) (“*Connect America Fund Order*”).

<sup>3</sup> See, e.g., Letter from Maggie McCready, Verizon, to Marlene H. Dortch, FCC, *Technology Transitions Policy Task Force*, GN Docket 13-5 (Jan. 10, 2014).

BrightLink, and 365 Wireless – and Verizon’s incumbent LECs, which provide Verizon’s FiOS Digital Voice service. In addition, Verizon Wireless and Sprint have entered into agreements for the exchange of voice traffic in IP format, as have Verizon Wireless and T-Mobile. Verizon continues to negotiate in good faith with providers of different types and different sizes, and Verizon anticipates those negotiations will lead to more commercial agreements.

These facts do not fit neatly with Comptel’s narrative, so Comptel and others choose to disparage or ignore them. For example, Comptel claims that Verizon’s commercial agreements and its active efforts to negotiate more of them do not “demonstrate that incumbent LECs have a business incentive to voluntarily provide VoIP interconnection at reasonable rates, terms, and conditions.”<sup>4</sup> Comptel offers nothing but empty rhetorical assertions to support this, because the facts tell the opposite story. Verizon’s commercial negotiations and agreements prove precisely what Verizon has told the Commission at every opportunity: as the transition to VoIP from TDM-based services continues, all providers have strong market-based incentives to enter into IP interconnection arrangements for VoIP traffic, and it is reasonable to expect VoIP providers to negotiate in good faith and agree to interconnect in IP format to exchange VoIP traffic with each other, as Verizon already is doing.

At the same time that Verizon has made clear through actions that it will pursue commercial IP VoIP interconnection agreements on just and reasonable terms, it is becoming harder and harder to discern what Comptel and others actually want. While Comptel complains to the Commission, its members have and are continuing to negotiate commercial IP VoIP interconnection agreements with Verizon. Verizon believes these negotiations will be successful as others already have been so long as *both* parties, including Comptel’s member companies, act reasonably. For our part, Verizon has described in great detail the process by which we approach commercial negotiations and the template documents that it is using to start those negotiations. No one has alleged that the substantive terms and conditions in those documents are unreasonable.

Comptel also points to recent regulatory developments in Michigan, where the Public Service Commission ruled in an arbitration between AT&T and Sprint that AT&T had an obligation under Section 251(c)(2) to provide IP interconnection.<sup>5</sup> But Comptel left out the key parts of the story that expose the regulatory games Sprint and others are playing. Sprint arbitrated before three state commissions — Michigan, Illinois, and Indiana — the question of whether Section 251(c)(2) requires IP VoIP interconnection. The Illinois Commerce Commission decided not to require IP interconnection in the parties’ arbitrated interconnection agreement.<sup>6</sup>

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<sup>4</sup> Letter from Angie Kronenberg, Comptel, to Marlene H. Dortch, FCC, *Technology Transitions*, GN Docket 13-5; *et al*, at 12 (April 2, 2014) (“Comptel Ex Parte”).

<sup>5</sup> *See* Comptel Ex Parte, at 13.

<sup>6</sup> *See SprintCom, Inc., WirelessCo, L.P., NPCR, Inc. d/b/a Nextel Partners and Nextel West Corp., Petition for Arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company*, Arbitration Decision, ICC Docket No. 12-0550, at 34 (Ill. Commerce Comm’n filed June 26, 2013); *see also*

And although the Michigan Public Service Commission sided with Sprint, after Sprint prevailed, it reached what it called a “contingent resolution” with AT&T of this issue, which led it to remove the IP VoIP interconnection language from its Michigan interconnection agreement,<sup>7</sup> to dismiss with prejudice its appeal of the Illinois commission’s decision in favor of AT&T on this issue,<sup>8</sup> and to delay further proceedings in the arbitration before the Indiana commission.<sup>9</sup> Sprint then argued that AT&T had *no* obligation to file with state regulators this commercial “contingent resolution.” Sprint’s actions show that it is seeking to use Section 252 and the resources of state commissions for leverage, and that it has no real interest in Section 251/252 style interconnection for IP traffic.

IP interconnection offers considerable efficiencies to providers and benefits to consumers in the form of new features that all-IP transmission makes possible. Consumers deserve to enjoy those undisputed benefits. Vonage has touted its “groundbreaking IP interconnection agreement” with Verizon,<sup>10</sup> which Vonage said “will allow both Verizon and Vonage customers to enjoy the quality of service and cost benefits that come from the IP exchange of traffic, including the potential to offer subscribers services that rely on end-to-end IP networks – such as high-definition voice.”<sup>11</sup> When providers are serious about negotiating IP VoIP interconnection arrangements, deals get done. Ironically, the potential for regulation is an impediment because it provides companies with an incentive *not* to negotiate and reach agreements in order to manufacture “evidence” of a need for regulatory action. Verizon’s actions and those of Comptel, Sprint, and others make clear that what is required to reach IP VoIP interconnection agreements is not regulation, but willing parties. Verizon has demonstrated that it is willing to enter contracts for IP VoIP interconnection.

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Reply Comments of Sprint, *Technology Transitions Policy Task Force Seeks Comment on Potential Trials*, GN Docket No. 13-5, at 4 (Aug. 7, 2013).

<sup>7</sup> Joint Submission, *Request for Commission Approval of an Interconnection Agreement Between Sprint Spectrum L.P. and AT&T Michigan*, Case No. U-17569, at 1-2 (Mich. Pub. Serv. Comm’n filed Feb. 25, 2014). After the Michigan commission objected to Sprint’s actions, Sprint and AT&T filed an agreement that contained the language the commission had ordered.

<sup>8</sup> See Stipulation of Dismissal of Count V of Plaintiffs’ Complaint, *SprintCom, Inc. v. Scott*, No. 1:13-cv-06565 (N.D. Ill. filed Feb. 28, 2014).

<sup>9</sup> See Joint Motion for New Hearing Dates and Suspension of Prehearing Activity, *Sprint Spectrum, L.P.’s Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, and the Applicable Laws for Rates, Terms and Conditions of Interconnection with Indiana Bell Telephone Company d/b/a AT&T Indiana*, Cause No. 44409-INT 01 (Ind. Util. Reg. Comm’n filed Feb. 28, 2014).

<sup>10</sup> Comments of Vonage Holdings Corp., *Numbering Policies for Modern Communications*, WC Docket 13-97; *et al.*, at 3 (March 4, 2014).

<sup>11</sup> *Id.* at 2-3.

*Special Access*: In 2012, the Commission determined that it could not address Comptel's claims about the competitiveness of or terms for special access services because Comptel failed to produce record evidence to support its claims.<sup>12</sup> And while Comptel continues to repeat the same baseless claims, it still has not done so.

As the Commission itself has noted, while it has attempted to compile a record, “[the FCC’s] efforts have been impeded by the failure of some parties to produce information clearly documenting their claims that special access rates are unreasonable.”<sup>13</sup> Despite the Commission’s voluntary data requests in 2010 and 2011 so few companies responded that the Commission still lacks complete data. The Commission specifically noted that “the vast majority of the [Comptel’s] service provider members ... did not provide any data in response to the agency’s October 2010 request.”<sup>14</sup>

Nor is Comptel’s failure to produce evidence to support its claim a surprise, because real world facts will only disprove its claims. Once collected – assuming the data collection remains comprehensive and is not amended to alleviate alleged burdens on certain segments of the marketplace or for other reasons – the data will show that there are many competitors in the market. Cable companies in particular have established themselves as major providers of Ethernet services to business customers. They and other non-incumbent providers now are routinely touting to Wall Street and elsewhere the high-capacity services they are investing in and providing. Just this month tw Telecom reported that growth in Ethernet and VPN had driven a 15% increase in data and Internet services revenue that “primarily resulted from installations of strategic Ethernet and VPN-based services and other services to enterprise customers,”<sup>15</sup> and in the fourth quarter of 2013 it announced “a strategic market expansion” to “significantly expand[]” its metro fiber footprint, “including entry into five new markets and accelerating the density of our metropolitan footprint in 29 existing markets.”<sup>16</sup>

Verizon has felt the effects of these trends, including intense competition for wireless backhaul services within its region. To cite just one example, when Verizon bid to supply Sprint with wireless backhaul within Verizon’s region to support Sprint’s aggressive network expansion, Verizon won *fewer than six percent* of the sites within its region, and Sprint announced that it had selected 25 to 30 other significant providers — including cable operators and fixed wireless providers — to provide backhaul.

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<sup>12</sup> See *Special Access for Price Cap Local Exchange Carriers*, Report and Order, 27 FCC Rcd 10557, ¶ 3 (2012).

<sup>13</sup> Opposition of the Federal Communications Commission to Petition for Writ of Mandamus, *In re COMPTTEL*, No. 11-1262, at 2 (DCC filed Oct. 6, 2011).

<sup>14</sup> *Id.* at 14.

<sup>15</sup> tw telecom inc., Quarterly Report SEC Form 10-Q (“2014 Q1 10Q”), at 29, <http://www.twtelecom.com/investor-guide/financial-reporting/sec-filings/10Q-10K-filings/> (May 8, 2014).

<sup>16</sup> *Id.* at 24.

Marlene H. Dortch

May 27, 2014

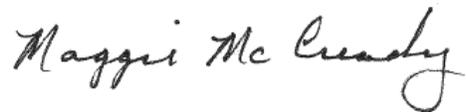
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In short, the Commission has previously determined that Comptel has produced “insufficient evidence” to support its claims and nothing has changed in that respect. And in the meantime, the market has only become more competitive as cable companies and others have further ramped up their competitive efforts.

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The Commission should reject Comptel’s continuing unsupported and unsupportable claims, and it should let its proceedings follow their normal course in order to reach data-driven decisions that encourage investment in next generation IP-based broadband networks.

Sincerely,

A handwritten signature in cursive script that reads "Maggie McCreedy".

cc: Stephanie Weiner  
Julie Veach  
Matthew DelNero  
Deena Shetler