



August 19, 2013

The Hon. Robin Weisz
Chairman, Interim Information Technology Committee
North Dakota Legislative Assembly
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Chairman Weisz and Members of the Committee:

On behalf of T-Mobile US, Inc., I'm writing to submit the company's policy position on issues you will be taking up in tomorrow's meeting of the Interim Information Technology Committee. Specifically, the Committee is initiating a study of the regulation of VOIP and its impacts on the telecommunications industry, and T-Mobile has concerns about the impact certain regulatory changes will have on interconnection relationships between competitive carriers such as T-Mobile and incumbent local exchange carriers (ILECs), and in particular the larger ILECs. I have also attached two documents that will help explain T-Mobile's concerns.

Although a transition from TDM networks to IP networks is both inevitable and beneficial, the advancement of technology alone does not necessarily justify the removal of all regulatory protections. Consumers of competitive telecommunications services have come to trust that their carrier will send and receive their important phone calls and data to the other telecommunications providers, at fair prices and reasonable terms. It is the job of the state PUC, under the authority of federal law, to monitor these intercarrier relationships and ensure that the parties are bargaining in good faith and upholding their commitments.

Legislation proposed last session in North Dakota would have eliminated the authority of the state PUC to review, approve and enforce interconnection agreements between carriers. Although the bill—SB 2234—contained language intended to preserve certain jurisdiction of the PUC, it was not clear whether such language would have restored the PUC's authority and satisfied the concerns raised by T-Mobile and others. As you know, the bill was amended to eliminate the deregulation language and replace it with language initiating the study.

T-Mobile urges the Interim Information Technology Committee to look very closely at the impacts deregulation will have on the relationships between carriers and the important role the state PUC plays in enforcing those relationships. I have attached a legal memorandum, authored by our Vice President of Government Affairs, Dave Conn, that more thoroughly explains T-Mobile's concerns and positions. Because your committee's study also implicates federal issues—issues that are currently under consideration by the FCC—I also thought it would be helpful to attach a filing T-Mobile recently made in the FCC proceeding on the subject. I hope these attached documents will help provide greater depth to our arguments.

Thank you very much for your consideration. If you have any questions whatsoever, please don't hesitate to contact me at (206) 890-3237 or Jim.Blundell@T-Mobile.com.

Sincerely,

JIM BLUNDELL
Senior Legislative Affairs Manager
T-Mobile US, Inc.

cc: Adam Mathiak, Fiscal Analyst
Allen H. Knudson, Legislative Budget Analyst and Auditor

MEMORANDUM

TO: Members, Interim Information Technology Committee
North Dakota Legislative Assembly

FROM: Dave Conn, M.A., J.D.
Vice President of State Government Affairs
T-Mobile US

RE: State Legislative Proposals to Deregulate Internet Protocol-based Networks

DATE: August 20, 2013

The two largest phone companies—AT&T and Verizon—have proposed a series of bills in state capitols across the country that, among other things, would completely remove state regulatory jurisdiction over all aspects of Internet Protocol-based communications networks and services. In the process, the proposals would remove state government from its traditional role of refereeing disputes that sometimes arise between telephone companies that must interconnect one another in order to ensure that calls between their customers are completed. The proposed legislation would apply to and treat one form of wireline voice service—Voice over Internet Protocol or VoIP—differently than currently existing services with the same functionality. The proposals come at an interesting time in the evolution of telephone networks from the legacy networks (Circuit-Switched Time Division Multiplex or TDM) to the next generation (Internet Protocol-enabled or IP-enabled) of networks. These sweeping deregulatory proposals fail to account for one important consideration: as competitive as telecommunications markets are at the end-user level, competitive carriers must still interconnect with each other in order to complete calls between their customers; interconnection is the lynchpin of competition because it allows customers of one carrier to talk to customers of any competing carrier. In many cases, the conditions and charges for these interconnections can be mutually agreed upon; but in some cases, a method for resolving disagreements about such interconnections will be necessary. If dominant, legacy, landline telephone companies are able to use their ubiquitous existing networks to force the use of inefficient interconnection processes by competitors, consumers will bear the consequences.

Instead, T-Mobile offers an alternative. In this memo, I share analysis of the current telecommunications market, as well as some trends. I discuss the current status of IP network deployment and some of the consequences of barriers to such deployment. I lay out the argument that federal law mandates a role for states and state regulatory commissions to play in the management of relationships between carriers and I offer language that will ensure, in spite of sweeping deregulation of IP-enabled networks, that states will continue to play a role in managing conflict between carriers over those networks.

A. The Realities of the Current ILEC-Dominant Telecommunications Market

While industry competition is driving promising technology advancements, one major development has significantly shifted the structure of the industry in a way that threatens competition. It is no secret that industry consolidation of both wireline and wireless entities has created powerful and dominating carriers in AT&T and Verizon, the largest wireline and wireless carriers. It is clearly evident, and not surprising, that

AT&T and Verizon understand that their dominant market positions can be fortified by dictating rates, terms, and conditions for interconnection with their networks, which inflate the costs of its rivals and produce excessive profits.

The largest ILECs today seek a regulatory environment in which they have the ability to exercise the leverage provided by their ubiquitous networks to force inefficient interconnection methods on competitors, without the “hurdle” presented by a state regulatory backstop that might prohibit anticompetitive behavior. It would be a mistake for state legislatures to take the simplistic view that sweeping deregulation would advance the IP transition and provide consumer benefits in all instances. In fact, ILECs today control tens of thousands of legacy interconnection points deployed over the last century at which they continue to control competitive access to their networks and their facilities. The declining retail market share of large ILECs (which has been substantially offset by growth in their own wireless and affiliated VoIP operations) has not undermined their ability to maintain wholesale chokepoints and control access for competitive carriers, VoIP providers and independent wireless carriers.

This practical reality, combined with many elements of the existing regulatory regime, provides opportunities for ILECs to impose excessive wholesale costs on competitors. Such charges are mere bookkeeping entries for ILECs and their affiliates, but create an anticompetitive burden on other carriers. This undermines the transition to efficient IP networks and harms consumers. ILECs have attempted to shield their IP voice service equipment from interconnection requirements by placing it in affiliated companies, which keep their voice IP networks end users are “closed” (i.e., packets are not allowed across the point of interconnection unless they are approved by the affiliate). As ILECs transition all their voice services to IP-based offerings, the law should provide a regulatory means to move away from continued ILEC control of chokepoint facilities for interconnection, rather than allowing no oversight (which will allow for continuation of existing control). Thus, the complete removal of all obligations that arise from ILEC control over bottleneck facilities would seriously undermine the potential benefits of more efficient and cost-effective IP networks and services.

B. Why is IP Interconnection Important?

There are multiple reasons why IP interconnection for voice traffic is important for competition and consumers. The first reason is that the market for voice services is highly competitive and competitors are continually looking for opportunities to reduce costs in order to compete on price. IP interconnection that is designed for efficiency involves relatively few points of interconnection (perhaps as few as a dozen across the entire contiguous U.S., in contrast with many thousands that currently exist in the contiguous U.S.) and more efficient use of interconnection facilities due to the inherently more efficient Internet Protocol. IP interconnection has the potential to substantially reduce costs from today’s TDM-Interconnection configuration, enabling more effective competition at the end-user level; but this can only happen if carriers are prevented from thwarting this more efficient interconnection architecture. Second, the network technology of carriers is evolving rapidly and more and more of each carrier’s respective network is becoming IP-based. As such, IP interconnection is the next logical evolutionary step. In fact, some competitive carriers are already exchanging voice traffic in IP format, albeit not with the largest ILECs (who refuse such arrangements). Third, if not allowed to interconnect their IP-enabled networks with the dominant ILECs, competitive carriers will be forced to convert this traffic from IP to TDM. This unnecessary and inefficient conversion from new technology to legacy technology will force additional investment in network equipment (e.g., media gateways that would be unnecessary if the traffic remained in IP format) and will degrade IP-based services since that conversion causes the loss of certain IP-based features. Again, the ability of competitors to offer low-cost advanced service alternatives will suffer.

C. Federal Law Applies to IP Interconnection

Until Congress amends the federal Telecommunications Act, Section 251 will continue to obligate the ILECs to interconnect, regardless of the technology the ILECs use to provide service. Indeed, the interconnection requirements of Section 251 and 252 are agnostic as to the technology employed by telecommunications service providers – even if those telecommunications services are used to provide unregulated information services.¹ As such, even after the transition to an IP-enabled network is complete, all ILECs will continue to have an enforceable obligation to “interconnect and exchange traffic” under Section 251(a) and (b), irrespective of the nature of the service provided to end users.² The FCC has held that the enforcement of those obligations is “necessary to promote local competition . . . and eliminate a potential barrier to broadband investment.”³ Moreover, because VoIP can be provided over broadband facilities, the enforcement of interconnection rights “for the purpose of exchanging traffic with VoIP providers will spur the development of broadband infrastructure,” and therefore is consistent with the exercise of the Commission’s ancillary jurisdiction in furtherance of the goals of Section 706 of the Act.⁴ The functionalities and safeguards needed for high quality voice transmission will not simply spring into existence once the all-IP network is deployed. Rather, the same pro-competitive interconnection policies, and Commission enforcement of Section 201 and 251 obligations, will continue to be necessary to protect the integrity of the network.

Some ILECs wrongly conflate IP-to-IP voice interconnection requirements with “regulating the Internet”.⁵ IP-to-IP voice interconnection consists of the transmission of data between two networks and thus meets the statutory definition of telecommunications.⁶ Importantly, the interconnection facilities themselves contain no capability “for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information,” which is the hallmark of the “information services” that the Commission historically has declined to regulate.⁷ The FCC’s authority to regulate IP interconnection is beyond dispute,⁸ and such regulation has nothing to do with regulating the unregulated information services that may be provided with such transmission.

¹ See *Petition of CRC Communications of Maine, Inc. and Time Warner Cable Inc. for Preemption Pursuant to Section 253 of the Communications Act, as Amended*, 26 FCC Rcd 8259, 8274 n.96 (2011) (“the regulatory classification of the service provided to the ultimate end user has no bearing on the wholesale provider’s rights as a telecommunications carrier to interconnect under section 251.”) (“*CRC Communications*”).

² See *id.* at 8259-60 ¶ 2, 8274 ¶ 27.

³ *Id.* at 8266 ¶ 14; see also *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*, 22 FCC Rcd 3513, 3519 ¶ 13 (2007) (“*Time Warner*”).

⁴ *Time Warner*, 22 FCC Rcd at 3519 ¶ 13.

⁵ *AT&T Petition* at 18. [Add full citation]

⁶ 47 U.S.C. § 153(50) (defining “telecommunications” as “the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.”)

⁷ See *id.* § 153(24) (defining “information service”).

⁸ 47 U.S.C. § 251(a) (“Each telecommunications carrier has the duty . . . to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.”).

Moreover, because TDM traffic, which is undeniably a telecommunications service, will continue to be transmitted at least until the transition IP-enabled networks is complete, the FCC will have ancillary jurisdiction over replacement IP services and the structure of the network over which that traffic is transmitted and exchanged.⁹

D. State Regulatory Commissions Have Jurisdiction Over IP Interconnection

Sections 251 and 252 of the federal Telecommunications Act provide a mechanism, within the jurisdiction of state regulatory commissions, to address and resolve conflicts that arise in the interconnection relationships between carriers. The FCC has not ever determined that this statutory jurisdiction is somehow waived, removed or preempted in the case of a particular network technology, such as IP voice interconnection. The role of the states is clear in the Act and, given the FCC's requirement that IP interconnection negotiations shall take place in good faith, state regulatory commissions should continue to fulfill their responsibilities under Section 252, including the resolution of issues in arbitration proceeding and other dispute resolution processes.

State regulatory commissions continue to exert their jurisdiction to consider and address interconnection disputes involving IP interconnection. The Illinois Regulatory Commission is currently considering the issues in a pending interconnection arbitration proceeding.¹⁰

The Puerto Rico Telecommunications Regulatory Board recently issued an order in an interconnection arbitration proceeding in which the incumbent carrier argued that the Board could not enforce IP-to-IP voice interconnection.¹¹ After making several references to the FCC's CAF Order, the Board determined that the competitor's "request for a means to drive IP-to-IP interconnection negotiations to conclusion is consistent with the FCC's perspective."¹² The Board concluded that the incumbent's position would leave the competitive carrier without a means to actually implement IP interconnection, a result inconsistent with the FCC's endorsement of the transition to all-IP networks.¹³

The Board reasoned that (1) Congress intended for the states to maintain a role in Section 251 interconnection dispute resolution, (2) the incumbent carrier could not show that the FCC has precluded state agencies from addressing IP interconnection, and (3) the incumbent could not show that the competitor's request conflicted with Section 251 or any federal law.¹⁴

The Public Utilities Commission of Ohio recently issued rules clarifying that the federal interconnection obligation applies regardless of the technology used for interconnection. In spite of arguments by AT&T, Cincinnati Bell, and the Ohio Telephone Association that the Commission's rules go beyond federal

⁹ See *T-Mobile Transformation FNPRM Comments* at 6-7.[Add full citation]

¹⁰ [Add Illinois citation]

¹¹ *Arbitration Order, Liberty Cablevision of Puerto Rico, LLC v. Puerto Rico Telephone Company, Inc.*, Docket No. JRT-2012-AR-0001, Puerto Rico Telecommunications Regulatory Board, September 25, 2012.

¹² *Id.* at 14.

¹³ *Id.*

¹⁴ *Id.* at 14-15.

statutory authority, the rules make clear the Commission's jurisdiction in IP interconnection.¹⁵

E. Proposed Amendment

T-Mobile, with the general support of Sprint and other competitive carriers, proposes amendment language to address the concerns outlined above. The amendment below addresses the need to maintain state regulatory commission jurisdiction for the resolution of IP interconnection disputes, as well as the need to designate regional IP POIs for IP interconnection:

Nothing in this act shall limit or restrict the authority of the [state commission] to decide any issue related to the terms, conditions, or pricing for interconnection allowing the completion of voice calls to end users, regardless of the technology used.

¹⁵ *Order*, Case No. 12-922-TP-ORD, pp. 4-6 (citing rule chapter 4901:1-7-06), Ohio Public Utilities Commission, October 31, 2012.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matters of)
)
AT&T and National Telecommunications) GN Docket No. 12-353
Cooperative Association Petitions Concerning the)
TDM-to-IP Transition)
)

COMMENTS OF T-MOBILE USA, INC.

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January 28, 2013

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COMMENTS OF T-MOBILE USA, INC.

T-Mobile USA, Inc. (“T-Mobile”) submits these comments in response to the petitions filed by AT&T and the National Telecommunications Cooperative Association (“NTCA”) requesting the Commission to address the transition of the public switched telephone network (“PSTN”) from time-division multiplexed (“TDM”) facilities and services to facilities and offerings based on the Internet Protocol (“IP”).¹

I. INTRODUCTION AND SUMMARY

An orderly industry transition to IP networks holds the potential for enormous benefits, including greater efficiencies for carriers and new and better competitive services for consumers. T-Mobile agrees with petitioners that the Commission should review and revise existing regulations to ensure that they reflect the current and future needs of consumers and carriers as networks transition to IP, in accordance with the requirements of the Communications Act of 1996 (“1996 Act”)² – what NTCA calls “smart regulation.”³ Implementing “smart regulation” entails eliminating outmoded regulations that serve as unintentional obstacles to updating of the nation’s

¹ *Pleading Cycle Established on AT&T and NTCA Petitions*, GN Docket No. 12-353, Public Notice, DA 12-1999 (rel. Dec. 14, 2012).

² 47 U.S.C. § 151 *et seq.*

³ Petition of the National Telecommunications Cooperative Association for a Rulemaking to Promote and Sustain the Ongoing TDM-to-IP Evolution at 9, GN Dkt. No. 12-353 (filed Nov. 19, 2012) (“NTCA Petition”).

communications networks while retaining others that are necessary to retain a competitive environment.

Neither petition, however, presents an entirely accurate vision of the regulatory reform necessary to unleash the full benefits of IP networks for consumers and protect the benefits of competition against anti-competitive abuses during and beyond the transition. Rather, they advance parochial incumbent local exchange carrier (“ILEC”) interests – overbroad and dangerous deregulation in the case of the AT&T Petition⁴ and increased and unjustified high-cost support for IP deployment in the case of the NTCA Petition.⁵ T-Mobile respectfully urges the Commission to focus on updating regulations to reflect a progressive regulatory framework for the IP transition, to ensure the continued development of competitive networks and advanced services benefitting the consumer during and after the IP transition.

There is no question that some of the existing regulations that reflect historic practices and network architectures are slowing the IP transition and therefore should be eliminated or modified. For this reason, T-Mobile supports Commission review of all carriers’ obligations in light of technological and market changes. Importantly, the Commission should use this proceeding to examine regulatory obligations that presuppose or require sole reliance upon TDM-era network architecture. The Commission should adopt a more efficient network interconnection architecture with a small number of IP points of interconnection (“POIs”), along the lines that T-Mobile previously proposed in comments filed last year in the *USF/ICC Transformation* proceeding.⁶ The

⁴ AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition, GN Dkt. No. 12-353 (filed Nov. 7, 2012) (“AT&T Petition”).

⁵ See NTCA Petition at 15.

⁶ Reply Comments of T-Mobile USA, Inc., *Connect America Fund*, WC Docket No. 10-90 (Mar. 30, 2012) (“T-Mobile Transformation FNPRM Reply Comments”); Comments of T-Mobile USA, Inc., *Connect America Fund*, WC Docket No. 10-90 (Feb. 24, 2012) (“T-Mobile Transformation FNPRM Comments”).

Commission also must move more aggressively to eliminate the unfair advantages for ILECs inherent in the legacy access charge and universal service regimes. The transition to bill-and-keep must move forward, and bill-and-keep should be applied to the transport and tandem switching charges that were excluded from the Commission's transition plan. Universal service reform must eliminate the advantages for ILEC IP network deployment that exist at the expense of other providers, while preserving all Americans' access to advanced communications capabilities.

Certain deregulatory actions, on the other hand, would undermine the IP transition and significantly harm the competitive environment for advanced services. T-Mobile advocates for appropriate Commission oversight and regulation both during the transition to IP networks and after the process is complete. ILECs still control tens of thousands of legacy POIs deployed over the past century, affording them tremendous market power and the potential for anti-competitive behavior in a variety of arenas. Further, the declining number of end user lines served by ILECs has not diminished ILEC control over bottleneck wholesale network components, such as transport, special access, transit, and backhaul facilities. To ensure a well-functioning, competitive market, the Commission must continue to require ILECs to comply with Sections 201 and 251 interconnection requirements for the telecommunications transport over which all services, including unregulated information services, must ride. Accordingly, the Commission should codify the obligation to negotiate IP-to-IP interconnections in good faith, backed up by speedy recourse to the Commission to promptly resolve IP interconnection disputes. Despite some contrary claims, the Commission's authority to regulate interconnection and access to other bottleneck facilities applies regardless of the underlying technology and irrespective of the ultimate regulatory classification of retail VoIP services. Continued Commission regulation is also necessary to ensure that IP networks are subject to reasonable requirements regarding reliability and resiliency.

In addition, rather than adopting formal trials involving only one type of carrier in a manner that would provide a distorted picture of IP transition issues and concerns, as AT&T proposes, the

Commission should organize a series of regional workshops to bring ILECs, competitive carriers, and all interested parties together to coordinate voluntary IP interconnection on a regional basis. Trials and test beds as proposed by AT&T would not be useful to prove out the risks of an overly deregulatory approach, as ILECs simply would be on their “best behavior” during any trials.

II. OUTMODED REGULATIONS THAT REFLECT ONLY CIRCUIT SWITCHED NETWORK ARCHITECTURE ARE A BARRIER TO THE TRANSITION TO IP NETWORKS

A. Retaining Legacy PSTN Network Architecture Will Undermine the Benefits of Efficient IP Networks

Any regulatory reform effort to facilitate the IP transition must directly promote the deployment of efficiently-designed IP networks and the competitive provision of advanced services. The traditional PSTN framework built around ILEC legacy circuit-switch-based infrastructure, with elaborate POI and edge rules that keep traffic tied to ILEC networks for the indefinite future, is rooted in less-efficient TDM technology – the regulatory regime of divestiture – and policy compromises made to implement the 1996 Act. The 1996 Act is designed to facilitate competition in a technologically neutral way and, while the regulations that the Commission adopted to implement it were intended to be technology-agnostic, they reflected the technology and network architecture that existed at the time. In this proceeding, the Commission should examine the current state of technology, and ensure that its regulations are updated to reflect the IP architecture of today and tomorrow.

Neither petition describes the architecture of an efficient all-IP network that should emerge at the end of an orderly transition. Contrary to ILEC assurances, there is no reason to believe that efficient IP network architecture will arise “organically” from the existing PSTN.⁷ Indeed, given the legacy inefficiencies built into PSTN network architecture, just the opposite could arise if

⁷ Comments of CenturyLink at 36-387, WC Dkt. No. 10-90 (Feb. 24, 2012).

interconnection requirements to exchange IP traffic are tied to legacy ILEC architecture.

Accordingly, the most effective regulatory step the Commission can take to facilitate the IP transition is to establish a transition to a structure like that proposed by T-Mobile in the *USF/ICC Transformation* proceeding.⁸ Specifically:

- The Commission should adopt a transition to a structure that would require all service providers to exchange traffic at a handful of regional POIs.
 - There should be a presumption that POIs used for IP voice interconnection will be located at existing Internet exchange points.
 - All such exchanges should be on a bill-and-keep basis by the end of the transition.
- All ILECs should be required to accept any request to exchange voice traffic in IP format and should be required to negotiate IP voice interconnections on behalf of all of their affiliates, thereby preventing avoidance of Section 251 obligations by offering IP-based services through affiliates.
- The Commission should establish a deadline for all carriers to accept voice traffic at regional IP POIs, preferably by the end of the price cap intercarrier compensation transition.⁹

Such an IP architecture and network requirements would be far more efficient than the current interconnection scheme and would therefore maximize consumer welfare by removing the thousands of legacy interconnection points that add unnecessary costs (ultimately paid by consumers) and undermine competitive carriers' investment and innovation.¹⁰ The current regime enables ILECs to require carriers like T-Mobile to transport traffic to too many POIs that are too

⁸ See T-Mobile Transformation FNPRM Reply Comments; T-Mobile Transformation FNPRM Comments.

⁹ T-Mobile Transformation FNPRM Reply Comments at 3-4. See also T-Mobile Transformation FNPRM Comments at 3-9. Sprint proposed a similar architecture. Comments of Sprint Nextel Corp. at 13-25, WC Dkt. No. 10-90 (Feb. 24, 2012). As discussed in more detail below, it is also imperative that parties have recourse to the Commission in the event interconnection negotiations break down. See *infra* Section III.B.1.

¹⁰ Deploying fewer, regional POIs is also significantly greener since each POI requires powered equipment and cooling.

deep in the ILEC network (*e.g.*, local wire centers), where access (and conditions of access) are solely under ILEC control. By contrast, under the T-Mobile's proposed network architecture, all carriers would be required to exchange traffic at regional POIs, precluding ILECs from requiring competitive carriers to replicate the legacy ILEC networks and preventing perpetuation of inefficient and anticompetitive conditions that would directly hinder the deployment of advanced competitive services. Wireless carriers like T-Mobile have been originating and terminating traffic on a bill-and-keep basis for decades with each other and other competitive carriers, and have developed more efficient networks as a result. T-Mobile has found that employing a handful of exchange points is measurably more efficient and robust than the PSTN architecture.

Moreover, under T-Mobile's proposal, ILECs could no longer avoid regulatory requirements and harm competitors by acting through different affiliates or by requiring other carriers to negotiate separate interconnection agreements with each ILEC affiliate, as ILECs have required T-Mobile to do. Also, ILECs could no longer insist on the exchange of traffic in TDM format, irrespective of end users' requirements, a reform that AT&T appears to support.¹¹

The Commission should remove one obstacle to the transition immediately by eliminating the regressive, asymmetrical interim rural transport rule, which disproportionately saddles CMRS providers with the costs of transporting indirectly interconnected calls from or to rural ILECs ("RLECs").¹² That rule illustrates the inefficiencies of forcing competitive carriers to replicate ILEC

¹¹ See AT&T Petition at 21.

¹² That rule requires that, for non-access traffic exchanged between a CMRS provider and a rate-of-return regulated RLEC, when the CMRS provider's chosen interconnection point is located outside the RLECs' service area, the CMRS provider is responsible for the transport between the RLEC's meet point to the interconnection point. *Connect America Fund*, 26 FCC Rcd 17663, 18040 ¶ 999 (2011) ("*USF/ICC Transformation Order*"). Because tandem transit service is often necessary for traffic to and from RLEC service areas, this rule might be applied to impose all of the transit costs between an RLEC's meet point with a third party tandem transit provider and the transit provider's interconnection with the CMRS provider.

networks. It allows RLECs to construct “porous” network edges, forcing other carriers to transport traffic deep into RLEC service territories, again with negative impacts on consumers and other carriers. This rule remains as an obstacle to creation of an efficient IP network.

B. Intercarrier Payments and Subsidies Should Facilitate an Efficient Transition, Rather Than Preserving Legacy Business Models

The Commission’s recent reforms to the universal service and access charge regimes, once fully implemented, will make both systems marginally better suited for the coming IP world. However, unreformed aspects of these systems remain key roadblocks to the IP transition, and continued reforms are critical to facilitate an orderly transition to an efficient and competitive IP world.

The exchange of IP traffic should be based on engineering efficiencies and should not preserve the inefficient access charge regime that the Commission began to phase out with the *USF/ICC Transformation Order*. As T-Mobile has argued, the preservation of access revenue streams provides an enormous incentive for ILECs to delay the IP transition.¹³ Thus, the Commission must continue to move forward with the transition to bill-and-keep as described in that Order.

Further reforms are necessary, however, to achieve an efficient regime for an IP-based network infrastructure. To this end, the Commission should adopt the additional intercarrier compensation (“ICC”) reductions proposed by T-Mobile and others in response to the Transformation FNPRM.¹⁴ Under the existing rules, ILECs can continue to impose inflated transport and tandem switching charges on carriers like T-Mobile for the exchange of traffic. ILEC transport and tandem switching rates should be included in the ICC transition to bill-and-keep in

¹³ T-Mobile Transformation FNPRM Reply Comments at 8-9.

¹⁴ See T-Mobile Transformation FNPRM Reply Comments at 8-11; T-Mobile Transformation FNPRM Comments at 9-12.

order to prevent access rate element arbitrage, as ILECs shift costs from end office termination services to transport and tandem switching elements. Otherwise, transport and tandem switching rates will become an *ad hoc* ICC recovery fund to make up for reduced termination charges. Thus, retaining inefficient payments for these elements will deter ILECs from transitioning to more efficient IP networks and undermine the IP transition, with negative consequences to consumers.

Under T-Mobile's proposed IP architecture,¹⁵ tandem switching and other access rate elements will become less relevant as voice traffic exchange transitions to fewer POIs. Consequently, ICC rate reductions and the network transition to fewer POIs will create a mutually reinforcing virtuous cycle, removing any incentive to delay either transition.¹⁶

Likewise, the universal service funding regime will undermine the IP transition if it subsidizes some competitors' networks at the expense of others. To date, even though the Commission has favored eliminating subsidies in areas where unsubsidized competition exists, it has hesitated to implement this approach, continuing to provide subsidy flows to ILECs even where unsubsidized competitors compete with them. Price cap ILECs continue to receive legacy support, some of which may be used to subsidize networks in competitive areas. Rate of return carriers lose support only where an unsubsidized competitor serves their entire study area (an unlikely proposition). Furthermore, even if it were to implement its policy of subsidizing one competitor per area, the Commission would not be adhering to a policy that is competitively and technologically neutral. The Commission should, therefore, expedite efforts to further eliminate ILEC support in competitive areas, and it should move this process forward expeditiously – unless it adopts a system supporting competitors in rural areas. As AT&T observes, there is a clear role for rational universal service policies to identify and address areas where the market alone would not ensure consumers'

¹⁵ See *supra* Section II.A.

¹⁶ For example, there are no tandems in IP networks and thus no tandem-related costs.

access to reasonably comparable services.¹⁷ But such policies should be competitively and technologically neutral.

As the Commission implements the Connect America Fund and Mobility Fund, it should continue to consider the impact of subsidies on carriers' abilities to compete in the new marketplace for IP-based services. Just as the ICC transition to bill-and-keep and the transition to a few IP POIs would be mutually reinforcing, the simpler IP network envisioned by T-Mobile also would reduce the need for universal service support. The Commission thus should reject NTCA's invitation to subsidize one group of competitors' IP networks in rural areas based on legacy ILEC status.¹⁸ To the extent that legacy ILEC carrier-of-last-resort obligations stand in the way of the rationalization of the universal service system for the new world of IP networks, they should be modified or eliminated.¹⁹

III. A PRO-COMPETITIVE REGULATORY FRAMEWORK MUST REMAIN IN PLACE TO ENSURE THAT ALL PARTIES EXCHANGE IP TRAFFIC ON REASONABLE TERMS

A. During the IP Transition, ILECs Will Continue to Control Competitive Access to their Networks and Facilities

It would be a mistake for the Commission to take the simplistic view that deregulation would advance the IP transition and provide consumer benefits in all instances. In fact, ILECs today control tens of thousands of legacy POIs deployed over the last century at which they continue to control competitive access to their networks and their facilities. ILECs' declining retail market shares have not undermined their ability to maintain wholesale chokepoints and control access for

¹⁷ NCTA Petition at 13-15.

¹⁸ *Id.* at 15.

¹⁹ In order to determine whether this needs to be done, however, the current impact of such carrier of last resort obligations will need to be identified and their financial impact quantified.

competitive carriers, VoIP providers and CMRS providers. This is particularly concerning because many ILECs are affiliated with CMRS or VoIP providers.

This practical reality, combined with many elements of the existing regulatory regime, provides opportunities for ILECs to impose excessive and discriminatory transport and tandem switching costs, as well as trunking and facility charges, on competitors. Such charges are mere bookkeeping entries for ILEC affiliates, creating an anticompetitive burden on unaffiliated carriers. This undermines the transition to efficient IP networks and harms consumers. Under current network architectures, ubiquitous ILEC facilities provide the only indirect, cost effective transit route to many rural networks. The IP networks deployed by ILECs remain “closed” networks (*i.e.*, packets are not allowed across the POI unless they are authorized). As ILECs transition their voice services to IP-based offerings, they will continue to control chokepoint facilities for interconnection with the PSTN, special access services, transit to other providers, and for access to the Internet (for backhaul). Thus, jettisoning all Title II obligations that arise from ILEC control over bottleneck facilities would seriously undermine the potential benefits of more efficient and cost-effective IP networks and services.

Therefore, the implicit assumption underlying the AT&T Petition that the conversion from TDM to IP format automatically will eliminate the need for core interconnection safeguards is incorrect. The use of packet switching allows multiple, indirect routes for call completion, which is not possible with TDM circuit-switched technology. These multiple routes, however, typically have to run through ILEC controlled interconnection points, and will continue to do so at least until the end of the transition. If carriers must continue to interconnect for IP voice traffic at ILEC-controlled interconnection points (*e.g.*, in order to obtain adequate quality of service), the ILECs will be able to continue to leverage their control of those facilities into a competitive advantage. Maintaining this advantage will undermine the IP transition, which is why competitively neutral network

interconnection points (that is, interconnection points not subject to the control of a single carrier) and limited rules are essential to ensure that the IP transition benefits customers.

B. The Basic Principles of Sections 251 and 252 Will Remain Relevant During and After the IP Transition

1. The IP Transition Will Not Obviate the Need to Ensure That ILECs Interconnect on Reasonable and Non-Discriminatory Terms

As AT&T previously observed, “the *transition* to an all-IP world likely will require the Commission’s active involvement on a range of issues.”²⁰ In the *USF/ICC Transformation Order*, the Commission reiterated its ruling that the obligation to negotiate interconnection in good faith “does not depend upon the network technology underlying the interconnection,” and that the requirement applies to requests for IP-to-IP interconnection.²¹ The Commission should foster compliance with this obligation by codifying it in straightforward language and establishing an inexpensive and speedy regulatory mechanism for resolving complaints in the event of violations. A similar good faith interconnection obligation established in the *T-Mobile Order* facilitated the development of intermodal competition,²² and the proper implementation of such an obligation in the IP interconnection context would facilitate the transition to a more efficient all-IP network.

During and after the transition to IP-based networks, the Commission will need to continue to exercise its authority under Sections 251 in order to prevent abuse in the exchange of traffic and the establishment of IP interconnection terms and conditions. Some regulation will remain necessary to ensure that no carriers can leverage legacy market power or gain unfair advantages. For example, ILEC dedicated transport facilities and tandem switches continue to be vitally necessary for

²⁰ AT&T Comments at 9, WC Dkt. No. 10-90 (Feb. 24, 2012) (emphasis in original).

²¹ See *USF/ICC Transformation Order*, 26 FCC Rcd at 18045 ¶ 1011 (“[W]e expect all carriers to negotiate in good faith in response to requests for IP-to-IP interconnection for the exchange of voice traffic.”).

²² See *Developing a Unified Intercarrier Compensation Regime*, 20 FCC Rcd 4855, 4865 ¶ 16 (2005), *appeal pending sub nom. Ronan Tel. Co. v. FCC*, No. 05-71995 (9th Cir. filed Apr. 8, 2005).

competitive carriers to interconnect with ILEC and other networks at reasonable cost. ILECs' loss of retail subscriber market shares has not lessened competitive carriers' dependence on these ILEC links. As one recent study noted: "The principal source of [the ILECs'] market position – a preexisting customer base and infrastructure – provides benefits to their IP networks that are comparable to the benefits enjoyed by the existing TDM networks."²³ Most importantly, as a wide range of service providers has emphasized recently, the Commission should continue to apply the obligations established in Sections 251 and 252 to interconnect and exchange traffic on reasonable and nondiscriminatory terms and conditions.²⁴

The Commission should enforce those obligations by requiring ILECs to negotiate IP interconnections in good faith, and providing a regulatory backstop to ensure a competitively-neutral result. One of the most important ways the Commission can guard against the exercise of market power in interconnection negotiations is to ensure that parties have recourse to an arbiter and standards for the resolution of disputes, where negotiations reach an impasse, as Section 252 of the Act provides. For example, the Commission could provide a forum through the Enforcement Bureau, such as the Accelerated Docket and mediation procedures, and place the burden to demonstrate good faith on the ILECs. Importantly, the rules for such proceedings must: (1) permit either party to file a complaint or seek resolution of a dispute over the requirements of the

²³ Joseph Gillan and David Malfara, National Regulatory Research Institute, *The Transition to an All-IP Network: A Primer on the Architectural Components of IP Interconnection*, at 22 n.48, NRRI 12-05 (May 2012) ("NRRI IP Transition Paper"), available at http://www.nrri.org/web/guest/research-papers/-/document_library_display/3stN/view/0/7101?_110_INSTANCE_3stN_redirect=http%3A%2F%2Fwww.nrri.org%2Fweb%2Fguest%2Fresearch-papers%3Fp_p_id%3D110_INSTANCE_3stN%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-2%26p_p_col_count%3D1.

²⁴ See, e.g., Letter from Thomas Jones, Counsel for Cbeyond, Inc., to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 10-90 (Dec. 4, 2012).

Commission's rules in an "accelerated" docket,²⁵ (2) be designed to reduce the costs associated with bringing a complaint, (3) establish clear precedent that is publicly available to facilitate resolution of future disputes without the need for repeated arbitrations or Commission involvement, and (4) provide for resolution of disputes within a commercially reasonable period, such as 90 to 120 days. These procedures would ensure that interconnection disputes are handled in a timely and efficient fashion and will further the Commission's goal to transition to an IP interconnection regime.²⁶

In addition, retaining stringent non-discrimination obligations are important to ensure that ILEC providers with their own long-haul transport facilities do not favor their own affiliates over competitors. Specifically, ILECs affiliated with VoIP and CMRS providers have significant incentives to provide their affiliates with interconnection on a discriminatory basis. Allowing such discrimination would permit these large entities to leverage their market power in one market (local services) to their benefit in competitive markets (VoIP and CMRS), which flies in the face of the 1996 Act's pro-competitive mandate.

2. The IP Transition Will Not Avoid the Need for Critical Services

The IP transition also should not be used as a justification to avoid or reduce existing quality of service obligations or to impede access to critical services facilities. As the Commission has found, its ultimate duty is to preserve the integrity of telecommunications and a competitive market for telecommunications. Practices that result in calls being dropped or traffic restricted "through impaired service quality" constitute unreasonable practices violating Section 201 of the Act.²⁷

²⁵ See 47 C.F.R. § 1.730.

²⁶ The Commission analogously has determined that a complaint proceeding is a proper vehicle to resolve disputes arising out of the negotiation of data roaming arrangements and noted that the accelerated docket procedures are available for such complaints. See *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, 26 FCC Rcd 5411, 5448-50 ¶¶ 74-77 (2011).

²⁷ See *Developing a Unified Intercarrier Compensation Regime*, 27 FCC Rcd 1351, 1356 ¶ 12 (2012).

Quality of service issues will continue to arise in an all-IP network. Because Internet “best efforts” standards are often insufficient for real time voice service, AT&T is wrong to assert that VoIP will be just another application on the “converged IP ecosystem” and that the unregulated Internet interconnections used for data exchanges will provide efficient interconnections suitable for the exchange of VoIP calls.²⁸ Voice service “is not simply becoming ‘just another application on the Internet.’”²⁹ The reliability, quality and security needed for real time voice service “will require a degree of interconnection and interoperability beyond that which applies to the public Internet.”³⁰

Furthermore, AT&T’s effort to characterize the emerging all-IP infrastructure as an unregulated information service network³¹ ignores the importance of continuing access to ILEC facilities, such as 911 facilities, number portability and routing, and the need for continuing Commission involvement to ensure the reliability and resiliency of networks. All of these critical service functionalities will continue to require enforceable interconnection obligations.

3. Section 251 of the Act Will Continue to Apply to ILECs During and After the Transition to IP Networks

Until Congress amends the Act, Section 251 will continue to apply to ILECs’ interconnection obligations regardless of the technology the ILECs use to provide service. Indeed, the interconnection requirements of Section 251 and 252 are agnostic as to the technology employed by providers of telecommunications transport and termination services – even when those telecommunications services are used to provide unregulated information services.³² As such, even

²⁸ Letter from Robert W. Quinn, Jr., Senior VP, Federal Regulatory and Chief Privacy Officer, AT&T, to Marlene H. Dortch, Secretary, FCC, at 2, 5-6, WC Dkt. No. 05-25 (Jan. 14, 2013).

²⁹ NRRI IP Transition Paper at 6.

³⁰ *Id.*

³¹ *See* AT&T Petition at 18.

³² *See Petition of CRC Communications of Maine, Inc. and Time Warner Cable Inc. for Preemption Pursuant to Section 253 of the Communications Act, as Amended*, 26 FCC Rcd 8259, 8274 n.96 (2011) (“the regulatory classification of the service provided to the ultimate end user has no bearing

after the transition is completed, all LECs, including rural ILECs covered by the Section 251(f) exemption, will continue to have an enforceable obligation to “interconnect and exchange traffic” under Section 251(a) and (b), irrespective of the nature of the service provided to end users.³³ The Commission has held that the enforcement of those obligations is “necessary to promote local competition . . . and eliminate a potential barrier to broadband investment.”³⁴ Moreover, because VoIP is often accessed over broadband facilities, enforcement of interconnection rights “for the purpose of exchanging traffic with VoIP providers will spur the development of broadband infrastructure,” and therefore is consistent with the exercise of the Commission’s ancillary jurisdiction in furtherance of the goals of Section 706 of the Act.³⁵

The functionalities and safeguards needed for high quality voice transmission will not simply spring into existence once the all-IP network is deployed. Rather, the same pro-competitive interconnection policies, and Commission enforcement of Section 201 and 251 obligations, will continue to be necessary to protect the integrity of the network.

C. The Commission Possesses the Authority to Retain Interconnection Requirements

AT&T wrongly conflates IP-to-IP interconnection and the regulation of interconnected VoIP services with regulating “information services” and the Internet.³⁶ IP-to-IP interconnection consists of the pure transmission and exchange of content between two networks and thus meets the statutory

on the wholesale provider's rights as a telecommunications carrier to interconnect under section 251.”) (“*CRC Communications*”).

³³ *See id.* at 8259-60 ¶ 2, 8274 ¶ 27.

³⁴ *Id.* at 8266 ¶ 14; *see also 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*, 22 FCC Rcd 3513, 3519 ¶ 13 (2007) (“*Time Warner*”).

³⁵ *Time Warner*, 22 FCC Rcd at 3519 ¶ 13.

³⁶ AT&T Petition at 18.

definition of telecommunications.³⁷ Importantly, the interconnection facilities themselves contain no capability “for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information,” which is the hallmark of the “information services” that the Commission historically has declined to regulate.³⁸ Similarly, an end-to-end IP voice call does not possess the characteristics of an information service, because it does not involve a net protocol conversion or any other change in the form or content of a real-time voice call.³⁹ For this reason, the Commission’s authority to regulate IP interconnection is beyond dispute,⁴⁰ and such regulation has nothing to do with regulating the unregulated information services that may be provided with such transmission.

Moreover, because TDM traffic, which is undeniably a telecommunications service, will continue to be transmitted at least until the transition is complete, the Commission will have ancillary jurisdiction over replacement IP services and the structure of the network over which that traffic is transmitted and exchanged.⁴¹

The Commission applied Section 251 explicitly to interconnection used for the exchange of IP voice traffic in the *Time Warner* and *CRC Communications* cases,⁴² and the legal justifications and policy considerations underlying these decisions will remain relevant and applicable after the

³⁷ 47 U.S.C. § 153(50) (defining “telecommunications” as “the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.”)

³⁸ *See id.* § 153(24) (defining “information service”).

³⁹ *Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, 19 FCC Rcd 7457, 7465 ¶ 12 (2004).

⁴⁰ 47 U.S.C. § 251(a) (“Each telecommunications carrier has the duty . . . to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.”).

⁴¹ *See* T-Mobile Transformation FNPRM Comments at 6-7.

⁴² *See CRC Communications*, 26 FCC Rcd at 8273-74 ¶¶ 26-27; *Time Warner*, 22 FCC Rcd at 3513, 3519 ¶ 13.

transition to an IP-based network is complete.⁴³ The Commission emphasized this point in the *USF/ICC Transformation Order*, stating:

[S]ection 251 of the Act is one of the key provisions specifying interconnection requirements, and . . . its interconnection requirements are technology neutral – they do not vary based on whether one or both of the interconnecting providers is using TDM, IP, or another technology in their underlying networks.⁴⁴

Together, these Commission holdings make clear that carriers do not lose their interconnection rights on account of VoIP traffic they may carry and exchange over telecommunications facilities with other carriers, irrespective of how VoIP service ultimately may be classified.⁴⁵

IV. A “TEST BED” FOR REGIONAL IP INTERCONNECTION COULD BE USEFUL

T-Mobile supports the concept of limited trials for regulatory reforms that will advance the IP transition. Specifically, T-Mobile urges the Commission to establish a regional POI test where ILECs, competitive carriers, and other interested parties would agree to exchange traffic in IP format. Although some carriers have been able to negotiate IP interconnections with ILECs, these agreements are not as efficient and beneficial as they might have been if they had been negotiated as part of an arrangement to exchange traffic among several carriers at regional POIs. In addition, because these interconnection agreements often involve significant expense, fewer carriers seek to enter into such agreements than otherwise might. Coordinated planning among as many entities as possible serving a given geographic region would create incentives for more parties to participate, which would increase the benefits of IP interconnection for all carriers and consumers. Accordingly,

⁴³ See *CRC Communications*, 26 FCC Rcd at 8273-74 ¶¶ 26-27 and n.96 (noting that “the regulatory classification of the service provided to the ultimate end user has no bearing” on the underlying provider’s “rights as a telecommunications carrier to interconnection under section 251”); *Time Warner*, 22 FCC Rcd at 3519 ¶ 13 (finding that permitting VoIP providers to interconnect via CLECs pursuant to Section 251 “encourag[es] competition for wholesale services,” promotes the goals of section 706, and “will spur the deployment of broadband infrastructure.”).

⁴⁴ *USF/ICC Transformation Order*, 26 FCC Rcd at 18126 ¶ 1342.

⁴⁵ *Time Warner*, 22 FCC Rcd at 3520-21 ¶ 15.

the Commission should host regional workshops where interested parties could discuss the coordination of IP traffic exchanges, including the identification of efficient IP POIs in each region and standards for participation in the interconnection arrangements.

On the other hand, “test bed” trials that experiment with deregulation that strips away important competitive protections, as AT&T proposes, would be counterproductive and highly unlikely to yield meaningful results. As explained above, it would be premature to eliminate regulations that allow ILECs to insist that other carriers continue to adhere to inefficient PSTN network architecture or allow ILECs to leverage their ownership of chokepoint facilities. A test bed cannot adequately assess the effectiveness of eliminating regulations, because the behavior of the parties involved in the test would necessarily be constrained by their knowledge that the Commission is using the test bed for an assessment.⁴⁶ In a trial run, ILECs hoping to encourage the Commission to adopt deregulatory policies will have an incentive to refrain from abusing market power, but this incentive will disappear once the Commission eliminates pro-competitive regulations. The odds of reversing ILECs abuse of their remaining bottleneck tollbooths becomes much more difficult after the fact; more fundamentally, the benefits of a competitive IP network architecture will be undermined, to the detriment of consumers. In any event, the trials proposed by AT&T are unnecessary for an understanding of the feasibility of IP interconnection, given that T-Mobile and other competitive carriers interconnect on an IP basis today. Instead, a more meaningful trial would be of a regime in which ILECs must negotiate reasonable IP interconnection agreements with all requesting parties voluntarily, and are prohibited from forcing competitive carriers to pay to carry traffic deep into ILEC networks.

⁴⁶ AT&T Petition at 6-7, 20-23.

V. CONCLUSION

For all of the reasons above, the Commission should not grant the AT&T and NTCA requests for deregulation and additional universal service support as outlined. Rather, it should adopt the IP transition and efficient IP architectural proposals submitted by T-Mobile while maintaining core interconnection obligations to curb ILEC leverage over legacy POIs.

Respectfully submitted,

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