



March 21, 2013

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

Re: AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition; Petition of the National Telecommunications Cooperative Association for a Rulemaking to Promote and Sustain the Ongoing TDM-to-IP Evolution, GN Docket No. 12-353

Dear Ms. Dortch:

The undersigned associations and companies—American Cable Association, Competitive Carriers Association, COMPTEL, and Computer & Communications Industry Association—represent a broad cross-section of the telecommunications industry, including wireline and wireless providers of all sizes and serving nearly every geographic area in the country. On the heels of the Commission’s inaugural Technology Transitions Policy Task Force Workshop, we submit this letter to underscore our concerns regarding the proposals of AT&T in connection with the transition from telecommunications networks based on time-division multiplexing (“TDM”) technology to those based on Internet Protocol (“IP”) technology. In particular, we agree on one central and critical issue: that the Commission should not dilute or forbear from applying the vital interconnection mandates and arbitration requirements of Sections 251 and 252 of the Communications Act (the “Act”) to incumbent local exchange carriers (“ILECs”) that operate IP-based networks.¹

The Commission has consistently affirmed that ensuring seamless connectivity of telecommunications networks is a bedrock principle of national communications policy. As the National Broadband Plan explains, “[f]or consumers to have a choice of service providers,

¹ The term “IP-based networks” as used herein refers to managed IP-based networks via which providers offer managed IP voice services.

competitive carriers need to be able to interconnect their networks with incumbent providers.”² Because their ubiquitous and entrenched networks give ILECs substantial market power and the ability to exclude competitive carriers from the telecommunications marketplace by denying interconnection, “[b]asic interconnection regulations . . . have been a central tenet of telecommunications regulatory policy for over a century.”³

The policy justifications for requiring ILECs to interconnect their networks on reasonable and nondiscriminatory terms do not diminish simply because the technology for exchanging telecommunications traffic changes. To the contrary, the Commission has explained in the context of the IP transition that “[f]or competition to thrive, the principle of interconnection . . . needs to be maintained.”⁴ Indeed, as the National Telecommunications Cooperative Association has pointed out, maintaining interconnection requirements for ILECs with IP-based networks will “accelerate the continuing IP evolution in the near-term.”⁵

While the largest ILECs have argued that the Act’s interconnection requirements are inapplicable to IP-based telecommunications networks, an examination of the statutory language confirms what the Commission has already concluded—that the interconnection provisions of Section 251 “are technology neutral” and “do not vary based on whether one or both of the interconnecting providers is using TDM, IP, or another technology in their underlying networks.”⁶ Section 251(a) requires all telecommunications carriers “to interconnect [their networks] directly or indirectly with the facilities and equipment of other carriers,” without reference to the technology or protocol used in such networks.⁷ Similarly, Section 251(b)(5) requires local exchange carriers “to establish reciprocal compensation arrangements for the transport and termination of telecommunications,” again without technology-based limitations.⁸ The various heightened interconnection and negotiation obligations for ILECs under Section 251(c) likewise do not vary by technology. Section 251(c), which establishes a duty for ILECs to “negotiate in good faith” for interconnection,⁹ “does not depend upon the network technology

² CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN, at 49 (2010), *available at* <http://download.broadband.gov/plan/national-broadband-plan.pdf>.

³ *Id.*

⁴ *Id.*

⁵ Petition of the National Telecommunications Cooperative Association for a Rulemaking to Promote and Sustain the Ongoing TDM-to-IP Evolution, GN Docket No. 12-353, at 14 (filed Nov. 19, 2012).

⁶ *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 ¶ 1342 (2011) (“*CAF FNPRM*”).

⁷ 47 U.S.C. § 251(a)(1); *see also* *CAF FNPRM* ¶ 1352 (recognizing that Section 251(a)’s requirements “are technology neutral on their face with respect to the transmission protocol used for purposes of interconnection”).

⁸ 47 U.S.C. § 251(b)(5).

⁹ *Id.* § 251(c)(1).

underlying the interconnection, whether TDM, IP, or otherwise.”¹⁰ Section 251(c)(2) does not distinguish among technologies in requiring ILECs “to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier’s network . . . for the transmission and routing of telephone exchange service and exchange access,”¹¹ and in fact requires ILECs to interconnect with requesting carriers “at *any* technically feasible point.”¹² Moreover, Sections 251(c)(2)(C) and (D) require that interconnection arrangements be “at least equal in quality to that provided by the [LEC] to itself” and available on “nondiscriminatory” terms—thus strengthening the Commission’s authority to require and oversee IP interconnection with other carriers in instances where ILECs internally rely on IP technology.¹³

The larger ILECs also cannot hide behind their corporate structure and claim that their reliance on separate affiliates to provide IP-enabled services somehow negates their obligations under Section 251 to provide interconnection. The D.C. Circuit already has confirmed that ILECs cannot evade Section 251 obligations by offering telecommunications services through affiliates, because such an approach would constitute an impermissible “circumvention of the statutory scheme.”¹⁴

The Commission should not believe AT&T’s claim that preserving interconnection safeguards for telecommunications traffic will result in regulation of the “Internet.” The undersigned parties and many others have advanced merely the unremarkable proposition that the longstanding interconnection obligations set forth in Section 251 of the Act apply to the exchange of telecommunications traffic on a technology-neutral basis. AT&T’s scare tactics notwithstanding, interconnection arrangements between LECs are distinct—both from a network architecture standpoint and as a policy matter—from the peering, transit, and other arrangements that apply to Internet content.

¹⁰ *CAF FNPRM* ¶ 1011.

¹¹ 47 U.S.C. § 251(c)(2).

¹² *Id.* § 251(c)(2)(B) (emphasis added).

¹³ *Id.* §§ 251(c)(2)(C), (D).

¹⁴ *Association of Communs. Enters. v. FCC*, 235 F.3d 662, 666 (D.C. Cir. 2001).

For these reasons, the undersigned parties submit that maintaining the Act's interconnection and arbitration obligations for ILECs with IP-based networks represents both the right policy choice and the correct legal outcome. We look forward to working with the Commission on managing the TDM-to-IP transition effectively while also continuing to promote competition and protect consumers in today's evolving telecommunications marketplace.

Respectfully submitted,

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