



**National Cable & Telecommunications Association**

25 Massachusetts Avenue, NW – Suite 100

Washington, DC 20001

(202) 222-2300

www.ncta.com

**Kyle McSlarrow**  
President and CEO

(202) 222-2500

(202) 222-2514 Fax

October 27, 2008

**EX PARTE**

The Honorable Kevin J. Martin  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

RE: Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92  
High-Cost Universal Service Support, WC Docket No. 05-337  
IP-Enabled Services, WC Docket No. 04-36

Dear Chairman Martin:

I am writing in regard to the proposal for intercarrier compensation and universal service reform that will be considered at the Commission's next agenda meeting. Based on reports, it appears that you have circulated an ambitious proposal to update both sets of rules. We appreciate your efforts to address this complicated and important set of issues.

The limited public information about the item makes it difficult to assess the effect it might have on NCTA's members. While we welcome a transition to a uniform terminating rate for all traffic, any pro-competitive benefits of intercarrier compensation reform would be fatally undermined if the Commission makes unnecessary or premature changes to its interconnection rules. The statutory provisions governing interconnection and reciprocal compensation, and the Commission's rules implementing those provisions, are the foundation on which today's robust facilities-based competition has been built.<sup>1</sup> As you recently acknowledged, you have been "adamant about requiring the telephone companies to interconnect with cable companies when they provide voice services . . . requiring them to interconnect at local rates, so that people can easily get their voice service cheaper."<sup>2</sup>

<sup>1</sup> See Letter from 360 Networks, *et al.*, to Chairman Kevin Martin, Federal Communications Commission, CC Docket No. 01-92 (filed Sept. 29, 2008) (NCTA/COMPTEL Letter).

<sup>2</sup> Matthew Lasar, *Interview: Laying it on the line with FCC chair Kevin Martin* (Oct. 6, 2008), available at <http://arstechnica.com/articles/culture/fcc-interview-kevin-martin.ars/7>.

In stark contrast to this objective, AT&T and Verizon recently have proposed (individually and then jointly) substantial changes that would raise the cost of interconnection for their competitors.<sup>3</sup> While they state that the purpose of these changes is to “define the functions governed by a uniform terminating rate” when traffic is exchanged pursuant to Section 251(b)(5), in fact the AT&T/Verizon Proposal, like its predecessors, would substantially undermine the interconnection rights and obligations established by Congress under Section 251(c)(2). For example, like the discredited 2006 Missoula Plan,<sup>4</sup> the various proposals submitted by AT&T and Verizon would thwart the long-established right of a requesting carrier to choose where interconnection takes place. Instead, ILECs could designate a network “edge” and charge extra to CLECs that choose a different point of interconnection.<sup>5</sup> The courts long ago found that such an approach violates the Act because “the decision where to interconnect and where not to interconnect must be left to [the CLEC]” and requiring “additional connections at an unnecessary cost to the CLEC[] would be inconsistent with the policy behind the Act.”<sup>6</sup> If the Commission does adopt default interconnection rules, it should make crystal clear that such rules preserve all the existing rights and obligations of interconnecting carriers, including the obligation of ILECs to provide cost-based interconnection at any technically feasible point.<sup>7</sup>

The new AT&T/Verizon Proposal, like their prior proposals, also seems not to contemplate the interconnection of IP networks or the exchange of traffic in IP format.<sup>8</sup> That is a remarkable omission given prior statements by both companies that the entire industry is transitioning to IP-based networks.<sup>9</sup> As NCTA and COMPTTEL have previously explained, an

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<sup>3</sup> See Letter from Donna Epps, Verizon, and Hank Hultquist, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (filed Oct. 14, 2008) (AT&T/Verizon Proposal); Verizon Proposal for Intercarrier Compensation Reform, attached to Letter from Susanne Guyer, Senior Vice President, Verizon, to Kevin Martin, Chairman, Federal Communications Commission, CC Docket No. 01-92 (filed Sept. 12, 2008) (Verizon Proposal); Letter from Brian Benison, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (filed Sept. 12, 2008) (AT&T Proposal) .

<sup>4</sup> Letter from Tony Clark, Commissioner and Chair, NARUC Committee on Telecommunications, Ray Baum, Commissioner and Chair, NARUC Task Force, and Larry Landis, Commissioner and Vice-Chair, NARUC Task Force, CC Docket No. 01-92, at 2 (filed July 24, 2006) (attaching the Missoula Plan) (Missoula Plan).

<sup>5</sup> AT&T/Verizon Proposal at 1 (Points #1 and #2).

<sup>6</sup> *MCI Telecommunications Corp. v. Bell Atlantic-Pennsylvania*, 271 F. 3d 491, 517-18 (3d Cir. 2001).

<sup>7</sup> To its credit, Verizon subsequently clarified that its proposal would not alter the rights of CLECs. See Letter from Donna Epps, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (filed Oct. 3, 2008).

<sup>8</sup> AT&T/Verizon Proposal at 1 (Point #5). For example, the proposal does not include softswitches in the list of possible “edge” locations, notwithstanding widespread deployment of such equipment by carriers of all types. See Letter from Henry Hultquist, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Oct. 13, 2008) at 2 (“certificated LECs are instead deploying special purpose packet switches, known as ‘softswitches’ – a type of packet router designed specifically to support voice telephony services.”).

<sup>9</sup> Verizon White Paper, attached to Letter from Donna Epps, Vice President, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 01-92, *et al.* (filed Sept. 19, 2008) at 8 (“All available evidence suggests that the trends in favor of wireless and IP-based services – and away from traditional wireline services – will continue and that these changes will continue to have significant and ever-increasing effects on the communications marketplace.”); Petition of AT&T Inc. for Interim Declaratory Ruling and

ILEC's use of IP-based equipment in no way relieves it of its obligation to allow interconnection at any technically feasible point on its network.<sup>10</sup> Yet that is one possible consequence of the AT&T/Verizon Proposal.

In contrast with Verizon's earlier proposal, the AT&T/Verizon Proposal is silent with respect to the treatment of transit services, raising concerns that such services implicitly would be removed from regulation.<sup>11</sup> The Commission has long recognized that transit is a crucial service provided by ILECs to new entrants.<sup>12</sup> Because of the limited competition that exists for this service, NCTA consistently has encouraged the Commission to confirm that transit services must be provided by ILECs at cost-based rates pursuant to Section 251.<sup>13</sup> The Commission "should not make the mistake of addressing one bottleneck (the terminating monopoly) held by all carriers, while ignoring a bottleneck that is owned almost entirely by Verizon and AT&T."<sup>14</sup>

While we have concerns regarding the most recent AT&T/Verizon Proposal, we do note one positive aspect of that proposal – it does not discriminate in favor rural incumbent LECs (RLECs). The equal treatment of RLECs and their competitors is a major improvement over the Missoula Plan and the earlier AT&T Proposal, which would seem to relieve RLECs of the obligation to transport their originating traffic to a terminating carrier when the parties exchange traffic through an intermediate tandem provided by a third carrier.<sup>15</sup> In addition to blatantly violating principles of competitive neutrality and having no statutory basis, assigning most of the costs of indirect interconnection to CLECs provides a strong incentive for RLECs to delay or deny providing direct interconnection. At a minimum, the Commission should make clear that any RLEC that refuses to provide direct interconnection upon request is not entitled to favorable

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Limited Waivers, WC Docket No. 08-152 (filed July 17, 2008) at 11 ("AT&T is among the nation's leading IP-enabled service providers, with increasing amounts of traffic originating in IP, a firm expectation that this trend will continue, and a resulting need for certainty in the compensation structure that will apply to such traffic.").

<sup>10</sup> NCTA/COMPTEL Letter at 3-4.

<sup>11</sup> As noted by Sprint, the original Verizon proposal was flawed in that it would have imposed access charges on transit traffic delivered to a tandem switch, even as other traffic delivered to a tandem switch would be eligible for a much lower uniform termination rate. *See* Letter from Charles W. McKee, Sprint Nextel, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (filed Oct. 17, 2008) (Sprint Letter) at 1.

<sup>12</sup> *See Developing a Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685, 4740, ¶ 125 (2005).

<sup>13</sup> *See, e.g.*, Comments of the National Cable & Telecommunications Association, CC Docket No. 01-92 (filed Oct. 25, 2006) at 24 ("Imposing an ongoing transit obligation on incumbent LECs pursuant to Sections 251(b)(5) and 251(c)(2) would promote facilities-based competition because it would ensure that the terms and conditions for transit service are contained in interconnection agreements. In addition, such an approach would continue to ensure a fair, cost-based pricing standard for transit service and the availability of a dispute resolution mechanism with state commissions."); *see also* Sprint Letter at Exhibit A (listing 17 states that regulate transit service under Section 251).

<sup>14</sup> Sprint Letter at 2.

<sup>15</sup> *See, e.g.*, AT&T Proposal at 4.

treatment with respect to the costs of exchanging traffic through an indirect interconnection arrangement.

Finally, we note that there is no urgency to adopt any of these interconnection proposals as part of the order now under consideration. According to reports, the draft item would prescribe a new pricing methodology and the states would exercise their authority under Sections 251 and 252 to establish rates pursuant to this methodology. Under this approach, AT&T and Verizon have offered no explanation as to why states cannot rely on existing Commission rules that define the “transport” and “termination” functions for which rates must be established under Section 251(b)(5) and specify the rate structure that states should establish when they set rates for these functions.<sup>16</sup> AT&T and Verizon do not even acknowledge the existence of these rules, let alone explain why changes are needed.

In addition, while the draft item ultimately would treat all traffic as subject to Section 251(b)(5), there reportedly will be a lengthy transition period during which access traffic presumably will continue to be terminated pursuant to access tariffs, not Section 251(b)(5) agreements. With any transition to a uniform rate potentially years away, the changes proposed by AT&T and Verizon are premature at best. Given this long lead time, and the fact that interested parties did not even see the most recent AT&T/Verizon Proposal until after the draft item circulated, the Commission should preserve the status quo with respect to interconnection.

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<sup>16</sup> 47 C.F.R. §§ 51.701, 51.709.

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This proceeding offers the Commission an opportunity to promote competition by making much-needed progress on intercarrier compensation and universal service reform. But the various interconnection rules proposed by AT&T and Verizon over the last few months would hinder, rather than promote, competition and therefore they should not be included in any new rules the Commission adopts next month.

Respectfully submitted,

**/s/ Kyle McSlarrow**

Kyle McSlarrow

cc: Commissioner Michael Copps  
Commissioner Jonathan Adelstein  
Commissioner Deborah Taylor Tate  
Commissioner Robert McDowell  
Dan Gonzalez  
Amy Bender  
Scott Deutchman  
Scott Bergmann  
Greg Orlando  
Nick Alexander  
Dana Shaffer  
Don Stockdale