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RE: NARUC TASK FORCE ON FEDERALISM

Dear Mr. Ramsay:

COMPTEL welcomes and appreciates the opportunity to provide comment on the initial set of draft principles put forth by the National Association of Regulatory Utility Commissioners’ (“NARUC”) Presidential Task Force on Federalism and Telecommunications (“NARUC Task Force”), articulating key telecommunications responsibilities for State utility regulators. Overall, COMPTEL supports NARUC’s effort to make clear the strong and important role for state commissions in the nation’s continuing transition of the PSTN from a circuit-switched network to IP technology.

Although the proposed principles touch on a number of important issues to consumers, as a trade association for the competitive industry, our focus is on those provisions that most directly impact competition. We are immediately encouraged by the NARUC Task Force’s commitment to technological neutrality (for instance, Principle 1 and its commitment to nondiscriminatory traffic exchange without regard to technology) and evidence-based decision making (Principle 7), which we believe is a unique strength of the state commission process that commonly includes discovery and cross-examination. Protecting competition protects consumers.

Of most importance to our members (at this point in the transition), however, is Principle 4 regarding the states’ role arbitrating and approving interconnection agreements under Sections 251 and 252 of the Telecommunications Act of 1996 (“Act”). It is imperative that state commissions continue to arbitrate interconnection agreements and resolve disputes as specified in the Act, regardless of whether the interconnection involves TDM or IP facilities. The future of competition depends on competitors’ ability to interconnect with incumbent local exchange carriers (ILECs) on an IP-IP basis. Fulfillment of this principle, as well as the preservation of
copper loops discussed further below, also accomplishes the goal (in Principle 3) that consumers have the maximum choice of products and services regardless of technology.

**The Transition of the PSTN from TDM to IP Technology**

There have been a number of misconceptions surrounding the transition to IP. As such, we begin our comments clarifying a few critical points: specifically, that competitors have already started and are rather far along in the transition; the traffic for which competitors are seeking IP-IP interconnection pursuant to the Act is the same managed VoIP traffic that is currently being converted back to TDM format to go over traditional point of interconnection. This traffic does not transverse the public Internet; and, all facility types including copper facilities are being used to provide VoIP and broadband services.

Competitors have invested billions of dollars in local broadband networks. Competitors have used this investment to provide consumers with innovative products and services and, in particular, are leading the transition to IP technology. According to the Federal Communications Commission’s (“FCC”) 2011 Local Competition Report, while 95% of the ILEC end user customers were still being served via TDM, competitors serve the majority of their customers via IP.\(^1\) Nonetheless, even though the vast majority of ILEC end-users remain TDM customers, the ILECs have deployed extensive IP-based interoffice networks that would enable SIP interconnection (also known as IP-IP or VoIP interconnection).\(^2\) The requirement to provide any technically feasible point of interconnection means that the technology at the interconnection point should not be dictated by the technology used to serve the end-user -- that is, if the ILEC can exchange traffic in IP they should do so, irrespective of the technology serving the ultimate end-user device.

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\(^1\) As of December 31, 2011, nearly 60% of the CLEC end-user lines are served by VoIP, as contrasted with only 5% of ILEC lines. Local Telephone Competition, Status as of December 31, 2011, Industry Analysis and Technology Division, Wireline Competition Bureau, January 2013, Tables 4 and 5.

It is important to understand that the services for which competitors are seeking SIP interconnection pursuant to Section 251 and 252 of the Act are managed VoIP services which, as AT&T and Verizon have acknowledged, do not transverse the public Internet. These services are distinguishable from over-the-top VoIP services (that require Internet access). While AT&T and Verizon have tried to confuse the issue with discussions of their commercial transit and peering arrangements for Internet traffic (and fears of regulation of the Internet), it is important to emphasize that their flagship VoIP products, Verizon FiOS and AT&T U-verse, do not transverse the public Internet and the Internet agreements they cite so freely cannot be used to terminate traffic to their FiOS and U-verse customers. While both services use IP technology, neither is part of the public Internet. As Verizon explains to potential FiOS customers (emphasis added):

To understand the features and quality of FiOS Digital Voice, you first need to know that the service is not the same as the services you get with a little Internet adapter for your modem and phone, and it does not ever touch the public Internet. 3

AT&T is equally clear that its U-verse service is not part of the Internet (emphasis added):

AT&T U-verse Voice service is provided over AT&T's world-class managed network and not the public Internet. Using one network to provide U-verse services enables AT&T to provide high quality service. Voice over IP ("VoIP") providers who utilize the public Internet are less able to control the traffic and ensure voice quality….4

Rather than being provided over the Internet, these services are provided over facilities that are designed to deliberately isolate the VoIP services from Internet traffic.

It is also important to understand that IP is a technology that can be used over copper or fiber facilities. Copper loops are not obsolete, but form a basic transmission platform that can, with electronic modification, become broadband facilities. Copper can be used to support either TDM or packet-based services because, as a transmission medium, it is format agnostic.

The 1996 Act, including Sections 251 and 252, are Technology Neutral

As the NARUC Task Force recognizes in its draft principles (Principle 4), Sections 251 and 252 of the Act are technology neutral. The FCC also agrees the Act, and those provisions of the Act in particular, are technology neutral. Specifically, the FCC has found that “…section 251 of the Act is one of the key provisions specifying interconnection requirements, and that 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.”

Moreover, the FCC concluded that “the interconnection obligations of sections 251(a) and 251(c)(2) apply to incumbents’ packet-switched telecommunications networks and the telecommunications services offered over them.” And, in the Advanced Services Remand Order, the FCC made clear that “the interconnection obligations set forth in section 251(c)(2) apply to packet-switched services as well as circuit-switch services.”

The State Commission Role as Arbitrator and Fact Finder

Congress gave the states an important role in ensuring that the networks of various carriers are interconnected, and that the terms of such interconnection are non-discriminatory, so that consumers may complete calls regardless of the provider of the called party. Specifically, states are tasked with arbitrating and approving interconnection agreements when a party seeks interconnection with the incumbent local exchange carrier (ILEC). The role of the state commissions in arbitrating and approving interconnection agreements does not change due to a change in technology carriers use to provide services.

While the FCC has sought comment on the best approach in ensuring good faith negotiations for IP-to-IP interconnection, it has made no finding as of yet that would preclude the state commissions from fulfilling their role under the Act as arbitrator of interconnection disputes – even as they relate to SIP interconnection. Although some large ILECs have argued that VoIP services are information services, the FCC has made no such finding. Rather the FCC has found that telecommunications services are not limited to TDM-based services.

- In the AT&T broadband forbearance proceeding, AT&T sought, and the Commission granted, forbearance from certain provisions of the Act (specifically excluding sections 251 and 252) for what the FCC referred to as “two categories of telecommunications services” – “(1) packet-switched services ...(2) non-

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6 Memorandum Opinion and Order, and Notice of Proposed Rulemaking, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 98-147, 98-11, 98-26, 98-32, 98-78, 98-91, CCB/CPD No. 98-15, RM 9244, FCC 98-188, ¶48 (1998). The FCC further states: “We reject BellSouth's argument that Congress intended that section 251(c) not apply to new technology not yet deployed in 1996. Nothing in the statute or legislative history indicates that it was intended to apply only to existing technology. Moreover, Congress was well aware of the Internet and packet-switched services in 1996, and the statutory terms do not include any exemption for those services.” Id at ¶ 49.

TDM-based optical networking, optical hubbing, and optical transmission services.\(^8\)

- The FCC has also found a particular service provided by AT&T,\(^9\) in which the call originates in TDM, is converted from its existing format into an IP format, and then is converted back to TDM (IP-in-the-middle), to be a telecommunications service.\(^10\) This is true whether one or multiple providers are involved in the IP transport.\(^11\)

- The FCC has stated that “the fact that Internet Protocol is used exclusively as transport for the traffic has no bearing on whether these voice and data services are appropriately considered telecommunications service.”\(^12\)

Another argument that has been raised by some large ILECs is that the FCC’s finding in the Minnesota Vonage Order means that VoIP is only an interstate, interexchange service and, therefore, excluded from Section 251(c)(2)\(^13\) and state jurisdiction.

- First, the FCC ruling in that order did not apply to fixed VoIP services, such as

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\(^8\) Memorandum Opinion and Order, Petition of AT&T for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to its Broadband Services, WC Docket No. 06-125, FCC 07-180, ¶ 14 (2007)(emphasis added).

\(^9\) The decision only addressed the service described by AT&T which (1) uses ordinary customer premises equipment (CPE) with no enhanced functionality; (2) originates and terminates on the public switched telephone network (PSTN); and (3) undergoes no net protocol conversion and provides no enhanced functionality to end users due to the provider’s use of IP technology. Id.

\(^10\) Order, Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges, WC Docket No. 02-361, FCC 04-97, ¶ 1 (2004)(“IP-in-the-Middle Order”)[“When the call reaches AT&T’s network, AT&T converts it from its existing format into an IP format and transports it over AT&T’s Internet backbone. AT&T then converts the call back from the IP format and delivers it to the called party through local exchange carrier (LEC) local business lines. We clarify that… the service that AT&T describes is a telecommunications service….”]

\(^11\) Id. at ¶ 1.

\(^12\) Notice Of Apparent Liability For Forfeiture, Compass Global, Inc. Apparent Liability for Forfeiture, FCC 08-97, File No. EB-06-IH-3060, NAL/Acct. No. 200832080083, FRN No. 0009690256, ¶ 18 (rel. April 9, 2008).

\(^13\) See e.g., Comments of AT&T, WC Docket No. 10-90 et al, p. 38 (filed Feb. 24, 2012).
the managed VoIP services for which competitors are seeking interconnection.14

- Second, the FCC never found nomadic VoIP service to be only an interstate, interexchange service. Rather it found that because there was no practical means to separate the service by jurisdiction, the Minnesota Vonage Order unavoidably reaches the interstate components of the DigitalVoice service that are subject to exclusive federal jurisdiction. The '96 Act is a federal statute; therefore, the State’s role under this Act is not preempted.

Indeed, the FCC has previously expressed its view that “states should determine in the first instance which sorts of agreements fall within the statutory standard [of Section 252].”15 The FCC believed this to be “consistent with the structure of section 252, which vests in the states the authority to conduct fact-intensive determinations relating to interconnection agreements.”16 As the FCC has stated “[b]ased on their statutory role provided by Congress and their experience to date, state commissions are well positioned to decide on a case-by-case basis whether a particular agreement is required to be filed as an “interconnection agreement” and, if so, whether it should be approved or rejected.17

State proceedings are noteworthy for their ability to find facts. Consequently, state commission consideration of these matters may better inform the FCC if it ultimately decides to take action on these issues. For example, one of the key disputes as to whether Section 251(c) applies when a competitor seeks to interconnect with the ILEC on an IP-to-IP basis is whether a telecommunication service is involved. It is interesting that, before the Illinois Commission, AT&T’s states that its position that the service for which Sprint seeks IP to IP interconnection is an information service, including its claim that it “would require a net protocol conversation to allow intercommunication with end users served by the PSTN,”18 is “appropriately addressed in legal briefs rather than in testimony.”19 The question of whether there is a net protocol

14 Minn. PUC v. FCC, 483 F.3d 570 (8th Cir. 2007) [The Court held that the Vonage order does not preempt fixed VoIP services and further states that “the FCC has since indicated VoIP providers who can track the geographic end-points of their calls do not qualify for the preemptive effects of the Vonage order.”]


16 Id at 7.

17 Id at 10.


19 Id.
conversion is something an expert should address. State commissions have the ability to put experts under oath, subject to cross examination, and to make actual findings of facts on technical issues, such as whether or not there is a net protocol conversion that does not fall under one the FCC exception as to what would still constitute a telecommunications service.

We hope and ask that, if and when a state commission is confronted with the issue of SIP Interconnection, it will uphold its obligations under Section 252 of the Act. For competition to thrive, the principle of interconnection—in which customers of one service provider can communicate with customers of another—needs to be maintained.

The State Commission Role in Preserving Copper Loops for Competition

FCC rules are clear that before an ILEC can retire its copper facilities it must comply with any applicable state requirements.\textsuperscript{20} This is important because copper loops play a significant role in allowing competitive carriers to bring affordable broadband to consumers. COMPTEL members are providing small and medium size businesses with innovative and affordable broadband services, including IP services, through the use of copper based solutions. As COMPTEL has explained to the FCC, if copper facilities were to be broadly retired – with no functionally and similarly priced alternative wholesale product available - the cost of providing broadband services to these small and medium size business customers could increase dramatically. A substantial rise in communications cost to these end-user customers will diminish their investment abilities and in some cases may lead them to forgo the broadband services they have been able to obtain from competitors. Competitive carriers serve a vast array of industries with their copper based solution, such as financial institutions, non-profits, retail customers, educational institutions, insurance companies, health care providers, publishing and consulting firms. Growth in the economy depends on growth in these industries.

Respectfully submitted,

/\textit{/s/} Karen Reidy

Karen Reidy

\textsuperscript{20} 47 CFR 51.319(a)(3)(iv).