

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20054**

**In the Matter of**

<b>VERMONT TELEPHONE COMPANY</b>	)	
<b>PETITION FOR DECLARATORY</b>	)	<b>WC Docket No. 08-56</b>
<b>RULING REGARDING</b>	)	
<b>INTERCONNECTION RIGHTS</b>	)	

**COMMENTS OF THE  
INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE**

To the Commission:

The Independent Telephone & Telecommunications Alliance (ITTA) hereby submits comments in the above-captioned proceeding. ITTA members are mid-size local exchange carriers that provide a broad range of high-quality wireline and wireless voice, data, Internet, and video services to 26 million customers in 44 states.

Vermont Telephone Company asks the Commission for a policy clarification via declaratory ruling or other mechanism to address the following questions: (1) whether only “telecommunications carriers” are entitled to interconnection with local exchange carriers pursuant to Sections 251 and 252 of the Act; (2) whether Voice over Internet Protocol (VoIP) providers are entitled to interconnection pursuant to those sections when they assert they are not “telecommunications carriers;” and (3) whether Comcast Phone of Vermont LLC, as a VoIP provider, is a telecommunications carrier, and therefore entitled to interconnection. ITTA submits that questions (1) and (2) are questions of law, and that question (3) is a question of fact that must rely upon an investigation of the

subject entity. In these comments, ITTA will address questions (1) and (2), and comment briefly on question (3).

**(1) Only “telecommunications carriers” are entitled to interconnection with LEC facilities under Sections 251 and 252 of the Act.**

Only telecommunications carriers are entitled to interconnection with LEC facilities under Sections 251 and 252 of the Act. Section 251(a) states, “Each telecommunications carrier has the duty (1) to interconnect directly or indirectly with facilities and equipment of *other telecommunications carriers*” (emphasis added). “Telecommunications carrier” is a defined term within the Act.<sup>1</sup> The language of the statute is clear: the rights attach to and are enjoyed by “telecommunications carriers.” Moreover, the Commission has addressed this question previously, and ruled that “the rights of telecommunications carriers to section 251 interconnection are limited to those carriers that, at a minimum, do in fact provide telecommunications services to their customers, either on a wholesale or retail basis.”<sup>2</sup> (A “telecommunications carrier” is a provider of “telecommunications services”).<sup>3</sup> In answering question (1), there is no need to stray beyond the statute, which is facially clear in establishing that the rights of interconnection are reserved to telecommunications carriers. The Commission was clear in *Time Warner* that its determination of what types of entities are entitled to interconnection was not a statement or ruling on the “statutory classification of a third-

<sup>1</sup> 47 USC § 153(44).

<sup>2</sup> *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: Memorandum Opinion and Order*, WC Docket No. 06-55, DA 07-709, at para. 14 (2007) (*Time Warner*).

<sup>3</sup> 47 USC § 153(44).

party provider's VoIP service.” In similar vein, the analysis in answering question (1) must begin and end at the entity that is interconnecting: that entity must be a telecommunications carrier in order to obtain interconnecting under Sections 251 and 252 of the Act.

**(2) Whether Voice over Internet Protocol (VoIP) providers are entitled to interconnection pursuant to those sections when they assert they are not “telecommunications carriers.”**

As established above, only telecommunications carriers are entitled to interconnection. Inasmuch as an entity claims to not be a telecommunications carrier, it is not clear why it would assert rights accorded only to telecommunications carriers. An entity accepting the benefits of interconnection rights by virtue of meeting the criteria for a telecommunications carrier would *de facto* be a telecommunications carrier, regardless of its claims to the contrary: an entity cannot deny its status for one purpose while retaining it for another.

**(3) Whether Comcast Phone of Vermont LLC, as a VoIP provider, is a telecommunications carrier, and therefore entitled to interconnection.**

Whether Comcast Phone of Vermont LLC, as a VoIP provider, is a telecommunications carrier, and therefore entitled to interconnection, is a question of fact. Pursuant to the Act, a telecommunications carrier is treated as a common carrier to the extent that it is engaged in the provision of telecommunications services.<sup>4</sup> The *sine qua non* of a common carrier is that it holds itself out to all users, even if its services may be useful to only a few.<sup>5</sup> By contrast, if interconnection is sought by an entity that

<sup>4</sup> 47 USC § 153(44).

<sup>5</sup> *NARUC v. FCC*, 533 F.2d 601 (D.C. Cir. 1976) (*NARUC II*). *NARUC II* acknowledged that “one can be a common carrier with regard to some activities but not others,”<sup>5</sup> and, consistently, the Act clarifies that “[a]

provides telecommunications but not on a common carrier basis (*i.e.*, only offering its services to a single entity, but not holding itself out to offer service to all users), then it would not be a common carrier, hence not a telecommunications carrier, and therefore not entitled to interconnection pursuant to the Act. The Commission has previously recognized this distinction, citing as examples whether an entity

offered the telecommunications at issue in any public written or oral communication, such as a tariff, an advertisement, a brochure, a hand-out, a press release, an industry trade-show presentation, or any website posting.<sup>6</sup>

The question regarding the status of the entity named in the petition by Vermont Telephone can be answered only by evaluating the entity and its actions.

In conclusion, the Vermont Telephone petition implicates questions of law and fact. The question regarding entities entitled to interconnection is resolved by a plain reading of the statute, and the question regarding the subject entity of the petition would be resolved by factual investigation.

Respectfully submitted,

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telecommunications carrier shall be treated as a common carrier under this chapter only to the extent that it is engaged in providing telecommunications services.”

<sup>6</sup> *Bright House Networks, LLC v. Verizon California, Inc., et al: Recommended Decision*, File No. EB-08-MD-002, DA 08-860, at para. 17 (internal citations omitted) (2008). The Commission continues: “the absence of any public or oral offering, coupled with the absence of any non-affiliated customers, is dispositive.” *Id.*