

Written Statement Of

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“State of Wireline Communications”

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Chairman Pryor, Chairman Rockefeller, Ranking Member Wicker, Ranking Member Thune and members of the Subcommittee, on behalf of our COMPTEL members, I thank you for the opportunity to appear today to discuss the status of the wireline communications industry.

My name is Jerry James and I am CEO of COMPTEL, the oldest and largest trade association for the competitive communications industry. COMPTEL started more than 30 years ago and today, our association has more than 200 members, including local competitors, broadband providers, wireless carriers, cloud service providers, supplier and professional partners. COMPTEL’s membership is diverse. Nearly two-thirds of COMPTEL’s members are small and medium-sized businesses, a majority of which have \$10 million or less in revenue and fewer than 100 employees. We also have a number of large national companies with thousands of employees. COMPTEL member companies utilize private investment to drive technological innovation and create economic growth with their competitive broadband, voice, video, Internet, data and other advanced services. Members of the competitive industry continue to be the entrepreneurial innovators. They were the first to deploy DSL in the mid-1990s. And, for the

last decade, they have been the first to deploy next-generation, Internet Protocol (IP)-based managed networks that utilize copper, fiber, and wireless technologies. Whether COMPTEL members are helping businesses meet their increasing bandwidth needs by providing Ethernet services, saving small businesses thousands of dollars each month in IT costs by offering cloud-based solutions, or enabling telemedicine by providing telecommunications services to rural health care facilities, they are the companies fostering innovation, investing in new facilities to reach their customers, and creating jobs across the United States.

COMPTEL members are serving every segment of the market on which this subcommittee has held status hearings: rural, wireless and video and they are largely running and growing their businesses with private investment and very little, if any, support from federal programs. But it is important to emphasize that the key element that allows COMPTEL members to offer these services is the wireline network.

Wireline networks are, and will continue to be, an essential component of the communications marketplace for the foreseeable future. Wireline remains the communications medium of choice for small, medium, and large businesses, as well as a significant segment of the consumer market. Businesses, in particular, require reliable, high-quality telecommunications services, along with cutting-edge features to conduct their day-to-day operations. For this reason, the ability to obtain Quality of Service (QoS) and Service Level Agreements (SLAs) is paramount to their operations. A small startup, a customer call center, or a tech support office cannot afford to have poor voice quality, or intermittent dial tone. Nor can these businesses afford to have unreliable broadband Internet access service. In fact, they would soon be out of business without reliable wireline voice and data services. This is a crucial point to remember as I address the continued need for the competitive opportunities Congress provided

for in the Telecommunications Act of 1996 (“the Act”) . Our members have relied on this law as they invested private capital, which has led to, and continues to result in, innovative service offerings and better prices for consumers.

Furthermore, wireline is an integral element of the nation’s communications infrastructure. The advances in wireless, specifically 4G/ LTE in today’s market, depend on the wireline network to handle the tremendous increase in data consumption that is predicted in the coming years. Cisco estimates that “[b]y 2017, almost 21 exabytes of mobile data traffic will be offloaded to the fixed network by means of Wi-Fi devices and femtocells each month. Without Wi-Fi and femtocell offload, total mobile data traffic would grow at a Compound Annual Growth Rate (CAGR) of 74 percent between 2012 and 2017 (16-fold growth), instead of the projected CAGR of 66 percent (13-fold growth).”<sup>1</sup> Spectrum remains a finite resource. To ensure wireless networks can manage their ever-increasing demand, carriers off-load traffic to wireline networks so it can traverse to its destination.

### **Competitive Companies Continue to Lead the Way in the IP Transition**

The transition of networks to IP technology is just another step in the evolution of the network. Competitive telecommunications companies have been at the forefront of the IP transition for over a decade. Some of our members have been all-IP since 1999. Since 2009, competitors have been asking the Commission to take action to ensure that the ILECs (AT&T and Verizon, in particular) comply with their obligations under Sections 251 and 252 of the Act and allow competitors to exchange managed voice traffic with them at points on their network

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<sup>1</sup> See Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update, 2012–2017, available at [http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white\\_paper\\_c11-520862.html](http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white_paper_c11-520862.html)

where they have IP facilities, so consumers may experience the full benefits of VoIP.<sup>2</sup> To be clear, we are not talking about “Over the Top” (OTT) VoIP or the Internet, but managed voice traffic exchanged between carriers.

As the FCC’s recent Public Notice on the IP Transition recognizes, VoIP interconnection has been happening all over the world “at a rapid rate” yet it has been delayed in this country notwithstanding “the efforts of some cable companies and competitive local exchange carriers.”<sup>3</sup> This delay is not technical. Rather, it is the result of the largest ILECs ignoring the Act’s interconnection obligations. These large ILECs continue to require competing carriers to convert traffic to legacy TDM-format prior to delivering it to the ILEC even where the ILEC itself has deployed facilities that could transport the traffic in packet form on its own network. This forced conversion increases cost for unnecessary media gateways, and reduces voice quality for consumers because of the unnecessary protocol conversions. The data clearly shows that the largest ILECs serve the largest share of voice subscribers<sup>4</sup> and, therefore, are the largest traffic exchange partners for all voice providers. Larger network operators have no incentive to interconnect with smaller. As a result, as the FCC stated in the Local Competition Order (¶ 55) “Incumbent LECS have no economic incentive . . . to provide potential competitors with opportunities to interconnect with and make use of the incumbent LEC’s network.”

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<sup>2</sup> Letter of William H. Weber, Cbeyond, *et al*, to Marlene Dortch, GN Docket No. 09-51, p. 1, filed Sept. 22, 2009.

<sup>3</sup> *Technology Transitions Policy Task Force Seeks Comment on Potential Trials*, GN Docket No. 13-5, Public Notice, DA 13-1016 (Technology Transitions Policy Task Force, May 10, 2013) (*Notice*) at 4.

<sup>4</sup> The FCC’s most recent local competition report indicates that the PSTN (defined here as retail switched access lines and VoIP subscriptions) consists of just over 141 million retail local telephone connections (as of June 2012). Source: Local Telephone Competition, Status as of June, 2012, Industry Analysis Division, Figure 1, page 2. Of this, AT&T, Verizon and CenturyLink (the ILECs that coincidentally seek to escape their interconnection obligations) serve 51% of the total connections. Sources: AT&T 10Q 2Q2012 at 18; Verizon 10Q 2Q2012 at 30; and CenturyLink 10Q2012 at 30. If the “PSTN” is defined to include mobile subscriptions, AT&T and Verizon (including their mobile affiliates), as well as CenturyLink, serve 61% of the total connections. Sources: AT&T 10Q 2Q2012 at 18; Verizon 10Q 2Q2012 at 27; and CenturyLink 10Q2012 at 30.

### **Last Mile Access and Interconnection are Vital to the IP Transition's Success**

Both Congress and its expert agency, the FCC, must keep in mind that the marketplace would not be where it is today, but for the requirements of last mile access and interconnection. Those two provisions are the foundation on which local competition was able to develop and grow and are technologically neutral. The provisions were enacted by Congress, which recognized that without them, competition in the local market would be unsustainable. Though some say those provisions are no longer needed, the reality is that last mile access and interconnection are still required to ensure a competitive wireline marketplace today and these provisions must continue to be enforced by the FCC.

### **Access to Last Mile Facilities is Critical to Bringing Consumers Broadband Services and Cutting-Edge Technologies**

Competitive providers have invested billions of dollars constructing facilities to serve their customers. However, competitors continue to face significant barriers to building their own last mile facilities because the fact remains that the large ILECs still have the advantages of incumbency (and a 100 year head start) to achieve a cost structure that no competitor can achieve. The largest investment costs associated with deploying an IP network (as with any network) exist at Layer 1 (the Physical Layer) with the infrastructure and facilities – including costs to obtain space on poles, rights of way, conduit, local permitting, and buildings – not with higher layers that electronically define and control traffic flows. By contrast, large incumbent carriers, such as AT&T and Verizon, have ubiquitous networks that they inherited as a result of their historical monopoly. In light of these facts, it is not surprising that the Government Accountability Office, the Department of Justice, and the FCC have all found that in the vast majority of locations in the country, incumbents control the only wireline connection

that can be used to serve business customers. AT&T and Verizon have exploited this control to secure an 80 percent share of the market for dedicated, high-capacity broadband circuits—known as “special access”—that are used to deliver reliable and high-speed services to American businesses.

The large incumbents have used their overwhelming market power to charge exorbitant prices to competitive carriers that seek to purchase special access circuits and use them to provide innovative business broadband services. For example, a recent analysis commissioned by COMPTTEL shows that AT&T’s prices for so-called packet-based “Ethernet” special access circuits are between six and 11 times higher than prices for comparable services.<sup>5</sup>

The large incumbents further use their market power to impose anticompetitive terms and conditions through exclusionary, “demand lock up” plans on competitive carriers seeking to purchase special access. For example, in many areas, in order to obtain a “discount” on circuits for which a purchaser has no alternative supplier (*i.e.*, the vast majority of circuits), the purchaser must commit to buying the majority of its total circuit demand from the incumbent—including circuits for which a cheaper alternative may be available. In addition, large incumbent LECs include “take or pay” provisions in their special access contracts so purchasers that do not meet their volume commitments are nonetheless required to pay for any committed but unused circuits.

The large incumbents’ failure to offer special access circuits on just and reasonable rates, terms, and conditions—as required by the Communications Act—not only threatens innovation and investment in business broadband, but also has consequences for the larger economy. A

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<sup>5</sup> Evaluating the Just and Reasonableness of BOC Ethernet Offerings (dated Apr. 2013), Attachment A, to Comments of CompTel, WC Docket No. 05-25, filed Apr. 16, 2013.

recent study, found that failure to reform the FCC’s special access policies, among others, could result in a loss of as many of 300,000 existing jobs in the telecom sector and a reduction of up to \$30 billion per year in capital expenditures in U.S. telecommunications networks.<sup>6</sup>

Congress should urge the FCC to take swift action to prevent these harms. *First*, the agency should use the existing record in the long-pending special access rulemaking proceeding to adopt interim rules to address incumbent carriers’ exclusionary, special access “demand lock up” plans. *Second*, while the FCC has adopted a mandatory information collection to gather data on special access prices, terms, and conditions, it has not yet submitted that information collection to the Office of Management and Budget for approval. The agency should do so as soon as possible. *Third*, the FCC should use the information it collects to conduct a market power analysis and adopt comprehensive final rules that govern the rates, terms, and conditions on which incumbent LECs must offer wholesale access to last-mile facilities in the geographic and product markets in which they possess market power. And those rules should apply to both so-called legacy, “TDM-based” last-mile facilities and newer, packet-based last-mile facilities.

There is no question that the large ILECs use the advantages of incumbency to achieve more economical cost structures in network deployments. For instance, Verizon’s FiOS fiber network not only shares the same infrastructure that houses its copper facilities, its copper network also becomes the supporting infrastructure when Verizon lashes the fiber directly to the copper cable. AT&T’s U-verse architecture exploits the preexisting copper network to an even greater extent, as it relies on the existing local copper loop (albeit shortened) to connect individual subscribers to its U-verse fiber. As AT&T explains:

AT&T does not have two separate outside plant networks. For its high-speed U-verse services, AT&T deployed fiber from central offices to

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<sup>6</sup> Susan M. Gately et al., “The Benefits of a Competitive Business Broadband Market” (April 2013).

specialized field terminals, after which U-verse services travel to the customer's location over copper facilities. The copper and fiber infrastructures combine to make a single seamless network.<sup>7</sup>

AT&T's cable and wire facilities were deployed over many decades and the deployment was protected by regulatory policy and subsidies.<sup>8</sup> The costly physical assets that underlie the IP networks of Verizon and AT&T are the same assets that have served as the PSTN for years. In addition to these physical assets, these ILECs are leveraging the other great benefit of incumbency: a still massive customer-base.<sup>9</sup>

Finally, where it is not feasible for COMPTTEL members to build their own facilities, many are investing in technologies that maximize the bandwidth capacity and speed of the existing copper network. Members are offering Ethernet over Copper (EoC) services to small and medium-sized businesses that allow for high-speed broadband services. Moreover, as fiber has still not been deployed to a large percentage of buildings, copper remains a critical resource for delivering high capacity broadband services to these buildings.

Some large incumbents have begun to remove existing copper facilities over which EoC services are provided. Unfortunately, because the FCC has permitted incumbents to deny competitors access to other facilities, including packetized facilities, that enable the delivery of broadband services, the competitive alternatives available to customers diminish or disappear.

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<sup>7</sup> Reply Declaration of Betsy Farrell Supporting Comments of AT&T California, Before the California Public Utilities Commission, Rulemaking to Evaluate Telecommunications Corporations Service Quality Performance and Consider Modification to Service Quality Rules, Rulemaking 11-12-0001, filed March 1, 2012, at ¶ 43.

<sup>8</sup> Although the Commission's ICC reform seeks to end the system of access support, the fact is that the system went on for decades and the local networks of the ILECs are largely fully depreciated. Nationally, in 2007, which is the last year the FCC required that this information be made public, 73% of the Total Plant in Service had been depreciated, and nearly 75% of the Cable and Wire Facilities had been recovered. 2007 ARMIS 43-04, Total Large ILECs, Rows 2260, 3080, 1530 and 3060.

<sup>9</sup> AT&T serves over 39 million wireline voice connections, while Verizon serves over 24 million wireline voice connections. AT&T data available at [http://www.att.com/gen/investor-relations?pid=262,4Q2011,Financial and Operating Results \(PDF\), page 13 of 21](http://www.att.com/gen/investor-relations?pid=262,4Q2011,Financial+and+Operating+Results+(PDF),page+13+of+21). Verizon data available at [http://www22.verizon.com/investor/qreport\\_quarterly\\_earnings\\_verizon\\_4q\\_2011\\_01242012.htm,4Q2011,Financial and Operating Information \(PDF\), page 16](http://www22.verizon.com/investor/qreport_quarterly_earnings_verizon_4q_2011_01242012.htm,4Q2011,Financial+and+Operating+Information+(PDF),page+16).



The FCC must revise its current rules to take into account not only the continued value of existing network infrastructure, but also competitor access to advanced broadband facilities continues to best serve consumers .

### **Sound Interconnection Policy is Vital for Functioning Markets**

It is vital for any successful communications policy to guarantee the ability of service providers to interconnect with other providers, regardless of the technology used in the underlying networks. As long as we maintain and promote a strong interconnection policy in telecommunications services, investment is higher, prices are more competitive, jobs and productivity increase, and innovation flourishes.

### **IP-to-IP Interconnection for Exchanging Voice Traffic is Nothing New Under the Act**

Congress mandated interconnection between competing providers in the 1996 Act because it understood the history of the industry and that competition itself does not ensure interconnection between providers, especially where some are much larger than others, and possess market power. Sections 251/252 provide for interconnection at any technically feasible point, at just and reasonable rates, and the opportunity for arbitration where the parties' negotiations fail. These protections continue to be necessary as the PSTN transitions from TDM to IP transmission technology. Congress has already established the framework for negotiations and minimum requirements, as well as the process for the arbitration/approval of interconnection agreements. Additionally, the FCC's record is complete in demonstrating that VoIP interconnection falls within that framework. In its universal service/intercarrier compensation order that was released in November 2011, the FCC found that IP interconnection for voice

services is critical, that the interconnection provisions in the statute are technology neutral, and that it expected carriers to negotiate in good faith in response to requests for IP-to-IP interconnection agreements for the exchange of voice traffic.

**There Is Widespread Agreement that the  
Communications Act's Interconnection Provisions Still Apply**

The FCC is actively considering IP interconnection issues in its universal service/intercarrier compensation proceeding. The record is complete and industry members, including cable providers, rural ILECs, and wireless providers, overwhelmingly support a ruling from the FCC that the ILECs must negotiate VoIP interconnection agreements. The reasons for this support are that:

- (1) the largest ILECs have ubiquitous networks in their service territories with access to every home and business;
- (2) these same ILECs continue to serve the majority of both business and residential wireline consumers in the U.S.; and
- (3) alternative providers cannot compete if they do not have an interconnection agreement with the ILECs.

Today, our members only have interconnection agreements with the ILECs to exchange traffic in TDM format, and it is widely recognized that the transition to IP in the U.S. has been slowed by the lack of interconnection with the major ILECs. Indeed, the FCC's own Technology Advisory Council observed that the major ILECs are slowing the transition by refusing to negotiate interconnection agreements and that the FCC could speed the process by answering the critical question of whether Sections 251/252 of the Communications Act apply to VoIP interconnection.

The technical feasibility of VoIP interconnection has already been established. The largest ILECs have the facilities in their networks to exchange voice traffic over the PSTN with other carriers on an IP-to-IP basis. All that is truly needed to move the industry forward in the transition is for these ILECs to comply with the interconnection provisions of the Act. Consumers should not have to wait any longer to reap the benefits of this new technology. Accordingly, the Commission should address the IP policy framework and confirm that Sections 251 and 252 apply to IP-to-IP interconnection.

### **The Importance of Managed Networks for Voice Services**

Managed VoIP service is voice service transmitted using IP technology over wireline, wireless, and coaxial cable networks. Unlike the services over the Internet, managed IP services, including managed VoIP services, can provide the kind of service-level guarantees that businesses expect. The Internet is a “best efforts” network, which means that traffic is routed and congestion controlled based on the principal of “first come, first routed.” In contrast, managed IP services can match performance to the particular needs of different information flows obtained through traffic management techniques.<sup>10</sup>

Consequently, managed voice services remain the dominant form of voice communications in the U.S., even when just looking at VoIP service. While some consumers may find an OTT VoIP service that is transmitted over the public Internet sufficient for their

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<sup>10</sup> See NRRRI white paper entitled “The Transition to an All-IP Network: A Primer on the Architectural Components of IP Interconnection” available at <http://communities.nrrri.org/documents/317330/7821a20b-b136-44ee-bee0-8cd5331c7c0b>.

needs, the majority do not. This conclusion is supported by the fact that only 10 percent of all U.S. VoIP subscribers use OTT VoIP services.<sup>11</sup>

Indeed, AT&T and Verizon's own product design and marketing for their managed VoIP services demonstrate the need to assure customers that their voice service does not traverse the Internet. AT&T confirms to its customers that "AT&T U-verse Voice service is provided over AT&T's world-class managed network and not the public Internet."<sup>12</sup> Likewise, Verizon explains to its customers that its managed VoIP 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."<sup>13</sup>

Nonetheless, a common, inaccurate theme echoed by AT&T and Verizon is that the mere existence of Internet peering and transit agreements demonstrates that unregulated interconnection agreements for managed voice services will allow competition to flourish. However, what AT&T and Verizon neglect to plainly state is that the peering agreements used to move Internet traffic that they cite so freely *are not* used to terminate traffic to their FiOS and U-verse customers because those customers receive managed voice services. While the FiOS and U-verse networks use IP transmission technology, the traffic does not traverse the public Internet.

In fact, there is no question that these managed VoIP services differ from the public Internet, nor is there any question that the exchange of this traffic will be subject to agreements

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<sup>11</sup> Local Telephone Competition, Status as of June, 2012, Industry Analysis Division, Figure 5, page 7. [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2013/db0621/DOC-321568A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db0621/DOC-321568A1.pdf)

<sup>12</sup> AT&T: How AT&T U-verse Voice is different from the digital voice products of other providers, available at <http://www.att.com/esupport/article.jsp?sid=KB401031#fbid=L8RYx19uzva> .

<sup>13</sup> Verizon Press Release, "FiOS Digital Voice: Here's How It Works, Verizon's Managed IP Network Links Customers' Homes to Softswitch and Applications Service, Enabling Innovative Services," June 3, 2010, available at <http://newscenter2.verizon.com/press-releases/verizon/2010/fios-digital-voice-heres.html>

that differ from the Internet peering arrangements that AT&T and Verizon continuously and erroneously cite. The only relevant question is whether IP interconnection agreements and network arrangements will be nondiscriminatory, reciprocal and public (which are the core requirements of Sections 251 and 252), or offered only to favored partners, distorted by one-sided compensation obligations, and secret.

### **Conclusion**

Congress should encourage the FCC to examine solutions and policies that allow consumers and businesses to continue to reap the benefits of the competitive telecommunications marketplace. It is not just about access for competitive telecommunications providers. It is about ensuring that the nation's businesses continue to have access to cutting-edge digital technologies and applications that drive value and growth. The ability of competitive service providers to interconnect and access the underlying communications infrastructure on reasonable terms and conditions, while maximizing existing infrastructure, will continue to provide consumers and businesses with the tools they need to succeed and increase economic growth and opportunities throughout the nation.