State of California **Public Utilities Commission**
San Francisco

M E M O R A N D U M

Date : May 8, 2008

To : The Commission
(Meeting of May 15, 2008)

From : Helen M. Mickiewicz
Assistant General Counsel

Subject: **Filing of Comments in Response to FCC's Rulemaking Regarding Petition for Declaratory Ruling Filed by Vermont Telephone Company, FCC WC Docket No. 08-56**

RECOMMENDATION: The CPUC should file comments in response to the Federal Communications Commission's (FCC) Public Notice, released on April 18, 2008, seeking comment on a Petition for Declaratory Ruling filed by Vermont Telephone Company (VTel). VTel has asked the FCC to clarify its policies on how an incumbent local exchange carrier should treat a request, submitted to the ILEC pursuant to § 251 of the 1996 Telecommunications Act) for interconnection, when the company making the request declines to identify itself as a telecommunications carrier.[1] Comments are due May 19, 2008, with reply comments dues June 6, 2008.

BACKGROUND: On April 11, 2008, Vermont Telephone Company (VTel), an incumbent local exchange carrier (ILEC) in Vermont, filed with the FCC its Petition for Declaratory Ruling.[2] VTel identified itself as "a family-owned [ILEC], whose rural service area covers 14 towns and villages in Southern Vermont", serving approximately 21,000 telephone lines.[3] On January 10, 2008, Comcast Phone of Vermont, LLC (Comcast) submitted to VTel a written request for an interconnection agreement that would include direct and indirect network interconnection, local number portability, reciprocal compensation via bill-and-keep, and access to directory listings and directory assistance.[4] Comcast holds a certificate from the Vermont Public Service Board, but does

[1] 47 U.S.C. § 251.

[2] VTC Petition for Declaratory Ruling, WC Docket No. 08-56 (filed April 11, 2008) (Petition).

[3] Petition, p. 1.

[4] *Id.* at 2.

not purport to provide "telecommunications service". Rather, Comcast offers "Digital Voice" service, which is a Voice over Internet Service (VoIP).[5]

VTel notes that various provisions of the Telecom Act impose obligations on ILECs and LECs pertaining to competitors who are "telecommunications carriers", and/or which are providing "telecommunications service" or "telephone exchange service".[6] VTel notes that along with its request to interconnect, Comcast is asking VTel to "upgrade its switches to provide number portability in more than a dozen of VTel's rate centers".[7] Because Comcast purports to not be a telecommunications carrier, or to be providing either telecommunications service or telephone exchange service, VTel asks the FCC to clarify if VTel is required, nonetheless, to fulfill obligations under § 251 (and § 252) which apply to telecommunications carriers. As a consequence, VTel asks the FCC to clarify whether VTel is required, under § 251 of the Telecom Act, to interconnect with an entity that represents itself to be something other than a "telecommunications carrier".

SPECIFIC QUESTIONS PRESENTED

VTel notes that "Comcast's possession of a CLEC certificate in Vermont is of significant importance, but is not necessarily a sufficient indication that Comcast is, in fact, providing a common carrier service that would meet the [Telecom] Act's statutory requirements".[8] In light of Comcast's bid to interconnect with VTel while simultaneously asserting that it is not a telecommunications service provider, VTel poses the following questions for the FCC:

1. Whether or not only "telecommunications carriers" are entitled to interconnection with LEC facilities by the express terms of §§ 251 and 252 of the Telecom Act;

2. Whether or not VoIP providers are entitled to interconnection pursuant to those sections of the Act when they assert they are not "telecommunications carriers";

3. Whether or not Comcast is a telecommunications carrier and, therefore, entitled to interconnection pursuant to the cited statutory provisions.

Staff recommends that the CPUC file comments urging the FCC to issue one or more orders resolving the very questions VTel has posed. Staff does not propose that the CPUC advocate a particular outcome on the questions presented.

Assigned staff: Legal Division – Helen Mickiewicz (HMM, 3-1319); Communications Division – Roxanne Scott (RS2, 3-5263).

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[5] *Id*.

[6] *Id*. at 4.

[7] *Id*. at 2.

[8] *Id* at 6.