

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	GN Docket No. 13-5
Technology Transitions)	
)	
Policies and Rules Governing Retirement of)	RM-11358
Copper Loops by Incumbent Local Exchange)	
Carriers)	
)	
Special Access for Price Cap Local Exchange)	WC Docket No. 05-25
Carriers)	
)	
AT&T Corporation Petition for Rulemaking to)	RM-10593
Reform Regulation of Incumbent Local Exchange)	
Carrier Rates for Interstate Special Access Services)	

REPLY COMMENTS OF AT&T

An air of unreality pervades this proceeding. In the *Further Notice*, the Commission proposed a laundry list of criteria for evaluating the adequacy of alternative services when considering 214 applications to discontinue legacy TDM services. These criteria (which include network capacity, reliability and security; and service quality, interoperability, functionality and coverage) supposedly are intended to encourage the ongoing transition to an all-IP environment by eliminating uncertainty in the 214 process that could pose a significant impediment to “a rapid and prompt transition to IP and wireless technology.”¹ The reality is that these criteria would substantially impede, not facilitate, the IP transition, by adding cost and delay to the process.

¹ *Technology Transitions*, GN Docket No. 13-5, *Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers*, RM-11358, *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, *AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM-10593, Report and Order, Order on Reconsideration and Further Notice or Proposed Rulemaking, at ¶ 203 (rel. Aug. 7, 2015).

Nonetheless, a variety of parties, all of whom either fail to appreciate or are indifferent to the impact of these proposals on the IP transition support this laundry list of criteria, with some proposing to make the list even longer. Remarkably, the premise from which all of them proceed is the patently absurd notion that ILECs, which are the only service providers that will be subject to the new standards, retain bottleneck control over communication services, and thus Commission micromanagement of their transition from TDM to IP services is necessary to protect consumers and public safety, preserve universal service, promote competition.

The reality is quite different. Consumers have largely abandoned traditional TDM-based networks and services. As noted in our opening comments, AT&T estimates that, by the end of this year, only 14% of the housing units in the states in which it is deemed an ILEC will purchase TDM voice services from an ILEC.² The remaining, overwhelming majority of households already have made the transition to wireless and IP technology, switching from TDM to wireless and VoIP services offered by a host of wireless providers, cable companies, and others, none of which are subject to the regulatory burdens the Commission and its supporters seek to impose on ILECs through the section 214 process.

The fact that so many consumers have made the switch establishes that wireless and IP services not only are “adequate” substitutes for traditional TDM services but also that the vast majority of consumers prefer them. It also refutes the notion that ILECs retain bottleneck control over communications services, requiring the Commission to micromanage the ILECs’ transition to IP networks and services.

² AT&T Comments at 2.

In this environment, adopting the criteria proposed by the Commission and its supporters will do nothing to streamline and facilitate the IP transition. Nor would it protect and promote the enduring values of consumer protection, public safety, universal service, and competition, because the criteria would apply only to the small minority of consumers that have not already made the transition. To the contrary, the criteria and other requirements proposed by the Commission and its supporters will impose a host of new and onerous regulatory requirements that only ILECs must meet before they can replace legacy TDM with IP-based services. These requirements will impose significant costs and delays on ILECs as they complete the transition from TDM to IP, hindering their incentive and ability to expand deployment of broadband networks and services. In the end, consumers will be the losers by depriving them of the benefits of robust competition by ILECs in the burgeoning broadband market currently dominated by cable.

For these reasons, the Commission should reject proposals that would expand the section 214 discontinuance process well-beyond its purpose of ensuring communities are not cut-off altogether from communications service, and use it to micromanage ILECs' IP networks and services. To the extent the Commission deems regulation of IP services necessary to address any important public interest or consumer issues, it should do so through rules of general applicability rather than proceeding through piecemeal evaluation of section 214 applications that will affect only one segment of the market.

In its opening comments, AT&T anticipated and responded to most of the arguments raised by parties supporting the Commission's proposal, and will not repeat itself here. Rather, we address a number of discrete issues raised in the comments.

1. The Commission Should Reject Proposals to Require ILECs to Ensure Device and Service Interoperability, Including Interoperability with Third Party Devices and Services.

As AT&T explained in its opening comments, the Commission's proposed adequate substitute criteria would significantly delay ILECs' transition to IP services, and impede their deployment of broadband, particularly in rural and other high cost areas. Those criteria ignore the overwhelming advantages of IP services, and would require ILECs (and only ILECs) to duplicate all of the features, functions and capabilities of outdated services that have been rejected by all but a small and dwindling minority of consumers. The criteria thus would impose on ILECs a Hobson's choice – redesign their next generation services to incorporate features and capabilities that the Commission, not consumers, believes are appropriate, or continue to maintain their TDM networks and services in perpetuity. In either case, ILECs would be forced to divert scarce capital investment dollars from expanding their deployment of the broadband infrastructure and services consumers have shown they actually want to satisfy intrusive regulatory mandates. It is difficult to conceive a regime more likely to frustrate rather than facilitate the IP transition.

Some of the parties supporting the Commission's proposal argue that the adequate substitute criteria should require ILECs to design IP replacement services to preserve, not only the features, functions, and capabilities of their existing telecommunications services, but also compatibility with third party devices and services. One commenter, for example, argues that IP replacement services should be required to maintain backward compatibility with "common" devices that currently are interoperable with the PSTN, and that any application to withdraw existing services should include "third-party certified test results" confirming compliance with

this requirement.³ Others contend that replacement services should be required to meet the needs of certain industry sectors.⁴ Utilities, for example, ask the Commission to require ILECs to design IP replacement services to provide the same functionality and reliability as existing services to ensure the continuity of utilities and critical infrastructure industries.⁵

These proposals are wholly unworkable. Service providers cannot be expected to know the specific needs of every industry sector using their existing telecommunications services as an input to their services or the technical specifications of all third party devices in the market. Nor should they be required to ensure that replacement services remain backward compatible with obsolete devices and services. Any such requirement would halt technological progress in its tracks, and force service providers to support obsolescent technologies and services rather than developing and deploying new technologies and services that consumers want and need.

Requiring ILECs to design their IP replacement services around third party devices and services also would be inequitable. ILECs' TDM services were not designed to accommodate third party devices and services; those devices and services were designed around TDM. And just as some alarm monitoring services had to adapt when analog-cellular service terminated, and consumer electronics manufacturers had to design and build (and consumers to purchase) new TVs and other devices in preparation for the DTV transition, so too will third party service

³ AARP Comments at 16. *See also* Pennsylvania PUC Comments at 16 (arguing IP replacement services should be required to support third-party CPE and/or services, such as home alarms, medical monitors, security systems, point of sale systems, and other functions and services currently supported by the PSTN); California PUC Comments at 11-12 (proposing that 214 applicants should be required to ensure replacement services are backward compatible with assistive technologies, provide subscribers with disabilities new equipment that is compatible with the providers IP service at no charge, or provide financial assistance and information on where a subscriber can purchase new equipment).

⁴ AICC Comments at 4, 9-10; ADT Comments at 2-3.

⁵ Utilities Telecom Council Comments at 3-4; *see also* NRECA Comments at 5-9.

providers and the few consumers remaining on TDM services have to adapt to the all-IP ecosystem.

Moreover, Congress itself not only recognized that technologies and services inevitably would evolve but also sought to promote that evolution because of the innumerable consumer benefits it would bring. That is why section 706 of the Communications Act directs the Commission to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.”⁶ It also is why Congress directed the Commission, in determining the services supported by USF to consider the extent to which such services have “through operation of market choices by consumers, been subscribed to by a *substantial majority* of residential customers.”⁷ As we pointed out in our opening comments, under that criterion, traditional telephone services no longer would qualify for USF support.⁸ Requiring ILECs to continue offering services (including features, functions and capabilities) that a vast majority of consumers have rejected to accommodate the needs of third party service providers and the few remaining consumers still on TDM services simply cannot be squared with these provisions. The Commission therefore should reject proposals to require ILECs to maintain backward compatibility with existing services and devices as they complete the IP transition, and maintain the approach it always has applied in evaluating section 214 applications.

⁶ 47 U.S.C. § 1302(a).

⁷ 47 U.S.C. § 254(c)(1)(B) (emphasis added).

⁸ AT&T Comments at 8.

2. The Commission Should Not Subject ILEC Applications to Withdraw Legacy Services to Unduly Long Notice Periods.

Several CLECs and others ask the Commission to require ILECs to provide lengthy advance notice of any planned discontinuance of service, regardless whether section 214 approval will be required (*i.e.*, regardless whether adequate substitutes are available). For example, INCOMPAS (previously known as COMPTTEL) proposes that “incumbent LECs should be required to identify their replacement product(s); provide sufficiently detailed notification to wholesale purchasers with regard to the discontinuance of service and replacement product(s); have an active functioning replacement product; and allow for sufficient time for competitors to perform all necessary functions for transitioning customers – at least one year– *prior to filing an application* with the Commission.”⁹ Likewise, Preferred Long Distance (PLD) proposes that ILECs be required to provide notice to and work with wholesale customers at least 18 months prior to filing an application to discontinue TDM-based services.¹⁰ And the Utilities Telecom Council maintains that utilities need at least one year advance notice prior to the discontinuance of an existing service to adequately plan for the transition to IP services.¹¹

These proposals would needlessly delay ILECs’ discontinuance of legacy TDM services, forcing them to expend significant resources to maintain existing facilities and services simply to meet the purported needs of their competitors, resources that could be used to develop and deploy the innovative services consumers actually want. The CLECs and others demanding

⁹ INCOMPAS Comments at 4 (emphasis in original).

¹⁰ PLD Comments at 5. *See also* XO Comments at 3 (“The Commission should amend its rules to require the ILECs to provide one year’s notice to wholesale customers of a planned discontinuance, reduction, or impairment of service used as a wholesale input, whether or not a Section 214 approval will be required.”).

¹¹ UTC Comments at 4.

lengthy notice requirements are large and sophisticated customers that have been on notice for years that ILECs are planning to complete the transition from TDM to IP services and decommission obsolete TDM networks.¹² These customers thus already have had ample notice to plan for the day when traditional TDM services no longer will be available.

Moreover, these customers typically purchase service pursuant to multi-year contracts, which provide them all the stability they need and ensure that ILECs cannot pull the rug out from under them. In any event, AT&T (and undoubtedly other ILECs as well) values its wholesale and other large business customers, and has every incentive to retain their business following the IP transition. ILECs thus have compelling business reasons to ensure these customers have adequate notice to transition to IP services. For these reasons, there is no basis for imposing additional, extended notice requirements on ILECs' withdrawal of TDM services.

3. The Commission Should Reject Proposals to Ignore Third Party Services in Evaluating Whether Consumers have Adequate Substitutes to Discontinued ILEC Services.

Several parties encourage the Commission to prohibit a carrier from relying on alternate services provided by third parties to demonstrate the availability of adequate substitutes to discontinued services.¹³ These parties thus would require that an ILEC seeking to discontinue

¹² AT&T, for example, announced three years ago its plan to transition to all-IP networks and services over the course of this decade.

¹³ AICC Comments at 3-4 (“A carrier should not be able to rely on services provided by other providers as an alternative because it is not possible for the carrier to know or demonstrate that a service provided by an alternative service provider meets the [discontinuance] criteria.”); Public Knowledge Comments at 1 (“Any proposal that would allow carriers to “split” their 214 criteria obligations for substitute service over multiple services would run directly counter to the core principal behind the checklist.”); AARP Comments at vii; NASUCA Comments at 12-13 (“NASUCA opposes the Commission’s tentative conclusion that it should consider third party offerings in evaluating adequate substitutes to discontinued ILEC services.”).

TDM services must itself provide IP Services that satisfy the overbroad “adequate substitute” criteria they propose to all customers in their service territories, irrespective of the number of available alternatives to those customers. Under their proposal even if an ILEC already has lost the vast majority – or even all – of its customers to competitive alternatives, it could not retire its TDM network and services unless it can show that it offers every potential customer in its service territory an IP alternative that provides all the same features, functions and capabilities of the TDM services those customers abandoned. Such a requirement not only would grossly and unlawfully expand the section 214 process and Congress’s goal of ensuring that communities are not cut-off altogether from communications service but also effectively establish a new, federal carrier-of-last resort obligation for IP services. These parties’ proposal would impose on ILECs, and ILECs alone, enormous and costly burdens borne by no other competing service provider, skewing the market and inhibiting their ability to transition to IP services. It should be rejected.

4. Affordability

In the *Further Notice*, the Commission tentatively, but correctly, concluded that it should not adopt an affordability criterion in assessing whether a replacement service is an adequate substitute because the focus of the analysis under the “adequate substitute” test relates to the nature of a service, not its costs.¹⁴ Nonetheless, some commenters argue the Commission should consider affordability in assessing whether a replacement service is an adequate substitute because a purportedly substantial increase in price might effectively preclude access for low-income consumers.¹⁵ These parties’ concerns are mere speculation. There’s no evidence that wireless and IP replacement services are generally less affordable than the TDM service they

¹⁴ *Further Notice* at ¶ 234.

¹⁵ Public Knowledge Comments at 4; Michigan PSC Comments at 12-13; Nebraska PSC Comments at 4.

replace. Indeed, the fact that the vast majority of consumers already have switched to such services demonstrates that they are affordable. And in all events, Lifeline support will continue to be available to qualifying customers that need it.

5. Conclusion.

For the foregoing reasons, the Commission should not adopt the detailed “adequate substitute” criteria proposed in the *Further Notice*.

Respectfully submitted,

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