

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

In the Matter of

AT&T Petition to Launch a Proceeding  
Concerning the TDM-to-IP Transition

Petition of the National Telecommunications  
Cooperative Association for a Rulemaking  
to Promote and Sustain the Ongoing  
TDM-IP Evolution.

GN Docket No. 12-353

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**COMMENTS OF PEERLESS NETWORK, INC.**

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Peerless Network, Inc. (“Peerless”), by its counsel, hereby submits these Comments in response to the AT&T<sup>1</sup> and NTCA<sup>2</sup> Petitions to initiate proceedings relating to the transition from TDM to IP infrastructures.

**SUMMARY**

Peerless appreciates this opportunity to provide comments on this matter. The AT&T Petition seeks a Commission rulemaking to allow incumbent local exchange carriers (“ILECs”) to transition their existing time-division multiplexed (“TDM”) platform and services to the Internet Protocol (“IP”). However, AT&T’s proposal to flash-cut to an IP interconnection regime

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<sup>1</sup> *In the Matter of the Technological Transition of the Nation’s Communications Infrastructure*, GN Docket No. 12-353 (Petition to Launch a Proceeding Concerning the TDM-to-IP Transition) (filed Nov. 7, 2012) (“*AT&T Petition*”).

<sup>2</sup> *In the Matter of the Technological Transition of the Nation’s Communications Infrastructure*, GN Docket No. 12-353 (Petition of the National Telecommunications Cooperative Association for a Rulemaking to Promote and Sustain the Ongoing TDM-to-IP Evolution) (filed Nov. 19, 2012) (“*NTCA Petition*”).

in certain markets, under the guise of a “trial run”, without first considering and implementing the interconnection obligations to protect the various consumer groups in these markets, has the makings of an experiment gone bad. AT&T’s proposal is a concoction reminiscent of the potion used by Jerry Lewis in the movie *The Nutty Professor*. At first look, there are some attractive features, but these wear off at the most inconvenient time and place, and are not sustainable in the long run. NTCA’s Petition proposes that the Commission move more methodically and analytically, first identifying which rules, obligations and benefits would apply in transitioning to a telecommunications world with IP interconnection obligations. The NTCA does not advocate flash-cutting to an unsustainable structure as suggested by AT&T’s Petition.

AT&T’s Petition requests that the Commission “[f]irst . . . eliminate, within the trial wire centers, outdated ‘telephone company’ regulations . . .” and then require IP interconnection. AT&T Petition, at 21 (emphasis added). During the trial-run, AT&T requests that the Commission “implement reforms designed to prevent” the “many millions of consumers that remain on TDM-based networks” from holding up AT&T’s migration to an IP network. *Id.* at 21-22. AT&T would require competing service providers to notify their customers that the “service providers will no longer provide them legacy services.” Of course, AT&T offers that it is willing to provide services to these consumers should they be terminated by their existing service providers, and offers to have these consumers transferred to AT&T on the date the trial run begins. *Id.* at 22. During its self-styled “experiment”, AT&T would be “free of the legacy regulations” that the FCC has adopted over the years that govern carrier interconnection requirements and service quality standards. *Id.* Moreover, AT&T’s experiment further seeks preemption from any protections that state regulations may provide to consumers or competing carriers. *Id.* at 23.

In contrast, the NTCA Petition does not seek a Commission experiment. Instead, NTCA requests that the Commission examine the means to promote and sustain the evolution of the Public Switched Telephone Network (“PSTN”) from TDM-based platforms to an IP-based infrastructure based on targeted regulatory relief and near-term incentives. The NTCA Petition acknowledges that the transition is an “already on-going IP evolution”, and recommends that the Commission transition to an IP infrastructure in a measured and thoughtful process. The NTCA recommends that the Commission:

1. identify which regulations that may have limited or no applicability in the delivery of IP-enabled services;
2. obtain input from all parties of interest (carriers, consumer groups, state public service commissions) on the proposed elimination of certain regulations; and
3. set a firm but reasonable deadline to complete a comprehensive, but granular, “refreshing” of the governing regulatory framework such that the evolution of IP-enabled networks can be sustained.

The Commission does not need to initiate another proceeding to investigate to develop Commission policies regarding IP interconnection and IP technologies as suggested by AT&T and the NTCA. The issues they raise are not new, and the Commission already has pending proceedings to review the IP interconnection issue.<sup>3</sup> However, if the Commission does proceed to initiate a rulemaking, it should deny the AT&T’s Petition, and follow the path recommended by the NTCA: the Commission should take an analytical approach to examine the existing rules, and not experiment with AT&T’s desired flash-cut approach in certain wire centers.

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<sup>3</sup> See, e.g., *Petition of USTelecom For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain Legacy Telecommunications Regulations*, WC Docket No. 12-61, at 59-63 (filed Feb. 16, 2012); *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011); *Petition of tw telecom inc. et al. to Establish Regulatory Parity in the Provision of Non-TDM-Based Broadband Transmission Services*, WC Docket No. 11-188 (filed Oct. 4, 2011); *Petition for Declaratory Ruling That tw telecom inc. Has the Right to Direct IP-to-IP Interconnection Pursuant to Section 251(c)(2) of the Communications Act, as Amended, for the Transmission and Routing of tw telecom’s Facilities-Based VoIP Services and IP-in-the-Middle Voice Services*, WC Docket No. 11-119 (filed June 30, 2011).

Regardless of the approach or docketed proceeding, the Commission must confirm that carriers have a duty to interconnect in IP or TDM format pursuant to Section 251(a) (for non-ILECs) and 251(c)(2) (for ILECs). Sections 251(a) and 251(c)(2) require interconnection, regardless of whether the exchange of telecommunications is in TDM or IP format. These Sections make no reference to the type of technology that is used for interconnection, and there is no FCC Order that limits interconnection to only TDM technologies. Just as important as these substantive provisions, the Commission must ensure that it retains jurisdiction and authority to enforce an obligation on carriers to interconnect with each other, whether directly or indirectly, and whether in TDM or IP format. Peerless discusses in these Comments situations where carriers, and AT&T in particular, leverages its ILEC and affiliated entities' market presence to game the system. AT&T, through its various affiliated entities, offers other LECs inconsistent terms and conditions for interconnection to different parties based on its market leverage. For example, AT&T Mobility will directly connect with LECs in some MTAs, but will not directly connect to LECs in other MTAs. In some MTAs (such as where AT&T Mobility indirectly interconnects), it requires carriers to route traffic through AT&T Long Distance Services, which charges a fee. AT&T Mobility would not be able to collect a fee if the LEC was directly connected. And, AT&T ILECs will agree to transit traffic to AT&T Mobility, but at rates substantially cheaper than the rates AT&T charges to LEC competitors. Moreover, neither AT&T ILEC, nor AT&T Mobility will interconnect in an IP format, and instead offer carriers a VoIP retail service offering. The Commission must ensure that it retains the ability to enforce just and reasonable terms for TDM and IP interconnection precisely to avoid this type of behavior.

The Commission should deny the AT&T Petition. While not necessary, if the Commission does initiate a new rulemaking proceeding, the Commission could proceed based on the NTCA Petition by carefully examining the appropriate regulatory structure to ensure a sustainable framework that promotes IP networks.

**I. AN INTRODUCTION TO PEERLESS**

**A. BACKGROUND ON PEERLESS**

Peerless is a competitive local exchange carrier that provides interconnection services through the United States. Based in Chicago, Illinois, Peerless relies on IP technology to provide signaling and call setup support for calls originating, terminating or traversing its network, and operates as a CLEC, competitive tandem provider and long distance company throughout the United States. In 2012, Peerless Network's revenues were approximately \$63 million.

Originally founded in 2008 by industry veterans who had previously experienced the frustrations of having too few interconnection options, Peerless has invested nearly \$30 million in over 40 major markets across the country since inception. Peerless has achieved a number of significant operational and financial milestones, including: building an combined TDM and IP network connected to nearly every major domestic carrier offering call origination and termination services in over 100 LATAs (Local Access Transport Areas) and 30 MTAs (Major Trading Areas); and being certified to provide services in 39 states and Washington, D.C. (with applications pending for 5 more states). Peerless Network currently provides its full range of services in 27 states and in Washington, D.C.

**B. PEERLESS' NETWORK**

Peerless' success is built on its unique network design. Peerless employs centralized, redundant call routing databases to route calls on a national level versus the industry norm of

localized switching and signaling control. Peerless also uses regional media gateways to direct calls from multiple LATAs through its national IP network for transport and termination to one of the hundreds of carriers with whom it has direct interconnection arrangements. Peerless' regional media gateway centers are termination points for customer and network switch interconnections via locally-accessed points of presence.

Virtually all of the transport Peerless provides between its local, regional and national points of presence and switching facilities is fiber-based transport facilities leased from other carriers, which are responsible for monitoring and maintaining the facilities and the equipment providing the transport service (though Peerless has recently completed the construction of its first data center in Chicago, Illinois, and employs a small fiber network of its own). Peerless also uses the latest generation of equipment to provide a full range of voice services through a mix of legacy/TDM services and IP trunking services to both wholesale and retail customers. The ratio between TDM and IP services varies by market.

Peerless' innovative network infrastructure minimizes costs, such that it does not cost Peerless materially more to complete a cross-country call on its network than it costs to complete a local call (except for access charges paid to the terminating carrier). Peerless also "peers" or directly connects with many carriers for voice services, meaning that Peerless directly connects to virtually every major carrier (CLEC, ILEC, Interconnected VOIP, IXC, Mobility, etc.) in the markets in which it operates. Under this structure, Peerless is able to reduce intermediate carrier charges, and a call on Peerless' network never traverses more than two of its switching elements, regardless of distance or jurisdiction.

### **C. THE PUBLIC INTEREST AND COMPETITIVE BENEFIT FROM PEERLESS' SERVICES**

Deployment of Peerless' unique model has helped to dramatically lower both wholesale and retail costs of service. For example, in Chicago, Peerless' rates for local transit service are 70-90% lower than current ILEC rates, and its tandem switched access rates are up to 50% less than when all costs are included.

However, for Peerless' model to succeed in new markets, it is critically important for Peerless to establish interconnection to ILECs, long distance carriers, CLECs and wireless providers in each market in which it operates. In addition to traffic exchanged directly between Peerless' retail customers and ILEC subscribers, Peerless uses ILEC tandem switches to send traffic to third-party carriers until it is able to directly connect with individual third-party carriers.

Currently, ILECs impose numerous obstacles to Peerless' model because ILECs have yet to offer any form of direct IP-IP interconnection and still require competitors to interconnect to most (and many times to all) of their tandem switches in each LATA before agreeing to route traffic to subtending end offices, or require expensive trunk groups for various types of traffic to each end office. And, ILECs have refused to recognize any third-party tandem providers, such as Peerless, as a homing tandem for CLECs and other carriers. AT&T in particular has resisted efforts in industry work-groups for such recognition within its territories, effectively eliminating the option for new entrants to avoid its costly "connect to every tandem" requirements.

Further, when interacting with ILECs as a new market entrant, Peerless often faces higher than market rates for interconnection agreements because several ILECs, AT&T included, have adopted the practice of "noticing" the expiration of their interconnection agreements to existing interconnected companies but allowing them to continue operating under the noticed for

termination interconnection agreements. ILECs even use this excuse (*i.e.*, the “noticed for termination” interconnection agreements) to deny CLECs terms and conditions in commercial agreements that they make available to their affiliated entities. In many states, this practice impedes new market entrants from adopting the terms of these existing interconnection agreements.

## **II. AT&T DOES NOT OFFER JUST OR REASONABLE TERMS FOR TDM OR IP INTERCONNECTION**

As explained below, AT&T exploits the regulated/nonregulated relationships of its ILEC and nonregulated entities to obtain unreasonable terms and conditions for interconnection. The Commission should recognize – and take into account – this anticompetitive conduct in evaluating whether to approve AT&T’s request to be free to develop its own supposed commercial terms for IP interconnection with no Commission rules or guidelines.

Peerless directly connects with the AT&T ILECs in each of the AT&T ILEC LATAs where Peerless provides service. Peerless also directly connects to AT&T Mobility in TDM format, but only in three MTAs where AT&T is also the CLEC. Peerless has requested direct connection to AT&T Mobility in the remaining MTAs, but AT&T has so far refused.

Peerless also directly connects to AT&T’s Long Distance Services affiliate to purchase interLATA services. AT&T uses AT&T Long Distance Services as the corporate vehicle to provide indirect interconnection to: 1) AT&T Mobility, 2) AT&T Long Distance for the exchange of interLATA traffic, and 3) AT&T CLEC services (*i.e.*, TCG).

Peerless has requested IP interconnection with AT&T, and specifically requested that Peerless be permitted to directly connect with AT&T Mobility, AT&T Long Distance (for the exchange of interLATA traffic), TCG and AT&T ILECs. To date, AT&T has refused Peerless’

request to directly (and symmetrically) connect using IP technology for AT&T Mobility, AT&T ILECs and TCG. Instead, AT&T has offered that Peerless may directly connect with AT&T Services for the exchange of IP traffic with AT&T Mobility, AT&T Services, TCG and all AT&T ILECs. AT&T has offered to allow Peerless to purchase interconnection with these entities via its retail service “Voice Over IP Connect Service” (“AVOICS”) for IP interconnection.<sup>4</sup> But AVOICS is not an effective service because it is exclusively a termination service and does not permit a carrier to receive traffic in IP format.

The Commission should reject AT&T’s experimental concoction for IP Interconnection with no Commission rules or guidelines because AT&T’s past conduct in offering TDM interconnection, even with the applicability of state and federal rules, demonstrates that it is willing and able to leverage its market power to impose unreasonable terms and conditions for interconnection.

AT&T’s legal views of the Communications Act and the Commission’s rules give AT&T an easy excuse to deny competitors fair interconnection terms. AT&T asserts that only the mutual exchange of a CLEC’s own subscriber’s local traffic is subject to the obligations under Section 251(c)(2).<sup>5</sup> According to AT&T, VoIP 911, interLATA, transit, and interMTA traffic are not subject to the obligations under Section 251(c)(2). *Id.* Moreover, AT&T asserts that the exchange of this traffic is subject to Section 251(a) and 251(c)(2) obligations only if the traffic is exchanged in TDM format.<sup>6</sup> AT&T further asserts that the Commission lacks any legal authority

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<sup>4</sup> AT&T AVOICS Brochure. Attached hereto as Exhibit 1.

<sup>5</sup> *In the matter of Sprintcom, Inc., WirelessCo, L.P., NPCR, Inc., d/b/a Nextel Partners, and Nextel West Corp., Petition for Arbitration, Pursuant to Section 252(b) of the Telecommunications Act of 1996, to Establish an Interconnection Agreement With Illinois Bell Telephone Company d/b/a AT&T Illinois*, Illinois Commerce Commission Docket No. 12-0550 (“Sprint Illinois Arbitration”), Direct Testimony of Patricia Pellerin, AT&T Ex. 1.0 (Filed December 5, 2012), at p. 23 (“Pellerin Illinois Testimony”). Attached hereto as Exhibit 2.

<sup>6</sup> *Sprint Illinois Arbitration, Direct Testimony of Carl C. Albright*, AT&T Ex. 2.0 (Filed December 5, 2012), at fn. 1. Attached hereto as Exhibit 3.

under Sections 251(a), 252(c), or any other provision of the Communication Act to regulate AT&T's IP to IP Interconnection terms and conditions.<sup>7</sup>

AT&T relies on its market leverage and regulatory views to obtain more favorable terms for its own affiliates than it would in a purely competitive market, while denying the equivalent benefits to its competing interconnecting partners. For example, for InterMTA traffic from a wireless carrier destined to an AT&T ILEC, AT&T requires the wireless carrier to route the traffic over expensive switched access trunks, where the wireless carrier is responsible for 100% of the cost of the trunks.<sup>8</sup> However, for AT&T ILEC originated interMTA traffic that is destined to a wireless carrier, AT&T agrees to use TELRIC-priced entrance facilities, where the cost is shared between carriers.<sup>9</sup> AT&T refuses to permit the interLATA exchange of traffic between its ILEC and **the wireless provider** to be on local (Section 251(c)(2)) interconnection trunks.<sup>10</sup> However, AT&T does allow **CLECs** to exchange third-party tandem switched access services over local interconnection trunks.<sup>11</sup>

AT&T recognizes that intraMTA traffic between AT&T and a wireless carrier, or between a CLEC and AT&T Mobility, is subject to bill and keep. AT&T acknowledges that the FCC has declared bill and keep arrangements apply to intraMTA traffic under the *Connect America Order*.<sup>12</sup> However, if the same intraMTA call is routed to the AT&T ILEC through a

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<sup>7</sup> *In the Matter of Connect America Fund, et al.*, WC Docket Nos. 10-90 *et al.*, Comments of AT&T, February 24, 2012, at 35-46 (“AT&T’s February 24, 2012 Connect American Comments”).

<sup>8</sup> Pellerin Illinois Testimony, at 59, 62.

<sup>9</sup> Pellerin Illinois Testimony, at 60, 62.

<sup>10</sup> Pellerin Illinois Testimony, at 61.

<sup>11</sup> *Joint Petition for Approval of Negotiated Interconnection Agreement between Illinois Bell Telephone Company and Level 3 Communications*, ICC Dkt. No. 05-0177, Joint Petition, ITR Appendix (Interconnection Trunking Requirements, §12.1(iv) (available at [www.ICC.Illinois.Gov](http://www.ICC.Illinois.Gov)).

<sup>12</sup> Pellerin Illinois Testimony, at 64, *citing Connect America Fund, et al.*, FCC 11-161, WC Docket Nos. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, ¶ 978 (Rel. Nov. 18, 2011 (“*Connect America Order*”).

transit arrangement (where a third-party carrier terminates the intraMTA call on behalf of the wireless carrier to AT&T ILEC), AT&T ILECs would charge a transit rate of up to \$0.00065 per MOU, notwithstanding the FCC's *Connect America Order* requiring bill and keep for intraMTA traffic.<sup>13</sup>

For the LEC that wishes to directly connect to AT&T Mobility, the terms demanded by AT&T are different than the terms required when a wireless carrier directly connects to AT&T. If a LEC is allowed to interconnect at all, the LEC can only directly connect to AT&T Mobility in MTAs where an AT&T affiliate is not the ILEC, and where the LEC is not allowed to transit traffic from third-party carriers. In AT&T ILEC territories, the LEC can terminate calls to AT&T Mobility only by routing the call through AT&T Services, on terms and conditions dictated by the unregulated entity (which according to AT&T is not bound by Section 251(c)(2) obligations). Section 20.11 of the Commission's rules permit AT&T Mobility to demand direct connection to a local exchange carrier, which would, under normal circumstances, require that intraMTA traffic be exchanged under a bill-and-keep arrangement.<sup>14</sup> And while AT&T Mobility would not be permitted to impose terminating access charges if it were directly connected to a LEC, AT&T can demand compensation from a LEC through an indirect interconnection as a requirement of interconnection through AT&T Services.

The prices that AT&T charges its affiliates are also different than what AT&T offers to competitors. For example, AT&T ILECs have an agreement with AT&T Mobility to provide transit service to AT&T Mobility under a commercial agreement which states that the

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<sup>13</sup> Pellerin Illinois Testimony at 67; Pellerin Illinois Testimony, Pricing Sheet at 12, line 315.

<sup>14</sup> 47 C.F.R. §20.11

Agreement is outside of the obligations under Sections 251 and 252.<sup>15</sup> AT&T ILECs have agreed to provide transit to AT&T Mobility at a rate based on volume from \$0.0020 per MOU.<sup>16</sup> In the pending arbitration with Sprint in Illinois, AT&T offers Sprint a rate almost more than twice the rate paid by AT&T Mobility: \$0.005034 per MOU.<sup>17</sup> This is also the rate that AT&T charges Peerless and other CLECs for transit services in Illinois. Even the highest rate made available to AT&T Mobility at the lowest volume of traffic (\$0.0034), gives AT&T Mobility a 30% discount off the rates charged to Sprint and CLEC competitors.

The contract terms offered to Sprint are also discriminatory. AT&T would require Sprint to indemnify AT&T Illinois against any losses it might suffer to a third-party terminating carrier as a result of Sprint's failure to deliver CPN. AT&T does not impose the same obligation on AT&T Mobility.<sup>18</sup>

These are just several examples of how AT&T uses AT&T Services, commercial agreements, and its affiliated corporate entities to either impose unreasonable interconnection terms where its ILEC affiliate is bound by Section 251(c)(2) obligations, or grant more favorable terms to its competitive affiliates. And, this conduct is occurring with TDM interconnection terms, where there is no credible dispute that Sections 251(a) and 252(c)(2) require interconnection.

In this proceeding, AT&T now proposes a grand experiment with no rules, no restrictions on its terms for interconnection, and no jurisdiction for the FCC or the state public service

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<sup>15</sup> Commercial Agreement between Illinois Bell Telephone Company, et al. and New Cingular Wireless PCS, LLC, Filed with the FCC on August 1, 2007. Excerpts of this Agreement are attached hereto as Exhibit 4.

<sup>16</sup> *Id.* The rate table offers 3 rates depending on volume in a given year. Given that AT&T ILECs provide transit to AT&T Mobility throughout the 21-state region covered by the Agreement, the lowest rate would apply.

<sup>17</sup> Pellerin Illinois Testimony, Pricing Sheet at 12, line 315.

<sup>18</sup> Compare Sprint Illinois Arbitration, Direct Testimony of J. Scott McPhee ("McPhee Illinois Testimony"), at 17-18 (attached hereto as Exhibit 5) with AT&T Mobility Commercial Agreement, at Section 3.8.

commissions to address discrimination. Any question about whether AT&T would engage in the same conduct for IP interconnection, with no rules, is answered by the IP Interconnection terms proposed by AT&T in its February 14, 2012 *Connect America Comments*. AT&T proposes that each carrier establish a Network Edge within each LATA.<sup>19</sup> AT&T proposes that:

2.(b)

“. . . every Terminating Carrier will offer direct interconnection and indirect interconnection at its Network Edges for the termination of traffic. However, in some circumstances Terminating Carriers will not do so.

\* \* \*

(ii) Where the Terminating Carrier is exempt from section 251(c), and it does not offer interconnection at the Network Edge or it insists on only indirect interconnection there, the Terminating Carrier must offer direct and indirect interconnection at an Alternative Edge. See *id.*”

Under AT&T’s *Connect America Proposal* for IP Interconnection, AT&T’s non-ILEC entities such as AT&T Services, TCG and AT&T Mobility would not be required to establish a Network Edge in each LATA because they are not subject to Section 252(c)(2) obligations; they could each require indirect interconnection through an Intermediate carrier, such as another AT&T affiliate.<sup>20</sup> Moreover because, according to AT&T’s proposal, the “rates, terms and conditions of Third-Party Tandem-Switched Transport Service shall be unregulated and governed solely by bilateral contract arrangements,”<sup>21</sup> AT&T would have the ability to aggregate market power over the termination of services to extract unreasonable terms and conditions from Sending Carriers seeking to exchange IP traffic with AT&T and its affiliates.

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<sup>19</sup> AT&T Feb. 24, 2012 *Connect America Comments*, Ex. A, at 1. AT&T’s Exhibit A is attached hereto as Exhibit 6.

<sup>20</sup> This is the manner in which AT&T currently offers IP interconnection through its AVOICS. This service, offered as a non-regulated service, provides termination services to the PSTN. The AVOICS rate structure has “separate rate elements for transport and terminating access. Connectivity facilities are billed under the applicable agreements for those facilities (e.g., MIS agreement). AVOICS Brochure, Ex. 1.

<sup>21</sup> AT&T Feb. 24, 2012 *Connect America Comments*, Ex. 6 at 6.

AT&T has a willingness to, and a history of, raising its rivals' costs through unfavorable interconnection terms and conditions.<sup>22</sup> There is every reason to believe that AT&T would use its proposed experiment to not only engage in that conduct in the trial wire centers, but would also use the trial run to lay a foundation to leverage the size of its affiliates' market presence to impede competition.

### **III. THE COMMISSION SHOULD CONFIRM THAT THE INTERCONNECTION OBLIGATIONS IMPOSED BY THE FCA APPLY TO IP INTERCONNECTION**

AT&T wraps the *National Broadband Plan* around its Petition to suggest that the flash-cut experiment proposed by AT&T is somehow authorized or endorsed by the *Plan*. In fact, the opposite is true. While AT&T asserts that IP interconnection should proceed forward without rules or obligations, the *National Broadband Plan* made clear that the transition to an IP world must be made consistent with the FCC's rules.<sup>23</sup> The *Plan* was clear that “[f]or competition to thrive, the principal of interconnection . . . needs to be maintained.”<sup>24</sup>

The NTCA Petition argues that “[i]t is essential . . . to adopt a more thoughtful and balanced approach to regulatory reform and promoting an IP evolution than engaging simply in

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<sup>22</sup> *In the Matter of Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LECs' Local Exchange Area*, Report and Order, 12 F.C.C.R. 15756, 587 ¶ 91 (Rel. April 8, 1997) (finding that while BOCs had the ability to engage in price squeeze to competing long distance carriers, 47 U.S.C. § 272 and price cap regulations limited their ability to do so); *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, First Report and Order and Further Notice of Proposed Rulemaking, FCC 96-489, 11 F.C.C.R. 21905 (rel. Dec. 24, 1996) (finding that BOCs' have the ability to use their market power in local exchange and exchange access services to engage in anticompetitive conduct in competitive markets); *In the matter of Access Charge Reform Price Cap Performance Review for Local Exchange Carriers Transport Rate Structure and Pricing Usage of the Public Switched Network by Information Service and Internet Access Providers*, NPRM, Third Report and Order and NOI, 11 FCC Rcd. 21354 ¶ 47 (Rel. Dec. 24, 1996); *In the matter of AT&T Long Lines Department, Revisions of Tariff No. 260 Private Lines Services, Series 5000 (TELPK)*, Memorandum Opinion and Order, 61 F.C.C.2d 587 ¶ 208 (Rel. 1976). See also *Pacific Bell Telephone Co. v. Linkline Communications, Inc.*, 555 U.S. 438 (2009) (finding that without an obligation to provide service (*i.e.* IP Interconnection), Pacific Bell could not be held to violate the Sherman Act.)

<sup>23</sup> *National Broadband Plan*, at 49 (noting an example where rural carriers were resisting interconnection through a misapplication of the FCC's rules.)

<sup>24</sup> *Id.*, citing 47 U.S.C. § 251(a) and (c)(2).

either unfettered deregulation (which may create a ‘Wild West’ that scares off investment) or rote mechanical application of regulations (which may deter investment as circumstances evolve).” NTCA Petition, at 9. Peerless agrees.

IP interconnection is used in networks merely as a technology to transport and exchange communications traffic; it is not a separate and distinct service.<sup>25</sup> Many carriers are not only already deploying IP technology within their own networks, but are also directly connecting to exchange traffic in IP format. Peerless currently exchanges traffic with over 60 carriers in IP format – all without having to change or ignore any regulations to do so. But different carriers are deploying IP technologies at different paces, in different geographic locations, and in providing different services. The Commission should take these factors into account in a transition to an IP network, determining, as NTCA suggests, which regulations are necessary to promote the transition.

The Commission has repeatedly recognized that IP enabled voice services are the functional equivalent of voice communications that are transmitted using TDM technologies, and has applied consumer protection and other regulations to these IP enabled services. The Commission requires Universal Service contributions to fund the deployment of advanced telecommunications infrastructure, including IP enabled networks,<sup>26</sup> and the Commission has applied number portability benefits to consumers of VoIP services.<sup>27</sup> The Commission has also

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<sup>25</sup> See *National Cable & Telecommunications Association v. Brand X Internet Services*, 545 U.S. 967, 998 (2005) (a carrier offers a “transmission path – telephone service – that transmits information independent of the information-storage capabilities provided by voice mail . . . [W]hen a person makes a telephone call, his ability to convey and receive information using the call is only trivially affected by the additional voice-mail capability.”)

<sup>26</sup> See generally *Connect American Order*.

<sup>27</sup> *In re Telephone Number Requirements for IP-Enabled Services Providers; Local Number Portability Porting Interval and Validation Requirements; IP-Enabled Services; Telephone Number Portability; Numbering Resource Optimization*, WC Docket Nos. 07-243, 07-244, 04-36, CC Docket Nos. 95-116, 99-200, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19531, (2007), *aff'd sub nom. National Telecomms. Cooperative Ass'n v. FCC* (D.C. Cir. Apr. 28, 2009).

extended CALEA benefits to consumers, and attached these obligations to carriers, of VoIP services.<sup>28</sup> The Commission also recognizes that providers of interconnected VoIP services should receive notice prior to being disconnected from service,<sup>29</sup> and that VoIP consumers be vested with the privacy protections afforded by the CPNI rules.<sup>30</sup> Moreover, and perhaps most persuasively, the Commission has already deemed IP enabled services to be subject to the protection of the FCC's public interest obligations and required E-911 functionality for interconnected VoIP services.<sup>31</sup> Merely because these services and functionalities are transmitted between carriers using IP networks does not eliminate them from the specter of FCC oversight.

AT&T's Petition recommends that the Commission migrate certain wire enters to an all-IP format without any interconnection rules in place. AT&T Petition, at 22. However, this would be unlawful. There is general agreement that ILECs are obligated to provide IP interconnection where available under Section 252(a)(2) for the transmission and routing of IP enabled telecommunications services.<sup>32</sup> IP enabled voice communications (or VoIP services) are telecommunications services, telephone exchange services, and exchange access services, as defined by the Act.<sup>33</sup> So, not only is IP interconnection an obligation under Section 252(c)(2), but it is also an obligation on AT&T's non-ILEC affiliates under Section 251(a).

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<sup>28</sup> *Communications Assistance for Law Enforcement Act and Broadband Access Services*, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd. 14989, ¶42 (2005).

<sup>29</sup> *IP Enabled Services*, Report and Order, 24 FCC Rcd. 6039, ¶ 69 (2009)

<sup>30</sup> *Implementation of the Telecommunications Act of 1996; Telecommunications Carriers' Use of Customer Proprietary Network Information; IP-Enabled Services*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd. 6927, ¶ 56 (2007).

<sup>31</sup> *IP-Enabled Services; E-911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd. 10245, ¶ 23 (2005).

<sup>32</sup> See, e.g. *Comments of CBeyond, Earthlink, Integra Telecom, and tw telecom in response to Connect America Order FNPRM*, WC Dkt. 10-90 *et al.* (filed February 24, 2011), at 20-27.

<sup>33</sup> 47 U.S.C. §§ 153(47) (defining "telecommunications services"), 153(47) (defining "telephone exchange access service"), 153(16) (defining "exchange access"), and 153(20) (defining "information service").

The Commission should make clear that ILECs and all carriers have the obligation to establish IP-to-IP interconnection to exchange all facilities-based voice traffic, whether IP or TDM, pursuant to both Sections 251(a) and Section 251(c)(2) of the Act. Section 251(c)(2) is crystal clear – it requires ILECs to provide interconnection to “any requesting telecommunications carrier” at any technically feasible point “for the transmission and routing of telephone exchange service or exchange access.” Section 251(a) is similarly clear – it requires all carriers to interconnect directly or indirectly. Both Sections are technology agnostic – they apply no matter what technology is used to transmit, route or exchange the traffic, and do not only apply to TDM traffic as AT&T suggests.

Incumbent LECs that receive requests for IP-to-IP interconnection are also subject to the negotiation and arbitration provisions of Sections 251 and 252 of the Act. Section 252(c)(2) provides a statutory requirement of good faith negotiations under Section 251(c)(1), with enforcement available through state arbitrations under Section 252. This ability to negotiate in good faith, followed by the ability to seek expedient relief where negotiations fail, is critical to the ability of carriers to continue to deploy IP networks. The Commission must ensure that competing carriers have a procedural vehicle to obtain nondiscriminatory terms and conditions for interconnection. If there is no right or place to seek fair interconnection terms, carriers will be frustrated in their ability to deploy new technologies.

The problems posed by AT&T’s experiment are not always directly connecting to the ILECs. AT&T in particular leverages the aggregate market presence of its affiliates (AT&T Mobility, TCG, ILECs and AT&T Long Distance) to extract unreasonable terms and conditions for interconnection. While AT&T Mobility has an obligation to interconnect, directly or indirectly, with other carriers, it unreasonably chooses where to directly connect with certain

carriers, and where to only indirectly connect to carriers through its affiliates. In addition, in some MTAs, AT&T Mobility only offers indirect connection through its affiliate, AT&T Long Distance, which charges rates for tandem/transit services that AT&T Mobility would not be permitted to charge if it were directly connected to the LEC.

Several carriers have advocated in other proceedings that the Commission confirm that ILECs are required to provide transit services at TELRIC prices, and pursuant to Section 252.<sup>34</sup> At first blush, this request seems at odds with a market where there are several alternative transit providers, such as Hypercube, Peerless, Level 3 and Neutral Tandem. However, the reason for this paradox is because AT&T does not give these third-party tandem providers access to the AT&T affiliated entities through either direct interconnection, or through indirect interconnection at reasonable terms or conditions. Consequently, neither LECs nor the competitive third-party tandem/transit providers are able to terminate traffic to AT&T Mobility, TCG or AT&T Long Distance on reasonable terms.

The Commission should not permit AT&T to skew the evolving IP market in the same way. The Commission should retain authority of IP services under Section 251(a) and 251(c) to ensure that telecommunications traffic can be exchanged on just and reasonable, and nondiscriminatory terms.

Carriers are already deploying IP technologies in the network, and the FCC should confirm that carriers are required to directly and indirectly connect in IP format, pursuant to both Section 251(a) and 251(c). To the extent a carrier has deployed IP in its network, and such network is available to interconnect in IP format, the carrier should be obligated to directly connect in IP format. Moreover, the FCC should confirm that third-party tandem providers are

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<sup>34</sup> See, e.g. *Comments of CBeyond, Earthlink, Integra Telecom, and tw telecom in response to Connect America Order FNPRM*, WC Dkt. 10-90 *et al.* (filed February 24, 2011), at 13-14.

permitted to direct connection in IP format to exchange traffic originated from other carriers that are not yet positioned to exchange traffic in IP format. That is not to say that the Commission needs to develop technical rules governing IP-to-IP interconnection; carriers should be able to agree on the technical standards for IP interconnection. However, the FCC must make clear that if carriers are unable to reach agreement on the details of IP-to-IP interconnection, whether it be on the compensation associated with the exchange of traffic, the technical standards, or the locations of interconnection, that carriers can turn to the FCC and state public service commissions to enforce rights under Section 251(a), 251(c) and 252 of the Act.

**V. IF THE COMMISSION DETERMINES TO INITIATE A PROCEEDING, THE COMMISSION SHOULD DENY THE AT&T PETITION AND FOLLOW THE APPROACH SUGGESTED BY NTCA**

The AT&T Petition requests that the Commission cast aside regulatory oversight of the transition to IP networks, and experiment with consumer services to see if a regulation-free transition could be successful. AT&T's request should be denied. There is no reason the Commission should or would need to conduct such an experiment; satisfying AT&T's curiosity to see how the market may respond in a regulation-free world is an insufficient rationale. CALEA, 911, discontinuation of service restrictions, and even the rules requiring non-discriminatory terms for interconnection were each adopted by the Commission to address a particular issue that does not go away with IP Interconnection.

Notably absent from AT&T's Petition are recommendations on how the Commission can undo the harm to consumers or competitors should AT&T's proposed experiment fail. AT&T proposes that the Commission discontinue any obligation on AT&T to provide certain basic services. AT&T Petition, at 16-17. But AT&T does not describe in detail the number of consumers that could be impacted by that decision, the role that state public service commissions

would have in determining how to transition to a “rational procurement model” for ensuring universal service, the safety net that would necessarily have to be put in place to account for consumers that were not able to transition to another carrier during the migration, or the countless other issues that arise with the elimination of TDM services.

AT&T likens the transition away from TDM consumer services to what “happened in the transition from analog to digital television and in the sunset of analog cellular services,” and asserts that the Commission shouldn’t let “a few customers delay the transition.” But basic local exchange services, whether provided in a TDM or IP format, are not the same as whether a consumer has the ability to watch a television show, or is stuck for a few months with an old analog TV. Basic local exchange services are deemed to be vital to consumer safety and protection.<sup>35</sup> The Commission should not proceed with AT&T’s recommendation to discontinue TDM services in any wire center, without first adopting the rules and requirements necessary to protect consumers’ interests.

And it’s not only AT&T ILEC consumers that are at issue. Carriers interconnect with AT&T ILEC to exchange traffic originated from, or destined to, other consumers. So the Commission has to ensure that every consumers’ telecommunications traffic is exchanged without fail. AT&T acknowledges that without a proper structure in place prior to the transition customers of other carriers may “be cut off (even temporarily) from service.” AT&T Petition, at 22. AT&T offers to “switch them to an alternative service” and give them time to “establish alternative arrangements” (*id.*), but doesn’t explain the justification for the Commission to force migration in a manner that would avoid the impact on consumers.

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<sup>35</sup> *Communications Assistance for Law Enforcement Act and Broadband Access Services*, First Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd. 15676, ¶ 56 (2004).

AT&T's proposal also does not suggest how the Commission can implement such a migration without considering the impact on a carrier's existing contracts with AT&T and other ILECs, or the manner in which carriers can be protected from uncompetitive interconnection terms. As demonstrated above, ILECs have historically had the willingness and ability to discriminate against competing carriers in offering access (*i.e.* interconnection) to their consumers. The rules applicable to various interconnection methods are already in place. To the extent those rules either cannot or should not apply, the Commission must still adopt rules to apply to maintain interconnection, so that consumers' telecommunications services do not fail.

Finally, the AT&T Petition does not suggest how the Commission should analyze the success or failure of its proposed experiment. There is no explanation of what metrics should be examined in the experiment to determine whether the same migration policies should be used in other wire centers. There is also no explanation in AT&T's Petition on how geographic differences may affect the success or failure of the proposed migration of a wire center to an IP network, and no explanation of how different ILEC practices may affect the outcome.

The NTCA Petition recommends a more analytical approach to migrating to IP networks. NTCA recognizes the need to "maintain certainty by retaining and reasserting a firm and clear regulatory foundation, while coordinating with state counterparts to examine specific bricks for potential replacement, repair, or removal where their utility or effectiveness is in question." NTCA Petition, at 10. The NTCA Petition recognizes that to be effective, the continued transition to IP networks must necessarily involve state public service commission, where many of the interconnection obligations and consumer protection laws are implemented.

The Commission should deny the AT&T Petition for each of the foregoing reasons. It is short sighted, overly simplistic, and fails to offer consumers or competitors requisite protections.

Should the Commission determine to initiate a proceeding to investigate the rules required for IP networks, the Commission should follow the analytical path suggested by NTCA. NTCA's recommendation is more akin to Professor Kelp, the lead character played by Jerry Lewis in the *Nutty Professor*. While Kelp is the nerdy and intelligent professor, his steady quiet approach ultimately leads to a successful marriage. AT&T's alternative proposal is akin to Buddy Love, the flashier alter ego of Kelp. While cool and attractive, he ultimately fails.

### CONCLUSION

The Commission should not give AT&T's regulation-free experiment the opportunity to fail, and should deny the Petition. The AT&T Petition presents no reason why a flash-cut to an IP interconnection regime will aid the industry's evolving transition to IP interconnection or why the Commission should disregard the Commission's existing work by opening a new rulemaking.

If the Commission does initiate a new rulemaking proceeding, the Commission should affirm that Sections 251(a) and (c)(2) of the Act apply regardless of the format-type used for the exchange, and should proceed based the systematic and incremental approach suggested in the NTCA Petition.

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Respectfully submitted,

**PEERLESS NETWORK, INC.**

/s/ Henry T. Kelly

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