

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

In the Matter of)	
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)	
AT&T and NTCA Petitions)	GN Docket No. 12-353
)	

**COMMENTS OF
THE AD HOC TELECOMMUNICATIONS USERS COMMITTEE**

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Summary

Ad Hoc opposes AT&T's Petition and supports (in part) NTCA's Petition regarding the appropriate regulatory response to the evolution of carrier networks and end user equipment to an all-IP environment. The crux of AT&T's request is that incumbent local exchange carriers ("ILECs") are no longer "monopolists," because "in today's convergent broadband environment they have been steadily losing ground to cable and wireless operators." Therefore, AT&T argues, the Commission should lift the regulatory requirements that "place the ILECs at a regulatory disadvantage"

NTCA, on the other hand, takes a broader approach urging the Commission to walk a middle ground between the "sledgehammer" approach of unfettered de-regulation like that advocated by AT&T and the "rote application" of legacy regulations that may no longer be appropriate for modern networks. NTCA asks the Commission to open a proceeding to determine whether its regulations, if any, should be eliminated or merely modified in order to further the goals of "protecting consumers, promoting competition, and ensuring universal service."

The Commission should not waste scarce resources toying with the deregulatory relief and market experiments that AT&T requests, for two reasons. First, AT&T has failed to provide any evidence that the ILECs and their wireless corporate affiliates, along with cable companies, no longer exert bottleneck control over essential last mile wireline and wireless network facilities. Second, the Commission cannot deregulate services willy-nilly simply because they use IP as a transmission protocol because that does not change the marketplace realities that require regulatory protections for end users. Nor does it transform regulated "telecommunications" into unregulated information services.

Ad Hoc agrees with NTCA that the PSTN is alive and kicking; it is merely evolving from a public switched telephone network to a packet switched telecommunications network. Ad Hoc also agrees that any review of the Commission's rules should ensure that the rules address consumer needs, technological change, and market conditions. – important goals identified by NTCA. In lieu of a new, omnibus proceeding, however, Ad Hoc is confident that the Commission's inter-disciplinary Technology Transitions Policy Task Force will provide a better vehicle for reviewing and updating the Commission's rules and policies where necessary. By taking advantage of the evidence and analysis already filed with the Commission in existing proceedings initiated to address IP transition issues, the Task Force will be able to proceed more efficiently and expeditiously than would be the case if the Commission started a new and duplicative proceeding.

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AT&T and NTCA Petitions Re)	GN Docket No. 12-353
Deployment of IP Technologies in)	
Public Networks)	
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**COMMENTS OF
THE AD HOC TELECOMMUNICATIONS USERS COMMITTEE**

The Ad Hoc Telecommunications Users Committee (“the Committee” or “Ad Hoc”) hereby responds to the Commission’s invitation for comments in the docket captioned above.¹

INTRODUCTION

In the instant Public Notice, the Commission seeks comment on Petitions filed by AT&T and the National Telecommunications Cooperative Association (“NTCA”) addressing the regulatory implications of the transition from the use of a time division multiplexing (“TDM”) transmission protocol to an Internet Protocol (“IP”) transmission protocol in carrier networks and end user equipment. The crux of AT&T’s request for regulatory relief is that incumbent local exchange carriers (“ILECs”) are no longer “monopolists,” because “in today’s convergent broadband environment they have been

¹ *Pleading Cycle Commenced on AT&T and NTCA Petitions*, GN Docket No. 12-353, Public Notice, DA 12-1999 (released Dec. 14, 2012).

steadily losing ground to cable and wireless operators.”² Therefore, AT&T argues, the Commission should lift the regulatory requirements that “place the ILECs at a regulatory disadvantage. . .”³ In particular, AT&T requests that the Commission:

- Eliminate the § 214 discontinuance process when an ILEC transitions its service offerings in a particular geographic area from TDM-based services to IP-based services.⁴
- Modify the notice of network change notification rules (47 C.F.R. §§ 51.325(a), 51.333) so that the ILECs’ first notice to interconnecting carriers, and not the Commission’s subsequent Public Notice, triggers the interconnecting carrier’s obligation to object to the proposed change.⁵
- Abolish the requirement that Eligible Telecommunications Carriers (“ETCs”) provide on demand to all customers in a designated service area. Rather, once an ETC undertakes “voluntary service commitments in clearly defined areas,” it would be allowed to receive the universal service funds necessary to provide those services.⁶
- Declare that “IP-enabled services, including all VOIP services are ...classified as interstate information services over which the Commission has exclusive jurisdiction.”⁷

² AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition (filed Nov. 7, 2012) (“AT&T Petition”) at 11.

³ *Id.*

⁴ *Id.* at 13-15.

⁵ *Id.* at 15.

⁶ *Id.* at 15-18.

⁷ *Id.* at 18.

- Eliminate the dialing parity requirements (allowing customers to choose their presubscribed long distance carrier).⁸
- Eliminate the requirement that ILECs retaining copper loop distribution facilities while upgrading to fiber feeder facilities must either: (1) maintain access to the otherwise unused copper feeder; or (2) provide a non-packetized path between the central office and customer premises.⁹

NTCA, on the other hand, took a broader approach in its petition, observing that the reports of the death of the PSTN are greatly exaggerated. NTCA urges the Commission to walk a middle ground, between the “sledgehammer” approach of unfettered de-regulation like that advocated by AT&T and the “rote application” of legacy regulations. Instead, NTCA requests that the Commission open a proceeding to determine whether its regulations, if any, should be eliminated or merely modified in order to further the goals of “protecting consumers, promoting competition, and ensuring universal service.”¹⁰

Ad Hoc addressed many of AT&T’s claims and the network realities that undermine them in comments filed on February 24, 2012 in WC Docket No. 10-90.¹¹ As those comments demonstrate, and as set forth in greater detail below, the FCC should not waste scarce resources toying with the deregulatory relief and market experiments that AT&T requests, for two reasons. First, AT&T has failed to provide any evidence

⁸ *Id.* at 19.

⁹ *Id.*

¹⁰ 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”) at 10.

¹¹ Comments of the Ad Hoc Telecommunications Users Committee on the FNPRM, WC Docket No. 10-90 (filed Feb. 24, 2012) (“Ad Hoc ICC FNPRM Comments”).

that ILECs and their wireless corporate affiliates, along with cable companies, no longer exert bottleneck control over essential last mile wireline and wireless network facilities. Second, the Commission cannot broadly deregulate services simply because they use IP as their transmission protocol, as AT&T requests, because the mere use of IP as a transmission protocol does not change the marketplace realities that require a regulatory response. Nor does it transform regulated “telecommunications” into unregulated information services.

Ad Hoc agrees with NTCA that the PSTN is alive and kicking; it is merely evolving from a public switched telephone network to a packet-switched telecommunications network. Ad Hoc also agrees that any review of the Commission’s rules should ensure that the rules are serving consumer needs, technological change, and market conditions – important goals identified by NTCA. In lieu of the new, omnibus proceeding suggested by NTCA, however, Ad Hoc supports the Commission’s creation of the inter-disciplinary Technology Transitions Policy Task Force. By taking advantage of the evidence and analysis already filed with the Commission in existing proceedings on IP transition issues, the Task Force will be able to proceed more efficiently and expeditiously than it would by starting a duplicative proceeding.

I. REGULATION OF TELECOMMUNICATIONS MONOPOLIES

Whether it is described as economic regulation, industrial regulation, or the public interest theory of regulation, the purpose and function of regulation remains the same - to protect the public interest in markets that suffer from an insufficient level of

competitive activity.¹² Lack of competition alone is not a sufficient condition to require regulation if any such lack would be short-term (given the structural characteristics of the market) or if the products involved are non-essential. Economic regulation is justified, however, for markets with structural characteristics that impede the emergence of competition and whose products are infused with a public interest.

Utilities like telecommunications services are paradigmatic examples of such competition-resistant markets for essential public services. The scale economies that exist in the provision of last mile wireline services are well documented¹³ and result in entry barriers for aspiring service providers that effectively insulate incumbents from any price-disciplining competitive threat.¹⁴ Given these economies of scale and entry barriers, last mile wireline services will tend towards domination by a “natural monopolist.”¹⁵ Because a monopoly provider obviates the need to build a redundant network, natural monopolies are considered to be efficient.¹⁶ Critically, however, the lack of competition inherent in a natural monopoly can harm consumers because the

¹² See, e.g., Stanley L. Brue, Sean M. Flynn and Campbell R. McConnell, *Microeconomics, 19th Edition*, (McGraw-Hill/Irwin: 2011) at 382, or N. Gregory Mankiw, *Principles of Microeconomics, 6th Edition* (South-Western College Pub: 2011) (“*Principles of Microeconomics*”) at 11 – 13.

¹³ See Berkman Center for Internet & Society at Harvard University, *Next Generation Connectivity: A review of broadband Internet transitions and policy from around the world*, Final Report (Feb. 2010), http://cyber.law.harvard.edu/sites/cyber.law.harvard.edu/files/Berkman_Center_Broadband_Final_Report_15Feb2010.pdf, pp. 83-89. The report also observes that “[t]he basic large economies of scale of communications networks have not been repealed by the transition to digital communications networks.” *Id.* at 9.

¹⁴ Michael Kende, *The Digital Handshake: Connecting Internet Backbones*, OPP Working Paper No. 32, Office of Plans and Policy, Federal Communications Commission (Sept. 2000) http://transition.fcc.gov/Bureaus/OPP/working_papers/oppwp32.pdf. Industries such as wireline telephony are characterized by economies of scale in that the cost per unit of providing service decreases as output increases. *Id.* at 9, n.32.

¹⁵ *Id.* at 9 (citing Robert S. Pindyck and Daniel L. Rubinfeld, *Microeconomics*, (Prentice Hall, 4th ed. 1998) at 352-358).

¹⁶ *Id.*

monopoly service provider has the ability to: (1) raise retail prices directly or reduce retail service quality; (2) leverage its market power in its monopoly market into other, formerly competitive markets; and (3) deny its competitors access to its network, thereby protecting its core market.¹⁷

In order to benefit from the efficiencies inherent in having a monopoly service provider build and operate a single telecommunications network, while protecting consumers from the aforementioned anti-competitive harms, governments have generally allowed telecommunications monopolies to operate, while subjecting them to regulation.¹⁸ In particular, governmental agencies have imposed rate limitations and service quality standards as well as imposing common carrier obligations, including interconnection and non-discrimination obligations, on monopoly providers of telecommunications services.¹⁹

As market conditions change and a monopolist's grip on a particular market loosens, the FCC has loosened its regulatory regime accordingly. For example, as competitive carriers entered the long distance market, the Commission "distinguished two kinds of carriers—those with market power (dominant carriers) and those without market power (non-dominant carriers)."²⁰ The Commission then "gradually relaxed its regulation of non-dominant carriers because it concluded that non-dominant carriers could not charge rates or engage in practices that contravene the requirements of the

¹⁷ *Id.* at 9-10.

¹⁸ *Id.* at 10.

¹⁹ *Id.* at 10.

²⁰ *Motion of AT&T Corp. to be Reclassified as a Non-dominant Carrier*, 11 FCC Rcd 3271, (1995) ("AT&T Non-Dominant Order") at 3274, ¶ 4.

Communications Act . . . since affected customers always had the option of taking service from a dominant carrier whose rates, terms and conditions for interstate service remained subject to close scrutiny by the Commission.”²¹ In determining how tightly a carrier should be regulated, “the Commission defined a dominant carrier to be a carrier that ‘possesses market power.’”²² In evaluating a carrier’s “market power,” the FCC “focused on certain ‘clearly identifiable market features,’ including ‘the number and size distribution of competing firms, the nature of barriers to entry, and the availability of reasonably substitutable services,’ and whether the firm controlled ‘bottleneck facilities.’”²³

The mere existence of competitors does not automatically translate into a competitive market. As Mankiw observes in his *Principles of Microeconomics*, “the invisible hand is powerful, but it is not omnipotent.”²⁴ Generally accepted economic theory has long recognized that it is possible for providers to have market power even in the presence of competitors. Mankiw, for example, specifically includes markets with multiple providers when he defines market power as [t]he ability of a single economic actor (*or small group of economic actors*) to have a substantial impact upon market price.”²⁵

²¹ *Id.*

²² *Id.* at 3274, ¶ 5 (quoting *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, First Report and Order*, 85 FCC 2d 1, 20-21 (1980) at 20-21).

²³ *Id.* See also *Petition of Qwest Corp. for Forbearance Pursuant to 47 USC §160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, WC Docket No. 09-135, Memorandum Opinion and Order, 25 FCC Rcd 8622 (2010) (“*Qwest Phoenix II Order*”), *aff’d Qwest Corp. v. Fed. Comm’n’s Comm’n*, 689 F.3d 1214 (10th Cir. 2012) for the most current articulation of the Commission’s market power test.

²⁴ Referring to Adam Smith. *Principles of Economics* at 11.

²⁵ *Principles of Economics* at 12 (emphasis added).

In order to grant AT&T's petition, the FCC must therefore determine whether telecommunications markets have become (or are capable of quickly becoming) sufficiently competitive to warrant that action, i.e., whether the ILECs, among the largest providers of last mile telecom services, no longer have market power in the provision of those services thanks to actual entry or elimination of the entry barriers that foreclosed potential entry.

II. THE ILECS CONTINUE TO HAVE MARKET POWER IN THE MARKET FOR LAST MILE FACILITIES, NO MATTER WHAT TRANSMISSION PROTOCOL IS USED

A. "Last mile" broadband networks are no more competitive than "legacy" networks

Current market conditions do not demonstrate that price-constraining competition has emerged (or can emerge) in the last-mile broadband services marketplace to a greater extent than has been the case for either the voice telephony market or the "legacy" data services market. In fact, in the National Broadband Plan, the FCC concluded that 91% of the Nation's population will be served by either a monopoly or a duopoly market for broadband services.²⁶ Such a lack of competitive alternatives has caused the Commission to understandably express concern about broadband competition in the United States.²⁷

The introduction of IP and other packet switching protocols represents an evolution of technology, not a revolution, consistent with the steady and incremental

²⁶ Federal Communications Commission, *Connecting America: The National Broadband Plan* (Mar. 2010), <http://download.broadband.gov/plan/national-broadband-plan.pdf> ("NBP") at 37, Exhibit 4-A (Share of Housing Units in Census Tracts with 0, 1, 2, and 3 Wireline Providers). The NBP states that 13% of households are served by only one broadband provider, while 78% are served by two broadband providers.

²⁷ NBP at 37.

advances both in switching²⁸ and transmission technology²⁹ over the last hundred years. Yet regardless of the steady change in switching and transmission technologies employed by the ILECs, the underlying physical network facilities continue to consist of two critical components: (1) local distribution or “last mile” facilities that connect individual customer premises (or, more generally, customer communications terminal devices) to the common switching and transport network; and (2) common transport and switching facilities that carry traffic from multiple customers and/or service providers between and among the endpoints of each connection.

The specific configuration of local distribution and common switching/transport networks has most certainly been altered by technological change.³⁰ However, local distribution and common switching and transport facilities have remained fundamentally separate and distinct during the course of this technology migration and have experienced very different competitive forces. In particular, the market for “last mile” facilities has remained fundamentally non-competitive because the advent of IP or

²⁸ Switching evolved from manually-operated cord switchboards through electromechanical step-by-step switching to common control electromechanical crossbar switching and program-controlled electronic switches. The electromechanical and first generation electronic switching systems utilized what later became known as a “space division” architecture, in that a physically separate switching path was established for each call. Later generations of electronic switching utilized a “time division” architecture, in which a “time slot” was assigned to each call within a larger bandwidth switching facility, allowing a connection between caller and called parties to be achieved by assigning both to the same time slot. These “time slots” were *synchronous* in that the slot assigned to each call would “arrive” at fixed intervals (e.g., at every 24th bit within a T-1 (1.544 mbps) data stream). Packet switching is another form of “time division” switching by which time slots are assigned *asynchronously* as each packet is assembled for transmission.

²⁹ Transmission technology has undergone a similar evolution, from a space division architecture in which each conversation was carried on a separate copper wire pair, through frequency-division multiplexing using carrier frequencies modulated by the voice signal, through synchronous time-division multiplexing (“TDM”) using fixed time slots, and on to asynchronous packet transmission protocols such as IP. The physical transport media also evolved, from multi-pair copper cables, through coaxial cables, fiber optics, and various wireless transmission technologies.

³⁰ For example, the development of very large capacity digital central office switches together with massive reductions in the unit cost of transport facilities have impacted the number and cost of the separate physical locations at which switching takes place.

other "advanced" switching and transport technologies has not changed the physical realities of "last mile" deployment. For wireline infrastructure, copper, coaxial, or fiber optic connections still need to be deployed on every street in every city and town nationwide. As Ad Hoc pointed out in its earlier comments on this topic,

[t]he question is not whether public networks are shifting to IP but whether IP somehow changes the fundamental economics of the network facilities on which IP technologies (just like 'legacy' TDM technologies) depend – the trenches, poles, rights of way, conduit, fiber runs, copper loops, spectrum licenses, municipal permitting for disruptions of streets and pavements, easements, rights of access to buildings, and all the other mundane but necessary inputs for any network.

Ad Hoc ICC FNPRM Comments at i. Similarly, for wireless infrastructure, providers must invest in wireless transmitters (whether 3G, 4G, or LTE), install them on towers or rooftops, connect them (nearly always) with wires, to supporting networks, and then maintain them. Again, the requirement that competitive providers construct this infrastructure from scratch creates significant economic barriers to competitive deployment.

B. The vast majority of the nation's households face wireline and wireless duopolies for high speed Internet access service

At the moment, and for the foreseeable future, high-speed wired Internet access is the most capable, and preferred form of Internet access for non-mobile needs. Specifically, the Commission pointed out that cable companies' DOCSIS 3.0 service offers download speeds of up to 50 Mbps,³¹ Verizon's FiOS service delivers download speeds of up to 40 Mbps,³² and DSL offers download speeds of up to 4 Mbps.³³

³¹ NBP at 20.

³² Federal Communications Commission's Office of Engineering and Technology and Consumer and Governmental Affairs Bureau, *Measuring Broadband America - July 2012: A Report on Consumer Wireline Broadband Performance in the U.S.*, Figure 3: Peak period sustained download performance, by

Although it can be as fast or faster than DSL³⁴, the utility of high-speed wireless service is sharply limited by: (1) the fact that the speed of wireless Internet access varies widely due to a user's distance from a transmission tower and atmospheric conditions;³⁵ and (2) the data usage sensitive pricing policies of wireless carriers.³⁶

As noted above, the Commission has recognized that 91% of the Nation's population is served by either a monopoly or a duopoly consisting of the local cable company or the ILEC. And, in the areas that do not have access to Verizon's FiOS service (*i.e.*, the majority of the United States), there is only one source of very high-speed, wired IP service—the local cable television monopoly. To make matters worse, Verizon has stated that it will not be expanding its FiOS footprint,³⁷ presumably because it is simply too expensive to do so. Rather, Verizon Wireless struck a deal with Comcast, Time Warner Cable, and Bright House pursuant to which Verizon Wireless received substantial amounts of Advanced Wireless Service spectrum, Verizon Wireless

provider--April 2012 Test Data (April 2012), <http://www.fcc.gov/measuring-broadband-america/2012/july#Figure3>.

³³ NBP at 38, Exhibit 4-B (Average Top Advertised Speed in Areas with 1, 2 and 3 Wireline Competitors)

³⁴ Dan Graziano, *Verizon's 4G LTE Network Crowned Speed King*, BGR (June 19, 2012), <http://bgr.com/2012/06/19/verizons-4g-lte-network-outperforms-att/>. AT&T's 4G LTE service has a maximum download speed of 56.07 Mbps.

³⁵ Susan P. Crawford, *Captive Audience: The Telecom Industry and Monopoly Power in the New Gilded Age* (Yale University Press: 2013) ("*Captive Audience*") at 160-61.

³⁶ *Id.* at 158 ("In 2011-12, first AT&T and then Verizon Wireless, looking to boost their average revenue per user, ended unlimited data plans for new users and instituted overage penalties.").

³⁷ Cecelia Kang, *Verizon Ends Satellite Deal, FiOS Expansion As It Partners With Cable*, Washington Post (Dec. 8, 2011), http://www.washingtonpost.com/blogs/post-tech/post/verizon-ends-satellite-deal-FiOS-expansion-as-it-partners-with-cable/2011/12/08/gIQAGANrfo_blog.html.

and the cable companies agreed to act as sales agents for each others' services, and the cable companies were given an option to resell Verizon Wireless' services.³⁸

These market realities lead to two conclusions, neither of which supports aggressive de-regulation of IP infrastructure. First, in most areas of the country, wireline IP facilities are available exclusively from a cable-ILEC duopoly. Second, the barriers to entry are so high that Verizon—a company that already owns substantial “last mile” infrastructure facilities throughout the eastern United States and has unparalleled economic and technological resources—has decided not to compete with the already-established cable monopoly. If Verizon has opted out of competing for additional wired IP connections, it is difficult to envision an entity that would have the resources and the know how to do so.

Wireless Internet access—a less technologically capable service offering—is also a less than competitive market. Specifically, “AT&T and Verizon Wireless together control two-thirds of the marketplace and generate 80 percent of its revenues...”³⁹ Sprint and T-Mobile, which are the third and fourth largest wireless providers, respectively, cannot meaningfully compete with AT&T and Verizon wireless because they lack “access to key infrastructure inputs—making their operating costs much higher.”⁴⁰

³⁸ *Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC For Consent To Assign AWS-1 Licenses*, WT Docket 12-4, Memorandum Opinion and Order and Declaratory Ruling, 27 FCC Rcd 10698 (2012).

³⁹ *Captive Audience* at 157-158.

⁴⁰ *Id.* at 158.

The duopoly nature of these markets means that they are not sufficiently competitive to warrant the de-regulation AT&T seeks. Duopolies are not significantly more effective at constraining market power than is a monopoly, as the Commission has pointed out: "Economists, courts, and the Commission have long recognized that duopolies may present significant risks of collusion and supracompetitive pricing, which can lead to significant decreases in consumer welfare."⁴¹ Tacit collusion is possible in an unregulated duopoly; the degree to which firms collaborate to raise prices depends upon the balance between high pricing to obtain immediate profits and moderating their pricing to forestall regulatory intervention that might interfere with long term profits.⁴² For example, "AT&T and Verizon often raise fees in concert, as they did in early 2010 by requiring all of their customers using feature phones to adopt data plans."⁴³ Such pricing will not drive prices toward marginal cost. Assuming at most limited competition by fringe competitors, in markets with two principal firms, both firms are "price-setters," not "price-takers" (*i.e.*, both firms can actively control the market price). Duopolists will act in support of their own best interests, by restricting output and charging a profit-maximizing price that will exceed the competitive equilibrium price, but likely be lower than the monopoly price.⁴⁴

⁴¹ *Qwest Phoenix II Order* at 8636.

⁴² Mark Armstrong, Simon Cowan & Sir John Vickers, *Regulatory Reform, Economic Analysis and British Experience (Regulation of Economic Activity)*, (MIT Press: 1994) at 132.

⁴³ *Captive Audience* at 158.

⁴⁴ See W. Kip Viscusi, John M. Vernon & Joseph E. Harrington, Jr., *Economics of Regulation and Antitrust*, (MIT Press: 2nd Ed. 1998) at 81, and discussion in chapter 5.

III. THE MERE USE OF IP AS A TRANSMISSION PROTOCOL DOES NOT TRANSFORM TELECOMMUNICATIONS INTO AN INFORMATION SERVICE

AT&T contends in its petition that the use of IP as a data transmission protocol, in and of itself, transforms a regulated basic service into an unregulated information service.⁴⁵ But AT&T provides no analysis to support that contention.

It is true that the deployment of IP as the preferred transmission protocol for modern networks may very well require carriers to convert traffic from TDM to IP (and vice versa) in order to interconnect a TDM carrier network with an IP carrier network or to connect customers with traditional TDM-compatible customer premises equipment (“CPE”) to customers with IP CPE. Such “net” protocol conversions are probably inevitable as carriers deploy IP technologies at different rates in different geographic areas, or when carriers connect customers with incompatible CPE. And historically, the FCC has treated a “net” protocol conversion (meaning a change in the transmission protocol for traffic as delivered to the customer, not a conversion that is transparent to the customer because it takes place solely within the carrier's network)⁴⁶ as an unregulated information service instead of a regulated network service.

But the Commission's protocol conversion rule anticipates the issue of conversions that are required by the evolution of the network and the deployment of new transmission technologies. As early as 1987, the FCC declared that the net

⁴⁵ AT&T Petition at 18 (“IP enabled services, including all VoIP services, are appropriately classified as interstate information services over which the Commission has exclusive jurisdiction.”)

⁴⁶ *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, 21957, ¶ 106 (1996) (“*Non-Accounting Safeguards Order*”). See also *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, Order, 19 FCC Rcd 7457, ¶ 1 and 7465, ¶ 12 (2004).

protocol conversion rule would not apply, and a regulated transmission service would not therefore become an unregulated information service, merely because a protocol conversion is necessitated by “the introduction of a new basic network technology (which requires protocol conversion to maintain compatibility with existing CPE).”⁴⁷

The Commission’s approach properly recognizes that the technology underlying regulated telecommunications networks evolves and improves over time. But whether a particular change in network technology obviates the need for regulation depends upon changes in the marketplace – changes in the underlying economics of network services – not transitional changes in the equipment used to provide those services which may or may not change the underlying market dynamics.

CONCLUSION

AT&T’s latest campaign for regulatory “reform” merely puts a new gloss on an old refrain. Instead of arguing that it should be de-regulated because markets are competitive (when they are not), AT&T argues that it should be de-regulated because networks are IP. Ad Hoc agrees that the evolution of public network facilities to an all-IP environment is beneficial and inexorable. But it does not remedy the marketplace

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Id.

conditions that make regulation necessary for the protection of end users and the public interest.

Respectfully submitted,
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January 28, 2012

Certificate of Service

I, Amanda Delgado, hereby certify that true and correct copies of the preceding Comments of Ad Hoc Telecommunications Users Committee were filed this 28th day of January, 2012, via the FCC's ECFS system.

A handwritten signature in black ink that reads "Amanda Delgado". The signature is written in a cursive style with a large initial 'A' and 'D'.

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