Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
AT&T Petition to Launch a Proceeding	)	GN Docket No. 12-353
Concerning the TDM-to-IP Transition	)	
	)	
Petition of the National Telecommunications	)	
Cooperative Association for a Rulemaking	)	
to Promote and Sustain the Ongoing	)	
TDM-to-IP Evolution	)	

REPLY COMMENTS OF CBEYOND, EARTHLINK, INTEGRA, LEVEL 3, AND TW TELECOM

WILLKIE FARR & GALLAGHER LLP
1875 K Street, NW
Washington, DC 20006
(202) 303-1000

Counsel for Cbeyond, EarthLink, Integra, Level 3, and tw telecom

February 25, 2013

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
AT&T Petition to Launch a Proceeding	)	GN Docket No. 12-353
Concerning the TDM-to-IP Transition	)	
	)	
Petition of the National Telecommunications	)	
Cooperative Association for a Rulemaking	)	
to Promote and Sustain the Ongoing	)	
TDM-to-IP Evolution	)	

REPLY COMMENTS OF CBEYOND, EARTHLINK, INTEGRA, LEVEL 3, AND TW TELECOM

Pursuant to the Commission's *Public Notice* in the above-captioned docket,[1] Cbeyond Communications, LLC, EarthLink, Inc., Integra Telecom, Inc., Level 3 Communications, LLC, and tw telecom inc. (collectively, the "Joint Commenters"), through their undersigned counsel, hereby submit these reply comments on AT&T's petition[2] and the National Telecommunications Cooperative Association's ("NTCA's") petition[3] filed in the above-referenced proceeding.

I. DISCUSSION

As the Joint Commenters explained in their comments, the best way for the Commission to promote efficient deployment and adoption of IP-based, packet-mode services is to update its

[1] *See Pleading Cycle Established on AT&T and NTCA Petitions*, Public Notice, 27 FCC Rcd. 15766 (2012) ("*Public Notice*").

[2] AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition, GN Dkt. No. 12-353 (filed Nov. 7, 2012).

[3] Petition of the National Telecommunications Cooperative Association for a Rulemaking to Promote and Sustain the Ongoing TDM-to-IP Evolution, GN Dkt. No. 12-353 (filed Nov. 19, 2012).

competition policies.[4] This, of course, means adopting policies that constrain the incumbent LECs' exercise of market power over last-mile connections to business customers and require incumbent LECs to comply with their duty under Section 251(c)(2) of the Communications Act[5] to establish direct interconnection arrangements with requesting carriers for the exchange of voice traffic in IP format. Adoption of these policies will yield more concrete benefits for businesses and consumers (*e.g.*, increased investment, increased innovation and lower prices) than any other policy the Commission is considering today in connection with the technology transitions. It is therefore critical that the Commission commit the resources needed to adopt these policies in accordance with a publicly-announced schedule of milestones.[6]

The Joint Commenters further explained that the Technology Transitions Policy Task Force ("Task Force") and the Commission should adopt an analytical framework for assessing whether to initiate new proceedings associated with the technology transitions that will yield the most efficient use of agency resources. Specifically, the Joint Commenters urged the Commission to: (1) avoid establishing redundant proceedings; (2) focus on only those issues that would not arise "but for" a technology transition; (3) prioritize issues based on their potential

---

[4] *See* Comments of Cbeyond, EarthLink, Integra, Level 3, and tw telecom, GN Dkt. No. 12-353, at 6-15 (filed Jan. 28, 2013) ("Cbeyond *et al.* Comments").

[5] 47 U.S.C. § 251(c)(2).

[6] As the Joint Commenters explained, those milestones should be as follows: (1) Late Spring 2013—Complete the Office of Management and Budget ("OMB") review process for the mandatory special access data request; (2) Summer 2013—Adopt interim rules to mitigate the harmful effects of ILECs' exclusionary special access volume/term "discount" plans; (3) Summer 2013—Collect information in response to the mandatory data request; (4) Summer 2013—Clarify that ILECs' interconnection duty under Section 251(c)(2) of the Act is technology neutral (and thus applies to TDM, SIP, or any other technology for the interconnection of facilities-based VoIP traffic); and Spring 2014—Adopt comprehensive final rules governing the rates, terms, and conditions on which ILECs must offer wholesale access to TDM-based and packet-mode last-mile facilities in the geographic and product markets in which they have market power. *See id.* at 2, 6-16.

effect on consumer welfare; and (4) utilize appropriate procedural mechanisms to address high priority issues.[7] Under these four basic guidelines, the Commission should deny both the AT&T petition and the NTCA petition. As the Joint Commenters explained, those petitions generally address issues that are either already encompassed by pending Commission rulemaking and forbearance proceedings or that would not arise "but for" the current technology transition (*e.g.*, elimination of accounting and recordkeeping requirements).[8] In addition, as the Joint Commenters further explained, the Commission should reject AT&T's proposal that it conduct wire center trials. AT&T has failed to explain why such trials are a necessary, efficient or in any way useful procedural mechanism for studying the technology transition.[9] In all events, AT&T failed to explain why rulemaking and forbearance petitions would not suffice.

This is not to say that the technology transitions are unimportant or unworthy of the Commission's attention. On the contrary, they are central to the Commission's responsibility under the Communications Act "to make available . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communications service" to all Americans.[10] The question posed by the petitions at issue here is not *whether* the Commission should promote efficient deployment and adoption of IP and packet-mode services, but rather *what is the most appropriate procedural approach* for doing so. The answer is that the Task Force, the Chairman and the Commission should consider all of the issues relevant to the transitions, assess the extent to which relevant issues are unaddressed in pending proceedings and, if necessary, initiate narrowly targeted

[7] *See id.* at 16-19.

[8] *See id.* at 19-21, 31-33.

[9] *See id.* at 19-27.

[10] *See* 47 U.S.C. § 151.

proceedings or hold workshops to address issues of high priority. The Commission can consider all of the relevant issues in a holistic, deliberate fashion without conducting a massive, largely redundant and costly proceeding for that express purpose. This is exactly what the Commission does every day as it considers each individual pending proceeding and the manner in which it relates to the agency's overall goals, as defined in the Communications Act, the National Broadband Plan and elsewhere.

The comments filed in this proceeding confirm this conclusion and more generally support the approach outlined by the Joint Commenters in their comments. *First*, a wide and diverse range of commenting parties agree that the Commission's first order of business in the technology transitions should be to update its competition policies. As the Massachusetts Department of Telecommunications and Cable ("DTC") explains, "before the FCC can allow complete transition to IP-based networks and services, it should resolve competition-related issues identified in the National Broadband Plan."[11] This means "developing and acting on an effective analytical framework for wholesale [last-mile] access competition policies; just and reasonable special access rates, terms and conditions; clarifying interconnection rights and obligations, particularly IP-to-IP interconnection; data roaming; and perhaps most immediately pertinent, ensuring appropriate balance in copper retirement policies."[12] Numerous other parties agree that the central challenge in promoting the transition to new, more efficient technology platforms is updating the Commission's competition policies.[13]

---

[11] *See* Massachusetts DTC Comments at 11. All references to "Comments" are to those filed on January 28, 2013 in GN Dkt. No. 12-353, unless otherwise indicated.

[12] *See id.*

[13] *See, e.g.*, Ad Hoc Telecommunications Users Committee Comments at 4-15; Sprint Nextel Comments at 1-2, 27-30; XO Comments at 21-30; CompTel Comments at 7-18; Peerless Comments at 17, 20.

Second, the comments support the conclusion that there is no need for the Commission to conduct an omnibus proceeding to address the technology transitions. Many parties outright oppose such a proceeding because, among other things, it is unnecessary, it would be costly, and it would divert attention from more pressing matters.[14]

Some parties do not expressly oppose or support the initiation of a new proceeding. Instead of focusing on questions of process, such parties generally repeat previously-articulated positions on issues that are already pending before the Commission or that could be addressed in narrowly-tailored proceedings to be initiated in the future. The Commission should infer from these comments that there is no need to conduct an omnibus proceeding to address these issues.

For example, while Free Press does not expressly oppose the initiation of a new omnibus proceeding, it observes that "almost all" of the relevant policy issues "are the subject of pending Commission proceedings," making the "need for the proceeding that both [AT&T and NTCA] request highly questionable."[15] Free Press urges the Commission to focus its attention on addressing the numerous matters that have been raised in pending proceedings, such as the regulatory classification of VoIP.[16] T-Mobile supports a comprehensive review of Commission rules and policies, but it argues that the Commission should focus on updating its interconnection, access charge, and universal service rules and emphasizes in particular the need to maintain regulations necessary to promote competition.[17] Virtually every one of the issues T-Mobile addresses is already pending before the Commission. Even Verizon declines to endorse

[14] *See, e.g.*, Sprint Nextel Comments at 5-6, 25-27; XO Comments at 14-21; Ad Hoc Telecommunications Users Committee Comments at i-ii.

[15] *See* Free Press Comments at 7-8.

[16] *See id.* at 5, 10.

[17] *See* T-Mobile Comments at 4-17.

an omnibus proceeding, preferring instead to reiterate arguments it has made in pending proceedings that address the relevant issues and to list issues that Verizon believes should be addressed in future proceedings.[18] Thus, while all of these parties agree (as do the Joint Commenters) that the Commission should consider the issues implicated by the technology transitions as an integrated whole, their comments support the conclusion that there is no need to do so in an omnibus proceeding.

The few commenters that expressly support such a proceeding offer no basis for this view. These parties merely repeat substantive arguments that have been made in the pending proceedings in which the Commission is already considering issues relevant to the transitions. For example, AT&T repeats its empty rhetorical attacks on competitors and once again lists the "legacy regulations" that it would like the Commission to assess in a rulemaking.[19] As explained, the Commission is already addressing virtually every one of these issues in pending proceedings.[20] Moreover, to the extent not already encompassed by such proceedings, the outlier issues can, if appropriate, be readily addressed in narrowly-tailored new proceedings initiated by the Commission. AT&T does not attempt to explain why this approach is insufficient.

CenturyLink candidly acknowledges that the Commission is already considering almost all of the issues relevant to the transition in pending proceedings, but it states that this fact "should not preclude the Commission from opening a proceeding to develop a unified approach

[18] Verizon states only that "AT&T's and NTCA's petitions present a good opportunity for the Commission to look for ways to further" the technology transition. *See* Verizon Comments at 2. Nowhere does Verizon state that the Commission should initiate a new omnibus proceeding regarding the technology transition.

[19] *See* AT&T Comments at 8-10.

[20] *See* Cbeyond *et al.* Comments at 19-20.

for the transition."[21] CenturyLink offers nothing to support this conclusion other than its preference that such a proceeding be used to eliminate existing regulations.[22] Even if this were the Commission's goal, it is not clear why a more narrowly targeted set of forbearance proceedings would not be a more efficient and effective procedural mechanism than an amorphous, all-inclusive proceeding.[23]

Public Knowledge offers a far more constructive view of the technology transitions than AT&T or CenturyLink. It suggests that the Commission should adopt an analytical framework for the technology transitions in which the Commission would seek to ensure service to all Americans, to promote competition, to protect consumers, to promote network reliability and to preserve public safety.[24] The Joint Commenters agree that these are sound objectives, but there is no need to conduct an omnibus proceeding to consider them. As Public Knowledge indicates, most of these issues are already subject to pending, in some cases extremely long-pending, proceedings.[25] Public Knowledge is surely correct that the Commission should act on these long-standing proceedings to, for example, define the scope of its authority over VoIP, but it can

[21] *See* CenturyLink Comments at 5.

[22] *See id.*

[23] CenturyLink also states that the need to adopt a new proceeding "demands urgent action" by the Commission. *See id.* at 2. But CenturyLink later explains that, "Since the vast majority of voice customers are still served by circuit-switched networks, however, it is premature for the Commission to establish the appropriate regulatory framework for IP networks and services." *See id.* at 8. Even more confusingly, CenturyLink concludes by stating that there is really no need for the Commission to "establish regulatory-based incentives for the TDM-to-IP transition" after all, since "[a]ll carriers have the incentives to hasten this transition." *See id.* at 10. One can only infer that CenturyLink believes that the adoption of the omnibus technology transition proceeding it (incorrectly) endorses does not warrant the Commission's attention any time soon.

[24] *See* Public Knowledge Comments at 13-27.

[25] *See id.* at 2-3 (describing harms associated with the FCC's failure to "resolve the numerous proceedings pending before it that would answer fundamental questions of the IP transition").

just as well, and more efficiently, do that in the existing proceedings as in a new proceeding. This same response applies to other parties that, like Public Knowledge, appropriately focus on the need to address pending proceedings that implicate the transition to an IP, packet-mode environment, but are unable to explain why conducting a new proceeding would expedite Commission action.[26]

Finally, the comments filed in this proceeding confirm that the Commission should reject AT&T's proposed wire center trials. While Public Knowledge observes that AT&T's proposal is "simply too ill defined for meaningful comment at this stage,"[27] those that do comment on the proposal overwhelmingly oppose it as unnecessary, unlikely to yield helpful information and affirmatively harmful. Free Press, for example, explains that AT&T's proposal amounts to an "attempt to establish a rigged demonstration designed to 'prove' correct AT&T's beliefs about the need for regulatory oversight."[28] The Massachusetts DTC observes that, since "AT&T's proposed trial concerns a transition in technology it is unlikely that their [sic] proposed trial would produce any useful data concerning the continued need for consumer protection regulations."[29] The majority of commenters agree that the proposal is ill-defined and skewed to

[26] For example, Cox argues that the Commission should address equal access and interconnection in an omnibus proceeding. *See* Cox Comments at 7, 9-11. But those issues are already before the Commission in pending proceedings. *See* Cbeyond *et al*. Comments at 19-20, 32. Cox argues further that the Commission should address other issues, such as whether service quality and price regulations of retail services should be maintained, in the omnibus proceeding. *See* Cox Comments at 7-8. Again, these issues can be more efficiently addressed in narrowly-targeted proceedings.

[27] *See* Public Knowledge Comments at 9.

[28] *See* Free Press Comments at 27.

[29] *See* Massachusetts DTC Comments at 9.

yield results that support AT&T's *a prioris*.[30] The tests would be anything but a data-driven, empirical approach to regulation. In light of these flaws, as the Massachusetts DTC explains, the Commission "should not implement AT&T's proposed trials."[31] Even those parties that might benefit from such an obviously biased and unreliable "experiment" decline to support them. For example, neither Verizon nor CenturyLink discusses AT&T's proposals in their comments. They apparently do not think much of the proposal. Moreover, virtually every party that does discuss the trial proposal agrees that, if the Commission were to somehow decide, against its better judgment, to conduct wire center tests, it must abandon AT&T's skewed proposed methodology and instead conduct tests that assess the necessity of pro-competition, pro-consumer measures and additional issues of concern to stakeholders other than AT&T.[32]

[30] *See, e.g.*, Sprint Nextel Comments at 6-8; XO Comments at 30-35; T-Mobile Comments at 17-18; Peerless Comments at 2, 12-14; Members of the Rural Broadband Policy Group Comments at 5-7.

[31] *See* Massachusetts DTC Comments at 14.

[32] *See, e.g.*, Cox Comments at 11-14; NCTA Comments at 8-10; TelePacific Comments at 15; Massachusetts DTC Comments at 6-7; CompTel Comments at 5. Alcatel-Lucent supports market trials for the purpose of confirming "the assumptions (number of resources, time to execute, disposition of legacy features, etc.) that vendors and carriers have been studying." Alcatel-Lucent Comments at 18. These narrow operational objectives differ dramatically from AT&T's proposal that trials be used to study the effect of complete deregulation.

II. CONCLUSION

For the foregoing reasons, the Commission should promptly update its last-mile access and interconnection policies for a packet-mode environment and dismiss the AT&T and NTCA petitions.

Respectfully submitted,

/s/ Thomas Jones

Thomas Jones
WILLKIE FARR & GALLAGHER LLP
1875 K Street, NW
Washington, DC 20006
(202) 303-1000

Counsel for Cbeyond, EarthLink, Integra, Level 3, and tw telecom

February 25, 2013