

**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)	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)	
_____)	

REPLY COMMENTS OF ALASKA COMMUNICATIONS SYSTEMS

Alaska Communications Systems (“ACS”)¹ hereby submits these Reply Comments in response to the Commission’s Public Notice in the above-captioned proceeding and the parties’ initial comments filed on or about January 28, 2013.²

I. INTRODUCTION AND SUMMARY

ACS generally concurs with those commenters who have agreed with AT&T and the National Telecommunications Cooperative Association (“NTCA”) that this is an appropriate time to consider important policy and regulatory issues associated with the transition from legacy TDM/circuit switched networks to the more modern, efficient and broadband capable IP networks.³ While AT&T and the NTCA approach the issue from different perspectives, they both conclude that the matter is ripe for Commission consideration and action. ACS agrees.

¹ In these comments, “Alaska Communications Systems” signifies the incumbent local exchange carrier (“ILEC”) subsidiaries of Alaska Communications Systems Group, Inc., which include ACS of Alaska, LLC, ACS of Anchorage, LLC, ACS of Fairbanks, LLC, and ACS of the Northland, LLC.

² Public Notice, GN Docket No. 12-353, “Pleading Cycle Established on AT&T and NTCA Petitions,” DA 12-1999, 27 FCC Red 15766 (Wir. Comp. Bur. 2012).

³ In this reference, “TDM” stands for Time Division Multiplexing and “IP” stands for Internet Protocol and, generically, for IP-enabled services.

II. GENERAL REPLY COMMENTS

There are number of issues raised by the participants that are worthy of Commission consideration. High on that list are three in particular.

- Like many other providers, ACS is concerned that continuing regulatory obligations to maintain duplicative legacy networks at the same time the Commission is driving national telecommunications policy towards broadband deployment is unsustainable. It is not reasonable to assume that providers generally can build, manage and service two networks side-by-side indefinitely. It is folly to think that this can occur in Alaska given its unique circumstances, extraordinarily high costs of service and the likely diminution, if not total loss of a substantial federal Universal Service Fund (“USF”) revenue stream.
- It is imperative that the Commission consider and respond to the continued implications of multiple jurisdictions participating in the implementation of federal policies such as the National Broadband Plan, the Transformation Order, and other significant initiatives. Successful implementation of these policies will rely, in large measure, on uniform application and predictability. By not addressing the impact of continued overlapping state regulation, the Commission invites a patchwork of competing if not contradictory guidelines that are destined to delay and perhaps even obstruct the progress toward the broadband revolution the Commission envisions.
- The time is appropriate for the Commission to evaluate both federal and state legacy regulatory requirements to determine which are absolutely necessary to ensure the public interest is protected and which – likely the preponderance of existing rules – can simply be abandoned as no longer feasible or necessary in an IP environment. In this regard, ACS urges the Commission to make a comprehensive evaluation of the legacy state and

federal rules and retain only those for which there is clear and convincing evidence of prospective public interest value.

III. RESPONSES TO INITIAL COMMENTS

A. GCI

ACS agrees with GCI that it is absolutely vital to the public interest that the Commission continue to preserve and advance universal service in accord with the mandate of Section 254⁴ during and after the transition to all-IP communications networks.⁵ In this respect ACS has repeatedly expressed its concern that the new high cost framework laid out in the Commission's *Transformation Order* fails to provide support for Alaska that is specific, predictable, and sufficient to ensure that rates and services in Alaska remain affordable and reasonably comparable to those available in urban areas around the nation.⁶ In remote areas of Alaska, for example, end-user

⁴ 47 U.S.C. § 254(b).

⁵ GCI Comments at 2-3.

⁶ *See, e.g.*, Comments of Alaska Communications Systems, WC Docket No. 10-90 (filed Feb. 19, 2013) (regarding design of the Remote Areas Fund); Comments of Alaska Communications Systems, WC Docket No. 10-90 (filed Feb. 19, 2013) (regarding areas eligible for CAF Phase II funding and procedures for making the required broadband service commitment); Comments of Alaska Communications Systems, WC Docket No. 10-90 (filed Jan. 28, 2013) (regarding 2013 CAF Phase I support); Comments of Alaska Communications Systems Group, Inc., WC Docket Nos. 10-90 and 05-337, at 4-6 (filed Feb. 1, 2012); Letter to Marlene H. Dortch, Secretary, FCC, from Karen Brinkmann, counsel for Alaska Communications Systems, Request for Connect America Fund Cost Models, FCC Public Notice in WC Docket Nos. 10-90 and 05-337, DA 11-2026 (Wireline Competition Bur., rel. Dec. 15, 2011), at 3 in attachment Alaska Communications Broadband Network Cost Study Model Methodology and Assumptions (filed Feb. 13, 2012); Ex Parte Letter to Marlene H. Dortch, Secretary, FCC, from Karen Brinkmann, counsel for Alaska Communications Systems Group, Inc., Developing a Unified Intercarrier Compensation Regime, et al., CC Docket Nos. 01-92 and 96-45, WC Docket Nos. 03-109, 05-337, 07-135, and 10-90, WT Docket No. 10-208, and GN Docket No. 09-51 (filed April 27, 2012); Ex Parte Letter to Marlene H. Dortch, Secretary, FCC, from Karen Brinkmann, counsel for Alaska Communications Systems Group, Inc., Developing a Unified Intercarrier Compensation Regime, et al., CC Docket Nos. 01-92 and 96-45, WC Docket Nos. 03-109, 05-337, 07-135, and 10-90, WT Docket No. 10-208, and GN Docket No. 09-51 (filed May 11, 2012); Connect America Fund; High-Cost Universal Service Support, Comments of Alaska Communications Systems Group, Inc., WC Docket Nos. 10-90 and 05-337 at 5 (filed July 9, 2012); Connect America Fund; High-Cost Universal Service Support, Reply Comments of Alaska Communications Systems Group, Inc., WC Docket Nos. 10-90 and 05-337 at 12 (filed July 23, 2012).

revenues from affordable rates could never begin to cover the cost of delivering broadband service.

As a result, the transition to IP networks must include universal service support at adequate levels to meet the requirements of Section 254, if the Commission is to ensure that Alaskans are able to participate in the transition to IP-enabled networks and avoid potential loss of existing TDM voice services. ACS agrees with GCI that, to do otherwise risks a return to the days when calls to Alaska and Hawaii were billed at elevated rates as international services. As services, including voice calling, increasingly are carried on end-to-end IP networks, the additional costs associated with the IP-TDM conversion necessary to reach customers served by legacy networks, such as those that are likely to persist in remote areas of Alaska, may begin to reverse decades of progress under the Commission's rate integration policies.⁷

Nevertheless, ACS opposes GCI's suggestion⁸ that the Commission should limit its evaluation of AT&T's petition by applying the narrow analytical framework of the *Phoenix Forbearance Order* to this proceeding.⁹ The *Phoenix Forbearance Order* was clearly a case that was decided under different circumstances, with different guiding principles and distinguishable outcome objectives than those present in the instant proceeding. In that Order, the Commission chose to evaluate a petition for relief from ILEC regulatory burdens associated with legacy wireline TDM services based on an

⁷ *Establishment of Domestic Communications-Satellite Facilities by Non-Governmental Entities*, Docket No. 16495, Second Report and Order, FCC 72-531, 35 F.C.C.2d 844 (1972).

⁸ GCI Comments at 4-5

⁹ *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, WC Docket No. 09-135, Memorandum Opinion and Order, FCC 10-113, 25 FCC Rcd 8622 (2010).

analysis of Qwest’s market power in specific geographic and product market segments.

The Commission defined these markets with reference to these legacy wireline TDM services, excluding wireless and some IP services.¹⁰ The Order gave no explicit consideration to the impending transition to the type of all-IP networks that the Commission’s current broadband-focused policy goals demand.¹¹

Thus, the analytical framework of the *Phoenix Forbearance Order* is inapt for at least two reasons. *First*, the trials that the AT&T Petition proposes are fundamentally broader in scope. AT&T essentially proposes a pilot project that would enable the Commission to evaluate – on a holistic, greenfield basis – the type and level of regulation that would facilitate the transition to an all-IP network and, thereafter, would promote competition and protects consumers, while at the same time creating incentives for innovation and deployment of new broadband services and facilities. This from-the-ground-up analysis differs markedly from the sort of piecemeal subtractive analysis of individual regulations inherent in the Section 10 framework for addressing previous forbearance petitions.¹²

Second, even though the *Phoenix Forbearance Order* is less than three years old, the communications industry has continued to evolve, and the policies and constructs that the Order reflects were developed for a different time and to promote different Commission policy objectives. The *Phoenix Forbearance Order* reflects the Commission’s caution in granting forbearance from legacy ILEC regulatory burdens at a

¹⁰ *Id.* at ¶¶ 54-55 (excluding mobile wireless and “over-the-top” VoIP services from the relevant product markets).

¹¹ *See, e.g., Connect America Fund*, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663 (2011) (“*Transformation Order*”),

¹² 47 U.S.C. § 160(a)(1-3).

time when it preferred to err, if at all, on the side of facilitating the emergence and success of wireline competitive local exchange carriers (“CLECs”). The market definitions on which the *Phoenix Forbearance Order* relied may no longer reflect the reality of the emerging IP-enabled world.

As a result, the focus of this proceeding should be to identify the proper policy direction for state and federal regulation going forward. Providers – virtually all of which are leaving the starting gate at the same time – on the quest to compete in the broadband world no longer need the protections originally embedded in the market-opening law enacted more than seventeen years ago. The Commission should craft its policies looking forward, not backward.

B. ITTA

ACS finds the comments of the ITTA¹³, especially its discussion of state regulatory implications, to be particularly persuasive. ACS endorses several of the arguments advanced by the ITTA including:

- States should reduce or eliminate Carrier of Last Resort (“COLR”) obligations for TDM-based services so that legacy facilities and services can be retired in favor of IP networks.
- ILECs should not be required to maintain two different network architectures when competitors are not subject to the same limitations.
- It does not make sense to subject IP-enabled services to legacy state obligations such as rate regulation or service or performance-related requirements.
- If states desire to continue to impose compulsory service obligations, it must provide adequate support to carriers through a state universal service fund or some other mechanism.

¹³ *E.g.*, Independent Telephone and Telecommunications Alliance Comments at 9-10, 12-13.

C. NARUC, NASUCA, State Members of the Federal/State Joint Board on Universal Service

These three commenters, with a vested interest in perpetuating and expanding the authority of state regulators, argue in favor of continuing and expanding state jurisdiction over the intrastate legacy services as well as the transition to IP-enabled networks.¹⁴ ACS believes that the Commission must take care to create a complete legal and factual record in this proceeding before ceding too much discretion to the states. Of critical importance is the need for national policies to be uniformly implemented across the country. State action that frustrates the ultimate achievement of these objectives is appropriately preempted.

It is unfortunate that NASUCA's positions are grounded in a static, if not backward-looking, view of technology. Suggesting that IP and TDM services all flow from one network or that copper facilities are the platform from which the evolution to broadband must continue to rely¹⁵ simply ignores the actual technological advances that are taking place. The suggestion that TDM networks work better during power outages is a shallow reason to suggest that such a dated and costly to maintain technology should remain available indefinitely.¹⁶ Even NASUCA's list of "failures" it attaches to AT&T's petition¹⁷ is grounded in arcane theories of regulated ratemaking which have already been discarded in many jurisdictions across the country.

¹⁴ *E.g.*, NARUC Comments at 5-10 (defending state jurisdiction and opposing preemption), 10-19 (defending state jurisdiction over fixed VoIP services); NASUCA comments at 15-19 (opposing preemption); State Members of Federal-State Joint Board on Universal Service Comments at 4-7 (opposing preemption).

¹⁵ NASUCA Comments at 4-6.

¹⁶ *Id.* at 7-9.

¹⁷ *Id.* at 26-27.

IV. CONCLUSION

ACS agrees with AT&T and NTCA that the time is right for the Commission to comprehensively evaluate regulatory policies that may impact the effective transition from legacy TDM networks to modern, efficient and broadband advancing IP networks. The Commission should create a complete legal and factual record to support its decision-making and should not rely on backward-looking frameworks that limit the Commission's flexibility in setting policies that are consistent with its forward-looking goals as articulated in the National Broadband Plan, *Transformation Order*, and other recent pronouncements.

Respectfully submitted,

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