

TABLE OF CONTENTS

	Page#
I. INTRODUCTION & SUMMARY	1
II. THE TRIALS PROPOSED IN THE PUBLIC NOTICE, WHILE MORE PROPERLY CHARACTERIZED AS OBSERVATIONS OF ALREADY OCCURRING TRENDS, CAN, IF CONDUCTED PROPERLY, INFORM THE COMMISSION AND THE INDUSTRY OF THE TECHNICAL AND POLICY CHALLENGES INVOLVED IN THE TRANSITION TO ALL-IP NETWORKS	2
A. VoIP Interconnection	5
B. All-IP Next-Generation 911	8
C. Wireline to Wireless.....	9
D. Numbering	11
III. THE COMMISSION SHOULD ADOPT CLEAR AND ENFORCEABLE “RULES OF THE ROAD” BEFORE ANY SPECIFIC “TRIALS” ARE AUTHORIZED	13
A. Specific and Enforceable Conditions in the Areas of Consumer Protection, Public Safety, Network Reliability, and Universal Service, Among Others, Should Apply to Any Trial Authorized by the Commission.....	13
B. The Commission Should Create a Process to Monitor the Fulfillment of These Conditions, Including a Process to Collect Meaningful Data, and Should be Prepared to Step in Immediately Should Trial Participants Fall Short of their Obligations.....	14
C. The Commission Should Clearly Define Which Regulations Will be Modified or Waived for Trial Participants Via a Notice and Comment Proceeding	15
IV. CONCLUSION.....	17

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

In the Matter of)
)
Technology Transitions Policy Task Force) GN Docket No. 13-5
Seeks Comment on Potential Trials)

**COMMENTS OF
NTCA–THE RURAL BROADBAND ASSOCIATION**

I. INTRODUCTION & SUMMARY

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits comments in response to the Public Notice² seeking comment on potential trials relating to the ongoing transition to Internet Protocol (“IP”) technology. The Public Notice seeks comment on potential trials in the areas of interconnection for voice over Internet Protocol (“VoIP”) traffic, Next Generation 9-1-1 (“NG911”) services, and wireless only services, among others.

As discussed further below, the “trials” proposed in the Public Notice can be properly characterized more as structured observations of already occurring trends, in contrast to the pilot programs typically undertaken by the Federal Communications Commission (the “Commission”). However, if conducted with a view towards gathering meaningful, publicly available data that can inform policymakers on the policy and technical challenges that are part of the transition to all-IP communications networks, the Public Notice proposals can ultimately

¹ NTCA represents nearly 900 rural rate-of-return-regulated incumbent local exchange carriers (“RLECs”). All of NTCA’s members are full service local exchange carriers and broadband providers, and many provide wireless, video, satellite, and/or long distance services as well.

² *Technology Transitions Policy Task Force Seeks Comment on Potential Trials*, Public Notice, DA 13-1016, GN Docket No. 13-5 (released May 10, 2013) (“Public Notice”).

assist the Commission in a balanced “smart regulation review” that promotes regulatory certainty and unleashes innovation while also protecting consumers.

However, more definition is needed to evaluate the utility of the trials outlined in the Public Notice and, if they proceed, to ensure their effectiveness. There is little indication from the Public Notice whether the Commission envisions a “regulatory backstop” that will ensure that the concepts of service quality, competition, consumer protection, and universal service do not inadvertently fall by the wayside.

At such time as the Commission authorizes full scale trials, certain safeguards and clear “rules of the road” must be adopted and applied to protect consumers, competition, and universal service. The Commission also needs to create a process to monitor those conditions, decide who will “pull the plug” should a trial go wrong, and create a process to ensure that the Commission and all interested stakeholders benefit from meaningful data collected from trial participants.

II. THE TRIALS PROPOSED IN THE PUBLIC NOTICE, WHILE MORE PROPERLY CHARACTERIZED AS OBSERVATIONS OF ALREADY OCCURRING TRENDS, CAN, IF CONDUCTED PROPERLY, INFORM THE COMMISSION AND THE INDUSTRY OF THE TECHNICAL AND POLICY CHALLENGES INVOLVED IN THE TRANSITION TO ALL-IP NETWORKS

The Public Notice seeks comment on three categories of “trials” proposed by the Commission’s Technology Transitions Policy Task Force. As the Public Notice states, “the goal of any trials would be to gather a factual record to help determine what policies are appropriate to promote investment and innovation while protecting consumers, promoting competition, and ensuring that emerging all-Internet Protocol (IP) networks remain resilient.”³ This is certainly a worthy goal, as the rapid technological changes currently underway necessitate a thoughtful and

³ *Id.*, p. 1

data-driven consideration of how Commission policy can adapt in ways that meet the twin goals of incenting innovation and protecting consumers.

However, as many said of the trials proposed by AT&T's petition of November 12, 2012,⁴ more definition is needed to evaluate the utility of the trials outlined in the Public Notice and, if they proceed, to ensure their effectiveness. There is little indication from the Public Notice which "rules of the road" will apply, or not apply as the case may be, to the proposed trials. While the Public Notice asks a few questions about rules that should be waived, it is not clear whether the Commission envisions a "regulatory backstop" that will ensure that the concepts of service quality, competition, consumer protection, and universal service do not inadvertently fall by the wayside. Put another way, it is not clear how these core objectives can or will be served once the trial train has left the proverbial station.

Moreover, the proposed potential trials contained in the Public Notice are perhaps more properly viewed as structured observations of already occurring trends than as true "trials." For example, they stand in contrast to the more detailed and structured "trials" in the mold of previous Commission pilot programs (such as the Broadband Lifeline Pilot Program).⁵ Having helped many members who are now participants in the Broadband Lifeline Pilot Program, NTCA is very familiar with the statistical discipline and structural rigor applied in this initiative; indeed, NTCA can report that a number of its members also declined to participate in the program

⁴ AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition, GN Docket No. 12-353 (filed Nov. 7, 2012) ("AT&T Wire Center Trials Petition").

⁵ *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, *Lifeline and Link Up*, WC Docket No. 03-109, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Advancing Broadband Availability Through Digital Literacy Training*, WC Docket No. 12-23, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (rel. Feb. 6, 2012) ("Lifeline Reform Order and FNPRM"), para. 326.

precisely because of the potential burden of its robust data-monitoring, data-gathering, and data-reporting aspects. But such aspects are ultimately critical to make any trial or pilot or structured observation a success – to ensure that such a program is more than a one-time “public relations” effort from which little, if any, knowledge is gained or retained to inform future policymaking.

Thus, if conducted with a view towards gathering meaningful data that can inform policymakers and the public on the policy and technical challenges that are part of the transition to all-IP communications networks, the Commission’s proposals in the Public Notice – whether viewed as trials or perhaps more accurately as structured observations of phenomena arising out of the ongoing IP evolution – can ultimately assist in a balanced “smart regulation review” of the kind that NTCA sought in its petition.⁶ But the keys to such success will be: (1) defining the trials sufficiently up front, thereby giving parties an opportunity to comment meaningfully on well-defined trials rather than abstract concepts; and (2) ensuring that robust and statistically significant data can be captured by such trials, rather than running “trials” where data gathering is anecdotal and the primary benefit comes in the form of public relations. Indeed, even if no regulatory “approvals” or “waivers” were needed or should be granted at this time, structured observations of ongoing trends in IP deployment could prove useful in gathering data about how operational issues and regulatory issues may intersect, coincide, or conflict in an increasingly IP-enabled world.

Below, NTCA offers comment on the discrete “trial” proposals contained in the Public Notice. In addition, these comments discuss the questions that must be answered, prior to any trials taking place, as to the safeguards and conditions that should be in place before any trial

⁶ 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”).

takes place. The objective of any trial or structured observation should be to promote regulatory certainty and unleash innovation while also protecting consumers, promoting competition, and ensuring universal service. This objective can only be accomplished if rule changes are made or waivers are granted with as complete an understanding as possible of their consequences.

A. VoIP Interconnection

As the Commission is well aware, the concept of interconnection agreements for the exchange of VoIP traffic is more than theoretical. For example, Verizon and Bandwidth.com reportedly entered into an agreement for the termination of VoIP traffic in 2011.⁷ Moreover, NECA has for a number of years offered a tariffed rate for the termination of VoIP traffic by RLECs.⁸ Thus, it is clear that the issue of interconnection for the exchange of VoIP traffic between carriers has moved beyond basic questions of technical or practical feasibility. This is not to say that certain technological challenges and other questions related to the proper regulatory regime for such traffic do not remain. Structured observations of ongoing trends, such as those contemplated by the Public Notice, can inform the Commission of any future steps it may need to take in this area.

With that in mind, the Commission should approach this issue, and that of the “IP Transition” in general, with the understanding that what is already occurring is an evolution of the Public Switched Telephone Network (“PSTN”), via a technology shift *within* communications networks nationwide. Facilitating this ongoing shift in an orderly manner that

⁷ Press Release, Bandwidth.com, Bandwidth.com Enters Into a Groundbreaking Commercial Agreement with Verizon for the Exchange of VoIP Traffic (Jan. 18, 2011), available at <http://bandwidth.com/about/read/verizonAgreement.html>.

⁸ See, NECA Tariff F.C.C. No. 5, Access Service, Trans. No. 1309 (filed Apr. 15, 2011) (effective May 1, 2011).

protects the objectives of consumer protection, universal service, and competition contained in the Communications Act should be the prism through which the Commission views each trial proposal as well as the data that it collects from observing ongoing trends.

In that regard, it would be premature for the Commission at this time to, *a priori*, jettison the framework contained in Sections 251 and 252 of the Communications Act. Contrary to the assertions of some, Sections 251 and 252 of the Communications Act are not impediments to negotiated agreements for the exchange of VoIP traffic. Indeed, these provisions provide carriers with the flexibility to pursue market solutions to interconnection issues,⁹ with a “regulatory backstop” to ensure that *consumers’* connectivity is not lost in the event that an agreement cannot be reached.¹⁰

It will also be worth engaging in a structured observation, with publicly available data reported out, of the “numbering trials” now being considered by the Commission. While the Public Notice seems to treat “numbering issues” as distinct from “interconnection issues” for trial purposes, the ways in which participating VoIP providers choose to interconnect and route

⁹ 47 U.S.C. § 252(a)(1).

¹⁰ 252(d). It is also worth noting the curious position adopted by many in the cable industry with respect to these IP-related regulatory issues. On the one hand, they support little, if any, oversight of IP-enabled services and urge a “light touch.” Comments of the National Cable & Telecommunications Association (NCTA), GN Docket No. 12-353, GN Docket No. 13-5 (filed Jan. 28, 2013), pp. 4-6. On the other hand, they urge strict enforcement of Section 251 and 252 obligations on IP interconnection with incumbent local exchange carriers. Reply Comments of NCTA, WC Docket No. 10-90, *et al.* (filed May 23, 2011), pp. 8-10. In other words, the argument appears to be that IP should not be regulated unless it should be – and while there is little, if any, need for regulation of IP services as offered to consumers, it is apparently essential that IP arrangements between competitors remain heavily regulated. *See* http://www.broadcastingcable.com/article/491592-FCC_Gets_Earful_on_AT_T_IP_Petition.php. Such regulatory posturing highlights why it is all the more important that the Commission first gather data on how *both* consumers *and* carriers are being affected by the IP evolution, rather than removing or modifying this rule or that based upon guesses as to where protections or regulatory backstops are truly needed.

calls with consumers on other networks – and the success or lack thereof they encounter in doing so – could help inform a structured observation of “interconnection issues” as well. In particular, it will be worth reviewing (and, once again, making publicly available) *how* VoIP providers secure interconnection (*e.g.*, commercial or regulatory-oriented terms) and how in turn any carrier partners of those VoIP providers secure interconnection. Put another way, even if the arrangements between a VoIP provider and its carrier partner may be “commercial” in nature, it is likely (if not essential) that regulated interconnection arrangements will also play a part in ensuring that calls complete. Alternatively, the “numbering trials” may help isolate points of failure, where greater regulation is needed because purely commercial arrangements or lack of enforcement result in incentives to let calls drop or in interconnection structures that are otherwise inadequate. In short, making more data available not only on *who* is conducting the numbering trials and *where*, but also *how* those providers are routing calls via different interconnection arrangements will be essential in making those trials something of use for purposes of informing subsequent policy-making.¹¹

Thus, instead of haphazardly creating new or modified regulatory constructs and calling those “trials,” the Commission should undertake “structured observations” of existing and soon-to-be-online IP interconnection and call routing efforts as a data gathering exercise. Only by

¹¹ In this regard, it is not clear that the Commission’s numbering trials even provide sufficient notice of *where* trials are occurring. Specifically, the Commission appears to have relaxed “facilities readiness” qualification standards for obtaining telephone numbers to the point where other carriers and operators could be “blindsided” with new call completion issues or other call routing concerns. *See, e.g., Ex Parte* Letter from James Falvey, Counsel to Bandwidth.com, Inc., to Marlene H. Dortch, Secretary, Commission, CC Docket No. 99-200, *et al.* (filed June 25, 2013). To be fair, this may be somewhat less of a concern for a limited number of trials that are reasonably publicized, but if any VoIP provider (or other unregulated entity) in the future can simply “walk in” and obtain numbering resources without obtaining a public interconnection agreement or providing some other notice to potentially affected carriers and operators of its entry into a given market, there is a significant risk that the kinds of call completion concerns presently being seen in rural areas will multiply throughout the country.

gathering meaningful data without artificially created preconditions can the necessary facts be brought to light and help the Commission and other stakeholders in assessing what may be needed to facilitate such interconnection. For example, there may be technical needs to achieve scale through improved industry-wide databases and enhanced systems that are not yet being implemented today, as instead carriers and service providers in bilateral arrangements use cobbled-together, non-scalable means to achieve IP interconnection. The Commission may also find that certain regulatory provisions are an impediment to IP interconnection – or no impediment at all. But creating a “trial” focused merely or even primarily on waiving this or that set of regulations would be simply “putting the cart before the horse,” as only a full and complete understanding of the marketplace and what is already happening today can help inform which regulations should apply going forward, which regulations require modification to achieve the core statutory objectives in an all-IP world, and which regulations are either inapplicable or of little use in an IP interconnection environment.

B. All-IP Next-Generation 911

The Commission also seeks comment on trial deployments of “all-IP” NG911 technology. While this area may be the most “ripe” for just such a trial, a number of technological issues particular to the areas served by RLECs must be kept in mind.

To begin with, the transition to NG911 services will require substantial and expensive upgrades to public safety answering points (“PSAPs”) in RLEC service areas. At present, the funding of 9-1-1 services varies by state, and the method of line-item fees or surcharges on customer bills based on the type of voice services provided has led to an inconsistent and often unreliable funding mechanism for upgrading PSAP facilities to accept voice, video, and data

transmissions from the public. In addition, even if capital resources are available, the lack of liability protections further hinders the transition to NG911 services. Existing 911 liability protection varies from state-to-state based upon LEC tariffs, statutes, and judicial decisions. Because current liability protection is not designed for the advanced, IP-based services, software, and applications that encompass NG911, the current liability risk proposition will deter innovation, investment, and deployment of NG911 technology and services.

Each of these challenges could perhaps be solved in part via a “pilot” program akin to the Broadband Lifeline Broadband Pilot Program. Pursuant to such a pilot, the Commission could direct funds to a rural PSAP to complete the necessary equipment upgrades. Any trial should be closely coordinated with entities like the National Emergency Number Association (“NENA”), which has created, and continues to revise, overall standards for NG911. With both technical standards in place and more reliable funding available, the Commission could designate a select number of PSAPs in rural and urban areas to initiate a trial in the manner contemplated by the Public Notice. The data gathered via this trial would answer many of the questions contained in the Public Notice.

C. Wireline to Wireless

As the Public Notice states, some wireline providers are currently considering wireless IP networks as the delivery platform for voice and broadband services. One such example, noted in the Public Notice, is the Verizon proposal to replaced copper facilities damages by hurricane Sandy on Fire Island, NY.

As an initial matter, NTCA is pleased that the Public Notice places emphasis on “evaluat[ing] the customer experience when customers are transitioned from wireline to wireless

voice and broadband services [and] observing whether consumers/businesses lose any capabilities previously available to them or what steps consumers/businesses must take to keep the functionality of certain services.”¹² Every trial should focus primarily on the consumer experience (which is why a singular focus on IP interconnection by some is once again so misplaced). A failure to focus on the experience of the consumer would threaten to leave consumers in less profitable, historically underserved rural areas without access to communications services that are “reasonably comparable” to those available in urban areas.

However, the Commission should go a step further; it should evaluate the long-term ramifications of wireless-only services, versus fiber-based wireline facilities, in terms of the ability of carriers offering wireless-only services to provide “reasonably comparable” basic and advanced services, now and in the future, to rural areas of the nation. For example, recent reports of outright failures in wireless services in rural Montana should give substantial pause to those who would rely too heavily on either wireless networks or “the workings of the market” to ensure seamless interconnected services. These service failures, which are due to what appear to be commercial roaming disagreements between large industry players, have resulted in “no calls in, no calls out and no 9-1-1 service” on certain cell networks for residents and businesses in small towns and other rural parts of Montana. Even temporary towers put in place to help alleviate the “market failure” in Montana are allegedly falling far short of the mark, with the result being, as one business owner put it, “you can really only get service on it on Main Street.” The Commission certainly needs to ask in the context of any wireless transition whether “service

¹² Public Notice, p. 8.

on Main Street” alone should ever be considered enough to serve the interests of consumers, protect public safety, or achieve universal service.¹³

The Verizon Fire Island proposal presents the Commission with a tailor-made opportunity to evaluate potential consumer impacts. That is, as Verizon has recently filed its Section 214 discontinuance petition for Fire Island and continues to work with New York State on how ostensibly substitute services would be deployed, the Commission can and should evaluate that petition and the important issues it raises. A structured observation of that effort, with a primary focus on the consumer impacts and *public* reporting of results, could provide the Commission and all interested stakeholders with valuable insight into the many issues implicated with “wireless-only networks.” Key to that evaluation is full disclosure by Verizon and the Commission of any data gathered via the Section 214 discontinuance proceeding and any ongoing implementation via a “trial.” Harkening back to the core principles that must drive any evaluation in every context of whether and to what degree regulations apply, only by shining a bright spotlight on such proposed transitions and their impacts can policymakers and consumers alike judge whether concepts of service quality, network reliability, affordability, and reasonable comparability can be met in both the short-run and over the long-haul through a deployment such as that proposed for Fire Island.

D. Numbering

The Public Notice also seeks comment on trials on numbering issues and related numbering databases. In light of the Commission’s recent decision to authorize a six-month trial granting interconnected VoIP providers access to telephone numbers, it is not clear why the

¹³ See “Weekend Roundup: Montana Cell Service,” Daily Yonder (June 28, 2013), available at: <http://www.dailyyonder.com/weekend-roundup-montana-cell-service/2013/06/27/6439>.

Commission is seeking to further “open the floodgates” without awaiting the results of those trials.

In granting Vonage direct access to numbers via a six-month trial, the Commission adopted a number of conditions and reporting requirements to protect the public interest.¹⁴ In doing so, the Commission clearly recognized that vigilance in overseeing this trial was necessary to protect consumers, prevent number exhaust, and to monitor possible problems with VoIP interconnection and number porting. While one may argue the Commission’s conditions did not go far enough to protect consumers – for example, is a VoIP provider subject to enforcement for call completion failures? – and while it still appears doubtful at this point that the trials will yield any statistically significant results that can inform policymaking going forward,¹⁵ at the very least the Commission should allow those trials to start and obtain whatever data can be gathered from those rather than proceed apace with yet another set of “numbering trials.” In addition, the Notice of Proposed Rulemaking also released will provide the Commission with additional valuable insight into this issue.

¹⁴ *Numbering Policies for Modern Communications*, WC Docket No. 13-97, *IP-Enabled Services*, WC Docket No. 04-36, *Telephone Number Requirements for IP-Enabled Services Providers*, WC Docket No. 07-243, *Telephone Number Portability*, CC Docket No. 95-116, *Developing a Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92, *Connect America Fund*, WC Docket No. 10-90, *Numbering Resource Optimization*, *Petition of Vonage Holdings Corp. for Limited Waiver of Section 52.15(g)(2)(i) of the Commission’s Rules Regarding Access to Numbering Resources* *Petition of TeleCommunication Systems, Inc. and HBF Group, Inc. for Waiver of Part 52 of the Commission’s Rules*, CC Docket No. 99-200, Notice of Proposed Rulemaking, Order and Notice of Inquiry, FCC 13-51 (rel. Apr. 18, 2013), paras. 105-107.

¹⁵ The Broadband Lifeline Pilot Program should serve as a model for “trials” or pilot programs that provide the Commission, industry, and other stakeholders with meaningful data. The Commission solicited applications for program participants, and in doing so expressly stated that one criterion upon which it would judge applicants would be “the value of the data to be collected in credibly addressing questions of interest.” *See, Wireline Competition Bureau Announced Application Procedures and Deadline for Applications to Participate in the Broadband Adoption Lifeline Pilot Program*, Public Notice, WC Docket No. 11-42, DA 12-683 (rel. Apr. 30, 2012), p. 3.

III. THE COMMISSION SHOULD ADOPT CLEAR AND ENFORCEABLE “RULES OF THE ROAD” BEFORE ANY SPECIFIC “TRIALS” ARE AUTHORIZED

At such time as the Commission authorizes full-scale trials, certain safeguards and clear “rules of the road” must be adopted and applied to protect consumers, promote competition, and ensure universal service. The Commission also needs to create a process to monitor those conditions, decide who will “pull the plug” should a trial go wrong, and ensure that the Commission and all interested stakeholders benefit from meaningful data collected from trial participants.

A. Specific and Enforceable Conditions in the Areas of Consumer Protection, Public Safety, Network Reliability, and Universal Service, Among Others, Should Apply to Any Trial Authorized by the Commission

Each of the technology transition trials discussed in the Public Notice, at bottom, touch on consumers and the quality and reliability of the communications services they will receive during and after the transition to all-IP services. Once full scale trials are authorized, in these or other areas, clear and enforceable conditions must attach to trial participants to ensure that consumers are adequately protected.

For example, trials of VoIP interconnection and wireless-only IP networks raise the possibility that consumers may experience a drop in network reliability or a degradation of service quality. NG911 trials raise the possibility that a consumer may be unable to summon emergency services in a time of need, possibly leading to tragic consequences.¹⁶ And of course, the concept of universal service in rural areas is one that is close to the heart of the millions of consumers served by NTCA members. This vital national policy could be threatened if the

¹⁶ For example, while IP technology promises all sorts of benefits, it may also represent a step backwards in identifying the physical location of someone who has dialed 911 in an emergency.

Commission is not vigilant in creating clear and enforceable conditions that will ensure that consumers in rural areas continue to have access to reasonably comparable services at reasonably comparable rates in the context of any trial conducted in rural areas.

In the absence of a specific, detailed trial proposal upon which to comment, NTCA reserves the right to address specific conditions for future trials. That said, as called for in the NTCA IP Evolution petition, consumer protection (including network reliability and public safety), competition, and universal service should be the pillars upon which each trial is conducted, and should form the basis of enforceable conditions on any provider that is authorized to participate in such trials.

B. The Commission Should Create a Process to Monitor the Fulfillment of These Conditions, Including a Process to Collect Meaningful Data, and Should be Prepared to Step in Immediately Should Trial Participants Fall Short of their Obligations

It is also critical that the conditions imposed on trial participants be thoroughly monitored in order to ensure that consumers' needs are being met. Thus, authorization of any trial should include a requirement that trial participants follow a detailed reporting schedule, along with certifications (subject to penalty) that the applicable conditions are being met.

In addition, the Commission should consider how fulfillment of these conditions will be monitored. Will state commissions play a role in monitoring and enforcing these conditions? What is the penalty for a trial participant's failure to live up to the conditions? Most importantly, who will decide, and at what point will the decision be made, to "pull the plug" on a trial if a trial participant fails to live up to the conditions it agreed to or if consumers are at risk? And if the "plug cannot be pulled" due to the nature of the trial, what does that mean for those consumers, and is the Commission and the service provider in question willing to live with that risk? These

and other critical questions likely to arise in this comment proceeding must be answered prior to Commission authorization of any trial.

The Commission must also resolve a number of important questions as to the data it will collect from these trials, in particular how it will be validated and whether it will be made public. For any trials to be of any true value to the Commission, as well as the industry, the Commission must establish a process to collect and *validate* data from trial participants. This data will of course vary by the type of trial conducted, and will in part consist of data demonstrating compliance with the conditions discussed above. In each case however, whether it be state commissions or the FCC, any data collected must be validated by an uninterested party to ensure its accuracy and integrity. In addition, it should also be made public, and trial participants must not be allowed to request confidential treatment. Only through transparency can consumers, state commissions, and the FCC remain vigilant in holding participants accountable. Moreover, the failure to make the data public will rob the process of much of its value, as all stakeholders can gain valuable insight from a full disclosure of the results of these trials.

C. The Commission Should Clearly Define Which Regulations Will be Modified or Waived for Trial Participants Via a Notice and Comment Proceeding

The Public Notice seeks comment on which of its rules would need to be waived in order to move forward with proposed trials. Unfortunately, it is difficult (if not impossible) to guess which rules should change or be eliminated in the absence of better definition of the trials in question. It is nonetheless critical that the Commission specify the exact “rules of the road” prior to authorizing any trial, which is why the Commission should publish for comment the details of proposed trials *before* granting any trial – such details should include the geographic area covered, the number of consumers and types of services affected, the specific rules the trial

proponent would seek to have waived, changed, or eliminated, and the anticipated effect of the trial on other carriers and service providers, public safety entities, and state regulatory bodies. Participants and potentially affected consumers, along with state commissions and other providers operating in the same geographic area, should be aware of which of the Commission's rules will be waived or modified. Any suspensions or modifications should be the subject of a notice and comment proceeding, in order to grant all stakeholders and the Commission the opportunity to thoughtfully consider the ramifications of suspending or modifying any particular rule.

Moreover, as a general matter, any presumption that Commission rules must be waived in order to proceed with "technology transition" trials begs the question of the very purpose of certain of the proposed trials. For example, as noted earlier, nothing in current FCC rules prevents carriers from entering into IP interconnection agreements today. If the Commission believes otherwise, then perhaps a "smart regulation review" of the sort proposed by NTCA should be conducted. As noted in that petition, "[t]he policy path by which to promote and sustain the orderly evolution to more IP-enabled networks must not abandon or neglect the core statutory objectives of protecting consumers, promoting competition, and ensuring universal service."¹⁷ An orderly transition cannot take place by suspending or modifying certain regulations and "seeing what happens." If, on the other hand, the purpose of the technology trials is to gather valuable insight into the technical and operational challenges that must be overcome, in certain areas, to move to an all-IP environment, then suspensions or modifications of Commission rules may not even be necessary. This is a question that is best answered by the

¹⁷ NTCA Petition, p. 5.

Commission via a notice and comment proceeding that seeks input on specific, better-defined trial proposals.

IV. CONCLUSION

The “trials” proposed in the Public Notice, while perhaps more properly characterized as structured observations of ongoing trends and developments, can, if conducted properly, inform the Commission and the industry of the technical and policy challenges involved in the transition to all-IP networks. However, more definition is needed to evaluate the utility of the trials outlined in the Public Notice and, if they proceed, to ensure their effectiveness.

At such time as the Commission authorizes full scale trials, certain safeguards and clear rules must be adopted and applied to protect consumers, promote competition, and ensure universal service. The Commission also needs to create a process to monitor those conditions, decide who will “pull the plug” should a trial go wrong, and ensure that the Commission and all interested stakeholders benefit from meaningful, publicly available data collected from trial participants.

Respectfully Submitted,

NTCA–THE RURAL BROADBAND ASSOCIATION

By: /s/ Michael R. Romano
Michael R. Romano
Senior Vice President – Policy
mromano@ntca.org

By: /s/ Brian Ford
Brian Ford
Regulatory Counsel
bford@ntca.org
4121 Wilson Blvd, 10th Floor
Arlington, VA 22203
(703) 351-2000

Comments of NTCA
July 8, 2013

GN Docket No. 13-5
DA 13-1016