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identify the appropriate preconditions for technology transitions and then determine the steps the agency must take to establish those preconditions. The Task Force will need to consider the many pending Commission proceedings that address aspects of the technology transitions as well as proposals for new proceedings. It must then make value judgments as to which existing proceedings should be given high priority, which existing proceedings should be given low priority, and whether any new proceedings need to be initiated to address key issues not already encompassed by existing proceedings. As the Joint Commenters have explained, the Task Force should utilize a consistent analytical framework (hereinafter, the “Joint Commenters’ framework” or “framework”) when making these determinations. In particular, the Commission should (1) avoid initiating a new proceeding to address an issue already encompassed by an existing proceeding; (2) consider only those issues that arise as a direct result of technology transitions (*i.e.*, they would not arise “but for” a technology transition); (3) place the highest priority on proceedings that will yield the greatest consumer welfare benefits; and (4) utilize appropriate procedural mechanisms to address high-priority issues that would not arise but for the technology transitions.

The *Public Notice* seeking comments on possible technology transition trials must be assessed in light of this framework. To begin with, the Task Force appears to have gone some way toward defining the preconditions for technology transitions. Specifically, the Task Force states that its objectives are to promote competition, spur innovation and investment, and protect consumers.³ While this plan is directionally sound, the Task Force should recognize that promoting competition is paramount among its defined goals. Competitive markets are independently desirable because they allocate resources efficiently and thereby advance

³ *See id.* at 1.

consumer welfare. But competitive markets are also the key to spurring innovation and investment in technology transitions while at the same time protecting consumers from the abuse of market power by dominant firms. Thus, while it is true that the Commission will need to evaluate certain other issues (*e.g.*, updating NG911), the centerpiece of the Task Force's technology transition agenda should be the promotion of competition.

Application of the aforementioned framework for defining the FCC's agenda yields the conclusion that the top technology transition priorities should be the adoption of rules that (1) require incumbent LECs to comply with their statutory duty to establish VoIP interconnection agreements on just, reasonable, and nondiscriminatory terms and conditions; and (2) constrain incumbent LECs' exercise of market power over last-mile connections to businesses. Such rules would address issues that would not arise but for the technology transitions because, absent Commission action, incumbent LECs will use the replacement of legacy technology with next generation technology to deny competitors interconnection and wholesale access to incumbent LEC last-mile facilities on just, reasonable, and nondiscriminatory rates, terms, and conditions. Adoption of these rules is therefore necessary to promote competition and will yield substantial consumer welfare benefits. The Commission can adopt these rules most appropriately and efficiently in pending proceedings.

The Commission should not, however, utilize its scarce resources to conduct trials that cannot be justified as agency priorities under the Joint Commenters' proposed framework. While all of the principles of the proposed framework are relevant to any proposal for a new agency proceeding concerning the technology transitions, the Commission should pay special attention to whether trials are the appropriate procedural mechanism. As discussed in Part II.A, a trial should only be deemed an appropriate procedural mechanism under the framework where

(a) it is a reliable method of analyzing an issue (*i.e.*, it would generate reliable data); (b) it is the most efficient means of analyzing an issue (*i.e.*, less costly alternatives are not available); and (c) the FCC is the appropriate entity to conduct a trial.

Applying the Joint Commenters' framework leads to the conclusion that it would be inappropriate for the Commission to conduct most of the trials proposed in the *Public Notice*. *First*, the Commission should not conduct VoIP interconnection trials. The available evidence demonstrates that the primary obstacle to establishing VoIP interconnection agreements throughout the industry is the incumbent LECs' unwillingness to negotiate such agreements, *not* any technical or process issues related to VoIP interconnection. Accordingly, as discussed in Part II.B.1 below, rather than conducting trials to establish technical or process standards, the FCC should simply clarify that incumbent LECs must provide VoIP interconnection under Section 251(c)(2) of the Communications Act.

Second, while it may be appropriate for the FCC to conduct an NG911 trial, it should carefully weigh the costs and benefits of such a trial before proceeding with one. As discussed in Part II.B.2, the Task Force and the Commission should consider (1) whether the FCC and other federal agencies have already gathered the information the Task Force seeks in existing NG911-related proceedings; (2) whether waiting until more PSAPs have deployed NG911 may help reduce the number of issues that need to be studied in a trial or even obviate the need for a trial altogether; and (3) whether other entities, such as state and local governments, may be better suited than the FCC to conduct an NG911 trial.

Third, there is no need for the FCC to conduct a wireline-to-wireless service replacement trial. As discussed in Part II.B.3, the New York Public Service Commission ("PSC") is already conducting a study of Verizon's replacement of wireline local exchange facilities with fixed

wireless facilities in an area damaged by Hurricane Sandy (*i.e.*, Fire Island, NY). Accordingly, it would be a more appropriate use of the FCC's resources for the agency to work with the New York PSC, Verizon, and other interested parties to ensure that the Commission obtains the results of the Fire Island trial and any related information the Commission believes is necessary.

Fourth, it is clear that the FCC should not conduct the wire center deregulation trials proposed by AT&T. AT&T's entire proposal is based on the obviously incorrect and self-serving assumption that a change in electronics used to provide business broadband services somehow diminishes the incumbent LECs' market power over physical connections to end users and over interconnection. As the Acting Director of the Task Force, Sean Lev, has explained, "[i]t is not appropriate simply to assume that a change in network protocols or the deployment of new physical infrastructure automatically . . . negates the need for an FCC role."⁴ Moreover, as discussed in Part II.B.4, the trials would unnecessarily address issues already encompassed by pending FCC proceedings and divert Commission resources away from the more critical issues raised by the technology transitions. The AT&T wire center trials would also produce unreliable data because they would be skewed toward providing specious "evidence" that competition rules (*i.e.*, last-mile access and interconnection policies) are unnecessary. In fact, AT&T has already reached that conclusion: "AT&T believes that this regulatory experiment will show that . . . regulation is no longer necessary or appropriate in the emerging all-IP ecosystem."⁵ There is simply no reason to take action on AT&T's proposed "experiment;" it should be flatly rejected.

⁴ "Technology Transitions Policy Task Force, Acting Director Sean Lev, Remarks at TIA Network Transition Event," at 3 (June 21, 2013), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-321781A1.pdf.

⁵ AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition, GN Dkt. No. 12-353, at 6 (filed Nov. 7, 2012) ("AT&T Petition").

II. DISCUSSION.

A. The Commission's First Priority When Addressing The Technology Transitions Should Be To Update Its Competition Policies.

In advising the Acting Chairwoman on the optimal means of addressing the technology transitions, the Task Force should identify the conditions that are necessary to advance the transitions. The Task Force should then determine the actions that the FCC must take to establish those conditions and define its procedural agenda by applying the Joint Commenters' framework. Under that framework, the Commission should (1) avoid initiating a new proceeding to address an issue already encompassed by an existing proceeding; (2) consider only those issues that arise as a direct result of technology transitions (*i.e.*, they would not arise "but for" a technology transition); (3) place the highest priority on proceedings that will yield the greatest consumer welfare benefits; and (4) utilize appropriate procedural mechanisms to address high-priority issues that would not arise but for the technology transitions.

The Task Force must recognize that competition—more than any other factor—drives changes in network technologies.⁶ When competition accelerates, transitions to more efficient technologies accelerate as competitors vie to provide increasingly better service. The result is more innovative service offerings, greater investment, and increased job creation. When competition stagnates, transitions to more efficient technologies decelerate as dominant firms retain older technology without fear of losing market share. The result is less innovation and

⁶ See, e.g., Letter from Thomas Jones, Counsel for Cbeyond, Inc., EarthLink, Inc., Integra Telecom, Inc., and tw telecom inc., to Marlene H. Dortch, Secretary, FCC, WC Dkt. Nos. 10-90 *et al.*, n.25 (filed Dec. 4, 2012) (discussing how CLECs' deployment of Ethernet technology to businesses forced incumbent LECs to respond with their own Ethernet offerings); Comments of Cbeyond, EarthLink, Integra, Level 3, and tw telecom, GN Dkt. No. 12-353, at 7-8 (filed Jan. 28, 2013) ("Cbeyond *et al.* Jan. 28, 2013 Comments") (same); Comments of EarthLink, Integra, and tw telecom, GN Dkt. No. 12-353 *et al.*, at 4 & n.10 (filed Mar. 5, 2013) (pointing out that CLECs were at the forefront of bringing DSL technology to businesses in the 1990s).

investment, decreased growth, and an American economy that is less able to compete on the global stage. It follows that promoting competition should be the primary objective of the Task Force and the Commission in advancing the technology transitions.

Consistent with the Joint Commenters' framework, the Task Force should prioritize existing proceedings that address markets in which FCC policies significantly affect the extent to which competition accelerates or stagnates and the threat to competition would not occur "but for" the technology transitions. This is the case in the pending proceedings that affect competition in the critically important business broadband market. Competition in the provision of most business broadband services depends on effective wholesale regulations, but the Commission's current wholesale rules threaten such competition in a variety of ways. For example, competitors need access to incumbent LEC last-mile facilities on just and reasonable rates, terms, and conditions, but the FCC's existing last-mile access policies (*i.e.*, its unbundling and special access rules) are not technology neutral. Specifically, current unbundling and special access rules apply to incumbent LECs' legacy TDM-based networks and copper facilities, but not to incumbent LECs' packet-based networks and fiber facilities.⁷ This is so despite the fact that incumbent LECs provide packet-based services over the same bottleneck physical connections that give them market power in the provision of TDM-based services. In addition, the Commission's wholesale rules have enabled incumbent LECs to force competitive LECs into special access purchase arrangements that, among other things, (1) require competitive LECs to continue purchasing large volumes of TDM-based special access services from incumbent LECs and (2) limit competitive LECs' ability to purchase packet-based special access services from

⁷ See Cbeyond *et al.* Jan. 28, 2013 Comments at 8 & n.15.

any service provider.⁸ Furthermore, the Commission has so far failed to clarify that incumbent LECs' duty under Section 251(c)(2) of the Act is technology neutral and thus applies to VoIP interconnection.

The Commission's failure to update these competition policies to ensure that competitors are able to obtain access to incumbent LEC last-mile facilities and interconnection on just and reasonable rates, terms, and conditions will impede the technology transitions occurring in the business broadband market. Competitors have led the way in deploying Ethernet services to American businesses, and, as AT&T has stated, incumbent LECs have (belatedly) invested in the provision of packet-based Ethernet services in response to competitive LECs' deployment of those services.⁹ If competitive LECs are unable to effectively compete, the ongoing transitions to Ethernet and other packet-based technologies will stall, future technology upgrades will occur later and more slowly, investment will decline, and jobs will be lost.

⁸ See, e.g., Comments of BT Americas, Cbeyond, EarthLink, Integra, Level 3, and tw telecom, WC Dkt. No. 05-25 *et al.*, at 20-36, 40-42 (filed Feb. 11, 2013) (explaining how incumbent LEC exclusionary purchase arrangements prevent competition from developing in the market for special access services and undermine the Commission's policy goals); Letter from Michael J. Mooney, Counsel for Level 3 Communications, LLC, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 05-25, at 1-20 (filed Feb. 22, 2012) (describing the harms resulting from exclusionary provisions in incumbent LEC special access tariffs). Competition in the provision of TDM-based services is relevant to the ongoing technology transitions because competitive LECs must rely on TDM-based services as an input to their downstream retail packet-based service offerings in the many markets in which incumbent LECs do not offer Ethernet inputs on just and reasonable rates, terms, and conditions. See, e.g., Reply Comments of BT Americas, Cbeyond, EarthLink, Integra, Level 3, and tw telecom, WC Dkt. No. 05-25 & RM-10593, at 46-47 (filed May 31, 2013) (explaining that incumbent LECs' Ethernet prices are well in excess of competitive levels).

⁹ See Letter from Robert W. Quinn, Jr., Senior Vice President, Federal Regulatory and Chief Privacy Office, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 05-25, at 3 (filed Jan. 14, 2013) ("*As Cbeyond et al. acknowledge . . . , CLECs are leading providers of Ethernet services, and ILECs have 'respond[ed] with further investments in their own Ethernet offerings.'*") (emphasis added).

This is not mere speculation. In a recent study entitled “The Benefits of a Competitive Business Broadband Market,”¹⁰ economist Susan Gately concludes that the adoption of updated policies that promote competition in a packet-based, IP environment would “stimulate the hiring of as many as 650,000 new employees into the ranks of the telecom sector over the next five years and the investment of an additional \$184 billion in private funds into U.S. telecommunications networks.”¹¹ Conversely, if the Commission were to fail to update its competition policies for the packet-based, IP marketplace, the study concludes that the result could be a loss of as many as 300,000 existing jobs in the sector and a reduction of up to \$30 billion per year in capital expenditures.¹²

It follows that the best way for the Commission to promote the efficient adoption of new technologies, especially in the business broadband market, is to update its last-mile access and interconnection policies. Specifically, the Commission should take the following steps: (1) adopt interim rules to mitigate the harmful effects of incumbent LECs’ exclusionary and anticompetitive special access “demand lock up” plans; (2) complete the Office of Management and Budget review process for the forthcoming mandatory special access data request; (3) collect information in response to the mandatory special access data request; (4) adopt comprehensive final rules governing the rates, terms, and conditions on which incumbent LECs must offer wholesale access to TDM-based and packet-based last-mile facilities in the geographic and product markets in which they possess market power; and (5) clarify that incumbent LECs must

¹⁰ See Susan M. Gately & Helen E. Golding, SMGately Consulting, LLC, “The Benefits of a Competitive Business Broadband Market” (April 2013), *attached to* Letter from COMPTEL *et al.*, to Marlene H. Dortch, Secretary, FCC, GN Dkt. No. 13-5 *et al.* (filed June 17, 2013).

¹¹ *Id.* at ii; *see also id.* at 20-21.

¹² *Id.* at iv; *see also id.* at 25-27.

provide VoIP interconnection under Section 251(c)(2) of the Act.¹³ The Commission can and should take all of these steps in proceedings that are already pending.

It is no secret, however, that updating the Commission's competition policies is a resource-intensive undertaking. The agency will therefore need to allocate its resources carefully. It must also be alert to incumbent LEC attempts to divert agency resources away from competition policy issues and toward matters that are less worthy of attention. Furthermore, it must avoid initiating proceedings, such as trials, that are not necessary to promote the technology transitions.

B. The Commission Should Not Conduct Trials On Most Of The Subject Matter Areas Discussed In The *Public Notice*.

In the *Public Notice*, the Task Force focuses primarily on whether it should conduct trials regarding (1) VoIP interconnection, (2) NG911, and (3) replacement of incumbent LEC wireline network facilities with wireless network facilities for purposes of providing voice and broadband service.¹⁴ In addition, the Task Force seeks comment on other possible trials, including AT&T's proposed wire center deregulation trials.¹⁵

When evaluating these proposals under the Joint Commenters' framework, the Task Force should give careful consideration to whether trials are the appropriate procedural mechanism. The Task Force should determine whether the benefits of conducting a trial outweigh the costs of relying on some other procedural mechanism to study the relevant issues. In particular, a trial should only be considered an appropriate procedure where (a) it is a reliable

¹³ See *Cbeyond et al.* Jan. 28, 2013 Comments at 6-16.

¹⁴ See generally *Public Notice*.

¹⁵ See *id.* at 2-3.

means of studying an issue, (b) it is the most efficient means of studying an issue (*i.e.*, less costly alternatives are not available), and (c) the FCC is the appropriate entity to conduct the trial.

In making these assessments, the Task Force should keep in mind that trials can be extremely complex, costly and time-consuming undertakings. They require extensive and sustained oversight and analysis by Commission staff. And the significant agency resources required to conduct trials would of course be unavailable for other work. This is a zero-sum proposition. Thus, conducting trials could slow down or stop work on other important matters, particularly the completion of the longstanding special access rulemaking proceeding and the clarification of incumbent LECs' statutory obligation to provide VoIP interconnection.

Applying the Joint Commenters' framework in this context yields the conclusion that the Commission should not conduct trials for VoIP interconnection or incumbent LEC replacement of wireline facilities with wireless facilities, although it is possible that a trial would be appropriate for NG911. Moreover, as is already well established, the Commission should not conduct the flawed wire center experiment proposed by AT&T.

1. VoIP Interconnection.

The Task Force seeks comment on whether it should hold trials for the purpose of ensuring that the "technical and process issues" associated with VoIP interconnection are "understood and resolved."¹⁶ The Task Force further suggests that trials could be used to "gather real-world data on the need and scope for technical or industry standards for the exchange of voice traffic in Internet protocol formats."¹⁷ The Joint Commenters applaud the Task Force for focusing on VoIP interconnection. Under the framework discussed above, however, it would be

¹⁶ *Id.* at 3.

¹⁷ *Id.*

inappropriate for the Commission to hold trials in order to assess the need for technical or industry standards at this time. The Commission should instead focus on adopting an order clarifying that incumbent LECs have the duty to interconnect in IP format for the exchange of facilities-based voice traffic under Section 251(c)(2) of the Communications Act.

- a. *The Commission's first priority should be clarifying that incumbent LECs must provide VoIP interconnection under Section 251(c)(2), not conducting trials to establish technical standards for VoIP interconnection.*

The available evidence demonstrates that the key obstacle to VoIP interconnection agreements is incumbent LECs' unwillingness to cooperate in negotiating such agreements.¹⁸

The *only* way to fix this problem is for the Commission to clarify that incumbent LECs have an enforceable statutory duty to provide VoIP interconnection. The Commission has already held in

¹⁸ See, e.g., Declaration of Tony Insinga on behalf of Cbeyond Communications, LLC, ¶¶ 5-6 (dated Jan. 24, 2013), attached as "Attachment A" to Cbeyond *et al.* Jan. 28, 2013 Comments (demonstrating that AT&T has refused Cbeyond's request for SIP interconnection for the exchange of local voice traffic); Cbeyond *et al.* Jan. 28, 2013 Comments n.29 (showing that AT&T Illinois has refused Sprint's request for IP-to-IP interconnection for the exchange of voice traffic); Comments of Cablevision Systems Corporation and Charter Communications, Inc., WC Dkt. No. 11-119, at 4 & n.5 (filed Aug. 15, 2011) (citing relevant comments submitted in WC Dkt. Nos. 10-90 *et al.* by Cox, EarthLink, PAETEC, and Sprint). While Verizon asserts that it has and "will continue to negotiate IP voice interconnection agreements in good faith and hopes to enter into more agreements" in the future (see Reply Comments of Verizon and Verizon Wireless, GN Dkt. No. 12-353, at 8 (filed Feb. 25, 2013)), Verizon's advocacy elsewhere demonstrates that it is determined to use its substantial leverage in interconnection negotiations to dictate to competitive LECs if, when, and on what rates, terms, and conditions VoIP interconnection will occur. Specifically, in a proceeding before the Massachusetts Department of Telecommunications and Cable, Verizon has stated that it will not disclose the "specific terms on which [it] is willing to exchange traffic with one carrier in IP format" because doing so "would confer a valuable business advantage to other carriers (Verizon MA's competitors) who may also seek to exchange traffic in IP format – namely, a leg up in contract negotiations with Verizon MA." *Investigation by the Department on its Own Motion to Determine whether an Agreement entered into by Verizon New England Inc., d/b/a Verizon Massachusetts is an Interconnection Agreement under 47 U.S.C. § 251 Requiring the Agreement to be filed with the Department for Approval in Accordance with 47 U.S.C. § 252*, Verizon New England Inc., Motion for Confidential Treatment, Mass. D.T.C. 13-6, at 2-3 (filed May 30, 2013), available at <http://www.mass.gov/ocabr/docs/dtc/dockets/13-6/vzmtncfident.pdf>.

the *USF/ICC Transformation Order* that “[t]he duty to negotiate in good faith has been a longstanding element of interconnection requirements under the Communications Act,” regardless of the network technology underlying the interconnection,¹⁹ and it has expressly sought comment on the specific statutory basis for that duty.²⁰ Therefore, the FCC should focus next on clarifying that statutory authority. As the Commission’s Technological Advisory Council (“TAC”) stated in September 2012, the “FCC has established a significant record on this issue in response to the [*USF/ICC Transformation FNPRM*],” and the “FCC should answer th[is] critical question.”²¹

As the Joint Commenters have previously explained, the Commission should clarify that incumbent LECs have an enforceable duty to provide direct IP-to-IP interconnection for the transmission and routing of facilities-based VoIP traffic under Section 251(c)(2) of the Act (and, as a consequence, incumbent LECs are subject to the negotiation and arbitration provisions of Sections 251 and 252 of the Act).²² Section 251(c)(2) requires that incumbent LECs provide

¹⁹ *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663, ¶ 1011 (2011) (“*USF/ICC Transformation Order*” or “*USF/ICC Transformation FNPRM*” or “*FNPRM*”).

²⁰ *See id.* ¶¶ 1351-1358 (seeking comment on the specific statutory authority to require good faith negotiations for IP-to-IP interconnection); *id.* ¶¶ 1380-1398 (seeking comment on the “possible [statutory] authority for the Commission to adopt a policy framework governing IP-to-IP interconnection”).

²¹ Federal Communications Commission Technological Advisory Council, TAC Memo—VoIP Interconnection, at 2-3 (2012), available at <http://transition.fcc.gov/bureaus/oet/tac/tacdocs/meeting92412/VoIP-Interconnection-TAC-Memo-9-24-12.pdf> (“*TAC VoIP Interconnection Memo*”).

²² *See, e.g.*, Comments of Cbeyond, EarthLink, Integra Telecom, and tw telecom, WC Dkt. Nos. 10-90 *et al.*, at 20-28 (filed Feb. 24, 2012) (“Cbeyond *et al.* Feb. 24, 2012 Comments”); Cbeyond *et al.* Jan. 28, 2013 Comments at 11-13.

interconnection for the exchange of “telephone exchange service” and “exchange access.”²³

Facilities-based VoIP service clearly meets the statutory definitions of both these terms.²⁴

Therefore, incumbent LECs must provide VoIP interconnection under Section 251(c)(2).²⁵

The Commission does not need to conduct a trial or otherwise study the technical issues associated with VoIP interconnection in order to make this clarification. The incumbent LECs’ duty to interconnect under Section 251(c)(2) only applies to the extent technically feasible.²⁶ If a requesting carrier seeks a form of VoIP interconnection that is not technically feasible, then the Section 251(c)(2) duty does not apply.

Nor would a real-world trial assist the Commission in clarifying the statutory basis for incumbent LECs’ duty to provide VoIP interconnection. That clarification should begin and end with an interpretation of the statute. It should not, as the Task Force suggests in the *Public*

²³ 47 U.S.C. § 251(c)(2)(A).

²⁴ See Reply Comments of tw telecom inc., Integra Telecom, Inc., and Cbeyond, Inc., WC Dkt. No. 11-119, at 10-28 (filed Aug. 30, 2011) (explaining in detail that tw telecom and other competitive LECs have the right to VoIP interconnection under Section 251(c)(2) of the Act for the transmission and routing of their facilities-based VoIP services, which qualify as “telephone exchange service[s]” and “exchange access” services under the Act).

²⁵ Enforcing the requirements of Section 251(c)(2) also comports with economic theory. As the FCC explained at the outset of its discussion of VoIP interconnection issues in the *USF/ICC Transformation FNPRM*, “[i]nterconnection among communication networks is critical given the role of network effects.” *FNPRM* ¶ 1336. That is, incumbent LECs have much larger customer bases than virtually any non-incumbent LEC, and as a result, competitors value interconnection with incumbents far more than incumbents value interconnection with competitors. Accordingly, in the absence of a clarification that Section 251(c)(2) applies to VoIP interconnection, incumbent LECs will have no incentive to provide VoIP interconnection on just, reasonable, and nondiscriminatory rates, terms, and conditions, particularly once incumbent LECs transition from TDM networks entirely and no longer offer TDM-based interconnection. See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and CMRS Providers*, First Report and Order, 11 FCC Rcd. 15499, ¶ 55 (1996) (“*Local Competition Order*”) (subsequent history omitted).

²⁶ See 47 U.S.C. § 251(c)(2)(B).

Notice, begin with a trial to test the feasibility of various possible methods of enforcing (or not enforcing) that duty and then end with a statutory interpretation based on the results of the trial.²⁷

Furthermore, while the Task Force proposes to conduct trials for the purpose of resolving technical and process issues associated with VoIP interconnection,²⁸ the available evidence demonstrates that technical and process issues are not an impediment to successful VoIP interconnection. The TAC has already concluded that “deployment is technically feasible today but is largely being delayed due to commercial and policy considerations.”²⁹ Indeed, “VoIP interconnect[ion] is happening all over the world, at a rapid rate.”³⁰ Nor is there any reason why an incumbent LEC in particular cannot establish VoIP interconnection. Verizon has openly acknowledged that it has established VoIP interconnection with a carrier.³¹ Thus, trials to resolve any technical or process issues associated with VoIP interconnection are not necessary at this time.³²

²⁷ See *Public Notice* at 5-6 (seeking comment on trials to test various ways of implementing the good faith negotiation requirement, including trials “without a [regulatory] backstop” and trials “where parties agree to negotiate pursuant to the existing section 251/252 framework or a similar process”).

²⁸ See *id.* at 3.

²⁹ *TAC VoIP Interconnection Memo* at 2.

³⁰ See *Public Notice* at 4 (quoting *TAC VoIP Interconnection Memo* at 2).

³¹ See *Investigation by the Department on its Own Motion to Determine whether an Agreement entered into by Verizon New England Inc., d/b/a Verizon Massachusetts is an Interconnection Agreement under 47 U.S.C. § 251 Requiring the Agreement to be filed with the Department for Approval in Accordance with 47 U.S.C. § 252*, Verizon New England Inc., Motion for Abeyance, Mass. D.T.C. 13-6, at 1 (filed June 25, 2013), available at <http://www.mass.gov/ocabr/docs/dtc/dockets/13-6/mtnabeyance.pdf>.

³² Trials to gather information on the “technical,” “logistical,” and “process” issues related to VoIP interconnection (see *Public Notice* at 5) are also unnecessary because the FCC already requested information on those issues in the pending *USF/ICC Transformation* proceeding. See, e.g., *USF/ICC Transformation FNPRM* ¶¶ 1367-1368 (seeking comment on logistical issues

To be sure, certain technical and process issues will need to be addressed as the industry transitions to all-IP networks. For example, SIP signaling is replacing SS7 signaling and existing industry databases (such as LNP databases) will need to evolve to take advantage of IP technology. These changes will likely require the development of technical and process standards. But those issues should be addressed *after* VoIP interconnection is established throughout the industry. Again, the Commission's first priority should be ensuring interconnection by clarifying that incumbent LECs have an enforceable statutory compulsion to provide VoIP interconnection.

This conclusion is further reinforced in two white papers submitted by COMPTTEL in this proceeding.³³ As explained in the white papers, physical interconnection for the exchange of VoIP traffic can and should be established *before* the development of technical or industry

such as “the number and/or location of physical [points of interconnection]” and pricing for VoIP interconnection); *id.* ¶ 1359 (seeking comment on any “implementation issues” associated with various policy approaches to VoIP interconnection); *id.* ¶ 1366 (“What specific terms and conditions would need to be subject to the [VoIP interconnection] policy framework [adopted by the FCC], and which could be left entirely to marketplace negotiations?”); *id.* ¶¶ 1352, 1370 (seeking comment on the process for enforcing the requirement to negotiate VoIP interconnection agreements in good faith, including whether the states and/or the Commission should arbitrate disputes when providers fail to reach an agreement). Indeed, the Task Force acknowledges in the *Public Notice* that “[i]n the Further Notice of Proposed Rulemaking accompanying the *USF/ICC Transformation Order*, the Commission sought comment on *all aspects* of VoIP interconnection.” See *Public Notice* at 4 (emphasis added). And the Commission received dozens of comments and reply comments in response to the *FNPRM*. Accordingly, trials to collect information on these issues would be redundant and a waste of agency resources.

³³ See generally “Necessary Technical and Operational Elements of a VoIP Interconnection Agreement,” attached as “Attachment A” to Comments of COMPTTEL, GN Dkt. No. 13-5 (filed July 8, 2013) (“VoIP Interconnection Agreements White Paper”); “Implementing VoIP Interconnection: Maximizing Economic and Operational Efficiency,” attached as “Attachment B” to Comments of COMPTTEL, GN Dkt. No. 13-5 (filed July 8, 2013) (“Economic and Operational Efficiency White Paper”).

standards that might be needed to support VoIP functionalities in the future.³⁴ Specifically, it is prudent to continue to rely on existing network functionalities and industry processes that support signaling and industry-wide databases while establishing VoIP interconnection.³⁵ Attempting to identify concerns in a trial conducted today would be premature because many of the relevant technical requirements will not become apparent until VoIP interconnection has been established throughout the industry.³⁶ Accordingly, now is not the appropriate time for trials concerning technical or industry standards for VoIP interconnection.

b. FCC trials are not an appropriate procedural mechanism for analyzing VoIP interconnection issues.

Commission trials are not an appropriate procedural mechanism for assessing the issues raised by VoIP interconnection for several reasons. *First*, trials are likely to be unreliable. Incumbent LECs' conduct during the trials—over a limited period of time in a limited number of geographic areas—would hardly provide the Commission with meaningful, “real-world” data³⁷ on VoIP interconnection. In fact, as the Joint Commenters have explained, incumbent LECs would have a strong incentive to be on their best behavior during any trials.³⁸

For example, incumbent LECs might voluntarily enter into VoIP interconnection agreements with competitive LECs during trials in order to give themselves a justification for arguing that the FCC need not clarify incumbent LECs' interconnection duty under Section

³⁴ See VoIP Interconnection Agreements White Paper at 12-13.

³⁵ See Economic and Operational Efficiency White Paper at 6-9.

³⁶ See *id.* at 7 (“If we fail to sufficiently consider the needs of future advanced voice services before designing, sizing and building signaling networks and databases for the IPSTN, we may be forced to re-engineer them again.”).

³⁷ *Public Notice* at 3.

³⁸ See *Cbeyond et al.* Jan. 28, 2013 Comments at 22-23.

251(c)(2). In the absence of a statutory duty to interconnect, however, incumbent LECs would have little, if any, incentive to provide VoIP interconnection on just, reasonable, and nondiscriminatory terms and conditions in a non-trial setting. This is because, all other factors being equal, a carrier that serves a large number of end users (*e.g.*, an incumbent LEC) has much more leverage in interconnection negotiations than a carrier that serves a small number of end users (*e.g.*, a competitive LEC).³⁹ Thus, even if incumbent LECs voluntarily establish VoIP interconnection agreements during trials, a similar outcome is unlikely in the “real world.”

Second, trials are not the most efficient means of studying the technical and logistical issues raised by VoIP interconnection. To the extent that the Commission wishes to assess the manner in which VoIP interconnection can be achieved, it can do so by collecting VoIP interconnection agreements in existence today (*e.g.*, by mandating that incumbent LECs file VoIP interconnection agreements reached with their affiliates and any other parties) and by seeking other input from carriers that have established VoIP interconnection in the U.S. and, if possible, elsewhere. This approach would likely yield answers to the Commission’s questions.

Third, the FCC does not appear to be the appropriate entity to conduct trials regarding the need for VoIP interconnection technical or industry standards. As the record in the *USF/ICC Transformation* proceeding makes clear, the industry, not the FCC, is best suited to lead the development of such standards as needed.⁴⁰

³⁹ Stated differently, negotiations between incumbent LECs and most competitive LECs “are not analogous to traditional commercial negotiations in which each party owns or controls something the other party desires.” *Local Competition Order* ¶ 55.

⁴⁰ *See, e.g.*, Cbeyond *et al.* Feb. 24, 2012 Comments at 25 (“The Commission should allow [technical] details to be addressed in bilateral negotiations between incumbent LECs and competitors.”); Reply Comments of Cablevision, WC Dkt Nos. 10-90 *et al.*, at 20 (filed Mar. 30, 2012) (“For the most part, technical aspects of IP-to-IP interconnection are best addressed through negotiations between interconnecting parties. Given the variation in specific technical conditions and the rapid development of the technology, detailed technical interconnection

Finally, if a regulatory agency were for some reason to conduct VoIP interconnection trials, state regulatory commissions are better equipped to do so than the FCC. This is because state commissions have more experience than the Commission in overseeing interconnection issues and resolving interconnection disputes under Section 252 of the Act.

2. NG911.

In the *Public Notice*, the Task Force seeks comments on conducting a trial of an all-IP NG911 network on an accelerated basis in areas where public safety officials are ready to deploy IP in one or more PSAP.⁴¹ The purpose of such a trial would be to gather information regarding the technical challenges associated with deploying all-IP NG911 networks, the technical capabilities of such networks, and the legal and regulatory obstacles to deploying NG911 networks.⁴² These issues are central to the Commission's execution of its responsibility under, among other provisions, Section 1 of the Communications Act to ensure the availability of a

requirements imposed by the Commission could inhibit development of agreements that truly meet the needs of the parties and might quickly become outdated. The better approach is to allow the parties free reign to negotiate the specific technical arrangements consistent with the right to request IP-to-IP interconnection – subject, as suggested above, to arbitration under section 252 where agreement on these matters cannot otherwise be reached.”); Reply Comments of Time Warner Cable, WC Dkt Nos. 10-90 *et al.*, at 13 (filed Mar. 30, 2012) (“By explicitly confirming that ILECs have a duty to negotiate IP-to-IP interconnection, the Commission can leave it to the negotiating parties to develop the specific terms of interconnection, and thereby harness market forces to manage the technical and financial aspects of IP interconnection.”); Comments of CenturyLink, WC Dkt. Nos. 10-90 *et al.*, at 41-42 (filed Feb. 24, 2012) (“[Technical] issues are best resolved through negotiations and industry standard-setting bodies.”); Comments of Verizon, WC Dkt. Nos. 10-90 *et al.*, at 23 (filed Feb. 24, 2012) (“Industry, not the Commission, is in the best position to work through the complicated, detailed [technical] requirements.”); Comments of Nebraska Rural Independent Companies, WC Dkt Nos. 10-90 *et al.*, at 30 (filed Feb. 24, 2012) (urging the Commission to “adopt overall IP technical standards *after* review and consultation with industry technical standards working groups”) (emphasis added).

⁴¹ See *Public Notice* at 7.

⁴² See *id.*

“rapid, efficient, Nation-wide and world-wide wire and radio communication service with adequate facilities at reasonable charges . . . for the purpose of promoting safety of life and property through the use of wire and radio communications.”⁴³ The prompt and efficient deployment of NG911 networks should be a high priority, and it may be that conducting an NG911 trial would be an appropriate use of Commission resources. The Task Force should not, however, recommend that the Commission conduct an NG911 trial unless it is confident that the benefits of such a trial outweigh the costs. In making this assessment, the Task Force should carefully consider the framework described in Part II.A above.

First, the Task Force should consider whether the information it seeks to obtain in an NG911 trial is redundant of information gathered in other NG911-related proceedings. For example, in the pending *Framework for Next Generation 911* proceeding, the Commission has sought comment on the full range of issues pertaining to the technical capabilities of NG911 networks and the obstacles associated with deploying such networks.⁴⁴ In addition, in the *Next Generation 9-1-1 Initiative*, the Department of Transportation (“DOT”) worked with private and public stakeholders to develop an NG911 system.⁴⁵ The system was tested both in a laboratory setting and with five PSAPs.⁴⁶ The *Public Notice* states that the trials proposed by the Task Force would “build on” those of the DOT, but it seems likely that there would be considerable

⁴³ 47 U.S.C. § 151.

⁴⁴ See generally *Framework for Next Generation 911 Deployment*, Notice of Inquiry, 25 FCC Rcd. 17869 (2010).

⁴⁵ See U.S. Department of Transportation, Research and Innovative Technology Administration, Intelligent Transportation Systems Joint Program Office, *Next Generation 9-1-1: The Approach*, available at http://www.its.dot.gov/NG911/ng911_approach.htm (last visited June 24, 2013) (“*Next Generation 9-1-1 Initiative*”).

⁴⁶ See *id.*

overlap between the DOT tests and the Task Force trials.⁴⁷ Furthermore, the E911 Implementation Coordination Office made federal grants available to PSAPs pursuant to the ENHANCE 911 Act to upgrade equipment and operations for, among other things, NG911.⁴⁸ Those grants yielded valuable information regarding the capabilities of NG911 equipment and networks and the obstacles associated with deployment.

It follows that before initiating an NG911 trial, the Task Force should carefully review the information gathered in its own *Framework for Next Generation 911* proceeding, the DOT's tests, the E911 Implementation Coordination Office grant program, and any other relevant federal and state programs that have yielded information regarding the technical characteristics of and obstacles to the deployment of NG911. The Task Force should recommend an FCC trial only if it is confident that such a trial would yield substantial and necessary information not already available as a result of prior studies and proceedings.

Second, as part of its analysis, the Task Force should consider carefully whether conducting a trial now, rather than sometime in the future, is the optimal means of allocating agency resources. The development of NG911 is at an extremely early stage.⁴⁹ It may well be that a trial now, before many areas and PSAPs have begun the transition to full IP NG911, will not be as useful as a trial conducted after more areas and PSAPs have begun the transition. In

⁴⁷ See *Public Notice* at 7.

⁴⁸ See, e.g., E911 Implementation Coordination Office, National Highway Traffic Safety Administration, National Telecommunications and Information Administration, *Enhanced 911 (E911) Grant Program: Final Report* (March 2013) available at <http://www.911.gov/pdf/E911GrantProgram-FinalReport.pdf>.

⁴⁹ See, e.g., Federal Communications Commission, *Legal and Regulatory Framework for Next Generation 911 Services: Report to Congress and Recommendations*, § 3.1.2 (Feb. 22, 2013), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-319165A1.pdf.

fact, waiting until after multiple areas and PSAPs have deployed NG911 may narrow the number of issues that need to be analyzed in a trial or even obviate the need for a trial entirely.

Third, the Task Force should consider whether the Commission is the most appropriate entity to conduct an NG911 trial. It is possible that another federal agency, one or more state commissions, local governments, PSAPs, Tribal Authorities or, more likely, some combination of these entities, would be better-placed to conduct such a trial. In all events, the Task Force should be open to the diversity of approaches to trials that may be conducted by these other entities.

3. *Wireline To Wireless Service Replacement.*

In the *Public Notice*, the Task Force seeks comment on conducting trials to determine the impact of incumbent LECs' replacement of established wireline local exchange facilities with wireless facilities.⁵⁰ The purpose of such trials would be to gather information regarding, among other things, the price, quality, E911 performance, and disability access capabilities of fixed wireless services that some incumbent LECs seek to offer in lieu of wireline services.⁵¹ As with NG911, these issues are central to the Commission's responsibilities under the Communications Act.⁵² Ensuring that incumbent LECs continue to provide local exchange service that meets the needs of end users warrants the Commission's close attention.

⁵⁰ *See Public Notice* at 8.

⁵¹ *See id.*

⁵² More specifically, the issues implicated by the proposed wireline-to-wireless service replacement trials are central to the Commission's responsibilities under the Act to, among other things, (1) ensure that incumbent LECs, as common carrier providers of telephone services, provide service on just and reasonable rates, terms, and conditions under Section 201(b) and on not unjustly or unreasonably discriminatory rates, terms, and conditions under Section 202(a); (2) determine whether discontinuance of legacy wireline service is in the public interest under Section 214; and (3) ensure access to the disabled under Section 255 and the terms of the Twenty-First Century Communications and Video Accessibility Act. *See* 47 U.S.C. §§ 201(b),

New FCC trials, however, are not the appropriate procedural mechanism to analyze these issues. This is because the New York PSC is already conducting a study of Verizon's replacement of wireline local exchange facilities on the western portion of Fire Island, where most wireline facilities were destroyed by Hurricane Sandy, with fixed wireless facilities. Specifically, the New York PSC has permitted Verizon to offer its Voice Link service (a fixed wireless service) in lieu of wireline service on Fire Island, subject to certain conditions that will allow the PSC to treat the replacement of wireline with wireless service as a real-world trial.⁵³ In particular, the New York PSC has required that Verizon file with the PSC a report by November 1, 2013 in which Verizon will include a

statement of the number of subscribers served by Voice Link in each month; description of the extent of customer acceptance of Voice Link as an alternative to traditional [wireline] service; assessment of quality and reliability as measured by trouble reports, outages and repair intervals; description of performance during commercial power outages; description of the impact on customers' 911 access; statement of costs associated with providing the Voice Link service; description of customer complaints and customer satisfaction; and, any other information useful in evaluating the advantages and disadvantages of Voice Link as an alternative to traditional [wireline] service and the need for modifications to the service.⁵⁴

In addition, prior to November 1, 2013, the New York PSC Staff will "monitor and oversee Voice Link service on Fire Island, with Verizon's cooperation and provision of any information

202(a), 214(a), 255; *see also* Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010) (as codified in various sections of Title 47).

⁵³ *See generally* *Tariff Filing by Verizon New York Inc. To Introduce Use Of Wireless Technology As An Alternative To Repairing Damaged Facilities*, Order Conditionally Approving Tariff Amendments In Part, Revising In Part, And Directing Further Comments, New York Public Service Commission Case 13-C-0197 (May 16, 2013), *available at* <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={C0F21317-B7CE-4AEE-9A38-3393D1DEB670}>.

⁵⁴ *See id.* at 9.

necessary to assist Staff in assessing service conditions, including service quality, outages and repair needs.”⁵⁵

Given that the New York PSC will be undertaking this extensive fact gathering regarding the provision of Verizon’s Voice Link service on Fire Island, there is no need for the FCC to conduct its own wireline-to-wireless service replacement trial. It would be far more efficient and appropriate for the FCC to work with the New York PSC, Verizon, and other interested and affected parties to ensure that the FCC has access to the results of the Fire Island trial. If necessary, the FCC could condition its approval of Verizon’s pending Section 214 application for approval to discontinue wireline service on Fire Island and two barrier islands in New Jersey⁵⁶ on Verizon filing with the FCC the information and reports yielded by the New York PSC review. To the extent that the FCC seeks additional information beyond that produced by the New York PSC proceeding, it can also condition its approval of Verizon’s Section 214 discontinuance application on Verizon filing such information. In this manner, the FCC can obtain the benefits of a real-world trial for the conversion of copper wireline local exchange facilities to fixed wireless facilities without incurring the expense of designing and conducting its own trial.

4. AT&T Flash Cut Deregulation.

In the *Public Notice*, the Task Force “invites” AT&T to submit more details on its proposal for wire center trials.⁵⁷ Even if AT&T provides additional information, there is no basis for the Commission to conduct such trials. To begin with, the only policy to be tested under

⁵⁵ *See id.* at 9-10.

⁵⁶ *See* Section 63.71 Application of Verizon New York Inc. and Verizon New Jersey Inc., WC Dkt. No. 13-150 (filed June 7, 2013).

⁵⁷ *See Public Notice* at 2-3.

AT&T's proposed trials is whether a mere change in technology justifies the elimination of virtually all regulation designed to promote competition and protect consumers.⁵⁸ That proposition does not warrant consideration, and it should be rejected without wasting resources on further consideration. Moreover, the trials proposed by AT&T would address issues (*e.g.*, whether incumbent LECs must provide VoIP interconnection, whether the FCC should eliminate Section 214 discontinuance requirements, whether the FCC should eliminate federal eligible telecommunications carrier requirements, etc.) that are already the subject of pending FCC proceedings.⁵⁹ Accordingly, there is no need to conduct wire center trials to address these issues.

Furthermore, AT&T's self-proclaimed wire center "experiment"⁶⁰ is the wrong procedural mechanism for addressing the ongoing technology transitions. As the Joint Commenters have explained, the wire center trials would be unnecessarily costly and complex and would divert the FCC's limited resources away from the critical work of updating its competition policies.⁶¹

Nor would AT&T's wire center deregulation trials generate any useful or reliable results. *First*, as in the case of potential VoIP interconnection trials, "there is absolutely no guarantee that information observed during [an AT&T wire center] trial, when the ILEC is operating under the threat of . . . regulation if they misbehave, would reflect behavior that would occur" outside

⁵⁸ Further, as consumer advocates and state regulatory commissions have explained, AT&T's proposal "is not only flawed from a policy perspective but is also a prescription for wasteful litigation." *See* Reply Comments of the National Association of State Utility Consumer Advocates, GN Dkt. No. 12-353, at 3 (filed Feb. 25, 2013) ("NASUCA Reply Comments"); *see also* Comments of the National Association of Regulatory Utility Commissioners, GN Dkt. No. 12-353, at 4 (filed Jan. 28, 2013).

⁵⁹ *See* Cbeyond *et al.* Jan. 28, 2013 Comments at 19-20.

⁶⁰ AT&T Petition at 6.

⁶¹ *See* Cbeyond *et al.* Jan. 28, 2013 Comments at 4-5, 22.

of a trial.⁶² *Second*, given that incumbent LECs would hand pick the wire centers to be used in the trials, it is likely that the incumbents would select wire centers where the negative impact of deregulation on competitors would be least noticeable (*e.g.*, wire centers with few interconnecting CLECs).⁶³ *Third*, the AT&T trials are unlikely to be of a sufficient duration to allow the Commission to observe and evaluate the full consequences of deregulation on competition and consumers. Those consequences, such as the demise of competition, would not likely be fully apparent for several years. These concerns are not merely theoretical given that AT&T has predetermined the outcome of its proposed trials: “AT&T believes that this regulatory experiment will show that . . . regulation is no longer necessary or appropriate in the emerging all-IP ecosystem.”⁶⁴

The record on AT&T’s proposal confirms that the Commission should reject it. Consumer advocates, state regulatory commissions, cable operators, competitive LECs, rural ILECs, wireless carriers, and others agree that AT&T’s wire center deregulation trials are a flawed approach to addressing the technology transitions.⁶⁵ Even Verizon and CenturyLink have

⁶² Reply Comments of AARP, GN Dkt. No. 12-353, at 37 (filed Feb. 25, 2013) (“AARP Reply Comments”).

⁶³ *See id.* at 37 (explaining that “[s]election bias” is one of several “major concern[s]” regarding AT&T’s proposal).

⁶⁴ AT&T Petition at 6.

⁶⁵ *See e.g.*, AARP Reply Comments at 36-40; NASUCA Reply Comments at 8; Reply Comments of American Cable Association, GN Dkt. No. 12-353, at 2 n.5 (filed Feb. 25, 2013); Reply Comments of TelePacific Communications, GN Dkt. No. 12-353, at 1 (filed Feb. 25, 2013); Reply Comments of XO Communications, LLC, GN Dkt. No. 12-353, at 7-12 (filed Feb. 25, 2013); Reply Comments of NECA, NTCA, WTC, and ERTA, GN Dkt. No. 12-353, at 8 (filed Feb. 25, 2013); Reply Comments of Sprint Nextel, GN Dkt. No. 12-353, at 2-6 (filed Feb. 25, 2013); Reply Comments of Peerless Network, Inc., GN Dkt. No. 12-353, at 8-10 (filed Feb. 25, 2013); Comments of Ad Hoc Telecommunications Users Committee, GN Dkt. No. 12-353, at 3-4 (filed Jan. 28, 2013); Comments of Massachusetts DTC, GN Dkt. No. 12-353, at 7-10 (filed Jan. 28, 2013).

not endorsed the AT&T wire center trials.⁶⁶ In light of this record, the Task Force and the Commission should not waste their resources on considering or conducting such trials.

III. CONCLUSION.

For the foregoing reasons, the Commission should not conduct trials on most of the subject matter areas discussed in the *Public Notice*. Rather, the Commission should promote competition, innovation, and investment during and after the technology transitions by updating and strengthening its last-mile access and interconnection policies.

Respectfully submitted,

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July 8, 2013

⁶⁶ See generally Comments of Verizon and Verizon Wireless, GN Dkt. No. 12-353 (filed Jan. 28, 2013) (remaining silent on AT&T's proposed wire center trials); Comments of CenturyLink, GN Dkt. No. 12-353 (filed Jan. 28, 2013) (same).