

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

In the Matter of	)	
	)	
Technology Transitions Policy Task Force	)	GN Docket. No. 13-5
	)	
AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition	)	GN Docket No. 12-353
	)	
Petition of the National Telecommunications Cooperative Association for a Rulemaking To Promote and Sustain the Ongoing TDM-to-IP Evolution	)	
	)	
Petitions for Rulemaking and Clarification Regarding the Commission's Rules Applicable to Retirement of Copper Loops and Copper Subloops	)	RM-11358
	)	

**COMMENTS OF XO COMMUNICATIONS, LLC  
ON TECHNOLOGY TRANSITIONS POLICY TASK FORCE  
PUBLIC NOTICE SEEKING COMMENT ON POTENTIAL TRIALS**

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## SUMMARY

XO Communications, LLC (“XO”) shares the objectives of the Technology Transitions Policy Task Force (“Task Force”) to assist the Commission in adopting rules and policies to protect end users and preserve and promote competition while promoting investment and innovation by competitive providers as well as incumbents. But XO does not support the proposed managed Internet Protocol (“IP”) voice interconnection trials, the wire center-based all-IP trials, or the copper-to-fiber transition trials proposed in the May 10, 2013, Public Notice released in GN Docket No. 13-5, DA 13-1016 (“Task Force Notice”). (XO takes no position in its Comments on the need for, or content of, Next Generation 9-1-1 trials or the wireline-to-wireless transition trials discussed in the Task Force Notice.) These proposed trials would be of little value. They are neither the most efficient nor the most effective way for the Commission to obtain “real world” information and data to support its decision-making regarding issues surrounding the evolution of communications networks as they rely more heavily on IP technologies and the continued availability of copper loops for competitors as networks evolve.

The Task Force Notice suggests that “real-world trials” may assist the Commission as it considers rules and policies to encourage rapid evolution to an all-IP PCN. While XO certainly agrees with the Task Force that trials may, in certain circumstances, be an appropriate regulatory tool to obtain data or obtain “experience” where none exists, they are not a sound choice in situations where, as here, pertinent real-world marketplace information is already available.

The use of IP technology in communications networks is not a new phenomenon. The evolution of the traditional, circuit-switched public-switched telephone network (“PSTN”) toward a packet-switched, IP-based public communications network (“PCN”) is well underway

in XO's network and within the industry at large. In addition, providers continue to make innovative and pro-consumer competitive use of copper loops.

Challenges remain, and new ones arise, in keeping communications and information services markets competitive as network evolution progresses. The Commission should take advantage of insights already gained by XO and other providers that have deployed IP technologies and take action in existing proceedings expeditiously to promote consumer welfare and foster lasting competition as networks continue to evolve. There is already a wealth of real-world market information available that the Commission can use to identify industry-wide challenges and evaluate the need for and structure of regulatory solutions where they would benefit the public interest. Indeed, XO and other competitive providers have already filed pertinent information with the Commission in other proceedings related to the evolution of the PCN, including on several occasions earlier this year, including GN Docket No. 12-353, WC Docket No. 05-25, RM-10593, and RM-11358. The Commission should rely on data already available from real-world marketplace activities rather than consider generating and collecting artificial data from the trials proposed in the Task Force Notice.

Moreover, to supplement the record in existing proceedings and better facilitate the evolution of the PSTN toward an IP-based PCN, the Commission should consider, where appropriate, targeted data requests to key industry players to identify and examine any market failures or other concerns – as well as best practices. If particular industry-wide issues arise based on the Commission's evaluation of such data, narrowly-tailored testing could then be considered if necessary to address specific issues, considering input from all interested parties and oversight by a neutral third party. Pursuing this course is superior to pressing forward with any of the trials proposed in the Task Force Notice identified above which will, by their nature,

be artificial to one degree or another. Experiential information would be far more valuable than any artificial data that the proposed trials might generate.

The Commission should use this industry experience and focus on enforcing its existing pro-competition rules and keeping its policies current as the evolution of networks continues, addressing relevant issues in pending proceedings, and modernizing its rules when necessary, consistent with that same pro-competition rubric. Thus, for example, as the evolution to an all-IP PCN proceeds, the Commission should continue to apply both its unbundling and interconnection rules to incumbent local exchange carriers (“ILECs”), modernizing those regulations as appropriate. This course of regulation is appropriate given the ILECs’ unparalleled reach to end user locations today and the need for competitors to have access to those locations – both to provide retail services through unbundling and to connect calls for their subscribers to customers of other providers through interconnection – on reasonable and nondiscriminatory rates, terms, and conditions. Thus, for example, the Commission should establish and enforce a regulatory framework to govern requests made to ILECs to establish managed IP voice interconnection to ensure that parties have a regulatory backstop when they are unable to resolve contractual issues through negotiation.

In addition, the Commission should update its copper retirement rules in recognition of the fact that purchasing services provided by XO and other competitors over ILEC copper loops and subloops has become and remains a critical means for business and enterprise customers to obtain the advanced broadband services they desire in both major metropolitan and smaller markets. These rule modifications are warranted because these innovative uses of copper loop plant have developed relatively recently and were unexpected when the current rules were adopted. The Commission should seek ways to maximize the public benefit from this valuable

resource – copper plant and lines – so as to promote availability of competitive voice and advanced broadband services.

The Commission should take the actions above expeditiously and not be distracted by the process of designing and conducting trials of the sort proposed in the Task Force Notice concerning managed IP interconnection arrangements, regulatory framework investigations in selected wire centers that are converted to all-IP technologies, or the copper-to-fiber transition. The Commission should decline, at this time, to pursue any such trials and proceed to complete the pending proceedings referenced above to establish and preserve a competitive environment for end users as the traditional PSTN evolves toward an all-IP PCN.

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**COMMENTS OF XO COMMUNICATIONS, LLC  
ON TECHNOLOGY TRANSITIONS POLICY TASK FORCE  
PUBLIC NOTICE SEEKING COMMENT ON POTENTIAL TRIALS**

XO Communications, LLC (“XO”), by its attorneys, hereby files its initial comments in response to the May 10, 2013, Public Notice released in GN Docket No. 13-5.<sup>1</sup> In the Task Force Notice, the Technology Transitions Policy Task Force (“Task Force”) seeks comment on whether there is a need to conduct and, if so, on specific details of various proposed “real world trials” in order to generate and collect “data that will be helpful to the Commission.”<sup>2</sup>

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<sup>1</sup> See *Technology Transitions Policy Task Force Public Notice Seeking Comment on Potential Trials*, GN Docket No. 13-5, Public Notice, DA 13-1016 (rel. May 10, 2013) (“Task Force Notice”). XO is also filing these comments in the two proceedings where the Commission is currently considering whether a new docket should be opened to evaluate the evolution of the public communications network (“PCN”) from the predominant use of TDM technologies to the use of Internet Protocol (“IP”) technologies (GN Docket No. 12-353) and whether to modernize the copper replacement rules (RM-11358).

<sup>2</sup> Task Force Notice at 1.

As explained herein, while XO shares the objectives of the Task Force to assist the Commission in adopting rules and policies to protect end users and preserve and promote competition, XO does not support any of the proposed trials contemplated in the Task Force Notice and discussed herein.<sup>3</sup> (More generally, XO does not support any trial that would be disruptive to the wholesale marketplace, would undermine competitive services provided to customers, or that is too open-ended and ill-defined.) As explained herein, the proposed trials would be of little value as they would be neither the most efficient nor the most effective way for the Commission to obtain information and data to support its sound decision-making regarding issues surrounding the evolution of communications networks as they rely more heavily on Internet Protocol (“IP”) technologies. The simple fact is that use of IP technology in communications networks is not a new phenomenon, and the Commission should take advantage of insights already gained by providers that have deployed IP technologies and act expeditiously to promote consumer welfare and foster lasting competition as networks continue to evolve. Because XO and other competitive providers have been at the forefront in providing IP-based voice and data services for the past decade, in many cases interconnecting with each other for the exchange of IP-based communications on a managed basis, there is a wealth of real-world market information already available that the Commission can use to identify industry-wide challenges and consider solutions. Thus, to enable the Commission to facilitate the evolution of the public switched telephone network (“PSTN”) toward an IP-based public communications network (“PCN”), the agency should consider, where appropriate, targeted data requests to key industry players, perhaps in select markets, to identify and examine any market failures or other concerns – as

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<sup>3</sup> XO takes no position at this time regarding any of the trials proposed in the Task Force Notice but not specifically discussed in these Comments, such as the proposed trials examining issues related to the transition of the nation’s emergency calling system to Next Generation 9-1-1 or the proposed trials concerning the wireline-to-wireless transition. *See id.* at 6-10.

well as best practices – rather than pressing forward to engage in the trials proposed in the Task Force Notice which will, by their nature, be artificial to one degree or another. If particular industry-wide issues arise based on the Commission’s evaluation of such data, narrowly-tailored testing could then be considered if necessary to address specific issues, considering input from all interested parties and oversight by a neutral third party. XO and other competitive providers have already filed compelling information with the Commission in other proceedings related to the evolution of the PCN, including on several occasions earlier this year.<sup>4</sup> The Commission should act in those proceedings to put in place and maintain a regulatory framework to govern managed IP interconnection and competitive access to end user customers as the evolution of networks continues.

## **I. INTRODUCTION**

The evolution of the traditional, circuit-switched PSTN toward a packet-switched, IP-based PCN is well underway, in XO’s network and within the industry at large, continuing the evolutionary trend in telecommunications networks that has occurred for over a century. Challenges remain, and new ones arise, in keeping communications and information services markets competitive as that evolution progresses. XO has actively participated in the above-captioned proceedings, GN Docket No. 12-353 and RM-11358, in which the Commission is considering its regulatory role as that evolution continues.<sup>5</sup> XO submits that, consistent with the

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<sup>4</sup> See *infra*, note 5.

<sup>5</sup> See, e.g., Comments of XO Communications, LLC, GN Docket No. 12-353 (AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition) (filed Jan. 28, 2013) (“XO TDM-IP Comments”); Reply Comments of XO Communications, LLC, GN Docket No. 12-353 (filed Feb. 25, 2013) (“XO TDM-IP Reply Comments”); Comments of XO Communications, LLC, and Broadview Networks, Inc., GN Docket No. 12-353 and RM-11358 (Refresh of the Record re Petition to Modify the Copper Replacement Rules) (filed Mar. 5, 2013) (“XO/Broadview Copper Refresh Comments”); Reply

purposes of the Task Force, the Commission should adopt rules and policies that promote investment and innovation by competitive providers as well as incumbents, so as to protect consumers, promote competition, and ensure resilient IP networks.<sup>6</sup>

More specifically, the Commission should focus on enforcing its existing pro-competition rules and policies, addressing relevant issues in pending proceedings, and modernizing its rules when necessary, consistent with that same pro-competition rubric. Thus, for example, as the evolution to an all-IP PCN proceeds, the Commission should continue to apply both its unbundling and interconnection rules to incumbent local exchange carriers (“ILECs”), modernizing those regulations as appropriate, in recognition of the ILECs’ unparalleled reach to end user locations and the need for competitors to have access to those locations – both to provide retail services through unbundling and to connect calls for their subscribers to customers of other providers through interconnection – on reasonable and nondiscriminatory rates, terms, and conditions. Thus, for example, the Commission should establish and enforce a regulatory framework through relevant open proceedings to govern

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Comments of XO Communications, LLC, and Broadview Networks, Inc., GN Docket No. 12-353 (filed Mar. 20, 2013) (“XO/Broadview Copper Refresh Reply Comments”). XO has also actively participated in the FCC’s *Special Access Reform* docket which addresses interrelated competition issues in the face of continued dominance of incumbent carriers to end user locations, especially in the business and enterprise markets. *See, e.g.*, Comments of XO Communications, LLC, WC Docket No. 05-25 (Special Access for Price Cap Local Exchange Carriers) and RM-10593 (AT&T Corporation Petition for Rulemaking To Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services) (filed Feb. 11, 2013) (“XO Special Access Comments”); Reply Comments of XO Communications, LLC, WC Docket No. 05-25 and RM-10593 (filed Mar. 12, 2013) (“XO Special Access Reply Comments”).

<sup>6</sup> See Task Force Notice at 1.

managed IP interconnection to ensure that parties have a regulatory backstop when they are unable to resolve contractual issues through negotiation.<sup>7</sup>

In addition, the Commission should update its copper retirement rules in recognition of the fact that purchasing services provided by XO and other competitors over ILEC copper loops and subloops has become and remains a critical means for business and enterprise customers to obtain the advanced broadband services they desire in both major metropolitan and smaller markets. These rule modifications are warranted because these innovative uses of copper loop plant have developed relatively recently and were unexpected when the current rules were adopted. The Commission should seek ways to maximize the public benefit from this valuable resource – copper plant and lines – so as to promote availability of competitive voice and advanced broadband services.<sup>8</sup>

The Task Force Notice suggests that “real-world trials” may assist the Commission as it considers rules and policies to encourage rapid evolution to an all-IP PCN. While XO certainly agrees with the Task Force that trials may, in certain circumstances, be an appropriate regulatory tool to obtain data or obtain “experience” where none exists, they are not a sound choice in all situations, particularly where pertinent real-world marketplace information is already available. Even if the Commission believes in a given case that a particular trial could potentially inform its decision-making, there is a second and no less important inquiry of whether a less-obtrusive, less-artificial, and less-resource-intensive way exists to serve the same

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<sup>7</sup> See, e.g., discussion in XO TDM-IP Comments at 20 and nn. 42-45 (referencing the *IP-Enabled Services Proceeding*, WC Docket No. 04-36; *Connect America Fund Further Notice of Proposed Rulemaking*, WC Docket No. 10-90; *Petitions for Rulemaking and Clarification Regarding the Commission’s Rules Applicable to Retirement of Copper Loops and Copper Subloops*, RM-11358; and the *Petition of USTelecom for Forbearance from Enforcement of Certain Legacy Telecommunications Regulations*, WC Docket No. 12-61).

<sup>8</sup> See, generally, XO/Broadview Copper Refresh Comments.

ends. In the current marketplace, XO and other providers have been deploying IP technologies within their networks for over a decade and have negotiated arrangements for interconnection between diverse networks in order to exchange managed IP traffic, including traffic that originates and/or terminates in both TDM and IP formats. Furthermore, providers continue to make innovative and pro-consumer competitive use of copper loops. Because of these circumstances, XO submits that the proposed trials would not be the best source of information.

In addition, a major consideration in the Commission's decision whether to conduct trials should be whether such trials would distort the markets where they are conducted or would tend to generate artificial data that do not reflect real world circumstances. This concern is especially acute where the Commission has yet to fully define the regulatory framework. Since the current marketplace provides actual real-world experience with the issues that the Commission seeks to address, there is no need to waste industry and Commission time and resources in developing any ill-conceived "trial" in order to generate so-called pertinent data. The Commission should gather and review data already available from real-world marketplace activities rather than consider generating and collecting artificial data from the proposed trials.

As amplified herein, the trials contemplated in the Task Force Notice are neither the most effective nor efficient way to ensure the Commission has the necessary information to engage in sound decision-making regarding the evolution of the PCN. Fully-developed records have been established in a number of relevant proceedings that provide the foundation for effective pro-competitive and pro-consumer Commission action in those proceedings.<sup>9</sup> Moreover, as noted above, activities in the marketplace have already generated a considerable amount of real-world information that would benefit the Commission's decision-making in those

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<sup>9</sup> See *supra* proceedings referenced in note 5.

proceedings. Providing the Commission with the benefit of this experiential information would be far more valuable than any artificial data that the proposed trials might generate. Therefore, rather than wasting time and resources in developing trials that would likely generate inferior information, the Commission should consider targeted information requests, focusing on certain markets if it feels appropriate, to supplement the records in the pending proceedings. The data resulting from targeted requests posed to industry members would be more likely to reflect actual challenges and potential solutions and therefore lead to better policy and regulatory decisions by the Commission.<sup>10</sup> Moreover, beyond concerns about the quality and soundness of the information gained from trials, current market information can be made readily available.

## **II. MANAGED IP INTERCONNECTION TRIALS ARE UNNECESSARY AND INAPPROPRIATE**

The Task Force Notice inquires whether trials “in a few geographic markets” for VoIP Interconnection, *i.e.*, managed IP interconnection, would be beneficial to ensure that technical and process issues are understood and resolved.<sup>11</sup> In describing the proposed trials, the Task Force Notice clarifies that comment is sought regarding the use of IP interconnection for voice services using Internet protocols, not layer-3 peering issues, which XO refers to as

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<sup>10</sup> XO recognizes that targeted testing may be appropriate to evaluate technical feasibility or implementation of a regulatory tool, for example, with regard to the direct assignment of telephone numbers available to a new class of provider or the sharing of spectrum in a given frequency band by certain classes of operators (e.g., spectrum “test beds”). *See* Task Force Notice at 1, n. 3. If the Commission determines that such testing could provide valuable insights in these or similar limited circumstances after its analysis of real-world data already available, then specific trials with appropriate constraints could be considered at that time to address specific issues, considering input from all interested parties and oversight by a neutral third party. There is no need, however, to consider any trials or testing to assess market feasibility or product acceptance by consumers.

<sup>11</sup> *See* Task Force Notice at 5-6.

managed IP interconnection.<sup>12</sup> By way of further explanation, there are two markedly different interconnection scenarios using IP, one for the purpose of exchanging Internet traffic (“Internet peering”) and the other involving off-Internet managed IP voice communications. The routing of Internet traffic via peering arrangements, which may include certain voice over IP (“VoIP”) providers’ traffic, requires routers to forward the data packets to their final destination, which is accomplished on a “best efforts” basis. Accordingly, the packets are not handled in a manner seeking to satisfy particular Quality of Service (“QoS”) metrics (bandwidth contention, jitter, packet loss, latency, among others). “Best efforts” Internet peering may be appropriate for routing public Internet traffic, but it provides insufficient QoS for *managed* IP voice services sought by business and enterprise customers. Managed IP interconnection for the exchange of managed IP voice traffic requires agreement among providers on a variety of parameters to ensure QoS demands are satisfied. These parameters are inserted into the voice packets by session border controllers (“SBCs”), equipment whose features and functionalities are essential for successful interconnection and QoS for managed IP voice traffic, but whose functionalities are totally irrelevant to the exchange of public Internet traffic.

Managed IP interconnection is far from ubiquitous at this time, in part because most ILECs refuse to abide by interconnection obligations under Section 251 of the Communications Act of 1934, as amended (the “Act”), to exchange IP-based voice traffic with requesting carriers. However, XO and other competitive providers have considerable experience with such arrangements. Consequently, industry or market trials are not necessary to evaluate the basic technical feasibility of such interconnection. Managed IP interconnection is feasible, and when parties are willing to negotiate these arrangements, XO has found that any technical

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<sup>12</sup> See *id.* at 3 (“we emphasize that the trial we propose today does not reach layer-3 peering issues”).

issues can be readily and satisfactorily addressed. Thus, the issue before the Commission is not whether managed IP interconnection is technically feasible – it is – but whether the proposed trials would be helpful to develop or clarify industry standards for such arrangements.

XO submits that the proposed industry trials would not be useful or necessary for this purpose. In addition to parties working out issues that arise in the course of implementing managed IP interconnection arrangements, a number of industry groups have already developed working technical standards and continue to revise those as needed to facilitate efficient managed IP interconnection. For example, the Internet Engineering Task Force (“IETF”) “is a large open international community of network designers, operators, vendors, and researchers concerned with the evolution of the Internet architecture and the smooth operation of the Internet.”<sup>13</sup> The working groups of the IETF focus on developing standardization of protocols and procedures, to which the Internet community voluntarily adheres. These Internet Standards are also often used by other interconnected network operators distinct from the public Internet,<sup>14</sup> such as parties engaged in managed IP interconnection arrangements. Each of the Internet Standards is adopted only after a period of development and several iterations of review by the Internet community and revision based upon experience.<sup>15</sup>

Similarly, the SIP Forum is an industry association whose mission is “to advance the adoption and interoperability of IP communications products and services based on SIP.”<sup>16</sup> While not a standards-setting body, the SIP Forum’s activities complement those of IETF and often include developing industry best practices and recommendations. Given the depth of

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<sup>13</sup> See <http://www.ietf.org/about/>.

<sup>14</sup> See <http://www.ietf.org/rfc/rfc2026.txt>.

<sup>15</sup> See *id.*

<sup>16</sup> See <http://www.sipforum.org/>.

technical experience and breadth of industry participation in both the IETF and the SIP Forum, for example, it is hard to imagine that any of the proposed trials conducted by the Commission would be able to improve upon or resolve any industry-wide technical issues that have been or are being considered by these or other existing industry standards groups. Instead of acting to implement a series of technology-focused trials, the Commission should monitor the progress of these industry-based standardization efforts and encourage their continuation.<sup>17</sup>

At the same time, the Commission should also encourage parties, as appropriate, to conduct private testing to gain a better understanding of technical issues and solutions. Compatibility issues will likely exist between individual carrier networks in any particular interconnection arrangement regardless of the development of industry standards, given that carriers typically implement the standards with slight variations and in different stages so that no two networks are ever identical. In XO's experience, however, compatibility issues can be easily resolved during testing between the parties, thus such parties should be invited to voluntarily inform the Commission of any issues encountered and resolutions that were implemented. Rather than devising industry-wide trials to evaluate specific technical issues that may only arise between two particular carrier networks, the Commission should trust that any such industry-wide technical issues have been or will be raised in the appropriate industry standards-setting forum to be tackled by the industry at large.

The Task Force Notice also asks whether trials could provide information regarding issues of disagreement or agreement during private negotiations. XO submits that trials are not necessary to generate this information because parties have already engaged in such interconnection negotiations and can provide answers to these questions in response to

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<sup>17</sup> Given the success of IP standards-setting efforts to date, XO does not envision the Commission will need to expand this role.

Commission inquiries. In XO's experience, when negotiating managed IP interconnection arrangements, the most contentious issues are business points, such as price and financial responsibility – whether it is shared (and, if so, to what extent) or borne by one party only – for the different aspects of the interconnection arrangement. Such issues are rather easily distinguished from technical issues, although parties may be willing to engage one technical solution versus another, based on cost and liability exposure rather than on technical feasibility.

XO is skeptical whether any “negotiations trials” would yield real world information because parties are likely to be on either their best behavior or their worst behavior, when knowing the trial is being used by the Commission to consider the need for additional regulation of the process. In any event, XO has already supplied information in prior comments to the Commission about the state of managed IP interconnection issues and regulatory solutions the Commission should adopt.<sup>18</sup> Should the Commission find the existing records in the pending proceedings insufficient, the experiences of XO and other providers seeking to establish interconnection to exchange managed IP traffic constitute a body of data that the Commission could draw upon if it so desires.

To obtain real world data in addition to that already submitted by XO and others, obviating any conceivable need for trials with all of their potential deficiencies, the Commission should require ILECs to provide copies of any of their current managed IP interconnection arrangements, which would provide evidence of what terms and conditions of such

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<sup>18</sup> See, e.g., Comments of XO Communications, LLC on Sections XVII.L-R of the Further Notice of Proposed Rulemaking, WC Docket Nos. 10-90 et al. (filed Feb. 24, 2012). The record in the foregoing proceedings identifies the particular stumbling blocks that recur in many, albeit not necessarily all cases, of providers' efforts to obtain interconnection to exchange managed IP traffic and addresses the Commission's authority to establish the minimum interconnection obligations on the part of incumbent, much as it has done under Section 251(c) for the past seventeen years following the passage of the Telecommunications Act of 1996.

interconnection that each has considered acceptable without a clearly defined regulatory backstop in place. These data characterize the current environment in which such interconnection negotiations have taken place and the results of such negotiations. The Commission might supplement this data collection effort with requests for additional information from ILECs and competitors that have requested interconnection regarding any negotiations that have taken place but did not result in final agreements.<sup>19</sup>

The Commission could analyze the agreements it obtains to ascertain whether additional affirmative requirements or procedural frameworks should be put in place, or whether the Commission should confirm that requesting parties have the ability to pursue managed IP interconnection terms and conditions under Sections 251 and 252 of the Act. The Commission should consider the information it obtains through the processes described above in light of other comments regarding managed IP interconnection filed in response to the Further Notice of Proposed Rulemaking accompanying the *USF/ICC Transformation Order*.<sup>20</sup>

The Task Force Notice also describes another type of “process trial,” one in which parties negotiate pursuant to the existing Section 251/252 framework of the Act or “a similar process.”<sup>21</sup> XO questions the basis of such a trial, given that the ILECs have not voluntarily agreed to be bound by the obligations in Section 251 or 252 with respect to IP-based interconnection. Rather, the ILECs have argued that the scope of Sections 251 and 252 is quite

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<sup>19</sup> The Commission should encourage other parties (apart from ILECs) to voluntarily submit information regarding particular managed IP interconnection issues that they have encountered in trying to reach managed IP interconnection arrangements and how they have been resolved or why they have become insoluble. The Commission could request more detailed information, under protection of confidentiality, if necessary.

<sup>20</sup> See *Connect America Fund, et al.*, WC Docket No. 10-90 et al. FCC 11-161, Report and Order and Further Notice of Proposed Rulemaking (rel. Nov. 18, 2011) (“*USF/ICC Transformation Order*”).

<sup>21</sup> Task Force Notice at 5.

limited and have attempted to minimize whatever obligations they have. There is no need to conduct a trial of the negotiations process since providers have over fifteen years of experience in negotiating and arbitrating interconnection agreements pursuant to Sections 251 and 252.

Moreover, by their nature, such “process” trials would be inherently flawed. Unlike a technical trial, which could objectively address whether a specific network or facility or interoperability configuration can work or may be used to identify problems, a process trial cannot take place in a vacuum but necessarily takes into account the motives and incentives of the parties involved. Rather, the Commission should affirmatively clarify that Sections 251 and 252 apply to managed IP voice interconnection and establish the basic framework of substantive obligations that serve as the backstop to negotiations for such arrangements.<sup>22</sup>

### **III. GEOGRAPHIC ALL-IP TRIALS ARE ALSO WITHOUT MERIT**

The Task Force Notice also inquires whether wire-center IP trials of the type suggested by AT&T in its Petition in GN Docket No. 12-353 would be helpful to the Commission. XO submits that the Commission must recognize that the predicate for such trials is AT&T’s desire to demonstrate its proposition to regulators that there is no need for FCC or state regulation – namely, ILEC obligations to competitors to provide interconnection or access to end user locations on just, reasonable, and nondiscriminatory terms – as ILEC networks evolve to all-IP platforms. AT&T asked the Commission in its Petition to open a proceeding for the purposes of conducting “geographically limited trial runs” to test its theories about the limited, if any, role it believes the Commission should play in an all-IP PCN “before eliminating, on a nationwide basis, all of the counterproductive regulatory burdens” that AT&T alleges

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<sup>22</sup> See XO TDM-IP Comments at 21-24.

exist.<sup>23</sup> AT&T recommended that the Commission elicit proposals “from ILECs” for specific wire centers in which to conduct this “experiment” and detailed plans for conducting the trials, including the network modifications necessary to progress from the legacy TDM network to IP technologies and the retail and wholesale services it will offer in place of its legacy wireline services.<sup>24</sup>

As the Task Force Notice observes, an extensive record regarding such trials has been compiled.<sup>25</sup> AT&T’s proposal received limited and lukewarm support even from its “advocates.” XO, in its comments in GN Docket No. 12-353, detailed the numerous flaws of the proposal which can be briefly summarized here.<sup>26</sup> In addition to being unnecessary for reasons similar to those applying to the proposed managed IP interconnection trials described above, geographic, wire-center-specific “all-IP trials” would not yield meaningful information, and may actually be harmful to end users and competition. For example, setting the term of any such trial in which carrier relationships would have to be worked out would be an arbitrary parameter with no analog in the real-world marketplace. Yet that temporal artifice would cast a long shadow over the parties, without engendering behavior indicative of true market conditions.

Along similar lines, wire center all-IP trials could force competitors to accelerate marketing efforts and investment decisions in the particular trial wire centers, making it even less likely that a time-limited trial would yield meaningful information. If trials were limited to markets where parties voluntarily agreed to participate in the trials, the results would be skewed because they would not reflect true competitive conditions in light of the legal uncertainty.

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<sup>23</sup> AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition, GN Docket No. 12-353 at 20 (filed Nov. 7, 2012).

<sup>24</sup> *See id.*

<sup>25</sup> *See* Task Force Notice at 10.

<sup>26</sup> *See* XO TDM-IP Comments at 30-35; XO TDM-IP Reply Comments at 9-12.

Merely by virtue of unanimous agreement in a wire center to participate in the trials (in contrast with an obligation to do so by regulatory fiat), there would be a level of consensus that does not exist in today's markets where regulatory rights and obligations continue to be a source of uncertainty and debate.<sup>27</sup>

Even if a wire center trial was made mandatory, such a trial would almost certainly not yield reliable information. In any trial examining the operation of the market among IP network operators in the absence of a regulatory framework governing incumbent obligations, the ILECs have every incentive to be on their best behavior given the potential upside for cooperating, i.e., a lighter regulatory touch, which would likely lead to distorted results. Conversely, there are symmetrical reasons to believe that the injection of an experiment framework into negotiations within selected wire centers would distort the competitors' behavior as well.

Furthermore, mandatory wire center trials with no actual or potential regulatory backstop would pull the rug out from under the wholesale market within the selected wire centers. Carriers' current pricing of customer services within wire centers selected for trials may have been predicated on the actual or potential regulatory backstop and expectation that any alteration of the *status quo* would be in a manner envisioned by Congress as previously implemented by the Commission – *not as the result of a regulatory experiment*. The wire center experiments, instituted without the sort of regulatory analysis undertaken in a forbearance proceeding or during Commission consideration of the scope of ILECs' unbundling obligations

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<sup>27</sup> Indeed, the Task Force Notice observes that it is “unclear whether any incumbent LECs would voluntarily agree to a trial using the section 251/252 framework.” Task Force Notice at 5, n. 23. Similarly, XO submits that it is equally “unclear” whether a broad representative swath of competitive carriers would agree to a trial that treats the Section 251/252 framework as wholly irrelevant, as AT&T argues it should be in an all-IP network environment.

under Section 251(d)(2) of the Act,<sup>28</sup> may result in sharp cost increases and corresponding squeezing of operating margins, with anticompetitive results.<sup>29</sup>

Rather than using trials based on forced participation and artificial parameters to determine what level of regulation would be appropriate, the Commission should, as XO explained in its comments in GN Docket No. 12-353, base its decisions on market analysis when considering the need for and appropriate regulations regarding access to end users and interconnections as ILEC networks transition to IP technologies.<sup>30</sup> Unless the Commission finds, using the very same market analysis tools refined in its unbundling forbearance decisions,<sup>31</sup> that ILECs no longer maintain market power due to their persistent and effectively ubiquitous and unchallenged access to end user locations, then, of necessity, unbundling and interconnection obligations need to exist.

To obtain the information necessary for such a market analysis, the Commission need not conduct trials, as the agency's previous experience makes plain. Instead, if it finds that evidence already submitted is insufficient, the Commission can obtain such information through data requests addressed to the ILECs, for example, in each of their top two or three markets. The

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<sup>28</sup> See 47 U.S.C. § 251(d)(2).

<sup>29</sup> XO would be strongly opposed to any effort to establish a no-regulatory-backdrop environment by revoking or suspending existing contractual interconnection and unbundling agreements because such action would irreversibly undermine competitors' investments in those markets.

<sup>30</sup> See XO TDM-IP Comments at 25-30.

<sup>31</sup> See, e.g., *Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, Memorandum Opinion and Order, 25 FCC Rcd 8622 (2010) ("Phoenix Forbearance Order") *aff'd sub nom Qwest Corporation v. FCC*, 689 F.3d 1214 (10<sup>th</sup> Cir. 2012); *Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas*, Memorandum Opinion and Order, 22 FCC Rcd 21293 (2007) ("Verizon Forbearance Petition Order").

data requests would at least focus on the buildings to which the ILECs provide access and those to which they provide the only carrier access. Depending on the results of the analysis, the Commission could determine whether or not to extend the analysis to additional markets. As XO noted in its Comments in response to the AT&T Petition, it is unlikely that the ILEC's predominant access to end user locations, especially to business and enterprise end users, is likely to diminish in the short run. No trial's results will change that fact.

#### **IV. COPPER RETIREMENT-RELATED TRIALS ARE NOT JUSTIFIED**

The Task Force Notice inquires whether the Commission should engage in any trials that “focus more specifically on the copper-to-fiber transition.”<sup>32</sup> XO submits that trials that focus on the copper-to-fiber transition are not necessary at this time and would not be useful to address the primary factors potentially affecting competition due to copper retirement by ILECs. As XO and Broadview explained in their recent comments refreshing the record in RM-11358, ILECs maintain a predominant position with respect to facilities-based access to end user locations (especially in the business and enterprise markets).<sup>33</sup> Yet, the current copper retirement rules enable ILECs, upon giving notice, to phase out copper loops used for unbundling provided

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<sup>32</sup> Task Force Notice at 11.

<sup>33</sup> See XO/Broadview Copper Refresh Comments at 10-11 (competitors typically do not have an economic alternative of building out their own facilities to an end user location when ILECs transition copper to fiber); XO/Broadview Copper Refresh Reply Comments at 15-16 (competitors do not have the same incentives or ability to build out fiber to end user locations as do ILECs; competitors must be far more selective); see also XO TDM-IP Comments at 4-6, 23-30 (noting that the clear market advantages that ILECs have today over competitors due to unparalleled facilities-based reach to end user locations, particularly in business and enterprise settings, which will not automatically dissipate as the public switched network evolves toward an Internet protocol public communications network); XO Special Access Comments, Exhibit 2, Declaration of John T. Dobbins, XO Vice President of Network and Access Optimization, ¶ 4 (ILEC channel terminations that provide business and enterprise customers with network access and ILEC transport facilities are far more extensively deployed in all markets in which XO operates than those of any of the ILECs' rivals).

that they make available unbundled, low capacity lit fiber loops in their stead. This is especially troubling because, in recent years XO and other CLECs have demonstrated an ability to use copper loops to provide cost-effective alternatives to end users that require high capacity, broadband services in competition with ILECs' fiber-based services, and in cases where such services are not yet available. The current rules would not provide such CLECs with an alternative to continue to serve their customers with comparable services on a cost-effective basis, as low-capacity lit fiber loops cannot be employed to provide a replacement service. Accordingly, as XO and Broadview explained in their comments and reply comments from earlier this year in RM-11358, the Commission should modify the copper retirement rules to preserve this valuable resource.<sup>34</sup>

The Task Force Notice asks more specifically whether there should be a trial in which one or more ILECs, presumably in select markets, sell their copper loop plant to a CLEC in each market.<sup>35</sup> XO submits that such a trial would raise more issues than it would potentially solve. For instance, in XO's experience, more than one CLEC uses the copper plant of an ILEC in a given market. Consequently, selling the copper to only one of the CLECs in a given market would create dilemmas concerning how and on what terms the CLEC-purchaser would make the loops available to other CLECs. This would require a new regulatory framework and, of necessity, increase the scale, scope, and complexity of any trial.

In addition and related to the technical difficulties raised in the Task Force Notice regarding such trials,<sup>36</sup> the ILEC would simply be required to replace one form of regulation with

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<sup>34</sup> See XO/Broadview Copper Refresh Comments at 8-12; XO/Broadview Copper Refresh Reply Comments at 2-8.

<sup>35</sup> See Task Force Notice at 11.

<sup>36</sup> The Task Force observes that a trial based on the sale of ILEC copper plant to a competitor, presumably to relieve the ILEC of the burdens of maintaining the copper

another. For instance, there would have to be regulations in place to govern the sale price and how the ILEC gives the CLEC purchaser access to ILEC shared facilities and space in order to utilize the copper.

For the foregoing reasons, rather than fashion problematic trial scenarios regarding the disposition of ILEC copper loops, the Commission should proceed with modifying the copper retirement rules. Specifically, the Commission should complete the rulemaking requested in the XO and BridgeCom Petitions and establish a formal process for approval by the Commission, on a case-by-case basis, of any proposed retirement of copper loops or copper subloops by the ILECs.<sup>37</sup> In addition, the Commission should abolish notification-only procedures for “short-term” modifications to ILEC networks, including copper loop and copper subloop retirements.<sup>38</sup> As the new regulations are worked out, the Commission should act on an interim basis to guard against further dismantling of the legacy copper network and injury to consumers of advanced communications capability under the flawed Commission rules.<sup>39</sup> As a general matter, the Commission should update its copper retirement rules to reflect the current

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plant and to avoid depriving competitors of access to the plant, creates a number of practical network challenges. For example, “it is unclear if [such a sale] is feasible given that fiber and copper may be intertwined in the access plant. Also, any such approach raises questions about the pricing of such copper and access to the ILEC’s shared facilities and space.” Task Force Notice at 11. Further, there is the unanswered question of whether an ILEC would be willing to sell the copper when it can retire it and reduce the options of its competitors in serving end user customers.

<sup>37</sup> The process should create a rebuttable presumption that such retirement does not serve the public interest.

<sup>38</sup> These procedures currently do not permit any interested party, including the Commission and state regulatory agencies, to contest elimination of UNEs that enable competitive narrowband and broadband services over redundant facilities. The Commission should no longer allow the ILECs to exercise such unilateral control over the nationwide copper infrastructure and over competition itself.

<sup>39</sup> See XO/Broadview Copper Refresh Comments at 12-15; XO/Broadview Copper Refresh Reply Comments at 8-11.

importance of copper-based alternative advanced telecommunications capability to the nation's economy and to preserve and better utilize this ubiquitous nationwide asset based on the full record in RM-11358.

## V. CONCLUSION

The Commission should decline to commence any of the trials described in the Task Force Notice. Rather, the Commission should proceed, as it finds necessary to supplement the record in proceedings underway to address the proper regulatory framework as the technologies used on the PCN continue to evolve, to obtain information and data from market participants, as it addresses appropriate pro-competitive measures in those proceedings to ensure competitors are able to obtain interconnection and access to end user locations.

Respectfully submitted,

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