

July 22, 2013

VIA ECFS

NOTICE OF EX PARTE PRESENTATION

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

Re: *Technology Transitions Policy Task Force Seeks Comment on Potential Trials,*
GN Dkt. No. 13-5

AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition,
GN Dkt. No. 12-353

Dear Ms. Dortch:

On July 18, 2013, the undersigned of Willkie Farr & Gallagher LLP (representing Cbeyond Communications, LLC, EarthLink, Inc., Integra Telecom, Inc., Level 3 Communications, LLC, and tw telecom inc.) (collectively, the “Joint Commenters”), Greg Darnell of Cbeyond, Chris Murray of EarthLink, Roger Fleming of Northfork Strategies, LLC (representing Integra), Joe Cavender of Level 3, and Don Shephard of tw telecom met with the following members of the FCC Staff regarding the above-referenced proceedings: Jonathan Chambers, Mindel De La Torre, Lisa Gelb, Patrick Halley, Matthew Hussey, Walter Johnston, Julius Knapp, Sean Lev, Henning Schulzrinne, Tim Stelzig, Yuxi Tian, Sarah Weeks, Stephanie Weiner, and Steve Wildman.

The Joint Commenters made arguments consistent with the attached presentation handout and their comments in the above-referenced proceedings.¹

Please do not hesitate to contact me at (202) 303-1111 if you have any questions or concerns about this submission.

¹ See Comments of Cbeyond, EarthLink, Integra, Level 3, and tw telecom, GN Dkt. No. 13-5 (filed July 8, 2013); see also Comments of Cbeyond, EarthLink, Integra, Level 3, and tw telecom, GN Dkt. No. 12-353 (filed Jan. 28, 2013).

Marlene H. Dortch
July 22, 2013
Page 2

Respectfully submitted,

/s/ Thomas Jones

Thomas Jones

Nirali Patel

*Counsel for Cbeyond Communications, LLC,
EarthLink, Inc., Integra Telecom, Inc.,
Level 3 Communications, LLC, and tw telecom inc.*

Attachment

cc (via email): Meeting Participants

**CBeyond, Earthlink, Integra, Level 3, and TW Telecom
EX PARTE PRESENTATION ON PROPOSED TECHNOLOGY TRANSITION TRIALS
(JULY 18, 2013)**

I. The Task Force Should Use A Consistent Analytical Framework For Defining The Commission's Technology Transitions Agenda.

- The Task Force should identify the preconditions for promoting technology transitions in a manner consistent with the policies established in the Communications Act.
- The Task Force should then propose an agency agenda for establishing those preconditions. In doing so, the Task Force should:
 - (1) avoid initiating new proceedings to address issues already encompassed by existing FCC or state PUC proceedings;
 - (2) consider only those issues that arise as a direct result of technology transitions;
 - (3) place the highest priority on proceedings that will yield the greatest consumer welfare benefits; and
 - (4) utilize appropriate procedural mechanisms (*e.g.*, procedures that are reliable and efficient) to address relevant issues.

II. The Commission's First Priority In Addressing The Technology Transitions Should Be Updating Its Competition Policies.

- The most important precondition for advancing the ongoing technology transitions is competition. Competitive markets are the key to spurring innovation and investment in new technologies while also protecting consumers from the abuse of market power by dominant firms.
- In order to promote competition in the business broadband market, the Commission should update its interconnection and last-mile access policies. Specifically, the Commission should adopt rules that:
 - (1) require incumbent LECs to comply with their statutory duty under Section 251(c)(2) of the Communications Act 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 American businesses.

- Adopting such rules in pending FCC proceedings is consistent with the Joint Commenters’ proposed framework because:
 - (1) the need to update the Commission’s interconnection and last-mile access policies arises as a direct result of the technology transitions (*e.g.*, incumbent LECs have argued that the FCC’s interconnection policies are not technology neutral);
 - (2) updating the Commission’s interconnection and last-mile access policies will yield substantial consumer welfare benefits; and
 - (3) completing existing proceedings that already encompass interconnection and last-mile access issues is the most efficient way to address such issues.

III. The Commission Should Not Conduct Most Of The Trials Discussed In The *Public Notice*.

- **VoIP Interconnection Trials**
 - VoIP interconnection trials are unnecessary.
 - The available evidence shows that the main obstacle to establishing VoIP interconnection agreements throughout the industry is incumbent LECs’ unwillingness to do so—*not* any technical issues related to VoIP interconnection.
 - The *only* way for the Commission to fix this problem is to rely on the substantial record developed in the *USF/ICC Transformation* proceeding and clarify that incumbent LECs must provide VoIP interconnection under Section 251(c)(2).
 - FCC trials are not an appropriate procedural mechanism for analyzing VoIP interconnection issues.
 - A “real-world trial” will not help the Commission clarify the statutory basis for incumbent LECs’ duty to provide VoIP interconnection. That clarification should begin and end with an interpretation of the statute.
 - VoIP interconnection trials are likely to be unreliable because, assuming that incumbent LECs even participate in such trials, they would have a strong incentive to be on their best behavior in an artificial test environment.
 - The record in the *USF/ICC Transformation* proceeding makes clear that the industry—not the FCC—is best suited to lead the development of technical standards for VoIP interconnection as needed.

- **NG911 Trial**

- In deciding whether to conduct an NG911 trial now, the Commission should consider, among other things:
 - (1) whether waiting until standards-setting bodies have developed relevant standards or until more PSAPs have deployed NG911 would make a trial more informative, reduce the number of issues to be studied, or obviate the need for a trial altogether; and
 - (2) whether the FCC is the appropriate entity to conduct a trial.

- **Wireline-to-Wireless Trials**

- FCC wireline-to-wireless trials are unnecessary. The NY PSC is already studying Verizon's replacement of wireline services with wireless services on Fire Island, NY.
- The Commission should obtain the results of that trial and any related information from Verizon, the NY PSC, and other interested parties instead of allocating scarce FCC resources toward a redundant trial.

- **AT&T Wire Center Deregulation Trials**

- AT&T's proposed wire center deregulation trials are unnecessary and unworkable. *See Cbeyond et al. Comments, GN Dkt. No. 12-353, at 19-27 (filed Jan. 28, 2013).*
- Consumer advocates, state regulatory commissions, cable operators, wireless carriers, competitive LECs, and rural ILECs all agree that AT&T's proposed trials are a flawed approach to addressing the technology transitions. In light of this record, the Task Force should not give AT&T's proposal further consideration.
- AT&T is still working on "an executable blueprint" for wire center trials *more than eight months* after proposing such trials. *See AT&T Comments, GN Dkt. No. 13-5, at 15 (filed July 8, 2013).* AT&T simply seeks to distract the Commission and divert agency resources from completing existing proceedings—such as the longstanding special access rulemaking—that would promote competition in the business broadband market.