

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

REPLY COMMENTS OF AT&T SERVICES, INC.

Christopher M. Heimann
Robert Barber
Gary L. Phillips
Peggy Garber
AT&T Services, Inc.
1120 20TH STREET NW
Suite 1000
Washington, D.C. 20036
(202) 457-3058 (phone)
(202) 457-3074 (facsimile)

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TABLE OF CONTENTS

INTRODUCTION AND SUMMARY..... 1

DISCUSSION.....7

I. GEOGRAPHIC ALL-IP TRIALS WILL PROVIDE REAL WORLD EXPERIENCE THAT WILL FACILITATE THE TRANSITION TO AN ALL-IP ENVIRONMENT WITH MINIMAL DISRUPTION TO CONSUMERS.....7

II. THE COMMISSION SHOULD REJECT CLEC ATTEMPTS TO USE THIS PROCEEDING TO FURTHER THEIR OWN SELF-INTEREST AND REGULATORY AGENDA12

 A. The Task Force Should Not Proceed With Stand-Alone Trials of IP-to-IP Interconnection for Voice Services.....12

 B. The Comments Confirm that Copper Retirement Is Not an Appropriate Subject for a Trial.....20

CONCLUSION.....24

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INTRODUCTION AND SUMMARY

The opening comments in this proceeding reflect broad consensus that the transition from traditional TDM-based communications systems to all-IP networks and services (the “IP Transition”) is not just some long-term, aspirational objective of federal communications policy laid out in the *National Broadband Plan*.² Parties from across the spectrum – including ILECs, CLECs, cable companies, wireless carriers, equipment manufacturers, consumers, state regulators, and many others – agree that the IP Transition is both inevitable and already irreversibly underway.³ Over the past decade, consumers have been abandoning traditional

¹ AT&T Services, Inc. files these comments on behalf of itself and its affiliates (hereinafter “AT&T”).

² FCC, *Connecting America: The National Broadband Plan*, at 59 (2010) (“*National Broadband Plan*”). See also *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 783 (2011) (“*USF/ICC Transformation Order*”) (establishing the goal of facilitating the transition away from TDM-based networks to the all-IP network of the future); *Numbering Policies for Modern Communications et al.*, FCC 13-51, ¶ 54 (2013) (“*2013 Numbering NPRM*”) (“The Commission has already set its goal to ‘facilitate the transition to an all-IP network . . .’”).

³ CenturyLink Comments at 8-10; CTIA Comments at 2-3; Telecommunications Industry Ass’n (TIA) Comments at 2-3; Telecordia Comments at 1-2; Voice Communications Exchange Committee Comments at 2-4; Verizon Comments at 1-2; New Jersey Rate Counsel Comments at 8-10; NCTA Comments at 3; Michigan PSC Comments at 2; Matrix Comments at 1; IntelPeer Comments at 1-4; GVNW Consulting Comments at 4; Edison Electric Institute Comments at 2-3; CWA Comments at 1; Cablevision Comments

TDM-based communications networks and services for wireless and VoIP services offered by wireless providers, cable companies and others.⁴ Moreover, legacy TDM communications platforms are rapidly obsolescing, and increasingly difficult to maintain as service providers lose access to essential equipment and spare parts, and the workforce with the expertise to maintain TDM equipment nears and enters retirement.⁵ Thus, the IP Transition is upon us and unstoppable, and “the real question [now] is whether our nation will handle the transition in a thoughtful or haphazard way.”⁶

AT&T strongly believes that consumers, industry and regulators must plan ahead so that we can manage the IP Transition in an efficient and pro-consumer manner. That planning should be guided by the fundamental principles of universal connectivity, consumer protection,

at 1- 2; California PUC Comments at 2-3; Comptel Comments at 2-3; Asian Americans Advancing Justice Comments at 1.

⁴ According to an analysis of the Commission’s own data, ILECs still provide traditional, switched voice services to less than one-third of homes passed nationwide. Ex Parte Letter of Glenn Reynolds, USTelecom, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 13-5, *et al.* at 3 (filed Jul. 1, 2013) (citations omitted). *See also* Reply Comments of AT&T, GN Docket No. 12-353 at 21 (filed Feb. 25, 2013) (projecting that, by the end of this year, only 21 percent of residential housing units in the states where AT&T is an ILEC still will subscribe to ILEC POTS services). In addition, approximately 40 percent of households have cut the cord entirely, and rely solely on wireless for their home voice services, with many more relying on wireless mostly to satisfy their communication needs. CDC, *Wireless Substitution: Early Release from the National Health Interview Survey, July-December 2012* (June 2013) (available at: <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201306.pdf>) (last checked August 7, 2013).

⁵ TIA Comments at 4-5 (noting that obsolescence is a major driver of the transition, with essential expertise and spare parts becoming scarce as TDM platforms have approached a 40 year plus lifespan).

⁶ Remarks of FCC Commissioner Ajit Pai, “Looking Back and Looking Ahead: The FCC and the Path to the Digital Economy,” Pittsburgh, PA (Jul. 25, 2013), available at: <http://www.fcc.gov/document/pai-pittsburgh-pa-remarks-looking-back-and-looking-ahead> (last checked August 7, 2013).

reliability and public safety.⁷ But we must begin that examination now, while there still is a TDM safety net in place.⁸

Twice in the past ten years, the country has undergone similar transitions in communications technology and services – in the transition from analog to digital cellular service, and from analog to digital TV. In both cases, the Commission planned ahead and adopted policies to “ensure that legacy regulations and services did not become a drag on the transition to a more modern and efficient use of resources, that consumers did not lose services they needed and that business could plan and adjust to the new standards.”⁹ Last November, AT&T sought to kick start this process by proposing geographically limited trials to prepare for the fast-approaching day when TDM will go the way of the dinosaur and all customers are using next-generation wireless and IP-based services. Like the DTV trial in Wilmington, North Carolina, geographically limited IP trials will provide the Commission, industry, and consumers invaluable real-world experience regarding the challenges of discontinuing TDM technology and services on which many Americans still rely even as many others already have made the switch to next-generation wireless and IP-based services.

A diverse group of parties support comprehensive trials of the transition,¹⁰ recognizing that they are more likely to provide valuable insights to guide the transition than the single

⁷ Jim Cicconi, *Public Knowledge’s White Paper on the IP Transition: A Common Sense Framework*, AT&T Public Policy Blog (posted July 24, 2013), available at: <http://www.attpublicpolicy.com/fcc/public-knowledges-white-paper-on-the-ip-transition-a-common-sense-framework/> (last checked August 7, 2013).

⁸ *Id.*

⁹ *National Broadband Plan* at 59.

¹⁰ See ADTRAN, Inc. Comments at 2-3; CenturyLink Comments at 1-2; Comcast at 1-3; Intelepeer, Inc. Comments at 1-3; Telecordia Comments at 1-2; Voice Communications Exchange Committee Comments at 4; Asian Americans Advancing Justice Comments at 1. As ADTRAN aptly observes, “such comprehensive ‘stress tests’ would provide a more accurate picture of the likely scenarios that will play

purpose trials proposed by the Commission. A large majority of the others appear to recognize that geographic trials are necessary or appropriate to identify and solve issues posed by the transition, and to accept that the Commission will authorize such trials. But a number of parties express concerns about the ongoing changes in communications technology, services, functions and customer equipment and the potential impact of those changes on consumers of the legacy TDM-based services. Among other things, commenters express concern that the replacement services will not be as reliable as existing services, or will not be compatible with certain equipment and services (such as alarm and health monitoring equipment and services, and fax and credit card authorization machines) designed to function on TDM communications platforms, or will lack the 911 location accuracy of today's POTS services, or may lack functions that are essential to air safety and national security. They ask the Commission to appropriately structure any trials to address these issues and ensure that consumers do not lose any essential features, functions and services during the trials or the IP Transition itself.

Many of these are fair questions that should be answered, but they do not provide a basis for rejecting or deferring the geographic trials AT&T has proposed. As AT&T previously has explained, the purpose of the trials is to provide a forum for identifying the types of operational, technical and logistical issues (including, potentially, those identified in the comments) that could arise when existing TDM-based services are discontinued and consumers transition to next-generation wireless and IP-based alternatives. The trials will provide an opportunity for all stakeholders (including consumers, industry and policy makers) to identify and engage in an informed debate about any gaps in technology, services or policy, and to develop solutions that address parties' concerns. In some cases, these solutions may entail changes to proposed

out in the real world as the various transitions occur in parallel, rather than serially." ADTRAN Comments at 3.

replacement services to ensure that they will support essential features and functions following the transition. In others, the Commission and other stakeholders may conclude that particular features and functions no longer are necessary or make sense in an all-IP world, or that entities that historically relied on TDM technology and services will have to adapt their own products and services to be compatible with next generation wireless and IP-based services. AT&T does not presume that it has answers to all of the concerns expressed in the comments, or even that it has identified all of the issues that may be posed by the transition. But that is the point of the trials AT&T has proposed: to identify and resolve issues (both known and unknown) while a TDM safety net is still in place so that an orderly transition can occur, along with the proper planning to make that happen. The concerns and objections raised in the comments thus emphasize the importance of granting AT&T's petition and moving ahead with trials.

Only a handful of commenters (principally CLECs) opposed geographic trials.¹¹ These parties claim that AT&T's proposal is an artifice to obtain deregulation, and that the trials it proposes would not be a realistic test of marketplace dynamics because ILECs will be on their best behavior. They assert that, rather than authorizing comprehensive trials, the Commission would better facilitate the IP Transition by requiring ILECs to provide IP-to-IP interconnection for voice services pursuant to sections 251 and 252 of the Communications Act, and modifying its copper retirement rules to require ILECs to maintain and make available copper loop facilities that they no longer use and otherwise would retire.

As AT&T previously has explained, it does not presume that the trials and IP Transition itself will result in a regulation free zone. To the contrary, the trials are intended to help the

¹¹ See, e.g., XO Comments at 13- 15 (claiming that the proposed trials are part of AT&T's supposed deregulation plan, and urging the Commission to require ILECs to revise its copper retirement rules to force ILECs to maintain facilities for which they have no need); CBeyond Comments at 25 (claiming trials would not be a realistic test of marketplace dynamics because ILECs will be on their best behavior); and Cox Comments at 5 (same).

Commission and other stakeholders understand the technology and policy implications of the IP Transition, and to determine on a competitively and technologically neutral basis what, if any, rules may be appropriate to protect consumers in an all-IP ecosystem. AT&T is confident that the trials will show that legacy regulation is unnecessary and, indeed, affirmatively harmful to consumers and competition. And, as AT&T has previously argued, the regulations favored by the CLECs are neither within the Commission's statutory authority nor in the public interest. But, regardless, those issues do not obviate the need for the Commission to understand and address the myriad other issues raised by the IP Transition. It is therefore critical that the Commission begin the trials so that parties can engage in a meaningful discussion of these issues based on real-world data rather than the rhetoric that has dominated the debate thus far.

To that end, the record makes clear that the Commission must do more than authorize the narrow, single purpose trials proposed in the *Public Notice*. Although parties voiced different rationales for their positions, they generally agreed that narrow trials of IP Interconnection, Next Generation 911, and copper retirement, would be premature, unnecessary, or would not yield useful or relevant information that would facilitate the TDM-to-IP transition. AT&T generally agrees for the reasons set forth in its opening comments, and will not repeat itself here. Rather, in Part I of these reply comments, we address parties' concerns regarding the potential impact of the IP Transition, and explain why these concerns do not provide a basis for rejecting or deferring the geographic trials AT&T has proposed. In Part II, we respond to CLEC attempts to use this proceeding to further their regulatory objectives by arguing that the Commission should mandate IP-to-IP interconnection for voice traffic, and modify its rules to require ILECs to maintain and make available copper loop facilities that are under-utilized or otherwise are uneconomical to maintain and operate.

DISCUSSION

I. GEOGRAPHIC ALL-IP TRIALS WILL PROVIDE REAL WORLD EXPERIENCE THAT WILL FACILITATE THE TRANSITION TO AN ALL-IP ENVIRONMENT WITH MINIMAL DISRUPTION TO CONSUMERS.

As the Commission recognized in the *USF/ICC Transformation Order*, “[n]etworks that provide only voice service . . . are no longer adequate for the country’s communication needs. Fixed and mobile broadband [networks] have become crucial to our nation’s economic growth, global competitiveness, and civic life.”¹² These networks, and the services they support, are “enabling entire new industries and unlocking vast new possibilities for existing ones,” and “changing how we educate children, deliver healthcare, manage energy, ensure public safety, engage government, and access, organize and disseminate knowledge.”¹³ Next-generation wireless and IP-based wireline networks and services thus promise to revolutionize how we live and work, and bring untold benefits to consumers. That is why the Commission has committed to adopt policies to “facilitat[e] industry progression to all-IP networks.”¹⁴

That transition will not be easy, and could be disruptive, as the dislocations on Fire Island following Superstorm Sandy show.¹⁵ But, as the record in this proceeding shows, the IP Transition is already upon us and unstoppable. A majority of commenters acknowledge this, and accept that trials could facilitate the transition.¹⁶ But, rather than embracing the possibilities and

¹² *USF/ICC Transformation Order* at ¶¶ 2-3 (citing the *National Broadband Plan* at xi).

¹³ *National Broadband Plan* at xi.

¹⁴ *2013 Numbering NPRM* at ¶ 48, citing *USF/ICC Transformation Order* at ¶ 1335.

¹⁵ See *National Broadband Plan* at 59 (noting that the transition raises critical issues regarding its potential impact on consumers, service providers and public policy objectives).

¹⁶ ADTRAN, Inc. Comments at 2-3; CenturyLink Comments at 1-2; Comcast at 1-3; Intelepeer, Inc. Comments at 1-3; Telecordia Comments at 1-2; Voice Communications Exchange Committee Comments at 4; New Jersey Rate Counsel Comments at 30-32 (laying out proposed criteria for evaluating trials); NCTA Comments at 2-3; NTCA Comments at 2-5; Michigan PSC Comments at 2-5; Granite Comments

benefits of the transition, some focus instead on what they fear could be lost. They fret that next generation networks and services will not be as reliable as existing services, or will be incompatible with certain equipment and services, or will lack critical features and functions. And they worry that market trials of the transition could jeopardize public safety and security if these issues are not addressed before consumers lose access to traditional wireline services.

The Department of Defense and other Federal Executive Agencies (jointly, “DoD/FEA”), for example, acknowledge that the transition will lead to “a more efficient, reliable, and functionally robust telecommunications network across the United States.”¹⁷ But, at the same time, they express concern that certain functions critical to public safety and security currently available over wireline and TDM-based networks may not work on wireless or IP-based networks.¹⁸ DoD/FEA argues that any trial thus should be structured to ensure that no functionality is lost for DoD/FEA, and that there is no forced “flash cut” for DoD/FEA.¹⁹ Likewise, Harris Corporation (“Harris”), which provides systems integration services for the FAA, asserts that forcing an IP transition in one of the 3,300 wire centers that provide the FAA with TDM services could jeopardize safe air travel in the U.S.²⁰ It argues that the Commission thus should limit any trial only to non-mission critical services or customers.²¹

at 1; Edison Electric Institute Comments at 3; City of New York Comments at 4-5; Cox Communications, Inc. Comments at 2-4; CWA Comments at 1; California PUC Comments at 2; Massachusetts Department of Telecommunications and Cable Comments at 1-2; Joint Comments of the Minnesota PUC and Minnesota Dept. of Commerce at 1-2.

¹⁷ DoD/FEA Comments at 1.

¹⁸ *Id.* at 3-4 (citing functionalities on which the FAA’s operational system relies).

¹⁹ *Id.* at 4-5.

²⁰ Harris Corp. Comments at 2-3.

²¹ *Id.* at 4-6.

Similarly, a number of advocacy groups, state commissions, and others argue that any trial should be voluntary and/or that consumers should have the ability to return to TDM-based wireline services at the conclusion of any trial based on concerns that next generation wireless and IP-based services might not adequately replace traditional wireline services.²² In particular, commenters express concern that wireless services may not be compatible with, *inter alia*, health monitoring devices, alarm systems, facsimile machines, and credit card validation equipment.²³ Others worry that wireless services may not provide the same 911 location accuracy and access as traditional wireline services.²⁴ And some fear that next generation wireless and IP-based services might not be as reliable as traditional wireline services because they rely on commercial power rather than power provided over the phone line itself, or may not have the same level of backup power as traditional wireline services, or may be more prone to network congestion.²⁵ They argue that consumers thus should be able to opt out of any trial or have the option of returning to traditional wireline services at the conclusion of any trial to ensure that they have access to features, functions, and services on which they have come to rely.

These parties raise important issues regarding the potential impact of the IP Transition, which must be addressed as that transition progresses, and voice legitimate concerns that any trial should be structured in a way that ensures that consumers do not lose essential features,

²² AARP Comments at 23-29; New York PSC Comments at 3; Public Knowledge Comments at 14; NJ Rate Counsel Comments at 16, 29; Michigan PSC Comments at 4.

²³ AARP Comments at 20, 25; New York PSC Comments 3; NJ Rate Counsel Comments at 22; Public Knowledge Comments at 13.

²⁴ NY PSC Comments at 3; NJ Rate Counsel Comments at 22; Public Knowledge Comments at 13-14.

²⁵ AARP Comments at 6; Massachusetts PSC Comments at 6; Indiana URC Comments at 2, New York PSC Comments at 3, APCO Comments at 4-5; Granite Comments at 12; Matrix Comments at 10; Public Knowledge Comments at 13; Rural Broadband Group Comments at 4.

functions and services during the trials or the IP Transition itself. But these issues and concerns reflect a fundamental misunderstanding of AT&T's proposal, and thus do not provide a basis for rejecting or deferring geographically limited trial runs of the transition.

Commenters' alarm that they may lose access to features, functions and services essential to public safety, national security, health or welfare are misplaced. Under AT&T's proposal, carriers will not be able to cut off existing services unilaterally or without notice to affected parties. As we previously have explained, the first step in any trial will be the submission by a carrier of a detailed plan identifying, *inter alia*, the geographic area in which it proposes to conduct the trial, the specific TDM-based services that will be discontinued in that area, the alternative wireless and wireline IP-based services that it will offer in place of those services, the other competitive alternatives available in that area, a proposed schedule for transitioning customers to alternatives and discontinuing existing services, information about the notice the carrier will provide to the public and any affected parties, information about any physical or other changes the carrier plans to make to its network, whether new or additional CPE may be required, and other information implicating important public interest considerations.²⁶ These considerations include how E911 services and services for the disabled will be provided once customers are transitioned off of TDM, and the steps the provider will take to address customers with specialized needs, such as customers with medical and alarm services or public safety and national security agencies that currently depend on wireline TDM services.²⁷ The plan also will identify any legacy regulatory obligations that would need to be addressed before the trial could proceed.

²⁶ AT&T Comments 11-15.

²⁷ *Id.*

The Commission then will put the carrier's detailed plan out for public comment. At that point, interested parties can raise any issues, concerns, and/or objections they have with the proposed transition plan, including any concerns they may have about the reliability and/or particular features, functions and capabilities (or lack thereof) of the services a carrier plans to offer in place of existing services. Thus, all parties affected by the transition (consumers, industry and policy makers) will have ample opportunity to engage in an open, frank and informed dialogue concerning any potential gap in technology, services or policy, and whether, how and by whom such gap should be filled.

In some cases, the solution may entail changes to the next-generation services a carrier plans to offer in place of existing services to ensure that they will support essential features and functions following the transition, or other modifications to the proposed transition plan. In others, the Commission and other stakeholders may conclude that particular features and functions no longer are necessary or make sense in an all-IP world. Or they may find that entities that historically relied on TDM technology and services will have to adapt their own products and services to be compatible with next generation wireless and IP-based services. In that case, the solution may be to modify the carrier's proposed transition schedule (either for certain services or for particular customers) to allow affected entities and customers time to adapt.

In this regard, the Commission must recognize that existing TDM-based services were not designed specifically to accommodate many of the devices and services about which parties express concern (including alarm monitoring services, health monitoring devices, fax machines, and others); rather, those devices and services were designed around TDM. And just as certain alarm monitoring services had to adapt when analog cellular service was terminated, and

consumer electronic manufacturers had to design and build (and consumers to purchase) new TV sets and other devices to prepare for the DTV transition, so too will many consumers and other affected entities that rely on TDM technology and services have to adapt to the rapidly emerging all-IP ecosystem. But that is the point of the trials AT&T proposed and the IP transition itself – to put all parties that may be affected by the transition on notice of the need to adapt, and to give them the time and opportunity to do so.

Thus, under AT&T’s proposal, no trial will begin, and no services will be withdrawn, until all interested parties have had the opportunity to express their concerns and objections to any aspect of a proposed trial. Nor will the Commission approve a trial until it is satisfied that a carrier’s transition plan adequately safeguards consumers, public safety and welfare, and national security. Even then, after a trial has been approved and begun, the Commission will retain the authority to step in and suspend a trial (or a portion thereof) if unforeseen problems arise. Thus, rather than justifying rejection of or delay in implementing AT&T’s proposal, the challenges and concerns identified in the record emphasize the importance of moving ahead while a TDM safety net remains in place.

II. THE COMMISSION SHOULD REJECT CLEC ATTEMPTS TO USE THIS PROCEEDING TO FURTHER THEIR OWN SELF-INTEREST AND REGULATORY AGENDA.

A. The Task Force Should Not Proceed With Stand-Alone Trials of IP-to-IP Interconnection for Voice Services.

As AT&T explained in its initial comments, the Task Force should not proceed with separate trials of so-called “VoIP interconnection” because they would serve no useful purpose, nor would they yield any useful or relevant information regarding the TDM-to-IP transition. Although the *Public Notice* correctly recognizes the importance of scaled IP interconnection to that transition, the trials it envisions – which ostensibly would be designed 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”²⁸ -- would not advance that ball. Indeed, the industry already has identified the need for standards, and is working collaboratively to address the critical technical issues (such as the development of the ENUM numbering database) that will facilitate broader deployment of IP-to-IP interconnection. As Verizon aptly observes, as the industry works through these issues, it would be “most efficient for parties to engage each other on a commercial basis without the distraction of an IP interconnection trial and the potential for proscriptive regulation.”²⁹ Moreover, because the geographically-limited trials of IP-based interconnection proposed in the *Notice* fail to reflect IP network engineering principles and the lessons learned from the existing Internet peering and transit environment, they would inject artificial inefficiencies and unhelpful limitations into these arrangements. In short, such a trial “would likely do more harm than good.”³⁰

Most of the CLECs that submitted comments agree that IP interconnection trials are unnecessary, but for reasons that are grounded in their regressive regulatory agenda. That is, those companies argue that the Commission should attempt to promote IP-to-IP interconnection not by facilitating market-based solutions to the common issues facing the industry in the TDM-to-IP transition, but rather through regulatory fiat – specifically, by finding that IP interconnection arrangements are governed by Sections 251 and 252 of the Telecommunications Act.³¹ As one CLEC commenter tellingly put it, their preferred approach to IP interconnection is

²⁸ Public Notice at 3 (emphasis added).

²⁹ Verizon Comments at 3.

³⁰ *Id.* at 2.

³¹ See Comptel Comments at 6-15; Cbeyond et al. Comments at 11-18; Texaltel Comments at 2; Granite Comments at 10; Sprint Nextel Comments at 5-9; XO Comments at 7-12; and American Cable Association Comments at 4-8.

a “‘shotgun marriage’ . . . , and regulators must continue to hold the shotgun”³² – undoubtedly aimed only at the ILECs.

As much as that approach may appeal to the CLECs, however, it has no basis in the law or sound public policy. As AT&T explained in its initial Comments – and has detailed in still other filings – the CLECs’ effort to shoehorn IP interconnection into the Section 251/252 framework cannot be reconciled with the plain language of those statutory provisions or other applicable provisions of law.³³ Just as importantly, imposing the Section 251/252 straightjacket, which is rooted in a TDM-based world in which the ILECs possessed a now long-gone monopoly, on next generation interconnection arrangements would be bad policy. As Comcast notes, “The Commission should be especially wary of reflexively applying regulatory models developed for the legacy Title II world to the IP ecosystem.”³⁴ This is because “many of the legacy Title II economic regulations as well as those that dictate the details, forms and jurisdictional oversight of interconnection are fundamentally not applicable to or logical for an IP voice network.”³⁵ Accordingly, trying to superimpose the Section 251/252 framework on IP interconnection would be entirely counter-productive to the Commission’s worthy goal of promoting IP interconnection and facilitating the TDM-to-IP transition.

More to the point of these comments, the CLECs’ concept of interconnection as a compulsory exercise – with the compulsion aimed solely at ILECs – plainly is not conducive to

³² Texaltel Comments at 2.

³³ For a fuller treatment of these legal issues, see Comments of AT&T, *Connect America Fund et al.*, WC Docket Nos. 10-90 *et al.*, at 9-34 (filed Feb. 24, 2012); Reply Comments of AT&T, *Connect America Fund et al.*, WC Docket Nos. 10-90 *et al.*, at 9-25 (filed Mar. 30, 2012). See also AT&T’s reply comments in GN Docket No. 12-353, filed on February 25, 2013.

³⁴ Comcast Comments at 4.

³⁵ *Id.* See also CenturyLink Comments at 2 (“It would be a costly mistake to apply the existing regulatory-based TDM interconnection model to IP-to-IP interconnection for voice services . . .”).

the concept of a trial of IP interconnection. If the technical impediments that AT&T described were not enough reason to table the Task Force's proposal to conduct such trials, the CLECs' efforts to use them as a means of advancing their pro-regulatory demands should definitively put the idea to rest. Indeed, it is precisely this insistence on interconnection as a "shotgun marriage" -- or, as yet another CLEC candidly describes it, the ILECs' "regulatory burden"³⁶ -- that is impeding progress in achieving such agreements. In this regard, Comptel has it exactly backwards when it claims that the absence of interconnection agreements with ILECs proves that regulatory intervention is required.³⁷ To the contrary, the difficulty in achieving those agreements flows directly from the CLECs' refusal to meaningfully entertain commercial approaches to negotiating and implementing such arrangements, demanding instead that the terms and conditions of IP interconnection be forced on the ILECs pursuant to the provisions of Sections 251 and 252 of the Act.

Verizon's ongoing experience with CLECs in Massachusetts -- a case that Comptel paradoxically claims demonstrates the ILECs' alleged intransigence³⁸ -- vividly illustrates this point. When Verizon informed the Commission in a prior filing that it had negotiated a commercial agreement covering VoIP traffic, the CLECs' did not respond by pursuing their own independent commercial negotiations. Instead, a group of carriers filed a petition with the Massachusetts Department of Telecommunications and Cable demanding that Verizon submit that contract for review and approval by that state commission under Sections 251 and 252 of the

³⁶ Peerless Comments at 5.

³⁷ Comptel Comments at 7.

³⁸ See Comptel Comments at 7-8 and n.7.

Act so that the petitioners could “opt-in” to that deal, rather than negotiating their own.³⁹ In fact, Comptel acknowledges that anything other than that result would be unacceptable, dismissing Verizon’s offer to negotiate commercial agreements with those carriers because it “would not afford the protections of Section 251/252 as Congress intended.”⁴⁰

In short, the CLECs have made it abundantly clear that they will not accept any approach to IP interconnection other than one that imposes on the ILECs all of the “regulatory burdens” of Sections 251 and 252, regardless of whether the requirements of those statutory provisions have any applicability in an all-IP world. Yet, when the ILECs properly refuse to bend to that strategy – and the CLECs thus fail to obtain their one-size-fits-all mandated interconnection agreement -- the CLECs contend that this result demonstrates that the ILECs must be forced to enter into such arrangements under that statutory framework.⁴¹

³⁹ *Id.*

⁴⁰ *Id.* at 15. Sprint, apparently without first attempting any negotiations responsive to Verizon’s offer, likewise simply assumes that was not made in “good faith.” Sprint Comments at 3 n.2.

⁴¹ Comptel makes a similar argument concerning a recent Section 251/252 arbitration before the Illinois Commerce Commission (“ICC”) involving Sprint and AT&T’s ILEC affiliate, AT&T Illinois. Comptel Comments at 16. But in doing so, it fails to accurately describe AT&T’s position in that case. Contrary to Comptel’s suggestion, AT&T did not categorically refuse to amend its interconnection agreement with Sprint to permit IP interconnection. Instead, as the Arbitration Decision shows, AT&T proposed contract language, endorsed by ICC Staff, that would allow Sprint to request IP-to-IP interconnection during the term of the parties’ interconnection agreement, but that would defer until such a request was made all arguments concerning whether AT&T was required to provide such interconnection and if so, on what terms and conditions. *SprintCom, Inc. et al, Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company*, Ill. Commerce Comm., Dkt. No. 12-0550, Arbitration Decision, at 31-32 (June 26, 2013), <http://www.icc.illinois.gov/docket/files.aspx?no=12-0550&docId=200154>. The Arbitrator adopted that language, finding that the ICC was not even in a position to determine whether it had authority to require IP interconnection because Sprint had not presented “an IP-to-IP interconnection proposal of sufficient detail to allow [the ICC] to assess whether such a plan is technically feasible or otherwise comports with the requirements of the 1996 Act.” *Id.* at 34. The Arbitrator rejected Sprint’s proposed ICA language because it “improperly finds that IP interconnection is technically feasible,” a determination the Commission was not prepared to make on that record. *Id.*

This is evidence of a regulatory agenda, not a regulatory need. The “real-world data” sought by the Task Force to inform the Commission’s efforts to facilitate the IP transition can be found not in the ILECs’ refusal to accede to CLECs’ regressive regulatory demands but in the experience already gained in the market for IP services, which shows that the regulation the CLECs seek is not necessary. Notwithstanding (or more likely because of) the lack of statutory or regulatory obligations and oversight, the Internet’s constituent networks (large and small) have reached efficient interconnection agreements anyway. Unregulated peering and transit arrangements—over which millions of over-the-top VoIP calls are exchanged every day—have succeeded for over twenty years in propelling the phenomenal growth of the Internet. There is absolutely no reason to believe that this process will not continue as providers transition from TDM to IP.

Again, the Task Force does not need to resolve the CLECs’ legal claims in this context, because, as most of the CLECs themselves advocate, it should not proceed with the proposed IP interconnection trials in the first place. But as the Task Force moves forward with its important work in assisting and advising the Commission, it should not lose sight of the peril that the CLECs’ backward-looking regulatory approach to IP interconnection poses to the IP transition itself.⁴²

Although the record developed here shows that the Task Force should not proceed with the proposed IP interconnection trial, some aspects of the proposals certain parties have made concerning the conduct of any such trial warrant brief discussion. For example, although Sprint argues that a trial is unnecessary, it contends that if one is conducted it must not only be governed by Section 251/252, but it must include affiliates of ILECs because ILECs purportedly

are “hiding” IP functions and assets in those affiliates.⁴³ This assertion is wrong on the facts and on the law. As for the facts, AT&T showed in the Illinois arbitration proceedings with Sprint that the only equipment at which it would be technically feasible for Sprint to establish an IP-to-IP interconnection arrangement with AT&T are wholly owned and operated by AT&T Corp. There is absolutely nothing to support Sprint’s claims that they have been “hidden” in that company, much less put there to evade any obligations under the Act. Indeed, the only evidence in the Illinois arbitration shows that AT&T’s decision to use an affiliate company to provide Internet service was based on financial, not competitive, considerations.⁴⁴

Sprint fares no better on the law. Even if the interconnection obligations established in Section 251(c) were applicable to IP interconnection – and they are not – those requirements do not extend to any company other than the ILECs. Section 251(c)(2)(B) provides that interconnection is to be “at any technically feasible point within the [incumbent] carrier’s network.” Accordingly, the FCC, in promulgating the initial set of rules implementing the Telecommunications Act, noted that section 251(c)(2) gives competing carriers the right to deliver traffic terminating on an incumbent LEC’s network at any technically feasible point “on

⁴³ Sprint Comments at 6.

⁴⁴ *SprintCom, Inc. et al, Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company*, Ill. Commerce Comm., Dkt. No. 12-0550, AT&T Illinois’ Initial Post-Hearing Brief, at 82-83 (March 22, 2013), available at <http://www.icc.illinois.gov/docket/files.aspx?no=12-0550&docId=195634> (last checked August 7, 2013). Similarly, Peerless claims (at 5-6) that the record from the Illinois arbitration shows that the AT&T ILECs “already own[] IP network infrastructure,” which they provide to the unregulated affiliate AT&T Corp. and which, according to Peerless, they should be required to provide as points of interconnection to unaffiliated CLECs. However, the uncontroverted evidence in that arbitration is completely to the contrary. In fact, AT&T explained that none of that “infrastructure,” including the various pieces of equipment identified by Peerless (at 5-6), provides a technically feasible point for IP-to-IP interconnection on the ILEC’s network. See AT&T Illinois’ Initial Post-Hearing Brief, at 80. Moreover, and contrary to both Sprint’s and Peerless’s claims, the record in that case also demonstrates conclusively that all IP traffic from AT&T customers is carried on AT&T Corp.’s network, and that the “connection” between AT&T Illinois and AT&T Corp. involves the backhaul of IP traffic to the AT&T Corp. switch, and thus is not an “interconnection” under Section 251(c)(2) of the Act. *Id.* at 80, 84-85.

that network.”⁴⁵ The resulting rule thus explicitly limits interconnection to “any technically feasible point *within* the incumbent LEC’s network.”⁴⁶ Indisputably, then, any interconnection required under Section 251 must be with the ILEC, not its affiliates.⁴⁷

Finally, CLECs such as Peerless and HyperCube – which argue that the ILECs “should not be able to dictate conditions for IP-based interconnection”⁴⁸ – proceed, with nary a hint of irony, to demand that the Commission dictate conditions for IP-based interconnection.

HyperCube, for example, seeks to have the Commission establish a requirement in any trials “for direct IP-IP interconnection whenever a requesting carrier has a volume of traffic to exchange that is equivalent to at least four T-1s.”⁴⁹ Peerless in turn would have the Commission require the ILEC in each trial market to interconnect with the CLECs’ tandems and recognize end offices as being subtended to those tandems.⁵⁰ Presumably dictating conditions for the trials is not a concern, so long as they are the CLECs’ conditions.

That is not to say, of course, that there is anything necessarily improper about what Peerless and HyperCube (and likely still other CLECs) might be seeking. However, the point is that those are issues that are best addressed by the parties in commercial negotiations. Imposing them as a condition of a trial interjects precisely the types of artificialities and inefficiencies that

⁴⁵ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98 (Aug. 8, 1996), ¶209.

⁴⁶ 47 C.F.R. §51.305(a)(2) (emphasis added).

⁴⁷ Comptel makes a similar error in its claim that “Border Elements” in AT&T’s network “could easily be configured to serve as points of interconnection for intercarrier VoIP exchange.” Comptel Comments at 25. The “IP Flexible Reach” service that Comptel points to as support for this claim, however, is provided by AT&T Corp., not an AT&T ILEC. See Comptel Comments, Attachment A, Figure 1.

⁴⁸ HyperCube Comments at 16.

⁴⁹ HyperCube Comments at 17.

⁵⁰ Peerless Comments at 7.

would make any such effort a waste of time and resources. It is thus yet another reason why the Task Force should not proceed with any stand-alone trial of IP-to-IP interconnection for voice services.

B. The Comments Confirm that Copper Retirement Is Not an Appropriate Subject for a Trial.

As AT&T explained in its initial Comments, the Commission should not conduct a trial on “issues related to copper retirement,” including a trial in which an ILEC sells some or all of its copper loops to a competitive LEC.⁵¹ The industry’s real world experience with copper retirement over the past decade shows that there is no need for a trial – the existing rules work, providing a process for retiring redundant or unnecessary facilities without any adverse effect on competition. Nor does the transition to an all IP-network indicate a need for trials, much less for any revision to the current rules for retiring copper loops. To the contrary, that transition reinforces the need to permit AT&T and other ILECs to continue to use their best business judgment to efficiently operate their networks, including, when necessary, by retiring copper facilities in accordance with the Commission’s rules.

Nothing in the initial comments supports a contrary result. Indeed, the only two parties that directly commented on the possibility of copper retirement trials, TelePacific Communications and XO Communications, agree that the Commission should not conduct such trials.⁵² However, their rationale essentially recycles their prior claims that the Commission should suspend the existing rules and then replace them with broad and intrusive requirements that would second-guess ILEC decisions about how best to operate and manage their networks. Simply stated, these companies oppose the idea of conducting copper retirement trials – and the

⁵¹ See Public Notice at 11.

⁵² Comments of TelePacific Communications, July 8, 2013, at 2-3 (“TelePacific Comments”); XO Comments at 17-19.

possibility of purchasing retired copper -- because they oppose the ability of the ILECs to retire copper in the first place. Focused on their own business plans, which involve the use of copper facilities to provide broadband services, they reject the notion of purchasing retired facilities to provide their own services. Instead, they envision forcing the ILECs to make copper loops available in perpetuity, even if they are “retired.” As TelePacific bluntly put it, the Commission should “[clarify that retirement] does not relieve the ILEC of its duty to provide unbundled access to copper loops that remain in the network.”⁵³

As AT&T has previously detailed in its comments in the docket considering the copper retirement rules,⁵⁴ the CLECs’ position has no basis in either law or sound public policy. Contrary to these parties’ claims, ILECs’ have no “duty” to provide CLECs access to retired copper. In the *Triennial Review Order* (“TRO”), the Commission rejected CLEC proposals to require ILECs to maintain and unbundle copper loops even where the ILECs overbuild such loops with fiber and no longer have any use for such copper facilities. Specifically, in a “brownfield” scenario in which an ILEC has overbuilt existing copper loops with Fiber to the Home (“FTTH”) or Fiber to the Curb (“FTTC”) loops, the ILEC retains the flexibility to retire the existing copper loops, provided it offers CLECs a 64 kbps voice grade transmission path over the fiber loop instead.⁵⁵ Thus, under the existing unbundling rules, after an ILEC has upgraded its network and retired unnecessary copper facilities, CLECs have no right to compel ILECs to lease them retired copper loops for their provision of broadband service.

⁵³ TelePacific Comments at 3.

⁵⁴ See Comments of AT&T Inc., WC Docket. No. 12-353, RM-11358, March 5, 2013.

⁵⁵ *Id.* at 17144-45 ¶ 277; 47 C.F.R. § 51.319(3)(iii).

This approach reflected the Commission’s determination that forced sharing obligations, including with respect to copper loops in FTTH, FTTC, or hybrid loop build-out areas, could deter ILECs from investing in next-generation networks and also discourage CLECs from building out their own networks.⁵⁶ Yet a regime of forced sharing is precisely what these CLECs are seeking. Indeed, if anything, they are looking for something even worse – a system in which ILECs would be forced, solely for the benefit of a small group of their competitors, to incur the substantial costs of maintaining unnecessary copper facilities that the ILECs have determined in their business judgment to retire.

It cannot be the case that the ILECs must maintain a separate network simply to provide some small set of companies with access to UNEs. In fact, in adopting its existing unbundling framework, the Commission rejected, as “unnecessary,” proposals -- virtually identical to those pushed by these CLECs now -- that “would require affirmative regulatory approval prior to the retirement of any copper loop facilities” by ILECs.⁵⁷ And, importantly, the Commission held that the limited obligation to provide access to the TDM features of hybrid loops did *not* prevent ILECs from retiring copper facilities.⁵⁸ In doing so, the Commission acknowledged that requiring ILECs to maintain two redundant networks would impose additional costs on ILECs.⁵⁹

⁵⁶ See *TRO*, 18 FCC Rcd at 16984 ¶ 3, 17141-42 ¶ 272, 17149-50 ¶ 288. Courts have recognized the substantial costs of forced sharing as well. See, e.g., *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 429 (1999) (Breyer, J., concurring in part and dissenting in part) (compulsory sharing can undermine the incentives to “undertake the investment necessary to produce complex technological innovations knowing that any competitive advantage deriving from those innovations will be dissipated by the sharing requirement”); *USTA I*, 290 F.3d at 424-25; *Verizon New England v. Maine Public Utils. Comm’n*, 509 F.3d 1, 9 (1st Cir. 2007) (forced sharing can “retard investment, handicap competition detrimentally, and discourage alternative means of achieving the same result that could conceivably enhance competition in the long run”).

⁵⁷ *TRO*, 18 FCC Rcd at 17146-47 ¶ 281; see also *id.* at 17152-53 ¶ 294 n.847.

⁵⁸ See *id.* at 17152-53 ¶ 294 n.847, 17153-54 ¶ 296.

⁵⁹ *Id.* at 17146-47 ¶ 281 n.823 (citing record evidence).

Neither TelePacific nor XO provides a basis here for imposing such a requirement, and its concomitant costs, on the ILECs by preventing them from retiring unnecessary copper facilities. For example, TelePacific baldly asserts that the ILECs are “better able” to provide access to copper loops because those loops are “intertwined with other ILEC plant.”⁶⁰ This contention, however, utterly ignores the fact that, for nearly a decade now the CLECs – including TelePacific – have been expected to build out their own next generation networks, seeking “innovative network access options” to provide broadband services to their customers.⁶¹ Yet TelePacific’s conception of “innovation” appears to be limited to having the ILECs remain at its beck and call *ad infinitum*, incurring the expense of maintaining otherwise unnecessary copper facilities because of the possibility that the CLEC might want them someday.

For its part, XO, with tongue presumably planted firmly in cheek, argues that the Commission should not proceed with trials regarding the retirement and possible sale of copper loops because the ILECs “simply would be required to replace one form of regulation with another,” including new rules to govern the sale price of the retired facilities.⁶² It is impossible to take this argument against “new” regulation seriously when, in virtually the same breath, XO asserts that the Commission should completely revise the existing facilities-retirement rules by, among other things, abolishing the notification procedures for short-term modifications to the ILECs’ networks and establishing a new “formal” process for case-by-case approval of any proposed copper loop retirements.⁶³ More to the point, XO is simply wrong – there is no need

⁶⁰ TelePacific Comments at 3.

⁶¹ *TRO*, 18 FCC Rcd at 17146-47 ¶ 272.

⁶² XO Comments at 18-19.

⁶³ *Id.* at 19.

for new regulation of any form governing the retirement of copper facilities. The existing rules, which do not impose any obligations concerning how copper may be made available to potential purchasers once it is retired, have worked well in the ten years since they were adopted, and any issues concerning pricing or access to retired facilities can be best addressed through voluntarily-negotiated commercial arrangements.

CONCLUSION

The Commission should authorize without further delay the comprehensive, geographic trials that AT&T has proposed to identify and resolve issues posed by the IP Transition while a TDM safety net is still in place so that an orderly transition can occur, along with the proper planning to make that happen.

Respectfully submitted,

/s/ Christopher Heimann
Christopher M. Heimann
Robert Barber
Gary L. Phillips
Peggy Garber
AT&T SERVICES, INC.
1120 20TH STREET NW
Suite 1000
Washington, D.C. 20036
(202) 457-3058 (phone)
(202) 457-3074 (facsimile)

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