

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

In the Matter of)	
)	
Technology Transitions Policy)	GN Docket No. 13-5
Task Force)	
)	
AT&T Petition to Launch a Proceeding)	GN Docket No. 12-353
Concerning the TDM-to-IP Transition)	
)	
)	

**JOINT COMMENTS OF ACN COMMUNICATIONS SERVICES, INC.,
ACCESS POINT, INC. AND MATRIX TELECOM, INC.**

Eric J. Branfman
Joshua M. Bobeck
Bingham McCutchen LLP
2020 K St., NW
Washington, D.C. 20006
202.373.6000 (Tel.)
202.373.6001 (Fax)
eric.branfman@bingham.com
josh.bobek@bingham.com

March 31, 2014

*Counsel for ACN Communications
Services, Inc., Access Point, Inc. and
Matrix Telecom, Inc.*

ACN Communications Services, Inc. (“ACN”), Access Point, Inc. (“Access Point”) and Matrix Telecom, Inc. (“Matrix”) respectfully submit these Joint Comments in response to the Commission’s February 28, 2014 Public Notice¹ in these dockets inviting comments on AT&T’s Proposal for Wire Center Trials,² following the Commission’s invitation for such experiments in the *Technology Transitions Order*.³ ACN, Access Point and Matrix each welcomes AT&T’s Wire Center Trial proposal and hopes to participate in the trials where they have customers in the Carbon Hill and Kings Point Wire Centers, but finds that AT&T’s proposal falls well short of the benchmarks the Commission established. AT&T’s proposal is highly flawed because it fails to provide a detailed description of how it intends to meet its wholesale obligations during the trial.

I. Introduction and Summary

ACN, Access Point and Matrix are each competitive providers of telecommunications services. ACN, Access Point and Matrix each operate nationwide and sell Voice, Data, Wireless and IP services to allow customers to select the solution that best fits their needs today while providing them alternatives if their telecommunications needs evolve over time. Many of the customer locations where ACN, Access Point or Matrix provides service are locations where the only facilities-based supplier for that product is the ILEC.

For ACN, Access Point or Matrix to duplicate the ILEC’s network at all of its customers’ locations would be prohibitively expensive. ACN, Access Point and Matrix therefore do not own their own telecommunications network or facilities. Instead, they each procure wholesale service

¹ Public Notice, *Commission Seeks Comment On AT&T’s Proposal For Service-Based Technology Transitions Experiments*, GN Docket Nos. 12-353 and 13-5, DA 14-285 (Feb. 28, 2014).

² See AT&T Proposal for Wire Center Trials, GN Docket Nos. 13-5, 12-353, filed Feb. 27, 2014 (“AT&T Proposal”).

³ *Technology Transitions*, et al., GN Docket No. 13-5 et al., Order, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-5 (rel. Jan. 31, 2014).

from other carriers, predominantly from the RBOCs and other ILECs. In particular, they rely on “Commercial Agreements” with the RBOCs under section 271 for continued provision of UNE-P replacement service. Under these commercial agreements, such as AT&T’s Local Wholesale Complete (“LWC”) Agreement, the RBOCs provide ACN, Access Point and Matrix with an unbundled DS0 loop, packaged together with local switching and shared transport. While the RBOCs must provide DS0 loops pursuant to the Commission’s current unbundling rules under section 251,⁴ they are required to provide local switching and shared transport under section 271.² The prices for this package of elements are set by the ILECs and are generally non-negotiable. A review of AT&T’s commercial agreements on file with the FCC shows little, if any, variation in prices, terms or conditions.

On January 31, 2014, the Commission released the *Technology Transitions Order* and invited companies to propose service-based experiments. The Commission emphasized that proposed experiments must not undermine the “enduring values” of protecting public safety, ensuring universal service, promoting competition, and protecting consumers. ACN, Access Point and Matrix’s comments will focus primarily on AT&T’s proposal in relation to the Commission’s enduring value of promoting competition.

In the *Technology Transitions Order*, the Commission indicated that it expected that AT&T would notify wholesale customers regarding their ability to participate in the experiment voluntarily and the types of replacement services that would be available during the trial.⁵ Similarly, the *Technology Transitions Order* indicated that trial proposals should “offer to replace wholesale inputs with services that offer substantially similar wholesale access” “at

⁴ See 47 C.F.R § 51.319(a)(1).

⁵ *Technology Transitions Order* ¶ 59.

equivalent prices, terms, and conditions.”⁶

The Commission further required an applicant to explain:

- Its “plan to ensure that the same type of wholesale customers can continue to use its network”
- “[T]hat the access provided during the experiment...is functionally equivalent to that provided immediately before the experiment”
- “[T]he applicant’s plan to ensure that neither the prices or costs of such access do not increase”
- How “neither wholesale nor retail customers [will be] penalized as a result of the experiment.”⁷

Like the notice requirement applicable to retail customers, the *Technology Transitions Order* requires that wholesale customers receive “clear, timely and sufficient notice of any service-based experiment,” observing that such notice “is critical” to “fulfilling” the Commission’s consumer protection responsibilities as well as [its] responsibilities to protect and promote competition.”⁸ Specifically, the *Technology Transitions Order* states that it requires

applicants to demonstrate that they will provide notice of: the nature of any relevant network changes; whether customers may opt in or opt out of the experiment after it has begun; the timing of any changes; what features of the provider’s existing technology will no longer be available on the new technology and how that may impact third-party devices and services the customer uses (e.g., medical monitoring services); how the provider’s services will change including any differences in prices, terms and conditions; where a customer may go for more information; and any other details regarding the experiment that likely will be of relevance to customers.⁹

While the rhetoric in AT&T’s application conveys its recognition of the importance of

⁶ *Id.*

⁷ *Technology Transitions Order* Appx. B, ¶ 35.

⁸ *Id.* at ¶ 70.

⁹ *Id.* at Appx. B ¶ 46.

competition and wholesale services,¹⁰ AT&T's trial plan is at best vague and incomplete regarding wholesale replacement products and timeframes, and lacks the assurances required under the *Technology Transitions Order*.

Under AT&T's Wire Center Trial Proposal, it is unclear how AT&T intends to provide ACN, Access Point, Matrix, and other competitive carriers the underlying LWC service that ACN, Access Point and Matrix currently use to serve their customers. If the Commission allows AT&T's Trial Plan to proceed, it must only do so on the condition that AT&T revise its plan to provide more specific information regarding its plans for replacing its LWC service with an IP-based alternative.

II. AT&T's Proposal Does Not Ensure Competitors Have Access To Equivalent Wholesale Inputs at Similar Prices During The Experiment

The *Technology Transitions Order* specifically requires AT&T, during the trial, to provide wholesale customers participating in the trial with replacement wholesale services that are equivalent to their current services, under similar rates, terms and conditions as they currently receive for their existing wholesale services.¹¹ AT&T's proposal does not comply with this requirement.

AT&T recognizes it has wholesale obligations during the trial but its proposal fails to provide the necessary details regarding AT&T's replacement wholesale services as is required under the *Technology Transitions Order*. While stating that "[r]etirement of wholesale service ... remain[s] a critical issue in the conversion to an all-IP world,"¹² AT&T's application lacks substantive detail regarding wholesale replacement services, including product information,

¹⁰ See AT&T Proposal, p. 5. n.2.

¹¹ *Technology Transitions Order*, ¶ 59.

¹² AT&T Proposal p. 10.

rates, terms and conditions, and timing of availability.

There is no question that CLECs “currently are purchasing wholesale services in both proposed test wire centers.”¹³ In Carbon Hill, “the bulk of the wholesale services” purchased are either LWC or resale.¹⁴ In Kings Point, CLECs purchase more wholesale services, including LWC, Ethernet, UNE loops and resold residential and business services.¹⁵ ACN, Access Point and Matrix each serves customers in both wire centers through the purchase of LWC.

AT&T asserts that its plan includes “a description with details of how [AT&T] intend[s] to proceed with respect to wholesale issues.”¹⁶ AT&T also states that it

endeavored to identify the extent to which wholesale customers are active in the two trial wire centers, as well as the legacy TDM products and services they are obtaining and their IP-based replacements, and to develop plans for engaging those customers in the trials and encouraging them to purchase the replacement products and services.¹⁷

These plans, if they exist, are not included in its proposal. The plan that AT&T filed with the Commission instead asserts only that AT&T is “working diligently to develop IP replacement services that it will make available” and it expects to “complete those development efforts, as well as those aimed at developing an IP-based alternative to the LWC product, as soon as possible, although it is likely the final commercial products will not be available until the trials already are underway.”¹⁸ Thus, the only thing that is clear about AT&T’s plans for addressing the wholesale aspect of its business is that AT&T intends to use the trial to get a head

¹³ AT&T Wire Center Trial Operating Plan, p. 45 (“AT&T Operating Plan”).

¹⁴ *Id.*

¹⁵ *Id.* at 46.

¹⁶ AT&T Proposal, p. 10.

¹⁷ *Id.* at 27.

¹⁸ *Id.*

start over its wholesale competitors. AT&T explicitly proposes to offer its retail customers new IP-based products in the trial wire centers before its wholesale customers can offer such products. This aspect of its proposal directly conflicts with the *Technology Transitions Order* requirement that wholesale customers not be “penalized as a result of the experiment.”¹⁹

Despite the lack of detailed wholesale plans, AT&T suggests that it “will proactively engage [its] wholesale customers in these wire centers to offer them the opportunity voluntarily to migrate from their existing TDM-based services.. to... replacement products.”²⁰ This process will include industry-wide letters and “direct outreach by sales teams.”²¹ Rather than identify specific product details and pricing, as the Commission requires, AT&T expects that its wholesale services will comply with the *Technology Transitions Order*’s requirements as a result of “negotiations” with CLECs.²² AT&T speculates that the “end results of ...negotiations would likely encompass terms such as those identified by the Commission in Appendix B” of the *Technology Transitions Order*.²³

AT&T’s proposal lacks adequate detail and is far too heavily redacted to comply with the *Technology Transitions Order*. For example, it is unclear as to the basis for AT&T’s redaction of its service transition timeline, which does not at all address UNEs or LWC.²⁴ And while AT&T provides “Product Data Sheets” for LWC in both Kings Point and Carbon Hill, these sheets are heavily redacted, making it impossible for commenting parties, including those directly impacted

¹⁹ *Technology Transitions Order* Appx. B, ¶ 35.

²⁰ AT&T Operating Plan, p. 46.

²¹ *Id.*

²² *Id.* at 47.

²³ *Id.*

²⁴ *See* Exhibit D.

by the proposed experiment to determine whether they contain any useful information.²⁵

It is remarkable that well over a year after petitioning the Commission to conduct wire center trials, AT&T now proposes wire center trials that do not address the *Technology Transitions Order*'s core concepts. AT&T fails to explain to the Commission and its wholesale customers the type of wholesale replacement services it intends to offer, or the particular rates, terms and conditions applicable to those services. While AT&T promises to inform wholesale customers using direct sales outreach, it is difficult to comprehend what the content of such outreach might contain, considering the absence of specifics AT&T has provided to date. This lack of detail prevents the Commission from determining that the proposed trial complies with the Commission's requirements and is in the public interest. AT&T must be required to correct this gap as a condition of proceeding with the trial.

The Commission must require AT&T to identify the terms, prices and conditions for its replacement products as a condition of moving forward with its proposal, and provide assurance that AT&T's wholesale customers will have access to its new products at the same time that AT&T makes those products available to its retail customers. Because this exercise is an experiment, designed to provide the Commission with data regarding the impact of the technology transition on the core values underlying the Communications Act,²⁶ the details of replacement products cannot be left hidden behind the assertion that AT&T will offer to enter into "commercial" agreements and unsubstantiated claims that wholesale customers such as ACN, Access Point and Matrix will be able to "drive a hard bargain."²⁷

Particularly in the business market, AT&T possesses market power advantages largely

²⁵ See Exhibit E.

²⁶ *Technology Transitions Order* ¶ 171.

²⁷ AT&T Operating Plan, p. 47.

because its competitors lack access to non-AT&T facilities for these types of users in most cases.²⁸ A technology transition trial will not eliminate these market power advantages. In fact, without adequate protective measures, the technology trial poses significant risks to competition in the business market, where competitors are reliant on the ILEC for transmission facilities. The Commission recognized this danger in adopting the requirements regarding wholesale access in the *Technology Transitions Order* in the first place. Therefore, the Commission should require AT&T to identify its proposed wholesale rates, terms and conditions so they can properly be considered in the trial framework.

Conclusion

As demonstrated in these Joint Comments, AT&T's trial proposal is missing information that is critically important to the Commission assuring itself that competition will be preserved under AT&T's plan. Within 60 days, AT&T should be required to supply the missing information regarding its wholesale replacement services, at which time the Commission will reconsider AT&T's proposal on a more complete record.

²⁸ *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*, 22 FCC Rcd 21293, ¶ 41 (finding that competitors light only 0.25% of the commercial buildings in the six covered MSAs combined.); *Petitions of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis, St. Paul, Phoenix and Seattle Metropolitan Statistical Areas*, 23 FCC Rcd 11729 ¶ 40 (finding that competitors served approximately 0.17 to 0.26 percent of all commercial buildings in the four MSAs combined.); *United States v. SBC Communications, Inc.*, Complaint, No. 1:05-cv-02102, ¶ 15 (D.D.C. Oct. 27, 2005); *United States v. Verizon Communications Inc. and MCI, Inc.*, Complaint, No. 1:05-cv-02103, ¶ 15 (D.D.C. Oct. 27, 2005) (in "the vast majority of commercial buildings in their territories, [AT&T] is likely the only carrier that owns a last-mile connection to the building.").

Respectfully submitted,

/s/Eric J. Branfman

Eric J. Branfman
Joshua M. Bobeck
BINGHAM MCCUTCHEN LLP
2020 K St., NW
Washington, D.C. 20006
202.373.6000 (Tel.)
202.373.6001 (Fax)
eric.branfman@bingham.com
josh.bobeck@bingham.com

*Counsel for ACN Communications
Services, Inc., Access Point, Inc. and
Matrix Telecom, Inc.*

March 31, 2014