

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

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

**COMMENTS OF WINDSTREAM CORPORATION**

Windstream Corporation (hereinafter “Windstream”) submits the following comments on AT&T’s Proposal for Wire Center Trials (the “AT&T Proposal”) suggesting experiments involving the transition of two wire centers, Carbon Hill, Alabama, and Kings Point, Florida, to “all-IP” services.<sup>1</sup> Windstream offers a variety of voice and data services to approximately 300 business customer locations in the Kings Point wire center,<sup>2</sup> in part through the purchase of UNEs, special access, and other wholesale products and services from AT&T. Thus, Windstream is concerned about the impact the experiments—and, in the future, the transition to entirely IP networks—will have on these customers, the vast majority of which are small businesses that are served by TDM-based products today.

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<sup>1</sup> See Letter from Christopher M. Heimann, General Attorney, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 13-5, 12-353, at Attachs. (filed Feb. 27, 2014) (AT&T Proposal).

<sup>2</sup> All of the customer information herein is derived from Windstream’s review of GeoResults data from 1st Quarter 2014 including all 19.5 million non-home based business locations in the nation. On March 27, 2014, Windstream ran a query for all customers of Windstream Communications in the Carbon Hill and Kings Point wire centers. Excluding obvious duplicates in the GeoResults data resulting from GeoResults’ compilation of data from three underlying data providers, the GeoResults data showed 310 business customer locations served by Windstream, all in the Kings Point wire center.

According to GeoResults data from 1st Quarter 2014, more than half of the commercial premise-based business customer locations served by Windstream in the Kings Point wire center have 5 or fewer employees; more than 90 percent have fewer than 50 employees. About two-thirds have annual sales of less than \$1 million, and half of those have annual sales of less than \$500,000.<sup>3</sup> More than 80 percent of the businesses represented have only a single or very few commercial premise-based locations.<sup>4</sup> More than one-third of the approximately 300 commercial premise-based locations served by Windstream are doctors' offices and other small health care facilities; others include local restaurants, independent retailers, beauty shops, florists and produce markets. Most of these members of the Kings Point business community require only limited amounts of bandwidth that can be delivered over a DS0 or DS1.

Windstream urges the Commission to require AT&T meet *all* of the Commission's requirements with respect to wholesale services used to enable communications connectivity for these customers and many others like them, as set forth in Paragraph 59 of the *Technology Transition Trials Order*.<sup>5</sup> Of particular concern are the following three requirements:

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<sup>3</sup> Information about number of employees and sales figures are provided to GeoResults by its underlying business database suppliers in most cases. In a few instances, where the "number of employees" data field is missing a value, GeoResults will use its proprietary models to provide an employee estimate for this record.

<sup>4</sup> Fewer than 20 percent of the locations served by Windstream are identified as by GeoResults as being part of a "family" of business locations, which are usually medium-sized or large, multi-site businesses.

<sup>5</sup> *Technology Transitions, et al., GN Docket No. 13-5, et al., Order, Report and Order and Further Notice of Proposed Rulemaking, Report and Order, Order and Further Notice of Proposed Rulemaking, Proposal for Ongoing Data Initiative*, FCC 14-5 (rel. Jan. 31, 2014) ("*Technology Transition Trials Order*").

- Comparable services must be available “at equivalent prices, terms and conditions.”<sup>6</sup>
- Replacement wholesale inputs must “offer substantially similar wholesale access to the applicant’s network.”<sup>7</sup>
- The applicant’s plan must “ensure that neither wholesale nor retail customers are penalized as a result of the experiment (*e.g.*, purchases of alternative services count towards discounts for purchases outside of the experiment areas, early termination fees are waived if early termination is caused by the experiment).”<sup>8</sup>

As drafted, AT&T’s Proposal does not meet these requirements, and it must be required to do so. The AT&T Proposal is far more fully defined and articulated with respect to the transition of AT&T’s *retail* products and customers than its *wholesale* products and customers. Thus, it is not clear that AT&T’s trial will “identify operational issues posed by technology transitions and their impact on customers, including any operational challenges arising between applicants and their wholesale customers and competitors.”<sup>9</sup> Indeed, at the time of filing AT&T was not even able to articulate the “specific extent of wholesale activity” in the wire centers.<sup>10</sup> In addition, the AT&T Proposal notably does not make clear what replacement services—and at what cost, terms, and conditions—will be available to wholesale customers during or after its trial. Furthermore, despite AT&T’s recognition that “it is important to be transparent about how [wholesale] issues

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<sup>6</sup> *Technology Transition Trials Order* at ¶ 59

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at Appendix B ¶ 35.

<sup>9</sup> *Id.* at ¶ 60.

<sup>10</sup> AT&T Wire Center Trial Operating Plan at 45, fn.98.

fit into the overall IP transition,”<sup>11</sup> much of the little detail AT&T has provided thus far has been pursuant to Protective Order and thus is inaccessible by its wholesale customers. Thus, while Windstream is interested in opportunities AT&T may present to convert Windstream’s business customers to all-IP services, Windstream is unable to provide meaningful comment on the proposed wholesale transition until AT&T provides and makes accessible to the public further details.

AT&T in its Proposal correctly notes that “any robust and meaningful examination of the processes necessary to effect an orderly transition from legacy TDM-based services to an all-IP ecosystem necessarily must include an assessment of the impact of that transition on wholesale customers.”<sup>12</sup> The question of the appropriate treatment of wholesale customers, consistent with Congress’ “core statutory value” of preserving and promoting competition,<sup>13</sup> is an essential consideration in the IP transition. The transition of wholesale services raises varied and complex policy issues, and trials in the two particular wire centers identified by AT&T—wire centers that appear to be relatively uncomplicated based on the types of customers served—cannot sufficiently illustrate, let alone resolve, these issues.<sup>14</sup> For this reason, Windstream agrees with the Commission’s stated approach not to resolve legal and policy questions in the context of any trials,<sup>15</sup> and Windstream urges the Commission to analyze all trial results in the context of the narrow focus of each experiment.

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<sup>11</sup> AT&T Proposal at 10.

<sup>12</sup> AT&T Proposal at 27.

<sup>13</sup> *See Technology Transition Trials Order* at ¶ 1.

<sup>14</sup> For example, there are wholesale transition challenges specific to urban areas, and areas containing government customers, that likely will not arise in the wire centers that are the subject of the AT&T Proposal.

<sup>15</sup> *See id.* at ¶ 8.

I. THE AT&T PROPOSAL FAILS TO ASSURE THAT COMPARABLE SERVICES WILL BE AVAILABLE AT EQUIVALENT PRICES, TERMS AND CONDITIONS.

The Commission made clear in the *Technology Transition Trials Order* that comparable services must be “available during the experiment at equivalent prices, terms and conditions.”<sup>16</sup> AT&T nowhere commits that this will be the case. In fact, AT&T merely states that its replacement IP-based services will be available on “commercial terms.” A simple fix would be to permit AT&T to institute replacement services, but to require that they be offered at rates not higher and on terms no worse than what the specific wholesale customer is already able to obtain today— including all applicable discounts. The *Technology Transition Trials Order* made clear that AT&T cannot use the trial to force a provider to pay more than it is already paying.<sup>17</sup>

In particular, the benchmark for a wholesale customer in evaluating what constitutes “equivalent prices, terms and conditions” has to be the rates the customer was able to pay under tariff and/or agreement for the TDM services. These rates cannot simply be left to the unconstrained marketplace. Indeed, were the Commission to fail to require that rates be set no higher than the equivalent level for DS0, DS1 and DS3 TDM services, not only would it violate the *Technology Transition Trial Order’s* requirement that prices or costs of access “do not increase as a result of the experiment,” but the Commission also would need to suspend its forbearance from Title II with respect to at least these packet-switched services. The Title II forbearance was premised directly on the availability of TDM DS1 and DS3 special access alternatives.<sup>18</sup>

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<sup>16</sup> *Technology Transition Trials Order* at ¶ 59.

<sup>17</sup> *See, e.g., id.* at ¶ 59 and Appendix B at ¶ 35.

<sup>18</sup> Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Title II and *Computer Inquiry* Rules with Respect to Its Broadband Services, *Memorandum Opinion and Order*, 22 FCC Rcd. 18,705,18, 717 ¶ 20 (2007) (“We note that the relief we grant AT&T

The AT&T Proposal as written, however, does not provide sufficient assurances that comparable services will be available for equivalent pricing, terms, and conditions. In Exhibit E to the AT&T Proposal, AT&T states that its ASE Product will be the alternative to its Special Access DS0 through DS3 TDM tariffed services, but does not provide any details regarding the pricing, service terms, and conditions (important for both initial delivery and ongoing service quality), or the network that will be used to provide the ASE product in the trial wire centers. This information is needed for all wholesale products AT&T intends to transition from TDM to IP. Data on AT&T's practices to date, outside of this trial, suggest there may be cause for concern regarding these elements: A comparison of the AT&T tariffed rack rates for its TDM products to the rack rates for the proposed ASE products indicates a significant price increase for wholesale customers,<sup>19</sup> and installation intervals for the ASE product may be significantly longer than the corresponding intervals for TDM products.

For an example of the unanswered questions posed by the AT&T Proposal, consider the case of a competitive provider choosing to participate in the trial and ordering a 2 Mbps ASE facility for last-mile connectivity rather than a DS1 TDM service from AT&T's special access tariff. Will the pricing and service terms and conditions be equivalent? Will the current network to the customer location support the ASE service, or will new facilities be required? If new facilities are required, is the competitive provider responsible for paying the special construction costs and how will any such costs be determined?

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excludes TDM-based, DS1 and DS3 special access services, and that such special access services remain rate regulated, regardless of the specific geographic market.”)

<sup>19</sup> See AT&T Tariffs, Switched Ethernet (ASE), Part 5, Section 4, and Special Access, Interstate Access Tariff, Section 11, Part 7, located at <http://cpr.att.com>.

Finally, AT&T does not make clear the extent to which a wholesale customer will be able to augment existing TDM services rather than take AT&T's alternative IP offerings. If a wholesale customer cannot initiate new TDM services or inputs or augment existing ones, then migration to the alternative offerings is not truly voluntary. If implemented during the trial phase, such an approach would be inconsistent with our interpretation of the *Technology Transition Trials Order* and the AT&T Proposal, which appear to acknowledge that wholesale participation in the trial at this time is entirely voluntary and that AT&T must file Section 214 Discontinuance Applications, and receive FCC approval, to grandfather or discontinue any wholesale inputs and services.<sup>20</sup> The Commission accordingly should remove any ambiguity and ensure that AT&T permits all wholesale customers to initiate new TDM services or inputs or augment grandfathered TDM inputs and services during the trial.

## II. THE AT&T PROPOSAL DOES NOT ASSURE THAT WHOLESALING INPUTS WILL OFFER SUBSTANTIALLY SIMILAR WHOLESALING ACCESS TO AT&T'S NETWORK

The AT&T Proposal also lacks necessary specifics regarding the transition of wholesale inputs in the two wire centers at issue. AT&T provides almost no detail about what equivalent inputs would be provided to ensure network access as an alternative to UNEs. The Proposal states that AT&T will only be making "UNEs available through the current stage of the trial" and "wholesale customers will have the opportunity to obtain bare copper loops."<sup>21</sup> However, AT&T does not define "bare copper" and does not specifically explain what is meant by "opportunity to obtain bare copper loops" or how AT&T intends to meet its wholesale

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<sup>20</sup> See *Technology Transition Trials Order* at ¶ 59 and fn.91; Wire Center Trial Operating Plan at 12-13 and fn.23.

<sup>21</sup> AT&T Proposal at 29.

obligations under Section 251(c) of the Act after the current stage of the trial. In particular, among the questions raised on this front are the following:

- Under what rates, terms, and conditions does AT&T intend to offer “bare copper” loops to wholesale customers after the “current stage of the trial”?
- Is AT&T’s proposed access to “bare copper” loops just to the sub-loop portion (distribution) of their copper network, whereby wholesale customers would be required to obtain rights of way and install equipment at AT&T’s service pedestals to provide connectivity to end user customers?
- Does AT&T intend to lease all or a portion of its copper facilities (i.e., feeder portion) to wholesale customers after it has concluded the trial? If so, under what rates, terms, and conditions and how will access to the copper network be provided?

Moreover, in addition to purchasing UNE loops in the form of an end-to-end unbroken copper loop, wholesale customers also purchase UNEs that combine copper and fiber transmission. It is unclear what replacement services will be offered for these UNE arrangements, and whether they will provide substantially similar wholesale access.

Windstream looks forward to receiving further detail from AT&T regarding its intentions for a wholesale transition trial so that it can provide further comment to the Commission. These details must be fleshed out to meet the Commission’s trial requirements.

### III. THE AT&T PROPOSAL DOES NOT MAKE CLEAR THAT WHOLESAL CUSTOMERS WILL NOT BE PENALIZED AS A RESULT OF CONTRACTUAL MINIMUM “SPEND” COMMITMENTS BY CIRCUIT TYPE.

AT&T nowhere explains how the experiment would interact with contractual minimum “spend” commitments. As the Commission is aware, these minimum “spend” (*i.e.*, minimum

annual commitment) clauses can significantly restrict the ability of a wholesale customer to shift purchases from AT&T to other suppliers, where available. Here, because these “spend” commitments frequently specify a minimum annual commitment by circuit type, a purchase of Ethernet in lieu of a DS1 will not necessarily count towards fulfillment of the minimum annual commitment. These commitments have the effect of locking the wholesale customer into the TDM product, or facing the prospect of essentially paying twice (once for the Ethernet service and once to make up the deficit on the minimum annual commitment for a DS1).

To ensure there is no such harm, the Commission should mandate that AT&T provide a reduction by one of committed DS1 and DS3 circuit counts for every converted or newly purchased IP equivalent circuit. In this way, a wholesale purchaser would not be penalized for “spend” shortfalls resulting from any switch to Ethernet services.

**IV. THE COMMISSION SHOULD NOT DELAY ITS ONGOING REVIEW OF THE LEGAL AND POLICY ISSUES THAT MUST BE ADDRESSED TO ENSURE ROBUST COMPETITION IN THE BUSINESS SERVICES MARKET.**

As noted above, Windstream agrees with the Commission’s stated approach not to resolve legal and policy questions in the context of any trials,<sup>22</sup> and it urges the Commission to continue to push forward with its regulatory review of the legal and policy issues that must be addressed to ensure that business consumers continue to have competitive options during and after the technology transitions. In particular, the Commission should continue to work closely with the Office of Management and Budget to expedite the approval of the comprehensive data collection in the special access reform proceeding.

The Commission acknowledged in the National Broadband Plan that the “current regulatory approach is a hodgepodge of wholesale access rights and pricing mechanisms,” in

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<sup>22</sup> See *Technology Transition Trials Order* at ¶ 8.

which “similar network functionalities are regulated differently, based on the technology used.”<sup>23</sup> As a result, “the lack of a consistent analytical framework hinders the FCC’s ability to promote competition,”<sup>24</sup> and the Commission made the following recommendations:

- The FCC should comprehensively review its wholesale competition regulations to develop a coherent and effective framework and take expedited action based on that framework to ensure widespread availability of inputs for broadband services provided to small businesses, mobile providers and enterprise customers.
- The FCC should ensure that special access rates, terms, and conditions are just and reasonable.
- The FCC should ensure appropriate balance in its copper retirement policies.<sup>25</sup>

Windstream urges the Commission act now to follow through on these recommendations. The AT&T Proposal or any other technical trials need not and should not delay efforts to create a consistent, fact-based regulatory framework to ensure that business and government consumers will benefit from access to competitive services through consistent and reasonably priced last-mile access.

### **CONCLUSION**

Windstream urges the Commission to require AT&T meet *all* of the Commission’s requirements with respect to wholesale services, as set forth in Paragraph 59 of the *Technology Transitions Trials Order*. Of particular concern are the requirements that comparable services must be available at equivalent prices terms and conditions; that replacement wholesale inputs

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<sup>23</sup> Federal Communications Commission, *Connecting America: The National Broadband Plan* at 47 (rel. March 16, 2010) (“National Broadband Plan”).

<sup>24</sup> *Id.* at 48.

<sup>25</sup> *Id.*

must offer substantially similar wholesale access to AT&T's network; and that the trial plan must ensure that customers are not penalized as a result of the experiment. As drafted, AT&T's Proposal does not meet these requirements, and it must be required to do so.

Respectfully submitted,

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