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March 31, 2014

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Comments of XO Communications, LLC on AT&T Proposal for Wire Center Trials – GN Docket Nos. 13-5 and 12-353

Dear Ms. Dortch:

XO Communications, Inc., (“XO”) through its counsel and in accordance with a protective order,¹ hereby submits a redacted version of its comments on AT&T’s Proposal for Wire Center Trials marked “Redacted – For Public Inspection.”

Pursuant to the Protective Order, XO submitted under separate cover one confidential copy to the Secretary’s Office and two confidential copies to Jonathan Reel, Competition Policy Division, Wireline Competition Bureau, these stamped “Confidential Information Subject to Protective Order in GN Docket Nos. 13-5 & 12-353, Before the Federal Communications Commission.”

¹ *In the Matter of Technology Transitions, AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition*, GN Docket Nos. 13-5, 12-353, Protective Order, DA 14-272 (Feb. 27, 2014) (“Protective Order”).

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Marlene H. Dortch
March 31, 2014
Page Two

Please contact the undersigned should you have any questions regarding this filing.

Respectfully submitted,

Handwritten signature of Edward A. Yorkgitis, Jr. in cursive script.

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Enclosure

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

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

**COMMENTS OF XO COMMUNICATIONS, LLC
ON AT&T PROPOSAL FOR WIRE CENTER TRIALS**

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March 31, 2014

TABLE OF CONTENTS

I.	INTRODUCTION AND SUMMARY	1
II.	THE EVOLUTION TO AN ALL-IP NETWORK HAS BEEN PROCEEDING WITHOUT THE NEED FOR ANY TECHNOLOGY EXPERIMENT	4
III.	THE PROPOSED AT&T TRIALS ARE FLAWED.....	8
IV.	IMMEDIATE COMMISSION ACTION REGARDING AT&T TRIAL PROPOSAL.....	13
V.	COMMISSION ACTION TO PROMOTE THE TRANSITION TO AN ALL-IP PCN WHILE PRESERVING ROBUST COMPETITION.....	15
VI.	CONCLUSION	17

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

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

**COMMENTS OF XO COMMUNICATIONS, LLC
ON AT&T PROPOSAL FOR WIRE CENTER TRIALS**

XO Communications, LLC (“XO”) hereby submits its comments on the February 27, 2014, proposal of AT&T¹ filed in the above-referenced dockets for technology transition trials in two wire centers in Carbon Hill, Alabama, and in West Delray Beach (Kings Point), Florida.

I. INTRODUCTION AND SUMMARY

As explained herein, AT&T’s proposed trials submitted in response to the Federal Communications Commission’s (“FCC’s”) invitation in its *Transition Trials Order*² are critically flawed and must be modified before and if they go forward. For a variety of reasons, the two wire centers were poorly chosen as a basis for investigating some of the problems and challenges associated with the transition from traditional networks and technologies to an advanced all-IP (“Internet Protocol”) public communications network (“PCN”). Further, and of great importance to the development and maintenance of a competitive market, AT&T has not provided adequate information about availability or capabilities of its proposed alternate wholesale services,

¹ AT&T Proposal for Wire Center Trials, GN Docket No. 13-5, *et al.* (filed February 27, 2014) (“AT&T Proposal”).

² *Technology Transitions, et al.*, GN Docket No. 13-5, *et al.*, Order, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-5 at ¶ 8 (rel. Jan. 31, 2014) (“*Transition Trials Order*”).

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including the pricing, terms, and conditions or the timeframes of the transition to grandfather and sunset its current time division multiplexing (“TDM”) services. Considering AT&T’s proposal as a whole in its current form, it is unclear what value the trials would be to the Commission and the industry toward advancing the objectives of a smooth transition to an all-IP PCN. This is especially the case because as competitive providers have demonstrated, the transition is already well underway and even AT&T’s IP-based services have been widely deployed.

The current proposal also suffers from a lack of transparency, contrary to the intentions of the FCC when soliciting proposals for trials. In the *Transition Trials Order*, the Commission on several occasions underscored the need for transparency noting, for example, that it would seek comment on the proposals “[t]o ensure transparency and maximize public input.”³ AT&T submitted material portions of its proposal under a request for confidentiality, especially transition timelines, which limits the ability of personnel within interested companies to review the filings and comment on all aspects of the proposal. Consequently, the proposal as submitted hinders the objectives of transparency and maximum public input.

XO supports Commission action to ensure that any trials are lawful and meaningfully contribute to the Commission’s understanding of the transition to an all-IP PCN. As a threshold matter, the Commission must consider AT&T’s proposal from the standpoint of Section 214 of the Communications Act of 1934, as amended, given the expected impairment or degradation of certain services resulting from the proposed experiment. Unless the Commission determines that “neither the present nor future public convenience and necessity will be adversely affected” by the discontinuance and degradation of services AT&T contemplates, the experiment should not be permitted to go forward in the form as contemplated by AT&T.

³ *Transition Trials Order* ¶ 5. See also *id.* ¶¶ 35, 174, and 176.

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While an appropriately designed and conducted trial may yield the Commission useful information to assist it in supporting the industry during a transition to an all-IP PCN, XO submits that any results will not have any material bearing on the need to address key legal and policy issues. The fact that the Commission has failed to do so has left competitive providers, such as XO, in limbo and subject to the whims of dominant incumbent carriers. If the Commission wants the IP transition to move forward expeditiously, it has a responsibility to address these matters now. In particular, a number of essential policy issues are already presented in existing proceedings which have generated full records, including making clear that incumbent carriers like AT&T must provide for Section 251/252 managed IP-based interconnection and the need for technology neutral access to wholesale facilities and services at prices that would promote competitive services and ensure the benefits of competition for as many users as possible during and after the transition. In addition, the Commission should make certain that all parties understand that AT&T and other incumbent local exchange carriers (“ILECs”) are not able to move forward with limiting or discontinuing service offerings without Commission approval under section 214.

XO supports the Commission’s effort to have the industry undertake IP-related trials. For instance, XO believes there is great merit in the trials being considered within the Numbering Test Bed, which will consider issues such as routing of IP calls, possible modifications to numbering allocation, and database changes. These are issues that will require full industry involvement and Commission oversight for success. XO urges the Commission to focus sufficient attention to completing those trials expeditiously. At the same time, to carry out its responsibility to advance the public interest, which includes making sure that the network continues to work for consumers, carriers, and wholesale customers, the Commission should

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scrutinize the AT&T proposal carefully and adopt modifications to correct the flaws discussed herein before allowing it to go forward.

II. THE EVOLUTION TO AN ALL-IP NETWORK HAS BEEN PROCEEDING WITHOUT THE NEED FOR ANY TECHNOLOGY EXPERIMENT

In considering any proposed technology transition experiment, the Commission should determine what “added-value” the experiment will create. After all, from XO’s experience, the industry has been moving rapidly toward the deployment of IP technology *without* needing any experiment. The Commission’s stated goal is “to create arenas of innovation where providers and their competitors, and the customers of each, are free to explore a variety of approaches to resolving any *operational* challenges that result from transitioning to new technology and that may impact users.”⁴ XO submits that the “trials” as proposed by AT&T are unlikely to produce any market data that is not already available, given that, as the Commission duly notes, “[t]echnology transitions are already underway.”⁵ XO, for example, is in the middle of transitioning the underlying technology within its own network as it has explained to the Commission on prior occasions.⁶ The transition has taken many complex turns, particularly as customers have many different telecommunications needs and requirements and especially in the business market relative to the residential market. There is no one-size-fits-all solution, but XO already has invaluable experience in using IP within its own network to operate efficiently (regardless of how the traffic originated), establishing managed IP-interconnection with other

⁴ *Transition Trials Order* ¶ 25.

⁵ *Id.* ¶ 2 (emphasis added).

⁶ *See, e.g.*, Comments of XO Communications, LLC on Petitions of AT&T and National Telecommunications Cooperative Association, GN Docket 12-353 (filed. Jan 28, 2013) at 2-3, 6-9 (“XO IP Transition Comments”).

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carriers, and making use of its own facilities and wholesale inputs to offer customers IP-based services, in addition to TDM-based services. Even AT&T admits that it has already introduced IP-based services and that the proposed trial is not necessary to introduce new IP-based services at any time or to test the services it proposes to offer throughout the trial.⁷

The AT&T VoIP services that AT&T plans to use during the Wire Center Trial are already in place in those wire centers, as well as in hundreds of other wire centers across AT&T's in-region footprint. They have been tested over time and under various conditions. AT&T intends to offer these services in place of legacy services—first on a voluntary basis and ultimately as a replacement for discontinued services. These services are generally available in the marketplace, and have been for years—they are not in any way new or experimental. Consequently we already have practices and procedures in place to maintain and test facilities and to address service disruptions.⁸

Given AT&T's description of the already widespread deployment of its VoIP services – and given the flaws and opacity of AT&T's proposed trial – it is difficult to understand what its proposal will achieve, especially in relation to the considerable data already available regarding existing marketplace arrangements and conditions.

XO is especially concerned with the trial's flaws regarding the provision of wholesale facilities and services. Today, XO provides IP-based retail services over its network and, as the Commission is aware,⁹ also relies significantly on wholesale inputs from ILECs such as AT&T, especially unbundled network elements (“UNEs”) and special access, to provide various retail services to its customers – including TDM, IP, and IP over TDM services. XO's customer base is almost exclusively business and enterprise customers. Access to wholesale facilities and services from AT&T and other major ILECs is particularly important to XO, as well as other

⁷ AT&T Proposal at 9.

⁸ AT&T Proposal, Operating Plan at 24.

⁹ *See Transition Trials Order* ¶ 59 (“Competitive LECs often serve customers by relying significantly on incumbent LECs’ last-mile networks, including by leasing a variety of copper-based UNEs and TDM-based DS1 and DS3 special access services.”)

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competitors, when serving business and enterprise customers, because in a substantial portion of the country, access to ILEC last-mile facilities is the only practical and economic way to offer competitive service.¹⁰

In analyzing XO’s trend in purchasing wholesale inputs from AT&T, it is clear that XO uses the TDM inputs increasingly to provide IP-based retail offerings. Table 1 below shows the total number of DS0 and DS1 circuits XO currently purchases from AT&T (as of March 2014). XO does still have a strong base of retail customers that purchase TDM services and for which XO purchases and will continue to need underlying TDM wholesale services. Significantly, however, **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** of the purchased DS0 circuits are being used today to provide high-speed Ethernet over Copper (“EoC”) services, and **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** of the purchased DS1 circuits are being used to provide Ethernet over Serial (“EoS”) services, both of which are IP-based services.¹¹

¹⁰ See, e.g., *XO IP Transition Comments* at 25-30; Comments of XO Communications, LLC on Technology Transitions Policy Task Force Public Notice Seeking Comment on Potential Trials, GN Docket No. 13-5, GN Docket No. 12-353, RM- 11358, filed July 8, 2013, at 16 (“Unless the Commission finds, using the very same market analysis tools refined in its unbundling forbearance decisions, that ILECs no longer maintain market power due to their persistent and effectively ubiquitous and unchallenged access to end user locations, then, of necessity, unbundling and interconnection obligations need to exist.”).

¹¹ XO obtains the DS1s from AT&T through both unbundled network element (“UNE”) purchases (59%) **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]**. These statistics underscore the importance of XO’s continued access to TDM wholesale services.

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Indeed, a comparison with XO's wholesale purchases from April 2012 (see Table 2 below) reveals that, in just the past two years, XO is making markedly increased use of DS0 and DS1 TDM inputs from AT&T to provide Ethernet services (IP-based services) to its retail customers.

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XO, like many carriers nationwide, will use TDM wholesale services to deliver IP-based retail services now, during and after the transition, making these inputs a crucial component of the IP ecosystem. Similarly, AT&T currently provides its IP-based U-Verse service over existing copper facilities and presumably will continue to do so along with its own Ethernet over copper services.

XO also purchases AT&T's Switched Ethernet services for resale to its customers, albeit to a lesser degree than it uses AT&T's TDM UNE and special access wholesale services to provide EoC or EoS services. At this time, XO purchases and resells approximately **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** AT&T Switched Ethernet circuits at speeds comparable to its EoC/EoS services. AT&T's Switched Ethernet services are more expensive than the cost of purchasing TDM wholesale services to provide EoC or EoS services at comparable speeds. Accordingly, XO does not consider AT&T's Switched Ethernet to be a comparable service with respect to pricing, terms and conditions. Instead, XO considers purchasing AT&T's Switched Ethernet service only when network or market conditions leave XO with no other choice, such as when sufficient TDM wholesale services are not available or when customer requirements exceed the maximum speed that XO is able to offer using such TDM wholesale services.

III. THE PROPOSED AT&T TRIALS ARE FLAWED

AT&T contends that its experiment will yield invaluable real-world experience regarding the issues that may arise as it transitions more customers to IP-based services and discontinues providing retail and wholesale TDM services in the selected wire centers. In reality, however, the proposed experiment as designed will likely provide only a very narrow window on one issue involved in the technology transitions and on one group of users -- AT&T's own retail

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customers. To the extent the trial would otherwise produce meaningful data, it would be compromised by the fact that the selected wire centers do not adequately represent the nationwide status of the marketplace, either for retail or wholesale services.

AT&T has proposed technology transition trials in wire centers in Carbon Hill, AL, and in West Delray Beach (Kings Point), FL. Carbon Hill has a rural and sparsely populated wire center; XO is not present there. XO provides some services in Kings Point to business and enterprise customers, although this is not a wire center that is typical of those in which XO and other competitive local exchange carriers operate.¹² Not only are the wire centers inadequate to test the wholesale issues, it is also unlikely that these two wire centers out of diverse tens of thousands of wire centers within AT&T's operating territories, are sufficiently representative to provide any clear lessons that can be extrapolated to inform FCC policymaking regarding retail services. These two wire centers contain limited anchor institutions, include no PSAPs, involve moderate demographic diversity, and limited large businesses and enterprise firms.¹³

XO purchases **[BEGIN CONFIDENTIAL]**

[END CONFIDENTIAL] Given the

demographics and geography of the Kings Point wire center, XO suspects that other CLECs have a similarly limited presence there. Thus, even if the wholesale customers voluntarily participated in the trial, it is unlikely that the data would be more meaningful than similar data collected from

¹² An experiment limited to only two wire centers may inherently be inadequate as the issues that the nation as a whole will face as the result of the technology transition will not be represented in just two wire centers. This is why the Commission should draw principally on the experience of carriers, like XO, and other providers that are already deeply enmeshed in the transition to an all-IP PCN within their own networks in developing appropriate policies and rules.

¹³ See, e.g., *ex parte* presentation of Angie Kronenberg, COMPTTEL, to Marlene H. Dortch Secretary, FCC, filed in GN Docket No. 13-5 and GN Docket No. 12-353 (dated Mar. 26, 2014) at 2 (“COMPTTEL *ex parte*”).

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real-world experiences in other more representative wire centers. Most importantly, the Commission must not allow AT&T to dictate the timeline for discontinuing its TDM wholesale services while XO and/or other competitor continue to offer TDM services to their retail customers and must ensure that AT&T's trial does not negatively impact its wholesale customers or their retail customers.

Furthermore, all of AT&T's proposed wholesale IP-based alternatives are not fully developed and ready for deployment, as AT&T itself admits.¹⁴ Thus, the "TBD" status of some of the wholesale alternatives, prevents the Commission and competitors from fully considering whether those alternatives will be comparable in rates, terms and conditions. Moreover, even for the limited set of wholesale alternatives designated in AT&T's proposal, AT&T has not provided terms and pricing information and sought overly broad confidential treatment of the deadlines for its proposed transition and sunseting of TDM wholesale services.¹⁵ Given the short transition timeframe proposed unsuccessfully by AT&T at the end of 2013 in modifying its federal special access tariffs,¹⁶ XO has no confidence that AT&T's proposal would provide adequate transition

¹⁴ See AT&T Proposal, Operating Plan at 46 ("AT&T also is working diligently to develop IP replacement services, which it intends to make available for resale to wholesale customers on commercial terms. AT&T's objective is 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.")

¹⁵ See, e.g., AT&T Proposal, Operating Plan at 45, n. 96 (transition dates redacted). Transition dates are also redacted as confidential in Exhibit B to the AT&T Proposal, Detailed Plan for specific services. AT&T explains that "wholesale customers will have the opportunity to obtain bare copper loops and utilize their own electronics to provide high capacity services to their end user customers." *Id.* at 46. AT&T does not offer details exactly under what rates, terms, and conditions the loops would be available, whether as UNEs or otherwise. Moreover, AT&T's surrounding discussion strongly implies that such copper loops and unbundled network elements may be available only for the "current" or "initial" stage of the trial, and provides inadequate information what will be available to wholesale competitors subsequently. See *id.*

¹⁶ See *In the Matter of Suspension and Investigation of AT&T Special Access Tariffs et al*, WC Docket No. 13-299, Order (rel. Dec. 9, 2013) (suspending the AT&T Nov. 25, 2013

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time for competitors. As AT&T points out, “wholesale access, and other issues, are likely to be contentious, and will spark much debate over the next few years.”¹⁷ For this reason, XO submits it is critical that all of the details regarding its proposed transition of wholesale services be made public, including pricing, terms and conditions of AT&T’s proposed alternative services as well as proposed deadlines for grandfathering and sunseting the current TDM wholesale services.

The Commission’s made clear that, in any trial, comparable services must be available at equivalent prices, terms, and conditions.¹⁸ In particular, the Commission stressed its need to review:

(1) the applicant’s plan to ensure that the same types of wholesale customers can continue to use its network; (2) the applicant’s plan to ensure that the access provided during the experiment – whether provided through unbundling, resale, or purchase of special access – is functionally equivalent to that provided immediately before the experiment; (3) the applicant’s plan to ensure that the prices or costs of such access do not increase as a result of the experiment; (4) the applicant’s plan to 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); and (5) whether the experiment will have any other impact on the provider’s wholesale customers.¹⁹

tariff revisions for five months and instituting an investigation, specifically Ameritech Transmittal No. 1803, Tariff F.C.C. No. 2 (filed Nov. 25, 2013); BellSouth Transmittal No. 71, Tariff F.C.C. No. 1 (filed Nov. 25, 2013); Nevada Bell Transmittal No. 254, Tariff F.C.C. No. 1 (filed Nov. 25, 2013); Pacific Bell Transmittal No. 498, Tariff F.C.C. No. 1 (filed Nov. 25, 2013); SNET Transmittal No. 1061, Tariff F.C.C. No. 39 (filed Nov. 25, 2013); SWBT Transmittal No. 3383, Tariff F.C.C. No. 73 (filed Nov. 25, 2013)). *See also Ameritech Operating Companies Transmittal No. 1803, Tariff F.C.C. No. 2 et al*; XO Communications, LLC Petition to Suspend and Investigate (filed Dec. 2, 2013). AT&T withdrew the referenced tariff filings effective January 16, 2014, pursuant to FCC Special Permission 14-001.

¹⁷ *Id.*

¹⁸ *Transition Trials Order* ¶ 59. *See also id.* ¶ 57 (“We presume that service offerings based on new technology will offer equivalent or better quality to comparable legacy-based services”).

¹⁹ *Transition Trials Order, App B* ¶ 35.

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AT&T insufficiently addressed these requirements, merely stating that “any customer considering [participating in the trial] – especially these sophisticated wholesale customers – will drive a hard bargain in that process – and that the end results of those negotiations would likely encompass terms such as those identified by the Commission in Appendix B.”²⁰ The Commission should not permit AT&T to move forward with these trials without providing the necessary details for the Commission and competitors to adequately evaluate its proposed alternative wholesale services. Carriers cannot make business plans and serve customers based on “TBD”. XO already knows that the current pricing for its Switched Ethernet service is higher than the costs of the TDM wholesale services XO purchases. AT&T’s proposal, which apparently intends to rely on individual negotiations for rates, terms, and conditions of the alternative service – which in a substantial number of cases will not have competitive substitutes given AT&T’s singular ubiquity in providing facilities and access to business and enterprise end user locations – provides no assurance that the prices and costs will remain comparable without increasing due to the experiment or that the experiment will not negatively impact XO and other wholesale customers and, in turn, their retail customers. In short, the proposed experiments within the two wire centers will touch only a small subset of the types of issues that providers and policymakers will face and need to resolve during the technology transition to an all-IP PCN.²¹

²⁰ AT&T Proposal, Operating Plan at 47.

²¹ An experiment of this purported magnitude should be performed completely within the public eye so as to satisfy the Commission’s objective of “transparency and maximize public input.” *Transition Trials Order*, ¶ 5. The lack of public transparency manifested in the proposal is itself reason to not sanction the AT&T experiments as currently designed and to send AT&T back to the drawing board.

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IV. IMMEDIATE COMMISSION ACTION REGARDING AT&T TRIAL PROPOSAL

At stake in the Commission's review of the AT&T proposal is its responsibility for protecting the public interest and ensuring that the PCN works today and will continue to work correctly moving forward. Therefore, as a threshold matter, the Commission should ensure that AT&T obtains proper approvals, either for discontinuance or forbearance, before moving forward with trials.

The Commission can also assist in resolving questions about the identity, availability and capabilities of AT&T's proposed alternative services. Further, the Commission should oversee adequate testing, not just a sampling, to ensure alternative services are comparable in all material respects to the services they are replacing.²² Moreover, as noted in the recent *COMPTEL ex parte*, “[w]hile AT&T lists competitive alternatives in its filing, none of those companies has the same legal obligations to provide voice or broadband services to the community, or last mile access or interconnection with competitors. As such, the Commission must conduct a close and careful evaluation of the availability, affordability, and substitutability of the services for residential, business, and wholesale consumers.”²³

In explaining the interconnection arrangements and routing for its IP traffic as well as its plans to discontinue its Feature Group D switched access services,²⁴ AT&T appears intent on transitioning its current and new customers to IP services provided by its non-ILEC affiliate in hopes of ultimately avoiding its Title II obligations. AT&T should not be able so easily to shed

²² See, *id.*, ¶ 57 (“We presume that service offerings based on new technology will offer equivalent or better quality to comparable legacy-based services.”) Wholesale customers should be invited to participate actively in testing of new wholesale services.

²³ *COMPTEL ex parte* at 2.

²⁴ AT&T Proposal, Operating Plan at 16.

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its interconnection obligations. In order to preserve the core value of facilitating competition and to make sure the network works, the Commission should oversee AT&T's proposed activities and act swiftly and decisively to preserve competition and the consumer benefits that arise from competition.

As these few examples are sufficient to demonstrate, there is the potential for serious impact on customers as a result of the proposed experiment. The FCC should exercise its authority and review AT&T's proposed experiments as part of its Section 214(a) discontinuance authority. That section proscribes discontinuance, reduction, or impairment of service to a community or part of a community unless the Commission issues a certificate "that neither the present nor future public convenience and necessity will be adversely affected thereby."²⁵

Beyond that, the Commission should examine the proposal with an eye toward its efficacy in producing data that the Commission can use as it oversees the transition to an all-IP PCN. As one example, the means by which information and data is collected during the trial should be examined critically and adjusted. AT&T's intent to use consumer complaint information filtered through its own customer care center and associates and its website rather than a methodic, impartial data collection is extremely inadequate. AT&T should endeavor to obtain systematic, objective information regarding the ultimate trial and its impact, and such raw data should be reviewed by an independent neutral third party. Only in this way, assuming the trials are well-designed in other respects as well, could these trials help the Commission "protect

²⁵ 47 U.S.C. § 214(a)(3).

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[] consumers, promot[e] competition, and ensur[e] that emerging IP-based networks remain resilient.”²⁶

V. COMMISSION ACTION TO PROMOTE THE TRANSITION TO AN ALL-IP PCN WHILE PRESERVING ROBUST COMPETITION

In the *Transition Trials Order*, the Commission stated that it did not intend to resolve legal and policy questions resulting from the transition in the context of any trials.²⁷ As important, however, the Commission wisely did not commit to waiting until the trials are completed before addressing critical policy and regulatory questions, such as what wholesale obligations will apply to an ILEC’s IP-based services, access to last-mile ILEC facilities and access on appropriate rates, terms, and conditions in the absence of TDM facilities subject to unbundling or Title II tariff requirements, and managed IP interconnection under Sections 251 and 252 of the Act. Resolution of these issues is essential to the preservation of competition during and after the transition to an all-IP PCN.

As XO explained at length in its earlier filings regarding the AT&T proposals for IP-based trials, the Commission has compiled a complete record regarding these important issues in several other proceedings.²⁸ The Commission already has underway proceedings considering principal policy issues to be addressed to promote competition such as: (1) the regulatory status of IP-enabled services,²⁹ (2) the regulatory protections needed to ensure managed IP

²⁶ See *Transition Trials Order* ¶ 21. Regarding the promotion of competition, without a thorough examination of wholesale service issues by all parties with complete information, including the identification and offering of comparable wholesale services under equivalent prices, terms, and conditions, any technology transition, including any related experiment, will be a failure from a policy perspective as explained above.

²⁷ AT&T Proposal at 29 n. 23. See *Transition Trials Order* ¶ 8.

²⁸ *XO IP Transition Comments* at 21-22.

²⁹ See *IP-Enabled Services*, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004).

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interconnection takes place in a competitively-balanced environment and to ascertain the extent to which ILECs' carrier of last resort obligations should apply,³⁰ (3) procedures and protections associated with copper loop retirement,³¹ and (4) the conditions under which the Commission might forbear from certain other dominant carrier obligations, including equal access rules in an packet-switched service environment.³² In addition, the Commission is examining its rules regarding special access pricing flexibility to ensure they do not undermine competition, has developed a record to understand the anti-competitive nature of price cap LEC long term pricing agreements, and (through Wireline Competition Bureau staff) has been meeting with AT&T and competitor representatives regarding AT&T's plans to eliminate special access DS1 and DS3 arrangements of terms longer than three years.³³ The Commission can and should act on these issues regardless of the timing or the conduct of any trials. The transition to an all-IP PCN is well underway and would be well served by Commission leadership and guidance in these areas. There is no reason to wait for the results of any appropriate trials in order to make these decisions, and the success of the technology transitions – assuming a fully competitive

³⁰ See *Connect America Fund, Report and Order and Further Notice of Proposed Rulemaking*, 26 FCC Rcd 17663 (2011).

³¹ See *Pleading Cycle Established for Comments on Petitions for Rulemaking and Clarification Regarding the Commission's Rules Applicable to Retirement of Copper Loops and Copper Subloops*, RM-11358, Public Notice, DA 07-209 (2007).

³² See *Petition of US Telecom for Forbearance from Enforcement of Certain Legacy Telecommunications Regulations*, WC Docket No. 12-61 (filed Feb. 16, 2012).

³³ See, e.g., *Special Access for Price Cap Local Exchange Carriers and AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 05-25 and RM-10593, FCC 12-153 (rel. Dec. 18, 2012); Comments of XO Communications, LLC on Further Notice of Proposed Rulemaking on Sections IV.A and IV.C, WC Docket No. 05-25 (filed Feb. 11, 2013). As noted earlier, AT&T's tariff filing in late 2013 seeking to eliminate DS1 and DS3 special access plans longer than three years was suspended and then withdrawn.

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environment which the Commission has emphasized as a critical and ongoing goal – will likely depend upon it.

VI. CONCLUSION

For the foregoing reasons, the Commission can and should exercise its authority to oversee the proposed trials in order to satisfy its responsibility to ensure the public interest is served and that the PCN continues to work. The proposed trials are of questionable value as currently constructed, given the already abundant deployment of IP-based retail services, and place too many critical issues as “TBD”.

Any trial that the Commission might sanction should focus on objective data regarding networks and facilities with measurable metrics and third party review. It is also critically important that to maintain competition for all services, any trial must focus on ensuring that comparable wholesale services will be available at equivalent prices, terms, and conditions. Moreover, the Commission must ensure that AT&T publicly discloses all relevant information about the proposed alternative services, particularly wholesale services it has not yet finalized, and secure any necessary authorizations, either discontinuance or forbearance, before moving forward with the proposed trials

Without waiting for such a trial to be developed and conducted, the Commission can and should move forward to resolve important policy issues already under consideration in other proceedings to ensure that competition remains robust during and after the transition, offering consumers a variety of advanced telecommunications services and broadband options from numerous competitors and making sure the network works. Completion of the proposed trials is not a necessary prerequisite to addressing these policy concerns nor an excuse for postponing such resolution.

REDACTED – FOR PUBLIC INSPECTION

Respectfully Submitted

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