

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

COMMENTS OF THE VERMONT DEPARTMENT OF PUBLIC SERVICE

On January 31, 2014, the FCC issued the Technology Transition Trials Order. In response, AT&T filed a proposal for wire center trials on February 27, 2014. On March 31, 2014 the Pennsylvania Public Utility Commission submitted comments on the proposal. The Vermont Department of Public Service concurs with the comments of the PA PUC and offers additional details on three aspects of the AT&T proposal raised in the comments of the PA PUC:

1. AT&T U-Verse voice service would not be subject to common carrier regulation (or, presumably, to state regulation)
2. AT&T U-Verse voice service consumers will have no choice of long-distance providers
3. AT&T would meet its ETC obligations through an affiliate's Wireless Home Phone service, which the state's authority to regulate is unclear.

Common Carrier Regulation

In footnote 111 of the Plan, AT&T asserts "Thus, insofar as AT&T, as a VoIP provider, is not providing that service as a common carrier and no longer will provide telephone exchange service or exchange access, it no longer would be subject to that obligation."

AT&T offers no basis for the assertion that AT&T, as a VoIP provider, is not providing a service as a common carrier. In fact, while information services may not be common carrier services, the FCC has expressly refused to define VoIP-based services as information services.¹⁰⁴ The U-Verse voice services described in the proposal appear to be telecommunications services under federal and state law. Without an explicit determination to the contrary, since AT&T intends to

¹⁰⁴ See *In the Matter of Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17896 at ¶ 718 (Nov. 18, 2011); see also *In the Matter of BellSouth Telecommunications, Inc. Request for Declaratory Ruling that State Commissions May Not Regulate Broadband Internet Access Services by Requiring BellSouth to Provide Wholesale or Retail Broadband Services to Competitive LEC UNE Voice Customers*, Memorandum Opinion and Order and Notice of Inquiry, 20 FCC Rcd 6830, 6848-6849 at ¶ 33 (March 25, 2005) ("We find that it is neither necessary nor practical to address in this proceeding the varied and complex issues surrounding the appropriate regulatory treatment of services that the Commission is currently considering elsewhere.").

meet its Eligible Telecommunications Carrier (ETC) requirements¹⁰⁵ through the provision of U-Verse voice services, these services should be regulated as telecommunications services. As such AT&T's U-Verse voice service should be treated as telephone exchange service or exchange access, exactly as the TDM service it replaces. U-Verse voice service should therefore be subject to common carrier regulation and state telecommunications regulation.

Long Distance Choice

In the AT&T plan, on page 48 in section 6.3.1.b, AT&T indicates that “consumers will not select a separate IXC to carry long distance calls.” It suggests that providers of IP-based services are exempt from this requirement: “Indeed, assuming it is even technically feasible, imposing such a requirement on these IP-based services would be prohibitively expensive and fundamentally at odds with the “any distance” nature of IP services themselves.” In support of this assertion, AT&T cites the Vonage order in footnote 109 of its plan as follows: “(finding that the characteristics of Vonage’s VoIP service “preclude any practical identification of, and separation into, interstate and intrastate communications for purposes of effectuating a dual federal/state regulatory scheme. . . .”) ¹⁰⁶.”

This assertion is illogical. AT&T suggests that IP-based services are “any distance” in nature, but offers no basis for this claim. The FCC indeed determined that it was impossible to separate interstate and intrastate components of the Vonage service. Since the Vonage VoIP adapter can be moved at the subscriber’s discretion, it is impossible to determine the starting point of any particular call, and it is therefore impossible to determine whether any specific call is interstate or intrastate. AT&T misreads the order to suggest the opposite: In indicating that IP services are “any distance” in nature, it suggests that employing VoIP somehow precludes identifying the ending point of the call. There is no basis for this conclusion, and therefore it should be rejected.

In fact, the proposal incorrectly applies the statement from the Vonage Order as it relates to the Vonage nomadic VoIP service to the fixed VoIP service provided by AT&T. In the AT&T plan, on page 22 in section 6.1.1a, AT&T states: “AT&T’s U-verse Voice residential services currently are geographically fixed to the consumer’s service address.” This indicates that unlike in the case of Vonage, AT&T is able to identify both the starting point and ending point of all

¹⁰⁵ 47 U.S.C. § 214 (e)(1) “Eligible telecommunications carriers—A common carrier designated as an eligible telecommunications carrier under paragraph (2), (3), or (6) shall be eligible to receive universal service support in accordance with section 254 of this title and shall, throughout the service area for which the designation is received—(A) offer the services that are supported by Federal universal service support mechanisms under section 254 (c) of this title...”

¹⁰⁶ Cf. *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, WC Docket No. 03-211 (Nov. 12, 2004),

calls. The FCC determined in the USF order that the Vonage preemption would not apply to such services.¹⁰⁷

Not only is AT&T not relieved of the obligation to offer U-Verse voice consumers a choice of long distance providers, U-Verse voice services are not even subject to the limited preemption of the Vonage order. The U-Verse voice services provided by AT&T in fulfillment of its ETC obligations should comply with all telecommunications obligations of the TDM services they replace, including affording consumers the choice of long distance provider. Furthermore, U-Verse voice service should be offered at tariffed local exchange rates, lower than the rate bundled with long distance.

Wireless Services

AT&T suggests in the plan that it will meet its ETC obligations in some areas solely through wireless service, delivered through CMRS services offered by its affiliate. States have limited jurisdiction over CMRS providers. This means that a consumer might have state regulated local exchange service now, and could see this replaced with another service not subject to such state regulation. Furthermore, the locations most likely to have only wireless service from AT&T are also likely to have very little, if any, competitive choice. The state would be powerless to ensure that these customers have access to services at reasonable prices or with reasonable service quality.

Restriction of state authority over Cellular Mobile Radio Service is based on the mobile nature of the services. 47 U.S.C. § 332(c)(3) restricts state authority to regulate “commercial mobile services”. A “mobile service” is defined in 47 U.S.C. § 153 as “a radio communication service carried on between mobile stations or receivers and land stations” and a “mobile station” means “a radio-communication station capable of being moved and which ordinarily does move”. In this instance, the services are to be provided at fixed locations. Since a station at a fixed location is not one that “ordinarily does move”, the preemption in 47 U.S.C. § 332(c)(3) arguably does not apply. This service is more properly described as fixed-wireless, or wireless local loop. In any event, AT&T is essentially using wireless technology to provide local exchange service. The FCC and states should be open to alternative technologies in the provision of basic telecommunications services, as described in 47 USC 254(c).¹⁰⁸ However, since AT&T is

¹⁰⁷ “...we note that an interconnected VoIP provider with the capability to track the jurisdictional confines of customer calls would no longer qualify for the preemptive effects of our Vonage Order and would be subject to state regulation. This is because the central rationale justifying preemption set forth in the Vonage Order would no longer be applicable to such an interconnected VoIP provider.” *In the Matter of Universal Service Contribution Methodology*, Report and Order and Notice of Proposed Rulemaking, WC Docket No. 06-122, ¶ 56 (June 21, 2006).

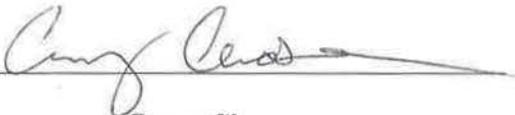
¹⁰⁸ Definition (1) In general

Universal service is an evolving level of telecommunications services that the Commission shall establish periodically under this section, taking into account advances in telecommunications and information technologies and services. The Joint Board in recommending, and the Commission in establishing, the definition of the services that are supported by Federal universal service support mechanisms shall consider the extent to which such telecommunications services—

voluntarily choosing to replace existing TDM services with wireless services in the fulfillment of these same obligations, the regulations relating to these services should continue to apply. Therefore, despite potential classification as a CMRS service and the associated CMRS preemption, the fixed-wireless wireless local loop services AT&T proposes to supply in meeting its ETC obligations should be subject to all of the state and federal regulations that apply to the current TDM services.

Dated at Montpelier, Vermont this __ day of April, 2014.

VERMONT DEPARTMENT OF PUBLIC SERVICE

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- (A) are essential to education, public health, or public safety;
 - (B) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers;
 - (C) are being deployed in public telecommunications networks by telecommunications carriers; and
 - (D) are consistent with the public interest, convenience, and necessity.