

**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	)	

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

XO Communications, LLC (“XO”) hereby submits its reply comments on the February 27, 2014, proposal of AT&T<sup>1</sup> filed in the above-referenced dockets for service-based experiments in two wire centers in Carbon Hill, Alabama, and in West Delray Beach (Kings Point), Florida.

**I. INTRODUCTION**

In its initial comments, XO explained that the AT&T Proposal contains critical design flaws and omissions in general and particularly with respect to wholesale services and inputs and should not be sanctioned unless those deficiencies are addressed and remedied. As XO stated in its comments, the Commission should determine what added value any experiment would create considering that the industry has been moving rapidly toward the deployment of IP technology without needing any experiment.<sup>2</sup> A number of competitive service providers voiced

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<sup>1</sup> AT&T Proposal for Wire Center Trials, GN Docket No. 13-5, *et al.* (filed February 27, 2014) (“AT&T Proposal”). The AT&T Proposal was submitted in response to the solicitation by the Federal Communications Commission (“Commission”) invitation in its *Transition Trials Order* for service-based experiments that would assist the Commission with its regulatory duties during the ongoing transition of the nation’s legacy time division multiplexing (“TDM”) networks to an all-IP (“Internet Protocol”) public communications network (“PCN”). *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*”).

<sup>2</sup> Comments of XO Communications LLC, GN Docket Nos. 13-5 and 12-253, at 4 (filed Mar. 31, 2014) (“XO Comments”).

complementary concerns to those raised by XO, underscoring the fact that the AT&T Proposal does not comply with the requirements of the *Transition Trials Order*. For instance, too many details of the experiment as it relates to wholesale services and inputs is “to be determined” (“TBD”). Together, the comments provide a road map for areas that need to be addressed before the AT&T Proposal could be of any real use to the Commission, the public, and the industry. Therefore, before the Commission considers approving such a transition trial, AT&T must be required to develop a well-designed experiment, one which fully examines the transition in suitable representative wire centers and allows all types of customers to be involved while preserving competition and the other core values articulated by the Commission in its *Transition Trials Order*.

The comments of the competitive providers also underscore that the Commission should not wait for the results of any eventual trials before addressing a number of key legal and policy concerns. Rather, the Commission should move forward to take actions defining the obligations of incumbent local exchange carriers (“ILECs”) under Sections 251 and 252 of the Communications Act of 1934, as amended, (the “Act”),<sup>3</sup> during and after the transition to an all-IP PCN. Only in this way will the Commission ensure that the core value of competition will be preserved.

## **II. THE COMMENTS HIGHLIGHT THE NUMEROUS FLAWS OF THE AT&T PROPOSAL**

In its comments, XO explained how AT&T failed to provide adequate information in its proposal about the identity, availability, or capabilities of alternate wholesale services<sup>4</sup> – a vexing flaw since AT&T has been promoting the idea of conducting technology transition

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<sup>3</sup> 47 U.S.C. §§ 251 & 252.

<sup>4</sup> See *XO Comments* at 10-11.

experiments for over a year. Indeed, the AT&T Proposal itself noted that it is still developing those inputs.<sup>5</sup> The lack of well-defined wholesale alternatives is an omission in the AT&T Proposal that numerous other commenters remarked upon, one which not only makes voluntary participation by wholesale customers unlikely, but also undermines the value of the proposed experiment as a whole. Further, the two wire centers identified in the AT&T Proposal appear to have little wholesale activity in any event, underscoring their unsuitability for meaningful technology transition trials even if AT&T were to address the other shortcomings of its proposal with respect to wholesale services.

**A. The Detail Regarding Wholesale Alternatives Is (Unacceptably) TBD**

In its comments, XO explained that with respect to addressing the transition to wholesale IP alternatives the AT&T Proposal was long on promise but short on delivery. COMPTEL similarly noted that, despite reference to a description of how it will proceed to include wholesale services and inputs into the proposed experiment, the AT&T plan “*in reality* lacks any detail on functionality and pricing of replacement products,” and often identifies no replacement products at all.<sup>6</sup> CBeyond *et al.* stated that in the absence of the alternative services being identified, the Commission cannot assess the AT&T proposal.<sup>7</sup> Nor can potential wholesale

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<sup>5</sup> 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.”)

<sup>6</sup> Comments of COMPTEL, GN Docket Nos. 13-5 and 12-253, at 5 (filed Mar. 31, 2014) (“COMPTEL Comments”).

<sup>7</sup> Comments of CBeyond, Integra, Level 3, and tw telecom, GN Docket Nos. 13-5 and 12-253, at 12-13, 23 (filed Mar. 31, 2014) (“CBeyond *et al.* Comments”) (AT&T fails to identify the rates terms and conditions on which AT&T plans to offer packet-based services to wholesale customers during the initial voluntary phase or in later phases of the transition experiments); *accord* Comments of Granite Telecommunications LLC, GN Docket Nos. 13-5 and 12-253, at 10 (filed Mar. 31, 2014) (“Granite Comments”).

customer participants.<sup>8</sup> Metropolitan Telecommunications (“MetTel”) noted that the missing detail is required “so that CLECs such as MetTel, that want to participate in the experiment, can make a decision to participate based on facts rather than unsupported promises. Without CLEC participation, the Commission will have no information as to how the technology transition impacts ILECs’ relationship with their wholesale customers.”<sup>9</sup> While it is not likely that parties can commit to participating in a voluntary experiment until it is better and fully defined (and designed), MetTel is correct that a rational decision cannot be made based on the paucity of information that the AT&T Proposal includes. COMPTTEL noted, for example, that AT&T plans to retire DS1 and DS3 unbundled network elements (“UNEs”) without offering a replacement product or an explanation why these elements cannot continue to be offered over an IP-based network.<sup>10</sup> Given the importance of special access services, which often are the sole means by which competitive providers can offer service to many business and enterprise locations – there being no other means of accessing the end user other than the ILEC’s facilities – how can

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<sup>8</sup> See, e.g., Comments of Windstream Corporation, GN Docket Nos. 13-5 and 12-253, at 3-4 (filed Mar. 31, 2014) (“Windstream Comments”) (Windstream is unable to “provide meaningful comment . . . until AT&T provides and makes accessible to the public further details”).

<sup>9</sup> Comments of Manhattan Telecommunications Corporation d/b/a Metropolitan Telecommunications, GN Docket Nos. 13-5 and 12-253, at 3-4 (filed Mar. 31, 2014). The Competitive Carriers Association (“CCA”) echoed this concern when it states that the lack of detail gives wholesale customers in the wire centers selected for the trial proposal an “untenable choice” between staying with TDM services AT&T has made clear will be discontinued or participating in the trial with no concrete information about the alternatives. Comments of the CCA, GN Docket Nos. 13-5 *et al.* at 3 (filed Mar. 31, 2014) (“CCA Comments”).

<sup>10</sup> *COMPTTEL Comments*, at 5, 9, 11-13. The Interisle Competitive Carriers Group correctly notes that unbundled loops “are *network elements*, not services, and are thus not time division multiplexed. They have no connection to IP vs. TDM and are vital to competition.” Interisle Competitive Carriers Group, GN Docket Nos. 13-5 and 12-253, at 10 (filed Mar. 31, 2014). As COMPTTEL contended, apart from the impairment standard, the ILECs do not have the option of “discontinuing” UNEs simply because they transition to a new technology. *COMPTTEL Comments*, at 12-13.

wholesale customers assent to participate in an experiment without knowing the nature and price of the alternatives AT&T will offer?<sup>11</sup>

### **B. Existing Wholesale IP-Based Alternatives Are Insufficient**

The opening comments also leave no doubt that the few wholesale alternatives that AT&T offers and identified in the AT&T Proposal are inadequate substitutes for many of the wholesale inputs currently available to competitors.<sup>12</sup> COMPTTEL emphasized that the existing AT&T products “offer nothing new to test,” and it is already well known that their availability “has failed as a catalyst to transition the industry to IP technology.”<sup>13</sup> COMPTTEL also noted that these products, such as AT&T’s Switched Ethernet (“ASE”) service, appear to lack certain key functionalities or flexibility as the TDM special access services they would replace, such as the number of devices served per customer or customers that could be served per port.<sup>14</sup> Moreover, the minimum bandwidth requirement of the ASE product may force end user customers of

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<sup>11</sup> Several commenters join XO in challenging AT&T’s suggestion that alternative IP-based services will be made available on “commercial terms,” rather than the equivalent terms called for by the *Transition Trials Order* (§59). See, e.g., *Windstream Comments* at 5; *CBeyond et al. Comments* at 5 (commercial terms for IP-based alternatives to regulated wholesale access inputs would allow AT&T to abuse its market power). Windstream also notes that should AT&T seek to discontinue TDM-based DS1 or DS3 services, an essential condition for forbearance from enforcing Title II obligations against AT&T’s packet-based services will have been removed. See *Windstream Comments* at 5 & n. 18.

<sup>12</sup> Granite Telecommunications criticizes AT&T for trying to get a jump start on its wholesale customers by offering “three specific different catch products for Message and Flat Rate business plans in both Kings Point and Carbon Hill – ‘New Product-A,’ ‘New Product-B’ and ‘IP Flex Reach,’ which will offer business customers IP-based products for voice calling” without offering “functionally equivalent wholesale products . . . to wholesale competitors at the outset of the trial.” *Granite Comments* at 7.

<sup>13</sup> *COMPTTEL Comments* at 4. See also *id.* at 14-15.

<sup>14</sup> *Id.* at 6, 19-23. COMPTTEL notes that many of the limitations that prevent AT&T’s ASE product are the result of AT&T decisions which could be changed. *Id.* at 21. In a similar vein, COMPTTEL raises the very important question whether AT&T could expand its Ethernet offering to allow business and enterprise customers to preserve existing investment in their customer premises equipment purchased to access TDM-based services. *Id.* at 6-7.

AT&T's wholesale customers to bear the costs of higher bandwidth ports that they would not otherwise need.<sup>15</sup> Yet, the prices of ASE and other existing "alternatives" based on AT&T's Interstate Access Guidebook would result in price increases of two to ten times tariffed special access pricing.<sup>16</sup> This is plainly contradictory to the requirement of the *Transition Trials Order* that the price of access functionally equivalent to UNEs or special access should "not increase as a result of the experiment."<sup>17</sup>

### C. AT&T Should Clarify the Availability of Non-IP Based Inputs

Windstream noted that, if participation in the trials is truly voluntary, as AT&T suggests, and the *Transition Trials Order* contemplates, then AT&T must ensure that wholesale customers can initiate new TDM services and augment existing ones. Otherwise, migration to IP-based inputs would be forced.<sup>18</sup> This concern about the availability of current inputs is critical and extends particularly to copper loop facilities. Like XO, several commenters raised concern over the ambiguity of AT&T's "promise" that "bare copper loops" would be available during the initial stages of the trial.<sup>19</sup> In short, AT&T fails to explain to what extent such loops will be made available, whether they will be home run or hybrid loops, what condition they are in (*i.e.*, are they adequate to support Ethernet over Copper ("EoC") service), how long they will be made available, and at what price. Depending on how these details are filled in, the availability of

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<sup>15</sup> See *id.* at 17-18.

<sup>16</sup> *Id.* at 6, 15-18; see also *Windstream Comments* at 6 (comparison of rack rates for TDM and ASE services "indicates a significant price increase for wholesale customers" and potentially significantly longer installation intervals). COMPTTEL's cost estimates exclude the cost of any equipment necessary by the wholesale customer or its end user customer as a result of the transition to the alternative wholesale input. See *COMPTTEL Comments* at 23.

<sup>17</sup> *Transition Trials Order*, app. B, ¶ 35.

<sup>18</sup> *Windstream Comments* at 7.

<sup>19</sup> See, e.g., *CBeyond et al. Comments* at 24-25; *COMPTTEL Comments* at 9-11; *Windstream Comments* at 7-8. See also *XO Comments* at 10 n. 15.

“bare copper loops” may prove a meaningless promise from the standpoint of preserving the core value of competition during even the initial stages of any trial.

XO also joins with those commenters that want to ensure that participation by wholesale customers in any experiment and the taking of non-TDM alternatives does not harm those customers in meeting volume commitments in their special access discount plans.<sup>20</sup> The Commission should require AT&T, if any experiment is permitted to go forward, to make clear that any IP-based alternatives replacing special access circuits will be counted toward meeting the commitments in those plans.<sup>21</sup>

**D. The Two Wire Centers of the Proposal Are Inadequate to Assess the IP Transition for Wholesale Services**

Several commenters stressed the flaws in AT&T’s choice of wire centers. *CBeyond et al.* highlighted that AT&T is admittedly still assessing the extent of wholesale activity in the two wire centers,<sup>22</sup> which further underscores that AT&T did not select the two wire centers in the AT&T Proposal with a meaningful test involving wholesale services in mind.<sup>23</sup> The two wire centers AT&T selected are, in any event, a poor choice to gain an understanding of the transition and its effects on wholesale competition. Of the other commenters, Windstream appears to be alone in suggesting that it serves more than a small number of customers served using wholesale inputs in the two selected wire centers, and of those customers, a significant portion – all in the

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<sup>20</sup> See, e.g., *CBeyond et al. Comments* at 24; *COMPTEL Comments* at 6; *Windstream Comments* at 8-9.

<sup>21</sup> See, e.g., *CBeyond et al. Comments* at 24-25; *COMPTEL Comments* at 9-11; *Windstream Comments* at 7-8. See also *XO Comments* at 16 (discussing concerns regarding the anti-competitive nature of price cap LEC long-term pricing agreements under review by the Commission).

<sup>22</sup> *Id.* at 13.

<sup>23</sup> As explained in its comments, XO purchases a limited number of circuits in the Kings Point wire center on a wholesale basis. *XO Comments* at 9.

Kings Point wire center – are small businesses requiring only DS0s or DS1s.<sup>24</sup> As a consequence, there is scant indication that the AT&T Proposal would provide any helpful information regarding the impact of the transition on wholesale competition on the large business and enterprise market segments in the two wire centers, assuming wholesale customers volunteered to be part of the proposal. Even the slightly more populated Kings Point wire center is a poor choice to obtain useful data regarding the technology transition in comparison to locations where multiple competitors – meaning three, four, five, or more competitors – are operating, such as in major urban centers.

### **III. THE COMMISSION SHOULD NOT DELAY ADDRESSING THE POLICY ISSUES NEEDED TO PRESERVE THE CORE VALUE OF COMPETITION**

XO shares the Commission’s goal of encouraging the transition to an all-IP PCN and urges the Commission to carefully consider the details of any proposed trial to ensure it will provide valuable data before sanctioning it. In the interim, however, the Commission should act promptly to address critical policy and regulatory issues, such as what wholesale obligations will apply to an ILEC when competitive providers seek to access ILEC’s IP-based last-mile facilities and enter into managed IP interconnection arrangements. Resolution of these issues is essential to the preservation of competition during and after the transition to an all-IP PCN, and the record in existing proceedings provide the platform for the Commission to act now to adopt orders.<sup>25</sup>

In a complementary vein, COMPTTEL and Windstream called upon the Commission to implement key recommendations of the National Broadband Plan designed to maintain competition during and after the transition to an all-IP PCN: develop a coherent and effective

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<sup>24</sup> *Windstream Comments* at 2.

<sup>25</sup> *See XO Comments* at 15-16 and the discussion of pending Commission proceedings therein.

framework to ensure widespread availability of wholesale inputs for broadband and other services, ensure rates for TDM and packet-based special access are just and reasonable, clarify statutory rights and obligations regarding IP interconnection, and ensure appropriate balance in copper retirement policies.<sup>26</sup> CCA in its comments made clear that Section 251(c) of the Act is technology neutral and that the Commission should take the opportunity now to make clear that AT&T's (indeed, all ILECs') Section 251 and 252 obligations apply to their IP-based network services, precluding attempts by AT&T to use the trials as a back door way to jettison those duties during and after the move to an all-IP PCN.<sup>27</sup> XO agrees that these matters should be addressed and urges the Commission to expeditiously implement a managerial framework to address the industry-wide large-scale issues, whether legal, regulatory, or policy arising from the IP transition, where these matters already have been pending for some time.<sup>28</sup>

#### **IV. CONCLUSION**

For the foregoing reasons and those set forth in XO's comments, the Commission should not sanction the AT&T Proposal as presented. The Commission should not consider approving any experiment until it can confirm that the experiment will provide valuable data not otherwise available from current marketplace activities. Before the AT&T Proposal could be considered capable of providing such data, AT&T must rectify the flaws highlighted in the comments, particularly as they apply to wholesale services and participation by wholesale customers. Finally, regardless of when and how it addresses the many flaws in the AT&T Proposal, the

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<sup>26</sup> See *COMPTEL Comments* at 7-8; *Windstream Comments* at 9-10.

<sup>27</sup> See *CCA Comments* at 5-6.

<sup>28</sup> The managerial framework proposed by COMPTEL deserves consideration by the Commission and interested parties as a measured but deliberate way to move forward. See *ex parte* Letter of COMPTEL to Marlene H. Dortch, Scary, FCC, filed in GN Docket No. 13-5 *et al.* (dated Apr. 2, 2014).

Commission should act promptly on the important policy, legal, and regulatory issues regarding the IP-transition already pending in numerous proceedings.

Respectfully Submitted,

XO COMMUNICATIONS, LLC



Thomas W. Cohen  
Edward A. Yorkgitis, Jr.  
Kelley Drye & Warren LLP  
3050 K Street, NW  
Suite 400  
Washington, D.C. 20007  
Telephone: (202) 342-8400  
Facsimile: (202) 342-8451

Lisa R. Youngers  
Tiki Gaugler  
XO Communications, LLC  
13865 Sunrise Valley Drive  
Herndon, VA 20171  
Telephone: (703) 547-2258

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