

**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

REPLY TO COMMENTS OF AT&T SERVICES, INC.

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April 10, 2014

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INTRODUCTION AND SUMMARY

The parties' comments reveal broad support for comprehensive trials to identify and resolve the many operational, logistical, and technical issues that could arise when existing TDM-based services are discontinued and replaced with IP-based wireline and wireless alternatives. Consumer groups, state commissions, public safety groups, and others recognize that such experiments will provide valuable experience and insights that will help guide the transition in a way that ensures that the fundamental values of universal connectivity, consumer protection, public safety, reliability, and competition ("core network values") continue to be met during and after the transition.¹ At the same time, commenters raise many legitimate questions and concerns regarding the trial, and, more broadly, the IP transition.² Their apprehensions are understandable; change, particularly changes in technology and services on which consumers

¹ See Texas 9-1-1 Entities Comments at 2; Telecommunications Industry Ass'n (TIA) Comments at 4; Public Knowledge, *et al.* Comments at 2; Michigan PSC Comments at 2; Manhattan Telecommunications Corp. Comments at 1; Alabama PSC 1-2; Hypercube Telecom Comments at 1-2; Harris Corp. Comments at 3-4; Granite Telecommunications Comments at 1; Ericsson Comments at 1-2; Competitive Carriers Ass'n Comments at 2; Communications Workers of America (CWA) Comments at 1; CenturyLink Comments at 1-2; and Comptel Comments at 2.

² Indeed, many of the commenters' questions and concerns seem to relate to the post-transition end-state, when traditional, TDM-based telephone services no longer are available, rather than to the trials themselves.

have relied for more than a century, always will cause some anxiety. But these concerns do not provide a basis for rejecting AT&T's proposed wire center trials. As we previously have acknowledged, AT&T does not have an answer to every question or issue posed by the IP transition, nor do we presume that we (or indeed any party) yet has identified every question that will arise during and after the trials. But, that is the point of the trials AT&T has proposed — to provide a vehicle for identifying and addressing the very sorts of issues and concerns raised in the comments. Simply put, if we had all the answers, there would be no reason to conduct a trial.

In its *Technology Transitions Order*, the Commission invited interested parties to submit proposals for real-world experiments to evaluate the impact of replacing existing services with IP-based alternatives in discrete geographic areas, and provided a detailed blueprint for such experiments.³ In so doing, it identified the information that parties should include in their proposals, and the conditions, presumptions and relevant factors that would guide the Commission's evaluation of proposed experiments.⁴ In response, AT&T submitted a detailed plan for two trials involving the transition of two wire centers — one rural and one suburban — to all IP services, which followed the Commission's blueprint to the letter.

A variety of commenters supported AT&T's proposal,⁵ and recognized that it “falls squarely within the vision of the *Technology Transitions Order*.”⁶ But a number of parties raised objections to and/or expressed concerns about AT&T's detailed plan for the proposed trials. Commenters' chief complaint is that they cannot fully evaluate the impact of the trial on

³ *Technology Transitions; AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition, et al.*, Order, Report and Order, and Further Notice of Proposed Rulemaking, *et al.*, GN Docket Nos. 13-5 and 12-353, *et al.*, FCC 14-5, rel. Jan. 31, 2014 (*Technology Transitions Order*).

⁴ *Id.*

⁵ CenturyLink Comments at 1; CWA Comments at 3; Ericsson Comments at 1; Harris Corp. Comments at 4; Alabama PSC Comments at 2; and TIA Comments at 1-3.

⁶ CenturyLink Comments at 1; NASUCA Comments at 3 (“[T]he AT&T proposal by and large follows the Commission's intentions for ‘experiments’ in the Transitions Trials Order.”)

consumers because some of the replacement services AT&T intends to offer are still under development. Commenters raised concerns about other matters, such as service quality, AT&T's plans for serving low income consumers, the reliability of next generation services, and whether all existing features, functions and capabilities of existing services will be carried forward to the all-IP ecosystem.

AT&T's proposed trials will provide a forum for addressing these questions and concerns, as the Commission intended when it solicited proposals for such experiments in the *Technology Transitions Order*. The trials will enable parties to evaluate the potential impact on consumers of the transition, engage in a fact-based dialogue regarding potential gaps in technology, services or policies, and develop solutions while the existing network and services remain in place as a backstop. Some solutions may entail changes to AT&T's proposed replacement services, while others will require customers to adapt to those replacement services to the extent the Commission finds that certain features and functions of TDM networks and services no longer make sense in an all IP world. At the same time, some issues/gaps are beyond the ability of any one provider to solve (such as how best to ensure that customers in remote and other high cost areas have access to broadband and other communications services in the emerging IP ecosystem), and will require all interested stakeholders to work together to develop a solution. But, critically, under the trial framework established by the Commission and wire center experiments proposed by AT&T, no one will lose access to existing services in the trial wire centers until the Commission is satisfied that the fundamental values of universal connectivity, consumer protection, public safety, reliability, and competition will continue to be met during and after the trials. Accordingly, the Commission should promptly approve AT&T's proposed wire center trials so that we and all interested parties can get on with the important task

of identifying and engaging in a meaningful dialogue regarding these issues based on real-world data.

DISCUSSION

I. Concerns That AT&T's Proposed Trials Leave Questions Unresolved Do Not Warrant Rejection of AT&T's Proposal.

The comments regarding AT&T's proposed wire center trials reflect broad agreement both that the TDM-to-IP transition is well underway and that comprehensive trials are an appropriate and effective way to identify and resolve operational, logistical and technical issues in a manner consistent with the core network values as we complete the transition.⁷ However, a number of parties raised concerns and questions regarding AT&T's proposal, and argue that the Commission should not approve AT&T's proposed trials, and thus permit it to withdraw existing services, until AT&T has fully addressed and responded to all such concerns and questions. These parties' principal objection is that they cannot evaluate the impact of the transition on consumers because some of the replacement services AT&T intends to offer in the trial wire centers are still being developed. For example, AARP contends that AT&T's plan does not provide sufficient detail regarding its Wireless Home Phone services, and, in particular, regarding the enhancements currently under development for that service, which will provide street address 911 location accuracy and support alarm monitoring, medical alert devices, fax

⁷ See Alabama PSC Comments at 1 (AT&T's proposed trials present "an opportunity to further our understanding of the technical issues confronting providers and the implications for consumers during the transition from the legacy wireline network to the IP-based telecommunications network."); People of the State of Illinois Comments at 2 ("The 'trials' that are contemplated by the Commission's Initiating Order represent a valuable attempt to monitor [the IP transition] and to identify potential problems and unanticipated consequences arising from the transition."); TIA Comments at 1-2; Public Knowledge, *et al.* Comments at 2 ("[t]rials can give the Commission the opportunity to more fully understand where new technologies may improve service for consumers and where those technologies must still be improved before carriers can convert entire communities over to them."); Michigan PSC Comments at 2 ("[T] MPSC supports the experimental trials concept that the FCC has proposed . . ."); Ericsson Comments at 1; CWA Comments at 1.

machines, assistive technologies, and credit card validation services.⁸ It argues that, before AT&T's proposal is approved, the Commission should confirm that the solutions AT&T is developing will work and not result in service degradation.⁹ AARP also complains that AT&T's plan does not reveal the wireless replacement service it intends to offer existing DSL customers that will be outside AT&T's wireline IP network footprint,¹⁰ nor does it adequately address the impact of the trials on broadband prices.¹¹ Similarly, the Michigan PSC expresses concern that

⁸ AARP Comments at 9-12. *See also* Alarm Industry Communications Committee (AICC) Comments at 4-7. AARP also complains that AT&T has inappropriately claimed confidential treatment of certain information (such as the timeline for implementing the enhancements to Wireless Home Phone, and the dates on which AT&T intends to seek approval to grandfather and later sunset particular services) it claims it needs to evaluate AT&T's proposal. However, all of the information that AT&T classified as confidential is competitively sensitive. Disclosure of that information could be used by AT&T's competitors to obtain a competitive advantage in the marketplace through preemptive marketing campaigns, developing similar enhancements to competitive products (in this regard, AT&T notes that it offers Wireless Home Phone nationwide in competition with similar products offered by Verizon and Sprint), and the like. In any event, AARP and other parties have access (or can obtain access) to such information pursuant to the Commission's protective orders in this proceeding. Moreover, as discussed below, under the Commission's trials framework, and AT&T's Wire Center Operating Plan, AARP and others will have ample opportunity to review and assess the adequacy of AT&T's replacement products before AT&T obtains approval to grandfather and/or sunset any existing services.

⁹ AARP Comments at 12; CWA Comments at 5 (arguing the Commission should not approve Phase II mandatory migration until the enhancements are implemented); Michigan PSC Comments at 5 (issues relating to AT&T's enhancements to its Wireless Home Phone service, including location accuracy, must be resolved before any permanent changes are made to the FCC rules or regulations). AT&T notes that it will keep both the National Emergency Number Association (NENA) and APCO International apprised of its work on the enhancements to its Wireless Home Phone service to provide public safety answering points with a MSAG-quality address, and seek input from them. Likewise, AT&T will engage with the alarm monitoring industry as it develops and tests the enhancements to Wireless Home Phone to address the compatibility of that service with analog data services and devices, including alarm systems. In so doing, AT&T will use the same development and testing procedures it used to ensure that its U-verse Voice service complies fully with the National Fire Protection Association (NFPA) fire code standard in NFPA 72.

¹⁰ AARP Comments at 18 (noting that AT&T did not list a wireless broadband service as a replacement for wireline DSL in the product data sheets in Exhibit E to the Wire Center Operating Plan). AT&T notes that, while the product data sheets identify only AT&T's wireline high speed Internet access (HSIA) services as replacements for wireline DSL, AT&T's Wire Center Operating Plan states that AT&T will offer consumers outside AT&T's wireline IP network footprint wireless alternatives, including AT&T's Wireless Home Phone and Internet service, which provides broadband Internet speeds capable of downstream speeds of 5-12 Mbps. AT&T Plan at 12. In any event, in response to questions from Commission staff, AT&T has provided additional information about its wireless replacements for wireline DSL services. *See* Letter of Christopher Heimann, AT&T, to Jonathan Reel, Competition Policy Division, WCB, GN Docket Nos. 13-5, 12-353 (March 25, 2014) (*AT&T March 25 Ex Parte*).

¹¹ AARP Comments at 20-21 (claiming that AT&T failed to provide projections of the cost difference between AT&T's existing DSL services and its IP wireline and wireless replacement services). However, AT&T provided information regarding the costs of replacement services both in the body of the plan and in the product data sheets attached thereto, and provided additional information regarding the impact of the trials on broadband prices in response to questions from Commission staff. *See AT&T March 25 Ex Parte*.

AT&T's proposal "does not specifically address what, if any, new or additional equipment will need to be installed and which party will pay the cost of any new equipment or services in these trial areas."¹²

Some commenters also express concern that the VoIP and wireless services AT&T will offer in place of legacy services will negatively impact network reliability and service quality.¹³ The Michigan PSC, for example, expresses concern that services that rely on commercial power and a battery backup are far less reliable than legacy phone services, which will continue to function in the event of a commercial power outage.¹⁴ Likewise, AARP expresses concerns regarding potential differences in reliability between traditional telephone services and wireless services, claiming that AT&T did not address the issue of backup power at the antenna serving the cell sites in the trial areas.¹⁵ AARP also asserts that AT&T's plan to offer wireless-only services to some customers in the trial wire centers raises important questions regarding service quality and coverage. It worries that customers in areas of Carbon Hill outside AT&T's IP

¹² Michigan PSC Comments at 4.

¹³ See AARP Comments at 13-14; Michigan PSC Comments at 6; Pennsylvania PUC Comments at 5.

¹⁴ Michigan PSC Comments at 6.

¹⁵ AARP Comments at 13. With the exception of small cell site deployments, AT&T maintains backup power to all cell sites using fixed generators, on-site battery arrays, and portable generators. AT&T included in its Wire Center Operating Plan a discussion of the additional measures AT&T takes to maintain communications services in the event of a power outage. AT&T Wire Center Operating Plan at 32. In addition, AT&T has Cell-sites on Wheels (COWs) and Cell-sites on Light Trucks (COLTs), and other equipment to restore cell service in the event of a power outage or other damage to network equipment. In any event, as the Commission is aware, AT&T's methods and procedures to maintain power and rapidly restore cell service in the event of an outage are second to none. These include providing special services and facilities to local governments and FEMA, Emergency Communication Vehicles, generators, WiFi and VoIP service, and cell phones. For example, during Superstorm Sandy, AT&T fielded countless requests from New York City for a variety of supporting assets and services. And, in response to a request for assistance from tw telecom, we transported an environmentally conditioned equipment trailer from Georgia to New York without a contract, and leased it to tw telecom so that it could recreate a hub that was damaged during a flood.

wireline network footprint may not receive an adequate wireless signal due to the terrain around Carbon Hill.¹⁶

Finally, a few parties assert that the Commission should not authorize a trial until or unless AT&T explains its plan for living units in the Carbon Hill wire center outside AT&T's IP wireline network and wireless footprints. AARP, for example, argues that the Commission should require AT&T "to better explain its plan for the . . . customers currently served by AT&T's TDM platform that AT&T indicates that it cannot make a 'business case' to serve with either its wireline or wireless options. Under no circumstances should these customers lose service as the result of a trial."¹⁷

Commenters raise legitimate concerns and fair questions that should be answered regarding the impact of the wire center trials AT&T has proposed (and, more generally, the IP transition) on consumers and the core network values of universal connectivity, consumer protection, public safety, reliability and competition.¹⁸ But, these concerns and questions do not provide a basis for rejecting or deferring AT&T's proposal. The common thread linking these concerns and questions is commenters' uneasiness that AT&T still is in the process of developing and enhancing some of the services that AT&T intends to offer in place of traditional, wireline telephone services, and that AT&T's plan raises certain questions that AT&T alone cannot resolve (such as how we, as a nation, can maintain universal connectivity in

¹⁶ AARP Comments at 14. AT&T notes that, in identifying the areas in which Wireless Home Phone would be available, AT&T relied on sophisticated modeling that accounts for terrain in calculating expected indoor signal strength at particular locations, consistent with industry practice. AT&T excluded customer locations where indoor signal strength likely would be insufficient to provide an acceptable level of service. In any event, as AT&T made clear in the plan and in its recent ex parte, to the extent a customer does not receive an adequate signal, the customer will have the option to terminate Wireless Home Phone service and reestablish legacy telephone service until an alternative is identified. See *March 25 Ex Parte*, response to question 22.

¹⁷ AARP Comments at 4. AT&T agrees, and, as discussed below, emphasizes that no one will lose access to communications services as a result of the trial.

¹⁸ A great many of these questions and concerns seem to focus on the ultimate end-state when TDM is no longer available, rather than on the trials themselves, which are just the beginning of the process.

remote and other high cost areas now that competition has eliminated the implicit subsidies on which carriers previously relied to support low-cost voice services in such areas). But, if AT&T already had all the answers (much less identified all of the issues that will be raised by the trials and the IP transition), there would be no reason to conduct a trial.

As AT&T explained in its proposal, the primary objective of the wire center trials is to provide a process for identifying and resolving the types of issues and concerns (both known and currently unforeseen) identified in the comments, which could arise when TDM-based services are discontinued and the remaining customers still subscribed to those services have to transition to IP-based wireline and wireless alternatives.¹⁹ The trials will provide a forum for all stakeholders to assess the impact on consumers of this major technology change, engage in a fact-based dialogue regarding any potential gaps in technology, services or policies, and develop solutions to address any concerns or open issues while the existing network and services still are in place. As the Commission itself observed, the purpose of the experiments solicited by the *Technology Transitions Order* is to enable the Commission and public to evaluate how consumers will be affected by the historic change in technology already transforming the nation's communications services:

The experiments and initiatives [solicited by the order] will collect data that will permit service providers and their customers, and independent analysts and commentators — as well as the federal, State, local and Tribal officials charged with oversight — to make data driven decisions about these technology transitions. By using an open and deliberative process to identify and address challenges, all stakeholders will benefit as we together learn how we may ensure that our values flourish as providers implement new technologies at scale and, ultimately, seek to discontinue legacy services and facilities.²⁰

¹⁹ AT&T Cover Narrative at 12; Wire Center Operating Plan at 1-2.

²⁰ *Technology Transitions Order* at para. 1.

Thus, rather than justifying rejection of AT&T's proposed wire center trials, the issues and concerns raised in the comments emphasize the importance of granting AT&T's proposal and moving ahead with the trials as quickly as possible.

In this regard, it is critically important to bear in mind what is at stake here. Completing the transition from traditional telephone services to next generation technologies is essential to the economic growth and global competitiveness of this nation. As the Commission recognized in the *Technology Transitions Order*, this transition already is well under way, and has brought with it new and improved communications services that have unleashed new products and services that are powering economic growth and fostering “innovations that cannot even be imagined today.”²¹ The IP transition has improved and facilitated communication and human interaction like no other network revolution before it, bringing untold benefits to the American people through, *inter alia*, distance learning, telemedicine, improved access to information, increased efficiency, and expanded markets for business' goods and services. As the Commission observed, “[t]he lives of millions of Americans could be improved by the direct and spillover effects of the technology transitions.”²² Thus, it sought to “speed” this transition through experiments designed to enable all stakeholders to “prepare for, maintain, and facilitate the momentum of technological advances that are already occurring.”²³ As a consequence, we, as a nation, cannot afford to hold off on beginning such experiments until every question is answered and every issue is resolved as some of the commenters propose — doing so will retard the transition and deprive millions of Americans of the myriad technological, economic and

²¹ *Id.* at para. 2.

²² *Id.*

²³ *Id.* at paras. 1, 2.

social benefits it brings. Rather, we should move forward with such experiments as expeditiously as possible,

Moreover, commenters' anxiety that approval of AT&T's proposed wire center trials could harm consumers by allowing AT&T to replace existing voice telephone services with untried, unreliable or otherwise inadequate replacement services, or otherwise leave existing customers without any service at all, is unwarranted. Under the framework established by the Commission's *Technology Transitions Order*, and AT&T's wire center trial proposal, customer participation in the initial phase of the trials will be wholly voluntary. Before AT&T can move on to either of the next phases of the trial (during which it first will grandfather and subsequently sunset existing services), it must file section 214 applications to demonstrate that withdrawing existing services — even for new customers — will not harm consumers and otherwise is consistent with the public interest. In those applications, which the Commission will put out for public comment, AT&T will provide detailed information about its proposed replacement services, and the availability of alternatives in areas outside AT&T's IP wireline network and wireless footprint. Interested parties thus will receive plenty of advance notice of AT&T's plans at each stage of the trial, and have ample opportunity to pose the sorts of questions, concerns and/or objections posed in the comments, including, *inter alia*, concerns regarding the quality and reliability of replacement services, and questions regarding differences in features, functions, capabilities, and cost between existing services and their replacements. Commission approval of AT&T's proposed trial thus will merely begin a process and dialogue for identifying and addressing those issues and concerns, and will not authorize AT&T either to grandfather or to sunset any existing services. As a consequence, no one will be forced to purchase any

replacement service or lose access to existing services, until or unless the Commission is fully satisfied that consumers will not be harmed and the public interest is satisfied.

II. The Commission Should Not Prejudge Whether All the Features and Functions of TDM Must Be Replicated in an All-IP World.

Several commenters object to AT&T's proposed wire center trials on the ground that the IP wireline and wireless services AT&T will offer in place of TDM services will not replicate all of the features and functions of those traditional telephone services. Public Knowledge, for example, asserts that a new network technology "is not a true step forward for everyone if it also abandons certain calling features supported by the existing network."²⁴ It argues that the Commission "cannot even begin the approval process for any 'trial' that would deny customers the ability to stay on or opt into the existing infrastructure when the new technologies fail to support features many people still rely on,"²⁵ and that "carriers cannot replace their existing services with new services until the Commission certifies that doing so is in the public interest."²⁶ Likewise, AARP argues that the Commission should not approve the trial unless there is no decrease in service functionality.²⁷ Similarly, the Pennsylvania PUC expresses concern that AT&T plans eventually to sunset switched carrier access charges, and will not maintain 1+ dialing for outgoing calls on the all-distance replacement services AT&T will offer in place of TDM.²⁸ And CWA argues that the Commission should require AT&T to continue

²⁴ Public Knowledge, *et al.* Comments at 2.

²⁵ *Id.* at 17.

²⁶ Public Knowledge, *et al.* Comments at 5.

²⁷ AARP Comments at 4.

²⁸ Pennsylvania PUC Comments at 6. *See also* Public Knowledge, *et al.* Comments at 17 (voicing concern that AT&T's U-verse voice service does not support collect calls and elevator phones, and that Wireless Home Phone currently does not support collect calls, elevator phones, E-911 with street address, medial and alarm monitoring, and credit card processing).

offering live operator services on the grounds that such services are technically feasible, and provide an important consumer service that, in times of emergency, could save lives.²⁹

The Commission should not reject AT&T's proposed trials on the ground that the IP-based wireline and wireless services that AT&T will offer in place of traditional, TDM-based telephone services will not replicate all of the features, functions and capabilities of those services (although, as AT&T previously has observed, those replacement services will support most of the features, functions, capabilities, applications and devices that are offered or enabled by AT&T's legacy network and services).³⁰ Nor should it prejudge whether any particular feature or function should be retained in an all-IP world. As discussed in AT&T's wire center trial proposal, IP networks enable a variety of new services, features, functions and capabilities that will benefit consumers, and the economy as a whole.³¹ At the same time, however, not every feature, function and capability of legacy services will (or even should) be supported, or will function in the same way, over next generation networks. The transition to all-IP networks and services necessarily will entail trade offs, and, in evaluating whether the transition is in the public interest, the Commission must consider whether the benefits outweigh any difference or purported diminution in features, functions and capabilities.

In designing replacement IP-based wireline and wireless services, AT&T sought to carry forward the features, functions and capabilities that consumers demand, and which are necessary to meet core network values. Not surprisingly, however, there are differences from traditional telephone services. But the question is not whether AT&T's replacement services differ from traditional telephone services, but whether those differences are nonetheless acceptable and thus

²⁹ CWA Comments at 6.

³⁰ AT&T Cover Narrative at 19; Wire Center Operating Plan at 13.

³¹ AT&T Wire Center Operating Plan at 44-45.

the replacements are reasonable and adequate alternatives. As AT&T observed in its detailed plan, although voice quality on wireless networks and services differs from (and, according to some, are inferior to) that of traditional, wireline voice services, over 40 percent of American households have cut the cord and rely on CMRS for all their communications needs, and thus have concluded that CMRS is an acceptable alternative to traditional, wireline services.³² Likewise, although VoIP services today offer sound quality comparable to or better than circuit-switched voice services, that was not always the case. But that did not stop millions of customers from switching to VoIP. Indeed, the number of customers that have abandoned traditional voice telephone services in favor of wireless and VoIP alternatives dwarfs those still subscribing to legacy services. In light of these marketplace developments, there is no basis to conclude that AT&T's proposed replacement services are inadequate simply because they do not offer all the features and functions of, or support all the same devices and services as, or function identically to existing services. Moreover, section 254 of the Act itself requires the Commission, in establishing the definition of services supported by Federal universal service support mechanisms, to consider the extent to which such services "have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers."³³ As a consequence, it is by no means clear that traditional voice telephone services still meet that test.

In any event, AT&T has identified the features and functions of its proposed replacement products (including both those already available and those under development), and how they differ from existing services so that all parties understand and can prepare for the transition. The

³² AT&T Wire Center Operating Plan at 45. Millions of those CMRS only households rely on services and devices similar to AT&T's Wireless Home Phone service to connect traditional telephone handsets to the network. *Id.*

³³ 47 U.S.C. § 254(c)(1)(B).

trial will provide all interested parties a forum and opportunity to identify any gaps in those services, and to engage in a fact-based dialogue regarding whether and by whom such gaps should be filled. In some cases, the solution may entail changes to AT&T replacement services. In others, the Commission and other stakeholders may conclude that particular features and functions are being overtaken by other services, no longer are necessary or make sense in an all-IP world, or that customers (including entities that designed their own products and services around TDM technology) will have to adapt. But the Commission should not hold the trials, or, more broadly, the IP transition itself, hostage to demands that every feature, function and capability of existing services must be carried over to the new technology and services. Rather, it should authorize the trials AT&T proposed, and resolve any questions regarding the adequacy of replacement services in the context of section 214 applications to grandfather and ultimately sunset existing services, as contemplated in the trial framework adopted in the *Transitions Trial Order*.

III. Ensuring Universal Connectivity to Broadband Will Require Cooperation Among all Stakeholders.

The National Consumer Law Center opposes AT&T's proposed wire trials on the grounds that AT&T has not yet identified a replacement for its existing voice telephony services for the four percent of living units in Carbon Hill located outside AT&T's IP wireline network and wireless footprints, and AT&T plans to seek relief from universal service obligations in areas where it receives no universal service support. It accuses AT&T of walking away from its universal service obligations, including offering Lifeline, and expresses concern that low-income consumers will lack access to low-cost services and customers living outside AT&T's IP wireline and wireless footprint in the trial wire centers will lose service altogether if AT&T is permitted to withdraw traditional circuit-switched services without adequate replacement

products and services.³⁴ It argues that the Commission “should demand more than a shoulder shrug for this 4 percent and require AT&T to submit a more concrete plan” for serving such customers,³⁵ and require AT&T to provide a low-cost, basic broadband package to all customers in the trial wire centers.³⁶

AT&T has not, as NCLC claims, walked away from the core network value of universal connectivity. Nor will anyone lose access to communications services as a result of the trials. Indeed, AT&T has specifically acknowledged that it is responsible for ensuring that customers at the four percent of living units outside AT&T’s IP wireline network and wireless footprints will have an alternative available to them prior to discontinuing existing TDM services, and committed to work with the Commission, policymakers and other stakeholders to ensure that this happens.

At the same time, however, it is important to recognize that the world has changed dramatically and, as a consequence, ensuring universal connectivity will require concerted action by all stakeholders. As we previously have explained, the days when regulators and others could rely on a single service provider — the incumbent telephone company — to provide universal access to communications services are long gone. The regulatory paradigm that made that possible depended on a complex web of implicit subsidies that shifted costs from local to long distance, rural to urban, and residential to business customers. But the social compact that made those subsidies sustainable depended on local franchise monopolies to ensure that competitors

³⁴ National Consumer Law Center (NCLC) Comments at 3 (noting that AT&T plans to seek for relief from ETC obligations, and has indicated that it cannot economically extend its IP wireline network and wireless services to reach all living units in its 22-state wireline service area, including 4 percent of living units in Carbon Hill).

³⁵ *Id.*

³⁶ *Id.* at 5.

did not undercut the incumbent and take away the customers on which the incumbent relied to recover the cost of offering low cost service in high cost areas through those implicit subsidies.

The 1996 Act rendered that social compact obsolete when it opened all telecommunications markets to competition, and thus eliminated the monopoly franchise that was the other side of the incumbent's bargain to provide universal connectivity. Since then, low-cost and high-revenue customers have abandoned traditional telephone networks and services in droves, switching to a host of competitive alternatives, eliminating the implicit subsidies that made reliance on the incumbent to provide universal connectivity possible.

Of course, Congress's decision to open telecommunications markets to competition has generated enormous benefits for the American people and economy by encouraging the huge investments in telecommunications infrastructure that is fueling the IP transition. But, there is no ignoring the resulting network economics (in particular, the high cost and limited returns of deploying broadband in sparsely populated rural areas) that have complicated, and in many cases eliminated, the business case for broadband investment in high cost areas.

It is important to remember that AT&T has not abandoned rural and other high cost areas by divesting underperforming wire centers. Rather it has sought to deploy broadband — both wireline and wireless — wherever possible, and thus has succeeded in bringing broadband to the vast majority of living units in high cost wire centers like Carbon Hill. And, for those living units not covered by its IP wireline network and wireless footprints, it has committed to work with all stakeholders to develop a solution that will ensure universal connectivity, and continue offering legacy services until that solution is found. Thus, far from “walking away” from the principle of universal connectivity, AT&T has embraced it and led the industry in seeking

universal service reforms that will make that possible. And we invite NCLC and others to join us in that effort.

Nor has AT&T walked away from its commitment to offering reasonably priced service to low-income customers. To the contrary, we have sought to meet the needs and demands of all our customers, including low-income customers, and will continue to do so irrespective of whether we maintain our existing ETC designations (and thus continue to participate in the Lifeline program). As discussed in the detailed plan, AT&T plans to offer in the trial wire centers unlimited local and domestic long distance calling over its Wireless Home Phone service at rates that typically are less than the amount AT&T's Lifeline customers currently pay for Lifeline-discounted traditional voice telephone services.³⁷ In any event, there currently are 19 providers of Lifeline service in Carbon Hill, and 7 in Kings Point.³⁸ As a consequence, regardless of whether AT&T continues to be an ETC and/or to offer Lifeline service, low income customers will continue to have access to low cost voice telephone services from AT&T and other providers in the trial wire centers.

IV. Criticisms of AT&T's Selection of Wire Centers for the Trials are Unjustified.

As it explained in the Plan, AT&T chose the Carbon Hill and Kings Point wire centers for the trial because they present some of the most difficult issues that carriers will have to confront as part the IP transition.³⁹ Some commenters argue that AT&T's proposal is too limited in that AT&T proposed trials only in two wire centers, both of which are in the same, general geographic region.⁴⁰ They assert that the trials are not representative of all the issues that may

³⁷ Wire Center Operating Plan at 42.

³⁸ *Id.*

³⁹ See *Wire Center Trial Operating Plan* at 2.

⁴⁰ See, e.g., Michigan Commission Comments at 3; Public Knowledge *et al.* Comments at 15; XO Comments at 9; Hypercube Comments at 3; Cbeyond *et al.* Comments at 17-18.

arise as the country completes the ongoing transition from traditional telephone to IP-based wireline and wireless services.⁴¹ Further, they contend that the Commission and other stakeholders cannot draw any conclusions from the data and experience derived from the trials, and/or apply the lessons from the trial outside the limited context of the trial wire centers themselves.⁴² AT&T acknowledges that no wire center is perfectly representative of all demographic, economic, geographic and technical characteristics of the whole country, or for that matter, of any other wire center. But these concerns should not stand in the way of AT&T's proposed trial in Carbon Hill and Kings Point.

No real-world trial is ideal but AT&T worked hard to select wire centers that would serve as the best possible test of the transition's impacts on customers. The Carbon Hill and Kings Point wire centers present a host of difficult issues—many of which have challenged regulators and industry for decades. Among others, the trials will highlight issues of how the transition will affect low-income customers, seniors and consumers with disabilities. It will address the economic and technical realities of deploying and maintaining services in rural and high-cost areas where wireless may provide the only viable option in coming years as the wireline, TDM network is replaced with next-generation technologies. Moreover, the Carbon Hill and Kings Point wire centers are subject to occasional severe weather conditions, including hurricanes, which will test the reliability and resiliency of the IP-based network and services in ways that are not possible in more temperate areas of the country.⁴³ Although the precise challenges will vary

⁴¹ See, e.g., Public Knowledge *et al.* Comments at 15-16; XO Comments at 9-10; Cbeyond *et al.* Comments at 18.

⁴² See, e.g., Michigan Commission Comments at 4; Hypercube Comments at 1-2; Cbeyond *et al.* Comments at 19-20.

⁴³ Although commenters criticize AT&T for not choosing an urban wire center or for not choosing more wire centers or some other specific aspect of the trial design, AT&T constructed the trial to produce information regarding some of the most challenging issues raised by the transition in a responsible, controlled setting. See, e.g., Public Knowledge *et al.* Comments at 14-15. Conducting a trial in an urban wire center, where multiple providers typically have deployed wireline broadband networks and services, and competition abounds, would not have

from wire center to wire center, many of the lessons learned from Carbon Hill and Kings Point will be applicable to wire centers across the country. Just to start, we will learn about customer satisfaction with the transition process; satisfaction with replacement services; network reliability; municipal, state and regulatory experiences with business processes; and service provider experiences with regulatory processes. All of this learning will be incorporated into AT&T's final transition plans and the Commission's policymaking on critical issues related to the transition going forward.

While next-generation networks offer immense opportunities for innovative services, competition and efficiencies, there are undoubtedly some populations with special concerns that must be addressed. There may be issues of which we are not yet aware and these trials are designed to reveal the good and the bad so that the FCC and industry can effectively address relevant public policy issues as the transition (already underway) proceeds. While AT&T without a doubt could have chosen many other wire centers within its footprint, it should be commended (not criticized) for choosing two challenging wire centers to start.

V. AT&T's Public Outreach and Education Plan Will Ensure Consumers Have Notice and Information Regarding the Trials.

A couple of commenters express concern about AT&T's proposed public outreach and education efforts. AARP, for example, expresses concern about the timing of AT&T's customer education efforts because of the length of the initial, voluntary phase of the trial. It recommends that AT&T include additional outreach efforts as the date of the next phase (during which existing customers will be grandfathered) approaches. It also worries that AT&T will not provide consumers sufficient information about any differences (in cost, features and functions)

provided the opportunity to address and resolve such difficult issues. Moreover, had we selected such a wire center for a trial, some commenters likely would have criticized AT&T for selecting a ringer to make the transition look easy. In any event, other carriers may conduct trials with different parameters and characteristics that could address some of these concerns.

between legacy and replacement services. It urges the Commission to require AT&T to expand and provide more detail regarding its public outreach and education efforts. AICC too urges the Commission to expand AT&T's outreach efforts to notify customers regarding the compatibility of replacement services with alarm monitoring services.

These parties concerns are unwarranted. As discussed in the detailed plan, AT&T will engage in an extensive effort to reach out and notify the public concerning the trials and their potential impact on customers. In addition to the customer outreach campaigns described in section 5.1., which appear to be the focus of their comments, AT&T plans to send residential customers multiple notices regarding AT&T's plans to grandfather and later sunset existing services.⁴⁴ These notices will identify the specific services affected, the alternative services available from AT&T, a description of any difference in features, functions and prices, information about how to contact AT&T for additional information and provide feedback, and information about how to contact the Commission with any concerns.⁴⁵ In addition, AT&T will provide its customers the notices required by section 63.71 of the Commission's rules when it seeks approval to grandfather and/or sunset existing services.⁴⁶ Consequently, AT&T is confident that customers will have ample notice and information regarding the trials.

VI. AT&T's Proposed Data Collection and Reporting Will Provide the Commission and Other Interested Parties Ample Data to Evaluate the Impact of the Trials on Consumers.

As AT&T explained in the Plan, it will collect and report to the Commission a variety of data, including data regarding the progress of the trial, customer complaints, network

⁴⁴ Wire Center Operating Plan at § 5.2.

⁴⁵ *Id.*

⁴⁶ *Id.*

performance, call quality, and issues relating to access by persons with disabilities.⁴⁷ Moreover, AT&T will provide mechanisms for feedback on the trial from customers and the community that will allow AT&T to promptly respond to problems raised by customers during the course of the trial and capture that feedback—good or bad—in the metrics to measure the success of the trial. Some commenters, however, complain that AT&T’s proposed data collection and reporting are inadequate. They argue that AT&T’s proposal did not include sufficient technical measures of network performance, or measures relating to interconnection and other wholesale issues, or sufficient information about the location and nature of control groups. Further, they contend that the Commission should mandate a broader set of metrics, require AT&T to report data on a more granular and more frequent basis, and require that an independent third party collect and evaluate data relating to the trials. While we recognize the need for meaningful data to evaluate the trial, AT&T’s proposed metrics will provide ample data for the Commission and others to evaluate the impact of the transition on customers in the trial wire centers.

A. AT&T Proposal Includes Mechanisms to Gather Customer Feedback.

As part of the trial, AT&T is providing customers and the community with tools to provide feedback on their experience with and concerns about the trial. At the time of the trial location announcement, AT&T launched a website specific to each trial wire center.⁴⁸ These two websites contain information about the trials and schedules for community information events. Each site also includes a “Contact Us” tool through which customers in the trial areas may communicate their issues and concerns and request information or assistance before, during, and after migration. These websites are also accessible to front-line AT&T employees—in

⁴⁷ See, *id.* at 54-56.

⁴⁸ See AT&T, *IP4Carbon Hill*, available at <http://ip4carbonhill.att.com/> (visited Apr. 9, 2014); AT&T, *IP4WestDelRayBeach*, available at <http://ip4westdelraybeach.att.com/> (visited Apr. 9, 2014).

customer care centers and in the field—to record customer feedback from calls to customer care and in-person contact on service calls.

All input to these sites is gathered and analyzed daily and will form the basis for the quarterly Customer Issues Report.⁴⁹ As AT&T explained in the Plan, the Quarterly Customer Issues Report will provide a summary of trial-specific customer issues, including direct customer input to trial-specific web sites, calls to AT&T customer care centers, and issues identified by AT&T field representatives having customer contact. In the report, AT&T will classify these issues in a way that reflects the type of issues customers report such as accessibility, product availability or product performance. These reports will provide an in-depth look at customer experience with the trial. Additional customer-experience data or reporting requirements are unnecessary and are unlikely to provide any materially improved insight into the customer impact of the trial.⁵⁰

The Commission should reject a condition for a dedicated customer care number (or “hotline”) for the trial wire centers proposed by AARP and AICC.⁵¹ These two parties proposed that the Commission require AT&T to establish dedicated contact numbers and dedicated call agents for trial-related customer calls. No such condition is warranted. Calls from transition trial customers to AT&T customer care centers will be handled by a group of call agents selected and trained to assist migrating customers. AT&T’s customer care systems have been

⁴⁹ See Wire Center Operating Plan at 54.

⁵⁰ See Public Knowledge *et al.* Comments at 7; Granite Comments at 12; XO Comments at 15. Granite proposes that the Commission require AT&T to collect wholesale-specific data, although it does not specify what data AT&T should be directed to collect. Granite Comments at 12. However, given the *Technology Transitions Order*’s prescription limiting wholesale customer involvement at the initiation of the trial to those that participate voluntarily, and given that, as AT&T has indicated, there is no change in the *status quo* for access to wholesale services, including UNEs and interconnection (which already are the subject of Service Quality Measurements approved by state commissions), no discrete wholesale metrics or data collection requirement would be appropriate at this time.

⁵¹ See AARP Comments at 24; AICC Comments at 10.

programmed to automatically identify customers located in trial wire centers (*i.e.*, without the customer having to self-identify as a trial customer) and automatically direct them to this group of trained agents. AT&T expects this approach to deliver a superior customer experience for trial participants. For example, this process negates the need for a customer to locate or remember a dedicated trial contact number or to navigate a more complex Interactive Voice Response (“IVR”) system menu to properly route trial-related calls. Thus, AT&T will ensure that customer care will effectively address trial-specific issues from customers and appropriately capture any customer feedback about the trials.

Finally, AT&T is also planning to engage a third-party survey company to conduct a voluntary consumer survey at certain milestones in the trial. The objective of the survey is to understand the range and frequency of customer experiences in connection with the trials, which would be reflected in reports to the Commission. Together, these methods will allow AT&T to accurately and effectively record and measure the impact of the trials on customers and to report information to the Commission that will be meaningful in evaluating the trials and as a basis for sound policymaking related to the IP transition going forward.

B. Additional Testing of Voice Quality is Not Necessary.

As the comments demonstrate, there is consensus that Mean Opinion Score (“MOS”) testing is an effective measure for evaluating voice quality.⁵² AT&T uses this well-established measure of voice quality as specified by the ITU-T recommendation P.800. Certain commenters, however, ask for additional specificity about AT&T’s MOS testing and reporting.⁵³ In the Plan, AT&T provided results from the MOS test for both U-Verse Voice and Wireless Home Phone

⁵² See Public Knowledge *et al.* Comments at 9.

⁵³ See AARP Comments at 27 (asking how the test results will be reported and applied); Public Knowledge *et al.* Comments at 9 (arguing that AT&T should specify the frequency of MOS testing).

services compared to the MOS for traditional circuit-switched voice services.⁵⁴ Both compared favorably. Therefore, we conclude that neither of AT&T's consumer replacement voice services is likely to be perceived by customers as lower quality compared to current voice service delivered over legacy voice services. To clarify, MOS results are reliably repeatable for a certain end-user device over a certain network; thus, there is no need to perform additional testing unless and until there is a new end-user device or a change in the network facility or switching systems that could affect voice quality. For example, for the development of a new Wireless Home Phone model, it may be appropriate to conduct an MOS test on that new device. To the extent that commenters call for a broader set of technical measures, such as jitter, latency and noise, these factors are already accounted for in MOS testing.⁵⁵ AT&T will supplement the record, as appropriate, during the course of the trial with any new or updated MOS testing relevant to the trial.

C. AT&T Now Has Identified Control Wire Centers.

AT&T has now selected two wire centers—Ohatchee, Alabama and Sandalfoot, Florida—to serve as control groups for the Carbon Hill and Kings Point trials for purposes of comparing the performance of AT&T's legacy TDM voice services and their IP-based wireline and wireless replacement services. As discussed above, no wire center is a perfect match to another. But AT&T has selected control wire centers that compare favorably on certain key characteristics: population and living units; geography and region; and IP-based service availability. Thus, each will serve as an appropriate control group for its respective trial wire center.

⁵⁴ See Wire Center Trial Operating Plan at 56.

⁵⁵ See Public Knowledge *et al.* Comments at 8.

The Ohatchee wire center will serve as the control wire center for Carbon Hill. See Exhibit 1. The Ohatchee wire center is primarily in Calhoun County in the Northeastern part of Alabama. The wire center has a generally rural customer base with a population of 7,988 (as compared to 6,594 in Carbon Hill) with 4,662 Living Units (compared to 4,388 Living Units in Carbon Hill).⁵⁶ Calhoun County has an area of approximately 605 square miles (compared to 790 square miles for Walker County) and both have generally similar weather conditions.⁵⁷ The two wire centers have comparable availability of IP-based wireline and wireless services from AT&T.

The Sandalfoot wire center will serve as the control wire center for Kings Point. See Exhibit 1. Like Kings Point, the Sandalfoot wire center is in Palm Beach County, Florida. The wire center has a generally suburban customer base with a population of 99,561 (as compared to 64,218 in Kings Point) with 55,570 Living Units (compared to 49,712 Living Units in Kings Point).⁵⁸ Being in the same county, Kings Point and Sandalfoot have generally similar geographic and weather conditions.⁵⁹ The two wire centers also have comparable availability of IP-based wireline and wireless services from AT&T.

In these two control wire centers, AT&T will operate on a business-as-usual basis. This means that marketing, network and other business plans that AT&T generally implements

⁵⁶ See U.S. Census Bureau, *The 2006-2010 ACS 5-Year Summary File Technical Documentation*, available at https://assets.nhgis.org/original-data/acs/2010ACS_5.pdf (2006-2010 ACS Data) (last checked Apr. 10, 2014). Census blocks have been mapped to the wire center boundaries to obtain relevant data for the wire centers. Living units include business, residential, vacant and under-construction locations. Living units are the units AT&T network engineers use when designing and building communications networks because each living unit is a separate location that AT&T historically has been required to serve upon request.

⁵⁷ See United States Census Bureau, *State and County Quick Facts (Calhoun County, Alabama)*, <http://quickfacts.census.gov/qfd/states/01/01015.html> (visited Apr. 10, 2014); United States Census Bureau, *State and County Quick Facts (Walker County, Alabama)*, <http://quickfacts.census.gov/qfd/states/01/01127.html> (visited Apr. 10, 2014).

⁵⁸ See *2006-2010 ACS Data*.

⁵⁹ See United States Census Bureau, *State and County Quick Facts (Palm Beach County, Florida)*, <http://quickfacts.census.gov/qfd/states/12/12099.html> (visited Apr. 10, 2014).

regionally or nationally, as applicable, will be implemented without change in these two wire centers. Business-as-usual does not mean that AT&T will freeze in place the network, marketing or other policies that are in effect today.⁶⁰ AT&T expects that consumers and businesses in the AT&T control areas will migrate to IP-based services on a totally voluntary basis in response to market forces as customers are doing across the country today. The control wire centers will not be subject to the activities associated with the grandfathering or sunseting of legacy TDM services described in AT&T Trial Plan.

VII. AT&T's Plan for Wholesale Services in the Trial Wire Center Complies with the Requirement of the *Transitions Trials Order*.

In the Wire Center Operating Plan, AT&T described its plans for satisfying the requirements the Commission established in the *Technology Transitions Order* for ensuring that the proposed wire center trials would not undermine the core value of competition. AT&T showed that its plan met each of the conditions and presumptions established in the Order by maintaining competitors' existing access to AT&T's network in the trial wire centers, by maintaining the *status quo* with respect to network interconnection in the trial wire centers, and finally by maintaining the *status quo ante* in those wire centers for intercarrier compensation. In particular, AT&T demonstrated that it was prepared to move forward with trials in the test wire centers subject to the key competition-related condition established in the *Technology Transitions Order* — that is, limiting the involvement of wholesale customers at the initiation of the trial to those that participate voluntarily.⁶¹

⁶⁰ Moreover, there is no merit to the entirely baseless argument by the Michigan Commission that AT&T may allow call quality to degrade in the control wire centers to make performance in the trial wire centers look better by comparison. See Michigan Commission Comments at 3-4 .

⁶¹ *Technology Transitions Order*, ¶59 and n.91.

Although Centurylink, as a wholesale customer, concludes that AT&T's proposal fully satisfies the *Technology Transitions Order*'s provisions for the treatment of wholesale services and customers,⁶² a number of other CLECs and competitors that purchase wholesale services from AT&T (including several that previously disparaged the entire concept of a wire center IP trial⁶³) have responded negatively to AT&T's plan, incorrectly claiming that it fails to comply with some or all of the requirements of that order and that the proposed trials accordingly should be delayed unless and until their concerns are addressed. Other commenters argue that, although the plan does not affect existing interconnection rights, it either suffers for having failed to include a test of IP-to-IP interconnection or somehow distracts from the important work of moving to a system of IP-to-IP interconnection – a subject that AT&T expressly indicated it would not test as part of the trial wire centers, and that would be inappropriate for such a geographically limited trial. Moreover, and notwithstanding the Commission's express determination not to resolve legal and policy questions resulting from the transition in the context of the trials,⁶⁴ a number of parties use their comments as a means of advancing their regulatory agendas to extend the ILECs' Section 251 wholesale obligations from the TDM environment in which they are grounded to the all-IP-ecosystem.

These comments, however, reflect a fundamental misunderstanding of the conditions and presumptions set forth in the *Technology Transitions Order* and a misapprehension of AT&T's plans for complying with them. Just as importantly, given that the Commission has made it clear

⁶² CenturyLink Comments at 3-4.

⁶³ See Cbeyond, EarthLink, Integra, Level 3, and tw telecom Comments, GN Docket 12-353, Jan. 28, 2013, at 21-22 (urging the Commission to reject the proposal to conduct wire center trials as unnecessary) (Cbeyond Comments). Ironically, many of those same carriers now indicate that they “would willingly participate in service-based experiments that truly complied with the requirements set forth in the” *Technology Transitions Order*. Cbeyond Comments at 10.

⁶⁴ *Technology Transitions Order*, ¶8.

that the involvement of wholesale customers at the initiation of the trial is strictly limited to those who choose to participate voluntarily, none of the issues that these carriers have identified with regards to wholesale issues provide a basis for preventing AT&T from moving forward expeditiously with its efforts now to begin to test the transition, especially for the general base of retail customers in the two trial wire centers.

A. The Trial Plan Maintains Wholesale Customers' Existing Access to AT&T's Network in the Trial Wire Centers.

AT&T emphasized in the trial plan that, in keeping with the *Technology Transitions Order*, any participation by wholesale customers in this first phase of the proposed wire center trials will be entirely voluntary. No customer will be forced to migrate to alternative services or products, or to alter its current wholesale arrangements with AT&T. The UNEs and other wholesale services that currently are available in the wire centers will remain available there, at the same terms, conditions and rates⁶⁵— unless, of course, a customer that is purchasing such services on a commercial basis voluntarily negotiates a change to those terms, conditions or rates.⁶⁶ The same wholesale customers that currently use AT&T's network in these wire centers, or that have ICAs that permit them to order services there, will continue to be able to do so during this phase of the proposed trials.⁶⁷ In short, AT&T has no plans to change the types of

⁶⁵ Certain CLECs argue that this representation is somehow vague, and that AT&T should have provided additional detail, such as the extent to which copper loops exist in the wire centers, as well as their length and condition. *See* Cbeyond Comments at 24. But this type of provisioning information already is available to CLECs currently operating in the wire centers (or that have ICAs that permit them to operate there).

⁶⁶ On that point, it is important to note that Local Wholesale Complete™, the current wholesale offering in use by several of the CLEC commenters, is a commercial offer that is negotiated with each wholesale customer. AT&T anticipates that the replacement IP wholesale products too will be offered to customers through commercial negotiations.

⁶⁷ *See Technology Transitions Order*, App. B, ¶35 (applicant must “ensure that the same types of wholesale customers can continue to use its network. . .”). Curiously, several parties criticize AT&T's proposed choice of “two very obscure” wire centers for the trials, asserting that they do not appear to be “served by many (if any) providers other than AT&T . . .” and thus do not depict a “typical, real-life multi-provider environment.” Hypercube Telecom Comments at 3; *see also* XO Comments at 9 (claiming that the proposed wire centers “do not adequately represent the nationwide status of the marketplace, either for retail or wholesale services.”); Cbeyond Comments at

wholesale access available to customers who do not elect to participate in the initial phase of the trial.⁶⁸

At the same time, and again consistent with the provisions of the *Order*,⁶⁹ AT&T was transparent about its intention to pursue additional phases of the trials that ultimately will include, with the Commission’s authorization through the Section 214 process, the complete withdrawal of TDM-based wholesale services.⁷⁰ Because AT&T values its relations with its wholesale customers, the plan expressed our intention to work aggressively to retain their business as the entire industry undergoes the transition to an all-IP ecosystem. To that end, the plan identified the replacement products that currently are available as alternatives to current legacy TDM services, such as the AT&T Switched Ethernet (ASE) service that is available to replace DSn-level special access services and high capacity UNEs. AT&T also explicitly indicated that it intended to make its retail IP replacement services available for resale to wholesale customers on commercial terms. But the plan was just as clear that, although AT&T is working diligently to develop those replacement products, they are not yet available and likely will not be until the trials already are underway.

18 (criticizing the fact that, among other things, both wire centers are “in warm weather climates.”). Those criticisms miss the mark. Not surprisingly, Carbon Hill, as a smaller, rural wire center, has a relatively small wholesale presence, but even there the wholesale activity involves 17 providers purchasing services ranging from Local Wholesale Complete to DS-1s. There are double that number of wholesale customers – including, according to its comments (at 9), XO itself — competing in the Kings Point wire center. Both of the proposed wire centers plainly fall within any commonsense definition of a “multi-provider environment,” and, as AT&T described in its initial filing, both provide “typical, real-life” tests of the issues, both for retail and wholesale services, that AT&T and other carriers will face in the transition.

⁶⁸ See *Technology Transitions Order*, App. B, ¶35. At least one CLEC expresses the concern that the outreach efforts AT&T intends to undertake in trials with its wholesale customers may in fact be an end run on that carrier’s relationship with its end user customers. Manhattan Telecommunications Corporation Comments (MetTel Comments) at 4. To be clear, AT&T is not proposing any such “circumvention of wholesale end-user relationships.” The outreach contemplated in this trial will be to AT&T’s wholesale customers and AT&T’s retail customers.

⁶⁹ *Id.*, n.91.

⁷⁰ To that end, AT&T identified in Section 6.3.1. and Exhibit E of its original filing the interstate TDM wholesale services for which 214 applications will be filed, and indicated when it anticipated submitting an application to grandfather those services in the trial wire centers.

A number of commenters point to this acknowledgement as proof that the plan fails to satisfy the condition that AT&T maintain wholesale access during the trial. In particular, several CLECs, citing to language in Paragraph 59 of the *Technology Transitions Order*, claim that AT&T's inability *now* to identify all of the wholesale products that will be available in the *future* – as well as to specify the terms, conditions and prices of those inchoate offerings – violates a requirement that AT&T prove at the initiation of the trial “that comparable services are available during the experiment at equivalent prices, terms, and conditions.”⁷¹ As one group of CLECs puts it, “wholesale customers must be able to obtain equivalent rates, terms and conditions for packet-based inputs *from the beginning* of any experiment in which TDM-based inputs will ultimately be eliminated.”⁷²

But that is not what the Commission required in the *Technology Transitions Order*. Instead, the Commission plainly established a phased approach for dealing with wholesale issues. The first phase was the initiation of the trials, and there the Commission, plainly being solicitous of CLEC concerns regarding their forced involvement in the trials, emphasized that the central requirement with regard to the treatment of wholesale customers was that their participation be voluntary. It was only “[a]fter the successful initiation of an experiment” that the Commission indicated it would be willing to consider “additional requests to implement a phase of an experiment that authorizes the withdrawal of existing services to wholesale customers.”⁷³ And it was only in the context of authorizing these “experiments *in the future* involving traditional wholesale access inputs” that the Commission indicated that its review

⁷¹ See, e.g., Cbeyond Comments at 22; Joint Comments of ACN Communications Services, Inc., Access Point, Inc. and Matrix Telecom, Inc. (“ACN Comments”), at 2-4; Comments of Competitive Carriers Association (“CCA Comments”), at 1; Comments of Comptel, at 5-7; Comments of Granite Telecommunications, LLC (“Granite Comments”), at 6; MetTel Comments, at 2-4; XO Comments at 10-12; Windstream Comments at 5-9.

⁷² Cbeyond Comments at 23 (emphasis in original).

⁷³ *Technology Transitions Order*, ¶59 (emphasis added).

would include ensuring that “comparable services” would be available at “equivalent prices, terms, and conditions.”⁷⁴

This is precisely the phased approach AT&T described in its plan – that is, initiating the trials with wholesale participation at that point solely on a voluntary basis, and then identifying the future timetable for Section 214 applications first to grandfather and ultimately to sunset existing TDM-based wholesale services.⁷⁵ Contrary to certain CLECs’ claims,⁷⁶ the Section 214 process is the appropriate vehicle for evaluating the adequacy of alternatives (including wholesale IP replacement products) to the TDM services AT&T will be seeking to discontinue. Indeed, those Section 214 applications will give all interested parties and the Commission an opportunity to evaluate those replacement service, as well as the other available competitive alternatives for those TDM-based services.

AT&T understands that it bears the burden of demonstrating in its Section 214 that customers will not be impaired by the withdrawal of any services it proposes to discontinue, which will require identification of alternatives.⁷⁷ Moreover, through that process all customers affected by the planned discontinuance — including the CLECs that commented on AT&T’s plan — will receive notice of the application and have ample opportunity to make their case to

⁷⁴ *Id.* (emphasis added).

⁷⁵ Contrary to XO’s argument (XO Comments at 14), there is no basis for requiring AT&T to undergo a Section 214 review as a predicate to even initiating the trials. The *Technology Transitions Order* certainly imposes no such requirement. Indeed, it bears repeating again that the *Order* made wholesale participation at the initiation of the trials entirely voluntary. In any event, the activities AT&T intends to undertake at the start of the trial will not “discontinue, reduce, or impair” the wholesale services AT&T offers in those communities. *See* 47 U.S.C. §214(a). As AT&T made clear in its trial plan, when it does meet that standard it will file the requisite applications with the Commission. But that time is not now.

⁷⁶ *See* Cbeyond Comments at 23 (claiming it would be “inappropriate” to delay consideration of wholesale issues until AT&T seeks authority under Section 214 to grandfather TDM-based services).

⁷⁷ *See* 47 C.F.R. §63.71(a)(ii). Curiously, especially in light of the timetable for submitting Section 214 applications that AT&T identified in its plan, the Competitive Carriers Association seems to believe that AT&T plans to discontinue services without first seeking Commission approval. *See* CCA Comments at 4-5. As AT&T’s filing clearly shows, that is not the case.

the Commission as to whether the alternatives AT&T identifies meet the statute's requirements.⁷⁸ Moreover, as the *Technology Transitions Order* makes clear, the Commission's decision to permit the initiation of a trial now will not prejudice any future Section 214 applications.⁷⁹ In short, the fact that AT&T will seek the Commission's permission in the future to discontinue certain TDM-based wholesale service, as explicitly contemplated in the *Technology Transitions Order*, provides no basis for not authorizing the trials to be initiated now.

Several CLECs nevertheless claim that the fact that AT&T has not completed the development of all of its wholesale IP replacement products puts them at some kind of competitive disadvantage – and some even go so far as to suggest that AT&T purposely delayed that development to give itself a “head start” over the competition.⁸⁰ There is no merit to that speculation, or to the notion that the CLECs who are already successfully competing in the trial wire centers will be unable to continue to do so during the trials. As AT&T described in its original plan and restated above, during the initial phase of the trials, those providers will have the same access to existing wholesale services and products (including network elements) they had before, and on the same terms and conditions. The CLECs operating in the trial wire centers clearly have been able to use those products and services to win customers in those markets, and

⁷⁸ See 47 C.F.R. §§63.71, 63.90.

⁷⁹ By the same token, the Commission should not take steps now that would anticipate the resolution of Section 214 applications long before they have even been filed. For example, the Commission should not adopt Windstream's suggestion to establish some form of price ceiling on replacement services. Windstream Comments at 5. The *Technology Transitions Order* does not contain any such requirement. In fact, the provision in that order on which Windstream and others rely simply sets forth the Commission's expectation (without the benefit of comment by incumbent LECs) that the prices, terms and conditions at which the comparable replacement services are offered will be “equivalent,” not identical, to current offers. In this regard, the Commission should not give any credence to the analyses advanced by certain parties concerning the pricing of AT&T's current Ethernet offerings. See Comptel Comments at 15-19. As Comptel acknowledges, its analysis is premised on rates in AT&T's Guidebook. *Id.* at 15. But those “rack rates” do not reflect the negotiated prices that prevail in the market. In any event, any such analysis is premature until AT&T actually seeks to grandfather the TDM services those Ethernet offerings will replace.

⁸⁰ See ACN Comments at 5-6; Granite Comments at 7.

can continue to do so during the initial phase of the trials. Moreover, for some of the wholesale IP replacements still under development, AT&T has not yet completed development and/or deployment of retail analogues. In such cases, IP replacements generally will be available to retail and wholesale customers at the same time, and AT&T thus will have no head start over the competition. If anything, wholesale customers will have their own marketing advantages during the initial phase of the trials, as they will be offering familiar services to customers while AT&T is seeking to induce customers to switch to new IP retail offerings that may be unfamiliar to them.

Finally, the CLECs complain that they may face “penalties” in making that transition when the replacement products are available, in contravention of the *Technology Transitions Order*.⁸¹ This is not the case. Especially at the initiation of the trial, when participation by wholesale customers again is entirely voluntary, AT&T anticipates that any of the sophisticated and well-represented wholesale customers who do decide to participate will ensure that the end results of those negotiations encompass terms such as those identified by the Commission in Appendix B. AT&T also understands that the Commission will be evaluating this issue in subsequent phases of the trial, and can address any concerns wholesale customers may have at that time.

B. The Proposed Wire Center Trials Are Not Appropriate Vehicles For Testing IP-to-IP interconnection.

AT&T demonstrated in its initial filing that the proposed wire center trials satisfied the condition established in the *Technology Transitions Order* “to maintain the status quo in providing interconnection arrangements to both existing and new customers” because they will

⁸¹ See, e.g., Cbeyond Comments at 24; ACN Comments at 6; Granite Comments at 7; MetTel Comments at 4. *Technology Transitions Order*, App. B, ¶35.

not result “in the cessation or impairment of service” for either other providers or end user customers.⁸² This is true for one very simple reason: the interconnection arrangements necessary to terminate traffic to AT&T’s VoIP customers or to its WHP customers already are present in the market and are being used to successfully carry that traffic. In other words, any changes in trunking and routing arrangements associated with the exchange of IP, rather than TDM, traffic that might be occasioned by the trials already are being effected in the marketplace today without question or controversy. And AT&T’s proposed trials will not negatively affect that status quo.

No commenter seriously challenges AT&T’s plan with regards to this point.⁸³ Instead, several parties claim that the plan is flawed because it does not include a test of IP-to-IP interconnection,⁸⁴ and still others assert that the proposed trials might even be a distraction from accomplishing such interconnection on a national basis.⁸⁵

There is no merit to either criticism. As an initial matter, AT&T has been very clear that it does not view the geographically-limited wire center trials it has proposed as an appropriate mechanism for testing, much less implementing, the national conversion to IP-to-IP interconnection that is necessary to complete the TDM-to-IP transition. Indeed, AT&T stated categorically in the plan that it did not intend to test IP-to-IP interconnection in the context of these trials. This is not, as CCA characterizes it, an effort to avoid any interconnection

⁸² See *Technology Transitions Order*, ¶¶61-62.

⁸³ The Competitive Carriers Association (CCA) characterizes AT&T’s plan as providing only “vague assurances about the continued availability of interconnection . . .,” but does not identify any specific shortcoming in that document on that issue. CCA Comments at 6. In any event, this criticism is belied by AT&T’s filing, which unequivocally asserts that the status quo regarding interconnection will be maintained in the trials.

⁸⁴ See CCA Comments at 3-5; Comments of Interisle Competitive Carriers Group at 8-9.

⁸⁵ See T-Mobile Comments at 3; Sprint Comments at 5-6.

“obligations” with respect to IP services.⁸⁶ Rather, this decision is premised on essential architectural distinctions between TDM interconnection and IP interconnection that likely will prevail in the all-IP environment. Unlike interconnection for TDM voice traffic, VoIP interconnection will almost certainly not respect LATA (or even state) boundaries. Instead, while the specific arrangements between individual IP networks may vary, IP interconnection will involve the exchange of traffic over broader regional, national, or global areas and at perhaps only a handful of geographic locations across the country (or the globe).

Another fundamental reason for not trying to shoehorn IP interconnection issues into these geographically limited trials is that, as commenters T-Mobile and Sprint appear to recognize, there is critical work that must be accomplished nationally as a predicate to IP interconnection. Contrary to Sprint’s assertions,⁸⁷ however, that work does not center on a counter-productive, and in fact unlawful, extension of Section 251(c) interconnection obligations to IP-to-IP interconnection. Rather, it includes the important work of establishing technical and industry standards for the exchange of voice traffic in IP. For example, the industry will need to develop a universally accessible ENUM-type system that, once SS7 signaling networks and tandem switches disappear, will enable different VoIP providers to find one another’s customers as efficiently as TDM-based carriers can find one another’s customers today via conventional numbering databases. In addition, the industry will need to develop higher-layer *interoperability* standards so that, for example, differences in VoIP providers’ codecs will not keep the customers of one interconnected VoIP provider from communicating with those of another.⁸⁸ The

⁸⁶ CCA Comments at 5.

⁸⁷ Sprint Comments at 4.

⁸⁸ A codec (short for “coder-decoder”) is a program that, in this context, determines how an analog voice sound will be represented by a stream of digital data.

successful completion of those efforts does not implicate the proposed trials in Carbon Hill and Kings Point, but it will require the investment of time and resources by all affected providers — including the commenters — at the national level.

C. AT&T’s Trial Plan is Consistent with Commission’s Existing Rules Regarding Wholesale Access.

The *Technology Transitions Order* indicated that the Commission did not intend to resolve legal and policy questions resulting from the transition in the context of the trials, *Id.*, ¶8, and consistent with the Commission’s express intent AT&T’s application for commencing the wire center trials did not seek to address, much less resolve, any such issues. In point of fact, for the most part existing federal and state laws do not pose an impediment to AT&T’s proposed trials or to the larger TDM-to-IP transition. Nevertheless, a number of parties commenting on AT&T’s plan have advanced interpretations of the Communications Act and Commission rules, or proposed modifications of those requirements, in ways that are inconsistent with marketplace developments (including changes in consumer demand and the growth in inter- and intramodal competition) and that, if adopted, could undermine the transition and the Commission’s ambitious broadband deployment goals.⁸⁹ Thus, in an effort to fully inform the discussion on these matters, AT&T sets the record straight on some of the legal issues relevant to the transition.

1. There is no basis for Reversing the Commission’s Non-Impairment Finding with Respect to IP Networks.

As the transition to an all IP ecosystem unfolds, AT&T and other ILECs will be replacing their legacy TDM networks with next generation IP-enabled facilities that include packet

⁸⁹ See, e.g., Cbeyond Comments at 27 (arguing, *inter alia*, that “AT&T should be treated as a LEC” for purposes of assessing the wholesale obligations associated with replacement IP products); Comptel Comments at 12-13 (unbundling rules regarding DS1s and DS3s apply to fiber loops using IP equipment); CCA Comments at 5 (Section 251 and 252 obligations apply to IP replacement products); XO Comments at 6 n.10 (citing to prior comments advocating for extension of unbundling and interconnection obligations absent finding “that ILECs no longer maintain market power due to their persistent and effectively ubiquitous and unchallenged access to end user locations. . . .”);

switches and equipment. The Commission determined over a decade ago in the *Triennial Review Order* that, on a national basis, CLECs were not impaired without access to packet switching, including routers and DSLAMs, and that eliminating any obligation to unbundle such facilities would encourage broadband deployment by ILECs and CLECs alike.⁹⁰ It thus declined to require that packet switching be made available as a stand-alone network element.⁹¹ For the same reasons, the Commission ruled in the *TRO* that ILECs need not provide unbundled access to the packet switched features, functions and capabilities of hybrid loops,⁹² but were required to provide unbundled access only to the legacy TDM features, functions and capabilities of such loops.⁹³ And the Commission subsequently found that the ILEC is also under no obligation to build TDM functionality into a new hybrid loop or into an existing hybrid loop that never had TDM functionality.⁹⁴ Thus, under the Commission’s existing unbundling rules, once an ILEC retires TDM facilities and equipment, it has no obligation to unbundle packetized loop transmission facilities (with the limited exception of providing a 64 kbps voice channel over a “brownfield” fiber-to-the-home/fiber-to-the-curb loop if it also retires the overbuilt copper loop).⁹⁵ Rather, it would fulfill any remaining loop unbundling obligations by making available

⁹⁰ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket No. 01-338 (Aug. 21, 2003) (“*TRO*”), ¶537.

⁹¹ *Id.*

⁹² *Id.*, ¶288. In the *Section 271 Forbearance Order*, the Commission later forbore from enforcing the requirements of section 271 with regard to the broadband elements that the FCC had relieved from unbundling in the *Triennial Review Order* and subsequent orders, including FTTH and FTTC loops, the packetized functionality of hybrid loops, and packet switching. *In the Matters of Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. §160(c) et al.*, Memorandum Opinion and Order, WC Docket No. 01-338 (“*Section 271 Forbearance Order*”), ¶19.

⁹³ *TRO*, ¶272.

⁹⁴ See 47 C.F.R. ¶¶51.325-335 *In the Matter of the Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Order on Reconsideration*, CC Docket No. 01-338 (Oct. 18, 2004) (“*Fiber-to-the-Curb Order*”), ¶2.

⁹⁵ 47 C.F.R. ¶¶51.319(a)(3)(iii). This 64 kbps requirement, of course, only is implicated if the ILEC retires the copper loop pursuant to the notice processes set forth in the FCC’s rules, which are described further below.

unbundled copper loops and subloops (to the extent it has not retired those facilities and continues to maintain and use them) to which requesting carriers could attach their own electronics to serve their customers.⁹⁶

There is no basis for abandoning these prior determinations, which were upheld on appeal by the D.C. Circuit,⁹⁷ and modifying the rules to require ILECs to unbundled packet-switched loops. In fact, such an effort flies in the face of the Commission's conclusion that declining to require ILECs to provide CLECs unbundled access to broadband elements (including packet switching and packetized loops) would advance the Commission's efforts to promote the deployment of next generation networks that are fueling the IP transition. The FCC found in the *TRO* that the decision not to unbundle stand-alone packet switching and other broadband elements would promote the goals of Section 706 by maintaining incentives for both ILECs and CLECs to invest in and deploy broadband infrastructure.⁹⁸ As the FCC intended, its far-sighted decision not to unbundle such facilities unleashed a torrent of investment in broadband by ILECs, Cable Multiple Systems Operators, wireless providers and many CLECs, which have emerged as some of the largest providers of next generation IP-based services. For example, tw telecom was recently identified as the third-largest Ethernet provider in the United States – ahead of ILEC CenturyLink -- and XO and Level 3 are the sixth and eighth largest Ethernet providers,

⁹⁶ As discussed further below, to the extent AT&T eventually retires any copper loops or subloops as part of the transition, it will offer to sell or otherwise transfer such facilities to CLECs, who then would be responsible for maintaining them.

⁹⁷ *United States Telecom Ass'n v. FCC*, 359 F.3d 554, 581-87 (D.C. Cir. 20014), *cert. denied*, 543 U.S. 925 (2004).

⁹⁸ *TRO*, ¶538.

respectively.⁹⁹ Cable companies, like Cox and Time Warner Cable, are also among the top 8 providers of Ethernet services in the United States.¹⁰⁰

The same incentives and opportunities that spurred that competitive investment remain available to the CLECs; if anything, the fact of the IP transition has underscored the importance of all competitors – including the CLECs -- investing in the next generation, packet-switched facilities and equipment that will be required in the emerging IP ecosystem. The FCC rightly concluded over ten years ago that the CLECs face no impairment without access to those facilities and equipment from the ILECs. The fact of the transition certainly does not provide a basis for the Commission to reverse course on that determination now by requiring ILECs to unbundle packet-switched transmission facilities and fiber. In any event, before it could reverse course and modify the rules to require ILECs to unbundle such facilities, the Commission would have to undertake a new rulemaking and find based on a complete record (as opposed to rhetoric) that requesting providers are impaired without access to those facilities. Given the massive investment in broadband by ILECs, cable MSOs, wireless providers and others, in addition to the robust inter- and intramodal broadband competition for broadband transmission services, the Commission plainly could reach no such conclusion consistent with Supreme Court and D.C. Circuit decisions reviewing the Commission’s prior unbundling decisions.¹⁰¹

⁹⁹ See *Mid-Year 2013 U.S. Carrier Ethernet Leaderboard; Cable MSOs and regional Competitive Providers show strongest gains*, Vertical Systems Group (Aug. 20, 2013), available at <http://www.verticalsystems.com/vsglb/mid-year-2013-u-s-carrier-ethernet-leaderboard/> (last checked Apr. 10, 2014).

¹⁰⁰ *Id.*

¹⁰¹ In the unlikely event the Commission sought to do so, it undoubtedly would unleash years of litigation and uncertainty, undermining incentives to invest in broadband, contrary to the express goals of section 706 of the Act. We note, in this regard, that the Commission’s prior attempts to require ILECs to unbundle elements for which CLECs faced no impairment resulted in a decade of litigation, and three court remands before the Commission was able to adopt rules that withstood scrutiny.

2. The Commission Should Affirm ILECs Need Not Provide TDM UNEs After they Retire TDM services.

The FCC's rules require the ILEC to provide access to certain unbundled high capacity (DS1 and DS3) loops and transport pursuant to Section 251(c)(3), except in those geographic areas where certain triggers have been met demonstrating that competitors would not be impaired without such access.¹⁰² In establishing those requirements in the *TRO*, the Commission made clear that the obligation to unbundle DS1s and DS3s applied only to "TDM-based services."¹⁰³ Thus, any obligation (with which AT&T will comply) to provide unbundled access to DS1s and DS3s is limited to those situations where TDM remains in place. As a result, no high-capacity loop unbundling obligation would survive the complete transition to IP. While we address this issue to be transparent about our position regarding the application of the Commission's unbundling rules post-transition in response to CLEC claims, we note that this issue will have no bearing on the trials because they do not contemplate retirement of TDM network facilities and equipment (which will not occur until well after the Commission authorizes AT&T to withdraw the TDM services provided over such facilities).

Although several CLEC commenters on AT&T's Wire Center Operating Plan appear to agree that AT&T's reading of the rules,¹⁰⁴ Comptel contends that the Commission's rules regarding the unbundling of DS1s and DS3s "provide no condition on the obligation based on whether the incumbent replaces copper loops with fiber loops or use [sic] TDM or IP

¹⁰² 47 C.F.R. ¶51.319(a)(4), (5).

¹⁰³ *TRO*, ¶294.

¹⁰⁴ *See* *Cbeyond* Comments at 8 ("Current wholesale regulations designed to constrain incumbent LEC exercise of market power over local transmission facilities and interconnection apply, either by Commission order or by virtue of incumbent LECs' interpretation, only to incumbent LEC network facilities that use legacy TDM technology.").

equipment.”¹⁰⁵ But the only provision in the rules that Comptel cites for this proposition requires the ILEC by its terms to provide nondiscriminatory access “to the time division multiplexing features, functions, and capabilities” of a hybrid loop.¹⁰⁶ There is nothing in the rule — or law or sound public policy — that requires the ILEC to provide such access when those TDM capabilities no longer exist, or to maintain that TDM capability solely to accommodate CLEC demands for UNEs. Such a result would in fact be contrary to the Congressional intent reflected in Section 706 — and the Commission’s effort in the *TRO* to give effect to that intent — to promote investment in next generation equipment and facilities.

This does not mean that CLECs will be left without any means to provide high capacity services to their customers. The CLECs will continue to have access to AT&T’s copper (whether as an unbundled element, to the extent the copper facility has not been retired in accordance with the Commission’s rules, or as a commercial offering if it has) to which they can attach their own electronics.¹⁰⁷ They also will continue to have access to ILEC poles, conduit and rights of way to deploy their own transmission facilities. Importantly, in both cases they will be reacting positively to the incentives the Commission established over 10 years ago by investing in their own equipment and facilities in order to compete. In addition, AT&T will continue to sell IP-based services to our competitors, which can resell or use those services as inputs to their own services if they so desire, just as we do today.

The Commission’s “TDM non-degradation” rule does not compel a different result. Under that rule, an ILEC may not engineer the transmission capabilities of the network in a

¹⁰⁵ Comptel Comments at 12-13.

¹⁰⁶ See 47 C.F.R. §51.319(a)(2)(ii).

¹⁰⁷ Notwithstanding the fact that the Commission’s rules give CLECs unbundled access to copper subloops, see 47 C.F.R. ¶51.319(b)(1), Comptel baldly claims that this is inadequate and that, “as a practical matter,” only “home run” copper is useful to wholesale customers. Comptel Comments at 11. Even assuming this is true, AT&T’s proposal provides for continued CLEC access to those facilities.

manner, or engage in any policy, practice or procedure, “that disrupts or degrades access to a local loop or subloop,” including the TDM capabilities of the hybrid loop, for which a CLEC may obtain or has obtained access under those rules.¹⁰⁸ The FCC adopted this rule in the *TRO* as a means of enforcing the ILECs’ nondiscrimination obligations under Section 251(c)(3).¹⁰⁹ But it plainly was not intended to preclude an ILEC from retiring the *entire* TDM network. Indeed, the FCC noted in the *TRO* that the prohibition against disrupting or degrading the TDM capabilities of hybrid loops was not intended to prevent ILECs from removing copper loops from their plant, so long as they complied with the applicable network notification requirements.¹¹⁰ Thus, the “TDM non-degradation” rule cannot have been intended to preclude the industry-wide transformation at issue here, and certainly should not be read to require an ILEC to continue to maintain and make available to TDM-based transmission facilities as UNEs if the ILEC would not otherwise do so for itself or its retail customers, particularly insofar as such a requirement would conflict with the Commission’s stated goal of facilitating the transition to all-IP broadband networks and services.

3. There is No Basis for Altering the Existing Network Change Rules.

AT&T does not plan to retire any copper loops or other TDM network facilities in the two trial wire centers as part of the proposed trials. In fact, copper loops and/or subloops will likely continue for some time to be used to serve customers and to provide various types of services (such as Ethernet over Copper), even as providers generally migrate their networks to all-IP. Nevertheless, as that migration continues and accelerates, and thus as AT&T and other

¹⁰⁸ 47 C.F.R. ¶51.319(a)(8).

¹⁰⁹ *TRO*, ¶294.

¹¹⁰ *TRO*, ¶294 and n. 847.

carriers face the operational challenges and complexities of making the transition to all-IP networks, ILECs must be free to superintend their networks and to retire network elements that have been rendered anachronistic, that no longer perform optimally, or that are unduly costly to maintain. In short, the ILECs must be permitted to operate under the existing FCC network modification rules to retire redundant and/or obsolete TDM facilities, including copper loops and loop electronics.¹¹¹

The FCC's current rules require ILECs to provide public notice, such as through industry fora or publications, of "any network change" that (1) "will affect a competing service provider's performance or ability to provide service"; (2) "will affect the ILEC's interoperability with other service providers;" (3) "will affect the manner in which customer premises equipment is attached to the interstate network;"; or (4) "will result in the retirement of copper loops or copper subloops, and the replacement of such loops with "fiber-to-the-home loops" or "fiber-to-the-curb loops," as those terms are defined in 47 C.F.R. ¶51.319(a)(3).¹¹² The rules thus assure that CLECs and other customers will receive notice of the network modifications that likely will be implicated in the TDM-to-IP transition. In fact, in certain cases the rules require the ILEC to certify that it has directly notified interconnected carriers of such proposed changes.¹¹³

The rules also permit affected carriers to object to the timing of the proposed modification, and subject any such objections to a process for resolution by the Commission.¹¹⁴ But the rules do not provide for anything more than that. In particular, the existing regulations rules do not contemplate that CLECs may object to the fact of the proposed modification, and –

¹¹¹ See 47 C.F.R. §§51.329, 51.3335-335.

¹¹² 47 C.F.R. §§51.325, 51.329.

¹¹³ 47 C.F.R. §§51.333(a).

¹¹⁴ 47 C.F.R. §§51.331(c), 51.333 (c)-(f).

except in the limited case in which a CLEC does object to the timing — they do not subject the ILEC’s proposal to Commission review, much less approval. Stated another way, the rules affect *when*, not *if*, an ILEC may implement a network modification. In short, the Commission’s network modification rules recognize that it ultimately is up to the ILEC — and not regulators or the ILEC’s competitors — to decide how best to operate and manage its network.

These rules properly implement Section 251 of the Act. Indeed, Section 251(c)(5) provides only that an ILEC must provide reasonable public notice of network changes. Nothing in that section (or any other provision in Title II) contemplates, much less, requires an ILEC (or any other telecommunications carrier) to obtain Commission approval for network modifications. In that respect, the 1996 Act did not alter the fundamental principle that carriers are free to engineer their networks however they choose, provided they comply with any requirements relating to the initiation or retirement of particular *services*.¹¹⁵

Moreover, as the 8th Circuit ruled in *Iowa Utils. Bd. v. FCC*, CLECs cannot demand access to “a yet unbuilt superior” network,¹¹⁶ and thus must take an ILEC’s network as they find it. The Commission subsequently recognized in the *TRO* that ILECs cannot be required to modify their networks to accommodate CLEC demands for access to UNEs except to the extent they otherwise would do so for themselves or their retail customers.¹¹⁷ The principle that ILECs cannot be required to engineer their networks solely to benefit a CLEC applies equally to the retirement of network facilities — including TDM loop and transport electronics. In particular,

¹¹⁵ AT&T notes in this regard that carriers were not required to obtain federal or state commission approval to replace their old electro-mechanical switches with digital switches.

¹¹⁶ 120 F.3d 753, 813, *rev’d in part on other grounds*, 525 U.S. 366. The FCC did not appeal that part of the 8th Circuit’s decision, which thus remains the law of the land.

¹¹⁷ *TRO*, ¶¶632-33.

an ILEC cannot be required to maintain TDM loop and transport transmission facilities except to the extent it otherwise would maintain them for itself or its retail customers.

The Commission’s existing framework for network modifications also is rooted in sound public policy. Intrusive public-utility-style regulation that would enable regulators to intervene in ILECs’ network engineering and management decisions, and require ILECs to incur the substantial costs of maintaining two networks — one to provide next-generation services and a second simply to prolong the “completely synthetic competition” fostered by unbundling¹¹⁸ -- would delay or compromise the transition to all-IP networks. As the *National Broadband Plan* recognized, “requiring an incumbent to maintain two networks ... reduce[s] the incentive for incumbents to deploy” next-generation facilities and “siphon[s] investments away from new networks and services.”¹¹⁹

Yet, certain CLECs have been pressing for exactly such a result from the Commission, requesting that the Commission suspend the current rules and subject the ILECs’ decisions to retire copper network facilities to a new system of regulatory micromanagement.¹²⁰ As AT&T has detailed in comments filed with the Commission, however, there is no basis in law, policy or the facts supporting such a change.¹²¹ To the contrary, the invasive regulatory regime that some

¹¹⁸ *United States Telecom Ass’n v. FCC*, 290 F.3d 415, 424 (D.C. Cir. 2002).

¹¹⁹ *National Broadband Plan* at 49.

¹²⁰ See, e.g., Letter of US TelePacific Corp. et al. Requesting Commission to Refresh Record and Take Expedited Action to Update Copper Retirement Rules, WC Docket Nos. 10-188,12-353;GN Docket Nos. 09-51, 13-5; RM-11358 (filed Jan. 25, 2013). See also Windstream Comments at 10 (arguing that the Commission “should ensure appropriate balance in its copper retirement policies.”).

¹²¹ Comments of AT&T, Policies and *Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers*, WC Docket No. 12-353, RM-11358, (filed March 5, 2013); Reply Comments of AT&T (filed March 20, 2013).

competitors seek to impose on the ILECs alone would undermine the Commission's national broadband objectives by dampening the incentives of ILECs and CLECs alike to invest in next-generation facilities. In particular, forcing ILECs to incur the substantial costs of maintaining outdated or redundant network facilities solely for the benefit of a small number of competitors would weaken the business case for deploying next-generation facilities in many places. Even if new network facilities are more efficient and dynamic than the old ones, many carriers will think twice before investing in the new ones if, in addition to bearing the costs of *those* facilities, they must also indefinitely bear the wasteful costs of the obsolete facilities they wish to replace.

That does not mean that CLECs that currently are utilizing copper to provide service will be left without recourse. As was noted previously, those carriers have been on notice for some time of the need to move forward and invest in their own facilities to meet customer demands for next generation services, and the record shows that many already have responded appropriately. There is still time for other providers to act, and the fact of the transition should further incent them to do so. Moreover, insofar as AT&T and other carriers do maintain copper loops in their networks during and after the transition, those facilities would remain available to CLECs under the existing rules. Finally, when AT&T ultimately determines to retire copper facilities, it is prepared to offer those retired loops to CLECs for purchase on commercial terms.¹²² This is not intended as money-making venture – AT&T anticipates that any such loops would be offered through public notice to the industry for purchase by interested providers basically at salvage value. But after that sale, AT&T would not have any responsibility for maintaining or providing service over that facility. Those responsibilities properly would rest entirely with the party that

¹²² AT&T is prepared to explain its concept for the sale of retired copper loops in greater detail at the Commission's convenience.

purchased it. Once again, we address this issue to be transparent about our position regarding the application of the Commission's loop unbundling rules post-transition in response to CLEC claims. We note, however, that this issue will have no bearing on the trials because they do not contemplate retirement of copper loops other than in the ordinary course of business (for example, where AT&T is required to move such facilities to accommodate road construction).

CONCLUSION

For the foregoing reasons, the Commission should approve AT&T's proposed wire center trials.

Respectfully submitted,

/s/ Christopher M. Heimann

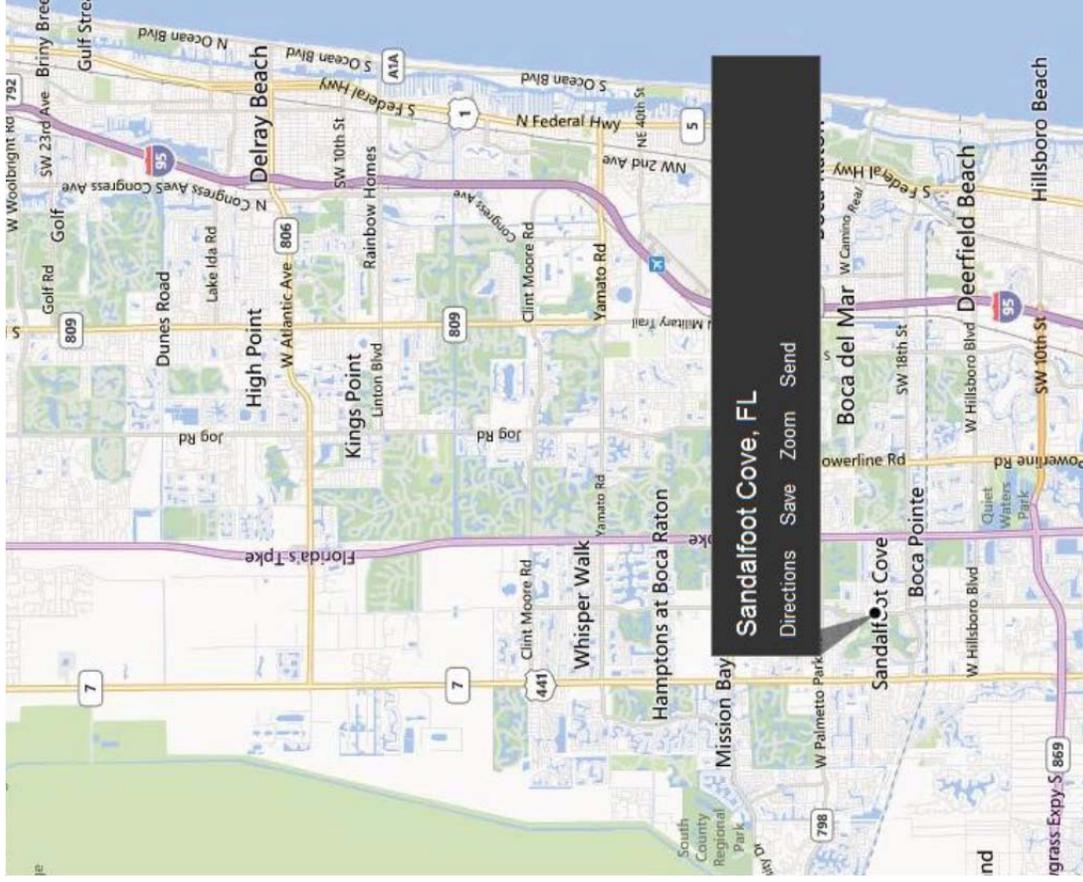
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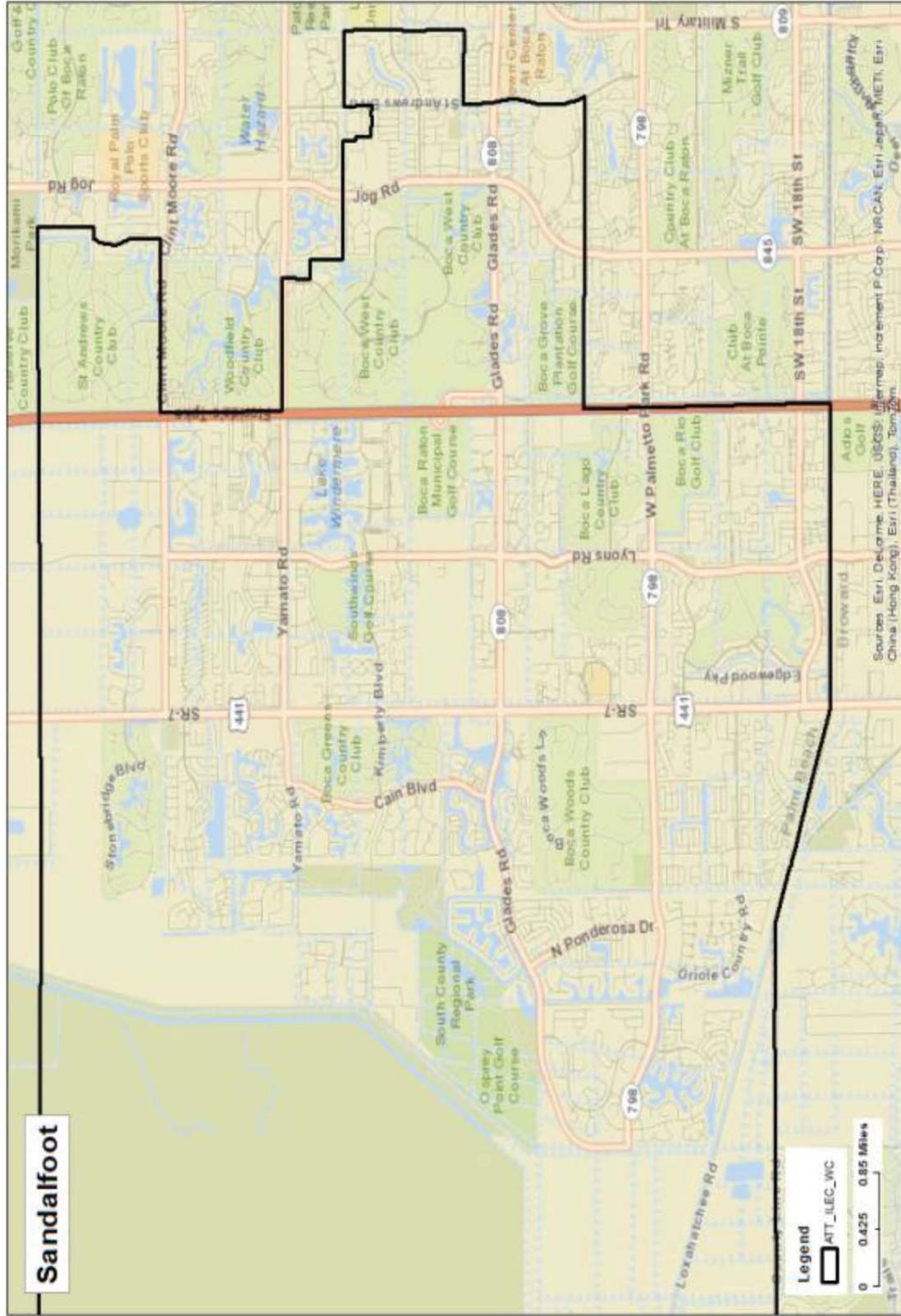
April 10, 2014

Exhibit 1

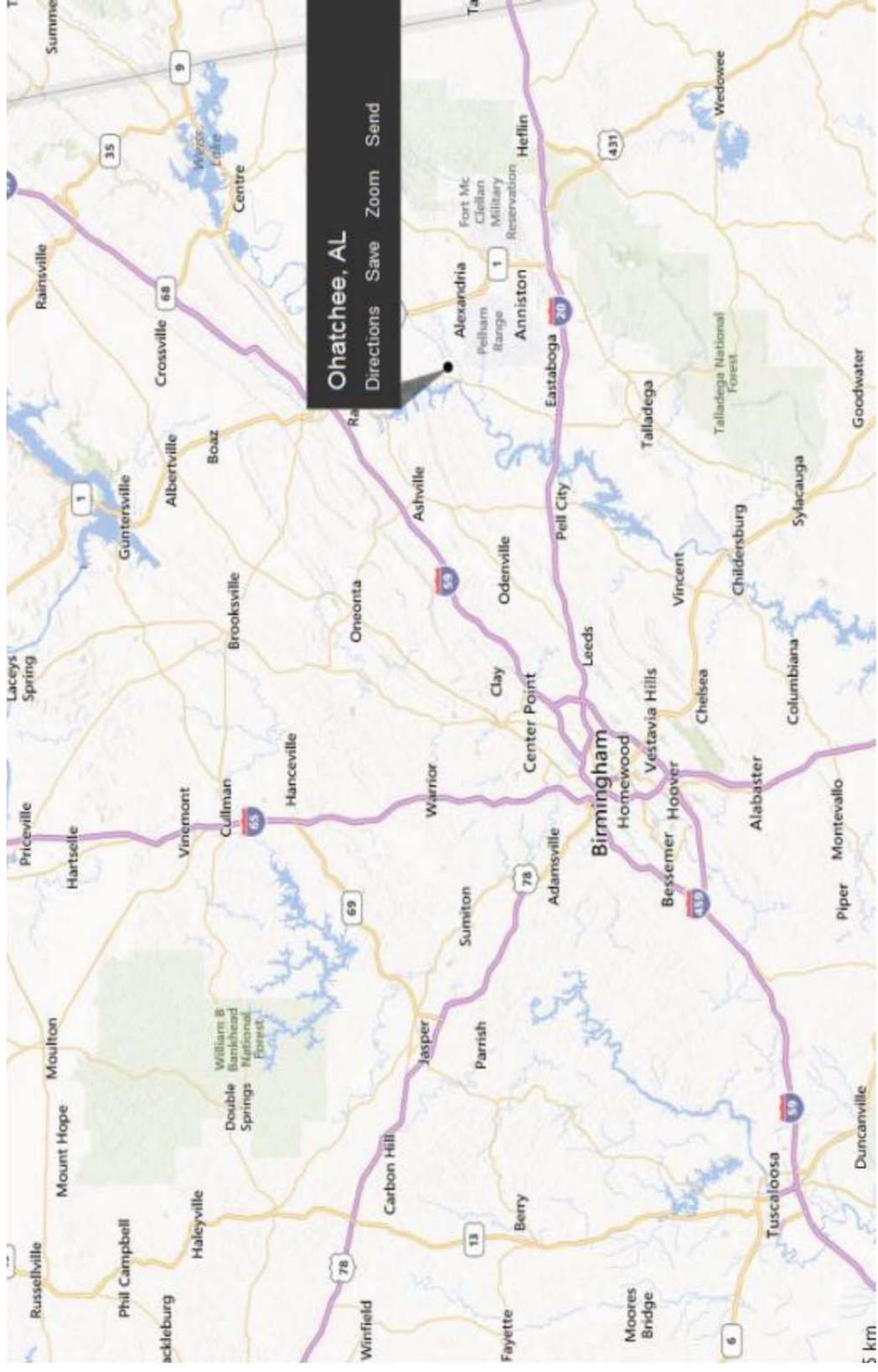
Sandalfoot Region



Sandalfoot Wire Center Boundary



Ohatchee Region



Ohatchee Wire Center Boundary

