

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

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

**SUPPORT OF GRANITE TELECOMMUNICATIONS, LLC
FOR CHALLENGE OF PUBLIC KNOWLEDGE AND THE NATIONAL CONSUMER
LAW CENTER TO AT&T'S CONFIDENTIALITY DESIGNATION**

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I. Introduction

Pursuant to the *Second Protective Order* in this proceeding, Granite Telecommunications, LLC (“Granite”) hereby files in support of the joint challenge by Public Knowledge (“PK”) and the National Consumer Law Center (“NCLC”) (collectively “Challengers”)¹ to AT&T’s designation of certain portions of its all Internet Protocol trial proposal as highly confidential. AT&T claims that the timeline under which AT&T’s all IP trials will be conducted is highly confidential and entitled to protection from disclosure under both Exemption 4 of the Freedom of Information Act (“FOIA”)² and the *Second Protective Order*.³

AT&T bears a heavy burden to demonstrate that this information must be protected from public disclosure, especially in the present context, in which AT&T has requested leave of the Commission to perform its all IP trials,⁴ and the Commission has mandated the objectives of transparency, maximum public debate, and that ILECs provide effective access to wholesale inputs as a precondition to any such IP trials.⁵ Among other requirements, AT&T is required to

¹ *Challenge To Confidentiality Designation Of Public Knowledge And The National Consumer Law Center On Behalf Of Its Low-Income Clients*, 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 (filed on April 8, 2014) (“Challenge”).

² AT&T Proposal for Wire Center Trials, 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 (Feb. 27, 2014) (“AT&T Trial Proposal”); *AT&T’s Reply to Challenge to Confidentiality Designation by Public Knowledge and the National Consumer Law Center*, 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 (filed on April 15, 2014) (“AT&T Reply”).

³ 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, Second Protective Order (rel. Feb. 27, 2014) (“Second Protective Order”).

⁴ *In the Matter of AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition*, WC Docket No. 12-353, at 1 (filed Nov. 7, 2012).

⁵ *In the Matter of Technology Transitions*, GN Docket No. 13-5, AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition et al., GN Docket No. 12-353, WC Docket Nos. 10-90 and 13-97, CG Docket Nos. 10-51 and 03-123, Order, Report and Order, FNPRM

demonstrate that the redacted information is subject to protection under FOIA and the Commission's implementing rules; and that the information "constitutes some of its most sensitive business data which, if released to competitors or those with whom [AT&T] does business, *would allow those persons to gain a significant advantage in the marketplace* or in negotiations."⁶ In addition, the regulations require an "[e]xplanation of how disclosure of the information could result in *substantial competitive harm*" to AT&T.⁷ Finally, redaction of the information must be consistent with the competitive provisions of the Act and the requirements of the Technology Transitions Order that ILECs maintain effective wholesale access for competitors.⁸ AT&T has not met its burden under these standards of review.

I. Allowing AT&T to Redact the Timeline Information Will Undermine the Purpose of the IP Trials - Fostering a Robust Public Debate on the IP Transitions, Including the Transitions For Wholesale Customers

Granite concurs with the Challengers that AT&T has not met its burden to establish that the redacted timeline information is "Highly Confidential" as designated by AT&T and that the information does not merit protection under the FOIA.⁹ Granite need not repeat the Challengers' well-pleaded arguments regarding the application of the FOIA and its exemptions.¹⁰ The timeline information set forth in Exhibit D, Exhibit E and elsewhere is not a trade secret or commercially

and Proposal for Ongoing Data Initiative, at ¶ 59, Appendix B, at ¶ 35(rel. Jan. 31, 20 14) ("Technology Transitions Order").

⁶ Second Protective Order, at ¶ 1 (emphasis added).

⁷ 47 C.F.R. § 0.459(b) (emphasis added).

⁸ Telecommunications Act of 1996, Pub. L No. 104-104, 110 Stat. 56 ("Act"), at §§ 251(c)(3), 251(c)(4) and, 271; Technology Transitions Order, at ¶ 59, Appendix B, at ¶ 35.

⁹ The timeline is set forth in Exhibit D to the AT&T Trial Proposal. Exhibit D is marked by AT&T as "Highly Confidential Information" subject to the Second Protective Order. The timeline information has also been redacted from the product data sheets in Exhibit E which is also marked as "Highly Confidential Information." AT&T Trial Proposal, Exhibits D and E. *See*, AT&T Trial Proposal, Wire Center Operating Plan, at 12.

¹⁰ Challenge, at pp. 9-16.

confidential information.¹¹ Rather, it is basic information regarding an all IP experiment that AT&T itself has repeatedly pressed the Commission to allow AT&T to conduct. It is impossible to have a “factually-informed public discussion” about the IP trials or assess “any operational challenges arising between applicants and their wholesale customers and competitors” as contemplated by the Commission,¹² if AT&T is permitted to withhold even basic information about the timing of key events associated with the trials. The redactions are inconsistent with the Technology Transitions Order, which requires that service-based experiments maintain the wholesale customers’ access to the applicant’s network and require the applicants to provide for evaluation “the applicant’s plan to ensure that the same types of wholesale customers can continue to use its network.”¹³ Redaction of the timeline information undermines the “right of the public to participate in this proceeding in a meaningful way”¹⁴ contrary to the intention of the

¹¹ AT&T argues that the timeline information is “voluntarily” submitted to the Commission such that the more lenient test under *Critical Mass* applies. AT&T Reply, at 4; *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir., 1999). Participation in the trials is voluntary. However, once AT&T determined to submit a trial proposal, submission of the required supporting data, including the timeline information, was not voluntary, but rather is required. The situation is analogous to that of a winning bidder on a government contract that discloses price information to the government to win the contract. The two-part *National Parks* test is uniformly applied in this type of case. See, e.g., *Trifid Corp. v. Nat’l imagery and Mapping Agency*, 10 F.Supp.2d 1087, 1097-98 (E.D. Missouri, 1998) (citations included to many cases); *Nat’l Parks and Conservation Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

¹² *In the Matter of Technology Transitions, GN Docket No. 13-5, AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition et al.*, GN Docket No. 12-353, WC Docket Nos. 10-90 and 13-97, CG Docket Nos. 10-51 and 03-123, Order, Report and Order, FNPRM and Proposal for Ongoing Data Initiative, at ¶¶ 8, 60, 80 (rel. Jan. 31, 20 14) (“Technology Transitions Order”).

¹³ Technology Transitions Order, at ¶ 59. See, e.g., Comments of XO Communications, GN Docket Nos. 13-5, 12-353, at 2 (March 31, 2014) (“Comments of XO”) (“a request for confidentiality, especially transition timelines, . . . limits the ability of personnel within interested companies to review the filings and comment on all aspects of the proposal.”).

¹⁴ Second Protective Order, at ¶ 1; 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, Protective Order (rel. Feb. 27, 2014), at ¶ 1 (“Protective Order”).

Commission. Thus, before AT&T's trial proposal can be meaningfully evaluated, AT&T must be required to publicly release this information.

II. Redaction of the Timeline Information Undermines Competition and Is Inconsistent With the Market Opening Measures of the Act

Withholding the timeline information undermines the market opening provisions of the Act, which is intended to foster competition, and provides AT&T with an opportunity to exploit its asymmetrical control of information in a win-back effort to eliminate competition from its wholesale customers.¹⁵ AT&T is required to provide wholesale inputs to its wholesale customers under section 251(c)(3) of the Act for UNEs, 251(c)(4) for resale of services, and section 271 for other items, and many of AT&T's competitors, including Granite, are reliant upon such inputs.¹⁶ Further, Section 251(c)(5) mandates that ILECs "provide public notice regarding any network change that: (1) Will affect a competing service provider's performance or ability to provide service; [or] (2) Will affect the incumbent LEC's interoperability with other service providers"¹⁷ Examples of network changes that trigger these obligations include, but are not limited to, "changes that affect: Transmission; signaling standards; call routing; network configuration;" and other items.¹⁸ The required public notice must include, among other items, the "implementation date of the planned changes."¹⁹ The Section 251(c)(5) disclosure requirement applies to both telecommunications services and information services and "promotes

¹⁵ See, e.g., Telecommunications Act of 1996, at §§ 251, 271 (competitive checklist).

¹⁶ Telecommunications Act of 1996, at §§ 251(c)(3), 251(c)(4) and, 271. See, e.g., Comments of XO, at 5-8.

¹⁷ Telecommunications Act of 1996, at §§ 251(c)(5); 47 C.F.R. § 51.325.

¹⁸ *Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 96-98, 95-185, 92-237, FCC 96-333, at ¶ 182 (Sept. 6, 1996) ("Network Changes Order").

¹⁹ 47 C.F.R. § 51.327.

open and vigorous competition.”²⁰ Generally, the public disclosure is required at the “make/buy point” but “at least 12 months before implementation.”²¹ AT&T may have already reached the make/buy point for some of these replacement services. AT&T’s IP trial proposal will affect the above items, yet AT&T refuses to provide public notice of the timing of the transitions.

The Commission recognized the importance of wholesale inputs in the Technology Transitions Order, stating that CLECs “often serve customers by relying significantly on incumbent LEC’s last-mile networks” and requiring that any trial proposal “offer to replace wholesale inputs with services that offer substantially similar wholesale access to the applicant’s network.”²² However, to avail themselves of these wholesale products and services and to compete effectively with AT&T, providers such as Granite must be able to engage in a dialogue with their end user customers as to the timing of any transition well in advance. The redaction of the timeline information from AT&T’s all IP Proposal makes it impossible for Granite, and other providers that are wholesale customers of AT&T, to coordinate with their end user customers to plan what specific products and services will be available and on what timeline.²³ This lack of information frustrates competition by artificially introducing uncertainty--for AT&T’s wholesale customers but not for AT&T itself--as to product and service availability that may make end user

²⁰ Network Changes Order, at ¶¶ 171, 176 (“Timely disclosure of network changes reduces the possibility that [ILECs] could make network changes in a manner that inhibits competition.”).

²¹ 47 C.F.R. § 51.331 (“the make/buy point is the time at which an [ILEC] decides to make for itself, or to procure from another entity, any product the design of which affects or relies on a new or changed network interface. If an [ILEC]’s planned changes do not require it to make or to procure a product, then the make/buy point is the point at which the incumbent LEC makes a definite decision to implement a network change.”).

²² Technology Transitions Order, at ¶ 59.

²³ *See, e.g.*, Comments of XO, at 10-11 (“XO has no confidence that AT&T’s proposal would provide adequate transition time for competitors.”).

customers reluctant to extent or enter into new contracts with Granite or others of AT&T's wholesale customers.

Further, AT&T can exploit its asymmetric control of this information to engage in win-back strategies while its wholesale customers are handicapped and prevented from competing for the same customers because they cannot provide their existing or prospective business customers any information as to when a replacement IP product or service will be made available. Granite is one of only a few CLECs that has business customers in Carbon Hill, Alabama, and Kings Point, Florida and is directly affected by this absence of information.²⁴ Business customers loathe uncertainty especially when entering into contracts. It is a simple matter for AT&T to exploit this asymmetric information to undermine competition and frustrate the market opening provisions of the Act. Redaction of the timeline information is also inconsistent with the presumption set forth in the Technology Transitions Order that “requires that service-based experiments maintain a competitor’s access to an applicant’s network.”²⁵

AT&T bears a substantial burden to demonstrate that release to wholesale customers or others of the timeline information “*would allow those persons to gain a significant advantage in the marketplace or in negotiations.*”²⁶ The governing regulations require an “[e]xplanation of how disclosure of the information could result in *substantial competitive harm*” to AT&T.²⁷ As demonstrated above, it is redaction of the information that harms competition, by enabling AT&T to affirmatively engage in win-back strategies through the use of asymmetric information

²⁴ See Letter from Bobbi-Sue Doyle-Hazard, Associate Corporate Counsel, Granite Telecommunications, LLC, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 13-5, at 1, and Presentation at 12 (Mar. 14, 2014).

²⁵ Technology Transitions Order, at ¶ 59, Appendix B, at ¶ 35.

²⁶ Second Protective Order, at ¶ 1 (emphasis added).

²⁷ 47 C.F.R. § 0.459(b) (emphasis added).

and to undermine the effectiveness of the market opening measures of the Act. Redaction needlessly heightens uncertainty that makes end users reluctant to enter into contracts with competitors that are dependent on AT&T's inputs. Access to the timeline information by such customers will merely level the playing field and will not cause AT&T any competitive harm. Moreover, the Commission needs to obtain informed input from Granite, other wholesale customers, and their end users on the impact of the proposed trials, which it cannot do if these customers are kept in the dark as to AT&T's plans for discontinuance and roll out. Accordingly, the Commission should not approve AT&T's all IP trial proposal unless AT&T agrees to release the redacted timeline information to the public.

III. Conclusion

AT&T's trial proposal is incomplete and will frustrate the open public policy debate intended by the Commission because AT&T seeks to withhold from public scrutiny basic information as to the timeline governing the trials. This is inconsistent with the market opening measures of the Act and the Technology Transitions Order which requires that effective wholesale access be maintained during the trials. Accordingly, the Commission should require AT&T to provide the missing timeline information to the public.

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Respectfully submitted,

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