

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Technology Transitions Policy Task Force)	GN Docket No. 13-5
Seeks Comment on Potential Trials)	

**REPLY COMMENTS OF
NTCA–THE RURAL BROADBAND ASSOCIATION
AND
THE WESTERN TELECOMMUNICATIONS ALLIANCE**

August 7, 2013

TABLE OF CONTENTS

	<u>Page No.</u>
I. INTRODUCTION & SUMMARY	1
II. TO THE EXTENT THAT TECHNICAL TRIALS OF WELL-DEFINED SCOPE AND DURATION ARE DEEMED USEFUL TO INVESTIGATE ISSUES RELATED TO THE TDM-TO-IP TRANSITION, SUCH TECHNICAL TRIALS SHOULD FOCUS ON COLLECTING DATA REGARDING THE BENEFITS AND UNFORESEEN CONSEQUENCES OF PROSPECTIVE TECHNICAL CHANGES AND SHOULD <u>NOT</u> PRE-JUDGE RESOLUTION OF REGULATORY AND ECONOMIC ISSUES.....	3
III. THE COMMISSION CAN SPUR ADDITIONAL INVESTMENT IN IP-ENABLED FACILITIES BY CONFIRMING THAT: (1) IP INTERCONNECTION BETWEEN CARRIERS FOR THE EXCHANGE OF TRAFFIC SUBJECT TO SECTIONS 251 AND 252 IS GOVERNED BY THE COMMUNICATIONS ACT; (2) CARRIERS CAN RECOVER THEIR COSTS PURSUANT TO THE ACT IN PROVIDING IP-ENABLED SERVICES; AND (3) RLECS ARE NOT RESPONSIBLE FOR THE TRANSPORT OF IP-ENABLED VOICE SERVICE OUTSIDE THE BOUNDARIES OF THEIR SERVICE AREAS	8
IV. CONCLUSION.....	12

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I. INTRODUCTION & SUMMARY

NTCA–The Rural Broadband Association (“NTCA”)¹ and the Western Telecommunications Alliance (“WTA”)² (“the Associations”) hereby submit reply comments in response to comments filed on the Public Notice³ seeking comment on potential trials relating to the ongoing transition to Internet Protocol (“IP”) technology. The Public Notice seeks comment on potential trials in the areas of interconnection for voice over Internet Protocol (“VoIP”) traffic, Next Generation 9-1-1 (“NG911”) services, and wireless only services.

The Associations tentatively support technical trials in limited and controlled circumstances where the focus would be entirely upon ascertaining and studying foreseen and unforeseen service quality and consumer impacts of the transition from Time-Division

¹ NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers. All of NTCA’s members are full service local exchange carriers and broadband providers, and many provide wireless, video, satellite, and/or long distance services as well.

² WTA is a trade association that represents over 250 small rural telecommunications companies operating in the 24 states west of the Mississippi River.

³ *Technology Transitions Task Force Seeks Comment on Potential Trials*, Public Notice, DA 13-1016, GN Docket No. 13-5 (rel. May 10, 2013) (“Public Notice”).

Multiplexing (“TDM”) to IP. This support, however, is *only* for well-defined and carefully structured technical trials that examine service and interoperability issues, as opposed to the use of purported “trials” as a tactic to eliminate existing regulatory obligations or pre-judge pending or future regulatory issues. By contrast, proposed “comprehensive all-IP trials” that actually constitute the permanent discontinuation of regulated services in various wire centers and their blanket replacement by non-regulated services under the guise of “technology transition” should be rejected by the Commission as contrary to both good public policy and core statutory principles.

In terms of VoIP interconnection, lingering regulatory uncertainty surrounding the exchange of traffic that is in all other respects subject to Sections 251 and 252 of the Communications Act hinders the seamless interconnection of IP-enabled networks. The Commission should confirm that Sections 251 and 252 of the Communications Act are applicable to the exchange of all traffic between carriers. It should also actively explore incentive-based approaches that reward carriers for investing in high-quality IP-enabled facilities and making interconnection available to one another in this manner. For example, by allowing carriers to recover through nondiscriminatory rates that would be developed pursuant to the Communications Act the costs of exchanging voice traffic in IP format, the Commission would provide these carriers with the resources, and therefore the incentive, to invest in and maintain IP-enabled network facilities.

The Commission should also reject calls for the use of fewer interconnection points spread out across wider geographic areas, which would impose significant, new costs on rural consumers and businesses, as the carriers that serve them would be forced to deliver traffic to

points of interconnection perhaps *several hundred miles or more* outside their service areas. If the costs of such transport can only be recovered from a small rural customer base, this will undermine the deployment of IP-enabled services in rural areas and ultimately threaten the quality and affordability of the services rural consumers and businesses can obtain.

II. TO THE EXTENT THAT TECHNICAL TRIALS OF WELL-DEFINED SCOPE AND DURATION ARE DEEMED USEFUL TO INVESTIGATE ISSUES RELATED TO THE TDM-TO-IP TRANSITION, SUCH TECHNICAL TRIALS SHOULD FOCUS ON COLLECTING DATA REGARDING THE BENEFITS AND UNFORESEEN CONSEQUENCES OF PROSPECTIVE TECHNICAL CHANGES AND SHOULD NOT PRE-JUDGE RESOLUTION OF REGULATORY AND ECONOMIC ISSUES

In previous filings in both GN Docket No. 12-353 and this proceeding, the Associations have tentatively supported technical trials in limited and controlled circumstances where the focus would be entirely on ascertaining and studying foreseen and unforeseen service quality and consumer impacts of the transition from TDM to IP. They have carefully distinguished between technical and regulatory trials, however, and have emphasized that they support only technical trials that examine service issues and oppose any use of purported “trials” as a tactic to eliminate existing regulatory obligations or pre-judge pending or future regulatory issues.⁴

Since the filing of AT&T’s November 7, 2012 petition to launch a TDM-to-IP transition proceeding,⁵ the nature and extent of many potential “trial runs” proposed by various industry players has been unclear. This ambiguity has been resolved to some degree through the most

⁴ Comments of WTA, GN Docket No. 12-353 (fil. Jan. 28, 2013), pp. 11-15; Reply Comments of NECA, NTCA, WTA, and ERTA (“Rural Associations”), GN Docket No. 12-353 (fil. Feb. 25, 2013); Comments of WTA, GN Docket No. 13-5 (fil. Jul. 8, 2013); Comments of NTCA, GN Docket No. 13-5 (fil. Jul. 8, 2013).

⁵ *AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition*, GN Docket No. 12-353 (filed Nov. 7, 2012).

recent comment filings – and in a manner that should give the Commission substantial pause in proceeding forward with some of the so-called “trials” at issue. Indeed, the record makes clear that what many couch as “trials” do not in fact propose anything that remotely resembles procedures to: (a) adjust various technical parameters; (b) allow regulators, carriers, customers, and other interested parties to study the impacts of such adjustments; and (c) permit current services to be restored temporarily or permanently if certain adjustments have significant adverse impacts upon service and/or significant numbers of customers choose to retain the *status quo*.

As one example, AT&T has clarified that it is proposing “comprehensive all-IP trials” that in effect constitute the permanent discontinuation of regulated services in various wire centers and their replacement by largely non-regulated services.⁶ Moreover, in certain rural wire centers where AT&T has decided that it is “cost prohibitive” to extend wireline broadband services, the proposed “trial runs” would consist of the permanent discontinuation of all existing wireline facilities and services, and their replacement by wireless IP voice and data services.⁷ In fact, AT&T admits that its rural wire center proposal is not a temporary trial but rather a permanent network and service change from which there will be no turning back, emphasizing that the switch to a wireless IP “option” is mandatory and irrevocable.⁸

The Associations oppose any attempt to scrap significant portions of either the nation’s wireline telecommunications network or essential regulatory backstops under the guise of “trials” or “trial runs.” Proposals that carriers “be free to discontinue services in accordance with

⁶ Comments of AT&T, GN Docket No. 13-5 (fil. Jul. 8, 2013), pp. 10-15, 20-23.

⁷ *Id.*, pp. 16-20.

⁸ *Id.*, p. 18.

the terms of the [“trial”] plan, without further Commission action” once the Commission approves a trial plan, are telling.⁹ Such an approach would appear to avoid Section 214 service discontinuation applications, state certification hearings, and other proceedings and safeguards that would give all interested stakeholders (including, most prominently, the affected consumers) the ability to assess thoughtfully and in a measured manner whether the specific step in question is in fact consistent with core statutory objectives to protect consumers, promote competition, fulfill public safety, and ensure universal service. Instead, the Commission, Congress, and state governments could likely be faced with a *fait accompli* wherein substantial portions of the country have been converted fully and permanently to wireless or other IP service before they have had the opportunity to establish appropriate transition plans and consider appropriate rules of the road for new services and interconnection arrangements.

The Associations recognize that telecommunications technologies, networks, and services are changing, and that TDM services are likely to be superseded or replaced in the future by IP services if current trends continue. However, there is no need to rush this already ongoing transition through to a precipitous completion of an “all IP network” by some artificial date, nor is there a need to carelessly tear out the regulatory fabric that has helped bring us to the point where the IP evolution is already alive and well. Indeed, growing numbers of the RLEC members of the Associations (and many others throughout the industry) have been replacing TDM switches with integrated IP/TDM network platforms capable of processing and switching both TDM and VoIP calls.¹⁰ These “hybrid” or integrated network platforms constitute an

⁹ *Id.*, p. 12.

¹⁰ In some cases, these are hybrid TDM-IP soft switches; in others, they are wholly IP soft switches

efficient, effective, and economical way to transition from TDM to IP with minimal disruption of the services and service options of consumers. They prove that it is not necessary to maintain separate and expensive TDM and IP networks, or to scrap major portions of TDM or wireline networks in order to transition to IP technologies. And, perhaps most importantly, this evolution has occurred against and within a regulatory backdrop that, while undoubtedly in need of review and modernization (and in some cases replacement or elimination), has helped to ensure that core statutory objectives remain always a key consideration.

It should also not be lost in this debate that robust and affordable wireline networks form the backbone of this technological evolution. For example, the Associations note that the U.S. Department of Defense and other federal executive agencies have filed comments in this proceeding indicating that, while they support advances in telecommunications technologies and services, they will continue to rely heavily upon wireline TDM-based networks and services for the foreseeable future.¹¹ They ask the Commission to carefully consider the potential adverse consequences for public safety and national security interests of a premature transition to different technologies and services.¹²

There has long been common recognition that wireline and wireless services are complementary rather than fully substitutable services.¹³ Whereas wireless offers mobility,

that integrate TDM peripherals.

¹¹ Comments of United States Department of Defense and All Other Executive Agencies (“DoD/FEA”), GN Docket No. 13-5 (fil. Jul. 8, 2013), pp. 1-4.

¹² *Id.*, p. 1.

¹³ *See, Connect America Fund*, WC Docket No. 10-90, *et al.* Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (“USF/ICC Transformation Order”), fn. 826

wireline provides higher speeds and capacities, as well as greater reliability, quality, and security. As DoD/FEA states, certain essential functionalities that federal agencies currently receive over wireline and TDM-based networks may not be available over wireless or IP-based networks.¹⁴ Similarly, as Public Knowledge and many press reports have highlighted, exclusive reliance on wireless as a replacement for wireline networking can yield, among other things, poor voice quality, loss of international calling services, and the loss of credit card payment capabilities.¹⁵ As Public Knowledge summarizes, the one lesson that can be taken away from instances in which consumers lose access without choice to robust wireline **and** wireless networks is that “consumers hate to be used as guinea pigs against their will.”¹⁶ Indeed, termination of access to wireline services in certain rural service areas violates the “reasonable comparability” provisions of Section 254(b)(3) of the Act, particularly when the Commission and others are encouraging the deployment of higher and higher capacity wireline services in the nation’s urban areas.

(stating that when the Commission adopted the identical support rule, it “did not contemplate the complementary role that mobile service would play in the years ahead.”). *See also*, John B. Horrigan, PhD, Vice President & Director, Media and Technology Institute, Joint Center for Political and Economic Studies, *Broadband Adoption and Usage: What Has Four Years Taught Us?* (Feb. 6, 2013), available at <http://www.jointcenter.org/newsroom/press-releases/broadband-adoption-and-usage-what-has-four-years-taught-us> (stating that “most – 83% – of those with Smartphones also have broadband at home. This means these devices tend to be *complements* to people’s access assets, not *substitutes*. Moreover, those with “Smartphone only” online access do a narrower range of online activities than those with wireline access.”). Emphasis in the original. Interestingly, AT&T has also previously emphasized the distinct nature and capabilities of wireless services, stating that “[w]ireless networks simply cannot provide the same amount of capacity as wireline networks (i.e., DSL and cable). Marsh, Joan, “Wireless is Different,” AT&T Public Policy Blog, Posted Aug. 13, 2010, available at <http://www.attpublicpolicy.com/government-policy/wireless-is-different/>.

¹⁴ DOD/FEA, p. 3.

¹⁵ Comments of Public Knowledge, GN Docket No. 13-5 (fil. Jul. 8, 2013), pp. 2-4.

¹⁶ *Id.*, p. 2.

Proposals for permanent, one-way no-return service and network replacements that are “trials” in name only should be rejected by the Commission as contrary to both good public policy and core statutory principles. Rather, to the extent that *technical* trials of limited scope and duration are deemed useful to investigate TDM-to-IP transitional issues, such technical trials: (a) should be clearly and narrowly specified; (b) should focus upon and collect information regarding the benefits, problems, and unforeseen consequences of prospective technical changes; and (c) should not pre-judge more thoughtful and measured resolution of regulatory and economic issues.

III. THE COMMISSION CAN SPUR ADDITIONAL INVESTMENT IN IP-ENABLED FACILITIES BY CONFIRMING THAT: (1) IP INTERCONNECTION BETWEEN CARRIERS FOR THE EXCHANGE OF TRAFFIC SUBJECT TO SECTIONS 251 AND 252 IS GOVERNED BY THE COMMUNICATIONS ACT; (2) CARRIERS CAN RECOVER THEIR COSTS PURSUANT TO THE ACT IN PROVIDING IP-ENABLED SERVICES; AND (3) RLECS ARE NOT RESPONSIBLE FOR THE TRANSPORT OF IP-ENABLED VOICE SERVICE OUTSIDE THE BOUNDARIES OF THEIR SERVICE AREAS

As NTCA discussed in its initial comments, the concept of IP-based interconnection between managed networks for the exchange of traffic has moved beyond the theoretical.¹⁷ This is confirmed by the record compiled thus far in this proceeding. It is clear that the “IP transition” is already underway and that arrangements can and will be made over time to facilitate this evolution, though certain industry-wide technical and overarching regulatory questions still exist to ensure that such arrangements are both as efficient as possible and serve the public interest. Indeed, member companies of the Associations have been at the forefront of the IP evolution – leveraging private capital, universal service support, and intercarrier compensation to deliver

¹⁷ Comments of NTCA, GN Docket No. 13-5 (fil. Jul. 8, 2013), p. 5.

cutting-edge, IP-enabled services to most of their service areas using a variety of network technologies that include fiber, copper, and wireless solutions.

Indeed, as the Commission is well aware, carriers participating in the National Exchange Carrier Association (“NECA”) tariff have for a number of years made available a tariffed service for the termination of traffic by RLECs through IP-enabled connections.¹⁸ For RLECs, regulatory uncertainty and the ability to recover the costs of advanced network deployment in distant, sparsely-populated areas, rather than technical feasibility, has been the main hurdle to facilitating IP-enabled interconnection.¹⁹

With respect to regulatory matters, the debate over rights and obligations that will govern IP-based interconnection remains in flux (even if it should not be). Specifically, lingering regulatory uncertainty surrounding the exchange of traffic that is in all other respects subject to Section 251 and 252 of the Communications Act²⁰ hinders the seamless interconnection of IP-

¹⁸ See, NECA Tariff F.C.C. No. 5, Access Service, Trans. No. 1309 (fil. Apr. 15, 2011) (effective May 1, 2011).

¹⁹ As NTCA Chief Executive Officer Shirley Bloomfield recently stated in testimony before the Senate Committee on Commerce, Science, and Transportation’s Subcommittee on Communications, Technology, and the Internet: “Even if IP networks are more efficient, there are still real and substantial network costs associated with the underlying transport of data from point A to point Z. It is not as if all of that data floats on free ‘pixie dust’ – there are real networks with real construction and operating costs that must be designed to handle the increasing amounts of traffic we all see on our networks.” Unfortunately, many seem to confuse (or ignore) these real transport and operating costs that exist within even the most efficient of networks, especially in rural areas where distances are great and the addressable market is smaller. Efficiency may translate to lower costs of operation and greater functionality for users, but it does not make costs magically disappear altogether or render geography and density magically irrelevant.

²⁰ This result would be entirely consistent with the Commission’s 2011 ruling that Sections 251 and 252 confer jurisdiction over and permit it to set rates for the exchange of all traffic with local exchange carriers (including traffic traditionally classified as access traffic or intrastate in nature). USF/ICC Transformation Order, ¶¶ 760-762. To be clear, NTCA and WTA do not agree with the manner in which the Commission took jurisdiction over and established a bill-and-keep rate for all such traffic. But having

enabled networks. It in fact creates the opposite, even perverse, incentive to retain TDM-based network facilities simply because, at least then, the “rules of the road” are less in dispute or disarray.

The Commission should, therefore (as most commenters generally agree²¹) confirm that Sections 251 and 252 of the Communications Act are applicable to the exchange of all traffic between carriers using their managed networks. As the Associations have noted, these statutory provisions are not impediments to negotiated agreements for the exchange of traffic; to the contrary, these provisions provide carriers with substantial flexibility to pursue tailored solutions to interconnection issues, with a “regulatory backstop” to ensure that *consumers’* connectivity is not lost in the event that an agreement cannot be reached.

As outlined in the NTCA IP Evolution Petition,²² the Commission should also actively explore incentive-based approaches that reward carriers for investing in high-quality IP-enabled facilities and making interconnection available to one another in this manner. For example, by allowing carriers to recover through nondiscriminatory rates that would be developed pursuant to

done so, there is no logical basis to conclude that the rates for the exchange of such traffic would be governed by sections 251 and 252 but all other terms and conditions for such traffic exchange would be “commercial” in nature and fall outside of regulation. In addition, because the Commission has already brought all VoIP-PSTN traffic within the framework of section 251(b)(5), the terms and conditions for interconnection to exchange all such traffic must, necessarily, fall within that same statutory framework as well. *Id.*, ¶ 933.

²¹ See, Comments of NJ Rate Counsel, GN Docket No.13-5 (fil. Jul. 8, 2013), p.7; Comments of T-Mobile, GN Docket No.13-5 (fil. Jul. 8, 2013), p. 10; Comments of GVNW, GN Docket No.13-5 (fil. Jul. 8, 2013), p. 5; Comments of Hypercube, GN Docket No.13-5 (fil. Jul. 8, 2013), p. 23; Comments of Michigan Public Service Commission, GN Docket No.13-5 (fil. Jul. 8, 2013), p. 8.

²² *Petition of the National Telecommunications Cooperative Association for a Rulemaking to Promote and Sustain the Ongoing TDM-to-IP Evolution*, GN Docket No. 12-353(filed Nov. 19, 2012) (“NTCA IP Evolution Petition”).

the Communications Act the costs of exchanging voice traffic in IP format, the Commission would provide these carriers with the resources, and therefore the incentive, to invest in and maintain IP-enabled network facilities.

Moreover, enabling cost recovery in such a manner would ensure that voice services in an all-IP world offer consumers the same quality as they are provided today. It would enable carriers to make available IP-enabled transport and routing services that would facilitate interconnection between managed IP-based networks, as opposed to delivering latency-sensitive traffic, such as voice, via “best efforts” public Internet networks. To the extent that the Commission seeks a trial of VoIP interconnection in an RLEC service area, the above discussion can serve as a template. For example, the Commission can and should examine whether the availability of standardized, cost-based, nondiscriminatory rates that are developed pursuant to the Act and are available equally to all comers can help “kick-start” the deployment of IP-enabled facilities and the availability of IP interconnection in RLEC areas (and between other carriers as well).

Finally, the Commission should reject calls to adopt interconnection rules that will create significant new financial obligations for RLECs and other regional, smaller providers.²³ More

²³ Certainly, these calls for ostensibly more “efficient” interconnection rules for the exchange of VoIP traffic in a “trial” must be soundly rejected. Whatever the ultimate resolution of this question, it should not come about as a result of a “trial” that creates policy that cannot later be undone. More specifically, AT&T and T-Mobile argue for VoIP interconnection trials that utilize small numbers of interconnection points spread out over large geographic areas. Such an approach is particularly inappropriate for a “trial” in light of AT&T’s open admission that, with respect to the wireless-only trials, there will be “no turning back.” This position clearly indicates that, as to this specific matter, these are not “trials” at all in the sense that the Commission will gather factual data that will inform future rulemakings; instead, they are rulemakings in themselves, since if AT&T gets its way, there will be “no turning back” and the newly created *status quo* of small numbers of interconnection points to which RLECs will be required to transport their IP-enabled voice traffic will be the rule. The ultimate resolution of this complicated and multifaceted issue should come about via a thoughtful and complete rulemaking

specifically, calls for “fewer interconnection points across a wider geographic area”²⁴ would impose significant, new costs on RLECs, as these carriers would be forced to deliver traffic to points of interconnection perhaps *several hundred miles or more* outside their service areas. Here again, it is essential not to confuse the “efficiency” of IP-enabled services with the notion that underlying networks somehow become costless (or “free”) in an IP-enabled world. Routing and transport costs associated with hauling traffic from western Nebraska to Denver or from northern Minnesota to Chicago do not disappear simply because the traffic in question may happen to be formatted in IP. If the costs of such transport can only be recovered from a small rural customer base, this will undermine the deployment of IP-enabled services to those rural consumers, and would ultimately threaten the quality and affordability of the services they can obtain.

IV. CONCLUSION

The Associations support technical trials that examine service issues, as opposed to the use of purported “trials” as a tactic to eliminate existing regulatory obligations or pre-judge pending or future regulatory issues. Proposals for permanent, one-way no-return service and network replacements that are “trials” in name only should be rejected by the Commission as contrary to both good public policy and core statutory principles.

In terms of VoIP interconnection, the Commission should confirm that Sections 251 and 252 of the Communications Act are applicable to the exchange of all traffic between carriers. It should also allow carriers to recover through nondiscriminatory rates that would be developed

process conducted pursuant to the precepts of the Administrative Procedure Act.

²⁴ AT&T, p. 22; T-Mobile, pp. 3-4.

pursuant to the Communications Act the costs of exchanging voice traffic in IP format. This would provide RLECs with the resources, and therefore the incentive, to invest in and maintain IP-enabled network facilities. Finally, the Commission should reject calls for the use of fewer interconnection points spread out across wider geographic areas, which would impose significant, new costs on rural consumers, as the carriers that serve them would be forced to deliver traffic to points of interconnection perhaps several hundred miles or more outside their service areas.

Respectfully Submitted,

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August 7, 2013