

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

In the Matter of)	
)	
Policies to Respond to the Ongoing Technological Transition of Voice Networks	)	GN Docket No. 12-353
)	
Connect America Fund	)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208
)	
IP-Enabled Services	)	CC Docket No. 02-23
)	
Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Framework for Broadband Internet Service	)	GN Docket No. 10-127
)	
Petition for Declaratory Ruling That tw telecom inc. Has the Right to Direct IP-to-IP Interconnection Pursuant to Section 251(c)(2) of the Communications Act, as Amended, for the Transmission and Routing of tw telecom’s Facilities-Based VoIP Services and IP-in-the-Middle Voice Services	)	WC Docket No. 11-119
)	
Petition of USTelecom for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain Legacy Telecommunications Requirements	)	WC Docket No. 12-61
)	
Cbeyond, Inc. Petition for Expedited	)	WC Docket No. 09-223

Rulemaking to Require Unbundling of)	
Hybrid, FTTH, and FTTC Loops Pursuant to)	
47 U.S.C. § 251(c)(3) of the Act)	
)	
Petition for Expedited Rulemaking to Adopt	)	WC Docket No. 09-222
Rules Pertaining to the Provision by Regional)	
Bell Operating Companies of Certain)	
Network Elements Pursuant to 47 U.S.C. §)	
271(c)(2)(B) of the Act)	
)	
Policies and Rules Governing Retirement Of	)	RM-11358
Copper Loops by Incumbent Local Exchange)	
Carriers, BridgeCom International, et al.,)	
Petition for Rulemaking and Clarification)	
(filed Jan. 18, 2007) (“BridgeCom Petition”);)	
Petition of XO Communications, LLC, et al.,)	
For a Rulemaking to Amend Certain Part 51)	
Rules Applicable to Incumbent LEC)	
Retirement of Copper Loops and Copper)	
Subloops)	
)	
In the Matter of Public Notice Seeking	)	WC Docket No. 10-188
Comment on the Business Broadband)	
Marketplace)	

**REPLY COMMENTS OF
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER
ADVOCATES**

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EXECUTIVE SUMMARY

The Federal Communications Commission's ("FCC's" or "Commission's") December 14, 2012 Public Notice¹ listed only one docket number — GN Docket No. 12-353 — in seeking comment on an AT&T petition requesting that the Commission open a proceeding “to facilitate the ‘telephone’ industry’s continued transition from legacy transmission platforms and services to new services based fully on the Internet Protocol (‘IP’).”² As of February 13, 2013, there were 104 filings made in Docket No. 12-353. Eighty-three (83) of those were comments, excluding ex parte filings, duplicate filings, the initial petitions and public notices. The National Association of State Utility Consumer Advocates (“NASUCA”) herewith responds to many of those comments.³

As stated in the initial comments: “NASUCA focuses on the AT&T Petition because the petition, which is represented as promoting the interest of American consumers, is, instead, a transparent attempt to impose the business plan of a single corporation — **AT&T** — on the telecommunications services (and their regulation) of the entire nation and of each of the states within it.”⁴ These reply comments reinforce NASUCA’s initial comments.

NASUCA’s reply comments begin with a brief discussion of what is reported as a recent major shift in AT&T’s position. But, of necessity, the reply comments continue

¹ Public Notice DA-1999 (rel. December 14, 2012).

² AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition, at 1 (filed Nov. 7, 2012) (AT&T Petition). The Public Notice also requested comment on a related petition filed by the National Telecommunications Cooperative Association (“NTCA”). As with the initial comments, these reply comments focus on the AT&T Petition.

³ As noted in NASUCA’s initial comments — and echoed in many other comments — the issues raised here pertain to a large number of pending Commission proceedings. Therefore, as with NASUCA’s initial comments, these reply comments are being filed in each of those FCC proceedings.

⁴ NASUCA Initial Comments at ii (footnote omitted).

with an exposition of the other comments that oppose AT&T's Petition as filed.⁵ Most of those comments are in accord with the concerns raised by NASUCA.⁶ Other comments expand upon and extend NASUCA's opposition. Several consumer organizations, including groups from many states supporting rural broadband and national organizations that have worked extensively on the myriad issues associated with the transition to IP, offer detailed analyses demonstrating that AT&T's petition should be rejected.

Then NASUCA addresses the fragility of the support for AT&T's proposals.⁷ That support consists of pleadings by other dominant network owners, industry trade associations and those who supply the dominant providers. AT&T is also supported by a number of public and consumer-interest groups. Yet as shown herein, those groups largely focus on the need for broadband and IP services, but fail to address the failures in AT&T's Petition, the irreparable harm AT&T's Petition would cause to the public, key legal issues, and have otherwise forgotten AT&T's long history of broken promises.⁸

As stated in NASUCA's initial comments, "AT&T, as the proponent of its Petition, bears the burden of proof on its proposals."⁹ As demonstrated in the various initial comments, AT&T has utterly failed to meet that burden.

⁵ See Section I.

⁶ See NASUCA Initial Comments at ii-iv.

⁷ See Section II.

⁸ See New Networks Institute Comments at 1-2.

⁹ NASUCA Comments at ii, citing Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended, WC Docket No. 07-267, Report and Order, FCC 09-56 (June 29, 2009), ¶1.

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

In the Matter of)
)
Policies to Respond to the Ongoing) GN Docket No. 12-253
Technological Transition of Voice Networks.)
)
)
et al.)

**REPLY COMMENTS OF
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER
ADVOCATES**

I. OTHER CONSUMER ADVOCATES, STATE REGULATORS, PUBLIC INTEREST GROUPS, COMPETITIVE LOCAL EXCHANGE CARRIERS, AND WIRELESS CARRIERS OPPOSE THE AT&T PETITION AS CONTRARY TO THE PUBLIC INTEREST, CONSISTENT WITH NASUCA’S INITIAL COMMENTS.

Eighty-three (83) comments were filed in response to the Public Notice. A review of those comments shows substantial opposition to AT&T’s Petition and its proposal for wire center trials. Twenty-six commenters oppose the filing outright and urge denial of the petition.¹⁰ Fourteen comments submit that preliminary matters must be addressed before addressing AT&T’s petition and proposed trials.¹¹

¹⁰ See Comments of Sprint Nextel Corporation, Comments of AARP, Comments of Harris Corporation, Comments of Interisle Consulting Group, Comments of TexalTel, Comments of Pennsylvania Public Utility Commission, Comments of Ad Hoc Telecommunications Users Committee, Comment of Comptel, Comments of Cbeyond, EarthLink, Integrra Telecom, Level 3 Communications and tw telecom; Comments of Granite Telecommunications, LLC; Comments of the Massachusetts Department of Telecommunications and Cable; Comments of the Nebraska Rural Independent Companies; Comments of Peerless Network, Inc.; Comments of the Rural Broadband Policy Group Access Humboldt, Akaku: Maui Community Television, Appalshop, California Center for Rural Policy, Center for Media Justice, Center for Rural Strategies, Central Appalachia Regional Network, Highlander Research and Education Center, Institute for Local Self Reliance, Main Street Project, Media Literacy Project, Mountain Areas Information Network, National Rural Education Association, Partnership of African American Churches, and Virginia Rural Health Association; Comments by State Members of the Federal-State Joint Board on Universal Service; Comments of Telepacific Communications; Comments of XO Communications, LLC; Comments

A. AT&T's Proposal Appears, at the Very Least, to be a Moving Target

NASUCA's Initial Comments responded to the filed AT&T Petition, per the instructions in the Public Notice, as did the filings of other commenters. These Reply Comments were drafted to respond to the comments of other parties (including AT&T¹²) on the Petition. Despite all this effort, it now appears that parties' focus on the details of AT&T's Petition was, in many respects, futile.

It is reported that at a Federal Communications Bar Association ("FCBA") event on February 20, 2013, AT&T "fleshed out" its proposal.¹³ It is reported that AT&T said that it was asking for a narrow trial, did not ask for particular relief and did not seek revolutionary changes in the networks and their regulation. It is also reported that AT&T said that it would use reply comments to try to clear up perceptions that it is asking for pre-emption or to end competitors' access to UNEs.

This clearly is not just "fleshing out" in response to a few misunderstandings. (Was the Petition so unclear that a multitude of commenters — both opposing and supporting

of Free Press; Comments of NARUC; Comments of Washington Independent Telecommunications Association; Comments of the Critical Messaging Association; Comments of the National Consumer Law Center and Advocates for Basic Legal, Equality, Inc.; Comments of New Networks Institute; Comments of the Community Competitors Coalition; Comment of the Schools, Health & Libraries Broadband Coalition; and Comments of NASUCA.

¹¹ See Comments of Cox Communications, Inc.; Comments of Cablevision Systems Corporation; Comments of Mpower Communications Corp., and U.S. TelePacific Corp; CAN Communications Services, Inc., Level 3 Communications, LLC, TDS Metrocom, LLC, and Telecommunications for the Deaf and Hard of Hearing, Inc., ("TDI"), Comments of the Public Utilities Commission of Ohio; Comments of the Indiana Utility Regulatory Commission; Comments of Western Alliance; Comments of Broadvox, Inc.; Comments of the California Public Utilities Commission and the People of California; Comments of Hypercube Telecom, LLC; Comments of MetroPCS Communications, Inc.; Comments of T-Mobile USA, Inc.; Comments of Public Knowledge; Comments of Inteliquent; and Comments of General Communications, Inc.

¹² As discussed in Section II.A. below, AT&T's comments were quite limited.

¹³ Matthew S. Schwartz, *AT&T Fleshes Out Details of Wire Center Trial Proposal*, Communications Daily (February 22, 2013).

AT&T — could have missed AT&T’s true intentions?) AT&T had full opportunity to describe its proposed trials and explain its position in its Petition.

It would be at the very least inappropriate (at most, unlawful) to adopt trials based on information provided by AT&T in reply or ex partes.¹⁴ To the extent that AT&T substantially changes its position in reply comments, there should be another round of public comment based on the newly-revealed specifics of the Petition.¹⁵

As noted, of necessity, these reply comments that follow are based on the AT&T Petition **as filed**, and on the initial comments that were submitted **based on the filed Petition**. The Commission (and AT&T) must consider these reply comments on that basis.

B. State Regulators

In its initial comments, NASUCA noted the lack of empirical support for AT&T’s filing and the doubtful legal basis for AT&T’s request for preemption of state law and the consequent federalization of the TDM-IP transition.¹⁶ The National Association of Regulatory Utility Commissioners (“NARUC”) raises similar concerns.

NARUC asserts that the approach suggested in the AT&T Petition, particularly the novel idea of imposing exclusive federal jurisdiction over phone service provided using VoIP technology by classifying it as an “information service,” is not only flawed from a policy perspective but is also a prescription for wasteful litigation. This is because the AT&T petition nowhere outlines in any detail an adequate legal basis for, or provides

¹⁴ Much less in informal meetings like the FCBA presentation.

¹⁵ The Commission should consider sanctioning AT&T for the waste of scarce resources it has caused.

¹⁶ See NASUCA Comments at ii.

empirical evidence to support, preemptive FCC action. Moreover, NARUC submits that the approach AT&T asks the Commission to “trial” will unquestionably require a dramatic change to the FCC’s Part 36 rules. Such changes cannot be considered without a recommended decision from the Federal State Joint Board on Separations, pursuant to 47 U.S.C. § 410(c).¹⁷

NARUC rightly points out that AT&T fails to provide *any* statutory support for preemption.¹⁸ To the contrary, NARUC provides a thorough legal analysis demonstrating that “[t]he FCC simply cannot preempt State authority without a specific Congressional grant of authority.”¹⁹ No such grant has been issued. In fact the opposite is true. As NARUC notes,

Unfortunately for AT&T’s Petition, in the context of supporting and promoting universal service, Congressional intent with respect to the State role could not be clearer. The Congressional vision of universal service policy explicitly reserves a crucial and explicit role for State commissions in Sections 254, 214, and 706. Indeed, in the broadest grant of preemptive authority in the entire statute, Congress still expressly reserves State authority to impose “requirements necessary to preserve and advanced universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services and safeguard the rights of consumers. COLR and related public safety obligations that AT&T wants preempted all fall squarely within these express reservations.”²⁰

As NARUC points out, AT&T’s Petition is premised on the false claim that “an IP-enabled network can provide only ‘information services’ as defined under federal law and therefore State regulation of both the services and the network is wholly preempted by federal authority.”²¹ In AT&T’s view, the term “information services” includes fixed

¹⁷ NARUC Comments at 5-20.

¹⁸ *Id.*, at 7-8.

¹⁹ *Id.*, at 9.

²⁰ *Id.*

²¹ *Id.*, at 10.

VoIP. Yet as NARUC points out, “the AT&T Petition fails to cite to a single case where the FCC concludes that any fee-based VoIP services are in fact ‘information services’ or any specific text in the Act that would justify preemption of such services.”²²

NARUC offers a comprehensive rebuttal to the claims propping up AT&T's preemption arguments.²³

- The FCC has not chosen to classify fixed VoIP as EITHER a telecommunications service OR an information service. (pp. 10-11)
- Without exception, since Computer II, the FCC has always treated all voice service that utilizes the public switched network as common carrier services -- whatever protocols were utilized -- because, as the definitions in the Act specify, the voice communications from the end-user's standpoint undergo no change in the form or content of the information as sent and received. (pp.11-12)
- Congress defined both “telecommunications services” and “information services” in terms of the service offered, not the technology used to provide that service; and the FCC is not free to ignore the express terms of the statute. (pp. 12-16)

NARUC also bolsters the point made in both the NTCA Petition and NASUCA's opening comments, that a shift in network technology does not alter the fundamental nature of the services being provided over the network:

On a broader level, AT&T also seems to be putting forth a novel construction that a change in the technology used to provide service from TDM to IP somehow converts a carrier's network from providing voice and other telecommunications services, to something else. But the shift to IP technology merely changes the technology for managing the existing network. It no more creates a new category of regulation than did the conversion from electro-mechanical to electronic switches, the introduction of multiplexers (which use packetized data), or the introduction of ISDN and frame relay services, which are also packet technologies. Indeed, significant network upgrades and transitions have occurred every [sic] since phone service was invented. None of these shifts in technology changed the fact that providers were still providing voice and data telecommunications services.²⁴

²² *Id.*, at 11.

²³ *Id.*, at 11-20.

²⁴ *Id.*, at 16.

Underscoring the accuracy of comments such as these, this Commission, when proposing rules to combat rural call dropping, puts forth a definition of “attempted call” referencing a transmission toward the termination provider “*regardless of the . . . technology used.*”²⁵

Concerns similar to those presented by NARUC are expressed by the State Members of the Federal-State Joint Board on Universal Service (“State Members”). The State Members opine that the relief requested by AT&T and the outcome of this proceeding – depending on what procedural and substantive approach the Commission takes — will have direct effects on the preservation and advancement of universal service, and that AT&T’s Petition and other petitions are simply designed to weaken the state-federal regulatory partnership for preserving and advancing universal service. The State Members submit that the FCC lacks appropriate authority to preempt the states and grant the relief requested by AT&T. The State Members also note that a number of states addressed similar issues in opposition to the USTA Forbearance Petition; that states have independent statutory authority to designate ETCs and define their obligations; that the transition does not affect wholesale interconnection obligations; that the issue of end-user customer migration to “next-generation” networks and retail services are matters of direct interest to the states; and that the FCC should curtail the use of ex parte submission and in-person meetings and if staff seek additional information it should be done by notice.²⁶

The comments of the Pennsylvania Public Utility Commission (“PA PUC”) also express grave doubts about AT&T’s Petition. PA PUC urges the FCC to preserve the structure of joint federal-state regulation premised on constitutional and cooperative

²⁵ Notice of Proposed Rulemaking, *In the Matter of Rural Call Completion*, WC Docket No. 13-39 (Feb. 7, 2013), proposed rule § 64.2101(b) (emphasis added).

²⁶ State Members Comments at 1-3, 4-15.

federalism; retain a modified form of common carriage on networks providing information to consumers regardless of technology uses; promote reasonable access to networks by incumbents and competitors on comparable terms regardless of technology for the benefit of consumers; and ensure that networks that provide information to consumers are safe, reliable, and provide quality of service at reasonably comparable rates while supporting universal service, TRS, 911 and other important policy mandates of states or Congress. PA PUC opposes preemption or forbearance, and submits that states must be active participants in any trials.²⁷

The California Public Utilities Commission and the People of the State of California (“CPUC”) call for a rulemaking to address the following questions as a measured approach to IP transition that would serve the public interest:

- Does the FCC have authority to preempt state jurisdiction over intrastate services including COLR, service quality, service withdrawal, consumer protection rules, rights-of-way rules, pole attachments and other state regulation?
- Should trial wire centers be located only in states that have eliminated COLR obligations and do not require state approval for withdrawal of service?
- Would customers be given a choice to migrate, or would migration be imposed? Is there practical way to allow customers to choose not to migrate for purposes of the trial?
- Would those ILECs in the trial area(s) currently required to provide competitive carriers access to UNEs continue to be required to do so during the trial(s)? In what way, if any, does the technical migration to IP have a bearing on the rules governing competition access and interconnection?
- Assuming that long-term maintenance of two co-existing networks could be prohibitively costly, could two networks be maintained for purposes of the trials, and, if so, what are the pros and cons of doing so? What is meant by “two networks” in this context? Does a change of protocols mean a change of networks, or of underlying facilities? Further, what does the word

²⁷ PA PUC Comments at 2-3.

“network” mean in this context? In what ways do IP-networks depend upon facilities that also provide TDM services such that while the services may change and the transmission protocol be modified, the physical facilities continue to constitute the basis of the network independent of transmission protocols?

- What criteria will be in place to measure the success of the trials? Who will develop those criteria? Who will judge whether they have been met in practice? On what basis will discrimination between useful technological advances and appropriate regulatory changes.²⁸

NASUCA agrees with these concerns.

Despite posing these questions, the CPUC suggests two possible paths for conducting IP-migration trials -- holding such trials only in states that have no COLR requirements and do not require state approval for withdrawal of service, or working with states to address state concerns consistent with state jurisdiction and rules. The CPUC notes that following the NTCA approach of examining the existing regulatory scheme to see what likely would work and what likely would not work in an all-IP-world is a more rational approach than allowing trials in states with no COLR obligations.²⁹

NASUCA categorically opposes holding any trials until the issues associated with the transition are fully explored by both the FCC’s Technology Transition Task Force (“TTTF”) and NARUC's Task Force on Federalism. At that point the FCC and the states, working cooperatively, would be in a position to devise trials that would provide useful information, while protecting the interests of the customers subjected to the experiment. Accordingly, NASUCA opposes the suggestion that trials could be permitted now in states that have no COLR requirements. Under no circumstances should AT&T or any other carrier be permitted to implement the vaguely defined, premature trials described in

²⁸ CPUC Comments at 12-15.

²⁹ *Id.*, at 12-13.

AT&T's petition, especially where they take advantage of the fact that some customers have no state-level COLR protections.

C. Industry

Numerous industry commenters oppose the AT&T Petition based upon their view that AT&T has market power or control of bottleneck facilities, which shows that the grant of AT&T's Petition would adversely affect the public interest and competition in an all-IP network.

Cablevision Systems Corporation ("Cablevision") asserts that ILECs continue to hold disproportionate power in the market for interconnection services because they control larger geographic areas and retain a dominant position in interconnection negotiations; affiliated entities of ILECs control significant volumes of wireless and international traffic and they leverage such power in interconnection negotiations; and ILECs control access not only to their own traffic, and that of their affiliates, but also of unaffiliated competitive providers that they interconnect with. Accordingly, interconnection rights must be preserved. Any trials must be subject to interconnection obligations, and the trials as proposed are not likely to be useful.³⁰

Sprint Nextel Corporation ("Sprint") expresses similar concerns by concluding that AT&T's Petition will not promote IP deployment and its regulatory experiments will generate little useful information; AT&T's proposal is premature, and contains unsupported assertions; AT&T possesses market power and it is exercising that power to impede the transition to an all-IP world; AT&T's market share is increasing; and there is no evidence that maintaining TDM and new networks places unique burdens on AT&T.

³⁰ Cablevision Comments at 2-3.

Sprint argues that the FCC must complete its pending IP voice interconnection FNPRM.³¹

Numerous wireless carriers also assert that the ILECs have market power and that interconnection obligations must be maintained and mandated for IP networks.³² The comments of this segment of the industry on these issues deserve consideration.

D. Consumer Groups

In its Initial Comments, NASUCA identified potential harms to consumers if AT&T's Petition was granted.³³ Free Press also notes the additional harms that the typical consumer could face.³⁴ NASUCA also appreciates the joint support of the

³¹ Sprint Nextel Comments at 3-4, 12-19. See also Interisle Consulting Group Comments at 1-4 (ILECs have market power and AT&T's Petition should be rejected and not relieve carriers of their PSTN obligation); Tixel Comments at 2, 4-6 (clear ground rules for IP interconnection and focused USF mechanisms for broadband are necessary; any transition must maintain the pillars to a necessary regulatory paradigm: "effective wholesale markets to assure that consumers continue to have choices and effective retail competition rather than markets characterized by duopoly or oligopoly"); Broadvox, Inc. Comments at 1-3 (Broadvox faces obstacles in dealing with AT&T on TDM/IP traffic compensation issues).

³² See MetroPCS Communications, Inc. Comments at 2-3, 6-8 (FCC must ensure all ILECs comply with interconnection duties even if all IP. Metro relies upon Sections 151 and 251 in support of interconnection issues. The FCC should not order the transition but encourage it. Metro endorses NTCA's Petition. Metro submits that ILEC have market power and dominant and have incentives not to interconnect or provide network access to competing providers); T-Mobile USA, Inc. Comments at 2-3, 9-17 (T-Mobile views both petitions as advancing parochial interests and urges the FCC to focus on updating regulations to reflect a progressive regulatory framework for the IP transition, to ensure continue deployment of competitive networks and advanced services benefiting consumers during and after the IP transition. T-Mobile asserts ILECs have market power and the potential for anti-competitive behavior in many areas, control over bottleneck wholesale network components such as transport, special access, transit, and backhaul facilities. The FCC must ensure compliance with Section 201 and 251 interconnection requirements and they must apply to IP interconnection. Intercarrier compensation reductions are still necessary because ILECs can continue to impose inflated transport and tandem switching charges on carriers like T-Mobile.); XO Communications, LLC Comments at ii, 2-20 (market power still exists, availability of wholesale inputs will remain necessary in an IP network and AT&T mischaracterizes the evolving networks, FCC precedent does not support a finding that IP services are information services, the FCC should finish the proceedings already addressing IP based services, interconnection is required and the FCC should establish default interconnection requirements for the exchange of traffic, access to UNEs and enforcement of other ILEC obligations are still necessary during and after the transition as long as ILECS have market power over essential local access facilities).

³³ See NASUCA Comments at i-iv, 12.

³⁴ See Free Press Comments at 4-5 (The grant of AT&T's wishes would mean no protections from price gouging, no accountability for service outages, no consumer protections from cramming and

National Consumer Law Center (“NCLC”)³⁵ and Advocates for Basic Legal Equality (“ABLE”) for NASUCA’s positions,³⁶ and appreciates those organizations’ specific concern for the potentially negative impact of AT&T’s Petition on low-income consumers.³⁷

The Rural Broadband Policy Group, comprised of 15 organizations from several states, addresses important issues associated with the impact of AT&T’s petition on customers in rural areas, echoing issues raised by both NASUCA and AARP.³⁸

Consumer groups representing the deaf and hard of hearing also raise important questions regarding the need to ensure that the transition to IP proceeds in a manner that ensures that users with disabilities "are able to attain and maintain access that is *functionally equivalent* to that accorded other users."³⁹

slamming, and no reliable access to emergency services. For millions of consumers and businesses, it would mean no access at all, as AT&T would be free to stop providing service. And because there would no longer be any obligation for interconnection, Americans should expect to see rolling localized Internet blackouts as intercarrier disputes pop up, which will be “resolved” by higher prices paid to dominant carriers like AT&T. The Commission must confront lingering and politically difficult questions concerning its authority over next-generation networks. If it doesn’t, American consumers will face the parade of horrors described above, and innovation will suffer for generations. We strongly urge the Commission, if it is inclined to grant AT&T’s request for a new proceeding, to open a *global* proceeding that first addresses all of the issues surrounding the transition to next generation networks that the Commission has long neglected. Specifically, this will require that the Commission re-examine these lingering questions about appropriate regulatory classifications of ILECs’ services, and it will require that the Commission square today’s market realities with the bad predictions made in the 2005 Wireline Broadband Order. AT&T’s Petition harms consumers since its purpose is to remove all regulations.)

³⁵ NCLC is a NASUCA affiliate member.

³⁶ NCLC/ABLE Comments at 2-3.

³⁷ *Id.*, at 3-4.

³⁸ Comments of the Rural Broadband Policy Group: Access Humboldt, Akaku: Maui Community Television, Appalshop, California Center for Rural Policy, Center for Media Justice, Center for Rural Strategies, Central Appalachia Regional Network, Highlander Research and Education Center, Institute for Local Self Reliance, Main Street Project, Media Literacy Project, Mountain Area Information Network, National Rural Education Association, Partnership of African American Churches, and Virginia Rural Health Association at 4-5.

³⁹ Comments of Consumer Groups on the Petitions of AT&T and National Telecommunications Cooperative Association, at 1-2.

NASUCA seconds a series of vital observations presented by AARP regarding the uncertain nature of the services that AT&T envisions in a transitioning and post-transitioned America. Repeating the summary of AT&T's investment agenda set forth in AT&T's petition, and explaining how AT&T's proposal for regulatory relief appears on its face to be directed at the *one percent* of customer locations within AT&T's wireline footprint that AT&T will not be serving with IP-based broadband services, AARP observes that AT&T's investment plan does *not* extend wireline broadband to 99 percent of customer locations. Instead, about *25 percent* of such locations will be served with LTE wireless service.⁴⁰ Rhetorically, perhaps, AARP asks: "Is forced migration the real agenda?"⁴¹

AARP continues: The migration to a wireless-only service arrangement raises significant concerns. According to data as recent as 2012, a majority of American households (64.2%) continues to purchase wireline voice service.⁴² The percentage is higher still for the older demographics.⁴³ Large numbers of consumers buy both wireless and wireline services.⁴⁴ Wireline service is more popular in non-metropolitan areas, the areas more likely to be affected by plans to abandon wireline networks, than in metropolitan areas, with approximately 73 percent of non-metropolitan households continuing to rely on wireline service.⁴⁵

⁴⁰ AARP Comments at 5-6. Because wireless VoIP has not yet been deployed by wireless carriers, AARP observes, it is unclear whether the trials envisioned by AT&T would even involve a complete IP transition. *Id.* at 14, n.32.

⁴¹ *Id.*, at 11.

⁴² *Id.*, at 16-17.

⁴³ *Id.*, at 1-2.

⁴⁴ *Id.*, at 12, 2.

⁴⁵ *Id.*, at 17.

Sound reasons support continued consumer reliance on wireline connections. Wireless service is of inferior reliability and quality. As highlighted by AARP, such service is not guaranteed to work in all places, especially indoors; that includes consumer residences, where consumers have an essential basic need that it work.⁴⁶ AARP quotes an AT&T coverage map:⁴⁷

Actual coverage may differ from map graphics and may be affected by terrain, weather, foliage, buildings and other construction, signal strength, high-usage periods, customer equipment and other factors. AT&T does not guarantee coverage and our coverage maps are not intended to show actual customer performance on the network, nor are they intended to show future network needs or build requirements inside or outside of AT&T's existing coverage areas.

As observed by AARP, wireless broadband is also typically metered and more costly than wireline broadband.⁴⁸ The higher cost limits the usefulness of wireless broadband for many applications, such as streaming video.⁴⁹ Retirement of copper loops would lead to DSL retirement and would eliminate a viable, typically unmetered, and reliable source of broadband.⁵⁰

NASUCA supports AARP's troubling observations. Regardless of AT&T's private business goals, the Commission and states should work together to advance the goals set forth in the statute, including universality, reliability and affordability.

NASUCA joins AARP in urging the Commission to reject AT&T's Petition and any

⁴⁶ *Id.*, at 18, citing California Public Utilities Commission, D.12-12-038, December 24, 2012, pp. 21-22.

⁴⁷ *Id.*, at 18, n. 53.

⁴⁸ *Id.*, at 12, 18.

⁴⁹ *Id.*, at 18.

⁵⁰ *Id.*, at 11, 18.

similar proposals that would lead to the forced migration of consumers to inferior and more costly services.⁵¹

The comments of Public Knowledge also correctly point out essential steps to moving forward in addressing the TDM-IP transition. Public Knowledge notes that the current lack of certainty rests upon the FCC's refusal to act on numerous proceedings pending before it that would answer the fundamental questions of the IP transition.⁵²

Public Knowledge posits that the principles set forth in the Communications Act of 1934 provide the proper framework for addressing the issues associated with the transition to IP:

As the Commission's official inquiry into this technological transition begins, the Commission's overriding responsibility is to ensure that the rules governing the network continue to protect and service the social needs of all Americans. As carriers update the technology upon which the phone networks operates, the basic social obligations of carriers to the public do not fade away.⁵³

Public Knowledge argues that the five core principles set forth the "Social Contract" that will remain even in an all-IP network. These principles are: (1) service to all Americans, (2) interconnection and competition, (3) consumer protection, (4) network reliability, and (5) public safety.⁵⁴ NASUCA agrees with Public Knowledge that these core principles should be the benchmarks against which all proposals are measured:

These five principles of service to all Americans ... provide both a foundation for the transition and a checklist for the Commission to measure all other proposals.... For any transition proposal, the FCC must consider its impact in these five core areas. If a proposal would result in Americans becoming unserved as a result of the transition, or if a proposal would in any way compromise competition, consumer protection, network reliability, or public safety, the Commission should

⁵² See Public Knowledge Comments at 2-3 and footnote 4 which identified the unresolved proceedings.

⁵³ *Id.*, at 13-14.

⁵⁴ *Id.*, at 4-9, 14-27.

reject it. By contrast, proposals that advance and enhance these fundamental principles should be adopted.⁵⁵

In accordance with these principles, Public Knowledge correctly argues that the United States must not step back from the goal of achieving 100% penetration of basic voice service, and raises the question of how the Commission will continue to pursue this goal “regardless of location, income, or disability - when carriers increasingly stop maintaining their older, TDM-based facilities.”⁵⁶

Ad Hoc Telecommunications Users Committee (“Ad Hoc”) opposes AT&T’s Petition and supports in part NTCA’s Petition because ILECs continue to have market power in the last mile and last mile broadband networks are no more competitive than legacy networks, the market for high speed internet access service is a wireline and wireless duopoly and mere use of IP as a transmission protocol does not transform telecommunications into an information service. Ad Hoc urges that the FCC’s TTTF is a better vehicle for reviewing and updating Commission’s rules and policies.⁵⁷

As noted by AARP and in NTCA's Petition,⁵⁸ smaller, independent rural carriers have continued to invest in and maintain their networks and have not let their copper networks deteriorate. Both rural ILECs and many competitors continue to make good use

⁵⁵ *Id.*, at 7.

⁵⁶ *Id.*, at 15.

⁵⁷ Ad Hoc Comments at 4-14. See also Granite Telecommunications, LLC Comments at 7-10, 22-27 (supports NTCA’s smart regulation and AT&T’s Petition should be denied, including trials. ILECs have market power and control bottleneck transmission facilities for the vast majority of business locations and IP interconnection is necessary); Telepacific Communications Comments at 2-3, 6-12 (AT&T’s Petition should be substantially modified or denied. It is based upon unsupported and unwarranted assumption that ILECs do not control bottleneck last mile transmission facilities and that competition can flourish without regulation. ILECS still have market power in the business market and the FCC should update existing copper retirement rules).

⁵⁸ AARP Comments at 9, citing NTCA Petition at 3.

of the copper networks.⁵⁹ Contrary to the fiction advanced by AT&T, it is possible and in some cases desirable to transmit IP-enabled service over copper, as NARUC alluded to in its comments.

Moreover, as NASUCA has consistently pointed out, this is all one network. For example, in the CPUC service quality docket (R.11-12-001), after repeating its claim that its plain old telephone service (“POTs”) and U-Verse services are provided over separate networks (while sharing portions of the local loop), AT&T provided discovery admitting that in some cases POTs and U-Verse share feeder routes from the central office to the remote terminal, and that there are instances where POTs and U-Verse share poles and conduit in the portion of AT&T's outside plant that runs from the central office to the remote terminal. These statements indicate that AT&T uses common network facilities for portions of its U-Verse provision.⁶⁰ AT&T is not abandoning much of the “old” TDM network. AT&T is using the network for its U-Verse offering, while doing its best to muddy the waters in order to justify cherry-picking which segments of the network it chooses to maintain.

NASUCA submits that the carriers that *have* failed to adequately maintain copper facilities are the Bell Twins -- AT&T and Verizon. The failure to maintain copper networks is part of a publicly-announced, deliberate strategy by these carriers to move

⁵⁹ See also, MPower Communications Corp. and U.S. TelePacific Corp. January 25, 2013, Request to Refresh Record and Take Expedited Action to Update Copper Retirement Rules to Promote Affordable Broadband Over Copper, WC Docket Nos. 10-188; 12-353; GN Docket Nos. 09-51, 13-5; RM-11358, January 25, 2013.

⁶⁰ The Utility Reform Network, Center for Accessible Technology, The National Consumer Law Center and Communications Workers of America, District 9's Reply to Responses Filed in Response to the Administrative Law Judge's Ruling Requiring Telecommunications Corporations to Provide Data, July 13, 2012, (Public Version) CPUC Docket R.11-12-001, at 20-21.

rural customers onto the carriers' own wireless networks⁶¹ and forcibly migrate customers in other areas to the carriers' own IP-enabled networks, thus further concentrating their market power.⁶² Simultaneously, AT&T and Verizon are using revenue from price-deregulated telecommunications services to finance campaigns to convince state legislatures to prevent their own state commissions from regulating fixed VoIP.

The Office of the Attorney General for the State of New York addressed these concerns in its Petition to Modify Verizon's Service Quality Improvement Plan and in a subsequent letter to the New York Public Service Commission responding to statements of Verizon's intent made on an investor's conference call by Verizon Chairman and Chief Executive Office Lowell McAdam.

The foregoing statements by Mr. McAdam contradict Verizon's assertions in this proceeding regarding investment in its landline network. Verizon avowedly intends to abandon substantial portions of its existing copper plant, rather than maintain it. It further appears ... that during the years before the companies FiOS and LTE systems are fully built out Verizon will defer maintenance of its copper network, only to "focus the investment to improve the performance of it" at a later date. Moreover, Verizon's stated intention to force urban landline customers onto FiOS and rural customers onto wireless plans will put basic voice service beyond the economic reach of a significant portion of the company's current customers who do not wish to or cannot pay for these services at current prices that far exceed current landline voice service. Finally, Verizon's intention to move rural customers from landline onto wireless ignores the fact that the company has not committed to extending its LTE network to reach 100% of customers.⁶³

AT&T's continual drumbeat for FCC preemption is part and parcel of this strategy. As is clear from the initial comments of NASUCA and many others, AT&T's strategy -- when

⁶¹ AARP Comments at 11.

⁶² See Letter from Keith H. Gordon, New York Assistant Attorney General to Jaclyn Brilling, New York Public Service Commission, Case 10-C-0202, Petition of Attorney General Eric T. Schneiderman to Modify the Verizon Service Quality Improvement Plan, July 30, 2012 ("NY AG Letter"). See also, MPower Communications Corp. and U.S. TelePacific Corp. January 25, 2013, Request to Refresh Record and Take Expedited Action to Update Copper Retirement Rules to Promote Affordable Broadband Over Copper, WC Docket Nos. 10-188; 12-353; GN Docket Nos. 09-51, 13-5; RM-11358, January 25, 2013 at 11-12.

⁶³ NY AG Letter.

measured against the benchmarks identified by Public Knowledge based on the federal Communications Act -- is not in the national interest.

AT&T's self-interested proposals should not blind the FCC to its fundamental public interest obligations. In its comments, Public Knowledge echoed NASUCA's concern that a transition to IP-based networks should not result in reduced reliability of service:

The impact of the transition to IP-based networks is unfolding before us in real time. After Hurricane Sandy, Verizon acknowledged that the storm caused outages in its FiOS voice, internet, and video services, while users across the affected areas lined up outside to use pay phones connected to the copper network. And just in the past two weeks, customers of AT&T's U-verse voice, internet, and video services suffered outages for days due to problems with a software upgrade. As one customer hit by the outages put it, "You go on U-verse, and the old handy dandy landlines that would work no matter what? That's not happening any longer." This, of course, is no new phenomenon. Outages by cable providers have been periodically denying subscribers their services for years.⁶⁴

E. A Single Consumer's Perspective

Finally, commenter David Leshner points out a (possibly) unintended (at least from AT&T's perspective) consequence of its petition:

With universal service, the ILEC's [sic] got not just obligations but also privileges too. These often include very broad easement rights for poles and ducts, tax relief [In Maryland, Verizon pays zero property tax on its Central Office & similar buildings for example] and even extending down to waivers for fees re: blocking roads & freedom from parking tickets. Assuming the Commission frees the ILEC's [sic] from any of their obligations, will they retain these privileges regardless?⁶⁵

⁶⁴ Public Knowledge Comments at 24.

⁶⁵ David Leshner Comments at 2.

NASUCA agrees with Mr. Leshner. Any reduction in public service obligations or jurisdiction must trigger a re-examination by the Commission and states of the privileges that are premised on the provision of public utility service.

II. THOSE WHO SUPPORT THE AT&T PETITION DO SO OUT OF SELF-INTEREST OR WISHFUL THINKING

A. Industry

Of course, AT&T's own comments support its petition, but focus on: 1) insisting that its proposed trials proceed forthwith⁶⁶ (despite the many questions about the trials discussed above), and 2) opposition to NTCA's proposed measured approach to the transition and maintaining interconnection obligations.⁶⁷ AT&T's comments provide little additional support for its Petition.

The key motive for the Petition is revealed in the comments of some in the industry that support AT&T. This includes CenturyLink, Comcast, Independent Telephone and Telecommunications Alliance ("ITTA"), USTelecom, and Verizon, all of whom seek to eliminate both state regulation and any interconnection requirements. Specifically, ITTA would "look to the market" to govern interconnection. This means that those with market power will be the governors.

On the other hand, some that also want to weaken regulation would like to maintain (for their interest, of course) the interconnection requirements. This includes Competitive Carriers Association, Cox, and the National Cable and Telecommunication Association. Here again, self-interest, not the public interest, predominates.

⁶⁶ See AT&T Comments at 2-10.

⁶⁷ *Id.* at 10-12.

Non-carriers, including equipment producers, have also thrown their lot in with AT&T. This includes Alcatel-Lucent, Internet Innovation Alliance, National Association of Manufacturers, TechAmerica, TechNet, Tech Transition, and the Telecommunications Industry Association. In some cases, AT&T and/or Verizon is a member of these organizations.⁶⁸ It may be that these commenters view AT&T (and Verizon, and the other large carriers that support AT&T) as the most likely winners in the current battle.⁶⁹ But their parochial interests, like those of AT&T, et al., must not be allowed to prevail against the broader interest of the Nation.

One such self-interested supporter of AT&T is Intelepeer, self-described as “a leading provider of ... [IP] communications service to service providers and enterprises” that “is transforming communications by delivering multimodal offerings, including voice and video, across devices networks and geographies.”⁷⁰ Intelepeer claims that “the expectations consumers have about their voice communication services have evolved.”⁷¹ Intelepeer does not say into what.

In NASUCA’s view, consumer expectations have remained remarkably constant over the many decades since voice telecommunications began. Consumers expect, or hope for, reliable service of reasonable quality at affordable prices, with as nearly universal coverage as possible. Again, these hopes and expectations are the very purposes of the federal and state laws that this Commission and the state public utility commissions seek to advance.

⁶⁸ For example, TechNet (AT&T), TechAmerica (Verizon), Internet Innovation Alliance (AT&T).

⁶⁹ This view may be shared by the US Chamber of Commerce.

⁷⁰ Intelepeer Comments at 1-2.

⁷¹ *Id.*, at. 4.

Intelepeer asserts that post-transition regulatory functions might be performed by industry standard-setting organizations, state attorneys general or litigation.⁷² The telecommunications landscape, however, is increasingly complex. This complexity is coupled with the demonstrated failures of the marketplace to accomplish public purposes, even with standard-setting organizations, as evidenced by such persistent problems as cramming and rural call dropping, among others. Nor is private litigation, absent participation when needed by expert public agencies, any assurance that public goals will be attained.⁷³ The situation demands the specialized expertise and public accountability that this Commission and state commissions provide.

Intelepeer references improvement in rural call completion.⁷⁴ As welcome as any improvement may be, the fact the problem has reached the level of seriousness it has reached, and that it persists to such an extent as to warrant an FCC notice of proposed rule-making with a not inconsiderable and not atypical amount of technical intricacy,⁷⁵ is testament once again to the dual need for expertise and public accountability.

⁷² Intelepeer Comments at 4-5.

⁷³ See “FTC opposes Verizon ‘cramming settlement,’” *Chicago Tribune*, Aug. 20, 2012, available at http://articles.chicagotribune.com/2012-08-20/business/chi-ftc-opposes-verizon-cramming-settlement-20120820_1_tentative-settlement-ftc-consumer-interests, quoting the FTC: “Everyone involved in this case except consumers who were fraudulently billed benefits from this settlement. Verizon obtains a beneficial release regardless of whether it pays a penny in claims, those who fraudulently billed consumers walk away with their ill-gotten gains and at least partial immunity from making their victims whole, and the plaintiffs’ attorneys receive millions of dollars.” See also *Manasher v. NECC Telecom*, 2008 WL 2622956 (E.D. Mich. 2008): “The doctrine of primary jurisdiction arises when a claim is properly cognizable in court but contains some issue within the special competence of an administrative agency. . . . [T]he reasons for the existence of the doctrine . . . , broadly speaking, are the desire for uniformity in adjudication and the belief that the decisionmaker with the most expertise and broadest perspective regarding a statutory or regulatory scheme will be most likely to resolve the issue correctly. . . . In cases raising issues of fact not within the conventional experience of judges or cases requiring the exercise of administrative discretion, agencies created by Congress for regulating the subject matter should not be passed over” (internal quotation marks omitted).

⁷⁴ Intelepeer Comments at 5.

⁷⁵ Notice of Proposed Rulemaking, *In the Matter of Rural Call Completion*, WC Docket No. 13-39, FCC 13-18 (Feb. 7, 2013).

Intelepeer references “a flourishing competitive landscape” in a marketplace it refers to as “IP voice and peering.”⁷⁶ Intelepeer does not define this asserted marketplace, let alone offer evidence of competitiveness in it, even at a wholesale level. Nor does it offer evidence that such a marketplace is capable of delivering for retail consumers the elusive goals of reliability, affordability and universality.

AT&T describes the “ongoing” transition as “a transformational revolution in telecommunications and an unprecedented boon for consumers,” while denying any rational basis for sustaining today’s rules and urging that “regulatory underbrush” stifles investment and harms consumers.⁷⁷ The fact the transition is ongoing means that some effects of the transition have already been felt.

These effects are not always the positive outcome that AT&T posits, especially not for consumers. The call dropping problem, which did not occur to any significant extent prior to the time the IP transition began, is an early signal that there is and will be not merely a continuing need, but at times a heightened need, for public authorities to have jurisdiction and resources to step in to protect and advance the public interest.

B. Consumer Groups

Some “consumer” support for AT&T is understandable. This includes the American Consumer Institute, whose support for the positions of dominant carriers and against regulation is traditional.

⁷⁶ Intelepeer Comments at 7.

⁷⁷ AT&T Comments at 3-4, 7-10.

Other groups' support is less easily understood. These groups support AT&T, and request approval of its Petition.⁷⁸ Although NASUCA has the utmost respect for the general work and intentions of the groups, it appears that in this regard they have been swayed by the claims of AT&T (and others) that grant of AT&T's Petition will speed the benefits of broadband to these groups' constituents and the Nation as a whole.⁷⁹ The main focus of these comments is thus the laudable goal of furthering broadband deployment. It does not appear from the comments that these groups have fully considered the complexity of the issues involved here; it also does not appear that these groups have fully considered the dismal track record of AT&T in meeting its commitments.⁸⁰ The comments of these organizations fail to address the extensive and complex issues raised by the petitions. This stands in stark contrast to the detailed analysis presented by the consumer organizations opposing the petition.

III. CONCLUSION

None of the comments submitted change NASUCA's basic assessment that "[a]midst the multitudinous details surrounding the changes to the PSTN caused by the

⁷⁸ See Comments of Asian American Federation, Asian Justice Center, Asian Business Association, Asian Pacific American Institute for Congressional Studies, Asian Pacific American Labor Alliance, Asian Pacific American Legal Center, Asian Woman in Business, Japanese American Citizens League, Leadership Education for Asian Pacifics, OCA and Southeast Asia Resource Action Center; Comments of the League of United Latin American Citizens, United States Hispanic Chamber of Commerce, and Labor Council for Latin American Advancement; Comments of the Minority Media and Telecommunications Council, National Association for the Advancement of Colored People, 100 Black Men of America, A. Philip Randolph Institute, International Black Broadcasters Association, Minority Business Enterprise Legal Defense and Education Fund, National Association of Neighborhoods, National Black College Alumni Hall of Fame, National Black Farmers Association, National Coalition on Black Civic Participation, National Organization of Black Elected Legislative Women, Rainbow Push Coalition, United Negro College Fund and United States Black Chamber, Inc.; Comments of Women Involved in Public Policy, et al.

⁷⁹ These groups may also receive considerable funding from AT&T.

⁸⁰ See footnote 8, above.

introduction of IP technology to the network ... AT&T's Petition stands as a singularly self-interested request for relief from federal and state regulation."⁸¹ AT&T's Petition must be rejected, and a more rational approach consistent with the **public** interest must be found to manage the transition to a network that incorporates the new services and efficiencies of IP, while maintaining the principles of (1) affordable service to all Americans, (2) interconnection and competition, (3) consumer protection, (4) network reliability, and (5) public safety, that are crucial to the current law and network.

Respectfully submitted,

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⁸¹ NASUCA Comments at 34.