

**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)	
)	
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)	
Petition for Expedited Rulemaking to Adopt 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)	WC Docket No. 09-222
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)	
Policies and Rules Governing Retirement Of 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)	RM-11358
)	
)	
)	
In the Matter of Public Notice Seeking Comment on the Business Broadband Marketplace)	WC Docket No. 10-188
)	

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**INITIAL COMMENTS OF
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER
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EXECUTIVE SUMMARY

The Federal Communications Commission's ("FCC's or "Commission's") December 14, 2012 Public Notice¹ lists only one docket number — GN Docket No. 12-253 — 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 Yet, as stated in a more recent AT&T ex parte — filed, ironically, in WC Docket No. 05-25 — AT&T notes that its petition concerns "issues that ... have, until now, been considered only in myriad widely disparate proceedings."³ The National Association of State Utility Consumer Advocates ("NASUCA")⁴ is submitting these comments in most, if not all, of those myriad proceedings.⁵

^{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). As discussed herein, the Public Notice also requested comment on an related petition filed by the National Telecommunications Cooperative Association ("NTCA").

^{3/} *Special Access Rates for Price Cap Local Exchange Carrier*, WC 05-25. Ex parte letter from Robert W. Quinn, Jr. (January 14, 2013) ("AT&T 1/14/13 ex parte") at 1. As discussed herein, there is substantial disagreement about whether this "myriad" of proceedings are "ready for resolution..." Id.

^{4/} NASUCA is a voluntary association of advocate offices in more than 40 states and the District of Columbia, incorporated in Florida as a non-profit corporation. NASUCA's members are designated by laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General's office). NASUCA's associate and affiliate members also serve utility consumers but are not created by state law or do not have statewide authority.

^{5/} These include the dockets addressed in an AT&T ex parte filed on August 30, 2012 ("AT&T 8/30/12 ex parte").

NASUCA focuses on the AT&T Petition because the petition, which is represented as promoting the interest of American consumers,⁶ 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.

First, it must be recognized that AT&T, as the proponent of its Petition, bears the burden of proof on its proposals.⁷ As demonstrated here, AT&T has utterly failed to meet that burden.

More importantly, AT&T's Petition contravenes a fundamental provision of federal telecommunications law, that the FCC is to "make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide and world-wide wire and radio communication with adequate facilities at reasonable charges."⁸ And the AT&T Petition also ignores another fundamental proposition of federal law: that the FCC has authority over interstate (and international) services, while the states (and state commissions) have authority over **intrastate** services. AT&T's Petition would write state commissions entirely out of the regulatory equation.

AT&T's Petition is based on a crucial, self-interested error. It asserts that there are two networks, the traditional "legacy" public switched telecommunications network ("PSTN") and the new IP network. The truth is that there is only one, **mixed**, network

^{6/} AT&T 1/14/13 *ex parte* at 2.

^{7/} Cf, *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.

^{8/} 47 U.S.C. § 151.

that is evolving — as the telecommunications network has continually done — to use and accommodate newer, more efficient technologies. The “new network” discussed by AT&T in fact relies on the legacy network, a network that has proved itself reliable time after time.

There is no need for such a network to abandon the principles (and regulations) that have benefited and protected consumers since at least 1934. The implications and results of AT&T’s Petition would harm — not benefit — consumers and members of the telecommunications industry other than AT&T (and its large cohorts).

NASUCA urges extreme caution in the consideration of AT&T’s Petition. The public interest consequences and implications of the Petition indeed require addressing questions long deferred by the FCC, questions of, *inter alia*, cost allocation, jurisdictional separations, service classification (especially of voice over Internet protocol[“ VoIP”] service), and retail rate setting, **before** the ultimate effects of the network transition can be evaluated.

AT&T’s petition is premature, to say the least. The Commission recently established the Technology Transition Task Force (“TTTF”), The TTTF was charged, in part, with coordinating the Commission’s efforts on IP interconnection and the resiliency of 21st century communications networks. Thus, the TTTF is the appropriate forum for considering the capabilities and functionality of an IP-based public communications network. The TTTF’s conclusions, of course, must be vetted through consideration of public comment.

Claims by AT&T and Verizon that *consumers* have benefited and will benefit from investments made by the companies must be evaluated with a clear view of the

policy objectives that the Act seeks to achieve. These goals have not been achieved to date. On the contrary, hopes that a truly competitive market would deliver the level of prices and quality that a competitive market delivers, have not materialized. For example, according to one observer, a package bundling voice, Internet and video sells, on average, in the United States for \$160 a month with taxes, while the equivalent in France costs just \$38 – and the French have an Internet that is 20 times faster uploading and 10 times faster downloading.⁹

⁹/ David Cay Johnston, “Bad Connections,” *New York Times*, Nov. 27, 2012, available at <http://www.nytimes.com/2012/11/28/opinion/break-up-the-telecom-cartels.html>.

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**INITIAL COMMENTS OF
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**I. ANY FCC ACTION MUST BE CONSISTENT WITH STATUTORY
POLICY OBJECTIVES – SECURING AFFORDABLE, RELIABLE, UNIVERSAL
SERVICE -- -REGARDLESS OF THE TECHNOLOGY USED.**

**A. The Overarching Universal Service Objectives Set Forth in the
Communications Act of 1934 Still Stand, Regardless of the Technology Used to
Provide Communications Services.**

The Communications Act of 1934 established national goals for communications services that are as relevant and vital to our society today as they were when the law was enacted.¹⁰ While the Act has been amended, this language remains in force. Specifically, above all else, the Commission was created for the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to “make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide and world-wide wire and radio communication service with adequate facilities at reasonable

^{10/} Contrary to AT&T’s claims of their irrelevance, See AT&T 1/114 ex parte at 3.

charges” and also for the purpose of “promoting safety of life and property through the use of wire and radio communications....”¹¹

In its petition, NTCA correctly recognizes that *there continues to be a fundamental need for all Americans to continue to receive high-quality, affordable communications regardless of underlying technology used to provide communications services.*¹² The FCC itself has acknowledged this fact, on the web page rebroadcasting the December 2011 workshops on “The Public Switched Telephone Network in Transition.” The FCC stated:

Circuit-switched wireline voice technology has created a high standard for reliability, accessibility, and ubiquity. Consumers will continue to expect and demand these qualities, even as they shift from PSTN services to services provide over different networks.¹³

Historically and by necessity, this fundamental goal has been sought through the evolution of a national public telecommunications network, comprised of interconnected networks owned and operated by privately held telecommunications corporations subject to regulation. The result has been a reliable, largely ubiquitous, publicly-available communications system carrying the telecommunications services that are vital to public safety, social interaction and the economy. Telephone corporations, like other public utilities, were deemed to be “businesses affected with a public interest,” for good

^{11/} 47 U.S.C. § 151.

^{12/} Petition of the National Telecommunications Cooperative Association for a Rulemaking to Promote and Sustain the Ongoing TDM-to-IP Evolution, at 1 (filed Nov. 19, 2012) (“NTCA Petition”). at 4.

^{13/} Cited in NRRI Report No. 12-12, “The Transition from the Legacy Public Switched Telephone Network to Modern Technologies,” Professor David Gabel and Steven Burns (October 2012) (“NRRI Report 12-12”) at 7. See <http://www.fcc.gov/events/public-switched-telephone-network-transition>.

reason.¹⁴ One need only to consider the aftermath of Hurricane Sandy and the January 2013 Commission report on the impact of the June 2012 Derecho on communications networks and 911 service¹⁵ to be reminded that the continued availability of a reliable, affordable network is vitally important to the nation.

NASUCA agrees with NTCA that the overarching objectives of the Communications Act must “apply with equal force whether services are rendered through Class 5 [time-division multiplexing] TDM switches and copper networks or routers, softswitches, and cutting-edge fiber or wireless solutions.”¹⁶ The fundamental goal of ensuring the continued availability of an efficient, reliable and affordable *public* communications network and services must be the litmus test the Commission applies as it weighs the myriad issues associated with the ongoing evolution of the public switched telecommunications network (“PSTN”), including the use of IP and/or any other successor modes of transmission. Proposals that would diminish or eliminate universal service and competitive requirements should be rejected as being in fundamental violation of 47 U.S.C. § 151.

B. The Move to IP and Beyond is an Evolution: This is All One Network.

AT&T’s petition is the company’s latest maneuver in its ongoing campaign to convince the Commission to abandon the regulatory requirements that are necessary to continue the provision of the efficient, reliable and affordable public communication system

^{14/} *Munn v. Illinois*, 94 U.S. 113 (1877).

^{15/} *Impact of the June 2012 Derecho on Communications Networks and Services – Report and Recommendations*, A Report of the Public Safety and Homeland Security Bureau, Federal Communications Commission (January 2013) (“Derecho Report”).

^{16/} NTCA Petition at 4.

required by Congress.¹⁷ AT&T portrays the changes to the PSTN involving the introduction of IP and softswitches as a magical event that renders every regulation or obligation supporting universal service irrelevant. AT&T has derisively characterized the PSTN as the “relic of a bygone era”¹⁸ and continues to dismiss universal service and competitive requirements as remnants of an outdated “legacy” regulatory system.¹⁹ AT&T has also called upon the Commission to order all telecom providers to jettison the so-called “legacy network” and require all carriers to abandon TDM and revamp their networks to utilize IP technology by a date certain. AT&T’s petition is designed to spur the process along. In reality, AT&T’s depiction of the network transformation that is taking place is inaccurate, and AT&T’s recommended policy approach is foolhardy. Not surprisingly, AT&T’s proposals are spiked with a strong dose of myopic self-interest.

As NTCA points out, the notion that IP networks and the PSTN are separate and distinct is a myth.

[W]hat is occurring already and should be promoted and sustained is an evolution of the PSTN – a technology shift within a network (or, really, a series of interconnected networks) that already enables essential, state-of-the-art communications among all American businesses and consumers. Circuit switching is already shifting to packet routing (such that it could perhaps be better said that we are moving toward a “PRCN” or a “Public Routed Communications Network”), and end-user devices have already been evolving rapidly from plain-old-telephone to smarter devices of all kinds.²⁰

This reinforces the point that NASUCA made in comments in response to NBP Notice No.

25:

^{17/} See, e.g., AT&T Comments on National Broadband Plan (“NBP”) Notice #25, Transition from the Legacy Circuit-Switched Network to All-IP Network (December 21, 2009) (“AT&T 12/21/09 Comments”); AT&T 8/30/12 ex parte.

^{18/} AT&T 12/20/09 Comments at 1.

^{19/} E.g., AT&T 1/14/13 ex parte at 1.

^{20/} NTCA Petition at 2.

While some carriers invoke the mantra of “net protocol conversion” in an attempt to place their traffic beyond existing interconnection compensation and other regulatory regimes, the network protocols in the PSTN have been constantly evolving since telephone service was first provided, and voice telephone service has been digitized and transmitted in packets for years. The continued and broadening use of IP protocols is the next step in an **evolutionary** process and may well be followed by transitions to other technical means of providing similar services in the future.²¹

Telecommunications technology has been evolving since telephone service was invented.²² Network switching technology transitioned from manual cord boards to electromechanical step-by-step switches, to crossbar switches, to Stored Program Control electronic analog switches, to digital switches and now to softswitches. Transmission modes evolved from frequency division multiplexing, through several iterations of time division multiplexing, and now to packets. And the signaling protocols have also changed along the way – manual set-up, dial pulse, dual-tone multi-frequency, Common Channel Interoffice Signaling and SS7, and now moving to IP. Each shift in switching and routing technology was, at the same time, both a profound advance in telecommunications networks and a logical evolution of the PSTN.

When the PSTN was gradually evolving to incorporate digital switching and transmission, to support data transmission along with voice telephony, it did not follow that the network was suddenly no longer essential for public communications and, therefore, regulatory requirements should be eliminated. It is disingenuous to suggest, as

^{21/} Comments of NASUCA on NBP Notice #25 (December 21, 2009) at 3-4 (emphasis added).

^{22/} See, e.g., for example, NRRI Report, 12-12 at 7-14. See, also, NRRI Report No. 12-05, “The Transition to an All-IP Network: A Primer on the Architectural Components of IP Interconnection,” Joseph Gillan and David Malfara (May 2012) (“NRRI Report 12-05”), at 3: “To be sure, the technology of the PSTN has changed before. It has moved from its roots as an analog network with in-band signaling to its current architecture characterized by highspeed fiber transport, digital switching, and call control managed by a parallel signaling network, Signaling System Seven (SS7). These evolutions, however, were largely silent — that is, the changes were known primarily to those who managed (or regulated) the network, but were generally invisible to consumers (and the political process).”

does AT&T, that this path should be followed now. Telecommunications networks will continue to evolve. The essential nature of the service has not changed, nor has the statutory obligation that the Commission is obliged to uphold.

1. AT&T Ignores the Fact That Its TDM Network And Its IP Network Both Rely Upon Copper In The Last Mile Which Undercuts Its Claim That Maintaining Both Networks Is Costly And Inefficient.

AT&T claims that “certain legacy regulations” effectively require that it continue to maintain its TDM network, and “every dollar spent on those networks is another dollar stranded in obsolete facilities and services, which cannot be invested in deployment of next generation services.”²³ AT&T’s claim is false and disingenuous. In fact, AT&T’s U-Verse service relies on the same transmission facilities that are used to provide AT&T’s TDM service, including the “last mile” copper connection to the home, used to provide both interstate and intrastate services.²⁴ AT&T’s U-Verse service also shares, at a minimum, conduit and support structures that are used in the provision of interstate and intrastate circuit switched services. The claim that AT&T is being forced to maintain two separate networks is a myth. The FCC should reject this as a justification both for AT&T’s proposal to set a date certain for TDM network sunset, and for granting this petition.

²³/ AT&T Petition at 11.

²⁴/ See, e.g., “AT&T’s \$14 billion U-Verse Investment boosts ASSIA, Tweaks Verizon,” Forbes (November 21, 2012), <http://www.forbes.com/sites/petercohan/2012/11/21/atts-14-billion-u-verse-investment-boosts-assia-tweaks-verizon/>. See also, *Overview of Technology Transformations in the PSTN*, presented by Dr. Trevor Roycroft, NASUCA 2008 Annual Meeting, slide 9, [Overview of Technology Transformations in the PSTN](#).

2. AT&T Ignores the Fact That TDM Networks Operate More Reliably In Face Of Electrical Outages

In its quest to persuade the FCC to require a speedy end to the TDM PSTN, AT&T makes no mention of the widely known fact that the TDM-based PSTN is inherently more reliable than IP fiber-based networks during extended power outages. As a 2012 NRRI Report noted,

The most notable engineering shortcoming of the new technologies is the movement away from reliance on the common battery and the adoption of terminal equipment, such as the cordless phone and the computer, which are more likely to fail during a power outage than equipment powered through the central office.²⁵

Consumers with cordless phones must thus become accustomed, every time a storm or other event takes out the electric power, to unplugging such phones and substituting corded alternatives.

The NRRI report discussed a study presenting an extensive analysis of telecommunications outages in which 30,000 or more customers were affected. The study found that the vast majority (75%) of service outages occurring during commercial power failure would not have occurred if best system practices had been followed.²⁶

Recent experience with Sandy and the Derecho shows that the reliability of the TDM network furthers the public interest. Premature retirement of the TDM network before technical solutions are in place to ensure that IP networks will continue to operate in the face of power loss is not sound public policy. Similarly, state commissions have to make the final call with respect to intrastate services as discussed below.

^{25/} NRRI 12-12 Report at 30.

^{26/} Kavithia Chayanam, "Analysis of Telecommunications Outages Due to Power Loss," master's thesis, Ohio University, 2005, pp.12, 14, and 15 (<http://etd.ohiolink.edu/view.cgi/Chayanam%20Kavitha.pdf?ohiou1125024491>), cited in NRRI 12-12 Report at 17.

The superior reliability of the TDM network is not something that should be ignored or brushed aside based on claims that such action would constitute “progress.” Customers who lose telephone service and the ability to call “911” would rightfully not regard that situation as “progress.”

Reliable telecommunications is a national imperative, mandated by the Communications Act. This was recognized in the recent FCC report on the impact of the Derecho on communications networks and services:

Congress has given the Commission the responsibility under the Communications Act to ensure that communications networks of all types “promote[e] safety of life and property.” Central to this important responsibility is promoting the reliability, resiliency, and availability of communications networks at all times, including in times of emergency or a natural disaster such as the derecho.²⁷

The FCC should not deem a sunset of the TDM network necessary. But if it does, the sunset of the TDM public network should not be mandated unless and until it undertakes a thorough examination of the back-up power requirements that are necessary to ensure that IP networks will continue to provide service during prolonged power outages. Further, customers should not be subject to an AT&T-type trial without reasonable and enforceable assurances that their phones will not fail in a power outage. Moreover, the FCC should specifically acknowledge the role of state enforcement and encourage states to monitor the extent to which both TDM and IP public network operators are following best practices pertaining to back-up power. and to take necessary steps to ensure sufficient back-up power in IP networks²⁸. Customers should not be

^{27/} FCC Derecho Report at 5 (footnote omitted).

^{28/} NRRRI Report 12-12 at 30-36.

treated as test subjects in an AT&T trial without reasonable and enforceable assurances that their phones will not fail in a power outage.

Of course, the “advanced” network is not subject to just systemic power outages. AT&T customers were recently hit by a U-verse outage in most Southern states.²⁹ Customers have been disappointed by AT&T’s lack of response to their concerns.³⁰

3. PSTN Transition Technical and Policy Issues:

The Commission must address many issues before any trials of the sort proposed by AT&T can be considered, and such trials can only be done with the concurrence, oversight and approval of state commissions, as discussed below in Section II. Real-life customers in the trial wire centers should not be “guinea pigs” for degraded service and public safety risk. One important consideration is the question of what capabilities and functionality of the TDM PSTN must be preserved in an IP public communications network, and what additional capabilities and functionality should be added. At a minimum, as the FCC, with state commissions, addresses the transition to a national IP-based public network, it must be ensured that the evolving network has these capabilities and functions:

- The ability to provide clear (minimal latency), high quality, reliable, affordable voice service, compatible with existing customer premises equipment (“CPE”), consistent with 47 U.S.C. §151;
- Measures to ensure a robust, resilient, reliable network and services, such as network back-up power, 48V power at CPE, routing diversity.

^{29/} See <http://www.charlotteobserver.com/2013/01/24/3807860/atts-u-verse-outage-angers-triangle.html>.

^{30/} Id.

- The ability to support advanced communications services such as high definition (“HD”) voice, video conferencing, and short messaging service/multimedia messaging service (“SMS/MMS”) text;
- Accessibility for all customers, including people with disabilities, people of color, customers on low incomes, customers located in rural areas.
- Reliable provision of E911 to all customers, regardless of the technology used to provide service;
- Support for capabilities and functionality necessary to support Communications Assistance for Law Enforcement Act (“CALEA”) standards and homeland security measures;
- Privacy and personal security protections;
- Interconnection and unbundling requirements; and
- Support for existing non-voice technologies that rely upon the PSTN, such as fax machines and alarm systems.³¹

The Commission should refer these questions about capabilities and functionality to its recently-created Technology Transition Task Force (“TTTF”).

The TTTF was charged with coordinating “the Commission's efforts on IP interconnection, resiliency of 21st century communications networks, business broadband competition, and consumer protection with a particular focus on voice services.” The TTTF is also responsible for considering the recommendations from the FCC Technological Advisory Council (“TAC”), including the development of a detailed plan for the orderly transition from the current PSTN system of record to the next point in the evolution of that system. The TTTF will include representatives from the states and should work closely with NARUC and state consumer advocates. This, not AT&T's self-

^{31/} See NRRIN Report 12-12 at 26-27, for an example of the need to ensure support for alarm systems.

serving petition, is the appropriate forum for considering the myriad issues associated with the capabilities and functionality of an IP-based public communications network.³²

NASUCA supports full consideration of the key recommendations of the TAC. Namely, the FCC TTTF and the Commission should develop a detailed plan for an orderly transition from the current PSTN system to a service-rich network for achieving key national goals. This effort should include a public-private partnership involving industry, providers, and relevant organizations and stakeholders (including consumer advocates), and a coordination mechanism for the ongoing evolution of the network to rapidly incorporate new technologies and capabilities.

The Commission should allow the TTTF to complete its work. This includes a thorough policy and regulatory analysis and review of the PSTN transition, which should result in, as discussed above, recommended policies for the IP communications environment, addressing issues including interoperability, interconnection, E.911, numbering, reliability, affordable service to all geographic regions, and other considerations. The TTTF should also complete the identification of mechanisms and a migration plan for critical services currently provided by the PSTN.

NASUCA incorporates by reference the entirety of the NRRI Report No. 20-12 and Report No.12-05 on the transition from the PSTN to and all IP network, cited earlier. It is clear from reviewing these reports the ongoing transition raises significant and complex issues that must be addressed prior to considering trials such as those proposed by AT&T, with the addition of safeguards to protect consumers.

^{32/} “FCC Chairman Announces Technology Transitions Policy Task Force,” December 10, 2012 (Commission Document, unofficial announcement) <http://www.fcc.gov/encyclopedia/technological-advisory-council>

C. The worst-case scenario – if AT&T’s Petition is granted in its entirety

AT&T and Verizon have not been shy about sharing their vision for the future of telecommunications in America, which would, inter alia:

- Ditch COLR obligations,
- Preempt state laws regarding, and eliminate state review of, service quality;
- Leave states no authority over network reliability,
- Move traffic that formerly ran under the non-discriminatory, common carriage rules of the PSTN onto a PRCN without anti-discrimination and common carriage rules;
- Eliminate state control and/or effective oversight over the basic service needs of customers in rural areas, potentially leaving states without jurisdiction to determine whether the newly proffered “4G” wireless service fulfills basic service obligations;
- Preclude states from mandating that carriers provide 911 service in areas with adverse topographical and geographical conditions such as mountains and thick vegetation.
- Foreclose states from addressing back-up power requirements to ensure adequate service,
- Preclude states from a role in determining when it would be appropriate to move customers from TDM networks to IP networks, however those are defined.

The breadth and magnitude of these impacts of AT&T’s proposals are enough on their own to require rejection of AT&T’s Petition.

The Commission needs to think clearly before tinkering with the future of the country. This might strike the casual reader as hyperbolic, but it cannot be denied that the nation's communications network becomes an ever more vital resource as the country moves into the Information Age. What was formerly called the PSTN, and can now be referred to as the PRCN, is (at present) a unified network that carries not only social and political communication, but an increasingly large share of the nation's commerce. Cloud

computing, 3D printing, big data, the Internet of Things – all phenomena that place the communications network in the middle. The network owners should not be allowed to pick winners and losers by exercising "lower layer control" (i.e., the entity that controls the physical layer in the protocol stack can control all layers that ride above).³³

To protect against such lower level control, there is no substitute for a strong non-discrimination rule, applicable to the physical layer; that is the essence of a Title II telecommunications service. Yet it is precisely these non-discrimination obligations, an essential part of the obligations traditionally attendant to a transport network, which AT&T seeks to elude with its proposals here.

The post-regulatory future that AT&T envisages also incites questions about how the network will be enabled if AT&T's proposals are accepted. The transport network *necessarily* includes not only the wires of AT&T and the other large incumbent local exchange carriers ("ILECs"), but also the pole attachments provided by other utilities, conduit under city streets, public utility easements over private property, and easy interconnection with competing carriers. Neither the ILECs nor the cable companies operate in a vacuum; all of these components are necessary for a unitary network. But if the nation's entire communications network is moved to the never-never land of unregulated "IP-enabled services," one might well ask where the legal authority

33/ Richard Whitt, *A Horizontal Leap Forward: Formulating a New Communications Public Policy Framework Based on the Network Layers Model*, 56 FED. COMM. L.J. 587, 647 (2004) (re "lower level control": "an entity's control over unique elements of the Physical Layer and its resulting control over higher layers in the protocol stack" leads to a situation where "he who controls the lower layers also can control the dependent upper layers"). See Direct Testimony of Jeffrey Richter, *in* Petition of AT&T Wisconsin for Declaratory Ruling that Its "U-Verse Voice" Service is Subject to Exclusive Federal Jurisdiction, Wisconsin Public Service Commission Docket 6720-DR-101 (filed Nov. 14, 2008), at 8-9 ("The OSI 7 Layer Model defines the relationship between the application (at the top) and the physical hardware (at the bottom); The TCP/IP model [in contrast] uses four layers"), available at http://psc.wi.gov/apps35/ERF_view/viewdoc.aspx?docid=104378. See also *id.* at Exhibit 1 (illustrating the seven layers of the OSI Model, with physical layer at bottom and applications layer at top, with "each layer functionally independent of the others, but provid[ing] service to the layer above it, and receiv[ing] service from the layer below it"), available at http://psc.wi.gov/apps/erf_share/view/viewdoc.aspx?docid=104379.

lies for the Commission to order pole attachments, or interconnection, or where the network operators will derive their authority to use streets and public utility easements and conduits. The choice of a common carriage model for this transport network —on the other hand — is an efficient solution, and fundamentally important choice for society generally, as NASUCA has repeatedly pointed out.³⁴

This exercise in predictive judgment is made more difficult by the uncertainty, when dealing with our largest ILEC, about what the proposed program actually is. AT&T pushed the Commission to revamp federal high cost support so that it will fund only broadband service, with support for reliable wireline service in rural areas ultimately eliminated.³⁵ The ink was not dry on the Connect America Fund (“CAF”) Order, however, when both AT&T and Verizon announced that they didn't want the federal broadband high cost support after all. Instead, AT&T's now formally announced plan is to abandon its rural landlines and force customers to move to its "4G" LTE wireless service,³⁶ which is an inherently less reliable service than voice provided over copper, and a much less robust broadband offering compared to wireline broadband. The Commission must not let AT&T dictate the terms of the TDM-IP transition, or define the issues for debate. Rather, the public (and country's) interest should be the Commission's lodestar.

^{34/} See, e.g., NASUCA January 15, 2010 Comments in re *Preserving the Open Internet*, GN Docket No. 09-191, and *Broadband Industry Practices*, WC Docket No. 07-52; NASUCA April 26, 2010 Reply Comments in those same dockets.

^{35/} See, e.g. WC Docket No. 10-90, AT&T Reply Comments (August 11, 2010).

^{36/} See <http://www.telecompetitor.com/wireless-landline-replacement-is-part-of-atts-rural-plans/>

II. ANY FCC ACTION MUST BE TAKEN IN CONCERT WITH THE STATES AND CANNOT INVOLVE UNLAWFUL PREEMPTION OF STATE AUTHORITY.

AT&T asks that the Commission open this proceeding to facilitate the transition from legacy transmission platforms and services to an IP network that will enable the retirement of the TDM network. In relation to the discussion above, AT&T's request ignores the fact that the current TDM and IP network offers both interstate and intrastate services over the same network.³⁷ AT&T's requests for trial runs in select wire centers to implement a transition now to an all-IP network similarly ignores that wire centers both provide interstate and intrastate services to customers.³⁸

AT&T claims that this regulatory experiment will show that conventional public-utility-style regulation is no longer necessary or appropriate in an IP network ecosystem.³⁹ AT&T submits that the experiment should not be delayed to accommodate business plans that depend upon TDM networks or to permit all carriers in a wire center to upgrade their networks to an IP network.⁴⁰ AT&T argues that dual regulation by federal and states unfairly burdens ILECs regarding the transition and siphons off investment to the maintenance of TDM networks to the detriment of investing in IP networks.⁴¹ AT&T posits that state requirements regarding legacy TDM networks impose obstacles by requiring ILECs to maintain "obsolete" voice networks that

³⁷/ AT&T's Petition at 1.

³⁸/ *Id.* at 6.

³⁹/ *Id.*

⁴⁰/ *Id.* at 7.

⁴¹/ *Id.* at 5.

customers are abandoning in “droves”⁴² and diverting funds from broadband investment.⁴³ AT&T also argues that IP-enabled services are subject to the FCC’s exclusive jurisdiction of the FCC and that states lack jurisdiction.⁴⁴

Contrary to AT&T’s self-serving positions, in 1934, Congress granted the FCC jurisdiction over interstate and international communications **but preserved state authority over intrastate communications**. 47 U.S.C. § 152(b). Further, the miscellaneous provisions of Title VII of the 1996 Act included §706, which provides:

The [FCC] and **each [s]tate commission** with regulatory jurisdiction over telecommunications services shall encourage deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans ... by utilizing ... price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.⁴⁵

Thus state commissions have a statutory role in advanced services.

AT&T’s Petition is a patent effort to federalize the transition from a TDM network to the IP network, which contravenes the role and rights of state commissions to regulate intrastate services. Contrary to AT&T’s assertions, state commissions have exclusive jurisdiction over intrastate services that are provided over the network, regardless of whether the technology used is TDM or IP. The Petition fundamentally

^{42/} Clearly, customers are not abandoning networks. Instead, they are availing themselves of new services that **providers** are offering over enhanced network facilities.

^{43/} *Id.* at 16. See also Verizon ex parte letter (filed in GN Docket Nos. 12-353 and 13-5) (January 15, 2013) at 3-4.

^{44/} AT&T Petition at 18.

^{45/} See 1996 Act, Pub. L. No. 104-104, Title VII, §706(a), 110 Stat. 56, 153 (1996) (emphasis added). This section was not an amendment to the 1934 Act, but was codified in the notes to 47 U.S.C. §157 until 2008, when it was amended and codified at 47 U.S.C. §1302 by the Broadband Data Improvement Act. Pub. L. No. 110-385, 122 Stat. 4096 (2008).

violates Section 2(b) of the Act and long-standing precedent on the role of states. See *Louisiana Public Service Commission v. FCC*, 476 U.S. 355 (1986); see also *Verizon Communications, Inc. v FCC*, 535 U.S. 467 (2002); *AT&T v. Iowa Utilities Board*, 525 U.S. 366 (1999).

Therefore, the relief requested by AT&T from this Commission can affect only interstate services, and has no applicability to intrastate services provided over the network, absent a change in the law. Regulation of intrastate services remains within the province of state commissions (and state legislatures) and the relaxation or modification of those regulations likewise remain with the states. The trial runs that are the heart of AT&T's Petition cannot not be directed, ordered or implemented by the FCC without consent and approval of state commissions. AT&T's proposals would usurp state commissions' jurisdiction over intrastate services, including determinations on the appropriate timing of any transition, the appropriate steps for any transition, and whether a complete transition is in the public interest.

AT&T's Petition and the proposals offered, if adopted by the FCC, implicate and raise substantial questions about whether the actions requested by the FCC would violate the dual sovereignty principles reflected in Federalism and the Tenth Amendment. Just as Congress cannot force the states to participate in and implement a federal regulatory scheme where states are treated as administrative agents of the federal government, the FCC cannot adopt policies which infringe on the sphere of state sovereignty and mandate IP transition for intrastate services. See *Nat'l Fed'n of Indep. Bus. v. Sebelius*, ___ U.S. ___, 132 S.Ct. 2566 (2012). AT&T's failure to raise this issue at all in the Petition reinforces the impression that the Petition is merely a vehicle to promote a deregulation

agenda, rather than a serious effort to address the myriad issues associated with the transition of the PSTN to an IP network.

AT&T also fails to mention and discuss the implications of the NARUC Presidential Task Force on Federalism and Telecommunications, launched in November 2012, which is also intended to address transitioning the PSTN to new networks, which in turn implicates wholesale obligations, cybersecurity issues, the smart grid, and consumer privacy on its proposals.⁴⁶ AT&T's Petition also implicates universal service issues which require referral and participation of the Federal-State Joint Board on Universal Service, as well as separations issues that must be referred to the Joint Board on Separations.⁴⁷

There are, moreover, compelling policy reasons of the highest order why the states need to play a prominent role in the transition. It is their local citizens whose communications needs must be met at all times, including as the transition goes forward, and whose lives, safety and welfare are inevitably at stake when threats and emergencies of all types arise.

State commissions, at their best, are familiar with local geography and the relevant players in the local wire centers. They are close to the scene and to many or most of the relevant sources of information. They have a focused interest in seeing that the transition proceeds with a minimum of adverse impact to the local population. They have a focused ability to commit resources to investigating potential sources of difficulty and potential threats to the affected populations.

^{46/} See <http://www.naruc.org/News/default.cfm?pr=337>.

^{47/} See AT&T Petition at 17. See Section VI., below.

By contrast, resource constraints may prevent the FCC from conducting a granular investigation of the local landscape across an entire nation. Even if the Commission could overcome such constraints, and even with respect to issues on which the Commission's authority is indeed paramount, state input will almost certainly prove to be helpful to the Commission, as it has before,⁴⁸ such that the transition will proceed more successfully, and with lesser danger to the lives, safety and welfare of the affected populations, if the states play a prominent role than if they do not.

In its effort to have states remove COLR obligations from their laws, AT&T has assured state officials that federal obligations would continue.⁴⁹ The effort has succeeded in some states, but not in others. The AT&T Petition is best described as

part of an overall regulatory and policy strategy by AT&T to change federal and states laws to accomplish certain business objectives that may adversely affect customers. In this regard, AT&T seeks freedom to decide when, where and to whom to provide services - as well as the prices, terms and conditions - of its own choosing. One means of doing so is to replace the provision of Title II services by Title I services, such as broadband. Another is to eliminate state and federal COLR obligations so as to allow discontinuance of service offerings with minimal or no government oversight as well as to enable further substitution of Title I for Title II services. Unfortunately, AT&T is using lobbying tactics that inhibit awareness of the combinatorial effect of achieving their policy goals under both federal and state laws.⁵⁰

^{48/} See, e.g., Derecho Report at 46 (“[t]he Virginia State Corporation Commission Staff Report of Preliminary Findings released September 14, 2012, announced numerous findings consistent with this report and helpful to the Bureau in its inquiry”).

^{49/} See WC Docket No. 12-61, et al., Ex Parte of Barbara Cherry (May 14, 2012).

^{50/} Id. at 2.

III. THE TRANSITION TO IP (AND BEYOND) MUST INCORPORATE UNBUNDLING REQUIREMENTS.

The lack of significant intramodal competition in the U.S. over traditional wireline facilities⁵¹ can be attributed to unfortunate decisions by the D.C. Circuit Court of Appeals, over-acquiesced in by the Commission.⁵² Despite being pejoratively (and incorrectly) referred to as “synthetic” competition,⁵³ this was competition in fact, especially for residential consumers.

This dearth of competition over traditional facilities has perversely allowed ILECs to continually raise their rates for wireline services,⁵⁴ thus producing an ostensibly “market-driven” pressure for customers to move to intermodal alternatives. Despite the claims of ILEC “non-dominance,”⁵⁵ this pattern has led to the domination of the national telecom space by two firms: AT&T and Verizon.⁵⁶

As stated by one commenter, ownership has reconstituted into a duopoly of “Bell Twins,” who exercise sweeping control of the communications terrain. They have little

^{51/} See Local Telephone Competition: Status as of December 31, 2011, FCC (January 2013) at 9-10.

^{52/} See AT&T 1/14/13 ex parte at n.8.

^{53/} Id. at 5. AT&T again argues that the leasing of facilities occurred at “below-market rates.” Id. Given that the “market” in question was and is monopolistic (or at best duopolistic), regulated rates were (and are) necessary to prevent the improper exercise of market power. See *Arizona Public Serv. Comm’n v. United States*, 742 F.2d 644, 650-51 (D.C. Cir. 1984) (“At the core of the ‘effective competition’ standard is the idea that there are competitive, market pressures on the [companies] deterring them from charging monopoly prices”).

^{54/} For example, AT&T Ohio has increased its monthly basic service rates by \$1.25 in each of the three years since being statutorily-permitted to do so, and has increased many non-basic rates in the years since being allowed to do so. Also, AT&T has raised its basic service rate in California by 115% between the fall of 2006 and January 2013. San Francisco Chronicle, AT&T rates skyrocket since deregulation,” (Januar 27, 2012).

^{55/} AT&T 1/14/13 ex parte at 4.

^{56/} Other carriers and providers undoubtedly participate in the market. But AT&T and Verizon are building on their market power, not seeing a diminution of it. See <http://www.bloomberg.com/news/2013-01-22/at-t-buying-alltel-spectrum-customers-for-780m.html>.

incentive to lower prices, make improvements to service or significantly invest in new technologies or infrastructures, leaving American consumers with a major disadvantage compared to counterparts in the rest of the world. What Americans have witnessed is low quality service and prices that are higher than a competitive market would allow, together with Internet coverage both less universal and slower by comparison.⁵⁷

As we transition to an IP-enabled network — which will, as described above, include, rather than replace, much of the current network — it is crucial for true competition for the Commission to continue, expand, and extend the requirement that give competitors access to network facilities. The incumbents must not be able to force competitors to deploy unnecessary duplicative facilities.

As part of the current process, the FCC should reexamine its earlier decisions on the unbundling of fiber.⁵⁸ As fiber becomes a more predominant part of the network — and especially if the incumbents are permitted to retire or remove their copper lines⁵⁹ — the need to allow, or rather **require**, other carriers to have access to that network will grow.

^{57/} Johnston, note 9 above; see also Susan P. Crawford, Captive Audience: The Telecom Industry and Monopoly Power in the New Gilded Age (Jan 8, 2013) .

^{58/} See *United States Telecom Ass'n v. FCC*, 359 F.3d 554, 581 (D.C. Cir. 2004)

^{59/} See <http://www.fiercetelecom.com/story/verizon-takes-advantage-superstorm-sandy-accelerate-copper-fiber-migration/2012-12-04>

IV. AT&T’S PETITION MUST BE DENIED: AT&T’S PROPOSALS ARE A TRANSPARENT ATTEMPT TO GET OUT FROM UNDER ALL REGULATION AND REQUIREMENTS THAT ARE NECESSARY TO ACHIEVE GOALS SET FORTH IN THE ACT.

AT&T was a major creator and proponent of the ABC Plan, which was submitted to the FCC and led to the *USF/ICC Transformation Order*.⁶⁰ The ABC Plan ostensibly addressed the Universal Service Fund (“USF”) and Intercarrier Compensation (“ICC”), but buried within the Plan were provisions seeking preemption of state authority over — and subsequent elimination of — inter alia, COLR obligations.⁶¹ Some suspected that this preemption was, in fact, the true and core motivation behind the ABC plan. Notably, those provisions of the ABC Plan were rejected by the FCC.⁶²

Similarly, it appears that the pending AT&T petition also has as its true purpose not the public interest in an efficient and up-to-date telecommunications network, but the interest of AT&T in eliminating both state and federal regulation. As noted below, the petition lacks key supporting data, on costs and revenues by which the current state and AT&T’s desired end-state can be compared. Equally importantly, AT&T fails to provide a legal foundation to support its self-interested request for the FCC to override virtually every aspect of telecommunications regulation.

Anything that might conceivably be an impediment to AT&T’s business plan is to be preempted — and then eliminated. This includes longstanding state **and federal** policies that require telecom carriers to provide service upon a customer’s request.

^{60/} See <http://americasbroadbandconnectivity.org/supporters/>.

^{61/} See WC Docket No. 10-90, Report and Order and Notice of Proposed Rulemaking, FCC 11-161 (rel. November 18, 2011), ¶ 82.

^{62/} Id.

AT&T says that such policies are no longer necessary with an all-IP network, given the supposed number and variety of providers of services over that network.⁶³ Yet that will be small consolation to the consumer in the mountains, or on the plains, or indeed, in the low-income area of a large city, where no carrier wants to provide service, because it's not in the carrier's business plan. As we noted in the opening section of these comments, this is contrary to the most fundamental provisions of the Telecommunications Act (and state telecom laws).

On a larger scale, AT&T's proposal (along with Verizon's⁶⁴) would take all decisions on services and their deployment out of the hands of state commissions, again in violation of the Act. State decisions on the withdrawal of services in each state are crucial to individual state interests — and the interests of customers in those states.⁶⁵

Similarly, AT&T's proposal for trials in certain wire centers presumes that the FCC has the authority to **experimentally** strip the states of their powers. Again, no legal support is given for the FCC's ability to do this. After all, the states are the laboratories of democracy, not lab rats for the FCC and companies to experiment with.⁶⁶

Further, consumers of telecommunications services need to be protected from fraudulent, deceptive, abusive and unfair practices. For many years, consumers have been victimized, even plagued, with injurious and often insidious practices, including

^{63/} AT&T 1/14/13 ex parte at 5.

^{64/} See Verizon 1/15/2013 ex parte.

^{65/} It is true that some states have relaxed or eliminated some such regulations, but the AT&T/Verizon proposals would not only override the states that have maintained control but prevent any state from “seeing the error of its ways” and reasserting jurisdiction.

^{66/} As noted by Justice Brandeis in dissent in *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932), “It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”

slamming, cramming, “bill shock” and oppressive early termination fees. According to the U.S. Senate Committee on Commerce, Science and Transportation, the cramming problem alone has probably cost *millions* of telephone users *billions* of dollars in unauthorized charges over the past decade,⁶⁷ an abuse and injury that according to the committee’s chairman “ought to be a monumental embarrassment” to the industry.⁶⁸ These are, moreover, not the sort of practices that competitive forces (if in place) could stop. They are practices that distort the market by enabling companies that engage in them to increase their customer and revenue bases at the expense of consumers and other companies.⁶⁹

The state and federal enforcement tools and resources that are needed to stem these practices must not be swept away or reduced in response to irrelevant arguments that technologies are transitioning. Such tools and resources must rather be maintained and enhanced and applied irrespective of transition. In order to police such practices, to secure responsible action on the part of the industry giants,⁷⁰ and to stop the fraudsters and abusers from migrating from one technology to another, more enforcement tools and resources are and will be needed at all levels, not fewer.⁷¹

^{67/} U.S. Senate, Committee on Commerce, Science and Transportation, 112th Cong., 1st Sess., Hearing No. 112-171, “Unauthorized Charges on Telephone Bills: Why Crammers Win and Consumers Lose” (July 13, 2011), at 4 (emphasis added).

^{68/} *Id.*, at . 118.

^{69/} *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, FCC 07-223, 23 F.C.C.R. 493 ¶ 2 (2008).

^{70/} See S. Hrg. 112-171, note 67 above, at 5 (“Since 2006, AT&T, Qwest, and Verizon have earned more than \$650 million through third-party billing”).

^{71/} *Ting v. AT&T*, 319 F.3d 1126 (9th Cir. 2003) (competitive telecommunications marketplace envisioned by federal law depends on, and creates much larger role for, state contract and consumer protection laws, such that availability of state law remedies is essential part of protection for consumers).

AT&T's Petition also fails to acknowledge the need for regulators to step in, regardless of the technology involved, when markets fail to deliver adequate and reliable service. Two timely examples highlight the need for joint federal and state jurisdiction over telecom services: call completion and inmate calling.

First, for reasons believed to include the illegal blocking or restriction of traffic as a means of avoiding termination charges, both interstate and intrastate long distance telephone calls have in recent years often failed to complete to rural destinations.⁷² Described as a “mounting epidemic,”⁷³ the problem “threaten[s] public safety, homeland security and consumer welfare in rural America,”⁷⁴ so much so that 36 U.S. Senators have written the Commission to express their “worry” that it “is only a matter of time before this situation leads to tragedy.”⁷⁵ Because VoIP traffic is likely a part of the problem, the Commission and the states must be able to reach such traffic in order to effect a solution.

Second, in the case of calls from correctional institutions, the facility essentially creates a monopoly for its inmates' calls.⁷⁶ The resulting rates have for years been

⁷²/ Declaratory Ruling, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, and *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, 27 F.C.C.R. 1351 (FCC 2012)

⁷³/ National Exchange Carriers Association, Press Release, “Survey by Rural Telecom Associations Finds Call Completion Problems Persist: Complaints on the Rise As Consumers Grow Frustrated with Repeated Occurrences of ‘Dead Air,’” (Nov. 15, 2012), available at https://www.neca.org/cms400min/NECA_Templates/PublicInterior.aspx?id=8287.

⁷⁴/ National Association of Regulatory Utility Commissioners, Resolution Addressing Rural Call Termination Issues (July 25, 2012), available at <http://www.naruc.org/Resolutions/12%200801%20Passed%20Resolution%20Addressing%20Rural%20Call%20Termination%20Issues.pdf>.

⁷⁵/ Letter to Julius Genachowski, Chairman (December 3, 2012).

⁷⁶/ Notice of Proposed Rulemaking, *In the Matter of Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375 (Dec. 28, 2012), ¶ 5.

decried as unjust and unreasonable. As NASUCA, among others, has observed, the current pricing causes a vulnerable, often low-income, group of Americans to be the victims of abusive monopolistic rates, commonly resulting in extreme hardship for the inmates' families.⁷⁷ The Commission has recently invited renewed comment on the issue, asking, among other things, whether use of VoIP technologies by inmate calling providers impacts the Commission's analysis and whether the use of VoIP technology affects the authority of state regulators to address intrastate inmate rates.⁷⁸ Again, because VoIP traffic is likely a part of the problem, or likely to be a part of the problem as time goes forward, the Commission and the states must be able to reach such traffic in order to effect a solution.⁷⁹

V. NUMEROUS FAILURES OF THE AT&T PETITION

NASUCA's preliminary review of the AT&T Petition shows numerous flaws, including but not limited to:

- (A) AT&T has failed to support any of its assertions that it offers as reasons for the filing and the requested actions with empirical evidence.
- (B) AT&T's claims that it and other ILECs are not dominant in any relevant market ignores that the FCC looks at market power, not

^{77/} NASUCA ex parte Presentation, CC Docket No. 96-128 (Jan. 20, 2009), p. 2.

^{78/} Notice of Proposed Rulemaking, *In the Matter of Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375 (Dec. 28, 2012), ¶ 51.

^{79/} According to NARUC, eight states have taken action to address the problem. Resolution Urging the FCC to take Action to Ensure Fair and Reasonable Telephone Rates from Correctional and Detention Facilities (Nov. 14, 2012), available at <http://www.naruc.org/Resolutions/Resolution%20Urging%20the%20FCC%20to%20take%20Action%20to%20Ensure%20Fair%20and%20Reasonable%20Telephone%20Rates%20from%20Correctional%20and%20Detention%20Facilities.pdf>.

market share, and the filing lacks any empirical evidence to support its claim of non-dominant status.⁸⁰

- (C) IP network investment and deployment will be based upon whether IP networks offer more dynamic, versatile, resilient, and cost-efficient investment for carriers, and AT&T has failed to offer any empirical evidence that IP investment is being hindered.
- (D) AT&T has failed to provide any empirical support that the cost of maintaining the TDM network is not recovered in rate caps at the federal level and rates set by state commissions for intrastate services.
- (E) With the elimination of ARMIS financial reporting, the public lacks access to data to contest AT&T's claims and a notice and comment proceeding proposed by AT&T is not appropriate, since no opportunity to conduct discovery is available.
- (F) AT&T's proposal for trial runs in select wire centers for a transition from legacy to next-generation services including the retirement of TDM facilities is premature, contrary to the public interest, and should be rejected.
- (G) Wire center trials are premature when rules for the transition have not been determined, remain open and not finalized by the FCC and state commissions have not reviewed, weighed in, and approved such trials which are within their exclusive jurisdiction.

AT&T offers a multitude of assertions as support for the proposals offered.

However, AT&T's filing lacks empirical support, studies or analyses to show that the purported assertions are accurate. In addition, the record is inadequate to substantiate the conclusions advanced by AT&T that allegedly support the requested action and relief.

By way of example, AT&T claims that statements at pages 49 and 59 of the NBP support its proposition that maintaining two networks reduces incentives to deploy next generation facilities, siphons investment away from new network and services, and could

⁸⁰/ See *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, WC Docket 09-135, Memorandum Opinion and Order, 25 FCC Rcd 8622 (2010) ("FCC Qwest Phoenix Forbearance Order"), at ¶¶ 58-59, affirmed *Qwest v. FCC*, 689 F.3d 1214(10th Cir. 2012).

lead to stranded investment costs.⁸¹ The NBP was a proposal of the FCC Staff and establishes goals. It has not been adopted by the FCC. Even so, AT&T's depictions of the NBP are selective and leave out pertinent portions which undercut its assertions.

AT&T states in its Petition that the NBP “recognizes that ‘requiring an incumbent to maintain two networks . . . reduces the incentive for incumbents to deploy’ next-generation facilities and ‘siphon[s] investments away from new network and services’” and “further recognizes that regulations that ‘require certain carriers to maintain POTS – a requirement that is not sustainable – [would] lead to investments in assets that could be stranded.’”⁸²

AT&T conveniently leaves out portions of the statement on page 49 of the NBP related to Recommendation 4.9, which qualifies AT&T's statement. The complete quote is “As a result, requiring an incumbent to maintain two networks - **one copper and one fiber - would be costly, possibly inefficient and reduce** the incentive for incumbents to deploy fiber network.” (Emphasis added.) AT&T changes “would ... reduce” to “reduces” without indicating the change. As noted above, there are not now and will not be two networks; just one mixed network. AT&T also fails to acknowledge other portions of Recommendation 4.9 which undermine the relief AT&T seeks. In Recommendation 4.9, the NBP states: “Retirement of these copper facilities affect both existing broadband services and the ability of competitors to offer new services.” In the last sentence of Recommendation 4.9, the NBP states: “The FCC should ensure appropriate balance in copper retirement policies as part of developing a coherent and effective framework for evaluating its wholesale access policies generally.” AT&T also

^{81/} AT&T Petition at 2, quoting NBP at 49 and 59.

^{82/} Id.

fails to note Recommendation 4.10, which addressed that “the FCC should clarify interconnection rights and obligations and encourage the shift to IP-to-IP interconnections where efficient.”

Further, AT&T conveniently rephrases the quote on page 59 related to Chapter 4, Section 4.5 entitled “TRANSITION FROM CIRCUIT-SWITCHED NETWORK,” and fails to include other parts of the Section 4.5 that undermine the relief requested by AT&T. The NBP states:

Regulations require certain carriers to maintain POTS - a requirement that is not sustainable - and lead to investments in assets that could be stranded. These regulations can have a number of unintended consequences, including siphoning investments away from new networks and services. The challenge for the country is to ensure that as IP-based services replace circuit-switched services, there is a smooth transition for Americans who use traditional phone service and for businesses that provide it.

(Footnotes omitted.) Section 4.5 goes on to state:

As with earlier transitions, the transition from a circuit-switched network will take a number of years. But to ensure that the transition does not dramatically disrupt communications or make it difficult to achieve certain public policy goals, the country should start considering the necessary elements of this transition in parallel with efforts to accelerate broadband deployment and adoption. As such, the FCC should start a proceeding on the transition that ask comment on a number of questions, including whether the FCC should set a timeline for a transition and, if so, what the timeline should be, quality of service requirements and safeguarding emergency communications. This proceeding should consider questions of jurisdiction, regulatory structure and legacy voice-specific regulations, including interconnection, numbering and carrier of last resort obligations. It should consider the impact of the transition on employment in the communications industry, particularly given the historic role of the sector in providing high-skill, high-wage jobs. In the proceeding, the FCC should also look at whether there are requirements from other federal entities, such as tax requirements, that would affect the path of the transition. (footnotes omitted).

NASUCA submits that AT&T's selective quotes and leaving out other portions of the recommendations evidence a lack of candor inconsistent with Section 1.17 of the Commission's rules.⁸³

On the merits, as the proponent of its proposals, AT&T has provided no data on its costs of maintaining the TDM network, on the revenues received from the TDM network, returns earned from the TDM networks or where those returns are being invested. AT&T has not provided empirical data on the net savings from the retirement of the TDM network and how those saving would be used to make further investments in broadband networks. AT&T also has not provided similar data on its wireless, data, video, and enterprise operations and how the returns from those services are being invested in broadband networks. Although AT&T complains that 14 million Americans lack broadband from the private sector even with the Universal Service reforms made in the ICC/USF Transformation Order,⁸⁴ AT&T along with Verizon refused CAF Phase I support for unserved areas within their footprints.

Although AT&T claims that retiring legacy TDM networks would free up billions of dollars to invest in next-generation IP services, AT&T has no actual data supporting this number.⁸⁵ AT&T's claim that additional incentives to invest in broadband networks are required is disingenuous when viewed against the AT&T's strong financial performance as measured by its stock price, dividends and earnings.⁸⁶ Further, AT&T's concern about stranded costs ignores the fact that it operates its TDM network under rate

^{83/} See 47 C.F.R. § 1.17 of the Commission's rules that govern truthful and accurate statements

^{84/} AT&T Petition at 3.

^{85/} *Id.* at 12.

^{86/} See <http://www.att.com/gen/investor-relations?pid=262>.

cap regulation at the federal level and rate cap regulation removes the link between rates and costs. AT&T also fails to mention that in many states it has been deregulated or is operating under rate cap regulations.⁸⁷

AT&T's arguments simply ignore the fact that investment decisions, including broadband investment decisions, are based upon business plans and the expected returns to be earned. AT&T has provided no business plans that show that relaxation of regulation in the areas identified would lead to increased IP investments. In a recent ex parte filing by Cbeyond, Inc., EarthLink, Inc., Integra Telecom, Inc., and tw telecom, inc., these carriers noted that AT&T's announced investments were quite modest and that robust competition policies lead to increased incentive to invest by competitors.⁸⁸

AT&T's spirited response to the Cbeyond, et al. letter,⁸⁹ seems directed at avoiding and eliminating IP-to-IP interconnection requirements related to VoIP, which is covered by TAC recommendations and deemed necessary by NTCA in its Petition.⁹⁰ Any transition from the TDM network to an IP network must address how IP-to-IP interconnection will occur.⁹¹

^{87/} See NRRI Report 12-06, "The Year in Review: The Status of Telecommunications Deregulation in 2012" (June 2012).

^{88/} See Letter from Thomas Jones (counsel for these carriers) to Marlene Dortch, WC Docket No. 10-90 *et al.* (filed December 4, 2012) ("Cbeyond Letter").

^{89/} AT&T 1/14/13 ex parte.

^{90/} NCTA Petition at 14-16. See also Verizon 1/15/13 ex parte (which reinforces NASUCA's view that the real agenda is elimination of regulation, since Verizon calls for (1) designating all IP services as inherently interstate services, (2) eliminating 64 Kbps transmission path obligations where copper has been retired, and (3) modifying Eligible Telecommunications Carrier (ETC) Universal Service requirements and preempting state COLR requirements).

⁹¹ See NRRI Report 12-05; see also NRRI Report 12-12 d (addressing implications for State Commissions including economics of the shutting down legacy systems (legacy systems will remain profitable so shut down is not profitable)).

In view of the above, NASUCA suggest that the FCC should reject AT&T's Petition as premature, or defer action until a consensus is reached on the appropriate regulatory process and framework for the transition to an IP network by the FCC, state commissions, consumer advocates and other stakeholders in the process.

VI. ATT&T'S PETITION FAILS TO RECOGNIZE THE NUMEROUS ADJUSTMENTS THAT MUST BE PERFORMED BEFORE A TRANSITION IS COMPLETED.-

AT&T's plan willfully (or at best negligently) overlooks the impacts it will have on the current structure of services and rates as the transition takes place. Current rates are based on cost assumptions that will no longer hold if the transition is effected; even rates that have been deregulated will need to be re-set, or else the supposedly market-based resultant rates will be even more divorced than they already are from those that would be produced by a competitive market.

This requires the Commission to make determinations on cost allocations, a long-neglected subject. The increased multiple uses of the network necessitates recognition that traditional voice is not the primary "cost-causer" of network costs; especially if voice is viewed as just one of many applications riding a broadband network.

And, regardless of the actual details of the end-state of the transition, there will have to be adjustments to jurisdictional separations dividing interstate costs from intrastate. The Commission has avoided addressing this issue for more than a decade now, to the detriment of customers of intrastate services by billions of dollars.⁹²

^{92/} See, .e.g., CC Docket No. 80-286, Reply Comments of the National Association of State Utility Consumer Advocates, the New Jersey Division of Rate Counsel and the Maine Office of the Public Advocate, (November 20, 2006) at 48.

In terms of jurisdictions, there is a pressing issue that must be decided **before** the Commission can proceed with determining the policies to govern the transition: the proper jurisdictional status of VoIP service. Consumers increasingly rely on VoIP as their voice service,⁹³ largely without knowing of the regulatory limbo the service is in. NASUCA has consistently argued that VoIP is a service that can be divided between the interstate and intrastate jurisdictions, as shown by the Commission's Universal Service Fund assessment mechanism.⁹⁴

Yet another aspect of the transition overlooked by AT&T is that the ultimate retirement of the TDM network should trigger review of service rates as an exogenous event under price cap regulation. Further, the efficiencies and cost saving touted by AT&T,⁹⁵ among others, should require resetting retail rates.

These factors also feed in to interstate/intrastate cost and revenue allocations, and should lead to both interstate and intrastate rate adjustments. One principal adjustment will have to be the Commission's own rate findings for the Connect America Fund.

The bottom line — both literally and figuratively — is that the AT&T Petition is, under the circumstances, incurably premature. The sheer number and consequences of

⁹³/ Local Competition Report, footnote 51, *supra*, at 15.

⁹⁴/ See NASUCA comments in *Universal Service Contribution Methodology*, WC Docket No. 06-122; CC Docket Nos. 96-45, 98-171, 90-571, 92-237; NSD File No. L-00-72; CC Docket Nos. 99-200, 95-116, 98-170; WC Docket No. 04-36, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7538-43, paras. 38-49 (2006) (*2006 Interim Contribution Methodology Order*); See NASUCA comments in *See Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services*, CC Docket No. 96-115, WC Docket No. 04-36, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927, 6954-57, paras. 54-59 (2007) (*CPNI Order*).

⁹⁵/ See AT&T 1/14/13 *ex parte* at 2.

the decisions that must be made before the Petition can be ruled on or even before the trials proposed by AT&T are begun — require rejection of the Petition.⁹⁶

VII. CONCLUSION -

Amidst the multitudinous details surrounding the changes to the PSTN caused by the introduction of IP technology to the network, as discussed herein AT&T's Petition stands as a singularly self-interested request for relief from federal and state regulation. NASUCA would conclude these comments with the following brief points:

- A. NTCA's proposal for a rulemaking to promote and sustain the ongoing TDM-IP evolution is a reasonable approach which comports with the dual jurisdiction of the FCC and state commissions while ensuring consumer protection, competition, and universal service.
- B. Preliminary action is required by the FCC on separations reform, classification of VoIP and VoIP Interconnection before the reforms in the NTCA Petition can be considered.
- C. No proceeding should be completed until the work of the FCC Technical Advisory Council is completed and commented on, and NARUC completes its Presidential Task Force on Federalism and Telecommunications.

Above all, AT&T's Petition must be rejected

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^{96/} Imagine the difficulty of ensuring that customers within the trial wire centers — as well as the other customers — are not harmed by the experiment.