

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

In the Matter of	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
International Comparison and Consumer	)	
Survey Requirements in the Broadband Data	)	GN Docket No. 09-47
Improvement Act	)	
Inquiry Concerning the Deployment of	)	
Advanced Telecommunications Capability to	)	
All Americans in a Reasonable and Timely	)	
Fashion, and Possible Steps to Accelerate	)	GN Docket No. 09-137
Such Deployment Pursuant to Section 706 of	)	
the Telecommunications Act of 1996, as	)	
Amended by the Broadband Data	)	
Improvement Act	)	

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

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## TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION .....	1
I. IT'S ALL ONE NETWORK!.....	4
II. VOICE: IT'S ALL ONE SERVICE!.....	6
III. THE DEATH OF THE PSTN AND POTS IS EXAGGERATED.....	7
IV. CONTINUED REGULATION IS NECESSARY FOR THE PUBLIC INTEREST vs. THE PRIVATE INTEREST OF AT&T.....	9
CONCLUSION.....	10

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**INTRODUCTION**

On January 13, 2010, the Federal Communications Commission (“FCC” or “Commission”) issued a Public Notice offering the opportunity to submit reply comments in these proceedings.<sup>1</sup> The Public Notice granted the request of the Media Access Project to

afford members of the public and other interested parties the opportunity to submit reply comments addressing issues that have been raised during the course of this proceeding, noting that the many public notices, workshops

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<sup>1</sup> DA 10-61 (rel. January 13, 2010).

field hearings and recent dialogue on the issues have “cast new light and added new perspectives on many of the questions raised in those notices and meetings.”<sup>2</sup>

As previously noted by the Commission, there have been over 66,000 pages of comments filed thus far in these proceedings.<sup>3</sup> Thus the issue of which of the seemingly-infinite number of issues to respond to in the limited time allowed is, to put it mildly, daunting.

The National Association of State Utility Consumer Advocates (“NASUCA”),<sup>4</sup> having decidedly limited resources, believes that there is one particular set of issues on which reply has not been possible to date, but which demands response. That is the assertion of AT&T Inc. regarding the public switched telephone network (“PSTN”) that “[f]oremost on the Commission’s agenda for enabling private investment to facilitate widespread deployment of broadband infrastructure should be the elimination of regulatory requirements that divert resources from broadband to the PSTN.”<sup>5</sup> Those regulations include carrier-of-last-resort (“COLR”) regulations<sup>6</sup>; unbundling

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<sup>2</sup> Id. at 1 (footnotes omitted).

<sup>3</sup> See remarks of Chairman Genachowski (December 16, 2009) at 1; available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-295265A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-295265A1.pdf).

<sup>4</sup> 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 the 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.

<sup>5</sup> AT&T Comments on NBP Public Notice #25, Transition from the Legacy Circuit-Switched Network to All-IP Network (December 21, 2009) (“AT&T 12/21/09 Comments”), at 8. (AT&T titles its comments as on “Transition from the Legacy Circuit-Switched Network to Broadband,” only the first misrepresentation in those comments.)

<sup>6</sup> Id. at 24.

requirements under 47 U.S.C. § 251<sup>7</sup>; and all federal support for the PSTN.<sup>8</sup> Indeed, AT&T would do away with all state regulation of telephone service.<sup>9</sup>

All this is proposed in the interest of incenting AT&T (and the other carriers) to invest in broadband deployment. NASUCA suggests that giving AT&T (in particular) this free rein will neither yield the results that AT&T “promises”<sup>10</sup> nor, in the end, benefit the consumers who are supposed to enjoy the benefits of a broadband network.

The PSTN that AT&T claims is obsolete, is not disappearing. The key point that AT&T willfully ignores is that there are not two networks, one PSTN and one IP-enabled. **They are both the same network.**

And AT&T would totally supplant the statutory requirement of support for voice service with support for broadband. To quote the National Telecommunications Cooperative Association (“NTCA”), “the longstanding public policy of the United States is that all rural citizens have access to affordable communications services at rates, terms and conditions comparable to those in urban areas.”<sup>11</sup> AT&T provides no demonstration that there is a legislative direction to eliminate that policy; instead all indications in the statute are that the intent is to have broadband **supplement**, not replace, traditional voice service.

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<sup>7</sup> Id. at 26.

<sup>8</sup> Id. at 21-22.

<sup>9</sup> Id. at 17-19.

<sup>10</sup> See Comments of Teletruth on NBP Public Notice # 25.

<sup>11</sup> GN Docket No. 09-51, WC Docket No. 09-51, RM-11584, NTCA Comments (January 7, 2010) at 6.

It should be clear that NASUCA does not disagree with AT&T's assertion that universal broadband access is a critical national priority.<sup>12</sup> NASUCA does disagree that achieving this priority must be done by phasing out Plain Old Telephone Service ("POTS") and the PSTN, and can only be accomplished by abandoning the regulations that keep carriers like AT&T in check.

To a great extent, these reply comments repeat while reemphasizing comments previously made by NASUCA in this and related dockets. Their focus is, however, a reply to AT&T's proposals, which are far removed from the public interest.

## I. IT'S ALL ONE NETWORK!

As recently stated in NASUCA's comments on Net Neutrality,

Broadband is delivered and made up of several physical components: transmission lines, modems, routers and computers. ... Various-ly-described service and application layers ride on this physical layer.<sup>13</sup>

...

[D]iscussion of telephone, cable, or broadband networks as *separate*, stand-alone networks is becoming ever less accurate and relevant. IP is the commonality that allows many different services to ride on what is currently, and will hopefully remain, one interconnected public electronic network. A unitary, interconnected network is essential to consumers ... because it is only this interconnection that makes real the prospect of

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<sup>12</sup> AT&T 12/21/09 Comments at 3-8.

<sup>13</sup> NASUCA Net Neutrality Comments (January 14, 2009) at 6-7 (footnotes omitted); see also 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) ("Richter Testimony") available at [http://psc.wi.gov/apps35/ERF\\_view/viewdoc.aspx?docid=104378](http://psc.wi.gov/apps35/ERF_view/viewdoc.aspx?docid=104378), at pp. 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"); 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 receive[ing] service from the layer below it"), available at [http://psc.wi.gov/apps/erf\\_share/view/viewdoc.aspx?docid=104379](http://psc.wi.gov/apps/erf_share/view/viewdoc.aspx?docid=104379).

ubiquitous, universal, and affordable telecommunications for all.<sup>14</sup>

And as stated by the Pennsylvania Public Utility Commission:

The FCC inconsistently classifies some network facilities and services as “information service[s]” but other networks or services are classified as “telecommunications” with shared [state and federal] jurisdiction. It is intuitively understood, and the FCC has already acknowledged, that broadband network facilities are *jointly* used for the provision of telecommunications and information services. For example, fiber optic broadband facilities are jointly used for the *transmission* of legacy PSTN voice traffic, the transmission of IP-based [voice over IP] VoIP calls, the interconnection function between telecommunications common carriers and information service providers, etc. To arbitrarily label broadband network facilities as “information services” defeats on paper this network engineering reality....<sup>15</sup>

As also stated in NASUCA’s Net Neutrality Comments:

AT&T is not maintaining two networks in any real sense. The same wires and wireless facilities, most of them built with ratepayer money in public streets and right-of-ways, are used in the provision of both POTS and “advanced broadband” services.<sup>16</sup>

This applies to the local network, and to the transmission network.<sup>17</sup>

There is only one network; parts of that network are new, and use different technology from the PSTN. It could not be clearer that AT&T’s attempt to divide the unitary network into two separate networks (one broadband/IP, and one PSTN) is just part and parcel of its overall strategy to eliminate as much regulation as possible (and where elimination is not possible, federalize it). It should also be clear that this attempt is not part of a grand plan to serve the public interest, but rather a scheme to maximize

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<sup>14</sup> NASUCA Net Neutrality Comments at 7-8 (footnotes omitted).

<sup>15</sup> Comments of Pennsylvania PSC in *Transition from Circuit-Switched Network FULL CITE*, at 2-3 (as quoted in NASUCA Net Neutrality Comment at ), available at [https://portal.neca.org/portal/server.pt/gateway/PTARGS\\_0\\_0\\_307\\_206\\_0\\_43/http%3B/prodnet.www.neca.org/publicationsdocs/wwwpdf/1221pa.pdf](https://portal.neca.org/portal/server.pt/gateway/PTARGS_0_0_307_206_0_43/http%3B/prodnet.www.neca.org/publicationsdocs/wwwpdf/1221pa.pdf).

<sup>16</sup> NASUCA Net Neutrality Comments at 10.

<sup>17</sup> Id. at 10-11.

AT&T's profits and control over its network.

## II. VOICE: IT'S ALL ONE SERVICE!

As stated by NASUCA in the *Transition from Circuit-Switched Network* comments,

Given ... the impact of the transition of essential telecommunications services from being provided over what was previously referred to as a public circuit-switched network to networks using IP, the first issue to address is whether changes in the transmission protocols are changing the nature of these essential services.<sup>18</sup>

Clearly, the answer is, "No."<sup>19</sup> As we also stated,

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. While the Internet has wrought great and wonderful new services, from a technological and functional perspective, the distinction between [POTS] and the VoIP service offered by carriers such as AT&T (including but not limited to U-Verse), Verizon (FiOS), Comcast, Cox and Time Warner is practically non-existent. These services are marketed to customers as regular telephone service; they depend on the network **not** transforming a customer's call, so that what is said on one end is precisely what is heard on the other. Indeed, the Internet and the PSTN use the same physical infrastructure. In sum, the use of IP protocols to provide telecommunications services does not fundamentally alter the nature of these essential services.<sup>20</sup>

Telecommunications technology has been changing from the very beginning. It went from cord boards to step-by-step switches, to crossbar switches, then analog switches and

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<sup>18</sup> NASUCA *Transition from Circuit-Switched Network* Comments at 3.

<sup>19</sup> See Richter Testimony at 3-4.

<sup>20</sup> NASUCA *Transition from Circuit-Switched Network* Comments at 3-4.

digital switches. And the transmission protocols changed along the way – dial pulse, dual-tone multi-frequency signaling, and Operating System 7. This will continue to evolve. The essential nature of the service has not changed. People still use the telephone in basically the same way they used it in the 1940s. Admittedly, the networks are now also used for other services, but voice is still there and is not going away.

Further, because from the perspective of customers, the functionality of VoIP services is virtually identical to traditional phone service, VoIP should be regulated like phone service. The same companies are providing the services, or if different companies are providing the services they are using the same facilities to provide the service along with other services. Voice is now the incremental service, but regulation should not be eliminated because of that.

### **III. THE DEATH OF THE PSTN AND POTS IS EXAGGERATED.**

As previously addressed, contrary to AT&T's assertions, there is really only one interconnected network involved here, so the PSTN is not one of the "relics of a by-gone era."<sup>21</sup> But another aspect of AT&T's argument is that POTS is also a relic.<sup>22</sup> AT&T refers in the 12/21/09 Comments to an ex parte it filed less than a month before.<sup>23</sup> A review of that ex parte shows much of AT&T's support for its proposition to be an exaggeration.

The very first chart in the ex parte, entitled "ILEC POTS Service Revenues –

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<sup>21</sup> AT&T 12/21/09 Comments at 1.

<sup>22</sup> Id.

<sup>23</sup> See 01-92, 05-337, 09-51, AT&T ex parte (November 24, 2009) ("AT&T 11/24/09 ex parte").

including Universal Service Surcharge Revenues” shows a total revenue decline from \$178.6 billion in 2000 to \$130.8 billion in 2007. But only \$7.1 billion of the \$47.8 billion decrease represents decreases in local exchange revenues; \$39.8 billion of the decrease is a decrease **in toll revenues**.<sup>24</sup>

The chart titled “ILECs switched access lines” shows a decrease from 139 million residential switched access lines in 2000 to 75 million in 2008. But the 2000 numbers included single line business; when those were transferred to the business count, the number of business lines increased by 16 million in a year when residential lines decreased by 18 million. The coincidence (or lack thereof) is startling.

And then there is the table titled “Non-Primary Residential Access Lines v. ADSL Lines.” This shows a 12.3 million decrease in non-primary access lines (many of which were used for dial-up Internet access) from 2000-2008 and a 24.1 million increase in ADSL lines – which can be used both for Internet access **and** for switched telephone service – over the same period.

AT&T asserts that “there are probably now [as of December 2009] more broadband connections than telephone lines in the United States,”<sup>25</sup> as if that proved that the PSTN is disappearing. AT&T cites FCC reports as of December 2007; the more recent reports as of December 2008 still show a wide gap between high-speed lines

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<sup>24</sup> See the second chart, showing a 13.2% (345 billion) decrease in ILEC interstate and intrastate switched access minutes.

<sup>25</sup> AT&T 12/21/09 Comments at 10.

(which include wireless high-speed lines) and end-user switched access lines.<sup>26</sup> Even at a rate of decline of 5% per year,<sup>27</sup> the disappearance of the switched access lines is hardly imminent. That is, unless the Commission buys into AT&T's scheme and allows it to shed POTS and reap higher profits from broadband. As discussed in the next section, that is precisely what the Commission should **not** do.

In the end, AT&T is seeking to abandon the customers who do not have, and may not want or need, broadband.<sup>28</sup> This is what the “[c]onsensus ... building in Washington that the subsidies for telecommunications should be invested in broadband infrastructure, not telephony...”<sup>29</sup> misses: that is, the consumers who continue to rely on traditional telephone service, and should not be forced into broadband with its additional costs, both for initial access and on-going service.<sup>30</sup>

#### **IV. CONTINUED REGULATION IS NECESSARY FOR THE PUBLIC INTEREST vs. THE PRIVATE INTEREST OF AT&T.**

As stated by NASUCA in the *Transition from Circuit-Switched Network*

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<sup>26</sup> *High-Speed Services for Internet Access, Dec. 31, 2008*, at Table 1 (showing 132,813,984 high-speed lines as of June 2008); *Local Telephone Competition: Status as of December 31, 2008*, at Table 1 (showing 154,654,847 end-use switched access lines as of June 2008).

<sup>27</sup> AT&T 12/21/09 Comments at n.24.

<sup>28</sup> See Commissioner Clyburn's speech to the Organization for the Protection and Advancement of Small Telephone Companies, at 3-4, available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-295927A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-295927A1.pdf).

<sup>29</sup> 09-51, Free Press Issue paper, “Making the National Broadband Plan Work for America (December 2009) (“Free Press Paper”) at 7, available at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020354632>. To quote another portion of the Free Press Paper (at 9) regarding broadcasting, “There may be a certain logic to phasing out old technologies and encouraging new ones – though we should be careful about pronouncing the death of broadcasting [for which, read POTS] while millions of Americans are still using it.

<sup>30</sup> The security of the PSTN, especially in terms of lack of vulnerability to power outages, seems often to be overlooked.

Comments, the following key regulations need to be maintained (and improved) for the protection of consumers (and of competition):

- Common carriage and prevention of undue discrimination<sup>31</sup>;
- Interconnection and access promotion<sup>32</sup>;
- Service quality and reporting requirements<sup>33</sup>;
- Protections against deceptive marketing and billing<sup>34</sup>
- Universal service for POTS<sup>35</sup>;
- Public safety protections<sup>36</sup>; and
- Privacy protections.<sup>37</sup>

Above all, the FCC should recognize and enhance the role of the states in consumer protection,<sup>38</sup> contrary to the desires of megafirms like AT&T.<sup>39</sup> This includes not attempting to override state policies on carrier-of-last-resort obligations.<sup>40</sup>

## CONCLUSION

The Commission should reject AT&T's self-serving and outlandish proposals.

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<sup>31</sup> NASUCA *Transition from Circuit-Switched Network* Comments at 6-7.

<sup>32</sup> *Id.* at 8-9; see also Free Press Paper at 4-5, 12-13.

<sup>33</sup> NASUCA *Transition from Circuit-Switched Network* Comments at 10, 13.

<sup>34</sup> *Id.* at 16-17.

<sup>35</sup> *Id.* at 11-12.

<sup>36</sup> *Id.* at 14-15.

<sup>37</sup> *Id.* at 15-16.

<sup>38</sup> *Id.* at 10-11.

<sup>39</sup> AT&T 12/21/09 Comments at 17-19.

<sup>40</sup> *Id.* at 24-26.

Respectfully submitted,

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