**BEFORE THE**
**FEDERAL COMMUNICATIONS COMMISSION**
**WASHINGTON, D.C. 20554**

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| In the Matter of: | ) | |
| AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition | ) | GN Docket No. 12-353 |

# REPLY COMMENTS OF CENTER FOR INDIVIDUAL FREEDOM, AMERICAN COMMITMENT, AMERICANS FOR TAX REFORM, COMPETITIVE ENTERPRISE INSTITUTE, INSTITUTE FOR POLICY INNOVATION AND TAXPAYER PROTECTION ALLIANCE


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February 25, 2013

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**Reply Comments of Center for Individual Freedom, American Commitment, Americans for Tax Reform, Competitive Enterprise Institute, Institute for Policy Innovation and Taxpayer Protection Alliance**

## I. Introduction

On behalf of the undersigned members ("Joint Commenters" or "we"), we respectfully encourage the Federal Communications Commission ("FCC" or "Commission") to grant AT&T's request ("AT&T Petition" or "Petition") to conduct beta trials in select, limited wire centers that will examine the transition to Internet Protocol ("IP") based networks ( "IP Transition"). This narrow objective – closely-supervised beta trials – and not the litany of objections offered by opposing commenters should be the basis for the Commission to accept the Petition.

Many of the comments filed by parties in opposition to the AT&T Petition are poorly disguised objections to or concerns about the IP Transition itself, not objections to the specific request made in AT&T's Petition. Yet these objections discount the available evidence, actual conditions in the marketplace and consumers' strong endorsement of competitive and lightly

regulated IP-based alternatives. Indeed, *consumers* are driving the IP transition, with many having already completed their own personal IP transition. The question now remains: how the Commission can facilitate the transition on a national scale? It is our conviction that granting the AT&T Petition is the best and most efficient way to move the United States toward a complete transition to IP and is the most effective way to further promote the private sector capital investment needed to ensure that advanced alternative broadband services are available to as many consumers as possible.

## II. About the Parties

Our shared goals include safeguarding and promoting the free enterprise system, as well as ensuring continued American innovation, leadership, economic prosperity, and global competitiveness. As a central aspect of that larger mission, our organizations advocate public policies at the Federal, State and local levels that advance technological, telecommunications, Internet and broadband innovation and development in a free, effective, and efficient manner.

We also share a strong belief that regulatory agencies must at all times act in a disinterested, neutral manner and judge the matters before them solely on the merits. Government agencies and policy makers should participate as neutral decision makers and should not facilitate the motives of outside interests, whether commercial or partisan. Our reply comments address certain overarching concerns raised by comments filed in opposition to the Petition, specifically those comments concerning the benefits of the IP Transition, AT&T's proposed beta tests, and the existing asymmetric regulation of certain broadband providers.

## III. Discussion

Several important allegations from opponents are based on an inaccurate, myopic view of the state of the current communications marketplace, consumer choice, and the nature of regulation itself.

### A. Competition and Market Power

Foremost is the issue of competition in the broadband market. Parties in opposition to AT&T's Petition suggest that regulations implementing the Telecommunications Act of 1996 ("Act") applicable to last century's legacy time division multiplexing ("TDM") based networks should be extended to IP-based networks and infrastructure. These claims disregard how the expansion of unregulated IP-based networks has led to an explosive demand for new services; novel and innovative technologies, devices and capabilities; hundreds of billions of dollars of new private sector investment; and, many more choices for consumers. Specifically, some claim that the FCC should "level the playing field" through an unprecedented application of new regulatory requirements such as unbundling, last mile access, and interconnection arrangements on IP-based networks and facilities. These same commenters, however, fail to note that imposing an array of additional regulations directed only at specific IP network providers would sustain business models that depend on regulated access and an environment that fails to provide the proper incentives for infrastructure investment.

We state our proposition clearly: many of those opposing the Petition favor imposing legacy Title II, *telephone* regulations solely on the IP-based networks of independent local exchange carriers ("ILECs"). We contend that the ILECs should no longer be subject to those regulations in any capacity, as a result of the lack of market power arising from the competitive alternatives currently available in the marketplace. This should hold true for both yesterday's TDM networks and today's IP networks.

While commenters that oppose the Petition suggest that ILECs retain an inherent competitive advantage in the market and maintain power over the (dwindling) market for traditional voice interconnection services, the reality is quite different. Today, consumers are migrating in droves away from traditional voice communications subscriptions, replacing legacy telephone services with newer, more robust and advanced high-speed broadband services. As ILECs lose market share, their ability to exert control over access to the consumer has vanished. Assertions made by certain parties that ILEC market power would enable control and manipulation of beta trials to direct favored policy outcomes are, in a word, absurd.

In today's marketplace, the IP-based service providers that remain comparatively free of legacy regulation, including wireless and VoIP providers, *already* provide voice service to the overwhelming majority of Americans. This is readily apparent in AT&T's ILEC service region where, on average, approximately 75% of households obtain voice service from a non-ILEC IP-based network provider. Since so many consumers have, and continue to, switch to alternative, lightly regulated advanced broadband communications services, ILECs should, and will, focus on investing and deploying IP-based networks with advanced functionalities to remain competitive in the high-speed broadband market. Thus, ILECS possess neither the ability nor motive to "manipulate" any beta trials.

A key factor in the vibrant growth of IP-based networks and services was the initial decision not to regulate IP interconnection. We live in a world with two distinct models for interconnection: one for the legacy telephone network and the other for IP-based network interconnection. The first, interconnection through the public switched telephone network, is heavily regulated and dramatically declining in use and popularity. The second, interconnection through IP-peering and transiting, is not subject to Title II regulation and is self- regulated by market participants. The IP-based model has resulted in greater innovation, enhanced economic efficiencies, explosive traffic growth, and has avoided regulatory arbitrage unlike the regulated model.

A stark contrast exists between how these regimes operate, including, for example, the underlying terms of interconnection. Under the lightly regulated IP model, terms are commercially-negotiated, flexible, and based on marketplace realities. In the regulated model, government intervention has created an unnecessarily complex system and an environment that promotes inappropriate incentives for arbitrage given the various regulatory definitions and forms of compensation that govern the exchange of traffic.

Why the difference? In the regulated model, government intervened to set rates, terms and conditions. This market-distorting activity led to a plethora of multi-jurisdictional legal and regulatory disputes. Fortunately, as American consumers and businesses continue to abandon legacy TDM-based telephone service, the business certainty enabled by IP-interconnection will reduce the number of disputes as more and more traffic migrates to faster, more reliable, and self-regulated IP-based networks.

Opposing commenters fail to submit any evidence regarding ILEC dominance of the IP interconnection market. The overwhelming majority of IP network traffic is data. No party submitted evidence into the record demonstrating market power by any entity in the data market. Given that voice traffic composes only a small portion of IP network traffic, commenters would be hard pressed to claim that the addition of TDM-based network voice traffic to data traffic on IP networks would somehow provide ILECs with a competitive advantage in the IP interconnection market.

Similarly, the Commission should not heed the call to extend unbundling obligations to fiber and IP-based services and facilities. These assertions are veiled attempts to reverse the Commission's wise position that forbearance from unbundling obligations is the best policy to advance the deployment of broadband services, a policy that has resulted in increased competition, substantial investment and growth in our economy. The FCC's decision to forbear from regulating new investment in fiber facilities and packet-based switching services has dramatically improved

consumer welfare. This decision led to hundreds of billions of dollars in private sector investment in high-speed networks serving both business and consumers. As with IP interconnection, commenters fail to make the case that new unbundling requirements would somehow benefit consumers.

Regulatory certainty is the only policy that will help drive private investment in next-generation networks and the economic growth that will result from these investments. The FCC, therefore, should make certain to investors and the private sector that it will not reverse its prior forbearance decision regarding fiber- and IP-based services and facilities.

For the foregoing reasons, the Commission should approve the AT&T Petition and start the beta trials to begin a comprehensive process to facilitate the nationwide IP transition. Healthy, market-based competition, rather than applying unnecessary regulation enacted for last century's monopoly-era past, will drive the IP transition and continue to provide substantial life-changing benefits to consumers. A light touch regulatory framework that addresses 21st century high speed IP-enabled services that ride on next generation broadband networks will promote the IP transition faster and more efficiently than the application of an antiquated, outmoded system that risks jeopardizing the significant progress that has been made.

### B. Consumer Protection

Some commenters suggest that the IP Transition will be disruptive to consumers and that it will result in a "forced migration" to new services that could, in theory, adversely affect older Americans. In light of the overwhelming popularity of wireless service today as a competitive alternative, these commenters appear to suggest that consumers are not aware of wireless as an alternative to wireline service. The basis for distinguishing between wireline and wireless services, they contend, hinges on how wireless service is billed and an unsupported assertion that it is more costly. Yet this argument ignores the reality that today, and for the foreseeable future, consumers seem to prefer the versatility and capabilities that mobile offers as a primary communications service.

How can migration be "forced" when 75% of customers have already moved to other service options? The substantial life-changing and beneficial services that IP-based networks offer – video, data, high-speed Internet, voice – far outweigh any benefits associated with maintaining costly hold-over legacy networks and their inferior service capabilities. The cable industry has already completed its migration from TDM-based networks to IP-based networks and IP-enabled voice services, yet there has been no reported outcry of any negative impact on consumers, including the elderly.

More accurately, the proposed beta trials should be viewed as a way to address transition issues for those consumers remaining on legacy telephone networks, similar to the beta trial the FCC conducted in Wilmington, North Carolina on the transition from analog television to digital television.

We do not undervalue the many issues the Commission will have to address in the trials, including those regarding consumer migration to IP services, but those considerations, if anything, reinforce the desirability of beta trials, on a geographically-limited basis under FCC supervision, to discover solutions to these issues and accelerate the transition to IP-based networks.

**C. Affordability and Accessibility to IP Networks and Services**

Several commenters also question whether the IP transition will bring next-generation networks and affordable high-speed broadband service to underserved communities, including communities of color. We are confident that the FCC will examine the record and conclude that *only* widespread deployment of IP-based networks will result in greater *accessibility* to IP-enabled services and increased competition will lead to the availability of more affordable choices in the marketplace.

Policies that slow the IP transition or weaken private sector incentives to invest in broadband networks and infrastructure serve as a deterrent to increased deployment and adoption of broadband services in underserved communities. Policies that hasten the IP transition and increase incentives

for investment by all types of broadband providers help bring broadband services to underserved communities.

In contrast to a well-functioning marketplace, existing regulations are not competitively neutral since they require the maintenance and operation of decades-old legacy TDM-based networks by only one type of provider in the broadband market: the ILECs. As the Commission has itself recognized, this burden deters additional investment in broadband facilities. In contrast, the ability to quickly transition away from outdated legacy traditional telephone networks would enable broadband service providers to redirect critical investment capital to the buildout of high-speed next-generation IP-based networks, including to traditionally underserved communities.

Currently, low-income consumers, as well as those few who continue to subscribe to traditional voice service, bear a disproportionate share of the costs of maintaining two networks, including the legacy telephone network. By accelerating the adoption of IP services, the IP Transition will shift the burden away from low-income consumers and enable more disadvantaged consumers to reap the rewards and benefits of IP-based networks and services.

## III. Conclusion

Opposing commenters have offered a wide variety of objections to AT&T's Petition. Yet while these concerns, if accurate, are serious, they nevertheless provide a strong rationale to endorse AT&T's suggestion of geographically limited beta trials under the direct supervision of the Commission to address them in a controlled experiment. The IP Transition *will* happen and is already happening as consumers rapidly choose IP-enabled networks and services for their communications needs; the question is when and how the transition should be completed to bring IP networks nationwide.

The AT&T Petition represents an effort to chart a course toward the important national goal, which the Administration and the Commission have already endorsed, of replacing outdated legacy networks with widespread IP-based network infrastructure for all consumers. Those new network

capabilities will help ensure that consumers can communicate faster and more efficiently. Moreover they will provide greater choice across a wider range and variety of services, on more vibrant and reliable IP networks. Granting the Petition will lead to beta tests in the marketplace that will show that market-based competition among broadband providers – the ultimate goal foreshadowed in the Act – is meeting America's communication needs, offering better and faster services to consumers, and enhancing economic growth.

Respectfully submitted,


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