

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

In the Matter of:	)	
	)	GN Docket No. 12-353
AT&T Petition to Launch a Proceeding	)	
Concerning the TDM-to-IP Transition	)	
	)	
Petition of the National Telecommunications	)	
Cooperative Association for a Rulemaking	)	
To Promote and Sustain the Ongoing	)	
TDM-to-IP Evolution	)	
_____	)	

**REPLY COMMENTS OF  
THE MICHIGAN PUBLIC SERVICE COMMISSION**

On December 14, 2012, the Federal Communications Commission (FCC or Commission) issued a public notice seeking comments on two related petitions. The first petition, filed by AT&T, Inc. (AT&T) on November 7, 2012, requests that the FCC initiate a proceeding to facilitate the industry transition from legacy transmission platforms and services to new services based fully on Internet Protocol (IP). The second petition, filed by the National Telecommunications Cooperative Association (NTCA), on November 19, 2012, requests that the FCC initiate a rulemaking to examine how to promote and sustain the ongoing evolution of the Public Switched Telephone Network (PSTN) from Time Division Multiplexing (TDM) to IP.

The NTCA also requests that the FCC solicit comments on whether certain regulations should be eliminated, retained, or modified to further the evolution of IP-enabled networks in a manner consistent with the FCC's statutory objectives of consumer protection, promoting competition, and ensuring universal service. In accordance with the FCC's directive, the Michigan Public Service Commission (MPSC) submits the following Reply Comments in GN Docket No. 12-353.

The MPSC's Reply Comments respond to certain positions advanced by the various commenting parties in their comments filed on or before January 28, 2013. The MPSC's silence with respect to any issue not addressed in its Reply Comments should not be interpreted as indicating agreement with the proponent of that issue. The MPSC further notes that any position taken herein could change in response to later events, including developments in state or federal law and review of Comments, Reply Comments, or Ex Parte filings submitted in this or other dockets.

### **Summary of AT&T & NTCA Petition proposals**

The first petition filed by AT&T asks the FCC to open a rulemaking proceeding to facilitate the telephone industry transition from the legacy analog-copper TDM network to an all IP network following a period of trial experiments. Specifically, AT&T asks the FCC to conduct trial runs of the transition at select wire centers chosen by incumbent local exchange carriers

(ILECs). It further proposes that the Commission eliminate outdated regulations within those trial wire centers, citing Section 214 provisions regarding the discontinuance of service approval requirements as an example of such outdated regulation that need not apply, or similar state requirements. AT&T also argues that carriers would have no right to demand TDM based interconnection or services in those wire centers.

The second petition filed by the NTCA, an industry trade association representing rural cooperative telecommunications carriers, asks the FCC to engage in “smart regulation” and avoid either taking a sledgehammer to the current regulatory foundation, or leaving the regulatory construct unchanged and hoping for the best. To that end, it requests the FCC initiate a rulemaking to examine the means of promoting the transition from an analog-copper TDM network to an IP network, while protecting consumers, promoting competition, and preserving universal service. The NTCA also requests that the FCC solicit comments on whether certain regulations should be eliminated, retained, or modified to further the evolution of IP-enabled networks in a manner consistent with the FCC’s statutory objectives. The NTCA Petition also envisions that efforts to achieve a balanced approach for review of the existing regulatory framework should be coordinated with state regulators.

The AT&T and NTCA Petitions both request that the FCC comprehensively review the existing state and federal rules governing interconnection and network infrastructure in light of technological changes and the ongoing evolution of the PSTN from TDM to IP.

### **Discussion**

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.

The MPSC agrees with NTCA that the overarching objectives of the Act must “apply with equal force whether services are rendered through Class 5 TDM switches and copper networks or routers, softswitches, and cutting-edge fiber or wireless solutions.” NTCA Petition, p 4. The MPSC believes that any proposals that would diminish or eliminate universal service, competitive requirements, public safety, consumer choice, or the roles that states play in these areas should be rejected.

AT&T claims that “certain legacy regulations” effectively require that it continue to maintain its TDM network, and that “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.” AT&T Petition, p 11. This is a false and misleading claim. The TDM and IP

networks are heavily intertwined. As the Members of the Federal State Joint Board on Universal Service (State Members) point out in their initial comments, 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, which is used to provide both interstate and intrastate services.

The NTCA also states in its petition that reports of the PSTN being dead are greatly exaggerated. What is actually occurring is a technology shift within a network. NTCA Petition, p 2. The MPSC believes that technological changes to the telecommunications network do not render all regulatory requirements obsolete. The network still remains, and will continue to remain, a critical and fundamental part of our society regardless of the technology used to carry the traffic, and state regulatory oversight over safety, competition, availability, and consumer protections must remain.

The MPSC also finds it noteworthy that AT&T points out in its Petition that "many millions of consumers remain on TDM-based networks." AT&T Petition, pp 22-23. Given that so many citizens and businesses still currently depend on the PSTN network, the transition to all IP networks and revisions to federal and state policies adopted on this transition cannot, and should not, be attempted in a quick and blanket fashion.

AT&T's Petition proposes an "experimental" end-user migration to "next generation" networks and services. AT&T Petition, pp 21-22. AT&T's argument is based on the incorrect premise that "IP-enabled services, including all VoIP services, are appropriately classified as interstate information services over which the Commission has exclusive jurisdiction." AT&T Petition, p 18.

Despite the fact that a number of states have refrained from the regulation of retail IP-based services, including VoIP, states still have an inherent interest in consumer protection that includes such areas as reliability and quality of service, cramming, and slamming. The migration from TDM to IP can and will affect the preservation and enhancement of universal service that states have the duty to protect under both federal and state law. The State Members have suggested in their comments that VoIP can become the substitute for traditional TDM-based voice services that are provided by wireline telecommunications carriers that also have carrier of last resort (COLR) obligations, and because of this, are regulated as public utilities by State commissions. State Members Comments, p 12. The MPSC also supports this concept. Furthermore, the MPSC supports the comments of the National Association of Regulatory Utility Commissioners (NARUC) in its assertion that AT&T fails to provide any statutory basis for preemption. This includes the states' COLR and public safety obligations.

The MPSC shares the concerns of other parties in addressing the ability of VoIP providers and Competitive Local Exchange Carriers (CLECs) to interconnect with ILEC's facilities in any next generation network technology environment and that this interconnection is subject to Sections 251 and 252 of the Act. It is important to understand that some degree of interconnection with ILEC facilities will continue to be necessary for the foreseeable future, even in an "all-IP" or next generation communications environment, and particularly during any trial period. Other commenters, including State Public Utility Commissions, have urged the Commission to update its competition policies before or as part of adopting any policies to facilitate the transition to any next generation network technology. Indiana URC Comments, p 3.

The MPSC is also concerned with the potential loss of services during any such transition, and urges the FCC to consider this possibility when considering AT&T's Petition and its request to conduct trial runs at various wire centers of the ILECs choosing. Consumers should not risk loss of ability to communicate with each other as the price for switching to a new technology because their previous or preferred CLEC or VoIP providers are unable to interconnect with the ILEC.

Among other safeguards, AT&T's Petition proposes to eliminate the Section 214 review process for a carrier to discontinue service and argues

that the provision should not apply when a broadband provider is upgrading from a legacy TDM network to an IP network. Contrary to what AT&T claims, the Section 214 process calls for a public comment period, notification to customers and a review of the impact on consumers, and remains an important safeguard to ensure that consumers are not left without service by a company's unilateral decision to transition its services. Under AT&T's Petition, companies would be permitted to discontinue offering services that are provided to anchor institutions such as schools and libraries, based solely on the ILEC's judgment that an adequate broadband replacement existed in the area. It is imperative that the states in conjunction with the FCC, determine whether or not the ILEC has provided an upgraded level of broadband service and whether there is a comparable alternative before the ILEC withdraws its wireline service altogether.

AT&T's Petition calls for a complete reduction of regulatory requirements, including the elimination of state-imposed rules pertaining to "on demand telecommunications services to all customers in a given geographic area." AT&T Petition, p 15. Although AT&T does not specifically use the term, it appears that this is a reference to Carrier of Last Resort obligations. The MPSC does not support the dismissal of COLR requirements. The State Members filed comments stating that they believe COLR obligations for wireline telecommunications common carriers "continue



to play an inherent and significant part in the joint State and federal goals for preserving and enhancing universal service.” State Members Comments, p 2. Furthermore, the State Members argue that the States should continue to exercise appropriate jurisdiction and regulatory oversight over their intrastate operations and facilities, and that “the States have the ultimate responsibility to ensure the preservation and existence of universal service for their citizens at reasonable and affordable rates, and to exercise appropriate regulatory oversight over the COLR obligations of such ILEC telecommunications utilities.” State Members Comments, p 4.

Existing COLR obligations administered by the states, in conjunction with Eligible Telecommunications Carrier (ETC) designations, and continuous federal and state Universal Service Fund (USF) funding support “provide legally founded and concrete assurances for preserving and enhancing the evolving concept of universal service.” State Members Comments, p 8. The assurances that the State Members reference are lacking under AT&T’s “rational procurement model” since “voluntary service commitments,” especially in high-cost areas that are served by ILECs will be insufficient to meet the evolving goals of universal service under both federal and independent state law. The MPSC is concerned with the degradation of reliability and quality of service for the wireline networks of ILECs, which as the State Members have suggested, would affect the “reliability and quality

of service that are [is] associated with interconnected networks that are operated by other telecommunications and communications service providers.” State Members Comments, p 9. It is important that the states maintain a role in ensuring that the reliability that customers have come to expect with a wireline telephone remains despite the underlying change in the way the network is configured.

The MPSC also believes that it is critically important that federal COLR obligations remain in place if the attempt is made at the state level to remove state specific COLR requirements.

It is clear that the communications field has been changing and evolving over the years, and there have been many significant changes in the U.S. since the passage of the Act. However, focusing too much on the evolution of the network can obscure the fact that many things have not changed. The Indiana Utility Regulatory Commission (URC) urged the Commission to ensure that “quality service” and universal service still be made available at “just, reasonable, and affordable rates” to all consumers. Indiana URC Comments, p 5. Furthermore, the Indiana URC suggested that the FCC should not simply “assume that consumer expectations will automatically change simply because of a change in technology. Regardless of the technology, consumers still expect, and have a right to expect, high quality voice service that is universally available at reasonable prices.”

Indiana URC Comments, p 5. It is important that the FCC take these factors into consideration and the states' fundamental role in these aspects of service when contemplating AT&T's Petition and the request for dismissal of certain regulatory obligations. Like the Indiana URC, the MPSC generally supports the transition from TDM to IP-based or other next generation networks and services, but urges the FCC to take great care to ensure the continuation of the competitive marketplace so that the end result is not a reduction in competition, ultimately leaving customers subject to prices or rates that are not just, reasonable, and affordable, with little to no competitive recourse.

The National Association of State Utility Consumer Advocates (NASUCA) has filed comments in response to AT&T's Petition, stating that the petition is "incurably premature" and that the "sheer number and consequences of 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." NASUCA Comments, pp 33-34. NASUCA indicates that it cannot support the request for AT&T's trial wire centers because there is an extreme difficulty in ensuring that customers within the trial wire centers, as well as other customers, would not be harmed by the experiment, but particularly because the suggested trial runs cannot legally be conducted without prior approval of State PUC. NASUCA asserts that State PUCs are familiar with the geography, and relevant players and information within the

local wire centers, and the transition from TDM-to-IP will proceed more successfully and with lesser danger to the lives of the public, safety and welfare if states play a prominent role in the transition. NASUCA supports NTCA's proposal for a rulemaking to promote and sustain the ongoing TDM-IP evolution as a reasonable approach which comports with the dual jurisdiction of the FCC and state commissions, while ensuring consumer protection, competition, and universal service.

Several State PUCs have weighed in and filed comments concerning AT&T's suggested preemption. The Public Utilities Commission of Ohio conceptually supports the NTCA's approach of "smart regulation" and states that "the approach espoused by NTCA provides the balance necessary to continue encouraging innovation and the IP transition, while, at the same time, recognizing the ongoing need for joint state-federal regulation to ensure that the goals of the 1996 Act are achieved and maintained." Ohio PUC Comments, p 9. The Ohio Commission strongly believes that the state commissions should be offered an important role in the collaborative process and consideration of the existing framework, as well as what should be retained or changed.

The State Members argue that "the interests and the role of the States are legally and factually unavoidable and cannot be summarily preempted by the Commission." State Members Comments, p 7. The MPSC supports this

section of NTCA's Petition and agrees with NASCUA, the State Members, NARUC, and the other State Commissions regarding state involvement going forward. The MPSC suggests that the FCC reaffirm a clear and firm regulatory foundation, while coordinating with state counterparts. While the MPSC agrees that some rules may be outdated and in need of clarification or updating as NTCA suggests, AT&T's Petition does not appear to have met the burden of proof nor has it provided enough reasoning to eliminate all regulatory requirements completely. Congress has also given the states explicit authority over intrastate services. Any policy decisions undertaken by the FCC with must take this right into consideration.

The FCC must also give strong consideration to the recommendations and considerations of the NARUC Federalism Task Force as well as the Technology Transition Task Force, NARUC Federal State Joint Board on Universal Service and the Joint Separations Board in reaching any decisions on the TDM to IP transition.

The MPSC has previously filed comments and reply comments with the FCC, in the United States Telecom Association's (USTA) Forbearance Petition, docket WC Docket No. 12-61 on April 9 and April 24, 2012 respectively, in which the MPSC urged the FCC to deny granting the forbearance that USTA sought for many regulations. AT&T's Petition rehashes many of the same arguments that were presented in this

forbearance petition that is currently pending before the FCC. In addition to its concern about USTA's attempts to eliminate discontinuance of service notice requirements among other rules, the MPSC also expressed its concern about the transition to broadband services and the effect this transition would have on Michigan's low-income customers. The well-being of Michigan's low-income and underserved residents is still a concern when reviewing AT&T's Petition as well. Several commenters have urged the FCC to consider an appropriate regulatory framework to accompany the ongoing TDM-IP evolution while simultaneously protecting all stakeholders, including the telecommunications industry, businesses, as well as consumers. It is imperative that the FCC also continue to study the implications the TDM to IP transition will have on low income and rural consumers. The MPSC urges the FCC to preserve its current authority until after it has conducted a prudent investigation and thorough consideration of all of the issues that AT&T's Petition raises.

In its Petition, AT&T makes no mention of the widely known fact that the TDM-based PSTN is fundamentally more reliable than IP fiber-based networks or wireless networks during extended power outages. Recent experience with Hurricane Sandy and the Derecho Storm of June 2012 shows that the reliability of the TDM network furthers the public interest and is necessary for consumer safety as it still remains the backbone for

communication in this country. As NASUCA suggests, “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,” NASUCA Comments, p 7. The TDM network is superior in terms of reliability and stability, and its dependability is not something that should be ignored or brushed aside based on the notion that doing so would constitute “progress.” The MPSC is most concerned that all of Michigan continues to have necessary and essential communication services. The MPSC supports the goal of expanding and deploying broadband networks and the provision of broadband and next generation communication service throughout Michigan, including, but not limited to, rural and high-cost areas in the state.

### **Conclusion**

The MPSC recognizes that the transition to an IP-based network is already underway. The MPSC supports the transition from TDM to IP-based or other next generation networks and services, and the deployment of affordable, open, and high-capacity broadband by all broadband providers. However, it is imperative to recognize that great care must be taken to ensure the continuation of the competitive marketplace, universal service, and consumer protections. AT&T’s Petition proposes sweeping deregulation

of the incumbent providers, which would allow them to withdraw service unilaterally. There cannot be a reduction in competition, thus leaving customers subject to prices and/or rates that are not just, reasonable, and affordable, with little or no competitive recourse. Furthermore, the FCC must rely on the recommendations of the NARUC Federalism Task Force as well as the Technology Transition Task Force, NARUC Federal State Joint Board on Universal Service and the Joint Separations Board in reaching any decisions on the TDM to IP transition rather than solely on a few providers within the industry.

The MPSC appreciates the opportunity to provide input on both AT&T and NTCA's Petitions and requests that the FCC take under consideration the MPSC concerns. The MPSC urges the Commission to consider how changes to existing federal policy may affect consumers in Michigan and across the nation, and to seek to continue implementing the IP-transition in a way that will preserve states' ability to ensure universal service, protect consumers, ensure reliability of their essential communications networks, and promote competition.

Respectfully submitted,

Anne M. Uitvlugt (P71641)  
Assistant Attorney General  
Public Service Division  
6520 Mercantile Way, Suite 1  
Lansing, MI 48911  
Telephone: (517) 241-6680

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