

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

In the Matter of

Technology Transitions Policy Task
Force Public Notice Regarding Potential
Trials

GN Docket No. 13-5

REPLY COMMENTS OF PUBLIC KNOWLEDGE

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SUMMARY

The phone network transition presents tremendous opportunities to improve service for everyday Americans across the nation, but we must be vigilant to protect consumers throughout the transition to ensure the changes we make to our networks are an actual step forward, not a step backward, for everyone. This principle applies just as much to the overall transition as it does to the Commission's proposed pilot programs.

Any pilot programs must first and foremost serve consumers. As we have already seen with real-world examples like rural call completion problems and the limitations in Verizon's Voice Link deployment in Fire Island and Mantoloking, we cannot assume that network changes will automatically result in better—or even equivalent—service for actual consumers. To be sure, these new technologies offer the opportunity for service improvement, but the Commission must actively ensure network updates actually redound to the benefit of consumers and do not leave any customers worse off.

As the Commission considers the scope of its pilot programs, the Commission should bear in mind the added risks and complications of trials that combine multiple aspects of the transition in one geographic area. With more moving parts, an all-in-one trial creates a higher risk that the causes of any unforeseen problems will be difficult to identify and fix. The Commission should therefore put any carrier proposals for combined trials out for public comment and carefully consider the added risks of the trial before it takes any action.

Finally, the pilot programs should inform, not set, public policy. This means that the pilots should be designed to enable communities to move back to the service they had before if the pilot program is not a success. It also means the Commission should not simply forbear or eliminate rules before the pilot programs have even begun. After all, the entire point of the trials is to evaluate the efficacy of the current rules. Erasing all of the rules before the programs have

even had a chance to gather data on how those rules operate would actually stand in the way of promoting an informed, reasoned debate about the best way to approach the phone network transition. The Commission should focus on designing responsible, specific trials designed to gather useful data that will inform the public discourse going forward.

ARGUMENT

I. Any Pilot Programs Must First and Foremost Protect Consumers.

The pilot programs, much like the phone network transition as a whole, must put consumers first. This is why the Commission must ensure any pilot programs include strong consumer protections, including mechanisms to responsibly wind down the trials when they reach their natural end or when unforeseen circumstances require the Commission to step in and end the trial to prevent harm to consumers. Additionally, the Commission should put any future proposals for pilot programs that combine multiple aspects of the transition out for public comment, due to the increased risks such trials pose to the members of the public who will be participating in the trials.

A. *The Commission Must Ensure the Trials Do Not Leave Consumers Worse Off.*

It is worth emphasizing the importance of having a mechanism to wind down the trials when they reach their endpoints or when novel issues create unanticipated consumer harms.¹ These trials may encompass only a small percentage of the total number of customers, but those customers are still real-life people who depend on the phone network to conduct business, communicate with loved ones, and reach emergency services in life-or-death situations.

The same public interest concerns that counsel for mechanisms to stop trials when needed also require that the trials will have an actual endpoint. A trial that is “mandatory and

¹ See Comments of Public Knowledge, *Technology Transitions Policy Task Force Public Notice Regarding Potential Trials*, GN Docket No. 13-5, at 10 (July 8, 2013).

² See Comments of AT&T, *Technology Transitions Policy Task Force Public Notice Regarding*

permanent”² is not a trial at all. If the Commission launched “trials” that were in fact designed to be permanent infrastructure changes, the communities subjected to the trials will bear all of the risks of the IP transition with none of the rewards that will spring from the policy debates informed by the trial data. And as a practical matter, communities subjected to these permanent trials would have a higher hill to climb to demand improvements in the network for any changes made during the trial that actually turn out to be a step backward for individual users.

Similarly, the wireline-to-wireless pilot programs should give consumers the choice of whether to replace their traditional wireline service with a new, untested wireless technology. Customers who choose not to move to wireless often decline to switch because they place a high value on some feature or characteristic of the wireline network that is not currently replicated by wireless networks, particularly if the wireless service in question has known restrictions compared to the wireline network. If, for example, a pilot program was to transition customers from wireline to wireless service similar to the current form of Verizon’s Voice Link service in New York, customers could very reasonably decline to participate in the trial if they would have to give up access to important services like medical monitoring, alarm systems, Internet access, credit card processing, calling card services, collect calls, and guaranteed 9-1-1 access.³ Now, in the instant docket we see the New York State Public Service Commission, no doubt speaking from experience, advising that wireline-to-wireless trials should only occur where customers have a safety net, that the wireline network should be maintained properly for those customers

² See Comments of AT&T, *Technology Transitions Policy Task Force Public Notice Regarding Potential Trials*, GN Docket No. 13-5, at 7 (July 8, 2013).

³ See Verizon Voice Link Terms of Service, Letter from Joseph A. Post, Deputy General Counsel—NY, Verizon, to Hon. Jeffrey C. Cohen, Acting Secretary, N.Y. State Public Service Commission, at 2-4 (May 20, 2013); Comments of New York State Attorney General Eric T. Schneiderman, *Application of Verizon New Jersey Inc. and Verizon New York Inc. to Discontinue Domestic Telecommunications Services*, WC Docket No. 13-150, at 6-10 (July 29, 2013).

who choose not to participate in the trial, and that the trial process should include collecting consumer comments.⁴

This is not just a case of recalcitrant customers who “do not want change.”⁵ These are everyday Americans who have legitimate concerns that the network they count on to support services in what could be life-or-death situations will lose its reliability and functionality. Requiring the transition to be a true step forward, not a step backward, for *everyone* is not “hold[ing] back progress,”⁶ it is *demanding* progress.

Contrary to AT&T’s assertion,⁷ a wireline-to-wireless trial that is voluntary for customers would be no less likely to yield important data to inform the Commission’s future actions. Customers who choose to participate in a wireline-to-wireless trial could still give feedback on how the service worked, customers who choose not to participate could explain why they declined, and customers who switch to wireless but ultimately return to the wireline service because the new network is not functioning properly could likely give some of the most useful information of all. If users conclude the wireless network is generally worse than the older wireline network, that data is invaluable to the Commission’s deliberations. Giving customers a choice during the pilot programs will create more incentive for carriers to ensure they offer the most compelling solutions possible to unforeseen problems to make customers *want* to use the newer technology. Again, this transition will only be a success if it produces networks that

⁴ Comments of New York State Public Service Commission, *Technology Transitions Policy Task Force Public Notice Regarding Potential Trials*, GN Docket No. 13-5, at 2-4 (July 8, 2013).

⁵ Comments of AT&T, *Technology Transitions Policy Task Force Public Notice Regarding Potential Trials*, GN Docket No. 13-5, at 7 (July 8, 2013).

⁶ *Id.*

⁷ *Id.* at 17.

actually better serve the needs of everyday Americans, not more limited or unreliable services that customers only use when they are forced to do so.

B. The Commission Should Put Any Specific Proposals for All-In-One Pilot Programs Out for Public Comment Before Taking Action.

As the Commission evaluates the all-in-one geographic trial proposal that AT&T intends to submit,⁸ the Commission should bear in mind that a trial combining multiple aspects of the phone network transitions poses increased risks to the consumers who will be part of those trials. With more moving parts, an all-in-one trial has more potential points of failure, and the causes of that failure may be more difficult to identify and fix. Moreover, a pilot program like the kind AT&T seems to support would discontinue TDM-based services entirely,⁹ leaving—perhaps permanently—no safety net for customers who have for decades relied on a functioning, dependable communications network. This is why Public Knowledge has advocated for responsible pilot programs that are carefully circumscribed to protect consumers and gather specific data points to inform the policy debate surrounding the phone network transition.¹⁰ The Commission should be especially cautious of plans proposing to combine all aspects of the phone network transition in one trial without explicitly describing the specific data that could only be collected in an all-in-one trial.

This is not to say that the Commission should not give due consideration to all of the proposals submitted to it. Public Knowledge notes that AT&T did not actually submit its

⁸ *Id.* at 11-12

⁹ *Id.* at 10.

¹⁰ See Comments of Public Knowledge, *Technology Transitions Policy Task Force Public Notice Regarding Potential Trials*, GN Docket No. 13-5, at 6-7 (July 8, 2013).

proposal for a comprehensive geographic trial in its comments, but once AT&T does so,¹¹ the Commission should also put that proposal out for public comment. For example, AT&T's outline for its future proposal notes that carriers should submit the information they deem relevant to the public interest in their proposed trial plans.¹² Of course, the relevant public interest benefits should be determined by all stakeholders, not just by the carrier asking for a particular trial, and the public should also have input on the public interest costs and risks of that trial. All stakeholders should have the opportunity to review and give their feedback on AT&T's proposal (or any other carrier's proposal) so the Commission could fully understand how a less targeted pilot program would impact consumers and competition, and what new information, if any, it would provide that a more targeted trial could not.

AT&T's description of the type of pilot program it intends to propose underscores the need for ample opportunity for all stakeholders to comment on the eventual formal proposal. For example, AT&T posits that the Commission's role in a trial should end when it approves the trial plan, so "the carrier in question would be free to discontinue services in accordance with the terms of the plan without further Commission action"¹³ Particularly for a pilot program that would be including so many aspects of the phone network transition simultaneously, it is crucial that the Commission retain authority to step in and protect consumers no matter what.

Similarly, AT&T's commitment to "develop solutions for customers with medical and alarm services" as well as for "the FAA, public safety and national security agencies,"¹⁴ while

¹¹ See Comments of AT&T, *Technology Transitions Policy Task Force Public Notice Regarding Potential Trials*, GN Docket No. 13-5, at 15 (July 8, 2013) ("AT&T is currently developing a comprehensive plan that encompasses each of the elements identified above.").

¹² *Id.* at 11-12.

¹³ *Id.* at 12.

¹⁴ *Id.* at 15.

laudable, does not by any means supersede the Commission's authority and responsibility to ensure that these important interests are in fact served during and after the pilot programs. And once a carrier has proposed potential solutions, all of the stakeholders that depend on these public safety services must be included to ensure that the solutions are actually working for everyone.

An all-in-one pilot program poses increased risks to consumers and competition, and therefore any proposal must explain in detail how the pilot program would work and what exact data it would gather that could not be gathered through a more careful, targeted pilot program. Any proposal for an all-in-one trial—whether submitted by AT&T or anyone else—should also be put out for public comment before the Commission makes any decision about the trial. This type of pilot program in particular would be poised to impact everyday users in substantial ways, and the Commission must seriously consider the public's input before taking any action on this type of initiative.

II. Pilot Programs Should Inform, Not Set, Public Policy.

The pilot programs can only be successful if they are designed and implemented to gather specific data to inform public policy, not to create it. Pilot programs exist to create a more productive, robust debate, not to cut off debate by setting norms before the information necessary to set norms has even been collected. Pilot programs would only be one component of a large and complicated industry transition, and the Commission must maintain control of this process by firmly establishing and maintaining the proper role of the pilot programs in the public discourse.

The Commission must therefore be cautious not to let the debate about designing pilot programs supersede the broader debate about the actual phone network transitions itself. For example, we are already seeing companies use the Commission's proposals to compare the

reliability and other characteristics of wireline and wireless services as a springboard to assert that wireless-only areas are inevitable and wireless networks already meet an acceptable level of service to be considered an adequate substitute for wireline. AT&T, for example, speaks of transitioning current customers of wireline, TDM-based services to wireless-only services as if it is already a done deal.¹⁵ As we have seen in communities like Fire Island, New York, this is not the kind of decision that can be made lightly,¹⁶ and it is imperative that authorities step in to protect consumers before carriers decide to unilaterally alter the network customers have been relying on for decades and continue to count on today.

AT&T discusses its future proposal for an all-in-one pilot program as if there is consensus that wireless LTE, in its current state of development, will be an acceptable alternative to the traditional wireline network customers have known for decades.¹⁷ This position could lead to a pilot program approach that at best lacks nuance and at worst leaves entire communities of everyday Americans behind. To the extent that certain wireless services may at some point be considered an adequate substitute for certain wireline services, we are far from any consensus as to what level of service the wireless network must provide before it can be considered an equivalent service. And for some users, wireless service may never be robust enough in the foreseeable future to replace wireline service. As the Schools, Health & Libraries Broadband Coalition has explained, “Anchor institutions are likely to need wireline connections well into

¹⁵ *See id.* at 6.

¹⁶ *Application of Verizon New Jersey Inc. and Verizon New York Inc. to Discontinue Domestic Telecommunications Services*, Public Notice, WC Docket No. 13-150 (June 28, 2013).

¹⁷ Comments of AT&T, *Technology Transitions Policy Task Force Public Notice Regarding Potential Trials*, GN Docket No. 13-5, at 16-17 (July 8, 2013).

the future, as their bandwidth demands are increasing every year and fiber optic facilities are becoming the most appropriate solution for many anchors.”¹⁸

The pilot programs should also not be used to cut off debate for determining when wireline service remains feasible. We have heard now from several carriers making reference to areas where wireline “cannot feasibly or economically be deployed”¹⁹ and even using that rationale to justify unilaterally changing network infrastructure to wireless services,²⁰ but the phone network transition debate has yet to establish what it means for a wireline network to become “infeasible” and in what situations—if any—wireline maintenance and repair costs might persuade authorities to allow carriers to change their networks to less established and less reliable wireless networks. Because we do not yet know what it actually means for wireline to “no longer be an option,”²¹ the Commission cannot use that metric as an input when designing pilot programs.

In its comments, AT&T asks the Commission to avoid a trial involving copper retirement and selling copper loops, noting that the “existing copper retirement rules have functioned well for nearly a decade.”²² This, however, takes the wrong approach entirely to deciding whether a

¹⁸ Comments of the Schools, Health & Libraries Broadband Coalition, *AT&T and NTCA Petitions on Transition From Legacy Transmission Platforms to Services Based on Internet Protocol*, GN Docket No. 12-353, *Technology Transitions Policy Task Force*, GN Docket No. 13-5, at 4 (Jan. 28, 2013).

¹⁹ Comments of AT&T, *Technology Transitions Policy Task Force Public Notice Regarding Potential Trials*, GN Docket No. 13-5, at 7 (July 8, 2013).

²⁰ Section 63.71 Application of Verizon New York Inc. and Verizon New Jersey Inc., *Section 63.71 Application of Verizon New York Inc. and Verizon New Jersey Inc. for Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, to Discontinue the Provision of Service*, WC Docket No. 13-150, at 1-2 (June 7, 2013).

²¹ Comments of AT&T, *Technology Transitions Policy Task Force Public Notice Regarding Potential Trials*, GN Docket No. 13-5, at 16-17 (July 8, 2013).

²² *Id.* at 8.

trial is needed. The decision to conduct or not conduct a trial should be based on whether the phone network transition creates the need for more data about how certain processes will work post-transition. The decision of whether to hold a trial is not a verdict on whether the existing rules are satisfactory; it is a decision on whether we need more data to determine what the rules should be.

Similarly, in its advocacy for an all-in-one pilot program AT&T urges the Commission to eliminate or forbear from rules entirely prior to the trials.²³ Once again, this puts the cart before the horse. While carriers participating in the pilots would certainly need permission and oversight from the Commission, the entire point of the pilot programs is to evaluate how the current rules function. Making permanent changes to the rules before the Commission has even begun using the pilot programs to collect data to evaluate the rules would make the entire exercise superfluous. Instead, the Commission must ensure that the pilot programs are carefully designed to fulfill their proper role: collecting information to inform policy.

CONCLUSION

As rural call completion problems and the controversy in Fire Island, New York and Mantoloking, New Jersey continue to remind us, it is crucial that network changes be handled responsibly and that consumers always come first. This is no less true when considering temporary pilot programs. The proposed pilots will impact real people who rely on the phone network for business and personal communications and who turn to the network to call for help during emergencies. The Commission must therefore maintain control over the pilot program process, ensure that consumers are protected throughout and after the trials, and design the trials

²³ *Id.* at 12, 15 (“[I]t is important for the detailed plans submitted by carriers to identify such obligations, and for the Commission to eliminate them prior to the start of the trial.”).

to collect specific, useful information that can be used to inform the policy debate surrounding the phone network transition.

Respectfully submitted,

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