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

In the Matter of
Technology Transitions Policy
Task Force

GN Docket No. 13-5

COMMENTS OF BULLSEYE TELECOM, INC. AND ACCESS POINT, INC.

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July 8, 2013

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BullsEye Telecom, Inc. (“BullsEye”) and Access Point, Inc. (“Access Point”), pursuant to the Public Notice\textsuperscript{1} issued by the Federal Communications Commission (“FCC” or “Commission”) submit the following comments regarding the potential for the Commission to conduct certain technical network transition trials.

I. Introduction and Summary

In previous comments filed in related proceedings,\textsuperscript{2} competitive carriers have broadly urged the Commission to fulfill recommendations made in the National Broadband Plan to update competition policy for the age of the all-IP network.\textsuperscript{3} Central to updating this policy, competitors have urged the Commission to ensure continued wholesale access to reasonably priced last-mile facilities capable of providing voice and broadband, regardless of the ILEC’s preferred underlying technology.\textsuperscript{4} Likewise, competitors have repeatedly urged the Commission to mandate IP Interconnection for voice service.\textsuperscript{5} With respect to the proposal for broad-based “all-IP” trials proposed by AT&T, competitors urged the Commission to reject such open ended trials, noting that it is unlikely that such trials could accurately measure how ILECs would behave with respect to competition should they be granted significant deregulation and further expressed concern that such trials would cause immediate harm to customers in the trial wire centers that have exercised their choice to select competitive providers, as well as to


\textsuperscript{2} See GN Docket No. 12-353, Petitions Concerning the TDM-to-IP Transition.


\textsuperscript{5} T-Mobile GN Docket No. 12-353 Comments at p. 5 (filed Jan. 28, 2013).
competition. Thus, competitors urged the Commission — if it adopted any trial along the lines proposed by AT&T — to ensure that such trials did not disturb the competitive choices made by customers and allowed CLECs access to wholesale inputs without regard to the type of physical transmission media selected by the ILEC.

Now that the Commission seeks further comment on three specific trials, our views remain constant - competition must not be sacrificed during the course of the trials. End users must retain the ability to select competitive service and competitive providers must retain the same rights to access reasonably priced wholesale inputs that they have under current rules. Nor has anything changed with respect to the lack of a need for the broad “all-IP” trials proposed by AT&T. With the proper structure, the three trials outlined in the Notice should be sufficient to assess key issues associated with the ongoing technology transition.

II. Overarching Principles to Guide Potential Trials

As the Commission considers trials to gauge the consumer impact of certain technology transitions on vital communications services, it should establish some clear principles regarding any such trial. While the goal of the trial is to evaluate the transition to new technology, the Commission must not lose sight of its core mission - to protect the public interest. That means the protection of consumers, and consistent with the Commission’s pro-competitive regulatory framework, preserving and fostering competition.

A. Participation in the Trial

While the Commission has correctly identified that the need to ensure competition is

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8 Notice, p. 2.
protected during any trials, the Notice is ambiguous, at least on one critical issue. The Notice states that the Commission is “mindful of the fact that, while participation in any trial would be voluntary for providers, all consumers in trial regions would likely be affected, either directly or indirectly.”

The use of the term “provider” in the Notice is vague and depending on what is intended, competition could be undermined rather than promoted. As the Commission is certainly aware, not all providers are similarly situated. Some providers are ILECs that may want to “host” a trial in particular geographic area. Other providers are cable companies that provide video, broadband, and voice services (or some combination) through their own facilities and require interconnection of their voice networks to exchange calls between their subscribers and those of the ILEC. Other providers, such as BullsEye and Access Point, purchase wholesale services from ILECs in order to provide competitive voice and data services. Other providers are long distance carriers or VoIP providers that also use the ILEC network to a certain extent.

The Notice is vague on which "providers" might opt-out of a trial conducted in a geographic area where they provide service. There are certainly practical difficulties if a customer served by a CLEC currently using an ILEC’s last-mile facilities pursuant to a contract or tariff arrangement, intends to continue to purchase the CLEC’s services yet the ILEC’s plan for the trial is to “retire” the network facilities currently used by the CLEC to serve the customer. This could arise either in an IP transition trial in which the ILEC wants to retire certain copper facilities currently used by CLECs or in a wireline-to-wireless trial in which the ILEC intends to shift lines from wireline to wireless transmission.

In order to protect consumers and competition, the Commission should adopt several

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9 Notice, p. 3.
guidelines for trials:

- Retail customers should be notified regarding the proposed trial and provided the ability to decline to participate in the trial without losing their current service;

- Trials should be voluntary for competitors as well; thus, wholesale customers should be notified regarding the proposed trial and provided the ability to decline to participate in the trial without losing their current wholesale service;

- Customers should not have to choose between participating in the trial and continuing to have a choice of service providers.

- Competitors must be given an opportunity to participate in the planning of the trials. For example, in the wireline to wireless trials, if the proposed wireless service will deny end users some of the functionality they currently enjoy, their current service providers should be made aware of it, so that they can offer the end user the choice of participating in the trial or retaining their current functionality, which is the same choice the end user should have if it currently purchases service directly from the ILEC.

- CLECs using wholesale inputs obtained from the ILEC should continue to have wholesale access to underlying facilities or their functional equivalent on terms and conditions similar to current access, regardless of the transmission medium. The ILEC can elect whether to provide access to existing facilities or to provide access to substitute facilities provided they offer, at a minimum, the same functionality as current facilities at similar rates, terms and conditions.

B. Selection of Trial Markets

The key principle regarding the selection of the geographic markets where trials occur should be that the geographic market serves as a bellwether for other markets. Ultimately, the goal of any trial is to create “lessons learned” for the Commission, state regulators and other carriers engaged in or considering similar technology shifts. It makes little sense for the Commission to allow an ILEC to select a market for trial if that market lacks characteristics shared with other markets. These characteristics could include population density; education profile of residents; unusual climactic conditions; and the mix between residential and business users, among others.

The selection of geographic areas to host trials should ultimately rest with the
Commission. One possible process would have the Commission establish, pursuant to a notice and comment rulemaking, objective criteria for use in evaluating ILEC proposals. Since ILECs presumably will want to volunteer certain markets, their nominations, pursuant to the criteria, should be subject to consultation with the relevant state commission and also subject to public comment.

In order to help the Commission evaluate potential trial proposals, the Commission should make a special effort to consult the relevant state commissions. These commissions and their professional staffs have a deeper understanding of the characteristics defining any particular trial location and should be able to aid the Commission in evaluating whether a particular location is an appropriate choice.

Following these overarching principles, BullsEye and Access Point suggest that the FCC limit the trials to the three proposed in the Notice: IP-IP interconnection; Public Safety and Wireline-to-Wireless. BullsEye and Access Point will provide comments regarding the IP interconnection and Wireline-to-Wireless trials only. Further, BullsEye and Access Point continue to oppose AT&T’s broad “all-IP” trial as premature. Consistent with the Notice, however, the FCC should seek additional comment from AT&T and other proponents of an “all IP trial” to evaluate whether such a trial could be useful later in the transition process.

III. Evaluation Criteria for All Trials

The Commission should, subject to public notice and comment procedures, adopt a detailed set of benchmarks for use in assessing the success of any trial. While these comments do not aim to propose specific benchmarks, BullsEye and Access Point urge the Commission to consider benchmarks aimed at measuring the trial’s success on key subjects.

A. Consumer Experience

Regardless of the technology transition subject to the trial, the core issue is whether the
transition can be conducted without detracting from the customer’s experience. In some cases parties suggest that the new services will enhance the customer experience.\textsuperscript{10} The Commission must develop benchmarks that can measure whether and how the transition has affected the customer experience. For example, measurements of call quality, dropped calls, customer complaints, increased busy signals and network congestion are indicative of the customer experience. Further, to the extent customers have the ability to elect whether to participate in a trial or to opt out of a trial once underway, the data regarding opt-outs will provide the Commission with insight into the trial’s impact.

\textbf{B. Service Quality}

While service quality is certainly integral to assessing the customer experience it is also worth measuring for its own sake. In particular, for the wireline-to-wireless trials, there are issues that customers tolerate with wireless service — dropped calls, increased interference, signal noise, network congestion, that they would not tolerate if the service were to replace, rather than supplement, the usually reliable wireline service with which customers are more familiar. Measuring technical performance along these lines should be part of any potential wireline-to-wireless trial.

\textbf{C. Public Safety}

Similarly it is well documented that wireline services are a part of the public safety framework since the copper network supports centrally provided power. This means that customers with power outages can still use landline phones to contact emergency services or loved ones during a power outage. These advantages may be lost when the customer switches to a fiber-based or wireless service. For such services, carriers must provide other arrangements to

\textsuperscript{10} \textit{See e.g.}, Verizon GN Docket No. 12-353 Comments, p. 3 (filed Feb. 25, 2013).
replace the backup power that is native to the copper-based network. The Commission should
develop measures to determine whether these alternative power arrangements are effective and
identify their limits so providers and customers alike understand the impact of the shift away
from copper networks.

IV. **Wireline to Wireless Trial**

The Commission also proposes a trial to allow ILECs to substitute wireless technology
for existing wireline services. At this stage some of the proposals are vague. For instance, the
precise contours of the proposed wireless services are not clear. And it is also unclear whether a
trial would involve wireless substitution for an entire geographic area or just some portion of an
area. Verizon, for example, is already proposing to eliminate wireline based service on Fire
Island, New York in response to the damage to the island’s wireline network during Hurricane
Sandy.\textsuperscript{11} Verizon has filed a tariff detailing its Voice Link replacement service but that still
leaves many questions unanswered.\textsuperscript{12} These comments focus on important guidelines that should
accompany any such trials including competition, treatment of business customers and customer
rights and notifications during any trial.

A. **Competition**

While the *Notice* and recent statements by Commission officials note the importance of

\textsuperscript{11} See Public Notice, DA 13-1475, *Comments Invited on Application of Verizon New
Jersey Inc. and Verizon New York Inc. to Discontinue Domestic Telecommunications Services*,
WC Docket No. 13-150 (rel. June 28, 2013); Letter from Frederick E. Moacdieh, Executive
Director – Federal Regulatory Affairs, Verizon, to Ms. Marlene H. Dortch, Secretary, Federal
Communications Commission, Attach. (filed June 7, 2013).

\textsuperscript{12} See NYPSC Case No. 13-C-0197, *Tariff filing by Verizon New York Inc. to introduce
language under which Verizon could discontinue its current wireline service offerings in a
specified area and instead offer a wireless service as its sole service offering in the area.*
continued competition, the Notice’s discussion of the wireless trial is disturbingly devoid of any substantive discussion regarding how customers served by competitors will be treated during the course of a trial. The Commission should not assume that all end users affected by a trial will be served by a single entity. Rather, numerous companies rely on the ILEC last-mile facilities for providing their services. BullsEye and Access Point, for instance, each purchase a package of services including use of an unbundled loop to provide voice and data services to customers, as do many other CLECs. Other carriers, such as IXCs, rely on ILEC last-mile facilities so their customers can make long distance phone calls. Each type of carrier will be affected by any proposed substitution of wireless service for wireline service.

The ILEC hosting the wireless trial should be required to identify the core components of its service: will it be voice alone or voice and data? If the wireless service includes data, the ILEC should also provide test results showing that the wireless accommodates the end users’ choice of available applications or content over that data service — such as “over-the-top” VoIP services or online video and gaming, similar to what is available via typical retail wireline broadband service.

The most important threshold questions are whether customers served by a non-ILEC using ILEC facilities will be required or permitted to participate in the trial and will be permitted to retain their current carrier. At a minimum, no end user should be deprived of its choice of carrier because of the ILEC’s election to participate in a trial of wireless replacement service. Any such customer must to have the ability to maintain its current competitive choice even if the ILEC wants to replace its wireline services to the customer’s geographic area with wireless services.

In earlier comments regarding the practical issues associated with the AT&T request for trial, Granite Telecommunications, LLC (“Granite”) highlighted some of the contractual impediments during the IP transition.\(^{14}\) Granite noted that some DS-0 agreements purport to eliminate the ILEC’s obligation to provide service where the loop is transitioned to another technology besides copper. The Commission should require the ILEC to choose which path it prefers. It can either allow the CLEC to continue using its wireline network to serve the customers and forego subjecting such lines to the trial or if the ILEC prefers to subject its lines that are being used by CLECs to the trial, it must waive any contractual impediments and provide the CLEC with a functionally equivalent wireless service without any material change to the terms and conditions of its current agreement with the CLEC.

The ILEC must also specify the technical capabilities of the wireless last-mile access, including whether it will support voice alone or both voice and data applications. The ILEC should indicate its plans for testing so that competitors that plan on using the last-mile access to provide their voice and data services have an opportunity to test such access before rolling out their retail services. This protects competition and consumers by allowing consumers to maintain their choice of suppliers. It also allows the ILEC the ability to choose how it will conduct such trial.

B. Trials Must Recognize the Presence of a Separate Business Market

The Notice also ignores distinctions between residential and business services and between retail and wholesale service. Previous comments regarding the IP transition have emphasized that any trial procedures must recognize the important distinctions between retail

residential and business services as well as any wholesale counterparts. Further, before any trial is allowed to proceed, the ILEC must describe in significant detail its proposed wireless services, including the full range of features and functionalities available for the service both for residential customers and business customers as well for wholesale customers serving one or both of these distinct markets.

As the Commission established in the *Qwest Phoenix Forbearance Order*, the market for serving business customers must be treated separately from the residential market. In the business market, the “ILECs retain their market power advantages in … generally due to lack of alternative customer access facilities for these types of users in most cases.” A technology trial will not alleviate these market power advantages. In fact, without adequate protective measures, the technology trial poses a great risk to competition in the business market where competitors are reliant on the ILEC for transmission facilities.

Business customers also obtain services that are markedly different from residential services and have different features. For example, business customers rely on sophisticated features that are not typically part of residential offerings, such as message waiting, hunting, hold, and Centrex features. Business customers also rely on more dedicated customer support functions. It is not clear whether and how an ILEC in a potential trial would dedicate back office resources to the special needs of business customers affected by the trial.

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16 See Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the *Phoenix, Arizona Metropolitan Statistical Area*, 25 FCC Rcd. 8622, 8635 ¶ 28 (2010) (“*Qwest Phoenix Forbearance Order*”) aff’d *Qwest Corp. v. FCC*, 689 F.3d 1214 (10th Cir. 2012) (explaining that an analysis that fails to separately evaluate market power in business markets separate from the mass market “is not supported by current economic theory.”).

17 XO GN Docket No. 12-353 Comments, p. 6.
For these reasons, notice to customers (including retail and wholesale customers) should identify with precision any differences between pre-existing services and services offered for purpose of the trial. The ILEC must also identify any differences in the terms and conditions for such trial services. For example, would data services provided over wireless be subject to a bandwidth cap? If so, at what level and what is the rate for overages? Are there any limitations on the service? The level of support provided to customers, especially wholesale customers and business customers, would also have to be spelled out well in advance of any trial.

Another important protection is required by the temporary nature of the trials. It would be presumptuous for the Commission and participating ILECs to presume success and retire existing facilities or render them obsolete. Instead, customers that elect to participate in the trial should be offered an end date when they will be permitted to switch back to their pre-existing service if they so choose. After all, it is ultimately the customer experience that will determine the success of the trial. If wireless service proves not to be as reliable or as robust as the wireline service for which it is substituted, the trial will not be a success. The Commission should develop reliable metrics to determine whether customers are satisfied with the services they received during the course of a trial. Allowing customers to reject the replacement service and return to their previous wireline service will provide a measure of the success of the trial.

C. Data Collection

The Commission should also collect other data regarding the trial of wireless service, including data regarding network outages, dropped calls, network congestion and network busy messages. The wireless network is generally more susceptible to such issues because of the shared nature of wireless spectrum and propagation characteristics associated with wireless transmission. Measuring how such services function as substitute for the nearly always available, self-powered, wireline network is an important analytical tool for evaluating a wireless trial.
Lastly, if the Commission permits multiple trials of wireless service by different ILECs, the Commission should consider standardizing the wireless offerings in each trial market. If the offerings are different it may be harder to isolate the cause of different results that may occur from trials in distinct markets. Standard offerings would allow the Commission to more easily identify problems that arise from the trial. Similarly, if the trial is by some measure successful, other carriers seeking to replace some wireline services with wireless will have ready to apply lessons. Those lessons might not be as clear if there are significant differences between the wirelines products that were offered at different trial sites.

V. IP Interconnection Trial

The record the Commission has compiled to date in related proceedings\(^1\) indicates that no technical trial is necessary for IP interconnection.\(^2\) Numerous carriers have already stated that they have agreements with other carriers to govern the exchange of voice traffic in IP.\(^3\) Every sector of the industry, including many ILECs, has offered support for mandatory IP interconnection.\(^4\) The impediment remains the refusal of the RBOCs to negotiate IP agreements

\(^{18}\) *See, e.g.*, GN Docket Nos. 12-353; WC Docket No. 10-90 et al.


\(^{20}\) *See* US TelePacific and Mpower Comments, WC Docket No. 10-90 et al, p. 21 (filed Feb. 24, 2012) (“IP interconnection has already been undertaken by carriers, demonstrating that IP interconnection is ‘technically feasible.’”); Charter Communications Comments, WC Docket No. 10-90 et al, 4-5 (filed Feb. 24, 2012) (“There is no dispute that IP-to-IP interconnection is ‘technically feasible,’ as it is commonly used in interconnection arrangements between VoIP service providers today.”).

\(^{21}\) For example, mandatory IP interconnection is supported by wireless carriers (Sprint GN Docket No. 12-353 Comments, pp. 27-28 (filed Jan. 28, 2013); MetroPCS GN Docket No. 12-353 Comments, p. 5 (filed Jan. 28, 2013); T-Mobile GN Docket No. 12-353 Comments at p. 5) (filed Jan. 28, 2013); by Cable VoIP providers (Cox Communications GN Docket No. 12-353 Comments at pp. 9-10 (filed Jan. 28, 2013); Cablevision GN Docket No. 12-353 Comments, pp. 4-6, (filed Jan. 28, 2013), and by ILECs (Nebraska Rural Independent ILECs GN Docket No. 12-
under the framework of sections 251 and 252 of the Act.

The record on the RBOCs’ intransigence on IP interconnection need not be repeated here.22 Given the RBOCs’ continued market power,23 should the Commission authorize a trial of IP interconnection, it must be conducted under the section 251/252 framework. In establishing such a trial, the parties would negotiate an agreement subject to the backstop of sections 251 and 252, with any disagreements subject to arbitration before a state commission. The Notice expresses concern that the RBOCs would not participate in such a trial,24 other ILECs that have taken the sensible position that the Act covers IP interconnection could participate. Both the NTCA and NECA have urged the Commission to find that sections 251 and 252 cover IP interconnection and have members that could surely participate in such a trial. The Commission should not allow one segment of the industry to control the ground rules for the trial through its unwillingness to participate in a trial that is not in every respect to its liking.

VI. The Commission Need Not Conduct an “All-IP Trial” at This Time

The Notice asks for specific comment regarding three discrete trials, as discussed above. BullsEye and Access Point support the Commission’s process for evaluating how to proceed with those three trials. The Notice also asks for comment regarding the “All-IP” trial originally proposed by AT&T and asks for comment on other aspects of AT&T’s all-IP trial besides those covered by the three specific trials.25 BullsEye and Access Point each believe that the three

353 Comments at p. iii, 8 (filed Jan. 28, 2013); NECA and OPASTCO GN Docket No. 12-353 Comments at p. 7 (filed Jan. 28, 2013).)


23 See id.

24 Notice at n.23.

25 Notice p. 10.
proposed trials are sufficient and there is nothing else in the AT&T proposal that the
Commission need pursue at this time.

BullsEye and Access Point further support the Commission’s request for more detailed
proposals from any party interested in pursuing an “all-IP trial.” Although BullsEye and Access
Point believe that an all-IP trial is not necessary, the Commission should make sure that those
proposing such a trial address the following issues before the Commission entertains any specific
all-IP trial proposal.

- First, and as discussed above in conjunction with the wireless trial, would such an
  “all-IP” trial be voluntary or mandatory for customers, including both retail and
  wholesale and business and residential customers?

- Competition must be preserved in an “all-IP” trial. Thus, carriers that are
  wholesale customers of the ILEC must be permitted to continue to serve their end
  users, either through the existing technology or the new technology, at current
  rates, terms and conditions. If the ILEC intends to provide competitors with
  access to its last-mile IP-enabled facilities, the ILEC should detail how it intends
  to test the ability of independent third party providers to incorporate those last-
  mile inputs into their finished voice and data services.

- As part of the trial proposal, the ILEC proposing the trial should be required to
  explain whether and how its IP network will support delivery of “over-the-top”
  services, including VoIP services and detail specific proposals for testing the use
  of the ILEC’s IP network with independent third party “over-the-top” VoIP
  providers.

- Regardless of whether customer participation would be mandatory, the
  Commission should make sure that no customer is required to purchase additional
  CPE in order to participate in the IP trial. If the ILEC intends to offer a service
  requiring new CPE the ILEC should bear that cost itself.

- While copper retirement is not a predicate for an IP trial, as parties have produced
data showing that copper networks can be used to provide IP-based services, the
ILEC must be clear on its copper retirement plans. The Commission should also
consider whether any copper retirement is necessary. For purpose of a trial, it is
not burdensome, in a confined geographic area, to require the ILEC to retain its
copper plant, at least temporarily, if it overbuilds with another technology.

26 Id.
VII. Conclusion

BullsEye and Access Point support the Commission’s proposal to plan for three trials: IP Interconnection; Public Safety and Wireless-to-Wireline provided the trials are sensibly governed along the lines proposed in these comments. As explained above, there is no need for the all-IP trial proposed by AT&T at this time and more information must be collected before any such broad trial is considered.

For the IP interconnection trial the FCC should require use of the Act’s framework under sections 251 and 252. Further in the course of establishing the protocols for the three trials referenced in the Notice, the Commission should take concrete steps to preserve competition and protect consumers by ensuring that customers in the trial areas should be able to determine whether they participate in the trial and customers that have selected competitive providers should not be deprived of their choice of service provider because the ILEC prefers to test a new technology for delivering service.

Respectfully submitted,

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July 8, 2013

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