Before the
Federal Communications Commission
Washington, D.C.

In the Matter of	**:**	
	:	**GN Docket No. 12-353**
Technological Transition of the Nation's	**:**	
Communications Infrastructure	**:**	

COMMENTS
SUBMITTED ON BEHALF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO

January 25, 2013

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INTRODUCTION AND SUMMARY

On December 14, 2012, the Federal Communications Commission (FCC) issued a public notice seeking comment on two related petitions filed in November, 2012.[1] Each petition urges the FCC to alter its policies to respond to the ongoing transition of voice networks. The first petition,[2] filed by AT&T on November 7, 2012, requests that the FCC initiate a proceeding to facilitate industry transition from legacy transmission platforms and services to new services based fully on Internet Protocol (IP). Specifically, AT&T asks the FCC to conduct for select wire centers chosen by incumbent local exchange carriers (ILECs) choosing to participate, trial runs of the transition to next-

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[1] *In the Matter of the Technological Transition of the Nation's Communications Infrastructure*, GN Docket No. 12-353 (Rel. Dec. 14, 2012).

[2] *In the Matter of the Technological Transition of the Nation's Communications Infrastructure*, GN Docket No. 12-353m (Petition to Launch a Proceeding Concerning the TDM-to-IP Transition) (Filed Nov. 7, 2012) (*AT&T Petition*).

generation services that include retiring time-division multiplexed (TDM) facilities and offerings with their replacement of IP-based alternatives. The second petition,[3] 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 from 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. The Public Utilities Commission of Ohio (Ohio Commission) appreciates the opportunity to present these comments for the FCC's studied consideration.

DISCUSSION

The United States has embarked upon a transition that affects the very infrastructure of its communications networks. Transitioning from the existing legacy TDM network to twenty-first century IP-based networks promises many benefits for consumers and challenges as well, to ensure that, as IP-based services replace circuit-switched ser-

[3] *In the Matter of the Technological Transition of the Nation's Communications Infrastructure*, GN Docket No. 12-353m (Petition of the National Telecommunications Cooperative Association for a Rulemaking to Promote and Sustain the Ongoing TDM-to-IP Evolution) (Filed Nov. 19, 2012) (*NTCA Petition*).

vices, there is a smooth transition for consumers who use traditional phone service and for the businesses that provide it.[4]

The Ohio Commission believes, as do the petitioners, that FCC policies should be responsive to the ongoing technological transition of voice networks. In the Ohio Commission's view, the primary issue facing the FCC is *how* to most effectively alter its policies to facilitate this inevitable transition while ensuring both availability and affordability for end users. The petitioners have offered differing, and often competing, views for the FCC's consideration. For its part, AT&T urges the FCC to eliminate specific twentieth century regulatory obligations to allow for the transition to twenty-first century networks and services.[5] AT&T asserts that incumbent LECs are subject to disproportionate regulatory burdens that, it claims, hinder the ability of these carriers to transition from legacy TDM networks to all-IP networks.[6] NTCA, on the other hand, advocates that a balanced approach to regulatory reform, rather than unfettered deregulation, is essential to promoting and facilitating the IP evolution.[7] NTCA warns against the "rote mechanical application of legacy networks, recommending instead a "smart regulation" approach that promotes and sustains the IP evolution.[8] This approach would, in NTCA's view, protect consumers, promote competition and ensure universal service

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[4] Federal Communications Commission, *Connecting America: The National Broadband Plan* (rel. March 10, 2010) at 59 (2010) (NBP).

[5] *AT&T Petition* at 11-20.

[6] *Id*. at 10

[7] *NTCA Petition* at 9.

[8] *Id*.

under a balanced regulatory approach that allows for a more surgical review of existing regulations where needed.[9]

Conceptually, the Ohio Commission supports the NTCA's approach of "smart regulation." As noted by the NTCA, such an approach allows for the examination of what has (or has not) worked in protecting consumers, promoting competition, and ensuring universal service.[10] Following such an examination, a studied consideration of the existing regulatory framework, and what should be retained or changed, in an "all-IP" world can be more effectively undertaken.[11] Like the NTCA, the Ohio Commission strongly believes that the state commissions should be offered an important role in the collaborative process. Coordination with state counterparts ensures a comprehensive regulatory review that will most effectively consider the states' legal mandates as well as state consumer interests.[12] The Ohio Commission believes that such a state-federal collaborative effort allows for a granular (and more thorough) review and analysis of legacy regulations because the states are closer to their consumers and better able to identify unique, state-specific circumstances that impact the deployment and advancement of IP networks. At some point, perhaps sooner than later, there will be a final "sunset" of the TDM framework. It is important that, while technology continues to change, the core statutory objectives of protecting consumers, promoting competition, and ensuring

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9 *NTCA Petition* at 5.

10 *Id*. at 10.

11 *Id.*

12 *Id*. at 12

universal service be maintained. "Smart regulation" that employs state-federal collaboration accomplishes these objectives.

The NTCA makes clear that affordable access to high quality communication services is a core objective of the Act.[13] To this end, states are able to provide the granularity necessary to maintain availability and affordability of telecommunications services. Accordingly, the Ohio Commission maintains that any new regulation that preempts or unduly interferes with states' regulatory oversight conflicts with this core objective of the Act. As the transition from TDM to IP progresses, the Ohio Commission urges the FCC to adopt only those regulations that recognize and preserve the states' vital regulatory oversight role. Again, the FCC should encourage a cooperative state-federal partnership that facilitates the TDM-to-IP transition while ensuring availability and affordability for all consumers. Such an approach is certainly not unprecedented and has proven successful when applied to the telephone companies' transition from analog to digital technology and the replacement of copper facilities by fiber optic facilities. In each instance, state-federal collaboration and cooperation was demonstrated to be effective in ensuring that legacy regulations and services did not become a drag on the transition to a more modern and efficient use of resources or discourage investment.[14]

Ohio regulatory policy provides incentives for carriers to offer high-quality, competitive telecommunications services.[15] AT&T suggests that legacy regulations may

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[13] 47 U.S.C. § 151 (2013).

[14] *See* NBP at 59.

[15] Ohio Rev. Code Ann. § 4927.02 (A)(2) (West 2013).

hinder future ILEC investment in new or upgraded all-IP networks if it exposes ILECs to the risk that, after making such investments, they will still incur the substantial costs of maintaining duplicative TDM networks.[16] While the National Broadband Plan (NBP) points out that maintaining duplicative networks may reduce the ILECs' incentive to deploy fiber, it also recommends that an appropriate balance in its copper ("legacy") retirement policies be ensured.[17] The drafters of the NBP recognized that competitive carriers continue to use copper to provide broadband services and that incumbent carriers are required to unbundle certain legacy facilities to allow competitors to connect their customers to the incumbent carrier's central office.[18] Although current FCC rules[19] allow ILECs to retire redundant copper facilities as they deploy fiber in their loops,[20] the Ohio Commission recognizes that, because not all competitors have deployed complete IP networks, a segment of the telecommunications market will continue to require legacy copper as the transition to an IP network. With this concern in mind, the Ohio Commission properly agrees with the NBP recommendations that there be an appropriate balance in copper retirement policies as part of developing a coherent and effective framework for evaluating the FCC's wholesale access policies.[21]

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16 *AT&T Petition* at 5.

17 NBP at 48.

18 *Id.*

19 47 C.F.R. §§ 51.325-51.335 (2013).

20 NBP at 48

21 *Id.* at 49.

While there is still a clear need for incumbent carriers to maintain certain copper facilities, it should also be an equally clear objective of regulators to adopt a balanced regulatory approach that actively supports and promotes the transition of all carriers to IP networks. In the Ohio Commission's opinion, new regulations should not allow ILECs to flash-cut to all-IP networks, but rather, should provide for a reasonable period of transition to such networks. Such a measured regulatory approach will encourage needed investment by *all* carriers during the transition period to position them to compete in an IP-based communications market. In contrast, a flash-cut approach deters competition since it essentially quashes the ability of many service providers to offer and maintain services. Ultimately, consumers will suffer as availability and affordability of services are negatively affected. Furthermore, the Ohio Commission notes that some ILECs, including petitioner AT&T, still plan on making the most use out of their existing copper facilities through hybrid copper/fiber arrangements as they migrate to all-IP networks.[22]

The state of Ohio provides a clear example of innovation flourishing under a "smart regulation" approach. Ohio recently undertook a comprehensive revision of its telecommunications laws to reflect the changing telecommunications industry and changes in the marketplace.[23] While promoting competition and innovation by adopting minimal regulatory obligations on new services and technology, Ohio's telecommunications laws maintain measured legacy regulations that ensure availability and affordability

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[22] Fierce Telecom, Year in Review 2012: AT&T's multibillion dollar network bet (Dec. 21, 2012), available at http://www.fiercetelecom.com/special-reports/year-review-2012-atts-multibillion-dollar-net-wor-bet?utm_medium=nl&utm_source=internal.

[23] Sub. S.B. 162 (2009).

of service for all Ohioans.[24] Within this regulatory environment, broadband, which is essential to IP-networks, has flourished. As of third quarter 2012, broadband availability in Ohio was at 97.57% with 126 broadband providers operating within the state.[25] In less than a year, 23,300 homes received access to or upgraded broadband service with 20,419 of those homes located in rural, high-cost Appalachian areas known to have a large broadband availability gap.[26] In Ohio, state and existing federal regulations have enabled providers, many of whom are rural ILECs, to invest in their networks to meet FCC broadband deployment objectives.[27] These regulations have not disadvantaged carriers, but instead have fostered innovation and deployment of advanced telecommunications services among the providers operating in the state while ensuring that no consumer is left wanting for basic telephone services. "Smart regulation" has proven successful in Ohio and the Ohio Commission encourages the FCC to adopt a similar approach as it considers the appropriate regulatory climate to responsibly manage TDM-to-IP transition.

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24 *See*Sub. S.B. 162 (2009).

25 Connect Ohio Program Stakeholder Report, July 1, 2012-September 30, 2012, available at www.connectohio.org. Connect Ohio is a non-profit organization working with the State of Ohio and other sectors of the state economy to accelerate the availability and use of broadband in the state in order to create: affordable availability of broadband for all of Ohio, better business environment, more effective community and economic development, improved healthcare, enhanced education, and more efficient government.

26 *Id.*

27 *See* Commission Comments at 13, *In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support Developing a Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109 (Comments Submitted on Behalf of the Public Utilities Commission of Ohio at 13) (filed August 24, 2011).

CONCLUSION

The ongoing TDM-to-IP transition brings the promise of many exciting benefits for consumers. It also presents the challenge of ensuring the availability and affordability of service for all consumers. The Ohio Commission supports the concept of "smart regulation" presented by the NTCA as the appropriate means of meeting this challenge. In the Ohio Commission's view, 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. The Ohio Commission appreciates the opportunity to provide its thoughts and recommendations for the FCC's studied consideration.

Respectfully submitted,

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