2013 SENATE INDUSTRY, BUSINESS, AND LABOR

SB 2234

2013 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

SB 2234
February 11, 2013
Job Number 18774

☐ Conference Committee

Committee Clerk Signature Em Liebelt

Explanation or reason for introduction of bill/resolution:

Relating to voice over internet protocol service and the jurisdiction of the public service commission

Minutes: Testimony Attached

Chairman Klein: Opened the hearing.

Senator Grindberg: Introduced the bill and presented testimony from Don Morton, Senior Director-Fargo Site Leader, Microsoft Corporation (1).

Representative Thoreson: Said this bill comes to them as it has several states over, the last year or two, dealing with voice internet protocol, which are an emerging technology and the next step in where are communications landscape is going. This bill acknowledges that the internet and the next generation of IP services shouldn't be governed by the out dated regulations that wouldn't apply to this new type of technology. It codifies it so VoIP and other internet based services have a light touch regulatory approach and it shows the IP is very different from traditional telephone services and should remain free and open in a competitive environment. It does not change any of the existing laws or regulations and it ensures no changes in how the consumer makes their traditional telephone calls. It also sends a single that North Dakota embraces a business friendly environment and encourages private investment to help extend broad band infrastructure to all corners of our state. (4:00-8:48)

Glen Richards, Executive Director of the Voice on the Net Coalition: Written Testimony (2). (9:45-26:05)

Cheryl Riley, AT&T: Written Testimony (3) and amendment (4). (27:30-49:12)

Andy Peterson, President and CEO of the Greater North Dakota Chamber: Written Testimony (5). (49:50-53:09)

Marnie Walth, Innovation Officer for Sanford Health: Written Testimony (6). (54:24-56:05)

Opposition

Mike McDermott, Executive Director of State Government Affairs for Verizon Communications: Written Testimony (7) and Amendment (8). (57:00-1:02:47)

Kent Blickensderfer, Director of Legislative Affairs for Century Link: Neutral. Said that Century Link worked with some of the other providers to hammer out language that they could accept on this bill but that with the amendment presented by Verizon they would be opposed to the bill.

Chairman Klein: Asked if he was otherwise pleased with the direction they are trying to go in trying to create an atmosphere in North Dakota that would be receptive to all these companies wanting to come here and still providing for the fund to be built.

Kent: Said that the language was important to them because they believe in the future there will be a state universal service fund. They believe that Century Link and its customers will be net payers into that fund because of the way their network lays out. Specifically exempting companies or making them subject to a tax that isn't there yet, you are specifically exempting yourself from regulation that isn't there yet also. The rest of the bill, Century Link is fine with. There are providers in the room that benefit greatly from a federal universal service fund which they take out millions of dollars from North Dakota today. Those are net dollars to those providers that they don't pay taxes on. Participating that way and not wanting to participate in a potential state high cost fund seems conflicting.

Senator Laffen: Said if they took that piece out, it isn't saying that you have to participate in it.

Kent: Said you could make that argument because all regulations in North Dakota are creatures of statute and you can revisit them every two years. By specifically taking that out now and because of the notwithstanding language in the beginning of the bill, the providers could come back and argue it was intended that they not be a part of that and not participate. (1:06-1:09)

David Crothers, North Dakota Association of Telecommunications Cooperatives: Written Testimony (9) and Map (10) and Petitions (11). (1:09:54-1:25:40)

Chairman Klein: Asked if he had any opportunity to sit down with the folks involved to craft something that would be acceptable to hopefully all the groups.

David: Said yes, he was approached by AT&T and Verizon, they have been very gracious in discussing what changes could potentially be made to their bill. Second answer is; no he doesn't believe there is. There is no way to negotiate the issues that are before the federal communications right now that seek to do the exact same thing on a federal level as they do on the state level. There is no form for going through that process here. It is the reason the proponents aren't at the Congress, they were unsuccessful in Congress in getting VoIP adopted as an information service. They don't want to be before the federal communications commission but it's the only avenue. They can go to the states and do much the same but there is no middle ground, consumers can't be halfway protected.

Chairman Klein: Closed the hearing.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

SB 2234
February 12, 2013
Job Number 18797

☐ Conference Committee

Committee Clerk Signature Eva Lietz

Explanation or reason for introduction of bill/resolution:

Relating to voice over internet protocol service and the jurisdiction of the public service commission

Minutes: Amendment and Vote

Chairman Klein: Opened the meeting and said that this maybe a hoghouse. There was a lot of discussion on whether the amendments should be on or not and there were folks that didn't like the bill at all. Some say we are way ahead of the curve here and others are saying they are trying to make sure North Dakota will be up to the times. He had an amendment crafted. Amendment Attached (1).

Senator Andrist: Said he would like to make sure this was selected for a study and wondering if he would resist.

Chairman Klein: Said he would resist because he did visit with the parties involved and they told him how they would like the language and it is, shall consider studying.

Senator Sorvaag: Moved adopt the amendment.

Senator Sinner: Seconded the motion.

Roll Call Vote: Yes - 7 No - 0

Senator Sorvaag: Motioned a do pass as amended.

Senator Unruh: Seconded the motion.

Roll Call Vote: Yes - 7 No - 0 Absent - 0

Floor Assignment: Senator Andrist

13.0748.01001
Title.02000

Prepared by the Legislative Council staff for
Senator Klein
February 11, 2013

2-12-13

PROPOSED AMENDMENTS TO SENATE BILL NO. 2234

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of voice over internet protocol service.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - VOICE OVER INTERNET PROTOCOL SERVICE. During the 2013-14 interim, the legislative management shall consider studying voice over internet protocol service and the effect of this service and other technologies on the telecommunications industry, including any desired changes in regulation and taxation. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly."

Renumber accordingly

Date: 2/12/2013
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2234

Senate Industry, Business, and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 13.0748.01001

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Sorvaag Seconded By Senator Sinner

Senators	Yes	No	Senator	Yes	No
Chariman Klein	x		Senator Murphy	x	
Vice Chairman Laffen	x		Senator Sinner	x	
Senator Andrist	x				
Senator Sorvaag	x				
Senator Unruh	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Date: 2/12/2013
Roll Call Vote #: 2

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2234

Senate Industry, Business, and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 13.0748.01001

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Sorvaag Seconded By Senator Unruh

Senators	Yes	No	Senator	Yes	No
Chariman Klein	x		Senator Murphy	x	
Vice Chairman Laffen	x		Senator Sinner	x	
Senator Andrist	x				
Senator Sorvaag	x				
Senator Unruh	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Andrist

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2234: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2234 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of voice over internet protocol service.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - VOICE OVER INTERNET PROTOCOL SERVICE. During the 2013-14 interim, the legislative management shall consider studying voice over internet protocol service and the effect of this service and other technologies on the telecommunications industry, including any desired changes in regulation and taxation. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly."

Renumber accordingly

2013 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2234

2013 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

SB 2234
March 12, 2013
Job 19808

☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to voice over internet protocol service and the jurisdiction of the public service commission

Minutes: Handouts, attachments 1 and 2

Hearing opened.

Senator Tony Grindberg, District 41: Provided information about the bill as introduced. The bill has been turned into a study. Contrasted current first engrossment of the bill with the original bill. Distributed attachment 1, a map which shows what is going on in other states.

3:11 **Representative Blair Thoreson, District 44:** I hope the committee gives a favorable recommendation to this. Then we look at the study and can come back next time around more informed and then put in place good legislation dealing with this emerging technology.

3:55 **Chairman Keiser:** As you know, the bill has transformed to a study. Is this one of the areas for which we should mandate a study?

Rep. Thoreson: I would leave that to the discretion of the committee. I think it is important. Even if it is a *shall consider*, I would hope that management does take this up in the interim.

4:33 **Representative Kasper:** What is the importance of this study or the bill? How will it impact what we do in North Dakota?

4:45 **Rep. Thoreson: In** the landscape of communications, voice over internet protocol is where we are moving. It impacts the consumers of our state. We've tried to make sure that an investment is made wisely by the industries doing this. If we put in place good policy, it will be good for the people of our state, not only the end user but also the possibility of creating more economic opportunities. After the study, we will come back more informed. There is legislation in other states that we could look at for best practices. We could put something in place and even be a step ahead so that companies would be more incline to relocate here.

6:00 **Representative Kasper:** Why not let the marketplace determine where we go rather than enacting legislation?

6:09 **Rep. Thoreson:** I believe in the marketplace. I also believe the regulatory agencies may enact some things, maybe not in the next two years, but there is that chance. With us putting a study forward, we can request to wait to put additional regulations on until we know the full aspect of what they might do to our citizens.

Support:

7:04 **Cheryl Riley, director of external affairs for AT&T:** Distributed attachment 2. Provided information about VOIP or voice over internet protocol. Gave examples of current and future uses for VOIP. Explained why companies like hers are looking to transfer their network to an IP-based platform. Talked about what that transition means for her company in North Dakota. Explained individual items within attachment 2. Highlighted statistics. Most in the industry agree that this is the future and where we are heading, but we did not agree on how it should proceed in terms of a regulatory perspective. Spoke about interim study in Wyoming.

11:48 **Representative Vigesaa:** Will corporations and state governments have to buy additional infrastructure equipment to handle the volume which will cover over this medium?

12:04 **Cheryl Riley:** I don't think that that's how it will work. For us in North Dakota, we have announced a project velocity IP, which is an additional investment to transition our nation-wide network to IP. I don't think that will require anything of government for that change; it will be seamless transition. Drew comparison with change from analog to digital television. Gave examples of the seamless transition.

13:10 **Representative Kasper:** What legislation would have to be passed now to allow your company to move forward in an expeditious manner? If we do not pass such legislation now, will our state be two years behind?

13:30 **Cheryl Riley:** The states which have worked on related legislation have made a strong statement. It is disappointing that North Dakota will not be one of those making a statement this year. If a study bill were killed, that would be a strong statement to the negative that perhaps regulation is on the table for these services in North Dakota. I know you are not looking to regulate these services, but these types of statements do have an impact on decision makers in companies like mine. I would love to have the original bill go through, but having a study bill on the table sends a message that you're going to look at it.

15:08 **Representative Kasper:** What would have been done in the initial bill...are you looking for open competition with no regulation....what will a study not do that the original bill would have done?

15:40 **Cheryl Riley:** The original bill would have put into statute was is already happening in North Dakota. The original bill was a future protection from a commission that would

decide to regulate voice over internet protocol and other IP-enabled services. It codified status quo. It was a statement that provided certainty. We're looking at at-risk capital for these transitions. I included in the handout a press release about investment by our company.

17:07 **Representative Kasper:** Summarized what he thinks the desired intent would be for legislation. What did Wyoming do and what did the original bill do?

17:30 **Cheryl Riley:** It says that the state of North Dakota would not regulate these services but that the FEC will continue to regulate it. Drew connections to wireless. We believe the market should regulate. Keep in mind that the internet does not stop at state lines.

18:41 **Representative Kasper:** What happened with the other bill in the senate? Were various providers unable to agree?

19:11 **Cheryl Riley:** I think there was disagreement about what the language should be.

19:35 **Chairman Keiser:** Summarized what he understands to be the position of AT&T and asked whether he was understanding correctly.

20:08 **Cheryl Riley:** I would say yes but would caveat that by saying that having a study bill on the table will help.

20:19 **Chairman Keiser:** If that's what your company needs to make the investment, the outcome of the study is that the FCC needs to regulate or the investment will not be made.

20:33 **Cheryl Riley:** I won't say that we wouldn't invest in North Dakota assets without this. Gave example of visit from corporate officer to underscore that these things are taken into consideration. A passage of this bill would bring a level of comfort to us.

21:33 **Chairman Keiser:** A company has limited investment capacity. If I look at this map, I know where I would spend my dollars first. Could you please identify for us the other states which are currently discussing this?

22:13 **Cheryl Riley:** Indicated other states which are considering legislation related to this issue. Will provide a list.

23:36 **Chairman Keiser:** If we were to pass the original bill, how long would it take your company to implement?

23:57 **Cheryl Riley:** We are making decisions on investments two or three years ahead. That is one of reasons we looked to a study resolution rather than a vote of no. The study resolution helps as we are looking at investment.

25:26 **Todd Kranda, attorney appearing on behalf of Verizon Wireless:** Appearing in support of the study resolution. We support the statements made by Cheryl Riley. We were not together on the senate side. The provisions in the prior bill were problematic. It

had some of what we wanted but covered more than we wanted. We had four telecommunication entities across the board when it came to support of opposition. Surmised that the senate committee decided to evaluate this over the interim and to allow for FCC things going on. Two more years to look into this is not a problem.

27:17 **Representative Kasper:** What were the problems in the original bill?

27:20 **Todd Kranda:** The original bill talked about a taxation. My company was okay with preemption regulation. We had asked for an amendment to remove sections dealing with the state universal service fund, which does not exist. We didn't feel it was appropriate to place the taxation on the industry when no such fund exists. Stated that he thinks Century Link would change from neutral to opposed if that section were removed.

Opposition:

Neutral:

Hearing closed.

Representative Kasper: Requested that bill be held.

2013 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

SB 2234
March 13, 2013
Job 19818

☐ Conference Committee

Jocelyn Gallagher

Explanation or reason for introduction of bill/resolution:

Relating to voice over internet protocol service and the jurisdiction of the public service commission.

Minutes: Handout, attachment 1

Chairman Keiser: 2234 is the voice over bill. You saw the states moving on it and those who are not. I don't know what happened in the Senate but I wouldn't be opposed to forming a subcommittee.

0:44 Representative Kasper: I spent a number of minutes out in the hallway after the hearing yesterday with all the parties in the room and there were a lot of tempers out there. Spoke to what happened in the Senate. I think we should try to work things out in a subcommittee and see if something can be done; a two year delay puts ND behind.

Chairman Keiser appointed subcommittee

Representative Kasper
Representative Beadle
Representative Boschee

2:10 Chairman Keiser: We have an obligation and if we make a decision to reinstate that bill, we need to do what we believe is right. I can't believe there isn't a model for regulation that's been developed in other states that we could adopt and modify.

In the afternoon of March 13, 2013, Chairman Keiser distributed printouts of an e-mail from Cheryl Riley. This is included as attachment 1.

2013 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

SB 2234 subcommittee
March 18, 2013
Job 20094

☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to voice over internet protocol service and the jurisdiction of the public service commission.

Minutes: No attachments

Subcommittee meeting location: Peace Garden Room

Meeting called to order at 3:31

Subcommittee members present:
Representative Kasper, chair; Representative Beadle; Representative Boschee

Other IBL members present:
Chairman Keiser; Representative Kreun

Attendees addressing the subcommittee:
Joel Gilbertson, AT&T; Kent Blickensderfer, Century Link; Todd Kranda, Verizon Wireless; David Crothers, North Dakota Association of Telecommunications Cooperatives

Topics discussed:

1. Review of hearing in Senate committee, summarized by Joel Gilbertson, AT&T.
2. Joel Gilbertson summarized the position of AT&T
3. High cost universal service fund
4. Potential lag or negative impact for the citizens caused by length of study period
5. PSC and the authority to regulate VOIP and the internet
6. Kent Blickensderfer summarized the position of Century Link regarding universal service fund.
7. Todd Kranda summarized the position of Verizon Wireless regarding the study and the universal service fund.
8. David Crothers summarized opposition of North Dakota Association of Telecommunications Cooperatives to initial bill; stated support of North Dakota Association of Telecommunications Cooperatives for study
9. Intention of entities, participants to be involved in the study; all attendees on behalf of entities indicated intention to be involved

10. Representative Boschee voiced support for the study after having heard information today
11. Representative Beadle stated that he does not see a problem with the original bill or with having a study
12. Representative Kasper addressed his initial concern regarding impact for citizens if a study is undertaken and a decision is delayed
13. Representative Beadle moves that we recommend to the committee that we pass the bill as presented as a study; seconded by Representative Boschee.
14. Representative Kasper reminded subcommittee that bill is a *shall consider*
15. Discussion and agreement that this should be a *shall study*
16. Representative Kasper supports the recommendation brought forth by the other members of the subcommittee
17. Representative Keiser spoke about grandfather clause

Meeting adjourned at 4:03

2013 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

SB 2234
March 19, 2013, morning
Job 20130

☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to voice over internet protocol service and the jurisdiction of the public service commission

Minutes: No attachments

Representative Beadle: Provided recap of bill. Provided recap of subcommittee meeting. Summarized concerns shared by attendees at subcommittee. We need to make sure we study who will be obligated to pay into the high cost universal fund and to make sure there are not all sort of exemptions. We need to look to see what the FCC determines on the issue; they are looking at it right now. The rural telecommunications cooperatives had several issues they wanted to look into as well. Another issue to study was the impact of deregulating VOIP. The recommendation of the subcommittee is to keep it as a study. The players have all said that they will be very involved in the interim to study it to make sure all concerns are looked into.

3:02 **Chairman Keiser:** It is obvious that one or more of those parties want to see no progress made under any condition. They had a bunch of issues they wanted to study. We did make a request that they give us a list of the problems which need to be studied.

3:35 **Representative Beadle:** My feeling is that the real hesitancy toward changing it concerns the investment that has been made into hardwire cable. The faster the change take place, they will lose money and not be able to compete.

Chairman Keiser: The other question that was asked was if there is any issue relative to being grandfathered in to the VOIP process. Apparently, the federal government is looking into providing regulation of the VOIP technology. Sometimes it pays to have state law do what you want it to do rather than having to adapt to a federal requirement. But I think they felt relatively certain that that did not matter. We will take up this bill this afternoon.

2013 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

SB 2234
March 19, 2013, afternoon
Job 20168

☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to voice over internet protocol service and the jurisdiction of the public service commission

Minutes: No attachments

Chairman Keiser: Do we have an amendment for this? I'd suggest we change it to *shall consider*. We don't need one. It's a shall consider. Representative Beadle gave the subcommittee report this morning. They have agreed to go with the study.

Representative Vigesaa: If we do pass the study, people like AT&T and Verizon won't put a black mark on us quite yet?

Representative Beadle: If we pass the study, then we are going on record passing something. They are not really worried about the makeup of the PSC being over-regulatory right now on that industry. The study gives them enough assurance that we are going to be moving forward with something they might like, especially since they have been encouraged by us on the record to be involved in the study, and they said that they will and are onboard with that. It will not be to our detriment. They said repeatedly that the only thing that would be to our detriment is to have legislation on this topic fail.

Motion for a do pass made by Representative Beadle and seconded by Representative Boschee.

Roll call vote on the motion for a Do Pass recommendation on engrossed SB 2234. Motion carries.

Yes = 14
No = 0
Absent = 1

Carrier: Kasper

Date: 3-19-13 afternoon

Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2234

House Industry, Business, and Labor Committee

Legislative Council Amendment Number _____

Action Taken: ☑ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider ☐ Consent Calendar

Motion Made By Beadle Seconded By Boschee

Representatives	Yes	No	Representatives	Yes	No
Chairman George Keiser	✓		Rep. Bill Amerman	✓	
Vice Chairman Gary Sukut	✓		Rep. Joshua Boschee	✓	
Rep. Thomas Beadle	✓		Rep. Edmund Gruchalla	✓	
Rep. Rick Becker	✓		Rep. Marvin Nelson	✓	
Rep. Robert Frantsvog	✓				
Rep. Nancy Johnson	✓				
Rep. Jim Kasper		NV			
Rep. Curtiss Kreun	✓				
Rep. Scott Louser	✓				
Rep. Dan Ruby	✓				
Rep. Don Vigesaa	✓				

Total Yes 14 No 0

Absent 1

Floor Assignment Kasper

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2234, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **DO PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2234 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

SB 2234

13.0748.01001
Title.

Prepared by the Legislative Council staff for
Senator Klein
February 11, 2013

PROPOSED AMENDMENTS TO SENATE BILL NO. 2234

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of voice over internet protocol service.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - VOICE OVER INTERNET PROTOCOL SERVICE. During the 2013-14 interim, the legislative management shall consider studying voice over internet protocol service and the effect of this service and other technologies on the telecommunications industry, including any desired changes in regulation and taxation. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly."

Renumber accordingly

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(1)

Microsoft

February 6, 2013

Senator Tony Grindberg
North Dakota State Senate
Bismarck, ND

Chairman Grindberg:

Microsoft strongly supports SB 2234, which would affirm North Dakota's policy of regulating internet-based services only as authorized by federal law. This important legislation would confirm North Dakota's commitment to fostering investment and innovation in the Internet economy.

North Dakota has been a national leader in economic development and job creation, focusing on growing a small number of important industries, including technology-based businesses, attracting highly recognized businesses to the state. Indeed, Microsoft has 900 team members in North Dakota and another 830 vendor employees who work on the Microsoft campus in Fargo.

Organizations such as the Center for Technology and Business (CTB) recognize the important role VoIP and other IP-enabled services play in improving the state's business climate. For example, the CTB provides training on how small businesses can use Skype to improve business processes, save money, and increase customer satisfaction.

In 2011, Microsoft acquired Skype for $8.5 billion. More than 200 million people use Skype each month. Skype to Skype voice, video, and instant messaging are absolutely free to users. Investments like this one, and those required to expand and improve upon Skype in the future, require business certainty in the regulatory climate. The language contained in SB 2234 eliminates ambiguity in that regulatory climate and provides clear direction to Microsoft and other companies that provide Internet enabled products and services in this state.

IP services include a wide array of offerings available on the Internet such as gaming, email, text messaging, search, online publishing, voice (voice over IP/VoIP), and video. These offerings – and many more – rely on Internet protocol technology and the underlying broadband infrastructure. These services also depend on state and federal policies that promote an open and competitive Internet.

For these reasons, Microsoft strongly supports SB 2234 and encourages passage of this important legislation.

Sincerely,

Dan Morton

Dan Morton
Senior Director-Fargo Site Leader
Microsoft Corporation

TESTIMONY OF THE VOICE ON THE NET COALITION

BEFORE THE SENATE INDUSTRY, BUSINESS AND LABOR COMMITTEE

HEARING ON SB 2234

FEBRUARY 11, 2013

Good afternoon Chairman Klein, members. My name is Glenn Richards and I am the Executive Director of the Voice on the Net Coalition. First I would like to thank you for the opportunity today to express the VON Coalition's support for SB 2234.

For those of you that do not know us, the Coalition's members include many of the leading Internet communications companies, including Google, Microsoft, Skype, Vonage and Yahoo. For the past 15 years, the VON Coalition has been working with federal and state policymakers to advance regulatory policies that enable consumers, businesses and government to enjoy the full promise and potential of Internet Protocol or IP communications. The companies in the VON Coalition are developing and delivering the next generation of voice, video and data communications services that can be used anywhere and everywhere that broadband is available -- no telephone required.

Once limited to hobbyists, IP communications today is the dominant technology for users of communications services. According to a report released last month by the FCC, at the end of 2011, there were more than 40,000 interconnected VoIP subscriber lines in North Dakota, receiving service from 43 VoIP providers. Nationally, there were more than 36 million VoIP subscriber lines in services, an increase of more than 15 percent from the prior year. In contrast, during the same period, wireline retail lines decreased by almost 10 percent from 117 million to 106 million lines.

The dramatic growth of IP communications has created viable competition in the communications industry, to the benefit of consumers that are saving hundreds of millions each year by switching to VoIP and other IP-enabled services. VoIP also provides consumers flexibility and features not possible in yesterday's telephone network. These include the ability to use an IP-enabled phone through any broadband connection anywhere in the world; allowing voice mail to be sent to email or converted to text; allowing multiple devices to ring at the same time, and bringing video conference calling to the masses. At the same time, quality and reliability have improved to equal if not surpass that of the legacy phone network.

For businesses, particularly small and medium sized businesses that are at times ignored by larger carriers, IP communications is lowering costs, allowing increased control over communications, increasing productivity, increasing mobility, enabling collaboration, and giving companies a competitive advantage. IP communications promotes telework; allowing people to work seamlessly from home as if they were in the office; creating more time with family and greater employment opportunities for parents of small children, adult caregivers and the disabled.

IP's ability to converge voice, video, and data into one application makes available new accessibility options for the tens of millions of disabled Americans. IP communications gives disabled users a choice as to which mode they want to communicate in. For example, a deaf-blind person could sign his conversation then read the response on text with a Braille display. A hearing-impaired person might use text for the main communication, then video to show their emotional reaction to the conversation.

IP communications is also bridging the gap between rural and urban Americans. VoIP can bring good information age jobs to rural communities, and encourages the rapid deployment of broadband to rural areas.

IP communications has prospered in a largely unregulated environment. The Federal Communications Commission in 2004 found that IP communications between computers should not be regulated at all; and it also that same year preempted state regulation of interconnected VoIP – which are services that are used more like a replacement for regular telephone service. The FCC has, however, imposed certain public safety and consumer protection requirements on interconnected VoIP providers, such as a requirement to provide 911 services, protect customer data, report outages and assist law enforcement. There is no federal entry or price regulation of VoIP.

At least 26 other states have already provided certainty to the investment markets by codifying regulatory "safe harbors" for VoIP or IP-enabled communications. These states have recognized that there is no benefit to imposing legacy telephone regulations on IP communications and that investment will be lost if regulatory ambiguities are allowed to remain in place. In an otherwise competitive market with low barriers to entry and low switching costs for consumers, entry and rate regulation has the potential to materially and adversely impact technological innovation, hinder the growth of open, competitive markets and place unnecessary burdens and costs on companies eager to invest in and deliver innovative products and features.

By adopting Senate Bill 2234, North Dakota now has the perfect opportunity to join these progressive states and help launch a new era of broadband-enabled benefits for consumers and businesses in North Dakota by eliminating the threat of conflicting state regulation of two types of Internet Protocol-enabled services. The first, referred to in this bill as Internet Protocol enabled service, includes those broadband delivered applications and services used by consumers, businesses, and government every day, such as instant messaging, e-mail, web surfing, search, streaming video, and voice communications applications such as Skype video

calling. Historically, the FCC has preempted regulation of these offerings. These are the innovative products and applications that are driving North Dakota's information technology economy. To ensure that consumers continue to have access to these transformative broadband applications, it is critical that state and local regulation not burden such innovation. SB 2234 recognize and retain federal preemption of state and local regulation.

The bill also refers to another form of IP communications service, identified as Voice over Internet Protocol, or VoIP services, which provide consumers a replacement for their traditional phone service. VoIP services as defined in SB 2234 and by the FCC are distinguished by the ability of consumers to both make calls to and receive calls from the public phone network. The FCC has created a uniform framework for the regulation of these two-way VoIP services that applies in all 50 states. This legislation reinforces the existing federal framework by precluding state or local governments or agencies in North Dakota from attempting to regulate VoIP in conflict with the FCC.

The appropriate policy framework, as embodied in this legislation will facilitate transformative improvements in the way all people in North Dakota communicate that harness the power of the Internet. Adoption of SB 2234 will provide three critical benefits to the state of North Dakota during these challenging economic times:

(1) a platform for innovation delivering advanced broadband communications features to consumers and business in North Dakota;

(2) increased competition among network and service providers leading to cost savings for consumers and businesses across the state; and

(3) increased infrastructure investment and accelerated broadband deployment – critical elements of job creation and economic growth in the state, particularly in rural areas.

This important legislation will ensure the continued availability of these broadband communications offerings and open new high-tech economic opportunities by prohibiting regulation of innovative IP-based services, consistent with Federal law. Everyone in North Dakota has much to gain from a regulatory environment that allows innovative IP enabled applications and services to remain free from regulations originally intended for plain old telephone services.

In summary, enabling a consistent and predictable policy framework, thereby fostering innovation in VoIP and IP-enabled applications and services can help lead to breakthrough new benefits for North Dakota consumers. The bill provides a platform for innovation, facilitates competition and cost savings for consumers, and will drive job growth, broadband deployment, and greater economic prosperity for the state.

We look forward to working with you and other policy makers in North Dakota to forge pragmatic solutions that enable consumers, businesses, and the economy to achieve the full promise and potential that VoIP and IP-enabled services can deliver.

Thank you again for your time and I look forward to your questions.

SB 2234: Voice over Internet Protocol (VoIP) & IP Enabled Services

Overview

SB 2234 provides certainty for investors and innovators in the broadband and Internet "app" economy by stating that VoIP and other Internet Protocol (IP)-enabled services will not be subject to legacy telephone regulation in North Dakota.

IP-enabled services are the next generation of communications and are rapidly being deployed to meet consumer demand. They are broadband services and require a broadband connection at the end user's location. By utilizing IP technology, they offer a suite of integrated capabilities and features enabling users to manage their personal voice, data and video communications dynamically. Examples include Skype, FaceTime, Vonage, magicJack, as well as a host of VoIP services provided by cable and telecommunications providers.

The FCC has recognized that IP-enabled services play a critical role in developing and growing the broadband ecosystem — which is a key driver of our economy — and that a patchwork of state regulation could severely inhibit this growth.

Today, ***no*** state applies legacy regulations to VoIP or IP enabled services, and 24 states and the District of Columbia have adopted similar legislation to promote the development of these advanced services. SB 2234 ensures that North Dakota's citizens and economy also benefit from these new services.

North Dakota should not get left behind. North Dakota has previously taken the lead in attracting high-tech investment to the state and should do so again by adopting this bill — to make clear that VoIP and other IP-enabled services will not be subject to legacy telephone regulations, and to promote the economic growth this regulatory certainty would bring to North Dakota.

Cheryl Riley
AT&T
Senate Industry, Business and Labor
February 11, 2013
SB 2234

IP Enabled Services

Questions & Answers

Q: How would this legislation affect North Dakota's regulatory regime?
A: The bill would provide regulatory certainty by recognizing VoIP and other IP-enabled services as services that are regulated by the FCC and not subject to state regulation as traditional telephone service.

Q: Why is this legislation needed?
A: This bill is needed to promote the continued growth of the broadband and Internet "app" economy in North Dakota and to attract high-tech investors and innovators to the state.

Q: Has similar legislation passed in other states? How many?
A: Yes, 24 states and the District of Columbia have passed statutes that prohibit state regulation of VoIP, IP-enabled services or both. These states are: Alabama, California, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Maine, Massachusetts, Maryland, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, Ohio, Pennsylvania, Rhode Island, Tennessee, Texas, Virginia, Wisconsin, and Utah. Several other states are actively considering legislation.

Q: What happens to 911?
A: Nothing. This bill will not in any way affect the operation of 911 service in North Dakota.

Q: Would this bill leave VoIP customers unprotected?
A: Certainly not. First and foremost, consumers are best protected by a vigorous, competitive marketplace that responds to their demands, and

Cheryl Riley
AT&T
Senate Industry, Business and Labor
February 11, 2013
SB 2234

this bill promotes competition and competitive growth. In addition, consumers are protected by federal and state law.

At the federal level, the FCC has carefully evaluated VoIP consumer issues and has taken action as the need arises, for example, by requiring VoIP providers:

- To provide E911 capabilities to their customers,
- To work with law enforcement to investigate crimes (CALEA),
- To make services accessible to disabled users,
- To protect customers' proprietary network information (CPNI),
- To allow customers to port their telephone number when changing providers
- To contribute to federal universal service programs
- To report network outages, and
- To provide customer notice before exiting the market.

At the state level, nothing in the bill impacts North Dakota's general consumer protection laws—and the Attorney General's authority to enforce those laws—just as they do for any other business in North Dakota.

Q: How will customer complaints be handled under this bill?

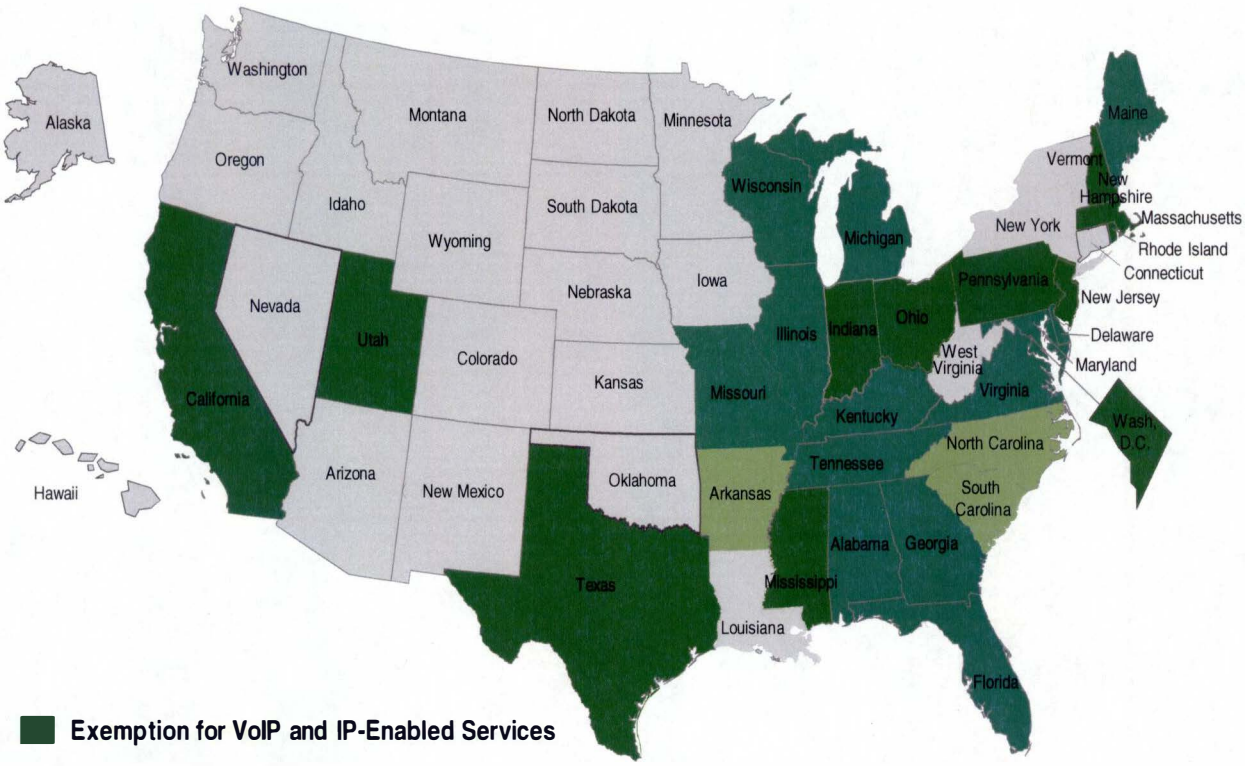
A: Consumers may file complaints involving VoIP and broadband services with the FCC. The FCC's complaint process is fully accessible either by phone, mail or electronically. Even so, the FCC's data indicate that the complaints it receives for VoIP service are very low — indeed, almost non-existent — in comparison to the total number of VoIP customers.

Q: How will carrier disputes be resolved?

A: The same as they are today. The bill does not enlarge or diminish any authority the PSC has today under federal law to resolve carrier disputes.

State VoIP & IP-Enabled Services Exemption Status

October 19, 2012



Exemption for VoIP and IP-Enabled Services

Exemption for VoIP Services

VoIP and IP-Enabled Services exemption due to broader retail deregulation

No exemption for VoIP or IP-Enabled Services

at&t

Cheryl Riley
AT&T
Senate Industry, Business and Labor
February 11, 2013
SB 2234

The Way North Dakota Communicates Has Changed Over the Past Decade

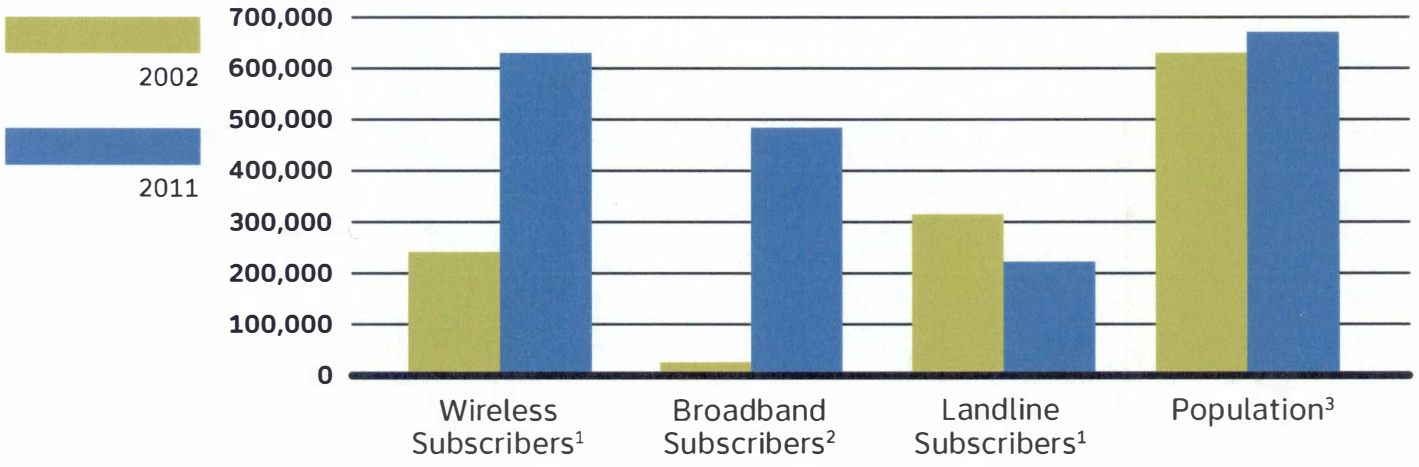
From 2002 to 2011, North Dakota has seen:

150% Increase In Wireless Subscribers

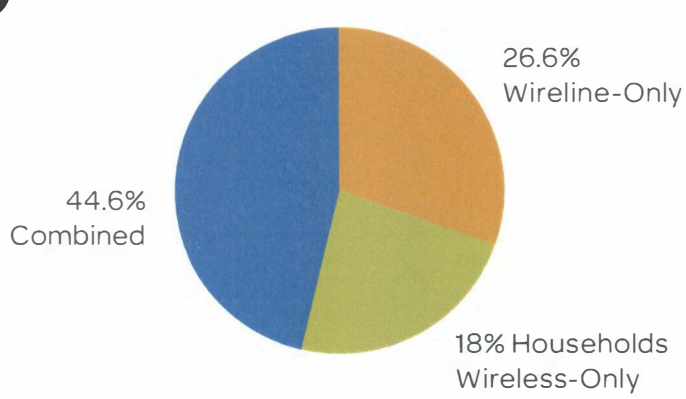
30% Decrease in Landline Subscribers

3,423% Increase In Broadband Subscribers

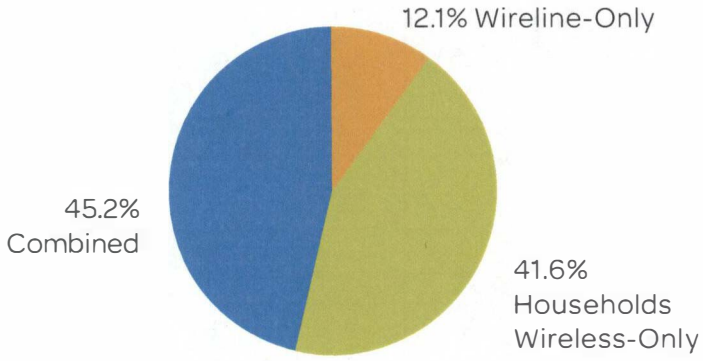
7.85% Increase In North Dakota's Population



Growth of Wireless-Only Households in North Dakota[4]:



June 2007



June 2011

Broadband Availability in North Dakota[2]:

DSL Broadband: 90% of the population Cable Modem: 92% of the population

Cheryl Riley
AT&T
Senate Industry, Business and Labor
February 11, 2013
SB 2234

[1]FCC Local Telephone Competition Report: Status as of June 30, 2002 and FCC Local Telephone Competition: Status as of June 30, 2011 *Landline Subscribers are for ILECs only due to lack of overall data.
[2]FCC High Speed Services for Internet Access: Status as of June 30, 2002 and FCC Internet Access Service Report: Status as of June 30, 2011
[3]U.S. Census Bureau
[4]National Health Statistics Wireless Substitution Report, October 2012 and March 2009

(4)

PROPOSED AMENDMENTS TO SENATE BILL NO. 2234

Page 1, line 10, after "protocol-enabled" insert "service"

Page 1, line 12, after "fund" insert "as are consistent with federal law"

Page 1, line 15, after "all" insert "state and federal"

Page 2, line 7, after "authority" insert "delegated by federal law"

Renumber accordingly

(5)

GNDC
Greater North Dakota Chamber

February 11, 2013

North Dakota Senate Committee on Industry, Business and Labor
State Capitol
600 East Boulevard
Bismarck, ND 58505-0360

Dear Committee Members,

We are writing to urge your support for SB 2234. This legislation provides certainty for investors and innovators in the broadband and Internet "app" economy by stating that advanced Internet Protocol (IP)-enabled services will not be subject to legacy telephone regulations.

IP-enabled services are the next generation of communications and are rapidly being deployed to meet consumer demand for popular apps that connect them in their daily lives...such things as Facebook, Netflix, ehealth, email, agricultural applications, online banking and Skype, just to name a few.

If adopted, this pro-business policy would encourage the kind of investment that would upgrade North Dakota's communications infrastructure and, by doing so, provide important consumer benefits (including new choices, better products, services and devices, and greater functionality) and help achieve state priorities in areas such as education, healthcare and energy.

Attracting technology investment in the state's broadband infrastructure is especially important as the energy industry continues to expand. Demand for voice, data and other high-speed, Internet-based applications have exploded in the Bakken-area and across the state's oil industry.

The FCC has recognized that IP-enabled services play a critical role in developing and growing the broadband ecosystem — which is a key driver of our economy — and that a patchwork of state regulation could severely inhibit this growth.

Today, ***no*** state applies outdated, legacy telephone regulations to IP enabled services, and 24 states have adopted legislation similar to SB 2234 to promote the development of these advanced services.

North Dakota has a well-deserved reputation for attracting high-tech investment to the state and should do so again by adopting this bill — to make clear that IP-enabled services will not be subject to legacy telephone regulations and to promote the economic growth this regulatory certainty would bring.

Champions (for) Business

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www.ndchamber.com

It would be another example of North Dakota's commitment to a business-friendly environment that creates jobs, boosts the state's economy and enables companies to invest in technology.

Simply put, this legislation is good for North Dakota businesses and the health, safety and welfare of its citizens. It is a strong indicator that North Dakota is open for business and companies can thrive and succeed in the state.

Sincerely,

Andy Peterson

Andy Peterson
President & CEO

Sanford Health
Avenue Right
Microsoft
Google
AT&T
Vonage
Von Coalition
Heartland Technology Alliance

(6)

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sanfordhealth.org

SANFORD HEALTH

Testimony
Senate Bill 2234
Interstate, Business and Labor Committee
Monday, Feb. 11, 2013

Chairman Klein and members of the Committee, good morning. My name is Marnie Walth; I am Sanford Health's Innovation Officer. Sanford Health is an integrated health system headquartered in the Dakotas and is now the largest rural, not-for-profit health care system in the nation with locations in 126 communities in eight states. With more than 26,000 employees, Sanford Health is the largest employer in North Dakota and South Dakota.

We're here today to ask the committee to support SB2234. We believe this legislation would encourage investment in our state's broadband infrastructure and give more North Dakotans access to high-quality health care services. High-speed broadband on IP-based networks can help improve rural health care. Today, 28 percent of North Dakotans live in a Health Professionals Shortage Area (HPSA), meaning access to doctors and other health professionals is strained, leaving families at risk for increased incidence of chronic disease and reduced access to preventive care. IP-based networks can help solve this problem.

IP-based networks have the capability to:

- Handle the increased use of telemedicine and the new devices and applications that will help increase access to doctors and treatment centers;
- Provide new tools to monitor patients remotely; and
- Improve data transmission for analysis by medical personnel.

To help make this happen, please consider supporting SB2234. It would give technology-based companies incentive to invest in their wireless broadband networks and broaden the availability of high-quality health care services in North Dakota. Thank you for your consideration.

TESTIMONY IN OPPOSITION TO SB 2234

Senate Industry Business & Labor Committee

February 11, 2013

Good morning Chairman Klein and members of the Senate Industry Business & Labor Committee, my name is Mike McDermott and I am the Executive Director of State Government Affairs for Verizon Communications.

I am appearing before you today to testify in opposition to SB 2234 as introduced. While Verizon generally supports the concept of regulatory certainty for emerging technology, and agrees that preempting state regulation of Internet Protocol-enabled services such as Voice over Internet Protocol ("VoIP") is a good thing, SB 2234 as introduced is not the appropriate method to do so. In fact, it would instead create a "glide path" towards the creation of a new fund, resulting in a **NEW TAX** or **SURCHARGE** on consumers of VoIP services.

Please allow me to explain. North Dakota, today, does not have a state high-cost universal service fund and has rejected attempts to create one in the past. But some in the industry think there should be a high-cost universal service fund. Section 1, paragraph 2 (a) of SB 2234 goes even further than that. It would require that VoIP customers be the first to pay into a new high-cost universal service fund by way of this tax on VoIP services and the North Dakotans that use them. No other technology has a requirement to pay into a fund before it has been created by state law. Not wireless. Not cable. Not even land-line telephones.

This is inconsistent with the basic intent of the bill, which is to maintain the regulatory status quo, provide certainty with regard to the continued non-regulation of IP-enabled services in ND, and keep VoIP free from costly regulation in the future. Such regulatory certainty attracts investment dollars and promotes adoption of new technologies.

VoIP technology is the future platform for new and innovative services and should be free from old telecom taxes and surcharges. SB 2234 should not be manipulated to lay a foundation for the creation of a new fund that would allow certain carriers to collect money from the pockets of VoIP customers.

Should SB 2234 as introduced become law, North Dakota would be the first state to create regulatory certainty regarding VoIP services in one hand, while subjecting VoIP customers to a fee to support a state high cost fund that does not even exist today on the other.

Verizon opposes SB 2234 for this reason, and urges the removal of Section 1, paragraph 2 (a) in order to protect VoIP technology from regulation and VoIP customers from unfair taxes and surcharges. If this language is removed, Verizon would support the legislation.

Unless Section 1, paragraph 2 (a) is removed, please give SB 2234 a DO NOT PASS recommendation.

Thank you.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2234

Page 1, line 12, remove "Any required assessments under any state high-cost universal service fund. If a"

Page 1, remove lines 13 through 15

Page 1, line 16, remove "b."

Page 1, line 17, replace "c." with "b."

Renumber accordingly

(9)

NORTH DAKOTA ASSOCIATION OF
TELECOMMUNICATIONS COOPERATIVES

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SENATE BILL 2234

SENATE INDUSTRY, BUSINESS AND LABOR COMMITTEE

FEBRUARY 11, 2013

DAVID CROTHERS
NORTH DAKOTA ASSOCIATION OF TELECOMMUNICATIONS COOPERATIVES

My name is David Crothers from the North Dakota Association of Telecommunications Cooperatives. The Association represents all of the cooperative and independent telephone companies and approximately 96 percent of the geographic territory of the State.

The Association urges you to reject Senate Bill 2234.

First, the legislation is not needed. Not one of the proponents today is being adversely impacted by existing North Dakota telecommunications law, nor will they suffer harm if this bill is defeated.

Second, the Federal Communications Commission is studying this very issue right now.

Third, the consequences of adopting Senate Bill 2234 aren't fully understood.

Senate Bill 2234 prohibits the State of North Dakota and any of its political subdivisions from adopting statutes, agency rules or municipal codes when a company asserts it is providing Voice

over Internet Protocol (VoIP) services anywhere during the transmission of a call.

Voice over Internet Protocol technology has existed for a number of years, but is becoming increasingly sophisticated both in its capabilities and adoption by customers and telecommunications companies. What once was an option only for large companies is becoming more commonplace for consumers with options such as Skype, FaceTime, Vonage and others. The immediate future of VoIP is telecommunications companies increasingly moving from "time division multiplexing" (TDM) transmission of calls on dedicated circuits to Voice over Internet Protocol (VoIP), which is digital packets randomly traveling any number of pathways but being reassembled at the final destination. VoIP is evolving from being an "application" that a customer uses to being a part of a telecom companies' networks. For example, AT&T has announced that it will be shifting 99 percent of its network from TDM to IP, large cable television companies offering telecom services and rural carriers are increasingly incorporating internet protocol (IP) into the transmission of their voice, video and data traffic.

It should also be noted that VoIP is simply an application. It is a means of transmitting calls. There is not a TDM or traditional telephone network versus a VoIP network. There are not two separate networks. Those calls will all traverse the same wires or fiber optic lines or wireless spectrum, regardless of whether it is VoIP or TDM.

The Association believes Senate Bill 2234 is both bad and unnecessary in North Dakota for several reasons.

First, on November 7, 2012, AT&T announced its "Project Velocity IP" plan. In the initiative, AT&T detailed their plan to spend $8 billion upgrading their wireless networks to 4G and $6 billion on their wire networks. On the same day, November 7th, AT&T went to the Federal Communications Commission with a document titled, "Petition to Launch a Proceeding Concerning the TDM-to-IP Transition".

In that petition, AT&T asks for "trial runs" of the transition from TDM to IP technologies, such as VoIP. In that document AT&T says:

"These trials will help the Commission understand the technological and policy dimensions of the TDM to IP transition and, in the process, identify the regulatory reforms needed to promote consumer interests and preserve private incentives to upgrade America's broadband infrastructure."

But in Senate Bill 2234 there is no concern whatsoever for those issues that AT&T themselves say are critical to determining the appropriate regulatory framework for VoIP. There is no attempt to understand the "policy dimensions" of the transition, there is no identifying of the 'regulatory reforms needed", and there is no effort to "promote consumer interests". Instead, what Senate Bill 2234 offers is the language in the first line, "Notwithstanding any other law…". The legislation, if adopted, will completely preempt any of the State's existing laws unless specifically exempted.

But in establishing a pleading cycle, the Federal Communications Commission went further than just AT&T's petition and paired it with another organization's (NTCA) petition. The second petition acknowledged the "ongoing evolution" from TDM to IP and advocated "smart regulation" of IP service. First, they advocated developing a list of existing regulations that hamper the delivery of IP-enabled services. Second, they recommend seeking comment on which of those regulations should:

1) Be eliminated;

2) Be retained to satisfy the need to protect consumers, promote competition and ensure universal service;

3) Be retained but require modification because of competition, regulatory changes or market conditions;

4) Be expanded if necessary.

The FCC set a deadline of January 28, 2013…two weeks ago today…for parties to submit their comments on the two petitions. Eighty different parties responded with a variety of concerns. The FCC has established a second round of "reply comments", which are due on February 28th of this year.

Second, the rural telecommunications companies have very real concerns about the impact this legislation will have in North Dakota.

While proponents of Senate Bill 2234 include language protecting rural companies' interconnection rights in lines 22 and 23 of the first page of the bill, Verizon, AT&T and others argue in their comments at the FCC that interconnection obligations should not be part of an IP regulatory regime. It would make the protections in SB 2234 meaningless.

They similarly urge Federal preemption of North Dakota jurisdiction over intrastate access rates by arguing that all "IP-enabled services are inherently interstate". What that does is remove Public Service Commission jurisdiction over traffic that moves exclusively within the borders of North Dakota and puts rural carriers and others at a tremendous disadvantage in attempting to negotiate with the large carriers.

Finally, I would like to elaborate on a comment that I made earlier saying that defeating this bill would not negatively impact any of the proponents.

First, AT&T. They offer four services in North Dakota: 1) wireless; 2) long distance; 3) transporting theirs' and others' telecom traffic through the State; and, 4) business enterprise relationships with customers. Not one of those services is regulated by the Public Service Commission today. If Senate Bill 2234 is defeated they still will not have any regulation of the services they provide in North Dakota. Neither will the services provided by Verizon in North Dakota be regulated. None of them.

The Association believes that passage of Senate Bill 2234 is premature. The reason that telecommunications regulation exists

is to protect customers, guarantee fair relationships between companies, and ensure universal service. Adoption of this legislation will endanger all three principals and lead to higher costs for rural North Dakotans.

The North Dakota Association of Telecommunications Cooperatives urges a "Do Not Pass" recommendation on Senate Bill 2234.

NORTH DAKOTA
ASSOCIATION OF TELECOMMUNICATIONS COOPERATIVES

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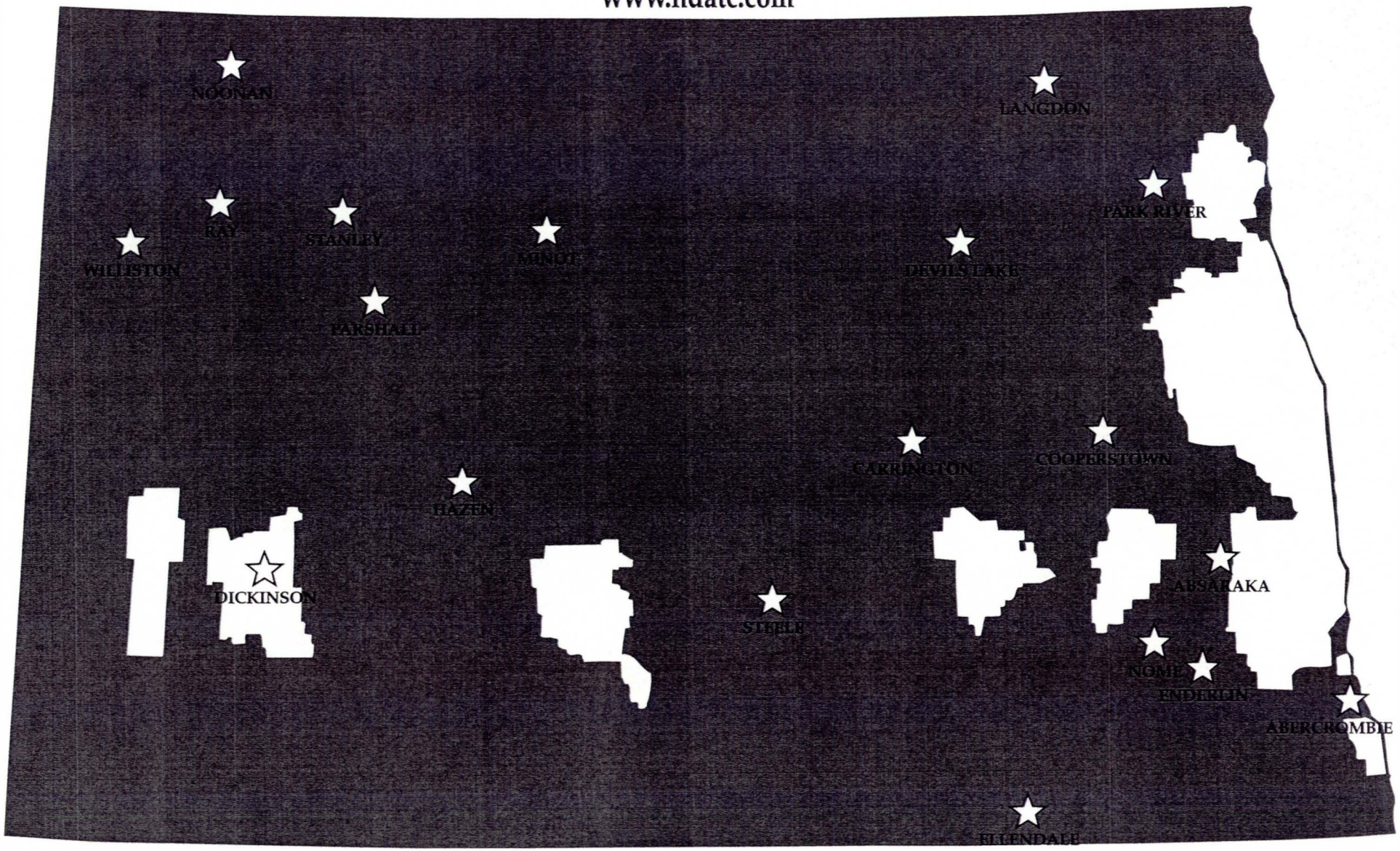

INDEPENDENT TELEPHONE COMPANY TERRITORY IN NORTH DAKOTA

10

NDATC

NORTH DAKOTA ASSOCIATION OF TELECOMMUNICATIONS COOPERATIVES

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DAKOTA CENTRAL TELECOMMUNICATIONS
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DICKEY RURAL TELEPHONE
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INTER-COMMUNITY TELEPHONE COMPANY
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MIDSTATE TELEPHONE COMPANY
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Webs[illegible]w.nemontel.net

THE NORTH DAKOTA RURAL TELEPHONE INDUSTRY

- **High-Speed Internet in 278 North Dakota rural communities.**
- **Independent telcos serve 96 percent of North Dakota's geographic territory.**
- **Over $1.3 billion total investment in local telecom infrastructure.**
- **Over $72 million in payroll for rural residents in 2013.**
- **Over 39,000 miles of fiber optic cable.**
- **$298 million in 2010-2012 construction spending on rural telecom infrastructure.**
- **1100 highly trained and educated employees in rural North Dakota communities.**

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Website: www.gondtc.com

NORTHWEST COMMUNICATIONS
Ray, ND 58849
Mgr: Mike Steffan
Phone: 701-568-3331
Website: www.nccray.com

POLAR COMMUNICATIONS
Park River, ND 58270
Mgr: David Dunning
701-284-7221
Website: www.polarcomm.com

RED RIVER COMMUNICATIONS
Abercrombie, ND 58001
Mgr: Jeff Olson
Phone: 701-553-8309
Website: www.rrt.net

RESERVATION TELEPHONE
Parshall, ND 58770
Mgr: Royce Aslakson
Phone: 701-862-3115
Website: www.rtc.coop

SRT COMMUNICATIONS
Minot, ND 58702
Mgr: Steve Lysne
Phone: 701-858-1200
Website: www.srt.com

UNITED TELEPHONE COOPERATIVE
Langdon, ND 58249
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Website: www.utma.com

WEST RIVER TELECOMMUNICATIONS
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Mgr: Bonnie Krause
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Website: www.westriv.co[illegible]

(11)

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	WC Docket No. 12- ___
AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition	)	

PETITION TO LAUNCH A PROCEEDING CONCERNING THE TDM-TO-IP TRANSITION

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November 7, 2012

TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	WC Docket No. 12-___
	)	
AT&T Petition to Launch a Proceeding	)	
Concerning the TDM-to-IP Transition	)	

PETITION TO LAUNCH A PROCEEDING CONCERNING THE TDM-TO-IP TRANSITION

AT&T respectfully asks the Commission to open a new proceeding to facilitate the "telephone" industry's continued transition from legacy transmission platforms and services to new services based fully on the Internet Protocol ("IP"). Specifically, AT&T asks the Commission to consider conducting, for select wire centers chosen by incumbent local exchange carriers ("ILECs") that elect to participate, trial runs of the transition to next-generation services, including the retirement of time-division multiplexed ("TDM") facilities and offerings and their replacement with IP-based alternatives. These trials will help the Commission understand the technological and policy dimensions of the TDM-to-IP transition and, in the process, identify the regulatory reforms needed to promote consumer interests and preserve private incentives to upgrade America's broadband infrastructure.

INTRODUCTION

With broad bipartisan support, the Commission has made expanding access to robust IP-based technologies the center of its regulatory agenda. Indeed, the Commission has authored a bold and ambitious *National Broadband Plan* that articulates in comprehensive fashion the challenges and opportunities presented by this country's broadband future. That plan

characterizes broadband deployment as "*the* great infrastructure challenge of the early 21st century."[1] At the same time, the *Plan* recognizes that "requiring an incumbent to maintain two networks . . . reduces the incentive for incumbents to deploy" next-generation facilities and "siphon[s] investments away from new networks and services." *National Broadband Plan* at 49, 59. It further recognizes that regulations that "require certain carriers to maintain POTS—a requirement that is not sustainable—[would] lead to investments in assets that could be stranded," and recommends that the Commission initiate a proceeding to "ensure that legacy regulations and services did not become a drag on the transition to a more modern and efficient use of resources." *Id.* at 59. The *Plan* concludes that the Commission should "start considering the necessary elements of this transition in parallel with efforts to accelerate broadband deployment and adoption" in order to "ensure that the transition does not dramatically disrupt communications or make it difficult to achieve certain public policy goals." *Id.* The Commission has taken critical steps to achieve the goals of the *National Broadband Plan* through its reform of universal service and intercarrier compensation in the *ICC/USF Transformation Order*.[2] It should now open a proceeding to take the next steps to "facilitate the transition" away from the legacy TDM-based network to an "all-IP network" that is capable of supporting broadband Internet access, higher-layer VoIP, and other advanced communications services for all Americans.[3]

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1 FCC, *Connecting America: The National Broadband Plan*, at 3 (2010) ("*National Broadband Plan*"), http://www.broadband.gov/.

2 *See generally* Report and Order and Further Notice of Proposed Rulemaking, *Connect America Fund et al.*, 26 FCC Rcd 17663 (2011) ("*USF/ICC Transformation Order*")

3 *Id.* at 17926 ¶ 783; *see also Notice of Proposed Rulemaking, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, FCC No. 12-118, ¶ 2 (rel. Oct. 2, 2012) ("*Incentive Auction NPRM*") (noting desire to "accelerate the transition from circuit-switched to IP networks"); FCC Technology Advisory Council, *Status of Recommendations*, at 11, 15-16 (June 29, 2011) (proposing that the

Although the private sector has invested well over $1 trillion in broadband networks,[4] much remains to be done. As of 2010, roughly 14 million Americans, residing in rural and other high-cost areas where the broadband business case is tenuous at best, still lacked access to a broadband infrastructure capable of supporting today's applications.[5] The Commission took a historic first step toward narrowing this gap in the *ICC/USF Transformation Order*. By redirecting universal service support to broadband, the new regime will enable providers to deliver broadband Internet access and other IP-enabled services to millions of Americans in high-cost areas for which there is no business case for private investment. But even after these reforms, the private sector will continue to bear much of the financial burden for expanding access to IP-based technologies, to the tune of many billions of dollars.[6]

Carriers such as AT&T are stepping up to do their part. In fact, just today, AT&T announced a $6 billion investment plan to expand and upgrade its wireline network to bring robust IP broadband services to millions of additional locations in its legacy footprint. In addition, AT&T plans to invest $8 billion in its wireless network, *inter alia,* to deploy LTE mobile services to cover 300 million people by year-end 2014 and densify its wireless network. Based on the actions the FCC already has taken, AT&T makes this announcement with full confidence that the Commission will continue to implement the *National Broadband Plan's* vision of removing regulatory impediments to efficient, all-IP networks, including obligations

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Commission establish 2018 as a date certain for the "PSTN sunset"), http://transition.fcc.gov/oet/tac/ TACJune2011mtgfullpresentation.pdf.

4 Anna-Maria Kovacs, *U.S. Broadband Deployment: The Glass is 98% Full*, FierceTelecom (Aug. 27, 2012), *available at* http://www.fiercetelecom.com/story/us-broadband-deployment-glass-98-full/2012-08-27.

5 *National Broadband Plan* at 3.

6 *Id.* at 136 (estimating that it will require over $24 billion in additional funding to bring broadband to currently unserved areas, an amount far larger than the Commission's $4 billion universal service budget).

that could require carriers to maintain legacy facilities and services even after they have deployed new, IP-based alternatives.

Other providers are likely contemplating similar investments. But ubiquitous deployment of IP facilities and services is not inevitable. There will be many high-cost areas where the business case for broadband deployment remains highly challenging. And where that case is weakest, the regulatory environment will influence providers' future investment decisions. Consequently, if the Commission hopes to maximize private sector investment to achieve its goals of nationwide broadband, and preventing stranded investment in obsolete facilities and services, it should take further action now to "facilitate the transition" to an "all-IP network."[7] As the Commission understands, converged IP networks are more dynamic, versatile, resilient, and cost-efficient than legacy TDM networks.[8] The prospect of those efficiencies will improve the business case for broadband investment in high-cost areas, especially when providers can avoid the costs and inefficiencies of maintaining duplicative legacy networks once IP networks are enabled. Accordingly, the Commission should act to open a dialogue on these vitally important issues, with the express recognition that a twenty-first-century network will require a twenty-first-century regulatory regime.

The current industry landscape makes it even more critical that the Commission initiate the proceeding outlined here. As discussed below, ILECs have operated at a competitive disadvantage in areas where they are providing traditional TDM-based services, as shown by the

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[7] *USF/ICC Transformation Order*, 26 FCC Rcd at 17926 ¶ 783; *see also Incentive Auction NPRM* ¶ 2 (noting desire to "accelerate the transition from circuit-switched to IP networks"); FCC Technology Advisory Council, *supra* note 2, at 11, 15-16 (proposing that the Commission establish 2018 as a date certain for the "PSTN sunset").

[8] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17978 ¶ 892 (noting that "IP-based softswitches . . . are significantly less costly and more efficient than the TDM-based switches they replace").

many consumers that have switched to wireline and wireless alternatives. And because network costs in this industry decline far more slowly than the number of customers on the network, these competitive pressures have led to skyrocketing per-customer costs, even as per-customer revenues remain constant or decline. Making matters more complicated, the Commission's regulatory reforms, while necessary to achieve the *National Broadband Plan's* goals of getting broadband to all Americans, are transitioning the universal service support that many ILECs have used to fund their legacy networks to broadband enabled infrastructure. In other words, the support to maintain the legacy TDM architecture will not be available for that narrow band technology in the future.

The existing regulatory regime exacerbates these challenges by exposing ILECs to the threat of unique regulatory burdens even after they make the transition to IP-based networks. First, unlike their competitors, ILECs are subject to a variety of federal and state regulations that effectively require them to invest large sums to maintain redundant and costly TDM networks even after they have turned on replacement IP networks. As stated above, the *National Broadband Plan* observed that "requiring an incumbent to maintain two networks . . . reduces the incentive for incumbents to deploy" next-generation facilities, "siphon[s] investments away from new networks and services," and results in significant "stranded" investment. *National Broadband Plan* at 49, 59. At the margins, therefore, legacy regulation could 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 as well.

Second, other rules threaten to reduce ILEC incentives to invest in new or upgraded IP networks by subjecting ILECs, and them alone, to the risk of unique regulatory disadvantages in

their provision of *new* services over *IP* networks as well. As discussed below, these rules are irrational and counterproductive. It makes no sense to treat ILECs as dominant providers in an all-IP broadband marketplace that other providers currently lead.

The Commission has many tools in its toolkit to address these concerns and to manage the transition to an all-IP network infrastructure while protecting consumer interests and investment incentives. This petition identifies potential legal and regulatory impediments to the transition, and encourages the Commission to take a pragmatic and incremental approach to these challenges. In particular, the Commission should open a new proceeding to conduct, for a number of select wire centers, trial runs for a transition from legacy to next-generation services, including the retirement of TDM facilities and offerings. As part of that proceeding, the Commission would invite ILECs to propose individual wire centers for such an experiment and a detailed plan identifying the steps those carriers will take in each wire center to transition from TDM to IP-based facilities and services. Specifically, the plan would identify the modifications each carrier will make to its network to effect the transition, as well as the services it will offer in place of legacy wireline services. And it would supply a timeline for these changes. The Commission also would solicit broad public comment on how best to remove the legal and regulatory impediments to the trial itself and the ultimate transition to all-IP networks and services. The Commission would then implement these trial runs and, within a year of the proceeding's inception, assess the results while considering broader industry-wide reforms.

AT&T believes that this regulatory experiment will show that conventional public-utility-style regulation is no longer necessary or appropriate in the emerging all-IP ecosystem. But the Commission need not prejudge that issue to conclude that the experiment is well worth undertaking. To the extent that any regulation is necessary at all, the experiment will enable the

Commission to consider, from the ground up and on a competitively neutral basis, what, if any, legacy ILEC regulation remains appropriate after the IP transition.

The Commission should launch this proceeding promptly and conduct trial runs of the transitional regulatory framework as soon as possible. The Commission should resist any calls to delay this proceeding merely to accommodate business models favoring legacy technologies. As with the analog-to-digital and 2G-to-3G/4G transitions in the wireless context, a TDM-to-IP transition will require some industry participants to update their business plans or upgrade their own facilities to adjust to industry-wide technological advances.[9] But that is certainly no reason to delay a transition that will bring massive benefits to American consumers.

In short, the time is right for conducting the TDM-to-IP experiment proposed here. Like the Commission, both major political parties have placed broadband policy front and center in their national agendas. The Democratic platform promises to ensure "that America has a 21st century digital infrastructure," including "robust wired and wireless broadband capability."[10] And the Republican platform notes that lack of universal broadband coverage "hurts rural America, where farmers, ranchers, and small business manufacturers need connectivity to expand their customer base and operate in real time with the world's producers."[11] Getting broadband to all Americans is an agenda for which there will be bipartisan support. To begin

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[9] *See* Memorandum Opinion and Order, *Sunset of the Cellular Radiotelephone Service Analog Service Requirement and Related Matters*, 22 FCC Rcd 11243, 11257-64 ¶¶ 28-41 (2007) (refusing to extend the analog sunset date despite claims that some industry participants had insufficient time to upgrade to digital facilities and equipment).

[10] *2012 Democratic National Platform: Moving America Forward* 9 (2012), http://assets.dstatic.org/dnc-platform/2012-National-Platform.pdf.

[11] *2012 Republican Platform: We Believe in America* 24 (2012), http://www.gop.com/wp-content/uploads/2012/08/2012GOPPlatform.pdf.

transforming these aspirations into results, the Commission should act promptly on the incremental reform proposals set forth here.

AT&T'S INVESTMENT IN THE NETWORK OF THE FUTURE

AT&T is already playing a leading role in the transition from legacy, TDM-based services to the all-IP world of the future. Indeed, just today, AT&T announced a $14 billion strategic investment to deploy next-generation services. As explained in greater detail below, this initiative will extend the benefits of robust IP-based services to millions of Americans. AT&T anticipates that other carriers will also invest in next-generation services as each charts its own course away from the TDM-based, circuit-switched network. Especially at the margins, however, many of these future investments will likely be predicated on the expectation that the Commission will follow through on its own promise to "facilitate the transition" away from TDM-based services and permit carriers to seamlessly deploy next-generation services in their place.[12] As the *National Broadband Plan* explains, requiring carriers to maintain outdated services "siphon[s] investment[] away from *new* networks and services," and strands it in obsolete facilities.[13] Such requirements cannot be squared with the Commission's goal of "accelerat[ing] the transition from circuit-switched to IP networks, with voice ultimately one of many applications running over fixed and mobile broadband networks."[14] Below, we describe

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12 *USF/ICC Transformation Order*, 26 FCC Rcd at 17926 ¶ 783; *see also Incentive Auction NPRM* ¶ 2 (noting desire to "accelerate the transition from circuit-switched to IP networks"); FCC Technology Advisory Council, *supra* note 2, at 11, 15-16 (proposing that the Commission establish 2018 as a date certain for the "PSTN sunset").

13 *National Broadband Plan* at 59 (emphasis added).

14 *USF/ICC Transformation Order*, 26 FCC Rcd at 17670 ¶ 11; *see also* FCC Technology Advisory Council, Critical Legacy Transition Working Group, *Sun-setting the PSTN*, at 1 (Sept. 27, 2011) ("Our population is quickly migrating to voice services that are not part of the traditional PSTN, thus negating the assumption, that the current system of PSTN regulation and subsidy can continue to support our social and economic needs as a nation. Examples include:

the additional concrete steps the Commission should take to begin making that goal a reality. But first we outline the important investments that AT&T has announced it will make to hasten the transition to an all-IP future.

As its traditional DSL broadband technology approaches the end of its life cycle, AT&T is planning a $6 billion wireline investment that includes providing higher-speed, IP-based wireline broadband to 57 million customer locations (consumer and small business), representing more than 75 percent of AT&T's wireline footprint. This investment will include expanding U-Verse—AT&T's integrated voice, data, and IPTV platform—by 8.5 million additional customer locations, for a total potential U-verse market of nearly 33 million customer locations. This expansion is expected to be complete by year-end 2015. AT&T will also plan to offer U-verse IPDSLAM service (high-speed IP Internet access) to nearly 24 million customer locations in its wireline service area .

At the same time, AT&T plans to invest $8 billion in wireless network initiatives, including, but not limited to, expanding LTE deployment to reach 300 million people, by year-end 2014. As part of that initiative, AT&T will offer wireless communications alternatives to customers living in particularly high-cost areas. These alternatives will include AT&T's innovative Mobile Premises Services, which allows customers to make calls using ordinary wireline handsets connected to wireless base stations. Together with the wireline expansion and upgrades described above, AT&T's investments are projected to extend high-quality IP-based broadband services to 99 percent of all customer locations within AT&T's wireline service area.

In sum, AT&T's investment marks a key milestone in achieving the Commission's goal of bringing next-generation IP-based services to Americans who currently lack them. But future

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3G and 4G cellular; VoIP; over the top services such as Skype; and many others."), http://transition.fcc.gov/oet/tac/tacdocs/meeting92711/Sun-Setting_the__Paper_V03.docx.

investments are not inevitable. The regulatory environment influences providers' investment decisions, and it matters today more than ever. This petition proposes a series of concrete, pragmatic steps the Commission can take to encourage additional carrier investment in next-generation services.

DISCUSSION

I. ILECs Are Subject to Disproportionate Regulatory Burdens Even Though They Are No Longer Dominant in Any Relevant Market

ILECs remain subject to an array of monopoly-era regulatory obligations. As explained below in Part II, those obligations hinder carriers' ability to retire their legacy TDM networks and transition to all-IP networks. What is more, they apply only to ILECs, imposing a disparate regulatory burden that cannot be justified in today's competitive marketplace.

The recent past has seen dramatic changes in the communications industry. ILECs are at a competitive disadvantage to cable and wireless with their legacy, TDM-based offerings, as shown by the many customers that have switched to such alternatives. Meanwhile, carriers' network costs are declining far more slowly than their number of customers. Customers are abandoning obsolescent TDM services, but AT&T and other incumbent carriers still must be prepared to serve every household in their service territories on demand. Thus, the costs of maintaining those networks remain in place, and every loss of another customer increases the average cost per line of serving the customers that remain.[15] Compounding these challenges, many of the lines that ILECs have lost were the source of implicit subsidies that traditionally underwrote affordable service for the remaining customers. And at the same time, the

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[15] *See, e.g.*, Fourteenth Report & Order, *Federal-State Joint Board on Universal Service*, 16 FCC Rcd 11244, 11326 ¶ 207 (2001) ("[A]s an incumbent loses lines to a [competitor], the incumbent must recover its fixed costs from fewer lines, thus increasing its per-line costs.") (internal quotation marks omitted).

Commission has begun to eliminate the universal service support allocated to TDM-based services and is redirecting it to broadband services.[16]

The path forward is clear: ILECs must be able to retire their obsolete TDM-centric networks and invest in IP broadband facilities and services that will enable them to offer consumers more robust competitive alternatives. As detailed below, however, certain legacy rules effectively require ILECs to maintain their TDM networks except where they can obtain relief through lengthy, onerous, and piecemeal regulatory procedures. And every dollar spent on those networks is another dollar stranded in obsolete facilities and services, and which cannot be invested in deployment of next-generation services. Meanwhile, the ILECs' competitors face no such regulatory impediments to transitioning from legacy to IP technologies.

Indeed, one of the great ironies of twenty-first-century telecommunications policy is that the Commission persists in treating ILECs as though they were still monopolists even though, in today's convergent broadband environment, they have been steadily losing ground to cable and wireless operators. In the next section, we canvass the legacy requirements that place ILECs at a regulatory disadvantage and explain why they reduce ILEC incentives to upgrade their networks to robust, all-IP platforms. Then, in Section III, we propose an incremental solution for regulatory reform, under which the Commission would establish trial runs in select wire centers to assess the regulatory and other dimensions of the TDM-to-IP transition.

II. TWENTIETH CENTURY REGULATORY OBLIGATIONS NEED TO BE ELIMINATED TO ALLOW A TRANSITION TO TWENTY-FIRST CENTURY NETWORKS AND SERVICES

The *National Broadband Plan* correctly identifies one of the main obstacles to broadband investment by wireline telephone companies: continuing regulatory obligations that effectively require carriers to keep legacy TDM networks in-place even after they have upgraded to all-IP

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[16] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17672-74 ¶¶ 17-25.

networks. As the *Plan* explains (at 49), "requiring an incumbent to maintain two networks" is "costly, possibly inefficient and reduces the incentive for incumbents to deploy" next-generation facilities. And regulations that "require certain carriers to maintain POTS—a requirement that is not sustainable . . . lead to investments in assets that could be stranded. These regulations can have a number of unintended consequences, including siphoning investments away from new networks and services." *Id.* at 59.

Maintaining a legacy TDM network—with its local, regional, and national infrastructure and back-office support systems—is an immensely expensive proposition. By one estimate, ILECs collectively have devoted approximately half of their wireline capital expenditures in recent years to the upkeep of their legacy networks.[17] In other words, an enormous percentage of ILEC capital resources are directed not towards bringing broadband to more customers, or upgrading to more efficient IP networks and services to offer a more robust competitive alternative to cable, but rather towards maintaining increasingly obsolete technologies that can no longer deliver what American consumers and policymakers demand. On the flipside, allowing carriers to retire legacy TDM-based services and networks would allow those carriers to free up billions of dollars to invest in next-generation IP services. The less regulatory uncertainty a provider faces about the application of legacy regulatory burdens to next-generation IP services, the greater the incentive it will have to build a platform to support those services. In this Section, we canvass these and related sources of investment-deterring regulatory uncertainty.

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[17] Robert C. Atkinson & Ivy E. Schultz, Columbia Inst. For Tele-Info., *Broadband in America: Where It Is and Where It Is Going*, at 29-30 (Nov. 11, 2009), http://www.broadband.gov/docs/Broadband_in_America.pdf.

Section 214 discontinuance requirements. Section 214 provides that "[n]o carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby." 47 U.S.C. § 214(a). As an initial matter, AT&T believes that this provision is simply inapplicable where a carrier transitions from legacy TDM-based services to superior IP-based ones; in such circumstances, a provider does not "discontinue, reduce, or impair service to a community" within the meaning of section 214(a).[18] When a carrier upgrades to IP services, consumers receive all the essential functionalities as before, plus additional functionalities that can only benefit them, and substituting a superior new service for a lesser-included legacy service can hardly be said to "discontinue, reduce, or impair service." But the Commission has not yet confirmed that it agrees. And if it disagrees, section 214 would require a carrier to ask for Commission approval in each individual area where it wishes to upgrade to an all-IP platform and for each legacy interstate TDM service it seeks to replace with an IP-based substitute. The prospect of such piecemeal relief, rife with delay and regulatory uncertainty, is a deterrent to investment.

This set of concerns is currently pending before the Commission in a forbearance petition filed by USTelecom in February 2012, which seeks relief from section 214 and its implementing regulations to the extent, if any, that they require Commission approval before a provider may discontinue legacy interstate TDM offerings and replace them with IP-based alternatives.[19] As

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[18] *See* Reply Comments of AT&T, *Petition of USTelecom For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain Legacy Telecommunications Regulations*, WC Docket No. 12-61, at 7-9 (filed Apr. 24, 2012) ("*AT&T USTelecom Petition Comments*").

[19] *See* Petition of USTelecom, *Petition of USTelecom For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain Legacy Telecommunications Regulations*, WC Docket No. 12-61, at 59-63 (filed Feb. 16, 2012) ("*USTelecom Forbearance Petition*").

AT&T has explained in that proceeding, the Commission should grant the requested relief.[20] Here we review the issue mainly to address the anti-investment consequences of any uncertainty about the inapplicability of section 214 in this context.

As AT&T and others have explained, requiring section 214 approvals in these circumstances—where an ILEC wishes to upgrade from legacy TDM networks to next-generation IP networks—would inject delay and uncertainty into the process and could deter carriers from making that upgrade in the first place.[21] In practice, there is typically a delay, sometimes substantial, after a carrier submits a section 214 application and before the Commission issues the public notice that starts the 60-day clock for automatic grants of section 214 applications by dominant carriers. And the Commission can suspend the automatic grant of any such application at will. *See* 47 C.F.R. § 63.71(c). Thus, when ILECs consider investing in next-generation infrastructure in particular areas, they face uncertainty about when and if the Commission will authorize them to discontinue costly and redundant TDM networks they no longer wish to use in those same areas, and that uncertainty can undermine investment incentives.

Section 214 requirements are not only obstacles to a timely TDM-to-IP transition, but also unnecessary to fulfill the purposes of section 214. As AT&T has previously explained, there is simply no need for section 214 approval where a carrier seeks to *replace* legacy interstate TDM services with alternative services.[22] The historic purpose for section 214 approval was to ensure that the public was not left without adequate communications service. That historical purpose is doubly inapplicable where, as would be the case here, (1) consumers can choose

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20 *See AT&T USTelecom Petition Comments* at 6-19.

21 *See id.* at 17-18; *USTelecom Forbearance Petition* at 62; *see also* Comments of Verizon, *Petition of USTelecom For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain Legacy Telecommunications Regulations*, WC Docket No. 12-61, at 8 (filed Apr. 9, 2012).

22 *AT&T USTelecom Petition Comments* at 6-10.

among an array of competitive alternatives to an ILEC's services, and (2) even the wireline incumbent is not exiting the market but is simply replacing a legacy service with an alternative service.

Notice-of-network-change rules. AT&T also supports USTelecom's related request for forbearance from the Commission's short-term notice-of-network-change rules to the extent they require the Commission to give duplicative notice to (previously notified) carriers affected by network changes before the clock for objections may start running.[23] The Commission's current rules require ILECs to provide notice to other carriers and the Commission before making certain "short-term" network changes. *See* 47 C.F.R. §§ 51.325(a), 51.333. Although interconnecting carriers may object to the *timing* of a short-term change, they cannot block it; instead, their only potential remedy is a delay (of no more than six months) to enable them to adapt their own networks. *Id.* § 51.333(c)(3)-(f). Under existing rules, the period for filing such timing objections is triggered not by notice to the affected carriers, but by the Commission's issuance of a Public Notice about the network change. *Id.* § 51.333(b), (c). This makes no sense. Instead, the clock for objections should begin to run immediately after a carrier receives formal notice from the ILEC. There is no need to wait for a redundant Public Notice from the Commission—a process that can (and often does) take months. Like section 214, such requirements are an unnecessary source of delay and investment-deterring uncertainty.

Federal and state service-obligation rules. State public utility commissions have traditionally imposed service obligations that require ILECs to provide on demand telecommunications services to all customers in a given geographic area, often at regulated rates, regardless of how many actually subscribe to those services. Legacy federal ETC rules create

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[23] *See id.* at 19-21; *USTelecom Forbearance Petition* at 56-59.

similar obligations. Importantly, these obligations come with no assurance that a carrier will receive any, much less sufficient, universal service support or other revenues to fulfill those service obligations.[24] And they, too, stifle investment in all-IP infrastructure.

In many states, legacy service obligations effectively preclude retirement of the TDM-based network, thereby requiring providers to maintain both legacy TDM and IP facilities. Many such obligations are defined by reference to a particular service or network architecture or include requirements that presume a carrier uses TDM technology.[25] This in effect requires a carrier to maintain a TDM network in the areas where such obligations apply, forcing ILECs to spend scarce capital dollars (which could be used to upgrade their networks to IP) to maintain an obsolete voice-centric network that customers are abandoning in droves. Again, maintaining both a TDM-based *and* an IP-based network is economically wasteful and exorbitantly expensive, and the threat of that outcome reduces carriers' financial incentives to invest in new, IP-based networks and services. These legacy service obligations therefore deter broadband investment.

The threat that regulators will impose even IP-oriented (but provider-specific) service requirements also can discourage ILEC investment in all-IP networks. For example, such requirements may be accompanied by price regulation. And it is well established that price regulation both undermines investment incentives (by limiting cost-recovery in potentially unforeseeable ways) and distorts competition with unregulated rivals.[26] The same would be true

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[24] *See generally* Comments of AT&T, *Connect America Fund et al.*, WC Docket Nos. 10-90 *et al.*, at 55-61 (filed Apr. 18, 2011) ("*AT&T April 18, 2011 Comments*").

[25] *See id.* at 56 (citing state laws requiring providers to offer local dial tone service, rotary pulse dialing operability, dual-tone multi-frequency signaling, single-party service, SS7 signaling, and single-party revertive calling and federal requirements regarding access to interexchange service and access to operator and directory services).

[26] *See* Report and Order and Further Notice of Proposed Rulemaking, *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, 22 FCC Rcd 15817, 15832-33 ¶¶ 39-40 (2007) (agreeing "with concerns raised in the record that rate regulation has

of other service-performance obligations—such as a requirement that ETCs provide standalone voice service—that have the effect of raising the cost of service and thus threaten the business case for additional investment in IP networks and services. What is more, these investment-deterring service obligations would provide little countervailing benefit to consumers, who can almost always choose from several different voice service providers.

For all of these reasons, AT&T has proposed that the Commission shift to a rational procurement model for ensuring universal service.[27] Under that model, compulsory service requirements would be abolished, and the sole purpose of designating a provider as an ETC would be to allow it, once it chooses to undertake voluntary service commitments in clearly defined areas, to receive the universal service funding necessary to provide supported services in those areas. Indeed, AT&T believes that this is the only lawful option for the future. As AT&T has detailed in other filings, the Commission cannot reasonably, or indeed legally, maintain its

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the potential to distort carriers' incentives and behavior with regard to pricing and investment in network buildout"); Report and Order and Notice of Proposed Rulemaking, *Appropriate Framework for Broadband Access to the Internet Over Wireless Facilities et al.*, 20 FCC Rcd 14853, 14878 ¶ 45 (2005) ("[W]e believe that we should regulate like services in a similar manner so that all potential investors in broadband network platforms, and not just a particular group of investors, are able to make market-based, rather than regulatory-driven, investment and deployment decisions."); Memorandum Opinion, *Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minn. Pub. Utils. Comm'n*, 19 FCC Rcd 22404, 22417 ¶ 21 (2004) ("*Vonage Order*") (information services should be allowed to "burgeon and flourish" free from economic regulation), *aff'd Minnesota Pub. Utils. Comm'n v. FCC*, 483 F.3d 570 (8th Cir. 2007); First Report and Order, *Price Cap Performance Review for Local Exchange Carriers*, 10 FCC Rcd 8961, 8989 ¶ 64 (1995) ("competition can be expected to carry out the purposes of the Communications Act more assuredly than regulation" ever could, and regulation is therefore appropriate "only where and to the extent that competition remain[s] absent in the marketplace").

[27] *See, e.g.*, Comments of AT&T, *Connect America Fund et al.*, WC Docket Nos. 10-90 *et al.*, at 3-9 (filed Feb. 9, 2012) ("*AT&T Feb. 9, 2012 Comments*"); Letter from Heather Zachary, Counsel to AT&T, to Marlene H. Dortch, FCC, WC Docket Nos. 10-90 *et al.* (filed Oct. 19, 2011) ("*AT&T Oct. 19, 2011 Letter*"); *AT&T April 18, 2011 Comments* at 54-82.

ETC rules in their current, often compulsory form, given the dramatic changes that it made to the universal service regime in the *USF/ICC Transformation Order*.[28]

Regulatory status of IP-enabled services. As AT&T previously has explained, IP-enabled services, including all VoIP services, are appropriately classified as interstate information services over which the Commission has exclusive jurisdiction.[29] But some CLECs and state regulators continue to attempt to assert state jurisdiction over such services, although none exists. Completing action in the IP-enabled services proceeding would put an end to such claims and drive additional investment by providers.

Remaining "equal access" obligations. These obligations, derived from the AT&T consent decree, were designed to facilitate a world in which "local" and "long-distance" services were strictly separated, and their continued application perpetuates an outdated business model in which a carrier arbitrarily and inefficiently segregates its service offerings into "local" and

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[28] *See AT&T Feb. 9, 2012 Comments* at 3-5; *see also AT&T Oct. 19, 2011 Letter* at 2-3. First, by definition, the purpose of the "eligible telecommunications carrier" designation is to identify those carriers that are, in fact, *eligible* to receive universal service funding. As 47 U.S.C. § 214(e)(1) directs, a "common carrier designated as an eligible telecommunications carrier . . . *shall be eligible to receive universal service support*." But the new CAF regime will entitle just *one* provider to qualify for support in a given area in exchange for offering both legacy services *and* broadband. Under this new framework, many existing ETCs will not in fact be *eligible* to receive universal service funding and, in fact, will be categorically barred from receiving it. Given this, only the CAF recipient should be designated as an ETC in a particular area. Second, many ETCs will lose their existing universal service funding under the new regime. Some carriers depend heavily on that support to offset the high costs of providing service in funded areas, and the Commission cannot rationally compel these carriers to continue providing service at a loss after it withdraws that support. Indeed, such an unfunded mandate would violate section 254, which requires the Commission to design its universal service programs so that support is "sufficient" to enable providers to offer the services deemed "universal." 47 U.S.C. § 254(b)(5), (e), (f). Finally, the Commission could not lawfully force any ETC, whether funded today or not, to continue providing service in any high-cost area where it is not the CAF recipient. Forcing an unsupported competitor to provide service at a loss in competition with a CAF recipient would violate both the Takings Clause and section 254's mandate that universal service policies be "equitable and nondiscriminatory." *Id.* § 254(b)(4), (d), (f). Such a service obligation would also violate the Commission's well-established principle of "competitive neutrality."

[29] *See AT&T April 18, 2011 Comments* at 26-30.

"long-distance" components.[30] Consumers now overwhelmingly demand all-distance services, and carriers and other service providers should not be forced to segregate those services into separate inter- and intrastate components merely to preserve state regulatory authority. Moreover, providers of IP-based services may be unable, as a practical matter, to comply with such obligations, and continued uncertainty regarding their application deters IP investment.

Dialing parity. "Dialing parity" is a subset of the equal access obligations and is independently applicable to LECs through section 251(b) and the Commission's implementing regulations.[31] Continued application of the legacy dialing parity rules—which generally require a LEC to offer its local customers the opportunity to preselect a specific long-distance provider—is unnecessary and incompatible with a transition to all-IP networks.

Legacy copper loop requirements. In the "hybrid loop" context, where an ILEC retains copper in distribution facilities but upgrades to fiber-optic technology in feeder facilities, current Commission rules require ILECs either to maintain access to the otherwise unused copper infrastructure in the feeder or to provide a non-packetized transmission path between the central office and the customer's premises.[32] This in effect arguably requires an ILEC to maintain either two redundant sets of loop facilities (copper and fiber) or two redundant network technologies (TDM and IP). That requirement, too, can impair the business case for building more fiber in the feeder and upgrading to all-IP networks.

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30 *See* Comments of AT&T, *Connect America Fund et al.*, WC Docket Nos. 10-90 *et al.*, at 72-74 (filed Feb. 24, 2012).

31 *See* 47 U.S.C. § 251(b)(3); 47 C.F.R. § 51.209.

32 *See* Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers et al.*, 18 FCC Rcd 16978, 17153-54 ¶ 296 (2003).

The above discussion is not intended as a comprehensive list of the outdated regulations that create disincentives for broader investment in next-generation network architectures and result in an inefficient allocation of scarce investment dollars. Other residual obligations may have the same effects by requiring carriers to maintain TDM functionality in their networks, including requirements related to ONA/CEI, record-keeping, accounting, guidebooks, payphones, and data collection. And other legacy rules raise the specter of monopoly-style regulation even of replacement IP networks. The Commission could use the regulatory proceeding described below to identify such rules and, in the trial wire centers, could either forbear from their application or waive them as appropriate.

III. THE COMMISSION SHOULD OPEN A RULEMAKING PROCEEDING TO CONDUCT TRIAL RUNS FOR REGULATORY REFORM IN DISCRETE WIRE CENTERS

AT&T recognizes that the Commission may wish to proceed incrementally before eliminating, on a nationwide basis, all of the counterproductive regulatory burdens discussed above. Accordingly, AT&T proposes that the Commission open a proceeding to consider implementing a number of geographically limited trial runs that will help guide the Commission's nationwide efforts to facilitate the IP transition.

In its notice launching the proposed new proceeding, the Commission should elicit prompt proposals from ILECs for specific wire centers to use as part of this experiment, as well as detailed plans for conducting trials in those wire centers. Those plans should identify both the network modifications that will be necessary to transition from the legacy TDM network to IP technologies and the services carriers will offer in place of legacy wireline services. The plans should also specify the steps participating carriers will take to notify customers (including both retail and wholesale customers) of these changes and to transition them to replacement services. And they should include a timeline laying out when each of these steps will occur. The specific

steps necessary to effect the transition, and the services that will be offered in place of legacy wireline services, may vary depending on geographic and other factors (e.g., terrain, population density, and the plant in the ground).

In its notice, the Commission should also seek public comment on how best to implement specific regulatory reforms within those wire centers on a trial basis. The following summarizes how AT&T currently envisions the geographically limited reforms that would be part of these trials. Other carriers would of course be able to share their own views as part of the new proceeding.

First, the Commission would eliminate, within the trial wire centers, outdated "telephone company" regulations that may require carriers to maintain legacy TDM-based networks and services even after replacement services are in place. For example, the Commission would make clear that providers need not obtain section 214 approval from the Commission or similar approval from state authorities in order to replace TDM services with alternatives.

Second, to the extent VoIP replaces legacy circuit-switched telephony in the trial wire centers, the Commission would preclude carriers (including carrier customers) from demanding service or interconnection in TDM format in those wire centers. Hence, as VoIP replaces legacy circuit-switched telephony, no carrier would be required to provide TDM-based dedicated transmission services, which would be replaced by Ethernet or other IP services. Carriers would also have no right to demand TDM-based interconnection or services, including TDM-based tandem transit services or SS7-based signaling.

Third, in the trial wire centers, the Commission would also implement reforms to facilitate the migration of end-user customers from legacy to next-generation services. Although the telecommunications ecosystem is moving quickly to an all-IP environment, many millions of

consumers remain on TDM-based networks. And as the transition continues apace in the trial wire centers, the Commission would implement reforms designed to prevent a few customers from delaying that transition, as happened in the transition from analog to digital television and in the sunset of analog cellular services. In particular, the Commission would permit service providers to notify customers that such service providers will no longer provide them legacy services once the legacy TDM network is retired. Under this approach, customers would of course be given sufficient opportunity to establish alternative arrangements. Alternatively, if the Commission is concerned that non-migrating customers will be cut off (even temporarily) from service, it could allow those customers' existing service providers to switch them to an alternative service at the time of the technological transition.

As AT&T envisions these trial runs, the Commission would also keep IP services free of legacy regulation so that the trial may proceed without the distorting and investment-chilling effects of such regulations. As noted, AT&T believes that this regulatory experiment will show that conventional public-utility-style regulation is no longer necessary or appropriate in the emerging all-IP ecosystem. But, at a minimum, the experiment will enable the Commission to consider, from the ground up and on a competitively neutral basis, what, if any, legacy regulation remains appropriate after the IP transition. Such an approach would be far more conducive to new investment than simply carrying over regulations that were devised for different technology in a different industry.

Finally, the Commission has ample legal authority under its waiver and forbearance powers to conduct these geographically limited trial runs. Congress explicitly authorized the Commission to forbear from applying any legal provision "to a telecommunications carrier ... in any or some of its ... geographic markets." 47 U.S.C. § 160(a). Additionally, the Commission

may waive its rules in the areas identified, because "special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest."[33] The Commission also has clear authority to preempt any state regulatory obligations that would interfere with these experiments or subvert the most important objective on the Commission's agenda: a smooth and rapid transition to the all-IP broadband environment of tomorrow.[34]

CONCLUSION

The legacy telephone network has provided high-quality voice service to American consumers for more than a hundred years. But that legacy infrastructure will inevitably give way to more robust and efficient IP alternatives; the only questions are how to implement that transition and how soon consumers will reap its benefits. The Commission should answer those questions through the proceeding described in this petition. That proceeding will enable the Commission to facilitate an industry-wide dialogue on the appropriate regulatory framework for the transition and to test that framework in geographically limited trial runs. The lessons learned from those trials will prove invaluable as the Commission fashions nationwide reforms intended to promote consumer interests and preserve private incentives to invest in IP technologies.

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[33] Report and Order and Memorandum Opinion and Order, *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements et al.*, 22 FCC Rcd 16440, 16483-84 ¶ 88 n.256 (2007); *see generally* 47 C.F.R. § 1.3.

[34] *See generally Vonage Order*, 20 FCC Rcd 14853; *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 376 n.4 (1986).

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November 7, 2012

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

In the Matter of	)	
	)	
Petition of the National	)	RM -_____
Telecommunications Cooperative	)	
Association for a Rulemaking to Promote	)	
and Sustain the Ongoing TDM-to-IP	)	
Evolution	)	

PETITION OF THE NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION FOR A RULEMAKING TO PROMOTE AND SUSTAIN THE ONGOING TDM-TO-IP EVOLUTION

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Dated: November 19, 2012

TABLE OF CONTENTS

SUMMARY

The National Telecommunications Cooperative Association hereby petitions the Federal Communications Commission (the "Commission") to initiate a rulemaking to examine means of promoting and sustaining the ongoing evolution of the Public Switched Telephone Network from a Time-Division Multiplexing ("TDM")-based platform to an Internet Protocol ("IP")-based infrastructure through targeted regulatory relief and the establishment of tailored near-term economic incentives.

The fundamental need of all Americans for affordable access to high-quality communications is independent of the technology used within the networks that connect them. The challenge facing industry and policy-makers concerns the development of a proper path by which to promote and, more importantly, sustain the *already-ongoing* IP evolution in a manner consistent with the core statutory objectives of protecting consumers, promoting competition, and ensuring universal service. In considering this challenge, it is useful to analogize the current regulatory construct to a foundation that is suspected of having some cracks. Within the range of ways by which to consider whether such cracks exist and how to address them, one can plot three fundamental approaches: (1) tear the foundation down; (2) examine the bricks and repair or replace them as needed; or (3) leave the foundation standing without change and hope that it holds.

The first option would effectively take a "sledgehammer" to the regulatory foundation, using (re)classification, forbearance, and/or preemption to discard, or depart almost entirely from, the statutory framework and the regulatory framework developed thereunder. It is unclear, however, whether such an experimental and sweeping "sledgehammer" approach can satisfy the statutory cornerstones of consumer protection, competition, and universal service. Moreover, if

one proposes that regulatory oversight stifles investment, the uncertainty of a regulatory vacuum and a lack of clear "ground rules" are likely to stifle investment even more.

On the other end of the range, regulators could simply hope the foundation will hold and continue to mechanically apply every current regulation "as is" in an IP-enabled world. But such an approach would fail to assess whether the regulatory foundation is built in the right way to fulfill the core statutory objectives in an evolving environment.

This Petition therefore recommends a more balanced approach of "smart regulation" that examines what has worked (or not) in protecting consumers, promoting competition, and ensuring universal service. After this review, the Commission can consider what from that framework should be kept, discarded, or modified as the IP migration continues. In other words, the Commission should maintain certainty by retaining and reasserting the clear regulatory foundation, while coordinating with state counterparts to examine each brick for potential replacement, repair, or removal. Specific steps the Commission should take are as follows:

(1) Develop a list of specific existing regulations that may have limited or no applicability in the delivery of IP-enabled services (or even with respect to TDM-based services) because of technological change, competitive forces, or other regulatory, market, or economic developments;

(2) Seek comment on which of the identified regulations: (a) might be eliminated for the specific purpose of enhancing the ongoing migration of networks from TDM-based to IP-based platforms while also furthering the statutory cornerstones of protecting consumers, promoting competition, and ensuring universal service; (b) might be retained in current form to satisfy the statutory cornerstones of protecting consumers, promoting competition, and ensuring universal service; and (c) might be retained but require modification in specifically defined ways (or might need to be replaced or supplemented by specific new regulations) to further the evolution of IP-enabled networks while serving the core statutory objectives of protecting consumers, promoting competition, and ensuring universal service; and

(3) Set a firm but reasonable deadline to complete this comprehensive, but granular, "refreshing" of the governing regulatory framework such that the evolution of IP-enabled networks can be sustained.

A rulemaking that pursues such a balanced course will promote regulatory certainty and the core statutory objectives. Moreover, it will signal clearly to lenders, investors, and operators that the existing foundation will be subject to thoughtful examination and targeted changes. A "smart regulation" approach acknowledges that an IP migration is not to be encouraged for its own sake, but precisely because IP-enabled networks are presumed to – and must – promote more affordable access to higher-quality communications services for all Americans.

The Commission should pair such a "smart regulation" review with targeted, carefully calibrated nearer-term economic incentives to prompt investment in IP-enabled infrastructure. For example, one way the Commission could accelerate the continuing IP evolution in the near-term would be to: (a) confirm that *all* interconnection for the exchange of traffic subject to sections 251 and 252 is governed by the Communications Act of 1934, as amended (the "Act"), regardless of the technology used to achieve such interconnection; and (b) provide carriers with an incentive to offer IP interconnection by allowing them to recover through rates developed pursuant to the Act the costs of exchanging traffic through such interconnects. Such an "incentive-based" approach would reward carriers that seize the opportunity to invest in IP-enabled interconnections. Another measure the Commission should pursue in short order is providing small rural local exchange carriers with sufficient and predictable universal service support regardless of whether a customer purchases regulated "plain old telephone service." Today, if a consumer buys regulated voice and broadband, the network is eligible for universal service support – but if the same consumer decides to take only broadband, the infrastructure is no longer eligible for universal service support under current rules. This denial of universal service support defies consumer preference and makes no sense in a regulatory regime that purports to promote the deployment and adoption of broadband and IP-enabled networks.

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

In the Matter of	)	
	)	
Petition of the National	)	RM -_____
Telecommunications Cooperative	)	
Association for a Rulemaking to Promote	)	
and Sustain the Ongoing TDM-to-IP	)	
Evolution	)	

PETITION OF THE NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION FOR A RULEMAKING TO PROMOTE AND SUSTAIN THE ONGOING TDM-TO-IP EVOLUTION

Pursuant to section 1.401 of the rules of the Federal Communications Commission (the "Commission"), 47 C.F.R. § 1.401, and in accordance with sections 1, 201, 202, 251, 252, and 254 of the Communications Act, as amended (the "Act"), 47 U.S.C. §§ 151, 201, 202, 251, 252, and 254, the National Telecommunications Cooperative Association ("NTCA")[1] respectfully petitions the Commission to initiate a rulemaking to examine means of promoting and sustaining the ongoing evolution of the Public Switched Telephone Network ("PSTN") from a Time-Division Multiplexing-based platform[2] to an Internet Protocol-based infrastructure[3] through

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[1] NTCA is an industry association representing nearly 600 network service operators across rural America. All of NTCA's members provide voice and broadband services, and many of its members also provide video, satellite, wireless, and other communications-related services to their communities. Each member is a small business and also a "rural telephone company" as defined in the Act. NTCA's members are dedicated to providing competitive modern telecommunications services and advancing the economic future of their rural communities.

[2] *See* Professor David Gabel and Steven Burns, *The Transition from the Legacy Public Switched Telephone Network to Modern Technologies*, National Regulatory Research Institute Report No. 12-12, October 2012 ("*NRRI Transition Report*"), at n. 1. ("Time-division multiplexing (TDM) is a type of multiplexing in which two or more voice signals are transmitted over a single circuit by taking turns in individual time slots created on that circuit.")

targeted, thoughtful regulatory relief and the establishment of more appropriate near-term economic incentives.

I. INTRODUCTION

The PSTN is sometimes portrayed as a distinct network composed of legacy, increasingly antiquated components that are uniquely and singularly TDM-based in nature. Those who view the PSTN in such a light have predicted urgently the "death of the PSTN."[4] As Mark Twain might have put it, however, "reports of the death of the PSTN are greatly exaggerated." Rather, what is occurring already and should be promoted and sustained is an *evolution* of the PSTN – a technology shift *within* a network (or, really, a series of interconnected networks) that already enables essential, state-of-the-art communications among all American businesses and consumers. Circuit switching is already shifting to packet routing (such that it could perhaps better be said that we are moving toward a "PRCN" or a "Public Routed Communications Network"), and end-user devices have already been evolving rapidly from plain-old telephones to smarter devices of all kinds.

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[3] *See id.* at n. 2. ("Internet Protocol (IP) is a packet-switched technology where information is broken up into packets that are transmitted individually and can take different routes to their common destination.")

[4] *See, e.g.,* Paula Bernier, *ITEXPO Panel Explores the Death of the PSTN*, TMCnet, Sept. 13, 2011, available at: http://www.tmcnet.com/topics/articles/217849-itexpo-panel-explores-death-the-pstn.htm; Peter Bernstein, *The Death of the Public Switched Telephone Network (PSTN)*, TMCnet.com, July 6, 2011, available at: http://www.tmcnet.com/topics/articles/193844-death-the-public-switched-telephone-network-pstn.htm; Mike Dolan, *AT&T to FCC – Kill the PSTN*, Fierce Enterprise Communications, Jan. 30, 2010, available at: http://www.fierceenterprisecommunications.com/story/t-fcc-kill-pstn/2010-01-03; Tony Bradley, *AT&T Tells FCC It's Time to Cut the Cord*, PC World, Dec. 30, 2009, available at: http://www.pcworld.com/article/185649/ATT_Tells_FCC_Its_Time_to_Cut_the_Cord.html

NTCA members and other small carriers have a strong interest in ensuring that this ongoing IP evolution is a near- and long-term success. These carriers have not stood idly while the IP evolution hurtles past them. To the contrary, these small carriers have been at the forefront of this evolution, leveraging entrepreneurship, private capital, universal service support, intercarrier compensation, sound working partnerships with federal and state regulators, and a commitment to the high-cost communities they serve to make responsible and "commendable" progress thus far in deploying broadband-capable networks and cutting-edge, IP-enabled switching/routing platforms.[5] As of December 2010, small rural carriers had deployed broadband to over 92 percent of their customers, and more than half of these carriers had either already deployed or had plans to deploy softswitches by the end of 2011.[6] Rural carriers have thus led the IP evolution to date, and this Petition reflects their strong interest in pursuing a sensible path to promote and ultimately sustain that ongoing transition.

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[5] *See High-Cost Universal Service Support, Federal-State Joint Board on Universal Service: Recommended Decision;* WC Docket No. 05-337, CC Docket No. 96-45, FCC 07J-4 (2007), at ¶ 30 (specifically citing small rural carriers as having done "a commendable job of providing broadband to nearly all their customers"). It must be noted, however, that just "getting broadband there" is not enough. The number of broadband-"served" customers should not become a mere "scoreboard" item for tracking. Instead, the key is that this ongoing migration to an IP-enabled, broadband-capable world must be *sustainable*, such that our nation does not just "get broadband there" in the short term, but we also "keep broadband there" over the long term at affordable rates and with high quality of service.

[6] *See* NECA, *Trends 2010 - A report on rural telecom technology,* at 5 and 9 (available at: https://www.neca.org/cms400min/NECA_Templates/PublicInterior.aspx?id=100). Of course, in considering whether such progress can be sustained and can satisfy the objectives of protecting consumers and ensuring universal service in the long run, it is important to note that nearly three-quarters of this broadband as of December 2010 was at speeds below 4 Mbps. *Id.* at 5. In other words, despite the remarkable and efficient progress of small rural carriers to date in leading the IP evolution, there is a serious risk that they – and more importantly, their consumers and communities – will be left behind (or left out altogether) over time in the absence of sufficient and predictable support that facilitates their continuing participation in the IP evolution.

The fundamental need of all Americans for high-quality communications and affordable access to the services that enable such communications remains unchanged and is entirely independent of the underlying technology used within the PSTN or the PRCN that connects them. Indeed, the core objectives of the Act – which include, above all else, making available "so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide and world-wide wire and radio communication with adequate facilities at reasonable charges"[7] – 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.

Regulatory distinctions that turn on what technology might be used to deliver a given service devolve into form over substance. The important distinctions for regulatory purposes should come not in *how* the service is delivered, but rather *what* the consumer receives. Any regulatory analysis driven primarily by network technology rather than consumer experience and expectation is doomed to fail those consumers in the end.[8] Similarly flawed is any approach that elevates a desire to promote the achievement of any specific technological platform as a goal of its own significance without tether to the ultimate statutory cornerstones of protecting consumers, promoting competition, and ensuring universal service.[9] Indeed, even as services may evolve beyond the boundaries of traditional telecommunications service offerings, for

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7 47 U.S.C. § 151.

8 *See NRRI Transition Report*, at 7-15 (discussing the evolution of network technologies underlying communications between Americans from late 19th century to the early 21st century).

9 *See* 47 U.S.C. §§ 151 (setting forth the purposes of the Act), 201 (requiring just and reasonable charges, practices, classifications, and regulations), 202 (prohibiting unjust or unreasonable discrimination), 251 (setting forth provisions for the development of competitive markets through interconnection and other duties), 252 (establishing processes for implementing section 251), and 254 (requiring the preservation and advancement of universal service).

example via inclusion of potential "information service" components, the Commission must not blindly accept the idea that the fundamental public policy objectives established by the Act can now safely be ignored. Finally, it is essential both as a matter of sound public policy and legal authority for the Commission to coordinate its analysis of next steps in a PRCN world with state regulators, as they are closest to the consumers, retain jurisdiction over intrastate services, and can help tailor solutions and tackle the challenges of fulfilling universal service and promoting competition on a localized basis.

II. A "SMART REGULATION" APPROACH TO PROMOTING AND SUSTAINING AN IP EVOLUTION MUST, ABOVE ALL ELSE, PROTECT CONSUMERS, PROMOTE COMPETITION, AND ENSURE UNIVERSAL SERVICE. IT MUST ALSO BALANCE REGULATORY CERTAINTY WITH THE NEED FOR A SURGICAL LOOK AT EXISTING REGULATIONS.

The policy path by which to promote and sustain the orderly evolution to more IP-enabled networks must not abandon or neglect the core statutory objectives of protecting consumers, promoting competition, and ensuring universal service. There is a wide range of policy options from which the Commission can choose in promoting and sustaining this ongoing transition. In this regard, it may be useful to think of the options before the Commission by analogizing the current regulatory construct to a foundation suspected of having some cracks. Although this foundation has served – and continues to serve – an essential role in fulfilling the core statutory objectives, its structure should at least be investigated. Across the range of options presented in deciding how to proceed, it is possible to plot at least three fundamental approaches: (1) tear the foundation down altogether; (2) examine the foundation carefully and repair or replace specific bricks; or (3) leave the foundation standing without change and hope that it holds.

Translating these choices to the policy challenges at hand, one option would be to take a "sledgehammer" to the regulatory foundation. This would be captured by using (re)classification, forbearance, and/or preemption to discard, or depart almost entirely from, the statutory framework laid out in the Act and the regulatory framework developed thereunder. The apparent thinking behind such an approach would be that: (a) regulation can stifle investment; (b) "innovation" rather than regulation is best positioned to protect consumers, promote competition, or ensure universal service in an IP-enabled world; and (c) investment to upgrade networks from TDM-based to IP-enabled would be unleashed if only regulators would get out of the way. Of course, such claims have been made in the past in attempt to leverage regulatory relief or assert the failings of regulation,[10] and yet remarkable investment and innovation has somehow overcome the "challenges" of continuing regulatory oversight.[11]

It is unclear whether such an experimental and sweeping "sledgehammer" approach, where the interests of individual consumers and the terms and conditions by which networks are

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[10] *See, e.g.*, AT&T Statement on T-Mobile Closing Several Call Centers, March 23, 2012, available at: http://attpublicpolicy.com/wireless/att-statement-on-t-mobile-closing-seven-call-centers ("So what's the lesson here? For one thing, it's a reminder of why 'regulatory humility' should be more than a slogan. The FCC may consider itself an expert agency on telecom, but it is not omniscient. And when it ventures far afield from technical issues, and into judgments about employment or predictions about business decisions, it has often been wildly wrong."); Robert S. Pindyck, *Mandatory Unbundling and Irreversible Investment in Telecom Networks*, National Bureau of Economic Research, Working Paper 10287, February 2004, at 1, available at: http://www.nber.org/papers/w10287.pdf (Verizon-commissioned study asserting that certain mandates in the Act "reduce incentives to build new networks or upgrade existing ones").

[11] *See, e.g., AT&T to Invest $14 Billion to Significantly Expand Wireless and Wireline Broadband Networks, Support Future IP Data Growth and New Services*, AT&T Press Release, Nov. 7, 2012, available at: http://www.att.com/gen/press-room?pid=23506&cdvn=news&newsarticleid=35661; *Broadband Investment*, USTelecom Broadband Industry Statistics report, available at: http://www.ustelecom.org/broadband-industry/broadband-industry-stats/investment ("In recognition of the extraordinary value wired and wireless broadband communications offers, private sector broadband investment reached $66 billion 2011, and the industry has invested nearly $1.2 trillion since 1996.").

connected hinge largely on the discretion of individual industry participants, can satisfy the statutory cornerstones of consumer protection, competition, and universal service. It is also unclear how such an approach would (or even could) work in light of legal mandates that compel state regulators and consumer advocates to protect the interests of their own consumers. For example, if a dispute arises between interconnected networks in a "deregulated" environment and connections are slowed, misrouted, degraded, or even shut off altogether,[12] can a federal or state regulator act quickly enough to step back in and protect consumers and the public interest? Would the federal or state regulator even have authority or ability to do so if prior regulatory classifications of the services at issue or specific decisions preclude or even preempt such action? (Staying with the analogy used herein, could the "regulatory foundation" be rebuilt quickly enough in the event of market failure or, worse still, disaster?) What if a dispute (or sheer neglect or disinterest) resulted in a failure to transmit public safety-related traffic (*e.g.*, calls to 911) or other calls or mission-critical data necessary for businesses to operate? What if a dispute (or sheer neglect or disinterest) resulted in entire regions of the country being effectively "cut off" from other parts?[13]

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12 This is not a hypothetical concern in circumstances in which there are limited (or no) regulatory safeguards to protect consumers. *See, e.g., Cogent's Standing Offer to Level 3: Turn the Connection Back On, Then Negotiate*, Cogent Communications Press Release, Oct. 7, 2005, available at: http://www.cogentco.com/news/press-releases/227-cogents-standing-offer-to-level-3-turn-the-connection-back-on-then-negotiate; Brian Stelter and Bill Carter, *Fox-Cablevision Blackout Reaches a 2nd Day*, New York Times, Oct. 17, 2010, available at: http://www.nytimes.com/2010/10/18/business/media/18cable.html; Kyle McGrath, *Missouri Retransmission Dispute Results in Four-Day Blackout*, Heartlander, available at: http://news.heartland.org/newspaper-article/missouri-retransmission-dispute-results-four-day-blackout.

13 Certainly the experience of rural consumers in failing to receive many long distance telephone calls because of a shadowy niche between regulated long distance services and ostensibly unregulated least-cost router services fosters little, if any, confidence in the "market" alone to solve such concerns. *See, e.g., Ex Parte* Letter from Michael R. Romano, Senior Vice

Such consumer-oriented concerns must be thoroughly considered and addressed – and the clear need for a cooperative relationship between federal and state regulators thought carefully through – before a sledgehammer is taken to existing regulatory constructs and before a "Wild West" approach is permitted to cavalierly substitute either theories about "innovation" or predictive judgments about competition for thoughtful oversight.[14] If regulatory oversight stifles investment, the uncertainty of a regulatory vacuum and a lack of clear "ground rules" are likely to stifle investment even more – and far more likely to leave consumers in the lurch.

On the other end of the spectrum, regulators could simply hope the existing regulatory foundation will hold with few, if any, updates or repairs. This option would be captured by mechanically applying every current regulation "as is" to services in an IP-enabled world. The apparent thinking behind such an approach would be that the existing regulatory framework has

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President – Policy, NTCA, to Marlene H. Dortch, Secretary, Commission, WC Docket Nos. 11-39 and 07-135; CC Docket No. 01-92 (filed Sept. 5, 2012) (explaining that "many NTCA members have experienced an increase in rural call completion problems," and noting "that call completion problems will persist and are likely only to increase unless and until the [Commission] sends a clear signal that parties will actually be held liable for failing to deliver calls").

[14] Indeed, a notable example of the potential shortcomings of relying largely upon predictive judgments and promises about competition can be found in the experience with respect to price-cap regulated special access services. *Compare Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1, First Report and Order, 10 FCC Rcd 8961, 8989 (1995), at ¶ 64 ("competition can be expected to carry out the purposes of the Communications Act more assuredly than regulation," and indicating regulation is needed "only where and to the extent that competition remain[s] absent in the marketplace") *with Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, *AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM-10593, Report and Order (rel. Aug. 22, 2012), at ¶ 22 ("the administratively simple competitive showings we adopted in 1999 have not worked as intended, likely resulting in both over- and under- regulation of special access in parts of the country"). Regardless of one's perspective on the merits of this ongoing special access examination, any framework that requires thirteen-plus years to determine whether competition has worked as an effective substitute for regulation – and then finds at least some evidence it may not have done so – puts consumers, competition itself, and universal service all at risk.

worked well enough to protect consumers, promote competition, and ensure affordable access to high-quality networks. Thus, despite the possibility of some weak spots in the foundation, the theory would be that applying regulations in the same manner going forward would engender similar public policy results. But such a simplistic approach would fail to engage in a necessary examination of whether consumer needs, technological change, or other market conditions should drive regulatory change. In short, it fails to assess whether the regulatory foundation is still built in the right way to fulfill the core statutory objectives in an evolving environment. For example, certain regulations, such as legacy discontinuance reports and equal access obligations, may have decreasing significance and questionable utility in serving the objectives of the Act in light of shifts in the communications market.

It is essential therefore to adopt a more thoughtful and balanced approach to regulatory reform and promoting an IP evolution than engaging simply in either unfettered deregulation (which may create a "Wild West" that scares off investment) or rote mechanical application of legacy regulations (which may deter investment as circumstances evolve). Specifically, the Commission should instead engage in "smart regulation" and avoid either taking a sledgehammer to the regulatory foundation or leaving the regulatory construct unchanged and hoping for the best. Such a thoughtful, carefully calibrated approach would capture the universally acknowledged importance of striking a balance between allowing markets to operate and the need for tailored regulations that enable and promote such markets.[15] This more sensible

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[15] *See* Ryan Caldbeck, *Why We Agree With Romney and Obama: Stronger Regulations Make Sense (Especially For Crowdfunding)*, Forbes.com, Oct. 9, 2012, available at: http://www.forbes.com/sites/ryancaldbeck/2012/10/09/why-we-agree-with-romney-and-obama-stronger-regulations-make-sense-especially-for-crowdfunding/ (quoting Governor Romney from the first presidential debate of 2012: "Regulation is essential. You can't have a free market work if you don't have regulation."); *Obama: Fix Regulation*, USAToday.com, March 27, 2008, available at: http://usatoday30.usatoday.com/news/politics/election2008/2008-03-27-economy-

"golden mean" would require a discerning look at what has worked (or not) in protecting consumers, promoting competition, and ensuring universal service, and then consider what from that existing regulatory framework should be kept, discarded, or modified in "all-IP world." This middle course would also ensure that the authority and core competencies of state public utility commissions and the interests of consumer advocates are acknowledged, respected, and incorporated within the process.[16] Sticking with the analogy used herein once more, the Commission should seek to maintain certainty by retaining and reasserting a firm and clear regulatory foundation, while coordinating with state counterparts to examine specific bricks for potential replacement, repair, or removal where their utility or effectiveness is in question.[17]

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speech_N.htm (quoting then-Senator Obama during the 2008 presidential campaign: "Our free market was never meant to be a free license to take whatever you can get, however you can get it. That is why we have put in place rules of the road to make competition fair and open and honest. We have done this not to stifle, but rather to advance, prosperity and liberty.").

[16] *See, e.g.*, 47 U.S.C. §§ 152(b) (preserving state jurisdiction over intrastate communications), 252 (defining the state role in setting rates for reciprocal compensation and approving or arbitrating interconnection agreements), and 254(a)(1) (requiring the establishment of a Federal-State Joint Board on Universal Service to implement the provisions of sections 214(e) and 254 of the Act).

[17] It is also worth noting that even within existing regulatory constructs, parties have found means by which to achieve innovative, market-based solutions. For example, the Commission has for some time permitted certain carriers to use "contract tariffs" and other vehicles to tailor individual services to consumer needs. *See* 47 C.F.R. § 69.727; *Access Charge Reform,* Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd. 14221, 14291 (1999). The Telecommunications Act of 1996 also enabled individual parties to negotiate interconnection agreements with terms and conditions tailored for specific circumstances. 47 U.S.C. § 251 and 252. Such agreements led, among other things, to negotiated rates and resolutions of contested traffic exchange and interconnection issues. *See, e.g., Level 3 and Bell Atlantic Reach Agreement on Reciprocal Compensation: Past Reciprocal Compensation Billing Dispute Settled Between the Two Carriers*, Level 3 Communications Press Release, Oct. 21, 1999, available at: http://level3.mediaroom.com/index.php?s=23600&item=65687. But the essential lesson to draw from these examples is that such tailored tariff terms and negotiated provisions do not and will not occur within a regulatory vacuum. Instead, they have developed against a backdrop of state-federal regulatory partnerships under the Act that that help define a reasonable outcome in the event that negotiations cannot achieve a resolution. This is essential

To this end, NTCA respectfully requests that the Commission initiate a rulemaking that starts from the premise that the ultimate goal of the existing framework – making available "a rapid, efficient, Nation-wide and world-wide wire and radio communication with adequate facilities at reasonable charges"[18] – can and must apply with equal force regardless of the technology used to achieve such communication. The Commission should then proceed methodically to discern how it can carry out the core statutory objectives of consumer protection, competition, and universal service while furthering the ongoing evolution of the PSTN to a PRCN. Specific steps to take as part of this "smart regulation" approach are as follows:

(1) Develop a list of specific existing regulations that may have limited or no applicability in the delivery of IP-enabled services (or even with respect to TDM-based services) because of technological change, competitive forces, or other regulatory, market, or economic developments;

(2) Seek comment on which of the identified regulations: (a) might be eliminated for the specific purpose of enhancing the ongoing migration of networks from TDM-based to IP-based platforms while also furthering the statutory cornerstones of protecting consumers, promoting competition, and ensuring universal service;; (b) might be retained in current form to satisfy the statutory cornerstones of protecting consumers, promoting competition, and ensuring universal service; and (c) might be retained but require modification in specifically defined ways (or might need to be replaced or supplemented by specific new regulations) to further the evolution of IP-enabled networks while serving the core statutory objectives of protecting consumers, promoting competition, and ensuring universal service; and

(3) Set a firm but reasonable deadline to complete this comprehensive, but granular, "refreshing" of the governing regulatory framework such that the evolution of IP-enabled networks can be sustained.

Such a "smart regulation" approach would strike an appropriate balance between the extreme ends of the range of potential regulatory process. Simply throwing out "the old" and

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to protect consumers, promote competition, and ensure universal service where market-driven outcomes may fail to yield a reasonable result. If some markets fail, a company might lose money. If communications markets fail, consumers are at risk of losing service contrary to federal and state laws and good public policy.

[18] 47 U.S.C. § 151.

recreating things "bottoms-up" from scratch (or not recreating things at all) would create a regulatory vacuum, confuse consumers and even put some at risk, and generate massive waves of uncertainty that undermine (rather than promote or accelerate) investment in the IP evolution. By contrast, a "smart regulation" approach that seeks to examine thoughtfully individual bricks in the regulatory foundation for potential repair, replacement, removal, or upgrade would provide the much-needed certainty of *starting from* time-tested statutory principles, regulatory frameworks, and related jurisprudence and administrative decisions. At the same time, a "smart regulation" approach should *only* start from that existing backdrop; it should seek to avoid application of rules with limited applicability in today's (and tomorrow's) communications markets by evaluating in a measured way the degree to which each specific regulation promotes or deters the IP evolution and is essential or unnecessary to fulfill the core objectives of protecting consumers, promoting competition, and ensuring universal service. Finally, this effort must be undertaken in coordination with state counterparts to ensure that a comprehensive regulatory review considers their respective legal mandates and consumer interests.

In short, a rulemaking that pursues the balanced course recommended herein will promote regulatory certainty and the core statutory objectives by starting from a well-known, time-tested existing baseline of legal and regulatory requirements. Moreover, it will simultaneously signal to lenders, investors, and operators that those frameworks will be subject to prompt review and potential upgrade on a surgical, thoughtful, and targeted basis. In the end, this "smart regulation" approach acknowledges that an IP-enabled network migration is not to be encouraged merely for its own sake, but precisely because IP-enabled networks are presumed to – and must – promote more affordable access to higher-quality communications services for all Americans.

III. THE COMMISSION SHOULD PAIR A "SMART REGULATION" REVIEW WITH NEAR-TERM ECONOMIC INCENTIVES THAT STIMULATE THE CONTINUING IP EVOLUTION.

As a further step, the Commission should pair such a "smart regulation" review of existing rules with consideration of how to inject targeted near-term economic incentives to prompt greater investment in IP-enabled infrastructure even as this comprehensive review is underway. It is a truism to say that the best way to encourage any given action by private parties is to make such action consistent with their economic self-interest. If the Commission is interested in promoting an IP evolution as promptly as possible because it is for the benefit of consumers, it should therefore adopt certain carefully designed "incentive-based" measures, and should move quickly to adopt (and partner with states to adopt, as necessary and appropriate) such measures even in advance of the more complete examination noted above.

For example, one specific measure that the Commission should consider for immediate adoption is an incentive-based mechanism that would allow carriers to recover costs for the exchange of communications traffic where they agree to make available IP-based interconnection in accordance with the well-defined statutory framework. Today, there is significant uncertainty (although there perhaps should not be) surrounding the rights and obligations that govern IP interconnection and the exchange of traffic through such interconnects. As noted earlier in this Petition, if the perception of heavy-handed regulation is a deterrent to investment, regulatory uncertainty is far worse in driving dollars away from markets. Lingering uncertainty surrounding IP interconnection for the exchange of traffic that is otherwise subject to sections 251 and 252 of the Act in all respects hinders the deployment of IP-enabled networks – in fact, it would seem to create perverse technology choice incentives by *encouraging* retention of TDM-based networks (at least at the points where they interconnect

with other networks) simply for the purpose of ensuring a clearer set of "ground rules" around interconnection and intercarrier compensation.

Accordingly, the Commission could perhaps best accelerate the continuing IP evolution in the near-term by: (a) confirming that ***all*** interconnection for the exchange of traffic subject to sections 251 and 252 is governed by the Act, regardless of the technology that might happen to be used to achieve such interconnection; and (b) providing carriers with an incentive to offer IP interconnection by allowing them to recover through rates that would be developed pursuant to the Act the costs of exchanging traffic through such interconnects. Such an "incentive-based" approach would reward carriers that seize the opportunity to invest in IP-enabled interconnections across their networks.[19] Such a structure would also have the benefit of more closely resembling the means by which carriers actually interconnect and compensate one another in "the Internet world." Indeed, as the Commission is well aware, interconnection within IP-based/Internet structures is not "cost free" for most interconnecting entities, except in cases where traffic scope and balances are roughly equivalent.[20]

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[19] Those who claim that such a measure would only reward operators who are not interested in building their own networks could not be more wrong. As noted earlier, small rural local exchange carriers such as those within NTCA's membership have been acknowledged as leaders in the deployment of fiber networks and IP-enabled and broadband network technologies. *See* footnotes 5 and 6, *supra*, and accompanying text. Given these efforts, those who argue that IP interconnection would somehow reward those who only want to avoid building their own networks are sorely mistaken at best and disingenuous at worst. To the contrary, allowing those who have built IP-enabled networks to recover the costs of offering interconnection with their cutting-edge networks would clearly *promote* rather than deter investment in such networks.

[20] *See, e.g.*, "Peering" (available at: http://en.wikipedia.org/wiki/Peering) ("in order for a network to reach any specific other network on the Internet, it must either: [1] Sell *transit* (or Internet access) service to that network (making them a 'customer'), [2] Peer directly with that network, or with a network who sells transit service to that network, or [3] Pay another network for transit service, where that other network must in turn also sell, peer, or pay for access.")

Another near-term measure the Commission should pursue to encourage an effective migration to a PRCN is providing small rural local exchange carriers with sufficient and predictable universal service support for networks regardless of whether a customer continues to purchase regulated "plain old telephone service." Today, if a consumer chooses to buy regulated voice and broadband, that loop is eligible for universal service support – but if the same consumer then decides that he or she only wants broadband service and will instead procure unregulated VoIP service or "cut the cord" for voice service altogether, the same loop is no longer eligible for universal service support under current rules. This denial of universal service support absolutely defies consumer preference and makes no sense in a regulatory regime that purports to promote the deployment and adoption of broadband and IP-enabled networks.[21]

Thus, there are sound economic and policy justifications for adopting such near-term measures to stimulate and sustain investments in IP-enabled networks. The Commission should seek act on these and similar near-term measures as may be developed in this rulemaking with an eye toward both the immediate and long-term benefits they could provide in promoting and sustaining the ongoing IP evolution – all while making sure to hearken back ultimately to the core objectives of protecting consumers, promoting competition, and ensuring universal service.

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[21] Another measure the Commission should examine in short order to stimulate and sustain IP-enabled service deployment is the universal service support for "middle mile" network facilities that carry data between Internet points-of-presence and distant high-cost areas. The substantial costs associated with such transport can place significant pressure on the prices charged to rural consumers, and every indication is that bandwidth demand is only increasing. *See, e.g.*, *Cisco's VNI Forecast Projects the Internet Will Be Four Times as Large in Four Years*, Cisco Press Release, May 30, 2012, available at: http://newsroom.cisco.com/press-release-content?type=webcontent&articleId=888280 (citing Internet traffic growth arising from several factors, including growth in the average fixed broadband speed to 34 Mbps by 2016 and the fact that over half of Internet traffic in 2016 is expected to come from Wi-Fi connections). Particularly, in the wake of intercarrier compensation changes that will make it more difficult to deploy and maintain transport networks, the availability of sufficient and predictable support for "middle mile" networks may be critical to ensuring that every American will have reasonably comparable access to broadband and thus be able to participate meaningfully in the IP evolution.

IV. CONCLUSION

For the foregoing reasons, NTCA respectfully requests that the Commission initiate a rulemaking to promote and sustain the evolution of networks to IP. This effort can and should be achieved through a balanced and surgical review of the existing regulatory framework that should be coordinated with state regulators to determine whether specific regulations deter or hinder an IP evolution and the degree to which such regulations might remain necessary or require modification to protect consumers, promote competition, and ensure universal service in an "all-IP world." Moreover, this effort can and should be accelerated through carefully calibrated, tailored near-term measures that provide greater regulatory certainty and appropriate incentives for the deployment and maintenance of IP-enabled networks.

Respectfully submitted,

NATIONAL TELECOMMUNICATIONS
COOPERATIVE ASSOCIATION

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Dated: November 19, 2012

(1) SB 2234
3-13-2013

Keiser, George J.

From: RILEY, CHERYL <cr6557@att.com>
Sent: Tuesday, March 12, 2013 9:40 PM
To: Keiser, George J.
Cc: Joel W Gilbertson; Levi D. Andrist
Subject: States with active IP/VoIP bills

Chairman Keiser,

Thank you for the opportunity to present SB 2234 today in House IBL. You asked for a list of other states that are actively pursuing "IP/VoIP" bills this legislative session and the list is below:

Arizona, Arkansas, Colorado, Connecticut, Iowa (is now a study bill), and New York are active bills. Missouri, Nevada and Oklahoma are expected to be introduced this session. As I mentioned, the Wyoming bill passed and was signed by the Governor 2 weeks ago. The original language in 2234 was very similar to the WY bill. I negotiated that language with Century Link thinking that would also help satisfy the rural telcom companies as well. Verizon, who has been a partner of AT&T throughout the U.S. on this issue, thought we "gave up" too much with the language and that's why they opposed in Senate IBL.

We talked with Rep. Kasper following the hearing and he plans to try to meet with all interested parties to pursue the original intent of 2234. As I mentioned in Committee today, passage of that bill would be a great statement for North Dakota but I'm concerned that we are not quite there in terms of negotiations with the rural telecom companies and that a "no" vote on this bill could potentially be a "black eye" for the state.

Proponents of the original 2234 tried to work with the rural telecoms beginning in October of 2012 to negotiate language and were met with resistance. If we do have an interim study, it will be vital for all parties to agree to sit down to work through the language of the bill.

If you have any thoughts on this, please feel free to contact me or talk with Joel and/or Levi.

Thanks again and please feel free to contact me with questions or concerns.

Thanks,

Cheryl

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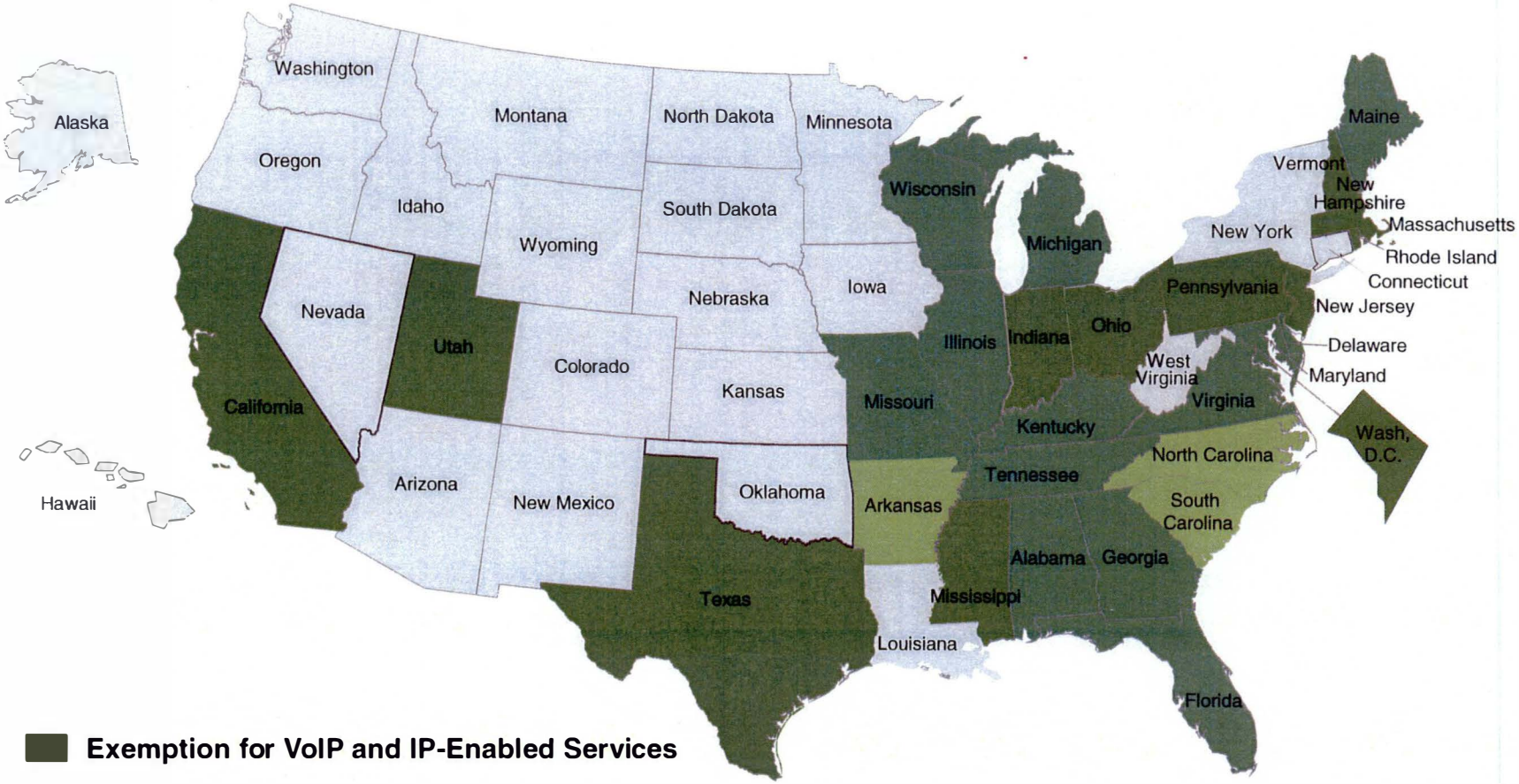
State VoIP & IP-Enabled Services Exemption Status

October 19, 2012



Exemption for VoIP and IP-Enabled Services

Exemption for VoIP Services

VoIP and IP-Enabled Services exemption due to broader retail deregulation

No exemption for VoIP or IP-Enabled Services

at&t

The Way North Dakota Communicates Has Changed Over the Past Decade

2234
2
3-12-13

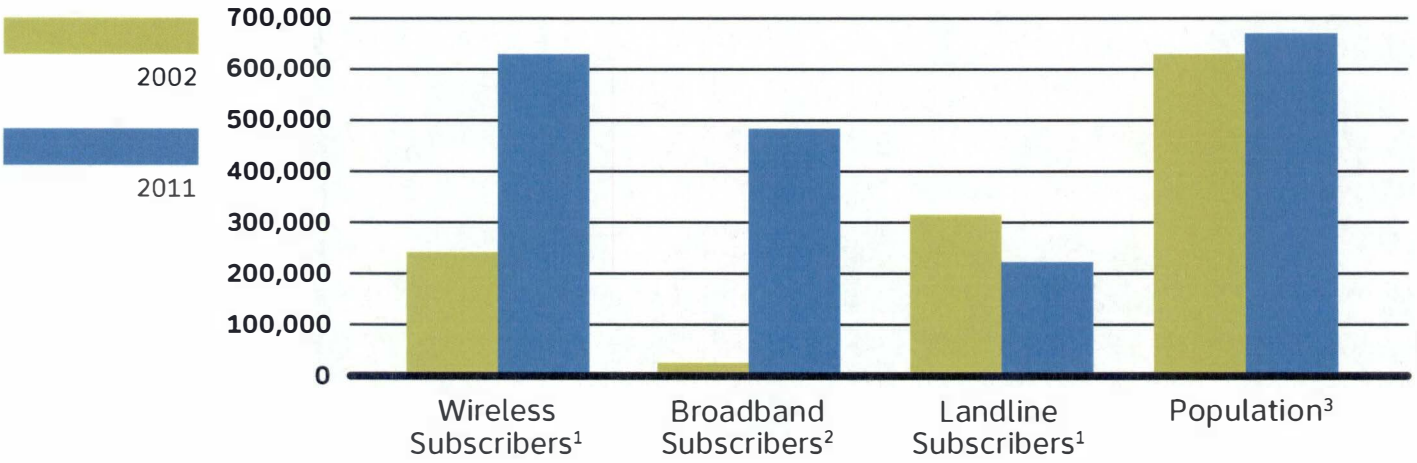
From 2002 to 2011, North Dakota has seen:

150% Increase In Wireless Subscribers

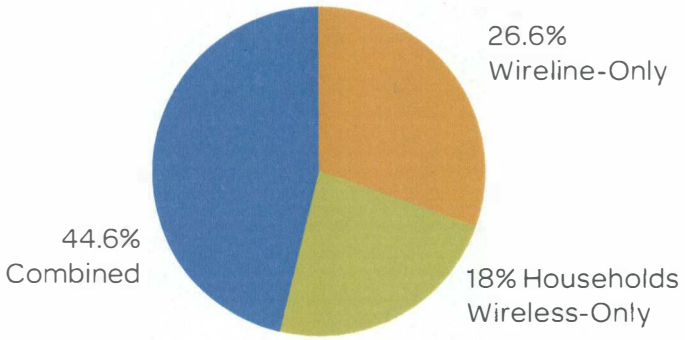
30% Decrease in Landline Subscribers

3,423% Increase In Broadband Subscribers

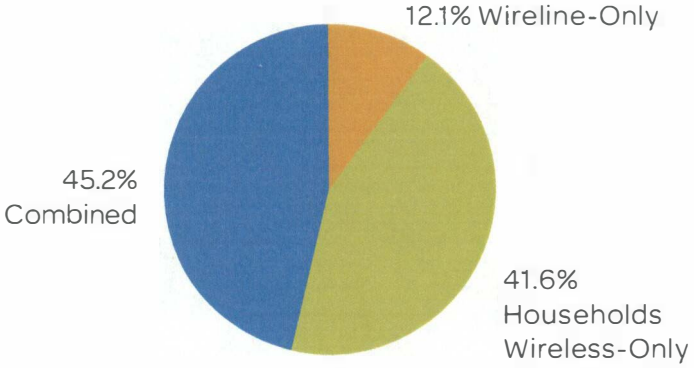
7.85% Increase In North Dakota's Population



Growth of Wireless-Only Households in North Dakota[4]:



June 2007



June 2011

Broadband Availability in North Dakota[2]:

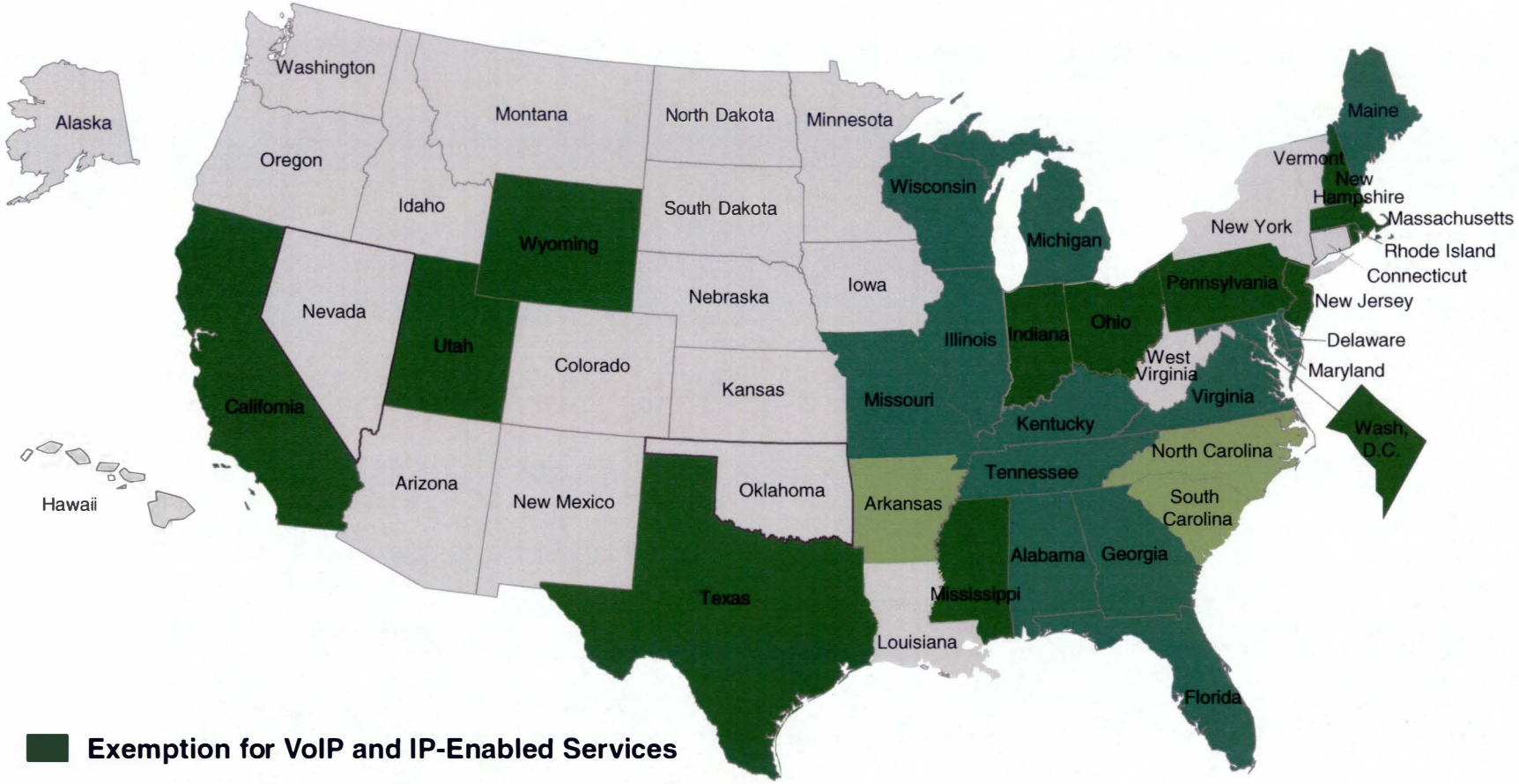
DSL Broadband: 90% of the population Cable Modem: 92% of the population

Cheryl Riley
AT&T
SB 2234
House Industry, Business and Labor Committee
March 12, 2013

[1]FCC Local Telephone Competition Report: Status as of June 30, 2002 and FCC Local Telephone Competition: Status as of June 30, 2011 *Landline Subscribers are for ILECs only due to lack of overall data.
[2]FCC High Speed Services for Internet Access: Status as of June 30, 2002 and FCC Internet Access Service Report: Status as of June 30, 2011
[3]U.S. Census Bureau
[4]National Health Statistics Wireless Substitution Report, October 2012 and March 2009

State VoIP & IP-Enabled Services Exemption Status

February 27, 2013



- **Exemption for VoIP and IP-Enabled Services**
- **Exemption for VoIP Services only**
- **VoIP and IP-Enabled Services exemption due to broader retail deregulation**
- **No exemption for VoIP or IP-Enabled Services**

at&t

News Release

For more information, contact:

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AT&T Strategic Communications
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AT&T INVESTED MORE THAN $50 MILLION IN NORTH DAKOTA FROM 2010 THROUGH 2012 TO ENHANCE SPEEDS, RELIABILITY AND PERFORMANCE FOR CUSTOMERS

Expanded 4G Coverage, New Cell Sites and Boosted Capacity Drive Improved Customer Experience

BISMARCK, NORTH DAKOTA (FEB. 21, 2013) — AT&T* invested more than $50 million in its North Dakota wireless and wireline networks from 2010 through 2012, with a focus on expanding 4G mobile Internet coverage and enhancing the overall performance of its networks.**

AT&T has made nearly 100 wireless network upgrades in six key categories in North Dakota during 2012, including activating new cell sites, adding capacity, upgrading cell sites to provide fast 4G mobile Internet speeds, deploying high-capacity Ethernet connections to cell sites, and adding or upgrading Distributed Antenna Systems, which boost wireless coverage and capacity in buildings and at major venues like convention halls or sports arenas.

"We know our customers depend on us for fast, reliable mobile Internet connections at home, work and everywhere in between," said Hardmon Williams, AT&T vice president and general manager for North Dakota, Minnesota and the Northern Plains. "Delivering for our North Dakota customers is a top priority and our ongoing investment here is designed to deliver a superior mobile Internet experience, encompassing speed, coverage and reliability."

"One of the reasons North Dakota has become such a dynamic place to live, work, and conduct business, can be attributed to the contributions of companies such as AT&T," said Representative Al Carlson, N.D. House Majority Leader. "AT&T's continued investment in our state's technological infrastructure makes possible the efficient communications and connectivity that are keys to building and strengthening North Dakota's business community. We need to continue to adopt pro-business policy that encourages this type of investment."

"We're proud to invest in North Dakota and expand our wireless broadband network to support growing demand for the latest wireless devices and capabilities," said Cheryl Riley, director, External Affairs-AT&T North Dakota. "We'd like to applaud policymakers for seeking a pro-business environment that encourages private investment in our state's communications infrastructure. This type of investment helps spur economic development, job creation and greater access to healthcare, education and other vital services."

Planned Investment to Expand Reach of Wireless and Wired Broadband

AT&T recently launched Project Velocity IP (VIP), a three-year investment initiative to expand and enhance its wireless and wired IP broadband networks. As part of Project VIP, AT&T plans to increase the density of its wireless network by deploying more than 10,000 macro sites, more than 1,000 distributed antenna systems, and more than 40,000 small cells. Through this initiative, we also plan to:

- Expand 4G LTE to cover more than 300 million people by year-end 2014
- Expand the AT&T wired IP broadband network to cover approximately 75 percent of customer locations in our wired service area by year-end 2015
- Expand the AT&T fiber network to reach 1 million additional business locations by year-end 2015

AT&T's innovation and investment has resulted in the nation's largest 4G network, covering 288 million people with ultra-fast speeds and a more consistent user experience.

AT&T is the only U.S. service provider to deploy two compatible 4G technologies to deliver more speed to more smartphone customers. AT&T's HSPA+ network enables mobile Internet speeds up to four times faster than 3G technologies.***

Cheryl Riley
AT&T
SB 2234
House Industry, Business and Labor
March 12, 2013

(1) SB2234
3-13-2013

Keiser, George J.

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