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March 31, 2014

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

Re: *In the Matter of Technology Transitions, GN Dkt. No. 13-5; AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition, GN Dkt. No. 12-353*

Dear Ms. Dortch:

On behalf of Cbeyond Communications, LLC, Integra Telecom, Inc., Level 3 Communications, LLC and tw telecom inc. (collectively, the “Joint Commenters”), please find enclosed the redacted version of the Joint Commenters’ comments on the service-based experiment proposal submitted by AT&T on February 27, 2014 in GN Docket Nos. 12-353 and 13-5 (the “Comments”).¹ The Comments contain information that AT&T has designated as confidential and highly confidential under the *Modified Protective Order*² and *Second Protective Order*³ in this proceeding.

Pursuant to the procedures outlined in the *Second Protective Order*, the original highly confidential version of the comments is being filed with the Secretary’s Office, and two copies of the highly confidential version of the Comments are being delivered to Jonathan Reel of the Competition Policy Division of the Wireline Competition Bureau.

¹ See AT&T Proposal for Wire Center Trials, GN Dkt. Nos. 13-5 & 12-353 (filed Feb. 27, 2014); see also *id.*, Attachment, “AT&T Wire Center Trial Operating Plan.”

² *In the Matter of Technology Transitions; AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition*, GN Dkt. Nos. 13-5, 12-353, Protective Order, DA 14-272 (rel. Feb. 27, 2014) (“*Protective Order*”).

³ *In the Matter of Technology Transitions; AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition*, GN Dkt. Nos. 13-5, 12-353, Second Protective Order, DA 14-273 (rel. Feb. 27, 2014) (“*Second Protective Order*”).

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Please do not hesitate to contact me at (202) 303-1111 if you have any questions regarding this submission.

Respectfully submitted,

/s/ Thomas Jones

*Counsel for Cbeyond, Integra, Level 3
and tw telecom*

Enclosure

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

In the Matter of)	
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Technology Transitions)	GN Docket No. 13-5
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)	

**COMMENTS OF
CBEYOND, INTEGRA, LEVEL 3, AND TW TELECOM**

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March 31, 2014

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION AND SUMMARY.....	1
II. AT&T’S SERVICE-BASED EXPERIMENT PROPOSAL IS DEFICIENT IN NUMEROUS RESPECTS	7
A. Background	7
B. AT&T’s Proposal Fails To Meet Many Of The Requirements And Guidelines Established In The <i>Experiments Order</i>	10
C. AT&T’s Proposed Treatment Of Wholesale Services Is Incomplete And Inconsistent With The <i>Experiments Order</i>	20
D. AT&T’s Proposed Treatment Of Retail Voice Services Is Inconsistent With The <i>Experiments Order</i> And Inappropriate For A Service-Based Experiment	25
III. THE COMMISSION SHOULD NOT APPROVE AT&T’S PROPOSED EXPERIMENT UNLESS AND UNTIL AT&T ADDRESSES THE DEFICIENCIES IN ITS PROPOSAL	28
A. The Success Of The Technology Experiment Regime Depends On The Adoption Of Appropriate Requirements For AT&T’s Proposal.....	28
B. AT&T Must Have Actually Developed And Begun To Deploy The Services And Enhancements It Seeks To Test In The Experiment Before Its Proposal Is Approved	29
C. AT&T Must Propose An Experiment That Encompasses A Sufficiently Diverse Set Of Consumers And Customer Types.....	30
D. AT&T Must Treat The Wholesale Services And Retail Voice Services It Offers During The Experiment In An Appropriate Manner.....	31
IV. CONCLUSION	32

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Cbeyond Communications, LLC (“Cbeyond”), Integra Telecom, Inc. (“Integra”), Level 3 Communications, LLC (“Level 3”), and tw telecom inc. (“tw telecom”) (collectively, the “Joint Commenters”), through their undersigned counsel, hereby submit these comments on the service-based experiment proposal submitted by AT&T on February 27, 2014 in GN Docket Nos. 12-353 and 13-5.¹ As discussed herein, AT&T’s proposal contains a number of serious defects and the Commission should not approve the proposal unless and until AT&T addresses these defects in a manner consistent with the *Experiments Order*.

I. INTRODUCTION AND SUMMARY.

Throughout this proceeding, the Joint Commenters have urged the Commission to rigorously assess the costs as well as the benefits of technology transition trials and to approve such experiments only where the costs are clearly outweighed by the benefits.² The Joint Commenters remain concerned that AT&T’s relentless advocacy in favor of trials to be

¹ See AT&T Proposal for Wire Center Trials, GN Dkt. Nos. 13-5 & 12-353 (filed Feb. 27, 2014) (“AT&T Proposal”); see also *id.*, Attachment, “AT&T Wire Center Trial Operating Plan” (“AT&T Plan”).

² See, e.g., Comments of Cbeyond, EarthLink, Integra, Level 3, and tw telecom, GN Dkt. No. 13-5, at 3-5 (filed July 8, 2013) (“Joint Commenters’ Technology Transitions Trials Comments”).

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conducted in wire centers hand-picked by AT&T could well cause more harm than good. Such trials are likely to be extremely costly in a number of respects. Wholesale customers, such as the Joint Commenters, must incur the expense of participating in this proceeding and, to the extent they operate in an area encompassed by the trial, of participating in the trial, while trying to prevent harm to their customers and to their reputation for providing good service. The Commission itself and state regulators must incur the considerable costs of reviewing and overseeing the trial, and of assessing the outcome, whatever that may be. And residential and business customers in the wire centers selected for the trial must incur the costs associated with the likely compulsion to transition to IP and packet-based services before they would otherwise choose to do so.

Just as importantly, there is a serious risk that AT&T will exploit the trial in many subtle, but significant, ways. For example, trials will divert FCC resources away from critically important local competition proceedings, such as the special access proceeding, that are key to spurring investment in packet-based networks. In addition, highly-publicized trials enable AT&T to frame the broader Commission agenda as focused on AT&T's own "no regulation" agenda instead of the more urgent task of constraining AT&T's ability to use its market power to slow-roll the expansion of competitors' packet-based networks and offerings. Moreover, these serious costs must be considered in light of the broader context, in which no other incumbent LEC (not even Verizon or CenturyLink) seems to believe that it is necessary to conduct technology transition trials.³

³ See, e.g., Reply Comments of Cbeyond, EarthLink, Integra, Level 3, and tw telecom, GN Dkt. No. 12-353, at 1-7 (filed Feb. 25, 2013); Joint Commenters' Technology Transitions Trials Comments at 11-19.

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To its credit, the Commission seems to recognize the significance of these costs. In the *Experiments Order*, it established requirements and guidelines for trials, now called “service-based experiments,” designed to ensure that the benefits of experiments exceed the considerable costs. As discussed in Part II.A below, the Commission held in the *Order* that service-based experiments must promote, not undermine, the fundamental values embodied in the Communications Act, including of course competition, but also public safety, universal access, and consumer protection. The Commission also made clear that service-based experiments are only worthwhile if they yield reliable information about the effects of the ongoing TDM-to-IP transition on customers. Accordingly, the *Experiments Order*, and in particular Appendix B of the *Order*, includes mandatory conditions as well as detailed guidance as to the information and commitments that any proposal should contain. These conditions and guidelines are all designed to ensure that an experiment will be worth the costs of participation and oversight, and they are all designed to ensure the protection and promotion of the bedrock policy objectives of the Act during the conduct of each experiment.

Unfortunately, AT&T’s proposal does not meet either the letter or spirit of the requirements and guidelines set forth in the *Experiments Order*. As one of AT&T’s own executives (the president of AT&T Alabama) has observed, the company’s proposal contains “more questions than answers.”⁴ This is notable because AT&T has been strongly advocating the idea of technology transition trials or experiments for more than 16 months. That it is still, even now, unprepared to design, let alone conduct, a useful service-based experiment again raises the question of whether AT&T has been motivated more by the desire to skew regulatory

⁴ Kery Murakami, *Uncertainties in AT&T’s Transition Plan Make It Hard to Assess, Observers Say*, COMMUNICATIONS DAILY, at 8 (Mar. 17, 2014).

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discourse in its favor than by the desire to study the effects of the TDM-to-IP transition on end users. In any event, the shortcomings of AT&T's proposal are numerous.

First, the proposal is missing much of the most fundamental information that is necessary for meaningful review and that, in most cases, is required under the *Experiments Order*. The missing information also raises questions about the utility of the proposed experiment. As discussed in Part II.B below, the list of such missing components includes the following:

- AT&T does not know when it will be ready to begin the experiment, so the proposal contains no proposed start date.
- AT&T states that it will transition wireline customers to semi-fixed wireless service, but it candidly admits that it has not yet developed a semi-fixed wireless business phone product (similar to its “Wireless Home Phone” service for residential customers), and it gives no indication as to when this product will be ready.
- AT&T states that it is “working diligently to develop IP replacement services . . . for resale to wholesale customers,” as well as “an IP-based alternative to [its Local Wholesale Complete] product,” but it has not yet completed the development of either.
- AT&T has not completed the development of certain 911 capabilities for its semi-fixed wireless services for residential or business customers.
- AT&T states that Wireless Home Phone and Home Phone with Internet services are not compatible with a number of important analog data devices and services (*e.g.*, alarm monitoring, medical monitoring, and credit card validation), and that it will not develop the enhancements needed to ensure such compatibility for some time.
- AT&T states that TTY compatibility and accessibility for Wireless Home Phone “is being carefully assessed,” but has not yet been developed.
- AT&T seeks to escape its eligible telecommunications carrier (“ETC”) obligations in the selected wire centers during the proposed experiment, but those obligations are the law and AT&T has not even attempted to meet the prerequisites for either forbearance from or a waiver of those requirements.
- AT&T has failed to include wire centers that encompass a representative cross-section of the U.S. population or AT&T's existing customer base in its

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experiment, with the result that customers in urban areas—particularly retail business and wholesale customers in those areas—are completely unrepresented.

- AT&T provides no indication as to how and to what extent it expects to extrapolate statistically meaningful conclusions about the impact of the transition on residential, business, and wholesale customers from the sample population and sample size it has chosen for the experiment, and it has not even bothered to select the control group wire centers.

Second, as discussed in Part II.C, AT&T’s proposed treatment of wholesale services—most importantly, wholesale access to packet-based local transmission facilities—is inconsistent with the *Experiments Order*. There, the Commission held that applicants must “ensure that comparable services are available during the experiment at equivalent prices, terms, and conditions”⁵ as those currently offered for TDM-based wholesale services. But AT&T has chosen to keep the rates, terms, and conditions on which it will offer packet-based local transmission services a secret, and it plans to offer such services only subject to—presumably confidential—“commercial” agreements. This is a formula for unreviewable abuse of market power, and, in all events, it makes it impossible for the FCC to ensure compliance with the *Experiments Order*. Moreover, AT&T has not explained how it will prevent wholesale customers that replace TDM-based special access services with packet-based or other replacement services from incurring early termination, shortfall or other penalties under AT&T’s exclusionary special access purchase arrangements. And, while AT&T indicates that it will continue to make copper loops available during the experiment, it provides no information about these facilities in the wire centers at issue.

⁵ *Technology Transitions*, Order, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-5, ¶ 59 (rel. Jan. 31, 2014) (“*Experiments Order*”); see also *id.*, Appendix B, ¶ 35 (setting forth the wholesale access requirements that any service-based experiment must satisfy).

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Third, as explained in Part II.D, AT&T seems to believe that it is largely, possibly entirely, free of regulations applicable to an incumbent “local exchange carrier” (*i.e.*, a provider of telephone exchange or exchange access services) when it provides VoIP and semi-fixed wireless services in lieu of legacy TDM-based voice services. This assertion rests on the assumptions that (1) the FCC will classify VoIP service as an information service and rule that VoIP is not a telephone exchange or exchange access service, and (2) the FCC will decide not to treat providers of semi-fixed wireless services as LECs. But the FCC has not reached either of these conclusions. Nor would it be appropriate for AT&T to make such assumptions in an experiment because, among other reasons, (1) AT&T’s VoIP and semi-fixed wireless services will clearly serve as replacements for its legacy local exchange service, and (2) exempting AT&T from regulations applicable to incumbent LECs prevents the experiment from encompassing important wholesale operational issues (*e.g.*, the ordering and provisioning of resold VoIP and semi-fixed wireless services).

In light of these omissions and defects, the Commission should deny AT&T’s proposal and provide AT&T guidance as to the changes it must make in order for its proposal to pass muster. As discussed in Part III below, consistent with the framework established in the *Experiments Order*, the Commission should clarify that AT&T must meet at least the following requirements before its proposal will be approved:

- AT&T must have completed the development of the services and functionalities that it plans to include in an experiment before the experiment proposal will be approved. This means that AT&T must have finished developing, among other things, (1) all of the functionalities needed to comply with the *Order*, including 911 functionalities and disabilities access capabilities, and (2) all of the features necessary to support analog data devices and services, such as home security monitoring, medical alert, and credit card validation services.

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- AT&T must increase the utility of its proposed experiment by including wire centers that encompass a larger and more representative population and a larger and more representative cross-section of AT&T’s existing customer base than is the case with its current proposal. In particular, AT&T should include one or more wire centers in urban areas to examine the effects of the transition on all types of customers—residential, business, and wholesale—in such areas. In addition, AT&T should set forth a comprehensive, detailed plan for ensuring that the data yielded by its experiment will be both meaningful and reliable.
- During the experiment, AT&T must comply with the wholesale access requirements set forth in the *Experiments Order*. It follows that AT&T must (1) offer access to packet-based local transmission facilities during the experiment on rates, terms, and conditions that are equivalent to those currently offered for TDM-based special access services and unbundled network elements, (2) publicize those rates, terms, and conditions, and (3) explain in detail how wholesale customers will avoid incurring any penalties for switching from TDM-based special access services to packet-based or other replacement services. AT&T should also provide information regarding the location, length, and condition of copper loops in the relevant wire centers.
- During the experiment, AT&T must comply with regulations applicable to incumbent LECs, including Section 251(c), where it offers VoIP services and semi-fixed wireless services as successors to its legacy TDM-based local exchange service.

II. AT&T’S SERVICE-BASED EXPERIMENT PROPOSAL IS DEFICIENT IN NUMEROUS RESPECTS

A. Background

As the Commission explained in the *Experiments Order*, the purpose of service-based experiments is to “encourage[] technological advances while preserving and protecting the enduring values established by Congress” that consumers have come to expect from their communications networks.⁶ These statutory values are public safety, universal access, competition, and consumer protection.⁷ Under the *Experiments Order*, those proposing technology transition experiments must comply with specific conditions, presumptions, and

⁶ *Experiments Order*, Appendix B, ¶ 11.

⁷ *Id.*

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factors designed to protect these four values.⁸ These conditions include requirements pertaining to, among other issues, 911 capability, disabilities access, universal service, and wholesale access.

With respect to wholesale access in particular, the Commission adopted specific requirements designed to protect wholesale customers, and therefore competition, from harm. This is of course a serious threat. Wholesale customers, such as the Joint Commenters, rely on incumbent LEC wholesale transmission services (purchased as special access or unbundled network elements) as well as interconnection with incumbent LECs to provide competitive and innovative broadband services to business customers. Current wholesale regulations designed to constrain incumbent LEC exercise of market power over local transmission facilities and interconnection apply, either by Commission order or by virtue of incumbent LECs' interpretation, only to incumbent LEC network facilities that use legacy TDM technology.⁹ If an incumbent LEC were permitted to discontinue offering access to local transmission facilities and/or interconnection as a result of the TDM-to-IP transition, wholesale regulation would become a nullity and wholesale customers would be even more susceptible to incumbent LECs' exploitation of market power. Accordingly, in the *Experiments Order*, the Commission decided that incumbent LECs must offer IP and packet-based replacement inputs that are functionally

⁸ See *id.* ¶¶ 11-44.

⁹ See, e.g., Reply Comments of Cbeyond, Inc., Integra Telecom, Inc., and tw telecom inc., WC Dkt. Nos. 10-90 *et al.*, at 13-15 & nn.38, 42 (filed May 23, 2011) (discussing the Commission's decisions to eliminate unbundled access to certain fiber loops and the packetized capabilities of hybrid loops as well as dominant carrier regulation of incumbent LECs' packet-based special access services); Comments of Cbeyond, EarthLink, Integra, Level 3, and tw telecom, GN Dkt. No. 12-353, at 9 & n.18 (filed Jan. 28, 2013) (explaining that the largest incumbent LECs have interpreted the FCC's current interconnection policies to apply only to packet-based services if those services are classified as "telecommunications services").

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equivalent to regulated TDM-based inputs in experiments where the legacy inputs will be discontinued.¹⁰

Furthermore, given that AT&T, or others, could use experiments as a means of skewing the outcome of the special access rulemaking or other proceedings, the Commission emphasized that service-based experiments must not be used to resolve pending legal or policy questions that are relevant to the TDM-to-IP transition.¹¹ Rather, the Commission explained that experiments are intended to give applicants and participants the opportunity to “explore a variety of approaches to resolving any operational challenges” that result from the transition without having to concede that the approach used “represents binding legal or policy obligations outside the context of the experiment.”¹²

The Commission further explained in the *Order* that its understanding of the impact of technology transitions on public safety, universal access, competition, and consumer protection must be “fact-based and data-driven.”¹³ Therefore, the Commission established guidelines to ensure that an experiment will generate valuable and reliable “real-world” data.¹⁴ For example, proposed experiments should encompass a diversity of participating service providers, a diversity of geographic areas (in particular, urban, rural and suburban areas), a diversity of population densities and demographics, a diversity of topologies, and a diversity of seasonal and

¹⁰ See *Experiments Order* ¶ 59; see also *id.*, Appendix B, ¶ 35.

¹¹ *Id.* ¶¶ 8, 25 (“We state again that these service-based experiments are not intended . . . to resolve legal or policy debates.”), 58.

¹² *Id.* ¶ 25.

¹³ *Id.* ¶ 8.

¹⁴ *Id.*

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meteorological conditions.¹⁵ Moreover, the Commission set forth “principles for the collection and reporting of data from any experiment”¹⁶ and found that useful experiments will include information (*e.g.*, the types of data to be collected, proposed metrics for measuring success, and the control groups to be used)¹⁷ to ensure that they will “not produce misleading or biased results.”¹⁸

These guidelines and requirements in the *Order*, if properly applied and enforced, will ensure that the Commission will only approve experiments in circumstances where the data yielded will be valuable enough to outweigh the costs associated with conducting the experiment. Indeed, the Joint Commenters would willingly participate in service-based experiments that truly complied with the requirements set forth in the *Experiments Order*. As explained below, however, AT&T’s proposed experiment does not meet these requirements.

B. AT&T’s Proposal Fails To Meet Many Of The Requirements And Guidelines Established In The *Experiments Order*

It has now been more than 16 months since AT&T filed a petition seeking to conduct TDM-to-IP transition trials in select wire centers.¹⁹ But after all this time, AT&T has submitted a proposal to conduct service-based experiments in Carbon Hill, Alabama and Kings Point, Florida that is missing many key categories of information. The proposal reads like a rush job, written as though the authors had no choice but to make the filing before they were ready to do

¹⁵ See *id.* ¶ 30; *id.*, Appendix B, ¶ 3.

¹⁶ *Id.* ¶ 5.

¹⁷ See *id.* ¶ 34; *id.*, Appendix B, ¶¶ 48-58.

¹⁸ *Id.* ¶ 34; *id.*, Appendix B, ¶ 51.

¹⁹ See generally AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition, GN Dkt. No. 12-353 (filed Nov. 7, 2012).

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so. The result is that AT&T’s proposal contains numerous omissions and ambiguities that (1) in many cases, render the proposal inconsistent with the *Experiments Order*, (2) preclude both the Commission and interested parties from conducting a meaningful review of the proposal, and (3) raise substantial doubts about the utility of the experiment.

First, it is not possible to determine whether AT&T has allocated sufficient time to conduct an initial, voluntary phase in the experiment, as is required under the *Experiments Order*.²⁰ AT&T states that it plans to commence an “initial” stage of the experiment in which it will “seek to encourage to the greatest extent possible a voluntary migration of its existing customers for wireline TDM services,”²¹ but it does not state when that initial stage will begin.²²

At the same time, AT&T has proposed specific dates, dates that are [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] to be sure,²³ when it plans to seek authority to grandfather and then discontinue legacy retail and wholesale services. But given how long it has taken AT&T just to get to this point, there is no basis for concluding that

²⁰ See *Experiments Order* ¶ 33 (holding that the Commission will consider discontinuance requests “[a]fter successful initiation of an experiment”) (emphasis added).

²¹ AT&T Plan at 1.

²² Perhaps AT&T omitted a start date for the initial stage of its proposed experiment because it believes that it does not need to seek prior Commission approval for this stage. Indeed, AT&T acts at times as though this initial stage has already begun. For example, it refers in its proposal to the “current stage of the trial” (AT&T Plan at 47) and is hastily pressing forward with a media campaign to publicize it, *id.* at 17-20. But even an initial voluntary phase of a service-based experiment requires Commission approval. See *Experiments Order* ¶ 33 (“All proposals will be subject to public comment and thorough Commission evaluation of whether initiation of the proposed experiment is in the public interest.”).

²³ See AT&T Plan, Exhibit D. It is worth noting that AT&T has taken an overly broad approach to designating information contained in its proposal as confidential or highly confidential. For example, the centerpiece of the proposal is the grandfathering and discontinuance of legacy TDM-based services, but AT&T has chosen to hide the dates on which it expects to grandfather and withdraw those services from the public. See *id.*

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AT&T will be able to commence the trial, at least for some services, before the dates it has proposed for grandfathering legacy services. Therefore, it is impossible to assess whether AT&T has proposed sufficient time for the required, initial voluntary stage of the trial.

Second, while AT&T states that it will try to encourage as many customers as possible to voluntarily migrate away from its wireline TDM-based services during the initial phase of the experiment,²⁴ it has not developed key packet-based replacement services for retail business customers and wholesale customers. For example, AT&T states that it is still “in the process of developing a wireless business phone product,” and it gives no indication as to when this product will be ready.²⁵ Similarly, AT&T states that it is “working diligently to develop IP replacement services . . . for resale to wholesale customers,” as well as “an IP-based alternative to [its Local Wholesale Complete] product,” but “it is likely” that these services will not be available “until

²⁴ AT&T appears to be paving the way for a “voluntary migration” of its existing customers in other parts of the country away from legacy TDM-based services by substantially increasing its rates for those services. *See, e.g.*, AT&T, Accessible Letter No. CLECAM14-033, “(RATE CHANGES) Business ISDN Direct Rate Increases – IL, IN, MI, OH, WI” (dated Mar. 14, 2014), *available at* https://clec.att.com/clec/access_letters/view.cfm?CPSWorkplace/getContent?objectStoreName=Accessible..Letters&objectType=document&guestid=P8guest&id={FA0D4278-B2E6-4005-A7B1-D1B784A035F4} (providing notice of intent to increase retail rates for Business ISDN services in the AT&T Midwest Region by approximately 25 percent, effective May 1, 2014); AT&T, Accessible Letter No. CLECC13-047, “(RATE CHANGES) Business Access Line, Trunk, and DID Rate Increase – CA” (dated Dec. 30, 2013), *available at* https://clec.att.com/clec/access_letters/view.cfm?CPSWorkplace/getContent?objectStoreName=Accessible..Letters&objectType=document&guestid=P8guest&id={D25B80D2-A19E-4C67-A818-9B683F907F75} (providing notice of intent to increase retail rates for Single and Multiline Business Access Lines in California by 20 percent (from \$39.50 to \$47.40), effective February 1, 2014); AT&T, Accessible Letter No. CLECC13-044, “(RATE CHANGES) Centrex Primary Line Rate Increases – CA” (dated Dec. 30, 2013), *available at* https://clec.att.com/clec/access_letters/view.cfm?CPSWorkplace/getContent?objectStoreName=Accessible..Letters&objectType=document&guestid=P8guest&id={B00C48A3-BABB-4BD4-B766-A9B66BD6E243} (providing notice of intent to increase retail rates for Centrex Primary Lines in California by approximately 20 percent, effective February 1, 2014).

²⁵ AT&T Plan at 13.

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the trials already are underway.”²⁶ It is impossible for the FCC or interested parties to assess a proposed experiment featuring services that do not yet exist.

Third, although the *Experiments Order* directs applicants to submit detailed information regarding the impact of their proposed experiments on wholesale customers,²⁷ AT&T has not even finished assessing the extent to which wholesale customers purchase existing TDM-based services in the selected wire centers. Instead, AT&T explains that it “is continuing to research the specific extent of wholesale activity in each wire center, and will supplement this filing at an appropriate time to incorporate information regarding such activity.”²⁸ In addition, AT&T cryptically states that it plans to address wholesale issues “by proposing additions to the trials themselves or through existing processes under the Communications Act and the Commission’s rules.”²⁹ AT&T does not explain what these “additions” or “processes” might entail.

Fourth, AT&T acknowledges that its semi-fixed wireless service does not currently comply with the 911 conditions set forth in the *Experiments Order*. There, the Commission held that “any service-based experiment can in no way diminish consumer access to 911/E911

²⁶ *Id.* at 47. One month after filing its proposal, AT&T still “has no update” on “the [replacement] products that will be available for wholesale customers” during the experiment. Letter from Christopher Heimann, General Attorney, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, GN Dkt. Nos. 13-5 & 12-353, Attachment, at 10 (filed Mar. 26, 2014) (“AT&T Mar. 26, 2014 Letter”); *see also* Letter from Robert C. Barber, General Attorney, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, GN Dkt. Nos. 13-5 & 12-353, at 1 & Attachment (filed Mar. 27, 2014) (providing no new details on the packet-based replacement products that will be available to wholesale customers in the Carbon Hill and Kings Point wire centers).

²⁷ *See Experiments Order*, Appendix B, ¶ 35.

²⁸ AT&T Plan n.98.

²⁹ AT&T Proposal at 10.

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emergency services,”³⁰ but AT&T indicates that it has not yet developed the upgrades necessary to provide users of its Wireless Home Phone service with “an [Automatic Location Identification (‘ALI’)] function to emulate the customer’s experience with wireline TDM service.”³¹ This is no surprise—when marketing this product, AT&T tells its customers that they “may have to provide [their] location address to the 911 operator.”³² This issue has generated significant concern among local leaders and law enforcement officials in Carbon Hill. At a recent public hearing on the proposed experiment, a local official placed a trial 911 call from a mobile device, and the emergency operator identified the call as originating from “several blocks away” from the caller’s actual location.³³ According to the local police dispatcher, it is clear that AT&T “still has some bugs to work out” because this “could have been a problem if someone really needed help.”³⁴ Although AT&T states that it “will not seek to grandfather its TDM-based voice services until these enhancements are available,”³⁵ it is not clear whether this process will be completed before the initial phase of the experiment begins. Indeed, AT&T recently told the Commission that it expects to add an ALI function to its Wireless Home Phone service [BEGIN

³⁰ *Experiments Order* ¶ 39.

³¹ AT&T Plan at 23-24; *id.* at 24 (“[W]e are developing enhancements that will allow AT&T to send [Master Street Address Guide] information to the appropriate PSAP while the device is at a registered service address.”).

³² AT&T Wireless Home Phone, <http://www.att.com/shop/wireless/devices/wirelesshomephone.html> (last visited Mar. 29, 2014) (“AT&T Wireless Home Phone Website”).

³³ *See Uncertainties in AT&T’s Transition Plan Make It Hard to Assess*, *supra* note 4, at 7.

³⁴ *See id.* at 7, 8.

³⁵ AT&T Plan at 24.

CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]³⁶ but the proposal states that AT&T will start grandfathering consumer TDM-based voice services in [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL].³⁷

Fifth, AT&T acknowledges that its Wireless Home Phone and Home Phone with Internet services are not compatible with a number of important analog data devices and services (*e.g.*, home security systems, medical alert devices, and credit card readers), and that it will not develop the enhancements needed to ensure such compatibility for some time.³⁸ In the *Experiments Order*, the Commission stated that it must “be able to evaluate in detail the impact of [proposed network] changes on [these] devices and services.”³⁹ This is not possible for AT&T’s current proposal.

³⁶ AT&T Mar. 26, 2014 Letter, Attachment, at 9. It is worth pointing out that AT&T seeks to assure members of the public safety community that their concerns about the experiment will be addressed, *see* AT&T Plan at 23, but AT&T will not share the “estimated timeline” for one of the relevant upgrades with the public. *See* AT&T Mar. 26, 2014 Letter, Attachment, at 9.

³⁷ AT&T Plan, Exhibit D.

³⁸ *See id.* at 14-15; *see also* AT&T Wireless Home Phone Website (“Not compatible with home security systems, fax machines, credit card machines, and medical alert/monitoring systems.”). Even though AT&T’s Wireless Home Phone and Home Phone with Internet services are not currently compatible with certain of the analog data devices and services listed in AT&T’s compatibility chart, AT&T indicates “Y” (for “Yes”) for these services. *See* AT&T Plan at 14. Only in the chart’s endnotes does AT&T explain that its compatibility enhancements are currently in development and that the enhancements will not be introduced [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] a fact that AT&T will not share with the public. *See id.* at 15.

³⁹ *Experiments Order*, Appendix B, ¶ 5.

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Sixth, AT&T states that “TTY compatibility and accessibility for Wireless Home Phone . . . is being carefully assessed,” but has not yet been developed.⁴⁰ Here again, AT&T has failed to comply with the *Experiments Order*. In the *Order*, the Commission held that any experiment must “comply[] with disability accessibility requirements,” including “the provision of TRS.”⁴¹ AT&T states that it “will not take any action to grandfather or discontinue service to a customer with assistive technology that is known to be incompatible with AT&T’s replacement services,” but the fact remains that key aspects of AT&T’s proposal for achieving accessibility cannot be reviewed as part of the proposal.⁴²

Seventh, AT&T’s proposal does not “maintain [the] universal service status quo” as required under the *Experiments Order*.⁴³ There, the Commission presumed that applicants “will maintain [eligible telecommunications carrier (‘ETC’)] status” and comply with other universal service rules during the experiment.⁴⁴ The Commission further held that “[b]ecause we do not wish to foreclose the opportunity for worthy experiments that may require some technical deviations from the current regulatory requirements . . . applicants may attempt to rebut these presumptions,” but “applicants will bear a heavy burden in doing so.”⁴⁵ In its experiment proposal, AT&T does not seek consent for “technical deviations” from current universal service

⁴⁰ AT&T Plan at 15; *see also id.* at 39; AT&T Mar. 26, 2014 Letter, Attachment, at 5 (explaining that AT&T’s Wireless Home Phone service will be compatible with assistive technology devices “once AT&T has implemented the circuit switched data enhancement”).

⁴¹ *Experiments Order*, Appendix B, ¶¶ 29-30.

⁴² *See* AT&T Plan at 15.

⁴³ *Experiments Order*, Appendix B, ¶ 32.

⁴⁴ *Id.*

⁴⁵ *Id.*

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rules—AT&T seeks to escape its ETC obligations altogether.⁴⁶ Accordingly, AT&T should have filed a request for forbearance from or waiver of those obligations.⁴⁷ Instead, AT&T merely states that it “will demonstrate how it will satisfy the universal access” requirements in the *Experiments Order* “in other ways and elaborate on why such relief is appropriate” when it files “a subsequent pleading” on some unidentified date.⁴⁸ AT&T should have filed its request for relief simultaneously with its experiment proposal so that the Commission could assess how universal access will be maintained for the duration of the experiment before it approves the experiment.

Eighth, AT&T’s proposed experiment covers an extremely small sample area that is not remotely representative of the American population or AT&T’s existing customer base. In the *Experiments Order*, the FCC “strongly encourage[d] providers to conduct experiments in a diversity of arenas . . . in urban, rural, and suburban areas . . . that involve differences in population density and other demographics, terrain, weather conditions, and other factors relevant to users’ experience with communications networks.”⁴⁹ As Commissioner Pai put it,

⁴⁶ See AT&T Plan at 39-40 (explaining that AT&T does not plan to comply with its ETC obligations in the two wire centers at issue after the initial phase of the experiment).

⁴⁷ A forbearance proceeding under Section 10 of the Act, 47 U.S.C. § 160, would be clearly more appropriate than a waiver proceeding to evaluate AT&T’s claims that, among other things, “requiring a carrier to maintain its ETC status is unnecessary to protect the public interest” and that “given the robust competition AT&T faces from wireless, cable MSOs and other wireline providers of broadband, there is no basis for limiting the way in which AT&T and other ETCs may structure their services if those limits do not apply to competitors as well.” AT&T Plan at 42.

⁴⁸ *Id.* at 39-40, 43.

⁴⁹ *Experiments Order*, Appendix B, ¶ 3.

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“trials should reflect the geographic and demographic diversity of our nation.”⁵⁰ AT&T’s proposed wire centers do not satisfy this standard.

To begin with, because AT&T did not include an urban wire center for its experiment, the experiment will yield no meaningful information about the impact of the TDM-to-IP transition on customers in urban areas. This is significant because, among other reasons, urban areas have larger numbers of retail business and wholesale customers than rural and suburban areas. Thus, an experiment in the rural Carbon Hill, AL and suburban Kings Point, FL wire centers will not contain a sufficient sample size of wholesale customers to generate reliable data about the effect of the transition on such customers (*e.g.*, whether AT&T has the operational capabilities to convert large numbers of wholesale customers from legacy TDM-based inputs to packet-based inputs, including the systems and processes for pre-ordering, ordering, installation, maintenance and billing of these inputs).

In addition, the Carbon Hill and Kings Point wire centers are both in warm weather climates, which will prevent AT&T from discovering and resolving issues that may arise in colder weather. Furthermore, while less than 65 percent of the U.S. population is White and Non-Hispanic,⁵¹ 95 percent of the population in Carbon Hill and 84 percent of the population in Kings Point fits this description. This unrepresentative sample is unlikely to yield results (*e.g.*, on the issues consumers face when migrating from legacy TDM-based voice services to IP voice services) that could be generalized across the population as a whole.

⁵⁰ *Id.*, Pai Statement.

⁵¹ See U.S. Census Brief, *The White Population, 2010*, at 3 (issued Sept. 2011), available at <http://www.census.gov/prod/cen2010/briefs/c2010br-05.pdf>.

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Finally, AT&T’s proposed experiment is unlikely to yield meaningful results even for the demographic groups that it does cover. In the *Experiments Order*, the FCC explained that it would be key to understand “whether the data would be suitable to make statistical inferences about the performance of the experiment areas.”⁵² Specifically, the Commission asked, “[i]f only a small number of experimental units will be involved, how will the data be analyzed so that meaningful quantitative conclusions are possible?”⁵³ AT&T’s proposed wire centers cover approximately 70,000 people,⁵⁴ or approximately 0.02 percent of the U.S. population, yet AT&T provides no indication as to how it expects to extrapolate meaningful conclusions from this sample.

Contrary to the guidelines established in the *Order*,⁵⁵ AT&T also does not provide a detailed description of the types of data it plans to collect or the metrics it plans to use. And the scant description AT&T does provide offers no basis for concluding that the proposed experiment will yield reliable data. For example, AT&T plans to “provide a summary of trial-specific customer issues” based on a selection of submissions to AT&T’s website and calls to AT&T customer care centers.⁵⁶ It is highly unlikely that this apparently ad hoc process would

⁵² *Experiments Order* ¶ 52.

⁵³ *Id.*

⁵⁴ AT&T Plan at 5.

⁵⁵ See *Experiments Order* ¶ 34 (stating that the Commission expects it will need to evaluate, among other things, “proposed metrics for measuring success”); *id.*, Appendix B, ¶¶ 49-58 (stating that “[i]t will be important to the Commission’s evaluation of proposals to understand each data type to be collected in an experiment” and “suggest[ing] various categories of data that might be reasonable to measure, depending on the specific nature of the experiment proposed”).

⁵⁶ AT&T Plan at 53.

produce reliable or statistically significant data regarding issues that customers may face during the experiment.

Nor has AT&T even selected the “control wire centers” to which it will compare the data from Carbon Hill and Kings Point. The Commission highlighted the importance of selecting proper control groups in the *Order* and stated that it “will need to understand how to ensure the selection of the control group does not produce misleading or biased results.”⁵⁷ By neglecting to select its control groups prior to proposing its experiment, AT&T has deprived the Commission of the opportunity to conduct this review.

C. AT&T’s Proposed Treatment Of Wholesale Services Is Incomplete And Inconsistent With The *Experiments Order*

In the *Experiments Order*, the Commission established a clear policy that incumbent LECs may not use service-based experiments as a means of evading meaningful regulation of wholesale services or of otherwise harming wholesale customers. In particular, the Commission explained that an incumbent LEC conducting a service-based experiment must offer packet-based services that are “comparable” to legacy TDM-based wholesale services at rates, terms, and conditions that are “equivalent” to those currently offered for the TDM-based wholesale services.⁵⁸ To that end, the *Order* “requires that service-based experiments maintain a competitor’s access to an applicant’s network” and requires that any proposal for a service-based experiment include a commitment to ensure, among other things, that

⁵⁷ *Experiments Order*, Appendix B, ¶ 51.

⁵⁸ *Experiments Order* ¶ 59.

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(1) “access provided during the experiment – whether provided through unbundling, resale, or purchase of special access – is functionally equivalent to that provided immediately before the experiment;”

(2) “the prices or costs of such access do not increase as a result of the experiment;” and

(3) “neither wholesale nor retail customers are penalized as a result of the experiment.”⁵⁹

As discussed below, AT&T’s proposal is inconsistent with the spirit and the letter of these requirements in a number of respects.

1. Availability Of Replacement Inputs

AT&T’s proposal fails to ensure that functionally equivalent replacements for UNEs and TDM-based special access inputs will be available to wholesale customers. As explained above, AT&T has failed to develop several wholesale replacement products. But AT&T has also overstated the availability of the few replacement products it has developed. For example, in the pleading accompanying its proposal, AT&T claims that it “has identified the replacement products that already are available as alternatives to current legacy TDM services – such as the AT&T Switched Ethernet (ASE) service that is available to replace DS_n-level special access service and high capacity loop and transport UNEs – and will provide customers who choose to do so the opportunity to transition to those alternatives in th[e] initial phase of the trial.”⁶⁰ However, in one of the dozens of highly confidential product data sheets appended to its proposal, AT&T indicates that in the Kings Point wire center, an AT&T replacement product is currently available for [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

⁵⁹ *Id.*, Appendix B, ¶ 35.

⁶⁰ AT&T Proposal at 29.

[REDACTED] [END HIGHLY CONFIDENTIAL]⁶¹ Also, the AT&T replacement products listed [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [REDACTED] [END HIGHLY CONFIDENTIAL] on the data sheet include both ASE and AT&T’s “Network Based IP VPN Remote Access” service.⁶² It is not clear whether this means that *both* ASE and the IP VPN service are available or that only either ASE *or* IP VPN service is available [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] Furthermore, while AT&T asserts that a competitive replacement product (*i.e.*, a service offered by provider other than AT&T) for AT&T’s DS1 service is available in [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] customer locations at issue in Kings Point, the products listed—best efforts Internet access service (105 Mbps downstream/768 Kbps upstream) from Comcast, “satellite” service from HughesNet, DISH Network, and DirecTV, and mobile wireless services from Sprint and Verizon Wireless⁶³—are obviously not viable substitutes for the dedicated services at issue.⁶⁴

2. *Rates, Terms, And Conditions For Replacement Inputs*

AT&T does not explain how it will ensure that replacement inputs will be available on rates, terms and conditions that are equivalent to those currently offered for UNEs and TDM-based special access. In particular, AT&T has chosen not to disclose the rates, terms, and

⁶¹ AT&T Plan, Exhibit E, at #WSA2. It is also not entirely clear from AT&T’s proposal whether a replacement product is available for the carriers currently “purchasing DS1 special access circuits” in the Carbon Hill wire center. *Id.* at 46.

⁶² *Id.*, Exhibit E, at #WSA2.

⁶³ *Id.*

⁶⁴ *See, e.g.*, Comments of BT Americas, Cbeyond, EarthLink, Integra, Level 3 and tw telecom, WC Dkt. No. 05-25, at 51-57 (filed Feb. 11, 2013).

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conditions on which it will offer packet-based services to wholesale customers during the initial voluntary phase or any subsequent phase of the proposed experiment. This omission makes it impossible for the Commission to ensure that AT&T will comply with the requirements for wholesale services set forth in the *Experiments Order*, including the requirement that “the prices or costs” of access that is functionally equivalent to UNEs or TDM-based special access “do not increase as a result of the experiment.”⁶⁵

Nor is it appropriate to delay consideration of this issue until AT&T seeks authority under Section 214 of the Act⁶⁶ to grandfather TDM-based local transmission services. This is because wholesale customers must be able to obtain equivalent rates, terms and conditions for packet-based inputs *from the beginning* of any experiment in which TDM-based inputs will ultimately be eliminated. It often takes time for wholesalers to transition existing retail business customers from legacy TDM-based inputs to packet-based inputs. Such a transition requires careful planning and cooperation from the incumbent LEC in order to avoid extended service outages or service degradation. Wholesale customers must therefore begin the process of cutting over existing customers as soon as possible, likely during the initial stage of the experiment. Moreover, given the problems that can arise when cutting over existing customers from TDM-based inputs to packet-based inputs, wholesale customers will seek to initiate service to as many new customers as possible using packet-based inputs. Thus, competitors that serve customers in the Kings Point wire center will have little choice but to participate in the experiment during the initial “voluntary” stage. The absence of *any* information about the prices, terms, and conditions

⁶⁵ *Experiments Order*, Appendix B, ¶ 35.

⁶⁶ 47 U.S.C. § 214.

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on which AT&T will offer wholesale packet-based inputs such as Ethernet makes the requisite business planning impossible.

3. *Penalties Associated With Purchasing Replacement Inputs*

AT&T does not explain how it will ensure that wholesale customers are not penalized as a result of the experiment. More specifically, wholesale customers that participate in the experiment may incur shortfall penalties, early termination fees for individual circuits, or other penalties as they replace the TDM-based circuits they currently purchase under AT&T's exclusionary, lock up special access "discount" plans with the packet-based inputs offered during the experiment. It is possible that the volumes of TDM-based special access services at issue in the Carbon Hill and Kings Point wire centers are not large enough to implicate shortfall penalties or other obstacles to purchasing packet-based inputs covered by these "discount" plans. But AT&T bears the burden of demonstrating that wholesale customers will not incur penalties as a result of its proposed experiment,⁶⁷ and it has not attempted to meet that burden.

4. *Availability of Copper Loops*

AT&T states that wholesale customers will "have the opportunity," apparently for the duration of the trial, "to obtain bare copper loops and utilize their own electronics to provide high capacity services to their end user customers."⁶⁸ But AT&T fails to provide any relevant details regarding this offer. In particular, AT&T does not discuss (1) the extent to which such loops exist today (*i.e.*, the locations to which such loops have not been replaced in whole or in part by fiber); (2) whether the loops are of sufficient length and in sufficient condition to provide

⁶⁷ *Experiments Order*, Appendix B, ¶ 35.

⁶⁸ AT&T Plan at 47.

Ethernet-over-copper services; or (3) AT&T’s plans for removing or disabling these facilities in the future.

D. AT&T’s Proposed Treatment Of Retail Voice Services Is Inconsistent With The *Experiments Order* And Inappropriate For A Service-Based Experiment

In its proposal, AT&T plans to offer its U-verse Voice, U-verse Business Voice, and Wireless Home Phone services as replacements for its legacy TDM-based voice services.⁶⁹ Although the Commission has not determined the regulatory classification of these services, the proposal assumes that they are almost entirely unregulated—and thus, assumes that AT&T need not comply with various wholesale obligations when providing the services. In so doing, AT&T skews the conditions for the experiment against wholesale customers and competition more generally.

In the proposal, AT&T assumes that managed, fixed interconnected VoIP services (*e.g.*, its U-verse Voice and U-verse Business Voice services) “are properly classified as information services.”⁷⁰ But the FCC has not yet decided whether a fixed, managed VoIP service is a telecommunications service, telephone exchange service, exchange access service, an information service, or some combination of these.⁷¹ AT&T likely assumes that this issue will be resolved in its favor to avoid the resale, interconnection, and other statutory obligations applicable to incumbent LECs.

⁶⁹ *See id.* at 12-13.

⁷⁰ *Id.* at 52.

⁷¹ Some parties have argued that VoIP service can qualify as a telephone exchange or exchange access service even if it is classified as an information service. *See, e.g.*, Comments of Cablevision Systems Corporation and Charter Communications, Inc., WC Dkt. No. 11-119, at 9 (filed Aug. 15, 2011) (explaining that “regardless whether VoIP is an information service or a telecommunications service, the provision of VoIP service constitutes ‘telephone exchange service’ or ‘exchange access’”).

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Similarly, AT&T states that its Wireless Home Phone service is a commercial mobile radio service (“CMRS”),⁷² and AT&T assumes that it is not a LEC when providing the service. The statutory definition of “local exchange carrier” does exclude providers of CMRS, unless the FCC decides to treat a provider of CMRS service as a LEC.⁷³ But the Commission has not yet decided whether to treat a provider of semi-fixed wireless voice services, such as AT&T’s Wireless Home Phone service, as a LEC.⁷⁴ The consequences of AT&T’s assumption that the FCC would classify its semi-fixed wireless service as a non-LEC service are, again, significant. Such a classification would mean that AT&T would avoid complying with, among other requirements, certain key wholesale regulations applicable to incumbent LECs in Section 251 of the Act, such as the resale requirement under Section 251(c)(4)⁷⁵ and direct interconnection obligations under Section 251(c)(2).⁷⁶

AT&T’s assumption that its VoIP and Wireless Home Phone services fall into the least regulated of the possible classifications is inappropriate for several reasons. *First*, given that AT&T is clearly positioning these services as replacements for and successors to its legacy

⁷² See, e.g., AT&T Plan at 12, 15, 23, 53. By asserting that its Wireless Home Phone service is a CMRS service, AT&T concedes that Wireless Home Phone is a telecommunications service. See, e.g., *Orloff v. FCC*, 352 F.3d 415, 418 (D.C. Cir. 2003) (“A provider of CMRS (commercial mobile radio service) such as Verizon is a ‘common carrier’ subject to Title II of the Communications Act.”).

⁷³ See 47 U.S.C. § 153 (32) (“Such term does not include a person . . . engaged in the provision of a commercial mobile service under section 332(c) of this title, except to the extent that the Commission finds that such service should be included in the definition of such term.”).

⁷⁴ See *id.* (defining “local exchange carrier” as “any person that is engaged in the provision of telephone exchange service or exchange access”).

⁷⁵ *Id.* § 251(c)(4).

⁷⁶ *Id.* § 251(c)(2).

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wireline local exchange and exchange access services, there is every reason to conclude that AT&T should be treated as a LEC when providing these services. In fact, the definition of telephone exchange service in the Communications Act, by its terms, contemplates successor services utilizing new technologies that provide the same functionalities as legacy circuit-switched local exchange service.⁷⁷

Second, AT&T's proposed treatment of these replacement voice services is inconsistent with the *Experiments Order*. Under the *Order*, AT&T's proposal must ensure that wholesale customers will be able to obtain replacement services for resale at prices equivalent to those for TDM-based services.⁷⁸ But AT&T does not state any intention to offer its VoIP and Wireless Home Phone services for resale. And it states that the unidentified IP replacement services that it will offer for resale will be made available "on commercial terms"⁷⁹ while TDM-based services currently offered for resale must be made available "at wholesale rates."⁸⁰

Third, by assuming that it is not subject to incumbent LEC obligations under Section 251 when providing its VoIP and semi-fixed wireless services, AT&T avoids addressing any operational issues that might otherwise arise. For example, if AT&T is not required to offer its

⁷⁷ See, e.g., Comments of Senators Stevens and Burns, *Federal-State Joint Board on Universal Service*, CC Dkt. No. 96-45, n.1 (filed Jan. 28, 1998) (explaining that Congress' 1996 amendment of the "telephone exchange service" definition to include "comparable" service "would not have been necessary had Congress intended to limit telephone exchange service to traditional voice telephony," and that "[t]he new definition was intended to ensure that the definition of local exchange carrier, which hinges in large part on the definition of telephone exchange service, was not made useless by the replacement of circuit switched technology with other means . . . of communicating information within a local area").

⁷⁸ *Experiments Order*, Appendix B, ¶ 35.

⁷⁹ AT&T Plan at 47.

⁸⁰ 47 U.S.C. § 251(c)(4).

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VoIP or semi-fixed wireless services for resale under Section 251(c)(4) in an experiment, AT&T avoids having to process orders for and provision such services on a wholesale basis to resellers. Such an outcome is contrary to AT&T's own rationale for conducting service-based experiments. As AT&T has stated, a reason to hold technology trials or experiments is to understand the "operational difficulties for existing ILEC-CLEC arrangements" rather than "remain blind to all these challenges until the final stages" of the transition are underway.⁸¹

III. THE COMMISSION SHOULD NOT APPROVE AT&T'S PROPOSED EXPERIMENT UNLESS AND UNTIL AT&T ADDRESSES THE DEFICIENCIES IN ITS PROPOSAL

A. The Success Of The Technology Experiment Regime Depends On The Adoption Of Appropriate Requirements For AT&T's Proposal

In the *Experiments Order*, the Commission stated that the first round of service-based experiments it approves "will serve as a prototype that will be followed" in evaluating subsequent proposals.⁸² According to the Commission, this approach will "set[] clear expectations for providers proposing successor experiments as to our expectations and requirements."⁸³ It will also make it "easier for the Commission and all stakeholders to compare data across different service-based experiments."⁸⁴ It is therefore critical that the Commission reject the AT&T proposal as filed and require AT&T to meet appropriate requirements for any future proposal it files. As discussed below, such requirements should be designed to ensure that (1) the proposal includes enough detail (1) enable the Commission and interested parties to conduct a meaningful review of all aspects of the experiment, (2) the proposal meets the necessary methodological requirements to ensure that the experiment will produce valuable and

⁸¹ Reply Comments of AT&T, GN Dkt. No. 12-353, at 10 (filed Feb. 25, 2013).

reliable data, and (3) AT&T does not utilize the experiment in ways that harm wholesale customers and competition.

B. AT&T Must Have Actually Developed And Begun To Deploy The Services And Enhancements It Seeks To Test In The Experiment Before Its Proposal Is Approved

No application for a service-based experiment should be approved for services that the applicant has not yet developed and begun to deploy. It should go without saying that there is no way for the Commission or interested parties to review an experiment proposal for services that do not exist. Nor can the Commission or interested parties be assured that these services will be ready for testing during the experiment if they are not deployed by the time the proposal is filed. In the case of the instant proposal, vague statements that AT&T “intends to make [such services] available” or that it is “working diligently to develop” them are insufficient.

In addition, the features of the newly developed services must meet the criteria (*e.g.*, for 911 capability and disabilities access) established in the *Experiments Order*. For example, as discussed in Part II above, the *Order* provides that “any service-based experiment can in no way diminish consumer access to 911/E911 emergency services,”⁸⁵ but AT&T’s proposal does not currently satisfy this standard. The Commission should require AT&T to ensure that the ALI enhancement to the 911 capability of its Wireless Home Phone service is developed before its proposal is approved. AT&T should also be required to implement any “circuit switched data

⁸² *Experiments Order* ¶ 29.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *See id.* ¶ 39.

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enhancement” necessary to ensure capability with accessibility devices for the disabled⁸⁶ before its proposed experiment is approved.

Similarly, the Commission should require AT&T to complete the development of enhancements to ensure compatibility of its Wireless Home Phone and its Home Phone with Internet services with important analog data devices and services (*e.g.*, alarm monitoring, medical alert and credit card validation applications) prior to approval of the experiment. This will allow such enhancements to be assessed in the context of the experiment proposal, and will allow their impact on consumers to be evaluated during any subsequent experiment.

C. AT&T Must Propose An Experiment That Encompasses A Sufficiently Diverse Set Of Consumers And Customer Types

Consistent with the framework of the Experiments Order, the Commission should approve only those experiments from which meaningful and reliable conclusions can be extrapolated. It follows that AT&T must propose an experiment that includes a sample size that is larger and more representative of the overall population and AT&T’s existing customer base than is the case with its current proposal. More specifically, AT&T should include an urban wire center in its experiment so that it can identify and address operational issues that are likely to arise during the transition in urban areas. In particular, the inclusion of an urban wire center in the experiment would allow AT&T to test whether it will be able to smoothly and efficiently transition large numbers of wholesale customers from legacy TDM-based inputs to packet-based inputs. AT&T should also include wire centers that are located in more diverse climates and where the populations are more diverse demographically than is the case with Carbon Hill, Alabama and Kings Point, Florida.

⁸⁶ See AT&T Mar. 26, 2014 Letter, Attachment, at 5.

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D. AT&T Must Treat The Wholesale Services And Retail Voice Services It Offers During The Experiment In An Appropriate Manner

As explained in Part II above, AT&T has inappropriately chosen to offer IP and packet-based wholesale services and retail voice services on rates, terms, and conditions that are inconsistent with the letter and the spirit of the *Experiments Order* and that threaten to harm both wholesale customers and competition. AT&T should be required to comply with wholesale regulations designed to address these problems. Of course, to the extent these regulations are different from the applicable requirements under existing law, they would apply only for purposes of the experiment.⁸⁷

First, the Commission must require AT&T to publicize the rates, terms, and conditions on which it will offer access to its packet-based local transmission facilities during the experiment. Those rates, terms, and conditions must ensure that, consistent with the *Experiments Order*, AT&T offers packet-based local transmission services that are “comparable” to legacy TDM-based wholesale services at rates, terms, and conditions that are “equivalent” to those currently offered for TDM-based wholesale services.

Second, AT&T must explain in detail how wholesale customers will avoid incurring penalties, such as any early termination penalties and short-fall penalties applicable under its exclusionary special access purchase arrangements, when switching from TDM-based special access services to packet-based or other replacement services offered by AT&T during the experiment.

⁸⁷ See *Experiments Order* ¶ 25 (holding that “decisions about how to address or resolve a problem or dispute during an experiment will not constitute a determination by the Commission or service providers that such an approach represents binding legal or policy obligations outside the context of the experiment”).

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Third, AT&T must provide information regarding the location, length, and condition of copper loops in the relevant wire centers. Without such information, AT&T's offering of access to copper loops is meaningless because wholesale customers cannot assess the extent to which they could use the copper facilities to provide service (*e.g.*, Ethernet-over-copper services).

Fourth, to the extent that AT&T plans to replace its TDM-based local exchange service with VoIP and/or semi-fixed wireless voice services, AT&T must comply with the statutory provisions and regulations applicable to providers of TDM-based telephone exchange service. These include the resale requirements of Section 251(c)(4) of the Act. Again, treating AT&T as subject to these requirements during the experiment could allow AT&T and wholesale customers to address operational issues that may arise without any concession by AT&T or any determination by the Commission that such requirements apply to AT&T's VoIP and semi-fixed wireless services outside of the experiment.

IV. CONCLUSION

For all of the foregoing reasons, the Commission should reject AT&T's proposal and require any future proposal for a service-based experiment to comply with the requirements discussed in Parts III.B-D above.

Respectfully submitted,

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