

State of California

Public Utilities Commission
San Francisco

MEMORANDUM

Date : June 21, 2013

To : Commissioners, Advisors
(Meeting of June 27, 2013)

From : Chris Witteman, Legal Division
Roxanne Scott, Communications Division

Subject : Filing of Comments with the FCC re TDM-IP Trials

RECOMMENDATION: The CPUC should file comments in response to a request from the FCC’s Technology Transitions Policy Task Force (Task Force) for comments on potential real-world trials related to the ongoing transition of the nation’s communications network from a traditional wireline (“TDM”-based technology) telecommunications network to an internet-protocol (“IP”-based technology) communications network.¹ The Task Force asserts that “[t]he goal of any trials would be to gather a factual record to help determine what policies are appropriate to promote investment and innovation while protecting consumers, promoting competition, and ensuring that emerging all-Internet Protocol (IP) networks remain resilient.”² The Task Force seeks comments on several aspects of the potential/proposed trials, including VoIP interconnection, E911, carrier proposals to transition some rural customers from wireline to wireless, legal issues associated with the trials, whether other trials are appropriate, and – most saliently – the role of the states in these trials.

¹ Time-Division Multiplexing (TDM) is a circuit-switched technology used to provide what is commonly referred to as traditional wireline telephone service, which is commonly delivered to customers over twisted pairs of copper wires, also called “copper loops”, which provide the final link between the service provider’s network and the customer’s premises. This service is also known as Plain Old Telephone Service (POTS). (Versions of TDM are also used on wireless networks.) Internet Protocol (IP)-based services are those that travel over fiber optic cables, co-axial cables, wireless facilities, and DSL copper wires, but use an Internet-based technology in lieu of switched circuits to deliver traffic.

² FCC May 10, 2013 Public Notice DA 13-1016, captioned “Technology Transitions Policy Task Force Seeks Comment on Potential Trials, GN Docket No. 13-5,” at 1 (available at <http://www.fcc.gov/document/technology-transitions-policy-task-force-seeks-comment-trials>). FCC Chairman Julius Genachowski announced the formation of the Task Force, led by FCC General Counsel Sean Lev, and staffed entirely by FCC personnel, in a December 10, 2012 press release.

Staff recommends that the CPUC file comments recognizing the value of trials, but stating that trials should take place after the FCC addresses long-standing legal questions, at least for purposes of the trials. These legal issues include the status of VoIP and other IP-enabled technologies, as well as the FCC's own jurisdiction to resolve the issues that it raises in the Public Notice request for comments. California should further assert that any trial affecting service offered by a state franchise or Certificate of Public Convenience and Necessity holder must respect state law, and the CPUC must approve any withdrawal of service contemplated or proposed by any trial involving closing a central office or cessation or suspension of a service to customers in California. The CPUC should urge the FCC to share all trial data with the states, and recommend that all parties participating in these trials should do so voluntarily, not pursuant to an FCC mandate. Comments are due July 8, 2013.

BACKGROUND: AT&T and the National Telecommunications Cooperative Association (NTCA) first proposed trials last year, and they also proposed that the FCC open a rulemaking to address a host of issues arising from the FCC's plan to transition the nation's communications network within the next eight years. The FCC took comment on the Petitions. Sprinkled throughout the Petitions were specific proposals that, if adopted, would dramatically affect state jurisdiction. In its January 28, 2013 comments, the CPUC noted, for example, that authorizing AT&T in the course of a trial to close certain wire centers without resolving those critical jurisdictional issues, as AT&T recommended, was tantamount to "putting the cart before the horse."³

Although the FCC has not yet issued a decision on whether to implement trials, or what their scope and ground rules would be, the Task Force "proposes to move forward with real-world trials to obtain data that will be helpful to the [FCC]" and now seeks comment "on a set of potential trials to assist the [FCC] in ensuring that policy decisions related to ongoing technology transitions are grounded in sound data." In particular, the Task Force seeks comment on trials to provide data in three areas: VoIP Interconnection; NG 911; and the potentially forced migration of some rural customers from wireline to wireless service.

VoIP Interconnection: As the industry moves from TDM to all-IP networks, providers are migrating to voice over Internet Protocol (VoIP) interconnection. The Task Force seeks "comment on a VoIP interconnection trial that would gather data to determine whether there are technical issues that need to be addressed and gather information relevant to the appropriate policy framework."

NG 911: The Task Force notes "[A]s we transition away from TDM, the nation's emergency calling (911) system must also migrate to Next Generation 9-1-1 (NG911)." The Task Force seeks comment "on a trial that will assist the Commission, state, local

³ CPUC January 28, 2013 Comments at 10-11.

and Tribal governments, and Public Safety Answering Points (PSAPs) in a few geographic areas to answer important technical and policy questions to accelerate the transition. Beyond NG911, we also seek comment on how a trial could elicit data on the impact of network resiliency and public safety more broadly as consumers migrate to wireless and IP-based services that are dependent on commercial power.”

Wireline to Wireless: Noting that at least one provider [AT&T] has proposed serving consumers with wireless service in place of wireline service in certain geographic areas, the Task Force seeks “comment on a trial that would analyze the impact of doing so and, in particular, focus on the consumer experience and ensure that consumers have the ability to move back to a wireline product during the trial.”

The CPUC’s January 28, 2013 comments on the AT&T and NCTA Petitions raised a number of issues concerning the possibility of trials, and anticipated that the FCC would clarify some of these issues before ordering trials. Staff proposes that the CPUC’s comments here would be consistent with the position set forth in the January 28th comments, specifically pertaining to retention of consumer protections, network reliability, competition and universal service.⁴

Staff notes that numerous other commenters in the January 28th round of comments also stressed the importance of settling the many outstanding issues *before* trials are ordered. The Pennsylvania PUC urged that outstanding issues (including federal-state issues) be addressed in already-open proceedings (and that the IP Petitions be denied); it worried that the proposed trials, were they go forward without rulings on these issues, might constitute a *de facto* attempt to “rewrite federal law.”⁵ The USF Joint Board and NARUC also asked that the AT&T Petition for trials be denied, and urged the FCC to decide outstanding legal issues in the USF/Interconnection proceeding where the issues have already been framed.⁶ COMPTTEL (the competitive carriers) asserted that “any test of the transition” should be preceded by the development of a standard IP interconnection agreement which would be “compliant with sections 251 and 252, [and] which will be filed and available for opt-in by other carriers to curb further disputes ... before [the incumbent carrier is] allowed to shut down its TDM network, even for a ‘test’.”⁷ Sprint

⁴ Comments at 11.

⁵ January 28, 2013 Comments of Pennsylvania PUC, at 2-3 (“constitutional and cooperative federalism” and “a modified form of common carriage,” *inter alia*, need to be preserved in rulings in existing proceedings, including “National Broadband Plan, the Connect America Fund proceeding, various forbearance requests, intercarrier compensation matters ... the current ICC/USF Order, and ancillary proceedings such as the pending petitions on retirement of copper”).

⁶ *See, e.g.*, January 28, 2013 Comments of NARUC, at 11-20 (discussing numerous definitional issues that would necessarily need to be decided before trials, particularly trials with any intrastate component, would commence).

⁷ January 28, 2013 Comments of COMPTTEL, at 5.

Nextel ask that the Petitions be denied, and that the FCC “immediately and explicitly re-affirm that Sections 251 and 252 apply to IP voice interconnection.”⁸

Rather than rule on these issues (raised largely in January 28, 2013 comments), the FCC’s Task Force released a May 10, 2013 Public Notice “propos[ing] to move forward with real-world trials” and requesting comments on these “potential trials.”² CPUC staff assumes that the FCC will issue an order prior to any trials; the question is how squarely the FCC will address outstanding legal issues before those trials begin.

The Task Force seeks comment on three particular aspects of the “technology trial” – VoIP interconnection, Public Safety and NG911 networks, and AT&T’s proposal to transition some customers (particularly those in rural areas) from wireline to wireless services -- as well as comment on possible “additional trials” related to numbering issues. The Task Force also seeks comment on the role of state governments in the trials, and on legal issues (“whether any commission rules or statutory provisions are implicated by the proposed trials”).

DISCUSSION AND RECOMMENDATIONS:

The CPUC’s comments should recognize the value of technical trials to gather a factual record to help determine what policies are appropriate to promote investment and innovation while protecting consumers, promoting competition, and ensuring that emerging all-Internet Protocol (IP) networks remain resilient. The comments should also foreground long-standing legal issues that are implicated by these trials. Staff proposes that the CPUC submit comments on both the particulars of the Task Force’s proposal, and on whether it is appropriate to “move forward” with trials before the FCC has clarified threshold issues, some of which are suggested below.

General Considerations

Staff recommends that the CPUC urge the FCC not to initiate trials prior to clarifying the open issues described above, and further discussed below (see “Legal Questions”) and in the Commission’s January 28, 2013 Comments. Staff recommends that the CPUC propose voluntary trial participation; the FCC should not mandate participation. Participation must be consistent with relevant state and federal law; a service provider should not disconnect service to any consumer unless the provider complies with state requirements.

As many commenters have noted, the TDM-IP transition has been happening for the last 10-15 years (indeed, it has been suggested that the FCC could also usefully survey those

⁸ February 25, 2013 Sprint Nextel Reply Comments, at 5/

² Public Notice, at 1.

customers and carriers who have already switched their service to VoIP/IP) – while the trials are important, more urgent is the need to resolve the ground rules before the trials take place.

Comments on Specific Proposals

The Commission should make the following recommendations regarding the proposed trial process.

State Role

Staff recommends that the CPUC seek acknowledgement from the FCC that any trial affecting service offered by a state franchise or Certificate of Public Convenience and Necessity holder must respect state law, and the CPUC must approve any withdrawal of service contemplated or proposed by any trial involving closing a central office or cessation or suspension of a service to customers in California. This is consistent with the CPUC’s January 28 2013 Comments.¹⁰

VoIP Interconnection

The FCC considers “allowing providers that participate in a trial to negotiate in good faith” for interconnection, and – failing that – to perhaps “conduct another trial where parties agree to negotiate pursuant to the existing 251/252 framework.” The CPUC should be wary of committing its ALJ Division to the state arbitration responsibilities under section 251/252, when those responsibilities are expanded without clear regulatory or statutory guidance to VoIP carriers.¹¹ Therefore, staff recommends that the FCC or an independent entity, not the state commissions, should arbitrate any interconnection disputes emanating from the trials (or allow each state commission to either opt in or opt out).

Prior to any trials, the FCC should decide and declare what authority it has over IP-interconnection (as discussed below in “Legal Questions”).

Staff recommends that the CPUC should urge the FCC, if and when it goes forward with trials, to obtain as much information from those trials as possible, including copies of all interconnection agreements negotiated and executed during the term of the trial. Indeed, maximum information harvest should be an FCC goal in any trial.

¹⁰ CPUC’s January 28, 2013 Comments at 9.

¹¹ Even under the fairly detailed regimen for traditional carriers to interconnect, the CPUC routinely gets pulled into federal court to litigate these questions. *See, e.g., Global NAPs v. CPUC*, 624 F.3d 1225 (9th Cir. 2011).

NG911

Staff recommends that the CPUC briefly note the five NG 911 trials being conducted in California under the oversight of the California Technology Agency.

Wireline to Wireless Migration

Staff recommends that the CPUC state that customers in the trial areas should have the option of wireline or wireless service during the trial; i.e., there should be no forced migration. Also the LECs participating in the trial should be required to fully disclose any differences between a customer's existing wireline and new wireless service *prior to* the customer switching. The CPUC should also urge the FCC to require carriers participating in such a trial to collect and submit a variety of data, including both technical data on wireless call quality, and a customer satisfaction survey, to the FCC and to the states for analysis. Finally, the CPUC should propose that participation in these trials should be voluntary, and should comply with relevant state and federal laws.

Additional Trials

Assignment of Numbers: The Task Force notes that "the technology transition offers an opportunity to take a fresh look at the assignment of numbers." Among other things, the Task Force seeks comment on whether a technology trial could serve as a means to test new technical proposals for assigning telephone numbers, e.g., individually instead of in blocks of 1000.

The Task Force also asks if any numbering trial should be conducted in conjunction with a VoIP interconnection trial or separately. Staff recommends that the CPUC state that it has no preference regarding whether or not they are trialed together or separately. In response to the questions whether states should be involved in selecting the geographic areas for any numbering trials, the CPUC should state that it wishes to participate in the trials to the extent that they involve numbers currently, or proposed to be, assigned in California.

The CPUC should also urge the FCC to provide states with access to data collected during the trials. Providing access to states would facilitate analysis by a diverse group of people with numbering expertise and the trial could only benefit from this analysis.

Copper to Fiber Trial: The Task Force asks if it should consider a trial on issues relating to copper retirement. Staff recommends that the CPUC oppose such a trial. Many CLECS are dependent on the ILECs' copper to deliver their services. The policy issues regarding CLEC access to ILEC facilities should be addressed before any such trial is undertaken.

Legal Questions

The Task Force asks “whether any Commission rules or statutory provisions are implicated by the proposed trials.” At the root of many of the questions described above – the FCC’s authority to regulate VoIP interconnection, the role of the states, universal service, etc. – is the question of the regulatory classification of broadband. Staff recommends that the CPUC urge the FCC to address this issue sooner rather than later.

The Task Force’s proposals re VoIP interconnection suggest why a formal FCC decision is necessary before trials begin. There is arguably no reason to have a trial on VoIP interconnection, and the associated competition issues, when – as the Commission concedes – the largest incumbents now assert that “the Commission lacks Title II authority to regulate interconnection between IP-based service providers.”¹²

If the FCC moves forward with trials, staff recommends that the FCC categorize VoIP as a “telecommunications” service to the limited extent necessary to conduct the trials. For instance, for purposes of the IP Interconnection trial, VoIP providers would be treated as telecommunications carriers under the 251-252 scheme so that they have clear authority to request interconnection,¹³ the ability to obtain numbers directly for any trial involving numbering,¹⁴ and standing to request pole attachments and the like.¹⁵

Staff seeks authority to submit comments on behalf of the CPUC that would set forth the issues addressed here and propose that the FCC address the questions presented in this memo.

Assigned staff: Legal Division – Chris Witteman (WIT 355.5524); Communications Division – Roxanne Scott, Karen Eckersley, Adam Clark (RS2, 703.5263).

¹² Task Force Request for Comments, at fn. 23, citing AT&T’s January 28, 2013 comments in this docket.

¹³ See 47 USC §§ 251-252; see in particular § 251(a) (only “telecommunications carriers” entitled to interconnect); § 251(c)(1) (only “telecommunications carriers” can request interconnection), *etc.*

¹⁴ See 47 USC §251(e) (“telecommunications numbering”); 47 CFR § 52.9(a)(1) (FCC shall make “telecommunications numbering resources ... available to telecommunications carriers”).

¹⁵ See 47 USC 251(b)(4) (incumbents must only grant access to “poles, ducts, conduits and rights-of-way” to other “providers of telecommunications services”).