

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

In the Matter of
Technology Transitions
AT&T Petition to Launch a Proceeding Concerning
the TDM-to-IP Transition
GN Docket No. 13-5
GN Docket No. 12-353

ORDER

Adopted: January 7, 2015

Released: January 7, 2015

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant in part and deny in part a challenge filed by Public Knowledge and the National Consumer Law Center (Public Knowledge)1 to AT&T’s designation as confidential, under the terms of pertinent Commission protective orders, certain information in its Proposal for Wire Center Trials2 filed pursuant to the Commission’s January 2014 Technology Transitions Order.3 Specifically, Public Knowledge challenges AT&T’s confidentiality designation of information in the Proposal regarding: (1) the percentage of living units in Carbon Hill that will receive wireline and/or wireless broadband service, which Public Knowledge asserts that AT&T made public subsequent to submission; and (2) the detailed timeline for AT&T’s proposed trials. For the reasons stated below, we grant the challenge as to the former designation and deny it as to the latter. As to the detailed timeline, we agree with Public Knowledge that the trials must be conducted responsibly and transparently. However, AT&T does not yet seek Commission authorization for its trials. When it does, the Commission will ensure that the public is able to participate fully in that process.

II. BACKGROUND

2. On January 31, 2014, the Commission released the Technology Transitions Order. Among other things, the Order solicited proposals for “service-based experiments” — i.e., “experiments in which incumbent providers seek to substitute new communications technologies for the TDM-based services over copper lines that they currently are providing to customers”4 The Technology Transitions Order established a framework for such proposals. The purpose behind seeking proposals for service-based experiments is to “speed technological advances by preserving the positive attributes of network services that customers have come to expect.”5

1 Challenge to Confidentiality Designation of Public Knowledge and the National Consumer Law Center, on Behalf of Its Low-Income Clients, GN Docket Nos. 13-5 and 12-353 (filed Apr. 8, 2014) (Challenge).

2 AT&T Proposal for Wire Center Trials, GN Docket Nos. 13-5 and 12-353 (filed Feb. 27, 2014) (Proposal).

3 Technology Transitions, et al., GN Docket No. 13-5 et al., Order, Report and Order and Further Notice of Proposed Rulemaking, Report and Order, Order and Further Notice of Proposed Rulemaking, Proposal for Ongoing Data Initiative, 29 FCC Rcd 1433, 1435, paras. 1 (2014) (Technology Transitions Order).

4 Id. at 1441, para. 22.

5 Id. at 1441, para. 23.

3. On February 27, 2014, the Wireline Competition Bureau (Bureau) issued two protective orders governing treatment of confidential information submitted in connection with proposed service-based experiments.⁶ The *Protective Order* governs the treatment of “confidential information,” and the *Second Protective Order* governs the treatment of “highly confidential information.”⁷ In adopting the *Protective Orders*, the Bureau acknowledged the importance of allowing public participation in proceedings concerning service-based experiments.⁸

4. In response to the *Technology Transitions Order*, on February 27, 2014, AT&T filed its Proposal to conduct service-based experiments in two trial wire centers. AT&T proposes to conduct service-based experiments in two wire centers: Carbon Hill, AL and Kings Point (a/k/a West Delray Beach), FL. The Proposal does not itself seek any regulatory action, and nothing has been filed yet that would enable AT&T to commence the first phase of the trials.⁹

5. Pursuant to the *Protective Orders*, AT&T designated as Confidential information in its Proposal regarding the percentage of living units in Carbon Hill that will receive wireline and/or wireless broadband service.¹⁰ It also designated as Highly Confidential information regarding the timeline for its proposed trials.¹¹ AT&T has not made public a concrete timeline for its proposed trials, but it has “made clear [that it] would not seek approval to withdraw TDM services in the trial wire centers any earlier than the second half of 2015.”¹²

6. On April 8, 2014, Public Knowledge challenged AT&T’s designation of certain information as either Confidential or Highly Confidential pursuant to the *Protective Orders*. Public Knowledge notes that “the Commission wisely established that proposed experiments should first be open for public comment before approving or rejecting carriers’ proposals,” but asserts that “the entire effort of engaging in a public dialogue to ensure effective, responsible trials is undermined if the carrier proposing the trials can withhold critical basic information about the trials themselves.”¹³ AT&T filed a reply on April 15, 2014.¹⁴

⁶ *Technology Transitions et al.*, GN Docket No. 13-5 et al., *Protective Order*, 29 FCC Rcd 2014 (Wireline Comp. Bur. 2014) (*Protective Order*); *Technology Transitions et al.*, GN Docket No. 13-5 et al., *Second Protective Order*, 29 FCC Rcd 2022 (Wireline Comp. Bur. 2014) (*Second Protective Order*) (collectively, the *Protective Orders*).

⁷ The term “Confidential Information” is defined as “information that is not otherwise available from publicly available sources and that is subject to protection under the Freedom of Information Act (‘FOIA’), 5 U.S.C. § 552, and the Commission’s implementing rules.” *Protective Order*, 29 FCC Rcd at 2015, para. 2. To qualify as “Highly Confidential Information,” the information in question must, among other things, be “some of [the submitting party’s] most sensitive business data which, if released to competitors or those with whom the [party] does business, would allow those persons to gain a significant advantage in the marketplace or in negotiations.” *Second Protective Order*, 29 FCC Rcd at 2023, para. 2.

⁸ *Protective Order*, 29 FCC Rcd at 2015, para. 1; *Second Protective Order*, 29 FCC Rcd at 2022, para. 1.

⁹ See Letter from Frank S. Simone, Asst. V.P. Federal Regulatory, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 13-5, 12-353, at 2 (filed June 6, 2014) (AT&T June 6 Letter) (clarifying that AT&T “had not requested a formal decision on [its] proposal to conduct wire center trials”); see also AT&T Proposal, Operating Plan.

¹⁰ AT&T Proposal at 14, and Operating Plan at 44.

¹¹ AT&T Proposal, Operating Plan at Exhs. D and E; see also AT&T Proposal at 20, 21, and Operating Plan at 15.

¹² AT&T June 6 Letter at 2; see also Letter from Robert C. Barber, General Attorney, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 13-5, 12-353, at 1 (filed May 27, 2014) (stating that AT&T “does not currently anticipate seeking approval to grandfather any TDM service earlier than the second half of 2015”).

¹³ Public Knowledge Challenge at 7.

¹⁴ See generally AT&T Reply.

III. DISCUSSION

A. Percentages of Living Units That Will Receive Wireline and/or Wireless Service

7. In its Proposal, AT&T designated as Confidential information regarding the percentage of living units in Carbon Hill that would be receiving wireline and/or wireless broadband service. However, AT&T disclosed that information to a trade publication, and the information appeared in an article in that publication on February 28, 2014.¹⁵ As a result, Public Knowledge asserts that AT&T should be required to resubmit its Proposal with this information unredacted. In its Reply, AT&T acknowledged that this information was “inadvertently disclosed in a press briefing.”¹⁶ It thus indicated that it does not oppose the Public Knowledge Challenge with respect to this information.¹⁷ We therefore grant the Challenge with respect to the information in the AT&T Proposal regarding the number of living units in Carbon Hill that will receive wireline and/or wireless broadband service and direct AT&T to file within 14 days of the release of this Order a revised public version of its Proposal and attachments in which that information is no longer redacted.

B. Detailed Timeline

8. We deny Public Knowledge’s Challenge as to the detailed timeline for AT&T’s trials. We agree with Public Knowledge that “the trials themselves must be conducted responsibly and transparently to ensure the real people in the trial wire centers are not harmed or left behind.”¹⁸ We also agree that the experiments “should first be open for public comment before approving or rejecting carriers’ proposals.”¹⁹ Here, however, AT&T has publicly stated that it is not yet seeking Commission authorizations and that it will not file the necessary applications to grandfather or discontinue services on a trial basis in Carbon Hill and West Delray Beach until at least the second half of 2015. The Commission will seek public comment on these applications and the timelines they propose when they are filed, ensuring that the public has a chance to participate fully in the process.

9. In the interim, we find that AT&T has justified highly confidential treatment of its detailed timeline information pursuant to the *Second Protective Order*. AT&T states that it “does not customarily disclose product migration timeframes, such as the ones at issue here, to the public until its services reach the implementation phase.”²⁰ AT&T asserts that the detailed timeline information is commercially sensitive, that premature disclosure of the timeline information could give competitors the information they would need to try to roll out competing IP-based services in those markets before AT&T’s proposed roll-out dates, thereby giving competitors a competitive edge and causing AT&T substantial harm.²¹ We note that the filing of AT&T’s section 214(a) applications — much less any action on them or implementation by AT&T — is over six months away, at a minimum. We therefore agree with AT&T that under the circumstances presented here, its detailed timeline is commercially sensitive and that disclosing it now would cause AT&T competitive harm;²² accordingly, we conclude that it should not be released to the public at this time. Also, were we to require AT&T to disclose

¹⁵ *Id.* at 1; *AT&T Proposes IP Transition Trials for Rural, Suburban Wire Centers*, TR Daily (Feb. 28, 2014).

¹⁶ AT&T Reply at 1.

¹⁷ *Id.*

¹⁸ Public Knowledge Challenge at 7.

¹⁹ *Id.*

²⁰ AT&T Reply at 5.

²¹ *Id.*

²² See *National Community Reinvestment Coalition v National Credit Union Admin.*, 290 F. Supp. 2d 124, 135 (D.D.C. 2003) (“Business and marketing plans by their nature usually contain information that would cause competitive harm if disclosed.”).

detailed timeline information at this early stage, we fear that we would harm the Commission's ability to obtain similar voluntary early disclosures in the future and discourage participation in trials.

10. But we also agree with Public Knowledge that the public must have an opportunity for informed participation. Importantly, there will be a public process to evaluate AT&T's proposed grandfathering and discontinuance when it files its applications pursuant to section 214(a),²³ as is the case with such requests generally.²⁴ We emphasize that robust public comment on the grandfather and discontinuance applications will be essential. Accordingly, we would be disinclined to allow information in those applications, when filed, to be subject to confidential treatment—absent extraordinary and unanticipated circumstances.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED pursuant to sections 4(i) and 4(j) of the Communications Act, as amended, 47 U.S.C. § 154(i) & (j), Section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and sections 0.91, 0.291, and 0.459 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 0.459, that the Public Knowledge Challenge is GRANTED IN PART and DENIED IN PART.

12. IT IS FURTHER ORDERED that within 14 days of release of this Order, AT&T must resubmit its Proposal and attachments thereto with the information regarding the number of living units in Carbon Hill that will receive wireline and/or wireless broadband service unredacted.

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach
Chief, Wireline Competition Bureau

²³ See 47 C.F.R. § 63.71.

²⁴ "This process allows the Commission to satisfy its obligation under the Act to protect the public interest and to minimize harm to consumers." *Ensuring Customer Premises Equipment Backup Power for Continuity of Communications et al.*, PS Docket No. 14-174 et al., Notice of Proposed Rulemaking and Declaratory Ruling, FCC 14-185, para. 5 (rel. Nov. 25, 2014).