Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WC Docket No. 17-84

COMMENTS OF AT&T

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AT&T respectfully submits these comments in response to the Further Notice of Proposed Rulemaking released on November 29, 2017 in the above-captioned matter.[1]

I. Introduction.

The transformation of the nation's communications networks from outdated legacy facilities to next-generation technologies is ongoing and is delivering significant benefits to consumers and the American public – and promises to deliver more. As the Commission recently recognized "[t]echnological innovation and private investment have revolutionized American communications networks in recent years, making possible new and better service offerings, and bringing the promise of the digital revolution to more Americans than ever before."[2] In the recent *Report and Order*, the Commission took a first step to reduce the regulatory burdens associated with transforming legacy networks to accelerate deployment of next-generation networks and

[1] Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking ¶ 156, FCC 17-154 (rel. November 29, 2017) ("FNPRM").

[2] Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking ¶ 1, FCC 17-154 (rel. November 29, 2017) ("*Report and Order*").

services by streamlining certain pole attachment, copper retirement, and service discontinuance rules.[3] But, it can do more. As discussed below, the Commission should adopt additional reforms to align its regulatory regime with current market conditions, which will reduce the regulatory burdens and promote investment in next-generation networks.

II. The Commission Should Further Streamline Its Section 214(a) Procedures for the Discontinuance of Data Services.

The Commission proposes to streamline the approval process for applications seeking to grandfather data services with download/upload speeds of less than 25/3 Mbps, so long as the applying carrier provides data services of equivalent quality at speeds of at least 25/3 Mbps or higher throughout the affected service area.[4] AT&T agrees with the Commission that applications seeking authorization to grandfather data services should have a "comment period of 10 days and an auto-grant period of 25 days for all carriers."[5] The Commission correctly observed that "streamlining the comment and auto-grant periods . . . will benefit both industry and consumers by speeding the retirement of outdated services and the transition to next-generation networks."[6] Further, these periods provide sufficient notice that a service will no longer be available for ordering as well as ample time for customers to transition to a new service, if necessary.

However, these proposed comment and auto-grant dates should not be limited to grandfathering data services or limited to data services with download/upload speeds of less than

[3] *Id.*

[4] FNPRM.

[5] FNPRM at ¶ 157.

[6] *Report and Order* at ¶ 95.

25/3 Mbps. The streamlined process should apply to any data service so long as the applying carrier certifies that it provides alternative data services with at least equivalent quality and speeds.

Further, the Commission also should adopt a streamlined auto-grant process for the discontinuance of any data services if the carrier sends customers notice at least 180 days prior to filing an application to discontinue the data service. Without such a process, the Commission's proposal would unnecessarily require carriers to file two applications (the first to grandfather and a subsequent application to discontinue) before discontinuing these services.

In the recent *Report & Order*, the Commission adopted a 10-day comment and 31-day auto-grant period for applications to discontinue legacy data services below 1.544 Mbps that had been grandfathered for at least 180 days.[7] Implicit in this ruling is the recognition that 180 days is sufficient time for customers to assess their service needs and to take any necessary steps to ensure that their services are transitioned to alternative services. Based on this, the Commission should adopt streamlined comment (10-day) and auto-grant (31-day) periods to discontinue any data services if the carrier sends customers notice at least 180 days prior to filing an application. Under this proposal, customers would have at least 190 days before comments are due on 214 applications and at least 221 days to transition their services before the services could be discontinued.[8] This is more than sufficient time, particularly because the vast majority of legacy data services, regardless of the customer's application, can be replaced by next-generation services, which are widely available in the market today.

[7] *Id.* at ¶ 94 (adopting a 10-day comment cycle and 31 day auto-grant period to discontinue legacy data services that were grandfathered for at least 180 days).

[8] If a new customer requests service at any time during this period, the carrier would be required to inform the customer of the pending status of the service and send the potential customer a copy of the notice letter.

III. The Commission Should Forbear from Requiring Compliance with § 214(a)'s Discontinuance Requirements for Services Without Existing Customers.

Section 10 of the Telecommunications Act requires the Commission to forbear from applying a regulation or statutory provision to a class of telecommunications services if (1) enforcement "is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection, with that. . . service are just and reasonable and not unjustly or unreasonably discriminatory," (2) enforcement "is not necessary for the protection of consumers," and (3) forbearance from applying that law "is consistent with the public interest."[9] Under the third criteria, "the Commission shall consider whether forbearance. . . will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services."[10] Under this framework, the Commission should determine that forbearance from applying Section 214(a)'s discontinuance requirements is warranted with respect to services without existing customers.

The rationale to forbear from applying Section 214(a)'s discontinuance procedures to services without existing customers is straightforward: When a service has no customers, it necessarily follows that the section 214 discontinuance processes are not necessary to ensure just and reasonable and nondiscriminatory terms of service, protect consumers or otherwise promote the public interest for the simple reason that customers have demonstrated by their actions in the marketplace that they don't need or want the service.[11] The purpose of Section 214(a)'s

[9] 47 U.S.C. § 160(a).

[10] *Id*. § 160(b).

[11] Under AT&T's proposal, a service would be considered to have no existing customers when it has had no customers or reasonable requests for service during the 30-day period immediately preceding discontinuance, e.g. (1) all previous customers have migrated to another service or provider, (2) when a service in the affected area has

discontinuance provision is to prevent particular communities from being deprived of critical links to the larger public communications infrastructure.[12] But no community or part of a community would be cut off from the public communications infrastructure when a service with no existing customer is eliminated. Indeed, a key component of the Section 214(a) discontinuance process — "notify[ing] all affected customers"— would be futile in the context of services without existing customers.[13] The sooner that carriers can stop maintaining unused services, the sooner those carriers can increase their investments in next-generation services. Therefore, the Commission should forbear from applying Section 214(a)'s discontinuance procedures on services without existing customers.

IV. The Commission Should Adopt Additional Streamlined Procedures for the Discontinuance of Legacy Voice Services.

The Commission also should streamline processing of section 214(a) discontinuance applications for legacy voice services where an alternative service is available. As the Commission recently acknowledged, consumers have abandoned legacy voice services in droves, transitioning instead to VoIP and mobile voice services (which, themselves, are rapidly transitioning to IP).

never had any customers, or (3) no customers has used the service for a 30-day period due to the destruction of legacy TDM facilities due to a force majeure event, such as a hurricane, tornado, forest fire, etc.).

[12] *See, e.g.*, Memorandum Opinion and Order, *Lincoln Cty. Tel. Sys., Inc.*, 81 F.C.C.2d 328, ¶¶ 11-12 (1980) ("*Lincoln County*") (citing the legislative history and observing that the purpose of § 214(a)'s discontinuance provision was to prevent a loss of telegraph service to critical wartime institutions resulting from, for example, merging telegraph companies closing particular stations); Memorandum Opinion and Order, *Western Union Tel. Co.*, 74 F.C.C.2d 293, ¶¶ 6-7 & n.4 (1979) ("*Western Union*") (same).

[13] 47 C.F.R. § 63.71(a); *see also id*. § 63.71(c) (carrier cannot file discontinuance application until "on or after the date on which notice has been given to all affected customers"); *id*. § 63.71(Technology transition discontinuance application "may be automatically granted only if the applicant provides affected customers with the notice required under paragraphs (a)(6) and (a)(7) of this section").

Streamlining the section 214(a) process will remove needless regulatory barriers to this ongoing, market-driven transition.

As the FNPRM notes, Verizon has proposed streamline processing of section 214(a) discontinuance applications for legacy voice services where a carrier certifies: (1) that it provides interconnected VoIP service throughout the affected service area; and (2) that at least one other alternative voice service is available in the affected service area. But there is no reason to limit streamlining to situations in which *both* conditions are met. Consumers are replacing legacy voice services with *both* interconnected VoIP and mobile services and the availability of either option should be sufficient to warrant streamlined treatment. In that regard, "[a]s of June 2016, interconnected VoIP lines accounted for nearly half of all retail voice telephone service connections in the United States, [and] non-incumbent LECs operate[d] *more than three quarters* of these approximately 60 million interconnected VoIP lines."[14] And at the same time, based on the CDC survey for the second half of 2016, 51% of households had abandoned fixed service altogether in favor of mobile service, and the percentage is increasing year after year. [15] In fact, mobile voice subscriptions outnumber "end-user switched access lines in service by *more than five-to-one*."[16] Thus consumers, by their own actions, have established that these services are adequate (and arguably superior) replacements for legacy voice service.

[14] *Report & Order* at ¶ 81 (emphasis added).

[15] *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2016* U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics (Rel. 05/2017) https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201705.pdf (last checked 01/16/2018).

[16] *Id.*

Under these circumstances, the Commission should make it simpler and easier for carriers to discontinue the ever-shrinking number of legacy interstate voice services that still have customers. Specifically, the Commission should adopt a presumption that interconnected VoIP and wireless voice are adequate substitutes for legacy voice service, and adopt a modified version of Verizon's proposal pursuant to which a carrier would receive automatic approval of an application to discontinue legacy voice service if it certifies either: (1) that it provides interconnected VoIP service throughout the affected service area; ***or*** (2) that at least one other alternative voice service, e.g. wireless voice or interconnected VoIP, is available in the affected service area.[17] Such a rule would reduce the regulatory burden for carriers and would not jeopardize the public convenience and necessity as the market has demonstrated that interconnected VoIP and wireless voice are more than adequate substitutes.

V. The Commission Should Eliminate the Outreach Requirements Associated with the Service Discontinuance Rules.

AT&T agrees with ITTA that the Commission should eliminate the customer outreach requirements adopted in the *2016 Technology Transitions Order*.[18] Under those requirements, when discontinuing legacy voice services, carriers are required to have a customer outreach plan that includes "(i) the development and dissemination of educational materials provided to all customers affected containing specific information pertinent to the transition. . . ; (ii) the creation of a telephone hotline and the option to create an additional interactive and accessible service to

[17] Although there is no reason to precondition streamlining on the availability of more than one alternative, in fact, multiple alternatives are available in the vast majority of the country. The Commission itself recently confirmed that 93% of the population is covered by at least four voice providers and that 99.7% of the population is covered by at least 2 voice providers. Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, including Commercial Mobile Services, *Twentieth Report*, WT Docket No. 17-69 (Rel. Sept. 27, 2017).

[18] FNPRM at ¶ 176-177; see also *2016 Technology Transitions Order*, 31 FCC Rcd at 8348-52, paras. 179-86.

answer questions regarding the transition; and (iii) appropriate training of staff to field and answer consumer questions about the transition."[19] AT&T agrees with ITTA that Commission micromanagement of a carrier's customer communication and internal training processes is intrusive and unnecessary. Carriers have an interest to ensure that their customer-facing staff and customers on legacy voice services are fully educated about alternative services in order to win future business. Carriers should have the flexibility to design communication plans associated with service discontinuances that utilize any available resources to communicate with customers (including but not limited to customer service centers, bill messages, webpages, email, and paper mail) in the most efficient manner based on the needs of the customer segment. The Commission did not require such an intrusion into carrier business practices before the *2016 Technology Transitions Order*, and these requirements should be repealed.

VI. The Commission Should Eliminate the Section 51.325(a)(3) and Section 68.110(b) Requirements that Incumbent LECs Provide Notice of Network Changes Affecting the Interoperability of Customer Premises Equipment.

The Commission should eliminate the notices related to customer premises equipment now required under 47 C.F.R. §68.110(b)[20] and 47 C.F.R §51.325(a)(3).[21] Sections 68.110(b) and 51.325(a)(3) have outlived their purpose.[22] Both rules were enacted at a time when the RBOC

[19] *Id.*

[20] Section 68.110(b) provides in relevant part "[i]f . . . changes [to a wireline telecommunications provider's communications facilities, equipment, operations or procedures] can be reasonably expected to render any customer's terminal equipment incompatible with the communications facilities of the provider of wireline telecommunications, or require modification or alteration of such terminal equipment, or otherwise materially affect its use or performance, the customer shall be given adequate notice in writing, to allow the customer an opportunity to maintain uninterrupted service."

[21] Section 51.325(a)(3) – requires the ILEC to provide public notice regarding any network change that: "will affect the manner in which customer premises equipment is attached to the interstate network."

[22] *See* Comments of AT&T Services, Inc. on Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84 (June 15, 2017) at 35-37; Reply Comments of AT&T Services, Inc. on Notice of

ILECs were dominant in the CPE industry.[23] That is no longer remotely true. In fact, seventeen years ago the Commission acknowledged how different the CPE marketplace had become compared to when the Part 68 rules were enacted.[24]

This competitive landscape was the basis for the Commission's decision to privatize the standards development the Commission utilized to ensure terminal equipment did not cause harm to the provider's network or personnel. This process, formerly under Part 68, is now administered by the Administrative Council for Terminal Attachments (ACTA).[25] Under this construct, the ACTA administers the review and publication of relevant standards; suppliers must ensure their terminal equipment conforms to FCC rules and the applicable ACTA technical criteria; terminal equipment suppliers must apply to have approved terminal equipment listed in the ACTA database

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Proposed Rulemaking, Notice of Inquiry, and Request for Comment, *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84 (July 17, 2017) at 21, 29.

[23] Section 68.110(b) was enacted when Western Electric, that time part of the Bell System, was the monopoly provider of CPE. *See 2000 Biennial Regulatory Review of Part 68 of the Commission's Rules and Regulations*, CC Docket No. 99-216, Report and Order, 15 FCC Rcd 24944, ¶ 7 (Dec. 21, 2000) ("*Biennial Review*"). *See also id.* ¶ 8 ("At the time the Commission established its Part 68 rules, AT&T controlled the terminal equipment market as well as the public switched network itself."). Similarly, the Commission added §51.325(a)(3) to the network disclosure requirements in 1999 because of the then ILEC dominance in the CPE market. "The primary purpose of network information disclosure in this context is . . . to give competitive manufacturers of CPE adequate advance notice when a carrier intends to alter its network in a way that may affect the manner in which CPE is attached to the network. Our concern has been that to the extent that a company with control over underlying transmission facilities also manufactures CPE, that company may have the incentive and ability to leverage its control of those facilities to favor its affiliate's CPE over that of competitive manufacturers." *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services*, CC Docket No. 95-20; FCC 99-36, ¶52 (rel. Mar. 24, 1999) ("*Computer III Remand").*

[24] "In the years since Part 68 was established [ ] the marketplaces for both terminal equipment and local exchange service have changed dramatically. Vibrant competition has emerged in the terminal equipment marketplace." *Biennial Review* ¶ 11. *See also* ¶ 82 (where the Commission discusses "the maturity and competitiveness of the terminal equipment manufacturing market and the telecommunications services industry.").

[25] *Wireline Competition Bureau Reiterates the Obligations of Terminal Equipment Suppliers Under Part 68 Rules*, 18 FCC Rcd. 6134, 18 F.C.C.R. 6354, 6455 (Apr. 2, 2003) ("*Part 68 PN*"). The FCC directed the industry, through the co-sponsorship and support of the Telecommunications Industry Association and the Alliance for Telecommunications Industry Solutions to establish ACTA. *See* http://www.part68.org/aboutmain.aspx. ACTA is comprised of members from four industry segments: service providers; manufacturers; testing laboratories; and other interested parties. *Id.*

(which allows carriers, equipment manufacturers, the FCC and others to verify that specific terminal equipment has indeed been approved and may be connected to wireline carriers networks); and terminal equipment suppliers must label approved terminal equipment in accordance with ACTA requirements.[26]

The requirements in Rule 68.110(b) that wireline telecommunications providers[27]determine if *any* customer's terminal equipment will be rendered incompatible with the providers' communications facilities, require modification or alteration, or its use or performance be otherwise materially affected are inoperable in today's environment and should be eliminated. While terminal equipment suppliers are required to list their approved equipment in the ACTA database, *subscribers* have no obligation to identify the CPE *they* are using – whether to ACTA or to their providers. Thus, while it is true that AT&T can access the ACTA database to determine if specific terminal equipment is Part 68 compliant, AT&T has no idea what specific equipment is being used by a specific subscriber, nor whether that specific CPE being used is ACTA compliant.

But, rather than the focus on non-conforming CPE, arguably the real focus of rule 68.110(b) is the directive that the customer be given the ability to maintain service. The rule requires that if a carrier reasonably expects that any change the carrier is making in its communications facilities, equipment, operations, or procedures will affect the customer's CPE the carrier must provide written notice so that the customer can maintain uninterrupted service. That type of notice happens today (and will continue) in the normal course of how carriers interact

[26] *Part 68 PN. See also Biennial Review* at ¶ 16 (the technical criteria allow manufacturers to develop terminal equipment that can operate and not harm all carriers' networks; carriers are only required to permit connection of compliant terminal equipment).

[27] The notice requirement in rule 68.110(b) applies to **all** wireline telecommunications providers, not just ILECs. Part *68 PN* ¶ 75 ("[A]ll wireline carriers, including incumbent LECs, competitive LECs, IXCs, and other entities that offer wireline telecommunications and whose network may be affected by direct connection of terminal equipment are subject to our rules under Part 68.") (emphasis added).

with their customers, and also as required under Section 214(a) service discontinuance rules. When AT&T seeks to retire copper, and replace the facility with FTTH/FTTC facilities, in most cases the customers' services will not change. However, in order to properly convert the customer to the new technology AT&T would need to do a truck roll/appointment to install a new optical network terminal ("ONT").[28] This process by its very nature involves reaching out to that customer to explain the need to convert their ONT to allow them to continue to receive service over the new fiber facilities. That customer would have the choice to continue their service with AT&T or seek an alternative provider.[29] Retaining the separate notice requirement under 68.110(b) is redundant to the normal business processes AT&T and other carriers undertake with copper retirements, is not necessary to provide relevant customer notice and preserve customer choice and will likely result in customer confusion.

Similar to 68.110(b), section 51.325(a)(3) requires the ILEC to "provide public notice regarding any network change that: will affect the manner in which customer premises equipment is attached to the interstate network." The 51.325(a)(3) requirement can be traced back to the *Computer II* 'all carrier' rule, which applied to all carriers owning basic transmission facilities and required the disclosure of "all information relating to network design . . . which would affect either intercarrier interconnection or the manner in which customer premises equipment is attached to the interstate network . . .."[30] The Commission eliminated the 'all carrier' rule for both IXCs and

[28] The ONT is used to terminate the fiber optic line at the customer's premise. It connects to the existing inside wire and jack and converts the signals in the customer's home and allows devices compatible with existing telephone standards to continue to work.

[29] In the situation where the change from copper to fiber will impair the customer's service – that would entail a Section 214 service discontinuance application, and the customer would receive notice under those requirements.

[30] *Computer III Remand* ¶ 39.

CLECs[31] finding it no longer in the public interest because of meaningful competition between carriers.[32] The Commission noted that even though it was eliminating the CPE disclosure requirement, IXCs and CLECs would still be subject to §§201/202 which would prohibit carriers that manufacture CPE from favoring their own CPE over that of competitive suppliers.[33]

In contrast, the Commission retained the CPE disclosure requirements for ILECs, adding it to the requirements contained in § 51.325(a),[34] primarily because of the ILECs' then perceived market power (over both services and CPE) and the Commission's belief that any failure to disclose would give ILECs "a significant head start in providing fully compatible equipment."[35]

Again, much has changed in the 18 years since 51.325(a)(3) was added as an ILEC-only requirement. ILECs are not a dominant force in their services and, as discussed above, clearly not in the highly-competitive CPE market.[36] Less than 17% of all households continue to purchase voice service from an ILEC.[37] Moreover, the underlying assumption that ILECs could withhold

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[31] *Computer III Remand* ¶¶ 6, 48-51.

[32] "Because IXCs and competitive LECs currently lack individual market power, they also lack the incentive to create incompatible network interfaces for existing services in order to leverage that power into upstream or downstream markets." *Computer III Remand* ¶ 48.

[33] *Computer III Remand* ¶ 51.

[34] *Computer III Remand* ¶ 52.

[35] *Computer Remand III* ¶ 52. *See also In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended 1998 Biennial Regulatory Review – Review of Customer Premises Equipment and Enhanced Services Unbundling Rules in the Interexchange, Exchange Access and Local Exchange Markets*, 16 FCC Rcd. 7418, 16 F.C.C.R. 7418 ¶ 56 (rel. Mar. 20, 2001) ("*254(g) Order")* ("It [Rule 51.325(a)] is necessary because failure to disclose network changes that affect CPE could give incumbent LECs a significant head start in providing fully compatible equipment and could thereby adversely affect competition in the CPE market."). *See also id.* ("this rule requires incumbent LECs to provide the specifications that competitive CPE suppliers need to provide compatible equipment.").

[36] Indeed, regarding the BOC ILECs, the BOCs for the most part were prohibited from manufacturing CPE except as permitted under §273. As the Commission previously observed "[u]pon gaining manufacturing relief, a BOC w[ould] enter a highly competitive market with zero percent market share . . ." *254(g) Order*, f.n. 112.

[37] It is projected that at the end of 2016 only 16.3% of U.S. households received switched voice service from the ILECs. http://www.ustelecom.org/broadband-industry/broadband-industry-stats/residential-competition

network specifications/criteria to get a head start in provisioning their own compliant CPE is inconsistent with how the industry works today. As discussed earlier, under the ACTA process the equipment manufacturers and testing laboratories have a seat at the same table with the service providers. It is hard to imagine a scenario where the ILECs could leverage the network change process to advantage themselves in the provisioning of compatible CPE. For the same reasons the Commission originally eliminated the CPE disclosure requirements on IXCs and CLECs, the Commission should eliminate it from the ILECs.

Finally, there is no basis for any concern that the CPE disclosures are needed because of unique CPE-related issues when carriers seek to retire copper and replace the facility with FTTH/FTTC facilities. In 2013, ATIS evaluated the transition of the PSTN to IP including the potential effects on the "huge ecosystem of CPE devices in use that depend on the PSTN access that currently exists."[38] The report focuses on "stranded CPE", referred to as "customer based equipment that will no longer function (or lose functionality) if the access network is migrated to a newer technology."[39] The report assesses different types of CPE (*e.g.*, analog phones, fax machines, alarm systems, TTY devices) and concludes: "for most CPE, consumers are voluntarily making the transition away from analog devices for better features, to save money, etc."; "[c]onsumers already have abundant choices"; "[f]or those choosing not to migrate CPE, it is possible to provide a converter box and substitute an alternate technology;" and "[m]any cable/fiber providers already provide such capability."[40]

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[38] *ATIS PSTN Transition Focus Group Assessment and Recommendations* (ATIS-I-000034) January 2013, p. 64 ("*PSTN Transition Report*"). This report is available for download at https://www.atis.org/01_about/

[39] *PSTN Transition Report*, p. 64.

[40] *PSTN Transition Report*, p. 65. Indeed, as described above, one of the outcomes of ACTA is standards that generate ONT with protocol conversion capability that ensures the signaling from the next generation services continue to be compatible with existing inside wiring and jacks and any CPE connected to them.

In sum, ongoing notifications related to CPE are no longer necessary in today's marketplace: ILECs do not have a dominant presence in CPE market (cannot get a head start); the CPE market is highly competitive; the ACTA process ensures CPE manufacturers have current standards; and there is no foreseeable effect on CPE because of the transition of the PSTN to IP.

VII. The FCC Should Extend the Streamlined Notice Procedures Applicable to *Force Majeure* and other Unforeseen Events Adopted in the *Report & Order* for Copper Retirements to All Types of Network Changes.

AT&T supports the extension of the streamlined notice procedures the Commission adopted for *force majeure* and other unforeseen events for copper retirements to all network changes. The Commission "[found] that it makes sense to allow the prompt installation of replacement facilities than to require the incumbent LEC to first repair the damages copper lines, if the incumbent LEC determines that it is the best course of action, only to subsequently expend additional resources to then retire and replace those facilities later."[41] That same logic applies to all network changes that result from *force majeure* and other unforeseen events. For example, if an automobile crashes into an ILEC's facilities causing a service outage, the ILEC's primary focus should be on restoring service – and if that restoral involves not just replacing the damaged copper facilities with new fiber facilities but also the replacement of any other facilities that may have been damaged (*i.e.*, a VRAD or cross-connect box that is manufacture-discontinued and cannot be replaced like-for-like) – the ILEC should be able to proceed with the work without having to provide the otherwise required advanced notice under the rules.

As with the copper retirement *non-force majeure* rules, the Commission can require the same protections and make clear that the ILEC would be required to maintain communication with

[41] *Report and Order* at ¶ 72.

any affected carriers and give notice of the network change as soon as practicable, commensurate with the circumstances.

VIII. The Commission's Overlashing Policy Should be Codified.

AT&T supports the Commission's longstanding policy of promoting overlashing additional wires, cables, and equipment. Overlashing through a notice and attachment process speeds deployment of broadband facilities with minimal administrative burdens. Codifying this overlashing policy will reduce confusion by eliminating uncertainty. And, requiring advance notice to the pole owner and any host attaching entity, as proposed in the Further Notice, promotes safety and the integrity and reliability of the wireline network by affording an opportunity to validate that the attacher has considered the impact overlashing will have on the pole and the host cables. Some poles, due to age or environmental factors, and some cables may be unable to reliably support additional equipment. Overlashing just one additional cable on such a pole may cause an overload condition. Consequently, pole loading calculations performed by the prospective attacher must be a requirement. A reasoned and practical codification of the Commission's overlashing policy would allow overlashing upon at least 30 days advance notice to the pole owner and host attaching entity and confirmation from the attacher that the overlashing complies with generally accepted engineering practices, the attacher has performed a pole loading analysis and no overloading will occur, and make-ready work is not necessary or will be completed before overlashing.

Respectfully submitted,

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