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

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

To: The Commission

COMMENTS OF
THE NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION

The National Rural Electric Cooperative Association ("NRECA") hereby submits its Comments in response to the Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking adopted on November 16, 2017, in which the Commission is looking to facilitate the deployment of IP-based services.[1]

INTRODUCTION

NRECA is the national service organization for more than 900 not-for-profit rural electric cooperatives that provide electric energy to approximately 42 million people in 47 states or approximately 12 percent of electric customers, including 327 of the nation's 353 "persistent poverty counties" (93%). Of the 42 million Americans served by cooperatives, an estimated 4 million live in persistent poverty counties. Rural electric cooperatives serve 88% of the counties of the United States. Rural electric cooperatives were formed to provide safe, reliable electric service to their member-owners at the lowest reasonable cost. Rural electric cooperatives are dedicated to improving the communities in which they serve; management and staff of rural

[1] *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, FCC 17-154 (rel. November 29, 2017) ("*Further Notice*").

electric cooperatives are active in rural economic development efforts. Electric cooperatives are private, not-for-profit entities that are owned and governed by the members to whom they deliver electricity. Electric cooperatives are democratically governed and operate according to the seven Cooperative Principles.[2]

NRECA and its members are intensely interested in the deployment of advanced telecommunications capabilities within the communities and areas in which electric cooperatives provide electric service. Many cooperatives are considering, planning or have already made investments and committed the resources to deploy fixed broadband networks and to provide broadband service within their electric service territories. They are taking these steps largely because existing service providers are unwilling either to extend their networks into rural areas or to upgrade their networks to meet the needs of these local communities.[3] On the other hand, few if any generation and transmission cooperatives serve consumers directly and will continue to rely on telecommunications carriers to meet their voice and data telecommunications services requirements. The same is true for many distribution cooperatives that are not presently pursuing broadband deployment.

[2] The seven Cooperative Principles are: Voluntary and Open Membership, Democratic Member Control, Members' Economic Participation, Autonomy and Independence, Education, Training and Information, Cooperation Among Cooperatives, and Concern for Community.

[3] In NRECA's Reply Comments filed in the initial phase of this proceeding, NRECA explained at length the challenges NRECA member-served communities face in securing advanced broadband services, relating incidents in which major service providers declined to extend broadband service into these communities even if pole attachment charges were eliminated. See *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Notice of Proposed Rulemaking, Notice of Inquiry and Request for Comment, 32 FCC Rcd 3266 (2017) ("*Wireline NPRM/NOI*"), NRECA Reply Comments, at 3-8 and 10-11 (filed on July 17, 2017).

DISCUSSION

A. The Commission Should Retain the Core Elements of the Adequate Replacement Test and Not Forbear from the Section 214(a) Service Discontinuance Procedures for the Technology Transition

NRECA supports the transition to IP services as it is part and parcel of NRECA's efforts to encourage investment and advance policies that support fixed broadband deployment in rural areas in which our members provide electric services. Wireline voice telecommunications services are essential to the day-to-day operation and emergency response capabilities of NRECA members. In many rural communities served by electric cooperatives, wireline voice services are provided solely by the local wireline carrier (that typically provides local and long-distance service to NRECA members). The same is true for the substantial business, health care and government operations and facilities that rural communities are looking to retain and attract.[4]

As discussed in Section C, below, NRECA supports retention of the core principles of the adequate replacement test for streamlined treatment of Section 214(a) service discontinuance applications for legacy wireline business voice service transitions adopted in 2016.[5] This position parallels in several respects the proposal that streamlined treatment be granted where an ILEC certifies: (1) 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.[6] On the other hand, NRECA opposes a technology transition premised on forbearance of Section 214(a) service discontinuance requirements as advocated by several parties.[7]

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[4] *Technology Transitions et al.*, 31 FCC Rcd 8283, 8324 (2016) (*2016 Technology Transitions Order).* ("Establishing a benchmark for service availability protects consumers, schools, libraries, healthcare facilities, utilities..., all of which depend on a service to be available when needed for everyday or emergency use.").

[5] *Id.*, 31 FCC Rcd at 8313-8348.

[6] *Further Notice,* at para. 171.

[7] *Id.*, at para. 174.

Under Section 10 of the Communications Act, the Commission "shall forbear from" applying a statutory or regulatory provision if it determines that the criteria set forth in Section 10(a) are met for particular services. The Section 10(a) factors may be summarized as follows:

- The applicable regulations are not necessary to ensure that the services in question are provided on a just and reasonable and not unjustly or unreasonably discriminatory basis;

- Those regulations are not necessary to protect customers; and

- The requested forbearance is in the public interest.

In making the public interest determination, the Commission must consider, pursuant to Section 10(b), "whether forbearance from enforcing the provision or regulation will promote competitive market conditions."[8]

For many rural communities, forbearance from applying the existing Section 214(a) discontinuance procedures for legacy wireline business voice services will not "promote competitive market conditions" nor is forbearance otherwise warranted due to the presence of facilities-based competition. While it may be true in urban areas that there are "[p]roviders everywhere eager to sell voice and data services using multiple modern technologies,"[9] this is not the case in rural communities.[10] Infrastructure to support high speed Internet access service

[8] 47 U.S.C. § 160 (a)-(b). The assessment of the existence or likelihood of competition was central to the Commission's decision in the special access proceeding to retain *ex ante* price regulation on DS-1 and DS-3 end-user channel terminations in those areas "where there currently appears to be few competitive alternatives… [indicating] broad entry in such regions may not occur" for these services. *Business Data Services in an Internet Protocol Environment*, Report and Order, 32 FCC Rcd 3459, 3505 (2017). Thus, the Commission decline to exercise its forbearance authority and eliminate price cap regulation for these special access services in areas where there was little competition and likelihood of competition was remote.

[9] Verizon Comments, at 28.

[10] Verizon substantially overstates the availability of fixed broadband access in asserting "more than 92 percent of Americans having access to 25/3 Mbps fixed broadband over which they easily can receive VoIP or over-the-top service from multiple providers." Verizon Comments, at 34-35, n. 107, citing FCC, Fixed Broadband Deployment Data, "Fixed Broadband (25 Mbps/3 Mbps) as of June, 2016, https://www.fcc.gov/maps/fixed-broadband-deployment-data/. The "more than 92 percent" number appears to be based on a bar chart that summarizes reports of broadband availability by census block reports that come with multiple qualifications, principally census blocks are counted as served with 25/3 Mbps fixed broadband if providers "*can or do offer* [25/3 Mbps fixed broadband service] *to at least one location* [in a census block]." Fixed Broadband Deployment Data,

and VoIP services are not ubiquitous in rural areas. Thus, if the broadband infrastructure is not in place to support VoIP service as a replacement for legacy wireline business voice services, the second prong of §10 (a) (enforcement of a regulation is not necessary for the protection of end-users) is not met.

The reality is that even 10/1 Mbps fixed broadband service is not available in many rural communities, let alone 25/3Mbps service as Verizon maintains.[11] For high cost areas served by the price cap ILECs, the Commission adopted a two-phase approach to support broadband deployment under its High Cost program. In 2015, the Commission issued state-wide offers to these carriers for deployment of 10/1 Mbps fixed broadband service in unserved census blocks;[12] several of the largest wireline carriers declined some or substantially all of their respective state-wide offers.[13] A second prong is the Connect America Phase II reverse auction that contemplates true broadband deployment in unserved rural areas.[14] The decisions of price cap carriers not to accept funding for 10/1 Mbps broadband for consumers and small businesses is a clear signal that these carriers have little interest in developing advanced broadband infrastructures capable of meeting 25/3 Mbps for any customers—residential, small business or large business--in the declined areas. Moreover, the commitments to provide 10/1 Mbps service for the accepted state-wide offers confirms that baseline 25/3 Mbps broadband infrastructure is years away in many rural communities. Consistent with the six-year buildout obligation for CAF II auction winners,[15] the

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"Fixed Broadband (25 Mbps/3 Mbps) as of June, 2016," https://www.fcc.gov/maps/fixed-broadband-deployment-data/ (last visited on December 20, 2017) (emphasis added).

[11] *Id*.

[12] *Wireline Competition Bureau Announces Connect America Phase II Support Amounts Offered to Price Cap Carriers to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, 30 FCC Rcd 3905 (WCB 2015).

[13] Press Release, Carriers Accept Over $1.5 Billion in Annual Support from Connect America Fund to Expand and Support Broadband for Nearly 7.3 Million Rural Consumers in 45 States and One Territory (Aug. 27, 2015), http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db0827/DOC-335082A1.pdf

[14] Connect American Fund, Report and Order on Reconsideration and Further Notice of Proposed Rulemaking *Phase II Auction Order and/or FNPRM Connect America Fund et. al* 31 FCC Rcd 5949, 5950-5951 (2016) ("*Phase II Auction Order*" or "*FNPRM Connect America Fund et. al*").

[15] *Id*., 31 FCC Rcd at 5964.

construction of robust networks for residential and small business customers in many rural communities will take several years, strongly indicating that advanced broadband infrastructure capable of supporting broadband and voice services for larger business customers also will lag for some time in many rural communities. Accordingly, forbearance from the Section 214(a) discontinuance obligations for legacy wireline voice services is not in the public interest.

B. Mobile Service is Not an Adequate Replacement for Legacy Wireline Business Voice Services

NRECA strongly objects to the position advanced by several carriers that mobile voice service may be a standalone "adequate replacement" for legacy wireline business voice services.[16] Their position is not realistic. In support of their forbearance requests, several wireline carriers emphasize the widespread availability of mobile service and the substantial transition among residential customers from legacy wireline services to mobile service. [17] That trend is irrefutable. However, mobile service is not a substitute for legacy wireline business voice services. Large and medium-sized businesses in urban or suburban locations are not terminating legacy wireline voice services in favor of mobile service, despite the ubiquitous availability of mobile service. They could not conduct their businesses.

Multi-million-dollar, asset-based network businesses, such as NRECA members' electric generation, transmission and distribution businesses, require wireline service for the reliable operation of their businesses, including communications with customers, suppliers, employees and the local community.[18] Continuous voice and data communications are maintained between

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[16] *Further Notice*, at para. 171, n. 526.

[17] *See* Comments of AT&T, at 41; *See* Comments of Verizon, at 33.

[18] Member cooperatives operate land mobile and microwave networks authorized under Parts 90 and 101 of the Commission's rules and obtain CMRS services for mobile voice and data applications. These wireless technologies complement, but do not displace, the essential wireline voice communications requirements of electric cooperatives.

generation and distribution cooperatives through multiple communications networks one which enables wireline voice communications. Reliable voice communications are central to electric cooperative communications on both a day-to-day basis and in the event of man-made emergencies or severe, adverse weather conditions.[19]

The challenge for many businesses, including NRECA members, is that mobile service is a “best efforts” service; there are no service level agreements or commitments. While commercial mobile networks are improving in terms of resiliency, the day-in, day-out availability and reliability of mobile service can vary significantly and does not approximate the reliability of legacy wireline voice services. “Dropped calls” or “dead zones” are not a concern with legacy wireline voice services. It is also our members’ experience that their local wireline carriers do provision additional service, lines or capacity in a reasonable manner upon request. While mobile service providers will always sell additional lines upon request, mobile service providers do not systematically respond to customer requests for additional cell capacity to accommodate customers’ peak demands for service.

[19] Comments of Utilities Technology Council UTC, at 31-33 (the adequate replacement test adopted in the 2016 Technology Transitions Order “goes to the substance of the issue for utilities—i.e., reliability”).

C. The Core Elements of the Adequate Replacement Test Are Important to NRECA Members and Should Be Retained

Rules and procedures for streamlined treatment of § 214(a) service discontinuance obligations for the technology transition should reasonably and equitably balance the interests of wireline business customers (particularly those based in rural areas) with the interests of telecommunications carriers. Service availability of 99.99%, latency of 100 milliseconds or less,[20] the same geographic coverage as the legacy wireline service, and 9 1 1 interoperability should be reasonably achievable for IP-based wireline voice services.

Presumably, an ILEC has one or a limited number of VoIP technologies that it will deploy as their TDM replacement service(s). NRECA understands that wireline carriers test and retest a technology to make sure it meets their performance criteria before introducing the technology into their networks and offering the service to customers. Thus, it is unreasonable for these carriers to argue that conducting one set of tests to verify compliance with the adequate replacement test for a given VoIP technology is unduly burdensome. As the criteria are satisfied, the wireline carrier may rely on those test results in subsequent §214(a) service discontinuance applications.

Another reasonable requirement is that in the §214 (a) notice of discontinuance provided to customers, the services provider must disclose information on the pricing for the service being discontinued and the pricing proposed for the replacement service, as provided under §63.602 (a)(3) of the Commission's rules. Customers should know or at least have a sense of the relative cost differences and whether the pricing for the replacement service is a fixed price for all

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[20] *Phase II Auction Order and/or FNPRM Connect America Fund et. al*, 31 FCC Rcd at 5961-5962 ("Low latency, that is, shorter delays, is essential for most network-based applications and is critical for others, such as VoIP, and other interactive and highly interactive applications.").

domestic calling, usage-sensitive, or having a fixed monthly charge, plus a usage-sensitive element. Service providers will have developed this information prior to deploying the replacement service and disclosure to customers prior to the initiation of the IP replacement service should not be unduly burdensome.

A troubling aspect of the ILECs' proposals cited in the Further Notice and in several of their Comments in this proceeding is their "take-it-or-leave-it" approach in terms of verification of the service quality for their VoIP services. Essentially, their position is that business customers must either accept the wireline replacement service "as is" or decline the service.[21] This heavy-handed approach should give the Commission pause in considering their requests for forbearance. A more reasonable approach would be for the wireline carriers to identify those elements of the adequate replacement test they find objectionable, provide an alternative, or explain that the objectionable elements are unduly burdensome, too difficult to quantify or may be eliminated because they are either not relevant to the quality of service parameter or redundant to another parameter

[21] Verizon Comments, at 38-39 (the carrier must only establish it offers interconnected VoIP throughout the affected service area and that another voice service is also available in the service area); AT&T Comments, at 44 (the FCC should adopt a presumption that certain types of next generation services are adequate substitutes and require customers to rebut the presumption).

CONCLUSION

A timely and efficient transition to IP-based services considering the reasonable expectations of services providers and end-users is in the public interest. Mobile service is not an adequate replacement for legacy wireline business voice services. Refinements to the adequate replacement test may be appropriate, but the core elements identified by NRECA should be retained for the wireline IP services replacing legacy wireline business voice services.

Respectfully submitted,

By: /s/

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