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	)	

COMMENTS OF WINDSTREAM SERVICES, LLC

Windstream Services, LLC ("Windstream"), on behalf of its affiliates and subsidiaries, herein submits comments in response to the *Further Notice of Proposed Rulemaking* ("*FNPRM*") released November 19, 2017, in the above-referenced proceeding.[1] As Windstream noted in its previous submissions in this proceeding, the statutory requirements governing service discontinuances and network changes act to protect consumers—including small and medium businesses, governments and agencies, schools, and healthcare providers—as service providers transition to next-generation networks and services. While it may be appropriate to take targeted measures to streamline or accelerate the Section 214(a) approval process and Section 251(b)(5) network change notice process, the Commission should be careful not to undermine the overall processes, which are essential to mitigate the service disruptions, higher prices, and diminished choice consumers may experience as a result of technology transitions.

Therefore, if the Commission decides to streamline the Section 214(a) discontinuance process for applications that seek authorization to "grandfather" data services with speeds of less than 25/3 Mbps, and for applications to discontinue previously grandfathered data services, it

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[1] *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 19, 2017) (*FNPRM*).

should incorporate targeted safeguards to protect end users. In addition, the Commission should reject proposals to eliminate the Section 214(a) requirements for discontinuances that are part of a network upgrade because an essential part of the Section 214(a) review process is consideration of whether replacement or alternative services are satisfactory in terms of cost and functionality. Finally, the Commission should not calculate the effective date for short-term network change notices from the date the incumbent LEC files its notice, rather than from the date the Commission releases its public notice. The existing rule helps ensure that short-term network change notices are accurate and sufficient, and gives competitive providers utilizing the networks more time to transition customers and avoid service disruptions—or more time to comply with the Section 214(a) discontinuance process where the incumbent LEC's network change prevents the competitive provider from continuing to offer a service.

I. IF THE COMMISSION FURTHER STREAMLINES THE SECTION 214(a) DISCONTINUANCE PROCESS, IT SHOULD INCORPORATE TARGETED SAFEGUARDS TO PROTECT CONSUMERS.

While Windstream was cautiously supportive of the Commission's previous proposal to streamline the Section 214(a) discontinuance process for applications that seek to "grandfather" low-speed legacy data services,[2] the present proposal to do the same for higher-speed data services[3] does not strike the appropriate balance between providing carriers flexibility and ensuring that customers have access to adequate alternatives. Unlike legacy voice and data services below 1.544 Mbps, higher-speed data services with speeds of less than 25/3 Mbps remain in heavy demand by consumers who do not require very high speeds and cannot bear the higher prices that often accompany more robust services. Therefore, where providers seek to

2 *See FNPRM* at ¶ 84.

3 *Id.* at ¶ 156.

grandfather or discontinue such in-demand services, the Commission must undertake a thorough examination of whether the proposed change would adversely affect the present or future public convenience and necessity,[4] including thoughtful consideration of the "existence, availability, and adequacy of alternatives," and "increased charges for alternative services."[5] Streamlining the process makes it less likely that such a thorough examination will occur.

If the Commission nevertheless decides to streamline the Section 214(a) process for grandfathering these higher-speed data services (below 25/3 Mbps), it should incorporate safeguards to protect end users. First, while the carrier would be permitted not to accept new customers, existing customers should be able to make moves, additions, and changes to the grandfathered service. This is particularly important to protect government users because they are frequent purchasers of low-speed legacy services and the budget and procurement processes make it difficult for them to convert or adapt their systems to new infrastructure in a timely manner.[6] Second, carriers should be required to identify alternative services at the time of notice. This should include information about the speeds, rates, terms, and conditions applicable to the alternatives, in order to inform the Commission's review of the Section 214(a) application and facilitate the transition of end users to new service options. Third, the Commission should prohibit LECs from discontinuing services to customers that are purchasing pursuant to a specified term before that term has expired. This safeguard would be consistent with the

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4 *See* 47 U.S.C. § 214(a).

5 *See Verizon Telephone Companies; Section 63.71 Application to Discontinue Expanded Interconnection Service Through Physical Collocation,* WC Docket No. 02-237, Order, 18 FCC Rcd 22737, 22742, ¶ 8 (*Verizon Expanded Interconnection Order*) (setting out the five factors the Commission considers when determining whether an application for discontinuance authority under Section 214(a) should be granted).

6 *See* Ex Parte Comments of the National Telecommunications and Information Administration, WC Docket No. 17-84, at 3-4 (October 27, 2017).

Commission's intent in the *2017 Business Data Services Order* not "to disturb existing contractual or other long-term arrangements" through regulatory reform.[7]

II. THE COMMISSION SHOULD REJECT PROPOSALS TO ELIMINATE SECTION 214(a) REQUIREMENTS FOR DISCONTINUANCES THAT ARE PART OF NETWORK UPGRADES.

The Commission also should reject proposals by CenturyLink and WTA to eliminate the requirement to file a Section 214(a) application altogether for any discontinuance that is part of a network upgrade,[8] or otherwise to short-circuit Section 214(a) reviews where the applicant claims that an alternative or replacement service is available. Such a regime would permit incumbent LECs to decide unilaterally whether a discontinuance is part of an "upgrade" and whether suitable alternatives are available. Congress decided in adopting Section 214(a) that this evaluation was the province of the Commission. The Commission rightly considers numerous factors in evaluating Section 214(a) applications, including the "existence, availability, and adequacy of alternatives," and "increased charges for alternative services."[9] Not just the availability of alternatives or "upgraded" services is relevant, but also the cost of such alternatives, and whether they provide comparable functionality.[10] It is incumbent on the Commission to conduct a thorough examination of these factors and to balance the interests of the carrier seeking discontinuance and the affected end users. By granting blanket

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7 *Business Data Services in an Internet Protocol Environment; Technology Transitions; Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket Nos. 16-143, 05-25, GN Docket No. 13-5, RM-10593, Report and Order, at ¶ 170 (rel. April 28, 2017).

8 *FNPRM* at ¶ 174.

9 *See Verizon Expanded Interconnection Order*, 18 FCC Rcd at 22742, ¶ 8.

10 *See id.*

discontinuance authority in these cases, the Commission would be abrogating its responsibility, delegated by Congress, to protect the public.

III. THE COMMISSION SHOULD CONTINUE TO CALCULATE THE WAITING PERIOD FOR SHORT-TERM NETWORK CHANGE NOTICES FROM THE DATE THE COMMISSION RELEASES ITS PUBLIC NOTICE.

The Commission should reject AT&T's proposal to revise the rule governing short-term network change notices to calculate the effective date of such notices from the date the incumbent LEC files its notice rather than from the date the Commission releases its public notice.[11] As the Commission stated in its Order accompanying this *FNPRM* in the context of the notice period for copper retirements, the present framework "affords Commission staff the necessary opportunity to review filings for mistakes and/or noncompliance with the rules" before such filings trigger waiting periods.[12] The Commission further explained that it routinely must contact filers to clarify, correct, or add required information;[13] thus the incumbent LEC's initial notice frequently is not sufficient or compliant with the rules and should not serve as the starting point for a very brief period in which notice recipients must accommodate the network change. AT&T does not identify any examples of network changes having to be delayed due to the timing of the release of the relevant public notice, nor does it demonstrate any other harm created by the current process.

In contrast, a sufficient notice period is essential for competitive providers who use the impacted network facilities to provide service to consumers. In some cases, existing service features and functions cannot be supported on the altered network, and the competitive provider

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[11] *See FNPRM* at ¶ 163.

[12] *Id.* at ¶ 65.

[13] *Id.*

must invest in and install new equipment and/or change the service offering to the end user and provide time for the end user to accommodate the service change. In other cases, the competitive provider may find it can no longer offer a service as a result of the network change and must file its own Section 214(a) discontinuance application and be able to provide adequate notice to its own customers. Thus, the Commission should retain the current rule that the effective date of short-term network change notifications runs from the date it releases public notice of the change. If the Commission nevertheless decides to adopt AT&T's proposal, it must ensure that a provider using the impacted facilities has adequate time to object to the network change and/or, if necessary, file its own Section 214(a) discontinuance application and provide sufficient notice to its own customers.

CONCLUSION

If the Commission decides to streamline the Section 214(a) discontinuance process for applications that seek authorization to "grandfather" data services with speeds of less than 25/3 Mbps, and for applications to discontinue previously grandfathered data services, it should incorporate targeted safeguards to protect end users. In addition, the Commission should reject proposals to eliminate the Section 214(a) requirements for discontinuances that are part of a network upgrade, and should not calculate the effective date for short-term network change notices from the date the incumbent LEC files its notice, rather than from the date the Commission releases its public notice.

Respectfully submitted,

/s/_____
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