Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20544

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

COMMENTS OF VERIZON ON THE FNPRM

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The record in this proceeding confirms that removing impediments to broadband deployment is critical to broadband investment and economic growth.[2] Commenters have concluded that reducing regulations that impede infrastructure deployment will significantly improve the business case for deploying wireline and wireless broadband facilities to more areas of the country.[3] The FCC has already taken important steps to remove legacy barriers to infrastructure deployment.[4] The *2017 Wireline Infrastructure Order* will help enable providers to more easily transition from legacy copper networks to faster and more reliable technologies, such as fiber, and to more easily discontinue legacy services. But there is still more to be done.

The *FNPRM* correctly suggests additional beneficial reforms to infrastructure policy. In particular, the Commission should now take this opportunity to affirm that intrastate services, including local telephone service, do not require a Section 214(a) application; revise its approach

[1] The Verizon companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications Inc.
[2] *See* Verizon Reply Comments at 1-2.
[3] *See* Corning Comments at 2.
[4] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, WC Docket No. 17-84, FCC 17-154 (Nov. 29 2017) ("*2017 Wireline Infrastructure Order*" or "*FNPRM*").

to applying Section 214 to legacy voice services when other voice options are available; forbear from applying Section 214 to applications to discontinue services with no customers; and expand its streamlining for applications to grandfather and discontinue previously-grandfathered services. The Commission should also adopt proposals to reform the network-change process by eliminating the notice requirements for network changes affecting customer terminal equipment or customer premises equipment, and the Commission should apply streamlined notice procedures to any network change caused by a *force majeure* event. The Commission should also codify its precedent on pole attachment overlashing. Finally, on a case-by-case basis, the Commission should preempt state or local impediments to rebuilding and repairing broadband infrastructure after natural disasters. These reforms would substantially speed broadband deployment and remove barriers to investment.

In addition to the items raised in the *FNPRM*, to hasten the move to newer, more capable, broadband networks, the Commission should also move forward promptly on other reforms to infrastructure policy raised in the *NPRM*,[5] such as:

- reforming the pole attachment rules by adopting one-touch make-ready as an option for new attachers who wish to use approved contractors to coordinate and do all work to add a new attachment;
- adopting a rule that incumbent LEC pole attachers are entitled to the telecom rate; and
- excluding capital cost recovery from pole attachment rates.[6]

These additional reforms are key to continuing to speed national broadband deployment.

[5] *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) ("*NPRM*").
[6] *See* Verizon Comments at 4-15; Verizon Reply Comments at 4-13.

I. THE COMMISSION SHOULD FURTHER STREAMLINE THE DISCONTINUANCE PROCESS TO ENCOURAGE THE MOVEMENT TO NEWER TECHNOLOGIES AND TO ALIGN THE COMMISSION'S RULES WITH CONGRESS'S INTENT

A. The Commission Should Streamline the Section 214(a) Discontinuance Process for Interstate Legacy Voice Services When Other Voice Options Are Available

The Commission should revise and streamline its application of Section 214(a) to legacy voice services.[7] Applying Section 214 to micromanage the marketplace is both unlawful and overly burdensome. As customers have already widely adopted newer wireless and VoIP offerings in lieu of legacy voice services, an outmoded and expansive use of Section 214 is today especially unwarranted. The Commission should use this proceeding to align its interpretation of Section 214(a) with the requirements of the statute and to streamline the ability of providers to discontinue legacy voice offerings.

As a preliminary matter, because the Commission's jurisdiction extends only to interstate services, providers may discontinue or grandfather purely *intra*state services (like local telephone service) without filing a Section 214(a) application.[8] Section 214 authority extends only to common carrier telecommunications services that are interstate, and not to features of an otherwise intrastate service such as dial tone. Further, consumers are shifting dramatically to communications options other than traditional wireline POTS. For example, the CDC's preliminary results for the first half of 2017 reflect that 52.5% of U.S. households have rejected wireline voice service altogether and rely only on wireless telephones.[9] Another 15.1% of

[7] *See FNPRM* ¶¶ 171-175 (seeking comments).
[8] Of course, providers may still have to meet state obligations relating to a discontinuance.
[9] Wireless Substitution: Early Release of Estimates from the National Health Interview Survey at 1, January – June 2017, HHS, CDC, National Center for Health Statistics (Dec. 2017), https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201712.pdf ("CDC Wireless Substitution").

households were "wireless-mostly," meaning the household had a wireline telephone but "all or almost all calls" occurred on mobile wireless phones telephones.[10] And most consumers who still have wireline voice services have also transitioned away from traditional wireline POTS. The FCC's Form 477 data reflects that about 61% of residential wireline retail voice telephone service connections use interconnected VoIP and only about 39% use switched access lines (i.e. POTS).[11]

In this context, antiquated discontinuance rules don't make sense. Requiring a Mother-May-I approach to discontinuing a legacy voice service when there are other voice options readily available eviscerates the purpose of Section 214. Thus, the Commission should issue a declaratory ruling that Section 214(a) applies only in those circumstances in which the community has no comparable, modern alternatives to the legacy voice service that the provider is discontinuing, reducing, or impairing. Where communities will still be served by a comparable, modern alternative after a provider discontinues a legacy voice offering, the Commission should hold that no Section 214(a) application is required. This approach would reverse prior Commissions' contrary, offering-by-offering approach to Section 214(a), which conflicts with the provision's text and history.

In the alternative, the Commission should reduce the unnecessary burdens Section 214(a) imposes in this marketplace in other ways. The Commission should, on its own motion, forbear from enforcing Section 214(a) as applied to legacy voice services, because enforcing that provision is not necessary to protect either competition or consumers. At a minimum, the

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[10] *Id*. at 3.
[11] FCC, *Voice Telephone Services: Status as of June 30, 2016* at 3, Fig. 2 (Apr. 2017), https://apps.fcc.gov/edocs_public/attachmatch/DOC-344500A1.pdf ("FCC June 2016 Voice Telephone Status").

Commission should streamline its existing discontinuance process for legacy voice services by eliminating the "adequate replacement" test and adopting an alternative approach that, as discussed below, protects consumers while also giving providers the certainty they require to roll out next-generation replacements to legacy voice services.

1. The Commission Lacks Section 214(a) Authority to Regulate a Provider's Discontinuance of a Particular Voice Offering If the Affected Community's Members Have Access to Other Voice Options

As a preliminary matter, the Commission has recognized that its "Section 214 authority applies only to interstate telecommunications services; wholly intrastate services such as local telephone service are excluded from its reach."[12] The Commission therefore lacks jurisdiction to require providers to seek approval under Section 214(a) before discontinuing those legacy voice services that are wholly intrastate. Instead, the discontinuance of such services is subject only to those state law requirements and preconditions, if any, that may exist.[13]

For interstate services, the Commission should find that Section 214(a) does not apply to a provider's discontinuance of a voice offering if the affected community's members can secure comparable service through a fiber, IP-based, or wireless alternative, whether offered by that provider or by another one. As multiple commenters have previously explained,[14] Congress's purpose in enacting Section 214(a) was to ensure that communities would not lose contact with the outside world – not to empower the Commission to regulate changes to any and every telecommunications service offered to a community. The Commission should therefore abandon

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[12] *Technology Transitions*; *USTelecom Petition for Declaratory Ruling That Incumbent Local Exchange Carriers Are Non-Dominant in the Provision of Switched Access Services*; *et al.*, Declaratory Ruling, Second Report and Order, and Order on Reconsideration, 31 FCC Rcd 8283, ¶ 52 (2016) ("*2016 Technology Transitions Order*").

[13] *See id.*

[14] *See* Verizon Comments at 30-33; CenturyLink Comments at 39; Comcast Comments at 31-32; Frontier Comments at 26-27; USTelecom Comments at 43; CenturyLink Reply Comments at 22.

prior Commissions' offering-by-offering approach to Section 214(a) and instead adopt the reading it proposed in the *NPRM*, under which it would consider "the entire range of offerings that are available to a community, or part of a community" in determining when a provider must seek authorization under Section 214(a) before discontinuing a service to that community.[15]

Congress added the service-discontinuance language to Section 214(a) in 1943 to address a particular national crisis: A major telegraph company was in dire financial condition, putting the nation's communications networks at risk amidst global war. For that reason, Congress amended then-existing law to allow that company to merge with another, stronger telegraph company.[16] Section 214(a), for its part, ensured that the newly-merged providers would not sever any of the communities they once served from the outside world. But Congress did not intend to impose an offering-by-offering regulatory regime. As Representative Brown, a Conference Committee manager, explained:

> I do not believe that the Congress or the country is interested in whether the telegraph company should abandon or take out a certain insulator or pole or even close down one office, if the community is adequately served by another office. The only thing that the Congress and the country [are] interested in is adequate service.[17]

Representative Wadsworth, a member of the House subcommittee that had prepared the bill, likewise explained:

> Of course, we all know that in certain communities the Western Union may have a telegraph office in the principal hotel and that right across the street there may be an office of the Postal Telegraph Co. Obviously, a merger might result in the

[15] *NPRM* ¶ 123.
[16] *See* S. Rep. No. 78-13, at 1-4 (1943); H.R. Rep. No. 78-69, at 3 (1943); 1943 Act, 57 Stat. 5; H.R. Rep. No. 78-69, at 1; s*ee also* Sharon K. Black, *Telecommunications Law in the Internet Age* 33-34 (2001), http://www.telecomlaw.ru/studyguides/Sharon_Black_Telecommunications_Law_2002.pdf (discussing Postal Telegraph & Cable System's merger with Western Union Telegraph Co.).
[17] 89 Cong. Rec. 786 (1943).

> abandonment of one or the other, because it is obvious that one office might be entirely sufficient for the community. But to make it certain, we inserted [the proviso now in § 214(a)].[18]

And Representative Boren, another Conference Committee manager, noted that Congress considered and rejected language that would have required a company seeking to "move a wire from one House Office Building to the other, by way of example . . . to go through the endless red tape of application and hearings and a certificate on the part of the Commission."[19] It is for that reason that Section 214(a)'s text permits the Commission to regulate discontinuances, reductions, or impairments of "service," but specifically excludes service-neutral network upgrades from the Commission's authority.[20]

The offering-by-offering approach that prior Commissions adopted[21] therefore is inconsistent with Congress's intent in adopting Section 214, exceeds the Commission's lawful authority, and should be set aside. Whether a community receives "service" does not depend on whether a given provider offers that service, or on the particular technological means by which a given provider does so; "[t]he only thing that the Congress and the country [are] interested in is adequate service."[22] An individual provider's discontinuance of an individual service offering does not discontinue, reduce, or impair "service" to a community so long as the affected

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[18] 89 Cong. Rec. 777 (1943).
[19] 89 Cong. Rec. 787 (1943).
[20] 47 U.S.C. § 214(a) (granting the Commission discontinuance authority, "*Provided, however*, That nothing in this section shall be construed to require a certificate or other authorization from the Commission for any installation, replacement, or other changes in plant, operation, or equipment, other than new construction, which will not impair the adequacy or quality of service provided") (emphasis added).
[21] *See, e.g.*, *Comments Invited on Application of City of Brookings Municipal Telephone Department to Discontinue Domestic Telecommunications Services*, Public Notice, 30 FCC Rcd 13,639 (2015); *Comments Invited on Application of Progressive Rural Telephone Cooperative to Discontinue Domestic Telecommunications Services*, Public Notice, 30 FCC Rcd 13,281 (2015).
[22] 89 Cong. Rec. 786 (1943).

community can still obtain comparable service from either that provider or elsewhere in the marketplace.

Further, the competitive nature of today's voice service offerings confirms that the offering-by-offering approach that prior Commissions adopted currently serves no sound public interest. As the Commission has read Section 214(a), it compels providers to preserve offerings that have become anachronisms because "customers have voted with their feet to confirm that modern alternatives are as good as, if not better than, legacy services."[23] That the majority of consumers themselves have voluntarily abandoned legacy service offerings in favor of modern alternative service offerings[24] makes clear that when a provider discontinues a legacy offering, it is not discontinuing service to a community. Indeed, Section 214(a)'s upgrade proviso confirms that Section 214(a) was not intended to preserve legacy technologies in perpetuity (irrespective of individual consumers' preferences for legacy technology), but instead to protect "the adequacy or quality of service provided" to the community.[25] Accordingly, consumer choice confirms that prior Commissions' interpretation of Section 214(a) is not only incorrect, but unnecessary.

2. In the Alternative, the Commission Should Forbear from Enforcing Section 214(a) with Respect to Legacy Interstate Voice Services

If the Commission disagrees and concludes that Section 214(a) would compel it to regulate providers' discontinuances of a legacy interstate voice offering even where communities

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[23] Verizon Reply Comments at 26; *see also* Verizon Comments at 33-35 (explaining that most Americans have shifted away from landline service in favor of a modern alternative); *FNPRM* ¶ 175 (seeking comment on this evidence of "a decisive shift by consumers away from legacy voice services, and towards competing fiber, IP-based and wireless alternatives").

[24] *See* CDC Wireless Substitution at 3 (preliminary estimate that 52.5% of U.S. households were wireless only the first half of 2017).

[25] *See* 47 U.S.C. § 214(a).

will still have other voice options, it should forbear from enforcing the provision so that providers can focus on offering modern voice services to consumers instead of maintaining outdated services.[26] All three conditions for forbearance are met. First, enforcing Section 214(a) as to legacy interstate voice services "is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory."[27] Competition for voice services – where 52.5% of households already rely exclusively on wireless services[28] and those still using wireline services have largely switched to modern, IP-based alternatives[29] – adequately disciplines providers' practices and rates without any need for reinforcement by Section 214(a). Second, enforcing Section 214(a) "is not necessary for the protection of consumers;" again, competition to provide voice service is robust and more than adequate to protect consumers' interests.[30] Third, "forbearance from applying such provision or regulation is consistent with the public interest:" enforcing Section 214(a) for interstate voice services imposes regulatory burdens without any offsetting benefit for the public or competition, and forbearance, therefore, will "promote competitive market conditions."[31] For each of these reasons, the Commission should, on its own motion, forbear[32] from enforcing

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[26] *See FNPRM* ¶¶ 174 (inviting comment on forbearance); Verizon Comments at 35-36; *see also* AT&T Comments at 47-52; CenturyLink Comments at 39-40, 45; WTA Comments at 13-14.
[27] 47 U.S.C. § 160(a)(1).
[28] *See* CDC Wireless Substitution at 2.
[29] *See* FCC June 2016 Voice Telephone Status at 3, Fig. 2 (as of June 30, 2016, approximately 40.3 million out of 66.2 million residential lines were served using interconnected VoIP technology).
[30] *See id.* § 160(a)(2).
[31] *See id.* § 160(a)(3), (b).
[32] It is well established that "the Commission has the authority to forbear from applying regulation on its own motion, as well as in response to a petition for forbearance." *See*

Section 214(a) if it reads that provision to require an application before a provider may discontinue a legacy voice service offering.

3. At a Minimum, the Commission Should Discard the "Adequate Replacement" Test and Adopt an Alternative Approach

If the Commission does not streamline its Section 214(a) regulations in the manner suggested above, it should, at a minimum, abandon the *2016 Technology Transitions Order*'s "adequate replacement" test for evaluating legacy voice discontinuances. That test – which is not in effect because it has not been approved by OMB[33] – is an overly complex standard that would require providers to collect an extraordinary amount of data for no offsetting benefit.[34] In its reply comments, Verizon endorsed an alternative approach that would require a provider discontinuing a legacy voice service to notify its customers and file an application with the Commission certifying that fixed or mobile voice service, including interconnected VoIP service, is available to the same community from the applicant or some alternative source.[35] As Verizon explained, this "proposed test balances consumers' interests in service continuity with providers' interest in focusing their efforts on next-generation networks, requiring providers to maintain legacy services only in those rare instances (if any exist at all) when their absence would cut consumers completely off from the nation's telephone network."[36] The certification required by

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Promoting Telehealth in Rural America, Notice of Proposed Rulemaking and Order, WC Docket No. 17-132, FCC 17-164, ¶ 116 n.182 (Dec. 14, 2017).

[33] The revisions to Section 63.71 adopted in the *2016 Technology Transitions Order* have not been approved by OMB and therefore are not in effect. *See 2016 Technology Transitions Order* ¶ 213 (specifying that the revisions to Section 63.71 require approval by OMB).

[34] *See* Verizon Reply Comments at 27-28.

[35] *See* Verizon Reply Comments at 27-28, *citing* AT&T Comments at 42-43.

[36] Verizon Reply Comments at 27-28.

this proposal is sufficient to enable the Commission to evaluate whether a given discontinuance is consistent with the "public convenience and necessity."[37]

If, however, the Commission decides to adopt the standard cited in the *FNPRM* – which would require the applicant to show: "(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"[38] – it should hold that the standard is satisfied if a provider certifies that the prescribed alternative voice services exist.[39] Requiring a provider to develop a more robust evidentiary showing would impose regulatory burdens much like those threatened by the Commission's "adequate replacement" test – requiring providers to "gather[] and report[] detailed data about how their offerings compare to their competitors'" in a given community.[40] Those burdens are unwarranted in today's competitive voice marketplace.

4. The Commission Should Eliminate the Outreach Requirements Adopted In the *2016 Technology Transitions Order*

To the extent that the Section 214 discontinuance process applies, the Commission should eliminate the *2016 Technology Transitions Order*'s consumer education and outreach requirements for discontinuing wireline TDM-based voice services and transitioning customers to a voice service using a different technology.[41] These outreach requirements are unnecessary because providers already have strong marketplace incentives to communicate with customers

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[37] *FNPRM* ¶ 66 (quoting 47 U.S.C. § 214(a)).
[38] *See FNPRM* ¶ 171.
[39] *See id.* ¶ 173 (seeking comment on this question).
[40] Verizon Comments at 38.
[41] *See 2016 Technology Transitions Order* ¶¶ 178-86. The education and outreach requirements – which are not in effect because they have not been approved by OMB – include disseminating materials to customers, operating a telephone hotline, and training staff. *See id.* ¶ 213 (stating that the outreach plan and consumer education requirements require approval by OMB); ¶¶ 182, 184-85 (discussing outreach requirements).

impacted by a technology transition.[42] For example, providers already have systems in place to communicate with customers who are transitioning from copper facilities to fiber, even if those customers can continue to obtain POTS voice service over their new facilities.[43] Providers who do not communicate effectively with their customers may lose them to a variety of wireline or wireless voice alternatives.[44] There is no need for the Commission to review and micromanage those communications during the discontinuance process (to the extent the process applies).[45] And, as AT&T has noted, the Commission can create its own general consumer education plan if it believes one is necessary.[46] The Commission should eliminate the burdensome and unnecessary consumer education and outreach requirements for discontinuing wireline TDM-based voice services.

B. The Commission Should Forbear from Section 214(a) Discontinuance Requirements for Services with No Customers

The Commission should adopt proposals to forbear from applying Section 214's discontinuance requirements to applications seeking to discontinue, reduce, or impair services with no existing customers.[47] The Commission recently granted streamlined treatment to no-

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[42] *See* ITTA Comments at 21; AT&T Comments, *Technology Transitions*; *et al.*, GN Docket No. 13-5, *et al*., at 17 (Oct. 26, 2015) ("2015 AT&T Comments").
[43] *See 2017 Wireline Infrastructure Order* ¶ 45 ("[I]ncumbent LECs have strong incentives to work closely with their retail customers in order to retain their business given the competition they face from competitive LECs, cable providers, and wireless providers. They do not require mandatory and prescriptive Commission-ordered notice to educate and inform their customers of network transitions from copper to fiber. Rather, these communications must necessarily occur for the incumbent LEC to continue providing the services to which its customers subscribe.").
[44] *See id.*
[45] Moreover, the Commission's longstanding discontinuance rules already require providers to inform customers about the discontinuance and the Commission's objection procedures. *See* 47 C.F.R. § 63.71(a)(1)-(4). The revisions to Section 63.71 adopted in the *2016 Technology Transitions Order* have not been approved by OMB and therefore are not in effect. *See id.* ¶ 213 (specifying that the revisions to Section 63.71 require approval by OMB).
[46] *See* 2015 AT&T Comments at 17.
[47] *See* AT&T Comments at 48-49; CenturyLink Comments at 45.

customer discontinuance applications involving low-speed legacy services because "[w]hen there are no customers of a service, and no prospective customers have requested a service for 30 days, there is little or no public interest for the section 214 discontinuance process to protect."[48] This logic applies to *all* services that don't have customers. As AT&T explains, "[w]hen a service has no customers, the market has already essentially determined that there is no need for the service, and there is no further role for § 214(a) to play."[49] Accordingly, the Commission should forbear from Section 214's requirements for all no-customer discontinuance applications. Instead of filing a Section 214 application, the provider should only be required to notify the Commission that it has discontinued the service and to certify that it had no customers or reasonable requests for service for at least 30 days before discontinuing the service.

If the Commission decides not to forbear from Section 214 for all no-customer applications, then at a minimum the Commission should extend to all interstate services the streamlining it recently adopted for discontinuance applications involving low-speed legacy services with no customers. If a provider certifies that a service has had no customers or reasonable requests for service for 30 days, the Commission should automatically grant the application to discontinue that service on the 15th day after the public notice unless the Commission notifies the applicant otherwise.

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[48] *2017 Wireline Infrastructure Order* ¶ 109.

[49] *See* AT&T Comments at 48. *See also* CenturyLink Comments at 45 ("For a service with no customers, a discontinuing carrier should be required simply to notify the Commission that it has discontinued the service, without a need for prior Commission approval. For such services, no purpose is served by soliciting public comment.").

C. The Commission Should Expand Its Streamlining for Applications to Grandfather and Discontinue Previously Grandfathered Services

The *2017 Wireline Infrastructure Order* adopted streamlined procedures that providers can choose[50] to follow to obtain quicker approval of applications to grandfather – to the extent these services are subject to Section 214 requirements – low-speed (less than 1.544 Mbps) legacy services and to discontinue low-speed legacy services that have been grandfathered for at least 180 days.[51] As we have explained, the Commission should further streamline the grandfathering process for *all* data services regardless of speed, as grandfathering a service does not change the experience for existing customers.[52]

Regardless of any speed threshold that the Commission decides to adopt, the Commission should refrain from imposing any requirement that an applicant seeking to grandfather data services below the speed threshold must "provide[] alternative data services of equivalent quality" higher than the speed threshold.[53] The recently-adopted streamlining for applications to grandfather low-speed legacy services did not include an "equivalent quality" requirement, and there is no need to impose such a rigid requirement on higher-speed services. Parties who believe that a community does not have access to reasonable substitute services will continue to have the opportunity to object during the proposed streamlined 10-day comment period. If the Commission determines that an objection raises a significant issue, it can pull the application

[50] Of course, a provider may still choose the non-streamlined discontinuance process if that process better suits the provider's needs. For example, in order to facilitate customers' migration to newer services, Verizon will very likely continue to sometimes file a single application under non-streamlined procedures seeking authority to both grandfather and eventually discontinue a service. *See, e.g.*, Verizon Application, Section 63.71 Application of Verizon New York Inc. For Authority Pursuant to Section 214 of the Communications Act of 1934, As Amended To Discontinue the Provision of Service, WC Docket 17-240 (Aug. 24, 2017) (single application seeking authority to grandfather and discontinue services).

[51] *See 2017 Wireline Infrastructure Order* ¶¶ 84-107.

[52] *See* Verizon Reply Comments at 30.

[53] *See FNPRM* ¶ 156.

from the proposed 25-day auto-grant. Imposing an "equivalent quality" requirement would be cumbersome and would inject significant uncertainty into the streamlined process. The Commission should not adopt its proposed "equivalent quality" requirement. If the Commission nevertheless adopts such a requirement, it should make clear that the requirement does not apply to the recently-adopted streamlined procedures for grandfathering and discontinuing previously-grandfathered low-speed legacy services.

The *FNPRM* also asks whether the Commission should extend its recently-adopted streamlined 10-day comment and 31-day auto-grant periods to applications to discontinue additional data services that have been grandfathered for at least 180 days.[54] We support this additional streamlining but we believe the Commission should go even further. To the extent that a discontinuance application is required, the Commission should streamline applications for *all* services that were previously grandfathered for at least 180 days. As the Commission noted in granting streamlined treatment for discontinuances of previously grandfathered low-speed legacy services, "the initial grandfathering of a service is a clear signal to . . . customers that such service is likely to be discontinued in the future."[55] This reasoning applies to *all* previously-grandfathered services regardless of upload/download speeds. All previously-grandfathered services should be eligible for streamlined discontinuance treatment.

II. THE COMMISSION SHOULD ADOPT ADDITIONAL REFORMS TO THE NETWORK-CHANGE PROCESS

The *2017 Wireline Infrastructure Order* adopted significant reforms to streamline the copper retirement and network-change processes so that providers can more smoothly transition from legacy copper networks to faster and more reliable technologies, such as fiber. The

[54] *See FNPRM* ¶ 159.
[55] *See 2017 Wireline Infrastructure Order* ¶ 96.

Commission can continue this progress by eliminating the notice requirements for network changes affecting customer equipment and by extending streamlined notice procedures for *force majeure* events to all network changes.

A. The Commission Should Eliminate the Notice Requirements For Network Changes Affecting Customer Equipment

The Commission should eliminate both Section 68.110(b)'s requirement that wireline telecommunications providers give customers written notice if "any customer's terminal equipment" would be materially affected by a network change and Section 51.325(a)(3)'s requirement that incumbent LECs provide public notice of network changes affecting the interoperability of customer premises equipment. As we have explained, Section 68.110(b) is fundamentally flawed because providers cannot track every variety and capability of customer terminal equipment and therefore providers cannot predict whether a network change will impact customer equipment.[56] Section 51.325(a)(3) suffers from this same flaw. Because incumbent LECs do not track customer premises equipment, incumbent LECs cannot be expected to predict whether a network change will affect the interoperability of customer premises equipment. Moreover, the Commission's concern in adopting Section 51.325(a)(3) – that an incumbent LEC "may have the incentive and ability to leverage its control of those facilities to favor its affiliate's CPE over that of competitive manufacturers"[57] – no longer applies because, as AT&T explains, "ILECs do not have a significant presence in the market for manufacturing CPE, and CPE manufacturers move at lightning speed to adapt to new technologies. Nor do ILECs continue to

[56] Verizon Comments at 26. *See also NPRM* ¶ 70; AT&T Comments at 36.
[57] *See Computer III Further Remand Proceedings: Bell Operating Co. Provision of Enhanced Services*; *et al.*, Report and Order, 14 FCC Rcd 4289, ¶ 52 (1999) (history omitted).

possess market power that would enable them to adversely affect the CPE marketplace . . . ."[58] The Commission should eliminate both Section 51.325(a)(3) and Section 68.110(b).

B. The Commission Should Apply Streamlined Notice Procedures for Force Majeure Events to All Network Changes

The Commission should extend its recently-adopted streamlined copper retirement notice procedures for *force majeure* and other unforeseen circumstances to all network changes. The *2017 Wireline Infrastructure Order* revised the copper retirement rules to exempt incumbent LECs from the advance notice and waiting period requirements for copper retirements caused by *force majeure* events.[59] The *2017 Wireline Infrastructure Order* also required incumbent LECs to give notice as soon as practicable and allowed for a commensurate reduced waiting period for copper retirements caused by a municipal mandate or third-party damage to copper lines.[60] The Commission reasoned that "incumbent LECs need the flexibility to restore service as quickly as possible in the case of unforeseen events and should not be rendered non-compliant by actions beyond their control."[61] This rationale applies equally to other types of network changes. Indeed, as the *FNPRM* notes, under a series of post-Hurricane-Katrina waiver orders, Verizon and certain other incumbent LECs already can avail themselves of streamlined procedures for all network changes – not just copper retirements – caused by *force majeure* circumstances.[62] In this regard, network modification notices are similar to copper retirement notices, and all incumbent LECs should benefit from this streamlining. The Commission should extend the recently-adopted streamlined procedures for copper retirements caused by *force majeure* events

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[58] AT&T Comments at 36-37.
[59] *See 2017 Wireline Infrastructure Order* ¶ 74.
[60] *See 2017 Wireline Infrastructure Order* ¶ 74.
[61] *Id*. ¶ 72.
[62] *See id*. ¶ 73.

and other unforeseen circumstances to all network changes caused by such events. Doing so will "provide greater regulatory certainty, and promote competitive neutrality among incumbent LECs."[63]

III. THE COMMISSION SHOULD CODIFY ITS PRECEDENT ON OVERLASHING

Verizon supports the Commission's proposal to codify its precedent on overlashing. Overlashing is tying additional wires, cables, or equipment to an existing attachment.[64] As the *FNPRM* notes, the Commission has long "encourag[ed] the use of overlashing to maximize the usable space on utility poles" and to "facilitate and expedite installing infrastructure."[65] Accordingly, the Commission allows overlashing subject to compliance with generally accepted safety, reliability, and engineering practices[66] and the Commission has held that no additional pole owner approval is needed for an existing attacher to overlash its own pole attachment or for a third party to overlash an existing attacher's pole attachment (with the existing attacher's consent).[67] "Overlashers are not required to give prior notice to utilities before overlashing.

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[63] *Id*. ¶ 73.

[64] *See Amendment of Commission's Rules and Policies Governing Pole Attachments*; *Implementation of Section 703(e) of the Telecommunications Act of 1996*, , Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12,103, ¶ 49 n.178 ("*2001 Pole Attach. Order*") ("Overlashing occurs when an attacher physically ties additional cables to cables already attached to a pole."); *see also id*. ¶ 73 ("Cable companies have, through overlashing, been able for decades to replace deteriorated cables or expand the capacity of existing communications facilities, by tying communication conductors to existing, supportive strands of cable on poles.").

[65] *FNPRM* ¶ 160.

[66] *See Implementation of Section 703(e) of the Telecommunications Act of 1996*; *Amendment of the Commission's Rules and Policies Governing Pole Attachments*, Report and Order, 13 FCC Rcd 6777, ¶ 68 (1998) (history omitted) ("Accordingly, we will allow third party overlashing subject to the same safety, reliability, and engineering constraints that apply to overlashing one's own pole attachment. Concerns that third party overlashing will increase the burden on the pole can be addressed by compliance with generally accepted engineering practices.").

[67] *See 2001 Pole Attach. Order* ¶ 75 ("We affirm our policy that neither the host attaching entity nor the third party overlasher must obtain additional approval from or consent of the utility for overlashing other than the approval obtained for the host attachment.").

However, the FCC rules do not preclude owners from negotiating with pole users to require notice before overlashing."[68]

ACA and NCTA allege that, despite the Commission's clear precedents, some pole owners are imposing advance-approval requirements on overlashing.[69] To remove any uncertainty, the Commission should codify its overlashing precedents. In doing so, however, the Commission should be careful to avoid inadvertently placing new restrictions on overlashing. For example, the *FNPRM* "seek[s] comment on codifying a rule that overlashing is subject to a notice-and-attach process . . . ."[70] This "notice-and-attach" language suggests that there's already an advance-notice requirement, but the only notice requirement in the Commission's precedents is for situations in which a telecommunications attachment is overlashed to a previously cable-only attachment.[71] And even in those circumstances, the Commission does not require advance notice. The Commission should refrain from adding an advance notice requirement to overlashing.

Indeed, the Commission should go further and prohibit utilities from requiring advance notice of overlashing because such a requirement would be cumbersome and inefficient. When a residential or business customer places a service order, Verizon often must extend (or "drop") facilities from its existing attachment to the customer's location. The extension sometimes requires Verizon to overlash its existing facilities. In these situations, Verizon often will not know until the site visit whether overlashing is necessary. It would be a significant

[68] *Southern Co. Servs. v. FCC*, 313 F.3d 574, 582 (D.C. Cir. 2002).
[69] *See* American Cable Ass'n (ACA) Comments at 9-10; NCTA Comments at 5-6.
[70] *FNPRM* ¶ 162.
[71] *See 2001 Pole Attach. Order*¶ 82 ("When the cable operator's pole attachment provides transmission of telecommunications services, whether for itself or via third party overlashing, it will notify the pole owner.").

inconvenience to the customer, not to mention costly and inefficient for a provider, if the provider were required to halt the installation in order to provide advance notice of overlashing to the pole owner. If the Commission decides to impose a notice requirement, it should establish an *ex post* notice requirement with a reasonable time period to comply, such as 15 business days after the overlashing is completed.

IV. ON A CASE-BY-CASE BASIS, THE COMMISSION SHOULD PREEMPT STATE OR LOCAL IMPEDIMENTS TO REBUILDING AND REPAIRING BROADBAND INFRASTRUCTURE AFTER NATURAL DISASTERS

The *FNPRM* seeks comment "on whether there are targeted circumstances in which the Commission can and should use [its] authority to preempt state or local laws that inhibit restoration of communications infrastructure."[72] In response to the *NPRM*, Verizon argued that "Sections 253 and 332(c)(7) use broad language to describe the types of local actions that are subject to preemption under those statutes, and the Commission should in turn interpret those terms broadly to apply to all manner of local actions that prohibit or effectively prohibit the provision of wireless service."[73] We also argued that the Commission should adopt rules barring state and local actions that prohibit the provision of telecommunications services.[74] We believe that the Commission can also use this broad preemption authority under Sections 253 and 332 to preempt "unnecessarily burdensome government regulation that may hinder rather than help recovery efforts" after natural disasters such as Hurricanes Harvey, Irma, and Maria.[75]

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[72] *FNPRM* ¶ 178.
[73] Verizon Comments, *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79; *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, at 21 (June 15, 2017).
[74] *See id*. at 29.
[75] *FNPRM* ¶ 178.

Similarly, Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 provides another potential source of authority that the Commission can use to preempt state laws that hinder deployment of broadband infrastructure after a natural disaster.[76] Congress adopted Section 6409(a) to facilitate deployment of wireless broadband facilities by requiring zoning authorities to approve "eligible facilities requests" for collocations and modifications. It requires State and local zoning authorities to approve and not deny "any eligible facilities request for a modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station."[77] To the extent that a state or locality is frustrating Congress's goal of streamlining the deployment of broadband networks – including after natural disasters – the Commission should preempt the state's or locality's actions. In doing so, the Commission should define – and where necessary reconsider its previous definitions – of terms such as "existing base station" in Section 6409 to achieve the congressional and Commission goal of streamlining the deployment of broadband networks.[78]

As the Commission recognizes, state and local authorities have a key role to play in managing the response to natural disasters. While a strict application of state or local zoning laws could prevent us from timely deploying a temporary facility or repairing a facility damaged by a natural disaster, states and localities are typically very supportive of providers' service restoration efforts and will routinely waive those restrictions in emergency situations. Therefore, rather than issue *ex ante* rules, the Commission should use expedited case-by-case adjudication

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[76] *See* Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, at Title VI § 6409 (2012) (2012) (codified at 47 U.S.C. § 1455) ("Section 6409").
[77] *See* § 6409(a)(1).
[78] *See* Verizon Comments, *Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies*, WT Docket No. 16-421, at 28-29 (Mar. 8, 2017).

to address requests to preempt state or local rules that impede broadband restoration or repair after natural disasters in those rare instances when such relief would be warranted.

V. CONCLUSION

As discussed above, the Commission should act quickly to exercise its statutory authority to eliminate barriers to infrastructure deployment.

Respectfully submitted,

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