

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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

**COMMENTS OF CENTURYLINK**

Craig J. Brown  
Eric J. Schwalb  
1099 New York Avenue, NW  
Suite 250  
Washington, DC 20001  
Phone 303-992-2503  
[Craig.J.Brown@CenturyLink.com](mailto:Craig.J.Brown@CenturyLink.com)

Attorneys for

**CENTURYLINK**

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CenturyLink hereby files its Comments in response to the Commission’s Further Notice of Proposed Rulemaking seeking to accelerate wireline broadband deployment by removing barriers to infrastructure investment.<sup>1</sup>

**I. INTRODUCTION AND SUMMARY**

In its *Order* issued in November, the Commission streamlined the copper retirement process and began to narrow and simplify its Section 214(a) discontinuance rules. These reforms will encourage investment in and speed the deployment of wireline broadband infrastructure and next-generation services. CenturyLink looks forward to further Commission action on the matters that remain pending in this proceeding, including those raised in the *FNPRM*.

CenturyLink agrees with the Commission’s proposal to codify a rule that “overlashing,” as defined in Commission precedent as tying wiring to other wiring already secured to a pole, is subject to a notice-and-attach process, without need for the pole owner’s prior approval. This rule will ensure that such overlashing, and the faster deployment of broadband that it enables, is

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<sup>1</sup> *In the Matter of 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 (rel. Nov. 29, 2017) (*Order* or *FNPRM*). These comments are filed by, and on behalf of, CenturyLink, Inc. and its subsidiaries.

available on all poles under the Commission's jurisdiction. This streamlined process should not be applied, however, to overloading of RF-emitting devices, batteries, power supplies, and other similar equipment, which presents safety, load, and aesthetic concerns best addressed through the standard pole attachment process. The Commission should also confirm that overlashers are required to notify the pole owner and provide a pole loading analysis within 10 days of overloading; give the pole owner an opportunity to inspect overloaded facilities for compliance with applicable safety, engineering, and aesthetic standards, including loading constraints; and require overlashers to undertake any make-ready necessary to comply with those standards, at the overlasher's expense.

CenturyLink also supports the Commission's proposals to further streamline its Section 214(a) discontinuance and network disclosure processes. The Commission should particularly focus on expediting and streamlining the grandfathering and discontinuance processes for DSn and legacy voice services, which are provided over increasingly underutilized networks, so that carriers can devote network investment to the next generation of data and voice services. Clear-cut, expedited discontinuance rules for these services will provide the regulatory certainty carriers need to make these investments, which are premised on timely decommissioning of the products, systems, and facilities used to support those legacy services.

Specifically, CenturyLink recommends that the Commission:

- Modify its streamlining proposal for legacy data services to focus on the transition from DS1 and DS3 services to IP-based alternatives;
- Apply streamlined notice procedures for *force majeure* events to all network changes;
- Forbear from Section 214(a) discontinuance requirements for services with no existing customers;
- Further streamline the Section 214(a) discontinuance process for legacy voice services, by forbearing from enforcing Section 214(a) and the Commission's implementing

regulations for these services, or, at a minimum, by adopting AT&T's proposal that a carrier discontinuing legacy voice service be required only to certify that fixed or mobile voice service will be available to all affected customers; and

- Eliminate the unnecessary and counterproductive outreach rules adopted in the *2016 Technology Transitions Order*.

## **II. “OVERLASHING,” AS PROPERLY DEFINED, SHOULD BE PERMITTED WITHOUT PRIOR APPROVAL OF THE POLE OWNER.**

CenturyLink agrees with the Commission's proposal to codify a rule that “overlashing,” as defined in Commission precedent as physically tying “wiring to other wiring already secured to the pole,”<sup>2</sup> is subject to a post-overlash notice and approval process. Thus attachers should be permitted, without the pole owner's prior approval, to overlash their own or third-parties' pole attachments with telecommunications wires, including fiber-optic cable, fiber splice closures,<sup>3</sup> and similar incidental equipment. Codifying this streamlined process will enable rapid deployment and upgrade of broadband services, while relying on subsequent inspection and make-ready processes to ensure that overlashed facilities comply with safety and engineering standards. This streamlined process should not apply, however, to the overlashing of equipment that is not incidental to overlashed telecommunications lines, such as RF-emitting devices, batteries, and power supplies, because such equipment is much more likely to present safety, load, and aesthetic concerns that should be addressed upfront through the pole attachment process.

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<sup>2</sup> *In the Matter of 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, 6805 ¶ 59 (1998) (*1998 Order*).

<sup>3</sup> A fiber splice closure is an encasement, commonly made of tough plastic, that protects the exposed area between spliced cables. Institute for Telecommunication Sciences, The Research Laboratory of the National Telecommunications and Information Administration, *Definition Splice Closure*, <https://www.its.bldrdoc.gov/fs-1037/dir-034/5042.htm>.

**A. A Streamlined Attachment Process Is Appropriate for Wire-to-Wire Overlashing.**

In its original *Notice*, the Commission sought comment on various means of speeding access to poles, while recognizing that expediency is just one factor that it must consider in modifying its pole attachment rules, in addition to the safety of those who work on the pole, compliance with applicable safety and electric codes, and protection of other attachers' equipment on the pole.<sup>4</sup> The Commission therefore vowed to work toward an approach that facilitates new attachments without creating undue risk of harm.<sup>5</sup>

In the case of wire-to-wire overlashing, the Commission long ago addressed these policy considerations. In the *Local Competition Order* and subsequent decisions, the Commission concluded that overlashing, "by which a new cable is wrapped around an existing wire, rather than being strung separately[,]" is an important method of maximizing usable capacity on a pole that is routinely used to accommodate additional strands of fiber or coaxial cable on existing pole attachments.<sup>6</sup> While the Commission acknowledged pole owners' concerns regarding engineering specifications and arranging for access and notification in cases of emergencies or

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<sup>4</sup> *In the Matter of 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, 3268 ¶ 6 (2017) (*Notice*). *Notice* at ¶ 6 (noting that streamlined rules "could raise meaningful concerns about safety and protection of existing infrastructure.")

<sup>5</sup> *Id.*

<sup>6</sup> *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, 11 FCC Rcd 15499, 16075 ¶ 1161 (footnote omitted) (1996) (*Local Competition Order*), subsequent history omitted; 1998 Order, 13 FCC Rcd at 6805 ¶ 59. See also *In the Matter of Amendment of Commission's Rules and Policies Governing Pole Attachments; In the Matter of Implementation of Section 703(e) of the Telecommunications Act of 1996*, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103, 12140-41 ¶ 73 (2001) (*2001 Order*).

modification, it concluded that such matters could be addressed through subsequent notice and inspection processes, rather than prior approval of the pole owner.<sup>7</sup>

CenturyLink's experience as both a pole owner and attacher confirms that a pole owner's prior approval of wire-to-wire overloading is unnecessary. CenturyLink allows parties to overload fiber optic cable to their own or others' attachments on CenturyLink poles, subject to a requirement that the overloading party provide appropriate notice, detailed description, and pole loading analysis to CenturyLink within 10 days of the overloading, as part of its permitting policy. CenturyLink's overloading policy also permits the use of fiber splice closures and other similar equipment that is appurtenant to the fiber optic cable being overloaded. After receiving notice, CenturyLink typically conducts a post-inspection of the overloaded facilities to ensure they comply with CenturyLink's standards and applicable safety and electric codes and do not pose loading concerns. This includes inspection of the underlying cable attachment to ensure it is also in compliance. The National Electric Safety Code requires that the cable being overloaded be in compliance prior to the overload taking place. If inspection reveals violations, overloading parties and/or the owners of the host attachments holding the contract with CenturyLink are responsible for any make-ready and associated actual costs required to correct deficiencies or overloading identified in these inspections. Where poles are older or there is a heavy load on the pole already, accommodating further overloading can cause the need for a new pole. The Commission has confirmed that "if the addition of overloaded wires to an existing attachment causes an excessive weight to be added to the pole requiring additional support or causes the cable sag to increase to a point below safety standards, then the attacher must pay the

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<sup>7</sup> *1998 Order*, 13 FCC Rcd at 6806 ¶ 60; *2001 Order*, 16 FCC Rcd at 12141 ¶ 74.

make-ready charges to increase the height or strength of the pole.”<sup>8</sup> Thus, if CenturyLink concludes on inspection that the overlash cannot be accommodated due to safety or engineering concerns, the overlashed facilities may have to be removed. The overlash party may then have the option to pay for a new, stronger or taller pole to accommodate its attachment, though a pole owner generally has no obligation to expand capacity for a third party.

As an attacher, CenturyLink frequently overlashes fiber and incidental equipment to its own or others’ attachments, providing a quick and cost effective means to extend fiber to new and existing locations. The overlash takes up no additional space on a pole and can be an expedient method of advanced services deployment, including in areas where CenturyLink is deploying broadband services through the Commission’s CAF II program.

CenturyLink therefore supports the Commission’s proposal to codify its long-standing requirement that utilities allow wire-to-wire overlash without prior approval of the pole owner, subject to post-overlash notice and inspection processes. The proposed rule will eliminate any confusion or uncertainty regarding the applicability of this requirement and guarantee that this pro-competitive process is available throughout the country on all utility-owned poles subject to Commission regulation. CenturyLink is aware that some pole owners require advance notice for all overlashing so that they are aware upfront of additional burdens that will be placed on their poles. For wire-to-wire overlashing, however, CenturyLink has found that such concerns largely can be addressed through post-overlash notice and make-ready.

Unfortunately, some attaching entities fail to give such notice. Given potential risks to safety and property, the Commission therefore should make clear that a failure to provide notice

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<sup>8</sup> *2001 Order*, 16 FCC Rcd at 12142 ¶ 77.



of overlashing will render the host attachment unauthorized and subject the attaching entity to contractual fees and to possible removal of the overlash.

**B. Overlashing of Non-Incidental Equipment Raises Concerns that Should Be Addressed Through the Standard Pole Attachment Process.**

The Commission should not extend its proposed overlashing rule to equipment other than that which is incidental to the placement of overlashed fiber optic cable. For example, the codified rules should not consider RF-transmitting antennas, routers, radios, electronic cross-connect equipment, batteries, power supplies, and other non-incidental devices added to existing lines to be an overlash exempt from the pole attachment process.

Such equipment presents safety, engineering, and aesthetic concerns not typically associated with wire-to-wire overlashing. This is most evident with antennas and other devices that emit RF signals. Typically, RF-emitting equipment is placed at the top or near the top of a pole, a significant distance from the telecommunications space on the pole, generally preventing unsafe RF exposure to telecommunications workers in that vicinity. In contrast, if RF equipment is overlashed to a cable or telecommunications attacher's facilities, that equipment may be located as close as one foot to CenturyLink's facilities. At such close range, RF equipment will expose pole workers to unsafe levels of RF radiation unless appropriate precautions are taken. CenturyLink therefore imposes certain safety-related requirements on RF equipment through its pole attachment application process, such as requiring appropriate labeling and an on/off switch on the equipment. If a cable or telecommunications provider is allowed to overlash RF-emitting equipment on a CenturyLink pole without going through the standard application process, CenturyLink could not ensure that these safety requirements are followed and pole workers could be exposed to unsafe levels of radiation, at least until this issue is addressed in the audit

process, and by then irreversible damage may be done. The overlashing of such equipment thus raises important safety concerns that are not implicated by wire-to-wire overlashing and that were not considered in the Commission's precedent permitting that type of overlashing without the pole owner's prior approval.<sup>9</sup>

CenturyLink is aware of certain small-cell and similar installations being suggested by various cable operators. Most involve three or more devices festooned to the wires between poles when fiber-optic lines are overlashed to existing coaxial wires. In one possible configuration, one device receives the electric supply; the second box contains a router; a third includes antennas; and the fourth is a radio that emits RF signals.<sup>10</sup> These devices vary in size and weight, but can be expected to add at least 50 pounds to the line, in addition to any overlashed fiber serving the equipment. These deployments may also require power supply cabinets and various other equipment that could also be placed on the same poles supporting the wireless equipment noted above. Notably, the complexity of these systems already requires considerable advance work and pole make-ready to be functional, so carriers should not be aggrieved by being required to follow the pole attachment process for the strand-mounted equipment they seek to attach to their wires.

As noted, CenturyLink's pole-mounted standards require such devices to be capable of being powered off so that workers on a pole can protect themselves from exposure when working in the vicinity. Without prior approval, CenturyLink would be unable to confirm that

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<sup>9</sup> See *1998 Order*, 13 FCC Rcd at 6805 ¶ 59; *2001 Order*, 16 FCC Rcd at 12140 (defining overlashing as "tying communication conductors to existing, supportive strands of cable on poles[]" (footnote omitted)); *S. Co. Services v. FCC*, 313 F.3d 574, 578 (D.C. Cir. 2002) (defining overlashing as "a technique whereby a telecommunications provider attaches a wire to its own (or, for third-party overlashing, to other attachers') existing wires[]").

<sup>10</sup> Attachment A illustrates such a deployment. See Attachment A.

this requirement is in place. Such a failure may be a breach of our contract, but it also can raise real-world safety issues that cannot be corrected later if, for example, a pole worker is unable to identify the newly-added RF devices as harmful and take appropriate precautions. Further, the current strand-mounted RF deployments are only the first of many iterations CenturyLink expects to arise if the Commission does not draw a bright-line limiting overloading to wire-to-wire deployments.

Similarly, overlashed batteries, power supplies, and other heavy equipment raise overloading concerns not anticipated in the Commission's overloading decisions. Typical wire overloading today involves fiber-optic cable, which is relatively lightweight as compared to the copper and coaxial lines installed in the past. By contrast, the weight and configuration of wireless and similar electric devices create considerably more sag, wind and ice loading, and stress on the pole than were considered in the engineering design and analysis conducted for the original wire to which the devices would be overlashed. Sag, in turn, can create encroachment into space reserved for other attachments and cause safety issues for those attachments' pole workers. Overloaded poles also present more danger to the public, including the risk of poles breaking or falling in adverse weather conditions. A pole owner must be afforded the opportunity to review these proposed deployments in advance to ensure the safety of the pole for workers and the public.

Finally, large devices overlashed between poles are much more likely to trigger complaints from nearby residents and concerns about compliance with local zoning requirements than the original copper, coax, or fiber cable in place before the new equipment was overlashed. Although these issues must be resolved by the overloading party, prior review by the pole owner can help identify appropriate locations for such deployments.

Such non-incidental equipment also falls outside the scope of the Commission's reasoning in its overlashing decisions. In those earlier decisions, the Commission ruled that a pole owner's approval of the original copper or coaxial cable attached to that pole encompassed any subsequent overlashing of fiber to that original cable.<sup>11</sup> These rulings do not logically extend to a party that is overlashing facilities of a much different character than the host attachments, whether it be equipment that transmits RF radiation that may endanger workers on the pole or batteries or power supplies that are much heavier and unsightly than the original wire strung between poles. Again, there is no indication that such concerns were even considered in the Commission's wire-to-wire overlashing decisions.

For all these reasons, the Commission should narrow its proposed overlashing rule to exclude equipment that is not incidental to the fiber optic cable being overlashed to the existing facilities attached to the pole. Likewise, NCTA's proposed rule dispensing with a requirement "to obtain approval from or provide advance notice to a pole owner before overlashing additional wires, cables, *or equipment* to its own facilities[]"<sup>12</sup> is overly broad and should be rejected. Parties should be permitted to overlash wire and splice closures without prior approval, but the overlashing of other types of equipment should be governed by the pole owner's standard attachment process.

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<sup>11</sup> See, e.g., *2001 Order*, 16 FCC Rcd at 12141 ¶ 75 ("affirm[ing] . . . 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[]") (footnotes omitted)).

<sup>12</sup> See Letter from Steve Morris, Vice President & Associate General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed Oct. 20, 2017) (emphasis maintained in part).

**C. Appropriate Notice and Subsequent Inspection and Corrective Make-Ready, at the Overlasher's Expense, Is Essential.**

In some cases of overlashing, remedial work will be required to correct problems with the overlash facilities. In some instances, it may even be necessary to replace the pole to address overloading concerns, as noted, particularly if multiple providers attach or overlash new facilities to the pole around the same time. Any rule or decision adopted by the Commission therefore should require overlashers to notify the pole owner and provide a pole loading analysis within 10 days of overlashing; give the pole owner an opportunity to inspect overlash facilities for compliance with applicable safety, engineering, and aesthetic standards, including loading constraints; and require overlashers to undertake any make-ready necessary to comply with those standards, at the overlasher's expense. Such processes are essential to ensure that the expediency of overlashing does not unduly threaten the safety and reliability concerns cited in the *Notice*,<sup>13</sup> including inadequate spacing. And as noted above, the pole owner must be permitted to assess fees and remove non-compliant overlash attachments.

**III. THE COMMISSION SHOULD FURTHER STREAMLINE ITS SERVICE DISCONTINUANCE AND NETWORK MODIFICATION RULES TO ACCELERATE WIRELINE BROADBAND DEPLOYMENT.**

In the *Order*, the Commission took important steps to streamline the copper retirement and discontinuance processes. The Commission should build on that foundation by further streamlining and eliminating outdated regulations that hinder wireline broadband deployment.

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<sup>13</sup> *Notice*, 32 FCC Rcd at 3268 ¶ 6.

**A. The Commission Should Expedite Applications to Grandfather and Subsequently Discontinue Legacy Data Services.**

To start, the Commission should expedite applications to grandfather data services, as proposed in the *FNPRM*, but also modify that proposal to more directly address the most common types of grandfathering that will occur in the TDM-to-IP transition.

As the Commission has recognized, business customers are steadily replacing TDM-based DS1 and DS3 services with Ethernet and other IP-based alternatives.<sup>14</sup> These replacement services are typically available from both ILEC and non-ILEC providers, often over fiber, but sometimes via copper, hybrid-fiber coax, or other technologies. Eventually the demand for new DS1 and DS3 services will become so low that a carrier can no longer cost effectively offer DS<sub>n</sub> circuits in that area, particularly as the equipment necessary to provide these services becomes difficult to obtain. Such a business decision will also allow the carrier to focus on products with growing demand.

Streamlined grandfathering rules will allow carriers to cease the sale of these services when it becomes rational to do so, rather than being dictated by outdated regulation, and begin the process of discontinuing existing service in that area. But to accomplish these objectives, the Commission should modify the grandfathering rule proposed in the *FNPRM* in two significant respects.

*First*, the expedited rule should apply to the grandfathering of data services with download/upload speeds up to 45 Mbps/45 Mbps, so that it covers DS3, as well as DS1,

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<sup>14</sup> *In the Matter of Business Data Services in an Internet Protocol Environment*, 32 FCC Rcd 3459, 3461 ¶ 3 (2017) (noting that DS<sub>n</sub> technology is becoming obsolete).

services.<sup>15</sup> In CenturyLink's experience, demand for new DS3s is even scarcer than that for new DS1s, as the cost-effectiveness and scalability of Ethernet and other IP-based alternatives are even more pronounced at higher speeds. Also, the higher capacity of a DS3 should ensure that customers can choose from multiple providers when transitioning from this service.

*Second*, this expedited process should apply as long as the petitioning carrier offers another data service of at least the same quality and speed throughout the affected service area as the service being discontinued. For example, if a carrier is grandfathering a DS1 service in an area, it should qualify for the expedited process if it offers another data service throughout that area that has download/upload speeds of at least a 1.5 Mbps/1.5 Mbps, rather than the 25 Mbps/3 Mbps speeds proposed in the *FNPRM*. This is important because existing copper facilities at some locations may support Ethernet service of 5 Mbps/5 Mbps or 10 Mbps/10 Mbps, for example, which are likely replacements for a DS1, but may not support 25 Mbps/3 Mbps. These more flexible thresholds are also justified by the fact that grandfathering has no impact on existing services.

Once a service has been grandfathered for a period of 180 days, that service should be eligible for the streamlined comment and auto-grant periods the Commission granted for lower speed data services in the *Order*.<sup>16</sup> Six months should provide more than enough time for affected customers to make arrangements to transition to alternative services.

Adoption of these streamlined approval processes will promote competition, expedite the TDM-to-IP transition, and facilitate the deployment of better quality, higher-speed services. A protracted process for grandfathering and discontinuing legacy data services extends the period

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<sup>15</sup> A DS3 circuit provides symmetric download/upload speeds of approximately 45Mbps.

<sup>16</sup> See *Order* at ¶ 85.

in which carriers must incur the cost of supporting services that fewer and fewer customers wish to purchase. Every dollar that a carrier spends to maintain outdated TDM-based services is a dollar that could be better spent deploying and upgrading next-generation IP-based services. With the modifications suggested above, the streamlined discontinuance processes will allow carriers to plan and implement a phased migration of customers to newer, more sustainable services and decommission the facilities and systems necessary to provide the services that are being phased out, with little impact on existing customers, given intense competition for IP-based BDS.

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

In the *Order*, the Commission properly adopted streamlined notice procedures for copper retirement in *force majeure* and other unforeseen circumstances.<sup>17</sup> The same considerations that led the Commission to take that action apply equally for other network changes in unforeseen circumstances. ILECs need flexibility to restore service as quickly as possible and should not be considered non-compliant in situations beyond their control.

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

The Commission should exercise its forbearance authority to eliminate the requirement for Commission approval to discontinue, reduce, or impair services with no existing customers. Forbearing from Section 214(a) and the Commission's implementing rules for this situation would satisfy each of the Section 10 criteria for forbearance. If a service has no customers, Commission approval to discontinue that service clearly is not necessary to ensure that the

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<sup>17</sup> *Order* at ¶¶ 71-78.



charges, practices, classifications, or regulations of that service are just and reasonable and not unjustly or unreasonably discriminatory.<sup>18</sup> Nor is such approval necessary to protect consumers, who will not be impacted by the service discontinuance.<sup>19</sup> Finally, forbearance from this approval requirement will serve the public interest by eliminating superfluous regulation that slows the transition to more modern services that customers actually want to purchase.<sup>20</sup>

**D. The Commission Should Further Streamline the Section 214(a) Discontinuance Process for Legacy Voice Services.**

In considering proposals to streamline its Section 214(a) discontinuance rules, the Commission should give particular attention to legacy voice services. As well documented in the record, consumers for the most part have already abandoned these services.<sup>21</sup> More than 52% of American households have eliminated landline service entirely in favor of wireless-only voice service, and approximately 40% of those retaining landline service receive nearly all or all of their calls on wireless phones.<sup>22</sup> These wireless alternatives are nearly ubiquitous, with mobile wireless network coverage extending to 99.9% of the United States,<sup>23</sup> with at least four service

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<sup>18</sup> See 47 U.S.C. § 160(a)(1).

<sup>19</sup> See *id.* § 160(a)(2).

<sup>20</sup> See *id.* § 160(a)(3).

<sup>21</sup> See, e.g., AT&T Comments, filed herein, at 42 (noting that only about 14% of American households still rely on legacy TDM landline services) (June 15, 2017) (footnote omitted).

<sup>22</sup> See CDC, *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, January-June 2017*, at 1, 4 (Dec. 28, 2017), <https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201712.pdf>.

<sup>23</sup> Verizon Comments, filed herein, at 34 (June 15, 2017).

providers covering approximately 92 percent of the U.S. population with 3G technology or better.<sup>24</sup>

Given these trends, the Commission's traditional Section 214 discontinuance process is now both unnecessary and a drag on the transition to next-generation networks and services. Like all companies, CenturyLink faces competing demands for its limited capital. In considering whether to devote a portion of that capital to upgrade local networks, CenturyLink must ensure that these expenditures are likely to bring a reasonable return on investment. That calculus depends, in part, on CenturyLink being able to stop offering and eventually discontinue legacy voice services as it rolls out VoIP and other next-generation IP services, avoiding the need to maintain duplicate TDM and IP products, systems, and equipment. As it stands, the Commission's Section 214(a) discontinuance process provides no certainty that carriers can do so in a timely manner. This lack of certainty imperils the already tenuous business case to make the sizable investments necessary to provide next-generation services in the fiercely competitive marketplace for those services.

Thus, one of the most important things the Commission can do in this proceeding is to establish a clear-cut process and timeline for discontinuing legacy voice services. If the Commission concludes that Section 214(a) approval is necessary in this context,<sup>25</sup> it should forbear from enforcing Section 214(a) and its implementing regulations. Each of the forbearance

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<sup>24</sup> See *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Twentieth Report, WT Docket No. 17-69, FCC 17-126 ¶ 7 (rel. Sept. 27, 2017).

<sup>25</sup> Verizon presented a strong rationale in its initial comments for concluding that a carrier does not trigger Section 214(a) by discontinuing a voice or data service offering if the affected community's members can secure comparable service through a fiber, IP-based, or wireless alternative. Verizon Comments at 33-35.

criteria in Section 10 are met here. Given the general availability of and intense competition for wireline and wireless substitutes to legacy voice service, the Commission's Section 214(a) process is not necessary to ensure just, reasonable, and nondiscriminatory rates, services, and conditions, or to protect consumers.<sup>26</sup> And, as noted, forbearance from enforcement of this process would serve the public interest by hastening the transition to IP-based replacements to legacy voice and other services.<sup>27</sup>

If the Commission opts not to forbear and maintains a requirement for Section 214(a) approval in this context, it should adopt AT&T's proposal that a carrier discontinuing legacy voice service be required to show only that fixed or mobile voice service will be available to all affected customers.<sup>28</sup> AT&T's proposal would allow the Commission to ensure that affected customers are properly notified and have at least one sufficient alternative to the service being discontinued. It would also give appropriate weight to reasonable alternatives available from any source (and not just the carrier discontinuing the legacy voice service), as required by Commission precedent.<sup>29</sup> Conversely, the Commission's proposal in the *Notice* to condition streamlining on the availability of an alternative from both the petitioner and a third party sets the bar for streamlining unnecessarily high. The presence of a single alternative to the

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<sup>26</sup> See 47 U.S.C. § 160(a)(1) and (2).

<sup>27</sup> See *id.* § 160(a)(3).

<sup>28</sup> AT&T Comments at 42-43.

<sup>29</sup> See, e.g., *In the Matter of Rhythms Links Inc. Section 63.71 Application to Discontinue Domestic Telecommunications Services*, Order, 16 FCC Rcd 17024, 17027 ¶ 8 (CCB 2001); *In the Matter of AT&T Corp.; Application for Authority under Section 214 of the Communications Act, as amended, to Discontinue the Offering of High Seas Service and to Close Its Three Radio Coast Stations (KMI, WOM and WOO)*, Memorandum Opinion and Order, 14 FCC Rcd 13225, 13229-33 ¶¶ 8-16 & n.27 (IB 1999) (*AT&T High Seas Order*), *recon. denied*, Order on Reconsideration, 16 FCC Rcd 13636 (IB 2001).

discontinued service should be sufficient. Whether the Commission adopts the streamlining proposal in the *Notice*, or preferably the AT&T test, it should allow a petitioner to meet the defined test through certification. The Commission should consider a voice service to be a viable substitute to legacy voice service if it has been adopted by a substantial portion of the public (*i.e.*, facilities-based or over-the-top interconnected VoIP, circuit-switched cable voice, 3G, 4G, or 5G wireless, or TDM voice service).

Finally, the Commission should affirm that applications to discontinue legacy voice services may be warranted even if they do not meet whatever streamlining criteria the Commission adopts. In some geographic areas, it may not make economic sense for a carrier to upgrade a TDM network to IP, absent high-cost or other government funding. Yet it also may become cost prohibitive to continue to provide services over the legacy network. In such situations, satellite or another non-wireline technology may be the only cost-effective means to serve the affected customers, even if those alternatives could result in higher costs or less robust service than the legacy voice service being discontinued.<sup>30</sup> The Commission should retain the existing regulatory framework in Rule 63.71 to address these situations as they arise.

**E. The Commission Should Eliminate the Unnecessary and Counterproductive Outreach Requirements Adopted in the 2016 Technology Transitions Order.**

In the *2016 Technology Transitions Order*,<sup>31</sup> the Commission adopted prescriptive requirements detailing the ways in which a carrier discontinuing legacy retail services should

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<sup>30</sup> See *AT&T High Seas Order*, 14 FCC Rcd at 13229-30 ¶¶ 9-11.

<sup>31</sup> See *In the Matter of Technology Transitions; USTelecom Petition for Declaratory Ruling That Incumbent Local Exchange Carriers Are Non-Dominant in the Provision of Switched Access Services; Policies and Rules Governing Retirement of Copper Loops by Incumbent Local*

communicate with its customers, in addition to following the notice requirements in Section 63.71. These outreach requirements are both unnecessary and counterproductive. All telecommunications providers face intense competition to retain consumers, who receive offers to switch to a competitor on a nearly weekly basis. Thus, these carriers have every incentive to keep their customers informed about any changes to their service and how they will affect those customers.

These carriers have also learned through experience the most effective means of informing and educating their customers. While a particular method of communication (*e.g.*, bill insert, email, or customer hotline) may seem to be a good way to inform customers, that is true only if the customers actually take advantage of it. Similarly, while providing customers exhaustive information about a technology transition may seem the best method to educate them, customers may be so overwhelmed by this level of detail that they simply ignore the communication altogether. The Commission therefore should give carriers the flexibility to inform and educate their customers about an upcoming service discontinuance in a manner best

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*Exchange Carriers*, Declaratory Ruling, Second Report and Order, and Order on Reconsideration, 31 FCC Rcd 8283 (2016).

suited to making customers aware of how an upcoming discontinuance will affect them and what, if anything, they need to do to prepare for it.

Respectfully submitted,

**CENTURYLINK**

By: /s/ Craig J. Brown  
Craig J. Brown  
Eric J. Schwalb  
CenturyLink, Inc.  
1099 New York Avenue, NW  
Suite 250  
Washington, DC 20001  
Phone 303-992-2503  
[Craig.J.Brown@CenturyLink.com](mailto:Craig.J.Brown@CenturyLink.com)

Its Attorneys

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