

*Before the*  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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

**COMMENTS OF CONSUMER GROUPS AND RERC**

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**California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc.**  
**Cerebral Palsy and Deaf Organization**  
**Hearing Loss Association of America**  
**National Association of the Deaf**  
**American Foundation of the Blind**  
**Rehabilitation Engineering Research Center on Technology for the Deaf and Hard of Hearing**  
**Rehabilitation Engineering Research Center on Universal Interface & Information**  
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Telecommunications for the Deaf and Hard of Hearing, Inc., Association of Late-Deafened Adults, California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc., Cerebral Palsy and Deaf Organization, Hearing Loss Association of America, National Association of the Deaf, and American Foundation of the Blind (collectively, “Consumer Groups”), along with Rehabilitation Engineering Research Center on Technology for the Deaf and Hard of Hearing at Gallaudet University and Rehabilitation Engineering Research Center on Universal Interface & Information Technology Access, Trace Research & Development Center at University of Maryland (collectively, “RERCs”), respectfully submit these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) November 29, 2017 *Further Notice of Proposed Rulemaking* (“*FNPRM*”) in the above-referenced proceeding.<sup>1</sup> For the reasons set forth below, Consumer Groups & RERCs (1) oppose repeal of rules that require carriers to provide notice of network changes that affect the interoperability of customer premises equipment (“CPE”), but do not oppose certain modifications to those rules; (2) oppose forbearance from the Section 214(a) discontinuance process for carriers seeking to discontinue legacy services, but do not oppose efforts to streamline the process, under certain conditions; and (3) oppose repeal of outreach requirements related to discontinuances.

### **Background**

As Consumer Groups, RERCs, and other organizations have expressed in the record, transitions from legacy services to IP-based services can have an adverse impact on assistive

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<sup>1</sup> *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 (November 29, 2017) (“*2017 Order & FNPRM*”).

technologies, such as text telephones (“TTYs”) and analog captioned telephones.<sup>2</sup> The record indicates that after transitions, these devices can be rendered unreliable or unusable<sup>3</sup> “leav[ing] customers reliant on such devices without access to general telephone services, including 911 services.”<sup>4</sup> While “some progress” has been made toward ensuring that TTYs and analog captioned telephones function on IP networks,<sup>5</sup> the record demonstrates that the problems that remain are not easily addressed.<sup>6</sup> It is clear that technological solutions are not yet at a stage where carriers can be confident that individuals who use these devices will be able to access communications networks without issue on IP-only networks.

At the same time, the market for IP-based assistive technology has not yet progressed enough that retirement of all legacy services is appropriate. IP-based assistive technologies are not yet fully developed, widely available, or adequate alternatives for all users.<sup>7</sup> It may also be costly for low-income individuals to switch to new alternatives and difficult for seniors to learn new devices. While it is a valid end goal that all individuals with disabilities switch to devices designed for IP networks,<sup>8</sup> the FCC must “support users of traditional analog equipment while making the transition from analog equipment and service to IP based equipment and service.”<sup>9</sup>

Consumer Groups & RERCs appreciate the desire and effort of carriers to modernize their networks and the Commission’s goal of facilitating that modernization. Indeed, Consumer Groups & RERCs are excited about innovations resulting from modern networks that may

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<sup>2</sup> See Consumer Groups & RERCs 2017 Reply at 1-2 (July 17, 2017); RERCs *Ex Parte* at 1 (Oct. 12, 2017); Ultratec October *Ex Parte* at 1 (Oct. 13, 2017).

<sup>3</sup> RERCs *Ex Parte* at 1; Ultratec October *Ex Parte* at 1.

<sup>4</sup> 2017 Order & FNPRM, ¶ 152.

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

<sup>6</sup> See RERCs *Ex Parte* at 1.

<sup>7</sup> See Ultratec October *Ex Parte* at 1-2; RERCs *Ex Parte* at 2.

<sup>8</sup> RERCs *Ex Parte* at 2.

<sup>9</sup> Ultratec October *Ex Parte* at 2.

improve access to communications for individuals with disabilities. However, modernization should not be at the expense of access to communications networks for individuals with disabilities using legacy devices. Consumer Groups & RERCs do not believe that transitions to IP-based services and preservation of legacy services during that transition are mutually exclusive or overly burdensome on carriers. Thus, the benefits from modernization can be realized without total loss of services for some users.

Consumer Groups & RERCs acknowledge and appreciate that the Commission, in the *2017 Tech Transitions Order* (“*Order*”), reminded carriers of their obligations as a matter of law, outside of Section 214(a), with respect to access to communications networks for individuals with disabilities.<sup>10</sup> It is important that carriers ensure that replacement services are “compatible with peripheral devices and specialized customer premises equipment, such as TTYs and captioned telephones”<sup>11</sup> and that they make “reasonable efforts to validate any unproven access solutions through testing with individuals with disabilities or with appropriate disability-related organizations that have established expertise with individuals with disabilities.”<sup>12</sup>

The Commission should not change rules in a way that could undermine the collaboration the *Order*’s reminder contemplates. Consumer Groups & RERCs have always valued the opportunity to “work cooperatively” with carriers to ensure that all individuals with disabilities have the ability to access communications services.<sup>13</sup> As discussed below, the existing rules facilitate the working relationships between carriers, the disability community, and the Commission. But the proposals the Commission is entertaining in the *FNPRM* could, if adopted,

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<sup>10</sup> *2017 Order & FNPRM* at ¶ 153.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*, citing 47 CFR § 6.7(b)(4).

<sup>13</sup> *Id.*, citing 47 CFR § 6.7(b)(3).

undermine the ability of Consumers Groups, RERCs, and the Commission to ensure that carriers consider the impact their network changes will have on individuals with disabilities.

Because some individuals still rely on TTYs and analog captioned telephones, changes to networks may affect the operation of those devices, and the market has not yet resulted in fully-developed, widely-available, and low-cost IP-based assistive technologies, the Commission should abstain from removing rules or modifying them in a way that might result in individuals with disabilities being cut off from communications networks without warning.

**A. The Commission should not repeal Sections 51.325(a)(3) and 68.110(b), but modifications may be appropriate.**

Sections 51.325(a)(3) and 68.110(b) require carriers to give notice of network changes that may affect the functionality of CPE.<sup>14</sup> These rules are important because the notice allows customers to modify their equipment or purchase new equipment to ensure their ability to communicate goes uninterrupted. Indeed, other filings in the record discuss instances where TTYs and analog captioned telephones have suddenly failed without warning, ostensibly due to undisclosed transitions from legacy services to IP-based services.<sup>15</sup> The Commission should keep and enforce the CPE notice rules so that such instances do not occur.

Those proposing that these rules be repealed claim that manufacturers no longer need notice because of changes in the CPE market.<sup>16</sup> In addition to ignoring that the rules are also in place so that customers receive notice, as just discussed, they also fail to acknowledge the customer benefits that flow from notice to manufacturers. While manufacturers may generally adjust quickly to network changes, they should be given some lead time so that they can begin

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<sup>14</sup> 47 CFR §§ 51.325(a)(3), 68.110(b).

<sup>15</sup> RERCs *Ex Parte* at 1; Ultratec October *Ex Parte* at 1.

<sup>16</sup> AT&T 2017 Comment at 36-37 (June 15, 2017).

offering equipment that will function on new services at the time or soon after the network has changed. This is imperative for manufacturers that are in the business of providing essential communications equipment, such as manufacturers of assistive technologies, but it also is important for other manufacturers who may in a position to quickly enter the assistive technology market on a new network by modifying their existing equipment or developing new equipment. Thus, advanced notice to manufacturers ensures that individuals with disabilities have options for functioning communications equipment after network changes and facilitates market competition, including for the development of assistive technologies.

To the extent the rules are currently interpreted to require providers to determine all the third-party devices that might be affected by network changes, Consumer Groups & RERCs would not oppose modifications that clarify that carriers do not have this burden. In the *Order*, the Commission relied on the carriers' assertions that they do not and cannot know all the devices that connect to their networks.<sup>17</sup> It cited the *Carterfone* decision in stating that "service providers do not bear the burden of ensuring compatibility with third-party devices; instead, that burden rests on the owner or use of a third-party device."<sup>18</sup> If necessary for clarity, Consumer Groups & RERCs would not oppose the rules being modified to clarify that carriers need only make a general determination as to whether their network changes are so significant that they could have an impact on the functionality of CPE. Carriers would not need to know precisely what CPE is connected to their networks, nor would they need to assess precisely what impact a change would have. They would only need to notify customers of changes that *could* have an impact on CPE. A rule fashioned this way would facilitate the ability of customers to assess

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<sup>17</sup> 2017 *Order & FNPRM* at ¶ 148.

<sup>18</sup> *Id.* at ¶ 137.

whether the coming change will impact their specific CPE and if so, allow them to make adjustments so that they can maintain uninterrupted service, as the existing rule contemplates.

These rules facilitate collaboration between disability organizations and carriers to ensure that replacement services are compatible and new services are adequately tested. Because carriers do not know all the devices that connect to their networks, they will not know when they might make a change that affects assistive technologies. However, since carriers have a duty to work with disability organizations to provide interim solutions and adequate testing for new services, it is important they learn about the potential affects before making network changes. One way carriers can learn about such affects is from disability organizations. When these organizations receive advanced notice of network changes, they can help assess the impact those changes will have on assistive technologies and inform carriers if they discover issues.

Finally, Consumer Groups & RERCs would not oppose making other modifications to the rules or even combining them into one rule so long as the final rule(s):

- Apply to all wireline carriers;
- Include a trigger based on changes that a carrier reasonably expects will render any CPE incompatible with the carrier's facilities, require modification or alteration of such CPE, or otherwise materially affect any CPE's use, performance, or manner in which they connect to the network;
- Require both public notice, adequate written notice to customers, and, when possible, notice provided in American Sign Language (ASL); and
- Include language that makes clear that one purpose of the rule is to give customers the opportunity to maintain uninterrupted service.

In addition to ensuring that customers and manufacturers receive notice of network changes that might affect CPE, the Commission should not change the Section 214(a) discontinuance process in a way that would prevent the Commission from assessing whether network changes adversely affect the public convenience and necessity.

**B. The Commission should not forbear from the Section 214(a) discontinuance process for legacy services and any modification should ensure the Commission receives information necessary to fulfill its obligations under that provision.**

Section 214(a) prohibits carriers from discontinuing, reducing, or impairing service to a community, or part of a community, until it has obtained a certificate from the Commission that neither the present nor the future public convenience and necessity will be adversely affected.<sup>19</sup>

In the *Order*, the Commission said that certain commenters conflated copper retirements and service discontinuance. According to the Commission, these commenters “wrongly focus[ed] on the underlying transmission medium” with respect to retail customer notices for copper retirements that might affect CPE.<sup>20</sup> It said that “the equipment and devices about which commenters express concern generally continue to function over fiber facilities as long as that service remains TDM-based.”<sup>21</sup> It also said that should copper retirements result in the discontinuance of particular services, those would be properly handled by the Section 214(a) discontinuance process.<sup>22</sup> Now, in the *FNPRM*, the Commission seeks comment on proposals to forbear from or further modify its application of Section 214(a) – the very process on which it just told people to rely. Forbearance and certain modifications could have the effect of removing the only remaining mechanism to ensure that carriers do not prematurely discontinue their services, including the TDM services on which TTYs and analog captioned telephones still rely.

In general, Consumer Groups & RERCs believe that now is not the time for the Commission to consider further changes to its Section 214(a) discontinuance process. The transition from legacy to IP-based services will impact the ability of TTY and analog captioned telephone users to reliably access communications networks. The earlier record also makes clear

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<sup>19</sup> 47 U.S.C. 214(a).

<sup>20</sup> *2017 Order & FNPRM* at ¶ 46.

<sup>21</sup> *Id.*

<sup>22</sup> *2017 Order & FNPRM* at ¶ 24.



that the full impact of the changes are not yet understood. And as noted above, the market is not yet equipped to address these uncertainties. The Commission should not introduce more uncertainty related to technology transitions by further changing the Section 214(a) process.

The Commission should fulfill its Section 214(a) obligation to play an active role in determining that the public convenience and necessity will not be adversely affected by network changes. Maintaining the existing Section 214(a) discontinuance process gives consumers and public interest organizations a chance to evaluate the changes a carrier intends to make and provides the Commission with insight on the impact of those changes. It also allows the Commission to evaluate the market on an ongoing basis to ensure the market is meeting the needs of consumers that will be affected by a discontinuance before allowing that discontinuance to take place. This includes ensuring that adequate alternatives to TTYs and analog captioned telephones are readily available. Thus, the Commission should not step back from its role protecting consumers pursuant to Section 214(a).

Consumer Groups & RERCs oppose the Commission forbearing from Section 214(a) and its Part 63 implementing rules for carriers that seek to discontinue legacy services. As an initial matter, doing so would be altogether contrary to the intent of Congress. If carriers are not required to obtain certification from the Commission when they discontinue legacy services, then Section 214(a) would be rendered largely obsolete. Section 214(a) is designed precisely for these moments. Application of Section 214(a) also facilitates collaboration between carriers and disability organizations.<sup>23</sup> As a result of the discontinuance process, disability organizations become aware of possible service changes that could impact assistive technologies. In return,

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<sup>23</sup> See *supra* Part A; see also, 2017 Order & FNPRM at ¶ 154 (“[W]e expect that wireline carriers will continue to ensure compliance with the Commission’s accessibility rules when deploying advanced services and before seeking to discontinue any legacy services.”).

these organizations can alert carriers of their concerns, serving as another mechanism that initiates the collaborative process the Commission said is required to take place.

Consumer Groups & RERCs would not oppose the Commission adopting a certification process to streamline processing of Section 214(a) discontinuance applications for legacy services so long as carriers provide information necessary for the Commission to evaluate whether remaining alternative services are sufficient. The certification process proposed by Verizon would only require a carrier to certify (1) that it provides a replacement IP service throughout the affected service area and (2) that at least one other alternative service is available in the affected service area.<sup>24</sup> Alternative services are only sufficient if at least one of those services meets the needs of the customers that will be affected by the discontinuance. In order for the carrier and the Commission to make that determination, the carrier seeking discontinuance would need to obtain and submit to the Commission information about the alternative carrier's service that shows that it is reliable, covers the entirety of the same service area, and provides the same functionality (such as TDM technology) as the service that is being discontinued.

In addition to declining to forbear from the Section 214(a) discontinuance process and ensuring that any modifications to the process give the Commission necessary information to complete its obligations under Section 214(a), the Commission should maintain the outreach requirements related to service discontinuances.

**C. The Commission should maintain its discontinuance outreach requirements.**

As the earlier record and this comment make clear, transitions from legacy to IP-based services will have an impact on some customers. When that happens, their first inclination will likely be to contact their carrier. But such interactions will be futile and a waste of time for both

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<sup>24</sup> 2017 Order & FNPRM at ¶ 171.

customers and carriers if customers are transferred to multiple customers service representatives, each as unable as the next to describe the network changes that have taken place and provide advice on steps the customer can take to address the situation. It only makes sense that carriers should provide educational materials and a customer hotline with trained customer service representatives that will be able to provide helpful information about network changes. Thus, the Commission should not repeal the outreach requirements for carriers and it should remind entities that outreach communications and materials must be accessible. Consumer Groups & RERCs are also interested in exploring other outreach methods for individuals with disabilities, including through telecommunications relay service (TRS) and equipment distribution program (EDP) administrators and additional collaboration between carriers and disability organizations.

Importantly, it is imperative that carriers be required to implement these outreach requirements before there are network changes. As discussed above, changes to the network may make it impossible for certain customers, including users of TTYs and analog captioned telephones, to contact a carrier using communications networks. In effect, without advance outreach requirements, the very network changes a customer desires to speak with their carrier about could make it impossible for the customer to engage in that communication.

Finally, it is even more imperative that the Commission maintain these rules if it makes substantial changes to the CPE notice and Section 214(a) discontinuance rules. In its comment preceding the *Order*, ITTA said that the outreach requirements are not needed because other discontinuance requirements already cause them to provide the same information to customers.<sup>25</sup> Consumer Groups & RERCs do not believe discontinuance rules require all the same information be shared with all the same people in all the same ways, but to the extent the

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<sup>25</sup> ITTA 2017 Comment at 21 (June 15, 2017).

Commission disagrees, it should not remove the outreach requirements if it also removes or substantially modifies the CPE notice and Section 214(a) discontinuance rules.

### **Conclusion**

Consumer Groups & RERCs support technology transitions, but not at the expense of access to communications networks for individuals with disabilities. A significant number of individuals still rely on TTYs and analog captioned telephones that may be rendered inoperable when legacy services are retired. Concurrently, the market for IP-based assistive technologies is not fully developed. Thus, the Commission should keep notice requirements for network changes that affect CPE and only modify the rules for clarity; deny forbearance from the Section 214(a) discontinuance process for legacy services while ensuring carriers submit necessary information if the Commission streamlines the process; and keep the discontinuance outreach requirements.

Respectfully submitted,

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