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, RERCS, AND STATE ADMINISTRATORS

Telecommunications for the Deaf and Hard of Hearing, Inc.
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
Rehabilitation Engineering Research Center on Technology for the Deaf and Hard of Hearing
Rehabilitation Engineering Research Center on Universal Interface & Information Technology Access, Trace Research & Development Center
National Association for State Relay Administration
Telecommunications Equipment Distribution Program Association

TABLE OF CONTENTS

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc. (CCASDHH), Cerebral Palsy and Deaf Organization (CPADO), Hearing Loss Association of America (HLAA), and National Association of the Deaf (NAD) (collectively, "Consumer Groups"), along with the Rehabilitation Engineering Research Center on Technology for the Deaf and Hard of Hearing at Gallaudet University (DHH-RERC) and the Rehabilitation Engineering Research Center on Universal Interface & Information Technology Access, Trace Research & Development Center, at the University of Maryland (IT-RERC) (collectively, "RERCs"),[1] and with the National Association for State Relay Administration (NASRA) and the Telecommunications Equipment Distribution Program Association (TEDPA) (collectively, "State Administrators"),[2] respectfully submit these reply comments in response to comments filed with the Federal Communications Commission's ("FCC" or "Commission") concerning the above-referenced proceeding.[3]

Introduction and Summary

In our initial comments, we asked the Commission to 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. In support of this request, we explained that many individuals still rely on text telephones ("TTYs") and analog captioned telephones, that changes

[1] Consumer Groups and RERCs seek to promote equal access to telecommunications for the 48 million Americans who are deaf, hard of hearing, late-deafened, or deafblind, as well as those with other disabilities, so that they may fully experience the informational, educational, cultural, and societal opportunities afforded by the telecommunications revolution.
[2] State Administrators seek to improve Telecommunications Relay Service (TRS) and Equipment Distribution Program (EDPs) administration for the benefit of individuals with disabilities by facilitating information sharing and engaging in community outreach.
[3] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Report and Order, Declaratory Ruling, and Further Notice Of Proposed Rulemaking, 32 FCC Rcd 11128 (November 29, 2017) ("*2017 Order & FNPRM*").

to networks may affect the operation of those devices, and that the market has not yet resulted in fully-developed, widely-available, and low-cost IP-based assistive technologies. We write to further explain the purpose and benefit of the existing rules while continuing to support opportunities to strengthen the rules for the benefit of consumers and carriers alike.

First, we make clear that the Commission should keep the Customer Premises Equipment ("CPE") notice rules because they are designed to ensure that consumers have the opportunity to update or modify their CPE in advance of network changes. We reiterate that we would not oppose modifying the rules to address the concern that carriers cannot identify all the CPE connected to their networks and the affect that network changes would have on those CPE.

Second, we ask that the Commission not forbear from its Section 214(a) discontinuance requirements when a discontinuance would affect the communications platform the carrier provides. We also propose that the Commission ensure collaboration between carriers and stakeholders is meaningful and productive by requiring carriers to report on the results of their collaborative efforts.

Third, we explain how the Commission's outreach requirements should not be repealed because they provide a flexible framework for carriers to educate consumers about service discontinuances. We also ask that the Commission encourage carriers to contact state organizations to facilitate this outreach.

Fourth, we explain that market competition cannot ensure that all carriers engage in the same or sufficiently similar conduct as what is required by the rules.

Fifth, we highlight that no commenters made reasonable claims that network changes would not affect users of some legacy devices or that there are adequate alternatives readily available for essential CPE, such as TTYs and analog captioned telephones.

I. The Commission should keep the CPE notice rules, which ensure consumers are not cut off from communications networks without warning, but the rules could be modified to address the primary concern expressed by carriers.

Some commenters argue that the Commission should eliminate the Section 51.325(a)(3) and 68.110(b) CPE notice rules because the original premise for the rules no longer exists. They claim that these rules were only designed to provide notice of network changes to CPE manufacturers.[4] At the time the rules were created, incumbents were active in the CPE marketplace and if they did not provide notice of network changes that would rendered CPE inoperable, they could escape competition by having the only CPE on the market that would function following the network change.[5] According to these commenters, the CPE notice rules are no longer necessary because incumbent carriers no longer occupy a dominant position in the CPE market[6] and manufacturers "move at lightning speed to adapt to new technologies" anyway.[7] These commenters misunderstand the real purpose of these rules – to ensure consumers are not cut off from communications networks without warning.

As we said in our initial comments, the CPE notice rules are primarily designed to give consumers the opportunity to modify or upgrade their CPE ahead of network changes.[8] This is evident from the plain language of these rules. Section 68.110(b) states that "*customer[s]* shall be given adequate notice in writing, to allow the *customer* an opportunity to maintain uninterrupted service" if a carrier's network changes are "reasonably expected to render any *customer's* terminal equipment incompatible with the communications facilities."[9] Similarly,

---

[4] *See, e.g.*, ADTRAN FNPRM Comment at 4-5 (Jan. 17, 2018); Verizon FNPRM Comment at 16, (Jan. 17, 2018).
[5] *See, e.g., id.*
[6] *See, e.g., id.*
[7] Verizon FNPRM Comment at 16.
[8] Consumer Groups & RERCs FNPRM Comment at 5 (Jan. 17, 2018).
[9] 47 C.F.R. § 68.110(b) (emphasis added).

Section 51.325(a)(3) states that incumbents must provide "*public* notice regarding any network change that . . . [w]ill affect the manner in which customer premises equipment is attached to the interstate network."[10] Additionally, when the Commission promulgated Section 51.325(a)(3), it also provided that the rule's underlying rationale was "to maintain interoperability and uninterrupted, high quality service to the *public*."[11] If the notice required by these rules were meant only for manufacturers, the Commission could have easily said so.

Even though the CPE notice rules are not primarily intended to protect CPE manufacturers, it is still important that manufacturers receive advanced notice for the benefit of consumers. Consumers will not be able to modify or upgrade their CPE ahead of network changes if there is not CPE on the market that will work on the new network. As we said in our initial comment, "[w]hile manufacturers may generally adjust quickly to network changes, they should be given some lead time so that they can begin offering equipment that will function on new services at the time or soon after the network has changed."[12] The public notice requirement under Section 51.325(a)(3) ensures that manufacturers are aware of network changes and can begin development of such CPE.

The CPE notice rules should be maintained to ensure consumers are informed during future network changes. Aside from the network changes carriers seek to make today, carriers will surely continue to innovate and further modernize their networks. Consumer Groups, RERCs, and State Administrators support this innovation. However, it is important that the

[10] 47 C.F.R. § 51.325(a)(3) (emphasis added).
[11] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392, 19496 (1996) (emphasis added).
[12] Consumer Groups & RERCs FNPRM Comment at 4-5.

Commission maintain rules that ensure that consumers are not unexpectedly cut off from communications networks during future network changes.

The Commission could modify the CPE notice rules to address the carriers' concern with identifying all the CPE that might be affected by their network changes. The carriers say that the CPE notice rules are "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."[13] We stand by Consumer Groups & RERCs' initial comment suggesting that the Commission could modify the rules to specify that carriers do not need to identify all the CPE attached to their networks, nor do they need to determine with certainty the impact their network changes will have on those CPE.[14] Instead, "[t]hey would only need to notify customers of changes that *could* have an impact on CPE."[15] We add here that meeting this standard would not be a heavy burden.[16]

In addition to keeping the CPE notice rules so that consumers can modify or upgrade their CPE ahead of network changes, the Commission should continue to play its important role under the Section 214(a) discontinuance process.

II. The Commission should maintain its vital role under Section 214(a) to oversee all discontinuances that may affect TTY and analog captioned telephone services.

The Commission should not forbear from applying the Section 214(a) discontinuance requirements if a carrier's discontinuance would affect TTYs and analog captioned telephones.

---

[13] Verizon FNPRM Comment at 16.
[14] Consumer Groups & RERCs FNPRM Comment at 6.
[15] *Id.*
[16] AT&T pointed out that carriers have access to the Administrative Council for Terminal Attachments (ACTA) database, which lists all the CPE that are Part 68 compliant. AT&T FNPRM Comment at 10. While not necessary to make the level of evaluation proposed, carriers could use this database to get a general idea of what CPE might be affected by a network change.

Many commenters state that the Section 214(a) discontinuance process is not necessary when there are adequate alternative voice services.[17] And NCTA asserts that "whether a service is grounded in TDM, IP, or another platform is essentially immaterial to the user so long as the customer can originate, complete, and receive voice calls."[18] But these commenters ignore that other non-voice services operate on the same communications platforms as voice service. Retirement of an underlying platform premised on availability of voice service on a new platform could result in the discontinuance of those non-voice service. Thus, if the Commission forbears from Section 214(a) for voice services, carriers could actually discontinue their TDM platforms and render TTYs and analog captioned telephones inoperable. The Commission should maintain its role overseeing the discontinuance process and not give carries such latitude.

The Commission should ensure that carriers engage in meaningful and productive collaboration with stakeholders in advance of services discontinuances. Consumer Groups & RERCs highlighted in their initial comment how the existing notice, discontinuance, and outreach requirements facilitate collaboration between carriers and accessibility organizations.[19] Carriers may also be required to collaborate with stakeholders outside the accessibility context or may say that they have collaborated with stakeholders when seeking approval from the FCC. It is important that the Commission and the public be able to assess whether carriers met with a variety of knowledgeable organizations and that they made a legitimate effort to understand how their network changes might affect consumers' access to communications services.[20]

---

[17] *See, e.g.*, Verizon FNPRM Comment at 4; CenturyLink FNPRM Comment at 17-18.
[18] NCTA-The Rural Broadband Association FNPRM Comment at 6 (Jan. 17, 2018).
[19] *See* Consumer Groups & RERCs FNPRM Comment.
[20] Even though carriers are required to both work with accessibility organizations and ensure their networks are backward compatible with accessibility devices, *2017 Order & FNPRM* at 11185-87, Consumer Groups, RERCs, and State Administrators know that there have been

Accordingly, when carriers are required to engage with stakeholders or claim that they have, the Commission should require that carriers file a brief report in the relevant docket on which organizations they met with, what issues were identified, and how those issues are being addressed. Doing so coincides with the Commission's statutory directive to ensure that communities are not cut off from communications networks due to network changes.[21]

In addition to the Commission's important role overseeing service discontinuances, it should maintain its outreach requirements so that carriers play their part in educating consumers during the discontinuance process.

III. The Commission should maintain the flexible framework of outreach requirements, which align with ordinary business practices, and it should encourage carriers to collaborate with key state stakeholders to improve outreach.

The outreach requirements provide a necessary baseline of conduct to ensure carriers communicate effectively with their customers about service discontinuances. Some commenters claim that the customer outreach requirements should be repealed because they are too prescriptive[22] or are duplicative of their ordinary business practices.[23] They act as if the rules create a substantial burden that prevents them from engaging in other outreach efforts. To the contrary, Consumer Groups, RERCs, and State Administrators agree with Communications Workers of America (CWA) that these rules "provide carriers with a flexible blueprint to follow."[24] And since the requirements align with the ordinary business practices of some commenters, they cannot possibly be harmful. Thus, having the requirements in place can only

instances where networks were changed and accessibility devices were rendered non-functional. The collaborative process is meant to help prevent such occurrences.

[21] 47 U.S.C. § 214.

[22] *See, e.g.*, CenturyLink FNPRM Comment at 18-19.

[23] NCTA FNPRM Comment at 9.

[24] CWA FNPRM Comment at 4-5, (Jan. 17, 2018).

result in the benefit of ensuring that all carriers "help consumers, particularly those most vulnerable, understand what to expect when their legacy voice service is discontinued."[25] Of course, like CWA, we "hope that carriers would actually expand upon these mandates with more extensive outreach."[26] When it comes to "discontinuance of a critical service consumers rely on," no amount of education is too much.[27]

Consumer Groups, RERCs, and State Administrators oppose a small carrier exemption from the basic, flexible, and essential outreach requirements.[28] Absent complete repeal, NCTA requests that the Commission exempt small carriers from the outreach requirements.[29] But these rules are just as necessary, if not more so, for midsized and smaller carriers. In a number of areas across the country, individuals with disabilities have access to only one carrier. If that one carrier is a small carrier and the Commission approves this exemption, these consumers will not be adequately informed about network changes that could cut off their communications. While we do not diminish the challenges faced by smaller carriers, they must understand that the costs associated with these important requirements are simply the costs of serving the public when operating this type of business.

The Commission should encourage carriers to collaborate with state entities that can facilitate outreach to individuals with disabilities. A variety of organizations and key individuals in the states that have regular contact with individuals with disabilities. These stakeholders include Telephone Relay Service ("TRS") administrators, Equipment Distribution Program ("EDP") administrators, advisory councils, divisions of government agencies, and public

[25] Public Knowledge and Center for Rural Strategies FNPRM Comment at 4 (Jan. 17, 2018).
[26] CWA FNPRM Comment at 24.
[27] Public Knowledge and Center for Rural Strategies FNPRM Comment at 4.
[28] NCTA FNPRM Comment at 10-11.
[29] *Id*.

utility/service commissions. Some of them already engage in consumer outreach or serve as a resource to these consumers when they have questions about their communications services or CPE. In addition to collaborating with these stakeholders as part of the discontinuance process, carriers can utilize them to augment their outreach efforts. Some of these stakeholders have reported that carriers do not communicate with them about network changes, but that they are anxious for that to occur. Because of the position these stakeholders occupy within their states, they would be an excellent avenue for community outreach. And in fact, this could reduce the burdens on carriers because individuals with disabilities and other consumers will learn about network changes without having to contact their carrier directly.

Since the outreach requirements are so important and go hand-in-hand with the CPE notice and Section 214(a) discontinuance requirements, the Commission should not rely on market competition to ensure that carriers meet the same standards required by the rules.

IV. Market competition will not adequately dictate that carriers engage in the same behavior required by enforceable rules.

Not all carriers operate in sufficiently competitive markets. Several commenters claim that the CPE notice, Section 214(a) discontinuance, and outreach requirements are not necessary because the competitive marketplace will cause them to do what the rules otherwise dictate.[30] However, some carriers, particularly those in rural areas, do not operate in competitive markets. Under the premise asserted by these commenters, carriers in these markets would not have any incentive to engage in the desired behavior absent the Commission's rules. Thus, the consumers that live in these non-competitive markets – such as rural individuals, including rural individuals with disabilities – would be most harmed were the Commission to repeal the rules.

[30] *See, e.g.*, Verizon FNPRM Comment at 11-12; NCTA FNPRM Comment at 7-9.

Even when there is adequate competition, not all carriers will engage in behavior that the existing rules require. Consumer Groups, RERCs, and State Administrators do not dispute that many carriers in competitive markets will make an effort to communicate effectively with most of their customers about network changes and the potential impact those changes may have on CPE. But the rules are not in place for those carriers and those customers. The rules are in place for the carriers that would not otherwise do what the rules require. Indeed, "the record from prior proceedings revealed several instances of incumbents involuntarily migrating their customers from copper networks without adequate notice or consent, resulting in customer confusion."[31] In fact, ITTA even states that "[w]hile discontinuing carriers [have an] incentive to avoid any customer disruptions, the Commission should tolerate minimal disruptions."[32] But in reality, these disruptions are not tolerated by the Commission; they are "tolerated" by the people that will not be able to access communications networks following a network change.

Absent the rules, some carriers may simply exit the market, reducing competition. Carriers can be expected to do this when the services purchased by consumers in particular markets do not provide the carrier with a high rate of return. Thus, the consumers most likely to lose their carriers are those in rural areas, those that are low income, and those with special needs, such as individuals with disabilities. In fact, CenturyLink even asks that the Commission allow it to discontinue services in geographic areas where it claims that it would be too costly to maintain the legacy service and too costly to upgrade the service.[33]

[31] Public Knowledge and Center for Rural Strategies 2018 at 7.
[32] ITTA – The Voice of America's Broadband Providers FNPRM Comment at 12, n.43 (Jan. 17, 2018).
[33] CenturyLink FNPRM Comment at 18.

Even though some commenters claim that market competition will suffice, no commenters reasonably claimed that essential legacy devices will function without issue following network changes.

V. No commenters reasonably assert that network changes will not affect users of some legacy devices or that there are adequate alternatives readily available for all such essential CPE.

The carriers do not deny that people still use legacy services or that discontinuing, reducing, or impairing those service may have an effect on the ability of those people to communicate. Some carriers argue that existing rules are not necessary because most consumers have transitioned to newer services.[34] This argument is illusory. The number of people that use new services has nothing to do with whether the Commission should keep rules designed to ensure that the people still using legacy services are not left without access to communications networks. Indeed, the carriers do not deny that many people do still use their legacy services nor that discontinuing, reducing, or impairing those services may affect the CPE used by those consumers. And as Consumer Groups & RERCs stated in their initial comment, when it comes to TTYs and analog captioned telephones, their CPE may be rendered unusable by network changes at the same time that the market has not advanced enough to ensure that adequate alternatives that function on IP-only networks are readily available.[35] It is precisely for people in these circumstances that the rules are in place.

There is no clear evidence that legacy devices can function without issue on new networks. Any claims to the contrary should not form the basis for repealing the notice and discontinuance requirements. AT&T asserts that legacy devices, including TTYs and analog

[34] *See, e.g.,* Verizon FNPRM Comment at 3-4; AT&T FNPRM Comment at 5-6.
[35] *See* Consumer Groups & RERCs FNPRM Comment at 2-3.

captioned phones, will be able to work on new networks with converter boxes.[36] However, it relies on an outdated industry report with no specifics.[37] As we cited in our initial comment, newer evidence in the record suggests that there may be no technical solution that will ensure legacy devices work on new networks.[38] Moreover, the report is not a reliable resource because the carriers did not meet their "obligation to 'work cooperatively with appropriate disability-related organizations,'" nor did they engage in "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."[39] Instead, this report was prepared by a telecommunications industry association with a mission to help its members achieve their business objectives.[40] Since disability organizations have rebutted the report's claims in the record, the Commission should not rely on it.

Even if carriers were correct that there are replacement devices readily available for users of legacy assistive CPE or mechanisms to ensure that those legacy CPE work on new networks, individuals would not know to upgrade or modify their devices without the collaboration and notice that the rules facilitate and provide. Instead, those users would be cut off from communications networks and left to wonder if the cause is their device, the network, or something else altogether.

---

[36] AT&T FNPRM Comment at 13.
[37] *Id*.
[38] Consumer Groups & RERCs FNPRM Comment at 3. While Verizon said in an earlier *ex parte* filing that it has conducted testing and is "not aware of any systemic issue in Verizon's networks that would cause end-users difficulties in using TTY or other assistive technologies after migrating from copper facilities to fiber," it cannot guarantee functionality when a user of an assistive technology on Verizon's network tries to communicate with someone on another carrier's network. Having the rules in place will help ensure that all carriers work to ensure the functionality of assistive devices.
[39] *2017 Order & FNPRM* at 11185-86.
[40] ATIS, http://www.atis.org/01_about/ (last visited February 16, 2018).

Conclusion

Consumer Groups, RERCs, and State Administrators urge the Commission to maintain rules that are designed to prevent consumers from being cut off from communications networks without warning, including the many individuals with disabilities that rely on TTYs and analog captioned telephones. Rather than repealing the rules, the Commission should consider modifications that would benefit both consumers and carriers alike.

Respectfully submitted,

/s/ Chris Laughlin

Chris Laughlin*
Institute for Public Representation
Georgetown University Law Center
600 New Jersey Avenue NW, Room 312
Washington, DC 20001
(202) 662-9543

Counsel for TDI

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI)
Claude Stout, Executive Director • cstout@TDIforAccess.org
8630 Fenton Street, Suite 121, Silver Spring, MD 20910
TDIforAccess.org

California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc. (CCASDHH)
Sheri A. Farinha, Vice Chair • sfarinha@norcalcenter.org
4708 Roseville Rd, Suite 111, North Highlands, CA 95660

Cerebral Palsy and Deaf Organization (CPADO)
Mark Hill, President • president@cpado.org
12025 SE Pine Street, #302, Portland, OR 97216
503.468.1219
www.cpado.org

Hearing Loss Association of America (HLAA)
Barbara Kelley, Executive Director • bkelley@hearingloss.org
Lise Hamlin, Director of Public Policy • lhamlin@hearingloss.org
7910 Woodmont Avenue, Suite 1200, Bethesda, MD 20814
hearingloss.org

* Guiying Ji, a law student in the Institute for Public Representation Communication & Technology Clinic, contributed substantially to the research and drafting of this comment.

National Association of the Deaf (NAD)
Howard Rosenblum, Chief Executive Officer • howard.rosenblum@nad.org
Contact: Zainab Alkebsi, Policy Counsel • zainab.alkebsi@nad.org
8630 Fenton Street, Suite 820, Silver Spring, MD 20910
301.587.1788
www.nad.org

Rehabilitation Engineering Research Center on Technology for the Deaf and Hard of Hearing (DHH-RERC), Gallaudet University
Christian Vogler, PhD • christian.vogler@gallaudet.edu
800 Florida Ave NE, TAP - SLCC 1116, Washington, DC 20002
www.deafhhtech.org

Rehabilitation Engineering Research Center on Universal Interface & Information Technology Access, Trace Research & Development Center (IT-RERC), University of Maryland
Gregg Vanderheiden PhD, Director • greggvan@umd.edu
4130 Campus Drive, College Park, MD 20742
https://trace.umd.edu

National Association for State Relay Administration (NASRA)
Holly Bise, Chair • holly.bise@state.co.us
1560 Broadway, Suite 250, Denver, CO 80202
303.894.2024
www.nasratrs.org

Telecommunications Equipment Distribution Program Association (TEDPA)
Sandra McNally, Chair • smcnally@temple.edu
1755 N. 13th Street, Student Center Rm. 411 South, Philadelphia, PA 19122
tedpa.org

February 16, 2018