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May 30, 2018

Via Electronic Filing

Ex Parte Communication

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Portals II, Room TW-A325
Washington, DC 20554

Re: *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84.

Dear Ms. Dortch:

AT&T has reviewed the *Draft Order* released May 17, 2018 where the Commission proposes several additional rule modifications to remove barriers to infrastructure investment.¹ AT&T applauds the vast majority of the proposed changes included in the *Draft Order* and believes that those changes will streamline processes and will remove barriers that carriers face when embarking on infrastructure investments.² However, AT&T offers the following suggestions to improve two of the proposals in the *Draft Order*.

In the *Draft Order*, the Commission proposes to expedite applications that grandfather, or discontinue previously grandfathered data services at speeds below 25/3 Mbps.³ AT&T previously supported the Commission's streamlined process to grandfather data services at speeds below 1.544 Mbps, i.e. a "comment period of 10 days and an auto-grant period of 25 days for all carriers," and agrees that moving the threshold for these applications to 25/3 is a move in the right direction. However, the Commission's proposal would be better if it applied to any legacy-TDM data service regardless of speed *so long as the applying carrier provides alternative data services with the same or greater bandwidth as the TDM data service being discontinued throughout the affected area*. The Commission's rationale for limiting the streamlined process to services below 25/3 Mbps are

¹ See *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Circulation Copy released May 17, 2018 ("*Draft Order*").

² See *Id.* at ¶¶15, 22, 44, 51, 57, 59 (Granting forbearance from Section 214(a) processes for services with no customers, eliminating 2016 outreach requirements, and the various network change disclosure reforms).

³ See *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Circulation Copy released May 17, 2018 ("*Draft Order*").

1) to incentivize carriers to transition from the provision of legacy or lower-speed data services and allow them to free up resources to devote to higher-speed more advanced services, and 2) to proceed incrementally to focus regulatory relief where it is most needed first—on lower-speed data services for which customer demand is rapidly declining.⁴

This rationale does not preclude extending the streamline process to data services with bandwidth greater than 25/3 Mbps. To be sure, customers with higher-speed TDM-based legacy data services have abandoned those services for higher bandwidth next generation services with speeds greater than the Commission’s proposed threshold of 25/3.⁵ In sum, the market already incents providers to deploy higher bandwidth services, so the proposed threshold is not needed.⁶

The *Draft Order* also proposes a new “alternative options test” to provide another option for streamlined treatment of applications to discontinue legacy voice services.⁷ Under this new test, a carrier may discontinue legacy voice service if it shows that (1) it provides a stand-alone interconnected VoIP service throughout the affected service area, and (2) at least one other stand-alone facilities-based voice service is available from another provider throughout the affected service area.⁸ For the reasons discussed below, the Commission should modify this test.

First, AT&T notes that the Commission did not seek comment on this proposal. Specifically, the alternative options test differs from the proposal included in the *Further Notice* in this proceeding in two material respects – (1) the requirement that the replacement interconnected VoIP service offered by the discontinuing carrier must be “stand-alone,” and (2) the requirement that the alternative service offered by another provider must also be offered on a “stand alone” basis. The requirement that both alternative services are offered on a stand-alone basis materially alters the utility of this test and warrants further notice and comment.⁹

⁴ *Draft Order* at 11.

⁵ See Business Data Services in an Internet Protocol Environment, WC Docket No.16-193, Report and Order, at ¶¶ 68 – 72 (Demonstrating demand and price changes of business data services, e.g. citing a Frost & Sullivan report that found that the migration from TDM to Ethernet business data services is fueling double-digit revenue growth for Ethernet business data services, and that this growth rate is expected to increase as Ethernet networks expand).

⁶ In case the Commission still does not want to include all data services (i.e. including those with very fast speeds), Commission evidence supports extending the proposed threshold to data services at speeds up to 45 Mbps (i.e. DS3). See *Id.* at ¶ 68, (acknowledging that “as a result of more substitutes in the market, incumbent LECs face declining sales in TDM services, notably DS1s and DS3s, including customer loss to cable operators and other providers”).

⁷ *Id.* at 29.

⁸ *Id.* at 30.

⁹ See 5 U.S.C. § 553.

In addition, the proposed test should be simplified. The *Draft Order* does not explain why the “stand alone” interconnected VoIP service must be offered by the discontinuing carrier. The interests that the Commission identifies are satisfied whether the “stand alone” interconnected VoIP service is offered by the discontinuing carrier or an unaffiliated provider. So, assuming the addition of “stand alone” is permitted, the first prong should be modified to simply require the discontinuing carrier to demonstrate that a “stand alone” interconnected VoIP service is available in the affected service area. Further, the Commission’s explanation for imposing a “stand alone” requirement for the second prong of the test is also missing. The Commission adopts the second prong stating the consumers will benefit from competition if there are two providers of service.¹⁰ But this rationale does not justify why the competing service must be stand-alone. Thus, the Commission should consider modifying this test and not limit alternative services to those provided on a stand-alone basis as this requirement ignores the market trend for bundles, especially in the wireless service market, which is abandoning voice-only service options.¹¹

Finally, the *Draft Order* relies on competition as justification for the second prong of the test.¹² However, competition is not a factor under Section 214(a), whose goal is to ensure that communities are not isolated and have access to at least one communications network. For this reason, AT&T has previously encouraged the Commission to adopt a modified version of Verizon’s initial proposal to streamline applications to discontinue legacy voice service if the discontinuing carrier certifies either: (1) that it provides interconnected VoIP service throughout the affected service area; *or* (2) that at least one other alternative voice service, e.g. wireless voice or interconnected VoIP, is available in the affected service area.

The Commission explains that this approach “fails to ensure the availability of a voice replacement service in the community as a condition to obtaining streamlined treatment that sufficiently addresses commenters’ concerns raised in this proceeding about the characteristics of the replacement voice service, and it does not carry the added benefit of ensuring the availability of multiple alternatives to affected customers, whether present or future.”¹³ This explanation overlooks the overwhelming evidence in the record that consumers have abandoned legacy-TDM voice services in favor of wireless voice or

¹⁰ *Id.*

¹¹ In footnote 92, the Commission states that over-the-top VoIP service does not satisfy the requirement of “stand-alone” for purposes of the alternative options test. If the Commission’s intention is to preclude a carrier from using over-the-top VoIP to demonstrate the presence of an alternative voice service in the affected area, the Commission does not need to require the replacement services to be stand alone. It can simply exclude over-the-top VoIP from the streamlined process.

¹² *Draft Order* at 34.

¹³ *See Id.* at 35.

interconnected VoIP services.¹⁴ As stated above, the availability of multiple alternatives is not warranted under 214(a), and the market data demonstrates that the characteristics of wireless voice and interconnected VoIP satisfy the market and thus, make them sufficient replacement services.

If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

/s/ Ola Oyefusi

¹⁴ See AT&T Comments filed January 17, 2018, WC Docket No. 17-84 at p. 6, AT&T Reply Comments filed February 16, 2018 at p. 8; US Telecom Reply Comments filed February 16, 2018, p. 7 (According to an analysis of FCC data, a mere 16.3 percent of households subscribed to legacy voice services as of year-end 2016), citing USTelecom Industry Statistics, available at <https://www.ustelecom.org/broadband-industry/broadband-industry-stats/residential-competition>. See Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84, Circulation Copy released May 17, 2018 (“*Draft Order*”). 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”); CenturyLink Comments filed January 17, 2018, pp. 15-16.