Before the
Federal Communications Commission
Washington, D.C. 20554

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

COMMENTS OF WINDSTREAM SERVICES, LLC

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Windstream Services, LLC ("Windstream"), on behalf of its affiliates and subsidiaries, herein submits comments in response to the *Notice of Proposed Rulemaking* ("*NPRM*"), *Notice of Inquiry, and Request for Comment* released April 21, 2017, in the above-referenced proceeding.[1]

INTRODUCTION AND SUMMARY

In its *2015 Technology Transitions Order*, the Commission adopted important "rules of the road" to ensure that consumers enjoy the benefits of two distinct but related transitions: (1) changes in network facilities, particularly the retirement of copper facilities and increasing reliance on fiber; and (2) changes involving the discontinuance, impairment, or reduction of legacy services, particularly services based on Time-Division Multiplexing (TDM).[2] Now, less

[1] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, 2017 FCC LEXIS 1199 (rel. April 21, 2017) (*NPRM*).

[2] *See Technology Transitions; Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers; Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 30 FCC Rcd 9372, 9375, ¶ 4 (2015) (*2015 Technology Transitions Order*).

than two years later, the Commission seeks to reverse almost entirely the *2015 Technology Transitions Order*. Though the Commission purportedly seeks to reduce barriers to infrastructure investment and speed the transition to next-generation networks and services, eliminating the protections instituted in 2015 instead would impede investment and complicate the technology transitions for many service providers, and would leave consumers vulnerable to service disruptions, fewer choices and higher prices. Rather than reflexively undoing the progress made in 2015, the Commission should make targeted changes to reduce burdens on incumbent LECs but should retain the essential framework established by the 2015 *Technology Transitions Order*, which ensures end users are informed and protected from undue service disruption.

Windstream—as the nation's fifth largest incumbent LEC, and with substantial competitive LEC operations making it one of the nation's largest provider of business data services and managed services—is in a unique position to evaluate policies governing infrastructure investment and technology transitions. Windstream operates the nation's sixth-largest fiber network (spanning approximately 147,000 miles) and is actively engaged in the transition toward IP-based services. At the same time, outside of its incumbent LEC territories, Windstream continues to rely on TDM-based business data services in the last mile to provide many business locations with its advanced communications and technology solutions. Without the essential "rules of the road" for copper retirements and network changes adopted in the *2015 Technology Transitions Order*, small and medium businesses, governments and agencies, schools and healthcare providers will experience more service disruptions, fewer options, and higher prices.

Therefore, Windstream advocates that the Commission should retain 47 C.F.R. § 51.332, the provision setting forth the notice requirements for copper retirements, with only modest changes to reduce unnecessary burdens on incumbent LECs. In addition, the Commission should amend 47 C.F.R. § 51.325(c) to permit early disclosure about planned network changes to all entities entitled to notice. Finally, the Commission should make targeted changes to streamline the Section 214(a) discontinuance process without harming end users.

I. THE COMMISSION SHOULD RETAIN SECTION 51.332 WITH MODEST CHANGES TO REDUCE BURDENS ON INCUMBENT LECS.

In the *2015 Technology Transitions Order*, the Commission made long-overdue updates to its copper retirement rules to protect consumers during the accelerating transition of copper networks to fiber-based technologies. Less than two years later, the Commission now seeks to eliminate some or all of these changes—a move Windstream opposes because it will increase the likelihood of service disruptions for consumers. The Commission had several sources of statutory authority to undertake the rule changes in 2015, and it should maintain the new framework, including the lengthened notice period, expanded definition of copper retirement, and the requirement that incumbent LECs communicate in good faith with interconnecting entities regarding the copper retirements. Because copper retirement is so impactful for competitive LECs purchasing last-mile access, and for their end-user customers—and is vastly more onerous than most other network changes—it is appropriate for the Commission to have a differentiated, heightened notice process for copper retirements. Windstream suggests some targeted changes that could reduce unnecessary burdens on incumbent LECs without harming end users.

A. The Commission Had Ample Authority to Impose the Copper Retirement Notice Provisions Adopted in the *2015 Technology Transitions Order*.

As Windstream noted in its March 9, 2015 Reply Comments,[3] the Commission has several sources of statutory authority for undertaking copper retirement rule changes.[4] First, to the extent a copper retirement would effect the discontinuance of a service, that retirement is subject to prior Commission review and authorization pursuant to Section 214 of the Communications Act.[5] Second, even when copper retirement does not require a Section 214 review, Section 251(c)(5) requires incumbent LECs to "provide reasonable public notice of changes made in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks."[6] This provision is implicated when copper retirement requires competitive LECs providing Ethernet over Copper to obtain other forms of last-mile connectivity, or when competitive LECs utilizing TDM-based DS1s and DS3s provided over copper must install different end user equipment to interface with an IP-based service. Third, the Commission has additional authority under Section 201(b) to ensure that an incumbent LEC's practices, including copper retirement, are just and reasonable.[7] Finally, Section 706(a) of the Telecommunications Act of 1996 permits the Commission to "utilize, in a manner consistent with the public interest, convenience, and necessity . . . measures that promote competition in the local telecommunications market, or other regulating methods that remove

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3 Reply Comments of Windstream Services, LLC, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593, WC Docket No. 15-1, at 38-41 (March 9, 2015).

4 *See NPRM* at ¶ 57.

5 *See* 47 U.S.C. § 214(a).

6 47 U.S.C. § 251(c)(5).

7 *See* 47 U.S.C. § 201(b).

barriers to infrastructure investment."[8] As the Commission has noted, "[b]y promoting an environment in which all parties are more able to accept transitions away from copper, creating a more predictable retirement notification process, and retaining a notice-based process that does not erect additional regulatory barriers" but "ensur[es] that interconnecting entities have the information they need to continue to serve customers" and make network investments, the Commission is acting consistent with Section 706.[9]

B. The Commission Should Maintain the Expanded Notice Requirement for Copper Retirements Established in the *2015 Technology Transitions Order*.

The Commission should retain the copper retirement timeline established in the *2015 Technology Transitions Order*, which doubled the time during which an incumbent LEC must wait to implement a planned copper retirement from 90 days to 180 days after the Commission's release of public notice, and eliminated the process by which competitive LECs can object to and seek to delay the planned copper retirement.[10]

While, as the Commission notes, interconnecting carriers are "aware that copper retirements are inevitable" and are "familiar by now with the implications of and processes involved in accommodating such changes,"[11] this familiarity doesn't simplify the onerous process of transitioning retail customers. As INCOMPAS has explained, incumbent LEC copper retirement frequently requires competitive LECs providing Ethernet over Copper or purchasing TDM-based DS1s and DS3s to migrate to other forms of last-mile access.[12] In many cases,

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8 *See* 47 U.S.C. § 1302(a).

9 *2015 Technology Transitions Order*, 30 FCC Rcd at 9417-18, ¶ 77.

10 *See NPRM* at ¶¶ 57-59.

11 *See id.* at ¶ 62.

12 *See* Comments of COMPTEL, PS Docket No. 14-174, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593, WC Docket No. 15-1, at 34-35 (Feb. 5, 2015).

existing service features and functions cannot be supported on fiber and/or IP-based alternatives. At best, the competitive LEC must invest in and install alternative electronics; more often it must either (1) find another form of last-mile access that will accommodate the service offering, (2) change the service offering to the retail customer and provide time for the customer to accommodate the change in service, or (3) provide the customer sufficient notice to seek an alternative service arrangement.[13] In addition, these transitions are often complicated by operational issues on the incumbent LEC side. Because copper retirement is so impactful for competitive LECs purchasing last-mile access—vastly more onerous than most other network changes—it is appropriate for the Commission not to harmonize the copper retirement notification process with the general network change notification process.[14]

Moreover, while a longer notice period for copper retirements is essential for competitive LECs to provide a seamless transition for their retail customers, it is not overly burdensome for incumbent LECs. As the Commission noted in the *2015 Technology Transitions Order*—and as Windstream knows in its capacity as an incumbent LEC—network providers plan their deployments and network improvements far more than six months ahead of time. In addition, the copper retirement timeline established in 2015 provides more certainty for incumbent LECs because it eliminated the objection process and the costs inherent in it. However, if the Commission returns to the 90-day notice period, it should reinstitute the objection process so that interconnecting carriers may obtain additional time if necessary to maintain uninterrupted service to retail customers.[15]

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[13] *See id.*

[14] *See NPRM* at ¶ 62.

[15] *See id*. at ¶ 59.

C. The Commission Should Retain the Expanded Definition of Copper Retirement Established in the *2015 Technology Transitions Order*.

To provide adequate protection for interconnecting carriers and their retail customers, the Commission should retain the expanded definition of copper retirement that added (1) the feeder portion of copper loops and subloops, and (2) *de facto* retirement that results from the failure to maintain copper facilities.[16]

As acknowledged by the Commission in the *2015 Technology Transitions Order*, based on a substantial record, losing access to the feeder portion of copper loops and subloops makes it difficult for competitive providers to use the remaining facilities.[17] In particular, where incumbent LECs replace copper feeder with fiber, competitive providers are unable to provide Ethernet over Copper service, which is an affordable and effective way to meet the data needs of small and medium-sized businesses.[18] Therefore, it is appropriate to include retirement of the feeder portion of copper loops and subloops in the definition of copper retirement that triggers the specific notice processes set forth in 47 C.F.R. § 51.332.

In addition, the Commission in 2015 rightly deemed the practice of deliberately allowing copper facilities to deteriorate to the extent that the networks are no longer reliable as *de facto* copper retirement because it is the functional equivalent of removing or disabling copper facilities.[19] For example, the Communications Workers of America has noted that Verizon "has

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16 *See id.* at ¶ 60.

17 *Id.* at ¶ 83. *See also, e.g.*, Birch et al. Comments, PS Docket No. 14-174, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593, WC Docket No. 15-1, at 34-36 (Feb. 5, 2015), XO Comments, PS Docket No. 14-174, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593, WC Docket No. 15-1, at 10-13 (Feb. 5, 2015).

18 *See, e.g.*, Birch et al. Reply Comments, PS Docket No. 14-174, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593, WC Docket No. 15-1, at 31 (March 9, 2015).

19 *2015 Technology Transitions Order*, 30 FCC Rcd at 9421-22, ¶¶ 89-90.

adopted a policy of 'de facto' copper discontinuance" that it effects by failing to maintain and repair its copper plant.[20] In fact, earlier this month, to resolve a complaint by CWA to the Pennsylvania Public Utilities Commission asserting that Verizon was not performing necessary upkeep on its network in the state, Verizon agreed in a settlement to make infrastructure upgrades to its copper infrastructure in Pennsylvania.[21] Incumbent LECs should not be permitted simply to abandon their copper networks without formally retiring them pursuant to the notice process established by the Commission. This notice is necessary to enable interconnecting carriers to transition end users without disruption.

D. The Commission Should Retain the Good Faith Communications Requirement and Specify the Types of Information Incumbent LECs Should Provide About Affected Circuits.

The Commission should retain the requirement that incumbent LECs work in good faith with competitive LECs that request additional information to accommodate the incumbent LEC's copper retirements with no disruption of service to the competitive LECs' end user customers.[22] Windstream as a competitive LEC has availed itself of the good faith communication requirement and finds it considerably more useful than the objection period included in the prior rules. The incumbent LECs are generally helpful in providing upon request the information Windstream requires to locate the impacted customer accounts and make the necessary conversions: wire center name, copper retirement notice filing date, relevant due dates,

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[20] Comments of the Communications Workers of America, PS Docket No. 14-174, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593, WC Docket No. 15-1, at 24 (Feb. 5, 2015).

[21] *See* Sean Buckley, "Verizon, CWA Reach Copper Network Settlement in Pennsylvania, Fierce Telecom (June 5, 2017), *available at* http://www.fiercetelecom.com/telecom/verizon-cwa-reach-copper-network-settlement-pennsylvania (last visited June 15, 2017).

[22] 47 C.F.R. § 51.332(g).

end user customer's name (for resale/UNE-P accounts), service address, billing telephone number, circuit ID and type (if applicable), and our company code (which identifies which entity owns the line or circuit) and CLLI code. To transition its customers effectively, Windstream relies heavily on the ongoing communication with the incumbent LECs that is fostered by the "good faith communications" rule.

To ensure that end-user customers are adequately protected going forward, particularly if the Commission shortens the notice period for copper retirements, the Commission should clarify in its rules that incumbent LECs are required to provide the following to each affected competitive LEC *before the notice period begins*:

- A complete and accurate list of the individual competitive LEC's circuits affected by the copper retirement, including the above-referenced information; and
- If there is a network interface change, the rates, terms, and conditions for, and functionality of, replacement wholesale inputs available from the incumbent LEC after the network change.

In addition, incumbent LECs should be required throughout the notice period to vet internally and communicate to competitive LECs information about operational processes for moving customers. All of this information is critical to a competitive LEC's ability to ensure continuity of service for its customers, and this clarification would not place undue burdens on incumbent LECs because they generally provide comprehensive circuit identification information today.

E. A Few Modest Changes to Section 51.332 Would Reduce Burdens on Incumbent LECs While Continuing to Provide Protections for End User Customers.

Although Section 51.332 on the whole has helped competitive LECs to transition customers away from copper facilities in a timely fashion and with fewer service disruptions, the Commission could make a few modest changes that would reduce burdens on incumbent LECs without rendering the notice regime ineffective. First, the Commission could revert to the pre-

2015 direct notice requirement, which mandated notice only to directly interconnecting service providers, rather than to "each entity" that directly interconnects, plus various state, federal, and tribal entities.[23] Under the old rule, the burden on incumbent LECs was minimized while all competitive LECs that could be affected by the planned copper retirement received notice. Second, the Commission could adopt its proposal to reduce the waiting period to 30 days where the copper facilities being retired are no longer being used to serve any customers in the affected service area.[24] Where the owner of the copper facilities has neither retail customers nor wholesale customers, an abbreviated interval before retirement may be appropriate to facilitate copper retirement without threatening service to end users.

II. THE COMMISSION SHOULD AMEND SECTION 51.325(c) TO PERMIT EARLY DISCLOSURE OF INFORMATION ABOUT PLANNED NETWORK CHANGES TO ALL ENTITIES ENTITLED TO NOTICE.

Windstream disagrees with the Commission's proposal to eliminate Section 51.325(c) of its rules but supports the revision of the section to permit disclosure of information about planned network changes prior to public notice *to the extent that the carrier makes such information available at the same time to all entities that would be entitled to direct notice of the network change in question*.[25] The Commission correctly notes that the current rule "unnecessarily constrain[s] the free flow of useful information that … entities may find particularly helpful in planning their own business operations." Early notice would enable competitive LECs to consider and respond to planned network changes and would facilitate the seamless transition of customers. However, Windstream has found that the early disclosure of

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[23] *See NPRM* at ¶ 61.

[24] *Id.* at ¶ 63.

[25] *See NPRM* at ¶ 67.

information to only selected parties engenders confusion; for example, Windstream CLEC's own retail customers have been told of copper retirements by their building owner (who received notice from the incumbent LEC) before Windstream itself received notice. This suggested revision would be consistent with the goal of the rule—to prevent "preferential disclosure to selected entities"—and at the same time would provide incumbent LECs the flexibility to disclose information and discuss contemplated changes before cementing plans.[26]

III. THE COMMISSION SHOULD TAKE TARGETED MEASURES TO STREAMLINE SECTION 214(a) DISCONTINUANCE PROCESS WITHOUT HARMING END USERS.

The statutory process set forth in 47 U.S.C. § 214(a) ensures that the Commission carefully considers whether the public would be adversely affected when carriers discontinue, reduce, or impair services on which communities rely. While it may be appropriate to take targeted measures to streamline the Section 214(a) approval process where harm to the community is mitigated, the Commission should take care not to undermine the overall process, which is fundamental to protect consumers. First, the Commission should not reverse its clarification in the *2015 Technology Transitions Order* that Section 214(a) applies to *all* retail end-users, as they are all part of the "community" experiencing the service discontinuance. Streamlining the process for applications that grandfather low-speed legacy services, and for applications that discontinue previously grandfathered low-speed legacy services, would be appropriate if narrowly tailored to prevent harm to end users. Finally, the Commission should not short-circuit Section 214(a) reviews by concluding that discontinuances will not adversely affect the present or future public convenience and necessity wherever "alternative services" are

[26] *See NPRM* at ¶ 68 (*quoting Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 et al.*, CC Docket No. 96-98 et al., Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd. 19392, 19494, ¶ 221 (1996).

available. An essential part of the Section 214(a) review process is consideration of whether alternative services are adequate in terms of cost and functionality.

A. The Commission Should Not Reverse its 2015 Clarification That Section 214(a) Applies to Retail End-User Customers of Carrier-Customers.

To provide adequate protections to all consumers, the Commission should continue to enforce its clarification that a carrier must consider the retail end-user customers of its carrier-customers when evaluating whether it will "discontinue, reduce, or impair service to a community, or part of a community."[27] As the Commission reasoned in the *2015 Technology Transitions Order*, this clarification "ensures that, consistent with the statute and precedent, a carrier fully evaluates whether there will be a discontinuance, reduction, or impairment of service to a community or part of a community."[28] A carrier-customer's end users are indisputably part of the community, and as the Commission has recognized, the discontinuance of wholesale services used by competitive LECs is likely to result in a discontinuance of service to retail end users.[29] Requiring a carrier to seek approval when its discontinuance would affect carrier-customers' end users is necessary to enable the Commission "to conduct a careful evaluation of whether that action is consistent with the public interest."[30]

A carrier-customer's end users are not adequately protected by the fact that the carrier-customer itself must submit a Section 214(a) application if it discontinues a service to end users due to the elimination of a wholesale input.[31] The Commission's consideration of the balance of

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[27] *See 2015 Technology Transitions Order*, 30 FCC Rcd at 9428, ¶ 102.

[28] *Id.* at 9434, ¶ 115.

[29] *Id.* at 9429, ¶ 104.

[30] *Id.*

[31] *See NPRM* at ¶ 92.

interests between the carrier seeking discontinuance authority and the affected users[32] is necessarily different in the two cases. For example, the "financial impact on the common carrier of continuing to provide the service"[33] may not weigh in favor of discontinuance in the case of the carrier seeking to discontinue a service used as a wholesale input, because the costs of providing the service are largely sunk; however, if a competitive carrier seeks to discontinue its own retail service because the required wholesale input was eliminated, the financial impact of continuing to provide the service without the wholesale input likely would be significant and would militate in favor of a grant of discontinuance authority. As noted above, the Commission cannot "conduct a careful evaluation" of whether a discontinuance is consistent with the public interest without considering the *full* effect on the community, including the end users of carrier-customers.

The fact that Section 251(c)(5) requires incumbent LECs to "provide reasonable notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks . . ." does not mean that Congress only intended to require incumbent LECs to provide notice, not obtain approval pursuant to Section 214(a), when making changes to wholesale inputs relied upon by competing carriers.[34] The two statutory provisions are not inconsistent; Section 251(c)(5) is a general notice provision that applies to a variety of changes, many of which fall short of discontinuance, reduction, or impairment of

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[32] *See Verizon Telephone Companies; Section 63.71 Application to Discontinue Expanded Interconnection Service Through Physical Collocation,* WC Docket No. 02-237, Order, 18 FCC Rcd 22737, 22742, ¶ 8 (*Verizon Expanded Interconnection Order*) (setting out the five factors the Commission considers when determining whether an application for discontinuance authority under Section 214(a) should be granted).

[33] *See id.*

[34] *See NPRM* at ¶ 93.

service, while Section 214(a) prescribes a heightened level of scrutiny for those network changes, including changes to wholesale inputs, that do rise to the level of discontinuance, reduction, or impairment of service to end users. Even under this heightened scrutiny, carriers are permitted to discontinue services in those cases where consumers and the public interest are adequately protected. Thus, this reconciliation of the mandates in Section 251(c)(5) and Section 214(a) "best eliminate[s] regulatory barriers to the deployment of next-generation networks and services, avoid[s] unnecessary capital expenditures on legacy services, and protect[s] consumers and the public interest."[35]

Finally, the Commission's 2015 clarification is supported by precedent.[36] In *BellSouth Telephone*, the Commission specifically rejected BellSouth's argument that Section 214 authorization is not required where it is only discontinuing service to carrier-customers.[37] The Commission emphasized that "[i]f, for example, a discontinuance, reduction, or impairment of service to the carrier-customer ultimately discontinues service to an end user, the Commission has found that § 214(a) requires the Commission to authorize such a discontinuance."[38] And the Commission found that, under the facts at issue, a Section 214(a) application and evaluation were necessary to determine if the impairment of service to the carrier-customer's end users will adversely affect the present or future public convenience or necessity."[39] While the other cases cited in the *2015 Technology Transitions Order* found that Section 214(a) did not apply to the

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35 *See id.*

36 *See id.* at ¶ 94.

37 *BellSouth Telephone Companies Revisions to Tariff FCC No. 4*, Transmittal No. 435, Memorandum Opinion and Order, 7 FCC Rcd 6322, 6322-23, ¶¶ 5-6 (1992).

38 *Id*. at 6322-23, ¶ 5.

39 *Id*. at 6323, ¶ 6.

specific facts presented, they strongly support the guiding principle that the primary focus in determining whether Section 214(a) applies should be on the effect on all end users.[40] The one cited case that postdated the adoption of the Telecommunications Act of 1996 did not consider the applicability of Section 251(c)(5) because, as discussed above, Section 251(c)(5) is not the operative provision in the cases of network changes resulting in actual discontinuance, reduction, or impairment of service to end users, including end users served by carrier-customers.[41]

B. Streamlining Applications that Grandfather Low-Speed Legacy Services for Existing Customers Would Be Appropriate If Narrowly Tailored.

Windstream supports the Commission's proposal to streamline the Section 214(a) discontinuance process for applications that seek authorization to "grandfather" low-speed legacy services for existing customers, but recommends several safeguards to protect end users. First, while the carrier would be permitted not to accept new customers, existing customers should be able to make moves, additions, and changes to the grandfathered service. This is particularly important to protect government users because they are frequent purchasers of low-speed legacy services and the budget and procurement processes make it difficult for them to

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[40] *See, e.g., Western Union Telegraph Company Petition for Order to Require the Bell System to Continue to Provide Group/Supergroup Facilities,* Memorandum Opinion and Order, 74 FCC 2d 293, 296, ¶ 7 (1979) (indicating that Section 214(a) would apply where "a change in a carrier's service offerings to another carrier will result in an actual discontinuance, reduction, or impairment to the latter carrier's customers"); *Lincoln County Tel. Sys., Inc. v. Mountain States Tel. and Tel. Co.*, File No. TS 3-79, Memorandum Opinion and Order, 81 FCC 2d 328, 332-33, ¶¶ 13-14 (1980) (quoting Western Union and noting that "[t]he concern should be for the ultimate impact on the community served*"); Graphnet, Inc. v. AT&T Corp.*, File No. E-94-41, Memorandum Opinion and Order, 17 FCC Rcd 1131, 1140, ¶ 29 (2002) (holding that when considering whether Section 214(a) applies, "concern should be had for the ultimate impact on the community served").

[41] *See Graphnet*, 17 FCC Rcd at 1140-41, ¶ 29.

convert or adapt their systems to new infrastructure in a timely manner.[42] Second, the Commission should adopt its proposal to apply streamlined processing only to low-speed TDM services at lower-than-DS1 speeds.[43] Third, carriers seeking to grandfather low-speed legacy services should be required to identify alternative services at the time of notice. This would assist wholesale customers in serving new end users and in beginning to transition existing customers from the legacy service.

C. Streamlining Applications to Discontinue Previously Grandfathered Legacy Data Services Would Also Be Appropriate If Narrowly Tailored.

If safeguards are put in place to protect existing customers, Windstream also supports the Commission's proposal to streamline the discontinuance process for applications that seek to discontinue legacy data services that have previously been grandfathered for a period of no less than 180 days. This streamlined process should be restricted only to previously grandfathered low-speed legacy services,[44] and a 180-day grandfathering minimum is appropriate because competitive LECs will need that time to transition customers away from the services being phased out.[45] To provide adequate protection for existing customers, however, the Commission should prohibit LECs from discontinuing services to customers that are purchasing pursuant to a specified term before that term has expired. This safeguard would be consistent with the Commission's intent in the *2017 Business Data Services Order* not "to disturb existing contractual or other long-term arrangements" through regulatory reform.[46] Moreover, at the time

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[42] *See NPRM* at ¶ 82 (seeking comment on how to take into account the needs of government users of legacy services.

[43] *See id.* at ¶ 79.

[44] *See id.* at ¶ 86.

[45] *See id.* at ¶ 87.

[46] *Business Data Services in an Internet Protocol Environment; Technology Transitions; Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for*

of the discontinuance application, the discontinuing carrier should be required to identify "alternative comparable data services."[47] This should include information about the speeds, rates, terms, and conditions applicable to the alternatives, in order to inform the Commission's review of the discontinuance application and to facilitate carrier-customers' transition of their customers to new service options.

D. The Commission Should Not Further Streamline Section 214(a) Applications Where "Alternative Services" Are Available.

It would be inappropriate for the Commission to short-circuit Section 214(a) reviews by concluding that discontinuances will not adversely affect the present or future public convenience and necessity wherever "alternative services" are available.[48] The Commission rightly considers numerous factors in evaluating Section 214(a) applications, including the "existence, availability, and adequacy of alternatives," and "increased charges for alternative services."[49] Not just the availability of alternatives is relevant, but also the cost of such alternatives, and whether they provide comparable functionality.[50] It is incumbent on the Commission to conduct a thorough examination of these factors and to balance the interests of the carrier seeking discontinuance and the affected end users, rather than rubber-stamping any application in which the carrier asserts that alternative services exist—or worse yet, granting blanket discontinuance authority or forbearing from Section 214 altogether in these cases.[51] By

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Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, WC Docket Nos. 16-143, 05-25, GN Docket No. 13-5, RM-10593, Report and Order, at ¶ 170 (rel. April 28, 2017).

47 *See NPRM* at ¶ 88.

48 *See NPRM* at ¶ 95.

49 *See Verizon Expanded Interconnection Order*, 18 FCC Rcd at 22742, ¶ 8.

50 *See id.*

51 *See NPRM* at ¶ 96.

"streamlining" in these ways, the Commission would be abrogating its responsibility to protect the public.

E. The Commission Should Not Modify Section 63.71(g) To Shorten the Timeframe During Which a Carrier Must Demonstrate it Has No Customers for the Relevant Service.

Windstream opposes the Commission's proposal to modify Section 63.71(g) to shorten from 180 days to 60 days the timeframe during which a carrier must demonstrate that it has had no customers and no reasonable requests for service in order to obtain streamlined treatment of Section 214 discontinuance applications.[52] Streamlined treatment is appropriate in cases where a service is no longer being used, but 60 days is too short of an interval to demonstrate that there is no demand for a service and that its streamlined discontinuance would not result in consumer harm. The existing 180-day interval correctly balances the interests of discontinuing carriers and potential consumers of these services. If the Commission chooses to modify Section 63.71(g) at all, Windstream requests that it change the "or" in "a service for which the requesting carrier has had no customers *or* reasonable requests for service during the 180-day period immediately preceding submission of the application"[53] to an "and," to make clear that both no customers *and* no reasonable requests for service are preconditions to receiving the streamlined treatment.

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[52] *See id.* at ¶ 97.

[53] 47 C.F.R. § 63.71(g) (emphasis added).

CONCLUSION

Eliminating the protections instituted in the *2015 Technology Transitions Order* would impede investment and complicate the technology transitions for many service providers, and would leave consumers vulnerable to service disruptions, fewer choices and higher prices. Rather than reflexively undoing the progress made in 2015, the Commission should make targeted changes to the copper retirement, network notice, and discontinuance rules to reduce burdens on incumbent LECs but should retain the essential framework established by the *2015 Technology Transitions Order*, which ensures end users are informed and protected from undue service disruption.

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