

REDACTED -- FOR PUBLIC INSPECTION

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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

**COMMENTS OF CENTURYLINK**

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## EXECUTIVE SUMMARY

In this proceeding, the Commission revisits three orders—the *2011 Pole Attachment Order*, the *2015 Technology Transition Order*, and the *2016 Technology Transition Order*—to identify ways to accelerate the deployment of the wireline infrastructure so critical to the availability of broadband services. CenturyLink welcomes this important initiative. With a long history in both rural America and major urban centers, CenturyLink has on-the-ground experience with nearly all of the detailed issues raised in the *Notice*. CenturyLink owns 2.2 million poles and attaches to 3.7 million electric utility poles. CenturyLink’s network is a dynamic mix of bandwidth-rich fiber and increasingly underutilized copper. Subscribership to CenturyLink’s TDM, copper-based traditional telephone and DS1 and DS3 services have steadily declined while its VoIP and packet-based sales have grown, though not as rapidly, due to intense competition. To compete, CenturyLink continues to invest heavily in fiber deployment for both business and residential customers, with the latter funded in part by the Commission’s Connect America Fund program.

From this vantage point, CenturyLink respectfully recommends the Commission take certain actions to remove unnecessary and counterproductive barriers to fiber deployment while maintaining protections for consumers and the public interest.

### *Pole Attachments*

The Commission should proceed carefully in considering changes to its pole attachment rules. While all attaching entities prefer pole attachments to be faster and cheaper, the Commission’s existing pole attachment regulations and implementing orders strike a good balance between attacher demands and pole owners’ concerns for the safety and reliability of their infrastructure networks. Yet some improvements can be made.

Specifically, CenturyLink recommends that the Commission:

- Make only incremental changes in the make-ready process, such as consolidation of the survey and estimate stages to shorten the pole attachment timeline;
- Decline to adopt unproven one-touch and other similar policies, which would raise knotty legal, operational, and safety issues;
- Ensure that ILECs pay the same pole attachment rates as other communications providers, except in certain narrow circumstances;
- Improve and expedite the Commission’s complaint procedures through adoption of a 180-day “shot clock”;
- Address concerns of exorbitant attachment rates charged and unreasonable practices by municipal and electric cooperative utilities; and
- Provide ILECs and CLECs equivalent access rights to each others’ last-mile poles, ducts, conduits and rights of way.

### ***Copper Retirement***

Two years ago, the Commission revised its copper retirement rules, purportedly to facilitate technology transitions by promoting competition and protecting consumers. In fact, the revised rules have done just the opposite. The 2015 rules' extended notice periods that have made it more difficult and expensive to upgrade copper facilities to fiber, particularly when limited time is available and during the short construction season in the northern parts of the U.S. The 2015 rules also impose burdensome notice requirements that serve little purpose other than to create unnecessary red tape. Taken together, these new requirements increase the cost of migrating to fiber, with little or no benefit. The Commission therefore should return to its pre-2015 copper retirement rules, with certain limited modifications.

Specifically, CenturyLink recommends that the Commission:

- Return to the 90-day notice period for copper retirements, to avoid the unnecessary delays and capital expenditures resulting from the current 180-day notice period;
- Limit the direct notice requirement to telephone exchange service providers that directly interconnect with the ILEC's network;
- Eliminate requirements for government-specified notice of copper retirements to retail customers, the Secretary of Defense, Governors, and Tribal Entities; and
- Repeal Section 51.325(c) of the Commission's rules, which constrains the reasonable flow of information between ILECs and their affiliates and customers.

### ***Service Discontinuance***

The Commission should recognize that migration to next-generation facilities is both natural and desirable. It therefore should eliminate prior approval requirements where possible and streamline those that remain.

Specifically, CenturyLink recommends that the Commission:

- Require, at most, a notice filing for transitions to next-generation services;
- Identify services that have been adopted by a significant percentage of the population and therefore constitute reasonable alternatives to legacy TDM services (such as facilities-based or over-the-top interconnected VoIP, circuit-switched cable, 3G or 4G wireless, or TDM voice service as reasonable alternatives for traditional voice service; and Ethernet for DS1 or DS3 service);
- To the extent Commission approval is required, grant applications on a streamlined basis, except where no reasonable alternatives are available;
- Further streamline the discontinuance process for applications to grandfather service or discontinue service with no customers;
- Abandon the "functional test" standard for determining when Section 214(a) applies;
- Find that the Section 214(a) process does not apply to wholesale services;
- Establish commonsense notice requirements; and
- Preempt inconsistent state regulations.

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

**COMMENTS OF CENTURYLINK**

CenturyLink hereby files its Comments in response to the Commission's Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment seeking to accelerate wireline broadband deployment by removing barriers to infrastructure investment.<sup>1</sup>

**I. INTRODUCTION**

CenturyLink welcomes this important initiative. Broadband has become essential to full participation in modern life, and wireline infrastructure is what makes that broadband possible. As the Commission well knows, wireline infrastructure is a key component of wireless, as well as wireline, broadband services, with wireless communications typically traveling only a short distance through the air before being handed off to a wireline network.

This docket presents an opportune time for the Commission to revisit its pole attachment, copper retirement, and service discontinuance rules. In April, the Commission finally completed the Business Data Service (BDS) proceeding. Based on its review of one of the largest and most comprehensive data collections in the agency's history, the Commission found that ILECs face

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<sup>1</sup> *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, WC Docket No. 17-84, FCC 17-37 (Apr. 21, 2017) (*Notice*). These comments are filed by, and on behalf of, CenturyLink, Inc. and its subsidiaries.

intense competition from cable operators and other providers virtually everywhere and for all business data services. The Commission further noted that both retail and wholesale customers now view packet-based services, such as Ethernet, as substitutes for legacy TDM services. In fact, new BDS customers almost always choose Ethernet (or another packet-based service) rather than DS1 and DS3 services and existing customers rarely replace an Ethernet service with a DS1 or DS3. And customers can purchase Ethernet from a variety of suppliers. Most notably, cable operators offer lower speed Ethernet services over their near-ubiquitous hybrid fiber-coaxial (HFC) networks and higher speeds over their rapidly expanding fiber facilities. Meanwhile, ILEC copper networks serve a smaller and smaller fraction of residential customers – now less than a quarter – as consumers opt to go wireless-only (as more than half of American households have done) or switch to VoIP, most often provided by cable operators.

Given these facts, the Commission should consider the questions raised in the *Notice* with three principles in mind. *First*, technology transitions, such as the ongoing IP migration, are inevitable, positive developments that should be encouraged rather than feared. That is the case despite sometimes vocal resistance from a small minority of users who prefer to keep the services they know, whether out of habit, convenience, or attachment to features that newer services may not have in the same form (such as compatibility with an aging fax machine). *Second*, red tape matters. The copper retirement and service discontinuance rules adopted by the Commission in 2015 and 2016 took “belts and suspenders” to a new extreme. Even though most customers had already voluntarily switched from TDM to IP services, the Commission established a laundry list of burdensome new requirements to ensure that consumers and carrier-customers were protected from the potential harms of the IP migration. While it is important that interconnecting carriers and end users receive proper notice when truly affected by a technology

transition, there is no need for government-specified disclosures or rigorous checklists and performance testing to demonstrate that a service already adopted by a large portion of the public is in fact an adequate alternative for a legacy TDM service.

In this docket the Commission revisits three orders: the *2011 Pole Attachment Order*, the *2015 Technology Transition Order*, and the *2016 Technology Transition Order*. The reforms adopted in the first order went a long way toward streamlining and modernizing the provision of pole attachments. Yet the past six years have shown that the 2011 rules can be improved. In particular, ILECs should be subject to the same pole attachment rates as other communications attachers, except in very limited circumstances, without the need for cumbersome case-by-case showings and inevitable disputes, and by creating a faster process for resolving pole attachment complaints. CenturyLink also understands the Commission's desire to expedite the pole attachment process given the prospect of thousands upon thousands of 5G attachments. But the Commission should proceed cautiously here to avoid unintended risks to safety and the continuity of the services already provided over those poles. The Commission thus should not make dramatic changes to the pole attachment process though it can shorten the attachment timeline through surgical changes to its rules and best practices that enable new attachers to undertake certain tasks earlier in the process through utility-approved contractors. The Commission also should not allow new attachers to move other entities' attachments without permission, which would raise a host of contractual, operational, and liability issues, or mandate unproven "One Touch Make Ready" (one-touch) processes. And the burdens of mandatory disclosure of pole-related information would outweigh any benefits of those disclosures.

The irony of this inquiry is that the most significant pole-related barrier to broadband deployment does not even concern the poles that are the primary focus of the *Notice*. In



CenturyLink's experience, municipal utilities and electric cooperatives, which tend to serve the areas with the most acute need for broadband deployment, are the pole owners that most often impose exorbitant pole attachment rates and burdensome terms and conditions. For example, utilities governed by the Tennessee Valley Authority (TVA) recently have imposed unreasonable attachment rate increases while they simultaneously enter the telecommunications business in competition with the telecom attachers they seek to gouge. The Commission should use all its available statutory and consultative powers to address this concerning trend.

In this proceeding, the Commission also revisits its 2015 and 2016 orders on copper retirement and service discontinuance. Those orders created a raft of new regulations, purportedly in the name of "streamlining" these processes, with scant justification and no attempt to weigh the resulting costs and benefits. The Commission should take a different approach here, by truly streamlining its copper retirement and service discontinuance processes, thereby facilitating the IP migration while maintaining safeguards to protect consumers and the public interest.

## **II. THE COMMISSION SHOULD PROCEED CAREFULLY WITH CHANGES TO ITS POLE ATTACHMENT RULES.**

While all attaching entities would like to obtain pole attachments more quickly and cheaply, the Commission's existing pole attachment regulations and implementing orders strike an appropriate balance between attacher demands and pole owners' concern for the safety and reliability of their infrastructure networks. In 2011, the Commission comprehensively revised its pole attachment rules "to improve the efficiency and reduce the potentially excessive costs of deploying telecommunications, cable, and broadband networks, in order to accelerate broadband

build out.”<sup>2</sup> The Commission concluded that these changes would “promote competition and increase the availability of robust, affordable telecommunications and advanced services to consumers throughout the nation,” by creating a uniform four-stage timeline for attaching to poles, remedies for situations in which those timelines are not met, and more consistent pole attachment rates.<sup>3</sup>

CenturyLink follows the timelines specified in the Commission’s rules when performing surveys and make-ready for a new attacher. CenturyLink has not been the subject of any formal complaints before the Commission during this period.<sup>4</sup>

CenturyLink also has gone beyond the requirements of the 2011 rules. Specifically, it allows attachers to expedite the pole attachment process by undertaking surveys and their own make-ready work through CenturyLink-approved contractors, even prior to the 45-day and 60- to 75-day waiting periods specified in the Commission rules. CenturyLink also provides new attachers with the names of existing attachers on the pole so they can coordinate any necessary rearrangement work with those attachers as quickly as possible, thereby expediting the official process laid out in the Commission’s rules.

The Commission should tread carefully in considering major changes to these rules. As acknowledged in the *Notice*, the pole attachment process reflects a delicate balance of allowing new attachments to poles in a timely and efficient manner without imposing undue burdens on

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<sup>2</sup> *In the Matter of Implementation of Section 224 of the Act; A National Broadband Plan for Our Future, Report and Order and Order on Reconsideration*, 26 FCC Rcd 5240, 5241 at ¶ 1 (2011) (*2011 Pole Attachment Order*).

<sup>3</sup> *Id.* at 5241-44 ¶¶ 1-8. These reforms, and Section 224 in general, do not apply to poles owned by municipalities, cooperatives, and non-utilities, as well as in states that directly regulate utility-owned infrastructures. *See id.* at 5243 n. 14.

<sup>4</sup> By contrast, CenturyLink has been involved in litigation in several states regarding electric cooperative utilities that are generally considered to be beyond the reach of the Commission’s rules.

pole owners or disrupting any wireline or wireless telecommunications or electric power services already provided over a pole. This process also must ensure the safety of the individuals who work on the pole, compliance with applicable safety and electric codes, and protection of the various attachers' equipment on the pole. Dramatic changes to this process, such as slashing timelines, allowing new attachers to move existing attachers' facilities without permission or contractual relationship, or mandating unproven one-touch processes would put these critical interests at risk. Instead, the Commission should consider incremental changes to the current process and encourage the industry, on a voluntary basis, to explore and experiment with additional changes that could expedite and streamline the attachment process, while preserving safety, reliability, and equitable sharing of pole attachment costs.

CenturyLink also believes that the Commission could safely shorten the pole attachment process in certain respects discussed below. The Commission should consider best practices to allow new attachers to perform the engineering survey and their own make-ready (including any necessary relocation of the utility's attachments on the pole) through a utility-approved contractor, subject to inspection by the utility after make-ready work is complete, at the new attacher's expense. However, this "self help" opportunity should not extend to the rearrangement of other attachers' facilities without permission, given likely disputes over liability and other issues. A mandatory one-touch process would raise similar concerns and potentially sacrifice safety and service continuity in the name of speed. The Commission should also avoid requirements to publicly disclose pole rates, locations, or availability, but ensure that utility pole owners can recover their actual costs.

CenturyLink urges the Commission to address several pole-related barriers to broadband deployment raised in the *Notice*. *First*, the Commission should explore the use of its Section 253

preemption authority and jurisdiction over municipal utilities that operate as telecommunications carriers to constrain these rate increases. *Second*, the Commission should adopt its proposal to provide ILEC attachers with the same rate paid by other telecommunications attachers, except in limited circumstances. *Third*, the Commission should establish its proposed 180-day shot clock to provide an effective mechanism for resolving pole attachment disputes. *Finally*, the Commission should revisit its interpretation of Sections 224 and 251 to provide ILECs reciprocal access to the poles, ducts, conduits, and rights-of-way of its cable and non-cable CLEC competitors.

**A. Any Revisions to the Current Pole Attachment Process Must Balance Speed with Safety, Service Continuity, and Burdens on Pole Owners.**

CenturyLink appreciates the Commission's desire to accelerate the deployment of next-generation infrastructure, particularly for 5G wireless services. But it is also important that the Commission consider the tradeoffs inherent in any changes intended to expedite the pole attachment process.

**1. The Commission Should Maintain the Current Pole Attachment Framework with Certain Incremental Changes.**

As the Commission recognizes in the *Notice*, there is a potential significant cost to shortening the current pole attachment timeframes. Specifically, unreasonably hasty timeframes could raise meaningful concerns about safety and protection of existing infrastructure.<sup>5</sup> Although many attachers are responsible, speed-to-market concerns, especially in the wireless industry, when coupled with contractors who often win bids by offering to perform work at the cheapest price and in the quickest fashion, increase the likelihood for poor attachment practice.

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<sup>5</sup> See *Notice* at ¶ 6.

CenturyLink has seen repeated incidents of certain attachers or contractors doing shoddy work. Common concerns for pole attachments include inadequate spacing between attachments, failure to use electric grounding, improper placement of guys and anchors, use of CenturyLink facilities (conduit, risers, guys, anchors) without authority, excess spooled cable, oversize boxes placed on the pole, and violations of the worker safety space requirements. Although CenturyLink remains vigilant in surveying this work after completion, the company sometimes finds changes to attachments made without notice or inspection. All of these lapses jeopardize the safety of those working on the pole and the reliability of the services provided over facilities attached to that pole. They also create the real possibility of complicated disputes over liability in the event of injury, outage, or property damage, particularly when arising from one attacher's movement of another attacher's facilities.

The shortened timeframes discussed in the *Notice* would also be unnecessarily burdensome for utility pole owners and existing attachers. To comply, utilities would likely need to maintain a dedicated staff solely to expedite pole attachment requests, at considerable expense, and it is not clear that such expenses could be recovered through pole attachment rates.

The Commission therefore should generally maintain the current pole attachment timeline while considering incremental changes to expedite that timeframe without jeopardizing safety, service reliability, and other important interests.

**a. The Commission Should Consolidate the Survey and Estimate Stages into a Single 45-Day Period.**

The Commission's current rules give a pole owner 45 days from receiving a complete pole attachment application to complete an engineering survey to determine whether and where

attachment is feasible, identify what make-ready is required, and respond to the applicant.<sup>6</sup>

Then, within 14 days of providing this response or receiving a survey conducted by the applicant, the pole owner must provide an estimate of charges to perform all necessary make-ready work, except for requests that are denied.<sup>7</sup>

CenturyLink now believes that these two stages can be consolidated into a single 45-day stage when the pole owner conducts the survey. In fact, CenturyLink already endeavors to provide a simultaneous response and estimate of make-ready charges within the initial 45-day period.<sup>8</sup> This change alone would shave 14 days off the current pole attachment timeline.<sup>9</sup>

The Commission should not otherwise shorten the survey/application stage. Fifteen or 30 days is simply insufficient to complete the work necessary to process a typical pole attachment application. When CenturyLink conducts an engineering survey, it usually walks the field with the applicant for each pole cited in the application to identify the space currently available on the pole. CenturyLink then reviews its electronic systems to confirm that this space has not been reserved for another application or project. For all but the smallest and simplest attachment requests, 45 days is necessary to complete these tasks.

**b. The Commission Should Preserve the Existing Make-Ready Timeline, With One Possible Exception.**

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<sup>6</sup> 47 C.F.R. § 1.1420(c).

<sup>7</sup> *Id.* at 1.1420(d).

<sup>8</sup> As is the case today, this 45-day stage should include time for the engineering survey and application review, which are closely related. The *Notice* asks “whether the review period for pole attachment applications should still include time for the utility to survey the poles for which access has been requested.” *Notice* at ¶ 10. Given that a pole owner cannot grant or deny a pole application until the survey is completed, it is appropriate for these activities to be included in a single stage.

<sup>9</sup> If the applicant completes the survey, then the pole owner should still have 14 days in which to provide an estimate of charges for make-ready work.

Currently the Commission's rules specify a make-ready period of 60 days for attachments in the communications space, with an additional 15-day "right-of-control" period for the utility pole owner to complete any make-ready work not done by an existing attacher on the pole.<sup>10</sup> The rules also provide additional time for larger orders.<sup>11</sup>

The Commission should retain this general timeline. Given the high degree of variability inherent in the make-ready process, it would be inappropriate to shorten the current 60-day make-ready timeline or adopt as requirements the current 30- and 45-day best practices for small and medium jobs, respectively. The Commission should also retain the longer timeline for larger orders.

**c. The Commission Should Establish a Best Practice Allowing New Attachers to Complete the Survey and Their Own Make-Ready, Subject to Post-Attachment Inspection at the New Attacher's Expense.**

Under the rules adopted in the *2011 Pole Attachment Order*, a new attacher is entitled to complete the survey or make-ready associated with its pole attachment application through a utility-approved contractor *only* if the utility pole owner fails to do this work within the time periods specified in the rules. As noted, CenturyLink has gone beyond this requirement. It generally allows new attachers to perform the engineering survey and conduct their own make-ready through CenturyLink-approved contractors, including necessary rearrangement of CenturyLink's facilities, without waiting for the periods in the rule to lapse.<sup>12</sup> This allows new

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<sup>10</sup> 47 C.F.R. § 1.1420(e).

<sup>11</sup> *Id.* at § 1.1420(g).

<sup>12</sup> This opportunity for "self help" does not extend to rearrangement of non-CenturyLink attachments on CenturyLink-owned poles. As discussed in Section II.A.1.d, allowing new

attachers to expedite the survey and make-ready timeline, assuming that's possible, while absorbing any additional expense or liability associated with this expedited work.

In CenturyLink's experience, this approach generally has worked well. However, it assumes that CenturyLink has the opportunity to conduct a post-attachment inspection and correct, or direct the new attacher to correct, any identified safety or operational concerns. This inspection is critical to make sure that work complies with relevant local laws and safety codes and does not disrupt other attachers' services. In some cases, attachers have sought to attach to poles equipment that is more safely placed on the ground given the size and weight of the equipment. Many of these issues can be addressed in the application process—assuming the Commission maintains the current 45-day survey and application period—but others are not identified until after the make-ready work has been completed. It is important that pole owners have the opportunity to ensure that any equipment placed on the pole can be done so safely, consistent with applicable standards, and without harm to the existing attachers' services and equipment. The pole owner also should be permitted to pass through the costs of those inspections to the attacher.

CenturyLink recommends that the Commission consider adopting this approach as a best practice, rather than a mandatory requirement for all utility pole owners. Though this practice has worked well on CenturyLink's poles, other pole owners may have legitimate concerns for not allowing new attachers to undertake the survey and their own make-ready work, in at least some circumstances. Utilities should also have the right to forbid particular attachers from doing this work on the utility's pole if that attacher has a history of poor performance.

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attachers to move existing attachers equipment without attachment would raise a host of concerns.



**d. Permitting New Attachers to Move Existing Attachers' Facilities Without Permission Would Create a Host of Concerns.**

The Commission should not adopt a rule permitting new attachers to relocate existing attachers' pole attachments without those parties' permission. Such a rule would raise a host of concerns and likely generate disputes. CenturyLink does not allow new attachers to touch existing attachers' facilities on CenturyLink-owned poles without their permission. CenturyLink's agreements with attaching entities do not grant to those attaching entities any right to perform work on the facilities of other entities. Similarly, CenturyLink's contracts with power companies do not allow the power company discretion to allow third parties to move CenturyLink's facilities. A change of this longstanding policy would require time-consuming and expensive negotiation of amendments to thousands of CenturyLink contracts, focused on complicated third-party beneficiary clauses, indemnification and liability issues and other contractual and operating concerns. It also would place pole owners in the uncomfortable position of being—not so much the quarterback of poles (which the Commission has never required)—but, even more concerning, the *referee* of pole infrastructure, monitoring, flagging, reviewing, and potentially resolving myriad third-party dispute issues all without compensation. The Commission never has required pole owners to step into such an active and time-consuming role between attaching entities. And it should not do so now.

Such unauthorized work would create serious concerns about liability in the event something goes wrong during the relocation work. This could take various forms. The new attacher's contractor might damage an existing attacher's facilities when relocating those facilities. In the related context of conduit access, CenturyLink has repeatedly incurred damage to its network when other providers placed their own fiber in CenturyLink's conduit, manholes

and vaults without permission from or even notice to CenturyLink. Without a contractual relationship, CenturyLink's only recourse in these circumstances is litigation. CenturyLink currently has several existing cease and desist letters pending with cable and broadband providers where those entities have allowed their contractors to use CenturyLink facilities without notice or compensation. In an incident just last week, a broadband provider severed CenturyLink's service to one of its customers and then connected the severed lines to the broadband provider's service.

Rearranged attachments on crowded poles can cause at least four problems: overloading, inadequate spacing between communications attachments, inadequate ground clearance, and inadequate communications worker safety space. The nearly-universal cause of all these problems is an attacher's apparent unwillingness to wait and pay for the placement of a taller or stronger pole. Rather, the attaching entity forces its way on the pole, potentially causing the ultimate costs of correction (*i.e.*, a new pole) to be borne by all affected parties. These issues may be discovered and corrected in a post-attachment inspection. But those attachments never should have been made in the first place. Such difficulties create additional work for the pole owner and all existing attaching entities.

These issues are not trivial. Ground clearance is essential to avoid lines and poles being pulled down by vehicles and farming equipment. Loading limits avoid poles snapping when lines are laden with ice or blown by strong winds. Communications worker safety space is an unwavering code requirement that protects all workers on a pole. When attachment practices are not followed, poles can and do fail, often in bad weather conditions. Remedial efforts can result in service disruption or degradation. Similarly, poor attachment practices (such as boxing in a

pole, or crisscrossing attachments from pole to pole) make restoration work in stormy conditions far more difficult.

For companies like CenturyLink with 911 obligations, even brief interruptions can be dangerous and entail hefty financial consequences, including regulatory penalties. The same is true for power companies with state mandates to provide reliable power. Pole owners—not CLECs, cable operators or broadband service providers who benefit from the ubiquity of these poles—bear the brunt of these penalties and restorative work when pole attachment practices fail.

While such incidents can occur no matter who does the relocation work, they are much more problematic in the absence of a contractual relationship. This lack of a contract between attachers also makes a lawsuit against a pole owner much more likely. Theoretically, each attacher could negotiate a contract with every other attacher on a pole to address such issues, but such a requirement would be incredibly burdensome and almost impossible to administer, given that each pole can have a different mix of attachers and pole owner.

These issues cannot be avoided by limiting a new attacher's activities to "routine" make-ready work for existing attachments. Such a rule would create incentives to claim that every make-ready activity is routine. Moreover, even seemingly routine activities, such as raising and then lowering a live telecommunications line, can adversely affect service if done incorrectly or if an accident occurs. Providing existing attachers an opportunity to observe these activities may reduce the risk of outage or property damage, but only at significant cost. Deploying network technicians for this purpose would be both expensive and a drain on a broadband provider's manpower, potentially at the expense of deploying and maintaining its own broadband facilities and services.

**2. One Touch Make Ready Processes Are Unproven and, in any Case, Unlikely To Accelerate Broadband Deployment in Rural Areas.**

Proposals to mandate a one-touch process raise similar concerns to allowing new attachers to move existing attachments without permission: increased chances of safety lapses, service disruption, contract concerns, and disputes over liability.

It is also unclear whether a one-touch process would actually accelerate broadband deployment in rural areas. At least in theory, a one-touch process permits more efficient work on poles that include multiple parties' attachments. Although those situations may exist in dense, urban areas where multiple competitors already exist, such multi-party scenarios are much less common in the rural areas in which the need for higher-speed access to the Internet is greatest.

In light of these concerns, the Commission should not require the implementation of a one-touch process, though it might encourage parties to explore the feasibility of such processes on a voluntary basis (*i.e.*, with the agreement of the pole owner and all attachers on the pole). Even such voluntary processes must include appropriate safeguards to ensure safety, service continuity, and efficiency. In this vein, a one-touch process should be available only to attachers that have established a record of complying with safety and other applicable standards. The party initiating the one-touch process should be required to use a contractor approved by each affected attacher on the pole. That party should also be responsible for any necessary coordination with other attachers on the pole. Attachers should be permitted to overlash only to their own facilities on the pole. And the pole owner and each affected attacher should be given notice that make-ready work has been completed and adequate time for inspection after the completion of any make-ready and rearrangement work.

Such voluntary one-touch processes will give the industry an opportunity to experiment with methods that leverage the potential efficiency of one contractor performing all the make-ready on a pole without fouling contracts and creating undue risks to safety, compliance with applicable codes, and service continuity.

**3. The Commission Should Not Require Utilities to Publicly Disclose Information Regarding Pole Rates, Locations, and Availability.**

The Commission also seeks comment on requiring utilities to establish online databases, maps, or other public information sources regarding pole rates, locations, and availability, and possibly even more detailed information, such as the number of existing attachers, physical condition, available communications space, the status of make-ready work, and status of pole engineering surveys.<sup>13</sup>

The Commission should not adopt these disclosure requirements. As an initial matter, considerable pole location information is available from CenturyLink for its existing contract partners. Although CenturyLink's online resources vary by region, most attaching entities under contract and subject to confidentiality restrictions have access to CenturyLink's existing pole inventory database, which is very useful in designing and deploying their network. Similarly, the actual, physical location of poles (whether power or telephone) is, of course, not hidden. Many attaching entities seek to drive their prospective territories, often taking pictures of the poles as they move along.

An unfunded government mandate, however, to catalog, post, and maintain this information in a specified way or with specified detail would impose unreasonable effort and expense on both utility pole owners and other parties with attachments on these poles. Large

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<sup>13</sup> Notice at ¶ 27.

utilities own millions of poles spread across large geographic areas, each of which would have to be located via GPS and then audited to determine current attachments and available space on the pole. And, of course, to be useful this information would have to be updated regularly. Third-party attachers similarly would have to keep their attachment data current and available through any databases or maps that are established.

Moreover, pole owners often consider such information to be proprietary, and disclosing such information may raise national security concerns to the extent it constitutes “critical infrastructure,”<sup>14</sup> and/or reveals crucial access points. The collection and disclosure of this information could also create new cybersecurity vulnerabilities.

Given these concerns, the Commission should avoid new public disclosure obligations.

**B. Utility Pole Owners Must Be Permitted to Recover Their Actual Costs to Accommodate New Attachments.**

The Commission should not adopt any rule that would prevent a utility pole owner from recovering its actual costs of accommodating new attachments on its poles. In the *Notice*, the Commission seeks comment on “standard” charges for make-ready.<sup>15</sup> In CenturyLink’s experience, make-ready charges are not at all standard for a number of reasons. CenturyLink has a large number of affiliates whose regulated rates vary. Moreover, labor costs, both internal and external, vary by region, union contract, bid results, and other factors. Finally, in urban areas, a multitude of attaching entities complicate the process of make-ready.

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<sup>14</sup> See Critical Protection, Executive Order No. 13,010, 61 Fed. Reg. 37,347 (Jul. 17, 1996). More recently, the President signed an Executive Order that focuses specifically on the cybersecurity of critical infrastructure. See Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure, Executive Order No. 13800, 82 Fed. Reg. 22,391 (May 16, 2017).

<sup>15</sup> *Notice* at ¶ 36.

Although CenturyLink has standard labor charges in some contracts, those contracts have proven to be very costly to CenturyLink as the rates of providing those services has outpaced those contractual amounts. Thus, static cost tables would not ensure that CenturyLink and other pole owners could recover their actual costs.

The Commission also should not require utilities to reimburse new or existing attachers for make-ready costs for nominal improvements that could be viewed as benefitting the utility, such as by creating additional space on a pole. Such reimbursements would make an already time-consuming process even more difficult to administer and likely lead to delays and disputes.

**C. The Commission Should Take Steps to Address Rates, Terms, and Conditions for Poles Owned by Municipalities or Cooperatives.**

The *Notice* correctly recognizes that broadband providers sometimes encounter difficulties in accessing poles, ducts, conduits, and rights-of-way owned by entities that are not directly subject to Section 224, such as municipal utilities, electric cooperative utilities, and railroads.<sup>16</sup> It is with these entities, and particularly municipal utilities and electric cooperatives, that CenturyLink has had the biggest problem obtaining pole access at reasonable rates, terms, and conditions to deploy broadband services. And it so happens that these entities often control the poles and rights-of-way in rural areas that have the most pressing broadband needs and most challenging business cases for broadband deployment.

For example, in Pennsylvania, an electric cooperative unilaterally (and without contractual support) raised CenturyLink's pole attachment rates by 50 percent. When CenturyLink refused to pay the increase, the cooperative threatened to remove CenturyLink's attachments. When CenturyLink declined to back down, the cooperative then threatened to move CenturyLink's "unpaid" balance (of the increased pole rental) to CenturyLink's account

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<sup>16</sup> See *Notice* at ¶ 30.

with the cooperative for electric service and to cut power to CenturyLink's central office building for failure to pay.

In numerous states, electric cooperatives are terminating fairly negotiated contracts and demanding new, onerous one-sided agreements (that push liability and cost to CenturyLink) in order to remain on the poles. If negotiations stall, the cooperatives sometimes refuse permits for new attachments—including those necessary to provide service partially funded by the Connect America Fund II (CAF II).

Municipal electric utilities and electric cooperatives also routinely require standards, without justification, that far exceed the NESC. They use those manufactured requirements (such as for loading or ground clearance) to demand that CenturyLink pay for large numbers of new poles to accommodate its existing attachments (even when the actual NESC standard does not require a new pole). Those poles typically are of a taller size, with the added space often used to create room for the cooperative's telecommunications business or its chosen telecommunications partner to place new fiber. Essentially, these entities require CenturyLink to subsidize the network deployment costs of its competitors.

Finally, throughout several states governed by distribution of electricity from the Tennessee Valley Authority (TVA), the TVA has waded into the pole attachment field by demanding that its member utilities increase pole attachment rates to those set by the TVA through a contrived formula that has no basis in law. TVA's overreach has been slowed by contractual limits on price increases, but CenturyLink has been advised that TVA is placing pressure on its members to increase pole revenue by cancelling contracts and demanding new rates in future agreements. Again, many of these same utilities are entering the



telecommunications business, even though they often own all of the poles in a territory, raising antitrust and competitive concerns.

But these entities are not entirely outside the Commission's control. As suggested in the *Notice*, the Commission retains authority under Section 253 to preempt rates, terms, and conditions for municipal-owned poles when the actions of the municipality are deemed to prohibit or effectively prohibit the provision of telecommunications services.<sup>17</sup> As a starting point, the Commission should declare that it will view unreasonable pole attachment rates (*i.e.*, those that significantly exceed the "upper telecom rate," as defined by the Commission) to be a violation of Section 253.<sup>18</sup> Such rates pose a barrier to the deployment of broadband services, which goes to the heart of Section 253 and the Commission's objectives in this proceeding. And there is no reason to believe that such rates are necessary for "fair and reasonable compensation."<sup>19</sup>

For their part, cooperative utilities frequently charge unreasonably high rates for access to poles that are necessary for CAF II-related deployment. These exorbitant rates result in broadband deployment to fewer locations, by driving up the per-subscriber cost of providing broadband service via the cooperative-owned poles. These unreasonable pole rates also can stifle competition as some of these cooperatives now compete with the cable and telecommunications companies subject to those rates. Given these issues, the Commission should note its concern about these issues and explore whether cooperative utilities' provision of

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<sup>17</sup> *Notice* at ¶ 108.

<sup>18</sup> 47 U.S.C. § 253.

<sup>19</sup> See 47 U.S.C. § 253(c) (allowing "fair and reasonable compensation"); *Puerto Rico Tel. Co. v. Municipality of Guayanilla*, 450 F.3d 9 (2006) (preempting franchise fee that could make the offering of telecommunications service prohibitive and not shown to constitute fair and reasonable compensation).

telecommunications, either directly or by joint venture, confers jurisdiction for the Commission to regulate the rates, terms, and conditions for the poles owned by those entities.

**D. The Commission Should Allow ILECs to Obtain the Same Attachment Rates Available to Other Attachers, Without the Need for Specific Showings.**

In 2011, the Commission concluded that, given the decline in ILEC pole ownership, market forces and independent negotiations might not be sufficient alone, in at least some circumstances, to ensure just and reasonable rates, terms, and conditions for ILEC pole attachments.<sup>20</sup> It therefore created a mechanism for ILECs to obtain pole attachments on reasonable rates, terms, and conditions. In practice, however, this case-by-case mechanism has proven cumbersome and time-consuming and fallen far short of the Commission's objective to ensure that ILECs have access to just and reasonable rates, terms, and conditions.

When negotiating with investor-owned electric utilities, CenturyLink generally has obtained pole attachments at rates close to the "upper telecommunications rate" only after protracted negotiations and the threat of an FCC complaint. In negotiations with one major investor-owned utility, for example, the utility declared that it would enter into a new contract with lower rates but that all existing CenturyLink attachments would be forever subject to the higher rates, and other terms and conditions, of the terminated joint use agreement.

Several utilities have claimed they cannot offer any rate relief on joint use contracts because the issues are purely of state concern and their state public utility agency will not allow such a result. Other utilities have placed roadblocks, such as demanding a full system audit (that can take years to perform and reconcile, at a cost of hundreds of thousands of dollars), before entering into negotiations of a new contract and a new rate.

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<sup>20</sup> *2011 Pole Attachment Order*, 26 FCC Rcd at 5327 ¶ 199.

Even in the best of circumstances, negotiations for rate reductions contemplated by the 2011 order have taken CenturyLink two years on average to complete. Most have required executive level escalation and preparation, if not filing, of a pole attachment complaint.

Despite the Commission's intention to level the playing field for the pole attachment rates ILECs pay vis-à-vis cable operators and other competitors, this has not occurred through the negotiations contemplated in the 2011 Order. Thus, the Commission should adopt its proposal that ILEC attachers pay the "upper" telecom rate if afforded benefits that "far outstrip" the benefits to other attachers, and pay the lower telecom rate where this is not the case.<sup>21</sup>

The Commission should clarify the types of terms that would trigger the higher rate. Specifically, it should find that only a joint use contract that includes *all* of the following (which used to be standard in joint use contracts) would meet such a showing: shared audit costs, reduced or eliminated surveying and make-ready, including the right to self-help; mutual insurance obligations; a mutual right to purchase poles; mutual and reciprocal indemnity, risk and liability provisions; and a right to use excess space on a pole without additional charge. Absent these beneficial terms, the ILEC should be eligible for the lower telecom rate.

**E. The Commission Should Adopt a "Shot Clock" for Pole Attachment Complaints.**

CenturyLink also agrees with the Commission's proposal to adopt a 180-day shot clock for pole attachment complaints. The current process is too slow. From afar, most parties view the Commission's process as indeterminate, with many cases languishing on the docket for years without resolution. Those parties who are involved in those cases, however, understand that the Commission has become more active in requiring the parties to mediate before it, which

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<sup>21</sup> Notice at ¶ 45.

CenturyLink welcomes. Still, CenturyLink has been reluctant to initiate complaint proceedings, even when warranted, because of the slow process.

The 180-day period should begin when the complaining party's reply is filed with the Enforcement Bureau. At that point, the FCC has the full record before it and 180 days is sufficient time to consult with the parties and issue a determination. If the case needs to be assigned to an administrative law judge, then the 180-day period should be extended with a scheduling order to have the matter adjudicated within one year. CenturyLink does not favor, however, the issuance of interim orders as was done recently in the *Verizon v. Dominion Virginia Power* litigation,<sup>22</sup> because it is not clear what precedential effect (if any) those determinations hold.

**F. The Commission Should Grant ILECs Reciprocal Access to Cable/CLEC Poles, Ducts, Conduits, and Rights of Way.**

Section 251(b)(4) of the Communications Act imposes on “[e]ach local exchange carrier” the duty “to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with section 224.”<sup>23</sup> Despite this statutory language, the Commission concluded in the *First Local Competition Order* that “no incumbent LEC may seek access to the facilities or rights-of-way of a LEC or any utility under either section 224 or section 251(b)(4)” because “section 224 does not provide access rights to incumbent LECs” and “[w]e give deference to the specific denial of access under section 224 over the more general access provisions of section

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<sup>22</sup> See *In the Matter of Verizon Virginia, LLC and Verizon South, Inc. v. Virginia Electric and Power Company d/b/a Dominion Virginia Power*, Proceeding No. 15-190, Bureau ID No. EB-15-MD-006, DA 17-395 (May 1, 2017) (*Verizon v. Dominion Virginia Power*).

<sup>23</sup> 47 U.S.C. § 251(b)(4).

251(b)(4).”<sup>24</sup> While expressing “serious doubts about the FCC’s analysis” on this point, the Ninth Circuit concluded that it was bound to defer to the Commission’s analysis,<sup>25</sup> which imposes one-sided infrastructure sharing on ILECs vis-à-vis their cable and CLEC competitors.

In 2015, the Commission mitigated this inequity by forbearing from the obligation for ILECs to provide access to newly-deployed entrance conduit to competitive LECs at regulated rates in greenfield (*i.e.*, new development) situations.<sup>26</sup> However, ILECs still must provide to their cable and non-cable CLEC competitors access to entrance conduit at regulated rates in all other situations—whether newly deployed in brownfield deployments *or* previously deployed—while ILECs cannot obtain access to *any* cable or non-cable CLEC entrance conduit (or other cable/CLEC infrastructure) at regulated rates.

ILECs have no special advantages in deploying last-mile infrastructure that would justify special regulatory burdens. In today’s market, all providers are equally capable of constructing conduit and many competitors can – and do – engage in such construction. In the *BDS Order*, the Commission found that cable companies now offer fiber-based services to compete for the largest enterprise customers across the country and also offer lower speed Ethernet services over

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<sup>24</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, 16103-04 ¶ 1231 (1996) (*First Local Competition Order*) (subsequent history omitted).

<sup>25</sup> *US West Communications, Inc. v. Hamilton*, 224 F.3d 1049, 1053-54 (9th Cir. 2000) (*Hamilton*), *amended opinion*, 2000 U.S. App. LEXIS 26416 (9<sup>th</sup> Cir. Sept. 13, 2000), *pet. for rehearing denied*, 2000 U.S. App. LEXIS 26417 (9<sup>th</sup> Cir. Oct. 23, 2000). The 2011 *Pole Attachment Order* reaffirmed the Commission’s interpretation that “incumbent LECs have no right of access to utilities’ poles pursuant to section 224(f)(1)” and that the Act “do[es] not grant incumbent LECs an access right under section 251(b)(4) that does not exist under section 224.” See 2011 *Pole Attachment Order* at 5328.

<sup>26</sup> *In the Matter of Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-General Networks; Lifeline and Link Up Reform and Modernization; Connect America Fund*, Memorandum Opinion and Order, 31 FCC Rcd 6157 at ¶ 75 (2015) (subsequent history omitted) “Entrance conduit” refers to conduit from the property line to a commercial building. *Id.*

their “near ubiquitous” DOCSIS 3.0 networks within their service footprints.<sup>27</sup> Non-cable CLECs, as well as other non-traditional providers, continue to invest and expand their network reach.<sup>28</sup> Given these and other market dynamics, the Commission found that ILECs are now on “similar footing” to their competitors, “as they often also deploy new facilities to meet customer demand (because even a relatively low demand customer today may not be a low demand customer tomorrow, and copper loop generally is incapable of meeting higher demands).”<sup>29</sup> It therefore found that the marketplace for packet-based business data services is competitive.<sup>30</sup> Thus any first-mover advantages the ILECs once possessed have dissipated. Further, perpetuating the current asymmetric conduit-access obligations actually disserves the public interest and harms consumers by distorting both ILEC and cable/CLEC incentives to construct new conduit that can be used to further deploy advanced services.

The most straightforward way to address this asymmetry in the Commission’s rules is to interpret Sections 251(b)(4) and 224 to allow ILECs to demand access to cable and non-cable CLEC poles, ducts, conduits, and rights-of-way at the rates, terms, and conditions specified in Section 224, and vice versa. This would give ILECs the same access rights as their competitors and allow them to share last-mile infrastructure necessary to provide broadband services, thus facilitating competition for these services. This sharing obligation would apply only when a

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<sup>27</sup> *Business Data Services in an Internet Protocol Environment; Technology Transitions; 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*, FCC 17-43, Report and Order at ¶ 55 (rel. Apr. 28, 2017) (*BDS Order*).

<sup>28</sup> *Id.* at ¶ 63.

<sup>29</sup> *Id.* at ¶ 83.

<sup>30</sup> *Id.*

provider is operating as a CLEC, rather than an interexchange carrier. It therefore would not apply to poles, ducts, conduit, and rights-of-way used to provide long-haul services.

Alternately, instead of adding an obligation to cable operators and CLECs, the Commission could further forebear to remove the asymmetric obligations noted above. This result, too, would place all competitors on equal footing.

### **III. THE COMMISSION SHOULD STREAMLINE ITS COPPER RETIREMENT AND GENERAL NETWORK CHANGE NOTIFICATION PROCESSES.**

Two years ago, the Commission revised its copper retirement rules, purportedly to facilitate technology transitions by promoting competition and protecting consumers. In fact, the revised rules have done just the opposite. The 2015 rules' extended notice periods have made it more difficult and expensive to upgrade copper facilities to fiber, particularly when limited time is available and during the short construction season in the northern parts of the U.S. The 2015 rules impose burdensome notice requirements that serve little purpose other than to create unnecessary bureaucracy. ILECs retiring copper facilities must notify Internet service providers, wireless providers, and interexchange carriers in the area, which are unlikely to be affected by a migration from copper to fiber. The 2015 rules also include superfluous mandates to provide government-specified notice to residential customers of copper retirements, despite a record showing that ILECs already have sufficient incentives to notify those customers to preserve and promote customer relationships, especially given the rapid competition they face from cable, wireless, and other competitors. Those rules also have expanded mandatory notice to government entities, including the Secretary of Defense, Governors, and Tribal entities (in addition to state public utility commissions (PUCs)), without any showing that such notice is necessary or even serves a useful purpose.

Especially taken together, these requirements increase the cost of migrating to the fiber facilities necessary to provide the high speed broadband services that both residential and business customers demand. The pace of CenturyLink's deployment of fiber facilities will depend, in part, on the ease with which the company can decommission legacy facilities and services and transition customers to new facilities and services. Over time, as more and more customers leave the legacy copper network, the cost of maintaining that network will eventually exceed the revenues it generates. At that point, it is logical to transition the remaining customers to the fiber network and retire the copper facilities. Rules that significantly delay CenturyLink's ability to retire copper facilities that are no longer profitable to operate, or impede CenturyLink's capacity to provision new or enhanced services on the replacement fiber network, will extend the "payback" period (*i.e.*, the number of years it will take CenturyLink to recoup its investment) for fiber deployments, thereby putting out of reach some fiber deployments that might otherwise occur.

The Commission therefore should take this opportunity to discard the counterproductive copper retirement requirements adopted in the *2015 Technology Transition Order* and return to its pre-2015 copper retirement rules, with certain limited modifications. Doing so will ease the expense and administrative burden of transitioning to next-generation facilities and services. Returning to the pre-2015 rules will have no deleterious effect on consumers or other carriers, as the prior rules contained adequate safeguards for the protection of all market participants. The Commission should also eliminate Section 51.325(c), which has long ceased to be necessary (assuming it ever was) and now hampers the reasonable flow of information between an ILEC and its affiliates and customers that is necessary for efficient planning, deployment, and provision of broadband services.



**A. The Commission Should Repeal Section 51.332.**

The Commission can accomplish most of the necessary streamlining of its copper retirement rules by repealing Section 51.332, which encompasses the bulk of the new copper retirement requirements adopted in the *2015 Technology Transition Order*. The requirements of Section 51.332 result in unnecessary delays and capital expenditures without demonstrated need or utility.

**1. Section 51.332's 180-Day Timeframe Causes Unnecessary Delays and Capital Expenditures.**

In the *2015 Technology Transitions Order*, the Commission extended the notice period for copper retirement to 180 days, finding that the 90-day notice period under the prior rules was insufficient.<sup>31</sup> That had not been CenturyLink's experience. In the dozen years that the 90-day notice rule was in effect,<sup>32</sup> CenturyLink received only a handful of requests for additional time. And, when it got those requests, it readily accommodated them.

By defaulting to a 180-day notice period, the Commission doubled the delay for ILECs to upgrade last-mile facilities from copper to fiber. 180 days is simply too long to accommodate some network upgrades. This is illustrated by CenturyLink's recent experience in Richfield, Minnesota, a suburb of Minneapolis-St. Paul. In 2016, Richfield informed CenturyLink that it

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<sup>31</sup> 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*, FCC 15-97, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking at ¶ 28 (rel. Aug. 7, 2015) (*2015 Technology Transition Order*).

<sup>32</sup> See *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Report and Order, and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003) (*Triennial Review Order*) (establishing copper retirement rules) (subsequent history omitted).

would have to relocate a copper cable in a roadside conduit, due to road construction. Typically, CenturyLink takes the opportunity in such projects to upgrade the relocated facility from copper to fiber. But Section 332's 180-day timeline prevented CenturyLink from doing that in Richfield, as the company had only 140 days to move its facilities. CenturyLink thus had to install a temporary copper facility at the new location and then replace that facility with a fiber facility after the 180-day period had run. This additional work cost CenturyLink \$36,000—money that more productively could have been used for deployment of new or upgraded broadband facilities. Given the short construction season in many parts of the country, such timeframes are not unusual and are consistent with the schedules for CenturyLink-initiated projects as well.

In repealing Section 332 and reinstating the 90-day notice period, the Commission should make two changes to pre-2015 rules in this area. *First*, the 90-day period should begin the date the application is filed, rather than the date the Commission issues a public notice. Lengthy delays in issuing the public notice are not uncommon and create uncertainty and confusion for both carriers and customers. This change will not adversely affect interconnecting LECs, who are directly notified of the proposed retirement before the filing at the Commission. *Second*, there is no need for a formal objection process at the Commission. As the Commission has found, this procedure in the pre-2015 rules was rarely used by interconnecting carriers,<sup>33</sup> consistent with CenturyLink's experience. And when these issues do arise, they are best worked out by the carriers, as they have been in the past, subject to any time constraints beyond the control of the ILEC retiring the copper facilities.

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<sup>33</sup> 2015 Technology Transition Order at ¶ 28.

**2. The Additional Notice Requirements Adopted in the 2015 Technology Transitions Order Are Unnecessary.**

**a. The Commission Should Limit the Direct Notice Requirement to Telephone Exchange Service Providers that Directly Interconnect with the ILEC's Network.**

Prior to the 2015 order, an ILEC retiring copper facilities was required to provide direct notice only to telephone exchange service providers that directly interconnect with the ILEC's network. The 2015 rules expanded this notice requirement to include other entities within the affected service area that directly interconnect with the ILEC's network—such as ISPs, IXC's, and wireless providers. There is no need for notice of copper retirement to these additional entities, which are not directly affected by the migration of the last mile from copper to fiber. These entities typically interconnect and exchange traffic with the ILEC at an access tandem or end office. ISPs, for example, typically interconnect at an aggregation point in the network and therefore are not directly affected by, nor need notice of, retirement of copper facilities in the last-mile network. CenturyLink has seldom, if ever, received questions from such providers when retiring copper facilities.

**b. The Commission's Copper Retirement Rules Are Ill-Suited and Unnecessary for Retail Customers.**

Section 251(c)(5) requires ILECs to “provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities or networks.”<sup>34</sup> In both the Second *Local Competition Order* and the *Triennial Review Order*, the Commission interpreted this provision as requiring notice

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<sup>34</sup> 47 U.S.C. § 251(c)(5).

only to interconnecting competitors.<sup>35</sup> Indeed, Section 251(c)(5)’s operative language—public notice of “changes in the information necessary for the transmission and routing of services” and “changes that would affect the interoperability of [the ILEC’s] facilities or networks”—clearly seems to refer to information affecting interconnecting providers, rather than retail customers. And Section 251(c)(5)’s placement in Section 251, which is titled “Interconnection” and specifies the duties that interconnecting carriers’ owe to each other, further suggests that its reach is limited to interactions between interconnecting carriers, rather than a carrier with its retail residential customers.

Regulatory mandates to notify affected retail customers of a change in the network facilities used to serve them also is unnecessary. From the beginning, communications networks have evolved over time, with constant improvements in the facilities and technologies used to serve retail customers. Notably, those countless upgrades have occurred over the decades without a Commission rule requiring ILECs (or competing providers) to notify affected customers.

There is no reason to think such a requirement is needed today. Given the huge capital investment required for fiber overbuilds, and the new and advanced services that can be provided over those facilities, ILECs possess strong incentives to notify affected retail customers of a transition from copper to fiber. Strong competition from cable, wireless and CLEC competitors

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<sup>35</sup> See *In the Matters of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers; Area Code Relief Plan for Dallas and Houston, Ordered by the Public Utility Commission of Texas; Administration of the North American Numbering Plan; Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois*, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392, 19468-19508 ¶¶ 165-259 (1996) (*Second Local Competition Order*); *Triennial Review Order*, 18 FCC Rcd at 17147 ¶ 281 (notifications of copper retirement “will ensure that incumbent and competitive carriers can work together to ensure the competitive LECs maintain access to loop facilities.”).

give ILECs further motivation to ensure that its retail customers are adequately informed and educated about network upgrades that might require new or modified CPE or will negatively affect them. There is no easier way to lose a retail customer, for example, than to dig up their rose garden (to bury a fiber optic cable) or temporarily disconnect their service (to install enhanced electronics at their home), without giving them advance notice. Indeed, carriers generally cannot access a customer's private property without first obtaining permission to enter and scheduling an appointment to do the work. CenturyLink has a fundamental interest in avoiding such negative customer experiences, particularly in today's competitive marketplace, where the vast majority of households in its service area have already left its network.

Thus, prior to the mandates in the *2015 Technology Transitions Order*, CenturyLink established a multi-step process to provide notice of network upgrades to affected consumers, *i.e.*, those to whose residence or property CenturyLink will need access or who will need a new modem or other CPE. In a large scale network upgrade, CenturyLink begins notifying customers by postcard as much as six months before the upgrade, followed by repeated attempts, using various means, to make sure that all affected customers are aware of the upcoming transition. If access to a customer's premise is necessary, CenturyLink sends a letter to the consumer asking them to set up an appointment for a service call. If the consumer does not contact CenturyLink, the company follows up with a phone call, and, if the consumer still cannot be reached, a technician is sent to the customer's door. In advance of these individualized contacts, CenturyLink sometimes leaves door hangers, notifying customers when a technician would be in their neighborhood. Each piece of collateral sent to a customer includes a link to a website with "Frequently Asked Questions" that provide information about the migration process and the services available to the customer over the upgraded network.

The CenturyLink group that makes these consumer contacts does not sell products, so there is no attempt to “upsell” them. These personnel essentially assume that affected customers will retain their existing services on the new fiber facilities. At the same time, CenturyLink of course separately markets new and enhanced services to consumers who would now be served by a superior network. Indeed, the very reason that CenturyLink decides to upgrade such areas is to win new customers and provide new and upgraded services to existing customers, which is essential to recovering the substantial expense of deploying these facilities. Virtually all customers are thrilled with the prospect of faster broadband speeds and a robust alternative to services provided by cable competitors. . There is no additional public interest to be gained by a government mandated notice to these same retail customers.

**c. Notice to the Secretary of Defense, Governors and Tribal Entities Is Unnecessary.**

In the 2015 order, the Commission expanded notice to governmental entities to include the Secretary of Defense, Governors, and Tribal entities—as well as state PUCs. These expanded notice requirements are of questionable value and can substantially increase the burdens of migrating to fiber facilities. Most copper retirements, such as for a neighborhood or part of a neighborhood, are unlikely to be of interest to the Governor, Department of Defense, or Tribal entities. It is also reasonable to assume that a state PUC can adequately represent the interests of the state.

**B. The Commission Should Eliminate Section 51.325(c).**

Section 51.325(c) was established in a far different time. In 1996, ILECs retained the lion’s share of residential and business customers in most markets. That situation has changed drastically, as customers today are much more likely to buy services from one of the ILEC’s competitors, rather than the ILEC itself.

Given these changed circumstances, there is no justification for retaining Section 51.325(c), which now stands as a burden to the deployment of and competition for next-generation services. As acknowledged in the *Notice*, this prohibition constrains the reasonable flow of information to an ILEC's affiliates and customers that is necessary for efficient planning, deployment, and service provision. For example, the current rule could be interpreted to prevent an ILEC from selling new services to customers in a given area until it has filed a network disclosure, thus delaying the introduction of next-generation services. The rule also arguably requires ILECs to inform their competitors, through network disclosure, of new service offerings at the same time they make that information available to partners and potential customers. This asymmetric requirement serves no purpose other than providing an unfair advantage to the ILECs' competitors. Thus, the public interest will be best served by repealing this outdated rule.

#### **IV. THE COMMISSION SHOULD STREAMLINE AND RETURN THE SECTION 214 DISCONTINUANCE PROCESS TO ITS INTENDED PURPOSE.**

As the Commission considers how best to promote the deployment of broadband infrastructure it should strive for a balanced approach that preserves customer access to retail services without impairing any market participant's ability to upgrade its offerings and compete in the marketplace. Specifically, it should remember that exit approval requirements are among the very most intrusive forms of regulation available to it, and that such mandates are appropriate and necessary only when retail customers will be left without any reasonably comparable alternative following the removal of a given service offering. Discontinuance requirements must always be designed to protect end-user consumers, not specific competitors, and must account for the broader evolution of the marketplace.<sup>36</sup>

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<sup>36</sup> For purposes of these Comments, "discontinuance" refers to the discontinuance, reduction, or impairment of a telecommunications service.

Thus, the Commission's task here is to chart a course that promotes investment, deployment and network upgrades while ensuring that consumers have adequate notification that their options are changing. The Commission's Section 214 framework also should consider the ultra-competitive state of the market and the unprecedented number of alternatives available to customers, as well as for the ways in which customers treat different offerings as substitutes for one another.

The Commission's framework must account for the inalterable core facts of network economics as well. Given the evaporating ILEC subscriber base and the migration of that base to competitive IP-based services provided by cable, non-cable CLEC and wireless providers, ILECs face rising per-user costs,<sup>37</sup> and are in the process of transitioning their own networks. ILECs accordingly are now overbuilding their copper networks with fiber not to diminish the service available to customers but rather to provide the very functions that consumers are most demanding. They cannot upgrade their networks, however, if forced to maintain two parallel networks, or to engineer next-generation networks to mimic the functionalities of century-old copper lines. To maintain and promote robust competition, the Commission must ensure that ILECs and their customers are not alone saddled with the costly technologies of the past.

In light of the above, the Commission should remain true to its long-standing discontinuance precedents, recognizing that the migration to next-generation facilities and services is both natural and desirable. The Commission should not hamper this transition by requiring approval for the replacement of one technology for another or the elimination of a wholesale offering absent any demonstrated effect on retail customers. Indeed, the Commission should adopt a presumption that discontinuances are permitted in all cases where there exists a

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<sup>37</sup> *BDS Order* at ¶ 233 (acknowledging that ILEC costs of providing DS1 and DS3 services are likely increasing with falling demand).



reasonably comparable retail alternative. The Commission should further streamline the discontinuance process for applications to “grandfather” service or discontinue services that have no customers. And the Commission should abandon the misguided “functional test” standard, interpret “service” for purposes of Section 214 to encompass the entire range of offerings that are available to a community, or part of a community, and confirm that Section 214 approval generally is not required to discontinue wholesale services. Finally, the Commission should establish commonsense rules that require notice of a proposed discontinuance only to those that will be directly affected by that discontinuance.

**A. The Migration from Legacy to Next-Generation Services that Are Offered by a Variety of Competitors is Part of the Natural Life-Cycle of Communications Networks.**

Like the retirement of copper loops, the discontinuance of legacy services following deployment of more capable and efficient facilities is a positive development entirely consistent with the evolution of communications services. All communications services progress through a natural life cycle in which mature services are gradually replaced with new services that offer more attractive features. Today, this life cycle is epitomized by the replacement of legacy TDM platforms such as Frame Relay and ATM by newer services, such as Ethernet. This transition has been entirely market-driven. Many areas served by CenturyLink have reached, or are rapidly approaching, the “tipping point” where a critical mass of customers have transitioned away from legacy TDM services to more current and capable technologies, making the continued provision of those legacy services impractical, inefficient, and inimical to consumers’ interests.

Burgeoning capacity needs have reduced the preeminent role once played by DSn-capacity facilities, culminating in a decisive and irreversible shift of the enterprise marketplace to competitively provisioned, packet-based Ethernet services. Ethernet services are economical

substitutes for copper DS1 and DS3 facilities and provide speeds many times higher than those legacy offerings.

Wireless providers particularly appreciate the flexibility that Ethernet offers because it is easily scalable as demand grows at a particular cell site. This has drastically undercut reliance on DS<sub>n</sub> circuits. For instance, from January 2012 to December 2016 the number of DS1 special access circuits CenturyLink provided to wireless providers dropped by **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]**. CenturyLink's DS1s provided to wireline customers declined during this period as well.

It is not surprising, then, that customers have increasingly viewed Ethernet services as a superior alternative to traditional services like ATM, Frame Relay, SONET, and Private Line, as well as DS1s and DS3s.<sup>38</sup> Customer demand has driven the robust growth of the Ethernet services market. U.S. retail Ethernet service installations increased 16% in 2016.<sup>39</sup> Given this migration away from TDM services, equipment manufacturers have discontinued or are phasing out support for TDM equipment, making it difficult (and soon impossible) to maintain the facilities and equipment used to provide traditional, wireline voice telecommunications services. Even today, when obsolescent legacy equipment fails, CenturyLink technicians are forced to scavenge spare parts from decommissioned assets in the network or try to track them down through after-market sources.

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<sup>38</sup> See, e.g., Frost & Sullivan, *Business Carrier Ethernet Services Market Update, 2015* (Sept. 2015) ("Carrier Ethernet, with its switched network architecture, scalable and flexible bandwidth options, its familiarity in the local area networks (LAN), low cost per megabit (MB), and ability support traffic prioritization and quality of service (QoS), has emerged as the de facto choice in the enterprise WAN networks.") See also *BDS Order* at ¶ 25 ("[E]xisting customers of TDM-based service are switching to Ethernet.")

<sup>39</sup> Vertical Systems Group, *2016 U.S. Port Share Detail* at 3 (2017).

Faced with these marketplace realities, CenturyLink has been developing plans to gradually transition its TDM networks and services to an all-Ethernet network to keep pace with consumers' demand and offer an ever-more-robust range of services. With nearly 4,000 wire centers, and estimated costs in the billions of dollars, the transition will likely stretch over a decade or longer. To help facilitate this migration, the Commission should continue to recognize the market's irrevocable (and desirable) migration away from DSn-capacity services toward Ethernet and other IP-based offerings and account for *all* competitors in the market. In recent years, dozens of competitive fiber providers have capitalized on mushrooming bandwidth needs and the falling costs of fiber deployment by providing carrier- and enterprise-grade Ethernet services over their ever-more ubiquitous long-haul and metropolitan networks.

Thus there are no "incumbents" in any relevant market segment. Every major cable operator now competes aggressively for enterprise customers.<sup>40</sup> For small business customers in its ILEC territory, CenturyLink now has only a [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] share of voice/data spend.<sup>41</sup> And CenturyLink and other ILECs provide voice service to less than a quarter of U.S. residential customers over traditional copper facilities.<sup>42</sup>

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<sup>40</sup> See, e.g. FIERCECABLE, *Comcast's Smit Calls Business Services "\$25B Opportunity," Says Full Duplex Coming in 24 Months* (Mar. 7, 2017), <http://www.fiercecable.com/cable/comcast-s-smit-calls-biz-services-25b-opportunity-says-full-duplex-coming-24-months> (Comcast ended 2016 "with a nearly \$6 billion revenue run rate" and "great traction" across the small, medium, and enterprise business segments, leading Comcast's CEO to predict that its business services division "could be yielding around five times that bounty"); Charter, *Charter Announces Fourth Quarter and Full Year 2016 Results* (Feb. 16, 2017), <http://ir.charter.com/phoenix.zhtml?c=112298&p=irol-newsArticle&ID=2246613> (reporting commercial revenues of more than \$1.6 billion in 2016).

<sup>41</sup> TNS, *BusinessWave CenturyLink SMB Market Share 4th Quarter 2016* at 9 (Feb. 2017). Small businesses are defined as locations with 1 to 100 employees.

<sup>42</sup> See *2015 Technology Transition Order* at ¶ 9.

**B. At Most, a Notice Filing Should Be Required for Transition to a New Generation of Service.**

When a carrier transitions from one generation of service to another, the Commission should, at most, require the carrier to file notice with the Commission that the carrier has properly notified customers affected by this transition. In other words, no prior Commission approval should be required. This result can be accomplished by interpreting “service,” for purposes of Section 214(a), as going beyond a single offering or product, and instead encompassing the entire range of offerings that are available to a community, or part of a community.<sup>43</sup> Alternatively, the Commission could use its forbearance authority to eliminate the need for Commission approval in this context. In taking this step, the Commission should ensure that this holding applies where a continuing service being relied upon is offered in a different manner – for example, as a non-tariffed private carriage or information service offering.

One of the fundamental challenges presented by the IP migration is that, as new generations of services come on line, providers may face onerous discontinuance requirements that essentially act as a barrier to new offerings. This may occur in the context of transitioning from legacy data, voice, or other types of services. Regardless of the context, there is a similar dynamic at play: legacy services currently being offered are gradually replaced by next-generation services. And typically there is an inevitable midstream step where legacy services are grandfathered before they are ultimately discontinued altogether. During these transitional steps in the deployment of next-generation services, the need for regulatory approval can delay and, in some cases, prevent the offering of these next generation services. In these cases, the availability of a similar next-generation offering should obviate the need for a discontinuance

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<sup>43</sup> See *Notice* at ¶ 123.

authorization – yet, the provider can get caught-up in protracted and unnecessary discontinuance proceedings related to the legacy product.

To avoid these problems, the Commission should interpret “service” in Section 214 to preclude the need for prior Commission approval or, alternatively, forbear from that requirement if such forbearance is deemed necessary to achieve this result.

**C. To the Extent Required, a Section 214(a) Service Discontinuance Application Should Be Granted on a Streamlined Basis Unless It Can Be Shown that There Are No Reasonable Alternatives Available.**

CenturyLink has noted the dramatic erosion of the ILECs’ subscriber base and the migration of that base to competitive IP-based services provided by cable, non-cable CLEC and wireless providers. Given this startling development, ILECs and other carriers should be permitted, on a streamlined basis, to discontinue declining end user services for which any competitive alternatives are available, via any technology or platform, to the extent Commission approval is required. This approach is consistent with the purpose of Section 214(a) and the Commission’s prior application of that provision. In contrast, detailed criteria that would effectively require that the exact same service be available in order to discontinue a retail service would contravene the Commission’s interpretation of Section 214(a), be overly burdensome, and halt the IP transition.

Under Commission precedent, discontinuance will be granted “when service alternatives are likely to exist.”<sup>44</sup> Reasonable alternatives from any source have been held adequate substitutes for a discontinued service, justifying grant of a Section 214(a) application.<sup>45</sup> That

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<sup>44</sup> *In the Matter of Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, First Report and Order, 85 F.C.C.2d 1 at 43 ¶ 128 (1980) (*First Competitive Carrier Order*).

<sup>45</sup> See, e.g., *In the Matter of Rhythms Links Inc. Section 63.71 Application to Discontinue Domestic Telecommunications Services*, Order, 16 FCC Rcd 17024, 17027 ¶ 8 (CCB 2001)

reasonable alternative services may be more “administratively burdensome and costly” than the discontinued service does not weigh heavily against discontinuance if they are still affordable.<sup>46</sup> For purposes of this test, the discontinuing carrier should be considered only one possible source of replacement services. Moreover, the possible impact of discontinuance on resellers and other carriers using the discontinued service as an input is irrelevant under applicable precedent, except insofar as end users will be left with no retail options.<sup>47</sup>

Commission precedent makes clear that discontinuances are permissible so long as reasonably comparable retail services are available to consumers, even if the alternatives are not functionally identical and/or are offered at higher prices. In the *Verizon Copper Discontinuance Order*, the Wireline Competition Bureau (WCB) found that, because “almost all of the . . . services previously available over copper . . . are also available over fiber[,]” there is minimal, if any, need for the discontinued services or facilities.<sup>48</sup> Likewise, the Commission also affirmed the grant of AT&T’s request to discontinue its Terrestrial Television Service (TTS) to certain locations and universal TTS connectivity between the remaining served locations partly on the grounds that satellite services provided a “comparable alternative to” TTS and that point-to-point

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(*Rhythms Links*); *In the Matter of AT&T Corp. Application for Authority under Section 214 of the Communications Act, as amended, to Discontinue the Offering of High Seas Service and to Close its Three Radio Coast Stations (KMI, WOM and WOO)*, Memorandum Opinion and Order, 14 FCC Rcd 13225, 13229-33 ¶¶ 8-16 & n.27 (IB 1999) (AT&T High Seas Order), recon. denied, Order on Reconsideration, 16 FCC Rcd 13636 (IB 2001).

<sup>46</sup> *In the Matter of Verizon Telephone Companies; Section 63.71 Application to Discontinue Expanded Interconnection Service Through Physical Collocation*, Order, 18 FCC Rcd 22737 at 22751-52 ¶¶ 27-29 (2003) (*Verizon Expanded Interconnection Order*).

<sup>47</sup> See *In the Matter of Western Union Telegraph Co.; Petition for Order to Require the Bell System to Continue to Provide Group/Supergroup Facilities*, Memorandum Opinion and Order, 74 F.C.C.2d 293, 296 ¶ 7 (1979) (*Western Union*).

<sup>48</sup> *In the Matter of Section 63.71 Application of Verizon New Jersey Inc. and Verizon New York Inc. for Authority to Discontinue Domestic Telecommunications Services*, Order 28 FCC Rcd at 13830 ¶ 10 (*Verizon Copper Discontinuance Order*) (emphasis added).

connections constituted an adequate replacement for the universal connectivity that was eliminated.<sup>49</sup>

Similarly, in the *AT&T High Seas Order*, AT&T was permitted to discontinue its High Seas high frequency radio-telephone service because its customer base was “steadily shrinking” and “reasonable alternative services are available.”<sup>50</sup> The International Bureau found that, although satellite-based radio telephone services imposed higher costs and offered less robust coverage than AT&T’s High Seas service, those differences did not render satellite-based service “nonviable as a substitute” for the High Seas service, and thus did not preclude approval of AT&T’s request to discontinue those offerings.<sup>51</sup> The Bureau also found that customers could use other types of services, such as cellular service, noting that “[v]iable alternatives to a discontinued service need not be the same type of service.”<sup>52</sup>

Given this precedent, the Commission should impose a strong presumption that discontinuance requests will be granted so long as retail customers have a reasonably comparable service available to them – even if it is not identical, or if it is somewhat more expensive. As demonstrated above, moreover, there are many alternatives to ILEC-provided services, and customers are migrating to those alternatives *en masse*, even absent any ILEC discontinuance. Such service substitutions already being made by consumers point the way to the appropriate approach to service substitution under Section 214(a).

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<sup>49</sup> *In the Matter of American Telephone and Telegraph Company, Application for Authority under Section 214 of the Communications Act to Discontinue the Interstate Offering of Terrestrial Television Service in Specified Local Access and Transport Areas*, Memorandum Opinion and Order, 8 FCC Rcd 6801, 6802 ¶ 13, 6803 ¶ 16 (1993).

<sup>50</sup> *AT&T High Seas Order*, 14 FCC Rcd at 13229 ¶ 8.

<sup>51</sup> *Id.* at 13229-30 ¶¶ 9-11.

<sup>52</sup> *Id.* at 13233 ¶ 16 n. 27 (emphasis added).

Specifically, the Commission should amend Section 63.71 of its rules, which sets out the streamlined procedures governing discontinuance applications.<sup>53</sup> Today, the vast majority of consumers have voluntarily “discontinued” legacy ILEC wireline services in favor of wireless and VoIP offerings, demonstrating their view that these newer services are reasonable alternatives to the abandoned services. The Commission should recognize this precedent and hold that if an ILEC (or, for that matter, any carrier) seeking to discontinue TDM voice service in a given area can certify that all affected retail customers have access to an alternative service that has been adopted by a substantial portion of the public (*i.e.*, facilities-based or over-the-top interconnected VoIP, circuit-switched cable, 3G or 4G wireless, or TDM voice service), either from the discontinuing carrier or at least one other provider, that application will be subjected to Section 63.71’s streamlined processes. Consumers have demonstrated that all of those services are reasonably interchangeable and that copper-based TDM voice service is the least desirable of all. No data collection or performance testing is necessary to confirm that consumers view these services as substitutable. Indeed, more than half of American households have disconnected their wireline connections in favor of wireless service, and interconnected VoIP accounts for 59 percent of residential wireline voice connections.<sup>54</sup> Three-quarters of these VoIP lines are provisioned by cable and other non-ILEC providers.

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<sup>53</sup> Under its current rules, the Commission normally authorizes discontinuance under a streamlined process in 31 or 60 days, for non-dominant or dominant carriers, respectively, “unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected.” 47 C.F.R. § 63.71(a)(5).

<sup>54</sup> Division of Health Interview Statistics, National Center for Health Statistics, Centers for Disease Control and Prevention, *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2016* at 1 (2017), <https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201705.pdf>; *Voice Telephone Services: Status as of December 31, 2015*, Industry Analysis and Technology Div., FCC, at 3, Figure 2, available at [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-342357A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-342357A1.pdf).



Similarly, the Commission should hold that if a carrier seeking to discontinue a TDM business data service, such as DS1 or DS3 service, in a given area certifies that all affected retail customers have access to another TDM or packet-based business data service, either from the discontinuing carrier or at least one other provider, that application will be subjected to Section 63.71's streamlined processes.

Under this framework, the Commission would subject a discontinuance application to streamlined processing as long as the applicant certifies that: (i) the applicant has notified the affected customers of the proposed discontinuance, and (ii) those customers will have access to at least one of the services the Commission has identified as an adequate alternative, whether offered by the applicant or a third party.

The application should then be deemed granted automatically a short time after filing (such as 30 days) unless the Commission notifies the applicant otherwise. The auto-grant date should be the same for "dominant" and "nondominant" carriers and run from the time the application is filed. For the relatively rare instances in which an application is suspended, the Commission should establish a second auto-grant date no later than 90 days after the application is suspended.<sup>55</sup>

**D. The Commission Should Further Streamline the Discontinuance Process for Applications to "Grandfather" Service or Discontinue Service with No Customers.**

In the *Notice*, the Commission proposes to streamline the public comment and auto-grant periods for applications seeking to "grandfather" low-speed legacy services for existing

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<sup>55</sup> The Commission also should not adopt special discontinuance rules or timelines for government customers. ILECs and other carriers have a long history of accommodating government customers to avoid disruption of service. They also have significant incentives to do so, in order to preserve important ongoing relationships with these customers.

customers.<sup>56</sup> Typically when a carrier grandfathers a service, it is because that service has become obsolete or is near the end of its life cycle but the carrier wishes to give affected customers time to transition to replacement services. Thus, the grandfathering itself provides a transition period. Moreover, the grandfathering of a service has less impact on customers than discontinuance because customers' existing services are not affected by this action.

The Commission should implement this proposal but apply it to *any* service that is being grandfathered, rather than just “low speed” services. As noted, demand for DS1 and DS3 services—particularly demand for *new* DS1 and DS3 services—has fallen precipitously.<sup>57</sup> Thus an expedited process for grandfathering these services should not adversely affect existing customers of those services.

For a service with no customers, a discontinuing carrier should be required simply to notify the Commission that it has discontinued the service, without a need for prior Commission approval. For such services, no purpose is served by soliciting public comment. To the extent necessary, the Commission should forbear on a limited basis from Section 214 in this context.

**E. The Commission Should Abandon the “Functional Test” Standard for Determining When Section 214(a) Applies.**

The Commission should revisit and reverse the misguided “functional test” standard adopted in the November 2014 Declaratory Ruling and confirmed in a subsequent Order on

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<sup>56</sup> Notice at ¶¶ 73-79. In practice, to “grandfather” a service means that the carrier stops accepting new customers (and possibly new orders from existing customers) while maintaining existing service to existing customers.

<sup>57</sup> See *BDS Order* at ¶ 25 (“New customers more likely than not, are choosing to purchase Ethernet services, subject to their availability and pricing, and existing customers of TDM-based service are switching to Ethernet. There is no evidence suggesting Ethernet customers are switching to DS1s and DS3s.”) (footnotes omitted).

Reconsideration.<sup>58</sup> As articulated, this standard broke from decades of precedent by requiring a carrier to look beyond the terms by which it has defined the service in its tariff or contract to determine whether a modification of that service constitutes a discontinuance, reduction, or impairment under Section 214. For all the reasons described in USTelecom's appeal of the *2015 Technology Transitions Order*,<sup>59</sup> the analysis underlying the functional test standard should be abandoned.

This is the correct outcome as a matter of public policy. Every transition to a new generation of technology or service involves trade-offs. New services typically include features not found in the services they are replacing but may also lack certain features, capabilities, or compatibilities present in the old services. It therefore is not surprising that VoIP services, for example, may not support certain legacy equipment, such as some vintages of fax machines, home security systems or credit card processing equipment that were designed to work with TDM-based services. In fact, customer devices designed for TDM networks are compatible with VoIP services in some cases but not others. For example, CenturyLink has ensured compatibility of its VoIP services with TTY equipment pursuant to the Commission's Telecommunications Relay Service (TRS) requirements. The compatibility of other devices, such as fax machines and monitoring devices, depends on the particular device. Some fax machines, for example, will function over a VoIP line, but may transmit more slowly than on a TDM line, or may require different settings. In general, these devices are compatible if their transmission is similar to the standards for TTY equipment. Increasingly, equipment such as home security systems can be readily converted to work on a broadband connection, such as the one over which the customer's

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<sup>58</sup> See Notice at ¶ 115.

<sup>59</sup> See Brief for Petitioner USTelecom, *United States Telecom Ass'n v. FCC*, No. 15-1414, at 25-39 (D.C. Cir. Jun. 14, 2016).

business VoIP service runs.<sup>60</sup> And Internet- or wireless-based services now offer similar, and often superior, functionality to those TDM-based services or equipment.<sup>61</sup>

In any case, a carrier discontinuing a legacy service should not have to prove that an alternative service will be compatible with legacy customer equipment any more than Microsoft should be required to ensure that a new version of Windows is compatible with all prior versions of software that might run on the computer. This results in some inconvenience to those owning older software versions, but that inconvenience generally is more than offset by the benefits of the new technology or service. The same goes in this context, where the IP transition will require some customers to update certain TDM-based equipment or services, and, in exchange, those and other customers enjoy the increased functionalities and capabilities of IP-based replacement services.

Technology transitions such as the IP migration also may affect certain groups of customers, such as the elderly, the hearing impaired, or late adopters, differently than others. To the extent necessary, the Commission should address the needs of such customers through rules that apply to all providers, rather than by imposing carrier-specific requirements or conditions through the Section 214(a) discontinuance process.

**F. The Section 214(a) Process Should Not Apply to the Discontinuance of Wholesale Services.**

In the *2015 Technology Transition Order*, the Commission erroneously concluded that a carrier must obtain Commission approval to discontinue a service that is used solely by carrier-

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<sup>60</sup> See, e.g., Home Depot, NextAlarm: Wired Alarm Broadband Adapter for Existing Alarm Systems (\$69.99), <http://www.homedepot.com/p/NextAlarm-Wired-Alarm-Broadband-Adapter-for-Existing-Alarm-Systems-252138ABN4AX12/206198730> (last visited Jun. 14, 2017).

<sup>61</sup> See, e.g., SmartHome, iSmartAlarm Smartphone Home Security System – Preferred Package, <http://www.smarthome.com/ismartalarm-smartphone-home-security-system-preferred-package.html> (last visited Jun. 14, 2017).

customers, unless the carrier first determines that none of its carrier-customers' retail end users would lose service.<sup>62</sup> This determination must consider all available information, including information from the carrier customer itself.<sup>63</sup>

The Commission should reverse this portion of the *2015 Technology Transition Order*, which misinterpreted the relevant statutory language,<sup>64</sup> ignored decades of precedent,<sup>65</sup> and created a time-consuming hurdle to replacing legacy TDM wholesale services with more modern and capable IP wholesale services. A discontinuing carrier has no way of knowing how the discontinuance of the wholesale service will affect the carrier-customer's end-user customers, except by asking the carrier-customer, which may have a vested interest in delaying the proposed discontinuance. Moreover, given the broad availability of Ethernet and other direct substitutes to these legacy TDM services, this process is unnecessary to protect the end-user customers that are the focus of Section 214(a).

Under the 1996 Act, carrier-customers are protected by Section 251(c)(5) and the Commission's implementing rules, which require carriers to provide public notice regarding network changes that affect a competing service provider's performance or ability to provide service.<sup>66</sup> That notice gives carrier-customers the ability to adjust to the discontinuance of a wholesale input, and, if necessary, notify their own end-user customers through the Section 214 discontinuance process in the rare instance that there is no available alternative to the discontinued wholesale input.

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<sup>62</sup> *2015 Technology Transition Order* at ¶ 115.

<sup>63</sup> *Id.* at ¶ 118.

<sup>64</sup> See 47 U.S.C. § 214(a) ("No carrier shall discontinue . . . service to a community, or part of a community" before obtaining Commission approval).

<sup>65</sup> See *Western Union*, 74 F.C.C.2d at 296-97 ¶¶ 7-9.

<sup>66</sup> 47 U.S.C. § 251(c)(5); 47 C.F.R. § 51.325(a)(1).

**G. The Commission Should Establish Commonsense Notice Requirements.**

The Commission should modify the notice to Tribal Nations of discontinuance applications that cover Tribal lands.<sup>67</sup> Specifically, notification to Tribal Nations should be required, at most, for services that directly affect the Tribal Nation. Some states include a large number of Tribal lands. As a result, the discontinuance of a service on a statewide basis can require notice to a large number of Tribal Nations even if the Tribal Nation is not directly affected and it is unlikely that any Tribal resident is affected by the proposed discontinuance. In a recent discontinuance of a calling card service in 14 western states, for example, CenturyLink had to provide notice to 104 Tribal Nations. In such situations, the burden of the notice requirement clearly outweighs any speculative benefits, given that subscribers living on Tribal Lands will be provided notice.

**H. The Commission Should Preempt Inconsistent State Regulations.**

Beyond adopting the reforms discussed above, the Commission must ensure that its pro-investment policies are not nullified or undermined by inconsistent state regulation. Such state regulations can take various forms—carrier-of-last-resort obligations, discontinuance requirements, or even service quality requirements—for services that are potentially subject to both Commission and state regulatory oversight.<sup>68</sup> The Commission therefore should preempt any inconsistent state law or regulation that would prevent the Commission’s intended result in this proceeding, whether that be for carriers to transition to next-generation services without

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<sup>67</sup> See *Notice* at ¶ 99.

<sup>68</sup> Service quality requirements can conflict with federal discontinuance rules if they impose significant and unnecessary delays.

government approval, or, alternatively, that they obtain necessary approval on an expedited or streamlined basis.

## **V. CONCLUSION**

CenturyLink supports the Commission's efforts to spur broadband deployment, especially in underserved rural markets. The Commission can best fulfill this objective by implementing incremental changes to its pole attachment rules, returning to its pre-2015 copper retirement rules, with limited exceptions, and eliminating requirements for prior approval to discontinue services to the extent possible and streamlining any remaining requirements for Commission approval. With these actions, the Commission will hasten wireline broadband investment to the benefit of all Americans.

Respectfully submitted,

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