

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544**

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

COMMENTS OF VERIZON

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June 15, 2017

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I. INTRODUCTION AND SUMMARY

The investment in and rapid deployment of broadband is the foundation for job growth and innovative services that will improve lives. Increased broadband penetration fuels sustainable GDP development,² and can advance “consumer welfare, civic participation, public safety and homeland security, community development, health care delivery, energy independence and efficiency, education, [and] worker training,”³ as well as enhance sustainability. Broadband today is the platform that enables services and capabilities like cloud computing, smart communities, distance learning, remote healthcare and the Internet of things. And it is a prerequisite for the services of the future, such as 5G and the applications that will rely on 5G speeds and latency such as self-driving cars, augmented reality, and virtual reality.

¹ The Verizon companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

² See, e.g., Michael Minges, ictData.org, “Exploring the Relationship Between Broadband and Economic Growth,” World Development Report Digital Dividends 2016 at 3 (2015), <http://pubdocs.worldbank.org/en/391452529895999/WDR16-BP-Exploring-the-Relationship-between-Broadband-and-Economic-Growth-Minges.pdf> (concluding that a 10 percent increase in fixed broadband penetration would increase GDP growth by 1.21 percent in developed economies).

³ American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 6001(k)(2)(D), 123 Stat. 115, 516 (2009).

The Commission has set forth a broad range of proposals to encourage broadband deployment, spur additional investment, and facilitate the transition to next-generation broadband facilities.⁴ These include important suggested changes to pole attachment rules, further modifications to the copper retirement process, and suggested changes to the Section 214 discontinuance process. We support the Commission’s efforts.

Below, we seek to reinforce the Commission’s efforts by suggesting additions and modifications to the Commission’s proposals that will help spur continued investment and growth.

Reform Pole Attachment Policies to Spur Broadband Deployment. First, providers must be able to quickly and efficiently place broadband facilities out in the field by attaching facilities to poles, accessing rights-of-way and buildings, and providing for backhaul. Verizon is one of the few providers with experience both as a pole owner and as a wireline and wireless attacher. Within its wireline footprint, Verizon operates as an incumbent local exchange carrier (LEC) that both owns poles and attaches to utility poles. In other areas, Verizon’s competitive LEC operations seek to attach to utility poles. And Verizon Wireless is a nationwide wireless provider that attaches to poles owned by both Verizon and by other entities.

Historically, we—and others—have faced delays in obtaining access to poles at reasonable cost. When it can take six months to a year and piles of paperwork to get an attachment approved and on the pole (and even then, sometimes at a rate far higher than what competitors are paying), broadband deployment is unreasonably delayed. The Commission can greatly shorten that timeline by allowing attachers to use approved contractors who would

⁴ See *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, 32 FCC Rcd 3266 (2017) (“*Notice*”).

coordinate and do all work to add a new attachment—otherwise called One-Touch Make-Ready. Attachers who do not wish to use this approach could continue to use the existing timeframes and processes. The Commission should also adopt a rule that incumbent LEC pole attachers are entitled to the telecom rate and the Commission should exclude capital costs from pole attachment rates.

Encourage next-generation broadband by streamlining copper retirement and service discontinuance. Second, to allow reasonable allocation of resources and encourage the transition to newer technologies, providers seeking to deploy and expand broadband facilities need better tools to efficiently retire legacy copper networks and discontinue outdated services. We have filed to retire copper in more than 3.8 million locations in our footprint where we are deploying fiber. The current rules have some improvements over the pre-2015 regime, and those changes—including notice-based copper retirement and the recognition that providers may repair facilities on fiber without requiring a retirement filing—should be kept. But based on our experience under both the prior and the current rules, there is still more to be done to not only allow, but to encourage the transition away from yesteryear technologies. The copper retirement notice procedures need to be revamped to remedy possible customer confusion, and to shorten the timeline. Customer notices should be linked to the customer’s specific migration to fiber, and not to the actual retirement of their copper. And providers should be able to quickly and efficiently discontinue services that are outdated or better served by other technologies.

The Commission’s renewed focus on encouraging increased broadband deployment and investment holds promise for American consumers and the U.S. economy. The proposed

reforms we discuss below would substantially speed broadband deployment and remove barriers to investment.⁵

II. POLE ATTACHMENT REFORMS WILL SPUR BROADBAND DEPLOYMENT

A. Speeding Access to Poles.

1. The Commission Should Authorize One-Touch Make-Ready as an Alternative to the Current Pole Attachment Process.

The Commission’s 2010 National Broadband Plan recognized that make-ready work “can be a significant source of cost and delay in building broadband networks.”⁶ “Make-ready” is the replacement or “modification of poles or lines or the installation of certain equipment (e.g., guys and anchors) to accommodate additional facilities.”⁷ Make-ready today requires coordination between the pole owner, the prospective attacher, and existing attachers. Each existing attacher is typically responsible for moving its facilities. As a result, “multiple visits to the same pole may be required simply to attach a new wire.”⁸ These repetitive climbs by multiple teams increase the length of the make-ready process, increase costs, can compromise pole integrity, can endanger workers and public safety, and inconvenience residents.

To lower the cost and speed up the make-ready process, the *Notice* seeks comment on whether to adopt a streamlined “one-touch make-ready” approach to allow parties to use utility-

⁵ The *Notice* also inquires about prohibiting state and local laws inhibiting broadband deployment. See *Notice* ¶¶ 100-114. Those issues are addressed in separate comments Verizon has filed in response to *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment; et al.*, Notice of Proposed Rulemaking and Notice of Inquiry, 32 FCC Rcd 3330 (2017) (*Wireless Infrastructure Notice*). Those comments have been filed in this docket and in the *Wireless Infrastructure Notice* docket.

⁶ FCC, *Connecting America: The National Broadband Plan* at 111 (Mar. 17, 2010), <https://transition.fcc.gov/national-broadband-plan/national-broadband-plan.pdf> (“*FCC National Broadband Plan*”).

⁷ *Notice*, ¶ 4, n.6. See also *id.* ¶ 38 (referring to make-ready fees covering the cost of a new pole).

⁸ *FCC National Broadband Plan*, at 111.

approved contractors to perform make-ready work in lieu of the existing attacher performing such work.⁹ Under this approach, a new attacher would hire an approved contractor to move all the facilities on a pole at once, “reduc[ing] the disruption, inconvenience, and delay that come from work by multiple crews,” lowering make-ready costs, and “improv[ing] safety and pole integrity.”¹⁰

The Commission has stated that “[a]s a general matter, promoting the deployment of competitive broadband infrastructure through one-touch make-ready policies is consonant with the goals of federal telecommunications policy [and] the Communications Act.”¹¹ While some parties may raise concerns about liability and responsibility for repairing damage caused by a contractor, any legitimate concerns can be addressed through appropriately crafted rules, and the benefits of one-touch make-ready far outweigh these concerns. A carefully constructed one-touch make-ready framework would substantially reduce the time and cost it takes a new attacher to access a pole; and reduce municipal and environmental disturbances, because only one truck roll would be required to address a new attacher.

The Commission should allow all new attachers, as well as pole owners, the option to use one-touch make-ready to secure faster access to utility poles by assuming more responsibility during the pole attachment process. Attachers who do so will have greater control over the pole attachment process, while burdens on existing attachers and pole owners would be significantly reduced. The option of using one-touch make-ready should apply to all pole attachment requests

⁹ See Notice ¶¶ 18, 21.

¹⁰ Ex Parte Letter from Austin Schlick, Google, to Marlene H. Dortch, FCC, *Implementation of Section 224 of the Act*, WC Docket No. 07-245, *et al.* (July 19, 2016).

¹¹ October 31, 2016, Letter from Howard J. Symons to B Benjamin C. Mizer, U.S. Dep’t. of Justice, *attached to* Memorandum, Statement of Interest of the United States, *BellSouth Telecommunications, LLC v. Louisville/Jefferson Country Metro Government*, No. 3:16-cv-00124 (W.D. Ky. filed Oct. 31, 2016) (No. 68-1).

including for large orders and wireless attachments above the communications space.¹² It should be available, as well, where owners of utility poles modify their poles in ways that would similarly require them to notify existing attachers and that, in the ordinary course of business, would require the attachers to move their facilities sequentially. Verizon details its proposed framework below.

a. The New Attacher Could Select an Approved Contractor and Would, Along With the Approved Contractor, Indemnify the Pole Owner, Existing Attachers, and Third Parties.

Attachers seeking to add a new attachment through the optional one-touch-make-ready process would select a contractor approved by the pole owner to perform a survey, make-ready estimate, and make-ready work. The approved contractor should meet several reasonable qualifications to minimize any risks to existing attachers or the public. First, approved contractors, who may be drawn from the lists already required to be made available by utilities,¹³ must exercise due care and be qualified or licensed to perform any work they are hired to perform. Second, work performed by the contractor must be performed in accordance with applicable safety standards, including the National Electric Safety Code, the National Electric Code, and rules designed to protect the pole and the facilities of the pole owner and existing attachers. Finally, the new attacher and the approved contractor must provide indemnification for any harm to pole owners, existing attachers, or third parties that arises from the make-ready work and the new attachment.

¹² The Commission's rules allow longer timelines for large pole attachment orders and for wireless attachments above the communications space. *See* 47 C.F.R. §§ 1.1420(e)(2)(ii), 1.1420(g).

¹³ The Commission's rules already require that utilities make available a list of contractors authorized to perform surveys and make-ready in the communications space on the utility's poles for circumstances where the utility fails to meet the timeline for access to its poles. *See* 47 C.F.R. § 1.1422.

b. By Using an Approved Contractor, the New Attacher Can Shorten the Timelines for Pre-Make-Ready Activities.

By assuming more responsibility during the pole attachment process, the new attacher could significantly reduce the time associated with pre-make-ready activities. Under the existing rules, a utility has up to 45 days to review and make a decision on a completed pole attachment application. This 45-day period includes time for the utility to survey the poles for which access has been requested.¹⁴ If an attacher chooses one-touch make-ready, the attacher can shorten significantly the application review and survey period by retaining an approved contractor to conduct the survey as quickly as practicable.

The existing rules contemplate up to 28 days for the utility to provide an estimate of make-ready charges and for the attacher to accept the utility's estimate. If an attacher chooses one-touch make-ready, the attacher can shorten this 28-day period by quickly obtaining and accepting a cost estimate from an approved contractor.

After the survey and estimate is complete, the new attacher must send the pole owner either a notice that make-ready work is required or notice that none is required. Five business days after receiving either, pole owners would be required to issue a license to the new attacher to attach, and, if necessary, provide contact information for existing attachers. The new attacher would then provide five business days' notice to the pole owner and existing attachers before any make-ready work is performed.

c. One-Touch Make-Ready Would Allow the New Attacher to Shorten Significantly the Make-Ready Process.

The existing rules contemplate a 60-day period for existing attachers and the utility to perform make-ready work, and, in practice, the make-ready work is typically completed

¹⁴ See 47 C.F.R. § 1.1420(c). This timeframe applies to “all requests for pole attachment up to the lesser of 300 poles or 0.5 percent of the utility's poles in a state.” 47 C.F.R. § 1.1420(g)(1).

sequentially.¹⁵ An attacher who elects one-touch make-ready would instead use a utility-approved contractor to perform all make-ready work¹⁶ and place its attachments at the same time. Instead of multiple truck rolls and possible municipal disturbances, the new attacher and its contractor will have just one. By replacing sequential make-ready with one-touch make-ready, the new attacher can shorten significantly the make-ready and attachment process.

New attachers would be required to notify the pole owner and existing attachers within 10 days of completing make-ready work and placing its facilities. Pole owners and existing attachers would provide written notice to the new attacher of any make-ready or attachment corrections that are needed; the new attacher would then have 30 days from notice to correct deficiencies. These time periods for post-make-ready notice and correction would not affect the new attacher's ability to use its newly attached facilities.

2. Parties Could Also Choose the Existing Timeframe and Process.

Alternately, parties could choose to proceed under the existing attachment process. The Commission's existing rules establish deadlines for pole owners to respond to pole applications and for all parties to complete make-ready work. The entire process should take up to 133 days—including 60 days for make-ready work—for orders not involving large quantities of poles or wireless attachments above the communications space.¹⁷ If the make-ready deadlines are not

¹⁵ If existing attachers do not complete make-ready within the 60-day period, the pole owner can assert a right to an additional 15 days to complete make-ready work. *See* 47 C.F.R. § 1.1420(e)(1)(iv).

¹⁶ One-touch make-ready would include make-ready on the existing pole and, where a new pole is required to accommodate the new attacher, the installation of a new pole, the transfer of facilities to the new pole, and the removal and disposal of the old pole.

¹⁷ *See* 47 C.F.R. § 1.1420. The Commission's rules specify a 90-day make-ready period for wireless attachments above the communications space. *See* 47 C.F.R. § 1.1420(e)(2)(ii). The Commission should clarify that this 90-day period applies to all such attachments, including pole-top wireless attachments.

met, then the new attacher has the right to complete the work by engaging a contractor approved by the pole owner.¹⁸

The Commission adopted the existing timelines in 2011 after developing an extensive record on the timelines for the various stages of the pole attachment process.¹⁹ Given that underlying record, the Commission should not adopt the *Notice*'s proposals to dramatically shorten the existing pole attachment process. With the one-touch make-ready alternative available to those who want to move more quickly, the Commission should leave intact the current process and timelines for those attachers who do not wish to take on the responsibility for conducting an engineering survey, estimating the necessary make-ready work, and doing one-touch make-ready through an approved contractor. There is no reason to believe that pole owners and existing attachers can accomplish these tasks any faster now than they could in 2011. And where existing attachers fail to complete make-ready within the specified timeframe, the Commission's current rules allow the new attacher to do the work by engaging a contractor approved by the pole owner.²⁰

The Commission should also consider whether this process should apply equally to so-called "mid-span" attachments. Currently, some providers have taken the position that attachments directly to existing cable or fiber between two poles need not follow any formal process for review or approval. But these mid-span attachments could implicate similar safety and reliability concerns as pole attachments, and the Commission should consider whether a similar process should be met.

¹⁸ See 47 C.F.R. § 1.1420(h)(2)(i).

¹⁹ See *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, ¶¶ 21-48 (2011) ("2011 Pole Attachment Order").

²⁰ See 47 C.F.R. § 1.1420(h)(2)(i).

B. The Commission Should Hold that Incumbent LECs are Entitled to the Same Telecom Rate as Other Attachers.

The Commission should adopt a rule that the “just and reasonable rate” under Section 224(b) for incumbent LEC attachers should be calculated using the most recent telecommunications rate formula.²¹ In the alternative, the Commission should presume that this formula provides a just and reasonable rate and require utilities seeking to overturn it to provide substantial evidence demonstrating why it is improper in a specific circumstance.

At the outset, the Commission’s jurisdiction encompasses not just rates, but also terms and conditions of attachment to investor-owned utility poles.²² The Commission has found that because incumbent LECs own fewer poles now than in the past, “market forces and independent negotiations may not be alone sufficient to ensure just and reasonable rates, terms and conditions for incumbent LECs pole attachments.”²³ While rates are a focus of the *Notice*, other terms and conditions may similarly impose unreasonable costs or burdens on incumbent LECs or other attachers that the Commission should be ready to address through its pole attachment complaint procedures or in this proceeding.

The *2011 Pole Attachment Order* reiterated that incumbent LECs are entitled to just and reasonable pole attachment rates just as their competitors receive and that ensuring such rates encourages broadband deployment and prevents distortions to competition.²⁴ But the *2011 Pole Attachment Order* did not specify an attachment rate formula for incumbent LECs. Instead, the Commission held that “to the extent that the incumbent LEC demonstrates that it is obtaining

²¹ See *Notice* ¶ 45.

²² See 47 U.S.C. § 224(b)(1) (stating that “the Commission shall regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable”).

²³ *2011 Pole Attachment Order*, ¶ 199.

²⁴ See *2011 Pole Attachment Order* ¶ 6.

pole attachments on terms and conditions that leave them comparably situated to telecommunications carriers or cable operators, we believe it will be appropriate to use the rate of the comparable attacher as the ‘just and reasonable’ rate for purposes of section 224(b).”²⁵ If an incumbent LEC cannot make such a showing (i.e., the incumbent LEC is not similarly situated to a competitive LEC or cable attacher), then the Commission uses a higher rate based on the Commission’s pre-2011 telecommunications formula as a “reference point” for evaluating whether pole attachment rates charged to incumbent LECs are just and reasonable.²⁶

The Commission’s incumbent LEC rate formulation “has led to repeated disputes between incumbent LECs and utilities over appropriate pole attachment rates.”²⁷ In many cases, utilities continue to charge incumbent LECs pole attachment rates significantly higher than the Commission’s telecommunications rate formula (and many multiples of what they charge competitive LEC or cable attachers) based on old—in some cases, decades-old—contracts. And incumbent LECs may be unable, as a practical matter, to renegotiate many of these contracts because of a disparity in pole ownership.²⁸ These utilities assert that for any new rates to apply to existing attachments, an incumbent LEC must remove the attachments completely. Incumbent LECs have a Hobson’s choice: live with insupportably high attachment rates that distort competition, or risk major disruption of their networks to obtain even the chance of a reasonable renegotiation.

²⁵ *2011 Pole Attachment Order* ¶ 217.

²⁶ *See id.* ¶ 218.

²⁷ *See Notice* ¶ 44.

²⁸ *See 2011 Pole Attachment Order* ¶ 199 (“The record demonstrates that incumbent LECs own fewer poles now than in the past, and this relative change in pole ownership may have left incumbent LECs in an inferior bargaining position to other utilities.”).

The Commission has asked whether a presumption that incumbent LECs are entitled to the telecom rate will “end this controversy.”²⁹ The better way to “end this controversy” is to adopt a rule, rather than a presumption, that incumbent LECs are entitled to the new telecom rate. But, absent a rule, the Commission should adopt a presumption with clear standards that set a high bar and alert the industry that this will be a strong presumption.

Our experience over the past six years has confirmed the need for either a blanket rule or a strong presumption with clear standards. Since the *2011 Pole Attachment Order*, multiple utilities have tried to continue charging us unreasonably high rates by asserting that Verizon has received alleged “unique benefits.” But the “unique benefits” cited do not provide an advantage and regardless, just lead to protracted litigation.³⁰ Rather than setting the stage for yet more legal wrangling, the Commission should confirm that the incumbent LEC telecom rate presumption should rarely be overcome, and definitely not by benefits that the incumbent LEC receives that are provided to all attachers, or that the incumbent LEC has never received.³¹ Nor should the presumption be overcome by efforts to point to costs allegedly incurred by the power company to better its own plant, such as costs associated with the installation of taller, stronger poles, or

²⁹ Notice ¶ 45.

³⁰ See *Verizon Virginia, LLC and Verizon South, Inc. v. Virginia Electric Power Co. d/b/a/ Dominion Virginia Power*, Order, EB-15-MD-006, No. 15-190; DA 17-395, ¶¶ 18, 20, 22 (May 1, 2017) (“*Verizon v. Dominion Virginia Power*”) (holding that Verizon pays unjust and unreasonable pole attachment rates and finding that the record suggests that “Dominion has overstated the value of a number of such alleged benefits” and “with only a few exceptions, Dominion does not quantify the purported material advantages that Verizon receives”); see also *Verizon Pole Attachment Complaint, Verizon v. Dominion Virginia Power*, No. 15-190, at 20-41 (Aug. 3, 2015) (arguing that the parties’ joint use agreement did not provide unique benefits that justify charging Verizon a rate higher than the telecom rate).

³¹ See *Verizon v. Dominion Virginia Power*, ¶ 18 (“Where Verizon performs a particular service itself and incurs costs comparable to its competitors in performing that service, we agree with Verizon that Dominion may not ‘embed in Verizon’s rental rate costs that Dominion does not incur.’”).

by costs that are canceled out because the incumbent LEC incurs the same reciprocal cost for the power company. Nor should the presumption be overcome based on whether an incumbent LEC has “special access” to modify a utility’s poles.³² While the term “special access” is vague and could lead to disagreements over its meaning, regardless, access to work on a pole without providing prior notice cannot justify a higher rate for the incumbent LEC because utilities may provide their attachers similar “access” in certain circumstances such as service drops or overflashing.

Nor should incumbent LEC entitlement to the telecommunications rate be conditioned on making commensurate reductions in the rates charged to the utility for attaching to the incumbent LEC’s poles.³³ Power companies have in some instances used their bargaining power to not just increase the rates they charge incumbent LECs—but to reduce the rates they pay incumbent LECs. Verizon, for example, is party to a joint use agreement where the per-pole rate that Verizon pays far exceeds the per-pole rates that Verizon charges the power company, even though the power company uses significantly more space on each joint use pole than Verizon does.³⁴ Requiring Verizon to provide a “commensurate” reduction to the power company’s rate in these circumstances would perpetuate this unfair disparity.

The relative rates charged to the utility and the incumbent LEC should continue to factor into the analysis.³⁵ In deciding an incumbent LEC’s complaint, the Commission can also consider “the rates, terms and conditions that the incumbent LEC offers to the electric utility or

³² See Notice ¶ 45.

³³ See *id.* ¶ 45.

³⁴ See *Verizon v. Dominion Virginia Power* ¶ 21 (finding that the record supports Verizon’s argument “that the per-pole rate that Dominion charges Verizon . . . far exceeds the per-pole rates that Verizon charges Dominion despite the fact that Dominion uses significantly more space on each joint use pole than Verizon”).

³⁵ See Notice ¶ 45.

other attachers for access to the incumbent LEC's poles, including whether they are more or less favorable than the rates, terms and conditions the incumbent LEC is seeking."³⁶ And the Commission has noted that the incumbent LEC should charge the power company a proportionate rate.³⁷ This means that, if the incumbent LEC is charged the new telecom rate, it should charge the power company the new telecom rate with the space occupied input modified to reflect the greater amount of space required by the power company on the pole.

In the event that a utility overcomes the incumbent LEC telecom rate presumption, then the Commission should set the pre-2011 telecom rate as a cap on the rate that may be charged an incumbent LEC.³⁸ Since 2011, the pre-2011 telecom rate has served as a "reference point" in determining the just and reasonable rate for incumbent LEC pole attachments.³⁹ Uncertainty about what this means has contributed to problems negotiating new rates. If the pre-existing telecom rate is instead an upper bound, it will focus the parties' negotiations by cabining the range of rates at issue.

C. The Commission Should Adopt the *Notice's* Proposals to Exclude Capital Costs from Pole Attachment Rates.

The Commission should adopt the *Notice's* commonsense proposals to exclude utilities' capital expenses from pole attachment rates.⁴⁰ It is unreasonable to require attachers or joint users to help defray the costs of constructing a pole designed primarily to meet an electric utility's own need for a taller pole or increased pole strength. Indeed, attachers and joint users should not be expected to defray the costs of replacing wood poles with significantly more expensive steel and concrete poles, or poles significantly higher than 45 feet, as these types of

³⁶ 2011 Pole Attachment Order ¶ 219.

³⁷ See *id.* ¶ 218, n.662.

³⁸ See *Notice* ¶ 45.

³⁹ See 2011 Pole Attachment Order ¶ 218.

⁴⁰ See *Notice* ¶ 40.

poles are generally constructed to serve the needs of the electric utility and not those of attachers. Additionally, attachers should not be forced to defray costs that pole owners have already received capital reimbursements for or those costs that are exclusively related to the conduct of the pole owner's own business or maintenance of the pole owner's own facilities.

D. The Commission Should Adopt a Shot Clock for Pole Attachment Complaints.

The Commission should adopt the *Notice's* proposals to establish a 180-day "shot clock" for the Enforcement Bureau to resolve both pole access complaints and other types of pole attachment complaints.⁴¹ Adopting a 180-day shot clock for resolving pole attachment complaints would provide all parties with a swift and effective process for ensuring that a challenged rate is just and reasonable. Such a 180-day shot clock would align the federal process with the time period that Congress gave reverse-preemption states to decide pole attachment complaints.⁴²

Currently, the Commission's rules require complainants to provide detailed information in their complaints and to conduct executive-level discussions with the other side before filing a complaint.⁴³ This detailed complaint and parallel requirement for a fulsome response is intended to alleviate the need for extensions; indeed, the Commission's rules state that extensions "are not contemplated" unless justified under 47 C.F.R. Section 1.46 and that there typically should be no other filings or other motions.⁴⁴ But in practice, power companies have routinely requested extensions and discovery that extend the Commission's complaint proceedings. These power companies argue simultaneously that parallel state court actions should proceed expeditiously

⁴¹ See *Notice* ¶¶ 47, 51.

⁴² See 47 U.S.C. § 224(c)(3)(B).

⁴³ See 47 C.F.R. § 1.1404.

⁴⁴ See 47 C.F.R. § 1.1407.

because the FCC is too slow to resolve complaints. For example, Dominion Virginia Power has argued that the Commission has a “track record of deferring resolution of critical issues for extended periods of time” and that a stay of the state court action “could last five or more years while an FCC decision is awaited.”⁴⁵ Similarly, Florida Power & Light argued that a state court litigation should proceed rather than wait for a Commission decision because “[i]t is not uncommon for FCC proceedings of this nature [i.e. pole attachment complaints] to reside, unaddressed, in the FCC’s administrative machinery for years.”⁴⁶

The 180-day shot clock should begin when the complaint is filed. Since complaints will be fully briefed within 50 days of filing, the Enforcement Bureau would have 130 days to decide the case. While the Enforcement Bureau should be able to pause the shot clock for a short time period to account for actions beyond its control,⁴⁷ it should exercise that ability only sparingly for extreme circumstances and in no cases beyond the 360 days Congress gave the states as an outside deadline to resolve similar actions.⁴⁸

III. COPPER RETIREMENT REFORMS TO ENCOURAGE TRANSITION TO NEWER TECHNOLOGIES

The Commission has properly encouraged deployment of fiber facilities for good reason: fiber provides a future-proof, reliable platform to meet consumers’ communications needs now and into the future. In comparison to legacy copper cable, fiber provides environmental and performance advantages, as it offers significantly greater bandwidth and is much less sensitive to

⁴⁵ Opp. of Dominion Virginia Power to Mot. to Dismiss or Stay of Verizon Virginia, *Virginia Electric Power Co. d/b/a/ Dominion Virginia Power v. Verizon Virginia, LLC, et al.*, Case No. CL-15003029-00, at 3, 21 (Henrico Cty. Va. Cir. Ct. Apr. 29, 2016).

⁴⁶ Florida Power & Light Co.’s Memorandum in Opp. to Verizon Florida LLC’s Mot. to Stay, *Florida Power & Light Co. v Verizon Florida LLC*, Case No. 13-14808, at 5 (Miami-Dade Cty. Fla. Cir. Ct. Mar. 27, 2014).

⁴⁷ See Notice ¶ 49.

⁴⁸ See 47 U.S.C. § 224(c)(3)(B).

distance limitations than is copper.⁴⁹ And importantly, the Commission has long acknowledged that requiring providers to retain copper or other facilities no longer needed to serve their customers would unnecessarily divert resources better spent deploying or enhancing the networks that they intend to use to serve their customers.⁵⁰

But—although attempting to streamline copper retirement—the *2015 Technology Transitions Order* created a new framework that lengthened and overly complicated the copper retirement process.⁵¹ While some of the changes adopted in the *2015 Technology Transitions Order* are unobjectionable or even beneficial—such as eliminating the largely unused process for certain parties to object to and delay a copper retirement—some of the other changes in practice unduly complicate and burden the process overall and increase customer confusion.

We speak from experience. As explained in the attached declaration of Kevin N. Smith, in recent years Verizon began a concerted effort to bring fiber to many of its customers and to retire legacy copper facilities.⁵² Pursuant to that project, we have filed to retire copper at approximately 3.8 million locations across eight states.⁵³ And as a result of our programs to encourage customers experiencing repeated service issues with copper facilities to migrate to

⁴⁹ Comments of Verizon, *Technology Transitions; et al.*, GN Docket No. 13-5, *et al.*, at 6-7 (Feb. 5, 2015) (“Verizon Tech Transitions Comments”).

⁵⁰ See *FCC National Broadband Plan* at 48-49 (stating that incumbents forced to retain redundant copper networks would have reduced incentives to invest in and deploy next generation facilities). Relatedly, in the Universal Service context, the Commission has recognized that it makes no sense to support duplicative networks, and has accordingly proposed that support be limited to “[a] single fixed broadband connection” per residence/household. *Connect America Fund; et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17,663, ¶ 1256 (2011).

⁵¹ See *Technology Transitions; et al.*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 30 FCC Rcd 9372 (2015) (“*2015 Technology Transitions Order*”).

⁵² See *attached*, Declaration of Kevin N. Smith, ¶ 2 (“Smith Decl.”).

⁵³ See *id.*

fiber, we estimate that from 2012 through 2016, Verizon made approximately 3.4 million fewer repair or trouble-shooting dispatches than would have been required had these customers remained on copper facilities. Although it is hard to quantify these saved dispatches in terms of savings to customers, there is no question that many customers avoided the time and hassle of scheduling repair appointments and being home or missing work to meet a repair technician.

We have filed our copper retirement notices under both the existing and the previous copper retirement rules. And based on our real-world experiences, we address some issues with the copper retirement framework adopted in 2015, including the length of the public notice period, disconnecting retail customer notices from the FCC's public notice process, the definition of "copper retirement," content of notices to retail customers, providing notice to competitive LECs, state governors, and tribal entities, the certification requirement, retaining the elimination of a period for parties to object and delay, eliminating the prohibition on providing advance notice of a network change, the terminal-equipment-notice requirement, emergency copper retirements, and rejecting new copper orders after a copper retirement notice has been filed.

A. The Public Notice Period Should Be Shortened to 90 Days.

As a starting point, the Commission should adopt a shorter 90-day public notice period. As the *Notice* notes, customers and competitive LECs have been aware that technology transitions are happening and 90 days' notice should be more than enough time for them to act, particularly when they will be retaining the same services over fiber that they had over copper.⁵⁴

⁵⁴ See Verizon Tech Transitions Comments, at 15 (noting that when Verizon migrates customers from copper to fiber, "we explain to traditional voice customers that they will continue to be able to receive the same regulated legacy voice services over fiber that they did over copper, at the same price, terms, and conditions").

If there are no customers on the copper facilities being retired, then the FCC public notice period should be shortened to 30 days.⁵⁵

To improve the efficiency of the copper retirement process, the Commission’s 90-day notice period should begin on the day that the copper retirement notice is filed with the Commission and not be dependent on the Commission’s release of a public notice. At a minimum, if the 90 day period continues to be tied to the public notice, the Commission should establish a process that ensures that no more than 10 business days pass between the time the copper retirement notice is filed and when the Commission releases a public notice.

B. The Timing of Notifying Retail Customers that Their Service Will Be Migrated Should Be Disconnected from the FCC Public Notice Process.

If the Commission continues to require retail customer notifications, it should disconnect its Commission filing and notice process—which relates to the timing of copper retirement—from the process of notifying retail customers as to when their services will be migrated. The customer migration date and copper retirement dates are generally distinct.⁵⁶ Because providers cannot flash cut and migrate all customers on a single date, we migrate customers in waves before we retire copper.⁵⁷ A customer’s migration can occur well before the copper is actually retired and can also be well after the “on or after” effective date specified in most copper retirement notices.⁵⁸

Yet the current rules require us to notify retail customers about the effective date of the copper retirement. This confuses them. In our experience, retail customers are far more concerned about when they will be migrated to the newer technology than when the formal

⁵⁵ See Notice ¶ 63.

⁵⁶ See Smith Decl. ¶ 9.

⁵⁷ See *id.*

⁵⁸ See *id.*

copper retirement takes place.⁵⁹ Thus, if any retail customer notice is mandated (and such a mandate is unnecessary given that providers must talk with their customers to actually migrate them), such notice should be divorced from the Commission’s timeline for its public notice. Customer notice (if required at all) should be some time period (perhaps, 60-90 days) prior to that customer’s *migration*, not prior to the date on or after which copper formally may be retired, and providers should be able to migrate customers at any point after customers have received the required amount of notice regarding their individual migration date. This notice period could happen at any time, including after the “on or after date” specified in a provider’s copper retirement filing. A draft timeline showing our proposed new process is attached at Exhibit A.

C. The “De Facto” Concept Should Be Eliminated from the Definition of “Copper Retirement.”

The Commission should eliminate “de facto” retirements from the definition of copper retirement.⁶⁰ The *2015 Technology Transitions Order* defined “copper retirement” as the “removal or disabling of copper loops, subloops, or the feeder portion of such loops or subloops, or the replacement of such loops with fiber-to-the-home loops or fiber-to-the curb loops.”⁶¹ The definition also includes “de facto” copper retirements that are the functional equivalent of a copper retirement.⁶² The “de facto” concept should be removed because it introduces significant uncertainty to the copper retirement process. Among other practical problems, the vague de facto retirement concept could result in unmanageable loop-by-loop retirement requirements or complicate a provider’s ability to move customers to fiber when that is the best and most efficient way to resolve troubles they are experiencing with copper facilities. Regardless of

⁵⁹ *See id.* ¶ 8.

⁶⁰ *See Notice* ¶ 60.

⁶¹ *2015 Technology Transitions Order*, ¶ 80.

⁶² *See id.*

whether the Commission changes the definition of “copper retirement,” it should reiterate that there is no actual (or “de facto”) copper retirement when “a carrier migrates an individual customer from its copper to its fiber network to resolve service issues raised to the carrier by the customer.”⁶³

D. The Commission Should Adopt a Flexible Standard Regarding Notices to Retail Customers.

If the Commission decides to retain the requirement that incumbent LECs provide direct notice to residential and non-residential retail customers, the Commission should eliminate the current one-size-fits-all approach and leave flexibility for providers to determine how most effectively to communicate with their customers.

As a practical matter, providers will almost always need to communicate with customers directly to migrate them from copper to fiber or another technology. Thus, it seems questionable whether the Commission needs to keep its newly imposed retail notice requirement. If the Commission decides to retain a direct notice requirement to retail customers, however, the Commission should recognize that providers need flexibility in determining how to most effectively communicate with their customers. Given the variations in how and when migrations will take place, the current one-size-fits-all approach to notice contributes to customer confusion. The current rules prescribe the content of customer notice in detail, requiring the copper retirement “on or after” date, a statement regarding whether existing services will be available with the same features and functionalities, and a neutral statement regarding available services.⁶⁴ Incumbent LECs are prohibited from including “any statement attempting to encourage a

⁶³ *Id.* ¶ 93.

⁶⁴ *See* 47 C.F.R. § 51.332(c)(2).

customer to purchase a service other than the service to which the customer currently subscribes.”⁶⁵

These requirements can result in customer confusion because incumbent LECs are required to provide the regulatory copper retirement “on or after” date even though what matters to customers is their individual migration date. Also, individual customers will often have unique interests and needs, and it may be more effective for a provider to deliver information to customers on an individual basis when the customer calls to schedule their migration instead of overwhelming customers with information in a written notification. Rather than micromanaging the content of the retail customer notices, the Commission should, at most, establish a general principle that notices be reasonably calculated to provide useful and timely information to allow customers to make an informed decision regarding the network change.⁶⁶

E. The Current Requirement Regarding Notice to “Interconnecting Entities” is Burdensome and Unnecessary.

The *2015 Technology Transitions Order* requires incumbent LECs to service notice on “each entity within the affected service area that directly interconnects with the incumbent LEC’s network,” whereas the previous rule required notice only to telephone exchange service providers that directly interconnect.⁶⁷ Thus, under the *2015 Technology Transitions Order*, providers must send hundreds of notices to interconnecting entities regardless of whether they would be impacted by the copper retirement.⁶⁸ To eliminate confusion and waste, the Commission should modify this 2015 notice requirement to apply only to telephone exchange

⁶⁵ 47 C.F.R. § 51.332(c)(2)(iii).

⁶⁶ Providers should also continue to be able to use email or electronic communications when appropriate. See 47 C.F.R. § 51.332(b)(3)(iv).

⁶⁷ See Notice ¶ 61 (quoting the *2015 Technology Transitions Order*).

⁶⁸ See Smith Decl. ¶ 12.

service providers who directly interconnect with the incumbent LEC's network and whose circuits are directly affected by the copper retirement.

The Commission should also remove any requirement that notices to these entities be served individually (by mail or otherwise). Because Verizon often files copper retirement notices by wire center, telephone exchange service providers (or interconnected entities under the current rules) receive multiple filings for a single state or multiple states.⁶⁹ This results in confusion and in companies ignoring the notices they receive.⁷⁰ Moreover, competitive LECs are accustomed to receiving important notices on our network change website and not by a hard copy mailing.⁷¹ The Commission should therefore withdraw the mailing requirement and instead allow incumbent LECs to post notices on their network change web pages within five business days of filing a copper retirement application with the Commission.

F. Other Notice Requirements Should Be Revisited.

The *2015 Technology Transitions Order* expanded the list of copper retirement-notice recipients, including to some parties that may not have a substantial interest in receiving notice of copper retirements that does not directly impact their services.⁷² For example, it may not be necessary to continue to provide a copy of all copper retirement filings to state governors and tribal authorities. Any state or tribal entities who are customers receive notices in the regular course, pursuant to the Commission's requirement that customers be notified; copies of notices that do not directly affect them may be confusing.⁷³ However, if the Commission retains the requirement to notify tribal entities, then the Commission should make granular tribal nation

⁶⁹ *See id.*

⁷⁰ *See id.*

⁷¹ *See id.*

⁷² *See Notice* ¶ 61.

⁷³ *See Smith Decl.* ¶ 11. For the same reasons, providers should not be required to provide notice of discontinuances to tribal authorities. *See Notice* ¶ 99.

location information publicly available. Verizon files many of its copper retirement notices at the wire center or sub-wire center level rather than the state level, and the lack of granular public information makes it difficult to identify whether an individual tribal nation has claims within the boundaries of the particular wire center or sub-wire center.⁷⁴

G. If the Commission Retains a Certification Requirement, It Should Be Tied to the Completion of Customer Migrations.

Under the current rules, incumbent LECs are required to certify that they have provided all of the requisite notices within 90 days of the Commission's public notice of the copper retirement. But as discussed above, it is often the case that we will not move some customers until after the copper retirement effective date, maybe six months or longer after the public notice was issued. Thus, under the current rules, the certification obligation requires providers to notify customers of the copper retirement effective date when what matters to customers is their migration date, and to receive that notice sometimes months before they need to take any action.⁷⁵ If the certification requirement remains at all, it should be a certification that all customers have received appropriate notice of their migration date. This certification could be filed before a provider actually retires copper (or when all migrations are complete and all customers contacted), which could be on or even well after the copper retirement effective date specified in a copper retirement filing.

H. Copper Retirement Should Remain a Notice-Based Process.

The *2015 Technology Transitions Order* eliminated competitive LECs' ability to object to and seek to delay an incumbent LEC's planned copper retirement.⁷⁶ The Commission should retain this change and keep copper retirement a notice-based process. Competitive LECs should

⁷⁴ See Smith Decl. ¶ 11.

⁷⁵ See *id.* ¶ 13.

⁷⁶ See Notice ¶ 59.

be aware by now that technology transitions are happening and should be prepared to act when they receive notice of a copper retirement. There is no reason to allow competitive LECs—or any other party—to delay a provider’s copper retirement.

I. The Commission Should Delete Section 51.325(c).

The Commission should adopt the *Notice*’s proposal to eliminate Section 51.325(c), which prohibits providers from disclosing “information about planned network changes” to “separate affiliates, separated affiliates, or unaffiliated entities (including actual or potential competing service providers or competitors)” until public notice has been given.⁷⁷ The Commission must ensure that its rules do not impede the transition to more modern network facilities and services. As currently written, Section 51.325(c) actually slows down network transitions by inhibiting providers from working cooperatively with landowners and landlords to obtain rights of way for next-generation technologies ahead of filing to retire copper.

As explained in the Smith Declaration, multiple dwelling units (MDUs) pose unique challenges to network transitions.⁷⁸ To migrate customers at MDUs to newer technologies, Verizon often must first receive permission from the landlord to deploy fiber to the MDU. Because of Section 51.325(c), Verizon cannot notify MDU landlords of its plans to retire copper unless Verizon has filed a copper retirement notice with the FCC. But filing a copper retirement notice also requires Verizon to notify nonresidential retail customers and interconnecting entities in the affected areas. As a result, Verizon is required to notify these entities of a copper retirement before Verizon knows if the landlord will allow access. It would make much more sense for Verizon to provide advance notice to the landlord, and if necessary, to provide advance notice to tenants so that they can request that their landlord provide access.

⁷⁷ See *Notice* ¶ 67; 47 C.F.R. § 51.325(c).

⁷⁸ See Smith Decl. ¶¶ 4-6.

Section 51.325(c) also limits Verizon's discussions of contemplated network changes or copper retirement with its large business, government, and interconnecting customers. By repealing this rule, providers could better work with customers on a longer time frame to assess the impact of and better prepare for any transition.⁷⁹

J. The Commission Should Eliminate the Terminal-Equipment-Notice Requirement.

The Commission should eliminate Section 68.110(b)'s requirement that carriers provide customers written notice if "any customer's terminal equipment" would be materially affected by a network change.⁸⁰ The *Notice* observes correctly that the rule is fundamentally flawed: Carriers cannot track every variety of customer terminal equipment and their capabilities. A carrier's tariffs and contracts fully notify its customers of the features that they are entitled to receive, giving consumers all the information required to determine what forms of terminal equipment will work with the service they have purchased. The Commission should eliminate Section 68.110(b) and the current requirement that carriers certify to the Commission that they complied with Section 68.110(b).⁸¹

K. The Commission Should Allow Emergency Copper Retirements.

The Commission should also make clear that the normal copper retirement timeline does not apply to emergency copper retirements triggered by third parties (such as copper cuts or municipal mandates) or by external events such as hurricanes or copper cuts.⁸² In such situations, incumbent LECs should be required to provide as much notice to affected customers

⁷⁹ See Smith Decl. ¶ 7.

⁸⁰ *Notice* ¶ 70.

⁸¹ See *Notice* ¶ 70.

⁸² See *id.* ¶ 63.

and make a copper retirement filing as soon as is practicable, and include in the certification (if there is a certification requirement) a description of the situation and how they provided notice.

Verizon has experienced instances where it has not controlled the decision to retire the copper or the copper retirement timeline.⁸³ In several of these instances, damage to existing copper or short-term notice of municipal projects damaged or required us to move our copper facility. Given the circumstances, it may make the most sense to deploy fiber rather than restore the copper. For example, prior to the current copper retirement rules becoming effective, Verizon had to post copper retirement notices on a less than six-month notice period, which the rules at the time allowed. For example, in 2015 New York City installed a new sewer project that required Verizon to move its copper cables in the path of that construction. Verizon filed a notice to retire the copper on 97 days' notice.⁸⁴ Similarly, in 2016, New York City upgraded a sanitary sewer in West Staten Island that required Verizon to move its copper facility in the path of construction. Verizon filed the copper retirement notice on 99 days' notice.⁸⁵ These filings would not be allowed under the current rules, and, even with a shorter 90-day notice period in place, we still need the ability to expedite copper retirement in situations where a third party requires us to file on a shorter timeframe (e.g., a contractor plans to raze a building).

Similarly, emergencies and natural disasters can force effective copper retirement with little notice. For example, Hurricane Sandy destroyed or damaged a significant portion of our copper facilities in many areas in 2012. Although we filed notices for copper retirement after the

⁸³ See Smith Decl. ¶ 15.

⁸⁴ See *Wireline Competition Bureau Short Term Network Change Notification Filed by Verizon New York Inc.*, Public Notice, WC Docket No. 15-104, Report No. NCD-2448 (Apr. 29, 2015); Smith Decl. ¶ 15.

⁸⁵ See *Wireline Competition Bureau Short Term Network Change Notification Filed by Verizon New York Inc.*, Public Notice, WC Docket No. 15-320, Report NCD-2513 (Dec. 16, 2015); Smith Decl. ¶ 15.

fact and received a limited waiver of the notice periods in the then applicable rules,⁸⁶ the Commission should permanently waive the timing and notification requirements of the copper retirement process in similar emergency situations. In such situations, incumbent LECs should be required to provide as much notice to affected customers and make a copper retirement filing as soon as is practicable, and include in their filing a description of the situation and how they provided notice.

L. Providers Should Be Allowed to Reject New Copper Orders as of the Date of Their Copper Retirement Filing or the Date of the Public Notice.

The Commission should also adopt a rule allowing incumbent LECs to decline orders for new copper-based services after a copper retirement notice is filed for a particular area and to provide service on alternative facilities. Once an incumbent LEC files to retire copper for a particular area, it does not make economic sense for the incumbent LEC to provision a new order on copper, including orders for unbundled network elements, only to shortly retire the copper thereafter.

IV. THE DISCONTINUANCE PROCESS SHOULD BE STREAMLINED

The Commission should revisit its discontinuance rules to better enable providers to eliminate outdated legacy services. As technology evolves, providers should not be saddled with barely used services that have largely been supplanted by newer products. Congress' original intention demonstrates how far the Commission has stretched Section 214 and the discontinuance process. Section 214 was designed originally to ensure that a community not be completely cut off from services; it should not today be used to require providers to maintain uneconomic or inefficient services indefinitely.

⁸⁶ See 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 13,826 (2013).

Properly construed, Section 214 requires Commission approval only where a service discontinuance would cause a community, or part of a community, to lose service entirely without administrative oversight. Yet today, that concern is absent: Providers everywhere are eager to sell voice and data service using multiple modern technologies. Customers have communication options ranging from traditional TDM (over fiber or otherwise), VoIP, over-the-top, wireless, and private line services. And the Commission recently found that “the market for business data services is dynamic with a large number of firms building fiber and competing for this business” and that “[c]able providers have also emerged as formidable competitors in this market.”⁸⁷ Accordingly, the Commission should hold that, where a carrier discontinues a service, it does not trigger the need for Section 214 review or approval where the community continues to have access to comparable service—whether from that provider or another provider, and whether over fiber, IP-based, or wireless technologies.

If the Commission concludes that Section 214(a) compels it to require carriers to get approval before discontinuing a service despite the presence of alternatives in the community, then at a minimum the Commission should abandon the “adequate replacement” test it adopted in 2016 for certain applications to discontinue legacy voice services—a test that will only complicate a process the Commission sought to simplify.

The Commission also should reverse the “functional test” it adopted in 2014⁸⁸ and revert to the traditional understanding that only those functionalities that a carrier has promised its customers, by tariff or contract, are part of its “service” for purposes of Section 214(a). It also

⁸⁷ *Business Data Services in an Internet Protocol Environment; et al.*, Report and Order, 32 FCC Rcd 3459, ¶ 2 (2017).

⁸⁸ *See Technology Transitions; et al.*, Notice of Proposed Rulemaking and Declaratory Ruling, 29 FCC Rcd 14,968, ¶ 115 (2014) (“*2014 Technology Transitions NPRM and Declaratory Ruling*”).

should take a number of smaller steps, outlined below, to streamline the discontinuance process and clear the way for carriers to roll out modern services.

A. The Commission Should Find that a Carrier Does Not Trigger § 214(a) if Comparable Fiber, IP-Based, or Wireless Alternatives Are Available.

1. A Carrier Does Not Trigger § 214(a) by Discontinuing a Service If Alternative Services Are Available to the Same Community.

A carrier does not trigger Section 214(a) by discontinuing an offering if the affected community's members can secure comparable service through a fiber, IP-based, or wireless alternative. Although earlier Commissions understood Section 214(a) to require carriers to obtain approval to discontinue individual service offerings notwithstanding alternatives available to the community, the uneasy fit between that precedent and today's changed competitive landscape highlights the error underlying earlier Commissions' decisions: Congress designed Section 214(a) to protect communities from being cut off from the outside world, not to create an offering-by-offering command-and-control regime. The Commission should take this opportunity to promulgate a rule returning Section 214 to its historical roots, and holding that, when a carrier stops selling a service to a particular community, but a comparable service remains available to that community through a modern alternative technology, the carrier's decision does not implicate the approval process in Section 214.

That understanding of Section 214(a) flows from its text, as illuminated by its historical context and legislative history. The provision entered the law in 1943, when Congress amended the Communications Act to require that “[n]o carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and

necessity will be adversely affected thereby.”⁸⁹ Congress went on to qualify that requirement with a proviso explaining “[t]hat nothing in this section shall be construed to require a certificate or other authorization from the Commission for any installation, replacement, or other changes in plant, operation, or equipment, other than new construction, which will not impair the adequacy or quality of service provided.”⁹⁰

Congress enacted this language in 1943 as part of broader legislation designed to allow a major telegraph company that was on the brink of collapse to merge with a stronger telegraph company.⁹¹ Congress added the service-discontinuance language to ensure that, as the merging carriers consolidated their equipment and operations, they would not cut communities off from the outside world. Congress’s debates over the provision reflect that the purpose of Section 214(a) is to protect communities’ continued access to the nation’s communications networks while preserving carriers’ ability to upgrade their technologies free from agency micromanagement. For example, Representative Brown, a Conference-Committee manager, explained:

I do not believe that the Congress or the country is interested in whether the telegraph company should abandon or take out a certain insulator or pole or even close down one office, if the community is adequately served by another office. The only thing that the Congress and the country [are] interested in is adequate service.⁹²

⁸⁹ An Act to Amend the Communications Act of 1934, Pub. L. No. 4, § 2, 57 Stat. 5, 11 (1943) (codified at 47 U.S.C. § 214(a)).

⁹⁰ An Act to Amend the Communications Act of 1934, Pub. L. No. 4, § 2, 57 Stat. 5, 11 (1943) (codified at 47 U.S.C. § 214(a)).

⁹¹ See S. Rep. No. 78-13, at 1-4 (1943); H.R. Rep. No. 78-69, at 3 (1943); 1943 Act, 57 Stat. 5; H.R. Rep. No. 78-69, at 1; see also Sharon K. Black, *Telecommunications Law in the Internet Age* 34 (2001) (discussing Postal Telegraph & Cable System’s merger with Western Union Telegraph Co.).

⁹² 89 Cong. Rec. 786 (1943).

Representative Wadsworth, a member of the House subcommittee that had prepared the bill, likewise explained:

Of course, we all know that in certain communities the Western Union may have a telegraph office in the principal hotel and that right across the street there may be an office of the Postal Telegraph Co. Obviously, a merger might result in the abandonment of one or the other, because it is obvious that one office might be entirely sufficient for the community. But to make it certain, we inserted [the proviso now in § 214(a)].⁹³

And Representative Boren, another Conference-Committee manager, noted that alternative language would have required a company seeking to “move a wire from one House Office Building to the other, by way of example . . . to go through the endless red tape of application and hearings and a certificate on the part of the Commission.”⁹⁴

Those worries have proved well-founded. Applying for the Commission’s permission under Section 214(a) can delay a carrier’s service upgrades considerably. The carrier must provide notice in writing not only to all affected customers, but also to the state public utility commission and Governor of the state at issue, affected Tribal authorities, and the Secretary of Defense.⁹⁵ Although an application will be granted automatically 31 or 60 days after filing unless the Commission acts within that period to “notif[y] the applicant that the grant will not be

⁹³ *Id.* at 777.

⁹⁴ *Id.* at 787.

⁹⁵ *See* 47 C.F.R. § 63.71(a).

automatically effective,”⁹⁶ when the Commission provides such notification, there is no deadline for it to act—leaving it free to “sit[] on these requests for months or even years.”⁹⁷

Given this backdrop, the Commission should abandon its historical understanding that Section 214(a) applies to each offering a carrier sells.⁹⁸ For the reasons explained above, that interpretation poorly fits the text, history, and purpose of Section 214(a). Congress could readily have written words that gave the Commission that authority and responsibility—by, for example, barring carriers from discontinuing “any service offering” absent the agency’s permission. But Congress wrote different words, and the Commission should not add other words to justify broader regulation.⁹⁹ Instead, the Commission should find that a carrier does not trigger Section 214(a) by discontinuing a service offering if the affected community’s members can secure comparable service through a fiber, IP-based, or wireless alternative.¹⁰⁰

2. The Discontinuance Process is Especially Out of Place in Today’s Marketplace for Interstate Voice Services.

However warranted the delays associated with the discontinuance process might have seemed in the telegraph marketplace of the 1940s, they are especially out of place in today’s

⁹⁶ *Id.* § 63.71(e). The longer period applies where the service at issue is one for which the Commission has classified the carrier as a dominant, rather than non-dominant, carrier. *See id.*; *see, e.g., Ad Hoc Telecomms. Users Comm. v. FCC*, 572 F.3d 903, 906 (D.C. Cir. 2009) (describing the FCC’s different regulation of carriers classified as dominant and non-dominant). Verizon is classified as a dominant carrier in the provision of many telecommunications services.

⁹⁷ *2014 Technology Transitions NPRM and Declaratory Ruling*, at Statement of Commissioner Pai (dissenting in relevant part).

⁹⁸ *See, e.g., Comments Invited on Application of City of Brookings Municipal Telephone Department to Discontinue Domestic Telecommunications Services*, Public Notice, 30 FCC Rcd 13,639 (2015); *Comments Invited on Application of Progressive Rural Telephone Cooperative to Discontinue Domestic Telecommunications Services*, Public Notice, 30 FCC Rcd 13,281 (2015).

⁹⁹ *See EEOC v. Abercrombie & Fitch Stores, Inc.*, 135 S. Ct. 2028, 2033 (2015).

¹⁰⁰ *See Notice* ¶ 123 (seeking comment on interpreting § 214(a) so that “no application would be required so long as a service offering of a similar type and quality is available in the affected area”).

interstate voice marketplace,¹⁰¹ where they harm consumers and competition as they delay the ability of providers to shift resources from legacy voice services to the more modern offerings that consumers demand. Consumers face no real threat that a discontinuance will leave them without voice service. Mobile wireless network coverage extends to 99.9 percent of the United States; indeed, “more than 90 percent of the population is covered by at least four service providers.”¹⁰² As of the end of 2016, 50.8 percent of American households had eliminated landline service entirely in favor of wireless-only voice service.¹⁰³ And among the minority of households that had not yet cut the cord despite having wireless phones, 38 percent received nearly all or all of their calls on their wireless phones.¹⁰⁴ All told, about two thirds of American households are wireless-only or wireless-mostly.¹⁰⁵ Among those living in poverty, the abandonment of wireline offerings is even greater: 66.3 percent live in households with only wireless telephones, as do 59 percent of those living near poverty.¹⁰⁶ Further, at last count (about a year ago), more than 92 percent of Americans had access to 25/3 Mbps fixed broadband,

¹⁰¹ Section 214’s requirements do not apply to intrastate voice services. *See Technology Transitions; USTelecom Petition for Declaratory Ruling That Incumbent Local Exchange Carriers Are Non-Dominant in the Provision of Switched Access Services; et al.*, Declaratory Ruling, Second Report and Order, and Order on Reconsideration, 31 FCC Rcd 8283, ¶ 52 (2016) (“2016 Technology Transition Order”) (noting that “the Commission’s Section 214 authority applies only to interstate telecommunications services; wholly intrastate services such as local telephone service are excluded from its reach”).

¹⁰² *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Nineteenth Report, 31 FCC Rcd 10,534, ¶ 37 (2016) (estimated by census block).

¹⁰³ *See CDC, Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July-December 2016*, at 2 (May 4, 2017), <https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201705.pdf>.

¹⁰⁴ *Id.*, at 4.

¹⁰⁵ *See id.*

¹⁰⁶ *Id.* at 3.

over which they easily can receive VoIP or over-the-top service from multiple providers.¹⁰⁷ As of mid-2016, there were 60.3 million interconnected VoIP subscriptions in the United States—up from 45.3 million just three years before.¹⁰⁸

Given that applying Section 214 in this context will exact substantial cost with no benefit to consumers, the Commission should take this opportunity to correct earlier Commissions' mistake and find that a carrier does not trigger Section 214(a) by discontinuing a voice or data service offering if the affected community's members can secure comparable service through a fiber, IP-based, or wireless alternative. To accommodate the rapid pace of technological change, the Commission should not adopt rigid criteria for evaluating whether a service lacks comparable alternatives. Each carrier should, instead, be authorized to evaluate all relevant facts to determine whether, if it were to discontinue a service offering in a particular community, the members of that community would remain able to purchase comparable service.

3. If the Commission Concludes That Section 214(a) Requires It to Regulate Individual Carriers' Discontinuance of Individual Legacy Voice Offerings, It Should Partially Forbear From Enforcing Section 214(a).

If the Commission concludes that Section 214(a) compels it to require carriers to get Commission approval when they transition from legacy voice services to their modern alternatives, it should forbear from enforcing the provision accordingly.¹⁰⁹ As explained above, the concern that animated Section 214(a) is irrelevant in today's voice services market. Furthermore, the process imposes needless delay and costs.

¹⁰⁷ See FCC, *Fixed Broadband Deployment Data*, "Fixed Broadband (25 Mbps/3 Mbps) as of June, 2016," <https://www.fcc.gov/maps/fixed-broadband-deployment-data/> (last visited June 13, 2017).

¹⁰⁸ See FCC, *Voice Telephone Services: Status As of June 30, 2016*, at 2 & Figs. 1, 2 (Apr. 21, 2017), https://apps.fcc.gov/edocs_public/attachmatch/DOC-344500A1.pdf.

Accordingly, the Commission should exercise its power to forbear, *sua sponte*, from enforcing Section 214(a) with respect to discontinuances of legacy voice services.¹¹⁰ Section 10 of the Communications Act requires the Commission to forbear from enforcing Section 214(a) to the extent that the Commission determines that three conditions are true: (1) enforcing the “provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory”; (2) enforcing that “provision is not necessary for the protection of consumers”; and (3) “forbearance from applying such provision or regulation is consistent with the public interest,” taking into account any effects on telecommunications competition.¹¹¹

As the usage statistics collected above demonstrate, voice providers on multiple platforms compete ferociously to attract customers. This competition adequately disciplines providers’ practices and rates and protects consumers. Because freeing providers from Section 214(a) in this market will promote competition among those providers on the merits of their next-generation services, forbearance is in the public interest.

To the extent that the Commission understands Section 214(a) to require it to regulate a carrier’s discontinuances of individual legacy voice offerings despite the pervasive presence of modern alternative voice technologies, the Commission should recognize that that command-and-control model is as unnecessary as it is obsolete. The Commission should, therefore, forbear from enforcing it.

¹¹⁰ See *MCI WorldCom, Inc. v. FCC*, 209 F.3d 760, 762 (D.C. Cir. 2000) (*sua sponte* forbearance affirmed).

¹¹¹ 47 U.S.C. § 160(a)–(b).

4. At a Minimum, the Commission Should Reverse the Adequate Replacement Test for Discontinuing Legacy Voice Services.

If the Commission does not forbear from Section 214(a) but concludes that the section applies when a carrier discontinues a service offering and the community has access to comparable alternative fiber, IP-based, or wireless services, the Commission should exercise that authority in a manner that reduces the burdens on carriers seeking to upgrade their networks. Principally, it should reverse the “adequate replacement” test that it adopted in the *2016 Technology Transitions Order*.¹¹² That test still has not gone into effect, but instead must be approved first by the Office of Management and Budget.¹¹³ The adequate replacement test was unwarranted when the Commission adopted it, and should be substantially revised now, before it needlessly slows the transition to next-generation technologies.

Under that test, a carrier asking the Commission automatically to grant its application to discontinue a legacy voice service must satisfy three broad criteria. *First*, it must show that the new service is of “substantially similar levels of quality as the applicant service.”¹¹⁴ To satisfy that prong, the carrier must show that “at least one” alternative service has three features: “substantially similar network performance as the service being continued,” “substantially similar service availability as the service being discontinued,” and “coverage to the entire affected geographic area.”¹¹⁵ As part of that showing, the carrier must satisfy many detailed technical benchmarks.¹¹⁶ *Second*, the carrier must show that the new service offers “compliance with existing federal and/or industry standards required to ensure that critical applications such

¹¹² *2016 Technology Transition Order*, ¶ 65.

¹¹³ *See id.* ¶ 213.

¹¹⁴ *Id.* ¶ 64.

¹¹⁵ *Id.* ¶ 89.

¹¹⁶ *See id.* ¶¶ 94-125.

as 911, network security, and applications for individuals with disabilities remain available.”¹¹⁷ Again, the carrier must satisfy a number of intricate multi-factor balancing tests—particularly concerning network security—to merit approval.¹¹⁸ *Third*, the applicant must show that the new service bears “interoperability and compatibility with an enumerated list of applications and functionalities determined to be key to consumers and competitors.”¹¹⁹

Even if these requirements were lawful—and, for the reasons explained above, they are not—they are unwise, risking serious harm to carriers and consumers alike. Such an ornate application process will not, as the Commission hoped, prove “automatic” or “streamlined.” Instead, it imposes extraordinary burdens on incumbent carriers in gathering and reporting detailed data about how their offerings compare to their competitors’. Further, its third prong mirrors the functional test’s error (discussed below): From when the test goes into effect until it sunsets in 2025,¹²⁰ this prong will prevent carriers from earning an “automatic” grant unless they commit to facilitate services that they never promised their customers—wasting years of resources on old technology that few customers want and nearly none, if any, need, in light of better modern alternatives.

The Commission should abandon the adequate replacement test in favor of the simpler, two-prong alternative proposed in the *Draft Notice*.¹²¹ Under that alternative, an application would be eligible for automatic grant if the carrier could prove “(1) that it provides interconnected VoIP service throughout the affected service area, and (2) that at least one other

¹¹⁷ *Id.* ¶ 64.

¹¹⁸ *See id.* ¶¶ 126-56.

¹¹⁹ *Id.* ¶ 65.

¹²⁰ *Id.* ¶ 170.

¹²¹ *See* Draft Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, WC Docket No. 17-84; FCC-CIRC1704-02, ¶ 83 (Mar. 30, 2017) (“*Draft Notice*”).

alternative voice service is also available in the affected service area.”¹²² If any adequate replacement test is to exist, that one would best balance the interests at stake. It ensures that consumers will continue to have access to the voice service the applicant historically provided them, and that competition will constrain the applicant’s price and quality. And it would compel carriers to maintain legacy services only in those rare instances (if any exist at all) where their absence would cut consumers off from the nation’s telephone network—freeing carriers to focus on rolling out and improving the next-generation technologies their customers demand.

B. The Commission Should Reverse the Functional Test and Define a “Service” Based on the Carrier’s Tariff or Product Guide.

The Commission should, as it proposed in the *Notice*, eliminate its functional test for defining a service.¹²³ Properly construed, a carrier’s “service” within Section 214(a) only includes those functionalities the carrier has promised its customers, as defined by tariff or by contract. In 2014, however, the Commission adopted a novel, broader, “functional test” to govern the meaning of “service” under Section 214(a).¹²⁴ That test brings within the scope of Section 214(a) not only the service a carrier has promised to offer, but also the ability to use third-party devices or services that relied on incidental, unpromised features of the carrier’s service or the facilities over which the carrier offered that service.

For the reasons that the *Notice* has identified,¹²⁵ and that USTelecom explained before the D.C. Circuit,¹²⁶ the functional test is unlawful. The test is inconsistent with the text and purpose of Section 214(a) because, as explained above, Congress crafted its proviso specifically

¹²² *Id.*, ¶ 83.

¹²³ *See Notice* ¶ 116.

¹²⁴ *2014 Technology Transitions NPRM and Declaratory Ruling* ¶ 115.

¹²⁵ *See Notice* ¶¶ 115-22.

¹²⁶ *See Brief for Petitioner USTelecom, U.S. Telecom Ass’n v. FCC*, No. 15-1414, at 25-39 (D.C. Cir. filed June 14, 2016).

to avoid micromanaging a carrier's service offerings.¹²⁷ Further, Congress placed the language within Title II, which never uses "service" to refer to third-party services. To the contrary, Title II's codification of the filed tariff doctrine, which prohibits carriers from offering benefits absent from their tariffs,¹²⁸ is impossible to square with the functional test—a test that compels carriers to do just that. The functional test also defies black-letter contract law, which makes a carrier "the master of his offer" to the customer.¹²⁹

The functional test also departs from the Commission's precedent. When the Commission first held in *Carterfone* that customers could attach third-party devices to the telephone service they purchased, it went out of its way to note that, if the underlying telephone network technology and standards changed, an incompatible third-party device must be "rebuilt to comply with the revised standards" or the customer would have to "discontinue its use."¹³⁰ As the Commission explained then, "[s]uch is the risk inherent in the private ownership of any equipment to be used in connection with the telephone system."¹³¹ The functional test impermissibly reassigns that risk to carriers.

Further, the Commission did not adequately explain how it will apply the functional test, leaving it so vague as to violate the Due Process Clause of the Fifth Amendment.¹³² Without more guidance, carriers are left to guess how the Commission will measure and weigh

¹²⁷ See 89 Cong. Rec. 786 (1943) (statement of Rep. Brown); *id.* at 777 (statement of Rep. Wadsworth).

¹²⁸ See 47 U.S.C. § 203(c).

¹²⁹ See Restatement (Second) of Contracts § 29 cmt. a (1981).

¹³⁰ See *Use of the Carterfone Device in Message Toll Telephone Service; et al.*, Decision, 13 F.C.C.2d 420, 424 (1968).

¹³¹ *Id.*

¹³² See *Timpinaro v. SEC*, 2 F.3d 453, 460 (D.C. Cir. 1993).

community reliance against the language of a carrier's tariffs and contracts. The test's impermissible vagueness is a second, independent reason the Commission should jettison it.

C. The Commission Should Adopt its Proposals to Streamline Applications to Grandfather Low-Speed Legacy Services and to Discontinue Grandfathered Services.

As it proposes, for all applications to grandfather low-speed legacy services for existing customers, the Commission should reduce the comment period to 10 days, and automatically grant such applications after 25 days unless the Commission notifies the applicant otherwise.¹³³ We agree with the *Notice* that the Commission should “at a minimum” apply this streamlined process to “low-speed TDM services at lower than DS1 speeds (below 1.544 Mbps), as these services are rapidly being replaced with more advanced or higher speed IP-based services.”¹³⁴ But the Commission should go even further and apply the streamlined process to any TDM-based services¹³⁵ because such services could also one day be replaced with more advanced or higher-speed IP-based services. Any specific speed threshold that the Commission sets could soon become outdated.

Applications to discontinue services that have been grandfathered for at least 180 days should be governed by the same uniform streamlined 10-day comment and 25-day auto-grant periods.¹³⁶ But there is no reason to limit the scope of this streamlining. Regardless of whether a service is low-speed or high-speed (or TDM-based), the act of grandfathering a service sends a strong signal to customers and the general public that the service is on a path to eventual

¹³³ See *Notice* ¶¶ 73-78.

¹³⁴ *Id.* ¶ 79.

¹³⁵ See *id.*

¹³⁶ See *id.* ¶¶ 85-89 (proposing “a streamlined uniform comment period of 10 days and an auto-grant period of 31 days for both dominant and non-dominant carriers”). In the interest of uniformity, the auto-grant period for discontinuances should mirror the auto-grant period for applications to grandfather.

discontinuance. Therefore, all services that have been grandfathered for at least 180 days should be eligible for a streamlined discontinuance process.

These streamlined discontinuance processes should apply regardless of whether the applicant is a dominant or non-dominant carrier.¹³⁷ Incumbent LECs today are just one of many competitive providers of communications services. The Commission should be looking to remove legacy distinctions that apply only to incumbents.

D. The Commission Should Adopt a 10-Day Shot Clock for Issuing the Public Notice and 31-Day Shot Clock for Deciding Applications that the Commission Does Not Grant Automatically.

The Commission should impose a 10-business-day “shot clock” between when it receives a Section 214(a) discontinuance application and when it issues the public notice. And, for those applications that the Commission declines to grant automatically, the Commission should establish a 31-day “shot clock” for decision and the application should be deemed granted if there is no decision within 31 days. These rules will reduce delays that substantially complicate carriers’ efforts to improve their networks.

E. The Commission Should Adopt the “No-Customer” Rule.

Where a carrier certifies that a service has had no customers or reasonable requests for service for 60 days, the Commission should automatically grant an application to discontinue that service on the 31st day unless the Commission notifies the applicant otherwise.¹³⁸ If there are no customers and no one has reasonably requested the service, there simply is no harm to prevent.¹³⁹ For that reason, these discontinuances merit streamlined treatment.

¹³⁷ *See id.* ¶ 73.

¹³⁸ *Id.* ¶ 97.

¹³⁹ *See id.*

V. CONCLUSION

As discussed above, the Commission should act quickly to exercise its statutory authority to eliminate barriers to wireline infrastructure deployment.

Respectfully submitted,

VERIZON



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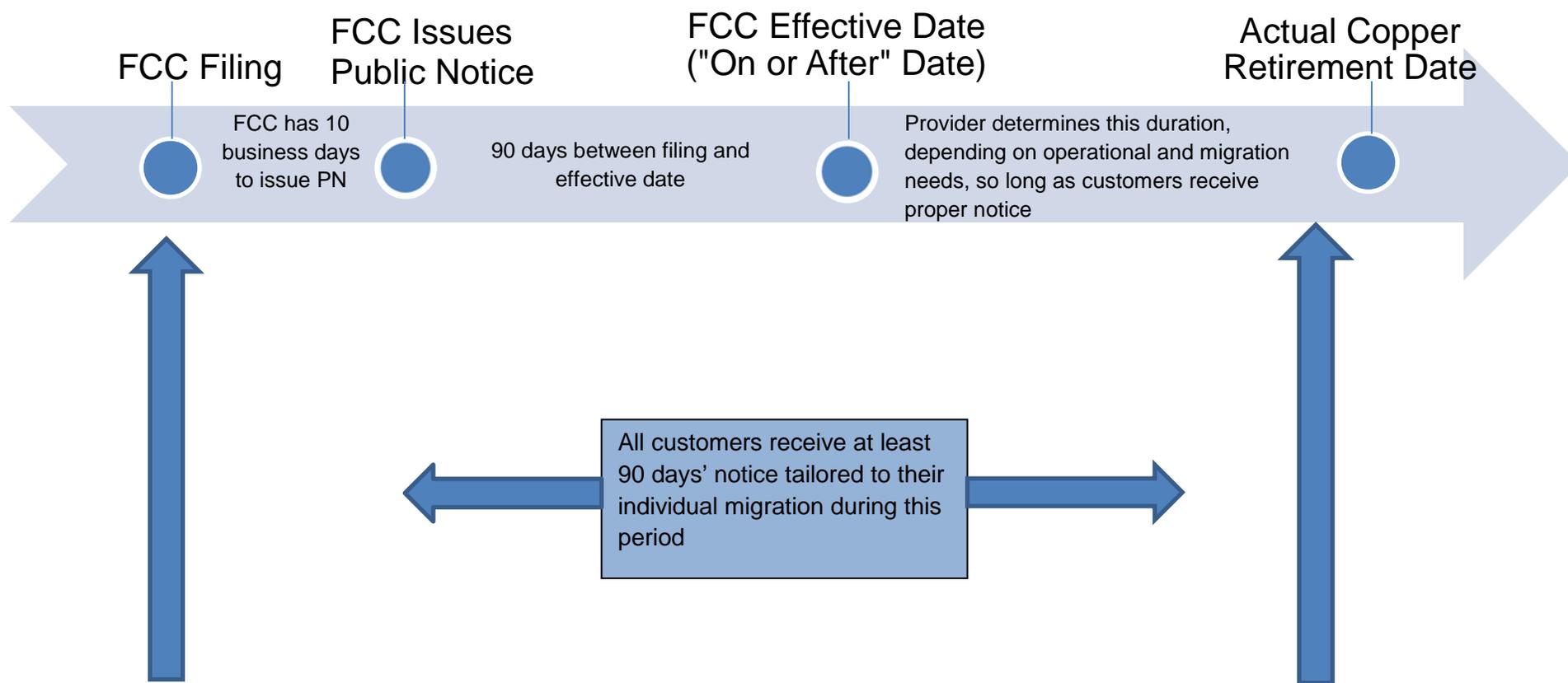
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Dated: June 15, 2017

EXHIBIT A

Proposed New Copper Retirement Process



- Notice to CLECs via website; Mailings to Public Utility Commissions & Department of Defense (within 5 business days).
- All new orders going forward may be provisioned on fiber.

- Provider certifies prior to actual copper retirement that it made reasonable efforts to provide useful and timely notice to all affected customers.

DECLARATION OF KEVIN N. SMITH

**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)

DECLARATION OF KEVIN N. SMITH

1. My name is Kevin N. Smith. I am Vice President, Wireline Transformation for Verizon. I assumed this position in 2016. I oversee planning and executing network transformation activities across the Verizon wireline network footprint. I and my team are focused on migrating legacy copper circuits to the more reliable fiber optic platform. Prior to my current position, I was responsible for managing the multi-billion dollar global wireline network capital program, a position I held since 2011. In that role, I worked with business leaders to develop product and sales strategies to optimize return on invested capital. Prior to that role, I held numerous positions at Verizon focused on capital analysis, network infrastructure planning, product deployment and engineering. I joined Verizon in 1995.

2. The purpose of this declaration is to describe the experiences that Verizon has gained from its technology migration initiatives and explain how the FCC can improve the current technology transition regulatory framework. In 2014, Verizon initiated a multi-year effort to bring fiber to many of its customers and retire its legacy copper facilities. We have gained significant experience in operationalizing the migration process and the copper retirement process. We have filed dozens of public notices to retire copper at 3,850,000 locations across 8

states. We filed these notices under both the existing rules that the FCC adopted in 2015 and the previous rules. As I describe below and based on what we have learned from questions and complaints we have received from customers about the required notifications and from the internal resources we have dedicated to this effort, the FCC can improve the existing regulatory requirements to make the process more consumer friendly and more efficient for providers. Given our experience in migrating customers from copper to fiber under the existing rules, we have identified real-life problems that the FCC could address to improve the process.

3. I will describe some of these issues in my declaration. I will provide examples about challenges we are facing related to (a) obtaining access to multiple dwelling units (MDUs), (b) our inability under the current rules to preview information on copper retirement with customers, (c) our communications with customers, (d) the certification process and (e) copper retirement efforts driven by emergencies or third parties like local municipalities.

4. MDUs pose unique challenges. In order to migrate customers at MDUs to newer technologies, Verizon must first obtain access to the MDU to deploy the fiber to the customers' premises. Many landlords at MDUs have either denied access or simply did not respond to access requests, which prevents Verizon from deploying fiber to those premises. As a general matter, more help is needed in getting access to MDUs so we can bring fiber to our customers.

5. Early notification is critical. The sooner we can notify tenants and landlords at MDUs, the sooner we are able to coordinate the deployment of fiber and the migration to newer technologies. Under the existing rules, we cannot provide MDU landlords advance notice of our plans to retire copper prior to filing a copper retirement notice with the FCC. So, in order to notify an MDU and initiate the access request early, the existing rules would require us to file the copper retirement notice early and also to identify and notify all business customers and

interconnecting entities in the affected areas early. Filing notices too early increases the risk of customer confusion, because the notification would not be related to the actual date when their service will be migrated. But if we have to wait until we file with the FCC to start talking to landlords, we are significantly slowed in gaining access to the premises and getting fiber to customers. Often, we have to talk with landlords, wait for them to grant or deny us access, and then, if denied access, try to see if the residents can convince their landlords to let us in. In our experience, it is only the residents who can get access granted – because they want the newer services.

6. The tenants at a property play an important role with the landlord in obtaining access to the property. Advance notice to end user customers helps inform landlords' decisions and facilitate access to MDUs. For example, based on our recent experience, when customers whose landlord had prevented access were faced with possibly losing service because of their landlord's failure to agree to migrate from copper to fiber, they urged their landlords to permit the migration. In response, seventy out of the 120 landlords at these properties changed their position and allowed us access.

7. Also, under the existing rules, we cannot preview copper retirement with wholesale or retail customers before we file. This prevents large customers, including those with a large number of circuits impacted by a copper retirement notice, from planning migration to the newer technology over a longer period of time. Recently, several large customers have requested information about Verizon's future copper retirement plans. We are unable to provide this advance information based on the regulatory requirements. Large business customers need time to plan, and providing early information to customers would help them plan migration efforts based on their unique budget cycles and business needs.

8. The current customer notification rules also create customer confusion. The current rules require that we notify retail customers about the effective date of the copper retirement and require that they receive notification within 90 days of the FCC's public notice. But both of those dates may have little meaning to the average consumer. Instead, we have found that retail customers are more concerned about when they will be migrated to the newer technology than when the copper is actually retired (or taken off the poles), and they prefer to be notified in close proximity to the time they need to schedule their migration.

9. The customer migration date and copper retirement dates are generally two unique dates. Because we cannot flash cut and migrate all customers on the copper retirement date, we migrate customers in phases. This can occur well before the copper is actually retired and can also be well after the "on or after" effective date specified in the copper retirement notice. It would be much more customer-friendly for notices to be tied to a specific customer's migration to fiber, rather than tied to the copper retirement's public filing with the FCC. Customers care most about when they will be migrated, not when the copper is physically retired or otherwise considered retired for regulatory purposes. And they are best able to act when they receive a notice that is tailored to their specific migration schedule. Receiving a notice six months or a year before they will actually be migrated only creates more confusion, particularly when they will later receive a notice that tells them when they actually need to migrate their services. Recently, customers in Maryland complained to the Maryland PSC, expressing confusion about these dates. We have also received FCC customer complaints evidencing confusion about migration versus effective date. Providing providers with flexibility in what and when to communicate to the retail customers would avoid such confusion.

10. The different notice timeframes for business retail, residential retail and wholesale customers also cause confusion. For example, confusion may arise when a retail customer is served by both an incumbent LEC (voice service) and an ISP (Internet service based on line-sharing). In this example, the retail customer may receive separate communication from the incumbent LEC and the ISP at different times for the same copper retirement activity. And the different notice timeframes and deadlines create an administrative burden. Currently, businesses and interconnecting entities must get notice no later than the date of copper retirement filing with the FCC. Consumers get notice at some point prior to 90 days after the FCC releases its public notice. Being able to standardize all notice periods to 90 days or less and tie them to the customers' individual migrations (instead of to the FCC's release of its public notice or on or after date) would provide more clarity to customers and remove administrative burdens. The critical issue is de-linking the customer migration from the copper retirement because it is the migration to the newer technology that the customer cares about. The retirement of copper may occur later and does not really impact the customer after he or she migrates service. A shorter notice period would also provide us with more flexibility in retiring the copper and providing sufficient notice to our customers.

11. The current rules also require that we send a copy of our notices to state governors and tribal nations. We already notify customers; an actual customer who is also a state governor or a resident in a tribal nation already receives a customer-specific notification directly. We have found that these requirements may not be helpful and increase administrative burdens. Additionally, without public listings that accurately depict tribal nation locations, correctly ensuring that they receive the appropriate notice has been challenging. If this requirement

continues, having more granular tribal nation location information publically available from the FCC would be helpful and would remove administrative burdens.

12. Further, current FCC rules result in over-notification of and confusion for some parties. Current rules require incumbent LECs to provide notification to interconnecting entities no later than the day the incumbent LEC files the notice with the FCC. For a given state, this is often hundreds of notices sent for any specific filing. Given that we frequently file individual copper retirement notices by wire center, interconnected entities – including those who aren't impacted by a particular filing – may receive multiple filings for a single state or multiple states. This results in confusion and in companies ignoring the notices they do receive. Further, under the current rules, requiring notification to every “interconnecting entity” creates redundancies. Interconnection is a switched concept that is unrelated to copper retirement. As a result, we are required to over-notify, resulting in confusion. Notices should be limited just to those wholesale entities whose circuits are directly affected. Additionally, we have found that competitive LECs are used to receiving notification by having it posted to our website and not by a hard copy mailing. In our experience, paper copies end up being unhelpful to most competitive LECs. It would be more useful and less burdensome to be able to post a notice online at our network change website and then work cooperatively with customers as their circuits are migrated. In fact, under our migration process, Verizon sends multiple mailings to our customers that address their individual circuits and migration plans. Such communication is more effective than the mailing required under the existing rules.

13. The certification requirements under the current rules are burdensome and should be simplified. Currently, the certification requirement is tied to the release of the FCC's public notice. This means that notices have to be given prior to that time – even if the customer is not

actually migrated until substantially later. As I explained above, customers should receive notifications tied to their actual migration date, even if that migration date is different from the effective date for copper retirement. If the certification requirement remains at all, it should be tied to when a provider actually retires copper, which occurs after all customers have been migrated, rather than to the FCC's public notice.

14. Last, we have experienced several instances where we do not control the decision to retire the copper or the copper retirement timeline. This occurs when a third-party, usually a local municipality, initiates construction projects that require Verizon to move its copper facility. This also occurs when an emergency results in the destruction or inoperability of our copper facility.

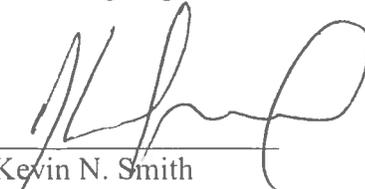
15. For example, in 2015, New York City installed a new sewer project that required Verizon to move its copper cables in the path of that construction. Verizon filed a notice to retire the copper on 97 days' notice. Similarly, in 2016, New York City upgraded a sanitary sewer in West Staten Island that required Verizon to move its copper facility in the path of construction. Verizon filed the copper retirement notice on 99 days' notice. Verizon typically has no control over the copper retirement date under these circumstances.

16. In sum, the FCC should modify the current copper retirement regulatory framework as I describe above.

17. This concludes my declaration.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 14, 2017



Kevin N. Smith