

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

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

**Reply Comments of
Communications Workers of America**

Debbie Goldman
Brian Thorn
501 Third St. N.W.
Washington, D.C. 20001
(202) 434-1194 (phone)
(202) 434-1201 (fax)
dgoldman@cwa-union.org

June 17, 2017

TABLE OF CONTENTS

I. Introduction and Summary.....1

II. Pole Attachment rules Must Continue to Protect Public and Worker Safety.....2

III. Copper Retirement Notification Process Must Continue to Provide Retail Consumers Clear, Timely, and Sufficient Advance Notice and Retain *DeFacto* Retirement in the Copper Retirement Definition.....5

IV. The Commission’s “Functional Test” is Required by the Plan Language of Section 214(a), By Its Purpose, and by Commission Precedent.....11

V. The Commission Should Not Preempt State and Local Laws as a Matter of Law and Policy.....14

VI. Conclusion.....17

I. Introduction and Summary

The Communications Workers of America (CWA) submits these reply comments in the *2017 Wireline Infrastructure Notice of Proposed Rulemaking (NPRM), Notice of Inquiry (NOI), and Request for Comment*.¹ CWA represents 700,000 workers in private and public sector employment who work in telecommunications and information technology, the airline industry, news media, broadcast and cable television, education, health care and public service, law enforcement, manufacturing and other fields. CWA members have a direct interest in this proceeding as workers and consumers.

The Commission should reject One-Touch Make-Ready pole attachment rules that threaten worker and public safety, undermine collective bargaining agreements, and weaken contractor accountability. Current pole attachment timelines were developed based on an extensive record and should be retained, with only minor possible adjustments.

The Commission's current *Technology Transitions* copper retirement and service discontinuance rules strike the proper balance between advancing broadband deployment and protecting consumers. The record in this proceeding demonstrates widespread opposition from consumer, labor, civil and human rights, elderly, and low-income organizations to proposals in the *NPRM, NOI, and Request for Comment* that would weaken or eliminate essential consumer protections during technology transitions. Public interest and labor commentators join with local and state government commentators in opposition to the Commission's proposals that would

¹ *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comments*, WC Docket No. 17-84, April 21, 2017 ("2017 Wireline Infrastructure NPRM").

preempt local and state statutes and regulations regarding management of and payment for public rights-of-way and public oversight over reliable, quality telecommunications services.

The Commission's proposed copper retirement and service discontinuance rule changes could make it more difficult to achieve the very goals the Commission claims for this proceeding. By reducing consumer protections and education during technology transitions, Commission proposals could increase copper customers' resistance to change for fear that copper retirement or landline discontinuance will leave them worse off while allowing incumbent carriers to neglect their copper networks – which typically provide DSL broadband connections – without an adequate replacement. The Commission should retain existing copper retirement and service discontinuance rules, which were developed based on an extensive record, and carefully balance the public interest in facilitating the transition from the legacy public switched telephone network (PSTN) to more advanced technologies while preserving essential consumer and public safety protections. The Commission should reject the anti-consumer, anti-worker proposals in the *Wireline Broadband NPRM, Request for Comment, and NOI*.

II. Pole Attachment Rules Must Continue to Protect Public and Worker Safety

In this proceeding, the Commission seeks comments on whether reforms to the Commission's pole attachment rules are necessary to remove barriers to broadband deployment, and if reforms are necessary, how to ensure that changes in pole attachment processes protect the safety of workers and the general public. Pole attachments are a key input for many broadband deployment projects and concern for worker and public safety must be paramount. In this regard, a number of commentators concurred with CWA that the Commission's *2011 Pole Attachment*

Order is working to facilitate new entrant installation of equipment on utility poles and radical changes would threaten public and worker safety.

One-Touch Make-Ready (OTMR). The Commission should refrain from adopting OTMR rules that would allow new attachers themselves or their utility-approved contractors to perform work on existing attachers' facilities that prioritize speed over safety and quality service, circumvent vital parts of the pole attachment process, often leave third parties and their contractors without accountability for poor or unsafe work, and in some places, infringe upon longstanding collective bargaining agreements, eliminating good, career jobs in the community.²

AT&T and the Coalition of Concerned Utilities agree with CWA that, if the Commission were to adopt any rules facilitating OTMR, the rules must be consistent with existing collective bargaining agreements regarding jurisdiction of work and limitations on outside contractors.³ Further, AT&T and the NCTA caution against "extreme forms" of OTMR. AT&T advocates a "balanced approach" that would limit OTMR to "routine" work that would not threaten service or network reliability (as determined by the existing attacher), provide existing attachers at least 30 days advance notice, and 60-day post completion inspection and indemnification, and, as

² CWA Comments, WC Docket No. 17-84, June 15, 2017 pp. 3-7; Comments of Frontier Communications, WC Docket No. 17-84, June 15, 2017, pp. 15-19.

³ Certain CWA collective bargaining agreements and past practices require employers to use CWA-represented employees for make-ready as well as engineering and survey work. CWA Comments, pp. 6-7. *See also* AT&T Comments, WC Docket No. 17-84, June 15, 2017, p. 17 ("AT&T values its workforce and has negotiated fair collective bargaining agreements allowing its bargained-for workforce to perform all work on AT&T's facilities in certain parts of the country. An OMTR regime should not impair the collective bargaining agreements of any existing attacher by mandating that independent contractors perform make-ready work in all situations. The unionized employees of AT&T and other, similar attachers have performed in this manner for decades, and it would be unreasonable for an OTMR rule to upset those settled, negotiated expectations and contractual obligations.") *See also* Comments of Coalition of Concerned Utilities, WC Docket No. 17-84, June 15, 2017, p.26 (noting that "many [electrical worker] union contracts place restrictions on the percentage of such (make-ready) work that can be done by contractors").

already mentioned, compliance with collective bargaining agreements.⁴ NCTA supports a “right touch” approach that provides existing attachers with adequate prior notice and a “meaningful opportunity to perform necessary work.”⁵

Time Frames. Numerous pole owners, as well as CWA, support maintaining the Commission’s current time frames for survey, cost estimate, make-ready, and inspection that were established in the *2011 Pole Attachment Order*.⁶ Verizon notes that the Commission adopted those timelines based on a robust record, and little has changed in the intervening years.⁷ The Coalition of Concerned Utilities (“Utilities Coalition”), representing 32 electric utilities owning more than 10 million utility poles, provides a detailed accounting of the time needed for each stage in the process, and cautions that “rushing the process” would cause employees to take short cuts, endangering public (and we would add worker) safety. Moreover, adding line crew resources “is not simply a matter of picking up the phone;” training qualified line crew employees takes a long time and, as already mentioned, there are union restrictions on the percentage of work that can be done by contractors.⁸ Shortening time frames would require that other critical work be pushed to the back of the queue. The Utilities Coalition points out that it is far too early to change timelines for “small cell” deployments which are not necessarily small in size, require special attention when placed in the electrical space on the pole, and there are

⁴ AT&T Comments, pp. 14-18.

⁵ Comments of NCTA, WC Docket No. 17-84, June 15, 2017, pp. 13-17.

⁶ *In the Matter of Implementation of Section 224 of the Act, Report and Order and Order on Reconsideration*, WC Docket No. 07-245, April 7, 2011 (“*2011 Pole Attachment Order*”).

⁷ Verizon Comments, WC Docket No. 17-84, June 15, 2017, pp. 8-9.

⁸ Comments of Coalition of Concerned Utilities, pp. 25-26.

simply too many unknowns at this point to warrant changes in the timeline rules.⁹ Finally, CWA sees merit in the Utilities Coalition proposal for Commission action that would require existing attachers to remove from poles unsafe and unused attachments, which increase wind and ice load, cause sagging wires that violate safety codes, and lead to unsightly and dangerous double poles because communications companies have not moved their equipment to new poles in a timely manner.¹⁰

III. Copper Retirement Notification Process Must Continue to Provide Retail Customers Clear, Timely, and Sufficient Advance Notice and Retain *De Facto* Retirement in the Copper Retirement Definition

Commentators representing consumer, elderly, labor, civil and human rights, and low-income public interest organizations, along with CWA, strongly support the current *Copper Retirement* rules that require 90-day advance notification to retail customers of copper-to-fiber migrations and that prohibit *de facto* copper retirement that is the result of systematic failure by an incumbent carrier to maintain its copper network.¹¹ Commentators agree that advance notice facilitates consumer acceptance of technology transitions. “Adequate notice is a foundation principle of due process,” NASUCA writes, adding that “it is of the utmost importance that there

⁹ *Id.*, pp. 22-26; *See also* CWA Comments, pp. 7-8. We note that AT&T’s suggestion to “fold” the 14-day estimate phase into the 45-day review/survey stage is worthy of consideration as one way to reduce pole attachment timelines. AT&T Comments, p. 2.

¹⁰ Comments of Coalition of Concerned Utilities, pp. 15-17, Appendices A and B.

¹¹ *See* CWA Comments; Comments of Public Knowledge; Comments of AARP; Comments of the National Association of State Utility Consumer Advocates, Maine Office of the Public Advocate, Maryland Office of People’s Counsel, New Jersey Division of Rate Counsel, Office of the Ohio Consumers’ Counsel, Pennsylvania Office of Consumer Advocate, and the Utility Reform Network (“NASUCA Comments”); Comments of Pennsylvania Public Utility Commission (“PA PUC Comments”); Comments of the California Public Utilities Commission (“CA PUC Comments”); Comments of the Public Utilities Commission of Ohio (“PUCO Comments”); Letter from The Leadership Conference on Civil and Human Rights, American Civil Liberties Union, Common Cause, CWA, NAACP, National Consumer Law Center, on behalf of its low-income clients, National Hispanic Media Coalition, OCA – Asian Pacific American Advocates to Ms. Marlene Dortch (“LCCHR Letter”); Comments of the Alarm Industry Communications Committee. All comments and the LCCHR Letter were filed in *In the Matter of*

be timely and full disclosure of service changes, so that every customer can fully evaluate the options available and make arrangements to replace the affected service(s) with the alternatives that meet all the customer's service requirements."¹² The *2015 Copper Retirement Order* advance notification timelines "reflect the needs of consumers for accurate information about the consequences of retirements of copper facilities," according to the Pennsylvania PUC.¹³ For technology transitions to work, AARP states, "consumers must be fully informed and have time to respond to proposed changes...The changes proposed in the *NPRM* ...create the potential for service discontinuance and technology retirement that will generate customer confusion, place vulnerable communities at risk, and interfere with a smooth technology transition."¹⁴ "In its *2015 Copper Retirement Order*," the Leadership Conference on Civil and Human Rights (LCCHR) writes, "the Commission achieved the important objectives of facilitating deployment of advanced networks while at the same time protecting consumers during the transition. Relaxing the *2015 Copper Retirement* rules, as the Commission now proposes, puts communities at risk, particularly low-income people, people of color, seniors, and residents of rural areas."¹⁵ New York City, the Ohio Public Utilities Commission, and NASUCA add that government entities typically need longer time frames beyond 90 days to plan and budget for network changes;

Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84, June 15, 2017.

¹² Comments of NASUCA et al, pp. 4 and 11.

¹³ Comments of PA PUC, p.3.

¹⁴ AARP notes that despite AT&T's extensive outreach during its Technology Transition trials with 61 educational meeting in Carbon Hill AL and 48 in Delray Beach FL, AT&T reports only a 38 percent reduction in consumer and only 25 percent reduction in business TDM (circuit switched) service. Comments of AARP, pp. v and 20-21.

¹⁵ LCCHR Letter, p. 1.

shorter time frames put essential public safety, healthcare, education, finance and other public services that run on copper networks at risk.¹⁶

Public interest commentators emphasize that the Commission provides no evidence that the *Copper Retirement* and *Service Discontinuance* rules – which were developed based on an extensive record and have been in effect for little more than a year – are not working. Verizon acknowledges that it has retired millions of lines under the current rules.¹⁷ Despite the lack of evidence, the Commission proposes to roll back the rules, which as AARP points out, would represent “a step in the wrong direction,” prioritizing industry objectives over the Commission’s enduring values of consumer protection, public safety, universal service, and competition.¹⁸

Public Knowledge elaborates on this point: “The Commission adopted the 2015 Tech Transitions rules to ensure the stability of the phone network, protect consumers and small businesses, and limit harm to persons with disabilities, all in furtherance of its core statutory duty to ensure all Americans have access to reliable, fast, and efficient communications systems, at reasonable rates. The Commission’s [proposals]...however, focus instead on whether and to what extent incumbent carriers are inconvenienced by rules promoting the public interest.”¹⁹

Verizon has the most experience among incumbent local exchange carriers in copper-to-fiber migrations, having retired more than 3.8 million locations since 2014.²⁰ For the reasons we have already noted, CWA, public interest, and government commentators reject Verizon’s recommendations to reduce or eliminate the copper retirement advance notification requirements.

¹⁶ New York City Comments, WC Docket No. 17-84, June 15, 2017, p. 6; Comments of Public Utilities Commission of Ohio (PUCO), p. 6; NASUCA Comments, p. 10-14.

¹⁷ Verizon Comments, p. 3, 17 and attached Declaration of Kevin M. Smith (“Smith Declaration”), p.2.

¹⁸ AARP Comments, p. iv. *See also* CWA Comments, pp. 1-2, 8-13; Comments of NASUCA et al. pp. 2, 12; Comments of CA PUC, p. 2.

¹⁹ Comments of Public Knowledge, p. 6.

However, CWA addresses several concerns raised by Verizon based on its actual experience with copper-to-fiber migrations. First, Verizon notes that customers experience confusion when the copper “retirement” date is different than their individual copper “migration” date. As Verizon explains, the company transitions customers in batches, frequently in advance of the planned copper retirement date. To alleviate this confusion, Verizon seeks a Commission rule change that would allow it to notify customers 90 days prior to their “migration” date rather than 90 days prior to the “retirement” date.²¹ While CWA appreciates Verizon’s concern to alleviate customer confusion, CWA believes that Verizon’s solution is misplaced. For a customer, the “migration” end date *is* the copper “retirement” date, the for one which Verizon must give at least 90 days advance notice to the impacted customer(s), the Commission, state commissions, and other entities. The information should be available on Verizon’s and the Commission’s website, as it is now.

CWA also cautions against Verizon’s proposal to allow advance notification of copper-to-fiber retirement in multiple dwelling units (MDUs) as an incentive to encourage tenants to press landlords to allow Verizon into the building to install fiber.²² While CWA certainly supports Verizon’s efforts to overcome landlord resistance in order to bring fiber to MDUs – and has offered on multiple occasions in multiple jurisdictions to partner with Verizon to facilitate fiber deployment in MDUs – we are concerned that Commission rules that would allow Verizon to provide inaccurate information to tenants will exacerbate customer fear and confusion. Similarly, there is no need in this proceeding to adopt Verizon’s recommendation to grant a

²⁰ Verizon Comments, p. 3, 17 and Smith Declaration, p.2.

²¹ Verizon Comments, pp. 19-20.

²² *Id.*, pp. 25-26.

blanket exemption from copper retirement requirements for emergency situations when triggered by third parties (such as copper cuts or municipal mandates) or by external events such as hurricanes. As Verizon itself explains, carriers currently have the option to file waiver requests in emergency situations, which Verizon did in the case of Superstorm Sandy.²³ In that instance, Verizon attempted to renege on its obligation to repair landline service by offering consumers an inferior fixed wireless Voice Link service, causing uproar from consumers, small businesses, public safety and elected officials. The Voice Link experience should serve as a cautionary tale against providing “emergency” loopholes that carriers can exploit to avoid copper retirement and service discontinuance rules that protect consumers.

De Facto Copper Retirement. NASUCA notes that 48 million households continue to rely on the copper network for voice services.²⁴ In many places, this is the only available, reliable, and affordable network. To ensure that incumbent carriers continue to maintain and repair copper networks in areas that have not been upgraded to fiber, the Commission appropriately ruled in the *2015 Copper Retirement Order* that the “disabling or removal” of copper facilities through “acts of commission or omission” deprives those consumers of vital communications links, poses a threat to public safety, and should therefore be included in the definition of copper retirement.²⁵ NASUCA supplements the extensive evidence that CWA provided to the Commission with further detail of *de facto* copper retirement.²⁶ The Commission should retain *de facto* retirement

²³ *Id.*, pp. 26-28.

²⁴ NASUCA Comments, p. 2 and attached Susan Baldwin Declaration, p. 64.

²⁵ *In the Matter of Technology Transitions, Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers, et al, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking*, GN Docket 13-5, RM-11358 et al., Aug. 7, 2015 (rel) (“*2015 Copper Retirement Order*”), para. 84-87.

²⁶ CWA Comments, pp. 16-23 and Appendices A1-A4; NASUCA Comments, p.9 and attached Susan Baldwin Declaration. *See also* Comments of Communications Workers of America, *In the Matter of Technology Transitions, Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers et al*, GN Docket

in its definition of copper retirement to ensure customers receive the reliable service for which they are paying. Further, this provision promotes the Commission goal to advance broadband service because *first*, well-maintained copper lines make it more likely that copper-based DSL will be functional and delivered at a reasonable speed, and *second* it encourages carriers to upgrade to fiber where this presents the most cost-effective alternative to repair copper lines. The Commission should also reject Verizon’s recommendation to broaden existing language that currently allows carriers to migrate individual customers from copper to fiber in response to an “individual customer’s service quality concerns.” The *2015 Copper Retirement Rules* clearly state that the “individual customer” exception does not apply to migrations in which “the carrier requires customers in a given area to move from copper to its fiber network as part of a planned network migration” and to situations in which “the carrier allows its copper network serving a broader geographical area (e.g., an entire neighborhood) to deteriorate in a manner that is the ‘functional equivalent of removal or disabling it.’”²⁷ The Commission should retain this language to foreclose such practices as “Fiber is the Only Fix” which targets entire categories and geographies for forced copper-to-fiber migration in violation of the Commission’s copper retirement rules.²⁸

No. 13-5, RM-11358 et al, at 24-34 (Feb. 5, 2015); Comments of Communications Workers of America, *Technology Transitions, Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers et al.*, *Further Notice of Proposed Rulemaking*, GN Docket No. 13-5, RM-11358 et al, at 15-22 (Oct. 20, 2015).

²⁷ *2015 Copper Retirement Order*, para. 93.

²⁸ See CWA Comments, p. 11 fn.26. CWA has filed complaints at the FCC and the Maryland Public Service Commission against Verizon’s deceptive “Fiber is the Only Fix” forced migration policy for lack of transparency to customers. See Letter from Vincent Trivelli to Mr. David J. Collins, Executive Secretary, Public Service Commission of Maryland, Case No. 9114 Investigation into Maryland Service Performance and Service Quality Standards and Case No. 9133 In the Matter of Appropriate Forms of Regulating Telephone Companies, May 3, 2016 and Sept. 6, 2016.

Finally, the Commission should retain Section 68.110(b) of the rules that require advance notice of any network change that would impact a customer's text telephone (TTY) equipment. There are still many consumers who use TTY equipment, many of whom are the least tech-savvy among the deaf and hard of hearing community. Abandoning advance notice requirements to this community could leave many deaf and hard of hearing consumers unknowingly without access to voice service, including critical 911 service.²⁹

IV. The Commission's "Functional Test" is Required by the Plain Language of Section 214(A), by Its Purpose and by Commission Precedent

Public interest commentators agree: Congress enacted Section 214(a) of the Communications Act to make sure that the people in communities that have relied on a particular service are not harmed by the discontinuance, reduction, or impairment of that service. That task is a critical part of encouraging technology transitions. The Commission's "functional test" correctly assesses the circumstances of the affected community to determine whether a replacement service exists. Stripping down the Section 214 protections would be a dangerous disservice to communities, particularly small towns and rural areas, where a functionally equivalent alternative may not be available.³⁰

As CWA explained in our initial comments, the focus of the statute is on the benefits to the communities served, not the narrow confines of a specific tariff. The statutory language in Section 214(a) is clear: "No 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

²⁹ Comments of Telecommunications for the Deaf and Hard of Hearing et al., WC Docket No. 17-84, June 15, 2017.

³⁰ CWA Comments, pp. 28-37; Public Knowledge Comments, pp. 8-12; NASUCA Comments, pp. 14-22; CA PUC, pp. 36-40; AARP, pp. 2, 6-7. Comments of Public Utilities Commission of Ohio, pp. 9-13; LCCHR Letter, p. 2.

Commission a certificate that neither the present nor future public convenience and necessity will be threatened.” (emphasis added) Congress’ choice of words was not accidental. Where Congress wanted to refer to a tariff, it did so. But in Section 214, it made the different choice to use the word “service.” Moreover, the plain language of Section 214(a) ties the term “service” to the “community.” This is a recognition by Congress that it is the “community” that should be the focus of the inquiry and the community must be given an opportunity to participate in the review and comment upon the change of service.³¹ As the Public Utilities Commission of Ohio explains, “[there are] many ways that consumers use and rely on their telephone service beyond the service description set forth in the tariff. For example, for many consumers, using their telephone service means being able to use a medical alert device or connecting with a home security system. Others rely on their service for medical monitoring...This [input] clearly establishes to the Ohio Commission that the “service” consumers receive from their local telephone company goes far beyond the service parameters set forth in the tariff.”³² Moreover, the Commission exercises authority over many services that have never been tariffed or have been detariffed.³³

Public interest commentators also reject the Commission’s proposal to use service agreements as a substitute for a functional test. As CWA explained in our initial comments, individualized terms, differing state laws, and the relevance of conduct to ascertain the parties intentions not only make contract law an unwieldy substitute for the functional test, but also

³¹ CWA Comments, pp. 28-31; Public Knowledge Comments, p. 8 (“When interpreting Section 214(a)...the Commission has consistently interpreted the term “service” to mean the subject of the certificate of public convenience and necessity, nor merely those services defined by the tariff”); NASUCA Comments. p.6 (“Section 214(a) makes clear that [the Commission’s jurisdiction] should be for the the benefit of the communities or parts of communities served.]

³² Comments of Public Utilities Commission of Ohio, pp. 10-11.

reinforces the notion that Congress did not intend the federal interests established by Section 214 to turn on such variable factors. If Congress had wanted to have Section 214 defined by contract law, it would have said so.³⁴

Further, neither the Commission's reliance on the filed-rate doctrine nor the Commission's actions in *Carterphone* provides a sound legal basis to narrow the scope of a Section 214 discontinuance review. The filed-rate doctrine serves a distinct purpose, which is to allow the Commission to determine whether Section 202's prohibition against unreasonable discrimination has been violated. But Section 214 does not ask whether different customers are being served differently, it asks whether a community is receiving service at all. Similarly, *Carterphone* supports the use of the functional test. The point in *Carterphone* was that devices could not be connected to the network that would harm the network itself. That rationale is entirely absent here; rather the focus of Section 214 is on the services that a telecommunications carrier has voluntarily decided to bring to a community. It is the successful use of those devices, like ATMs, medical alerts, and alarm systems, on the network that is at the heart of the Section 214(a) inquiry.³⁵

Public interest commentators agree that the Commission should reject the *NPRM's* proposal to exempt from 214(a) review any discontinuance in locations where community members can secure service through a fiber, IP-based, or wireless alternative.³⁶ As a first matter, absent public notice prompting Commission review and the opportunity for public comment, the

³³ Comments of Public Utilities Commission of Ohio, pp. 10-11 ("In Ohio, as the industry moved from a heavily regulated environment to a market-drive environment, the reliance on tariffs has waned. Many, if not most, services have been detariffed.") See also Public Knowledge Comments, pp. 9-12.

³⁴ CWA Comments, pp. 33-34.

³⁵ CWA Comments, pp. 32-33.

³⁶ *NPRM*, para 95.

Commission lacks the means to verify a carrier's assertion that comparable service is available to everyone in the community. Second, as NASUCA, AARP, and CWA emphasize, the substitution of wireless service for wireline service does not meet the adequate replacement test because wireless is not available or provides unreliable service in many areas, particularly in rural communities; generally is more expensive under current pricing regimes; and in the case of a product like Voice Link, does not provide connections to medical devices, fax machines, and data services.³⁷ To ensure that members of the community will continue to have access to an adequate replacement where a carrier seeks to discontinue legacy service, the Commission should retain (if not strengthen) the three-pronged test in the *2016 Service Discontinuance Order* that details standards of 1) network reliability, availability, and coverage; 2) access to critical applications and functionalities, including 911 service and service for people with disabilities; and 3) interoperability with key applications and functionalities such as home security alarms, medical monitoring devices, and fax machines.³⁸

V. The Commission Should Not Preempt State and Local Laws as a Matter of Law and Policy

The evidence in the record conclusively demonstrates that the *NOI's* proposals to preempt state and local laws regarding deployment moratoria, rights-of-way negotiation and approval processes, fees and other costs, permitting and licensing, and service quality and copper maintenance requirements are unnecessary to advance broadband goals, illegal under the plain language of Section 253(b) and (c) of the Communications Act, and represent bad policy that

³⁷ NASUCA Comments, pp. 21-22; AARP Comments, p. xiv; CWA Comments, pp. 35-36.

³⁸ AARP Comments, p. xiv (“Comparability of alternative services must address affordability and prices, data speeds, quality, and service quality. Consumers must not be migrated to services that have more restrictive caps.”); LCCHR Letter; CWA Comments, pp. 36-37.

would impose “one size fits all” regulations on tens of thousands of diverse communities and result in considerable consumer harm.³⁹

As numerous local governments explain, Section 253(c) of the Act protects state and local government authority “to manage the public rights-of-way...to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.” Section 253(b) of the Act protects state sovereignty to “impose, on a competitively neutral basis and consistent with section 254 of this title, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.”⁴⁰ As the City of Chicago points out, the Commission and various courts have provided cities with a list of issues appropriate for rights-of-way regulation; there is no need for further Commission action in this proceeding.⁴¹ Section 253(c) also explicitly gives state and local governments the authority to require “fair and reasonable compensation” for use of public rights-of-way and facilities; the statute does not limit compensation only to direct costs.

³⁹ See Comments of the National League of Cities; Comments of Smart Communities and Special Districts; Comments of National Association of Regulatory Commissioners; Comments of City of Eden Prairie MN; Comments of The City of Chicago; Comments of League of Arizona Cities and Towns, Comments of League of California Cities and League of Oregon Cities; Comments of League of Minnesota Cities; Comments of the City of New York; Comments of the City of Philadelphia; Comments of the City and County of San Francisco; Comments of the DuPage Mayors and Managers Conference; Comments of the Virginia Joint Commenters; Comments of the Pennsylvania Public Utility Commission; Comments of the California Public Utilities Commission; Comments of the Public Utilities Commission of Ohio; NASUCA Comments; Public Knowledge Comments; CWA Comments; LCCHR Letter. All comments were filed in WC Docket No. 17-84, June 15, 2017.

⁴⁰ 47 U.S.C. Sections 253(b) and (c).

⁴¹ Comments of the City of Chicago, pp. 9-10.

The Commission's *NOI* erroneously assumes that state and local laws and regulations serve as barriers to broadband deployment. In fact, as CWA noted in our comments, states have significantly reduced or eliminated oversight of wireline telecommunications and many states prohibit regulatory authority over Voice-over-Internet-Protocol (VoIP) and/or IP-enabled services.⁴² According to the National Regulatory Research Institute, state legislators have shifted their focus away from deregulating traditional providers and toward increasing broadband availability.⁴³ Numerous local government commentators point to policies they have adopted to encourage high-speed broadband investment in their cities and towns.

State laws that require incumbent carriers to maintain adequate facilities and equipment serve to further Commission broadband goals by requiring incumbent local exchange carriers (LECs) to improve copper networks, which deliver DSL service, and encouraging incumbent carriers to upgrade to fiber if this is the most cost-effective method to ensure quality service. Moreover, there remain all too many communities, particularly in rural and low-income areas, where consumers have few, if any, alternatives to the legacy copper network for affordable, reliable voice and broadband service. In these locations, as CWA and NASUCA document, regulatory oversight has been necessary to protect consumers in locations where incumbent carriers have allowed their copper networks to deteriorate and have not upgraded their networks to fiber.⁴⁴

⁴² CWA strongly believes that the same rules should apply to all voice service, regardless of the technology used to deliver that service.

⁴³ Sherry Lichtenberg, *The Year in Review 2016: Moving Past Reduced Regulation*, Silver Spring MD: National Regulatory Research Institute, Report No. 16-10 at iii, December 2016.

⁴⁴ The evidence highlights state regulatory proceedings in California, Iowa, Maryland, New Jersey, New York, Pennsylvania, and Ohio. See CWA Comments, pp. 16-23; NASUCA Declaration of Susan Baldwin.

VI. Conclusion

The record in this proceeding demonstrates that the *Technology Transition* rules are working to advance broadband investment while preserving and promoting the Commission's statutory obligations to safeguard and promote universal service, public safety, consumer protection, and competition. Rules that require incumbent carriers to provide consumers clear, sufficient, and timely advance notification of copper retirement and Section 214 discontinuance provisions that ensure there is an adequate replacement prior to discontinuance or impairment of legacy services together facilitate technology transitions by giving people the education and time they need to prepare and the reassurance they need that they will not be left with inferior service after the change. Commission preemption of state and local statutes that protect and promote quality networks would undermine the longstanding federal/state partnership that protects and advances quality, universal service – including high-speed broadband service – to all Americans. Finally, the Commission should respect the authority of local and state government to enact rules and regulations that protect the public trust over public assets and rights-of-way.

Respectfully Submitted,



Debbie Goldman
Communications Workers of America

July 17, 2017