

**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)	

Reply Comments of AARP

July 17, 2017

Trevor R. Roycroft, Ph.D.
Economic Consultant

David Certner
Legislative Counsel and
Legislative Policy Director
Government Affairs
AARP
601 E Street, NW
Washington, DC 20049

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Introduction

AARP respectfully submits these Reply Comments for the FCC's consideration, and thanks the Commission for the opportunity to participate in this important proceeding regarding the transition to all IP broadband networks. The *NPRM* proposes dramatic changes in customer notice associated with copper retirement, service discontinuance, and the functional test. AARP is opposed to the proposed changes, and sees no reason for the Commission to walk back the more balanced approach that it adopted, based on extensive record evidence, over the past three years. AARP has reviewed comments filed by other parties, and finds that many other parties agree with AARP's general perspective on the appropriateness of existing customer notice requirements.¹ With regard to the existing notice requirements, AARP also notes that the carriers most likely to be proposing discontinuance—ILECs—do not provide any evidence that the existing notice requirements have impeded the technology transition.

With technology transition Orders issued in 2014, 2015, and 2016,² based on extensive record evidence, the Commission adopted procedures for IP transition. As was discussed in AARP's

¹ See, for example, CWA Comments; Public Utilities Commission of Ohio Comments; Pennsylvania Public Utilities Commission Comments; Public Knowledge Comments; NASUCA Comments; Windstream Comments; Maryland Office of People's Counsel Comments; Consumer Groups and RERCS Comments; Greenlining Comments; The Leadership Conference of Civil and Human Rights Comments.

² *In the Matter of Technology Transitions, AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition, Connect America Fund, Structure and Practices of the Video Relay Service Program, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Numbering Policies for Modern Communications*, GN Docket No. 13-5, GN Docket No. 12-353, WC Docket No. 10-90, CG Docket No. 10-51, CG Docket No. 03-123, WC Docket No. 13-97. Order, Report and Order and Further Notice of Proposed Rulemaking, Report and Order, Order and Further Notice of Proposed Rulemaking, Proposal for Ongoing Data Initiative, January 31, 2014. Hereinafter, *2014 Technology Transitions Order*.

In the Matter of Ensuring Customer Premises Equipment Backup Power for Continuity of Communications Technology Transitions, Policies and Rules Governing Retirement Of Copper Loops by Incumbent Local Exchange Carriers, Special Access for Price Cap Local Exchange Carriers, AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, PS Docket No. 14-174, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593, Notice of Proposed Rulemaking and Declaratory Ruling, November 25, 2014. Hereinafter *2014 Declaratory Ruling*.

opening comments,³ the *NPRM*'s proposed modifications to the existing rules are a step in the wrong direction. While proposing dramatic changes to the existing rules associated with copper retirement and customer notice, the *NPRM* does not identify credible benefits associated with the proposed changes, and the opening comments filed by AARP and many other parties support the proposition that the costs of walking back the existing framework will be high, while benefits will be lacking. The combined impact of the *NPRM*'s notice and copper retirement proposals is increased risk for consumers and harms to competition. Based on a review of the opening comments, AARP does not believe there is any evidence to support reversing current Commission rules associated with copper retirement, service discontinuance, or the application of the functional test. The Commission should continue with its existing framework.

Carriers identify no specific deployment benefits of reduced customer notice requirements

If existing customer notice requirements were having a negative impact on the technology transition, for example, impeding the deployment of state-of-the-art fiber networks, then the

In the Matter of Technology Transitions, Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers, Special Access for Price Cap Local Exchange Carriers, AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services. GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, August 7, 2015. Hereinafter, *2015 Technology Transitions Order*.

Technology Transitions, GN Docket No. 13-5, *US Telecom Petition for Declaratory Ruling That Incumbent Local Exchange Carriers Are Non-Dominant in the Provision of Switched Access Services*, WC Docket No. 13-3, *Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers*, RM-11358, Declaratory Ruling, Second Report and Order, and Order on Reconsideration, July 15, 2016. Hereinafter *2016 Technology Transitions Order*.

³ AARP would like to clarify that due to a typographical error, footnotes 82 and 86 in AARP's opening comments refer to the incorrect FCC order. The correct citation is to the 2014 *Declaratory Ruling*. I.e., *In the Matter of Ensuring Customer Premises Equipment Backup Power for Continuity of Communications Technology Transitions, Policies and Rules Governing Retirement Of Copper Loops by Incumbent Local Exchange Carriers, Special Access for Price Cap Local Exchange Carriers, AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, PS Docket No. 14-174, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593, Notice of Proposed Rulemaking and Declaratory Ruling, November 25, 2014.

Commission might have cause for concern. However, AARP searched carrier comments in vain for any specific example of how the existing Section 214 discontinuance notice requirements have impeded in any way the deployment of next generation technologies. At most, carriers provided vague statements regarding the alleged burden of the existing notice practices. For example, the most detail that Verizon can provide is that Section 214(a) discontinuance “can delay a carrier’s service upgrades considerably.”⁴ Similarly, US Telecom does not offer any specific example of the delay of next generation services associated with notice requirements.⁵ USTelecom goes on to state, in support of a 10-day notice proposal, that:

[G]randfathering a service is the ultimate notice mechanism. When a customer is informed that a legacy service he or she subscribes to will no longer be offered to new customers because it is being discontinued, there is no mystery about the provider’s future plans regarding that service.⁶

AARP disagrees. Unless the grandfathering notice identifies the specific date on which a service will be discontinued, the mystery of when the service will be discontinued persists. The existing notice requirements continue to be reasonable.

CenturyLink does not provide any example of delay associated with a 30-day discontinuance customer notice resulting in delayed technology deployment.⁷ AT&T offers no example of discontinuance notice delays negatively affecting the technology transition.⁸ Frontier provides a discussion that blends issues associated with Section 214 discontinuance, copper retirement, and the functional test, but provides no specific example of Section 214 customer notice impeding

⁴ Verizon Comments, p. 32.

⁵ USTelecom Comments, *passim*.

⁶ USTelecom Comments, p. 35.

⁷ CenturyLink Comments, *passim*. CenturyLink does provide an example of the impact of delay associated with the 180-day notice on copper retirement. (CenturyLink Comments, pp. 28-29.)

⁸ AT&T Comments, *passim*.

technology deployment.⁹ Comcast indicates that the Commission should reduce the burden on service providers by streamlining discontinuance, and leave it to service providers alone to determine whether Section 214(a) applies.¹⁰ AARP disagrees with this proposal, and notes that Comcast provides no example of how existing notice requirements have delayed technology upgrades. ITTA—The Voice of America’s Broadband Providers, while complaining about notice requirements, offers no example of how the existing discontinuance notice requirement has delayed any infrastructure upgrades. Like AT&T, ITTA also proposes to allow discontinuance given the existence of wireless mobility alternatives.¹¹ As AARP discusses in its opening comments, wireless mobility services are not a reasonable substitute for wireline services, as evidenced by the fact that over 50 percent of households continue to maintain a wireline telephone.¹² AARP disagrees with these proposals and encourages the Commission to abide by its existing notice requirements.

Windstream, on the other hand, offers a more balanced discussion of notice issues, stating that the overall Section 214(a) process “is fundamental to protect consumers,” and Windstream also encourages the Commission to narrowly tailor any changes “to prevent harms to end users.”¹³

AARP strongly agrees with Windstream where it states:

[T]he Commission should not short-circuit Section 214(a) reviews by concluding that discontinuances will not adversely affect the present or future public convenience and necessity wherever “alternative services” are available. An essential part of the Section 214(a) review process is consideration of whether alternative services are adequate in terms of cost and functionality.¹⁴

⁹ Frontier Comments, pp. 26-28.

¹⁰ Comcast Comments, p. 31.

¹¹ ITTA Comments, p. 18.

¹² AARP Comments, p. 11.

¹³ Windstream Comments, p. 11.

¹⁴ Windstream Comments, pp. 11-12.

Windstream is correct on this point—a careful evaluation of “cost and functionality” is a key element needed to ensure that consumers are not harmed by the technology transition. AARP sees no evidence that the Commission’s existing Section 214 discontinuance notice requirements impede the technology transition. AARP believes that the existing rules continue to provide a reasonable set of protections for consumers during the technology transition.

AT&T’s alternative notice proposal should be rejected

AT&T offers an alternative notice proposal that fails to provide sufficient assurance that consumers will have adequate alternatives. AT&T’s proposal would allow a carrier to avoid compliance with §63.602(b), and would instead require a showing that “at least one of the following alternative services is available to affected customers: fixed or mobile voice service, including interconnected VoIP services.”¹⁵ These alternatives are not consistent with the Commission’s goals associated with technology transition. Forcing wireline consumers to adopt mobility services is not a reasonable path forward, as the Commission learned from its experience with Verizon and Fire Island.¹⁶ AT&T’s proposal should be rejected.

Verizon’s proposal to adopt a “two-prong” replacement test should be rejected

Verizon indicates that the replacement test that was contained in the *Draft Notice* in this proceeding should be adopted. That two-prong test was described as follows in the *Draft Notice*:

Under our proposed streamlined approach, any carrier discontinuing legacy voice service would be eligible for automatic grant of their application under Section 63.71 of our rules, provided it is able to demonstrate: (1) that it provides interconnected VoIP service throughout the affected service area, and (2) that at least one other alternative voice service is also available in the affected service area.¹⁷

¹⁵ AT&T comments, pp. 42-43.

¹⁶ AARP Comments, pp. 24-25.

¹⁷ *Draft Notice*, ¶83.

AARP is opposed to the Verizon proposal. Unlike the existing three-prong test,¹⁸ the *Draft NPRM*'s two-prong test would not ensure sufficient consumer protection. The existence of interconnected VoIP services does not provide a sufficient foundation to ensure that issues of network performance and service availability will be adequately resolved. The Commission must ensure the continuity of high-quality services and the minimization of consumer disruptions, and the sole focus on interconnected VoIP is not reasonable. The *Draft NPRM*'s two-pronged test is inadequate and neglects critical issues, such as the potential for communities to lose access to wireline services, and 911 continuity. The *2016 Technology Transition Order*'s three-prong test specifies service standards that appropriately set parameters to establish minimum performance levels with the introduction of a new technology platform.¹⁹

Verizon's advocacy for the *Draft NPRM*'s vague approach could result in significant degradation of service, specifically because the two-pronged test could leave communities without wireline voice services. "Interconnected VoIP" services can include wireless mobility services, such as voice over LTE (VoLTE). Thus, the elimination of all wireline services in a community could result from the satisfaction of the first prong of the test. Also, the "two-pronged test" contains no component to address the performance or continuity of 911 services.²⁰ The lack of this key element makes the two-prong test useless for addressing the technology transition, as one of the foundations of the evaluation of a service discontinuance request must be the prevention of

¹⁸ *2016 Technology Transition Order*, ¶¶88-171.

¹⁹ *2016 Technology Transition Order*, §III.C.

²⁰ The *Draft NPRM* asks "Should carriers be required to address continuity of 911 service under our proposed two prong test? Should discontinuing carriers be required to make particular showings regarding 911 accessibility, location accuracy, or any other applicable emergency service requirements?" *Draft NPRM*, ¶86. That the *Draft NPRM* has to ask such a question indicates a significant disconnect between the *Draft NPRM* and the statutory mission of this Commission.

interruption or degradation of critical emergency services. In opening comments, NARUC reminded the Commission of a February 2016 NARUC Resolution, which stated, in part:

That the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC), convened at its 2016 Winter Committee Meetings in Washington, D.C., urges the FCC to adopt specific criteria for the FCC to use in evaluating applications to discontinue retail telecommunications services that preserve fundamental features of legacy services such as connection quality, 9-1-1 and NG-911 access, competitive interconnection, interoperability, affordability, and services for those with disabilities, among other things;²¹

Certainly, the *Draft Notice's* two-prong test does not meet these objectives.

The second prong of the *Draft Notice's* test is also inappropriately vague. The “availability of one other alternative voice service” does not provide a sufficient foundation to determine the impact on consumers of service discontinuance. The second prong adds little to the first prong of the “test” and is a largely unrelated measure of the consumer impact of service discontinuance. Services such as mobility wireless services could be utilized under the second prong of the test to enable the discontinuance. Wireless-only alternatives are not appropriate as consumer demand, as illustrated by the Commission own data, clearly shows that tens of millions of households continue to value and purchase wireline services.²² The “two-pronged” test simply does not provide an adequate metric to gauge the reasonableness of service discontinuance requests.

²¹ NARUC Comments, Appendix B.

²² “According to the most recent statistics released by the Commission’s Industry Analysis and Technology Division of the Wireline Competition Bureau, there were 65 million traditional “switched access” lines in service, 59 million interconnected VoIP subscriptions, and 335 million mobile subscriptions in the United States as of December 2015. FCC, Voice Telephone Services: Status as of December 31, 2015 at 2 (2016). *Draft Notice*, ¶82, footnote 118, emphasis added.

The Commission should gather information from other carriers

Charter, as one of the potential carriers that might be identified as a replacement service provider, states that the Commission should not burden Charter or other carriers with requests for information regarding the nature and extent of services provided.²³ AARP disagrees with Charter's proposal. While it is true that there is publicly available information that can be discerned from "advertisements, price lists, and tariffs,"²⁴ specific and granular information will be needed to determine full extent of the availability of alternative services, otherwise, portions of communities may be left unserved. The Commission should gather information from other service providers as it evaluates discontinuance requests.

Proper notice is required to protect consumers and vulnerable populations

In opening comments, AARP emphasized the need for a consumer-focused technology transition, the importance of proper notice, and the need for Commission findings regarding the continued functionality of technologies that are relied upon by older Americans and individuals with disabilities.²⁵ While carriers are mute on the subject of consumer impact of their proposals to reduce or eliminate notice requirements, the need to protect consumers, especially vulnerable communities, were sentiments voiced by numerous other parties. NASUCA, in its opening comments, states:

Adequate notice is a foundation principle of due process, and the Commission's attempt to whittle away at the existing notice provisions creates unacceptable risks for consumers. Here, it is important that the notice period provide the opportunity for affected consumers to learn of and evaluate the impact of the proposed changes and then communicate their concerns to the Commission. An unreasonably abbreviated notice period fails to protect consumers, by impeding their ability to participate in Section 214 process.²⁶

²³ Charter Comments, pp. 58-59

²⁴ Charter Comments, p. 59.

²⁵ AARP Comments, pp. iii, 13-15.

²⁶ NASUCA Comments, p. 11.

AARP strongly agrees with NASUCA’s observations, and the lack of consumer protection that is part and parcel of the *NPRM*’s proposals has the potential to turn the technology transition into a costly and disruptive process for consumers. Furthermore, as discussed above, the carriers have not identified any specific impediments to the technology transition arising from existing Section 214 discontinuance notice requirements. Thus, the *NPRM*’s proposals to minimize customer notice will generate few benefits for the technology transition, while imposing substantial costs on consumers.

Other parties also emphasize the importance of adequate customer notice, especially with regard to elderly community members, or those who may have disabilities. Communications Workers of America state “CWA opposes changes to Section 68.110(b) that would eliminate advance notification requirements to individuals with disabilities of network change that would impact terminal equipment upon which these individuals depend.”²⁷ CWA also offered specific examples of the problems that too-short notice associated with service discontinuance can cause:

The NJ Rate Counsel noted that her office began to receive customer complaints as early as May 2015 when Verizon NJ began to send 45-day advance notice letters regarding copper-to-fiber migration under the Commission’s Section 51.333 Short Term Network Change Notification rules. The Rate Counsel explained that the majority of customers wanted more information, were very concerned about whether the fiber platform would work during power outages, and wanted to know if Verizon had a right to retire the copper network. Some customers reported service interruptions post-migration. Others complained that their medical equipment, alarms, or special equipment for people with hearing loss would not function on the fiber network. “Every time Verizon releases a new batch of scheduled copper retirement notices throughout a targeted New Jersey wire center,” the Petition noted, “Rate Counsel receives alarmed calls from Verizon wireline telephone service customers. Most of these calls are from children of elderly seniors who live by themselves and do not have duplicate telephone service and depend solely on their wireline telephone service. These customers are not tech savvy and are alarmed and confused by Verizon’s customer notification letter which advises that the subscriber has

²⁷ CWA Comments, p. 9.

30 days to schedule the migration to Verizon’s fiber platform or face suspension of service.” The NJ Rate Counsel concluded “that the use of a § 51.333 Short Term Notices (sic) is inappropriate and frustrates and undermines the Act’s copper retirement rules...” While CWA cannot comment on whether the Commission’s Section 51.332 90-day retail advance notice rules have served to ameliorate customer confusion and complaints regarding copper-to-fiber migration in New Jersey, it is absolutely clear that the absence of sufficient advance notice aroused significant customer resistance that served as a deterrent to the technology transition in New Jersey.²⁸

Consumer Groups and RERCS raise issues similar to those raised by AARP²⁹ with regard to the impact of notice associated with the TTY/RTT transition:

Many people with disabilities, their friends and families, businesses, and public services, including emergency services, continue to rely on TTYs. This reliance has been well documented in other proceedings and recognized by the Commission. In its December 2016 order initiating the transition from TTY to RTT technology (“RTT Order”), the Commission acknowledged the need to ensure that TTY use remains accounted for in the rapidly transitioning telecommunications ecosystem. The Commission explained that “certain people who are still reliant on TTYs . . . including persons who cannot afford high speed access, people in rural areas for whom IP service is not available, and senior citizens who might be reluctant to try new technology.” The Commission also recognized that “TTYs are still used by many government agencies and that some places of public accommodation (e.g., hotels and hospitals) offer only TTYs as their method for text-based communication.”³⁰

The California Public Utility Commission also emphasizes the importance of adequate notice to protect older Americans and the disability community:

As the FCC correctly recognizes, eliminating that direct notice would likely have a deleterious effect on disabled customers and senior citizens. Many of those vulnerable customers rely on specialized CPE to communicate effectively over the public telecommunications network. It is critically important that those customers be able to communicate just as effectively after the transition to newer technologies. For example, if a Section 214 applicant is transitioning its service in an affected community to a similar IP-based service, the applicants’ disabled subscribers should not be forced to switch CPE or to switch to an alternative voice provider just to keep receiving the same accessibility,

²⁸ Communication Workers of America Comments, pp. 11-12, citations omitted.

²⁹ AARP Comments, pp. 14-15.

³⁰ Consumer Groups and RERCS Comments, pp. 1-2.

usability, and compatibility with assistive technologies. Further, some services provided using analog technology, such as TTYs, cannot be duplicated with IP.³¹

The Public Utilities Commission of Ohio states:

The Ohio Commission strongly advocates that the FCC maintain notice to residential consumers as well. Residential consumers include senior citizens, people with disabilities and people with health issues that require monitoring by a medical device or a medical assistance device. Lack of sufficient notice to these consumers could result in compatibility issues with medical or other devices critical to disabled or senior citizen consumer groups. Notice allows these vulnerable populations to arrange for device upgrades or make other alternative arrangements. To require less, may place these consumers at great risk.³²

Speaking on the issue of vulnerable users, The Leadership Conference of Civil and Human Rights states:

In past technology transition proceedings, The Leadership Conference urged the Commission to ensure that vulnerable users are protected during and after the technology transition. We filed in support of “universal service, public safety, network reliability, and consumer protections, which remain as relevant in an IP network as they do in the current system.” Regardless of the technology, the Commission has an obligation to ensure that everyone has access to high-quality, affordable, and reliable voice and high-speed broadband services and that long-established consumer protections are maintained during and after the transition.³³

The Maryland Office of People’s Counsel provides a report of its experience on the positive impact of the Commission’s existing notice requirements on consumers during the technology transition:

Maryland OPC also believes that Maryland’s recent experience under the current FCC copper retirement notice rules is particularly relevant to the query in the NPRM . . . on “the likely impacts of eliminating such notice to consumers who have disabilities and senior citizens.” The FCC rules established a reasonable framework for customer notice of the planned copper retirement. The initial non-compliant notices produced confusion and frustration among customers. However, the revised compliant notices and extra time

³¹ California Public Utility Commission Comments, p. 31.

³² Public Utilities Commission of Ohio, Comments, p. 5.

³³ The Leadership Conference on Civil and Human Rights, Comments, p. 1, citations omitted.

have reduced the level of misunderstanding and hardship, particularly for senior citizens and customers who had to ensure compatibility with medical devices. Verizon's subsequent willingness to work with Maryland OPC and these customers was helpful to this process. However, none of this would have occurred without the FCC's current notice regulations and the ability of an agency like Maryland OPC to bring customer service problems to the attention of the Maryland PSC for resolution.³⁴

The National Association of Utility Consumer Advocates similarly expresses support for adequate notice, and the potential negative impact on vulnerable populations:

Consumer Advocates support tailoring notice to ensure that vulnerable populations are not at risk for having their communications disrupted by a change in technology for which they had insufficient time to prepare. If proposed network changes can potentially render end user equipment or essential services inoperable, the Commission needs to ensure that affected parties - including retail customers, wholesale customers, agencies at all levels of government, public safety officials, municipalities, tribes and states - have adequate time to become aware of the proposed changes, evaluate their impacts and search for reasonable substitute services that fully meet their needs and are affordable. Consequently, it is important to maintain ample notice, as under the existing rules, for state governments, national security agencies, and Tribal entities, as well as consumers.³⁵

Public Knowledge also addresses the importance of the existing Technology Transition rules for individuals with disabilities:

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 writing here suggests little interest in the impact of its actions in light of this mandate, however, focusing instead on whether and to what extent incumbent carriers are inconvenienced by rules promoting the public interest.³⁶

On the other hand, service provider comments are generally silent on this important issue.

CenturyLink is the exception, noting the importance of addressing vulnerable communities:

³⁴ Maryland Office of People's Counsel, Comments, p. 6, citations omitted.

³⁵ National Association of Utility Consumer Advocates, Comments, pp. 13-14, citations omitted.

³⁶ Public Knowledge, Comments, p. 6.

Technology transitions such as the IP migration also may affect certain groups of customers, such as the elderly, the hearing impaired, or late adopters, differently than others. To the extent necessary, the Commission should address the needs of such customers through rules that apply to all providers, rather than by imposing carrier-specific requirements or conditions through the Section 214(a) discontinuance process.³⁷

AARP agrees that all service providers should be subject to rules that protect consumers, and especially vulnerable communities during the Section 214(a) discontinuance process. The Commission's existing rules serve this purpose.

The Commission should maintain the functional test

In comments, AARP noted the continuing importance of the functional test. AARP believes that the Commission's 2014 interpretation is correct,³⁸ and the instant *RFC* misinterprets the issue of whether the tariff is controlling. There is no indication in the language of Section 214(a) that Congress intended to allow the carrier to define the scope of a discontinued "service" via its tariff. As Public Knowledge notes, the Commission "must look at the whole statute, including Section 214(c) and the entirety of Title II, as context as it exercises its authority under these sections."³⁹ AARP agrees that the appropriate scope of evaluation is more broad—service discontinuance has an impact on more than the tariffed service that may be discontinued.

Both AT&T and Verizon take issue with the functional test, and point to language in the *Carterfone* ruling that states that carriers should "remain free to make improvements in the telephone system."⁴⁰ On this matter, AARP believes that AT&T and Verizon miss the forest because of the trees. As the Commission noted in its *2014 Declaratory Ruling*, the issue of the functional test goes beyond the mere connection of a particular type of equipment to the network.

³⁷ CenturyLink, Comments, p. 47.

³⁸ *2014 Declaratory Ruling*, §IV.

³⁹ Public Knowledge Comments, p. 9.

⁴⁰ AT&T Comments, quoting *Carterfone*, pp. 60-61. Verizon Comments, p. 40.

Rather, the determination of whether discontinuance is occurring, based on the functional test, considers the social and economic impact more broadly:

The value of communications networks derives in significant part from the ability of customers to use these networks as inputs for a wide range of productive activities. Taking such factors into account when determining whether a service change amounts to a discontinuance, reduction, or impairment helps ensure that the Commission's discontinuance process fulfills the statutory purpose of section 214, including protecting public safety and consumers.⁴¹

AARP believes that the *2014 Declaratory Ruling* is correct on the matter of the scope of evaluation, and that anything less will lead to a technology transition that harms consumers.

On the other hand, AT&T states that the functional test is inappropriately “unbounded” as the test places carriers in the position to “guess” how their services might be used, and what the community thinks about such uses.⁴² AARP does not find this perspective to be convincing. It is reasonable to expect that telecommunications service providers keep current with the usage of the technologies and services that it sells. Such information is essential to the carriers marketing their services. For example, current advertising messages indicate that carriers identify the uses that consumers may find compelling for their broadband connections. Such information is essential for carriers to promote their services, and it is information that they collect as part of normal business operations. AT&T knows that with a broadband connection, consumers “Stream hit HD movies and your favorite TV shows with less waiting and buffering. . . . you can

⁴¹ *In the Matter of Ensuring Customer Premises Equipment Backup Power for Continuity of Communications, Technology Transitions, Policies and Rules Governing Retirement Of Copper Loops by Incumbent Local Exchange Carriers, Special Access for Price Cap Local Exchange Carriers, AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, PS Docket No. 14-174, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593. Notice of Proposed Rulemaking and Declaratory Ruling, November 25, 2014, ¶116.

⁴² AT&T Comments, pp. 66, 68.

connect, stream, and browse with our fastest upload and download speeds.”⁴³ AT&T also knows that consumers “Surf, stream, chat, and game. . .”⁴⁴

Likewise, Verizon has discerned that its broadband services enable the following customer usages:

- Surf the web, email, shop, share your favorite pics, and stream videos superfast.
- Stream more, download more and share videos, photos and status updates on multiple devices at the same time.
- Stay connected. Enjoy faster speed and less lag while you’re working or at home. Upload large files to the cloud, perform quicker backups and play competitive multi-player gaming.⁴⁵

It is simply not credible that carriers are unaware of their customer’s usage of services, and this is true for both broadband and voice. Recall that Verizon told its customers, when proposing to withdraw wireline services in Fire Island:

Verizon Voice Link is not compatible with monitored alarm security systems, fax machines, DVR services, credit card machines, or medical alert services (e.g. Life Alert). . . . Verizon Voice Link currently does not include Internet service.⁴⁶

Claims that carriers do not know how their services are utilized are not credible.

Other parties also propose to eliminate the functional test.⁴⁷ CenturyLink frames its opinion on the functional test using the example of Microsoft:

[A] carrier discontinuing a legacy service should not have to prove that an alternative service will be compatible with legacy customer equipment any more than Microsoft

⁴³ <https://www.att.com/shop/internet/gigapowerupdates.html>

⁴⁴ <https://www.att.com/internet/fiber.html>

⁴⁵ <https://www.verizon.com/home/fios-fastest-internet/>

⁴⁶ Comments of AARP in re *Application of Verizon New Jersey Inc. And Verizon New York Inc. to Discontinue Domestic Telecommunications Services*, WC Docket No. 13-150, Comp. Pol. File No. 1115, July 29, 2013, p. 14.

⁴⁷ See, for example, NTCA Comments, p. 23; Comcast Comments, p. 34; Frontier Comments, pp. 27-28; ITTA Comments, pp. 24-25.

should be required to ensure that a new version of Windows is compatible with all prior versions of software that might run on the computer.”⁴⁸

AARP hopes that the PSTN migration for which this Commission is responsible does not mirror the Microsoft Windows 8 experience, which certainly cannot be viewed as a model for technology transition.⁴⁹ AARP urges the Commission to reject CenturyLink’s carrier-oriented logic on technology transition. Consumers should not be thrown under the bus for the convenience of carriers. Continuity of services as the PSTN transitions to next-generation technologies affects more than a user’s computer desktop experience, and the economic wellbeing of communities, as well as the safety of life and property depend on a consumer-oriented and seamless transition.

Other parties also support the continuation of the functional test. The Public Utilities Commission of Ohio States:

The Ohio Commission encourages the FCC to maintain the “functional test” that will continue to “look beyond the terms of a carrier’s tariff” while taking into account the “totality of the circumstances” from the perspective of a community or part of a community when evaluating a request to discontinue, reduce or impair service under Section 214(a).⁵⁰

Similarly, the Pennsylvania Public Utilities Commission states:

The Commission has taken reasonable steps to protect consumers, competition, and the public safety by requiring applicants seeking Section 214 relief to affirm that if a retail

⁴⁸ CenturyLink Comments, p. 47.

⁴⁹ See, for example, “Windows 8: The disastrous result of Microsoft’s gutless equivocation,” *ExtremeTech*, October 25, 2012. <https://www.extremetech.com/computing/138701-windows-8-the-disastrous-result-of-microsofts-gutless-equivocation> ; see also, “Microsoft Fan Says: ‘Windows 8 Is A Disaster In Every Sense Of The Word’”, *Business Insider*, February 10, 2014. <http://www.businessinsider.com/microsoft-fan-says-windows-8-is-a-disaster-in-every-sense-of-the-word-2014-2> ; see also, “Windows 8 woes spark questions over Microsoft chief’s future,” *The Telegraph*, May 12, 2013. <http://www.telegraph.co.uk/finance/newsbysector/mediatechnologyandtelecoms/10052316/Windows-8-woes-spark-questions-over-Microsoft-chiefs-future.html> ; see also, “Did Microsoft just admit Windows 8 is its worst operating system ever?” *Computerworld*, July 1, 2014. <http://www.computerworld.com/article/2476464/microsoft-windows/did-microsoft-just-admit-windows-8-is-its-worst-operating-system-ever-.html>

⁵⁰ PUCO Comments, p. 10.

service or a service used as a wholesale input by one or more other carriers is being discontinued, reduced, or impaired it will be replaced by an adequate functionally equivalent substitute service. The “functional” test using a totality of the circumstances does not prohibit network changes; rather, it allows wireline ILECs to migrate or transition to all-fiber networks and facilities, while, at the same time, maintaining universal access to competitive retail services and wholesale access services.⁵¹

AARP also agrees with Communication Workers of America’s compelling discussion of the functional test, which states in part:

This statutory language and this administrative practice are necessary to ensure that the community, and the people in the community, has a chance to participate in the decision of whether the service on which they have relied will disappear. Yet, the Commission’s NPRM is curiously silent here; there is talk about potential burden on carriers but no discussion of the ability of the public to participate in a transparent way in a potential change of importance to them where they live or work. This omission – fueled by the proposition that on-the-ground reality must be ignored in favor of the sterile terms of a regulatory filing – conflicts with the language of the statute, its purpose, Commission precedent and the common-law. . . . the Commission’s functional test must be retained.⁵²

CWA concludes:

In sum, the functional test is neither too small nor too big. It is just right. People are what make a community, and it is their usage that must remain the touchstone of the Section 214(a) inquiry.⁵³

AARP agrees with CWA on this matter, and AARP believes that the functional test should continue. The existing approach provides an appropriate balance and will ensure that the risks of the technology transition are minimized.

Conclusion

As the technology transition unfolds, the Commission must continue to maintain its focus on fundamental issues such as adequate customer notice, availability of comparable services, impact

⁵¹ PaPUC Comments, p. 23.

⁵² CWA Comments, p. 30.

⁵³ CWA Comments, p. 37. See also, pp. 28-36 of CWA comments.

on competition, service affordability, and reliability. Consumers deserve to be fully informed regarding the retirement of legacy technologies, and the existing notice requirements reasonably serve that purpose. The Commission cannot wish away the complex relationships between legacy TDM technologies and the technologies that are utilized by consumers that depend on TDM services. Consumers must be given a reasonable amount of time to make needed adjustments. Furthermore, the Commission must assure that consumers have functionally similar alternatives, and that the alternatives are affordable and of high quality. The next generation public network must offer affordability and reliability similar to the legacy PSTN, otherwise, consumers and innovation will be harmed.