Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20544

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

REPLY COMMENTS OF VERIZON

William H. Johnson
Of Counsel

Katharine R. Saunders
Roy E. Litland
VERIZON
1300 I Street NW, Suite 500E
Washington, DC 20005
(202) 515-2462

Scott H. Angstreich
Collin R. White
KELLOGG HANSEN TODD FIGEL &
FREDERICK, P.L.L.C.
1615 M Street NW, Suite 400
Washington, DC 20036

Attorneys for Verizon

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The record in this proceeding confirms that investment in and rapid deployment of broadband is the foundation for job growth and innovative services that will improve lives. Hard data in the record show that removing impediments to broadband deployment is critical to broadband investment and economic growth. They also confirm that reducing regulations that increase costs and slow infrastructure deployment will significantly improve the business case for deploying modern wireline and wireless broadband facilities to more areas of the country, including to rural and suburban areas.[2] Reforms similar to some of the *Notice*'s[3] could achieve substantial benefits in a very short time frame. According to Corning – a fiber manufacturer with every interest in promoting policies that spur deployment – the benefits over a five-year timeframe would be substantial:

- an additional $45.3 billion in enabled capex investment for FTTP and an additional $23.9 billion in enabled capex investment for 5G fixed wireless;

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[1] The Verizon companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications Inc.
[2] *See* Corning Comments at 2.
[3] *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, ¶¶ 100-114 (2017) ("*Notice*").

- 26.7 million incremental premises passed by fiber and 14.9 million incremental premises passed by 5G fixed wireless;

- 95 percent of the incremental premises passed by fiber and about 66 percent of the incremental premises passed by 5G fixed wireless would be in suburban or rural areas;

- the incremental capex for rollout of fiber to the premises would directly or indirectly result in about 358,000 jobs driving more than $28 billion in economic output per year and the incremental capex for 5G fixed wireless would directly or indirectly result in about 140,000 jobs and drive $13.7 billion in economic output per year; and

- increased broadband competition spurred by incremental passing of fiber to the premises would drive consumer welfare gains ranging from $150.8 million to $2.7 billion.[4]

Other analysts likewise conclude that "the requirement to operate and maintain legacy networks and systems (TDM based) limits providers' ability to take advantage of the savings and shift capital to deep fiber deployment."[5] These analysts underscore the importance of quick action by the Commission to eliminate regulatory barriers that "impede deployment of additional fiber assets, or restrict the types of services that may be offered."[6] Based on these, the key areas in which the Commission should focus are:

Reform Pole Attachment Policies. The record confirms that (1) current pole attachment processes aren't working well, and (2) streamlining the attachment timeline and reducing attachment costs are critical to faster broadband deployment. There is diverse support for the Commission to adopt one-touch make-ready ("OTMR") as an option for new attachers who wish to use approved contractors to coordinate and do all work to add a new attachment (new

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[4] *See* Corning Comments at 2-3.
[5] Deloitte LLP, *Communications infrastructure upgrade: The Need for Deep Fiber* at 5 (July 2017), https://www2.deloitte.com/content/dam/Deloitte/us/Documents/technology-media-telecommunications/us-tmt-5GReady-the-need-for-deep-fiber-pov.pdf ("Deloitte Study").
[6] *See id*.

attachers could also choose to use the existing timeframes and processes).[7] The record also supports adoption of a rule that incumbent LEC pole attachers are entitled to the telecom rate and rules excluding capital cost recovery from pole attachment rates.

Encourage next-generation broadband by streamlining copper retirement and service discontinuance. The record also supports changes to the copper retirement and service discontinuance processes to allow more efficient retirement of legacy copper networks and encourage transition away from outdated services. These include revisions to copper retirement notice procedures to link any notice to the customer's specific migration, rather than to the actual retirement of their copper, as well as modifications to the required notification itself. There is also support for an improved process to efficiently discontinue services that are outdated or better served by other technologies.

In short, the record evidence should reinforce the Commission's renewed focus on encouraging increased broadband deployment and investment. We continue to support the Commission's efforts to continue to speed deployment and remove barriers to investment.[8]

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[7] If a new pole is needed to accommodate the new attachment, the contractor would also set the new pole and remove the old pole.

[8] The Notice also inquires about prohibiting state and local laws that inhibit broadband deployment. *See Notice* ¶¶ 100-114. Verizon addresses those issues in comments and reply comments responding 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.

I. POLE ATTACHMENT REFORMS WOULD SPUR BROADBAND DEPLOYMENT.

A. A Diverse Range of Parties Support One-Touch Make-Ready.

A wide range of parties – from small competitive providers and fiber manufacturers, to electric utilities, to Google Fiber – support adoption of a balanced OTMR framework. Others suggest changes to OTMR that would needlessly complicate or undermine OTMR.

1. OTMR Will Streamline and Speed Broadband Deployment.

The record contains broad and diverse support for a balanced one-touch make-ready approach that can facilitate broadband deployment.[9] For example, the Fiber Broadband Association supports "OTMR because it speeds access to poles, reduces administrative costs, is more efficient, and reduces total impact to the community."[10] CCIA argues that "OTMR should be presented as an option for new attachers" and INCOMPAS and Level 3 agree.[11] Google Fiber rightly explains some of the benefits of the new approach, including streamlining the make-ready process by replacing multiple truck rolls with just one, which will "reduce disruption of streets and sidewalks, minimizing risk and inconvenience to residents."[12] And Corning, the leading

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[9] *See* CompTIA Comments at 2 (stating that OTMR "would significantly shorten the pole attachment timeline and reduce deployment costs"); Crown Castle Comments at 3 (supporting OTMR with conditions); ExteNet Systems Comments at 54-55 (supporting OTMR because it allows for faster and safer construction and lowers barriers to entry); Lightower Comments at 4 ("OTMR . . . represents the speediest path to attachment, produces predictable delivery timelines for customers, and takes all stakeholders' attachment and safety concerns into account."); Next Century Cities Comments at 7 ("NCC urges the Commission to promulgate OTMR rules, but to ensure that they are a framework and not a straightjacket.").

[10] *See* Fiber Broadband Association Comments at 6-7.

[11] *See* Computer & Communications Industry Association (CCIA) Comments at 18 ("OTMR should be presented as an option for new attachers."); INCOMPAS Comments at 3 (stating that "the Commission should adopt rules that provide new attachers the option to invoke a . . . OTMR process"); Level 3 Comments at 2 (stating that Level 3 is a "strong supporter" of "properly crafted OTMR").

[12] *See* Google Fiber Comments at 10.

supplier of optical communications fiber, also supports OTMR because it "would effectively reduce overall access time."[13] As Corning's analysis concludes, reducing regulations and improving the business case for deploying next-generation broadband infrastructure "would drive significant collateral benefit in the form of job creation, economic growth, and consumer welfare."[14] Companies like Corning, the D.C. Circuit has recognized, that "sell goods and services that are inputs to the production and use" of services like those at issue here have "the incentive to make a completely unbiased judgment" on the merits of regulatory proposals regarding those services.[15] The Commission should give substantial weight to Corning's judgment.

Verizon's proposed approach aims to balance the benefits to new attachers with protections for the pole owner and existing attachers. We urged the Commission to authorize one-touch make-ready as an alternative to the current pole attachment process.[16] By assuming responsibility for the survey and make-ready estimate, the new attacher could shorten the pre-make-ready period. And by replacing sequential make-ready with one-touch make-ready the new attacher could shorten significantly the make-ready and attachment process.[17] The new attacher would be required to correct any deficiencies the pole owner and existing attachers

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[13] *See* Corning Comments at 1-2, 4.
[14] Corning Comments at 2, 5-6. *Accord* Corning Comments at Attachment A, Hal Singer, Economists Incorporated, *Assessing the Impact of Removing Regulatory Barriers on Next Generation Wireless and Wireline Broadband Infrastructure Investment* (June 2017).
[15] *See United States v. Western Elec. Co.*, 993 F.2d 1572, 1582 (D.C. Cir. 1993) (emphasis omitted).
[16] Verizon Comments at 4-9.
[17] *Id.*, at 7-8.

identified.[18] And the new attacher and the approved contractor would provide indemnification for any harm the contractor's make-ready work caused.[19]

Although cable incumbents and some incumbent LECs claim that the use of third-party contractors could damage their facilities and cause outages,[20] not only do the current rules already authorize the use of contractors if existing attachers do not meet their make-ready deadlines,[21] but, as Google Fiber points out, "in many markets, the contractors approved by the pole owners are the same contractors used by attachers, both incumbents and new providers."[22] And if a contractor performs shoddy work, an existing attacher can demand that the new attacher and its contractor repair the deficiency and provide indemnification for any harm caused, and the existing attacher can request that the pole owner remove the contractor from the list of approved contractors. Thus, any specific issue with a qualified contractor can be addressed with communication and coordination between the pole owner, the new attacher, existing attachers, and the contractor.

Some other parties support OTMR in a more limited form. For example, the electric utilities would limit OTMR to the communications space and impose other conditions.[23] AT&T

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[18] *Id*. at 8.
[19] *Id*. at 6.
[20] *See* Charter Comments at 39-44; Comcast Comments at 20-22; NCTA Comments at 15-16. *See also* AT&T Comments at 15-16; CenturyLink Comments at 7-8, 12-14; Frontier Comments at 16-17.
[21] *See* 47 C.F.R. § 1.1422.
[22] *See* Ex Parte Letter from Kristine Laudadio Devine, counsel to Google Fiber, to Marlene Dortch, FCC, at 1 (July 3, 2017).
[23] *See* Ameren, *et al*. ("Electric Utilities") Comments at 5-6 (supporting OTMR in the communications space subject to conditions); Coalition of Concerned Utilities Comments at 17-18 (supporting OTMR in the communications space subject to conditions); CenterPoint, *et al*. ("POWER") Comments at 12 (supporting OTMR in the communications space subject to conditions); Edison Electric Institute Comments at 3 (stating that OTMR in the communications space "may prove beneficial").

recognizes the benefits of OTMR but raises concerns relating to its own collective bargaining agreements and what it terms "unbalanced" OTMR approaches.[24] These suggestions go too far in undermining the benefits of OTMR.

First, the Commission should reject arguments that pole owners have no obligation to determine the list of approved contractors,[25] or that permit existing attachers to veto those contractors.[26] These proposals are unnecessary or unworkable. The Commission's current rules already require the pole owner to maintain a list of approved contractors that a new attacher can use if existing attachers do not meet their make-ready deadlines.[27] To address concerns about liability, the Commission should make clear that in maintaining this list, the pole owner is not making warranties and that liability for deficient work or damage rests exclusively with the new attacher and its contractor. And while the Commission should encourage the pole owner to consider feedback from existing attachers, the ultimate authority to designate approved contractors must rest exclusively with the pole owner. Otherwise the list of approved contractors could vary from pole to pole based on the particular attachers on the poles.

Second, the Commission should hold that OTMR is authorized both in the communications space and for the attachment of wireless facilities above the communications space. While some electric companies argue that OTMR should be barred above the

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[24] *See* AT&T Comments at 14-15.
[25] *See* Alliant Energy, *et al*. ("Midwest Electric Utilities") Comments at 31 (stating that "[t]he utility shouldn't have to "approve" a particular contractor to perform make-ready in the communications space because that would inject the utility into the communication space make-ready process and expose the utility to potential liability").
[26] *See* Charter Comments at 56 (arguing that existing attachers should have the right to approve contractors).
[27] *See* 47 C.F.R. § 1.1422.

communications space because of safety and reliability concerns,[28] such a restriction would effectively preclude OTMR for most wireless attachments. If a contractor is qualified to perform work above the communications space, the new attacher should be allowed to use the contractor.[29]

Third, the Commission should reject efforts to limit OTMR to "routine" make-ready work that is not reasonably expected to cause an outage and to give existing attachers the right to make that determination.[30] The benefits of OTMR will not be fully realized if new attachers must get preclearance from existing attachers for make-ready work. If the Commission decides to draw distinctions between "routine" and "complex" make-ready work, the Commission should at most require that existing attachers be given a slightly longer notice period before a contractor performs complex one-touch make-ready work.

Fourth, the Commission should not tailor its OTMR rules to specific companies' particular collective bargaining agreements.[31] That approach would result in a patchwork of rules that might be subject to change every few years and would be administratively unmanageable for new attachers.

[28] *See* Electric Utilities Comments at 5-6 (supporting OTMR in the communications space subject to conditions); Coalition of Concerned Utilities Comments at 17-18 (supporting OTMR in the communications space subject to conditions); POWER Comments at 12 (supporting OTMR in the communications space subject to conditions); Edison Electric Institute Comments at 3 (stating that OTMR in the communications space "may prove beneficial").

[29] Of course, utilities should not be able to unreasonably reject proposed qualified contractors or make the process of becoming qualified so unreasonable as to place a roadblock in efforts to use OTMR.

[30] *See* AT&T Comments at 15-16.

[31] *See*, *e.g.*, *id*. at 17.

Fifth, the Commission should not establish a rigid timeframe for the pole owner and existing attachers to inspect completed OTMR work.[32] This would align with the Commission's current rule that avoids establishing a deadline to inspect self-help make-ready work,[33] in large part because the limitations period for raising claims about damage to a party's facilities is typically governed by state contract or property law. There is no reason to upset that balance by imposing a new artificial deadline.

Finally, the Commission should reject proposals to impose penalties on existing attachers in place of allowing OTMR. Comcast asserts that monetary penalties "should serve to deter existing attachers from unreasonably delaying make-ready work."[34] But as Crown Castle points out, "the administration, tracking, and enforcement of such fines would simply complicate matters."[35] And as INCOMPAS notes, a system of fines "would do nothing to solve the numerous separate climbs and construction stoppages in the public-rights-of-way or separate time intervals."[36]

In short, although pole owners, existing attachers, and the public have legitimate interests in protecting existing facilities we – as a pole owner and pole attacher – believe that the benefits of one-touch make-ready in spurring broadband deployment will far outweigh any growing pains associated with OTMR.

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[32] *See*, *e.g.*, Google Fiber Comments at 6 (proposing a 60-day inspection period).
[33] *See* 47 C.F.R. § 1.1420(i).
[34] *See* Comcast Comments at 19.
[35] *See* Crown Castle Comments at 25. *See also* AT&T Comments at 28 ("Adopting a penalties-based approach would only foment conflict, in litigation or otherwise, between new and existing attachers about who is to blame for the make-ready delay.").
[36] *See* INCOMPAS Comments at 10. *See also* Google Fiber Comments at 11-12 (stating that right-touch make-ready fines do not solve the fundamental problem of sequential make-ready); Crown Castle Comments at 25, CCIA Comments at 18.

2. 47 U.S.C. § 224(h)'s Reasonable Opportunity Requirement Does Not Bar One-Touch Make-Ready.

Despite Comcast's and NCTA's arguments,[37] OTMR is not barred by statute. Section 224(h) states that if a pole owner "intends to modify or alter" a pole, the owner must provide written notification to existing attachers so they "have a reasonable opportunity to add to or modify" their attachments. This provision is irrelevant to most instances of OTMR, since here it is a *new attacher* who is seeking to rearrange pole attachments.[38] Moreover, even in instances where a pole owner is seeking to modify or alter a pole, written notification of its intent to use OTMR could fulfill the requirements of this section.

B. Aside From OTMR, the Commission Should Not Shorten Existing Pole Attachment Timelines.

Substantial record evidence confirms that the Commission should not shorten the existing pole attachment process to the extent that this process remains an alternative to OTMR. Google Fiber argues that "[t]oday, existing attachers struggle to meet the 60-day deadline; unless the Commission reforms its rules to streamline make-ready procedures themselves, shorter deadlines alone will not improve make-ready."[39] And shorter timelines would not address the fundamental inefficiencies of sequential make-ready work.

At most, any timeline change should be very cautious and include only targeted, incremental reforms. For example, we agree with AT&T's and Frontier's proposal to eliminate

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[37] *See* Comcast Comments at 19; NCTA Comments at 16.

[38] To the extent that Section 224(h) does apply, the Commission should forbear, *sua sponte*, from enforcing this section because it is not necessary to ensure that charges or practices are just and reasonable, it is not necessary for the protection of consumers, and forbearance would benefit the public interest by speeding broadband deployment. *See* 47 U.S.C. § 160(a) (forbearance standard).

[39] *See* Google Fiber Comments at 12. *See also* AT&T Comments at 6-14 (proposing incremental, targeted reforms); CenturyLink Comments at 8; Frontier Comments at 15.

the pole owner's right to invoke an additional 15 days to complete other parties' make-ready work, as many owners typically do not invoke the 15-day period.[40] We also support AT&T's proposal to eliminate the additional 30 days for make-ready work on wireless attachments above the communications space, thereby harmonizing the make-ready timelines for all pole attachments, as pole owners and attachers today have much more experience with pole-top attachments than they had in 2011.[41]

C. Incumbent LECs Should Pay the Telecom Rate.

The record confirms that the Commission should adopt a rule that incumbent LECs are entitled to the telecom rate for purposes of pole attachments. The Commission's current framework, under which incumbent LECs must prove that they are similarly situated to other attachers, has resulted in protracted negotiations and repeated disputes as some power companies refuse to negotiate reasonable rates.[42]

As Frontier argues, "ILECs now compete head-to-head with cable, telecommunications, and broadband companies for the same customers, but lack the ability to negotiate competitive pole attachment rates."[43] Predictably, the electric utilities argue that incumbent LECs should not pay the telecom rate because they receive a litany of supposed advantages from joint use agreements.[44] But the Enforcement Bureau's recent decision in *Verizon v. Dominion Virginia Power* demonstrates that the "advantages" are illusory.[45] The Bureau found that the advantages cited by Dominion "do not remotely justify the difference between the rate [Verizon] pays and

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[40] *See* AT&T Comments at 13; Frontier Comments at 15.
[41] *See* AT&T Comments at 13-14.
[42] *See* CenturyLink Comments at 21-22; Frontier Comments at 4-7.
[43] *See* Frontier Comments at 6.
[44] *See* Electric Utilities Comments at 25-30; Coalition of Concerned Utilities Comments at 45-49.
[45] *See Verizon v. Dominion Virginia Power*, Order, 32 FCC Rcd 3750 (2017).

the rate that competitive LECs pay to attach to Dominion's poles;"[46] in fact, many of the alleged benefits simply did not exist.[47]

If the Commission adopts an incumbent LEC telecom rate presumption instead of a rule, that presumption should only be overcome in rare situations, and not by reference to benefits that all attachers receive or that the incumbent LEC has never received.[48] And, if the presumption is overcome, the maximum "reasonable rate" acceptable should be no higher than the old telecom rate. The Commission should also reject electric companies' calls for automatic commensurate reductions in the rates charged to the utility for attaching to incumbent LECs' poles.[49] As we explained, the rates parties charge each other may already be disproportionate; a "commensurate" rate reduction to all electric companies would only perpetuate the disparity.[50]

D. Exclude Capital Costs from Pole Attachment Rates.

The record supports codifying Commission precedent that pole attachment rates cannot include capital costs that utilities already recover via make-ready fees.[51] Parties either do not oppose this proposal,[52] or admit they already comply with it.[53] To promote clarity, the Commission should, at a minimum, codify its rule that pole attachment rates cannot include capital costs that utilities recover through make-ready fees. The Commission should also exclude all capital costs from pole attachment rates. While utilities oddly assert – without citing

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[46] *Id.*, ¶ 17.
[47] *Id.* ¶ 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.'").
[48] *See* Verizon Comments at 12-13.
[49] *See* Electric Utilities Comments at 35-36.
[50] *See* Verizon Comments at 13.
[51] *See* AT&T Comments at 20; Comcast Comments at 29; NCTA Comments at 18.
[52] *See* Electric Utilities Comments at 47.
[53] *See* Coalition of Concerned Utilities Comments at 32-34; POWER Comments at 22-24.

case law – that excluding capital costs from pole attachment rates "constitutes an unconstitutional taking of utility property without just compensation,"[54] their argument makes no sense. 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 separate need for a taller pole or increased pole strength: attachers should pay only for the costs they cause.

E. Adopt a 180-Day Shot Clock for Pole Attachment Complaints.

There is strong record support to adopt a 180-day shot clock for pole access complaints, and many parties also support applying the same shot clock to other pole attachment complaints.[55] Some electric companies claim that a 180-day shot clock would somehow prevent non-pole-access complaints from going through the "full process."[56] But as discussed in our initial comments, six months is the same period that Congress allowed for reverse-preemption states to decide pole attachment complaints, and thus should apply here.[57]

F. Other Pole Attachment Issues

1. Additional Pole Cost Data

The Commission should reject Comcast's request to require incumbent LECs to provide disaggregated pole cost data.[58] Comcast claims that this data is now needed because the Commission recently permitted incumbent LECs to use Generally Accepted Accounting Principles – instead of Part 32 accounting – to set pole attachment rates.[59] While meritless, the

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[54] *See* Coalition of Concerned Utilities Comments at 36. *See also* Edison Electric Institute Comments at 42.
[55] *See* AT&T Comments at 25-26 (supports shot clock for both types of complaints); CenturyLink Comments at 22; Frontier Comments at 14; NCTA Comments at 21.
[56] *See* POWER Comments at 38; Electric Utilities Comments at 60.
[57] *See* Verizon Comments at 15.
[58] Comcast Comments at 27.
[59] *Id*.

Commission should not address Comcast's request in this proceeding but instead should address it in the context of NCTA's petition for reconsideration of the Commission's Part 32 order.[60]

2. The Tennessee Valley Authority Pole Attachment Rate

The Commission should reject the Coalition of Concerned Utilities' argument that the pole attachment rate should be the rate established recently by the Tennessee Valley Authority for use by not-for-profit electric cooperatives and municipalities under its jurisdiction.[61] The rates adopted by TVA are significantly higher than rates calculated using the Commission's pole attachment rate formula.[62] For the reasons stated by USTelecom, CenturyLink, and Frontier, these higher rates will impede broadband deployment.[63] The Commission should not adopt them.

3. Unreasonable Dilatory Tactics by Utilities

The Commission also should confirm that certain non-rate practices by utilities are unreasonable. For example, the Commission should confirm that utilities are required to make the locations of their facilities available – subject to an appropriate nondisclosure agreement –

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[60] *See Comprehensive Review of the Part 32 Uniform System of Accounts*, Public Notice, WC Docket No. 14-130 & CC Docket No. 80-286; 82 FR 31282 (June 26, 2017) (addressing NCTA Petition for Reconsideration, WC Docket No. 14-130 & CC Docket No. 80-286 (filed June 5, 2017)).
[61] *See* Coalition of Concerned Utilities Comments at 39-41.
[62] *See* USTelecom Comments at 12.
[63] *See id.*; CenturyLink Comments at 19-20; Frontier Comments at 10-14.

before a new attacher signs a contract.[64] Similarly, the Commission should affirm that utilities may not delay the pole attachment process while they negotiate a contract with a new attacher.[65]

II. REFORM COPPER RETIREMENT RULES TO ENCOURAGE TRANSITION TO NEWER TECHNOLOGIES.

No party genuinely disputes the need to facilitate the continued migration to new technologies, and almost every filer acknowledges the benefits of encouraging providers to transition from copper to newer technologies such as fiber.[66] While parties recognize that the some of the *2015 Technology Transitions Order*'s[67] reforms were helpful – including eliminating the ability of parties to object and delay copper retirements – there's broad support in the record that further changes are needed and could encourage these transitions.[68]

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[64] *See Implementation of Section 224 of the Act*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, ¶ 47 (2011) ("*2011 Pole Attachment Order*") ("We agree that make-ready performance does normally require an agreement to be in place between the parties. We find, however, that the engineering analysis (or any other aspect of a survey) and negotiation of rates, terms, and conditions can take place on separate tracks.").

[65] *See id.*, ¶ 46 ("The current 45-day response rule continues to apply to all requests for access under Section 224, whether or not the request is an application subject to the timeline we adopt today, and completion of an initial pole attachment agreement or 'master agreement' is not a prerequisite to starting the clock.").

[66] *See*, *e.g.*, AARP Comments at iv (quoting then-Commissioner Pai's statement that "[f]iber networks transmit data at the speed of light and fail at only one-eighth the rate of copper networks"). The Alarm Industry Communications Committee (AICC) alleges, without factual support, that Verizon's copper retirement program caused an increase in failed alarm signals in the first half of this year. *See* AICC Comments at 8. We reiterate that fiber and coaxial cable based facilities are widely deployed across the country and around the world, and provide reliable and efficient service to millions of customers, including customers using alarm systems. *See* Verizon Response at 5, *Wireline Competition Bureau Short Term Network Change Notification Filed By Verizon Virginia LLC*, Report No. NCD-2378 (Aug. 20, 2014). Verizon's fiber facilities work equally well with alarm systems as do copper facilities, and we are not aware of any reason that the transition would cause such a claimed increase.

[67] *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*").

[68] *See*, *e.g.*, Verizon Comments at 16-28; AT&T Comments at 29-31; Corning Comments at 1-2; ITTA Comments at 7-8; NTCA Comments at 18-19.

A. Any Required Public Notice Period Should Be 90 Days When Copper Facilities Are In Use and 30 Days Otherwise.

As we and other parties have explained, 90 days is a sufficient notice period for retirement of copper facilities that are in use.[69] Windstream argues that the current 180-day timeframe should be retained because providers face an "onerous process of transitioning retail customers;"[70] INCOMPAS suggests the period should be even longer.[71] But as other providers explain, there is significant legwork required well before making a copper retirement filing, and this pre-filing planning period, plus the current 180-day notice period and the time it takes to issue a public notice, already stretches the effective timeline for a copper retirement filing to a year or more – a timeline "simply too long to accommodate some network upgrades."[72] Providers have known for years about the technology transitions and therefore returning to a 90-day notice period is reasonable.[73] That period should begin when an incumbent LEC files its notice to provide "a predictable date certain" to start the notice and migration process.[74] As happens today, providers should continue to be able to begin migrating customers after each has received the appropriate period of notice, even if that is well before the copper is actually retired. Parties also agree that the Commission should expedite the timeframe for retiring copper facilities that are no longer in use to 30 days or less.[75]

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[69] *See* Verizon Comments at 18-19; AT&T Comments at 34 (arguing for 60-day period); CenturyLink Comments at 28-29 (arguing for 90-day period).
[70] *See* Windstream Comments at 5.
[71] *See* INCOMPAS Comments at 13-14 ("If anything, 180 days is inadequate notice.").
[72] *See* CenturyLink Comments at 28; AT&T Comments at 32.
[73] *See Notice* ¶ 62.
[74] *See* AT&T Comments at 34 (arguing that effective date "should be calculated from the date the ILEC files notice or certification of the change with the Commission"); CenturyLink Comments at 29 (arguing that "the 90-day period should begin the date the application is filed, rather than the date the Commission issues a public notice").
[75] *See Notice* ¶ 63 (asking whether to reduce waiting period to 30 days where the copper facilities are no longer in use); Windstream Comments at 10 (supporting proposal); California Public

Finally, as we explained in our opening comments,[76] the Commission should also allow an incumbent LEC that has filed a copper retirement notice to decline orders for new copper-based services in the area covered by the notice.[77] Once an incumbent LEC files to retire copper for a particular area, it makes no 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.

B. Notices to Retail Customers and Certification Should Be Flexible, and Copper Retirement Should Remain a Notice-Based Process.

Some commenters express concern that any reform to the copper retirement rules could result in incumbent LECs failing to notify their retail customers.[78] But as Verizon and others have pointed out, no rule is necessary because a provider cannot migrate customers from copper to newer technologies without first notifying them of the upcoming changes and scheduling installations of new technologies such as fiber to the premises.[79] Rather than try to impose a rigid one-size-fits-all approach on these notifications, the Commission should permit flexibility.

The record shows that the current rules, which attempt to micromanage providers' communications with their customers, have resulted in customer confusion. For example, the

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Utilities Commission ("Cal. PUC") Comments at 29 ("The CPUC could support this measure, if it were accompanied by some assurance that customers in the service area were not forced off their copper-based service through inadequate notice; or because a California-based COLR did not submit a required notice to provide basic service using an alternative technology."); AT&T Comments at 35 (calling for 15-day period).

[76] *See* Verizon Comments at 28.

[77] *See* Verizon Comments at 28.

[78] *See* AICC Comments at 3, 10; National Association of State Utility Consumer Advocates, *et al*. ("NASUCA") Comments at 14; Communications Workers of America (CWA) Comments at 8; Cal. PUC Comments at 31.

[79] *See*, *e.g.*, Verizon Comments at 20; AT&T Comments at 33 ("Further, when copper facilities are replaced by FTTH facilities, the retail customer is not only notified of the upgrade but is directly involved in the installation of the new optical network terminal on the customer's premises.").

Maryland Office of People's Counsel states that some customers were confused because they received notices from Verizon referring to the copper retirement effective date in its regulatory filing and the separate date by which those customers would be required to migrate to fiber.[80] Similarly, the Alarm Industry Communications Committee conflates the copper retirement and copper migration dates and, as a result, mistakenly alleges that Verizon sometimes gave residential retail customers less than 90 days' notice.[81] As we have explained, such customer confusion resulted from the copper retirement rules, which required us to notify our customers about the regulatory copper retirement date when the only date customers care about is the date they will be migrated off copper.[82] The Commission can eliminate this confusion by removing requirements that notice be tied to the effective or actual retirement date and by no longer dictating the content of customer notices. Instead, providers should be permitted to provide customers notice reasonably calculated to allow the customers to make an informed decision regarding the network change.

Similarly, if the Commission continues to require some form of copper retirement notice certification, parties should need to certify only 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 customers are off of the affected copper). Separating the notice process from the date of actual retirement or the "effective date" of the Commission's public notice process will reduce customer confusion substantially while streamlining the process.

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[80] Joyce Lombardi, Maryland Office of People's Counsel ("Md. OPC") Comments at 3.
[81] *See* AICC Comments at 5.
[82] *See* Verizon Comments at 19-20 and Smith Decl. ¶ 8.

Finally, a number of parties correctly explained why copper retirement should remain a notice-based process and should not return to an objection-based approach.[83] Although some other parties urge a return to an objection-based process,[84] there is no dispute that the previous objection procedures were seldom, if ever, used.[85] And providers should be aware by now that technology transitions are happening and should be prepared to act when they receive notice of a copper retirement; as Corning demonstrates, delay is itself harmful to the transition.[86]

C. Copper Retirement Should Not Include the "De Facto" Concept and Should Not Be Conflated With Service Discontinuance.

The Commission should do away with the concept of "de facto" copper retirement because the concept introduces significant uncertainty to the copper retirement process.[87] Frontier explains that "[w]hile carriers . . . do not seek to allow copper plant to degrade, they are unable to continuously monitor the state of all infrastructure, even if it is not currently in use."[88] If the Commission retains the "de facto" concept, however, it should reiterate that there is no

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[83] *See*, *e.g.*, AT&T Comments at 34 (arguing that Commission should eliminate the objection process); Frontier Comments at 24 ("It does not appear that there is any legitimate reason for a party to object to the deployment of new fiber infrastructure, and instead, retaining some type of objection provision would just introduce opportunity for gaming and parties to seek to delay deployments.").

[84] *See* Cal. PUC Comments at 29 ("The rules should include an objection period that is sufficiently long for affected parties to explain the effect to the FCC, so that the FCC can determine if there is a problem."); Windstream Comments at 6 (arguing that the objection procedures should be reinstated if the Commission reverts to a 90-day notice period).

[85] *See 2015 Technology Transitions Order*, ¶ 28 (noting that objection procedure was "rarely used"). *See also* CenturyLink Comments at 29; AT&T Comments at 35 ("From 2007 to 2016, AT&T filed 666 network change notices – 266 short-term, 12 copper retirement, and 388 long-term. Not one of those 278 short-term or copper retirement notices generated an objection from any party.").

[86] *See Notice* ¶ 62; Corning Comments at 6 (stating that "there is an opportunity cost associated with preserving antiquated regulations that maintain copper-based networks or that have a disincentive effect on broadband investment (either by increasing costs or slowing deployment), and there is much to be gained from eliminating these regulatory obstacles").

[87] *See* Verizon Comments at 20.

[88] *See* Frontier Comments at 24.

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"[89] to avoid unmanageable loop-by-loop retirement requirements.

Parties such as CWA, NASUCA, and Windstream claim that CWA-initiated state service quality complaints somehow justify retaining the de facto copper retirement concept.[90] CWA seeks to create the impression that Verizon engages in widespread de facto copper retirements. But as Verizon has explained previously, that's just not correct.[91] And Verizon has already responded to CWA's specific allegations before the relevant state public utility commissions, showing that CWA's claims are unfounded.[92] Rather than encroach upon issues before the state commissions, the Commission should instead focus on improving customer service by encouraging the move to more reliable fiber.

Some parties also improperly conflate copper retirement with the Section 214 service discontinuance process. For example, Utilities Technology Council is concerned that modifying Section 51.332 would result in the "de facto retirement of services,"[93] and Southern Company

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[89] *See 2015 Technology Transitions Order* ¶ 93.
[90] *See* CWA Comments at 15-23; NASUCA Comments at 9; Windstream Comments at 8.
[91] *See*, *e.g.*, Ex Parte Letter from Maggie McCready, Verizon, to Marlene Dortch, FCC, *Technology Transitions*, GN Docket No. 13-5 & RM-11358 (Oct. 23, 2015) ("Verizon spends significant amounts to ensure our copper network remains healthy and provides the high quality of service customers demand. From 2008 through 2014, for example, Verizon spent more than $12 billion on its copper network, including spending on maintenance and repair, restoral, and rehabilitation of copper throughout Verizon's wireline footprint.").
[92] *See* Verizon Responses to Communications Workers of America Letter, *Appropriate Forms of Regulating Tel. Cos.*, Case No. 9133; *Investigation Into Verizon Maryland Service Performance and Service Quality Standards*, Case No. 9114 (Md. PSC filed Jan. 14, 2016); Verizon Pennsylvania Answer to Petition, *Petition of Communications Workers of America For a Public, On-the-Record Commission Investigation of the Safety, Adequacy, and Reasonableness of Service Provided by Verizon Pennsylvania*, Docket No. P-2015-2509336 (Pa. PUC filed Nov. 10, 2015).
[93] Utilities Technology Council Comments at 26.

Services appears to assume that copper retirement equates to replacing one service with another.[94] But under the statute – as well as in practice – retiring copper is not the same as discontinuing a service. For example, Verizon customers today may continue to subscribe to the same TDM plain old telephone service (POTS) on a like-for-like basis, over fiber facilities as they had over copper. The Commission should therefore reject any attempts to blur the distinction between copper retirement and Section 214 discontinuance.

D. Allow an Incumbent LEC to Notify Providers On Its Network Change Website.

The *2015 Technology Transitions Order* requires incumbent LECs to serve notice on "each entity within the affected service area that directly interconnects with the incumbent LEC's network," broadening the number of entities beyond the prior requirement of notice only to telephone exchange service providers that directly interconnect. As Verizon and others explain, the current rule requires that notices be sent to interconnecting entities even if they are not impacted by the copper retirement.[95] Even Windstream recognizes that "[u]nder the old rule, the burden on incumbent LECs was minimized while all competitive LECs that could be affected

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[94] *See* Southern Co. Comments at 5 ("Even though a 'retirement' should not involve a discontinuance, reduction, or impairment of service, customers need time to assess whether and how the proposed replacement service will affect their ongoing operations, then engineer, order, and install the replacement service, assuming it is adequate.").

[95] *See* Verizon Comments at 22; CenturyLink Comments at 30 ("The 2015 rules expanded this notice requirement to include other entities within the affected service area that directly interconnect with the ILEC's network–such as ISPs, IXCs, and wireless providers. There is no need for notice of copper retirement to these additional entities, which are not directly affected by the migration of the last mile from copper to fiber. These entities typically interconnect and exchange traffic with the ILEC at an access tandem or end office."); Frontier Comments at 25 (stating that "Frontier finds itself notifying cable companies and other carriers that have never even consider[ed] the potential for purchasing residential copper loops for resale"); ITTA Comments at 10 (stating that "even if an interconnected entity is actively connected to an ILEC network, if it does not currently have a service that rides a copper cable planned for retirement, there is no reason to notify that carrier of the retirement").

by the planned copper retirement received notice."[96] The Commission should return to its prior rule requiring notice only to telephone exchange service providers that directly interconnect. Further, as we already explained,[97] the Commission should eliminate the mailing requirement and 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.

E. Eliminate Section 51.325(c).

Many parties support deleting or reforming Section 51.325(c), which prohibits providers from giving advance notice of "information about planned network changes" to "separate affiliates, separated affiliates, or unaffiliated entities (including actual or potential competing service providers or competitors)."[98] As we explained, Section 51.325(c) 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.[99] Even Windstream acknowledges that Section 51.325(c) prevents parties from exchanging useful information, although its proposed solution to require providers to make advance disclosure simultaneously to all entities that would be entitled to notice of the network change[100] would prove administratively complicated and difficult to operationalize. Instead, the Commission should eliminate Section 51.325(c) in its entirety.

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[96] *See* Windstream Comments at 10.
[97] *See* Verizon Comments at 23.
[98] *See* AT&T Comments at 37-38 (eliminating Section 51.325(c) "will make the network change process more thoughtful and collaborative"); ITTA Comments at 5 (stating that "Section 51.325(c) unnecessarily hinders the network change process"); Verizon Comments at 25.
[99] *See* Verizon Comments at 25.
[100] *See* Windstream Comments at 10 ("The Commission correctly notes that the current rule "unnecessarily constrain[s] the free flow of useful information that … entities may find particularly helpful in planning their own business operations.") (alterations retained). *See also* Pennsylvania Public Utility Commission ("Pa. PUC") Comments at 10 (arguing for similar condition should Section 51.325(c) be modified); INCOMPAS Comments at 15 (same).

F. Eliminate the Terminal-Equipment-Notice Requirement.

The record confirms that 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.[101] As AT&T explains, "[i]t is unrealistic to require the ILEC to be able to predict whether a network change could possibly have a material effect on customer equipment that the ILEC is unaware of and is not itself provisioning and maintaining."[102] The supporters of Section 68.110(b) do not explain how an incumbent LEC can make this prediction.[103] The Commission should eliminate Section 68.110(b) and any related certification requirements.

G. Allow Emergency Copper Retirements.

The Commission should also clarify that the regular copper retirement timeframes do not apply to emergency copper retirements triggered by third parties (such as municipal mandates) or by external events such as hurricanes or unplanned copper cuts.[104] As CenturyLink explains, in some instances, municipally-mandated facilities relocations present an opportunity to upgrade from copper to fiber, but that opportunity might be lost or delayed because of the need to comply with standard copper retirement timeframes.[105] Similarly, Frontier argues that the Commission

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[101] *See Notice* ¶ 70.

[102] *See* AT&T Comments at 36. *See also* Frontier Comments at 26 (arguing that "eliminating Section 68.110(b) will remove unnecessary red tape and promote broadband deployment"); ITTA Comments at 15-16 ("Aside from the practical difficulties of ascertaining whether "any customer's" – and, if so, whose – CPE "can be reasonably expected" to be affected by a network change, the benefits of providing the required notifications long have been eclipsed by the costs.").

[103] *See* Cal. PUC Comments at 32; NASUCA Comments at 13-14; Utilities Technology Council Comments at 28-29.

[104] *See* Frontier Comments at 24 n.56 ("[S]hould the Commission retain Section 51.332 in any manner, it is imperative to accommodate these types of emergency situations.").

[105] *See* CenturyLink Comments at 29 ("Typically, CenturyLink takes the opportunity in such projects to upgrade the relocated facility from copper to fiber. But Section 332's 180-day

should accommodate emergency copper retirement situations such as "emergency repairs and state and local construction schedules."[106] The Commission should adopt Verizon's proposal that, in such situations, incumbent LECs should be required to provide notice to affected customers and make a copper retirement filing as soon as practicable, and include in their filing a description of the situation and how they provided notice.[107] In adopting rules for emergency copper retirement, the Commission should allow providers substantial flexibility rather than crafting an overly restrictive framework such as AT&T's proposal. AT&T's proposed framework provides flexibility for incumbent LECs only after they invoke a disaster recovery plan.[108] While we agree that emergency copper retirement flexibility should cover disaster recovery situations, the flexibility should also extend to non-disaster situations such as municipal construction projects.

III. STREAMLINE THE DISCONTINUANCE PROCESS.

A wide range of comments confirm that the Commission's existing discontinuance process unnecessarily burdens providers' efforts to roll out next-generation services. Providers,[109] trade associations,[110] and fiber manufacturers such as Corning[111] agree that the Commission should lighten that burden. In light of that consensus, the Commission is right to reconsider both the scope of its discontinuance authority and the substance of its policies.[112] For the reasons Verizon and others have explained, the Commission in particular should eliminate

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timeline prevented CenturyLink from doing that in Richfield, as the company had only 140 days to move its facilities.").

[106] Frontier Comments at 24 n.56.

[107] *See* Verizon Comments at 27-28.

[108] *See* AT&T Comments at 38-39.

[109] *See id*. at 40-41; CenturyLink Comments at 34-49.

[110] *See*, *e.g.*, ITTA Comments at 17.

[111] *See*, *e.g.*, Corning Comments at 1-2.

[112] *See* Verizon Comments at 28-42.

certain rules – including the "functional test" for defining a carrier's "service" under Section 214(a) and the related "adequate replacement" test – that exceed the Commission's authority.[113] It also should take further actions to simplify the nation's transition from legacy services to modern services.

A. A Provider Does Not Trigger Section 214(a) if Comparable Fiber, IP-Based, or Wireless Alternatives Are Available.

1. Section 214(a) Applies to Community-Wide Loss of Service, Not Changes to Individual Offerings.

The Commission lacks the statutory authority to regulate a carrier's discontinuance of a voice or data offering if the affected community's members can secure comparable service through a fiber, IP-based, or wireless alternative. As the comments detail,[114] Section 214(a)'s language, historical context, and legislative history confirm Congress's purpose was to keep communities from losing contact with the outside world – not to empower the Commission to regulate a provider's change of any offering. To the contrary, the legislative history shows "[t]he only thing that the Congress and the country [are] interested in is adequate service."[115] The comments demonstrate that the Commission should abandon its erroneous, offering-by-offering approach to Section 214(a) in favor of the better reading the Commission has proposed in the *Notice*, under which it would instead consider "the entire range of offerings that are available to a community, or part of a community."[116]

No party that favors retaining the Commission's offering-by-offering interpretation of Section 214(a) defends that position by reference to the text, purpose, or history of that section.

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[113] *See* Verizon Comments at 37-41.
[114] *See*, *e.g.*, Verizon Comments at 30-33. *See also* CenturyLink Comments at 39; Comcast Comments at 31-32; Frontier Comments at 26-27; USTelecom Comments at 43.
[115] 89 Cong. Rec. 786 (1943).
[116] *Notice* ¶ 123.

Instead, those parties recite potential negative consequences that they fear might follow from even modest changes to the discontinuance process.[117] But hypothetical policy concerns cannot expand the Commission's authority beyond its statutory limits.[118]

Even taking those concerns on their own terms, they are misplaced. Customers typically can choose among many next-generation options for receiving voice service, including multiple mobile wireless and VoIP or over-the-top providers. Indeed, a majority already have chosen to jettison landline service entirely in favor of a modern alternative.[119] 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."[120] Customers have voted with their feet to confirm that modern alternatives are as good as, if not better than, legacy services.[121] Accordingly, the Commission should find that Section 214(a) does not apply to a provider's discontinuance of a voice or data offering if the affected community's members can secure comparable service through a fiber, IP-based, or wireless alternative.

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[117] *See, e.g.*, AARP Comments at 2-9; AICC Comments at 11-13.

[118] *Cf. AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 392 (1999).

[119] Verizon Comments at 33-35.

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

[121] AARP is wrong to suggest that § 214(a) obligations attach to broadband internet access service. *See* AARP Comments at 2-9. The Commission forbore from applying § 214(a) to the broadband services that it reclassified as telecommunications services subject to Title II. *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601, ¶ 509 (2015).

2. In the Alternative, Partially Forbear From Enforcing Section 214(a).

If the Commission concludes that Section 214(a) compels it to regulate providers' transitions to modern technology, it should forbear, *sua sponte*, from enforcing the provision.[122] The discontinuance process imposes delays and costs that are unwarranted in the voice services marketplace – a marketplace competitive enough to discipline providers' practices and rates, and to protect consumers, without intrusive regulation. Accordingly, Verizon agrees with those commenters who endorse partial forbearance, as necessary, to protect the public's interest in the benefits of permission-less innovation.[123]

3. At a Minimum, Eliminate the Adequate Replacement Test.

If Section 214(a) applies and the Commission does not partially forbear, then it should, at a minimum, reverse the "adequate replacement" test that it adopted for discontinuing legacy voice services.[124] Even if the test were lawful (and it is not), it is far more complicated than necessary – with three prongs subject to multiple sub-parts that require incumbent providers to gather and report extraordinary amounts of data. If the Commission is inclined to impose any test at all, it should adopt AT&T's proposal that the provider be required to show that fixed or mobile voice service, including interconnected VoIP service, is available.[125] AT&T's proposed test balances consumers' interests in service continuity with providers' interest in focusing their efforts on next-generation networks, requiring providers to maintain legacy services only in

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[122] *See* 47 U.S.C. § 160(a-b); *MCI WorldCom, Inc. v. FCC*, 209 F.3d 760, 762 (D.C. Cir. 2000) (*sua sponte* forbearance affirmed).
[123] *See*, *e.g.*, Verizon Comments at 35-36; AT&T Comments at 47-52; CenturyLink Comments at 39-40, 45.
[124] *Technology Transitions*, *et al.*, Declaratory Ruling, Second Report and Order, and Order on Reconsideration, 31 FCC Rcd 8283, ¶ 65 (2016). *See also* Verizon Comments at 37-39; AT&T Comments at 40-47; ITTA Comments at 20-21.
[125] *See* AT&T Comments at 42-43.

those rare instances (if any exist at all) when their absence would cut consumers completely off from the nation's telephone network.

B. Reverse the Functional Test.

For the reasons that the Commission identified in the *Notice*,[126] that USTelecom explained before the D.C. Circuit,[127] and that many commenters have reiterated here,[128] the Commission's "functional" test for defining a provider's service is baseless and unlawful. It is inconsistent with the text and purpose of Section 214(a), with that section's placement within Title II, with the filed-tariff-doctrine and contract-law principles, and with the Commission's own precedent. Further, the Commission did not adequately explain how it will apply the test, leaving it so vague as to violate the Fifth Amendment.[129]

Again, commenters supporting the functional test have offered the Commission no sound basis for retaining it. In places, they misunderstand the statute to suggest that it provides roving authority for the Commission to intervene everywhere it concludes the public convenience and necessity so demand.[130] As USTelecom argued before the D.C. Circuit[131] and AT&T has pointed out here,[132] that reasoning is faulty: Section 214(a) does not grant the Commission the authority to opine on the public convenience and necessity *unless* a carrier is discontinuing

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[126] *See Notice* ¶¶ 115-22.
[127] *See* Brief for Petitioner USTelecom, *U.S. Telecom Ass'n v. FCC*, No. 15-1414 (D.C. Cir. filed June 14, 2016) ("USTelecom Brief").
[128] *See* Verizon Comments at 39-41; ADTRAN Comments at 7-8; AT&T Comments at 61-67; CenturyLink Comments at 45-47; Comcast Comments at 31; Frontier Comments at 27; ITTA Comments at 24-25.
[129] *Timpinaro v. SEC*, 2 F.3d 453, 460 (D.C. Cir. 1993).
[130] *See* CWA Comments at 36 (stating that the question posed by § 214 focuses on "whether, looking to the totality of the circumstances, the people are receiving the functionalities required by the public convenience and necessity").
[131] USTelecom Brief at 34.
[132] AT&T Comments at 66.

something that qualifies as a "service" under the statute. And, as commenters have explained, a mere "function" or "feature" of a service does not define the service unless those functions or features are included in the applicable tariff or product guide.[133]

Nor does it matter that some third-party devices and services (like fax machines or alarm systems) might use features of providers' legacy networks that carriers never promised to customers in tariffs or contracts, and that those providers now wish to eliminate as they upgrade their networks. When the Commission permitted use of third-party equipment, it emphasized that third parties who exercise that option bear the risk that network improvements will make their equipment obsolete.[134]

The law could not sensibly be otherwise. Providers deploying new facilities cannot predict what equipment features third parties might utilize when selling their own equipment or services. If providers must facilitate in perpetuity not only the services they design their networks to deliver to their customers, but also the equipment or services that third parties invent later and that use unpromised features of those legacy networks, carriers cannot adequately plan how they set up their networks. Section 214(a) does not authorize the Commission to impose such an unworkable burden.[135]

C. Revise Other Rules, Particularly Those Related to Grandfathering, to Expedite the IP Transition.

There is widespread support for streamlining applications to grandfather – to the extent these services are subject to Section 214 requirements – low-speed (less than DS1) legacy data services and to discontinue low-speed legacy data services that have been grandfathered for at

[133] *See*, *e.g.*, AT&T Comments at 61-69; Comcast Comments at 31.
[134] *See Use of the Carterfone Device in Message Toll Telephone Service*, Decision, 13 F.C.C.2d 420, 424 (1968).
[135] *See* USTelecom Comments at 41-42; AT&T Comments at 67-69.

least 180 days.[136] At a minimum, to the extent that it requires discontinuance applications, the Commission should adopt its proposed 10-day comment and 25-day auto-grant periods for such applications. But the Commission should go further and streamline the grandfathering process generally, since grandfathering a service does not change the experience for existing customers.[137] The Commission should also streamline applications to discontinue services grandfathered for at least 180 days because the act of grandfathering a service sends a strong, clear signal to customers and the general public that the service is on a path to eventual discontinuance.[138]

Expedite Applications to Discontinue Services With No Customers. In particular, like other commenters,[139] Verizon urges the Commission to shorten substantially the time providers must wait before discontinuing a service offering with no customers. If a provider 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.[140]

Adopt Shot Clocks For the Public Notice and Deciding Applications Removed from Auto-Grant. The Commission should also impose time limits on itself to reduce key delays. It should impose a 10-day "shot clock" between when it receives a Section 214(a) discontinuance application and when it issues a public notice of discontinuance.[141] For those applications that

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[136] AT&T Comments at 46; CenturyLink Comments at 44-45. Windstream Comments at 15, Pa. PUC Comments at 11-12 (supporting streamlining but seeking a 20-day comment period and 30-day auto-grant period).
[137] *See* Verizon Comments at 41.
[138] *See id*. at 41-42.
[139] AT&T Comments at 48; CenturyLink Comments at 45; ITTA Comments at 23-24.
[140] *See Notice* ¶ 97.
[141] *See* Verizon Comments at 42.

the Commission declines to grant automatically, the Commission should establish an additional 31-day shot clock for decision and the application should be deemed granted if there is no decision within 31 days.[142]

Reject Proposals Calling For Additional Delays. The Commission should reject proposals for additional delays in the discontinuance process, which are not necessary to protect customers' reliance interests. In particular, in evaluating proposals about how much notice providers must give their customers before applying to discontinue legacy services,[143] the Commission should consider that a longer pre-filing notice period does not necessarily help customers: The longer the period, the longer the time during which customers must monitor the Commission's public notices before they know when to object. And a lengthy pre-filing notice period would extend rather than streamline the discontinuance process. The Commission should also reject calls for a rule requiring providers to identify the specific speeds, rates, terms, and conditions of comparable alternatives in their customer notices.[144] Providers already have every economic incentive to help their customers buy modern services that suit their individual needs; additional regulatory burdens are unwarranted.

Finally, the Commission should not adopt special Section 214(a) discontinuance requirements regarding government users or "critical" applications.[145] As AT&T points out,[146] government entities and users of these applications are highly sophisticated, and so have long been aware that providers are transitioning away from legacy equipment to modern alternatives.

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[142] *See id.*
[143] *See* INCOMPAS Comments at 16 (12 months' notice); AT&T Comments at 46 (180 days).
[144] *See* Windstream Comments at 17. *See also* National Rural Electric Cooperative Association (NRECA) Comments at 8; Pa. PUC Comments at 16.
[145] *See*, *e.g.*, Harris Corporation Comments at 6-7; NRECA Comments at 9.
[146] *See* AT&T Comments at 51-52.

Further, providers have ample experience working with these customers, who have contracts that specifically govern their services and the timeline for changes to them. A service discontinuance within the meaning of Section 214(a) may start the process for changes to a particular customer's service, but the specific contract that governs that relationship will dictate the actual change to the customer's services. Only in the exceptionally rare case where there is not a governing contract and where a critical service might be impacted would the timing of Section 214(a) come into play, and in those instances, a customer can still object within the Commission's timeline. Those objections could be considered in the context of deciding a one-off, specific case rather than in trying to formulate a broad, new rule.

IV. CONCLUSION

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

Respectfully submitted,

VERIZON

Katharine R. Saunders
Roy E. Litland
1300 I Street NW, Suite 500E
Washington, DC 20005
(202) 515-2462

Scott H. Angstreich
Collin R. White
KELLOGG, HANSEN, TODD, FIGEL &
FREDERICK, P.L.L.C.
1615 M Street NW, Suite 400
Washington, DC 20036

Attorneys for Verizon

William H. Johnson
Of Counsel

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