

**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 CHAIRMAN BETTY ANN KANE OF THE
PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA**

Chairman Betty Ann Kane of the Public Service Commission of the District of Columbia (DC PSC) files these Reply Comments in response to the Federal Communications Commission's (Commission) April 21, 2017 Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment in the above docket (*Notice*).¹ The DC PSC is committed to facilitating the deployment of telecommunications infrastructure that offers more advanced and innovative services to District of Columbia consumers. However, because this transition could cause disruption to some consumers, these consumers need adequate information to be able to make informed choices regarding the replacement of their services. State public service commissions are willing and able to work with the Commission and other interested stakeholders to promote new technology and assist those for whom the transition will be more difficult but cannot provide this assistance if the Commission preempts state authority. The DC PSC supports the Comments of several state commissions, the National Association of Regulatory Utility Commissioners (NARUC), the National Association of State Utility Consumer Advocates, Maine Office of the Public Advocate, Maryland Office of the People's Counsel, New Jersey Division of Rate Counsel, Office of the Ohio Consumers' Counsel, Pennsylvania Office

¹ *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC 17-84 Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, (*Notice*) 32 FCC Rcd 3266 (2017).

of the Consumer Advocate, and The Utility Reform Network (Consumer Advocates), AARP, and others that seek to protect consumers as they transition to new advanced services.²

The Commission should not preempt state and local laws and regulations that it believes hinder broadband deployment.

The *Notice* seeks input regarding its authority to preempt state and local regulations that may hinder broadband deployment or copper retirement. Chairman Kane agrees with other state commissions and NARUC that state and local statutes and regulations should not be preempted summarily by the Commission.³ While section 253(a) of the federal Act does permit the FCC to preempt state or local regulations “that may prohibit or have the effect of prohibiting” the provision of telecommunications services,⁴ the Commission’s preemption authority is not unlimited. First, states retain the authority to impose, “on a competitively neutral basis...requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.”⁵ Second, the Commission may preempt the state or local regulations listed in Section 253(a) and (b) only after notice and an opportunity for public comment.⁶ Thus, the Commission cannot summarily preempt state and local regulations relating to telecommunications quality of service in this proceeding.⁷

² Comments Submitted on Behalf of the Public Utilities Commission of Ohio, WC Docket No. 17-84 at 2 (Ohio Commission Comments), filed June 15, 2017.

³ Comments of the California Public Utilities Commission, WC Docket 17-84 at 9-11 (CPUC Comments).

⁴ 47 U.S.C. § 253(a).

⁵ 47 U.S.C. § 253(b).

⁶ 47 U.S.C. § 253(d).

⁷ Chairman Kane supports NARUC’s Comments, which further explain that the Commission lacks authority to summarily preempt state and local regulations, including rights-of-way regulations. Comments of the National Association of Regulatory Utility Commissioners, WC Docket 17-84 at 10-12 (NARUC Comments), filed June 15, 2017.

Like most other state commissions,⁸ the DC PSC is required to ensure that public utilities are “required to furnish service and facilities reasonably safe and adequate and in all respects just and reasonable.”⁹ Additionally, the DC PSC has the statutory authority to “establish service quality standards for [regulated] telecommunications service providers, to regulate terms and conditions of service (but not including rates, charges, and rate structure) to protect the public safety and welfare, provide for continued quality of telecommunications service, and safeguard the rights of consumers.”¹⁰ These provisions are technology-neutral for the services that the Commission regulates.¹¹ There is no need to preempt technology-neutral state and local laws and regulations, especially when these statutes and regulations do not inhibit the deployment of advanced telecommunications facilities, as in the District of Columbia.¹²

As noted by NARUC, the Consumer Advocates, and other state commissions, state public service commissions have a vital role to play in consumer protection.¹³ State commissions are often the first entity that consumers contact with a complaint against a

⁸ See, Comments of the Pennsylvania Public Utilities Commission, WC Docket No. 17-84 at 17-18 (PA PUC Comments).

⁹ D.C. Code § 34-1102(a) (2001 Ed.).

¹⁰ D.C. Code § 34-2002(g) (2016 Supp.).

¹¹ The DC PSC does not have statutory authority over wireless, cable, Voice over Internet Protocol, or Internet-protocol enabled services rather, its authority is limited to traditional wireline service. D.C. Code § 34-2006 (2016 Supp.). However, this limited authority should not be preempted by the Commission.

¹² The District of Columbia has been the beneficiary of a great deal of advanced telecommunications facilities deployment, from Verizon Washington, DC Inc.’s (Verizon DC) deployment of fiber facilities pursuant to its Cable Franchise Agreement to competitors’ deployment of fiber and wireless facilities throughout the District of Columbia.

¹³ NARUC Comments at 3, 5; Comments of the National Association of State Utility Consumer Advocates, Maine Office of the Public Advocate, Maryland Office of the People’s Counsel, New Jersey Division of Rate Counsel, Office of the Ohio Consumers’ Counsel, Pennsylvania Office of the Consumer Advocate, and the Utility Reform Network on Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comments, WC Docket No. 17-84 at 25-29 (Consumer Advocate Comments), filed June 15, 2017; Ohio Commission Comments at 7-8.

telecommunications service provider, and state commissions often have dedicated resources to investigate complaints and provide a forum for a consumer to informally or formally resolve complaints. If the Commission preempts state commissions' authority to safeguard consumer rights, then consumers have no choice but to address the Commission with their complaints, which would increase the Commission's workload.

Additionally, state public service commissions are held responsible for outages and failures of the regulated telecommunications networks in their states. Any preemption of state and local statutes and regulations that protect the integrity of regulated telecommunications networks could increase public safety hazards since state public service commissions would be barred from addressing these concerns.

The Commission should retain 47 C.F.R. § 51.332 in its entirety.

In the *Notice*, the Commission proposes amendments to its new rules relating to copper abandonment in several ways, first proposing repeal of 47 C.F.R. § 51.332 altogether.¹⁴ Chairman Kane agrees with the Pennsylvania Public Utilities Commission (PA PUC), AARP, and the Consumer Advocates that Section 51.332 added important protections for consumers, such as extending the copper abandonment rules to all portions of the copper network and treating the failure to maintain copper facilities as a *de facto* abandonment.¹⁵ These requirements ensure that consumers are alerted when an incumbent local exchange carrier (LEC) decides to cease its maintenance of copper facilities. Additionally, this notice enables consumers to make other telecommunications choices, instead of just experiencing a deteriorating copper network without knowing that these facilities will not be repaired by their provider.

¹⁴ *Notice*, ¶ 58.

¹⁵ PA PUC Comments at 5; Comments of AARP, WC Docket No. 17-84, at 12 (AARP Comments), filed June 15, 2017; Consumer Advocate Comments at 9.

The DC PSC concurs with the Consumer Advocates, the California Public Utilities Commission (CPUC), the Ohio Commission and the PA PUC that section 51.332 ensures that state public service commissions are informed of copper facilities abandonment, so that they can take steps to alert consumers and handle any questions or complaints that the copper abandonment could cause, particularly for consumers that rely on copper facilities for use with certain devices.¹⁶ Along with the CPUC, Ohio Commission, and the PA PUC, Chairman Kane supports retention of section 51.332 in its current form.¹⁷

Alternatively, the Commission seeks input on whether copper abandonment should be treated the same as other network changes. As discussed by the CPUC, this change would ignore the fact that even though copper facilities provide a limited set of services and functionalities, they do provide some functionalities that more advanced network facilities cannot, particularly line power.¹⁸ Additionally, many consumers who have not already switched to more advanced services remain served by copper facilities because they use devices that are not compatible with more advanced networks.¹⁹ These customers need prior notification of the retirement of copper facilities, so that they can make alternative arrangements.²⁰

The Commission also seeks comments on amending 47 C.F.R. § 51.332, citing needs to streamline the copper abandonment process, provide greater flexibility, and reduce burdensome

¹⁶ Consumer Advocates Comments at 11; CPUC Comments at 25; Ohio Commission Comments at 2-3, 5; PA PUC Comments at 7-8.

¹⁷ Ohio Commission Comments at 2-3.

¹⁸ Chairman Kane agrees with the CPUC that the *Notice* often assumes that copper facilities invariably provide less advanced services, while fiber facilities provide more advanced service. This assumption leads to conflation of the copper abandonment rules and the section 214(a) rules. *See*, CPUC Comments at 34-35.

¹⁹ For example, as pointed out by the Consumer Groups and RERCs, many customers in the deaf and hard-of-hearing communities still rely on TTYs, which are often not compatible with IP networks. Comments of Consumer Groups and RERCs in Response to NPRM, WC Docket 17-84 at 2-4, filed June 15, 2017.

²⁰ *See*, CPUC Comments at 26.

requirements for incumbent LECs.²¹ As stated above, Chairman Kane believes that the rule in its current form is preferable to the proposed amendments. For example, Chairman Kane agrees with the Consumer Advocates' arguments that the 180-day notice period for copper abandonment when the copper facilities are in use is beneficial so that the customers that are using the copper facilities have sufficient time to transition off of those facilities and make other arrangements for telecommunications services.²² These customers include not only residential customers but customers providing critical infrastructure such as utilities and emergency responders.²³ All of these customers may need longer than 90 days to find replacements for copper facilities or devices that would be compatible with new facilities. Chairman Kane believes that the notice requirements for all types of retail consumers and the states should be retained, to permit a smoother transition from copper facilities.

The Commission should not amend its Section 214(a) Rules.

Section 214(a) of the Act provides:

No carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby . . .

The *Notice* proposes to amend several changes to the Section 214(a) rules made in the *2015 Technology Transitions Order*. Chairman Kane agrees with other commenters that the Commission should move carefully before amending these rules. For example, the *2015 Technology Transitions Order* required notice of discontinuance of service be sent to end users

²¹ *Notice* ¶ 63.

²² Consumer Advocates Comments at 13-14.

²³ Chairman Kane also notes that many federal government agencies, state governments, and local governments still rely on copper services. That is not the case in the District of Columbia, since the District Office of the Chief Technology Officer (OCTO) operates a fiber network for the entire District of Columbia government.

served by wholesale customers of a discontinuing provider, not just that provider's customers. Chairman Kane agrees with the CPUC, the PA PUC, AARP, and the Alarm Industry Communications Committee (AICC) that these end users also need to be provided notice of the discontinuance of service, since they will need to make alternative arrangements for service.²⁴

Chairman Kane also agrees with state commissions and the Consumer Advocates that argue that the Commission should continue to use a "functional test" to determine whether there is a discontinuance of service in a community, instead of looking solely at tariffed services.²⁵ In today's environment, not all services may be tariffed (such as in the District of Columbia, where unregulated services are not required to be tariffed), but the lack of such tariffing should not exempt a provider from notifying customers if these services are discontinued.

Conclusion

The current copper abandonment and Section 214(a) rules strike an appropriate balance between the deployment of facilities providing advanced telecommunications services and the needs of consumers who need additional time to transition from older telecommunications services. While Chairman Kane supports the technology transition, the needs of these consumers should be protected. State commissions should be able to perform these consumer protection functions, instead of being preempted by the Commission.

Respectfully submitted,

²⁴ See, CPUC Comments at 36-38; PA PUC Comments at 14-15; AARP Comments at 6-7. As noted in the Comments of the AICC, customers using alarms, Personal Emergency Alarm Systems, and medical device systems that are not compatible with next-generation networks need more time to transition to these new networks. Comments of the Alarm Industry Communications Committee at 6-7, 8, Docket No. 17-84, filed June 15, 2017.

²⁵ Ohio Commission Comments at 13; PA PUC Comments at 21-24; Consumer Advocates Comments at 30-31.



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