

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

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

**REPLY COMMENTS OF
THE UNITED STATES TELECOM ASSOCIATION**

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**REPLY COMMENTS OF
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USTelecom is pleased to submit its reply comments to the important issues raised by the Federal Communications Commission (Commission) in its rulemaking proceeding (Notice) proposing a number of actions designed to accelerate the deployment of next-generation networks and services by removing barriers to infrastructure investment.¹ Like several other commenters, USTelecom supports many of the Commission’s tentative conclusions contained in the Notice and urges it to move quickly to update its rules to reflect today’s competitive environment.

I. POLE ATTACHMENT REFORMS.

A. Introduction.

The record in this proceeding demonstrates strong support for important and timely reforms to the Commission’s regulatory framework governing wireline infrastructure, including pole attachments. As noted by one commenter, the Commission’s commitment to remove

¹ Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, *Notice of Proposed Rulemaking*, WC Docket No. 17-84 (rel. April 21, 2017) (*Notice*).

regulatory barriers to infrastructure investment at the federal, state, and local level, and reforming Commission regulations that increase costs and slow broadband deployment is “urgently needed to ensure that excessive regulation does not hamper innovation.”² USTelecom agrees that such reforms will “help to mitigate regulatory barriers to the deployment of next-generation facilities and technologies that will continue to change the telecommunications landscape for the better.”³

Decisive Commission action to reform its current regulatory framework for pole attachments is particularly important to a broad range of facilities-based companies deploying broadband infrastructure. As the Commission recognized in its Notice, “[p]ole attachments are a key input for many broadband deployment projects,”⁴ including for wireline fiber, cable, and wireless providers’ equipment. As noted by one commenter, “commonsense changes” to the Commission’s pole attachment rules can “accelerate broadband infrastructure deployment without sacrificing service quality or safety.”⁵ While such changes would be beneficial to all nationwide broadband deployment efforts, they will also benefit ILEC broadband providers seeking to serve harder-to-reach rural areas due to the greater rate parity with their competitors, and more timely resolution of complaints.⁶

² See, Comments of AT&T, WC Docket No. 17-84, at iv (filed June 15, 2017) (*AT&T Comments*).

³ *Id.*, p. v.

⁴ Notice, ¶ 3.

⁵ *AT&T Comments*, p. 6.

⁶ See e.g., Comments of Frontier Communications Corporation, WC Docket No. 17-84, pp. 3 – 4 (filed June 15, 2017) (*Frontier Comments*) (stating that “one of the greatest challenges and expenses has been the disproportionately high pole attachment rates it has been forced to pay compared to cable and telecommunications competitors, particularly in some of the rural areas in which Frontier operates. Rationalizing ILEC pole attachment rates and adopting a clear, bright-line presumption as to those rates will go a long way towards promoting broadband deployment.”); see also, Comments of CenturyLink, WC Docket No. 17-84, p. 18 (filed June 15,

Commenters recognized the inherent consumer and public policy benefits that parity rates for ILEC pole attachers would have in today's converged, voice, video and broadband marketplace. Consumers will benefit through enhanced competition and superior voice, video and broadband services, while at the same time a level playing field is created for providers of essentially identical services, making fundamentally similar attachments. Other benefits could be gained through reforms to pole attachment timelines, implementation of a shot-clock, and addressing the exorbitant pole attachment rates charged by cooperatives and municipalities.

B. The Record Demonstrates Strong Support for Implementing a Presumption of “Just and Reasonable” Rates for ILECs.

The record in this proceeding demonstrates significant support for the Commission's proposal to adopt a “just and reasonable rate” formula for ILEC attachers, and many commenters support using the most recent telecommunications rate formula.⁷ Many commenters agreed with USTelecom that today's highly competitive broadband marketplace removes any legitimate policy basis that justifies forcing ILECs to pay higher pole attachment rates than those paid by their cable and telecommunications competitive counterparts.⁸

2017) (*CenturyLink Comments*) (discussing the challenges it faces securing reasonable pole attachment rates from municipalities and cooperatives, and that such entities “often control the poles and rights-of-way in rural areas that have the most pressing broadband needs and most challenging business cases for broadband deployment.”).

⁷ Notice, ¶¶ 44–45.

⁸ See e.g., Comments of ITTA, , WC Docket No. 17-84, p. 2, n. 3 (June 15, 2017) (*ITTA Comments*) (quoting the Commission's 2016 Technology Transitions Order, which states that “[t]here has been an indisputable ‘societal and technological shift’ away from switched telephone service as a fixture of American life. Consumers are increasingly able and willing to abandon their landlines in favor of communications technologies that do not rely on local telephone switches”); see also, *CenturyLink Comments*, p. 1 (stating that “subscribership to CenturyLink's TDM, copper-based traditional telephone and DS1 and DS3 services have steadily declined while its VoIP and packet-based sales have grown, though not as rapidly, due to intense competition.”).

Moreover, the Commission itself has recognized that “current market realities” have evolved beyond the assumptions Congress made in 1996 regarding pole ownership, with “incumbent LEC pole ownership [having] diminished relative to that of electric utilities” in the intervening years.⁹ Thus, ILECs often are not in an equivalent bargaining position with electric utilities in pole attachment negotiations, and market forces have not been sufficient to ensure just and reasonable rates.

Despite the Commission’s intention to level the playing field for the pole attachment rates ILECs pay vis-à-vis cable operators and other competitors, this has not occurred through the negotiations contemplated in its 2011 Order.¹⁰ CenturyLink, for example, states that “even in the best of circumstances, negotiations for rate reductions contemplated by the 2011 order have taken CenturyLink two years on average to complete,” and “most have required executive level escalation and preparation, if not filing, of a pole attachment complaint.”¹¹ USTelecom agrees that the ambiguity associated with the Commission’s current framework – which requires ILECs to demonstrate that they are “comparably situated” to a telecommunications provider to justify the telecommunications rate – creates a “complicated and fact-dependent test that is fraught with uncertainty.”¹²

As a result, “utilities continue to charge incumbent LECs pole attachment rates significantly higher than the Commission’s telecommunications rate formula (and many

⁹ Implementation of Section 224 of the Act, *Report and Order and Order on Reconsideration*, 26 FCC Rcd 5240, ¶ 206 (April 7, 2011) (*2011 Pole Attachment Order*).

¹⁰ *2011 Pole Attachment Order*, ¶ 215 (stating that “where parties are in a position to achieve just and reasonable rates, terms and conditions through negotiation, we believe it generally is appropriate to defer to such negotiations.”).

¹¹ *See*, CenturyLink Comments, p. 22.

¹² *AT&T Comments*, p. 23.

multiples of what they charge competitive LEC or cable attachers) based on old – in some cases, decades-old – contracts.”¹³ In addition, given the disparity in pole ownership between ILECs and investor owned utilities (IOUs), ILECs often face a “Hobson’s choice: live with insupportably high attachment rates that distort competition, or risk major disruption of their networks to obtain even the chance of a reasonable renegotiation.”¹⁴

Arguments opposing the Commission’s proposed pole attachment rate reforms largely ignore the Commission’s stated goal in its Notice of ending the “controversy” and “repeated disputes” associated with pole attachment rate complaints.¹⁵ For example, the Edison Electric Institute (EEI) suggests that the Commission’s current proposals on rate reforms are “premature”, since the Broadband Deployment Advisory Committee (BDAC) is currently considering potential recommendations on pole attachment issues.¹⁶ As acknowledged by EEI, however, the BDAC’s charter does not even address pole attachment rate reforms,¹⁷ nor was the issue raised at its most recent meeting in April.¹⁸ While the BDAC’s broader recommendations may be helpful, the Commission cannot risk missing the opportunity to achieve its important rate reforms, particularly since it appears that the BDAC may not even address them. Moreover, the

¹³ Comments of Verizon, WC Docket No. 17-84, p. 11 (filed June 15, 2017) (*Verizon Comments*).

¹⁴ *Id.*

¹⁵ *Notice*, ¶¶ 44, 45.

¹⁶ Comments of the Edison Electric Institute, WC Docket No. 17-84, p. 18 (filed June 15, 2017) (*EEI Comments*).

¹⁷ *See*, Broadband Deployment Advisory Committee Charter, March 1, 2017 (available at: <https://www.fcc.gov/sites/default/files/bdac-charter.pdf>) (visited July 12, 2017) (noting that issues to be considered by the BDACA “may” include, “recommending further reforms of the Commission’s pole attachment rules.”).

¹⁸ Broadband Deployment Advisory Committee Presentation, April 21, 2017, p. 9 (available at: <https://www.fcc.gov/sites/default/files/bdac-4-21-2017-presentation-overview.pdf>) (visited July 12, 2017).

Commission already has the statutory authority, sufficient record evidence and compelling policy reasons to expeditiously resolve the existing disparities in pole attachment rates through its current proceeding.

Equally without merit are the arguments made by one group of joint commenters (Joint IOU Commenters) which assert that ILECs are “abandoning” efforts to build out wireline broadband, and that “there have not been any improvements in broadband service.”¹⁹ These unfounded assertions ignore the significant broadband investment by ILECs since the 2011 Pole Attachment Order, and the marked improvement in broadband services acknowledged by the Commission itself.

Subsequent to the Commission’s adoption of its 2011 Pole Attachment Order, the wireline broadband industry invested \$69 billion in capital expenditures in 2012, followed by \$75 billion in 2013, and \$77 billion in 2014.²⁰ These significant investments rebut any suggestion by the Joint IOU Commenters that ILECs are not investing in their broadband networks, and demonstrate that ILECs are meeting the specific benefits cited by the Joint IOU Commenters, including improvement in broadband services, increasing broadband deployment, and ongoing expansion efforts.²¹

The Commission should also disregard the unreasonable proposal put forth by the Coalition of Concerned Utilities (CCU). The CCU argues that “not only should the [Tennessee

¹⁹ Joint Comments of CenterPoint Energy Houston Electric, LLC, Dominion Energy Virginia and Florida Power & Light Company, WC Docket No. 17-84, p. 33 (filed June 15, 2017) (*Joint IOU Comments*).

²⁰ USTelecom Research Brief, December 14, 2016 (available at: <https://www.ustelecom.org/sites/default/files/Broadband%20Investment%20Down%20in%202015.pdf>) (visited July 12, 2017).

²¹ *Joint IOU Comments*, p. 31.

Valley Authority] formula be used for attachments used to provide ‘commingled’ services, it should be used for attachments by entities providing cable and telecommunications services as well.”²² As noted by USTelecom and others, however, the Tennessee Valley Authority (TVA) rate – which is approximately four times the Commission rate²³ – is not only unreasonable, but *expressly dismisses* the Commission’s federally mandated broadband policy goals.²⁴ As such, the Commission should disregard the CCU’s irresponsible proposal as both unreasonable and contrary to Commission and federal broadband policy goals.

The Commission should therefore adopt the most recent telecommunications rate as the presumed just and reasonable ILEC rate. Further, USTelecom recommends that the Commission clearly state that the rate reform applies to existing pole attachment contracts to end the competitive distortion and interminable rate disputes with IOUs. Without such a clear directive, comments from several IOUs make clear that there will be no meaningful rate reform – only more of the same prolonged and expensive disputes that have delayed ILEC rate reductions and diverted scarce resources that could have been invested in broadband deployment during the six years since the 2011 Pole Attachment Order recognized an ILEC right to just and reasonable rates.²⁵ Based upon the comments in this docket thus far, there is a strong and clear mandate for

²² Comments of The Coalition of Concerned Utilities, WC Docket No. 17-84, pp. 39 – 41 (filed June 15, 2017) (*CCU Comments*).

²³ Frontier Comments, p. 12 (filed June 15, 2017).

²⁴ See e.g., Comments of USTelecom Comments, WC Docket No. 17-84, pp. 13 – 15 (filed June 15, 2017) (*USTelecom Comments*).

²⁵ See e.g. *CCU Comments*, p. 49 (“The *Coalition* believes that ILECs never should be entitled to a lower rate because of the competitive advantages enumerated above, but also because electric utilities do not have bargaining leverage over ILECs if ILECs own poles to which electric utilities must attach.”). Thus, the IOUs take the position that ILECs are not entitled to rate relief as long as they own *any* joint use poles, while also maintaining that ILECs must abide by contracts that they may genuinely lack the ability to terminate. See *Verizon Florida LLC v. Florida Power and Light Company*, Memorandum Opinion and Order, Docket No. 14-216, File

the Commission to establish a just and reasonable rate formula for ILEC pole attachments. USTelecom urges the Commission to act on this mandate, particularly in light of its clear statutory authority and obligation to do so.

C. The Commission Should Address the Prohibitive Pole Attachment Rates Charged by Municipalities and Cooperatives Raised by Several Commenters.

Multiple commenters also raised significant concerns regarding the increasingly exorbitant and unreasonable pole attachment rates charged by municipalities and cooperatives. For example, Comcast Corporation (Comcast) identified “unreasonable costs imposed for access to their poles,” as one of the two “primary barriers to broadband infrastructure deployment” in areas served by municipalities and cooperatives.²⁶ Comcast further notes that positive Commission action on this issue would “significantly improve broadband deployment efforts throughout the nation.”²⁷

Similarly, Frontier Communications Corporation (Frontier) notes that while the exception for municipalities and cooperatives may have made sense when it was established in 1978, it has recently become “increasingly clear that some of these organizations value the revenues they are able to demand for pole attachments over expanded broadband deployment to their citizens and members.”²⁸ Indeed, Comcast notes several instances in which the fees it pays to municipally-

No. EB-14-MD-003, 30 FCC Rcd. 1140, ¶25 (February 11, 2015) (quoting *2011 Pole Attachment Order*, ¶216) (Enforcement Bureau recognized that “this appears to be a case in which ‘an incumbent LEC . . . genuinely lacks the ability to terminate an existing agreement’” and that, without relief, the ILEC could be forced to pay the relatively high agreement rates for as long as its attachments remained on Florida Power’s poles.).

²⁶ Comments of Comcast Corporation, WC Docket No. 17-84, p. 23 (filed June 15, 2017) (*Comcast Comments*).

²⁷ *Id.*

²⁸ *Frontier Comments*, pp. 9 – 10.

and cooperative-owned utility poles “are frequently excessive.”²⁹ It notes for example, that in its “Big South” region of the United States covering much of the southeast, the weighted average rate it pays to municipalities and cooperatives is approximately \$18.83, as compared to \$6.26 for poles owned by ILECs and private utilities.³⁰

Although Section 224 of the Communications Act may exclude municipalities and cooperatives from rate regulation, the Commission has previously acknowledged that it may have authority to act on unreasonable pole attachment rates they charge to attachers. In one of its earlier reports on the status of competition in the multichannel video programming distribution (MVPD) marketplace, the Commission noted that Congress’ decision to initially exclude municipalities and cooperatives from federal pole attachment regulation was based in part “on the implicit assumption that these entities were functioning not just as businesses providing utility pole and conduit space but as public representatives performing a regulatory or quasi regulatory function.”³¹ The Commission, however, went on to state that “[w]hen these cooperatives and municipal entities are themselves engaged in the provision of communications services a conflict of interest may result such that the rates charged to competitors may no longer be cost based and that competition may accordingly be distorted.”³²

Multiple commenters in this proceeding have noted that this potential for anti-competitive conduct has already emerged in the marketplace. Comcast, for example, notes that in Chattanooga, Tennessee, the majority of the poles on which Comcast facilities are attached are

²⁹ *Comcast Comments*, p. 24.

³⁰ *Id.*

³¹ Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, 13 FCC Rcd 1034, 63 FR 10222, *Fourth Annual Report*, ¶ 226 (1998).

³² *Id.*

owned by EPB Electric Power, one of the largest municipally-owned electric power companies in the country that also “provides retail voice, video, and data services in direct competition with Comcast.”³³ Notably Comcast pays EPB Electric Power a rate that is almost 300 percent higher than the per-pole rate paid by Comcast to the largest investor-owned pole operator in Chattanooga.³⁴

Frontier discussed TVA’s approved \$300 million strategic fiber initiative that will expand its fiber capacity that will include 3,500 miles of fiber to enable broadband connections for its generating plants and customers in its service territory.³⁵ As Frontier observed, the TVA’s “middle mile network and the significant increase in pole attachment rates, gives the appearance of a group stifling the investment of others to provide themselves a competitive advantage.”³⁶

D. The Record Demonstrates Support for Targeted Reforms to its Make Ready Process.

Many commenters also expressed support for targeted reforms to the Commission’s make ready process. While timelines remain a challenge to meet for pole owners, especially ILEC pole owners who own a small percentage of poles and whose core business is unrelated to pole ownership, several commenters agreed that narrowly targeted reforms may be appropriate. Various commenters discussed such targeted refinements, including reduction of the make-ready timeline by eliminating the 15-day period for a pole owner to complete make-ready work after an existing attacher fails to meet its make-ready deadline.³⁷ That extra time is often not needed and,

³³ *Comcast Comments*, pp. 24 – 25.

³⁴ *Id.*, p. 25.

³⁵ *Frontier Comments*, pp. 12 – 13.

³⁶ *Id.*, p. 12.

³⁷ *See e.g., Frontier Comments*, p. 15; *AT&T Comments*, p. 13.

as noted by AT&T, “adds complexity to the pole attachment process without any corresponding benefit.”³⁸

The record also demonstrates the Commission should reject its proposal that would require pole owners to publish uniform make-ready rates. Several commenters agreed with USTelecom’s assessment that the proposal ignores the reality that make-ready rates often vary depending on a broad range of factors.³⁹ For example, one group of utilities noted that “actual charges for make ready still vary greatly based on a multitude of factors,” and that “changes in geography and environment alone” in large states can “result in an enormous variation in make ready charges due to the relative difficulties inherent in the geology of particular localities.”⁴⁰ The Commission itself acknowledged this reality when it rejected an identical proposal in its 2011 Pole Attachment Order.⁴¹

While commenters supporting publication of such rates readily acknowledge that “make-ready costs may vary regionally,” they offer no reasonable approach for addressing this geographic reality.⁴² Moreover, as noted by Frontier, adoption of the Commission’s approach would “divert scarce resources from broadband deployment.”⁴³ It noted further that “in the State of Connecticut alone, Frontier estimated that it would cost \$75 million to \$100 million to be able to create a database of its poles.”⁴⁴ USTelecom maintains that the Commission should therefore

³⁸ *AT&T Comments*, p. 13.

³⁹ *USTelecom Comments*, pp. 18 – 19.

⁴⁰ *Joint IOU Comments*, p. 18.

⁴¹ *2011 Pole Attachment Order*, ¶ 86.

⁴² Comments of NCTA, WC Docket No. 17-84, p. 12 (filed June 15, 2017) (*NCTA Comments*).

⁴³ *Frontier Comments*, p. 20.

⁴⁴ *Id.*

continue the “policy and restraint reflected in its 2011 Order and refrain from imposing any standard change for make ready or requiring the publication of set schedule of common make ready charges.”⁴⁵

E. A Broad Range of Commenters Support a “Shot Clock” For Pole Attachment Complaints.

The record in this proceeding also demonstrates broad support for the Commission’s proposal to establish a shot clock for pole attachment access and rate complaints. Multiple commenters from a broad range of industries expressed support for adoption of a shot clock for pole attachment rate and access complaints, who noted that such a framework would introduce greater predictability and certainty for attachers, promote more timely deployment of broadband infrastructure, and provide greater uniformity for addressing pole attachment complaints.

For example, several commenters noted that setting a 180-day time limit would lend greater predictability to the pole attachment complaint process for parties, while still affording the Commission sufficient time to adjudicate disputes fairly and thoroughly.⁴⁶ As noted by AT&T, attachers “cannot wait a year or more to deploy, and when faced with potential delays in resolving pole attachment complaints, most will simply move on to another jurisdiction.”⁴⁷ One coalition of electric utilities similarly acknowledges that a shot-clock would be beneficial given the “special urgency attendant to true access disputes.”⁴⁸ The same group further notes that a

⁴⁵ *Joint IOU Comments*, p. 20.

⁴⁶ *See e.g., AT&T Comments*, p. 25.

⁴⁷ *AT&T Comments*, p. 25.

⁴⁸ Initial Comments of Ameren Corporation, American Electric Power Service Corporation, *et al*, WC Docket No. 17-84, p. 59 (filed June 15, 2017).

shot-clock would “also give the Enforcement Bureau (and the parties) an additional tool and incentive to craft an early resolution to the dispute.”⁴⁹

The American Cable Association similarly notes that instituting a shot clock would not only provide plaintiffs with greater certainty about when their complaint will be resolved but “more importantly, when their deployment will resume.”⁵⁰ NTCA explains that “a small operator approaching a deadline to complete a phase of network construction before winter puts a hold on the project simply cannot wait on a complaint the resolution of which can span even multiple construction seasons.”⁵¹ It further notes that such a result “not only renders the complaint process almost worthless, it unnecessarily diverts resources . . . that could have been used for better purposes.”⁵²

While some commenters oppose the establishment of a shot-clock for rate disputes, their arguments are without merit. For example, one group of IOU commenters asserts that while the 180-day shot clock should apply only to complaints related to pole attachment access, they should not be applied for complaints alleging unreasonable rates, terms or conditions.⁵³ They assert that access complaints are “more urgent” than rate complaints, and it is therefore more “important that the Enforcement Bureau’s complete review of the complaint is timely.”⁵⁴ Such arguments ignore the fact that both access and rate complaints are equally important, particularly given their impact on broadband deployment efforts. As noted above, delays in resolving either

⁴⁹ *Id.*

⁵⁰ Comments of the American Cable Association, WC Docket No. 17-84, p. 53 (filed June 15, 2017).

⁵¹ *NCTA Comments*, pp. 9 – 10.

⁵² *Id.*

⁵³ *Joint IOU Comments*, p. 38.

⁵⁴ *Id.*

pole access or rate complaints can significantly delay broadband deployment efforts, and both categories of complaints warrant expeditious resolution by the Commission.

F. The Record Demonstrates the Need for the Commission to Ensure Reciprocal Access to Poles for ILECs.

Finally, USTelecom supports the Commission’s proposal to “create a reciprocal system of infrastructure access rules in which incumbent LECs . . . could demand access to competitive LEC poles and vice versa.”⁵⁵ USTelecom supports the Commission’s proposed reinterpretation since it is most consistent with the statute and advances the Commission’s goal of promoting broadband infrastructure deployment. USTelecom agrees that the most straightforward way for the Commission to address this asymmetry is for it to “interpret Sections 251(b)(4) and 224 to allow ILECs to demand access to cable and non-cable CLEC poles, ducts, conduits, and rights-of-way at the rates, terms, and conditions specified in Section 224 and vice versa.”⁵⁶

Commenters opposing regulatory parity amongst competitors flip the argument on its head by incorrectly asserting that competitive parity equates to regulatory obligations. NCTA, for example, maintains that “imposing new obligations on competitive LECs would be of limited relevance” since the only infrastructure they own is conduit.⁵⁷ NCTA ignores the fact that rather than “imposing new obligations” on competitive LECs, the Commission’s proposal instead creates regulatory parity amongst all categories of attachers by ensuring reciprocal access rights.

As noted by CenturyLink, such an interpretation would “give ILECs the same access rights as their competitors and allow them to share last-mile infrastructure necessary to provide

⁵⁵ *Notice*, ¶ 54.

⁵⁶ *CenturyLink Comments*, p. 25.

⁵⁷ *NCTA Comments*, p. 22.

broadband services, thus facilitating competition for these services.”⁵⁸ An asymmetric conduit-access obligation[] actually disserves the public interest and harms consumers by distorting both ILEC and cable/CLEC incentives to construct new conduit that can be used to further deploy advanced services.”⁵⁹ Moreover, given the highly competitive nature of today’s marketplace, USTelecom agrees that it is “inequitable and anti-competitive, as well as contrary to the clear language of Section 251(b)(4), to give CLECs the right of access to ILEC poles and conduits, but to deny reciprocal access rights to ILECs.”⁶⁰

II. COPPER RETIREMENT, NETWORK CHANGE AND DISCONTINUANCE REFORMS.

A. The Commission Cannot Successfully Accelerate Broadband Deployment Without A Commitment to Technology Transitions.

Although not styled as a continuation of the Technology Transitions proceeding,⁶¹ this proceeding clearly is an outgrowth of it. In that proceeding, the Commission committed to adopting clear standards to eliminate uncertainty that could impede the transition to modern networks. By initiating this proceeding, in part to reinvigorate its efforts on technology transitions, the Commission acknowledges the importance of accelerating the building of wireline broadband networks using modern facilities and technologies, and understands that will not happen without the removal of barriers that take away the incentives for providers to expand and upgrade their existing networks and services.

⁵⁸ *CenturyLink Comments*, p. 25.

⁵⁹ *Id.*

⁶⁰ Comments of WTA, WC Docket No. 17-84, pp. 16 – 17 (filed June 15, 2017) (*WTA Comments*).

⁶¹ Technology Transitions, GN Docket No. 13-5; *see also* Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers, RM-11358.

Because some of the safeguards recently put in place by the Commission are themselves potential barriers to infrastructure investment, we are encouraged that the Commission wisely proposes to ease or eliminate them in this proceeding. That, in our view, evinces a true commitment to lessening regulation, as appropriate, to fully enable a successful transition to ubiquitous high-speed broadband that is increasingly important as a “gateway to jobs, health care, education, information, and economic development.”⁶² But some commenters seem committed to the status quo (or even the prior regulatory regime) in ways that will only stymie transitions, and thus prolong (rather than accelerate) broadband deployment. Some of the opposition is attributable to a lack of information about the benefits to be gained, or the mistaken belief that transitioning to new services will be prohibitively expensive without appreciable benefits. Others are concerned that about the potential need to replace equipment and systems that now rely on legacy TDM and copper-based technology, or that their current equipment will be rendered obsolete or incompatible with new technology. And some of the opposition is simply resistance to change. Even if these concerns were valid (and for the overwhelming majority of customers, they are not), that would not justify indefinitely requiring one segment of providers (ILECs) to delay or forego altogether upgrading their networks and to spend limited funds to keep legacy facilities running despite the minimal and shrinking demand for services using those facilities.

Because the transition to wireless and fiber facilities and IP technologies is already well underway, and consumers have already rapidly adopted these technologies in overwhelming numbers, the Commission should not hold up the transition to accommodate a very small number of consumers. Instead, the Commission should educate consumers about the benefits of

⁶² Notice, ¶ 1.

technology transitions, both to reassure that technology transitions will result in net gains because of the new features and applications that will be possible, and to manage their expectations about what legacy service features may no longer be available. As with the digital television (DTV) transition, the Commission must ensure that the public is well-informed about the need for transitioning to help the public embrace this phase of the technology revolution.

For many, the transition to fiber facilities is not a substantive change. Many can continue to receive the same TDM services over fiber facilities at the same rates, terms, and conditions as over copper.⁶³ Faxing, alarm monitoring services, and the like will continue to be available to consumers post-transition. 911 communications continue to work in the same manner. And the Commission has already fully addressed back-up batteries in its prior order. In the same manner that consumers survived the DTV transition with little fanfare in many instances, consumers will survive the transition to all-IP networks. When Microsoft upgrades to a new version of Windows, there are no regulations that require it to file an application to shut down the old version, or to allow customers who prefer the old version to delay or stop the upgrade. Similarly, Volvo has announced it will stop manufacturing internal combustion engines in favor of more fuel-efficient hybrid and electric engines, which should be applauded, and there are no regulations that require them to keep making internal combustion engines.⁶⁴ Likewise, telecom industry providers should be applauded for their efforts to embrace this ongoing next phase of telecommunications.

⁶³ See, *Verizon Comments*, p. 18, n. 54.

⁶⁴ See, Jack Ewing, New York Times, *Volvo, Betting on Electric, Moves to Phase Out Conventional Engines*, July 5, 2017 (available at: <https://www.nytimes.com/2017/07/05/business/energy-environment/volvo-hybrid-electric-car.html>) (visited July 17, 2017).

The FCC must keep its commitment to facilitating technology transitions as a matter of good governance and public policy. It is in everyone’s best interest that the Commission help the public to understand that the benefits of allowing technology transitions to happen unimpeded by unnecessary regulation, and that the benefits of new technologies and services driven by infrastructure investment will vastly outweigh the minimal inconveniences that some customers may experience – but need not to with proper notice and education.

B. Our National Broadband Deployment Goals Will Not Be Met Without a Commitment to Investing in infrastructure and Upgrades by the Federal Government.

A few years ago, a thoughtful public policy research paper observed that consumers generally are far ahead of federal government agencies and certain populations like the elderly in transitioning to new telecommunications technologies and services, and that the Commission should be accelerating transitions so that we all reap “the benefits of pervasive IP,” or internet protocol technology deployment:

Rather than slowing down the transition with arcane regulations that require both large and small network operators to maintain compatibility with obsolete systems, the FCC should focus its efforts on encouraging holdout populations—in the public and in the private sector—to adapt to contemporary reality. The social benefits of a more rapid transition are greater than those of a slow one.⁶⁵

We agree, and find that ILEC efforts to retire legacy facilities and replace them with new fiber and IP technology that will better serve our present and future needs are at risk for derailment by those who are focused on the short-term view.

⁶⁵ Richard Bennett, “Wake Up, FCC: The Internet Protocol Transition Is Now,” American Enterprise Institute (Apr. 3, 2014) (available at <http://www.aei.org/publication/wake-up-fcc-the-internet-protocol-transition-is-now/>) (visited July 14, 2017).

In particular, continuing the alarm raised in related proceedings by the National Telecommunications and Information Administration (NTIA),⁶⁶ Harris Corporation (Harris) filed comments in this proceeding seeking concessions that, if granted, would require ILECs to maintain TDM-technologies “for the foreseeable future.”⁶⁷ Explaining that “some FAA systems continue to rely on [TDM] technology for essential U.S. air traffic control system services,”⁶⁸ Harris insists that “the Commission must take all steps necessary to preserve sufficient TDM services” to preserve Federal Aviation Administration (FAA) operations.⁶⁹ Despite the FAA’s current reliance on legacy technology and systems, this is not a reasonable ask or expectation for the Commission to make of ILECs.

Government customers have long been on notice that technology transitions are underway, and “have had ample notice and opportunity to plan for the transition of these services for some time, from both budgetary and operational perspectives.”⁷⁰ Drastic measures such as requiring providers to maintain legacy services indefinitely instead of setting a reasonable timeframe after which all customers, including the federal government, should no longer expect to have access to legacy services is not only reasonable, but is necessary if the Commission seeks to spur infrastructure investment.

⁶⁶ See, e.g., Petition for Reconsideration or Clarification of the National Telecommunications and Information Administration, GN Docket No. 13-5, WC Docket No. 13-3, RM-11358 (filed Oct. 12, 2016) (*NTIA Petition*).

⁶⁷ Comments of Harris Corporation, WC Docket No. 17-84, at 2 (filed Jun. 22, 2017).

⁶⁸ *Id.*

⁶⁹ *Id.* at 4. Harris goes even further, seemingly rejecting as “not a viable solution” the prospect of using higher bandwidth service, stating that FAA does not need higher bandwidth, apparently without considering what enhancements could be achieved with higher-speed service. Harris also implies, without evidence or explanation, that higher bandwidth service would force increased costs on customers.

⁷⁰ *AT&T Comments*, p. 52.

For federal agencies in particular, there should be a concerted, federal government-wide effort to ensure that Executive Branch policies do not prolong the federal government's reliance on legacy services. First, agencies should be required to assess in the near term the extent of their continued reliance on legacy services, and identify what will be needed to replace equipment, systems, and infrastructure to bring them into the twenty-first century. Once assessments are done, Congress must approve and appropriate the necessary funding to accomplish necessary upgrades. This is key because many agencies cite to a lack of funding for upgrades and new equipment, so funding should be appropriated specifically for this purpose. The current administration has committed to an infrastructure bill that reportedly will include funding for telecommunications and broadband infrastructure; that commitment should be kept and implemented as soon as possible.

Finally, starting now and continuing throughout the transition period, the FCC, NTIA, and other Federal Government stakeholders must undertake a robust education effort to explain the need for transition, and to ensure that the benefits of a swift transition are well known. Although it is true that transition from legacy networks may affect the current customer experience, that is not always the case. Moreover, given the faster, more robust services and features that are available with newer technologies and services, it is far more likely the customer experience will be enhanced rather than diminished.

USTelecom's member companies also recognize the key role they play in educating all their customers, not just agencies, of impending changes in their service offerings and that, in the long and short term, the enhanced offerings made possible with fiber and IP-based network will

benefit us all. Contrary to suppositions by AARP that consumers will be confused⁷¹ – they sounded a similar alarm with regard to the DTV transition that turned out pretty well – many transitions and upgrades will be virtually transparent to end user customers. Where that is not the case, customer education can and will eliminate widespread customer confusion for those who fear they will be worse off after transition.

C. Providers Must Not be Expected or Required Both to Build New Fiber Networks and Maintain Legacy Copper-Based Networks.

As providers plan and build out their next-generation networks to meet the country's current and future broadband needs, no one is focused on putting new copper in the ground as part of that planning and building.⁷² That is not to say that copper-based networks have fully outlived their usefulness; in some areas of the country, copper still forms a significant part of the infrastructure used to provide basic telecommunications to some communities. But those areas are few, and are shrinking precipitously; only an estimated 16% of voice customers still rely on legacy copper facilities.⁷³ Moreover, it appears that only one quarter of fixed (non-mobile

⁷¹ Comments of AARP, WC Docket No. 17-84, at v. (Jul. 15, 2017) (stating that proposed changes “create the potential for service discontinuance and technology retirement that will generate customer confusion, place vulnerable communities at risk, and interfere with a smooth technology transition”) (*AARP Comments*).

⁷² *But see, Frontier Comments*, p. 22 (explaining that burdensome rules have delayed fiber deployment and caused Frontier's engineers to consider deploying copper to comply with the rules).

⁷³ See Patrick Brogan, USTelecom Research Brief, *Voice Competition Data Support Regulatory Modernization*, at 1 (Nov. 25, 2014) (available at: http://www.ustelecom.org/sites/default/files/documents/National%20Voice%20Competition%202014_0.pdf) (visited Jul. 12, 2017) (*USTecom Research Brief*). See also USTelecom Residential Competition Statistics (available at <https://www.ustelecom.org/broadband-industry/broadband-industry-stats/residential-competition>).

wireless) household internet connections (*i.e.*, including cable modem, fiber-to-the-premises, satellite, or fixed wireless) that rely wholly or in part on copper facilities.⁷⁴

The reasons why consumers are choosing fiber-based services is no mystery. Verizon explains some of them: “fiber provides a future-proof, reliable platform to meet consumers’ communications needs now and into the future. In comparison to legacy copper cable, fiber provides environmental and performance advantages, as it offers significantly greater bandwidth and is much less sensitive to distance limitations than is copper.”⁷⁵ It is important for the Commission to keep this in mind as it decides whether limited resources are better focused on prolonging the transition away from reliance on copper facilities or on encouraging and facilitating the investment in fiber and other new facilities and infrastructure.

We believe commenters that seek more process and oversight of the copper retirement process to protect competitors and consumers are well-intentioned, but those who complain that there is no cost benefit analysis supporting the elimination of certain copper retirement requirements⁷⁶ ignore the undisputable costs involved with maintaining copper infrastructure borne by one segment of broadband competitors – ILECs – that must spread those costs over fewer and fewer customers at the same time that they are investing in and building newer networks.⁷⁷ In particular where copper is being replaced by fiber, *e.g.*, the costs of having to

⁷⁴ See Industry Analysis and Technology Division, Wireline Competition Bureau FCC, Internet Access Services: Status as of June 30, 2016 at 17, Figures 13, 14 (April 2017) (available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-344499A1.pdf) (visited Jul. 12, 2017). Fixed connections make up only 30% of all residential connections. *Id.*

⁷⁵ *Verizon Comments*, pp. 16-17.

⁷⁶ See, *e.g.*, Comments of Public Knowledge, WC Docket No. 17-84, GN Docket Nos. 13-5, 12-353, at 5 (Jun. 15, 2017).

⁷⁷ See, *CenturyLink Comments*, p. 27 (explaining how the Commission’s copper retirement and network change notification requirements “increase the cost of migrating to the fiber facilities

maintain both facilities far outweigh any benefit gained by the few customers that prefer to keep their old services on copper – especially where customers can continue to keep voice service over fiber facilities, plus have access to many more potential applications and products.

It is worth repeating that the Commission’s rules confirm that copper retirement remains a notice-based, not permission-based process.⁷⁸ Still, policies and rules that slow down the process of copper retirement are burdensome, and thus can have the same deleterious effects as a permission-based process. To be clear, USTelecom has not advocated that ILECs should not have to provide notice of changes that would affect the interoperability of other providers’ facilities and networks, as required under section 251(c)(5).⁷⁹ Nor do we advocate for elimination of all forms of notice to either residential or non-residential customers when network upgrades will affect their service,⁸⁰ but USTelecom encourages the Commission to allow providers flexibility as to timing, content, and methodology, to keep their costs and burdens to a minimum. As noted in our comments,⁸¹ we support repeal of rules recently adopted in 2015 to the extent that they inject unnecessary delay and force providers to expend resources on legacy

necessary to provide the high speed broadband services that both residential and business customers demand”).

⁷⁸ See *Verizon Comments*, p. 24 (stating that copper retirement should remain a notice-based process).

⁷⁹ 47 U.S.C. § 251(c)(5).

⁸⁰ But see, *CenturyLink Comments*, p. 30-31 (explaining that because ILECs have ample motivation to adequately inform and educate their retail customers about network upgrades that might require new or modified equipment or will otherwise negatively affect them, regulatory mandates to notify affected retail customers of network facilities changes are unnecessary).

⁸¹ See, e.g., *USTelecom Comments*, pp. 22-27.

infrastructure that otherwise could be invested in new infrastructure, and other commenters agree.⁸²

Most importantly, a different mindset about the copper retirement process is warranted. All competitors and customers should now be on notice that the transition away from copper-based infrastructure is well underway and should be preparing for “the inevitable.”⁸³ That alone warrants adoption of shorter notice periods and other streamlining actions.⁸⁴ The Commission’s policies should therefore reflect a balanced approach that protects consumers and competitors, but also removes barriers (including unreasonable delay) to infrastructure investment.

D. The Commission Should Promote the Discontinuance of Legacy Services That Are Substantially Similar to Replacement Services Based on Newer Technology.

As noted in USTelecom’s comments, widespread competition for broadband services warrants a relaxed, light-touch regulatory approach to service discontinuance reform.⁸⁵ Succinctly put, “[t]he Commission’s task here is to chart a course that promotes investment, deployment and network upgrades while ensuring that consumers have adequate notification that their options are changing.”⁸⁶ What should be the Commission’s guiding principle is evident in the Act and precedent interpreting Congress’s intent in enacting section 214(a) – protecting

⁸² See, e.g., *AT&T Comments*, p. 31 (stating that ILEC-centric network disclosure rules should be eliminated or revised to reduce burdens associated with copper retirement and to facilitate rapid deployment of modern networks); Comments of NTCA – The Rural Broadband Association, WC Docket No. 17-84, at 19 (Jun. 15, 2017).

⁸³ *Notice*, ¶ 62 (“We anticipate that interconnecting carriers are aware that copper retirements are inevitable”).

⁸⁴ See, e.g., *Verizon Comments*, pp. 18-19 (advocating for a 90-day notice period for copper retirement rather than the current 180 days, and for a 30-day notice period where there are no customers on the copper facilities being retired).

⁸⁵ *USTelecom Comments*, p. 31.

⁸⁶ *CenturyLink Comments*, p. 35.

communities from the adverse effects of service discontinuance means ensuring that they are not left without *any* service, not *a particular* service.⁸⁷ The new “functional” test recently adopted by the Commission, for example, served as a distraction because it took the focus off whether other services would still be available to the community and was so vague that it introduced confusion for providers as to whether an application for discontinuance was even necessary for certain actions. That confusion, in turn, created a barrier for providers seeking to replace legacy services with modern offerings. Several other commenters agree that the functional test should be eliminated.⁸⁸

To facilitate the transition to modern facilities and networks, the Commission must create the right environment that encourages providers to move resources away from outdated, obsolete services and invest in modern services that will meet the nation’s broadband deployment needs. Vague and onerous service discontinuance requirements are barriers to infrastructure investment and innovation because maintaining outdated services wastes resources that could be better spent building new networks and innovating to create new services.

In fact, there is support in the record for eliminating section 214 requirements altogether if a provider upgrades by replacing TDM- and copper-based services with IP- or fiber-based services.⁸⁹ In the alternative, the Commission could forbear from enforcing the Section 214(a) discontinuation provisions in circumstances where carriers are upgrading their networks to

⁸⁷ See 47 U.S.C. § 214(a); *Verizon Comments*, p. 28 (“Section 214 was designed originally to ensure that a community not be completely cut off from services; it should not today be used to require providers to maintain uneconomic or inefficient services indefinitely.”)


⁸⁸ *Verizon Comments*, p. 39; *CenturyLink Comments*, p. 45; *Comcast Comments*, p. 31.

⁸⁹ *Frontier Comments*, p. 26 (stating that removal of the discontinuance application requirement for copper to fiber upgrades “will help promote broadband deployment through the removal of another unnecessary barrier”); *WTA Comments*, pp. 40-41 (advocating for streamlining of the discontinuance process for legacy services discontinued as part of technology transitions).

achieve the Commission's broadband deployment goals and policies. We agree that such an outcome would encourage broadband investment and deployment. We also find merit in arguments by commenters who advocate for a notice-only discontinuance process where other fiber, IP-based, or wireless alternatives are available to the affected community, effectively creating an un rebuttable presumption that discontinuance will not adversely affect the present or future public convenience and necessity in such circumstances.⁹⁰

Respectfully submitted,

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⁹⁰ See, e.g., *ITTA Comments*, p. 17 (Jun. 15, 2017). See also *AT&T Comments*, pp. 42 – 43 (advocating for a streamlined auto-grant discontinuance process for certain legacy services that would allow providers to demonstrate the existence of one or more alternative fixed or mobile voice services, including interconnected VoIP services, in lieu of meeting existing “adequate substitute” criteria); *Verizon Comments*, p. 30.