

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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

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**REPLY COMMENTS OF AT&T SERVICES, INC.  
ON NOTICE OF PROPOSED RULEMAKING,  
NOTICE OF INQUIRY, AND REQUEST FOR COMMENT**

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## INTRODUCTION AND EXECUTIVE SUMMARY

The record in this docket marks out a clear path for the Commission to follow to reduce existing regulatory barriers to deployment of next-generation wireline facilities and the delivery of enhanced broadband services to the American public. There is a growing consensus that consumers are best served when communications companies are encouraged to invest and compete, free of the costs and burdens of backward-looking obligations to maintain legacy services and facilities. By adopting the pro-competitive, deregulatory proposals set out in the Notice,<sup>1</sup> the Commission can begin the process of adapting the regulatory environment to the realities and promise of new technologies.

*Pole Attachment Proposals.* The detailed comments filed in response to the Commission's proposals make clear that incremental changes can improve the pole attachment process without upsetting the balance that existing regulations strike among the interests of pole owners, existing attachers, and new attachers. Consistent with that view, although some compression is possible, existing pole attachment timelines cannot be substantially reduced without sacrificing safety, service reliability, and respect for collective bargaining agreements. Given industry experience, harmonizing the timeline for wireless attachments above the communications space is appropriate. Filed comments both provide support for one-touch make-ready ("OTMR") and demonstrate that the Commission should not mandate OTMR without appropriate safeguards. The regulations governing pole attachment and make-ready rates should be clarified and rationalized, and ILEC rates, in particular, should be brought into line with the rates that other attachers pay.

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<sup>1</sup> Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, 32 FCC Rcd 3266 (2017) ("Notice").

The Commission should generally be reluctant to impose further obligations with regard to disclosure of pole locations, mandated use of workflow tracking systems, and disclosure of costs, because such regulations threaten to impose substantial costs without corresponding benefit and because the industry is generally addressing these issues without regulatory intervention. The Commission can provide useful clarification with respect to: (1) unwarranted restrictions of the sort that some investor-owned utilities impose on wireless attachments in the name of safety; (2) overloading and removal of facilities that have been taken out of service; and (3) the use of boxing and extension arms.

***Network Modification Proposals/Copper Retirement.*** The reversal of changes to the copper retirement rules that the Commission adopted in 2015 is broadly supported by the record and is a straightforward step for the Commission to take to reduce obstacles to replacement of legacy facilities with next-generation networks. Where parties have opposed these changes, their objections are frequently based on confusion between transition of facilities from copper to fiber and discontinuance of *service*. Most network modifications do not impair end-users' services and therefore require only notice, not approval. Furthermore, the claim that copper retirement is somehow "unique" is not supported by the record: network modifications often implicate CLEC interoperability, but that does not provide a justification for delaying needed improvements.

Far from elongating the notice period for copper retirements, the Commission should streamline notice obligations to reduce costs. In addition, the Commission should eliminate the requirements for direct notice of copper retirement to retail consumers – and the similar CPE-related obligation in Part 68 – because such mandates create rather than reduce customer confusion. To the extent carriers need to work with customers to effectuate network changes, they have every incentive to work with their end-users to do so.

*Section 214 Discontinuance Proposals.* The record provides ample support for the Commission’s proposal to do away with the “adequate replacement” test for determining whether a § 214 application should receive streamlined treatment. Evidence from the marketplace makes clear that IP-based voice services, including wireless services, have largely displaced traditional POTS service; there is no need to encourage regulatory litigation over their adequacy. The Commission should similarly reject efforts to turn the § 214 process into an occasion for micro-management of the technical details of carriers’ services and networks.

With respect to legacy voice and data services, the Commission should adopt common-sense, deregulatory measures to facilitate discontinuance. The Commission should thus recognize that grandfathering of low-speed legacy services does not constitute discontinuance and should provide for expedited approval of discontinuance applications for services that have been grandfathered for 180 days. With respect to large, customized networks, the Commission can rely on negotiations and contractual agreements to address any specific concerns. The Commission should also reject proposals designed to protect individual competitors’ niches at the expense of overall competition and innovation. The opposition to proposals for discontinuance of services with no customers defies common-sense and should be rejected.

## DISCUSSION<sup>2</sup>

### I. The Commission Should Adopt Targeted Pole Attachment Reforms

The extensive record in this docket demonstrates the substantial coordination required among pole owners, existing attachers, and new attachers to facilitate access and attachments to utility poles. Over the years, the Commission has crafted rules, and pole owners and attachers have developed processes, that balance new attachers' interest in expeditiously deploying new services, existing attachers' need to preserve existing services, utilities' desire to protect their poles, and all parties' desire to protect workers.

The Commission should tread cautiously before upsetting that balance by adopting some of the extreme measures proposed in the comments. Instead, the Commission can reduce the pole attachment timeline to facilitate speedier deployment of broadband services by adopting common-sense incremental measures proposed by AT&T and other commenters.<sup>3</sup> AT&T encourages the Commission to take these incremental steps and reject proposals for wholesale changes with uncertain consequences that can only lead to more complexity and more problems.<sup>4</sup>

#### A. Pole Attachment Timelines Should Generally Be Maintained

There is extensive support in the record that major reductions in existing pole attachment timelines could create trade-offs that are not in the public interest. Existing timelines are already

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<sup>2</sup> AT&T is separately filing, in this docket and in WT Docket No. 17-79, reply comments that address the actions that the Commission should take under § 253 of the Communications Act, 47 U.S.C. § 253, to remove unreasonable state and local barriers to infrastructure deployment. *See also* AT&T Comments at 69-77.

<sup>3</sup> For example, AT&T proposed combining the estimate stage with the review and survey stage, thereby reducing the timeline by 15 days. *See* AT&T Comments at 2, 6-9. Other parties support that proposal as well. *See* CenturyLink Comments at 8-9; Crown Castle Comments at 13-14.

<sup>4</sup> AT&T has discovered that open lines of communication between pole owners, existing attachers, and new attachers can lead to acceptable, if not always ideal, outcomes for all parties.

challenging for some utilities to meet, and shortening those deadlines even further could compromise safety by encouraging workforces to rush or to take shortcuts to meet deadlines.<sup>5</sup> AT&T agrees that shortening the application review/pole survey timeline and the make-ready timeline is not sustainable or conducive to worker safety. Utilities' financial and manpower resources are finite, and the demands of shortened timelines would stretch those resources unreasonably.<sup>6</sup> Moreover, utilities cannot simply hire more workers to solve these concerns because the volume of pole attachment orders fluctuates, often spiking without warning.<sup>7</sup> Even potential attachers acknowledge that utilities should not be expected to maintain staff for these unpredictable spikes.<sup>8</sup>

For related reasons, several commenters echo AT&T's concern that current rules governing large order timelines are overly burdensome and subject to gamesmanship.<sup>9</sup> Crown Castle proposes to give new attachers submitting large pole attachment orders the option to use normal pole attachment timelines (rather than the extended large order timelines) if they pay all of the costs of retaining contractors to meet the normal order timelines.<sup>10</sup> This proposal has

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<sup>5</sup> See, e.g., Edison Electric Comments at 22 (“[S]hortening time periods and speeding the application review process, especially for larger projects, can cause greater concerns, including but not limited to those related to significant safety and compliance problems.”); Coalition of Concerned Utilities Comments at 24-25; Ameren Comments at 12; CenterPoint Energy Houston Electric Comments at 5.

<sup>6</sup> See Frontier Communications Comments at 14-17; Edison Electric Comments at 17, 22-23; CenterPoint Energy Houston Electric Comments at 6-7; Coalition of Concerned Utilities Comments at 22-26.

<sup>7</sup> See CenterPoint Energy Houston Electric Comments at 7 (“[Q]ualified labor is limited within certain markets, and sufficient resources could not be guaranteed to manage periodic surges in pole access requests.”).

<sup>8</sup> See Crown Castle Comments at 16.

<sup>9</sup> See Midwest Electric Utilities Comments at 20-23; CenterPoint Energy Houston Electric Comments at 9.

<sup>10</sup> See Crown Castle Comments at 16.

potential. In those regions where such a procedure is consistent with pole owners' bargained-for labor agreements, pole owner-approved contractors can perform surveys for new attachers, as long as the new attacher (not the pole owner) is responsible for coordinating the survey work. Crown Castle's proposal could thus provide a natural extension to the one-touch make-ready ("OTMR") proposal that AT&T has supported, and should be subject to the same conditions. *See infra* pp. 7-11.

**B. The Make-Ready Timeline for Wireless Attachments Should Be Harmonized With Other Make-Ready Work**

As AT&T explained in its opening comments, the additional 30 days provided under the Commission's rules for make-ready work for wireless attachments above the communications space is not warranted in light of pole owners' experience over the last six years.<sup>11</sup> The Coalition of Concerned Utilities argues to the contrary that the industry's experience justifies lengthening the timeline for make-ready work above the communications space.<sup>12</sup> But aside from potential concerns about expanded deployment of small cells, its comments identify no technical issues that the industry had not encountered even before the Commission adopted the current make-ready timelines in 2011. Since that time, pole owners, wireless providers, and contractors have become more, not less, knowledgeable about and proficient at safely deploying antennas and other equipment on utility poles.

Edison Electric argues that wireless attachments are unique because they require highly skilled labor to deploy, they involve non-standard equipment configurations, and are deployed

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<sup>11</sup> *See* AT&T Comments at 13-14. For the same reasons explained in this section, AT&T opposes the Coalition of Concerned Utilities' position that only electric utilities can direct make-ready work above the communications space. *See* Coalition of Concerned Utilities Comments at 28-29.

<sup>12</sup> *See id.* at 26-28.



throughout a pole network rather than along a line of poles.<sup>13</sup> Edison Electric’s objections are overblown. For one thing, wireless attachments are placed by utility-approved contractors working under National Electric Safety Code (“NESC”) and Occupational Safety and Health Administration standards, mitigating concerns about worker safety. Furthermore, although wireless providers may have different equipment configurations, each provider tends to deploy only one or two standard equipment configurations within a region (based on municipal requirements), which contractors quickly gain experience deploying. Moreover, most poles support a single wireless facility, making variations among different providers’ configurations unimportant in assessing the viability of make-ready timelines for a pole.

As to wireless attachment deployment patterns, small cell facilities are already deployed by project, involving multiple, closely spaced structures and will increasingly be deployed closer to each other as millimeter wave spectrum becomes available. Yet, even a wireless small cell project involving attachments and related make-ready work on multiple poles would take less, not more, time than wired attachments and related make-ready work on *every* pole in a designed line of poles. Thus, it is time for the Commission to harmonize the wireless and wired pole attachment timelines above the communications space.

**C. The Record Provides Support for a Balanced OTMR Approach**

**1.** The comments provide broad support among pole owners, existing attachers, and new attachers for OTMR, but the record also reflects the need to impose appropriate limitations on the process. To the extent the Commission adopts some form of OTMR, it should also make clear that the interests of pole owners and existing attachers are protected. In particular:

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<sup>13</sup> See Edison Electric Comments at 28-29.

- all make-ready work should be performed by the pole owner’s approved contractors;
- the procedure should be followed only where permitted under the existing attacher’s labor contracts;
- the procedure should be available only for simple work;<sup>14</sup>
- appropriate notice must be provided to existing attachers before any make-ready work is performed;
- the new attacher should be responsible for any deficient make-ready work; and
- the new attacher must indemnify all parties for any liability arising out of that work.

With these safeguards, OTMR represents an extension to existing procedures, rather than a new concept. Current make-ready processes already allow a new attacher to perform make-ready work if existing attachers fail to do so. And, many commenters, including staunch OTMR advocates, recognize that existing attachers should be provided the opportunity to perform their own complex make-ready work when a service outage is reasonably likely.<sup>15</sup>

The main point of contention over OTMR appears to be how soon a new attacher should be able to invoke a self-help remedy. In resolving this question, the Commission should recognize that it is in the public interest to minimize the potential for service outages; accordingly, existing attachers should be provided with more than a token 15-day or 30-day period in which to perform complex make-ready work. The existing 60-day timeline affords a

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<sup>14</sup> AT&T opposes Crown Castle’s proposal to recognize electric power activation of attachments as part of the make-ready work. *See* Crown Castle Comments at 20-22. By definition, § 224 and the Commission’s make-ready work regulations pertain to “attachments” placed on utility poles and not to services offered on those attachments or poles. Electric service should not be covered by make-ready any more than should the telecommunications services provided over those attachments.

<sup>15</sup> *See, e.g.*, Google Fiber Comments at 5-7; R Street Institute Comments at 12; Lumos Networks Comments at 6-7.

more realistic timeframe, especially where coordination with multiple attachers is required. Moreover, as Google Fiber observes, “most make-ready is simple”;<sup>16</sup> thus, retaining existing processes, including the 60-day make-ready timeline, for less frequent – but higher risk – complex make-ready is worth the benefit of the reduced potential for a service outage. Moreover, the existing process is time tested and would not introduce additional complexity to an already intricate timeline.

Google Fiber’s OTMR proposal would authorize the pole owner’s approved contractor to determine if make-ready is simple or complex.<sup>17</sup> Under AT&T’s OTMR proposal, existing attachers are provided 30 days after notice to make these determinations and to invoke their right to the existing 60-day make-ready period if complex make-ready is required. Again, existing attachers are in the best position to determine whether required make-ready work could impact their service or threaten the reliability of their networks and they should make that determination for their facilities.

**2.** Other commenters also support the need for make-ready processes to respect bargained-for labor contracts.<sup>18</sup> Providing the full 60-day make-ready timeframe would continue to allow utilities to use highly skilled bargained-for labor to perform their own make-ready work,

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<sup>16</sup> Google Fiber Comments at 8.

<sup>17</sup> See Letter from Kristine Laudadio Devine, Counsel to Google Fiber, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 1 (July 3, 2017) (“Google *Ex Parte* Letter”).

<sup>18</sup> See Edison Electric Comments at 27 (“[I]n some instances make-ready would also be delayed to ensure compliancy with existing labor agreements that preclude the use of outside contractors.”); Frontier Communications Comments at 16 (“The Commission . . . should avoid make-ready proposals that raise potential concerns with collective bargaining agreements.”).

whether complex or simple, before new attachers can use their self-help remedy.<sup>19</sup> Highly skilled labor is necessary for OTMR to succeed.<sup>20</sup>

Certain electric utilities oppose a requirement that pole owners approve contractors that are qualified to perform OTMR because of purported liability concerns, and because the new attacher is best qualified to select the contractor.<sup>21</sup> AT&T, which publishes an approved contractor list, has had a different experience as a pole owner. AT&T's pre-approved contractors have provided consistent and reliable expertise that is not always available to a new attacher.<sup>22</sup> Moreover, maintaining a list of pre-approved contractors eliminates potential disputes – for example, when (as is often the case) existing attachers and a new attacher cannot agree on a qualified contractor. Liability concerns can be addressed through other means, such as through releases, disclaimers, and other documentation. Using different contractors for each transfer or requiring all existing attachers, new attachers, and a pole owner to agree on a contractor is not a workable solution; instead, it would inject additional delays and conflict into the process.

**3.** Some of the reasons that parties offer in support of OTMR for all attachments are not well taken. Google Fiber argues for OTMR in part because existing attachers often perform make-ready in sequential 60-day periods, causing months of make-ready work on poles with

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<sup>19</sup> The Commission's prior observation that labor contracts restrict *utilities'* – not new attachers' – ability to hire outside contractors is not dispositive, as those observations were made in response to utilities' requests to not allow contractors to perform pole work. *See Report and Order and Order on Reconsideration, Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, 26 FCC Rcd 5240, ¶ 52 (2011) (“*2011 Pole Attachment Order*”). AT&T requests that contractors be allowed to perform the work that they are entitled to perform under their bargained-for contracts.

<sup>20</sup> *See* Nittany Media Comments at 2.

<sup>21</sup> *See* Edison Electric Comments at 30; CenterPoint Energy Houston Electric Comments at 10-13.

<sup>22</sup> By contrast, the record is rife with examples of unapproved contractors causing service outages. *See, e.g.*, AT&T Comments at 16-17; Comcast Comments at 20-22.

multiple existing attachers.<sup>23</sup> Google Fiber’s experience is not the norm. The Commission’s pole attachment rules envision a single 60-day make-ready period, and that is what pole owners generally provide. The new attacher (or, at its election, the pole owner) can perform the make-ready work that is not completed within this 60-day period. In any event, Google Fiber’s experience with sequential 60-day make-ready periods does not provide a justification for adopting OTMR – instead, those concerns can be resolved simply by clarifying that there is only one 60-day make-ready period applicable to all existing attachers.

**D. The Commission Should Ensure that Pole Attachment and Make-Ready Rates are Rational and Consistent**

*1. ILEC Rates:* Several commenters confirm that ILEC attachers currently pay disproportionately high pole attachment rates compared to other attachers and join AT&T in supporting the Commission’s proposal to use the modified telecommunications rate as the presumptive “just and reasonable” pole attachment rate under § 224(b) for ILEC attachers.<sup>24</sup> Investor-owned electric utility (“IOU”) pole attachment rates for AT&T’s ILECs are often more than double the modified telecommunications rate charged to other attachers. There is no policy justification for ILECs to pay substantially higher rates to attach to the same pole as their competitors. And, the disparity in pole ownership may mean that, as a practical matter, ILECs may not have the leverage to renegotiate their agreements with IOUs to change those rates or other terms.<sup>25</sup>

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<sup>23</sup> See Google Fiber Comments at 11-12; Google *Ex Parte* Letter at 2-3.

<sup>24</sup> See Frontier Communications Comments at 4-7; Verizon Comments at 10-14; CenturyLink Comments at 21-22; USTelecom Comments at 3-4; WTA Comments at 14-16.

<sup>25</sup> See Verizon Comments at 11.

IOUs argue that applying the modified telecommunications rate to ILEC pole attachments would provide ILECs with an unfair advantage over their cable and CLEC competitors because, supposedly, ILECs have traditionally gained certain rights through existing joint use agreements with electric utilities.<sup>26</sup> But the disparity in the pole attachment rates some IOUs charge for ILEC attachments relative to cable and CLEC attachments is huge and is not remotely justified by any other provision of existing joint use agreements.

IOUs also assert that ILECs have not expanded broadband or otherwise created consumer benefits following the Commission's 2011 Order allowing ILECs to file complaints of unjust and unreasonable pole attachment rates.<sup>27</sup> That is not true: in the three years after the Commission's *2011 Pole Attachment Order*, fixed broadband providers expanded service to approximately 2 million Americans<sup>28</sup> and improved performance enough for the Commission to change its broadband availability speed benchmark to 25 mbps download/3 mbps upload.<sup>29</sup> As of December 2014, wireline broadband speeds of 25 mbps/3 mbps were available to 90% of Americans, 10 mbps/1 mbps were available to 94% of Americans, and 4 mbps/1 mbps (the

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<sup>26</sup> See Coalition of Concerned Utilities Comments at 45-46.

<sup>27</sup> See CenterPoint Energy Houston Electric Comments at 30-33.

<sup>28</sup> See 2016 Broadband Progress Report, *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, 31 FCC Rcd 699, ¶ 79 (2016); Eighth Broadband Progress Report, *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, 27 FCC Rcd 10342, ¶ 45 (2012).

<sup>29</sup> See 2015 Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment, *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, 30 FCC Rcd 1375, ¶¶ 3, 26-55 (2015).

broadband benchmark before 2015) to 95% of Americans.<sup>30</sup> And, for its part, AT&T has expanded its fiber deployment to nearly 4 million consumer locations across 46 metropolitan areas nationwide and to more than 1.2 million U.S. business locations.<sup>31</sup>

2. ***TVA Rates:*** The Coalition of Concerned Utilities proposes that the Commission apply the pole attachment rate recently adopted by the Tennessee Valley Authority (“TVA”) for use by the electric cooperatives and municipalities under its jurisdiction to all pole attachments across the country or alternatively, as a separate rate for attachments that support “commingled services” across the country.<sup>32</sup> The Commission should reject this proposal: indeed, TVA rates should not be used as the benchmark for any pole attachment rates because they conflict with the congressionally mandated rates under § 224 and are not otherwise just and reasonable. The TVA rate allows pole owners under the TVA’s jurisdiction to recover more than 28% of their annual costs of owning and operating pole distribution systems, nearly quadruple the 7.4% of costs recoverable under the cable rate and the modified telecommunications rate using standard assumptions. Assuming the TVA’s cost recovery rate supports the TVA’s mission of reducing burdens on electric ratepayers, it nevertheless conflicts with the Commission’s policy to balance the burden on utility ratepayers with the need to minimize disincentives to investment, including artificially high pole attachment rates.<sup>33</sup>

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<sup>30</sup> See *2016 Broadband Progress Report* ¶ 79.

<sup>31</sup> AT&T Inc., *2016 Annual Report*, at 3 (2016), [https://www.att.com/Investor/ATT\\_Annual/2016/downloads/att\\_ar2016\\_completeannualreport.pdf](https://www.att.com/Investor/ATT_Annual/2016/downloads/att_ar2016_completeannualreport.pdf).

<sup>32</sup> See Coalition of Concerned Utilities Comments at 39-41.

<sup>33</sup> See Order on Reconsideration, *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, 30 FCC Rcd 13731, ¶ 20 (2015).

Furthermore, the TVA's artificially inflated pole attachment rate would discourage investments in broadband deployment.<sup>34</sup> Current TVA rates survive only because the TVA and the utilities under its jurisdiction are not covered by § 224. For utilities covered by § 224, the Commission should continue applying the cable rate and the modified telecommunications rate to pole attachments for cable and telecommunications services, respectively, as well as for any commingled services.<sup>35</sup>

**3. Treatment of Capital Costs:** AT&T opposes a modification of the FCC's rules to prohibit pole owners from recovering unreimbursed capital costs in its pole attachment rates. Certain parties argue that such capital costs should be excluded from pole attachment rates because they are not caused by attachers, and are incurred primarily for the benefit of the pole owner.<sup>36</sup> But even if attachers do not directly "cause" unreimbursed capital costs, attachers benefit from pole owners' investment and should pay their proportionate share of the associated costs, as defined by the cable rate and the modified telecommunications rate.<sup>37</sup> "The pole attachment rental rate is . . . designed to allow the pole owner to recover a share of its depreciation, taxes and financing capital costs associated with the pole, in addition to recovering

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<sup>34</sup> See Frontier Communications Comments at 10 ("The [TVA] . . . decision requiring increased pole attachment rates provides an interesting case study in the abuses of cooperatives and municipalities and the willingness of electric utilities to delay and impede broadband services to the citizens and members they serve."); CenturyLink Comments at 4 ("utilities governed by the Tennessee Valley Authority (TVA) recently have imposed unreasonable attachment rate increases while they simultaneously enter the telecommunications business in competition with the telecom attachers they seek to gouge").

<sup>35</sup> See AT&T Comments at 21.

<sup>36</sup> See Comcast Comments at 29-30; Verizon Comments at 14-15.

<sup>37</sup> See *2011 Pole Attachment Order* ¶ 145 (maintenance and administrative expenses are included in the lower-bound telecom rate even though the attacher might not cause all of those operating costs).



a share of ongoing administrative and maintenance expenses.”<sup>38</sup> As the Coalition of Concerned Utilities aptly puts it, “[e]liminating capital expenses from the pole attachment rental rate is like asking the owner of a rental building to set office rentals at an amount sufficient to cover only ongoing operating and maintenance costs, but not to cover the owner’s other annual costs associated with taxes, depreciation or financing the building.”<sup>39</sup> This is not rational ratemaking or regulatory policy. Furthermore, excluding non-reimbursed capital costs from the pole attachment rate calculation would discourage pole replacements and the capacity increases they may provide when a pole owner has the option between repairing and replacing a pole.<sup>40</sup>

**4. *Recovery of Administrative Expenses:*** The Coalition of Concerned Utilities asks the Commission for approval to recover from attachers – separate from the pole attachment rate – all out-of-pocket administrative expenses they incur to “accommodate pole attachment requests and monitor pole attachment activity,” including the cost of personnel to manage the pole attachment process.<sup>41</sup> The Commission should reject this request because administrative expenses, including costs not attributable to pole attachments and miscellaneous costs, are already a component of the pole attachment rates.<sup>42</sup> Allowing utilities to pass through administrative costs – other than those already included in the pole attachment rate and those that are part of make-ready charges – would open the door to arbitrary increases in pole attachment

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<sup>38</sup> Coalition of Concerned Utilities Comments at 35; *see also* Edison Electric Comments at 41-43.

<sup>39</sup> Coalition of Concerned Utilities Comments at 35.

<sup>40</sup> *See, e.g.*, Ameren Comments at 50; CenterPoint Energy Houston Electric Comments at 25.

<sup>41</sup> Coalition of Concerned Utilities Comments at 37; *see also id.* at 37-39.

<sup>42</sup> *See* Report and Order, *Amendment of Rules and Policies Governing Pole Attachments*, 15 FCC Rcd 6453, ¶ 49 (2000).

costs and provide just as much of a disincentive to pole attachments as an increase in the actual rate. The Commission should refuse that invitation.

**E. Additional Pole Attachment Issues**

*1. Pole Location Database:* Pole owners uniformly oppose the proposal that they be required to create and maintain electronic, searchable databases of the location and availability of poles for attachments. Although the American Cable Association supports such a proposal,<sup>43</sup> it provides no persuasive justification for it. Indeed, assuming the Commission has the authority to impose such a requirement – a matter that is subject to debate<sup>44</sup> – the costs to survey the location and availability of poles across the country and to maintain and keep that information current would be prohibitive, if it could even be done within a reasonable timeframe.<sup>45</sup> Utilities own millions of poles and most do not keep electronic records of availability for attachments, and would have to create such systems and records from scratch.

Furthermore, an electronic database would have limited utility because it would only account for authorized attachments and would quickly become outdated due to changes that occur for reasons both foreseeable (*e.g.*, normal wear and tear) and unforeseeable (*e.g.*, weather events). Consequently, the database could not be relied on to establish whether poles could accommodate additional attachments. As AT&T explained in its comments, a physical inspection of the pole is the only way to reliably provide that information.<sup>46</sup> Moreover, electric cooperatives and municipally-owned utilities, which are not covered by § 224, would have no

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<sup>43</sup> See, *e.g.*, American Cable Association Comments at 13-15.

<sup>44</sup> See Coalition of Concerned Utilities Comments at 53-59; Edison Electric Comments at 35-36.

<sup>45</sup> See CenterPoint Energy Houston Electric Comments at 17; Coalition of Concerned Utilities Comments at 53-59.

<sup>46</sup> See AT&T Comments at 7.

obligation to create or maintain the same type of database. And, commenters agree with AT&T's concern that publicly providing the pole location information would compromise the safety of the nation's critical electrical and telecommunications infrastructure.<sup>47</sup>

**2. *Mandated Use of Workflow Tracking Systems:*** Some commenters also propose Commission action – such as adoption of best practices or as part of OTMR regulations – to require utilities to use the National Joint Utilities Notification System (“NJUNS”), or a similar system, to track and coordinate pole attachment workflow and activities.<sup>48</sup> AT&T believes that Commission action is unnecessary, as these systems develop where they are warranted. AT&T and other utilities use NJUNS or similar regional systems in most, but not all, parts of the country.<sup>49</sup> The system used and its capabilities is agreed to by the players within the particular region, and AT&T is unaware of any significant problems that would warrant a requirement to operate such a system across the country. Such development would require the expenditure of funds that are better devoted to broadband deployment. Simply put, pole owners and attachers already use pole attachment tracking and coordination systems when and where they determine the systems are needed, and there is no need for the Commission to intervene.

**3. *Disclosure of Pole Cost Data:*** Comcast asks the Commission to clarify that ILECs must continue to publicly disclose detailed pole cost data because of the recent Commission Order allowing ILECs to transition from uniform system of accounts to generally

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<sup>47</sup> See Coalition of Concerned Utilities Comments at 54-55; Edison Electric Comments at 35-36; CenterPoint Energy Houston Electric Comments at 17.

<sup>48</sup> See Google Fiber Comments at 6; Crown Castle Comments at 20-21.

<sup>49</sup> See Google Fiber Comments at 6 n.16 (“Not all utilities use NJUNS, but most use some form of electronic notification system.”).

accepted accounting principles.<sup>50</sup> The Commission need not consider the issue in this docket because it has been raised in a petition for reconsideration of the *Part 32 Order*.<sup>51</sup>

**4. Unreasonable Construction Standards:** Crown Castle asks the Commission to clarify that a “construction standard” imposed by a utility that exceeds the “NESC clearance standard by more than 20 percent is presumptively unfair and unreasonable.”<sup>52</sup> AT&T agrees that utilities should not impose arbitrary and unilateral construction standards on the placement of pole attachments. Electric utilities increasingly have adopted blanket limitations on the type or amount of wireless equipment allowed on their poles – for example, restricting use to a maximum of one antenna or no associated equipment on a pole, even though antennas and associated equipment can vary substantially in size and present no risk of overloading the pole.<sup>53</sup> Another illustration of these blanket limitations is electric utilities prohibiting the placement of equipment below the usable space on a pole, despite widespread industry allowance of such deployments and the absence of industry standards restricting such placement. In another case, an electric utility allowed AT&T’s antenna, but no radios or other associated equipment, on its pole, which precluded AT&T from using the pole because the municipality prohibited placement of equipment at ground level.

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<sup>50</sup> See Comcast Comments at 29; see also Report and Order, *Comprehensive Review of the Part 32 Uniform System of Accounts; Jurisdictional Separations and Referral to the Federal-State Joint Board*, WC Docket Nos. 14-130, *et al.* (Feb. 24, 2017) (“*Part 32 Order*”).

<sup>51</sup> See Public Notice, *Petition for Reconsideration of Action in Proceeding of Comprehensive Review of the Part 32 Uniform System of Accounts; Jurisdictional Separations and Referral to the Federal-State Joint Board*, WC Docket Nos. 14-130, *et al.*, (June 26, 2017).

<sup>52</sup> Crown Castle Comments at 10.

<sup>53</sup> See, e.g., ExteNet Systems Comments at 55 (“[U]tilities have sometimes refused to permit ExteNet to attach anything to their poles other than an antenna.”).

Although these utilities claim that they are motivated by safety concerns, they typically provide only token explanations as to the specific safety risks. Such arbitrary prohibitions violate the Commission’s directive that a utility denying access “must explain in writing its precise concerns – and how they relate to lack of capacity, safety, reliability, or engineering purposes – in a way that is specific with regard to both the particular attachment(s) and the particular pole(s) at issue.”<sup>54</sup> For its part, AT&T follows industry standards and has encountered few issues following that course. Predictability in construction standards promotes broadband deployment by facilitating planning and investment by new attachers. Commission clarification on these points would assist new attachers and pole owners in their interactions.

5. ***Overlashing and Removal of Copper:*** The Coalition of Concerned Utilities proposes a rule that would prohibit overlashing on out-of-service cable, requiring attachers to remove attachments that are no longer being used to provide service, including when copper is retired.<sup>55</sup> The Coalition overstates the concern.

Overlashing is a valuable tool to efficiently increase pole capacity that is used by service providers across the country and typically occurs over cable with active circuits. Service providers should not be required to remove cable that supports overlashing when that cable is later taken out of service, as removing cable that is overlashed entails significant expenditure, is extremely complicated, and is typically unnecessary. Concerns about pole loads caused by overlashing in these situations should be resolved by compliance with generally accepted

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<sup>54</sup> *2011 Pole Attachment Order* ¶ 76.

<sup>55</sup> *See* Coalition of Concerned Utilities Comments at 15-17.

engineering practices.<sup>56</sup> In AT&T's experience, overloading issues are easily resolved when attachers and pole owners work together when needed to increase the size of the pole.

At the same time, attachers have little incentive to keep inactive cables on a pole if they do not support overlashed cable, because the attacher would continue to pay pole attachment fees on unused cables and be subject to make-ready work to transfer the unused cables when new attachers locate on the pole. AT&T accordingly has no objection to requiring existing attachers to remove from poles any cables that (a) do not already support overlashing; (b) are no longer used to provide service; and (c) are not intended to be used to provide service at a later date. Indeed, where the cable is copper and subject to retirement, the ILEC should be able to retire it according to the expedited waiting period proposed by AT&T. *See* AT&T Comments at 31-35; *infra* pp. 23-27.

## **II. The Commission Should Reform Its Copper Retirement and Network Change Notification Rules**

The record contains broad support for the Commission reversing the changes to its copper retirement rules that the Commission adopted in 2015. Compliance with those additional obligations has required ILECs to expend significant engineering, administrative, and legal resources, which has delayed the replacement of legacy facilities with broadband facilities.<sup>57</sup> The costs imposed by the 2015 copper retirement rules far outweigh any purported benefits. In

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<sup>56</sup> *See* Report and Order, *Implementation of Section 703(e) of the Telecommunications Act of 1996; Amendment of the Commission's Rules and Policies Governing Pole Attachments*, 13 FCC Rcd 6777, ¶ 64 (1998) (“To the extent that the overlashing does create an additional burden on the pole, any concerns should be satisfied by compliance with generally accepted engineering practices.”).

<sup>57</sup> *See, e.g.*, CenturyLink Comments at 26-33; Frontier Communications Comments at 22-25; ITTA Comments at 7-16; U.S. Telecom Comments at 21-30; Verizon Comments at 18-29.

particular, commenters support eliminating § 51.332's special treatment of copper retirement,<sup>58</sup> narrowing the universe of copper retirement notice recipients,<sup>59</sup> reducing waiting periods for copper retirement,<sup>60</sup> tying the calculation of copper retirement waiting periods to the date the notice is filed,<sup>61</sup> eliminating the ability to file objections to copper retirements,<sup>62</sup> repealing §§ 51.325(c) and 68.110(b) of the Commission's rules,<sup>63</sup> and providing flexibility when ILECs modify their networks following a *force majeure*.<sup>64</sup> AT&T focuses this portion of its reply comments on copper retirement and network modification issues, responding to the arguments marshaled in opposition to these reforms.

**A. Network Modification Should Not Be Conflated With Service Discontinuance**

Most of the comments filed in opposition to the Commission's copper retirement proposals conflate network modifications with service discontinuances. For example, Consumer Advocates asserts that direct retail notice of copper retirement is needed "to ensure that vulnerable populations are not at risk for having their communications disrupted by a change in technology,"<sup>65</sup> the California PUC contends that "copper retirement affects basic service in

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<sup>58</sup> See, e.g., CenturyLink Comments at 31; Frontier Communications Comments at 23; Verizon Comments at 20-22.

<sup>59</sup> See, e.g., Frontier Communications Comments at 24; U.S. Telecom Comments at 23-24.

<sup>60</sup> See, e.g., ITTA Comments at 8; Windstream Comments at 9-10.

<sup>61</sup> See, e.g., CenturyLink Comments at 29; U.S. Telecom Comments at 25-27; Verizon Comments at 19.

<sup>62</sup> See, e.g., Information Technology & Innovation Foundation Comments at 6; Frontier Communications Comments at 24; U.S. Telecom Comments at 23; Verizon Comments at 24.

<sup>63</sup> See, e.g., ITTA Comments at 14; U.S. Telecom Comments at 29-31; Verizon Comments at 25-28.

<sup>64</sup> See U.S. Telecom Comments at 29; Verizon Comments at 26-28.

<sup>65</sup> Consumer Advocates Comments at 13.

California” because “[c]ustomers being switched from copper might find themselves without free access to 9-1-1, or service functionality or coverage, or access to relay service,”<sup>66</sup> and the Communication Workers of America assert that retail notice of copper retirement “ensures that legacy telephone customers are not left without vital voice and related services . . . during and after a copper-to-fiber migration.”<sup>67</sup>

Most transitions from copper to fiber, however, will not impair the service end-users receive. Network modifications require only notice, not approval. To the extent a network modification *also* discontinues or impairs service to a community or part of a community, it would require approval through the *separate* § 214(a) process. The Commission should therefore not take improper account of concerns about service discontinuance when considering reform of notice-based network modification rules.

**B. There Is No Logical Reason to Treat Copper Retirement Differently from Other Network Modifications**

Some commenters suggest that copper retirements require their own separate rules because they are “unique”<sup>68</sup> or are “different in magnitude and impact”<sup>69</sup> or “more onerous”<sup>70</sup> than other network changes. But copper retirements present the same considerations for consumers and connecting carriers as other network changes, and therefore they do not require

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<sup>66</sup> California PUC Comments at 26.

<sup>67</sup> Communication Workers of America Comments at 11; *see also* AICC Comments at 10 (asserting that “allowing ILECs to ‘retire copper’ without providing direct notice to consumers would result in the termination of local telephone service to consumers, including the ability to call 911, without notice”); Windstream Comments at 3 (contending that eliminating 2015 copper retirement rules “will increase the likelihood of service disruption for consumers”).

<sup>68</sup> Public Knowledge Comments at 4.

<sup>69</sup> Communication Workers of America Comments at 9.

<sup>70</sup> Windstream Comments at 5-6.



special treatment. For example, although Windstream laments that copper retirement often requires installing new equipment or modifying services,<sup>71</sup> the same is true of other network modifications, which likewise often implicate CLECs' interoperability. And, to the extent the volume of copper retirements increases as carriers continue to migrate to fiber networks, that increase only highlights the need to ensure that the copper retirement is as streamlined as possible and is hardly a reason to *add* delay to the copper retirement process.

### **C. The Commission Should Streamline Notice Obligations Associated With Copper Retirement**

The record is devoid of any substantial evidence to support the elongated 180-day notice period for copper retirements. The comments that oppose the Commission's proposal to streamline copper retirement notice obligations proceed from the faulty premise that such obligations impose no costs on carriers.<sup>72</sup> For example, some comments incorrectly contend that long notice periods for network modifications like copper retirement impose no added burden because ILECs already plan far in advance for such modifications.<sup>73</sup>

These comments are contrary to record evidence of the tangible costs that notice-based obligations impose on carriers trying to transition their services and networks. For example,

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<sup>71</sup> *See id.*

<sup>72</sup> *See, e.g.,* AARP Comments at 3; AICC Comments at 4-5 (increase notice period "would not slow down the transition to next generation networks"); Consumer Advocates Comments at 18 (burden of notice period is "minor" because it only involves "sharing . . . information"); INCOMPAS Comments at 16 (extended notice periods "will cause no economic harm to the incumbent LECs"); Southern Co. Comments at 13 (carriers "would risk very little" in giving more notice).

<sup>73</sup> *See* Southern Co. Comments at 7 ("it is difficult to believe that the issuance of notice to customers would cause any further delay" because "[c]arriers will need to devote a significant amount of time planning, engineering, constructing, and testing replacements for copper that is to be retired"); Windstream Comments at 6 (longer notice period "not overly burdensome for incumbent LECs" because ILECs "plan their deployments and network improvements far more than six months ahead of time").

AT&T described in its opening comments the burdens involved in providing direct notice of copper retirements to retail customers,<sup>74</sup> and CenturyLink described an example of extended notice periods for copper retirement forcing it to incur thousands of dollars in costs that it otherwise would have avoided.<sup>75</sup> More generally, it stands to reason that the longer the notice period or the more extensive the required notice, the longer a carrier must wait before retiring outdated copper facilities, and the more resources must be devoted to maintaining or preparing to decommission those facilities.<sup>76</sup> This in turn adversely affects continued investment in next-generation technology and the expansion of broadband facilities.<sup>77</sup>

Some parties attempt to challenge the notion that the 2015 copper retirement rules have curtailed ILEC deployments, but their reasoning is faulty. For example, AARP contends that prior to 2015 “shorter notice requirements provided little incentive for ILECs to replace copper

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<sup>74</sup> AT&T Comments at 31-33.

<sup>75</sup> CenturyLink Comments at 28-29.

<sup>76</sup> *See, e.g.*, Corning Comments at 6 (economic study confirming “that there is an opportunity cost associated with preserving antiquated regulations that maintain copper-based networks”); *id.*, Ex. A (Singer Report) at 30 (describing significant costs of maintaining outdated copper facilities); NCTA Comments at 17-20 (observing that the 2015 changes to Part 51 network disclosure rules tend to extend, rather than decrease, the copper retirement process, and divert capital from network improvements to prolonged regulatory compliance measures); R Street Institute Comments at 15-16 (noting that it is not in the public interest to require resources that could be used to provide larger benefits to more consumers to instead prop up outdated networks when comparable or better alternatives are available).

<sup>77</sup> *See, e.g.*, ITTA Comments at 2 (“Under the Commission’s regulatory framework prior to 2015, incumbent LECs (ILECs) were already placed at a competitive disadvantage vis-à-vis their cable and wireless competitors, because ILECs had to comply with legacy obligations tied to their former dominant position in the TDM-based world while their competitors were free to transition to IP-enabled platforms without such burdensome regulatory constraints”); *id.* at 4 (“These regulations inhibited ILECs’ ability to compete, stifled investment in the networks and technologies the Commission seeks to encourage, and served as a disincentive to fiber deployment by incumbent wireline carriers, with the paradoxical result of impeding the migration to IP-enabled networks and services”); Fiber Broadband Association Comments at 2 (“The Commission should repeal the 2015 network change notification rule which imposes an unnecessary and costly process, thereby hindering investment in fiber infrastructure.”)

facilities with fiber optics” because “ILECs have generally avoided fiber-to-the-home deployment.”<sup>78</sup> AARP goes on to claim that AT&T and other ILECs did not begin to invest in fiber deployment until challenged by the entry of Google Fiber.<sup>79</sup> These claims, however, are inaccurate for three reasons. *First*, there have always been myriad regulatory obstacles beyond the Commission’s 2015 copper retirement rules that have stood in the way of expansive fiber deployment.

*Second*, as the very blog post AARP cites stated, AT&T began investing \$140 billion in its fiber network in 2011,<sup>80</sup> before Google Fiber first debuted in Kansas City in late 2012.<sup>81</sup> AT&T also made several other fiber distribution deployments prior to 2011.<sup>82</sup> AT&T’s deployment of fiber-to-the-home has also been more expansive than, and not co-extensive with, Google Fiber’s. AT&T currently offers gigabit, fiber-based service to 4.6 million locations across 52 major metropolitan areas and plans to add 2 million more locations and 23 more metro areas in 2017.<sup>83</sup> AT&T has the largest fiber network within the 21-state footprint where it

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<sup>78</sup> AARP Comments at 17-18.

<sup>79</sup> *See id.* at 18-19.

<sup>80</sup> *See* Joan Marsh, *Broadband Investment Not for the Faint of Heart* (Aug. 30, 2016), <https://www.attpublicpolicy.com/broadband/broadband-investmentnot-for-the-faint-of-heart/>.

<sup>81</sup> *See* Scott Canon, *Google Fiber customer relish a sneak peek*, *Kansas City Star*, Nov. 13, 2012.

<sup>82</sup> *See, e.g.*, Press Release, *AT&T and the Broadway-San Antonio Sign Agreement for New Fiber-to-the-Node IP Network in Local High-Rise Community* (July 29, 2009), <https://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=26977&mapcode=consumer|mk-connected-communities>; Press Release, *New Fiber-Optic Network to Speed Communication for the City of Evansville and Vanderburgh County* (Nov. 18, 2008), <https://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=26324&mapcode=enterprise>; Press Release, *AT&T Breaks Ground on Fiber-Based Technology Infrastructure at DuPage National Technology Park* (Feb. 2, 2007), <https://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=23347&mapcode=corporate|broadband>.

<sup>83</sup> *See* Press Release, *100% Fiber Network Powered by AT&T Fiber Coming to 8 New Metros, Reaching at Least 75 Overall* (Apr. 20, 2017), <http://www.prnewswire.com/news->

provides home internet service – much larger than the 10 metro areas where Google Fiber is currently offered.<sup>84</sup>

*Third*, Google Fiber’s experience is relevant not because of its entry into the fiber market but *how* it entered. Google Fiber changed the dialogue with states and municipalities regarding how investments were made in fiber, which reduced regulatory barriers to deployment of fiber for other carriers who were able to request the same terms and conditions of investment that Google Fiber obtained. Streamlining the copper retirement rules would similarly remove barriers to entry and make it less costly for carriers to replace copper with fiber.

Taking the costs of notice-based obligations into account undercuts commenters whose position amounts to the truism that more notice is better than less. No one questions the benefits of providing notice. The issues before the Commission are *how much* notice of copper retirement is needed and *who* needs to receive such notice. Some CLEC and public utility commenters contend that 180 days’ notice (or more) of copper retirement is needed because the process of migrating services from copper to fiber is complicated and time-consuming.<sup>85</sup> These comments, which lack any specifics, should be given little weight because the copper-to-fiber transition is not a new phenomenon that requires planning from square one; impacted entities

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releases/100-fiber-network-powered-by-att-fiber-coming-to-8-new-metros-reaching-at-least-75-overall-300442687.html.

<sup>84</sup> There are numerous metro areas where AT&T has deployed fiber but Google Fiber has not, and there are also three metro areas (Orange County, Provo, and Salt Lake City) where Google Fiber has deployed fiber, but AT&T has not. *See* [http://about.att.com/content/dam/snrdocs/fiber/fiber\\_map\\_april\\_2017.pdf](http://about.att.com/content/dam/snrdocs/fiber/fiber_map_april_2017.pdf) (showing AT&T deployments); <https://fiber.google.com/newcities/#viewcities> (showing Google Fiber deployments).

<sup>85</sup> *See, e.g.*, Competitive Carriers Association at 53-54; INCOMPAS Comments at 13-14; National Rural Electric Cooperative Association Comments at 5-7; Southern Co. Comments at 5; Sprint Comments at 51-53; Windstream Comments at 5-6.

have had a decade or more to assess and account for how that transition will impact their operations. Adjusting to the realities of copper retirement should already be part of how these companies do business, as it has been for ILECs like AT&T for some time, and therefore the 60 days proposed by AT&T<sup>86</sup> should be an adequate amount of time to plan for such retirements.

**D. The Commission Should Eliminate “Mandated” Retail Customer Notice Requirements**

There is also no substantial record support for providing direct notice of copper retirement to retail customers.<sup>87</sup> Some commenters defend these direct notices under the guise of reducing consumer confusion,<sup>88</sup> but as AT&T and others explained in their comments, regulatory-mandated notice to retail customers about copper retirement *causes* more consumer confusion than it ameliorates.<sup>89</sup> Carriers already have the incentive to ensure their customers are properly informed and will experience a smooth transition when copper is being replaced by fiber facilities. Customers will be contacted to schedule appointments for any required changes in equipment at the customer’s premises. A rule requiring retail notices – and the contents of those notices – is redundant, and a rule that requires months of advanced notice is confusing to customers and thus harmful.

Southern Co. defends direct retail notice of copper retirement with the dubious contention that it cannot “simply trust” that an interconnecting telephone exchange carrier “will timely and

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<sup>86</sup> See AT&T Comments at 34-35. Similarly, when facilities are not being used to provide service the 15 days proposed by AT&T provides reasonable notice. *Id.*

<sup>87</sup> See Fiber Broadband Association Comments at 11 (observing that there is no credible, systematic evidence that replacing copper with fiber produces any harm to consumers).

<sup>88</sup> See, e.g., AARP Comments at v, xiii; Maryland Office of People’s Counsel Comments at 2; Pennsylvania PUC Comments at 8-9.

<sup>89</sup> See, e.g., AT&T Comments at 33; Verizon Comments at 23; Smith Decl. ¶ 8 (attached to Verizon Comments).

accurately report network changes that are reported to it by the underlying carriers.”<sup>90</sup> This argument should be given no weight because interconnecting carriers have every incentive to relay relevant consequences of copper retirements to their end users, and Southern Co. provides no support for any contrary conclusion. And, to the extent commenters defend direct retail notice of copper retirement on the basis that it protects against service loss,<sup>91</sup> they conflate copper retirement with service discontinuance, as discussed above.

The Commission should similarly give no weight to comments that raise alarm about “forced migration” of technology-resistant consumers from antiquated copper networks to the fiber networks of the future.<sup>92</sup> Rhetoric about “forced migration” is a red herring because there is no genuine dispute that fiber networks are superior to copper networks; it thus makes sense for the Commission to facilitate the migration from copper to fiber, regardless of whether some might prefer to continue to use outdated technology. As the Commission has recently observed, consumers are not switching from services provided over next-generation networks to services provided over legacy ones.<sup>93</sup> “Nor as a policy matter would [the Commission] want that to

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<sup>90</sup> Southern Co. Comments at 6.

<sup>91</sup> See, e.g., California PUC Comments at 31-34.

<sup>92</sup> See *See id.* at 29-30; AARP Comments at 21. The California PUC cites to recent changes to AT&T California’s Residential Service Agreement (“RSA”) as evidence that carriers are contemplating “forc[ed] migrat[ions]” because it discloses “in fine print” that AT&T must access customers’ homes to install new network equipment when transitioning from copper to fiber. California PUC Comments at 30. As stated earlier, AT&T communicates with its customers in the normal course to educate consumers and ensure continuity of service. The RSA makes clear that future upgrades to AT&T’s network may require AT&T to install new equipment outside the customer’s home in order for their telephone service to continue to work and that if AT&T upgrades its network in the customer’s area, AT&T will provide additional notice and make an appointment with if needed. AT&T’s RSA is not tantamount to forced migrations.

<sup>93</sup> See Report and Order, *Business Data Services in an Internet Protocol Environment*, WC Docket Nos. 16-143, *et al.*, 2017 WL 1632988, ¶ 24 (Apr. 28, 2017).

occur” because “the technology transition is moving toward the eventual termination of TDM service offerings altogether,” and the Commission “want[s] to encourage that migration.”<sup>94</sup> In any event, although technology-resistant consumers may choose to avoid fiber networks when legacy networks are available, the Commission should not favor such choices as a matter of policy.<sup>95</sup>

Related to its rhetoric about “forced migration,” the California PUC also urges preservation of mandated direct retail notice of copper retirements on the basis that disabled and elderly consumers will be “[f]orc[ed] . . . to switch [customer premises equipment (“CPE”)] to maintain comparable service.”<sup>96</sup> Other commenters make a similar point to argue for preserving the CPE-related notice required by 47 C.F.R. § 68.110(b).<sup>97</sup> The Commission should reject these arguments for multiple reasons. *First*, neither direct retail notice of copper retirement nor notice under § 68.110(b) would impact *whether* customers must change CPE, as the California PUC seems to believe. *Second*, as discussed in AT&T’s opening comments, ILECs do not generally know what equipment customers use to attach to the network and access service.<sup>98</sup> *Finally*, as highlighted by AT&T’s RSA excerpted in the comments of the California PUC, when AT&T

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<sup>94</sup> *Id.* ¶ 25.

<sup>95</sup> *See* ADTRAN Comments at 5 (observing that although “copper loops are not an obsolete technology,” “fiber tends to provide greater capacity over longer distances and is less expensive to maintain,” and “the carrier is in the best position to determine which technology will be most efficient and best meet its customers’ needs”); *see also* ITTA Comments at 9 (“Effectively requiring ILECs to preserve copper networks for CLECs who do not want to invest in fiber facilities and a small minority of consumers who do not welcome advanced services will reduce the competitive options available overall to consumers.”).

<sup>96</sup> California PUC Comments at 31-32.

<sup>97</sup> *See* Southern Co. Comments at 11-12; Utilities Technology Council Comments at 28-29.

<sup>98</sup> *See* AT&T Comments at 36.

provides service to end users, it contacts those end users to arrange for installation of new equipment when necessary. Thus, mandating separate direct retail notices based on a concern about incompatible CPE is unnecessary. Indeed, as Verizon’s Comments demonstrate, sending direct retail notice at the time of copper retirement *and* at the time of service migration and/or CPE changes is confusing.<sup>99</sup>

### **III. The Commission Should Streamline Its § 214(a) Discontinuance Process**

As discussed in AT&T’s opening comments (at 40-52), the Commission should streamline its § 214(a) discontinuance procedures for legacy voice and data services and should forbear from requiring compliance with § 214(a) for interconnected VoIP services and services without existing customers. The comments filed on the Commission’s proposal make clear that these measures will promote broadband deployment and reduce the burdens of excessive or needless regulation.<sup>100</sup>

#### **A. The Commission Should Abandon the “Adequate Replacement” Test**

Commenting carriers and carrier trade associations agree that the Commission should do away with the “adequate replacement” test for determining whether a § 214(a) discontinuance application receives streamlined treatment.<sup>101</sup> The Commission should accord substantial weight to these comments because carriers are the ones saddled with the costs of complying with the

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<sup>99</sup> See Verizon Comments at 19-20; Smith Decl. ¶ 9.

<sup>100</sup> In its opening comments, AT&T explained why the Commission should reverse its 2015 determination that carriers must take into account the end users of their wholesale customers in determining whether they must obtain discontinuance authority under § 214 and the Commission’s so-called “functional test” for determining whether such authority is required. See AT&T Comments at 53-68. AT&T rests on those arguments for purposes of these reply comments.

<sup>101</sup> See AT&T Comments at 42-45; CenturyLink Comments at 40-44; Comcast Comments at 31-32; Frontier Communications Comments at 27-28; Verizon Comments at 37-39; US Telecom Comments at 37-38; ITTA Comments at 20-21.



“adequate replacement” test. Although carriers’ comments on this issue sometimes differ in the details, they share a common thrust: fiber, IP-based, or wireless services available to affected consumers should be presumed “adequate” replacements for legacy services. At a minimum, fixed or mobile voice service, including interconnected VoIP services, should be presumptively adequate replacements for legacy voice service.<sup>102</sup> Adopting this presumption should be straightforward, given the vigorous and growing competition that exists for next-generation and wireless services and the fact that consumers have already abandoned TDM-based voice service *en masse*.<sup>103</sup>

The Commission should reject AARP’s unsupported contention that the § 214(a) discontinuance process should not be streamlined because “[d]isability populations are likely to be more reliant on TDM-based services.”<sup>104</sup> For more than a decade, people with disabilities have abandoned legacy services along with everyone else, due largely to the superior accessibility features found on mobile devices. For example, as Consumer Groups acknowledged in the Commission’s Real-Time Text (“RTT”) proceeding, hearing-impaired customers who formerly used a teletypewriter (“TTY”) “have largely migrated to newer technologies” like RTT that “offer[] superior accessibility solutions on IP networks.”<sup>105</sup> The

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<sup>102</sup> See AT&T Comments at 42, 44-45.

<sup>103</sup> See *id.* at 41-42 (collecting empirical evidence).

<sup>104</sup> AARP Comments at 14.

<sup>105</sup> Comments of Consumer Groups on Petition of AT&T Regarding the Substitution of Real-Time Text for Text Telephone Technology, *Petition for Rulemaking to Update the Commission’s Rules for Access to Support the Transition from TTY to Real-Time Text Technology, and Petition for Waiver of Rules Requiring Support of TTY Technology*, GN Docket No. 15-178 (Aug. 24, 2015).

Commission similarly observed several years ago that “the disabilities community considers TTY an antiquated technology with technical and functional limitations.”<sup>106</sup>

Consumer behavior likewise contradicts AARP’s suggestion that wireless voice services are not adequate replacements for TDM-based voice services because of their coverage or cost.<sup>107</sup> As discussed in AT&T’s opening comments, about 65% of American households now receive all or almost all telephone calls on cell phones, while only about 14% of American households still rely on legacy TDM landlines.<sup>108</sup> More than half of all American households (50.8%) have now abandoned land-line voice service entirely – a figure that has increased nearly ten percentage points in the past three years.<sup>109</sup> Indeed, even the RAND study relied on by AARP (at 11) found that landline voice service was ranked least important among the four services the study investigated, implying that when consumers choose between mobile voice service and landline service, “mobile voice service is preferred.”<sup>110</sup> Moreover, the cost-per-megabit of wireless data plummeted 99% between 2005 and 2013,<sup>111</sup> 93% of the U.S. population has access to four or more wireless service providers,<sup>112</sup> and 99.9% of the U.S. population has

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<sup>106</sup> Notice of Proposed Rulemaking, *Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications*, 26 FCC Rcd 13615, ¶ 26 (2011).

<sup>107</sup> See AARP Comments at 11-12.

<sup>108</sup> See AT&T Comments at 41-42.

<sup>109</sup> See National Center for Health Statistics, *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2016*, at 5 (May 2017), <https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201705.pdf>.

<sup>110</sup> Craig Bond & Howard Shatz, *U.S. Consumer Preferences for Telephone and Internet Services*, at 26 (2016), [http://www.rand.org/content/dam/rand/pubs/research\\_reports/RR1300/RR1382/RAND\\_RR1382.pdf](http://www.rand.org/content/dam/rand/pubs/research_reports/RR1300/RR1382/RAND_RR1382.pdf).

<sup>111</sup> See CTIA, *Wireless Quick Facts*, <https://www.ctia.org/industry-data/wireless-quick-facts>.

<sup>112</sup> See *id.*

wireless coverage.<sup>113</sup> This massive shift from legacy TDM landlines to wireless proves that wireless voice services are an adequate replacement for legacy voice services.

The Commission should also reject assertions that carriers should be required not only to identify an alternative service but also to “expl[ain] how that service provides the same or better capacity, service levels, and reliability as the service to be discontinued, and at comparable cost.”<sup>114</sup> As AT&T has explained previously, such a detailed inquiry “would improperly convert § 214(a)’s relatively narrow mandate to ensure continuity of service into a broad-based tool to regulate the details of (certain) carriers’ service offerings.”<sup>115</sup> Such an approach would require the Commission to micromanage the technical details of carriers’ services and networks, which it does not have the authority to do under § 214(a), and it would also place a disproportionate emphasis on the adequacy of alternative services, which is only a small piece of a larger statutory inquiry. The better approach is to presume the adequacy of certain available alternative services and allow customers or consumer advocates to rebut that presumption with specific, evidence-based objections if the circumstances warrant.<sup>116</sup>

In this regard, parties objecting to the adequacy of substitute services must be able to do more than offer generalizations or speculation. For example, the Alarm Industry Communications Committee’s unsupported assertion that next-generation services “oftentimes do not provide the same quality, reliability and functionality as the TDM-based services on

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<sup>113</sup> Nineteenth Report, *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, 31 FCC Rcd 10534, tbl. III.A.ii (2016).

<sup>114</sup> Southern Co. Comments at 16; *see also* Pennsylvania PUC Comments at 13; AICC Comments at 12-13; AARP Comments at 6, 10.

<sup>115</sup> Comments of AT&T Services, Inc. at 42, *Ensuring Customer Premises Equipment Backup Power for Continuity of Communications*, PS Docket Nos. 14-174, *et al.* (Feb. 5, 2015).

<sup>116</sup> *See* AT&T Comments at 44-45.

which consumers rely”<sup>117</sup> would be insufficient to overcome the presumption. Similarly, although AICC argues (at 12) that new services must be equivalent with TDM-based services with respect to “carriage of signals and protocols, loop voltage treatment, decibel loss, jitter, dual tone multi frequency (DTMF) signal performance, compression and latency,” millions of households have made the switch to IP-based services and are using these services for their alarm systems, fax machines and other devices. This marketplace evidence establishes that wireless and IP services are indeed “adequate” alternatives for traditional TDM voice service.

**B. The Commission Should Streamline the Comment and Automatic-Grant Periods for Both Legacy Voice and Data Services**

AT&T agrees with commenters who have urged that consumers must have adequate notice before service is discontinued.<sup>118</sup> Such notice is required under 63.71(a) of the Commission’s rules; in addition, AT&T’s proposed discontinuance process for TDM-based voice services would require notice to subscribers before the filing of a § 214 application.<sup>119</sup> At the same time, the adequacy of notice should not be based on speculation about what sort of notice is needed to ensure that notice will “sink in for the consumer.”<sup>120</sup> Rather, the adequacy of notice should depend on an objective standard of how long a reasonable consumer should be expected to take to evaluate alternative service options before a service is discontinued. Any notice standard should also take into account additional public interest considerations, including the public interest in prompt deployment of advanced telecommunications infrastructure.

AT&T’s proposals, which are similar to the Commission’s proposals and would provide several

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<sup>117</sup> AICC Comments at 12.

<sup>118</sup> *See, e.g.*, AARP Comments at 3-5; Consumer Advocates Comments at 11-14; Southern Co. Comments at 12-13, 15-16.

<sup>119</sup> *See* AT&T Comments at 41-42.

<sup>120</sup> Consumer Advocates Comments at 12.

weeks' notice prior to a service discontinuance,<sup>121</sup> strike the appropriate balance among these competing considerations.

With respect to applications that grandfather low-speed legacy services, there should be no concern regarding adequate notice to existing customers because grandfathering does not discontinue service to those customers. Rather, as the Commission explained, “grandfathering” merely means stopping acceptance of new customers for a service “while maintaining service to existing customers.”<sup>122</sup> For applications to discontinue services that have already been grandfathered for at least 180 days, the Commission’s proposal would provide customers at least 190 days to explore alternative services before the deadline for submitting comments and at least 211 days between when the service is grandfathered and when it is ultimately discontinued. This is ample time for customers to prepare for service discontinuances.<sup>123</sup>

Moreover, the Commission’s proposal to reduce the comment period by 5 days and 20 days for non-dominant and dominant carriers, respectively, is modest when compared to the 6 or 7 months affected customers would still have to prepare for grandfathered services to be discontinued. This is especially so because of the wide availability and ready accessibility of alternative services, including ethernet-based data services. And, in any event, AT&T’s proposal would provide even more time to affected customers – at least 55 days’ notice before a service is grandfathered and at least 115 days’ notice before a service is discontinued.<sup>124</sup>

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<sup>121</sup> See AT&T Comments at 43-44.

<sup>122</sup> Notice ¶ 73.

<sup>123</sup> See Windstream Comments at 16 (agreeing that 180-day grandfathering is an “appropriate” safeguard).

<sup>124</sup> See AT&T Comments at 43-44.

Some commenters raise the prospect that certain large, customized networks, such as the Federal Aviation Administration’s air traffic control infrastructure, might take longer than 211 days to transition.<sup>125</sup> These networks, however, were built on customized timelines and will be transitioned on customized timelines. As AT&T explained in its opening comments, any challenges or special circumstances presented by transitioning large volumes of services, including “critical” services, can be overcome through negotiation and coordination and do not require additional regulation.<sup>126</sup> Indeed, many customers who require such services have already availed themselves of multi-year term plan options or extended discontinuance notice requirements in their service agreements. Thus, this small subset of services does not present a reason to rethink the Commission’s notice or auto-grant reforms.

Three specific proposals by commenters with regard to the discontinuance and grandfathering of services should be rejected. *First*, INCOMPAS’s proposal to require ILECs to (1) provide at least one year’s notice before filing a discontinuance application, and (2) grandfather existing DSn special access circuits for at least three years before discontinuing them.<sup>127</sup> INCOMPAS’s sole justification for this proposal is its unsupported assertion that “extended notification is critical to competitors.”<sup>128</sup> This proposal is intended to benefit certain favored *competitors* at the expense of *competition* by impeding ILECs’ ability to discontinue outdated legacy services; it should be rejected. CLECs have been on notice for years that ILECs

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<sup>125</sup> See Harris Corp. Comments at 4-7; Southern Co. Comments at 5, 12-13; Puget Sound Energy Comments at 14-15; Midwest Electric Utilities Comments at 46-47.

<sup>126</sup> AT&T Comments at 52.

<sup>127</sup> See INCOMPAS Comments at 16. Harris Corp. similarly proposes that “at least 180 days advance notice” should be provided for service discontinuances. See Harris Corp. Comments at 6-8.

<sup>128</sup> INCOMPAS Comments at 16.

are transitioning their networks and services, and providing years of additional time at this point would be unjustified and unnecessary.

*Second*, Windstream’s proposal to prohibit ILECs from discontinuing services to customers purchasing those services pursuant to a specified term, before the term has expired.<sup>129</sup> This proposal is also unnecessary because the contracts between providers and customers, not Commission regulations, define any obligations to provide services for a defined term by addressing term and termination.<sup>130</sup> If a customer believes that any discontinuance of service violates its service agreement, it can pursue relief in whatever manner is permitted by the agreement; the Commission need not intervene to alter such contracts after the fact.<sup>131</sup>

*Third*, Windstream’s proposal to require carriers to allow existing customers “to make moves, additions, and changes to the grandfathered service.”<sup>132</sup> The Commission should reject this proposal because carriers need to retain the flexibility to restrict move/add/change activity during the grandfathered period on a case-by-case basis. That flexibility is necessary because carriers are sometimes limited in their ability to provide additional legacy services that are being phased out. For example, AT&T generally limits move and add activity for a service when network facilities or equipment needed to provide that service become unavailable, often because

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<sup>129</sup> See Windstream Comments at 16-17.

<sup>130</sup> See, e.g., Memorandum Opinion and Order, *Modification and Clarification of Policies and Procedures Governing Siting and Maintenance of Amateur Radio Antennas and Support Structures, and Amendment of Section 97.15 of the Commission’s Rules Governing the Amateur Radio Service*, 17 FCC Rcd 333, ¶ 8 (2001) (“We recognize the importance of preserving the integrity of contractual relations. We are therefore reluctant to pre-empt private parties’ freedom of contract.”).

<sup>131</sup> See Memorandum Opinion and Order, *Applications of Jerry Russell d/b/a The Russell Company and Hansen Broadcasting*, 27 FCC Rcd 8323, ¶ 24 (2012) (“[T]he Commission has consistently held that parties should seek redress for private contractual disputes in courts of competent jurisdiction.”).

<sup>132</sup> See Windstream Comments at 15.

manufacturers have stopped making them.<sup>133</sup> Independent of these practical considerations, Windstream’s proposal should also be rejected because it would force carriers to invest resources in outdated technology rather than investing in deployment of next-generation services.

**C. The Opposition to Streamlining Discontinuance of Services Without Existing Customers Is Unfounded**

Some commenters oppose streamlining discontinuance procedures for services that lack existing customers,<sup>134</sup> but that opposition is misguided. For example, Southern Co. suggests that even when no customers subscribe to a service, a § 214(a) application is needed to protect “prospective customer[s]” who might still be considering use of that service.<sup>135</sup> Similarly, Windstream asserts that “60 days is too short of an interval to demonstrate that there is no demand for a service,” and that maintaining a 180-day interval would protect the interests of “potential consumers of these services.”<sup>136</sup> At best, these comments are a solution in search of a problem; there is no evidence that any “prospective” or “potential” customer has been impacted by discontinuing a service that is not being used. As AT&T explained in its opening comments, requiring a § 214(a) application in those circumstances would be wasteful and unnecessary; at worst, maintaining such a requirement would divert focus and resources from services that serve actual demand. When there are no customers, the market has spoken and demonstrated that there is no need for the service. Therefore, the Commission’s duty is satisfied and forbearance is

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<sup>133</sup> See CenturyLink Comments at 37 (“[E]quipment manufacturers have discontinued or are phasing out support for TDM equipment, making it difficult (and soon impossible) to maintain the facilities and equipment used to provide traditional, wireline voice telecommunications services.”).

<sup>134</sup> See Southern Co. Comments at 13; Windstream Comments at 18.

<sup>135</sup> Southern Co. Comments at 13.

<sup>136</sup> Windstream Comments at 18.



appropriate from these requirements as AT&T proposed to prevent waste of the carriers' and Commission's time and resources associated with processing such applications.<sup>137</sup>

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<sup>137</sup> See AT&T Comments at 48-49.