



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17120

IN REPLY PLEASE
REFER TO OUR FILE

November 7, 2017

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: ***In re Accelerating Wireline Broadband Deployment by Removing
Barriers to Infrastructure Investment – WC Docket No. 17-84***

Ex Parte Submission of the Pennsylvania Public Utility Commission

Dear Secretary Dortch:

The Pennsylvania Public Utility Commission (Pa. PUC) submits this written ex parte in response to the circulating and publicly disclosed draft proposed *Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking (Draft Report and Order)*¹ released as a part the Tentative Agenda, which reflect the items to be considered at the Commission's upcoming November 16, 2017 Open Meeting. The Pa. PUC has actively participated in this proceeding and has timely submitted comments.² The present ex parte submission focuses only on selected parameters of the *Draft Report and Order*. However, the Pa. PUC preserves all previous arguments and positions contained in its formal comments previously filed in this proceeding.³

The Pa. PUC supports the Commission's efforts to remove regulatory barriers to increase infrastructure investment and accelerate broadband deployment. The Pa. PUC further notes that the preservation and enhancement of the universal service concept and the encouragement of broadband deployment are shared statutory goals under both federal and Pennsylvania law.⁴ The Pa. PUC remains concerned, however, that any FCC action not adversely impact competition, obviate state law or preempt state regulation.

¹ *In re Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, circulating draft Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, released October 26, 2017, FCC-CIRC1711-04 (*Draft Report and Order*).

² WC Docket No. 17-84, Comments of the Pennsylvania Public Utility Commission, June 15, 2017 (Pa. PUC Comments).

³ This includes the Pa. PUC's position on the Section 214 "functional test." Compare Pa. PUC Comments at 18-24 with *Draft Report and Order* at 48, ¶ 127.

⁴ See generally 47 U.S.C. § 1302(a) and 66 Pa. C.S. § 3011(2).

The Pa. PUC appreciates the Commission's respect for state authority, for example acknowledging Pennsylvania's statutory authority to preserve and police the reliability, adequacy, and safety of services and facilities provided by carriers operating within the Commonwealth.⁵ This addresses the Pa. PUC's concern expressed in comments to the Commission's NPRM, which potentially considered protections provided in independent state law to be potential targets of federal preemption because they allegedly presented a "barrier to deploying next-generation technologies and services."⁶

However, the *Draft Report and Order* proposes certain actions that the Pa. PUC does not support as discussed below.

The *Draft Report and Order* revises the existing copper network retirement rules and eliminates "the requirement of direct notice to retail customers adopted in 2015."⁷ Similarly, the *Draft Report and Order* eliminates "the requirement that incumbent LECs provide direct notice of planned copper retirements to state commissions, governors, Tribal Nations, and [the U.S.] Department of Defense"⁸ The Pa. PUC does not support eliminating these notice requirements.

As designed, the existing copper retirement rules preserve and assist an orderly transition of existing networks to newer technologies and communications protocols. In this respect, the existing rules operate in tandem with fundamental Pa. PUC regulatory policy governing the potential suspension and termination of service for an ILEC end-user customer⁹ that is implicated by a copper retirement and conversion of a consumer's service to a fiber optic-based connection. Adherence to the Commission's existing notice rules that operate jointly with applicable Pa. PUC regulations ensures that consumers are informed about changes to their service and are not left without access to essential services during such technology transitions, e.g., 911/E911 emergency calling capabilities, and thus, serves the federal and Pennsylvania statutory goals of preserving and enhancing safe, reliable, and universal service.

⁵ See *Draft Report and Order* at 11, ¶ 23 and n. 67; Pa. PUC Comments at 16-21; cf. *In re Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, (FCC, rel. April 21, 2017), *Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment*, FCC 17-37 (NPRM) at 36, ¶ 113 and n. 161;

⁶ NPRM at 36, ¶ 113.

⁷ *Draft Report and Order* at 20, ¶ 45.

⁸ *Draft Report and Order* at 25, ¶ 56.

⁹ See generally Pa. PUC regulations at 52 Pa. Code §§ 64.71, 64.72, 64.74, 64.101-103 (medical conditions and certification), 64.121, and 64.123.

As notice-only rules, the Commission's existing rules have not impeded copper network replacement projects in Pennsylvania.¹⁰ The current Commission rules governing notice requirements to end-users help minimize customer confusion and the frequency of informal and/or formal complaints that are or may be associated with copper network replacement projects.¹¹ By facilitating customer awareness, these rules help avoid unwarranted complaints and potential litigation over service outages. Such litigation can impede the Commission's professed goal of accelerating the deployment of wireline broadband access facilities and services. Thus, the rules benefit both carriers and customers. Overall, the copper-to-fiber transition in Pennsylvania has been relatively smooth and seamless for consumers and, by all accounts, is going well in the Commonwealth. The Pa. PUC sees no reason to depart from the existing consumer notice rules that are helping achieve this desired result.

For the above-referenced reasons, the Commission should also retain its existing rules requiring notice of copper network retirement projects "to state commissions, governors, Tribal Nations, and [the U.S.] Department of Defense."¹² The Pa. PUC reiterates its interest in receiving this information, given its statutory responsibility to regulate the reliability, adequacy, and safety of telecommunications services that are provided through physical wireline network facilities in Pennsylvania, including plain old telephone services provided over a fiber network. Moreover, retaining the notice rules helps ensure that the Pa. PUC remains informed about copper network retirement projects in Pennsylvania and in doing so, helps ensure that the Pa. PUC can adequately respond to consumer inquiries on the subject. Therefore, the Pa. PUC has an inherent interest in having advance knowledge of technology transitions that may impact areas that are under its traditional regulatory oversight.

Other Pennsylvania state agencies and departments that operate under the Governor's jurisdiction may be similarly interested in having advance notice, through notice provided to the Governor, of network transition projects that may affect their respective telecommunications and communications capabilities, functions, operations, and/or oversight responsibilities in various areas including public health and safety. This would likely include state agencies that maintain critical services and those that advance or sometimes fund the deployment of advanced networks as part of their economic

¹⁰ WC Docket No. 17-84, Pa. PUC Comments at 8-9 citing *Altman v. Verizon Pennsylvania*, Docket No. C-2015-2515583 (Pa. PUC Order adopted October 27, 2016; Initial Decision issued July 25, 2016), wherein the Pa. PUC explicitly denied the complainants' request to have their residential basic local exchange service restored to copper-based network facilities that had been replaced by fiber optic facilities, reasoning that nothing under Pennsylvania law entitled the customers to receive copper-based local exchange service.

¹¹ WC Docket No. 17-84, Pa. PUC Comments at 8. Such consumer informal and formal complaints are usually submitted to and addressed by the Pa. PUC's Bureau of Consumer Services or the Office of Administrative Law Judge.

¹² *Draft Report and Order* at 25, ¶ 56.

development responsibilities, an important consideration given the role that broadband deployment plays in economic development.

In addition, the Pa. PUC notes with approval the ex parte comments of the National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce. NTIA states in relevant part:

Over the past two years, NTIA has described to the Commission how the ongoing network transition will significantly challenge federal agencies' ability to maintain mission critical services. Ensuring continuity of national security, public safety, and emergency preparedness communications is a paramount concern, and NTIA has described critical agency activities that may be imperiled by uncoordinated planning for or inability to accommodate changes in the facilities and services that agencies use.¹³

It is intuitive that NTIA's well-stated concerns can and do apply equally to the operations and responsibilities of agencies and departments of various state governments that carry out similar critical missions, including those in the Commonwealth of Pennsylvania.

For these reasons, the Commission should not eliminate the copper retirement notice requirements as proposed in the draft Report and Order.

Respectfully Submitted on Behalf of the
Pennsylvania Public Utility Commission

/s/

David Screven
Assistant Counsel
Tel.: (717) 787-5000
E-Mail: dscreven@pa.gov

¹³ WC Docket No. 17-84, ex parte comments of the NTIA, October 27, 2017, at 3 (footnotes omitted).