

November 9, 2017

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

Re: Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84

Dear Ms. Dortch:

On November 7, Yosef Getachew and Daiquiri Ryan of Public Knowledge (“PK”), Debbie Goldman of the Communications Workers of America (“CWA”), and Dawit Kahsai of AARP met with Amy Bender, Legal Wireline Advisor to Commissioner O’Rielly, with regard to the above captioned proceeding.

PK, CWA, and AARP explained that the Commission should reject the changes to the copper retirement notice and discontinuance rules proposed in the recently circulated Draft Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking (“Draft Order”).¹ As the record in this proceeding demonstrates, copper networks have served as the backbone of the nation’s communication system for decades.² In addition to traditional phone services, the copper network is the connective tissue for many third-party services such as fax machines, home alarms, and medical alert devices that consumers and small businesses use every day. Eliminating the copper retirement and discontinuance rules will result in a downgrade for Rural America and hurt the nation’s most vulnerable populations including the elderly, low-income consumers, and those with disabilities.

PK, CWA, and AARP specifically expressed concern that the Draft Order’s proposal to completely eliminate the advance notice requirement for retail customers³ and to reduce the advance notice requirement for interconnecting carriers from 180 to 90 days⁴ will leave consumers, small businesses, and anchor institutions confused and unprepared when incumbent carriers decide to retire their copper networks. Further, the Draft Order’s proposal to eliminate

¹ See Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, FCC-CIRC1711-104, (Oct. 26, 2017) http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db1026/DOC-347451A1.pdf (“Draft Order”).

² See, e.g.,

³ Draft Order at 20 ¶ 45.

⁴ *Id.* at 26 ¶ 61.

the de facto copper retirement definition⁵ will allow incumbent carriers to neglect their copper infrastructure in areas where consumers have no affordable, reliable alternative.⁶

CWA also pointed out where the Draft Order mischaracterized arguments it made in the record with regard to de facto copper retirements.⁷ The Commission assumes consumers receive no benefit from a de facto retirement notice because a “de facto retirement could have conceptually already occurred when notice would be required.”⁸ Consumers know when their legacy services no longer work, but the very purpose of the de facto retirement rule is to prevent intentional neglect of copper facilities.⁹

PK, CWA, and AARP also explained that the Draft Order’s proposal to eliminate the “functional test”¹⁰ and narrowly reinterpret the definition of service under Section 214(a) to only include a carrier’s tariff is fundamentally flawed. The use of the term “service” under Section 214(a) has long been understood to extend beyond the four corners of the tariff both from the practical application and statutory interpretation of Section 214. When interpreting Section 214(a) including in previous discontinuance proceedings, the Commission has consistently interpreted the term “service” to mean the subject of public convenience and necessity, not merely those services defined by the tariff.¹¹ Indeed, the Commission itself has pointed out it has extended Section 214 obligations to carriers with detariffed services.¹² Further, the Commission must look at the entirety of Section 214, including Section 214(c) which discusses in further detail the Commission’s authority, including language regarding terms and conditions bound up in the certificate, not in any tariff. This interpretation allows the commission to apply Section 214 as a licensing statute and oversee transactions between telecommunications carriers. To be clear, the same exact sentence found in Section 214(c) that allows the Commission to issue a certificate for a discontinuance also allows governs its initial grant authority and its initial transfer authority.¹³ In its Draft Order, the Commission fails to explain how it can interpret the definition of service differently in various proceedings that all fall under Section 214.

Whatever the definition of service, the Commission has broad rulemaking authority under Section 214 to evaluate whether discontinuance serves “the public interest, convenience, and necessity.” The public interest mandate in Section 214 requires the Commission to “define more specifically what carriers’ obligations are when discontinuing ... services as part of a technology

⁵ *Id.* at 16-17 ¶ 37.

⁶ *See* CWA Comments at 14-23.

⁷ Draft Order at 17 n. 124, 129.

⁸ *Id.*, ¶ 37.

⁹ *See* CWA Comments at 15.

¹⁰ Draft Order at 48 ¶ 127.

¹¹ *See Technology Transitions et al*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 30 FCC Rcd 9372, 9473 ¶ 189 (2015).

¹² *Id.*

¹³ *See* 47 U.S.C. §214(c).

transition.”¹⁴ Therefore, even if the Commission adopts a narrow definition of the term service, it would not alter the nature of the rules it has previously adopted under Section 214.¹⁵ The definition of service and what it technically includes does not cancel out the broad authority given to the Commission by Congress; section 214(a), above all else, mandates the Commission to take actions that protect consumers from harms associated with termination or decreases in their communications services.

Next-generation networks will bring countless benefits to everyday consumers, but the Commission must ensure the transition is an upgrade for all Americans. For these reasons, the current copper retirement and discontinuance rules should be retained.

Respectfully submitted,

/s/ Yosef Getachew
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Cc: Amy Bender

¹⁴ See *Technology Transitions et al*, Declaratory Ruling, Second Report and Order, and Order on Reconsideration, 31 FCC Rcd 8283, 8304 ¶ 62 (quoting *Emerging Wireline Order and Further Notice*, 30 FCC Rcd at 9481, ¶ 204) (“2016 Declaratory Ruling”).

¹⁵ See *id.* at 8313-8355 ¶¶ 88-194.