

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	GN Docket No.13-5
Technology Transitions)	
)	

COMMENTS OF AT&T

AT&T Services, Inc. on behalf of its affiliates, files these comments in response to the *Public Notice* issued by the Office of Engineering and Technology and the Wireline Competition Bureaus (“Bureaus”) seeking comment on expanding the list of key applications and functionalities for which carriers must demonstrate interoperability when seeking to discontinue legacy voice service under the adequate replacement test.¹ AT&T recognizes the limited scope of the *Public Notice*, however, AT&T respectfully submits that the interoperability component of the adequate replacement test is fundamentally misconceived and should be revisited.

The adequate replacement test allows a carrier to obtain streamlined approval of its section 214 application to discontinue legacy voice service as a part of a technology transition if the carrier demonstrates in its application that an available replacement service satisfies a three-pronged test: (1) the replacement service offers substantially similar levels of network infrastructure and service quality, (2) the replacement complies with existing federal and/or industry standards required to ensure that critical applications such as 911, network security and applications for individuals with disabilities remain available, and (3) the replacement service offers interoperability with key applications and devices.² Under the interoperability prong (the focus of the instant *Public Notice*), the carrier must demonstrate or certify that the replacement service works with low-speed

¹ Office of Engineering and Technology and Wireline Competition Bureau Seek Comment on List of Interoperable Devices for Discontinuance Applications under the Adequate Replacement Test, *Public Notice*, GN Docket No. 13-5, rel. October 29, 2018.

² 47 C.F.R. § 63.602(b).

modem devices, including fax machines, home security alarms, medical monitoring devices, analog-only caption telephone sets, and point-of-sale terminals. Carriers must make this showing even if virtually no customers continue to use these devices or if readily available and widely utilized, inexpensive alternative devices are compatible with the replacement service. That makes no sense. To make matters worse, there are myriad versions of these legacy devices, and requiring carriers to demonstrate interoperability with all of them can be extremely burdensome, and some of these devices may no longer be used by *anyone*. AT&T would have less concern with an interoperability component to the adequate replacement test if the Commission determines that certain types of equipment are sufficiently critical and sufficiently dependent on legacy POTS service that interoperability is necessary. But the interoperability component of the adequate replacement test was adopted without any such an inquiry. Rather, the Commission simply observed that certain devices were used in conjunction with legacy POTS service, and without determining the extent to which those devices remain in use or the availability and use of alternative services or devices, the Commission required interoperability. That makes no sense and unnecessarily burdens the transition from legacy services to advanced services. Accordingly, the Commission should eliminate the interoperability prong of the adequate replacement test and consider any interoperability issues that are raised in the course of a pending section 214 application on a case-by-case basis, taking into account the criticality of the device, the number of users and the availability and use of alternative devices or services.

This change would be consistent with the *Declaratory Ruling* reversing the “functional test” for determining whether Section 214(a) applies.³ In the *Declaratory Ruling*, the Commission correctly reversed its previous “functional test” standard for determining whether a service is being discontinued, reduced or impaired pursuant to section 214(a). The Commission held that *carriers*

³ See Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, 32 FCC Rcd 11128 at ¶ 128 (2017) (“*Declaratory Ruling*”).

are not required to assess whether there is loss or change in service functionality or interoperability with 3rd party devices to determine whether a section 214 application is required. Instead, the carrier's service description in its tariff (or customer service agreement) is dispositive of what comprises the "service" being offered under section 214.⁴ In so holding, the Commission explained that this approach is better aligned with the statutory text and provides clarity to both carriers and customers.⁵ Importantly, it recognized that "*carriers have no means of knowing what devices their customers are using, and therefore cannot be expected to account for their proper functioning.*"⁶ The Commission concluded it made more sense from a cost and efficiency perspective to require third party manufacturers, as opposed to carriers, to bear the cost of ensuring compatibility and that the public interest benefits of enabling carriers to provide improved service to Americans, and expand service to Americans "outweigh any losses as a result of possibly hastened [CPE] obsolescence."⁷ By the same token, since carriers have no insight into whether their customers still use devices that rely solely on legacy TDM-based POTs, carriers should not be required to conduct the burdensome research to demonstrate that next-generation voice service is compatible with outdated devices as a *pre-condition* to obtain section 214 approval.

The Commission's decision in *Carterfone* also supports eliminating the interoperability prong from the adequate replacement test.⁸ Here, the Commission held that customers could attach third-party devices to the telephone service they purchased, but explained that if the underlying telephone network technology and standards changed, the device must be "rebuilt to comply with the revised standards" or the customer would have to "discontinue its use," for such was the "risk

⁴ *Id.*

⁵ *Declaratory Ruling* at para 148.

⁶ *Id.*

⁷ *Id.* at para. 150.

⁸ *Use of the Carterfone Device in Message Toll Telephone Service*, 13 F.C.C.2d 420 (1968) (*Carterfone*).

inherent in the private ownership of any equipment to be used in connection with the telephone system.”⁹ Similar to the findings in the recent *Declaratory Ruling*, *Carterfone* recognized the risk inherent in device ownership and manufacturing and concluded that the public interest is better served by allowing carriers to transition their networks and required the device industry to carry the burden to adapt CPE to new network standards. This holding warrants that carriers be relieved of the burden of backward compatibility, so they can devote their resources to accelerate broadband deployment.

It is especially unnecessary for carriers to carry the burden of the interoperability prong given that the CPE industry already recognizes its role to update devices to be compatible with new network standards. Specifically, CPE industry standards are administered by the Administrative Council for Terminal Attachments (“ACTA”) to ensure that terminal equipment and applications are compatible with communications networks. ACTA administers the review and publication of equipment standards, and equipment manufacturers must ensure their terminal equipment conforms to FCC rules and the applicable ACTA technical requirements.¹⁰ In addition, manufacturers must apply to have approved equipment listed in the ACTA database, which allows carriers, the FCC, and other equipment manufacturers to verify that specific CPE has indeed been approved to connect with carrier networks. Thus, the adequate replacement test’s interoperability prong is duplicative of an already established process administered by the industry with the incentive to ensure compatibility.

That process is working. Indeed, in the two years since the adequate replacement test was adopted, the CPE market continued its evolution toward interoperability with broadband and/or mobile networks and services making this requirement unnecessary. For example, the alarm industry began transitioning its systems to IP, mobile, and video technology in 2010 by replacing

⁹ *Id.* at 424.

¹⁰ <https://www.part68.org/aboutMain.aspx>

POTs based alarm panels with newer equipment¹¹ with little resistance by the customers since the newer systems have cost saving advantages and offer more robust features.¹² The technological obsolescence of POTS-dependent alarm systems has escalated as more customers have cut the cord¹³ and “providers and manufacturers face shorter product development cycles and more frequent technological innovations.”¹⁴ And, as the use of smartphones has increased, customers prefer to access their security system on their mobile devices.¹⁵ Indeed, the alarm industry has embraced IP-based and wireless technology and touts the convenience wireless alarm systems.¹⁶

Similarly, the remaining CPE-based applications for which carriers are required to demonstrate backward compatibility under the interoperability prong are also dependent on IP-based and/or wireless technology. Point of Sale (POS) technology has completely evolved; market innovators like Shopkeep, Square and Vend helped revolutionize the POS marketplace to the point where customers and providers no longer depend on POTS for retail transactions. The vast majority of today’s POS systems are broadband-based (wired and/or wireless) or offered as an onsite network backed up by cloud technology. In fact, none of the top ten POS systems rely on TDM-based POTs.¹⁷ Likewise, eFax, i.e. sending and receiving faxes online and secure cloud-

¹¹ <https://www.securitysales.com/news/pots-phase-out-no-cause-for-alarm-say-some/>

¹² <https://www.securitysales.com/fire-intrusion/tips-trends-opportunities-alarm-signal-transmission/> (stating customers no longer need dedicated POTs line).

¹³ <https://www.securitysales.com/news/pots-phase-out-no-cause-for-alarm-say-some/> (noting that some 70,000 POTs lines are cancelled every month).

¹⁴ *Id.*

¹⁵ https://www.securityindustry.org/wp-content/uploads/2017/12/2017_SECURITY_MEGATRENDS_FINAL.pdf; <https://www.securitysales.com/photos/access-control-providers-gsx-2018/slideshow/0/>.

¹⁶ <https://www.adt.com/resources/busting-myths-real-security-scoop> (stating “Times have changed – and security has too! Home phone lines aren’t as common as they used to be, but that’s not an obstacle. Alarm panels can connect to monitoring stations by using GSM signals and cellular based technology. Think of it like a cell phone for your alarm system – convenient, simple, and it saves you money”). See also <https://www.securitysales.com/fire-intrusion/tips-trends-opportunities-alarm-signal-transmission/>.

¹⁷ https://www.top10bestpossystems.com/?utm_source=google&kw=point%20of%20sale%20terminal%20manufacturers&c=302420189258&t=search&p=&m=e&adpos=1t1&dev=c&devmod=&mobval=0&network=g&campaignid=672061088&adgroupid=37964978081&targetid=kwd-

based drop box applications have eliminated the need for extra legacy phone lines dedicated for fax machines, thus, saving customers money and time.¹⁸ Medical alert devices have also evolved and are now primarily based on wireless technology. Providers and customers alike recognize the benefits of wireless technology for this application. Providers even advertise the fact that these devices do not require POTs and have incorporated GPS technology, thereby increasing their utility because these devices are no longer confined to homes.¹⁹ There has also been advancement in captioned telephone technology as well. Captioning services are now available to users online virtually; these services can be accessed anywhere, anytime, with a wired or wireless broadband Internet connection.²⁰ Given the proliferation of next generation devices in all of the categories included in the interoperability prong of the adequate replacement test, the Commission should find there is no need for carriers to demonstrate backward compatibility for these applications and eliminate them from the interoperability prong.

For all the reasons discussed above, the Commission should eliminate the interoperability prong of the adequate replacement test. In the meantime, because this prong is fundamentally misconceived, the Commission should under no circumstances expand the list of applications and functionalities subject to it. As stated above, the burden of interoperability comes at a cost and it is unreasonable to impose these costs on carriers when they have no insight into what devices are connected to their networks. It is especially wasteful when the market data demonstrates there are ample alternatives available that are compatible with next generation networks, which further suggests the list should be eliminated or at minimum, reduced.

[30064546705&interest=&physical=1016367&feedid=&a=268&ts=&gclid=EAIaIQobChMI67mervyz3gIVzcDACH3nbgM3EAAAYASAAEgJlbPD_BwE](http://www.fcc.gov/record/documents/attach/30064546705&interest=&physical=1016367&feedid=&a=268&ts=&gclid=EAIaIQobChMI67mervyz3gIVzcDACH3nbgM3EAAAYASAAEgJlbPD_BwE).

¹⁸ <https://enterprise.efax.com/online-fax-services/secure-fax>.

¹⁹ www.adt.com/health.

²⁰ <http://www.hearingreview.com/2010/03/connectivity-through-sound-a-brief-history-of-captioned-phones/>

Respectfully submitted,

/s/ Terri L. Hoskins

Terri L. Hoskins
Christopher Heimann
Gary Phillips
David Lawson

AT&T Services, Inc.
1120 20th Street, N.W.
Suite 1000
Washington, D.C. 20036
(202) 457-3047

November 28, 2018

Attorneys for AT&T Services, Inc.