TRI STATE COMMUNICATIONS
650 E. Palisade Ave., #101
Englewood Cliffs, NJ 07632
(410) 484-9729

November 27, 2018

Federal Communications Commission
Consumer Inquiries & Complaints Division
Consumer & Governmental Affairs Bureau
445 12th Street, S.W.
Washington DC 20554

Mr. Luis Roeder
290 W. Mt. Pleasant Ave
Floor 1
Livingston, NJ 07039

RE: Tri-state Communications; Serve Ticket #: 2628699
Serve Date: September 04, 2018

Dear FCC:

Kindly accept this letter brief of Tri-State Communications and Tenny Journal Communications, Inc. (Collectively "Tri State"), in reply to the October 2, 2018 letter to the FCC from Luis Roeder, a member of Verizon's Executive Relations Team. As a preliminary matter and of initial great importance to Tri State are the blatant misstatements in that letter.

47 U.S.C. § 214(a) was the Governing Authority for Verizon's Discontinuance of POTS

1. Within 5 days of receiving Verizon's letter (that had no return address) that stated its intention to retire the copper lines essential to Tri State's business and migrate to fiber, Tri State filed an objection with the FCC and Verizon. Tri State made it clear that retiring copper lines was tantamount to suspending service, that Tri State's analog phones could only operate with copper lines, and without the copper lines Tri State would be out of business.[1]

2. Verizon did not immediately respond. When it did, Mr. Roeder wistfully asserted that "Verizon had fully complied with applicable rules for retiring copper and migrating to fiber facilities":

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[1] Tri State is a small CLEC that provides telephone services to individuals and commercial users through coin operated pay telephones. It owns and operates 225 payphones in the State of Maryland and has a total of eight employees.

> For each location, we notified Tri State that it must contact us within a specified time period to decide to migrate to fiber or the service would be subject to disconnection. Tri State failed to make such arrangements. As a result, we lawfully disconnected Tri State's service at the locations at issue.

3. While one would not expect Verizon to say otherwise, Tri State most certainly disputes that Verizon acted in compliance with the FCC's regulations. It was a Hobson's choice. Despite Verizon knowing that the payphones would not function with fiber, that there was no alternative infrastructure or carrier available, and that Verizon was breaching its agreement with Tri State to provide it with plain-old-telephone-service ("POTS"), it was take it or leave it.

4. In his letter on behalf of Verizon, Mr. Roeder claimed to have complied with the network change disclosures of 47 CFR §§ 51.325-51.333. Contrary to this smug assertion, Verizon's actions involved more than a "network change"; they involved a complete discontinuance and total impairment of service. The controlling authority therefore was 47 U.S.C. § 214(a), not 47 CFR §§ 51.325-51.333.

5. According to the Commission, a carrier's tariff or contract with its customer determines the scope of a "service" for purposes of 47 U.S.C. § 214(a)[2] discontinuance requirement".[3]

> "We find that a carrier's description in its tariff—or customer service agreement in the absence of a tariff—is dispositive of what comprises the "service" being offered by that carrier for purposes of determining whether section 214(a) discontinuance authority is required."[4]

6. Pursuant to the terms of the unambiguous and undisputed contract between Verizon and Tri State, the Interconnection Agreement, ("ICA") the "service" Verizon contracted to provide to Tri State was plain-old-telephone-service. It is the only "service" Verizon agreed to provide Tri State, and the only "service" Tri State agreed to purchase. Tri State's payphones are "smart" payphones that contain all the equipment in the phone needed to set up the call. Verizon refers to them as Customer

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[2] In relevant part, 47 U.S.C. § 214(a) provides: "[n]o carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby."

[3] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 32 FCC 11128, 11177 & n.425 (Rel. Nov. 29, 2017). ("Wireline Deployment Order,") 32 FCC Rcd at 11177 ¶ 130.

[4] Wireline Deployment Order" at ¶ 127.

Provided Pay Telephones.

7. So there is no misunderstanding, the evidence of record more than satisfies any standard deemed necessary to prove that when Verizon discontinued POTS, it discontinued the "service" it contracted to provide Tri State; therefore, the authority of section 214(a) applied. Verizon's conclusory assertion that by complying with 47 CFR §§ 51.325-51.333, it complied with the applicable rules for retiring copper and migrating to fiber is just false.

8. The older analog technology that Tri State's payphones use requires sending an electric current to the phones to enable them to function. The phones must be called every day to charge the phones' batteries and check on the phone's operations. The electric current can only be transmitted over copper lines. With fiber lines, Tenny Journal's existing master computer cannot call and connect daily with the payphones in the field to exchange data and check on the phones' operation. Unless that connection is made, the payphones won't function. Verizon knew this copper connection was essential in advance of disconnecting the copper lines, but did it anyway without the Commission's certification. However, that's not particularly surprising. They are Verizon.

Verizon Provided Knowingly False Information to the FCC

9. In his letter, Mr. Roeder asserted that fiber is compatible with payphones, and Verizon has migrated other payphone service providers to fiber without problem. This is just plain false. The payphones' analog technology **will not** function with fiber lines! For Verizon to make such a knowingly false statement without even attempting to make an evidentiary showing is mind-boggling. Mr. Roeder's relies on his own statement as somehow constituting evidence. It does not!

10. In short, not only did Verizon totally disregard section 214(a), Verizon ignored 47 CFR § 63.602 and the additional contents of an application when a technology transition discontinues an existing retail service. Verizon expected its application to retire copper would be automatically granted based solely on its characterization of disputed facts without any consideration of the role of evidence or burden of proof. 47 CFR § 63.602(b)(1) required Verizon to certify that the replacement of the copper lines offers substantially similar levels of network infrastructure and service quality as the service being discontinued. The evidence clearly supports that payphones cannot function with fiber

lines, and pursuant to 47 CFR § 63.602 Verizon was compelled to certify truthfully in its application, and it did not.

11. After sending its application for removal of the copper lines to the Commission and its notice to Tri State, at no point did Verizon consider that fiber lines were not interoperable with key applications and functionalities of Tri-State's payphones.[5] As could be expected, Verizon did not consider fiber lines were totally inoperable with the network infrastructure currently in place for Tri State's payphones, and that critical applications such as 911, network security, and applications for individuals with disabilities would be suspended and unavailable to this segment of the population.

12. Verizon was legally obligated to certify truthfully and accurately to the Commission and not omit material information that would prevent its statements from being incorrect, or misleading.[6] This would entail Verizon's following the Commission's directions and truthfully certifying to the FCC that the "network change" required a disconnection of service, and that no other alternative and no other carrier were available.[7] In light of the strict rules applicable to such orders, the fact that Verizon did not comply with the FCC's orders reflects Verizon's intentions and provides direct evidence that Verizon provided a knowingly false certification to the FCC and should not be allowed to self-certify in the future.

Verizon Has No Intention of Migrating to Fiber in the Areas Where the Payphones are Located.

13. Even a rudimentary cost benefit analysis makes clear that Verizon will not extend funds to migrate to fiber in the areas where Tri State's payphones are located until it has been successful in more profitable areas where the environment presents fewer challenges and the communities can afford cell phones and broadband. Therefore, it seems only reasonable to leave the copper lines in place in these areas until they can be reliably replaced which is likely to be 15 to 20 years in the areas where Tri State has its payphones.

[5] See, 2016 Technology Transitions Order, 31 FCC Rcd at 8305, ¶ 65.

[6] See 47 CFR 1.17(a)(1)(2)

[7] 47 U.S.C. § 416 Orders of Commission, (c). Compliance; "It shall be the duty of every person, its agents and employees, and any receiver or trustee thereof, to observe and comply with such orders so long as the same shall remain in effect."

14. If Tri State were to save its payphones (which it can't without copper lines) it would be forced to run electrical lines and install a meter for each commercial building where a payphone was located. Tri State's phones are not in homes; they are in commercial buildings. Tri State would have to obtain permission from each commercial establishment, and these businesses are very reluctant to allow an outside company to attach electric lines and set up a meter on their building. Almost none will allow it. Most don't want the electricity or the meter. They have nothing to gain.

15. To run electrical lines to each payphone, would cost Tri State $3,000 to $5,000 for each of the 225 phones, in addition to obtaining and installing the electric meter, and paying the labor costs to connect it. That's if the businesses would allow it, and it were economically feasible, which it is not. However, the cost to Verizon to retain the copper lines until fiber can be replaced is negligible.

16. Low income areas of the cities and rural areas where Verizon has not installed fiber (or any functionally comparable platform) and also has not committed to deploying fiber services, payphones will continue to provide the only means of communication for many of those residents. The residents of those communities cannot afford broadband or cell phones. Therefore, it is not profitable for Verizon to replace the copper lines with fiber in those areas.

17. Similarly, in those areas that are out of cell tower range where wireless service is unavailable or unreliable due to challenging terrain, forest, weather, buildings, signal strength, and other factors, the cost to Verizon to remove the copper lines and replace them with fiber is enormous, and the potential profit is zero to none. Payphones, on the other hand, are critical to the public safety and welfare in those areas, which will almost certainly be threatened if payphones are not available.

18. Contrary to some of the available reports, the cost to Verizon to allow the copper lines to remain until the fiber lines are deployed is insignificant. For example, should Verizon temporarily postpone the retirement of copper for 10 years in some of the poorer areas of the cities or in rural areas, it will not result in an exorbitant maintenance cost for Verizon, in fact, the cost would be imperceptible.

19. Verizon has roughly 50 million phones with copper lines in its training areas. The majority of those phones use copper lines, and the phones in other areas of the state will not be transferred to FiOS for probably 15 to 20 years. It is only fair that the copper lines that serve payphone

CLECs should be allowed to remain in service for as long as possible, or certainly as long as Verizon's own copper lines are in place.

Verizon's Actions Must Be Strictly Construed

20. Mr. Roeder condones Verizon's actions by saying that Maryland's PSC supports Verizon's right to retire copper and migrate customers to fiber facilities. However, Verizon's right to retire copper is not the issue. The issues are whether Verizon followed the regulations regarding its retirement of the copper lines, whether it adhered to the requirements of 47 U.S.C. § 416, whether it complied with the safeguards of 47 U.S.C. § 214(a), and whether its actions were just and reasonable as required by 47 U.S.C. §201(b).

21. Contrary to Mr. Roeder's self-serving statement, Maryland's PSC letter did not state that it reviewed Verizon's compliance with the rules governing the retirement of copper as it affected Tri State. Likewise, the letter did not state that based on that review it determined Verizon complied with the applicable rules and acted legally in disconnecting service to Tri State. It merely stated it will take no further action on OPC's Petition for an Investigation and Suspension of Copper Retirement Notices Sent by Verizon Maryland. This is neither direct nor circumstantial evidence that Verizon acted properly or legally in disconnecting service to Tri State's phones.

Payphones Provide a Necessary Service for People Living in Lower Economic and Rural Areas.

22. Despite the decline in payphones, for people living in the lower income and rural areas like those served by Tri State, payphones provide an essential, life-saving service. These individuals cannot afford to buy a cell phone or pay a monthly cell phone charge, and many do not want, or cannot, afford a land line. They simply want the ability to make calls when it's necessary. And when they want to make a call they prefer to go to a payphone and pay 50¢. In these areas, replacing the existing service with a newer, "better" service that users cannot afford to buy is not a step forward.

23. For payphone users, the majority of whom are people of color, wireless replacement services are not affordable, and if those individuals cannot afford to replace the payphones they rely on, they will have no service at all. They will lose access to essential communications service and the

concomitant ability to contact first responders. Thus, the higher cost and unaffordability of replacement services will have a severe, disparate, and discriminatory impact on people of color in lower-income communities.

Relief Requested

25. In light of Verizon's knowledge that it was disconnecting and disrupting service when there was no alternative replacement and no carrier available in violation of Section 214(a), and its false certification to the Commission, Tri State requests the Commission halt any further deceptive practices by Verizon, require Verizon to immediately restore the copper lines and reconnect service to its payphones, and redress any other disingenuous actions Verizon has taken against Tri State under this policy.

Respectfully,

John Cory
Authorized Officer of Tri State

CERTIFICATION OF JOHN CORY

I, John Cory, of full age, being duly sworn, make this affidavit and state as follows:

1. I am an officer of Tri State Communications ("Tri State"), and I am authorized to act in this matter to oppose the removal of copper lines from the payphones that Tri State owns and operates.

2. I submit this Certification from my personal knowledge that the facts stated in Tri State's Reply to Verizon's Opposition are true.

3. I further certify that if any statement is intentionally false, I am subject to punishment.

Dated: 11/27/18

John Cory, Authorized Officer
Tri State Communications