

November 6, 2014

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

Re: GN Docket No. 12-353, Comment Sought on the Technological Transition of the Nation's Communications Infrastructure; GN Docket No. 13-5, Technology Transitions Policy Task Force

Dear Ms. Dortch:

On November 4, 2014, Jodie Griffin, Harold Feld, Clarissa Ramon, and Edyael Casaperalta of Public Knowledge met with Rebekah Goodheart, Christine Sanquist, and Ben Freedman in Commissioner Clyburn's office.

Public Knowledge (PK) expressed its support for the Chairman's recently proposed items beginning the process of establishing rules to protect consumers during the phone network's technology transitions.¹ The Commission has unanimously acknowledged certain "core statutory values" that must endure in our communications networks throughout and after technology transitions: public safety, ubiquitous and affordable access, competition, and consumer protection.² The Commission must now take steps to protect those values and create certainty for all stakeholders by establishing rules that ensure no one will be left behind in the technology transitions and no carrier will be allowed to engage in "self-help" to the detriment of network users.

Survey Results Confirm Basic Service is Critically Important to Consumers.

It is evident from real-world examples like the public's reaction to Voice Link in Fire Island, NY that consumers care strongly about the future of their phone service,³ a point that recent survey data released by PK only confirms. The report, attached to this *ex parte*, finds that

¹ See Tom Wheeler, *Technology Transitions: Consumers Matter Most*, FCC BLOG (Oct. 31, 2014), <http://www.fcc.gov/blog/technology-transitions-consumers-matter-most>.

² See *Technology Transitions*, GN Docket No. 13-5, *AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition*, GN Docket No. 12-353, *Connect America Fund*, WC Docket No. 10-90, *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, *Numbering Policies for Modern Communications*, WC Docket No. 13-97, Order, Report and Order and Further Notice of Proposed Rulemaking, Report and Order, Order and Further Notice of Proposed Rulemaking, Proposal for Ongoing Data Initiative at ¶¶ 1-4 (rel. Jan. 31, 2014).

³ See *The Phone Network Transition: Lessons from Fire Island*, Public Knowledge (Mar. 7, 2014), <https://www.publicknowledge.org/news-blog/blogs/the-phone-network-transition-lessons-from-fire-island>.

consumers overwhelmingly say that phone service is important for the typical American household.⁴ Most survey respondents still had landline phones at home, and almost half had both a landline and a mobile phone. When asked why they continued paying for both landline and mobile phone service, 82% of respondents pointed to the reliability of the landline network, 73% said they liked the connection quality, and 45% said they kept a landline connection so they would still have a working phone during a power outage. Additionally, a little more than a third of respondents pointed to a specific functionality they rely on that currently needs the copper network to operate, like medical alerts (24%), fax machines (26%), and security systems (17%).

The survey responses also indicated that the affordability of basic landline service impacts consumers' habits. Two-thirds of respondents with both a cell phone and a landline phone said that when they are at home they mostly use their landline phone to make and receive calls. That number increased to 72% among households with income below \$25,000, which suggests the affordability of basic landline service allows users to communicate more frequently than a potentially more expensive wireless plan would.

The survey also asked questions to learn more about the values people associate with basic phone service. An overwhelmingly majority—89% of respondents—said it is important for a typical household to have a phone. When asked about specific services, 96% of the respondents said it is important that a phone can reach emergency services like 911; 81% said it is important for a phone to be able to reach all other numbers in the country; and 59% said it is important for a phone to be able to communicate its location.

These survey results do not mean that policymakers must avoid new technologies, but rather just confirm that there are important needs currently being served by the existing network, and those needs must continue to be met on new networks.

The Commission Should Establish Comprehensive Metrics to Evaluate the Impact of Proposed Network Changes on Consumers.

Public Knowledge urged the Commission establish the metrics by which new technologies will be evaluated when carriers wish to transition away from their existing networks.⁵ This will increase certainty for all parties and prevent customers from being left behind in a network transition. Public Knowledge urged the Commission to consider factors like reliability, functionality, accessibility, call quality, and network capacity, among other metrics, when considering a carrier's request to move phone users to a new technology.⁶

⁴ See John Horrigan, *Consumers and the IP Transition: Communications Patterns in the midst of Technological Change* (Nov. 2014), <https://www.publicknowledge.org/assets/uploads/blog/Consumers.IP.Transition.FINAL.pdf>.

⁵ See 47 U.S.C. § 214(a).

⁶ See *A Brief Assessment of Engineering Issues Related to Trial Testing for IP Transition*, CTC Technology & Energy (Jan. 14, 2014), <https://www.publicknowledge.org/files/CTC-PK%20PSTN%20Report.pdf>.

Consumers and Competition Must Be Protected When a Carrier Wishes to Retire Its Copper Network.

Public Knowledge also urged the Commission to ensure carriers are complying with existing rules that serve the network's core values. The Commission should protect universal access by ensuring carriers are not failing to adequately maintain their networks and offer reasonable basic service.⁷ Similarly, the Commission should protect competition in the network by confirming that the existing rules continue to enable competitive access to unbundled network elements even after the transition to IP.⁸ Technology transitions in and of themselves should not lead to elimination of existing unbundling obligations, or an increase in special access pricing. Ensuring the continued effectiveness of competitive access is particularly critical to preserving and promoting choice for many small businesses, government entities, and nonprofit organizations across the country.

If a carrier wishes to stop maintaining its network or stop offering basic service, it must follow the appropriate rules for discontinuing service, retiring its copper network, or both. PK noted that if a carrier has filed notice or requested permission to change its network, a default assumption that the request will be granted places a significant burden on consumers and other network users to first prevent automatic approval before even getting to any substantive objections to the proposed change.

PK also noted that copper retirement rules, including rules regarding adequate maintenance and consumer education, will only be effective if they are paired with adequate enforcement mechanisms. The Commission has ample authority under § 4(i) to make the consumer whole when carriers fail to fulfill their responsibilities.⁹ The Commission could consider enforcement measures designed to prevent and redress violations could include fines (measured per customer, per day), an order to restore the prior level of service, and consideration when a carrier has committed so many violations that it calls into question the carrier's ability to hold a license or receive a transfer of a license.

PK also urged the Commission to work with state authorities to both identify problems and ensure rules are being enforced to the benefit of customers.

The Commission Should Have a Process for Handling Network Changes After Natural Disasters.

PK urged the Commission to include in its pending technology transitions item guidance for situations where a carrier wishes to change its network after sustaining network damage

⁷ See Letter from Jodie Griffin, Public Knowledge, and Regina Costa, The Utility Reform Network, *et al.* to Julie A. Veach, FCC (May 12, 2014), *available at* https://www.publicknowledge.org/assets/uploads/blog/14.05.12_Copper_Letter.pdf.

⁸ See 47 C.F.R. §§ 51.319(a)(4), (5); Letter from Marlana F. Barzilai, Senior Government Affairs Counsel, Windstream, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 13-5 (Oct. 9, 2014).

⁹ 47 U.S.C. § 154(i).

during a natural disaster. Addressing the substantive issues of how to evaluate new technologies is important, but there remain the procedural issues of how and when to seek permission to deploy new technology in the wake of a natural disaster.

The Commission should establish exactly when a carrier must seek permission if it wants to change its network after a natural disaster. Particularly in states that may not have a similar process before the state utility commission, it is critical for the Commission to confirm what triggers the need to file a § 214(a) application or a network change notification after the existing network has been damaged. Additionally, consumers and carriers alike need guidance on how carriers should notify customers of a proposed network change when residents and business owners may be displaced in the wake of a natural disaster. PK urged the Commission to adopt a comprehensive solution that would give customers multiple ways to contact the relevant carrier and state and federal authorities to give feedback on proposed changes.

As we continue to move forward in the network transition, consumers and other end-users are looking to the Commission to ensure the effectiveness of existing rules while carefully establishing new rules to guide future transitions. PK urges the Commission to continue to ensure the network's core values will guide policy decisions throughout and after the transition.

In accordance with Section 1.1206(b) of the Commission's rules, this letter is being filed with your office. If you have any further questions, please contact me at (202) 861-0020.

Respectfully submitted,

/s/ Jodie Griffin
Senior Staff Attorney
PUBLIC KNOWLEDGE