



January 23, 2015

Ex Parte

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

Re: Ensuring Customer Premises Equipment Backup Power for Continuity of Communications, PS Docket No. 14-174; Technology Transitions, GN Docket No. 13-5; Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers, RM-11358; Special Access for Price Cap Local Exchange Carriers, WC Docket No. 05-25; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, RM-10593.

Dear Ms. Dortch:

GVNW Consulting, Inc. (“GVNW”)¹ supports the Petition for Reconsideration of the United States Telecom Association (“USTelecom”)² of the Declaratory Ruling³ in the above-captioned proceedings. As requested by USTelecom, the Commission should withdraw its Declaratory Ruling and undertake a notice and comment process so that all parties have an opportunity to provide information to better inform the consideration of this substantive change to the application of Section 214.

¹ GVNW Consulting, Inc. is a management consulting firm that provides a wide variety of consulting services, including regulatory and advocacy support on issues such as universal service, intercarrier compensation reform, and strategic planning for communications carriers in rural America.

² See Petition for Reconsideration of the United States Telecom Association, PS Docket No. 14-174 *et al.*, (filed Dec. 23, 2014) (Petition).

³ See *Technology Transitions, et al.*, Notice of Proposed Rulemaking and Declaratory Ruling, PS Docket No. 14-174, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593; FCC 14-185 (rel. Nov. 25, 2014) (“*Declaratory Ruling*”).

Under the additions of presumptions and factors to the section 214 process, substantively changing the current process, providers, including the small companies for whom GVNW provides services, will have to guess whether to file for section 214 approval based on “post hoc determinations based on the presence of third-party services and devices that a provider may not even know exist.”⁴ Interacting with regulatory bodies is expensive for small companies, and this amorphous standard for determining whether it is necessary to file a section 214 request will necessitate filing in all instances so as to avoid potential violation of the FCC’s rules. The standard its new rule sets is exceptionally and impermissibly vague. As noted by Commissioner O’Rielly in his dissent, “Instead of defining a service based on the terms of a carrier’s tariff, the Commission will take into account “the totality of the circumstances from the perspective of the relevant community or part of a community, when analyzing whether a service is discontinued, reduced, or impaired under section 214. In other words, a carrier has to guess how the service is being used, what the community thinks about such uses, and whether the FCC would require a filing in such circumstances.”⁵ High-cost small carriers trying to bring advanced services to rural areas that are challenging to serve while simultaneously navigating the IP transition certainly do not need to engage in regulatory guessing games causing additional regulatory expenses that divert funds from serving customers.

USTelecom is correct that in its Declaratory Ruling “the Commission imposed new substantive requirements, or rules, on providers without any notice or opportunity for comment.”⁶ By redefining what constitutes a “service” under section 214, the Commission has made a substantive change affecting all providers, including GVNW’s clients. Such a change should be carefully considered pursuant to a rulemaking, not unilaterally imposed with no opportunity for affected parties to inform the Commission’s decision-making process. The Declaratory Ruling clearly changes the existing standard for grant of a section 214 discontinuance request and is subject to the rulemaking requirements of the Administrative Procedure Act.⁷

GVNW also agrees with the Petition that a service “is defined by what a provider offers to its customers, not the facilities a provider uses or the other uses to which the customer may put the service.”⁸ As the Petition correctly notes “Thus, the interstate telecommunications services that a carrier offers are defined by the terms of its federal tariff or, in the case of telecommunications services that have been detariffed, in its contracts with its customers.”⁹

The new standard imposed by the Declaratory Ruling means that a carrier cannot know whether it will have to subject itself to section 214 review as it attempts to plan upgrades to its facilities and services. Providing advanced services in challenging rural areas is marginally profitable at best, even with universal service support. Adding in the unnecessary regulatory risk

⁴ See Petition at 4.

⁵ See Statement of Commissioner Michael O-Reilly, Concurring in Part and Dissenting in Part.

⁶ *Id* at 1-2.

⁷ Pub. L. 79-404.

⁸ See Petition at 5 quoting *National Cable & Telecommunications Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 990-91 (2005).

⁹ *Id* at 5.

imposed by the new section 214 standard discourages providers from making such changes designed to benefit consumers. And carriers that decide to avoid some regulatory risk by subjecting all such determinations to section 214 approval will then have to deal with the risk inherent in the section 214 process which Commissioner Pai notes in his dissent to the Declaratory Ruling “isn’t a speedy process. The FCC sometimes sits on these requests for months or years.”¹⁰ Some carriers are subject to FCC imposed timely build out requirements in conjunction with universal service funding and others may be subject to similar build out obligations in conjunction with financing from the Rural Utilities Service. Unnecessary application of the section 214 requirements can throw a monkey wrench into carefully planned construction programs.

The Commission should withdraw its Declaratory Ruling and undertake a notice and comment process so that all parties have an opportunity to provide information to better inform the consideration of this substantive change to the application of Section 214. Hopefully, given this opportunity for reflection, the Commission will conclude that the approach taken in the Declaratory Ruling is counterproductive to its goal of encouraging rapid deployment of advanced services.

Sincerely,

/s/ David B. Cohen
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¹⁰ See Statement of Commissioner Ajit Pai, Concurring in Part and Dissenting in Part.