

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

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

**COMMENTS OF THE
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (NCTA) supports the United States Telecom Association’s petition asking the Commission to reconsider its declaratory ruling regarding discontinuances under section 214 of the Communications Act of 1934, as amended (the Act).¹ Specifically, the Commission should withdraw its declaratory ruling and seek comment on its proposal to adopt a “functional test” to determine whether a change in service constitutes a discontinuance, reduction, or impairment of service under section 214.

¹ Petition for Reconsideration of the United States Telecom Association, PS Docket No. 14-174, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593 (Dec. 23, 2014); *Ensuring Customer Premises Equipment Backup Power for Continuity of Communications*, PS Docket No. 14-174, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593, Notice of Proposed Rulemaking and Declaratory Ruling, FCC 14-185 (Nov. 25, 2014) (*Declaratory Ruling*); 47 U.S.C. § 214.

In the *Declaratory Ruling*, the Commission:

clarif[ied] and reiterate[d] that the Commission looks beyond the terms of a carrier’s tariff, and instead it applies a functional test that takes 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 214.²

The Commission stated that it was appropriate to adopt the functional test for services in a declaratory ruling to “terminat[e] a controversy or remov[e] uncertainty” and cited Verizon’s position that moving to an alternative service that does not support certain third-party applications and devices designed to work with voice services offered over copper facilities does not constitute a discontinuance, reduction or impairment of services.³ The Commission disagreed with this position and issued the declaratory ruling, finding that it would look beyond the description of the service offered by the provider to identify “what the ‘community or part of a community’ reasonably would view as the service provided by the carrier” in analyzing discontinuances, reductions or impairments of service under section 214.⁴

Redefining the definition of “service” in such a novel and burdensome manner cannot properly be regarded as a mere clarification. In contrast to its stated aim of terminating controversy and removing uncertainty, the Commission’s declaratory ruling has instead *created* controversy and uncertainty by eliminating a carrier’s ability to identify the service for which it is responsible. Instead, the Commission should provide notice and seek comment on a change of

² *Declaratory Ruling*, FCC 14-185, ¶117.

³ *Id.* at ¶114, 116.

⁴ *Id.* at ¶115.

this significance through a rulemaking proceeding. We therefore agree with the United States Telecom Association that the Commission should reconsider and withdraw its declaratory ruling.

Respectfully submitted,

/s/ Steven F. Morris

Steven F. Morris
Jennifer K. McKee
National Cable & Telecommunications
Association
25 Massachusetts Avenue, NW – Suite 100
Washington, DC 20001-1431

January 23, 2015