

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
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
	)	

**COMMENTS OF  
GVNW CONSULTING, INC.**

February 5, 2015

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## Executive Summary

The transition from TDM circuit-switched networks running on copper loops to all-Internet Protocol (IP) multi-media networks using copper, coaxial cable, wireless and fiber is of enormous importance to the American people and our nation's economy. The amazing variety of innovative advanced services that can be more efficiently delivered over an all-IP network are even more important in the challenging-to-serve rural areas where GVNW's clients provide communications services, as the ubiquitous availability of such services can overcome the barriers of distance and geography that relegate many rural areas to lesser economic opportunities and loss of population.

In order for rural America to not fall behind in the highly beneficial transition to an all-IP network, the proper incentives for deployment must be in place. For GVNW's clients, that means a sufficient and predictable high-cost universal service fund, an economically rational system of interconnection, and the avoidance of unnecessary regulatory costs. Going forward, adherence to these principles will advance the goals articulated by the Commission in the Notice – competition, consumer protection, universal service, and public safety and national security.

The Commission's words explaining the undesirability of operating dual networks unfortunately do not match its proposed actions. In the Notice, the Commission properly "recognize[s] the many benefits of fiber-based service and the desirability for incumbent LECs of not having to operate both copper and fiber networks indefinitely, including the potential for more bandwidth and increased reliability in difficult weather conditions" but goes on to propose a regulatory regime in contrast with this recognition. The Commission should take its own words and those of the National Broadband Plan to heart and not create *de facto* requirements for maintenance of two networks and disincentives for fiber deployment.

The Commission should accept the proposition that an all-IP network is superior to the current network in meeting the Commission's goals. Commission actions that harm the business case for deployment of the facilities needed to evolve rural networks to an all-IP basis actually serve as a barrier to meeting the Commission's goals. An all-encompassing federal regulatory regime that adds obstacles and obligations to those seeking to build out an all-IP infrastructure in the most challenging areas of our nation will serve neither the interests of network providers, the principles embodied in the Communications Act, nor the American people.

As an initial matter, 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. Much of the Notice is based on the Commission's authority under Section 214 of the Communications Act. Clarifying that authority by reconsidering the changes to that authority adopted in the Declaratory Ruling is a necessary prerequisite to moving forward with consideration of the issues raised in the Notice.

It is reasonable for the Commission to consider adoption of rules to ensure that its goals are met when there is reasonable and verifiable evidence that the absence of rules is standing in the way of meeting those goals. GVNW supports the Commission's goals, but the Commission

has presented no clear evidence that the adoption of backup power rules is the most efficient and effective way to implement its goals.

The Commission has provided no information that customers currently served by IP infrastructure over a non-powered line are not receiving adequate backup power. The Commission has also not established a consumer-centered metric for the definition of “adequate” with respect to backup power. The Commission should first focus on the definition and consumer preference for adequate backup power. Once that task is completed, it should then determine whether those needs are being met by the market. If not, its first resort should not be to prescriptive rules but to the development of best practices and voluntary standards adopted by standards-setting bodies that have much greater knowledge and expertise when it comes to these matters.

The current regulations, Sections 51.325 and 68.110(b) of the Commission’s rules, are sufficient to trigger the provision of notice to the public of network changes. Section 51.325 properly interprets the Commission’s authority conferred in Sec. 251(c)(5) of the Act. Proposed additional rules would exceed that authority. Section 68.110(b) of the Commission’s current rules calls for adequate notice in writing if changes in communications facilities, equipment, operations or procedures can be reasonably expected to render any customer’s terminal equipment incompatible with the communications facilities of the provider of wireline telecommunications, or require modification or alteration of such terminal equipment, or otherwise materially affect its use or performance. This appears perfectly adequate to fulfill the Commission’s goals.

The Commission has labeled the reasonable economic decision to not maintain an inferior network when a superior network is available as a “*de facto* retirement” and implied some malicious intent on the part of the network provider. There is no such thing as a *de facto* retirement. It just makes sense that when a superior network is available, which provides more and better services to consumers and also requires less maintenance, that the provider would not devote scarce resources to maintaining the current legacy network. When that network no longer is able to provide reliable service, it is appropriate for it to be retired.

Similarly, the Commission has labeled a perfectly reasonable practice of letting customers know the increased services to which they could subscribe over their new IP network as the nefarious-sounding “upselling.” To address this invented problem, the Commission proposes to regulate speech by requiring incumbent LECs to supply a neutral statement of the various choices that the LEC makes available to retail customers affected by the planned network change. Perhaps the Commission would prefer that the provider not make the customer aware of the increased broadband speed offered by the new network (25Mbps downstream and 3Mbps upstream, for example) and have the customer unaware that his or her 3/768 speed can be improved, or have the provider bury such information in a lengthy “neutral statement of the various choices.” After all, attempting to convince the customer of the benefits of, for example, 25/3 over 3/768 is “upselling” and apparently harmful to the customer, while the Commission has adopted such a standard as the minimum requirement for a service to be considered “broadband.”

The Commission's authority through Sec. 214 is with respect to discontinuance of services, not technologies. The relevant question is not whether copper is retired, or the definition of retirement of copper, or movement from infrastructure based on one technology to infrastructure based on a different technology, but whether the network change will "discontinue, reduce or impair service." The Commission acknowledges that it does "not intend to establish an approval requirement for copper retirement" yet it proposes to define "retirement" of copper. Defining copper retirement and establishing an approval process are outside the scope of the Commission's statutory authority under Sec. 214.

There is no evidence that the civil enforcement tools at the Commission's disposal are inadequate to compel compliance with the Commission's rules. The certification requirement proposed in the Notice is heavy-handed and unnecessary.

The Commission should reconsider its Declaratory Ruling in this proceeding and reexamine whether its proposed highly regulatory approach benefits consumers and meets its stated goals.

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**COMMENTS OF  
GVNW CONSULTING, INC.**

GVNW Consulting Inc. (“GVNW”)<sup>1</sup> respectfully submits its comments in response to the Notice of Proposed Rulemaking (“Notice”) in the above captioned dockets.<sup>2</sup> The transition from TDM circuit-switched networks running on copper loops to all-Internet Protocol (IP) multi-

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<sup>1</sup> 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.

<sup>2</sup> Notice of Proposed Rulemaking and Declaratory Ruling *In the Matter of Ensuring Customers 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), (rel. Nov. 25, 2014).

media networks using copper, coaxial cable, wireless and fiber is of enormous importance to the American people and our nation's economy. The amazing variety of innovative advanced services that can be more efficiently delivered over an all-IP network can be revolutionary in terms of facilitating the delivery of health services, educational opportunities, entertainment, and all manner of services useful and necessary to both residential and business customers. Such services are even more important in the challenging-to-serve rural areas where GVNW's clients provide communications services, as the ubiquitous availability of such services can overcome the barriers of distance and geography that relegate many rural areas to lesser economic opportunities and loss of population.

In order for rural America to not fall behind in the highly beneficial transition to an all-IP network, the proper incentives for deployment must be in place. For GVNW's clients, that means a sufficient and predictable high-cost universal service fund, an economically rational system of interconnection, and the avoidance of unnecessary regulatory costs. Going forward, adherence to these principles will advance the goals articulated by the Commission in the Notice – competition, consumer protection, universal service, and public safety and national security.<sup>3</sup>

The Commission's words explaining the undesirability of operating dual networks unfortunately do not match its proposed actions. In the Notice, the Commission properly "recognize[s] the many benefits of fiber-based service and the desirability for incumbent LECs of not having to operate both copper and fiber networks indefinitely, including the potential for more bandwidth and increased reliability in difficult weather conditions"<sup>4</sup> but goes on to propose a regulatory regime in contrast with this recognition. The Notice states that "We

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<sup>3</sup> Notice at ¶ 2.

<sup>4</sup> Notice at ¶ 15.

emphasize that we support and encourage these and other fiber deployments, and are committed to maintaining the incentives for carriers to deploy fiber.”<sup>5</sup> The Notice goes on to quote the National Broadband Plan which recognizes that “requiring incumbent LECs to maintain two networks – one copper and one fiber – ‘would be costly, possibly inefficient and reduce the incentive for incumbents to deploy fiber facilities.’”<sup>6</sup> The Commission should take its own words and those of the National Broadband Plan to heart and not create *de facto* requirements for maintenance of two networks and disincentives for fiber deployment.

The Commission should accept the proposition that an all-IP network is superior to the current network in meeting the Commission’s goals. The NPRM should therefore not seek to preserve the legacy TDM network or the way it fulfilled the Commission’s goals. The Commission should not view its goals through a 20<sup>th</sup> century lens, but affirmatively encourage and avoid discouraging the rapid evolution to a ubiquitous new network that will better meet its goals in ways that are both predictable and unforeseeable. Commission actions that harm the business case for deployment of the facilities needed to evolve rural networks to an all-IP basis actually serve as a barrier to meeting the Commission’s goals.

The Commission has defined the relationship properly and clearly between those who build and operate networks and those who use them. It now has to carefully define the relationship between itself and the providers upon whom it is relying to invest in upgraded networks and bring the advantages of an all-IP network to the American people. An all-encompassing federal regulatory regime that adds obstacles and obligations to those seeking to build out an all-IP infrastructure in the most challenging areas of our nation will serve neither the

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*, quoting the *National Broadband Plan* at 48.

interests of network providers, the principles embodied in the Communications Act, nor the American people.

**I. The Commission Should Act on USTelecom’s Petition for Declaratory Ruling Before Deciding on the Issues Raised in the Notice**

As requested by USTelecom and previously supported by GVNW,<sup>7</sup> the Commission should withdraw its Declaratory Ruling<sup>8</sup> 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. Much of the Notice is based on the Commission’s authority under Section 214 of the Communications Act. Clarifying that authority by reconsidering the changes to that authority adopted in the Declaratory Ruling is a necessary prerequisite to moving forward with consideration of the issues raised in the Notice, particularly with respect to requirements for notice of discontinuance of a service. If the definition of discontinuance is unclear, as it is under the interpretation in the Declaratory Ruling, the trigger for notice to consumers is also unclear. However, if the Commission decides to move forward on the Notice regardless of its reconsideration of the Declaratory Ruling, it should carefully consider the potential negative consequences of adoption of an unnecessarily heavy-handed regulatory regime on the timing and ubiquity of an all-IP network for the American people.

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<sup>7</sup> See Letter from David B. Cohen, Senior Policy Advisor, GVNW Consulting Inc., and Jeffrey H. Smith, President/CEO, GVNW Consulting, Inc., to Marlene Dortch, re *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*”).

<sup>8</sup> 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*”).

In its Petition for Reconsideration,<sup>9</sup> 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.”<sup>10</sup> 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.<sup>11</sup>

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.”<sup>12</sup> 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,

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<sup>9</sup> See Petition for Reconsideration of the United States Telecom Association, PS Docket No. 14-174 *et al.*, (filed Dec. 23, 2014) (Petition).

<sup>10</sup> *Id.* at 1-2.

<sup>11</sup> Pub. L. 79-404.

<sup>12</sup> See Petition at 4.

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.”<sup>13</sup> 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.

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.”<sup>14</sup> 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.”<sup>15</sup>

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 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

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<sup>13</sup> See Statement of Commissioner Michael O-Reilly, Concurring in Part and Dissenting in Part.

<sup>14</sup> See Petition at 5 quoting *National Cable & Telecommunications Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 990-91 (2005).

<sup>15</sup> *Id* at 5.

months or years.”<sup>16</sup> 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.

## **II. The Commission Has Not Demonstrated the Need for Backup Power Rules**

It is reasonable for the Commission to consider adoption of rules to ensure that its goals are met when there is reasonable and verifiable evidence that the absence of rules is standing in the way of meeting those goals. GVNW supports the Commission’s goals, but the Commission has presented no clear evidence that the adoption of backup power rules is the most efficient and effective way to implement its goals.

The Commission, which properly prides itself on data-driven decision-making, has provided no information that customers currently served by IP infrastructure over a non-powered line are not receiving adequate backup power. The Commission has also not established a consumer-centered metric for the definition of “adequate” with respect to backup power. Obviously the increasing proportion of communications users who rely solely on wireless networks to meet their communications needs have elected to sacrifice some level of backup power capability for the other advantages they determine are offered by their choice of infrastructure over which to receive services.

The Commission should first focus on the definition and consumer preference for adequate backup power. Once that task is completed, it should then determine whether those needs are being met by the market. If not, its first resort should not be to prescriptive rules but to

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<sup>16</sup> See Statement of Commissioner Ajit Pai, Concurring in Part and Dissenting in Part.

the development of best practices and voluntary standards adopted by standards-setting bodies that have much greater knowledge and expertise when it comes to these matters.

Assuming, *arguendo*, that an eight-hour standard is appropriate, best practices and standards can assist providers in meeting that standard in the most efficient manner. The small companies that are GVNW's clients are not going to create *de facto* standards and best practices by their purchase and installation of backup power equipment. Such standards could result from implementation of a uniform solution by a larger carrier, but that result may work well with the architecture adopted by that carrier but not for others. Such a result is inferior to standards and practices that could be implemented nationwide and create efficiencies for all providers and ease of use for all customers.

Best practices and standards can help determine whether technology to meet public safety needs is presently available or could be economically available in the future with the high level of demand created by standardization of equipment. The Commission's inquiries on the potential for solar power, fuel cells, power-over-Ethernet, D-cell batteries, Lithium-Ion battery packs and other technologies<sup>17</sup> venture far beyond its core competencies and are best left to manufacturers and providers collaborating to meet standards and best-practices adopted by the industry to meet Commission goals. The same applies to the feasibility of "smart" backup power devices that can load shed non-essential functions, conserve power when on battery and not in use, or support only certain calls or functions, all of which are inquired about in the Notice.<sup>18</sup>

Standardization would also eliminate the need for "a comprehensive consumer education plan [which] would be critical to consumers' ability to successfully self-provision backup

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<sup>17</sup> Notice at ¶¶ 36, 38 and 40.

<sup>18</sup> *Id* at ¶¶ 34 and 37.

power.”<sup>19</sup> Standards and best practices should result in consumer-friendly solutions that are the same or similar across providers and networks, thereby accustoming consumers to maintaining their backup power devices.

The Notice asks several questions about the availability and configuration of CPE<sup>20</sup> as if network providers are responsible for consumer CPE and have knowledge of the types of CPE used by individual consumers. The Commission deregulated CPE decades ago and should return neither consumers nor providers to the era of choice between a black phone and a beige phone. Again, best practices and standards designed to address backup power equipment compatible with the most commonly-used CPE and that used by those with disabilities is a far better solution than mandating the availability of particular CPE by providers.

Finally, the Commission stunningly implies that it would regulate rates for provision of backup power required under the rules. It observes “that the proposed rules would permit providers to charge commercially reasonable fees for any provision of backup power under the rules.”<sup>21</sup> Establishing a standard of “commercially reasonable fees” clearly implies that those fees are regulated. Similarly, the Commission implies that it will regulate battery prices, when it asks whether service providers should be required to offer spare batteries, *at reasonable cost*, for consumers to use as replacements.<sup>22</sup> In the highly competitive world of telecommunications, in which states are usually responsible for regulation of rates and generally only for basic service, the Commission is proposing that it create new, federally rate-regulated services, backup power and replacement batteries.

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<sup>19</sup> *Id* at ¶ 40.

<sup>20</sup> *Id* at ¶¶ 33, 34, 35 and 40.

<sup>21</sup> *Id* at footnote 122.

<sup>22</sup> *Id* at ¶ 38.

### **III. The Current Rules, Sections 51.325 and 68.110(b), Provide for Sufficient Public Notice**

The Communications Act is based on the regulation of services, not facilities. This is clearly true of Section 214, which speaks to discontinuance of services. The Commission should be careful to maintain that important distinction. The Declaratory Ruling, which appears to expand the definition of discontinuance of services, would concomitantly trigger a greater notice obligation than present today. Pursuant to USTelecom’s Petition for Reconsideration, the Commission should restore the previous definition of service discontinuance. Similarly, the current regulations, Sections 51.325 and 68.110(b) of the Commission’s rules, are sufficient to trigger notice to the public of network changes. Section 51.325 properly interprets the Commission’s authority conferred in Sec. 251(c)(5) of the Act.<sup>23</sup> Additional rules would exceed that authority.

Contrary to the Commission’s reading of Section 51.325 of its own rules, that section does make provision for providing notice to retail customers.<sup>24</sup> It merely does not state the form, timing or content of the notice, none of which need to be prescribed by the Commission. It is reasonable to assume that the word “notice” includes an aspect of efficacy – that is, notice shall be given in a form and with such content that the intended recipients of the notice have a reasonable chance of being notified of the network change. Network providers are familiar enough with their customers and the best ways to communicate with them that they should be permitted the flexibility to determine the optimal form, timing and content of the notice.

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<sup>23</sup> 47 U.S.C. 251(c)(5).

<sup>24</sup> See Notice at ¶ 60 which states “Since our current part 51 rules make no provision at all for retail customers” and §51.325 which begins with the words “Notice of network changes: Public notice requirement. (a) An incumbent local exchange carrier (“LEC”) must provide public notice regarding any network change.”

Incumbent LECs have nothing to hide – they are adding new services and upgrading services by investing in superior infrastructure for the benefit of their customers. If the Commission insists on a notice requirement, it should be based on whatever method the company uses to bill each customer – e-mail when the customer is billed electronically and postal mail when the customer receives a hard-copy bill. Small companies should be offered the option to use whichever method is most efficient for all customers.

There is no need to provide for comment pursuant to the notice of a service discontinuance. While giving lip service to copper retirement as a notice-based process as opposed to an approval process,<sup>25</sup> the Commission proposes to solicit comments, a process which is more appropriate for an approval process. A comment process is designed to inform the regulator as to a decision it will be making, but there is no authority for the Commission to refuse a discontinuance, so there is no need for a comment process. A comment process will only serve to make the service discontinuance process longer, more burdensome and thus more expensive for the network provider. It is an inappropriate use of the comment process to substitute it for the complaint process, to inform “future policymaking decisions going forward, or to “monitor.”<sup>26</sup> Establishing policies and procedures that discourage discontinuation of legacy services when they are being replaced by superior all-IP based services is not good public policy.

Criteria should be established to evaluate Section 214 retirement applications, as suggested by the Notice.<sup>27</sup> As the Commission will be receiving an increasing number of such applications, establishment of objective criteria will not only help providers prepare complete

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<sup>25</sup> *Id* at ¶ 56.

<sup>26</sup> *Id* at ¶ 78.

<sup>27</sup> *Id* at ¶ 93.

applications but should facilitate the timely consideration of those applications by the Commission.

The Commission has labeled the reasonable economic decision to not maintain an inferior network when a superior network is available as a “*de facto* retirement” and implied some malicious intent on the part of the network provider.<sup>28</sup> There is no such thing as a *de facto* retirement. It just makes sense that when a superior network is available, which provides more and better services to consumers and also requires less maintenance, that the provider would not devote scarce resources to maintaining the current legacy network. When that network no longer is able to provide reliable service, it is appropriate for it to be retired. The Commission-recommended alternative is for the network provider to invest in a superior new network which requires less maintenance but continue to spend money maintaining the legacy network the new network was intended to replace. The Commission may choose to label the first option as a “*de facto* retirement” but GVNW would characterize it as making a rational economic decision which keeps costs down and benefits customers.

Similarly, the Commission has labeled a perfectly reasonable practice of letting customers know the superior services to which they could subscribe over their new IP network as the nefarious-sounding “upselling.” To address this invented problem, the Commission proposes to regulate speech by requiring incumbent LECs to supply a neutral statement of the various choices that the LEC makes available to retail customers affected by the planned network change.<sup>29</sup> Perhaps the Commission would prefer that the provider not make the customer aware of the increased broadband speed offered by the new network (25Mbps downstream and 3Mbps

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<sup>28</sup> *Id* at ¶ 53.

<sup>29</sup> *Id* at ¶ 72.

upstream, for example)<sup>30</sup> and have the customer unaware that his or her 3/768 speed can be improved, or have the provider bury such information in a lengthy “neutral statement of the various choices.” After all, attempting to convince the customer of the benefits of 25/3 over 3/768 is “upselling” and apparently harmful to the customer, while the Commission has adopted such a standard as the minimum requirement for a service to be considered “broadband.” The Commission asks whether forfeiture would be an appropriate remedy for marketing 25/3 service to a customer.<sup>31</sup> It is a mystery as to how the threat of forfeiture for such “upselling” meets the Commission’s objectives as far as the deployment and uptake of ubiquitous broadband meeting its newly adopted definition.

The Commission has a sufficient public notice requirement in Sec. 51.325 of its rules. The Commission states that “Retail customers who are directly impacted by copper retirement need to know about it.”<sup>32</sup> This substitutes a new standard of “directly impacted” for the previous standard encompassed by the current rule which was properly tied to the service provided over the facility.

There is no need to micromanage the implementation of the notice requirement, particularly with mandates that are ambiguous or have a broader impact than stated. For example, the Notice proposes that “affected customers who must receive notice are anyone who will need new or modified CPE or who will be negatively impacted by a planned copper

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<sup>30</sup> See *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act (GN Docket No. 14-126), 2015 Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment*, at ¶ 26 (Rel. Feb. 4, 2015).

<sup>31</sup> *Id.* at ¶ 76.

<sup>32</sup> *Id.* at ¶ 61.

retirement.”<sup>33</sup> This incorrectly assumes that providers are aware of the CPE used by all of their customers and can identify “affected” customers. It also adds the broad brush “negatively impacted” language which is so ambiguous as to be meaningless. Both aspects of the language would result in basically requiring all customers to be notified. There is no reason to create a rule for commonsense actions such as notification when a technician would need to gain access to the customer’s premises.<sup>34</sup> If the Commission defines an affected customers as one that will experience “a change in the electrical power arrangements for his or her service,” then all changes from copper to fiber that would include a change from line-power to battery backup service would require notification. Moreover, Section 68.110(b) of the Commission’s current rules calls for adequate notice in writing if changes in communications facilities, equipment, operations or procedures can be reasonably expected to render any customer’s terminal equipment incompatible with the communications facilities of the provider of wireline telecommunications, or require modification or alteration of such terminal equipment, or otherwise materially affect its use or performance. This appears perfectly adequate to fulfill the Commission’s goals except for the restriction to wireline telecommunications. It should be modified to include fixed wireless applications that may increasingly be used to substitute for wireline infrastructure.

#### **IV. There is No Need to Define or Create an Approval Process for Copper Retirement**

The Commission’s authority through Sec. 214 is with respect to discontinuance of services, not technologies. The relevant question is not whether copper is retired, or the definition of retirement of copper, or movement from infrastructure based on one technology to

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

infrastructure based on a different technology, but whether the network change will “discontinue, reduce or impair *service*.”<sup>35</sup> [Emphasis added] The Commission acknowledges that it does “not intend to establish an approval requirement for copper retirement”<sup>36</sup> yet it proposes to define “retirement” of copper.<sup>37</sup> Defining copper retirement and establishing an approval process are outside the scope of the Commission’s statutory authority under Sec. 214.

#### **V. There is No Need for a Certification Requirement**

The Commission increasingly seeks to criminalize enforcement of its regulations by including certification requirements. This is particularly true, when as suggested in the Notice that “an officer of the incumbent LEC or an individual authorized by the incumbent LEC sign the certification and attest to the truth and accuracy of the representations therein under penalty of perjury.”<sup>38</sup> There is no evidence that the civil enforcement tools at the Commission’s disposal are inadequate to compel compliance with the Commission’s rules. The certification requirement proposed in the Notice is heavy-handed and unnecessary.<sup>39</sup> It does nothing but increase the costs of compliance for large companies that will have to go through several levels of management to achieve the necessary certification and for small companies that will have to unnecessarily avail themselves of costly legal review as they in good faith try to comply with the Commission’s rules.

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<sup>35</sup> 47 U.S.C. 214(a).

<sup>36</sup> Notice at ¶ 49.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at ¶ 83.

<sup>39</sup> *Id.* at ¶ 80.

## **VI. Conclusion**

As an initial matter, the Commission should grant USTelecom's Petition for Reconsideration of the Declaratory Ruling and subject the proposal to redefine a service to the notice and comment process. The Commission should also reconsider its highly prescriptive and regulatory approach in this proceeding with the goals of facilitating and accelerating the transition from the legacy TDM network to an all-IP network. An all-encompassing federal regulatory regime that adds obstacles and obligations to those seeking to build out an all-IP infrastructure in the most challenging areas of our nation will serve neither the interests of network providers, the principles embodied in the Communications Act, nor the American people.

/s/ David B. Cohen  
David B. Cohen  
Senior Policy Advisor

/s/ Jeffry H. Smith  
Jeffry H. Smith  
President/CEO

GVNW Consulting, Inc.  
8050 SW Warm Springs Street, Suite 200  
Tualatin, Oregon 97062

202-236-3947

February 5, 2015