

**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)	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 CALTEL

Pursuant to the Commission’s Public Notice establishing dates for comments on the Emerging Wireline Networks and Services Notice of Proposed Rulemaking (NPRM),¹ the California Association of Competitive Telecommunications Companies² (“CALTEL”) files the following comments on behalf of its members.³

¹ *Wireline Competition Bureau Announces Comment and Reply Comment Dates for the Emerging Wireline Networks and Services Notice of Proposed Rulemaking*, DA 15-5, January 6, 2015.

² CALTEL is a non-profit trade association working to advance the interests of fair and open competition and customer-focused service in California telecommunications. CALTEL members are entrepreneurial companies building and deploying networks to provide competitive voice, broadband, and video services. The majority of CALTEL members are small businesses who help to fuel the California economy through technological innovation, new services, affordable prices and customer choice.

³ See www.caltel.org for a list of CALTEL member companies.

I. Introduction and Summary

CALTEL appreciates the opportunity to file opening comments on the NPRM, a thoughtful and well-intentioned document that finally addresses many of the wholesale competition issues that were teed up in the *National Broadband Plan*.⁴ In particular, the NPRM accurately recognizes and distinguishes between the three technology transitions that are currently underway in the industry,⁵ and the need to protect existing wireline competition (and the competitive choice it offers to residential and business customers) from harm due to these changes.

In these comments, CALTEL will first describe its advocacy before the California Public Utilities Commission (CPUC) which resulted in a state-specific copper retirement notice-and-negotiations process. The record of the California proceeding revealed information that is either taken for granted in many of the NPRM's assumptions or which addresses some of the questions it poses. CALTEL also will discuss its prior advocacy and its current position regarding potential sale or auction of copper facilities.

Next, CALTEL will discuss the related issue of *de facto* retirement of copper facilities due to failure or refusal by major ILECs to maintain it. CALTEL will first summarize its joint advocacy with a California consumer group, the Utilities Reform Network (TURN), before the CPUC regarding the failure of AT&T and Verizon California to maintain copper facilities. Although this advocacy was successful in

⁴ See Federal Communications Commission, *Connecting America: The National Broadband Plan*, Chapter 4, pp. 50-51; <http://download.broadband.gov/plan/nationalbroadband-plan.pdf> ("National Broadband Plan"), Recommendations 4.7 and 4.9. See also *Wireline Competition Bureau Seeks Comment on Business Broadband Marketplace*, WC Docket No. 10-188, DA 10-1743, dated September 15, 2010.

⁵ NPRM at fn. 16.

persuading the CPUC to determine that it should undertake a third-party physical examination of ILEC facilities and infrastructure in order to investigate the root cause of service quality problems that affected retail and wholesale customers alike, the RFP for this examination has unfortunately never been issued. CALTEL is unsure whether the CPUC still intends to issue the RFP, and if, at some point in the future, the CPUC will have evidence and recommendations to share with the Commission.

Despite the absence of this data, CALTEL explains the usefulness of the CPUC's service quality results in identifying problems and trends, and how this data supports conclusion that AT&T's results, while significantly sub-standard, may not constitute copper retirement. On the other hand, Verizon's fiber migration initiative includes a deliberate refusal to repair "chronic" copper loops in targeted wire centers which certainly qualifies as intentional retirement of copper, which should be disclosed as such at the onset--before customers have been enticed or evicted onto fiber.

Finally, CALTEL will explain how the importance of the trade-offs, stated several places in the NPRM, between the need for approval-based vs. notice-based copper retirement rules and the assurance of continued access to wholesale inputs on equivalent rates, terms and conditions cannot be overstated. But while CALTEL supports the Commission's tentative conclusion regarding access to equivalent wholesale inputs, it is unclear how the mitigating impacts of this continued access can be realized unless the Section 214 certificate process is somehow operationally integrated into the triggers and timelines governing individual copper retirement notices and any related sale/auction

evaluation. The CPUC's adopted process is also helpful here in illustrating the problems with the NPRM's current Section 214(a) service discontinuance proposal.

II. Discussion

A. The CPUC's Copper Retirement Notice-and-Negotiations Process

In 2007, CALTEL filed a Petition for Rulemaking⁶ with the California Public Utilities Commission (CPUC) to advocate for state-specific rules similar to those proposed in the two petitions filed with the Commission that were docketed as RM-11358.⁷ CALTEL's petition was granted and a rulemaking was opened in January, 2008.⁸ Although CALTEL was not successful in persuading the CPUC to adopt all of its proposed rules, the ability to gather extensive information gathered through the discovery process was extremely valuable and is still relevant to many of the assumptions that form the basis of the NPRM.

In that state proceeding, CALTEL was able to confirm the following:

- The TRO's assumptions, and academic theories espoused by economist witnesses on behalf of AT&T and Verizon, that copper retirement was needed to encourage the deployment of fiber was contradicted by the facts and responses to discovery;

⁶ California Public Utilities Commission Petition for Rulemaking P.07-07-009, *Petition of the California Association of Competitive Telecommunications Companies Pursuant to Public Utilities Code Section 1708.5 to Adopt, Amend, or Repeal Regulations Governing the Retirement by Incumbent Local Exchange Carriers of Copper Loops and Related Facilities Used to Provide Telecommunications Services*, filed July 12, 2007.

⁷ See *Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers, BridgeCom International et al. Petition for Rulemaking and Clarification* (filed January 18, 2007) and *Petition of XO Communications, LLC., Covad Communications Group, Inc., NuVox Communications and Eschelon Telecom, Inc. for a Rulemaking to Amend Certain Part 51 Rules Applicable to Incumbent LEC Retirement of Copper Loops and Copper Subloops* (filed January 18, 2007).

⁸ California Public Utilities Commission Rulemaking R.08-01-005, *Rulemaking Regarding Whether to Adopt, Amend, or Repeal Regulations Governing the Retirement by Incumbent Local Exchange Carriers of Copper Loops and Related Facilities Used to Provide Telecommunications Services*, issued January 10, 2008.

- AT&T’s broadband architecture is copper-dependent, thereby proving that the existing copper network can, with additional investment by either an incumbent or competitor, become an important component of a comprehensive broadband policy;
- Neither FiOS nor U-verse are complete stand-alone networks or physically separate in every way from the more traditional copper network. Verizon’s network experts stated that not only do the facilities share common support structures, rights-of-way, and conduit, fiber cables are often “lashed to” copper cables;
- Verizon’s internal analysis (as of that time) fundamentally concluded that shutting down its copper network would require a massive and costly forced-migration of customers, because its FiOS entertainment network will not voluntarily attract the majority of its base.⁹

The CPUC’s Decision,¹⁰ issued over six years ago, addressed several issues that are still relevant and for which the NPRM requests input. For example, the CPUC found that when retiring a copper loop, ILECs are required “to offer to its retail end-user customer the comparable service over fiber that the customer was previously receiving”¹¹ and that “if an ILEC is advertising its new fiber-based service to customers, it should not represent that the customer *must* purchase the fiber-based service.”¹²

The CPUC also clarified that “by copper loop, we refer to the copper ‘transmission facility between a distribution frame (or its equivalent) in an incumbent

⁹ See *Declaration of Joseph Gillan, On Behalf of CALTEL*, California Public Utilities Commission Rulemaking R.08-01-005, *Rulemaking Regarding Whether to Adopt, Amend, or Repeal Regulations Governing the Retirement by Incumbent Local Exchange Carriers of Copper Loops and Related Facilities Used to Provide Telecommunications Services*, at ¶8. For more information about Verizon’s evolving plans to migrate customers to its fiber facilities and to retire underlying copper facilities, see Comments of CALTEL, *Petition for Forbearance of the United States Telecom Association*, WC Docket 12-161, dated April 6, 2012 and Comments of CALTEL, *Telepacific et. al. Request to Refresh the Record*, WC Docket 10-188, et. al, filed March 5, 2013.

¹⁰ D.08-11-033, California Public Utilities Commission Rulemaking R.08-01-005, *Decision Adopting Process Governing Retirement by Incumbent Local Exchange Carriers of Copper Loops and Related Facilities Used to Provide Telecommunications Services*, issued November 13, 2008.

¹¹ *Id.* at p. 14.

¹² *Id.* at p. 39.

LEC central office and the loop demarcation point at an end-user customer premises, including inside wire owned by the incumbent LEC.”¹³ Hence, copper feeder plant was included in the CPUC’s definition, and CALTEL agrees with the proposal in the NPRM that it should be added to the definition of copper facilities in 47 C.F.R. § 51.325(a)(4).¹⁴

CALTEL addressed two other questions now posed in the Commission’s NPRM in the context of the CPUC’s proceeding. Regarding what actions should be included in the definition of copper retirement,¹⁵ CALTEL proposed:

The term “copper loop retirement,” “copper retirement” or “retirement means any practice, procedure, or policy that directly or indirectly makes copper facilities unavailable for any reason to a competitive carrier for use to provide service to customers. These terms expressly include any situation in which the copper facility, in whole or in part, is: 1) physically uninstalled, disabled, or removed from the location where it was installed; 2) removed from, or reclassified or re-designated in any Operations Support System, database, listing, or any inventory or assignment system of any type so that the copper loop or copper facility is unavailable for assignment; or 3) designated with any notation, listing or other type of label indicating that it is unavailable for assignment for use. These terms do not include situations in which one copper facility is replaced with another resulting in no net loss of facilities available for assignment for use (e.g. replacement of damaged facilities).¹⁶

CALTEL also noted that the ILECs’ retirement notices varied widely in terms of format and content, and thereby addressed the questions posed in the NPRM regarding revisions to notice requirements:¹⁷

¹³ *Id.* at p. 24, fn. 51.

¹⁴ NPRM at ¶ 51.

¹⁵ NPRM at ¶ 52.

¹⁶ *Opening Comments of the California Association of Competitive Telecommunications Companies on the Preliminary Scope of Issues to be Addressed in Rulemaking R.08-01-005*, California Public Utilities Commission Rulemaking R.08-01-005, dated March 14, 2007 at p. 30.

¹⁷ NPRM at ¶ 57.

Thus, CALTEL's proposed rules ask the ILEC retirement notices provide sufficient information to determine the scope and impact of a proposed copper retirement by identifying the type of facility affected (e.g. drop line, loop, feeder plant, aerial or underground), the location of the facility, the timeframe that the ILEC plans to retire the facility, other carriers that might be affected by the retirement, and the overall scope of the retirements planned for the affected community and the method of retirement.¹⁸

The CPUC in its final decision did not adopt any formal rules; however, the CPUC established a notice-and- negotiation process in addition to the network change process currently in force at the federal level. This process:

- Requires ILECs to “file concurrently with (the CPUC’s) Communications Division any notices of network changes that the carriers file with the (Commission) for fiber to the home (FTTH) or fiber to the curb (FTTC) deployment that results in the retirement of copper plant”;¹⁹
- Requires ILECs to “serve concurrently with its filing at the CPUC, notice of the copper retirement upon all CLECs that are interconnected with the ILEC, regardless of whether the CLEC is serving customers currently on the specific retiring copper loop”;
- Within 20 days of the date that these notices are concurrently filed, a CLEC “must request, in writing, negotiations with the ILEC either to purchase the entire copper loop from the ILEC or to reach an agreement with the ILEC on price and terms and conditions for continued access to loop facilities”;
- The CLEC are required to “include in its request for negotiations the following information:
 - a. Whether the CLEC seeks to purchase the copper loop, or whether the CLEC seeks only to have the ILEC maintain access to a loop;
 - b. The number of current or planned customers on the copper loop;
 - c. The services that the CLEC provides over the loop or plans to provide over the loop; and
 - d. The number of UNEs that the CLEC currently purchases”;
- The ILEC is required to “enter into good faith negotiations with the CLEC for a period of 60 days either to sell the copper loop at issue at fair market

¹⁸ *Opening Comments of the California Association of Competitive Telecommunications Companies on the Preliminary Scope of Issues to be Addressed in Rulemaking R.08-01-005*, California Public Utilities Commission Rulemaking R.08-01-005, dated March 14, 2007 at p. 6.

¹⁹ D.08-11-033 at Ordering Paragraph 4.

- value; or to reach a fair and equitable agreement with the CLEC on price and terms to ensure (continued) access to loop facilities;
- Although the CPUC declined to adopt a binding arbitration process to adjudicate negotiation disputes, it found that it expected “that the ILECs will work in good faith to provide (loop facilities) access to their wholesale CLEC customers”²⁰ and “if there is evidence that the ILECs are engaging in anti-competitive behavior in this regard, we may revisit the issue.”²¹

While CALTEL was disappointed with many aspects of the CPUC’s decision, the intervening years suggest that it may have had a prophylactic effect in that neither AT&T nor Verizon have filed copper retirement notices of any significant impact in California. This is true despite the extensive deployment of FiOS in Verizon’s Los Angeles market. As a result, the negotiations process outlined above has never been real-world tested in California.

This fact is especially important in that the NPRM’s questions about potential sales or auctions of copper facilities to interested CLECs remains hypothetical.²² Nonetheless, the issues that CALTEL raised before the CPUC still appear to be valid, and are cursorily addressed in AT&T’s proposal (which consists of one power point slide).²³ As CALTEL previously explained:

Although CALTEL does not rule out consideration of an option to acquire soon-to-be-retired copper facilities (via direct sale, auction, irrevocable rights of use, etc.), CALTEL believes that such an arrangement not only is undesirable as a policy matter, but also administratively unworkable and economically infeasible.

²⁰ *Id. at p. 19.*

²¹ *Id. at p. 14.*

²² NPRM at ¶¶ 84-91.

²³ *See* Letter from Robert C. Barber, Attorney, AT&T, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 13-5, 12-353, et. al., filed May 30, 2014.

...the ILECs have referenced a “parallel copper network” that does not exist on the physical, financial or systems level; instead, the reality is that copper and fiber ILEC facilities are significantly integrated in the ILEC networks, sharing common conduit and feeder plant. An option that would “sell” a single copper loop to a CLEC that would continue to reside in ILEC conduit and be interconnected to ILEC feeder plant would create unworkable operational and maintenance problems. Such a transfer of ownership would also trigger franchise, easement, rights-of-way, and building access issues, in addition to issues associated with access to ILEC facilities through which the copper is routed as noted above.²⁴

In short, CALTEL’s position regarding possible sale or auctions remains unchanged, i.e. it is an option worth considering but faces significant operational, financial, and legal hurdles.

B. *De Facto Retirement and Inadequate Maintenance of Copper Facilities*

The NPRM asks whether “incumbent LECs (are) in some circumstances neglecting copper to the point where it is no longer reliably usable” and “if copper facilities are (being) allowed to degrade in quality to the point of de facto retirement without notice to customers.”²⁵ CALTEL has been very vocal on this issue in its advocacy before the CPUC.

Dick Jalkut, CEO of TelePacific Communications, a CALTEL member, testified at a February 4, 2011 hearing of the California Senate Energy, Utilities and Communication Committee convened to examine service quality issues in the wake of extended service outages following the December, 2010 winter storms. Later that spring, CALTEL wrote a letter calling for the Commission to open a service quality proceeding,

²⁴ *Opening Comments of the California Association of Competitive Telecommunications Companies on the Preliminary Scope of Issues to be Addressed in Rulemaking R.08-01-005*, California Public Utilities Commission Rulemaking R.08-01-005, dated March 14, 2007 at pp. 28-29.

²⁵ NPRM at ¶ 53.

and to include within its scope a physical examination of key telecommunications infrastructure.

The CPUC issued an Order Instituting Rulemaking (OIR) in December, 2011, in which the CPUC recognized CALTEL's advocacy about the nexus between retail and wholesale service quality, and the impact of poor performance by AT&T and Verizon on competitive carriers, and on competition:

...since CLECs rely on copper facilities owned by URF ILECs, deteriorating facilities and extended out-of-service repair times negatively impact customer choice by increasing costs of CLECs through compensating customers to restore confidence in their service. If this confidence cannot be restored, it creates an anti-competitive environment by removing CLECs as a viable alternative to the URF ILECs.²⁶

CALTEL has partnered with the Utility Reform Network over the course of the CPUC's proceeding, filing six sets of detailed comments, responses and declarations over the past two and a half years, including a Declaration from another CALTEL member company CEO, Dane Jasper of Sonic Telecom.²⁷ These filings, along with those of other parties like the CPUC's Office of Ratepayer Advocates (ORA) and the Communications Workers of America (CWA), contain the "examples and facts"—pictures of hefty bags wrapped around poles and pedestals, admissions of unpressurized vaults and un-replaced pulp cable--which were available to the parties of the type which the NPRM is now

²⁶ *Order Instituting Rulemaking to Evaluate Telecommunications Corporations Service Quality Performance and Consider Modification to Service Quality Rules*, California Public Utilities Commission Rulemaking R.11-12-001, issued December 1, 2011, at p. 11.

²⁷ See Declaration of Dane Jasper, Attachment A, Response of the California Association of Competitive Telecommunications Companies to Emergency Motion of the Utility Reform Network (TURN) Urging the Commission to Take Immediate Action to Protect Verizon Customers and Prevent Further Deterioration of Verizon's Landline Network, R.11-12-001, dated April 15, 2014.

seeking.²⁸

The combined efforts of these parties were successful in persuading the Assigned Commissioner in the CPUC's proceeding to issue an Amended Scoping Memo ordering a physical evaluation of AT&T and Verizon facilities. The full Commission confirmed his determination in a unanimous decision the following month:

The scoping memo and ruling issued on September 24, 2012, found that “[i]n order to maintain acceptable levels of service quality for California customers, it is necessary to ensure that carriers have access to an adequate network of infrastructure,” and includes within the scope of this proceeding an evaluation of carriers’ network infrastructure, facilities, and related policies and practices. The scoping memo provides that this study will be conducted by an independent consultant and overseen by the Commission’s Communications Division. The purpose of this evaluation is to gauge the condition of the carrier infrastructure and facilities used in the provision of telecommunications services within California, in order to ensure that the facilities and related practices support a level of service consistent with public safety and customer needs.²⁹

Unfortunately, the CPUC to date has not issued the RFP for this examination. If such an examination had been completed, the CPUC would be in a position to share factual data and weigh in on the questions posed in the NPRM regarding copper retirement rule changes and applicable service quality standards. At this point, CALTEL is unsure whether the CPUC still intends to issue the RFP, and if at some point in the future, it will have evidence and recommendations to share with the Commission.

Absent that data, CALTEL acknowledges that the issue of deferred maintenance and degraded plant is difficult to translate into substantive rules. As CALTEL described

²⁸ NPRM at ¶ 53.

²⁹ D.13-02-023, R.11-12-001, at pp. 2-3.

in its opening comments on the CPUC's OIR, underlying root causes are complex, and problems are often not detected until there is a significant weather-related event:

The prolonged outages that resulted from (the 2010 winter) storms revealed outside plant that was long-obsolete and management decisions that had deferred or diverted capital and operating expenditures from readying the network for winter rain—a weather event that happens every year in California to a greater or lesser degree.³⁰

Nonetheless, service quality metrics are probably a good indicator that plant is being allowed to degrade. A recent Scoping Memo in the CPUC's proceeding included a staff report that analyzed ILEC results for the CPUC's Out of Service (OOS) Repair Interval Measure (90% within 24 hours excluding Sundays, federal holidays, catastrophic events and widespread outages). The report included a number of tables and graphs which concluded:

The two largest wireline carriers: AT&T California (AT&T) and Verizon California (Verizon) never met the minimum standard for the OOS repair interval measure during the 2010 to 2013 period. Generally, all fourteen (rural) GRC (general rate case) ILECs met the minimum standard. Only one GRC ILEC, Frontier Communications West Coast, encountered an issue of not meeting the standard in more than one year within 2010 to 2013.³¹

Specifically, AT&T's repair time results trended positively—from a dismal 50% in 2010, to 67%, 71% and 67% in the following three years.³² Verizon's results however trended steadily downwards—from 76% in 2010, to 73%, 72% and 70%.³³ These trends

³⁰ *Comments of the California Association of Competitive Telecommunications Companies on Order Instituting Rulemaking to Evaluate Telecommunications Corporations Service Quality Performance and Consider Modifications to Service Quality Rules*, R.11-12-001, dated January 31, 2012, at p. 27.

³¹ *Assigned Commissioner's Amended Scoping Memo and Ruling*, R.11-12-001, issued September 24, 2014, at Attachment A, Staff Report, at p. 6.

³² *Id.* at p. 10.

³³ *Id.*

may be indicative of the two different business plans and strategies noted in the NPRM for these two companies with regards to fiber deployment and continued reliance on copper plant:

AT&T has indicated that it intends to maintain its copper for some of its services, such as its fiber to the node (FTTN)-based U-verse service and other DSL and Ethernet over Copper (EOC) services.³⁴

Whereas:

Where Verizon has deployed its fiber network, it generally seeks to transition customers from the legacy copper network to the fiber network. Verizon already has transitioned two of its wire centers completely, one in Florida and one in Texas. Verizon also announced it plans to transition another six wire centers (in 2014).³⁵

With the elimination of ARMIS service quality reports, the Commission does not currently have access to nationwide and uniform service quality reports, and CALTEL is aware that some other states, but certainly not all, have a metric similar to the CPUC's OOS Repair Measure. Furthermore, despite its continuing poor results, CALTEL is not convinced that AT&T is intentionally failing to maintain and degrade plant in order to *de facto* retire it.

Verizon, however, is another story. The record in the CPUC's proceeding, and repeated in the May 12, 2014 letter from Public Knowledge et al.,³⁶ describes Verizon internal practices that include refusals to repair copper loops for customers with "chronic copper network problems" (i.e. those who call in trouble tickets to the Verizon maintenance center) which result in the customer choosing between transitioning to a

³⁴ NPRM at ¶ 18.

³⁵ *Id.* at ¶ 17.

³⁶ NPRM at fn. 51.

fiber loop or disconnecting their service. Verizon has also described this initiative publicly: although it claims that it is focused on addressing chronic loop problems, it is clear from FiOS take-rates that non-FiOS customers are being targeted to increase the fill rates and improve the economics on the otherwise underutilized fiber facilities.³⁷ While *de facto* copper retirement may be generally difficult to detect or confirm, surely a decision to refuse to further maintain a copper loop crosses a bright line, and should be noticed to retail customers and competitors in the targeted wire centers before copper loops have been entirely transitioned to fiber.

C. Copper Retirement Rules and Section 214 Certificates

By now it should be clear that CALTEL has expended significant time and resources advocating for more robust copper retirement rules and state commission oversight of the ILEC's failure to maintain copper facilities. But CALTEL also agrees with the conclusion, stated several times in the NPRM, that the "separate proposal to ensure continued access to wholesale services following TDM discontinuances would address many of the concerns that have led competitive LECs to advocate for an approval (vs. a notice-based copper retirement) requirement."³⁸

That separate proposal, as CALTEL understands it, is to "tentatively require incumbent LECs that seek section 214 authority to discontinue, reduce, or impair a legacy service used as a wholesale input by competitive providers to commit to providing

³⁷ See Comments of CALTEL, *Petition for Forbearance of the United States Telecom Association*, WC Docket 12-161, dated April 6, 2012 and Comments of CALTEL, *Telepacific et. al. Request to Refresh the Record*, WC Docket 10-188, et. al, filed March 5, 2013.

³⁸ See, e.g., NPRM at ¶ 56.

equivalent wholesale access on equivalent rates, terms, and conditions.”³⁹ The NPRM suggests that the trigger for an ILEC to seek such authority would be based on its assessment whether (retail) service to a community or part of a community is discontinued, reduced, or impaired such that approval is necessary pursuant to section 214(a).⁴⁰

Although CALTEL agrees with COMPTTEL’s previous advocacy, repeated in the NPRM, that “the Commission should prohibit incumbent LECs from ‘removing, disabling, or failing to maintain copper’ unless the Commission makes a finding that such request is in the public interest, and the public interest standard should ‘ensure the availability of functionally equivalent comparable wholesale services at equivalent prices, terms and conditions,’”⁴¹ CALTEL can also see valuable trade-offs between securing an approval-based copper retirement process and the assurance of obtaining continued access to equivalent wholesale inputs.

But the NPRM’s proposed use of two admittedly “separate, but often related”⁴² sets of rules (i.e. the copper retirement notices process and the Section 214(a) service discontinuance process) is inadequate and unlikely to achieve the desired outcomes. In particular, the triggers and timelines are not integrated and information about equivalent wholesale inputs will not be available when CLECs need to make decisions about

³⁹ NPRM at ¶ 92.

⁴⁰ *Id.* at ¶¶ 102-103.

⁴¹ *Id.* at fn. 60.

⁴² *Id.* at ¶ 5.

whether or not to enter into negotiations for continued lease or purchase of soon-to-be-retired copper facilities.

There is a suggestion at one point in the NPRM’s discussion of enhanced copper retirement notice rules that the Commission intends for the two processes to dovetail:

Specifically, we propose requiring that incumbent LECs provide a description of the expected impact of the planned changes, including but not limited to any changes in prices, terms, or conditions that will accompany the planned changes.¹⁴⁷ See Appendix A, proposed revisions to sections 51.327(a)(6) and 51.332(c)(1). We emphasize that we do not seek through this proposal to provide an exemption from the statutory requirement pursuant to section 214(a) to obtain authorization to discontinue, reduce, or impair service to a community or part of a community.⁴³

But the two processes are clearly not on the same trajectory at too many other points in the discussion. Discontinuance is discussed as an “en masse” or “eventual” transitioning away from legacy services,⁴⁴ and interested parties (rather than ILECs themselves) are tasked with monitoring and reporting “circumstances in which an incumbent LEC’s proposed copper retirement is accompanied by or is the cause of a discontinuance, reduction, or impairment of service provided over that copper—but the incumbent LEC has failed to seek the necessary authority, contrary to the requirements of section 214(a) and our rules thereunder.”⁴⁵

The wire centers which Verizon is targeting for migration of all copper-based services to fiber provide a good example. Under the CPUC’s negotiations-and-notice

⁴³ *Id.* at ¶ 57 and fn. 147.

⁴⁴ *Id.* at ¶ 5.

⁴⁵ *Id.* at ¶ 78.

process, CALTEL assumes that Verizon would file copper retirement notices in a given wire center once it had transitioned California retail customers to fiber loops, similar to the notices it has filed in Texas, Florida and other states. At that time, an interconnecting CLEC would be faced with deciding if it was interested in negotiating with Verizon for continued access to copper loops or loop-and-port combinations, either on a leased or purchased basis. It is at that point that the CLEC would need information about its options, including access to equivalent wholesale inputs at equivalent rates, terms and conditions. Yet, without some change to the rebuttable presumption outlined in the NPRM,⁴⁶ Verizon would probably claim that it does not have enough information to determine whether or not the retail services of the CLEC will be discontinued, reduced or impaired, let alone that it has an obligation to trigger the Section 214(a) service discontinuation process in time for information about equivalent wholesale inputs to be useful.

III. Conclusion

CALTEL welcomes this opportunity to provide input on two of the key issues, and related questions, in the Commission's Emerging Wireline Networks and Services NPRM. CALTEL offers the recommendations outlined above to assist the Commission in achieving its plan, undertaken in the *National Broadband Plan*, to "ensure appropriate

⁴⁶ *Id.* at ¶ 103.

balance in copper retirement policies as part of developing a coherent and effective framework for evaluating its wholesale access policies generally.”⁴⁷

CALTEL looks forward to reading the opening comments of other parties and providing additional comments and recommendations in its reply comments.

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⁴⁷ See Federal Communications Commission, Connecting America: The National Broadband Plan, Chapter 4, pp. 50-51; <http://download.broadband.gov/plan/nationalbroadband-plan.pdf> (“National Broadband Plan”), Recommendation 4.9.